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**RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
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.*

18 Case No. C01-1351 TEH

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**DECLARATION OF JOHN HAGAR IN
SUPPORT OF RECEIVER'S MASTER
APPLICATION FOR ORDER WAIVING
STATE CONTRACTING STATUTES,
REGULATIONS AND PROCEDURES,
AND APPROVING RECEIVER'S
SUBSTITUTE PROCEDURE FOR
BIDDING AND AWARD OF
CONTRACTS, IN CONNECTION WITH
CERTAIN MAJOR PROJECTS**

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 this matter. I make this declaration in support of the
4 Receiver's application for a waiver of State contracting procedures and to approve the
5 Receiver's proposed alternative contracting procedures with respect to certain major
6 projects that are underway or are planned to commence shortly.
- 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.
- 11 3) For the better part of the last 12 months, and in response to the Court's order regarding
12 contracting, entered on March 30, 2006, efforts have been under way to improve and
13 streamline the procedures governing contracting for medical services. The Receiver
14 established a Project Team to process the payment of all outstanding invoices and to
15 develop modified bidding, procurement and payment processes necessary for the
16 management of all CDCR health care contracts. As part of that project, the Division of
17 Correctional Health Care Services ("DCHCS") undertook a number of studies of the
18 current contracting process. Attached hereto as Exhibit 1 is a true and correct copy of a
19 chart prepared by DCHCS in May 2006 that sets forth the existing steps and an estimated
20 timelines for the State contracting process. Attached hereto as Exhibit 2 is a true and
21 correct copy of excerpts from a report prepared by DCHCS, dated July 26, 2006,
22 pertaining to recommendations for an improved medical services contracting process.
- 23 4) Much progress has been made in improving the medical services contracting process, but
24 the new systems are not yet in place. Ultimately, the Receiver intends to expand the
25 contracting improvement project to include contracting procedures for the prison
26 healthcare system generally. But, other issues, like the projects described below, require
27 more urgent attention and the Receiver wishes to have the medical services contracting
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procedures improved and implemented before moving on to other contracting processes. Accordingly, the Receiver has brought the accompanying Application seeking a waiver of State contracting procedures with respect to the projects described more fully below.

5) I have also been involved to a greater or lesser extent with the planning for each the projects described below. I am, therefore, generally familiar with the need for and goals of these projects. In view of the utter breakdown in the prison healthcare system, the Receiver has had to move forward on multiple fronts simultaneously to address the many failings in the system. Timely review and approval of these projects is essential. As of mid-April 2007, the Receivership is poised for a number of critical initiatives upon which the medical care of more than 170,000 men and women depend. If these projects are not implemented in a prompt and coordinated fashion, the Receivership's efforts to address unconstitutional conditions in California's prisons will not go forward and some of the remedial progress achieved to date will be lost. As the Receiver's Chief of Staff, I emphasize and can attest that each of the projects described below is a significant component of the overall reconstruction of the prison health care system, each is essential to the proper functioning of the system and each will require one or more contracts of varying size and complexity in order to be completed.

IT Technical and Operational Infrastructure Project

6) Data management requires appropriate IT infrastructure and there is no such appropriate infrastructure within the prison system. The Receiver and his Chief Information Officer, John Hummel, investigated and have found that the prison IT network was designed and installed decades ago; network bandwidth is already at maximum capacity handling email alone and cannot also accommodate clinical or business systems; in some cases, entire clinics are operating with a only single computer workstation and phone line; and even if more IT workstations were present, existing power resources in clinics are insufficient to support these new resources; With respect to operational infrastructure for medical IT, desk top support, trainers, information security personnel, and network managers are all

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lacking. Simply stated, no coherent systems or support for medical information technology exists.

7) The Receiver's technical and operational infrastructure project will lay the foundation for a health care information system—a prerequisite of an effective health care *management* system—by establishing high speed information networks, data standards, and operational support. These essential infrastructure elements are the first priority of the Receiver's "information technology" prong of his pending Plan of Action. As a starting point, the Receiver plans to create a competent, healthcare-oriented IT unit of State employees within the *Plata* Support Division to support the Office of the Receiver's IT projects, including "interim" IT issues. This unit will assist in assessing existing technical and operational infrastructure, designing new technical and operational systems, and procuring the goods and services necessary for the implementation of the new IT infrastructure. The development of an electronic medical record ("EMR") or other clinical or business applications is *not* included in this project at this time. The Receiver will seek approvals for those other projects after the IT infrastructure project has progressed further.

8) The Receiver anticipates engaging an outside information technology consultant for initial management of the new and emerging IT unit within the *Plata* Support Division. This contract will be awarded through the formal bidding process described in Section VI of the accompanying Application (*i.e.*, formal solicitations will be published, a 30-day response period will be provided, and selection committee will be appointed to make recommendations to the Receiver). The Receiver also plans to engage contractors to assist the Receiver and the *Plata* Support Division with assessing existing technical and operational infrastructure, designing new technical and operational systems, and providing the goods and services necessary for the implementation of the new infrastructure. These contracts are likely to be of variable size and complexity and it is currently not feasible to pinpoint which of the Receiver's specific proposed replacement

1 contracting procedures will be utilized. Each contract will, however, be awarded in
2 accordance with the proposed replacement contracting process based on the particular
3 circumstances of each contract.

4 **Health Information Management Project**

- 5 9) CDCR inmate-patients are each issued a Unit Health Record ("UHR") paper medical
6 chart upon intake into the prison system. In theory, the policies and procedures for
7 maintaining medical records should be the same from institution to institution as the
8 UHR travels with the inmate. Paper charts should be legible, appropriately maintained,
9 readily available at the point of care, and logically organized. In practice, CDCR has no
10 functional centralized oversight or management of medical recordkeeping in any of its 33
11 prisons.
- 12 10) To begin addressing the inadequacies in medical recordkeeping, the Receiver intends to
13 (1) assess the current state of healthcare information management, including
14 organizational structure, infrastructure, workflow, staffing, security, access, and utility of
15 paper-based forms and documentation tools; (2) inventory all existing CDCR clinical
16 documentation forms and describe how they are currently being used by frontline
17 providers; (3) test his findings in light of currently available IT and industry best
18 practices, with specific reference to published literature and experience in other
19 correctional systems; (4) develop specific solutions that can be implemented immediately
20 in the context of the existing paper-based medical records system; and, (5) produce a
21 detailed approach, including estimated costs and duration of effort, for the complete
22 restructuring and modernization of healthcare information management at CDCR. The
23 second phase of the health information management project will be to engage a contractor
24 or contractors to implement the program developed through the steps described above.
- 25 11) The Receiver plans to engage one or more consultants to accomplish the objectives
26 described above. Both phases of the project will be competitively bid. Phase one will
27 likely be informally bid as described in Section VI of the Receiver's Application (*i.e.*,
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1 direct solicitation of at least three qualified vendors) as the probable value of the contract
2 is not likely to be large. Whether formal or informal bidding is utilized with respect to
3 phase two will depend largely on the recommendations developed in the first phase.

4 **Clinical Data Warehouse Project**

- 5 12) Medical practice and healthcare management in CDCR takes place in an information-
6 poor environment. Although certain data sources are available (for example, in the form
7 of lab results and pharmacy orders), there is no way to convert this data into information,
8 compiled and presented in a usable manner to assist system-wide decisions. For any
9 effective clinical organization today, it is essential to convert operational data into
10 information by creating a data warehouse. But no such resource is available in the
11 CDCR.
- 12 13) The Receiver will develop a data warehouse to centralize data now scattered among
13 disparate operational systems and make clinical information standardized and readily
14 available to support planning and decision making. Once completed, the data warehouse
15 will support "business intelligence" applications such as (1) clinical and financial
16 analytics and decision support, (2) executive information systems, (3) query and reporting
17 tools, (4) data mining, (5) business process monitoring, and (6) online scoreboards and
18 dashboards. The data warehouse is, in essence, the reservoir from which clinical and
19 business applications, once implemented, will draw their information. Thus, this might
20 alternately be thought of as the "data infrastructure project," which serves no less
21 important a function than the IT Technical and Operational Infrastructure Project,
22 described above, in assisting the Receiver in developing information from which
23 management decisions can be made.
- 24 14) Data warehousing requires processes and tools to define and manage data definitions,
25 cleanse bad data contained in source systems, integrate data from diverse source systems,
26 and organize the data into meaningful subject areas (*i.e.*, populations or disease states).
27 Not surprisingly, the creation, implementation and configuration of a data warehouse is
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1 extremely challenging even in a high-functioning healthcare organization. Thus, this
2 project will require a number of competent, highly skilled technicians that are not
3 currently available within the CDCR.

4 15) To implement the clinical data warehouse project the Receiver will require contracts for
5 goods and services with a healthcare database architect, a database/data warehouse
6 vendor, and other vendors necessary for implementing clinical and health care data
7 management portals. The Receiver anticipates obtaining all the above goods and services
8 through a competitive process—either formal or informal bidding—based on the scope of
9 the particular contract.

10 **Telemedicine Project**

11 16) CDCR currently operates a telemedicine program that connects inmates in as many as 24
12 prisons with various contracted specialty physician groups, as well as with a telemedicine
13 hub in downtown Sacramento. Since the program's inception in 1996, there have been
14 almost 60,000 telemedicine visits, with nearly 10,000 in Fiscal Year 2005-2006 alone
15 (the last year for which data is available). Nevertheless, a cursory review of CDCR
16 Telemedicine by the Receiver's team suggests the program is not operating at its full
17 capabilities. Less than half of all telemedicine visits are medical in nature (as opposed to
18 mental health). Just six prisons accounted for more than 80% of all telemedicine
19 medical visits in FY 2005-2006. The current system appears to be inadequately staffed,
20 with only one technician available to service 24 widely-dispersed facilities. The
21 technology in use also seems outdated, as the system is exclusively dependent on ISDN
22 paired copper wires and analog video equipment. As such, despite its potential promise,
23 the telemedicine program does not provide appropriate assistance in a timely and cost-
24 effective manner.

25 17) Improvement of the telemedicine program is one of the major initiatives of Receiver's
26 pending Plan of Action. The Receiver intends to conduct a comprehensive review of the
27 existing telemedicine program, including (1) assessing the current program capabilities,
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1 organizational structure, and technical infrastructure, and (2) developing a plan for
2 restructuring and modernizing the telemedicine program at CDCR so that the system
3 works efficiently, is cost-effective and addresses inmate needs. Specific elements of the
4 assessment will include: interviewing relevant CDCR telemedicine personnel, including
5 leadership and front-line clinical and technical staff; visiting a sample set of six to nine
6 prisons, including those that are high, low, and non-users of CDCR telemedicine services,
7 to determine telemedicine clinical workflow, the condition and placement of telemedicine
8 workstations, the perceptions of telemedicine by front-line providers, and the perceived
9 need for telemedicine services; assessing CDCR's telemedicine headquarters in
10 downtown Sacramento; and surveying recipients of CDCR telemedicine provider
11 contracts for feedback on CDCR's ability to function as a telemedicine partner. Once the
12 assessment and planning phases of the project are complete, the Receiver will, if and as
13 necessary, undertake restructuring of the program to maximize its benefits to the health
14 care mission of the prison medical system.

15 18) The Receiver intends to contract for all phases of this project, including assessment, plan
16 development, and plan implementation. Such contracts may include contracts for goods
17 and/or services, with consulting, professional services and IT firms. The Receiver is
18 actively working towards engaging a contractor for the assessment and planning phase of
19 the project and has already commenced a formal bid process consistent with the
20 Receiver's proposed procedures. A contract with the firm will not be executed unless the
21 Receiver's proposed contracting process is approved by way of the accompanying
22 Application. The Receiver anticipates competitively bidding the second phase of the
23 project—formally or informally—based on the scope of the remediation plan
24 recommended by the Receiver's consultant and adopted by the Receiver.

25 **5000 Multi-Purpose Medical Bed Construction Project: Project Management and**
26 **Preliminary Planning**

27 19) The California prison system houses more than 170,000 inmates in a system designed to
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1 accommodate only 100,000. Compared to the general population, inmates suffer from a
2 disproportionate burden of medical and mental illness. The State Legislative Analyst's
3 Office ("LAO") estimates that by 2022 there will be more than 30,000 inmates 55 and
4 older, four times the current figure, and that geriatric inmates will constitute 16 percent of
5 the inmate population, up from about 5 percent now. A true and correct copy of excerpts
6 from the LAO report is attached hereto as Exhibit 3. The State has only about 700
7 medical beds in its prison facilities. And nearly all of these beds are designed for short-
8 term or acute care. The majority of medically needy inmates are housed in general acute
9 care hospitals (GACHs), correctional treatment centers (CTCs), outpatient housing units
10 (OHUs), and a variety of special needs yards and cellblocks. There is currently an
11 insufficient quantity and quality of space to care for the chronically ill and aging inmate
12 population. The problem will quickly deteriorate further if left unaddressed.

13 20) As discussed in the Receiver's Fourth Bi-Bimonthly Report (at pp. 19-20), one of the
14 Receiver's major goals is the design and construction of healthcare facilities to
15 accommodate the thousands of inmates with chronic illness, frailty, and/or functional
16 impairments. The Receiver anticipates constructing a facility or facilities with beds to
17 accommodate 5,000 inmates. Although the Receiver's responsibility does not extend to
18 mental health care, the Receiver and the *Coleman* Special Master are collaborating on this
19 project. The planned facilities will house several levels of care, exclusive of acute care
20 hospital beds, that can be described as skilled nursing, assisted living, and congregate
21 living. One goal of the new facilities construction is to remove medical long-term care
22 inmates from beds within the GACH, CTC, and OHU units, all of which should be
23 reserved for short-term stays.

24 21) The Receiver is currently at the preliminary planning and investigation stage of the
25 construction project. He is studying the existing burden of chronic medical illness and
26 functional impairment in the California prison population, assessing approaches for
27 clustering inmates into cohorts that correspond to the level of care and programming, and
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1 developing an estimate of future long-term care bed needs by level of care and
2 programming so as to inform new facilities construction.

3 22) The Receiver is also actively pursuing the engagement of a highly qualified program
4 management firm to advise him with regard to the project and to provide facilities
5 development expertise for the design and construction of new medical facilities. The
6 Receiver does not intend for the program manager to provide design, construction, or
7 construction management services. Rather, the overall mission of the program manager
8 will be to act as a resource to the Receiver and to provide broad coordination of the full
9 range of technical resources and management services necessary to implement the
10 planned construction project, including assisting the Receiver in quantifying the capital
11 resource needs for the program.

12 23) The Receiver will require a contract to engage the selected program manager as well as
13 other contracts related to preliminary planning, programming and prototype development
14 for the project. Because of the urgent need to move forward with this critical and
15 complex project, a formal procurement process, consistent with the Receiver's proposed
16 formal bidding procedure, has already been undertaken to obtain the Program Manager.
17 However, no contract has yet been executed. On January 24, 2007, the Receiver issued a
18 Request for Qualifications ("RFQ"), soliciting 20 top program management firms
19 directly, and publishing advertisements on various websites (including the Engineering
20 News-Record) and in nearly a thousand weekly bulletins published for various markets
21 around the country. A true and correct copy of the RFQ is attached hereto as Exhibit 4.
22 Responses to the RFQ were due on February 23, 2007, and the Receiver received
23 numerous responses from reputable firms. A selection committee of construction and
24 procurement experts was appointed by the Receiver to make recommendations regarding
25 a short-list of firms to be interviewed, and the same committee participated in interviews
26 along with the Receiver and his Chief of Staff. The Receiver selected a team primarily
27 consisting of the URS Corporation and Bovis Lend Lease based on a unanimous
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1 recommendation of the committee and his own independent judgment. A contract with
2 the firm will not be executed unless the Receiver's procurement process is approved by
3 way of this application.

4 24) As stated above, the Receiver anticipates that other contracts will be required for the
5 preliminary stages of this project. These contracts will become more clearly defined once
6 the Receiver obtains the advice and recommendations of his selected program
7 management firm. The Receiver will file a separate application for waiver of State
8 contract law, if necessary, with respect to the *design* and *construction* of specific facilities
9 after preliminary planning has proceeded further.

10 **San Quentin Project: Medical Facility Construction**

11 25) As the Court has been previously informed, the Receiver has undertaken a pilot project to
12 improve medical services at San Quentin. Among the multitude of barriers to the
13 delivery of constitutionally adequate medical care at San Quentin is the complete lack of
14 appropriate medical space. The lack of space in which to work, not only clinical space,
15 but also desperately needed space for services such as telemedicine, for specialty
16 providers, for offices, for meetings, for information technology, for office equipment and
17 for supplies is a major factor driving the inability to provide constitutionally adequate
18 medical care at San Quentin. The lack of adequate space impairs not only direct patient
19 care, but the facility's ability to attract a sufficient number of qualified staff as well.

20 26) The Receiver most recently updated the Court regarding his pilot project at San Quentin
21 in his Fourth Bi-Monthly Report (at pp. 23-29). As reported, the Receiver has prepared a
22 construction plan to remedy both interim and long term medical space deficiencies. The
23 interim and small scale projects include development of personnel offices and a medical
24 supply warehouse, renovation of the Trauma Treatment Area, and expansion of the West
25 and East Block rotundas to establish clinical "sick call" areas.

26 27) The Receiver is also planning the construction of a Central Health Facility that will
27 address the long term needs for medical services and space at San Quentin. The project
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1 will include all necessary infrastructure and site improvements and the demolition of the
2 existing "Building #22" to make room for the new building. The new Central Health
3 Services Building will support the delivery of medical, dental, and mental health care
4 services, including outpatient clinical services, specialty clinical services, licensed
5 inpatient care, outpatient housing care, pharmacy, medical records, medical
6 administration and support. Surgery or treatment for serious illness or medical
7 conditions, which are beyond the capability of this new facility will be handled either in a
8 community medical facility on a contract basis or in another CDCR medical facility.
9 Long-term acute psychiatric care will not be available in the facility.

10 28) The Receiver will require contracts directly related to all phases of medical facility
11 construction at San Quentin from pre-planning analysis, to planning, design, development
12 and construction of the new facility to rebuilding, improvement and repair of existing
13 facilities. The Receiver is actively working towards engaging a master contractor for the
14 design and construction of the project and has already commenced a formal bid process
15 consistent with the replacement contracting process set forth below. A contract with a
16 firm will not be executed unless and until the Receiver's substituted procedures are
17 approved by way of this application. There will undoubtedly be subcontracts and
18 additional direct contracts necessary for the completion of the project. These contracts
19 will be awarded after competitive bidding to the extent possible. The Receiver, however,
20 has established an aggressive timeline for the completion of this project given the urgency
21 of the need for additional clinical space at San Quentin. Also, over the lifetime of a
22 construction project, traditional bidding processes for all of the subcontracts necessary to
23 complete a project can add months, if not years, to the project's completion. Thus, the
24 Receiver anticipates that some contracts that may otherwise call for formal bidding will
25 be informally bid or sole sourced, where the contract is an essential part of a Central
26 Health Facility project and delay will substantially interfere with timely or cost-effective
27 completion of the project.

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1 **Temporary Medical Facility (Modular Building) Project**

- 2 29) The Receiver has now toured 18 prisons and has discovered that most of the medical
3 space in these facilities is aging and deteriorating, is overwhelmed by the burgeoning
4 inmate population of the prisons or both. There is a dire need for additional space for
5 medical clinics, ancillary services (e.g., pharmacy, laboratory and medical records) and
6 offices throughout the entire system.
- 7 30) In addition to addressing the immediate needs for new medical space at San Quentin, the
8 Receiver must provide some short term relief to other prisons while long term facility
9 expansion takes place over the next three to five years. Thus, the Receiver is planning to
10 supplement existing medical facility space with temporary modular buildings where
11 needed within the prisons. The Receiver anticipates placing the first modular units at
12 Avenal State Prison, where the Receiver has recently undertaken more focused efforts.
13 The Receiver will expand the project from its pilot phase at Avenal depending on the
14 success of the initial placements. The project will include defining facility needs as well
15 as the design, logistics, and installation of the modular units.
- 16 31) The Receiver anticipates engaging a construction program management firm to oversee
17 the project. As described above, the Receiver has begun a formal bid process to engage a
18 construction project manager for his capital expansion program. The solicitation called
19 not only for construction of new sub-acute hospital beds, but also for the renovation or
20 reconstruction of other non-housing components of the CDCR medical health care
21 system. However, the Receiver has decided to separate the management of the "5,000
22 bed" project from the Temporary Medical Facility project to ensure that an appropriate
23 focus is provided to each initiative. Thus, with respect to the Temporary Medical Facility
24 project, the Receiver anticipates engaging the firm rated second highest by the Receiver
25 and his selection committee during the program management RFQ process discussed
26 above. That firm is Vanir Construction. The Receiver will also require contracts for the
27 purchase or lease, transportation, configuration, and placement of the modular units, in
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1 addition to any other services necessarily and directly related to installing the new
2 modular building space. The Receiver anticipates awarding these contracts after
3 competitive bidding in accordance with substituted procedures described in his
4 Application filed herewith.

5 **Recruitment and Hiring Project**

6 32) The crisis in the delivery of medical care in California is due to a great degree to CDCR's
7 chronic failure adequately to staff clinical positions at California state prisons. California
8 prisons have, for example, a 20% vacancy rate statewide for primary care providers
9 (physicians, nurse practitioners and physician assistants), in addition to unacceptable
10 vacancy rates throughout the clinical classifications. These high vacancy rates for prison
11 medical staff negatively impact the quality of patient care, and make it difficult to achieve
12 systemic improvements, because so few permanent staff are on hand to implement and
13 maintain remedial efforts. High vacancy rates also waste taxpayer dollars.

14 33) In addition to the high vacancy rate across all classes of clinical staff, a debilitating lack
15 of qualified personnel in CDCR health care leadership positions exists and is continuing.
16 Applicants with the necessary skills and experience to solve the medical delivery crisis
17 refuse to apply for work in California's prison system given the State's inadequate
18 management and executive salaries and poorly conceived and overly restrictive duty
19 statements. To make matters worse, there is no pool of competent State employees with
20 the requisite skill, experience, and work habits to correct this crisis. In any event, there
21 remains a significant risk that the CDCR will fail to fill the department's vacancies due to
22 bureaucratic delays and red tape.

23 34) On February 23, 2007, with the prior approval of the Court, the Receiver announced
24 salary increases for physicians working in the prisons to aid in recruitment efforts and to
25 provide improved access to quality care for inmate patients. This action follows a salary
26 adjustment last year for most other prison medical staff that delivered increases ranging
27 from 5% to 64% over time for critical health care positions and brought their salaries
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- 1 closer in line with those paid at University of California hospitals.
- 2 35) The Receiver also intends to establish a non-classified, broadband Career Executive
3 Assignment ("CEA") category of employees to fill the approximately two-hundred and
4 fifty necessary medical executive positions necessary to begin the process of establishing
5 a constitutionally adequate medical system in California's prisons. Those selected for the
6 CEA positions will function as the top layers of management in the prisons, in regional
7 offices, and in a central office directed by the Receiver. The Receiver will also establish
8 the appropriate salaries for this new classification of employees who serve under his
9 direction.¹
- 10 36) Enhancing the pay scale and creating new leadership positions, however, is just the first
11 step in filling the void of qualified medical staff. The critical next steps are to implement
12 a marketing, recruitment and executive search campaign to attract the *best qualified*
13 health care professionals, and to improve the CDCR's examination and hiring process so
14 that good candidates are not lost to more nimble employers. Particular attention will be
15 paid to the recruitment of qualified Board Certified physicians in family practice or
16 internal medicine and executive level leadership positions, which have been particularly
17 difficult to attract. Additional details regarding the Receiver's efforts to undertake
18 professional and timely recruitment are set forth in the Receiver's Fourth Bi-Monthly
19 Report (at pp. 8-9).
- 20 37) The Receiver intends to engage consulting, recruitment and other human resources
21 support firms to work in conjunction with the CDCR *Plata* Support Unit and to assist
22 with filling clinical and leadership vacancies, including conducting executive search,
23 recruitment, and exam administration. The Receiver anticipates awarding these contracts
24 through competitive bidding (either through a formal or informal bid process) in
25 accordance with Receiver's proposed alternative procedures.

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27 ¹ On February 17, 2006, the Department of Personnel Administration eliminated the CEA salary caps and delegated
28 responsibility to all departments for the CEA compensation program. That responsibility subsequently transferred
from the CDCR Secretary to the Receiver pursuant to the Court's Order of February 14, 2006.

1 these contracts after informal bidding in accordance with the Receiver's proposed
2 procedures.

3 **Emergency Response Project**

4 41) In reviewing the response, treatment, and transportation of patients with emergency
5 medical conditions, the Receiver has found several critical deficiencies in the CDCR's
6 practices:

- 7 (a) Due to geography, population density, and call volume experience, the
8 community emergency medical services (EMS) response time to the prison
9 entry site is often prolonged.
- 10 (b) Security procedures further delay ambulance response through the entry
11 site.
- 12 (c) First response within the prison is often performed by custody and health
13 care personnel with limited experience in emergency medical treatment.
- 14 (d) Training of CDCR personnel in emergency medical treatment is limited
15 and many are unfamiliar with existing EMS policies and procedures.
- 16 (e) Patient transportation vehicles are inadequate.
- 17 (f) There are additional security delays as the ambulance exits the facility.

18 42) These shortcomings have had tragic consequences as illustrated by the stabbing death of
19 Officer Manuel A. Gonzalez, Jr., on January 10, 2005, at the CIM. The Office of the
20 Inspector General ("OIG") conducted a special review and found a number of deficiencies
21 in the emergency response system that played a critical role in the incident, ranging from
22 faulty and missing equipment to inadequate or non-existing staff training to a failure of
23 leadership by staff physicians. A true and correct copy of excerpts from the OIG report is
24 attached hereto as Exhibit 6.

25 43) To begin addressing these problems, the Receiver intends to conduct an 18-month pilot
26 project that will place paramedics in eight of the 33 State prisons on an around the clock
27 basis. Experienced paramedics with substantial experience in emergency medical care
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1 and training will be used, and they will be employees of a Local Emergency Medical
2 Services Agency ("LEMSA")-approved Advanced Life Support ("ALS") service
3 provider. The ultimate goals of the pilot project are to improve the emergency medical
4 care and response within the prisons, improve patients' clinical outcomes and decrease
5 unexpected deaths due to a lack of appropriate emergency medical care. Pilot projects are
6 a critical element of the Receiver's remedial program, enabling him to establish an initial
7 framework for sound remedial methodology. This particular pilot project is linked to the
8 priority "emergency response" prong of the comprehensive Plan of Action being
9 developed by the Receiver.

10 44) The project is planned to consist of three phases. Phase 1 will establish pre-hospital care
11 for medical emergencies within the prison facilities. The paramedics will be locally
12 accredited, operating under the medical control of the local EMS Agency Medical
13 Director and will be subject to LEMSA policies and procedures. Specialized
14 transportation vehicles, for use only in the prison, may also be tested. Paramedics will
15 not transport patients outside the prison. All EMS transports will continue to be
16 performed by ambulance transportation providers in compliance with LEMSA policies
17 and procedures. Phase 2 will include utilization of paramedics to educate CDCR staff on
18 EMS response, skills and competencies. They will also assist in improving equipment,
19 policies and procedures, and further coordinate the custody and healthcare staff to
20 optimize the prison EMS response system. Phase 3 will explore the feasibility of
21 conducting an OSHPD Health Manpower Pilot Project to use paramedics in a nurse-
22 extender role within CTCs and Triage and Treatment Areas (TTAs).

23 45) The Receiver will require several contracts directly related to the implementation of the
24 emergency response project, including contracts with the selected paramedic provider, a
25 project coordinator/consultant, and contracts for the procurement of vehicles (for
26 transport within prison perimeters), equipment and supplies needed for project
27 implementation. The Receiver anticipates awarding a sole source agreement to American
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1 Medical Response (AMR) for paramedic first response, given the urgent need for
2 enhanced emergency response in the prisons. AMR is also the largest private provider of
3 paramedic services in California (serving 28 counties) and thus most capable of providing
4 the depth and breadth of personnel and equipment to all the pilot sites throughout the
5 state. No other paramedic provider has the statewide reach and staffing capacity required
6 to meet the Receiver's needs. Data regarding the geographic distribution of paramedic
7 providers is available on the website of the California Emergency Medical Services
8 Authority at: http://www.emsa.ca.gov/emsdivision/2006_transport_prov.xls.

9 **Fiscal Control Project**

- 10 46) The CDCR's budgeting and financial control processes are in disarray, severing the
11 critical link between patient care needs and the financial planning necessary to provide
12 for those needs. The Receiver and his Chief Financial Officer, Richard Wood, have
13 encountered a multitude of problems in trying to plan for the Receiver's corrective
14 actions, among them: (1) The current financial reporting and budgeting process and
15 system is undocumented; (2) current financial and budget reports are not inventoried; (3)
16 budget report content is not complete, consistent with GAAP accounting or conducive to
17 comparison with prior periods, budget or benchmarks; (4) key operating metrics are not
18 captured and reported and do not appear to be consistent with or to corroborate
19 expenditure levels; (5) budget/finance staff skill levels are not adequately assessed prior
20 to assignment, staff are not given adequate training to perform current or new job
21 responsibilities, and supervisory staff are spread thin; and (6) significant portions of the
22 budget are not based on historical utilization of outside service, supplies or workload.
23 The result is that the prison healthcare system is not only failing in its core mission, it is
24 wasting vast sums of money in the process.
- 25 47) Fiscal stewardship by the Receiver is both a mandate from this Court and a key element
26 of the Receiver's remedial program. To address the specific problems identified above,
27 the Receiver and his Chief Financial Officer are undertaking a two-phase project. In the
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1 first phase, the Receiver will retain a professional services firm with recognized expertise
2 in public sector accounting, budgeting and financial systems to study and document the
3 current system, identify the "bottlenecks" in current processes and provide a plan of
4 "work arounds" and interim procedures and processes to provide more timely and reliable
5 financial reporting so that the Receiver and all CDCR managers can engage in better
6 financial planning. In the second phase, the Receiver will seek outside expertise in
7 designing a permanent system of internal controls and professional standards for the
8 financial operation of the CDCR and the Receivership. The Receiver's goal is not simply
9 to make the financial reporting system consistent, accurate and transparent, but to provide
10 CDCR with the tools to manage properly the public dollars entrusted to the agency.

11 48) The Receiver anticipates engaging a professional services firm or firms to complete the
12 project steps outlined above. The Receiver will award the contracts for both phases of
13 this project by way of competitive bidding (either through a formal or informal bid
14 process).

15 **Contracting Project**

16 49) The Court is already well aware of the serious problems inherent in CDCR's management
17 of the more than \$400 million in clinical contracts awarded by the department each year.
18 As the Court emphasized in its Order, dated March 30, 2006, CDCR's management had,
19 by late 2005, all but collapsed, jeopardizing patient care and wasting limited public
20 resources.

21 50) The Receiver, working with his Project Team, consolidated the contracting organization
22 spread throughout the CDCR bureaucracy and placed it under the Receiver's control. The
23 Receiver established and commenced on a pilot project basis a new contract IT program.
24 These early steps were taken to stem the emergency caused by the CDCR's backlog of
25 contract processing and payments. However, developing long term and sustainable
26 clinical contracting practices will require additional professional expertise and direction
27 not currently available in the CDCR. Thus, the next steps for the contracting project will
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1 involve, first, retaining a professional services firm to undertake an assessment of and to
2 make recommendations related to long term strategies for the medical contracts unit, and
3 subsequently obtaining consulting and management services to implement the
4 recommendations. The Receiver does not intend to displace any of the employees of the
5 medical contracts unit. Rather, he intends to create a *temporary* management overlay,
6 aimed at improving the skills and expertise of the unit.

7 51) The Receiver anticipates executing contracts with a professional services firm or firms for
8 an assessment of and recommendations regarding the CDCR's contract management,
9 operations, policies and procedures. In addition, the Receiver anticipates executing
10 contracts with a professional services firm or firms for the implementation of the
11 recommendations obtained and temporary management of the medical contracts units.
12 The Receiver plans to utilize the formal bidding process to award the contract(s) with
13 respect to the first phase of this project, and use either formal or informal bidding with
14 respect to the second phase based on the scope of the recommendations provided by the
15 initial consultant.

16 **Pharmacy Project**

17 52) The Receiver commissioned an audit of the pharmacy operations in six prisons by Maxor
18 Pharmacy Services Corporation, Inc. ("Maxor"). That audit, which was presented to the
19 Court last year, described in some detail the many areas that must be addressed if the
20 pharmacy operations are to meet the needs of the inmate population. Among the failings
21 in the current pharmacy operation is the fact that the system (such as it is) is unduly
22 expensive, even as it fails to provide timely and medically appropriate service to the
23 inmate population.

24 53) The Maxor Audit included a "Road Map" for revamping the pharmacy operations over a
25 three year period. The primary focus of the Road Map is implementing a sustainable,
26 patient-centered, and outcome-driven pharmacy process, with the goal of creating a cost-
27 effective CDCR managed and operated "best practice" pharmacy. The Road Map is
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1 designed to progress in stages—"crawl," "walk," and "run"—with each stage advancing
2 pharmacy standards based on the completion of the preceding stage. The Receiver
3 awarded the contract to implement the Road Map to Maxor. While the pharmacy project
4 is progressing, the completion of the initial steps of the Road Map has not ended and will
5 not end the pharmacy crisis. Significant work remains. A detailed update regarding the
6 pharmacy project is set forth in the Receiver's Fourth Bi-Monthly Report (at pp. 15-18).

7 54) In addition to the primary contract awarded to Maxor previously approved by the Court,
8 the Receiver must enter into a number of supplemental contracts to complete the
9 pharmacy operations project. For example, an essential component of the Maxor Road
10 Map is a central fill facility. Such a facility will provide greater standardization, quality
11 control and efficiency in drug dispensing throughout the State. There is no such facility
12 currently; instead, the Receiver must lease or purchase the necessary land and then build
13 out the facility. This facility must, in turn, be equipped with drug dispensing, packaging
14 and reclamation equipment. The Maxor Road Map also calls for the procurement of IT
15 resources necessary to establish connectivity between individual prison pharmacies, and
16 the development of a pharmacy information management system—without which the
17 Receiver will be unable to accomplish the Road Map's objective of centralized and
18 standardized practice and management.

19 55) All of the major contracts described above—build out of a central fill pharmacy,
20 procurement of dispensing, packaging and reclamation equipment, and the procurement
21 of a pharmacy information system – will be awarded after formal bidding according to the
22 Receiver's proposed alternative process. The lease or purchase of the central fill property
23 will likely be a sole source contract based on the unique characteristics, location and
24 availability of appropriate space. Other, smaller scale contracts peripheral to these larger
25 agreements, e.g., contracts with local vendors for installation of equipment for the
26 pharmacy IT system, will be procured in accordance with guidelines set forth in the
27 Receiver's proposed contract award process based on the particular circumstances of each
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1 contract.

2 **Complying With State Contracting Procedures Would Clearly Prevent The**
3 **Receiver From Completing His Tasks In A Timely Fashion**

4 56) The record before the Court, and all of the findings by the Receiver, clearly demonstrate
5 that State contracting procedures are much too slow and insufficiently nimble to
6 accommodate the Receiver's efforts to bring the projects described above to fruition or to
7 make meaningful change to the prison healthcare system in a timely fashion. From my
8 perspective—a perspective gained from more than a decade of work with this Court
9 concerning remedying unconstitutional conditions in California's prisons—it is
10 inconceivable that the Receiver could utilize State procedure to award the contracts
11 discussed above and still move forward at a pace acceptable for a receivership. If the
12 Receiver is required to comply with the very policies and procedures which led to the
13 receivership in California's prisons, his efforts for prompt and timely remedial work will
14 be thwarted to such a degree that the very purpose of the receivership will be defeated.

15 57) The projects described above are interlinked and interdependent. Improved pharmacy
16 operations require improved recordkeeping, data retrieval and document management
17 systems. Improved recordkeeping, data retrieval and document management systems
18 require improved and upgraded IT. The system's IT cannot be improved without
19 adequately trained personnel, and new hardware and software. Every function in the
20 system requires additional, usable space which in turn requires securing the land upon
21 which facilities will be built and then undertaking competent analysis, design and
22 construction of new facilities. Injecting State contracting procedure into even a part of
23 these multi-faceted, interdependent projects threatens to slow the Receiver's work to a
24 snail's pace at best and to bring it to a grinding halt at worst.

25 58) Equally clearly, if the Receiver were required to seek waivers one contract at a time, that
26 would likewise impede the Receiver's ability to move forward in a timely fashion and
27 will result in additional expense to the receivership estate and to perpetuation of the
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1 inadequate care that the Receiver has been charged with remedying.

2 **Receiver's Efforts To Find Alternatives To A Waiver Of State Law**

- 3 59) The Receiver has been mindful of the Court's concern that the Receiver comply with
4 State law or find alternatives to a waiver of State law if possible. However, the State
5 itself has indicated its inability to undertake the many contracts and projects described
6 above in the time frames that are necessary.
- 7 60) For example, Staff Counsel, Jared Goldman, and I have met with State representatives on
8 numerous occasions concerning specialty care contracts, hospital contracts and registry
9 contracts, among others. John Hummel, the Receiver's Chief Information Officer, has
10 raised on numerous occasions in discussions with State representatives that State
11 contracting procedure limits his ability to proceed with planned information technology
12 projects. The Receiver and I have conducted several meetings with State officials
13 concerning the contracting barriers erected by State law to design/build and other
14 alternative methods of timely, less expensive prison construction. At every meeting,
15 without exception, State officials have acknowledged that many serious barriers exist to
16 effectuating prompt remedial action. Furthermore, those State officials have consistently
17 been unable to suggest any alternatives consistent with State law and instead have
18 recommended that the Receiver "get an order from the Federal Court."
- 19 61) To the extent that, in the course of the meetings discussed above, State officials have
20 expressed any questions or concerns about the Receiver's need for a waiver of contracting
21 procedures or the substituted procedures that the Receiver has proposed in the
22 accompanying Application, the Receiver has endeavored to address those questions and
23 concerns in the Application and, at this point, does not anticipate opposition to the
24 Application from the State. Indeed, a number of State officials have reviewed the
25 Application and have pointed out additional statutes implicated by the Receiver's projects
26 that should be, and have been, included in the Receiver's request for a waiver.

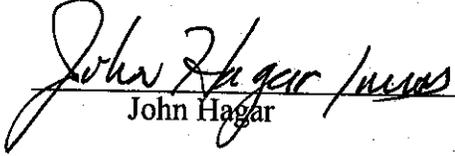
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Receiver's Plan to Monitor and Report Re Contracts

62) A specific concern raised by the State Officials with whom I have met concerning the Receiver's Application relates to the tracking and reporting about the contracts entered into by the Receivership that result from this motion. The Receiver agrees that the State should receive notice of all formal bidding and, in addition, that all contracts should be reported on a quarterly basis in a manner which adequately identifies each contract and how each contract flows from this motion. The Receiver's report will also provide adequate information concerning how the contract was developed and bid. I will be responsible for developing the manner and scope of the report. Given the cooperative nature of our discussions with the State concerning this motion, I do not anticipate problems reaching agreement concerning the format and scope of the reporting that will be required.

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

Dated: April 17, 2007



John Hagar