

FILED/ENDORSED

AUG - 6 2010

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18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 COUNTY OF SACRAMENTO

20 DEBBIE L. ENDSLEY; CALIFORNIA
DEPARTMENT OF PERSONNEL
21 ADMINISTRATION,

22 Petitioners/Plaintiffs,

23 v.

24 JOHN CHIANG, sued herein in his official
capacity only; OFFICE OF STATE
25 CONTROLLER,

26 Respondents/Defendants.

Case No. 34-2010-80000591

**PETITIONERS' NOTICE OF HEARING
ON DEMURRER AND DEMURRER TO
RESPONDENTS' AMENDED CROSS-
COMPLAINT**

Hearing Date/Time: August 26, 2010
Time: 1:30 p.m.
Dept.: 19
Trial Date: TBD

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

1 JOHN CHIANG, in his official capacity as)
2 CONTROLLER OF THE STATE OF)
3 CALIFORNIA; and the OFFICE OF THE)
4 STATE CONTROLLER,)

5 Cross-Complainants,

6 v.

7 DEBBIE L. ENDSLEY, sued herein in her)
8 official capacity only; CALIFORNIA)
9 DEPARTMENT OF PERSONNEL)
10 ADMINISTRATION,)

11 Cross-Defendants.
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1 **NOTICE OF HEARING**

2 TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that on August 26, 2010, at 1:30 p.m., in Department 19 of the
4 above-entitled Court located at 720 Ninth Street, Sacramento, California, Petitioners/Plaintiffs and
5 Cross-Defendants Debbie L. Endsley and the California Department of Personnel Administration
6 (DPA) will demur to the Amended Cross-Complaint for Declaratory Relief filed by Defendants/
7 Respondents John Chiang and the Office of the State Controller (Controller). Petitioners/Plaintiffs
8 demur on the grounds that each of the Controller's ten causes of action fails to state facts sufficient
9 to constitute any cause of action against Petitioners/Plaintiffs. The grounds for the demurrer are
10 further explained in the Demurrer itself, which follows herein.

11 The Demurrer is based on this Notice of Hearing and Demurrer, the Memorandum of Points
12 and Authorities and Request for Judicial Notice filed herewith, the pleadings, papers, and records on
13 file with the Court, and such argument as may be presented at the time of the hearing.

14 Pursuant to Local Rule 3.04, the Court will make a tentative ruling on the merits of this
15 matter by 2:00 p.m., the court day before the hearing. To receive the tentative ruling, you can access
16 the Court's web site at www.saccourt.com or arrange to obtain the tentative ruling from the clerk of
17 Department 19. If you do not call the Court and the opposing party by 4:00 p.m. the court day
18 before the hearing, no hearing will be held.

19 **DEMURRER**

20 Petitioners/Plaintiffs and Cross-Defendants Debbie L. Endsley and the Department of
21 Personnel Administration jointly and severally demur under Code of Civil Procedure section 430.10
22 to each and every Cause of Action in the Amended Cross-Complaint of Defendants/Respondents and
23 Cross-Complainants John Chiang and the Office of the State Controller, as follows:

24 **DEMURRER TO FIRST CAUSE OF ACTION**

25 1. The First Cause of Action for Declaratory Relief in the Amended Cross-Complaint
26 does not state sufficient facts to constitute a cause of action against Petitioners/Plaintiffs and Cross-
27 Defendants Debbie L. Endsley and the California Department of Personnel Administration. (Code
28 Civ. Proc., § 430.10 subd. (e).)

1 For instance, the First Cause of Action alleges that the July 1, 2010 DPA Pay Letter (Pay
2 Letter) is legally invalid because it fails to provide certain instructions. However, the First Cause of
3 Action does not articulate why, or under what legal authority, the Pay Letter is supposedly
4 “unlawful” because it does not contain certain instructions. No legal authority requires DPA to
5 provide any more detailed instructions than DPA has already given regarding precisely how the
6 Controller should implement the Pay Letter. To the contrary, applicable law confirms that the
7 operation of the state payroll system is a function of the State Controller. The First Cause of Action
8 also fails because the inability of the Controller to identify which employees are paid from the
9 general fund, and which are paid from continuous appropriations, is entirely speculative.

10 **DEMURRER TO SECOND CAUSE OF ACTION**

11 2. The Second Cause of Action for Declaratory Relief in the Amended Cross-Complaint
12 does not state sufficient facts to constitute a cause of action against Petitioners/Plaintiffs and Cross-
13 Defendants Debbie L. Endsley and the California Department of Personnel Administration. (Code
14 Civ. Proc., § 430.10 subd. (e).)

15 For instance, the Second Cause of Action alleges that the July 1, 2010 DPA Pay Letter is
16 legally invalid because it fails to provide certain instructions. However, the Second Cause of Action
17 does not articulate why, or under what legal authority, the Pay Letter is supposedly “unlawful”
18 because it does not contain certain instructions. No legal authority requires DPA to provide any
19 more detailed instructions than DPA has already given regarding precisely how the Controller
20 should implement the Pay Letter. To the contrary, applicable law confirms that the operation of the
21 state payroll system is a function of the State Controller. The Second Cause of Action also fails
22 because the Controller lacks standing to assert the legal rights of the Receiver, and because the
23 Controller does not allege that the Receiver has sought a waiver from compliance with the legal
24 requirements of *White v. Davis*. (Code Civ. Proc., § 430.10 subd. (e), (f).)

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1 **DEMURRER TO THIRD CAUSE OF ACTION**

2 3. The Third Cause of Action for Declaratory Relief in the Amended Cross-Complaint
3 does not state sufficient facts to constitute a cause of action against Petitioners/Plaintiffs and Cross-
4 Defendants Debbie L. Endsley and the California Department of Personnel Administration. (Code
5 Civ. Proc., § 430.10 subd. (e).)

6 For instance, the Third Cause of Action alleges that the July 1, 2010 DPA Pay Letter is
7 legally invalid because it fails to provide certain instructions. However, the Third Cause of Action
8 does not articulate why, or under what legal authority, the Pay Letter is supposedly “unlawful”
9 because it does not contain certain instructions. No legal authority requires DPA to provide any
10 more detailed instructions than DPA has already given regarding precisely how the Controller
11 should implement the Pay Letter. To the contrary, applicable law confirms that the operation of the
12 state payroll system is a function of the State Controller.

13 **DEMURRER TO FOURTH CAUSE OF ACTION**

14 4. The Fourth Cause of Action for Declaratory Relief does not state sufficient facts to
15 constitute a cause of action against Petitioners/Plaintiffs and Cross-Defendants Debbie L. Endsley
16 and the California Department of Personnel Administration. (Code Civ. Proc., § 430.10 subd. (e).)

17 For instance, the Fourth Cause of Action erroneously asserts the Pay Letter is inconsistent
18 with *White v Davis* (2003) 30 Cal.4th 528. The Fourth Cause of Action also invokes prompt
19 payment requirements that are more stringent than the FLSA actually requires because the FLSA
20 only requires that the State make overtime payments “as soon as practicable.”

21 **DEMURRER TO FIFTH CAUSE OF ACTION**

22 5. The Fifth Cause of Action for Declaratory Relief does not state sufficient facts to
23 constitute a cause of action against Petitioners/Plaintiffs and Cross-Defendants Debbie L. Endsley
24 and the California Department of Personnel Administration. (Code Civ. Proc., § 430.10 subd. (e).)

25 For instance, the Fifth Cause of Action asserts a legal claim that has already been resolved by
26 the published decision of the Third Appellate District in *Gilb v Chiang* (2010) 186 Cal.App.4th 444.

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1 **DEMURRER TO SIXTH CAUSE OF ACTION**

2 6. The Sixth Cause of Action for Declaratory Relief does not state sufficient facts to
3 constitute a cause of action against Petitioners/Plaintiffs and Cross-Defendants Debbie L. Endsley
4 and the California Department of Personnel Administration. (Code Civ. Proc., § 430.10 subd. (e).)

5 For instance, the Sixth Cause of Action alleges that the July 1, 2010 DPA Pay Letter is
6 legally invalid because it fails to provide certain instructions. However, the Sixth Cause of Action
7 does not articulate why, or under what legal authority, the Pay Letter is supposedly “unlawful”
8 because it does not contain certain instructions. No legal authority requires DPA to provide any
9 more detailed instructions than DPA has already given regarding precisely how the Controller
10 should implement the Pay Letter. To the contrary, applicable law confirms that the operation of the
11 state payroll system is a function of the State Controller. The Sixth Cause of Action also applies an
12 incorrect legal standard for impossibility by ignoring the legal requirement that a state official must
13 demonstrate actual impossibility, or extreme and unreasonable difficulty or expense. (See *Board of*
14 *Supervisors of Butte County v McMahon* (1993) 219 Cal.App.3d 286, 299-300.) The Controller
15 also fails to recognize he holds a duty to comply to the maximum extent possible. (*Ibid.*)

16 **DEMURRER TO SEVENTH CAUSE OF ACTION**

17 7. The Seventh Cause of Action for Declaratory Relief does not state sufficient facts to
18 constitute a cause of action against Petitioners/Plaintiffs and Cross-Defendants Debbie L. Endsley
19 and the California Department of Personnel Administration. (Code Civ. Proc., § 430.10 subd. (e).)

20 For instance, the Seventh Cause of Action alleges that the July 1, 2010 DPA Pay Letter is
21 legally invalid because it fails to provide certain instructions. However, the Seventh Cause of
22 Action does not articulate why, or under what legal authority, the Pay Letter is supposedly
23 “unlawful” because it does not contain certain instructions. No legal authority requires DPA to
24 provide any more detailed instructions than DPA has already given regarding precisely how the
25 Controller should implement the Pay Letter. To the contrary, applicable law confirms that the
26 operation of the state payroll system is a function of the State Controller. The Seventh Cause of
27 Action also applies an incorrect legal standard for impossibility by ignoring the legal requirement
28 that a state official must demonstrate actual impossibility, or extreme and unreasonable difficulty or

1 expense. (See *Board of Supervisors of Butte County v. McMahon* (1993) 219 Cal.App.3d 286, 299-
2 300.) The Controller also fails to recognize he holds a duty to comply to the maximum extent
3 possible. (*Ibid.*)

4 **DEMURRER TO EIGHTH CAUSE OF ACTION**

5 8. The Eighth Cause of Action for Declaratory Relief does not state sufficient facts to
6 constitute a cause of action against Petitioners/Plaintiffs and Cross-Defendants Debbie L. Endsley
7 and the California Department of Personnel Administration. (Code Civ. Proc., § 430.10 subd. (e).)

8 For instance, the Eighth Cause of Action asserts a legal claim that has already been resolved
9 by the published decision of the Third Appellate District in *Gilb v. Chiang, supra*, 186 Cal.App.4th
10 444.

11 **DEMURRER TO NINTH CAUSE OF ACTION**

12 9. The Ninth Cause of Action for Declaratory Relief does not state sufficient facts to
13 constitute a cause of action against Petitioners/Plaintiffs and Cross-Defendants Debbie L. Endsley
14 and the California Department of Personnel Administration. (Code Civ. Proc., § 430.10 subd. (e).)

15 For instance, the Ninth Cause of Action asserts a legal claim that has already been resolved
16 by the published decision of the Third Appellate District in *Gilb v. Chiang, supra*, 186 Cal.App.4th
17 444.

18 **DEMURRER TO TENTH CAUSE OF ACTION**

19 10. The Tenth Cause of Action for Declaratory Relief does not state sufficient facts to
20 constitute a cause of action against Petitioners/Plaintiffs and Cross-Defendants Debbie L. Endsley
21 and the California Department of Personnel Administration. (Code Civ. Proc., § 430.10 subd. (e).)

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1 For instance, the Tenth Cause of Action asserts a legal claim that has already been resolved
2 by the published decision of the Third Appellate District in *Gilb v Chiang, supra*, 186 Cal.App.4th
3 444.

4 Dated: August 6, 2010

5 Respectfully submitted,

6 K. WILLIAM CURTIS
7 Chief Counsel

8 WARREN C. STRACENER
9 Deputy Chief Counsel

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14 Attorneys for Defendant
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