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14 JAN FRANK

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN FRANCISCO

17 CALIFORNIA ATTORNEYS,
18 ADMINISTRATIVE LAW JUDGES AND
19 HEARING OFFICERS IN STATE
20 EMPLOYMENT, GLEN GROSSMAN,
21 MARK HENDERSON, GEOFFREY
22 SIMS, and DOES 1-500,

23 Petitioners/Plaintiffs,

24 vs.

25 ARNOLD SCHWARZENEGGER as,
26 Governor of the State of California;
27 DAVID GILB as Director of the
28 Department of Personnel Administration;
29 JOHN CHIANG, Controller of the State of
30 California; JAN FRANK, as President of
31 STATE COMPENSATION INSURANCE
32 FUND, and DOES 1-50,

33 Defendants/Respondents.

Case No. CPF-09-509205

**RESPONDENT AND DEFENDANT JAN
FRANK'S MEMORANDUM OF POINTS
AND AUTHORITIES IN RESPONSE TO
VERIFIED PETITION FOR WRIT OF
MANDATE**

[Filed concurrently herewith Declaration of
Janet Frank in Support of Response to Verified
Petition for Writ of Mandate]

Date: March 20, 2009

Time: 9:30 a.m.

Department: 301

34 **I. INTRODUCTION.**

35 Respondent and Defendant Jan Frank (hereinafter "Frank"), named in this litigation in her
36 capacity as President of the State Compensation Insurance Fund (the "Fund"), submits this

1 memorandum of points and authorities in response to Petitioners and Plaintiffs California
2 Attorneys, Administrative Law Judges and Hearing Officers in State Employment, Glen
3 Grossman, Mark Henderson, and Geoffrey Sims' ("Petitioners") Petition for Writ of Mandate (the
4 "Petition"). In this matter, Frank is caught between the proverbial "rock and a hard place."
5 While Frank and the Fund have the best interests of the Fund's employees in mind at all times,
6 Respondent and Defendant Governor Arnold Schwarzenegger (the "Governor") issued an
7 Executive Order dated December 19, 2008 (the "Order") requiring Respondent and Defendant the
8 Department of Personnel Administration ("DPA") to implement a furlough program of two days
9 per month of all State employees regardless of funding source. *See* Declaration of Janet Frank
10 ("Frank Declaration") at Exhibit 1. The Order provided for a limited exemption process. *Id.*
11 Frank and the Fund attempted to negotiate with the DPA to obtain an exemption from the Order
12 on behalf of Fund employees, making many of the same arguments made here by Petitioners, but
13 the Fund was unable to obtain an exemption. *Id.* at ¶4. The DPA instructed the Fund to move
14 forward with two days of furloughs per month for Fund employees. *Id.* Accordingly, the Fund
15 felt it had no choice but to comply with the Order and implemented a furlough plan consistent
16 with the Order and as directed by the DPA. *Id.*

17 Frank understands that Petitioners maintain that the Governor and the DPA lack the
18 authority to impose furloughs on the Fund or Fund employees. Frank also understands, however,
19 that the Governor and the DPA maintain that the Governor has the authority to impose furloughs
20 on the Fund or Fund employees, and that the Governor and the DPA further contend that this
21 Petition and Complaint are barred by the doctrine of *res judicata*. If the Court feels it is
22 appropriate to rule on the issues presented in this Petition, Frank and the Fund intend fully to
23 comply with whatever ruling the Court may make on the issue of whether the Order lawfully
24 applies to Fund employees.

25 **II. FACTUAL BACKGROUND.**

26 The Fund is a self-supporting, non-profit enterprise that provides workers' compensation
27 insurance to California employers at cost with no financial obligation to the public. Frank
28 Declaration at ¶2. Frank is the President of the Fund. *Id.* The Fund employs approximately 475

1 legal professionals, such as attorneys, Administrative Law Judges, and Hearing Officers. *Id.*

2 As noted, the Governor issued the Order on December 19, 2008. *See* Frank Declaration at
3 Exhibit 1. The Order directed the DPA to implement a furlough program of two days per month
4 of all State employees “regardless of funding source.” *See id.* The Order provided for a “limited
5 exemption process.” *Id.*

6 Frank and the Fund attempted to avail Fund employees of that exemption process. Frank
7 Declaration at ¶4. Frank and the Fund attempted to negotiate an agreement with the DPA that
8 Fund employees were exempt. *Id.* The Fund made many of the same arguments asserted by
9 Petitioners in this litigation. *Id.* After extensive negotiations, however, the Fund was unable to
10 obtain an exemption. *Id.* The DPA instructed the Fund to move forward with two days of
11 furloughs per month. *Id.* Accordingly, the Fund felt it had no choice but to comply with the
12 Order and implemented a furlough plan consistent with the Order and as directed by the DPA. *Id.*

13 **III. STATEMENT OF POSITION.**

14 Again, Frank and the Fund have the best interests of the Fund’s employees in mind. The
15 Fund felt, however, that it had no choice but to comply with the Order once the Order was issued,
16 the DPA denied the requested exemption, and the DPA instructed the Fund to implement the
17 furlough. Frank understands that Petitioners maintain that the Governor and the DPA lack the
18 authority to impose furloughs on the Fund or Fund employees, but understands that the Governor
19 and the DPA maintain that the Governor has the authority to impose furloughs on the Fund or
20 Fund employees. Frank and the Fund intend fully to comply with whatever order the Court may
21 enter on the issue of whether the Order lawfully applies to Fund employees.

22 Frank takes no position on the issue of whether this action is barred by the doctrine of *res*
23 *judicata* in light of the decision in *California Attorneys, Administrative Law Judges and Hearing*
24 *Officers in State Employment v. Governor Arnold Schwarzenegger et al.*, Case No. 2009-
25 80000135, filed in Sacramento Superior Court.

26 **IV. CONCLUSION.**

27 Again, if the Court feels it is appropriate to rule on the issues presented in this Petition,
28 Frank and the Fund intend fully to comply with whatever ruling the Court may make on the issue

1 of whether the Order lawfully applies to Fund employees.

2 Dated: March 10, 2009

MANATT, PHELPS & PHILLIPS, LLP
Ronald B. Turovsky
Alison Sultan White

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By: Ronald B. Turovsky
Ronald B. Turovsky
Attorneys for Defendant/Respondent
JAN FRANK

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1 **PROOF OF SERVICE**

2 I, Linda Allen, declare as follows:

3 I am employed in San Francisco County, San Francisco, California. I am over the
4 age of eighteen years and not a party to this action. My business address is MANATT, PHELPS
& PHILLIPS, LLP, One Embarcadero Center, 30th Floor, San Francisco, California 94111. On
5 March 10, 2009, I served the within:

6 **RESPONDENT AND DEFENDANT JANET FRANK'S MEMORANDUM
7 OF POINTS AND AUTHORITIES IN RESPONSE TO VERIFIED
8 PETITION FOR WRIT OF MANDATE**

9 on the interested parties in this action addressed as follows:

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20 **(BY ELECTRONIC MAIL)** By transmitting such document(s) electronically at
21 [time] from my e-mail address, lallen@manatt.com at Manatt, Phelps & Phillips,
22 LLP, San Francisco, California, to the person(s) at the electronic mail addresses
23 listed above. The transmission was reported as complete and without error.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct and that this declaration was executed on March 10, 2009, at San
26 Francisco, California.

27 

28 Linda Allen