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

16 SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, CASE No.

17 Petitioners/Plaintiffs,

18 **VERIFIED PETITION FOR WRIT**
19 **OF MANDATE AND COMPLAINT**
20 **FOR INJUNCTIVE AND**
21 **DECLARATORY RELIEF**

22 v.

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

Respondents/Defendants.

COME NOW SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 (hereafter
"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

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,

1 or regulation must be adopted immediately without prior notice or a meeting
2 with the recognized employee organization, the administrative officials or
3 their designated representatives as may be properly designated by law shall
4 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.”

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

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

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

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

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

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

1 17. California law specifically forbids the executive branch from altering salaries.
2 Government code section 19826(b) in relevant part states:

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

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

15 19. LOCAL 1000 is the certified exclusive representative of about ninety-five thousand
16 (95,000) employees in State Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20 and 21. LOCAL 1000
17 negotiates collective bargaining contracts on behalf of employees in such bargaining units, represents
18 such employees as to their terms and conditions of employment under the Dills Act. LOCAL 1000
19 represents the exempt and nonexempt civil service employees who work for the State of California and
20 whose state or civil service employment is affected by implementation of the Governor’s Order.

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

25 21. It is well established that the State Controller has “the power and the duty to ensure that
26 the decisions of an agency that affect expenditures are within fundamental jurisdiction of the agency.”
27 (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.) Through California Government Code,
28 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

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.

1 38. Court intervention and relief is urgently needed to prevent the Governor and DPA from
2 implementing the illegal Order in February 2009, which is an Order that violates the California
3 Constitution and various statutes and regulations, including but not limited to the doctrine of separation
4 of powers under Article III, Section 3, of the California Constitution, and Government Code sections
5 19826(b) and 3516.5, among other laws.

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

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

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

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

24 43. Therefore, Petitioner/Plaintiff LOCAL 1000 seeks temporary, preliminary and permanent
25 injunctive relief directing Respondents/Defendants to cease and desist taking action to implement the
26 proposed furlough of state employees represented by LOCAL 1000, or in any manner to have their
27 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)

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