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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

Case No. C01-1351 TEH

DECLARATION OF JOHN HAGAR IN SUPPORT OF RECEIVER'S MOTION FOR ORDER MODIFYING STIPULATED INJUNCTION AND OTHER ORDERS

I, John Hagar, declare as follows:

1) I am currently the Special Master in *Madrid v.Tilton* and have been engaged as Chief of Staff for Receiver Robert Sillen in this matter. I make this declaration in support of the Receiver's Motion for an order modifying certain orders entered in this matter.

2) In my capacity as Chief of Staff for the Receiver, I have general operational oversight of most of the ongoing activities of the receivership and regularly confer with the Receiver and other staff members regarding those activities to ensure that the Receiver's goals and directives are being implemented.

3) The Receiver's motion is directed to three orders: the Stipulation for Injunctive Relief, entered on June 13, 2002 ("Stipulated Injunction"), the Stipulated Order Re Quality of Patient Care And Staffing, entered on September 13, 2004 ("Patient Care Order") and the Order Re Interim Remedies Relating To Clinical Staffing, entered on December 1, 2005 ("Clinical Staffing Order"). Set forth in **bold** below are the specific provisions of each of the foregoing orders as to which modification or elimination is requested.

Provisions Of The Stipulated Injunction That Should Be Modified.

Implement Inmate Medical Services Program (IMSP) Policies and Procedures in accordance with multi-year roll out schedule (Stipulated Injunction, ¶¶ 4-5.)

4) The roll-out schedule in the Stipulated Injunction is inconsistent with the Receiver's current, and more comprehensive, Plan of Action. After reviewing the system from top to bottom, prison by prison, the Receiver has determined that the roll-out schedule is not the most efficacious method for implementing significant change. As a result, the Receiver has prioritized changes in care standards differently than proposed under the roll out. Notably, the Receiver has begun to institute, and will continue to utilize, a "pilot project" model for developing and implementing appropriate practices and services. *See, e.g.*, Plan of Action., p. 40 and Goal B and Objectives B.3.1, B.7, B.12; Goal C and Objectives C.2, C.3; Goal D and Objectives D.1, D.3.4, D.4.1, D.4.2, D.5.1, D.5.2; Goal E and Objectives E.1, E.2.

5) The Receiver will be unable to implement the interconnected and time sensitive elements

of his Plan of Action if he is constrained by the multi-year "pre-determined, entire-system" roll out schedule model contained in the Stipulated Injunction. Instead, the Receiver proposes to review and modify the current IMSP Policies and Procedures in accordance with the schedule of the Plan of Action. For example, the chronic care requirements will be reviewed and modified to be consistent with community chronic care standards. *See* Plan of Action, Goal B, Objective B.2.6.3; *see also* Objectives B.3.1.2, B.5. The format of the IMSP Policies and Procedures may be modified as well; modification and addition of new material in the policies and procedures will be considered as the Receiver progresses.

Implement following requirements regardless of roll out status: 24 hour coverage by RNs in emergency clinics; intrasystem transfers per policy; treatment protocols implemented as resources allow; priority ducat system implemented; outpatient special diets available for patients with liver and kidney end-stage failure (Stipulated Injunction, ¶¶ 6a-6e).

6) The Receiver believes these provisions of the Stipulated Injunction should be eliminated. These provisions will not be easily integrated with the interconnected and time sensitive elements of the Plan of Action. Moreover, these provisions are at once too vague from an operational perspective (*e.g.* "emergency clinics," "intrasystem transfers," and "as resources allow"), while at the same time addressing the problems identified as if they were isolated and independent of the system as a whole. These requirements were imposed without consideration of other needed corrections to the system and without consideration for their impact on the overall health delivery system. The Receiver has undertaken to approach the failures in the prisons systemically, rather than addressing discrete problems in isolation and believes that the particular issues highlighted in these provisions of the Stipulated Injunction are better resolved as part of his overall Plan. Thus, the Receiver has established programs to deal with clinic coverage (*see* Plan of Action, Goal B, Objective B.7; Goal F); inter-prison transfers (*see* Goal B, Objective B.2.1); access to medical care (*see* Goal B, Objectives B.2 and B.3); and special diets (*see* Goal B, Objective B.9).

Institute Director's level review for inmate appeals (Stipulated Injunction, ¶ 7).

7) The Receiver believes that this requirement should be eliminated. The Receiver does not believe that it is appropriate that a CDCR "Director," *i.e.*, a custody official, perform the final level of review for medical appeals. In practice, the result of this provision has been that the final CDCR review concerning a clinical question is structured as an evaluation limited to "due process" considerations only (*e.g.*, did the State follow the appropriate rules). The underlying clinical issue is ignored. In contrast, the Receiver intends to develop an entirely new medical complaint and appeal process, coordinating with the needs of the *Coleman*, *Perez*, and *Armstrong* remedial plans and building on the information learned from the San Quentin patient advocacy model. Over time, this pilot project will be expanded to consider appeal requirements and then implemented throughout California prison system. *See* Plan of Action, Goal C, Objective C.3.

Audit each prison's compliance with IMSP Policies and Procedures consistent with roll out schedule; develop audit instrument and file it with the court; achieve 85% overall compliance with IMSP Policies and Procedures and conduct minimally adequate death reviews and quality management proceedings to reach substantial compliance (Stipulated Injunction, ¶¶ 19-23).

8) The Receiver believes that these compliance standards be eliminated. The Receiver has developed a detailed remedial program that is not dependent upon the roll out model reflected in the Stipulated Injunction. When implemented, the Receiver's Plan of Action is intended to bring the entire system into compliance with constitutional standards and the Plan makes provision for returning the system to State control once compliance is achieved. Plan of Action, Goal G. The Plan also includes its own metrics for determining when compliance has been achieved and for maintaining quality of performance within the system. Plan of Action, pp. 43-50; *see, e.g.*, Goal A, Objective A.8; Goal B, Objective B.10.1; Goal C, Objectives C.1, C.2, C.6; Goal D, Objective D.2. *See also* Report Re Plan of Action, pp. 6-8. In addition, the Plan of Action sets forth specific programs to develop, review and implement policies and procedures on an ongoing basis, including policies and procedures for death reviews and quality management programs. *See* Plan of Action, p. 48 and Goal C and Objectives C.4 – C.8; Goal D, Objective D.3.1.

Institution and patient monitoring by plaintiffs' counsel and institutional information access and reporting to plaintiffs' counsel (Stipulated Injunction, ¶¶ 7, 9-15).

9) The Receiver believes that the monitoring procedures developed under the Stipulated Injunction be modified substantially. I have been in communication with officials at the State level as well as staff in the various prisons concerning these monitoring procedures. The following brief description of how those requirements are being implemented is based on information I gathered as a result of my investigation.

A. Pursuant to Paragraph 7 of the Stipulated Injunction (as subsequently modified), plaintiff's counsel visit on average one prison per week. I understand that those visits last from one to three days. Prior to, and during the inspections, plaintiffs' counsel request hundreds of pages of documents. In addition, I understand that staff attorneys from both the Attorney General's office and CDCR also attend these inspections.

B. Also pursuant to Paragraph 7, plaintiffs' counsel may request medical information about specific inmates. These requests have grown ever more numerous. I have learned that CDCR received 90 such requests in January 2007 alone. I also understand that one full time DCHCS staff person has been assigned to responding to these inquiries. Other personnel are routinely diverted to assisting in responding to these requests as well.

C. Also pursuant to Paragraph 7, plaintiffs' counsel schedule conference calls on up to three Fridays of each month to follow up regarding particular inmates. The Chief Medical Officers ("CMOs") and staff must spend many hours preparing and obtaining documents for, and then participating in, these calls. In addition, an attorney for CDCR sits in on the calls. In January 2007 alone, plaintiffs' counsel apparently requested information about 99 inmates during these calls.

D. Paragraph 7 also requires the CMOs to meet with plaintiffs' counsel once each month, in addition to the foregoing telephone calls and visits. Plaintiffs'

counsel typically send a detailed agenda in advance, and expect the CMOs to be prepared to discuss the items on the agenda. While the conference calls themselves usually last only an hour, the CMOs and their staff must gather documentation and be prepared to answer questions during the calls. Invariably, additional documents and information are requested during the calls.

E. Finally, the Stipulated Injunction and the Patient Care Order (¶ 8) require defendants to produce documents upon request to plaintiffs' counsel. I have been informed that the DCHCS must produce over 500 pages per month to plaintiffs' counsel. These document productions are disproportionately burdening Health Care Managers and their clerical staff at the roll out institutions.

10) The Receiver recognizes the duty imposed on class counsel to communicate with and assist class members, as well as the need for counsel to be kept appraised of the remedial efforts and on-going changes to conditions of confinement. Plaintiffs' counsel have not been empowered, however, to monitor this receivership or to impose – even unintended – burdens on the Receiver's staff. Whatever oversight and reporting functions these provisions may have served in the past are now substantially less important with the receivership in place. In fact, the monitoring program has expanded over time and has grown to proportions where it now has an adverse impact on the *Receiver's* ability to direct CDCR and DCHCS staff. Those staff serve under the Receiver's direction and are needed to implement his remedial programs in a timely manner. Time and resources that could be put to use on the Receiver's behalf are being diverted to responding to demands made by counsel for plaintiffs.

11) If the information gathered as a result of these burdensome meetings, calls and requests was significantly improving the Receiver's ability to address the problems in the system, the effort expended by prison and DCHCS staff might be justified. But the Receiver has obtained only minimal, if any, benefit from these many inspections,

telephone calls and document requests. The Receiver also understands that in addition to becoming more frequent, these meetings and requests have become increasingly adversarial. Moreover, the timing of the inspections, in particular, appears driven more the schedules of plaintiffs' counsel than by institutional need.

12) The Receiver would like to develop a compliance monitoring pilot project designed with the existence of the receivership (and the Receiver's metrics) in mind. While it is important that counsel be able to represent their clients, it is absolutely necessary that monitoring of remedial progress be restructured so that it is more objective, more clinically oriented, more independent, less expensive and less intrusive. To this end, I, as the Receiver's Chief of Staff, met with Matthew Cate, Inspector General and discussed with him the concept that the Office of Inspector General ("OIG") will assume an oversight and reporting role concerning *Plata* compliance. Mr. Cate has agreed to participate in a pilot program of *Plata* compliance monitoring that will include periodic prison inspections. As the Court is aware, the OIG has participated in the *Madrid* remedial process in an effective manner and is willing to assist in this case. Involving the OIG on a pilot basis has a number of potential benefits, including the following: (1) this process will provide the State with much needed experience and expertise in monitoring and reporting on compliance that could prove invaluable when the health care system is ultimately returned to State control; (2) having one independent agency perform on-site reviews will substantially reduce the cost of the review as teams of attorneys from the Prison Law Office, Attorney General's Office, and CDCR Office of Legal Affairs will not participate in those reviews; and (3) the OIG has special skills concerning prison inspections and objective review processes and should bring an improved measure of objectivity to the inspection reports.

13) On behalf of the Receiver, I anticipate coordinating this effort through the Receiver's new Office of Evaluation, Measurement and Compliance to be established. The Receiver's office will submit the pilot proposal to the Court within 60 days and will involve counsel for both parties with this aspect of the remedial efforts.

Provisions Of The Patient Care Order That Should Be Modified

Develop criteria and method to identify high-risk patients; identify all patients who meet high-risk criteria, beginning with 2003 rollout institutions, and complete a plan for identifying patients at all other institutions for court review; ensure that high-risk patients are treated by qualified primary care providers; provide nursing and administrative support necessary to assist court-approved independent physicians in evaluating and treating high-risk patients at SAC, COR, CCWF, and SVSP by November 11, 2004 (Patient Care Order, ¶¶ 13-16).

14) The Receiver believes that these requirements should be eliminated as they are unnecessary or redundant in light of the Plan of Action. In practice, CDCR never fully complied with these requirements from the Patient Care Order. And the Receiver believes that being required to address the needs of high-risk patients precisely as set forth in the Patient Care Order will interfere with his ability to implement the interconnected and time sensitive elements of his Plan of Action. As with other requirements imposed by the orders, the Receiver does not wish to address these requirements independently of his efforts to remedy the system as a whole, but rather wishes to address them as part of his overall Plan. Thus, the Receiver intends to address the health care needs of the high-risk population as set forth in the Plan of Action. *See* Goal B, Objective B.3.1.2.

Submit proposal to control agencies to reclassify all physician categories, including a Regional Medical Director classification, complete a salary survey prior to submission of the proposal, address the need for salary adjustments in the proposal, and hire additional central office and regional medical directors while the proposal is considered by control agencies; submit a plan to the court to hire and retain central office and regional medical directors; submit a proposal to control agencies for a director of nursing and regional directors of nursing; establish and fill these positions on an interim basis (Patient Care Order, ¶¶ 17-18).

15) The Receiver believes that these provisions of the Patient Care Order should be eliminated because they are no longer necessary, and are unduly restrictive as framed. The Receiver has previously undertaken to increase clinical salaries, including physician salaries and has brought a motion to waive State law in order to establish Receiver Career Executive Assignments for prison, regional, and central office medical administrators that is currently pending before the Court. In addition to these steps, the Receiver will continue to implement his overall approach to hiring staff, including

supervisory staff, as addressed in Goal A, Objectives A.7 and A.8 of the Plan.

16) The Receiver also believes that he should not be limited to submitting proposals to California's control agencies regarding hiring, but instead should be allowed to exercise the full range of authority provided in the Order of February 14, 2006.

Submit a plan to the Court to change the hiring process from a local process to a central or regional process for physician, nurse practitioner, and physician assistant positions (Patient Care Order, ¶ 19).

17) The Receiver believes that this provision should be eliminated because it is no longer necessary, and is unduly restrictive as framed. The Receiver has already taken decisive action to improve hiring processes, including the hiring of registered nurses, licensed vocational nurses, mid-level practitioners, and physicians. Furthermore, the Receiver's ongoing approach to hiring processes is addressed in the Plan of Action. *See* Goal A, Objectives A.7 and A.8. The Receiver should not be limited to submitting plans to the Court, but instead should be allowed to exercise the full range of authority provided in the Order of February 14, 2006.

Develop a plan to establish a program for on-site clinics through a residency program affiliation to provide care for patients with complex medical conditions (Patient Care Order, ¶ 20).

18) The Receiver believes that this provision of the Patient Care Order should be eliminated because it is inconsistent with his approach as outlined in the Plan of Action. While the Receiver shares the concerns that motivated inclusion of this provision in the Patient Care Order, and has provided for options related to patients with complex medical conditions in his Plan (Goal B, Objectives B.3 and B.5), as framed this provision of the Patient Care Order calls for an overly restrictive answer to a serious problem that can and should be addressed through a variety of clinical options. For example, improved medical care for patients with complex problems might best be dealt with in ways other than through a "residency program affiliation." The Receiver wants the flexibility to propose clinical solutions more carefully tailored to the particular problems at issue rather than be limited to a "one size fits all" approach.

19) A practical concern with this provision is that many prisons currently lack sufficient

space for "on-site" specialty clinics. Such clinics, if they are to be utilized, have yet to be constructed. That, too, is part of the Plan. *See* Goal F. This provision of the Patient Care Order, therefore, is yet another example of how even the best intentions on the part of the defendants were doomed from the outset. The Receiver believes it should be eliminated in favor of the Receiver's more comprehensive, and more flexible, approach.

Fund, establish, and begin to fill one position at each institution for support of the SATS-LITE system (Patient Care Order, ¶ 23).

20) The Receiver believes that this requirement should be eliminated because it is unworkable and outmoded. The SATS-LITE system, which has never been fully and effectively implemented, is an outdated tracking system which the Receiver wishes to replace with a time-phased clinical information technology program. The Receiver's plan for automated scheduling and tracking systems are addressed in the Plan of Action. *See generally* Goal D. The Receiver contends that it would be fiscally irresponsible to continue to expend limited State resources on an automation proposal that doe not work.

Fund, establish, and begin to fill no less than nine additional Quality Management Assistance Team ("QMAT") positions (Patient Care Order, ¶ 24).

21) The Receiver believes that this requirement should be eliminated because it is unworkable. Pursuant to the Patient Care Order, QMAT personnel were to visit the various prisons and measure performance by utilizing an audit instrument. The Receiver has found, however, that QMAT has not improved the quality of physician care in California's prisons and has numerous shortcomings discussed in the Plan of Action. *See* Plan of Action, pp. 43-44. In light of these shortcomings, the Receiver has determined that the QMAT program is not an adequate quality improvement process. Moreover, QMAT related orders have never been effectively implemented and draw too many resources away from necessary patient care. The Receiver plans to eliminate QMAT, and institute the clinical staffing models set forth in Goal A, Objectives A.7 and A.8 and Goal C, Objective C.6 of the Plan of Action.

Provisions Of The Clinical Staffing Order That Should Be Modified

Establish recruitment and retention differentials for physicians, mid-level providers, and registered nurses, in addition to all existing recruitment and retention differentials; modify all written and digital recruitment documents accordingly (Clinical Staffing Order, ¶¶ 2a-2c (pp. 6-10)).

22) The Receiver believes that this provision of the Clinical Staffing Order should be eliminated because it is inconsistent with the Receiver's approach. Under the Receiver's program, clinical salaries are not dependent upon rigid "differentials." Instead, the Receiver believes that hiring and retaining quality clinical personnel in California's prisons will depend upon paying salaries based upon honest and forthright assessments of experience and performance. The Receiver has already begun to implement his approach and believes that he should have the flexibility to continue, without being bound to formulas.

Establish a program to process physician, mid-level practitioner, and registered nurse job applicants within 5 business days from receipt of application; establish a monitoring program to ensure standard is met for 90% of all applicants (Clinical Staffing Order, ¶ 3a (pp. 10-11)).

23) The Receiver believes that these requirements should be eliminated because they are inconsistent with his Plan of Action. These requirements were based on Court expert recommendations concerning an emergency salary increase ordered by the Court prior to the effective date of the Receiver's appointment. That order recognized that the Receiver needed the flexibility to make additional modifications to salaries and hiring processes. A new, expedited hiring process is therefore being tested on a pilot basis. Expedited hiring is also addressed in the Plan of Action. *See* Goal A, Objective A.8.3.3; *see also* Objective A.8.2.

24) The Receiver also finds that the paperwork and tracking processes required to monitor compliance with this order has proven to be unduly time consuming and expensive.

Establish a program to interview, evaluate, and render a hiring decision to all physician, mid-level practitioner, and registered nurse job applicants within 10 business days from receipt of application; establish a monitoring program to ensure standard is met for 90% of all applicants (Clinical Staffing Order, ¶ 3b (p. 11)).

25) The Receiver believes that his requirement should be eliminated for the reasons set forth in paragraphs 23 and 24, above.

Establish and implement a policy requiring that recently hired physicians be supervised by the regional medical Director when the physician is hired at an institution where the CMO and Chief Physician and Surgeon positions are vacant (Clinical Staffing Order, ¶5a (p. 12)).

26) The Receiver believes that this requirement should be eliminated for many of the reasons set forth in paragraphs 23 and 24, above. The Receiver also believes that the specificity required by this provision, *i.e.*, utilizing regional medical directors to supervise physicians under certain circumstances, is not conducive to providing a flexible yet appropriate program for adequate clinical supervision in California's prisons. The Receiver will undertake programs to provide appropriate clinical management as set forth in the Plan of Action. *See* Goal A, Objectives A.1 and A.7.

Establish and implement a program to hire physicians, mid-level practitioners, and registered nurses on a regional basis to allow for placement at prisons with the most need (Clinical Staffing Order, ¶ 5c (p. 12)).

27) The Receiver believes that this requirement should be eliminated for many of the reasons set forth in paragraphs 23 and 24, above. The Receiver will institute his own program to provide appropriate clinical staff as described in the Plan of Action. *See* Goal A, Objectives A.7. and A.8. The Receiver does not believe that the specificity of this requirement, *i.e.*, hiring clinicians on a regional basis, is conducive to providing a flexible yet appropriate program for adequate clinical supervision in California's prisons. While hiring clinicians on a regional basis may be explored in the future, an order mandating this specific practice is neither necessary nor appropriate at this time. In the interim, the Receiver is exploring innovative methods of staffing the prisons, including the concept of an "air force" whereby physicians who live in the Bay Area, Sacramento, Los Angeles, and San Diego will be flown to remote prisons for work, and

then returned to their homes. *See* Goal A, Objective A.8.6. Other relevant programs to increase staffing include the use of part time State registry staff, tuition reimbursement, etc. *See* Goal A, Objectives A.8.2 and A.8.3.

Verify credentials, licensure, and security clearance of all contract providerson a provisional basis within 2 business days of presentation by CMG and NOAH; complete final verification within 5 business days (Clinical Staffing Order, ¶ 6d (p. 13)).

28) The Receiver believes that this requirement should be eliminated for many of the reasons set forth in paragraphs 23 and 24, above. The Receiver does not believe that the specificity in this order, *i.e.,* using a two and five day standard for only two out of dozens of registry providers, is conducive to providing a flexible yet appropriate program for ensuring timely access to registry personnel. While timely verification is appropriate, this requirement is too rigid. The Receiver notes, for example, that problems with timely access to personnel from some registries are caused by the registry failing or refusing to perform credentialing and licensure verification. The Receiver is moving to modify registry contracts to correct this problem. The Receiver's alternate program for timely credentialing, licensure verification, and security clearances is set forth in the Plan of Action. *See, e.g.,* Goal A., Objective A.7.5.3.

Complete hiring interview and make provisional decision to hire or reject CMG or NOAH contract providers within 4 days of submission for 90% of applicants (Clinical Staffing Order, ¶ 6e (p. 13)).

29) The Receiver believes that this requirement should be eliminated for many of the reasons set forth in paragraphs 23, 24 and 28, above. The Receiver does not believe that the specificity set forth in this requirement, *i.e.*, using a four day standard for only two out of dozens of registry providers, is conducive to providing a flexible yet appropriate program for ensuring timely access to registry personnel. The Receiver's alternate program for the timely retention of contract providers is set forth in the Plan of Action. *See* Goal A, Objectives A.6.1, A.6.2, A.6.3.

Establish an adequate program to monitor prisoner health services provided by CMG/MHA/Staff Care (Clinical Staffing Order, ¶ 6g (p. 14)).

30) The Receiver believes that this requirement should be eliminated. This requirement was never implemented by defendants because CDCR was unable to hire and retain physicians to perform the necessary quality review functions called for in the order. Moreover, and in any event, the Receiver does not believe that the specificity in this order, *i.e.*, monitoring only three providers (one of which no longer provides services to CDCR), is conducive to providing a flexible yet appropriate program to measure and ensure appropriate levels of quality from registry personnel. The Receiver's alternate program for measuring the quality of contract providers is set forth in the Plan of Action. *See* Goal A, Objectives A.6.1 and A.6.2.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: May 9, 2007

John Hagar

PROOF OF SERVICE BY MAIL

I, Kristina Hector, declare:

I am a resident of the County of Alameda, California; that I am over the age of eighteen (18) years of age and not a party to the within titled cause of action. I am employed as the Inmate Patient Relations Manager to the Receiver in *Plata v. Schwarzenegger*.

On March 10, 2007 I arranged for the service of a copy of the attached documents described as DECLARATION OF JOHN HAGAR IN SUPPORT OF RECEIVER'S MOTION FOR ORDER MODIFYING STIPULATED INJUNCTION AND OTHER ORDERS on the parties of record in said cause by sending a true and correct copy thereof by pdf and by United States Mail and addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 10, 2007 at San Francisco, California.

Kristina Hector