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And Hearing Officers in State Employment  
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9  
10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 CALIFORNIA ATTORNEYS,  
13 ADMINISTRATIVE LAW JUDGES AND  
14 HEARING OFFICERS IN STATE  
EMPLOYMENT,

15 Plaintiff,

16 vs.

17 ARNOLD SCHWARZENEGGER as, Governor  
18 of the State of California; Department of  
Personnel Administration; JOHN CHIANG,  
19 Controller of the State of California;  
20 and DOES 1 through 100,

21 Defendants.  
22

Case No.

**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

(C.C.P. §526, 1062.)

Date: August 3, 2010  
Time: 11:00 a.m.  
Dept.: 31

23  
24 **INTRODUCTION**  
25

26 On July 28, 2010, Governor Arnold Schwarzenegger issued an Executive Order directing  
27 the furlough of all state employees for three days per month for the indefinite future. The  
28 question of whether the Governor has the legal authority to unilaterally impose furloughs on

Complaint for Declaratory and Injunctive Relief

1 State employees is currently pending in the California Supreme Court. However, numerous trial  
2 and appellate courts have invalidated furloughs identical in nature to those issued in the recent  
3 order. The furloughs are set to begin on Friday, August 13, 2010, and will continue on the  
4 second, third, and fourth Friday of each month thereafter.

5 The purported purpose of the furloughs is “to immediately begin saving cash until a  
6 budget is in place.” The Executive Order exempts a number of departments for reasons related  
7 to the State’s needs, but fails to consider the various needs of the different state departments  
8 subject to furloughs. The furloughs will be implemented in dozens of agencies whose budgets  
9 are funded in whole or in part by sources other than the General Fund. Closing these  
10 departments three days per month will interfere with the objects for which the various special  
11 funds were created.

12 The furloughs are unlawful and must be enjoined to prevent irreparable harm to CASE  
13 members, disruption to the government, and illegal manipulation of public funds.

14  
15 **I. Parties**

16 1. Plaintiff CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES  
17 AND HEARING OFFICERS IN STATE EMPLOYMENT (“CASE”), is, and at all times herein  
18 mentioned was, a nonprofit corporation organized and existing under the laws of the state of  
19 California, with its principal place of business in the County of Sacramento, State of California.  
20 CASE is the exclusive collective bargaining representative of legal professionals in State  
21 Bargaining Unit 2 pursuant to Government Code section 3520.5. CASE represents  
22 approximately 3500 legal professionals in more than 80 different state departments, boards, and  
23 commissions. Approximately 62% of CASE members are paid salaries from revenue sources  
24 other than General Fund revenues. CASE is a state taxpayer.

25 2. Defendant ARNOLD SCHWARZENEGGER is the elected Governor of the State  
26 of California. Pursuant to Government Code section 3513, subdivision (j), and section 3517, the  
27 Governor is the employer of state employees in Bargaining Unit 2, for purposes of bargaining or  
28

1 meeting and conferring in good faith under the Ralph C. Dills Act. Governor Schwarzenegger is  
2 named in his official capacity only.

3 3. Defendant Department of Personnel Administration (“DPA”) is responsible for  
4 managing the nonmerit aspects of the State’s personnel system. DPA serves as the Governor’s  
5 designated representative for purposes of collective bargaining, and for purposes of meeting and  
6 conferring with the exclusive representatives. (See Gov. Code § 19815.2; Gov. Code § 3517.)

7 4. Respondent/Defendant JOHN CHIANG is a constitutional officer and is the  
8 elected State Controller of the State of California. (Cal. Const. Art. V, § 11.) Pursuant to  
9 Government Code section 12410, the State Controller shall superintend the fiscal concerns of the  
10 state. The Controller shall audit all claims against the state, and may audit the disbursement of  
11 any state money, for correctness, legality, and for sufficient provisions of law for payment. In  
12 addition, the Controller shall draw warrants on the Treasurer for the payment of money directed  
13 by law to be paid out of the State Treasury; but a warrant shall not be drawn unless authorized by  
14 law. (Gov. Code § 12440.) John Chiang is named in his official capacity only.

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16 **II. Venue**

17 5. The California Attorney General has an office within the City of Oakland, making  
18 Alameda County an appropriate venue. (Code of Civ. Proc. § 401.)

19  
20 **III. Prior Litigation re Furloughs**

21 6. The Governor and DPA previously sought to impose furloughs via executive  
22 order more than 18 months ago. CASE and others filed suit in this Court seeking writ relief from  
23 the imposition of furloughs. On December 31, 2009, the Honorable Frank Roesch of the  
24 Alameda County Superior Court issued an order finding that the furloughs were unlawful  
25 pursuant to Government Code section 19851, subdivision (a) and section 16310, subdivision (a).

26 7. That case is currently fully briefed and awaiting oral argument in the California  
27 Court of Appeal, First Appellate District. Other cases challenging furloughs filed in other  
28

1 counties are currently fully briefed and pending in the California Supreme Court with no date yet  
2 set for oral argument.

#### 3 4 **IV. The Executive Order**

5 8. The Governor's Executive Order made a number of proclamations relating to a  
6 perceived fiscal cash crisis. Other than the general "power and authority vested in me by the  
7 Constitution and statutes of the State of California," the only specific authority cited in the order  
8 was Government Code section 3516.5. Section 3516.5 does not define "emergency" nor does it  
9 empower the Governor to "furlough" state employees or otherwise reduce their wages.

10 9. The order specifically directed DPA to adopt and implement a furlough of  
11 represented state employees and supervisors for three days per month on the second, third, and  
12 fourth Fridays of each month. The furloughs will result in a pay reduction for CASE members of  
13 approximately 14 percent per month.

14 10. The Executive Order contains no findings or proclamations regarding the various  
15 needs of the different state departments subject to the furloughs.

#### 16 17 **V. The Impacted Departments**

18 11. CASE members work at more than 80 different State departments, agencies,  
19 boards, and commissions. Furloughing CASE members for three days each month will  
20 dramatically impact the legal business of those departments. Approximately 62% of CASE  
21 members are employed in agencies or positions that are funded in whole or in part by sources  
22 other than the General Fund. Furloughing CASE members for three days each month at these  
23 departments will interfere with the departments' ability to carry out their respective missions.

#### 24 25 **VI. The Duty of the Controller**

26 12. It is clear that "the Controller has the power, indeed the duty, to ensure that the  
27 decisions of an agency that affect expenditures are within the fundamental jurisdiction of the  
28 agency." (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.) Moreover, the Controller's

1 “power of audit does include the duty to ensure that the expenditure in question is authorized by  
2 law.” (*Ibid.*) The Legislature has specifically provided that “a warrant shall not be drawn unless  
3 authorized by law ....” (Gov. Code § 12440.)

4 13. Any attempt by an administrative agency (such as DPA) to exercise control over  
5 matters which the Legislature has not seen fit to delegate to it (such as salary reductions) is not  
6 authorized by law and in such case the agency's actions can have no force or effect. The  
7 Controller therefore has a duty to refrain from issuing pay warrants that are illegally reduced by  
8 virtue of DPA's implementation of the furloughs.

9  
10 **FIRST CAUSE OF ACTION**  
11 **(Declaratory Relief pursuant to C.C.P. § 1060)**  
12

13 14. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing  
14 paragraphs as if fully set forth herein.

15 15. An actual controversy has arisen and now exists between Plaintiff and Defendants  
16 regarding the legality of the threatened furloughs of CASE members and the reduction of their  
17 salaries. Plaintiff desires a declaration of their rights with respect to the Governor and DPA's  
18 stated intention to furlough state employed legal professionals and reduce their salaries through  
19 an unlawful executive order.

20 16. Plaintiff has an immediate and direct interest affected by this proceeding in that  
21 its members have a right not to be illegally furloughed and further have a right not to have their  
22 pay unlawfully reduced as proposed by the Executive Order.

23 17. Plaintiff seeks a declaration from this Court that the threatened furloughs violate  
24 Government Code sections 19851 and 16310.

25 18. Such a declaration is necessary and appropriate at this time in order to avoid the  
26 implementation of these illegal furloughs which will adversely affect the rights of Plaintiff and  
27 its members. Defendants' actions will result in irreparable injury and harm to CASE members  
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1 including the denial of the protection of the laws regarding their salaries. The loss of such rights  
2 cannot be compensated fully by damages or other forms of legal relief.

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5 **SECOND CAUSE OF ACTION**

6 **(Complaint for Injunctive Relief pursuant to C.C.P. § 526)**  
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8 19. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing  
9 paragraphs as if fully set forth herein.

10 20. As a matter of law, the Governor lacks the authority to impose a furlough and  
11 reduce the salaries of CASE members and Plaintiff has a reasonable likelihood of success on the  
12 merits.

13 21. Respondent/Defendant Controller Chiang has a duty to audit claims and to  
14 conclude that, since the Governor and DPA lack authority for the furlough, it is illegal, and the  
15 Controller has a duty to ensure that salaries not be reduced as a result of the illegal furlough.

16 22. Unless restrained and enjoined, defendants will unlawfully implement the  
17 furloughs resulting in irreparable harm to Plaintiff CASE and its members.

18 23. Plaintiff and its members will suffer irreparable harm and injury if the illegal  
19 furlough order is implemented, including the denial of the protection of the laws regarding their  
20 salaries, and the actual economic loss of salary, which in turn will proximately cause some  
21 members to be at risk of losing their homes, cars, and ability to purchase the basic necessities of  
22 life.

23 24. Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law,  
24 other than the relief sought in this petition, in that there is no other legal remedy to prevent or  
25 enjoin the implementation of the illegal furlough and its reduction of salary and hours.  
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1 **CONCLUSION**

2 WHEREFORE, Plaintiff CASE respectfully prays that:

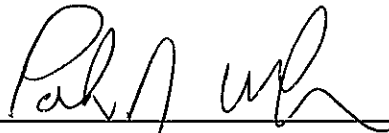
3 1. The Court issue a declaration that the portions of the Governor's Executive  
4 Order S-12-10 calling for a furlough and salary reduction for state employed legal professionals  
5 are unlawful.

6 2. The Court issue a temporary, preliminary and permanent injunction directing the  
7 Governor, DPA and the Controller to cease and desist taking action to furlough state employed  
8 legal professionals by reducing their hours and reducing their pay under an unlawful Executive  
9 Order.

10 3. Petitioner/Plaintiff be awarded attorneys fees and costs of suit incurred in this  
11 action.

12 THE LAW OFFICE OF BROOKS ELLISON

13  
14 Dated: 8-2-10



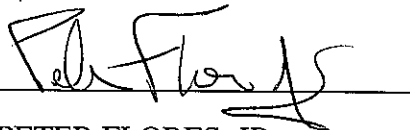
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16 PATRICK J. WHALEN

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**VERIFICATION**

I, Peter Flores, Jr., am the President of CASE, the Petitioner/Plaintiff in this proceeding. I have read the foregoing petition and know its contents. The facts stated therein are true and are within my personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 2, 2010 at San Francisco, California.



PETER FLORES, JR.