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RICHARD J. ...

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARCIANO PLATA, et al.,
Plaintiffs,

v.

ARNOLD SCHWARZENEGGER,
et al.,
Defendants.

NO. C01-1351 TEH
CLASS ACTION
ORDER

The Court is in receipt of two motions from the Receiver for (1) an Extension of Time to File Plan of Action and Establish Advisory Board, and (2) to Modify Provision of June 13, 2002 Stipulation Re Injunctive Relief. Plaintiffs oppose both motions. Defendants filed a response stating that they do not oppose the first motion. With respect to the second, they state that they do not oppose the general process proposed by the Receiver, but request an opportunity to review and comment with respect to the anticipated final proposal prior to the Court taking action.

A. Extension of Time to File Plan of Action and Establish Advisory Board

This Court's February 14, 2006 Order Appointing Receiver directed the Receiver to develop a detailed Plan of Action ("Plan"), designed to effectuate the restructuring and development of a constitutionally adequate medical health care delivery system, within 180-210 calendar days. It further provided that, pending development of the Plan, the Receiver

1 shall undertake “immediate and/or short term measures designed to improve medical care
2 and begin the process of restructuring and development of a constitutionally adequate
3 medical health care delivery system.” February 14, 2006 Order at 2-3.

4 In the instant motion, the Receiver provides an overview of his anticipated Plan of
5 Action, including a discussion of the conceptual basis and components of such a plan and his
6 priorities for remedial action. He explains, however, that the enormity and complexity of the
7 task have made it necessary to request additional time to develop the Plan of Action.
8 Specifically, he requests an additional six months to submit a proposed Plan of Action and
9 set of metrics, with a revised Plan and revised set of metrics to follow six months thereafter.
10 The Plan would then, of course, be subject to modification as changing circumstances may
11 require. Plaintiffs object to this timetable and urge the Court to require the Receiver to file a
12 Plan within the next three months because the very enormity of the task demands an overall
13 strategic plan as soon as possible.

14 There is no dispute that a detailed plan with metrics should be developed as “soon as
15 possible.” The Receiver is committed to this goal and the Court’s initial seven-month
16 deadline was set with this standard in mind. The question is, what is “as soon as possible”
17 under the circumstances. Court is satisfied that the initial seven month deadline was not
18 realistic given what the Court and Receiver have learned since the Receivership began in
19 April 2006. First it has become clear that establishing the Office of Receiver from the
20 ground up is a more time-consuming task than initially estimated and indeed key positions
21 are still being filled or have just recently been filled. Second, the complexity of the
22 dysfunction in the delivery of medical care that the Receiver has uncovered in the last several
23 months – as explained in his motion and his three Bi-monthly Reports filed to date – exceeds
24 even that which was understood at the time of the Court’s February 14, 2006 Order. In light
25 of these developments, and given the truly unique and unprecedented nature of the task, the
26 Court is satisfied that an additional 6-month extension to develop a Plan of Action and set of
27 metrics – that are realistic, fully informed, detailed, and effective – is consistent with the
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1 Court's intent to require a Plan as soon as possible. In contrast, the Court concludes that
2 requiring a more hastily thrown together or prematurely devised plan, for the sake of
3 satisfying an earlier deadline, or for the sake having "a plan," would be inefficient and
4 counterproductive in this case.

5 Further, as noted above, the Receiver has provided the Court and the parties with the
6 conceptual basis for his Plan as well as an outline of priorities. His comprehensive Bi-
7 Monthly Reports also provide a detailed review of the Receiver's operations as he moves
8 forward and continues to simultaneously undertake "short term measures designed to
9 improve medical care and begin the process of restructuring and development of a
10 constitutionally adequate medical health care delivery system." February 14, 2006 Order at
11 3. In this regard, the Court notes that Plaintiffs have commended the Receiver for
12 establishing himself as a bold and creative leader and for his impressive accomplishments to
13 date in various areas. *See* Pls' Response at 4, 6. The Court will, however, direct the
14 Receiver to also provide updates in his Bi-Monthly Reports with respect to his specific
15 progress on the Plan of Action. The Court further notes that the Receiver anticipates meeting
16 with counsel in January 2007 following intensive planning sessions with his staff in mid-
17 December 2006. This meeting will provide the Receiver an additional opportunity to discuss
18 with all counsel his priorities and plans.

19 Plaintiffs also urge the Court to appoint and activate the Advisory Board at this time.
20 *See* Feb. 14, 2006 Order at 9 ("The Court, in consultation with the Receiver, shall appoint an
21 Advisory Board of no more than five members to assist and advise the Court and the
22 Receiver with respect to achieving the goals of the Receivership"). The Court concludes,
23 however, that the Receiver is in the best position to determine how to make the most
24 effective use of an Advisory Board. As such, the Court will defer to the Receiver's
25 recommendation with respect to the timing of the Advisory Board for the reasons set forth in
26 his motion at pages 19-20.

1 In short, the Court finds that the requested extension of time to submit the Plan of
2 Action and metrics is appropriate and necessary given the extraordinarily complex panoply of
3 challenges facing the Receiver and the importance of ensuring that the Plan and metrics will
4 be as effective and productive as possible. *See also* Feb. 14, 2006 Order at 9 (noting that the
5 Order “may be modified as necessary from time to time to assure the success of this
6 Receivership” given its “unprecedented. . . scope and dimension”). Accordingly, the Court
7 shall modify the February 14, 2006 Order with respect to the timetable for the Plan of Action
8 as set forth below. The Court also anticipates, as recommended by the Receiver, that he shall
9 begin consulting with the Court with respect to the appointment of an Advisory Board when
10 he files his proposed Plan of Action in May 2007. No modification of the Court’s February
11 14, 2006 Order is required with respect to this item. *See* Feb. 14, 2006 Order at 9.

12
13 B. Motion to Modify Provision of June 13, 2002 Stipulation Re Injunctive Relief.

14 The Court’s Order of February 14, 2006 contemplated that the Receiver would
15 identify those provisions, if any, of the June 13, 2002 Stipulation Re Injunctive Relief and
16 the September 14, 2004 Patient Care Order, that should be modified or discontinued due to
17 changed circumstances. *See* Feb. 14, 2006 Order at 2. At this point, the Receiver only seeks
18 a modification of one aspect of the June 13, 2002 Stipulation Re Injunctive Relief and only
19 on a pilot basis, and only at San Quentin State Prison.

20 The limited requested modification concerns the system for medically screening and
21 evaluating prisons that arrive into the California Department of Corrections and
22 Rehabilitation (“CDCR”) through the San Quentin reception center. The proposed
23 modification was developed through a team approach that included numerous CDCR
24 clinical, custody, and administrative personnel, and clinical experts on the Receiver’s staff.
25 The proposal provides for an approach to the medical screening that the Receiver believes
26 will prove more efficient and more likely to provide prompt medical attention when needed.
27 *See* Receiver’s Mot. at 18-19.

1 Plaintiffs acknowledge that the Reception Center screening process “has long been
2 backlogged and ineffective, and is thus ripe for reform.” Pls.’ Response at 13. Plaintiffs
3 contend, however, that the request is premature because certain specifics of the program are
4 still being considered and thus the proposed modification is not yet finalized. They request
5 that the motion be revisited after the proposal is finalized. They do not, however, identify
6 any objection with respect to the general substance of the Receiver’s approach. Defendants
7 similarly state that they do not oppose the “general process” proposed by the Receiver but
8 request that they be allowed to review and comment on the final version of the proposal
9 before the Court decides whether to modify the June 13, 2002 Stipulation.

10 In order that the Receiver can move forward on this issue in a prompt manner, the
11 Court will grant the requested limited modification on a pilot basis with the proviso that
12 either party may move to reconsider if, after reviewing the final version of the modification,
13 objections arise.

14
15 Accordingly, and good cause appearing, it is HEREBY ORDERED that:

16
17 1. The first sentence of Section I (B) of the Court’s February 14, 2006 Order
18 Appointing Receiver shall be replaced with the following new paragraph:

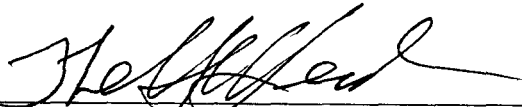
19 The Receiver shall, beginning with the Bi-Monthly Report of January 2007, report to
20 the Court concerning progress toward establishing a Plan of Action and the necessary metrics
21 to measure the success of the Plan. The Receiver shall develop his first proposed detailed
22 Plan of Action and proposed metrics, designed to effectuate the restructuring and
23 development of a constitutionally adequate medical health care delivery system, no later than
24 May 15, 2007. At the same time, he shall file a plan to establish the administrative structures
25 to document, accurately track, and report metrics. The Receiver shall thereafter file a revised
26 Plan of Action and metrics no later than November 15, 2007.

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2. The Court grants the Receiver's request to modify, on a pilot basis at San Quentin Prison only, the process for screening and evaluating newly arriving inmates prescribed by the June 13, 2002 Stipulation, so that the process is consistent with the process described at page 18 of the Receiver's motion. The modification shall be in effect for a "pilot" period of twelve months. Given, however, that the process has not been finalized, this approval is without prejudice to any party moving to reconsider if, after reviewing the final version of the screening and evaluation process, objections arise.

IT IS SO ORDERED.

Dated: 12/19/06



THELTON E. HENDERSON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

PLATA et al,
Plaintiff,

Case Number: CV01-01351 TEH

CERTIFICATE OF SERVICE

v.

SCHWARZENEGGER, et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 19, 2006, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dated: December 19, 2006

Richard W. Wieking, Clerk
By: R.B. Espinosa, Deputy Clerk