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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

**RECEIVER'S REPLY MEMORANDUM  
IN SUPPORT OF HIS 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**

1 Receiver Robert Sillen (“Receiver”) submits this Reply Memorandum in support of his  
2 Supplemental Application No. 1 for an order (1) waiving any requirement that the Receiver  
3 comply with State statutes, rules, regulations and/or procedures governing the notice, bidding,  
4 award and protests (collectively “State Contracting Procedures”) with respect to the contracts  
5 necessary to implement certain projects involving radiology services, clinical laboratory services,  
6 nursing leadership development, physician credentialing and medical specialty services  
7 administration described below; and, (2) approving substituted notice, bidding and contract  
8 award procedures for such projects identical in form procedures approved by this Court in its  
9 order, dated June 4, 2007, granting Receiver’s Master Application for a Waiver of State  
10 Contracting Law for certain projects (the “June 4, 2007 Order”). The Receiver also seeks an  
11 order *nunc pro tunc* approving a November 27, 2006 contract with the Association of California  
12 Nurse Leaders (“ACNL”) concerning nursing leadership training.

13 **I. THE RECEIVER IS WILLING TO PROVIDE THE INFORMATION**  
14 **REQUESTED BY PLAINTIFFS WITHOUT THE NECESSITY FOR AN ORDER.**

15 Defendants do not oppose the Receiver’s Supplemental Application. Plaintiffs’ counsel  
16 have filed a “Response” in which they state that, “Plaintiffs do not oppose any aspect of the  
17 Receiver’s Motion.” (Plaintiffs’ Response at 2:3). Plaintiffs do request, however, that the Court  
18 require the Receiver (1) to provide plaintiffs with the assessments, critiques, designs, and  
19 roadmaps for the radiology and clinical laboratory projects within thirty days of receiving them  
20 from the respective contractors in phase one of each project (Plaintiffs’ Response at 2:14-18) and  
21 (2) to notify plaintiffs’ counsel promptly of the prison or prisons chosen as the “pilot” for  
22 medical specialty services administration once the Receiver engages any medical administrative  
23 organization to provide local administrative support for the coordination of specialty services  
24 (Plaintiffs’ Response at 2:26-3:3).

25 The Receiver notes that plaintiffs’ request is not properly before the Court since they have  
26 not brought their own motion. Civil L.R. 7-1. Although plaintiffs are not entitled to an order  
27 requiring the Receiver’s compliance with their request, the Receiver is willing to provide  
28

1 plaintiffs the information they seek and will make good faith efforts to make it available to them  
2 within 30 days of receipt by the Receiver.

3 **II. NUNC PRO TUNC APPROVAL OF PHASE ONE OF THE CLINICAL**  
4 **LABORATORY SERVICES PROJECT IS UNNECESSARY SINCE THE**  
5 **RECEIVER HAS NOT AND WILL NOT ENTER A CONTRACT FOR THAT**  
6 **PROJECT UNTIL THE COURT APPROVES THE WAIVER FOR THAT**  
7 **PROJECT IN THIS APPLICATION.**

8 Plaintiffs' counsel suggest that the Receiver should obtain *nunc pro tunc* approval for  
9 phase one of the clinical laboratory services project because the Receiver issued a Request For  
10 Proposal ("RFP") for the project before the Court has ruled on this Supplemental Application  
11 No. 1. Contrary to counsel's suggestion, the Receiver has not entered into a contract for such  
12 services nor will he before the Court has ruled on this Supplemental Application. Declaration of  
13 John Hagar ("Hagar Decl.") ¶ 3, filed herewith. Instead, to speed up the process and avoid  
14 unnecessary delay, Receiver issued the RFP pending approval of this Supplemental Application.

15 *Id.*

16 This is precisely the same procedure the Receiver followed in connection with the  
17 selection of a Program Manager related to the preliminary planning, programming and prototype  
18 development for the 5000 Multi-Purpose Medical Bed Construction Project and the San Quentin  
19 Medical Facility Construction Project described in his Master Application for a waiver of state  
20 contracting procedures. Master App. at 17:26-18:13 (5000 Multi-Purpose Medical Bed  
21 Construction Project) and 20:10-14 (San Quentin Medical Facility Construction Project). Hagar  
22 Decl. ¶ 4. Plaintiffs' counsel had not one word to say about that procedure in connection with  
23 the Master Application nor was *nunc pro tunc* approval required.<sup>1</sup> Here, as with the those earlier  
24 projects, the Receiver will not enter into a formal contract concerning the clinical laboratory  
25 services project unless and until the Court approves the project as part of this Supplemental  
26 Application.

27 <sup>1</sup> Plaintiff's counsel's decision to make an issue of this non-issue is but another example in their recent campaign to  
28 carp at and criticize the Receiver for anything and everything, no matter how benign. All they are accomplishing by  
this behavior is to divert the Receiver's time and energy and to increase expense to the receivership estate  
unnecessarily.

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**CONCLUSION**

Given the critical need detailed in the Receiver's opening papers, the Receiver respectfully requests an order (1) waiving any requirement that the Receiver comply with State Contracting Procedures only with respect to the contracts necessary to complete the projects described in this Application; and, (2) approving the same substituted notice, bidding and award procedures approved by the Court in its June 4, 2007 Order for such contracts. The Receiver also respectfully requests an order *nunc pro tunc* approving the November 27, 2006 contract with ACNL.

The Court should deny the requests made by plaintiffs' counsel in their Response to this Supplemental Application.

Dated: July 17, 2007

FUTTERMAN & DUPREE LLP

By: \_\_\_\_\_ /s/  
Martin H. Dodd  
Attorneys for Receiver Robert Sillen

**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 July 17, 2007 I served a copy of the following document(s):

**RECEIVER'S REPLY MEMORANDUM IN SUPPORT OF HIS 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.

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BY OVERNIGHT COURIER SERVICE: I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.

BY FACSIMILE: I caused said document(s) to be transmitted to the telephone number(s) of the addressee(s) designated.

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