

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

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

MARCIANO PLATA, et al.,  
Plaintiffs,  
v.  
EDMUND G. BROWN JR., et al.,  
Defendants.

NO. C01-1351 TEH

ORDER GRANTING IN PART  
DEFENDANT'S MOTION TO  
CLARIFY OCTOBER 17, 2006  
ORDER

11 This matter comes before the Court on Defendant Edmund G. Brown Jr.'s motion to  
12 clarify the Court's October 17, 2006 order. Plaintiffs and the Receiver filed statements of  
13 non-opposition to the motion. Interested third party Service Employees International Union,  
14 Local 1000 ("SEIU") opposes the motion. After carefully reviewing the submitted written  
15 arguments, the Court finds oral argument to be unnecessary and now VACATES the hearing  
16 scheduled for August 29, 2011, and GRANTS IN PART Defendant's motion. The Court  
17 agrees with Defendant that it has the authority to clarify its prior orders but disagrees as to  
18 the impact of such clarification.

19  
20 **BACKGROUND**

21 This motion concerns the Court's October 17, 2006 order, which granted the  
22 Receiver's September 12, 2006 motion to waive state law to allow for increasing the salary  
23 ranges for certain positions relevant to the remedial phase of this case. The parties'  
24 September 26, 2006 responses to the motion expressed no opposition, although Defendants  
25 requested certain clarifications that the Court addressed in its order.

26 The Court made the following "essentially undisputed findings":

- 27 1. The recommended salary adjustments are appropriate and  
28 necessary to attract and retain qualified permanent, full-time,  
clinical employees within the CDCR, and without such

1 adjustments Defendants will be unable to address their  
 2 chronically high vacancy rates in the area of medical health care.

3 2. Satisfactorily addressing the chronically high vacancy rates  
 4 within CDCR’s health care division is a necessary predicate to  
 achieving a constitutionally adequate medical health delivery  
 system.

5 3. Defendants have been given every opportunity to address this  
 6 issue in a timely manner and are unable or unwilling to  
 7 remedy the chronically high vacancy rates on their own and  
 8 this inaction is clearly preventing the Receiver from  
 developing or implementing a constitutionally adequate  
 medical health care system and otherwise carrying out his  
 duties as set forth in this Court’s February 14, 2006 Order.

9 4. The requested waiver, as invited by Defendants, is necessary  
 10 because there are no adequate alternatives that have been  
 presented to the Court.

11 Oct. 17, 2006 Order at 10. The Court further concluded that:

12 the Receiver has satisfactorily demonstrated that he has satisfied  
 13 the standard for obtaining a waiver set forth in this Court’s  
 February 14, 2006 Order. Specifically, he has shown that he has  
 14 “made all reasonable efforts to exercise his powers . . . in a  
 manner consistent with California state laws” but that a “state  
 15 law” or “state inaction” is “clearly preventing him from  
 developing or implementing a constitutionally adequate medical  
 16 health care system” and that “other alternatives are inadequate.”  
 See February 14, 2006 Order at Section II (D).

17 *Id.* at 10-11. Accordingly, the Court waived California Government Code sections 3516.5,  
 18 3517, 19816, 19826, 19829, 19832, and 19836, and title 2, section 599.681 of the California  
 19 Code of Regulations, “*for the sole and limited purpose* of enabling the Receiver to direct the  
 20 implementation, adjustment, and administration of the proposed salaries and structural  
 21 changes to the pay system set forth in Exhibit 6 to the Receiver’s Motion for Waiver.” *Id.* at  
 22 11 (emphasis in original). The Court continued: “In granting this limited waiver, the Court  
 23 clarifies that such waiver is not intended to relieve Defendants or the State of any of their  
 24 duties and responsibilities under California law, including the obligation to collectively  
 25 bargain regarding salaries.” *Id.* Finally, in compliance with the Prison Litigation Reform  
 26 Act of 1996, the Court found:

27 that the above remedy is narrowly drawn to remedy the  
 28 constitutional violations at issue, extends no further than  
 necessary to correct a current and ongoing violation of a federal

1 right, and is the least intrusive means necessary to correct these  
2 violations. The Court also is amply satisfied that this relief will  
3 impose no unnecessary burden on defendants and will have no  
adverse impact on either the safety of the public or the operation  
of the criminal justice system.

4 *Id.* at 11-12 (footnote omitted). The Court denied the Receiver’s request for an on-going  
5 waiver of state law relating to salaries and instead ordered the Receiver to meet and confer  
6 with the parties if “the Receiver determines that additional salary modifications are necessary  
7 to achieve a constitutionally adequate medical health care system.” *Id.* at 13.

8 The positions affected by the Court’s October 17, 2006 order include positions in  
9 Bargaining Units 17 and 20, which are represented by the SEIU. The SEIU reached  
10 collective bargaining agreements with the Department of Personnel Administration (“DPA”)  
11 in June 2006 as to these bargaining units. The memoranda of understanding (“MOUs”) were  
12 approved by the California Legislature and then-Governor Arnold Schwarzenegger and  
13 became effective on September 6, 2006. The MOU for Bargaining Unit 17 provided that an  
14 “equity increase” of 7.5% shall be added to “the maximum salary rate” for all classifications  
15 in that unit effective January 1, 2007. Ex. B to SEIU’s Req. for Judicial Notice at 73.  
16 Similarly, the MOU for Bargaining Unit 20 provided that 10% shall be added to “the  
17 maximum salary rate” for certain classifications in that unit, and that 5% shall be added to  
18 “the maximum salary rate” for other classifications, all effective January 1, 2007. Ex. C to  
19 SEIU’s Req. for Judicial Notice at 77. Although the agreements became effective prior to  
20 the briefing on the Receiver’s motion for waiver of state law, neither the Receiver’s nor  
21 Defendants’ briefing mentioned the future increases contained in these MOUs.

22 To date, DPA has not authorized payment of the above percentage salary increases  
23 because it has taken the position that the salary ranges in the Court’s October 17, 2006 order  
24 superceded all previously negotiated salaries, including future increases not yet effective as  
25 of the date of the Court’s order. SEIU subsequently filed a grievance, which was decided in  
26 SEIU’s favor at arbitration. DPA then filed a petition to vacate the arbitration award in state  
27 court, but the state trial court found no grounds for doing so. The case is currently pending  
28 on appeal before the California Third District Court of Appeal.

1 **DISCUSSION**

2 As the October 17, 2006 order unambiguously stated, the increased clinical salaries  
3 required by that order were the least intrusive means of ensuring that clinical positions could  
4 be filled with qualified candidates, such that the level of care provided to California inmates  
5 could be brought to constitutional levels.<sup>1</sup> Thus, the Court agrees with Defendant’s assertion  
6 that “the Receiver and this Court intended in 2006 to establish new salary ranges, above  
7 then-existing wages, that would be sufficiently high to fill clinical positions with qualified  
8 candidates, but at the least possible cost to the State.” Reply at 7.

9 The intent of the Court’s order was to replace all then-existing salary ranges with the  
10 new ranges proposed by the Receiver, as set forth in Exhibit 6 to the Receiver’s  
11 September 12, 2006 motion. The Court was unaware at the time that any clinical salaries  
12 were due to be increased under collective bargaining agreements in January 2007 – less than  
13 three months later – and may well have denied those increases after such a short time had  
14 they been timely presented to the Court. For example, had Defendants requested clarification  
15 in their response to the Receiver’s motion as to whether percentage salary increases due to  
16 become effective at a later date would be nullified by the Receiver’s requested waiver of  
17 state law, the Court could have addressed the issue in a timely manner. However, no  
18 evidence of any such increases was presented to the Court, and the Court cannot now say that  
19 it intended to waive something of which it was unaware.

20 Defendant has submitted evidence with his motion that no further salary increases are  
21 necessary based on current vacancy rates in the positions at issue. Such evidence would be  
22 relevant if the Receiver were seeking a further waiver of state law to increase salaries, or if  
23 any party were requesting an order that salaries be raised, but neither is the case here. The  
24 Court did not and does not now approve any salary increases beyond those contained in  
25 Exhibit 6 to the Receiver’s September 12, 2006 motion for waiver of state law, and no party

---

26  
27 <sup>1</sup>Of course, while adequate staffing “is a necessary predicate to achieving a  
28 constitutionally adequate medical health delivery system,” Oct. 17, 2006 Order at 10,  
increased staffing alone could not and has not remedied the constitutional violations at issue  
in this case.

1 has requested such an order, let alone made the required showing that such increases are  
2 required to remedy the constitutional issues in this case. However, the Court also did not and  
3 does not now prohibit any salary increases that are implemented consistent with state law.

4 Defendant's motion is GRANTED IN PART and DENIED IN PART consistent with  
5 the above discussion.

6

7 **IT IS SO ORDERED.**

8

9 Dated: 08/25/11



THELTON E. HENDERSON, JUDGE  
UNITED STATES DISTRICT COURT

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28