

**SETTLEMENT AGREEMENT
AND MUTUAL RELEASE OF CLAIMS**

This Settlement Agreement and Mutual Release of Claims (hereinafter, “Agreement”) is entered into by California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (“CASE”), on the one hand, Edmund G. Brown Jr., as Governor of the State of California, the California Department of Personnel Administration (“DPA”), and the Office of Administrative Hearings (“OAH”) (collectively, “State Respondents”), on the other hand, (collectively referred to hereinafter as “the Parties”).

1. Recitals.

1.1. On May 22, 2009, CASE commenced an action in the Alameda County Superior Court challenging furloughs of California state employees working in various agencies and departments named in the case that were imposed as a result of then-Governor Arnold Schwarzenegger’s Executive Orders S-16-08 and S-13-09, *California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, et al. v. Schwarzenegger, et al.*, Alameda County Superior Court Case No. RG09453892.

1.2 On February 25, 2010, the Alameda County Superior Court entered judgment in the Action granting a writ of mandate commanding that furloughs be set aside for all employees working in the agencies and departments named in that action.

1.3 On February 26, 2010, then-Governor Schwarzenegger appealed the judgment to the First District Court of Appeal, First District Court of Appeal No. A127777. While that appeal was pending, the California Supreme Court issued its decision in *Professional Engineers in California Government v. Schwarzenegger* (2010)

50 Cal.4th 989, in which the Court held that the furloughs imposed as a result of Executive Order S-16-08 were ratified by the California Legislature through its adoption of the Revised Budget Act of 2008, in which the Legislature authorized the reduction of appropriations for employee compensation contained in the original 2008 Budget Act by an amount that reflected the savings sought to be obtained through furloughs.

1.4. After considering supplemental briefing submitted regarding the impact of the California Supreme Court's decision in *Professional Engineers* on the judgment rendered in the action described in paragraph 1.1, as well as holding oral argument, the First District Court of Appeal issued its unpublished decision on September 29, 2011. The First District Court of Appeal reversed the judgment of the Alameda County Superior Court and held that as a result of the decision in *Professional Engineers* furloughs were imposed properly on all agencies and departments named in the Action that were the subject of items of appropriation in the state budget. The First District Court of Appeal remanded the action to the Alameda County Superior Court for the limited purpose of determining which, if any, of the named agencies or departments were the subject of an item of appropriation in the California state budget.

1.5 In addition to that action entitled *California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, et al. v. Schwarzenegger, et al.*, Alameda County Superior Court Case No. RG09453892 as described above which is currently pending in the Alameda County Superior Court by virtue of the First District Court of Appeal's remand order, CASE also currently has pending an additional action challenging the 2009-2010 furloughs of California state employees, *California Attorneys, Administrative Law Judges and Hearing Officers in*

State Employment, et al. v. Schwarzenegger, et al., Alameda County Superior Court Case No. RG10528855. All actions referenced in this paragraph shall collectively be referred to hereinafter as “the Actions.”

1.6. CASE, for its part, and State Respondents, for their part, now desire to fully and finally resolve the issues and disputes between them arising out of, or related to, the Actions, as well as any and all other issues and disputes arising from, or related to, the furloughs of state employees, on the terms and conditions set forth below.

2. Dismissal of Pending Furlough-Related Litigation. In consideration for the promises and covenants contained in this Agreement, CASE shall dismiss with prejudice any claims asserted against State Respondents in *California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, et al. v. Schwarzenegger, et al.*, Alameda County Superior Court Case No. RG09453892. In addition, CASE shall dismiss *California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, et al. v. Schwarzenegger, et al.*, Alameda County Superior Court Case No. RG10528855 with prejudice in its entirety.

3. State Respondents’ Non-Opposition to Resolution of Claims With Specific State Agencies and Departments in *California Attorneys, Administrative Law Judges and Hearing Officers in State Employment, et al. v. Schwarzenegger, et al.*, Alameda County Superior Court Case No. RG09453892.

In consideration of the promises and covenants contained in this Agreement, State Respondents, for their part, shall not oppose payment by California Children and Families Commission (“First 5”), California State Lottery (“State Lottery”), California Prison Industry Authority (“CALPIA”), California Earthquake Authority (“CEA”), and

California Housing Finance Agency (“CalHFA”), only, of any wages or salaries not paid to employees working in those agencies as a result of the State of California’s furloughs imposed between 2009 and 2011 pursuant to former Governor Arnold Schwarzenegger’s Executive Orders S-16-08, S-13-09, and S-12-10 (hereinafter referred to as “furloughs”). In this regard, CASE specifically acknowledges that as a condition for obtaining payment from any of the aforementioned agencies for wages or salaries not paid to employees working in those agencies as a result of the furloughs, employees working in those agencies will be required to relinquish any and all banked furlough time to which those employees may currently be entitled, and which they accrued during the furloughs. In addition, the Parties acknowledge and agree that any and all compensation paid to employees at First 5, the State Lottery, CALPIA, CalHFA, and CEA for wages or salaries not paid due to the furloughs shall be paid solely from those agencies’ funds and nothing in this Agreement shall be construed as creating a liability on the State of California’s General Fund.

4. Mutual Release of Claims. Except for the obligations expressly set forth in this Agreement, the Parties, including their officers, agents, directors, commissioners, and employees hereby mutually release and forever discharge each other from any and all claims, damages, actions, causes of action, liabilities, judgments, liens, contracts, agreements, rights, debts, suits, obligations, promises, acts, costs, and expenses (including, but not limited to, attorneys’ fees), damages, and charges of whatsoever nature arising from, or related to, the Action or the furloughs. Each party shall bear its own attorneys’ fees and costs.

5. Mutual Waiver of Unknown or Unanticipated Claims. With respect to the respective claims by the Parties relating to the Actions or the furloughs, it is understood and agreed that the releases of claims referred to in paragraph 4 of this Agreement constitute full and final releases by the Parties with respect to such claims. With respect to any claims by the Parties arising from, or related to, the Actions or the furloughs, the Parties expressly waive the provisions of California Civil Code section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

In that connection, the Parties realize and acknowledge that one or more claims released pursuant to paragraph 4 of this Agreement may include losses that are presently unknown or unsuspected, and that such losses as were sustained may give rise to additional losses and expenses in the future, which are not now anticipated. Nevertheless, the Parties acknowledge that this release has been negotiated and agreed upon and that in consideration for the rights and benefits under this Agreement, the Parties intend and hereby do release, acquit and forever discharge each other from claims arising from, or related to, the Actions or the furloughs.

6. No Admissions. The Parties mutually acknowledge that this Agreement is entered into in order to resolve matters which are in dispute. The Parties enter into this Agreement, in part, due to the costs and uncertainty of litigating the Action. Other than the express acknowledgements made in this Agreement, nothing contained in this Agreement shall be deemed as an admission of any kind by or to any

other party to this Agreement regarding any of the issues in the Actions or regarding any other issue whatsoever.

7. Entire Agreement. This document constitutes the entire agreement between the Parties regarding the subject matters referred to in this Agreement, all oral agreements being merged herein, and superseded hereby. There are no representations, agreement, arrangements, or understandings, oral or written, between or among the Parties relating to the subject matter of this Agreement that are not fully expressed herein.

8. Waiver. Any of the terms or conditions of this Agreement may be waived in writing at any time by the party entitled to the benefit thereof, but no such waiver shall affect or impair the right of the waiving party to require observance, performance, or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition hereof.

9. Amendment. The terms and conditions of this Agreement may be modified or amended at any time by agreement of the Parties. Any such amendment or modification as hereinafter may be made shall be ineffective to modify this Agreement in any respect unless in writing and signed by the party or parties against whom enforcement of the modification or amendment is sought.

10. Representation By Counsel. The Parties have carefully read this Agreement and the contents hereof are known and understood by all Parties. The Parties acknowledge that each has had an adequate period of time in which to consider the terms and conditions of this Agreement. The Parties have each received independent legal advice from attorneys of their choice with respect to the preparation, review, and advisability of executing this Agreement. Prior to the execution of this Agreement by

each party, that party's attorneys reviewed the Agreement, and the Parties acknowledge that they have executed this Agreement after independent investigation and without fraud, duress, or undue influence.

11. Severability. If any provision of this Agreement is adjudicated by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement which can be given full force and effect without the invalid provision shall continue in full force and effect and shall in no way be impaired or invalidated, unless expressly stated otherwise in this Agreement.

12. Succession. Subject to the provisions otherwise contained in this Agreement, this Agreement shall inure to the benefit, and be binding upon, the directors, officers, agents, commissioners, employees, successors and assigns of each of the respective Parties hereto.

13. Captions. All paragraph captions are for reference only and should not be considered in construing this Agreement.

14. Representation of Authority to Settle. Each party hereto warrants and represents that it has the power and authority to settle the claims as set forth herein and that, in the case of corporate entities, its signatory is duly authorized and empowered to sign this Agreement on its behalf.

15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one in the same document.

16. Governing Law. The rights and obligations of the Parties, and the interpretation and performance of this Agreement, shall be governed by the laws of the State of California, excluding its conflict of law rules.

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

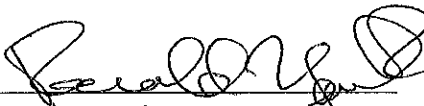
Dated: _____

By _____

Its _____

CALIFORNIA DEPARTMENT OF
PERSONNEL ADMINISTRATION
on behalf of STATE
RESPONDENTS

Dated: 2-7-12

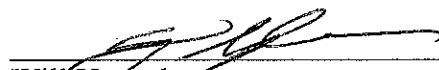
By 

Its Director

APPROVED AS TO FORM:

Patrick J. Whalen
Law Offices of Brooks Ellison
Attorney for CASE

David W. Tyra
Kronick, Moskovitz, Tiedemann & Girard, Attorneys for State Respondents

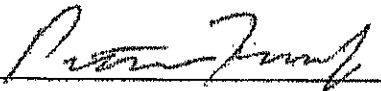


Willy Yamada
Deputy General Counsel, Department of Personnel Administration
Attorneys for State Respondents

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JUDGES AND HEARING
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EMPLOYMENT

Dated: 2-1-12

By 
Its President

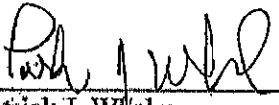
CALIFORNIA DEPARTMENT OF
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on behalf of STATE
RESPONDENTS

Dated: _____

By _____

Its _____

APPROVED AS TO FORM:


Patrick J. Whalen
Law Offices of Brooks Ellison
Attorney for CASE

David W. Tyra
Kronick, Moskovitz, Tiedemann & Girard, Attorneys for State Respondents

Will Yamada
Deputy General Counsel, Department of Personnel Administration
Attorneys for State Respondents

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OFFICERS IN STATE
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Dated: _____

By _____

Its _____

CALIFORNIA DEPARTMENT OF
PERSONNEL ADMINISTRATION
on behalf of STATE
RESPONDENTS

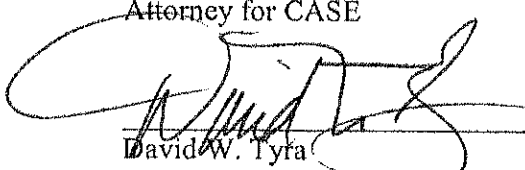
Dated: _____

By _____

Its _____

APPROVED AS TO FORM:

Patrick J. Whalen
Law Offices of Brooks Ellison
Attorney for CASE



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Will Yamada
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