



## CALIFORNIA PRISON HEALTH CARE SERVICES

### For Immediate Release

## Federal Receiver Responds to Governor and Controller's Opposition to Contempt Motion

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**The Receiver will be available for Interviews by Teleconference at 3:30pm (888) 272-7337 ID # 3554858**

(Sacramento, CA) In a reply Memorandum filed in U.S. District Court, Northern District of California today, September 22, 2008, the office of Federal Receiver J. Clark Kelso is responding to the opposition filed by State Attorney General Edmund G. Brown on behalf of defendants Arnold Schwarzenegger, Governor of California, and State Controller John Chiang to a motion seeking they be held in contempt for failing to fund the receiver's construction program. The construction program is designed to bring the State of California into compliance with the U.S. Constitution by building 10K medical and mental health beds to provide access to basic medical care for California's chronically ill, injured, aged and/or mentally ill inmates. A hearing is set on the contempt motion on October, 6, 2008 at 10am at 450 Golden Gate Ave. in San Francisco in Courtroom 12 on the 19<sup>th</sup> Floor. Below is a summary of the Receiver's response as written by his attorney Martin Dodd:

### Budgetary Constraints

-Defendants' dire predictions of financial disaster if the Court granted this motion in the absence of a budget are now moot. The legislature and Governor have finally reached agreement on a budget.

- Filings by Defendants in other proceedings demonstrate that their cries of poverty were overblown and calculated to mislead. The Receiver has confirmed that \$250 million in General Fund money appropriated under AB 900 for CDCR infrastructure is, and at all times material to this matter, was unencumbered, but Defendants never made it available to the Receiver.

- Financial constraints may not be used to justify the creation or perpetuation of constitutional violations. The Receivership quotes cases that uphold the legal principles that financial constraints do not allow states to deprive persons of their constitutional rights and that compliance with constitutional standards may not be frustrated by legislative inaction or failure to provide the necessary funds.

### Defendant's responsibility/ Failure of the Legislature to Act

-Defendants refuse to accept that the obligation under the Courts Orders to fund the Receiver's projects falls on *them*, and not on the legislature. The Defendants have not offered *any* funding alternatives. Instead, they have merely encouraged the Receiver to seek a legislative solution. In any event, if legislation is the Defendants' preferred funding method, the Receiver's attorney emphasizes, "then one would have expected them to move heaven and earth to encourage the legislature to authorize such funding. Defendants have offered no evidence to show that they have made any effort to cause the legislature to act."

-The legislature has now *failed four times* to enact legislation to permit bond financing of the Receiver's capital projects. The legislature twice defeated SB 1665, the legislature failed on two occasions to bring a similar bill, AB 1819, to a vote before it adjourned. Therefore, the reply asserts, "In the face of the legislature's repeated failure to enact enabling legislation, Defendants cannot credibly argue that the Receiver should simply wait for the legislature to act."

### Size, Scope and Cost of 10K Bed Project

-The Defendants and Attorney General seek to mislead the Court into believing that the scope and projected cost of the Receiver's capital projects have somehow taken them by surprise. "This is dangerously close to an outright fabrication," Kelso's lawyer writes. "For roughly two years, State representatives have been working closely with the Receiver's staff to plan and develop the very projects that Defendants now claim are so startling in scope and cost." "Without so much as a whisper of an objection from Defendants," add Kelso's lawyer, "Judge Thelton Henderson's Court specifically approved the capital projects *and their estimated cost* when it ruled that the Receiver's Turnaround Plan of Action is the "plan for moving this case forward."

-The Defendants and the Attorney General have never objected to the multiple orders issued by Judge Henderson's Court in the Plata case and the *Coleman, Perez* and *Armstrong* courts approving of the Receiver's projects. To the contrary, Defendants acknowledge that the Receiver's construction plans are those which the State intends to follow to bring the prison health care system up to constitutional standards.

-In fact, Defendants and the Attorney General have relied upon the Receiver's plans as a basis for contesting the overcrowding claim in the three-judge panel proceeding. Just last week, a Deputy Attorney General filed a declaration arguing that improvements are being made in the delivery of health care, notwithstanding overcrowding in the prisons. The defendants cannot have it both ways. They cannot rely upon the Receiver's construction plans in one set of proceedings, but seek to challenge those same plans in another proceeding.

### Remedy

-The Receivership suggests a step-by-step approach to the funding. The reply memo states, "the Court may wish to issue orders designed to ensure that Defendants fund the capital projects through the end of this year, such as an order compelling Defendants to utilize the \$250 million in appropriated, but unencumbered, AB 900 funds that currently exist. And, the Court could, at the same time, require Defendants to come back to this Court in a reasonably short period of time with a demonstrably *workable* plan that intended to provide funding over the long term." (-0-)