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5 *Attorneys for Receiver*  
J. Clark Kelso

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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 TEH

**DECLARATION OF MARTIN H. DODD  
IN SUPPORT OF RECEIVER'S  
SUPPLEMENTAL APPLICATION NO. 8  
FOR ORDER WAIVING STATE  
CONTRACTING STATUTES,  
REGULATIONS AND PROCEDURES**

1 I, Martin H. Dodd, declare as follows:

- 2 1. I am attorney licensed to practice before all the courts of the State of California and  
3 before this Court and am a partner in the law firm of Futterman & Dupree, LLP, attorneys  
4 for Receiver J. Clark Kelso. I make this declaration in support of the Receiver's  
5 Supplemental Application No. 8 for an order waiving State contracting statutes,  
6 regulations and procedures. The facts set forth herein are based upon my own personal  
7 knowledge and if called as a witness I could testify thereto.
- 8 2. Pursuant to this Court's Order, dated January 25, 2008, on December 16, 2008, I  
9 submitted the accompanying Application, the Declaration of Dr. Terry Hill, and a  
10 proposed Stipulation to counsel for the parties and requested that they stipulate to the  
11 relief requested in the Application. Attached hereto as Exhibit 1 is a true and correct  
12 copy of the e-mail that I sent to counsel requesting a stipulation. Subsequently, counsel  
13 for plaintiffs indicated that plaintiffs would so stipulate.
- 14 3. On or about January 6, 2009, counsel for defendants, Paul Mello, told me in a telephone  
15 conversation that defendants would not stipulate to the relief requested in the Application,  
16 but had no objection to entry of an order continuing the waiver of State contracting  
17 statutes, regulations and procedures to permit the Receiver to extend or modify the  
18 contract that is the subject of the Application. Attached hereto as Exhibit 2 is a true and  
19 correct copy of the proposed Stipulation which reflects the signature of plaintiff's counsel  
20 only.

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

23 Dated: January 9, 2009

\_\_\_\_\_  
/s/  
Martin H. Dodd

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# EXHIBIT 1

**Dodd, Martin**

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**From:** Dodd, Martin  
**Sent:** Tuesday, December 16, 2008 5:24 PM  
**To:** Donald Specter; 'Alison Hardy'; Steve Fama; 'Paul B. Mello'; Rochelle East  
**Cc:** Jared Goldman; Terry Hill; John Hagar  
**Subject:** Receiver's further waiver application regarding quality improvement projects  
**Attachments:** Suppl. App 8 Waiver of ContractDRAFT.DOC; Hill Decl Suppl Appl 8 Waiver (121208).doc; Suppl. waiver No. 8 order (without certificate of service).doc

Dear counsel:

In the order approving the Receiver's Supplemental Waiver Application No. 2, which permitted the Receiver to proceed with his Asthma Initiative at several pilot institutions, the court declined to provide the Receiver with a waiver generally with respect to quality improvement initiatives generally. Instead, the court required the Receiver to request waivers of contracting procedure with respect to each quality improvement project. The court did request that the Receiver seek a stipulation from the parties to expedite the waiver application process. I have attached the Receiver's Supplemental Waiver Application No. 8 with a proposed stipulation, a declaration of Dr. Terry Hill to support the application and stipulation and a proposed order. As you will see, the Receiver proposes to extend an existing contract to develop a quality improvement project pertaining to diabetes and Hepatitis C. Frankly, I am not entirely convinced that a waiver application is necessary in this instance, but we have framed it thus out of an abundance of caution.

We suggest that, prior to filing, we have a meeting at my office to discuss any questions or concerns you may have about the attached. We can arrange, of course, for a dial-in for anyone who would prefer to participate by telephone. Since we would like to get the application on file as soon as reasonably possible, I suggest that the meeting occur as soon after the new year as we can all get together. If there are dates that are either particularly good or particularly bad for any of you, let me know.

Martin H. Dodd  
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To the extent that this email or its attachments concern federal tax issues, under Internal Revenue Service Treasury Regulations, we are required to inform you that any advice contained in this email or any attachment thereto is not intended or written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code. Thank you.

# EXHIBIT 2

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5 *Attorneys for Receiver*  
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.*

Case No. C01-1351 TEH

**STIPULATION IN SUPPORT OF  
RECEIVER'S SUPPLEMENTAL  
APPLICATION NO. 8 FOR ORDER  
WAIVING STATE CONTRACTING  
STATUTES, REGULATIONS AND  
PROCEDURES**

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18 The parties and the Receiver, through their respective counsel, stipulate for an Order  
19 approving the Receiver's Supplemental Application No. 8 for order waiving state contracting  
20 statutes, regulations and procedures as follows:

- 21 1. On November 20, 2007, the Receiver submitted his Supplemental Application No. 2 for  
22 an Order Waiving State Contracting Statutes, Regulations, and Procedures and Approving  
23 Receiver's Substitute Procedure for Bidding and Award of Contracts ("Supplemental  
24 Application No. 2").  
25 2. Supplemental Application No. 2 concerned the Receiver's quality improvement Access-  
26 to-Care projects, including specifically the Asthma Initiative, which was designed to  
27 eliminate preventable deaths due to undiagnosed or uncontrolled asthma.  
28 3. On January 25, 2008, the Court entered its Order (Docket # 1066) (the "January 25

1 Order”) granting in part and denying in part Supplemental Application No. 2. In the  
2 January 25 Order, the Court waived State contracting law, regulations and procedures to  
3 the extent necessary to permit the Receiver to undertake the first quality improvement  
4 project, focused on asthma, but denied Supplemental Application No. 2 without prejudice  
5 to the extent that it sought to apply to unspecified future, as yet unspecified, quality  
6 improvement projects. The Court ruled that “[s]hould the need for a waiver arise once  
7 the Receiver develops the contemplated quality improvement projects, the Court will re-  
8 evaluate an application for a waiver at that time. To reduce inefficiency, the Receiver  
9 shall attempt to seek a stipulation from the parties before filing any further supplemental  
10 applications for waivers of state law.” Docket # 1066, p. 3.

- 11 4. As set forth more fully in the Declaration of Terry Hill, M.D., filed herewith, following  
12 the January 25 Order, the Receiver entered into a contract with Health Management  
13 Associates (“HMA”) for technical assistance, education and training, and evaluation  
14 services for the purpose of developing and implementing the quality improvement  
15 program, with an initial focus on asthma.
- 16 5. Working with HMA, the Receiver’s staff brought together teams from six pilot prisons  
17 to share their ideas and experience, using a chronic care redesign model known as a  
18 “learning collaborative.” In November 2008 the six pilot sites completed the last of four  
19 “collaborative learning sessions.” As reported by Dr. Hill, their performance in  
20 implementing the chronic care model and in taking advantage of the collaborative  
21 approach far exceeded expectations.
- 22 6. The teams from these six pilot facilities have begun to develop the knowledge, skills,  
23 and strategies that will enable them to redesign care for patients with any chronic disease,  
24 including:
- 25 a. A new organizational framework of team-based, patient-centered coordinated care  
26 with unambiguous responsibility for individual patient outcomes;
  - 27 b. Proven methods for continuously improving the processes of care;
  - 28 c. Evidence-based standards of chronic disease care;

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d. A new and powerful information system support tool, the chronic disease patient registry; and,

e. The ability to identify the sickest and most complicated of the chronically ill patients who can receive focused case management.

7. To leverage the knowledge and expertise developed by the chronic care teams, the Receiver's current plan is that, beginning in January 2009, the chronic care team and leaders from the six pilot sites will work with HMA to disseminate the chronic disease model and to create the local improvement teams at the remaining 27 prisons, specifically with respect to asthma. In addition, the six pilot sites will add two additional chronic diseases, diabetes mellitus and hepatitis C, to their programs. The Receiver has chosen these two diseases because of their high prevalence in the inmate-patient population, because they have serious potential to cause suffering and death, and because there are known standards which should guide care. As with asthma, the experience of these six pilot sites will serve as the basis for the change packages and strategies to be used for dissemination to the remaining 27 prisons later in 2009. By the end of 2009, all prisons will have trained local leadership in chronic care, and all will have implemented the patient-centered, team-based chronic care model appropriate for managing any chronic illness using evidence-based, standardized processes and measurements. As Dr. Hill emphasizes, the speed and scope of the proposed 2009 initiatives exceed industry standards even among the highest-performing and most richly-endowed healthcare delivery systems.

8. As a result of the demonstrated success of the Access-to-Care pilot focusing on asthma, and the importance of HMA to that success, the Receiver believes, and the parties agree, that continued progress at the pace anticipated requires continued HMA expertise and leadership. Because both the January 25, 2008 Order and HMA's contract were focused on asthma, the addition of diabetes and hepatitis C to the Access-to-Care Initiative program will require modifications to and extensions of HMA's contract. Thus, the Receiver's Supplemental Application seeks an Order waiving State contracting law and

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2 January 25 Order, the Court waived State contracting law, regulations and procedures to  
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- 22 6. The teams from these six pilot facilities have begun to develop the knowledge, skills,  
23 and strategies that will enable them to redesign care for patients with any chronic disease,  
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procedure to the extent that such a waiver may be necessary to permit the Receiver to modify and extend HMA's existing contract to assist in the implementing the Access-to-Care program with respect to the two additional diseases.

9. As with the proposed contracts to pursue the asthma pilot portion of the Access-to-Care Initiative, State contracting procedures, if required to be followed with respect to the proposed additional quality improvement projects, would interfere with or impede the Receiver in the performance of his duties. In light of HMA's experience, the success achieved and the aggressive time frame within which the Receiver intends to implement the next phase of the Access-to-Care Initiative, it would be detrimental to the Receiver's goals if he were required to follow State contracting procedures and/or seek new or additional contractors to assist in the process. Accordingly, the Receiver believes, and the parties agree, that no adequate alternative to the proposed waiver of State contracting procedures exists.

10. Accordingly, the parties hereto stipulate that, to the extent necessary and required, the waiver of State contracting procedure provided for in this Court's Order, dated January 25, 2008, should be deemed applicable to any extension and amendment of the HMA contract necessary to permit the Receiver to pursue his quality improvement projects pertaining to diabetes and Hepatitis C as described more fully above and in the Declaration of Terry Hill, filed herewith.

Dated: \_\_\_\_\_, 2009

FUTTERMAN & DUPREE LLP

By:           /s/            
Martin H. Dodd  
Attorneys for Receiver J. Clark Kelso

Dated:   1/8  , 2009

PRISON LAW OFFICE

By:           [Signature]            
Steve Pama  
Attorneys for Plaintiffs

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Dated: \_\_\_\_\_, 2009

OFFICE OF THE ATTORNEY GENERAL  
HANSON BRIDGETT LLP

By \_\_\_\_\_  
Paul B. Mello  
Attorneys for Defendants

**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 January 9, 2009, I served a copy of the following document(s):

**DECLARATION OF MARTIN H. DODD IN SUPPORT OF RECEIVER'S SUPPLEMENTAL APPLICATION NO. 8 FOR ORDER WAIVING STATE CONTRACTING STATUTES, REGULATIONS AND PROCEDURES**

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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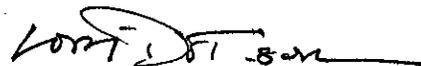
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John Chiang  
Richard J. Chivaro  
State Controller  
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Sacramento, CA 95814

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19 I declare that I am employed in the offices of a member of the State Bar of this Court at  
20 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.

21 Executed on January 9, 2009 at San Francisco, California.

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Lori Dotson