

No. C061011

IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

---

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al.,  
*Plaintiffs and Appellants,*

v.

JOHN CHIANG, as State Controller, etc.,  
*Defendant and Appellant;*

ARNOLD SCHWARZENEGGER, as Governor, etc., et al.,  
*Defendants and Respondents.*

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**FILED**

On Appeal of an Order and Judgment  
by the Sacramento County Superior Court,  
Case No. 34-2008-80000126-CU-WM-GDS,  
The Honorable Patrick Marlette

SEP - 1 2009

COURT OF APPEAL - THIRD DISTRICT  
DEENA C. FAWCETT  
BY J. Fawcett Deputy

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**JOINT APPENDIX  
VOLUME IV OF IV [PAGES 679 THROUGH 814]**

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SEP - 1 2009

Clerk, Court of Appeal,  
Third Appellate District

Attorneys for Defendant and Appellant State Controller John Chiang

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J	1/9/09	Minute Order [Petitioners' Ex Parte Application for an Order Shortening Time to Hear Petition for Writ of Mandate and Respondents' Ex Parte Request for an Order Shortening Time for Filing Demurrer]	Vol. I, JA 92

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BB	1/20/09	Declaration of David W. Tyra, Exh. 5: Nov. 6, 2008 Special Session Proclamation	Vol. III, JA 517
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TT	1/22/09	Respondent Schwarzenegger and DPA's Reply to All Petitioners' Oppositions to Respondents' Demurrers to Petitions for Writ of Mandate	Vol. III, JA 633
UU	1/22/09	Declaration of Tami R. Bogert Regarding Public Employment Relations Board's Exclusive Initial Jurisdiction and Filed Unfair Practice Charges Concerning the State's Furlough Plan	Vol. III, JA 646
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**JOHN CHIANG**  
California State Controller

February 3, 2009

The Honorable Patrick Marlette  
Superior Court of California  
County of Sacramento  
Gordon D. Schaber Courthouse  
Department 19  
720 Ninth Street  
Sacramento, CA 95814

Re: *Professional Engineers in California Government, et al. v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000126

*California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Governor Arnold Schwarzenegger, et al.*, Case No. 2009-80000134

*Service Employees International Union, Local 1000 v. Governor Arnold Schwarzenegger, et al.*, Case No. 2009-80000135

Dear Judge Marlette:

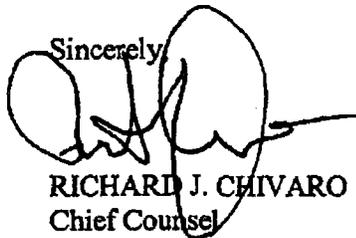
This office has received the enclosed letters from the independently elected Constitutional Officers and other elected state-wide officials including the Lieutenant Governor, Office of the Attorney General, Secretary of State, State Treasurer, Superintendent of Public Instruction, and Insurance Commissioner regarding the applicability of the recent ruling in the above-referenced cases to employees of those offices.

Prior to the ruling, the Governor and his staff contacted the constitutional officers and informed them that their offices were not affected by the executive order inasmuch as those officers were not under the direct authority of the Governor. Based on this contact, none of the constitutional officers sought to challenge the executive order. The specific terms of the executive order state that it only applies to state employees under the Governor's direct authority. However, since your decision was issued, the Governor's office has construed the ruling in its broadest possible sense to apply to all state employees and, basing its decision on this reading, has now notified the independent constitutional officers and state-wide officials that their employees are impacted by the ruling.

The Honorable Patrick Marlette  
February 3, 2009  
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The issue of whether independently elected constitutional and state-wide officers are subject to a Governor's executive order and/or whether the Governor's executive order applies to constitutional and state-wide officers, their agencies and staff was not an issue before the court and, therefore, was never pled, briefed, litigated or argued by any of the parties. Therefore, the State Controller's Office respectfully requests clarification of the breadth of the court's ruling. Specifically, we ask that the court clarify whether the ruling was intended to confer broad authority in the Governor to cover issues that were not properly before the court. Given the fact that the Governor intends to implement his order on February 6, 2009, your prompt response would be appreciated.

Sincerely,



RICHARD J. CHIVARO  
Chief Counsel



RONALD V. PLACET  
Senior Staff Counsel

RJC/RVP/ac

Enclosures

Letter from Lieutenant Governor John Garamendi  
Letter from Secretary of State Debra Bowen  
Letter from California State Treasurer Bill Lockyer  
Letter from Superintendent of Public Instruction Jack O'Connell  
Letter from Insurance Commissioner Steve Poizner  
Letter from Chief Deputy Attorney General James M. Humes

cc: David W. Tyra, Kronick, Moskowitz, Tiedemann & Girard

Will M. Yamada, Personnel Relations Counsel,  
Department of Personnel Administration

J. Felix De La Torre and Brook Pierman, SEIU Local 1000

Patrick Whalen, California Attorneys, Administrative Law Judges and  
Hearing Officers in State Employment

Gerald James, Professional Engineers in California Government and  
California Association of Professional Scientists

Gregg McLean Adam, Carroll, Burdick & McDonough

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3 California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. Governor  
4 Arnold Schwarzenegger, et al.  
5 Sacramento County Superior Court Case No. 2009-80000134

6 Service Employees International Union, Local 1000 v. Governor Arnold Schwarzenegger, et al.  
7 Sacramento County Superior Court Case No. 2009-80000135

8 **PROOF OF SERVICE**

9 I am employed in the County of Sacramento, State of California. At the time of service, I was at least 18  
10 years of age, a United States citizen employed in the county where the mailing occurred, and not a party to the  
11 within action. My business address is 300 Capitol Mall, Suite 1850, Sacramento, CA 95814.

12 On February 3, 2009, I served the foregoing document entitled:

13 **CONTROLLER'S LETTER TO JUDGE MARLETTE DATED FEBRUARY 3, 2009**

14 on all interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope,  
15 addressed as follows:

16 David W. Tyra  
17 Kronick, Moskovitz, Tiedemann & Girard  
18 400 Capitol Mall, 27th Floor  
19 Sacramento, CA 95814

Will M. Yamada, Personnel Relations Counsel  
Department of Personnel Administration  
1515 S Street, North Building, Suite 400  
Sacramento, CA 95814

20 J. Felix De La Torre  
21 Brook Pierman  
22 SEIU Local 1000  
23 1808 14<sup>th</sup> Street  
24 Sacramento, CA 95814

Patrick Whalen  
California Attorneys, Administrative Law Judges  
and Hearing Officers in State Employment  
Law Office of Brooks Ellison  
1725 Capitol Avenue  
Sacramento, CA 95814

25 Gerald James  
26 Professional Engineers in California Government and  
27 California Association of Professional Scientists  
28 660 J Street, Suite 445  
Sacramento, CA 95814

Gregg McLean Adam  
Carroll, Burdick & McDonough LLP  
44 Montgomery Street, Suite 400  
San Francisco, CA 94104

BY MAIL

I placed the envelope for collection and processing for mailing following this business's ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 3, 2009, at Sacramento, California.



Amber A. Camarena



LIEUTENANT GOVERNOR JOHN GARAMENDI

February 2, 2008

The Honorable John Chiang  
State Controller  
P.O. Box 942850  
Sacramento, CA 94250-5872

Dear Controller Chiang:

I am writing to clarify my position with regard to employee furloughs affecting state constitutional offices, and to request that you not implement a furlough applying to employees under my direction. I respectfully maintain that the Governor does not have the power to mandate a furlough.

I understand these are extraordinary times. We are facing unprecedented economic challenges and there is no question that all state offices must share in making hard choices to cut costs and preserve cash. I have agreed to substantial cuts in my operating budget, including two consecutive 10% reductions this fiscal year, which more than offset savings from a furlough.

It is my responsibility to structure cost savings that preserve the integrity of my office.

Nothing in Judge Marlette's ruling could be construed to modify historical precedent which requires Constitutional officers to manage their budget and operations in a manner which will allow for the most effective discharge of their duties. This includes decisions relating to effective staffing requirements.

I appreciate your cooperation in this request, and will await the Court's direction

Sincerely,

A large, stylized handwritten signature in black ink, reading "John Garamendi".

JOHN GARAMENDI  
Lieutenant Governor



*Secretary of State*  
**DEBRA BOWEN**  
*State of California*

February 2, 2009

The Honorable John Chiang  
California State Controller  
P.O. Box 942850  
Sacramento, CA 94250-5872

Dear Mr. Chiang:

I write regarding Governor Schwarzenegger's direction to you following the January 29, 2009, Superior Court ruling concerning the Governor's ability to furlough certain state employees. I do not believe this ruling can legally be applied to state employees working at the Secretary of State's office, nor do I believe it is in California's best interests. I respectfully ask that you not apply the ruling to the employees under my control and direction.

I am committed to doing my part to address California's unprecedented budget situation. However, implementation of the Governor's Executive Order as written will interfere with my ability to provide services, such as filing corporate documents and accepting Uniform Commercial Code filings, that are critical to business and commercial activity in the state.

Moreover, reducing the number of employee hours spent now will result in overtime hours being spent later, thus costing taxpayers money rather than saving it. I support the Governor's overall goal of reducing state spending, which is why I reduced my 2008-09 General Fund budget by 10%. For 2009-10, I am committed to achieving savings equal to or greater than the amount of money the Governor seeks to achieve by furloughing people who work for the Secretary of State's office.

As you are aware, California's Constitutional officers were not a party to the Superior Court litigation because they were repeatedly told that the Governor believed he lacked authority over their employees.

Executive Order S-09-08, issued on July 31, 2008, recognized that Governor Schwarzenegger did not have the authority to impose the requirements on the state's Constitutional officers because they are not under his direct executive authority:

**"IT IS FURTHER REQUESTED** that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, constitutional officers, the legislative branch

The Honorable John Chiang  
February 2, 2009  
Page 2 of 2

(including the Legislative Counsel Bureau), and judicial branch, assist in the implementation of this Order and implement similar mitigation measures that will help to preserve the State's cash supply during this budget impasse."

Similarly, Executive Order S-16-08, issued on December 19, 2008, explicitly omitted agencies not under the Governor's direct executive authority:

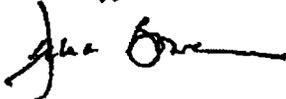
"IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year."

As recently as January 9, 2009, the Governor's own staff conceded in a telephone conference, that the Governor had no authority to apply Executive Order S-16-08 to the agencies of other Constitutional officers. They requested that the Constitutional officers implement the order voluntarily.

While the Superior Court's ruling upholds Executive Order S-16-08, it does not address the employees of California's other Constitutional officers because that issue was never raised during the litigation. I did not join the lawsuit filed against the Governor because I am not under his direct executive authority and his staff assured me and the other Constitutional officers that we were not subject to his order. Having thus ensured that I would have had no standing to challenge the order in court, the Governor cannot now use the decision of the Superior Court to require my staff to take unpaid furlough days.

If you have any questions about my position in this matter, or if you need further information, please contact me at (916) 653-7244.

Sincerely,



Debra Bowen  
Secretary of State

DB:elg:pg



**BILL LOCKYER**  
TREASURER  
STATE OF CALIFORNIA

January 30, 2009

John Chiang  
State Controller  
P.O. Box 942850  
Sacramento, CA 94250-5872

RE: State Employee Furlough per Governor's Executive Order S-16-08

Dear Mr. Chiang:

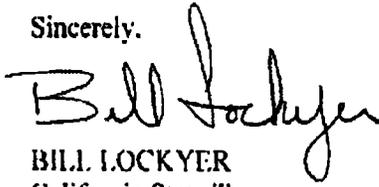
In light of the ruling issued by Judge Marlette yesterday, I am requesting that the State Controller's Office not implement the furlough order in connection with employees under my control and direction. It is my position that the Governor does not have the authority to unilaterally impose a furlough on the employees of the other constitutional officers without their consent and that there is nothing in Judge Marlette's ruling that deals with these issues, which were neither argued nor pled in his court. His order cannot be interpreted to authorize furloughs in the departments under the control and management of constitutional officers other than the Governor.

Government Code section 12302 provides the Treasurer with the exclusive authority, subject to the Civil Service Act, to appoint and fix the salaries of the employees necessary to carry out the duties of the office. In addition, as the office of a separately elected constitutional official, this office has been granted inherent powers and responsibilities and the authority to act independently within certain constraints. For instance, the Treasurer must act within the constraints of budget appropriations and legislative enactments. However, the Treasurer retains the authority to determine how best to carry out his duties without interference from other executive branch elected officials.

I would note that both in private conversations and in statements to the press, representatives of the Governor's Office have previously acknowledged and assured our offices that constitutional officers are not required to comply with Executive Order S-16-08. I do not see anything in Judge Marlette's ruling that would suggest that generally accepted principle to be overturned.

As this matter progresses, we would certainly comply with an appellate court order upholding the Governor's Executive Order and applying it to the constitutional offices; any legislative action taken to impose furloughs on state employees; or agreements reached with state employee bargaining units that are subsequently ratified by the Legislature. However, at this time and as noted above, I am asking that the Controller's Office not implement the Executive Order with respect to employees under my control and direction.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Lockyer". The signature is written in a cursive, flowing style with a large initial "B".

BILL LOCKYER  
California State Treasurer



CALIFORNIA  
DEPARTMENT OF  
EDUCATION

**JACK O'CONNELL**  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

February 2, 2008

The Honorable John Chiang  
State Controller  
P.O. Box 942850  
Sacramento, CA 94250-5872

Dear Controller Chiang:

I write in response to the Sacramento Superior Court's ruling upholding Governor Arnold Schwarzenegger's employee furlough plan, specifically, the Governor's recent directive to apply his plan to departments not under his auspices. I request that you not apply the furlough to employees under my control and direction, based on my belief that the Governor lacks the authority to unilaterally impose a furlough on state employees who work for an elected constitutional officer other than the Governor. The court proceedings did not address this issue, and the court's order cannot be read to allow or require that my employees be subjected to a furlough at the Governor's directive.

There is good reason why the court's order cannot be given such sweeping application. Until the court's ruling, representatives of the Governor's Office and the Department of Personnel Administration explicitly advised the various constitutional offices that they were not required to comply with Executive Order S-16-08. Instead, the Governor's representatives sought our commitment to achieving the Executive Order's primary objective of a ten percent reduction in General Fund expenditures. This approach is consistent with the position of elected constitutional officers as separately elected leaders charged with the duty to fulfill the obligations of their offices. The State Superintendent of Public Instruction (SSPI) must act within budgetary limitations and legislative enactments, but as an elected official, the SSPI retains inherent powers to determine the manner in which the duties of the office are carried out.

Under my direction, the California Department of Education will do its part to address the state's dire financial situation and achieve General Fund savings. My Department has frozen hiring and contracting, and substantially limited travel and other expenditures. All expenditures are being closely monitored and trimmed. However, reductions will be made by me in a thoughtful manner that preserves, where ever possible, our capacity to carry out vital programs. As an example, it makes no sense to drastically cut federally funded programs that provide meals to needy children, when the goal is a reduction in General Fund spending. In addition, the needs of students at

The Honorable John Chiang  
February 2, 2009  
Page 2

California's State Special Schools, which operate on a 24-hour basis, must be given careful consideration.

I remain hopeful that these difficult circumstances can be resolved without the imposition of unilateral furloughs for any state employee, and will follow the progress of further judicial proceedings, collective bargaining efforts, and legislative action. But at this time, for the reasons described above, I ask that the Controller's Office not implement Executive Order S-16-08 for the Department under my control and direction.

Sincerely,

Handwritten signature of Jack O'Connell in black ink.

JACK O'CONNELL

JO:gp



STEVE POIZNER  
Insurance Commissioner

February 2, 2009

Honorable John Chiang  
State Controller  
300 Capitol Mall  
Sacramento, CA 95814

Dear Controller Chiang:

The Governor's office has informed me that they intend to apply Judge Marlette's court ruling to the Department of Insurance as well as to the offices of the other independently-elected statewide officers. There is legal uncertainty as to the Governor's authority in this matter.

The court's ruling did not specifically address the question of whether the Governor's executive authority to order furloughs extends to other statewide offices. Therefore, I ask you to withhold implementation the ordered furloughs at the Department of Insurance until this matter is resolved.

Thank you for your immediate attention to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Poizner", written over a faint circular stamp.

STEVE POIZNER  
Insurance Commissioner

300 Capitol Mall, Suite 1700  
Sacramento, California 95814  
Phone: (916) 492-3500 • Fax: (916) 492-5280

PECG JA 000689



STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL  
JAMES M. HUMES  
CHIEF DEPUTY ATTORNEY GENERAL

February 2, 2009

Honorable John Chiang  
California State Controller  
300 Capitol Mall, Suite 1850  
Sacramento, CA 95814

RE: *Professional Engineers in California Government v. Schwarzenegger*  
Sacramento Superior Court Case No. 34-2008-80000126-CU-WM-GDS

*California Attorneys, Administrative Law Judges, etc. v. Schwarzenegger*  
Sacramento Superior Court Case No. 34-2009-800000134-CU-WM-GDS

*Service Employees International Union, Local 1000 v. Schwarzenegger*  
Sacramento Superior Court Case No. 34-2009-80000135-CU-WM-GDS

Dear Mr. Chiang:

I understand that the Governor's Office has changed its position regarding the applicability of the Governor's furlough order on other constitutional officers. Before Judge Marlette's January 29, 2009 minute order, the Governor's Office encouraged, but did not require, other constitutional officers to comply with the furlough order. Accordingly, this office did not intervene in these cases. But emboldened by the minute order, the Governor's Office now informs us that it wants to apply the furlough order to other constitutional officers after all. Because we believe that the Governor's interpretation of the minute order is incorrect, and because we believe that the furlough order cannot be forced on other constitutional officers under these circumstances, we ask the Controller's Office to refrain from implementing the furloughs called for in Executive Order S-16-08 on our employees.

It appears that the Governor's Office is attempting to use the *absence* of any ruling addressing whether the Governor has authority to furlough employees of constitutional officers like the Attorney General as a ground to assert that authority. This tactic is improper for several reasons.

To begin with, the question of whether the Governor has authority to furlough employees of the other constitutional officers was not before the court. As you know, the writ actions were each brought by unions asking the court for an order holding that the Governor's executive order requiring the furloughs is illegal. Thus, unions were trying to prove that you had a ministerial duty not to follow the Executive Order for the reasons set forth in their writ petitions. (*Sacramento County Fire Protection Dist. v. Sacramento County Assessment Appeals Bd. II* (1999) 75 Cal.App.4th 327, 331 [describing the requirements for a writ as "a clear, present (and usually ministerial) duty on the part of the respondent; [and] (2) a clear, present and beneficial right in the petitioner in the performance of that duty." (citation omitted)].) The court rejected the unions' position and intends to render a judgment denying the writ petitions. But that judgment, whenever it is signed, cannot be interpreted to address issues that were not before the court, much less to grant affirmative relief in favor of the Governor on those issues as if he had prosecuted his own petition for writ of mandate against you.

Nor can the Governor's authority to unilaterally impose a furlough on employees of the other constitutional officers be lightly implied from his more general authority. While a full briefing regarding the Governor's authority to issue executive orders is beyond the limited scope of this letter, our Supreme Court has noted, "[u]nlike the federal Constitution, the California Constitution . . . embodies a structure of divided executive power." (*Marine Forests Soc. v. California Coastal Com'n* (2005) 36 Cal.4th 1, 31; see also Cal. Const., art. V, § 11 [providing for the election of the Lieutenant Governor, Attorney General, Controller, Secretary of State, and Treasurer]; Zasloff, *Taking Politics Seriously: A Theory of California's Separation of Powers* (2004) 51 UCLA L. Rev. 1079, 1113 ["the California Constitution explicitly and repeatedly creates a multiple executive. The Lieutenant Governor, Attorney General, Secretary of State, Treasurer, and Controller all are directly elected and do not answer to the Governor."]) The Attorney General has a constitutional duty to ensure that the laws are uniformly and adequately enforced in California (Cal. Const., art. V, § 13) and statutory control over the Department of Justice. (Gov't Code, § 15000.) Dozens of statutes impose various duties on the Attorney General and DOJ. Thus, there can be no question that the Attorney General, like the other constitutional officers, wields executive authority as surely as the Governor does. For this reason, we do not believe that an executive order, which has been defined as "a formal written directive of the Governor which by interpretation, or the specification of detail, directs and guides *subordinate officers* in the enforcement of a particular law" (63 Ops.Cal.Atty.Gen. 583, 584 (1980), emphasis added), applies to the Attorney General. Accordingly, the Governor lacks the authority to compel the Attorney General to comply with the executive order mandating furloughs.

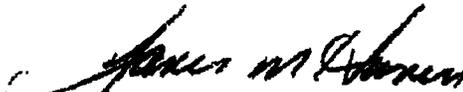
The Attorney General would have intervened in these writ actions had he believed that the Governor intended to apply mandatory furloughs to DOJ employees. He did not do so only because the Governor's Office previously took the position, both in private conversations and

Hon. John Chiang  
February 2, 2009  
Page 3

publicly, that the constitutional officers were not required to participate in the furlough program. (See Goldmacher, *Statewide Dems Say No to Furloughs For Own Staff*, Sacramento Bee (January 12, 2009) [article notes that Governor's Office "has said the furloughs can't be mandated on other constitutional offices" and quotes Governor's spokesman stating that with respect to constitutional officers, furloughs are "their decision"] <available at <http://www.sacbee.com/static/weblogs/capitolalert/latest/018524.html>>.) For the Governor presently to take the position, based on Judge Marlette's order, that he is entitled to require furloughs for the constitutional officers' employees, is tantamount to a bait-and-switch.

We urge the Controller not to implement the furlough order against DOJ employees.

Sincerely,



JAMES M. HUMES  
Chief Deputy Attorney General



SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

DATE/TIME : 2/04/09 DEPT. NO : 19  
JUDGE : P. MARLETTE CLERK : D. RIOS, SR.  
REPORTER : NONE BAILIFF : NONE

---

PRESENT:

Professional Engineers in California  
Government; California Association of  
Professional Scientists,  
Petitioners,

VS. Case No.: 34-2008-80000126

Arnold Schwarzenegger, Governor,  
State of California; Department of  
Personnel Administration; State  
Controller John Chiang; and Does 1  
through 20 inclusive,  
Respondents.

---

California Attorneys, Administrative  
Law Judges and Hearing Officers in  
State Employment,  
Petitioners,

VS. Case No.: 34-2009-80000134

Arnold Schwarzenegger, Governor,  
State of California; David Gilb as  
Director of the Department of  
Personnel Administration; John Chiang  
Controller of the State of  
California; and Does 1 through 10,  
Respondents.

BOOK : 19  
PAGE : 2008-80000126-1909  
DATE : 2/04/09  
CASE NO. : 2008-80000126, et al  
CASE TITLE : PECG; CAPS v.  
SCHWARZENEGGER, et al

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO

BY: D. RIOS, SR.,  
Deputy Clerk

**Service Employees International  
Union, Local 1000,  
Petitioners,**

**VS. Case No.: 34-2009-80000135**

**Arnold Schwarzenegger, Governor,  
State of California; Department of  
Personnel Administration; State  
Controller John Chiang; and Does 1  
through 20 inclusive,  
Respondents.**

**Nature of Proceedings:**

**MINUTE ORDER ON STATE CONTROLLER'S  
REQUEST FOR CLARIFICATION OF COURT'S  
RULING**

The Court has received and reviewed a letter dated February 3, 2009 from Richard J. Chivaro, Chief Counsel of the California State Controller's Office, requesting clarification of the Court's ruling in these matters, specifically, on the issue of whether the ruling is applicable to employees of independently elected Constitutional Officers and other elected state-wide officials, including the Lieutenant Governor, Office of the Attorney General, Secretary of State, State Treasurer, Superintendent of Public Instruction and Insurance Commissioner. The letter to the Court attaches copies of letters to the State Controller from those officers or their representatives raising issues regarding the Governor's authority to order furloughs of their employees.

The Court's ruling in the above-captioned matters addressed petitions for writ of mandate and complaints for declaratory relief brought by four recognized employee organizations, raising issues regarding the Governor's authority to order furloughs of their members, as employees of executive branch agencies. The independently elected Constitutional Officers and other elected state-wide officials referenced above were not parties to these matters. The petitions and complaints upon which the Court ruled did not raise any issues regarding the Governor's authority to order furloughs for the employees of those officers and officials. The Court's ruling therefore did not address, or make any ruling regarding, the Governor's authority to order furloughs for the employees of those officers and officials. Accordingly, the Court expresses no views regarding that issue.

**Certificate of Service by Mailing attached.**

**CERTIFICATE OF SERVICE BY MAILING**  
**C.C.P. Sec. 1013a(4))**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled Minute Order in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James  
Attorney at Law  
660 J Street, Suite 445  
Sacramento, CA 95814

David W. Tyra  
KRÖNICK, MOSKOVITZ, TIEDEMANN  
& GIRARD  
400 Capitol Mall, 7th Floor  
Sacramento, CA 95814

Patrick Whalen  
ELLISON WILSON ADVOCACY, LLC  
1725 Capitol Avenue  
Sacramento, CA 95814

J. Felix DeLa Torre, Staff Attorney  
S.E.I.U.  
1808 -14<sup>th</sup> Street  
Sacramento, CA 95811

Brooke D. Pierman, Staff Attorney  
S.E.I.U.  
1808 -14<sup>th</sup> Street  
Sacramento, CA 95811

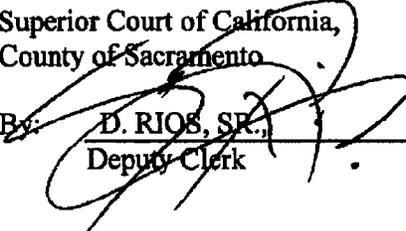
Will M. Yamada  
Department of Personnel Administration  
Legal Office  
1515 S Street, No. Bldg., Ste. 400  
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel  
Ronald V. Placet,  
Sr. Staff Counsel  
Office of the State Controller  
300 Capitol Mall, Ste 1850  
Sacramento, CA 95814

Gregg McLean Adam  
CARROLL, BURDICK & McDONOUGH  
44 Montgomery Street, Ste. 400  
San Francisco, CA 94104

Dated: February 4, 2009

Superior Court of California,  
County of Sacramento

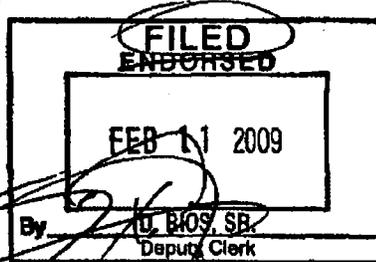
By:   
D. RIOS, SR.,  
Deputy Clerk



DEPARTMENT 19

*Filed by Fax*

1 DAVID W. TYRA, State Bar No. 116218  
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489  
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
4 A Law Corporation  
5 400 Capitol Mall, 27th Floor  
6 Sacramento, California 95814  
7 Telephone: (916) 321-4500  
8 Facsimile: (916) 321-4555  
9 E-mail: [dtyra@kmtg.com](mailto:dtyra@kmtg.com)



6 K. WILLIAM CURTIS  
7 Chief Counsel, State Bar No. 095753  
8 WARREN C. STRACENER  
9 Deputy Chief Counsel, State Bar No. 127921  
10 LINDA A. MAYHEW  
11 Assistant Chief Counsel, State Bar No. 155049  
12 WILL M. YAMADA  
13 Labor Relations Counsel, State Bar No. 226669  
14 DEPARTMENT OF PERSONNEL ADMINISTRATION  
15 1515 S Street, North Building, Suite 400  
16 Sacramento, CA 95811-7258  
17 Telephone: (916) 324-0512  
18 Facsimile: (916) 323-4723  
19 E-mail: [Willyamada@dpa.ca.gov](mailto:Willyamada@dpa.ca.gov)

20 Attorneys for Defendants/Respondents  
21 ARNOLD SCHWARZENEGGER, Governor; STATE OF  
22 CALIFORNIA; and DEPARTMENT OF PERSONNEL  
23 ADMINISTRATION

Exempted from Fees  
(Gov. Code § 6103)

24 SUPERIOR COURT OF CALIFORNIA  
25 COUNTY OF SACRAMENTO

26 PROFESSIONAL ENGINEERS IN  
27 CALIFORNIA GOVERNMENT;  
28 CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS,

Case No. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To  
The Honorable Patrick Marlette

Petitioners/Plaintiffs,

ORDER AFTER HEARING

v.

ARNOLD SCHWARZENEGGER,  
Governor, STATE OF CALIFORNIA;  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION; STATE  
CONTROLLER JOHN CHIANG; and  
DOES 1 through 20, inclusive,

Date: January 29, 2009  
Time: 9:00 a.m.  
Dept.: 19

Respondents/Defendants.

KRONICK,  
MOSKOVITZ,  
TIEDEMANN &  
GIRARD  
ATTORNEYS AT LAW

909201.1

- 1 -

ORDER AFTER HEARING



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The Court, after considering the various brief submitted by the parties, the exhibits submitted therewith, and having heard the oral argument of counsel renders the decision attached hereto as Exhibit A and incorporated herein by reference.

DATED: FEB 11 2009



*[Handwritten Signature]*  
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2009

OFFICE OF STATE CONTROLLER

By: \_\_\_\_\_  
Shawn D. Silva, Attorneys for  
Respondent/Defendant  
STATE CONTROLLER JOHN CHIANG

Dated: \_\_\_\_\_, 2009

LAW OFFICE OF BROOKS ELLISON

By: \_\_\_\_\_  
Patrick J. Whalen, Attorneys for  
Petitioners/Plaintiffs  
CALIFORNIA ATTORNEYS,  
ADMINISTRATIVE LAW JUDGES and  
HEARING OFFICERS IN STATE  
EMPLOYMENT

Dated: 2/2/, 2009

By: *[Handwritten Signature]*  
Gerald A. James, Attorneys for  
Petitioners/Plaintiffs  
PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT and  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS

Dated: \_\_\_\_\_, 2009

SEIU LOCAL 1000

By: \_\_\_\_\_  
J. Felix De La Torre, Attorneys for  
Petitioner/Plaintiff  
SERVICE EMPLOYEES  
INTERNATIONAL LOCAL 1000

# **EXHIBIT A**



**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134.

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

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**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
\_\_\_\_\_  
**Deputy Clerk**

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80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

**Ruling on Preliminary Evidentiary Issues:**

Respondents<sup>1</sup> have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

**Ruling on Respondents' Demurrers to the Petitions:**

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<sup>1</sup> In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

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Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3<sup>rd</sup> 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3<sup>rd</sup> 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3<sup>rd</sup> 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 168-169.)

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In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.<sup>2</sup>

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

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<sup>2</sup> This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

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Respondents' demurrers are therefore overruled.

**Ruling on the Petitions and Complaints:**

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.<sup>3</sup> According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.<sup>4</sup>

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

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<sup>3</sup> There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

<sup>4</sup> See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

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Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties<sup>5</sup>, and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

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<sup>5</sup> See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PECG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp. 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PECG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

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Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."<sup>6</sup>

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."<sup>7</sup>

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."<sup>8</sup>

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."<sup>9</sup>

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

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<sup>6</sup> See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.

<sup>7</sup> See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.

<sup>8</sup> See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.

<sup>9</sup> See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

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cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.<sup>10</sup>

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

<sup>10</sup> At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

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order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PEGG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.<sup>11</sup>

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.<sup>12</sup> The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

<sup>11</sup> At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

<sup>12</sup> See, Title 29, Code of Federal Regulations, section 541.710.

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employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented<sup>13</sup>, is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation<sup>14</sup>, but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA.

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."<sup>15</sup> In *Tirapelle v. Davis*

<sup>13</sup> See, Declaration of Don Schepmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.

<sup>14</sup> See, e.g., 29 U.S.C. Section 216.

<sup>15</sup> See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

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**CASE NO. : 2008-80000126**  
**CASE TITLE : PEGG; CAPS v.**  
**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**



**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

**CERTIFICATE OF SERVICE BY MAILING**  
**C.C.P. Sec. 1013a(4))**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James  
Attorney at Law  
660 J Street, Suite 445  
Sacramento, CA 95814

David W. Tyra  
KRONICK, MOSKOVITZ, TIEDEMANN  
& GIRARD  
400 Capitol Mall, 7th Floor  
Sacramento, CA 95814

Patrick Whalen  
ELLISON WILSON ADVOCACY, LLC  
1725 Capitol Avenue  
Sacramento, CA 95814  
Brooke D. Pierman, Staff Attorney  
S.E.I.U.  
1808 -14<sup>th</sup> Street  
Sacramento, CA 95811

J. Felix DeLa Torre, Staff Attorney  
S.E.I.U.  
1808 -14<sup>th</sup> Street  
Sacramento, CA 95811  
Will M. Yamada  
Department of Personnel Administration  
Legal Office  
1515 S Street, No. Bldg., Ste. 400  
Sacramento, CA 95811

RICHARD CHIVARO, Chief Counsel  
Ronald V. Placet,  
Sr. Staff Counsel  
Office of the State Controller  
300 Capitol Mall, Ste 1850  
Sacramento, CA 95814

Dated: 1/30/09

Superior Court of California,  
County of Sacramento

By: D. RIOS, SR.,  
Deputy Clerk

**BOOK : 19**  
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**DATE : 01/30/09**  
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**SCHWARZENEGGER**

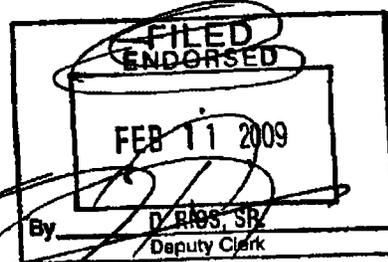
**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

1 DAVID W. TYRA, State Bar No. 116218  
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489  
3 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
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18 Attorneys for Defendants/Respondents  
19 ARNOLD SCHWARZENEGGER, Governor; STATE OF  
20 CALIFORNIA; and DEPARTMENT OF PERSONNEL  
21 ADMINISTRATION

Exempted from Fees  
(Gov. Code § 6103)

22 SUPERIOR COURT OF CALIFORNIA  
23 COUNTY OF SACRAMENTO

24 PROFESSIONAL ENGINEERS IN  
25 CALIFORNIA GOVERNMENT;  
26 CALIFORNIA ASSOCIATION OF  
27 PROFESSIONAL SCIENTISTS,

CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To  
The Honorable Patrick Marlette

Petitioners/Plaintiffs,

**PROOF OF SERVICE**

v.

Date: January 29, 2009  
Time: 9:00 a.m.  
Dept.: 19

28 ARNOLD SCHWARZENEGGER,  
Governor; STATE OF CALIFORNIA;  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION; STATE  
CONTROLLER JOHN CHIANG; and  
DOES 1 through 20, inclusive,

Respondents/Defendants.

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I, Bao Xiong, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On February 5, 2009, I served a copy of the within document(s):

- 1. **2/5/09 LETTER TO HONORABLE PATRICK MARLETTE W/ CONTROLLER'S OBJECTIONS**
- 2. **ORDER AFTER HEARING**
- 3. **JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

by causing it to be transmitted via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

**Attorney for Petitioners/Plaintiffs**

Gerald James, Esq.  
660 J Street, Suite 445  
Sacramento, CA 95814  
Fax: (916) 446-0489  
Email: gjames@cwo.com

**Attorney for Respondent/Defendant**

**State Controller John Chiang**  
Richard J. Chivaro, Esq.  
Ronald V. Placet, Esq.  
Shawn D. Silva, Esq.  
Ana Maria Garza, Esq.  
OFFICE OF THE STATE  
CONTROLLER  
300 Capitol Mall, Suite 1850  
Sacramento, CA 95814  
Fax: (916) 322-1220  
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 5, 2009, at Sacramento, California.

  
\_\_\_\_\_  
Bao Xiong



DEPARTMENT 19

*Filed by Ryo*

1 DAVID W. TYRA, State Bar No. 116218  
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RECEIVED  
FEB -5 2009  
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CIVIL

ENTERED  
FEB 11 2009

6 K. WILLIAM CURTIS  
Chief Counsel, State Bar No. 095753  
7 WARREN C. STRACENER  
Deputy Chief Counsel, State Bar No. 127921  
8 LINDA A. MAYHEW  
Assistant Chief Counsel, State Bar No. 155049  
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E-mail: [WillYamada@dpa.ca.gov](mailto:WillYamada@dpa.ca.gov)

FILED  
ENDORSED  
FEB 11 2009  
By *[Signature]* D. BROS. SR.  
Deputy Clerk

13 Attorneys for Defendants/Respondents  
14 ARNOLD SCHWARZENEGGER, Governor; STATE OF  
15 CALIFORNIA; and DEPARTMENT OF PERSONNEL  
ADMINISTRATION

Exempted from Fees  
(Gov. Code § 6103)

16 SUPERIOR COURT OF CALIFORNIA  
17 COUNTY OF SACRAMENTO

18  
19 PROFESSIONAL ENGINEERS IN  
20 CALIFORNIA GOVERNMENT;  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS,

Case No. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To  
The Honorable Patrick Marlette

21 Petitioners/Plaintiffs,

JUDGMENT RE: VERIFIED PETITION  
FOR WRIT OF MANDATE AND  
COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF

22 v.

23 ARNOLD SCHWARZENEGGER,  
24 Governor, STATE OF CALIFORNIA;  
DEPARTMENT OF PERSONNEL  
25 ADMINISTRATION; STATE  
26 CONTROLLER JOHN CHIANG; and  
DOES 1 through 20, inclusive,

Date: January 29, 2009  
Time: 9:00 a.m.  
Dept.: 19

27 Respondents/Defendants.  
28

KRONICK,  
MOSKOVITZ,  
TIEDEMANN &  
GIRARD  
ATTORNEYS AT LAW

909204.1

- 1 -

JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

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Based upon the Ruling of this Court and Order Thereon attached hereto as Exhibit A and incorporated herein by reference,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be entered forthwith in favor of Respondents and against Petitioners with respect to Petitioners Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.

DATED: FEB 11 2009



*[Signature]*  
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2009

OFFICE OF STATE CONTROLLER

By: \_\_\_\_\_  
Shawn D. Silva, Attorneys for  
Respondent/Defendant  
STATE CONTROLLER JOHN CHIANG

Dated: \_\_\_\_\_, 2009

LAW OFFICE OF BROOKS ELLISON

By: \_\_\_\_\_  
Patrick J. Whalen, Attorneys for  
Petitioners/Plaintiffs  
CALIFORNIA ATTORNEYS,  
ADMINISTRATIVE LAW JUDGES and  
HEARING OFFICERS IN STATE  
EMPLOYMENT

Dated: 2/2/2009

By: *[Signature]*  
Gerald A. James, Attorneys for  
Petitioners/Plaintiffs  
PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT and  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS

Dated: \_\_\_\_\_, 2009

SEIU LOCAL 1000

By: \_\_\_\_\_  
J. Felix De La Torre, Attorneys for  
Petitioner/Plaintiff  
SERVICE EMPLOYEES  
INTERNATIONAL LOCAL 1000

KRONICK,  
MOSKOVITZ,  
TIEDEMANN &  
GIRARD  
ATTORNEYS AT LAW

909204.1

# **EXHIBIT A**



**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

Introduction and Background:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134.

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

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SCHWARZENEGGER

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
Deputy Clerk

**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

**Ruling on Preliminary Evidentiary Issues:**

Respondents<sup>1</sup> have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

**Ruling on Respondents' Demurrers to the Petitions:**

---

<sup>1</sup> In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3<sup>rd</sup> 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3<sup>rd</sup> 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3<sup>rd</sup> 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 168-169.)

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
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**PROCEEDINGS: Amended Minute Order**

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.<sup>2</sup>

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

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<sup>2</sup> This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

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**SUPERIOR COURT OF CALIFORNIA,**  
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**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

Respondents' demurrers are therefore overruled.

**Ruling on the Petitions and Complaints:**

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.<sup>3</sup> According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.<sup>4</sup>

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

---

<sup>3</sup> There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

<sup>4</sup> See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

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**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties<sup>5</sup>, and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

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<sup>5</sup> See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PEGG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PEGG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

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**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."<sup>6</sup>

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."<sup>7</sup>

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."<sup>8</sup>

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."<sup>9</sup>

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

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<sup>6</sup> See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.

<sup>7</sup> See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.

<sup>8</sup> See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.

<sup>9</sup> See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.<sup>10</sup>

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

<sup>10</sup> At oral argument on these matters, counsel for CASE and PECG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
\_\_\_\_\_  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PEGG and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.<sup>11</sup>

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.<sup>12</sup> The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

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<sup>11</sup> At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

<sup>12</sup> See, Title 29, Code of Federal Regulations, section 541.710.

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**



**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
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**PROCEEDINGS: Amended Minute Order**

(1993) 20 Cal. App. 4<sup>th</sup> 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

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Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

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SCHWARZENEGGER

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
Deputy Clerk

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**PROCEEDINGS: Amended Minute Order**

**CERTIFICATE OF SERVICE BY MAILING**  
**C.C.P. Sec. 1013a(4))**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

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Sacramento, CA 95814

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Sacramento, CA 95814

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J. Felix DeLa Torre, Staff Attorney  
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Department of Personnel Administration  
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RICHARD CHIVARO, Chief Counsel  
Ronald V. Placet,  
Sr. Staff Counsel  
Office of the State Controller  
300 Capitol Mall, Ste 1850  
Sacramento, CA 95814

Dated: 1/30/09

Superior Court of California,  
County of Sacramento

By: D. RIOS, SR.,  
Deputy Clerk

**BOOK : 19**  
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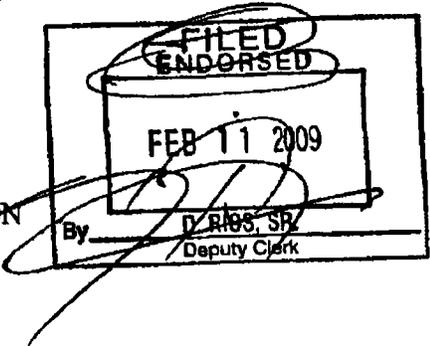
**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

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18 Attorneys for Defendants/Respondents  
19 ARNOLD SCHWARZENEGGER, Governor; STATE OF  
20 CALIFORNIA; and DEPARTMENT OF PERSONNEL  
21 ADMINISTRATION

**Exempted from Fees  
(Gov. Code § 6103)**

22 SUPERIOR COURT OF CALIFORNIA  
23 COUNTY OF SACRAMENTO

24 PROFESSIONAL ENGINEERS IN  
25 CALIFORNIA GOVERNMENT;  
26 CALIFORNIA ASSOCIATION OF  
27 PROFESSIONAL SCIENTISTS,

CASE NO. 34-2008-80000126-CU-WM-GDS

**Assigned For All Purposes To  
The Honorable Patrick Marlette**

Petitioners/Plaintiffs,

**PROOF OF SERVICE**

v.

**Date: January 29, 2009  
Time: 9:00 a.m.  
Dept.: 19**

28 ARNOLD SCHWARZENEGGER,  
Governor; STATE OF CALIFORNIA;  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION; STATE  
CONTROLLER JOHN CHIANG; and  
DOES 1 through 20, inclusive,

Respondents/Defendants.

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I, Bao Xiong, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On February 5, 2009, I served a copy of the within document(s):

- 1. **2/5/09 LETTER TO HONORABLE PATRICK MARLETTE W/ CONTROLLER'S OBJECTIONS**
- 2. **ORDER AFTER HEARING**
- 3. **JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

by causing it to be transmitted via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

**Attorney for Petitioners/Plaintiffs**

Gerald James, Esq.  
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Email: gjames@cwo.com

**Attorney for Respondent/Defendant**

**State Controller John Chiang**  
Richard J. Chivaro, Esq.  
Ronald V. Placet, Esq.  
Shawn D. Silva, Esq.  
Ana Maria Garza, Esq.  
OFFICE OF THE STATE  
CONTROLLER  
300 Capitol Mall, Suite 1850  
Sacramento, CA 95814  
Fax: (916) 322-1220  
Email: rchivaro@sco.ca.gov

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 5, 2009, at Sacramento, California.

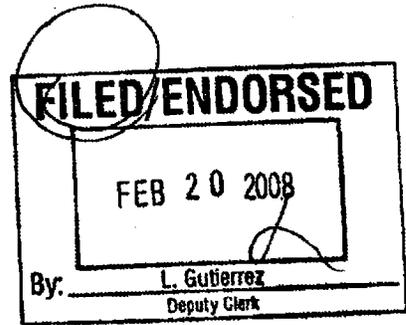
  
\_\_\_\_\_  
Bao Xiong



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21 ADMINISTRATION



22 Exempted from Fees  
23 (Gov. Code § 6103)

24 SUPERIOR COURT OF CALIFORNIA

25 COUNTY OF SACRAMENTO

26 PROFESSIONAL ENGINEERS IN  
27 CALIFORNIA GOVERNMENT;  
28 CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER,  
Governor; STATE OF CALIFORNIA;  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION; STATE  
CONTROLLER JOHN CHIANG; and  
DOES 1 through 20, inclusive,

Respondents/Defendants.

CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To  
The Honorable Patrick Marlette

**NOTICE OF ENTRY OF ORDER AFTER  
HEARING AND JUDGMENT RE:  
VERIFIED PETITION FOR WRIT OF  
MANDATE AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Date: January 29, 2009  
Time: 9:00 a.m.  
Dept.: 19

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**TO: PETITIONERS/PLAINTIFFS PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT AND CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS AND THEIR ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE THAT on February 11, 2009, an Order After Hearing and a Judgment regarding Petitioners' verified petition for writ of mandate and complaint for declaratory and injunctive relief were entered in the above-entitled matter in favor of Respondents/Defendants GOVERNOR ARNOLD SCHWARZENEGGER, STATE OF CALIFORNIA and DEPARTMENT OF PERSONNEL ADMINISTRATION. True and correct copies of said Order and Judgment are attached hereto as Exhibits 1 and 2, respectively.

Dated: February 19, 2009

KRONICK, MOSKOVITZ, TIEDEMANN &  
GIRARD  
A Law Corporation

By: 

David W. Tyra  
Attorneys for Defendants/Respondents  
ARNOLD SCHWARZENEGGER,  
Governor; STATE OF CALIFORNIA; and  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION

1 **PROOF OF SERVICE**

2 I, Bao Xiong, declare:

3 I am a citizen of the United States and employed in Sacramento County, California. I am  
4 over the age of eighteen years and not a party to the within-entitled action. My business address  
5 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On February 20, 2009, I served a  
6 copy of the within document(s):

7 **NOTICE OF ENTRY OF ORDER AFTER HEARING AND JUDGMENT RE:  
8 VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR  
9 DECLARATORY AND INJUNCTIVE RELIEF**

- 10  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
11 forth below on this date before 5:00 p.m.
- 12  by transmitting via e-mail or electronic transmission the document(s) listed above  
13 to the person(s) at the e-mail address(es) set forth below.

14 **Attorney for Petitioners/Plaintiffs**

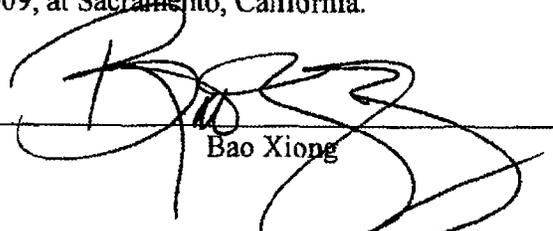
15 Gerald James, Esq.  
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19 Email: gjames@cwo.com

20 **Attorney for Respondent/Defendant**

21 **State Controller John Chiang**  
22 Richard J. Chivaro, Esq.  
23 Ronald V. Placet, Esq.  
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 20, 2009, at Sacramento, California.

  
Bao Xiong

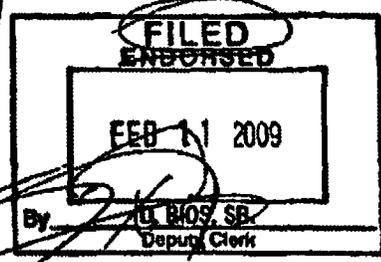
# **EXHIBIT 1**

DEPARTMENT 19

*Filed by Fax*

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Attorneys for Defendants/Respondents  
ARNOLD SCHWARZENEGGER, Governor; STATE OF CALIFORNIA; and DEPARTMENT OF PERSONNEL ADMINISTRATION  
Exempted from Fees (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT; CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor, STATE OF CALIFORNIA; DEPARTMENT OF PERSONNEL ADMINISTRATION; STATE CONTROLLER JOHN CHIANG; and DOES 1 through 20, inclusive,

Respondents/Defendants.

Case No. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To  
The Honorable Patrick Mariette

ORDER AFTER HEARING

Date: January 29, 2009  
Time: 9:00 a.m.  
Dept: 19

KRONICK,  
MOSKOVITZ,  
TIEDEMANN &  
GIRARD  
ATTORNEYS AT LAW

909201.1

- 1 -

ORDER AFTER HEARING

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**TO PETITIONERS AND TO THEIR ATTORNEYS OF RECORD:**

On or about January 29, 2009, Respondents' Demurrer to Petitioner's Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief came on regularly for hearing. At that same time and place, the Court conducted a hearing on the merits of the aforementioned petition and complaint per the parties' agreement and the Court's Minute Order of January 9, 2009.

Respondents/Defendants Governor Arnold Schwarzenegger, State of California, David Gilb, and Department of Personnel Administration were represented by David W. Tyra of Kronick, Moskovitz, Tiedemann & Girard and Will M. Yamada, Senior Labor Relations Counsel, Department of Personnel Administration.

Respondent/Defendant State Controller John Chiang was represented by Shawn D. Silva of the State Controller's Office.

Petitioners/Plaintiffs Professional Engineers in California Government and California Association of Professional Scientists were represented by Gerald A. James.

Petitioner/Plaintiff California Attorneys, Administrative Law Judges and Hearing Officers in State Employment was represented by Patrick J. Whalen, Law Offices of Brooks Ellison.

Petitioner/Plaintiff SEIU Local 1000 was represented by J. Felix De La Torre and Brooke Pierman.

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**KRONICK,  
MOSKOVITZ,  
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GIRARD**  
ATTORNEYS AT LAW

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The Court, after considering the various brief submitted by the parties, the exhibits submitted therewith, and having heard the oral argument of counsel renders the decision attached hereto as Exhibit A and incorporated herein by reference.

DATED: FEB 11 2009



*[Signature]*  
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

Dated: \_\_\_\_\_, 2009

OFFICE OF STATE CONTROLLER

By: \_\_\_\_\_  
Shawn D. Silva, Attorneys for  
Respondent/Defendant  
STATE CONTROLLER JOHN CHIANG

Dated: \_\_\_\_\_, 2009

LAW OFFICE OF BROOKS ELLISON

By: \_\_\_\_\_  
Patrick J. Whalen, Attorneys for  
Petitioners/Plaintiffs  
CALIFORNIA ATTORNEYS,  
ADMINISTRATIVE LAW JUDGES and  
HEARING OFFICERS IN STATE  
EMPLOYMENT

Dated: 2/2/, 2009

By: *[Signature]*  
Gerald A. James, Attorneys for  
Petitioners/Plaintiffs  
PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT and  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS

Dated: \_\_\_\_\_, 2009

SEIU LOCAL 1000

By: \_\_\_\_\_  
J. Felix De La Torre, Attorneys for  
Petitioner/Plaintiff  
SERVICE EMPLOYEES  
INTERNATIONAL LOCAL 1000

# **EXHIBIT A**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

**DATE/TIME : 01/30/09**  
**JUDGE : P. MARLETTE**  
**REPORTER : none**

**DEPT. NO : 19**  
**CLERK : D. RIOS, SR.**  
**BAILIFF : none**

**PRESENT:**

**Professional Engineers in California Government;\California  
Association of Professional Scientists,  
Plaintiff,**

**VS. Case No.: 2008-80000126**

**Arnold Schwarzenegger, Governor, State of  
California\Department of Personnel Administration\State  
Controller John Chiang\and Does 1 through 20 inclusive,  
Defendant.**

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**Nature of Proceedings: Amended Minute Order**

The Court is issuing a revised version of its final ruling in these matters. The revision makes no substantive changes in the ruling, but corrects an editing error in the last sentence of the third paragraph from the end of the ruling, regarding the State Controller, by deleting the word "incidental". The revised final ruling which follows shall be the final ruling of the Court.

**PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD  
SCHWARZENEGGER, et al., Case No. 2008-80000126;**

**CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE  
EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;**

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD  
SCHWARZENEGGER, et al., Case No. 2009-80000135.**

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

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**BOOK : 19**  
**PAGE : 2008-80000126-13009**  
**DATE : 01/30/09**  
**CASE NO. : 2008-80000126**  
**CASE TITLE : PECG; CAPS v.  
SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
\_\_\_\_\_  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

**Introduction and Background:**

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. As relevant to this action, the Executive Order directed the Department of Personnel Administration, effective February 1, 2009 through June 30, 2010, to adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, and to adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees.

Several organizations representing state employees affected by the Executive Order have filed three separate petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Order imposing the furloughs, and seeking to overturn them.

The first such action, Case No. 2008-80000126, was filed by petitioners Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") on December 22, 2008. That action initially was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding; it was reassigned to this Department after respondents filed a peremptory challenge to Judge Connelly pursuant to Code of Civil Procedure section 170.6 on January 7, 2009.

The second such action, Case No. 2009-80000134, was filed by petitioner California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE") on January 5, 2009. That action was assigned to Department 33 of this Court, Judge Lloyd Connelly, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Case No. 2008-80000126.

The third such action, Case No. 2009-80000135, was filed by petitioner Service Employees International Union, Local 1000 ("SEIU"), on January 7, 2009. The action was assigned to Department 29 of this Court, Judge Timothy M. Frawley, presiding. Petitioner simultaneously filed a Notice of Related Case in that action, stating that it was related to Cases Nos. 2008-80000126 and 2008-80000134.

On January 9, 2009, the Court heard simultaneous ex parte applications by the petitioners and respondents in Case No. 2008-80000126 for orders shortening time that would have the effect of setting a hearing on respondents' demurrer to the petition and the hearing on the merits of the petition itself for a date prior to February 1, 2009, when the furloughs would go into effect.

At the hearing on January 9, 2009, counsel for the petitioners in Cases Nos. 2009-80000134 and 2009-80000135 appeared and stipulated on the record that those cases would be treated as related to Case No. 2008-

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**CASE TITLE : PECG; CAPS v.**  
**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.**  
**Deputy Clerk**



**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PECC; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dillis Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3<sup>rd</sup> 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3<sup>rd</sup> 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3<sup>rd</sup> 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 168-169.)

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**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**      **DEPARTMENT: 19**  
**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.<sup>2</sup>

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

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<sup>2</sup> This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

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**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

Respondents' demurrers are therefore overruled.

**Ruling on the Petitions and Complaints:**

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.<sup>3</sup> According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.<sup>4</sup>

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

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<sup>3</sup> There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

<sup>4</sup> See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

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SCHWARZENEGGER

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties<sup>3</sup>, and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

<sup>3</sup> See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PEGG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp. 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PEGG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

Second, the specific terms of certain of the petitioners' MOUs expressly permit the State either to reduce hours in case of lack of funds or to take all necessary action to carry out its mission in emergencies.

For example, Article 3.1.B of the MOU between the State and petitioner CASE, which appears under the heading "State Rights", provides that "[t]o the extent consistent with law and this MOU, the rights of the State include, but are not limited to, the exclusive right to...relieve its employees from duty because of lack of work, lack of funds, or for other legitimate reasons...[and to] take all necessary actions to carry out its mission in emergencies."<sup>6</sup>

Article 10.3 of the CASE MOU, which appears under the heading "Layoff", further provides: "The State may propose to reduce the number of hours an employee works as an alternative to layoff. Prior to implementation of this alternative to a layoff, the State will notify and meet and confer with the Union to seek concurrence of the usage of this alternative."<sup>7</sup>

Article 12.1.B of the CAPS MOU, which appears under the heading "State Rights", provides that: "Consistent with this Agreement, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."<sup>8</sup>

Article 4.B of each of the SEIU MOUs similarly provides that: "Consistent with this Contract, the rights of the State shall include, but not be limited to, the right...to take all necessary action to carry out its mission in emergencies."<sup>9</sup>

The Court finds that the current fiscal emergency, which is amply documented in the evidence respondents have submitted, authorizes the Governor to reduce the work hours of state employees under these

<sup>6</sup> See, respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 11.

<sup>7</sup> See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 59.

<sup>8</sup> See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit B, p. 71.

<sup>9</sup> See, Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit B, p. 16 (Bargaining Unit 1); Exhibit C, p. 17 (Bargaining Unit 3); Exhibit D, p. 17 (Bargaining Unit 4); Exhibit E, p. 17 (Bargaining Unit 11); Exhibit F, p. 18 (Bargaining Unit 14); Exhibit G, p. 17 (Bargaining Unit 15); Exhibit H, p. 17 (Bargaining Unit 17); Exhibit I, p. 16 (Bargaining Unit 20); Exhibit J, p. 15 (Bargaining Unit 21).

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

cited terms of the various MOUs. The nature of the fiscal emergency is such that the state employee furloughs imposed by the Governor's Executive Order are both necessary and reasonable under the circumstances.<sup>10</sup>

The existence of the current emergency also authorized the Governor to make his order without first meeting and conferring with state employee organizations pursuant to Government Code section 3516.5.

The Court accordingly finds that both statutory law and the provisions of the petitioners' MOUs authorized the Governor to reduce the work hours of state employees through a furlough in the current fiscal emergency.

The Court finds that Government Code section 19826(b) does not preclude the Governor from taking such action.

Section 19826(b) states that the Department of Personnel Administration shall not establish, adjust or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Government Code section 3520.5, which is the case for all of the petitioners in these actions.

This case, however, does not involve the establishment, adjustment or recommendation of a salary range for represented state employees. This case involves a temporary reduction in the hours worked by certain state employees, which will result in a loss of pay for the hours not worked. The order does not change established salary ranges at all: state employees will continue to receive their normal pay according to established ranges in weeks that do not include a furlough day. In essence, state employees are subject to a temporary deduction from their total pay under the established ranges, and not to being paid under a new or adjusted salary range.

The present case is therefore distinguishable from *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, which involved an across-the-board salary cut of 5% with no furlough or reduction in work hours. *Greene* also involved the issue of what the State was entitled to do in the bargaining process under the Ralph C. Dills Act, specifically, whether the State could unilaterally impose the salary cut as part of its "last, best and final offer" when it was officially at impasse with the state employee organizations. The present case does not involve bargaining issues in that the parties are not at impasse, and petitioners' pleadings have raised issues regarding the Governor's positive authority to make the challenged

<sup>10</sup> At oral argument on these matters, counsel for CASE and PEGG argued that many of their members work in so-called "special fund" agencies, and that the Governor's order, which was designed to deal with a looming General Fund deficit, was not reasonably related to the fiscal emergency insofar as it orders furloughs for those employees. (CASE also raised this issue in its reply brief.) This contention was not raised in any of the petitions or complaints for declaratory relief, and petitioners did not submit any evidence to support it. The Court therefore makes no findings on it.

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**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGC; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PEGC and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.<sup>11</sup>

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.<sup>12</sup> The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

<sup>11</sup> At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

<sup>12</sup> See, Title 29, Code of Federal Regulations, section 541.710.

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**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented<sup>13</sup>, is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation<sup>14</sup>, but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA.

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."<sup>15</sup> In *Tirapelle v. Davis*

<sup>13</sup> See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gibb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.

<sup>14</sup> See, e.g., 29 U.S.C. Section 216.

<sup>15</sup> See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

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**CASE TITLE : PEGG; CAPS v.**  
**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.**  
**Deputy Clerk**



**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

**CERTIFICATE OF SERVICE BY MAILING**  
**C.C.P. Sec. 1013a(4)**

I, the undersigned deputy clerk of the Superior Court of California, County of Sacramento, do declare under penalty of perjury that I did this date place a copy of the above entitled notice in envelopes addressed to each of the parties, or their counsel of record as stated below, with sufficient postage affixed thereto and deposited the same in the United States Post Office at Sacramento, California.

Gerald James  
Attorney at Law  
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Sacramento, CA 95814

David W. Tyra  
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RICHARD CHIVARO, Chief Counsel  
Ronald V. Placet,  
Sr. Staff Counsel  
Office of the State Controller  
300 Capitol Mall, Ste 1850  
Sacramento, CA 95814

Dated: 1/30/09

Superior Court of California,  
County of Sacramento

By: D. RIOS, SR.,  
Deputy Clerk

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SCHWARZENEGGER

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
Deputy Clerk

# **EXHIBIT 2**

DEPARTMENT 19

*Filed by Ryo*

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RECEIVED  
 FEB - 5 2009  
 36  
 CIVIL

ENTERED  
 FEB 11 2009

FILED  
 ENDORSED  
 FEB 11 2009  
 By: *[Signature]* D. BIGGS, SR.  
 Deputy Clerk

13 Attorneys for Defendants/Respondents  
 14 ARNOLD SCHWARZENEGGER, Governor; STATE OF  
 CALIFORNIA; and DEPARTMENT OF PERSONNEL  
 15 ADMINISTRATION

Exempted from Fees  
 (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA  
 COUNTY OF SACRAMENTO

19 PROFESSIONAL ENGINEERS IN  
 CALIFORNIA GOVERNMENT;  
 20 CALIFORNIA ASSOCIATION OF  
 PROFESSIONAL SCIENTISTS,  
 21  
 Petitioners/Plaintiffs,  
 22  
 v.  
 23 ARNOLD SCHWARZENEGGER,  
 Governor, STATE OF CALIFORNIA;  
 24 DEPARTMENT OF PERSONNEL  
 ADMINISTRATION; STATE  
 25 CONTROLLER JOHN CHIANG; and  
 26 DOES 1 through 20, inclusive,  
 27  
 Respondents/Defendants.

Case No. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To  
 The Honorable Patrick Marlette

JUDGMENT RE: VERIFIED PETITION  
 FOR WRIT OF MANDATE AND  
 COMPLAINT FOR DECLARATORY AND  
 INJUNCTIVE RELIEF

Date: January 29, 2009  
 Time: 9:00 a.m.  
 Dept.: 19

KRONICK,  
 MOSKOVITZ,  
 TIEDEMANN &  
 GIRARD  
 ATTORNEYS AT LAW

909204.1

- 1 -

JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1 Based upon the Ruling of this Court and Order Thereon attached hereto as Exhibit  
2 A and incorporated herein by reference,

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Judgment be  
4 entered forthwith in favor of Respondents and against Petitioners with respect to Petitioners  
5 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief.

6  
7 DATED: FEB 11 2009



*[Signature]*

JUDGE OF THE SUPERIOR COURT

8 APPROVED AS TO FORM:

9 Dated: \_\_\_\_\_, 2009

OFFICE OF STATE CONTROLLER

11 By: \_\_\_\_\_  
Shawn D. Silva, Attorneys for  
Respondent/Defendant  
STATE CONTROLLER JOHN CHIANG

14 Dated: \_\_\_\_\_, 2009

LAW OFFICE OF BROOKS ELLISON

16 By: \_\_\_\_\_  
Patrick J. Whalen, Attorneys for  
Petitioners/Plaintiffs  
CALIFORNIA ATTORNEYS,  
ADMINISTRATIVE LAW JUDGES and  
HEARING OFFICERS IN STATE  
EMPLOYMENT

19 Dated: 2/2/2009

21 By: *[Signature]*  
Gerald A. James, Attorneys for  
Petitioners/Plaintiffs  
PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT and  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS

24 Dated: \_\_\_\_\_, 2009

SEIU LOCAL 1000

26 By: \_\_\_\_\_  
J. Felix De La Torre, Attorneys for  
Petitioner/Plaintiff  
SERVICE EMPLOYEES  
INTERNATIONAL LOCAL 1000

28

KRONICK,  
MOSKOVITZ,  
TIEDSMANN &  
GIBARD  
ATTORNEYS AT LAW

909204.1

- 2 -

JUDGMENT RE: VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

# **EXHIBIT A**

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO**

**DATE/TIME : 01/30/09**  
**JUDGE : P. MARLETTE**  
**REPORTER : none**  
**DEPT. NO : 19**  
**CLERK : D. RIOS, SR.**  
**BAILIFF : none**

**PRESENT:**

**Professional Engineers in California Government;\California  
Association of Professional Scientists,  
Plaintiff,**

**VS. Case No.: 2008-80000126**

**Arnold Schwarzenegger, Governor, State of  
California\Department of Personnel Administration\State  
Controller John Chiang\and Does 1 through 20 inclusive,  
Defendant.**

---

**Nature of Proceedings: Amended Minute Order**

The Court is issuing a revised version of its final ruling in these matters. The revision makes no substantive changes in the ruling, but corrects an editing error in the last sentence of the third paragraph from the end of the ruling, regarding the State Controller, by deleting the word "incidental". The revised final ruling which follows shall be the final ruling of the Court.

**PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al., v. GOVERNOR ARNOLD  
SCHWARZENEGGER, et al., Case No. 2008-80000126;**

**CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE  
EMPLOYMENT, v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000134;**

**SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, v. GOVERNOR ARNOLD  
SCHWARZENEGGER, et al., Case No. 2009-80000135.**

The following shall constitute the Court's final rulings on the demurrers and petitions for writ of mandate and complaints for declaratory relief in the above-captioned matters:

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**CASE TITLE : PECG; CAPS v.  
SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
\_\_\_\_\_  
**Deputy Clerk**



**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

80000126, and that those cases would be transferred to this Department for hearing pursuant to Rule of Court 3.300(h)(1)(a). Counsel for respondents in Case No. 2008-80000126 also stated on the record that he represented the respondents in one of the other two cases, and most likely would represent the respondents in the other (although at that time, the petition had not formally been served on the respondents), and also stipulated on the record that the three cases would be heard in this Department as provided above. The parties further agreed to a briefing schedule and to a combined hearing on the respondents' demurrers to, and the merits of, the three petitions. The parties to all three actions have filed their briefs and other papers according to the agreed-upon schedule and the Court heard oral argument on the matter on Thursday, January 29, 2009.

On January 12, 2009, a fourth action was filed challenging the Governor's Executive Order, entitled *California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al.*, Case No. 2008-80000137. The Court issued an order finding that case to be related to the three cases captioned above and further ordered that case assigned to this Department. That case has been set for hearing on Friday, February 5, 2009.

**Ruling on Preliminary Evidentiary Issues:**

Respondents<sup>1</sup> have made two requests for judicial notice, filed January 9, 2009 and January 13, 2009, along with an Amended Request for Judicial Notice on January 23, 2009 in response to the Court's order directing them to submit complete copies of the Memoranda of Understanding ("MOUs") involved in these actions. No objections to the requests have been filed. The Court has reviewed the requests and the documents attached thereto and finds that all such documents are proper subjects for judicial notice. Respondents' requests for judicial notice are therefore granted.

Respondents' evidentiary objection to the Declaration of Peter Flores, Jr. is overruled on the ground that the lack of a signature on the declaration has been remedied by the filing of an amended declaration, unchanged in substance, which bears Mr. Flores' signature.

**Ruling on Respondents' Demurrers to the Petitions:**

---

<sup>1</sup> In using the terms "respondents" or "defendants" in this ruling, the Court is referring to Governor Arnold Schwarzenegger and the Department of Personnel Administration. Although State Controller John Chiang also has been named as a respondent in these actions, the Controller has filed an Opposition to the Respondents'/Defendants' Demurrer stating that his interests are actually aligned with the petitioners and that, but for the short time frame, he would have filed a formal motion to realign the parties, seeking to be redesignated as a petitioner/plaintiff. The Controller's position in these actions will be discussed further below. In this ruling, the Court also has treated the terms "the Governor", "the Department of Personnel Administration" (or "the department" or "DPA") and "the State" as being essentially interchangeable.

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**                      **DEPARTMENT: 19**  
**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

Respondents' demurrers are overruled on the following basis:

The petitions and complaints allege generally that the provisions of the Governor's Executive Order S-16-08 that implement a furlough of represented state employees and supervisors for two days per month, and an equivalent furlough or salary reduction for state managers, effective February 1, 2009 through June 30, 2010, are invalid in that such action on the part of the Governor is not authorized by law, and moreover is forbidden by certain provisions of law, in particular, Government Code section 19826(b).

The Court finds that such allegations are sufficient to state a cause of action for issuance of a writ of mandate or for declaratory relief, regardless of whether Government Code section 19826(b) is superseded by the terms of the MOUs petitioners have entered into with the State (as respondents argue), because the petitions and complaints allege, in essence, that the Governor lacks the positive authority to make the challenged order in the first instance, irrespective of any statutory prohibition that may or may not apply. The allegation that the Governor lacks any authority to make the challenged order is sufficient to state a cause of action on its own.

The Court further finds that the issue of the Governor's authority to make the challenged order is not an issue within the exclusive initial jurisdiction of the Public Employment Relations Board, because it involves issues of statutory interpretation and separation of powers between the Governor and the Legislature, which are matters properly within the jurisdiction of the courts, and not issues of unfair practices under the Ralph C. Dills Act, which are matters properly within the jurisdiction of the Board. (See, e.g., *California School Employees Association v. Azusa Unified School District* (1984) 152 Cal. App. 3<sup>rd</sup> 580, 592-593; *California Teachers' Association v. Livingston School District* (1990) 219 Cal. App. 3<sup>rd</sup> 1503, 1519.) Moreover, the petitions and complaints in effect allege that the Governor's Executive Order regarding an employee furlough violates the provisions of the petitioners' MOUs with the State governing wages and hours. The Board does not have the authority to enforce agreements between the parties. (Government Code section 3514.5(b); see also, *San Lorenzo Education Association v. Wilson* (1982) 32 Cal. 3<sup>rd</sup> 841.)

Moreover, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that the normal policy reasons requiring parties to exhaust available administrative remedies do not apply in this case for many of the reasons stated by the Third District Court of Appeal in a case arising out of an earlier state budget crisis: namely, that the facts are undisputed, so there is no need for administrative development of the record; judicial intervention will not interfere with the expertise of the agency or create problems of judicial economy, given that the underlying issues are within the expertise of the courts and undoubtedly would be resolved ultimately by the courts even if initial jurisdiction were found in the Board; and, given that this case raises questions of first impression which most likely are bound for ultimate determination in the appellate courts, there is little concern of conflicting decisions between the Board and the courts. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 168-169.)

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**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.**  
Deputy Clerk

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

In addition, even if this Court were to conclude that the Board did have jurisdiction over this matter, it would conclude that exhaustion of administrative remedies by resort to the Board should be excused on the ground that requiring exhaustion under the particular circumstances of this case would cause both the State and its employees to suffer irreparable injury, again, for many of the reasons stated in the 1992 *Greene* case: specifically, that the extremely grave nature of the fiscal crisis faced by the state, and the urgent need for resolution of these issues in as expeditious a manner as possible, create a great potential for irreparable harm in the nature of layoffs of state employees, with a concomitant reduction in the nature of state services, all of which are amply demonstrated by the declarations and documents that have been filed by parties in this matter (many of them by respondents). Even if, as the Court of Appeal stated in the *Greene* case, there is a possibility that the Board could order the same relief that petitioners seek here, it is extremely unlikely that the entire process of Board adjudication followed by judicial review as provided by law would be completed in a sufficiently timely manner to address the immediate crisis. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 170-171.)

Petitioners SEIU and CASE raise additional claims for declaratory relief regarding the effect of the furlough on the exempt status of employees under the federal Fair Labor Standards Act ("FLSA"). The SEIU complaint alleges that a significant number of its employees will be required to work in excess of 40 hours during furlough weeks, that such employees will no longer be considered exempt employees as a matter of law during those weeks, that such workers will be entitled to overtime pay during such weeks, and that respondents lack any mechanism or systems in place to move employees from exempt to non-exempt status from week-to-week, with the result being that such employees will not receive the overtime pay to which they are entitled under the FLSA. Such facts are sufficient to state a cause of action in declaratory relief based on the theory that respondents are not willing and able to comply with their obligations under the FLSA, at least for the purpose of withstanding a demurrer. Respondents' contention that the complaint on its face shows that petitioner's FLSA claim is not ripe for review, and seeks only an advisory opinion, because there is no allegation that respondents actually have failed to pay any overtime that is due, is unpersuasive.<sup>2</sup>

The CASE complaint alleges the same facts regarding the effect of the furloughs on its employees' exempt status under the FLSA. The complaint lacks the specific allegations present in the SEIU complaint regarding respondents' lack of willingness and ability to comply with the FLSA, but alleges in general terms that respondents' actions will result in denial of the protection of the laws regarding overtime compensation. In essence, this complaint is identical in substance to the SEIU complaint; the Court concludes that it also states a cause of action for declaratory relief.

<sup>2</sup> This is, of course, distinct from the issue of whether there is any proof tending to demonstrate that FLSA violations actually will occur. This issue is dealt with in the Court's ruling on the merits, below.

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**CASE TITLE : PECG; CAPS v.**  
**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

Respondents' demurrers are therefore overruled.

**Ruling on the Petitions and Complaints:**

The petitions for writ of mandate and complaints for declaratory relief challenging the provisions of the Governor's Executive Order imposing furloughs on state employees are based on twin contentions: that the Governor lacks any authority, statutory or otherwise, to take such action; and that applicable statutory law expressly forbids him from taking such action. For the reasons stated below, the Court finds that these contentions are unpersuasive.

The facts regarding the implementation of the furlough are essentially undisputed, as is the fact that the State faces an extremely urgent fiscal crisis.<sup>3</sup> According to documents submitted to the Court, the Governor, through the Department of Personnel Administration, has developed a furlough plan that will result in the closing of general government operations on the first and third Fridays of each month, beginning on Friday, February 6, 2009. The unpaid furlough days are not work days and employees shall not report to work. For state operations that cannot close, a "self-directed" furlough will be used that will result in state employees either taking two furlough days each month on days chosen by the employees and approved by their supervisors, or accruing two furlough days per month to be taken when feasible. Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same.<sup>4</sup>

The Governor's Executive Order thus reduces the normal work hours of state employees for a temporary period due to the state's current fiscal crisis. The emergency measure will result in an accompanying deduction from pay for the hours not worked, but the order does not change established salary ranges. The Governor's authority for this action is found in statutes in the Government Code and in the employment contracts of the unions challenging the order.

The Governor has the statutory authority to reduce the hours of state employees pursuant to Government Code section 19851 and 19849.

---

<sup>3</sup> There do appear to be disputes of fact over whether the implementation of the furlough will result in violations of the federal FLSA. This issue will be discussed separately below.

<sup>4</sup> See, Memorandum dated January 9, 2009 from David A. Gilb, Director of the Department of Personnel Administration, to Agency Secretaries, et al., regarding "State Employee Furlough per Governor's Executive Order S-16-08", attached to the Amended Declaration of Peter Flores, Jr. as Exhibit H.

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**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

Section 19851(a) provides: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of the state employee eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies."

Section 19849(a) provides that the Department of Personnel Administration "...shall adopt rules governing hours of work and overtime compensation and the keeping of records related thereto, including time and attendance records. Each appointing power shall administer and enforce such rules."

The Court finds that these two statutes, taken together, provide the Governor with authority to reduce the workweek of state employees to meet the needs of state agencies, and to do so by adopting a rule. The provisions of the Executive Order regarding the furlough are a rule in that they establish a standard of general application to state employees. Under the circumstances of the current fiscal crisis, the reduction in the workweek of state employees under the furlough order is indisputably related to the needs of the various state agencies, which, from the evidence respondents have submitted to the Court, run the imminent risk of running out of money and thus being unable to carry out their missions, if immediate action is not taken to reduce expenditures.

The Court further finds, on two separate bases, that the Governor has authority to reduce the work hours of the state employees represented by the petitioners in these actions pursuant to the terms of the MOUs the State entered into with the petitioner employee organizations, which remain in effect, although technically expired, pursuant to Government Code section 3517.8(a).

First, each of the petitioners' MOUs expressly incorporates the terms of sections 18949 and 19851 into the agreement between the parties<sup>5</sup>, and the terms of the MOU do not conflict with these statutes, notwithstanding that the MOUs call for a normal work week of 40 hours. Thus, these provisions of law are not superseded by the MOUs, and the Governor retains the authority, pursuant to law and contract, to take any actions he would be permitted to take pursuant to Government Code sections 19849 and 19851 as described above.

<sup>5</sup> See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 80 (PEGG MOU); Exhibit B, p. 75 (CAPS MOU); Respondents' Amended Request for Judicial Notice, filed January 23, 2009, Exhibit A, p. 16 (CASE MOU); Exhibit B, p. 20 (SEIU MOU for Bargaining Unit 1); Exhibit C, p. 22 (SEIU MOU for Bargaining Unit 3); Exhibit D, p. 21 (SEIU MOU for Bargaining Unit 4); Exhibit E, p. 21 (SEIU MOU for Bargaining Unit 11); Exhibit F, pp. 22-23 (SEIU MOU for Bargaining Unit 14); Exhibit G, p. 21 (SEIU MOU for Bargaining Unit 15); Exhibit H, p. 21 (SEIU MOU for Bargaining Unit 17); Exhibit I, p. 21 (SEIU MOU for Bargaining Unit 20); Exhibit J, p. 19 (SEIU MOU for Bargaining Unit 21). In addition, the PEGG MOU provides, in Article 17.1, which appears under the heading "State Rights", that: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (See, Respondents' Request for Judicial Notice, filed January 9, 2009, Exhibit A, p. 72.)

**BOOK : 19**  
**PAGE : 2008-80000126-13009**  
**DATE : 01/30/09**  
**CASE NO. : 2008-80000126**  
**CASE TITLE : PEGG; CAPS v.**  
**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**





**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGC; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

order rather than issues regarding any failure to comply with his collective bargaining obligations under the Dills Act.

Moreover, the *Greene* case did not address any provisions of the employee organizations' MOUs that might have authorized the salary reduction in that case, on the basis of an emergency or otherwise, because the case technically involved a situation in which there was an absence of a MOU, as is the case when an existing MOU has expired and the parties have bargained to impasse. (See, *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal. App. 4<sup>th</sup> 155, 174.) As noted above, the petitioners' MOUs in this case remain in effect pursuant to Government Code section 3517.8(a), and contain provisions authorizing the Governor's order reducing work hours. The *Greene* case therefore is not controlling here.

The Court accordingly rules that, with regard to the issues raised by all petitioners regarding the Governor's authority to make the challenged order, the petitions for writ of mandate are denied and judgment shall be entered for the defendants (respondents) on the complaints for declaratory relief. This ruling applies to both state employees represented by all of the petitioners under the Dills Act and to those state employees represented by petitioners PEGC and CAPS who are excluded from the Dills Act by law, as the authorities on which the Court has relied in finding that the Governor has the authority to take the challenged action apply to both classes of employees.<sup>11</sup>

With regard to the causes of action for declaratory relief raised by SEIU and CASE raising issues involving possible non-compliance with the FLSA, the Court finds that as a matter of proof, as distinguished from a matter of pleading, petitioners' claims that implementation of the Governor's order will actually result in employees formerly considered to be exempt from the Act's provisions working overtime within the meaning of the Act during a furlough week, and that the State will not comply with the Act with regard to employees who do so, are entirely hypothetical and speculative prior to implementation of the furloughs, and thus not ripe for decision.

As respondents point out, under applicable federal regulations, employees may be furloughed for budget-related reasons without affecting their exempt status, except for the workweek in which the furlough occurs.<sup>12</sup> The viability of petitioners' FLSA claims therefore depends upon proof that there will be, as a matter of fact,

<sup>11</sup> At oral argument, counsel for petitioner SEIU raised the contention that the Governor's order amounted to an unconstitutional impairment of contracts. This contention was not raised in any of the petitions, and was not briefed by the parties. Petitioner SEIU did cite several out-of-state cases in its reply brief in which government employee furloughs were challenged on this basis. Those cases were cited, however, for the proposition that a furlough is equivalent to a reduction in employee salary, and not in support of the contention that the Governor's action impaired the petitioner's contracts with the State. Because such contention was not raised by the petitions or briefed by the parties, the Court makes no finding on it.

<sup>12</sup> See, Title 29, Code of Federal Regulations, section 541.710.

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**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126**

**DEPARTMENT: 19**

**CASE TITLE: PEGG; CAPS v. SCHWARZENEGGER**

**PROCEEDINGS: Amended Minute Order**

employees who work more than 40 hours during a furlough week. At this point, before the furlough actually has been implemented, there is no evidence before the Court regarding any employee actually doing this, let alone any evidence that this will be the case with large numbers of state employees. Petitioners' allegations that this will happen are merely hypothetical.

Similarly, the evidence that petitioner CASE has submitted demonstrating that the State's payroll system is antiquated and lacks the flexibility and reliability to be able to cope with the kind of week-to-week changes in an employee's exempt status that will occur when furloughs are implemented<sup>13</sup>, is not necessarily proof that the State will not be able to cope with paying overtime pay to those to whom it is entitled. Once again, petitioners' proposition that the FLSA will be violated depends upon proof that employees actually will be entitled to overtime, and that there will be sufficient numbers of them that the State will not be able to comply with the FLSA. Such proof is lacking at this point.

Finally, even if petitioners were able to prove that the State was likely to fail to comply with the FLSA with regard to some number of state employees, it would not necessarily follow that they would be entitled to the relief they seek, which is the invalidation of the furlough order itself. Any actual violation of the FLSA would give rise to remedies arising under the FLSA, i.e., for recovery of the unpaid overtime compensation<sup>14</sup>, but the failure to comply with the FLSA in that situation would be a separate issue from the validity of the furlough. Notwithstanding this Court's ruling upholding the Governor's order, any affected employee retains his or her rights and remedies under FLSA, and the Court's ruling that petitioners have not proven an actual violation of the FLSA at this point does not preclude them, or their individual members, from exercising those remedies once an actual violation can be proven. Thus, FLSA compliance issues, hypothetical or otherwise, do not serve as a basis for overturning the Governor's Executive Order regarding furloughs.

The Court therefore finds in favor of defendants (respondents) on the SEIU and CASE complaints for declaratory relief regarding alleged non-compliance with the FLSA.

A final issue remains with regard to the State Controller. As noted in footnote 1 above, the Controller, although named as a respondent/defendant, has taken a position in these actions in alignment with the petitioners, specifically stating that his office "...has no intention of implementing the reduction in pay as contemplated in the Governor's Order, unless determined otherwise by a court of law."<sup>15</sup> In *Tirapelle v. Davis*

<sup>13</sup> See, Declaration of Don Scheppmann, chief of Personnel/Payroll Services Division of the Office of the California State Controller, dated October 14, 2008 and filed in the case entitled *David A. Gilb, California Department of Personnel Administration v. John Chiang, Office of State Controller, et al.*, which is pending in the United States District Court for the Eastern District of California, attached to CASE's opposition to respondents' demurrer as Exhibit A.

<sup>14</sup> See, e.g., 29 U.S.C. Section 216.

<sup>15</sup> See, Controller's Opposition to Respondents' Demurrer, p. 2:15-17.

**BOOK : 19**  
**PAGE : 2008-80000126-13009**  
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**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

**BY: D. RIOS, SR.,**  
**Deputy Clerk**

**CASE NUMBER: 2008-80000126 DEPARTMENT: 19**  
**CASE TITLE: PECG; CAPS v. SCHWARZENEGGER**  
**PROCEEDINGS: Amended Minute Order**

(1993) 20 Cal. App. 4<sup>th</sup> 1317, the Third District Court of Appeal held that the Controller may not refuse to implement an executive action affecting state employees' pay that is authorized by law. In this case, the Court has ruled that the provisions of the Governor's Executive Order reducing the work hours of state employees through a furlough, and thereby affecting their pay during the furlough weeks, is authorized by law. The Controller therefore lacks authority to refuse to implement the Governor's Executive Order. The Court's judgment in this matter therefore shall include an order directing the Controller to take all necessary and appropriate steps to implement the provisions of the Governor's Executive Order imposing furloughs on state employees, including the reduction in such employees' pay.

At the close of the hearing, counsel for CASE made an oral motion on the record that the Court stay its ruling pending appellate review. The Court denied the motion.

//

Counsel for respondents is directed to prepare the orders and judgments in accordance with this ruling under the procedures set forth in Rule of Court 3.1312.

Certificate of Service by Mailing attached.

**BOOK : 19**  
**PAGE : 2008-80000126-13009**  
**DATE : 01/30/09**  
**CASE NO. : 2008-80000126**  
**CASE TITLE : PECG; CAPS v.**  
**SCHWARZENEGGER**

**SUPERIOR COURT OF CALIFORNIA,**  
**COUNTY OF SACRAMENTO**

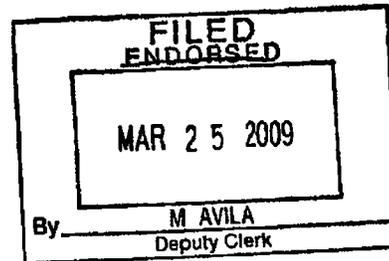
**BY: D. RIOS, SR.,**  
**Deputy Clerk**





1 GERALD JAMES - State Bar #179258  
660 J Street, Suite 445  
2 Sacramento, CA 95814  
Telephone: (916) 446-0400  
3 Facsimile: (916) 446-0489

4 Attorney for Petitioners/Plaintiffs  
PROFESSIONAL ENGINEERS IN  
5 CALIFORNIA GOVERNMENT;  
CALIFORNIA ASSOCIATION OF  
6 PROFESSIONAL SCIENTISTS



7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SACRAMENTO  
10

11  
12 PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT;  
13 CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS  
14

15 Petitioners/Plaintiffs,

16 v.

17 ARNOLD SCHWARZENEGGER, Governor,  
18 STATE OF CALIFORNIA; DEPARTMENT  
OF PERSONNEL ADMINISTRATION;  
19 STATE CONTROLLER JOHN CHIANG; and  
DOES 1 THROUGH 20, INCLUSIVE  
20

21 Respondents/Defendants.  
22  
23

CASE NO.  
34-2008-80000126-CU-WM-GDS

**NOTICE TO PREPARE PARTIAL  
REPORTER'S TRANSCRIPT AND  
NOTICE OF ELECTION TO PROCEED  
BY APPENDIX IN LIEU OF CLERK'S  
TRANSCRIPT**

24 **NOTICE TO PREPARE PARTIAL REPORTER'S TRANSCRIPT**  
25

26 To the clerk of the Superior Court of the State of California for the County of Sacramento:  
27

28 PLEASE TAKE NOTICE that Petitioners/Appellants, Professional Engineers in

1 California Government and California Association of Professional Scientists, request the  
2 preparation of a partial reporter's transcript, which shall include only the following proceedings  
3 in the above-entitled case that were had on the following dates:

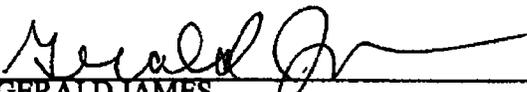
4	5	6	7	8	9
DATE	DEPT	FULL OR HALF DAY	NAME OF REPORTER	AMOUNT OF DEPOSIT	
January 29, 2009	19	Half	K. Nowack #6987	\$325	

8 A deposit of \$325 accompanies this notice, pursuant to California Rules of Court  
9 8.130(b).

10 The Notices of Appeal for PECG and CAPS in this matter were each filed on February 3,  
11 2009. Pursuant to the March 17, 2009 order of the Court of Appeal in Professional Engineers in  
12 California Government et al., v. Schwarzenegger as Governor et al., Case No. C061011 which  
13 found the appeal not suitable for mediation, all proceedings in the appeal are to recommence as if  
14 the notice of appeal had been filed on March 17, 2009. Pursuant to Local Rule 1, the March 17,  
15 2009 date of the notice is to be treated as the date the notice of appeal was filed.

16 The January 29, 2009 oral argument on the writ hearing contains all of the substantive  
17 oral argument before the court in this proceeding.

18  
19 Dated: March 25, 2009

20   
21 **GERALD JAMES**  
22 Attorney for Petitioners/Appellants  
23 Professional Engineers in California Government  
24 and California Association of Professional  
25 Scientists

26  
27 **NOTICE OF ELECTION TO PROCEED BY APPENDIX IN LIEU OF CLERK'S**  
28 **TRANSCRIPT**

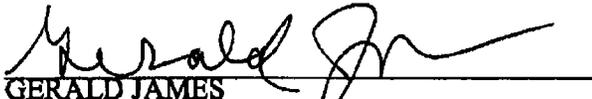
To the clerk of the Superior Court of the State of California for the County of Sacramento:

PLEASE TAKE NOTICE that Professional Engineers in California Government and

1 California Association of Professional Scientists, elect to proceed by preparation of an appendix  
2 under California Rules of Court 8.124 in lieu of a clerk's transcript under California Rules of  
3 Court 8.120.

4 The Notices of Appeal for PEGC and CAPS in this matter were each filed on February 3,  
5 2009. Pursuant to the March 17, 2009 order of the Court of Appeal in Professional Engineers in  
6 California Government et al., v. Schwarzenegger as Governor et al., Case No. C061011, which  
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9 2009 date of the notice is to be treated as the date the notice of appeal was filed.

10  
11 Dated: March 25, 2009

  
GERALD JAMES  
Attorney for Petitioners/Appellants  
Professional Engineers in California Government  
and California Association of Professional  
Scientists

1 **PROOF OF SERVICE BY MAIL**

2 I declare that I am employed in the County of Sacramento, California. I am over the age  
3 of 18 years and not a party to the within entitled cause. The address of my business is 660 J  
Street, Suite 445, Sacramento, California, 95814.

4 I am readily familiar with my firm's practice for collection and processing of  
5 correspondence for mailing with the United States Postal Service, to wit, that correspondence  
6 will be deposited with the United States Postal Service on the same day in the ordinary course of  
business.

7 On March 25, 2009, I served the **NOTICE TO PREPARE PARTIAL REPORTER'S**  
8 **TRANSCRIPT AND ELECTION TO PROCEED BY APPENDIX IN LIEU OF CLERK'S**  
TRANSCRIPT on the parties listed below by placing it in a sealed envelope for collection and  
mailing this date, following ordinary business practices:

9 David W. Tyra  
10 Kronick, Moscovitz, Tiedemann & Girard  
400 Capitol Mall, 7<sup>th</sup> Floor  
11 Sacramento, CA 95814  
*Attorney for Respondents Arnold Schwarzenegger and Department of Personnel*  
12 *Administration*

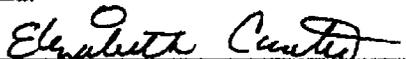
13 Will M. Yamada  
Department of Personnel Administration  
14 1515 S Street, North Bldg., Suite 400  
Sacramento, CA 95811  
15 *Attorney for Respondent Department of Personnel Administration*

16 Richard Chivaro  
Ronald V. Placet  
17 Office of the State Controller  
300 Capitol Mall, Suite 1850  
18 Sacramento, CA 95814  
*Attorneys for Respondent State Controller John Chiang*

19 Robin B. Joahnsen  
Remcho, Joahnsen & Purcell  
20 201 Dolores Avenue  
San Leandro, CA 94577  
21 *Attorneys for Respondent State Controller John Chiang*

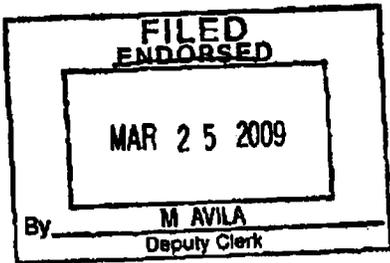
22  
23  
24 I declare under the penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

25 Executed on March 25, 2009 at Sacramento, California.

26   
27 Elizabeth Cantu



1 GERALD JAMES - State Bar #179258  
660 J Street, Suite 445  
2 Sacramento, CA 95814  
Telephone: (916) 446-0400  
3 Facsimile: (916) 446-0489



4 Attorney for Petitioners/Plaintiffs  
PROFESSIONAL ENGINEERS IN  
5 CALIFORNIA GOVERNMENT;  
CALIFORNIA ASSOCIATION OF  
6 PROFESSIONAL SCIENTISTS

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SACRAMENTO

10  
11  
12 PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT;  
13 CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS

CASE NO.  
34-2008-80000126-CU-WM-GDS

14  
15 Petitioners/Plaintiffs,

**NOTICE TO PREPARE PARTIAL  
REPORTER'S TRANSCRIPT AND  
NOTICE OF ELECTION TO PROCEED  
BY APPENDIX IN LIEU OF CLERK'S  
TRANSCRIPT**

16 v.

17  
18 ARNOLD SCHWARZENEGGER, Governor,  
STATE OF CALIFORNIA; DEPARTMENT  
OF PERSONNEL ADMINISTRATION;  
19 STATE CONTROLLER JOHN CHIANG; and  
DOES 1 THROUGH 20, INCLUSIVE

20  
21 Respondents/Defendants.

22  
23  
24 **NOTICE TO PREPARE PARTIAL REPORTER'S TRANSCRIPT**

25  
26 To the clerk of the Superior Court of the State of California for the County of Sacramento:  
27 PLEASE TAKE NOTICE that Petitioners/Appellants, Professional Engineers in  
28

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Notice to Prepare Partial Reporter's Transcript and Election to Proceed by Appendix in Lieu of Clerk's Transcript

1 California Government and California Association of Professional Scientists, request the  
2 preparation of a partial reporter's transcript, which shall include only the following proceedings  
3 in the above-entitled case that were had on the following dates:

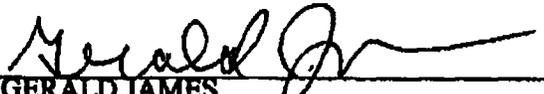
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DATE	DEPT	FULL OR HALF DAY	NAME OF REPORTER	AMOUNT OF DEPOSIT	
January 29, 2009	19	Half	K. Nowack #6987	\$325	

8 A deposit of \$325 accompanies this notice, pursuant to California Rules of Court  
9 8.130(b).

10 The Notices of Appeal for PECG and CAPS in this matter were each filed on February 3,  
11 2009. Pursuant to the March 17, 2009 order of the Court of Appeal in Professional Engineers in  
12 California Government et al., v. Schwarzenegger as Governor et al., Case No. C061011 which  
13 found the appeal not suitable for mediation, all proceedings in the appeal are to recommence as if  
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15 2009 date of the notice is to be treated as the date the notice of appeal was filed.

16 The January 29, 2009 oral argument on the writ hearing contains all of the substantive  
17 oral argument before the court in this proceeding.

18  
19 Dated: March 25, 2009

20   
21 GERALD JAMES  
22 Attorney for Petitioners/Appellants  
23 Professional Engineers in California Government  
and California Association of Professional  
Scientists

24 **NOTICE OF ELECTION TO PROCEED BY APPENDIX IN LIEU OF CLERK'S**  
25 **TRANSCRIPT**

26  
27 To the clerk of the Superior Court of the State of California for the County of Sacramento:  
28 PLEASE TAKE NOTICE that Professional Engineers in California Government and

1 California Association of Professional Scientists, elect to proceed by preparation of an appendix  
2 under California Rules of Court 8.124 in lieu of a clerk's transcript under California Rules of  
3 Court 8.120.

4 The Notices of Appeal for PEGC and CAPS in this matter were each filed on February 3,  
5 2009. Pursuant to the March 17, 2009 order of the Court of Appeal in Professional Engineers in  
6 California Government et al., v. Schwarzenegger as Governor et al., Case No. C061011, which  
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Dated: March 25, 2009

  
GERALD JAMES  
Attorney for Petitioners/Appellants  
Professional Engineers in California Government  
and California Association of Professional  
Scientists

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**PROOF OF SERVICE BY MAIL**

I declare that I am employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The address of my business is 660 J Street, Suite 445, Sacramento, California, 95814.

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service on the same day in the ordinary course of business.

On March 25, 2009, I served the **NOTICE TO PREPARE PARTIAL REPORTER'S TRANSCRIPT AND ELECTION TO PROCEED BY APPENDIX IN LIEU OF CLERK'S TRANSCRIPT** on the parties listed below by placing it in a sealed envelope for collection and mailing this date, following ordinary business practices:

David W. Tyra  
Kronick, Moscovitz, Tiedemann & Girard  
400 Capitol Mall, 7<sup>th</sup> Floor  
Sacramento, CA 95814  
*Attorney for Respondents Arnold Schwarzenegger and Department of Personnel Administration*

Will M. Yamada  
Department of Personnel Administration  
1515 S Street, North Bldg., Suite 400  
Sacramento, CA 95811  
*Attorney for Respondent Department of Personnel Administration*

Richard Chivaro  
Ronald V. Placet  
Office of the State Controller  
300 Capitol Mall, Suite 1850  
Sacramento, CA 95814  
*Attorneys for Respondent State Controller John Chiang*

Robin B. Joahnsen  
Remcho, Joahnsen & Purcell  
201 Dolores Avenue  
San Leandro, CA 94577  
*Attorneys for Respondent State Controller John Chiang*

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 25, 2009 at Sacramento, California.

  
Elizabeth Cantu



**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF SACRAMENTO**

Superior Court of California, County of Sacramento

720 Ninth Street  
 Sacramento, CA 95814-1311

**PAYMENT RECEIPT**

Receipt #: 104581

Clerk ID: mavla2

Transaction No: 292500

Transaction Date: 03/25/2009

Transaction Time: 10:38:49 AM

Case Number	Fee Type	Qty	Fee Amount	Balance Due	Amount Paid	Remaining Balance
34-2008-80000126-CU-WM-GDS	Reporter's transcript deposit	1	\$325.00	\$325 00	\$325 00	\$0.00
				Sales Tax	\$0 00	
				<b>Total:</b>	<b>\$325.00</b>	<b>Total Rem. Bal: \$0.00</b>
Check Number(s): 18279					Check	\$325 00
				<b>Total Amount Tended:</b>	<b>\$325 00</b>	
				Change Due.	<b>\$0.00</b>	
				Balance	\$0.00	

**COPY**



1 DAVID W. TYRA, State Bar No. 116218  
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489  
3 MEREDITH H. PACKER, State Bar No. 253701  
4 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
5 A Law Corporation  
6 400 Capitol Mall, 27th Floor  
7 Sacramento, California 95814  
8 Telephone: (916) 321-4500  
9 Facsimile: (916) 321-4555  
10 E-mail: [dtyra@kmtg.com](mailto:dtyra@kmtg.com)

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14 Deputy Chief Counsel, State Bar No. 127921  
15 LINDA A. MAYHEW  
16 Assistant Chief Counsel, State Bar No. 155049  
17 WILL M. YAMADA  
18 Labor Relations Counsel, State Bar No. 226669  
19 DEPARTMENT OF PERSONNEL ADMINISTRATION  
20 1515 S Street, North Building, Suite 400  
21 Sacramento, CA 95811-7258  
22 Telephone: (916) 324-0512  
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24 E-mail: [WillYamada@dpa.ca.gov](mailto:WillYamada@dpa.ca.gov)

25 Attorneys for Defendants/Respondents  
26 ARNOLD SCHWARZENEGGER, Governor; STATE OF  
27 CALIFORNIA; and DEPARTMENT OF PERSONNEL  
28 ADMINISTRATION

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

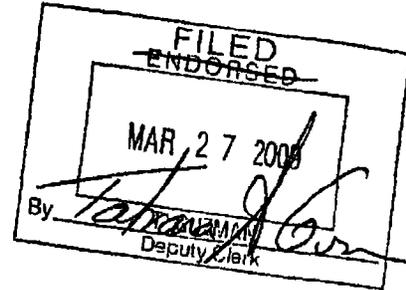
PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT;  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER,  
Governor; STATE OF CALIFORNIA;  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION; STATE  
CONTROLLER JOHN CHIANG; and  
DOES 1 through 20, inclusive,

Respondents/Defendants.



Exempted from Fees  
(Gov. Code § 6103)

Third District Court of Appeal  
Case No.: C061011

CASE NO. 34-2008-80000126-CU-WM-GDS

Assigned For All Purposes To  
The Honorable Patrick Marlette

NOTICE OF ELECTION TO PROCEED  
WITH APPENDIX ON APPEAL

(California Rule of Court 8.124)

1  
2  
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NOTICE IS HEREBY GIVEN that Respondents, Arnold Schwarzenegger,  
Governor; State of California and Department of Personnel Administration elect to proceed under  
the provisions of California Rules of Court, Rule 8.124(a)(1), providing for submission of a joint  
appendix or individual appendices in lieu of a clerk's transcript.

Dated: March 27, 2009

KRONICK, MOSKOVITZ, TIEDEMANN &  
GIRARD  
A Law Corporation

By:   
David W. Tyra  
Meredith H. Packer  
Attorneys for Defendants/Respondents  
ARNOLD SCHWARZENEGGER,  
Governor; STATE OF CALIFORNIA; and  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION

1 **PROOF OF SERVICE**

2 I, Cindy Harrell, declare:

3 I am a citizen of the United States and employed in Sacramento County,  
4 California. I am over the age of eighteen years and not a party to the within-entitled action. My  
5 business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On  
6 March 27, 2009, I served a copy of the within document(s):

7 • **NOTICE OF ELECTION TO PROCEED WITH APPENDIX ON**  
8 **APPEAL**

- 9  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
10 forth below on this date before 5:00 p.m.  
11  by transmitting via e-mail or electronic transmission the document(s) listed above  
12 to the person(s) at the e-mail address(es) set forth below.

12 **Attorney for Petitioners/Plaintiffs**

13 Gerald James, Esq.  
14 660 J Street, Suite 445  
15 Sacramento, CA 95814  
16 Fax: (916) 446-0489  
17 Email: [gjames@cw.com](mailto:gjames@cw.com)

12 **Attorney for Respondent/Defendant**

13 **State Controller John Chiang**  
14 Richard J. Chivaro, Esq.  
15 State of California Controller's Office  
16 300 Capitol Mall, Suite 1850  
17 Sacramento, CA 95814  
18 Fax: (916) 322-1220  
19 Email: [rchivaro@sco.ca.gov](mailto:rchivaro@sco.ca.gov)

17 **Attorney for Respondent/Defendant**

18 **State Controller John Chiang**  
19 Robin B. Johansen  
20 Remcho, Johansen & Prucell, LLP  
21 201 Dolores Avenue  
22 San Leandro, CA 94577  
23 Fax: (510) 346-6201  
24 Email: [rjohansen@rjp.com](mailto:rjohansen@rjp.com)

22 I am readily familiar with the firm's practice of collection and processing  
23 correspondence for mailing. Under that practice it would be deposited with the U.S. Postal  
24 Service on that same day with postage thereon fully prepaid in the ordinary course of business. I  
25 am aware that on motion of the party served, service is presumed invalid if postal cancellation  
26 date or postage meter date is more than one day after date of deposit for mailing in affidavit.

27 ///

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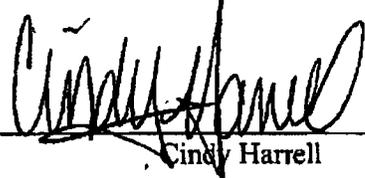
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PROOF OF SERVICE

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on March 27, 2009, at Sacramento, California.

  
Cindy Harrell





**Counsel for Petitioner/Appellant**

Gerald James, SBN 179258  
660 J Street, STE 445  
Sacramento, CA 95814  
(916) 446-0600

#

Representing: Petitioner/Appellant  
PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT,  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS

**Counsel for Respondent**

David W. Tyra, SBN 116218  
KRONICK, MOSCOVITZ, TIEDEMANN  
& GIRARD  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814  
(916) 321-4500

#

Representing: Defendant/Respondent  
ARNOLD SCHWARZENEGGER and  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION

William M. Yamada SBN UNKNOWN  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION  
1515 S Street, North Bldg., STE 400  
Sacramento, CA 95814  
(916) 446-4692

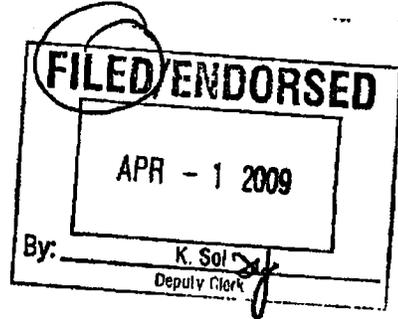
Representing:  
DEPARTMENT OF PERSONNEL  
ADMINIATRATION

Richard Chivaro, SBN 124391  
OFFICE OF THE STATE CONTROLLER  
300 Captiol Mall, STE 1850  
Sacramento, CA 95814  
(916) 445-6854  
Representing:  
STATE CONTROLLER JOHN CHIANG



1 ROBIN B. JOHANSEN, State Bar No 79084  
2 REMCHO, JOHANSEN & PURCELL, LLP  
3 201 Dolores Avenue  
4 San Leandro, CA 94577  
5 Phone: (510) 346-6200  
6 Fax: (510) 346-6201  
7 Email: rjohansen@rjp.com

8 Attorneys for Respondent/Defendant  
9 State Controller John Chiang



10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO

12 PROFESSIONAL ENGINEERS IN  
13 CALIFORNIA GOVERNMENT; CALIFORNIA  
14 ASSOCIATION OF PROFESSIONAL  
15 SCIENTISTS,

16 Petitioners/Plaintiffs,

17 vs.

18 ARNOLD SCHWARZENEGGER, Governor,  
19 STATE OF CALIFORNIA; DEPARTMENT OF  
20 PERSONNEL ADMINISTRATION; STATE  
21 CONTROLLER JOHN CHIANG; and DOES 1  
22 THOURGH 20, inclusive,

23 Respondents/Defendants.

No.: 34-2008-80000126-CU-WM-GDS

Assigned for All Purposes to the  
Honorable Patrick Marlette

**RESPONDENT/DEFENDANT  
JOHN CHIANG'S NOTICE OF APPEAL;  
NOTICE OF ELECTION TO PROCEED  
BY WAY OF APPENDIX IN LIEU OF  
CLERK'S TRANSCRIPT; NOTICE OF  
DESIGNATION OF REPORTER'S  
TRANSCRIPT**

**NO FILING FEE PURSUANT TO  
GOVERNMENT CODE SECTION 6103**

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RESPONDENT/DEFENDANT JOHN CHIANG'S NOTICE OF APPEAL;  
NOTICE OF ELECTION TO PROCEED BY WAY OF APPENDIX IN LIEU OF  
CLERK'S TRANSCRIPT; NOTICE OF DESIGNATION OF REPORTER'S TRANSCRIPT

1 **TO: THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
2 **FOR THE COUNTY OF SACRAMENTO**

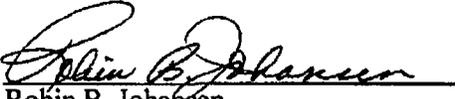
3 PLEASE TAKE NOTICE that respondent/defendant John Chiang ("respondent")  
4 hereby appeals the Court's January 29, 2009 final ruling on the petition for writ of mandate and  
5 complaint for declaratory relief, as amended by the Court on January 30, 2009, in the above entitled  
6 case.

7 This Notice of Appeal is filed simultaneously with the Notice of Election to Proceed by  
8 Way of Appendix in Lieu of Clerk's Transcript and the Notice Designating Reporter's Transcript.  
9 Respondent elects to proceed by an appendix in lieu of a Clerk's Transcript under Rule 8.124 of the  
10 California Rules of Court. Respondent designates the transcript of the hearing on demurrers and  
11 petitions for writ of mandate, which were reported by Karen Nowack, CSR, for inclusion in the  
12 Reporter's Transcript, under Rule 8.130 of the California Rules of Court.

13 Dated: March 26, 2009

Respectfully submitted,

14 REMCHO, JOHANSEN & PURCELL, LLP

15 By:   
16 Robin B. Johansen

17 Attorneys for Respondent/Defendant  
18 State Controller John Chiang

19 (00077568)

1 **PROOF OF SERVICE**

2 I, the undersigned, declare under penalty of perjury that:

3 I am a citizen of the United States, over the age of 18, and not a party to the within  
4 cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

5 On March 30, 2009, I served a true copy of the following document(s):

6 **Respondent/Defendant John Chiang's Notice of Appeal;**  
7 **Notice of Election to Proceed By Way of Appendix in Lieu of Clerk's**  
8 **Transcript; Notice of Designation of Reporter's Transcript**

9 on the following party(ies) in said action:

10 Gerald A. James  
11 Professional Engineers in California  
12 Government  
13 660 "J" Street, Suite 445  
14 Sacramento, CA 95814

*Attorneys for Petitioners/Plaintiffs  
Professional Engineers in California  
Government, et al.*

15 David W. Tyra  
16 Kronick, Moskovitz, Tiedemann &  
17 Girard  
18 400 Capitol Mall, 27th Floor  
19 Sacramento, CA 95814

*Attorneys for Respondent/Defendant  
Arnold Schwarzenegger*

20 Will M. Yamada  
21 Chief Counsel  
22 Department of Personnel  
23 Administration  
24 1515 "S" Street, Suite 400  
25 Sacramento, CA 95811-7246

*Attorneys for Respondent/Defendant  
Department of Personnel Administration*

26 Richard Chivaro  
27 State Controller's Office  
28 Chief Counsel  
300 Capitol Mall, Suite 1850  
Sacramento, CA 95814

*Respondent/Defendant*

29 Karen Nowack, CSR  
30 Sacramento County Superior Court  
31 Department 19  
32 720 - 9th Street  
33 Sacramento, CA 95814

- 34  **BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed  
35 envelope or package addressed to the person(s) at the address above and  
36  depositing the sealed envelope with the United States Postal  
37 Service, with the postage fully prepaid.

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placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.

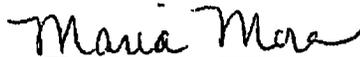
**BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

**BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

**BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

**BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on March 30, 2009, in San Leandro, California.

  
\_\_\_\_\_  
Maria E. Mora



1 DAVID W. TYRA, State Bar No. 116218  
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489  
3 MEREDITH H. PACKER, State Bar No. 253701  
4 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
5 A Law Corporation  
6 400 Capitol Mall, 27th Floor  
7 Sacramento, CA 95814  
8 Telephone: (916) 321-4500  
9 Facsimile: (916) 321-4555  
10 E-mail: [dtyra@kmtg.com](mailto:dtyra@kmtg.com)

11 K. WILLIAM CURTIS  
12 Chief Counsel, State Bar No. 095753  
13 WARREN C. STRACENER  
14 Deputy Chief Counsel, State Bar No. 127921  
15 LINDA A. MAYHEW  
16 Assistant Chief Counsel, State Bar No. 155049  
17 WILL M. YAMADA  
18 Labor Relations Counsel, State Bar No. 226669  
19 DEPARTMENT OF PERSONNEL ADMINISTRATION  
20 1515 S Street, North Building, Suite 400  
21 Sacramento, CA 95811-7258  
22 Telephone: (916) 324-0512  
23 Facsimile: (916) 323-4723  
24 E-mail: [WillYamada@dpa.ca.gov](mailto:WillYamada@dpa.ca.gov)

25 Attorneys for Defendants/Respondents  
26 ARNOLD SCHWARZENEGGER, Governor; STATE OF  
27 CALIFORNIA; and DEPARTMENT OF PERSONNEL  
28 ADMINISTRATION

FILED  
ENDORSED  
APR - 1 2009  
By FEN-RU CHEN  
Deputy Clerk

Exempted from Fees  
(Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

\$325

PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT;  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor;  
STATE OF CALIFORNIA; DEPARTMENT  
OF PERSONNEL ADMINISTRATION;  
STATE CONTROLLER JOHN CHIANG; and  
DOES 1 through 20, inclusive,

Respondents/Defendants.

Third District Court of Appeal  
Case No.: C061011

CASE NO. 34-2008-80000126-CU-WM-GDS

RESPONDENTS' DESIGNATION OF  
ADDITIONAL PROCEEDINGS FOR  
REPORTER'S TRANSCRIPT

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TO THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SACRAMENTO:

PLEASE TAKE NOTICE that pursuant to Rule 8.130 of the California Rules of Court, Respondents ARNOLD SCHWARZENEGGER, Governor; STATE OF CALIFORNIA, and DEPARTMENT OF PERSONNEL ADMINISTRATION, in this appeal hereby designate the following additional proceedings to be included in the Reporter's Transcript on Appeal:

DATE	DEPT	FULL OR HALF DAY	NAME OF REPORTER	AMOUNT OF DEPOSIT
January 9, 2009	19	Half	L. Ricci, CSR #	\$325.00

The above proceeding is the court's Hearing on Petitioners/Plaintiffs Professional Engineers in California Government and California Association of Professional Scientists Ex Parte Request for Order Shortening Time for the Hearing on the Merits for the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time to File Demurrer to the Petition for Writ of Mandate.

A deposit of \$325.00 accompanies this notice, pursuant to California Rules of Court Rule 8.130(b).

Dated: April 1, 2009

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD  
A Law Corporation

By: *Meredith Packer*  
David W. Tyra  
Meredith H. Packer  
Attorneys for Defendants/Respondents  
ARNOLD SCHWARZENEGGER, Governor;  
STATE OF CALIFORNIA; and  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION

1 **PROOF OF SERVICE**

2 I, Cindy Harrell, declare:

3 I am a citizen of the United States and employed in Sacramento County,  
4 California. I am over the age of eighteen years and not a party to the within-entitled action. My  
5 business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On April 1,  
6 2009, I served a copy of the within document(s):

7 • **RESPONDENTS' DESIGNATION OF ADDITIONAL  
8 PROCEEDINGS FOR REPORTER'S TRANSCRIPT**

- 9  by transmitting via facsimile the document(s) listed above to the fax number(s) set  
10 forth below on this date before 5:00 p.m.
- 11  by placing the document(s) listed above in a sealed \_\_\_\_\_ envelope and  
12 affixing a pre-paid air bill, and causing the envelope to be delivered to a  
13 \_\_\_\_\_ agent for delivery.
- 14  by causing personal delivery by Messenger of the document(s) listed above to the  
15 person(s) at the address(es) set forth below.
- 16  by placing the document(s) listed above in a sealed envelope with postage thereon  
17 fully prepaid, the United States mail at Sacramento, California addressed as set  
18 forth below.
- 19  by transmitting via e-mail or electronic transmission the document(s) listed above  
20 to the person(s) at the e-mail address(es) set forth below.

21 **Attorney for Petitioners/Plaintiffs**

22 Gerald James, Esq.  
23 660 J Street, Suite 445  
24 Sacramento, CA 95814  
25 Fax: (916) 446-0489  
26 Email: [gjames@cw.com](mailto:gjames@cw.com)

21 **Attorney for Respondent/Defendant**

22 **State Controller John Chiang**  
23 Richard J. Chivaro, Esq.  
24 State of California Controller's Office  
25 300 Capitol Mall, Suite 1850  
26 Sacramento, CA 95814  
27 Fax: (916) 322-1220  
28 Email: [rchivaro@sco.ca.gov](mailto:rchivaro@sco.ca.gov)

23 **Attorney for Respondent/Defendant**

24 **State Controller John Chiang**  
25 Robin B. Johansen  
26 Remcho, Johansen & Prucell, LLP  
27 201 Dolores Avenue  
28 San Leandro, CA 94577  
Fax: (510) 346-6201  
Email: [rjohansen@rip.com](mailto:rjohansen@rip.com)

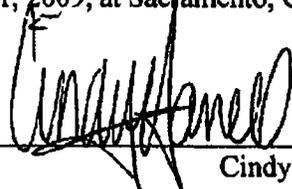
23 **Court Reporter**

24 Sacramento County Superior Court  
25 Department 19  
26 ATTN: L. Ricci  
27 720 Ninth Street  
28 Sacramento, CA 95814

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 1, 2009, at Sacramento, California.

  
Cindy Harrell





**SUPERIOR COURT OF CALIFORNIA**  
**County of Sacramento**  
**720 Ninth Street ~ Room 101**  
**Sacramento, CA 95814-1380**  
**(916) 874-5403—Website www.saccourt.ca.gov**

PROFESSIONAL ENGINEERS IN  
 CALIFORNIA GOVERNMENT;  
 CALIFORNIA ASSOCIATION OF  
 PROFESSIONAL SCIENTISTS

Petitioner/Appellant

vs.

ARNOLD SCHWARZENEGGER,  
 Governor, STATE OF CALIFORNIA;  
 DEPARTMENT OF PERSONNEL  
 ADMINISTRATION; STATE  
 CONTROLLER JOHN CHIANG; and  
 DOES 1 THROUGH 20, INCLUSIVE  
 Respondent

COURT OF APPEAL NO: **C061011**  
 SUPERIOR COURT NO: **34-2008-80000126-**

**CU-WM-GDS**

**AMENDED**

**NOTICE OF FILING OF DESIGNATION  
 AND NOTICE TO REPORTERS TO PREPARE  
 TRANSCRIPTS**

Appeal from the Honorable Judge PATRICK MARLETTE

PLEASE TAKE NOTICE that you and each of you are hereby directed to commence preparation of the REPORTER'S TRANSCRIPT on Appeal in the above-entitled action. The Appeal is to the THIRD DISTRICT COURT OF APPEAL and the transcript is to contain the following dates, as designated by the APPELLANT/RESPONDENT:

<i><b>COURT DATES</b></i>	<i><b>(CSR) NUMBER</b></i>	<i><b>COURT REPORTER'S NAME</b></i>
01/09/09	7614	<i><b>L. RICCI</b></i>
01/29/09	6987	<i><b>K. NOWACK</b></i>

TRANSCRIPTS ARE DUE: APRIL 27, 2009

Please notify the Appeals Unit in writing before the due date if no transcript will be filed. Requests for an extension of time from the Third District Court of Appeal should be filed prior to the due date.

**Please prepare 1 original and 2 copy of your transcript.**

I declare under penalty of perjury that this notice was sent to the aforementioned reporters and the Court Reporter Supervisor via interoffice mail.

Executed on: March 27, 2009

BY: F. CHEN, 874-6475

Deputy Clerk

**Counsel for Petitioner/Appellant**

Gerald James, SBN 179258  
660 J Street, STE 445  
Sacramento, CA 95814  
(916) 446-0600

#

Representing: Petitioner/Appellant  
PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT,  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS

**Counsel for Respondent**

David W. Tyra, SBN 116218  
KRONICK, MOSCOVITZ, TIEDEMANN  
& GIRARD  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814  
(916) 321-4500

#

Representing: Defendant/Respondent  
ARNOLD SCHWARZENEGGER and  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION

William M. Yamada SBN UNKNOWN  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION  
1515 S Street, North Bldg., STE 400  
Sacramento, CA 95814  
(916) 446-4692

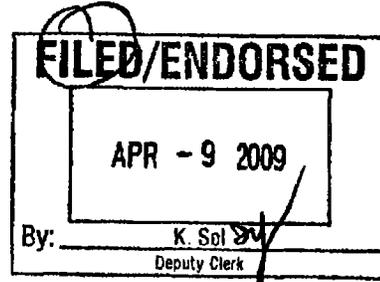
Representing:  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION

Richard Chivaro, SBN 124391  
OFFICE OF THE STATE CONTROLLER  
300 Capitol Mall, STE 1850  
Sacramento, CA 95814  
(916) 445-6854  
Representing:  
STATE CONTROLLER JOHN CHIANG



1 ROBIN B. JOHANSEN, State Bar No 79084  
2 MARGARET R. PRINZING, State Bar No 209482  
3 REMCHO, JOHANSEN & PURCELL, LLP  
4 201 Dolores Avenue  
5 San Leandro, CA 94577  
6 Phone: (510) 346-6200  
7 Fax: (510) 346-6201  
8 Email: rjohansen@rjp.com

9 Attorneys for Respondent/Defendant  
10 State Controller John Chiang



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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT; CALIFORNIA  
ASSOCIATION OF PROFESSIONAL  
SCIENTISTS,

Petitioners/Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER, Governor,  
STATE OF CALIFORNIA; DEPARTMENT OF  
PERSONNEL ADMINISTRATION; STATE  
CONTROLLER JOHN CHIANG; and DOES 1  
THOURGH 20, inclusive,

Respondents/Defendants.

No.: 34-2008-80000126-CU-WM-GDS

Assigned for All Purposes to the  
Honorable Patrick Marlette

**RESPONDENT/DEFENDANT  
JOHN CHIANG'S AMENDED NOTICE  
OF APPEAL; NOTICE OF ELECTION  
TO PROCEED BY WAY OF APPENDIX  
IN LIEU OF CLERK'S TRANSCRIPT;  
NOTICE OF DESIGNATION OF  
REPORTER'S TRANSCRIPT**

**NO FILING FEE PURSUANT TO  
GOVERNMENT CODE SECTION 6103**

RESPONDENT/DEFENDANT JOHN CHIANG'S AMENDED NOTICE OF APPEAL;  
NOTICE OF ELECTION TO PROCEED BY WAY OF APPENDIX IN LIEU OF  
CLERK'S TRANSCRIPT, NOTICE OF DESIGNATION OF REPORTER'S TRANSCRIPT



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**TO: THE CLERK OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SACRAMENTO**

PLEASE TAKE NOTICE that respondent/defendant John Chiang ("respondent") hereby appeals the Court's January 29, 2009 final ruling on the petition for writ of mandate and complaint for declaratory relief, as amended by the Court on January 30, 2009, in the above entitled case.

PLEASE TAKE FURTHER NOTICE that respondent elects to proceed by an appendix in lieu of a Clerk's Transcript under Rule 8.124 of the California Rules of Court.

PLEASE TAKE FURTHER NOTICE that respondent designates the transcript of the January 29, 2009 hearing on the demurrers and the petitions for writ of mandate, which were reported by Karen Nowack, CSR, for inclusion in the Reporter's Transcript, under Rule 8.130 of the California Rules of Court. Included with this Notice is a deposit in the amount of \$325.00 for the transcript of these proceedings pursuant to Rule 8.130(b) of the California Rules of Court.

Dated: April 8, 2009

Respectfully submitted,  
REMCHO, JOHANSEN & PURCELL, LLP

By:   
Robin B. Johansen

Attorneys for Respondent/Defendant  
State Controller John Chiang

(00078757)

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placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.

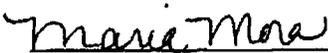
**BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

**BY MESSENGER SERVICE:** By placing the document(s) in an envelope or package addressed to the persons at the addresses listed and providing them to a professional messenger service for service.

**BY FACSIMILE TRANSMISSION:** By faxing the document(s) to the persons at the fax numbers listed based on an agreement of the parties to accept service by fax transmission. No error was reported by the fax machine used. A copy of the fax transmission is maintained in our files.

**BY EMAIL TRANSMISSION:** By emailing the document(s) to the persons at the email addresses listed based on a court order or an agreement of the parties to accept service by email. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare, under penalty of perjury, that the foregoing is true and correct. Executed on April 8, 2009, in San Leandro, California.

  
\_\_\_\_\_  
Maria E. Mora





**SUPERIOR COURT OF CALIFORNIA**  
**County of Sacramento**  
**720 Ninth Street ~ Room 101**  
**Sacramento, CA 95814-1380**  
**(916) 874-5403—Website www.saccourt.ca.gov**

PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT;  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS  
Petitioner/Appellant

vs.

ARNOLD SCHWARZENEGGER,  
Governor, STATE OF CALIFORNIA;  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION; STATE  
CONTROLLER JOHN CHIANG; and  
DOES 1 THROUGH 20, INCLUSIVE  
Respondent

COURT OF APPEAL NO: C061011  
SUPERIOR COURT NO: 34-2008-80000126-  
CU-WM-GDS  
2<sup>ND</sup> AMENDED  
NOTICE OF FILING OF DESIGNATION  
AND NOTICE TO REPORTERS TO PREPARE  
TRANSCRIPTS

Appeal from the Honorable Judge PATRICK MARLETTE

PLEASE TAKE NOTICE that you and each of you are hereby directed to commence preparation of the REPORTER'S TRANSCRIPT on Appeal in the above-entitled action. The Appeal is to the THIRD DISTRICT COURT OF APPEAL and the transcript is to contain the following dates, as designated by the APPELLANT/RESPONDENT:

<i>COURT DATES</i>	<i>(CSR) NUMBER</i>	<i>COURT REPORTER'S NAME</i>
01/09/09	7614	<i>L. RICCI</i>
01/29/09	6987	<i>K. NOWACK</i>

TRANSCRIPTS ARE DUE: JUNE 1, 2009

Please notify the Appeals Unit in writing before the due date if no transcript will be filed. Requests for an extension of time from the Third District Court of Appeal should be filed prior to the due date.

**Please prepare 1 original and 3 copy of your transcript.**

I declare under penalty of perjury that this notice was sent to the aforementioned reporters and the Court Reporter Supervisor via interoffice mail.

Executed on: March 27, 2009

BY: F. CHEN, 874-6475

Deputy Clerk

<p><b><u>Counsel for Petitioner/Appellant</u></b> Gerald James, SBN 179258 660 J Street, STE 445 Sacramento, CA 95814 (916) 446-0600 # Representing: Petitioner/Appellant PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS</p>	<p><b><u>Counsel for Respondent</u></b> David W. Tyra, SBN 116218 KRONICK, MOSCOVITZ, TIEDEMANN &amp; GIRARD 400 Capitol Mall, 27th Floor Sacramento, CA 95814 (916) 321-4500 # Representing: Defendant/Respondent ARNOLD SCHWARZENEGGER and DEPARTMENT OF PERSONNEL ADMINISTRATION</p> <p>William M. Yamada SBN UNKNOWN DEPARTMENT OF PERSONNEL ADMINISTRATION 1515 S Street, North Bldg., STE 400 Sacramento, CA 95814 (916) 446-4692 Representing: DEPARTMENT OF PERSONNEL ADMINIATRATION</p> <p>Richard Chivaro, SBN 124391 OFFICE OF THE STATE CONTROLLER 300 Captiol Mall, STE 1850 Sacramento, CA 95814 (916) 445-6854 Representing: STATE CONTROLLER JOHN CHIANG</p>
--	--





**SUPERIOR COURT OF CALIFORNIA**  
**County of Sacramento**  
**720 Ninth Street ~ Room 101**  
**Sacramento, CA 95814-1380**  
**(916) 874-5403—Website [www.saccourt.ca.gov](http://www.saccourt.ca.gov)**

**Professional Engineers in California  
 Government et al.**

**Petitioner/Appellant**

**v.  
 Schwarzenegger as Governor et al.  
 Respondent**

**COURT OF APPEAL  
 NUMBER: C061011**

**SUPERIOR COURT  
 NUMBER: 34-2008-80000126-CU-  
 WM-GDS**

**NOTICE OF NON-AVAILABILITY OF  
 REGISTER OF ACTIONS**

**PLEASE BE ADVISED:**

A designation has been filed to proceed by appendix instead of by clerk's transcript. Pursuant to rule 8.124(a)(2) of the California Rules of Court, the superior court clerk must promptly send a copy of the register of action, if any. Sacramento Superior Court does not keep a register of actions or a docket. Therefore, nothing will be sent.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

DATED: June 9, 2009

F. CHEN  
 By: FEN-RU CHEN, Deputy Clerk

SUPERIOR COURT OF CALIFORNIA )  
 COUNTY OF SACRAMENTO )

DECLARATION OF MAILING

As Deputy Clerk of the Superior Court of California, County of Sacramento, I hereby declare under penalty of perjury, that I have this day mailed, by first class mail, postage fully prepaid, a true and correct copy of the above notice to each of the persons hereinafter set forth, addressed as follows:

Gerald James, SBN 179258  
660 J Street, STE 445  
Sacramento, CA 95814  
(916) 446-0600

#

Representing: Petitioner/Appellant  
PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT,  
CALIFORNIA ASSOCIATION OF  
PROFESSIONAL SCIENTISTS

#

Representing: Petitioner/Appellant

David W. Tyra, SBN 116218  
KRONICK, MOSCOVITZ,  
TIEDEMANN & GIRARD  
400 Capitol Mall, 27th Floor  
Sacramento, CA 95814  
(916) 321-4500

#

Representing: Defendant/Respondent  
ARNOLD SCHWARZENEGGER and  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION

William M. Yamada SBN UNKNOWN  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION  
1515 S Street, North Bldg., STE 400  
Sacramento, CA 95814  
(916) 446-4692

Representing:  
DEPARTMENT OF PERSONNEL  
ADMINISTRATION

Robin B. Johansen, SBN 79084  
Remcho, Johansen & Purcell, LLP  
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San Leandro, CA 94577

Richard Chivaro, SBN 124391  
OFFICE OF THE STATE  
CONTROLLER  
300 Capitol Mall, STE 1850  
Sacramento, CA 95814  
(916) 445-6854

Representing:  
STATE CONTROLLER JOHN  
CHIANG

#

Representing: Respondent

Court of Appeal  
Third Appellate District  
621 Capitol Mall, 10<sup>th</sup> Floor  
Sacramento, CA 95814

Executed at Sacramento, California, on June 10, 2009.

F. CHEN

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DEPUTY CLERK



No. C061011

IN THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

---

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT, et al.,  
*Plaintiffs and Appellants,*

v.

JOHN CHIANG, as State Controller, etc.,  
*Defendant and Appellant;*

ARNOLD SCHWARZENEGGER, as Governor, etc., et al.,  
*Defendants and Respondents.*

---

On Appeal of an Order and Judgment  
by the Sacramento County Superior Court,  
Case No. 34-2008-80000126-CU-WM-GDS,  
The Honorable Patrick Marlette

---

**STIPULATION DESIGNATING CONTENTS OF JOINT APPENDIX**

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Richard J. Chivaro, State Bar No. 124391

Chief Counsel

Ronald V. Placet, State Bar No. 155020

Senior Staff Counsel

Shawn D. Silva, State Bar No. 190019

Senior Staff Counsel

Ana Maria Garza, State Bar No. 200255

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Margaret R. Prinzing, State Bar No. 209482

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San Leandro, CA 94577

Phone: (510) 346-6200

Fax: (510) 346-6201

Email: [rjohansen@rjp.com](mailto:rjohansen@rjp.com)

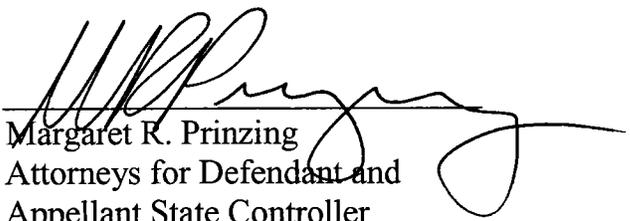
Attorneys for Defendant and Appellant State Controller John Chiang

The parties, through their respective counsel, hereby designate that the Joint Appendix in Lieu of Clerk's Transcript shall be indexed as required by Rule 8.144(b) and shall contain the documents described in Exhibit A and which are incorporated herein by reference.

Respectfully submitted,

Dated: August 31, 2009

REMCHO, JOHANSEN & PURCELL, LLP

By:   
Margaret R. Prinzing  
Attorneys for Defendant and  
Appellant State Controller  
John Chiang

Dated: August 28, 2009

PROFESSIONAL ENGINEERS IN  
CALIFORNIA GOVERNMENT

By:   
Gerald A. James  
Attorneys for Plaintiffs and  
Appellants Professional Engineers  
in California Government, et al.

August 28

Dated: ~~July~~     , 2009

KRONICK, MOSKOVITZ, TIEDEMANN  
& GIRARD

By: Meredith Packer

Meredith Packer  
Attorneys for Defendants and  
Respondents Governor  
Schwarzenegger and Department  
of Personnel Administration

(00084940-2)

**EXHIBIT A**

<b>CHRONOLOGICAL INDEX TO JOINT APPENDIX</b>			
<b>Tab</b>	<b>Date Filed/Signed</b>	<b>Document</b>	<b>Volume/Page</b>
A	12/22/08	PECG and CAPS Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. I, JA 1
B	1/6/09	PECG and CAPS Memorandum of Points and Authorities in Support of Verified Petition for Writ of Mandate and Complaint for Declaratory Relief	Vol. I, JA 21
C	1/6/09	Declaration of Theodore Toppin in Support of Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. I, JA 46
D	1/6/09	Declaration of Theodore Toppin, Exh. A: Nov. 6, 2008 Letter from Arnold Schwarzenegger to State Workers	Vol. I, JA 50
E	1/6/09	Declaration of Theodore Toppin, Exh. B: Nov. 6, 2008 Special Session Proclamation	Vol. I, JA 53
F	1/6/09	Declaration of Theodore Toppin, Exh. C: Governor's legislative proposals relating to the furlough of state workers	Vol. I, JA 55
G	1/6/09	Declaration of Theodore Toppin, Exh. D: Dec. 1, 2008 Prop. 58 Special Session Proclamation	Vol. I, JA 70
H	1/6/09	Declaration of Theodore Toppin, Exh. E: Dec. 1, 2008 Special Session Proclamation	Vol. I, JA 72
I	1/6/09	Declaration of Theodore Toppin, Exh. F: Assembly Budget Committee's Summary of Governor's Proposed December 2008-09 Budget Adjustments	Vol. I, JA 74
J	1/9/09	Minute Order [Petitioners' Ex Parte Application for an Order Shortening Time to Hear Petition for Writ of Mandate and Respondents' Ex Parte Request for an Order Shortening Time for Filing Demurrer]	Vol. I, JA 92

<b>CHRONOLOGICAL INDEX TO JOINT APPENDIX</b>			
<b>Tab</b>	<b>Date Filed/Signed</b>	<b>Document</b>	<b>Volume/Page</b>
K	1/9/09	Notice of Hearing and Demurrer to Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief by Arnold Schwarzenegger, State of California and Department of Personnel Administration ("DPA")	Vol. I, JA 96
L	1/9/09	Memorandum of Points and Authorities in Support of Demurrer to Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief by Schwarzenegger, State of California and DPA	Vol. I, JA 99
M	1/9/09	Request for Judicial Notice in Support of Demurrer to Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief by Schwarzenegger, State of California and DPA	Vol. I, JA 111
N	1/9/09	Request for Judicial Notice, Exh. A: Agreement between State and PECG	Vol. I, JA 115
O	1/9/09	Request for Judicial Notice, Exh. B: Agreement between State and CAPS	Vol. II, JA 221
P	1/9/09	Request for Judicial Notice, Exh. C: Dec. 22, 2008 Unfair Practice Charge filed by SEIU	Vol. II, JA 342
Q	1/9/09	Request for Judicial Notice, Exh. D: Dec. 24, 2008 Unfair Practice Charge filed by Stationary Engineers, Local 39	Vol. II, JA 404
R	1/9/09	Request for Judicial Notice, Exh. E: Dec. 23, 2008 Unfair Practice Charge filed by American Physicians and Dentists	Vol. II, JA 415
S	1/9/09	Request for Judicial Notice, Exh. F: Dec. 30, 2008 Unfair Practice Charge filed by AFSCME	Vol. II, JA 419
T	1/16/09	Minute Order [relating PECG, CASE, SEIU and CCPOA cases]	Vol. II, JA 424

<b>CHRONOLOGICAL INDEX TO JOINT APPENDIX</b>			
<b>Tab</b>	<b>Date Filed/Signed</b>	<b>Document</b>	<b>Volume/Page</b>
U	1/20/09	Respondents' Schwarzenegger and DPA's Opposition to Petitioners' Petitions for Writ of Mandate in Consolidated Actions	Vol. II, JA 426
V	1/20/09	Declaration of Alene Shimazu [in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate]	Vol. II, JA 470
W	1/20/09	Declaration of David W. Tyra in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate	Vol. III, JA 476
X	1/20/09	Declaration of David W. Tyra, Exh. 1: Jul. 31, 2008 Executive Order S-09-08	Vol. III, JA 481
Y	1/20/09	Declaration of David W. Tyra, Exh. 2: Governor's Sept. 23, 2008 Press Release regarding adoption of budget	Vol. III, JA 485
Z	1/20/09	Declaration of David W. Tyra, Exh. 3: Governor's Budget, Special Session 2008-09	Vol. III, JA 489
AA	1/20/09	Declaration of David W. Tyra, Exh. 4: Oct. 2008 Finance Bulletin issued by Department of Finance	Vol. III, JA 514
BB	1/20/09	Declaration of David W. Tyra, Exh. 5: Nov. 6, 2008 Special Session Proclamation	Vol. III, JA 517
CC	1/20/09	Declaration of David W. Tyra, Exh. 6: Nov. 6, 2008 letter from Governor to state workers	Vol. III, JA 519
DD	1/20/09	Declaration of David W. Tyra, Exh. 7: CASE Public Information and Announcements	Vol. III, JA 522
EE	1/20/09	Declaration of David W. Tyra, Exh. 8: Dec. 17, 2008 Update from SEIU Local 1000	Vol. III, JA 524
FF	1/20/09	Declaration of David W. Tyra, Exh. 9: Jan. 9, 2009 PECG Weekly Update	Vol. III, JA 527

**CHRONOLOGICAL INDEX TO JOINT APPENDIX**

<b>Tab</b>	<b>Date Filed/Signed</b>	<b>Document</b>	<b>Volume/Page</b>
GG	1/20/09	Declaration of David W. Tyra, Exh. 10: Dec. 1, 2008 Fiscal Emergency Proclamation	Vol. III, JA 530
HH	1/20/09	Declaration of David W. Tyra, Exh. 11: Dec. 19, 2008 Executive Order S-16-08	Vol. III, JA 532
II	1/20/09	Declaration of David W. Tyra, Exh. 12: Controller's Dec. 19, 2008 Press Release	Vol. III, JA 535
JJ	1/20/09	Declaration of David W. Tyra, Exh. 13: Dec. 12, 2008 letter from Controller to Governor and Legislators	Vol. III, JA 537
KK	1/20/09	Declaration of David W. Tyra, Exh. 14: Department of Finance Financial Presentation	Vol. III, JA 541
LL	1/20/09	Declaration of Director of Finance Michael C. Genest [in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate]	Vol. III, JA 556
MM	1/20/09	Declaration of Julie Chapman [in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate]	Vol. III, JA 562
NN	1/20/09	Declaration of Julie Chapman, Exh. A: Notices sent by DPA to PECG, SEIU, Local 1000, CASE and CAPS	Vol. III, JA 566
OO	1/20/09	Declaration of Bernice Torrey [in Support of Opposition to Merits of Petitioners' Petitions for Writ of Mandate]	Vol. III, JA 582
PP	1/20/09	Petitioners PECG and CAPS' Opposition to Respondent Schwarzenegger and DPA's Demurrer to Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. III, JA 587
QQ	1/20/09	Answer of Controller to Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. III, JA 600

<b>CHRONOLOGICAL INDEX TO JOINT APPENDIX</b>			
<b>Tab</b>	<b>Date Filed/Signed</b>	<b>Document</b>	<b>Volume/Page</b>
RR	1/20/09	Controller's Opposition to Respondents'/ Defendants' Demurrer to Verified Petitions for Writ of Mandate and Complaints for Declaratory and Injunctive Relief	Vol. III, JA 611
SS	1/22/09	Petitioners PECG and CAPS' Reply to Respondent Schwarzenegger and DPA's Opposition to Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief	Vol. III, JA 620
TT	1/22/09	Respondent Schwarzenegger and DPA's Reply to All Petitioners' Oppositions to Respondents' Demurrers to Petitions for Writ of Mandate	Vol. III, JA 633
UU	1/22/09	Declaration of Tami R. Bogert Regarding Public Employment Relations Board's Exclusive Initial Jurisdiction and Filed Unfair Practice Charges Concerning the State's Furlough Plan	Vol. III, JA 646
VV	1/23/09	Minute Order [directing respondents to file amended request for judicial notice that attaches complete text of all provisions of the CASE and SEIU MOUs cited in briefs]	Vol. III, JA 650
WW	1/29/09	Minute Order [Ruling on Petitions for Writ of Mandate, Complaints and Demurrers]	Vol. III, JA 652
XX	1/30/09	Amended Minute Order – Ruling on Petitions for Writ of Mandate, Complaints and Demurrers	Vol. III, JA 660
YY	2/3/09	Notice of Appeal by PECG	Vol. III, JA 673
ZZ	2/3/09	Notice of Appeal by CAPS	Vol. III, JA 676
AAA	2/3/09	Letter from Respondent/Defendant Controller to Judge Marlette seeking clarification of ruling	Vol. IV, JA 679
BBB	2/4/09	Minute Order [re Controller's request for clarification of Court's order]	Vol. IV, JA 693
CCC	2/11/09	Order After Hearing [re Writ of Mandate]	Vol. IV, JA 696

**CHRONOLOGICAL INDEX TO JOINT APPENDIX**

<b>Tab</b>	<b>Date Filed/Signed</b>	<b>Document</b>	<b>Volume/Page</b>
DDD	2/11/09	Judgment Re: Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. IV, JA 715
EEE	2/11/09	Notice of Entry of Order After Hearing and Judgment Re: Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief	Vol. IV, JA 733
FFF	3/25/09	PECG and CAPS' Notice to Prepare Partial Reporter's Transcript and Notice of Election to Proceed by Appendix in Lieu of Clerk's Transcript	Vol. IV, JA 771
GGG	3/25/09	PECG and CAPS' Notice to Prepare Partial Reporter's Transcript and Notice of Election to Proceed by Appendix in Lieu of Clerk's Transcript [containing Superior Court payment receipt]	Vol. IV, JA 775
HHH	3/27/09	Schwarzenegger and DPA's Notice of Election to Proceed with Appendix on Appeal	Vol. IV, JA 780
III	3/27/09	Notice of Filing of Designation and Notice to Reporters to Prepare Transcripts	Vol. IV, JA 784
JJJ	4/1/09	Respondent/Defendant Controller's Notice of Appeal; Notice of Election to Proceed by Way of Appendix in Lieu of Clerk's Transcript; Notice of Designation of Reporter's Transcript	Vol. IV, JA 786
KKK	4/6/09	Respondents' Schwarzenegger and DPA's Designation of Additional Proceedings for Reporter's Transcript	Vol. IV, JA 790
LLL	4/6/09	Amended Notice of Filing of Designation and Notice to Reporters to Prepare Transcripts	Vol. IV, JA 790
MMM	4/9/09	Respondent/Defendant Controller's Amended Notice of Appeal; Notice of Election to Proceed by Way of Appendix in Lieu of Clerk's Transcript; Notice of Designation of Reporter's Transcript	Vol. IV, JA 796

<b>CHRONOLOGICAL INDEX TO JOINT APPENDIX</b>			
<b>Tab</b>	<b>Date Filed/Signed</b>	<b>Document</b>	<b>Volume/Page</b>
NNN	5/1/09	2nd Amended Notice of Filing of Designation and Notice to Reporters to Prepare Transcripts	Vol. IV, JA 799
OOO	6/9/09	Notice of Non-Availability of Register of Actions	Vol. IV, JA 801
PPP	7/15/09	Stipulation Designating Contents of Joint Appendix	Vol. IV, JA 803

**PROOF OF SERVICE**

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause or action. My business address is 201 Dolores Avenue, San Leandro, CA 94577.

On August 31, 2009, I served a true copy of the following document(s):

**Joint Appendix  
Volume IV of IV [Pages 679 Through 802]**

on the following party(ies) in said action:

Gerald A. James Professional Engineers in California Government 455 Capitol Mall, Suite 501 Sacramento, CA 95814-4433 Phone: (916) 446-0400 Fax: (916) 446-0489	<i>Attorneys for Appellants Professional Engineers in California Government, et al.</i>
---	---

David W. Tyra Kronick, Moskovitz, Tiedemann & Girard 400 Capitol Mall, 27th Floor Sacramento, CA 95814 Phone: (916) 321-4500 Fax: (916) 321-4555	<i>Attorneys for Respondents Governor Arnold Schwarzenegger and Department of Personnel Administration</i>
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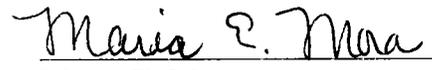
Will M. Yamada Chief Counsel Department of Personnel Administration 1515 "S" Street, Suite 400 Sacramento, CA 95811-7246 Phone: (916) 324-0512 Fax: (916) 323-4723	<i>Attorneys for Respondent Department of Personnel Administration</i>
---	--

Richard Chivaro  
State Controller's Office  
Chief Counsel  
300 Capitol Mall, Suite 1850  
Sacramento, CA 95814  
Phone: (916) 445-6854  
Fax: (916) 322-1220

*Attorneys for Appellant State Controller  
John Chiang*

- BY UNITED STATES MAIL:** By enclosing the document(s) in a sealed envelope or package addressed to the person(s) at the address above and
- depositing the sealed envelope with the United States Postal Service, with the postage fully prepaid.
  - placing the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the businesses' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, located in San Leandro, California, in a sealed envelope with postage fully prepaid.
- BY OVERNIGHT DELIVERY:** By enclosing the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
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I declare, under penalty of perjury, that the foregoing is true and correct. Executed on August 31, 2009, in San Leandro, California.

  
\_\_\_\_\_  
Maria E. Mora