

1 FUTTERMAN & DUPREE LLP  
MARTIN H. DODD (104363)  
2 JAMIE L. DUPREE (158105)  
160 Sansome Street, 17<sup>th</sup> Floor  
3 San Francisco, California 94104  
Telephone: (415) 399-3840  
4 Facsimile: (415) 399-3838  
martin@dfdlaw.com  
5 jdupree@dfdlaw.com

6 *Attorneys for Receiver*  
Robert Sillen

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

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MARCIANO PLATA, et al.,  
*Plaintiffs,*  
v.  
ARNOLD SCHWARZENEGGER, et al.,  
*Defendants.*

Case No. C01-1351 TEH

**NOTICE OF FILING OF JOINT REPORT  
AND STIPULATION BETWEEN  
RECEIVER ROBERT SILLEN AND  
CALIFORNIA STATE PERSONNEL  
BOARD**



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

MARCIANO PLATA, et al.,  
*Plaintiffs,*  
v.  
ARNOLD SCHWARZENEGGER, et al.,  
*Defendants.*

Case No. C01-1351 THE  
**JOINT REPORT AND STIPULATION**

**I.  
INTRODUCTION**

On July 3, 2007, the Court issued an Order Re Receiver’s Motion for Waiver of State Law Re Receiver Career Executive Assignments (hereinafter Order). The Order requires the Receiver and State Personnel Board (hereinafter SPB) to meet and confer as soon as practical and, within 45 days of July 3, 2007, to submit a joint report to the Court as to whether they are able to agree upon a mechanism for the hiring of medical health care executives/administrators. Staff from the Office of the Receiver and from SPB have met and conferred and have reached agreement, as set forth below.

The agreement set forth below, approved by the SPB Board, is the result of extensive discussions and negotiations. For example, the Receiver’s Chief of Staff, John Hagar, and the Receiver’s attorney, Linda Buzzini, met with SPB Executive Officer Suzanne Ambrose, Assistant Executive Officer Mary Fernandez, and Acting Appeals Division Chief Carol Ong on July 11 and 17, 2007. On July 18, 2007, Ms. Buzzini met with the same SPB representatives, four additional SPB employees, plus Daryll Tsujihara and Josie Fernandez, representing the Director of the Department of Personnel Administration (“DPA”). On July 27, 2007, Mr. Hagar and Ms. Buzzini met with Ms. Ambrose, Ms. Fernandez and Ms. Ong. On August 1, 2007, Mr. Hagar and Ms. Buzzini met with DPA Director, Dave Gilb. Information was additionally

1 exchanged telephonically on multiple occasions between SPB, DPA and the Receiver's Office.

2 Both SPB and DPA staff worked cooperatively with the Office of the Receiver to resolve  
3 the issue pending before the Court. Based upon those discussions and agreements, the Receiver  
4 and SPB hereby submit the joint stipulation below for review by the Court.

5 **II.**  
6 **STIPULATION**

7 The Receiver and SPB have agreed to test the effectiveness of the following mechanism  
8 for hiring medical health care executives/administrators within CDCR. The core elements of this  
9 mechanism will allow the Receiver to begin addressing the lack of medical leadership in CDCR  
10 through the use of new civil service classifications with minimum qualifications the Receiver  
11 concurs are essential for developing and maintaining a constitutionally-adequate medical care  
12 system. Candidates with the requisite qualifications from inside and outside State service may  
13 apply. The Receiver can appoint individuals on a limited term (non-tenured) basis for up to two  
14 years, during which time the incumbent will be subject to discipline for cause or release without  
15 cause. Once permanent status is granted by the Receiver it will be followed by a one-year  
16 probationary period. The SPB and Receiver have agreed to proceed to implement this trial hiring  
17 program as follows.

- 18 1. The State Personnel Board (SPB) shall, in an expedited and streamlined fashion  
19 consistent with its Constitutional authority, establish civil service classifications  
20 which permit the broad and inclusive recruitment of executive and managerial  
21 candidates with the job-related experience, education, knowledge, skills and/or  
22 abilities determined necessary by the Receiver. If the Board declines to adopt the  
23 Receiver's recommendations regarding classifications at a meeting of the Board, it  
24 will within 10 days of the meeting provide the Receiver with its specific objections in  
25 writing and provide alternative suggestions aimed at satisfying the Receiver's  
26 objectives. Within 15 days following this Board meeting SPB staff shall meet and  
27 confer with the Receiver's representatives for purposes of reaching agreement as to an  
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- 1 alternative proposal to be submitted to the Board for adoption at its next regularly  
2 scheduled meeting.
- 3 2. The Board will act upon the Receiver's requests to establish classifications or amend  
4 classifications at its regularly scheduled meetings which are open to the public. Any  
5 non-attorney/client privileged written information provided to the Board before the  
6 meeting will be provided to the Receiver by SPB prior to the hearing. Consistent with  
7 the Board's customary public hearing practices for adoption of classifications, the  
8 parties in *Marciano Plata et al. v. Arnold Schwarzenegger, et al.* (Case No. C01-1351  
9 TEH) as well as any other member of the public, may offer testimony regarding the  
10 classification proposal. Any matter taken under submission by the Board shall be  
11 decided at or before its next regularly scheduled Board meeting.
- 12 3. The establishment of classifications and revisions thereto shall be part of a step-by-  
13 step phased-in hiring program beginning with a pilot program at three prisons and  
14 with regional nursing and physician positions, as directed by the Court in its Order Re  
15 Receiver's Motion for Waiver of State Law Re Receiver Career Executive  
16 Assignments.
- 17 4. The civil service classifications established pursuant to this agreement shall have the  
18 following attributes.
- 19 a. The classifications shall provide for open examinations which permit individuals  
20 from both outside and inside civil service, who possess the requisite qualifications  
21 for the executive and managerial classifications, to compete for eligibility for  
22 appointment.
- 23 b. The classifications will be based on core professional and managerial  
24 competencies determined by the Receiver and the Board to be common to the  
25 positions which will be allocated to a classification.
- 26 c. Minimum qualifications determined necessary by the Receiver and approved by  
27 the Board may be expressed as specific education and/or experience requirements;  
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1 as knowledge, skills, abilities and personal characteristics; and/or as additional  
2 desirable qualifications likely to identify candidates in possession of the requisite  
3 knowledge, skills, abilities and personal characteristics. Licenses and  
4 certifications may additionally be required either for entry into the examination or  
5 as a requirement for particular types of positions allocated to the classification.

6 d. The classifications may additionally contain alternate ranges or various levels  
7 applicable to particular types of positions falling within a broader classification.

8 The level or alternate range criteria along with the broader description of the  
9 classification as a whole will guide salary surveys for the subset of positions  
10 allocated to each alternate range<sup>1</sup>.

11 e. SPB and Receiver's Office have not yet worked out all of the details about  
12 whether there should be one or more classifications, and they remain undecided  
13 about the number of levels or alternate ranges that may fall within individual  
14 classifications. One possibility they envision is a single nursing executive  
15 classification with minimum qualifications designed to exclude candidates who do  
16 not possess core managerial competencies which are essential and common to all  
17 positions allocated to the classification. A civil service examination would  
18 competitively assess all candidates in this regard. Within that classification there  
19 may be at least three alternate ranges or levels successful candidates could be  
20 appointed into. The three ranges or levels would have separate salaries and would  
21 be for institution directors of nursing, regional directors of nursing and the  
22 statewide director of nursing. The Receiver's discretion when selecting  
23 candidates from the list for these positions will be guided by pre-established  
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26 <sup>1</sup> SPB does not object to broad-banding for salaries, if the Receiver ultimately decides upon this  
27 salary administration methodology. SPB and the Receiver's staff have entered into preliminary  
28 discussions with DPA and all agree creation of new classifications and hiring are not necessarily  
dependent upon resolving this issue during the earlier phases of the pilot project. Broad-banding  
is not a method for determining the salary range. It is a method of administering salaries once  
salaries and salary ranges have been settled upon.

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additional desirable qualifications which are job-related and more particularly reflect specific competencies associated with the positions.

- f. The Receiver's Office and SPB agree to work together regarding the development of examinations which can be administered both on-line and in-person so that either testing method or both methods can be used concurrently to compliment recruitment efforts. SPB shall approve and make examinations available for use within 30 days of when examinations are formally submitted by the Receiver's Office.
- g. The SPB and Receiver agree that any usual and customary fees on the part of SPB shall apply to the Receiver consistent with charges to other State agencies.
- h. The SPB shall with concurrence by Receiver, provide for supplemental applications, list flags and list certifications designed to make the Receiver's evaluation of candidates with particularized qualifications identifiable from employment lists efficiently and in an order which reflects their relative merits as ascertained by the competitive examination.
- i. The Receiver shall determine whether testing is continuous, and when the testing is open and closed based on a schedule he determines necessary. The Receiver may create and/or supplement merged employment lists on an ongoing basis to ensure that candidates of the highest quality are available for consideration at all times by the Receiver.
- j. The Receiver shall have the ability to make appointments from among all who are successful in the examination. The examination results shall, however, be expressed by scores or rankings so that the Receiver can consider the candidates' relative scores/rankings.
- k. The Receiver may at his discretion appoint individuals from the list into an alternate range or level either permanently as that term is defined in Government Code section 18528 or on a limited-term basis for up to two years.

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- l. The Receiver may release limited-term appointees from employment at any time prior to the completion of their limited term appointment with or without cause, and without regard to whether other limited term employees remain in the same classification.
  - m. Permanent appointments shall be followed by a one year probationary period and shall in particular be subject to Government Code section 19173 (grounds and method of rejection) and Government Code section 19175 (burdens of proof and presumptions).
  - n. Disciplining permanent employees shall be subject to Government Code section 19590 (tenure, SPB investigation with or without hearing, burdens of proof and presumptions).
5. The establishment and use of civil service classifications pursuant to the foregoing will not impact the ability of the SPB to establish and the Receiver to utilize Career Executive Assignments (hereafter CEA) as defined in Government Code section 18547, even when there exists a parallel civil service classification established pursuant to the foregoing.
6. The Receiver shall submit special 90 and 180 day special reports concerning the program described above, and will also address this issue in subsequent Quarterly Reports. SPB may, within 20 days after receipt of these reports, submit its own report which shall be limited to detailing activities under this agreement. The Receiver and SPB agree to meet and confer as necessary in order to effectively implement this stipulation, to address problems which may arise, and to propose to the Court modifications to the stipulation which may prove necessary.

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**IT IS SO STIPULATED**

August 9, 2007

August 17, 2007



Suzanne M. Ambrose  
Executive Officer  
State Personnel Board



John Hagar  
Chief of Staff  
Office of the Receiver

**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies as follows:

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

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

On August 20, 2007, I served a copy of the following document(s):

**NOTICE OF FILING OF JOINT REPORT AND STIPULATION BETWEEN RECEIVER ROBERT SILLEN AND CALIFORNIA STATE PERSONNEL BOARD**

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

\_\_\_ BY HAND DELIVERY: I caused such envelope(s) to be served by hand to the address(es) designated below.

X BY MAIL: I caused such envelope(s) to be deposited in the mail at my business address, addressed to the addressee(s) designated. I am readily familiar with Futterman & Dupree's practice for collection and processing of correspondence and pleadings for mailing. It is deposited with the United States Postal Service on that same day in the ordinary course of business.

\_\_\_ BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

\_\_\_ BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

Andrea Lynn Hoch  
Legal Affairs Secretary  
Office of the Governor  
Capitol Building  
Sacramento, CA 95814

Robin Dezember  
Director (A)  
Division of Correctional  
Health Care Services  
CDCR  
P.O. Box 942883  
Sacramento, CA 94283-0001

Bruce Slavin  
General Counsel  
CDCR -- Office of the Secretary  
P.O. Box 942883  
Sacramento, CA 94283-0001

Kathleen Keeshen  
Legal Affairs Division  
California Department of Corrections  
P.O. Box 942883  
Sacramento, CA 94283

1 Richard J. Chivaro  
John Chen  
2 State Controller  
300 Capitol Mall, Suite 518  
3 Sacramento, CA 95814

Molly Arnold  
Chief Counsel, Dept. of Finance  
State Capitol, Room 1145  
Sacramento, CA 95814

4 Laurie Giberson  
Staff Counsel  
5 Department of General Services  
707 Third St., 7<sup>th</sup> Fl., Ste. 7-330  
6 West Sacramento, CA 95605

Matthew Cate  
Inspector General  
Office of the Inspector General  
P.O. Box 348780  
Sacramento, CA 95834-8780

7 Donna Neville  
Senior Staff Counsel  
8 Bureau of State Audits  
555 Capitol Mall, Suite 300  
9 Sacramento, CA 95814

Warren C. (Curt) Stracener  
Paul M. Starkey  
Labor Relations Counsel  
Department of Personnel Administration  
Legal Division  
1515 "S" St., North Building, Ste. 400  
Sacramento, CA 95814-7243

10  
11 Gary Robinson  
Executive Director  
12 UAPD  
1330 Broadway Blvd., Ste. 730  
13 Oakland, CA 94612

Yvonne Walker  
Vice President for Bargaining  
CSEA  
1108 "O" Street  
Sacramento, CA 95814

14 Pam Manwiller  
Director of State Programs  
15 AFSME  
555 Capitol Mall, Suite 1225  
16 Sacramento, CA 95814

Richard Tatum  
CSSO State President  
CSSO  
1461 Ullrey Avenue  
Escalon, CA 95320

17 Tim Behrens  
President  
18 Association of California State Supervisors  
1108 "O" Street  
19 Sacramento, CA 95814

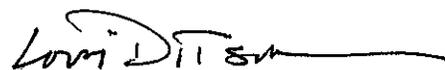
Elise Rose  
Counsel  
State Personnel Board  
801 Capital Mall  
Sacramento, CA 95814

20 Stuart Drown  
Executive Director  
21 Little Hoover Commission  
925 L Street, Suite 805  
22 Sacramento, CA 95814

California State Personnel Board  
Office of the Attorney General  
1515 Clay Street, 20<sup>th</sup> Floor  
P.O. Box 70550  
Oakland, CA 94612-0550

23 J. Michael Keating, Jr.  
285 Terrace Avenue  
24 Riverside, RI 02915

25  
26 Dated: August 20, 2007



Lori Dotson