



## CALIFORNIA PRISON HEALTH CARE SERVICES

### Media Advisory

# ***DEFENDANTS GOVERNOR SCHWARZENEGGER & CONTROLLER CHIANG: Federal Prison Health Care Receiver J. Clark Kelso's Contempt Motion Set for Hearing Monday RECEIVER WILL BE AVAILABLE FOR COMMENTS AFTER THE HEARING***

**For Monday, October 6, 2008**

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(Sacramento, CA) Federal Receiver J. Clark Kelso will be available for comments following the hearing on the contempt motion against defendants Arnold Schwarzenegger, Governor of California, and State Controller, John Chiang. The Receiver has filed a motion asking that 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. The hearing is set for this coming **Monday, October 6, 2008 at 10am at 450 Golden Gate Ave. in San Francisco in Courtroom 12 on the 19<sup>th</sup> Floor**. The Receiver will meet reporters immediately after the hearing on the Golden Gate Ave Courtroom steps.

Below is a summary of the Receiver's response to the opposition issues that have been raised by the defendants as written by the Receiver's Attorney Martin Dodd:

#### Budgetary Constraints

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.

#### Defendants' 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 legislature has now *failed four times* to enact legislation to permit bond financing of the Receiver's capital projects. 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."

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

The Defendants and the 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. However, 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. 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.

#### "Secret Documents"

Mr. Brown's attorneys agreed that the draft policy at issue was subject to the protective orders in the *Coleman* (mental health) class action, protective orders originally requested by the Attorney General. If Mr. Brown has now changed his position and requests a waiver of those protective orders, he must seek relief from the *Coleman* Court, not the Judge in the *Plata* (medical) class action. The Receiver's contempt motions raise serious and important issues: addressing conditions of confinement so terrible that prisoners die unnecessarily, conditions which, because of decades of State neglect, will cost California's taxpayers billions of dollars to correct. Mr. Brown's decision to simply ignore these issues and, instead, file a politically motivated, seriously flawed diversionary pleading is, unfortunately, yet another example why a Federal Receivership is necessary to address the unconstitutional conditions within California's troubled prison system.

#### 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 intends to provide funding over the long term." -0-