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12 ARNOLD SCHWARZENEGGER as Governor of the State of  
California; DEPARTMENT OF PERSONNEL  
13 ADMINISTRATION

**Exempted from Fees  
(Gov. Code § 6103)**

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SACRAMENTO

17 CALIFORNIA ASSOCIATION OF  
PSYCHIATRIC TECHNICIAN,

Petitioner/Plaintiff,

19 v.

20 ARNOLD SCHWARZENEGGER as,  
21 Governor of the State of California;  
DEPARTMENT OF PERSONNEL  
22 ADMINISTRATION; JOHN CHIANG, as  
State Controller, and Does 1 through 10,  
23 inclusive,

24 Respondents/Defendants.

CASE NO. 34-2009-80000148-CU-WM-GDS

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR TRANSFER OF ACTIONS  
FOR COORDINATION OF  
PROCEEDINGS [C.C.P. § 403]**

Date: October 2, 2009  
Time: 1:30 p.m.  
Dept.: 19

Complaint Filed: January 23, 2009

25 922719.1

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
1	
2	
3	TABLE OF AUTHORITIES ..... ii
4	I. INTRODUCTION ..... 1
5	II. ANALYSIS ..... 3
6	A. Standard for Transfer and Coordination of Noncomplex Cases ..... 3
7	B. Moving Parties Made a Good Faith Effort to Obtain Consent to Coordination Before Bringing this Motion ..... 4
8	C. Coordination of the Actions Described in this Motion is Warranted Because the Factors for Coordination Specified in Code of Civil Procedure Section 404.1 Are Present ..... 5
9	1. The Actions to be Coordinated Share Common Questions of Fact and/or Law ..... 5
10	2. Coordination Will Promote Efficient Use of Judicial Resources..... 8
11	3. Coordination Will Not Result in Prejudice to any Party ..... 10
12	4. Coordination Will Avoid the Risk of Inconsistent Adjudications ..... 11
13	D. Coordination Pursuant to Section 403 Is Appropriate Because These Cases Are Noncomplex ..... 11
14	1. These Cases Do Not Involve “Numerous Pretrial Motions Raising Difficult or Novel Legal Issues that Will Be Time-Consuming to Resolve.” ..... 12
15	2. These Cases Do Not Involve “Management of a Large Number of Witnesses or a Substantial Amount of Documentary Evidence.” ..... 13
16	3. These Cases Do Not Involve the “Management of a Large Number of Separately Represented Parties.” ..... 13
17	4. While These Cases Do Involve Coordination of Actions Pending in Different Counties, This Factor Alone Does Not Render the Actions Complex ..... 14
18	5. These Cases Do Not Involve “Substantial Postjudgment Judicial Supervision.” ..... 15
19	
20	
21	III. CONCLUSION ..... 15
22	
23	
24	
25	
26	
27	
28	

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**Page**

**STATE CASES**

Consumer Advocacy Group, Inc. v. ExxonMobil Corp. (2008) 168 Cal.App.4th 682 ..... 8

Crowley v. Katleman (1994) 8 Cal.4th 666 ..... 7, 8

Le Parc Community Ass’n v. Workers’ Compensation Appeals Bd. (2003)  
110 Cal. App. 4th 1161 ..... 7

McGhan Medical Corporations v. Superior Court (1992) 11 Cal.App.4th 804..... 3, 4, 6, 8, 10

Mycogen v. Monsanto Company (2002) 28 Cal.4th 888..... 7, 8

People ex rel. Garamendi v. American Autoplan, Inc. (1993) 20 Cal.App.4th 760 ..... 9

Plant Insulation Co. v. Fiberboard Corporation (1990) 224 Cal App.3d 781 ..... 9

Tensor Group v. City of Glendale (1993) 14 Cal. App. 4th 154..... 7

**STATUTES**

California Code of Civil Procedure § 403 ..... 1-4, 14, 15

California Code of Civil Procedure § 404..... 3

California Code of Civil Procedure § 404.1..... 3, 4, 5, 8

California Rule of Court 3.400..... 2, 11, 12

California Rule of Court 3.400(b)..... 12-15

California Rule of Court 3.500..... 4

I.

INTRODUCTION

Since this Court adjudicated the first actions challenging Governor Schwarzenegger's Executive Order S-16-08 directing the furloughs of state employees on January 29, 2009<sup>1</sup>, over a half dozen additional cases challenging the Governor's authority to furlough state employees have been filed. These cases, many of which were commenced by the same state employee unions that brought the original furlough challenges, were initiated despite this Court's ruling in its Final Amended Order of January 30, 2009 that the Governor's Executive Order constituted "a rule in that they establish a standard of *general application to state employees*." (Final Amended Order of January 30, 2009, Exhibit A to Request for Judicial Notice ("RJN").) Despite the fact that this Court obtained, and pursuant to the doctrine of exclusive concurrent jurisdiction (see discussion below) continues to possess, jurisdiction over furlough actions, the subsequent furlough challenges were brought in the San Francisco County and Alameda County Superior Courts.

By this motion, Respondents Governor Arnold Schwarzenegger and Director David Gilb seek transfer of the following actions to this Court pursuant to Code of Civil Procedure section 403 for purposes of coordinating these actions in this Court:

*CAPT v. Schwarzenegger, et al.*  
Sacramento County Superior Court Case No. 34-2009-80000148<sup>2</sup>

*SEIU/Walker v. Schwarzenegger, et al.*  
Sacramento County Superior Court Case No. 34-2009-80000150<sup>3</sup>

*CASE v. Schwarzenegger, et al.*  
Alameda County Superior Court Case No. RG09453982

<sup>1</sup> As this Court will recall, the first actions challenging furloughs of state employees were filed on December 22, 2008 by Professional Engineers in California Government ("PECG") and California Association of Professional Scientists ("CAPS"), Case No. 2008-80000126; on January 5, 2009 by California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE"), Case No. 2009-80000134; and on January 7, 2009 by Service Employees International Union, Local 1000 ("SEIU"), Case No. 2009-80000135. At a hearing dated January 9, 2009, all three cases were coordinated for final hearing on the merits. That hearing occurred on January 29, 2009.

<sup>2</sup> This Court already has asserted jurisdiction over this action pursuant to a coordination order based on the notice of related case filed in this case. The present motion is brought in this case due to the fact that it is the oldest of the actions still pending at the trial court level challenging furloughs of state employees having been commenced on January 23, 2009.

<sup>3</sup> This action also is already pending before this Court.

1 *Calif. Correctional Peace Officers Assn ("CCPOA") v. Schwarzenegger, et al.*  
Alameda County Superior Court Case No. RG09441544

2 *SEIU/Walker v. Schwarzenegger, et al.*  
3 Alameda County Superior Court Case No. RG09456750

4 *Union of American Physicians & Dentists ("UAPD") v. Schwarzenegger, et al.*  
5 Alameda County Superior Court Case No. RG09456684

6 *CalPERS v. Schwarzenegger, et al.*  
San Francisco County Superior Court Case No. CPF-09-509754<sup>4</sup>, <sup>5</sup>

7 As the following discussion will demonstrate, transfer of these actions to this  
8 Court for purposes of coordination pursuant to Code of Civil Procedure section 403 is  
9 appropriate. This Court is the proper court for the coordination of these actions in that this Court  
10 was the first to assert jurisdiction over challenges to Governor Schwarzenegger's Executive Order  
11 directing the furloughs of state employees. Furthermore, coordination of these actions is  
12 appropriate because the actions share common questions of fact and/or law. Moreover,  
13 coordination will promote the ends of justice, the efficient utilization of judicial resources in the  
14 adjudication of these actions, the convenience of parties, and will avoid the risk of inconsistent  
15 judgments all without prejudice to the parties or their counsel. Finally, coordination pursuant to  
16 section 403 is appropriate because these actions are noncomplex based on the definition set forth  
17 in California Rules of Court, Rule 3.400.

18 For all of these reasons, Respondents Governor Arnold Schwarzenegger and  
19 Director David Gilb respectfully request that this Court order the transfer of the aforementioned  
20 actions for purposes of coordination in this Court.

21 \_\_\_\_\_  
22 <sup>4</sup> In addition to these furlough cases, four other cases have been filed in San Francisco County Superior Court:  
23 *CASE v. Schwarzenegger*, Case No. CPF-09-509205; *CASE v. Schwarzenegger*, Case No. CPF-09-509629; *SEIU v.*  
24 *Schwarzenegger*, Case No. CPF-09-509580; and *CAPS v. Schwarzenegger*, Case No. CPF-09-509695. Respondents  
25 are not seeking to coordinate these actions by way of this motion. First, the first listed CASE action already had gone  
26 to final judgment and is on appeal to the First District Court of Appeal. The SEIU action is set for a hearing on the  
27 merits on September 1, 2009. More specifically, all four actions involve a very narrow issue, namely, that employees  
28 of the State Compensation Insurance Fund ("SCIF") are exempt from furloughs by operation of a unique Insurance  
Code section applicable only to SCIF employees. For these reasons, these actions are not part of this coordination  
motion. In addition, the case of *CDF Firefighters v. Schwarzenegger*, Case No. 34-2009-00032732, filed in this  
Court, is not included in this motion because Petitioner in that case filed a Code of Civil Procedure section 170.6  
challenge of Judge Marlette.

<sup>5</sup> Respondents anticipate that other furlough-related lawsuits will be filed. Thus, Respondents request that  
this Court's order on this motion include a prospective order coordinating new furlough actions with the actions to be  
coordinated pursuant to this motion.

1 II.

2 ANALYSIS

3 A. Standard for Transfer and Coordination of Noncomplex Cases.

4 The transfer and coordination of noncomplex cases is governed by Code of Civil  
5 Procedure section 403. That code section reads as follows:

6 A judge may, on motion, transfer an action or actions from another  
7 court to that judge’s court for coordination with an action involving  
8 a common question of fact or law within the meaning of Section  
9 404. The motion shall be supported by a declaration stating facts  
10 showing that the actions meet the standards specified in Section  
11 404.1, are not complex as defined by the Judicial Council and that  
12 the moving party has made a good faith effort to obtain agreement  
13 to the transfer from all parties to each action. Notice of the motion  
14 shall be served on all parties to each action and on each court in  
15 which an action is pending. Any party to that action may file  
16 papers opposing the motion within the time permitted by rule of the  
17 Judicial Council. The court to which a case is transferred may  
18 order the cases consolidated for trial pursuant to Section 1048  
19 without any further motion or hearing.

20 There is not much in the way of appellate authority interpreting and applying the  
21 standard for noncomplex cases. However, the case of *McGhan Medical Corporations v. Superior*  
22 *Court* (1992) 11 Cal.App.4th 804 is illustrative. While the petition for coordination in that case  
23 was brought pursuant to Code of Civil Procedure section 404, applicable to coordination of  
24 complex cases, the court’s analysis is informative because the coordination of both noncomplex  
25 and complex cases must satisfy the standards specified in Code of Civil Procedure section 404.1.  
26 (See Code Civ. Proc. § 403 quoted above.) In *McGhan Medical Corporations*, the appellate court  
27 reversed the trial court’s denial of a petition for coordination of several hundred cases by breast  
28 implant patients against manufacturers, producers, and physicians. (*Id.* at 814-15.) The trial court  
initially had denied the petition because “common questions of fact or law do not predominate in  
that the cases involve different implants, different designs, different warnings, different  
defendants, different theories of defect, different modes of failure, and different injuries.” (*Id.* at  
808; citation omitted.) The trial court also cited concerns regarding “unnecessary delay of  
discovery and of trial,” inconvenience to “the plaintiffs, their counsel, defendant health care  
providers, and witnesses by requiring them to travel to a selected site or sites to process their

1 cases,” and the “tax [on] judicial resources by sending hundreds, and possibly a thousand cases,  
2 to one county.” (*Id.* at 808, fn.2.)

3 In reversing the trial court, the appellate court noted that the “causes of action in  
4 most of the complaints are uniform (strict products liability, negligence, breach of warranty, fraud  
5 and deceit, misrepresentation, intentional infliction of emotional distress, loss of consortium).  
6 We are absolutely satisfied that the preparation for trial in terms of depositions, interrogatories,  
7 admissions, collection of physical data, etc., will be better achieved if done in a coordinated  
8 manner.” (*Id.* at 814.) The court rejected the contention that unique cases would be prejudiced by  
9 coordination because the coordinating judge may “sever any such unique cases, or...make other  
10 provisions for same which will adequately address the concerns of those who can establish a  
11 unique status.” (*Id.* at 812.) The court noted, “[t]here is no reason why the coordinating judge  
12 cannot prescribe special rules” to alleviate travel concerns regarding centralized sites of  
13 discovery.” (*Ibid.*) Finally, the appellate court rejected complaints of delay by counsel “who have  
14 moved expeditiously to conclude their litigation,” citing delay as a “modest price to pay for the  
15 efficiency to be gained by the majority of cases through coordination.” (*Id.* at 813.)

16 Here, as the discussion to follow will establish transfer and coordination of the  
17 listed actions meets the standards set forth in section 404.1.

18 **B. Moving Parties Made a Good Faith Effort to Obtain Consent to Coordination Before**  
19 **Bringing this Motion.**

20 Pursuant to the authority granted it in section 403, the Judicial Council has adopted  
21 rules regarding the transfer and coordination of noncomplex cases, which are found at Rule 3.500  
22 of the California Rules of Court. This rule provides at subsection (b) that as a preliminary matter  
23 a party that intends to file a motion under section 403 “must first make a good faith effort to  
24 obtain agreement of all parties to each case to the proposed transfer and consolidation.” As set  
25 forth in the accompanying Declaration of David W. Tyra, moving party made such a good faith  
26 effort. On August 25, 2009, a letter was sent to counsel for all parties seeking their agreement to  
27 transfer and coordination of these actions. (See Exhibit A to Declaration of David W. Tyra.)

28 Several counsel communicated their clients’ opposition to transfer and coordination and

922719.1

1 communicated that they did not feel sufficient information had been provided regarding the basis  
2 for making this motion. (See Exhibit B to Declaration of David W. Tyra.) Based on these letters  
3 and e-mail communications, a second letter was sent to all counsel on August 28, 2009 setting  
4 forth in greater detail the basis for the present motion. (See Exhibit C to Declaration of David W.  
5 Tyra.) None of the parties consented to the transfer and coordination of the actions in response to  
6 this second letter and two attorneys reiterated their clients' opposition. (See Exhibit D to  
7 Declaration of David W. Tyra.)

8 **C. Coordination of the Actions Described in this Motion is Warranted Because the**  
9 **Factors for Coordination Specified in Code of Civil Procedure Section 404.1 Are**  
10 **Present.**

11 Code of Civil Procedure section 404.1 sets forth the factors for coordination of  
12 actions. That code section provides as follows:

13 Coordination of civil actions sharing a common question of fact or  
14 law is appropriate if one judge hearing all of the actions for all  
15 purposes in a selected site or sites will promote the ends of justice  
16 taking into account whether the common question of fact or law is  
17 predominating and significant to the litigation; the convenience of  
18 parties, witnesses, and counsel; the relative development of the  
19 actions and the work product of counsel; the efficient utilization of  
20 judicial facilities and manpower; the calendar of the courts; the  
21 disadvantages of duplicative and inconsistent rulings, orders, or  
22 judgments; and, the likelihood of settlement of the actions without  
23 further litigation should coordination be denied.

24 Application of these factors to the present motion demonstrates the propriety of  
25 coordination.

26 **1. The Actions to be Coordinated Share Common Questions of Fact and/or Law.**

27 All of the currently operative pleadings are submitted as exhibits to the  
28 accompanying request for judicial notice. The basic factual predicate for the claims raised in  
these actions is identical, namely, the Governor's issuance of Executive Orders S-16-08 and S-13-  
09 directing the furloughs of state employees and the implementation of those furloughs by the  
Department of Personnel Administration ("DPA"). This is made evident by a review of the  
specific allegations contained in the petitions/complaints.

1 First, each of the actions allege the same causes of action: for a writ of mandate,  
2 declaratory and injunctive relief. (The CalPERS action in San Francisco County Superior Court  
3 omits claims for injunctive and declaratory relief.) Thus, the causes of action being pled are the  
4 same. This was a key factor for the court in *McGhan Medical Corporations v. Superior Court*,  
5 *supra*, 11 Cal.App.4th 804, 814 in finding that coordination in that case should occur.

6 The commonality among the cases, however, is based on more than merely  
7 pleading the same causes of action. This commonality is found through an examination of the  
8 specific factual allegations contained in the complaints, which are often stated in nearly identical  
9 language. For instance, the opening paragraph of the *CAPT v. Schwarzenegger* action filed in this  
10 Court states that it is based on Governor Schwarzenegger's December 19, 2008 Executive Order  
11 S-16-08, and paragraph 4 of the complaint alleges that the action also is brought to challenge  
12 Governor Schwarzenegger's July 1 2009 Executive Order S-13-09. (See Exhibit B to RJN, ¶ 1,  
13 4.) This allegation is repeated in the other actions to be coordinated. See e.g., opening and third  
14 [unnumbered] paragraphs in *CASE v. Schwarzenegger*, Alameda County Superior Court Case No.  
15 RG09453982 alleging that the action is based on the same Executive Orders, Exhibit D to RJN, p.  
16 4; *SEIU v. Schwarzenegger*, Alameda County Superior Court Case No. RG09456750 alleging at  
17 paragraphs 1, and 2 "[i]n filing this Petition, Petitioners challenge the legality of Executive Order  
18 S-16-08 ... issued by Governor Schwarzenegger ... on December 19, 2008" and Executive Order  
19 S-13-09, Exhibit E to RJN, ¶ 1, and 2; *UAPD v. Schwarzenegger*, Alameda County Superior  
20 Court Case No. RG09456684 alleging at paragraph 1 that the case is based on the same Executive  
21 Order, Exhibit F to RJN, ¶ 1; *CCPOA v. Schwarzenegger*, Alameda County Superior Court Case  
22 No. RG09441544 alleges at paragraph 1 that the action is based on the same Executive Order,  
23 Exhibit G to RJN, ¶ 1; *CalPERS v. Schwarzenegger*, San Francisco County Superior Court Case  
24 No. CPF-09-509754 alleging that the action is based on same Executive Order, Exhibit H to RJN,  
25 ¶ 4. Although the *SEIU/Walker v. Schwarzenegger*, Sacramento County Superior Court Case No.  
26 34-2009-80000150 action does not directly challenge the legality of the Executive Order, it does  
27 challenge the implementation of that Executive Order by the DPA and thus shares common issues  
28 of fact and law with the other actions. (See Exhibit B to the RJN.).

922719.1

- 6 -

1 A review of the prayers to the various complaints also reveals the same  
2 commonality. In *CAPT v. Schwarzenegger*, petitioners pray for a writ of mandate ordering the  
3 Governor to “rescind the [alleged] pay cuts implemented” through the Executive Orders. (Exhibit  
4 B to RJN, p. 8.) The CASE Alameda County action prays for a writ of mandate ordering  
5 Governor Schwarzenegger and Director Gilb “to set aside” the Executive Orders. (Exhibit D to  
6 RJN, p. 39.) The SEIU Alameda County Action prays for a writ of mandate ordering Governor  
7 Schwarzenegger “to set aside” the Executive Orders. (Exhibit E to RJN, p. 38.) The UAPD  
8 Alameda County action prays for a writ of mandate ordering the Governor “to cease furloughing”  
9 Petitioners’ members. (Exhibit F to RJN, p. 14.) The CCPOA Alameda County action prays for  
10 a writ of mandate requiring Governor Schwarzenegger to restore compensation lost due to  
11 furloughs. (Exhibit G, p. 23.) In short, a review of the various complaints demonstrates the  
12 common factual basis for the claims alleged.

13 Petitioners will argue that the various actions allege different legal theories to  
14 challenge the Governor’s Executive Orders. However, it is clear that the primary right being  
15 pursued by the Petitioners is relief from furloughs. A “primary right” has been defined as “the  
16 plaintiff’s right to be free from the particular injury suffered.” (*Mycogen v. Monsanto Company*,  
17 *supra*, 28 Cal.4th 888, 904, quoting *Crowley v. Katleman* (1994) 8 Cal.4th 666, 681-682.) “The  
18 most salient characteristic of a primary right is that it is indivisible: the violation of a single  
19 primary right gives rise to but a single cause of action. [Citation omitted.] A pleading that states  
20 the violation of one primary right in two causes of action contravenes the rule against ‘splitting’ a  
21 cause of action. [Citation omitted.]” (*Le Parc Community Ass'n v. Workers' Compensation*  
22 *Appeals Bd.* (2003) 110 Cal.App.4th 1161, 1169 quoting *Crowley v. Katleman* (1994) 8 Cal.4th  
23 666, 681.) “[I]f two actions involve the same injury to the plaintiff and the same wrong by the  
24 defendant, then the same primary right is at stake even if in the second suit the plaintiff pleads  
25 different theories of recovery, seeks different forms of relief and/or adds new facts supporting  
26 recovery.” (*Id.*, at p. 1170, quoting *Tensor Group v. City of Glendale* (1993) 14 Cal.App.4th  
27 154.) “Even where there are multiple legal theories upon which recovery might be predicated,  
28 one injury gives rise to only one claim for relief. The primary right must also be distinguished

922719.1

- 7 -

1 from the *remedy* sought: ‘The violation of one primary right constitutes a single cause of action,  
2 though it may entitle the injured party to many forms of relief, and the relief is not to be  
3 confounded with the cause of action, one not being determinative of the other.’” (*Mycogen v.*  
4 *Monsanto Company, supra*, (2002) 29 Cal.4th 888, 904, *quoting Crowley v. Katleman* (1994) 8  
5 Cal.4th 666, 681-682.)

6 In all of these actions, the primary right being pursued is relief from the furloughs  
7 established by the Executive Orders and the implementation of those furloughs pursuant to the  
8 DPA’s implementation plans. This is the critical factual predicate underlying all of these cases.  
9 The fact that different legal theories are being followed to seek a legal determination regarding  
10 the primary right being asserted, *i.e.*, relief from the furloughs, does not detract from the  
11 commonality of the actions. (See, *McGhan Medical Corporations v. Superior Court, supra*, 11  
12 Cal.App.4th 804, 812.) While petitioners may take different legal paths to achieve their desired  
13 result, all roads lead back to one basic, primary issue or right: a challenge to the enforceability of  
14 the Governor’s Executive Orders. Accordingly, common questions of law and/or fact are, in the  
15 language of section 404.1, “predominating and significant” and this element for coordination is  
16 satisfied.

17 **2. Coordination Will Promote Efficient Use of Judicial Resources.**

18 At present, challenges to the Governor’s Executive Orders directing the furloughs  
19 of state employees are being litigated in three different Superior Courts. Coordinating these  
20 actions in a single court constitutes an efficient use of judicial resources and promotes judicial  
21 economy. Coordination in this Court promotes these interests for several reasons.

22 First, this Court was the first to assert jurisdiction over furlough challenges and,  
23 therefore, should continue to be the court to hear these challenges pursuant to the doctrine of  
24 exclusive concurrent jurisdiction. “Under the rule of exclusive concurrent jurisdiction, when two  
25 California superior courts have concurrent jurisdiction over the subject matter and all parties  
26 involved in the litigation, the first to assume jurisdiction has exclusive and continuing jurisdiction  
27 over the subject matter and all parties involved until such time as all necessarily related matters  
28 have been resolved.” (*Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168

922719.1

1 Cal.App.4th 675, 682; *People ex rel. Garamendi v. American Autoplan, Inc.* (1993) 20  
2 Cal.App.4th 760, 769-70.) “The rule is based on the public policies of avoiding conflicts that  
3 might arise between courts if they were free to make contradictory decisions or awards relating to  
4 the same controversy, and preventing vexatious litigation and multiplicity of suits. [Citations.]”  
5 (*Plant Insulation Company v. Fiberboard Corporation* (1990) 224 Cal.App.3d 781, 787.) “The  
6 rule is established and enforced not ‘so much to protect the rights of parties as to protect the rights  
7 of Courts of co-ordinate jurisdiction to avoid conflict of jurisdiction, confusion, and delay in the  
8 administration of justice.’ [Citation.]” (*Id.*) Where the requirements for exclusive concurrent  
9 jurisdiction are present, application of the doctrine is *mandatory*. “Thus, if the conditions are  
10 met, the issuance of a stay order is a matter of right.” (*Garamendi, supra*, 20 Cal.App.4th at 772.)  
11 Respondents have been compelled to raise this issue in the Alameda and San Francisco County  
12 Superior Courts through demurrers to the petitions filed in those courts. This Court’s assertion of  
13 jurisdiction over these other actions – jurisdiction this Court possesses in the first place based on  
14 exclusive concurrent jurisdiction – will obviate the need for continually raising this defense  
15 through pleading challenges.

16 Second, this Court already has adjudicated furlough challenges and is familiar with  
17 the issues connected to them. For instance, in the CASE, SEIU, and UAPD Alameda County  
18 actions, petitioners allege that furloughs should not be imposed on their members working in  
19 certain “special fund” agencies because furloughing those employees does not result in savings to  
20 the General Fund. In its Amended Final Order, this Court specifically addressed the General  
21 Fund vs. special fund issue at footnote 10 of its decision:

22 At oral argument on these matters, counsel for CASE and PECG  
23 argued that many of their members work in so-called “special fund”  
24 agencies, and that the Governor’s order, which was designed to deal  
25 with a looming General Fund deficit, was not reasonably related to  
26 the fiscal emergency insofar as it orders furloughs for those  
employees. (CASE also raised this issue in its reply brief.) This  
contention was not raised in any of the petitions or complaints for  
declaratory relief, and petitioners did not submit any evidence to  
support it. The Court therefore makes no findings on it.

27 (*Id.* at p. 9, fn. 10.)

28

1 Thus, the very issue at the center of the CASE, SEIU, and UAPD Alameda County actions  
2 already has been raised before this Court. While this Court did not make any specific findings on  
3 this issue due to the fact that it was raised in an untimely fashion by Petitioners in the original  
4 furlough actions, this Court has been exposed to this issue and, therefore, should be the Court to  
5 now finally address it as raised in the Alameda County actions. Accordingly, this factor for  
6 coordination is satisfied here.

7 **3. Coordination Will Not Result in Prejudice to any Party.**

8 None of the actions to be coordinated currently has a date set for a hearing on the  
9 merits. In fact, there are no hearings currently set in the CAPT and SEIU actions pending in this  
10 Court or the CalPERS action pending in the San Francisco County Superior Court. None of the  
11 actions has gotten to such a stage that transferring them to this Court will result in undue delay in  
12 their adjudication. Furthermore, as stated by the court in *McGhan Medical Corporations v.*  
13 *Superior Court, supra*, 11 Cal.App.4th 804, 813 any minimal delay resulting from the process of  
14 transferring and coordinating these actions is a “modest price to pay for the efficiency to be  
15 gained by ... coordination.” Finally, the majority of Petitioners’ counsel – counsel for SEIU,  
16 CASE, and CAPT – as well as counsel for Respondents all have their offices in Sacramento.  
17 Accordingly, litigating these cases in this Court will result in efficiency and convenience to the  
18 parties.

19 In contrast to the absence of any prejudice to Petitioners from the coordination of  
20 these actions, the failure to coordinate them will result in prejudice to the State and its agencies  
21 named as Respondents in these cases. Without an order coordinating these, and future, furlough  
22 cases, Respondents will be subjected to lawsuits filed in multiple courts throughout California  
23 and subjected to the risk of inconsistent adjudications with respect to the issue basic to all of these  
24 cases: the Governor’s authority to furlough state employees. (See argument below.) This  
25 prejudice to the State and its agencies can be prevented through the issuance of the requested  
26 coordination order.

1           **4.       Coordination Will Avoid the Risk of Inconsistent Adjudications.**

2           The fact that coordination will avoid risk of inconsistent judgments among the  
3 different trial courts in which these cases are pending is self evident. An equally important risk of  
4 inconsistent adjudications avoided by this coordination, however, is the risk of inconsistent  
5 appellate decisions. Currently, the three cases decided by this Court on January 29, 2009 are on  
6 appeal to the Third District Court of Appeal. Appellants' opening briefs are due in that Court on  
7 September 3, 2009. (See Declaration of David W. Tyra.) These will be the first cases to be heard  
8 at the appellate level. Because of the importance of the questions surrounding challenges to the  
9 Governor's authority to furlough state employees, however, it is likely that all of these cases will  
10 end up in the appellate courts. If these cases are not coordinated, this will mean that the actions  
11 currently pending in the Alameda and San Francisco County Superior Courts will be appealed to  
12 the First District Court of Appeal. This situation creates a risk of conflicting appellate decisions  
13 on these important issues. Coordination in this court, on the other hand, will ensure that all  
14 appeals go to the Third District Court of Appeal and thereby avoid the risk of conflicting  
15 appellate decisions.

16       **D.       Coordination Pursuant to Section 403 Is Appropriate Because These Cases Are**  
17       **Noncomplex.**

18           The determination of whether a case is noncomplex is governed by the definition  
19 and factors found at Rule 3.400 of the California Rules of Court. Subsection (a) of that rule  
20 defines complex cases as follows:

21                   A 'complex case' is an action that requires exceptional judicial  
22                   management to avoid placing unnecessary burdens on the court or  
23                   the litigants and to expedite the case, keep costs reasonable, and  
24                   promote effective decision making by the court, the parties, and  
25                   counsel.

26           Based on this definition, these cases are noncomplex. These cases have not  
27 required "exceptional judicial management." In fact, as this Court will recall with respect to the  
28 three cases adjudicated by it on January 29, 2009, there was a single scheduling conference held  
on January 9, 2009, and from that scheduling conference the cases moved to a full hearing on the  
merits and final resolution. From commencement to final decision, took less than 45 days. The

1 same is true of the other cases to be coordinated. In the Alameda County cases, for instance, a  
2 single case management conference has been held at which the Court set deadlines for service of  
3 process, discovery, and established a hearing date on pleadings challenges. This is not  
4 “extraordinary judicial management.” The fact that these cases may involve novel, important, or  
5 complicated issues does not make them “complex.”

6           The designation of a case as “complex” is reserved for a narrow set of cases that  
7 are lengthy, expensive, and require “exceptional judicial management” to ensure they do not get  
8 out of hand. As the Judicial Council notes in its fact sheet regarding complex civil litigation,  
9 complex cases “may involve such areas as antitrust, securities claims, construction defects, toxic  
10 torts, mass torts, and class actions.” (See Exhibit I to RJN.) These cases are not of that type.  
11 Indeed, “[m]ost litigation falls in the ‘noncomplex’ category.” (Weil & Brown, Cal. Practice  
12 Guide: Civil Procedure Before Trial (The Rutter Group 2009) ¶ 12:405.2.) That is certainly the  
13 case here.

14           The conclusion that these cases are noncomplex is further supported by  
15 examination of the factors for complex cases listed at Rule of Court 3.400(b).

16           **1. These Cases Do Not Involve “Numerous Pretrial Motions Raising Difficult or**  
17           **Novel Legal Issues that Will Be Time-Consuming to Resolve.”**

18           The first factor listed at Rule 3.400 is whether these cases will involve “numerous  
19 pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve.”  
20 This factor is not present here. Once again, this Court’s own experience is instructive. At the  
21 hearing on January 29, 2009, this Court resolved the *only* pretrial motion – Respondents’  
22 demurrer to Petitioners’ complaints – contemporaneously with the Court’s hearing on, and  
23 resolution of, the merits. This also is true in the other jurisdictions hearing these cases. The only  
24 pretrial motions being raised are demurrers to the complaints. There are not *numerous* pretrial  
25 motions that are difficult, time-consuming or expensive. This factor weighs in favor of a  
26 classification of these cases as noncomplex.

1           **2.       These Cases Do Not Involve “Management of a Large Number of Witnesses**  
2           **or a Substantial Amount of Documentary Evidence.”**

3           The second factor listed at Rule 3.400(b) for determination of whether a case is  
4 complex is whether it involves “[m]anagement of a large number of witnesses or a substantial  
5 amount of documentary evidence.” These cases, to date, have been resolved without the  
6 necessity of live testimony from *any* witness. All testimony has been submitted through a  
7 relatively small number of declarations. Similarly, the documentary evidence in these cases has  
8 been limited and manageable.

9           Petitioners in the CASE, SEIU and UAPD Alameda County actions may argue  
10 that those cases, two of which name over 60 state agency directors as Respondents, will involve  
11 witnesses and documentary evidence of a different magnitude than the other furlough cases. Yet,  
12 this fact, even if true, would not render the cases complex. It is important to keep the basic  
13 definition of a complex case in mind, *i.e.*, a case requiring “exceptional judicial management.”  
14 There is no reason to believe that even if these cases involve a greater number of witnesses or  
15 volume of documentary evidence they will require “exceptional judicial management.” As  
16 evidence of this, unlike any of the other furlough cases heard to date, CASE and CCPOA have  
17 propounded discovery in their Alameda County actions. However, this discovery process has not  
18 required any court management and none is anticipated. In the end, even if there is an increase in  
19 testimonial and documentary evidence in these cases there will not be enough to warrant complex  
20 case designation.

21           **3.       These Cases Do Not Involve the “Management of a Large Number of**  
22           **Separately Represented Parties.”**

23           The third factor listed at Rule 3.400(b) for determination of whether a case is  
24 complex is whether it involves “[m]anagement of a large number of separately represented  
25 parties.” As demonstrated by the list of counsel attached to the meet and confer letters sent out  
26 regarding this motion (see Exhibit A to the Declaration of David W. Tyra), these cases do not  
27 involve a large number of separately represented parties. In the seven cases to be consolidated in  
28 this Court, there are only 12 different lawyers/law firms involved, and the majority of those are

1 involved in more than one of the cases. For instance, the Governor and Director David Gilb are  
2 represented by the same counsel in all cases. Other attorneys, e.g., Ross Moody of the Attorney  
3 General's office, Ronald Turovsky of Manatt, Phelps & Phillips, Harvey Leiderman of Reed  
4 Smith, and Michael Strumwasser of Strumwasser & Woocher, represent parties in multiple  
5 actions, a fact that supports coordination of these cases in a single court.

6           Petitioners may argue that in two of the cases to be coordinated, the CASE and  
7 SEIU Alameda County actions, there are over 60 named Respondents and that this demonstrates  
8 the "complexity" of those actions. However, of the 60+ agency directors named as Respondents  
9 in those actions, the vast majority are represented by the same counsel at the Department of  
10 Personnel Administration, Labor Relations Counsel Will M. Yamada. Less than a half dozen of  
11 the named Respondents in those actions have chosen to retain their own separate counsel. The  
12 number of counsel involved in these cases is manageable in a single court and once again, this  
13 factor weighs in favor of a finding that these cases are noncomplex.

14           **4. While These Cases Do Involve Coordination of Actions Pending in Different**  
15           **Counties, This Factor Alone Does Not Render the Actions Complex.**

16           The fourth factor listed at Rule 3.400(b) for determination of whether a case is  
17 complex is whether it involves "[c]oordination with related actions pending in one or more courts  
18 in other counties, states, or countries, or in a federal court." Given that the purpose of this motion  
19 is to coordinate actions pending in different Superior Courts, moving parties concede that this  
20 factor exists *to a degree*. However, this factor standing alone cannot render a case complex. This  
21 is demonstrated by the fact that Code of Civil Procedure section 403 provides for the coordination  
22 of noncomplex actions. If every time a party sought to coordinate actions pending in different  
23 courts, the pendency of actions in different courts rendered those cases complex, there would be  
24 no such thing as the coordination of noncomplex cases, a conclusion belied by the express  
25 language of section 403.

26           Furthermore, the coordination sought here does not involve actions filed in other  
27 states, countries, or in federal court. This motion seeks to coordinate actions pending in three  
28

1 Northern California Superior Courts. Coordination of this type is precisely the sort of  
2 coordination of noncomplex cases contemplated by section 403.

3 **5. These Cases Do Not Involve “Substantial Postjudgment Judicial**  
4 **Supervision.”**

5 The fifth, and final, factor listed at Rule 3.400(b) for determination of whether a  
6 case is complex is whether it requires “[s]ubstantial postjudgment judicial supervision.” These  
7 cases do not involve the prospect of *any* postjudgment judicial supervision. Thus, this factor, like  
8 the rest, weighs in favor of finding these cases to be noncomplex.

9 An analysis of the factors supporting complex case designation set forth at Rule  
10 3.400 demonstrates that these cases are noncomplex. Accordingly, a motion for coordination of  
11 noncomplex cases pursuant to Code of Civil Procedure section 403 is the proper vehicle for  
12 bringing this matter to this Court for determination. Furthermore, as previously noted, bringing  
13 this motion in this case – the oldest of the furlough cases pending at the trial court level – and in  
14 this Court – the first to assert jurisdiction over the issues arising from the Governor’s Executive  
15 Orders directing furloughs of state employees – is the proper step to take.

16 **III.**

17 **CONCLUSION**

18 Based on the foregoing, Respondents Governor Arnold Schwarzenegger and  
19 Director David Gilb hereby respectfully request that this Court order the transfer of the listed  
20 cases to this Court pursuant to Code of Civil Procedure section 403 for coordination with the  
21 actions already pending in this Court.

22 Dated: August 31, 2009

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