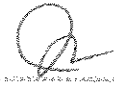


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Superior Court Of California,
Sacramento
Dennis Jones, Executive
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By  Deputy
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5 Attorneys for Plaintiffs YVONNE WALKER and
6 SERVICE EMPLOYEES INTERNATIONAL UNION, Local 1000

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

11 YVONNE WALKER, SERVICE
12 EMPLOYEES INTERNATIONAL UNION,
13 LOCAL 1000;

CASE NO.
**VERIFIED PETITION FOR WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

13 Petitioners/Plaintiffs,

14 v.

15 ARNOLD SCHWARZENEGGER, Governor;
16 STATE OF CALIFORNIA; DEPARTMENT
17 OF PERSONNEL ADMINISTRATION, and
18 DOES 1 Through 50, Inclusive,

Date:
Time:
Judge:
Department:

18 Respondents/Defendants.

21 **TO THE SUPERIOR COURT:**

22 YVONNE WALKER and SERVICE EMPLOYEES INTERNATIONAL UNION,
23 LOCAL 1000, a nonprofit mutual benefit corporation, Petitioners and Plaintiffs herein, pursuant
24 to California Code of Civil Procedure section 1085, 1060, and 526a, request the Court to issue a
25 writ of mandate or mandamus, declaratory judgment, and injunctive relief to Respondents and
26 Defendants, ARNOLD SCHWARZENEGGER, Governor, the STATE OF CALIFORNIA and
27 the DEPARTMENT OF PERSONNEL ADMINISTRATION, determining that Respondents and
28 Defendants have violated and continue to violate California Labor Code section 201 and 203 by

1 failing to pay employees discharged from state service all wages earned and unpaid at the time of
2 discharge. Since the issuance of an unlawful executive order, Respondents/Defendants have
3 caused the State of California and the taxpayers therein to risk exposure to extraordinary amounts
4 of monetary damages by discharging employees without the payment of wages earned and unpaid
5 at the time of discharge. Petitioners/Plaintiffs seek taxpayer injunctive relief pursuant to
6 California Code of Civil Procedure section 526a, attorney's fees, and costs of suit.

7 **PARTIES**

8 1. Petitioner/Plaintiff YVONNE WALKER (hereafter "Petitioner" or "Walker") is,
9 and at all times relevant to this Petition was, a taxpayer of the State of California. Walker has
10 been assessed for and is liable to pay taxes to the State of California within the last year. Walker
11 is a resident of Sacramento County. Walker is, therefore, beneficially interested in the proper
12 expenditure of taxpayer funds in the State of California.

13 2. Petitioner/Plaintiff SERVICE EMPLOYEES INTERNATIONAL UNION,
14 LOCAL 1000 (hereafter "Petitioner" or "Local 1000") is a nonprofit mutual benefit corporation
15 organized under the laws of the State of California with its principal office in Sacramento,
16 California. Local 1000 is organized to represent employees of the State of California in
17 participating collectively in the mutual formulation of wages, hours, working conditions and
18 retirement benefits. Local 1000 is the certified representative of employees in State Bargaining
19 Units 1, 3, 4, 11, 14, 15, 17, 20 and 21. Local 1000 negotiates collective bargaining contracts on
20 behalf of employees in such bargaining units, represents such employees as to their terms and
21 conditions of employment under the Dills Act, and receives dues and fair share fees from such
22 employees. The President of Local 1000 is Walker. Among its represented workforce are the
23 retired annuitants, permanent intermittent employees, seasonal employees, temporary help
24 workers, and student assistants affected by the executive order. Local 1000 is, and at all time
25 relevant to this Petition was, a taxpayer of the State of California. Local 1000 has been assessed
26 for and is liable to pay tax to the State of California within the last year. Local 1000 is, therefore,
27 beneficially interested in the proper expenditure of taxpayer funds in the State of California.

28 ///

1 correct copy of the Executive Order is attached hereto as "Exhibit A" and incorporated herein as
2 though fully set forth.)

3 11. The Executive Order states in relevant part,
4 "IT IS FURTHER ORDERED that except for services and
5 functions of state government deemed critical and exempt by this
6 Order, all State agencies and departments under my direct
7 executive authority take immediate action to terminate the services
8 of the following five categories of employees and individuals
effective July 31, 2008: (1) Retired Annuitants; (2) Permanent
Intermittent Employees; (3) Seasonal Employees; (4) Temporary
Help Workers; and (5) Student Assistants."

9 12. Individuals working for the State as retired annuitants, permanent intermittent
10 employees, seasonal employees, temporary help workers, and student assistants are "employees"
11 of the State as that term is defined and used in the California Labor Code.

12 13. Pursuant to the terms of the Executive Order, on July 31, 2008, Respondents
13 terminated the services of those retired annuitants, permanent intermittent employees, seasonal
14 employees, temporary help workers, and student assistants that were not specifically exempted
15 from the Executive Order. The Executive Order is allegedly a response to the State's "fiscal
16 crisis" and yet because of Respondents' violation of the law, the taxpayers of the State are being
17 exposed to untold amounts of monetary damages.

18 14. Respondents have violated their mandatory duty to comply with the law when
19 they willfully failed to pay, and continue to willfully fail to pay, retired annuitants, permanent
20 intermittent employees, seasonal employees, temporary help workers, and student assistants the
21 wages due at separation in violation of Labor Code section 201, triggering penalties under Labor
22 Code section 203.

23 15. Respondents' arbitrary and capricious actions violating their mandatory duty have
24 and will continue to harm taxpayers. Penalties under Labor Code section 203 have accrued, and
25 continue to accrue, against Respondents. Any penalties which have already accrued, and those
26 that continue to accrue, against Respondents must be paid by taxpayer funds.

27 16. Respondents are not exempt from either Labor Code section 201 or Labor Code
28 section 203. Labor Code section 220 sets forth the labor code provisions which are inapplicable

1 to the State. Labor Code sections 201 and 203 are not included in that list and, therefore,
2 Respondents have a mandatory duty to comply with Labor Code sections 201 and 203.

3 **FIRST CAUSE OF ACTION**

4 **Petition for Writ of Mandate**

5 **(California Code of Civil Procedure § 1080)**

6 17. Plaintiffs reallege and incorporate the allegations in paragraphs 1 through 16,
7 inclusive, as if fully set forth in this Cause of Action.

8 18. California Labor Code section 201 requires Respondents to pay its employees all
9 wages due immediately upon discharge of an employee. California Labor Code section 203
10 provides that if an employer willfully fails to timely pay such wages the employer must, as a
11 penalty, continue to pay the subject employees' wages until the back wages are paid in full or
12 until an action therefor has been commenced. The penalties shall not continue for more than
13 thirty (30) days.

14 19. The retired annuitants, permanent intermittent employees, seasonal employees,
15 temporary help workers, and student assistants were "discharged" from State service as that term
16 is used in Labor Code section 201 as a result of Executive Order S-09-08.

17 20. The retired annuitants, permanent intermittent employees, seasonal employees,
18 temporary help workers, and student assistants were not paid all wages due immediately upon
19 discharge. Therefore, these employees are entitled to unpaid compensation.

20 21. As a consequence of Respondents' willful conduct in not paying all wages earned
21 and unpaid at the time of discharge, the retired annuitants, permanent intermittent employees,
22 seasonal employees, temporary help workers, and student assistants are entitled to up to thirty
23 (30) days of wages as a penalty pursuant to Labor Code section 203, as well as interest thereon,
24 attorney's fees, and costs of suit pursuant to Labor Code section 218.5.

25 22. Any expenditure of taxpayer funds by Respondents for the unlawful practices
26 described herein is wasteful, illegal, and unlawful. Petitioners, as taxpayers of the State of
27 California, are beneficially interested in the issuance of this Writ in that the order sought by this
28 Petition is necessary to prohibit the unlawful expenditure of tax funds.

1 penalty, continue to pay the subject employees' wages until the back wages are paid in full or
2 until an action therefor has been commenced. The penalties shall not continue for more than
3 thirty (30) days.

4 28. The retired annuitants, permanent intermittent employees, seasonal employees,
5 temporary help workers, and student assistants were "discharged" from State service as that term
6 is used in Labor Code section 201 as a result of Executive Order S-09-08.

7 29. The retired annuitants, permanent intermittent employees, seasonal employees,
8 temporary help workers, and student assistants were not paid all wages due immediately upon
9 discharge. Therefore, these employees are entitled to unpaid compensation.

10 30. As a consequence of Respondents' willful conduct in not paying all wages earned
11 and unpaid at the time of discharge, the retired annuitants, permanent intermittent employees,
12 seasonal employees, temporary help workers, and student assistants are entitled to up to thirty
13 days of wages as a penalty pursuant to Labor Code section 203, as well as interest thereon,
14 attorney's fees, and costs of suit pursuant to Labor Code section 218.5.

15 31. Any expenditure of taxpayer funds by Respondents' for the unlawful practices
16 described herein is wasteful, illegal, and unlawful. Petitioners, as taxpayers of the State of
17 California, have an interest in enjoining the unlawful expenditure of tax funds.

18 32. The taxpayers of the State of California, including Petitioners, have suffered and
19 continue to suffer irreparable injury in that Respondents' willful failure to comply with Labor
20 Code section 201 is resulting in the continued accrual of penalties under Labor Code section 203,
21 and other costs under Labor Code section 218.5.


22 33. Pursuant to California Civil Code of Civil Procedure sections 526a and 1060,
23 Petitioners seek declaratory and injunctive relief to prevent continued harm and to protect
24 themselves and other taxpayers from the Respondents' unlawful actions. Petitioners have no
25 other plain, speedy or adequate remedy at law as there is no provision in the law for taxpayers to
26 receive money damages for unlawful governmental conduct; damages would be difficult to
27 ascertain; and money damages would not adequately compensate taxpayers for unlawful
28 governmental activities.

1 Respondents can comply with the Labor Code and prevent the continued accrual of penalties
2 which must be paid with taxpayer funds;

- 3 4. For an award of attorney's fees;
- 4 5. For costs of suit incurred herein;
- 5 6. For such other and further relief as this Court may deem just and proper.

6
7 DATED: August 6, 2008

SEIU LOCAL 1000

8
9 By 
10 BROOKE D. PIERMAN
11 Attorneys for Plaintiffs
12 YVONNE WALKER and SERVICE
13 EMPLOYEES INTERNATIONAL
14 UNION, Local 1000
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VERIFICATION

I, Yvonne Walker, declare under penalty of perjury under the laws of the State of California, that I am the President of SEIU Local 1000, the Petitioner in this action. I further declare that I am taxpayer in the State of California. I have first-hand knowledge of the facts stated in the PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the foregoing PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts stated therein are true and correct, except as to those facts alleged on information or belief, and as to those facts, I believe them to be true.

DATED: August 6, 2008



YVONNE WALKER
President of SEIU Local 1000

EXHIBIT A



Office of the Governor

ARNOLD SCHWARZENEGGER
THE PEOPLE'S GOVERNOR

EXECUTIVE ORDER S-09-08

07/31/2008

WHEREAS the constitutional deadline for enacting a state budget for Fiscal Year 2008-09 has passed without the enactment of a budget; and

WHEREAS in the absence of a budget, State government is constitutionally prohibited from making payments that are not compelled by either the State Constitution or federal law; and

WHEREAS until there is a state budget, the State has no authority to pay the following payments: (1) Vendors and Contractors for goods and services chargeable to Fiscal Year 2008-09; (2) Payroll for legislative staff, appointees, and exempt employees; (3) Payroll for other state employees beyond that required by federal labor law; (4) Highway User Taxes that are apportioned to the state, cities and counties for highway and road improvement projects; (5) Cal Grants to students in higher education; (6) Transfers to the Trial Courts; (7) Transfers to University of California, California State University, and Community Colleges; (8) Transportation Revolving Fund disbursements; (9) Non-revenue limit school payments; and (10) Payments for non-federally mandated social services programs such as Community Care Licensing, Adult Protective Services, State Only Foster Care; State Only Adoptions Assistance, and Cash Assistance Program for Immigrants; and (11) tax relief payments to low income seniors and disabled persons; and

WHEREAS on May 1, 2003, the California Supreme Court, in *White v. Davis*, issued a decision that, in conjunction with other pre-existing court orders, clarified that during a period that there is no state budget in place, federal labor laws require the State to pay its nonexempt FLSA employees either federal minimum wage or, for those employees that work overtime, their full salaries plus overtime; and

WHEREAS it is not known when a budget will be adopted for Fiscal Year 2008-09; and

WHEREAS as a result of the late budget, there is a real and substantial risk that the State will have insufficient cash to pay for state expenditures; and

WHEREAS since June 2008, the unprecedented number and size of fires in California has created states of emergency that have required additional and substantial expenditures of cash to ensure that there are sufficient resources to effectively fight these fires and save lives and homes; and

WHEREAS it is critical that the State be able to meet any unforeseen emergency such as fire, flood or public health emergency and to continue to make timely payments on constitutionally and federally-mandated obligations and existing obligations to pay holders of state bonds; and

WHEREAS due to the impending cash crisis and budget delay, the State may be forced to consider a Revenue Anticipation Warrant (RAW) at an exorbitant cost to the State, including hundreds of millions of dollars in credit enhancements, in order to make sure there is sufficient cash to pay for state expenditures; and

WHEREAS after the late adoption of a budget, there will be additional cash demands because all of the deferred payments that were not permitted to be made during the budget impasse will become due and payable; and

WHEREAS the late budget has resulted in loss of savings to the State in the amount of \$164 million for July, and failure to enact a budget in August will result in additional loss of savings in the amount of \$323 million; and

WHEREAS as a result of the late budget, additional mitigation measures must be implemented to offset the loss of savings and to ensure that there is sufficient cash to make the State's payments; and

WHEREAS the State employs nearly 22,000 retired annuitants, permanent intermittent employees, and seasonal employees and the State hires new employees at the rate of approximately 1,700 per month; and

WHEREAS except for services and functions of state government deemed critical by this Order, additional mitigation measures need to be taken to immediately reduce expenditures and preserve cash, including the following: (1) halting all hiring, transfers and promotions of employees, and contracting for individuals to perform services; (2) prohibition of overtime; (3) termination of the services of retired annuitants, permanent intermittent employees, seasonal employees, temporary help workers and, student assistants; and (4) suspension of personal services contracts.

NOW, THEREFORE, I, ARNOLD SCHWARZENEGGER, Governor of the State of California, in accordance with the authority vested in me by the Constitution and the statutes of the State of California, do hereby issue the following orders to become effective immediately:

IT IS ORDERED that the services and functions of state government directly related to the preservation and protection of human life and safety, including but not limited to emergency and disaster response activities and the provision of 24-hour medical care, shall be deemed critical and exempt from this Order.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action effective July 31, 2008 to cease and desist hiring of employees (except in instances in which there is a bona fide offer and acceptance prior to the effective date of this Order), transferring employees between State agencies and departments, promoting employees, and contracting for individuals to perform services.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and emergent situations to preserve and protect human life and safety, all State agencies and departments under my direct executive authority take immediate action to cease and desist authorization of all overtime for employees effective July 31, 2008.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order, all State agencies and departments under my direct executive authority take immediate action to terminate the services of the following five categories of employees and individuals effective July 31, 2008: (1) Retired Annuitants; (2) Permanent Intermittent Employees; (3) Seasonal Employees; (4) Temporary Help Workers; and (5) Student Assistants.

IT IS FURTHER ORDERED that except for services and functions of state government deemed critical and exempt by this Order and except for services provided pursuant to multi-year contracts for Information Technology systems and services, all State agencies and departments under my direct executive authority take immediate action to suspend all personal services contracts effective July 31, 2008.

IT IS FURTHER ORDERED that all Agency Secretaries and Department Directors shall take immediate action to implement this Order, and any other action that will reduce state expenditures.

IT IS FURTHER ORDERED that the Director of the Department of Finance shall establish an exemption process that Agency Secretaries shall utilize to determine if an exemption is justified based on critical services and functions, which may include either cost-reducing or revenue-producing services and functions that will help ensure that there is sufficient cash for the State to make its payments.

IT IS FURTHER ORDERED that Agency Secretaries and Cabinet-level Directors shall report their exemptions to the Cabinet Secretary and the Director of the Department of Finance within 24 hours of approving an exemption.

IT IS FURTHER ORDERED that the Director of the Department of Finance and Director of the Department of Personnel Administration shall work with the State Controller to develop and implement the necessary mechanisms, including but not limited to pay letters and computer programs, to comply with the California Supreme Court's *White v. Davis* opinion to pay federal minimum wage to those nonexempt FLSA employees who did not work any overtime.

IT IS FURTHER ORDERED that the necessary mechanisms to ensure compliance with the *White v. Davis* opinion must be in place to be effective for the August 2008 payroll.

IT IS HEREBY REQUESTED that during this budget impasse, the State Treasurer shall take all actions necessary to maintain the State's ability to pay its bond obligations, including payment of principal and interest with funds in the State Treasury, and shall take all actions that are necessary to protect the State's funds and investments.

IT IS FURTHER 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, constitutional officers, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, assist in the implementation of this Order and implement similar mitigation measures that will help to preserve the State's cash supply during this budget impasse.

IT IS FURTHER ORDERED that this Order shall remain in effect until such time as both a Fiscal Year 2008-09 Budget is adopted and the Director of the Department of Finance confirms an adequate cash balance exists to meet the State's fiscal obligations.

I FURTHER DIRECT that as soon as hereafter possible, this Order 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 31st day of July 2008.

ARNOLD SCHWARZENEGGER
Governor of California

ATTEST:

DEBRA BOWEN
Secretary of State