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Attorneys for Plaintiffs and Consenters

10 IN THE UNITED STATES DISTRICT COURT FOR
11 THE NORTHERN DISTRICT OF CALIFORNIA

JCS

13 RICHARD T. NEWTON; FRANK M.
14 MCNEAL; and SEAN A. BEATON,

CV 09

5887

15 Plaintiffs/Petioners,

16 v.

17 COLLECTIVE ACTION COMPLAINT
18 FOR LATE PAYMENT OF WAGES, IMPROPER
19 RECORD KEEPING, AND FAILURE TO
20 PROPERLY CALCULATE AND PAY
21 OVERTIME WAGES UNDER THE FAIR
22 LABOR STANDARDS ACT (29 U.S.C. Section
23 201 et seq.)

17 ARNOLD SCHWARZENEGGER, in his
18 official capacity as Governor of the State
19 of California; DEBBIE ENDSLEY, in her
20 official capacity as the Director of the
21 California Department of Personnel
22 Administration; JOHN CHIANG, in his
23 official capacity as the Controller of the
24 State of California; MATTHEW CATE,
25 in his capacity as the Secretary of the
26 California Department of Corrections and
27 Rehabilitation; BERNARD WARNER, in
28 his official capacity as the Chief Deputy
Secretary of the California Division of
Juvenile Justice; STEPHEN MAYBERG,
in his official capacity as the Director of
the California Department of Mental
Health, and DOES 1 THROUGH 10,
INCLUSIVE,

Defendants/Respondents

1 which is herein filed with this Court as Exhibit "A," asking that the DOL pursue injunctive relief on this
2 matter, along with the recovery of monetary damages on behalf of BU6 members.³

3 **PARTIES**

4 4. The named Plaintiffs and accompanying Consentors are employed by the State of
5 California (herein "the State"), in a variety of correctional peace officer classifications, and work at the
6 various prisons, institutions and offices, run by the California Department of Corrections and
7 Rehabilitation (herein "CDCR"), the Division of Juvenile Justice within CDCR (herein "DJJ") and/or
8 the California Department of Mental Health (herein "DMH"). Plaintiffs are involved in all custodial
9 aspects of the incarceration of adult and juvenile inmates in California's correctional system. Their
10 responsibilities include, among others, feeding inmates, escort duties within the institutions, supervising
11 inmates 24-hours-per-day, parole agent services, correctional firefighting, and inmate medical and
12 counseling services. Plaintiffs also schedule and transport inmates for scheduled and emergency
13 medical treatment, transport inmates throughout the state and interstate between institutions, respond to
14 emergencies such as riots, and are entrusted to protect public safety by maintaining the overall security
15 at all of California's prisons.

16 5. Each named Plaintiff is both a Plaintiff and Consentor to this action. Each has consented
17 in writing to become a party to this action, and their Consent Forms are herein filed with this Court
18 collectively as Exhibit "B". The three named Plaintiffs are employed at the following locations:

Name	Position	Location	County
Richard T. Newton	Correctional Officer	Eel River Conservation Camp	Humboldt County, CA
Frank M. McNeal	Correctional Officer	San Quentin State Prison	Marin County, CA
Sean A. Beaton	Correctional Officer	San Quentin State Prison	Marin County, CA

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28 ³ To the best of Plaintiffs' knowledge, the DOL continues to review this matter.

1 6. Four additional persons have consented in writing to become Consentors to this action.
2 Their Consent Forms are herein filed with this Court collectively as Exhibit "C". The Consentors to this
3 action have the following employment position at the following institutions:⁴

4 Name	5 Position	6 Location	7 County
8 Troy Testo	9 Medical Technical Assistant	10 Salinas Valley State Prison	11 Monterey County, CA
12 Frank Colburn	13 Correctional Officer	14 Salinas Valley State Prison	15 Monterey, CA
16 Brenda Gibbons	17 Correctional Officer	18 Salinas Valley State Prison	19 Monterey, CA
20 Brian Messer	21 Correctional Officer	22 Salinas Valley State Prison	23 Monterey, CA

24 7. At all relevant times, each of the Defendants listed below (here collectively called "the
25 Defendants") is, and has been, an employer of Plaintiffs within the meaning of § 3(d) of the FLSA (29
26 U.S.C. § 203(d)), and is, and has been, engaged in the operation of an enterprise engaged in interstate
27 commerce within the meaning of §§ 3(r) and 3(s) of the FLSA (29 U.S.C. §§ 203 (r) and (s)).

28 (a) Defendant ARNOLD SCHWARZENEGGER is sued in his official capacity as the
29 Governor of the State of California, and whom, at all relevant times has been, the chief state executive
30 officer responsible for the furloughing of state workers.

31 (b) Defendant DEBBIE ENDSLEY is, and at all relevant times has been, the Director of the
32 Department of Personnel Administration (herein "DPA"), and sued in her official capacity only. DPA
33 represents the Governor as the "employer" in all matters pertaining to California State employer-
34 employee relations. DPA claims to be responsible for all issues related to salaries and benefits, job
35 classifications, and the training of state employees.

36 (c) Defendant MATTHEW CATE is, and at all relevant times has been, the Secretary of
37 CDCR, and sued in his official capacity only. CDCR is responsible for the operations of the California
38 state corrections, rehabilitation, probation, and parole systems. CDCR operates 33 adult correctional
39 facilities and 7 juvenile detention centers. CDCR is the second largest police agency in the United
40 States, and employs approximately 35,000 state correctional peace officers.

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⁴ As additional persons consent in writing to become Consentors to this action, their Consent Forms will be filed with this Court.

1 (d) Defendant BERNARD WARNER, is, and at all relevant times has been, the Chief
2 Deputy Secretary of the California DJJ, and sued in his official capacity only. DJJ is a Division within
3 CDCR. Youths are sent to DJJ to receive various training and treatment services.

4 (e) Defendant JOHN CHIANG is, and at all relevant times has been, the California State
5 Controller, and sued in his official capacity only. The State Controller is the Chief Fiscal Officer of
6 California, and his functions include accounting for the disbursement of all state funds and
7 administering the state payroll system. The Controller is also charged with auditing all claims against
8 the State and may audit the disbursement of any State money for accuracy, propriety, and legality.
9 (California Government Code § 12410).

10 (f) Defendant STEPHEN MAYBERG is, and at all relevant times has been, the Director of
11 the California Department of Mental Health (herein "DMH"), and sued in his official capacity only.
12 DMH employs, among others, Medical Technical Assistants ("MTAs"), who are themselves peace
13 officers working within California's correctional institutions.

14 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

15 8. In response to the weak performance of the California economy and the projected
16 monetary shortfalls in the 2008-2009 and 2009-2010 budgets, Defendant ARNOLD
17 SCHWARZENEGGER issued Executive Order S-16-08 (included as Exhibit "D") on December 19,
18 2008. This Order adopted a plan to implement a two day per month furlough, effective February 1,
19 2009 through June 30, 2010, for almost all of the more than 200,000 workers employed by the State of
20 California. The plan provided for most state workers to be given two uncompensated days off work
21 each month, colloquially referred to as "Furlough Fridays." Due to the fact that state prisons are 24-
22 hour-per-day, 7-days-per-week facilities and cannot close, unlike, for example, the Department of Motor
23 Vehicles offices, correctional officers and other corrections employees work their two furlough days and
24 accrue the two furlough days per month which are "booked" to be taken at a later time, when
25 operationally feasible.

26 9. On March 5, 2009, Plaintiffs were notified in writing (included as Exhibit "E") that they
27 could bank their accrued furlough days for a period not to exceed 24-months from the end of the
28

1 Furlough Program on June 30, 2010. At the end of the 24-months, any unused furlough days would
2 escheat to the state.

3 10. On July 1, 2009, California Governor Arnold Schwarzenegger issued Executive Order S-
4 13-09 (included as Exhibit "F"), which adopted a plan to implement a third furlough day for state
5 employees, effective July 1, 2009 through June 30, 2010. This Order directs that "all State employees
6 covered by the original and amended furlough plans must use their accrued furlough days prior to using
7 vacation, annual leave, personal holiday, holiday credit, personal leave plan credit, and compensatory
8 time off."⁵

9 11. At all times relevant herein, the state has maintained a practice of establishing in each
10 calendar year, twelve correlated state pay periods with pay day occurring at the end of each month.

11 12. It has been a longstanding practice of the state to pay overtime pay earned in a given state
12 pay period, before the end of the month, *immediately following* the pay period in which the overtime
13 was earned.

14 13. Beginning with the initial furloughs effective February 1, 2009, Plaintiffs were ordered to
15 report to work on their furlough days with the promise that they will be compensated with a "furlough
16 day off" in the future. Defendants require Plaintiffs to work their furlough days without paying them
17 within the pay period in which they work. Pursuant to 29 U.S.C. § 211(c), employees are required to
18 keep accurate records reflecting hours worked. There is no record keeping of which days worked
19 constitute that month's furlough days. For those furlough hours that are used, there is no accounting of
20 whether the hours used were accrued during that pay period or during a previous pay period.

21 14. As of October 1, 2009, at least 2,352,940 worked furlough hours remain unreimbursed to
22 CDCR employees. Included, as Exhibit "G", is a breakdown by month of the number of furlough hours
23 worked and the number of hours used from February 2009 through September 2009 by CDCR
24 employees in Bargaining Unit 6 ("BU6").⁶

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26 ⁵ The accrued furlough hours are not compensatory time. See 29 U.S.C. § 207(o).

27 ⁶ This document was provided by Defendants as the first page of Exhibit G to the October 28, 2009, declaration of Robert
28 Downs, Assistant Chief of Personnel Operations, CDCR, in support of Defendants' opposition to CCPOA's ongoing state
court request for writ of mandate that the furloughs have led the State to violate various ministerial duties imposed upon it by
the California Labor Code. Case No. RG-09-441544, Alameda Superior Court.

1 15. As of October 1, 2009, at least 19,368 worked furlough hours remain unreimbursed to
2 DMH employees. Included, as Exhibits "H and I", are breakdowns by month of the number of furlough
3 hours worked and the number of hours used from February 2009 through September 2009 by DMH
4 employees in bargaining unit 6 ("BU6").⁷

5 16. Work performed on furlough days, as well as not being properly and promptly
6 compensated for as "straight time", is not being counted by Defendants towards Plaintiffs' overtime
7 calculation. As of October 1, 2009, at least 5,259,067 hours worked by CDCR employees within BU6
8 were not included in overtime calculations since furloughs commenced. (See attachment "G" for the
9 number of furlough hours worked by CDCR employees within BU6 per month). As of October 1, 2009,
10 at least 40,528 hours worked by DMH employees within BU6 were not included in overtime
11 calculations. (See attachments "H" and "I" for the total number of furlough hours worked by DMH
12 employees within BU6).

13 **FIRST CLAIM - VIOLATION OF THE FLSA BY FAILING TO PAY FOR ALL WORK**
14 **PERFORMED WITHIN THE PAY PERIOD**

15 17. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein,
16 paragraphs 1 through 16 of this complaint.

17 18. Each of the Defendants sued in their official capacities has violated the FLSA, the
18 regulations and interpretative bulletins thereunder, by failing and continuing to fail to pay Plaintiffs for
19 all of the work they performed within the pay period in which it was worked.

20 **SECOND CLAIM - VIOLATION OF THE FLSA BY FAILING TO INCLUDE THE**
21 **FURLOUGH DAYS WORKED WHEN CALCULATING OVERTIME**

22 19. Plaintiffs reallege and incorporate by this reference, as though fully set forth herein,
23 paragraphs 1 through 18 of this complaint.

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27 ⁷ These documents were provided by Defendants as Exhibits C and D to the October 28, 2009, declaration of Candice Murch,
28 Chief of Labor Relations, DMH, in support of Defendants' opposition to CCPOA's ongoing state court request for writ of
mandate that the furloughs have led the State to violate various ministerial duties imposed upon it by the California Labor
Code. Case No. RG-09-441544, Alameda Superior Court.

