

SUPREME COURT COPY

Court of Appeal, Third Appellate District – Nos. C061011, C061009, C061020
S183411

IN THE SUPREME COURT OF CALIFORNIA

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

v.

ARNOLD SCHWARZENEGGER, as Governor, etc., et al., Defendants
Respondents;

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

RECEIVED

JUN 23 2010

CLERK SUPREME COURT

CALIFORNIA ATTORNEYS, etc., Plaintiff and Appellant

v.

ARNOLD SCHWARZENEGGER, as Governor, etc., et al., Defendants
Respondents;

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

JUN 23 2010

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, Plaintiff and
Appellant,

v.

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

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

**RESPONDENTS' REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF SUPPLEMENTAL LETTER BRIEF**

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Pursuant to Evidence Code sections 452 and 459 and California Rules of Court, Rule 8.252, Respondents Arnold Schwarzenegger and the Department of Personnel Administration (hereinafter "State Respondents") move this Court for an order taking judicial notice of the "Declaration of Diana Ducay in Support of Petitioners' Reply to Respondents' Opposition on the Merits," filed in Sacramento County Superior Court in *Schwarzenegger, et al. v. Chiang, et al.*, Case No. 34-2009-80000158. This declaration is currently a part of the appellate record in that action, which is now pending before the Third District Court of Appeal, Case No. C061648.

Judicial notice of Ms. Ducay's declaration is necessary and appropriate for a full and complete review of one of the issues on which this Court has sought supplemental letter briefing per its June 9, 2010 Order. Specifically, Ms. Ducay's declaration is relevant to the discussion of the effect of the revised Budget Act of 2008 and Budget Act of 2009 on the validity of the Governor's executive order and/or the remedy to which the state employee organizations before the Court may be entitled. Accordingly, State Respondents respectfully request that this court take judicial notice of the Declaration of Diana Ducay attached as Exhibit 1.

MEMORANDUM OF POINTS AND AUTHORITIES

State Respondents move this Court for an order taking judicial notice of the attached “Declaration of Diana Ducay in Support of Petitioners’ Reply to Respondents’ Opposition on the Merits” pursuant to California Evidence Code sections 452 and 459 and California Rules of Court, Rule 8.252. Ms. Ducay’s declaration was not filed in any of the actions currently before this Court, but originally was filed in the Sacramento County Superior Court in another furlough-related action, *Schwarzenegger v. Chiang*, Sacramento County Superior Court Case No. 34-2008-80000158-CU-WM-GDS. Judgment was entered on behalf of State Respondents in that action on April 3, 2009. The matter is now pending before the Third District Court of Appeal, Case No. C061648. Ms. Ducay’s declaration is a part of the appellate record.

Pursuant to Evidence Code section 459, a reviewing court may take judicial notice of any document specified in Evidence Code section 452. Ms. Ducay’s declaration is a document which may be judicially noticed pursuant to Evidence Code section 452. A court is permitted to take judicial notice of documents contained in the files of a case pending in another court. (Evid. Code § 452, subd. (d)(1).) Furthermore, this Court may take judicial notice of the records of any court of the state. (*Gerawan Farming v. Lyons* (2000) 24 Cal.4th 468, 483, fn. 3.)

Judicial notice of Ms. Ducay's declaration is necessary and appropriate for a full consideration of the following issue specified in this Court's June 9, 2010 Order:

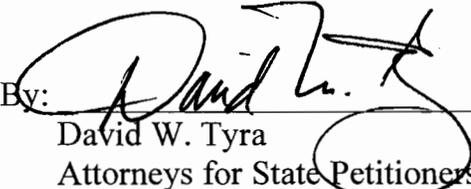
What effect, if any, does the provision of the revised 2008 Budget Act which reduced the appropriation for employee compensation for the 2008-09 fiscal year in an amount comparable to the savings sought to be achieved by the Governors furlough order (Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 2 § 36 (SBX3 2, § 36), passed by the Legislature and approved by the Governor on Feb. 20, 2009) have on (1) the validity of the Governor's executive order, and/or (2) the remedy, if any, to which the petitioning labor organizations may be entitled in these actions?

To address this issue fully, State Respondents must discuss the fiscal assumptions underlying the reductions in state employee compensation legislatively mandated by Sections 3.90 of the revised Budget Act of 2008 and the Budget Act of 2009. These assumptions are discussed in Ms. Ducay's declaration. Therefore, Ms. Ducay's declaration is relevant to one of the issues presented by this Court in its June 9, 2010 Order. Accordingly, State Respondents request that this Court take judicial notice of Ms. Ducay's declaration in order to address fully an issue raised by this Court.

For the foregoing reasons, State Respondents respectfully request that this court take judicial notice of Exhibits 1 as discussed in this memorandum and the attached Declaration of David W. Tyra.

Dated: June 23, 2010

KRONICK, MOSKOVITZ, TIEDEMANN
& GIRARD
A Law Corporation

By: 
David W. Tyra
Attorneys for State Petitioners
GOVERNOR ARNOLD
SCHWARZENEGGER and THE
DEPARTMENT OF PERSONNEL
ADMINISTRATION

**DECLARATION OF DAVID W. TYRA
IN SUPPORT OF REQUEST FOR
JUDICIAL NOTICE**

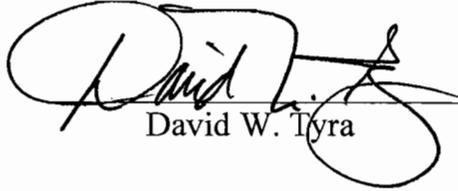
I, David W. Tyra, declare:

1. I am an attorney licensed in the State of California and am a shareholder with Kronick, Moskovitz, Tiedemann & Girard, attorneys of record for State Respondents in this action.

2. I have personal knowledge of the matters stated in this declaration and, if asked to do so, I could competently testify to those matters.

3. In the supplemental letter brief filed by State Respondents in this action in response to this Court's June 9, 2010 Order, I have cited to the "Declaration of Diana Ducay in Support of Petitioners' Reply to Respondents' Opposition on the Merits," filed in *Schwarzenegger, et al. v. Chiang, et al.*, Sacramento County Superior Court Case No. 34-2008-80000158-CU-WM-GDS, Third District Court of Appeal Case No. C061648. Ms. Ducay's declaration attests to the fiscal assumptions underlying the reductions in state employee compensation to be achieved pursuant to Sections 3.90 of the revised Budget Act of 2008 and the Budget Act of 2009. Attached to this request for judicial notice, and marked as Exhibit 1, is a true and correct copy of "Diana Ducay's Declaration in Support of Petitioners' Reply to Respondents' Opposition on the Merits," filed in the *Schwarzenegger v. Chiang* action referenced above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed this 23rd day of June, 2010, at Sacramento, California.


David W. Tyra

[PROPOSED] ORDER

The Request for Judicial Notice filed by Respondents Governor Arnold Schwarzenegger and Department of Personnel Administration is hereby GRANTED.

DATED:

CHIEF JUSTICE OF THE SUPREME
COURT

FILED/ENDORSED

MAR - 9 2009

DEPUTY CLERK

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13 Attorneys for Petitioners
 14 ARNOLD SCHWARZENEGGER, Governor; DAVID A.
 GILB, Director of Department of Personnel
 15 Administration; and DEPARTMENT OF PERSONNEL
 ADMINISTRATION

Exempted from Fees
 (Gov. Code § 6103)

17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF SACRAMENTO

20 ARNOLD SCHWARZENEGGER,
 Governor; DAVID A. GILB, Director of
 21 Department of Personnel Administration;
 DEPARTMENT OF PERSONNEL
 22 ADMINISTRATION,

23 Petitioners,

24 v.

25 STATE CONTROLLER JOHN CHIANG;
 and DOES 1 through 20, inclusive,

26 Respondents.
 27

CASE NO. 34-2009-80000158-CU-WM-GDS

**DECLARATION OF DIANA L. DUCAY IN
 SUPPORT OF PETITIONERS' REPLY TO
 RESPONDENT'S OPPOSITION ON THE
 MERITS**

Date. March 12, 2009
 Time: 1:30 p.m.
 Dept. 19

Action Filed: February 9, 2009

1 I, DIANA L. DUCAY, declare:

2 1. I am the Program Budget Manager for the Administration Unit of the California
3 Department of Finance. The Administration Unit oversees the budgets for CalPERS, CalSTRS,
4 Department of Personnel Administration, Public Employment Relations Board, and State
5 Personnel Board. Specifically, the unit which I oversee has direct responsibility for the employee
6 compensation and retirement benefit components of the State Budget. In addition, the unit is
7 responsible for Local Mandates, Audits & Evaluations and the administrative support of the
8 Department of Finance.

9 2. I have personal knowledge of all facts stated in this declaration and if called upon
10 to do so, I could and would competently testify thereto.

11 3. Attached hereto and marked as Exhibit 1 is a true and correct copy of Section 3.90
12 of the Budget Act of 2008, which was added to the Budget Act as a result of SBX 3 2, passed on
13 or about February 19, 2009. Section 3.90 of the Budget Act of 2008 requires that overall budget
14 appropriations for fiscal year 2008-2009 be reduced in the total amounts of \$385,762,000 from
15 General Fund items and \$285,196,000 from items relating to other funds to reflect reductions in
16 state employee compensation for that fiscal year.

17 4. Attached hereto and marked as Exhibit 2 is a true and correct copy of Section 3 90
18 of SBX 3 1 establishing appropriations for the 2009-2010 fiscal year. This legislation mandates
19 that budget appropriations for fiscal year 2009-2010 be reduced in the total amounts of
20 \$1,024,326,000 from General Fund items and \$688,375,000 from items relating to other funds to
21 reflect reductions in state employee compensation for that fiscal year.

22 5. These budget reduction figures legislatively mandated by both sections 3.90 for
23 fiscal years 2008-2009 and 2009-2010 were calculated by the Administration Unit of the
24 Department of Finance, which I manage, in cooperation with the Department of Personnel
25 Administration, prior to those figures being included in the legislation. Our calculation of these
26 figures was based, in part, on the assumption that all state employees, including those who work
27 in the offices of the civil executive officers of the State, i.e., the Lieutenant Governor, the
28 Secretary of State, the Treasurer, the Attorney General, the Controller, the Superintendent of

1 Public Instruction, the Insurance Commissioner, and the Board of Equalization, would be
2 furloughed two days a month from February 2009 to June 2010 as required by Governor
3 Schwarzenegger's Executive Order S-16-08, dated December 19, 2009. Thus, the assumptions
4 underlying the required budget savings specified in section 3.90 for fiscal years 2008-2009 and
5 2009-2010 include two-day a month furloughs for the employees of the civil executive officers.

6 6. I generally am familiar with Governor Schwarzenegger's line item vetoes of the
7 civil executive officers' budgets, included in separate legislation, reducing those budgets by
8 approximately 10 percent. However, these line item vetoes relate only to the 2009-2010 State
9 Budget, which takes effect on July 1, 2009. The savings in state employee compensation costs
10 for the 2008-2009 fiscal year as reflected in section 3.90 of SBX3 2 was computed based on the
11 assumption that state employees, including those employees working in the offices of the civil
12 executive officers, would be furloughed twice a month. The savings in state employee
13 compensation costs for the 2009-2010 fiscal year as reflected in section 3.90 of SBX3 1 also was
14 computed based on the assumption that state employees, including those employees working in
15 the offices of the civil executive officers, would be furloughed twice a month. The monthly
16 savings to the State budget resulting from furloughing the employees of civil executive officers
17 twice monthly is estimated to be nearly \$5.5 million.

18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct and was executed in Sacramento, California on March 6, 2009.

20
21 
22 Diana L. Duca
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EXHIBIT 1

Sec. 3.90. (a) Notwithstanding any other provision of this act, each item of appropriation in this act, with the exception of those items for the California State University, the University of California, Hastings College of the Law, the Legislature (including the Legislative Counsel Bureau), and the judicial branch, shall be reduced, as appropriate, to reflect a reduction in employee compensation achieved through the collective bargaining process for represented employees or through existing administration authority and a proportionate reduction for nonrepresented employees (utilizing existing authority of the administration to adjust compensation for nonrepresented employees) in the total amounts of \$385,762,000 from General Fund items and \$285,196,000 from items relating to other funds. It is the intent of the Legislature that General Fund savings of \$1,024,326,000 and other fund savings of \$688,375,000 in the 2009-10 fiscal year shall be achieved in the same manner described above. The Director of Finance shall allocate the necessary reduction to each item of appropriation to accomplish the employee compensation reductions required by this section.

(b) The Department of Personnel Administration shall transmit proposed memoranda of understanding to the Legislature promptly and shall include with each such transmission estimated savings pursuant to this section of each agreement.

(c) Nothing in this section shall change or supersede the provisions of the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).

EXHIBIT 2

SEC. 3.90. (a) Notwithstanding any other provision of this act, each item of appropriation in this act, with the exception of those items for the California State University, the University of California, Hastings College of the Law, the Legislature (including the Legislative Counsel Bureau), and the judicial branch, shall be reduced, as appropriate, to reflect a reduction in employee compensation achieved through the collective bargaining process for represented employees or through existing administration authority and a proportionate reduction for nonrepresented employees (utilizing existing authority of the administration to adjust compensation for nonrepresented employees) in the total amounts of \$1,024,326,000 from General Fund items and \$688,375,000 from items relating to other funds. The Director of Finance shall allocate the necessary reductions to each item of appropriation to accomplish the employee compensation reductions required by this section.

(b) The Department of Personnel Administration shall transmit proposed memoranda of understanding to the Legislature promptly and shall include with each such transmission estimated savings pursuant to this section of each agreement.

(c) Nothing in this section shall change or supersede the provisions of the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1 of the Government Code).

PROOF OF SERVICE

I, May Marlowe, declare:

I am a resident of the State of California and over the age of eighteen years, and not a party to the within action; my business address is 400 Capitol Mall, 27th Floor, Sacramento, CA 95814-4416. On June 23, 2010, I served the within documents:

RESPONDENTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF SUPPLEMENTAL LETTER BRIEF

- by transmitting via facsimile from (916) 321-4555 the above listed document(s) without error to the fax number(s) set forth below on this date before 5:00 p.m. A copy of the transmittal/confirmation sheet is attached.
- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California addressed as set forth below.
- by causing personal delivery by Messenger of the document(s) listed above to the person(s) at the address(es) set forth below.
- by placing the document(s) listed above in a sealed Federal Express envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal Express agent for delivery.
- by causing to be transmitted via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

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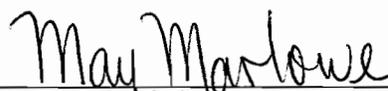
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 23, 2010, at Sacramento, California.



May Marlowe