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NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA

13 MARCIANO PLATA, et al.,

14 *Plaintiffs,*

15 v.

16 ARNOLD SCHWARZENEGGER, et al.,

17 *Defendants.*

Case No. C01-1351 TEH

**RECEIVER'S OPPOSITION TO  
REQUEST BY STATE PERSONNEL  
BOARD FOR ADDITIONAL TIME TO  
RESPOND TO RECEIVER'S MASTER  
WAIVER APPLICATION**

18 Receiver Robert Sillen submits this opposition to the request by the State Personnel  
19 Board ("SPB") for an additional two weeks, until May 22, 2007, within which to respond to the  
20 Receiver's Master Waiver Application, filed and served on April 17, 2007. SPB was served with  
21 the Master Waiver Application at the same time as other recipients, but waited more than two  
22 weeks before requesting two additional weeks to respond. The Court should either deny the  
23 request outright or, if the Court is inclined to grant some additional time, require SPB's response  
24 to be filed by no later than May 14, 2007.

25 1. SPB's request for additional time has potential real world impact. As the Master  
26 Waiver Application indicates, the Receiver has so far declined to execute a substantial number of  
27 contracts pending a ruling on his Application. In particular, the proposed contract with  
28 URS/Bovis Lend Lease to begin the very important planning process for the 5000 bed project has

1 been on hold for several months until the Receiver could obtain authorization to proceed. The  
2 URS/Bovis Lend Lease contractor team was specially crafted for the Receiver's project and  
3 additional delay threatens the very real possibility that the team will have to turn instead to other  
4 business. If that were to occur it would set the Receiver back substantially. Other contracts are  
5 also in limbo, awaiting a ruling.

6 In a related vein, it is important to note that SPB's request addresses only its purported  
7 authority to review "personal services" contracts under State law. Many, if not most, of the  
8 agreements that the Receiver proposes to execute in the near term are *not* personal services  
9 contracts. But SPB's request, if granted, will delay the Receiver's ability to enter into any  
10 contracts, whether or not they involve personal services.

11 2. Why SPB sat on its hands for two weeks before making its request is unexplained.  
12 SPB did not even see fit to contact the Receiver during those two weeks to discuss whether an  
13 accommodation could be reached to address SPB's alleged concern about the timing of its  
14 response. Indeed, if SPB believes it is so important to weigh in on the Receiver's Application  
15 before the Court rules, SPB could and should have called a special meeting for the express  
16 purpose of discussing the Application and providing direction to its counsel. Rather than act  
17 expeditiously, SPB chose to do nothing and to wait until "the first meeting of the Board since the  
18 Master Application was filed" (SPB Request, p. 2:9-10) on May 8 – one day before responses to  
19 the Application are due – to discuss the Application. And SPB fails even to explain why it will  
20 need two more weeks after the May 8 meeting to file a response. SPB's lethargic approach to the  
21 Receiver's Waiver Application is symptomatic of the State-wide "trained incapacity" that led to  
22 the receivership in the first instance.

23 3. SPB's request is equally questionable on the merits. While SPB attempts to create  
24 the impression that the Receiver intends to interfere with SPB's authority under Article VII of the  
25 State Constitution, SPB is forced to acknowledge that the Receiver has not requested a waiver of  
26 any provision of the California Constitution. Nor has he requested that this Court interfere with  
27 SPB's constitutional authority.

28 4. The Receiver has requested that he be relieved of any requirement to comply with

1 California Government Code § 19130 and California Public Contracts Code § 10337, the only  
2 two statutes the Receiver has asked to be waived that implicate or potentially implicate SPB.  
3 Section 19130 sets forth the general rule that State agencies may not contract for services that  
4 State civil service employees can perform. Significantly for SPB's request before this Court,  
5 Section 19130 says nothing about the duties or responsibilities of SPB. Of equal importance, as  
6 noted above, the bulk of the Receiver's proposed agreements are not personal services contracts.  
7 And it is by no means clear that any "personal service" contract that the Receiver may undertake  
8 will be for services that State employees could otherwise provide. Thus, SPB's alleged concerns  
9 may be entirely theoretical at this point.

10 Nevertheless, to the extent Gov't Code §19130 may be implicated in any contract he  
11 undertakes, the Receiver does wish to be relieved of the requirement in that statute since, if he  
12 were not so relieved, there would be little or no point to the receivership. The Receiver would  
13 effectively be just another State agency.

14 Section 10337 provides in pertinent part as follows:

15 (a) . . .The State Personnel Board may, when it has reason to believe that a proposed  
16 contract is not in compliance with the provisions of Section 19130 of the Government  
17 Code, and shall, when requested to do so by an employee organization representing state  
18 employees, direct a state agency to transmit the contract to it for review.

19 (b) The State Personnel Board shall direct any state agency to transmit to it for review any  
20 contract proposed or executed pursuant to subdivision (a) of Section 19130 of the  
21 Government Code, if the review has been requested by an employee organization notified  
22 pursuant to Section 19131 of the Government Code.

23 The Receiver surely wishes to be relieved of any requirement that he vet contracts in  
24 advance with SPB before undertaking them; were it otherwise, the receivership would be turned  
25 on its head and the remedial efforts in the prison health care system would once again be subject,  
26 or potentially subject, to the control of a State agency – precisely the situation that gave rise to  
27 the receivership in the first instance. Critically, however, nothing in the Receiver's Waiver  
28 Application prevents anyone from calling the Receiver's contracts to the attention of the SPB and  
nothing prevents the SPB from requesting that this Court consider any argument it wishes to  
make with respect to such a contract.

5. Lastly, but surely not least, even if SPB technically has the ability to request

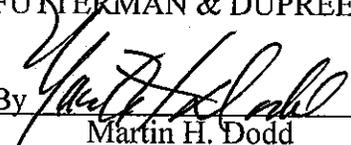
1 advance review of contracts pursuant to Section 10337, the Receiver understands that *in practice*  
2 SPB only reviews *executed* contracts in response to a complaint from an employee organization.  
3 When, and if – and this may be a big if – some employee organization decides to complain about  
4 a future contract executed by the Receiver, the Court can address at that point whether and to  
5 what extent the SPB should be involved.

6 **CONCLUSION**

7 SPB's eleventh hour request is based on hypothetical concerns and paints with too broad  
8 a brush since, if granted, it will have the effect of preventing the Receiver from executing any  
9 agreements for at least two more weeks. That could prove costly indeed if vendors decide to take  
10 their business elsewhere because the Receiver is unable to act. The Court should either deny the  
11 request or permit SPB to file any response no later than May 14, 2007. After all this time, six  
12 additional days following the SPB meeting should be more than sufficient for SPB to craft a  
13 response to the Receiver's Application.

14 Dated: May 7, 2007

FUTTERMAN & DUPREE, LLP

By   
Martin H. Dodd  
Attorneys for Receiver Robert Sillen

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1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies as follows:

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

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

7 On May 7, 2007, I served a copy of the following document(s):

8 **RECEIVER'S OPPOSITION TO REQUEST BY STATE PERSONNEL**  
9 **BOARD FOR ADDITIONAL TIME TO RESPOND TO RECEIVER'S**  
10 **MASTER WAIVER APPLICATION**

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

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

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

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

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

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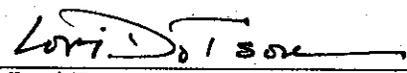
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6 Dated: May 7, 2007

  
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