



California Corporate & Securities Law

Suit Against CalPERS Survives Demurrer For The Time Being

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Last Friday, I wrote this [post](#) about Sacramento Superior Court Judge Allen Sumner's tentative ruling in a case alleging that CalPERS improperly laundered the salary of the receiver appointed by the U.S. District Court to oversee California's prison health care. On Tuesday, Judge Sumner signed this [order](#). Consistent with the tentative ruling, the case has survived for now CalPERS' demurrer.^[1] However, Judge Sumner has asked for additional briefing on the question of the petitioner's standing. Thus, it remains to be seen whether the case will survive.

In 2005, U.S. District Court Judge Thelton E. Henderson established a receivership for medical care in California's prisons. The Receiver reports to the federal court, not the Governor. The gist of the petitioner's claim is that the California [Judicial Council](#) through the Administrative Office of the Courts appointed the current receiver as a "Federal Court Consultant" and then "loaned" the receiver to the California Prison Health Care Receivership Corporation (the "CPHCR Corporation"). The alleged purpose of all these machinations was to maintain the receiver's eligibility with CalPERS.

The ambiguous nature of the receiver is evident in this [website](#) for the California Correctional Health Care Services. To the casual reader, the website appears to be that of a California state agency, with a bold "CA.gov" in the upper left-hand corner even though the site uses the ".org" domain name used by non-profits and associations rather than the ".ca.gov" used by California state agencies.

[1] Although the demurrer is a common responsive pleading, other states, such as Nevada, have abolished it. See, e.g., NRCP 7(c) ("Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used."). The demurrer, an Anglo-French term meaning to delay, has its roots in the English law. According to Sir William Blackstone, "An issue upon matter of law is called a demurrer: and it confesses the facts to be true, as stated by the opposite party; but denies that, by the law arising upon those facts, any injury is done to the plaintiff, or that the defendant has made out a legitimate excuse . . .". 3 *Commentaries on the Laws of England* ch. 21. The English Stamp Act of 1765 that so angered American colonials mandated a tax of 3 pence upon "every skin or piece of vellum or parchment, or sheet or piece of paper, on which shall be ingrossed, written or printed, any . . . demurrer, or other pleading, or any copy thereof, in any court of law within the British colonies and plantations in America".

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information kbishop@allenmatkins.com

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