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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 MARCIANO PLATA, et al.,

12 *Plaintiffs,*

13 v.

14 ARNOLD SCHWARZENEGGER, et al.,

15 *Defendants.*

Case No. C01-1351 TEH

**DECLARATION OF JOHN HAGAR IN
SUPPORT OF RECEIVER'S
OPPOSITION TO MOTION OF NON-
PARTY MEDICAL DEVELOPMENT
INTERNATIONAL FOR ORDER
SHORTENING TIME**

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 opposition to the motion for an order shortening time brought by non-party
5 Medical Development International ("MDI"). The facts set forth herein are based upon
6 my own personal knowledge or upon information and belief based upon my investigation
7 into this matter.
- 8 2. In my capacity as Chief of Staff for the Receiver, I have general operational oversight of
9 most of the ongoing activities of the receivership and regularly confer with the Receiver
10 and other staff members regarding those activities to ensure that the Receiver's goals and
11 directives are being implemented.
- 12 3. In the Fall of 2006, the Receiver made the decision to assume direct control over
13 California Department of Corrections and Rehabilitation ("CDCR") employees
14 responsible for the processing of medical specialty contracts. To effectuate this decision,
15 34 CDCR employees from the CDCR's Office of Business Services physically moved to
16 the same building in Sacramento where the Receiver has his offices. Shortly thereafter, I
17 was informed by CDCR contract managers, who now reported to me, that two senior
18 CDCR officials were attempting to enter into a \$26 million multi-year contract with
19 Medical Development International ("MDI") without following the State's competitive
20 bid process.
- 21 4. When I commenced an investigation into the allegations, I discovered that, even though
22 MDI did not have a contract with the State of California, the same two CDCR officials –
23 *without informing the Receiver* – had allowed MDI to place staff into two prisons,
24 California State Prison, Los Angeles County ("LAC") and the California Correctional
25 Institute at Tehachapi ("CCI"). Then, *without competitive bidding and without a*
26 *contract*, MDI had commenced a program to provide specialty medical services at both
27 prisons. MDI began submitting monthly invoices for hundreds of thousands of dollars,
28 despite the fact that it had no valid contract with the State of California.

1 5. My initial concerns about MDI included the following:

- 2 a. The failure by CDCR officials and MDI to proceed with the normal competitive
3 bid contract process.
- 4 b. An attempt by CDCR officials to force the CDCR contract personnel who now
5 reported to me to approve the MDI contract based on the officials' interpretation
6 of Judge Henderson's *Order re State Contracts and Contract Payments Relating*
7 *to Service Providers for CDCR Inmate/Patients*, filed March 30, 2006. That
8 Order had been prepared, based on a report I filed as a Correctional Consultant in
9 *Plata*. I was convinced that the Court did not intend for that Order to be utilized
10 to avoid competitive bidding concerning the type of services proposed by MDI.
11 My concern about MDI intensified after I discovered a number of e-mails which
12 indicated that although CDCR contract employees, a CDCR attorney, and an
13 attorney from the Department of General Services all recommended that the
14 CDCR officials pushing the MDI contract seek my advice concerning the
15 proposed contract, those officials had failed to do so.
- 16 c. MDI is not licensed to practice medicine in California. CDCR and other State
17 attorneys had concluded that the services provided by MDI called for a scope of
18 work that violated the very strong prohibition in California on the "corporate
19 practice of medicine," *i.e.* the provision of medical services by business entities
20 that have not been licensed to practice medicine in California.
- 21 d. A number of somewhat serious billing irregularities concerning invoices
22 submitted by MDI.
- 23 e. Reports from health care personnel at one of the two prisons involved that MDI
24 had essentially hijacked all specialty services at that institution. In effect, instead
25 of MDI functioning as one of several alternative available providers for access to
26 specialty services in the community, MDI functioned as the *only* alternative –
27 even when more efficient and less expensive alternatives were available. My
28 subsequent review of the situation confirmed the report; for example, at one the

1 two prisons the use of CDCR telemedicine decreased by approximately 80%
2 following MDI's arrival at the prison.

3 f. The rate of payment demanded by MDI, through its billings, appeared to be
4 excessive, far more than needed for the services provided. Furthermore, although
5 MDI was providing services in Kern County, it demanded Medicare
6 reimbursement rates from Santa Clara County, a proposed contract provision
7 which, according to CDCR contract experts, had never been seen before.

8 6. Based on these concerns I contacted the Office of Inspector General ("OIG") and
9 requested a formal investigation concerning the MDI contract. That investigation is
10 continuing. At the same time, I recommended to the Receiver that we stop paying
11 invoices submitted by MDI, pending discussion with MDI and the completion of our own
12 and the OIG's investigations.

13 7. In early February 2006, the Receiver and I met with MDI and its attorneys. We expressed
14 our very strong concerns that MDI's services violated California law. We also indicated
15 concerns about two related, but independent issues: as noted above, the rates being
16 charged by MDI for its services seemed exorbitant and, furthermore, the Receiver could
17 not determine what the underlying rates that physicians under contract with MDI were
18 charging to or receiving from MDI. The Receiver underscored that he could not pay for
19 the services being rendered unless and until he was satisfied that MDI was acting
20 lawfully.

21 8. During the meeting, MDI's response to the concerns of the Receivership ranged from
22 threatening legal action, to threatening to discontinue services immediately at CCI and
23 LAC, to alleging that it was the innocent victim of misconduct by the CDCR and that it
24 wanted nothing more than to enter into a formal and legally binding agreement with the
25 State. At the conclusion of the meeting, MDI conceded that it was faced with a serious
26 business decision: either to cease doing business at LAC and CCI or to convince the
27 Receiver that its contracted activities did not violate California law. The Receiver
28 emphasized that his primary concern was protecting patient care. The Receiver urged

1 MDI to prove what it claimed, *i.e.*, that its business practices were legal; however, he
2 emphasized to MDI that if MDI made the decision to cease patient services at LAC and
3 CCI they should do so in a manner that provided for continuity of care. The Receiver
4 stated at the meeting that if MDI suddenly dumped both contracts in a manner that
5 jeopardized patient care, as MDI had threatened to do, he would not utilize MDI's
6 services anywhere else in California's prison system.

7 9. The Monday following this meeting I received a telephone call from Timothy Heffernan,
8 the MDI attorney who had attended the meeting with the Receiver. Mr. Heffernan told
9 me that MDI had made the decision to prove to the Receiver that its services conformed
10 to California law. He promised to move quickly in this regard, understanding that during
11 the interim MDI would continue to provide services at CCI and LAC *and* that it would
12 not be paid for such services unless and until it proved that the services were legal. In
13 addition, Mr. Heffernan and I discussed the Receiver's concerns about the price of MDI
14 services, as well as the Receiver's request that MDI provide him with factual data
15 showing what MDI was paying to physician providers compared to what MDI would be
16 paid under its proposed contract. While I was assured that such data would be
17 forthcoming, as clarified in the Declaration of Martin H. Dodd filed herewith, MDI has
18 never provided the Receivership this crucial information.

19 10. MDI's subsequent failure to prove that its services are legal in California is described
20 more fully in Mr. Dodd's declaration.

21 11. Because MDI had threatened and continued to threaten to discontinue specialty services
22 at CCI and LAC, I established a task force of clinical providers and contract staff to
23 develop an alternative method of providing adequate specialty services at the two prisons
24 in the event that MDI carried out its threats. A comprehensive program was developed
25 which calls for on-site clinical services, improved administrative, clinical and custody
26 coordination, and a new program to attract and retain a network of providers. This
27 program has been approved for implementation.

28 12. While efforts were being made to develop a plan for substitute specialty services at CCI

1 and LAC, I began to receive anecdotal information that – in direct contrast to claims by
2 MDI – access to specialty care at CCI and LAC remains inadequate. Therefore, to gain an
3 accurate assessment of MDI’s performance, I formed a four-person team comprised of a
4 competent correctional physician/administrator, a registered nurse, a correctional expert,
5 and a specialty provider administrator. This week, *i.e.*, the week of April 2, 2007, this
6 team went on site to inspect CCI and LAC. I conducted a telephone conference with the
7 team on Thursday April 5, 2007 and was informed of the following:

- 8 a. Contrary to the allegations in MDI’s moving papers, provisions for special care at
9 CCI and LAC are in crisis. For example, at LAC, although there are 196
10 speciality care cases scheduled for the remainder of April 2007, there are
11 approximately 450 patients who need specialty services who have not yet been
12 scheduled. Of these, 135 of these patients *have been waiting for specialty care*
13 *for more than 90 days.*
- 14 b. The identical systemic problems which have plagued the CDCR effort to provide
15 prisoner/patient specialty care at other prisons, *e.g.*, poor scheduling, the failure to
16 develop a network of competent providers, inadequate numbers of support staff,
17 inadequate numbers of correctional officer escorts, poor utilization management,
18 the inability to attract providers to come into prisons to deliver care, etc. continue
19 to plague the specialty care services at LAC and CCI. Simply stated, MDI has not
20 demonstrated any “quick fix” expertise.
- 21 c. To the extent that improvements in specialty care services have been made at CCI,
22 they are primarily the result of hard work on the part a CDCR Registered Nurse,
23 and not MDI.
- 24 d. During the latter part of March, MDI discontinued providing “in-prison” specialty
25 services at CCI, without informing the Receiver.
- 26 e. At the same time, MDI implemented a policy and practice of refusing to schedule
27 patients for outside specialty consultations if MDI estimated that the cost of the
28 specialty care would exceed \$5000, regardless of the seriousness of the patient’s

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health care problem. Again, this policy was implemented without MDI informing the Receiver.

13. Alarmed by what appeared to be a blatant attempt by MDI to put profits before patient care, I asked my team to implement the Receiver's backup plan for substitute specialty services and instructed the Health Care Managers and Wardens at both CCI and LAC to discontinue utilizing MDI for any specialty services, effective Friday, April 6, 2007.
14. The Office of the Receiver will be forwarding to MDI a demand for the return of any CDCR patient records that are in MDI's possession (to be delivered in a HIPPA compliant manner). Without these records, timely follow-up and continuity for hundreds of prisoner/patients will be in jeopardy. In the event that MDI does not comply immediately, the Receiver will bring a motion to compel MDI officials to appear before the Court and show cause why they should not be held in contempt for a violation of page 8, paragraph VI. of the Order Appointing Receiver, filed February 14, 2006.
15. There is no need for the Court to grant MDI's motion for an order shortening time. MDI no longer provides specialty care at CCI and LAC; indeed, patient care at both prison will be far better served by the new team approach developed by the Office of the Receiver – at considerably lower cost to California's taxpayers.

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

Dated: April 6, 2007



John Hagar