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7  
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

**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**

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1 INTRODUCTION

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

12 The Receiver also seeks an order *nunc pro tunc* approving a November 27, 2006 contract  
13 with the Association of California Nurse Leaders (“ACNL”) concerning nursing leadership  
14 training.

15 The Receiver makes this application on the grounds that if he were required to comply  
16 fully with existing State Contracting Procedures, he would be unreasonably constrained in his  
17 ability to accomplish the goals the Court has set for him. In order for the Receiver to fulfill in a  
18 timely fashion the charge this Court has given him, the Receiver requires the waiver requested in  
19 this application so that he is not hampered by the same bureaucratic procedures that have  
20 prevented the State itself from solving the problems of the California prison medical delivery  
21 system.

22 The Receiver seeks a waiver for (a) radiology services, (b) clinical laboratory services, (c)  
23 nursing leadership development, (d) physician credentialing, and (e) medical specialty services  
24 administration because each project area is critical to the overall success of the Receiver’s  
25 systemwide overhaul of the medical system in the prisons. CDCR’s poor management in these  
26 areas has created tremendous fiscal waste in addition to substandard care. The Receiver’s Plan  
27 of Action will streamline services and will ensure competent care providers, which will in turn  
28 reduce state expenditures in these areas. Moreover, adherence to the streamlined contracting

1 procedures approved by this Court in its June 4, 2007 Order will further the goals of the State  
2 Contracting Procedures but without stalling Receiver’s progress in implementing the changes  
3 necessary to provide constitutional medical care.

4 The State Contracting Procedures should also be waived for the ACNL contract *nunc pro*  
5 *tunc*, which Receiver entered on an emergency basis after the Division of Correctional Health  
6 Care arranged to have ACNL provide nursing leadership training without having a State contract  
7 to do so. As the services rendered by ACNL were necessary and beneficial as described more  
8 fully below, Receiver also seeks *nunc pro tunc* approval of the ACNL contract.

9 **FACTUAL BACKGROUND**

10 **A. Appointment of Receiver**

11 In the face of the unprecedented and ongoing crisis in the California prison health care  
12 system and the apparent inability of the State to address that crisis, on February 14, 2006, this  
13 Court appointed the Receiver and gave him a mandate to move forward expeditiously to remedy  
14 the deficiencies in the system. The Court vested in the Receiver the duty to control, oversee,  
15 supervise and direct all administrative, personnel, financial, accounting, contractual, legal and  
16 other operational functions of the medical delivery component of the California Department of  
17 Corrections and Rehabilitation (“CDCR”). In addition to those very broad powers, this Court  
18 established a procedure by which the Receiver could request waivers of State laws and contracts  
19 when necessary for him to accomplish his work.

20 In the event, however, that the Receiver finds that a state law, regulation, contract,  
21 or other state action or inaction is clearly preventing the Receiver from developing  
22 or implementing a constitutionally adequate medical health care system, or  
23 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.

24 Order Appointing Receiver (“Order”) filed February 14, 2006, p. 5:4-9.

25 **B. Receiver’s Master Application for a Waiver of State Contracting Law**

26 On April 17, 2007, the Receiver filed a master application for an order (1) waiving any  
27 requirement that the Receiver comply with State Contracting Procedures with respect to the  
28 contracts necessary to implement certain projects described therein; and (2) approving substituted

1 notice, bidding and contract award procedures for such projects (the “Master Application”). In  
 2 that Master Application, the Receiver set out in some detail the complex web of State  
 3 Contracting Procedures impeding his ability to fulfill his court-ordered mandate to provide  
 4 constitutional medical care to the State’s prisoners, and his proposed process to streamline those  
 5 procedures to accomplish the goals the Court has set out for him. The Master Application was  
 6 designed to thoroughly address the legal and factual rationale for waivers of State Contracting  
 7 Procedures in the context of this receivership, and to permit subsequent follow-up waiver  
 8 applications (such as this one) without the need to repeat such rationale. Master Application  
 9 3:11-15.

10 **C. The June 4, 2007 Order Granting the Master Application**

11 In the June 4, 2007 Order, the Court granted the Receiver’s Master Application, waiving  
 12 any requirement that the Receiver comply with State Contracting Procedures with respect to the  
 13 contracts necessary to implement the projects described in the Master Application. In that Order,  
 14 the Court noted “that absent a waiver, the Receiver would ultimately be constrained by the very  
 15 burdens that have impeded the State in dealing with the undisputed challenges in the prison  
 16 health care system. It would be a hollow gesture to appoint a Receiver only to let him to become  
 17 entangled in the same bureaucratic quagmire that has thwarted prior efforts to provide  
 18 constitutional medical care. As such, the Court concludes that the instant application for a  
 19 waiver has merit.” June 4, 2007 Order at 4:23-5:2 (citations and quotations omitted).

20 The Court also approved a streamlined contracting procedure for the Receiver’s use in  
 21 connection with the projects listed in the Master Application. The three alternative bidding  
 22 processes approved in the June 4, 2007 Order are:

23 (1) Expedited Formal Bids

24 The Receiver shall utilize the expedited formal bidding process on all higher cost  
 25 contracts – i.e., those contracts whose total contract price is estimated to be valued at \$750,000 or  
 26 more. The expedited formal bidding process shall also presumptively apply to contract whose  
 27 total contract price is estimated to be valued at between \$75,000 - \$750,000, unless the Receiver  
 28 determines that urgent circumstances require use of the urgent informal bidding process. June 4,

1 2007 Order 6:6-11.

2 *Expedited Formal Bidding Procedures*

- 3 1. The Receiver shall develop and issue a Request for Proposal (“RFP”) and will
- 4 formally solicit at least three bids by posting the RFP on the Receiver’s website
- 5 and publishing the solicitation in a trade publication of general circulation and/or
- 6 an internet-based public RFP clearinghouse for a period of at least one week (7
- 7 calendar days). The Receiver shall notify the parties whenever an RFP is posted
- 8 on the Receiver’s website. The Receiver may, in his discretion, identify and
- 9 solicit additional bidders. If fewer than three bidders respond to the RFP, the
- 10 Receiver shall make reasonable, good faith efforts to identify additional bidders
- 11 and solicit their responses to the RFP.
  
- 12 2. The period for response to the RFP shall be at least 30 days.
  
- 13 3. The Receiver will appoint a 3-person selection committee consisting of persons
- 14 with relevant experience, none of whom are affiliated with, or otherwise have any
- 15 conflict with, any bidder or the Receiver (or any member of his staff).
  
- 16 4. Criteria for selection of the successful bidder may, in the reasonable determination
- 17 of the Receiver, include but not be limited to such factors as cost, reputation of the
- 18 bidder for responsiveness and timeliness of performance, quality of service or
- 19 product performance, ability of the bidder to provide innovative methods for
- 20 service delivery, and other similar factors the Receiver deems relevant.

  - 21 a. The Receiver (or, at his direction, the selection committee) may conduct
  - 22 interviews of some or all bidders, answer questions posed by bidders and
  - 23 provide additional information to bidders. For contracts whose total
  - 24 contract price is estimated to be valued at \$750,000 or more, the selection
  - 25 committee shall conduct interviews of at least the tope two bidders.
  - 26 b. The selection committee shall provide a recommendation to the Receiver.
  - 27 c. The Receiver will retain the discretion to reject the recommendation of the
  - 28 selection committee and award the contract to another bidder deemed
  - more qualified or to no one.

  
- 5. The Receiver shall list all bidders in his quarterly progress reports to the Court
- and identify the successful bidder. If fewer than three bidders responded to the
- RFP and/or any bidder responded to a direct solicitation by the Receiver, the
- Receiver will so note that fact in the report.

23 June 4, 2007 Order 6:13-7:9.

24 (2) Urgent Informal Bids

25 The Receiver may use an alternative second process when urgent circumstances require  
26 the Receiver to move more quickly than permitted by the expedited formal bidding process, but  
27 competitive bidding is still required to the extent possible. The Receiver may utilize the urgent  
28 informal bidding process for contracts whose total contract price is estimated to be valued at

1 between \$75,000 - \$750,000 if he determines that urgent circumstances do not permit sufficient  
2 time to utilize the expedited formal bidding process because:

3 (1) the additional delay that would result from utilizing the expedited formal bidding  
4 process would substantially risk endangering the health or safety of inmates or staff, or

5 (2) the contract is essential to the "critical path" of a larger project, and the additional  
6 delay that would result from utilizing the expedited formal bidding process would significantly  
7 interfere with timely or cost-effective completion of the larger project.

8 The Receiver may also utilize the urgent informal bidding process for any contract whose  
9 total contract price is reasonably estimated to be valued at less than \$75,000.

10 June 4, 2007 Order 7:11-25.

11 *Urgent Informal Bidding Process*

- 12 1. The Receiver will make reasonable, good faith efforts to identify and solicit at  
13 least three proposals and will accept additional unsolicited bids that may be  
submitted.
- 14 2. The Receiver may, in his discretion, develop an RFP prior to soliciting bidders,  
15 establish a response period with respect to any such RFP and/or establish a  
selection committee to assist in the selection of the successful bidder.
- 16 3. Criteria for selection of the successful bidder, in the reasonable determination of  
17 the Receiver or his staff, may include, but will not be limited to, cost, reputation  
of the contractor for responsiveness and timeliness of performance, quality of  
18 product or service, ability of the bidder to provide innovative methods for service  
delivery, and other similar factors the Receiver deems relevant.
- 19 4. The Receiver will retain the discretion to award the contract to any bidder or to no  
20 bidder.
- 21 5. The Receiver will identify all bidders, including the successful bidder, in his  
22 quarterly progress reports to the Court. For contracts whose total contract price is  
estimated to be between \$75,000 - \$750,000, the Receiver shall also provide the  
23 explanation for his determination that one (or both) of the criteria for using the  
urgent informal bid process were satisfied. If the Receiver is unable to obtain at  
least three bidders, he will note that fact in the report.

24 Sole Source Bidding

25 Finally, the Receiver may utilize a sole source when he has determined, after reasonable  
26 effort under the circumstances, that there is no other reasonably available source. Sole source  
27 bidding shall only be used as a last resort. The Receiver shall identify any contract that is sole-  
28 sourced in the Receiver's quarterly progress reports to the Court along with an explanation as to

1 the basis for the Receiver's determination that no other sources are reasonably available.  
2 June 4, 2007 Order 8:16-23.

3 **D. Description of the Major Projects that Are the Subject of this Supplemental**  
4 **Application<sup>1</sup>**

5 As the Court is aware, the Receiver is proceeding to address the crisis in the prison health  
6 care system on multiple fronts simultaneously. In the Receiver's Plan of Action, he presents an  
7 initial roadmap for the improvements necessary to raise the level of prison medical care up to  
8 Constitutional levels. Part of the Plan of Action provides an initial direction for (a) radiology  
9 services, (b) clinical laboratory services, (c) nursing leadership development, (d) physician  
10 credentialing, and (e) medical specialty services. Each of these projects is a significant  
11 component of the overall reconstruction of the prison health care system and each is essential to  
12 the proper functioning of the system.

13 As set forth in more detail below, CDCR's management of (a) radiology services, (b)  
14 clinical laboratory services, (c) nursing leadership development, (d) physician credentialing, and  
15 (e) medical specialty services has been fiscally inefficient and wasteful. Receiver's approach will  
16 not only provide significantly better healthcare for inmates, it will do so in a fiscally sound  
17 manner, eliminating much of the waste of the current system.

18 For example, for radiology services, each prison has developed its own imaging program.  
19 Some perform the services in-house while others contract out, often at widely disparate rates.  
20 Several prisons have purchased new digital imaging systems that are mutually incompatible.  
21 Because there is no infrastructure to store digital images, all must be stored in hard copy form,  
22 making it expensive and difficult to access information needed for inmates' medical care.  
23 Centralizing and standardizing radiology service will increase the quality of the service and, once  
24 the infrastructure is in place, should reduce the cost of radiology services.

25 Similar problems exist with clinical laboratory services. Each prison has developed its  
26 own clinical laboratory program. Some prisons conduct their own labs while others contract out  
27 the services, often at widely disparate rates. The quality of the laboratories also varies widely.

28 <sup>1</sup> The facts set forth in this section are based on the accompanying Declaration of John Hagar.

1 Given that CDCR's healthcare information technology infrastructure has suffered from a decade  
2 of neglect, the current network is insufficient to support an enterprise laboratory information  
3 system; in many cases lab results are not being routinely made available to providers who  
4 ordered them.

5 As the Court has noted, the lack of nursing leadership and supervision have caused severe  
6 problems in the delivery of healthcare to the state's inmates which in turn have caused undue  
7 expense by simple health issues turning into more complex and life-threatening ones. Similarly,  
8 the failure to have a proper physician credentialing program in place has perpetuated incompetent  
9 medical care in the prisons, also ultimately increasing the cost of that care. The same problem  
10 exists with CDRC's provision of specialty medical services, which lacks coordinated  
11 administration, resulting in medical failures and excessive cost.

12 In the Receiver's Supplemental Application No. 1, he seeks authorization to expedite  
13 contracts for (a) radiology services, (b) clinical laboratory services, (c) nursing leadership  
14 development, (d) physician credentialing, and (e) medical specialty services on the grounds that  
15 such projects are both necessary for the delivery of constitutional health care and will ultimately  
16 result in fiscal savings given the current inefficiencies in the care delivered. The projects  
17 requiring contracts that the Receiver is currently undertaking or which are planned are described  
18 in more detail below.

19 **1. Radiology Services**

20 *a. Description of the problem.* The scope of imaging services required by  
21 inmate/patients includes plain film radiology, CT, MRI, ultrasound, nuclear medicine, dental  
22 scans, and angiography. Until recently, healthcare operations in the 33 prisons were confined to  
23 "silos" with no central planning of services. As a result, each facility has been responsible for  
24 developing its own imaging services program, and there is no standardization in imaging  
25 services. Several facilities maintain their own CT scanners, while others contract out for those  
26 services. Neighboring prisons may have contracts with different radiology medical groups at  
27 wildly different rates and different levels of service. Some facilities have outdated equipment  
28 dating from the 1980s; others have purchased new imaging devices that they lack the expertise

1 and equipment to install. Several prisons have purchased and installed new digital imaging  
2 systems that are mutually incompatible with one another. Because CDCR's healthcare  
3 information technology infrastructure has suffered from a decade of neglect, the current network  
4 is insufficient to support a picture archiving and communication system ("PACS"), and all digital  
5 images must be printed and stored as hard copies. Additionally, facilities in extremely remote  
6 California locations have had great difficulty recruiting and retaining radiology staff and  
7 identifying neighboring radiology groups that can provide timely reads of films.

8           *b. Description of the Project.* The Receiver plans to design, pilot and  
9 implement a statewide, centrally managed approach to imaging and radiology, including  
10 equipment, supplies, staffing, training, certification, external contracts and information systems.  
11 Plan of Action, Objective B.12.1. This redesign of imaging services will occur in concert with  
12 other improvements in the healthcare system, including overhauls of information technology and  
13 telemedicine, which will provide the infrastructure to support PACS and teleradiology in the  
14 future.

15           In the first phase of the project, the Receiver will engage a contractor to perform an  
16 operations assessment of existing CDCR imaging services and make recommendations on how to  
17 restructure the program for maximum benefit to the healthcare mission of CDCR. Specifically,  
18 the Receiver is seeking one or more contractors who will: (1) provide an assessment of the  
19 current state of imaging services, including capabilities, staffing, organizational structure, and  
20 technical infrastructure; (2) provide a critique of the existing system in light of currently  
21 available technology and industry best practices; (3) estimate the return on investment for the  
22 establishment of centralized radiology operations, including staffing, capital equipment  
23 investment, PACS, supplies and outsourcing or "insourcing" of radiology reads; (4) design an  
24 appropriate imaging system for the prisons; and, (5) develop a road map for reaching the  
25 envisioned design. In the second phase of the project, the Receiver plans to engage one or more  
26 contractors as may be necessary to implement the program developed through the steps described  
27 above.

28

1           c.       *The contracts necessary for implementation of the Project.* The Receiver  
2 plans to engage one or more consultants to accomplish the objectives described above. The  
3 Receiver plans to competitively bid both phases of the project. Receiver will utilize the  
4 Expedited Formal Bidding Procedures set forth in the Court's June 4, 2007 Order for Phase One  
5 of the project. Whether Expedited Formal Bidding or Urgent Informal Bidding is utilized with  
6 respect to Phase Two will depend largely on the scale of the recommendations developed in the  
7 first phase.

8           **2.       Clinical Laboratory Services**

9           a.       *Description of the problem.* Each prison facility has been responsible for  
10 developing its own clinical laboratory program. Consequently, there is no standardization in  
11 laboratory services and there are disparate levels of quality among the various prisons. The  
12 scope of clinical laboratory services currently provided to inmates on-site vary widely and may  
13 include specimen collection, pre- and post-analytical processing of specimens, and testing for  
14 hematology, basic chemistries, coagulation studies, toxicology, endocrinology, urinalysis, and  
15 rapid plasma reagin ("RPR"). Several facilities maintain their own clinical laboratories  
16 (performing as many as 8000 tests a month), while others contract out for all lab tests.  
17 Neighboring prisons may have contracts with different reference laboratories at substantially  
18 different rates and different levels of service. Some facilities have outdated equipment dating  
19 from the 1980s; others have purchased new analytic equipment that they lack the expertise and  
20 equipment to install.

21           Additionally, because CDCR's healthcare information technology infrastructure has  
22 suffered from a decade of neglect, the current network is insufficient to support an enterprise  
23 laboratory information system; in many cases lab results are not being routinely made available  
24 to providers who ordered them. Additionally, facilities in extremely remote California locations  
25 have had great difficulty recruiting and retaining qualified laboratory staff and identifying facility  
26 space for lab functions such as phlebotomy and pre-analytical processing.

27           b.       *Description of the Project.* The Receiver plans to design, pilot and  
28 implement a statewide, centrally managed approach to clinical laboratory services, including

1 equipment, supplies, staffing, training, certification, external contracts and information systems.  
2 Plan of Action, Objective B.12.2. This redesign of lab services will occur in concert with other  
3 improvements in the healthcare system, including overhauls of information technology and  
4 telemedicine, which will provide the infrastructure to support an enterprise laboratory  
5 information system.

6 In the first phase of the project, the Receiver plans to engage a contractor to perform an  
7 operations assessment of existing CDCR clinical lab services and make recommendations on  
8 how to restructure the program for maximum benefit to the prison medical system. Specifically,  
9 the Receiver is seeking one or more contractors who will: (1) provide an assessment of the  
10 current state of clinical laboratory services, including capabilities, staffing, contracts, licensure,  
11 organizational structure, and technical infrastructure; (2) provide a critique of the existing system  
12 in light of currently available technology and industry best practices; (3) estimate the return on  
13 investment for the establishment of centralized clinical laboratory operations, including staffing,  
14 capital equipment investment, laboratory information system, supplies and shared reference  
15 laboratory contracts; (4) develop a design for the future prison clinical laboratory services; and,  
16 (5) provide a road map, including estimated cost and duration of effort, for the Receivership to  
17 achieve the envisioned design. In the second phase of the project, the Receiver plans to engage  
18 one or more contractors as may be necessary to implement the program developed through the  
19 steps described above.

20 c. *The contracts necessary for implementation of the Project.* The Receiver  
21 plans to engage one or more consultants to accomplish the objectives described above. The  
22 Receiver plans to competitively bid both phases of the project. Receiver will utilize the  
23 Expedited Formal Bidding Procedures set forth in the Court's June 4, 2007 Order for Phase One  
24 of the project. Whether Expedited Formal Bidding or Urgent Informal Bidding is utilized with  
25 respect to Phase Two will depend largely on the scale of the recommendations developed in the  
26 first phase.

27

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1           **3. Nursing Leadership Development**

2           *a. Description of the problem.* The Court has found that “a lack of medical  
3 supervision in the prisons is a major contributor to the crisis in CDCR medical delivery.”  
4 October 5, 2005 Findings of Fact and Conclusions of Law Re Appointment of Receiver  
5 (“FFCL”), pg. 14. At the institutional level, there are very few managers and supervisors that are  
6 competent. *Id.* Aggravating the problem is a chronic high vacancy rate among supervisors. *Id.*,  
7 pg. 15. In fact, “[m]any line-staff, including both physicians and nurses, work without any  
8 supervision whatsoever.” *Id.*

9           “This lack of leadership and supervision has resulted in a failure to correct the myriad  
10 problems within the CDCR medical clinics. Such unaddressed problems have made the  
11 provision of adequate medical care impossible and clearly have resulted in patient deaths.” *Id.*,  
12 pg. 15 (internal citations omitted). Specific problems in nursing include, for example:

13           . . . CDCR nurses often fail to perform basic functions and refuse to carry out specific  
14 physician orders. [The Court’s nursing Expert] also found that a number of nurses were  
15 not even certified in basic CPR. At certain prisons, nurses often fail to identify urgent  
16 medical issues that require immediate referral to a physician. Even where face-to-face  
17 triage is implemented, nurses often fail to take vital signs or conduct examinations.  
Nurses then often fail to adequately assess patients and dispense appropriate over-the-  
counter medications for problems. [¶] Additionally, the evidence shows that those  
nurses who fail to perform basic duties over an extended period of time are not  
disciplined.

18 *Id.*, pg. 14 (internal citations omitted).

19           *b. Description of the Project.* As described in the Receiver’s April 17, 2007  
20 Master Application, the Receiver is actively engaged in a major recruitment and hiring project to  
21 fill clinical positions, including nursing leadership positions. Receiver’s Master Application,  
22 pgs. 22-24; *see also* Plan of Action, Objectives A.8.3., A.8.6. However, immediate, short-term  
23 measures to strengthen nursing leadership must also be taken. Thus, the Receiver intends to  
24 contract with one or more nursing registries capable of providing an immediate infusion of  
25 qualified supervisory nurses into prison facilities. In addition, the Receiver intends to contract  
26 with one or more professional nurse training organizations to enhance the skills of supervisory  
27 nurses already in the prison system. Plan of Action, Objective A.8.5.

1           c.       *The contracts necessary for implementation of the Project.* The Receiver  
2 plans to engage one or more entities to accomplish the objectives described above. He plans to  
3 competitively bid the supervisory nurse registry contract or contracts and supervisory nurse  
4 training contracts using the Expedited Formal Bid Process set forth in the Court's June 4, 2007  
5 Order.

6           **4.       Credentialing**

7           a.       *Description of the problem.* A well run healthcare delivery system  
8 ordinarily screens out incompetent physicians (1) by applying an appropriate initial screening of  
9 each physician, and (2) on an ongoing basis, by assessing the quality of the physicians through a  
10 peer review or performance appraisal process. The initial qualifying review is often referred to  
11 as "credentialing." The CDCR credentialing process, however, has been largely deficient. The  
12 CDCR historically hired any physician who had "a license, a pulse and a pair of shoes." FFCL,  
13 pg. 8. In addition, the CDCR has failed to ensure that physicians' practices are limited to the  
14 roles for which they were vetted. As found by the Court, "[t]he CDCR's high number of  
15 incompetent or unqualified doctors is due in part to defendant's failure to track physician  
16 credentials and to remain cognizant of the areas of practice in which their board-certified doctors  
17 are certified." *Id.*, pg. 31. "[M]any CDCR doctors are not qualified to practice within the type of  
18 medicine required by their position and practice outside their area of medical expertise." *Id.*, pg.  
19 32.

20           b.       *Description of the project.* As set forth in his Plan of Action, the Receiver  
21 is now developing a human resources program that will "[r]estore and standardize competency  
22 levels of clinical staff based on health care industry standards." Plan of Action, Objective A.8.1.  
23 This will include developing "adequate leadership and support for medical staff credentialing,  
24 privileging, and peer review . . ." (Plan of Action, Objective A.8.5.3.), and implementing "an  
25 information system to track credentialing and education requirements including Continued  
26 Medical Education (CME) and Continued Education Units (CEU)." Plan of Action, Objective  
27 A.8.5.3.1.

28

1           c.       *The contracts necessary for implementation of the Project.* The Receiver  
2 intends to obtain goods and services that are necessary for supporting the CDCR's credentialing  
3 program, for example, engaging a vendor or vendors capable of providing the expertise and  
4 technology necessary for implementing an information system for tracking credentialing and  
5 education requirements. The Receiver anticipates that the value of the contracts necessary for  
6 implementing the project will be relatively small. Receiver anticipates using the Urgent Informal  
7 Bidding process as set forth in the June 4, 2007 Order for the credentialing goods and services.  
8 Time is of the essence with respect to obtaining a viable credentialing system given the  
9 substantial risk to inmate health and safety caused by hiring and retaining unqualified medical  
10 staff.

11           **5. Medical Specialty Services—Administration**

12           a.       *Description of the problem.* As previously found by the Court,  
13 "Defendants have failed to provide patients with necessary specialty services. Patients with very  
14 serious medical problems often wait extended periods of time before they are able to see a  
15 specialist due to unnecessary and preventable delays." FFCL, pg. 24. "Even when patients do  
16 see a specialty consultant, medical staff often do not follow-up on the specialist's  
17 recommendations." *Id.* Factors contributing to these failures are physician incompetence and  
18 dysfunctional contract processing and payment systems, each of which is being addressed by  
19 other initiatives of the Receiver. Another problem—the thrust of this project—is the dysfunction  
20 in the administrative systems which support specialty services, for example, provider network  
21 *development*, patient scheduling, transportation, and medical record transmission.

22           b.       *Description of the project.* On a pilot basis, the Receiver intends to  
23 engage a medical administrative services organization to provide local administrative support for  
24 the coordination of specialty services. Based on the proposals received, the selected contractor or  
25 contractors may, for example, provide services related to provider development and coordination,  
26 patient scheduling, medical record transmission, and claim processing. Plan of Action,  
27 Objectives A.4.3., A.4.4., A.6.1.4., A.6.1.5., A.6.3., A.8.4. In addition, the Receiver intends to  
28 pilot and implement an information system application to support special services scheduling.

1 Plan of Action, Objective D.5.2. Following an assessment of the success of the pilot projects,  
2 these efforts may be expanded to additional institutions.

3 c. *The contracts necessary for implementation of the Project.* The Receiver  
4 plans to engage several contractors to accomplish the objectives described above. He plans to  
5 competitively bid the specialty service administrative support contracts using the Expedited  
6 Formal Bid Process set forth in the Court's June 4, 2007 Order. Following the pilot, several  
7 different contractors may be engaged to serve different regions of the State. The Receiver will  
8 likely procure an information system application (i.e., software license) to support special  
9 services scheduling through the Informal Urgent Bid Process given that the software is urgently  
10 required to reduce administrative backlogs and thus delays in obtaining specialty appointments  
11 for inmates, which pose a substantial risk of endangering the health of inmates.

12 **E. GOOD CAUSE EXISTS TO WAIVE STATE CONTRACTING LAW AND**  
13 **PROCEDURES FOR THE ABOVE-REFERENCED PROJECTS TO ENSURE**  
14 **THAT RECEIVER CAN ACHIEVE HIS COURT-ORDERED MANDATE TO**  
15 **PROVIDE CONSTITUTIONAL MEDICAL CARE TO THE STATE'S**  
16 **PRISONERS.**

17 As set forth in Receiver's Master Application, the State Contracting Procedures are  
18 complex, cumbersome and extremely time-consuming and have had a real, day-to-day and very  
19 serious adverse impacts on the CDCR's ability to provide adequate medical care in its prisons  
20 and on the Receiver's ability to implement necessary, timely, and inter-related remedial  
21 measures. The Receiver submits that, on its face, State Contracting Procedures are much too  
22 slow, much too bureaucratic and insufficiently nimble to accommodate the Receiver's efforts to  
23 bring the projects described to fruition or to make meaningful change to the prison healthcare  
24 system in a timely fashion.

25 This Court has found that the process by which State contracts are developed, reviewed,  
26 bid and awarded contributes to and exacerbates the numerous failings in the prison health care  
27 system. *See* FFCL at pp. 26-27. In the June 4, 2007 Order, the Court noted that "[t]here is no  
28 dispute that it would effectively stymie the Receiver's efforts to implement the projects identified  
in his [Master] Application in a timely manner if full compliance with the State's traditional  
contracting processes were required." June 4, 2007 Order 3:18-20. Based on Receiver's

1 showing in the Master Application, the Court granted a waiver of State Contracting Procedures  
2 for those projects listed in Receiver's Master Application in the June 4, 2007 Order.

3 For the same reasons, the Court should grant this Supplemental Application No. 1. The  
4 projects at issue (radiology services, clinical laboratory services, nursing leadership development,  
5 physician credentialing and medical specialty services administration) are all critical to the  
6 systemic changes necessary to achieve constitutional medical care in the State's prisons. Without  
7 a waiver of State Contracting Procedures, Receiver will be forced to spend months if not years  
8 obtaining vendors before these projects could move forward. Receiver submits that compliance  
9 with State Contracting Procedures will prevent him from accomplishing his mandate. Given  
10 what is at stake, Receiver does not have months or years to wait before implementing significant  
11 changes. A waiver is appropriate.

12 Based on the foregoing, the Receiver requests a waiver of State Contracting Procedures to  
13 the extent they would otherwise apply only to the projects and contracts described above,  
14 including but not limited to, the following:

15 Government Code ("Gov't Code") §§ 14825 – 14828 and State Contracting Manual  
16 ("SCM") §§ 5.10A, 5.75, 5.80 (governing advertisement of State contracts).

17 Public Contracts Code ("PCC") §§ 10290 – 10295, 10297, 10333, 10335, 10351, 10420 –  
18 10425; Gov't Code § 14616; SCM §§ 4.00 – 4.11; (governing approval of contracts by  
19 Department of General Services ("DGS") and exemption from and consequences for failure to  
20 obtain DGS approval).

21 PCC §§ 10308, 10309, 10314; SCM vol. 2, State Administrative Manual ("SAM") §§  
22 3500 – 3696.3 (governing procurement of goods).

23 PCC §§ 6106, 10109 – 10126, 10129, 10140, 10141, 10180 – 10185, 10220, 10301 –  
24 10306, 10340 – 10345, 10351, 10367, 10369; Gov't Code §§ 4525 – 4529.20, 4530-4535.3,  
25 7070-7086, 7105-7118, 14835-14837; and Mil. & Veterans Code §§ 999-999.13; 2 CCR §§ 1195  
26 – 1195.6; SCM §§ 5.00 – 6.40 and Management Memo ("MM") 03-10 (governing competitive  
27 bidding, required language in bid packages, Non-competitive Bid ("NCB") procedures,  
28 preferential selection criteria, contractor evaluations and notice, contract award and protest

1 procedures for service, consulting service, construction project management and public works  
2 contracts).

3 PCC §§ 10314, 10346 (progress payment limitations).

4 Gov't Code § 13332.09 and MM 06-03 (governing vehicle purchases).

5 PCC §§ 12100 – 12113, 12120 – 12121, 12125 – 12128; SCM vol. 3; SAM §§ 4800 –  
6 4989.3, 5200 – 5291 (governing procurement of IT, telecommunication and data processing  
7 goods and services and applicable alternate protest procedures).

8 Gov't Code §§ 13332.10, 14660, 14669, 15853 (governing acquisition and leasing of real  
9 property).

10 Gov't Code §§ 13332.19, 15815 (governing plans, specifications and procedures for  
11 major capital projects).

12 PCC §§ 10365.5, 10371; SCM § 3.02.4 (governing restrictions on and approval for  
13 multiple contracts with same contractor).

14 **F. RECEIVER WILL COMPLY WITH THE SUBSTITUTE BIDDING PROCESS**  
15 **PROCEDURES APPROVED BY THE COURT IN ITS JUNE 4, 2007 ORDER,**  
16 **WHICH COMPLY WITH THE ESSENTIAL GOALS OF STATE**  
**CONTRACTING PROCEDURES.**

17 In approving the Master Application, the Court approved three bidding processes:  
18 Expedited Formal Bidding; Urgent Informal Bidding; and Sole Source Bidding. June 4, 2007  
19 Order 6:18:8:23. For the projects described in this supplemental waiver application, Receiver  
20 proposes to follow the bidding procedures approved by the Court in the June 4, 2007 Order.  
21 Receiver submits that the streamlined processes approved by the Court will permit him to move  
22 expeditiously to accomplish his mandate while at the same time providing sufficient safeguards  
23 to the public and the public fisc in the contracting process. He seeks approval of those bidding  
24 procedures for the projects subject to this application.

25 In addition, in his Master Application, Receiver noted that State law requires provisions  
26 and certifications that address particular public policies, e.g., antidiscrimination laws. As with  
27 contracts to be entered into pursuant to the June 4, 2007 Order, Receiver proposes to publish the  
28 provisions requiring contractor certifications of compliance on his website and include a single

1 representation in the contracts he awards to the effect that the contractor has read, and attests that  
 2 he/she/it is in compliance with, the required provisions. Receiver seeks approval of this  
 3 procedure with respect to the projects described above.

4 **G. RECEIVER SEEKS NUNC PRO TUNC APPROVAL OF THE ACNL  
 5 SUPERVISORY NURSE TRAINING CONTRACT ARRANGED BY THE STATE  
 6 FOR WHICH ACNL HAS ALREADY PROVIDED SERVICES.<sup>2</sup>**

6 In November 2006, the Division of Correctional Health Care Services – without the  
 7 knowledge of the Receiver – arranged for ACNL to provide supervisory nurse training. The  
 8 arrangement provided for four, three-day training sessions. No contract was ever approved by  
 9 the State, and two of the training sessions had not been completed when Receiver learned of the  
 10 arrangement. ACNL would not agree to complete the remaining sessions without a formal  
 11 contract. In Receiver’s view, the engagement, on a programmatic basis, was beneficial and  
 12 necessary for CDCR nursing. An informal survey during the training sessions showed that  
 13 approximately three-quarters of the nurses attending had never received any prior nurse  
 14 leadership training. These nurses would have remained entirely without training had not  
 15 ACNL—one of the top nurse leadership training organizations in the state—provided the  
 16 necessary training. Accordingly, Receiver entered into a contract with ACNL on an emergency  
 17 basis for the nurse supervisory training. The contract with ACNL is attached as Exhibit 1 to the  
 18 accompanying Declaration of John Hagar. Exhibit A to that contract sets forth the curriculum of  
 19 the nursing leadership program provided by ACNL. The Receiver hereby now seeks approval of  
 20 the ACNL contract *nunc pro tunc*.

21 The failure of the CDCR to enter into a formal agreement for the engagement of ACNL is  
 22 yet another example of the Department’s administrative dysfunction. Without the Receiver’s  
 23 intervention, ACNL would not have agreed to complete its final two training sessions, leaving  
 24 approximately half of the nursing supervisors without the benefit of the program. This would  
 25 have, in turn, prevented the CDCR from applying the improved standards imparted during the  
 26 training to any of the CDCR’s nurse leaders. In addition, without the Receiver’s intervention, the  
 27 ACNL would be yet another victim of the CDCR’s administrative dysfunction, left with no

28 <sup>2</sup> The facts set forth in this section are also based on the accompanying Declaration of John Hagar.



**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):

**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.

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.

Andrea Lynn Hoch  
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Office of the Governor  
Capitol Building  
Sacramento, CA 95814

Robin Dezember  
Director (A)  
Division of Correctional  
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- |    |  |  |
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Dated: June 27, 2007



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Lori Dotson