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 9 ADMINISTRATION OF THE  
 CALIFORNIA PUBLIC EMPLOYEES'  
 10 RETIREMENT SYSTEM

11 *Exempt from Filing Fees – Govt. Code § 6103*

12  
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 14 FOR THE COUNTY OF SAN FRANCISCO

15 BOARD OF ADMINISTRATION OF THE  
 CALIFORNIA PUBLIC EMPLOYEES'  
 16 RETIREMENT SYSTEM,

17 Petitioner,

18 v.

19 ARNOLD SCHWARZENEGGER, Governor of  
 the State of California; DAVID GILB, Director  
 20 of the California Department of Personnel  
 Administration; JOHN CHIANG, Controller of  
 21 the State of California, and DOES 1 through 50,  
 inclusive,

22 Respondents.  
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 28

ENCLOSURE  
 SAN FRANCISCO COUNTY  
 SUPERIOR COURT

2009 AUG 19 AM 2:00

BY: [Signature]

Case No. **CPF-09-509754**

**PETITION FOR WRIT OF MANDATE**

**FAXED**

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**INTRODUCTION**

1  
2 1. Over 1.6 million public employees, retirees and their beneficiaries depend on the  
3 California Public Employees' Retirement System ("CalPERS") to administer the retirement benefits  
4 they have earned (and will earn in the future) as a result of their public service. Those employees  
5 have Constitutionally protected, vested rights to the prompt delivery of their benefits and related  
6 services, as well as an actuarially sound retirement fund. CalPERS administers over \$180 billion in  
7 segregated trust funds for these purposes, and the cost of administering the retirement system is paid  
8 out of those trust funds. By federal and state law, those trust funds are beyond the reach of the  
9 government to use for any other purpose.

10 2. CalPERS lost a significant portion of its investment portfolio in the 2008 global  
11 financial crisis. These were assets earmarked to meet the state's promises to its employees and  
12 retirees, promises backed by the taxpaying public. These losses will adversely impact future state  
13 budgets if CalPERS cannot recoup the losses through the prudent management and investment of its  
14 resources.

15 3. The financial crisis has adversely impacted CalPERS' retirees and their beneficiaries,  
16 who are relying more heavily on the safety and reliability of their CalPERS benefits than ever  
17 before.

18 4. The financial crisis also triggered a budgetary crisis for the State of California.  
19 Unable to close the growing General Fund deficit and unable to reconcile budgetary policies with the  
20 state Legislature, in December, 2008 Governor Arnold Schwarzenegger invoked a law that  
21 temporarily suspends meet-and-confer requirements with labor in the event of an emergency and  
22 unilaterally imposed an across-the-board furlough of all state personnel. Commencing February 1,  
23 2009, this furlough order reduced the work and salaries of state employees by two days a month,  
24 through June 30, 2010.

25 5. By July 1, 2009 the General Fund deficit had continued to grow and the Governor and  
26 Legislature had not come to agreement over balancing the current fiscal year budget. The Governor  
27 decreed another fiscal emergency and added another unpaid day off each month for all state  
28 employees, including those at CalPERS, totaling three working days per month and approximately

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1 15% of their compensation. This second furlough order was premised on a statute reserved for the  
 2 *temporary* suspension of laws in order to meet an emergency caused by a natural disaster. That  
 3 statute authorizes a 60-day period of emergency, at most. Instead, the Governor used it to declare a  
 4 365-day emergency and as the basis for furloughing all state workers for the entire fiscal year.

5 6. The Governor's actions were without legal authority because he acted unilaterally and  
 6 outside the power granted to him under the Constitution for resolving a fiscal emergency. That law,  
 7 known as Proposition 58, requires joint action with the state Legislature. The Legislature has not  
 8 adopted the Governor's furlough program.

9 7. As applied to CalPERS, the furlough orders will not accomplish the Governor's goal  
 10 of balancing the General Fund budget. Rather than saving any money for the state's General Fund,  
 11 the orders instead deprive CalPERS of full staffing exactly at the time when it must be at full  
 12 capacity in order to rebound from the 2008 investment losses and relieve the state from a future  
 13 funding deficit. The consequence of applying the furlough orders to CalPERS, whose state  
 14 employees that manage and invest the retirement fund are not paid out of the General Fund, will be  
 15 to widen, not narrow, the General Fund deficit.

16 8. At the same time, the furloughing of CalPERS' staff has jeopardized and will  
 17 continue to jeopardize the vested rights of its members to a properly administered and invested  
 18 retirement system: The impact has caused lost investment opportunities and disruption in CalPERS'  
 19 ability to close financial transactions worldwide on a timely basis; lost investment income; delays in  
 20 implementing major IT projects for delivering benefits; delays in processing retirement and  
 21 disability applications and paying vested benefits; delays in scheduling retiree medical examinations;  
 22 delays in regulatory compliance. The adverse impact on members' vested rights is real and  
 23 measureable, and growing.

24 9. When the Governor ordered three furlough days per month he acted beyond the scope  
 25 of his authority under Article IV §10(f) of the California Constitution (Proposition 58), which  
 26 authorizes him to *propose* legislation for consideration by the Legislature – not to take legislative  
 27 action himself. In addition, even if the Governor had the legislative authority he claims, his furlough  
 28 orders unlawfully interfere with the CalPERS Board of Administration's ability to carry out its

1 constitutional obligation to ensure that the vested rights of CalPERS' participants and beneficiaries  
2 are honored. For these reasons, CalPERS seeks a writ of mandate commanding the Governor, the  
3 Director of the Department of Personnel Administration and the State Controller to cease  
4 implementing the Governor's furlough orders to CalPERS' employees.

5 **PARTIES**

6 10. Petitioner, the Board of Administration of CalPERS, is the governing body of the  
7 retirement system. CalPERS is an independent public agency that administers retirement, death,  
8 disability and health benefits for over 1.6 million California public employees, retirees and their  
9 beneficiaries. The funds Petitioner administers are "trust funds and shall be held for the exclusive  
10 purposes of providing benefits to participants in the pension or retirement system and their  
11 beneficiaries and defraying reasonable expenses of administering the system." Cal. Const. Art. XVI  
12 §17.

13 11. Respondent Arnold Schwarzenegger is the elected Governor of the State of  
14 California. Governor Schwarzenegger is named in his official capacity only.

15 12. Respondent David Gilb is the Director of the California Department of Personnel  
16 Administration, charged by the Governor with carrying out his personnel orders. Director Gilb is  
17 named in his official capacity only.

18 13. Respondent John Chiang is the elected Controller of the State of California. The  
19 Controller's Office pays the salaries of CalPERS' employees out of CalPERS' trust funds. Controller  
20 Chiang is named in his official capacity only.

21 **VENUE**

22 14. The San Francisco Superior Court is an appropriate venue under Code of Civil  
23 Procedure section 401(a). This action is related to *CASE, et al. v. Schwarzenegger, et al.*, Action  
24 No. CPF-09-509205 in the files of this Court, pursuant to California Rules of Court 3.300. That  
25 matter is assigned to Hon. Peter Busch.

26 **PETITION FOR WRIT OF MANDATE**

27 15. The allegations set forth above in Paragraphs 1 through 14, inclusive, are  
28 incorporated herein by this reference.

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1 ***The Board of Administration's Constitutional Obligation***

2 16. Under the California Constitution and state statutes, the CalPERS Board of  
3 Administration is responsible for administering the retirement system in a manner that will assure  
4 prompt delivery of benefits and related services to its participants and their beneficiaries. Cal.  
5 Const. Art. XVI, §17(a); Government Code sections 20170, 20171. It must do so with care, skill,  
6 prudence, and diligence. Cal. Const. Art. XVI, §17(c); Government Code section 20151(c).

7 17. To fulfill its constitutional obligation, CalPERS must employ skilled and diligent  
8 staff. CalPERS staff must, among other things: (a) manage CalPERS relationship with the state and  
9 more than 2,000 public employers; (b) determine the amount of employee and employer  
10 contributions that are necessary to fund the system in an actuarially sound manner; (c) collect and  
11 account for nearly a hundred million dollars in employee and employer contributions each month;  
12 (d) prudently diversify investments of over \$180 billion, (e) pay retirement and health care benefits  
13 to hundreds of thousands of retirees every month, (f) promptly respond to questions and concerns of  
14 employers, participants and beneficiaries, and (g) comply with accounting, reporting, open meeting,  
15 public records and federal tax law requirements. The costs incurred administering CalPERS'  
16 retirement fund (including the salaries of state employees who manage the retirement fund and its  
17 investments) are "paid from funds appropriated for interest income from the retirement fund."  
18 Government Code section 20173.

19 ***The Governor's Furlough Orders and DPA's Implementation***

20 18. In Executive Order S-16-08, (a true and correct copy of which is attached hereto as  
21 Exhibit A), the Governor ordered the Department of Personnel Administration to adopt a plan to  
22 implement a furlough of all state employees of two days per month effective from February 1, 2009  
23 to June 30, 2010. The Department of Personnel Administration complied with Executive Order S-  
24 16-08. CalPERS has not been exempted from Executive Order S-16-08, despite its request to be  
25 exempted.

26 19. In Executive Order S-13-09 (a true and correct copy of which is attached hereto as  
27 Exhibit B) the Governor ordered the Department of Personnel Administration to add a third furlough  
28 day per month, to be effective from July 1, 2009 through June 30, 2010. The Department of

1 Personnel Administration complied with Executive Order S-13-09. CalPERS has not been exempted  
2 from Executive Order S-13-09, despite its formal request to be exempted.

3 ***The Controller's Role***

4 20. "[T]he Controller has the power, indeed the duty, to ensure that the decisions of an  
5 agency that affect expenditures are within the fundamental jurisdiction of the agency." *Tirapelle v.*  
6 *Davis* (1993) 20 Cal.App.4<sup>th</sup> 1317, 1335. Any attempt by an administrative agency to exercise  
7 control over matters which the Legislature has not delegated to it is not authorized by law and in  
8 such case the agency's actions can have no force or effect. The Controller therefore has a duty to  
9 refrain from issuing pay warrants that are illegally reduced. Government Code section 12440.

10 21. Notwithstanding the Controller's public statement that the Governor had no legal  
11 authority to reduce state employee hours and wages unilaterally, the Controller has implemented the  
12 two furlough orders. The Controller has paid reduced salaries to CalPERS' employees since  
13 February 1, 2009.

14 ***The Governor Had No Legal Authority to Unilaterally Order the Furloughs***

15 22. Setting public employee salaries is a quintessentially legislative act. *See Pacific*  
16 *Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 189. Although the Legislature may properly  
17 delegate its authority in this realm, it has not done so here. No law empowers the Governor to  
18 unilaterally reduce the work schedule of state employees for an entire fiscal year, or more.

19 23. The first Executive Order, S-16-08, invoked Government Code section 3516.5, part  
20 of the "Ralph C. Dills Act", Government Code sections 3512 et seq. That section allows the state to  
21 react to an emergency affecting state employment without first meeting and conferring with  
22 recognized employee organizations.

23 24. The second Executive Order, S-13-09, invoked Government Code section 8625, part  
24 of the "Emergency Services Act", Government Code sections 8550, et. seq. That section allows a  
25 declaration of emergency where there are "conditions of extreme peril to the safety of persons and  
26 property" under section 8558(b), and allows the Governor to suspend laws and regulations to the  
27 extent necessary to address the emergency, but only so long as the emergency persists, *and in no*  
28 *event for more than 60 days*. Section 8627.5(b).

1           25.     Neither statute affords the Governor the unilateral *legislative* authority to declare a  
2 year-long emergency and suspend California's labor statutes and the collective bargaining rights of  
3 state employees.

4           26.     By invoking two inapplicable statutes, the Governor failed to observe the  
5 constitutional provision that directly applies to a "fiscal emergency" -- a provision that carefully  
6 constrains his unilateral authority. In 2004, the People approved Proposition 58, which added a new  
7 provision to Article IV of the California Constitution. Article IV establishes the *separation of*  
8 *powers* doctrine. Proposition 58 added a provision that explicitly addresses a fiscal emergency of  
9 the type the Governor declared in December of 2008 and again in July of 2009. That provision,  
10 Article IV, section 10(f)(1), reads as follows:

11           "If, following the enactment of the budget bill for the 2004-05 fiscal year or any  
12 subsequent fiscal year, the Governor determines that, for that fiscal year, General  
13 Fund revenues will decline substantially below the estimate of General Fund revenues  
14 upon which the budget bill for that fiscal year, as enacted, was based, or General  
15 Fund expenditures will increase substantially above that estimate of General Fund  
16 revenues, or both, the Governor may issue a proclamation declaring a fiscal  
17 emergency and shall there upon cause the Legislature to assemble in special session  
18 for this purpose. The proclamation shall identify the nature of the fiscal emergency  
19 and shall be submitted by the Governor to the Legislature, accompanied by *proposed*  
20 legislation to address the fiscal emergency." (Emph. added)  
21  
22

23           27.     Section 10(f)(1) of Article IV of the Constitution provides the Governor the authority  
24 only to (a) declare a fiscal emergency, (b) cause the Legislature to assemble in special session and  
25 (c) propose legislation to address the fiscal emergency. It does not provide the Governor with the  
26 power to resolve the fiscal emergency through unilateral legislative action of his own.

27           28.     The use of the Emergency Services Act as a basis for exercising powers not conferred  
28 under Proposition 58 conflicts with the principle of statutory interpretation that the specific takes

1 precedence over the general. *See, e.g., Rose v. State of California* (1942) 19 Cal.2d 713, 724 (“A  
 2 specific provision relating to a particular subject will govern in respect to that subject, as against a  
 3 general provision, although the latter, standing alone, would be broad enough to include the subject  
 4 to which the more particular provision relates.”); *Shewry v. Wooten* (2009) 172 Cal.App.4th 741,  
 5 747 (“Under the well-established rule of statutory construction, a specific statute controls over a  
 6 general statute covering the same subject.”) The Emergency Services Act does not on its face  
 7 appear directed at fiscal emergencies, and if it can be said to address them at all, does so only in the  
 8 most general of terms. Proposition 58, by contrast, addresses the subject of fiscal emergencies  
 9 explicitly. Its failure to authorize the Governor to take unilateral legislative action must therefore  
 10 take precedence.

11 29. The Governor exercised his legitimate but limited power under Proposition 58 on July  
 12 1, 2009, by Proclamation, calling the Legislature back into extraordinary session to pass an amended  
 13 Budget Bill. On July 23, 2009, the Legislature and the Governor reached agreement on a revised  
 14 budget and the Legislature adopted enabling amendments to the Budget Act of 2009. One of those  
 15 amendments came in Assembly Bill (extraordinary session) 4-1. Section 552 of ABx 4-1 amended  
 16 section 3.90.(a) of the Budget Act of 2009 to read, in part:

17 "Notwithstanding any other provision of this act, each item of appropriation  
 18 in this act...shall be reduced, as appropriate, to reflect a reduction in employee  
 19 compensation achieved through the collective bargaining process for represented  
 20 employees or through existing administration authority and a proportionate  
 21 reduction for non-represented employees..."

22 Section 552 of ABx 4-1 also restated Section 3.90.(c) of the Budget Act to confirm that "[n]othing in  
 23 this section shall change or supersede the provisions of the Ralph C. Dills Act."

24 30. The 2009 Budget Act therefore did not authorize circumvention of state labor laws  
 25 and did not constitute Legislative adoption of the furlough program. Instead, it recognizes only  
 26 compensation reductions that can be achieved through further collective bargaining with employee  
 27 representatives, or through the exercise of existing administrative authority over non-represented  
 28 employees.

1           31.     In sum, the Governor had no authority to order furloughs for CalPERS employees --  
2 whether represented or non-represented. The Executive Orders purporting to do so are null and  
3 void. As a result, the Director of the Department of Personnel Administration and the Controller  
4 may not lawfully implement those orders.

5           ***The Furlough Orders Interfere with CalPERS Participants' and Beneficiaries' Vested Rights to***  
6           ***Prompt Delivery of Benefits and Related Services and an Actuarially Sound Retirement Fund***

7           32.     CalPERS participants and beneficiaries have a vested right to prompt delivery of  
8 benefits and related services, as well as an actuarially sound retirement system. Cal. Const. art. XVI,  
9 §17; *Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109, 1133. ("Actuarial soundness  
10 of the system is necessarily implied in the total contractual commitment, because a contrary  
11 conclusion would lead to express impairment of employees' pension rights.") Those vested rights  
12 may not be impaired by state action. U.S. Constitution, Art. 1, Sec. 10, cl. 1; California  
13 Constitution, Art. 1, Sec. 9. The CalPERS Board of Administration has a fiduciary obligation to its  
14 participants to protect those vested rights. Cal. Const. art. XVI, §17; Government Code sections  
15 20151, 20170, 20171. It cannot satisfy that obligation unless it has adequate staff to carry out  
16 CalPERS' business on a daily basis.

17           33.     The furloughs are impairing the vested rights of CalPERS' participants by, among  
18 other things: threatening CalPERS' ability to respond to the extraordinary and unprecedented  
19 investment losses of 2007-2009; hampering CalPERS' ability to trade and settle daily in the  
20 securities markets; impairing CalPERS' ability to monitor risk in its investment portfolio; delaying  
21 implementation of significant IT projects, thus potentially incurring significant contractual penalties;  
22 inhibiting CalPERS' ability to timely process and deliver retirement, disability and health benefits;  
23 and forcing CalPERS into non-compliance with state and federal regulations.

24           34.     To protect the members' vested rights in an actuarially sound retirement system  
25 against an unconstitutional impairment of contract, courts will scrutinize "emergency" acts to  
26 determine if they are appropriate and reasonable under the circumstances. *Olson v. Cory* (1980), 27  
27 Cal.3d 532, 554. The Governor's furlough orders do not satisfy this test because the furlough of  
28 CalPERS employees does not help ease the state's budget crisis at all; in fact, they will inevitably

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1 harm the state's fiscal condition. As noted, the CalPERS employees who manage the retirement  
 2 fund and invest its assets are paid entirely out of that trust fund. Government Code section 20173.  
 3 Cutting their salaries will not save any General Fund revenues. Although the Governor has  
 4 suggested that a fiscal benefit may be derived from furloughing the employees of other special fund  
 5 agencies because the state has authority to borrow from those agencies' funds to meet the state's  
 6 obligations, *the state is precluded by law from borrowing from the CalPERS' trust fund.*  
 7 Government Code sections 20176, 20177. Thus, there is no positive fiscal impact to the state in  
 8 furloughing CalPERS employees. But there is a significant negative fiscal impact to the state from  
 9 these furloughs. The losses that CalPERS may suffer, as chronicled above, will create unfunded  
 10 liabilities that ultimately will be the state's responsibility to satisfy. Government Code section  
 11 20814.

12 35. The jeopardy to CalPERS' participants and beneficiaries constitutes an unreasonable  
 13 impairment of their pension rights. CalPERS has an immediate and direct interest affected by this  
 14 proceeding in that CalPERS' ability to satisfy its constitutional obligations to its participants and  
 15 their beneficiaries will be adversely impacted if the furlough orders continue to be enforced.

16 36. Respondents each have a clear, present and ministerial duty to conform their conduct  
 17 to the laws of the State of California and to avoid violations of the law. The reduction in salary for  
 18 CalPERS employees, resulting from the furlough orders, is not lawful.

19 37. As a matter of law, the Governor lacks authority to (a) impose a furlough and reduce  
 20 the salaries of CalPERS employees, (b) take action that would unlawfully impair the vested rights of  
 21 CalPERS participants and beneficiaries, and (c) take action that is arbitrary, capricious and  
 22 unreasonable. The furlough orders violate all three legal proscriptions.

23 38. CalPERS has no plain, speedy, and adequate remedy in the ordinary course of law,  
 24 other than the relief sought in this Petition. Respondents have denied CalPERS' request that it be  
 25 relieved from the furlough orders.

26 39. CalPERS and the participants to whom it owes a fiduciary obligation have suffered  
 27 and will continue to suffer irreparable injury due to the unlawful furlough orders.  
 28

1 40. CalPERS has no administrative remedy which will result in preventing or enjoining  
2 the illegal furloughs and their unlawful impact on CalPERS.

3 PRAYER

4 WHEREFORE, Petitioner, the Board of Retirement of the California Public Employees'  
5 Retirement System ("CalPERS"), respectfully prays that:

6 1. the Court issue a preemptory writ in the first instance (a) commanding Respondents  
7 Governor Schwarzenegger and Director Gilb to set aside the portions of the Governor's Executive  
8 Orders S-16-08 and S-13-09 calling for furloughs and salary reductions for CalPERS employees, and  
9 (b) commanding Respondent Controller Chiang to ensure that salaries of CalPERS employees not be  
10 reduced as a result of the unlawful furlough orders;

11 2. the Court, alternatively, first issue an alternative writ (a) commanding Respondents  
12 Governor Schwarzenegger and Director Gilb to set aside the portions of the Governor's Executive  
13 Orders S-16-08 and S-13-09 calling for furloughs and salary reductions for CalPERS employees, and  
14 (b) commanding Respondent Controller Chiang to ensure that salaries of CalPERS employees not be  
15 reduced as a result of the unlawful furlough orders, or, in the alternative, show cause why it should  
16 not do so, and thereafter issue a preemptory writ commanding such actions;

17 3. the Court declare that (a) Respondents Governor Schwarzenegger and Director Gilb  
18 had and have no authority to order and implement the furloughs and salary reductions called for in  
19 the Governor's Executive Orders S-16-08 and S-13-09 for CalPERS employees, and (b) Respondent  
20 Controller Chiang has no authority to reduce the salaries of CalPERS employees as a result of the  
21 unlawful furlough orders;

22 4. the Court stay Executive Orders S-16-08 and S-13-09 as applied to CalPERS,  
23 pending the final resolution of this petition;

24 5. the Court award CalPERS its attorneys fees and costs of suit incurred in this action;

25 and

26 ///

27 ///

28 ///

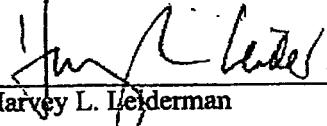
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6. the Court award CalPERS such other and further relief as the Court may deem just and proper.

DATED: August 19, 2009

REED SMITH LLP

By   
Harvey L. Leiderman

Attorneys for Petitioner, Board of Retirement of the  
California Public Employees' Retirement System

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VERIFICATION

I, Stephen W. Kessler, am the Deputy Executive Officer for Operations of the California Public Employees' Retirement System, whose Board of Administration is the Petitioner in this proceeding. I have read the foregoing Petition for Writ of Mandate and know its contents. The facts stated therein are true and are within my personal knowledge. 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 August 19, 2009 at Sacramento, California.

*Stephen W. Kessler*

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# **EXHIBIT A**



# 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 issue 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 19<sup>th</sup> day of December, 2008.

**ARNOLD SCHWARZENEGGER**  
Governor of California

**ATTEST:**  
**DEBRA BOWEN**  
Secretary of State

# **EXHIBIT B**



# Office of the Governor

ARNOLD SCHWARZENEGGER  
THE PEOPLE'S GOVERNOR

## EXECUTIVE ORDER S-13-09

07/01/2009

**WHEREAS** the global recession has caused California's revenues to continue to plummet, leaving our state with an unprecedented budget deficit that forces the State to take drastic actions that will affect every Californian; and

**WHEREAS** on December 19, 2008, I issued Executive Order S-16-08, in which I ordered the Department of Personnel Administration (DPA) to: (1) initiate the layoff process for state civil service employees effective January 1, 2009 through June 30, 2010; and (2) adopt a plan to implement a furlough of two days per month effective February 1, 2009 to June 30, 2010; and

**WHEREAS** on January 9, 2009, in order to reduce current spending to ensure that essential services of the State are not jeopardized and the public health and safety is preserved, the DPA adopted a furlough plan; and

**WHEREAS** on May 15, 2009, state agencies and departments sent out over 4,500 layoff notices to employees funded by the General Fund to further reduce current state spending; and

**WHEREAS** on May 20, 2009, after the failure of Propositions 1A through 1E, California faced a budget deficit of at least \$21.3 billion for fiscal years 2008-09 and 2009-10; and

**WHEREAS** California planned to borrow up to \$6 billion through a Reimbursement Warrants (commonly known as RAWs) to address part of the budget deficit, but this short-term borrowing is no longer an available option due to the recent decision of the federal government not to provide financial assistance or loan guarantees for this emergency, short-term borrowing; and

**WHEREAS** the State's inability to borrow through RAWs will result in more severe spending cuts in the State's programs and services; and

**WHEREAS** on May 22, 2009, the Legislative Analyst predicted that the Governor's May Revision revenue projections may prove overly optimistic, and instead, projected that the drop in revenues will be at least \$3 billion worse than projected putting the size of the State's shortfall at more than \$24 billion for fiscal years 2008-09 and 2009-10; and

**WHEREAS** the State Controller has determined that without effective action to address the budget and cash crisis, the State will have insufficient cash to meet its obligations starting July 2009 and will need to issue registered warrants (IOUs) in order to preserve cash and protect payments the State must make to fund education and repay outstanding debt; and

**WHEREAS** the projected \$24 billion budget deficit will require deeper cuts to state programs and services, additional borrowing from available resources such as special funds, and the release of thousands of prison inmates who are undocumented immigrants; and

**WHEREAS** on June 30, 2009, the Legislature failed to take action to pass a revised budget for fiscal years 2008-09 and 2009-10 to effectively address the unprecedented statewide fiscal crisis, thereby requiring billions of dollars in additional solutions; and

**WHEREAS** the State will be forced to eliminate state programs and services providing critical public services, ranging from public safety to health and welfare; and

**WHEREAS** if the State eliminates any of these critical state programs and services, then the public health and safety will be jeopardized, causing extreme peril to the safety of persons and property; and

**WHEREAS** immediate and comprehensive action to further 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** an additional furlough day per month is necessary to continue to reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State, such as services provided by CAL Fire, hospitals and 24-hour care facilities, 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 July 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt an amended plan to implement a furlough of represented state employees for three days per month, regardless of funding source. This plan shall include a limited exemption process.

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

**IT IS FURTHER ORDERED** that all state employees covered by the original and amended furlough plans must use their accrued furlough days prior to using vacation, annual leave, personal holiday, holiday credit, personal leave plan (PLP) credit, and compensatory time off (CTO).

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, 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 1st day of July, 2009.

**ARNOLD SCHWARZENEGGER**  
Governor of California

**ATTEST:**  
**DEBRA BOWEN**  
Secretary of State