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Supervisors

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ASSOCIATION OF CALIFORNIA
STATE SUPERVISORS,

Petitioner,

v.

ARNOLD SCHWARZENEGGER, in
his capacity as Governor of the State
of California; STATE OF
CALIFORNIA; CALIFORNIA
DEPARTMENT OF PERSONNEL
ADMINISTRATION; JOHN
CHIANG in his capacity as the
Controller of the State of California;
and DOES 1 THROUGH 10,
INCLUSIVE,

Respondents

No. *RC* 10501997
**VERIFIED PETITION FOR WRIT OF
MANDATE/PROHIBITION**

**ENDORSED
FILED
ALAMEDA COUNTY**
MAR 03 2010
CLERK OF THE SUPERIOR COURT
By M Hayes Deputy

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Petitioner the ASSOCIATION OF CALIFORNIA STATE SUPERVISORS

("ACSS") alleges as follows:

GENERAL ALLEGATIONS

Introduction

1. On December 19, 2008, California Governor Arnold Schwarzenegger issued Executive Order S-16-08. The Executive Order proclaimed that California faced a "fiscal and cash crisis" in the form of a General Fund deficit. The Executive order did not address the status of other State financial resources other than those in the General Fund ("Special Funds").

2. Because of the looming General Fund deficit, the Executive Order directed the California Department of Personnel Administration ("DPA") to adopt a plan to furlough state employees for two days per month and reduce their pay by a commensurate amount (approximately 9.2 percent), effective February 1, 2009 through June 30, 2010 ("the furlough duration period"). The Executive Order did not differentiate between employees working at agencies funded entirely by the General Fund and those whose salaries are funded in whole or in part by Special Funds or by resources from the federal government ("Federal Funds").

3. On January 9, 2009, the DPA issued its furlough implementation plan in a memorandum to all Agency Secretaries, Undersecretaries and Directors entitled "State Employee Furlough per Governor's Executive Order S-16-08" ("the Furlough Memo"). The Furlough Memo advised that all general government operations would be closed on the first and third Fridays of each month beginning with Friday, February 6, 2009, and employees were ordered not report to work on those days. For State operations that cannot close, the Furlough Memo outlined two types of "self-directed" furloughs: (1) Employees would take two furlough days each month but on days chosen by the employee and approved by the supervisor; or (2) Employees would accrue two furlough days per month to be taken at a later date "when feasible." The Furlough Memo also stated that all employees must use their accrued furlough days on or before June 30, 2012, or they will

1 be forfeited, as it expressly dictates that these so-called “[f]urlough days will not be
2 cashed out.” The Furlough Memo does not direct any State agencies to permit impacted
3 employees to take the furlough days off during the same month in which their salaries are
4 correspondingly reduced.

5 4. On July 1, 2009, California Governor Arnold Schwarzenegger issued
6 Executive Order S-13-09. The order directed the DPA to implement a third furlough day
7 each month. On approximately July 10, 2009, DPA implemented the directive, including
8 adding a third furlough day. Executive Order S-16-08 and Executive Order S-13-09 are,
9 hereinafter, referenced collectively as “Executive Orders.”

10 5. A significant portion of ACSS-represented employees work in positions
11 funded, in whole or in part, by sources other than the General Fund. Furloughing these
12 employees does not result any General Fund savings, the stated purpose the furlough plan.

13 6. Certain ACSS-represented employees are under the “self-directed”
14 furlough plan outlined in the Furlough Memo. However, because of operational necessity
15 many of these employees are not able to take their self-directed furlough days in the
16 month that they accrue. Therefore, the DPA’s plan represents an illegal *de facto* decrease
17 in total salary paid for all affected employees, now amounting to up to 14 percent, without
18 any commensurate, contemporaneous, or even eventual reduction in workdays of hours.

19 7. ACSS brings this action on behalf of its members working in both
20 General Fund and Special Fund agencies.

21 **The Parties**

22 8. Petitioner ACSS is, and at all times relevant was, a non-profit
23 organization organized and existing under the laws of the State of California, with its
24 principal place of business in the County of Sacramento. ACSS is the recognized
25 employee organization (pursuant to Gov. Code § 3527) for approximately 7000 managers,
26 supervisors, confidential, and exempt state employees working in various state
27 departments. ACSS brings this action on behalf of itself and its members, having standing
28 to do so under the doctrine articulated by the United States Supreme Court in *Allee v.*

1 *Medrano* (1974) 416 U.S. 802, and by the California Supreme Court in *Professional Fire*
2 *Fighters v. City of Los Angeles* (1963) 60 Cal.2d 276 and *Int'l Assoc. of Fire Fighters v.*
3 *City of Palo Alto* (1963) 60 Cal.2d 295.

4 9. ACSS and its respective members are all beneficially interested in
5 Respondents' faithful performance of their legal duties because Petitioners have been and
6 will be directly and negatively impacted by the unlawful salary and benefits reduction
7 ordered in and caused by the Executive Orders and Furlough Memo.

8 10. Respondent ARNOLD SCHWARZENEGGER is the duly-elected
9 Governor of the State of California, sued herein in his official capacity only. The
10 Governor is the employer of state supervisory employees and issued the Executive Orders
11 directing furloughs and salary reductions.

12 11. Respondent CALIFORNIA DEPARTMENT OF PERSONNEL
13 ADMINISTRATION is, and at all relevant times was, the agency of the State of
14 California designated as the Governor's representative under the Excluded Employee Bill
15 of Rights, California Government Code section 3525 *et seq.* (Gov. Code § 3527.) The
16 DPA represents the Governor as the employer in all matters pertaining to California state
17 excluded employer-employee relations, and it is responsible for administering salaries and
18 benefits, job classifications, and training. (Gov. Code § 19815.2 *et seq.*) The DPA is
19 responsible for implementing the purported furloughs and salary reductions directed by
20 the Executive Orders.

21 12. Respondent JOHN CHIANG is the duly elected controller for the State of
22 California, sued herein in his official capacity only. Among other duties, the Controller is
23 responsible for administering the fiscal condition and responsibilities of the State of
24 California. The Controller is charged with auditing all claims against the State and may
25 audit the disbursement of any state money for accuracy, propriety, and legality. (Gov.
26 Code § 12410.) The Controller is charged with drawing warrants on the State Treasury
27 for the payment of money directed by law. Such warrants must be made as authorized
28 and required by law. (Gov. Code § 12440.)

1 13. Petitioner is ignorant of the true names and capacities of
2 Defendants/Respondents sued herein as DOES 1 through 10 and, therefore, sues these
3 Defendants by such fictitious names. Petitioner will amend this Petition to state their true
4 names and capacities once they have been ascertained. Petitioner is informed and
5 believes, and on that basis alleges, that each of these Respondents is in some manner
6 responsible for the acts complained of herein.

7 **The Salary Rates for ACSS Members**

8 14. ACSS members receive their regular salaries in monthly payments (i.e.,
9 12 times per annum).

10 15. DPA sets ACSS members' salary rates and publishes them in its Civil
11 Service Pay Scales.

12 16. At no time since the implementation of the Furlough Memo has the DPA
13 purported to modify or change its Civil Service Pay Scales in a manner reducing or
14 otherwise modifying ACSS members' salary rates.

15 **The Implementation of the Furlough Program to ACSS Members and**
16 **Corresponding Salary Decrease**

17 17. Pursuant to the Furlough Memo, in February 2009, the DPA implemented
18 the furlough program for state employees including ACSS members. At the end of
19 February or beginning of March 2009, Petitioner's members received their first paychecks
20 since the implementation of the state's furlough program. Petitioner believes and hereby
21 alleges that its members' paychecks were reduced by approximately 9 percent (including
22 equivalent reductions in premiums and other benefits), notwithstanding whether the
23 impacted employees actually took one or more furlough days during the pay period.
24 Petitioner believes and hereby alleges that many of its members received no form of
25 payment other than credited furlough days for up to two days that they worked during the
26 pay period.

27 18. As a result of the implementation of the third furlough day each month,
28 as described *supra*, beginning in July of 2009, Petitioner's members were and continue to

1 be subject to salary reductions amounting to approximately 14 percent. Many did not
2 receive a commensurate and contemporaneous reduction in workdays and/or work hours
3 and Petitioner believes and hereby alleges that many of its members received no form of
4 payment other than credited furlough days for up to three days that they worked during
5 the pay period.

6 **The Agencies Employing ACSS Members**

7 19. At times relevant, ACSS members impacted by the Furlough Memo (as
8 detailed herein) were or are presently employed by Respondents to work at the State
9 agencies listed in Exhibit A hereto, whose employees' salaries are funded, on information
10 and belief, entirely by Special Funds or Federal Funds.

11 20. At times relevant, ACSS members impacted by the Furlough Memo (as
12 detailed herein) were or are presently employed by Respondents to work at the State
13 agencies listed in Exhibit B hereto, whose employees' salaries are funded, on information
14 and belief, in part by resources from the General Fund and in part by Special Funds or
15 Federal Funds.

16 21. At times relevant, ACSS members impacted by the Furlough Memo (as
17 detailed herein) were or are presently employed by Respondents to work at the State
18 agencies listed in Exhibit C hereto, whose employees' salaries are funded, on information
19 and belief, in whole by resources from the General Fund.

20 22. ACSS is informed and believes, and thereon alleges, that, at times
21 relevant, ACSS members impacted by the Furlough Memo (as detailed herein) were or are
22 presently employed by Respondents to work at other State Agencies not referenced in
23 Exhibits A through C hereto.

24 **VENUE**

25 23. Venue in the Superior Court of Alameda is proper because the California
26 Attorney General has an office within the City of Oakland in the County of Alameda
27 (Code Civ. Proc. §401(1) and §1109.)
28

1 agencies where, at times relevant, ACSS members have been employed by Respondents.
2 Therefore the funds have been appropriated for salaries of ACSS members working in
3 these agencies.

4 29. Respondent DPA has never purported to change the wage scale as applied
5 to ACSS members and cannot do so via an illegal furloughs plan.

6 30. If Respondents are not required to comply with the strictures of
7 Government Code section 19851(a), State employees represented by ACSS will continue
8 to suffer harm in the form of reduced work hours and/or salaries. Petitioner ACSS is a
9 non-profit organization that is the recognized employee organization (pursuant to Gov.
10 Code § 3527) for approximately 7000 managers, supervisors, confidential, and exempt
11 state employees working in various state departments. ACSS's purpose is to represent its
12 members in their employment relations with Respondents, including regarding wages,
13 hours, and terms and conditions of employment. Accordingly, ACSS and its members are
14 beneficially interested in Respondents' faithful performance of their statutory duties under
15 Government Code section 19851(a), and Petitioner and its members have a clear, present
16 and substantial right to require Respondents to perform those duties.

17 31. At all times mentioned herein, Respondents have been able to perform
18 the duties described above. Notwithstanding such ability, Respondents have failed and
19 refused, and continue to fail and refuse, to perform their statutory duties under
20 Government Code section 19851(a).

21 32. ACSS has no right of appeal from the failure of the Respondents to act as
22 required by law, and Petitioner does not have available to it any administrative remedy to
23 contest the action. Nor does Petitioner have any other plain, speedy or adequate remedy
24 in the ordinary course of law other than the relief sought in this action. Therefore,
25 Petitioner seeks a peremptory writ of mandate compelling all Respondents to comply with
26 their mandatory duty under Government Code section 19851(a).

27 WHEREFORE, Petitioner prays for the relief set forth below.
28

1 **SECOND CAUSE OF ACTION**

2 **Failure to Comply With Government Code section 16310(a)**

3 33. Petitioner hereby incorporates by reference all of the foregoing
4 paragraphs as though fully set forth herein.

5 34. Respondents, and each of them, were and are responsible for the acts or
6 omissions complained of herein.

7 35. Respondents lack the legal authority to implement the Executive Orders
8 and Furlough Memo on the Special Fund agencies. Government Code section 16310(a)
9 permits special funds to be loaned to the General Fund only when such borrowing will not
10 “interfere with the object for which a special fund was created.” This creates clear,
11 present and ministerial duties on the part of Respondents to individually consider the
12 potential impact on the purpose of the Special Fund before borrowing and ensure that such
13 borrowing will not interfere with that purpose.

14 36. Petitioners are informed and believe that Respondents are ordering and
15 implementing furloughs of ACSS members working in Special Fund Agencies in order to
16 increase internal borrowing from special funds, without regard to whether such borrowing
17 interfered with the objects for which the special funds were created. The decision to
18 implement the program without considering whether such action might “interfere with the
19 object for which a special fund was created” was arbitrary, capricious, and without
20 justification, amounting to an abuse of discretion by Respondents.

21 37. If Respondents are not required to comply with the strictures of
22 Government Code section 16310(a), State employees represented by ACSS will continue
23 to suffer harm in the form of reduced work hours and/or salaries. Petitioner ACSS is a
24 non-profit organization that is the recognized employee organization (pursuant to Gov.
25 Code § 3527) for approximately 7000 managers, supervisors, confidential, and exempt
26 state employees working in various state departments. ACSS’s purpose is to represent its
27 members in their employment relations with Respondents, including regarding wages,
28 hours, and terms and conditions of employment. Accordingly, ACSS and its members are

1 beneficially interested in Respondents' faithful performance of their statutory duties under
2 Government Code section 16310(a), and Petitioner and its members have a clear, present
3 and substantial right to require Respondents to perform those duties.

4 38. At all times mentioned herein, Respondents have been able to perform
5 the duties described above. Notwithstanding such ability, Respondents have failed and
6 refused, and continue to fail and refuse, to perform their statutory duties under
7 Government Code section 16310(a).

8 39. ACSS has no right of appeal from the failure of the Respondents to act as
9 required by law, and Petitioner does not have available to it any administrative remedy to
10 contest the action. Nor does Petitioner have any other plain, speedy or adequate remedy
11 in the ordinary course of law other than the relief sought in this action. Therefore,
12 Petitioner seeks a peremptory writ of mandate compelling all Respondents to comply with
13 their mandatory duty under Government Code section 16310(a).

14 WHEREFORE, Petitioner prays for the relief set forth below.

15 **THIRD CAUSE OF ACTION**

16 **Failure to Pay Designated Wage Scale in Violation of Labor Code section 223**

17 40. Petitioner hereby incorporates by reference all of the foregoing
18 paragraphs as though fully set forth herein.

19 41. Respondents, and each of them, were and are responsible for the acts or
20 omissions complained of herein.

21 42. Labor Code section 223 reads as follows:

22 Where any statute or contract requires an employer to maintain the
23 designated wage scale, it shall be unlawful to secretly pay a lower wage
while purporting to pay the wage designated by statute or by contract.

24 The Legislature's use of the word "shall" in this statute demonstrates its intention that
25 these acts are mandatory and that the DPA lacks discretion not to comply. (Cal.Lab.Code
26 § 15 [“‘Shall’ is mandatory and ‘may’ is permissive.”]) Labor Code section 223 is made
27 applicable to the State employer and ACSS members by operation of Labor Code section
28 220.

1 43. As detailed above, the wage scale for ACSS members is set by DPA's
2 Civil Service Pay Scales and, at no time, has DPA purported to change the applicable
3 wage scale. Thus, Labor Code section 223 creates clear, present and ministerial duties on
4 the part of Respondents to pay all ACSS employees for every hour and fraction thereof
5 worked at the wage scale designated in the Civil Service Pay Scales.

6 44. Respondents have failed and continue to fail to pay any wages for up to
7 three days of work performed per month (approximately 24 compensable hours) for ACSS
8 members who are on Respondents' so-called "self-directed" furlough program, but who
9 are unable to use all furlough credits in the same month in which they accrue.

10 45. Petitioner and its members are beneficially interested and have a clear,
11 present and substantial right to require Respondents to perform their duties under Labor
12 Code section 223.

13 46. At all times relevant herein, the State has been able to perform its duty
14 and comply with Labor Code section 223. Notwithstanding such ability, the State has
15 knowingly failed and refused, and continues to fail and refuse, to pay the required hourly
16 wage to ACSS members for up to three days of work performed (approximately 24 hours)
17 in violation of Labor Code section 223.

18 47. Petitioner has no right of appeal from the failure of the Respondents to
19 act as required by law, nor does Petitioner have any available administrative remedy to
20 contest the action, nor does Petitioner have a plain, speedy or adequate remedy in the
21 ordinary course of law other than the relief sought in this action. Therefore, Petitioner
22 seeks a peremptory writ of mandate compelling all Respondents to comply with their
23 mandatory duty under Labor Code section 223.

24 WHEREFORE, Petitioner prays for the relief set forth below.
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1 **FOURTH CAUSE OF ACTION**

2 **Failure to Provide Payment Earned Wages in Negotiable Form**
3 **in Violation of Labor Code section 212**

4 48. Petitioner hereby incorporates by reference all of the foregoing
5 paragraphs as though fully set forth herein.

6 49. Respondents, and each of them, were and are responsible for the acts or
7 omissions complained of herein.

8 50. California Labor Code section 212 reads, in pertinent part, as follows:

9 No person, or agent or officer thereof, shall issue in payment of
10 wages due, or to become due, or as an advance on wages to be
11 earned:

12 (1) Any order, check, draft, note, memorandum, or other
13 acknowledgment of indebtedness, unless it is negotiable and
14 payable in cash, on demand, without discount, at some established
15 place of business in the state, the name and address of which must
16 appear on the instrument, and at the time of its issuance and for a
17 reasonable time thereafter, which must be at least 30 days, the
18 maker or drawer has sufficient funds in, or credit, arrangement, or
19 understanding with the drawee for its payment.

20 (2) Any scrip, coupon, cards, or other thing redeemable, in
21 merchandise or purporting to be payable or redeemable otherwise
22 than in money.

23 ...

24 (Cal.Lab.Code § 212(a).) The Legislature's use of the word "shall" in this statute
25 demonstrates its intention that these acts are mandatory and that the DPA lacks discretion
26 not to comply. (Cal.Lab.Code § 15 ["'Shall' is mandatory and 'may' is permissive."])
27 Labor Code section 212 is made applicable to the State employer and ACSS members by
28 operation of Labor Code section 220.

29 51. As detailed above, many ACSS members are subject to the so-called
30 "self-directed" furlough plan without a commensurate, contemporaneous, or even
31 eventual reduction in workdays of hours. Thus, by reducing ACSS members' total
32 monthly pay by the amount they earn in three days of work (approximately 14 percent),
33 Respondents have failed and continue to fail to pay any wages for up to three days of
34 work per month (approximately 24 compensable hours).

1 52. Instead, Respondents purport to compensate these ACSS members for
2 those three days of work in the form of deferred so-called “self-directed” furlough days,
3 which, according to the DPA’s own Furlough Memo, cannot and “will not be cashed out.”
4 Thus, by definition and as a matter of law, Respondents’ use of so-called “self-directed”
5 furlough days to compensate ACSS members for up to three days of work performed per
6 month violates Labor Code section 212(a), which requires payment of wages in a manner
7 that “is negotiable and payable in cash, on demand.”

8 53. Labor Code section 212, and the case law interpreting it, impose a clear,
9 present, and ministerial duty that Respondents shall compensate all hours worked by
10 ACSS members in a manner that “is negotiable and payable in cash, on demand,” and not
11 in the form of some deferred ostensible benefit, whether or not said benefit has cash value.
12 Despite this ministerial duty, Respondents are compensating ACSS members for
13 approximately 14 percent of their work hours in the form of deferred so-call “self-
14 directed” furlough days, which, according to Respondents, have no cash value
15 whatsoever.

16 54. For the reasons delineated above, Petitioner and its members are
17 beneficially interested and have a clear, present and substantial right to require
18 Respondents to perform their duties under Labor Code section 212.

19 55. At all times mentioned herein, Respondents have been able to perform
20 the duty described above. Notwithstanding such ability, Respondents have failed and
21 refused, and continue to fail and refuse, to perform their mandatory duty under Labor
22 Code section 212.

23 56. ACSS has no right of appeal from the failure of the Respondents to act as
24 required by law, and Petitioner does not have available to it any administrative remedy to
25 contest the action. Nor does Petitioner have any other plain, speedy or adequate remedy
26 in the ordinary course of law other than the relief sought in this action. Therefore,
27 Petitioner seeks a peremptory writ of mandate compelling all Respondents to comply with
28 their mandatory duty under Labor Code section 212.

1 WHEREFORE, Petitioner prays for the relief set forth below.

2 **FIFTH CAUSE OF ACTION**

3 **Failure to Pay California Minimum Wage in Violation of Labor Code section 1171 *et***
4 ***seq.* and 8 California Code of Regulations section 11000 *et seq.***

5 57. Petitioner hereby incorporates by reference all of the foregoing
6 paragraphs as though fully set forth herein.

7 58. Respondents, and each of them, were and are responsible for the acts or
8 omissions complained of herein.

9 59. As detailed above, Respondents are without authority to unilaterally
10 decrease ACSS members' wages. Moreover, many ACSS members are subject to the
11 furlough plan without a commensurate, contemporaneous or even eventual reduction in
12 workdays or hours. Thus, by reducing ACSS members' total monthly pay by the amount
13 they earn in three days of work, Respondents have failed and continue to fail to pay any
14 wages for up to three days of work per month (approximately 24 compensable hours).

15 60. California Labor Code section 1182.11 reads as follows:

16 ... The Industrial Welfare Commission shall, at a public meeting,
17 adopt minimum wage orders consistent with this section without
18 convening wage boards, which wage orders shall be final and
conclusive for all purposes.

19 61. California Labor Code section 1182.12 reads as follows:

20 Notwithstanding any other provision of this part, on and after
21 January 1, 2007, the minimum wage for all industries shall be not
22 less than seven dollars and fifty cents (\$7.50) per hour, and on and
after January 1, 2008, the minimum wage for all industries shall be
not less than eight dollars (\$8.00) per hour.

23 62. Labor Code section 1171 applies the California State minimum wage to
24 all California employees. Moreover, the Wage Orders adopted by the Industrial Welfare
25 Commission, pursuant to its Constitutional and statutory authority, expressly apply the
26 California minimum wage to individuals employed by the State. (See 8 California Code
27 of Regulations § 11000, *et seq.*)
28

1 63. Respondents' failure to pay any wages in negotiable form to ACSS
2 members who are not exempt from the California minimum wage provisions, for up to
3 three days of work per month (approximately 24 compensable hours) violates Labor Code
4 sections 1182.11, 1182.12, and 1194, as well as 8 California Code of Regulations section
5 11000, *et seq.*, which create clear, present and ministerial duties on the party of
6 Respondents requiring that employees be paid a statutory minimum wage for every hour
7 and fraction of an hour worked.

8 64. At all times relevant herein, the State has been able to perform its duties
9 pursuant to these provisions. Notwithstanding such ability, the State has knowingly failed
10 and refused, and continues to fail and refuse, to pay any wages for compensable time
11 worked by non-exempt ACSS members.

12 65. The minimum wage statutes and regulations discussed above, and the
13 case law interpreting them, impose a clear, present, and ministerial duty that Respondents
14 shall pay at least the California State minimum wage for all hours and fractions thereof
15 worked. Despite this ministerial duty, Respondents have failed and continue to fail to
16 compensate non-exempt ACSS members at all for up to three days of labor
17 (approximately 24 hours).

18 66. For the reasons discussed above, Petitioner and its members are
19 beneficially interested and have a clear, present and substantial right to require
20 Defendants/Respondents to perform their duties under Labor Code sections 1182.11,
21 1182.12, and 1194, as well as 8 California Code of Regulations section 11000, *et seq.*

22 67. At all times mentioned herein, Respondents have been able to perform
23 the duties described above. Notwithstanding such ability, Respondents have failed and
24 refused, and continue to fail and refuse, to perform their mandatory duties under Labor
25 Code sections 1182.11, 1182.12, and 1194, as well as 8 California Code of Regulations
26 section 11000, *et seq.*

27 68. ACSS has no right of appeal from the failure of the Respondents to act as
28 required by law, and Petitioner does not have available to it any administrative remedy to

1 contest the action. Nor does Petitioner have any other plain, speedy or adequate remedy
2 in the ordinary course of law other than the relief sought in this action. Therefore,
3 Petitioner seeks a peremptory writ of mandate compelling all Respondents to comply with
4 their mandatory duties under Labor Code sections 1182.11, 1182.12, and 1194, as well as
5 8 California Code of Regulation section 11000, *et seq.*

6 WHEREFORE, Petitioner prays for the relief set forth below.

7 **PRAYER**

8 WHEREFORE, Petitioner prays for the following relief:

9 1. A Writ of Mandate compelling Respondents to comply with their legal
10 obligations to do the following:

11 a. Pursuant to Government Code sections 19851(a) and 16310(a), to
12 set aside portions of the Executive Orders and the Furlough Memo that require the
13 Respondent agencies to furlough ACSS members, and pay Petitioners their corresponding
14 full salaries and benefits at the end of each pay period without reduction, at rates as they
15 existed prior to implementation of the Executive Orders and Furlough Memo.

16 b. Pursuant to Labor Code section 223, to pay all ACSS members the
17 full cash wage due for every hour and fraction thereof worked at the designated wage
18 scale set by Respondent DPA.

19 c. Pursuant to Labor Code section 212, to pay all ACSS members their
20 full cash wages at the end of each pay period for all hours worked during the pay period in
21 a form that is "is negotiable and payable in cash, on demand."

22 d. Pursuant to Labor Code section 1171 *et seq.* and 8 California Code
23 of Regulations section 11000 *et seq.*, to pay in negotiable form at least the statutory
24 California minimum hourly wage to non-exempt ACSS members at the end of each pay
25 period for every hour or fraction thereof worked during the pay period.

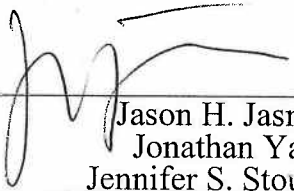
26 2. Petitioner be awarded its costs of suit, including attorneys' fees, pursuant
27 to Government Code section 800, Code of Civil Procedure section 1021.5, Labor Code
28 section 1094, or any other legal basis.

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3. Such other relief as may be just.

Dated: March 3, 2010

CARROLL, BURDICK & McDONOUGH LLP

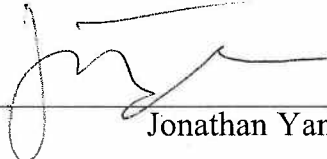
By  _____
Jason H. Jasmine
Jonathan Yank
Jennifer S. Stoughton
Attorneys for Petitioner

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VERIFICATION

I, Jonathan Yank, am one of the attorneys for Petitioner herein and am authorized to execute this on its behalf. I have read the foregoing Verified Petition for Writ of Mandate/Prohibition and am informed and believe, and thereon allege, that the matters stated therein are true and correct. I sign this verification on behalf of Petitioner, pursuant to Code of Civil Procedure §446, since an extenuating circumstance exists in that Petitioner is absent from the county in which my office is located. Furthermore, the facts of this matter are within my knowledge and I am informed and believe that the facts themselves are not the subject of disagreement between the parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on March 3, 2010 at San Francisco, California.



Jonathan Yank

