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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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11 MARCIANO PLATA, et al.,

Case No. C01-1351 TEH

12 *Plaintiffs,*

13 v.

14 ARNOLD SCHWARZENEGGER, et al.,

**DECLARATION OF JOHN HAGAR IN  
SUPPORT OF RECEIVER'S  
OPPOSITION TO PLAINTIFFS'  
MOTION FOR AN ORDER DIRECTING  
RECEIVER TO COMPLY WITH  
APRIL 4, 2003 ORDER AND ACCESS TO  
DOCUMENTS AND/OR MODIFYING  
THE ORDER APPOINTING RECEIVER**

15 *Defendants.*

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1 I, John Hagar, declare as follows:

- 2 1. I am the Special Master in *Madrid v. Tilton* and have been engaged as Chief of Staff for  
3 Receiver Robert Sillen in the *Plata* case. Prior to being engaged as Chief of Staff I served  
4 as the Court's Correctional expert in *Plata*. Prior to that appointment, I attended  
5 numerous *Plata* meetings and discussed the status of *Plata* with counsel, California  
6 Department of Corrections and Rehabilitation ("CDCR") correctional and medical staff,  
7 and with the experts appointed in *Plata*.
- 8 2. I make this declaration in support of the Receiver's "Opposition to Plaintiffs' Motion for  
9 an Order Directing Receiver to Comply With The April 4, 2003 Order re Production and  
10 Access to Documents and/or Modifying the Order Appointing Receiver." The facts set  
11 forth herein are based upon my own personal knowledge or upon information and belief  
12 based upon my investigation into allegations made by the attorneys for the plaintiff class  
13 in his matter.
- 14 3. In my capacity as Chief of Staff for the Receiver I have general operational oversight of  
15 most of the ongoing activities of the receivership, and regularly confer with the Receiver  
16 and other staff members regarding those activities to ensure that the Receiver's goals and  
17 directives are being implemented.
- 18 4. I have reviewed plaintiffs' motion, the Declaration of Steven Fama in support of the  
19 motion, the exhibits attached to Mr. Fama's declaration, and plaintiffs' proposed order.  
20 It is important that plaintiffs' allegations be placed in context, and that the numerous  
21 factual errors in plaintiffs' moving papers to be corrected.
- 22 5. This declaration is therefore limited to addressing the following issues:
- 23 a. The Need For Prisoner/Patients To Able to Correspond with the Receiver in a  
24 Confidential and Private Manner;
  - 25 b. The Receiver's Plan for Accurate Multi-Discipline Death Review Investigations  
26 and Reports; and,
  - 27 c. The Receiver's Implementation of Short Term/Emergency Measures.
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1        **The Need For Prisoner/Patients To Able to Correspond with the Receiver in a**  
2        **Confidential and Private Manner.**

- 3        6. **The Inmate/Patient Complaint Process.** The Receiver's current program to evaluate  
4        and respond to prisoner/patient complaints is described in the Receiver's Third Bi-  
5        Monthly Report, filed on December 5, 2006. Subsequent Bi-Monthly and Quarterly  
6        Reports provided the Court with on-going evaluations and analysis of prisoner concerns.  
7        I was personally involved with the development and implementation of this program. It  
8        was established only after discussion with both the Prison Law Office ("PLO") and  
9        CDCR prisoner appeal staff.
- 10       7. To summarize, each inmate letter of complaint is logged when received. The Receiver's  
11       staff responds to each letter, and includes contact information for the Prison Law Office  
12       so that the inmate may communicate with class counsel. Each letter is individually  
13       reviewed and evaluated by the Receiver's medical staff. The Receiver's medical staff  
14       makes a determination as to whether the letter raises issues of sufficient seriousness that  
15       further inquiry is required, and if so, what that further inquiry should be. At the  
16       reviewer's suggestion and direction, the inmate's medical records may be requested for  
17       further review. In some cases the reviewing physician corresponds with the prisoner or  
18       contacts prison medical staff concerning the need for additional medical care. A file for  
19       each inquiry that merits further review is set up to permit staff to track progress on such  
20       inquiries. Perhaps 20% of all inmate letters merit further inquiry, but only a handful of  
21       letters, perhaps 10-15 to date, have resulted in further action beyond the initial follow up  
22       inquiry.
- 23       8. The Receiver has insisted that the handling of patient complaints be as transparent as  
24       possible. However, the specifics of any individual patient's medical problems, and the  
25       details of communications and decisions by the clinicians employed by the Receiver with  
26       individual patients are an entirely different matter. The Receiver, the clinicians who work  
27       for the Office of the Receiver, and I all agree it is imperative that confidential medical  
28       information remain confidential.

- 1     **9. The Importance of Protecting Prisoner/Patient Confidential Communications with**  
2     **the Court.** Based on my more than 10 years of experience as Special Master, I have  
3     concluded that an essential element of an effective Federal Court remedial plan are  
4     provisions that allow prisoners to correspond confidentially with the Court's remedial  
5     plan representative. The importance of allowing confidential communication between  
6     prisoners and Court representatives applies with equal force whether the representative be  
7     an Expert, a Special Master, or in this case the Receiver. Unless the men and women  
8     confined to California correctional facilities are absolutely convinced that the details of  
9     their complaints will remain confidential, they will not feel comfortable communicating  
10    with the Court. Unless they believe that confidential communication is possible,  
11    prisoners with serious problems will hesitate to bring, and in some cases, will not bring  
12    the problems to the Court's attention.
- 13    10. The Court has recognized the importance of direct, confidential prisoner communication  
14    with the Receiver. The Order appointing the Receiver provides that he is to have  
15    "unlimited access" to the inmate population and the authority to engage in confidential  
16    interviews with inmates. This fundamental principle of effective remedial plan  
17    monitoring is especially important in *Plata* because the inquiries of prisoner class involve  
18    medical questions, and in some circumstances, very serious questions pertaining to  
19    medical issues (including HIV and HCV infections) which themselves call for the utmost  
20    privacy.
- 21    11. It is also important to emphasize that the need for prisoners to communicate  
22    confidentially with the Court through the Receiver applies, regardless of whether the  
23    attorneys who demand to review confidential correspondence work for the plaintiffs or  
24    for the defendants. On occasion, situations arise where California prisoners do not trust  
25    the PLO. Regardless of the validity of the prisoner's concern, all prisoner/patients must  
26    be allowed to communicate directly with the Receiver, especially when the inquiry  
27    involves questions of medical care. In my opinion, the PLO's demand that its lawyers  
28    review prisoner medical care correspondence (including the clinical determinations made

1 by the Receiver's staff for that specific patient) will, if granted, cast a chill upon  
2 prisoner's willingness to communicate with the Receiver. If prisoners believe that they  
3 cannot ask the Receiver for help concerning their medical problems in a confidential  
4 manner, the remedial effort will be rendered more difficult, more expensive, more time  
5 consuming and, as a result, some serious problem may well fail to be addressed.

6 12. The documents requested by plaintiffs include material pertaining to the clinical decisions  
7 about which the inmates have inquired in the first instance, as well as the judgments and  
8 determinations made by the Receiver's own staff as a result of their review of inmate  
9 letters and files. Mr. Fama's declaration does not appear to present justification why the  
10 Receiver should be ordered to provide confidential prisoner inquiries (and the medical  
11 opinions rendered by his clinicians) to the PLO. The PLO has a long standing policy of  
12 using lawyers, not doctors, to review medical files. To the best of my knowledge,  
13 information and belief, there is no one who works for the PLO who is clinically  
14 competent to evaluate the adequacy of medical opinions. If local clinicians and the  
15 Receiver's staff must be concerned that their records, decisions and judgments will  
16 routinely be reviewed – and subject to second guessing – by plaintiffs' counsel, then that  
17 could have a substantial adverse effect on the Receiver's ability to hire, retain and  
18 motivate a highly qualified and committed clinical staff. The Receiver's clinical staff  
19 should not have to be concerned that every decision they make may find its way into the  
20 hands of plaintiffs' counsel.

21 13. Mr. Fama expresses concern that, without disclosure of these records, there may be  
22 duplication of effort by prison officials responding to Receiver inquiries and plaintiffs'  
23 counsel's inquiries about the same inmate. Mr. Fama has failed to provide real-life  
24 examples of cases in which coordination problems arose because PLO attorneys did not  
25 have access to the records which they now demand. Furthermore, no one has brought to  
26 my attention any systemic communication problem between the Receiver's appeal  
27 process and the treating institution.

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1 **14. Steven Fama's Interactions With The Office of the Receiver Concerning**

2 **Inmate/Patient Communications.** I have reviewed the letters, agendas and other  
3 documents described in Mr. Fama's declaration. It is correct that the PLO requested, on  
4 several occasions, to have access to confidential correspondence between prisoners and  
5 the Receiver's clinical staff who review serious prisoner medical complaints, including  
6 on April 18, 2007. Repeatedly, however, the Receiver expressed reservations about the  
7 request. I also attended the meetings referenced in Mr. Fama's declaration.

8 Unfortunately, Mr. Fama decided to depart suddenly from the April 18, 2006 meeting  
9 held in the Robing Room on the 19<sup>th</sup> Floor of the Northern District Federal Court House.  
10 Therefore, a discussion about PLO access to confidential medical correspondence, a  
11 discussion which involved the attorneys for both parties as well as the Receiver, was  
12 never completed. To the best of my knowledge, information and belief, until the filing of  
13 the PLO's motion, approximately ten weeks later, plaintiffs' counsel did not mention this  
14 subject again to either the Receiver or me.

15 **The Receiver's Plan for Accurate Multi-Discipline Death Review Investigations and**  
16 **Reports.**

17 **15. Problems In The Current Approach To Death Reviews.** The Court is aware of the  
18 breakdown of the CDCR's process to evaluate prison medical deaths. For several years it  
19 has proven impossible to conduct adequate reviews in the 33 California prisons due to  
20 severe staffing shortages and the poor quality of physician services at those institutions.  
21 As a result, various plans have been attempted to centralize the death review process.  
22 None of those plans, including the agreements between the CDCR and PLO to "farm out"  
23 the death review process of the University of California at San Diego, have produced an  
24 adequate death review process. Thus, throughout the pre-Receiver'ship portion of this  
25 case very significant "backlogs" and quality problems existed with the CDCR death  
26 review process.

27 **16.** After conducting a review of this matter, the Receiver and his staff have concluded that  
28 fundamental flaws exist in the manner in which CDCR (and counsel) approaches the

1 issue of death reviews; flaws that the Receiver intends to address. As a layperson  
2 familiar with this issue I attempt below to provide a non-technical summary of why the  
3 Receiver needs to develop a completely new form of mortality review.

4 a. First, an adequate death review requires not only an evaluation of the event, but  
5 also of the system in which the event occurred; therefore, death reviews often call  
6 for inter-disciplinary evaluations, a process that cannot take place when reviews  
7 are conducted only by a central office clinician or a doctor at a university. Not  
8 surprisingly, therefore, the previous short term fixes proposed by the PLO and  
9 CDCR have not been successful.

10 b. Second, there is a definitional question at the heart of the review, *i.e.*, which  
11 deaths are reviewed and what about those deaths is reviewed? A patient death  
12 may or may not present serious issues concerning the delivery of medical care.  
13 Thus, even to begin to develop an adequate mortality review process, all deaths  
14 must be categorized, *e.g.* homicides, suicides, "natural deaths," etc., and the  
15 review process must commence by focusing on deaths which may be  
16 "preventable." This process however, involves not only a systemic analysis of  
17 each death (*e.g.*, whether correctional staff responded to an emergency  
18 appropriately; whether clinical staff provided adequate care), but may call for an  
19 evaluation of whether the death was preventable *during earlier stages of the*  
20 *prisoner's incarceration*. It may be, for example, that a specific prisoner/patient  
21 with end stage cancer received adequate treatment during his or her final months  
22 of life; however, if that same patient had been adequately screened at a Reception  
23 Center when he or she arrived in the CDCR years earlier, the cancer may have  
24 been detected and treated, and death would not have occurred when it did.

25 17. This form of review, which looks at the entire system and which includes an historical  
26 evaluation of care, is necessary to provide adequate evaluations of prisoner deaths. It is,  
27 however, an extremely complicated process to develop and, in the current circumstances  
28 at CDCR, will present serious challenges to implement. Nevertheless, as discussed

1 below, this necessary corrective action is already underway.

2 18. **Receiver's Multifaceted Program re Mortality Reviews.** The Receiver has already  
3 embarked on the following inter-related remedial action for mortality reviews:

- 4 a. Enhance the PPEC process. The overall PPEC process has been strengthened, a  
5 motion to utilize PPEC for disciplining physicians who engage in inappropriate  
6 medical practices is pending before the Court, and approval has been received  
7 from the Court to enter into contracts for consultants to implement the new PPEC  
8 process after the Court rules on the pending motion.
- 9 b. Enhance the death review process, including the analysis of death review  
10 information to effectuate systemic improvements. The Receiver is in the process  
11 of conducting an initial review of prisoner deaths in 2006 with a goal of focusing  
12 corrective actions on the primary or most common causes of preventable deaths.
- 13 c. Form a new interdisciplinary Medical Central Intake Unit, Medical Investigation  
14 Unit, and Medical Prosecution Unit that is modeled after the successful Post-  
15 Powers remedial plan. A significant number of prisoner deaths involve inter-  
16 actions between clinical and custody personnel. These new units, comprised of  
17 staff from CDCR Internal Affairs, CDCR Legal, and the Office of the Inspector  
18 General, will ensure that deaths are evaluated from a variety of perspectives. In  
19 addition, these new units will improve the timeliness of the current death review  
20 process and ensure that discipline, if necessary, is effectuated in a timely manner.  
21 As the Receiver's Chief of Staff, I am working with Internal Affairs, CDCR  
22 Legal, and the Office of the Inspector General to develop the parameters of these  
23 programs and to thereby ensure that medical investigations are "scoped" (defining  
24 the necessary range and focus of the investigation) and properly managed from a  
25 clinical perspective. In addition, methods of reporting on such deaths to ensure  
26 transparency, while at the same time respecting the sensitive nature of the  
27 information developed in connection with such reviews, will also be included in  
28 the system to be developed.

1 19. The Receiver's current plan, consistent with POA objectives, calls for establishing pilots  
2 for each of the above programs by November 2007, just a few months away.

3 20. **The Documents Demanded By The PLO Are Unnecessary And Preparing Them**  
4 **Would Be Unduly Burdensome.** Despite the fact that the Receiver indicated in the POA  
5 that the mortality review project is underway and will be established by November of this  
6 year, the PLO has requested that this Court order the Receiver to "prepare and provide to  
7 counsel for the parties a summary review of each CDCR prisoner-patient death"  
8 determined to have been preventable. As indicated above, the current system does not  
9 produce any meaningful mortality review data. The Receiver's new system is being  
10 developed. As a practical matter, therefore, the PLO is demanding that the Receiver  
11 develop a third procedure solely for plaintiffs' counsel's benefit. It would be unduly  
12 burdensome on the Receiver and his staff if the Receiver was required to pull aside the  
13 clinicians who are working on his new mortality review project, and instead cause them  
14 to prepare the additional documents demanded by the PLO. Such a duplicative and  
15 wasteful procedure will not advance the longer term goal of constructing a meaningful  
16 mortality review process. Put succinctly, more reports to the PLO are not the solution to  
17 this problem.

18 **The Receiver's Implementation of Short Term/Emergency Measures.**

19 21. **Introduction.** The Receiver and his staff work almost constantly to implement  
20 "immediate and/or short term measures designed to improve medical care" as called for  
21 by the Order of February 14, 2006. Indeed, given the woeful state of the CDCR and the  
22 utter failure concerning implementation of the stipulated Plata Orders, it has been  
23 difficult to step away from day-to-day crises to engage in the thoughtful long-term  
24 planning necessary to create a cost effective, sustainable Plan of Action.

25 22. I can appreciate plaintiffs' counsel's frustrations as they observe ongoing manifestations  
26 of systemic problems, such as problems with the delivery of outside specialty care at  
27 various institutions. Counsel for plaintiffs, however, continue to focus on the immediate  
28 manifestations of problems, rather than upon their deeper, or longer-term infrastructure-

1 related causes. In addition, in my opinion, plaintiffs' counsel often seem, in their reports,  
2 to jump from the manifestation of a problem to their version of a "solution," without  
3 regard to the critical underlying issues that have given rise to the problem in the first  
4 instance. The Receiver, on the other hand, has attempted to focus his efforts on  
5 immediate and short term fixes to the **infrastructure**, *i.e.*, an approach to corrective  
6 action that is substantially different than the PLO's unsuccessful approach the remedial  
7 process.

8 **23. Immediate/Short Term Remedial Actions Taken By The Receiver.** As stated above,  
9 since the inception of the receivership, the Receiver and his staff have implemented  
10 immediate and short term corrective actions. Many of these measures involve "hidden"  
11 or infrastructure-related problems, including serious shortfalls in the *Plata* remedial  
12 process that have gone unrecognized by the Court experts and counsel for the parties for  
13 many years. A limited (and by no means exhaustive) summary of these actions includes  
14 the following:

- 15 a. "Live-Scan" fingerprint services for clinical job applicants established at every  
16 CDCR prison;
- 17 b. purchase of and conversion to a new computer system to procure and manage  
18 specialty contracts;
- 19 c. delegated testing for all classes to expedite hiring for critical clinical and medical  
20 support positions commenced on a pilot basis at San Quentin State prison;
- 21 d. the medical clinical hiring function taken over by the *Plata* Support Division as of  
22 July 1, 2007;
- 23 e. a one-day hiring system implemented at five prisons to fill critical vacancies;
- 24 f. pay increases implemented as a recruitment *and retention* strategy;
- 25 g. 120 vans (30 with wheelchair lifts) emergency ordered for medical transport  
26 statewide;
- 27 h. four vans (one with a wheelchair lift) delivered to CCI to assist with specialty  
28 services following the MDI crisis and 9.44 additional custody positions

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established at CCI and LAC to assist with specialty services;

- i. UCSF physicians deployed to various institutions experiencing problems handling HIV cases; and,
- j. intensified monitoring of the quality of clinical management, resulting in, among other things, substantial turnover in the ranks of Health Care Managers, Chief Medical Officer and Directors of Nursing.

24. In addition, prison-specific short term corrective actions have been implemented, including, but not limited to, the following:

- a. The various San Quentin improvements described in the Receiver's prior reports;
- b. a new specialty care pilot at CCI and LAC which will include computerized scheduling; and,
- c. an extensive array of improvements at Avenal State Prison, including deploying CDCR medical leadership and a UCSF team to take control and see patients; the establishment of 18.3 custody positions, including 1 AW Healthcare; 14 OTs; 1 Chief P&S; 14 RNs, 12 LVNs, 3 CNAs, 3 SRNIIs, 1 SISA, 1AISA, and 2 Materials and Stores Supervisors I; ordering of 6 addition vans (1 with a wheelchair lift); and, the purchase of 2 relocatable buildings for four additional clinics and two reception areas (to be delivered within 90 days).

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

Dated: July 23, 2007

\_\_\_\_\_  
/s/  
John Hagar

I hereby attest that I have on file all holograph signatures for any signatures indicated by a "conformed" signature (/s/) within this efiled document.

\_\_\_\_\_  
/s/  
Martin H. Dodd  
Attorneys for Receiver Robert Sillen

**CERTIFICATE OF SERVICE**

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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.

On July 23, 2007, I served a copy of the following document(s):

**DECLARATION OF JOHN HAGAR IN SUPPORT OF RECEIVER'S OPPOSITION TO PLAINTIFFS' MOTION FOR AN ORDER DIRECTING RECEIVER TO COMPLY WITH APRIL 4, 2003 ORDER AND ACCESS TO DOCUMENTS AND/OR MODIFYING THE ORDER APPOINTING RECEIVER**

by placing true copies thereof enclosed in sealed envelopes, for collection and service pursuant to the ordinary business practice of this office in the manner and/or manners described below to each of the parties herein and addressed as follows:

- BY HAND DELIVERY: I caused such envelope(s) to be served by hand to the address(es) designated below.
- BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.
- BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.
- BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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26 Dated: July 23, 2007



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