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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.

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF *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 **INTRODUCTION**

25 The Governor has once again ordered furloughs in violation of the law. The furloughs
26 are set to commence on Friday, August 13, 2010. This Court must act to enjoin the unlawful
27 implementation of furloughs.
28

1 **STATEMENT OF FACTS**

2
3 Plaintiff California Attorneys, Administrative Law Judges and Hearing Officers in State
4 Employment (“CASE”) is, and at all times herein mentioned was, a nonprofit corporation
5 organized and existing under the laws of the state of California, with its principal place of
6 business in the County of Sacramento, State of California. CASE is the exclusive collective
7 bargaining representative of legal professionals in State Bargaining Unit 2 pursuant to
8 Government Code section 3520.5. (Flores Dec. ¶ 1.)

9 CASE represents approximately 3500 legal professionals in more than 80 different state
10 departments, boards, and commissions. Approximately 2500 CASE members work in
11 departments or positions that are funded in whole or in part by sources other than the General
12 Fund. (Flores Dec. ¶ 2.)

13 On July 28, 2010, at approximately 8:43 a.m., CASE received email notification of a
14 conference call for representatives of all of the State’s 21 Bargaining Units. The call was
15 scheduled to begin at 10:45 a.m. that same day, and the chairperson listed was Julie Chapman,
16 the Chief Deputy Director of the Department of Personnel Administration. (Flores Dec. ¶ 3.)

17 At the beginning of the conference call, Ms. Chapman announced that the Governor would
18 be issuing an executive order later that same day announcing the implementation of three
19 furlough days per month for many state employees, including many CASE members. The
20 purported justification for the furloughs was a cash shortage resulting from the absence of a
21 budget for Fiscal Year 2010-2011. (Flores Dec. ¶ 4.)

22 Ms. Chapman discussed some of the specifics of the executive order, including the fact that
23 the furloughs would take place on the second, third, and fourth Fridays of each month. Ms.
24 Chapman then identified various exemptions to the furlough order. (Flores Dec. ¶ 5.)

25 Ms. Chapman stated that the exemptions for Highway Patrol and CalFIRE were based on the
26 State’s need to ensure public safety. The exemptions for departments like Franchise Tax Board
27 and Board of Equalization were based on the fact that those departments were revenue
28 generating and that the State needed to ensure the continued influx of revenue. The exemptions

1 for departments like Employment Development, Department State Compensation Insurance
2 Fund, California Housing Finance Authority, and California Earthquake Authority were based on
3 the fact that funds for those agencies were 100% separate from the General Fund and non-
4 borrowable. Ms. Chapman never indicated that the various needs of the different state agencies
5 were considered in deciding whether to implement the furloughs at all other departments.

6 (Flores Dec. ¶ 6.)

7 The three-day per month furloughs will result in a pay reduction of approximately 14% per
8 month for all impacted CASE members for the duration of the furloughs. (Flores Dec. ¶ 7.) On
9 July 28, 2010, the Governor issued Executive Order S-12-10. Pursuant to that Executive Order,
10 the furloughs take place on the second, third, and fourth Fridays of each month starting in
11 August, which means that the first furlough day will occur on Friday, August 13, 2010. (Flores
12 Dec. ¶ 11.)

13 Previously, on December 31, 2009, the Honorable Frank Roesch of the Alameda County
14 Superior Court issued an order finding that the furloughs were unlawful pursuant to Government
15 Code section 19851, subdivision (a) and section 16310, subdivision (a). (Flores Dec. ¶ 12.)

16 Furloughs result in increased case loads for CASE members, increased backlogs for CASE
17 members, and increased overtime costs for the departments implementing the furloughs. In
18 addition, there is a strong probability that the State will enter into additional contracts for outside
19 legal counsel.

1 **ARGUMENT**

2 **I. Standard for Issuance of a Temporary Restraining Order**

3 Code of Civil Procedure sections 526 and 527 authorize issuance of a temporary
4 restraining order where an impending act by one party is likely to cause "great or irreparable
5 injury" to another party or where an impending act by one party respecting the subject of the
6 lawsuit would "render the judgment ineffectual" as to another party. (Code Civ. Proc., §
7 526(a)(2)-(3); *Ancora-Citronelle Corp. v. Green* (1974) 41 Cal.App.3d 146.) The purpose of a
8 temporary restraining order is to preserve the status quo pending a hearing on the merits of the
9 action. (*Jeneski v. Myers* (1984) 163 Cal.App.3d 18, 28.)

10 The standard for issuing temporary injunctive relief is well settled: the moving party must
11 show (1) a reasonable probability that they will prevail on the merits; and (2) the interim harm to
12 the moving party in the absence of temporary injunctive relief pending a hearing on the merits
13 outweighs the harm to the opposing party caused by the imposition of such relief. (*IT Corp. v.*
14 *County of Imperial* (1983) 35 Cal.3d 63, 69-70.) In deciding whether to issue such relief, the
15 court must be guided by a "mix" of the potential-merit and interim-harm factors: the greater the
16 showing on one, the less must be shown on the other to support an injunction. (*Butt v. State of*
17 *California* (1992) 4 Cal.4th 668, 678.) A court may thus issue temporary injunctive relief where
18 a plaintiff demonstrates a high likelihood of success on the merits, even if the plaintiff is unable
19 to show that the balance of harms tips in their favor. (*Ibid.*)

20 For the reasons which follow, plaintiff can demonstrate a strong likelihood of success on
21 the merits, because this Court has previously found furloughs identical to those imposed in this
22 case illegal. Moreover, plaintiff can show that CASE members will suffer irreparable harm if the
23 furloughs are implemented, whereas the defendants cannot demonstrate any harm whatsoever.

24
25 **II. The Furloughs Violate Government Code section 19851**

26 Government Code section 19851, subdivision (a), provides as follows:

27
28 (a) It is the policy of the state that the workweek of the state employee shall be 40
hours, and the workday of state employees eight hours, *except that workweeks*

1 *and workdays of a different number of hours may be established in order to meet*
2 *the varying needs of the different state agencies.* It is the policy of the state to
3 avoid the necessity for overtime work whenever possible. This policy does not
4 restrict the extension of regular working-hour schedules on an overtime basis in
5 those activities and agencies where it is necessary to carry on the state business
6 properly during a manpower shortage.

7 (Emphasis added.) The furloughs contemplated by the Executive Order would reduce the
8 workweeks of all CASE members to four days per week, three weeks per month. With only
9 limited exceptions, the furloughs will be applied across-the board.

10 Each state agency has differing needs related to its function and its sources of funding.
11 Defendants DPA and the Governor refused to consider those varying needs before implementing
12 the furloughs. Although certain agencies were exempted from the furlough, defendants have
13 already admitted that those exemptions were not based on the needs of those agencies, but rather
14 the overall needs of the State.

15 For example, according to statements made by Julie Chapman, Chief Deputy Director of
16 DPA, the exemptions for Highway Patrol and CalFIRE were based on the State's need to ensure
17 public safety. The exemptions for departments like Franchise Tax Board and Board of
18 Equalization were based on the fact that those departments were revenue generating and that the
19 State needed to ensure the continued influx of revenue. The exemptions for departments like
20 Employment Development Department, State Compensation Insurance Fund, California Housing
21 Finance Authority, and California Earthquake Authority were based on the fact that funds for
22 those agencies were 100% separate from the General Fund and non-borrowable. Ms. Chapman
23 never indicated that the various needs of the different state agencies were considered in deciding
24 whether to implement the furloughs at all other departments.

25 Ms. Chapman's statements regarding the reasons for the various exemptions indicate that
26 the administration has not learned its lesson since this Court previously found the furloughs
27 illegal. Defendants failed to undertake any consideration of the varying needs of the different
28 state agencies before ordering the furloughs. As previously found by this Court, furloughs
29 implemented in such a manner are an unlawful abuse of discretion.

1 **III. The Furloughs Violate Government Code section 16310**

2 The purported purpose of the furloughs is “to immediately begin saving cash until a
3 budget is in place.” (Flores Dec., Exh. A.) The Executive Order expressly contemplates using
4 the cash saved as a result of the furloughs for meeting its other financial obligations.
5 Accordingly, the furloughs will result in a loan from special funds to the General Fund.

6 Government Code section 16310 subdivision (a) allows special funds to be loaned to the
7 General Fund, but it also expressly states that “[t]his section does not authorize any transfer that
8 will interfere with the object for which a special fund was created. . . .” The sole reported case
9 interpreting the prohibition on interference with special fund objectives is *Daugherty v. Riley*
10 (1934) 1 Cal.2d 298. In that case, the court invalidated legislation that diverted special fund
11 money to the General Fund. (*Id.* at p. 309.) By parity of reasoning, the Governor’s
12 implementation of furloughs on employees in positions funded by sources other than the General
13 Fund should likewise be invalidated, because it will allow the General Fund to borrow more
14 money than it would otherwise be entitled borrow, and will do so at the expense of the effective
15 operation of the specially funded departments.

16 The impact of the furloughs on the ability of the specially funded departments to carry
17 out their mission should be obvious: their offices will be closed three days per month, thereby
18 hindering their ability to provide services to the public and carry out their mission. It requires no
19 leap of logic to see that if a state agency is closed three days per month, and its employees are
20 furloughed on those days, (reducing their pay by almost 14%), then the agency will be 14% less
21 productive. Accordingly, whatever salary savings is made available for borrowing via the
22 furloughs is necessarily available only at the expense of the special fund agencies’ normal
23 operations. This is a patent violation of Government Code section 16310.

24 The impact to these agencies is not speculative. Because the Governor previously
25 imposed furloughs which ended less than two months ago, there is a track record which
26 demonstrates that furloughs negatively impact the agencies. For example, based on discovery
27 conducted in connection with earlier litigation regarding furloughs, it is established that
28 furloughs result in increased case loads for CASE members, increased backlogs for CASE

1 members, and increased overtime costs for the departments implementing the furloughs. In
2 addition, there is a strong probability that the State will enter into additional contracts for outside
3 legal counsel. (Flores Dec. ¶ 13.)

4 By closing offices three days per month, increasing the case loads and backlogs of the
5 legal professionals employed at the departments, increasing the overtime costs, and creating the
6 strong risk that outside legal counsel will have to be employed, it cannot be denied that the
7 furloughs “interfere with the object for which a special fund was created.”

8 9 **IV. The Balance of Harms Favors Plaintiff**

10 If furloughs are implemented, the consequences to CASE members will be disastrous.
11 Many CASE members have had their wages reduced for the last 17 months as a result of the
12 Governor’s previous unilateral imposition of three furlough days per month, resulting in a
13 monthly pay reduction of approximately 14%. Because of the furloughs, most members have
14 exhausted their personal savings and have reached the limit of their available lines of credit.
15 Many CASE members are the sole source of income for their families. Reducing the pay of
16 CASE members again through furloughs would put many members at risk of losing their homes,
17 cars, and other necessities. (Flores Dec. ¶ 10.) Even if CASE members were later awarded back
18 pay, the damage to their finances, in terms of lost homes, repossessed cars, and ruined credit
19 ratings, would already have been done.

20 Conversely, the harm to the defendants if a temporary restraining order were issued
21 would be minimal. The Executive Order expressly states that “the latest cash projections show
22 that California’s cash will go into the negative no later than October 2010.” This hearing on the
23 preliminary injunction can certainly be heard prior to October and thus there is no danger that a
24 temporary restraining order stopping the furloughs will jeopardize the State’s cash situation.

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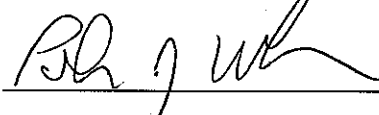
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1 **CONCLUSION**

2 Petitioner respectfully requests that this Court issue a temporary restraining order
3 restraining and enjoining the defendants from implementing the furloughs contemplated by
4 Executive Order S-12-10.

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7 Dated: 8-2-10

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