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8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
10 **AND FOR THE NORTHERN DISTRICT OF CALIFORNIA**

11 MARCIANO PLATA, et al.,  
12 *Plaintiffs,*

v.

13 ARNOLD SCHWARZENEGGER, et al.,  
14 *Defendants.*

Case No. C01-1351 TEH

15 RALPH COLEMAN, et al.,  
16 *Plaintiffs,*

v.

17 ARNOLD SCHWARZENEGGER, et al.,  
18 *Defendants.*

Case No. CIV S-90-0520 LKK JFM P

19 CARLOS PEREZ, et al.,  
20 *Plaintiffs,*

v.

21 JAMES TILTON, et al.,  
22 *Defendants.*

Case No. C 05-05241 JSW

1 JOHN ARMSTRONG, et al.,  
 2 *Plaintiffs,*  
 3 v.  
 4 ARNOLD SCHWARZENEGGER, et al.,  
 5 *Defendants.*

Case No. C94-2307 CW

**RESPONSE OF RECEIVER J. CLARK KELSO TO DEFENDANTS' RESPONSE TO OSC RE: TRANSITION, ACTIVATION, AND MANAGEMENT OF RECEIVER'S 10,000 BED PROJECT COORDINATION AGREEMENT**

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8 Pursuant to the Courts' Order, dated October 30, 2008 (*Plata* Docket # 1622), Receiver  
9 J. Clark Kelso (the "Receiver") submits this response to Defendants' Response To OSC Re:  
10 Transition, Activation, and Management of Receiver's 10,000 Bed Project, filed November 10,  
11 2008 (*Plata* Docket # 1780).

12 **INTRODUCTION**

13 Given the opportunity to "show cause" why the Courts should not adopt the Coordination  
14 Agreement pertaining to the transition, activation and management of the anticipated 10,000 bed  
15 project, Defendants chose merely to interpose objections, unsupported by any evidence. The  
16 Receiver submits that, for the reasons discussed below, those objections are without merit.  
17 Nevertheless, the Receiver suggests that the Courts refrain from approving the Coordination  
18 Agreement until the Receiver has conducted additional meetings with stakeholders regarding his  
19 plans and has had an opportunity to report to the Courts following those meetings.

20 **RESPONSES TO OBJECTIONS**

21 The Receiver is surprised that the Defendants have objected on the grounds that the  
22 10,000 bed project is unnecessary. That objection effectively ignores the approvals for the  
23 project provided by State officials, ignores two years of planning pertaining to the project in  
24 which State representatives actively participated and ignores the many meetings between the  
25 Receiver's senior staff and high level State officials to discuss and report on the progress of the  
26 project. Those meetings have included officials from various State agencies, including  
27 specifically the Department of Mental Health ("DMH") and the California Department of

1 Corrections and Rehabilitation ("CDCR") and at no time has anyone suggested that the project  
2 was either unnecessary or an inappropriate response to the crisis in the prison medical health care  
3 delivery system.

4 Similarly, Defendants' objection that there has been a lack of coordination between the  
5 Receiver's office, DMH, CDCR and Department of Finance completely overlooks the months of  
6 planning and cooperation between the Receiver's office, DMH, CDCR and others to develop the  
7 very lengthy and detailed Facility Program Statement for the project. That document alone, when  
8 it is released to the public, will demonstrate the careful planning, cooperation and coordination of  
9 the Receiver and the various State agencies involved.

10 Defendants object that the agreement is unclear with respect to the role that DMH and  
11 CDCR will play in recruitment and hiring. The agreement was reviewed in draft by Robin  
12 Dezember, Chief Deputy Secretary of Correctional Health Care Services. He proposed certain  
13 modifications to the draft to clarify that Correctional Health Care Services would be responsible  
14 for hiring, as distinct from recruiting, and managing mental health and dental employees at the  
15 new facilities. The agreement in the form submitted to the Courts reflects his proposed  
16 modifications. Similarly, Elaine Bush, Chief Deputy at DMH reviewed the agreement and was  
17 comfortable with its terms. Finally, the agreement is clear that CDCR and DMH will be  
18 involved "with the selection of upper-level facility management."

19 **CONCLUSION AND SUGGESTION FOR HOW TO PROCEED**

20 While the Receiver believes Defendants' objections lack merit and are being driven by  
21 Defendants' recently-adopted litigation posture rather than by any real concern with the  
22 Coordination Agreement, the Receiver nevertheless wishes to assure the Courts that he is  
23 committed to transparency and cooperation with State agencies. Accordingly, the Receiver  
24 proposes that he institute a series of meetings commencing in the near future to which relevant  
25 stakeholders will be invited for the purpose of discussing the 10,000 bed project and the  
26 Receiver's plans for managing the facilities to be constructed. The Receiver will then report

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1 back to the Courts following those meetings, at which time the Courts can decide whether to  
2 approve the Coordination Agreement.

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Dated: November 17, 2008

/s/ Martin H. Dodd  
Martin H. Dodd  
Attorneys for Receiver J. Clark Kelso