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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SACRAMENTO

14 DEBBIE L. ENDSLEY; CALIFORNIA
DEPARTMENT OF PERSONNEL
15 ADMINISTRATION

16 Petitioners/Plaintiffs,

17 v.

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

20 Respondents/Defendants.

21 JOHN CHIANG, in his official capacity as
CONTROLLER OF THE STATE OF
22 CALIFORNIA; and the OFFICE OF THE
STATE CONTROLLER

23 Cross-Complainants,

24 v.

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

27 Cross-Defendants.
28

) **PETITIONERS/PLAINTIFFS'**
) **OPPOSITION TO EX PARTE**
) **APPLICATIONS FOR LEAVE TO**
) **INTERVENE BY CCPOA, SEIU, AND**
) **PECG/CAPS**

Hearing Date: July 16, 2010
Time: 11:00 a.m.
Dept: 19
Trial Date: TBA

) **Exempt from Fees**
) **(Gov. Code § 6103)**

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

	<u>Page</u>
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
The Controller’s Cross-Complaint	3
SEIU’s Proposed Complaint in Intervention	4
CCPOA’s Proposed Complaint in Intervention.....	4
PECG/CAPS’ Proposed Complaint in Intervention	5
The Union’s Commons Claim for Seeking Intervention.....	5
III. ANALYSIS	6
A. THE UNIONS ARE NOT ENTITLED TO COMPULSORY INTERVENTION AS A MATTER OF RIGHT	6
1. The Union Have Not “Claimed an Interest” in a “Property or Transaction” that is the Subject of this Action	6
2. The Controller’s and Unions’ Motives and Interests in Challenging the Legality of the Pay Letter Are Identical and The Controller Is The Party Best Situated to Litigate the Claims	8
B. THE COURT SHOULD DENY PERMISSIVE INTERVENTION BY THE UNIONS.....	10
1. The Unions Do Not Have Direct and Immediate Interest in this Action. .	11
2. The Proposed Intervention Will Improperly Expand the Issues Before this Court	13
3. Delay, Inconvenience, and Prejudice to the Original Parties Outweigh the Unions’ Interests.....	13
IV. CONCLUSION	15

TABLE OF AUTHORITIES

Page

CALIFORNIA CASES:

1

2

3

4 *Citizens for Open Access etc. Tide, Inc. v. Seadrift Assn.* (1998)
60 Cal. App. 4th 1053.....9

5

6 *City of Burlingame v. County of San Mateo* (1951)
103 Cal.App.2d 885..... 11

7 *Continental Vinyl Products Corp. v. Mead Corp.* (1972)
27 Cal. App. 3d 543..... 11,13

8

9 *County of San Bernadino v. Harsh California Corp.* (1959)
52 Cal.2d 341..... 13

10 *Deutschmann v. Sears, Roebuck & Co.* (1982)
132 Cal. App. 3d 912.....6

11

12 *Gilb v. Chiang* (2010)
2010 Cal. App. LEXIS 1037passim

13 *Hausmann v. Farmers Ins. Exchange* (1963)
213 Cal. App. 2d 611.....6

14

15 *Isaacs v. Jones* (1898)
121 Cal. 257.....6,7

16 *In re Veterans' Industries, Inc.* (1970)
8 Cal. App. 3d 902..... 6

17

18 *Jade K. v. Viguri* (1989)
210 Cal.App.3d 1459..... 10

19 *Jersey Maid Milk Products Co. v. Brock* (1939)
13 Cal. 2d 661.....6,11

20

21 *La Mesa Lemon Grove & Spring Valley Irrigation Dist. v. Halley,* (1925)
195 Cal. 739..... 8

22 *Mary R. v. B & R Corp.* (1983)
149 Cal.App.3d 308..... 11

23

24 *Muller v. Robinson* (1959)
174 Cal.App.2d 511..... 13

25 *Olson v. Hopkins* (1969)
269 Cal.App.2d 638..... 11

26

27 *People ex rel. State Lands Commission v. City of Long Beach* (1960)
183 Cal.App.2d 271..... 11

28 *People v. Brophy* (1942)
49 Cal.App.2d 15..... 13

1	<i>People v. Superior Court of Ventura County</i> (1976)	
	17 Cal. 3d 732.....	14
2		
3	<i>Truck Ins. Exchange v. Superior Court</i> (1997)	
	60 Cal.App.4th 342.....	10
4	<i>White v. Davis</i> (2003)	
	30 Cal.4th 528.....	passim
5		
6	<i>Wright v. Jordan</i> (1923)	
	192 Cal. 704.....	13
7	<u>STATUTES:</u>	
8	Code Civ. Proc., § 387 (b).....	6,7,8
	Code Civ. Proc., § 1085.....	8
9	Gov. Code § 12470.....	10
	Gov. Code § 19826 (a)	4

10
11
12
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14
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1 I.

2 **INTRODUCTION**

3 Petitioners/Plaintiffs DEBBIE L. ENDSLEY (Endsley) and the CALIFORNIA
4 DEPARTMENT OF PERSONNEL ADMINISTRATION (DPA) (collectively “Petitioners” or
5 “DPA”) have initiated this action against Respondents/Defendants JOHN CHIANG (Chiang),
6 Controller of the State of California, and the OFFICE OF STATE CONTROLLER (collectively
7 “Respondents” or “the Controller”), to prohibit Respondents from violating the California
8 Constitution, state law, precedent set forth by the California Supreme Court and the Third District
9 Court of Appeal, and the instructions contained in DPA Pay Letter 10-XX, issued on July 1, 2010.

10 Pursuant to the California Constitution, state law, and Supreme Court precedent set forth in
11 *White v. Davis* (2003) 30 Cal.4th 528 and reiterated by the Third District Court of Appeal in *Gilb v.*
12 *Chiang* (2010) 2010 Cal. App. LEXIS 1037 (hereafter “*Gilb v. Chiang*”), the Controller has a clear
13 legal and ministerial duty to refrain from issuing state employees full pay in the absence of a state
14 budget or other available appropriation. Absent an appropriation, the Controller is only permitted to
15 pay employees as minimally required under the Fair Labor Standards Act.

16 Respondents erroneously claim they are excused from performing their legally-mandated
17 duties because the state payroll system allegedly cannot pay employees who work overtime their full
18 salaries in a timely manner as required by the FLSA. This claim has already been adjudicated in
19 *Gilb v. Chiang* where the court ruled against Respondent in favor of DPA. (*Gilb v. Chiang*; see also,
20 Exhibits A and B of Petitioners’ Request for Judicial Notice ISO Petition.) Respondents do not
21 challenge the fact that but for this alleged infeasibility, they must pay federal minimum wage to state
22 employees in the absence of a state budget or other appropriation.

23 Four unions seek intervention in this action: California Correctional Peace Officers
24 Association (CCPOA), Service Employees International Union, Local 1000 (SEIU), Professional
25 Engineers in California Government (PECG), and California Association of Professional Scientists
26 (CAPS) (collectively “the unions”). The unions primarily contend they have an interest in this
27 litigation based on the potential harm their members would suffer if their pay is temporarily reduced
28 to the federal minimum wage until a budget is passed. This contention should not be considered in

1 determining whether intervention is proper since the Supreme Court has already held that California
2 law requires the Controller delay full payment of state employee salaries absent an appropriation.
3 (*See White v. Davis.*) Furthermore, the unions are not in a position to assist in an adjudication of
4 Respondents' purported impossibility claim, as the Controller has the experience and expertise
5 administering the payroll which is required to litigate the alleged inability to comply with FLSA.¹
6 All of the causes of action raised by the unions are based on secondhand "information and belief."
7 The unions have no direct knowledge or evidence to support their causes of action. The interests of
8 the unions and their members are adequately represented by the Controller, and the unions cannot
9 add anything that will facilitate adjudication of the matters before this Court. Accordingly, the
10 unions' applications for leave to intervene should be denied.

11 II.

12 STATEMENT OF FACTS

13 The California Supreme Court, in *White v. Davis*, and the Third District Court of Appeal in
14 *Gilb v. Chiang*, have both upheld the duty of the Controller to comply with DPA's Pay Letter and to
15 delay paying employees' full salaries in the absence of a state budget or other available
16 appropriation except as minimally required by federal law. (*See Gilb v. Chiang.*) In both Court
17 decisions, the unions filed briefs on behalf of their members in opposition to implementation of the
18 federal minimum wage. Despite these oppositions, the Courts upheld the requirement that the
19 Controller delay payment of full salaries in the absence of a budget or other appropriation.

20 On July 1, 2010, the California state budget for the 2009-2010 fiscal year expired. (*See*
21 *Declaration of Jerri Judd in Support of Petitioners' Application for TRO* ["Judd Decl."], ¶ 9.) Since
22 the Legislature has not passed a budget for the fiscal year beginning July 1, 2010, budget
23 appropriations for the payment of California state employee salaries no longer exist, absent a
24 continuous appropriation. (*Id.* at ¶ 9.) On July 1, 2010, DPA issued a pay letter directing
25 Respondents to comply with the California Constitution and California state law by withholding
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28 ¹ DPA contends Respondents' impossibility defense has already been adjudicated and resolved in
Gilb v. Chiang. Thus, DPA maintains Respondents cannot re-raise an issue that has already been
adjudicated against them.

1 payment of full salaries to state employees whose salaries are not continually appropriated, except as
2 minimally required by federal law. (See Judd Decl., Exhibit A.) When the Controller received
3 DPA's July 1, 2010 pay letter, he issued a press release unequivocally expressing his intent to both
4 disregard the pay letter, and to continue issuing state employees full pay even though there was no
5 budget or existing appropriation. (See Judd Decl., Exhibit B.)

6 On July 2, 2010, the Third District Court of Appeal affirmed the trial court's decision in *Gilb*
7 *v. Chiang*, thus reinforcing the Controller's obligation to comply with DPA's pay letter and his
8 independent obligation to delay the payment of full salaries in accordance with state and federal law.
9 (See *Gilb v. Chiang*.) Despite this ruling, Respondents subsequently issued a press release on July 2
10 announcing his intention once again to issue full pay during a budget impasse even without an
11 appropriation. (Judd Decl., Exhibit C.)

12 On July 6, 2010, DPA filed the instant lawsuit seeking a writ of prohibition/mandate and a
13 complaint for injunctive and declaratory relief to prohibit Respondents from violating the California
14 Constitution, state law, judicial precedent set forth in the California Supreme Court's decision in
15 *White v. Davis* and the Third District Court of Appeal's decision in *Gilb v. Chiang*, and the orders
16 contained in DPA Pay Letter 10-XX, issued on July 1, 2010.

17 **The Controller's Cross-Complaint**

18 On July 7, 2010, Respondents filed a Cross-Complaint for Declaratory Relief in Response to
19 DPA's Writ of Mandate/Prohibition and Complaint for Injunctive and Declaratory Relief. (See
20 Controller's Cross-Complaint for Declaratory Relief.) Respondents' Cross-Complaint alleges nine
21 separate causes of action challenging the validity of DPA's pay letter premised on hypothetical
22 violations which allegedly may occur because of perceived inadequacies in the State's payroll
23 system. The First Cause of Action alleges the pay letter is unlawful because it purportedly fails to
24 exempt from the order delaying full pay employees who are paid with a continuous appropriation.
25 The Second Cause of Action alleges the DPA pay letter is unlawful because it purportedly fails to
26 exempt employees subject to the direction and control of the Receiver. The Third Cause of Action
27 alleges the DPA pay letter is unlawful because it fails to give Respondents direction on how to make
28 Federal and State mandatory deductions. The Fourth Cause of Action alleges the DPA pay letter is

1 unlawful because it purportedly will result in the Respondent violating the FLSA by not timely
2 paying all wages due when overtime is worked. The Fifth Cause of Action alleges the DPA pay
3 letter is unlawful because it attempts to improperly modify the state's negative payroll system thus
4 purportedly causing violations of the FLSA. The Sixth Cause of Action alleges the DPA pay letter is
5 unlawful because it impermissibly mandates the Federal minimum wage and not the higher State
6 minimum wage. The Seventh Cause of Action alleges the DPA pay letter is unlawful because it
7 does not provide Respondents with instructions on how to reduce employee compensation to
8 conform with the California Constitution. The Eighth Cause of Action alleges the DPA pay letter is
9 unlawful because it does not provide Respondents with instructions on how to restore pay to
10 employees once a budget is enacted. The Ninth Cause of Action alleges the DPA pay letter is
11 unlawful because it violates Government Code section 19826(a).

12 **SEIU's Proposed Complaint in Intervention**

13 SEIU's proposed Complaint in Intervention alleges four causes of action all premised "upon
14 information and belief". The First Cause of Action alleges hypothetical violations of the FLSA when
15 overtime is worked. The Second Cause of Action alleges the pay letter is unlawful because it does
16 not exempt employees from the pay letter who are subject to a continuing appropriation. The Third
17 Cause of Action alleges the DPA pay letter is unlawful because it purportedly failed to exempt
18 employees subject to the direction and control of the Receiver. And, the Fourth Cause of Action
19 alleges declaratory and injunctive relief based on conclusory claims of FLSA and state law
20 violations. All claims raised by SEIU are raised in Respondents' cross-complaint. Further, SEIU's
21 claims are premised upon information and belief since only the Respondents have any direct
22 knowledge of the purported inability to comply due to the current outdated payroll system.

23 **CCPOA's Proposed Complaint in Intervention**

24 CCPOA's proposed Complaint in Intervention alleges one cause of action: a hypothetical
25 violation of the FLSA when employees work overtime. This claim has already been raised by
26 Respondents in their cross complaint. Again CCPOA's cause of action is also premised upon
27 information and belief as they have no direct knowledge to support this claim since the purported
28 evidence is only held by the Controller.

1 **PECG/CAPS' Proposed Complaint in Intervention**

2 PECG/CAPS' proposed Complaint in Intervention alleges two causes of action. The First
3 Cause of Action for declaratory and injunctive relief claims the DPA pay letter is unlawful because it
4 fails to exempt employees who work in departments with a continuing appropriation. The union
5 further claims upon information and belief that even if the DPA pay letter exempted employees with
6 a continuous appropriation, it would be impossible for Respondents to comply because they would
7 not be able to identify which employee positions are funded by a continuous appropriation. (5:1-
8 5:11.) PECG/CAPS also claim upon information and belief that the DPA pay letter and/or the delay
9 of full pay absent an appropriation will violate the FLSA when overtime is worked. In its Second
10 Cause of Action the unions seek a writ of mandate based on the same claims upon information and
11 belief alleged in the First Cause of Action. The alleged causes of action raised by PECG/CAPS have
12 already been raised by Respondents in their cross-complaint. Further PECG/CAPS claims are all
13 based on second hand information and belief.

14 **The Unions' Common Claim For Seeking Intervention**

15 All the unions assert that intervention is necessary to protect their members from receiving
16 the federal minimum wage when there is no budget or other appropriation.. The unions claim
17 delaying full payment of salaries in the absence of a budget or other appropriation will cause their
18 members irreparable harm as a result of temporarily being subjected to the federal minimum wage.
19 The Supreme Court and Appellate Court have already established that temporarily paying employees
20 as minimally required by the FLSA is lawful and in fact mandatory when no budget or other
21 appropriation exists.

22 For the reasons stated below, this Court should deny the unions' request for leave to
23 intervene in the instant case.

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III.

ANALYSIS

A. **THE UNIONS ARE NOT ENTITLED TO COMPULSORY INTERVENTION AS A MATTER OF RIGHT.**

The unions fail to satisfy the requirements entitling them to compulsory intervention under Code of Civil Procedure section 387, subdivision (b) (hereafter, "section 387(b)"). Intervention under this section is warranted only if "the person seeking intervention claims an interest relating to the property or transaction which is the subject of the action and that person is so situated that the disposition of the action may as a practical matter impair or impede that person's ability to protect that interest, unless that person's interest is adequately represented by existing parties." The party seeking to intervene has the burden of demonstrating intervention is proper. (*Hausmann v. Farmers Ins. Exchange* (1963) 213 Cal. App. 2d 611, 615.) Because the unions have not and cannot demonstrate any of the required conditions, intervention as a matter of right under section 387(b) must be denied.

1. **The Unions Have Not "Claimed an Interest" in a "Property or Transaction" that is the Subject of this Action.**

Compulsory intervention, first and foremost, requires that "the person seeking intervention *claims an interest* relating to the property or transaction which is the subject of the action." (Code Civ. Proc., § 387, subd. (b); emphasis added.) The interest claimed "must be an interest which is proper to be determined in the action in which the intervention is sought." (*Isaacs v. Jones* (1898) 121 Cal. 257, 261; see also *Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal. 2d 661, 663-664; *Deutschmann v. Sears, Roebuck & Co.* (1982) 132 Cal. App. 3d 912, 915.) "The claimed interest must be direct or immediate in character to the extent that the intervenor will either gain or lose by the direct effect of the judgment." (*In re Veterans' Industries, Inc.* (1970) 8 Cal. App. 3d 902, 921.)

The unions purport to "claim an interest" in intervention because the Controller's compliance with the law would, absent a continuing appropriation, mandate payment of wages and salaries as minimally required by the FLSA.. (See, e.g., PECG/CAPS Ex Parte Application, 6:6-8.) However,

1 the unions mistakenly interpret the phrase “claim an interest” as simply requiring them to “allege”
2 some interest. Here the claim or interest at issue pertains to the Respondents’ purported inability to
3 comply with the pay letter in a manner which would not violate the FLSA. The unions have no
4 direct knowledge or evidence to support Respondents’ contentions about impossibility. Under the
5 unions’ proposed interpretation, the property interest required for purposes of mandatory
6 intervention would result in a more relaxed standard than the property interest required for
7 permissive intervention.²

8 Although state employees represented by the unions will be affected by the outcome of the
9 instant litigation, this does not equate to the unions having sufficiently “claimed an interest” relating
10 to the property or transaction which is the subject of this action for the purpose of compulsory
11 intervention under section 387(b). The present litigation does not involve a dispute between parties
12 over an ownership or property interest in the salaries and wages of state employees. Petitioners
13 readily admit “employees who work during a budget impasse obtain a right, protected by the
14 contract clause, to the *ultimate* payment of salary that has been earned.” (*White v. Davis* (2003) 30
15 Cal.4th 528, 571; emphasis added and removed.) Since the Supreme Court has already clearly
16 defined the state employee’s property interest in the payment of his or her salaries earned during a
17 budget impasse, this “claimed” interest is not a subject of dispute, and is not “proper to be
18 determined in the action.” (*Isaacs v. Jones* (1898) 121 Cal. 257, 261.) Instead, this action revolves
19 around the Controller’s mandatory obligation under the law to delay the *actual* payment of the
20 employees’ earned wages during a budget impasse. Whether employees are entitled to full payment
21 of salaries in the absence of a budget or other appropriation is not in dispute. The unions may not
22 claim an interest in a matter that is not at issue in this action.

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27 ² Compare Govt. Code, § 387, subd. (a) [permissive intervention requires that a party “*has an*
28 *interest* in the matter in litigation”] with Govt. Code, § 387, subd. (b) [compulsory intervention
requires that a party “*claim an interest* to the property or transaction which is the subject of the
action”] (emphasis added). A comparison of these two subdivisions indicates that the use of the
word “claim” was not intended to be synonymous with the word “allege.”

1 The California Supreme Court's holding in *La Mesa Lemon Grove & Spring Valley*
2 *Irrigation Dist. v. Halley*, (1925) 195 Cal. 739 (hereafter "*La Mesa*"), is illustrative of the relevant
3 property interest at stake in a proceeding in mandamus. In *La Mesa*, landowners filed a motion to
4 intervene in an action by the irrigation district against the president and secretary of the irrigation
5 district for a writ of mandate to compel the president and the secretary to comply with the law and
6 sign and attest to bonds which were properly authorized by the irrigation district. In identifying the
7 subject matter of the litigation before it, the court explained,

8
9 The matter in litigation in the pending proceeding is whether or not the respondents have
10 refused, without legal justification, to do that which the law specifically requires them to do,
11 as duties resulting from their respective offices (sec. 1085, Code Civ. Proc.). The court in
12 said proceeding is not concerned with the necessity or the propriety of authorizing or issuing
13 said bonds. Those questions are for the determination of the officers and electors of the
14 district. Assuming that mandamus is the proper remedy, we are then only concerned with the
15 propriety of the refusal of the president and secretary to sign and attest the bonds as required
16 by law.

17 (*Id.* at 741.) Similar to the *La Mesa* case, the issue in the instant litigation is whether the Controller
18 has refused to do that which the law specifically requires of him, which is to withhold payment of
19 full salaries in the absence of a state budget or other appropriation. The issue in the instant case is
20 not whether the Controller has a legal duty to delay payment of full state employee salaries during a
21 budget impasse without an appropriation; this issue has already been decided by the courts.

22
23 **2. The Controller's and Unions' Motives and Interests In Challenging the Legality**
24 **of the Pay Letter Are Identical and the Controller Adequately Represents the**
25 **Unions' Interests.**

26 Even if the unions could claim an interest in the subject matter of the instant litigation,
27 mandatory intervention *will not apply* if the original party adequately represents the interests of the
28 proposed intervenors. (Code Civ. Proc., § 387(b).) This is certainly the case here where the unions'
proposed causes of action are entirely duplicative of claims set forth in the Controller's Cross-
Complaint. (See Respondent's Cross-Complaint for Declaratory Relief.)

While very little case law exists interpreting section 387(b)'s definition of "adequate
representation," the concept of privity required for application of the doctrine of *res judicata* is
instructive. The courts have defined "adequate representation" as follows,

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1 [w]e measure the adequacy of ‘representation by inference, examining whether the ... party
2 in the suit ... had the same interest as the party to be precluded, and whether that ... party
3 had a strong motive to assert that interest. If the interests of the parties in question are likely
4 to have been divergent, one does not infer adequate representation and there is no privity
[citations]. If the ... party’s motive for asserting a common interest is relatively weak, one
does not infer adequate representation and there is no privity [citations].’

5 (*Citizens for Open Access etc. Tide, Inc. v. Seadrift Assn.* (1998) 60 Cal. App. 4th 1053, 1071.) The
6 Controller adequately represents the unions’ interests because the only causes of action the unions
7 assert are identical to those already raised by the Controller in its Cross-Complaint. If an original
8 party’s causes of action are identical to those raised by a proposed intervenor, logic dictates the
9 proposed intervenor’s interests are adequately represented by the original party.

10 The Controller’s identified motivation behind refusing to implement DPA’s pay letter is that
11 implementation would violate state employee rights under the FLSA and other laws. (Cross-
12 Complaint, 5:16-20.) In particular, the Cross-Complaint alleges the pay letter: (1) fails to identify
13 and exempt state employees paid from continuing appropriations (“the continuing appropriation
14 issue”); (2) fails to exempt state employees subject to the federal court orders in the *Plata* litigation
15 (“the *Plata* issue”); and, (3) provides no instruction on how to ensure the Controller does not violate
16 the FLSA’s overtime payment requirements (“the FLSA overtime issue”). (Cross-Complaint, 6:6-
17 8:5.) The Cross-Complaint goes on to allege six additional reasons the Controller contends the Pay
18 Letter is illegal. (See Cross-Complaint, pp. 7-11.)

19 In comparison, CCPOA, SEIU, and PECG/CAPS Proposed Complaints in Intervention all
20 allege upon second hand information and belief that the Pay Letter is illegal for reasons identical to
21 those alleged by the Controller. CCPOA’s only cause of action raises the FLSA issue – the identical
22 issue the Controller alleges in its Fourth Cause of Action. (See CCPOA Complaint in Intervention.)
23 SEIU also alleges the FLSA issue and raises two additional causes of action, specifically, the
24 continuing appropriation issue and the *Plata* issue. (See SEIU [Proposed] Verified Petition, pp. 7-9.)
25 The Controller raises these very allegations as its First and Second Causes of Action, respectively.
26 Finally, PECG/CAPS only raise the FLSA issue and the continuing appropriation issue. (See
27 PECG/CAPS [Proposed] Verified Complaint, ¶¶ 19-23.) As stated above, these claims were already
28 raised in the Controller’s Cross-Complaint.

1 Not only is the Controller an adequate representative of the unions' claims, the Controller is
2 *better* situated to represent the unions' claims than the unions themselves. For example, all of the
3 unions' pleadings allude to the Controller's inability to implement the pay letter, or otherwise allege
4 the Controller's inability to implement the pay letter will result in FLSA violations. However, it is
5 only the Controller who has personal knowledge regarding the actual capabilities of the state's
6 payroll systems. The unions are only able to plead the payroll system's limitations "on information
7 and belief." (See PECG/CAPS Proposed Complaint in Intervention, ¶¶ 21-23, [pleading "on
8 information and belief" the Controller's inability to comply with the FLSA and state law].) The
9 Controller, and not any intervening union, is legally responsible for installing and maintaining the
10 state payroll system. (See Govt. Code, § 12470.) Therefore, the Controller is best situated to
11 represent the interests of all proposed intervening unions. The unions should be denied intervention
12 as a matter of right because the Controller adequately represents the unions' interests, possesses
13 identical motives, and, is the party with the direct knowledge required to litigate these claims.
14 Accordingly, mandatory intervention should be denied.

15 **B. THE COURT MUST DENY PERMISSIVE INTERVENTION BY THE UNIONS.**

16 Intervention is permitted only if a party has a direct and immediate interest in the action; if
17 proposed intervention will not enlarge the issues in the litigation and will not delay resolution of the
18 immediate controversy; and, if the potential interest to intervene outweighs the inconvenience and
19 prejudice to the original parties. (*Truck Ins. Exchange v. Superior Court* (1997) 60 Cal.App.4th 342,
20 346.) The four unions seeking intervention do not have a direct and immediate interest in the
21 dispute over purported impossibility at issue in this action. The proposed intervention will enlarge
22 the issues in the litigation and delay resolution of the immediate controversy; and, the inconvenience
23 and prejudice to the original parties to the action outweigh any potential interest to intervene. The
24 Controller's legal obligation to delay payment of full salaries to state employees in the absence of a
25 budget or other appropriation is not in dispute. The unions' attempts to revive and re-litigate the
26 legal controversies previously decided only serves to strategically delay and obfuscate the matters
27 before the Court. Petitioners request this Court exercise its broad discretion to deny the unions'
28 intervention in this case. (*Jade K. v. Viguri* (1989) 210 Cal.App.3d 1459, 1468.)

1 **1. The Unions Do Not Have A Direct and Immediate Interest in this Action.**

2 A party seeking permissive intervention must demonstrate, as a threshold matter, that its
3 interest is “direct and immediate” rather than “remote and consequential.” (*Olson v. Hopkins* (1969)
4 269 Cal.App.2d 638, 641; *City of Burlingame v. County of San Mateo* (1951) 103 Cal.App.2d 885,
5 890.) Interests that are indirect, consequential, or remote, are not direct and immediate interests.
6 (*See Jersey Maid Milk Products Co. v. Brock* (1939) 13 Cal.2d 661, 664-665; *Mary R. v. B & R*
7 *Corp.* (1983) 149 Cal.App.3d 308, 314-315.) “An interest is consequential and thus insufficient for
8 intervention when the action in which intervention is sought does not directly affect it although the
9 results of the action may indirectly benefit or harm its owner.” (*Continental Vinyl Products Corp. v.*
10 *Mead Corp.* (1972) 27 Cal. App. 3d 543, 550.) It is well settled that an intervenor’s interest must be
11 “in the matter in litigation” and “of such a direct or immediate character that the intervenor will
12 either gain or lose by the direct legal operation and effect of the judgment.” (*People ex rel. State*
13 *Lands Commission v. City of Long Beach* (1960) 183 Cal.App.2d 271, 274-275 [internal citations
14 omitted].) In the instant action, Petitioners seek to enjoin the Controller from paying full salaries to
15 state employees absent a budget or other appropriation. The unions seek to intervene to protect their
16 members from temporarily receiving less than full wages and salaries despite the lack of budget or
17 other appropriation for such payments and the provisions of the California Constitution, state law,
18 and legal precedent that prohibit such payments. The unions allege upon information and belief that
19 full salaries must be paid to their members because the Controller is unable to process delayed
20 payment of full salaries without potentially violating the FLSA. The unions, as well as the
21 Controller, allege such violations are inevitable because the State’s payroll systems are incapable of
22 timely processing payment of state employee salaries. The unions and the Controller also argue that
23 even without a state budget or other appropriation, state employees must be paid full salaries because
24 DPA’s pay letter is flawed.

25 The unions’ alleged interests in preventing the harm its members may suffer if payment of
26 their full wages is delayed are irrelevant to the legal issues raised by Petitioners and Respondents in
27 their pleadings and do not constitute grounds for intervention in this case. (See, e.g., Ex Parte
28 Application for Leave to Intervene by CCPOA, p. 6 [“The Pay Letter proposes to drastically reduce

1 the salaries of the employees represented by CCPOA, causing these employees to suffer gravely in
2 innumerable ways...”].) The law is clear that payment of full employee wages must be delayed in
3 the absence of a budget or other appropriation, and federal minimum wage in compliance with the
4 FLSA must be paid in its place. The unions cannot intervene on the basis that irreparable harm to its
5 members would result if minimum wage was imposed because the harm, if any, results from an
6 operation of law that is not in dispute.

7 In contrast, the Controller has a direct and immediate interest in the outcome of the instant
8 case. An order compelling the Controller to comply with *White v. Davis*, state law, and Pay Letter
9 10-XX would require the Controller to affirmatively refrain from violating state law and judicial
10 precedent and pay only that which is minimally required by federal law. The direct and immediate
11 consequence of a judgment from this Court is limited to the Controller’s duties with respect to
12 paying state employee salaries.

13 Unlike the Controller’s immediate interest, each union’s interest in the instant case is
14 consequential and indirect to the actual dispute before the court because each union’s interest is
15 limited only to the amount of salary its members will receive in the absence of a budget or other
16 appropriation. The unions’ interests do not relate to the Controller’s constitutional duty to abide by
17 state law or the DPA pay letter, nor do the unions’ interests relate to the Controller’s duty to delay
18 payment of full salaries consistent with the minimal requirements of the FLSA in the absence of an
19 appropriation. Instead, the unions’ interests – the amount of salary each union member receives –
20 are consequential because the amount of salary received by each union member flows *only as a*
21 *consequence* of the court’s judgment in the case. It is the Controller’s ministerial duty and authority
22 that are at issue in this case, not the state employee’s right to receive payment when there is no
23 budget or other appropriation for payment of full salaries. Thus, the unions’ interests are not direct
24 and immediate. None of the unions have any duty to comply or even to act in compliance with this
25 Court’s judgment in this case or with the directions given to the Controller in *White v. Davis* and
26 *Gilb v. Chiang*. For the reasons stated above, permissive intervention should be denied because the
27 unions’ interests in the instant case are not direct and immediate, but indirect and consequential.

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1 **2. The Proposed Intervention Will Improperly Expand the Issues Before this**
2 **Court.**

3 Intervention must be denied if the intervenor “come[s] in on a claim which enlarges the
4 issues and changes the nature of the main proceeding.” (*Muller v. Robinson* (1959) 174 Cal.App.2d
5 511, 515 [internal citations omitted].) An intervenor broadens the scope or function by bringing
6 causes of action which have their proper forum elsewhere. (*People v. Brophy* (1942) 49 Cal.App.2d
7 15, 34-35, citing *Wright v. Jordan* (1923) 192 Cal. 704.) The unions should be denied intervention
8 here because the causes of action the unions seek to insert have already been decided in *White v.*
9 *Davis and Gilb v. Chiang* or are identical to the claims already brought by the Controller. By raising
10 arguments here that have already been decided, the unions seek to broaden the instant case and
11 obfuscate the issues before this Court. Accordingly this court should exercise its discretion and deny
12 intervention.

13 **3. Delay, Inconvenience, and Prejudice to the Original Parties Outweigh the**
14 **Unions’ Interests**

15 When ruling on a motion to intervene, the court “... must balance the desirability of
16 intervention to protect a direct interest against the normal right of the original parties to the litigation
17 to conduct their lawsuit on their own terms and the potential of unduly extending the litigation.”
18 (*Continental Vinyl Products Corporation v. Mead Corp.* (1972) 27 Cal.App.3d 543, 552, citing
19 *County of San Bernadino v. Harsh California Corp.* (1959) 52 Cal.2d 341, 346 (internal quotations
20 omitted).) Allowing the unions to intervene by bringing duplicative causes of action will only delay,
21 inconvenience, and prejudice the original parties. Conversely, denying intervention will not
22 prejudice the unions’ interests in the action, since the claims the unions raise have already been
23 raised by the Controller.

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1 If intervention is granted in this case, each union alleging that the Controller cannot feasibly
2 comply with state law may submit its own experts, declarations, and other evidence in support of the
3 Controller's original cause of action. Petitioners would be required to individually address each
4 allegation submitted by each union. The original parties will be prejudiced by having to address
5 time-consuming duplicative and repetitive claims, many of which have already been judicially
6 resolved.

7 Petitioners will also be prejudiced because continued delay in the instant case may
8 indefinitely delay the State's ability to compel the Controller to comply with the law. As
9 demonstrated by both *White v. Davis* and *Gilb v. Chiang*, when a state budget is passed before the
10 case is decided, mootness becomes an additional issue. If a budget passes prior to resolution of this
11 case, the Controller will have once again avoided his legal duty without consequence. "[A] trial
12 court possesses discretion to deny intervention even when a direct interest is shown if the interests of
13 the original litigants outweigh the intervenors' concerns of potential delay and multiplicity of
14 actions." (*People v. Superior Court of Ventura County* (1976) 17 Cal. 3d 732, 737.) Respondents
15 have been able to avoid paying state employees as required by the California Constitution, state law,
16 and the Supreme Court's directive in *White v. Davis* since 2003. Petitioners' interest in performing
17 its duty to enforce the laws regarding employee compensation outweighs Respondents' failure to
18 comply with the law based on a continuing argument of purported infeasibility and resulting
19 hypothetical FLSA violations. The unions' attempts to intervene with claims duplicative of those
20 already raised unduly prejudices the original parties by interjecting and expanding the original scope
21 of the litigation. Accordingly, the unions' applications for leave to intervene should be denied.

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IV.
CONCLUSION

This Court should deny the applications for leave to intervene by SEIU, CCPOA and PECG/CAPS. The unions are not entitled to intervention as a matter of right under section 387(b) because the unions cannot claim an interest in the property or transaction that is the subject of the action. Even if the unions could claim a sufficient interest, the Controller more than adequately represents the unions' and union members' interests in the litigation. The unions bring no claims other than those already raised by the Controller in its Cross-Complaint.

This Court should also exercise its broad discretion to deny permissive intervention because the unions' interest in the outcome of the litigation is consequential. Moreover, granting intervention will improperly enlarge the scope of the case and cause the re-litigation of issues already adjudicated. As an original party, the Controller brings claims identical to those proposed by each union. Allowing intervention will therefore cause undue delay in litigating this instant case, and prejudice to the original parties to the action.

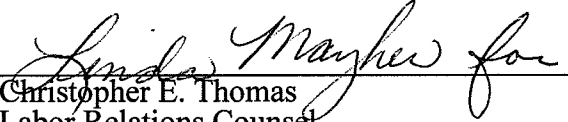
For the reasons stated above, Petitioners respectfully request this Court deny the unions' applications for leave to intervene.

Dated: July 13, 2010

Respectfully submitted,

K. WILLIAM CURTIS
Chief Counsel

WARREN C. STRACENER
Deputy Chief Counsel

By: 
Christopher E. Thomas
Labor Relations Counsel
Attorneys for Petitioners/Plaintiffs

1 **PROOF OF SERVICE**

2 CASE NAME: *Debbie Endsley; California Department of Personnel Administration v. John*
3 *Chiang, Office of State Controller*

4 CASE NUMBER: 34-2010-80000591

5 I, Lisette Olivar, declare:

6 I am employed in the County of Sacramento, California. I am over the age of 18 years, and
7 not a party to the within action. My business address is 1515 S Street, North Building, Suite 400,
8 Sacramento, California 95811-7258. I am readily familiar with my employer's business practice for
9 collection and processing of correspondence for GSO, U.S. Mail, Fax Transmission and/or Personal
10 Service.

11 On July 13, 2010, I caused the following documents to be served:

12 **PETITIONERS/PLAINTIFFS' OPPOSITION TO EX PARTE APPLICATIONS FOR**
13 **LEAVE TO INTERVENE BY CCPOA, SEIU AND PECG/CAPS**

14 on the party listed as follows:

15 X via electronic mail followed by overnight through Golden State Overnight.

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capacity as Controller of the State of California
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15 I declare under penalty of perjury under the laws of the State of California that the above is
16 true and correct.

17 Executed on July 13, 2010, at Sacramento, California.

18 
19 Lisette Olivar