

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>ANNE M. GIESE (SBN 143934)</b> Service Employees Int'l Union 1808 14th Street Sacramento, CA 95811 TELEPHONE NO.: (916) 554-1279      FAX NO.: (916) 554-1292	<b>FOR COURT USE ONLY</b>			
ATTORNEY FOR (Name): <b>Petitioners/Plaintiffs</b>				
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco</b> STREET ADDRESS: <b>400 McAllister Street</b> MAILING ADDRESS: CITY AND ZIP CODE: <b>San Francisco, CA 94102</b> BRANCH NAME:				
CASE NAME: <b>Service Employees Int'l Union, Local 1000 v. Schwarzenegger, et al.</b>				
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%; padding: 5px;"> <b>CIVIL CASE COVER SHEET</b>  <input checked="" type="checkbox"/> <b>Unlimited</b>            (Amount demanded exceeds \$25,000)         </td> <td style="width:33%; padding: 5px;"> <input type="checkbox"/> <b>Limited</b>            (Amount demanded is \$25,000 or less)         </td> <td style="width:34%; padding: 5px;"> <b>Complex Case Designation</b>  <input type="checkbox"/> <b>Counter</b>    <input type="checkbox"/> <b>Joinder</b>            Filed with first appearance by defendant            (Cal. Rules of Court, rule 3.402)         </td> </tr> </table>	<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER:  JUDGE:  DEPT:
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Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input checked="" type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

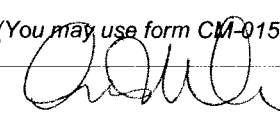
a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive

4. Number of causes of action (specify): **Four (4)**

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **August 27, 2009**  
**ANNE M. GIESE**  
 (TYPE OR PRINT NAME) 
  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:**  
**(AVISO AL DEMANDADO):**

SERVICE EMPLOYEES INTERNTIONAL UNION, LOCAL 1000 and  
YVONNE WALKER

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ARNOLD SCHWARZENEGGER, as Governor, State of California;  
DEPARTMENT OF PERSONNEL ADMINISTRATION; and DOES 1  
through 20, INCLUSIVE

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
*(El nombre y dirección de la corte es):*

San Francisco County Superior Court - Civic Center Courthouse  
400 McAllister Street, San Francisco, CA 94102

CASE NUMBER:  
*(Número del Caso):*

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

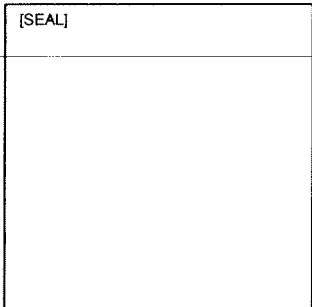
*(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):*  
ANNE M. GIESE (SBN 143934), SEIU Local 1000, 1808 14th Street, Sacramento, CA 95811  
Tel: (916) 554-1279

DATE: August 27, 2009  
*(Fecha)*

Clerk, by \_\_\_\_\_, Deputy  
*(Secretario) (Adjunto)*

*(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)*

*(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).*



**NOTICE TO THE PERSON SERVED:** You are served

1.  as an individual defendant.
2.  as the person sued under the fictitious name of *(specify)*: \_\_\_\_\_
3.  on behalf of *(specify)*: \_\_\_\_\_  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (authorized person)  
 other *(specify)*: \_\_\_\_\_
4.  by personal delivery on *(date)*: \_\_\_\_\_

SEIU LOCAL 1000  
1808 14<sup>th</sup> Street, Bldg. 1  
Sacramento, California 95814  
Telephone: (916) 554-1279

1 PAUL E. HARRIS, III (State Bar No. 180265)  
2 ANNE M. GIESE (State Bar No. 143934)  
3 **SERVICE EMPLOYEES INTERNATIONAL UNION**  
4 **LOCAL 1000**  
5 1808 14<sup>th</sup> Street  
6 Sacramento, CA 95814  
7 Telephone: (916) 554-1279  
8 Facsimile: (916) 554-1292

9 Attorneys for Petitioners/Plaintiffs  
10 SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 1000 and YVONNE WALKER  
11 and

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

14 SERVICE EMPLOYEES INTERNATIONAL  
15 UNION LOCAL 1000 and YVONNE  
16 WALKER,

17 Petitioners/Plaintiffs,

18 v.

19 ARNOLD SCHWARZENEGGER, as  
20 Governor, State of California;  
21 DEPARTMENT OF PERSONNEL  
22 ADMINISTRATION, and DOES 1  
23 THROUGH 20, INCLUSIVE,

24 Respondents/Defendants.

CASE No.

**VERIFIED PETITION FOR WRIT  
OF MANDATE AND COMPLAINT  
FOR INJUNCTIVE AND  
DECLARATORY RELIEF  
(C.C.P. §§ 1085 and 1060)**

25 Petitioners/Plaintiffs YVONNE WALKER and SERVICE EMPLOYEES

26 INTERNATIONAL UNION, LOCAL 1000 (Plaintiffs) bring this Writ of Mandate pursuant to  
27 California Code of Civil Procedure sections 1085 and 1060, requesting the Court to issue a writ of  
28 mandate or mandamus, declaratory judgment, and injunctive relief to Respondents and  
Defendants, determining that they have violated and continue to violate the provisions of the  
Constitution, state law, regulations and policy by arbitrarily and capriciously using the provisions  
of the Emergency Services Act as a basis to implement state closures and an additional day of  
furlough of state employees pursuant to an improper and illegal executive proclamation.

Plaintiffs allege as follows:



1 responsible for implementing the office closures at issue in the contested Executive Proclamation  
2 herein.

3 6. Plaintiffs are ignorant of the true names and capacities of Defendants herein sued as  
4 DOES 1 through 20, and therefore sue these Defendants by such fictitious names. Plaintiffs will  
5 amend this Petition/Complaint to state their true names and capacities once they have been  
6 ascertained. Plaintiffs are informed and believe, and on that basis allege, that each of these  
7 Defendants is in some manner responsible for the acts complained of herein.

## 8 **II. Venue**

9 7. Defendants engaged in the acts alleged herein within the County of San Francisco.  
10 Accordingly, venue in this County is proper.

11 8. Furthermore, the California Attorney General has an office within the City of San  
12 Francisco, making San Francisco County an appropriate venue. (Code Civ. Proc. § 401(1).)

## 13 **III. Irreparable Harm to Plaintiffs and Their Members**

14 9. On July 1, 2009, Governor Arnold Schwarzenegger issued a Proclamation under the  
15 Emergency Services Act (“ESA”) which purports to declare that a “State of Emergency” exists  
16 warranting his immediate action. This Proclamation is an illegal Proclamation that waives laws  
17 and rules in order for all State departments and agencies to implement state closures and a  
18 furlough of represented state employees and supervisors for one additional day per month. In  
19 effect, the Governor proclaimed a purported emergency under the ESA in order to bypass laws and  
20 rules that would otherwise prohibit his actions in enacting state closures and to furlough  
21 employees and/or cut salaries of state employees by approximately an additional five (5) percent  
22 over an 12-month period.

23 10. As legal authority for the furlough, the Order cites to California Government Code,  
24 section 3516.5, a portion of the Ralph C. Dills Act. Section 3516.5, however, does not authorize  
25 the Governor or DPA to close offices or to issue furloughs or reduce the salaries of represented  
26 members. Consequently, Governor Schwarzenegger did not cite any legal authority that would  
27 support his issuance of a Proclamation and subsequently affirm the implementation of that  
28 Proclamation by the Department of Personnel Administration. Moreover, the ESA specifically

1 prohibits its use for labor disputes. The matters within the subject matter of the Proclamation are  
2 issues contained in ongoing labor disputes between SEIU Local 1000 and Defendants.

3 11. The DPA has a mandatory duty to comply with the legal requirements concerning  
4 civil service protections for state employees. Moreover, DPA has a mandatory duty not to conduct  
5 itself in a manner which violates the legal restrictions on such rules.

6 12. These violations of mandatory duties cannot be compensated in damages; once the  
7 right is violated, it will be lost. The loss of such rights cannot be compensated fully by damages or  
8 another form of legal relief. Interim injunctive relief is therefore proper directing Defendants to  
9 cease and desist from failing to adhere to their mandatory duties.

### 10 FIRST CAUSE OF ACTION

#### 11 (Writ of Mandate - Arbitrary and Capricious Action)

12 13. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as though  
13 fully set forth herein.

14 14. On July 1, 2009, Governor Arnold Schwarzenegger issued a Proclamation under the  
15 Emergency Services Act which purports to declare that a “State of Emergency” exists warranting  
16 his immediate action. However, this Proclamation is an illegal Proclamation in that it does not  
17 purport to find that all conditions requisite to a “state of emergency” exist. Indeed, the Governor  
18 could never make such a finding, since political decisions - like determining methods to increase  
19 revenues and decrease spending - are unlike the acute emergencies that the Act was designed to  
20 confront, such as “combat” by “the combined forces of a mutual aid region or regions.” (Gov.  
21 Code, § 8558(b).)

22 15. The Emergency Services Act establishes “[t]hree conditions or degrees of  
23 emergency.” (Gov. Code, § 8558.) One is a “state of war emergency,” which obviously does not  
24 apply here. (*Id.*, subd. (a).) The other two classes of “emergency,” a “local emergency” and a  
25 “state of emergency,” require Proclamation by the Governor. Both must be

26 caused by such conditions as air pollution, fire, flood, storm,  
27 epidemic, riot, drought, sudden and severe energy shortage, plant or  
28 animal infestation or disease, the Governor's warning of an  
earthquake or volcanic prediction, or an earthquake, or other

1 conditions, other than conditions resulting from a labor controversy.  
2 (*Id.*; subds. (b) and (c).)

3 16. These two classes of emergency differ by the geographic areas affected - a feature  
4 embedded in the statutory definition of each. “Local emergency’ means the duly proclaimed  
5 existence of conditions of disaster or of extreme peril to the safety of persons and property *within*  
6 *the territorial limits of a county, city and county, or city*, caused by [any of the above-listed  
7 conditions].” (*Id.*, subd. (c), italics added.)

8 17. In contrast, “State of emergency’ means the duly proclaimed existence of  
9 conditions of disaster or of extreme peril to the safety of persons and property within the state  
10 caused by [any of the above conditions] *which, by reason of their magnitude, are or are likely to*  
11 *be beyond the control of the services, personnel, equipment, and facilities of any single county,*  
12 *city and county, or city and require the combined forces* of a mutual aid region or regions to  
13 combat.” (*Id.*, subd. (b), italics added.)

14 18. The Act confers powers on the Governor to deal with certain categories of  
15 emergencies (see generally *Macias v. State of California* (1995) 10 Cal.4th 844, 854) - but those  
16 powers differ depending on the category. At any of the three levels of emergency, the Governor  
17 may make expenditures from any fund “legally available . . . to deal with actual or threatened  
18 conditions of [the emergency].” (Gov. Code, § 8645.) But only in a “state of war emergency” or a  
19 “state of emergency” may the Governor suspend laws or regulations and “commandeer . . . any  
20 private property or personnel” he deems necessary. (Gov. Code, §§ 8571, 8572.)

21 19. The Governor may indeed be able to exercise some discretion in determining  
22 whether the conditions required by section 8558 exist. But there are explicit prerequisites for  
23 proclaiming a State of Emergency. Those powers are used arbitrarily and capriciously when they  
24 undermine Legislative decision-making about political resolutions to budget problems. Decisions  
25 which fundamentally determine revenue and spending priorities are inherently political in nature,  
26 and do not rise to the level the type of emergency the ESA is intended to address. Moreover, to  
27 use them in a labor dispute is specifically prohibited.

28 ///

1           20.     The Governor may proclaim a State of Emergency “in an area affected or likely to  
2 be affected,” but Government Code section 8625 requires the Governor to find that all of the  
3 “circumstances described in subdivision (b) of Section 8558 exist.” (Gov. Code, § 8625(a).) And  
4 subdivision (b) of section 8558 *requires more* than “conditions of . . . extreme peril” that are  
5 “beyond the control of . . . any single county.” The Governor must also find that those conditions  
6 “require the combined forces of a mutual aid region or regions to combat.” (Gov. Code §  
7 8558(b).)

8           21.     It is undisputed the Governor *did not* make any such findings in this case, nor could  
9 he legitimately do so, given the nature and purpose of mutual aid regions (see Gov. Code, §§ 8600,  
10 8615 et seq.) compared with the inherently political nature of the crisis the Governor sought to  
11 address - a decision about adopting a budget through measures such as reducing spending or  
12 increasing revenues through fees, taxation or other means.

13           22.     Section 8625 reiterates that before the Governor can declare a State of Emergency,  
14 he or she must either be “requested to do so” by a local official, or determine “that local authority  
15 is inadequate to cope with the emergency.” These alternative requirements confirm that the  
16 Legislature contemplated emergencies that local governments would typically resolve, but that are  
17 too large for any one of them to handle effectively. No such request was made in this case.

18           23.     Section 8628 provides that “[d]uring a state of emergency,” the Governor may  
19 direct state agencies “to provide supplemental services and equipment to political subdivisions to  
20 restore any services which must be restored in order to provide for the health and safety of the  
21 citizens of the affected area.” This provision further demonstrates that what the Act means by  
22 “state of emergency” is a disaster affecting a particular “area” that requires temporary and  
23 supplemental assistance from state agencies to “political subdivisions,” not a persistent fiscal  
24 stalemate permeating the whole state.

25           24.     The Act assigns “preparedness, mitigation, response and recovery” tasks to the  
26 Office of Emergency Services (“OES”). No such assignment was made, nor was appropriate, for  
27 the budget impasse at issue herein. The Act contemplates acute emergencies, i.e., those that arrive  
28 at some observable time (be it an hour or a season) and do particular harm that the OES can

1 “mitigate,” “respond” to, and ultimately, from which they help the affected region “recover.”

2 25. The Act’s listing of the *kinds of conditions* that can qualify as a State of Emergency,  
3 while not exhaustive, indicates that the Legislature meant to give state officials power over  
4 situations that would be the province of local government *but for* their “magnitude” in the  
5 particular instance. These conditions include “air pollution, fire, flood, storm, epidemic, riot,  
6 drought, sudden and severe energy shortage, plant or animal infestation or disease,” (Gov. Code, §  
7 8558, subd. (b)), all situations or conditions that city and county governments normally address.

8 26. The Legislature did not intend to confer upon the Governor the broad powers  
9 available under the ESA where the problem is one that the Legislature would ordinarily deal with  
10 in the first instance. The Governor is acting in violation of the ESA’s mandates when he twists the  
11 Act’s definition of a “state of emergency” around the situation, suspends laws, and exercises any  
12 of the other extraordinary powers conferred by the Act to deal with wildfires and similar  
13 catastrophes.

14 27. As legal authority for the Fiscal Emergency Proclamation, the Governor cites only  
15 to California Government Code section 3516.5, while making a general reference to the “power  
16 and authority vested in [him] by the Constitution and statutes of the State of California.” (Exhibit  
17 A.) The Order does not cite to any specific constitutional provision or statute that authorizes the  
18 Governor or DPA to furlough and/or unilaterally reduce the salaries of state employees by almost  
19 15% for up to eighteen (18) months.

20 28. In relevant part, California Government Code, section 3516.5 states:

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

In cases of emergency when the employer determines that a law,  
resolution, or regulation must be adopted immediately without prior  
notice or a meeting with the recognized employee organization, the  
administrative officials or their designated representatives as may be  
properly designated by law shall provide such notice and opportunity

1 to meet and confer in good faith at the earliest practical time  
2 following adoption of such law, rule, resolution, or regulation.

3 29. At present, the current budget impasse is over, and the Legislature has adopted a  
4 new amended budget for 2009-2010. Nevertheless, the Governor's proclamation continues in  
5 effect. As such it is clear that the Proclamation was driven by political exigencies rather than a  
6 true emergency. However, the labor dispute over the furloughs and closures continues unabated.  
7 The decisions pertaining to this budget crisis, like any other prior budget impasse, are inherently  
8 political and not the exigent circumstances which warrant or justify action under the ESA. For  
9 example, the following sequence of events indicate that the governor's own positions reflect the  
10 political nature of this budget impasse.

11 30. On or about November 6, 2008, the Governor stated that the urgency of the budget  
12 crisis allows him to frame coming tax and fee increases as things that are "necessary to do." After  
13 recognizing the severity of the November 2008 budget deficit (which was then \$15 billion), he  
14 characterized the deficit as a revenue, rather than a spending, issue.

15 31. Indicating a revenue increase could solve the revenue problem, during the early part  
16 of this budget crisis, the Governor proposed an oil severance tax at a rate of about 9.9% of gross  
17 sales – this would have ended California's unique status as the only state without an oil severance  
18 tax.

19 32. Then, on or about November 10, 2008, the Governor continued to frame  
20 California's budget problems as a revenue, rather than a spending, issue.

21 33. Then, in or about March 2009, the Governor signed an eighteen month budget  
22 resolving the 2008-2009 budget impasse and setting forth a budget for 2009-2010. (Chaptered law  
23 1. 2009-2010 Session. (SB 1 3X.))

24 34. On or about March 25, 2009, the Governor explained that his proposal for  
25 temporary tax increases in February 2009 was possible because it was for the good for the state; he  
26 added that he would never sign a pledge not to raise taxes in case of an "emergency."

27 35. However, on or about May 19, 2009, in another political decision made by the  
28 voters themselves, on a Special Ballot the State's voters turned down several ballot propositions

1 concerning budget balancing methods.

2 36. In contrast to prior positions, on or about June 5, 2009, the Governor proclaimed  
3 his opposition to new taxes and reform, unless it replaced the existing progressive tax structure  
4 with a regressive one. Also, the Governor's proposed 15% flat tax on income would represent a  
5 tax increase for the lower and middle classes, but a decrease for upper class income earners.

6 37. However, on or about June 16, 2009, the Governor proposed to cut excess and  
7 fraud, but even his own budget director knew, or should have known, these cuts were small and  
8 ineffective. He created an arbitrary opposition between the costs from "labor unions and others,"  
9 and the continuation of social and health programs. He claimed that the \$15 fee for park funding  
10 was a Democratic proposal despite the fact that it was actually submitted by the Joint Legislative  
11 Budget Conference Committee comprised of members of both political parties. For example, on  
12 or about June 18, 2009, the Budget Conference Committee was willing to institute new fees to  
13 generate revenue but Governor Schwarzenegger was opposed. This group was made up of 3  
14 Democrats and 2 Republicans from each chamber - the House and the Senate - for a total of 10  
15 members. While the vote to pass this fee was split along party lines, the 6 Democratic Yes votes  
16 met the minimum requirement for this proposal to be sent to the Governor.

17 38. Then, in a move that continued to exemplify that budget issues are determined by  
18 spending and/or revenue decisions, in or about July 2009, the Governor considered additional  
19 offshore drilling along California's Coastline, and how this would go forward without an oil  
20 severance tax. The proposal, however, was voted down on July 24, 2009. But the Governor's  
21 more recent support to both drill and not approve an oil severance tax is a reversal of his January  
22 2009 position on this topic.

23 39. On July 1, 2009, the Governor's own Hollywood incentive program (which passed  
24 in February 2009) came online, the same day the third furlough day of state workers took effect.  
25 The program allows Film and Television projects shot in California to apply for State tax credits  
26 which can cover 10 to 25% of general production costs. This program would supplement  
27 production and filming costs such as crew salaries – even while the Governor sought to cut state  
28 workers salaries. This again exemplifies a political decision regarding state spending.



1           45. Under our system of government, the Governor operates as one branch of  
2 government balanced by the separate authority of the legislature and courts. This separation of  
3 powers is set forth clearly in Article III, Section 3 of the state constitution, which states:

4                           The powers of state government are legislative,  
5                           executive, and judicial. Persons charged with the  
6                           exercise of one power may not exercise either of  
7                           others except as permitted by this Constitution.

8           46. In this system, “none of the coordinate branches of our tripartite government may  
9 exercise power vested in another branch.” (*Cirone v. Cory* (1987) 189 Cal.App.3d 1280, 1286;  
10 234 Cal. Rptr. 749.) Likewise, no Governor may exercise the powers of the legislature.

11           47. Even when utilizing the power of the ESA through proclamation, the Governor still  
12 may not alter this fundamental boundary of his authority. The purpose of a proclamation is to  
13 carry out the legitimate actions that are within the defined boundaries of his authority to execute.  
14 Like an executive order, it is a vehicle to carry out his legitimate authority, but not a source of new  
15 or independent authority.

16           48. The Governor has no constitutional or delegated authority to proclaim an  
17 emergency unless the specific directives of the ESA are satisfied. Otherwise, the improperly  
18 issued proclamation actually impairs or amends other existing legislation. As such, the  
19 Proclamation is constitutionally flawed and must fail. While the Governor’s power may be valid  
20 when it is exercised consistent with the authority vested in that office by the California  
21 Constitution or delegated by the Legislature (Cal. Const. Art. V, § 1), when it is used in excess of  
22 these parameters the Governor has exceeded his authority. Such is the case here.

23           49. The California Constitution describes the “executive power” of the Governor as  
24 follows: “The supreme executive power of this State is vested in the Governor. The Governor  
25 shall see that the law is faithfully executed. (Cal. Const. Art. V, § I.)

26           50. Therefore, the Governor’s authority to issue a proclamation derives, in part, from  
27 the constitutional provisions conferring the supreme executive power on the Governor, and  
28 providing that the Governor shall see that the laws are “faithfully executed.” Because only the  
Legislature is empowered to create laws, the Governor is authorized to issue proclamations only as

1 permitted by those statutes approved by the Legislature which explicitly delegate executive  
2 discretion to the Governor over particular areas.

3 51. Plaintiffs lack any plain, speedy and adequate remedy in the ordinary course of law  
4 to enforce Defendants' mandatory duties under the laws of the State of California.

5 52. As the organization representing civil service employees and employed by  
6 Defendants, SEIU is beneficially interested in upholding the California law and in preserving the  
7 laws and duties of the State and under the Emergency Services Act. Plaintiffs and their members,  
8 including Plaintiff Yvonne Walker have a clear, present and substantial right to require Defendants  
9 to perform their duties.

10 53. Plaintiffs have no right of appeal from the failure of the Defendants to act as  
11 required by law, nor do Plaintiffs have any available administrative remedy to contest the action,  
12 nor do Plaintiffs have a plain, speedy or adequate remedy in the ordinary course of law other than  
13 the relief sought in this action.

14 54. Plaintiffs have necessarily engaged the services of counsel to represent them in the  
15 preparation and prosecution of the within action resulting from the conduct and threatened conduct  
16 of Defendants. The legal services rendered will thus inure to the benefit of all persons employed  
17 in the state civil service and to all citizens and taxpayers of the State of California. Such benefits  
18 will be derived in part through the efforts of Plaintiffs herein. Therefore, Plaintiffs will, upon  
19 entry of final judgment, request the court in its discretion, to award the reasonable value of  
20 Plaintiffs' attorney's fees and other litigation expenses and to assess the amount thereof against  
21 Defendants, and each of them.

22 **Third Cause of Action**

23 **(Writ of Mandate - Impairment of Contract)**

24 55. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as though  
25 fully set forth herein.

26 56. The United States Constitution prohibits a state from enacting a "law impairing the  
27 obligation of contracts." (Art. I, § 10(1).) Likewise, the California Constitution provides in part  
28 that a "law impairing the obligation of contracts may not be passed." (Art.1, § 9.) Under well-

1 settled principles, these contract clauses “limit the power of a state to modify its own contracts  
2 with other parties.” (*Valdes v. Cory* (1983) 139 Cal.App. 3d. 773, 783; 189 Cal.Rptr. 212.)

3 57. In California, the terms and conditions of civil service employment are fixed by  
4 statute and not by contract. (*Miller v. State of California* (1977) 18 Cal.3d 808, 813-814; 135  
5 Cal.Rptr. 386, 557 P.2d 970.) Courts have long recognized that the rights of public employees  
6 involve obligations protected by the contract clause of the Constitution. In *Valdes*, the court  
7 concluded that “a statute will be treated as a contract with binding obligations when the statutory  
8 language and circumstances accompanying its passage clearly ‘evince a legislative intent to create  
9 private rights of a contractual nature enforceable against the State.’” (*Valdes, supra*, 139 Cal.  
10 App. 3d at 786 (internal citations omitted).

11 58. In California, numerous statutes and even constitutional restrictions govern the  
12 operation of state buildings and create private rights of a contractual nature enforceable against the  
13 state. Some of the statutes were enacted by voter initiatives and propositions, and as such cannot  
14 be amended by executive fiat through the issuance of a Proclamation. Many, if not most or all, of  
15 the statutes prohibit amendments thereto in a manner which is inconsistent with their purpose.

16 59. The Governor’s Proclamation is an arbitrary act by fiat which contradicts or wholly  
17 undermines the purpose of the Emergency Services Act enacted through the democratic electoral  
18 system. Through the voting process, the adoption of these laws created a statutory obligation  
19 which creates the fabric and structure concerning the method and manner of addressing a  
20 legitimate emergency.

21 60. To the extent that the cuts imposed by the Proclamation impaired contractual  
22 obligations, it violated both the federal and state constitutions prohibiting the impairment of  
23 contracts. “Neither the court nor the legislature may impair the obligation of a valid contract (Cal.  
24 Const., Art. I, §§ 1, 16 [now Cal. Const., Art. I, § 9]) and a court cannot lawfully disregard the  
25 provisions of such a contract or deny to either party his rights thereunder.” (*Bradley v. Superior*  
26 *Court* (1957) 48 Cal.2d 509, 519; 310 P.2d 613 (emphasis added); *Newhall v. Newhall* (1964) 227  
27 Cal.App.2d 800, 815; 39 Cal. Rptr. 144.)

28 ///

1           61.     The closure of State offices to effectuate the furlough of SEIU Local 1000 members  
2 employed by those State departments and agencies identified as Respondents/Defendants violates  
3 these provisions of the California Constitution. In addition, these acts are arbitrary and capricious,  
4 as is the dismantling of the Administrative Procedures Act.

5           62.     In addition, closing offices and furloughing employees working in State  
6 departments and agencies is wasteful mismanagement of the personnel resources of the respondent  
7 agencies. The furloughs achieve no substantial benefit to the General Fund and deprive the People  
8 of California of essential services. (*See Civ. Proc. Code 526(a)(2)*, “[a]n injunction may be  
9 granted . . . [w]hen it appears by the complaint or affidavits that the commission or continuance of  
10 some act during the litigation would produce waste, or great or irreparable injury, to a party to the  
11 action.”)

12           63.     Plaintiffs lack any plain, speedy and adequate remedy in the ordinary course of law  
13 to enforce Defendants’ mandatory duties under the laws of the State of California.

14           64.     As the organization representing civil service employees and employed by  
15 Defendants, SEIU is beneficially interested in upholding the California law and in preserving the  
16 laws and duties of the State and under the Emergency Services Act. Plaintiffs and their members,  
17 including Plaintiff Yvonne Walker, have a clear, present and substantial right to require  
18 Defendants to perform their duties.

19           65.     Plaintiffs have no right of appeal from the failure of the Defendants to act as  
20 required by law, nor do Plaintiffs have any available administrative remedy to contest the action,  
21 nor do Plaintiffs have a plain, speedy or adequate remedy in the ordinary course of law other than  
22 the relief sought in this action.

23           66.     Plaintiffs have necessarily engaged the services of counsel to represent them in the  
24 preparation and prosecution of the within action resulting from the conduct and threatened conduct  
25 of Defendants. The legal services rendered will thus inure to the benefit of all persons employed  
26 in the state civil service and to all citizens and taxpayers of the State of California. Such benefits  
27 will be derived in part through the efforts of Plaintiffs herein. Therefore, Plaintiffs will, upon  
28 entry of final judgment, request the court in its discretion, to award the reasonable value of

1 Plaintiffs' attorney's fees and other litigation expenses and to assess the amount thereof against  
2 Defendants, and each of them.

3 **Fourth Cause Of Action**

4 **(Declaratory Relief)**

5 67. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as though  
6 fully set forth herein.

7 68. An actual and present controversy has arisen and now exists between Plaintiffs and  
8 Defendants concerning their respective rights, duties, and obligations under the law (under the  
9 applicable laws and regulations.)

10 69. Plaintiffs contend that through their acts and/or omissions, the Defendants abused  
11 their discretion with regard to these obligations. Plaintiffs are informed and believe that  
12 Defendants dispute this contention.

13 70. Plaintiffs desire a judicial determination of their rights and a declaration of the  
14 Defendants' obligations under these laws.

15 71. This case seeks enforcement of important public rights and the relief sought is in  
16 the public's interest, since it will determine whether the Defendants violated their mandatory  
17 duties or abused their discretion. Plaintiffs have no other adequate legal or administrative remedy.

18 72. Plaintiffs lack any plain, speedy and adequate remedy in the ordinary course of law  
19 to enforce Defendants' mandatory duties under the Constitution, laws, rules and/or policies of the  
20 State of California.

21 73. As the organization representing civil service employees, SEIU is beneficially  
22 interested in upholding the California Constitution and in preserving the laws and duties of the  
23 State civil service. Plaintiffs and their members, have a clear, present and substantial right to  
24 require Defendants to perform their duties.

25 74. Plaintiffs have no right of appeal from the failure of the Defendants to act as  
26 required by law, nor do Plaintiffs have any available administrative remedy to contest the action,  
27 nor do Plaintiffs have a plain, speedy or adequate remedy in the ordinary course of law other than  
28 the relief sought in this action.



- 1           3.       For its costs of suit;
- 2           4.       For its attorney's fees; and
- 3           5.       For such other and further relief as the Court deems appropriate.

4       **On the Second and Third Causes of Action:**

5           1.       A.       For a peremptory writ of mandate directing Defendants to cease and desist  
6 actions in violation of the Constitution, the law and the Emergency Services Act.

7                   B.       Pending issuance of a peremptory writ, that this Court issue a temporary  
8 restraining order and preliminary injunction, directing Defendants to cease and desist actions in  
9 violation of the Constitution, the law and the Emergency Services Act.

10          2.       A.       That this Court, on hearing this petition and on consideration of any return  
11 filed thereto, issue an alternative and peremptory writ of mandate directing Defendants to cease  
12 and desist actions in violation of the Constitution, the law and of Government Code section 8558,  
13 et seq.

14                   B.       Pending issuance of a peremptory writ, that this Court issue a temporary  
15 restraining order and preliminary injunction, directing Defendants to cease and desist actions in  
16 violation of the Constitution, the law and of Government Code section 8558, et seq.

- 17          3.       For its costs of suit;
- 18          4.       For its attorney's fees; and
- 19          5.       For such other and further relief as the Court deems appropriate.

20       **On the Fourth Cause of Action:**

21          1.       A.       For a declaratory judgment and declaration of rights that Defendants have  
22 violated and continue to violate their mandatory duty and/or abuse their discretion with regard to  
23 actions in violation of the Constitution, the law and of Government Code section 8558, et seq..

24                   B.       Pending issuance of a peremptory writ, that this Court issue a temporary  
25 restraining order and preliminary injunction, directing Defendants to cease and desist from actions  
26 in violation of the Constitution, the law and of Government Code section 8558, et seq.

- 27          2.       For its costs of suit;
- 28          3.       For its attorney's fees; and

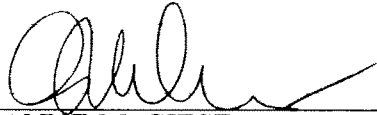
SEIU LOCAL 1000  
1808 14<sup>th</sup> Street, Bldg. 1  
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Telephone: (916) 554-1279

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4. For such other and further relief as the Court deems appropriate.

DATED: August 25, 2009

Respectfully submitted,  
SEIU Local 1000

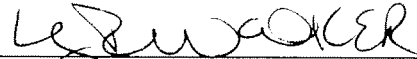
By   
ANNE M. GIESE  
Attorney for Plaintiffs/Petitioners

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Telephone: (916) 554-1279

**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, 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.

DATED: August 28, 2009



YVONNE WALKER  
President of SEIU Local 1000

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