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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.

**DECLARATION OF RECEIVER J.
CLARK KELSO IN SUPPORT OF
RECEIVER'S MOTION FOR ORDER
ADJUDGING DEFENDANTS IN
CONTEMPT FOR FAILURE TO FUND
RECEIVER'S REMEDIAL PROJECTS
AND/OR FOR AN ORDER
COMPELLING DEFENDANTS TO FUND
SUCH PROJECTS**

14 ARNOLD SCHWARZENEGGER, et al.,

15 *Defendants.*

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Date: September 22, 2008
Time: 10:00 a.m.
Courtroom: Hon. Thelton E. Henderson

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1 I, J. Clark Kelso, declare as follows:

- 2 1. I am the Court-appointed Receiver in this matter, appointed pursuant to this Court's
3 Order, dated January 23, 2008. I have custody of the files pertaining to the Receivership
4 and am familiar with the contents thereof. The facts set forth herein are based on my
5 review of the Receivership records and documents which are a matter of public record as
6 well as my own personal knowledge. If called as a witness, I could competently testify
7 thereto.
- 8 2. On February 14, 2006, this Court entered its Order Appointing Receiver ("OAR"), which
9 appointed the original Receiver in this matter. The OAR conferred on the Receiver all of
10 the powers of the Secretary of CDCR insofar as the delivery of medical care is concerned
11 and suspended the Secretary's exercise of those powers for the duration of the
12 Receivership. Lest the Receiver be constrained by the same trained incapacity that had
13 stymied efforts under the stipulated orders, the Court made it clear that State law could be
14 waived when necessary to move the system toward compliance with the Constitution.
15 And, to underscore that the Court expected the State to work with the Receiver as he
16 undertook his efforts, the Court directed two provisions of the OAR, in particular, at the
17 Defendants.
- 18 3. Paragraph IV of the OAR, entitled "COSTS," provides that "[a]ll costs incurred in the
19 implementation of the policies, plans, and decisions of the Receiver relating to the
20 fulfillment of his duties under this Order shall be borne by Defendants." Paragraph VI,
21 entitled "COOPERATION," provides that "All Defendants, and all agents, or persons
22 within the employ, of any Defendant in this action . . . and all persons in concert and
23 participation with them, . . . shall *fully* cooperate with the Receiver in the discharge of his
24 duties under this Order, . . . Any such person who . . . thwarts or delays the Receiver's
25 performance of his duties under this Order, shall be subject to contempt proceedings
26 before this Court." (Emphasis in original.) The Court ordered that the OAR be served on
27 various State agencies, including the Department of Finance, Department of General
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Services and the State Personnel Board. (OAR, ¶ VI.B.)

4. Defendants did not take an appeal from the OAR.
5. On October 4, 2006, the Governor of California acknowledged the crisis in the prisons created by overcrowding and proclaimed that the crisis amounted to an emergency within the meaning of the California Emergency Services Act (Cal. Gov't Code § 8550 *et seq.*). As a result of the Proclamation, the Governor conferred upon the Secretary of the CDCR a number of powers, including the authority to “contract for facility space, inmate transportation, inmate screening, the services of qualified personnel, and/or for the supplies, materials, equipment, and other services needed to immediately mitigate the severe overcrowding and the resulting impacts within California.” The Governor then suspended during the pendency of the emergency all provisions of the Government Code and Public Contracts Code as they pertained to state contracting. Attached hereto as Exhibit 1 is a true and correct copy of the Governor’s Proclamation, judicial notice of which is requested.
6. From early in the Receivership, the Receiver recognized that the prisons sorely lacked adequate medical facilities and that, if the system was to be brought up to Constitutional standards, very substantial renovation of existing facilities, and even more substantial construction of new facilities would be required. The original Receiver launched at least three significant construction-related initiatives: construction of new facilities at San Quentin State Prison, a health care Facility Improvement program designed to provide new and upgraded clinical space and clinical support space at each prison and a project for the construction of several major medical facilities for the medical and mental health treatment of prisoners that would result in up to 5,000 medical beds and 5,000 mental health beds.
7. In the Receiver’s Second Bi-Monthly Report to the Court, filed in September 2006, the Receiver reported that he was in the initial stages of planning for the foregoing projects. The Receiver reported that he had met with State officials in September 2006 to discuss

1 planning for the 5,000 medical bed project and stressed that he would enter into
2 discussions with the Special Master in *Coleman* for the purpose of determining whether
3 the project should be expanded to include facilities to accommodate 5,000 mental health
4 beds. In the Third Bi-Monthly Report, filed in December 2006, the Receiver reported
5 that he had commissioned studies for the design and construction of the 5,000 medical
6 bed project.

7 8. The Defendants neither objected to nor expressed any concerns about the Receiver's
8 proposed capital projects described in his reports.

9 9. Meanwhile, commencing in May 2006, and continuing until the present, Judge Karlton in
10 the *Coleman* case issued a series of orders for the provision and construction of additional
11 mental health beds at various institutions. Pursuant to those orders, Judge Karlton
12 required the Defendants to develop and submit to the court long range plans for
13 accommodating the prison mental health population. In an order dated October 20, 2006,
14 Judge Karlton required the Defendants to "address the feasibility of a 'Design and Build'
15 approach for the construction projects specified in the consolidated plan and shall
16 coordinate the use of such an approach with any related Design and Build efforts in the
17 Plata case." Exh. 3 to Docket # 1251, p. 3.

18 10. On November 15, 2007, the original Receiver filed his Plan of Action ("POA"). Docket
19 # 929 *et seq.* Among the initiatives included within the POA was the Receiver's 5,000
20 Prison Medical Bed Construction Initiative and the health care Facility Improvement
21 Construction Initiative. Under the 5,000 bed project, the Receiver planned to
22 "[c]oordinate and lead a program to construct up to 5000 medical beds and up to 5000
23 mental health beds, utilizing carefully planned patient demographic reports to establish
24 the number and acuity levels of the beds needed." Docket # 929, p.16 of 128. The
25 Receiver originally planned that pre-construction work, including obtaining funding of
26 the project, would be completed by the Spring of 2008 so that construction could
27 commence by June 2008. *Id.* In addition, the Receiver anticipated completing

1 construction in connection with the Facility Improvement Construction Initiative at 12
2 prisons by November 2008. *Id*

3 11. The Defendants neither objected to nor raised any concerns about the construction plans
4 set forth in the POA.

5 12. Both the original Receiver and I have met with the Special Master in *Coleman* and the
6 court representatives in *Armstrong* and *Perez* on a regular basis to coordinate activities
7 and initiatives. Those meetings resulted in a series of coordination agreements that
8 effectively gave the Receiver the lead role in projects designed to benefit the class
9 members in the respective cases. In particular, on November 13, 2007, the courts in all
10 four cases issued an order to show cause why the coordination agreement for the San
11 Quentin, Facility Improvement and 5,000/10,000 bed projects should not be approved.
12 Although the Defendants made a number of comments and suggestions about the
13 language of the order approving the coordination agreement, the Defendants did not
14 object to the projects or to the Receiver's lead role in connection with the projects. On
15 February 26, 2008, the courts in all four cases entered an order approving the
16 Construction Coordination Agreement. Docket # 1107.

17 13. On January 23, 2008, this Court appointed me to act as Receiver. This Court stated that,
18 "the Receivership's focus can and must now shift towards long-term reform that will
19 achieve the implementation of a sustainable, constitutionally adequate system of
20 delivering medical care to Plaintiffs -- and, not inconsequentially, a system that must
21 ultimately be transitioned back to the State of California's control." Order Appointing
22 New Receiver ("OANR") (Docket # 1063), p. 4:10-20.

23 14. On March 13, 2008, I issued the first draft of a Turnaround Plan of Action ("TPA")
24 entitled, "Achieving a Constitutional Level of Care in California's Prison." One of the
25 primary Goals described in the TPA is the capital improvement projects to be undertaken,
26 including both the Facility Improvement and 5,000/10,000 bed projects. The Facility
27 Improvement project involves upgrading all existing institutions by 2012, and the
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1 5,000/10,000 bed project will involve the expansion of 6 or 7 existing facilities to serve
2 the long-term chronic care medical and mental health needs of up to 10,000 patients. The
3 upgrade program, as described in the TPA, was projected to cost at least \$1 billion and
4 costs for the expansion program was anticipated to be about \$6 billion. The capital
5 projects are an essential component of my remedial plan for the State prison medical care
6 system, without which I will be unable to bring the system into compliance with the
7 Constitution.

8 15. The TPA was submitted for public comment for four weeks. The Defendants did not
9 object to the construction program described therein or its costs. Following a one-day
10 working session with the Court and its Advisory Working Group on May 3, 2008, I
11 caused final modifications to be made to the TPA and filed it with the Court on June 6,
12 2008. Docket # 1229. This Court approved the TPA on June 16, 2008, and stressed that
13 the TPA would be the plan of action for moving forward. Docket # 1245. Defendants
14 did not appeal from the order approving the TPA.

15 16. I have endeavored, when seeking funding for construction of medical facilities for
16 inmates, to work within the parameters of State law to the extent possible. For example,
17 construction of new medical facilities at San Quentin State Prison is being financed by
18 Legislatively-authorized funding of \$140 million in bond financing.

19 17. Unfortunately, more recent efforts I have made to work within the boundaries provided
20 by State law have been met with opposition. As described in the TPA, the Facility
21 Improvement and 5,000/10,000 bed projects were anticipated to require up to \$7 billion
22 over the next three to five years. Given the scale of these projects and the substantial
23 funding requirements, I attempted to work closely with the State to obtain financing.
24 Specifically, I sought legislation to authorize financing of the project through revenue
25 bonds, not unlike the process by which the San Quentin project is being financed.

26 18. Senator Mike Machado agreed to sponsor Senate Bill ("SB") 1665, which embodied the
27 proposal. On April 14, 2008, I made a presentation to the Legislature that described the
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1 Receivership's "New Facilities Capital Program." The presentation described both the
2 Facility Improvement plans and the 5,000/10,000 bed project. The latter is to be
3 accomplished by the construction of seven facilities at existing prison sites, each with
4 approximately 1,500 beds to accommodate medical and mental health services for up to
5 10,000 inmate-patients. The presentation pointed out that demographic projections in
6 studies performed by two consulting firms demonstrated the need for the additional
7 medical and mental health beds. I also attempted to describe each of the seven new
8 facilities in some detail, the location and phasing of construction for each facility, and the
9 projected direct and indirect costs.

10 19. SB 1665 was approved by the Senate Public Safety and Appropriations Committees. The
11 bill was scheduled for a vote by the full Senate on May 15, 2008. One day before the
12 vote, the Legislative Analyst's Office ("LAO") informed Senator Machado that the LAO
13 intended to issue a report the following week that would suggest that SB 1665 somehow
14 conflicted with the Prison Litigation Reform Act (18 U.S.C. § 3626). On May 16, 2008, I
15 met with legislative staff, LAO representatives and representatives from the Office of
16 Legislative Counsel to discuss the LAO's concerns and to express my willingness to try
17 and address those concerns.

18 20. The floor vote on SB 1665 was scheduled for May 27, 2008. Despite the meeting I had
19 with the LAO on May 16, the LAO issued its report several days before the floor vote.
20 *See* Exh. 20 to Docket # 1251. The LAO Report contains a number of seriously
21 misleading or factually inaccurate statements which are discussed at length in the
22 Receiver's Eighth Quarterly Report, filed herein on June 17, 2008. Docket #1248, pp.
23 49-56. Suffice it to say, as stated in that Report, "[s]tripped to its basics, the LAO
24 recommends 'business as usual,' contemptuous of the existing *Plata, Coleman, and*
25 *Armstrong* orders." *Id.*, p. 54.

26 21. The full Senate failed on two occasions to approve SB 1665. As a practical matter, given
27 the chaos that seems to have gripped the Executive and Legislative branches over the
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1 failure to pass a state budget, a legislative solution to fund the necessary construction is
2 now speculative at best.

3 22. Despite the setback in the Legislature, I have continued to try to work with the State
4 Executive branch to obtain the necessary funding for the capital projects and to avoid
5 seeking Court intervention. Specifically, I met with representatives of the State
6 Controller's Office ("SCO"), the Department of Finance ("DOF"), the State Treasurer's
7 Office, the Governor's Office and the Attorney General's Office to discuss possible
8 mechanisms by which the State could provide funding, notwithstanding the Legislature's
9 refusal to enact SB 1665.

10 23. In particular, I proposed two alternative approaches to funding, each of which was
11 rejected by the State. First, I proposed to enter into a Memorandum of Understanding
12 ("MOU") with the SCO and DOF to permit funding of the construction projects on a
13 "pay-as-you-go" basis under the Emergency Services Act. The Governor's Emergency
14 Proclamation, together with the Emergency Services Act, provide the Governor with
15 substantial authority to authorize expenditures by departments in the Executive Branch
16 from funds appropriated originally for other purposes or the Secretary of CDCR to
17 redirect Agency funds in light of the emergency. The obvious advantage to the pay-as-
18 you-go approach is that the State would not have to obtain the full \$7 billion required for
19 the capital projects at one time, and thus the impact on the State's financial well-being
20 would be minimized. Second, I stressed that, in light of the OAR's requirement that the
21 State pay all costs of the Receivership, the SCO could simply issue warrants on the State
22 Treasury as necessary to fund the construction projects. The DOF rejected the first
23 proposal and the SCO rejected both.

24 24. The DOF suggested that I seek private financing for the capital projects that would stretch
25 out repayment over a 25-30 year period, and likely would require waivers of State law. I
26 indicated that I was unwilling to adopt such an approach absent an MOU with the SCO
27 and DOF that would provide for some kind of security for the borrowing. For its part, the
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1 SCO was unwilling to issue warrants on the State Treasury unless this Court issued an
2 order for a sum certain, more specific than the cost provisions of the OAR.

3 25. In the face of the failure by the SCO and DOF to reach agreement on either of my
4 proposed solutions to the funding problem, I have offered yet another potential solution.
5 I sent the Governor's Office a letter on June 9, 2008 that proposed a contract between
6 CPR, Inc. (the not for profit corporation through which the Receivership is operated), on
7 the one hand, and the Office of the Governor and CDCR, on the other hand. Pursuant to
8 the Governor's emergency powers, the Governor would authorize CPR to undertake the
9 planning, design and construction of the proposed facilities. CPR would thereafter
10 deliver ownership of the facilities to the State. Payment would be authorized by the
11 Governor under the Emergency Services Act and/or as a result of the Costs provision of
12 the OAR. I also proposed that the Governor would authorize payment on an annual basis
13 (plus an additional advance – a construction contingency fund – of up to 25% of that
14 year's annual construction needs). Unfortunately, this proposal, too, was rejected.

15 26. Although the original cost estimates for my capital projects were approximately \$7
16 billion, in fact, the total amount is now estimated to be at or above **\$8 billion** because I
17 have taken on the responsibility of constructing facilities to comply with the remedial
18 plans in *Armstrong* and *Perez*, as well as in *Plata* and *Coleman*. The estimates for the
19 amounts required over the next five years are set forth below:

Encumbrance Needs	2008/09	2009/10	2010/11	2011/12	2012/13	Totals
10,000 Bed Project	2,466,588,245	1,912,814,369	1,620,597,386			6,000,000,000
33 Prison Project	669,758,485	1,058,164,539	269,617,285	2,459,691		2,000,000,000
TOTAL	3,136,346,730	2,970,978,908	1,890,214,671	2,459,691		8,000,000,000
Cash Flow Needs						
10,000 Bed Project	213,969,815	1,681,635,423	2,028,583,445	1,576,846,590	498,964,727	6,000,000,000
33 Prison Project	148,132,134	987,771,354	845,854,293	18,242,219		2,000,000,000
TOTAL	362,101,949	2,669,406,777	2,974,437,738	1,595,088,809	498,964,727	8,000,000,000

1 27. Of the more than \$3.1 billion the capital projects will require in fiscal 2008/09, I will
2 require approximately \$204.6 million through December 2008, of which \$92.5 million
3 will be used for the improvement program at four institutions (Avenal State Prison, Mule
4 Creek State Prison, Correctional Training Facility and California Rehabilitation Center)
5 and \$112.1 million will be used for a variety of preliminary projects to be undertaken in
6 connection with the 10,000 Bed expansion project. On July 16 and July 22, 2008, I made
7 demand on the Governor and the Controller, respectively, to transfer approximately
8 \$204.6 million to my account for the purpose of keeping the construction projects on
9 track through the end of this year. I explained that my cash resources were running low
10 and that failure to transfer the necessary funds would "likely cause my construction
11 program management and design-build teams to stand down and disassemble, resulting in
12 irreparable delays and thereby posing a grave threat to the health and safety of our inmate-
13 patients." True and correct copies of my letters are attached hereto as Exhibits 2 and 3,
14 respectively.

15 28. I understand that Section 28 of AB 900, enacted by the legislature last year, appropriated
16 \$300 million for infrastructure improvements in the state prisons and that approximately
17 \$250 million of those funds remains available. Nevertheless, on July 25, 2008, the
18 Governor, and on July 28, 2008, the Controller responded to my letters and both refused
19 to comply with the demand to transfer the \$204.6 million that I had requested. Despite
20 the failure of SB 1665, the Governor and the Controller expressed only their hope that a
21 legislative solution for the necessary funding could be achieved. True and correct copies
22 of the Governor's and Controller's letters are attached hereto as Exhibits 4 and 5,
23 respectively. Neither the Governor nor the Controller suggested any alternate funding
24 plan in the absence of a legislative solution. To date, the State has failed and refused to
25 provide the funding necessary to permit me to continue the construction projects through
26 the end of this year and has failed and refused to provide a mechanism to assure funding
27 of the capital projects through and including their completion.

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

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4 Dated: August 13, 2008

/s/ J. Clark Kelso
J. Clark Kelso

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

11
12 _____
/s/ Martin H. Dodd
Martin H. Dodd
13 Attorneys for Receiver J. Clark Kelso

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

I am an employee of the law firm of Futterman & Dupree LLP, 160 Sansome Street, 17th 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 August 13, 2008, I served a copy of the following document(s):

DECLARATION OF RECEIVER J. CLARK KELSO IN SUPPORT OF RECEIVER'S MOTION FOR ORDER ADJUDGING DEFENDANTS IN CONTEMPT FOR FAILURE TO FUND RECEIVER'S REMEDIAL PROJECTS AND/OR FOR AN ORDER COMPELLING DEFENDANTS TO FUND SUCH PROJECTS

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 FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.
- BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated below. 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.

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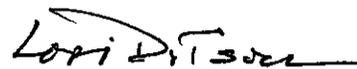
21

22 I declare that I am employed in the offices of a member of the State Bar of this Court at
23 whose direction the service was made. I declare under penalty of perjury, under the laws of the
24 united State of America, that the above is true and correct.

Executed on August 13, 2008 at San Francisco, California.

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25



Lori Dotson

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EXHIBIT 1



Proclamation

RELATED CONTENT

10/04/2008 Print Version

Prison Overcrowding State of Emergency Proclamation

PROCLAMATION

by the
Governor of the State of California

WHEREAS, the California Department of Corrections and Rehabilitation (CDCR) is required by California law to house inmates committed to state prison; and

WHEREAS, various trends and factors, including population increases, parole policies, sentencing laws, and recidivism rates have created circumstances in which the CDCR is now required to house a record number of inmates in the CDCR prison system, making the CDCR prison system the largest state correctional system in the United States, with a total inmate population currently at an all-time high of more than 170,000 inmates; and

WHEREAS, due to the record number of inmates currently housed in prison in California, all 33 CDCR prisons are now at or above maximum operational capacity, and 29 of the prisons are so overcrowded that the CDCR is required to house more than 18,000 inmates in conditions that pose substantial safety risks, namely, prison areas never designed or intended for inmate housing, including, but not limited to, common areas such as prison gymnasiums, dayrooms, and program rooms, with approximately 1,500 inmates sleeping in triple-bunks; and

WHEREAS, the current severe overcrowding in 29 CDCR prisons has caused substantial risk to the health and safety of the men and women who work inside these prisons and the inmates housed in them, because:

With so many inmates housed in large common areas, there is an increased, substantial risk of violence, and greater difficulty controlling large inmate populations.

With large numbers of inmates housed together in triple-bunks, there is an increased, substantial risk for transmission of infectious illnesses.

The triple-bunks and tight quarters create line-of-sight problems for correctional officers by blocking views, creating an increased, substantial security risk.

WHEREAS, the current severe overcrowding in these 29 prisons has also overwhelmed the electrical systems and/or wastewater/sewer systems, because those systems are now often required to operate at or above the maximum intended capacity, resulting in an increased, substantial risk to the health and safety of CDCR staff, inmates, and the public, because:

Overloading the prison electrical systems has resulted in power failures and blackouts within the prisons, creating increased security threats. It has also damaged fuses and transformers.

Overloading the prison sewage and wastewater systems has resulted in the discharge of waste beyond treatment capacity, resulting in thousands of gallons of sewage spills and environmental contamination.

And when the prisons "overdischarge" waste, bacteria can contaminate the drinking water supply, putting the public's health at an increased, substantial risk.

WHEREAS, overloading the prison sewage and water systems has resulted in increased, substantial risk of damage to state and privately owned property and has resulted in multiple fines, penalties and/or notices of violations to the CDCR related to wastewater/sewer system overloading such as groundwater contamination and environmental pollution; and

WHEREAS, overcrowding causes harm to people and property, leads to inmate unrest and misconduct, reduces or eliminates programs, and increases recidivism as shown within this state and in others; and

WHEREAS, in addition to all of the above, in the 29 prisons with severe overcrowding, the following circumstances exist:

Avenal State Prison has an operational housing capacity of 5,768 inmates, but it currently houses 7,422 inmates, with 1,654 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 64 incidents of assault/battery by inmates — 31 of them against CDCR staff — along with 15 riots/melees, and 27 weapon confiscations.

The California Correctional Center has an operational housing capacity of 5,724 inmates, but it currently houses 6,174 inmates, with 450 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 126 incidents of assault/battery by inmates — 16 of them against CDCR staff — along with 34 riots/melees, and 21 weapon confiscations.

The California Correctional Institution has an operational housing capacity of 4,931, but it currently houses 6,702 inmates, with 771 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 125 incidents of assault/battery by inmates — 79 of them against CDCR staff — along with 6 riots/melees, and 57 weapon confiscations.

Centinela State Prison has an operational housing capacity of 4,368, but it currently houses 4,856 inmates, with 588 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 141 incidents of assault/battery by inmates — 30 of them against CDCR staff — along with 10 riots/melees, and 151 weapon confiscations.

The California Institution for Men has an operational housing capacity of 5,372, but it currently houses 6,916 inmates, with 1,243 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 170 incidents of assault/battery by inmates — 57 of them against CDCR staff — along with 21 riots/melees, and 47 weapon confiscations.

The California Institution for Women has an operational housing capacity of 2,228, but it currently houses 2,624 inmates, with 396 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 65 incidents of assault/battery by inmates — 28 of them against CDCR staff — and 6 weapon confiscations.

The California Men's Colony has an operational housing capacity of 6,294, but it currently houses 6,674 inmates, with 280 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 151 incidents of assault/battery by inmates — 33 of them against CDCR staff — along with 11 riots/melees, and 29 weapon confiscations.

The California State Prison at Corcoran has an operational housing capacity of 4,954, but it currently houses 6,317 inmates, with 363 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 147 incidents of assault/battery by inmates — 58 of them against CDCR staff — along with 5 riots/melees, and 111 weapon confiscations.

The California Rehabilitation Center has an operational housing capacity of 4,660, but it currently houses 4,866 inmates, with 198 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 65 incidents of assault/battery by inmates — 28 of them against CDCR staff — 9 riots/melees, and 34 weapon confiscations.

The Correctional Training Facility has an operational housing capacity of 6,167, but it currently houses 7,027 inmates, with 870 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 85 incidents of assault/battery by inmates — 26 of them against CDCR staff — along with 8 riots/melees, and 27 weapon confiscations.

Chuckawalla Valley State Prison has an operational housing capacity of 3,443, but it currently houses 4,292 inmates, with 849 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 60 incidents of assault/battery by inmates — 11 of them against CDCR staff — along with 5 riots/melees, and 21 weapon confiscations.

Deuel Vocational Institution has an operational housing capacity of 3,115, but it currently houses 3,911 inmates, with 798 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 114 incidents of assault/battery by inmates — 54 of them against CDCR staff — along with 7 riots/melees, and 37 weapon confiscations.

High Desert State Prison has an operational housing capacity of 4,346, but it currently houses 4,708 inmates, with 360 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 351 incidents of assault/battery by inmates — 44 of them against CDCR staff — along with 6 riots/melees, and 289 weapon confiscations.

Ironwood State Prison has an operational housing capacity of 4,185, but it currently houses 4,665 inmates, with 480 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 96 incidents of assault/battery by inmates — 19 of them against CDCR staff — along with 14 riots/melees, and 52 weapon confiscations.

Kern Valley State Prison has an operational housing capacity of 4,566, but it currently houses 4,666 inmates, with 120 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 146 incidents of assault/battery by inmates — 60 of them against CDCR staff — along with 10 riots/melees, and 48 weapon confiscations.

The California State Prison at Los Angeles has an operational housing capacity of 4,230, but it currently houses 4,698 inmates, with 468 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 211 incidents of assault/battery by inmates — 123 of them against CDCR staff — along with 4 riots/melees, and 101 weapon confiscations.

Mule Creek State Prison has an operational housing capacity of 3,197, but it currently houses 3,929 inmates, with 732 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 65 incidents of assault/battery by inmates — 35 of them against CDCR staff — along with 1 riot/melee, and 28 weapon confiscations.

North Kern State Prison has an operational housing capacity of 6,189, but it currently houses 5,365 inmates, with 178 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 135 incidents of assault/battery by inmates — 43 of them against CDCR staff — along with 16 riots/melees, and 70 weapon confiscations.

Pelican Bay State Prison has an operational housing capacity of 3,444, but it currently houses 3,604 inmates, with 160 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 256 incidents of assault/battery by inmates — 88 of them against CDCR staff — along with 9 riots/melees, and 106 weapon confiscations.

Pleasant Valley State Prison has an operational housing capacity of 4,366, but it currently houses 5,112 inmates, with 744 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 205 incidents of assault/battery by inmates — 69 of them against CDCR staff — along with 12 riots/melees, and 26 weapon confiscations.

The Richard J. Donovan Correctional Facility has an operational housing capacity of 4,120, but it currently houses 4,720 inmates, with 600 inmates housed in areas designed for other purposes. At the

same time, in the last year, there were 244 incidents of assault/battery by inmates — 118 of them against CDCR staff — along with 11 riots/melees, and 98 weapon confiscations.

The California State Prison at Sacramento has an operational housing capacity of 2,973, but it currently houses 3,213 inmates, with 240 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 284 incidents of assault/battery by inmates — 159 of them against CDCR staff — along with 5 riots/melees, and 118 weapon confiscations.

The California Substance Abuse Treatment Facility and State Prison at Corcoran has an operational housing capacity of 6,360, but it currently houses 7,593 inmates, with 1,233 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 120 incidents of assault/battery by inmates — 63 of them against CDCR staff — along with 20 riots/melees, and 124 weapon confiscations.

The Sierra Conservation Center has an operational housing capacity of 5,657, but it currently houses 6,107 inmates, with 460 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 61 incidents of assault/battery by inmates — 18 of them against CDCR staff — along with 19 riots/melees, and 50 weapon confiscations.

The California State Prison at Solano has an operational housing capacity of 5,070, but it currently houses 5,858 inmates, with 788 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 60 incidents of assault/battery by inmates — 26 of them against CDCR staff — along with 4 riots/melees, and 114 weapon confiscations.

San Quentin State Prison has an operational housing capacity of 4,933, but it currently houses 5,183 inmates, with 287 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 282 incidents of assault/battery by inmates — 123 of them against CDCR staff — along with 15 riots/melees, and 118 weapon confiscations.

Salinas Valley State Prison has an operational housing capacity of 4,200, but it currently houses 4,680 inmates, with 480 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 181 incidents of assault/battery by inmates — 82 of them against CDCR staff — along with 7 riots/melees, and 91 weapon confiscations.

Valley State Prison for Women has an operational housing capacity of 3,902, but it currently houses 3,958 inmates, with 56 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 126 incidents of assault/battery by inmates — 75 of them against CDCR staff — and 15 weapon confiscations.

Wasco State Prison has an operational housing capacity of 5,838, but it currently houses 6,098 inmates, with 260 inmates housed in areas designed for other purposes. At the same time, in the last year, there were 226 incidents of assault/battery by inmates — 97 of them against CDCR staff — along with 32 riots/melees, and 82 weapon confiscations.

WHEREAS, some of these 29 severely overcrowded prisons may even be housing more inmates, because the inmate population continually fluctuates among the CDCR prisons; and

WHEREAS, in addition to the 1,871 incidents of violence perpetrated in these 29 severely overcrowded prisons by inmates against CDCR staff last year, and the 2,642 incidents of violence perpetrated in these prisons on inmates by other inmates in the last year, the suicide rate in these 29 prisons is approaching an average of one per week; and

WHEREAS, the federal court in the *Coleman* case found mental-health care in CDCR prisons to be below federal constitutional standards due in part to the lack of appropriate beds and space; and

WHEREAS, the use of common areas for inmate housing has severely modified or eliminated certain inmate programs in the 29 prisons with severe overcrowding; and

WHEREAS, the severe overcrowding has also substantially limited or restricted inmate movement, causing significantly reduced inmate attendance in academic, vocational, and rehabilitation

WHEREAS, overcrowded prisons in other states have experienced some of the deadliest prison riots in American history, including:

In 1971, the nation's deadliest prison riot occurred in Attica, New York, resulting in the death of 43 people. On the day of this riot, the prison — which was built for 1600 — housed approximately 2,300 inmates.

In 1981, a riot occurred in the New Mexico State Penitentiary. More than 30 inmates were killed, more than 100 people were injured, and 12 officers were taken hostage, some of whom were beaten, sexually assaulted, and/or raped. On the day of this riot, the prison — which was built for 800 — housed approximately 1,138 inmates.

In 1993, a riot occurred in Lucasville, Ohio. One officer was murdered, four officers were seriously injured, and nine inmates were killed. On the day of this riot, the prison — which was built for 1600 — housed approximately 2,300 inmates.

WHEREAS, I believe immediate action is necessary to prevent death and harm caused by California's severe prison overcrowding; and

WHEREAS, because of the housing shortage in CDCR prisons, the CDCR has current contracts with four California counties to house 2,362 additional state inmates in local adult jails, but this creates the following overcrowding problem in the county jails:

According to a report by the California State Sheriffs' Association in June 2006, adult jails recently averaged a daily population of approximately 80,000 inmates. On a typical day, the county jails lacked space for more than 4,900 inmates across the state.

Based on the same report, 20 of California's 58 counties have court-imposed population caps resulting from litigation brought by or on behalf of inmates in crowded jails and another 12 counties have self-imposed caps.

Most of California's jail population consists of felony inmates, but when county jails are full, someone in custody must be released before a new inmate can be admitted.

The 2006 Sheriffs' Association report states that last year, 233,368 individuals statewide avoided incarceration or were released early into local communities because of the lack of jail space.

WHEREAS, overcrowding conditions are projected to get even worse in the coming year, to the point that the CDCR expects to run out of all common area space to house prisoners in mid-2007, and will be unable to receive any new inmates; and

WHEREAS, in January 2006, I proposed \$6 billion in the Strategic Growth Plan to help manage inmate population at all levels of government by increasing the number of available local jail beds and providing for two new prisons and space for 83,000 prisoners to address California's current and future incarceration needs; and

WHEREAS, the California Legislature failed to act upon this proposal; and

WHEREAS, in March 2006, a proposal was submitted as part of my 2006-07 budget to enable the CDCR to contract for a total of 8,500 beds in community correctional facilities within the state; and

WHEREAS, the California Legislature denied this proposal; and

WHEREAS, on June 26, 2008, I issued a proclamation calling the Legislature into special session because I believed urgent action was needed to address this severe problem in California's prisons, and I wanted to give the Legislature a further opportunity to address this crisis; and

WHEREAS, the CDCR submitted detailed proposals to the Legislature to address the immediate and longer-term needs of the prison system in an effort to resolve the overcrowding crisis; and

WHEREAS, the California Legislature failed to adopt the proposals submitted by the CDCR, and also failed to adopt any proposals of its own; and

WHEREAS, in response, my office directed the CDCR to conduct a survey of certain inmates in California's general population to determine how many might voluntarily transfer to out-of-state correctional facilities; and

WHEREAS, the CDCR reports that more than 10,000 inmates expressed interest in voluntarily transferring to a correctional facility outside of California; and

WHEREAS, the overcrowding crisis gets worse with each passing day, creating an emergency in the California prison system.

NOW, THEREFORE, I, **ARNOLD SCHWARZENEGGER**, Governor of the State of California, in light of the aforementioned, find that conditions of extreme peril to the safety of persons and property exist in the 29 CDCR prisons identified above, due to severe overcrowding, and that the magnitude of the circumstances exceeds the capabilities of the services, personnel, equipment, and facilities of any geographical area in this state. Additionally, the counties within the state are harmed by this situation, as the inability to appropriately house inmates directly impacts local jail capacity and the early release of felons. This crisis spans the eastern, western, northern, and southern parts of the state and compromises the public's safety, and I find that local authority is inadequate to cope with the emergency. Accordingly, under the authority of the California Emergency Services Act, set forth at Title 2, Division 1, Chapter 7 of the California Government Code, commencing with section 8650, I hereby proclaim that a State of Emergency exists within the State of California's prison system.

Pursuant to this proclamation:

I. The CDCR shall, consistent with state law and as deemed appropriate by the CDCR Secretary for the sole purpose of immediately mitigating the severe overcrowding in these 29 prisons and the resulting impacts within California, immediately contract for out-of-state correctional facilities to effectuate voluntary transfers of California prison inmates to facilities outside of this state for incarceration consisting of constitutionally adequate housing, care, and programming.

II. The CDCR Secretary shall, after exhausting all possibilities for voluntary transfers of inmates, and in compliance with the Interstate Corrections Compact and the Western Interstate Corrections Compact, and as he deems necessary and appropriate to mitigate this emergency, effectuate involuntary transfers of California prison inmates, based on criteria set forth below, to institutions in other states and those of the federal government for incarceration consisting of constitutionally adequate housing, care, and programming. In such instance, because strict compliance with California Penal Code sections 11191 and 2911 would prevent, hinder, or delay the mitigation of the severe overcrowding in these prisons, applicable provisions of these statutes are suspended to the extent necessary to enable the CDCR to transfer adult inmates, sentenced under California law, to institutions in other states and those of the federal government without consent. This suspension is limited to the scope and duration of this emergency.

A. The CDCR Secretary shall prioritize for involuntary transfer the inmates who meet the following criteria:

1. Inmates who: (a) have been previously deported by the federal government and are criminal aliens subject to immediate deportation; or (b) have committed an aggravated felony as defined by federal statute and are subject to deportation.
2. Inmates who are paroling outside of California.
3. Inmates who have limited or no family or supportive ties in California based on visitation records and/or other information deemed relevant and appropriate by the CDCR Secretary.

4. Inmates who have family or supportive ties in a transfer state.

5. Other inmates as deemed appropriate by the CDCR Secretary.

B. No person under commitment to the Division of Juvenile Justice may be considered for such transfer.

III. The CDCR Secretary shall, before selecting any inmate for transfer who has individual medical and/or mental-health needs, consult with the court-appointed Receiver of the CDCR medical system and/or the court-assigned Special Master in the *Coleman* mental-health case, depending on the healthcare needs of the inmate, to determine whether a transfer would be appropriate.

IV. The CDCR Secretary shall, before effectuating any inmate transfer, carefully and thoroughly evaluate all appropriate factors, including, but not limited to, the cost-effectiveness of any such transfer and whether an inmate selected for transfer has any pending appeals or hearings that may be impacted by such transfer.

V. The CDCR shall, as deemed appropriate by the CDCR Secretary, contract for facility space, inmate transportation, inmate screening, the services of qualified personnel, and/or for the supplies, materials, equipment, and other services needed to immediately mitigate the severe overcrowding and the resulting impacts within California. Because strict compliance with the provisions of the Government Code and the Public Contract Code applicable to state contracts would prevent, hinder, or delay the mitigation of the severe overcrowding in these prisons, applicable provisions of these statutes, including, but not limited to, advertising and competitive bidding requirements, are suspended to the extent necessary to enable the CDCR to enter into such contracts as expeditiously as possible. This suspension is limited to the scope and duration of this emergency.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of October 2008.

ARNOLD SCHWARZENEGGER

Governor of California

ATTEST:

BRUCE McPHERSON

Secretary of State

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EXHIBIT 2

J. Clark Kelso, Receiver
501 J Street, Suite 100
Sacramento, CA 95814
(916) 323-1923
Clark.Kelso@cder.ca.gov
www.cprinc.org

July 16, 2008

Governor Arnold Schwarzenegger
Office of the Governor
State Capitol
Sacramento, CA 95814

Dear Governor Schwarzenegger:

I notified Director Genest on May 30, 2008, in a letter copied to you, of the need for \$70 million to satisfy the unfunded requirements of the construction programs in my Turnaround Plan of Action through the end of Fiscal Year 2007-2008. That time has passed, and I now require a total of \$204.6 million to meet the unfunded needs of the construction programs through December 31, 2008. The Legislature has not provided the \$70 million in funding previously requested. You have taken no action to provide funding, even on an interim basis, despite your authority to do so under applicable law, including the California Emergency Services Act.

The obligation of all *Plata* defendants to fund the construction programs in the Turnaround Plan of Action is beyond dispute. The February 14, 2006 Order Appointing Receiver ("OAR") provides that "[a]ll costs incurred in the implementation of the policies, plans, and decisions of the Receiver relating to the fulfillment of his duties under this Order shall be borne by Defendants." (OAR, pg. 7.) The *Plata* defendants did not appeal from the OAR. The Court has deemed the Turnaround Plan of Action "the plan of action for moving this case forward," and has specifically found that the strategic goals in the plan, including those related to construction, are "necessary to bring California's medical health care system up to constitutional standards." (Order Approving Receiver's Turnaround Plan of Action, pgs. 3-4.) Despite the obligation placed on the *Plata* defendants collectively, and you individually, to provide the funding necessary to bring these projects to fruition, no funding has yet been provided.

Without additional funding, my cash on hand for construction costs, as incurred, will be exhausted in October or November. This will likely cause my construction program management and design-build teams to stand down and disassemble, resulting in irreparable delays and thereby posing a grave threat to the health and safety of our inmate-patients. I will not, indeed cannot, let this occur. The OAR is clear that any person who "thwarts or delays the Receiver's performance of his duties under this Order, shall be subject to contempt proceedings before this Court." (OAR, pg. 8.) Unless you

take immediate action to provide funding, interim or otherwise, for the construction programs in the Turnaround Plan of Action, I intend to move the Court for whatever remedy may be necessary to compel the State's funding of the programs, including, but not limited to, commencing contempt proceedings against you and the other *Plata* defendants. I recognize that you are not wholly responsible for the unconstitutional conditions in the prison system. However, you presently hold the position and authority that will enable us to resolve this crisis. Please provide written assurance no later than Friday, July 25, 2008 that the funding requested above will be provided.

Yours truly,

A handwritten signature in black ink, appearing to read "J. Clark Kelso". The signature is written in a cursive, somewhat stylized font.

J. Clark Kelso
Receiver

EXHIBIT 3

J. Clark Kelso, Receiver
501 J Street, Suite 100
Sacramento, CA 95814
(916) 323-1923
Clark.Kelso@cdcr.ca.gov
www.cprinc.org

July 22, 2008

The Honorable John Chiang
State Controller
300 Capitol Mall
Sacramento, CA 95814

Dear Controller Chiang:

As you know, I have met numerous times with your staff to discuss my office's need for funding to support the construction programs set forth in my court-approved Turnaround Plan of Action, and your office's obligation to provide such funding. My needs have now become much more urgent, requiring immediate attention.

On May 30, 2008, I notified Director Michael Genest of the Department of Finance of the need for \$70 million to satisfy the unfunded requirements of the construction programs in my Turnaround Plan of Action through the end of Fiscal Year 2007-2008. That time has passed without funding being provided, and I now require a total of \$204.6 million to meet the unfunded needs of the construction programs through December 31, 2008. The Legislature has not provided the \$70 million in funding previously requested, and the Governor has similarly taken no action to provide funding, even on an interim basis, despite his authority to do so under applicable law, including the California Emergency Services Act.

The obligation of all *Plata* defendants, including yourself, to fund the construction programs in the Turnaround Plan of Action is beyond dispute. The February 14, 2006 Order Appointing Receiver ("OAR") provides that "[a]ll costs incurred in the implementation of the policies, plans, and decisions of the Receiver relating to the fulfillment of his duties under this Order shall be borne by Defendants." (OAR, pg. 7.) The *Plata* defendants did not appeal from the OAR. The Court has deemed the Turnaround Plan of Action "the plan of action for moving this case forward," and has specifically found that the strategic goals in the plan, including those related to construction, are "necessary to bring California's medical health care system up to constitutional standards." (Order Approving Receiver's Turnaround Plan of Action, pgs. 3-4.) Despite the obligation placed on the *Plata* defendants collectively, and you individually, to provide the funding necessary to bring these projects to fruition, no funding has yet been provided.

Without additional funding, my cash on hand for construction costs, as incurred, will be exhausted in October or November. This will likely cause my construction program management and design-build teams to stand down and disassemble, resulting in irreparable delays and thereby posing a grave threat to the health and safety of our inmate-patients. I will not, indeed cannot, let this occur. The OAR is clear that any person who "thwarts or delays the Receiver's performance of his duties under this Order, shall be subject to contempt proceedings before this Court." (OAR, pg. 8.)

Unless you take immediate action to provide funding, interim or otherwise, for the construction programs in the Turnaround Plan of Action, I intend to move the Court for whatever remedy may be necessary to compel the State's funding of the programs, including, but not limited to, commencing contempt proceedings against you and the other *Plata* defendants. I recognize that you are not wholly responsible for the unconstitutional conditions in the prison system. However, you presently hold the position and authority that will enable us to resolve this crisis. Please provide written assurance to me no later than Friday, July 25, 2008 that the funding requested above will be provided.

Yours truly,

A handwritten signature in black ink, appearing to read "J. Clark Kelso". The signature is written in a cursive, somewhat stylized font.

J. Clark Kelso
Receiver

EXHIBIT 4



GOVERNOR ARNOLD SCHWARZENEGGER

July 25, 2008

Mr. J. Clark Kelso
Receiver
501 J Street
Suite 100
Sacramento, California 95814

Dear Mr. Kelso,

I am writing in response to your July 16 letter regarding funding for your proposed construction projects. You state that you now require \$204.6 million to meet unfunded needs of your construction programs through December 21, 2008, and ask that I provide written assurance no later than July 25, 2008, that the requested funding will be provided.

As you know, I support your Turnaround Plan of Action and the construction programs that you have determined are necessary to fulfill your duties as receiver and improve the quality and delivery of medical care in the state prison system. I continue to prefer and support the use of lease revenue bonds to provide the funding mechanism for these proposed construction projects.

As you are also aware, my administration has been working with you to explore other funding mechanisms for your proposed construction projects. To this end, our offices discussed the possibility of providing funding under my Prison Overcrowding State of Emergency Proclamation. However, my office concluded that this was not a legal option. Recently, on July 22, 2008, the state's counsel provided a detailed response to a list of 11 questions sent by your counsel regarding different funding mechanisms for your proposed construction projects. Currently, my office and the Department of Finance are working with your office on revenue bonds to be issued by the Infrastructure Bank in the event that lease revenue bond funding is not authorized by the Legislature.



Mr. J. Clark Kelso

July 25, 2008

Page two

As Governor, I am bound by the Constitution and state law. As you recognize in your letter, only the Legislature has the authority to make appropriations. In the absence of legislative authorization, it is not within my power to appropriate state funds for the Receiver's construction projects. Therefore, I am not in a position to provide you with written assurance that your request of \$204.6 million will be met. I remain committed to working with you and Judge Henderson to bring California's prison health care system up to constitutional standards, and I will continue to work with you and the Legislature to obtain funds necessary to complete your mission.

Sincerely,

A handwritten signature in black ink, appearing to read "Arnold Schwarzenegger". The signature is fluid and cursive, with the first name "Arnold" being particularly prominent.

Arnold Schwarzenegger

/la

EXHIBIT 5

RECEIVED AUG 08 2008



JOHN CHIANG
California State Controller

July 28, 2008

J. Clark Kelso, Receiver
501 J Street, Suite 100
Sacramento, CA 95814

Re: Turnaround Plan of Action

Dear Mr. Kelso:

Thank you for your letter concerning the above-referenced subject dated July 22, 2008. As was explained to you by my Chief Counsel on June 5, 2008, and more recently in a letter dated July 22, 2008, from the Attorney General's Office to your counsel, Martin H. Dodd, Futterman & Dupree, copy attached, we are unable to comply with your request.

As you know, Mr. Dodd, at your behest, raised essentially the same question posed in your letter concerning the availability of funding albeit with more specificity on the availability, or lack thereof, of specific funds as well as the applicability of the February 14, 2006, Order.

In responding to Mr. Dodd's questions, I asked my staff to provide all relevant legal and factual information in order that you would be fully apprised about the tenuous financial condition of the State and the defendants' views concerning the limitations of the referenced Order. It is my opinion that the Attorney General's response to those questions is self explanatory and needs no further elaboration.

That being said, it is my understanding that the State defendants, including my office, have been cooperating with your office to construct a solution that accomplishes your objectives with little or no disruption to the State's general fund, special fund or operations. It is also my understanding that the alternative presented is one that utilizes lease revenue bonds to fund the proposed capital outlay expenditures. This method is, of course, the method used by the state to fund projects of this magnitude thereby spreading the cost of repayment over a period of years rather than on a "pay as you go" method.

J. Clark Kelso, Receiver
July 28, 2008
Page 2

While I cannot comply with your request, I do encourage continuing discussion between our respective offices as well as the Legislature and the Governor's office with the hope that this matter can be satisfactorily resolved in the best interest of both the State and the plaintiffs in the litigation.

Sincerely,



JOHN CHIANG
California State Controller



EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE

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July 22, 2008

Martin H. Dodd, Esq.
Futterman & Dupree LLP
160 Sansome Street, 17th Floor
San Francisco, CA 94104

RE: *Marciano Plata, et al. v. Arnold Schwarzenegger, et al.*
United States District Court, Northern District, Case No. 3:01-cv-01351-TEH

Dear Mr. Dodd:

This letter responds to your letter dated July 15, 2008, in which you proposed that the state defendants meet with the Receiver to discuss issues related to the funding of the Receiver's proposed construction projects. Your letter included questions that the Receiver would like to have answered.

The state defendants agree that the information that the Receiver seeks can be conveyed through the means of informal discovery requests rather than through formal discovery. This is consistent with federal court's discovery stay order in *Plata* issued on July 10, 2008, in which the court gave the parties the opportunity to informally share information. In a continued spirit of cooperation, we provide these informal responses to your questions. After reviewing these initial responses, please feel free to contact us if the Receiver has questions or needs clarification. We are also willing to meet with the Receiver's Office to discuss these matters further, if that is required.

As we have informed the Receiver in prior communications, the way to fund the Receiver's proposed construction projects is to obtain authorization from the California Legislature. Indeed, the state defendants continue to work diligently to secure such legislative authorization. Defendants would prefer to fund the Receiver's proposed construction projects without the necessity of a federal court order. Senate Bill 1665 (Machado), or some other bill containing its substance, would fund the Receiver's proposed construction projects and would not require a court order. The last version of the bill authorized \$6.9 billion in lease revenue bonds to fund the Receiver's proposed construction projects. However, as this letter explains, other proposed methods to fund the Receiver's proposed construction projects are inconsistent with California law and could expose defendants to personal liability.

Martin H. Dodd, Esq.
July 22, 2008
Page 2

I. The State Defendants Lack Authority to Appropriate Funds, and Could Face Personal Liability, If They Utilize Funds in a Manner Not Authorized by an Appropriation.

Several of the Receiver's queries ask whether the state defendants would agree to fund the Receiver's proposed projects out of special funds earmarked for other uses. While the legal limitations on use of certain funds are addressed below in response to each question, a general explanation of the ability of state defendants to respond voluntarily to the Receiver's request may clarify matters.

A. The Governor's Emergency Proclamation for Prison Overcrowding Cannot Be Used to Fund the Receiver's Proposed Construction Projects Because the Receiver's Projects Will Not Mitigate the Emergency Condition.

The Receiver has suggested that the state defendants could use the Governor's existing Emergency Proclamation regarding prison overcrowding to obtain funding for the Receiver's projects. However, the Emergency Proclamation is based on the severe prison overcrowding caused by the use of non-traditional beds in 29 identified state prisons. The proclamation orders contracts with out-of-state correctional facilities and inmate transfers immediately to mitigate the severe overcrowding in 29 of the 33 state prisons. The Receiver's proposed construction projects are long-term in nature and will not have any immediate effect to mitigate the emergency condition. Therefore, there is no nexus between the Receiver's proposed construction projects and mitigating the severe overcrowding caused by the use of non-traditional beds. Accordingly, the existing emergency proclamation cannot be used to obtain funding for the Receiver's proposed construction projects.

B. The State Defendants Cannot Agree to Fund the Receiver's Proposed Construction Projects in the Absence of Legislative Authorization Without Violating California Law and Potentially Incurring Personal Liability.

Asking whether the state defendants would fund the Receiver's projects from special funds elides the distinction between possession of funds and their appropriation by the Legislature. The California Constitution provides that "[m]oney may be drawn from the Treasury only through an appropriation made by law and upon a Controller's duly drawn warrant." (Cal. Const., art. XVI, § 7.) The Government Code further provides that "a warrant shall not be drawn unless authorized by law, and unless . . . unexhausted specific *appropriations* provided by law are available to meet it." (Gov. Code, § 12440.)

"An appropriation is a legislative act setting aside a certain sum of money for a specified object in such manner that the executive officers are authorized to use that money and no more for such specified purpose." (*White v. Davis* (2002) 108 Cal.App.4th 197, 211 [citation omitted].) Under California's Constitution, "the legislative department of the government is entrusted the exclusive power of deciding how, when, and for what purposes the public funds shall be applied in carrying on the government. To the legislative department of the government

Martin H. Dodd, Esq.

July 22, 2008

Page 3

is entrusted the power to say to what purpose the public funds shall be devoted in each fiscal year. . . ." (*Humbert v. Dunn* (1890) 84 Cal. 57, 59-60; see also *People v. Pacheco* (1865) 27 Cal. 175, 209.)

All of the defendants in this case are part of the executive branch of government. They therefore lack power to appropriate state funds to fund the Receiver's projects.

Besides being ultra vires, any action taken to spend state funds in the absence of an appropriation could subject government officials to personal liability for repayment. (See Gov. Code, § 13324 [personal liability for excess expenditures]). In *Stanson v. Mott* (1976) 17 Cal.3d 206, our Supreme Court held that "public officials must use 'due care,' i.e., reasonable diligence, in authorizing the expenditure of public funds, and may be subject to personal liability for improper expenditures made in the absence of such due care." (*Id.* at pp. 226-227; see also *Stevens v. Geduldig* (1986) 42 Cal.3d 24, 34-36 [holding that executive branch officials who acted negligently in authorizing contracts were subject to personal liability for any losses caused by their actions, although the losses were later repaid from an authorized funding source].)

C. While Special Funds Can Be Borrowed, They Must Be Reimbursed To Meet the Needs of the Special Funds, Which Makes Them Unavailable as a Source of Funding for the Receiver's Proposed Construction Projects.

A second issue raised by the Receiver's questions is the extent to which special funds may be borrowed for other purposes. The State Treasury comprises a series of special funds and the general fund: the latter consisting of all treasury receipts not earmarked by law for a special fund. (Gov. Code, § 16300; see also Gov. Code, §§ 12440, 17000.) "[A]lthough transfers of funds are permissible, the fund from which money is transferred must be reimbursed. Such transfers are considered to be loans." (*Willens v. Cory* (1975) 53 Cal.App.3d 104, 107-108 (citations omitted), disapproved on other grounds by *Olson v. Cory* (1983) 35 Cal.3d 390; see also *Daugherty v. Riley* (1934) 1 Cal.2d 298, 309.) While the Legislature has authorized loans from special funds to the general fund in order to support state operations (Gov. Code, § 16310), this is done pursuant to law that requires the *anticipation of the receipt of revenues that will allow the special funds to be repaid when needed* by the special fund. The monies in a special fund cannot be permanently diverted. They can only be loaned. And to qualify as a loan, there must be a pre-borrowing belief that the special fund can be reimbursed when the funds are needed for the special fund purpose. Allowing the Receiver to take special funds without any expectation or means of repayment would be illegal. (*Daugherty, supra*, at p. 309.)

II. Responses to the Receiver's Specific Questions

1. **Do defendants intend to fund the Receiver's proposed construction projects without the necessity of a court order? If so, in what amounts, by what dates, and through what funding mechanisms?**

Martin Id. Dodd, Esq.

July 22, 2008

Page 4

At present, SB 1665 or some other bill containing its substance, is the defendants' only means of funding the Receiver's proposed construction projects without a court order because defendants do not presently have authority to fund the Receiver's proposed construction projects. As explained above, the defendants would violate the California Constitution and other state law if they agreed to spend money on the Receiver's proposed construction projects without an appropriation (Cal. Const., art. XVI, § 7; Gov. Code, § 12440), and could be subject to personal liability for monies spent. (*Stanson, supra*, at pp. 226-227; *Geduldig, supra*, at pp. 34-36.)

It is true that that when federal law places an obligation upon the state promptly to make payments of public funds, the Controller is authorized to make such payments independent of the enactment of an appropriation. (*White v. Davis, supra*, 108 Cal.App.4th at p. 223.) However, there is no federal law requiring the prompt payment for the Receiver's proposed construction projects.

The Receiver relies on general language in the district court's order dated February 14, 2006 ("Order") for the proposition that all costs, including the cost of construction, are required to be paid by the defendants. In that regard, the Order reads:

All costs incurred in the implementation of the policies, plans, and decisions of the Receiver relating to the fulfillment of his duties under this Order shall be borne by Defendants. Defendants shall also bear all costs of establishing and maintaining the Office of Receiver, including the compensation of the Receiver and his staff.

(Order, Page 7, lines 9-13.) By its own terms, the Order requires the defendants to bear the costs incurred with the "implementation of the policies, plans, and decisions of the Receiver relating to the fulfillment of his duties under the Order . . ." The duties of the Receiver are identified in the Order under paragraph 1 as "A. Executive Management," "B. Plan of Action," "C. Budgeting and Accounting," and "D. Reporting," and it is the cost for implementing those duties together with the cost of establishing and maintaining the Office of the Receiver which the defendants must bear.

While the Order requires payment of the costs incurred by the Receiver pursuant to the enumerated duties, the Order relied upon does not require the defendants to bear the cost of land acquisition, construction costs or other costs associated with capital outlay projects. In fact, the Order is to the contrary. As currently written, the "duties" of the Receiver, and the costs attributable thereto, are addressed separate and apart from the "Powers and Authority of the Receiver" which are contained in paragraph 2 of the Order. With respect to the Receiver's powers and authorities, the Order seems to make clear that the Receiver is vested with the "powers vested in law in the Secretary of the CDCR . . ." The Secretary's powers for which the Receiver is authorized to usurp do not include the power to obligate the State to fund capital outlay projects absent legislative authorization. On that point, and in apparent recognition of that fact, the Order contemplates that in carrying out the exercise of powers, the Receiver shall carry out that function, unless waived by the court, "in a manner consistent with California state laws, regulations, and contracts, including labor contracts." Although the Court has waived various

Martin H. Dodd, Esq.
July 22, 2008
Page 5

contracting requirements, it has not waived the constitutional requirements that money may be drawn from the Treasury only through an appropriation made by law (Cal. Const., art. XVI, §7) or that all appropriations be made by the Legislature. (Cal. Const., art. IV, §12, subd. (d).)

Consequently, it appears that there is no existing authority for the defendants to fund the Receiver's proposed construction projects. However, the defendants would prefer to fund the projects without a court order.

2. **In the event that a court order is required to compel the Controller to draw warrants on the State Treasury to fund the Receiver's projects, is there particular language defendants require in such an order to ensure that the funds are forthcoming? Are there particular funds or accounts that the Court should identify in such an order, or is an order directing that payment be made in a specified amount from the General Fund sufficient?**

The defendants disagree with the Receiver's apparent objective of "seek[ing] an appropriate order compelling funding by the State." (Letter, July 15, 2008, p. 1). Capital outlay projects are traditionally funded through either general obligation bonds approved by the voters or through lease revenue bonds as authorized in law. To that extent, the Receiver has been provided two options consistent with the traditional funding mechanisms. The first option is SB 1665, as mentioned above, and the second potential option is another bond financing that is currently in the conceptual phases.

The state is not willing to waive its sovereign immunity for purposes of a court order requiring the payment of money from the State Treasury under these circumstances. Moreover, for the reasons described in this response, we believe any attempt to the payment of the Receiver's costs for proposed construction projects from the specified funds described below would be in violation of state constitutional and other substantive state and federal laws.

Defendants would also note that asking a party to a lawsuit to draft a hypothetical court order is neither informal nor formal "discovery." Defendants reserve the right to appeal any such order.

3. **Please identify all banks or depository institutions in which State funds are currently held or deposited and the respective balances held at each such institution.**

None of the current defendants possesses this information. Nonetheless, to facilitate informal discovery, counsel has contacted the State Treasurer's Office ("STO") for assistance in formulating this answer.

According to the STO, the State's use of depository institutions can be summarized as follows:

Martin H. Dodd, Esq.

July 22, 2008

Page 6

Demand Account Banks	
Financial Institution	Balance As of July 17, 2008
Bank of America	365,322,997.08
Union Bank of California	375,156,665.76
Wells Fargo Bank	29,917,998.67
U.S. Bank	4,149,374.96
Citibank *	1,313,890.66
Bank of the West	5,055,064.38
West America Bank	5,331,912.53
Total	\$786,247,904.04

* In addition to this amount, the STO maintains an additional \$13 million with Citibank as compensating balances for the services that the bank provides relative to debt service payments.

The seven demand account banks listed handle daily funds flowing in and out of the State Treasury. From the moment these monies are deposited, they are encumbered for the purposes they were collected, and are ultimately credited to agency, fund or account they were destined for on the same day as received. Further, certain amounts on deposit represent trust funds that flow through the State Treasury. A certain amount of cash is maintained on deposit to meet the State's immediate working capital operational needs. There are daily estimates of receipts and claims (warrants) using the funds in these bank balances to cover the warrants.

4. **As of June 30, 2008, the Controller reports that the Special Fund for Economic Uncertainties held \$925,715,000. What is the current balance in that fund? Is the Special Fund for Economic Uncertainties a source that may be utilized to fund the Receiver's projects in part? If not, why not? Where and in what form is the Special Fund for Economic Uncertainties held?**

The purposes for which the SFEU may be used are specified in Government Code section 16418. This fund is a special fund created in the State Treasury as a reserve fund to meet General Fund cash flow needs and to eliminate any General Fund deficit as of the end of each fiscal year (Gov. Code, §§16418, subd. (a) and (b)), and "for the purpose of allocating funds for disaster relief . . ." (Gov. Code, § 16418, subd. (c).) The disaster relief contemplated by section 16418(c) is related to damage resulting from earthquakes, fire and other natural disasters. Accordingly, it is not available for funding the Receiver's proposed construction projects. (*Long Beach Unified Sch. Dist. v. State of California* (1991) 225 Cal.App.3d 155, 183 [holding that there needs to be a general relationship between the purpose of the special fund and the expenditure made].)

The SFEU represents a reserve fund within the meaning of Section 5 of Article XIII B of the California Constitution and is unavailable for purposes relating to funding the Receiver's proposed construction projects. The current balance in the fund is zero.

Martin H. Dodd, Esq.
July 22, 2008
Page 7

5. **What is the current balance in the Economic Recovery Fund? Is the Economic Recovery Fund a source that may be utilized to fund the Receiver's projects in part? If not, why not? Where and in what form is the Economic Recovery Fund held?**

The Economic Recovery Fund (ERF) is a special fund created by the enactment of Government Code section 99060. The ERF was created as a repository for the bond proceeds authorized pursuant to the Economic Recovery Bond Act. (Gov. Code, §§99066 [incorporating provisions of State General Obligation Bond Law into Economic Recovery Bond Act], 99051(d), 99060 (a), 16722 and 16757 [defining and specifying the ERF as the fund into which Economic Recovery Bond proceeds are deposited].) The proceeds in the ERF are restricted for purposes for which the bonds were sold (Gov. Code, §99064) and are therefore not available to fund the Receiver's proposed construction projects. Section 99060(c) provides that except for amounts costs payable in connection with the bonds, and to retire or refund economic recovery bonds, the remaining balance of ERF as determined by the committee, will be transferred to the General Fund to fund the purposes of the Economic Recovery Bond Act. Uses of bond proceeds have been likened to contractual limitations upon the issuing governmental entity, here the state, which has entered into a contract with the voters. (See *Veterans of Foreign Wars v. State of California* (1974) 36 Cal.App.3d 688 [bond act formed contract with voters: change in use of bond proceeds held in violation of constitution]; See also *Metropolitan Water Dist. v. Dorff* (1982) 138 Cal.App. 3d 388, 398, citing *Peery v. City of Los Angeles* (1922) 187 Cal. 753, 769 ["status analogous to a contract" is created when electors exercise their constitutional right to approve creation of bonded indebtedness].) The current balance in the fund is \$68,370.

6. **What is the current balance in the Budget Stabilization Account? Is the Budget Stabilization Account a source that may be utilized to fund the Receiver's projects in part? If not, why not? Where and in what form is the Budget Stabilization Account held?**

The Budget Stabilization Account is a special fund created by California Constitution, Article 16, Section 20 (Proposition 58, approved March 2, 2004.). The fund was created for specific purposes unrelated to funding the Receiver's proposed construction project and, therefore, is unavailable for that purpose. The current balance in the fund is zero.

7. **What are the current balances in the Surplus Money Investment Fund ("SMIF"), the Pooled Money Investment Account ("PMIA") and the State Expenditure Revolving Funding ("SERF")? If the General Fund is exhausted, will defendants request a transfer pursuant to Government Code §§§§ 13332 and/or 16310 to the General Fund from other funds or accounts, including the SMIF, the PMIA, and the SERF, to fund the Receiver's projects? If not, why not? If so, in what amounts and by what dates?**

Martin H. Dodd, Esq.

July 22, 2008

Page 8

Surplus Money Investment Fund

The SMIF and its uses are governed by Government Code section 16470 through 16476. SMIF contains funds from both the General Fund and the special funds which are not necessary for the particular funds' immediate needs. Money in SMIF is invested by the Treasurer and all investment earnings are apportioned to the contributing fund in accordance with law. Since the General Fund is exhausted, all amounts currently contained in SMIF are derived from the special funds. Special fund money is only available for purposes specified in law and, while temporarily borrowed by the General Fund, the money must be available to meet the demands of the special fund. (See *Daugherty v. Riley, supra*, 1 Cal.2d 298, 309; *Willens v. Cory, supra*, 53 Cal.App.3d 104, 107-108.) The law provides that the special fund monies may be borrowed so long as the borrowing does not interfere with the purpose of the special fund. Here, the Receiver is seeking a transfer of special fund monies which will make the monies unavailable for the special fund and interfere with the purpose of the special fund. For this reason, money in SMIF is unavailable to fund the Receiver's proposed construction projects.

The current balance in SMIF is \$31,009,794,946 as of July 17, 2008.

Pooled Money Investment Account (PMIA)

Government Code section 16480 provides "all state money held by the State Treasurer in treasury trust accounts, and all money in the State Treasury [with certain exceptions] is appropriated for the purpose of investment and deposit as provided in this article." As is the case with SMIF, the PMIA is merely an investment account for money not immediately needed by the State's General Fund, special funds, and for money deposited by cities, counties and other local entities into the Local Agency Investment Fund (LAIF) established by Government Code 16429.1(a). Note that LAIF monies are never available for transfer to the General Fund. (Gov. Code, §16429.3.) Since the General Fund is exhausted, all amounts currently contained in PMIA are derived from the special funds or the LAIF. Thus, because the PMIA is currently investing only special funds and trust funds, the PMIA not available to fund the Receiver's proposed construction projects.

The current balance in the PMIA is \$71,071,895, 970 as of July 17, 2008.

State Expenditure Revolving Fund

The SERF was created in the Budget Act of 1981. (Stats 1981, ch. 99.) The purpose of the fund is to facilitate program cost accounting consistent with the provisions of Chapter 1284, Statutes of 1978. The State Controller, at the request of an agency, may transfer up to 10% of any agencies' Budget Act appropriation to SERF. The agency may use the fund to make payment of payroll and other claims. The use of money in this fund is charged against the appropriations of the appropriate agency. SERF may only be used by an agency for purposes authorized in the Budget Act and is unavailable to fund the Receiver's proposed construction projects. The current balance in SERF is zero.

Martin H. Dodd, Esq.
July 22, 2008
Page 9

8. Will defendants use the General Cash Revolving Fund to fund the Receiver's projects? If not, why not? If so, in what amounts and by what dates?

The General Cash Revolving Fund (GCRF) is a temporary accounting device established pursuant to Government Code section 16381. When there is insufficient cash in the General Fund to pay appropriations when due, the Controller may request the Governor to open the GCRF. (Gov. Code, § 16383.) The amount needed to pay these appropriations is internally borrowed from special funds and deposited to the GCRF. (Gov. Code, §16381).

Reimbursement Warrants (RAWs) are a short-term, external cash flow borrowing that the Controller issues to reimburse the GCRF; and upon reimbursement, the GCRF is closed. (Gov. Code, §§ 16384, 17241). Supreme Court case law excepts RAWs from the California Constitution, article XVI, section 1 (the "Debt Limit"), when the RAWs are issued to pay a valid existing appropriation and revenues to pay that appropriation are anticipated or reasonably expected to be available within a short period of time. (*Johnson v. Riley (Riley I)* (1933) 219 Cal. 513; *Riley v. Johnson (Riley II)* (1936) 6 Cal. 2d 529; *PMIB v. Unruh (PMIB)* (1984) 153 Cal.App.3d 155.) Because of these restrictions, funds received from the sale of RAWs are unavailable to fund the Receiver's proposed construction projects.

9. Will defendants issue Revenue Anticipation Notes to fund the Receiver's projects in whole or in part? If not, why not? If so, in what amounts and by what dates?

Revenue Anticipation Notes (RANs), like Reimbursement Warrants, are another form of short-term, external borrowing that requires as a pre-requisite, the existence of a valid appropriation. (Gov. Code, §17300.) RANs can only be issued when the Controller determines that revenues in that fiscal year are insufficient to meet the appropriations made by the Legislature. (*Ibid.*) Further, the case law exempting the RANs from the Debt Limit, requires that the RANs be repaid from anticipated revenues within the same fiscal year as issued. (*See Riley I, Riley II, PMIB and Flourney v. Priest* (1971) 5 Cal.3d 35.) Because of these restrictions, funds received from the sale of RANs are unavailable to fund the Receiver's proposed construction projects.

10. As of June 30, 2008, the Controller identified more than \$12 billion in short-term "borrowable resources." Please identify all such "borrowable resources" and the amounts currently available. Will defendants utilize such resources to fund the Receiver's projects in whole or in part? If not, why not? If so, in what amounts and by what dates?

The figure referenced in question 10 is the amount of unused Borrowable Resources. The Borrowable Resources consist entirely of special fund money which is temporarily available to be loaned to the General Fund. Further, what the state considers to be Borrowable Resources primarily consists of funds discussed above in our response to H.7 above. Because this is special fund money, as stated above, any money borrowed must not interfere with the purpose of the

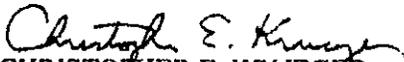
Martin H. Dodd, Esq.
July 22, 2008
Page 10

special fund and must be retransferred to the special fund as needed. Because these are special fund resources and are available for temporary General Fund use, they are unavailable for purposes of funding the Receiver's proposed construction projects. A complete listing of the Borrowable Resources as of June 30, 2008, is attached.

11. **Please identify a person or persons most knowledgeable about the sources and uses of cash in the State General Fund, the methods by which funds are transferred to and from the General Fund and other sources and the legal authorization for such transfers, the procedures that are followed and/or required to effectuate transfers from other accounts or funds to the General Fund, the methods and mechanisms by which the State raises cash and/or funds obligations when the General Fund is exhausted, the funds or accounts that are potentially available as sources of cash for the General Fund, the location(s) at which State funds are held or deposited and the amount and availability of borrowable resources.**

This response provides extensive information, and it also expresses the willingness of defendants to meet with the Receiver to discuss these matters further. Under the circumstances, defendants can work with the Receiver informally to identify persons most knowledgeable, to the extent that may still be needed after the Receiver reviews this information.

Sincerely,


CHRISTOPHER E. KRUEGER
Senior Assistant Attorney General

For EDMUND G. BROWN JR.
Attorney General

CEK:rara

Enclosure: Complete listing of the Borrowable Resources

(below w/encl.)

cc: Andrea Hoch, Legal Affairs Secretary - Office of the Governor
Louis Mauro, Chief Deputy Legal Affairs Secretary - Office of the Governor
Benjamin Rice, Deputy Legal Affairs Secretary - Office of the Governor
Richard Chivaro, Chief Counsel - State Controller's Office
Molly Arnold, Chief Counsel - Department of Finance
Paul B. Mello, Esq. - Hanson Bridgett LLP
Rochelle C. East, Acting SAAG - DOJ Correctional Law

Question # 10

Internal Borrowable Resources as of 6/30/08

<u>Fund Number</u>	<u>Fund Name</u>	<u>Amount (in thousands)</u>	<u>Subtotal</u>	<u>Total</u>
0374	Special Fund for Economic Uncertainties	\$2,377,451		
0377	1987 Higher Education Earthquake Account	\$23		
	Total SFEU		\$2,377,474	
1011	Budget Stabilization Account	\$0		
	General Fund Special Accounts			
0014	Hazardous Waste Control Account	\$13,653		
0022	State Emergency Telephone Number Acct	\$144,709		
0025	Leaking Underground Storage Tank Cost Recovery Fund	\$109		
0026	State Motor Vehicle Insurance	\$30,088		
0050	Colorado River Mgmt Account	\$16,385		
0066	Illegal Drug Lab Cleanup Account	\$6,386		
0448	Occupancy Compliance Monitoring Account	\$60,499		
0457	Mortgage Bond Allocation Fee Account	\$58,866		
0462	PUC Utilities Reimbursement Account	\$20,866		
0497	Local Government Geothermal Resources Revolving Subaccount	\$8,410		
0557	Toxic Substances Control Account	\$45,828		
various	Other Special Accounts (to be separately identified at a later date)	\$157,785		
	Total General Fund Special Accounts		\$563,574	
	Special Funds			
0007	Breast Cancer Research Account	\$25,944		
0041	Aeronautics Account	\$11,282		
0042	State Highway Account	\$201,111		
0044	Motor Vehicle Account	\$614,681		
0046	Public Transportation Account	\$41,861		
0048	Transportation Revolving Account	\$320,118		
0061	Motor Vehicle Fuel Account	\$273,066		
0062	Highway Users Tax Account	\$0		
0064	Motor Vehicle License Fee Account	\$15,896		
0067	State Corporations Fund	\$18,401		
0080	Childhood Lead Poisoning Prevention Fund	\$31,713		
0100	California Used Oil Recycling Fund	\$26,501		
0101	School Facilities Fee Assistance Fund	\$854		
0106	Pesticide Regulation Fund	\$22,381		
0111	Department of Food and Agriculture Account	\$18,233		
0115	Air Pollution Control Fund	\$133,811		
0121	Hospital Building Fund	\$73,358		
0125	Assembly Contingent Fund	\$6,762		
0133	California Beverage Container Recycling Fund	\$277,225		
0140	California Environmental License Plate Fund	\$11,286		
0143	California Health Data and Planning Fund	\$29,489		
0144	California Water Fund	\$1,130		
0159	Trial Court Improvement Fund	\$133,838		
0183	Environmental Enhancement and Mitigation Demonstration Prgm	\$23,573		
0184	Employment Development Department Benefit Audit Fund	\$4,298		
0185	Employment Development Department Contingent Fund	\$47,622		
0186	Energy Resources Surcharge Fund	\$0		
0192	Fair and Exposition Fund Satellite Wagering Account	\$5,715		
0193	Waste Discharge Permit Fund	\$36,713		
0203	Genetic Disease Testing Fund	\$8,190		
0214	Restitution Fund	\$139,739		
0217	Insurance Fund	\$56,921		

<u>Fund Number</u>	<u>Fund Name</u>	<u>(in thousands)</u>	<u>Subtotal</u>	<u>Total</u>
0223	Worker's Comp Admin Revolving Fund	\$67,600		
0226	California Tire Recycling Management Fund	\$98,187		
0228	Secretary of State's Business Fees Fund	\$16,375		
0230	Cigarette and Tobacco Products Surtax Fund	\$2,350		
0231	Cigarette and Tobacco, Health Education Fund	\$62,561		
0232	Cigarette and Tobacco, Hospital Services Account	\$24,723		
0233	Cigarette and Tobacco, Physician Services Account	\$2,736		
0234	Cigarette and Tobacco, Research Account	\$34,461		
0235	Cigarette and Tobacco, Public Resources Account	\$2,177		
0236	Cigarette and Tobacco, Unallocated Account	\$17,113		
0262	Habitat Conservation Fund	\$32,445		
0263	Off-Highway Vehicle Fund	\$188,104		
0269	Glass Processing Fee Account	\$8,940		
0281	Recycling Market Development Revolving Loan Account	\$17,467		
0309	Perinatal Insurance Fund	\$13,582		
0317	Real Estate Fund	\$42,915		
0320	Oil Spill Prevention and Administration Fund	\$14,584		
0321	Oil Spill Response Trust Fund	\$57,444		
0331	Sales Tax Account	\$221,182		
0332	Vehicle License Fee Account	\$57,191		
0334	Vehicle License Fee Growth Account	\$254		
0347	School Land Bank Fund	\$59,170		
0367	Indian Gaming Special Distribution	\$183,733		
0372	Disaster Relief Fund	\$10		
0381	Public Interest Research, Development, and Demonstration Fund	\$238,106		
0382	Renewable Resource Trust Fund	\$170,708		
0387	Integrated Waste Management Account	\$24,461		
0392	State Parks and Recreation Fund	\$41,383		
0400	Real Estate Appraisers Regulation Fund	\$18,561		
0412	Transportation Rate Fund	\$1,283		
0421	Vehicle Inspection and Repair Fund	\$69,384		
0439	Underground Storage Tank Cleanup Fund	\$13,521		
0516	Harbors and Watercraft Revolving Fund	\$211,302		
0556	Judicial Admin Effectiveness & Modernization	\$46,215		
0571	Uninsured Employers Account	\$16,862		
0602	Architecture Revolving Fund	\$70,632		
0620	Child Care Facility Revolving Fund	\$74,286		
0652	Old Age/Survivors Insurance Revolving Fund	\$6,773		
0666	Service Revolving Fund	\$59,798		
0678	Prison Industries Revolving Fund	\$56,752		
0679	State Water Quality Control Fund	\$34,841		
0682	Inmate Construction Revolving Account	\$80,654		
0702	Professions and Vocations, Consumer Affairs Fund	\$48,539		
0704	Professions and Vocations, Accountancy Fund	\$23,800		
0735	Professions and Vocations, Contractors' License Fund	\$33,732		
0758	Professions and Vocations, Contingent Board of Medical Examiners	\$22,448		
0761	Professions and Vocations, Registered Nursing Fund	\$19,630		
0827	Milk Producers Security Trust Fund	\$49,824		
0872	State Hospital Account	\$51,243		
0903	Assessment Fund	\$0		
0929	Housing Rehabilitation Loan Fund	\$55,243		
0932	Trial Court Trust Fund	\$185,811		
0955	State Instructional Materials Fund	\$57,067		
0966	State School Site Utilization Fund	\$5,641		
0961	School Deferred Maintenance Fund	\$24,170		
0970	Unclaimed Property Fund	\$388,873		
3007	Traffic Congestion Relief Fund	\$698,958		
3008	Transportation Investment Fund	\$123,610		
3019	Substance Abuse Treatment Trust	\$1,681		

<u>Fund Number</u>	<u>Fund Name</u>	<u>(in thousands)</u>	<u>Subtotal</u>	<u>Total</u>
3020	Tobacco Settlement Fund	\$2,284		
3082	School Facility Emergency Repair	\$85,171		
3093	Transportation Deferred Investment Fund	\$336,830		
8032	Oil Trust Fund	\$169,836		
9730	Department of Technology Service Revolving Fund	\$38,218		
6050	Tobacco Asset Sales Revenue Fund	\$189		
various	Other Special Funds (to be separately identified at a later date)	\$1,552,788		
	Total Special Funds		\$9,044,126	
	Other Funds and Accounts			
0999	Agency Bank Accounts	\$863,369		
0094	Retail Sales Tax	\$1,210,862		
0890	Federal Trust Fund	\$100,000		
0942	Special Deposit Fund	\$50,000		
	Total Other Funds and Accounts		\$2,224,221	
Total Internal Borrowable Resources at June 30, 2008				\$14,209,395