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18 Attorneys for Proposed Intervenors
19 CALIFORNIA ASSOCIATION OF
20 PROFESSIONAL SCIENTISTS;
21 PROFESSIONAL ENGINEERS IN
22 CALIFORNIA GOVERNMENT



23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
24 **COUNTY OF SACRAMENTO**

25 DEBBIE L. ENDSLEY; CALIFORNIA
26 DEPARTMENT OF PERSONNEL
27 ADMINISTRATION,

28 Petitioners/Plaintiffs,

v.

JOHN CHIANG, sued herein in his official capacity
only; OFFICE OF THE STATE CONTROLLER,

Respondents/Defendants.

JOHN CHIANG, in his official capacity as
CONTROLLER OF THE STATE OF CALIFORNIA;
OFFICE OF THE STATE CONTROLLER,

Cross-Complainants,

v.

DEBBIE L. ENDSLEY, sued herein in her official
capacity only; CALIFORNIA DEPARTMENT OF
PERSONNEL ADMINISTRATION,

Case No. 34-2010-80000591

NOTICE OF *EX PARTE*
APPLICATION FOR LEAVE
TO INTERVENE; *EX PARTE*
APPLICATION FOR LEAVE
TO INTERVENE;
MEMORANDUM OF POINTS
AND AUTHORITIES;
EXHIBIT 1; [PROPOSED]
ORDER

Date: July 16, 2010

Time: 11:00 a.m.

Dept: 19

Judge: Hon. Patrick Marlette

Action Filed: July 6, 2010

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Cross-Defendants.

CALIFORNIA ASSOCIATION OF PROFESSIONAL
SCIENTISTS; PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT,

Intervenors.

1 NOTICE OF EX PARTE APPLICATION
2 AND EX PARTE APPLICATION

3 Please take notice that on July 16, 2010, at 11:00 a.m., in Department 19 of the
4 Sacramento Superior Court, 720 9th Street, Sacramento, California, 95814, before the
5 Honorable Patrick Marlette, proposed intervenors California Association of Professional
6 Scientists (“CAPS”) and Professional Engineers in California Government (“PECG”)
7 (collectively, “Proposed Intervenors”) will respectfully apply to the Court for leave to intervene
8 in this action by filing a Verified Complaint and Petition for Writ of Mandate in Intervention.

9 This *ex parte* application is made pursuant to the California Rules of Court 3.1200 *et*
10 *seq.* and California Code of Civil Procedure §387. *Ex parte* relief is necessary because an
11 application for a Temporary Restraining Order is pending. Absent immediate intervention in
12 this action, Proposed Intervenors’ members face an immediate danger of irreparable harm based
13 on proceedings in this litigation, as explained below, and intervention is necessary to enable
14 Proposed Intervenors to protect against that harm. Intervention is proper because CAPS and
15 PECG each claim an interest in the subject of this action, and adjudication of the parties’ claims
16 in the absence of CAPS and PECG will impair or impede the ability of CAPS and PECG to
17 protect those interests. A proposed Verified Complaint and Petition for Writ of Mandate in
18 Intervention is attached as Exhibit 1 and is incorporated by reference.

19 This application is based on this notice; all pleadings, papers, and records in this action;
20 the attached memorandum of points and authorities; and such evidence as may be presented at
21 the hearing.
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1 The contact information for counsel for all parties in this action is:

Counsel	Party
2 3 K. William Curtis 4 Warren C. Stracener 5 Linda A. Mayhew 6 Christopher E. Thomas 7 David D. King 8 Shaun R. Spillane 9 Department of Personnel Administration 10 1515 S Street, North Building, Suite 400 11 Sacramento, California 95811-7258 12 Telephone: (916) 324-0512 13 Fax: (916) 323-4723 14 E-mail: davidking@dpa.ca.gov	Counsel for Petitioners/Plaintiffs
15 Richard J. Chivaro 16 Ronald V. Placet 17 Shawn D. Silva 18 Office of the State Controller 19 300 Capitol Mall, Suite 1850 20 Sacramento, California 95814 21 Telephone: (916) 445-6854 22 Fax: (916) 3222-1220 23 E-mail: rchivaro@sco.ca.gov 24 Steven S. Rosenthal 25 Marc S. Cohen 26 Jay W. Waks 27 Alan K. Palmer 28 Bryant Delgadillo Kaye Scholer LLP 1999 Avenue of the Stars, Suite 1700 Los Angeles, California 90067 Telephone: (310) 788-1000 Fax: (310) 788-1200 E-mail: srosenthal@kayescholer.com	Counsel for Respondents/Defendants

21 Notice of this Application has been provided to counsel for Petitioners/Plaintiffs and
22 Respondents/Defendants in accordance with Rule 3.1203 of the California Rules of Court, as
23 detailed in the attached Declaration of Barbara J. Chisholm. Counsel for
24 Respondents/Defendants have informed counsel for CAPS and PECG that they do not oppose
25 this Application; and counsel for Plaintiffs/Petitioners have informed counsel for CAPS and
26 PECG that Plaintiffs/Petitioners are assessing their position regarding the intervention.

27 Chisholm Decl. ¶¶3-4.

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Dated: July 12, 2010

Respectfully Submitted,

JONATHAN WEISSGLASS
BARBARA J. CHISHOLM
PEDER J. THOREEN
Altshuler Berzon LLP

GERALD JAMES

Attorneys for Intervenors CAPS and PECG


By: Gerald James

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 In a July 1, 2010 draft pay letter (“Pay Letter”), Petitioners/Plaintiffs Debbie L. Endsley
4 and the Department of Personnel Administration illegally instructed Respondents/Defendants
5 John Chiang and the Office of State Controller to reduce the wages and salaries of thousands of
6 state employees, including thousands of employees who are members of Proposed Intervenors
7 California Association of Professional Scientists (“CAPS”) and Professional Engineers in
8 California Government (“PECG”), to the minimum wages mandated by the federal Fair Labor
9 Standards Act (“FLSA”), until a budget is passed by State Legislature. CAPS and PECG seek
10 to intervene in this action to protect the rights of state employees they represent who will be
11 harmed by the unlawful Pay Letter. *Ex parte* relief granting leave to intervene is appropriate
12 because Petitioners/Plaintiffs recently have asked the Court to issue emergency injunctive relief
13 ordering Respondents/Defendants to comply with the Pay Letter. Absent immediate
14 intervention, Proposed Intervenors will be unable to protect their members, who face immediate
15 danger of irreparable harm if the Pay Letter is implemented.

16 **ARGUMENT**

17 **I. *Ex Parte* Relief Is Appropriate**

18 Petitioners/Plaintiffs allege in their Petition for Writ of Prohibition/Mandate; Complaint
19 For Injunctive And Declaratory Relief that Respondents/Defendants have refused to comply
20 with the unlawful Pay Letter, and that an order from this Court requiring such compliance must
21 be issued “in advance of” July 22, 2010. Pet’n & Compl., ¶¶22-24. On July 7, 2010,
22 Petitioners/Plaintiffs filed an application for a Temporary Restraining Order. That application is
23 currently scheduled to be heard by the Court on July 16, 2010. Chisholm Decl. ¶5.

24 As detailed below and in the accompanying proposed Complaint and Petition in
25 Intervention, CAPS’ and PECG’s interests will be substantially impaired and their members will
26 face irreparable harm if the Court orders the relief sought by Petitioners/Plaintiffs. Such harm
27 will include the inability of some members to pay for necessary living expenses such as housing,
28 transportation and food. *See* Decl. of Ted Toppin (“Toppin Decl.”) ¶7; Decl. of Wilburn L.

1 Thompson Jr. (“Thompson Decl.”) ¶7. Immediate intervention is necessary to enable CAPS and
2 PECG to protect their members’ interests. CAPS and PECG therefore seek leave to intervene
3 on an *ex parte* basis. *See* Cal. R. Ct. 3.1202 (*ex parte* relief appropriate where, among other
4 things, party faces immediate danger or irreparable harm). As set forth in the accompanying
5 Declaration of Barbara J. Chisholm, Proposed Intervenors have complied with the procedural
6 requirements for *ex parte* relief. Chisholm Decl. ¶¶3-4; *see* Cal. R. Ct. 3.1203, 3.1204. Counsel
7 for Respondents/Defendants have informed Proposed Intervenors that they do not oppose this
8 application; and Plaintiffs/Petitioners are assessing their position regarding CAPS’ and PECG’s
9 intervention. Chisholm Decl. ¶¶3-4.

10 II. Leave to Intervene Should Be Granted

11 California law allows for both intervention as of right (C.C.P. §387(b)) and permissive
12 intervention (C.C.P. §387(a)). *See* 4 B. E. Witkin, *California Procedure*, Pleading §195 (4th ed.
13 1997). CAPS and PECG seek intervention under both standards.

14 A. The Court Should Grant CAPS And PECG Intervention As Of Right

15 As to intervention of right, C.C.P. §387(b) provides in pertinent part:

16 if the person seeking intervention claims an interest relating to the property or
17 transaction which is the subject of the action and that person is so situated that
18 the disposition of the action may as a practical matter impair or impede that
19 person’s ability to protect that interest, unless that person’s interest is adequately
represented by existing parties, the court shall, upon timely application permit
that person to intervene.

20 In other words, “the court must allow intervention” if the intervenor “(1) claims an interest
21 relating to the property or transaction that is the subject of the action, (2) is so situated that the
22 action’s disposition may impair the person’s ability to protect that interest, and (3) is not
23 adequately represented with regard to that interest by existing parties.” 4 Witkin, *California*
24 *Procedure*, Pleading §195.

25 1. Interest in the Action: CAPS is the exclusive bargaining representative of the
26 nearly 3,000 state employed scientists in State Bargaining Unit 10, the Professional Scientific
27 unit. Complaint and Petition In Intervention, ¶5. CAPS is also a verified supervisory
28 organization under Government Code section 3527 subdivision (c) representing state

1 supervisory scientists in their employment relations with the state. *Id.* PEGC is the exclusive
2 bargaining representative of the nearly 10,000 state employed engineers in State Bargaining Unit
3 9, the Professional Engineers unit. *Id.* ¶6. PEGC is also a verified supervisory organization
4 under Government Code section 3527 subdivision (c) representing state supervisory engineers
5 in their employment relations with the state. *Id.*

6 CAPS and PEGC have an interest in challenging the legality of the Pay Letter because
7 that letter, if implemented, would dramatically reduce the wages and salaries of thousands of
8 CAPS' and PEGC's members, causing severe and irreparable harm to many members. Toppin
9 Decl. ¶7. Proposed Intervenors thus have a significant interest in the subject of this action.

10 2. Impairment: If the Court orders Respondents/Defendants to implement the
11 unlawful Pay Letter, Proposed Intervenors' ability to protect their and their members' interests
12 will be substantially impaired. Consequently, the disposition of this action could "as a practical
13 matter" impede the interests of CAPS' and PEGC's members. C.C.P. §387(b).

14 3. Adequate Representation: Although Respondents/Defendants have resisted
15 implementing the unlawful Pay Letter and have filed a cross-complaint in this action, Proposed
16 Intervenors' interests are not co-extensive with those of Respondents/Defendants. In contrast to
17 Respondents/Defendants, who are charged with representing the interests of the public as a
18 whole, CAPS and PEGC represent the particular and potentially more parochial interests of the
19 unions and their members. Proposed Intervenors should not be forced to rely on
20 Respondents/Defendants to represent their particular interests. Moreover, Proposed Intervenors
21 raise claims that Respondents/Defendants have not raised directly in their cross-complaint such
22 as that compliance with the Pay Letter is impossible or infeasible because
23 Respondents/Defendants are unable to determine precisely which employees' wages and salaries
24 are funded by continuing appropriations. Finally, members of CAPS and PEGC affected by the
25 Pay Letter are in the best position to demonstrate the hardships that will be endured if the Pay
26 Letter's unlawful provisions are enforced, which will assist the Court in evaluating the pending
27 request for injunctive relief.

1 **B. CAPS And PECG Also Satisfy the Requirements For Permissive**
2 **Intervention**

3 Alternatively, CAPS and PECG should be granted permissive intervention. Under
4 C.C.P. §387(a), “any person, who has an interest in the matter in litigation, or in the success of
5 either of the parties, or an interest against both, may intervene in the action or proceeding.”
6 Permissive intervention is appropriate “if (1) the party has a direct and immediate interest in the
7 action; (2) the intervention will not enlarge the issues in the litigation; and (3) the reasons for
8 the intervention outweigh any opposition by the parties presently in the action.” *U.S. Ecology*
9 (2001) *Inc. v. State of Cal.*, 92 Cal.App.4th 113, 139.

10 As shown above, Proposed Intervenors have a direct and immediate interest in
11 challenging the Pay Letter and the resulting unlawful pay reductions.

12 Proposed Intervenors’ intervention will not enlarge the issues in this litigation, as they
13 only seek to challenge the validity of the Pay Letter that is at the center of the existing dispute.

14 Nor is there any interest weighing against intervention at this very early stage in the
15 proceedings. CAPS’s and PECG’s intervention will not delay proceedings. Indeed, CAPS and
16 PECG intend to submit their proposed opposition to the application for a temporary restraining
17 order by the deadline set by the Court.

18 **C. CAPS and PECG Have Complied With the Requirements For Intervention**

19 The procedure for obtaining intervention is “by complaint, setting forth the grounds
20 upon which intervention rests, filed by leave of the court.” C.C.P. §387(a). Concurrently with
21 this application, CAPS and PECG are lodging a proposed Verified Complaint and Petition in
22 Intervention.

23 Finally, CAPS and PECG have submitted a “timely application.” C.C.P. §387(a).
24 Absent a showing of prejudice to the other parties’ interests, which there is none here, timeliness
25 under C.C.P. §387 is broadly and permissively construed. *See, e.g., Truck Ins. Exchange v.*
26 *Superior Court* (1997) 60 Cal.App.4th 342, 351 (“timeliness is hardly a reason to bar
27 intervention when a direct interest is demonstrated and the real parties in interest have not
28 shown any prejudice other than being required to prove their case”); *Mallick v. Superior Court*

1 (1979) 89 Cal.App.3d 434, 437 (granting intervention *after* judgment was entered). CAPS and
2 PECG have intervened at the earliest date they reasonably could. This litigation is only six days
3 old, and no motions have yet been heard by the Court. The application for intervention is
4 timely.

5 **CONCLUSION**

6 For all the foregoing reasons, CAPS and PECG respectfully request that the Court grant
7 their application for leave to intervene in this action.

8 Dated: July 12, 2010

Respectfully Submitted,

9
10 JONATHAN WEISSGLASS
11 BARBARA J. CHISHOLM
12 PEDER J. THOREEN
13 Altshuler Berzon LLP

14 GERALD JAMES

15 Attorneys for Intervenors CAPS and PECG

16
17 
18 _____
19 By: Gerald James

Exhibit 1

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12 CALIFORNIA ASSOCIATION OF
13 PROFESSIONAL SCIENTISTS; PROFESSIONAL
14 ENGINEERS IN CALIFORNIA GOVERNMENT

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SACRAMENTO**

16 DEBBIE L. ENDSLEY; CALIFORNIA
17 DEPARTMENT OF PERSONNEL
18 ADMINISTRATION,

18 Petitioners/Plaintiffs,

19 v.

20 JOHN CHIANG, sued herein in his official capacity
21 only; OFFICE OF THE STATE CONTROLLER,

21 Respondents/Defendants.

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24 JOHN CHIANG, in his official capacity as
25 CONTROLLER OF THE STATE OF CALIFORNIA;
26 OFFICE OF THE STATE CONTROLLER,

26 Cross-Complainants,

27 v.

28 DEBBIE L. ENDSLEY, sued herein in her official
capacity only; CALIFORNIA DEPARTMENT OF
PERSONNEL ADMINISTRATION,

Case No. 34-2010-80000591

**[PROPOSED] VERIFIED
COMPLAINT AND PETITION
FOR WRIT OF MANDATE IN
INTERVENTION**

Dept: 19
Judge: Hon. Patrick Marlette

Action Filed: July 6, 2010

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Cross-Defendants.

CALIFORNIA ASSOCIATION OF PROFESSIONAL
SCIENTISTS; PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT,

Intervenors.

1 straight time worked plus one and one-half times their regular rate of pay for overtime.

2 **PARTIES**

3 5. Intervenor CALIFORNIA ASSOCIATION OF PROFESSIONAL SCIENTISTS
4 (“CAPS”) is, and at all times herein mentioned was, a nonprofit corporation organized and
5 existing under the laws of the State of California, with its principal place of business in the
6 County of Sacramento, State of California. CAPS is the duly certified collective bargaining
7 representative of the nearly 3,000 state employed scientists in State Bargaining Unit 10, the
8 Professional Scientific unit. CAPS is also a verified supervisory organization under
9 Government Code section 3527 subdivision (c) representing state supervisory scientists in their
10 employment relations with the state. CAPS represents the employment interest of its members.
11 Included among its members are thousands of state employees who are affected by the actions
12 of the Petitioners and Respondents in this action. The questions involved in this lawsuit affect
13 the payment of CAPS members’ salaries. Petitioners/Plaintiffs seek to cut the wages and
14 salaries of some CAPS members to the federal minimum wage and to cut the wages and salaries
15 of other CAPS members to \$455 per week. On information and belief, many CAPS members’
16 salaries are funded by continuing appropriations and many nonexempt CAPS members will
17 work overtime during the relevant pay periods.

18 6. Intervenor PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT
19 (“PECG”) is, and at all times herein mentioned was, a nonprofit corporation organized and
20 existing under the laws of the State of California, with its principal place of business in the
21 County of Sacramento, State of California. PECG is the duly certified exclusive collective
22 bargaining representative of the nearly 10,000 state employed engineers in State Bargaining Unit
23 9, the Professional Engineers unit. PECG is also a verified supervisory organization under
24 Government Code section 3527 subdivision (c) representing state supervisory engineers in their
25 employment relations with the state. PECG represents the employment interest of its members.
26 Included among its members are thousands of state employees who are affected by the actions
27 of the Petitioners and Respondents in this action. The questions involved in this lawsuit affect
28 the payment of PECG members’ salaries. Petitioners/Plaintiffs seek to cut the wages and

1 salaries of some PEGC members to the federal minimum wage and to cut the wages and salaries
2 of other PEGC members to \$455 per week. On information and belief, many PEGC members'
3 salaries are funded by continuing appropriations and many nonexempt PEGC members will
4 work overtime during the relevant pay periods.

5 7. Petitioner/Plaintiff DEBBIE ENDSLEY is the Director of the California
6 Department of Personnel Administration and is responsible for managing the non-merit aspects
7 of the state's personnel system. *See* Gov. Code §19815.2.

8 8. Petitioner/Plaintiff CALIFORNIA DEPARTMENT OF PERSONNEL
9 ADMINISTRATION ("DPA") is a California state agency statutorily created for the purposes of
10 managing the nonmerit aspects of the state's personnel system. Gov. Code §19815.2.

11 9. Respondent/Defendant JOHN CHIANG is a state constitutional officer as the
12 duly elected State Controller of the State of California. Cal. Const., art. V, §11. Among various
13 other duties, the Controller superintends the fiscal concerns of the state. The Controller shall
14 audit all claims against the state and may audit the disbursement of any state money for
15 correctness, legality, and for sufficient provisions of law for payment. Gov. Code §12410. The
16 Controller shall draw warrants on the Treasurer for the payment of money directed by law to be
17 paid out of the State Treasury; but a warrant shall not be drawn unless authorized by law, and
18 unless unexhausted specific appropriations by law are available to meet it. Gov. Code §12440.

19 10. Respondent/Defendant OFFICE OF THE STATE CONTROLLER is a state
20 department charged with processing payroll transactions for state employees and auditing the
21 disbursement of state money. Gov. Code §§12410, 12412.

22 **VENUE**

23 11. This Court has jurisdiction over this action pursuant to the California
24 Constitution, Article VI, Section 10, because this case is a cause not given by statute to other
25 trial courts.

26 12. The California Attorney General has an office within the City of Sacramento,
27 making Sacramento County an appropriate venue. Code of Civ. Proc. §401.

1 **FACTUAL ALLEGATIONS**

2 13. On July 1, 2010, Director Endsley transmitted a letter to Controller Chiang,
3 attaching a draft pay letter (the "Pay Letter") and informing Controller Chiang that "we must
4 take the steps outlined in the attached pay letter to adjust wages and salaries during this budget
5 impasse." Director Endsley's letter notes that there is no state budget and asserts that, under
6 *White v. Davis*, 30 Cal.4th 528 (2003), in the absence of a budget, the Controller has no legal
7 authority to pay state employee wages and salaries except as required by federal labor law. A
8 copy of the July 1 letter and the Pay Letter are attached as Exhibit A.

9 14. The Pay Letter instructs the Controller to reduce the salaries and wages of most
10 state employees, including thousands of employees represented by each of the Intervenors, to
11 \$7.25 per hour – the minimum wage mandated under the FLSA – or to \$455 per week.

12 15. On July 6, 2010, Director Endsley and DPA filed a lawsuit against the Controller
13 and the Office of the Controller, seeking a writ of prohibition/mandate, declaratory and
14 injunctive relief, to force the Controller to implement the Pay Letter.

15 16. On July 7, 2010, the Controller and the Office of the Controller filed a cross-
16 complaint for declaratory relief seeking, among other things, a declaration that the Pay Letter is
17 legally invalid.

18 **DENIAL AND AFFIRMATIVE DEFENSES**

19 17. Intervenors generally deny each and every allegation of Petitioners/Plaintiffs'
20 Petition for Writ of Prohibition/Mandate; Complaint For Injunctive And Declaratory Relief.

21 18. As a first, separate affirmative defense to the Petition/Complaint, and each cause
22 of action thereof, Intervenors allege that Petitioners/Plaintiffs have failed to allege facts
23 sufficient to constitute a cause of action.

24 **FIRST CAUSE OF ACTION**
25 **AGAINST ALL PETITIONERS/PLAINTIFFS**
26 **(Declaratory and Injunctive Relief)**

27 19. Intervenors incorporate by reference all of the foregoing paragraphs as if fully
28 set forth herein.

1 20. The Pay Letter is premised on the Controller’s alleged lack of authority to
2 provide full wages and salaries to state employees in the absence of appropriations through this
3 year’s state budget, but the Pay Letter fails to exempt from its scope those state employees
4 whose wages and salaries are not funded by this year’s state budget, but who instead are paid
5 through continuing appropriations. *See Gilb v. Chiang*, ___ Cal.Rptr.3d ___, 2010 WL
6 2637734, at *1 (Cal.App.3d Dist. July 2, 2010) (“the law authorizes ‘continuing appropriations’
7 that run from year to year without the need for further authorization”). The Pay Letter is
8 unlawful insofar as it seeks to reduce the wages and salaries of thousands of state employees,
9 including thousands of state employees represented by Intervenors, whose wages and salaries
10 are funded by existing continuing appropriations and thus are not contingent upon the
11 Legislature’s passage of the budget.

12 21. As a separate and additional matter, on information and belief, even if the Pay
13 Letter were construed to exempt employees whose salaries and wages are funded by continuous
14 appropriations, compliance with the Pay Letter in a way that exempts state employees who are
15 paid through continuing appropriations would be impossible or infeasible because, when
16 passing continuous appropriations, the Legislature does not specify or mandate which
17 employees’ wages and salaries are to be funded by such appropriations. The Controller lacks
18 the ability timely to identify precisely which state employees must be exempted from the
19 reductions mandated by the Pay Letter.

20 22. As a separate and additional matter, notwithstanding the Pay Letter, nonexempt
21 State employees who perform overtime work are entitled under the FLSA to timely payment of
22 their full wages or salaries for all straight time worked plus one and one-half times their regular
23 rate of pay for overtime. *See White*, 30 Cal.4th at 577-78 (“during a budget impasse, [the state]
24 . . . must timely pay nonexempt employees who work overtime their full salary for all straight
25 time worked plus one and one-half times their regular rate of pay for overtime”); *Gilb*, 2010 WL
26 2637734, at *2. Overtime must be paid on a timely basis in compliance with federal law. On
27 information and belief, the Pay Letter will result in the failure to comply with federal law on the
28 timely payment of overtime.

1 whose wages and salaries are funded by continuing appropriations.

2 3. That the Court issue a declaratory judgment holding that compliance with the Pay
3 Letter is impossible and/or infeasible because the Controller cannot accurately identify those
4 state employees whose salaries are funded by continuing appropriations.

5 4. That the Court issue a declaratory judgment holding that the Pay Letter will result
6 in the failure to comply with federal law on the timely payment of overtime.

7 5. That the Court issue a declaratory judgment holding that compliance with the Pay
8 Letter is impossible and/or infeasible because the Controller cannot identify in a timely manner
9 those nonexempt employees who will work overtime during the relevant pay periods.

10 6. That the Court issue temporary, preliminary, and permanent injunctive relief
11 prohibiting Plaintiffs/Petitioners and Defendants/Respondents from implementing the unlawful
12 Pay Letter.

13 7. That the Court issue a peremptory writ of mandate ordering Petitioners/Plaintiffs
14 to set aside the Pay Letter.

15 8. Attorneys' fees and expenses;

16 9. Costs of this action; and

17 10. Such other and further relief as the nature of Intervenors' cause may warrant.

18
19 Dated: July 12, 2010

Respectfully Submitted,

20
21 JONATHAN WEISSGLASS
22 BARBARA J. CHISHOLM
23 PEDER J. THOREEN
24 Altshuler Berzon LLP

25 GERALD JAMES

26 Attorneys for Intervenors CAPS and PECG

27
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By: Gerald James

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VERIFICATION

I, Bruce J. Blanning, am the Executive Director to the Professional Engineers in California Government ("PECG"), a proposed Intervenor in the instant action.

I have read the foregoing Complaint and Petition in Intervention and know its contents. All facts alleged in the Complaint and Petition relevant to Intervenor PECG are true of my own personal knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this affidavit was executed on this 12th day of July, 2010 at Sacramento, California.


BRUCE J. BLANNING

Exhibit A

DEPARTMENT OF PERSONNEL ADMINISTRATION

OFFICE OF THE DIRECTOR
1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95811-7258



July 1, 2010

The Honorable John Chiang
California State Controller
300 Capitol Mall, Suite 1850
Sacramento, California 95814

Dear Controller Chiang,

Today is July 1, 2010, and there is no state budget. Regrettably, we must take the steps outlined in the attached pay letter to adjust wages and salaries during this budget impasse. The six Bargaining Units with tentative agreements are not included because we are seeking and expect the Legislature to approve a continuous appropriation for these six units. We anticipate passage of a continuous appropriation for these bargaining units before the end of the month.

In May 2003, the California Supreme Court held in *White v. Davis* that in the absence of an approved state budget, the Controller has no legal authority to pay state employee wages and salaries except as required by federal labor law.

In 2008, the Department of the Personnel Administration (DPA) issued a pay letter directing the payment of wages and salaries in compliance with *White v. Davis*. You did not implement that pay letter. You cited your computer system as one of the reasons you could not pay minimum wage for state employees during a budget impasse. Based on your refusal, the DPA sued and won in the trial court. You appealed to the appellate court and we are waiting for a decision.

However, in June 2003, your predecessor, Steve Westly, stated that the "technical tasks involving changing pay for more than 200,000 employees can be accomplished." Based on this statement, it appears that there is a way to implement changes to your computer system to comply with *White v. Davis* and the Fair Labor Standards Act (FLSA).

I urge you to take the necessary steps to make changes to your computer system to comply with state law. My staff is prepared to work with you to develop and implement the necessary mechanisms to comply with the California Constitution, *White v. Davis*, and the Fair Labor Standards Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Debbie Endsley".

Debbie Endsley
Director

**PAY DIFFERENTIAL XXX
WHITE VS. DAVIS NO BUDGET/MINIMUM WAGE PAY DIFFERENTIAL -
RANK AND FILE AND EXCLUDED EMPLOYEES**

Established: 07/01/10

CLASS TITLE	CB/ID	RATE	DEPARTMENT
All classes with WWG 2 designation with the exception of positions that have a continuous appropriation	R01, R02, R04, R06, R07, R09, R10, R11, R13, R14, R15, R17, R20, R21, S01, S04, S05, S06, S07, S08, S09, S11, S12, S13, S14, S15, S17, S20, U01, U04, U07, U09, U12, U15, U19, E, E97, E98, and confidential employees tied to the above rank-and-file bargaining units.	Rate 1	All Departments
All classes with WWG E designation with the exception of positions that have a continuous appropriation	R01, R02, R03, R07, R09, R10, R11, R17, R21, S01, S02, S03, S04, S06, S07, S08, S09, S10, S12, S11, S14, S15, S17, S18, S19, S20, S21, M01, M02, M05, M06, M07, M08, M09, M10, M11, M12, M13, M14, M15, M16, M17, M18, M19, M20, M21, M21, U01, U02, U09, U10, U19, E97, E98, E99	Rate 2	

RATE	EARNINGS ID
<p><u>RATE 1 -WWG 2</u></p> <p>Full-time employees shall be eligible for:</p> <p> \$1,218 for a 21 day pay period \$1,276 for a 22 day pay period</p> <p>Intermittent employees shall be eligible for:</p> <p> \$7.25 per hour</p> <p>Daily rate employees shall be eligible for:</p> <p> \$58.00 per day</p>	

SECTION 14:

PAY DIFFERENTIALS

RATE	EARNINGS ID
RATE 2 - WWG E	
Full-time employees shall be eligible for: <p style="margin-left: 40px;">\$1,971.66 per pay period</p>	
Intermittent employees shall be eligible for: <p style="margin-left: 40px;">\$11.36 per hour</p>	
Daily rate employees shall be eligible for: <p style="margin-left: 40px;">\$91.00 per day</p>	

CRITERIA
<p>Employees in classes with a Work Week Group designation of 2 and E are eligible for this pay differential with the exception of employees in Bargaining Units 5, 8, 12, 16, 18, and 19. These bargaining units have a continuous appropriation and will receive their regular compensation.</p> <p>All health benefits will not be withheld from this minimum wage pay differential for 90 days.</p> <p>Group legal will be withheld from this minimum wage pay differential.</p> <p>Miscellaneous deductions will be withheld from this minimum wage payment.</p> <p>Employee's lump sum payments will not be based on this minimum wage payment.</p> <p>Disability payments which occurred prior to July 1, 2010 will not be subject to minimum wage.</p> <p>Supplemental payments for disability will be based on minimum wage as of July 1, 2010.</p>

IF APPLICABLE, SHOULD PAY DIFFERENTIAL BE:	
PRO RATED	Yes
SUBJECT TO QUALIFYING PAY PERIOD	No
ALL TIME BASES AND TENURE ELIGIBLE	Yes
SUBJECT TO PERS DEDUCTION	Yes

INCLUSION IN RATE TO CALCULATE THE FOLLOWING BENEFIT PAY	
OVERTIME	No
IDL	No
EIDL	No
NDI	No
LUMP SUM VACATION	No
LUMP SUM SICK	No
LUMP SUM EXTRA	No

PAY LETTER: 10-XX
ISSUE DATE:

**DEPARTMENT OF PERSONNEL ADMINISTRATION
SECTION I**

For questions regarding Section I, call (916) 323-3343
Technical questions will be referred to the Personnel Services Branch

To comply with federal labor law and the California Supreme Court's decision in White v. Davis, in the absence of an approved budget WWG 2, E, and SE classes shall be paid as follows:

All Regular Pay for all employees is delayed until a budget is signed with the exception of the Bargaining Units identified below. Until a Budget is signed employees in Work Week Group 2 and WWG E are eligible for Pay Differential XXX. Employees in WWG SE are not entitled to Regular Pay or the Minimum Wage Pay Differential in the absence of a Budget.

SECTION 14: PAY DIFFERENTIALS

PAY DIFFERENTIAL XXX

WHITE VS. DAVIS NO BUDGET/MINIMUM WAGE PAY DIFFERENTIAL RANK AND FILE AND EXCLUDED EMPLOYEES is established: (Effective 07/01/10)

Excluded from Minimum Wage Differential:

Bargaining Units 5, 8, 12, 16, 18 and 19

1 **[PROPOSED] ORDER**

2 Having considered the *ex parte* application for leave to file a complaint in intervention
3 submitted by California Association of Professional Scientists and the Professional Engineers in
4 California Government, and supporting documents, including the proposed Verified Complaint
5 and Petition for Writ of Mandate in Intervention, and good cause appearing therefor,

6 IT IS HEREBY ORDERED that the California Association of Professional Scientists
7 and the Professional Engineers in California Government are each granted leave to intervene in
8 this action and to file the Verified Complaint and Petition in Intervention submitted with the
9 application.

10
11 Date: _____

12 Judge of the Superior Court
13
14
15

