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8

9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF ALAMEDA

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

15 Petitioner/Plaintiff,

16 vs.

17 ARNOLD SCHWARZENEGGER as, Governor
18 of the State of California; DAVID GILB as
Director of the Department of Personnel
19 Administration; JOHN CHIANG, Controller of
the State of California; EDMUND G. BROWN,
20 JR., Attorney General of the State of California;
21 STEVE POIZNER, Insurance Commissioner of
the State of California; PRESTON
22 DUFAUCHARD, Corporations Commissioner
of the Department of Corporations; CINDY
23 EHNES, Director of the Department of
24 Managed Health Care; JEFF DAVI, Real Estate
Commissioner of the Department of Real
25 Estate; CARRIE LOPEZ, Director of the
26 Department of Consumer Affairs; GEORGE
VALVERDE, Director of the Department of
27 Motor Vehicles; MIKE CHRISMAN, Secretary
of the California Energy Commission; KEN
28 LEWIS, Chief Executive Officer of the Public

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Date:
Time:
Dept.:

1 Employees' Retirement System; RONALD P.
2 SCHAFER, Chairperson of the Santa Monica
3 Mountains Conservancy; DOUGLAS BOSCO,
4 Chairman of the California State Coastal
5 Conservancy; JULIE NAUMAN, Executive
6 Officer of the Victim Compensation and
7 Government Claims Board; ALAN KERZIN,
8 Executive Director of the State Council on
9 Developmental Disabilities; MARY-ANN
10 WARMERDAM, Director of the Department of
11 Pesticide Regulation; RENEE ZITO, Director of
12 the Department of Alcohol and Drug Programs;
13 JACK EHNES, Chief Executive Officer of the
14 State Teachers' Retirement System; GLENN
15 POMEROY, Chief Executive Officer of the
16 California Earthquake Authority; WILLIAM
17 HARAF, Commissioner of the Department of
18 Financial Institutions; STEVE HARDY,
19 Director of the Department of Alcoholic
20 Beverage Control; FRED ARMENDARIZ,
21 Chairman of the Alcoholic Beverage Control
22 Appeals Board; RAYNOR T. TSUNEYOSHI,
23 Director of the Department of Boating and
24 Waterways; TERRI CIAU, Executive Director
25 of the Gambling Control Commission; JOHN P.
26 DONNELLY, Executive Director of the
27 Wildlife Conservation Board; J. A. FARROW,
28 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;

1 BONNIE GARCIA, Chair of the California
Unemployment Insurance Appeals Board;
2 TONY SAUER, Director of the Department of
Rehabilitation; MARY D. NICHOLS, Chairman
3 of the Air Resources Board; LYNN JACOBS,
Director of the Department of Housing and
4 Community Development; PATRICK
5 HENNING, Director of the Employment
Development Department; LESTER SNOW,
6 Director of the Department of Water Resources;
PATRICK WRIGHT, Executive Director of the
7 California Tahoe Conservancy; BRIDGETT
8 LUTHER, Director of the Department of
Conservation; DOROTHY RICE, Executive
9 Director of the State Water Resources Control
Board; DAVID MAXWELL-JOLLY, Director
10 of the Department of Health Care Services;
MARK HORTON, Director of the Department
11 of Public Health; JOHN A. WAGNER, Director
12 of the Department of Social Services; WILL
13 KEMPTON, Director of the California
Department of Transportation; MAZIAR
14 MOVASSAGHI, Acting Director of the
Department of Toxic Substances Control; JON
15 DUNCAN, Director of the Department of
Industrial Relations; LYNN DAUCHER,
16 Director of the California Department of Aging;
RUTH COLEMAN, Director of the Department
17 of Parks and Recreation; DALE BONNER,
18 Secretary of the Business, Transportation, and
Housing Agency; KAREN HUMPHREY,
19 Executive Director of the California
20 Postsecondary Education Commission
and DOES 1 through 100,

21
22 Defendants/Respondents.
23

24
25 **Introduction**

26 On December 19, 2008, Governor Arnold Schwarzenegger issued Executive Order S-16-
27 08, which made a number of proclamations relating to a General Fund deficit which was
28 projected to grow to \$42 billion over the following 18 months. The order further proclaimed that

1 “a furlough will reduce current spending and immediately improve the State's ability to meet its
2 obligations to pay for essential services of the State” The order directed the Department of
3 Personnel Administration (“DPA”) to implement a furlough of two days per month “regardless
4 of funding source” but directed DPA to allow limited exemptions. That order directed that the
5 furlough plan would include “a limited exemption process.” Other than the general “power and
6 authority vested in me by the Constitution and statutes of the State of California,” the only
7 specific authority cited in the order was Government Code section 3516.5.

8 On February 19, 2009, the Legislature passed a budget to close the \$42 billion deficit
9 referenced in the Executive Order. That same day, Governor Schwarzenegger held a press
10 conference in which he announced that he would sign the budget on Friday, February 20, 2009.
11 On February 20, 2009, Governor Arnold Schwarzenegger signed the budget passed by the
12 Legislature the previous day. The budget resolves the deficits in the current fiscal year (FY 08-
13 09) as well as the upcoming fiscal year (09-10). The passage of the budget eliminates the stated
14 basis for the furloughs. To the extent the Executive Order purported to be authorized under the
15 emergency provisions of Government Code section 3516.5, the emergency is over.

16 Many employees impacted by the furloughs are not paid out of the General Fund. There
17 are dozens of state agencies and departments which are funded in whole or in part by federal
18 funds, user fees, or other sources of revenue apart from the General Fund. Furloughing these
19 employees does not result in any General Fund savings. Accordingly, there is no authority to
20 furlough such employees. Moreover, furloughing these employees is a wasteful mismanagement
21 of fiscal and personnel resources by agencies who have been charged with carrying out specific
22 missions, and which are unable to do so as a result of the furloughs.

23
24 **I. Parties**

25 Petitioner/Plaintiff CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES
26 AND HEARING OFFICERS IN STATE EMPLOYMENT (“CASE”), is, and at all times herein
27 mentioned was, a nonprofit corporation organized and existing under the laws of the state of
28 California, with its principal place of business in the County of Sacramento, State of California.

1 CASE is the exclusive collective bargaining representative of legal professionals in State
2 Bargaining Unit 2 pursuant to Government Code section 3520.5. CASE represents
3 approximately 3400 legal professionals in more than 80 different state departments, boards, and
4 commissions. Approximately 62% of CASE members are paid salaries from revenue sources
5 other than General Fund revenues. CASE is a state taxpayer.

6 Respondent/Defendant ARNOLD SCHWARZENEGGER is the elected Governor of the
7 State of California. Pursuant to Government Code section 3513, subdivision (j), and section
8 3517, the Governor is the employer of state employees in Bargaining Unit 2, for purposes of
9 bargaining or meeting and conferring in good faith under the Ralph C. Dills Act. Governor
10 Schwarzenegger is named in his official capacity only.

11 Respondent/Defendant DAVID GILB is the Director of the California Department of
12 Personnel Administration (DPA) and is responsible for managing the nonmerit aspects of the
13 State's personnel system. DPA serves as the Governor's designated representative for purposes
14 of collective bargaining, and for purposes of meeting and conferring with the exclusive
15 representatives. (See Gov. Code § 19815.2; Gov. Code § 3517.) David Gilb is named in his
16 official capacity only.

17 Respondent/Defendant JOHN CHIANG is a constitutional officer and is the elected State
18 Controller of the State of California. (Cal. Const. Art. V, § 11.) Pursuant to Government Code
19 section 12410, the State Controller shall superintend the fiscal concerns of the state. The
20 Controller shall audit all claims against the state, and may audit the disbursement of any state
21 money, for correctness, legality, and for sufficient provisions of law for payment. In addition,
22 the Controller shall draw warrants on the Treasurer for the payment of money directed by law to
23 be paid out of the State Treasury; but a warrant shall not be drawn unless authorized by law.
24 (Gov. Code § 12440.) John Chiang is named in his official capacity only.

25 Respondent/Defendant EDMUND G. BROWN, JR., is the Attorney General of the State
26 of California and is the head of the Department of Justice. (Government Code sec. 12510.) The
27 Department of Justice employs CASE members in positions funded by sources other than the
28 General Fund. Attorney General Brown is sued in his official capacity only.

1 Respondent/Defendant STEVE POIZNER is the Insurance Commissioner of the State of
2 California and is the head of the Department of Insurance. (Ins. Code. Sec. 12906.) The
3 Department of Insurance employs CASE members in positions funded by sources other than the
4 General Fund. Steve Poizner is sued in his official capacity only.

5 Respondent/Defendant PRESTON DUFAUCHARD is the Corporations Commissioner
6 of the Department of Corporations, which employs CASE members in positions funded by
7 sources other than the General Fund. Mr. Defauchard is sued in his official capacity only.

8 Respondent/Defendant CINDY EHNES is the Director of the Department of Managed
9 Health Care which employs CASE members in positions funded by sources other than the
10 General Fund. Ms. Ehnes is sued in her official capacity only.

11 Respondent/Defendant JEFF DAVI is the Real Estate Commissioner of the Department
12 of Real Estate which employs CASE members in positions funded by sources other than the
13 General Fund. Mr. Davi is sued in his official capacity only.

14 Respondent/Defendant CARRIE LOPEZ is the Director of the Department of Consumer
15 Affairs which employs CASE members in positions funded by sources other than the General
16 Fund. Ms. Lopez is sued in her official capacity only.

17 Respondent/Defendant GEORGE VALVERDE is the Director of the Department of
18 Motor Vehicles which employs CASE members in positions funded by sources other than the
19 General Fund. Mr. Valverde is sued in his official capacity only.

20 Respondent/Defendant MIKE CHRISMAN is the Secretary of the California Energy
21 Commission which employs CASE members in positions funded by sources other than the
22 General Fund. Mr. Chrisman is sued in his official capacity only.

23 Respondent/Defendant KEN LEWIS is the Chief Executive Officer of the Public
24 Employees' Retirement System which employs CASE members in positions funded by sources
25 other than the General Fund. Mr. Lewis is sued in his official capacity only.

26 Respondent/Defendant RONALD P. SCHAFFER is the Chairperson of the Santa Monica
27 Mountains Conservancy which employs CASE members in positions funded by sources other
28 than the General Fund. Mr. Schaffer is sued in his official capacity only.

1 Respondent/Defendant DOUGLAS BOSCO is the Chairman of the California State
2 Coastal Conservancy which employs CASE members in positions funded by sources other than
3 the General Fund. Mr. Bosco is sued in his official capacity only.

4 Respondent/Defendant JULIE NAUMAN is the Executive Officer of the Victim
5 Compensation and Government Claims Board which employs CASE members in positions
6 funded by sources other than the General Fund. Ms. Nauman is sued in her official capacity
7 only.

8 Respondent/Defendant ALAN KERZIN is the Executive Director of the State Council on
9 Developmental Disabilities which employs CASE members in positions funded by sources other
10 than the General Fund. Mr. Kerzin is sued in his official capacity only.

11 Respondent/Defendant MARY-ANN WARMERDAM is the Director of the Department
12 of Pesticide Regulation which employs CASE members in positions funded by sources other
13 than the General Fund. Ms. Warmerdam is sued in her official capacity only.

14 Respondent/Defendant RENEE ZITO is the Director of the Department of Alcohol and
15 Drug Programs which employs CASE members in positions funded by sources other than the
16 General Fund. Ms. Zito is sued in her official capacity only.

17 Respondent/Defendant JACK EHNES is the Chief Executive Officer of the State
18 Teachers' Retirement System which employs CASE members in positions funded by sources
19 other than the General Fund. Mr. Ehnes is sued in his official capacity only.

20 Respondent/Defendant GLENN POMEROY is the Chief Executive Officer of the
21 California Earthquake Authority which employs CASE members in positions funded by sources
22 other than the General Fund. Mr. Pomeroy is sued in his official capacity only.

23 Respondent/Defendant WILLIAM HARAF is the Commissioner of the Department of
24 Financial Institutions which employs CASE members in positions funded by sources other than
25 the General Fund. Mr. Haraf is sued in his official capacity only.

26 Respondent/Defendant STEVE HARDY is the Director of the Department of Alcoholic
27 Beverage Control which employs CASE members in positions funded by sources other than the
28 General Fund. Mr. Hardy is sued in his official capacity only.

1 Respondent/Defendant FRED ARMENDARIZ is the Chairman of the Alcoholic
2 Beverage Control Appeals Board which employs CASE members in positions funded by sources
3 other than the General Fund. Mr. Armendariz is sued in his official capacity only.

4 Respondent/Defendant RAYNOR T. TSUNEYOSHI is the Director of the Department of
5 Boating and Waterways which employs CASE members in positions funded by sources other
6 than the General Fund. Mr. Tsuyenoshi is sued in his official capacity only.

7 Respondent/Defendant TERRI CIAU is the Executive Director of the Gambling Control
8 Commission which employs CASE members in positions funded by sources other than the
9 General Fund. Ms. Ciau is sued in her official capacity only.

10 Respondent/Defendant JOHN P. DONNELLY is the Executive Director of the Wildlife
11 Conservation Board which employs CASE members in positions funded by sources other than
12 the General Fund. Mr. Donnelly is sued in his official capacity only.

13 Respondent/Defendant J. A. FARROW is the Commissioner of the California Highway
14 Patrol which employs CASE members in positions funded by sources other than the General
15 Fund. Mr. Farrow is sued in his official capacity only.

16 Respondent/Defendant KIRK BREED is the Executive Director of the California Horse
17 Racing Board which employs CASE members in positions funded by sources other than the
18 General Fund. Mr. Breed is sued in his official capacity only.

19 Respondent/Defendant JOAN BORUCKI is the Director of the California State Lottery
20 Commission which employs CASE members in positions funded by sources other than the
21 General Fund. Ms. Borucki is sued in her official capacity only.

22 Respondent/Defendant LLOYD THRONE is the Director of the Department of
23 Community Services and Development which employs CASE members in positions funded by
24 sources other than the General Fund. Mr. Throne is sued in his official capacity only.

25 Respondent/Defendant L. STEVEN SPEARS is the Acting Executive Director of the
26 California Housing Finance Agency which employs CASE members in positions funded by
27 sources other than the General Fund. Mr. Spears is sued in his official capacity only.
28

1 Respondent/Defendant MARK LEARY is the Executive Director of the California
2 Integrated Waste Management Board which employs CASE members in positions funded by
3 sources other than the General Fund. Mr. Leary is sued in his official capacity only.

4 Respondent/Defendant RON DIEDRICH is the Director of the Office of Administrative
5 Hearings which employs CASE members in positions funded by sources other than the General
6 Fund. Mr. Diedrich is sued in his official capacity only.

7 Respondent/Defendant DESTIE OVERPECK is the Acting Chief Deputy Administrative
8 Director of the Division of Workers Compensation which employs CASE members in positions
9 funded by sources other than the General Fund. Ms. Overpeck is sued in her official capacity
10 only.

11 Respondent/Defendant DON KOCK is the Director of the Department of Fish and Game
12 which employs CASE members in positions funded by sources other than the General Fund. Mr.
13 Kock is sued in his official capacity only.

14 Respondent/Defendant CALEB CHEUNG is the Commission Chair of the Commission
15 on Teacher Credentialing which employs CASE members in positions funded by sources other
16 than the General Fund. Mr. Cheung is sued in his official capacity only.

17 Respondent/Defendant BONNIE GARCIA is the Chair of the California Unemployment
18 Insurance Appeals Board which employs CASE members in positions funded by sources other
19 than the General Fund. Ms. Garcia is sued in her official capacity only.

20 Respondent/Defendant TONY SAUER is the Director of the Department of
21 Rehabilitation which employs CASE members in positions funded by sources other than the
22 General Fund. Mr. Sauer is sued in his official capacity only.

23 Respondent/Defendant MARY D. NICHOLS is the Chairman of the Air Resources Board
24 which employs CASE members in positions funded by sources other than the General Fund. Ms.
25 Nichols is sued in her official capacity only.

26 Respondent/Defendant LYNN JACOBS is the Director of the Department of Housing
27 and Community Development which employs CASE members in positions funded by sources
28 other than the General Fund. Ms. Jacobs is sued in her official capacity only.

1 Respondent/Defendant PATRICK HENNING is the Director of the Employment
2 Development Department which employs CASE members in positions funded by sources other
3 than the General Fund. Mr. Henning is sued in his official capacity only.

4 Respondent/Defendant LESTER SNOW is the Director of the Department of Water
5 Resources which employs CASE members in positions funded by sources other than the General
6 Fund. b is sued in his official capacity only.

7 Respondent/Defendant PATRICK WRIGHT is the Executive Director of the California
8 Tahoe Conservancy which employs CASE members in positions funded by sources other than
9 the General Fund. Mr. Wright is sued in his official capacity only.

10 Respondent/Defendant BRIDGETT LUTHER is the Director of the Department of
11 Conservation which employs CASE members in positions funded by sources other than the
12 General Fund. Ms. Luther is sued in her official capacity only.

13 Respondent/Defendant DOROTHY RICE is the Executive Director of the State Water
14 Resources Control Board which employs CASE members in positions funded by sources other
15 than the General Fund. Ms. Rice is sued in her official capacity only.

16 Respondent/Defendant DAVID MAXWELL-JOLLY is the Director of the Department of
17 Health Care Services which employs CASE members in positions funded by sources other than
18 the General Fund. Mr. Maxwell-Jolly is sued in his official capacity only.

19 Respondent/Defendant MARK HORTON is the Director of the Department of Public
20 Health which employs CASE members in positions funded by sources other than the General
21 Fund. Mr. Horton is sued in his official capacity only.

22 Respondent/Defendant JOHN A. WAGNER is the Director of the Department of Social
23 Services which employs CASE members in positions funded by sources other than the General
24 Fund. Mr. Wagner is sued in his official capacity only.

25 Respondent/Defendant WILL KEMPTON is the Director of the California Department of
26 Transportation which employs CASE members in positions funded by sources other than the
27 General Fund. Mr. Kempton is sued in his official capacity only.

1 Respondent/Defendant MAZIAR MOVASSAGHI is the Acting Director of the
2 Department of Toxic Substances Control which employs CASE members in positions funded by
3 sources other than the General Fund. Mr. Movassaghi is sued in his official capacity only.

4 Respondent/Defendant JON DUNCAN is the Director of the Department of Industrial
5 Relations which employs CASE members in positions funded by sources other than the General
6 Fund. Mr. Duncan is sued in his official capacity only.

7 Respondent/Defendant LYNN DAUCHER is the Director of the California Department
8 of Aging which employs CASE members in positions funded by sources other than the General
9 Fund. Ms. Daucher is sued in her official capacity only.

10 Respondent/Defendant RUTH COLEMAN is the Director of the Department of Parks
11 and Recreation which employs CASE members in positions funded by sources other than the
12 General Fund. Ms. Coleman is sued in her official capacity only.

13 Respondent/Defendant DALE BONNER is the Secretary of the Business, transportation,
14 and Housing Agency which employs CASE members in positions funded by sources other than
15 the General Fund. Mr. Bonner is sued in his official capacity only.

16 Respondent/Defendant KAREN HUMPHREY is the Executive Director of the California
17 Postsecondary Education Commission which employs CASE members in positions funded by
18 sources other than the General Fund. Ms. Humphrey is sued in her official capacity only.

19 DOES 1 through 100 are the heads of the various additional agencies, departments,
20 boards and commissions which employ CASE members in positions which are funded by
21 sources other than the General Fund. Petitioner/Plaintiff will identify those persons with more
22 specificity after discovery and investigation.

23
24 **II. Venue**

25 The California Attorney General has an office within the City of Oakland, making
26 Alameda County an appropriate venue. (Code of Civ. Proc. § 401.)

27
28 **III. The Executive Order**

1 The Governor's Executive Order (a true and correct copy of which is attached as Exhibit
2 A), made a number of proclamations relating to a perceived fiscal cash crisis, and the
3 Legislature's failure to "effectively" address the crisis.

4 Other than the general "power and authority vested in me by the Constitution and statutes
5 of the State of California," the only specific authority cited in the order was Government Code
6 section 3516.5.¹ Section 3516.5 does not define "emergency" nor does it empower the Governor
7 to "furlough" state employees or otherwise reduce their wages. It merely provides an exception
8 to the requirement of providing notice to the exclusive representatives of employees of the state.

9 The order specifically directed DPA to adopt and implement a furlough of represented
10 state employees. (Exhibit A, p. 2.) A furlough of two days per month results in a pay reduction
11 of approximately 9.2 percent per month.

12 The first finding in the Executive Order refers exclusively to the looming General Fund
13 deficit. (Exh. A, p. 1.) The Executive Order is silent as to the status of the many Special Fund
14 agencies which employ CASE members, and for which there is no looming deficit or fiscal
15 emergency.

16 17 **IV. The Special Fund Agencies**

18 The Department of Insurance ("DOI") employs approximately 71 CASE members. The
19 salaries of CASE members at DOI are funded entirely by fees imposed on insurance premiums.
20 Not a single General Fund dollar goes to support the budget of DOI. Accordingly, furloughs at
21 DOI result in reduced state services while achieving no savings whatsoever to the General Fund.

22
23 ¹ That section provides:

24 Except in cases of emergency as provided in this section, the employer shall give reasonable written
25 notice to each recognized employee organization affected by any law, rule, resolution, or regulation
26 directly relating to matters within the scope of representation proposed to be adopted by the employer,
27 and shall give such recognized employee organizations the opportunity to meet and confer with the
28 administrative officials or their delegated representatives as may be properly designated by law.

26 In cases of emergency when the employer determines that a law, rule, resolution, or regulation must be
27 adopted immediately without prior notice or meeting with a recognized employee organization, the
28 administrative officials or their delegated representatives as may be properly designated by law shall
provide such notice and opportunity to meet and confer in good faith at the earliest practical time
following the adoption of such law, rule, resolution, or regulation.

1 On the contrary, every dollar not paid to DOI employees incrementally increases the state's
2 budget deficit, in that the state loses the income tax revenue that DOI employees would pay on
3 that income with no offsetting decrease in state spending.

4 The Department of Corporations ("DC") employs approximately 38 CASE members.
5 The salaries of CASE members at DC are funded entirely by fees imposed on corporations. Not
6 a single General Fund dollar goes to support the budget of DC. Accordingly, furloughs at DC
7 result in reduced state services while achieving no savings whatsoever to the General Fund. On
8 the contrary, every dollar not paid to DC employees incrementally increases the state's budget
9 deficit, in that the state loses the income tax revenue that DC employees would pay on that
10 income with no offsetting decrease in state spending.

11 The Department of Managed Health Care ("DMHC") employs approximately 39 CASE
12 members. The salaries of CASE members at DMHC are funded entirely by the Managed Care
13 Fund, which generates revenue from license fees charged to health management plans. Not a
14 single General Fund dollar goes to support the budget of DMHC. Accordingly, furloughs at
15 DMHC result in reduced state services while achieving no savings whatsoever to the General
16 Fund. On the contrary, every dollar not paid to DMHC employees incrementally increases the
17 state's budget deficit, in that the state loses the income tax revenue that DMHC employees would
18 pay on that income with no offsetting decrease in state spending.

19 The Department of Real Estate ("DRE") employs approximately 18 CASE members.
20 The DRE Budget is funded entirely by the Real Estate Fund, which generates revenues from the
21 license fees charged to real estate agents and brokers. Not a single General Fund dollar goes to
22 support the budget of DRE. Accordingly, furloughs at DRE result in reduced state services
23 while achieving no savings whatsoever to the General Fund. On the contrary, every dollar not
24 paid to DRE employees incrementally increases the state's budget deficit, in that the state loses
25 the income tax revenue that DRE employees would pay on that income with no offsetting
26 decrease in state spending.

27 The Department of Consumer Affairs ("DCA") employs approximately 14 CASE
28 members. DCA is funded from a variety of more than 40 special funds, the vast majority of

1 which are generated from licensing fees imposed upon the licensees of the various professions
2 which are regulated by bureaus within DCA. Not a single General Fund dollar goes to support
3 the budget of DCA. Accordingly, furloughs at DCA result in reduced state services while
4 achieving no savings whatsoever to the General Fund. On the contrary, every dollar not paid to
5 DCA employees incrementally increases the state's budget deficit, in that the state loses the
6 income tax revenue that DCA employees would pay on that income with no offsetting decrease
7 in state spending.

8 The Department of Motor Vehicles ("DMV") employs approximately 24 CASE
9 members. DMV is funded entirely through a variety of approximately 5 special funds, whose
10 revenues are generated largely by vehicle registration and license fees. Not a single General
11 Fund dollar goes to support the budget of DMV. Accordingly, furloughs at DMV result in
12 reduced state services while achieving no savings whatsoever to the General Fund. On the
13 contrary, every dollar not paid to DMV employees incrementally increases the state's budget
14 deficit, in that the state loses the income tax revenue that DMV employees would pay on that
15 income with no offsetting decrease in state spending.

16 The Energy Resources Conservation and Development Commission ("ERCDC")
17 employs approximately 21 CASE members. The ERCDC budget is funded by a variety of
18 approximately 11 different special funds. Not a single General Fund dollar goes to support the
19 budget of ERCDC. Accordingly, furloughs at ERCDC result in reduced state services while
20 achieving no savings whatsoever to the General Fund. On the contrary, every dollar not paid to
21 ERCDC employees incrementally increases the state's budget deficit, in that the state loses the
22 income tax revenue that ERCDC employees would pay on that income with no offsetting
23 decrease in state spending.

24 The Public Employees' Retirement System ("PERS") employs approximately 18 CASE
25 members. PERS's budget receives no General Fund dollars whatsoever. Rather, the PERS
26 budget is funded from a variety of approximately 9 different special funds. Accordingly,
27 furloughs at PERS result in reduced state services while achieving no savings whatsoever to the
28 General Fund. On the contrary, every dollar not paid to PERS employees incrementally

1 increases the state's budget deficit, in that the state loses the income tax revenue that PERS
2 employees would pay on that income with no offsetting decrease in state spending.

3 The Santa Monica Mountains Conservancy ("SMMC") employs approximately 1 CASE
4 member. The SMMC budget is funded by a variety of approximately 4 different special funds.
5 Not a single General Fund dollar goes to support the budget of SMMC. Accordingly, furloughs
6 at SMMC result in reduced state services while achieving no savings whatsoever to the General
7 Fund. On the contrary, every dollar not paid to SMMC employees incrementally increases the
8 state's budget deficit, in that the state loses the income tax revenue that SMCC employees would
9 pay on that income with no offsetting decrease in state spending.

10 The State Coastal Conservancy ("SCC") employs approximately 6 CASE members. The
11 SCC budget is funded by a variety of approximately 10 different special funds. Not a single
12 General Fund dollar goes to support the budget of SCC. Accordingly, furloughs at SCC result in
13 reduced state services while achieving no savings whatsoever to the General Fund. On the
14 contrary, every dollar not paid to SCC employees incrementally increases the state's budget
15 deficit, in that the state loses the income tax revenue that SCC employees would pay on that
16 income with no offsetting decrease in state spending.

17 The Victim Compensation and Government Claims Board ("VCGCB") employs
18 approximately 6 CASE members. The VCGCB budget is funded by the Restitution Fund and by
19 federal dollars. Not a single General Fund dollar goes to support the budget of VCGCB.
20 Accordingly, furloughs at VCGCB result in reduced state services while achieving no savings
21 whatsoever to the General Fund. On the contrary, every dollar not paid to VCGCB employees
22 incrementally increases the state's budget deficit, in that the state loses the income tax revenue
23 that VCGCB employees would pay on that income with no offsetting decrease in state spending.

24 The State Council on Developmental Disabilities ("SCDD") employs approximately 1
25 CASE member. The SCDD budget is funded entirely with federal dollars. Not a single General
26 Fund dollar goes to support the budget of SCDD. Accordingly, furloughs at SCDD result in
27 reduced state services while achieving no savings whatsoever to the General Fund. On the
28 contrary, every dollar not paid to SCDD employees incrementally increases the state's budget

1 deficit, in that the state loses the income tax revenue that SCDD employees would pay on that
2 income with no offsetting decrease in state spending.

3 The Department of Pesticide Regulation (“PR”) employs approximately 3 CASE
4 members. The vast majority of the PR budget comes from the Department of Pesticide
5 Regulation Fund, which generates revenues from licensing fees imposed on pesticide dealers and
6 applicators. A small portion of the PR budget comes from federal dollars. Not a single General
7 Fund dollar goes to support the budget of PR. Accordingly, furloughs at PR result in reduced
8 state services while achieving no savings whatsoever to the General Fund. On the contrary,
9 every dollar not paid to PR employees incrementally increases the state’s budget deficit, in that
10 the state loses the income tax revenue that PR employees would pay on that income with no
11 offsetting decrease in state spending.

12 The Department of Alcohol and Drug Programs (“ADP”) employs approximately 3
13 CASE members. ADP’s budget receives no General Fund dollars whatsoever. Rather, the ADP
14 budget is funded from a variety of approximately 11 different special funds, as well as federal
15 dollars. Not a single General Fund dollar goes to support the budget of ADP. Accordingly,
16 furloughs at ADP result in reduced state services while achieving no savings whatsoever to the
17 General Fund. On the contrary, every dollar not paid to ADP employees incrementally increases
18 the state’s budget deficit, in that the state loses the income tax revenue that APD employees
19 would pay on that income with no offsetting decrease in state spending.

20 The State Teachers’ Retirement System (“STRS”) employs approximately 6 CASE
21 members. STRS’s budget receives no General Fund dollars whatsoever. Rather, the STRS
22 budget is funded from a variety of approximately 5 different special funds. Accordingly,
23 furloughs at STRS result in reduced state services while achieving no savings whatsoever to the
24 General Fund. On the contrary, every dollar not paid to STRS employees incrementally
25 increases the state’s budget deficit, in that the state loses the income tax revenue that STRS
26 employees would pay on that income with no offsetting decrease in state spending.

27 The California Earthquake Authority (“CEA”) employs approximately 2 CASE members.
28 CEA is entirely user funded through premiums assessed on earthquake insurance policies. The

1 moneys are completely separate from the State Treasury. (Insurance Code section 10089.22,
2 subd. (b).) The State of California has no liability for any of the financial obligations of CEA.
3 (Insurance Code section 10089.35, subd. (d).) Accordingly, furloughs at CEA result in reduced
4 state services while achieving no savings whatsoever to the General Fund. On the contrary,
5 every dollar not paid to CEA employees incrementally increases the state's budget deficit, in that
6 the state loses the income tax revenue that CEA employees would pay on that income with no
7 offsetting decrease in state spending.

8 The Department of Financial Institutions (DFI) employs approximately 8 CASE
9 members. The salaries of CASE members employed at DFI are funded entirely by assessments
10 on its bank, trust company, credit union, money transmitter, payment instrument seller and
11 foreign bank office licensees. These assessments, along with all other monies collected by the
12 Commissioner (such as fines, case settlement amounts, civil money penalties, etc.) are deposited
13 in the Financial Institutions Fund in the State Treasury (Financial Code section 265). The DFI
14 budget receives no General Fund dollars. Accordingly, furloughs at DFI result in reduced state
15 services while achieving no savings whatsoever to the General Fund. On the contrary, every
16 dollar not paid to DFI employees incrementally increases the state's budget deficit, in that the
17 state loses the income tax revenue that DFI employees would pay on that income with no
18 offsetting decrease in state spending.

19 The Department of Alcoholic Beverage Control ("ABC") employs approximately 15
20 CASE members. The ABC budget is funded entirely out of federal dollars and the Alcoholic
21 Beverages Control Fund which generates money from the sale of liquor licenses. The ABC
22 budget receives no General Fund dollars. Accordingly, furloughs at ABC result in reduced state
23 services while achieving no savings whatsoever to the General Fund. On the contrary, every
24 dollar not paid to ABC employees incrementally increases the state's budget deficit, in that the
25 state loses the income tax revenue that ABC employees would pay on that income with no
26 offsetting decrease in state spending.

27 The Alcoholic Beverage Control Appeals Board ("ABCAB") employs approximately 1
28 CASE member. The ABCAB budget is funded entirely out of the Alcoholic Beverage Control

1 Appeals fund, which generates money from a surcharge imposed on the sale of liquor licenses.
2 The ABCAB budget receives no General Fund dollars. Accordingly, furloughs at ABCAB result
3 in reduced state services while achieving no savings whatsoever to the General Fund. On the
4 contrary, every dollar not paid to ABCAB employees incrementally increases the state's budget
5 deficit, in that the state loses the income tax revenue that ABCAB employees would pay on that
6 income with no offsetting decrease in state spending.

7 The Department of Boating and Waterways ("DBW") employs approximately 1 CASE
8 member. The DBW budget is funded entirely out of the Alcoholic Beverage Control Appeals
9 fund, which generates money from a surcharge imposed on the sale of liquor licenses. The DBW
10 budget receives no General Fund dollars. Accordingly, furloughs at DBW result in reduced state
11 services while achieving no savings whatsoever to the General Fund. On the contrary, every
12 dollar not paid to DBW employees incrementally increases the state's budget deficit, in that the
13 state loses the income tax revenue that DBW employees would pay on that income with no
14 offsetting decrease in state spending.

15 The Gambling Control Commission ("GCC") employs approximately 4 CASE members.
16 The GCC budget is funded entirely out of a variety of approximately five special funds, the vast
17 majority of which comes from the Indian Gaming Revenue Trust Fund. The GCC budget
18 receives no General Fund dollars. Accordingly, furloughs at GCC result in reduced state
19 services while achieving no savings whatsoever to the General Fund. On the contrary, every
20 dollar not paid to GCC employees incrementally increases the state's budget deficit, in that the
21 state loses the income tax revenue that GCC employees would pay on that income with no
22 offsetting decrease in state spending.

23 The Wildlife Conservation Board ("WCB") employs approximately 1 CASE member.
24 The WCB budget is funded entirely out of a variety of approximately 7 special funds. The WCB
25 budget receives no General Fund dollars. Accordingly, furloughs at WCB result in reduced state
26 services while achieving no savings whatsoever to the General Fund. On the contrary, every
27 dollar not paid to WCB employees incrementally increases the state's budget deficit, in that the
28

1 state loses the income tax revenue that WCB employees would pay on that income with no
2 offsetting decrease in state spending.

3 The California Highway Patrol (“CHP”) employs approximately 1 CASE member. The
4 CHP budget is funded entirely out of a variety of approximately seven special funds, the vast
5 majority of which comes from the Motor Vehicle Account, State Transportation Fund. The CHP
6 budget receives no General Fund dollars. Accordingly, furloughs at CHP result in reduced state
7 services while achieving no savings whatsoever to the General Fund. On the contrary, every
8 dollar not paid to CHP employees incrementally increases the state’s budget deficit, in that the
9 state loses the income tax revenue that CHP employees would pay on that income with no
10 offsetting decrease in state spending.

11 The California Horse Racing Board (“CHRB”) employs approximately 1 CASE member.
12 The CHRB budget is funded entirely out of two special funds, the vast majority of which comes
13 from the Fair and Exposition Fund, which is funded by a percentage of the wagers made on horse
14 racing throughout the state. The CHRB budget receives no General Fund dollars. Accordingly,
15 furloughs at CHRB result in reduced state services while achieving no savings whatsoever to the
16 General Fund. On the contrary, every dollar not paid to CHRB employees incrementally
17 increases the state’s budget deficit, in that the state loses the income tax revenue that CHRB
18 employees would pay on that income with no offsetting decrease in state spending.

19 The California State Lottery Commission (“CSLC”) employs approximately 2 CASE
20 members. The CSLC is funded entirely through the sales of lottery tickets. The CSLC budget
21 receives no General Fund dollars. Accordingly, furloughs at CSLC result in reduced state
22 services while achieving no savings whatsoever to the General Fund. On the contrary, every
23 dollar not paid to CSLC employees incrementally increases the state’s budget deficit, in that the
24 state loses the income tax revenue that CSLC employees would pay on that income with no
25 offsetting decrease in state spending.

26 The Department of Community Services and Development (“DCS”) employs
27 approximately 1 CASE member. DCS is funded entirely with federal dollars, and receives no
28 General Fund dollars. Accordingly, furloughs at DCS result in reduced state services while

1 achieving no savings whatsoever to the General Fund. On the contrary, every dollar not paid to
2 DCS employees incrementally increases the state's budget deficit, in that the state loses the
3 income tax revenue that DCS employees would pay on that income with no offsetting decrease
4 in state spending.

5 The California Housing Finance Agency ("CHFA") employs approximately 10 CASE
6 members. CHFA is entirely self-supporting, generating revenues from interest on mortgage loans
7 it makes to provide affordable housing. CHFA receives no General Fund dollars. Accordingly,
8 furloughs at CHFA result in reduced state services while achieving no savings whatsoever to the
9 General Fund. On the contrary, every dollar not paid to CHFA employees incrementally
10 increases the state's budget deficit, in that the state loses the income tax revenue that CHFA
11 employees would pay on that income with no offsetting decrease in state spending.

12 The California Integrated Waste Management Board ("CIWMB") employs
13 approximately 9 CASE members. The salaries of CASE members at CIWMB are funded
14 entirely by user fees. There is a tire fee paid each time a consumer purchases a tire which is used
15 to fund CIWMB. There is also an integrated waste management fee paid each time a consumer
16 takes things to a landfill. There are numerous other fees imposed for the disposal of electronic
17 waste and other material. (See, e.g., Public Resources Code sections 42464 et seq., 42885,
18 48000 et seq., 48650.2) These fees do not go into the General Fund. Accordingly, furloughs of
19 CASE members at CIWMB result in reduced state services while achieving no savings
20 whatsoever to the General Fund. On the contrary, every dollar not paid to CIWMB employees
21 incrementally increases the state's budget deficit, in that the state loses the income tax revenue
22 that CIWMB employees would pay on that income with no offsetting decrease in state spending.

23 The Office of Administrative Hearings ("OAH") employs approximately 80 CASE
24 members. The salaries of CASE members at OAH are funded by federal funds for special
25 education which pass through the California Department of Education. The federal government
26 imposes strict timelines on the resolution of special education disputes, which CASE members at
27 OAH adjudicate. Reducing work hours for CASE members employed in this capacity makes
28 meeting the timelines difficult if not impossible, and thus endangers the continued receipt of

1 these federal dollars. Not a single General Fund dollar goes to support the budget of OAH.
2 Accordingly, furloughs at OAH result in reduced state services while achieving no savings
3 whatsoever to the General Fund. On the contrary, every dollar not paid to OAH employees
4 incrementally increases the state's budget deficit, in that the state loses the income tax revenue
5 that OAH employees would pay on that income with no offsetting decrease in state spending.

6 The Division of Workers Compensation ("DWC") employs approximately 200 CASE
7 members. The salaries of CASE members at DWC are funded entirely by assessments levied on
8 insurance companies based on their insurance premiums, and on self-insured employers based on
9 their payrolls. (See Labor Code section 62.5(a), (b) and (e).) Furloughs of CASE members in
10 DWC thus have no impact whatsoever on the General Fund, and result in reduced state services
11 while achieving no savings whatsoever to the General Fund. On the contrary, every dollar not
12 paid to CASE members employed at DWC incrementally increases the state's budget deficit, in
13 that the state loses the income tax revenue that those DWC employees would pay on that income
14 with no offsetting decrease in state spending.

15 The Office of Spill Prevention and Response ("OSPR"), part of the Department of Fish
16 and Game, employs approximately 5 CASE members. OSPR is specially funded on a \$.05 per
17 barrel of oil landed across salt water. (Government Code section 8670.40.) The salaries of
18 CASE members are funded from that fund, not the General Fund. Furloughs of CASE members
19 employed at OSPR thus have no impact whatsoever on the General Fund, and result in reduced
20 state services while achieving no savings whatsoever to the General Fund. On the contrary,
21 every dollar not paid to CASE members employed at OSPR incrementally increases the state's
22 budget deficit, in that the state loses the income tax revenue that those OSPR employees would
23 pay on that income with no offsetting decrease in state spending.

24 The Commission on Teacher Credentialing ("CTC") employs approximately 3 CASE
25 members. CTC is wholly funded by two special fund accounts, the Teacher Credential Fund,
26 which is supported by credential fees, and the Test Development and Administration Account,
27 which is supported by exam fees. The salaries of CASE members employed by CTC are paid for
28 out of these funds, not the General Fund. Furloughs of CASE members employed at the CTC

1 thus have no impact whatsoever on the General Fund, and result in reduced state services while
2 achieving no savings whatsoever to the General Fund. On the contrary, every dollar not paid to
3 CASE members employed at the CTC incrementally increases the state's budget deficit, in that
4 the state loses the income tax revenue that those CTC employees would pay on that income with
5 no offsetting decrease in state spending.

6 The California Unemployment Insurance Appeals Board ("CUIAB") employs
7 approximately 185 CASE members. The CUIAB budget, which is included in EDD's budget, is
8 \$107,428,000 for 2008-2009. Of that budget approximately 92% is from the Unemployment
9 Administration Fund, administered under grant from the Employment and Training
10 Administration ("ETA"), for the administration of California's unemployment insurance
11 program for unemployment appeals. Approximately 7% is from the Unemployment
12 Compensation Disability Fund for state disability appeals. Approximately one-half of one
13 percent is from the General Fund for employment tax appeals. Furloughs in this agency have a
14 negligible effect on the General Fund. In fact, given the miniscule percentage of General Fund
15 dollars that go to the CUIAB budget, furloughs at CUIAB actually increase the state's budget
16 deficit, in that the state loses the income tax revenue that CUIAB employees would pay on that
17 income with no offsetting decrease in state spending.

18 The Department of Rehabilitation ("DOR") employs approximately 4 CASE members.
19 Approximately 82% of DOR's budget is paid for directly with federal dollars. Approximately
20 three other special funds contribute another 3% of the DOR budget. Less than 15 percent of
21 DOR's budget comes from the General Fund. All CASE member positions at DOR are funded
22 entirely from these federal or special funds. Accordingly, furloughs at DOR result in reduced
23 state services while achieving no savings whatsoever to the General Fund. On the contrary,
24 every dollar not paid to DOR employees incrementally increases the state's budget deficit, in that
25 the state loses the income tax revenue that DOR employees would pay on that income with no
26 offsetting decrease in state spending.

27 The Air Resources Board ("ARB") employs approximately 15 CASE members.
28 Approximately 99.9% of ARB's budget is paid for out of a variety of approximately 9 different

1 special funds. Less than 3 hundredths of one percent of the ARB budget comes from the General
2 Fund. Furloughs in this agency have a negligible effect on the General Fund. In fact, given the
3 miniscule percentage of General Fund dollars that go to the ARB budget, furloughs at ARB
4 actually increase the state's budget deficit, in that the state loses the income tax revenue that
5 ARB employees would pay on that income with no offsetting decrease in state spending.

6 The Department of Housing and Community Development ("HCD") employs
7 approximately 13 CASE members. Approximately 77% of HCD's budget is paid for out of a
8 variety of approximately 20 different special funds. Another 22% of HCD's budget comes from
9 federal dollars. Only approximately one percent of the HCD budget comes from the General
10 Fund. Furloughs in this agency have a negligible effect on the General Fund. In fact, given the
11 miniscule percentage of General Fund dollars that go to the HCD budget, furloughs at HCD
12 actually increase the state's budget deficit, in that the state loses the income tax revenue that
13 HCD employees would pay on that income with no offsetting decrease in state spending.

14 The Employment Development Department ("EDD") employs approximately 20 CASE
15 members. Approximately 90% of EDD's budget is paid for directly with federal dollars.
16 Approximately seven other special funds contribute almost the entire remaining balance of
17 EDD's total budget. Less than one-quarter of one percent of EDD's budget comes from the
18 General Fund. Furloughs in this agency have a negligible effect on the General Fund. In fact,
19 given the miniscule percentage of General Fund dollars that go to the EDD budget, furloughs at
20 EDD actually increase the state's budget deficit, in that the state loses the income tax revenue
21 that EDD employees would pay on that income with no offsetting decrease in state spending.

22 The Department of Water Resources ("DWR") employs approximately 23 CASE
23 members. Approximately 98% of DWR's budget is paid for out of a variety of approximately 20
24 different special funds, including, but not limited to: 1) payments from the state water contractors
25 for delivery of water; 2) the sale of excess electricity supplied by various generating facilities; 3)
26 surcharges on payments from California ratepayers to the three investor-owned utilities (PG&E,
27 Southern California Edison and San Diego Gas & Electric). Less than two percent of DWR's
28 budget comes from the General Fund. Furloughs in this agency have a negligible effect on the

1 General Fund. In fact, given the miniscule percentage of General Fund dollars that go to the
2 DWR budget, furloughs at DWR actually increase the state's budget deficit, in that the state
3 loses the income tax revenue that DWR employees would pay on that income with no offsetting
4 decrease in state spending.

5 The California Tahoe Conservancy ("CTC") employs approximately 3 CASE members.
6 Approximately 96% of CTC's budget is paid for out of a variety of approximately 9 different
7 special funds, the majority of which comes from the California Environmental License Plate
8 fund. Less than 4 percent of CTC's budget comes from the General Fund. Furloughs in this
9 agency have a negligible effect on the General Fund. In fact, given the miniscule percentage of
10 General Fund dollars that go to the CTC budget, furloughs at CTC actually increase the state's
11 budget deficit, in that the state loses the income tax revenue that CTC employees would pay on
12 that income with no offsetting decrease in state spending.

13 The Department of Conservation ("DOC") employs approximately 10 CASE members.
14 Approximately 99% of DOC's budget is paid for out of a variety of approximately 22 different
15 special funds, the majority of which comes from the California Beverage Container Recycling
16 Fund. Only approximately 1 percent of DOC's budget comes from the General Fund. Furloughs
17 in this agency have a negligible effect on the General Fund. In fact, given the miniscule
18 percentage of General Fund dollars that go to the DOC budget, furloughs at DOC actually
19 increase the state's budget deficit, in that the state loses the income tax revenue that DOC
20 employees would pay on that income with no offsetting decrease in state spending.

21 The State Water Resources Control Board ("WRCB") employs approximately 39 CASE
22 members. Approximately 73% of WRCB budget is paid for out of a variety of approximately 31
23 different special funds. Approximately 21% of the WRCB budget comes from federal dollars.
24 Only 6% of the WCRB budget comes from the General Fund. Furloughs in this agency have a
25 negligible effect on the General Fund. In fact, given the miniscule percentage of General Fund
26 dollars that go to the WCRB budget, furloughs at WCRB actually increase the state's budget
27 deficit, in that the state loses the income tax revenue that WCRB employees would pay on that
28 income with no offsetting decrease in state spending.

1 The Department of Health Care Services (“DHCS”) employs approximately 54 CASE
2 members. More than half of DHCS’s budget comes directly from federal Medicaid dollars.
3 DHCS is also funded by approximately a dozen other special funds. The salaries of CASE
4 members employed by DHCS are paid for in large part out of these funds, and thus furloughs in
5 this agency have only a marginal effect on the General Fund.

6 The Department of Public Health (“DPH”) employs approximately 21 CASE members.
7 Approximately half of DPH’s budget comes directly from federal dollars. Approximately 39%
8 of DPH’s budget comes from a variety of special funds. The salaries of CASE members
9 employed by DPH are paid for in large part out of these funds. Only 11% of the DPH budget
10 comes from the General Fund, and thus furloughs in this agency have only a marginal effect on
11 the General Fund.

12 The Department of Justice (“DOJ”) employs approximately 1000 CASE members. More
13 than half of DOJ’s budget comes from a variety of approximately 30 different special funds. The
14 Bureau of Medi-Cal Fraud and Elder Abuse, a division within the Department of Justice employs
15 approximately 20 CASE members. The Bureau is federally funded and the salaries of CASE
16 members in the Bureau are paid for out of these funds, not the General Fund. The salaries of
17 many other CASE members employed at DOJ are paid in whole or in part out of special funds or
18 federal dollars. Thus, furloughs in this agency have only a marginal effect on the General Fund.

19 The Department of Social Services (“DSS”) employs approximately 115 CASE
20 members. Approximately 30% of DSS’s budget comes from federal dollars. Another 20% of
21 the budget comes from a variety of approximately 20 different special funds. The salaries of
22 CASE members employed by DSS are paid for in large part out of these funds, and thus
23 furloughs in this agency have only a marginal effect on the General Fund.

24 The California Department of Transportation (“CalTRANS”) employs approximately 131
25 CASE members. Approximately 27% of CalTRANS’s budget comes from federal dollars.
26 Another 60% of the budget comes from a variety of approximately 21 different special funds.
27 Only 13% of the CalTRANS budget is funded by the General Fund. The salaries of CASE
28

1 members employed by CalTRANS are paid for in large part out of the federal and special funds,
2 and thus furloughs in this agency have only a marginal effect on the General Fund.

3 The Department of Toxic Substances Control (“DTSC”) employs approximately 19
4 CASE members. Approximately 72% of DTSC’s budget comes from a variety of approximately
5 15 different special funds. Another 17% of the budget comes from federal dollars. Less than
6 12% of the DTSC budget comes from the General Fund. Accordingly, furloughs in this agency
7 have only a marginal effect on the General Fund.

8 The Department of Industrial Relations (“DIR”) employs approximately 417 CASE
9 members. Approximately 76% of DIR’s budget comes from a variety of approximately 22
10 different special funds. Another 7% of the budget comes from federal dollars. Only
11 approximately 17% of the DIR budget comes from the General Fund. Accordingly, furloughs in
12 this agency have only a marginal effect on the General Fund.

13 The California Department of Aging (“CDA”) employs approximately 1 CASE member.
14 Approximately 70% of the CDA budget comes from federal dollars. Another 5% of the CDA
15 budget comes from a variety of approximately three different special funds. Only 23% of the
16 CDA budget comes from the General Fund. Accordingly, furloughs in this agency have only a
17 marginal effect on the General Fund.

18 The Department of Parks and Recreation (“DPR”) employs approximately 6 CASE
19 members. Approximately 80% of DPR’s budget comes from a variety of approximately 16
20 different special funds, including some federal dollars. Less than 20% of the DPR budget comes
21 from the General Fund. Accordingly, furloughs in this agency have only a marginal effect on
22 the General Fund.

23 The Business, Transportation and Housing Agency (“BTH”) employs approximately 2
24 CASE members. Approximately 74% of BTH’s budget comes from a variety of approximately 6
25 different special funds. Less than 26% of the BTH budget comes from the General Fund.
26 Accordingly, furloughs in this agency have only a marginal effect on the General Fund.

27 The California Postsecondary Education Commission (“CPEC”) employs approximately
28 1 CASE member. Approximately 81% of CPEC’s budget comes from federal dollars. Less than

1 19% of the CPEC budget comes from the General Fund. Accordingly, furloughs in this agency
2 have only a marginal effect on the General Fund.

3 4 **V. The Respondent Agencies Have an Obligation to Carry Out Their Mission**

5 Each of the named respondent agencies has been authorized and charged by the
6 Legislature to carry out their respective missions. To that end, the agencies have sought, and the
7 Legislature has approved, funding for positions occupied by CASE members. The special funds
8 appropriated for those provisions are required by law to be expended in a manner that furthers
9 their intended purpose. By authorizing, funding, and filling positions with CASE members, both
10 the respondents and the Legislature have determined that the duties of those CASE members are
11 essential to carrying out the mission of the agency and ensuring the proper administration of
12 those special funds.

13 Implementing a mandatory furlough of two days per month on CASE members employed
14 in the respondent agencies means that CASE members are not able to carry out their duties as
15 intended. Complicating matters is the fact that CASE members are legal professionals with
16 ethical obligations to their clients as well as contractual obligations to their employer. Forcing
17 them to be furloughed two days per month means they will be unable to meet these obligations.
18 CASE members are required to work as many hours as necessary to complete their duties, but
19 requiring furloughs conflicts with this obligation. As a result, important legal work deemed
20 necessary to the proper administration of the aforementioned special funds will not be
21 completed. Vital health and welfare services will be hindered, and public safety will be
22 detrimentally impacted as a result of the respondent agencies' decision to furlough CASE
23 members and prevent them from performing their necessary duties.

24 Moreover, many of the CASE members employed at the respondent agencies have state
25 and federal mandates to meet in terms of deadlines or quotas regarding their legal caseload.
26 Forcing these CASE members to be furloughed two days per month hinders their ability to
27 comply with these mandates, limits the ability of the respondent agencies to fulfill their
28 respective missions, and jeopardizes the state's ability to meet its obligations.

1
2 **VI. The Furloughs Are an Irrational Response to the Claimed Emergency**

3 The action taken by respondents is quite overbroad in light of the emergency which they
4 claim justifies the action. They are seeking to unilaterally impose furloughs on employees in
5 agencies where there is no justification for their actions. As a result, the furlough has no rational
6 basis and is arbitrary, capricious, and unlawful. Even if section 3516.5 could be read to confer
7 some power during emergencies, any power must be limited to the emergency presented.
8 Furloughs of CASE members in positions funded by sources other than the General Fund result
9 in no savings to the General Fund. Accordingly, to the extent respondents Governor
10 Schwarzenegger and DPA seek to justify their action on the basis of the General Fund deficit,
11 their justification demonstrates their lack of authority to act in the manner they have.

12 There is no statutory authorization for furloughs.² In fact, the Government Code
13 expressly prohibits departments from unilaterally reducing the work time of employees against
14 their will. (Gov. Code § 19996.22, subd. (a).)

15 The Government Code specifies that “[t]enure of civil service employment is subject to
16 good behavior, efficiency, the necessity of the performance of the work, and the appropriation of
17 sufficient funds.” (Gov. Code § 18500, subd. (c)(6).) The Legislature has already passed, and
18 the Governor has already signed, a budget appropriations bill for Fiscal Year 2009-2010.
19 Accordingly, the funds have already been appropriated, and there is no basis to mandate the
20 furlough of the legal professionals in Unit 2. Any such furlough therefore has no rational basis
21 and is arbitrary, capricious, and unlawful.

22
23 **VII. The Duty of the Controller**

24 It is clear that “the Controller has the power, indeed the duty, to ensure that the decisions
25 of an agency that affect expenditures are within the fundamental jurisdiction of the agency.”
26 (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.) Moreover, the Controller’s “power of
27

28 ² The single reference to employee furloughs in the Government Code appears in Government Code section 68108,
and is applicable only to employees of the judicial branch of government.

1 audit does include the duty to ensure that the expenditure in question is authorized by law.”

2 (*Ibid.*) The Legislature has specifically provided that “a warrant shall not be drawn unless
3 authorized by law” (Gov. Code § 12440.)

4 Any attempt by an administrative agency (such as DPA) to exercise control over matters
5 which the Legislature has not seen fit to delegate to it (such as salary reductions) is not
6 authorized by law and in such case the agency's actions can have no force or effect. The
7 Controller therefore has a duty to refrain from issuing pay warrants that are illegally reduced by
8 virtue of DPA’s implementation of the furlough.

9
10 **FIRST CAUSE OF ACTION**
11 **(Petition for Writ of Mandate)**
12

13 Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if
14 fully set forth herein.

15 The Executive Order issued on December 19, 2008, as applied to CASE members
16 employed in agencies funded by sources other than the General Fund, violates the law because
17 the Governor has no authority to unilaterally furlough such employees. The sole rationale for the
18 furloughs was the deficit to the General Fund. The sole authority cited was Government Code
19 section 3516.5 Furloughs of employees in agencies or positions that are not funded by the
20 General Fund are thus without justification or authority. Furloughs of CASE members in
21 positions that are only partially funded by the General Fund result in minimal savings to the
22 General Fund.

23 Petitioner/Plaintiff has an immediate and direct interest affected by this proceeding in that
24 employees have a right not to be illegally furloughed and further have a right not to have their
25 pay reduced as proposed by the Executive Order.

26 Respondents/Defendants each have a clear, present, and ministerial duty to conform to
27 the laws of the State of California and to avoid violations of the law.
28

1 Respondent/Defendant Controller Chiang has a duty to audit claims and to conclude that,
2 since the Governor and DPA lack authority for the furlough, it is illegal, and the Controller has a
3 duty to ensure that salaries not be reduced as a result of the furlough.

4 As a matter of law, Respondents/Defendants lack the authority to impose a furlough and
5 reduce the salaries of CASE members and Petitioner/Plaintiff has a reasonable likelihood of
6 success on the merits.

7 Petitioner/Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of
8 law, other than the relief sought in this petition, in that there is no other legal remedy to prevent
9 or enjoin the implementation of the illegal furlough and its reduction of salary and hours.

10 Petitioner/Plaintiff and its members have suffered and will continue to suffer irreparable
11 harm and injury due to the illegal furlough order, including the denial of the protection of the
12 laws regarding their salaries, and the actual economic loss of salary, which in turn will
13 proximately cause some members to be at risk of losing their homes, cars, and ability to purchase
14 the basic necessities of life.

15 Petitioner/Plaintiff has no administrative remedy which will result in preventing or
16 enjoining the illegal furlough and its reduction of salary and hours.

17 **SECOND CAUSE OF ACTION**

18 **(Complaint for Declaratory and Injunctive Relief)**

19
20 Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if
21 fully set forth herein.

22 The Governor and DPA have already implemented the furloughs on CASE members
23 effective February 6, 2009, which has impacted all the pay checks disbursed since the end of
24 February.

25 The Controller has implemented a reduction in pay corresponding to the equivalent of
26 two days of salary per month.

1 The furlough order has no rational basis and is arbitrary, capricious, and unlawful.
2 Judicial relief is urgently needed to prevent the Respondents/Defendants from continuing to
3 violate the law by imposing the illegal furlough program which began in February 2009.

4 As a result of the Executive Order and subsequent implementation of the furloughs, an
5 actual controversy has arisen and now exists between Petitioner/Plaintiff and
6 Respondents/Defendants regarding the furlough of CASE members and the reduction of their
7 salaries.

8 Petitioner/Plaintiff desires a declaration of their rights with respect to the
9 Respondents'/Defendants' furlough of state employed legal professionals and reduction of their
10 salaries through an unlawful executive order.

11 Such a declaration is necessary and appropriate at this time in order to avoid the
12 continued implementation of these illegal provisions which will adversely affect the rights of
13 Petitioner/Plaintiff. Respondents/Defendants actions will result in irreparable injury and harm to
14 CASE members including the denial of the protection of the laws regarding their salaries. The
15 loss of such rights cannot be compensated fully by damages or other forms of legal relief.

16 As a matter of law, Respondents/Defendants lack the authority to unilaterally impose a
17 furlough and reduce the salaries of CASE members whose salaries are not paid out of the
18 General Fund, and Petitioner/Plaintiff has a reasonable likelihood of success on the merits.

19 Therefore, Petitioner/Plaintiff seeks temporary, preliminary and permanent injunctive
20 relief directing Respondents/Defendants to cease and desist taking action to furlough CASE
21 members, and prohibiting them from reducing their pay under an unlawful Executive Order.

22 23 **THIRD CAUSE OF ACTION**

24 **(Complaint for Declaratory and Injunctive Relief)**

25 Mandating furloughs for CASE members employed by respondent agencies is a wasteful
26 mismanagement of the special funds used to pay for the positions occupied by those CASE
27 members, and a wasteful mismanagement of the personnel resources of the respondent agencies.
28

1 (Code of Civ. Proc. §526a.) The furloughs achieve no substantial benefit to the General Fund
2 and deprive the People of California of essential services.

3 As a result of the Executive Order and subsequent implementation of the furloughs by
4 respondent agencies, an actual controversy has arisen and now exists between Petitioner/Plaintiff
5 and Respondents/Defendants regarding the furlough of CASE members and the reduction of
6 their salaries.

7 Petitioner/Plaintiff desires a declaration of its rights with respect to the propriety of the
8 respondent agencies' decision to implement the furloughs to the detriment of the People of the
9 State of California. The furloughs are a wasteful mismanagement of funds and resources.

10 Such a declaration is necessary and appropriate at this time in order to avoid the
11 continued implementation of these illegal provisions which will adversely affect the rights of
12 Petitioner/Plaintiff. Respondents/Defendants actions will result in irreparable injury and harm to
13 CASE members employed by respondent agencies and to the People of the State of California
14 who are entitled to the proper administration of the special funds designated to fund the positions
15 in which CASE members are employed by respondent agencies. The loss of such rights cannot
16 be compensated fully by damages or other forms of legal relief.

17 As a matter of law, the furlough order has no rational basis and is arbitrary, capricious,
18 and unlawful, and Petitioner/Plaintiff has a reasonable likelihood of success on the merits.

19 Therefore, Petitioner/Plaintiff seeks temporary, preliminary and permanent injunctive
20 relief directing Respondents/Defendants to cease and desist taking action to furlough CASE
21 members, and prohibiting them from reducing their pay under an unlawful Executive Order.
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1 **CONCLUSION**

2
3 WHEREFORE, Petitioner/Plaintiff CASE respectfully prays that:

4 1. The Court issue a peremptory writ in the first instance ordering
5 Respondents/Defendants Governor Schwarzenegger and Director Gilb to set aside the portions of
6 the Governor’s Executive Order S-16-08 calling for a furlough and salary reduction for CASE
7 members employed in respondent agencies because the Executive Order has no rational basis
8 and is arbitrary, capricious, and unlawful.

9 2. The Court issue a peremptory writ in the first instance commanding
10 Respondent/Defendant Controller Chiang to ensure that salaries not be reduced as a result of the
11 illegal furlough.

12 3. The Court issue a declaration that the portions of the Governor’s Executive
13 Order S-16-08 calling for a furlough and salary reduction for state employed legal professionals
14 are unlawful and illegal in that the Governor and DPA have violated and continue to violate the
15 law by furloughing CASE members based on a perceived General Fund deficit when such
16 furloughs have no impact on the General Fund.

17 4. The Court issue a preliminary and permanent injunction directing the
18 Governor, DPA and the Controller to cease and desist taking action to furlough state employed
19 legal professionals by reducing their hours and reducing their pay under an unlawful Executive
20 Order.

21 5. The Court issue a declaration the furlough of CASE members employed in the
22 respondent agencies is a wasteful mismanagement of government funds and personnel resources
23 which will adversely affect the rights of Petitioner/Plaintiff and will endanger the health, welfare,
24 and public safety of the People of California, and is therefore unlawful.

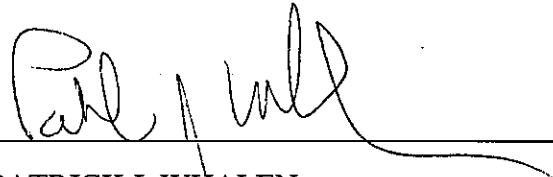
25 6. The Court issue a preliminary and permanent injunction directing the
26 Governor, DPA and the Controller to cease and desist taking action to furlough CASE members
27 employed at the respondent agencies because the furloughs are a wasteful mismanagement of
28 government funds and personnel resources which will adversely affect the rights of

1 Petitioner/Plaintiff and will endanger the health, welfare, and public safety of the People of
2 California.

3 7. Petitioner/Plaintiff be awarded attorneys fees and costs of suit incurred in this action.
4

5 THE LAW OFFICE OF BROOKS ELLISON

6 Dated: 5-22-09

7 

8 PATRICK J. WHALEN

9 Attorney for Plaintiff
10 CALIFORNIA ATTORNEYS,
11 ADMINISTRATIVE LAW JUDGES AND
12 HEARING OFFICERS IN STATE
13 EMPLOYMENT
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3 **VERIFICATION**

4 I, Peter Flores, Jr., am the President of CASE, the Petitioner/Plaintiff in this proceeding.
5 I have read the foregoing petition and know its contents. The facts stated therein are true and are
6 within my personal knowledge. I declare under penalty of perjury under the laws of the State of
7 California that the foregoing is true and correct and that this declaration was executed on May
8 21, 2009 at Sacramento, California.

9
10 
11 PETER FLORES, JR

EXHIBIT A



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-16-08

12/19/2008

WHEREAS, due to developments in the worldwide and national financial markets, and continuing weak performance in the California economy, there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over the next 18 months; and

WHEREAS the cash reserve in the State Treasury is below the amount established by the State Controller to ensure that the cash balance does not reach zero on any day in the month; and

WHEREAS without effective action to address the fiscal and cash crisis, the cash reserve in the State Treasury is estimated to be a negative \$5 billion in March 2009; and

WHEREAS on November 6, 2008, due to concerns regarding dramatically declining revenues, I issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS the Legislature failed during that Special Session to enact any bills to address the State's significant economic problems; and

WHEREAS on December 1, 2008, due to the worsening fiscal crisis, I declared that a fiscal emergency exists and convened the Legislature to meet in extraordinary session to address the fiscal crisis that California faces; and

WHEREAS on December 1, 2008, due to the fiscal emergency and the nationwide economic recession, I also issued a Special Session Proclamation and convened the Legislature of the State of California to meet in extraordinary session to address the economic crisis; and

WHEREAS on December 17, 2008, the California Pooled Money Investment Board took the unprecedented action to halt lending money for an estimated 2,000 infrastructure projects as a result of the cash crisis, including the substantial risk that California will have insufficient cash to meet its obligations starting in February 2009; and

WHEREAS in the December 1, 2008 fiscal emergency extraordinary session, the Legislature failed to effectively address the unprecedented statewide fiscal crisis; and

WHEREAS immediate and comprehensive action is needed to address the fiscal and cash crisis facing the State of California; and

WHEREAS failure to substantially reduce the deficit carried forward from the current fiscal year into the next fiscal year will likely prevent the State from being able to finance the cashflow shortages of billions of dollars, thus making it likely that the State will miss payroll and other essential services payments at the beginning of 2009; and

WHEREAS immediate and comprehensive action to reduce current spending must be taken to ensure, to the maximum extent possible, that the essential services of the State are not jeopardized and the public health and safety is preserved; and

WHEREAS State agencies and departments under my direct executive authority have already taken steps to reduce their expenses to achieve budget and cash savings for the current fiscal year; and

WHEREAS a furlough will reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services of the State so as not to jeopardize its residents' health and safety in the current and next fiscal year.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, by virtue of the power and authority vested in me by the Constitution and statutes of the State of California, do hereby determine that an emergency pursuant to Government Code section 3516.5 exists and issue this Order to become effective immediately:

IT IS ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement a furlough of represented state employees and supervisors for two days per month, regardless of funding source. This plan shall include a limited exemption process.

IT IS FURTHER ORDERED that effective February 1, 2009 through June 30, 2010, the Department of Personnel Administration shall adopt a plan to implement an equivalent furlough or salary reduction for all state managers, including exempt state employees, regardless of funding source.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, the Department of Personnel Administration shall work with all State agencies and departments to initiate layoffs and other position reduction and program efficiency measures to achieve a reduction in General Fund payroll of up to ten percent. A limited exemption process shall be included.

IT IS FURTHER ORDERED effective January 1, 2009, the Department of Personnel Administration shall place the least senior twenty percent of state employees funded in any amount by General Fund resources on the State Restriction of Appointment (SROA) list.

IT IS FURTHER ORDERED that effective January 1, 2009 through June 30, 2010, all State agencies and departments under my direct executive authority, regardless of funding source, are prohibited from entering into any new personal services or consulting contracts to perform work as a result of the furloughs, layoffs or other position reduction measures implemented as a result of this Order.

IT IS REQUESTED that other entities of State government not under my direct executive authority, including the California Public Utilities Commission, the University of California, the California State University, California Community Colleges, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the current and next fiscal year.

This Order is not intended to create, and does not create, any rights or benefits, whether substantive or procedural, or enforceable at law or in equity, against the State of California or its agencies, departments, entities, officers, employees, or any other person.

I FURTHER ORDER that, as soon as hereafter possible, this Order shall be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.



IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 19th day of December, 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:
DEBRA BOWEN