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**FILED**  
**Superior Court Of California,**  
**Sacramento**  
**Dennis Jones, Executive**  
**Officer**  
**01/23/2009**  
**awoodward**  
**By \_\_\_\_\_, Deputy**  
**Case Number:**  
**34-2009-80000148-CU-WM-GDS**

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10 CALIFORNIA ASSOCIATION OF )  
11 PSYCHIATRIC TECHNICIAN )  
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Petitioner/Plaintiff

vs.

ARNOLD SCHWARZENEGGER, as )  
Governor, State of California; )  
DEPARTMENT OF PERSONNEL )  
ADMINISTRATION; JOHN CHIANG, as )  
State Controller, and Does 1 through 10, )  
inclusive )

Respondents/Defendants

Case No.:  
PETITION FOR WRIT OF MANDATE AND  
COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF

Date:  
Time:  
Dept:

Petitioner/Plaintiff alleges as follows:

**Introduction**

1. On December 19, 2008, California Governor Arnold Schwarzenegger issued Executive Order S-16-08 (Executive Order). Among other things the Executive Order proclaimed that California faced a "fiscal and cash crisis," and in order to save money, directed the Department of Personnel Administration (DPA) to adopt a plan to furlough stat employees for two days per month, effective February 1, 2009 through June 30, 2010.

2. On January 9, 2009, the DPA issued its furlough implementation plan in a memorandum to all Agency Secretaries, Undersecretaries and Directors entitled "State Employee Furlough per Governor's Executive Order S-16-08" (Furlough Memo). Of critical importance to

1 this case, the Furlough Memo directed state employees who work in state developmental centers,  
2 state mental hospitals, and state prisons caring for the developmentally disabled and the mentally  
3 ill to either select and take two furlough days each month or, if not feasible, to accrue two  
4 furlough days per month to be taken "when feasible." The result of either of the aforementioned  
5 is that the salaries of these employees would be adjusted to reflect two unpaid furlough days per  
6 month. The DPA's plan results in an approximate 10% salary decrease for all affected  
7 employees.

8 3. The Executive Order and Furlough Memo run afoul of clear statutory law and legal  
9 precedent because Government Code section 19826(b) expressly prohibits  
10 Respondents/Defendants from decreasing the salary of represented employees.

#### 11 **Parties**

12 4. Petitioner/Plaintiff CALIFORNIA ASSOCIATION OF PSYCHIATRIC  
13 TECHNICIANS (CAPT) is, and at all times herein mentioned was, a non-profit corporation  
14 organized and existing under the laws of the State of California, with its principal place of  
15 business in the County of Sacramento. CAPT is the duly-certified exclusive collective  
16 bargaining representative (pursuant to Government Code section 3520.5) for approximately 7000  
17 civil service employees in State Bargaining Unit 18 (Bargaining Unit 18). These employees are  
18 employed in state developmental centers, state mental hospitals and state prisons. They are  
19 responsible for the care and well being of developmentally disabled persons and persons  
20 suffering from mental illness living in those facilities 24 hours per day, 365 days per year.  
21 CAPT brings this action on behalf of itself and members of Bargaining Unit 18 affected by the  
22 implementation of the Executive Order and Furlough Memo.

23 5. CAPT, and the civil service employees it represents in Bargaining Unit 18, are all  
24 beneficially interested in Respondents/Defendants' faithful performance of their legal duties  
25 because Petitioners/Plaintiffs will be directly and negatively impacted by the unlawful salary  
26 reduction ordered in the Executive Order and the Furlough Memo.

27 6. Respondent/Defendant ARNOLD SCHWARZENEGGER is the duly-elected  
28 Governor of the State of California, sued herein in his official capacity only. The Governor is  
29 the employer of the civil service employees in Bargaining Unit 18 (Government Code section  
30 3513), and issued the Executive Order directing the furlough/salary reduction.

1 7. Respondent/Defendant DPA is and, at all relevant times was, the agency of the State  
2 of California designated as the Governor's bargaining representative under the Dills Act. The  
3 DPA represents the Governor as the employer in all matters pertaining to California state  
4 employer-employee labor relations, and it is responsible for all issues related to salaries and  
5 benefits, job classifications and training. DPA is responsible for implementing the  
6 furlough/salary reduction directed by the Executive Order and Furlough Memo.

7 8. Respondent/Defendant JOHN CHIANG is the duly-elected controller for the State of  
8 California, sued herein in his official capacity only. Among other duties, the Controller is  
9 responsible for administering the fiscal condition and responsibilities of the State of California.  
10 The Controller is charged with auditing all claims against the State and may audit the  
11 disbursement of any state money for accuracy, propriety and legality. The Controller is charged  
12 with drawing warrants on the State Treasury for the payment of money directed by law. Such  
13 warrants must be made as authorized and required by law.

14 9. Petitioner/Plaintiff is ignorant of the true names and capacities of  
15 Respondents/Defendants sued herein as Does 1 through 10 and therefore sues these  
16 Respondents/Defendants by such fictitious names. Petitioner/Plaintiff will amend this  
17 Petition/Complaint to state their true names and capacities once they have been ascertained.  
18 Petitioner/Plaintiff is informed and believes, and on that basis alleges, that each of these  
19 Respondents/Defendants is in some manner responsible for the acts complained of herein.

20  
21 **The Executive Order and Subsequent Implementation  
of a Salary Decrease for Bargaining Unit 18 member**

22 10. On December 19, 2008, the Governor issued the Executive Order. Through the  
23 Order the Governor directed DPA to implement the furlough as follows:

24 **IT IS SO ORDERED** that effective February 1, 2009, through June 30,  
25 2010, the Department of Personnel Administration shall adopt a plan to  
26 implement a furlough of represented state employees and supervisors for  
27 two days per month, regardless of funding source. The plan shall include  
a limited exemption process.

28 11. As legal authority for the furlough order, the Governor cites only to California  
29 Government Code section 3516.5, while making general reference to the "power and authority  
30 vested in [him] by the Constitution and statutes of the State of California." The Executive Order  
does not cite to any specific constitutional provision or statute that authorizes the Governor or

1 DPA to furlough and/or unilaterally reduce the salaries of state employees for eighteen (18)  
2 months. The Executive Order declared that the Legislature had failed to adequately address the  
3 “unprecedented statewide fiscal crisis” and that “immediate and comprehensive action” was  
4 needed to address it. As a result the Executive Order directed DPA to adopt a plan for two (2)  
5 unpaid furlough days for all represented state employees.

6 12. On January 9, 2009, the DPA issued the Furlough Memo outlining how it would  
7 implement the Executive Order’s directives. The Furlough Memo advised that all general  
8 government operations will be closed on the first and third Friday of each month beginning with  
9 Friday, February 6, 2009, and employees shall not report to work on those days. For those state  
10 operations where such a close of business is unfeasible, the Furlough Memo outlined two types  
11 of “self-directed” furlough: 1) Employees to take two furlough days each month but on days  
12 chosen by the employee and approved by the supervisor, and 2) Employees to accrue two  
13 furlough days per month to be taken at a later date “when feasible.” Because the state  
14 developmental centers, state mental hospitals and state prisons must operate 24 hours per day,  
15 365 days per year, the majority of Bargaining Unit 18 members automatically qualify for the  
16 second type of “self-directed” furlough. Finally, the Furlough Memo advised that salaries will  
17 be adjusted—i.e. reduced—to reflect these unpaid furlough days.

18 13. As a result, starting in February 2009, Bargaining Unit 18 members will be subject to  
19 an immediate 10% salary decrease that has not been approved by the Legislature.

20  
21 **Respondents/Defendants Ministerial Duty to**  
22 **Comply with Government Code section 19826**

23 14. Government Code section 19826 provides in relevant part that:

24 (b) Notwithstanding any other provision of law, the department *shall not*  
25 *establish, adjust, or recommend a salary range for any employees* in an  
26 appropriate unit where an employee organization has been chosen as the  
27 exclusive representative pursuant to Section 3520.5. (Emphasis added).

28 The Legislature’s use of the word “shall” in the statute demonstrates its intention that  
29 these acts are mandatory and that the DPA lacks discretion not to comply. (California  
30 Government Code section 14).

15. Through section 19826(b), the Legislature enunciated a clear decision not to delegate  
its salary setting function to the DPA with respect to represented employees. Thus, absent

1 Legislative action, Respondents/Defendants are prohibited from implementing any salary  
2 decrease for Bargaining Unit 18 members because CAPT has been chosen as their exclusive  
3 representative pursuant to Government Code section 3520.5.

4  
5 **FIRST CAUSE OF ACTION**

6 **Declaratory Relief for Violation of Government Code section 19826**

7 16. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs  
8 as though fully set forth herein.

9 17. Respondents/Defendants, and each of them, were responsible for the acts or  
10 omissions complained of herein.

11 18. An actual controversy has arisen and now exists between Petitioner/Plaintiff and  
12 Respondents/Defendants concerning their respective rights, duties, and obligations under  
13 Government Code section 19826(b). Petitioner/Plaintiff contends that Respondents/Defendants  
14 have failed to comply with their statutory obligation under Government Code section 19826(b)  
15 by implementing a salary adjustment equivalent to a 10% salary decrease for Bargaining Unit 18  
16 members, a represented unit, without prior approval from the California Legislature.  
17 Petitioner/Plaintiff is informed and believes that Respondents/Defendants  
18 SCHWARZENEGGER and DPA dispute this contention.

19 19. At all times mentioned herein, Respondents/Defendants have been able to perform  
20 the duty described above. Notwithstanding such ability, Respondents/Defendants fail and refuse,  
21 and continue to fail and refuse, to perform their statutory duty under Government Code section  
22 19826(b).

23 20. Petitioner/Plaintiff desires a judicial determination of its rights and declaration of  
24 Respondents/Defendants' obligations under Government Code section 19826(b).  
25 Petitioner/Plaintiff requests that this court declare that Respondents/Defendants are without  
26 authority to implement the proposed reduction in salary for Bargaining Unit 18 members.

27 WHEREFORE, Petitioner/Plaintiff prays for the relief set forth below.  
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29  
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1 **SECOND CAUSE OF ACTION**

2 **Injunctive Relief for Violation of Government Code section 19826(b)**

3 21. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs  
4 as though fully set forth herein.

5 22. Respondents/Defendants, and each of them, were responsible for the acts omissions  
6 complained of herein.

7 23. Government Code section 19826(b) prohibits Respondents/Defendants from  
8 implementing a salary adjustment equivalent to a 10% salary decrease to Bargaining Unit 18 , a  
9 represented unity, without prior approval from the California Legislature.

10 24. As a result, Plaintiff/Petitioner requests this court enjoin Respondents/Defendants  
11 from implementing its unauthorized and illegal salary adjustment.

12 WHEREFORE, Petitioner/Plaintiff prays for the relief set forth below.

13 **THIRD CAUSE OF ACTION**

14 **Writ of Mandate (Code of Civil Procedure section 1085)**

15 25. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs  
16 as though fully set for herein.

17 26. Respondents/Defendants, and each of them, were responsible for the acts or  
18 omissions complained of herein.

19 27. Government Code section 19826(b), and the case law interpreting it, impose a clear,  
20 present and ministerial duty that Respondents/Defendants shall not "adjust" salaries. Despite  
21 this duty, Respondents/Defendants intend to decrease the salary of Bargaining Unit 18 members  
22 by 10% in clear violation of their duty.

23 28. At all times mentioned herein, Respondents/Defendants have been able to perform  
24 their duty as described above. Notwithstanding such ability, Respondents/Defendants fail and  
25 refuse, and continue to fail and refuse, to perform their duty under Government Code section  
26 19826(b).

27 29. Petitioner/Plaintiff has no right of appeal from the failure of the  
28 Respondents/Defendants to act as required by law, nor does Petitioner/Plaintiff have a plain,  
29 speedy or adequate remedy in the ordinary course of law other than the relief sought in this  
30 action. Therefore, Petitioner/Plaintiff seeks a peremptory writ of mandate compelling all

1 Respondents/Defendants to comply with their mandatory duty under Government Code section  
2 19826(b).

3 WHEREFORE, Petitioner/Plaintiff prays for the relief set forth below.

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5 **FOURTH CAUSE OF ACTION**

6 **Declaratory Relief for Violation of Fair Labor Standards Act**

7 30. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs  
8 as fully set forth herein.

9 31. The Fair Labor Standards Act (hereinafter FLSA) is codified in 29USC section 201-  
10 209. The FLSA requires that employers pay employees for all hours worked in a 40 hour  
11 workweek and to pay overtime compensation for time worked beyond 40 hours in a workweek.  
12 (29USC section 206a). All overtime work that is ordered, approved or "suffered or permitted"  
13 must be compensated.

14 32. Under the Executive Order and Furlough Memo Bargaining Unit 18 employees who  
15 are required to "accrue two furlough days per month to be taken at a later date," will not be  
16 compensated for the full 40 hours worked in a work week and will not receive overtime  
17 compensation for work performed beyond 40 hours in a workweek in those weeks where they  
18 are required to work a full 40 hour week and additional overtime shift(s), but must accrue a  
19 furlough day. In effect, such employees will be required to work at least 48 hours in weeks  
20 requiring a furlough days, but will only be compensated for 40 hours in such a week.

21 33. Respondents/Defendants have a statutory duty under the FLSA to compensate  
22 employees for all hours worked in a 40 hour workweek and to pay overtime compensation when  
23 an employee works beyond 40 hours in a workweek.

24 34. Any failure of Respondents/Defendants to comply with this statutory duty is a  
25 violation of the FLSA.

26 35. An actual controversy has arisen and now exists between Petitioner/Plaintiff and  
27 Respondents/Defendants concerning their respective rights, duties and obligations under the  
28 overtime provisions of the FLSA. Petitioner/Plaintiff contends that under the Executive Order  
29 and Furlough Memo Respondents/Defendants will violate the FLSA by implementing the two  
30 day per month furlough "accrual." Bargaining Unit 18 employees will be required to work 40  
hours per week but will not be compensated for the 40 hours worked in those weeks in which

1 they must accrue a furlough day. In addition, in workweeks where Bargaining Unit 18  
2 employees work 40 hours, and accrue a furlough day, if required to work an additional overtime  
3 shift they will not receive overtime compensation for that overtime shift. Petitioner/Plaintiff is  
4 informed and believes that Respondents/Defendants contend that implementation of the  
5 Executive Order and Furlough Memo does not violate the FLSA.

6 36. Petitioner/Plaintiff desires a judicial determination of its rights and those of  
7 Bargaining Unit 18 members and a declaration of Respondents/Defendants' obligations under  
8 the FLSA, the Executive Order and Furlough Memo. Petitioner/Plaintiff requests this court  
9 declare that Respondents/Defendants must compensate Bargaining Unit 18 members for all  
10 hours worked in a workweek and pay the appropriate overtime rate in those weeks where they  
11 work excess of 40 hours per week.

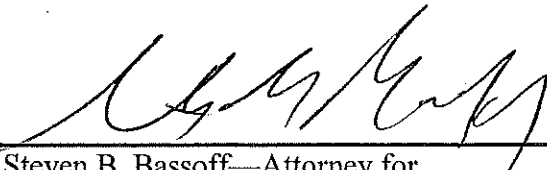
12 37. WHEREFORE, Petitioner/Plaintiff prays for the relief set forth below

13  
14 **PRAYER**

15 WHEREFORE, Petitioner/Plaintiff prays for the following relief:

- 16 1. A declaration that Government Code section 19826(b) prohibits the  
17 Respondents/Defendants from reducing the salaries or otherwise adjusting the salaries of  
18 Bargaining Unit 18 member without prior approval of the California Legislature.
- 19 2. An Injunction ordering Respondents/Defendants to cease and desist from unlawfully  
20 reducing salaries of employees in Bargaining Unit 18 without prior approval of the California  
21 Legislature.
- 22 3. A Writ of Mandate compelling Respondents/Defendants to continue to pay Bargaining  
23 Unit 18 members their full salaries and benefits without reduction or adjustment
- 24 4. A declaration that notwithstanding the Executive Order and Furlough Memo, under  
25 the FLSA Respondents/Defendants must pay Bargaining Unit 18 employees their full salaries for  
26 all hours worked in a workweek and pay overtime compensation to Bargaining Unit 18  
27 employees at the statutory rate when they work in excess of 40 hours in a workweek.
- 28 5. A judgment embodying the foregoing and awarding Petitioner/Plaintiff its costs of  
29 suit, including attorneys' fees pursuant to Government Code section 800, Code of Civil  
30 Procedure section 1021.5, or any other legal basis.
6. Such other relief as may be just.


Dated: January 23, 2009

  
Steven B. Bassoff—Attorney for  
Petitioner/Plaintiff

**VERIFICATION**

I, Anthony Myers, am the President of the California Association of Psychiatric Technicians (CAPT) the Petitioner/Plaintiff herein and am authorized to execute this on CAPT's behalf. I have read the foregoing Petition for Writ of Ordinary Mandate and Complaint for Injunctive and Declaratory Relief and that the matters stated therein are true and correct, and are within my personal knowledge. As to those matters alleged on information and believe it is my belief that said matters are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on January 23, 2008 at Sacramento, California.

  
Anthony Myers