

1 DAVID W. TYRA, SBN 116218
KRISTIANNE T. SEARGEANT, SBN 245489
2 MEREDITH PACKER, SBN 253701
KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
3 A Law Corporation
400 Capitol Mall, 27th Floor
4 Sacramento, California 95814
Telephone: (916) 321-4500
5 Facsimile: (916) 321-4555
dtyra@kmtg.com
6

7 K. WILLIAM CURTIS, Chief Counsel, SBN 095753
WARREN C. STRACENER, Dep. Chief Counsel, SBN 127921
8 LINDA A. MAYHEW, Assist. Chief Counsel, SBN 155049
WILL M. YAMADA, Lab, Relations Counsel, SBN 226669
9 DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
10 Sacramento, CA 95811-7258
Telephone: (916) 324-0512
11 Facsimile: (916) 323-4723
E-mail: willyamada@dpa.ca.gov
12

13 Attorneys for Defendants/Respondents
14 ARNOLD SCHWARZENEGGER, DAVID GILB, CINDY
EHNES, CARRIE LOPEZ, TONY SAUER, DAVID
15 MAXWELL-JOLLY, JOHN A. WAGNER, and KIMBERLY
BELSHE

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

16
17
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF ALAMEDA
20

21 UNION OF AMERICAN PHYSICIANS
AND DENTISTS,

CASE NO. RG-09456684

NOTICE OF APPEAL

Petitioner/Plaintiff,

23 v.

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

25 Defendants/Respondents.
26
27
28

934494.1

NOTICE OF APPEAL

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

3 PLEASE TAKE NOTICE that Respondents/Defendants ARNOLD
4 SCHWARZENEGGER, in his capacity as Governor of the State of California and DAVID GILB,
5 in his former capacity as Director of the Department of Personnel Administration, and CINDY
6 EHNES, CARRIE LOPEZ, TONY SAUER, DAVID MAXWELL-JOLLY, JOHN A. WAGNER,
7 AND KIMBERLY BELSHE, in their official capacities, hereby appeal to the First District Court
8 of Appeal, State of California, from the final judgment in this matter and the following Orders
9 that are separately appealable: (1) the Order After Hearing in this matter entered on December 31,
10 2009, a true and correct copy of which is attached as Exhibit A hereto; (2) the Order After
11 Hearing in this matter entered on February 25, 2010, a true and correct copy of which is attached
12 as Exhibit B hereto; and (3) the Judgment for Petitioner in this matter entered on February 25,
13 2010, a true and correct copy of which is attached as Exhibit C hereto; as well as any Writ of
14 Mandate subsequently issued pursuant to any and/or all of them.

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

20 Dated: February 26, 2010

KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation

21
22
23 By: 

David W. Tyra
Attorneys for Defendants/Respondents
ARNOLD SCHWARZENEGGER as Governor of the
State of California; DAVID GILB, CINDY EHNES,
CARRIE LOPEZ, TONY SAUER, DAVID
MAXWELL-JOLLY, JOHN A. WAGNER, and
KIMBERLY BELSHE

EXHIBIT A



FILED
ALAMEDA COUNTY

DEC 31 2009

CLERK OF THE SUPERIOR COURT
By Vicki Daybell *VD*

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

UNION OF AMERICAN
PHYSICIANS AND DENTISTS,

Petitioner/Plaintiff,

vs.

ARNOLD SCHWARZENEGGER, et
al.,

Respondents/Defendants.

RG09456684

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, Moskowitz, 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 UAPD 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 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.

¹ All requests for judicial notice are GRANTED as unopposed.

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. Petitioner in this Matter

Petitioner UAPD represents non-management physicians and dentists in state employment, including those working for the California Highway Patrol, and the Departments of Social Services ("DSS"), Mental Health, Health Care Services,

Consumer Affairs ("DCA"), Public Health, and Rehabilitation. Salaries for employees at DSS are funded entirely by federal funds. Other employees, such as those employed by DCA and CHP, are funded entirely from special funds. Others have their salaries paid mostly from special funds, with only a small proportion of the budget being funded from the General Fund. At least 6 of the agencies whose heads are named in the Petition are funded by non-borrowable special 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. UAPD 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.

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 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].)

1. 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.² 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 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,"³ 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 delay moving

² 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.

³ 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.

persons with disabilities from the state disability rolls to the federal rolls. These delays 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 different state agencies before ordering and implementing furloughs conflicts with the requirements of Section 19851.⁴ 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.

2. 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

⁴ 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.

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.)

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 UAPD offers evidence to show that UAPD-represented employees are unable to complete Social Security disability reviews promptly and accurately due to the mandatory furloughs. Fewer applications are processed per month than in pre-furlough months, processing times have increased by about 14% since the implementation of furloughs, and pending cases have increased by about 39% compared to the prior year. (Declaration of Dr. C. Richard Dann at ¶7, 8, 11.) While the national average processing time for reconsiderations of disability determinations has increased by about 3%, the California average processing time has increased 22.3% since the implementation of furloughs. (Second Declaration of Peter D. Spencer, filed November 9, 2009, at ¶6.) The practice of staging cases or pooling cases as they come in, rather than assigning them to an evaluator within 48 hours, was implemented as a result of furloughs. While making the statistics on processing appear better initially, staging and pooling have resulted in a backlog of some 15,000 pending cases waiting, but not assigned for, review, which will also increase processing time.

(*Id.* at ¶8; Dann Declaration at ¶8, 9.) The federal Social Security Administration estimates that furloughs have delayed disability payments to California citizens in need of benefits at an average rate of over \$420,000 per day. (*Id.*)

Respondents argue that the *Scott* case can be distinguished because there the budgetary decision completely eliminated the ability to carry out a mandatory function, whereas here services are not completely eliminated. In *Scott*, the court based its decision on authorities holding that an act in complete conflict with the requirements of the city charter was void, and granted writ relief on this basis. (*Scott*, *supra*, at 695.) Here, the relevant authority in section 16310 precludes not only actions in complete conflict with carrying out the agencies' duties, but also actions that interfere with the object of the special fund. Plainly, a writ may lie to correct a failure to comply with section 16310, just as it may to lie to invalidate an enactment that is in complete conflict with carrying out the agencies duties.

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.

3. 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.

CONCLUSION

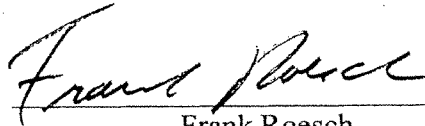
Based upon the foregoing, the Court GRANTS the Petition for Writ of Mandate. A writ of mandate shall issue commanding Respondents to set aside those portions of Executive Orders S-16-08 and S-13-09 affecting UAPD-represented employees which were issued in violation of mandatory duties in Government Code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

A handwritten signature in cursive script, appearing to read "Frank Roesch", written over a horizontal line.

Frank Roesch
Judge of the Superior Court

EXHIBIT B



7845082

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

UNION OF AMERICAN PHYSICIANS
AND DENTISTS,

Case No. RG09-456684

Petitioners/Plaintiffs,

ORDER AFTER HEARING

vs.

ARNOLD SCHWARZENEGGER, as
Governor of the State of California;
DAVID GILB, as Director of the
Department of Personnel Administration, et
al.,

Respondents/Defendants.

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 UAP&D 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; UAP&D 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. Such incidental relief follows directly and logically even if the petition does not specifically request such relief. The Court's Judgment and Writ, however, will not include language that salary and wages withheld pursuant to the implementation of the Governor's Executive Order be paid. This is because the parties have come to the agreement that the issues of back pay and attorney fees are to be deferred until the end of the appellate process. (See e-mail from David Tyra to Andrew Kahn dated Jan. 6, 2010 attached to the form of Proposed Judgment submitted on January 7, 2010.)

Date: February 24, 2010



Frank Roesch
Judge of the Superior Court.

CLERK'S DECLARATION OF MAILING

I certify that I am not a party to this cause and that on the date stated below I caused a true copy of the foregoing ORDER AFTER HEARING, JUDGMENT FOR PETITIONER, PEREMPTORY WRIT OF MANDATE to be mailed first class, postage pre paid, in a sealed envelope to the persons hereto, addressed as follows:

Andrew J. Kahn, Esq.
Davis, Cowell & Bowe LLP
595 Market Street, Suite 1400
San Francisco, CA 94105

David W. Tyra, Esq.
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Ross C. Moody, Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Jenny Esquivel, Esq.
Will M. Yamada, Esq.
Department of Personnel Administration
1515 S Street, North Bldg., Suite 400
Sacramento, CA 95811

Lynn Lee, Esq.
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Avenue NW
Washington, D.C. 20530

I declare under penalty of perjury that the same is true and correct.
Executed on February 26, 2010

By: Vicki Daybell
Vicki Daybell, Deputy Clerk
Department 31

EXHIBIT C



7845086

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

UNION OF AMERICAN PHYSICIANS
AND DENTISTS,

Case No. RG09-456684

Petitioners/Plaintiffs,

JUDGMENT FOR

vs.

PETITIONER

ARNOLD SCHWARZENEGGER, as
Governor of the State of California;
DAVID GILB, as Director of the
Department of Personnel Administration, et
al.,

Respondents/Defendants.

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

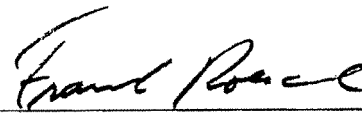
Respondent/Defendant Controller Chiang to immediately pay all employees of Respondent Departments and Agencies their full salary without any reductions pursuant to the illegal furloughs directed by the unlawful Executive Orders;

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

9 by placing the document(s) listed above in a sealed _____ envelope and
10 affixing a pre-paid air bill, and causing the envelope to be delivered to a
11 _____ agent for delivery.

12 by causing personal delivery by Messenger of the document(s) listed above to the
13 person(s) at the address(es) set forth below.

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

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

19 **Attorneys for Petitioner Union of
20 American Physicians and Dentists**

21 Andrew J. Kahn
22 Adam Zapala
23 Davis, Cowell & Bowe
24 595 Market Street, Suite 1400
25 San Francisco, CA 94105
26 Fax: (415) 597-7201
E-mail: ajk@dcbsf.com

27 **Attorneys for Respondent/Defendant John
28 Chiang**

Ross C. Moody, Esq.
STATE OF CALIFORNIA
ATTORNEY GENERAL'S OFFICE
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Fax: (415) 703-1234
E-mail: Ross.Moody@doj.ca.gov

Will M. Yamada
DEPARTMENT OF PERSONNEL
ADMINISTRATION
1515 S Street, North Building, Suite 400
Sacramento, CA 95811-7258
Telephone: (916) 324-0512
Facsimile: (916) 323-4723
E-mail: willyyamada@dpa.ca.gov

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

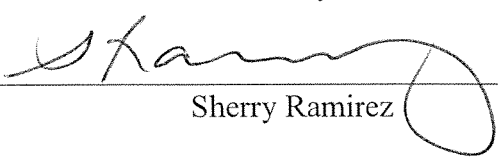
934523.1

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

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