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10 JAN FRANK

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco  
AUG 05 2009  
GORDON PARK-LI, Clerk  
BY: MICHAEL RAYRAY  
Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 IN AND FOR THE COUNTY OF SAN FRANCISCO

15 SERVICE EMPLOYEES  
16 INTERNATIONAL UNION, LOCAL  
17 1000, KATHLEEN COLLINS, STEPHEN  
18 MCVEIGH, LISA DAVIS, BERTHA DEE  
19 CERNA, RITA SALAZAR, MARIA  
20 VILLEGAS, AND JAMES BRIGGS,  
21 AND DOES 1-5000,

19 Petitioners/Plaintiffs,

20 vs.

21 ARNOLD SCHWARZENEGGER, as  
22 Governor of the State of California; JAN  
23 FRANK, as the President of STATE  
24 COMPENSATION INSURANCE FUND;  
25 DAVID GILB, as Director of the  
26 Department of Personnel Administration;  
27 JOHN CHIANG, Controller of the State of  
28 California; and DOES 1-100,

26 Defendants/Respondents.

Case No. CPF-09-509580

**DEFENDANT/RESPONDENT JAN  
FRANK'S VERIFIED RETURN AND  
ANSWER TO VERIFIED PETITION FOR  
WRIT OF MANDATE AND COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE  
RELIEF**

**Complaint Filed June 12, 2009**

1 Defendant/Respondent JAN FRANK (“Respondent”) provides this verified return and  
2 answer to the Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive  
3 Relief of Petitioners/Plaintiffs SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL  
4 1000, KATHLEEN COLLINS, STEPHEN MCVEIGH, LISA DAVIS, BERTHA DEE CERNA,  
5 RITA SALAZAR, MARIA VILLEGAS, AND JAMES BRIGGS, as follows:

6 1. With respect to the allegations contained in the first and second sentences of ¶ 1,  
7 Respondent admits the allegations. With respect to the allegations contained in the third  
8 sentence, Respondent admits that the Order directs the Department of Personnel Administration  
9 to “adopt a plan to implement a furlough of represented state employees and supervisors for two  
10 days per month.” Except as expressly admitted and alleged herein, Respondent denies, generally  
11 and specifically, each and every allegations contained in ¶ 1.

12 2. With respect to the allegations contained in the first sentence of ¶ 2, Respondent  
13 admits that the Governor’s Order may not be applied to State Compensation Insurance Fund  
14 (“State Fund”) employees, and that the California Legislature expressly excluded State Fund  
15 employees from “staff cutbacks” such as furloughs. With respect to the allegations contained in  
16 the second, third, fourth and fifth sentences of ¶ 2, Respondent admits the allegations.

17 3. With respect to the allegations contained in the first, second, third and fifth  
18 sentences of ¶ 3, Respondent admits the allegations. With respect to the allegations contained in  
19 the fourth sentence of ¶ 3, Respondent denies that the Court ordered State Fund to exclude CASE  
20 members from the furlough order. Respondent alleges that the Order stated that “State Fund  
21 employees represented by CASE are exempt from Executive Order S-16-08. Therefore, those  
22 portions of the Governor’s Executive Order S-16-08, insofar as they will and have resulted in  
23 furloughs and salary reductions for State Fund employees represented in this action, does not  
24 apply to petitioners.”

25 4. With respect to the allegations contained in ¶ 4, Respondent admits that SEIU  
26 Local 1000 represents numerous employees working at State Fund. Respondent denies for lack  
27 of information and belief the remaining allegations contained therein.

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1           5.       With respect to the allegations contained in ¶ 5, Respondent admits that  
2       Petitioner/Plaintiff KATHLEEN COLLINS is a State Fund employee in the city of Commerce,  
3       California, and that Petitioner has alleged that she has been adversely impacted by the  
4       implementation of the furlough order. Respondent denies for lack of information and belief the  
5       remaining allegations contained therein.

6           6.       With respect to the allegations contained in ¶ 6, Respondent admits that  
7       Petitioner/Plaintiff STEPHEN MCVEIGH is a State Fund employee in the city of San Francisco,  
8       California, and that Petitioner has alleged that he has been adversely impacted by the  
9       implementation of the furlough order. Respondent denies for lack of information and belief the  
10      remaining allegations contained therein.

11          7.       With respect to the allegations contained in ¶ 7, Respondent admits that  
12      Petitioner/Plaintiff LISA DAVIS is a State Fund employee in the city of San Diego, California,  
13      and that Petitioner has alleged that she has been adversely impacted by the implementation of the  
14      furlough order. Respondent denies for lack of information and belief the remaining allegations  
15      contained therein.

16          8.       With respect to the allegations contained in ¶ 8, Respondent admits that  
17      Petitioner/Plaintiff BERTHA DEE CERNA, is a State Fund employee in the city of Pleasanton,  
18      California, and that Petitioner has alleged that she has been adversely impacted by the  
19      implementation of the furlough order. Respondent denies for lack of information and belief the  
20      remaining allegations contained therein.

21          9.       With respect to the allegations contained in ¶ 9, Respondent admits that  
22      Petitioner/Plaintiff RITA SALAZAR is a State Fund employee in the city of Santa Ana,  
23      California, and that Petitioner has alleged that he has been adversely impacted by the  
24      implementation of the furlough order. Respondent denies for lack of information and belief the  
25      remaining allegations contained therein.

26          10.      With respect to the allegations contained in ¶ 10, Respondent admits that  
27      Petitioner/Plaintiff MARIA VILLEGAS is a State Fund employee in the city of Burbank,  
28      California, and that Petitioner has alleged that she has been adversely impacted by the

1 implementation of the furlough order. Respondent denies for lack of information and belief the  
2 remaining allegations contained therein.

3 11. With respect to the allegations contained in ¶ 11, Respondent admits that  
4 Petitioner/Plaintiff JAMES BRIGGS is a State Fund employee in the city of Sacramento,  
5 California, and that Petitioner has alleged that he has been adversely impacted by the  
6 implementation of the furlough order. Respondent denies for lack of information and belief the  
7 remaining allegations contained therein.

8 12. With respect to the allegations contained in ¶ 12, Respondent denies for lack of  
9 information and belief the allegations contained therein.

10 13. With respect to the allegations contained in ¶ 13, Respondent admits that Arnold  
11 Schwarzenegger is the Governor of the State of California. With respect to the second sentence  
12 of ¶ 13, Respondent alleges that the Government Code speaks for itself, and these allegations  
13 involve legal matters that need not be answered. With respect to the third sentence of ¶ 13,  
14 Respondent alleges that the Petition speaks for itself as to the capacity in which Governor  
15 Schwarzenegger is being sued. To the extent that the allegations in ¶ 13 contain any factual  
16 matter, Respondent denies, generally and specifically, each and every allegations contained in  
17 ¶ 13.

18 14. With respect to the allegations contained in ¶ 14, Respondent admits the  
19 allegations.

20 15. With respect to the allegations contained in ¶ 15, Respondent admits that DAVID  
21 GILB is the Director of the California Department of Personnel Administration. With respect to  
22 the remaining allegations contained in the first sentence of ¶ 15, Respondent alleges that the  
23 Government Code speaks for itself, and these allegations involve legal matters that need not be  
24 answered. With respect to the second sentence of ¶ 15, Respondent alleges that the Petition  
25 speaks for itself as to the capacity in which David Gilb is being sued.

26 16. With respect to the allegations contained in ¶ 16, Respondent admits that JOHN  
27 CHIANG is the Controller of the State of California. With respect to the last sentence of ¶ 16,  
28 Respondent alleges that the Petition speaks for itself as to the capacity in which John Chiang is

1 being sued. With respect to the remaining allegations in ¶ 16, Respondent alleges that the  
2 Government Code speaks for itself, and these allegations involve legal matters that need not be  
3 answered.

4 17. Respondent denies for lack of information and belief the allegations in ¶ 17, since  
5 Respondent does not know the identities of DOES 1 through 100. Respondent denies that State  
6 Fund has “authorized” or “implemented” furloughs and alleges that State Fund received an  
7 executive order and sought an exemption.

8 18. With respect to the allegations contained in ¶ 18, Respondent admits the  
9 allegations.

10 19. With respect to the allegations contained in ¶ 19, Respondent admits the  
11 allegations.

12 20. With respect to the allegations contained in ¶ 20, Respondent alleges that Order S-  
13 16-08 speaks for itself, and admits that the Order states “due to developments in the worldwide  
14 and national financial markets, and continuing weak performance in the California economy,  
15 there is an approximately \$15 billion General Fund deficit for the 2008-09 fiscal year, which  
16 without effective action, is estimated to grow to a \$42 billion General Fund budget shortfall over  
17 the next 18 months.” Respondent denies, generally and specifically, each and every remaining  
18 allegation contained in ¶ 20.

19 21. With respect to the allegations contained in ¶ 21, Respondent alleges that Order S-  
20 16-08 speaks for itself, and admits the Order says allegations quoted in the first sentence of ¶ 21.  
21 With respect to the allegations contained in the second sentence of ¶ 21, Respondent admits that  
22 the Order required the DPA to adopt a furlough plan that “shall include a limited exemption  
23 process.”

24 22. With respect to the allegations contained in ¶ 22, Respondent alleges that Order S-  
25 16-08 and Government Code section 3516.5 speak for themselves, and these allegations involve  
26 legal matters that need not be answered.

27 23. With respect to the allegations contained in ¶ 23, Respondent admits that on  
28 January 30, 2009, she sent an email regarding furloughs to State Fund employees in which she

1 stated: "I have been in communication with a number of folks in Sacramento. In light of the  
2 recent court decision, DPA is specifically taking a hard look at us for a final decision." Except as  
3 expressly admitted and alleged herein, Respondent denies, generally and specifically, each and  
4 every allegations contained in ¶ 23.

5 24. With respect to the allegations contained in the first sentence of ¶ 24, Respondent  
6 admits that on February 6, 2009, she sent State Fund employees an email informing them that  
7 State Fund and the DPA were unable to reach an agreement that exempted State Fund from the  
8 Executive Furlough Order. With respect to the allegations contained in the second and third  
9 sentences of ¶ 24, Respondent admits that State Fund circulated a memorandum to its employees  
10 with furlough information, and that the memorandum stated that certain employees salaries would  
11 be adjusted by the State to reflect two non-work days. Except as expressly admitted and alleged  
12 herein, Respondent denies, generally and specifically, each and every allegations contained in  
13 ¶ 24.

14 25. With respect to the allegations contained in ¶ 25, Respondent admits the  
15 allegations.

16 26. With respect to the allegations contained in ¶ 26, Respondent admits the  
17 allegations.

18 27. With respect to the allegations contained in ¶ 27, Respondent admits the  
19 allegations.

20 28. With respect to the allegations contained in the first, second, third and fifth  
21 sentences of ¶ 28, Respondent admits the allegations. With respect to the allegations contained in  
22 the fourth sentence of ¶ 28, Respondent denies that the Court ordered State Fund to exclude  
23 CASE members from the furlough order. Respondent alleges that the Order stated that "State  
24 Fund employees represented by CASE are exempt from Executive Order S-16-08. Therefore,  
25 those portions of the Governor's Executive Order S-16-08, insofar as they will and have resulted  
26 in furloughs and salary reductions for State Fund employees represented in this action, does not  
27 apply to petitioners."  
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1           29.     With respect to the allegations contained in the first, third and fourth sentences of  
2 ¶ 29, Respondent admits the allegations. With respect to the second sentence of ¶ 29, Respondent  
3 denies the allegations and instead alleges that State Fund sought an exemption from the furlough  
4 order but was denied such an exemption.

5           30.     With respect to the allegations contained in ¶ 30, Respondent admits the  
6 allegations.

7           31.     With respect to the allegations contained in ¶ 31, Respondent admits the  
8 allegations

9           32.     With respect to the allegations contained in ¶ 32, Respondent admits the  
10 allegations.

11          33.     With respect to the allegations contained in ¶ 33, Respondent admits the  
12 allegations.

13          34.     With respect to the allegations contained in the first sentence of ¶ 34, Respondent  
14 admits the allegations. With respect to the remainder of the allegations in ¶ 34, Respondent  
15 alleges that the cited case law speaks for itself, and these allegations involve legal matters that  
16 need not be answered.

17          35.     With respect to the allegations contained in the first and second sentences of ¶ 35,  
18 Respondent admits the allegations. With respect to the remainder of the allegations in ¶ 35,  
19 Respondent alleges that the cited case law speaks for itself, and these allegations involve legal  
20 matters that need not be answered.

21          36.     With respect to the allegations contained in ¶ 36, Respondent alleges that the  
22 Insurance Code speaks for itself, and these allegations involve legal matters that need not be  
23 answered.

24          37.     With respect to the allegations contained in ¶ 37, Respondent alleges that the  
25 Government Code and cited case law speak for themselves, and these allegations involve legal  
26 matters that need not be answered.

27          38.     With respect to the allegations contained in ¶ 38, Respondent admits the  
28 allegations.

1 **FIRST CAUSE OF ACTION**

2 **(Petition for Writ of Mandate)**

3 39. With respect to ¶¶ 1 - 38 in the Petition, Respondent incorporates by this reference  
4 all responses to the allegations contained in ¶¶ 1 - 38 of this Answer as though fully set forth  
5 herein.

6 40. With respect to the allegations contained in the first sentence of ¶ 40, Respondent  
7 alleges that the California Constitution speaks for itself, and these allegations involve legal  
8 matters that need not be answered. With respect to the allegations contained in the second  
9 sentence of ¶ 40, Respondent lacks sufficient knowledge to respond to this allegation, and thus  
10 denies the allegation for want of information.

11 41. With respect to the allegations contained in ¶ 41, Respondent admits the  
12 allegations.

13 42. With respect to the allegations contained in ¶ 42, Respondent admits the  
14 allegations.

15 43. With respect to the allegations contained in ¶ 43, Respondent admits the  
16 allegations.

17 44. With respect to the allegations contained in ¶ 44, Respondent admits the  
18 allegations

19 45. With respect to the allegations contained in ¶ 45, Respondent admits the  
20 allegations.

21 46. With respect to the allegations contained in ¶ 46, Respondent admits that the  
22 Governor, DPA, and the Controller lack the requisite authority to enforce a furlough of State  
23 Fund employees and to reduce their salaries. Respondent generally and specifically denies the  
24 allegation that State Fund lacks the authority to enforce a furlough of State Fund employees and  
25 to reduce their salaries. Respondent admits that the furlough order is in violation of Insurance  
26 Code §11873(c). Respondent admits that Petitioners have a reasonable likelihood of success on  
27 the merits as to the Governor, DPA and the Controller. As to State Fund, Respondent denies that  
28

1 Petitioners have a reasonable likelihood of success on the merits. Respondent alleges that State  
2 Fund received a furlough order and unsuccessfully tried to obtain an exemption.

3 47. With respect to the allegations contained in ¶ 47, Respondent admits the  
4 allegations.

5 48. With respect to the allegations contained in ¶ 48, Respondent admits that  
6 Petitioners have alleged and informed Respondent that they will suffer irreparable harm and  
7 injury if the furlough is implemented. As for the remaining allegations, Respondent lacks  
8 sufficient knowledge to respond to these specific allegations, and thus can neither admit nor deny  
9 the remaining allegations in ¶ 48 for want of specific information.

10 49. With respect to the allegations contained in ¶ 49, Respondent admits the  
11 allegations.

12 **SECOND CAUSE OF ACTION**

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

14 50. With respect to ¶¶ 1 - 49 in the Petition, Respondent incorporates by this reference  
15 all responses to the allegations contained in ¶¶ 1 - 49 of this Answer as though fully set forth  
16 herein.

17 51. With respect to the allegations contained in ¶ 51, Respondent admits that State  
18 Fund employees have been subjected to furloughs since February 6, 2009, and that the salaries  
19 and work hours of the affected employees have been reduced accordingly. Respondent denies,  
20 both generally and specifically, each and every remaining allegation contained in ¶ 51.  
21 Respondent alleges that State Fund received a furlough order and sought an exemption.

22 52. With respect to the allegations contained in ¶ 52, Respondent admits the  
23 allegations.

24 53. With respect to the allegations contained in ¶ 53, Respondent admits that judicial  
25 relief is needed to prevent the Governor, the DPA and the Controller from continuing to violate  
26 the California Constitution and laws through the furloughing of SEIU Local 1000 members  
27 employed at State Fund. Respondent denies, both generally and specifically, each and every  
28

1 remaining allegation contained in ¶ 53. Respondent denies that she has violated the California  
2 Constitution or any laws.

3 54. With respect to the allegations contained in ¶ 54, Respondent admits the  
4 allegations that there is a controversy between Petitioners/Plaintiffs and Respondents/Defendants,  
5 other than Respondent. Respondent denies, both generally and specifically, each and every  
6 remaining allegation contained in ¶ 54.

7 55. With respect to the allegations contained in ¶ 55, Respondent admits the  
8 allegations.

9 56. With respect to the allegations contained in ¶ 56, Respondent admits that a  
10 declaration is necessary and appropriate to end the implementation of the Order. Respondent  
11 further admits that Petitioners have alleged and informed Respondent that the actions of the  
12 Governor, DPA, and Controller will result in irreparable injury and harm to affected SEIU Local  
13 1000 members. Respondent denies that the actions of Respondent will result in irreparable injury  
14 and harm to Petitioners. As to the remainder of the allegations in ¶ 56, Respondent lacks  
15 sufficient knowledge to respond, and thus denies the remainder of the allegations in ¶ 56 for want  
16 of information.

17 57. With respect to the allegations contained in ¶ 57, Respondent admits the  
18 allegations.

19 58. With respect to the allegations contained in ¶ 58, Respondent admits that  
20 Petitioners seek the stated relief.

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**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Respondent is not in violation of any laws. Respondent attempted to seek an exemption from the furlough order for State Fund employees and was unsuccessful.

Dated: August 5, 2009

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

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


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**VERIFICATION**

I, Janet Frank, am President of the State Compensation Insurance Fund and am authorized to make this verification on its behalf. I have read the foregoing Verified Return and Answer to Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The facts stated therein are true and are within my personal knowledge, except as to these matters which are stated upon my information and belief. As to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 5<sup>th</sup> day of August 2009, at San Francisco, California.

  
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JANET FRANK

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**PROOF OF SERVICE**

I, Linda Allen, declare as follows:

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

**DEFENDANT/RESPONDENT JAN FRANK'S VERIFIED RETURN AND ANSWER TO VERIFIED PETITION FOR WRITE OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

on the interested parties in this action addressed as follows: **SEE ATTACHED SERVICE LIST**

**(BY MAIL)** By placing such document(s) in a sealed envelope, with postage thereon fully prepaid for First Class mail, for collection and mailing at Manatt, Phelps & Phillips, LLP, San Francisco, California, following ordinary business practice. I am readily familiar with the practice at Manatt, Phelps & Phillips, LLP, for collection and processing of correspondence for mailing with the United States Postal Service, said practice being that in the ordinary course of business, correspondence is deposited in the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 5, 2009, at San Francisco, California.



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Linda Allen

SERVICE LIST

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