

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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CROSS COMPLAINT

CE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000 et al VS. ARNOLD SCHWARZEN

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16 Complainant JAN FRANK

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 IN AND FOR THE COUNTY OF SAN FRANCISCO

19 SERVICE EMPLOYEES
20 INTERNATIONAL UNION, LOCAL
21 1000, KATHLEEN COLLINS, STEPHEN
22 MCVEIGH, LISA DAVIS, BERTHA DEE
23 CERNA, RITA SALAZAR, MARIA
24 VILLEGAS, AND JAMES BRIGGS,
25 AND DOES 1-5000,

26 Petitioners/Plaintiffs,

27 vs.

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

Defendants/Respondents.

Case No. CPF-09-509580

JAN FRANK'S VERIFIED CROSS-
PETITION FOR WRIT OF MANDATE OR
WRIT OF PROHIBITION AND CROSS-
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF

Complaint Filed June 12, 2009

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1 JAN FRANK, as the President of STATE
2 COMPENSATION INSURANCE FUND,

3 Cross-Petitioner/Cross-
4 Complainant,

5 vs.

6 ARNOLD SCHWARZENEGGER, as
7 Governor of the State of California;
8 DAVID GILB, as Director of the
9 Department of Personnel Administration;
10 JOHN CHIANG, as Controller of the State
11 of California,

12 Cross-Respondents/Cross-
13 Defendants.

14 INTRODUCTION

15 1. Respondent, Defendant, Cross-Petitioner, and Cross-Complainant Jan Frank
16 (“Frank”), in her official capacity as President of the State Compensation Insurance Fund (“State
17 Fund”), files this cross-petition for writ of mandate under §1085 or prohibition under §1103 of
18 the California Code of Civil Procedure and cross-complaint for declaratory and injunctive relief.
19 Frank seeks to obtain a full and final resolution that the two executive orders issued by
20 Respondent, Defendant, Cross-Respondent, and Cross-Defendant Governor Arnold
21 Schwarzenegger (“Governor Schwarzenegger”), which have resulted in the implementation of a
22 three-day per month furlough of State Fund employees and therefore a salary reduction of
23 approximately 13.8%, cannot be implemented and applied to State Fund’s employees as specified
24 below.

25 2. Furloughs of State Fund employees may not be imposed because, among other
26 reasons, Insurance Code § 11873(c) provides that the “positions funded by the State
27 Compensation Insurance Fund are exempt from any hiring freezes and staff cutbacks otherwise
28 required by law.” As a result of this statutory provision, all positions funded by State Fund are
exempt from furloughs. Moreover, State Fund’s powers are vested in its Board of Directors and
Officers. Further, the furloughs of State Fund employees result in no savings to the State of
California since no State Fund moneys are paid to the State and no State of California moneys go

1 to State Fund. Thus, the resulting hardship experienced by State Fund employees due to the
2 salary reductions serves no governmental purpose.

3 3. On June 4, 2009, San Francisco Superior Court Judge Peter J. Busch, in an action
4 filed by California Attorneys, Administrative Law Judges, and Hearing Officers in State
5 Employment ("CASE") and individual employees of State Fund represented by CASE against the
6 respondents here, issued an Order stating that State Fund employees represented by CASE are
7 exempt from executive order S-160-08 pursuant to Insurance Code § 11873(c). Judge Busch
8 entered judgment in favor of CASE and issued a writ commanding Governor Schwarzenegger
9 and Respondent, Defendant, Cross-Respondent, and Cross-Defendant David Gilb ("Gilb") to set
10 aside the portion of the executive order calling for a furlough and salary reduction for State Fund
11 employees represented by CASE. The writ also commanded Respondent, Defendant, Cross-
12 Defendant, and Cross-Complainant John Chiang (the "Controller") to "immediately pay State
13 Fund employees their full salary without any reductions pursuant to the illegal furlough directed
14 by the unlawful executive order." Judge Busch issued a permanent injunction directing Governor
15 Schwarzenegger, the DPA, and the Controller to cease and desist taking any action to furlough
16 petitioners in that action by reducing their hours and reducing their pay.

17 4. Governor Schwarzenegger and Gilb have appealed this decision, but Judge Busch
18 issued an order lifting the automatic stay of his decision. Thus, this case has established that State
19 Fund employees represented by CASE are exempt from furloughs by Governor Schwarzenegger,
20 and the approximately 465 State Fund attorneys represented by CASE are not being subjected to
21 the furlough.

22 5. For purposes of the applicability and validity of the furloughs, however, there is no
23 distinction between the State Fund employees represented by CASE and the many thousands of
24 State Fund employees not represented by CASE. Section 11873(c) provides that all "positions
25 funded by the State Compensation Insurance Fund" are exempt from the furlough order. Whether
26 the State Fund employee is an attorney, a manager, a secretary, or a janitor, the exemption of
27 Section 11873(c) applies. The decision by Judge Busch should have resolved the dispute as to
28 whether Governor Schwarzenegger has the authority to furlough any State Fund employees.

1 6. Governor Schwarzenegger and Gilb have continued to take the position that the
2 executive orders apply to the other employees of State Fund not represented by CASE and thus
3 not directly referenced in the Judgment and Order. Moreover, the Controller continues to pay all
4 other State Fund employees beyond those represented by CASE salaries that have been reduced
5 to reflect three furlough days.

6 7. As a result, the many thousands of State Fund employees not represented by
7 CASE continue to be subject to the furloughs, despite the exemption of §11873(c), despite the
8 ruling by Judge Busch, and despite the fact that the furloughs do not contribute any moneys to the
9 State of California in order to address the State's fiscal problems. The other State Fund
10 employees therefore continue to endure the reduction in their salaries. This has created hardship
11 on the employees, and has substantially disrupted State Fund's ability to operate its business.

12 8. The disparate result, where thousands of State Fund employees are subject to
13 furloughs and other employees are not, has led to significant additional disruption and turmoil.
14 For example, attorneys represented by CASE are not subject to the furlough, but their secretaries
15 and managers are. The inconsistent application of the furlough has negatively affected morale
16 and has further disrupted State Fund's business.

17 9. SEIU has been forced to continue to pursue this underlying petition and complaint
18 in this matter. The present action brought by SEIU would in part remedy the situation, but would
19 not go far enough. Another action has recently been filed by a union representing additional State
20 Fund employees – the California Association of Professional Scientists ("CAPS"). The present
21 actions could still leave many employees not represented by SEIU, CAPS, or CASE subject to the
22 furlough – at least based upon the present positions taken by Governor Schwarzenegger, Gilb,
23 and the Controller – and thus would not result in complete relief for Frank, State Fund, and all
24 State Fund employees.

25 10. Moreover, on July 16, 2009, the Association of California State Supervisors
26 ("ACSS") sent a letter to Frank and to State Fund's Directors demanding that State Fund cease
27 and desist the implementation of the furloughs as to members of ACSS employed by State Fund.
28 The letter cited the CASE Petition and Judge Busch's order and decision, and asserted that

1 Section 11873(c) and Judge Busch's order and decision have equal application to all State Fund
2 employees.

3 11. Thus, in this action, Frank now seeks an order that *all* other State Fund employees
4 – in addition to those State Fund employees represented by CASE, who are already the subject of
5 Judge Busch's order – are exempt from the furloughs. Frank requests that the Court issue a writ
6 commanding Governor Schwarzenegger and Gilb to set aside the portion of the executive orders
7 calling for a furlough and salary reduction as to all other State Fund employees, and commanding
8 the Controller to immediately pay all other State Fund employees their full salary without any
9 reductions pursuant to the furloughs. Frank also seeks a permanent injunction directing Governor
10 Schwarzenegger, Gilb, and the Controller to cease and desist taking any action to furlough these
11 other State Fund employees by reducing their hours and reducing their pay.

12 THE PARTIES

13 12. Frank is the President of State Fund. She has been duly appointed President of
14 State Fund by State Fund's Board of Directors pursuant to Insurance Code § 11785, with
15 delegated authority to manage State Fund pursuant to Insurance Code § 11787. As President of
16 State Fund, she has the power and authority to seek a writ and an injunction on behalf of State
17 Fund and its employees. Frank has been authorized and directed by State Fund's Board of
18 Directors to seek the order and relief stated in this Cross-Petition and Cross-Complaint on behalf
19 of State Fund and its employees.

20 13. Governor Schwarzenegger is the elected Governor of the State of California.
21 Governor Schwarzenegger is named in his official capacity.

22 14. Gilb is the Director of the Department of Personnel Administration ("DPA"). Gilb
23 is named in his official capacity.

24 15. The Controller is the elected Controller of the State of California. The Controller
25 is named in his official capacity.

1 powers and authority over the administration, management, and conduct of the business affairs of
2 State Fund, and its operations are not in any way controlled by the Governor. Moreover, State
3 Fund's moneys are entirely separate from the State of California's moneys. Furthermore, State
4 Fund is statutorily exempt from furloughs.

5 23. More specifically, State Fund has its origin in the California Constitution. The
6 California Constitution has vested "plenary power" to the Legislature over the workers'
7 compensation system, including "the establishment and *management* of a State compensation
8 insurance fund." Cal. Const. Art. 14 §4 (emphasis added). The Constitution further states that all
9 the "functions" of the "State compensation insurance fund" are "vested" in State Fund. *Id.*

10 24. Pursuant to that Constitutional mandate, the Legislature has enacted a variety of
11 statutory provisions that further delegate decisions to State Fund's Board of Directors.

12 25. For example, Insurance Code §11781 provides that State Fund's Board is "vested
13 with full power, authority and jurisdiction over the State Compensation Insurance Fund" and that
14 the Board "may perform all acts necessary or convenient in the exercise of any power, authority
15 or jurisdiction over the fund, either in the administration thereof or in connection with the
16 insurance business to be carried on by it under the provisions of this chapter, as fully and
17 completely as the governing body of a private insurance carrier."

18 26. In addition, Insurance Code §11770 provides that State Fund is "to be
19 administered by its board of directors."

20 27. Insurance Code §11785 provides that the President shall manage and conduct the
21 business and affairs of State Fund under the general direction and subject to the approval of the
22 Board, and §11787 provides that the President may exercise those powers and functions and
23 perform those duties with the same force and effect as the Board of Directors subject to its
24 approval.

25 28. Likewise, Labor Code §57.5 provides that "All duties, power, and jurisdiction
26 relating to the administration of the State Compensation Insurance Fund shall be vested in the
27 Board of Directors of the State Compensation Insurance Fund."
28

1 29. These provisions demonstrate that State Fund's Board is vested with full power
2 and authority over State Fund, that Frank has the authority to bring this action, and that State
3 Fund's Board is to operate as fully and completely as the governing body of a private insurance
4 carrier.

5 **State Fund Is Self Supporting and Its Moneys Are Separate from the State's Moneys**

6 30. State Fund is entirely self-supporting and derives all of its funds from the
7 operation of its worker's compensation insurance business. State Fund's moneys and finances are
8 separate from the State. State Fund gets no moneys from and gives no moneys to the State.

9 31. For example, Insurance Code §11771 provides that the "State shall not be liable
10 beyond the assets of the State Compensation Insurance Fund for any obligations in connection
11 therewith."

12 32. Section 11775 states that State Fund shall be "self-supporting" and shall "be fairly
13 competitive with other insurers."

14 33. Section 11800.1 provides that "the moneys deposited with the State Treasurer are
15 not state moneys" Pursuant to §11800.2, the State Controller is required to keep a "special
16 ledger account" for State Fund.

17 34. Section 11774 states that the "assets of the fund shall be applicable to the payment
18 of losses sustained on account of insurance and *to the payment of the salaries* and other expenses
19 charged against it." Cal. Ins. Code §11774 (emphasis added). Salaries of State Fund employees
20 are paid out of the assets of State Fund, which are in turn derived from premiums and investments
21 made using those premiums, not out of State revenues.

22 35. While the warrants or checks paid to State Fund employees are written by the
23 Controller, that is only as a pass through. Insurance Code §11874 provides that "the Controller
24 shall draw his warrant in favor of the State Compensation Insurance Fund for the total amount of
25 the funds in the custody of the Treasurer belonging to the State Compensation Insurance Fund
26 and the Treasurer shall pay such warrant."

27 36. These sections show that the funds of State Fund, including those used to pay
28 salaries, are not moneys of the State. To the extent the furlough would create any savings, the

1 savings would be experienced by State Fund, not by the State of California. Thus, to the extent
2 the purpose of the furlough of State Fund employees is to effectuate a savings by California's
3 general fund, the furlough will not accomplish that goal in any way.

4 State Fund Employees Are Exempt from Furlough Orders

5 37. Moreover, in order to allow State Fund to operate as a business and to compete
6 with private businesses, the Legislature adopted a statutory exemption from furloughs for State
7 Fund employees. The Legislature in 2003 enacted workers' compensation reform, which among
8 other things added Insurance Code §11873(c). Section 11873(c) provides that:

9 Notwithstanding any provision of the Government Code or any
10 other provision of law, the positions funded by the State
11 Compensation Insurance Fund are exempt from any hiring freezes
and staff cutbacks otherwise required by law.

12 38. Section 11873(c) was enacted in order to allow State Fund executives to exercise
13 their best business judgment over staffing needs in light of the negative impact the State's hiring
14 freeze had had on State Fund's operations. The Legislative History states:

15 The state hiring freeze had a substantial impact on SCIF during a
16 period of intense growth in SCIF's policyholder base due to many
17 other insurance companies dropping out of the California workers'
18 compensation market. Despite large increases in premium volume,
19 numbers of policyholders, necessity for claims adjustment services,
20 increased demand for health and safety services and other insurance
21 company operations, SCIF was unable to increase the size of its
22 workforce. This in itself may have had negative impact on the cost
of claims, in that delays in underwriting and claims adjusting
responsibilities may have caused higher policy costs to employers,
may have caused penalties to occur, and may have led to more and
unnecessary litigation - to the extent that employers operated
without any insurance due to their inability to obtain a policy from
SCIF, this may have led to civil liability and/or substantial penalty
assessments for illegal uninsurance.

23 The impact of allowing SCIF to expand and contract its workforce
24 without regard for hiring requirements applicable to other state
25 departments will allow SCIF's executive leadership to exercise its
26 best business judgment on SCIF's staffing needs. This should have
a positive impact on controlling policy costs and providing better
service to policyholders.

27 39. This Legislative History shows the Legislature recognized State Fund's need to be
28 able to make its own decisions concerning the level of its staffing. Recognizing that State Fund

1 operates and competes with the private sector as a business, the Legislature adopted this
2 exemption in order to leave all decisions concerning staffing, the availability of staff, workforce
3 hours, and workforce availability to State Fund's Board and Officers so they could exercise their
4 best business judgment in order to avoid disruption of underwriting and claims adjusting and to
5 control policy costs and to provide better service.

6 40. When the exemption for State Fund from hiring freezes and staff cutbacks
7 contained in §11873(c) was enacted, the Legislative History noted that the exemption "would not
8 result in a direct fiscal impact to the state, since SCIF is an off-budget department."

9 THE FIRST FURLOUGH ORDER

10 41. On December 19, 2008, Governor Schwarzenegger issued Executive Order S-16-
11 08 (the "Executive Order"). The Executive Order directs all State departments and agencies to
12 implement a two-day per month furlough of its employees, effective February 1, 2009, through
13 June 30, 2009.

14 42. Frank and State Fund did not believe that the Executive Order could be and was
15 meant to be imposed on State Fund employees. Frank and State Fund therefore inquired of the
16 Governor's Office and the DPA whether the Executive Order was intended to apply to State Fund
17 employees. They were informed, however, that it was so intended.

18 43. The Executive Order states that it had an "exemption process." Frank and State
19 Fund thus repeatedly attempted to obtain an "exemption." Frank and State Fund, however, were
20 not able to obtain an exemption from the Governor.

21 LITIGATION, THE SECOND FURLOUGH ORDER, AND THE AFFECT ON 22 STATE FUND

23 44. While these negotiations were ongoing, CASE, on February 10, 2009, filed a
24 petition for writ of mandate and complaint for declaratory relief in the case entitled *California*
25 *Attorneys, Administrative law Judges and Hearing Officers in State Employment et al. adv.*
26 *Arnold Schwarzenegger et al.*, San Francisco Superior Court Case No. CPF-09-509580 (the
27 "CASE Petition"). In the CASE Petition, CASE sought an order that State Fund employees were
28

1 exempt from the furlough order based in part on Insurance Code §11873(c). The CASE Petition
2 was assigned to Judge Busch.

3 45. In response to the CASE Petition, Governor Schwarzenegger and Gilb argued that
4 the CASE Petition was barred by the doctrine of res judicata or collateral estoppel based upon the
5 fact that another action had been filed by CASE in Sacramento Superior Court. Judge Busch
6 concluded that res judicata or collateral estoppel could not apply since that case was not final, but
7 on his own raised the question whether the doctrine of exclusive concurrent jurisdiction applied
8 and prevented his consideration of the CASE Petition and invited briefing by the parties on the
9 subject. Based upon Judge Busch's identification of this possible issue, Governor
10 Schwarzenegger and Gilb asserted that the doctrine prevented consideration of the CASE Petition
11 on the merits by Judge Busch. After extensive briefs were filed and oral argument was
12 conducted, Judge Busch concluded that the doctrine did not apply and did not prevent him from
13 ruling on the merits of the CASE Petition.

14 46. On the merits, on June 4, 2009, Judge Busch issued an Order stating that State
15 Fund employees represented by CASE are exempt from executive order S-160-08 pursuant to
16 Insurance Code §11873(c). Judge Busch ruled on the merits as follows:

17 the Court finds that based upon the common sense meaning of the phrase "staff
18 cutback" as used in Insurance Code §11873(c), and as informed by the policy
19 concerns expressed in the legislative history of the adoption of that section, a
20 "furlough" reduces the availability of staff and therefore constitutes a "staff
21 cutback" for purposes of the statute. Thus, State Fund employees represented by
22 [CASE] are exempt for the Executive Order S-16-08.

23 Judge Busch entered judgment in favor of CASE in the CASE Petition on June 4, 2009. Judge
24 Busch issued a Writ commanding Governor Schwarzenegger and Gilb to set aside the portion of
25 the executive order calling for a furlough and salary reduction for State Fund employees
26 represented by CASE. The Writ also commanded the Controller to "immediately pay State Fund
27 employees their full salary without any reductions pursuant to the illegal furlough directed by the
28 unlawful executive order." Judge Busch issued a permanent injunction directing Governor

1 Schwarzenegger, the DPA, and the Controller to cease and desist taking any action to furlough
2 petitioners by reducing their hours and reducing their pay.

3 47. Governor Schwarzenegger and Gilb have opposed implementation of Judge
4 Busch's ruling. Governor Schwarzenegger and Gilb appealed his decision, and stated in the
5 notice of appeal that Judge Busch's Order was stayed pending appeal, and thus that the
6 employees of State Fund represented by CASE would continue to feel the effects of the furlough
7 during the appeal. CASE sought an order from Judge Busch lifting the stay, and, over Governor
8 Schwarzenegger and Gilb's opposition, that order was granted by Judge Busch on July 9, 2009.

9 48. As a result of the CASE Petition, the approximately 465 State Fund attorneys
10 represented by CASE are not being subjected to the furlough at the present time.

11 49. On July 1, 2009, Governor Schwarzenegger issued Executive Order S-13-09 (the
12 "Second Executive Order"). The Second Executive Order directs all State departments and
13 agencies to implement a three-day per month furlough of its employees, effective July 1, 2009,
14 though June 30, 2010. Governor Schwarzenegger and Gilb maintain that the three-day furlough
15 applies to State Fund employees not represented by CASE – despite the exemption created by
16 §11873(c) and the conclusion of Judge Busch.

17 50. The Controller has taken the position that he will not impose the three-day
18 furlough order as to State Fund employees represented by CASE, but that he will comply with the
19 two furlough orders as to all other State Fund employees. Despite State Funds' request to the
20 Controller that he no longer reduce the checks of any State Fund employees to reflect the
21 furlough orders, the Controller continues to issue checks to State Fund employees that are not
22 represented by CASE that are reduced by approximately 13.8% to reflect the three-day furlough
23 imposed due to the Second Furlough Order. Since the Controller issues the checks to State Fund
24 employees – even though the funds being paid by the Controller are entirely State Fund moneys –
25 State Fund employees beyond those represented by CASE are not receiving their full salaries and
26 are receiving checks reduced to reflect the furloughs.

27

28

1 51. The net effect is that State Fund employees not represented by CASE are subject
2 to the furloughs even though they should not be. This has created hardship on State Fund
3 employees, and has disrupted State Fund's business.

4 52. Moreover, the fact that some employees are subject to furloughs and others are not
5 has led to additional disruption and turmoil, has affected morale, and has disrupted State Fund's
6 business.

7 53. On July 16, 2009, ACSS demanded that State Fund cease and desist the
8 implementation of the furloughs as to members of ACSS employed by State Fund. Thus, while
9 the three-day furlough is being implemented because Governor Schwarzenegger and Gilb have
10 continued to assert that the furlough orders apply to the other State Fund employees, and the
11 Controller will not issue checks in the full amount at the present time to these other State Fund
12 employees, ACSS has directed its cease and desist demand to State Fund and to Frank.

13 54. SEIU filed this action on June 12, 2009. In this action, SEIU requests that the
14 same order issued by Judge Busch concerning the State Fund employees represented by CASE
15 equally apply to the State Fund employees represented by SEIU.

16 55. Governor Schwarzenegger and Gilb have opposed efforts to transfer this case
17 (which was given an even number and therefore would not otherwise automatically be sent to
18 Judge Busch) to Judge Busch – even though Judge Busch had just resolved a lawsuit based on the
19 same issues of law and fact. Governor Schwarzenegger and Gilb have filed a declaration under
20 California Code of Procedure §170.6 seeking to disqualify Judge Busch from handling the SEIU
21 Petition.

22 56. The present action brought by SEIU would in part remedy the situation faced by
23 State Fund's employees, but would not go far enough. The present action could still leave many
24 employees not represented by SEIU or by CASE subject to the furlough – based upon the present
25 positions taken by Governor Schwarzenegger, Gilb, and the Controller – and would not result in
26 complete relief for Frank and State Fund.

27 57. On July 24, 2009, CAPS and several of its members filed another Petition for Writ
28 of Mandate and Complaint for Declaratory Relief, entitled *California Association of Professional*

1 *Scientists et al. v. Arnold Schwarzenegger et al.*, San Francisco Superior Court Case No. CPF-09-
2 509695 (the "CAPS Petition"), which asserts that the executive orders are illegal as they pertain
3 to employees of State Fund represented by CAPS based upon Insurance Code §11873(c). This
4 action too could still leave many employees subject to the furlough.

5 58. Thus, in this Cross-Petition and Cross-Complaint, Frank seeks an order and
6 determination that *all* other State Fund employees, in addition to those represented by CASE, are
7 exempt from the furloughs, and that Governor Schwarzenegger's orders do not apply to any other
8 State Fund employees pursuant to Insurance Code §11873(c), among other grounds, and seeks an
9 appropriate writ and injunction to that effect.

10 FIRST CAUSE OF ACTION

11 (Cross-Petition for Writ of Mandate or Prohibition against all Cross-Respondents)

12 59. Frank incorporates the allegations set forth in paragraphs 1 through 58 as though
13 set forth fully herein.

14 60. Insurance Code §11873(c) creates an exemption from furloughs ordered by the
15 Governor. The section provides that the "positions funded by the State Compensation Insurance
16 Fund are exempt from any hiring freezes and staff cutbacks otherwise required by law." A
17 commonsense reading of this language shows that it includes furloughs. The legislative history
18 of that section shows that it was the intent to allow State Fund's Board and Officers to manage
19 their business and thus to allow them to make hiring and staffing decisions in order to run their
20 worker's compensation insurance business.

21 61. Moreover, Governor Schwarzenegger does not have the power to furlough State
22 Fund employees given State Fund's structure. All powers and duties are vested by the
23 Legislature to State Fund's Board of Directors, which has in turn delegated certain power and
24 authority to its President. Governor Schwarzenegger does not have the power to issue a furlough
25 affecting State Fund employees.

26 62. Given the fact that State Fund gives no moneys to the State and takes no moneys
27 from the State, and because State Fund is financed entirely by its own operations, the furlough
28 does nothing to relieve the State's fiscal problems. None of the operational savings experienced

1 due to the furloughs goes to the State of California. The furloughing of State Fund employees
2 serves no purpose.

3 63. The furlough has, however, substantially disrupted State Fund's business. The
4 unavailability of its employees has made it difficult to provide its services and to compete with
5 private insurance carriers.

6 64. Furthermore, the disparate result – where some State Fund employees are covered
7 by the furloughs and others are not – is causing additional disruption and loss of morale.

8 65. Governor Schwarzenegger's furlough order as applied to State Fund's employees
9 is contrary to law. Frank is entitled to the issuance of a writ of mandate under §1085 or writ of
10 prohibition under §1103 of the California Code of Civil Procedure commanding Governor
11 Schwarzenegger and Gilb to set aside the portion of the executive orders calling for a furlough
12 and salary reduction as to all other State Fund employees, and commanding the Controller to
13 immediately pay all other State Fund employees their full salary without any reductions pursuant
14 to the furlough directed by the executive orders.

15 66. Frank has no available administrative remedy. Frank has no plain, speedy, and
16 adequate remedy at law except for this Petition. The Petition is timely.

17 SECOND CAUSE OF ACTION

18 (Cross-Complaint for Declaratory and Injunctive Relief against all Cross-Defendants)

19 67. Frank incorporates the allegations set forth in paragraphs 1 through 66 as though
20 set forth fully herein.

21 68. Governor Schwarzenegger has issued the two executive orders, and Governor
22 Schwarzenegger and Gilb have continued to impose the furloughs on State Fund employees other
23 than those represented by CASE. The Controller has carried out a salary reduction of
24 approximately 13.8% of all State Fund employees other than those represented by CASE.

25 69. An actual controversy has arisen, in that Governor Schwarzenegger and Gilb
26 maintain that they have the power to furlough these other State Fund employees despite Judge
27 Busch's Order, despite section §11873, despite the statutes that vest all powers of this nature to
28 State Fund's Board of Directors and Officers, and despite the separation of finances such that the

1 furlough will generate no savings whatever to the State of California. The Controller maintains
2 that he is obligated to reduce the salaries of State Fund employees other than those represented by
3 CASE pursuant to the executive orders. Frank maintains that Governor Schwarzenegger and Gilb
4 do not have the power to furlough these other State Fund employees because, among other
5 grounds, of Judge Busch's Order, because of §11873, because the statutes that vest all powers of
6 this nature to State Fund's Board of Directors and Officers, and because the separation of
7 finances such that the furloughs will generate no savings whatever to the State of California.
8 Frank maintains that the Controller has no power to reduce the salaries of these other State Fund
9 employees pursuant to the executive orders.

10 70. Frank therefore desires a declaration of the rights and powers, if any, of Governor
11 Schwarzenegger, Gilb, and the Controller concerning the furloughs and the reduction in the
12 salaries of these other State Fund employees.

13 71. A declaration is necessary and appropriate at this time in order to avoid the
14 implementation of the furloughs to the State Fund employees beyond those represented by CASE
15 and in order to avoid the disparate result where the salaries of some State Fund employees are
16 reduced and others are not.

17 72. Frank seeks a temporary, preliminary, and permanent injunction directing
18 Governor Schwarzenegger, the DPA, and the Controller to cease and desist taking any action to
19 furlough these other State Fund employees by reducing their hours and reducing their pay. The
20 affected rights cannot be compensated fully by monetary relief and thus irreparable injury will be
21 suffered, and Frank has a reasonable likelihood of success on the merits.

22 **PRAYER**

23 Wherefore, Frank respectfully prays that:

24 **On Frank's First Cause of Action for Writ of Mandate or Prohibition:**

- 25 1. That this Court issue a writ under seal of this Court commanding Governor
26 Schwarzenegger and Gilb to set aside the portion of the executive orders calling
27 for a furlough and salary reduction for *all* other State Fund employees and
28 commanding the Controller to immediately pay all other State Fund employees

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their full salary without any reductions pursuant to the furlough directed by the executive order.

2. For costs of this proceeding, for attorneys' fees, and for such other relief as the Court deems just and proper.

On Frank's Second Cause of Action for Declaratory Relief:

3. That this Court declare that Governor Schwarzenegger and Gilb do not have the power to furlough these other State Fund employees and that the Controller has no power to reduce the salaries of these other State Fund employees pursuant to the executive orders.

4. That this Court issue a permanent injunction directing Governor Schwarzenegger, Gilb, and the Controller to cease and desist taking any action to furlough these other State Fund employees by reducing their hours and reducing their pay.

5. For costs of this proceeding, for attorneys' fees, and for such other relief as the Court deems just and proper.

Dated: August 5, 2009

MANATT, PHELPS & PHILLIPS, LLP
Ronald B. Turovsky
Alison Sultan White

By: Ronald B. Turovsky
Ronald B. Turovsky
Attorneys for Defendant/Respondent and Cross-Petitioner/Cross-Complainant
JAN FRANK

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VERIFICATION


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VERIFICATION

I, Janet Frank, am President of the State Compensation Insurance Fund and am authorized to make this verification on its behalf. I have read the foregoing *Verified Cross-Petition for Writ of Mandate or Prohibition and Cross-Complaint for Declaratory Relief* and know its contents. The facts stated therein are true and are within my personal knowledge, except as to those matters which are stated upon my information and belief. As to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5th day of August 2009, at San Francisco, California.



JANET FRANK

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