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**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.

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

**PETITIONERS' REPLY TO OPPOSITION
OF RESPONDENT AND INTERVENORS
ON THE MERITS**

Date: March 12, 2009
Time: 1:30 p.m.
Dept.: 19
The Honorable Patrick Marlette

Action Filed: February 9, 2009

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I.

INTRODUCTION

In an excess of hyperbole, Respondent State Controller John Chiang and Intervenor mischaracterize this case as involving an “unprecedented” intrusion by the Governor into the “core functions” of “elected constitutional officers by ordering them to furlough their employees.” (See Respondent’s and Intervenor’s Opposition Brief, 1:3-13.) Contrary to Respondent’s and Intervenor’s assertions, however, this case in no way involves an attempt by the Governor to interfere with the core functions of the civil executive officers of this State. Rather, by issuing Executive Order S-16-08 on December 19, 2008 directing twice monthly furloughs for all state employees, including the civil executive officers’ employees, the Governor was exercising the constitutional and statutory authority granted to him as the state employer to regulate the working hours of state employees. This authority extends to the employees of the other civil executive officers because, by definition, those employees are members of the state workforce subject to the Governor’s executive authority.

While Respondent’s and Intervenor’s opposition largely consists of their erroneous argument that the Executive Order impermissibly intrudes upon the civil executive officers’ prerogatives, Respondent and Intervenor raise additional arguments that are equally unavailing. First, the Executive Order is not moot as a result of the Governor’s line item vetoes reducing the budgets of the civil executive officers. The issue of the Governor’s ability, as the state employer, to regulate the working hours of state employees through furloughs is an issue of public importance likely to recur and, therefore, is not moot. Furthermore, Petitioners’ evidence demonstrates that the revisions to the 2008-2009 and 2009-2010 budgets recently passed by the Legislature mandate certain cost savings in state employee compensation costs. The assumptions factored into the cost savings figures included in the recent legislation include twice monthly furloughs of state employees, including the employees of the civil executive officers. (See generally Declaration of Diana Ducay.)

Second, Petitioners are not estopped from applying the Executive Order to the employees of the civil executive officers. Respondent and Intervenor have failed to demonstrate

1 the essential elements for applying principles of equitable estoppel to comments made by
2 Administration officials shortly following issuance of the Executive Order. Specifically,
3 Respondent and Intervenors have failed to demonstrate that the statements made by
4 Administration officials regarding the applicability of the Executive Order to the civil executive
5 officers' employees were deliberately false and made for the purpose of causing Respondent
6 and/or Intervenors to alter their position to their detriment.

7 Finally, this Court's prior ruling of January 30, 2009 establishes the applicability
8 of the Executive Order to the civil executive officers' employees. The undisputed evidence
9 submitted with Petitioners' opening brief shows that the vast majority of the employees working
10 for the State's civil executive officers are represented by Service Employees International Union,
11 Local 1000 ("SEIU"), California Attorneys, Administrative Law Judges and Hearing Officers in
12 State Employment ("CASE"), or Professional Engineers in California Government ("PECG").
13 Each of these employee organizations was subject to the final ruling and judgment of this Court
14 rendered on January 30, 2009, as follows:

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

21 Based on this Court's January 30, 2009 ruling, therefore, employees working for the civil
22 executive officers are subject to the Executive Order because they are members of the employee
23 organizations against whom that ruling was made.

24 For all of these reasons, as more fully discussed below, Petitioners submit that this
25 Court should issue the requested writ of mandate compelling the Controller to reduce employee
26 compensation for those employees working for the other civil executive officers commensurate
27 with twice monthly furloughs and to issue the requested injunctive relief compelling the
28

1 Controller to comply with the Executive Order and the implementation of it as directed by the
2 Department of Personnel Administration (“DPA”).

3
4 **II.**

4 **LEGAL ANALYSIS**

5 **A. The Governor Has the Legal Authority to Furlough the Employees of the State Civil**
6 **Executive Officers.**

7 As noted above, the dominant argument in Respondent’s and Intervenors’
8 opposition is that the Executive Order interferes with their prerogatives as “independent
9 constitutional officers” of the State. Respondent and Intervenors are statutorily defined as “civil
10 executive officers.” Government Code section 1000 states, “Executive officers are either (a) civil
11 or (b) military.” Section 1001 defines the civil executive officers of the State of California as
12 including the Governor, Lieutenant Governor, the Secretary of State, the Treasurer, the Attorney
13 General, the Controller, the Insurance Commissioner, the Superintendent of Public Instruction,
14 and the members of the Board of Equalization. Maintaining this proper definition of Respondent
15 and Intervenors as civil executive officers is not mere nomenclature because Government Code
16 section 12010 provides: “The Governor shall supervise the official conduct of all executive and
17 ministerial officers.” Thus, for all of the arguments raised by Respondent and Intervenors
18 regarding their independence and notions of “divided executive authority” in California (see
19 Opposition, 8:14, *et seq.*), the relevant statutory framework gives the Governor the authority and
20 responsibility for supervising the official conduct of the civil executive officers. This, in fact, is
21 consistent with the constitutional framework in the California Constitution, which grants to the
22 Governor “[t]he supreme executive power of the State.” (Cal. Const., Art. V, sec. 1.)

23 This having been said, it is not the Governor’s authority over the civil executive
24 officers themselves that is really at issue here. Rather, it is the Governor’s authority, in his role as
25 the state employer, over the state workforce, including those state employees working for the
26 other civil executive officers, that is at issue. Specifically, it is the Governor’s authority to
27 regulate the working hours of those state employees by directing twice monthly furloughs that is
28 being challenged by Respondent and Intervenors. It is undisputed that the Governor and DPA

1 possess "jurisdiction over the state's financial relationship with its employees, including matters
2 of salary, layoffs and nondisciplinary demotions." (*Tirapelle v. Davis* (1993) 20 Cal.App.4th
3 1317, 1322.) As this Court already has ruled, this jurisdiction includes the authority to regulate
4 the working hours of state employees, including temporarily furloughing them during a time of
5 fiscal crisis. (See Gov. Code §§ 19851 and 19849.) Despite this fact, Respondent and
6 Intervenor argue that the Governor may not furlough employees working for them.

7 In making this argument, Respondent and Intervenor rely on a series of
8 Government Code sections they contend provide them with "independent power and duties" with
9 respect to state employees working for them. (See Opposition, pp. 13-14.) The statutes relied
10 upon by Respondent and Intervenor do *not*, however, provide them with authority over state
11 employees in their service that is independent of, or greater than, the Governor's authority over
12 them as the state employer. Rather, the statutes relied upon by Respondent and Intervenor
13 provide that the civil executive officers may appoint certain key deputies and staff, who
14 themselves are civil executive officers. (See e.g., Gov. Code, § 12101 re Lieutenant Governor,
15 § 12152 re Secretary of State, § 12302 re Treasurer, § 12402 re Controller, § 12502 re Attorney
16 General, see also, *Schabarum v. California Legislature* (1998) 60 Cal.App.4th 1205, 1225.)
17 Those employees who are listed in the aforementioned statutes are thus subject to the Governor's
18 supervisory authority over the performance of all executive employees of the State. (Gov. Code
19 § 12010.) All other employees working for the civil executive officers who are not specifically
20 referenced in the aforementioned statutes are state employees in the civil service and thus subject
21 to the Governor's authority over them as the state employer.

22 This is clear from the holding in *Schabarum, supra*, which Respondent and
23 Intervenor do not even cite, much less discuss, in their opposition. As noted in Petitioners'
24 Opening Brief to this Court, the issue in *Schabarum* was whether the determination by the
25 Legislature and the Governor that the budget for the Legislative Counsel may be excluded from
26 the operating expenses and equipment for the Legislature was unconstitutional. In answering this
27 question in the negative, the court noted that the chief of the Legislative Counsel's office is one of
28 the civil executive officers enumerated in Government Code section 1001. Thus, the chief, along

1 with two deputies, are exempt from civil service. However, as to the remainder of the staff
2 working in the Legislative Counsel's office, the court noted as follows:

3 [B]ut other members of the Legislative Counsel's staff are subject
4 to the civil service system of employment. (Cal. Const. art. VII, §§
5 1, subd. (a), 4, subd. (m).) *They are thus subject to the jurisdiction*
6 *of the State Personnel Board with respect to the merit aspects of*
7 *their employment and to the Department of Personnel*
8 *Administration with respect to the nonmerit aspects of*
9 *employment.)*

10 (*Id.*, at p. 1225; emphasis added.) Later in its opinion, the *Schabarum* court reiterated this same
11 point and contrasted employees working in the Legislative Counsel's office from those
12 employees working directly for the Legislature:

13 The Legislative Counsel is not, in form, a part of the Legislature.
14 Its chief is a civil executive officer who must be appointed on a
15 nonpartisan basis. [Citations.] While the officers and employees of
16 the Legislature are exempt from civil service and may be hired and
17 fired freely by the house to which they are attached [citation],
18 *employees of the Legislative Counsel are within the civil service*
19 *and are under the jurisdiction of the State Personnel Board and the*
20 *Department of Personnel Administration*

21 (*Id.*, at p. 1227; emphasis added.)

22 Just like the employees of the Legislative Counsel who are within the civil service
23 and, therefore, subject to the Governor's jurisdiction as the state employer, employees of the civil
24 executive officers who also are members of the civil service are subject to that same jurisdiction.
25 This conclusion is made abundantly clear by considering the fact that, except for exempt
26 appointed positions, the employees of the civil executive officers are represented by various
27 recognized employee organizations pursuant to the Dills Act. It is undisputed that the vast
28 majority of the civil executive officers' employees belong to bargaining units represented by
employee organizations that were petitioners in the cases decided by this Court on January 30,
2009. For instance, in the State Controller's office there are approximately 920 employees in
bargaining units represented by petitioners subject to this Court's Final Amended Ruling of
January 30, 2009 (916 in SEIU, 4 in CASE); in the Attorney General's office, approximately
3,151 employees in bargaining units represented by those petitioners (2,186 in SEIU, 954 in
CASE, 2 in PECCG, and 9 in CAPS); in the Secretary of State's office, approximately 391

1 employees in bargaining units represented by those petitioners (374 in SEIU and 15 in CASE); in
2 the State Treasurer's office approximately 155 employees in bargaining units represented those
3 petitioners (153 in SEIU and 2 in CASE); in the Superintendent of Public Instruction's,
4 approximately 2,215 employees in bargaining units represented by those petitioners (2,199 in
5 SEIU, 14 employees in CASE, and 2 employees in PECG); in the Insurance Commissioner's
6 office, approximately 760 employees in bargaining units represented by those petitioners (685 in
7 SEIU and 75 in CASE); and in the State Board of Equalization offices, approximately 3,506
8 employees in bargaining units represented by those petitioners (3,440 in SEIU, 65 in CASE, and
9 1 in PECG). (See Judd Decl., ¶¶ 7-13.)

10 Government Code section 3513(c) defines those state employees who are entitled
11 to be represented by recognized employee organizations as "any civil service employee of the
12 state." In other words, to be represented by a recognized employee organization under the Dills
13 Act, a state employee must be a member of the civil service. The *Schabarum* decision, in turn,
14 holds that employees in the civil service are subject to DPA's jurisdiction as to the nonmerit
15 aspects of their employment. It follows *a fortiori* that the represented, civil service employees of
16 the civil executive officers are subject to the Governor's authority to regulate the working hours
17 of state employees and are, therefore, subject to the twice monthly furloughs established by the
18 Executive Order. Respondent's and Intervenor's irrelevant arguments regarding their
19 independent constitutional status fail to address, much less overcome, this clear and inescapable
20 conclusion.

21 **B. The Issue of the Governor's Authority to Furlough the Civil Executive Officers'**
22 **Employees Is Not Moot.**

23 Respondent and Intervenor's argue that the furloughing of their employees to
24 achieve certain cost savings has been rendered moot as a result of the Governor's recent line item
25 vetoes of their budgets. (Opposition, p. 17, *et seq.*) This is untrue.

26 To begin with, the Governor's line item vetoes affect only the civil executive
27 officers' budgets for the 2009-2010 fiscal year, which begins on July 1, 2009. (See Declaration
28 of Diana Ducay, ¶ 6.) For the remainder of the 2008-2009 fiscal year, Section 3.90 of the Budget

1 Act of 2008, recently enacted by the Legislature, requires that overall budget appropriations for
2 fiscal year 2008-2009 be reduced in the total amounts of \$385,762,000 from General Fund items
3 and \$285,196,000 from items relating to other funds to reflect reductions in state employee
4 compensation for that fiscal year. (See Declaration of Diana Ducay, ¶ 3.) Because the
5 Governor's line item vetoes apply only to the civil executive officers' budgets in the next fiscal
6 year, the primary mechanism for achieving the legislatively mandated cost savings in state
7 employee compensation for this fiscal year is the furloughs directed by the Executive Order.

8 For the 2009-2010 fiscal year, the Legislature has mandated budget appropriations
9 be reduced in the total amounts of \$1,024,326,000 from General Fund items and \$688,375,000
10 from items relating to other funds to reflect reductions in state employee compensation for that
11 fiscal year. (See Declaration of Diana Ducay, ¶4.) In calculating these budget reductions, there
12 was an assumption that all state employees, including those who work in the offices of the civil
13 executive officers of the State, *i e*, the Lieutenant Governor, the Secretary of State, the Treasurer,
14 the Attorney General, the Controller, the Superintendent of Public Instruction, the Insurance
15 Commissioner, and the Board of Equalization, would be furloughed two days a month from
16 February 2009 to June 2010 as required by the Executive Order. Thus, the assumptions
17 underlying the required budget savings specified for both fiscal years 2008-2009 and 2009-2010
18 include two-day a month furloughs for the employees of the civil executive officers. (See
19 Declaration of Diana Ducay, ¶ 5.) The furloughing of the civil executive officers' employees has
20 not, therefore, been rendered moot by the Governor's line item vetoes of the civil executive
21 officers' budgets for the 2009-2010 fiscal year.

22 While the furloughing of the civil executive officers' employees is certainly not
23 moot, even if this were the case this Court should still issue the requested relief. Although
24 subsequent events may render an issue technically moot, courts still have the discretion to decide
25 the issues of public importance that are likely to recur, especially when, because of their limited
26 duration, the issues are not easily susceptible of judicial review. (*Californians for Fair*
27 *Representation – No on 77 v Superior Court* (2006) 138 Cal.App.4th 15, 22-23; *State Bd of*
28 *Educ v Honig* (1993) 13 Cal.App.4th 720, 742.) Under these circumstances, the court may

1 exercise its inherent discretion to resolve issues raised in a proceeding even if the matter is moot
2 as to the particular parties in the proceeding. (*Id.*) Here, the issue of the Governor's authority to
3 temporarily furlough state employees during a fiscal crisis is an issue of public importance that is
4 likely to recur and is of a limited duration. The issues raised in this proceeding are, therefore,
5 significant enough that this Court should exercise its inherent discretion to resolve them even if
6 finds that there is some aspect of this case that may have become technically moot.

7 **C. Petitioners Are Not Estopped from Seeking a Writ of Mandate and/or Injunctive**
8 **Relief to Enforce the Executive Order.**

9 Respondent and Intervenors argue that Petitioners are equitably estopped from
10 seeking enforcement of the Executive Order against them based on certain statements allegedly
11 made by Administration officials in early January 2009 to the effect that the Executive Order did
12 not apply to the civil executive officers. (Opposition, p. 22, *et seq.*) Yet, Respondent and
13 Intervenors have failed to present any facts to this Court warranting the application of equitable
14 estoppel principles to this case.

15 All parties agree that the State's fiscal crisis, and the adoption of state employee
16 furloughs as one means of addressing that crisis, were unprecedented. Following issuance of the
17 Executive Order on December 19, 2009, analyses of various aspects of state employee furloughs
18 were being undertaken and information was being disseminated rapidly. As the accompanying
19 declaration of Debbie Endsley makes clear, the conversation with the civil executive officers
20 regarding furloughs that took place on January 9, 2009 concluded with an understanding that
21 more legal analysis needed to occur to determine whether the Executive Order would apply to the
22 civil executive officers' employees. (See Declaration of Debbie Endsley, ¶ 4.)

23 In order for the doctrine of equitable estoppel to apply, Respondent and
24 Intervenors must show that Petitioners made statements, or engaged in conduct, that intentionally
25 and deliberately misled Respondent and Intervenors to believe a particular thing true – in this case
26 that the Executive Order did not apply to their employees – and to act upon such belief. (See
27 Evid. Code § 623.) The essence of an estoppel, if it is applicable at all in these circumstances, is
28 that Petitioners have by false language or conduct led Respondent and Intervenors to do that

1 which they would not otherwise have done and, as a result, they have suffered injury. (*El Rio*
2 *Oils v Pacific Coast Asphalt Co.* (1949) 95 Cal.App.2d 186, 194.) As stated by the court in
3 *Hoopes v Dolan* (2008) 168 Cal.App.4th 146, 162,

4 Broadly speaking, ‘estoppel’ refers less to a doctrine than to a
5 conceptual pattern, first articulated in the courts of equity, which
6 has come to pervade our law. When it is successfully invoked, the
7 court in effect closes its ears to a point – a fact, argument, claim, or
8 defense – on the ground that to permit its assertion would be
9 intolerably unfair.

10 In this case, Respondent and Intervenors have failed to produce any evidence
11 showing that Petitioners acted in a deliberately false way to induce them to change position in
12 reliance. In fact, the evidence presented to the Court is to the contrary, *i e*, the teleconference on
13 January 9, 2009 ended with an understanding that more legal research was needed to determine
14 whether the Executive Order applied to the civil executive officers’ employees. Respondent and
15 Intervenors also have failed to produce any evidence that they have suffered any injury as a result
16 of the statements allegedly made during this teleconference. Finally, there has been no showing
17 that it would be “intolerably unfair” to apply the Executive Order to the civil executive officers’
18 employees. In fact, what would be intolerably unfair would be for the civil executive officers’
19 employees to avoid furloughs while their fellow state employees continue to experience them.
20 Accordingly, Petitioners are not estopped from seeking enforcement of the Executive Order on
21 the civil executive officers’ employees.

22 **D. This Court’s Prior Ruling Establishes that the Executive Order Applies to the Civil**
23 **Executive Officers’ Employees.**

24 Following this Court’s ruling of January 30, 2009, State Controller Chiang wrote
25 to this Court seeking clarification as to whether the Court’s ruling applied to the employees of the
26 civil executive officers. In response, this Court stated in a Minute Order dated February 4, 2009,
27 as follows:

28 The Court’s ruling in the above-captioned matters addressed
petitions for writ of mandate and complaints for declaratory relief
brought by four recognized employee organizations, raising issues
regarding the Governor’s authority to order furloughs of their
members, as employees of executive branch agencies. The

1 independently elected Constitutional Officers and other elected
2 state-wide officials referenced above were not parties to these
3 matters. The petitions and complaints upon which the Court ruled
4 did not raise any issues regarding the Governor's authority to order
5 furloughs for the employees of those officers and officials. The
6 Court's ruling therefore did not address, or make any ruling
7 regarding, the Governor's authority to order furloughs for the
8 employees of those officers and officials. Accordingly, the Court
9 expresses no views regarding that issue.

10 (See Respondent's and Intervenors' Request for Judicial Notice, Exhibit 12.) On the basis of this
11 Minute Order, Respondent and Intervenors argue that the Court's January 30, 2009 ruling is
12 inapplicable to their employees.

13 However, at the time this Court issued its Minute Order of February 4, 2009, it had
14 not been presented with evidence that the vast majority of the civil executive officers' employees
15 are members of the very employee organizations that were subject to the Court's ruling of
16 January 30, 2009. As this Court stated in its February 4, 2009 Minute Order, "[t]he Court's ruling
17 [of January 30, 2009] addressed petitions for writ of mandate and complaints for declaratory
18 relief brought by four recognized employee organizations, *raising issues regarding the*
19 *Governor's authority to order furloughs of their members*, as employees of executive branch
20 agencies. (Emphasis added.) Petitioners now have presented this Court with evidence of the fact
21 that the civil executive officers' workforce are made up of employees in the very employee
22 organizations that were before the Court on January 29, 2009 and thus subject to this Court's
23 January 30, 2009 ruling. (See Judd Declaration submitted with Petitioners' Opening Brief.)

24 In that ruling, this Court stated,

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

There is no dispute here that the civil executive officers' employees are employees
represented by the employee organizations that were before this Court on January 29, 2009 and

1 thus subject to the above order. Accordingly, this Court's prior ruling fully disposes of the issue
2 as to whether the Executive Order applies to the civil executive offices' employees.

3
4 **III.**

5 **CONCLUSION**

6 Governor Schwarzenegger, acting as the state employer, has the authority to
7 furlough the civil executive officers' employees. These employees are part of the state workforce
8 subject to the Governor's exercise of his executive authority. They also are members of the
9 employee organizations against whom this Court ruled on January 30, 2009. Accordingly, this
10 Court should issue the requested writ of mandate and injunctive relief compelling Respondent
11 State Controller Chiang to comply with the Governor's Executive Order and refrain from actions
12 interfering with the full implementation of state employee furloughs, including the furloughing of
13 state employees working for the civil executive officers of the State.

14 Dated: March 9, 2009

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

15
16
17 By: 

18 David W. Tyra
19 Attorneys for Petitioners
20 ARNOLD SCHWARZENEGGER, Governor;
21 DAVID A. GILB, Director of Department of
22 Personnel Administration; and DEPARTMENT OF
23 PERSONNEL ADMINISTRATION
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1 I, May Marlowe, declare as follows:

2 I am a citizen of the United States and employed in Sacramento County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address
4 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On March 9, 2009, I served a
copy of the within document(s):

5 **PETITIONERS' REPLY TO OPPOSITION OF RESPONDENT AND**
6 **INTERVENORS ON THE MERITS**

- 7 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.
- 8 by placing the document(s) listed above in a scaled Federal Express envelope and
9 affixing a pre-paid air bill, and causing the envelope to be delivered to a Federal
Express agent for delivery.
- 10 by causing personal delivery by Messenger of the document(s) listed above to the
11 person(s) at the address(es) set forth below.
- 12 by placing the document(s) listed above in a scaled envelope with postage thereon
13 fully prepaid, the United States mail at Sacramento, California addressed as set
forth below.
- 14 by causing to be transmitted via e-mail or electronic transmission the document(s)
15 listed above to the person(s) at the e-mail address(es) set forth below.

16 Mark Beckington, Esq.
17 DEPARTMENT OF JUSTICE
18 300 S. Spring Street, #5312
19 Los Angeles, CA 90013
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20 I am readily familiar with the firm's practice of collection and processing correspondence
21 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
22 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
23 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.

24 I declare under penalty of perjury under the laws of the State of California that the above
is true and correct. Executed on March 9, 2009, at Sacramento, California.

25
26 
27 May Marlowe