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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

**REPLY DECLARATION OF JOHN  
HAGAR IN SUPPORT OF RECEIVER'S  
SUPPLEMENTAL APPLICATION NO. 2  
FOR ORDER WAIVING STATE  
CONTRACTING STATUTES,  
REGULATIONS AND PROCEDURES,  
APPROVING RECEIVER'S  
SUBSTITUTE PROCEDURE FOR  
BIDDING AND AWARD OF  
CONTRACTS**

1 I, John Hagar, declare as follows:

- 2 1) I am currently the Special Master in *Madrid v. Tilton* and have been engaged as Chief of  
3 Staff for Receiver Robert Sillen in the matter *Plata v. Schwarzenegger*. I make this reply  
4 declaration in support of the Receiver's Supplemental Application No. 2 for an order  
5 waiving of State Contracting Procedures and to approve the Receiver's proposed  
6 alternative contracting procedures ("Waiver Application").
- 7 2) In my capacity as Chief of Staff for the Receiver, I have general operational oversight of  
8 most of the ongoing activities of the receivership and regularly confer with the Receiver  
9 and other staff members regarding those activities to ensure that the Receiver's goals and  
10 directives are being implemented. In addition, as the Court is aware, in connection with  
11 the *Madrid* case, I have been the Special Master at Pelican Bay State Prison ("PBSP") for  
12 many years and have overseen the implementation of the remedial plans in that case.
- 13 3) Plaintiffs' objections to the Waiver Application appear to be based upon a  
14 misunderstanding of the Receiver's quality improvement programs generally and the  
15 Asthma Initiative, specifically. In addition, plaintiffs' objections reflect a lack of basic  
16 information that could have been remedied by visiting the Receiver's website. The  
17 accompanying Declaration of Terry Hill will address these issues. This declaration is  
18 limited to plaintiffs' suggestion that the Receiver address the very serious problems in  
19 managing asthma care in California's prisons by applying "lessons learned" at PBSP.
- 20 4) Contrary to plaintiffs' assertions, I submit that the "lessons learned" at PBSP actually  
21 support the Receiver's waiver. As the Court is aware, the State of California, counsel,  
22 and the Special Master devoted *two full years* to developing an adequate health care  
23 remedial plan (including a chronic disease program) at PBSP. Thereafter, it took *five*  
24 *more years*, years of monthly on-site monitoring by the Special Master, regular on-site  
25 inspections by numerous Court experts, and countless meetings and hearings, before  
26 PBSP's chronic disease program rose to a level of remedial plan compliance sufficient to  
27 permit monitoring to be limited, and then discontinued. Given the systemic problems  
28 which continue to plague California's prison medical care delivery system, it would take

1 far more than five years to “apply” the *Madrid* model to thirty two disparate institutions.  
2 And waiting even five more years is far too long. Five more years will result in deaths  
3 which can be, and will be avoided if the Receiver’s waiver application is granted.

4 5) The remedial program implemented over a painfully long period of time at one prison  
5 under the watchful eye of the Federal Court, the Special Master, and Court experts cannot  
6 be simply “applied” to thirty-two other institutions. Indeed, the history of the *Plata* class  
7 action is proof positive of this. In many respects, the original *Plata* remedial plan mirrors  
8 *Madrid*; the same Court experts and the same lawyers representing the parties in *Madrid*  
9 developed and stipulated to the *Plata* program.

10 6) When, however, the *Madrid* model was “applied” via time-phased *Plata* “roll outs” to  
11 other institutions, it not only failed, it did so to such an extent that the extraordinary  
12 remedy of a Receivership was required. The Receiver and his staff, including myself, are  
13 familiar with the real life “practices” at CDCR institutions. We have concluded that a  
14 simplistic “copying” of alternative models will fail, and that this failure will result in  
15 additional preventable deaths. The proposal before the Court will lead to timely,  
16 adequate, and sustainable improvement. From my experience, plaintiffs’ proposal – in  
17 essence, to pursue an approach that has already failed – should be rejected.

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

20 Dated: December 21, 2007

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

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24 I hereby attest that I have on file all holograph  
25 signatures for any signatures indicated by a  
26 “conformed” signature (/s/) within this efiled  
document.

27 \_\_\_\_\_  
/s/  
28 Martin H. Dodd  
Attorneys for Receiver Robert Sillen

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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 June 27, 2007 I served a copy of the following document(s):

**DECLARATION OF JOHN HAGAR IN SUPPORT OF RECEIVER'S SUPPLEMENTAL APPLICATION NO. 1 FOR ORDER WAIVING STATE CONTRACTING STATUTES, REGULATIONS AND PROCEDURES, APPROVING RECEIVER'S SUBSTITUTE PROCEDURE FOR BIDDING AND AWARD OF CONTRACTS AND APPROVING NUNC PRO TUNC ACNL SUPERVISORY NURSE TRAINING CONTRACT**

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.

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.

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Andrea Lynn Hoch  
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Dated: June 27, 2007

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Lori Dotson