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J. Clark Kelso  
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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

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11 MARCIANO PLATA, et al.,

12 *Plaintiffs,*

13 v.

14 ARNOLD SCHWARZENEGGER, et al.,

15 *Defendants.*  
16

Case No. C01-1351 TEH

**DECLARATION OF JOHN HAGAR 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**

Date: October 6, 2008  
Time: 10:00 a.m.  
Courtroom: Hon. Thelton E. Henderson

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22 I, John Hagar, declare as follows:

- 23 1) I am the Chief of Staff for Receiver J. Clark Kelso in the matter *Plata v. Schwarzenegger*.
- 24 As Chief of Staff, I have general operational oversight of most of the ongoing activities of
- 25 the receivership and regularly confer with the Receiver and other staff members regarding
- 26 those activities to ensure that the Receiver's goals and directives are being implemented.
- 27 2) I have been actively involved in the discussions, general oversight and coordination of the
- 28 Receiver's capital projects, including specifically the 10,000 bed and facilities upgrade

1 projects. Very early in the construction project, with the agreement of State officials, the  
2 decision was made that the Receiver would construct both medical and mental health  
3 facilities to realize economies and avoid unnecessary duplication, and because of the  
4 breadth of authority the Receiver possessed.

5 3) Over the course of the last 18 months, I have attended numerous meetings with California  
6 Department of Corrections and Rehabilitation (CDCR) officials, officials from the  
7 Governor's Office, and lawyers from Attorney General's Office, at which the issue of  
8 construction of facilities for mental health patients was discussed and approved. Among  
9 the State officials who attended and were involved in these discussions were Andrea  
10 Hoch, the Governor's Legal Affairs Secretary; Jim Tilton, former Secretary of CDCR;  
11 Matthew Cate, current Secretary of CDCR; Lisa Tillman, Deputy Attorney General;  
12 Benjamin Rice, formerly an attorney in the Governor's Office and now with CDCR;  
13 Robert Gore, Senior Deputy Cabinet Secretary of CDCR; Paul Mello, outside counsel and  
14 Deborah Hysen, CDCR's Chief Deputy Secretary of Facility Planning, Construction and  
15 Management. In addition, during the course of the last year the Office of the Receiver  
16 has provided numerous documents to state officials that have described the Receiver's  
17 proposed capital projects, including their scope and anticipated cost. Among those  
18 documents were the following:

- 19 • New Facilities Capital Program Status Report to Judge Henderson and Judge Karlton,  
20 January 31, 2008;
- 21 • Senate Bill 1665, introduced by Senator Machado, February 22, 2008;
- 22 • Options Report, the Framework for the Development of the New California Health  
23 Care Facilities, April 9, 2008;
- 24 • California Prison Health Care Receivership New Facilities Capital Program, April 14,  
25 2008;
- 26 • The Receiver's Turnaround Plan of Action, June 6, 2008; and,
- 27 • The Receiver's Ninth Quarterly Report, September 15, 2008

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- 1 4) In addition to the foregoing, for the last year on a bi-weekly, and sometimes more  
2 frequent, basis I have met with CDCR officials to discuss the coordination of Receiver's  
3 construction. These meetings discuss site selection, facility size, cost, infrastructure, and  
4 other critical aspects of correctional construction. Robert Gore and Ben Rice from the  
5 Governor's Office were regular attendees, as was Deborah Hysen, Chief Deputy  
6 Secretary. In addition, I have arranged for two presentations concerning the Receiver's  
7 Construction Project by URS/Bovis construction management team members for the  
8 attorneys representing both parties in *Armstrong, Coleman, Perez, and Plata*. Deputy  
9 Attorney General, Lisa Tillman, attended both meetings.
- 10 5) At no time has any State official objected to either the scope of the Receiver's project or  
11 his cost projections. In fact the very opposite is true; State officials have repeatedly  
12 affirmed that it was in the State's interest to coordinate Health Care construction under  
13 the Receivership.
- 14 6) In addition, I have had several conversations with the State's lawyers concerning the best  
15 manner in which the State can work with the Receivership to ensure that each of the bed  
16 related Orders issued by the Honorable Lawrence Karlson in the *Coleman* class action are  
17 addressed by the Receiver's health care facilities. Attorneys from the Attorney General's  
18 Office representing the defendants in the *Coleman* case have on more than one occasion  
19 taken the position that the CDCR bed plan should, in fact, be the Receiver's 10,000 bed  
20 construction project -- the very project the Attorney General now opposes in the *Plata*  
21 litigation.
- 22 7) In addition to including CDCR mental health care in the Receiver's new health care  
23 facility construction project, approximately two months ago, the Governor's Office asked  
24 the Receiver to merge the Department of Mental Health (DMH) into the 10,000 bed  
25 construction process. This merger will accomplish two cost savings and patient oriented  
26 improvements: first, it will provide for DMH's continuing mental health treatment for  
27 intermediate and acutely ill CDCR prisoner-patients; second, by increasing the number of  
28 mental health beds in the 10,000 bed project, the DMH will then be able to move CDCR

1 prisoners from DMH facilities into the Receiver's facilities. This process will thereafter  
2 free up hundreds of badly needed DMH beds for a backlog of seriously mentally ill  
3 patients who at this time languish in the California counties.

4 8) In reliance upon a) this Court's orders, including the coordination orders entered by this  
5 Court and the courts in *Coleman, Perez and Armstrong*; b) the active participation by and  
6 involvement of State officials in the facility planning process for the 10,000 bed and  
7 facilities upgrade projects; c) the repeated representations by State attorneys and officials  
8 that the Receiver's projects are the preferable way to address the facilities needs in the  
9 pending class actions; and d) the encouragement by State officials that the Receiver  
10 assume even greater responsibility, including beds needed by DMH, the Receiver has  
11 moved forward aggressively to plan for the facilities. I directed my staff to estimate the  
12 amounts incurred to date for the planning and development process. I am informed and  
13 believe, based on my staff's analysis, that the Receiver has incurred costs to date of  
14 roughly \$34 million in the planning process, approximately *one-half* of which is  
15 applicable to the expanded construction requirements necessitated by including mental  
16 health beds to address the *Coleman* class bed plans.

17 9) In view of the active participation and involvement of State officials in the facilities  
18 planning process at every step of the way, it is truly startling that the Attorney General  
19 would issue a press release – as he did – on September 15, 2008, accusing the Receiver of  
20 trying to cloak his project with a “veil of secrecy.” Nothing could be further from the  
21 truth.

22 10) What seems to have triggered the Attorney General's ill-considered and ad hominem  
23 attack, is the Receiver's insistence that the draft Facility Program Statement applicable to  
24 the 10,000 bed project not be made public. The document represents the product of the  
25 Receiver's deliberative process and that of his Core Planning Team<sup>1</sup> and is subject to  
26 further revision, refinement and modification. Apparently the Attorney General is not  
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28 <sup>1</sup> The Defendants have, of course, fought to prevent disclosure of their own deliberations in connection with the three-judge panel proceeding.

1 aware that the draft Facility Program Statement was provided to his office by the  
2 Receiver with the specific promise of confidentiality and that it would not be made  
3 public. The facts pertaining to how the Attorney General came into possession of the  
4 draft Facility Program Statement and the conditions on its use are explained in more  
5 detail in the Declaration of Martin H. Dodd, filed herewith and will not be repeated here.  
6 Suffice it to say that the Attorney General's attempt to file the document publicly in this  
7 matter was inconsistent with the terms upon which the document was provided to  
8 attorneys in his office.

- 9 11) The Attorney General is apparently also unaware that one of the lawyers in his office,  
10 Connie LeLouis – who has filed a declaration in this matter – attended a meeting of the  
11 Receiver's Construction Oversight Board, a group which will monitor the expenses and  
12 organization of the Receiver's construction project. The board includes: David Shaw, the  
13 Inspector General of the State of California; Elaine Howle, the California State Auditor;  
14 and other officials identified in the Receiver's Ninth Quarterly Report.
- 15 12) Finally, in charging the Receiver with "secrecy," the Attorney General is apparently  
16 unaware of the fact that extensive studies in patient demographics were completed to  
17 determine the appropriate scope of the Receiver's health care construction project,  
18 including several years of study approved by the *Coleman* Court with the knowledge and  
19 agreement of attorneys in the Office of the Attorney General.
- 20 13) Section 28 of AB 900 included an appropriation of approximately \$300,000,000 for  
21 infrastructure capital outlays by CDCR. I directed my staff to investigate whether all or  
22 any portion of those appropriated funds remains unencumbered. Based on that  
23 investigation, I am informed and believe that more than \$250,000,000 remains  
24 unencumbered. Nevertheless, despite a number of face to face meetings, including  
25 meetings with counsel and high level officials from the Department of Finance, the State  
26 did not propose access to these funds when the Receiver's explained his construction  
27 funding crisis and continued to fail to do so even after he requested that Defendants make  
28 funds available to carry the capital projects through the end of this calendar year. I have

1 also directed my staff to request these funds directly from the State and they have done  
2 so. The State has yet to decide whether to make those funds available to the Receiver.

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

5 Dated: September 22, 2008

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

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

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/s/ Martin H. Dodd  
10 Martin H. Dodd  
11 Attorneys for Receiver J. Clark

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**CERTIFICATE OF SERVICE**

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 September 22, 2008, I served a copy of the following document(s):

**DECLARATION OF JOHN HAGAR IN SUPPORT OF REPLY MEMORANDUM OF RECEIVER J. CLARK KELSO IN SUPPORT OF 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.

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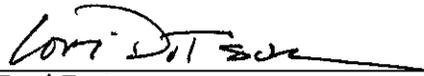
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22 I declare that I am employed in the offices of a member of the State Bar of this Court at  
23 whose direction the service was made. I declare under penalty of perjury, under the laws of the  
united State of America, that the above is true and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

24 Executed on September 22, 2008 at San Francisco, California.

25   
26 \_\_\_\_\_  
Lori Dotson