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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

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MARCIANO PLATA, et al.,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, et al.,

Defendants.

Case No. C01-1351 TEH

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

Date: August 27, 2007
Time: 10:00 a.m.
Dept: Courtroom 12, 19th Floor
Judge: Hon. Thelton E. Henderson

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 reply declaration in support of the Receiver's Motion to Modify the Stipulated
9 Injunction and Other Orders Entered Herein. The facts set forth herein are based upon
10 my own personal knowledge or upon information and belief based upon my investigation
11 into allegations made by the attorneys for the plaintiff class in this matter.
- 12 3. In my capacity as Chief of Staff for the Receiver I have general operational oversight of
13 most of the ongoing activities of the receivership, and regularly confer with the Receiver
14 and other staff members regarding those activities to ensure that the Receiver's goals and
15 directives are being implemented.
- 16 4. I have reviewed the Prison Law Office's ("PLO") Opposition to the Receiver's Motion
17 for Order Modifying the Stipulated Injunction in this case. I have also reviewed the
18 declarations and attachments submitted in support of the Opposition. This opposition and
19 the counter motion filed concurrently by the PLO highlight five questions:
- 20 a. Does the Receiver work for the Court or for the PLO?
- 21 b. Are the proposed modifications to the Stipulated Injunction and related orders
22 warranted in light of the POA and clinical requirements?
- 23 c. Of what value are the monitoring provisions of the Stipulated Injunction given the
24 appointment of a Receiver in this case?
- 25 d. What is the most effective and cost efficient method for monitoring *Plata*
26 compliance during this initial implementation period of the Receivership?
- 27 e. Has the Receiver demonstrated a commitment to transparency?
- 28 5. This declaration attempts to provide the Court with factual context concerning these

1 questions and provides certain other factual information to assist the Court in resolving
2 this motion.

3 **Does the Receiver Work for the Court or for the PLO?**

4 6. Shortly after the effective date of his appointment, (to the best of my recollection during
5 May 2006), the Receiver and I went to the PLO's office in Marin County to meet with
6 plaintiffs' counsel Donald Specter, Michael Bien, Allison Hardy, and Steven Fama.
7 Shortly after the meeting began, Mr. Fama stated that the Receiver worked for counsel for
8 the plaintiffs. Neither Mr. Specter, nor Mr. Bien, nor Ms. Hardy corrected Mr. Fama.
9 The Receiver disagreed, and during the discussion which ensued, the Receiver made it
10 clear that he worked for Judge Thelton Henderson.

11 **Are The Proposed Modifications To The Stipulated Injunction And Related Orders**
12 **Warranted In Light Of The POA And Clinical Requirements?**

13 7. I have personal knowledge of some of the negotiations which gave rise to the Stipulated
14 Injunction in this case. The attorneys for the parties and the experts employed by the
15 parties should be commended for their effort to address extremely complex and
16 interrelated failures in the medical care delivery system in the State's prisons. That said,
17 in my view, the ultimate stipulation reached was "carefully crafted" from a legal point of
18 view, but was not "carefully crafted" from the perspective of implementing a viable
19 prison medical delivery system. For example, because the attorneys for the State took the
20 position that the State could not afford to implement *Plata* mandates throughout the
21 system simultaneously, the parties agreed to a "roll out" program. However, as the
22 numerous meetings, motions and hearings have subsequently demonstrated, the "roll out"
23 program failed to produce a viable prison medical delivery system. Another example is
24 the parties' stipulation to achieve 85% overall compliance with Inmate Medical Services
25 Program ("IMSP") Policies and Procedures. The Receiver and his clinicians, however,
26 question the adequacy of an 85% compliance rate in connection with critical medical
27 issues, and expect a much higher rate of compliance.
28 8. To move forward with his Plan of Action ("POA"), the Receiver plans to retain the major

1 *Plata* substantive Stipulated Injunction provisions. In this motion, he seeks to modify
2 those aspects of the Stipulated Injunction and related orders that he and his clinical
3 experts have identified as being contrary to the POA or otherwise without value in terms
4 of moving the remedial program forward.

5 **PLO's Objections To Modification of the Stipulated Injunction**

6 9. The PLO objects the modification of the following provisions:

- 7 a. Implementation of the IMSP Policies and Procedures in accordance with the
8 multi-year roll out schedule, including the Chronic Care protocols. (Stip. Inj. ¶¶ 4-
9 5).
- 10 b. Removal of provisions regarding 24 hour coverage by RNs in emergency clinics,
11 intrasystem transfers per policies, implementation of treatment protocols,
12 implementation of a priority ducat system, and making outpatient special diets
13 available for patients with liver and kidney end-stage failure. (Stip. Inj. ¶¶ 6a-6e).
- 14 c. Replacing Director-level review from inmate medical appeals with the Receiver's
15 new complaint and appeal process. (Stip. Inj. ¶ 7).
- 16 d. Removal of provisions requiring an audit of each prison's compliance with IMSP
17 Policies and Procedures consistent with roll out schedule, development of an audit
18 instrument filed with the court, achieving 85% overall compliance with IMSP
19 Policies and Procedures and conducting minimally adequate death reviews and
20 quality management proceedings to reach substantial compliance. (Stip. Inj. ¶¶
21 19-23).
- 22 e. Monitoring of Institutions and Patients by the PLO and Institutional Information
23 Access and Reporting the PLO. (Stip. Inj. ¶¶ 7, 9-15).
- 24 f. Elimination of Provisions regarding High Risk Patients. (Patient Care Order ¶¶
25 13-16).
- 26 g. Elimination of Provisions related to Quality Care Management Assistance Team
27 ("QMAT"). (Patient Care Order ¶ 24).
- 28 h. Elimination of Provisions regarding Expedited Hiring. (Clinical Staffing Order ¶¶

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3a-3b).

- i. Elimination of Specified Supervision of Newly Hired Physicians. (Clinical Staffing Order ¶ 5a).

10. I have addressed the disputed issues in my opening declaration in some detail. See my opening declaration at ¶¶ 4-8, 14, 21 and 21-26. Below, I have added some additional information about a few of the disputed issues.

Why Modifications to the Stipulated Injunction and Related Orders Are Warranted

- a. Implementation of the IMSP Policies and Procedures in accordance with the multi-year roll out schedule, including the Chronic Care protocols. (Stip. Inj. ¶¶ 4-5). As set forth in my opening declaration at ¶ 5, these provisions deal with a roll out implementation of agreed-upon policies and procedures. It makes no sense to require the Receiver to adhere with roll out deadlines that have already passed and do not fit with the POA. Moreover, to the extent that these provisions could be construed as limiting the application of the Policies and Procedures only to roll out facilities, the Receiver has implemented them when possible at non-roll out prisons. The Receiver has also taken actions that would not yet have been required by the Stipulated Injunction, such as increasing the number of correctional officers available to escort prisoners to medical visits, implementing clinical improvement, and bringing equipment to non-roll out facilities. With respect to the Policies and Procedures, they are a part of the POA. They remain in place today. What the Receiver seeks is an order eliminating the requirement of compliance with the specific Policies and Procedures so that any of them may be adapted, modified or jettisoned as appropriate as the POA is developed.
- b. Removal of provisions regarding 24 hour coverage by RNs in emergency clinics, intrasystem transfers per policies, implementation of treatment protocols, implementation of a priority ducat system, and making outpatient special diets available for patients with liver and kidney end-stage failure. (Stip. Inj. ¶¶ 6a-6e). The PLO asserts that these requirements have been achieved at most prisons.

1 Unfortunately, the PLO is mistaken. These standards have not been implemented
2 in a consistent way at the State's prisons, and will need to be addressed in the
3 context of the broader and much more complex POA. The other problems with
4 these requirements are set forth in my opening declaration at paragraph 6.

5 c. Replacing Director-level review from inmate medical appeals with the Receiver's
6 new complaint and appeal process. (Stip. Inj. ¶ 7). The Receiver is in the process
7 of developing a new medical complaint and appeal process, coordinating with the
8 needs of the *Coleman, Perez, and Armstrong* remedial plans. The Receiver's new
9 plan will focus on inmate appeal advocates who are nurses and who can perform
10 appropriate clinical screening. A pilot of this program has been implemented at
11 San Quentin.

12 d. Removal of provisions requiring an audit of each prison's compliance with IMSP
13 Policies and Procedures consistent with roll out schedule, development of an audit
14 instrument filed with the court, achieving 85% overall compliance with IMSP
15 Policies and Procedures and conducting minimally adequate death reviews and
16 quality management proceedings to reach substantial compliance. (Stip. Inj. ¶¶
17 19-23). As set forth in paragraph 8 of my opening declaration, the Receiver has
18 developed a detailed remedial program that is not dependent upon the roll out
19 model of the Stipulated Injunction. In my declaration filed in opposition to
20 Plaintiff's Motion for an Order Direction the Receiver to Comply with the April 4,
21 2003 Order re Production and Access and/or Modifying the Order Appointing
22 Receiver, filed on July 23, 2007, at paragraphs 15-18, I addressed the Receiver's
23 plan for death reviews. The Receiver's Chief Medical Officer, Terry Hill, has
24 filed a declaration accompanying this motion which addresses quality
25 management plans by the Receiver. Further, as discussed above in Paragraph 7,
26 the Receiver and his clinicians do not agree that 85% compliance with standards
27 is adequate, particularly when critical medical issues are implicated.

28 e. Monitoring of Institutions and Patients by the PLO and Institutional Information

1 Access and Reporting the PLO. (Stip. Inj. ¶¶ 7, 9-15). I will address this request
2 at Paragraphs 11-22 below.

3 f. Elimination of Provisions regarding High Risk Patients. (Patient Care Order ¶¶
4 13-16). As set forth in my opening declaration at paragraph 14, these provisions
5 are unnecessary or redundant in light of the POA.

6 g. Elimination of Provisions related to Quality Care Management Assistance Team
7 (“QMAT”). (Patient Care Order ¶ 24). As set forth in my opening declaration at
8 paragraph 21, this requirement was unworkable. The PLO challenges my
9 competency to so state.

10 i. In fact, I am personally familiar with the development, history, and
11 purpose of the CDCR’s QMAT. QMAT began as a Pelican Bay State
12 Prison (“PBSP”) program to measure physician quality in the *Madrid*
13 litigation. Essentially, QMAT attempts to provide objective measurements
14 to clinical encounters in order to measure the quality of those encounters
15 (for example, defining the criteria for an adequate cardiac related chronic
16 disease encounter and then verifying, through a chart review, that the
17 elements of care were all provided). QMAT functioned adequately at
18 PBSP because there was a management structure in place at the prison to
19 act upon QMAT findings, e.g. additional training, corrective action,
20 adverse action for continued quality problems, etc.

21 ii. At a later date, the CDCR made the decision to utilize a version of the
22 PBSP QMAT program state wide and it subsequently became an element
23 of *Plata*. However, it never functioned as intended in *Plata* because there
24 is no underlying management team to use the QMAT findings in an
25 effective manner. Thus, in reality, QMAT has evolved into a system
26 where clinicians (some of whom are well qualified) travel to various
27 prisons to conduct QMAT reviews, the results of which are to all practical
28 purposes were ignored. In addition, QMAT has never been appropriately

1 staffed. Given the day-to-day crises which have afflicted the medical
2 delivery system for the past five years, moving QMAT staff into prison
3 clinical positions for patient care has long been a common practice.

4 iii. As set forth in the accompanying declaration of Dr. Terry Hill, CDRC
5 decided to end QMAT before the appointment of the Receiver. In light of
6 this background, the Receiver's clinical leaders have decided to end the
7 QMAT program. More effective quality measurements will be
8 implemented as set forth in the POA. Meanwhile, however, moving the
9 few remaining clinical QMAT staff into the prisons to provide medical
10 care will serve to improve patient care. More line clinicians will be
11 available and no quality related services will be lost because QMAT has
12 not functioned adequately.

13 h. Elimination of Provisions regarding Expedited Hiring. (Clinical Staffing Order ¶¶
14 3a-3b). As set forth in my opening declaration at paragraphs 23-25, these
15 provisions should be eliminated because they are inconsistent with the POA and
16 monitoring compliance with them has been unduly time consuming and
17 expensive. In addition, a new, expedited hiring process is being tested on a pilot
18 basis. It will make it possible to bring a clinician into State service within 24
19 hours. Here, the Receiver's success can be measured by the numbers. Through
20 the pilot in place, the Receiver has already brought hundreds of RNs and LVNs
21 into State service. The degree of success of this program thus far dramatically
22 exceeds the success of the remedial effort in the years preceding the appointment
23 of the Receiver.

24 i. Elimination of Specified Supervision of Newly Hired Physicians. (Clinical
25 Staffing Order ¶ 5a). As set forth in my opening declaration at paragraph 26,
26 these provisions should be eliminated because they are inconsistent with the POA,
27 because monitoring compliance with them has been unduly time consuming and
28 expensive, and they requirements are insufficiently flexible.

1 **Of what value are the monitoring provisions of the Stipulated Injunction given the**
2 **appointment of a Receiver in this case?**

- 3 11. The Receiver and his staff have determined that the old way of monitoring *Plata*
4 compliance, a method of prison inspections which the PLO continues to apply to
5 Receivership, is not effective, not objective, unnecessarily adversarial, and unnecessarily
6 expensive.
- 7 12. I have addressed the burdens of the PLO's monitoring in some detail in my opening
8 declaration at paragraphs 9-13. To assist the Court to understand the burdens imposed by
9 the PLO's monitoring with greater specificity, I directed that written documentation from
10 the PLO concerning its monitoring role be gathered for the time period of January
11 through April 2007. A true and correct copy of that documentation is attached hereto as
12 Exhibit 1. Exhibit 1 is voluminous, consisting of pre-prison visit letters detailing
13 information to be supplied at each of the PLO's prison visits, post-prison inspection
14 letters about the PLO's "findings" and observations during specific prison inspections,
15 lists of questions for Friday conference calls at which the PLO asks questions,
16 correspondence and agendas for monthly meetings with the PLO, and document requests
17 concerning particular prisoners. Omitted from the exhibit are the responsive documents.
- 18 13. Attached hereto as Exhibit 2 is a true and correct copy of an index of the documentation
19 contained in Exhibit 1.
- 20 14. These documents were generated by the PLO in connection with the *Plata* monitoring set
21 forth in the Stipulated Injunction. A cursory review of the correspondence and questions
22 from the PLO shows the dramatic breadth of information demanded by them.
- 23 15. For example, from January – April 2007, the PLO visited 18 prisons, 16 for two days, and
24 two for a single day, for a total 34 days of prison visits. It requires substantial time for
25 prison and medical professionals at the prison to prepare for each such prison visit and
26 requires significant staff time (including medical providers) to respond to the PLO's
27 inquiries during the visit.
- 28 16. Reviewing a single pre-prison inspection letter demonstrates the breadth and depth of the

1 PLO's demands. Attached hereto as Exhibit 3 is a true and correct copy of a July 10,
2 2007, PLO letter concerning a July 18-19 monitoring visit at Kern Valley State Prison.
3 This letter is typical of the pre-visit letters sent by the PLO and shows impact the
4 monitoring has on the Receiver and his staff.

5 17. Specifically, in Exhibit 3, the PLO indicated that they hoped to learn about any
6 implementation efforts and plans given that the prison was now a "roll out" prison. The
7 PLO went on to state that counsel intended "to visit medical care facilities and talk with
8 inmates and staff regarding how the medical care delivery system currently works." The
9 PLO planned to speak with the Health Care Manager, the Warden, and other managers,
10 supervisors and staff, including the health records and nursing supervisors and medical
11 appeals analyst, concerning *Plata* implementation and medical care issues. The letter
12 continues:

I would like to discuss the current status of medical clinic and ancillary
staffing (established positions and vacancies), and the matters that the
prison is supposed to have already addressed: preventive services,
notification to patients of diagnostic test results, physical therapy,
emergency response review and documentation thereof, priority ducats for
medical appointments, health care transfer process, "24/7" RN coverage,
availability of translators for non-English speaking patients, and
implementation of a hunger strike protocol.

In addition, I would also like to discuss the current process for, and status
of specialty services scheduling (including any problem areas), and the
current status of medical records, physician lines (including approximate
time-frames for routine appointments in each clinic) registered nurse
responsibilities, and medical appeals....

I will then tour some of the medical clinics and related areas....

At some point, I would like to talk with the medical appeals analyst and
review the requested medical appeals (a list of those has been emailed to...
CDCR-Legal). I would also like to talk with those who actually review,
process, track and schedule specialty service requests, and visit their work
areas. I will also, throughout the tour, be looking in unit health records
(UHR), and specifically intend to review the UHRs listed at the end of this
letter. I also intend to review any emergency response review committee
(ERRC) minutes from this year and last, and any Quality Management
Committee minutes form the current calendar year.

...I would like to end the visit with an "exit interview" with at least the
health care manager and key medical supervisors, but including the
warden and others if they are interested....

1 The letter attached a list of 18 inmates whose unit health records counsel intended to
2 review at the prison inspection. This same process and the same type of requests are
3 duplicated over and over for each prison visit, 18 prison visits in total over the first four
4 months of 2007.

5 18. Then, following each prison inspection, the PLO writes a lengthy letter detailing
6 counsel's observations during the prison visit, including what *they believe to be Plata*
7 compliance issues. Attached hereto as Exhibit 4 is a true and correct copy of an 18-page
8 July 10, 2007 letter from PLO concerning its tour of CSP-Solano. Plaintiffs' counsel
9 prepare these letters without the benefit of any physician medical review of the
10 information they have gathered.

11 19. In addition, three times each month, plaintiffs' counsel conducts a Friday telephone call
12 with health care managers at the prisons. In advance, counsel submit detailed questions
13 and expect answers during the calls. The detailed questions for such calls are set forth in
14 Exhibit 1, pages PLO 265-268 (4-page List of PLO Questions for January 12, 2007
15 Health Care Manager Call for Region 1). Not surprisingly, it also takes a great deal of
16 medical staff time to prepare for these calls. In addition, the Chief Medical Officer also
17 meets with the PLO on a monthly basis, which also requires significant preparation time.

18 20. Despite the tremendous effort involved in the PLO monitoring process, it is of limited
19 value to the Receivership. Specifically, I have reviewed a selected number of the PLO's
20 2006 prison inspection reports. I have not reviewed every report because if I were to do
21 so I would not have adequate time to perform my obligations at the Receiver's Chief of
22 Staff. I emphasize that my review has been from the perspective of the Receivership; in
23 other words, whether the reports are helpful to implementing the POA. From the
24 inspection reports that I have reviewed there are a number of serious problems with the
25 PLO inspection process that can summarized as follows:

- 26 a. The continued recitation of problems which have been identified by, and are in the
27 process of being corrected by the Receiver. For example, the PLO reports provide
28 extensive commentary about staffing shortages, vehicle shortages, and pharmacy

1 related problems. None of this is news, and the Receiver has implemented salary
2 increases, new hiring programs, purchased more than 100 new medical
3 transportation vehicles, and engaged the Maxor Corporation in a pharmacy re-
4 structuring program.

5 b. Alleged “findings” by the PLO attorney inspecting a specific prison based only on
6 random conversations with staff. Much of the PLO reporting, in its reports,
7 involves summaries of staff comments. On occasion, the reports dwell on
8 conflicts of statements between different employees. The correction of problems
9 requires a process to “dig deeper” to find out the truth. Given the chaotic state of
10 certain prison medical systems, staff turn over, and newly implemented changes, it
11 should be no surprise that confusion and some disagreement exist. This reporting,
12 however, is often of little use in terms of determining the true nature of a problem
13 and correcting that problem. On occasion, inaccuracies which could be corrected
14 prior to the issuance of the PLO report are not corrected because of an inadequate
15 and/or incomplete “exit interview” process.

16 c. The lack of objective measurements. The great majority of the PLO prison
17 inspection reports do not, in any consistent manner, report useful objective data
18 concerning day to day compliance with *Plata* standards, including very critical
19 measurements involving access to care, chronic disease interventions, etc. To a
20 large degree, the reports do not compliance with *Plata* mandates, but focus instead
21 on the inspecting attorneys’ impression of the status of old remedial processes that
22 were put in place prior to the Receivership.

23 d. Medical chart analysis by lawyers. Many of the PLO reports cite “chart reviews.”
24 These reviews, however, are performed by lawyers, not by clinicians. As a result,
25 on occasion incomplete and inaccurate findings are rendered. Time spend
26 reviewing, addressing, and correcting erroneous findings detracts from providing
27 patient care.

28 e. Prison specific PLO inspection assignments. A review of the PLO 2006

1 inspection reports indicates that selected attorneys are assigned to certain prisons.
2 As a result, there are inconsistencies in the nature of PLO reporting when
3 comparing one prison from another. In addition, certain reports indicate that the
4 reviewing attorney focus his or her attention during follow-up inspections on
5 problems previously reported rather than the overall state of compliance with
6 *Plata* mandates. In some instances, the reports are simply inaccurate. For
7 example, the PLO conducted a monitoring visit of San Quentin on February 20-
8 21, 2007, and submitted a nine-page post-prison visit letter on March 7, 2007.
9 That letter was replete with inaccuracies, as addressed in my responsive letter
10 dated May 8, 2007, a true and correct copy of which is attached hereto as Exhibit
11 5. Finally, this method of allocating institutions for review leads to circumstances
12 where serious systemic problems are simply missed by the PLO lawyer
13 conducting the inspection. For example, in the January 9 and 10, 2007 inspection
14 of the California Rehabilitation Center (“CRC”), great attention was placed on
15 improvements perceived from the conditions which existed during the prior
16 inspections. A true and correct copy of the PLO’s post-visit inspection report is
17 attached hereto as Exhibit 6. Remarkably, the PLO failed to focus on the fact that
18 CRC’s mission was soon to change, and that as a result, hundreds of women
19 prisoners would be transferred to ugly beds in other prisons, which would have a
20 detrimental impact on the delivery of medical care to them. While noted by the
21 PLO in the letter, this significant issue was not described as any sort of problem.
22 *See* Exhibit 6 at pp. 3-4 (“I was told that the women inmates are likely to be
23 transferred out of CRC in the next few months, and the women would be replaced
24 by male inmates.”)

25 21. I agree with the PLO as stated at page 27 of the Opposition that, on occasion, prison
26 inspections by the PLO do provide information concerning aspects of the serious deficient
27 prison medical delivery system. However, these types of findings are few and far
28 between, and, in the Receiver’s view, do not justify the tremendous expenditure of

1 resources required by the PLO monitoring. Specifically, the PLO's monitoring efforts
2 causes the loss of patient care time because clinical staff must respond to the PLO rather
3 than treat patients. Further, the PLO produces such a volume of paper that it is difficult
4 to sort through what is relevant and important and what is not.

5 22. In order to quantify the impact that the PLO's monitoring has on CDCR staff, I arranged
6 for the compilation of information by the staff in the *Plata* Support Division, to determine
7 the number of staff hours expended for PLO monitoring activities. A true and correct
8 copy of the results of the informal time study prepared under my direction is attached
9 hereto as Exhibit 7. The information contained in Exhibit 7 reflects the following:

- 10 a. Seven of ten prisons which had most recently undergone a Plata Tour by PLO
11 attorneys provided information regarding the PLO's inspections: ASP, CVSP,
12 RJD, SOL, PVSP, COR, and SVSP. Eight institutions provided information
13 concerning the impact of producing documents responsive to the PLO's monthly
14 document requests: CCWF, CMC, CCI, LAC, FOL, CRC, SOL, and CEN.
- 15 b. For each monitoring activity, we contacted the CDCR staff members responsible
16 for responding to the monitoring activity to ask to provide a summary of the
17 number staff hours expended for participating in the monitoring activity. For
18 example, we contacted the Health Care Manager at the applicable institutions for
19 information about the time spent for the *Plata* Tours and the Health Records
20 Technician II for information about medical records requests.
- 21 c. If an institution provided a range of staff or hours for the particular activity (*i.e.*,
22 8-10 staff x 2 hours), the low number was used to compute monitoring activity
23 time so as not to overstate the number of hours expended in responding to the
24 PLO's monitoring activity.
- 25 d. The number of hours expended by the Receiver's staff, primarily CDCR staff, is
26 set forth in Exhibit 7. To calculate the number, we totaled the results from each
27 institution surveyed and then divided the result from the number of institutions
28 providing data, thereby obtaining an average time estimate of hours expended for

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each monitoring activity.

- e. The number of occurrences for the headings “Inmate Medical Concerns / Para 7 Letters” and “Medical Records Request” were determined by generating a report from the *Plata* letters database, and, accordingly, reflect the actual number of Inmate Medical Concerns/Paragraph 7 Letters and Medical Records Requests generated by the PLO.
- f. Exhibit 7 contains a two columns listing “PY.” “PY” means person years, and was calculated upon a 2080 (40 hours x 52 weeks) hour year without deduction for vacation or other time off.
- g. Exhibit 7 reflects that the Receiver’s institution staff spent 18,285 hours responding to the PLO’s monitoring activities in 2006, and an additional 4,805.5 hours of headquarters and CDCR legal staff time. In other words, 8.80 person years of time was spent by institution staff responding to the PLO’s monitoring requests in 2006, and another 2.32 person years of time was spent by headquarters and CDCR legal staff, *for a total of over 11 full time persons working 40 hours a week, 52 weeks a year for 2006 to satisfy the PLO’s monitoring request. In 2007, based on year to date information, the PLO monitoring activities—if unabated—will take 8.85 person years for institution staff time and 2.31 person years for headquarters and CDCR legal staff, again for a total of over 11 full persons working 40 hours a week, 52 weeks a year.* Many of the staff involved in monitoring activities are the senior medical personnel at an institution, such as the Health Care Manager and the supervising nurse.

What is the most effective and cost efficient method for monitoring *Plata* compliance during this initial implementation period of the Receivership?

- 23. There is fundamental difference in the manner in which the Receiver views monitoring *Plata* compliance and the manner it is perceived by the PLO. The Receiver, by his motion, seeks an objective, non-adversarial evaluation of compliance with *Plata* substantive orders. The PLO, on the other hand, approaches these issues with the

1 assumption that the PLO will continue to monitor *Plata* compliance as it monitored the
2 process back when remedial plan implementation was the responsibility of the State of
3 California. *See, e.g.* Opposition at 3:14-16: “[a]s a preliminary matter, it is disturbing
4 for the Receiver to take the position that his activities should not be monitored by
5 representatives of the people for whose benefit he was appointed.” (emphasis added).

6 24. The Receiver believes that while monitoring of *Plata* compliance is important (the
7 development of metrics is a crucial element of the POA), his activities are not and should
8 not be subject to adversarial monitoring by the PLO. The Receiver understood this issue
9 to have clarified by the Court in 2006 letters by the Court informing the PLO that the
10 previously appointed Court experts would not be monitoring the Receiver, as well as by
11 provisions in the Order of February 14, 2006 which call for the Receiver, not the parties,
12 to develop metrics to evaluate the progress of the POA.

13 25. It should be emphasized, as explained below, that the Receiver’s motion does not call for
14 an end to monitoring of the prison health delivery system. Instead, it calls for the
15 creation, via a pilot program, of a more comprehensive, objective, and efficient
16 monitoring program run by an independent party. The Receiver has developed a program
17 with the Office of the Inspector General (“OIG”) which will provide an independent
18 examination of the prison medical delivery system. The Receiver has every reason to
19 believe that this new system will uncover all of the problems cited by the PLO, and more.

20 26. An initial overview of the proposed pilot monitoring program is set forth in Exhibit 8. It
21 should be emphasized that both the Receiver and the OIG believe that minor
22 modifications will prove necessary as the pilots develop. The program will be
23 implemented in three distinct phases. During the Phase I, the OIG will develop in
24 conjunction with the Receiver the health care components selected for inspection, which
25 include the *Plata* essential components. With the assistance of medical experts, the OIG
26 will develop audit instruments for each of the areas components selected for inspection.
27 The OIG will test and refine the audit instruments at five pilot institutions, Valley State
28 Prison for Women, California State Prison – Corcoran, Mule Creek State Prison,

1 California State prison – Los Angeles County and Calipatria State Prison. The OIG will
2 prepare and issue a public report following each inspection. During Phase Two, the OIG
3 will assume inspection and audit responsibilities at all State prisons affected by the *Plata*
4 lawsuit. In Phase Three, the OIG will turn over its inspection and audit responsibilities to
5 CDRC or the Receiver. At that point, the OIG will assume a monitoring role and will
6 develop monitoring methodologies accordingly.

7 27. From the perspective of the Receivership, there will be are many advantages to this pilot,
8 including objectivity, clinical review of quality (as opposed to legal review), and initial
9 steps toward a state-based monitoring program. As the Court is aware, the OIG has been
10 effective and helpful concerning the *Madrid Post Powers* remedial monitoring, and,
11 accordingly, has developed expertise in prison inspections and the Federal Court remedial
12 process. In my view, the OIG has a good record of honest and quality in connection with
13 *Madrid*. Plaintiffs, in their Opposition, attempt to cry wolf, raising fears that the
14 Governor may eliminate OIG in the future. These fears appear groundless, but even if
15 they come about, the Receiver, the parties and the Court can work together to develop an
16 alternative. Dire predictions alone do not warrant rejection of this carefully thought out
17 alternative to the expensive and inadequate form of prison monitoring which exists today.

18 28. As set forth in the POA, the Receiver intends, over time, to implement a variety of
19 standardized quality measurements grounded in medical science that will provide the
20 Receiver, the Court, counsel, and the public with on-going and adequate measurements of
21 the performance of the California prison medical delivery system. The Pilot proposed
22 above is not the end-all of monitoring, it is a pilot in partnership with the OIG designed to
23 improve and make more efficient and objective Plata compliance monitoring during this,
24 the beginning of the walk stage of the Receivership. In a very real way, the new program
25 is a win win for everyone involved, the Receiver, counsel and the Court will receive
26 improved and more objective compliance monitoring reports, the cost of prison
27 inspection monitoring will be reduced, the present unreasonable burden on the Receiver's
28 clinical staff will be reduced, and the Receiver meanwhile, will continue to development

1 of his own science based measurements, as explained in the POA.

2 29. In light of this OIG pilot program, the Receiver seeks a twelve-month moratorium all
3 monitoring by the PLO. Simply stated, the PLO version of prison monitoring is too
4 burdensome and of too little remedial value. In addition, the clinical staff working under
5 crisis conditions in California's prisons need a break. This moratorium will permit the
6 prison medical staff to move away from the old, failed way of doing things, and focus on
7 working under the new POA. If at the end of twelve months, the PLO believes there
8 remains a need for monitoring by counsel, the Receiver proposes that the PLO be
9 permitted to bring a motion to restore some or all of its previous monitoring activity upon
10 a showing of a need for the same.

11 **Has the Receiver Demonstrated a Commitment to Transparency?**

12 30. In their opposition, PLO contends that the Receiver is not committed to transparency and
13 avoids accountability for his actions. To the contrary, the Receiver has gone to
14 extraordinary measures to ensure as much transparency as possible concerning the
15 activities of the Receivership.

16 31. Thus far, the Receiver has filed five Bi-Monthly and Quarterly Reports. Each report
17 describes the Receiver's activity for the applicable period. For example, the Fifth
18 Quarterly Report, filed on June 20, 2007, is 45-pages long and describes the Receiver's
19 activities over the prior quarter. In that Report, the Receiver described his legal filings
20 (his POA, his Overcrowding Report, and his multiple Requests for Waivers of State
21 Law), "Step Back" meeting to coordinate his interdisciplinary staff achievement of his
22 goals, his budget submission, the continuation of various remedial pilots and projects (the
23 San Quentin project, San Quentin Construction, Maxor Pharmaceuticals Pilot, MTA
24 conversion to LVN, Clinical Hiring, the *Plata* Support Division and the Specialty Care
25 Contracts Pilot), his coordination efforts with the *Armstrong*, *Coleman* and *Perez* class
26 actions, ten new hires for the Receiver's Remedial Team, an accounting of receivership
27 expenses, and a report on inmate patient complaints. The Fifth Quarterly Report is
28 typical of the breadth of information covered in his periodic reports to the Court. All of

1 his reports to the Court, other Court filings, and other documents are available to
2 members of the public 24 hours a day, 7 days a week, through the Receiver's website,
3 www.cprinc.org.

4 32. In addition, in his Fifth Quarterly Report, the Receiver specifically describes his
5 "commitment to transparency and public information" and details his availability to the
6 press, CDCR staff, members of state government and the public. Fifth Quarterly Report
7 at pp. 33-41.

8 33. As set forth in his prior Bi-Monthly and Quarterly Reports, in addition to the numerous
9 reports and motions he has submitted to the Court, the Receiver has provided reports to
10 CDCR staff, to CDCR prisoners as well as engaging in public interviews and
11 appearances. A sampling of these activities are listed below:

12 *AP Newsmaker interview with Don Thompson - July 13, 2006

13 *Sacramento Bee interview with columnist Dan Weintraub - July 17, 2006

14 *KGO TV San Francisco, Channel 10 San Diego interview - August 14, 2006

15 *Appearance with State Controller Steve Westly Press Conference Re: Audit of Prison
16 Medical Care System - August 2, 2006

17 *Appearance at the Centerforce Annual Summit, San Francisco, Luncheon Plenary,
18 September 11, 2006

19 *Memo to San Quentin staff - October 5, 2006 re: San Quentin medical care
20 improvement project update

21 *Memo to San Quentin inmates - October 5, 2006 re: San Quentin medical care
22 improvement project update

23 *Memo to CDCR medical staff - October 23, 2006 re: timing and implementation of
24 salary increases

25 *Letter 4 from the Receiver - October 27, 2006: fourth in a series of public letters from
26 the Receiver, this one provided a six-month progress report to a broad state audience

27 *Appearance on Channel 10 News San Diego, September 14, 2006, "10 News Examines
28 State Prison Health Care"

- 1 *Appearance on KCBS Radio News San Francisco, Oakland, San Jose – September 19,
- 2 2006
- 3 *Appearance on KPBS San Diego – September 20, 2006
- 4 *Appearance on Capitol Public Radio Sacramento – October 17, 2006
- 5 *Appearance on KQED Radio San Francisco – October 17, 2006
- 6 *Keynote address at California Conference of Local Health Officers Conference, San
- 7 Diego, October 2006
- 8 *Appearance at the Little Hoover Commission Testimony, Sacramento, November 2006
- 9 *San Quentin Medical Newsletter – January 23, 2007 to institution staff and inmates
- 10 *Letter from the Receiver – January 23, 2007: fifth in a series of public letters from the
- 11 Receiver to a broad audience including members of state government
- 12 *California Progress Report.com – January 25, 2007, “An Open Letter on California
- 13 Prisons From Federal Court Receiver Robert Sillen”
- 14 *Appearance at KQED Radio San Francisco – December 5, 2007
- 15 *Appearance on KPCC Capitol Public Radio – January 12, 2007
- 16 *Appearance on KCBS Radio News San Francisco, Oakland, San Jose – January 27,
- 17 2007
- 18 *Appearance at State Personnel Board meeting – Sacramento, January 23, 2007
- 19 *Address to Santa Clara County Bench and Bar Association – San Jose, January 24, 2007
- 20 *Testimony before the California State Senate Budget and Fiscal Review Subcommittee –
- 21 Sacramento, February 7, 2007
- 22 *Address to the United African American Ministerial Action Council Community Forum
- 23 on Health Disparity and Reentry Issues – San Diego, February 28, 2007
- 24 *Letter from the Receiver – April 20, 2007: sixth in a series of public letters from the
- 25 Receiver to a broad audience including members of state government
- 26 *Letter from the Receiver – May 11, 2007: seventh in a series of public letters from the
- 27 Receiver to a broad audience including members of state government
- 28

- 1 *San Mateo County Medical Association Bulletin – April 2007 issue, “Receivership
- 2 addressing prison health care crisis”
- 3 *Pharmacy Horizons v. 1 Issue 2 – May 2007, Message from the Receiver to CDCR
- 4 Pharmacy Staff
- 5 *Appearance on KCBS Radio San Francisco – May 10, 2007
- 6 *Appearance on KXJX Capitol Public Radio Sacramento – May 10, 2007
- 7 *Appearance on KTVU Channel 2 Oakland – May 10, 2007
- 8 *Appearance on KPBS San Diego Public Radio – May 11, 2007
- 9 *Appearance on KQED Radio San Francisco – May 15, 2007
- 10 *Appearance on KXJX Capitol Public Radio Sacramento – May 15, 2007
- 11 *Keynote Address at the Association for Criminal Justice Research, Sacramento,
- 12 March 22, 2007
- 13 *Address to San Mateo Rotary Club, San Mateo, March 29, 2007
- 14 *Testimony before the California Assembly Budget Subcommittee 4, Sacramento,
- 15 April 11, 2007
- 16 *Address to Coalition of Alcohol and Drug Association Conference, Sacramento,
- 17 May 21, 2007
- 18 *Ribbon cutting ceremony and media event at San Quentin State Prison to open the new
- 19 Triage and Treatment Area, June 14, 2007
- 20 *Address at the San Mateo County Medical Association Annual Meeting, San Mateo,
- 21 June 16, 2007
- 22 34. Through these activities, the Receiver intends to keep the public at large as well as the
- 23 specific organization involved advised about his remedial actions in this matter.
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1 I declare under penalty of perjury under the laws of the State of California and the United
2 States that the foregoing is true and correct.

3 Dated: July 30, 2007

/s/
John Hagar

4
5 I hereby attest that I have on file all holograph
6 signatures for any signatures indicated by a
7 "conformed" signature (/s/) within this efiled
8 document.

/s/
9 Jamie L. Dupree
Attorneys for Receiver Robert Sillen

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