

FILE BY FAX

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**ENDORSED
FILED**
San Francisco County Superior Court

JUN 12 2009

GORDON PARK-LI, Clerk
BY: PARAM NATT
Deputy Clerk

6 Attorneys for Petitioners/Plaintiffs

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9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN FRANCISCO

11 SERVICE EMPLOYEES INTERNATIONAL
12 UNION, LOCAL 1000, KATHLEEN
COLLINS, STEPHEN MCVEIGH, LISA
13 DAVIS, BERTHA DEE CERNA, RITA
SALAZAR, MARIA VILLEGAS, AND
14 JAMES BRIGGS, AND DOES 1-5000,

CASE NO. **CPF-09-509580**

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

15 Petitioners/Plaintiffs,

16 vs.

17 ARNOLD SCHWARZENEGGER as,
Governor of the State of California; JAN
18 FRANK, as President of STATE
COMPENSATION INSURANCE FUND;
19 DAVID GILB as Director of the Department
of Personnel Administration; JOHN
20 CHIANG, Controller of the State of
California; and DOES 1-100,

21 Defendants/Respondents.

22
23 **I. INTRODUCTION**

24 1. Petitioners/Plaintiffs SERVICE EMPLOYEES INTERNATIONAL UNION,
25 SEIU LOCAL 1000, KATHLEEN COLLINS, STEPHEN MCVEIGH, LISA DAVIS, BERTHA
26 DEE CERNA, RITA SALAZAR, MARIA VILLEGAS, AND JAMES BRIGGS (hereafter
27 "Petitioners") petition this Court for a writ of mandamus pursuant to Code of Civil Procedure
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1 section 1085, directed to Respondents ARNOLD SCHWARZENEGGER, JAN FRANK,
2 DAVID GILB, and JOHN CHIANG (hereafter collectively “Respondents”). Petitioners
3 challenge the legality of Executive Order S-16-08 (hereafter “Order”) issued by Governor Arnold
4 Schwarzenegger (hereafter “Governor”) on December 19, 2008, as that Order applies to SEIU
5 Local 1000 members employed at the State Compensation Insurance Fund (hereafter “SCIF”).
6 The Order directs all State departments and agencies, including SCIF, to implement a two-day
7 per month furlough of represented state employees.

8 2. The Governor’s Order, however, is unlawful as applied to SCIF employees
9 because the California Legislature expressly excluded SCIF employees from “staff cutbacks”,
10 such as furloughs. On or about February 10, 2009, CASE¹ (the California Attorneys,
11 Administrative Law Judges, and Hearing Officers in State Employment) filed a petition for writ
12 of mandate in San Francisco Superior Court seeking to have the Order declared illegal as applied
13 to its members working at SCIF. The Court designated the CASE petition as Case No. CPF-09-
14 509205. In its petition, CASE alleged that the Governor’s Order was unlawful as applied to
15 CASE members employed as SCIF because the Legislature, pursuant to California Insurance
16 Code § 11873 (c), expressly excluded SCIF employees from furloughs. Case argued that
17 Insurance Code section 11873 specifically forbids the Governor from ordering “staff cutbacks”.

18 3. On June 4, 2009, San Francisco Superior Court Judge Peter J. Busch agreed with
19 CASE and ruled that Order S-16-08—as applied to CASE members employed at SCIF—was
20 unlawful. The Court stated that, “based upon the common sense meaning of the phrase, ‘staff
21 cutback’ as used in the Insurance Code § 11873 (c), and as informed by the policy concerns
22 expressed in the legislative history of the adoption of that section, a ‘furlough’ reduces the
23 availability of staff and therefore constitutes a ‘staff cutback’ for purposes of the statute.”

24 **(Exhibit A, Order Granting Writ of Mandate in Case No. CPF-09-509205.)** The Court then
25 ordered that SCIF exclude CASE members from the furlough Order. Accordingly, Petitioners,
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27 ¹ CASE is the exclusive representative of about 3,400 attorneys, administrative law judges and other legal
28 professionals employed by the State of California in Bargaining Unit 2

1 through this action, now seek to expand the Court's ruling to apply to all SEIU Local 1000
2 members employed at SCIF.

3 II. PARTIES

4 4. SERVICE EMPLOYEES INTERNATIONAL UNION, SEIU Local 1000 ("SEIU
5 Local 1000") is a nonprofit mutual benefit corporation organized under the laws of the State of
6 California with its principal office in Sacramento, California. SEIU Local 1000 is organized to
7 represent employees of the State of California in participating collectively in the mutual
8 formulation of wages, hours, working conditions and retirement benefits. SEIU Local 1000 is
9 the certified exclusive representative of about ninety-five thousand (95,000) employees in State
10 Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20 and 21. In addition, SEIU Local 1000 represents
11 numerous employees working at SCIF. SEIU Local 1000 is, as a result of its representative role,
12 beneficially interested in ensuring the correct and timely payment of wages to state employees.

13 5. Petitioner/Plaintiff KATHLEEN COLLINS is a SCIF employee in the city of
14 Commerce, California, and is a resident of Los Angeles County, California, and has been
15 adversely impacted by the implementation of the furlough order. In addition, Ms. COLLINS is a
16 taxpayer and member of SEIU Local 1000.

17 6. Petitioner/Plaintiff STEPHEN MCVEIGH is a SCIF employee in the city of San
18 Francisco, California, and is a resident of the City and County of San Francisco, California, and
19 has been adversely impacted by the implementation of the furlough order. In addition, Mr.
20 MCVEIGH is a taxpayer and member of SEIU Local 1000.

21 7. Petitioner/Plaintiff LISA DAVIS is a SCIF employee in the city of San Diego,
22 California, and is a resident of San Diego County, California, and has been adversely impacted
23 by the implementation of the furlough order. In addition, Ms. DAVIS is a taxpayer and member
24 of SEIU Local 1000.

25 8. Petitioner/Plaintiff BERTHA DEE CERNA, is a SCIF employee in the city of
26 Pleasanton, California, and is a resident of Alameda County, California, and has been adversely
27 impacted by the implementation of the furlough order. In addition, Ms. CERNA is a taxpayer
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1 and member of SEIU Local 1000.

2 9. Petitioner/Plaintiff RITA SALAZAR is a SCIF employee in the city of Santa Ana,
3 California, and is a resident of Los Angeles County, California, and has been adversely impacted
4 by the implementation of the furlough order. In addition, Ms. SALAZAR is a taxpayer and
5 member of SEIU Local 1000.

6 10. Petitioner/Plaintiff MARIA VILLEGAS is a SCIF employee in the city of
7 Burbank, California, and is a resident of Los Angeles County, California, and has been adversely
8 impacted by the implementation of the furlough order. In addition, Ms. VILLEGAS is a taxpayer
9 and member of SEIU Local 1000.

10 11. Petitioner/Plaintiff JAMES BRIGGS is a SCIF employee in the city of
11 Sacramento, California, and is a resident of Sacramento County, California, and has been
12 adversely impacted by the implementation of the furlough order. In addition, Mr. BRIGGS is a
13 taxpayer and member of SEIU Local 1000.

14 12. Petitioners DOES 1 through 5,000 are other persons who will be adversely
15 affected by the implementation of the furloughs who may be identified after discovery and
16 further investigation.

17 13. Respondent/Defendant Governor ARNOLD SCHWARZENEGGER is the elected
18 Governor of the State of California. The Governor is the employer of state employees in all
19 represented bargaining units for the purposes of bargaining or meeting and conferring in good
20 faith under the Ralph C. Dills Act. (Govt. Code § 3513(j).) SEIU Local 1000 sues GOVERNOR
21 SCHWARZENEGGER in his official capacity only.

22 14. JAN FRANK is the President of the State Compensation Insurance Fund, duly
23 appointed by the SCIF Board of Directors pursuant to Insurance Code section 11785, with
24 delegated authority to manage the fund pursuant to Insurance Code section 11787. Jan Frank is
25 named in her official capacity only.

26 15. Respondent/Defendant Respondent/Defendant DAVID GILB is the Director of
27 the California Department of Personnel Administration (“DPA”) is, and at all times herein
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1 **IV. FACTUAL BACKGROUND**

2 20. In Order S-16-08, the Governor declares that there is a serious General Fund
3 deficit that he claims justifies the decision to impose an across-the-board, two-day per month
4 furlough of represented State employees.² According to the Order, "developments in the
5 worldwide and national financial markets, and continuing weak performance in the California
6 economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year,
7 which without effective action, is estimated to grow to a \$42 billion General Fund budget
8 shortfall over the next 18 months. (**Exhibit B**, p.1.)

9 21. The Order then declares that, a "failure to substantially reduce the deficit carried
10 forward from the current fiscal year into the next fiscal year will likely prevent the State from
11 being able to finance the cashflow shortages of billions of dollars, thus making it likely that the
12 State will miss payroll and other essential services payments at the beginning of 2009." (*Id.*) The
13 Order directed DPA to allow for exemptions to the furloughs.

14 22. The sole authority cited in the Order was Government Code section 3516.5. That
15 section provides:

16 "Except in cases of emergency as provided in this section, the employer shall give
17 reasonable written notice to each recognized employee organization affected by any
18 law, rule, resolution, or regulation directly relating to matters within the scope of
19 representation proposed to be adopted by the employer, and shall give such
20 recognized employee organizations the opportunity to meet and confer with the
21 administrative officials or their delegated representatives as may be properly
22 designated by law.

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

24 23. On or about Friday, January 30, 2009, Respondent Jan Frank, SCIF President,
25 issued a memorandum to all SCIF employees, which she entitled: "Furloughs." Respondent
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27 _____
28 ²The Order does not apply to Unit 5 employees represented by the California Association of Highway Patrolmen because the Governor claims those employees have an effective collective bargaining agreement.

1 Frank informed the SCIF employees that discussions with DPA concerning a possible exemption
2 from the furlough Order were still in progress.

3 24. Later that day, however, Respondent Frank sent all SCIF employees an email
4 informing them that DPA had denied it a furlough exemption. SCIF then circulated a
5 memorandum to its employees explaining the process for implementation of the furlough. The
6 memorandum also stated that the SCIF employees' salaries would be reduced as a result of the
7 furloughs.

8 25. Since February 6, 2009, to the present, SEIU Local 1000 members employed at
9 SCIF continue to be subject to furloughs and a reduction in their salaries from the furloughs.

10 26. On or about February 10, 2009, CASE filed a petition for writ of mandate in San
11 Francisco Superior Court asking the Court to declare the furloughs illegal as applied to CASE
12 members working at SCIF. The Court designated that petition as Case No. CPF-09-509205.

13 27. In its petition, CASE alleged that Order S-16-08 was unlawful when applied to
14 CASE members employed by SCIF because the Legislature, through Insurance Code § 11873(c),
15 expressly exempted SCIF employees from furloughs. Case alleged that Insurance Code section
16 11873 specifically forbids the Governor and executive branch from ordering "staff cutbacks,"
17 arguing that furloughs fell into the category of "staff cutbacks."

18 28. On June 4, 2009, San Francisco Superior Court Judge Peter J. Busch agreed with
19 CASE and ruled that Order S-16-08—as applied to CASE members employed by SCIF—was
20 unlawful. The Court stated that, "based upon the common sense meaning of the phrase, 'staff
21 cutback' as used in the Insurance Code § 11873 (c), and as informed by the policy concerns
22 expressed in the legislative history of the adoption of that section, a 'furlough' reduces the
23 availability of staff and therefore constitutes a 'staff cutback' for purposes of the statute."
24 **(Exhibit A.)** The Court then ordered that SCIF exclude CASE members from the any furloughs.
25 Accordingly, Petitioners, through this action, now seek to expand the Court's ruling to apply to
26 all SEIU Local 1000 members working at SCIF.

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1 29. Petitioners will be irreparably harmed by effectuation of the furlough Order, as
2 they will suffer an unlawful reduction in their work hours and salaries. Petitioners have no plain,
3 adequate, or speedy remedy at law because SCIF has directed them to immediately take furlough
4 days, which reduces their salaries. Petitioners have a direct and immediate interest, and are
5 affected by the Order in that they and other SEIU Local 1000 members have a right not to be
6 illegally furloughed. Petitioners further have a Constitutional and statutory right to not have their
7 pay reduced by the Order.

8 30. Article 14, § 4 of the California Constitution grants the Legislature "plenary
9 power, unlimited by any provision of this Constitution, to create, and enforce a complete system
10 of workers' compensation, by appropriate legislation "

11 31. Pursuant to its authority, the Legislature provided that: "Notwithstanding any
12 provision of the Government Code or any other provision of law, the positions funded by the
13 State Compensation Insurance Fund are exempt from any hiring freezes **and staff cutbacks**
14 otherwise required by law." (Cal. Ins. Code § 11873(c)) (Emphasis added.)

15 32. In addition, the Legislature enacted California Labor Code § 57.5, which provides
16 that, "all duties, powers, and jurisdiction relating to the administration of the State Compensation
17 Insurance Fund shall be vested in the Board of Directors of the State Compensation Insurance
18 Fund."

19 33. Pursuant to California Insurance Code § 11781, the Board of Directors at SCIF are
20 vested with "full power, authority and jurisdiction" over the fund, and may exercise any power
21 over the fund "as fully and completely as the governing body of a private insurance carrier."

22 34. In enacting California Insurance Code § 11774, the Legislature made clear that
23 "the assets of the [SCIF] *shall* be applicable ... to the *payment* of the *salaries* " (Emphasis
24 added.) In *White v. Davis* (2003) 30 Cal.4th 528, 567, fn. 15, the California Supreme Court
25 held that money for SCIF salaries is subject to a continuing appropriation that authorizes
26 disbursement of funds regardless of the status of the General Fund.

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

5 41. The Governor may not pass laws or ignore those laws passed by the California
6 Legislature pursuant to its authority under the California Constitution. Among those laws that
7 the Governor may not ignore is California Insurance Code § 11873(c).

8 42. Executive Order S-16-08, issued on December 19, 2008, violates the California
9 Constitution, the doctrine of separation of powers, and the Insurance Code, because results in the
10 Executive Branch usurping and exercising those powers specifically reserved to the Legislature
11 by the California Constitution. The California Legislature acting upon its Constitutional
12 authority enacted Insurance Code section 11873, which exempts SCIF from staff cutbacks, such
13 as furloughs. The Governor, through the Orders, is violating the doctrine of separation of powers
14 by asserting authority where it has none. In addition, the Order violates Insurance Code section
15 11873.

16 43. In this matter, Petitioners have an immediate and a direct interest affected by these
17 proceedings in that SEIU Local 1000 members employed at SCIF have a statutory and
18 Constitutional right not to be furloughed, and to not have their hours cut and salaries reduced as
19 proposed by the Order.

20 44. Respondents have a clear, present, and ministerial duty to conform to the
21 Constitution and laws of the State of California, and to abstain from violations thereof.

22 45. Respondent Controller Chiang has a duty to audit claims and to conclude that,
23 since the Governor and DPA's proposed furlough conflicts with Insurance Code section 11873,
24 subdivision (c), and the California Constitution, the Governor and the DPA have no authority to
25 implement the furlough. The Controller has a duty to ensure the salaries of SCIF employees not
26 be reduced as a result of the furloughs because the Order, as applied to SCIF employees, has no
27 force or effect.

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1 employees working for SCIF, and the reduction of their salaries.

2 55. Petitioners/Plaintiffs desire a declaration of their rights with respect to the
3 Governor and DPA's intent to furlough SEIU Local 1000 members employed, at SCIF and to
4 further reduce their salaries through an unlawful Order.

5 56. Such a declaration is necessary and appropriate at this time to end the continuing
6 implementation of the unlawful Order that adversely affects the rights of Petitioners/Plaintiffs.
7 Respondents/Defendants actions will result in irreparable injury and harm to affected SEIU Local
8 1000 members including the denial of the protection of the laws regarding their work hours and
9 salaries. The loss of such rights cannot be compensated by damages or other forms of legal
10 relief.

11 57. As provided by the California Constitution and statutory authority, the Governor
12 lacks authority to impose furlough at SCIF and reduce the salaries of employees. The Order is in
13 direct conflict with the California Constitution and existing statutes, and is therefore unlawful,
14 and Petitioners/Plaintiffs have a reasonable likelihood of success on the merits.

15 58. Therefore, Petitioners/Plaintiffs seek temporary, preliminary and permanent
16 injunctive relief directing Respondents/Defendants to cease and desist taking further action to
17 furlough SEIU Local 1000 members at SCIF, and prohibiting them from reducing their pay under
18 an unlawful Order which conflicts with the California Constitution and statutory authority.

19 **V. PRAYER FOR RELIEF**

20 WHEREFORE, Petitioner/Plaintiff SEIU Local 1000 respectfully prays that:

21 1. The Court issue a peremptory writ in the first instance ordering Respondents/
22 Defendants Governor Schwarzenegger and Director Gilb to set aside the portions of the
23 Governor's Executive Order S-16-08 calling for a furlough and salary reduction for SCIF
24 employees because the Executive Order is unlawful when applied to SCIF.

25 2. The Court issue a peremptory writ in the first instance commanding Respondent
26 Controller Chiang to ensure that the salaries of SCIF employees not be reduced as a result of the
27 furlough, and to provide back pay with legal interest for the past reduction of their salaries from
28

1 the unlawful Order.

2 3. The Court issue a declaration that those portions of Executive Order S-16-08
3 directed at SEIU Local 1000 members employed at SCIF are unlawful, as the Governor, DPA,
4 and SCIF President Jan Frank have violated and continue to violate the provisions of Article 14,
5 section 4 of the California Constitution and Insurance Code section 11873 by furloughing SEIU
6 Local 1000 members employed at SCIF and subsequently reducing their salaries.

7 4. The Court issue a preliminary and permanent injunction directing the Governor,
8 DPA, SCIF, and the Controller to cease and desist in their efforts to furlough SCIF employees,
9 and to cease and desist from any further salary reductions through the Order.

10 5. Petitioners/Plaintiffs be awarded attorneys fees and costs of suit incurred in this
11 action.

12 DATED: June 12, 2009

SEIU Local 1000

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14 By 

J. FELIX DE LA TORRE
Attorney for SERVICE EMPLOYEES
INTERNATIONAL UNION, Local 1000

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VERIFICATION

I, YVONNE WALKER, declare under penalty of perjury under the laws of the State of California that I am the President of SEIU Local 1000, which is a Petitioner in this action. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true. Executed this 11th day of June, 2009 in Sacramento, California.



YVONNE WALKER
President, SEIU LOCAL 1000

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VERIFICATION

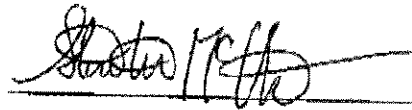
I, KATHLEEN COLLINS, declare under penalty of perjury under the laws of the State of California that I am a Petitioner in this action. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true. Executed this _____ day of June, 2009 in Commerce, California.


KATHLEEN COLLINS

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VERIFICATION

I, STEPHEN MCVEIGH, declare under penalty of perjury under the laws of the State of California that I am a Petitioner in this action. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true. Executed this 11th day of June, 2009 in San Francisco, California.



STEPHEN MCVEIGH

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VERIFICATION

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

Executed this 11 day of June, 2009 in San Diego, California.



LISA DAVIS

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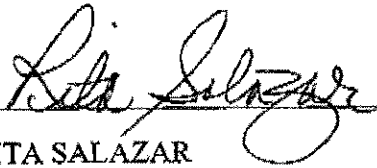
VERIFICATION

I, BERTHA DEE CERNA, declare under penalty of perjury under the laws of the State of California that I am a Petitioner in this action. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true. Executed this 12 day of June, 2009 in Pleasanton, California.


BERTHA DEE CERNA

VERIFICATION

I, RITA SALAZAR, declare under penalty of perjury under the laws of the State of California that I am a Petitioner in this action. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true. Executed this 11 day of June 2009 in Pomona, California.


RITA SALAZAR

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VERIFICATION

I, MARIA VILLEGAS, declare under penalty of perjury under the laws of the State of California that I am a Petitioner in this action. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true. Executed this 11 day of June, 2009 in Sacramento, California.



MARIA VILLEGAS

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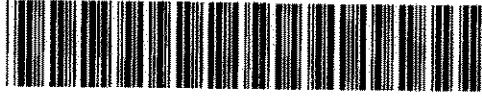
VERIFICATION

I, JAMES BRIGGS, declare under penalty of perjury under the laws of the State of California that I am a Petitioner in this action. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true. Executed this 11 day of June, 2009 in Sacramento, California.



JAMES BRIGGS

EXHIBIT A



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

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ORDER

ORNIA ATTORNEYS ADMINISTRATIVE LAW JUDGES et al VS. ARNOLD SCHWARZENE

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Superior Court of California
County of San Francisco

JUN - 4 2009

GORDON PARK-LI, Clerk
BY: *Gordon Park-Li*
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT, GLEN GROSSMAN,
MARK HENDERSON, GEOFFREY SIMS,
and DOES 1-500,

Petitioners/Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER as Governor
of the State of California; DAVID GILB as
Director of the Department of Personnel
Administration; JOHN CHIANG, as Controller
of the State of California; JAN FRANK, as
President of STATE COMPENSATION
INSURANCE FUND, and DOES 1-50,

Defendants/Respondents.

Case No. CPF-09-509205

**ORDER GRANTING WRIT OF
MANDATE**

The above-entitled cause came on regularly for hearing on April 15, 2009, at 9:30 p.m. in Department 301, Hon. Peter J. Busch, presiding, with counsel present as indicated on the record. The matter was tried without a jury and submitted to the court. The court, having considered all of the oral and documentary evidence submitted, as well as the written and oral arguments of counsel,

1 Having considered the entire record in this matter, including the pleadings, briefs, oral
2 argument, and all other evidence submitted to the Court, this Court hereby renders its final
3 decision in this case.

4 The Court finds that the doctrine of exclusive concurrent jurisdiction does not apply in
5 this case. Although a similar action was filed in Sacramento Superior Court, case no. 34-2009-
6 80000134 (the "Sacramento Action"), Judge Marlette's February 4, 2009 minute order states that
7 the Sacramento Action was limited to the effect of Respondent Governor Arnold
8 Schwarzenegger's Executive Order S-16-08 (the "Executive Order") on employees of executive
9 branch agencies. Therefore, the Sacramento Action did not adjudicate the effect of the Executive
10 Order on employees who were not employed by executive branch agencies. The State
11 Compensation Insurance Fund ("State Fund") is not an executive branch agency. Therefore, the
12 doctrine of exclusive concurrent jurisdiction is not applicable to this case.

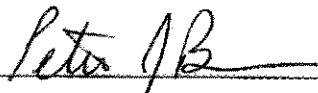
13 Turning to the merits, the Court finds that based upon the common sense meaning of the
14 phrase "staff cutback" as used in Insurance Code §11873(c), and as informed by the policy
15 concerns expressed in the legislative history of the adoption of that section, a "furlough" reduces
16 the availability of staff and therefore constitutes a "staff cutback" for purposes of the statute.
17 Thus, State Fund employees represented by the California Attorneys, Administrative Law Judges
18 and Hearing Officers in State Employment ("CASE") are exempt from the Executive Order S-
19 16-08.

20 Therefore, those portions of the Governor's Executive Order S-16-08, insofar as they will
21 and have resulted in furloughs and salary reductions for State Fund employees represented in this
22 action, does not apply to petitioners.

23 The petition is granted, judgment shall be entered accordingly and the writ shall issue.

24 It is so ordered.

25 Dated: June 4, 2009



26 Hon. Peter J. Busch
27 Judge of the Superior Court
28

California Superior Court
City and County of San Francisco
Law & Motion Department • Room 301

No. 509205

**Certificate of Service by Mail
(CCP § 1013a(4))**

CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT, GLEN GROSSMAN,
MARK HENDERSON, GEOFFREY SIMS,
and DOES 1-500,

Petitioners/Plaintiffs,

vs.

ARNOLD SCHWARZENEGGER as
Governor of the State of California; DAVID
GILB as Director of the Department of
Personnel Administration; JOHN CHIANG,
as Controller of the State of California; JAN
FRANK, as President of STATE
COMPENSATION INSURANCE FUND,
and DOES 1-50,

I, Gordon Park-Li, Clerk of the Superior Court of the City and County of San Francisco, certify that:

1) I am not a party to the within action;

2) On JUN - 4 2009, I served the attached:

**ORDER GRANTING WRIT OF MANDATE
JUDGMENT FOR PETITIONER
PEREMPTORY WRIT OF MANDATE**

by placing a copy thereof in a sealed envelope, addressed to the following:

Patrick Whalen

Law Offices of Brooks Ellison

1725 Capital Avenue

Sacramento, CA 95814

Ronal Chivaro

Office of the State Controller

300 Captial Mall, Suit 1850

Sacramento, CA 94814

David Tyra
Kronick, Moskovitz, Tiedemann & Girard
400 Capital Mall, 27th Floor
Sacramento, CA 95814

Ronald Turovsky
Manatt, Phelps & Philips
11355 West Olympic Blvd.
Los Angeles, CA 9006

and,

3) I then placed the sealed envelope in the outgoing mail at 400 McAllister St., San Francisco , CA 94102 on the date indicated above for collection, attachment of required prepaid postage, and mailing on that date following standard court practice.

Dated: JUN - 4 2009

GORDON PARK-LI, Clerk

By: 
deputy
AUDREY HUIE

EXHIBIT B



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR**EXECUTIVE ORDER S-16-08**

12/19/2008

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year.

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

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



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

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN
Secretary of State