

FILED

APR 25 2007

RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,
Plaintiffs,

v.

ARNOLD SCHWARZENEGGER,
et al.,
Defendants.

NO. C01-1351 TEH
CLASS ACTION

ORDER GRANTING RECEIVER'S
MOTION FOR ONE TIME LIMITED
WAIVER OF CALIFORNIA
GOVERNMENT CODE SECTION
19080.3

United States District Court
For the Northern District of California

The Court is in receipt of the Receiver's Motion for One Time Limited Waiver of California Government Code § 9080.3, filed April 6, 2007, and supporting declarations. The Receiver seeks this limited, one-time waiver in order to permit 22 Pharmacy Technicians to complete their previously authorized, limited-term appointments.

On April 11, 2007, the Court ordered the parties to respond to the Receiver's motion. Plaintiffs filed a timely Statement of Non-Opposition. Defendants filed a late "Response"¹ stating that they "agree that a waiver of state law is needed to allow 'the existing pharmacy appointments set to expire on June 30, 2008. . . to remain limited-term employees until the funding approved by the Legislature for their positions expires on June 30, 2008.'" Defs.'

¹ Defendants' response was filed five days late, and only after being contacted by the Court. The parties are informed, and warned, that, in the future, the Court will construe a failure to timely respond as a statement of non-opposition.

1 Response at 2. They further state that they “support the Receiver’s effort to obtain this
2 waiver.” *Id.*²

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4 DISCUSSION

5 As explained in the Receiver’s motion, the California Department of Corrections and
6 Rehabilitation (“CDCR”) obtained funding in 2004 for 53.5 two-year “limited term”
7 Pharmacy Technician positions to address serious staffing deficiencies in CDCR prison
8 pharmacies around the state. Although CDCR stated that it would conduct a statewide study
9 during the two-year period to further determine and justify its staffing requirements for
10 pharmacy technicians it failed to undertake the promised study. Nonetheless, funds were
11 approved for the 2006-07 budget to undertake such a study, and the Pharmacy Technician
12 positions were approved for an additional two-years. Notwithstanding a number of obstacles
13 to recruitment, *see* Mot. at 5, the Receiver has filled 31 of these positions. *See* Exhibit to
14 Mynhier Dec. (“List of Limited-Term Pharmacy Technician Positions”) (Filed April 10,
15 2007).

16 The Receiver has learned, however, that state law requirements would operate to
17 prevent 22 of the 31 Pharmacy Technicians from completing their terms. Specifically, a
18 restriction in Government Code § 19080.3 would require 22 Pharmacy Technicians to be
19 terminated after expiration of the original two-year term, notwithstanding the fact that the
20 Legislature has extended the funding for those positions for an additional two years.
21 Accordingly, the Receiver seeks “a limited, one-time waiver of Government Code § 19080.3
22 for the purpose of permitting the 22 Pharmacy Technicians with appointments that are
23 funded until June 30, 2008 to continue as limited-term employees until that date.” *See* Mot. at
24 7.

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27 ² Defendants also note that they “do not take a position on the specific facts and/or
28 arguments in the Receiver’s Motion.” Response at 2. They do not, however, identify any
inaccuracy in the motion or object to any specific statement of fact or argument.

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2 The Receiver's request is governed by this Court's February 14, 2006 Order which
3 provides in pertinent part as follows:

4 The Receiver shall make all reasonable efforts to exercise his powers, as
5 described in this Order, in a manner consistent with California state laws,
6 regulations, and contracts, including labor contracts. In the event, however,
7 that the Receiver finds that a state law, regulation, contract, or other state
8 action or inaction is clearly preventing the Receiver from developing or
9 implementing a constitutionally adequate medical health care system, or
otherwise clearly preventing the Receiver from carrying out his duties as set
forth in this Order, and that other alternatives are inadequate, the Receiver shall
request the Court to waive the state or contractual requirement that is causing
the impediment.

10 February 14, 2006 Order at 5.

11 As the Receiver states, "[n]o one seriously disputes the fact that the CDCR pharmacy
12 program is in a state of abject disrepair." *see* Mot. at 3, and that an adequate pharmacy
13 program is essential to a minimally functioning medical delivery system. Nor is it disputed
14 that the Receiver has undertaken an aggressive program to remedy the pharmacy system and
15 that pharmacy technicians are central to this program, which requires "maximizing the
16 utilization of Pharmacy Technicians so that pharmacists are freed to perform much needed
17 clinical functions." *Id.* at 4. In short, Pharmacy Technicians "are essential in the routine
18 processing and delivery of pharmaceuticals" and without them, "daily services provided by
19 the pharmacist would be. . . severely impacted . . . and create a void in pharmacy services
20 that cannot be immediately overcome." *See id.* at 4, and Ex. 2 (Decl. of Dr. Glenn Johnson).

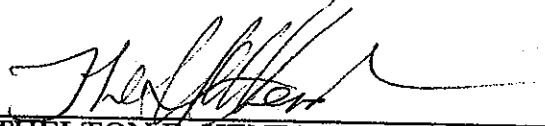
21 As such, the Court is satisfied that the Pharmacy Technicians at issue fill an essential
22 role in the Receiver's efforts to remedy the pharmacy system and thus the constitutional
23 deficiencies in the delivery of medical care. At the same time, there are no adequate
24 alternatives for obtaining the critical services provided by the 22 Pharmacy Technicians
25 should they be prematurely terminated. Shifting their duties to others would undermine the
26 effectiveness of pharmacy remedial efforts. Nor is making such employees permanent a
27 viable option given that the entire pharmacy management system is undergoing a
28 restructuring and adding permanent positions in certain geographic locations at this point in

1 time would undermine the ability of the Receiver to effectively manage the pharmacy
2 remedial process.

3 Given all of the above, the parties' agreement that a waiver is warranted in this case,
4 and the entire record herein, the Court finds that the requested limited, one-time waiver of
5 Government Code § 19080.3 is appropriate and that other alternatives are inadequate.
6 Accordingly, the Court HEREBY WAIVES Government Code § 19080.3 for the limited,
7 one-time purpose of permitting the 22 Pharmacy Technicians with appointments in positions
8 that are funded by the Legislature until June 30, 2008 to continue as limited-term employees
9 until that date.

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12 **IT IS SO ORDERED.**

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14 Dated: 4/24/07

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THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PLATA et al,

Plaintiff,

v.

SCHWARZENEGGER, et al,

Defendant.

Case Number: CV01-01351 TEH

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 25, 2007, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: April 25, 2007


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