

1 BROOKS ELLISON
State Bar No. 122705
2 PATRICK J. WHALEN
State Bar No. 173489
3 THE LAW OFFICE OF BROOKS ELLISON
1725 Capitol Ave.
4 Sacramento, CA 95811
Telephone: (916) 448-2187
5 Facsimile: (916) 448-5346
E-mail: counsel@calattorneys.org

6 Attorneys for Plaintiff
7 California Attorneys, Administrative Law Judges,
And Hearing Officers in State Employment
8

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.

**EX PARTE APPLICATION FOR
ORDER TO SHOW CAUSE RE:
PRELIMINARY INJUNCTION AND
TEMPORARY RESTRAINING ORDER**

(C.C.P. §527.)

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

23
24
25 Plaintiff CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND
26 HEARING OFFICERS IN STATE EMPLOYMENT (“CASE”), hereby applies for an order to
27 show cause directing defendants to show cause why a preliminary injunction should not issue
28 enjoining the defendants Governor Arnold Schwarzenegger and the Department of Personnel

Ex Parte Application for OSC re Preliminary Injunction and TRO

1 Administration (“DPA”) from implementing unlawful furloughs of CASE members for three
2 days per month pursuant to an Executive Order, and enjoining Controller Chiang from reducing
3 the salaries of CASE members pursuant to the furloughs directed by the Executive Order.

4 Plaintiff CASE also requests a temporary restraining order preserving the status quo in this case
5 and enjoining any furloughs or salary reductions for CASE members pending a hearing on a
6 motion for preliminary injunction.

7 The complaint in this case alleges that the furloughs are unlawful in several respects.
8 Specifically, the furloughs are in direct contravention of Government Code sections 19851 in
9 that they were implemented on all virtually all state departments without a consideration of “the
10 varying needs of the different state agencies.” Rather, the furloughs were implemented for the
11 benefit of the State as a whole without regard to the impact they will have on the different state
12 agencies.

13 Moreover, the furloughs at agencies which employ CASE members in positions funded
14 in whole or in part by sources other than the General Fund are in direct contravention of
15 Government Code section 16310, subdivision (a) which allows special funds to be loaned to the
16 General Fund, but also expressly states that “[t]his section does not authorize any transfer that
17 will interfere with the object for which a special fund was created. . . .” The Executive Order
18 expressly contemplates using the cash saved as a result of the furloughs for meeting its other
19 financial obligations. Accordingly, the furloughs will result in a loan from special funds to the
20 General Fund. However, by closing offices three days per month and by limiting the ability of
21 the legal professionals employed in those agencies to perform their duties, the furloughs will
22 interfere with the objects for which the various special funds were created.

23 This request for temporary injunctive relief is made pursuant to Code of Civil Procedure
24 section 527 based on the announcement by the Governor and DPA that furloughs would begin on
25 August 13, 2010.

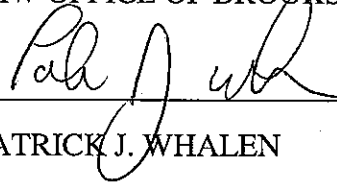
26 Because plaintiff, its members, and the public will suffer great and irreparable injury if
27 defendants are not temporarily restrained from implementing the furloughs, plaintiff seeks relief
28

1 from this Court to preserve the status quo pending a hearing to show cause as to why a
2 preliminary injunction should not be entered pending final judgment.

3 This application is supported by the memorandum of points and authorities, the
4 declarations of Peter Flores, Jr., and Patrick Whalen, submitted concurrently herewith. Plaintiff
5 has provided opposing counsel more than 24 hours notice of the date, time, and location at
6 plaintiff would make this application, as set forth in the declaration of Patrick Whalen. Plaintiffs
7 provided opposing counsel with a copy of these papers on August 2, 2010 at approximately 4:45
8 p.m.

9
10 Dated: 8-2-10

THE LAW OFFICE OF BROOKS ELLISON



PATRICK J. WHALEN

Attorney for Plaintiff
CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT