



CALIFORNIA PRISON HEALTH CARE SERVICES

For Immediate Release

Receiver: State "Fails to Provide Any Basis for Termination of Receivership"

For Tuesday, February 24, 2009

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Mr. Kelso will be available for a media phone conference at 11:30am at 1-888-272-7337 ID# 3554858

(San Francisco, CA) Representing the Receiver appointed by the United States District Court in *Plata v. Schwarzenegger*, attorney James Brosnahan of Morrison and Forester filed an opposition brief against the State's motion to terminate the Receivership and its Construction Program. Citing "the same reckless approach" used by the State before, Mr. Brosnahan characterizes the State's motion as follows: "It is wrong on the applicable legal standards. It is unclear about what it seeks. It glosses over the facts and levels false accusations at the Receiver. And perhaps most reckless of all, Defendants ask the Court to terminate ongoing remedial measures without submitting even a scrap of evidence suggesting that they have a better solution or an alternative plan of any kind."

Opposition to Motion to Terminate the Receivership

The Opposition staunchly rejects the State's *only argument* for terminating the Receivership, that the Prison Litigation Reform Act (PLRA) prohibits the appointment of receivers through the citation of numerous cases which hold that Federal District Courts retain all traditional powers that are not expressly revoked by the PLRA. "The PLRA does not expressly or even impliedly revoke the Court's power to appoint a receiver." Additionally, Mr. Brosnahan reminds the Court that State representatives took the position during previous *Plata* hearings that they, "**do not dispute** that the court has the power to appoint a receiver..."

Opposition to Motion to Terminate the Construction Plan

The Opposition also brushes aside the State's contention that the Receiver's Construction plan should be terminated, pointing out that the District Court has yet to approve a final construction plan. In fact, as emphasized in the Opposition, the public comment period concerning construction has just concluded, and the Receiver recently filed a report with the District Court concerning three possible options for the long-term care facility construction. The State's attorneys, the Opposition clarifies, "come nowhere near meeting their burden of showing the construction would violate the law" and "fail to acknowledge" that most of the costly and most often criticized components "**were included at the request of State Officials.**" The Opposition brief recommends that the Court hold an evidentiary hearing if additional specific findings are necessary concerning whether construction proposed by the Receiver comports with the Prison Litigation Reform Act.

Additionally, the Opposition points out that the State does not dispute that unconstitutional medical conditions persist in California's prisons, and that the Three-Judge Panel has issued a tentative ruling which holds that ongoing medical and mental health constitutional violations continue to exist.