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13 Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER as Governor of the State of
California; DAVID GILB as Director of the Department of
14 Personnel Administration

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

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF ALAMEDA
17

18 CALIFORNIA ATTORNEYS,
19 ADMINISTRATIVE LAW JUDGES AND
20 HEARING OFFICERS IN STATE
EMPLOYMENT,

21 Petitioner/Plaintiff,

22 v.

23 ARNOLD SCHWARZENEGGER as,
24 Governor of the State of California, et al.,

25 Defendants/Respondents.
26
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CASE NO. RG-09453982

[Assigned for all purposes to Judge Frank
Roesch, Dept. 31]

NOTICE OF APPEAL

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To the Clerk of the Superior Court of the State of California for the County of Alameda.

PLEASE TAKE NOTICE that Respondents/Defendants ARNOLD SCHWARZENEGGER, in his capacity as Governor of the State of California; DAVID GILB, in his former capacity as Director of the Department of Personnel Administration, hereby appeal to the First District Court of Appeal, State of California from the final judgment in this matter and the following Orders that are separately appealable: (1) the Order of October 14, 2009 overruling Respondents'/Defendants' demurrer to the Petition for Writ of Mandate, a true and correct copy of which is attached as Exhibit A hereto; (2) the Order After Hearing in this matter entered on December 31, 2009, a true and correct copy of which is attached as Exhibit B hereto; (3) the Order After Hearing in this matter entered on February 25, 2010, a true and correct copy of which is attached as Exhibit C hereto; and (4) the Judgment for Petitioner in this matter entered on February 25, 2010, a true and correct copy of which is attached as Exhibit D hereto; as well as any Writ of Mandate subsequently issued pursuant to any and/or all of them.

The December 31, 2009 Order (Exhibit B), the February 25, 2010 Order (Exhibit C), and the February 25, 2010 Judgment for Petitioner (Exhibit D) granted a Writ of Mandate and attendant relief in this action. Therefore, the filing of this appeal automatically stays the effect of those Orders and the Judgment, as well as any subsequently issued Writ of Mandate itself. (*Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 727.)

Dated: February 26, 2010 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

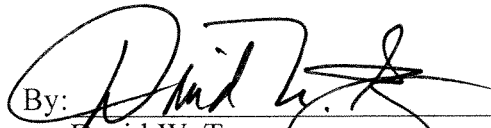
By: 
David W. Tyra
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER as Governor of the
State of California; DAVID GILB as Director of the
Department of Personnel Administration

EXHIBIT A



7843974

FILED
ALAMEDA COUNTY

OCT 14 2009

CLERK OF THE SUPERIOR COURT
E By *Camille A. [Signature]*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT,

Petitioner/Plaintiff,

vs.

ARNOLD SCHWARZENEGGER, et al.

Respondents/Defendants.

RG09453982

ORDER OVERRULING DEMURRER

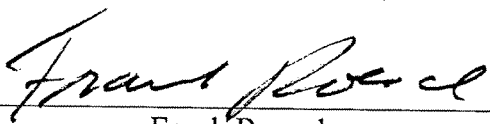
The Demurrer of Defendants/Respondents Arnold Schwarzenegger, et al. came on regularly for hearing on September 11, 2009, in Department 31 of this Court, the Honorable Frank Roesch presiding. David W. Tyra appearing for Schwarzenegger. Patrick J. Whalen appearing for Petitioner. Ross C. Moody appearing for the State Controller. William Yamada and co-counsel Jenny L. Esquivel appearing for the California Energy Commission. Aparna Sridhar appearing for Glenn Pomeroy. Ronald B. Turovsky appearing for Joan Borucki.

Felix De La Torre appearing for S.E.I.U. Jeffery Ryan Rieger appearing for CALPERS.

The Court having considered the pleadings and arguments submitted in support of and in opposition to the motion, and good cause appearing, it is hereby ORDERED that the demurrer on grounds of subject matter jurisdiction/exclusive concurrent jurisdiction is OVERRULED.

IT IS SO ORDERED.

DATED: 10/14/09



Frank Roesch
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

Case Number : RG09 453982
Case name: CA Attorneys vs. Schwarzenegger

ORDER OVERRULING DEMURRER

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document **ORDER OVERRULING DEMURRER** as mailed first class, postage prepaid, in a sealed envelope, addressed as shown at the bottom of this document, and that the mailing of the foregoing and execution of this certificate occurred at 1221 Oak Street, Oakland, CA 94612

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 19, 2009

Executive Officer/Clerk of the Superior Court
By Shanika Hatfield, Deputy Clerk

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Sacramento, CA 95814

A.G. Kawamura
Secretary, California Department of
Food and Agriculture
1220 N Street
Sacramento, CA 95814-_____

EXHIBIT B



FILED
ALAMEDA COUNTY

DEC 31 2009

CLERK OF THE SUPERIOR COURT

By Vicki Daybell *rd*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES
AND HEARING OFFICERS IN
STATE EMPLOYMENT,

Petitioner/Plaintiff,

vs.

ARNOLD SCHWARZENEGGER,
et al.,

Respondents/Defendants.

RG09453982

ORDER GRANTING PETITION
FOR WRIT OF MANDATE

The hearings on the coordinated Petitions for Writ of Mandate of California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE"), Union of American Physicians and Dentists ("UAPD"), and Service Employees International Union, Local 1000 and Yvonne Walker ("SEIU") came on regularly on November 16, 2009, in Department 31 of this Court, Judge Frank

Roesch presiding. CASE appeared by Patrick Whalen of The Law Office of Brooks Ellison. UAPD appeared by Adam Zapala of Davis, Cowell & Bowe, LLP. SEIU appeared by Felix J. De La Torre, Esq.

Respondents on the Petitions appeared as follows:

Respondent Arnold Schwarzenegger, David Gilb, and Kris Perry appeared by David W. Tyra, Esq., of Kronick, Moskovitz, Tiedemann & Gerard.

Respondents Alan Kerzin, Bonnie Garcia, Bridgett Luther, Caleb Cheung, David Maxwell-Jolly, Carrie Lopez, Dale Bonner, Destie Overpeck, Dorothy Rice, Douglas Bosco, Fred Armendariz, George Valverde, J.A. Farrow, Jon Duncan, John P. Donnelly, Julie Nauman, Karen Humphrey, Ken Lewis, Kirk Breed, L. Steven Spears, Lester Snow, Lloyd Throne, Lynn Daucher, Lynn Jacobs, Mark Horton, Mark Leary, Mary D. Nichols, Mary-Ann Warderman, Maziar Movassaghi, Mike Chrisman, Patrick Henning, Patrick Wright, Raynor T. Tsuneyoshi, Ron Diedrich, Ronald P. Schafer, Ruth Coleman, Steve Hardy, Steve Poizner, Terri Ciau, Tony Sauer, John A. Wagner, Kimberly Belshe, Will Kempton, and William Haraf appeared by Will M. Yamada, Esq., Labor Relations Counsel for the Department of Personnel Administration.

Respondents Anne Stausboll, Jack Ehnes, and John A. Wagner appeared by Harvey L. Leiderman, Esq., of Reed Smith.

Respondents Edmund G. Brown Jr., Debra Bowen, and John Chiang appeared by Ross C. Moody, Esq., California Department of Justice.

Respondent Glenn Pomeroy appeared by Aparna Sridhar, Esq. and Michael J. Strumwasser, Esq. of Strumwasser & Woocher LLP.

Respondent Joan Borucki represented by Ronald B. Turovsky, Esq. of Manatt, Phelps, & Phillips, LLP.

At the hearing, Petitioners on all three Petitions joined in each others' arguments, as did Respondents on all Petitions.

The Court having considered the pleadings, evidence,¹ and arguments submitted in support of and in opposition to the CASE Petition, and good cause appearing, it is hereby ORDERED that the Petition is GRANTED. The reasons follow:

FACTUAL BACKGROUND

A. The State's General Fund and Special Funds

State employees' salaries may be paid from any one or more of three funding sources: the General Fund, special state funds that are earmarked for particular programs or agencies, and federal funds received by the state as a passthrough. Many, but not all, special funds agencies deposit "idle" cash in the Pooled Money Investment Account ("PMIA"), which creates a pool of resources from which the State may borrow to meet current fiscal obligations. The State may also directly borrow from special funds held by an individual agency or

¹ Respondents' objections to the Declaration of Patrick Whalen are overruled as moot in light of the supplemental Declaration of Patrick Whalen, submitted on November 9, 2009. All requests for judicial notice are GRANTED as unopposed.

department. The Controller's Office turns to external borrowing only after determining that resources available from internal borrowing are insufficient to meet the cash needs of the General Fund. Certain special funds are, by statute, non-borrowable. Likewise, federal funds designated for use by particular agencies cannot be borrowed to pay General Fund obligations.

B. The Executive Orders

The Governor issued two Executive Orders that reduced the workdays and salaries of State employees. On December 19, 2008, Governor Schwarzenegger issued Executive Order S-16-08, which directed the Department of Personnel Administration ("DPA") to adopt a plan to furlough state employees "regardless of funding source" for two days per month, and to reduce their pay by a commensurate amount, effective February 1, 2009, through June 30, 2009. The order directed DPA to include a "limited exemption process." The only specific authority cited in the order was Government Code section 3516.5.

Two months later, on February 19, 2009, the Legislature passed a budget, which was signed into law by the Governor the next day.

On July 1, 2009, Governor Schwarzenegger issued Executive Order S-13-09, which directed DPA to implement an additional (third) furlough day each month, and extended the implementation of the prior two-day furlough an additional year, effective July 1, 2009, and through June 30, 2010. Again, the only specific authority cited in the order was Government Code section 3516.5.

Approximately a month later, on July 28, 2009, the Governor signed into law a budget for fiscal year 2009/10.

C. The Petitioners in this Matter

Petitioner CASE represents legal professionals in Bargaining Unit 2, who work in some 80 different state departments, boards and commissions. CASE argues that a majority of its members work in positions that are either entirely or almost entirely funded by monies from sources other than the State's General Fund. For instance, the Department of Insurance, which employs 71 CASE-represented employees, is funded entirely from non-General Fund monies. A furlough of these employees does not result in a direct General Fund savings. Similarly, the Department of Corporations, the Department of Managed Health Care, the Department of Real Estate and the Department of Motor Vehicles, to name but a few, are funded entirely by non-General Fund monies. Of the agencies whose heads are named in the CASE Petition, at least 6 exclusively specially-funded agencies, and at least 13 primarily specially-funded agencies, pay their employees with non-borrowable funds.

SUMMARY OF ARGUMENTS

Petitioners argue that, while the justification offered for the furloughs was to create savings for the General Fund, such savings cannot come from furloughs of these non-General Fund positions. CASE alleges that the furloughing of employees in agencies where there is no General Fund savings has no rational basis and is arbitrary, capricious and unlawful. In addition, Petitioners argue that

furloughs of special funds positions interfere with the purposes for which those special funds were created because they decrease services to the public and impede the operations of the special funds departments and agencies.²

Respondents argue that furloughs achieve General Fund savings as well as other benefits to the General Fund. Furlough of those employees in special fund departments or positions increased the amount of unallocated special fund monies, and that those unallocated special fund monies are borrowable resources that the State can use to meet its fiscal obligations. The greater the amount of internal borrowable resources, the less external borrowing the State must pursue to meet its obligations. Respondents argue that the Governor has the discretion to decide that furloughs are the best means to achieve the goal of ameliorating the State's fiscal crisis, and that the Court cannot substitute its judgment for the Governor's. Moreover, Respondents argue, this discretion permits the Governor to furlough employees even when it creates no savings or benefit to the General Fund if he

² The Court notes that CASE sought a writ of mandate in the Sacramento County Superior Court on the grounds that the Governor lacked authority to order furloughs or that statutory law expressly forbids ordering furloughs. In that case, which is now on appeal, the court determined that the Governor has the statutory authority to reduce the hours of state employees under Government Code section 19851 and 19849. While that decision is not a final decision and is not binding on this Court, the court there did not reach the questions of whether the July 1, 2009 Executive Order complied with the requirements of Section 19851(a), whether either Executive Order failed to comply with Section 19851(a) with respect to non-General Fund agencies, or whether furloughs of non-General Fund agencies violated Section 16310(a). Further, that decision was based upon the circumstances presented at the time, and was issued before the Legislature passed a revised budget in February of 2009, and before it passed its 2009/10 budget.

does so based upon the principles of labor parity and sharing the burden among all State employees.

In response to Respondents' borrowable funds argument, Petitioners contend that several agencies are funded by special funds as to which internal borrowing is expressly prohibited. As to these agencies, there are no General Fund savings and no benefits to the State's fisc, only reductions in service to the public. Further, in those instances where special funds are "borrowable funds," Government Code section 16310(a) permits special funds to be loaned to the General Fund only when such borrowing will not "interfere with the object for which a special fund was created."

DISCUSSION

A writ of mandate will lie to compel the performance of an act which the law specifically enjoins, as a duty resulting from an office, trust, or station. (Cal. Code Civ. Proc. §1085.) A writ of mandate will issue when there is a clear, present, ministerial duty on the part of the respondents and a clear, present, beneficial right in the petitioner to performance of that duty. (*Baldwin-Lima-Hamilton Corp. v. Sup. Ct.* (1962) 208 Cal.App.2d 803, 813-14.)

Discretion is abused when a public officer acts beyond the bounds of reason or in derogation of applicable legal standards. (*See Calif. Correctional Supervisors Organization v. Dept. of Corrections* (2002) 96 Cal.App.4th 824, 827.) A court cannot compel a public officer to exercise discretion in a particular way, but where only one choice can be a reasonable exercise of discretion, a court may

compel a public officer to make that choice. (*Id.*; see also *Ng v. State Personnel Board* (1977) 68 Cal.App.3d 600, 605 [discretion is abused when the action exceeds the bounds of reason].)

A. The Governor Violated a Mandatory Duty to Take Into Account the Agencies' "Varying Needs" Before Reducing Working Hours

Issuance of the furlough Executive Orders by the Governor, and implementation by the Respondent state agencies, was an abuse of discretion because the Executive Orders violated the requirements of Government Code section 19851(a). Government Code section 19851(a) provides:

It is the policy of the state that the workweek of the state employee shall be 40 hours, and the workday of state employees eight hours, except that workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies. It is the policy of the state to avoid the necessity for overtime work whenever possible. This policy does not restrict the extension of regular working-hour schedules on an overtime basis in those activities and agencies where it is necessary to carry on the state business properly during a manpower shortage.

(Cal. Gov't Code §19851(a), emphasis supplied.) The furloughs mandated by the Governor's Executive Orders reduced all State employees' workweeks to four days, or 32 hours, for three weeks per month.³ The Executive Orders applied a workweek reduction across-the-board. Indeed, Respondents contend that section 19851 gives the Governor discretion to decide that the State's overall needs can

³ The Executive Orders permitted only a "limited exemption" from the furlough requirement. At the hearing on the Petition, Respondents conceded that the exemptions have been limited to agencies involved in public safety, such as the California Highway Patrol and, during fire season, State firefighters.

substitute for an individual determination of the needs of the agency. Such a decision by the Governor is contrary to Section 19851(a), which only permits a workweek reduction "in order to meet the varying needs of the different state agencies."

Moreover, when employee positions are funded *entirely* by non-borrowable special funds or federal funds -- as is the case for many of the agencies at issue here -- the General Fund savings justification for furloughs does not survive scrutiny. When the only justification underpinning the furlough of these employees that remains is "labor parity,"⁴ the Court cannot do otherwise than to conclude that Respondents have abused their discretion. This is particularly so when the result of the furloughs in these areas is, *inter alia*, to slow down processing of unemployment claims, impede state workers' ability to respond to losses of CalPERS's investments, and delay moving persons with disabilities from the state disability rolls to the federal rolls. All of these cost the State yet more money, without resulting in any savings.

Each State agency has differing needs relating to its function and to the sources of its funding. Respondents' refusal to consider those varying needs of the

⁴ The "labor parity" justification is one based only on the feelings of the General Fund agencies' employees. It is not based upon the principle that the quantum of pay cuts suffered by those employees ought to be spread out amongst all the State employees. Rather it is a decision that "labor parity" requires the quantum of pay cuts be increased so that all State employees suffer equally, without regard to savings to the General Fund and without lessening the pay cuts suffered by the General Fund agencies' employees. This is not rationally related to any governmental purpose.

different state agencies before ordering and implementing furloughs conflicts with the requirements of Section 19851.⁵ Failure to comply with the mandatory duty in Section 19851 was an abuse of the Respondents' discretion. Moreover, when furloughs are implemented to save money, yet their implementation in some agencies saves nothing and increases costs, such a policy is arbitrary, capricious and unlawful.

B. Furloughing Employees to Increase Potential Borrowing from Special Fund Agencies Interferes with those Agencies' Operations In Violation of Government Code §16310(a)

Respondents further abused their discretion by ordering and implementing furloughs in order to increase internal borrowing from special funds, without regard to whether such borrowing interfered with the objects for which the special funds were created. Government Code section 16310(a) permits special funds to be loaned to the General Fund only when such borrowing will not "interfere with the object for which a special fund was created." Similarly, the California case law provides that a writ will lie to reverse a budgetary decision where such a decision eliminates the ability to carry out a mandatory function required by law. (See *Scott v. Common Council* (1996) 44 Cal.App.4th 684, 694.)

⁵ The Court rejects the notion that the exemption of public safety officers and forest fire fighters is evidence that the Governor evaluated the "varying needs of the different state agencies." It is persuasive only that the Governor considered the varying needs of those specific agencies, not others. It does not demonstrate that the Governor ever considered the varying needs of agencies such as the California Earthquake Authority or the Department of Health Care Services.

The operations of each agency have been reduced by three days per month. This basic fact alone is at least a prima facie showing of interference with the object of the special funds agencies, specifically the agencies' ability to carry out their respective missions.

In addition, Petitioner CASE offers evidence that:

- the case loads of CASE-represented employees have increased at thirteen of the named agencies, according to those agencies' own admissions;
- the backlog for matters handled by CASE-represented employees has increased at 17 of the named agencies, according to those agencies' own admissions;
- since the inception of the furloughs, the named agencies have incurred \$102 million in overtime hours and have executed at least 54 contracts for outside counsel.

Respondents contend that the outside contracts and overtime evidence do not show an interference with the purposes of the special fund. They argue that CASE-represented employees are exempt from overtime. This response is a *non sequitur*. The amount of overtime that is being worked, even if not worked by CASE-represented employees themselves, indicates that the agencies are making up the time lost due to furloughs by having employees work extra hours on the days that they are there. The reduced workweeks ordered by the Governor interfere with the ability of the agencies' employees to complete their work, and require increased overtime expenditures to make up for the loss.

Petitioner's evidence demonstrates furloughing employees of agencies funded by special funds for the purpose of freeing up additional borrowable funds has resulted in an interference with the objectives of those agencies. As such, the Executive Orders and their implementation violate Government Code section 16310(a) and are an abuse of discretion.

C. The Emergency Provisions Cited by the Governor Do Not Change the Result Here

The Governor has relied upon several provisions concerning emergency measures that the Governor may take in issuing both the Executive Orders and accompanying emergency proclamations, including provisions of the California Emergency Services Act. The authorities offered by the Governor in his Executive Orders do not appear to allow the Governor to implement furloughs if they would violate other provisions of the law. Nor does the California Emergency Services Act appear to contemplate the Governor declaring an "emergency," and suspending regular Legislative authority, for more than a temporary period. (See Government Code §8629; see also, e.g., Government Code §8627.5(b).) The Executive Orders themselves appear to recognize that the emergency necessitating them was the failure of the Legislature to pass the budgets, though the reach of the orders extended long after those budgets were subsequently passed and signed into law.

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CONCLUSION

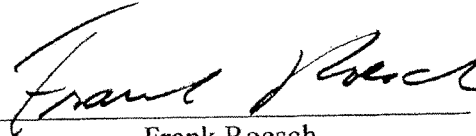
Based upon the foregoing, the Court GRANTS the Petition for Writ of Mandate. A writ of mandate shall issue commanding Respondents to set aside those portions of Executive Orders S-16-08 and S-13-09 affecting CASE-represented employees which were issued in violation of mandatory duties in Government Code §§16310(a) and 19851(a), and to cease and desist the furlough of CASE-represented employees.

The declaratory and injunctive relief sought in the operative Second Amended Petition and Complaint is entirely duplicative of the writ relief granted herein.

Petitioner shall prepare a form of judgment for execution by the Court and a form of writ for approval as to form by the Court and execution by the Clerk of the Court.

IT IS SO ORDERED.

DATED: December 31, 2009



Frank Roesch
Judge of the Superior Court

EXHIBIT C



FILED
ALAMEDA COUNTY

FEB 25 2010

CLERK OF THE SUPERIOR COURT

By Vicki Daybell *VD*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT,

Petitioner/Plaintiff,

vs.

ARNOLD SCHWARZENEGGER as, Governor
of the State of California; DAVID GILB as
Director of the Department of Personnel
Administration; JOHN CHIANG, Controller of
the State of California; EDMUND G. BROWN
JR., Attorney General of the State of California;
STEVE POIZNER, Insurance Commissioner of
the State of California; PRESTON
DUFAUCHARD, Corporations Commissioner of
the Department of Corporations; CINDY EHNES,
Director of the Department of Managed Health
Care; JEFF DAVI, Real Estate Commissioner of
the Department of Real Estate; CARRIE LOPEZ,
Director of the Department of Consumer Affairs;
GEORGE VALVERDE, Director of the
Department of Motor Vehicles; MIKE
CHRISMAN, Secretary of the California Energy
Resources Conservation and Development
Commission; ANNE STAUSBOLL, Chief
Executive Officer of the Public Employees'
Retirement System; RONALD P. SCHAFFER,
Chairperson of the Santa Monica Mountains

Case No. RG09-453982

ORDER AFTER HEARING

Conservancy; DOUGLAS BOSCO, Chairman of the California State Coastal Conservancy; JULIE NAUMAN, Executive Officer of the Victim Compensation and Government Claims Board; ALAN KERZIN, Executive Director of the State Council on Developmental Disabilities; MARY-ANN WARMERDAM, Director of the Department of Pesticide Regulation; JACK EHNES, Chief Executive Officer of the State Teachers' Retirement System; GLENN POMEROY, Chief Executive Officer of the California Earthquake Authority; WILLIAM HARAF, Commissioner of the Department of Financial Institutions; STEVE HARDY, Director of the Department of Alcoholic Beverage Control; FRED ARMENDARIZ, Chairman of the Alcoholic Beverage Control Appeals Board; RAYNOR T. TSUNEYOSHI, Director of the Department of Boating and Waterways; TERRI CIAU, Executive Director of the Gambling Control Commission; JOHN P. DONNELLY, Executive Director of the Wildlife Conservation Board; J. A. FARROW, Commissioner of the California Highway Patrol; KIRK BREED, Executive Director of the California Horse Racing Board; JOAN BORUCKI, Director of the California State Lottery Commission; LLOYD THRONE, Director of the Department of Community Services and Development; L. STEVEN SPEARS, Acting Executive Director of the California Housing Finance Agency; MARK LEARY, Executive Director of the California Integrated Waste Management Board; RON DIEDRICH, Director of the Office of Administrative Hearings; DESTIE OVERPECK, Acting Chief Deputy Administrative Director of the Division of Workers Compensation; DON KOCK, Director of the Department of Fish and Game; CALEB CHEUNG, Commission Chair of the Commission on Teacher Credentialing; BONNIE GARCIA, Chair of the California

Unemployment Insurance Appeals Board; TONY SAUER, Director of the Department of Rehabilitation; MARY D. NICHOLS, Chairman of the Air Resources Board; LYNN JACOBS, Director of the Department of Housing and Community Development; PATRICK HENNING, Director of the Employment Development Department; LESTER SNOW, Director of the Department of Water Resources; PATRICK WRIGHT, Executive Director of the California Tahoe Conservancy; BRIDGETT LUTHER, Director of the Department of Conservation; DOROTHY RICE, Executive Director of the State Water Resources Control Board; DAVID MAXWELL-JOLLY, Director of the Department of Health Care Services; MARK HORTON, Director of the Department of Public Health; JOHN A. WAGNER, Director of the Department of Social Services; WILL KEMPTON, Director of the California Department of Transportation; MAZIAR MOVASSAGHI, Acting Director of the Department of Toxic Substances Control; JON DUNCAN, Director of the Department of Industrial Relations; LYNN DAUCHER, Director of the California Department of Aging; RUTH COLEMAN, Director of the Department of Parks and Recreation; DALE BONNER, Secretary of the Business, Transportation, and Housing Agency; KAREN HUMPHREY, Executive Director of the California Postsecondary Education Commission; JOSEPH MILLER, Chairman of the Workers' Compensation Appeals Board; DEBRA BOWEN, Secretary of State for the State of California; CHARLES PATILLO, General Manager of the California Prison Industry Authority; TOM FLESH, President of the New Motor Vehicle Board; PAUL D. THAYER, Executive Officer of the California State Lands Commission; STEVE THARRATT, M.D., Director of the Emergency Medical Services Authority; A. G. KAWAMURA, Secretary of the California Department of Food and Agriculture; WILL BUSH, Director of the

Department of General Services; ROGER
BRAUTIGAN, Acting Secretary of the
Department of Veterans Affairs; LESLEY
CUMMINGS, Executive Director of the Managed
Risk Medical Insurance Board, and DOES 1
through 100,

Defendants/Respondents.

The parties appeared before the court on February 22, 2010 to discuss disagreements between the parties relating to the form of judgment and form of writ presented to the court for its consideration following the decision of this case and the two companion cases raising almost identical causes of action.

The court has considered the argument of counsel and the papers filed in this case and the other two cases and has made the following determinations:

Issue 1. Scope of Application of the Writ

The Court's Order applies to and affects each Respondent and all employees of each Respondent. It is not limited by bargaining unit or union membership.

While CASE is a representative of some employees in Respondent Departments and Agencies and therefore has standing to pursue this case, the matter is not a class action on behalf of any defined class. The lawsuit's theory for relief is that the Governor issued Executive Orders implementing a furlough/wage reduction program and that those Orders are invalid and illegal because he failed to comply with mandatory requirements found in the Government Code. Its object was a determination of the legality of the Orders; CASE

members were not the only employees in Respondent Departments and Agencies affected by them. It follows that the Order of this Court must apply to all employees of the Respondent Departments and Agencies affected by the illegal Executive Orders.

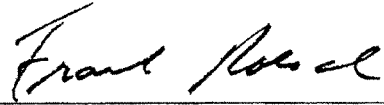
While the logic that the furloughs are illegal because the Governor did not comply with the mandatory requirements relating to the formation of the Executive Orders also leads to the conclusion that the Governor's furlough orders are likewise unlawful as applied to agencies funded by General Fund funds, this Court cannot and will not extend the Court's Order to those State Agencies and their employees. The pleadings in this case and the theories underpinning the claims for relief argued in this case (and the choice of Respondents named in this case) make clear that the relief sought is limited to the named Respondents.

Issue 2. Salary and Wages Wrongfully Withheld

The same logic that limits application of the court's order to Respondents named herein, namely the substance of the pleadings filed herein, applies to the issue of salary/wages not paid due to the Governor's unlawful furlough orders. The question of salary/wages wrongfully withheld is clearly incidental (see CCP Section 1095) to the theory of relief plead by Petitioner seeking invalidation of the Executive Orders that created the furlough/wage reduction programs. Not only did the Second Amended Petition specifically seek such incidental relief (see Paragraph 2 and 3 of the prayer of the Second Amended Petition), but such incidental relief also follows directly and logically even if the petition had not specifically requested such relief. The Court's Judgment and Writ will include language

that salary and wages withheld pursuant to the implementation of the Governor's Executive Order be paid both prospectively and retroactively.

Date: February 24, 2010

A handwritten signature in cursive script, appearing to read "Frank Roesch", written in black ink.

Frank Roesch
Judge of the Superior Court.

EXHIBIT D



FILED
ALAMEDA COUNTY

FEB 25 2010

CLERK OF THE SUPERIOR COURT

By Vicki Daybell *JD*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CALIFORNIA ATTORNEYS, ADMINISTRATIVE
LAW JUDGES AND HEARING OFFICERS IN
STATE EMPLOYMENT,

Petitioner/Plaintiff,

vs.

ARNOLD SCHWARZENEGGER as, Governor of the
State of California; DAVID GILB as Director of the
Department of Personnel Administration; JOHN
CHIANG, Controller of the State of California;
EDMUND G. BROWN JR., Attorney General of the
State of California;
STEVE POIZNER, Insurance Commissioner of the
State of California; PRESTON DUFAUCHARD,
Corporations Commissioner of the Department of
Corporations; CINDY EHNES, Director of the
Department of Managed Health Care; JEFF DAVI,
Real Estate Commissioner of the Department of Real
Estate; CARRIE LOPEZ, Director of the Department
of Consumer Affairs; GEORGE VALVERDE,
Director of the Department of Motor Vehicles; MIKE
CHRISMAN, Secretary of the California Energy
Resources Conservation and Development

Case No. RG09-453982

**JUDGMENT FOR
PETITIONER**

Commission; ANNE STAUSBOLL, Chief Executive)
 Officer of the Public Employees' Retirement System;)
 RONALD P. SCHAFER, Chairperson of the Santa)
 Monica Mountains Conservancy; DOUGLAS)
 BOSCO, Chairman of the California State Coastal)
 Conservancy; JULIE NAUMAN, Executive Officer of)
 the Victim Compensation and Government Claims)
 Board; ALAN KERZIN, Executive Director of the)
 State Council on Developmental Disabilities; MARY-)
 ANN WARMERDAM, Director of the Department of)
 Pesticide Regulation; JACK EHNES, Chief Executive)
 Officer of the State Teachers' Retirement System;)
 GLENN POMEROY, Chief Executive Officer of the)
 California Earthquake Authority; WILLIAM HARAF,)
 Commissioner of the Department of Financial)
 Institutions; STEVE HARDY, Director of the)
 Department of Alcoholic Beverage Control; FRED)
 ARMENDARIZ, Chairman of the Alcoholic Beverage)
 Control Appeals Board; RAYNOR T. TSUNEYOSHI,)
 Director of the Department of Boating and Waterways;)
 TERRI CIAU, Executive Director of the Gambling)
 Control Commission; JOHN P. DONNELLY,)
 Executive Director of the Wildlife Conservation)
 Board; J. A. FARROW, Commissioner of the)
 California Highway Patrol; KIRK BREED, Executive)
 Director of the California Horse Racing Board; JOAN)
 BORUCKI, Director of the California State Lottery)
 Commission; LLOYD THRONE, Director of the)
 Department of Community Services and Development;)
 L. STEVEN SPEARS, Acting Executive Director of)
 the California Housing Finance Agency; MARK)
 LEARY, Executive Director of the California)
 Integrated Waste Management Board; RON)
 DIETRICH, Director of the Office of Administrative)
 Hearings; DESTIE OVERPECK, Acting Chief Deputy)
 Administrative Director of the Division of Workers)
 Compensation; DON KOCK, Director of the)
 Department of Fish and Game; CALEB CHEUNG,)
 Commission Chair of the Commission on Teacher)
 Credentialing; BONNIE GARCIA, Chair of the)
 California Unemployment Insurance Appeals Board;)
 TONY SAUER, Director of the Department of)
 Rehabilitation; MARY D. NICHOLS, Chairman of the)
 Air Resources Board; LYNN JACOBS, Director of the)
 Department of Housing and Community Development;)

PATRICK HENNING, Director of the Employment)
 Development Department; LESTER SNOW, Director)
 of the Department of Water Resources; PATRICK)
 WRIGHT, Executive Director of the California Tahoe)
 Conservancy; BRIDGETT LUTHER, Director of the)
 Department of Conservation; DOROTHY RICE,)
 Executive Director of the State Water Resources)
 Control Board; DAVID MAXWELL-JOLLY, Director)
 of the Department of Health Care Services; MARK)
 HORTON, Director of the Department of Public)
 Health; JOHN A. WAGNER, Director of the)
 Department of Social Services; WILL KEMPTON,)
 Director of the California Department of)
 Transportation; MAZIAR MOVASSAGHI, Acting)
 Director of the Department of Toxic Substances)
 Control; JON DUNCAN, Director of the Department)
 of Industrial Relations; LYNN DAUCHER, Director)
 of the California Department of Aging; RUTH)
 COLEMAN, Director of the Department of Parks and)
 Recreation; DALE BONNER, Secretary of the)
 Business, Transportation, and Housing Agency;)
 KAREN HUMPHREY, Executive Director of the)
 California Postsecondary Education Commission;)
 JOSEPH MILLER, Chairman of the Workers')
 Compensation Appeals Board; DEBRA BOWEN,)
 Secretary of State for the State of California;)
 CHARLES PATILLO, General Manager of the)
 California Prison Industry Authority; TOM FLESH,)
 President of the New Motor Vehicle Board; PAUL D.)
 THAYER, Executive Officer of the California State)
 Lands Commission; STEVE THARRATT, M.D.,)
 Director of the Emergency Medical Services)
 Authority; A. G. KAWAMURA, Secretary of the)
 California Department of Food and Agriculture; WILL)
 BUSH, Director of the Department of General)
 Services; ROGER BRAUTIGAN, Acting Secretary of)
 the Department of Veterans Affairs; LESLEY)
 CUMMINGS, Executive Director of the Managed)
 Risk Medical Insurance Board, and DOES 1 through)
 100,)

Defendants/Respondents.

///

The above-entitled cause came on regularly for hearing on November 16, 2009, at 9:00 a.m. in Department 31, Hon. Frank Roesch, presiding, pursuant to the verified petition filed by petitioners, with counsel present as indicated on the record.

The cause was heard and both oral and documentary evidence was received. The matter was tried without a jury and submitted to the court. The court has considered the entire record in this matter, including all of the oral and documentary evidence submitted, as well as the written and oral arguments of counsel. By order dated December 31, 2009, this Court directed that judgment for petitioner and a peremptory writ of mandate should issue in the cause. The reasons supporting the Court's judgment are set forth in the Order Granting Petition for Writ of Mandate issued by the Court on December 31, 2009.

Therefore, it is hereby ORDERED, ADJUDGED AND DECREED:

1. That Judgment is entered in favor of petitioners.
2. That a peremptory writ of mandate issue commanding Respondents/Defendants Governor Schwarzenegger and Director Gilb to set aside the portions of the Governor's Executive Orders S-16-08 and S-13-09 calling for a furlough and resulting salary reduction for all employees of Respondent Departments and Agencies, and to cease and desist the furlough of such employees;
3. That a peremptory writ of mandate issue commanding Respondent/Defendant Controller Chiang to immediately pay all employees of Respondent Departments and Agencies their full salary without any reductions pursuant to the illegal furloughs directed by

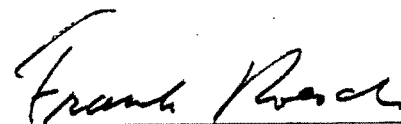
the unlawful Executive Orders, and to take any and all actions required by law to restore any salary wrongfully withheld as a consequence thereof;

4. That the aforementioned portions of the Governor's Executive Orders S-16-08 and S-16-09, insofar as they will and have resulted in furloughs and salary reductions for employees of Respondent Departments and Agencies, are hereby declared unlawful and illegal *ab initio* in that they violate the provisions of Government Code sections 16310, subdivision (a) and 19851, subdivision (a); and,

5. That Petitioners are the prevailing parties herein and are awarded their costs of suit.

The petition is granted, judgment shall be entered accordingly and the writ shall issue under the seal of this Court.

Date: February 25, 2010



Frank Roesch
Judge of the Superior Court

1 I, Sherry Ramirez, declare:

2 I am a citizen of the United States and employed in Sacramento County, California. I am
3 over the age of eighteen years and not a party to the within-entitled action. My business address
4 is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On February 26, 2010, I served a
5 copy of the within document(s):

6 • **NOTICE OF APPEAL**

7
8 by transmitting via facsimile the document(s) listed above to the fax number(s) set
forth below on this date before 5:00 p.m.

9 by placing the document(s) listed above in a sealed envelope with postage thereon
10 fully prepaid, the United States mail at Sacramento, California addressed as set
11 forth below.

12 by transmitting via e-mail or electronic transmission the document(s) listed above
to the person(s) at the e-mail address(es) set forth below.

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15 **Law Judges and Hearing Officers in**
16 **State Employment**

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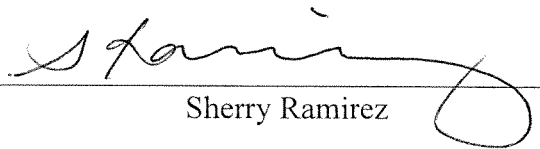
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on February 26, 2010, at Sacramento, California.



Sherry Ramirez