

1 EDMUND G. BROWN JR.  
Attorney General of the State of California  
2 CHRISTOPHER E. KRUEGER  
Senior Assistant Attorney General  
3 ROCHELLE C. EAST  
Senior Assistant Attorney General  
4 CONSTANCE L. LELOUIS  
Supervising Deputy Attorney General  
5 DANIEL J. POWELL, State Bar No. 230304  
Deputy Attorney General  
6 455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004  
7 Telephone: (415) 703-5830  
Fax: (415) 703-1234  
8 Email: Daniel.Powell@doj.ca.gov

9 Attorneys for State Defendants

10

11

IN THE UNITED STATES DISTRICT COURT

12

FOR THE NORTHERN DISTRICT OF CALIFORNIA

13

SAN FRANCISCO DIVISION

14

**MARCIANO PLATA, et al.,**

3:01-cv-01351-TEH

15

Plaintiffs,

16

v.

**ADMINISTRATIVE MOTION  
TO FILE DOCUMENTS  
UNDER SEAL SUBMITTED  
UNDER OBJECTION AND  
PURSUANT TO THREAT OF  
SANCTIONS BY RECEIVER**

17

**ARNOLD SCHWARZENEGGER, et al.,**

18

Defendants.

19

Hearing: Oct. 6, 2008

20

Time: 10:00 a.m.

21

Judge: The Honorable

Thelton E.

Henderson

22

**NOTICE OF MOTION AND MOTION**

23

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

24

PLEASE TAKE NOTICE THAT State Defendants hereby move the Court for leave to file

25

portions of a document under seal pursuant to Local Rule 79-5, but do so under objection and

26

only because they are being compelled to do so by the Receiver's threat to seek sanctions if they

27

do not. The documents at issue are portions of Defendants' Opposition to the Receiver's Motion

28

For Order Adjudging Defendants In Contempt for Failure to Fund Receiver's Remedial Projects

Motion to File Documents Under Seal

Marciano Plata, et al. v. Arnold Schwarzenegger, et al.

3:01-cv-01351-TEH

1 and/or an Order Compelling Defendants to Fund Such Projects and an exhibit in support of  
2 Defendants' Opposition. This motion is based upon this Notice of Motion and Motion,  
3 Memorandum of Points and Authorities, and all the pleadings and papers on file in this action.

#### 4 **MEMORANDUM OF POINTS AND AUTHORITIES**

5 In conjunction with Defendant's Opposition to the Receiver's Motion, defendants rely on  
6 the Receiver's Facility Program Statement, Second Draft (The Receivers' Plan), to show that the  
7 \$8 billion requested by the Receiver is neither necessary nor the least restrictive means to cure  
8 constitutional violations as required by the Prison Litigation Reform Act (PLRA). The State  
9 Defendants adamantly believe that the Receiver's Plan should and must be made public. The  
10 Receiver has demanded \$8 billion of the State's funds, and the Receiver's Plan represents the  
11 most detailed justification for that request. While the State Defendants believe, for the reasons  
12 stated in their Opposition, that the Receiver's Plan and the other available evidence fail to satisfy  
13 the Receiver's burden of demonstrating that such an expenditure of state funds is authorized  
14 under federal law, the Receiver's Plan should nevertheless be made publically available.

15 Although the Receiver failed to designate as confidential the copies of the Receiver's Plan  
16 that he provided to the Department of Finance, he designated other copies as confidential and  
17 subject to the protective orders in *Plata, Coleman*, and the three-judge panel proceeding in those  
18 cases. Defendants therefore sought clarification from the Receiver to ensure that they were  
19 authorized to publicize the Receiver's Plan. (Declaration of Daniel J. Powell ¶ 2.) Counsel for  
20 the Receiver refused to provide such authorization and instead threatened to seek sanctions if the  
21 Receiver's Plan was not filed under seal. (Ex. A to Powell Decl.)

22 Given that the Receiver has threatened Defendants with sanctions should the Receiver's  
23 Plan be made public, Defendants have no choice but to seek that it be filed under seal.  
24 Accordingly, State Defendants file this request under objection to file under seal the portions of  
25 the Receiver's Plan, attached as Exhibit A to the Declaration of Christopher Lief in Support of  
26 State Defendants' Opposition to the Receiver's Motion For Order Adjudging Defendants In  
27 Contempt for Failure to Fund Receiver's Remedial Projects and/or an Order Compelling  
28 Defendants to Fund Such Projects, and those portions of the Opposition quoting and/or

1 discussing the Receiver's Plan. As State Defendants believe that the Receiver's Plan should be  
2 made public, however, they have no objection to the Court denying this request, and preserve the  
3 right to file a formal motion seeking the release of such documents pursuant to the procedures  
4 contemplated by the protective orders in *Plata, Coleman*, and the three-judge proceeding.

5 Dated: September 15, 2008

6 Respectfully submitted,  
7 EDMUND G. BROWN JR.  
Attorney General of the State of California  
8 CHRISTOPHER E. KRUEGER  
Senior Assistant Attorney General  
9 ROCHELLE C. EAST  
Senior Assistant Attorney General  
10 CONSTANCE L. LELOUIS  
Supervising Deputy Attorney General  
11

12 /s/ Daniel J. Powell

13 DANIEL J. POWELL  
14 Deputy Attorney General  
Attorneys for State Defendants  
15

16  
17 20144517.wpd  
SA2008303384  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **Marciano Plata, et al. v. Arnold Schwarzenegger, et al.**

No.: **3:01-cv-01351-TEH**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On September 15, 2008, I served the attached

**(1) Declaration of Daniel J. Powell in Support of State Defendants' Motion to File Documents Under Seal**

**(2) Administrative Motion to File Documents Under Seal Pursuant to Demand by Receiver and Under Defendants' Objection**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Andrea Hoch  
Legal Affairs Secretary  
Office of the Governor  
State Capitol Building, 1st Floor  
Sacramento, CA 95814

Warren C. Stracener  
Paul M. Starkey  
Dana Brown  
Labor Relations Counsel  
Department of Personnel Admin. Legal Division  
1515 S Street - North, Suite 400  
Sacramento, CA 95814 D-22

Donald Currier  
Legal Counsel  
CDCR, Legal Division  
P.O. Box 942883  
Sacramento, CA 94283-0001

Robin Dezember, Director  
Division of Correctional  
CDCR  
P.O. Box 942883  
Sacramento, CA 94283-0001

Molly Arnold  
Chief Counsel  
Department of Finance  
State Capitol, Room 1145  
Sacramento, CA 95814 A-15

Matthew A. Lopes, Jr.  
Pannone Lopes & Devereaux, LLC  
317 Iron Horse Way, Suite 301  
Providence, RI 02908

Laurie Giberson, Senior Staff Counsel  
Department of General Services  
Office of the Chief Counsel  
707 Third Street, 7th Floor, Suite 7-330  
West Sacramento, CA 95605 C-1

David Shaw  
Inspector General  
Inspector General's Office  
P.O. Box 348780  
Sacramento, CA 95834-8780

Donna Neville  
Senior Staff Counsel  
Bureau of State Audits  
555 Capitol Mall, Suite 300  
Sacramento, CA 95814

Al Groh  
Executive Director  
UAPD  
1330 Broadway Blvd., Ste. 730  
Oakland, CA 94612

Peter Mixon, Chief Counsel  
California Public Employees Retirement System  
Office of the General Counsel  
400 Q Street, Lincoln Plaza  
Sacramento, CA 95814

Yvonne Walker  
Vice President for Bargaining  
SEIU - Local 1000  
1108 "O" Street  
Sacramento, CA 95814

Jay Shulman, DMD, MA, MSPH  
9647 Hilldale Drive  
Dallas, TX 75231

Pam Manwiller  
Director of State Programs  
AFSCME  
555 Capitol Mall, Ste. 1225  
Sacramento, CA 95814

Richard Tatum  
CSSO State President  
CSSO  
1461 Ullrey Avenue  
Escalon, CA 95320

Tim Behrens  
President  
ACSS  
1108 "O" Street  
Sacramento, CA 95814

Elise Rose  
Chief Counsel  
State Personnel Board  
801 Capitol Mall  
Sacramento, CA 95814

Stuart Drown  
Executive Director  
Little Hoover Commission  
925 L Street, Suite 805  
Sacramento, CA 95814

Joseph D. Schalzo, DDS, CCHP  
3785 N. 156th Lane  
Goodyear, AZ 85395

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on September 15, 2008, at San Francisco, California.

Susan Chiang

Declarant



Signature