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ALAMEDA COUNTY
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Robert C. Y. J.

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10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT,
14
15 Petitioner/Plaintiff,

CASE NO. RG10494800

vs.

**SECOND AMENDED VERIFIED
PETITION FOR WRIT OF
MANDATE/PROHIBITION AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

17 ARNOLD SCHWARZENEGGER, et al.
18
19 Defendants/Respondents.

20 SERVICE EMPLOYEES INTERNATIONAL
21 UNION, LOCAL 1000,

CASE NO: RG10507922

22 Plaintiff/Petitioner,

Assigned for All Purposes To:

v.

Judge: Hon. Steven A. Brick
Dept.: 17

23 ARNOLD SCHWARZENEGGER, et al.

24 AND ALL OTHER CONSOLIDATED
25 MATTERS;

Trial Date: None set
Complaint Filed: April 5, 2010

26 RG1050708; RG10503805; RG10501997;
27 RG10516259; RG10514694; and
28 RG10528855

Plaintiff/Petitioner the SERVICE EMPLOYEES INTERNATIONAL UNION Local 1000
alleges as follows:

///

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FILED BY FAX

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2 **I. INTRODUCTION**

3 1. Petitioners/Plaintiffs SERVICE EMPLOYEES INTERNATIONAL UNION
4 LOCAL 1000 petition this Court for a writ of mandamus pursuant to Code of Civil Procedure
5 section 1085, directed to Respondents ARNOLD SCHWARZENEGGER, in his capacity as
6 Governor of the State of California; STATE OF CALIFORNIA; CALIFORNIA DEPARTMENT
7 OF PERSONNEL ADMINISTRATION; JOHN CHIANG in his capacity as the Controller of the
8 State of California; CALIFORNIA DEPARTMENT OF CORRECTIONS AND
9 REHABILITATION; CALIFORNIA DEPARTMENT OF MENTAL HEALTH; CALIFORNIA
10 DEPARTMENT OF JUVENILE JUSTICE; CALIFORNIA EMPLOYMENT DEVELOPMENT
11 DEPARTMENT; CALIFORNIA DEPARTMENT OF VETERANS AFFAIRS; CALIFORNIA
12 DEPARTMENT OF DEVELOPMENTAL SERVICES; FRANCHISE TAX BOARD (hereafter
13 collectively "Defendants/Respondents"). Petitioner challenge the legality of Executive Order S-
14 16-08 (hereafter "Order 08") issued by Governor Arnold Schwarzenegger (hereafter "Governor"),
15 as the Order 08 applies to SEIU Local 1000 members. Order 08 directs all State departments and
16 agencies to implement a two-day per month furlough of represented state employees.
17 Additionally, Petitioner challenges the legality of Executive Order S-13-09 (hereafter "Order 09")
18 issued by the Governor, as the Order 09 applies to SEIU Local 1000 (hereafter "SEIU") members.
19 Order 09 directs all State departments and agencies to implement a three-day per month furlough
20 of represented state employees. Finally, Petitioner challenges the legality of Executive Order S-
21 12-10 (hereafter "Order 10") issued by the Governor, as the Order 10 applies to SEIU Local 1000
22 (hereafter "SEIU") members. Order 10 directs all the Department of Personnel Administration to
23 implement a plan for all State departments and agencies, except 8 named departments, to
24 implement a three-day per month furlough of represented state employees effective in August,
25 2010 and continuing indefinitely. Governor's Orders 08, 09 and 10 are collectively referred to as
26 the Governor's Orders or Orders.

27 2. The Governor's Orders, as applied, are unlawful because they constitute a salary
28 reduction in violation of Government Code section 19826(b) and violate mandatory duties under
Labor Code sections 212, 222, 223 and 1171 *et seq.*

1 under the Ralph C. Dills Act. (Government Code, § 3513(j)), and issued Order 08 and 09 directing
2 furloughs and salary reductions.

3 6. Defendant/Respondent CALIFORNIA DEPARTMENT OF PERSONNEL
4 ADMINISTRATION (hereafter "DPA") is, and at all relevant times was, the agency of the State of
5 California designated as the Governor's bargaining representative under the Ralph C. Dills Act
6 ("Dills Act"), California Gov. Code section 3512 *et seq.* (Gov. Code, §§ 19815.4(g) and 3517.)
7 DPA represents the Governor as the employer in all matters pertaining to California state
8 personnel employer-employee relations, and it is responsible for administering salaries and
9 benefits, job classifications, and training. (Gov. Code, § 19815 *et seq.*) DPA is responsible for
10 implementing the purported furloughs and salary reductions directed by Order 08 and 09.

11 7. Defendant/Respondent JOHN CHIANG is the duly elected controller for the State
12 of California, sued herein in his official capacity only. Among other duties, the Controller is
13 responsible for administering the fiscal condition and responsibilities of the State of California.
14 The Controller is charged with auditing all claims against the State and may audit the disbursement
15 of any state money for accuracy, propriety, and legality. (Gov. Code, § 12410.) The Controller is
16 charged with drawing warrants on the State Treasury for the payment of money directed by law.
17 Such warrants must be made as authorized and required by law. (Gov. Code, § 12440.)

18 8. Defendant/Respondent CALIFORNIA DEPARTMENT OF CORRECTIONS AND
19 REHABILITATION (Hereafter "CDCR") (formerly known as the "California Department of
20 Corrections") is an agency of the State of California. CDCR is the appointing authority for various
21 employees in SEIU represented bargaining units.

22 9. Defendant/Respondent CALIFORNIA DEPARTMENT OF MENTAL HEALTH
23 (the "DMH") is an agency of the State of California. DMH is the appointing authority for
24 employees in SEIU represented bargaining units.

25 10. Defendant CALIFORNIA DEPARTMENT OF JUVENILE JUSTICE
26 (the "DJJ") is an agency of the State of California. DJJ is appointing authority for SEIU
27 represented employees working at correctional institutions housing youth wards of the State.

28 11. Defendant CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT

1 (“EDD”) is an agency of the State of California. EDD is the appointing authority for various
2 employees in represented Bargaining Units 1 and 4.

3 12. Defendant/Respondent DEPARTMENT OF VETERANS AFFAIRS (“DVA”) is an
4 agency of the State of California. DVA is the appointing authority for employees in SEIU
5 represented bargaining units.

6 13. Defendant/Respondent DEPARTMENT OF DEVELOPMENTAL SERVICES
7 (“DDS”) is an agency of the State of California. DDS is the appointing authority for SEIU
8 represented employees working at Developmental Centers and State-operated bargaining units.

9 14. Defendant/Respondent FRANCHISE TAX BOARD (the "FTB") is an agency of
10 the State of California. FTB is the appointing authority for employees in SEIU represented
11 bargaining units.

12 15. Plaintiff/Petitioner is ignorant of the true names and capacities of
13 Defendants/Respondents sued herein as DOES 1 through 100 and, therefore, sues these
14 Defendants by such fictitious names. Plaintiffs/Petitioner will amend this Petition/Complaint to
15 state their true names and capacities once they have been ascertained. Plaintiff/Petitioner is
16 informed and believes, and on that basis alleges, that each of these Defendants/Respondents is in
17 some manner responsible for the acts complained of herein.

18 III. VENUE

19 Venue in Superior Court of Alameda is proper because actions against state officials may
20 be commenced in any city or county in which the Attorney General has an office. (Code of Civ.
21 Proc., § 401.) The Attorney General has an office in the County of Alameda.

22 IV. ADDITIONAL FACTS

23 Wage Rates Set by the Master Memorandum of Understanding

24 16. The terms and conditions of employment for rank-and-file employees in Bargaining
25 Units 1, 3, 4, 11, 14, 15, 17, 20, and 21 are governed by a Master Memorandum of Understanding
26 (hereafter "Master MOU") (i.e., a collective bargaining agreement) between SEIU and the State
27 employer. The Master MOU contained specific terms setting the wage rates for rank-and file
28 employees.

1 17. The duration of the Master MOU was initially July 1, 2006 to June 30, 2008. It
2 nonetheless remained in effect beyond that date in accordance with section 3517.8 of the
3 Government Code. This “evergreen” statute provides that an expired MOU will remain in effect
4 until a new MOU is negotiated or the employer imposes a Last, Best, and Final Offer following
5 impasse in labor negotiations.

6 18. During the summer of 2008 DPA and SEIU began negotiations on a successor
7 agreement. In or about February, 2009, the State and SEIU reached a “tentative agreement” on a
8 successor agreement. The successor agreement was presented to the California State Legislature,
9 as required by Government Code section 3517.5. However, the Legislature has not yet approved
10 the successor agreement.

11 19. Rank-and-file employees that are subject to the “self-directed” furloughs
12 represented by SEIU receive their regular salary in monthly payments (i.e., 12 times per annum).

13 **Salary Decreases Unlawfully Imposed by Defendants**

14 **Executive Order 08**

15 20. At the end of 2008, the Governor lobbied the Legislature in two specially-convened
16 legislative sessions to enact numerous cost-cutting measures designed to combat a growing fiscal
17 crisis. Among his many proposals was a two-day furlough of state employees. In seeking
18 legislative approval, the Governor implicitly conceded that salary setting for State employees is the
19 purview of the Legislature, pursuant to constitutional powers. (*Tirapelle v. Davis* (1993) 20
20 Cal.App.4th 1317, 1325, fn.10 [“Salary setting is a legislative function and since the Legislature
21 chose not to delegate this function to DPA ... , it necessarily retained that role.]

22 21. Nonetheless, after the Legislature failed to implement any of the measures,
23 Defendant/Respondent Schwarzenegger took the extraordinary step of issuing an Executive Order
24 to accomplish his proposed furlough of state employees. To date, the legislature has never
25 approved the Governor's furlough plan.

26 ///

1 22. On December 19, 2008, the Governor issued Order 08.¹ Among other things, the
2 Order proclaimed that California faced a "fiscal and cash crisis," and, in order to save money,
3 directed the DPA to adopt a plan to furlough state employees for two days per month and reduce
4 their pay by a commensurate amount (approximately 10%), effective February 1, 2009 through
5 June 30, 2010 (hereafter "the furlough duration period.).

6 23. On January 9, 2009, the DPA issued its furlough implementation plan in a
7 memorandum to all Agency Secretaries, Under Secretaries and Directors entitled "State Employee
8 Furlough per Governor's Executive Order S-16-08" ("the 09 Furlough Memo"). The Furlough
9 Memo advised that all general government operations would be closed on the first and third
10 Fridays of each month beginning with Friday, February 6, 2009, and employees were ordered not
11 report to work on those days. For State operations that cannot close (e.g., prisons, hospitals) the
12 Furlough Memo outlined two types of "self-directed" furloughs: (1) Employees would take two
13 furlough days each month but on days chosen by the employee and approved by the supervisor;
14 and (2) Employees would accrue two furlough days per month to be taken at a later date "when
15 feasible." Because public safety dictates that prisons and hospitals must operate on a 24/7 basis,
16 CDCR, DJJ, DVA², DDS³, and DMH⁴ (hereafter "Category Two") employees automatically fell
17 into the second category of "self directed" furlough. EDD and FTB (hereafter "Category One")
18 employees fell into the first category of "self directed" furlough.

19 24. Finally, the 09 Furlough Memo advised that salaries will be adjusted – i.e., reduced
20 to reflect two unpaid furlough days per month. The 09 Furlough Memo also states that all
21 employees must use their furlough days on or before June 30, 2012, or they will be forfeited, as it
22 expressly dictates that these so-called "[f]urlough days will not be cashed out." The 09 Furlough

23
24 ¹The sole authority cited by the Governor for Order 08 is Government Code section 3516.5.

25 ²DVA is responsible for operating the California Veterans Homes which provides residential care,
26 medical care, and rehabilitative services for disabled and aged veterans. Medical services include 24-hour
27 nursing care.

27 ³DDS is responsible for operating five State Developmental Centers and two community facilities.

28 ⁴DMH is responsible for the care and treatment of people with mental illness at five hospitals and
three acute care facilities within CDCR.

1 Memo does not direct and does not require that impacted employees to take the furlough days off
2 during the same month in which their salaries are correspondingly reduced.

3 25. On February 3, 2009, the DPA issued a memorandum to all State department
4 Personnel Management Liaisons prohibiting State agencies from using overtime work to permit
5 employees to use their so-called "self-directed" furlough days. The chronic under staffing at 24/7
6 institutions such as CDCR, DJJ, DMH, DDS, and DVA, along with the prohibition on the use of
7 overtime to allow staff to use their accrued deferred furlough days means that these State civil
8 servants will not be able to take their deferred furlough days within the furlough duration period,
9 rendering the purported *quid pro quo* for their pay reduction wholly illusory.

10 **Executive Order 09**

11 26. On July 1, 2009, the Governor issued Order 09⁵. Order 09 required DPA to adopt a
12 plan to furlough state employees for three days per month and reduce their pay by a commensurate
13 amount (approximately 15%), effective July 1, 2009 through June 30, 2010⁶. DPA implemented
14 the third furlough day in the same manner as the two furlough days –“self-directed” and “when
15 feasible.” More importantly, use of overtime to permit employees to use their so-called "self-
16 directed" furlough days remained prohibited.

17 27. On April 17, 2009, the Governor issued a “State of Emergency-Unemployment
18 Proclamation” (hereafter “Proclamation”). Among other things, the Proclamation provided that
19 Californians “continue to suffer from the current severe economic downturn,” and “the
20 circumstances of the economic downturn, and the circumstances of the resulting unemployment in
21 California are, by reason of their magnitude, are beyond the control of the services, personnel,
22 equipment and facilities of any single county, city and county, or city.” The Governor ordered the
23 EDD and the California Unemployment Insurance Appeals Board (Hereafter “CUIAB”) to
24 contract for personnel, and ordered DPA and Department of Finance to expedite approvals for the
25

26 ⁵The sole authority cited by the Governor for Order 09 is Government Code section 3516.5.

27 ⁶The original furlough period from February 1, 2009 to June 30, 2009, which includes the period of
28 Order 09, is the “the furlough duration period.” However, pursuant to Order 10, the duration period is now
opening and continuing.

1 hiring of EDD and CUIAB personnel. Nevertheless, due to the over 2 million unemployed
2 Californians, and resulting unemployment benefit claims, EDD employees remain unable to take
3 furlough days within the furlough duration period. Likewise because of workload, staffing issues,
4 among others, FTB employees remain unable to take furlough days within the furlough duration
5 period.

6 28. As a result of the Orders 08 and 09, starting on February 6, 2009, Category One
7 and Two employees were and continue to be subject to a salary decrease that was not approved of
8 by the Legislature. They did not receive a commensurate and contemporaneous reduction in
9 workdays and/or work hours.

10 29. At the end of February/beginning of March and continuing to June 2009 Category
11 One and Two employees received their first paychecks since the implementation of the state's
12 furlough program. Plaintiff/Petitioner believes and hereby alleges that all Category One and Two
13 employee paychecks were reduced approximately 10% (including equivalent reductions in
14 premiums and other benefits). Then, in July 2009 Category One and Two employee paychecks
15 were further reduced approximately 15% (including equivalent reductions in premiums and other
16 benefits) by implementation of an additional furlough day. Category One and Two employee
17 paychecks were reduced by the furloughs, notwithstanding whether they actually took one or more
18 furlough days during the pay period. Plaintiff/Petitioner believes and hereby alleges that
19 thousands of Category One and Two employees received no form of payment other than credited
20 furlough days for two or three days that they worked during the pay period.

21 30. Beginning in February of 2009, and continuing thereafter, hundreds of Category
22 One and Two employees have requested, and been denied, permission to use their so-called "self-
23 directed" furlough days. The purported reasons these misnomered "self-directed" leave requests
24 have been denied in nearly every instance was because of under staffing at CDCR, DJJ, DVA,
25 DMH, FTB, and EDD, and the consequent impossibility of allowing employees to take time off
26 without paying other employees overtime to fill their work posts.

27 31. Due to the 24/7 staffing needs at institutions, such as prisons and hospitals, the
28 current problem of chronic under staffing, and the prohibition on the use of overtime to permit

1 "self-directed" furloughs, it will be impossible for State agencies to allow every Category Two
2 employee to utilize the 46 deferred furlough days each will accrue during the period allotted.

3 32. In summary, it will be impossible for Category One and Two employees, including
4 those represented by SEIU, to ever use the misnomered "self-directed" furlough days that are the
5 purported *quid pro quo* for their non-receipt of two to three days' wages per month. Thus, DPA's
6 plan represents a *defacto* decrease in total salary paid for all affected employees within CDCR,
7 DJJ, DVA, DMH, DDS, FTB and EDD without any commensurate, contemporaneous, or even
8 eventual reduction in workdays or hours.

9 33. Plaintiffs are informed and believe that the furloughs under Order 10 will be
10 implemented in the same or similar illegal manner such that, it will be impossible for Category
11 One and Two employees, including those represented by SEIU, to ever use the misnomered "self-
12 directed" furlough days that are the purported *quid pro quo* for their non-receipt of two to three
13 days' wages per month. Thus, DPA's 2010 furlough as implemented will represent a *defacto*
14 decrease in total salary paid for all affected employees within the affected departments without any
15 commensurate, contemporaneous, or even eventual reduction in workdays or hours.

16 34. Plaintiffs do not believe that the causes of action and remedies sought herein are
17 required to file with the California Victims Compensation and Government Claims Board
18 ("VCGCB") prior to filing suit, pursuant to the Government Claims Act (Government Code, § 900
19 et. seq.); nor do they waive their right to contest this issue. Nonetheless, out of an abundance of
20 caution, Plaintiff/Petitioner filed a Government claim on February 25, 2010, for said unpaid
21 wages, liquidated damages, and civil penalties with the VCGCB. The claim also referenced the
22 claims presented herein. VCGCB denied the claim for reasons including but not limited to that the
23 court system is the appropriate means for resolution.

24 **Prior Lawsuit by SEIU Challenging the Executive Order**

25 35. On January 9, 2009, SEIU filed a Verified Petition for Writ of Mandate/Prohibition
26 and Complaint for Injunctive and Declaratory Relief in the Sacramento Superior Court, Case No.
27 34-2009-80000126. The case was heard on the merits on January 29, 2009, and that day, Judge
28 Patrick Marlette, Department 19, entered a minute order confirming his earlier tentative ruling

1 denying SEIU's request for relief. Judge Marlette ruled that the Governor had the authority to
2 reduce the work hours (i.e., furlough) of State employees and commensurately with a pay
3 reduction for the hours not worked. Additionally, Judge Marlette found SEIU's Fair Labor
4 Standards Act claims were not ripe. Judgment was entered in favor of the Governor, DPA and the
5 Controller on February 11, 2009.

6 36. SEIU asserts that Judge Marlette's ruling was legally erroneous in that it assumed
7 Defendants/Respondents furlough plan would be lawful if, at some indefinite time during the
8 lifetime of the plan, impacted Category One and Two employees would be able to use their
9 accrued furlough days. As delineated below, myriad provisions of the Labor Code and
10 Government Code demonstrate the falsity of this assumption. *Inter alia*, those provisions prevent
11 any reduction in employees' hourly wage rates without prior legislative approval, require full
12 payment of wages in negotiable form (redeemable in cash) at the end of each pay period for all
13 hours worked during the pay period, and require that said wages be paid at the agreed or legally-
14 designated hourly rate or, if no such rate is established (which is not the case here), at least the
15 California minimum wage.

16 37. New facts and evidence, including Order 09, have developed since the Order 08,
17 Furlough Memo, and various related program documents have been implemented as to SEIU
18 represented employees noted above, beginning on February 6, 2009, and continuing thereafter,
19 literally hundreds of requests (indeed the vast majority of requests made) to use accrued so-called
20 "self-directed" furlough days have been denied outright. The overwhelming rate of denials at
21 CDCR, DMH hospitals, and DVA veterans homes, DDS, FTB and EDD, chronic under staffing
22 problems at these agencies/facilities, and the prohibition on the use of overtime to allow furlough
23 days off demonstrate, well-beyond a preponderance of the evidence, that it will be impossible for
24 the vast majority of employees to ever use these illusory furlough days within the time allotted, let
25 alone use them in the month in which their wages are correspondingly reduced.

26 38. Due to the development of these new facts and evidence underlying and
27 supporting SEIU's claims pled herein; Judge Marlette's ruling and judgment in the
28 prior lawsuit are no bar to the present action. "Res judicata or collateral estoppel 'was

1 never intended to operate so as to prevent a re-examination of the same question between
2 the same parties where, in the interval between the first and second actions, the facts have
3 materially changed or new facts have occurred which may have altered the legal rights or
4 relations of the litigants.” (*Evans v. Celotex Corp.* (1987) 194 Cal.App.3d 741, 748 [*citing Hurd*
5 *v. Albert* (1931) 214 Cal. 15, 26]; *see also United States Golf Assn. v. Arroyo Software Corp.*
6 (1999) 69 Cal.App.4th 607, 616 [“Collateral estoppel does not apply where there are changed
7 conditions or new facts which did not exist at the time of the prior judgment....”]; *In re Catherine*
8 *H.* (2002) 102 Cal.App.4th 1284, 1291 [“[C]ollateral estoppel ‘does not apply ... where there are
9 changed conditions and new facts which did not exist at the time of the prior judgment’ ... “])
10 Moreover, this petition/complaint raises new statutory causes of action that were not ripe and,
11 thus, could not have been raised in the prior litigation.

12 CCPOA Alameda County Lawsuit

13 39. On or about March 16, 2009, CCPOA filed a petition for writ of mandate in
14 Alameda Superior Court asking the Court to declare the furloughs illegal as applied to Unit 6
15 members. On April 21, 2009, CCPOA amended its petition for a writ of mandate, but its request
16 that the Court declare the furloughs illegal as applied to Unit 6 members, remained unchanged.
17 The Court designated that petition as Case No. RG-09-441544.

18 40. In its petition, CCPOA alleged that Order 08 was unlawful when applied to Unit 6
19 members employed by CDCR, DJJ and DMH because: (1) Reducing Unit 6 members salary
20 without reducing the workdays and/or work hours violated Government Code section 19286(b);
21 (2) Compensating Unit 6 members with “self-directed” furlough days for days of work performed
22 per month violated Labor Code section 212(a) because the furlough days cannot be cashed out;
23 (3) The failure to pay California minimum wage for days worked violated Labor Code section 1171
24 *et seq.* and California Code of Regulations, tit. 8, section 11000 *et seq.*; and (4) failure to pay Unit
25 6 members the designated wage scale violated Labor Code section 223.

26 41. On December 17, 2009, Alameda Superior Court Frank Roesch granted the writ,
27 in part. The Court found that “for those pay period in which an employee works more hours than
28 those for which he or she is compensated at the regular rate of pay, that constitutes a reduction in

1 salary by Respondents contrary to the requirements of Government Code section 19286(b).”
2 (Order Granting Petition for Writ of Mandate in Case No. RG 09441544.) The Court determined
3 that it “must conclude that for any pay period in which an employee works more hours than those
4 for which he or she is compensated at either the regularly-established rate of pay or the minimum
5 wage, Respondents have violated the mandatory duties imposed upon them under Labor Code
6 sections 223 and 1711 *et seq.*, respectively.” (*Id.* at p. 9.) The Court then ordered the portions
7 of Order 08 and 09 that violate State law rescinded as to CCPOA members.

8 2010 Executive Order for Furloughs

9 42. On or about July 28, 2010, the Governor issued a third Executive Order implement
10 furloughs effective in August 2010. Executive Order S-12-10 directs all state departments and
11 agencies, with a few exceptions, to implement a three-day per month furlough of state employees
12 regardless of funding source. Executive Order S-12-10 will reduce the salaries of all state
13 employees by approximately fifteen (15) percent. The Governor justifies this Order on the
14 ground there the state must “preserve sufficient cash in the 2010-11 fiscal year...” (Exhibit A,
15 “Executive Order S-12-10,” attached hereto).

16 43. The prior Executive Orders ended furloughs on June 30, 2010. With one month
17 reprieve, the Governor unilaterally reenacted the furloughs allegedly to preserve cash though the
18 Order admits that cash reserves exist for several months.

19 44. The 2010 Executive Order directs DPA to issue a new Furlough Plan. To date, no
20 plan has been issued to indicate the manner in which furloughs will be implemented. Plaintiffs
21 are informed and believe that the furloughs under Order 10 will be implemented in the same or
22 similar illegal manner such that, (with certain limited exemptions) it will be impossible for
23 Category One and Two employees, including those represented by SEIU, to ever use the
24 misnomered "self-directed" furlough days that are the purported *quid pro quo* for their non-receipt
25 of two to three days' wages per month, let alone use them in the same month in which the pay
26 reductions are forced to occur. Thus, DPA's 2010 furlough as implemented will represent a
27 *defacto* decrease in total salary paid for all affected employees within state departments without
28 any commensurate, contemporaneous, or even eventual reduction in workdays or hours.

1 **Class Action Allegations**

2 45. SEIU brings this action on behalf of themselves and all others similarly situated,
3 including, current and future or its represented bargaining unit employees (Units 1,3, 4, 11, 14,
4 15, 17, 20 and 21) impacted by the implementation of the Executive Orders and Furlough
5 Memos, and all former of its represented bargaining unit employees who have separated from
6 service since the implementation of the Executive Orders and Furlough Memos.

7 46. The class that SEIU represents is composed of former, current, and future of its
8 represented Bargaining Unit employees who sustained losses or will sustain losses due to the
9 implementation of the Executive Orders and Furlough Memos. This class of employees is
10 appropriately divided into subclasses as detailed below.

11 47. The persons in the class are so numerous (more than 37,000 individuals) that
12 joinder of all such persons is impracticable, and the disposition of their claims in a class action
13 rather than separate individual actions will benefit the parties and the court.

14 48. The claims of SEIU are typical of those of the class, and the Plaintiffs/Petitioners
15 will fairly and adequately represent the interests of the class. Plaintiffs/Petitioners share the
16 common experience of the class members: they are all employees in SEIU represented units who
17 were, and are being, subject to an illegal furloughs program and being denied payment of wages
18 as a result of the implementation of the Executive Orders and Furlough Memo.

19 49. Plaintiffs/Petitioners have retained counsel competent and experienced in complex
20 class action litigation.

21 50. Common questions of law and fact (i.e. the illegality of the Executive Orders and
22 Furlough Memo) exist as to all members of the Plaintiffs/Petitioners class and predominate over
23 any questions which affect only individual members of the class. Among the questions of law
24 and fact common to Plaintiffs/Petitioners and the class are:

- 25 a. Whether Defendants/Respondents violated Government Code section 19826(b) by
26 implementing the self-directed furlough program which resulted in a *de facto*
27 salary decrease for SEIU represented unit employees without a contemporaneous
28 and commensurate reduction in workdays and/or hours.

- 1 b. Whether Defendants/Respondents violated Labor Code section 212 by
2 implementing the furlough program and failing to pay SEIU represented unit
3 employees for every hour and fraction thereof worked at the salary scale
4 designated in the MOU and the Civil Service Pay Scales published by DPA.
- 5 c. Whether Defendants/Respondents violated Labor Code sections 222 and 223 by
6 implementing the furlough program and failing to pay SEIU represented unit
7 employees for every hour and fraction thereof worked at the salary scale
8 designated in the MOU and the Civil Service Pay Scales published by DPA.
- 9 d. Whether Defendants/Respondents violated the California minimum wage laws by
10 implementing the furlough program and failing to pay SEIU represented unit
11 employees at a rate equal to or above the State minimum wage for every hour and
12 fraction thereof worked in violation of Labor Code section 1171 *et seq.* and 8
13 California Code of Regulations section 11000 *et seq.*
- 14 e. Consistent with these common questions of law and fact, Plaintiffs/ Petitioners
15 anticipate creating 4 subclasses of plaintiffs to efficiently manage the class:
- 16 (1) All SEIU represented unit employees who were impacted by Defendants/
17 Respondents ongoing violation of Government Code section 19826(b);
- 18 (2) All SEIU represented unit employees impacted by Defendants/Respondents
19 violation of Labor Code section 212;
- 20 (3) All SEIU represented unit employees impacted by Defendants/Respondents
21 violation of Labor Code sections 222 and 223; and
- 22 (4) All SEIU represented unit employees impacted by Defendants/
23 Respondents' failure to pay the California minimum wage in violation of
24 Labor Code section 1171 *et seq.* and 8 California Code of Regulations
25 section 11000 *et seq.*
- 26 f. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy since individual joinder of all members of the
28 class is impracticable. Class action treatment will permit a large number of

1 similarly situated persons to prosecute their common claims in a single forum
2 simultaneously, efficiently, and without unnecessary duplication of effort or
3 expense that numerous individual actions would engender. No difficulties are
4 likely to be encountered in the management of this class action that would
5 preclude its maintenance as a class action, and no superior alternative exists for the
6 fair and efficient adjudication of the controversy. The class members are readily
7 identifiable from the Defendants/Respondents' records.

8 51. Further, the Plaintiffs/Petitioners are informed and believe that the damage to each
9 Plaintiff/Petitioner is relatively small, amounting to the difference each Plaintiff/Petitioner would
10 have been paid had the Executive Orders and the Furlough Memos not been implemented.
11 Therefore, it is economically unfeasible to pursue such remedies other than in a class action. The
12 expense and burden of individual litigation would make it difficult or impossible for individual
13 members of the class to redress the wrongs done to them, while an important public interest will
14 be served by addressing the matter as a class action. The cost to the court system of adjudication
15 of such individual actions would be substantial. The prosecution of individual remedies by
16 members of the Plaintiff/Petitioner class may establish inconsistent standards of conduct for
17 Defendants/ Respondents and result in the impairment of class members' rights and the
18 disposition of their interests through actions to which they were not parties.

19 52. Defendants/Respondents have acted on grounds generally applicable to all class
20 members, thereby making final injunctive relief or corresponding declaratory relief appropriate
21 with respect to the Class as a whole. Prosecution of separate actions by individual class members
22 would create the risk of inconsistent or varying adjudications with respect to individual class
23 members, and would establish incompatible standards of conduct for Defendants/Respondents.

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IV. ARGUMENT

FIRST CAUSE OF ACTION

(Violation of Government Code section 19826 and Separation of Powers Doctrine,
California Constitution, art. III, section 3)

53. Plaintiff/Petitioner hereby incorporates by reference all of the foregoing paragraphs as though fully set forth herein.

54. Defendants/Respondents, and each of them, were and are responsible for the acts or omissions complained of herein.

55. Government Code section 19826 states, in pertinent part:

(b) Notwithstanding any other provision of law, the department shall not establish, adjust, or recommend a salary range for any employees in an appropriate unit where an employee organization has been chosen as the exclusive representative pursuant to Section 3520.5.

(Gov. Code, § 19826(b) [emphasis added].) The Legislature's use of the word "shall" in this statute demonstrates its intention that these acts are mandatory and that the DPA lacks discretion not to comply. (Gov. Code, § 14 [“‘Shall’ is mandatory and ‘may’ is permissive.”])

56. Through Government Code section 19826(b), the Legislature enunciated a clear decision not to delegate its constitutional salary setting function to the DPA with respect to represented employees. (*Department of Personnel Administration v. Greene* (1992) 5 Cal.App.4th 155.) Thus, absent Legislative action, Defendants/Respondents are prohibited from implementing any salary decrease for rank-and-file SEIU represented members because SEIU has been chosen as their exclusive representative pursuant to Government Code section 3520.5.

57. An actual controversy has arisen and now exists between Plaintiff/Petitioner and Defendants/Respondents concerning their respective rights, duties, and obligations under the Government Code section 19826(b). Plaintiff/Petitioner contends that Defendants/Respondents have failed and continue to fail to comply with their statutory obligation under Government Code

1 section 19826 as a result of implementing a *de facto* salary decrease to SEIU represented
2 Category One and Two employees without prior approval from the California Legislature, by
3 reducing the overall monthly salaries due to the furloughs, without contemporaneously and
4 commensurately reducing workdays and/or work hours. Plaintiff/Petitioner is informed and
5 believes that Defendants/Respondents SCHWARZENEGGER and DPA dispute this contention.

6 58. Government Code section 19826, and the case law interpreting it, impose a clear,
7 present, and ministerial duty that Defendants/Respondents shall not “adjust” salaries without
8 legislative approval. Despite this ministerial duty, Defendants/Respondents intend to decrease
9 Plaintiff/Petitioner’s members’ salaries by approximately 15%⁷ in clear violation of their
10 ministerial duty.

11 59. Plaintiff/Petitioner and its members have a clear, present and substantial
12 right to require Defendants/Respondents to perform their duties under Government Code
13 section 19826(b) and not implement a salary decrease absent Legislative action.

14 60. At all times mentioned herein, Defendants/Respondents have been able to
15 perform the duty described above. Notwithstanding such ability, Defendants/Respondents
16 have failed and refused, and continue to fail and refuse, to perform their statutory duty
17 under Government Code section 19826.

18 61. Plaintiff/Petitioner has no right of appeal from the failure of the Defendants/
19 Respondents to act as required by law, nor does Plaintiff/Petitioner have any available
20 administrative remedy to contest the action, nor does Plaintiff/Petitioner have a plain, speedy or
21 adequate remedy in the ordinary course of law other than the relief sought in this action.
22 Therefore, Plaintiff/Petitioner seeks a peremptory writ of mandate compelling all Defendants/
23 Respondents to comply with their mandatory duty under Government Code section 19826(b).

24 62. Plaintiff/Petitioner desires a judicial determination of its rights and a declaration of
25 Defendants/Respondents' obligations under Government Code section 19826(b). Plaintiff/
26

27 ⁷From February to June 2009 SEIU represented employee pay was reduced by approximately 10%.
28 Order 09 imposed a 15% pay reduction. Any additional references to the 15% pay reduction incorporates
the reduction of pay in the amount of 10% from February to June 2009 and continuing into the future under
Order 10.

1 Petitioner requests that this Court declare that Defendants/Respondents are without authority to
2 implement the proposed reduction in salary for SEIU represented Category One and Two
3 employees.

4 63. As a proximate result of the State's wrongful acts, the members that
5 Plaintiff/Petitioner represents have suffered lost income in the form of unpaid wages.

6 WHEREFORE, Plaintiff/Petitioner prays for the relief set forth below.

7 **SECOND CAUSE OF ACTION**

8 **(Failure to Pay California Minimum Wage in Violation of Labor Code**

9 **section 1171 *et seq.* and California Code of Regulations, tit. 8, section 11000 *et seq.*)**

10 Plaintiff/Petitioner hereby incorporates by reference all of the foregoing paragraphs as
11 though fully set forth herein.

12 64. Defendants/Respondents, and each of them, were and are responsible for the acts
13 or omissions complained of herein.

14 65 As detailed above, Government Code section 19826 prohibits Defendants/
15 Respondents from reducing the hourly rate of pay for SEIU represented Category One and Two
16 employees at affected agencies without express legislative approval, which is lacking here. Thus,
17 by reducing SEIU represented Category One and Two employees' total monthly pay by the
18 amount they earn in three days⁸ of work, Defendants/Respondents have failed and continue to fail
19 to pay any wages for three days of work per month (approximately 24 compensable hours).

20 66. California Labor Code section 1182.11 reads as follows:

21 "... The Industrial Welfare Commission shall, at a public meeting,
22 adopt minimum wage orders consistent with this section without
23 convening wage boards, which wage orders shall be final and
conclusive for all purposes."

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26 ⁸From February to June 2009 SEIU represented employee pay was reduced by the amount they earn
27 in two days. Order 09 imposed a pay reduction in the amount of three days work. Any additional references
28 to three days of work incorporates the reduction of pay in the amount of two days from February to June
2009. Order 10 imposed a pay reduction in the amount of three days work starting August 2010 and
continuing indefinitely.

1 67. California Labor Code section 1182.12 reads as follows:

2 “Notwithstanding any other provision of this part, on and after
3 January 1,2007, the minimum wage for all industries shall be not
4 less than seven dollars and fifty cents (\$7.50) per hour, and on and
 after January 1,2008, the minimum wage for all industries shall be
 not less than eight dollars (\$8.00) per hour.”

5 68. Labor Code section 1171 applies the California State minimum wage to
6 all California employees. Moreover, the Wage Orders adopted by the Industrial Welfare
7 Commission, pursuant to its Constitutional and statutory authority, expressly apply the
8 California minimum wage to individuals employed by the State. (*See California Code*
9 *of Regulations, tit. 8, section 11000 et seq.*)

10 69. Defendants' failure to pay any wages in negotiable form to Category One and Two
11 employees for two days, then three days of work per month (approximately 16 and 24
12 compensable hours) violates Labor Code sections 212, 1182.11, 1182.12, and 1194, as well as
13 California Code of Regulations, tit. 8, section 11000 *et. seq.*, which require that employees be
14 paid a statutory minimum wage for every hour and fraction of an hour worked.

15 70. At all times relevant herein, the State has been able to perform its duties
16 pursuant to these provisions. Notwithstanding such ability, the State has knowingly failed and
17 refused, and continues to fail and refuse, to pay any wages for compensable time worked by
18 Category One and Two employees.

19 71. An actual controversy has arisen and now exists between Plaintiff/Petitioner and
20 Defendants/Respondents concerning their respective rights, duties, and obligations under the
21 minimum wage statutes and regulations discussed above. Plaintiff/Petitioner contends that
22 Defendants/Respondents have failed and refused, and continues to fail and refuse, to comply with
23 their statutory and regulatory obligation under these provisions to pay at least the California State
24 minimum wage for all hours and fractions thereof worked. Plaintiff/Petitioner is informed and
25 believes that Defendants/Respondents SCHWARZENEGGER and DPA dispute this contention.

26 72. The minimum wage statutes and regulations discussed above, and the case law
27 interpreting them, impose a clear, present, and ministerial duty that Defendants/Respondents shall
28 pay at least the California State minimum wage for all hours and fractions thereof worked.

1 Despite this ministerial duty, Defendants/Respondents have failed and continue to fail to
2 compensate Category One and Two employees at all for three days of labor per pay period.

3 73. Plaintiff/Petitioner and its members have a clear, present and substantial right to
4 require Defendants/Respondents to perform their duties under Labor Code sections 1182.11,
5 1182.12, and 11.94, as well as California Code of Regulations, tit. 8, section 11000 *et seq.*

6 74. At all times mentioned herein, Defendants/Respondents have been able to perform
7 the duties described above. Notwithstanding such ability, Defendants/Respondents have failed
8 and refused, and continue to fail and refuse, to perform their mandatory duties under Labor Code
9 sections 1182.11, 1182.12, and 1194, as well as California Code of Regulations, tit. 8, section
10 11000 *et seq.*

11 75. Plaintiff/Petitioner desires a judicial determination of its rights and a declaration of
12 Defendants/Respondents' obligations under Labor Code sections 1182.11, 1182.12, and 1194, as
13 well as California Code of Regulations, tit. 8, section 11000 *et seq.* Plaintiff/Petitioner requests
14 that this Court declare that Defendants/Respondents are statutorily obligated to pay all Category
15 One and Two employees for every hour and fraction thereof worked at least the California
16 minimum hourly wage and that, by reducing Category One and Two employees monthly salary by
17 the amount required to compensate them for three days of work, Defendants/Respondents are
18 failing to pay said minimum wage in violation of Labor Code sections 1182.11, 1182.12, and
19 1194, as well as California Code of Regulations, tit. 8, section 11000 *et seq.*

20 76. Plaintiff/Petitioner has no right of appeal from the failure of the Defendants/
21 Respondents to act as required by law, nor does Plaintiff/Petitioner have any available
22 administrative remedy to contest the action, nor does Plaintiff/Petitioner have a plain, speedy or
23 adequate remedy in the ordinary course of law other than the relief sought in this action.

24 Therefore, Plaintiff/Petitioner also seeks a peremptory writ of mandate compelling all
25 Defendants/Respondents to comply with their mandatory duty under Labor Code sections
26 1182.11, 1182.12, and 1194, as well as California Code of Regulations, tit. 8, section 11000
27 *et seq.*

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1 Two employees for every hour and fraction thereof worked at the wage scale designated in the
2 prior Master MOU.

3 83. Because Government Code section 19826 prohibits Defendants/Respondents from
4 reducing the hourly rate of pay for SEIU represented employees, by reducing Category One and
5 Two employees' total monthly pay by the amount they earn in two days, and subsequently three
6 days of work, Defendants/Respondents have failed and continue to fail to pay any wages for two
7 and three days of work per month (approximately 16 and 24 compensable hours).

8 84. Plaintiff/Petitioner and its members have a clear, present and substantial
9 right to require Defendants/Respondents to perform their duties under Labor Code sections 222
10 and 223.

11 85. At all times relevant herein, the State has been able to perform its duty
12 and comply with Labor Code sections 222 and 223. Notwithstanding such ability, the State has
13 knowingly failed and refused, and continues to fail and refuse, to pay the required hourly
14 wage to Category One and Two employees for two, and subsequently three days of work
15 performed in violation of Labor Code sections 222 and 223.

16 86. Plaintiff/Petitioner desires a judicial determination of its rights and a declaration of
17 Defendants/Respondents' obligations under Labor Code sections 222 and 223. Plaintiff/Petitioner
18 requests that this Court declare that Defendants/Respondents are statutorily obligated to pay all
19 Category One and Two employees for every hour and fraction thereof worked at the wage scale
20 designated in the prior Master MOU and that, by reducing Category One and Two employees
21 monthly salary by the amount required to compensate them for two and three days of work
22 (approximately 16 and 24 hours), Defendants/Respondents are failing to pay said hourly wage in
23 violation of Labor Code sections 222 and 223.

24 87. Plaintiff/Petitioner has no right of appeal from the failure of the Defendants/
25 Respondents to act as required by law, nor does Plaintiff/Petitioner have any available
26 administrative remedy to contest the action, nor does Plaintiff/Petitioner have a plain, speedy or
27 adequate remedy in the ordinary course of law other than the relief sought in this action.
28 Therefore, Plaintiff/Petitioner also seeks a peremptory writ of mandate compelling all

1 Defendants/Respondents to comply with their mandatory duty under Labor Code sections 222 and
2 223.

3 88. As a proximate result of the State's wrongful acts, the members that
4 Plaintiff/Petitioner represents have suffered lost income in the form of unpaid wages.

5 WHEREFORE, Plaintiff/Petitioner prays for the relief set forth below.

6 **FOURTH CAUSE OF ACTION**

7 **Failure to Provide Payment Earned Wages in**

8 **Negotiable Form in Violation of Labor Code section 212**

9 89. Plaintiff/Petitioner hereby incorporates by reference all of the foregoing
10 paragraphs as though fully set forth herein.

11 90. Defendants/Respondents, and each of them, were and are responsible for
12 the acts or omissions complained of herein.

13 91. California Labor Code section 212 reads, in pertinent part, as follows:

14 No person, or agent or officer thereof, shall issue in payment of
15 wages due, or to become due, or as an advance on wages to be
16 earned:

17 (1) Any order, check, draft, note, memorandum, or other
18 acknowledgment of indebtedness, ***unless it is negotiable and***
19 ***payable in cash, on demand,*** without discount at some established
20 place of business in the state, the name and address of which must
21 appear on the instrument, and at the time of its issuance and for a
22 reasonable time thereafter, which must be at least 30 days, the
23 maker or drawer has sufficient funds in, or credit, arrangement, or
24 understanding with the drawee for its payment.

25 (Cal. Lab. Code, § 212(a), emphasis added.) The Legislature's use of the word "shall" in this
26 statute demonstrates its intention that these acts are mandatory and that the DPA lacks discretion
27 not to comply. (Cal. Lab. Code, § 15 [“‘Shall’ is mandatory and ‘may’ is permissive.”])
28 Labor Code section 212 is made applicable to the State employer and SEIU represented
employees by operation of Labor Code section 220, which was amended in 2000 for the express
legislative purpose of applying Labor Code section 212 and most other provisions of
Division 2, Part 1, Chapter 1, Article 1 of the Labor Code to State employees.

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1 92. As detailed above, Government Code section 19826 prohibits Defendants/
2 Respondents from reducing the hourly rate of pay for Category One and Two employees without
3 express legislative approval, which is lacking here. Thus, by reducing Category One and Two
4 employees' total monthly pay by the amount they earn in three days of work (approximately
5 15%), Defendants/Respondents have failed and continue to fail to pay any wages for three days of
6 work per month (approximately 24 compensable hours).

7 93. Instead, Defendants/Respondents purport to compensate Category One and Two
8 employees for those two days of work in the form of deferred so-called "self-directed" furlough
9 days, which, according to the DPA's own Furlough Memo, cannot and "will not be cashed out."
10 Thus, by definition and as a matter of law, Defendants/Respondents' use of so-called "self-
11 directed" furlough days to compensate Category One and Two employees for three days of work
12 performed per month violates Labor Code section 212(a), which requires that payment of wages
13 be made in a manner that "is negotiable and payable in cash, on demand."

14 94. An actual controversy has arisen and now exists between Plaintiff/Petitioner and
15 Defendants/Respondents concerning their respective rights, duties, and obligations under Labor
16 Code section 212. Plaintiff/Petitioner contends that Defendants/Respondents have failed and
17 continue to fail to comply with their statutory obligation under Labor Code section 212 by failing
18 to pay Category One and Two employees for hours worked in a form that is "is negotiable and
19 payable in cash, on demand." Plaintiff/Petitioner is informed and believes that Defendants/
20 Respondents SCHWARZENEGGER and DPA dispute this contention.

21 95. Labor Code section 212, and the case law interpreting it, impose a clear,
22 present, and ministerial duty that Defendants/Respondents shall compensate all hours
23 worked by Category One and Two employees in a manner that "is negotiable and payable in cash,
24 on demand," and not in the form of some deferred ostensible benefit, whether or not said
25 benefit has cash value. Despite this ministerial duty, Defendants/Respondents are
26 compensating Category One and Two employees for approximately 15% of their work hours in
27 the form of deferred so-call "self-directed" furlough days, which, according to Defendants/
28 Respondents, have no cash value whatsoever.

1 reduction, at rates as they existed prior to implementation of the Order 08 and 09 and
2 Furlough Memo, for all hours worked during the preceding pay period.

3 b. Pursuant to Labor Code section 212, to pay Category One and Two
4 employees their full cash wages at the end of each pay period for all hours worked during
5 the pay period in a form that is "is negotiable and payable in cash, on demand."

6 c. Pursuant to Labor Code section 1171 *et seq.* and California Code of
7 Regulations, tit. 8, section 11000 *et seq.*, to pay in negotiable form at least the statutory
8 California minimum hourly wage to Category One and Two employees at the end of each
9 pay period for every hour or fraction thereof worked during the pay period.

10 d. Pursuant to Labor Code sections 222 and 223, to pay all Category One and
11 Two employees the full cash wage due for every hour and fraction thereof worked at the
12 wage scale designated in the prior Master MOU between SEIU and Defendants/
13 Respondents, said rate being set and binding by operation of Government Code section
14 19826.

15 2. An injunction ordering Defendants/Respondents to cease and desist from the
16 following unlawful actions:

17 a. Violating Government Code section 19826 by reducing salaries of
18 Category One and Two employees without prior approval of the California Legislature or
19 without a contemporaneous and commensurate reduction in workdays and/or work hours.

20 b. Violating Labor Code section 212 by failing to pay Category One and Two
21 employees their full cash wages at the end of each pay period for all hours worked during
22 the pay period in a form that is "is negotiable and payable in cash, on demand."

23 c. Violating Labor Code section 1171 *et seq.* and California Code of
24 Regulations, tit. 8, section 11000 *et seq.* by failing to pay in negotiable form at least the
25 statutory California minimum hourly wage to Category One and Two employees at the
26 end of each pay period for every hour or fraction thereof worked during the pay period.

27 d. Violating Labor Code sections 222 and 223 by failing to pay all Category
28 One and Two employees the full cash wage due for every hour and fraction thereof

1 worked at the wage scale designated in the prior Master MOU between SEIU and
2 Defendants/Respondents, said rate being set and binding by operation of Government
3 Code section 19826.

4 3. Declarations of legal rights and duties of SEIU represented Category One and Two
5 employees and Defendants/Respondents, respectively, as follows:

6 a. Government Code section 19826(b) prohibits the Defendants/
7 Respondents from reducing the total monthly salaries of Category One and Two
8 employees without prior approval of the California Legislature or without a
9 contemporaneous and commensurate reduction in workdays and/or work hours.

10 b. Labor Code section 212 requires that Defendants/Respondents pay
11 Category One and Two employees their full cash wages at the end of each pay period for
12 all hours worked during the pay period in a form that is "is negotiable and payable in
13 cash, on demand," and that Defendants/Respondents have violated and continued
14 to violate Labor Code section 212 by compensating three days' work (approximately 24
15 hours) per month in the form of a purported deferred leave benefit.

16 c. Labor Code section 1171 *et seq.*, and California Code of Regulations, tit. 8,
17 section 11000 *et seq.* require that Defendants/Respondents pay at least the statutory
18 California minimum hourly wage to Category One and Two employees in at the end of
19 each pay period for every hour or fraction thereof worked during the pay period, and that,
20 by failing to pay employees any cash compensation for two and three days' work per
21 month, Defendants/Respondents have violated and continue to violate Labor Code section
22 1171 *et seq.* and California Code of Regulations, tit. 8, section 11000 *et seq.*

23 d. Labor Code sections 222 and 223 requires that Defendants/Respondents
24 pay all Category One and Two employees for every hour and fraction thereof worked at
25 the wage scale designated in the prior Master MOU between SEIU and
26 Defendants/Respondents, said rate being set and binding by operation of Government
27 Code section 19826, and that, by failing to pay employees any cash compensation for two
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1 and three days' work per month, Defendants/Respondents have violated and continue to
2 violate Labor Code sections 222 and 223.

3 4. For unpaid wages, pursuant to Government Code section 19826 and Labor Code
4 sections 212, 222 and 223;

5 5. For unpaid California minimum wages, pursuant to Labor Code sections 1182.11,
6 1182.12, and 1194, as well as California Code of Regulations, tit. 8, section 11000, et. seq.;

7 6. For liquidated damages in additional sums equal to unpaid California minimum
8 wages, pursuant to Labor Code section 1194.2;

9 7. A Judgment embodying the foregoing and awarding Petitioner its costs of suit,
10 including attorneys' fees, pursuant to Government Code section 800, Code of Civil Procedure
11 section 1021.5, Labor Code section 1094, or any other legal basis; and


12 8. For damages, civil penalties and liquidated damages, pursuant to the contingencies
13 discussed in paragraph 34.

14 9. Such other relief as may be just.

15
16 DATED: August 5, 2010

SEIU LOCAL 1000

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19 By



ANNE M. GIESE
Attorneys for Plaintiff/Petitioner
SEIU Local 1000

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VERIFICATION

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2 I, YVONNE WALKER, declare under penalty of perjury under the laws of the State of
3 California that I am the President of SEIU Local 1000, which is a Petitioner in this action. I have
4 first-hand knowledge of the facts stated in the SECOND AMENDED VERIFIED PETITION
5 FOR WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE
6 RELIEF and could competently testify to them as a witness at a hearing or trial. I have read the
7 foregoing SECOND AMENDED VERIFIED PETITION FOR WRIT OF MANDATE AND
8 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF, and state that the facts
9 stated therein are true and correct, except as to those facts alleged on information or belief, and as
10 to those facts, I believe them to be true. Executed this 5th day of August, 2010 in Sacramento,
11 California.

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16 YVONNE WALKER
17 President, SEIU LOCAL 1000
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SEIU Local 1000
1808 14th Street
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DECLARATION OF SERVICE

CASE NAME: *PECG v. Arnold Schwarzenegger, et al. - (Lead Case)*
SEIU Local 1000 v. Arnold Schwarzenegger, et al.
COURT NAME: Alameda County Superior Court
CASE NUMBER: RG10494800 (*Lead*) / RG10507922

I am a citizen of the United States and a resident of the County of Yolo. I am over the age of eighteen (18) years and not a party to the above-entitled action. My business address is 1808 14th Street, Bldg. 1, Sacramento, California 95811.

I am familiar with Service Employees' International Union, Local 1000's practice whereby the mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day's mail is collected and deposited in a United States mailbox after the close of each day's business.

On August 5, 2010, I served the following:

**SECOND AMENDED VERIFIED PETITION FOR WRIT OF
MANDATE/PROHIBITION AND COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

[X] (BY ELECTRONIC SERVICE) Based upon a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication, that the transmission was unsuccessful.

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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 5, 2010, at Sacramento, California.



MARY A. WALSH