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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

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11 MARCIANO PLATA, et al.,

12 *Plaintiffs,*

13 v.

14 ARNOLD SCHWARZENEGGER, et al.,

15 *Defendants.*

Case No. C01-1351 TEH

**RECEIVER'S REQUEST FOR  
PERMISSION TO FILE MOTION TO  
IMPLEMENT RECOMMENDATIONS IN  
OVERCROWDING REPORT AND FOR  
SCHEDULING ORDER WITH RESPECT  
TO SUCH MOTION**

1 Receiver Robert Sillen requests permission to file a motion for an order or orders to  
2 implement the recommendations that he made at the conclusion of his Overcrowding Report,  
3 filed herein on May 15, 2007. In addition, the Receiver requests that the Court set a briefing and,  
4 if necessary, hearing schedule in connection with the motion.

5 **A. The Receiver Requests Permission To File A Motion For An Order Or**  
6 **Orders Implementing His Recommendations.**

7 On February 15, 2007, in connection with plaintiffs' motion to empanel a three-judge  
8 court to consider a cap on the State prison population, this Court ordered the Receiver to submit  
9 a report setting forth "his best assessment of the manner, and extent to which, overcrowding is  
10 interfering with his ability to successfully remedy the constitutional violations" in the State  
11 prison health care system. Order, dated Feb. 15, 2007, p. 4. The Receiver did so.

12 At the conclusion of his lengthy and detailed Report, the Receiver made three  
13 recommendations to the Court:

- 14 1. That, within 15 days, Defendants be required to submit a report to this Court and  
15 to the courts in the *Armstrong*, *Coleman* and *Perez* cases, pertaining to "all  
16 aspects of the [proposed] 'infill' project, *including all studies and expert reports*  
17 *that have been conducted*" as they relate to whether sufficient clinical space and  
18 other support services have been factored into proposed construction plans;
- 19 2. That the Court issue an Order to Show Cause requiring the Defendants, within 15  
20 days, to state why the Receiver should not be given "direct oversight over the  
21 CDCR's correctional officer recruitment and hiring program;" and,
- 22 3. That the Court require Defendants to submit a Plan of Action describing how they  
23 intend to "address the serious correctional problems afflicting the CDCR" so that  
24 the various remedial plans affecting the prison health care system will be placed in  
25 the context of a more all-encompassing reform plan.

26 Following submission of the Report, additional information pertaining to overcrowding  
27 and its impact on the Receiver's ability to fulfill his duties came to light. For example, the  
28 CDCR is in the process of a major "mission change" at the California Rehabilitation Center

1 (“CRC”), the result of which will be that all 600 female prisoners will be transferred to various  
2 facilities around the State and the CRC will become an all-male Level II facility. Similarly, plans  
3 are in the works to convert the Sierra Conservation Center (“SCC”) Level III facility into a  
4 Sensitive Needs Yard Level III facility. This change will result in the movement in or out of  
5 roughly 2000 prisoners. These two developments exemplify the mission changes and “yard  
6 flips” that the Receiver discussed in his Overcrowding Report and which are seriously interfering  
7 with his ability to undertake effective and timely implementation of his remedial plans. *See*  
8 Report, pp. 17-18, 29.

9 These and other significant recent developments in the State’s response to the  
10 overcrowding crisis will have a substantial, negative impact on the Receiver’s ability to comply  
11 with the mandate this Court has given him. As such, the Receiver believes that it is important  
12 that he have the opportunity to bring the facts to this Court’s attention and to explain why he  
13 believes these new developments, together with the evidence in his Overcrowding Report,  
14 support his recommendations.

15 The Receiver had intended merely to file a supplemental report detailing this new and  
16 important information. But, in the interim, both plaintiffs and defendants filed supplemental  
17 briefing in connection with the motion for appointment of a three-judge panel in which they each  
18 briefly addressed the Receiver’s recommendations. Plaintiffs expressed support for the  
19 Receiver’s first recommendation that defendants submit an “infill” report and that the Court issue  
20 an order to that effect. Pltfs. Supp. Brief, filed May 29, 2007, p. 14. Plaintiffs suggested,  
21 however, that the Receiver be required to file a motion with respect to his other two  
22 recommendations on the grounds that they were “not directly related to the population cap issue”  
23 pending before the Court. *Id.*, p. 15. For their part, defendants effectively request this Court to  
24 reject the Receiver’s recommendations. Defs. Supp. Brief, p. 9.

25 After considering the matter further, the Receiver believes that plaintiffs’ suggestion has  
26 merit and that the Receiver should file a separate motion for an order or orders implementing his  
27 recommendations. This will give the Receiver and the parties an opportunity to brief the issues  
28

1 fully and for the Court to address the recommendations head on. Therefore, the Receiver  
2 requests permission to bring such a motion.

3 **B. The Receiver Requests That The Court Issue A Scheduling Order With**  
4 **Respect To The Motion**

5 Although the Receiver made his recommendations in the Overcrowding Report, which  
6 was filed at the Court's request in connection with the motion for a three-judge panel, the  
7 Receiver believes that consideration should be given to his recommendations without regard to  
8 the disposition of the three-judge panel motion. His recommendations relate to *Plata*-specific  
9 issues that he believes should be addressed independently of plaintiff's request for a population  
10 cap. Accordingly, the Receiver requests that this Court set a date by which his requested motion  
11 must be filed and a briefing schedule specifically with respect to it. In addition, the Court may  
12 wish to set a hearing on a matter of such significance.

13 **CONCLUSION**

14 For all the foregoing reasons, the Receiver requests permission to file a motion for an  
15 order or orders implementing the recommendations that he made at the conclusion of his  
16 Overcrowding Report and requests that the Court set a briefing and, if necessary, hearing  
17 schedule in connection with such motion.

18  
19 Dated: May 31, 2007

FUTTERMAN & DUPREE LLP

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21 By:                   /s/                    
22 **Martin H. Dodd**  
23 **Attorneys for Receiver Robert Sillen**  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17<sup>th</sup> Floor, San Francisco, CA 94104. I am over the age of 18 and not a party to the within action.

I am readily familiar with the business practice of Futterman & Dupree, LLP for the collection and processing of correspondence.

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**RECEIVER'S REQUEST FOR PERMISSION TO FILE MOTION TO IMPLEMENT RECOMMENDATIONS IN OVERCROWDING REPORT AND FOR SCHEDULING ORDER WITH RESPECT TO SUCH MOTION**

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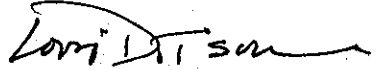
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5 Dated: May 31, 2007



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