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FILED
 Superior Court Of California,
 Sacramento
 11/06/2009
 amacias
 By _____, Deputy
 Case Number:
 34-2009-00063209

8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF SACRAMENTO

12 CALIFORNIA CORRECTIONAL
 SUPERVISOR'S ORGANIZATION,

14 Plaintiff,

14 v.

15 CALIFORNIA DEPARTMENT OF
 16 CORRECTIONS AND REHABILITATION;
 17 THE CALIFORNIA DEPARTMENT OF
 18 PERSONNEL ADMINISTRATION and
 19 DOES 1 THROUGH 20 inclusive.

) Case No.:

) COMPLAINT AND TEMPORARY
) RESTRAINING ORDER, PRELIMINARY
) AND PERMANENT INJUNCTION

Department
 Assignments
 Case Management 43
 Law and Motion 54
 Minors Compromise 17

21 I.

22 PARTIES AND GENERAL ALLEGATIONS

23 Plaintiffs allege:

24 1. Plaintiff, the California Correctional Supervisor's Organization is, and at all times
 25 herein mentioned in this complaint, was a recognized labor organization representing
 26 correctional supervisors employed in various correctional institutions throughout the state.

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1 2. At all times herein mentioned Defendant, State of California is and was a political
2 subdivision of the United States and is responsible for the incarceration of individuals convicted
3 of crimes within the State.

4 3. Defendant, the California Department of Corrections and Rehabilitation is, and at
5 all times mentioned, was a political subdivision of the State of California and is responsible for
6 the incarceration and rehabilitation of persons convicted of crimes within the state and the
7 employment of correctional supervisors within each correctional institution maintained by the
8 State of California Department.

9 4. Defendant, California Department of Personnel Administration is, and at all times
10 mentioned, was a political subdivision of the State of California and represents the State of
11 California as the employer in all matters pertaining to state personnel employer-employee
12 relations including the negotiation of salary and benefits and the administration of salary and
13 benefits provided to all correctional supervisors employed by the state.

14 5. Defendants, Does 1 through 20 inclusive, are sued in this complaint under
15 fictitious names. Their true names and capacities are unknown to plaintiffs. When their true
16 names and capacities are known, plaintiffs will amend this complaint by asserting their true
17 names and capacities herein. Plaintiffs are informed and believe, and thereon allege that each of
18 the fictitiously named defendants is responsible in some manner for occurrences alleged in this
19 complaint, and if plaintiffs' damages as alleged in this complaint were proximately caused by
20 those defendants.

21 6. On or about December 19, 2008, Governor Arnold Schwarzenegger issued
22 Executive Order S-16-08. This order directed that the Department of Personnel Administration,
23 effective February 1, 2009 through June 30, 2010 implement a furlough program regarding state
24 employees and supervisors wherein employees would be furloughed for a period of two days per
25 month and implement a salary reduction for those employees equivalent to two days per month
26 for those days the employees did not work. The furlough days would result in an approximate
27 10% reduction in employees pay. Subsequently, Governor Schwarzenegger imposed an
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1 additional furlough day per month on state employees for a total of three furlough days per
2 month.

3 7. On or about January 9, 2009, the Department of Personnel Administration issued
4 an implementation plan in an attempt to comply with the Governor's Executive Order S-16-08.
5 In light of the need for 24-hour, 7 day a week supervision of correctional officers and the inmates
6 incarcerated, defendant, Department of Personnel Administration implemented a procedure for
7 self-directed furlough days which would then be taken, if possible, by the employee by June 30,
8 2012 and taken at the discretion of their supervisors in consideration of staffing needs. If a
9 supervisor does not take their "furlough days" on or before June 30, 2012, those days would be
10 forfeited. The Department's January 9, 2009 directive does not provide that a furloughed day be
11 granted for furloughed employees during the pay period in which they are allegedly furloughed.

12 8. Thus, correctional supervisors are required to work a 40 hour work week, of which
13 three work days (24 hours) per month are uncompensated with the hope that the Department,
14 depending upon staffing levels, will allow supervisors to take "furlough days" off from work
15 during the pay period in which they are accrued. The decision to allow a correctional supervisor
16 to take a furlough day is at the discretion of their supervisor and on many occasions correctional
17 supervisors are not allowed to take furlough days during the pay period in which they are
18 accrued. As such, plaintiff alleges that correctional supervisors are not being fully compensated
19 for work performed for the State of California and the California Department of Corrections and
20 Rehabilitation during the pay period in which the work was performed.

21 II.

22 FIRST CAUSE OF ACTION

23 (Violation of Labor Code Section 212)

24 9. Plaintiff incorporates herein by reference paragraphs 1 through 8 of General
25 Allegations as though set forth at length. Labor Code Sections 212 requires that every employer
26 in the State of California, including those employed as supervisors with the California
27 Department of Corrections and Rehabilitation, be paid for wages for hours worked, payable in
28 cash, on demand and within the pay period in which the work was performed.

1 conduct is not restrained or in the event that plaintiff is forced to a multiplicity of suits to attain
2 an adequate remedy for defendants' wrongs as herein alleged.

3 **IV.**

4 **THIRD CAUSE OF ACTION**

5 **(Declaratory Relief)**

6 17. Plaintiff incorporated herein by reference paragraphs 1 through 7 of the General
7 Allegations; paragraphs 9 through 11 of the First Cause of Action; paragraphs 12 through 16 of
8 the Second Cause of Action as though set forth at length.

9 18. An actual controversy has arisen and now exists between plaintiff and defendants
10 concerning their respective rights and duties in that plaintiff contends that the implementation of
11 the furlough program, as applied to correctional supervisors denies supervisor's compensation for
12 hours worked when supervisors are not allowed to take three furlough days off per month in the
13 pay period in which they are accrued, whereas the defendants claim that the furlough days do not
14 have to be taken in the pay period in which they are accrued and that by accumulating the
15 furlough days that may possibly be used by the affected supervisor does not constitute a violation
16 of California's wage and hour laws.

17 19. A judicial declaration is necessary and appropriate at this time in order that
18 plaintiff may ascertain its rights and duties as they apply to the application of the state's wage
19 and hour laws to its members. Plaintiff has exhausted all administrative remedies available to it
20 by meeting with representatives of the defendants named herein and request the relief requested
21 in this complaint. No other administrative remedies are currently available.

22 WHEREFORE, Plaintiffs pray judgment against defendants and each of them as follows:

23 1. For an order requiring defendants to show cause if they have, why they should not
24 be enjoined as set forth in this complaint, during the pendency of this action;

25 2. For a temporary restraining order, a preliminary injunction, and a permanent
26 injunction, all enjoining defendants, and each of them, and their agents, servants, and employees,
27 and all persons acting under, or in concert with them from: a) continue to work correctional
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1 supervisors who work three days per month without compensation within the pay period in
2 which they work.

3 3. For a declaration that correctional supervisors must be compensated for all hours
4 work in the pay period in which the work is performed either by money or the use of all furlough
5 days accrued during the pay period.

6 4. For attorney's fees pursuant to Government Code Section 1021.5

7 5. For costs of suit incurred in this action; and

8 6. For such other and further relief as this court deems just and proper.

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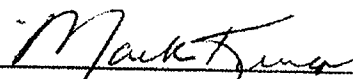
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Respectfully submitted.

14 Dated: November 5, 2009

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MARK R. KRUGER
Attorney for Plaintiffs

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VERIFICATION


I, MARK R. KRUGER declare;

I am an attorney duly licensed to practice law in all courts of the State of California and am the attorney for Plaintiff, California Correctional Supervisor's Organization.

Plaintiff resides outside of the county in which my office is located, and therefore I execute this Complaint on their behalf. I have reviewed the Complaint and I know the contents thereof. I certify the same is true of my own knowledge except as to those matters which are therein stated upon my information and belief, and 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 on November 5, 2009 at Elk Grove, California.



MARK R. KRUGER,
Attorney for California Correctional
Supervisor's Organization