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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

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10 CALIFORNIA ASSOCIATION OF) Case No.: CPF-09-509695
11 PROFESSIONAL SCIENTISTS, PATTY)
12 VELEZ, VALERIE BROWN, CHRIS) PETITIONERS’/PLAINTIFFS’ REPLY TO
13 ROGERS AND JEFF TIEDEMAN) RESPONDENTS’ OPPOSITION TO WRIT
14) OF MANDATE
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Petitioners/Plaintiffs)
vs.) Date: January 21, 2010
Arnold Schwarzenegger, as) Time: 9:30 a.m.
Governor of the State of California;) Dept: 301
DEPARTMENT OF PERSONNEL)
ADMINISTRATION; JOHN CHIANG, as)
State Controller, JAN FRANK, as President of)
the STATE COMPENSATION INSURANCE)
FUND and Does 1 through 50, inclusive)
Respondents/Defendants)

INTRODUCTION

Petitioner/Plaintiff California Association of Professional Scientists (CAPS) has requested that the Court take judicial notice of three cases that were heard in Alameda County Superior Court¹ in which the issues raised in this proceeding were decided. In all three cases the Court issued writs of mandate ordering that Executive Orders S-16-08 and S-13-09 be set aside

¹ *Service Employees International Union Local 1000 and Yvonne Walker v. Arnold Schwarzenegger et al.* Alameda Superior Court Case No: RG09456750, *Union of American Physicians and Dentists v. Arnold Schwarzenegger et al.* Alameda Superior Court Case No: RG09456684 and *California Attorneys Administrative Law Judges and Hearing Officers in State Employment v. Arnold Schwarzenegger et al.* Alameda Superior Court Case No: RG9453982.

1 as to those employees who are compensated by special funds, holding that the Executive Orders
2 violate Government Code sections 16310(a) and 19851(a).

3
4 **ARGUMENT**

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6 **THE COURT MAY ISSUE A WRIT OF MANDATE TO SET ASIDE**
7 **THE EXECUTIVE ORDERS**

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9 Respondents argue that the Court may not issue a writ of mandate in this matter because
10 (1) there is no clear, present, and ministerial duty by Respondents entitling Petitioners to a writ
11 of mandate and (2) issuance of a writ would violate the doctrine of separation of powers.

12 Respondents' arguments are without merit.

13 As noted in Petitioners' moving papers, a writ of mandate is available to correct an abuse
14 of discretion by a public official, including the Governor of the State of California. Discretion is
15 abused when a public officer acts beyond the bounds of reason or in derogation of applicable
16 legal standards. *California Correctional Supervisors Organization v. Department of Corrections*
17 (2002) 96 Cal.App.4th 824, 827. Also, a writ may issue to reverse a budgetary decision where
18 such a decision eliminates the ability to carry out a mandatory function required by law. *Scott v.*
19 *Common Council* (1996) 44 Cal.App. 4th 684, 694.

20 CAPS contends that the Respondents abused their discretion in three respects. First,
21 Respondents implemented furloughs for special fund employees knowing that such furloughs
22 have no effect on reducing the General Fund deficit. Thus, the furlough of special fund
23 employees does not achieve the purpose of reducing the General Fund deficit.

24 Second, under Government Code section 16310(a) special funds may be loaned to the
25 General Fund only when such borrowing does not interfere with the purpose for which the
26 special fund was created. Where such loans take place, the special fund must be repaid with
27 interest. Respondents implemented the furloughs in order to increase internal borrowing from
28 special funds without regard to whether such borrowing interfered with the mandatory functions
29 of those funds. On its face, three day furloughs each month interferes with the function of the
30 special fund agencies, thus violating section 16310(a).

1 Third, Respondents apparently decided to furlough special fund employees simply for the
2 purpose of achieving “labor parity” without regard to whether such furloughs would reduce the
3 deficit in the General Fund or whether special fund agencies would be able to perform their
4 functions. Based on the above, the furloughing of special fund employees constitutes an abuse
5 of discretion on the part of Respondents that is subject to a writ of mandate.

6
7 **THE GOVERNOR DOES NOT HAVE THE AUTHORITY TO FURLOUGH**
8 **STATE EMPLOYEES PURSUANT TO GOVERNMENT CODE SECTIONS**
9 **19851 AND 19849**

10 Respondents contend that under Government Code sections 19851 and 19849 the
11 Governor has the authority to reduce the hours of state employees—furlough state employees.
12 Again, Respondents are incorrect.

13 The relevant part of section 19851(a) states that:

14 It is the policy of the state that the workweek of the state employee shall be
15 40 hours and the workday of state employees shall be eight hours, *except*
16 *that workweeks and workdays of a different number of hours may be*
established in order to meet the varying needs of the different state
agencies. (Emphasis added).

17 The Executive Orders provide for the furloughing of state employees three days per
18 month. The workweek reduction applied to all state employees without regard to the needs of
19 different state agencies they worked for. Section 19851(a) requires that the “varying needs of
20 different” state agencies be considered when altering the workweek and workdays. There is no
21 evidence that Respondents considered the varying needs of the different state agencies when
22 ordering the furloughs. Contrary to Respondents’ contention section 19581(a) places a
23 mandatory or ministerial duty on them to consider the varying needs of the different state
24 agencies before changing the 40 hour workweek and 8 hour workday. As noted by the Court in
25 the Alameda County cases “Respondents refusal to consider those varying needs of the different
26 state agencies before ordering and implementing furloughs conflicts with the requirements of
27 Section 19581. The failure to comply with the mandatory duty in Section 19851 was an abuse of
28 the Respondents’ discretion.”

29 Respondents’ reliance on section 19849 is also misplaced. Section 19849 does not give
30 Respondent Department of Personnel Administration the authority to make rules for furloughing
special fund employees three days per month. As noted above, the policy of the State is to have

1 a 40 hour workweek and an 8 hour workday. This policy may be altered to meet the varying
2 needs of the different state agencies. Where it has been determined that varying needs of
3 different state agencies require a change from the 40 hour workweek and the 8 hour workday,
4 Respondent DPA may adopt rules governing hours of work. However, section 19849 does not
5 authorize Respondent DPA to simply change rules governing the hours of work where there has
6 been no determination that the “varying needs” require a change from the 40 hour workweek and
7 8 hour workday. Here, Respondents failed to comply with their mandatory duty under section
8 19851(a) as there was no determination that the varying needs of the different special fund
9 agencies required the furloughing of employees. Therefore, section 19849 does not give
10 Respondents the authority to furlough employees of special fund agencies.

11 Respondents next argue that employees of special fund agencies must be furloughed in
12 order to achieve “labor parity.” This argument must also be rejected.

13 The stated purpose of the furloughs was to reduce the deficit in the General Fund. It is
14 beyond dispute that furloughing employees of special fund agencies does not reduce the General
15 Fund deficit. In fact, there is a strong argument that borrowing from special fund agencies
16 increases the General Fund deficit because borrowed special funds must be repaid with interest.
17 Since furloughing special fund employees does nothing to reduce the deficit of the General Fund,
18 the stated purpose of the furloughs is not achieved through “labor parity.”

19 Additionally, it is ironic that Respondents seek to justify the furloughs by arguing that the
20 collective bargaining process would be disrupted if Unit 10 employees of General Fund agencies
21 are furloughed three days per month and Unit 10 employees of Special Fund agencies are not.
22 Respondents implementation of the furloughs for Unit 10 employees was done unilaterally
23 without any concern about the meet and confer obligations that exist in the Dills Act under
24 Government Code sections 3516.5 and 3517. The frustration that General Fund employees
25 furloughed three days per month may feel if Special Fund employees were not is nothing
26 compared to the frustration all Unit 10 employees feel over Respondents complete failure to
27 meet and confer over the implementation of the furloughs or the impact of the furloughs.
28 Implementing furloughs to achieve “labor parity” does not reduce the General Fund deficit and,
29 as found by the Alameda County Superior Court, is not rationally related to any governmental
30 purpose.

1 actually increases the General Fund deficit because when the funds are repaid, and they must be,
2 interest is also paid to the special funds.

3 In sum, Respondents have abused their discretion by furloughing special fund employees
4 in Unit 10, and a writ should issue ordering Respondents to set aside the portions of Executive
5 Orders S-16-08 and S-13-09 affecting Unit 10 employees who are compensated by special funds.
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7 Dated: January 14, 2010
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Steven B. Bassoff—Attorney for
11 Petitioners/Respondents
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