

Docket No. C061020

070011

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

C061020

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000,
Plaintiff and Appellant,
v.
JOHN CHIANG, as State Controller, etc.,
Defendant and Appellant;
ARNOLD SCHWARZENEGGER, as Governor, etc. et al.,
Defendants and Respondents.

Sacramento County
Judge: Patrick Marlette
Sacramento County No. 34200980000135CUWMGDS

**JOINT APPENDIX
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On Appeal of an Order and Judgment
by the Sacramento Superior Court
No. 34-2009-80000135-CU-WM-GDS
The Honorable Patrick Marlette

FILED

SEP - 3 2009

COURT OF APPEAL - THIRD DISTRICT
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BY [Signature] Deputy

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no complete
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no service controller no order
Clerk, Court of Appeal,
Third Appellate District

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FILED
Superior Court Of California,
Sacramento
Dennis Jones, Executive
Officer
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By , Deputy
Case Number:
34-2009-80000135-CU-WM-GDS

Dept 29

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **IN AND FOR THE COUNTY OF SACRAMENTO**

16 **SERVICE EMPLOYEES INTERNATIONAL**
17 **UNION, LOCAL 1000,**

CASE No.

18 **Petitioners/Plaintiffs,**

VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF

19 v.

20 **ARNOLD SCHWARZENEGGER, as**
21 **Governor, State of California;**
22 **DEPARTMENT OF PERSONNEL**
23 **ADMINISTRATION; JOHN CHIANG, as**
24 **State Controller, and DOES 1 THROUGH 20,**
25 **INCLUSIVE,**

26 **Respondents/Defendants.**

27 **COME NOW SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 (hereafter**
28 **"LOCAL 1000") and complain against Respondents/Defendants Arnold Schwarzenegger, Governor,**
State of California; Department of Personnel Administration; John Chiang, State Controller; and Does
1 through 20, alleging as follows:

I. INTRODUCTION

On December 19, 2008, Governor Arnold Schwarzenegger issued Executive Order S-16-08 (hereafter "Order"), an illegal Order that instructs all State departments and agencies to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding

1 source. In effect, the Governor seeks to cut salaries of state employees by approximately ten (10)
2 percent over an 18-month period. As legal authority for the furlough, the Order cites to California
3 Government Code, section 3516.5, a portion of the Ralph C. Dills Act. Section 3516.5, however, does
4 not authorize the Governor or DPA to issue furloughs or reduce the salaries of represented members.
5 Consequently, Governor Schwarzenegger did not cite to any legal authority that would support his
6 issuance of a furlough Order, and subsequently affirm the implementation of that Order by the
7 Department of Personnel Administration, and the Office of the State Controller. LOCAL 1000 seeks
8 Court's intervention to block implementation of the Governor's illegal Order.

9 In addition, the furlough will affect the exempt status of those state employees who are
10 currently considered FLSA-exempt. To be specific, the furlough will destroy a state employees'
11 exempt status during the workweek that a state employee is furloughed. LOCAL 1000 seeks a
12 declaration that FLSA-exempt state employees represented by LOCAL 1000 are entitled to overtime
13 compensation during a furlough week.

14 By this verified petition and complaint, Petitioners/Plaintiffs LOCAL 1000 petitions the Court
15 for the issuance of a writ of mandate pursuant to Code of Civil Procedure §1085 and file this action
16 for injunctive and declaratory relief by alleging as follows:

17 **II. PARTIES**

18 1. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, is a nonprofit
19 mutual benefit corporation organized under the laws of the State of California with its principal office
20 in Sacramento, California. LOCAL 1000 is organized to represent employees of the State of
21 California in participating collectively in the mutual formulation of wages, hours, working conditions
22 and retirement benefits. LOCAL 1000 is the certified exclusive representative of about ninety-five
23 thousand (95,000) employees in State Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20 and 21. LOCAL
24 1000 negotiates collective bargaining contracts on behalf of employees in such bargaining units,
25 represents such employees as to their terms and conditions of employment under the Dills Act, and
26 receives dues and fair share fees from such employees. LOCAL 1000 represents the exempt and
27 nonexempt civil service employees who work for the State of California and whose state or civil
28 service employment is affected by implementation of the Governor's Order. LOCAL 1000 is, as a

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1 result of its representative role, beneficially interested in ensuring the correct and timely payment of
2 wages to state employees.

3 2. Respondent/Defendant Governor ARNOLD SCHWARZENEGGER is the elected
4 Governor of the State of California. The Governor is the employer of state employees in all
5 represented bargaining units for the purposes of bargaining or meeting and conferring in good faith
6 under the Ralph C. Dills Act. (Govt. Code §3513 (j).) GOVERNOR SCHWARZENEGGER is sued
7 in his official capacity only.

8 3. Respondent/Defendant CALIFORNIA DEPARTMENT OF PERSONNEL
9 ADMINISTRATION (DPA) is, and at all times herein mentioned was, a department of the State of
10 California with the responsibility of managing the non-merit aspects of the state's personnel system
11 and as serving as the Governor's designated representative for purposes of collective bargaining
12 agreements with the exclusive representatives for state bargaining units under the Ralph C. Dills Act
13 and to meet and confer on matters relating to supervisory employer-employee relations. (Govt. Code
14 §19815.2; Govt Code §3517 and 3527.)

15 4. Respondent/Defendant STATE CONTROLLER JOHN CHIANG is a state
16 constitutional officer as the duly elected Controller of the State of California. (Cal. Const., art. V,
17 §11.) Among various other duties, the Controller shall superintend the fiscal concerns of the state.
18 The Controller shall audit all claims against the state and may audit the disbursement of any state
19 money for correctness, legality, and for sufficient provisions of law for payment. (Gov. Code §
20 12410.) The Controller shall draw warrants on the Treasurer for the payment of money directed by
21 law to be paid out the State Treasury; but a warrant shall not be drawn unless authorized by law, and
22 unless unexhausted specific appropriations by law are available to meet it. (Gov. Code § 12440.) The
23 Controller is sued in his official capacity only.

24 5. The true names and capacities of Respondents/Defendants named herein as DOES 1
25 through 20, inclusive, are unknown to Petitioner/Plaintiffs who therefore sue such
26 Respondents/Defendants by such fictitious names, and Petitioner/Plaintiffs will amend this complaint
27 to show their true names and capacities when the same have been ascertained. Petitioners/Plaintiffs
28 are informed and believe and thereon allege that each of the Respondents/Defendants are in some

1 manner responsible for the act complained of herein.

2 **III. VENUE**

3 6. Respondents/Defendants engaged in all of the acts alleged herein within the County
4 of Sacramento. Accordingly, venue in Sacramento County is proper.

5 7. Furthermore, the California Attorney General has an office within the City of
6 Sacramento, making Sacramento County an appropriate venue. (Cal. Code of Civil Procedure §
7 401(1).)

8 **IV. ALLEGATIONS**

9 **A. The Furlough Order**

10 8. On December 19, 2008, the Governor issued Executive Order S-16-08. (Exhibit A,
11 attached hereto) Through the Order, the Governor directed the Department of Personnel
12 Administration (hereafter "DPA") to implement the furlough as follows:

13 **IT IS ORDERED** that effective February 1, 2009, through June 30,
14 2010, the Department of Personnel Administration shall adopt a plan
15 to implement a furlough of represented state employees and supervisors
16 for two days per month, regardless of funding source. This plan shall
include a limited exemption process.

17 (Exhibit A.)

18 9. As legal authority for the furlough Order, the Governor cites only to California
19 Government Code, section 3516.5, while making a general reference to the "power and authority
20 vested in [him] by the Constitution and statutes of the State of California." (Exhibit A.) The Order
21 does not cite to any specific constitutional provision or statute that authorizes the Governor or DPA
22 to furlough and/or unilaterally reduce the salaries of state employees for eighteen (18) months.

23 10. In relevant part, California Government Code, section 3516.5 states:

24 "Except in cases of emergency as provided in this section, the employer shall
25 give reasonable written notice to each recognized employee organization
26 *affected by any law, rule, resolution, or regulation* directly relating to
27 matters within the scope of representation proposed to be adopted by the
28 employer, and shall give such recognized employee organizations the
opportunity to meet and confer with the administrative officials or their
designated representatives as may be properly designated by law.

In cases of emergency when the employer determines that a law, resolution,

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or regulation must be adopted immediately without prior notice or a meeting with the recognized employee organization, the administrative officials or their designated representatives as may be properly designated by law shall provide such notice and opportunity to meet and confer in good faith at the earliest practical time following adoption of such law, rule, resolution, or regulation.”

11. For Section 3516.5 to have any application, the proposed “law, rule, resolution or regulation relating to matters within the scope of representation” would first need to be lawful. Because the Governor has no authority to furlough state employees or reduce their salaries, the Order at issue is not lawful. Section 3516.5, therefore, has no application here.

12. Article V, Section 1, of the Constitution of the State of California states: “The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed.” As such, the Governor’s role is to execute those laws passed by the Legislature.

13. California Government Code, section 12010, in relevant part, states, “[t]he Governor shall supervise the official conduct of all executive and ministerial officers.”

14. The Governor’s power to issue executive orders originates in Article V, Section 1, of the California Constitution: “The supreme executive power of this State is vested in the Governor.” Because of this general authority, the Governor can issue orders regarding the actions of the executive branch of government. The Governor, however, may only issue orders as allowed by statutes that give him executive power over specific matters. Consequently, the Governor’s power to issue a specific order resides in various statutes, and not in any one place, like the Constitution. To support the issuance of Executive Order S-16-08, the authorizing statute would have to empower the Governor to furlough state employees, or said another way, to unilaterally reduce the salaries of state workers.

15. The Constitution makes clear that the Governor may not invade the province of the Legislature. California Constitution, Article III, Section 3, provides as follows: “The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.”

16. The Legislature alone is empowered to establish the salaries for state workers. For represented employees, the Legislature provided that salaries for state employees shall be established through collective bargaining. (*Lowe v. Resources Agency* (1991) 1 Cal.App.4th 1140.)

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17. California law specifically forbids the executive branch from altering salaries.

Government code section 19826(b) in relevant part states:

(b) Notwithstanding any other provision of law, the department 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 Section 3520.5.”

18. Under Section 19826 subdivision (b), where an exclusive representative has been chosen, neither the Governor, DPA or the Controller have the authority to change the salaries of represented employees—“notwithstanding any other provision of law.” Because the Legislature did not delegate its salary setting function with respect to represented employees, the Governor has no power to issue an Order applying furloughs as a tool to reduce the salaries of state employees. Subpart (b) indisputably show that the Legislature reserved for itself the role of setting salaries for represented employees. Furthermore, the Legislature created a statute that authorizes the Legislature alone to approve the setting of salaries for represented employees. (Cal. Gov. Code section 3517.5.)

19. LOCAL 1000 is the certified exclusive representative of about ninety-five thousand (95,000) employees in State Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20 and 21. LOCAL 1000 negotiates collective bargaining contracts on behalf of employees in such bargaining units, represents such employees as to their terms and conditions of employment under the Dills Act. LOCAL 1000 represents the exempt and nonexempt civil service employees who work for the State of California and whose state or civil service employment is affected by implementation of the Governor’s Order.

20. By issuing the Order and seeking to implement it, Respondents/Defendants have violated and will continue to violate the California Constitution and various state statutes. This Order violates the constitutional principles of the separation of powers and is directly contrary to existing law by reducing the salaries of state employees without Legislative approval.

21. It is well established that the State Controller has “the power and the duty to ensure that the decisions of an agency that affect expenditures are within fundamental jurisdiction of the agency.” (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.) Through California Government Code, section 12400, the Legislature provided that “a warrant shall not be draw unless authorized by law.” Where a State agency or department attempts to exercise control over matters the Legislature did not delegate to its control, such delegation is unlawful and has no force or effect.

1 22. Consequently, the Controller has a legal duty to refrain from issuing pay warrants that
2 reduce the salaries of represented state employees through illegal means, including an unlawfully
3 issued Executive Order.

4 23. The Governor's furlough Order conflicts with Government Code section 19826
5 subdivision (b) as well as other state laws. Where an exclusive representative has been selected,
6 Section 19826(b) makes clear that neither the Governor or DPA have authority to change the
7 Legislatively approved salaries. Since the Governor and the DPA have no authority to implement the
8 furlough, the furlough Order has no force or effect and the Controller has a duty to ensure that salaries
9 for represented state employees not be reduced as a result of the unlawful furlough.

10 **B. Fair Labor Standard Act Exemption**

11 24. The Order further conflicts with, and changes the Fair Labor Standards Act exemption
12 status of numerous LOCAL 1000 members. The Fair Labor Standards Act (hereafter "FLSA") is
13 codified in 29 U.S.C. section 201-219. The FLSA requires that employers pay overtime compensation
14 for time worked beyond 40 hours in a workweek. (29 USC § 206a.) All overtime work that is ordered,
15 approved, or "suffered or permitted" must be compensated. Exempt employees are not entitled to, and
16 do not receive overtime compensation.

17 25. A significant number of LOCAL 1000 members employed by the State are considered
18 exempt under the FLSA. The base pay of an FLSA-exempt employee may not be reduced based on the
19 "quality or quantity" of work performed. (28 C.F.R. § 541.603.) This means that the employer may
20 not reduce the base pay of a FLSA-exempt employee if s/he performs less work than normal, if the
21 reason for the reduction is dictated by the employer, such as through a furlough. As one example, an
22 FLSA-exempt employee's base pay may not be reduced if there is "no work" to be performed (such as
23 for a plant closing, slow period, or furlough). Reducing a FLSA-exempt employees' salary through a
24 furlough is considered an impermissible reduction, and destroys exempt status for the workweek in
25 which the furlough is applied. (29 C.F.R. § 541.710).

26 26. The State of California recognizes that a substantial number of state workers represented
27 by LOCAL 1000 are exempt under the FLSA. ("In relevant part, Section 19.19.21 of the parties'
28 collective bargaining agreement states, "State employees who are exempt from the FLSA are not hourly

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1 workers. The compensation they receive from the State is based on the premise that they are expected
2 to work as many hours as is necessary to provide the public services for which they were hired.
3 Consistent with the professional status of these employees, they are accountable for their work product,
4 and for meeting the objective of the agency for which they work.”). This contract is currently in full
5 force and effect. As a consequence, FLSA-exempt union members are contractually obligated to work
6 as many hours as necessary to complete their assignments.

7 27. Because FLSA-exempt state workers subject to the LOCAL 1000 contract are obligated
8 to work as many hours as necessary to accomplish their tasks, those employees will be required to work
9 well beyond 40 hours in each workweek to make up for the lost work time due to furloughs. As such,
10 the Order is illegal as it does not provide any requirement or mechanism to insure that LOCAL 1000
11 members are paid overtime for the work that will undoubtedly be necessary to provide the public
12 services for which they were hired.

13 FIRST CAUSE OF ACTION

14 (Petition for Writ of Mandate)

15 28. Petitioner/Plaintiff LOCAL 1000 hereby incorporates by reference all of the foregoing
16 paragraphs as if fully set forth herein.

17 29. The Governor’s Order, S-16,08, which directs DPA to implement a two-day per month
18 furlough, and a corresponding reduction in salaries, violates the constitutional doctrine of separation
19 of powers under Article III, Section 3 of the California Constitution. Through the Order, the Governor
20 seeks to illegally delegate to DPA those powers reserved exclusively for the Legislature through various
21 state laws. To be specific, only the Legislature has the power and authority to alter the salaries of state
22 employees. Consequently, the Governor’s Order is without legal authority and unlawful.

23 30. Respondents/Defendants Governor Schwarzenegger, DPA and the Controller each have
24 a clear, present, and ministerial duty to conform to the laws of the State of California and to avoid
25 violating the California Constitution.

26 31. Petitioner/Plaintiff LOCAL 1000 and its members have an immediate and direct interest
27 affected by the Order in that represented state employees have a right to avoid illegal furloughs, a right
28 to have their salaries legitimately set by the California Legislature, and a right to avoid having their pay

1 unilaterally reduced as through an illegal Executive Order.

2 32. Respondent/Defendant Controller Chiang has a legal duty to audit claims and to
3 conclude that, since the Governor's proposed furlough conflicts with the California Constitution and
4 Government Code, section 19826, subdivision (b) as well as other state laws, the Governor and the
5 DPA are without the requisite authority to implement the proposed furlough. Consequently, the
6 furlough has no force or effect, and the Controller has a duty to ensure that salaries not be reduced as
7 a result of the furlough.

8 33. Petitioner/Plaintiff LOCAL 1000 has no plain, speedy, and adequate remedy in the
9 ordinary course of law, other than the relief sought in this petition, in that there are not other legal
10 remedies to prevent or enjoin the implementation of the furlough, and the reduction of salaries.

11 34. Petitioner/Plaintiff LOCAL 1000 has no administrative remedy which will result in
12 preventing or enjoining the illegal furloughs and its reduction of salaries. In addition,
13 Petitioner/Plaintiff and its members will suffer irreparable harm and injury if the proposed furloughs
14 are implemented, including the loss of those legal protections used to establish their salaries. The
15 proposed ten (10) percent pay reduction is a draconian loss of income and will likely result in state
16 employees defaulting on home mortgages, car loans, or other legal obligations—with such defaults
17 resulting in unfavorable results on their credit scores, and negative repercussions on their ability to
18 obtain credit in the future.

19 SECOND CAUSE OF ACTION

20 (Separation of Powers - Complaint for Declaratory and Injunction Relief)

21 35. Petitioner/Plaintiff LOCAL 1000 hereby incorporates by reference all of the foregoing
22 paragraphs as if fully set forth herein.

23 36. Beginning with the February 2009 pay period, the Governor and DPA have made clear
24 that they intend to implement the furlough Order, thus reducing the salaries of represented state
25 employees by approximately ten (10) percent for an eighteen (18) month period.

26 37. At this time, Petitioner/Plaintiff LOCAL 1000 does not know whether
27 Respondent/Defendant Controller Chiang intends to issue warrants reducing the salaries of represented
28 state employees by about ten (10) percent each month, as required by the unlawful Order.

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38. Court intervention and relief is urgently needed to prevent the Governor and DPA from implementing the illegal Order in February 2009, which is an Order that violates the California Constitution and various statutes and regulations, including but not limited to the doctrine of separation of powers under Article III, Section 3, of the California Constitution, and Government Code sections 19826(b) and 3516.5, among other laws.

39. As a result of this Executive Order, an actual controversy has arisen and now exists between Petitioner/Plaintiff LOCAL 1000 and Respondents/Defendants regarding the furlough of state employees represented by LOCAL 1000, as the furlough is merely an illegal mechanism by the Governor to reduce the salaries of represented state employees and circumvent the Legislative process.

40. Petitioner/Plaintiff LOCAL 1000 desires a declaration of its rights and the rights of its impacted members with respect to the Governor and DPA's intent to furlough state employees represented by LOCAL 1000 through the unlawful Order, and a declaration of its members' rights to not have their salaries or work hours illegally reduced.

41. Such a declaration is necessary and appropriate at this time in order to avoid implementation of the illegal furloughs which would adversely impact the rights of Petitioner/Plaintiff LOCAL 1000. Respondents/Defendants actions will result in injury and harm to state employees including the denial of the protection of the laws regarding their salaries and their work hours. The loss of such rights cannot be compensated fully by damages or other form of legal relief.

42. Because the Executive Officer is in direct conflict with existing statutes and is therefore unlawful, Petitioner/Plaintiff is entitled as a matter of law not to have the salaries of its members reduced and their work hours cut. Petitioner/Plaintiff LOCAL 1000, therefore, has a reasonable likelihood of success on the merits regarding its Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief.

43. Therefore, Petitioner/Plaintiff LOCAL 1000 seeks temporary, preliminary and permanent injunctive relief directing Respondents/Defendants to cease and desist taking action to implement the proposed furlough of state employees represented by LOCAL 1000, or in any manner to have their salaries or work hours reduced through a process other than that provided for by California law.

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THIRD CAUSE OF ACTION

(FLSA - Complaint for Declaratory and Injunction Relief)

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44. Petitioner/Plaintiff LOCAL 1000 hereby incorporates by reference all of the foregoing paragraphs as if fully set forth herein.

45. Beginning with the February 2009 pay period, the Governor and DPA will implement the furlough Order issued by the Governor on December 19, 2008. Because the furloughs are being ordered by the Governor, who is the legal employer of those state employees represented by LOCAL 1000, the reduction in salary for FLSA exempt employees is "occasioned by the employer." Pursuant to relevant FLSA regulations, the furloughs will result in the loss of exemption status for the workweek in which the FLSA exempt employees are furloughed. Consequently, those represented state employees will be entitled to overtime compensation for overtime hours spent completing their required tasks.

46. There is no dispute that the State has concluded that a significant number of LOCAL 1000 members are FLSA exempt, and regards those employees as such.

47. Petitioner/Plaintiff LOCAL 1000 desires a declaration of its rights and the rights of its FLSA-exempt members to receive overtime compensation for overtime hours spent completing those tasks that each employee is obligated to complete without regard to the hours each must work.

48. Petitioner/Plaintiff LOCAL 1000 is informed and believes that a significant number of its FLSA-exempt members are required to work well beyond 40-hours in a workweek to complete their assigned tasks. Thus, a declaration is necessary and appropriate at this time in order to prevent the Governor and the DPA from implementing this illegal Order in a manner that will undoubtedly result in overtime wage violations for those LOCAL 1000 members who are FLSA-exempt.

49. Petitioner/Plaintiff LOCAL 1000 is informed and believes that the State agencies and departments responsible for implementing the furloughs do not have the mechanisms or systems in place to accurately track work hours during those weeks that FLSA-exempt employees are furloughed and lose their exempt status. Moreover, LOCAL 1000 is informed and believes that the Office of the State Controller does not have the mechanisms and/or systems in place to move FLSA-exempt employees from exempt to non-exempt status from week-to-week. As such, the logistical problems facing the state will undoubtedly result in a failure to properly pay wages due and owing LOCAL 1000

1 members who are FLSA-exempt.

2 50. Respondents/Defendants failure to pay appropriate overtime wages to those FLSA-
3 exempt employees who are illegally furloughed will result in irreparable harm to the state employees
4 represented by LOCAL 1000, including the denial of laws regarding overtime pay, and the loss of
5 income during a dire economic period. Those state employees represented by LOCAL 1000 that suffer
6 both a ten (10) percent salary reduction from the illegal furlough, and are also denied their overtime
7 compensation, have an actual risk of failing to make payments to creditors. Where these state
8 employees are forced to make late payment (or are unable to make payments to creditors at all), the
9 employees risk losing their home, car, or other property. Moreover, the failure to make timely payments
10 results in a negative credit rating and impacts the employees' ability to obtain future credit, resulting
11 in a harm that a court cannot remedy with a back pay award or other forms of legal relief.

12 51. Therefore, Petitioner/Plaintiff LOCAL 1000 seeks a declaration that if furloughs are
13 implemented, its FLSA-exempt members will be entitled to overtime compensation under the FLSA
14 for all hours worked to complete their required work.

15 **PRAYER**

16 WHEREFORE, Petitioner/Plaintiff LOCAL 1000 respectfully prays for judgment against
17 Respondents/Defendants, and each of them, as follows:

18 On Petitioners/Plaintiffs' First Cause of Action for Writ of Mandate:

19 1. That the Court issue a finding that Executive Order S-16-08 is unlawful and illegal.

20 2. That the Court issue a peremptory writ in the first instance commanding the Governor
21 and DPA to comply with their mandatory duties under Article III, section 3 and Article V, section 1 of
22 the California Constitution and Government Code sections 19826, and to rescind the portions of the
23 Governor's Order S-16-08 implementing a furlough and salary reduction for state employees
24 represented by LOCAL 1000.

25 3. That the Court issue a peremptory writ in the first instance commanding
26 Respondent/Defendant Controller Chiang to ensure that salaries not be reduced as a result of the illegal
27 furlough.

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1 4. For costs of suit incurred in this action and for such other relief as the Court deems
2 proper, including attorneys fees if applicable under 1021.5 or any other statute.

3 On Petitioners/Plaintiffs' **Second Cause of Action** for Writ of Mandate:

4 1. That the Court issue a declaration that the portions of the Governor's Executive Order
5 S-16-08 calling for a furlough and salary reduction for state employees represented by LOCAL 1000
6 are unlawful and illegal in that the Governor and DPA violated and continue to violate the provisions
7 of Article III, section 3 and Article V, section 1 of the California Constitution and Government Code
8 sections 19826(b), among other state statutes, by ordering and implementing a furlough and a ten (10)
9 percent salary reduction for represented state employees.

10 2. That the Court issue a temporary, preliminary and permanent injunction directing the
11 Governor, DPA and the Controller to cease and desist taking action to furlough represented state
12 employees by reducing their work hours and reducing their pay under an unlawful Executive Order.

13 3. For costs of suit incurred in this action and for such other relief as the Court deems
14 proper, including attorneys fees if applicable under 1021.5 or any other statute.

15 On Petitioners/Plaintiffs' **Third Cause of Action** for Writ of Mandate:

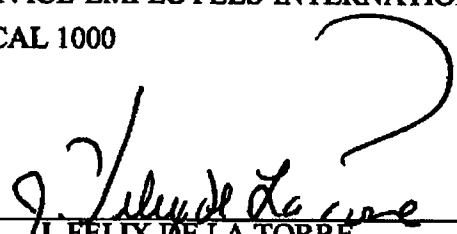
16 1. That the Court issue a declaration that the implementation of a furlough on an FLSA-
17 exempt state employee will result in the loss of exemption during the furlough week, and will require
18 that the State pay overtime rates to the furloughed FLSA-exempt employee for any time in excess of
19 40 hours in the work week, or 8-hours in a work day if applicable.

20 2. For costs of suit incurred in this action and for such other relief as the Court deems
21 proper, including attorneys fees if applicable under 1021.5 or any other statute.

22 DATED: January 7, 2009

23 SERVICE EMPLOYEES INTERNATIONAL UNION
24 LOCAL 1000

25
26
27 By



28 J. FELIX DE LA TORRE
BROOKE D. PIERMAN
Attorney for Petitioner/Plaintiff
SEIU LOCAL 1000

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VERIFICATION

I, Yvonne Walker, declare under penalty of perjury under the laws of the State of California, that I am the President of SEIU Local 1000, the Intervenor in this action. I have first-hand knowledge of the facts stated in the VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT IN INTERVENTION FOR INJUNCTIVE AND DECLARATORY RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT IN INTERVENTION FOR INJUNCTIVE AND DECLARATORY RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true.

DATED: January 7, 2009



YVONNE WALKER
President of SEIU Local 1000

EXHIBIT A



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its

obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

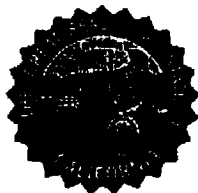
IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

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.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

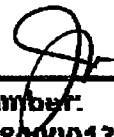
ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

ORIGINAL

FILED

CM-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) BROOKE D. PIERMAN (#222630) SEIU Local 1000 1808 14th Street Sacramento, CA 95811 TELEPHONE NO (916) 554-1279 FAX NO (Optional) (916) 554-1272 E-MAIL ADDRESS (Optional) bpierman@seiu1000.org ATTORNEY FOR (Name) Plaintiff/Petitioner SEIU Local 1000		Superior Court of California, Sacramento Dennis Jones, Executive Officer 01/07/2009 jrover By  , Deputy Case Number: 34-2009-8000135-CU-WM-GDS
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS 720 Ninth Street MAILING ADDRESS CITY AND ZIP CODE Sacramento, California 95814 BRANCH NAME Gordon D. Schaber Downtown Courthouse		
PLAINTIFF/PETITIONER SEIU LOCAL 1000		CASE NUMBER
DEFENDANT/RESPONDENT GOVERNOR ARNOLD SCHWARZENEGGER, et al.		JUDICIAL OFFICER
NOTICE OF RELATED CASE		DEPT

Identify, in chronological order according to date of filing, all cases related to the case referenced above

- 1 a Title: PECG,CAPS v. SCHWARZENEGGER,, et al.
 b. Case number 34-2008-8000126
 c Court. same as above
 other state or federal court (name and address):
 d Department: 33
 e Case type limited civil unlimited civil probate family law other (specify):
 f Filing date 12/22/08
 g Has this case been designated or determined as "complex?" Yes No
 h Relationship of this case to the case referenced above (check all that apply):
 involves the same parties and is based on the same or similar claims.
 arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact
 involves claims against, title to, possession of, or damages to the same property
 is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
 Additional explanation is attached in attachment 1h
 i. Status of case
 pending
 dismissed with without prejudice
 disposed of by judgment
- 2 a Title. CASE v. SCHWARZENEGGER, et al.
 b. Case number 34-2009-8000134
 c Court same as above
 other state or federal court (name and address):
 d Department: 33

PLAINTIFF/PETITIONER SEIU LOCAL 1000	CASE NUMBER
DEFENDANT/RESPONDENT GOVERNOR ARNOLD SCHWARZENEGGER	

2 (continued)

e. Case type. limited civil unlimited civil probate family law other (specify):

f Filing date 1/5/09

g Has this case been designated or determined as "complex?" Yes No

h Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 2h

i Status of case.

- pending
- dismissed with without prejudice
- disposed of by judgment

3. a Title:

b Case number:

c Court: same as above
 other state or federal court (name and address):

d Department

e Case type: limited civil unlimited civil probate family law other (specify):

f Filing date

g Has this case been designated or determined as "complex?" Yes No

h Relationship of this case to the case referenced above (check all that apply):

- involves the same parties and is based on the same or similar claims.
- arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- involves claims against, title to, possession of, or damages to the same property.
- is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- Additional explanation is attached in attachment 3h

i Status of case:

- pending
- dismissed with without prejudice
- disposed of by judgment

4 Additional related cases are described in Attachment 4 Number of pages attached: _____

Date January 8, 2009

BROOKE D. PIERMAN

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)

Brooke D. Pierman
 (SIGNATURE OF PARTY OR ATTORNEY)

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

DATE/TIME : 01/09/09 9:30 a.m. DEPT. NO : 19
JUDGE : P. MARLETTE CLERK : D. RIOS, SR.
REPORTER : L. RICCI (7614) BAILIFF : O. MUNOZ

PRESENT:
Gerald James
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.

David W. Tyra, for Respondent
Schwarzenneger and Dept of Personnel
Administration
Ronald V. Placet for Respondent State
Controller John Chiang

Patrick J. Whalen

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

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 : 01/09/09 9:30 a.m.
CASE NO. : 2008-80000126
CASE TITLE : PECG; CAPS v.
SCHWARZENEGGER

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


BY: D. RIOS, SR.,
Deputy Clerk

Page 1 of 4

Z1z2--2008-80000126-10909-with Mailing

SEIU JA 000020

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Hearing on Petitioner's Ex Parte Request for Order Shortening Time on the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time to Demurrer the Petition for Writ of Mandate

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

**Brooke D. Pierman and
J. Felix de la Torre**

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:

**Hearing on Petitioner's 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**

This matter came on this date for hearing on Petitioner's Ex Parte Request for Order Shortening Time on the Hearing on the Merits on the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time on the Demurrer to the Petition for Writ of Mandate, with the above named counsel present before the Court. Also appearing before the Court were Patrick J. Whalen on behalf of California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, who are the Petitioners in case 34-2009-80000134; Brooke D. Pierman and J. Felix de la Torre on behalf of Service Employees International Union, Local 1000, who are Petitioners in case 34-2009-80000135.

Mr. Tyra and Mr. Placet indicated they would appear, for the purposes of these proceedings, on behalf of the Respondents in the above referenced cases.

Pursuant to stipulation of all counsel present, this matter and the cases 34-2009-80000134 and 34-2009-80000135 are deemed to be Related Cases. The Court ordered those matters re-assigned to Department 19 for all purposes and joined with the matter now before this Court.

The Ex Parte Requests of counsel for an Order Shortening Time are GRANTED by the Court. The Hearing on the Merits of the Petitions for Writ of Mandate is scheduled for January 29, 2009 at 9:00 a.m., in this Department.

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Hearing on Petitioner's Ex Parte Request for Order Shortening Time on the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time to Demurr the Petition for Writ of Mandate

The Demurrer to the Petition for Writ of Mandate, filed today, is scheduled for the same date and time, to be heard prior to the Hearing on the Merits.

The Points and Authorities already on file are deemed to be the Opening Brief of Petitioners, Professional Engineers in California Government and California Association of Professional Scientists.

The Demurrer to the Petition in case 34-2008-80000126 is ordered filed forthwith. The Supplemental Demurrer for case 34-2009-80000134 and 34-2009-80000135 shall be filed by or before January 13, 2009.

The Petitioners in cases 34-2009-80000134 and 34-2009-80000135 shall file their respective Opening Briefs by or before January 13, 2009.

All Oppositions shall be filed by or before January 20, 2009 and all Reply Briefs shall be filed by or before January 22, 2009.

The parties further stipulated that all services of the pleadings will either be served personally or electronically.

FURTHER, it has been arranged that the filings in these matters, shall be filed through Victor Davis, Court Supervisor in the Civil Support Unit, located in room 104 of the Main Courthouse, at 720 -9th Street, Sacramento, California.

Certificate of Service by Mailing attached.

SEIU JA 00022

CASE NUMBER: 2008-80000126

DEPARTMENT: 19

CASE TITLE: PECG; CAPS v. SCHWARZENEGGER

PROCEEDINGS: Hearing on Petitioner's Ex Parte Request for Order Shortening Time on the Petition for Writ of Mandate and Hearing on Respondent's Ex Parte Request for Order Shortening Time to Demurrer the Petition for Writ of Mandate

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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& GIRARD
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RICHARD CHIVARO, Chief Counsel
Ronald V. Placet,
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1515 S Street, No. Bldg., Ste. 400
Sacramento, CA 95811

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

Dated: January 9, 2009

Superior Court of California,
County of Sacramento

By: D. RIOS, SR.
Deputy Clerk

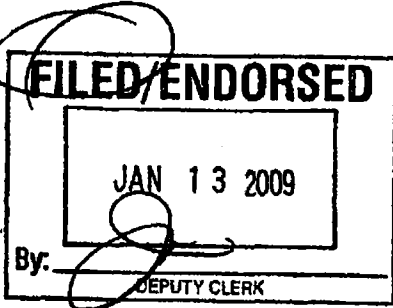
SEIU JA 000023

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DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
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Deputy Chief Counsel, State Bar No. 127921
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Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER; DAVID GILB; and
DEPARTMENT OF PERSONNEL ADMINISTRATION



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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER as
Governor of the 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, inclusive,

Respondents/Defendants.

CASE NO. 34-2009-80000134-CU-WM-GDS

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

**NOTICE OF HEARING AND
DEMURRER TO VERIFIED PETITIONS
FOR WRIT OF MANDATE AND
COMPLAINTS FOR DECLARATORY
AND INJUNCTIVE RELIEF**

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

1 SERVICE EMPLOYEES
2 INTERNATIONAL UNION, LOCAL 1000,

Case No. 34-2009-80000135-CU-WM-GDS

3 Petitioner/Plaintiff,

4 v.

5 ARNOLD SCHWARZENEGGER, as
6 Governor, State of California;
7 DEPARTMENT OF PERSONNEL
ADMINISTRATION; JOHN CHIANG, as
State Controller; and DOES 1 through 20,
inclusive,

8 Respondents/Defendants.
9

10 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

11 PLEASE TAKE NOTICE that on January 29, 2009, at 9:00 a.m. or as soon
12 hereafter as the matter may be heard in Department 19 of the above-entitled court, located at 720
13 Ninth Street, Sacramento, California, Respondents/Defendants GOVERNOR ARNOLD
14 SCHWARZENEGGER, DAVID GILB, Director of Department of Personnel Administration,
15 will demur to the petition for writ of mandate and complaint for injunctive and declaratory relief
16 filed by Petitioner/Plaintiff CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES
17 and HEARING OFFICERS IN STATE EMPLOYMENT ("CASE") and Respondents/Defendants
18 GOVERNOR ARNOLD SCHWARZENEGGER and DEPARTMENT OF PERSONNEL
19 ADMINISTRATION will demur to the petition for writ of mandate and complaint for injunctive
20 and declaratory relief filed by Petitioner/Plaintiff SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 1000 ("SEIU"). (For ease of this Court's consideration, Governor
22 Schwarzenegger, Department of Personnel Administration (DPA) and David Gilb will be referred
23 to collectively as "Respondents," unless the context otherwise requires. Similarly, CASE and
24 SEIU will be referred to collectively as "Petitioners," unless the context otherwise requires.)

25 Respondents' demur to Petitioners' petitions on the following grounds:

26 1. That this Court, the Superior Court of California, County of Sacramento,
27 has no jurisdiction over the subject of the cause of action alleged in the petition for
28 writ of mandate and complaint for injunctive and declaratory relief because

907735 1

- 2 -

NOTICE OF HEARING AND DEMURRER TO VERIFIED PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY AND INJUNCTIVE RELIEF

KRONICK,
MOSKOVITZ,
TIEDEMANN &
GIRARD
ATTORNEYS AT LAW

SEIU JA 000025

1 exclusive jurisdiction in the subject matter of the claims raised in the
2 petition/complaint is vested in the California Public Employment Relations Board
3 ("PERB").

4 2. The Petitioners have failed to exhaust their administrative remedies.

5 3. The Petitioners have failed to state a claim for which relief can be granted.

6 The demurrer will be based on this notice of hearing and demurrer; the
7 memorandum of points and authorities and request for judicial notice served and filed herewith;
8 the papers, records, and documents already on file herein; and on such further oral or
9 documentary evidence as may be submitted at the hearing in this matter.

10
11 Dated: January 13, 2009

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Law Corporation

12
13
14 By: 

15 David W. Tyra
16 Attorneys for Defendants/Respondents
17 ARNOLD SCHWARZENEGGER, as
18 Governor of the State of California;
19 DAVID GILB, as Director of the
20 Department of Personnel Administration;
21 and DEPARTMENT OF PERSONNEL
22 ADMINISTRATION
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- 3 -

NOTICE OF HEARING AND DEMURRER TO VERIFIED PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY AND INJUNCTIVE RELIEF

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 January 13, 2009, I served a
6 copy of the within document(s):

7 **NOTICE OF HEARING AND DEMURRER TO VERIFIED**
8 **PETITIONS FOR WRIT OF MANDATE AND**
9 **COMPLAINTS FOR DECLARATORY AND INJUNCTIVE**
10 **RELIEF BY ARNOLD SCHWARZENEGGER, DAVID GILB**
11 **AND DEPARTMENT OF PERSONNEL ADMINISTRATION**

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

24 **Attorneys for Petitioners/Plaintiffs**
25 **California Attorneys,**
26 **Administrative Law Judges and**
27 **Hearing Officers in State**
28 **Employment**

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Patrick J. Whalen, Esq.
THE LAW OFFICE OF BROOKS
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Attorney for Respondent/Defendant
State Controller John Chiang

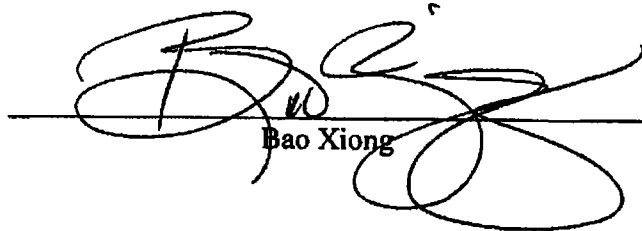
Rick Chivaro, Esq.
Ronald V. Placet, Esq.
Shawn D. Silva, Esq.
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2 SEIU, Local 1000
3 Paul E. Harris, III, Esq.
4 Anne Giese, Esq.
5 J. Felix De La Torre, Esq.
6 Brooke D. Pierman, Esq.
7 SERVICE EMPLOYEES
8 INTERNATIONAL UNION LOCAL
9 1000
10 1808 14th Street
11 Sacramento, CA 95814
12 Fax: (916) 554-1292
13 Email: bpierman@seiu1000.org

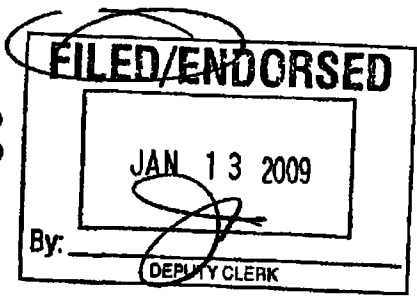
Attorneys for Petitioners/Plaintiffs
Professional Engineers In California
Government and California
Association of Professional
Scientists
Gerald James, Esq.
660 J Street, Suite 445
Sacramento, CA 95814
Fax: (916) 446-0489
Email: gjames@cwo.com

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

14 I declare under penalty of perjury under the laws of the State of California that the above
15 is true and correct. Executed on January 13, 2009, at Sacramento, California.

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Bao Xiong



1 DAVID W. TYRA, State Bar No. 116218
2 KRISTIANNE T. SEARGEANT, State Bar No. 245489
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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
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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

Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER; DAVID GILB; and Exempted from Fees
DEPARTMENT OF PERSONNEL ADMINISTRATION (Gov. Code § 6103)

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER as
Governor of the 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, inclusive,

Respondents/Defendants.

CASE NO. 34-2009-80000134-CU-WM-GDS

Assigned For All Purposes To
The Honorable Patrick Marlette

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEMURRER TO VERIFIED PETITIONS
FOR WRIT OF MANDATE AND
COMPLAINTS FOR DECLARATORY
AND INJUNCTIVE RELIEF BY
GOVERNOR ARNOLD
SCHWARZENEGGER, DAVID GILB
AND DEPARTMENT OF PERSONNEL
ADMINISTRATION

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

907827 2

MPA IN SUPPORT OF DEMURRER TO VERIFIED PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY AND INJUNCTIVE RELIEF

KRONICK,
MOSKOVITZ,
TIEDEMANN &
GIRARD
ATTORNEYS AT LAW

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1000,

Petitioner/Plaintiff,

v.

ARNOLD SCHWARZENEGGER, as
Governor, State of California;
DEPARTMENT OF PERSONNEL
ADMINISTRATION; JOHN CHIANG, as
State Controller; and DOES 1 through 20,
inclusive,

Respondents/Defendants.

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MPA IN SUPPORT OF DEMURRER TO VERIFIED PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY AND INJUNCTIVE RELIEF

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20	<i>Hayward Area Planning Assn. v. Alameda County Transportation Authority</i> (1999) 72 Cal.App.4th 95	14
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I.

INTRODUCTION

Respondents/Defendants GOVERNOR ARNOLD SCHWARZENEGGER and DAVID GILB, Director of Department of Personnel Administration, demur to the petition for writ of mandate and complaint for injunctive and declaratory relief filed by Petitioners/Plaintiffs CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES and HEARING OFFICERS IN STATE EMPLOYMENT ("CASE") and Respondents/Defendants GOVERNOR ARNOLD SCHWARZENEGGER and DEPARTMENT OF PERSONNEL ADMINISTRATION demur to the petition for writ of mandate and complaint for injunctive and declaratory relief filed by Petitioner/Plaintiff SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 ("SEIU") on the basis that this Court has no jurisdiction over the claims raised in said petitions and complaints. (For ease of this Court's consideration, Governor Schwarzenegger, Department of Personnel Administration (DPA) and David Gilb will be referred to collectively as "Respondents," unless the context otherwise requires. Similarly, CASE and SEIU will be referred to collectively as "Petitioners," unless the context otherwise requires.)

Petitioners' primary claim in this case is that the December 19, 2008 Governor's Executive Order, ("the Executive Order"), establishing two-day a month furloughs for state employees beginning February 1, 2009, violates Government Code section 19826(b). That code section provides:

Notwithstanding any other provision of law, the department 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 Section 3520.5.

Labor relations between the State and Petitioners' members are governed by the Ralph C. Dills Act ("Dills Act"), Government Code section 3512, *et seq.* Government Code section 19826 is inoperative here because the Petitioners and Respondents are parties to a Memorandum of Understanding ("MOU"). Pursuant to the Dills Act, the MOUs continue to control the terms and conditions of Petitioners' members' employment with the State. (See Gov. Code, § 3517.8(a).) As a result, section 19826 is superseded by the MOU and, therefore,

1 inoperable here. (See Gov. Code, § 3517.6.) Because of this fact, the Public Employment
2 Relations Board (“PERB”) possesses exclusive, initial jurisdiction over any dispute involving the
3 Executive Order. (Gov. Code, § 3514.5.) The only cognizable and presently justiciable legal
4 theories for challenging the Executive Order fall squarely within the ambit of the Dills Act.
5 Therefore, PERB, not this Court, has exclusive, initial jurisdiction in this case.

6 Petitioners have failed to exhaust their administrative remedies. Specifically,
7 Petitioner CASE has failed entirely to pursue available remedies to challenge the Executive Order
8 – either as an alleged violation of the parties’ MOU or as an alleged unfair labor practice – before
9 PERB, the administrative agency the Legislature designated to adjudicate such issues. Petitioner
10 SEIU initially filed an unfair labor practice charge with PERB and sought remedial action in the
11 proper jurisdiction. Petitioner SEIU, however, has inappropriately, prematurely, and without
12 cause abandoned the administrative processes available to it in favor of filing with this Court, a
13 judicial body without jurisdiction of the claims asserted. Petitioners’ unsupported contention they
14 are at risk of irreparable harm does not excuse their failure to exhaust administrative remedies
15 prior to filing this petition.

16 Petitioners’ speculative allegations of future harm for possible overtime violations
17 of the Fair Labor Standards Act (“FLSA”) are not ripe for judicial review. Petitioners are asking
18 this Court for what amounts to an improper advisory opinion that Respondents must comply with
19 the law. “Exempt” employees who may hypothetically work in excess of 40 hours during a
20 furlough week cannot establish that the State has or intends to violate the FLSA. Accordingly,
21 Petitioners fail to state a claim on which this Court can grant relief.

22 For these reasons, Respondents respectfully request their demurrer to Petitioners’
23 Petitions and Complaints be granted without leave to amend and this matter be dismissed.

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II.

SUMMARY OF MATERIAL FACTS

On December 19, 2008, Governor Arnold Schwarzenegger issued an Executive Order. (Petitioner CASE's Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief, ¶ 7, hereinafter referred to as "CASE Petition"; Petitioner SEIU's Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief, ¶ 8, hereinafter referred to as "SEIU Petition".) In this Executive Order, Governor Schwarzenegger declared that due to the State of California's worsening fiscal crisis, "immediate and comprehensive" action to reduce current spending must be taken. (CASE Petition, ¶ 7, and Exhibit A thereto; SEIU Petition, ¶ 8, and Exhibit A thereto.) The Governor proclaimed that the State of California was in a state of fiscal emergency and, as a result, the State must institute employee furloughs as a cost-saving measure. (*Id.*) The furloughs ordered by the Governor are set to begin on February 1, 2009, and last through June 30, 2010. (*Id.*)

On December 22, 2008, state employee unions Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS") jointly filed a Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief seeking this Court to intervene and enjoin implementation of the furloughs.

On December 22, 2008, Petitioner SEIU filed an unfair labor practice charge with PERB alleging, among other things, that Respondent Governor Schwarzenegger's Executive Order and its furlough plan are unlawful. (See Exhibit C to Respondents' Request for Judicial Notice (hereinafter referred to as "Respondents' RJN").) Petitioner SEIU has not pled it has either requested that PERB seek injunctive relief on its behalf or that PERB has refused to do so. (*Id.*)

On January 5, 2009, Petitioner CASE filed its Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief asking this Court to intervene and enjoin implementation of the furloughs. On January 7, 2009, Petitioner SEIU filed its Verified Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief seeking the same remedy. The claims alleged in the petitions and complaints are dependent on the theory that

1 the Executive Order is precluded by Government Code section 19826. Petitioners also allege
2 implementation of the Executive Order will result in future hypothetical violations of the FLSA.
3 Since there has been no actual violation of the FLSA, the Petitioners are seeking an advisory
4 opinion from the Court reiterating that the Respondents must comply with the relevant provisions
5 of the FLSA.

6 III.

7 **SUMMARY OF PETITIONERS' COMMON ALLEGATIONS**

8 Petitioners allege that where an exclusive representative has been selected for an
9 employee organization, section 19826 deprives the Department of Personnel Administration
10 ("DPA") of authority to adjust salary ranges of represented employees. (CASE Petition, ¶¶ 10,
11 11; SEIU Petition, ¶¶ 17, 18.) Petitioner SEIU argues that Government Code section 19826
12 "specifically forbids the executive branch from altering salaries." (SEIU Petition, ¶ 17.)
13 Similarly, Petitioner CASE contends that section 19826 establishes that the legislature "withheld
14 from DPA the power to reduce salaries for represented employees." (CASE Petition, ¶ 11.)

15 Petitioner CASE admits that although the current MOU between it and the State of
16 California expired on July 1, 2007, the terms of the MOU remain in effect while the parties
17 negotiate for a successor agreement. (CASE Petition, ¶ 15, fn. 4, and Exhibit A to Respondents'
18 RJN.) Petitioner CASE admits that to date it has not agreed to a successor MOU or reached
19 impasse. (*Id.*) Similarly, the MOUs with the State of California to which Petitioner SEIU are a
20 party have also expired. The terms, however, indisputably remain in full force and effect until a
21 new agreement is reached or the parties reach impasse. (See Exhibit B to Respondents' RJN.)

22 Petitioners further contend that the Governor is precluded from overriding the
23 statutory prohibition on salary range reduction contained in section 19826 based on a declaration
24 of fiscal emergency. (CASE Petition, ¶¶ 8, 16; SEIU Petition, ¶¶ 9-11.) In the Executive Order,
25 the Governor relies on the emergency powers granted him by Government Code section 3516.5¹,

26 ¹ Government Code section 3516.5 provides as follows:

27 Except in cases of emergency as provided in this section, the employer
28 shall give reasonable written notice to each recognized employee
organization affected by any law, rule, resolution, or regulation directly

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MPA IN SUPPORT OF DEMURRER TO VERIFIED PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY AND INJUNCTIVE RELIEF

1 a part of the Dills Act, as authority for ordering employee furloughs. Petitioners allege that
2 section 3516.5 does not provide the Governor with the statutory authority to furlough state
3 employees or otherwise cut salary or hours of work. Petitioners argue the Executive Order
4 violates the California Constitution and the constitutional principle of separation of powers².
5 (CASE Petition, ¶ 16; SEIU Petition, ¶ 20.)

6 Petitioners contend that the Governor is attempting to exceed his constitutional
7 authority. (CASE Petition, ¶¶ 16, 17; SEIU Petition, ¶¶ 12-16.) In support of its position,
8 Petitioner SEIU recites Article III, Section 3 of the California Constitution, "The powers of the
9 state government are legislative, executive, and judicial. Persons charged with the exercise of one
10 power may not exercise either of the others except as permitted by this Constitution." (SEIU
11 Petition, ¶ 15.) Petitioners allege that only the legislature is empowered with the ability to
12 establish state employee salary ranges. (CASE Petition, ¶ 18; SEIU Petition, ¶ 16.)

13 Petitioners also allege that implementation of Governor Schwarzenegger's
14 Executive Order will result in future FLSA violations. (CASE Petition, ¶ 25; SEIU Petition, ¶¶
15 26, 27.) Petitioners argue that exempt employees, due to the nature of their workload, will be

16 relating to matters within the scope of representation proposed to be
17 adopted by the employer, and shall give such recognized employee
18 organizations the opportunity to meet and confer with the administrative
19 officials or their delegated representatives as may be properly designated
20 by law.

21 In cases of emergency when the employer determines that a law, rule,
22 resolution, or regulation must be adopted immediately without prior
23 notice or meeting with a recognized employee organization, the
24 administrative officials or their delegated representatives as may be
25 properly designated by law shall provide such notice and opportunity to
26 meet and confer in good faith at the earliest practical time following the
27 adoption of such law, rule, resolution, or regulation.

28 ² In its petition and complaint, Petitioner CASE cites a few additional and inapplicable Government
Code sections to support its claim that only the Legislature has the power to reduce salaries for represented
employees. (CASE Petition, ¶¶ 12 – 15.) However, none of the statutes gives this Court jurisdiction over
the subject matter of this action. Government Code section 19997 authorizes state departments to lay off
employees, a matter not at issue in this case. (CASE Petition, ¶ 13.) Government Code section 19996.22
concerns the Reduced Worktime Act and allows employees who are coerced into reducing their worktime
"contrary to the intent of this article" [The Reduced Worktime Act] to file a grievance with the
"department [DPA]." (CASE Petition, ¶ 13.) Government Code section 18500(c)(6) is merely an
enumeration of the goals of the civil service system and not relevant to the matter at hand. (CASE
Petition, ¶ 14.)

1 forced to work in excess of the scheduled work days. (CASE Petition, ¶ 25; SEIU Petition, ¶ 48.)
2 Petitioners further allege that the exempt employees will lose their exempt status as a result of the
3 furlough plan. (CASE Petition, ¶ 46; SEIU Petition, ¶ 45.) The loss of the exempt status and the
4 requirement to work in excess of the scheduled workdays will result in hourly overtime. (CASE
5 Petition, ¶ 47; SEIU Petition, ¶ 48.) Petitioners contend the Respondents are incapable of
6 accurate record keeping and, as a result, incapable of the proper payment of wages due. (SEIU
7 Petition, ¶ 49; see also CASE Petition, ¶ 48.)

8 Petitioners contend this Court's intervention is required to prevent the
9 implementation of the furloughs because they have "no plain, speedy, and adequate remedy in the
10 ordinary course of law." (CASE Petition, ¶ 32; SEIU Petition, ¶ 33.) Petitioners erroneously
11 allege they have no administrative remedy that will allow them to prevent the furlough. (CASE
12 Petition, ¶ 34; SEIU Petition, ¶ 34.)

13 IV.
14 LEGAL ARGUMENT

15 A. Standard For Demurrer.

16 A demurrer tests the sufficiency of a complaint. Under California Code of Civil
17 Procedure section 430.10(a), a defendant may demur to a complaint if the court has no
18 jurisdiction over the subject matter of the cause of action alleged in the petition or pleading. A
19 challenge to the jurisdiction of the court, when the jurisdictional defense is apparent from the
20 complaint or petition, or based upon facts that can be properly judicially noticed, is properly and
21 appropriately addressed via demurrer. (*Satten v Webb* (2002) 99 Cal.App.4th 365, 374.)
22 Furthermore, respondents may seek a demurrer if the plaintiff/petitioner fails to state facts
23 sufficient to constitute a cause of action. (Code Civ. Proc., § 430.10(e).) A court may sustain a
24 demurrer "on the ground that the complaint fails to allege an actual or present controversy, or that
25 it is not 'justiciable'." (*DeLaura v. Beckett* (2006) 137 Cal.App.4th 542, 545.)

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1 **B. PERB, Not This Court, Has Exclusive, Initial Jurisdiction Over This Labor Dispute.**

2 **1. Government Code Section 19826 Is Superseded By The MOUs Between The**
3 **Parties And By Operation Of The Dills Act.**

4 Petitioners largely base their petitions and complaints on the theory that under
5 Government Code section 19826(b), neither the Governor nor DPA has the authority to alter
6 salary ranges of state employees if an exclusive representative has been selected for the employee
7 organization.³ Petitioners argue Government Code section 19826 and *Department of Personnel*
8 *Administration v. Superior Court (Greene)* (1992) 5 Cal.App.4th 155 (applying Government
9 Code section 19826) “expressly and unambiguously precludes the reduction of represented
10 employee wages.” (CASE Petition, ¶ 11; see also SEIU Petition, ¶ 18.)

11 However, Government Code section 19826 is inapplicable to the case at hand
12 because it is superseded by existing MOUs between the parties. The Dills Act governs the labor
13 relations between the State and its employees. Pursuant to Government Code section 3517.8(a)
14 contained in the Dills Act,

15 If a memorandum of understanding has expired, and the Governor
16 and the recognized employee organization have not agreed to a new
17 memorandum of understanding and have not reached an impasse in
18 negotiations, subject to subdivision (b), *the parties to the agreement*
19 *shall continue to give effect to the provisions of the expired*
20 *memorandum of understanding, including, but not limited to, all*
21 *provisions that supersede existing law, any arbitration provisions,*
22 *any no strike provisions, any agreements regarding matters covered*
23 *in the Fair Labor Standards Act of 1938.” (Emphasis added.)*

24 (Gov. Code, § 3517.8(a).)

25 Both Petitioner CASE and Petitioner SEIU are parties to expired MOUs with the
26 State of California.⁴ Petitioners have not alleged new MOUs have been agreed upon by

27 ³ In addition to the jurisdictional infirmities in the petitions and complaints that warrant sustaining
28 the present demurrer, it also is important to note that nowhere do Petitioners allege how furloughs are
synonymous with the phrase “salary ranges” as used in section 19826. In fact, the Executive Order
attached to the petitions and complaints (which have become part of the pleadings) make no mention of
reducing salary ranges. Thus, the Executive Order on its face does not alter salary ranges but only acts to
reduce the hours state employees work. The petitions and complaints fail to offer any theory
demonstrating the Governor’s lack of authority to reduce the hours worked by state employees.

⁴ This court can take judicial notice of the memoranda of understanding between the Petitioners and
the State of California. Evidence Code section 452(c) authorizes the Court to take judicial notice of
“official acts of legislative, executive, and judicial departments . . . of any state of the United States.” In

1 Petitioners and the State or that the parties have reached a labor impasse in negotiations for a
2 successor MOU. Petitioner CASE not only admits that the terms of its MOU are still controlling,
3 it further states that the provisions of its MOU supersede the Government Code. (CASE Petition,
4 fn. 4.) Respondents agree. Accordingly, pursuant to Government Code section 3517.8(a), the
5 parties must continue to give effect to the expired MOUs, *including all provisions which*
6 *supersede existing law.*

7 As stated in *Department of Personnel Administration v. Superior Court (Greene)*
8 (1992) 5 Cal.App.4th 155, 174-175, a case relied upon by Petitioner CASE,

9 The Dills Act is a 'supersession statute', designed so that, *in the*
10 *absence of a MOU*, as is the case when an existing MOU has
11 expired and the parties have bargained to impasse, numerous
12 Government Code provisions concerning state employees' wages,
hours and working conditions take effect. One of the provisions
which is effective *in the absence of an MOU* is section 19826."
(Emphasis added.)

13 Thus, the present case is exactly the opposite situation of that in *Greene*. In that case, the State
14 and two of its employee bargaining units had reached impasse in their labor negotiations and,
15 therefore, numerous provisions of the Government Code, including section 19826, had taken
16 effect. Here, in contrast, the parties' labor relations continue to be governed by a valid and
17 enforceable MOU and, therefore, pursuant to section 3517.8, the parties must continue to give
18 effect to that MOU, *including all provisions which supersede existing law.*

19 California Government Code section 3517.6(a) sets forth those code sections
20 which are superseded by a valid MOU. Among the superseded code sections identified in section
21 3517.6(a) is section 19826. There is no allegation in the petitions that the MOUs between the
22 parties are no longer controlling. Therefore, section 19826 is superseded by the Dills Act and the
23 terms of the expired MOUs. In other words, section 19826 has no legal force and effect between

24 this case, the MOUs between Petitioners and the State are an "official act" of the executive department
25 because DPA, on behalf of the Governor, negotiated the MOU pursuant to the statutory mandate set forth
26 in the Ralph C. Dills Act (Gov. Code § 3512 et seq.; *Pacific Lumber Co. v. State Water Resources Control*
Bd. (2006) 37 Cal.4th 921, 936, fn. 5 [MOU between Regional Water Quality Control Boards, the
27 Department of Forestry and the State Water Resources Control Board is proper subject for a court's
judicial notice because it is an official act by executive agencies, citing *Brown v. City of Los Angeles*
Dist. (1993) 19 Cal.App.4th 536, 543, fn. 3].)

1 these parties in the face of a valid MOU. Section 19826 has been superseded by the MOUs as
2 specified in the Dills Act. It is inapplicable to the matter at hand and does not control the dispute.

3 2. **PERB Has Exclusive, Initial Jurisdiction Over Disputes Covered By The Dills**
4 **Act.**

5 As a result of the continuing suppression of section 19826, the only potential
6 existing dispute between the parties is whether the Executive Order violates the terms of the
7 existing MOUs or whether the Governor committed an unfair labor practice by declaring a fiscal
8 emergency, thereby bypassing bargaining with the employee organizations over the
9 implementation of employee furloughs as a cost saving measure. The dispute as to whether the
10 Governor failed to meet and confer in good faith is governed exclusively by the Dills Act. (Gov.
11 Code, §§ 3516.5, 3517.)

12 PERB possesses exclusive, initial jurisdiction over the administration of the Dills
13 Act. (Gov. Code, § 3514.5 [“The initial determination as to whether the charges of unfair
14 practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this
15 chapter, shall be a matter within the exclusive jurisdiction of the board”]; *California Association*
16 *of Professional Scientists v. Schwarzenegger* (2006) 137 Cal.App.4th 371, 381 [“The assignment
17 of exclusive initial jurisdiction in section 3514.5 to the Board means that the only forum to pursue
18 a cause of action for violation of the statutory rights conferred in the Dills Act is before the
19 Board”].)

20 The scope of PERB’s exclusive, initial jurisdiction is construed broadly in favor
21 of allowing the Board to exercise its expertise over public sector labor relations in this state. (*El*
22 *Rancho Unified School District v. National Education Association* (1983) 33 Cal.3d 946, 953;
23 *San Diego Teachers Association v Superior Court* (1979) 24 Cal.3d 1, 12-14.) PERB’s
24 jurisdiction is broadly construed because “PERB is an expert, quasi-judicial administrative
25 agency” specially entrusted “to protect both employees and the state employer from violations of
26 the organizational and collective bargaining rights” guaranteed by the statutes it administers.
27 (*Banning Teachers Association v. Public Employment Relations Board* (1988) 44 Cal.3d 799,
28 804; *City and County of San Francisco v. International Union of Operating Engineers, Local 39*

1 (2007) 151 Cal.App.4th 938, 943.) It has long been settled that PERB's "findings within that
2 field carry the authority of an expertness which courts do not possess and therefore must respect."
3 (*Banning Teachers Association, supra*, 44 Cal.3d at p. 804.)

4 Judicial deference to PERB's administrative process is both necessary and
5 appropriate to fulfill PERB's legislatively assigned mission "to help bring expertise and
6 uniformity to the delicate task of stabilizing labor relations." (*San Diego Teachers Association,*
7 *supra*, 24 Cal.3d at p. 12; *Local 21, International Federation of Professional and Technical*
8 *Engineers, AFL-CIO v. Bunch* (1995) 40 Cal.App.4th 670, 676-679 [discussing the broad scope
9 of PERB's exclusive, initial jurisdiction]; *City and County of San Francisco, supra*, 151
10 Cal.App.4th at p. 945 [finding that a party may not evade PERB's jurisdiction through artful
11 pleading]; *El Rancho Unified School District, supra*, 33 Cal.3d at p. 954, fn. 13 [stating that a
12 court must defer to PERB when the underlying conduct alleged "may fall within PERB's
13 exclusive jurisdiction"].)

14 The only possible existing disputes in this matter fall squarely under PERB's
15 exclusive, initial jurisdiction over Dills Act disputes. The Executive Order cites to Government
16 Code section 3516.5 of the Dills Act as the basis for the furloughs. Despite this fact, Petitioners
17 have improperly attempted to bring their dispute before this Court, based in large part on section
18 19826(b), a statute that is superseded by the provisions of the existing MOU between the parties
19 and indisputably inoperative here. Thus, this Court lacks subject matter jurisdiction over this
20 dispute. This demurrer should be sustained without leave to amend and the matter dismissed.

21 **3. PERB Possesses The Authority To Furnish The Relief Requested By**
22 **Petitioners.**

23 In addition to possessing exclusive, initial jurisdiction of the dispute presented in
24 the petitions and complaints, PERB possesses the authority to furnish the relief requested by
25 Petitioners. PERB enjoys wide "discretion *to withhold as well as pursue*, the various remedies at
26 its disposal." (*San Diego Teachers Association, supra*, 24 Cal.3d at p. 13, emphasis added.) The
27 Legislature invested PERB with broad discretion to exercise its remedial powers in order to
28 achieve peace and stability in labor relations. (*San Diego Teachers Association, supra*, 24 Cal.3d

1 at p. 13.) As the court in *San Diego Teachers Association* found, PERB may also conclude it is
2 best to maintain the status quo, and preserve stability in labor relations, by withholding injunctive
3 relief. (*Id.*) Or, to the contrary, seek injunctive relief when necessary. It is not appropriate for a
4 court to intervene and prevent PERB from providing relief it best sees fit “to implement the
5 broader objectives” of California’s public sector labor laws. (*Id.*; Gov. Code, § 3514.5.)
6 Therefore, if PERB is somehow unable to offer the relief necessary, PERB has the authority to
7 seek injunctive relief from the courts on behalf of Petitioners. Title 8 of the California Code of
8 Regulations section 32450 authorizes a complaining party to file a request for injunctive relief
9 with PERB. PERB’s General Counsel has between 24 and 120 hours to investigate the
10 circumstances of the request and issue a recommendation to the Board as to whether to seek an
11 injunction. (8 Cal. Code of Regs., §§ 32455, 3260.)

12 4. **Because PERB Has Exclusive, Initial Jurisdiction Over This Labor Dispute,**
13 **This Court Does Not Have Authority to Issue a Writ.**

14 As PERB has exclusive, initial jurisdiction, this Court does not have authority to
15 issue the writ requested or rule on the merits of the complaints. “Mandate may not issue to
16 compel action which is not within the court’s jurisdiction.” (*Daniels v. Superior Court* (1955)
17 132 Cal.App.2d 700, 701.) Petitioners seek this Court’s intervention in a labor matter centering
18 on the terms and conditions of employment. Issuance of a writ and ruling on the merits of the
19 complaints will cause a significant and continuing divestment of PERB’s exclusive jurisdiction
20 over the Dills Act as it applies to this labor dispute and to these parties. A ruling from this Court
21 will effect a special exemption to the Dills Act applicable only to these parties whereby this Court
22 will supplant PERB and establish itself as arbiter over the parties’ bargaining relationship. Such a
23 ruling will directly frustrate “the Legislature’s purpose in creating an expert administrative body
24 whose responsibility it is to develop and apply a comprehensive, consistent scheme regulating
25 public employer-employee relations.” (*Link v. Antioch Unified School District* (1983) 142
26 Cal.App.3d 765, 769.) The issuance of a writ and retention of jurisdiction in this case would be
27 unwarranted judicial intervention into PERB’s legislatively delegated duty to administer the Dills
28 Act as it applies to the parties’ bargaining relationship. (Gov. Code, §§ 3512, 3514.5.)

1 **C. Petitioners Have Not Exhausted Their Administrative Remedies Before PERB.**

2 In general, a party must be forced to *exhaust* its administrative remedies before
3 resorting to intervention from the courts. (*Coachella Valley Mosquito & Vector Control District*
4 *v. Public Employment Relations Board (Coachella Valley)* (2005) 35 Cal.4th 1072, 1080.) The
5 rule of exhaustion “is not a matter of judicial discretion” but rather a fundamental rule
6 establishing “a jurisdictional prerequisite to resort to the courts.” (*Sierra Club v. San Joaquin*
7 *Local Agency Formation Commission* (1999) 21 Cal.4th 489, 496.)

8 Neither Petitioner has exhausted its available administrative remedies. Petitioner
9 CASE has failed to even seek, let alone exhaust, its administrative remedies with PERB before
10 seeking relief from this Court. No exceptions to the exhaustion rule apply to excuse Petitioner
11 CASE’s failure to exhaust its administrative remedies with PERB.

12 Petitioner SEIU’s conduct in initially filing an unfair practice charge with PERB,
13 complaining of the same issues asserted here, is evidence in support of Respondents’ position that
14 PERB has exclusive, initial jurisdiction. Petitioner SEIU, however, did not exhaust the
15 administrative appeals available to it before PERB. Instead, it prematurely and inappropriately
16 abandoned the governing administrative process in favor of seeking relief improperly before this
17 Court.

18 Petitioner SEIU has squarely presented to PERB the exact claims it presents to this
19 Court (with the exception of the hypothetical FLSA allegations that are neither ripe nor justiciable
20 in any forum at this point). (See Exhibit C to Respondents’ RJN.) In its PERB charge, Petitioner
21 SEIU complained Respondents Governor Schwarzenegger and Department of Personnel
22 Administration failed to meet and confer in good faith before issuance of the Governor’s
23 Executive Order. (*Id.*) Furthermore, Petitioner SEIU charged that the furlough was unlawful and
24 exceeded the Governor’s authority pursuant to Government Code section 3516.5.

25 To date, PERB has not rendered a determination on Petitioner SEIU’s unfair
26 practice charge. Petitioner SEIU filed an unfair practice charge with PERB on
27 December 22, 2008, but failed to plead how or why it did not avail itself of the available motion,
28 pursuant to Title 8 of the California Code of regulations section 32147, to expedite PERB

1 proceedings on the charge. Additionally, Petitioner SEIU has not requested that the PERB Board
2 seek injunctive relief on this issue, even though this remedy is available through PERB. (8 Cal.
3 Code of Regs., § 32450.)

4 This Court has no authority to review how PERB exercises its remedial discretion
5 while Petitioner SEIU's claims are still pending before PERB. This Court must defer to PERB's
6 expertise in exercising its legislatively delegated authority. (*Mt. San Antonio Community College*
7 *District v Public Employment Relations Board* (1989) 210 Cal.App.3d 178, 190.)

8 Petitioners have made no showing as to why they should be afforded relief from
9 the exhaustion doctrine. Courts have recognized several limited exceptions to the exhaustion
10 rule, such as "[1] situations where the agency indulges in unreasonable delay, ... [2] when pursuit
11 of an administrative remedy would result in irreparable harm, [3] when the agency is incapable of
12 granting an adequate remedy, and [4] when resort to the administrative process would be futile
13" (*Department of Personnel Administration v. Superior Court (Greene)* 5 Cal.App.4th 155,
14 169 [numbering added].) None of these exceptions apply to excuse Petitioners' failure to exhaust
15 their administrative remedies before PERB, and their petitions should therefore be dismissed.

16 Petitioners will not be subject to irreparable harm if they pursue their
17 administrative remedies. The California Supreme Court addressed the "irreparable injury" issue
18 in *San Diego Teachers Association*. There, the school district argued it should not be required to
19 complete the PERB process because "completion of the administrative proceeding would result in
20 irreparable injury." (*San Diego Teachers Association, supra*, 24 Cal.3d at p. 13.) The court
21 rejected that argument and found PERB has broad discretion "to withhold as well as pursue"
22 whatever remedies it deems appropriate. (*Id.*) Accordingly, Petitioners can claim no "irreparable
23 injury" excusing their failure to exhaust their administrative remedies with PERB. Petitioners'
24 failure to exhaust their administrative remedies bars this Court from exercising jurisdiction over
25 these petitions and complaints and they must, as a result, be dismissed.

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1 **D. Petitioners' Third Cause of Action In Their Petitions Fails to State a Claim Upon**
2 **Which Relief Can Be Granted Because Petitioners' Request For Declaratory Relief**
3 **Pursuant To The FLSA Is Not Ripe For Review.**

4 Petitioners' speculative FLSA allegations amount to nothing more than a
5 hypothetical scenario that fails to state any cause of action. A justiciable cause of action only
6 exists if the complaint or petition alleges facts supporting an "actual controversy." (*Stonehouse*
7 *Homes v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 540.) Courts will not hear an action
8 that is not founded on an actual controversy, and therefore, ripe for judicial action. (*Id.*)
9 Ripeness is required because the existence of an actual controversy "prevents courts from issuing
10 purely advisory opinions, or considering a hypothetical state of facts in order to give general
11 guidance rather than to resolve a specific legal dispute." (*In re Joshua S.* (2007) 41 Cal.4th 261,
12 273, quoting *Hunt v. Superior Court* (1999) 21 Cal.4th 984, 998.) Cases are not ripe if they
13 require the court to speculate about "hypothetical future actions." (*Stonehouse Homes, supra*,
14 167 Cal.App.4th at p. 540.)

15 In order for a case to be ripe and therefore justiciable, "the legal issues posed must
16 be framed with sufficient concreteness and immediacy so that the court can render a conclusive
17 and definitive judgment rather than a purely advisory opinion based on hypothetical facts or
18 speculative future events." (*Consumer Cause, Inc. v. Johnson & Johnson* (2005) 132 Cal.App.4th
19 1175, 1186, citing *Hayward Area Planning Assn. v. Alameda County Transportation Authority*
20 (1999) 72 Cal.App.4th 95, 102.)

21 In *Younger v. Superior Court of Sacramento County* (1978) 21 Cal.3d 102, 119,
22 the court declared, "the rendering of advisory opinions falls within neither the functions nor the
23 jurisdiction of this court." The *Younger* court declared that a request from the Attorney General
24 to declare a statute unconstitutional was not ripe and therefore not justiciable because, "no party
25 to any of these proceedings shows that any public agency presently refuses, to his detriment, to
26 obey the terms of that statute." (*Id.*)

27 Petitioner CASE asks for a declaration that, "...if a furlough is implemented, its
28 members will be entitled to overtime compensation under the FLSA." (CASE Petition, ¶ 49.)
Petitioner SEIU seeks a declaration that, "... if furloughs are implemented, its FLSA-exempt

1 members will be entitled to overtime compensation under the FLSA for all hours worked to
2 complete their required work.” (SEIU Petition, ¶ 51.)

3 Petitioners’ petitions and complaints are entirely hypothetical and speculative.
4 Petitioners are asking this Court to render an advisory opinion that Respondents should pay
5 overtime compensation to employees, which assumes (1) any employees will in fact work
6 overtime during a week in which the furloughs occur; and (2) the Respondents would fail to pay
7 overtime to employees legally entitled to receive it. Neither Petitioner SEIU nor Petitioner CASE
8 has alleged any actual or concrete failure to pay wages or to keep accurate overtime records.
9 Petitioners fail to allege facts establishing that any employee has been required to, or actually has,
10 worked any uncompensated overtime. Furthermore, Petitioners have failed to allege facts
11 establishing that the Respondents have failed to keep accurate overtime records or pay any
12 overtime benefits owed to any employees. Much like the case in *Younger*, neither Petitioner has
13 stated any facts that show that “any public agency presently refuses, to [their] detriment, to obey
14 the terms of that statute.” (*Younger v. Superior Court of Sacramento County, supra*, at 119.)
15 Petitioners have stated no facts that support a claim the Respondents have any intention to neglect
16 or ignore the overtime requirements under the FLSA.

17 Both Petitioners have failed to state *any facts* sufficient to support a cause of
18 action for an FLSA violation because neither petitioner alleges the Respondents failed to pay *any*
19 legally earned overtime to *any* state employee. By this action, Petitioners are requesting that this
20 Court issue an order compelling the State of California to comply with the terms of the FLSA
21 when the State of California has neither violated the FLSA nor expressed *any intention* to do so.
22 Petitioners have not alleged any justiciable “actual controversy,” and inappropriately seek an
23 advisory opinion from this Court, an action which this Court is powerless to perform.
24 Accordingly, this Court should grant Respondents’ demurrer because Petitioners have failed to
25 state facts sufficient to support a cause of action.

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28 ///

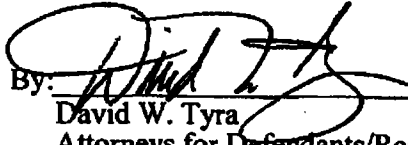
V.

CONCLUSION

For the foregoing reasons, the Respondents respectfully request this Court sustain Respondents' demurrer without leave to amend and dismiss Petitioners' Petitions for Writ of Mandate and Complaints for Injunctive and Declaratory Relief.

Dated: January 13, 2009

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Law Corporation

By: 

David W. Tyra
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, as
Governor of the State of California;
DAVID GILB, as Director of the
Department of Personnel Administration;
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 January 13, 2009, I served a
6 copy of the within document(s):

7 **MEMORANDUM OF POINTS AND AUTHORITIES IN**
8 **SUPPORT OF DEMURRER TO VERIFIED PETITIONS**
9 **FOR WRIT OF MANDATE AND COMPLAINTS FOR**
10 **DECLARATORY AND INJUNCTIVE RELIEF BY**
11 **GOVERNOR ARNOLD SCHWARZENEGGER, DAVID**
12 **GILB AND DEPARTMENT OF PERSONNEL**
13 **ADMINISTRATION**

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

26 **Attorneys for Petitioners/Plaintiffs**
27 **California Attorneys,**
28 **Administrative Law Judges and**
Hearing Officers in State
Employment

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Attorney for Respondent/Defendant
State Controller John Chiang

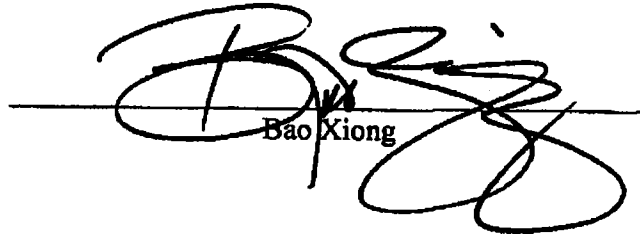
Rick Chivaro, Esq.
Ronald V. Placet, Esq.
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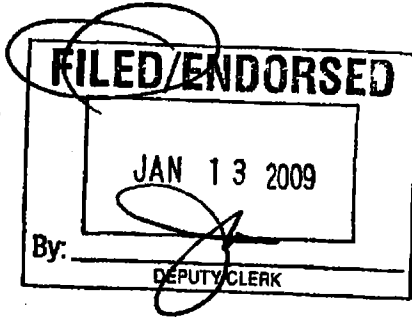
9 I am readily familiar with the firm's practice of collection and processing correspondence
10 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
11 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
12 motion of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

14 I declare under penalty of perjury under the laws of the State of California that the above
15 is true and correct. Executed on January 13, 2009, at Sacramento, California.

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25
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27
28

Bao Xiong

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16 Sacramento, CA 95811-7258
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19 E-mail: WillYamada@dpa.ca.gov

20 Attorneys for Defendants/Respondents
21 ARNOLD SCHWARZENEGGER; DAVID GILB; and
22 DEPARTMENT OF PERSONNEL ADMINISTRATION

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

23 SUPERIOR COURT OF CALIFORNIA

24 COUNTY OF SACRAMENTO

25 CALIFORNIA ATTORNEYS,
26 ADMINISTRATIVE LAW JUDGES AND
27 HEARING OFFICERS IN STATE
28 EMPLOYMENT,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER as
Governor of the 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, inclusive,

Respondents/Defendants.

CASE NO. 34-2009-80000134-CU-WM-GDS

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

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEMURRER TO
VERIFIED PETITIONS FOR WRIT OF
MANDATE AND COMPLAINTS FOR
DECLARATORY AND INJUNCTIVE
RELIEF BY ARNOLD
SCHWARZENEGGER, DAVID GILB
AND DEPARTMENT OF PERSONNEL
ADMINISTRATION**

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

907741 1

- 1 -

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER TO VERIFIED PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY AND INJUNCTIVE RELIEF

KRONICK,
MOSKOVITZ,
TIEDEMANN &
GIRARD
ATTORNEYS AT LAW

SEIU JA 000052

1 SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 1000,

Case No. 34-2009-80000135-CU-WM-GDS

2 Petitioner/Plaintiff,

3 v.

4 ARNOLD SCHWARZENEGGER, as
5 Governor, State of California;
6 DEPARTMENT OF PERSONNEL
ADMINISTRATION; JOHN CHIANG, as
7 State Controller; and DOES 1 through 20,
inclusive,

8 Respondents/Defendants.
9

10 In support of the demurrer filed in this action by Respondents/Defendants
11 GOVERNOR ARNOLD SCHWARZENEGGER, DAVID GILB, Director of Department of
12 Personnel Administration, to the petition for writ of mandate and complaint for injunctive and
13 declaratory relief filed by Petitioners/Plaintiffs CALIFORNIA ATTORNEYS,
14 ADMINISTRATIVE LAW JUDGES and HEARING OFFICERS IN STATE EMPLOYMENT
15 ("CASE") and Respondents/Defendants GOVERNOR ARNOLD SCHWARZENEGGER and
16 DEPARTMENT OF PERSONNEL ADMINISTRATION to the petition for writ of mandate and
17 complaint for injunctive and declaratory relief filed by Petitioner/Plaintiff SERVICE
18 EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 ("SEIU"), (for ease of this Court's
19 consideration, Governor Schwarzenegger, Department of Personnel Administration (DPA) and
20 David Gilb will be referred to collectively as "Respondents," unless the context otherwise
21 requires; similarly, CASE and SEIU will be referred to collectively as "Petitioners," unless the
22 context otherwise requires), Respondents hereby request that this Court take judicial notice under
23 California Evidence Code sections 452 and 453 of the following documents:

24 **Exhibit A:** Agreement Between State of California and California Attorneys,
25 Administrative Law Judges and Hearing Officers in State
26 Employment ("CASE") covering Bargaining Unit 2, effective
27 July 1, 2005 through June 30, 2007. (A true and correct copy of the
28 cover page and table of contents is attached hereto.)

907741 I

- 2 -

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEMURRER TO VERIFIED PETITIONS FOR WRIT OF MANDATE AND COMPLAINTS FOR DECLARATORY AND
INJUNCTIVE RELIEF

1 **Exhibit B:** Agreements Between State of California and Service Employees
2 International Union, Local 1000 covering Bargaining Units 1, 3, 4,
3 11, 14, 15, 17, 20, and 21, effective July 1, 2005 through
4 June 30, 2008. (A true and correct copy of the cover page and table
5 of contents is attached hereto.)

6 **Exhibit C:** Unfair Labor Practice Charge filed by Service Employees
7 International Union, Local 1000 against Department of Personnel
8 Administration and Governor Arnold Schwarzenegger,
9 December 22, 2008.

10 This Court can take judicial notice of the memoranda of understanding (“MOU”)
11 between the Petitioners and the State of California. Evidence Code section 452(c) authorizes the
12 Court to take judicial notice of “official acts of legislative, executive, and judicial departments . . .
13 of any state of the United States.” In this case, the MOUs between Petitioners and the State were
14 “official act[s]” of the executive department because the DPA, on behalf of the Governor,
15 negotiated the MOUs pursuant to the statutory mandate set forth in the Ralph C. Dills Act (Gov.
16 Code § 3512 *et seq.*; *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th
17 921, 936, fn. 5 [MOU between Regional Water Quality Control Boards, the Department of
18 Forestry and the State Water Resources Control Board is proper subject for a court’s judicial
19 notice because it is an official act by executive agencies, citing *Brown v. City of Los Angeles*
20 (2002) 102 Cal.App.4th 155, 172, fn. 10; *Dunn-Edwards Corp. v. South Coast Air Quality*
21 *Management Dist.* (1993) 19 Cal.App.4th 536, 543, fn. 3].)

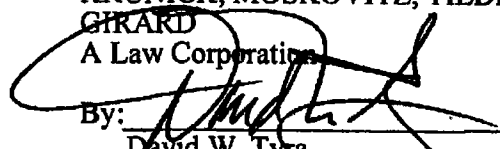
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1 In addition, this Court can take judicial notice of the public filings and
2 administrative record of the quasi-judicial agency Public Employment Relations Board. (See *City*
3 *and County of San Francisco v. International Union of Operating Engineers, Local 39* (2007)
4 151 Cal.App.4th 938, 942 and fn. 2.)

5 Dated: January 13, 2009

KRONICK, MOSKOVITZ, TIEDEMANN &
GIRARD
A Law Corporation



By: _____
David W. Tyra
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER, as
Governor of the State of California;
DAVID GILB, as Director of the
Department of Personnel Administration;
and DEPARTMENT OF PERSONNEL
ADMINISTRATION

EXHIBIT C



**STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE**

DO NOT WRITE IN THIS SPACE: Case No: _____

Date Filed: _____

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES NO

1. CHARGING PARTY: EMPLOYEE EMPLOYEE ORGANIZATION EMPLOYER PUBLIC¹

a. Full name: Service Employees International Union, Local 1000

b. Mailing address: 1808 14th Street, Sacramento, CA 95811

c. Telephone number: (916) 554-1279

d. Name, title and telephone number of person filing charge: Paul E. Harris, III, Chief Counsel. (916) 554-1279

e. Bargaining unit(s) involved: 1, 3, 4, 11, 14, 15, 17, 20 and 21

RECEIVED
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PERSONNEL ADMINISTRATION
LEGAL DIVISION
2008 DEC 22 PM 1:19

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION EMPLOYER

a. Full name: Department of Personnel Administration / Governor Arnold Schwarzenegger

b. Mailing address: 1515 "S" Street, North Building, Suite 400, Sacramento, California 95811-7258

c. Telephone number: (916) 324-0512

d. Name, title and telephone number of agent to contact: K. William Curtis, Chief Counsel, DPA (916) 324-0512

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

a. Full name:

b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

a. Full name: State of California, Department of Personnel Administration

b. Mailing address: 1515 "S" Street, North Building, Suite 400, Sacramento, California 95811-7258

c. Agent: K. William Curtis, Chief Counsel, DPA (916) 324-0512

¹An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.)
- Ralph C. Dills Act (Gov. Code sec. 3512 et seq.)
- Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code sec. 3560 et seq.)
- Meyers-Milias-Brown Act (MMBA) (Gov. Code sec. 3500 et seq.)
- Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.)
- Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code sec. 71630--71639.5)
- Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code sec. 71800 et seq.)

b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are: Government Code, sections 3512, 3515, 3515.5, 3516.5, 3517 and 3519

c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are (a copy of the applicable local rule(s) MUST be attached to the charge):

d. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and *not conclusions of law*. A statement of the remedy sought must also be provided. (Use and attach additional sheets of paper if necessary.)

See Attachment d.

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on December 22, 2008

at Sacramento, California
(City and State)

(Date)

J. Felix De La Torre
(Type or Print Name)

J. Felix De La Torre
(Signature)

Title, if any: Staff Attorney, SEIU Local 1000

Mailing address: 1808 14th Street, Sacramento, CA 95811

Telephone Number: (916) 554-1279

ATTACHMENT d.

STATEMENT OF THE CHARGE

The Service Employees International Union, Local 1000 (hereafter "Union") is the exclusive bargaining representative pursuant to the Ralph C. Dills Act ("Dills Act") for State employees in Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21. This charge alleges that the Department of Personnel Administration ("DPA") violated sections 3512, 3515, 3515.5, 3516.5, 3517 and 3519 of the Dills Act by failing and refusing to provide necessary and relevant information to the Union, by unilaterally cancelling bargaining sessions, by regressive bargaining, and by unilaterally implementing regressive bargaining proposals without negotiating with the Union. It is evident the State's plan was to surface bargain with Local 1000 until the crisis became so dire that it believed it could declare an emergency to justify its decision to ignore California laws. In short, the plan was to ultimately implement draconian measures to resolve the budget crisis on the backs of state workers.

At all times relevant, the State of California, through its agent, DPA, and SEIU Local 1000 have been, and are presently engaged in contract negotiations. Before the parties began their negotiations, DPA insisted on establishing ground rules to govern various aspects of the bargaining process. Consequently, the parties spent several months preparing the ground rules. [Exhibit 1] Within the ground rules, the parties established a "Master Table" and "Unit Tables" for each bargaining unit represented by Local 1000. The parties also agreed that only specified contract proposals would be negotiated at the Unit Tables and others only at the Master Table. [Id.] The parties approved this latter rule on August 22, 2008. [Id.]

On or about November 6, 2008, Governor Arnold Schwarzenegger released a letter to "Valued State Workers." [Exhibit 2] In this letter, the Governor addressed the projected revenue shortfall confronting the State, and the need for spending reductions. The Governor also acknowledged that "spending reductions will impact our state workers". [Id.] In doing so, the Governor pointed out that State workers "deliver important services every day." Nonetheless, his letter proposed the following detrimental action, among others, toward state workers:

"Furloughs: All state employees will be furloughed one day each month for the next year and half, a total of 19 days. This will result in a pay cut of about 5 percent. The pay cut will not affect retirement and other benefits for which you are eligible."

[Id.](Emphasis added)

Finally, the Governor assured the state workers that he was "working closely with union leadership to achieve results in the least painful way possible." [Id.] This pledge, as detailed below, was nothing more than lip service to give the illusion that the State intended to bargain in good faith over the proposals.

On November 9, 2008, SEIU Local 1000 and DPA held a scheduled bargaining session. After many months of bargaining where the parties passed and exchanged hundreds of proposals, DPA passed a set of proposals which included the Governor's unpaid, one day per month furloughs, the elimination of two paid holidays, and a significant change in the manner in which overtime is calculated. [Exhibit 3] In essence, DPA initiated bargaining over the Governor's proposals as set forth in his November 6, 2008, letter. This further confirmed that DPA and the Governor understood that the furlough plans and other detrimental proposals had a significant impact on the wages, hours and working conditions of state workers and it was obligated to negotiate in good faith with Local 1000.

Local 1000 responded to the proposals by hand delivering a formal information request on November 10, 2008, to Julie Chapman, Deputy Director of DPA. [Exhibit 4] The Union's information request asked DPA to provide detailed information to allow the Union to understand and measure the impact of the Governor's proposed spending restrictions—as outlined in DPA's November 9, 2008, bargaining proposals. [Id.] SEIU Local 1000 also sought the requested information to determine if there were alternatives to the furloughs (and other proposals) that would allow the State to "achieve results in the least painful way" to State workers, as the Governor committed to in his November 6, 2008, letter.

On or about November 17, 2008, DPA responded to the Union's information request by producing a one-page document that showed nothing but raw figures without any reference to establish the source of the calculations or supporting data. [Exhibit 5] In addition, DPA declared other certain Union requests to be "hypothetical" or "questions" and refused to provide any information because it took the erroneous position that a public entity is not obligated to respond where an information request seeks information rather than a specific document. [Id.]

On November 20, 2008, Paul E. Harris, III, SEIU Local 1000 Chief Counsel, sent DPA a detailed three page letter whereby Local 1000 objected to DPA's defective responses to the Union's information request. [Exhibit 6] In that letter, Mr. Harris confirmed DPA's untenable position that it was not obligated to provide information that was not contained in a single document. As authority, Mr. Harris cited to *Stockton Unified School District* (1980) PERB Dec. No. 143, which held that a public entity's duty to provide information to a union extended well beyond its duty to provide documents. Mr. Harris requested that DPA comply with the information request no later than November 26, 2008. To date, DPA has not responded to Local 1000's letter or provided any additional information. By failing and refusing to respond to the Union's information request, DPA has interfered with the Union's ability to represent its members and engaged in bad faith bargaining in violation of the Dills Act.

On November 18, 2008, the parties met to continue bargaining. Despite the fact that the parties had been bargaining specified proposals at the individual Unit Tables, DPA passed a "Package Offer" at the Master Table that included unit-specific proposals. [Exhibit 7] In other words, DPA violated the ground rules specifying that certain contract articles and sections would be addressed at the Master Table. DPA did not seek or receive a waiver of the ground rules. DPA's violation of the ground rules and attempt to negotiate proposals at the Master Table while the parties continued to negotiate the same issues at Unit Tables is another indicia of bad faith bargaining.

On November 20, 2008, the parties again met to resume Unit Table negotiations. To be specific, the Unit 1, 11, and 15 tables were scheduled to meet at the Holiday Inn in Sacramento. Based on the ground rules, Local 1000 paid and arranged for space to accommodate the negotiations. That day, Local 1000 was prepared to proceed and continue bargaining. When DPA arrived and saw that the Union bargaining team included a staff attorney, it walked out, stating it would not negotiate with the Union if a staff attorney was present. As a courtesy, Margarita Maldonado, the Bargaining Unit 1 Chair, made it clear that the attorney's role was as Union staff; and not as an expert witness or as a "member" observer. DPA maintained its objection to the presence of the attorney claiming the attorney's presence was prohibited by the ground rules. DPA then unilaterally cancelled that bargaining session in violation of Rule 12 of the ground rules. [Exhibits 1 and 8] DPA also cancelled the Unit 15 table bargaining session. [Exhibit 9] DPA, however, continued to bargain at the Unit 11 table despite the fact that SEIU staff attorney Anne Giese was present. It is also worth noting that Paul E. Harris, Chief Counsel for Local 1000, has been present in prior bargaining sessions without objection from DPA.

Moreover, DPA's claim that the ground rules prohibit staff attorneys attending bargaining sessions is without merit. The ground rules place no conditions whatsoever on the presence of Union staff at bargaining sessions. The only individuals referenced in the ground rules are "observers" and "expert witnesses." [Exhibit 1] The ground rules define an observer as a "SEIU Local 1000 bargaining unit member." Maldonado reiterated to DPA that staff counsel is not an SEIU Local 1000 bargaining unit member (observer) or an "expert witness." As such, the ground rules did not prohibit the presence of staff attorneys and DPA had no grounds to unilaterally cancel the bargaining session. SEIU Local 1000 alleges that DPA's refusal to meet as scheduled, and its intentional misapplication of the ground rules is in bad faith. Moreover, it is well established that DPA cannot dictate to the Local 1000 who the union assigns to its negotiating teams. See *Gilroy Unified School District* (1984) 9 PERC ¶ 16042, p. 3; citing *American Radiator and Standard Sanitary Corp.* (1965) 155 NLRB 736 (the NLRB concluded that the composition of the employees' bargaining committee is the internal business of the union over which the employer has no control and that the employer was not relieved of its duty to bargain by the presence of "outsiders" on the employees' negotiating team. See also *Carlsbad Unified School District* (1985) PERB Dec. No. 529, p. 40, citing *San Ramon Valley Unified School District* (1982) PERB Dec. No. 230. There is no question that DPA's unilateral cancellation of the Unit 1 and 15 bargaining sessions was in bad faith, and its reliance on the ground rules was pretextual.

The parties are presently scheduled to resume bargaining, which would include discussions involving the proposed one-day per month furloughs, on January 5, 2009. Despite the Governor's statement that he would work with SEIU Local 1000 to find ways to "achieve results in the least painful way" to State workers, on December 19, 2008—less than one week before the Holidays—the Governor unilaterally implemented a *two-day* per month furlough on State workers. While the parties were in the midst of addressing the impact and alternatives to a one-day per month furlough, the State of California, through its agents, unilaterally implemented a two-day per month furlough without any notice or opportunity for Local 1000 to bargain on behalf of its members. The two-day per month furlough is regressive and another indicator of bad faith bargaining. The December 19, 2008, letter to "State Workers (as opposed to his November 6, 2008, letter addressing them as "Valued State Workers"), made it evident the Governor's earlier pledge to work with union

leadership was pure lip service, and he had no intent to actually negotiate his furlough plan or any other proposal with Local 1000. [Exhibit 10]

It is also notable that, in his original one-day-per-month furlough proposal, the Governor estimated that each state worker would suffer about a five (5) percent pay cut. Despite the fact that the two-day-per-month furlough doubles the pay cut for each State Worker, the Governor made no mention of that impact in his December 19, 2008, letter. And in the Governor's December 19, 2008, letter, the furloughs were no longer a "proposed" measure, but the Governor made clear he was "compelled to take" the steps outlined in his letter. Also missing from the December 19, 2008, letter, was the Governor's prior commitment to "working closely with union leadership to achieve results in the least painful way."

On December 19, 2008, the Governor issued Executive Order S-16-08. [Exhibit 11] The Order formalized the Governor's plan to implement those steps outlined in his December 19, 2008, letter. The Governor ordered furloughs as follows:

IT IS ORDERED that effective February 1, 2009, through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

The Governor does not dispute that he is disregarding California laws by unilaterally implementing layoffs and furloughs without prior notice to the Union and an opportunity to bargain. In justifying the decision to circumvent State law, the Governor relies on California Government Code, section 3516.5, which allows the suspension of laws during an emergency under specific conditions. In short, the Governor unilaterally declared the budget deficit an emergency so that he could forgo negotiating with Local 1000. The problem with the Governor's reliance on Section 3516.5 is that the extent and severity of the budget crisis has been well known since at least August 2008—six months before the two-day per month furloughs are to be implemented. In fact, it is evident the Governor has been aware of the extent and severity of the crisis since July 2008 when he Executive Order S-09-08 in July 2008. [Exhibit 12] In the earlier Order, the Governor laid off thousands of state workers as one measure to address the budget shortfall. Without question, the State has been fully aware of its fiscal crisis since for many months. But instead of meeting and conferring with the Union to find creative solutions, the Governor and DPA engaged in bad faith bargaining for several months, aware that the State's ultimate plan was to rely on Section 3516.5 to implement drastic measures by executive fiat.

To the extent that the budget crisis is now an emergency, DPA and the Governor intentionally squandered multiple opportunities between July 2008 and the present to find creative solutions to lessen the impact on state workers. As detailed above, DPA engaged in bad faith bargaining throughout that period. PERB has even issued a complaint against DPA for its failure to respond to information about other proposals, such as layoffs, the State was using to address the crisis. (See PERB Complaint in SA-CE-1714-S). The Governor and DPA cannot be rewarded for this intentional and illegal circumvention of California laws.

The Governor's decision to double the furloughs without any notice to the Union or opportunity to bargain, coupled with DPA's various acts of bad faith bargaining (refusing to provide information, violating the ground rules, unilaterally cancelling bargaining sessions, making obviously flawed objections to information requests, and passing regressive proposals), makes it unmistakable that DPA and the Governor were merely going through the steps with no real intent to bargain in good faith. Nevertheless, the State of California acknowledges that furloughs have a significant impact on the wages, hours and working conditions of employees and is a mandatory subject of bargaining. Without question, DPA and the Governor have violated California law and SEIU Local 1000 is entitled to appropriate remedies.

REMEDIES REQUESTED

1. An order that DPA cease and desist from failing and refusing to meet and bargain in good faith;
2. An order that DPA cease and desist from refusing to comply with information requests;
3. An order that DPA cease and desist from interfering with the Union's right to represent its members on matters concerning wages, hours and working conditions;
4. An order that DPA immediately meet and confer in good faith with the Union regarding the proposed furloughs and other proposals that are detrimental to the wages, hours and working conditions of employment;
5. An order maintaining the status quo until such time as the parties can complete the meet and confer (bargaining) process in good faith;
6. A declaratory order that DPA violated the Dills Act;
7. A posting in the manner of the National Labor Relations Board;
8. Attorneys' fees at the lodestar rate; and
9. Any other appropriate remedies that would effectuate the purposes of the Dills Act.

EXHIBIT 1

HOLIDAY IN
20MAY08
2005

2nd Union Proposal of May 20, 2008
2008 NEGOTIATIONS
Ground Rules for SEIU Local 1000 and the State of California
Master and Unit Tables

1. The parties will agree to the list of articles and /or sections that shall be discussed at the Master Table representing Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20 & 21. The agreed upon list of articles/sections shall not be discussed at bargaining unit tables.
2. ~~The parties agree that Master Table negotiating sessions will be held in Sacramento. The Union shall select meeting locations/facilities for scheduled Master Table negotiations. The State shall select meeting locations/facilities for scheduled unit table negotiations. Where facilities require payment for use, such costs shall be paid by the party responsible for securing the location. By mutual agreement different arrangements may be made. Negotiations shall take place in Sacramento on mutually agreed upon dates, times and locations. The Union shall be responsible for securing meeting locations/facilities for scheduled negotiations. There shall be no fees charged to the State for negotiating or caucus rooms.~~
3. The parties shall limit the number of representatives for the Master Table to 18 each.
4. On May 9, 2008, The Union shall provided the State with the names, classification titles, and work locations of each Union team member. Those employees will be released on State Release Time to participate in scheduled preparations/negotiations. The list of Union team members may be amended with at least seventy-two (72) hours notice to the state's chief negotiator. If the number of employees to be released exceeds the number of employees on the current listing, the parties will discuss whether Union Leave or State Release Time is appropriate. If bargaining should continue beyond July 1, 2008, the State shall release an additional fifteen (15) Union team members on State Release Time.
5. ~~Individual bargaining unit members identified on a list provided by the Union will compose the unit table representatives.~~
- 5.6. If requested, the State agrees to grant reasonable travel time for bargaining team members who are on State release time for negotiations and who must travel from out of the way locations such as but not limited to Eureka, Porterville, Blythe, Bakersfield, Soledad, San Luis Obispo, Crescent City, Tehachapi and El Centro or other mutually agreed location to participate in negotiations. The State agrees, when requested, to grant reasonable travel time to bargaining team members for negotiations who must travel from out of the way locations, such as Eureka, Porterville, Blythe, Bakersfield, Soledad, San Luis Obispo, Crescent City, Tehachapi, El Centro, Victorville or other mutually agreed upon locations. Time spent during travel shall not result in overtime compensation.
- 6.7. Expert witnesses and observers may attend negotiations. Time granted for witnesses will be granted as State Release Time. Observers may use Union Leave, vacation or other leave credits, subject to advance notice. The approval of vacation or other leave credits is also subject to available vacation or other leave balances of the affected employee. SEIU Local 1000 Bargaining unit members may observe bargaining sessions with advance notice. Observers may be granted Union Leave, Compensable Time Off (CTO) vacation leave or an authorized leave of

absence without pay for negotiations subject to advance notice and operational need. Observers will not cause disruptions.

7.8. The State shall not pay travel expenses that may be incurred by employees participating as Union bargaining team members, expert witnesses or observers.

8.9. ~~The State agrees to place bargaining team members on weekly work schedules of Monday through Friday and daytime shifts (between the hours of 8:00 AM and 5:00 PM), while the employee is participating in the 2008 Contract Negotiations. Such schedule changes shall be allowed from the first day of mutually scheduled negotiations until the parties have reached tentative agreement on the entire contract or a PIRB declared impasse. All negotiations shall be scheduled for seven (7) day blocks from Monday through Sunday. When employees are released for negotiations any alternate work schedule or non-standard work shifts will be converted to Monday through Friday, 8:00 AM to 5:00 PM schedules with Saturdays and Sundays as their regular days off. During those periods when the parties are not scheduled to meet or prepare (usually in excess of seven (7) days); bargaining team members will be returned to the shift/workweeks they were assigned prior to the commencement of the 2008 Contract Negotiations. Bargaining team members will be returned to the assignment they had prior to this agreement. Supervisors will be notified that bargaining unit team members in posted positions will be allowed to bid in absentia during any bid period. No bargaining team member shall be subject to any mandatory overtime. No bargaining team member shall suffer any loss of compensation because of this altered schedule.~~

TC USU
2042
20MAY0

TC USU
2042
20MAY

9.10. Time spent for negotiation/preparation purposes by Union team members will not result in overtime compensation. However, this does not preclude members from working voluntary overtime.

10.11. The parties shall will endeavor to agree upon an agenda, location, date, and time for the next negotiating session at the completion of each session. Whenever possible, the agenda will include the specific sections of the MOU to be discussed.

11.12. The parties agree to be prepared to bargain at the agreed upon starting time. Failure of either party to appear within one (1) hour of a scheduled starting time, without prior notification, shall be considered a cancellation of the meeting. The parties shall exercise all efforts to keep each other apprised of the time frame of caucuses. If either Party must cancel a negotiating session that Party will endeavor to provide forty-eight (48) hours advance notice to the Chief Negotiator(s).

12.13. Each party shall identify the authorized agent(s) to reach agreement at the initial bargaining session and notify the other party prior to any changes in the authorized agent(s).

13.14. All proposals and counterproposals shall be in writing on three (3) hole punched paper and shall show additions to the current contract with underlining and deletions to the current contract with strikethrough. The party passing the proposal or counter proposal shall provide enough copies for every member of the other team.

14.15. Tentative agreements will be reduced to writing and initialed by each party at the time the tentative agreement is reached. All such tentative agreements are tentative subject to a final agreement being reached by the parties.

15.16. After tentative agreement on the entire contract, the parties shall meet on a mutually agreed upon date to review the final contract draft prior to it being submitted to the Union's membership for ratification.

16.17. Upon request by the Union, the State shall grant State paid release time for bargaining team members of each bargaining unit for ratification purposes. The granting of such request is subject to advance notice, in writing, to the State.

17.18. All tentative agreements reached at the Master Table shall be binding on each individual bargaining unit. The parties shall continue negotiations at the unit table for each bargaining unit and all additional matters within scope shall be addressed there.

18.19. Neither party shall use a court reporter to take notes, and neither party shall use any type of video, audio or broadcasting devices during negotiating sessions, except by mutual agreement.

20. These Ground Rules are effective upon signatures of both Parties. These Ground Rules shall expire upon ratification of the total agreement by both Parties or when impasse is declared by PERB.

W. J. JACKER
SEIU Local 1000
For Bargaining Units 1, 3, 4, 17, 14, 15, 17, 20 & 21

(Sander)
Department of Personnel Administration
For State of California

Michael Medina BU 1 Chair
Doreen BU 5 Chair
Larry BU 21 Chair
Robert BU 20 Chair
W. J. BU 14 Chair
Ed BU 4
John BU 15 Chair
Carrie BU 11 Chair
Nancy L. Lyeola BU 17 Chair



**Union Proposal of August 22, 2008
2008 NEGOTIATIONS**

Ground Rules for SEIU Local 1000 and the State of California

*5:00pm
8/22/08
Holiday Inn-
California
Room*

Master Table Articles/Sections

- PREAMBLE
- 2.1 Union Representatives
- 2.2 Access
- 2.3 Use of State Equipment
- 2.5 Use of State Facilities
- 2.6 Steward Time Off
- 2.7 Employee Time Off
- 2.8 Union Steward Protection
- 2.9 Union Information Packets
- 2.10 Orientation
- 2.11 Bargaining Unit Chair Time Off
- 3.1 Union Security
- 3.2 Release of Home Addresses: Non-Law Enforcement Employees
- 4.1 State's Rights
- 5.1 No Strike
- 5.2 No Lockout
- 5.3 Individual Agreements Prohibited
- 5.4 Savings Clause
- 5.5 Reprisals
- 5.7 Non-Discrimination
- 5.8 Sexual Harassment
- 5.9 Joint Labor/Management Committee on Discrimination (JLMCD)
- 5.10 Labor/Management Committees
- 5.11 Dignity Clause
- 5.12 Upward Mobility Joint Labor/Management Committee
- 6.1 Purpose
- 6.2 Definitions
- 6.3 Time Limits
- 6.4 Waiver of Steps
- 6.5 Presentation
- 6.6 Informal Discussion
- 6.7 Formal Grievance – Step 1
- 6.8 Formal Grievance – Step 2
- 6.9 Formal Grievance – Step 3
- 6.10 Response
- 6.11 Formal Grievance – Step 4
- 6.12 Grievance Review
- 6.13 AWOL Hearing Back Pay
- 6.14 Mini-Arbitration Procedure
- 7.1 Holidays

- 8.1 Vacation/Annual Leave
- 8.2 Sick Leave
- 8.4 Parental Leave
- 8.5 Adoption Leave
- 8.6 Union Leave
- 8.7 Unpaid Leave of Absence
- 8.8 Transfer of Leave Credits, Work and Family Program (Catastrophic Leave)
- 8.9 Catastrophic Leave - Natural Disaster
- 8.10 Release Time for State Civil Service Examinations
- 8.11 Release Time for State Personnel Board Hearings
- 8.12 Leave Credits Upon Transfer in State Service
- 8.14 Jury Duty
- 8.16 Family Medical Leave Act (FMLA)
- 8.18 Work and Family Participation
- 8.19 Paid Time Off-- Precinct Election Board
- 8.20 Blood Donation Programs
- 9.1 Health Benefit Plans
- 9.2 Dental Benefit Plans
- 9.3 Vision Benefit Plans
- 9.4 Rural Health Care Equity Program
- 9.5 Employee Assistance Program (EAP)
- 9.6 Pre-Tax of Health and Dental Premiums Costs
- 9.7 Pre-Retirement Death Continuation of Benefits
- 9.8 Joint Union/Management Benefits Advisory Committee
- 9.9 Presumptive Illness
- 9.10 Employee Injury on the Job
- 9.12 Flex/Elect Program
- 9.13 Long-Term Care Insurance Plan
- 9.15 Industrial Disability Leave (IDL)
- 9.16 Group Legal Service Plan
- 9.17 State Disability Insurance (SDI)
- 10.1 Health and Safety Commitment
- 10.2 Health and Safety Committees
- 10.3 Occupational Hazards
- 10.4 Injury and Illness Prevention Programs (IIPP)
- 10.6 Emergency Evacuation Procedures
- 10.12 Employee Restroom Facilities
- 10.21 Workplace Violence Prevention
- 10.22 Computer Work Stations
- 10.23 Independent Medical Examinations
- 10.27 Remodeling/Renovations and Repairs
- 10.28 Pest Control
- 10.29 Smoking Cessation
- 10.30 Health and Safety Grievances
- 10.X Health Promotion Activities
- 11.1 Salaries
- 11.4 Timely Payment of Wages
- 11.7 Merit Salary Adjustments (MSA)

- 11.10 Sustained Superior Accomplishment Awards
- 11.11 Union-Management Committee on State Payroll System
- 11.13 Tax Deferral of Lump Sum Leave Cash Out Upon Separation
- 12.1 Business and Travel Expense
- 12.2 Moving and Relocation Expenses
- 12.3 Parking Rates
- 12.4 Commute Program
- 12.5 Transportation Incentives
- 12.7 State Owned Housing
- 13.1 Personnel and Evaluation Materials
- 14.1 Classification Changes
- 14.2 Out-of-Classification Grievances and Position Allocation Hearing Process
- 14.3 Classification/Pay Data
- 14.6 Job Announcements
- 14.8 Contracting Out
- 15.3 Hardship Transfer
- 16.1 Layoff and Reemployment
- 16.2 Reducing the Adverse Effects of Layoff
- 16.3 Alternative to Layoff
- 16.4 Military Installations
- 16.5 Layoff Employee Assistance Program
- 17.1 First Tier Retirement Formula (2% @ 55)
- 17.2 Second Tier Retirement Plan
- 17.4 State Safety Retirement
- 17.7 Enhanced Industrial Retirement
- 17.8 Employer-Paid Employee Retirement Contributions
- 17.10 1959 Survivor's Benefits – Fifth Level
- 18.1 Permanent Intermittents (PI)
- 19.5 Set Up/Shut Down Time
- 19.10 Work in Multiple Time Zones
- 19.11 Call Back Time
- 19.12 Standby Time
- 24.1 Entire Agreement
- 24.2 Duration
- Side Letter #1 – Golden Handshake
- Side Letter #3 – Domestic Partner
- Side Letter #4 – Access Agreement
- Addendum I – Time Off for Victims of Domestic Violence

Unit Table Articles/Sections

- 1.1 Recognition
- 2.4 Distribution of Union Information
- 5.6 Supersession - we owe
- 8.3 Bereavement Leave
- 8.13 Court Appearance and/or Subpoenas - today
- 8.15 Personal Leave Program
- 8.17 Mentoring Leave - today
- 9.11 Enhanced Industrial Disability Leave (EIDL) - today
- ~~9.12 Temporary Disability Leave~~ - Pam
- 10.7 Protective Clothing - Tald
- 10.9 Safety Equipment - Tald
- 10.10 Medical Monitoring - talk abt briefly
- 10.11 Hazardous Materials - today
- ~~10.13 Access to Work Areas 24 Hours~~ - Jim
- 10.14 Personal Alarms - they owe
- 10.18 Referral of Assault/Battery - 44 issue
- 10.19 Assaultive Behavior - Big Gump
- 10.25 Infectious Disease Control - Tald
- ~~10.26 Precautions Against~~ - John
- 11.3 Salary Definitions - state over
- 11.8 Night Shift Differential - Tald
- 11.9 Bilingual Differential Pay - state over
- ~~11.10 Referral~~ - Pam
- 11.17 Recruitment and Retention Differentials - SO
- 11.20 Recruitment and Retention - Avenal, Ironwood, Calipatria, Chuckawalla Valley and Centinela Prisons - SO
- 12.8 Overtime Meal Benefits and Allowances - CDCR) discussion
- 12.9 Overtime Meal Allowance
- 12.10 Damaged or Destroyed Personal Property - Tald
- 12.11 Uniform Replacement Allowance - Tald
- 12.13 Tools, Business Equipment, Materials and Supplies - Tald
- 12.14 Professional Dues - Tald
- ~~12.15 Reimbursement~~ - Jim
- 13.2 Personal Performance Session - ?
- 13.3 Joint Apprenticeship Committee - SO
- 13.6 Performance Appraisal of Permanent Employees - Tald
- 14.4 Duty Statements, Post Orders, and Work Instructions - (conversation?)
- ~~14.5~~ - John
- ~~14.7 Assignment of Duties~~ - Kathy
- 15.1 Appeal of Involuntary Transfer - Cobe
- 19.1 Hours of Work - shift working
- 19.2 Overtime -
- 19.3 Rest Periods - US
- 19.4 Meal Periods - Tald
- 19.8 Flexible Work Hours - talk to Randy

19.9 Exchange of Time Off - Multi-Shift Operations

~~21.1 Electronic Monitoring Program~~ - Kathy

21.2 Electronic Monitoring

21.3 Class A & B Commercial Driver's License

Side Letter #2 - Streamlining the State Safety Retirement Process

EXHIBIT 2



GOVERNOR ARNOLD SCHWARZENEGGER

November 6, 2008

Dear Valued State Worker,

During the six weeks since I signed our state budget, the mortgage crisis has deepened, unemployment has increased and the stock market has dropped significantly. As a result, we are facing a projected \$11 billion revenue shortfall this fiscal year.

These dramatic developments require us to work together and respond immediately. I have called the Legislature into special session to address our fiscal emergency, and I am proposing a combination of economic stimulus measures, programs to keep Californians in their homes, revenue increases and spending reductions to address the real, immediate financial problems facing the state.

If approved by the Legislature, these spending reductions will impact our state workers. Californians rely on you to deliver important services every day, and I am proud of your hard work and dedication to the state. That's why I want you to hear about these impacts from me directly.

To achieve cost savings and protect vital state services, I am proposing the following measures:

- Furloughs: All state employees will be furloughed one day each month for the next year and half, a total of 19 days. This will result in a pay cut of about 5 percent. The pay cut will not affect retirement and other benefits for which you are eligible.**
- Holidays: The Columbus Day holiday will be eliminated, and Lincoln's Birthday and Washington's Birthday will be observed together on Presidents Day. In addition, we will no longer pay time-and-a-half to employees working on holidays. Instead, employees required to work on holidays will receive holiday credit for use at another time, as they do now.**
- Four-day week: The law will be amended to make it easier for departments to allow employees to work ten hours a day, four days a week.**
- Overtime: The state will no longer count leave time (including sick leave and vacation time) as time worked for overtime purposes. Instead, employees will only become eligible for overtime pay once actual time worked exceeds the required threshold.**

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2811

A small circular logo or stamp, possibly a union or organizational mark, located at the bottom center of the page.

SEIU JA 000074

November 6, 2008
Page two

These changes will save the state roughly \$1.4 billion over two years. I know these are not easy proposals, and I assure you we are working closely with union leadership to achieve results in the least painful way possible. All the actions we're proposing must first be approved by the Legislature.

I've always said that California has the most talented and most diligent state employees, and I am confident we will make it through this tough time by working together. Thank you for your cooperation and hard work on behalf of the State of California.

Sincerely,



Arnold Schwarzenegger

EXHIBIT 3

Management Proposal

passed 1.14.12

Bargaining Unit: All Units

Date: 11/9/08

Exclusive Representative: SEIU

Subject: Furlough

ARTICLE New

Effective with the December 2008 pay period and ending June 30, 2010, the State of California will implement a furlough program for all bargaining unit employees. The furlough program shall be one day (8 hours) of furlough per month for a 19 month period and will place employees in temporary, non-duty status on these days. No employee subject to furlough shall receive compensation for any furlough period.

Furloughs shall not adversely affect an employee's retirement service credit or service anniversary date; create a break in service or constitute an absence from state service; impact the accrual of leave credits or payment of health, dental, or vision benefits; impact the calculation of final compensation; impact the calculation of death, disability, or survivor benefits; or adversely affect any other benefit or payment an employee would otherwise receive or be entitled to receive.

The State intends to implement the furlough program as follows:

- In general government operations (Monday through Friday) the State intends to close operations one day per month. Employees will be excused from work without pay on the furlough day.
- In facilities where it is not operationally feasible to close down one day per month (24/7 facilities) employee's pay will be reduced by one day and the employer may schedule employees furlough day off as operationally feasible. Furlough days must be taken as they have no cash value.

State Packaged Proposal
November 18, 2008
2:18 p.m.

EXHIBIT 4



Hand Delivered

November 10, 2008

Ms. Julie Chapman, Deputy Director
Department of Personnel Administration
1515 S Street, North Building
Sacramento, CA 95814

Dear Ms. Chapman,

SEIU Local 1000 is making the following information request to determine the impact on State employees represented by the Union, of the recently announced proposals to deal with the projected 2008-2009 and 2009-2010 budget deficit:

1. What is the breakdown of the anticipated savings from each of the Governor's three Employee Compensation proposals passed to the SEIU Local 1000 on November 9, 2008, for each of Local 1000's nine Bargaining Units, for each State department/agency/commission, and for each classification in Local 1000's Bargaining Units?
2. Will there be exemptions from the Governor's three Employee Compensation proposals for individual Bargaining Units, departments/agencies/commissions, or classifications? If there will be exemptions, what process and criteria will be used to grant them?
3. If exemptions in #2 above have already been determined, what Bargaining Unit, department/agency/commission or classification are being exempted?
4. In State operated schools for juveniles, how will mandated instructional minutes in a school year be met, if Teachers and Vocational Instructors are subject to a 5% Furlough?
5. What is the anticipated impact on staffing (necessitating additional or fewer allocated positions) on SEIU Local 1000 represented classifications, based on each of the following programs proposed by the Governor:
 - Mortgage loan modification
 - Broadening of Sales and Use Tax
 - Increasing the Oil Severance Tax
 - Increasing the Alcohol and Excise Tax
 - Increasing the Vehicle Registration fee
 - Employment Development Department reform
 - Changes in Proposition 98
 - Parole reform

YVONNE R. WALKER
President

M. CORA OKUMURA
Vice President
and Secretary-Treasurer

JIM HARD
Vice President
for Organizing/Representation

KATHLEEN B. COLLINS
Vice President for Bargaining

SERVICE EMPLOYEES
INTERNATIONAL UNION

1808 14th Street
Sacramento, CA 95811
(916) 554-1200
(866) 471-SEIU (7348)
(916) 554-1275 (fax)
www.seu1000.org



SEIU JA 000079

- Enhanced inmate credit earning
- Property crime threshold revisions

6. Will any of the proposed program changes in #4 above, result in an increase in allocated State Information Technology employees? Does the State anticipate having to contract out any of the additional information technology work which may result from the programs in #4?
7. Since the Governor's Executive Order has gone into effect, how much money has the State saved by canceling or reducing the use of outside contractors? How much money is projected to be saved for all of fiscal year 2008-2009, from the canceled or reduced outside contracts?
8. How much money has the State saved from all other components of the Governor's Executive Order (excluding the canceling or reduction of outside contracts)? How much money does the State project saving during all of fiscal year 2008-2009 from these other components of the Governor's Executive Order?
9. Please also breakout the two grouping of components in #7 and #8 above, by the savings in each of SEIU Local 1000's nine Bargaining Units.
10. How many Permanent Intermittents and Retired Annuitants represented by SEIU Local 1000, has the State rehired (exempted) from the Governor's Executive Order? Please break this out by Bargaining Unit, department/agency/commission and classification.
11. How many hiring/promotion exemptions have been granted or denied since the executive order has been in effect, by Bargaining Unit, Classification, and Department.

Discuss around the Executive Order as well
Jan

The Union requests a response no later than Monday, November 24, 2008. Thank you for your response to this information request, which will enable the Union to formulate a response to the Governor's proposals.

Yours truly,


Art Grubel
Contract Department Director

Co. Ms. Yvonne Walker, President
Mr. Michael Baratz, Chief of Staff
Ms. Cindie Fonseca, Chair Unit #3
Mr. David Gilb, DPA Director

EXHIBIT 5

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION
1515 "G" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258



November 17, 2008

Mr. Art Grubel
SEIU Local 1000
1808 14th Street
Sacramento, CA 95811

RE: SEIU Information Request (Common Table)

Mr. Grubel:

This is in response to the information request regarding common table bargaining, dated November 10, 2008.

The State is responding to these requests without conceding whether the information requested is relevant and necessary to SEIU's ability to develop bargaining proposals as provided under the Dills Act. In addition, in light of the litigation filed against the State by SEIU, these responses do not constitute a waiver of the State's litigation privilege.

1. What is the breakdown of the anticipated savings from each of the Governor's three Employee Compensation proposals passed to SEIU Local 1000 on November 9, 2008, for each of Local 1000's nine Bargaining Units, for each State department/agency/commission, and for each classification in Local 1000's Bargaining Units?

We have enclosed the information available with respect to this request broken down by each of the bargaining units represented by SEIU. Additional breakdowns are not available.

2. Will there be exemptions from the Governor's three Employee Compensation proposals for individual Bargaining Units, departments/agencies/commissions, or classifications? If there will be exemptions, what process and criteria will be used to grant them?

This is not a request for information, rather a hypothetical question. There has been no indication that there will be exemptions to the Employee Compensation proposals.

3. If exemptions in #2 above have already been determined, what Bargaining Unit, department/agency/commission or classification are being exempted?

There has been no indication that there will be exemptions to the Employee Compensation proposals.

4. In State operated schools for juveniles, how will mandated instructional minutes in a school year be met, if Teachers and Vocational Instructors are subject to a 5% Furlough?

This is a question, not an information request. CDCR is responsible for ensuring that an appropriate amount of instructional minutes is provided to its students.

5. What is the anticipated impact on staffing (necessitating additional or fewer allocated positions) on SEIU Local 1000 represented classifications, based on each of the following programs proposed by the Governor:

- a. Mortgage loan modification
- b. Broadening of Sales and Use Tax
- c. Increasing the Oil Severance Tax
- d. Increasing the Alcohol and Excise Tax
- e. Increasing the Vehicle Registration fee
- f. Employment Development Department reform
- g. Changes in Proposition 98
- h. Parole Reform
- i. Enhanced Inmate credit earning
- j. Property crime threshold revisions

This is a question, not an information request. As such, there are no responsive documents available.

6. Will any of the proposed program changes in #4 above, result in an increase in allocated State Information Technology employees? Does the State anticipate having to contract out any of the additional information technology work which may result from the programs in #4?

This is a question, not a request for specific information. There has been no indication the issue of instructional minutes in State operated schools for juveniles (question #4) will result in increased Information Technology employees.

7. Since the Governor's Executive Order has gone into effect, how much money has the State saved by canceling or reducing the use of outside contractors? How much money is projected to be saved for all of fiscal year 2008-2009, from the canceled or reduced outside contracts?

Responsive documents to this request for information are not available.

Mr. Art Grubel
November 17, 2008
Page 3

8. How much money has the State saved from all other components of the Governor's Executive Order (excluding the canceling or reduction of outside contracts)? How much money does the State project saving during all of fiscal year 2008-2009 from these other components of the Governor's Executive Order?

Responsive documents to this request for information are not available.

9. Please also breakout the two grouping of components in #7 and #8 above, by the savings in each of SEIU Local 1000's nine Bargaining Units.

Responsive documents to this request for information are not available.

10. How many Permanent Intermittents and Retired Annuitants represented by SEIU Local 1000, has the State rehired (exempted) from the Governor's Executive Order? Please break this out by Bargaining Unit, department/agency/commission and classification.

Responsive documents to this request for information are not available.

11. How many hiring/promotion exemptions have been granted or denied since the executive order has been in effect, by Bargaining Unit, Classification, and Department.

Responsive documents to this request for information are not available.

If you have any questions, please contact me at (916) 324-0505.

Sincerely,



Randy Fisher
Senior Labor Relations Officer

cc: Michael Baratz, Chief of Staff
Cindi Fonseca, Bargaining Unit 3 Chair

SEIU JA 00084

**Department of Personnel Administration
Cost Savings for SEIU Units
Effective 12/1/2008**

R01	1 day of Perforh	\$30,510,500	\$30,540,507	\$27,360,500	\$22,834,229	\$28,527,328	\$149,761,530	\$23,884,251	\$123,409,312	\$227,132,824
R01	2 days of Holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R01	Eliminate PP for time worked on holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R01	Leave time not counted as hours worked for overtime	\$1,128,520	\$0	\$1,128,520	\$1,061,000	\$0	\$1,061,000	\$2,092,540	\$0	\$2,092,540
R03	1 day of Perforh	\$6,704,001	\$672,032	\$6,213,134	\$6,772,480	\$679,827	\$10,691,007	\$12,479,081	\$1,201,169	\$16,694,250
R03	2 days of Holidays	\$390,000	\$0	\$390,000	\$760,000	\$0	\$760,000	\$1,140,000	\$0	\$1,140,000
R03	Eliminate PP for time worked on holidays	\$760,000	\$0	\$760,000	\$1,268,000	\$0	\$1,268,000	\$2,160,000	\$0	\$2,160,000
R03	Leave time not counted as hours worked for overtime	\$0	\$0	\$0	\$1,440	\$0	\$1,440	\$2,260	\$0	\$2,260
R04	1 day of Perforh	\$14,741,767	\$18,761,250	\$34,582,943	\$28,271,087	\$33,676,404	\$88,147,001	\$40,912,204	\$23,037,640	\$68,950,843
R04	2 days of Holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R04	Eliminate PP for time worked on holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R04	Leave time not counted as hours worked for overtime	\$294,091	\$0	\$294,091	\$1,188,870	\$0	\$1,188,870	\$1,983,901	\$0	\$1,983,901
R11	1 day of Perforh	\$612,282	\$3,762,044	\$4,374,326	\$1,040,488	\$6,347,306	\$7,389,879	\$1,861,000	\$10,000,000	\$11,711,720
R11	2 days of Holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R11	Eliminate PP for time worked on holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R11	Leave time not counted as hours worked for overtime	\$189,574	\$0	\$189,574	\$234,994	\$0	\$234,994	\$514,367	\$0	\$514,367
R14	1 day of Perforh	\$142,000	\$810,822	\$768,822	\$244,000	\$1,048,701	\$1,291,200	\$267,130	\$1,867,400	\$2,044,530
R14	2 days of Holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R14	Eliminate PP for time worked on holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R14	Leave time not counted as hours worked for overtime	\$12,000	\$0	\$12,000	\$21,000	\$0	\$21,000	\$34,011	\$0	\$34,011
R18	1 day of Perforh	\$9,267,007	\$1,291,001	\$4,000,000	\$6,721,440	\$2,111,046	\$7,032,000	\$9,090,507	\$8,542,000	\$12,491,700
R18	2 days of Holidays	\$220,000	\$4,000	\$224,000	\$670,000	\$0	\$670,000	\$1,000,000	\$12,000	\$1,012,000
R18	Eliminate PP for time worked on holidays	\$220,000	\$0	\$220,000	\$1,227,000	\$18,000	\$1,245,000	\$1,260,000	\$20,000	\$1,280,000
R18	Leave time not counted as hours worked for overtime	\$220,007	\$0	\$220,007	\$464,327	\$0	\$464,327	\$640,194	\$0	\$640,194
R17	1 day of Perforh	\$11,174,000	\$1,000,700	\$12,760,700	\$10,180,000	\$2,700,000	\$21,240,000	\$20,220,000	\$4,912,000	\$24,740,100
R17	2 days of Holidays	\$1,844,000	\$7,000	\$1,851,000	\$2,000,000	\$14,000	\$2,120,000	\$2,132,000	\$21,000	\$2,153,000
R17	Eliminate PP for time worked on holidays	\$2,000,000	\$12,000	\$2,160,000	\$2,830,000	\$24,000	\$2,854,000	\$2,810,000	\$27,000	\$2,837,000
R17	Leave time not counted as hours worked for overtime	\$1,760,004	\$0	\$1,760,004	\$1,920,000	\$0	\$1,920,000	\$4,024,010	\$0	\$4,024,010
R20	1 day of Perforh	\$4,346,007	\$200,000	\$4,546,007	\$7,480,041	\$261,300	\$7,901,340	\$11,700,000	\$200,000	\$12,300,100
R20	2 days of Holidays	\$441,000	\$12,000	\$453,000	\$682,000	\$24,000	\$706,000	\$1,200,000	\$20,000	\$1,220,000
R20	Eliminate PP for time worked on holidays	\$682,000	\$24,000	\$706,000	\$1,910,000	\$40,000	\$1,950,000	\$2,300,000	\$27,000	\$2,327,000
R20	Leave time not counted as hours worked for overtime	\$540,347	\$0	\$540,347	\$601,304	\$0	\$601,304	\$1,174,320	\$0	\$1,174,320
R21	1 day of Perforh	\$779,010	\$220,000	\$1,700,040	\$1,200,000	\$1,207,000	\$2,620,700	\$2,110,000	\$2,613,014	\$4,620,040
R21	2 days of Holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R21	Eliminate PP for time worked on holidays	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
R21	Leave time not counted as hours worked for overtime	\$200	\$0	\$200	\$1,000	\$0	\$1,000	\$2,000	\$0	\$2,000

1 day Perforh Profile:

Cost of 1 day is 4.62% (8 Hours/173.33).
Cost 7 days for FY 2008/09 and 12 days for FY 2009/10

Elimination of 2 Holiday Profile:

Savings of eliminating 2 holidays based on date of overtime of departments required to maintain mandatory and essential programs on State holidays (e.g., 24-hour operators, 24-hour care facilities and departments with posted positions).
2 holidays that are being eliminated are Lincoln Birthday (2/12) and Columbus Day (October 2009).

Elimination of Premium Pay for Holiday Profile:

Savings of eliminating premium pay for holidays based on date of overtime of departments required to maintain mandatory and essential programs on State holidays (e.g., 24-hour operators, 24-hour care facilities and departments with posted positions).
Coding based 19 holidays during the fiscal year with elimination of Lincoln & Columbus.

Units are affected date of 12/31/08. Job & Salary schedule by City: (CONTRACT: NEW YORK, NJ, WASHINGTON, DC, MARYLAND) (JOB:) (SALARY:)

Leave time not counted as hours worked for overtime Profile:

The numbers are per DCF estimate.
Allocation by bargaining unit of the DOF estimate was based on the same ratios as the May 2007 BOD unit profile report for overtime - SUPPZD.

EXHIBIT 6



Tele: (916) 326-4222
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November 20, 2008

Via Facsimile Only
(916) 322-0765

YVONNE R. WALKER
President

M. CORA OKUMURA
Vice President
and Secretary-Treasurer

JIM HARD
Vice President
for Organizing/Representation

KATHLEEN B. COLLINS
Vice President for Bargaining

Randy Fisher
Department of Personnel Administration
Labor Relations Division
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258

Re: **SEIU Local 1000 Information Request Dated November 10, 2008**

Dear Mr. Fisher:

On November 10, 2008, SEIU Local 1000's Contract Department Director Arthur Grubel sent an information request to DPA Deputy Director Julie Chapman requesting information relating to the Governor's proposal to furlough state workers one day a month, to eliminate two paid holidays and change the manner in which overtime is calculated. On November 17, 2008, you sent a letter to Grubel purporting to respond to the Union's information request. Your response included a single page of figures and refused to respond in any substantive manner to 10 of the 11 information requests.

On Monday November 17, 2008, during a lull in a negotiating session, I questioned you regarding your refusal to provide substantive responses to the Union's information request. At the conclusion of the conversation, I agreed to confirm the Union's position in writing. This is that correspondence.

The Department of Personnel Administration's response to the Union's information request refuses to provide information on three grounds. First, you assert that the one page breakdown of cost savings anticipated from the compensation proposals is the only information available because, "Additional breakdowns are not available." Second, in response to several of the requests, you assert that the requests are "questions" or "hypothetical questions not information requests." Finally, you assert in response to six of the 11 information requests that "Responsive documents to this request for information are not available." As set

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SEIU JA 00087

forth in more detail below, none of these three claims relieve the State from its obligation to provide the requested information and bargain in good faith with the Union.

It is well established under PERB decisional law that an employer has an obligation to provide employee organizations with requested information necessary and relevant to bargaining and that failure to do so constitutes a failure to bargain in good faith. *State of California (Departments of Personnel and Transportation)* (1997) PERB Dec. No. 1227-S, pp. 36-37. Where a union properly requests relevant and necessary information, the employer must provide the information in a timely fashion in order to afford the union ample time to evaluate the information prior to bargaining. *Chula Vista City School District* (1990) PERB Dec. No. 834.

In this case, after months of bargaining in which hundreds of proposals were made and exchanged, on November 9, 2008, DPA passed a set of proposals to the Union which can only be described as punitive and regressive. These proposals included unpaid furloughs resulting in significant pay reductions, the elimination of two paid holidays and a significant change in the manner in which overtime will be calculated and earned. One day later, the Union served DPA with its information request seeking information directly related to the operation, intent and impact of the new proposals. Rather than responding fully, accurately and in good faith to the request, DPA elected instead to provide only a single page of information and raised the spurious objections to the requests described above.

DPA's rationale for refusing to provide the requested information, your November 17, 2008, response and our conversation at the bargaining table made clear that DPA takes the position that where an information request seeks information rather than a specific document, the employer need not respond to the request. This interpretation is incorrect as a matter of law.

In *Stockton Unified School District* (1980) PERB Dec. No. 143, the Board determined that the employer violated its duty to bargain in good faith when it refused to provide information to the Union based on its contention that the information requested did not exist in a document in the employer's possession. The Union requested information relating to health plan contribution rates for employees represented by the Union. The employer refused to provide the information claiming that the only document it had in its possession included data on non-represented employees. On that basis, the employer refused to provide any document in response to the Union's information request. PERB held that the failure to provide the information violated the obligation to bargain in good faith.

In this case, DPA has refused to provide information to the Union based on the rather incredible claim that the requests are "questions" or "hypothetical questions, not an information request." As our discussion made clear, you asserted this

position on DPA's behalf based on your belief that if an information request seeks information not contained in a specific, existing document, the employer need not comply or provide information in response to the request. As set forth more fully above, this position is clearly erroneous as a matter of law.

Please provide full, accurate and complete responses to the Union's information request dated November 10, 2008, no later than Wednesday, November 26, 2008. Should the State fail to provide full, accurate and complete responses to the Union's information request by that date, the Union will take appropriate legal action.

Thank you for your prompt attention to this matter.

Sincerely,



PAUL E. HARRIS, III
Chief Counsel
SEIU Local 1000

cc: **Michael Baratz, Chief of Staff, SEIU Local 1000**
Julie Chapman, Deputy Director, Department of Personnel Administration
David Gilb, Director, Department of Personnel Administration
Yvonne Walker, President, SEIU Local 1000
BUNC Chairs, SEIU Local 1000

EXHIBIT 7

**2008 NEGOTIATIONS
STATE OF CALIFORNIA'S CONCEPTUAL PROPOSAL
TO
SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU), LOCAL 1000
BARGAINING UNITS 1, 3, 4, 11, 14, 15, 17, 20, AND 21**

**Package Offer
November 18, 2008**

The State of California (State) hereby proposes its Conceptual Proposal for the period of December 1, 2008 through June 30, 2010.

All Units (Common Table)

Term of MOU

Effective December 1, 2008 upon ratification of the parties and expires on June 30, 2010.

Compensation (Salaries 11.1 & 11.2)

Due to the severe nature of the fiscal difficulties within California, the state proposes a 19 month furlough program. The furlough program shall be one day (8 hours) of furlough per month for a 19 month period and will place employees in temporary, non-duty status on these days. Employees shall not receive compensation for the 19 furlough days.

Holidays (Article 7)

The State proposes to ~~increase~~ the number of holidays in this article from 13 to 11. Specifically the State proposes to eliminate February 12 and the second Monday in October from the list of observed holidays. February 12 will be combined with the third Monday in February to observe presidents day.

The State proposes to ~~remove~~ the premium pay for hours worked on a holiday from this section. Employees working on a holiday will receive hour for hour pay for all hours worked on a holiday and up to 8 hours of holiday credit on the leave books

Time Counted for Overtime (Article 19)

The State proposes a change consistent with the federal Fair Labor Standards Act (FLSA). FLSA provides that only actual time spent performing work be counted as hours worked in a work period. Leave time shall no longer count as hours worked for the purpose of calculating premium (1 ½ time) overtime compensation.

2.8 Union Steward Protection

The proposed language allows stewards who are experiencing reprisal or discrimination to file a grievance at the level a level beyond the first level if the allegations are against their immediate supervisor.

2.10 New Employee Orientation

The proposed language would ~~increase~~ the union's time to meet with new employees from 15 to 20 minutes exclusive of travel time.

5.7 Non Discrimination

The proposed language would add grievance and arbitration procedures for Bargaining Unit 17 employees.

5.8 Sexual Harassment

The proposed language would add grievance and arbitration procedures for Bargaining Unit 17 employees.

5.9 JLMC on Discrimination

This language allows the Committee to meet with SPB upon their request.

5.12 Upward Mobility JLMC

The State can accept the Union's proposal of November 17, 2008. This proposal maintains the Union's ability to request and meet with Departments regarding their upward mobility program. (This proposal is tied to 13X Institute for Quality Public Services.)

9.17 State Disability Insurance

This provides for the State and Union to explore the feasibility of leave integration upon the full implementation of the 21st Century Project and deletes provisions which have been acted on by both parties.

11.4 Timely Payment of Wages

This eliminates the reference to GC 19838 as this code is already in the Supersession provisions. This is tied to 11X Recovery of Overpayments and gives the State a mechanism for recovering overpayments. The employee is entitled to be given the necessary information to verify that they have received an overpayment. It does not allow employees to receive a full paycheck when they have not worked or accounted for absences with leave credits for the hours required in a pay period.

12.7 State Owned Housing

This addresses concerns identified in the Bureau of State Audits review of the State's program.

13.1 Personnel and Evaluation Materials

This addresses the Union's concerns and limits rank and file shift lead employees access to review an employee's personnel file without written authorization and provides an inspection log.

13X Institute for Quality Public Services

The State and Union both have an interest to provide continuing education and professional development to employees. This would establish a JLMC to develop a process to provide training.

Unit 1

14.12 Personnel Specialist (PSS) Classification: Workload Factors and Weights

The State and Union have discussed concern over the outdated contents of this section. The State proposes delete the current language and replace it with the establishment of a Personnel and Payroll Joint Labor Management Workload Committee to review workload, overtime, and employee development.

Side Letter 17 Investment Officer Series (CalPERS, STRS)

The State accepts the union's proposal to delete Side Letter 17 and our counter to the union package is contained on the last two pages. The State proposes to add the language that incorporates the Incentive Award Program as established in the agreement of 2007. The State also agrees to add the Chartered Financial Analyst Pay Differential into the contract and has attached the proposed language to complete the package.

Class Studies (Section 14.9 & 14.11)

The State proposes deletion because these studies have been completed. Any changes resulting from these studies would be made consistent with Article 14.1 of the Bargaining Unit 1 MOU.

Side Letter 8 Extended Travel, Department of Insurance

This revised language brings this side letter into conformance with all State and Federal tax laws.

Unit 3

8.21 - 9-12, 10-12 and 11-12 Leave

The implementation of the 220 day work year for teachers in the CDCR makes the utilization of these play plans overly burdensome and can no longer be offered to these employees.

8.28 Educational Leave

The State accepts the Union's 11/12/08 proposal which clarifies how educational leave is converted at retirement.

21.00x Work Assignment Notification

This would address the Union's concern that CDCR make reasonable effort to inform teachers of their next year's work assignment prior to the completion of the Academic Calendar.

The following sections are intended to revise outdated language, increase the flexibility for Personal Necessity Leave and reflect the current process for D.J.J Academic Calendar: 23.1, 23.2, 23.6, 23.8, 23.9, 23.10 and 23.12.

The following sections are intended to transition the side letter agreement of the Adult 220 Day Academic Schedule into the MOU and increase the flexibility for Personal Necessity Leave: 24.1, 24.3, 24.4, 24.5, 24.6, 24.7, 24.8, 24.9, 24.10, 24.11, 24.12, 24.13, 24.14.

Unit 4

1.1 Recognition

New language would allow a new classification established by the SPB to automatically be incorporated into the agreement without bargaining each provision unless new classification is a Seasonal or Temporary type position.

8.17 Mentoring Leave

New language would allow unit 4 employees not in a post position in CDCR to receive matching time off to participate in mentoring leave. It also allows unit 4 employees in level of care facilities to participate.

10.25 Infectious Disease Control

The State accepts the Union's proposed new language to add Department of Veterans Affairs and Department of Health Care Services and the Department of Public Health.

13.11 Upward Mobility and Training

This language would require departments provide written reasons for training being denied. Also allows employees to request a copy of the upward mobility program and departmental posting of plan on the internal website.

14.4 Duty Statements, Post Orders, and Work Instructions

This language would maintain the non-grievability of Post orders but would allow grievances if the Bargaining unit 4 employees were not in a post position whether or not the document was called "Post Order"

14.14 Library Technical Assistant Classification

This would mandate that the department of Correction review the use of this classification in its institutions to ensure that they are being used properly.

19.9 Exchange of Time Off - Multi-shift

This would allow shift exchanges within the pay period instead of limiting them to a work week.

Side Letter 2

This would allow a joint labor/management group to study the Program Technician series.

Article New: Seasonal Clerks

State proposes a new section that would be similar to the Permanent Intermittent Section and would outline holidays, sick leave, vacation, annual leave and shift differential.

Class Studies (Section 14.15 & 14.16)

The State proposes deletion because these studies have been completed. Any changes resulting from these studies would be made consistent with Article 14.1 of the Bargaining Unit 4 MOU.

Unit 11

10.31 Health and Safety Inspections

Allows union representatives to accompany Health and Safety Officers during inspections except where there are safety, security or patient care concerns.

19.9 Exchange of Time Off – Multi-shift Operations

This would extend the time period for exchanges to within the pay period (rather than within the same week) and allows double shifts consistent with departmental policies.

20.3 Post and Bid (Unit 11)

The State accepts the Union's proposal to remove the class of Materials and Research Engineering Associate (MREA) from the post and bid process.

Side Letter 4 – Fish and Wildlife Specialist (Lead)

This provides that the State will meet with the Union over a new classification if the Union provides the reasons a new class is needed.

Unit 14

2.4 Distribution of Union Information

The State is proposing the deletion of this article and would propose to include Bargaining Unit 14 employees in article 2.12.

2.12 Distribution of Literature

The State has agreed to add language which would allow the distribution of literature in employee in-baskets.

21.2 Electronic Monitoring

The State agrees that technology should not be used to harass employees and have provided language to address this issue. The State is not interested in limiting its ability to utilize technology.

Unit 15

12.11 Uniform Replacement Allowance

The State accepts the Union's request to add hats and patches into the uniform section for CDCR food service employees and incorporates other definition changes.

Unit 17

9.14 Temporary Disabled Employees

The State accepts the union's proposal of June 17, 2008. This extends this provision to Bargaining Unit 17 employees.

11.16 Alternate Ranges (AR) and 231

The State proposes to delete alternate range for employees supervising inmates (AR 40). The State established an increased salary level for all positions eligible for AR 40 as a result of a court order and in accordance with the equity agreement with SEIU.

13.7 Performance Appraisal of Nursing Practices

This addresses the Union's concerns for appropriate nurse practices review. This provides a nurse supervisor review when an employee receives a "needs improvement" rating related to nursing practices on a performance appraisal.

19.2 Overtime

State proposes to delete counting of sick leave as hours worked for determining overtime to be consistent with federal law. This is consistent with the new proposal presented at the common table.

19.14 Overtime Scheduling CDCR

Limits the number of overtime hours in a week and changes procedure for filling overtime needs.

20.8 Post and Bid Procedure CDCR - DJJ

Proposes to incorporate the DJJ agreement on Post and Bid into the MOU.

20.9 Preferred Watch/Regular Days Off by Seniority - CDCR

New language providing bidding on RDO and shift, deletes current post and bid language.

Appendix 4 (F) Alternate Ranges (AR) 40 and 231

Propose delete, these alternate ranges were incorporated into base salary, see 11.16.

Unit 20

8.3 Bereavement Leave

State seeking language clarification of "3 regular work days" to "3 eight-hour days (24 hours)" per occurrence. This change would be consistent with all other State employees.

11.20 Recruitment and Retention - CDCR

These R&Rs were eliminated because the new salary ranges compensate them (effective September 1, 2006) per direction from the Receiver's Office. In addition, this also applies to the Perez salaries effective April 1, 2007.

11.60 Licensed Vocation Nurse (LVN) Recruitment and Retention

This was eliminated with new Receiver's salaries and Plata equity salary increases.

11.62 - Dental Assistant Registration Differential

Need to modify this provision eliminating \$100 per month differential for obtaining their Registered Dental Assistant Certification. Based on new Perez and Perez Equity Agreements, employees are placed in higher salary range with the Certification.

19.14 (New Proposal) CDCR LVN Overtime Process

Receiver's Office seeking new language for Overtime Process for LVNs.

Unit 21

8.28 Educational Leave

This expands the use of educational leave for the purpose of completing degrees and credentials, and provides for any denials in writing to include the reason for any denial.

12.14 Professional Organiza

This incorporates language that as technology becomes available, Bargaining Unit 21 employees will be provided access to publications provided through the State Library.

14.4 Statement

The State agrees that when a classification specification is revised, a new duty statement will be provided to the employee.

19.8 Flexible Work Hours

This revision allows hourly employees to request and utilize flexible work hours. Salaried employees already have flexibility in this area subject to supervisor's approval. The State is holding on its 7/23/08 proposal.

Appendix A Ed Leave Classes

The State accepts that this information item be updated and attached to the MOU.

Appendix B Leave Hours for Reduced Time Bases

The State accepts that this information item be updated and attached to the MOU.

Any tentative agreement reached by the State and Union is incorporated into this package proposal.

Any current contract provision not specifically addressed in this conceptual proposal will be considered to continue without modification (i.e. rollover) unless specifically noted above.

Except as detailed above, any State proposal that has been presented and not agreed upon as a tentative agreement is hereby withdrawn by the State.

Except as detailed above, any Union proposal that has been presented and not agreed upon as a tentative agreement is hereby rejected by the State.

EXHIBIT 8



Tele: (916) 554-1279
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November 20, 2008

Via Facsimile and U.S. Mail
(916) 322-0765

YVONNE R. WALKER
President

M CORA OKUMURA
Vice President
and Secretary-Treasurer

JIM HARD
Vice President
for Organizing/Representation

KATHLEEN B. COLLINS
Vice President for Bargaining

Deborah True
Department of Personnel Administration
Labor Relations Division
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258

Re: Refusal to Bargain at Unit 1 Table

Dear Ms. True:

This letter confirms that, earlier today, you refused to bargain with the Unit 1 Bargaining Team because you learned I would be present during the negotiations.

As you know, the Department of Personnel Administration previously agreed to negotiate today with SEIU Local 1000 at the Unit 1 table. Based on this agreement, Local 1000 arranged and paid for space at the Holiday Inn to accommodate these negotiations. Consequently, Local 1000 was prepared to proceed and continue bargaining. As a courtesy to you, Margarita Maldonado, the Bargaining Unit 1 Chair, notified you I would be present at the bargaining session. Ms. Maldonado made it clear that my role was as Union staff; and not as a witness or as an observer. In response, you cited to the ground rules as a basis to object to my presence and as a justification to unilaterally cancel the scheduled bargaining session.

You maintained the position that the ground rules prohibited my presence despite the fact the ground rules place no conditions whatsoever on the presence of Union staff at bargaining sessions. In fact, the only individuals referenced in the ground rules are "observers" and "expert witnesses." The ground rules define an observer as a "SEIU Local 1000 bargaining unit member." Ms. Maldonado reiterated to you that I am not an SEIU Local 1000 bargaining unit member (observer) or an "expert witness." As such, the ground rules do not prohibit my presence and you had no grounds to unilaterally cancel the bargaining session.

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SEIU JA 000098

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 January 13, 2009, I served a
6 copy of the within document(s):

7 **REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
8 DEMURRER TO VERIFIED PETITIONS FOR WRIT OF
9 MANDATE AND COMPLAINTS FOR DECLARATORY
AND INJUNCTIVE RELIEF BY ARNOLD
SCHWARZENEGGER, DAVID GILB AND DEPARTMENT
OF PERSONNEL ADMINISTRATION**

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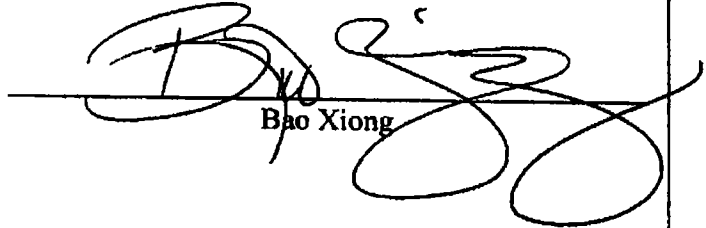
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8
9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

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

CASE Nos. 34-2008-80000126; 34-2009-
80000134; and 34-2009-80000135

15
16 **Petitioners/Plaintiffs,**

17 v.

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

SEIU LOCAL 1000's
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF

21 **Respondents/Defendants.**

Date: January 29, 2009
Time: 9:30 a.m.
Dept: 19
Judge: Hon. Patrick Marlette

22 **CALIFORNIA ATTORNEYS,**
ADMINISTRATIVE LAW JUDGES AND
23 **HEARING OFFICERS IN STATE**
EMPLOYMENT,

24 **Petitioners/Plaintiffs,**

25 v.

26 **ARNOLD SCHWARZENEGGER as,**
27 **Governor of the State of California; DAVID**
GILB as Director of the Department of
28 **Personnel Administration; JOHN CHIANG,**

LOCAL 1000's MPAs IN SUPPORT OF WRIT

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1 Controller of the State of California;
2 and DOES 1 through 10,

3 Defendants/Respondents.

4 SERVICE EMPLOYEES INTERNATIONAL
5 UNION, LOCAL 1000,

6 Petitioners/Plaintiffs,

7 v.

8 ARNOLD SCHWARZENEGGER, as
9 Governor, State of California;
10 DEPARTMENT OF PERSONNEL
11 ADMINISTRATION; JOHN CHIANG, as
12 State Controller, and DOES 1 THROUGH 20,
13 INCLUSIVE,

14 Respondents/Defendants.

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I. INTRODUCTION

On December 19, 2008, Governor Arnold Schwarzenegger ("Governor") issued Executive Order S-16-08 ("Order"), an illegal Order that instructs all State departments and agencies to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. In effect, the Governor seeks to cut salaries of state employees by approximately ten (10) percent over a seventeen (17) month period. As legal authority for the furlough, the Order cites to California Government Code, section 3516.5, a portion of the Ralph C. Dills Act. Section 3516.5, however, does not authorize the Governor or the Department of Personnel Administration ("DPA") to issue furloughs or reduce the salaries of represented state employees. Consequently, the Governor did not cite to any legal authority that would support his issuance of a furlough Order, and subsequently affirm the implementation of that Order by the DPA, and the Office of the State Controller. Service Employees International Union, Local 1000 ("Local 1000") seeks the Court's intervention to block implementation of the Governor's illegal Order.

In addition, the furlough will affect the exempt status of those state employees who are currently considered FLSA-exempt. To be specific, the furlough will destroy a state employees' exempt status during the workweek that a state employee is furloughed. Local 1000 seeks a declaration that FLSA-exempt state employees represented by Local 1000 are entitled to overtime compensation during a furlough week.

II. STATEMENT OF FACTS

Petitioner/Plaintiff Local 1000 is the exclusive certified collective bargaining representative of employees in State Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20 and 21. Local 1000 represents approximately ninety-five thousand (95,000) rank and file state employees. Through the furlough Order, the Governor seeks to reduce the salaries of state employees by ten percent (10%) of most, if not all, of these state employees represented by Local 1000.

On or about November 6, 2008, the Governor released a letter addressed to "Valued State Workers." (Declaration of J. Felix De La Torre ¶ 3, Exhibit A.) In this letter, the Governor discussed a projected revenue shortfall confronting the State, and the need for spending reductions.

1 The Governor also acknowledged that “spending reductions will impact our state workers.” (Id.)
2 The Governor noted that state employees “deliver important services every day.” Nevertheless,
3 the Governor’s letter proposed to furlough state employees for one-day per month for eighteen
4 (18) months. In that letter, the Governor made clear that his intent was to reduce the salaries of
5 state employees by five percent (5%). Remarkably, the Governor referred to the furloughs as a
6 “pay cut”:

7 “Furloughs: All state employees will be furloughed one day each
8 month for the next year and half, a total of 19 days. This will result
9 in a pay cut of about 5 percent. The *pay cut* will not affect
retirement and other benefits for which you are eligible.”

10 (Id.)(emphasis added)

11 On December 19, 2008, the Governor issued Executive Order S-16-08. The Order states in
12 relevant part:

13 “**IT IS FURTHER ORDERED** that effective February 1, 2009
14 through June 30, 2010, the Department of Personnel Administration
15 shall adopt a plan to implement a furlough of represented state
employees and supervisors for two days per month, regardless of
funding source.”

16 (A true and correct copy of Executive Order S-16-08 is attached as “Exhibit A” to the Verified
17 Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief.)

18 Pursuant to the Order, represented state employees will have their work hours reduced by
19 two days per month beginning in February 2009. In other words, the Order doubled the furlough
20 from one day each month to two days each month. This two day furlough will also result in the
21 doubling of the “pay cut” to the salaries of the thousands of represented state employees’— from
22 five to ten percent. The Governor cited no proper authority to support an Order that would reduce
23 the wages for represented state employees—a legislative act. Instead, the Governor relied on
24 Government Code, section 3516.5, a portion of the Ralph C. Dills Act that has no relationship to
25 the setting of salaries or work hours for state employees.

26 To implement the illegal Order, on January 9, 2009, the Director for the DPA issued a
27 memorandum that outlined the Governor’s furlough implementation plan. In part, DPA’s
28 implementation memo provided that:

1 For operations that cannot close, Agency Secretaries (and Directors who do not report to an
2 agency) may request approval from DPA to use a “self-directed” furlough for specific positions.

3 There will be two types of furloughs:

- 4 • Employees take two furlough days each month but on days chosen by the employee
5 and approved by the supervisor. For example, revenue-generating positions may be
6 considered for this type of furlough.
- 7 • Employees accrue two furlough days per month to be taken when feasible. Furlough
8 days that cannot be used within the same month must be taken within two years
9 following the end of the furlough program. Furlough days will not be cashed out.
10 Posted positions in 24/7 facilities such as prisons and hospitals automatically
11 qualify for this self-directed furlough and do not require prior approval from DPA.

12 (De La Torre Decl. ¶ 4, Exhibit B)

13 As with the Order, the DPA implementation plan provides no procedures or mechanism to
14 insure that formerly exempt employees are properly paid overtime wages due on pay day. As
15 detailed below, the Order and plan are illegal for a number of reasons. In response, Local 1000
16 and several other state employee unions filed legal challenges to the illegal furlough plan. In the
17 interest of judicial economy, Local 1000 will incorporate the procedural and historical facts
18 outlined in co-Petitioners/Plaintiffs’ opening papers.

19 III. ARGUMENT

20 A. LEGAL STANDARD FOR WRIT OF MANDATE

21 A traditional writ of mandate brought under Code of Civil Procedure section 1085 lies “to
22 compel the performance of an act which the law specifically enjoins, as a duty resulting from an
23 office, trust, or station.” (Code of Civil Proc. § 1085.) Under this section, mandate will lie to
24 compel the performance of a clear, present, and usually ministerial duty in cases where a petitioner
25 has a clear, present and beneficial right to performance of that duty. (*Morgan v. Bd. of Pension*
26 *Comrs.* (2000) 85 Cal.App.4th 836, 842, 102 Cal.Rptr.2d 468.)

27 Mandamus has long been recognized as the appropriate means by which to challenge a
28 government official’s refusal to implement a duly enacted legislative measure. (*Morris v. Harper*

1 (2001) 94 Cal.App.4th 52, 58.) In the present matter, Petitioners seek a writ of mandate to
2 compel the Governor and the DPA to comply with the Constitution of the State of California and
3 state statutes which prevent the unilateral reduction of represented state employees' salaries and
4 hours of work. Local 1000 seeks a Court order directing Respondents/Defendants to follow all
5 laws, as it is evident the Order violates the California Constitution and state laws, as described
6 below.

7 **B. THE GOVERNOR IS WITHOUT AUTHORITY TO FURLOUGH STATE**
8 **EMPLOYEES AND SUCH AN ORDER IS UNLAWFUL**

9 *1. The Governor's Power to Issue Executive Orders is Limited to Those Matters*
10 *Authorized by the California Constitution or Delegated by the Legislature*

11 The Governor is not a despot. The Governor's power is valid only to the extent it is
12 exercised consistent with the authority vested in that office by the California Constitution, or
13 delegated by the Legislature. (Cal. Const. § 1, Art. V.) The California Constitution describes the
14 "executive power" of the Governor as follows:

15 "The supreme executive power of this State is vested in the
16 Governor. The Governor shall see that the law is faithfully
executed."

17 (Cal. Const. Article V, § 1.)

18 Therefore, the Governor's authority to issue an executive order derives, in part, from the
19 constitutional provisions conferring the supreme executive power on the Governor, and providing
20 that the Governor shall see that the laws are "faithfully executed." Because only the Legislature is
21 empowered to create laws, the Governor is authorized to issue executive orders only as permitted
22 by those statutes approved by the Legislature which explicitly delegate executive discretion to the
23 Governor over particular areas. Consequently, the Governor's power to issue any executive order
24 must be rooted in a statute.

25 In issuing Executive Order S-16-08, the Governor failed to provide any statutory authority
26 to support his effort to furlough represented state employees. Instead, as legal authority to
27 implement the furlough, the Governor cites only to California Government Code, section 3516.5.

28 ///

1 In relevant part, Section 3516.5 states:

2 "Except in cases of emergency as provided in this section, the
3 employer shall give reasonable written notice to each recognized
4 employee organization *affected by any law, rule, resolution, or*
5 *regulation* directly relating to matters within the scope of
6 representation proposed to be adopted by the employer, and shall
7 give such recognized employee organizations the opportunity to
8 meet and confer with the administrative officials or their designated
9 representatives as may be properly designated by law.

10 In cases of emergency when the employer determines that a *law,*
11 *resolution, or regulation* must be adopted immediately without
12 prior notice or a meeting with the recognized employee organization,
13 the administrative officials or their designated representatives as
14 may be properly designated by law shall provide such notice and
15 opportunity to meet and confer in good faith at the earliest practical
16 time following adoption of such law, rule, resolution, or regulation."

17 There are numerous problems with the Governor's reliance on section 3516.5. First and
18 foremost, Section 3516.5 does not authorize the Governor to unilaterally furlough state employees.
19 In fact, section 3516.5 has nothing to do with furloughs, the setting of salaries, or establishing
20 work days and work hours for state employees. That statute simply permits the state to
21 temporarily forego meeting and conferring with a union over a proposed change in the law when
22 the state can show there is a legitimate emergency.

23 Second, the meet and confer exemption under section 3516.5 does not apply to executive
24 orders; it applies only to proposed changes in a "law, resolution or regulation¹." Without question,
25 the California Legislature is the only state entity with the authority to pass a "law or resolution."
26 While a state agency or department may adopt a regulation, the regulation must first be authorized
27 by a statute and subsequently adopted through the procedure contained in the Administrative
28 Procedures Act ("APA"). (Ca. Gov. Code § 11340 *et seq.*) If a state agency issues, enforces, or
attempts to enforce a rule without following the APA, the rule is called an "underground
regulation." (1 CCR § 250.) State agencies are prohibited from enforcing underground
regulations. (*Tidewater Marine Western Inc. v. Victoria Bradshaw* (1996) 14 Cal.4th 557.) It is

¹It is notable the Legislature did not exempt the state from bargaining over a proposed "rule," even during an emergency, as it omits any reference to the term "rule" in subpart (b), which is the exemption to bargaining.

1 important to emphasis that section 3516.5 exempts only proposed changes in the law—which is a
2 Legislative function. The purpose of an executive order is to “execute” the law; not create laws.
3 Thus, section 3516.5 is not applicable to an executive order which is not a proposed “law,
4 resolution, or regulation.”

5 Second, even assuming an executive order qualifies as a “law, resolution, or regulation,”
6 section 3516.5 is inapplicable where the proposed “law, resolution, or regulation” is enacted
7 without the requisite legal authority. For example, the state would not be able to rely on the
8 exemption under section 3516.5 exemption, and avoid its meet and confer obligations, if the
9 regulation were enacted in violation of the APA. Thus, before section 3516.5 is even applicable to
10 a meet and confer situation, the proposed change in law, whether statutory or regulation change,
11 must be valid. Because the Governor has no authority to furlough state employees or reduce their
12 legislatively set salaries, the Order at issue is unlawful.

13 Where an Executive Order is issued without authority, as in this case, the Order is invalid.
14 Consequently, section 3516.5 does not confer on the Governor the power to reduce the salaries of
15 represented state employees.

16 **2. *The Governor's Order Violates the Government Code and is Therefore Illegal.***

17 The portion of Order, which establishes furloughs for represented state employees, directly
18 violates state statutes, and is therefore illegal. In the Order, the Governor directs DPA to adopt a
19 plan to implement a furlough of all represented state employees for two days per month from
20 February 1, 2009 through June 30, 2010. (See, Exhibit A attached to Verified Petition for Writ of
21 Mandate and Complaint for Injunctive and Declaratory Relief.) Upon implementation of this
22 furlough Order, represented state employees will have their hours reduced by two days a month.
23 This reduction in hours will be accompanied by a loss of two days of pay each month. The
24 reduction in hours mandated by the furlough order equates to a ten percent (10%) pay reduction for
25 each represented state employee. By its very terms, the Order expressly reduces the salaries and
26 hours of work for represented state employees.

27 However, setting compensation and hours of work for represented state employees is a
28 legislative function, not an executive one. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1325,

1 fn. 10; *Lowe v. California Resources Agency* (1991) 1 Cal.App.4th 1140, 1151.) The Legislature
2 specifically reserved the function of setting the salaries and hours of work for represented state
3 employees to itself. The Legislature enacted Government Code section 19826(b) which states:

4 “(b) Notwithstanding any other provision of law, the department
5 shall not establish, adjust, or recommend a salary range *for any*
6 *employees in an appropriate unit where an employee*
7 *organization has been chosen as the exclusive representative*
8 pursuant to Section 3520.5.” (emphasis added)

9 This statute specifically withheld from the Governor and the DPA any authority to
10 “establish, adjust, or recommend” changes in salaries for represented state employees. The statute
11 expressly “preclude[s] DPA from unilaterally adjusting represented employees’ wages.”

12 (*Department of Personnel Administration v. Superior Court* (1992) 5 Cal.App.4th 155, 178.)

13 Accordingly, “the question of represented employees’ wages...must ultimately be resolved by the
14 Legislature itself.” (*Ibid.*) As a consequence, the Governor is expressly forbidden from changing
15 the salaries of represented employees.

16 The Legislature enacted the Ralph C. Dills Act (“Dills Act”) to provide for a reasonable
17 method of establishing the wages, hours, and other terms and conditions of employment for
18 represented state employees. (Gov. Code § 3512.) The Dills Act allows the DPA and state
19 employee unions to negotiate wages, hours, and working conditions into a memorandum of
20 understanding. Section 3517.6 of the Dills Act permits the parties to negotiate provisions into a
21 memorandum of understanding which supercede certain statutory provisions, including section
22 19826. It is also notable that after the DPA and the union negotiate the terms of an agreement, the
23 Legislature ultimately must approve the agreement and salaries agreed upon. (Cal. Gov. Code §
24 3517.5.)

25 In the absence of a memorandum of understanding, statutory provisions such as Section
26 19826 remain in effect. (*Department of Personnel Administration v. Superior Court* (1992) 5
27 Cal.App.4th 155, 174-175.) The Court in *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1325
28 aptly stated, “Salary setting is a legislative function and since the Legislature chose not to delegate
this function to the DPA with respect to represented employees under the Ralph C. Dills Act, it
necessarily retained that role for itself.” Thus, it is clear that the Legislature, not the Governor or

1 the DPA, retains the sole authority to “establish, adjust, or recommend” changes in salaries for
2 represented state employees.

3 Pursuant to Section 3520.5 of the Dills Act, Local 1000 is the certified exclusive
4 representative of approximately ninety-five thousand (95,000) state employees in Bargaining Units
5 1, 3, 4, 11, 14, 15, 17, 20 and 21. All of the employees in these bargaining units are therefore
6 “represented” state employees and therefore subject to the protections on salary adjustments
7 established by the Legislature in section 19826(b). This provision makes clear that neither the
8 Governor nor the DPA may alter the salaries of any Local 1000 bargaining unit member. The
9 furlough order is in direct conflict with Section 19826(b) because it seeks to implement a salary
10 reduction for represented state employees. The Order’s ten percent (10%) salary reduction
11 undoubtedly “establish[es], adjust[s], or recommend[s]” changes in salaries for represented state
12 employees in violation of section 19826(b). The furlough Order is therefore illegal under Section
13 19826(b).

14 In addition to salaries, the forty hour workweek of represented state employees is similarly
15 protected by statute. Government Code section 19851 states in relevant part:

16 “It is the policy of the state that the workweek of the state employee
17 shall be 40 hours, and the workday of state employees eight hours,
18 except that workweeks and workdays of a different number of hours
19 may be established in order to meet the varying needs of the
20 different state agencies.”

19 Government Code section 19852 states:

20 “When the Governor determines that the best interests of the state
21 would be served thereby, the Governor may require that the 40-hour
22 workweek established as the state policy in Section 19851 shall be
23 worked in four days in any state agency or part thereof.”

23 These statutes make clear that it is the policy of the State that state employees shall work a
24 forty hour week. Even though the Governor is given the limited authority to establish a four day
25 workweek in section 19852, state employees must still work a forty hour week. Thus, all section
26 19852 allows is the creation of what is commonly referred to as “four tens,” or a four day
27 workweek with ten hour days. Notably, sections 19851 and 19852 are similarly listed in the Dills
28 Act as supersedable statutes. The parties may therefore agree to a provision in a memorandum of

1 understanding which conflicts with the statutory requirements. Neither the Governor nor the DPA
2 have the authority to effect a reduction in hours for represented state employees without
3 Legislative approval. Yet, the furlough portion of the Executive Order will reduce state
4 employees' workweeks to thirty-two (32) hours two times a month. A thirty-two (32) hour
5 workweek directly conflicts with "the policy of the state" to maintain a forty (40) hour workweek
6 codified in Sections 19851 and 19852.

7 The furlough Order clearly violates several state statutes and is therefore illegal. The Court
8 must issue a writ of mandate directing the Governor and the DPA to comply with the law, and
9 preventing the unilateral reduction of salaries and hours of represented state employees.

10 **3. *The Furlough Order Violates the Constitution and the Doctrine of Separation of***
11 ***Powers and is Therefore Illegal.***

12 Executive Order S-16-08 also violates the Constitution of the State of California. One of
13 the fundamental provisions of the Constitution is found in Article III, section 3, and sets forth the
14 doctrine of separation of powers. Article III, section 3 states, "The powers of state government are
15 legislative, executive, and judicial. Persons charged with the exercise of one power may not
16 exercise either of the others except as permitted by this Constitution." The separation of powers
17 doctrine not only guards against the concentration of power in a single branch of government, it
18 also protects one branch against the overreaching of the others. (*Kasler v. Lockyer* (2000) 23
19 Cal.4th 472, rehearing denied, certiorari denied 121 S.Ct. 1090.) The present case is an example
20 of the Governor overreaching into the powers vested in the Legislature.

21 The Legislature declares public policy and makes provisions for the ways and means of its
22 accomplishment, while carrying out those declared policies is an administrative or "executive"
23 function for purposes of the separation of powers doctrine. (*California Radioactive Materials*
24 *Management Forum v. Department of Health Services* (1993) 15 Cal.App.4th 841, rehearing
25 denied, review denied.) Article V, section 1, of the Constitution states in relevant part: "The
26 Governor shall see that the law is faithfully executed." The Governor is therefore bound by the
27 Constitution to carry out the laws and policies established by the Legislature, including those laws
28

1 regarding the salaries and hours of state employees. This includes Government Code sections
2 19826, 19851, and 19852.

3 The furlough portion of the Order runs afoul of Article III, section 3, and Article V, section
4 1, because it ignores the statutory framework regarding how state employees' salaries and hours of
5 work are established. As argued above, the Legislature enacted statutes which divest the Governor
6 and the DPA of any authority to change the salaries and hours for represented state employees.
7 Such authority rests entirely with the Legislature. By reducing the salaries and work hours of
8 represented state employees, the furlough portion of the Order overreaches into the powers vested
9 in the Legislature in violation of the state Constitution and the separation of powers doctrine.

10 As an executive officer, the Governor may not exercise any legislative function except that
11 granted to him expressly by the terms of the Constitution. (*Lukens v. Nye* (1909) 156 Cal 498.)
12 This legal tenet is echoed in case law which describes the authority of an administrative body, such
13 as the DPA. An administrative agency has only such authority as has been conferred on it.
14 Administrative action that is not authorized by, or is inconsistent with, acts of the Legislature is
15 void. (*Association for Retarded Citizens-California v. Department of Developmental Services*
16 (1985) 38 Cal.3d 383, 391-392.) Petitioners are unaware of any provision of the Constitution that
17 allows the Governor to issue an Executive Order which reduces the salaries and work hours of
18 represented state workers. Because the Governor lacks any enumerated authority in the
19 Constitution to adjust the salaries and work hours of Local 1000 bargaining unit members, the
20 Petition must be granted.

21 **C. THE EXECUTIVE ORDER FAILS TO ADDRESS OVERTIME PAY FOR**
22 **EXEMPT STATE EMPLOYEES**

23 The Executive Order further conflicts with, and changes the Fair Labor Standards Act
24 ("FLSA") exemption status of numerous Local 1000 members. The FLSA is codified in 29
25 U.S.C. sections 201-219. The FLSA establishes standards for minimum wages, overtime pay, and
26 record-keeping, among other things. These standards apply to both full-time and part-time
27 workers in the private and public sectors. The FLSA covers state and local government agencies
28 regardless of their dollar volume of business.

1 ***1. The Order Does Not Provide a System or Mechanism to Properly Compensate the***
2 ***Thousands of State Employees Who Will Lose Their Exempt Status as a Result***
3 ***of the Furloughs.***

4 The FLSA requires that employers pay overtime compensation for time worked beyond
5 forty (40) hours in a workweek. (29 USC § 206a.) All overtime work that is ordered, approved, or
6 “suffered or permitted” must be compensated. Section 13(a)(1) of the FLSA provides a complete
7 minimum wage and overtime exemption for “any employee employed in a bona fide executive,
8 administrative, or professional capacity,” as those terms are defined in 29 C.F.R. Part 541. An
9 employee may qualify for exemption if the test relating to duties and salary are met. Exempt
10 employees are not entitled to, and do not receive overtime compensation. An employee is exempt
11 if the employee meets the “salary basis” test. As noted in 29 CFR § 541.602(a):

12 ***[a]n employee will be considered to be paid on a “salary basis” . . . if***
13 ***the employee regularly receives each pay period on a weekly, or less***
14 ***frequent basis, a predetermined amount constituting all or part of the***
15 ***employee’s compensation, which amount is not subject to reduction***
16 ***because of variations in the quality or quantity of the work***
17 ***performed. Subject to the exceptions provided in [29 C.F.R. §***
18 ***541.602(b)], an exempt employee must receive the full salary for***
19 ***any week in which the employee performs any work without***
20 ***regard to the number of days or hours worked. (emphasis added)***

21 But the FLSA provides that if a public employer, such as the State of California, furloughs
22 an FLSA-exempt employee, the employee loses her or his exempt status during the furlough work
23 week. To be specific, 29 CFR § 541.710 provides:

24 ***(b) Deductions from the pay of an employee of a public***
25 ***agency for absences due to a budget-required furlough shall***
26 ***not disqualify the employee from being paid on a salary***
27 ***basis except in the workweek in which the furlough occurs***
28 ***and for which the employee's pay is accordingly reduced.***
 (emphasis added)

29 A significant number of Local 1000 members employed by the State are considered exempt
30 under the FLSA. In fact, the State expressly recognizes that a substantial number of state
31 employees represented by Local 1000 are exempt under the FLSA. In relevant part, Section 19.1
32 of the parties’ memorandum of understanding provides as follows:

33 ***“State employees who are exempt/excluded from the FLSA are not***
34 ***hourly workers. The compensation they receive from the State is***
35 ***based on the premise that they are expected to work as many hours***

1 *as is necessary to provide the public services for which they were*
2 *hired.* Consistent with the professional status of these employees,
3 they are accountable for their work product, and for meeting the
4 objective of the agency for which they work.”

4 (De La Torre Decl. ¶ 5, Exhibit C.)(emphasis added)

5 Based on this contract language, FLSA-exempt Local 1000 members are contractually
6 . obligated to work as many hours as necessary to complete their assignments. Because FLSA-
7 exempt state employees subject to the Local 1000 memorandum of understanding are obligated to
8 work as many hours as necessary to accomplish their tasks, those employees will be required to
9 work well beyond 40 hours in each workweek to make up for the lost work time due to the two day
10 a month furloughs. As such, the furlough Order is illegal as it does not provide any requirement or
11 mechanism to insure that Local 1000 members are paid overtime for the work that will
12 undoubtedly be necessary to provide the public services for which they were hired. Neither the
13 Order or the following DPA implementation plan provide any means or mechanism to provide for
14 record-keeping, computation and payment of overtime wages.

15 On January 9, 2009, DPA issued a memorandum that outlined the state’s furlough
16 implementation plan. The implementation memo provided, in part, that:

17 For operations that cannot close, Agency Secretaries (and Directors who do not report to an
18 agency) may request approval from DPA to use a “self-directed’ furlough for specific positions.

19 There will be two types of furloughs:

- 20 • Employees take two furlough days each month but on days chosen by
21 the employee and approved by the supervisor. For example,
22 revenue-generating positions may be considered for this type of furlough.
- 23 • Employees accrue two furlough days per month to be taken when feasible.
24 Furlough days that cannot be used within the same month must be taken
25 within two years following the end of the furlough program. Furlough
26 days will not be cashed out. Posted positions in 24/7 facilities such as
27 prisons and hospitals automatically qualify for this self-directed furlough
28 and do not require prior approval from DPA.

1 (De La Torre Decl. ¶ 4, Exhibit B.)

2 As with the Executive Order, the DPA implementation plan provides no procedures or
3 mechanism to insure that formerly exempt employees are properly paid overtime wages due and
4 owing on pay day. In fact, neither the Order or the DPA implementation memorandum address the
5 complex logistical problems facing the state in recording, calculating and issuing overtime
6 payments to formerly exempt employees. Because the Order does not account for this legal
7 obligation, the Governor seeks to implement the Order that violates the FLSA on its face.

8 **2. *The Order Violates the FLSA Requirement that All Wages Due Be Paid on the***
9 ***Next Regular Pay Day.***

10 The rule is that all FLSA wages, whether minimum or overtime wages, must be paid “when
11 due,” which normally means at the next regularly scheduled pay day. Section 778.106, Title 29, of
12 the Code of Federal Regulations, provides required pay periods for overtime wages:

13 “There is no requirement in the Act that overtime compensation be
14 paid weekly. The general rule is that overtime compensation earned
15 in a particular workweek *must be paid on the regular pay day for*
16 *the period in which such workweek ends.* When the correct amount
17 of overtime compensation cannot be determined until some time
18 after the regular pay period, however, the requirements of the Act
19 will be satisfied if the employer pays the excess overtime
20 compensation as soon after the regular pay period as is practicable.
21 Payment may not be delayed for a period longer than is reasonably
22 necessary for the employer to compute and arrange for payment of
23 the amount due and in no event may payment be delayed beyond the
24 next payday after such computation can be made. (Emphasis added)

25 Under the FLSA, “Late pay” is generally the same as “no pay.” (*Biggs v. Wilson*, 1 F.3d
26 1537 (9th Cir. 1993).) This is important because an employer that fails to pay wages when due is
27 liable for liquidated damages (double damages). The implementation plan runs afoul of the FLSA
28 because it requires certain employees to lose ten percent (10%) of their salary each month despite
the fact that the employee worked each and every day without being furloughed. To be specific,
those employees who fall under the second type of furlough will have their FLSA rights violated
because each will work a full-month but not receive their full salary on the next scheduled pay
date.

///

SEIU LOCAL 1000
1808 14th Street
Sacramento, California 95811
Telephone: (916) 554-1279

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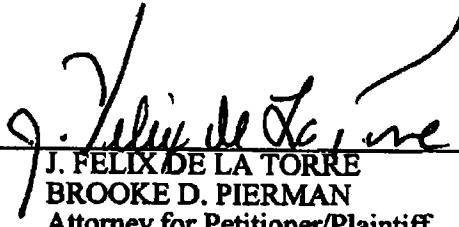
IV. CONCLUSION

For the above-identified reasons, Local 1000 respectfully requests the Court issue the writ as requested in the Petition.

DATED: January 13, 2009

SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 1000

By



J. FELIX DE LA TORRE
BROOKE D. PIERMAN
Attorney for Petitioner/Plaintiff
SEIU LOCAL 1000

ORIGINAL

1 PAUL E. HARRIS, III, Chief Counsel (State Bar No. 180265)

ANNE GIESE (State Bar No. 143934)

2 J. FELIX DE LA TORRE (State Bar No. 204282)

BROOKE D. PIERMAN (State Bar No. 222630)

3 SERVICE EMPLOYEES INTERNATIONAL UNION
LOCAL 1000

4 1808 14th Street

Sacramento, CA 95811

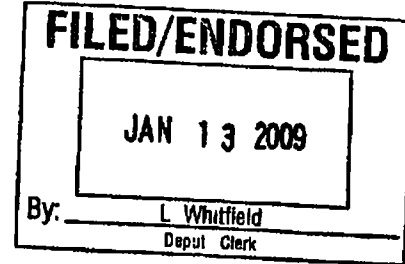
5 Telephone: (916) 554-1279

6 Facsimile: (916) 554-1292

7 Attorneys for Petitioner/Plaintiff

SERVICE EMPLOYEES INTERNATIONAL UNION

LOCAL 1000



8
9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SACRAMENTO**

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

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 Respondents/Defendants.
21 _____ /

22 CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
23 HEARING OFFICERS IN STATE
EMPLOYMENT,

24 Petitioners/Plaintiffs,

25 v.

26 ARNOLD SCHWARZENEGGER as,
27 Governor of the State of California; DAVID
GILB as Director of the Department of
28 Personnel Administration; JOHN CHIANG,

CASE Nos. 34-2008-80000126; 34-2009-
80000134; and 34-2009-80000135

**DECLARATION OF J. FELIX DE LA
TORRE IN SUPPORT OF VERIFIED
PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF**

Date: January 29, 2009

Time: 9:30 a.m.

Dept: 19

Judge: Hon. Patrick Marlette

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1 Controller of the State of California;
2 and DOES 1 through 10,

3 Defendants/Respondents.

4 SERVICE EMPLOYEES INTERNATIONAL
5 UNION, LOCAL 1000,

6 Petitioners/Plaintiffs,

7 v.

8 ARNOLD SCHWARZENEGGER, as
9 Governor, State of California;
10 DEPARTMENT OF PERSONNEL
11 ADMINISTRATION; JOHN CHIANG, as
12 State Controller, and DOES 1 THROUGH 20,
13 INCLUSIVE,

14 Respondents/Defendants.

15 I, J. FELIX DE LA TORRE, do declare and say:

16 1. I make this declaration on the basis of my own personal knowledge and if called to
17 testify to the facts stated herein, I am competent to do so.

18 2. I am a Staff Attorney for the Service Employees International Union, Local 1000
19 (“SEIU Local 1000”) and have held this position since August 2008. Prior to working at Local 1000,
20 I have worked as an attorney representing labor unions for approximately eight years.

21 3. In my capacity as a Staff Attorney for SEIU, I am aware that Governor Schwarzenegger
22 sent a letter to all state employees on November 6, 2009. The letter proposes a one day a month
23 furlough for state employees resulting in a pay cut of about five percent. (A true and correct copy of
24 the November 6, 2009 letter is attached hereto as “Exhibit A.”)

25 4. In my capacity as a Staff Attorney for SEIU, I am aware that Julie Chapman, Deputy
26 Director of Labor Relations from the Department of Personnel Administration (“DPA”) sent a letter
27 to Michael Baratz, Chief of Staff for SEIU Local 1000 on January 9, 2009. Attached to Chapman’s
28 letter was a memorandum from David A. Gilb, Director DPA to all Agency Secretaries,
Undersecretaries, and Directors dated January 9, 2009. The memorandum deals with the furlough plan

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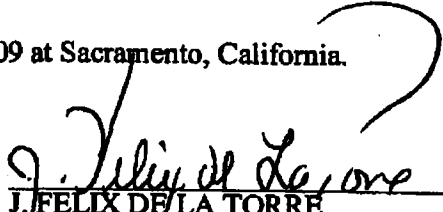
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pursuant to Executive Order S-16-08. (A true and correct copy of the January 9, 2009 letter and memorandum are attached hereto as "Exhibit B.")

5. In my capacity as a Staff Attorney for SEIU, I am familiar with the Memorandum of Understanding between SEIU Local 1000 and the State of California. Article 19.1 of the parties Memorandum of Understanding deals with the hours of work for SEIU Local 1000 members. (A true and correct copy of Article 19 of the parties Memorandum of Understanding effective July 1, 2006 through June 30, 2008 is attached hereto as "Exhibit C.")

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

Executed this 13th day of January 2009 at Sacramento, California.



J. FELIX DE LA TORRE
Staff Attorney for Petitioner/Plaintiff
SEIU Local 1000

EXHIBIT A



GOVERNOR ARNOLD SCHWARZENEGGER

November 6, 2008

Dear Valued State Worker,

During the six weeks since I signed our state budget, the mortgage crisis has deepened, unemployment has increased and the stock market has dropped significantly. As a result, we are facing a projected \$11 billion revenue shortfall this fiscal year.

These dramatic developments require us to work together and respond immediately. I have called the Legislature into special session to address our fiscal emergency, and I am proposing a combination of economic stimulus measures, programs to keep Californians in their homes, revenue increases and spending reductions to address the real, immediate financial problems facing the state.

If approved by the Legislature, these spending reductions will impact our state workers. Californians rely on you to deliver important services every day, and I am proud of your hard work and dedication to the state. That's why I want you to hear about these impacts from me directly.

To achieve cost savings and protect vital state services, I am proposing the following measures:

- **Furloughs:** All state employees will be furloughed one day each month for the next year and half, a total of 19 days. This will result in a pay cut of about 5 percent. The pay cut will not affect retirement and other benefits for which you are eligible.
- **Holidays:** The Columbus Day holiday will be eliminated, and Lincoln's Birthday and Washington's Birthday will be observed together on Presidents Day. In addition, we will no longer pay time-and-a-half to employees working on holidays. Instead, employees required to work on holidays will receive holiday credit for use at another time, as they do now.
- **Four-day week:** The law will be amended to make it easier for departments to allow employees to work ten hours a day, four days a week.
- **Overtime:** The state will no longer count leave time (including sick leave and vacation time) as time worked for overtime purposes. Instead, employees will only become eligible for overtime pay once actual time worked exceeds the required threshold.

November 6, 2008
Page two

These changes will save the state roughly \$1.4 billion over two years. I know these are not easy proposals, and I assure you we are working closely with union leadership to achieve results in the least painful way possible. All the actions we're proposing must first be approved by the Legislature.

I've always said that California has the most talented and most diligent state employees, and I am confident we will make it through this tough time by working together. Thank you for your cooperation and hard work on behalf of the State of California.

Sincerely,



Arnold Schwarzenegger

EXHIBIT B



DEPARTMENT OF PERSONNEL ADMINISTRATION

ARNOLD SCHWARZENEGGER, Governor

MEMORANDUM



DATE: January 9, 2009

TO: Agency Secretaries
Undersecretaries
Directors

FROM: David A. Glib
Director
Office of the Director
(916) 322-5193; FAX (916) 322-8378

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

To reduce current spending to ensure that essential services of the State are not jeopardized and the public health and safety is preserved, the Department of Personnel Administration, under the Governor's authority and at the direction of the Governor, 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 this February. As such, these unpaid furlough days are not work days and employees shall not report to work. The first furlough day under this plan will be February 6, 2009.

DPA will post details on its website early next week and send a memo to personnel offices with additional information.

For operations that cannot close, Agency Secretaries (and Directors who do not report to an agency) may request approval from DPA to use a 'self-directed' furlough for specific positions. There will be two types of self-directed furlough:

- Employees take two furlough days each month but on days chosen by the employee and approved by the supervisor. For example, revenue-generating positions may be considered for this type of furlough.
- Employees accrue two furlough days per month to be taken when feasible. Furlough days that cannot be used within the same month must be taken within two years following the end of the furlough program. Furlough days will not be cashed out. Posted positions in 24/7 facilities such as prisons and hospitals automatically qualify for this self-directed furlough and do not require prior approval from DPA.

Salaries will be adjusted to reflect the unpaid furlough days, but benefits will remain the same (i.e., the furlough will not affect payouts for unused leave, service credit, health and retirement benefits, etc.)

Please note: The state continues to meet with representatives for state employees about the impact of this program and will notify you of any further developments.

1515 "S" Street, North Building, Suite 400, Sacramento, CA 95811-7243
www.dpa.ca.gov

SEIU JA 000127

DEPARTMENT OF PERSONNEL ADMINISTRATION

LABOR RELATIONS DIVISION
1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258



January 9, 2009

Mr. Michael Baratz
Service Employees International Union
PO Box 160005
Sacramento, CA 95816

Dear Mr. Baratz:

I have attached a copy of the Department of Personnel Administration's (DPA) implementation plan with regard to the furlough portion of Governor Schwarzenegger's Executive Order S-16-08. The implementation plan is being shared with you in response to numerous requests by employee organizations for information regarding the details of the furlough program. This plan was also distributed to department management who may share it with their employees. In addition, it will be posted on the DPA's website.

The State looks forward to meeting with you regarding the impact of furlough on the members of your organization.

If you have questions we can discuss them at our scheduled meet and confer sessions or feel free to contact me at (916) 324-0476.

Sincerely,

A handwritten signature in cursive script, appearing to read "Julie Chapman".

Julie Chapman
Deputy Director of Labor Relations

EXHIBIT C

ARTICLE 19 – HOURS OF WORK AND OVERTIME

19.1 Hours of Work (Excludes Unit 3, 17, and 21)

- A. Unless otherwise specified herein, the regular workweek of full-time employees shall be forty (40) hours, Monday through Friday, and the regular work shift shall be eight (8) hours.
- B. Workweeks and work shifts of different numbers of hours may be established by the employer in order to meet varying needs of the State agencies.
- C. Employees' workweeks and/or work shifts shall not be permanently changed by the State without adequate prior notice. The State shall endeavor to give thirty (30) calendar days but in no case less than fifteen (15) calendar days notice.
- D. The State shall endeavor to provide employees with at least five (5) working days advance notice of a temporary change in their workweek hours and workday. This advance notice is not required if:
 - 1. The change is due to an unforeseen operational need; or
 - 2. The change is made at the request of the employee.
- E. Classifications are assigned to the workweek groups as shown in the Lists of Classifications attached to this Contract.
- F. Workweek group policy for Fair Labor Standards Act (FLSA) - Exempt/Excluded Employees: State employees who are exempt/excluded from the FLSA are not hourly workers. The compensation they receive from the State is based on the premise that they are expected to work as many hours as is necessary to provide the public services for which they were hired. Consistent with the professional status of these employees, they are accountable for their work product, and for meeting the objectives of the agency for which they work.

Following is the State's policy for all employees exempt/excluded from the FLSA:

- 1. Management determines, consistent with the current Contract the products, services, and standards which must be met by FLSA - exempt/excluded employees;
- 2. The salary paid to FLSA - exempt/excluded employees is full compensation for all hours worked in providing the product or service;
- 3. FLSA - exempt/excluded employees are not authorized to receive any form of overtime compensation, whether formal or informal;
- 4. FLSA - exempt/excluded employees are expected to work, within reason, as many hours as necessary to accomplish their assignments or fulfill their responsibilities and must respond to directions from management to complete work assignments by specific deadlines. FLSA exempt/excluded employees may be required to work specific hours to provide services when deemed necessary by management;
- 5. FLSA - exempt/excluded employees shall not be charged paid leave or docked for absences in less than whole-day increments. Less than full-time employees shall be charged time proportionate to their scheduled hours of work. Record keeping for accounting, reimbursements, or documentation relative to other applicable statutes, such as the FMLA, is permitted.
- 6. FLSA - exempt/excluded employees shall not be suspended for less than five (5) days when facing discipline;
- 7. With the approval of the appointing power, FLSA - exempt/excluded employees may be allowed absences with pay for one or more whole days due to excessive work load or other special circumstances without charging leave credits;
- 8. Subject to prior notification and management concurrence, FLSA exempt/excluded employees may alter their work hours. Employees are responsible for keeping management apprised of their schedule and whereabouts. Prior approval from management for the use of formal leave (e.g., vacation, sick leave, personal leave, personal day) for absences of an entire day or more is required.

19.1.3 Hours of Work (Unit 3)

- A. Unless otherwise specified herein, the regular workweek of full-time employees shall be forty (40) hours, Monday through Friday, and the regular work shift shall be eight (8) hours.
- B. Workweeks and work shifts of different numbers of hours may be established by the employer in order to meet varying needs of the State agencies.

- C. Employees' workweeks and/or work shifts shall not be permanently changed by the State without adequate prior notice. The State shall endeavor to give thirty (30) calendar days but in no case less than fifteen (15) calendar days notice.
- D. The State shall endeavor to provide employees with at least five (5) working days advance notice of a temporary change in their workweek hours and workday. This advance notice is not required if:
 - 1. The change is due to an unforeseen operational need; or
 - 2. The change is made at the request of the employee.
- E. Classifications are assigned to the workweek groups as shown in the Lists of Classifications attached to this Contract.
- F. **Workweek group policy for Fair Labor Standards Act (FLSA) - Exempt/Excluded Employees:**
 State employees who are exempt/excluded from the FLSA are not hourly workers. The compensation they receive from the State is based on the premise that they are expected to work as many hours as is necessary to provide the public services for which they were hired. Consistent with the professional status of these employees, they are accountable for their work product, and for meeting the objectives of the agency for which they work.

Following is the State's policy for all employees exempt/excluded from the FLSA:

- 1. Management determines, consistent with the current Contract the products, services, and standards which must be met by FLSA - exempt/excluded employees;
- 2. The salary paid to FLSA - exempt/excluded employees is full compensation for all hours worked in providing the product or service;
- 3. FLSA - exempt/excluded employees are not authorized to receive any form of overtime compensation, whether formal or informal;
- 4. FLSA - exempt/excluded employees are expected to work, within reason, as many hours as necessary to accomplish their assignments or fulfill their responsibilities and must respond to directions from management to complete work assignments by specific deadlines. FLSA exempt/excluded employees may be required to work specific hours to provide services when deemed necessary by management;
- 5. FLSA - exempt/excluded employees shall not be charged paid leave or docked for absences in less than whole-day increments. Less than full-time employees shall be charged time proportionate to their scheduled hours of work. Record keeping for accounting, reimbursements, or documentation relative to other applicable statutes, such as the FMLA, is permitted.

For Unit 3 employees: partial day absences for medical appointments should be scheduled during on-student contact time unless otherwise authorized by management;

- 6. FLSA - exempt/excluded employees shall not be suspended for less than five (5) days when facing discipline;
- 7. With the approval of the appointing power, FLSA - exempt/excluded employees may be allowed absences with pay for one or more whole days due to excessive work load or other special circumstances without charging leave credits;
- 8. Subject to prior notification and management concurrence, FLSA exempt/excluded employees may alter their work hours. Employees are responsible for keeping management apprised of their schedule and whereabouts. Prior approval from management for the use of formal leave (e.g., vacation, sick leave, personal leave, personal day) for absences of an entire day or more is required.

19.1.17 Hours of Work (Unit 17)

The regular workweek of full-time Unit 17 employees shall be forty (40) hours and eight (8) hours per day. Workweeks and workdays of a different number of hours may be scheduled by the State in order to meet the varying needs of the State.

19.1.21 Hours of Work (Unit 21)

- A. Employees in Work Week Group (WWG) 2 required to work in excess of forty (40) hours per week shall be compensated for such ordered overtime either by cash payment or compensating time off (CTO) in the following manner:
 - 1. Cash compensation shall be at one and one-half (1½) times the hourly rate.

2. Compensating time off shall be authorized at one and one-half (1.5) hours for each overtime hour worked.
 3. Employees in classes assigned to WWG 2 shall be compensated for ordered overtime of at least one-quarter ($\frac{1}{4}$) hour at any one time. Overtime will be credited on a one-quarter ($\frac{1}{4}$) hour basis with a full quarter of an hour credit granted if half or more of the period is worked. Smaller fractional units will not be accumulated.
- B. Overtime may be compensated on a cash or CTO basis at the discretion of the department head or designee. Both parties agree and understand that a different type of overtime payment (cash or CTO) may be provided to employees at different times and may even be different for employees in the same or similar situations.
 - C. Notwithstanding any other contract provision, departmental policy or practice, the travel time of employees who are covered by FLSA shall only be considered as time worked if it meets the definitions and requirements of travel time in sections 785.41 of Title 29 of the Code of Federal Regulations.
 - D. No employee in a classification assigned to WWG E shall have his/her salary reduced (docked) for absences of less than an entire day.

19.2 Overtime (Excludes Unit 17 and 21)

- A. Overtime is earned at the rate of one and one-half ($1\frac{1}{2}$) times the hourly rate for all hours worked in excess of forty (40) hours in a regular workweek and is compensable by cash or CTO if it meets the following criteria:
 1. Ordered overtime of at least fifteen (15) minutes at any one time;
 2. Overtime will be credited on a fifteen (15) minute basis with a full fifteen (15) minute credit to be granted if seven (7) minutes is worked. Smaller fractional units will not be accumulated.
- B. Overtime may be compensated on a cash or CTO basis at the discretion of the department head or designee. Both parties agree and understand that a different type of overtime payment (cash or CTO) may be provided to employees at different times and may even be different for employees in the same or similar situations. However, in the event that the DIR determines that this provision is inconsistent with Labor Code section 204.3, the parties agree to immediately meet and confer regarding the impact of that determination.
- C. Overtime must be authorized in advance, except in an emergency, by the State or its designated representative. This authorization must also be confirmed in writing not later than ten (10) days after the end of the pay period during which the overtime was worked. Each State agency shall maintain complete and accurate records of all compensable overtime worked by its employees.
- D. The time when CTO may be taken shall be at the discretion of the State. When CTO is ordered, reasonable advance notice (at least 24 hours) should be provided the employee.
- E. CTO may be taken only in units of time of fifteen (15) minutes or multiples thereof.
- F. CTO for employees shall be earned on a time one and one-half ($1\frac{1}{2}$) basis and may be authorized in lieu of cash compensation. If an employee is not allowed CTO within twelve (12) pay periods following the pay period in which the overtime was worked, payment shall be made for such overtime on the next payroll.
- G. Employees may accrue up to two hundred forty (240) hours of CTO. All hours in excess of two hundred forty (240) CTO hours shall be compensated in cash.
- H. Normally, an employee who has an accumulation of two hundred forty (240) hours or thirty (30) days of authorized overtime shall not be required to work additional overtime.
- I. Notwithstanding any other contract provision, departmental policy, or practice, the travel time of employees who are covered by FLSA shall only be considered as time worked if it meets the definitions and requirements of travel time in sections 785.34 through 785.41 of Title 29 of the Code of Federal Regulations, except as provided in 1, 2 and 3 below.
 1. Effective January 31, 2002, all time spent on required travel to an alternate worksite shall be compensated consistent with the requirements of the FLSA. For FLSA covered employees, the State shall endeavor to accommodate travel to an alternate worksite to occur during an employee's normal work hours. However, the State will also consider the business needs of the department including the costs of travel arrangements.
 2. Notwithstanding the above, FLSA covered employees traveling on state business, outside of their normal work hours (as defined in FLSA) will be granted a special allowance for actual time spent traveling. Employees shall receive this special allowance equivalent to the

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE
MINUTE ORDER**

Date: 01/16/2009

Time: 01:35:00 PM

Dept: 19

Judicial Officer Presiding: Judge Patrick Marlette
Clerk: D. Rios

Bailiff/Court Attendant:
ERM:

Case Init. Date: 12/22/2008

Case No: 34-2008-80000126-CU-WM-GDS Case Title: Professional Engineers In California Government
vs. Arnold Schwarzenegger Governor State of California

Case Category: Civil - Unlimited

Event Type: Motion - Other - Writ of Mandate

Causal Document & Date Filed:

Appearances:

Date: January 16, 2009

Proceedings: Ruling, Notice and Certificate of Mailing of Court's Own Motion to Deem as Related the following Writ of Mandate cases: 34-2008-80000126, 2009-80000134, 2009-80000135 & 2009-8000137

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;

CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION v. GOVERNOR ARNOLD SCHWARZENEGGER, et al., Case No. 2009-80000137:

On December 19, 2008, in a response to the current State budget crisis, Governor Arnold Schwarzenegger issued Executive Order S-16-08. 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. Those three actions, specifically, Case No. 2008-80000126, Case No. 2009-80000134, and Case No. 2009-80000135, are now assigned to this Department and set for hearing on Thursday, January 29, 2009 on respondents' demurrers to the petitions and on the merits of the petitions, all of the parties having stipulated that the three cases should

Date: 01/16/2009

MINUTE ORDER

Page: 1

Dept: 19

Calendar No.:

SEIU JA 000133

be treated as related matters and assigned to this Department pursuant to Rule of Court 3.300(h)(1), and further having stipulated to the hearing date and a briefing schedule.

On January 15, 2009, the Court became aware that a fourth action had been filed on January 12, 2009, entitled California Correctional Peace Officers Association v. Governor Arnold Schwarzenegger, et al., Case No. 2008-80000137. That case was assigned to Department 31, Judge Michael P. Kenny, presiding. As of the date of this order, the Court has not been informed that a Notice of Related Case has been filed in that action stating that it is related to the three cases already assigned to this Department. However, the Court has reviewed the petition filed in Case No. 2009-80000137 and finds that it is related to the three cases now assigned to this Department within the meaning of Rule of Court 3.300(a) in that it alleges that the Governor's executive order directing a furlough of state employees is unlawful under Government Code section 19826(b), which is one of the central issues of law in the other three cases.

Given the relationship between Case No. 2009-80000137 and the three cases currently assigned to this Department, and the fact that a hearing on shortened time has been ordered for those three cases, the Court finds good cause to make the following order:

This order shall serve as a Notice of Related Case based on the facts stated above. Case No. 2009-80000137 is hereby ordered to be related to the three cases currently assigned to this Department as listed above, and is re-assigned to this Department, unless any party in that case files a response opposing this notice within five days as provided in Rule of Court 3.300(g). If no response is filed within five days, this order shall take effect and Case No. 2009-8000137 will be transferred to this Department effective immediately. If a response opposing this notice is filed within five days, the Court will take the matter under submission without oral argument and will issue a minute order ruling on the objection.

The Court also notes that, although the petition in Case No. 2009-80000137 raises legal issues that are identical to those in the cases currently before the Court, it does have different facts in that the furlough for correctional officers is "self-directed", i.e., the furlough days are to be taken "when feasible", so that it will not necessarily go into effect on the first Friday in February, as is the case with the furloughs for the state employees in the other three cases. In the event that Case No. 2009-80000137 is assigned to this Department pursuant to the terms of this order, counsel in that case are directed to meet and confer and determine whether it is necessary or feasible for that case to proceed on the same schedule for briefing and hearing as the other three cases, and to inform the Court in writing of their determination.

Attachment: Declarations of Mailing

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LOCAL 1000

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9
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF SACRAMENTO**

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

CASE Nos. 34-2008-80000126; 34-2009-
80000134; and 34-2009-80000135

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,

**SEIU LOCAL 1000's OPPOSITION
TO DEMURRER TO VERIFIED
PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

20 Respondents/Defendants.

Date: January 29, 2009
Time: 9:00 a.m.
Dept: 19
Judge: Hon. Patrick Marlette

21
22 CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
23 HEARING OFFICERS IN STATE
EMPLOYMENT,

24 Petitioners/Plaintiffs,

25 v.
26 ARNOLD SCHWARZENEGGER as,
27 Governor of the State of California; DAVID
GILB as Director of the Department of
28 Personnel Administration; JOHN CHIANG,

LOCAL 1000's OPPOSITION TO DEMURRER

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Controller of the State of California;
and DOES 1 through 10,

Defendants/Respondents.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1000,

Petitioners/Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, as
Governor, State of California;
DEPARTMENT OF PERSONNEL
ADMINISTRATION; JOHN CHIANG, as
State Controller, and DOES 1 THROUGH 20,
INCLUSIVE,

Respondents/Defendants.

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1
2 **I. INTRODUCTION**

3 Petitioner SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000 ("Local
4 1000") hereby files its Opposition to the demurrer filed by Respondents GOVERNOR ARNOLD
5 SCHWARZENEGGER ("Governor") and DAVID GILB, Director of the Department of Personnel
6 Administration ("DPA")(collectively "Respondents").

7 Respondents' demurrer mistakenly asserts that Local 1000 loses its associational standing
8 rights to pursue a writ of mandate under section 1085 of the Code of Civil Procedure simply
9 because it is a labor organization. The demurrer rests entirely on the erroneous premise that Local
10 1000 may only challenge the furlough Order by filing an unfair practice charge with Public
11 Employment Relations Board ("PERB") or pursuing a grievance under the parties MOU. As a
12 consequence, Respondents reason that the Court lacks jurisdiction to hear this dispute.

13 However, Respondents' argument ignores the purpose of associational/organizational
14 standing. Local 1000 may pursue the instant petition under its associational standing rights,
15 thereby invoking the rights applicable to its individual members. There is no question an
16 individual union member has standing to independently challenge the furlough Order under
17 Government Code section 19826(b). If the furlough Order is implemented, Local 1000 members
18 will suffer an injury unique to represented state employees, as the Governor's violation of section
19 19826(b) will result in a ten percent (10%) salary reduction for these state employees—an injury not
20 shared by the general public. Thus, Local 1000 members have an independent right, not subject to
21 PERB jurisdiction, to challenge the Order. The exhaustion requirement does not apply to
22 individual Local 1000 members since they do not have standing to seek PERB or contractual
23 remedies for the furlough Order. In turn, because the writ is based on Local 1000's associational
24 standing, no exhaustion of remedies is required.

25 Respondents' demurrer also mis-characterizes the issues presented to the court as solely a
26 "labor dispute" in an attempt to avoid this Court's jurisdiction and confer jurisdiction upon PERB.
27 (Demurrer, page 11, lines 17-20.) Despite this mis-characterization, jurisdiction in PERB cannot
28 be conferred merely because the Respondents contend that the Dills Act may be implicated in the
resolution of the claims presented. Because the petition does not expressly or impliedly allege

1 conduct proscribed in the Dills Act, PERB does not have jurisdiction over this dispute. Moreover,
2 simply because Local 1000 filed an unfair practice charge on a separate issue does not dictate
3 PERB's jurisdiction in this case.

4 Respondents' demurrer incorrectly asserts that Local 1000's Fair Labor Standards Act
5 ("FLSA") claims in the third cause of action are not ripe. However, the argument fails to
6 recognize the legal standard on demurrer which requires the Court to accept as true all properly
7 pleaded facts in the petition. The petition alleges that the State of California has no system or
8 mechanism in place to account for and pay overtime wages for formerly exempt employees.
9 (Local 1000 Petition ¶ 27, p. 8.) The petition further alleges that currently exempt employees *will*
10 work beyond 40-hours in a workweek. (*Id.*) These allegations are beyond speculative and must be
11 taken by the Court as true. Yet, Respondents never dispute that their furlough plan failed to take
12 into account the effect of the furloughs on non-exempt employees. Indeed, Respondents have
13 failed to provide any facts which contradict the allegations of the petition.

14 For these reasons, Petitioners respectfully request that this Court overrule the demurrer in
15 its entirety. In the alternative, should the Court find any deficiencies in the petition for writ of
16 mandate, Petitioners seek leave to amend.

17 II. STATEMENT OF FACTS

18 In the interest of avoiding duplication, Petitioner Local 1000 incorporates the Summary of
19 Material Facts in Respondents' opening brief. In addition, Local 1000 includes the following facts
20 and corrects Respondents' mis-characterization of Local 1000's unfair practice charge. Contrary to
21 Respondents' claim, the unfair practice charge filed by Local 1000, identified as PERB Case No.
22 SA-CE-1752-S, does not involve the same claims raised in Local 1000's petition.

23 Rather, Local 1000's unfair practice charge alleges that the State of California has been
24 engaging in bad faith bargaining (also known as "surface bargaining") through a series of acts
25 dating back to August 2008. The unfair practice charge focuses on the parties' interactions at the
26 bargaining table. (*See*, "Exhibit C" to Respondents' Request for Judicial Notice.") The furlough
27 Order is just one example, among many, cited in the charge to support Local 1000's theory that the
28 ongoing conduct of the DPA and the Governor demonstrates that they have not been bargaining in

1 good faith as required under the Dills Act. (*Id.*)

2 Respondents confuse Local 1000's "bad faith bargaining" theory with a "unilateral change"
3 theory or allegations of a collective bargaining agreement violation—which are two distinct claims.
4 Thus, contrary to Respondents' assertion in the demurrer, Local 1000 has not abandoned its bad
5 faith bargaining unfair practice charge and continues to pursue its remedies in that matter. Local
6 1000's unfair practice charge rests on entirely different facts and legal theories than the instant
7 writ. The writ alleges that the furlough Order lacks statutory or constitutional authority, and
8 therefore only the Superior Court, not PERB, has jurisdiction over those claims.

9 III. ARGUMENT

10 To avoid repetitive arguments, Local 1000 incorporates and adopts those arguments in the
11 opposition papers filed by co-Petitioners CASE, CAPS, and PECG, which refute Respondents'
12 arguments that PERB has exclusive, initial jurisdiction over this matter, and that the state
13 employee unions failed to exhaust administrative and contradicted remedies prior to filing their
14 writ actions.

15 A. LEGAL STANDARD FOR DEMURRER

16 A general demurrer admits all material facts that are properly pleaded. (*C&H Foods Co. v.*
17 *Hartford Ins. Co.*, (1984) 163 Cal.App.3d 1055, 1062.) Generally, material facts alleged in the
18 complaint are treated as true for the purpose of ruling on the demurrer. (*Gruenberg v. Aetna Ins.*
19 *Co.* (1973) 9 Cal.3d 566, 572.) Also taken as true are facts that may be implied or inferred from
20 those expressly alleged. (*Harvey v. City of Holtville* (1969) 271 Cal.App.2d 816; *Miranda v. Great*
21 *Southwest Fire Ins. Co.* (1975) 50 Cal.App.3d 492, disapproved in part on other grounds in *Wood*
22 *v. Elling Corp.* (1977) 20 Cal.3d 353, 362 fn. 7.) Also accepted as true are the recitals of
23 evidentiary facts contained in exhibits attached to the petition. (*Satten v. Webb* (2002) 99
24 Cal.App.4th 365, 375.)

25 In a ruling on demurrer, the trial court is required to construe the complaint liberally with a
26 view to substantial justice between the parties. (Code Civ. Proc., § 452; *Cameron v. Wernick*
27 (1967) 251 Cal.App.2d 890.) If the facts as alleged by the petitioner state a cause of action under
28 any possible legal theory, the Court must order the demurrer overruled. (*City of Morgan Hill v.*

1 *Bay Area Air Quality Management Dist.* (2004) 118 Cal.App.4th 870.)

2 Moreover, a demurrer may not be strengthened by bringing in evidentiary material that
3 discloses a defect in the complaint. As the court stated in *Colm v. Francis* (1916) 30 Cal.App.
4 742, 752: "It is wholly beyond the scope of the inquiry to ascertain whether the facts stated are true
5 or untrue. That is always the ultimate question to be determined by the evidence upon trial of the
6 questions of fact." In short, the ruling on a demurrer determines a legal issue on the basis of
7 assumed facts, i.e., those alleged in the complaint, regardless of whether they ultimately prove to
8 be true. (See, 5 Witkin, Cal. Proc. (4th ed. 1997) Pleading, § 900, pp. 358-360.)

9 It is long held that to sustain without leave to amend a demurrer to a mandamus petition is
10 generally abuse of discretion unless the petition shows on its face that it is incapable of
11 amendment. (*Tringham v. State Board of Education* (1955) 137 Cal. App. 2d 733.)

12 **B. PERB DOES NOT HAVE EXCLUSIVE, INITIAL JURISDICTION OVER THIS**
13 **DISPUTE DUE TO PETITIONER'S ASSOCIATIONAL STANDING**

14 Respondents' demurrer rests on the erroneous premise that Local 1000 loses its
15 associational standing rights to pursue a writ of mandate under section 1085 of the Code of Civil
16 Procedure simply because it is a labor organization. Respondents incorrectly argue that Local
17 1000 has only two options to challenge the furlough Order: (1) Local 1000 must file an unfair
18 practice charge with PERB; and/or (2) Local 1000 must file a grievance under its MOU with the
19 State. As a consequence, Respondents reason that the Court lacks jurisdiction to hear this dispute.
20 Respondents' argument, however, ignores the purpose of associational/organizational standing.
21 Respondents' arguments and supporting case law are, therefore, inapplicable.

22 When a party pursues a claim under its associational standing rights, that party invokes
23 rights applicable to its individual members; not its own independent rights. This is because
24 associational standing is a form of "third party" standing. In seeking issuance of this writ, Local
25 1000 is standing in the place of its individual union members who are represented state employees.
26 Thus, Local 1000 asserts a separate and distinct claim that does not fall within PERB's exclusive,
27 initial jurisdiction.

28 ///

1 The proper analysis is whether a represented employee would be independently barred
2 from seeking declaratory and injunctive relief under section 1085. There is no question an
3 individual union member has standing to independently challenge the furlough Order. Section
4 1085 creates a broad right to the issuance of a writ of mandate to “compel performance of an act
5 which the law specifically enjoins.” Consequently, section 1085 is available not only to those who
6 have enforceable private rights, but to those who are “beneficially interested” parties within the
7 meaning of Code of Civil Procedure section 1086. (*California Homeless and Housing Coalition v.*
8 *Anderson* (1995) 31 Cal. App. 4th 450, 458.)

9 A “beneficial interest” means the petitioner has a special interest over and above the
10 interest of the public at large. (*State Water Resources Control Bd. Cases* (2006) 136 Cal. App. 4th
11 674, 829.) To invoke associational standing, petitioner must simply identify members and provide
12 facts suggesting that it can pursue a claim on behalf of its members. (*Associated Builders &*
13 *Contractors v. San Francisco Airports Comm.* (1999) 21 Cal. 4th 352, 361.) While the general
14 public has an interest in the Governor complying with state laws, Local 1000 members have a
15 unique interest in challenging the illegal Order over and above the public’s interest. This is true
16 because the Order involves violations of law that directly impact payment of their salaries. There
17 can be no question that Government Code section 19826 expressly prohibits the Governor and the
18 DPA from tampering with the salaries of represented state employees. Local 1000 members
19 therefore have a unique interest in ensuring that section 19826 is enforced.

20 Our courts have historically held that such a unique interest confers standing on private
21 individuals when they are members of an identifiable subgroup. In *Kappadahl v. Alcan Pacific*
22 *Co.* (1963) 222 Cal. App.2d 626, the court concluded that property owners had standing to pursue
23 a writ to require county building inspectors to revoke permits issued in violation of county
24 ordinances because the property owners had unique concerns over property devaluation and
25 increased traffic—injuries not shared by the general public. Similarly, if the furlough Order is
26 implemented, Local 1000 members will suffer an injury unique to represented state employees, as
27 the Governor’s violation of section 19826(b) will result in a ten percent (10%) salary reduction for
28 these state employees—an injury not shared by the general public. There can be no question that

1 Local 1000 members have an independent right, not subject to PERB jurisdiction, to challenge the
2 Order.

3 Petitioner Local 1000 is a labor organization that represents state employees who are
4 subject to the furlough Order. To establish associational standing, Local 1000 must demonstrate
5 that its members would have standing to sue on their own right. (*Associated Builders and*
6 *Contractors Inc. v. San Francisco Airports Com., supra*, 21 Cal. 4th at p. 361.) Local 1000
7 members certainly have a special interest over and above the public at large in ensuring
8 Respondents carry out their obligations under Government Code section 19826. Local 1000
9 therefore has associational standing to contest the legality of the furlough Order and pursue this
10 writ action.

11 The flaw in Respondents' demurrer is that it assumes that Local 1000 is pursuing this
12 action solely on behalf of itself. Accordingly, Respondents focused their arguments on whether
13 Local 1000 itself is preempted by the Dills Act or must first exhaust any contractual remedies
14 available. In doing so, Respondents failed to comprehend that Local 1000 filed this writ under its
15 associational standing rights in the capacity of a represented state employee. As such, PERB does
16 not have exclusive, initial jurisdiction over this dispute.

17 The issue is whether a state employee filing a section 1085 writ to enjoin the furlough
18 Order is preempted by the Dills Act or must pursue a contractual remedy. As discussed below,
19 due to its associational standing, Local 1000 is not required to exhaust administrative or
20 contractual remedies.

21 **C. PETITIONER HAS NO OBLIGATION TO EXHAUST ITS ADMINISTRATIVE**
22 **OR CONTRACTUAL REMEDIES**

23 **1. Individual Local 1000 Members Do Not Have The Right To File At PERB And**
24 **Therefore Do Not Have Any Remedies To Exhaust At PERB**

25 Respondents' argument that Local 1000 must exhaust administrative remedies at PERB is
26 inapplicable to the individual members impacted by the furlough Order. To be specific,
27 Respondents assert that Local 1000 should first pursue an unfair practice charge at PERB.
28 Respondents' demurrer identifies the issue as follows: "whether the Governor committed an unfair
labor practice by declaring a fiscal emergency, thereby bypassing bargaining with the employee

1 organizations over the implementation of employee furloughs as a cost saving measure.”
2 (Demurrer, p. 9, lines 7-9.) Respondents therefore frame the issue as a failure “to meet and confer
3 in good faith,” or the unilateral reduction of wages and work hours, which is governed exclusively
4 by the Dills Act. (Demurrer, p. 9, lines 9-10.)

5 The option to file an unfair practice charge, however, does not apply to Local 1000's
6 individual members on whose behalf Local 1000 seeks court intervention. Unlike labor
7 organizations, individual union members do not have the right to pursue unilateral change or bad
8 faith bargaining charges at PERB.

9 The Dills Act provides that “once an employee organization is recognized as the exclusive
10 representative of an appropriate unit, the recognized employee organization *is the only*
11 *organization that may represent that unit* in employment relations with the state.” (Gov. Code §
12 3515.5 (emphasis added).) PERB precedent has long held that individual union members do not
13 have standing to allege unilateral change violations. (Oxnard School District (Gorcey/Tripp)
14 (1988) PERB Decision 667.) An individual Local 1000 member therefore cannot file an unfair
15 practice charge at PERB alleging that the Governor or the DPA violated the Dills Act by issuing a
16 furlough Order which unilaterally reduces salaries or work hours. Such an action would be
17 dismissed by PERB due to lack of standing. Indeed, PERB recently dismissed a case where an
18 individual employee sought a PERB remedy for the unilateral reduction of his work hours.
19 (Oakland Unified School District (2007) PERB Decision 2586-E.)

20 Moreover, the duty imposed on the Governor to meet and confer regarding terms and
21 conditions of employment is specifically limited to the exclusive representative. Government
22 Code section 3517 states: “The Governor, or his representative as may be properly designated by
23 law, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of
24 employment *with representatives of recognized employee organizations...*” (Emphasis added.)
25 PERB has held that individual employees lack standing to allege violations of sections which
26 protect the collective bargaining rights of employee organizations. (State of California
27 (Department of Corrections) (1993) PERB Decision No. 972-S.) An individual Local 1000
28 member therefore does not have standing to allege that the Governor or the DPA failed to meet

1 and confer in good faith as this is a collective bargaining right owed exclusively to the certified
2 bargaining representative.

3 Because individual employees do not have standing to pursue collective bargaining rights
4 at PERB, they do not have the obligation to exhaust these administrative remedies. The
5 exhaustion requirement only applies where there exists an adequate legal remedy. (*Eight*
6 *Unnamed Physicians v. Medical Executive Comm. of the Med. Staff of Washington Township*
7 *Hosp.* (2007) 150 Cal.App.4th 503, 510.) The exhaustion requirement does not apply if no
8 administrative remedy is available or exhaustion would be futile. (*Kaiser Foundation Hospitals v.*
9 *Superior Court* (2005) 128 Cal.App.4th 85, 99-100; *Ogo Associates v. City of Torrance* (1971) 37
10 Cal.App.3d 830.) It is clear that the exhaustion requirement does not apply to individual Local
11 1000 members since they do not have standing to seek PERB remedies for the furlough Order.
12 Because the writ is based on Local 1000's associational standing, no exhaustion of PERB remedies
13 is required.

14 2. ***Individual Local 1000 Members Cannot Pursue Contractual Violations And***
15 ***Therefore Do Not Need To Exhaust Their Contractual Remedies***

16 It is well established that an individual union member cannot pursue remedies for a
17 violation of the union contract. In *Jones v. Omnitrans* (2004) 125 Cal.App.4th 273, the court
18 confirmed that only the union has the authority to pursue violations of the collective bargaining
19 agreement. In reaching this conclusion, the Court cited to the Supreme Court case *Vaca v. Sipes*
20 (1967) 386 U.S. 171, 191-192:

21 "Though we accept the proposition that a union may not arbitrarily
22 ignore a meritorious grievance or process it in perfunctory fashion,
23 we do not agree that the individual employee has an absolute
24 right to have his grievance taken to arbitration regardless of the
25 provisions of the applicable collective bargaining agreement. . . .
26 In providing for a grievance and arbitration procedure which gives
27 the union discretion to supervise the grievance machinery and to
28 invoke arbitration, the employer and the union contemplate that each
will endeavor in good faith to settle grievances short of arbitration.
Through this settlement process, frivolous grievances are ended
prior to the most costly and time-consuming step in the grievance
procedures. Moreover, both sides are assured that similar
complaints will be treated consistently. . . . [¶] If the individual
employee could compel arbitration of his grievance regardless of
its merit, the settlement machinery provided by the contract

1 would be substantially undermined . . . Moreover, under such a
2 rule, a significantly greater number of grievances would proceed
3 to arbitration. This would greatly increase the cost of the
4 grievance machinery and could so overburden the arbitration
process as to prevent it from functioning successfully." (*Vaca* at
pp. 191-92 (emphasis added).)

5 The Supreme Court was clear that individual employees may not compel arbitration on
6 their grievances. (*Id.*) Rather, the union, not the individual employee, controls which grievances
7 may proceed to arbitration. To hold otherwise, would risk the efficiency of the grievance
8 procedure negotiated by the parties. Individual union members, therefore, do not have a
9 guaranteed contractual remedy. Because individual union members have no right to pursue
10 contract violations, those same individuals cannot be required to exhaust the contractual remedies
11 which are not available to them. (*Kaiser Foundation Hospitals v. Superior Court* (2005) 128
12 Cal.App.4th 85, 99-100; *Ogo Associates v. City of Torrance* (1971) 37 Cal.App.3d 830.)

13 Respondents' demurrer fails to address PERB preemption and the failure to exhaust
14 administrative remedies when a writ is filed on behalf of individual members under an
15 associational standing theory. Accordingly, the demurrer must be overruled. However, should the
16 Court determine that the petition lacks sufficient facts to support associational standing, Petitioner
17 requests leave to amend.

18 **D. THE CONDUCT AT ISSUE IN THE PETITION DOES NOT IMPLICATE THE**
19 **DILLS ACT AND THEREFORE PERB LACKS JURISDICTION**

20 In determining whether PERB has jurisdiction over any matter, the initial question should
21 be whether the party seeking relief is alleging conduct which constitutes an unfair practice or
22 violation of the Dills Act. (*California Teachers Assn. v. Livingston Union School Dist.* (1990) 219
23 Cal.App.3d 1503, 1511.) In general, the Dills Act identifies the following state employer conduct
24 as unlawful: (1) to interfere with the exercise of rights conferred by the act on employees or their
25 unions; (2) refuse to meet and confer in good faith; (3) interfere with, dominate, or discriminate
26 among employee organizations; or (4) refuse to participate in the impasse procedures. (Gov. Code
27 § 3519.) Petitioners have not alleged any of the state employer violations listed in the Dills Act.
28 Rather, the petition is premised on a separate and distinct statutory right contained in Government

1 Code section 19826(b). PERB has no authority to remedy conduct not expressly or impliedly
2 proscribed by its governing statutes. (*California Teachers Assn. v. Livingston Union School Dist.*
3 (1990) 219 Cal.App.3d 1503, 1525.) Because the petition does not expressly or impliedly allege
4 conduct proscribed in the Dills Act, PERB does not have jurisdiction over this dispute.

5 Furthermore, jurisdiction in PERB cannot be created merely because a party contends that
6 the Dills Act may be implicated in the resolution of a claim. (*Id.* at 1519.) Respondents' attempt
7 to characterize this as a "labor dispute" is merely an attempt to circumvent the jurisdiction of this
8 Court. (Demurrer, page 11, lines 17-20.) If this matter was solely a labor dispute, then individual
9 employees would be divested of their right to enforce section 19826(b). As is argued above, each
10 individual Local 1000 member affected by the furlough Order has standing to bring the instant
11 petition. As such, Respondent cannot adequately characterize this dispute as one which is isolated
12 to the state employer and state employee unions.

13 Moreover, the fact that Local 1000 filed an unfair practice charge on an unrelated issue is
14 not determinative in this case. The unfair practice charge alleges that the State of California has
15 been engaging in bad faith, or "surface" bargaining through a series of acts dating back to August
16 2008. The furlough Order is just one example cited in the unfair practice charge of the ongoing
17 conduct that shows the DPA and the Governor have not been bargaining in good faith as required
18 under the Dills Act. Respondents confuse Local 1000's "bad faith" theory with a "unilateral
19 change" theory or allegations of a collective bargaining agreement violation—which are two
20 distinct claims. Local 1000's unfair practice charge rests on entirely different facts and legal
21 theories than the instant writ. The writ alleges that the furlough Order lacks statutory or
22 constitutional authority, and therefore only the Superior Court, not PERB, has jurisdiction over
23 those allegations.

24 Indeed, even if Local 1000 filed an unfair practice charge on the exact issue contained in its
25 petition such pleading would not automatically confer jurisdiction on PERB. The mere fact that an
26 unfair practice charge is filed does not confer jurisdiction on PERB. (*Public Employment*
27 *Relations Bd. v. Modesto City Schools Dist.* (1982) 136 Cal.App.3d 881, 890 (fact that district
28 filed "unfair practice claims did not confer jurisdiction upon PERB").) Thus, simply because

1 Local 1000 filed an unfair practice charge on a separate issue does not dictate PERB's jurisdiction
2 in this case.

3 This jurisdictional issue was discussed in *Wygant v. Victor Valley Joint Union High School*
4 *Dist.* (1985) 168 Cal.App.3d 319. In *Wygant*, a school district policy required that a teacher
5 complete so many units of professional growth within a four year period in order to advance on the
6 experience portion of the district's salary schedule. The plaintiff teacher failed to earn sufficient
7 professional growth units within the four year period and was denied credit for two years of
8 experience. She filed a petition for writ of mandate seeking reclassification on the salary schedule
9 and rescission of the district's professional growth policy, claiming the policy violated the mandate
10 of Education Code section 45028 that certified employees be uniformly classified based on years
11 of training and experience. (*Id.* at pp. 321-322.)

12 Notably, the Court of Appeal rejected the district's claim that the plaintiff was required to
13 exhaust her administrative remedies before PERB. The court explained the matter did not involve
14 a claimed unfair practice charge under the EERA but a violation of a specific provision of the
15 Education Code. (*Id.* at 322-323.) The court rejected attempts to transform the plaintiff's claim
16 into one that the district failed to meet and confer in good faith. According to the court: "Every
17 employee lawsuit complaining of acts of a school district qua employer arguably raises a question
18 of whether a school district was meeting and negotiating in good faith, yet PERB's exclusive
19 jurisdiction is not all inclusive." (*Id.* at 324-325 (emphasis added).)

20 This matter is analogous to *Wygant* because the conduct alleged in the instant petition does
21 not involve a claimed unfair practice charge under the Dills Act but, rather, a violation of a
22 specific provision of the Government Code: section 19826(b). As in *Wygant*, this Court should
23 reject Respondents' attempts to transform the Petitioner's claim into one that the State failed to
24 meet and confer in good faith.

25 **E. PETITIONER'S REQUEST FOR DECLARATORY RELIEF PURSUANT TO THE**
26 **FLSA IS RIPE FOR REVIEW**

27 Respondents' demurrer alleges that Local 1000's FLSA claims in the third cause of action
28 are not ripe. Accordingly, Respondents argue that the court must sustain their demurrer as to this

1 cause of action. This argument, however, fails to correctly apply the demurrer standard, as the
2 argument requires the court to first invalidate the factual contentions in Local 1000's petition.
3 Material facts alleged in the complaint are treated as true for the purpose of ruling on the demurrer.
4 (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572.) Also taken as true are facts that may be
5 implied or inferred from those expressly alleged. (*Harvey v. City of Holtville* (1969) 271
6 Cal.App.2d 816; *Miranda v. Great Southwest Fire Ins. Co.* (1975) 50 Cal.App.3d 492,
7 disapproved in part on other grounds in *Wood v. Elling Corp.* (1977) 20 Cal.3d 353, 362 fn. 7.)
8 The Court must also accept as true the recitals of evidentiary facts contained in exhibits attached to
9 the complaint. (*Satten v. Webb* (2002) 99 Cal.App.4th 365, 375.) Because all allegations of the
10 complaint are taken as true, unless contradicted by matters of which judicial notice may be taken,
11 Respondents' demurrer must be overruled.

12 Respondents argue that the FLSA issue is not ripe because there is no evidence the State of
13 California will neglect to pay overtime to formerly exempt employees who are furloughed.
14 (Demurrer, p. 14, lines 11-13.) Respondents take the position that the claims are hypothetical.
15 This argument ignores the factual allegations in the petition. First, the petition alleges that the
16 State of California has no system or mechanism in place to account for and pay overtime wages for
17 formerly exempt employees. (Local 1000 Petition ¶ 27, p. 8.) It should be noted that Respondents
18 never dispute that their furlough plan failed to take into account the effect of the furloughs on non-
19 exempt employees. Moreover, the petition alleges that currently exempt employees *will* work
20 beyond 40-hours in a workweek. (*Id.*) These allegations are beyond speculative and must be
21 taken by the Court as true. (*Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 572.)

22 Respondents reliance on *Younger v. Superior Court of Sacramento County* (1978) 21
23 Cal.3d 102 is inapposite. *Younger* does not involve a demurrer. As such, the court did not review
24 the factual allegations to determine whether, if true, the parties were entitled to relief. Moreover,
25 in *Younger*, the court made clear that it refused to address whether a state agency would violate
26 California law for two reasons. First, the court noted that the allegations were not part of the writ.
27 The court pointed out that, "[the claims] are not issues in any case before us - in either of the
28 present proceedings or in either of the two companion matters hereto." (*Id.* at 119.) Second, the

1 court noted that since petitioners failed to raise their claims in their original petition, they also
2 failed to include any contentions that the state would be unable to comply with the law, stating
3 that: "There is no claim that this data cannot be extracted and compiled during the two-year
4 statutory delay before destruction of the underlying records." (*Younger* at p. 116.)

5 In contrast, Local 1000's petition includes factual contentions to support its claim that the
6 State of California will violate the FLSA if allowed to implement its furloughs as planned. Local
7 1000 contends that formerly exempt-employees will continue to work more than 40-hours in a
8 workweek to accomplish their assignments, and that the state has no mechanisms or systems in
9 place to track and pay overtime to them. These allegations, which must be taken as true, clearly
10 set forth an actual and present controversy over Respondents' violation of the FLSA. It is
11 therefore Respondents' burden on demurrer to set forth facts which prove that the furlough plan
12 recognizes the need to pay overtime to exempt employees during furlough weeks, and implements
13 a means of ensuring that accurate overtime payments are made. Respondents have failed to
14 provide any facts which contradict the allegations of the petition and, therefore, the demurrer must
15 be overruled.

16 IV. CONCLUSION

17 Based on the foregoing, Petitioners respectfully request that this Court overrule the demurrer
18 in its entirety. In the alternative, should the Court find any deficiencies in the petition for writ of
19 mandate, Petitioner seeks leave to amend.

20 DATED: January 20, 2009

21 SERVICE EMPLOYEES INTERNATIONAL UNION
22 LOCAL 1000

23
24 By 

25 J. FELIX DE LA TORRE
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DECLARATION OF SERVICE

1
2
3 CASE NAME: **PROFESSIONAL ENGINEERS IN CALIFORNIA CALIFORNIA**
4 **GOVERNMENT v. ARNOLD SCHWARZENEGGER, et al.;**
5 **CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND**
6 **HEARING OFFICERS IN STATE EMPLOYMENT**
7 **SEIU LOCAL 1000 v. ARNOLD SCHWARZENEGGER, et al.**
8 COURT NAME: Sacramento County Superior Court
9 CASE NUMBER: 34-2008-80000126; 34-2008-2009-8000134; 34-2009-80000135

7 I am a citizen of the United States and a resident of the County of West Sacramento. I
8 am over the age of eighteen (18) years and not a party to the above-entitled action. My business
9 address is 1808 14th Street, Sacramento, California 95811.

9 I am familiar with SEIU Local 1000's practice whereby the mail is sealed, given the
10 appropriate postage and placed in a designated mail collection area. Each day's mail is
11 collected and deposited in a United States mailbox after the close of each day's business.

11 On January 20, 2009, I served the following:

12 **SEIU LOCAL 1000's OPPOSITION TO DEMURRER TO VERIFIED PETITION**
13 **FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND**
14 **INJUNCTIVE RELIEF**

15 (BY ELECTRONIC SERVICE) Via TRO mandating electronic service. The
16 document was served electronically and the transmission was reported as complete and without
17 error.

18 **[SEE ATTACHED]**

19
20
21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct and that this Declaration was executed on January 20, 2009, at
23 Sacramento, California.

24
25 
26 MARY A. MEDINA
27
28

ATTACHMENT TO DECLARATION OF SERVICE

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20 DAVID GILB, and EPARTMENT 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,

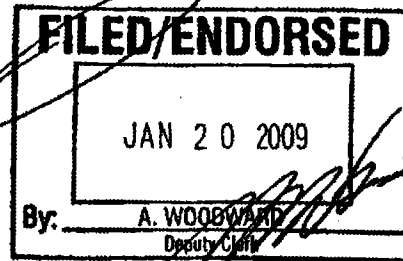
28 Petitioners/Plaintiffs,

v.

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

34 Respondents/Defendants.

35 AND RELATED CASES



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

37 Assigned For All Purposes To The Honorable
38 Patrick Marlette

39 RESPONDENTS' OPPOSITION TO
40 PETITIONERS' PETITIONS FOR WRIT OF
41 MANDATE IN CONSOLIDATED ACTIONS

42 Date: January 29, 2009

43 Time: 9:00 a.m.

44 Dept.: 19

45 Action Filed: December 22, 2008

46 Trial Date: None Set

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RESPONDENTS' OPPOSITION TO PETITIONERS' PETITIONS FOR WRIT OF MANDATE IN CONSOLIDATED ACTIONS

SEIU JA 000155

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I.

INTRODUCTION

The State of California is facing an unprecedented and growing financial disaster. Over the past six months, the State's fiscal crisis has escalated. Since the current State budget was enacted on September 23, 2008, the national economic recession has deepened driven largely by crises in the banking and housing industry. This national economic crisis has directly impacted California's budget. The budget was predicated on anticipated revenues that have fallen well below the estimates made at the time the budget was signed.

In response to this deepening economic crisis, the Governor called emergency legislative sessions to address the impact of the revenue shortfall on the State budget. However, no solution to the State budget crisis has yet to be achieved and the State is now on the brink of insolvency. The undisputed, irrefutable evidence demonstrates the State is running out of money and will, according to estimates by the State Controller, run out of cash in February. The Governor has determined that the furloughing of state employees two days a month is an unavoidable and necessary step to help alleviate the pending budget and solvency crisis.

The fundamental issue before this Court is whether the Governor of the State of California may exercise the executive power granted him in order to address a fiscal crisis of unprecedented dimension. Petitioners would have this Court believe that the Governor does not have the authority to act in the manner he has, i.e., ordering a two-day a month furlough for state employees. As the discussion to follow will amply demonstrate, the Governor does possess this authority and has exercised it in both a reasonable and responsible manner. Respondents have made every effort to avert the necessity of adopting furloughs. However, there are simply no other available options for immediate action. Petitioners fail to address the obvious: there is a serious emergency requiring immediate action and the Governor has taken one step within his authority, the furloughing of state employees two days a month, to respond to this situation. Petitioners' attempt to enjoin the State from adopting the furlough will only worsen the State's dire economic conditions and impose a far greater harm than the effect of furloughing state

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1 employees. Accordingly, Respondents Governor Arnold Schwarzenegger, State of California,
2 David Gilb, and Department of Personnel Administration request that this Court deny the various
3 petitions for writ of mandate submitted by the petitioner public employee unions.
4

5 II.

6 STATEMENT OF FACTS

7 A. Efforts to Address the State Budget Crisis Prior to Issuance of the Subject Executive 8 Order.

9 On July 31, 2008, Governor Schwarzenegger issued Executive Order S-09-08
10 directing the State to take various emergency measures in light of the budget impasse. (7-31-08
11 Exec Order, Exhibit 1 to the Declaration of David W. Tyra ["Tyra Declaration"].) In the
12 Executive Order, the Governor directed state agencies and departments "to cease and desist
13 authorization of all overtime for employees effective July 31, 2008[.]" (Id.)

14 On September 23, 2008 the Governor signed into law a new budget for the 2008-
15 2009 fiscal year. (9-23-08 Gov Press Release, Exhibit 2 to Tyra Declaration.) Shortly after
16 signing the budget, the national economy took a serious downturn resulting in an unanticipated
17 and significant reduction in revenues forecast in the 2008-2009 budget. (Declaration of Michael
18 C. Genest ["Genest Declaration"], ¶ 4.) Besides the revenue shortfall, the State's Department of
19 Finance also determined by the end of the 2008 fiscal year the State would amass a budget deficit
20 of \$11.2 billion based solely on the impact of the budget compromise. (Governor's Budget for
21 Special Session 08-09, Exhibit 3 to Tyra Declaration.) The Department of Finance also initially
22 determined revenue for the 2009-2010 fiscal year would be \$13 billion lower than projected. (Id.)
23 Absent immediate action the conclusion was the "state will run out of cash in February and be
24 unable to meet all of its obligations for the rest of the year." (Id.)

25 In the Department of Finance's October 2008 Finance bulletin, the Department
26 determined the "Preliminary General Fund agency cash for October was \$923 million below the
27 2008-09 Budget Act forecast of \$10.667 billion." September's revenues included the third
28 estimated payments for personal income tax filers and calendar-year corporations. At that point

1 the Department concluded "year-to-date revenues are \$1.06 billion below the \$22.58 billion that
2 was expected." (DOF, Oct 2008 Finance Bulletin, Exhibit 4 to Tyra Declaration.)

3 In response to the unanticipated budget deficit, the Governor, on November 6,
4 2008, issued a special session proclamation calling for an emergency session of the Legislature to
5 immediately address this looming crisis. (Governor's 11-06-08 Special Session Proclamation,
6 Exhibit 5 to Tyra Declaration.) On the same day, the Governor also issued a letter to all state
7 workers informing them of some of the plans he was proposing in order to save state funds which
8 would impact state workers. (Governor's 11-6-08 letter to state employees, Exhibit 6 to Tyra
9 Declaration.) In the letter, the Governor also informed State employees he would be convening
10 the Legislature to attempt to seek a comprehensive solution to the entire budget crisis.

11 In an effort to work with State bargaining unit representatives, the Department of
12 Personnel Administration ("DPA") put forth proposals to the labor unions in early November of
13 2008 including, but not limited to, a proposed one-day furlough and elimination of two holidays
14 per year. Petitioners did not agree to either of these proposals. The state employee unions,
15 however, including Petitioners in this case, have all recognized and acknowledged the State of
16 California is facing a serious and immediate fiscal crisis. (CASE Public Information and
17 Announcements, Exhibit 7 to Tyra Declaration; SEIU Local 1000 Update, Exhibit 8 to Tyra
18 Declaration; PEGC Weekly Update, Exhibit 9 to Tyra Declaration.)

19 The Legislature convened in special session in or about early November of 2008 in
20 an effort to resolve the pending budget crisis. No resolution was reached. On December 1, 2008,
21 the Governor issued a proclamation addressing the deepening financial crisis and the likelihood
22 that "this fiscal year's deficit will cause the State to miss payroll and school payments at the
23 beginning of 2009." (Governor's 12-1-08 Proclamation, Exhibit 10 to Tyra Declaration.) In this
24 proclamation, the Governor also reconvened the Legislature for another special session to address
25 the fiscal emergency. The Legislature reconvened in special session but, to date, a solution to the
26 budget problem proves illusive. The Department of Finance also recalculated its estimates and
27 found revenues for the 2008-2009 fiscal year were expected to be \$14.8 billion below the
28 estimate at the time the 2008-2009 budget was enacted. (Genest Declaration, ¶ 4.) The deficit

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1 had increased by more than \$3 billion in the span of approximately two months. The State
2 Department of Finance also determined the State's inability to reach a solution on the State's
3 deficit had caused the deficit to increase and the State would now have a \$41.6 billion deficit by
4 the end of the 2009-2010 fiscal year. (Genest Declaration, ¶ 5.) As a result of the devastating
5 budget deficit, the conclusion reached was that the State will run out of funds by February 2009.
6 (Genest Declaration, ¶ 8.)

7
8 **B. The Subject Executive Order.**

9 Faced with a financial catastrophe of unprecedented proportions, and the fact that a
10 solution acceptable to both the Governor and the Legislature was proving illusive, the Governor
11 issued an Executive Order on December 19, 2008 declaring an emergency pursuant to
12 Government Code Section 3516.5. (12.19.06 Exec Order, Exhibit 11 to Tyra Declaration,
13 referred to hereafter as "the Executive Order.") In the Executive Order, the Governor reiterated
14 the fact that absent immediate action, the State will run out of cash in February of 2009 and will
15 not be able to meet its obligations. (Id.) The Executive Order directed the implementation of a
16 two-day a month furlough plan for all State employees commencing in February of 2009. (Id.)

17
18 **C. Cost Savings to the State Resulting from the Furloughs.**

19 For the 2008-2009 fiscal year, the two-day furlough would amount to an estimated
20 savings to the General Fund in the amount of \$298,541,141. (Declaration of Alene Shimazu
21 ["Shimazu Declaration"], ¶ 5.) The savings to the General Fund for excluded unrepresented
22 employees is estimated at \$76,837,793 for fiscal year 2008-2009. (Shimazu Declaration, ¶ 5.)
23 For the 2009-2010 fiscal year, the two-day furlough would amount to an estimated savings to the
24 General Fund in the amount of \$716,498,739. (Shimazu Declaration, ¶ 6.) The savings to the
25 General Fund for fiscal year 2009-2010 for excluded unrepresented employees is estimated at
26 \$184,410,703. (Shimazu Declaration, ¶ 6.) The savings to the General Fund is estimated at
27 \$75,075,787 per month by implementing a temporary two-day a month furlough for represented
28

1 and excluded unrepresented employees covering a seventeen-month period. (Shimazu
2 Declaration, ¶ 7.)

3
4 **D. Efforts to Meet and Confer with State Public Employee Unions Regarding the Furloughs.**

5 All Petitioners in this case are currently covered by Memoranda of Understandings
6 (MOU) that are currently in full force and effect. (Chapman Declaration, ¶¶ 12-15.)

7 On December 19, 2008, DPA telephoned and sent out letters to all of the state
8 public employee unions advising them of the furloughs and offering to bargain over the impacts
9 of their implementation. (Declaration of Julie Chapman ["Chapman Declaration"], ¶¶ 4, 5.)
10 Since sending out the letter, DPA has met with SEIU and PEEG to begin bargaining over the
11 impacts of the furloughs. (Chapman Declaration ¶¶ 6-9.) DPA has a meeting scheduled with
12 CASE on January 23, 2009 to bargain over the impacts of the furloughs. (Chapman Declaration,
13 ¶ 10.) CAPS has not yet requested to meet to bargain over the impacts of the furloughs.
14 (Chapman Declaration, ¶ 11.)

15 DPA currently is attempting to meet with all state employee unions regarding the
16 implementation of the furloughs. (Chapman Declaration, ¶ 6.) DPA is working to ensure the
17 furloughs will comply with the Fair Labor Standards Act. (Chapman Declaration, ¶ 16.) During
18 the 17-month furlough period, no state employee will be paid less than \$6.55 per hour (i.e., the
19 federal minimum wage under the FLSA) for the duration of the furloughs. (Declaration of
20 Bernice Torrey ["Torrey Declaration"], ¶ 4.)

21
22 **E. Confirmation of State Fiscal Crisis Since Issuance of the Executive Order.**

23 On December 19, 2008, the California State Controller, John Chiang, released a
24 statement urging the Governor and Legislature to reach a resolution in order to prevent the State
25 from running out of cash in late February. (12-19-08 Chiang Press Release, Exhibit 12 to Tyra
26 Declaration.) On December 22, 2008, Chiang sent a letter to the Governor and the Legislature,
27
28

1 reiterating the severity of the fiscal crisis the State was facing. (12-22-08 Letter from Chiang,
2 Exhibit 13 to Tyra Declaration.) In this letter, Chiang stated,

3
4 [I]f current projections hold true, the State is less than seventy days
5 from running out of cash. Worse, my office's analyses indicate
6 there will be no shelter from the storm as the State's cash position
7 will remain negative throughout the remainder of the fiscal year.
8 As I indicated during the recent Legislative Budget Session, the
9 failure of the Governor and the Legislature to quickly arrive at an
10 agreement to responsibly address the State's \$41 billion budget
11 crisis would begin a cascading series of regrettable actions
12 necessary to conserve the State's dwindling case reserves. (Id.)

13 On January 13, 2009, the Director of the Department of Finance Michael Genest
14 issued a special report titled "California at the Brink of Financial Disaster" detailing the State's
15 financial crisis and the immediate harm that will be caused when the State runs out of cash.
16 ("California at the Brink of Disaster, Exhibit 14 to Tyra Declaration.) He confirmed the State is
17 expected to run out of cash in February. (Genest Dec. ¶ 8.)

18 III.

19 ARGUMENT

20 A. The Governor Has the Executive Authority to Issue the Subject Executive Order and 21 Order Furloughs of State Employees.

22 1. **The Governor, as the State Employer, Is Authorized to Impose** 23 **Furloughs Pursuant to the Emergency Provision of the Dills Act,** 24 **Government Code Section 3516.5.**

25 Confronted with an unprecedented fiscal emergency, the Governor acted pursuant
26 to his constitutional authority, and in his capacity as the state employer, to preserve the State's
27 ability to meet its obligations by reducing the number of days employees work each month. The
28 Governor and DPA are statutorily "vested with the duties, purposes, responsibilities, and
jurisdiction ... with respect to the administration of salaries, hours, and other personnel related
matters...." (Gov. C. § 19816(a).) Furthermore, under the Dills Act, which governs labor
relations between the State and its employees (Gov. Code, § 3512, *et seq.*), the Governor, or his
representative, is specifically authorized to negotiate wages, hours, and other terms and

1 conditions of employment, with public employee exclusive bargaining representatives. (Gov.
2 Code, § 3517.) The labor relations between the State and Petitioners are indisputably governed
3 by MOUs, negotiated pursuant to the Dills Act, which contain provisions relating to hours of
4 work, as well as other terms and conditions of employment. (See generally, Request for Judicial
5 Notice submitted in support of Respondents' demurrers.)¹ Not only does the Dills Act thus
6 establish the legal framework for analyzing the labor relations between the State and Petitioners,
7 it also establishes the legal authority for the Governor's exercise of his executive authority in
8 issuing the subject Executive Order.

- 9
10 a. In the Event of an Emergency, Government Code Section 3516.5
11 Allows the Governor to Impose Terms and Conditions Without
First Bargaining.

12 Although furloughs may be subject to the meet and confer process under the Dills
13 Act, the State is authorized to unilaterally act because of the current extreme fiscal crisis. (Gov.
14 Code, § 3516.5, see also *Sonoma County Organization v. County of Sonoma (Sonoma County)*
15 (1991) 1 Cal.App.4th 267.) Government Code section 3516.5 provides, in relevant part:

16 *Except in cases of emergency as provided in this section, the*
17 *employer shall give reasonable written notice to each recognized*
18 *employee organization affected by any law, rule, resolution, or*
19 *regulation directly relating to matters within the scope of*
representation proposed to be adopted by the employer, and shall
give such recognized employee organizations the opportunity to
meet and confer...

20 In cases of emergency when the employer determines that a law,
21 rule, resolution, or regulation must be adopted immediately without
22 prior notice or meeting with a recognized employee organization,
23 the [employer] ... shall provide such notice and opportunity to meet
and confer in good faith at the earliest practical time following the
adoption of such law, rule, resolution, or regulation. (Emphasis
added.)

24 In *Sonoma County*, the court interpreted the same language contained in
25 Government Code section 3516.5, in the Meyers Miliias Brown Act (MMBA) (Gov. Code, §

26
27 ¹ As explained more fully below, the MOUs supersede various Government Code sections relied upon by
28 Petitioners, including sections 19826 and 19851. (See Gov. Code, § 3517.8, subd. (a), 3517.6, subd. (a).)
Therefore the MOUs control the terms and conditions of employment and Government Code sections
19826 and 19851 are inapplicable.

1 3504.5). The court held a municipal employer was not required to bargain with the union before
2 implementing a new work rule giving local supervisors authority to put employees on unpaid
3 leave of absence in the wake of job actions by union members. The court held that irrespective of
4 the county's possible managerial right to implement the new work rule, the county's *obligation to*
5 *meet and confer was excused by an emergency.* (Emphasis added; *Sonoma County, supra*, 1
6 Cal.App.4th at p. 274.)

7 The court further held that since the county had already determined there was an
8 emergency, as reflected in the emergency ordinance, the burden shifted to the union to
9 demonstrate there was not a bona fide emergency. (*Id.*, at p. 275-76, citing Evid. Code, § 663—
10 presumption that public officers have properly exercised their duties.) The California Supreme
11 Court, approving the holding in *Sonoma County*, has held that courts review public employer
12 declarations of an emergency under an abuse of discretion standard. (See *San Francisco Fire*
13 *Fighters Local 798 v. City and County of San Francisco* (2006) 38 Cal.4th 652, 669.)

14 Here, the State of California is facing an undeniable fiscal crisis of unprecedented
15 dimension. On December 1, 2008, the Governor declared a fiscal emergency pursuant to Article
16 VI, section 10, subdivision (f) of the California Constitution. (Executive Order, Exhibit 10 to
17 Tyra Declaration.). The Governor's declaration of fiscal emergency creates a rebuttable
18 presumption that an emergency in fact exists. (See *Sonoma County, supra*, 1 Cal.App.4th at p.
19 275-276 and Evid. Code, § 664.) The burden is shifted to the Petitioners to demonstrate there is
20 not an emergency justifying the Governor's action. Petitioners have failed to present any
21 evidence demonstrating the absence of an emergency. Furthermore, Petitioners do not present
22 any evidence to rebut the Governor's declaration of fiscal emergency.

23 In fact, the Petitioners concede the extreme magnitude of the fiscal crisis. (See
24 Exhibits 7-9 to Tyra Declaration.) PECG, in its "Weekly Update" of January 9, 2009, states "the
25 state is running out of cash. (Exhibit 9 to Tyra Declaration.) CASE's "Public Information &
26 Announcements" section of its website, in a post dated January 6, 2009, states that "CASE is
27 aware of the fact that California is facing an unprecedented financial crisis." (Exhibit 7 to Tyra
28 Declaration.) SEIU's December 17, 2008 "Update '08" quotes SEIU's President: "California is

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1 headed over a cliff. The governor and the legislature need to work at this 24 hours a day until
2 they reach a resolution.” (Exhibit 8 to Tyra Declaration.) State Controller John Chiang has been
3 forced to stop payments to some construction contractors. He says the state will really run out of
4 money in February, which will make paying the State’s bills difficult if not impossible. (Exhibit
5 13 to Tyra Declaration.)

6 The Governor’s Executive Order made several findings specific to the extreme
7 fiscal crisis. Specifically, the Executive Order states, “due to developments in the worldwide and
8 national financial markets, and continuing weak performance in the California economy, there is
9 an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without
10 effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next
11 18 months” and that “without effective action to address the fiscal and cash crisis, the cash
12 reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009.” (Exhibit 10
13 to Tyra Declaration.) The Executive Order further states that “it [is] likely that the State will miss
14 payroll and other essential services payments at the beginning of 2009.” (*Id.*)

15 The Department of Finance and the State Controller’s Office agree an
16 unprecedented fiscal crisis exists. (Genest Dec. ¶ 3; 12-22-08 Chiang letter, Exhibit 13 to Tyra
17 Declaration.) In a statement on the Governor’s website, Michael Genest, Director of the
18 Department of Finance states “[i]n a matter of weeks, California, the world’s eighth largest
19 economy, will run out of cash and delay making refunds to our hard-working taxpayers.” (See
20 Exhibit 14 to Tyra Declaration.)

21 In a Statement at the Senate and Assembly Joint Convention on December 8, 2008,
22 Controller John Chiang stated, “[f]ailure to act threatens our ability to respond to natural
23 disasters, our ability to provide life preserving care to the elderly and the ill, and our ability to
24 protect our communities from crime.” (These conclusions are reiterated in Controller Chiang’s
25 December 22, 2008 letter, Exhibit 13 to Tyra Declaration.) Controller Chiang went on to state,
26 “[t]he size of the revenue shortfall for the remainder of the fiscal year was most recently
27 estimated at \$7.8 billion by the Legislative Analyst and at \$9.7 billion by the Department of
28 Finance. My office’s economists think even \$9.7 billion may be an understatement. My office

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1 tested the latest cash flows associated with this \$9.7 billion deterioration, and what we found was
2 a clear threat to the State's ability to pay all of its bills starting this spring. By February, we will
3 only have \$882 million in cash on-hand. By March, we will have exhausted our general and
4 borrowable funds and run more than \$1.9 billion in the red. If revenues continue to deteriorate,
5 this number will only grow." (Id.) Thus, there can be no question that a fiscal crisis exists. The
6 Dills Act, specifically Government Code section 3516.5 grants the Governor the power to take
7 measures to address such emergencies, which is precisely what the Governor has done here.

8
9 b. The Governor's Executive Order Falls Within the Purview of
10 Government Code Section 3516.5

11 Petitioner SEIU specifically, and the other Petitioners generally, assert
12 Government Code section 3516.5 does not apply to executive orders, including the Executive
13 Order at issue here. (SEIU Ps and As, at p. 6.) SEIU erroneously claims the meet and confer
14 exemption applies only to changes in a "law, resolution or regulation" and alleges the
15 "Legislature did not exempt the state from bargaining over a proposed "rule," even during an
16 emergency, as it omits any reference to the term "rule" in subpart (b), which is the exemption to
17 bargaining." (SEIU Ps and As, at p. 6, fn. 1.) Contrary to SEIU's claim there are no subparts in
18 Government Code section 3516.5. Furthermore, SEIU has misstated the language of section
19 3516.5 by representing that the word "rule" was omitted from the second "section" of
20 Government Code section 3516.5. The emergency exception absolutely applies to rules, and
21 "rule" is specifically referenced in the second paragraph of the code section as quoted above.

22 The Governor's Executive Order constitutes a rule pursuant to this Government
23 Code section. A "rule" is "an established and authoritative standard or principle; a general norm
24 mandating or guiding conduct or action in a given type or situation." (Black's Law Dict. (8th ed.
25 2004) p. 1357, col. 1.) An Executive Order is defined as "a formal written directive of the
26 Governor which by interpretation, or the specification of detail, directs and guides subordinate
27 officers in the enforcement of a particular law. Such an order, however, need not be predicated
28 upon some express statutory provision, but may properly be employed to effectuate a right, duty,

1 or obligation which emanates or may be implied from the Constitution or to enforce public policy
2 embodied within the Constitution and laws.” (63 Ops.Cal.Atty.Gen. 583 (1980).) Accordingly,
3 executive orders generally, and this Executive Order specifically, fall within the ambit of
4 Government Code section 3516.5.

5
6 c. The Governor has exercised his emergency powers in a reasonable
and appropriate fashion.

7
8 The Governor has not utilized the emergency powers granted him under the Dills
9 Act in an arbitrary or capricious way. In fact, Respondents examined alternatives to furloughs
10 and have made every effort to avoid the furloughs.² On November 6, 2008, the Governor called a
11 special session of the Legislature. (11.6.08 Proclamation, Exhibit 5 to Tyra Declaration.) A
12 solution acceptable to all parties was not reached. (12-19-08 Executive Order, Exhibit 11 to Tyra
13 Declaration.) On December 1, 2008, in addition to the declaration of fiscal emergency, the
14 Governor called another special session, but, to date, a compromise solution has not been
15 reached. (*Id.*)

16 State agencies and departments under the Governor’s direct authority have already
17 reduced expenses to achieve budget and cash savings for the current fiscal year. (See Special
18 Session Budget, Exhibit 3 to Tyra Declaration; “California at the Brink of Financial Disaster,”
19 Exhibit 14 to Tyra Declaration.) However, there is still a \$15 billion General Fund deficit for the
20 2008-2009 fiscal year, estimated to grow to \$42 billion over the next 18 months if no action is
21 taken. The Governor acted to reduce current spending to ensure essential services of the State are
22 not jeopardized and the public health and safety are preserved. To that end, it is estimated the
23

24
25 ² In fact, furloughs constitute one of the less intrusive steps available to the Governor to address
26 California’s budget crisis. It is indisputable that the Governor has the authority to layoff state employees
27 to address budget issues (See Gov. C. § 19997.) Rather than ordering mass layoffs at this time, however,
28 the Governor took the measured approach of issuing the Executive Order at issue in this case and ordering
two-day a month furloughs. Nonetheless, in light of the depth of California’s fiscal crisis, the Governor’s
Executive Order also directs DPA to “work with all State agencies and departments to initiate layoffs and
other position reduction and program efficiency measures to achieve a reduction in General Fund payroll
of up to ten percent.”

1 furlough plan will result in General Fund savings of approximately \$ 1,276,288,376 over the next
2 17 months. (Dec. Shimazu ¶ 5, 6.)

3 Government Code section 3516.5 requires the State Employer to provide notice
4 and an opportunity to meet and confer in good faith at the earliest practical time following the
5 adoption of a law, rule, resolution or regulation adopted in cases of emergency. (Gov. Code, §
6 3516.5.) Respondents have complied with this obligation. On December 19, 2008, Respondents
7 noticed the state employee unions of the Executive Order and the furloughs and offered to meet
8 and confer. (Chapman Declaration, ¶ 4-5.) DPA met with SEIU on January 6, 2009, and with
9 PECG on January 13, 2009. (Chapman Declaration, ¶ 7, 9.) DPA is scheduled to meet with
10 CASE on January 23, 2009. (Chapman Declaration, ¶ 10.) CAPS has not requested to meet, but
11 DPA is following up with CAPS to schedule a meeting. (Chapman Declaration, ¶ 11.) Thus,
12 Respondents have satisfied the requirements of Government Code section 3516.5 and are
13 authorized to implement the furloughs.

14 In sum, therefore, the Governor acted in a constitutionally and statutorily
15 authorized manner in issuing the subject Executive Order. The Governor issued the Executive
16 Order to address a fiscal crisis the existence of which is admitted by all parties to this action. He
17 issued the Executive Order after making considerable effort to resolve the fiscal crisis through
18 other means. Following the issuance of the Executive Order, the state employer has continued to
19 fulfill its meet and confer obligations under the Dills Act. Petitioners' contention that
20 Respondents are without authority to issue and implement the Executive Order and the furlough
21 of state employees lacks merit. For this reason, their requested relief should not issue from this
22 Court.

23
24 **2. The Governor's Issuance of the Executive Order Does Not Implicate
Government Code Section 19826.**

- 25 a. Furloughs are not synonymous with "salary ranges" as that term in
26 used in section 19826.

27 One of Petitioners' principal claims is the two-day furloughs ordered by the
28 Governor in his Executive Order violate Government Code section 19826(b). That code section

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1 provides as follows:

2 Notwithstanding any other provision of law, the department shall
3 not establish, adjust, or recommend a *salary range* for any
4 employees in an appropriate unit where an employee organization
has been chosen as the exclusive representative pursuant to Section
3520.5. (Emphasis added.)

5 Contrary to Petitioners' claims, furloughs are not equivalent to reductions in salary
6 ranges. No employees' wage rate or salary range will be reduced as a result of the furlough. A
7 furlough only constitutes a reduction in hours worked, not a reduction in the wage rate paid for
8 that work. A furlough reduces an employee's total number of hours worked in a particular pay
9 period. The corresponding rate of pay is not affected and employees will be paid at their normal
10 rate for a reduced number of hours resulting from the two furlough days per month. There is no
11 evidence in this case that the State has any intention of paying state employees at a lesser rate, or
12 to impact state employee salary ranges, for the hours actually worked. The only evidence before
13 this Court is that the *hours worked* will be impacted by the furloughs, not the *rate of pay* for those
14 hours worked.

15 A change to the number of hours worked does not impact an employee's "salary
16 range" as that term is used in section 19826(b). For example, when an employee works overtime
17 his or her total compensation is increased due to the increased hours. If Petitioners' argument is
18 that a change in work hours is synonymous with a change in salary range, then Petitioners also
19 would have to agree that every time an employee was paid increased compensation resulting from
20 working overtime hours a violation of section 19826(b) had occurred. Obviously, Petitioners are
21 not making such a claim. A furlough is a reduction in hours resulting in a reduction in total
22 compensation in the same way that overtime is an increase in hours resulting in an increase in
23 total compensation. Neither one, however, constitutes a change in "salary range." A salary range
24 adjustment occurs where an employee's total work hours remain unchanged and their
25 corresponding pay either increases or decreases.

26 This conclusion is supported by applicable regulations adopted by DPA. The DPA
27 regulations define "salary range" as the "minimum and maximum rate currently authorized for the
28 class." (2 CCR § 599.666.1.) "Rate" for hourly employees is "any one of the dollar and cents

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1 amounts found within the salary range.” (*Id.*) In this respect, “[m]onthly or hourly rates of pay
2 may be converted from one to the other when the Director of [DPA] considers it advisable.” (2
3 CCR § 599.670.) In other words, “salary range” concerns the hourly rate an employee is paid.
4 “Salary range” does not refer to the employee’s “total compensation.” Accordingly, the
5 Governor’s Executive Order establishing two-day a month furloughs for state employees does not
6 fall within the ambit of section 19826(b). Because Petitioners largely rely on this code section in
7 support of their arguments in this case, their request for a writ of mandate should be denied.

8
9 b. Section 19826 is suppressed by operation of the Dills Act due to the
10 existence of the current MOUs between the parties.

11 Government Code section 19826 is inapplicable to the case at hand because it is
12 superseded by existing MOUs between the parties. The Dills Act governs the labor relations
13 between the State and its employees. Pursuant to Government Code section 3517.8(a) contained
14 in the Dills Act,

15 If a memorandum of understanding has expired, and the Governor
16 and the recognized employee organization have not agreed to a new
17 memorandum of understanding and have not reached an impasse in
18 negotiations, subject to subdivision (b), *the parties to the agreement
shall continue to give effect to the provisions of the expired
19 memorandum of understanding, including, but not limited to, all
provisions that supersede existing law, any arbitration provisions,
any no strike provisions, any agreements regarding matters covered
in the Fair Labor Standards Act of 1938.*”

20 (Emphasis added.) (Gov. Code, § 3517.8(a).)

21 In this case, all Petitioners are parties to continuing, albeit expired, MOUs with the
22 State of California. Petitioners have alleged neither that successor MOUs have been agreed upon,
23 nor that the parties have reached a labor impasse in negotiations for a new MOU. Accordingly,
24 pursuant to Government Code section 3517.8(a), the parties must continue to give effect to the
25 expired MOUs, *including all provisions which supersede existing law*

26 As stated in *Department of Personnel Administration v. Superior Court (Greene)*
27 (1992) 5 Cal.App.4th 155, 174-175, a case heavily relied upon by Petitioners,
28 The Dills Act is a ‘supersession statute’, designed so that, *in the
absence of a MOU*, as is the case when an existing MOU has
expired and the parties have bargained to impasse, numerous

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1 Government Code provisions concerning state employees' wages,
2 hours and working conditions take effect. One of the provisions
3 which is effective *in the absence of an MOU* is section 19826."

4 (Emphasis added.) Thus, the present case is exactly the opposite situation of that in *Greene*. In
5 that case, the State and two of its employee bargaining units (one of which was CAPS, one of the
6 petitioners here), had reached impasse in their labor negotiations and, therefore, numerous
7 provisions of the Government Code, including section 19826, had taken effect. Here, in contrast,
8 the parties' labor relations continue to be governed by valid and enforceable MOUs and,
9 therefore, pursuant to section 3517.8, the parties must continue to give effect to that MOU,
10 *including all provisions which supersede existing law.*

11 California Government Code section 3517.6(a) sets forth those code sections
12 which are superseded by a valid MOU. Among the superseded code sections identified in section
13 3517.6(a) is section 19826. Therefore, section 19826 is superseded by the Dills Act and the terms
14 of the expired MOUs. In other words, section 19826 has no legal force and effect between these
15 parties in the face of a valid, operative MOU because that code section has been superseded by
16 the MOUs as specified in the Dills Act. As section 19826 is superseded, it is inapplicable to the
17 matter at hand and has no role in consideration of the validity of the Executive Order.

18 **3. The Adoption of the Furloughs Also Does Not Violate Government**
19 **Code Section 19851.**

20 Government Code Section 19851 does not prohibit the Governor from imposing
21 furloughs for two reasons. First, Government Code section 19851 has been superseded by the
22 terms and conditions of MOUs between the state and each of the exclusive representatives
23 involved in this proceeding in the same fashion as section 19826 discussed above. Second, the
24 Governor and DPA are authorized to set the hours of work for state employees.

25 Government Code section 19851, like section 19826, is one of the statutes
26 identified in Government Code section 3517.6. It provides in pertinent part that where terms of
27 section 19851 "are in conflict with the provisions of a memorandum of understanding, the
28 memorandum of understanding shall be controlling without further legislative action." (See also
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1 Gov. Code § 19851(b).) Section 19851 has been superseded by MOUs between the State and the
2 exclusive representatives for each bargaining unit at issue in these consolidated proceedings.

3 Accordingly, section 19851 is not applicable here because it is superseded as a matter of law.³

4 Contrary to Petitioners' argument here, section 19851 does not require the State
5 provide a 40-hour workweek. Rather, it is a statement of legislative intent or policy goals, and
6 the Courts of Appeal have repeatedly held such statements may not give rise to a mandatory duty.
7 (*Shamsian v. Department of Conservation* (2006) 136 Cal.App.4th 621, 634-635, citing *County of*
8 *Los Angeles v. Superior Ct.* (2002) 102 Cal.App.4th 627, 639; *MacDonald v. State of California*
9 (1991) 230 Cal.App.3d 319, 330; *Tirpak v. Los Angeles Unified School Dist* (1986) 187
10 Cal.App.3d 639, 642-643; and *Ibarra v. California Coastal Com.* (1986) 182 Cal.App.3d 687,
11 694.) A writ of mandate petition will not lie absent a clear and present duty on the part of
12 respondents, nor will it lie to control discretion conferred upon a public agency. (*Shamsian*,
13 *supra*, 136 Cal.App.4th at 639-640.)

14 Additional statutes support DPA's authority to establish workweeks of other than
15 40 hours. For example, Government Code section 19849(a) states: "The [DPA] shall adopt rules
16 governing hours of work and overtime compensation and the keeping of records related thereto,
17 including time and attendance records. Each appointing power will administer and enforce such
18 rules." Pursuant to this statute, the Governor and DPA are vested with broad authority to set
19 work hours. Implied within this authority is the right to reduce hours.

20 Section 19851 also clearly authorizes the Governor and DPA to reduce either
21 hours or workdays in this fiscal crisis. Government Code section 19851(a) states in pertinent
22 part: "It is the policy of the state that the workweek of the state employee shall be 40 hours, and
23 the workday of state employee eight hours, *except that workweeks and workdays of a different*
24 *number of hours may be established in order to meet the varying needs of the different state*
25

26 ³ Even though each of the MOUs between the state and the exclusive representatives in these proceedings
27 have expired, the terms of those MOUs continue in full force and effect until the parties reach impasse or
28 negotiate a successor agreement (Gov. Code § 3517.8.) As of the filing of this memorandum, the state
has not reached impasse or negotiated a successor agreement with any of the exclusive representatives
involved in these consolidated proceedings.

1 agencies” (Emphasis added.) Due to the extraordinarily dire fiscal circumstances facing the
2 State, the DPA’s reduction of state employees’ hours and workdays is justified “in order to meet
3 the varying needs of the different state agencies.”

4 PECG’s and CAPS’ reliance on *Lukens v. Nye* (1909) 156 Cal. 498, is misplaced
5 and out of context. The narrow issue addressed by the California Supreme Court in that case was
6 whether proposed legislation to appropriate money to pay an individual’s claim against the State,
7 which had been passed by both houses of the Legislature, could be changed by the Governor
8 when sent to him for consideration, *prior to being enacted into law*. The court held that except in
9 the sole instance of a bill containing several items of appropriation of money, the Governor was
10 without the power to amend such legislation, but rather was limited to either approving or
11 disapproving of the act as a whole. (*Lukens v Nye, supra*, 156 Cal. 498 at p. 503.) The *Lukens*
12 decision has no bearing on the scope of the Governor’s powers to act in cases of emergency
13 pursuant to Government Code section 3516.5, or the suppression of various statutes in light of a
14 valid and enforceable MOU.

15 PECG’s and CAPS’ reliance on *Association for Retired Citizens-California v.*
16 *Department of Developmental Services* (1985) 38 Cal.3d 384, 391-392 also is misplaced and
17 inapplicable here. The *Developmental Services* case held that an administrative action
18 inconsistent with the acts of the Legislature is void. The Executive Order directing two-day a
19 month furloughs is neither an administrative action,⁴ nor is it inconsistent with the authority
20 vested in the Governor, as the executive, to regulate the hours of work of state employees.

21 Ultimately, both sections 19826 and 19851 are inapplicable to the present situation
22 because they are both suppressed by operation of the Dills Act due to the existence of valid
23 MOUs between the parties. Thus, neither statute serves as an impediment to the Governor’s
24 issuance of the Executive Order in question.

25
26
27 ⁴ An “administrative action” is a quasi-legislative proceeding by any state agency. (See Gov. C. §
28 82002(a)) The term does not include the acts of the Governor in whom “the supreme executive power of
the State is vested.” (Cal. Const , Art. V, § 1.)

1 4. **The Governor's Executive Order Does Not Improperly Interfere with**
2 **the Legislature's Authority.**

3 Petitioners argue that the Governor's Executive Order violates the separation of
4 powers between the Executive and the Legislature because California law grants to the
5 Legislature exclusive authority to set the salaries of state employees. Separate and apart from the
6 fact that the furlough of state employees does not impact state employee salaries as pointed out in
7 the argument above, Petitioners have misapplied the concept of separation of powers to the matter
8 before the Court.

9 The California Constitution grants the Governor "supreme executive power" and
10 requires the Governor to see that the law is faithfully executed. (Cal. Const., Art. V § 1.) Article
11 V, section 1, of the California Constitution grants the Governor the authority to issue directives to
12 subordinate executive officers concerning the enforcement of the law. (63 Ops.Cal.Atty.Gen.
13 583, (1980) WL 96881 (Cal.A.G.)) The Governor is charged with supervising the official
14 conduct of all executive and ministerial officers. (Gov. Code, § 12010.) Here, the Governor
15 acted properly promulgating an executive order directing DPA to implement a two-day per month
16 furlough plan.

17 In addition to the executive powers granted him by the California Constitution, the
18 Governor also is vested with the sole authority to collectively bargain on behalf of the state
19 employer with the bargaining unit representatives. DPA is charged with representing the
20 Governor, as the State employer, in administering those aspects of the state personnel system
21 subject to collective bargaining under the Dills Act, Government Code section 3512, *et seq.* (See
22 Gov. Code 3513(j), 19815.4(g), 19816(a), 19816.4, 19816.8, 19816.17, 19819.5-19819.7.)
23 Included within these powers is the duty to bargain and meet and confer with the state bargaining
24 units' exclusive representatives over wages, hours, and terms and conditions of employment.
25 (Gov. Code §§ 3512, 3517; *CCPOA v. State of California* (2006) 142 Cal.App.4th 198, 202.)
26 DPA acts as the Governor's representative for purposes of meeting and conferring with all of the
27 state bargaining units. (*CCPOA v. State, supra*, 142 Cal.App.4th at 202.) The adoption of the
28 furloughs falls squarely within the scope of collective bargaining pursuant to the Dills Act.

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1 Furthermore, as already noted, the statutes relied upon by Petitioners for claiming that
2 Respondents lack the authority to furlough state employees, namely section 19826(b) and others,
3 are superseded by the Dills Act due to the ongoing viability of the parties' MOUs. (Gov. Code §
4 3517.6.) Finally, as already noted, an additional authority granted the Governor by the Dills Act,
5 specifically Government Code section 3516.5, is the authority to adopt rules and regulations
6 affecting state employment without prior notice.

7 The constitutional and statutory provisions cited above establish the Governor's
8 authority to issue the Executive Order in question. Petitioners erroneously contend, however, that
9 the Executive Order violates the notion of separation of powers between the executive branch and
10 the legislative branch. The separation of powers doctrine places limits upon the actions of each
11 branch with respect to the other branches to prevent one branch from usurping authority of the
12 other branches. (*Superior Court v. County of Mendocino* (1996) 13 Cal.4th 45, 52-53.) However,
13 the separation of powers doctrine does not require a sharp demarcation between the operations of
14 the three branches of government. Rather, California courts have long recognized that, in reality,
15 the separation of powers doctrine allows the three departments of government to significantly
16 affect each other. (*Marine Forests Society v California Coastal Com.* (2005) 36 Cal.4th 1, 24-
17 25.)

18 The Executive Order in question was issued in order to alleviate part of the State's
19 catastrophic and ever-worsening fiscal crisis. In the absence of immediate action, the State will
20 run out of money by February 2009, which is literally in a matter of days. (12-22-08 Letter from
21 Chiang, Exhibit 13 to Tyra Declaration.) By issuing the Executive Order, the Governor is abiding
22 by his constitutional mandate to ensure the State's financial solvency. To that end, the Executive
23 Order directed the DPA to implement a two-day furlough in order to realize immediate necessary
24 savings to the General Fund. (Shimazu Declaration, ¶ 7.) Here, the Governor invoked the
25 authority granted to him pursuant to Government Code section 3516.5 in order to realize these
26 necessary savings via the furloughs. As such, the Executive Order in no way impairs, limits or
27 hinders the powers of the Legislature or Judiciary, but rather falls squarely within the authority
28 delegated to the Governor by the California Constitution and the Dills Act to address the fiscal

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1 crisis and solvency of the State and to administer the wages, hours, and terms and conditions of
2 state employment through the DPA. Therefore, the Executive Order is an entirely constitutional
3 exercise of the Governor's executive power.

4
5 **5. Petitioner's Reliance on *DPA v. Superior Court (Greene)* is Misplaced.**

6 In *Dept of Personnel Admin v. Superior Court (Greene)*, *supra*, 5 Cal. App. 155,
7 172, the Court held DPA could not implement a final wage proposal containing a salary reduction
8 after having bargained to impasse. In particular, the *Greene* court held the Legislature retains
9 "ultimate authority over state workers' employment conditions," and section 19826 was a specific
10 delegation of this authority to the DPA with respect to unrepresented employees but not with
11 respect to represented employees. (*Id.* at 177-8.) "As a consequence, the question of represented
12 employees' wages at impasse must ultimately be resolved by the Legislature itself." (*Id.* at 178.)

13 There are several key factual distinctions between the *Greene* case and this matter.
14 First and foremost, *Greene* dealt with an across the board 5% salary reduction for employees. In
15 *Greene*, employees were going to continue working their normal hours but receive 5% less pay,
16 an effective reduction in their rate of pay. Here, no such reduction in state employees' rate of pay
17 will occur. Rather, state employees' rate of pay will remain exactly the same; those employees
18 will simply work fewer hours.

19 Second, in *Greene* the parties had bargained to impasse on their MOUs when the
20 employer decided to adopt the pay reductions. Here, it is undisputed that the labor relations
21 between the parties are defined by their MOUs, which legally remain in force and effect. (See
22 Govt. C. §3517.8(a).) In fact, *Greene* was decided before the enactment of Government Code
23 Section 3517.8, which incorporated an "evergreen" provision into the Dills Act, *i.e.*, MOUs
24 between the state employer and its bargaining units remain in force and effect past the expiration
25 of the MOU as long as the parties remain in good faith bargaining for a successor MOU.
26 Pursuant to 3517.8(a), the current language in the MOUs remains in effect until the parties either
27 reach impasse or agree to a new MOU. Section 3517.8(a) provides:

1 If a memorandum of understanding has expired, and the Governor
2 and the recognized employee organization have not agreed to a new
3 memorandum of understanding and have not reached an impasse in
4 negotiations, subject to subdivision (b), *the parties to the agreement*
5 *shall continue to give effect to the provisions of the expired*
6 *memorandum of understanding, including, but not limited to, all*
7 *provisions that supersede existing law, any arbitration provisions,*
8 *any no strike provisions, any agreements regarding matters covered*
9 *in the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et*
10 *seq.), and any provisions covering fair share fee deduction*
11 *consistent with Section 3515.7. (Emphasis added.)*

12 Third, it is important to note the *Greene* court held section 19826 only prohibited
13 the state employer from altering salary ranges. The *Greene* court was never asked to consider the
14 legality of furloughs. In fact, the *Greene* court held the state employer was authorized to reduce
15 and limit employee total compensation in other ways. (See *Greene, supra*, 5 Cal. App. 4th at
16 187.) For example DPA has the authority to layoff employees which reduces the work force.
17 (See Gov. Code § 19997.) DPA is also authorized to to reduce or eliminate overtime which
18 directly reduces employees' total compensation. (See Gov. Code § 19816.10) None of these
19 actions implicate Section 19826. Indeed, although the *Greene* court held DPA could not
20 unilaterally reduce employees' salaries, it nevertheless found DPA could unilaterally reduce an
21 employee's benefits, even though this would limit an employee's total compensation. (See
22 *Greene, supra*, 5 Cal. App. 4th at 187.)

23 Finally, *Greene* did not involve the Governor's exercise of the emergency
24 authority granted him by section 3516.5 to adopt a pre-impasse rule or regulation in an
25 emergency situation. In short, *Greene* is inapposite to the present situation and its holding does
26 not serve as a legal impediment to the Governor's exercise of his executive authority to issue the
27 Executive Order.

28 The Governor' Executive Order is not governed by section 19826 because it does
not involve a reduction in employee salary ranges. It does not violate the separation of powers
between the Governor and the Legislature. And, it is not prohibited by the holding in *Greene*.
Accordingly, the Executive Order directing a period of temporary furloughs is well within the

1 Governor's inherent executive power to address the State's current fiscal crisis. As a result,
2 Petitioners are not entitled to the issuance of the requested writs of mandate.

3
4 **B. This Court Does Not Have the Jurisdiction to Issue the Requested Relief.**

5
6 As previously noted, the court in *Dept. of Personnel Admin. v. Superior Court*
7 (*Greene*), *supra*, 5 Cal. App. 155 held that the Dills Act is a supersession statute that operates to
8 suppress certain statutory provisions when a valid MOU exists between the state employer and
9 one of its bargaining units. A year later, the court in *Tirapelle v Davis* (1993) 20 Cal.App.4th
10 1317, 1325), confirmed this:

11 The Ralph C. Dills Act is a 'supersession statute'; that is, the parties
12 are permitted to override otherwise applicable statutory provisions
13 in a memorandum of understanding (MOU), but in the absence of
14 an existing MOU, these statutory provisions apply...The DPA's
salary setting function, set forth in Section 19826, is one of those
statutory provisions which may be overridden in a MOU

15 Contrary to the situations in *Tirapelle* and *Greene*, all Petitioners are subject to MOUs still
16 currently in effect. None of the Petitioners are at impasse with DPA and as such the current
17 MOUs override a number of statutes including, but not limited to, section 19826. (See
18 Government Code Section 3517.6.) Although Respondents maintain that furloughs are not a
19 salary reduction and thus do not implicate section 19826, even if this section applied, it is moot
20 since the statute is superseded by the operative MOU's. As a result, the only conceivable claims
21 Petitioners can make here are that Respondents have either violated the provisions of the
22 applicable MOUs and/or engaged in unfair labor bargaining by not meeting and conferring with
23 the Petitioners over the furloughs prior to the issuance of the Executive Order. Either way, the
24 proper forum for adjudication of Petitioners' claims is before the Public Employment Relations
25 Board (PERB). In fact, SEIU initially filed a charge before PERB and that case is still pending.
26 This Court must defer to PERB's expertise and initial exclusive jurisdiction in resolving this
27
28

1 matter.

2 **1. Petitioners are Covered by MOUs Currently in Effect Thereby**
3 **Superseding Government Code Section 19826 and Other Statutes**
4 **Relied on by Petitioners.**

5 As already noted, the Dills Act operates to suppress section 19826 and the other
6 statutory provisions relied on by Petitioners. All Petitioners are parties to expired, but continuing,
7 MOUs with the State of California. Petitioner CASE not only admits that the terms of its MOU
8 are still controlling, it further states the provisions of its MOU supersede the Government Code.
9 (CASE Petition, fn. 4.) Respondents agree. Accordingly, pursuant to Government Code section
10 3517.8(a), the parties must continue to give effect to the expired MOUs, including all provisions
11 which supersede existing law.

12 **2. PERB has Initial Exclusive Jurisdiction Over this Matter.**

13 As a result of the continuing suppression of section 19826, and the other statutes
14 on which Petitioners rely, the only potential existing dispute between the parties is whether the
15 Executive Order violates the terms of the existing MOUs or whether the Governor committed an
16 unfair labor practice by declaring an emergency under section 3516.5, thereby bypassing
17 bargaining with the employee organizations over the implementation of employee furloughs as a
18 cost saving measure. Thus, the dispute as to whether the Governor failed to meet and confer in
19 good faith is governed exclusively by the Dills Act. (Gov. Code, §§ 3516.5, 3517.)

20 PERB possesses exclusive, initial jurisdiction over the administration of the Dills
21 Act. (Gov. Code, § 3514.5 [“The initial determination as to whether the charges of unfair
22 practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this
23 chapter, shall be a matter within the exclusive jurisdiction of the board”]; *California Association*
24 *of Professional Scientists v Schwarzenegger* (2006) 137 Cal.App.4th 371, 381 [“The assignment
25 of exclusive initial jurisdiction in section 3514.5 to the Board means that the only forum to pursue
26 a cause of action for violation of the statutory rights conferred in the Dills Act is before the
27 Board”].)
28

1 The scope of PERB's exclusive, initial jurisdiction is construed broadly in favor of
2 allowing the Board to exercise its expertise over public sector labor relations in this state. (*El*
3 *Rancho Unified School District v. National Education Association* (1983) 33 Cal.3d 946, 953;
4 *San Diego Teachers Association v Superior Court* (1979) 24 Cal.3d 1, 12-14.) PERB's
5 jurisdiction is broadly construed because "PERB is an expert, quasi-judicial administrative
6 agency" specially entrusted "to protect both employees and the state employer from violations of
7 the organizational and collective bargaining rights" guaranteed by the statutes it administers.
8 (*Banning Teachers Association v. Public Employment Relations Board* (1988) 44 Cal.3d 799,
9 804; *City and County of San Francisco v. International Union of Operating Engineers, Local 39*
10 (2007) 151 Cal.App.4th 938, 943.) It has long been settled that PERB's "findings within that
11 field carry the authority of an expertness which courts do not possess and therefore must respect."
12 (*Banning Teachers Association, supra*, 44 Cal.3d at p. 804.)

13 Judicial deference to PERB's administrative process is both necessary and
14 appropriate to fulfill PERB's legislatively assigned mission "to help bring expertise and
15 uniformity to the delicate task of stabilizing labor relations." (*San Diego Teachers Association,*
16 *supra*, 24 Cal.3d at p. 12; *Local 21, International Federation of Professional and Technical*
17 *Engineers, AFL-CIO v. Bunch* (1995) 40 Cal.App.4th 670, 676-679 [discussing the broad scope
18 of PERB's exclusive, initial jurisdiction]; *City and County of San Francisco, supra*, 151
19 Cal.App.4th at p. 945 [finding that a party may not evade PERB's jurisdiction through artful
20 pleading]; *El Rancho Unified School District, supra*, 33 Cal.3d at p. 954, fn. 13 [stating that a
21 court must defer to PERB when the underlying conduct alleged "may fall within PERB's
22 exclusive jurisdiction"].)

23 24 3. Petitioners Have Failed to Exhaust Their Administrative Remedies.

25 In general, a party is required to exhaust its administrative remedies before
26 resorting to intervention from the courts. (*Coachella Valley Mosquito & Vector Control District*
27 *v. Public Employment Relations Board* (2005) 35 Cal.4th 1072, 1080 (*Coachella Valley*)). The
28 rule of exhaustion "is not a matter of judicial discretion" but rather a fundamental rule

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1 establishing "a jurisdictional prerequisite to resort to the courts." (*Sierra Club v. San Joaquin*
2 *Local Agency Formation Commission* (1999) 21 Cal.4th 489, 496.)

3 Petitioners have not exhausted their available administrative remedies. Petitioners
4 PECCG, CAPS, and CASE have failed to even seek, let alone exhaust, their administrative
5 remedies with PERB before seeking relief from this Court. No exceptions to the exhaustion rule
6 apply to excuse Petitioners' failure to exhaust their administrative remedies at PERB.

7 SEIU's conduct in initially filing an unfair practice charge before PERB
8 complaining of the same issues asserted here supports Respondents' contention that PERB has
9 initial exclusive jurisdiction. Petitioner SEIU, however, did not exhaust the administrative
10 remedies available to it before PERB. Instead, it prematurely and inappropriately abandoned the
11 governing administrative process in favor of seeking relief improperly before this Court. It is also
12 important to note the SEIU unfair practice charge is still pending before PERB.

13 Petitioner SEIU has squarely presented to PERB the exact claims it presents to this
14 Court (with the exception of the hypothetical FLSA allegations that are neither ripe nor justiciable
15 in any forum at this point). (See Request for Judicial Notice in support of Respondents'
16 demurrers.) In its charge filed with PERB, Petitioner SEIU complained Governor
17 Schwarzenegger and Department of Personnel Administration failed to meet and confer in good
18 faith before issuance of the Governor's Executive Order. (Id.) Furthermore, Petitioner SEIU
19 charged the furlough was unlawful and exceeded the Governor's authority pursuant to
20 Government Code section 3516.5.

21 To date, PERB has not rendered a determination on any of the unfair practice
22 charges challenging the Governor's Executive Order. By way of example, SEIU filed its unfair
23 practice charge with PERB on December 22, 2008. SEIU and the other Petitioners fail to explain
24 why they have not availed themselves of the available motion, pursuant to Title 8 of the
25 California Code of Regulations section 32147, to expedite PERB proceedings on the charge.
26 Petitioner SEIU has also not sought injunctive relief from the PERB Board on this issue, despite
27 being an available remedy. (8 Cal.Code of Regs., § 32450.) This Court has no authority to
28 review how PERB exercises its remedial discretion. This Court must defer to PERB's expertise

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1 in exercising its legislatively delegated authority. (*Mt. San Antonio Community College District*
2 *v. Public Employment Relations Board* (1989) 210 Cal.App.3d 178, 190.)

3 Petitioners have made no showing as to why they should be afforded relief from
4 the exhaustion doctrine. Courts have recognized several limited exceptions to the exhaustion
5 rule, such as “[1] situations where the agency indulges in unreasonable delay, ... [2] when pursuit
6 of an administrative remedy would result in irreparable harm, [3] when the agency is incapable of
7 granting an adequate remedy, and [4] when resort to the administrative process would be futile
8” (*Greene, supra*, 5 Cal.App.4th 155, 169 [numbering added].) None of these exceptions
9 apply to excuse Petitioners’ failure to exhaust their administrative remedies before PERB, and
10 their petitions should therefore be dismissed.

11 Moreover, Petitioners will not be subject to irreparable harm if they pursue their
12 administrative remedies. The California Supreme Court addressed the “irreparable injury” issue
13 in *San Diego Teachers Association*. There, the school district argued it should not be required to
14 complete the PERB process because “completion of the administrative proceeding would result in
15 irreparable injury.” (*San Diego Teachers Association, supra*, 24 Cal.3d at p. 13.) The Court
16 rejected that argument and found PERB has broad discretion “to withhold as well as pursue”
17 whatever remedies it deems appropriate. (*Id.*) Accordingly, Petitioners can claim no “irreparable
18 injury” excusing their failure to exhaust their administrative remedies with PERB. Therefore, the
19 Petitioners’ failure to exhaust their administrative remedies bars this Court from exercising
20 jurisdiction over these petitions and complaints and they must, as a result, be dismissed.

21
22 **C. The Fair Labor Standards Act Does Not Preclude the Adoption of Furloughs**
23 **Pursuant to the Executive Order.**

24 The Fair Labor Standards Act (“FLSA”), 29 U.S.C. section 201, *et seq.*, requires
25 employers to pay overtime compensation for any hours worked over forty in a workweek.
26 However, certain executive, administrative and professional employees are exempt from the
27 overtime provisions of the FLSA. (29 U.S.C. § 213.) In order to maintain their exempt status, an
28 executive, administrative or professional employee must meet both a “duties test” and a “salary

1 basis test". (29 C.F.R. § 541.300.) Pursuant to the "salary basis test" an employee will be
2 considered to be paid on a "salary basis", and therefore exempt, if the employee regularly
3 receives a predetermined amount constituting all or part of the employee's compensation, which
4 amount is not subject to reduction because of variations in quality or quantity of work performed.
5 (29 C.F.R. § 541.602.)

6 SEIU and CASE argue the furlough is illegal under the FLSA with respect to
7 exempt employees, including attorneys, because the furlough results in impermissible deductions
8 from exempt employees' salaries, thereby defeating the "salary basis test" for these employees
9 and resulting in a permanent loss of their exempt status. SEIU further alleges the Executive
10 Order is illegal because it does not provide a mechanism for payment of overtime for the work
11 SEIU believes will be necessary to provide the public services for which these exempt employees
12 were hired. Both SEIU and CASE mischaracterize the applicable FLSA regulations and base
13 their allegations on pure speculation that exempt employees will work overtime during a
14 workweek in which they have been furloughed and these employees will not be properly
15 compensated.

16
17 **1. The FLSA Permits Budget-Related Furloughs of Exempt Employees of Public Agencies.**

18
19 In 1992 the Department of Labor (DOL) issued FLSA regulations that modified
20 the "salary basis test" as it applied to state and local governments. Included in the new
21 regulations was Title 29 of the Code of Federal Regulations section 541.710⁵. Pursuant to section
22 541.710(b), exempt employees of a public agency "may be furloughed for budget-related reasons
23 without affecting their exempt status, except for the workweek in which the furlough occurs".
24 The intent of this new rule was to permit public sector employers facing financial difficulties
25 from budget shortfalls to be empowered to make appropriate decisions on how best to implement

26
27 ⁵ In 1992, this regulation was originally numbered Title 29 of the Code of Federal Regulations section
28 541.5d. The 1992 amendments were re-numbered in 2004, however the 1992 version of Title 29 of the
Code of Federal Regulations section 541.710 along with the DOL's reasons for its promulgation remains
consistent with the 2004 version.

1 furloughs without risking additional retroactive overtime liabilities and even higher potential
2 deficits because of the furloughs. (57 Fed.Reg. 37,674-37,675 (Aug. 19, 1992).)

3 The State of California is in an unprecedented fiscal crisis and in order to reduce
4 the number of layoffs necessary to continue operation of state services, the Governor lawfully
5 ordered the furlough of state employees two days per month, including those exempt under
6 FLSA. Although these employees will lose their exempt status for the workweeks in which a
7 furlough day occurs, these employees will continue to be exempt during the workweeks in which
8 a furlough day is not taken and will remain exempt once the furlough period is completed in June
9 of 2010. (29 C.F.R. § 541.710.)

10 Both SEIU and CASE argue the primary effect of the loss of the exemption will be
11 a significant amount of overtime compensation which might be owed to these otherwise exempt
12 employees. They allege these exempt employees will necessarily have to work overtime to
13 complete their assignments and fulfill their responsibilities. However, these claims are
14 hypothetical, speculative and lacking any actual factual support.

15 The potential for overtime liability only arises during the two workweeks per
16 month in which the furlough day occurs. During the remaining workweeks, these employees
17 continue to be exempt from the overtime provisions of the FLSA. Where an employee does in
18 fact work overtime, during a workweek in which he has been furloughed, he or she will be
19 compensated consistent with the FLSA. (See Chapman Declaration, ¶ 16.) Notwithstanding the
20 temporary loss of the FLSA exemption, section 541.710(b) makes it explicitly clear that FLSA
21 exempt employees may be furloughed by their state employer for budget-related reasons.

22
23 **2. The "Self Directed Furlough Plan" Does Not Run Afoul to the
24 Requirements of the FLSA.**

25 SEIU alleges the portion of the Order dealing with the "Self Directed Furlough
26 Plan" violates, Title 29 of the Code of Federal Regulations section 778.106 because it requires
27 certain employees to lose ten percent of their salary each month despite the fact the employee
28 worked each and every day without being furloughed. However, SEIU has grossly

1 mischaracterized section 778.106. Section 778.106 deals exclusively with the payment of
2 overtime compensation and establishes the general rule that overtime compensation earned in a
3 particular workweek must be paid on the regular pay day for the period in which such workweek
4 ends. However, when the correct amount of overtime cannot be determined until some time after
5 the regular pay day, the requirements of the Act will be satisfied if the employer pay the excess
6 overtime compensation as soon as is practicable. (29 C.F.R. § 778.106.)

7 SEIU cites *Biggs v. Wilson* (9th Cir. 1993) 1 F.3d 1537 for the proposition that late
8 payment of wages is the same as a failure to pay wages under the FLSA. This case is inapposite
9 as the State will continue to pay employees their wages consistent with federal and state law.
10 Even with a reduction in the number of hours worked, no state employee will be paid wages that
11 are inconsistent with the requirements of those laws. (See Torrey Declaration, ¶ 4.) Accordingly,
12 the "Self Directed Furlough Plan" does not run afoul to section 778.106 or any other provision
13 dealing with the minimum amount of wages required to be paid on an employee's regular pay
14 day.

15
16 **3. Attorneys Are Not Subject to the "Salary Basis Test" and Will Not
17 Lose Their Exempt Status During the Furlough.**

18 While the FLSA exempt status of most professional employees is conditioned on
19 the satisfaction of both a "duties test" and a "salary basis test," attorneys, by regulation, are
20 explicitly excluded from the salary requirements, including the "salary basis test," applicable to
21 other executive, administrative and professionally exempt employees. (29 C.F.R. § 541.304.)

22 CASE alleges attorneys will be owed significant amounts of overtime because they
23 will inevitably have to work more than the eight hours on their non-furlough days in order to meet
24 their ethical and contractual obligations.⁶ This claim is frivolous since attorneys are not subject to
25 the requirements of the "salary basis test," and therefore cannot lose their exemption because of a
26 furlough which has the effect of reducing their total compensation, even in the workweek when

27 ⁶ CASE originally made this argument in its Verified Petition For Writ Of Mandate And Complaint For
28 Declaratory And Injunctive Relief. It can be inferred from CASE's failure to address this issue in its
Memorandum Of Points And Authorities In Support Of Verified Petition For Writ Of Mandate And
Complaint For Declaratory And Injunctive Relief that it now realizes its original assertion was incorrect.

1 the furlough occurs. (29 C.F.R. § 541.304.) Since attorneys cannot lose their exemption, they are
2 not entitled to overtime compensation even if they must work more than eight hours in one day or
3 forty hours in a workweek in order to meet their contractual or ethical obligations.

4
5 **D. Petitioners' Request For Injunctive Relief Must Be Denied As They Have An**
6 **Adequate Remedy At Law, Have Failed To Demonstrate A Likelihood Of Success,**
7 **And Have Failed To Demonstrate Irreparable Harm.**

8 Injunction is an extraordinary power, to be exercised always with great caution and
9 in those cases only where it fairly appears that if an injunction is not granted that the petitioner
10 will suffer irreparable injury. An injunction should rarely, if ever, be used in a doubtful case.
11 (*City of Tiburon v. Northwestern Pacific Railroad Co.* (1970) 4 Cal.App.3d 160, 179.) In
12 deciding to issue an injunction, the court weighs two 'interrelated' factors: (1) the likelihood that
13 the moving party will ultimately prevail on the merits and (2) the relative interim harm to the
14 parties from issuance or non issuance of the injunction. (*O'Connell v Superior Court* (2006) 141
15 Cal. App. 4th 1452, 1463) "The trial court's determination must be guided by a 'mix' of the
16 potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must
17 be shown on the other to support an injunction." (*Id.*)

18 **1. Petitioners Have An Adequate Remedy At Law.**

19 A prerequisite for granting equitable relief is an inadequate remedy at law. Code
20 of Civil Procedure section 526 provides that an injunction may be granted "[w]hen a pecuniary
21 compensation would not afford adequate relief" or "[w]here it would be extremely difficult to
22 ascertain the amount of compensation which would afford adequate relief." (Code of Civ. Proc.,
23 § 526, subd. (a)(4), (5).) The courts have recognized that a "party seeking injunctive relief must
24 show the absence of an adequate remedy at law" (*Department of Fish and Game v Anderson-*
25 *Cottonwood Irrigation Dist.* (1992) 8 Cal.App.4th 1554, 1564) and that "[w]hen an adequate
26 remedy exists at law, and if monetary damages afford adequate relief and are not extremely
27 difficult to ascertain, an injunction cannot be granted." (*Thayer Plymouth Center, Inc. v. Chrysler*
28 *Motors Corp* (1967) 255 Cal.App.2d 300, 306; see also *Tahoe Keys Property Owners'*

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1 *Association v State Water Resources Control Board* (1994) 23 Cal.App.4th 1459, 1471.)

2 Here, Petitioners seek to enjoin the implementation of furloughs because the
3 resulting furloughs will result in a loss of compensation for their members. Even assuming
4 Petitioners have a meritorious argument on this point, the claims raised are strictly economic and,
5 therefore, monetary damages presumably would afford adequate relief. Accordingly, there is an
6 adequate remedy at law, and an injunction should not issue.

7
8 **2. Petitioners Are Not Likely To Succeed On The Merits.**

9 Petitioners fail to demonstrate they are likely to succeed on the merits. Petitioners
10 focus their Petitions on an alleged violation of Government Code section 19826, subdivision (b).
11 However, as set forth above and in Respondents' demurrer, section 19826 is superseded by the
12 parties' MOUs, and therefore is inapplicable here.

13 Furthermore, the Governor, as the state employer, is empowered to negotiate hours
14 and other terms and conditions with the Unions, but in cases of emergency, the State Employer
15 may implement a law, rule, regulation or resolution relating to wages, hours and other terms and
16 conditions of employment without first meeting and conferring with the Unions. (Gov. Code, §
17 3516.5, see also *Sonoma County Organization v. County of Sonoma (Sonoma County)* (1991) 1
18 Cal.App.4th 267.) Petitioners bear the burden of demonstrating an emergency does not exist.
19 None of the Petitioners refute the existence of an emergency or allege that Government Code
20 section 3517.6 was violated. Accordingly, since the implementation of furloughs is lawful, the
21 Petitioners cannot succeed on the merits and an injunction cannot issue.

22
23 **3. The Issuance Of An Injunction Will Result In Irreparable Harm To
The State.**

24 In deciding to issue a permanent injunction, the court "should consider the relative
25 hardship of the parties and balance the equities." (*Cota v. County of Los Angeles* (1980) 105 Cal.
26 App. 3d 282, 292.) "Where injury would result to the public, an additional reason arises for
27 refusal to grant injunctive relief." (*Id.*) A "significant" showing of irreparable injury is required
28

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1 because there is a “general rule against enjoining public officers or agencies from performing
2 their duties.” (*Tahoe Keyes Prop. Owners Ass'n. v. State Water Resources Control Bd.*, *supra*, 23
3 Cal.App.4th at p. 1471.)

4 Furthermore, when an injunction is sought against a public agency or officer,
5 public policy considerations come into play. The public interest must be considered. “It is well
6 established that when injunctive relief is sought, consideration of public policy is not only
7 permissible but mandatory.” (*Teamsters Agricultural Workers Union v International*
8 *Brotherhood of Teamsters* (1983) 140 Cal. App. 3d 547, 555 citing *Loma Portal Civic Club v.*
9 *American Airlines, Inc* (1964) 61 Cal.2d 582, 588; see also *O'Connell v Superior Court* (2006)
10 141 Cal.App.4th 1452, 1471.)

11 The consideration of public policy is based upon the principle of separation of
12 powers. The California Supreme Court “emphasized that ‘principles of comity and separation of
13 powers place significant restraints on courts’ authority to order or ratify acts normally committed
14 to the discretion of other branches or officials. [Citations.] In particular, the separation of powers
15 doctrine (Cal. Const., art. III, § 3) obligates the judiciary to respect the separate constitutional
16 roles of the Executive and the Legislature.” (*O'Connell v. Superior Court, supra*, 141
17 Cal.App.4th at p. 1464, citing to *Butt v State of California* (1992) 4 Cal.4th 668, 695.) The
18 Supreme Court has “stressed that ‘a judicial remedy must be tailored to the harm at issue
19 [citations],’ and that ‘[a] court should always strive for the least disruptive remedy adequate to its
20 legitimate task.’” (*O'Connell v. Superior Court, supra*, 141 Cal.App.4th at p. 1464, citing to *Butt*
21 *v. State of California, supra*, 4 Cal.4th at pp. 695-96.)

22 Here, the harm to Respondent far exceeds the harm to Petitioners and their
23 members. The State is facing an unprecedented, undisputed immediate fiscal disaster that is
24 affecting every citizen of this state. (See Genest Declaration, ¶ 3; Tyra Declaration, Exhibits 11,
25 13.)

26 There is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal
27 year that is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18
28 months. If no action is taken the cash reserve in the State Treasury is estimated to be a negative

K. MUNKOVITZ,
ANN & GIRARD
ATTORNEYS AT LAW
CORPORATED

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1 \$5 billion in March 2009, which means it is likely the State will miss payroll and other essential
2 services payments at the beginning of 2009. (Tyra Declaration, Exhibit 11.) As stated by
3 Controller Chaing, “[f]ailure to act threatens our ability to respond to natural disasters, our ability
4 to provide life preserving care to the elderly and the ill, and our ability to protect our communities
5 from crime.” (Tyra Declaration, Exhibit 13.) Both Chiang and Genest have declared that if
6 nothing is done the State will run out of cash in February – in a matter of days.

7 In contrast to the severe repercussions to the State of California if the Governor is
8 prevented from ordering furloughs, Petitioners have failed to demonstrate the significant
9 irreparable harm that is required when an injunction is sought against a public officer or agency.
10 (*Tahoe Keyes Prop. Owners Ass’n v. State Water Resources Control Bd.*, *supra*, 23 Cal.App.4th
11 at p. 1471.) Petitioner SEIU does not address its request for injunctive relief at all in its
12 memorandum of points and authorities. The only section that could be construed as addressing
13 “harm” is SEIU’s discussion that the Executive Order does not provide a system to compensate
14 FLSA-exempt employees. (See SEIU’s Ps and As, at p. 12.) The State intends to satisfy all of its
15 FLSA requirements. Yet, SEIU’s allegations that FLSA-exempt employees may not be properly
16 compensated is mere speculation. An injunction will not issue on speculative harm. “An
17 injunction cannot issue in a vacuum based on the proponents’ fears about something that may
18 happen in the future.” (*Korean Philadelphia Presbyterian Church v. California Presbytery*
19 (2000) 77 Cal.App.4th 1069, 1084.)

20 Likewise, Petitioner CASE’s allegations of irreparable harm are also unfounded
21 and speculative. (See CASE’s Ps and As, at p. 14.) CASE alleges the furlough will “put certain
22 CASE members at risk of losing their homes, defaulting on auto loans, and suffering negative
23 reports on their credit ratings.” (*Id.*) In support of this statement, CASE cites to the declaration
24 of Peter Flores. First, the “declaration” of Peter Flores served on Respondent was not signed, and
25 therefore, should be disregarded in its entirety. Second, neither “declaration” nor the points and
26 authorities state that CASE members will suffer such risks as losing their homes as a result of the
27 furlough. Also, CASE submits no declarations from any of its members that will be furloughed
28 to testify as to their harm. As stated above, such speculative harm does not justify the issuance of

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1 an injunction. (*Korean Philadelphia Presbyterian Church v. California Presbytery, supra*, 77
2 Cal.App.4th at p. 1084.)

3 Petitioners PECG and CAPS also fail to establish irreparable harm. (PECG/CAPS
4 Ps and As, at p. 17.) The only harm alleged by PECG and CAPS to its members is a loss of
5 money. (*Id.*) As stated above, a loss of money does not justify an injunction because there is an
6 adequate remedy at law (i.e., money damages). PECG and CAPS also do not establish a
7 significant showing of irreparable harm (i.e., how a furlough and commensurate reduction in
8 wages significantly harms its members.)

9 All of the evidence demonstrates the direness of the State's fiscal crisis. The
10 Governor, the Controller and the Finance Director have all made it clear the State will run out of
11 money in February. The furlough will assist the State in realizing immediate savings to help
12 ensure the State can satisfy its monetary obligations. Accordingly, the balancing of the relative
13 equities at stake in this case warrants a denial of the requested injunctive relief.

14
15 **IV.**

16 **CONCLUSION**

17 This State is in a dire fiscal crisis and is only weeks away from insolvency. The
18 Petitioners do not dispute the existence of this fiscal crisis and the fact that immediate action must
19 be taken. The emergency provision of the Dills Act was created specifically to permit the
20 Governor to address emergency situations in the manner he has in the Executive Order. The
21 Governor's Executive Order is a reasonable, measured, appropriate, and authorized use of his
22 constitutional and statutory executive powers. Accordingly, Respondents respectfully requests
23 this Court deny Petitioners' writs of mandate and requests for injunctive relief.

24 Dated: January 20, 2009

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

25 By: 

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

K. MOSKOVITZ,
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21 Governor; STATE OF CALIFORNIA; DAVID GILB and
22 DEPARTMENT OF PERSONNEL ADMINISTRATION

23 SUPERIOR COURT OF CALIFORNIA
24 COUNTY OF SACRAMENTO

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

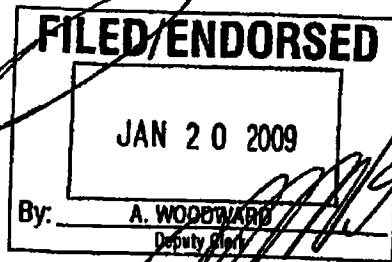
Petitioners/Plaintiffs,

v.

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

Respondents/Defendants.

AND RELATED CASES



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

Assigned For All Purposes To The Honorable
Patrick Marlette

PROOF OF SERVICE

Date January 29, 2009

Time: 9:00 a.m.

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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- 1 -

PROOF OF SERVICE

1
2 I, May Marlowe, 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 January 20, 2009, I served a
6 copy of the following document(s):

7 **RESPONDENTS' OPPOSITION TO PETITIONERS' PETITIONS FOR WRIT OF
8 MANDATE IN CONSOLIDATED ACTIONS;**

9 **DECLARATION OF DAVID W. TYRA;**

10 **DECLARATION OF JULIE CHAPMAN;**

11 **DECLARATION OF ALENE SHAMAZU;**

12 **DECLARATION OF BERNICE TORREY;**

13 **DECLARATION OF DIRECTOR OF FINANCE MICHAEL C. GENEST;**

14 **EVIDENTIARY OBJECTION TO DECLARATION OF PETER FLORES, JR.**

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

17 by placing the document(s) listed above in a sealed envelope with postage thereon
18 fully prepaid, the United States mail at Sacramento, California addressed as set
19 forth below.

20 by placing the document(s) listed above in a sealed Federal Express envelope and
21 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
22 Express agent for delivery.

23 by transmitting via e-mail or electronic transmission the document(s) listed above
24 to the person(s) at the e-mail address(es) set forth below.

25 **Attorneys for Petitioners/Plaintiffs California**
26 **Attorneys, Administrative Law Judges and**
27 **Hearing Officers in State Employment**

28 Brooks Ellison, Esq.

Patrick J. Whalen, Esq.

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2 **1000**

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4 Anne Giese, Esq.

5 J. Felix De La Torre, Esq.

6 Brooke D. Pierman, Esq.

7 SERVICE EMPLOYEES INTERNATIONAL

8 UNION LOCAL 1000

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10 Sacramento, CA 95814

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12 Email: bpierman@seiu1000.org

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

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

20 Executed on January 20, 2009, at Sacramento, California.

21 
22 _____
23 May Marlowe

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Attorneys for Defendants ARNOLD SCHWARZENEGGER,
Governor; STATE OF CALIFORNIA; and DEPARTMENT OF
PERSONNEL ADMINISTRATION

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

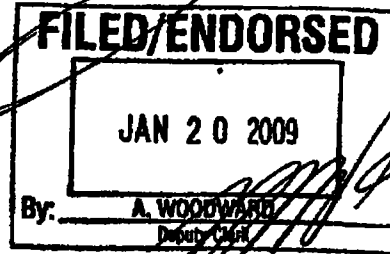
PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT;
CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

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.



CASE NO. 34-2008-80000126-CU-WM-GDS
DECLARATION OF ALENE SHIMAZU

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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- 1 -

DECLARATION OF ALENE SHIMAZU

KRONICK, MOSKOVITZ,
TIEDEMANN & GIRARD
ATTORNEYS AT LAW
SACRAMENTO

SEIU JA 000199

1 I, ALENE SHIMAZU, declare:

2 1. I am employed with the State of California, Department of Personnel
3 Administration (DPA) as the Chief of the Office of Financial Management and Economic
4 Research since approximately 2003.

5 2. This declaration is being filed concurrently with the Respondent's Opposition to
6 Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. I am familiar
7 with the facts stated in this declaration, and if called as a witness, I could, and would, testify
8 competently to these facts.

9 3. As the Chief of the Office of Financial Management and Economic Research
10 (OFMER), I provide cost and fiscal impact information to the Director of DPA. As part of my
11 duties, I direct and oversee the completion of financial analyses of sensitive and complex
12 collective bargaining and other compensation proposals and provide subsequent oversight and
13 control to ensure compensation commitments remain within budgetary limits. I oversee the
14 determination of the most efficient and accurate methods to estimate costs associated with those
15 proposals and analyze the fiscal impact of compensation policies on the State of California. I
16 provide this information to the Department of Personnel Administration Director, Chief Deputy
17 Director, and Deputy Director of Labor in order for the Executive Branch of State Government to
18 make budgetary and financial decisions relating to employee compensation.

19 4. OFMER was directed to calculate the savings to the State by implementing a
20 temporary 2-day a month furlough for represented and excluded unrepresented employees
21 covering a seventeen month period.

22 5. OFMER calculated that the savings to the General Fund for represented employees
23 subject to the furloughs to be estimated at \$298,541,141 for fiscal year 2008-2009. The savings
24 to the General Fund for excluded unrepresented employees is estimated at \$76,837,793 for fiscal
25 year 2008-2009.

26 6. The savings to the General Fund for fiscal year 2009-2010 for represented
27 employees subject to the furloughs is estimated at \$716,498,739, and the savings to the General
28 Fund for fiscal year 2009-2010 for excluded unrepresented employees is estimated at
\$184,410,703.

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7. The savings to the General Fund per month is estimated at \$75,075,787 by implementing a temporary 2-day a month furlough for represented and excluded unrepresented employees covering a seventeen month period.

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

Executed on this 16th day of January, 2009, at Sacramento, California.

Aleene Shimazu

ALENE SHIMAZU

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20 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
21 Governor; STATE OF CALIFORNIA; DAVID GILB and
22 DEPARTMENT OF PERSONNEL ADMINISTRATION

23 SUPERIOR COURT OF CALIFORNIA

24 COUNTY OF SACRAMENTO

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

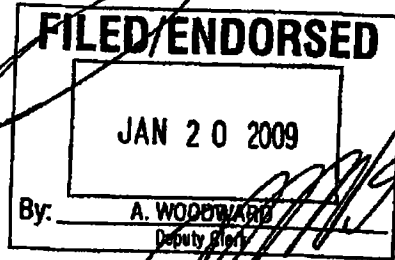
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DOES 1 through 20, inclusive,

Respondents/Defendants.

AND RELATED CASES



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

Assigned For All Purposes To The Honorable
Patrick Marlette

PROOF OF SERVICE

Date January 29, 2009

Time: 9:00 a.m.

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

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- 1 -

PROOF OF SERVICE

SEIU JA 000202

1
2 I, May Marlowe, 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 January 20, 2009, I served a
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10 **DECLARATION OF JULIE CHAPMAN;**

11 **DECLARATION OF ALENE SHAMAZU;**

12 **DECLARATION OF BERNICE TORREY;**

13 **DECLARATION OF DIRECTOR OF FINANCE MICHAEL C. GENEST;**

14 **EVIDENTIARY OBJECTION TO DECLARATION OF PETER FLORES, JR.**

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

17 by placing the document(s) listed above in a sealed envelope with postage thereon
18 fully prepaid, the United States mail at Sacramento, California addressed as set
19 forth below.

20 by placing the document(s) listed above in a sealed Federal Express envelope and
21 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
22 Express agent for delivery.

23 by transmitting via e-mail or electronic transmission the document(s) listed above
24 to the person(s) at the e-mail address(es) set forth below.

25 **Attorneys for Petitioners/Plaintiffs California**
26 **Attorneys, Administrative Law Judges and**
27 **Hearing Officers in State Employment**

28 Brooks Ellison, Esq.

Patrick J. Whalen, Esq.

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14 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
15 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
16 motion of the party served, service is presumed invalid if postal cancellation date or postage
17 meter date is more than one day after date of deposit for mailing in affidavit.

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

20 Executed on January 20, 2009, at Sacramento, California.

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May Marlowe

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

FILED/ENDORSED
JAN 20 2009
By: A. WOODWARD
Deputy Clerk

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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

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

CASE NO. 34-2008-80000126-CU-WM-GDS
**Assigned For All Purposes To The Honorable
Patrick Marlette**
**DECLARATION OF DAVID W. TYRA IN
SUPPORT OF OPPOSITION TO MERITS OF
PETITIONERS' PETITIONS FOR WRIT OF
MANDATE**
Date: January 29, 2009
Time: 9:00 a.m.
Dept.: 19

908229 1

K. MOSKOVITZ,
ANN & GIRARD
ATTORNEYS AT LAW
SACRAMENTO

DECLARATION OF DAVID W. TYRA

I, DAVID W. TYRA, declare:

1. I am an attorney duly licensed to practice before all courts of the State of California. I am a shareholder with the firm of Kronick, Moskovitz, Tiedemann and Girard, counsel for defendants/respondents Governor Arnold Schwarzenegger, State of California, David Gilb, and Department of Personnel Administration.

2. I have personal knowledge of all facts stated in this declaration and if called upon to do so, I could and would competently testify thereto.

3. Attached to this declaration and marked as Exhibit 1 is a true and correct copy of Governor Arnold Schwarzenegger’s July 31, 2008 Executive Order.

4. Attached to this declaration and marked as Exhibit 2 is a true and correct copy of a press release from the Governor’s office dated September 23, 2008 regarding the adoption of a State budget for the 2008-2009 fiscal year.

5. Attached to this declaration and marked as Exhibit 3 is a true and correct copy of the Governor’s Special Session Budget for the special session of the Legislature convened after passage of the September 23, 2008 State budget.

6. Attached to this declaration and marked as Exhibit 4 is an October 2008 Finance Bulletin issued by the Department of Finance.

7. Attached to this declaration and marked as Exhibit 5 is a true and correct copy of Governor Arnold Schwarzenegger’s November 6, 2008 Special Session Proclamation.

8. Attached to this declaration and marked as Exhibit 6 is a true and correct copy of Governor Arnold Schwarzenegger’s November 6, 2008 letter to state employees.

9. Attached to this declaration and marked as Exhibit 7 is a true and correct copy of a CASE Public Information and Announcement downloaded from CASE’s web site.

10. Attached to this declaration and marked and marked as Exhibit 8 is a true and correct copy of a December 17, 2008 Update from SEIU Local 1000 downloaded from SEIU’s web site.

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11. Attached to this declaration and marked as Exhibit 9 is a true and correct copy of a PEGC Weekly Update for the week of January 9, 2009 downloaded from PEGC's web site.

12. Attached to this declaration and marked as Exhibit 10 is a true and correct copy of Governor Arnold Schwarzenegger's December 1, 2008 Fiscal Emergency Proclamation.

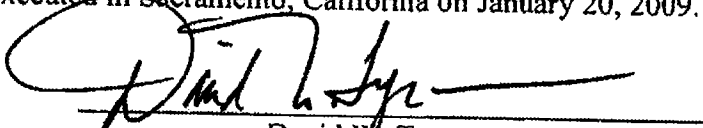
13. Attached to this declaration and marked as Exhibit 11 is a true and correct copy of Governor Arnold Schwarzenegger's December 19, 2008 Executive Order.

14. Attached to this declaration and marked as Exhibit 12 is a true and correct copy of State Controller John Chiang's December 19, 2008 Press Release.

15. Attached to this declaration and marked as Exhibit 13 is a true and correct copy of State Controller John Chiang's December 22, 2008 letter to Governor Arnold Schwarzenegger and leaders of the State Legislature.

16. Attached to this declaration and marked as Exhibit 14 is a presentation prepared by Director of Finance Michael C. Genest entitled, "California at the Brink of Financial Disaster."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in Sacramento, California on January 20, 2009.



David W. Tyra

1 **PROOF OF SERVICE**

2 I, May Marlowe, 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 January 20, 2009, I served a
6 copy of the within document(s):

7 **DECLARATION OF DAVID W. TYRA**

- 8 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.
- 9 by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- 10 by causing personal delivery by Messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- 11 by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.
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13 **Attorneys for Petitioners/Plaintiffs**
 14 **California Attorneys,**
 15 **Administrative Law Judges and**
 16 **Hearing Officers in State**
 17 **Employment**
 18 Brooks Ellison, Esq.
 19 Patrick J. Whalen, Esq.
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 23 Sacramento, CA 95814
 24 Fax: (916) 448-5346
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 25 CONTROLLER
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20 is true and correct. Executed on _____, 2009, at Sacramento, California.

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May Marlowe

EXHIBIT 1



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-09-08

07/31/2008

WHEREAS the constitutional deadline for enacting a state budget for Fiscal Year 2008-09 has passed without the enactment of a budget, and

WHEREAS in the absence of a budget, State government is constitutionally prohibited from making payments that are not compelled by either the State Constitution or federal law; and

WHEREAS until there is a state budget, the State has no authority to pay the following payments: (1) Vendors and Contractors for goods and services chargeable to Fiscal Year 2008-09; (2) Payroll for legislative staff, appointees, and exempt employees, (3) Payroll for other state employees beyond that required by federal labor law, (4) Highway User Taxes that are apportioned to the state, cities and counties for highway and road improvement projects; (5) Cal Grants to students in higher education; (6) Transfers to the Trial Courts; (7) Transfers to University of California, California State University, and Community Colleges, (8) Transportation Revolving Fund disbursements, (9) Non-revenue limit school payments; and (10) Payments for non-federally mandated social services programs such as Community Care Licensing, Adult Protective Services, State Only Foster Care, State Only Adoptions Assistance, and Cash Assistance Program for Immigrants; and (11) tax relief payments to low income seniors and disabled persons; and

WHEREAS on May 1, 2003, the California Supreme Court, in *White v Davis*, issued a decision that, in conjunction with other pre-existing court orders, clarified that during a period that there is no state budget in place, federal labor laws require the State to pay its nonexempt FLSA employees either federal minimum wage or, for those employees that work overtime, their full salaries plus overtime; and

WHEREAS it is not known when a budget will be adopted for Fiscal Year 2008-09, and

WHEREAS as a result of the late budget, there is a real and substantial risk that the State will have insufficient cash to pay for state expenditures; and

WHEREAS since June 2008, the unprecedented number and size of fires in California has created states of emergency that have required additional and substantial expenditures of cash to ensure that there are sufficient resources to effectively fight these fires and save lives and homes; and

WHEREAS it is critical that the State be able to meet any unforeseen emergency such as fire, flood or public health emergency and to continue to make timely payments on constitutionally and federally-mandated obligations and existing obligations to pay holders of state bonds, and

WHEREAS due to the impending cash crisis and budget delay, the State may be forced to consider a Revenue Anticipation Warrant (RAW) at an exorbitant cost to the State, including hundreds of millions of dollars in credit enhancements, in order to make sure there is sufficient cash to pay for state expenditures, and

WHEREAS after the late adoption of a budget, there will be additional cash demands because all of the deferred payments that were not permitted to be made during the budget impasse will become due and payable, and

WHEREAS the late budget has resulted in loss of savings to the State in the amount of \$164 million for July, and failure to enact a budget in August will result in additional loss of savings in the amount of \$323 million; and

WHEREAS as a result of the late budget, additional mitigation measures must be implemented to offset the loss of savings and to ensure that there is sufficient cash to make the State's payments; and

WHEREAS the State employs nearly 22,000 retired annuitants, permanent intermittent employees, and seasonal employees and the State hires new employees at the rate of approximately 1,700 per month; and

WHEREAS except for services and functions of state government deemed critical by this Order, additional mitigation measures need to be taken to immediately reduce expenditures and preserve cash, including the following (1) halting all hiring, transfers and promotions of employees, and contracting for individuals to perform services; (2) prohibition of overtime; (3) termination of the services of retired annuitants, permanent intermittent employees, seasonal employees, temporary help workers and, student assistants; and (4) suspension of personal services contracts

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with the authority vested in me by the Constitution and the statutes of the State of California, do hereby issue the following orders to become effective immediately.

IT IS ORDERED that the services and functions of state government directly related to the preservation and protection of human life and safety, including but not limited to emergency and disaster response activities and the provision of 24-hour medical care, shall be deemed critical and exempt from this Order

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action effective July 31, 2008 to cease and desist hiring of employees (except in instances in which there is a bona fide offer and acceptance prior to the effective date of this Order), transferring employees between State agencies and departments, promoting employees, and contracting for individuals to perform services.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and emergent situations to preserve and protect human life and safety, all State agencies and departments under my direct executive authority take immediate action to cease and desist authorization of all overtime for employees effective July 31, 2008

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action to terminate the services of the following five categories of employees and individuals effective July 31, 2008. (1) Retired Annuitants, (2) Permanent Intermittent Employees, (3) Seasonal Employees; (4) Temporary Help Workers; and (5) Student Assistants

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and except for services provided pursuant to multi-year contracts for Information Technology systems and services, all State agencies and departments under my direct executive authority take immediate action to suspend all personal services contracts effective July 31, 2008.

IT IS FURTHER ORDERED that all Agency Secretaries and Department Directors shall take immediate action to implement this Order, and any other action that will reduce state expenditures.

IT IS FURTHER ORDERED that the Director of the Department of Finance shall establish an exemption process that Agency Secretaries shall utilize to determine if an exemption is justified based on critical services and functions, which may include either cost-reducing or revenue-producing services and functions that will help ensure that there is sufficient cash for the State to make its payments.

IT IS FURTHER ORDERED that Agency Secretaries and Cabinet-level Directors shall report their exemptions to the Cabinet Secretary and the Director of the Department of Finance within 24 hours of approving an exemption.

IT IS FURTHER ORDERED that the Director of the Department of Finance and Director of the Department of Personnel Administration shall work with the State Controller to develop and implement the necessary mechanisms, including but not limited to pay letters and computer programs, to comply with the California Supreme Court's *White v Davis* opinion to pay federal minimum wage to those nonexempt FLSA employees who did not work any overtime.

IT IS FURTHER ORDERED that the necessary mechanisms to ensure compliance with the *White v Davis* opinion must be in place to be effective for the August 2008 payroll

IT IS HEREBY REQUESTED that during this budget impasse, the State Treasurer shall take all actions necessary to maintain the State's ability to pay its bond obligations, including payment of principal and interest with funds in the State Treasury, and shall take all actions that are necessary to protect the State's funds and investments

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 (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.

IT IS FURTHER ORDERED that this Order shall remain in effect until such time as both a Fiscal Year 2008-09 Budget is adopted and the Director of the Department of Finance confirms an adequate cash balance exists to meet the State's fiscal obligations.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 31st day of July 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:

DEBRA BOWEN
Secretary of State

EXHIBIT 2



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR**PRESS RELEASE**

09/23/2008 GAAS.650 08 FOR IMMEDIATE RELEASE

Governor Schwarzenegger Signs State Budget with Budget Reform

Governor Arnold Schwarzenegger today signed the 2008-09 state budget, concluding a very difficult budget year and delivering a real win for Californians with a proposal to achieve meaningful budget reform. It addresses California's \$15.2 billion budget shortfall with a combination of cuts and increased revenues. It fully funds education's Proposition 98 guarantee and does not borrow funding from voter-approved local government or transportation funds. The historic budget reform package includes a strong rainy-day fund aimed at helping smooth out the unpredictable highs and lows in revenues that plague our state and create massive deficits.

"While California is certain to face a difficult budget situation again next year, this budget does not take money out of people's paychecks or borrow from voter-approved local government or transportation funds, and it includes real budget reform with teeth," Governor Schwarzenegger said. "These budget reforms, when approved by voters, will finally put California's budget on a path toward long-term fiscal stability."

Throughout California's history, numerous attempts have been made to reform our state's broken budget system. When the Governor was elected, he committed to finally end California's feast and famine budget cycle. In 2004, the Governor worked with the legislature to pass Proposition 58, which took the first step toward budget reform. In 2005, the Governor attempted the next step in budget reform with Proposition 76, and while it was defeated, the Governor remained committed to reform.

Today, the Governor delivered on his commitment with reforms to address two major flaws in the state budget system—wildly volatile revenues and over spending. In fact, had these reforms been in place over the past decade, this year's budget problem would have been approximately \$10 billion smaller and California would have benefited from \$8 billion in additional funding available for infrastructure and other one-time purposes. The proposal will now go before voters on the next statewide election ballot.

Over the weekend, the Governor used his veto pen to make an additional \$510 million in General Fund reductions, reflecting the Governor's determination to reduce spending to the maximum extent possible. The state also captured \$340 million in savings due to the delay in enacting the budget and the effect of the Governor's executive order.

BUDGET REFORM**A Rainy-Day Fund With Teeth**

Increases the size of California's Budget Stabilization Account (BSA) from 5 percent of General Fund expenditures to 12.5 percent—or approximately \$13 billion dollars today.

Requires annual transfers to the BSA of 3 percent of General Fund and eliminates the ability to suspend those annual transfers. During economic downturns, when funds can be drawn out of the BSA, the transfer would not occur.

In addition to the annual transfer of 3 percent of General Fund to the BSA, requires that all current-year revenue that is above 5 percent of the amounts included in the Budget Act be transferred to the BSA, after first providing funding to education as required under Proposition 98. This means that unexpected spikes in revenues that occur during the fiscal year—normally recognized in the Governor's May Revision—will be transferred to the BSA or used exclusively for one-time spending.

Funds can only be transferred out from the BSA under the following conditions. 1) actual revenues during the Fiscal Year must be below a specified level: prior year spending adjusted by population growth and per capita personal

income growth; 2) funds transferred from the BSA back into the General Fund must be appropriated in a stand-alone bill. The amount transferred out of the BSA during a fiscal year will be limited to the amount which would bring revenues up to prior year spending adjusted by population and per capita personal income growth

When the balance in the BSA reaches 12.5 percent, any excess revenues acquired mid-year will be available for one-time expenditures only. One-time purposes will include: paying down debt, paying off outstanding General Obligation bonds, investing in infrastructure and capital outlay projects, paying for "settle-up" dollars owed to education, pre-paying health care liability for retired employees (OPEB) and tax relief.

Mid-Year Reduction Authority

Authorizes the Director of Finance to do the following when s/he determines, mid-year, that revenues have fallen below specified levels.

- Reduce state operations budgets by up to 7 percent without modifying or suspending the law.
- Freeze Cost of Living Adjustments (COLAs), rate increases or increases in state participation in local costs, as designated in the Budget Act, for up to 120 days.
- The governor can submit urgency legislation to permanently suspend COLAs and other rate increases. If the governor fails to act within the 120 days, or the Legislature fails to adopt the suspension, the COLAs and other rate increases are reinstated.

ADDITIONAL BUDGET CUTS

- This budget holds General Fund spending to virtually no growth this year-\$103.4 billion 2008-09 compared to \$103.3 billion in 2007-08
- The Budget includes a reduction of \$850 million General Fund spending or one percent below the amounts proposed in the budget bill adopted by the Legislature. This reduction represents \$9.7 billion in spending reductions and is due to:
 - \$510 million-General Fund vetoes. These vetoes reflect the Governor's determination to reduce spending to the maximum extent possible given constitutional, statutory and court-ordered spending requirements
 - \$340 million-General Fund savings due to the delay in enacting this Budget and the effect of the Governor Executive Order S-09-08. Given the state's fiscal condition, the order will remain in effect for the remainder of the year.

LOTTERY MODERNIZATION AND SECURITIZATION

- Proposes a ballot measure to modernize the state Lottery and improve the performance of this underperforming state-owned asset
- If passed by voters, future proceeds of an improved state Lottery would be securitized (estimated to be approximately \$5 billion in 2009-10) with the additional revenues used to pay down debt and fill the rainy-day fund in the out-years

EDUCATION FUNDING

Funds the Proposition 98 guarantee at \$58.1 billion - \$1.5 billion higher than the current-year funding. This level of funding eliminates the proposed reductions in the Governor's May Revision and maintains funding to base categorical programs such as class size reduction, special education, child nutrition programs and child care.

BRINGING IN REVENUE

The budget passed by the Legislature originally included a measure that would have taken more money out of hardworking Californians' paychecks by requiring that they pay 10 percent more state taxes from Californians to balance the state's books in 2009 - for a total of \$1.6 billion. The Governor rejected it, and it was replaced instead with a plan to bring in outstanding tax revenue owed to the state by increasing penalties on corporations that under-report by more than \$1 million what they owe the state.

- Imposes a 20 percent penalty on the under-reporting of tax owed to the state and applies to any corporation that under-reports by more than \$1 million. (Applies to taxable years beginning in 2003 in which the statute of limitations is open and allows taxpayers an opportunity to file an amended return by May 31, 2009, to avoid the penalty.)

- The Franchise Tax Board estimates that the state will bring in \$1.51 billion over the 2007-08 and 2008-09 budget years. California has had success with this kind of tax collection program before. The similar tax amnesty program the state conducted in 2005 brought in an additional \$3.6 billion, according to the Department of Finance

A two-year suspension of the Net Operating Loss (NOL) tax deduction. Suspends for two years the ability of corporations to reduce their tax liability based on prior losses and phases in conformity to federal law over three years starting in 2010 by allowing losses to offset profits in two prior years; also extends the period for carrying forward losses from 10 to 20 years

ECONOMIC STIMULUS

Includes an economic stimulus package that.

- Expedites the allocation and disbursement of existing transportation and housing bond funds to stimulate economic growth and job creation immediately.
- Authorizes new lease revenue bonds to accelerate capital outlay projects for higher education.
- Provides flexibility in overtime laws to exempt high-paid software engineers in the competitive technology industry from overtime rules.

EXHIBIT 3

GOVERNOR'S BUDGET



SPECIAL SESSION 2008-09

INTRODUCTION

Economic conditions have deteriorated dramatically since the Governor signed the 2008 Budget Act on September 23. This deterioration was reflected in General Fund revenue collections for the month of September that came in \$923 million below forecast. As a result, California faces a revenue shortfall of \$11.2 billion this year. Specifically, the Department of Finance estimates that General Fund revenues will be approximately \$567 million lower in 2007-08, \$10.7 billion lower in 2008-09, and \$13 billion lower in 2009-10 than earlier projections.

This significant revenue shortfall demands immediate action for the following reasons:

- A revenue reduction of this magnitude will reduce total cash resources below acceptable levels next month. If no action is taken to reduce spending, increase revenues, or a combination of both, the state will run out of cash in February and be unable to meet all of its obligations for the rest of the year.
- The revenue reduction will eliminate the \$1.7 billion reserve adopted in the Budget Act and create a General Fund budget gap of \$9.5 billion.
- Quick action to restore balance to the current year budget will lay the groundwork for balancing the budget for 2009-10.

INTRODUCTION

- Delays in enacting budgetary solutions will significantly reduce the value of those solutions for this year and next, thereby necessitating even more spending reductions and/or revenue increases

In light of the urgency of the situation, Governor Schwarzenegger has called a special session of the Legislature and is proposing a variety of spending reductions and revenue increases to bring spending closer in line with available revenues. In addition, given the economic downturn and its impact on families and workers, the Governor is proposing numerous measures to help stimulate the economy to help families stay in their homes and to keep Californians employed.

OVERVIEW OF THE PROPOSALS TO ADDRESS THE SHORTFALL

The Governor's special session proposals include spending reductions totaling \$4.5 billion, or 49 percent of the total proposed solutions, while revenue increases account for \$4.7 billion, or 51 percent of the total solutions. As the figure shows, these proposals are in addition to the \$24.3 billion in solutions enacted in the Budget Act of 2008. When all of the solutions are considered, spending reductions account for 49 percent, revenue increases account for 39 percent and borrowing accounts for 12 percent.

Final spending and revenue projections for the 2009-10 Governor's Budget will not be available until January. Therefore, this special session proposal is based on preliminary projections of the revenue shortfall only and does not reflect the total potential budget gap. The economic situation and the revenue shortfall are so severe that it is clear that there will be a substantial deficit projected for 2009-10. Therefore, the descriptions of the fiscal effects of the special session proposals include estimates of their impact in 2009-10.

Figure INT-01
Major Solutions
(Dollars in Millions)

	As of 2008 Budget Act			2008-09	
	2007-08 & prior	2008-09	Total	Special Session	Total
Revenue Increases					
Corporate Penalty for Understatement of Tax	\$1,436	\$75	\$1,510		\$1,510
Net Operating Loss Suspension and Carryback		1,285	1,285		1,285
Tax Credit Limitation and Usage Modification		615	615		615
Limited Liability Corporations Payment Date Change		360	360		360
Accelerate Estimated Payments		1,270	1,270		1,270
Remove Estimated Payment Option for High Income Taxpayers		1,035	1,035		1,035
Accrual Change		418	1,440		1,858
Additional Tax Revenues (LAQ/DQF) (June)	120	-250	-130		-130
Additional Tideland Revenues (LAQ/DQF)	24	168	190		190
Additional Revenues from Tribal Compacts		78	78		78
FTB/BOE Revenue Options		226	226		226
Transfers from Special Funds		141	141		141
Justice Settlement (transfer to GF)		11	11		11
Temporary (3-year) 1.5 cent increase in Sales Tax				\$3,540	3,540
Oil Severance Tax (9.9% tax rate, exception for stripper wells)				530	530
Expand Sales Tax to Some Services				357	357
Nickel a Drink Alcohol Tax				283	283
All Other Changes					
Total Revenue Increases	63	74	137		137
	\$2,058	\$6,586	\$8,584	\$4,720	\$13,284
				51%	40%
Borrowing					
Economic Recovery Bonds					
Loans from Special Funds	\$3,313		\$3,313		\$3,313
Total Borrowing		\$714	714		714
	\$3,313	\$714	\$4,027	\$0	\$4,027
				0%	12%
Expenditure Reductions					
Proposition 58					
Property Tax					
Redevelopment Agency Pass Through	\$276	\$423	\$698		\$698
Settle-Up Payments		350	350		350
Base	150		150		150
Non Proposition 58	671	2,643	3,314	\$2,500	5,814
Budget Balancing Reductions					
Non Budget Balancing Reductions	113	2,154	2,267		2,267
Medi-Cal Program Savings		165	165	142	307
Suspend Prop 58 Transfer		1,509	1,509		1,509
Use of Public Transportation Account for Home-to-School Transportation		488	488		488
Use Spillover Monies for Debt Service Payments		250	250		250
Reimburse of GF for Past Debt Service Payments from TDSF		235	235		235
Reduce Mandates Funding		53	53		53
Eliminate Estimated Claims for N98 Mandates		75	75		75
Defer Third Year Payment of 15-Year Plan for Old N98 Mandates		75	75		75
Eliminate Funding for CCPOA Last, Best, and Final Offer	260	230	490		490
Health and Dental Benefits for Annuitants Premium Reductions	23	81	104		104
State Cash Management Improvement Program		60	60		60
Reduction (Control Section 4 D7)		50	50		50
Savings Due to Budget Delay and Executive Order S-09-08		340	340		340
CDCR--Limit Parole Supervision				78	78
Funding Realignment for Public Safety Grant Programs				250	250
Reduce UC and CSU budgets to the 10% Across-the-Board Reduction Funding Level				132	132
Developmental Services Program Savings				34	34
SSI/SSP Program Savings				391	391
CalWORKs Program Savings				274	274
IHSS Program Savings				118	118
Reduce State Funding for Transit Agencies				230	230
Eliminate Funding for the Williamson Act				35	35
Employee Compensation Changes				320	320
All Other Changes					
Total Expenditure Reductions, before vetoes	60	137	167		167
Vetoes	\$1,717	\$9,153	\$10,870	\$4,504	\$15,374
Reduces Reserve		\$510	\$510		510
Total Solutions	\$7,988	\$17,189	\$24,277	\$9,224	\$33,501
				100%	100%

STIMULATE THE ECONOMY/RETAIN AND CREATE JOBS

Finally, the special session will focus on various proposals to help stimulate the economy, retain and create jobs, and reduce barriers to job creation and retention

The economic stimulus proposals include accelerating the appropriation of \$700 million remaining in Proposition 1B funds for improvements to local streets and roads. These funds will be available for cities and counties that agree to encumber the funds by December 31, 2009, certify that their local fund balances for road maintenance do not exceed three months of their Highway Users Tax Account (HUTA) and Transportation Investment Fund (TIF) revenues, and meet accountability requirements

The economic stimulus proposal also provides an additional \$800 million in Proposition 1B funding in 2008-09 for local transit agencies to accelerate several large local transit projects. Moreover, to create jobs in a sector heavily impacted by the current downturn, some Proposition 1B projects administered by Caltrans totaling \$822 million will be accelerated by waiving some state and federal environmental requirements

The economic stimulus proposal also includes accelerating the implementation of \$147 million of water and flood projects funded by Propositions 84 and 1E. Under existing law, these funds will not be available until March 1, 2009. The Administration believes urgency legislation is necessary to make these Proposition 84 and 1E funds available immediately. In addition, the Governor will seek action by the federal government to move an additional \$571 million in water projects forward now.

The special session proposal will also include the reintroduction of the necessary amendments to AB 900 so that needed construction for the Department of Corrections and Rehabilitation can begin as well as to create valuable jobs in the state. The Administration is also looking forward to continuing to work with the Legislature to address the correctional systems' capital needs for medical and mental health services.

The Governor will propose the following in the special session.

- Easing regulations to allow "in the pipeline" hospital construction projects to move forward
- Providing flexibility to employers regarding flex time schedules, meal and rest periods, and overtime rules, to reduce the amount of costly litigation and encourage employers to keep jobs in-state

INTRODUCTION

- Providing tax incentives to new film and television production locating in California and production that has left the state, to return in-state
- Creating reforms to help homeowners avoid foreclosure and stay in their homes, as well as reforms to the lending process that will help prevent a future mortgage crisis in California

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

ECONOMIC OUTLOOK

Less than six weeks after the enactment of the 2008-09 budget, a string of weak economic statistics, arriving during a spreading credit crunch and the bankruptcies and rescues of several financial institutions, has convinced most economists that the national economy is in recession. Most persuasive was a sharp fall in consumer spending in the third quarter of 2008 and a stock market collapse in October. Mounting job losses, falling home prices, plunging equity prices, and tight credit conditions have worn down consumers. One widely followed measure of consumer confidence – The Conference Board Consumer Confidence Index – fell to a record low in October. Slower consumer spending is, in turn, dampening business spending on equipment and structures.

While economic statistics on the California economy are fewer and less timely than those on the national economy, there is no doubt that the California economy is experiencing the same pressures as the national economy. Job losses have grown in recent months. The state's unemployment rate has risen quickly in the last year and is considerably higher than the national rate. Housing prices are falling faster in the state than in the nation. Taxable sales were below year-ago levels in the most recent four quarters of available data. Auto sales have dropped farther in the state than the nation.

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

The outlook for the national and California economies has deteriorated considerably since the budget enactment. Weaker GDP growth, bigger job losses, and smaller personal income gains are now expected in 2009. Whereas a short, modest economic decline was expected before, a deeper and longer decline is much more likely now. How long and how deep depends largely on how long it takes for credit to become much more available.

The Nation

Real GDP decreased 0.3 percent in the third quarter of 2008, with the weakness widely spread across major spending categories. A 3.1-percent drop in consumer spending—the largest percentage decline in 28 years—did most of the damage. Business equipment spending and residential construction also fell, and export growth slowed.

The economy ended the third quarter much weaker than it began, and this was before the stock market delivered its greatest drop in 21 years in October with paper losses of \$2.5 trillion. Retailers are expected to report very weak October sales, which will bode poorly for holiday sales. The fourth quarter of 2008 is expected to be considerably weaker than the third quarter.

The Federal Reserve and U.S. Treasury took dramatic steps in September and October to reinvigorate credit markets. On October 29, the Federal Reserve lowered by one-half percentage point its target for the interest rate banks charge one another for short-term loans. This brought the target rate to 1 percent, leaving the central bank very little room to further ease monetary policy. Thus, it appears increasingly likely that Congress will enact another economic stimulus package.

California

California labor markets have weakened as 2008 has progressed. In the first nine months of the year, California lost 78,600 jobs, but in the first five months the average monthly loss was 5,200 jobs, while in the last four months, it was 13,200 jobs. Seven of the 11 major industry sectors have lost jobs since the end of 2007, with construction, retail trade, and financial activities—which includes real estate and mortgage lending services—accounting for the bulk of the job losses. The state's unemployment rate began 2008 at 5.9 percent and quickly rose to 7.7 percent in August and September.

California's housing slump continues to be a significant drag on the economy. But home sales have started to pick up, especially sales of distressed houses. New home sales remain at low levels. Average home prices continue to drop. In September, the median price of existing homes sold, \$316,500, was 41 percent lower than the median price a

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

year earlier. Some of the decline is due to a changing mix of homes that have sold—more moderately priced homes and fewer expensive homes. Unsold inventories have stabilized at six months of sales at current monthly sales rates. Single-family home building appears to have stabilized at very low rates.

The Outlook

The outlook for the state and national economies darkened considerably as 2008 progressed and accelerated through the end of October. Economic growth was already expected to be low before the credit and stock market turmoil developed. Recent economic statistics point to considerable economic weakness in the fourth quarter of 2008 and in 2009. It appears that consumers will get little reprieve from job losses, falling home prices, and low equity prices. The state's unemployment rate could exceed 10 percent in some months of 2009 and 2010. The impact of the financial rescue measures enacted by Congress in October is uncertain at this point. The national and California economies will face strong headwinds in 2009 and the first half of 2010.

A new forecast will be prepared for the Governor's Budget that will incorporate new economic data released in November and be informed by events and other forecasts that become available in the next few weeks.

Figure Econ-01 shows selected economic indicators used in the current forecast.

Figure ECON-01
Economic Outlook
Percentage changes unless otherwise noted

	2008 (Est.)	2009 (Projected)	2010 (Projected)
Selected United States Economic Indicators			
Real gross domestic product	1.4	-0.9	1.6
Personal income	4.3	1.9	2.6
Corporate profits before taxes	-12.2	1.4	6.3
Nonfarm wage and salary employment	-0.1	-1.6	0.2
Unemployment rate (Percent)	5.7	7.6	8.1
Housing starts (1,000s of units)	931	737	1,013
Selected California Economic Indicators			
Personal income	4.0	2.2	2.6
Nonfarm WAS employment	-0.4	-1.2	-0.4
Unemployment rate (Percent)	7.0	9.0	9.7
Housing permits (1,000s of units)	67	64	83

Forecast based on data available as of October 2008
Percent changes calculated from unrounded data

REVENUE ESTIMATES

To provide the Governor and the Legislature with the most up-to-date assessment of current year revenues, the Department has taken into account available data and input from economists, including experts outside of the department to provide an updated revenue projection. Developing this preliminary revenue assessment is highly unusual and outside the traditional revenue estimates included in the Governor's Budget or the May Revision. Based on the latest available data, the Department now projects that baseline General Fund revenues are expected to be approximately \$102.4 billion in 2007-08, \$91.3 billion in 2008-09, and \$89.5 billion in 2009-10. New revenues from tax law changes proposed in the special session are estimated to be \$4.7 billion in 2008-09 and \$10.3 billion in 2009-10. Proposed total revenues are \$96.1 billion in 2008-09, and \$99.8 billion in 2009-10.

Expected baseline revenues have been reduced from Budget Act estimates by approximately \$567 million in 2007-08, \$10.7 billion in 2008-09, and \$13 billion in 2009-10. The reductions are primarily due to reductions to the economic forecast for personal income, capital gains and corporate profits, and lower tax collections. Expected baseline revenues for 2009-10 also reflect a \$500 million reduction for the sale of the EdFund, which is no longer expected to be completed in 2009-10.

The \$7.2 billion revenue reduction to 2008-09 baseline Personal Income tax revenues is largely due to lower expected capital gains. Capital gains accounts for \$4.0 billion of the 2008-09 personal income tax revenue loss. The remaining approximately \$3.2 billion reduction is due to a lower forecast for personal income components such as wages and salaries and proprietorship income.

The approximately \$1.6 billion reduction to 2008-09 baseline Sales and Use tax revenues is due to lower collections, and lower expected disposable income, auto sales and less construction of new housing.

The approximately \$1.6 billion reduction to baseline Corporation tax revenues is due to lower third-quarter corporate estimated payments and lower expected corporate profits.

Figure REV-01 displays the forecast changes between Budget Act and Special Session

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

Figure REV-01
 2008-09 Special Session
GENERAL FUND REVENUE FORECAST
SUMMARY TABLE
 Reconciliation with 2008-09 Budget Act
 (In millions)

Source	Budget Act	Special Session			
		Baseline	Change between Forecasts	Proposed	Change between Forecasts
Fiscal 07-08					
Personal Income Tax	\$54,380	\$54,289	-\$91	\$54,289	-\$91
Sales & Use Tax	26,813	26,613	-\$200	\$26,613	-\$200
Corporation Tax	11,926	11,690	-\$236	\$11,690	-\$236
Insurance Tax	2,171	2,173	\$2	\$2,173	\$2
Other Revenues	6,525	6,457	-\$68	\$6,457	-\$68
Transfers	<u>1,212</u>	<u>1,238</u>	<u>\$26</u>	<u>\$1,238</u>	<u>\$26</u>
Total	\$103,027	\$102,460	-\$567	\$102,460	-\$567
Fiscal 08-09					
Personal Income Tax	\$55,721	\$48,479	-\$7,242	\$48,479	-\$7,242
Sales & Use Tax **	27,111	25,486	-\$1,625	\$29,383	\$2,272
Corporation Tax	13,073	11,428	-\$1,647	\$11,428	-\$1,647
Insurance Tax	2,029	2,177	\$148	\$2,177	\$148
Other Revenues	3,242	2,987	-\$275	\$3,789	\$547
Transfers	<u>816</u>	<u>798</u>	<u>-\$18</u>	<u>\$798</u>	<u>-\$18</u>
Total	\$101,992	\$91,333	-\$10,659	\$96,053	-\$5,940
Change from Fiscal 07-08	-\$1,035	-\$11,127		-\$6,408	
% Change from Fiscal 07-08	-1.0%	-10.9%		-6.3%	
Fiscal 09-10					
Personal Income Tax	\$55,863	\$48,824	-\$7,039	\$48,824	-\$7,039
Sales & Use Tax **	29,248	25,234	-\$4,014	\$33,709	\$4,461
Corporation Tax	11,982	10,731	-\$1,251	\$10,731	-\$1,251
Insurance Tax	2,135	2,135	\$0	\$2,135	\$0
Other Revenues	3,366	2,603	-\$763	\$4,389	\$1,023
Transfers	<u>15</u>	<u>61</u>	<u>\$46</u>	<u>\$61</u>	<u>\$46</u>
Total	\$102,609	\$89,588	-\$13,021	\$99,849	-\$2,761
Change from Fiscal 08-09	\$617	-\$1,745		\$3,796	
% Change from Fiscal 08-09	0.6%	-1.9%		4.0%	

** Proposed sales and use tax numbers include \$322 million for 2008-09 and \$713 million for 2009-10 that will be transferred under Proposition 42 to the Transportation Investment Fund. Of these amounts, \$676 million will be transferred in 2009-10 and \$359 million in 2010-11.

Proposed Law Changes

Temporary Sales Tax Increase: Effective January 1, 2009, a temporary rate increase of 1.5 percent is proposed for three years in the General Fund Sales and Use tax. At the end of three years, the Sales and Use tax rate will return to 5 percent. This proposal is expected to generate additional sales tax revenues of \$3.540 billion in 2008-09 and \$7.319 billion in 2009-10 for the General Fund. These amounts include \$322 million for 2008-09 and \$713 million for 2009-10 that will be transferred under Proposition 42 to the Transportation Investment Fund. Of these amounts, \$676 million will be transferred in 2009-10 and \$359 million in 2010-11.

Broaden the Sales and Use Tax to Include Certain Services: Effective February 1, 2009, it is proposed to apply the sales and use tax rate to appliance and furniture repair, vehicle repair, golf, and veterinarian services. Effective March 1, 2009, the sales and use tax rate will be applied to amusement parks and sporting events. Assuming a 6.5-percent General Fund tax rate, this proposal is expected to generate additional General Fund sales tax revenue of \$357 million in 2008-09 and \$1.156 billion in 2009-10. These estimates assume initially low collections but significant improvements in collections over time. This proposal will also generate revenues for local government agencies of \$151 million in 2008-09 and \$487 million in 2009-10, including \$27 million for local public safety funds in 2008-09 and \$89 million in 2009-10.

Oil Severance Tax: Effective January 1, 2009, it is proposed to impose an oil severance tax upon any oil producer extracting oil from the earth or water in California. The tax shall be applied to the gross value of each barrel of oil at a rate of 9.9 percent. Any oil produced by a stripper well, in which the average value of oil as of January 1 of the prior year is less than fifty dollars (\$50) per barrel, will be exempt from this tax. Also, any oil owned or produced by any political subdivision of California will be exempt from this tax. This proposal is expected to generate additional revenues of \$528 million in 2008-09 and \$1.195 billion in 2009-10.

Increase Alcohol and Excise Taxes by 5 Cents a Drink: Alcohol excise taxes are proposed to be raised by five cents per drink beginning on January 1, 2009. A drink is defined as 1.5 ounces of distilled spirits, 12 ounces of beer, or 5 ounces of wine. This increase is estimated to raise \$293 million in 2008-09 and \$585 million in 2009-10. These estimates are adjusted to reflect an estimate of reduced consumption caused by the increase in price. Alcohol taxes were last raised in 1991. See the Funding Realignment portion of Program Reductions for information on uses of these revenues.

ECONOMIC OUTLOOK AND REVENUE ESTIMATES

Vehicle Registration Fee Increase: Effective February 1, 2009, annual vehicle registration fees are proposed to be increased by \$12 to offset a shift of Vehicle License Fee revenue from the support of the Department of Motor Vehicles to support local criminal justice programs. This special fund revenue will provide \$150 million for these programs in 2008-09 and \$359 million in 2009-10 and future years. See the Funding Realignment portion of Program Reductions for information on uses of these revenues.

PROGRAM REDUCTIONS

The Administration proposes a total of \$4.5 billion of General Fund reductions in 2008-09 program costs. These reductions will generate \$6.1 billion in General Fund savings in 2009-10. The reductions are in addition to the \$11.38 billion in expenditure reductions in the 2008 enacted budget.

PROPOSITION 98 (K-14)

Total Proposition 98

Due to significant declines in anticipated revenues since the budget was enacted, the Administration proposes total Proposition 98 expenditure reductions of \$2.5 billion in 2008-09 in the special session, including eliminating the partial COLA provided to K-12 revenue limits and community college apportionments, Child Care programs savings, and further reducing general purpose funding for all Local Education Agencies, which will be accompanied by dramatic flexibility provisions that will allow LEA's to transfer categorical funds at their discretion to ensure adequate funding for essential classroom instruction and services. Specific savings proposals are summarized below.

K-12 Programs

- \$244.3 million is proposed for reduction by eliminating the 0.68-percent COLA provided for school district and county office of education revenue limits.

PROGRAM REDUCTIONS

- \$1.791 billion is proposed for reduction by further reducing the amount for local education agency (LEA) revenue limits, coupled with flexibility to transfer categorical funds to each LEA's general fund. This strategy is necessary to provide maximum flexibility to local education agencies (LEAs). It is the Administration's expectation that LEAs will maintain as much funding as possible for direct classroom instruction and the most essential support services. Therefore, the Administration proposes to authorize LEAs to transfer any categorical allocations received to their general fund for any purpose up to the amount of their share of the reduction. Districts electing to utilize this flexibility must adopt a transfer plan in a regularly scheduled governing board meeting and agree to report the amounts and categorical programs from which transfers were made and the purposes for which those funds were used.
- \$55 million is proposed for reduction in capped child care programs to reflect the amount of funding that will not be allocated in current year contracts as reported by the Department of Education for General Child Care, Preschool, Alternative Payment and other programs. Because this amount has not been allocated for contracts with providers, it will not result in a reduction of services to families.
- \$42 million is proposed for reduction from Stage 2 and Stage 3 child care programs based on revised estimates for lower than anticipated caseload since the budget was enacted. Stage 2 costs are revised down by \$27 million and Stage 3 costs are revised down by \$15 million.
- It is also proposed that \$108 million in recently identified prior-year child care savings be reappropriated for CalWORKs Stage 2 and 3 programs to offset an estimated shortfall in one-time savings from the After School Safety and Education (ASES) program that was anticipated to fund part of the 2008-09 costs for these caseload-driven programs.
- \$71.2 million in reductions are proposed to specific programs that are currently underutilized. The amounts and programs with recently identified prior-year savings that are proposed for reduction include \$28.6 million for K-3 Class Size Reduction, \$2.6 million for Principal Training, \$3.3 million for Alternative Credentialing, and \$1 million for the Pupil Retention Block Grant. Further, the Administration proposes to reduce the appropriation for the Targeted Instructional Improvement Grant (TIIG) program on a one-time basis and backfill that reduction through reappropriation of the one-time prior-year savings anticipated from the aforementioned programs. The Administration recognizes these savings amounts are subject to refinement and will work with the Legislature to adjust this proposal to conform to any updated information that becomes available.

PROGRAM REDUCTIONS

Community Colleges (CCC)

- \$39.8 million is proposed for reduction by eliminating the 0.68-percent COLA for CCC apportionments enacted in the education trailer bill (Section 33 of Chapter 519, Statutes of 2008)
- \$292.4 million is proposed for reduction by further reducing the amount for general purpose apportionments and providing categorical flexibility similar to the proposal for K-12 LEAs. Similarly, it is the Administration's expectation that districts will maintain as much funding as possible to maximize course offerings aligned with the system's highest priorities for transfer, basic skills and vocation/career preparation along with the most essential support services. Thus, it is proposed that community college districts may transfer categorical allocations to the district's general fund for any purpose up to the amount of their share of the \$290.1 million reduction. Districts electing to utilize this flexibility must also adopt plans in public meetings and agree to report the amounts and programs from which transfers were made and the purposes for which those funds were used.

HIGHER EDUCATION

\$132 million in ongoing reductions are proposed for the higher education segments, excluding community colleges. Specific amounts are detailed below.

University of California (UC)

- A reduction of \$65.5 million is proposed on an unallocated basis. Together with UC's \$33.1 million share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, expenditures for UC will reflect approximately a ten-percent reduction from the workload budget, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

California State University (CSU)

- A reduction of \$66.3 million is proposed on an unallocated basis. Together with CSU's \$31.3 million share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, expenditures for CSU will reflect a ten-percent reduction from the workload budget, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

Hastings School of Law (HCL)

- A reduction of \$402,000 is proposed on an unallocated basis. Together with HCL's \$114,000 share of the \$190 million statewide savings requirement for state operations assumed in the enacted 2008 Budget, expenditures for HCL will reflect a ten-percent reduction from the workload budget, consistent with the reduction level proposed in the January 2008-09 Governor's Budget.

CORRECTIONS AND REHABILITATION

Parole Reform, Enhanced Credit Earning, and Property Crime Threshold Revisions

The Administration's special session proposal reflects reductions in the Department of Corrections and Rehabilitation of \$78.1 million in 2008-09 and \$677.6 million in 2009-10, as a result of the following proposals:

- Focus parole efforts on those offenders who have committed serious, violent, or sexual crimes. Under this proposal, offenders without current or previous convictions for serious, violent, or sexual crimes would not receive parole supervision after their release from prison. This would substantially reduce parole costs in the Department, ensure that the highest risk offenders continue to receive full supervision on parole, and reform the current "revolving door" process in which more prison admissions result from parole revocations than court convictions. This proposal is estimated to result in General Fund savings of \$78.7 million in 2008-09 and \$535.9 million in 2009-10.
- Enact statutory changes that would authorize the CDCR to provide up to four months of earned credit for each program successfully completed by an eligible inmate. Incentivizing program participation and completion will reduce inmate violence within the CDCR and will facilitate the inmate's reintegration into society. Additional changes would authorize consistent day-for-day credit for all eligible inmates who comply with institutional rules, continuous day-for-day credits for inmates who are in jail pending transfer to a state prison, and enhanced credits for inmates who are awaiting an assignment at a conservation camp. These proposals result in a cost of \$3.4 million in 2008-09 and a savings of \$90.5 million ongoing beginning in 2009-10, after accounting for savings already included in the 2008-09 Budget Act.
- Implement changes to adjust the statutory threshold values for determining when property crimes are prosecuted as a felony to reflect inflation since 1982. As a result, the special session reflects General Fund savings of \$2.9 million General Fund in 2008-09, growing to \$51.3 million in 2009-10.

LEGISLATURE

- No specific reductions are proposed for the Legislature, however, the 2008-09 Budgets of other constitutional officers including the Governor's Office, the Attorney General, and the Judicial Branch included reductions in the range of ten percent. The Legislature's 2008-09 Budget reflects a reduction of a lesser level. The Administration hopes the Legislature can achieve savings that are more in line with the savings achieved by constitutional executive officers.

PUBLIC SAFETY GRANT PROGRAMS

Reductions for Various Public Safety Grants

- The proposal includes the elimination of a total of \$51.7 million General Fund in 2008-09 and \$103.5 million General Fund in 2009-10 for local public safety funding. This includes the following:
 - o \$14.7 million in 2008-09 and \$29.4 million in 2009-10 that is allocated to counties that operate juvenile camps and ranches. While these funds are available to all counties based on the number of beds occupied, these funds currently support the operation of 29 camps or ranches. These funds are administered by the CDCR.
 - o \$28.7 million in 2008-09 and \$57.4 million in 2009-10 for various local assistance programs administered by the Office of Emergency Services. Included in this reduction is funding for Vertical Prosecution Block Grants, Rural Crime Prevention, California Multi-jurisdictional Methamphetamine Enforcement Teams, the High Technology Theft Apprehension Program, Sexual Assault Felony Enforcement Teams, and various other public safety programs.
 - o \$8.3 million in 2008-09 and \$16.7 million in 2009-10 for grants to county sheriffs of specified small and rural counties for supplemental public safety funding.

HEALTH AND HUMAN SERVICES

To address the budget shortfall, the Administration proposes legislation to implement the following eligibility and benefit changes effective December 1, 2008:

Medi-Cal

- Reduce California benefits to the level of optional benefits provided in most states. Cease to provide the following optional benefits for adult (excluding children) dental,

PROGRAM REDUCTIONS

- chiropractic, incontinence creams and washes, acupuncture, audiology, speech therapy, optometry/optometrists, optician/optical lab services, podiatry, and psychology services. California will still be providing more optional benefits than most states. General Fund savings of \$41 million result in 2008-09 and \$129.9 million in 2009-10.
- Limit benefits for newly qualified immigrants and immigrants who permanently reside under the color of law (PRUCOL) to the same level as currently provided for undocumented immigrants. Benefits retained include emergency services, pregnancy-related services, long-term care in a nursing facility, and breast and cervical cancer treatment. General Fund savings of \$29.7 million result in 2008-09 and \$144.4 million in 2009-10.
 - Implement a monthly eligibility determination for emergency services for undocumented immigrants. This population currently receives up to six months of health services after an initial eligibility determination. This proposal would limit services to one month unless and until a subsequent emergency ensues. General Fund savings of \$15.1 million result in 2008-09 and \$73.5 million in 2009-10.
 - Reduce the income level for new applicants to the Section 1931 (b) program to the pre-March 2000 standard of an average of approximately 72 percent of the federal poverty level, and define under-employment as the principal wage earner working less than 100 hours a month for persons applying for Section 1931 (b) and for the medically needy program. The Section 1931 (b) program provides Medi-Cal eligibility to families with low incomes who meet eligibility requirements. Parents with higher incomes who meet the resource and status requirements would be eligible for the Medi-Cal medically needy program with a share of cost. General Fund savings result of \$8.6 million in 2008-09, \$109 million in 2009-10, and ultimately \$342.5 million in 2011-12.
 - Shift federal Safety Net Care Pool funding from designated public hospitals to portions of the California Children's Services, the Genetically Handicapped Persons, the Medically Indigent Adult Long-Term Care, and Breast and Cervical Cancer Treatment programs, which are eligible for these funds. No net reduction in services to beneficiaries will result from this shift. General Fund savings of \$3.7 million result in 2008-09 and \$54.2 million in 2009-10.
 - Reinstate share of cost for Medi-Cal for aged, blind and disabled individuals with incomes over the SSI/SSP limits. Eligibility for Medi-Cal without a share of cost for beneficiaries previously expanded in January of 2001 from 69 percent up to 127 percent of the federal poverty level. This proposal would align eligibility with the SSI/SSP limits, and generate General Fund savings of \$43.8 million in 2008-09, \$203.7 million in 2009-10, and \$212.8 million annually thereafter.

Three-Percent Reduction to Regional Center Operations and Purchase of Services Payments

- Discount payments to regional center service providers by three percent effective December 1, 2008. Certain types of payments will be exempt from this reduction, including supplemental rent/lease payments for consumers receiving supported and independent living services, and "usual and customary" rates for services such as bus fares. The department will also consider exemptions necessary to ensure the health and safety of consumers. Payments for supported employment services will not be discounted. Additionally, to assist in the implementation of the reduction to regional center operations funding, the Administration proposes to provide workload relief such as suspension of reporting requirements for staff salary schedules and contract expenditures, and suspension of the 1:66 coordinator-to-consumer ratio. For those consumers who are on the federal Home and Community Based Services Waiver, are three years of age and younger in the Early Start Program, or are consumers moving from a developmental center into the community, the coordinator-to-consumer ratio will not be suspended. These changes are expected to result in General Fund savings of \$34.2 million in 2008-09 and \$59.8 million in 2009-10.

Supplemental Security Income/State Supplementary Payment (SSI/SSP)

- Reduce SSI/SSP grants to the federal minimum effective March 1, 2009, which would result in General Fund savings of \$348.9 million in 2008-09 and \$1.1 billion in 2009-10. Currently, the SSI/SSP grant for an aged/disabled individual is \$870 per month and the grant for aged/disabled couples is \$1,524 per month. After provision of a federal cost-of-living adjustment in January, 2009, this proposal would reduce the monthly grants to \$830 and \$1,407 for aged/disabled individuals and couples, respectively.
- Eliminate the Cash Assistance Program for Immigrants effective March 1, 2009, which would result in General Fund savings of \$37.8 million in 2008-09 and \$114.1 million in 2009-10. This state-only program provides benefits to aged, blind, and disabled legal immigrants.

CalWORKs

- Modify the Safety Net program, by continuing benefits for families beyond their 60-month time limit only if they meet federal work participation requirements. This would result in General Fund savings of \$80.7 million in 2008-09 and \$242 million in 2009-10, assuming March 1, 2009 implementation.
- Provide cash aid for families receiving child-only benefits in a manner consistent with other CalWORKs families, for General Fund savings of \$76.8 million in 2008-09 and

PROGRAM REDUCTIONS

\$230.3 million in 2009-10. Under this proposal, aid to some families receiving child-only benefits would be limited to 60 months. These families include parents or caretakers who are undocumented non-citizens or certain types of felons.

- Institute a face-to-face self-sufficiency review every six months with a county worker for CalWORKs families who are not meeting work requirements. This proposal would result in General Fund savings of \$23.3 million in 2008-09 and \$94.8 million in 2009-10, assuming March 1, 2009 implementation. These reviews would assess what services or resources may be necessary to address barriers that are preventing participation and help remove a family's dependence upon public assistance.
- Reduce CalWORKs grants by 10 percent effective March 1, 2009, which would result in General Fund savings of \$93.2 million in 2008-09 and \$279.6 million in 2009-10. This proposal would reduce the maximum monthly grant for a family of three from \$723 to \$651.

In-Home Supportive Services (IHSS)

- Provide IHSS domestic and related services to individuals with the highest levels of need, as measured by a functional index score of 4 or higher. This proposal would result in General Fund savings of \$23.1 million in 2008-09 and \$71.4 million in 2009-10, assuming March 1, 2009 implementation. The provision of other IHSS services to all eligible consumers regardless of their functional index score would not be impacted.
- Focus the state buyout program for IHSS recipients whose Medi-Cal share of cost is higher than their IHSS share of cost on persons with the most severe needs. This proposal would result in General Fund savings of \$12.3 million in 2008-09 and \$37 million in 2009-10, assuming March 1, 2009 implementation. Under this proposal, IHSS recipients with average functional index scores below 4 would be required to pay for more of their services before qualifying for subsidies.
- Limit state participation in the wages of IHSS workers to the state minimum wage plus \$0.60 per hour for health benefits. Assuming March 1, 2009 implementation, this proposal would result in General Fund savings of \$82.9 million in 2008-09 and \$248.8 million in 2009-10.

California Food Assistance Program (CFAP)

- Eliminate the CFAP effective July 1, 2009, which would result in General Fund savings of \$30.3 million in 2009-10. This state-only program provides food benefits to low-income legal non-citizens.

STATE TRANSIT ASSISTANCE PROGRAM

Eliminate Local Transit Grants

- This proposal eliminates the portion of the State Transit Assistance program that is paid from the Public Transportation Account (\$229.9 million in 2008-09 and \$306 million in 2009-10), but retains \$350 million available from Proposition 1B for local transit programs. This program has historically provided between 3 and 5 percent of total funding for local transit agency operations and capital costs associated with local mass transportation programs. The majority of local funding comes from farebox revenues, federal funds, state capital funding, and other local tax revenues.

WILLIAMSON ACT

- This proposal eliminates \$34.7 million in state reimbursements to local taxing agencies that partially defray the loss of property tax revenues from contracts with local landowners who agree to limit the use of their land to agricultural, scenic, or open space purposes in exchange for reduced property taxes. This action does not eliminate the ability of local entities to enter into these agreements.

While local governments can cancel contracts if state funding is eliminated, they cannot begin to collect taxes based on the property's full value until four years have elapsed. After four years the property is annually taxed at an incrementally higher value over a five-year period. In the sixth year, the property is taxed at full value.

FUNDING REALIGNMENT

In an effort to reduce General Fund expenditures and to create permanent, stable funding for certain high-priority programs, the Governor's special session proposal generates additional revenues to fund various public safety programs and drug and alcohol prevention and treatment services. Specifically, the proposal increases revenues by \$442.5 million in 2008-09 and \$944 million in 2009-10 to support these high-priority programs as follows:

Local Law Enforcement Grants

- The proposal provides \$150 million in 2008-09 and \$359 million in 2009-10 in Vehicle License Fee (VLF) funding for specific law enforcement grant programs. The proposal also eliminates General Fund support for these programs, resulting in savings of \$198.8 million in 2008-09 and \$397.5 million in 2009-10. These VLF funds were previously used to support the Department of Motor Vehicles (DMV) operations.

PROGRAM REDUCTIONS

which will now be funded by increased revenue in the Motor Vehicle Account derived from a \$12 increase in the annual vehicle registration fee. The specific programs that will be funded from the VLF include the following:

- o \$55.7 million in 2008-09 and \$135.9 million in 2009-10 to support a broad spectrum of local juvenile probation activities statewide.

With this funding realignment proposal, overall funding to support juvenile probation activities will be reduced by \$20.2 million in 2008-09 and \$16 million in 2009-10, but the program will receive a permanent, statutory funding stream.

- o \$94.3 million in 2008-09 and \$223.1 million in 2009-10 to support the COPS/JJCPA Programs and the Booking Fees Program. The COPS/JJCPA Programs will receive \$78.6 million in 2008-09 and \$191.6 million in 2009-10. The Booking Fees Program will receive \$15.8 million in 2008-09 and \$31.5 million in 2009-10.

With this funding realignment proposal, overall funding for the COPS/JJCPA Programs will be reduced by \$28.6 million in 2008-09 and \$22.6 million in 2009-10. Overall funding for the Booking Fee Program will not be impacted in either year.

Alcohol Excise Tax for Drug and Alcohol Prevention and Treatment

- Alcohol excise taxes are proposed to be raised by five cents a drink beginning on January 1, 2009. This increase is estimated to raise \$293 million in 2008-09 and \$585.0 million in 2009-10.

Revenues generated from these taxes will be used to fund drug and alcohol abuse prevention and treatment services, thereby generating General Fund savings of \$293 million in 2008-09 and \$585 million in 2009-10 while maintaining program services. Specifically these revenues will provide \$27 million for providing substance abuse services to CalWORKs participants, \$116 million for providing alcohol and drug treatment programs to individuals both in-prison and in parole settings, and \$150 million to the Department of Alcohol and Drug Programs to provide a variety of prevention and treatment services, including services currently provided pursuant to Proposition 36, the Drug Offender Treatment Program, and the Drug Medi-Cal program. By establishing this dedicated revenue source, the state can ensure that these critical programs continue to provide alcohol and drug prevention and treatment to California's most needy citizens.

EMPLOYEE COMPENSATION CHANGES

- Require state employees take a one day furlough each month between December 1, 2008 and June 30, 2010. This would result in a savings of approximately \$263 million General Fund in 2008-09 and \$451 million General Fund in 2009-10.
- Eliminate two state holidays and premium pay for hours worked on all remaining holidays. This would result in a savings of approximately \$39.4 million General Fund in 2008-09 and \$74.5 million General Fund in 2009-10.
- Compute overtime based on actual time worked. This change would result in a savings of approximately \$17.5 million General Fund in 2008-09 and \$30 million General Fund in 2009-10.
- Establish alternative work schedules of ten hours per day, four days per week.

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EXHIBIT 4

SEIU JA 000243



FINANCE

BULLETIN

October 2008

ECONOMIC UPDATE

The ongoing housing and financial crises continued to roil the California economy in August. The state lost payroll jobs for the sixth consecutive month, and the unemployment rate rose again. Home building slowed, but home sales stabilized.

- California lost 7,700 nonfarm payroll jobs in August—about half of the 15,000 loss in July. The state lost jobs in seven out of the first eight months of 2008, and in 10 out of the last 12. Since nonfarm employment peaked in July 2007, the state has lost 83,700 jobs, or 6,440 per month on average.

- Only three of the state's major industry sectors gained jobs in August. Information added 9,400 jobs, educational and health services, 2,200, and leisure and hospitality, 1,900.

- Seven sectors lost jobs. The big losses were in trade, transportation, and utilities—6,400—and in government, where 6,000 jobs were dropped. Retail trade, the biggest component of trade, transportation, and utilities, lost 7,800. Elsewhere, financial activities lost 2,800 jobs, manufacturing, 2,400, construction, 2,000, professional and business services, 1,500, and other services, 100.

- Still burdened by ongoing housing troubles, California employment also dropped on a year-over-year basis. Nonfarm payroll employment fell by 72,700 jobs (0.5 percent) from August 2007 to August 2008. Six industry sectors gained jobs, lead by a 50,200 gain in educational and health services. Employment also rose 26,300 in government, 14,100 in leisure and hospitality, 8,400 in professional and business services, 900 in natural resources and mining, and 500 in other services. Over the year, employment fell by 79,200 in Construction, 33,300 in Financial Activities, 28,800 in Manufacturing, 24,600 in Trade, Transportation, and Utilities; and 7,200 in Information.

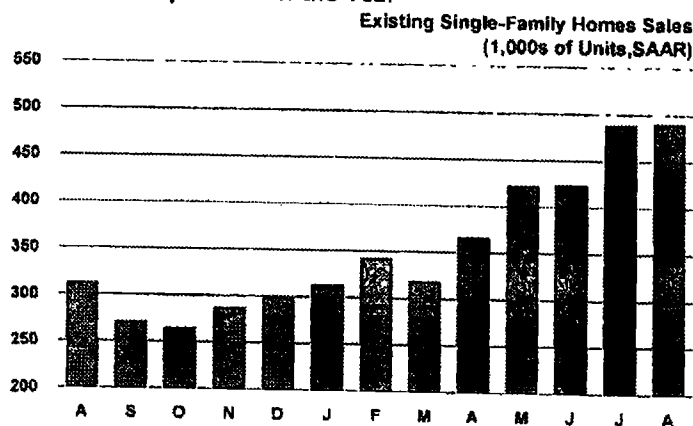
- California's unemployment rate rose to 7.7 percent in August, up from a revised 7.4 percent in July, and up from 5.5 percent a year earlier. The 2.2 percentage point increase from August 2007 to August 2008 was the largest year-over-year increase since July 1991. However, as much as a third of that jump may have been due to the U.S. Bureau of Labor Statistics' practice—adopted in January 2005—of adjusting state unemployment estimates so that they add up to the national estimate. This "benchmarking" of states' unemployment estimates has resulted in a huge increase in the variability of California's unemployment statistics.

- Home building slowed considerably in August, with slowdowns in both single and multi-family home building. Residential permits were issued at a seasonally adjusted annual rate of 55,645 units, down over 56.2 percent from a year earlier. Single-family permits were down 55.0 percent, while multi-family permitting was down 57.4 percent. New home permitting during the first eight months of 2008 was down 43.8 percent from the same months of 2007 and down 60 percent from the same period of 2006.

- Nonresidential construction also slowed in August. Nonresidential construction permitting was down 21.9 percent in August from a year earlier. For the first eight months of 2008 as a whole, nonresidential permitting was down 5.5 percent from the same months of 2007.

- In August, California real estate markets basically moved sideways. Existing home sales and home prices were essentially unchanged from July. Sales of existing single-family detached homes totaled 490,850 units at a seasonally adjusted annualized rate, according to the California Association of Realtors. Inventories remained elevated—although much better than at the beginning of the year. The Association's unsold inventory index stood at 6.7 months in August for the second consecutive month. The median price of existing, single-family homes sold in August was \$350,140, essentially unchanged from July, but down 40.5 percent from August 2007.

Home Sales Improve Over the Year



Source: California Association of Realtors

MONTHLY CASH REPORT

Preliminary General Fund agency cash for October was \$923 million below the 2009 Budget Act forecast of \$10,667 billion. September's revenues include the third estimated payments for personal income tax filers and calendar-year corporations. Year-to-date revenues are \$1,066 billion below the \$22,580 billion that was expected.

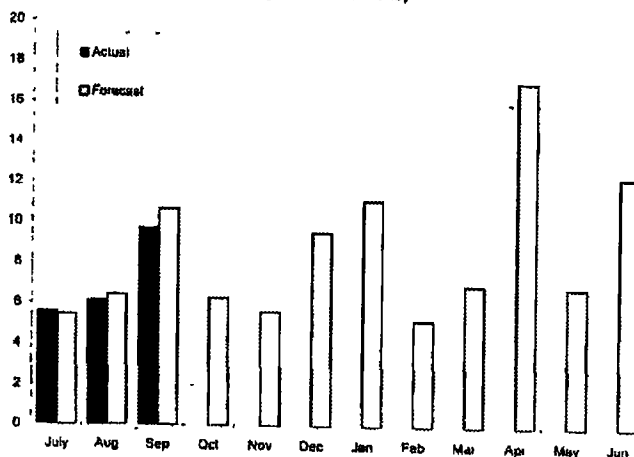
Personal income tax revenues to the General Fund were \$289 million below the month's forecast of \$5,836 billion. Withholding was \$23 million above the estimate of \$2,543 billion but estimated payments showed significant weakness coming in \$337 million below the expected level of \$3,267 billion. Other receipts were \$35 million above the forecast of \$305 million and refunds were \$14 million above the projected level of \$175 million. Proposition 63 requires that 1.76 percent of total monthly personal income tax collections be transferred to the Mental Health Services Fund (MHSF). The amount transferred to the MHSF in July was \$4 million below the month's estimate of \$104 million. Year-to-date General Fund income tax revenues are \$98 million below estimate.

Sales and use tax receipts were \$212 million below the month's forecast of \$2,249 billion. September represents the second prepayment for third quarter taxable sales. A more complete picture of third quarter sales activity will be available when final payments for the quarter are received in late October and early November. The shortfall in this revenue source can be attributed to the weak economy. Year-to-date, the sales tax cash is \$515 million below forecast.

Corporation tax revenues were \$426 million below the month's estimate of \$2,238 billion. The loss was due to sagging prepayments, which were \$468 million lower than the forecast of \$2,095 billion. Other payments were \$18 million above the \$242 million that was expected and refunds were \$24 million below the projected level of \$99 million. Year-to-date revenues are \$428 million below estimate.

Revenues from the insurance, estate, alcoholic beverage, and tobacco taxes were \$32 million above the month's estimate of \$185 million. The remaining revenues—pooled money interest income and "other" revenues—were \$28 million below the month's estimate of \$159 million.

General Fund Agency Cash
2008 Budget Act Forecast
(Dollars in Billions)



This bulletin reflects revenue receipts under the agency cash basis. Actual General Fund revenue receipts as posted by the State Controller's Office is generally different from the results from the agency cash revenue receipts due to timing. This is due to lags between the time tax agencies record tax payments and refunds, and the time these amounts are reported to and recorded by the Controller's Office accounts. For the month of September, the loss in the major three revenue sources is \$927 million under agency cash basis and \$814 million per the Controller's accounts—a difference of \$113 million. The Personal Income Tax accounts for \$19 million of the difference, the Corporation Income Tax accounts for \$10 million, and the Sales and Use Tax accounts for \$84 million. Sales tax cash numbers are often different because payments are due at the end of the month. In the preliminary Official Statement for the RANs offering, we note that the State's General Fund revenues on a budgetary basis could be adjusted downward by \$3 billion for this fiscal year. This projection is consistent with both the agency cash basis revenue receipts for September reported here as well as with the Controller's cash cited in the preliminary Official Statement.

2008-09 Comparison of Actual and Forecast Agency General Fund Revenues

(Dollars in Millions)

Revenue Source	SEPTEMBER 2008				2008-09 YEAR-TO-DATE			
	Forecast	Actual	Change	Percent Change	Forecast	Actual	Change	Percent Change
Personal Income	\$5,836	\$5,547	-\$289	-5.0%	\$11,491	\$11,393	-\$98	-0.9%
Sales & Use	2,249	2,037	-212	-9.4%	6,827	6,312	-515	-7.5%
Corporation	2,238	1,812	-426	-19.0%	2,659	2,231	-428	-16.1%
Insurance	145	180	35	24.1%	545	547	2	0.4%
Estate	0	0	0	0.0%	0	3	3	n/a
Pooled Money Interest	25	22	-3	-12.0%	75	81	6	8.0%
Alcoholic Beverages	30	27	-3	-10.0%	90	86	-4	-4.4%
Tobacco	10	10	0	0.0%	30	29	-1	-3.3%
Other (a)	134	109	-25	-18.7%	863	838	-25	-2.9%
Total	\$10,667	\$9,744	-\$923	-8.7%	\$22,580	\$21,520	-\$1,060	-4.7%

This is an agency cash report and the data may differ from the Controller's report to the extent that cash received by agencies has not yet been reported to the Controller. Except for estate & "other" revenues, revenues are ranked in descending order of fiscal year magnitude.

Totals may not add due to rounding. The forecast is from the 2008 May Revision updated for the 2008 Budget Act.

(a) The forecast for "other" revenues reflects actual cash for July and August.

EXHIBIT 5



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

11/06/2008

Special Session Proclamation 11/06/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by Section 3(b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California on the 6th day of November 2008, at a time to be determined, for the following purpose and to legislate upon the following subjects

- 1 To consider and act upon legislation to address fiscal and budget-related matters.
- 2 To consider and act upon legislation to address the economy, including but not limited to efforts to stimulate California's economy and create and retain jobs
- 3 To consider and act upon legislation to address the housing mortgage crisis.
- 4 To consider and act upon legislation to address the solvency of the Unemployment Insurance Fund



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed 6th day of November, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

EXHIBIT 6



GOVERNOR ARNOLD SCHWARZENEGGER

November 6, 2008

Dear Valued State Worker,

During the six weeks since I signed our state budget, the mortgage crisis has deepened, unemployment has increased and the stock market has dropped significantly. As a result, we are facing a projected \$11 billion revenue shortfall this fiscal year.

These dramatic developments require us to work together and respond immediately. I have called the Legislature into special session to address our fiscal emergency, and I am proposing a combination of economic stimulus measures, programs to keep Californians in their homes, revenue increases and spending reductions to address the real, immediate financial problems facing the state.

If approved by the Legislature, these spending reductions will impact our state workers. Californians rely on you to deliver important services every day, and I am proud of your hard work and dedication to the state. That's why I want you to hear about these impacts from me directly.

To achieve cost savings and protect vital state services, I am proposing the following measures:

- **Furloughs:** All state employees will be furloughed one day each month for the next year and half, a total of 19 days. This will result in a pay cut of about 5 percent. The pay cut will not affect retirement and other benefits for which you are eligible.
- **Holidays:** The Columbus Day holiday will be eliminated, and Lincoln's Birthday and Washington's Birthday will be observed together on Presidents Day. In addition, we will no longer pay time-and-a-half to employees working on holidays. Instead, employees required to work on holidays will receive holiday credit for use at another time, as they do now.
- **Four-day week.** The law will be amended to make it easier for departments to allow employees to work ten hours a day, four days a week.
- **Overtime:** The state will no longer count leave time (including sick leave and vacation time) as time worked for overtime purposes. Instead, employees will only become eligible for overtime pay once actual time worked exceeds the required threshold.

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2811

SEIU JA 000249

November 6, 2008

Page two

These changes will save the state roughly \$1.4 billion over two years. I know these are not easy proposals, and I assure you we are working closely with union leadership to achieve results in the least painful way possible. All the actions we're proposing must first be approved by the Legislature.

I've always said that California has the most talented and most diligent state employees, and I am confident we will make it through this tough time by working together. Thank you for your cooperation and hard work on behalf of the State of California.

Sincerely,



Arnold Schwarzenegger

EXHIBIT 7

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

Home > Public Information & Announcements

Also see: CASE Litigation, Interested in becoming a State Attorney or ALJ?, Media & News Inquiries

Public Information & Announcements

CASE Files Petition for Writ of Mandate and Complaint for Declaratory Relief Posted: January 6, 2009

CASE Files Petition for Writ of Mandate and Complaint for Declaratory Relief

CASE Files Petition for Writ of Mandate and Complaint for Declaratory Relief

On January 5, 2009, CASE filed a Petition for Writ of Mandate and a Complaint for Declaratory and Injunctive Relief against Governor Schwarzenegger and his administration in the Sacramento County Superior Court. Our lawsuit seeks a declaration that the Governor has no authority to unilaterally impose furloughs on State employees, an injunction prohibiting the Governor or any other State officer from implementing the furloughs, and a declaration that any attempt to furlough State employees who are exempt from the Fair Labor Standards Act ("FLSA") would result in the loss of the FLSA exemption to the employer. Copies of the pleadings are available by selecting the link below.

CASE is aware of the fact that California is facing an unprecedented financial crisis. However, it is unconscionable for Governor Schwarzenegger to attempt to remedy California's budget woes through the use of "emergency powers" by placing an unfair burden on the back of its legal professionals. This is especially true given the fact that Governor Schwarzenegger has created his own emergency by refusing to sign the comprehensive budget package passed by the Legislature on December 18, 2008.

As CASE has consistently argued, the members of Bargaining Unit 2 have financially contributed to the State for many years in the form of salaries that are 25% to 50% below where they should be. Furthermore, there are numerous legal, practical, and political problems with Governor Schwarzenegger's proposed course of action, not the least of which is that it does not appear Governor Schwarzenegger has the legal authority to unilaterally impose furloughs, as such an act would violate our existing contract with the State of California. The Governor's virtual disregard of the collective bargaining process has effectively precluded CASE from presenting less drastic alternatives to "hard" furloughs, such as voluntary early retirement programs, voluntary conversions to part-time work schedules, and/or "soft" furloughs, where employees are furloughed but compensated for the unpaid time in the future with deferred payments or leave credits. Moreover, under the FLSA, the State cannot furlough exempt employees (and all Unit 2 attorneys are exempt) without losing its exempt status, which would expose the State to the very real possibility of having to pay its employees their normal rate of pay plus overtime.

CASE is committed to opposing the Governor's ill-advised proposal in every available forum, and will keep you updated as information becomes available. If you have any specific questions, please direct them to info@calattorneys.org.

As always, thank you for your support of CASE and your colleagues in Bargaining Unit 2.

EXHIBIT 8

Republican proposal would slash vital state services

As *Update* goes to press the Republicans are releasing a one-sided budget plan that calls for billions more in funding cuts for vital state services and reduces worker protections

Local 1000 is launching a campaign to obtain funding for state services as part of the federal economic stimulus package, but this Republican proposal may keep Californians from getting that relief.

Republican legislators appear ready to risk crucial state services for Californians by refusing to consider any budget compromise that includes cutting tax loopholes

for the wealthy or raising the alcohol tax. The Republican proposals would also restrict the ability of workers to earn overtime.

"The budget deficit is getting worse every day and the Republicans need to stop playing games with workers' rights and join everyone else in finding a comprehensive budget solution," said Cindie Fonseca, chair of our Professional Educators and Librarians (Unit 3).

Local 1000 has called for a comprehensive solution, including a series of other funding measures such as raising the alcohol tax by a "nickel a drink," going after tax

scofflaws and cutting hundreds of millions in wasteful information technology contracts for well-connected private firms.

"The state has already laid off 10,000 temporary workers so before legislators consider layoffs and furloughs, they need to get rid of expensive private contractors who do work that state employees perform more effectively at lower cost," Fonseca said.

If there is no compromise on the \$14 billion deficit by early January, California would have to pull the plug on about \$5 billion in upcoming public works projects such as hospitals, roads and

levies. Republican resistance to compromise may also hinder California's ability to get billions from the federal economic stimulus package.

"We need to have everyone, the unions, the governor and the legislature conveying the same message to Washington in order to get economic stimulus funds," Local 1000 President Yvonne Walker said. "California is headed over a cliff. The governor and the legislature need to work at this 24 hours a day until they reach a resolution."

To see updated news on the state budget go to seiu1000.org and watch the Channel 1000 News.

Local 1000 wins outsourcing battle Board cancels "proprietary" computer contract at DGS

Local 1000 has won another big victory in our campaign to prevent the costly outsourcing of information technology jobs that can be done at half the cost by state workers. On Dec. 2, the full State Personnel Board upheld a ruling that disapproves an IT software contract between the Department of General Services (DGS) and Valley Oak Systems Inc.

The Board's decision brings an end to Local 1000's challenge to five IT contracts - our attorneys won four cases. The disapproved contracts were valued at \$448 thousand. DGS chose to appeal only the Valley Oaks case to the full board, claiming that the program which

was serviced under that contract was custom and "proprietary."

"DGS's continued failure to train existing staff to maintain proprietary programs and then argue they have to outsource maintenance at double the cost is an outrageous waste of taxpayer money."

*—Margarita Maldonado
Chair, Bargaining Unit 1*

However, the full SPB agreed with Local 1000 attorneys that the Valley Oaks contract was not written to service

a proprietary program. It was written as what has become a boilerplate maintenance and service contract with help-desk services. In fact the word "proprietary" never appeared in the contract.

"DGS's continued failure to train existing staff to maintain proprietary programs and then argue they have to outsource maintenance at double the cost is an outrageous waste of taxpayer money," said Margarita Maldonado, chair of Bargaining Unit 1 and an associate information systems analyst at the Department of Justice. "DGS has known since 2003 - a full five years - that they needed to train workers."

Watch the Channel 1000 News online 24/7 at seiu1000.org

KNOW YOUR RIGHTS

YOUR UNION CONTRACT PROTECTIONS

Article 6 - Grievance and Arbitration

Your union contract contains hundreds of provisions designed to protect your rights. Article 6 – Grievance and Arbitration – defines a grievance as a dispute involving the interpretation and enforcement of the terms of the contract, and guarantees your right to fair and timely resolution.

Grievances should be discussed informally with the employee's immediate supervisor who must give a response within seven calendar days.

Step 1: If an informal grievance is not resolved satisfactorily, a formal grievance may be filed in writing no later than twenty-one calendar days after the event being grieved.

- Written grievances must include a description of the alleged violation, the specific act(s) causing the violation, and the specific remedy being sought.
- The department must respond in writing within twenty-one calendar days of receipt of the formal grievance.

Step 2: If the grievant is not satisfied with the written response, a written appeal may be filed with the department within twenty-one calendar days after receipt of the written response. The department must respond in writing to the appeal, with a copy sent concurrently to Local 1000 headquarters.

Step 3: If the grievant is not satisfied with the decision rendered at Step 2, an appeal may be filed within 30 days to the Department of Personnel Administration (DPA). A response is due from DPA within 30 days.

Step 4: If the grievance is not resolved at Step 3, Local 1000 has the right to submit the grievance to arbitration. An arbitrator will be mutually selected by DPA and Local 1000.

How to take Action

Contact your Local 1000 steward if you feel your rights have been violated. Your steward will work with you and management to determine the best course of action. Remember – grievances must be filed within twenty-one calendar days from occurrence in order to be considered. For more information regarding Article 6 – Grievance and Arbitration, review your contract by visiting www.seiu1000.org

Bargaining resumes Jan. 5

Our bargaining team will return to the table beginning in January. Both Master Table and unit bargaining is expected to begin the week of Jan. 5, but exact times and dates have not been set.

Local 1000's contract expired on June 30, provisions of the old contract remain in effect.

Our team has been bargaining steadily with the state since May and we have signed more than 400 tentative agreements, mainly dealing with non-economic issues.

The Statewide Bargaining Advisory Committee plans to meet Jan. 9-12 and will review the status of bargaining and the state budget.

Delegate nomination process begins for General Council

Council meets Labor Day weekend in L.A.

The Local 1000 Election Committee is beginning the work of administering the elections for delegates to the 2009 General Council in Los Angeles. Nomination forms for the delegate election will be arriving at each member's home by mail during the first week of January.

General Council is the policy making body for the California State Employees Association (CSEA) and is made up of delegates from all CSEA affiliates – Local 1000, the California State University Employees Union (SEIU Local 2579), the Association of California State Supervisors and the CSEA Retirees.

Each Local 1000 District Labor Council is entitled one delegate per 100 members. This has ranged from 8-19 delegates.

At the General Council, all delegates vote to elect CSEA officers, adopt the association's three-year budget, and accept or reject proposed changes to the organization's bylaws. At that time, Local 1000 delegates will also vote on the three-year budget for Local 1000.

General Council will be held in Los Angeles during the Labor Day weekend, Sept. 4-7, 2009.

For further information go the delegate elections page at seiu1000.org or e-mail local1000Elections@seiu1000.org

Mileage rate to drop in 2009

On Jan. 1, the state's standard mileage rates for the use of a car (also vans, pickups or panel trucks) will be reduced to 55 cents per mile for business miles driven. Under your Local 1000 contract, state workers receive the federal Internal Revenue Service rate.

FOR MORE INFORMATION, CALL LOCAL 1000 TOLL FREE (866) 471-SEIU (7348) or visit our website: www.seiu1000.org

SACRAMENTO (916) 554-1200 • OAKLAND (510) 452-4357 • SAN DIEGO (619) 624-0515

LOS ANGELES (323) 525-2970 • RANCHO CUCAMONGA (909) 466-5044 • FRESNO (559) 226-0756



Watch the Channel 1000 News online 24/7 at seiu1000.org

SEIU JA 000255

EXHIBIT 9

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Weekly Update January 9, 2009

Budget negotiations between the Governor and Democratic Legislative leadership broke down earlier this week. The Governor's demands for an agreement on even partial relief of the \$42 billion General Fund Budget deficit centered on outsourcing (unlimited authority for design build and public-private partnerships), state employees (authorizations for furloughs), and environmental (exemptions of some projects from the California Environmental Quality Act requirements). While Democrats made some concessions, it either wasn't enough or the Governor changed and increased his demands. However, a broad spectrum of labor organizations has been meeting with legislative leadership to coordinate efforts on budget needs and the Governor's positions on various issues. The Governor's preliminary budget proposal from last week will probably be the same as his official proposal (if indeed he makes another one). His State of the speech will be delivered at 10 a.m. on Thursday, January 15.

The Governor vetoed the Democrats \$18 billion package of bills to partially relieve the \$40 billion deficit. As a direct result, the state is running out of cash and State Controller John Chiang has been forced to stop payments to some construction contractors. He says the state will really run out of money in February, which will make paying its bills difficult if not impossible. What effect this will have on paychecks if the Governor of Legislature doesn't do something between now and then is unclear but is a serious concern. We are working with everyone involved to try to fix the problem.

PECG was in court this morning (Friday, January 9) to ask the Judge to expedite a hearing on PECG's lawsuit challenging the Governor's Executive Order to furlough state employees two days per month. Ironically, the Governor outsourced his defense of his actions to a high profile private law firm in Sacramento, rather than using any of the 2,000 state attorneys he plans to furlough. Judges for these cases are drawn by chance and the assigned Judge was Lloyd Connelly, a former Democratic legislator and experienced judge. Each side gets one challenge so the state challenged Judge Connelly as being biased. As a result, Judge Marlette was assigned to hear the case.

The Judge ruled that the case will be heard on January 29. Two other unions also filed suit, so their argument will be heard at the same time.

Mark Miller, PECG's Corporate Vice President, Supervisory, presented DPA Director Dave Gilb with petitions signed by more than 1300 PECG-represented supervisors and managers, asking the DPA Director to implement the pay raises for supervisors and managers in the same manner as those received by Unit 9 employees whom they supervise.

EXHIBIT 10



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

PROCLAMATION

12/01/2008

Fiscal Emergency Proclamation 12/01/2008

PROCLAMATION

by the
Governor of the State of California

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, it is estimated that there will be a General Fund revenue shortfall of at least \$11.2 billion for the 2008-09 fiscal year. Additionally, the weakening economy will increase the expenditures for health and social services beyond what is provided for in the Budget Act.; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces, and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS immediate and comprehensive action is needed to address the revenue shortfall facing the State of California; and

WHEREAS within months the State will not be able to meet all of its expenses, outside of debt service, without immediate and comprehensive action; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars that will occur in July and August, thus making it likely that this fiscal year's deficit will cause the State to miss payroll and school payments at the beginning of 2009; and

WHEREAS, according to the Legislative Analyst, next fiscal year's budget will be even more out of balance than the current year budget and balancing the 2009/2010 budget will be immeasurably more difficult if actions to reduce spending trends and increase revenue trends are not put into place immediately,

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with Section 10(f) of Article IV of the Constitution of the State of California, **HEREBY DETERMINE** that General Fund revenues for Fiscal Year 2008-09 will decline substantially below the estimate of General Fund revenues upon which the 2008 Budget Act was based.

I, ARNOLD SCHWARZENEGGER, Governor of the State of California, **HEREBY DECLARE** that a fiscal emergency exists

I, ARNOLD SCHWARZENEGGER, Governor of the State of California, **HEREBY IDENTIFY THE NATURE OF THIS FISCAL EMERGENCY** to be the projected budget imbalance and insufficient cash reserves for Fiscal Year 2008-09 and the projected insufficient cash reserves and potential budgetary and cash deficit in Fiscal Year 2009-10 which are anticipated to result from the dramatically lower than estimated General Fund revenues in Fiscal Year 2008-09.

FURTHER, on this day, as required by Section 10(f) of Article IV of the Constitution of the State of California, I will cause the Legislature to assemble in special session to address this fiscal emergency, and I will submit to the Legislature proposed legislation to address this fiscal emergency



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 1st day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

EXHIBIT 11



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009, and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis, and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009, and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis, and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009, and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year, and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its

obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately.

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

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

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State

EXHIBIT 12

CONTROLLER JOHN CHIANG
STATE OF CALIFORNIA

300 Capitol Mall
Sacramento, CA 95814
916 445.2636
www.controller.ca.gov

PR08:066
FOR IMMEDIATE RELEASE:
DECEMBER 19, 2008

CONTACT: HALLYE JORDAN
916-445-2636

**Chiang Issues Statement on Governor's
Executive Order Requiring State Employee
Furloughs and Layoffs**

SACRAMENTO – Controller John Chiang today issued the following statement in response to Governor Schwarzenegger's executive order to implement furloughs and layoffs:

"This is one of many painful results stemming from the inability of the Governor and Legislature to agree on responsible solutions to our chronic fiscal crisis, and more painful realities are on their way. It is clear that the Governor's executive order would hurt public servants, and in turn adversely impact our economy and slow its recovery.

"I await the Department of Personnel Administration's plan on how to implement this executive order. The only hope for reversing our financial course is for the Governor and Legislature to work together to enact a balanced budget that stops us from running out of cash in late February."

###

EXHIBIT 13



JOHN CHIANG
California State Controller

December 22, 2008

The Honorable Arnold Schwarzenegger
Governor of California
State Capitol Building
Sacramento, CA 95814

The Honorable Darrell Steinberg
President pro Tem
California State Senate
State Capitol, Room 205
Sacramento, CA 95814

The Honorable Karen Bass
Speaker of the Assembly
State Capitol, Room 219
Sacramento, CA 95814

The Honorable Dave Cogdill
Senate Republican Leader
State Capitol, Room 305
Sacramento, CA 95814

The Honorable Michael Villines
Assembly Republican Leader
State Capitol, Room 3104
Sacramento, CA 95814

Dear Governor Schwarzenegger and Legislative Leaders:

I am writing to underscore the stark reality that, if current projections hold true, the State is less than seventy days from running out of cash. Worse, my office's analyses indicate there will be no shelter from the storm as the State's cash position will remain negative throughout the remainder of the fiscal year.

As I indicated during the recent Joint Legislative Budget Session, the failure of the Governor and the Legislature to quickly arrive at an agreement to responsibly address the State's \$41 billion budget crisis would begin a cascading series of regrettable actions necessary to conserve the State's dwindling cash reserves. However, these cash-preserving options no doubt will have the unintended effect of deepening and prolonging the recession

that has already crippled our State's economy. The first of those actions were made last week:

- The Pooled Money Investment Board was forced to shut off the flow of \$3.8 billion in loans to approximately 2,000 critical infrastructure projects. That action is expected to cost the state 200,000 private sector jobs and the loss of \$12.5 billion to our economy.
- Last Friday, the Governor ordered mass layoffs and unpaid furloughs starting in February for nearly 250,000 state public servants, including nursing home inspectors, peace officers, and auditors charged with identifying fraud, waste, and abuse.

Unless adequate budget and cash solutions are fashioned in the next several weeks, the list of casualties will only multiply in the weeks and months ahead.

Specifically, my office will be forced to pursue the deferral of potentially billions of dollars in payments and/or the issuance of individual registered warrants, commonly referred to as IOUs. In order to ensure that the State can meet its Constitutionally-required obligation to schools and debt service, the Capitol's budget paralysis may leave me no choice but to, in full or in part, withhold payments or to issue IOUs to other individuals and entities entitled to state payments. Given the current financial instability of the banking industry, it is highly unlikely that the banks, if they accept the IOUs at all, will be able to do so for any sustained period of time. Consequently, the recipients of the registered warrants may have no apparent options but to hold them until redemption.

While I hope that reasonable minds and a shared desire to responsibly steer the State away from the worst fiscal crisis since the Great Depression will produce the necessary solutions in the days ahead, I must continue to make preparations for the impending cash crunch. These plans will be outlined for you shortly after the formal release of the Governor's January spending plan.

I also have directed my staff to immediately accelerate the efforts necessary to issue a Revenue Anticipation Warrant (RAW), a rarely-used and extremely costly form of external borrowing. However, given the strained condition of the financial markets, the lack of market liquidity and the current condition of the State's finances, this type of financing may not be possible. A high risk of failure exists even assuming the imposition of high fees and that the Legislature adopts triggered spending reductions and/or tax increases that likely would be necessary to ensure that money is available to allow us to repay a RAW at maturity.

The State's dire cash position not only jeopardizes and places at risk our ability to meet our financial obligations in a timely manner, it threatens our ability to respond to natural disasters and protect our communities from crime. I cannot stress enough the crisis we are

The Honorable Governor Schwarzenegger and Legislative Leaders
December 22, 2008
Page 3

facing. Without action by the Legislature and the Governor, we literally are weeks away from a meltdown of State government that threatens the delivery of critical public services our citizens deserve and expect.

Sincerely,

Original signed by:

JOHN CHIANG
California State Controller

Cc: Members of the State Legislature
Bill Lockyer, California State Treasurer
Mike Genest, Director, Department of Finance
Mac Taylor, Legislative Analyst

EXHIBIT 14

SEIU JA 000270

California at the Brink of Financial Disaster

Michael C. Genest
Director of Finance
State of California

\$41.6 Billion of Budget Deficit

(General Fund in Billions)

Carry Forward Deficit	-14.8
Revenues and Transfers	86.3
Total Available Resources	<u>71.5</u>
Target Reserve	2.0
Expenditures	111.1
2009-10 Budget Deficit	<u><u>-41.6</u></u>

What Happens When the State "Runs Out of Money"?

(Amounts in Billions)

	Jan	Feb	Mar	Apr	May	Jun	Jul
Beginning Balance With Borrowables	\$3.7	\$3.2	-\$0.5	-\$4.2	-\$3.5	-\$4.4	-\$3.7
Receipts	7.8	5.3	4.9	11.8	5.8	6.9	5.8
Disbursements	8.3	9.0	8.6	11.1	6.7	6.2	12.5
Ending Cash Balance Including Borrowables	3.2	-0.5	-4.2	-3.5	-4.4	-3.7	-10.4
General Fund Cash Balance	-\$11.8	-\$15.6	-\$18.8	-\$18.0	-\$19.2	-\$18.4	-\$26.3

Who Will and Who Won't Be Paid?

Will Pay

Public Schools
Debt Service, GO and Lease Revenue
Repayments to Special Funds
Payroll and Benefits
Medi-Cal Claims
RANs Repayment

Will Not Pay

Tax Refunds
Vendors
Social Services Payments to Counties
Healthy Families Program
Developmental Services -
Regional and Developmental Centers
Mental Health Programs
Cal Grants

Infrastructure Projects Will Stop

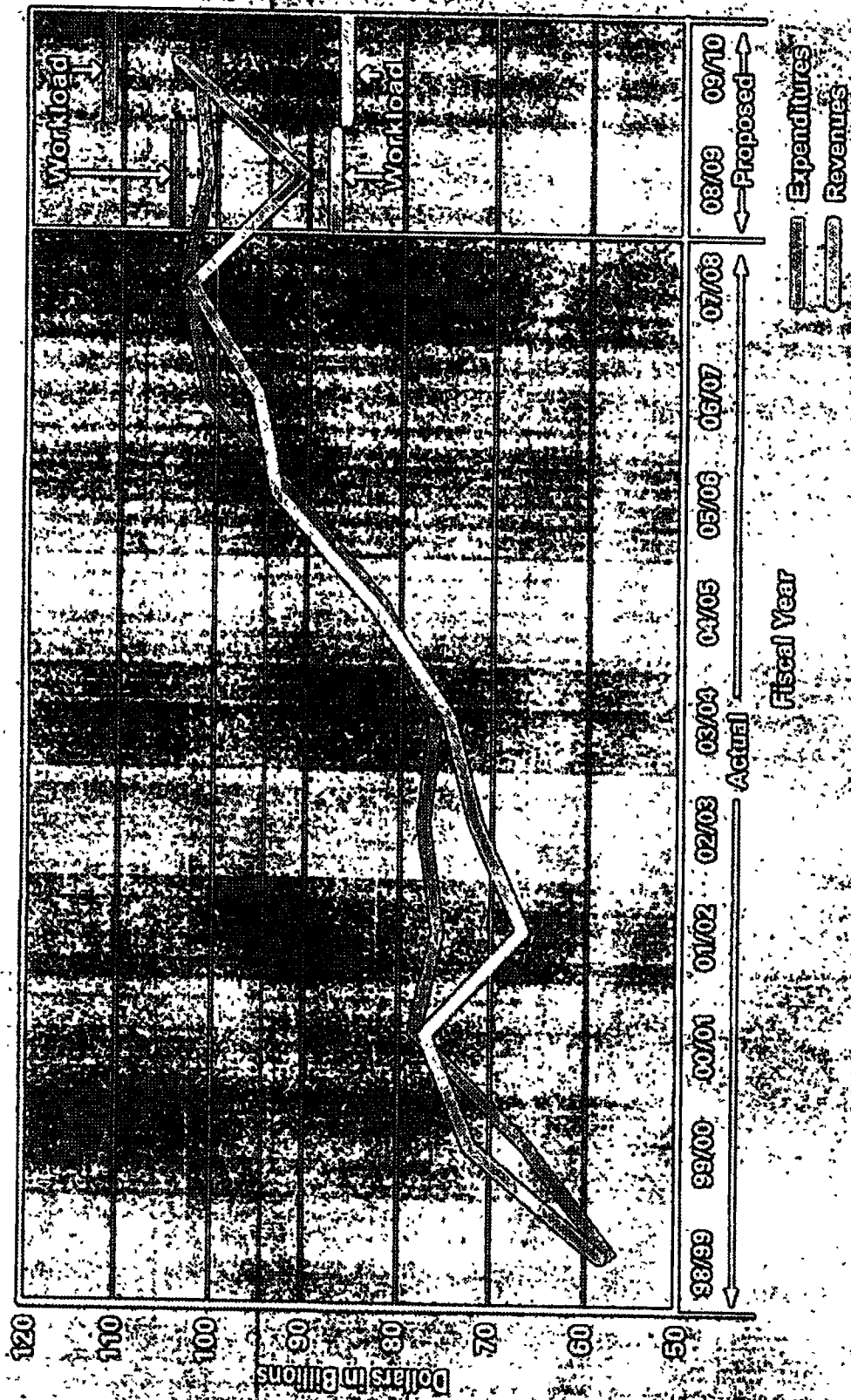
Over 5,700 infrastructure projects are at risk including

- 1,411 K-12, community college and university projects
- 203 transportation projects
- 481 flood control and water projects
- 671 housing projects

The value of all those projects exceeds \$22.5 billion

Shutting down these projects will result in closure costs and penalties that could be hundreds of millions of dollars

How Did We Get Into This Mess?



California State Department of Finance

How Did We Get Into This Mess?

Average Annual Growth from 1998-99 to 2009-10 Governor's Budget

Major General Fund Programs	Average Annual Percentage Growth
Prop 98	4.6%
Base	2.7%
VLF Tax Cut	Did not exist in 1998-99
ERB Triple Flip	Did not exist in 1998-99
Corrections	6.3%
Higher Education (excluding Comm. Colleges)	2.5%
Medi-Cal	6.4%
SSI/SSP	1.5%
Developmental Services	13.1%
Mental Health	9.5%
CalWORKs	0.0%
HSS	11.2%
Other HHS	4.3%
Prop 42	Did not exist in 1998-99
Courts	9.7%
Debt Service/Pension Contribution/Other Non-Discretionary	10.1%
Total	4.7%

What Do We Propose To Do About It?

(Dollars in Billions)

	December 19 Special Session Proposals	Additional Special Session Proposals	Proposals to be Enacted By July 1	Total
Expenditure Reductions	\$9,811 44%	\$4,049 87%	\$3,567 24%	\$17,427 42%
Revenues	12,505 56%	236 5%	1,545 10%	14,286 34%
Lottery	0 0%	0 0%	5,001 34%	5,001 12%
Borrowing	0 0%	358 8%	0 0%	358 1%
RAWs	0 0%	0 0%	4,673 32%	4,673 11%
Total	\$22,316 100%	\$4,643 100%	\$14,786 100%	\$41,745 100%

What Do We Propose To Do About It?

Cuts

(Dollars in Millions)

Program Area	2008-09 and prior	2009-10	Two-Year Total
Health and Human Services	\$461.8	\$4,332.5	\$4,794.3
Corrections and Rehabilitation	85.1	960.5	1,045.6
K-14 Education	5,027.8	2,683.2	7,711.0
Higher Education	132.2	725.0	857.2
Employee Compensation	414.6	1,288.5	1,703.1
Other	339.4	976.8	1,316.2
Total	\$6,460.9	\$10,966.4	\$17,427.4

What Do We Propose To Do About It?

Revenues

(Dollars in Millions)

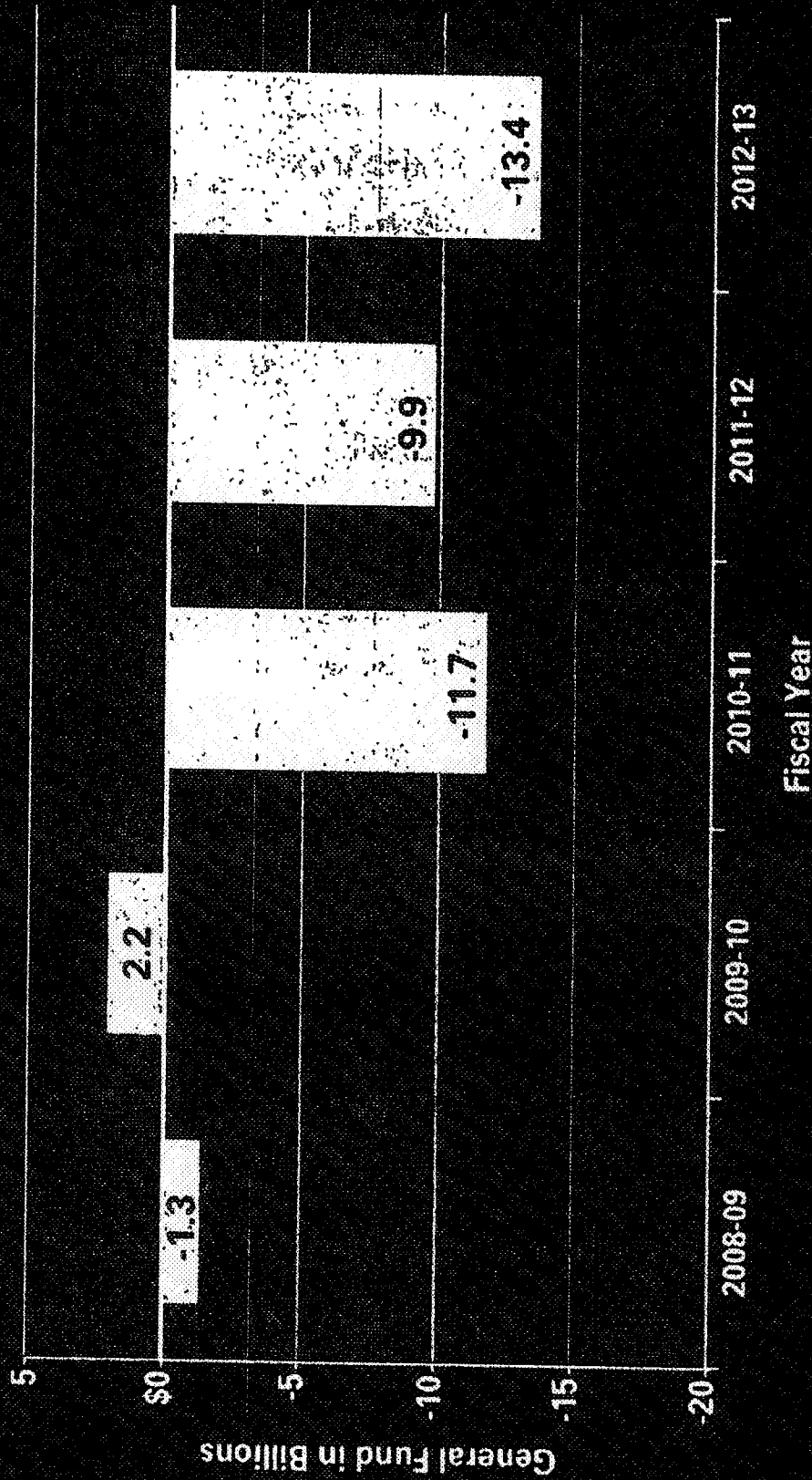
Program Area	2008-09 and prior	2009-10	Two-Year Total
Temporary 1.5 cent Sales Tax Increase*	\$2,350.0	\$6,758.0	\$9,108.0
Sales Tax on Selected Services**	272.4	1,110.9	1,383.3
Reduce Dependent Exemption Credit	0.0	1,440.0	1,440.0
Oil Severance Tax***	348.2	836.4	1,184.6
Nickel a Drink Alcohol Tax Increase	244.0	585.0	829.0
Special Fund Loans and Transfers	399.0	195.2	594.2
Other	0.0	2.8	2.8
Total	\$3,613.6	\$10,928.3	\$14,541.9

* Net of Prop 42 revenues

** Net of Costs and Tidelands Revenue reduction

California State Department of Finance

Do The Solutions Hold Up?



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23 E-mail: WillYamada@dpa.ca.gov

24 Attorneys for Defendants ARNOLD SCHWARZENEGGER,
25 Governor; STATE OF CALIFORNIA; DAVID GILB and
26 DEPARTMENT OF PERSONNEL ADMINISTRATION

27 SUPERIOR COURT OF CALIFORNIA
28 COUNTY OF SACRAMENTO

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

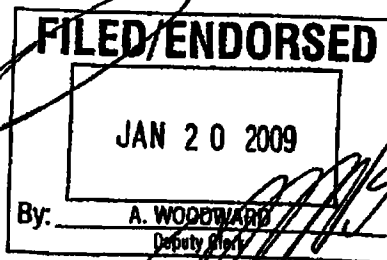
Petitioners/Plaintiffs,

v.

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

Respondents/Defendants.

AND RELATED CASES



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

Assigned For All Purposes To The Honorable
Patrick Marlette

PROOF OF SERVICE

Date January 29, 2009

Time: 9:00 a.m.

Dept.: 19

Action Filed: December 22, 2008

Trial Date: None Set

908228 1

- 1 -

PROOF OF SERVICE

1
2 I, May Marlowe, 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 January 20, 2009, I served a
6 copy of the following document(s):

7 **RESPONDENTS' OPPOSITION TO PETITIONERS' PETITIONS FOR WRIT OF
8 MANDATE IN CONSOLIDATED ACTIONS;**

9 **DECLARATION OF DAVID W. TYRA;**

10 **DECLARATION OF JULIE CHAPMAN;**

11 **DECLARATION OF ALENE SHAMAZU;**

12 **DECLARATION OF BERNICE TORREY;**

13 **DECLARATION OF DIRECTOR OF FINANCE MICHAEL C. GENEST;**

14 **EVIDENTIARY OBJECTION TO DECLARATION OF PETER FLORES, JR.**

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

17 by placing the document(s) listed above in a sealed envelope with postage thereon
18 fully prepaid, the United States mail at Sacramento, California addressed as set
19 forth below.

20 by placing the document(s) listed above in a sealed Federal Express envelope and
21 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
22 Express agent for delivery.

23 by transmitting via e-mail or electronic transmission the document(s) listed above
24 to the person(s) at the e-mail address(es) set forth below.

25 **Attorneys for Petitioners/Plaintiffs California**
26 **Attorneys, Administrative Law Judges and**
27 **Hearing Officers in State Employment**

28 Brooks Ellison, Esq.

Patrick J. Whalen, Esq.

THE LAW OFFICE OF BROOKS ELLISON

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Controller John Chiang

Rick Chivaro, Esq.

Ronald V. Placet, Esq.

Shawn D. Silva, Esq.

Ana Maria Garza, Esq.

OFFICE OF THE STATE CONTROLLER

300 Capitol Mall, Suite 1850

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2 1000

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Professional Engineers In California
Government and California Association of
Professional Scientists

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

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

20 Executed on January 20, 2009, at Sacramento, California.

21
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25
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27
28


May Marlowe