

# FILE COPY

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Representative for Requesting Party

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## BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

California Attorneys, Administrative	)	<b>REQUEST FOR INJUNCTIVE RELIEF</b>
Law Judges and Hearing Officers	)	
In State Employment	)	
	)	
v.	)	
	)	
Arnold Schwarzenegger, the State of	)	
California and the Department of	)	
Personnel Administration	)	
_____	)	

COMES NOW, the requesting party, CALIFORNIA ATTORNEYS,  
ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE  
EMPLOYMENT ("CASE"), hereby respectfully requesting injunctive relief by the Board  
in Superior Court to prevent substantial injury and irreparable harm to the members of  
Bargaining Unit 2. This request is based on the unfair labor practice charge that is being  
filed contemporaneously with this request and the declaration of Patrick Whalen, CASE  
General Counsel.

### PRELIMINARY STATEMENT

CASE is the exclusive bargaining representative of all of the legal professionals  
employed by the State of California in Bargaining Unit 2. At approximately 4:45 p.m. on

July 30, 2010, notice was provided to David King, counsel for the Department of Personnel Administration via telephone that CASE would be filing a request for injunctive relief with the Public Employee Relations Board (“PERB”). At approximately 4:40 p.m. on July 30, 2010, notice was also provided via telephone to Tammy of the Office of General Counsel for PERB.

On July 28, 2010, Governor Arnold Schwarzenegger issued Executive Order S-12-10 which instituted three days of furloughs per month on most state employees. (Exhibit B.) The order specifically stated that “furloughs are necessary to immediately begin saving cash.” (*Ibid.*) The order exempted from its effect the six bargaining units that had reached tentative agreements with the administration. (*Ibid.*)

#### **THE BOARD HAS AUTHORITY TO SEEK INJUNCTIVE RELIEF**

The Board is authorized to seek injunctive relief in a court for the purpose of enforcing the provisions of the State Employer-Employee Relations Act, California Government Code section 3512, et seq. (“Dills Act”). (Gov. Code, § 3514.5; Cal. Code Regs., Title 8, § 32450.) A court may grant injunctive relief to the Board when there is reasonable cause to believe that an unfair labor practice has been committed, and injunctive relief would be both just and proper. (*Public Employment Relations Board v. Modesto City Schools District* (1982) 136 Cal.App.3d 881, 896.) In seeking injunctive relief, PERB is not required to establish an unfair labor practice has in fact been committed. Rather, the burden for injunctive relief is met if PERB’s theory is neither insubstantial nor frivolous. (*Id.*, at pp. 896-897.)

**INJUNCTIVE RELIEF IS NECESSARY TO PREVENT SUBSTANTIAL  
AND IRREPARABLE HARM TO THE MEMBERS OF BARGAINING  
UNIT 2**

The furloughs are set to begin on Friday, August 13, 2010, and the resulting reduction in salaries will be shown on the paychecks issued to CASE members on the August 31, 2010 pay day. (Exhibit B, Exhibit C, ¶ 6.)

Many CASE members have had their wages reduced for the last 17 months as a result of the Governor's previous unilateral imposition of furloughs, resulting in a monthly pay reduction of approximately 14%. Because of the furloughs, most members have exhausted their personal savings and have reached the limit of their available lines of credit. Many CASE members are the sole source of income for their families. Reducing the pay of CASE members again through furloughs would put many members at risk of losing their homes, cars, and other necessities. (Exhibit C, ¶ 9.)

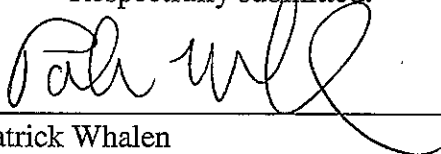
## CONCLUSION

The General Counsel must conduct an investigation of a request for injunctive relief and make a recommendation to the Board within 120 hours after receipt of the request. (Cal.Code Regs, Title 8, at §§ 32455, 32460.) The General Counsel is authorized to seek injunctive relief in every case in which the General Counsel has reasonable cause to believe that such action is in accordance with the Board's policy and legal grounds for injunctive relief are present. (*Id.*, at § 32470.)

Specifically, CASE is requesting that the Board seek injunctive relief that: (1) prohibits the implementation of furloughs and (2) enjoins the unilateral implementation of this change in working conditions until the meet and confer process has been completed.

**Dated: August 2, 2010**

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Patrick Whalen", written over a horizontal line.

Patrick Whalen  
CASE General Counsel

# EXHIBIT A

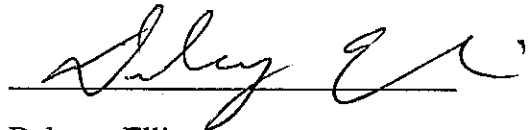
## DECLARATION OF DELANEY ELLISON

I, Delaney Ellison, declare as follows:

1. On July 30, 2010, at approximately 4:45 p.m., I contacted David King via telephone at the Department of Personnel Administration and gave him notice that CASE would be filing an unfair practice charge with a request for injunctive relief on either Monday, August 2, 2010, or Tuesday, August 3, 2010.
2. On July 30, 2010, at approximately 4:40 p.m., I contacted PERB via telephone to provide notice that CASE would be filing an unfair practice charge with a request for injunctive relief on either Monday, August 2, 2010, or Tuesday, August 3, 2010. I was informed by several people that the only person authorized to accept such notice was Tammy at (916) 327-8381. At approximately 4:50 p.m., I left a voicemail at the above number providing said notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based on my personal knowledge, and if called to testify to these facts, I would do so competently and truthfully.

Executed this \_\_\_\_ day of August, 2010, in Sacramento, California.



Delaney Ellison

# EXHIBIT B



# Office of the Governor

ARNOLD SCHWARZENEGGER  
THE PEOPLE'S GOVERNOR

## EXECUTIVE ORDER S-12-10

07/28/2010

**WHEREAS**, due to continuing weak performance in the California economy and other factors, there is an approximately \$19 billion General Fund deficit for the 2010-11 fiscal year; and

**WHEREAS** the State has already taken extraordinary measures to conserve cash, such as implementing payment deferrals to schools and other local governments; and

**WHEREAS** there is no state budget for the 2010-11 fiscal year and a lengthy budget delay is likely; and

**WHEREAS** the longer it takes to adopt state budget measures to implement needed savings, the more the value of those savings erode, meaning that additional savings will be needed to make up for that lost time and money; and

**WHEREAS** without a budget in place, the latest cash projections show that California's cash will go into the negative no later than October 2010; and

**WHEREAS** to ensure that the State meets its payment obligations protected by the California Constitution and federal law, the State Controller has stated that he could be forced to begin issuing registered warrants (IOUs) as early as August 2010; and

**WHEREAS** the State must start preserving cash beginning in August 2010 to improve the State's ability to meet its obligations to pay for debt services and critical and essential services to protect public health and safety and to make payments protected by the California Constitution and federal law; and

**WHEREAS** furloughs are necessary to immediately begin saving cash until a budget is in place that includes solutions that will ensure there is sufficient cash for the State to meet its obligations to pay for debt service and critical and essential services to protect public health and safety and make payments protected by the California Constitution and federal law; and

**WHEREAS** as part of the solutions to close the \$19 billion General Fund deficit, the Governor's May Revise budget proposal included a 15 percent reduction in employee compensation costs for fiscal year 2010-11; and

**WHEREAS** in order to preserve sufficient cash in the 2010-11 fiscal year without a budget in place, three furlough days per month are necessary to achieve savings in employee compensation for the 2010-11 fiscal year; and

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

**WHEREAS** a furlough will reduce current spending and immediately improve the State's ability to meet its obligations to pay for essential services and make payments protected by the California Constitution and federal law in the 2010-11 fiscal year.

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

**IT IS ORDERED** that effective August 1, 2010, the Department of Personnel Administration (DPA) shall adopt a plan to implement a furlough of represented state employees and supervisors for three days per month consistent with the terms of this Order.

**IT IS FURTHER ORDERED** that effective August 1, 2010, the DPA shall adopt a plan to implement an equivalent furlough or salary reduction for all non-represented state employees, including supervisors, managers, and exempt state employees, consistent with the terms of this Order.

**IT IS ORDERED** that the following state agencies and departments are exempt from this furlough executive order:

California Highway Patrol  
California Department of Fire and Forestry Protection (CalFIRE)  
Franchise Tax Board  
Board of Equalization  
Employment Development Department  
State Compensation Insurance Fund  
California Housing Finance Authority  
California Earthquake Authority

**IT IS FURTHER ORDERED** that the represented employees in Bargaining Units 12, 16, 18 and 19 are exempt from this furlough executive order based on the expectation that the tentative Memoranda of Understanding reached with these Bargaining Units will be ratified by the Bargaining Unit membership and the State Legislature by early August 2010, whereby the employee compensation savings in these agreements will result in immediate cash savings beginning in the August 2010 pay period.

**IT IS FURTHER ORDERED** that DPA shall adopt a furlough plan that will result in the closing of general government operations on the second, third and fourth Fridays of each month, beginning in August 2010.

**IT IS FURTHER ORDERED** that effective August 1, 2010, and for the duration of the furlough period, all state agencies and departments subject to furloughs shall take all necessary action to require their employees to take three furlough days within the month.

**IT IS FURTHER ORDERED** that the furlough period shall end when a 2010-11 fiscal year budget is in place and the Director of the Department of Finance determines that there is sufficient cash to allow the State to meet its obligations to pay for critical and essential services to protect public health and safety and to meet its payment obligations protected by the California Constitution and federal law.

**IT IS REQUESTED** that other entities of State government, including the California Public Utilities Commission, the University of California, Hastings College of Law, the California State University, California Community Colleges, the Bureau of State Audits, the legislative branch (including the Legislative Counsel Bureau), and judicial branch, implement similar or other mitigation measures to achieve budget and cash savings for the 2010-11 fiscal year.

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

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



**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 28<sup>th</sup> day of July 2010.

ARNOLD SCHWARZENEGGER  
Governor of California

# EXHIBIT C

## DECLARATION OF PETER FLORES, JR.

I, Peter Flores, Jr., declare as follows:

1. I am President of Petitioner/Plaintiff California Attorneys, Administrative Law Judges and Hearing Officers in State Employment ("CASE"). CASE is, and at all times herein mentioned was, a nonprofit corporation organized and existing under the laws of the state of California, with its principal place of business in the County of Sacramento, State of California. CASE is the exclusive collective bargaining representative of legal professionals in State Bargaining Unit 2 pursuant to Government Code section 3520.5.

2. CASE represents approximately 3500 legal professionals in more than 80 different state departments, boards, and commissions. The vast majority of CASE members are attorneys employed in Work Week Group ("WWG") SE. Approximately 600 CASE members are administrative law judges or hearing officers employed in WWG E. Approximately 150 CASE members are employed in WWG 2.

3. On July 28, 2010, at approximately 8:43 a.m., CASE received email notification of a conference call for representatives of all of the State's 21 Bargaining Units. The call was scheduled to begin at 10:45 a.m. that same day, and the chairperson listed was Julie Chapman, the Chief Deputy Director of the Department of Personnel Administration. I called in to the conference call at 10:45 a.m. that day.

4. I have met personally with Ms. Chapman on prior occasions and I recognized her voice when she identified herself as Julie Chapman at the beginning of the conference call. Ms. Chapman announced that the Governor would be issuing an executive order later that same day announcing the implementation of three furlough days per month for many state employees, including many CASE members. The purported justification for the furloughs was a cash shortage resulting from the absence of a budget for Fiscal Year 2010-2011.

5. Ms. Chapman discussed some of the specifics of the executive order, including the fact that the furloughs would take place on the second, third, and fourth Fridays of each month. Ms. Chapman then identified various exemptions to the furlough order, which included those six bargaining units that have already reached a tentative agreement with the Administration. Ms. Chapman solicited questions from those representatives on the call. When asked directly if, assuming other units reached a tentative agreement with the administration, they too would be exempted from furloughs, Ms. Chapman stated "there is room for other units to be out of furloughs." In response to similar follow up questions, she repeated this statement several times

using slightly different verbiage, but the clear import of her responses was that if other units reached tentative agreements, they could be exempted from the furloughs.

6. The three-day per month furloughs will result in a pay reduction of approximately 14% per month for all impacted CASE members for the duration of the furloughs.

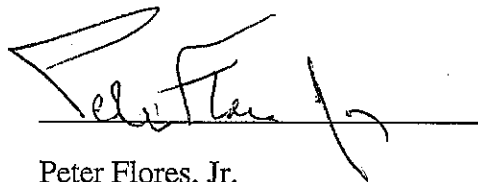
7. CASE is currently in the process of negotiating a successor Memorandum of Understanding (MOU) to the MOU which expired on June 30, 2007. Pursuant to Government Code section 3517.8, the previous MOU remains in effect until a successor MOU is negotiated, or until impasse is reached. Bargaining has been ongoing for more than three years.

8. In my capacity as President of CASE, I have had an opportunity to meet hundreds of CASE members, and I have discussed with them the impact the wage reductions resulting from the furloughs would have on their workplaces and their lives. I am familiar with the precarious financial situation many CASE members are presently enduring. The salaries for the State's legal professionals lag far behind those of other public sector legal employers by as much 50%. Many members have over \$100,000 in educational debt including both undergraduate college and law school, and a wage reduction will be financially ruinous.

9. Many CASE members have had their wages reduced for the last 17 months as a result of the Governor's previous unilateral imposition of three furlough days per month, resulting in a monthly pay reduction of approximately 14%. Because of the furloughs, most members have exhausted their personal savings and have reached the limit of their available lines of credit. Many CASE members are the sole source of income for their families. Reducing the pay of CASE members again through furloughs would put many members at risk of losing their homes, cars, and other necessities.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based on my personal knowledge, and if called to testify to these facts, I would do so competently and truthfully.

Executed this 2<sup>nd</sup> day of August, 2010, in San Francisco, California.

A handwritten signature in black ink, appearing to read "Peter Flores, Jr.", written over a horizontal line.

Peter Flores, Jr.