

1 Government (“PECG”), Service Employees International Union, Local 1000
2 (“SEIU), California Statewide Law Enforcement Association (“CSLEA”),
3 International Union of Operating Engineers, Local 39 (“IUOE”), Association of
4 California State Supervisors (“ACSS”), California Correctional Supervisor’s
5 Organization (“CCSO”), in these consolidated cases came on for hearing on
6 August 9, 2010 at 10:00 a.m. in Department 17 of this Court, the Honorable Steven
7 A. Brick presiding. The hearing was scheduled pursuant to CASE’s initial ex parte
8 application, which was filed on August 3, 2010, and continued to this date so that
9 the other Petitioners/Plaintiffs would have an opportunity to decide whether to join
10 in CASE’s application or file their own, and so that Respondents would have an
11 opportunity to file papers in opposition. Pursuant to the Court’s scheduling order,
12 as modified at Respondents’ request, other Petitioners/Plaintiffs filed and served
13 their moving papers on August 5th; Respondents served their opposition papers
14 before noon on August 7th and filed them today.

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19 The Court has carefully considered all of the papers filed in support of and
20 in opposition to the applications, provided the parties in advance with questions to
21 be addressed at the hearing, and had extensive oral argument. The Court has taken
22 judicial notice of various documents as requested by the parties and advised the
23 parties on the record of its resolution of evidentiary objections.
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1 Good cause appearing therefor, and pursuant to the schedule agreed upon by
2 the parties at the hearing this morning, the Court hereby ORDERS Arnold
3 Schwarzenegger, as Governor of the State of California, the Department of
4 Personnel Administration, and John Chiang, as Controller of the State of California
5 TO SHOW CAUSE on September 13, 2010 at 9:00 a.m. in Department 17 why
6 they should not be preliminarily enjoined from implementing or enforcing the
7 provisions of Executive Order S-12-10 insofar as they require the furlough of state
8 workers in bargaining units and classifications represented by Petitioners/Plaintiffs.
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10 Petitioners shall file and serve their further papers in support by August 20, 2010.
11 Respondents shall file their further opposition papers by August 31, 2010.
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13 Petitioners shall file their reply papers by September 7, 2010.
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15 With respect to Petitioners/Plaintiffs' applications for temporary restraining
16 orders, the parties agree that the purpose of a restraining order is to preserve the
17 status quo until a decision can be made on a preliminary injunction. (See
18 *Landmark Holding Group, Inc. v. Superior Court* (1987) 193 Cal.App.3d 525,
19 527.) The Court agrees with Petitioners that the status quo at this time is that
20 furloughs are scheduled to begin on August 13, 2010, and that those furloughs are
21 challenged by the various amended petitions and complaints in these consolidated
22 actions. Hence, not granting a restraining order would allow the status quo to be
23 changed.
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1 Under Code of Civil Procedure section 527(a): “A preliminary injunction
2 may be granted at any time before judgment upon a verified complaint, or upon
3 affidavits if the complaint in the one case, or the affidavits in the other, show
4 satisfactorily that sufficient grounds exist therefor.” Section 527(b) provides that a
5 temporary restraining order or preliminary injunction, or both, may be granted in
6 an action pleaded as a class action prior to class certification. Section 526(a),
7 provides that an injunction may be granted:
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10 . . .

11 (2) When it appears by the complaint or affidavits that the commission or
12 continuance of some act during the litigation would produce . . . great or
irreparable injury, to a party to the action.

13 (3) When it appears, during the litigation, that a party to the action is doing,
14 or threatens, or is about to do . . . some act in violation of the rights of
15 another party to the action respecting the subject of the action, and tending
to render the judgment ineffectual.

16 (4) When pecuniary compensation would not afford adequate relief;

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18 (5) Where it would be extremely difficult to ascertain the amount of
compensation which would afford adequate relief.

19 The cases interpreting these provisions apply the same standards to issuance of a
20 temporary restraining order as to a preliminary injunction. (See, e.g., *Church of*
21 *Christ in Hollywood vs. Sup. Ct.* (2002) 99 Cal.App.4th 1244, 1251 citing *IT Corp.*
22 *v. County of Imperial* (1983) 35 Cal.3d 63, 69); *Scripps Health v. Marin* (1999) 72
23 Cal.App.4th 324, 334; see also 38 Cal.Jur.3d §9.) In deciding whether to issue a
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25 temporary restraining order, a trial court must:

1 “evaluate two interrelated factors... The first is the likelihood that the
2 plaintiff will prevail on the merits at trial. The second is the interim
3 harm that the plaintiff is likely to sustain if the [restraining order]
4 were denied as compared to the harm that the defendant is likely to
suffer if the [order] were issued.”

5 (*Church of Christ, supra*, at 1251, quoting *IT Corp. v. County of Imperial* (1983)
6 35 Cal.3d 63, 69; see also *White v. Davis* (2003) 30 Cal.4th 528, 554.) Further, the
7 Court must consider the public interest when a party seeks to enjoin public officers
8 and agencies. (*O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452, 1471;
9 *Tahoe Keys Property Owners’ Assoc. v. State Water Resources Control Board*
10 *(1994)* 23 Cal.App.4th 1459, 1472-73.)

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12 With respect to Petitioners’ likelihood of success on the merits, the Court
13 has directed counsel to brief the legislative history with respect to the key
14 Government code sections which Petitioners rely upon. Pending consideration of
15 that information, the Court is satisfied that Petitioners have raised at least serious
16 questions concerning Respondents’ authority to implement furloughs through the
17 Governor’s Executive Order. Further, at this early stage in the litigation, it appears
18 that the Executive Order cannot be reconciled with Government Code sections
19 8558, 11020, and 16310(a).
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23 Petitioners have also made a sufficient showing of great or irreparable harm
24 to at least some of their members through the thirty plus declarations submitted
25 with the applications. The verified petitions allege such harm to all of their

1 members. Examples of the types of great or irreparable harm that have been
2 submitted include being members put in desperate financial circumstances by
3 additional furloughs because the previous furlough orders have depleted savings
4 and retirement accounts already; homes have been lost or are at risk of being lost
5 because of inability to keep current on mortgages; credit scores have declined
6 because of inability to pay bills, rendering it difficult or impossible to obtain
7 further credit; members have been rendered unable to afford food for an adequate
8 diet for themselves and their families or to buy necessary medicines. The stress
9 and emotional strain of further furlough deductions amounting to a 14-15% pay cut
10 can never be fully measured or adequately compensated, even if Petitioners win on
11 the merits and are awarded back pay after the long delay inherent in litigation of
12 this type. (Cf. *White v. Davis, supra*, 30 Cal.4th 528, 561 [taking into
13 consideration, on review of preliminary injunction, consequent “great immediate
14 harm to the many persons who would be deprived of vital funds, frequently
15 necessary to obtain the necessities of life”]; *Social Services Union v. County of San
16 Diego* (1994) 158 Cal.App.3d 1126, 1131 [affirming denial of stay because of
17 “irreparable damage to the employees who would have completely lost the benefits
18 of the writ had it been stayed.”])

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24 The evidence of harm to Respondents and to the public interest if the
25 retraining order is granted, on the other hand, is far less clear. The Court accepts

1 the reality that the State is in extremely serious cash and fiscal straits.
2 Respondents' motivation to save cash through the furloughs, among many other
3 programs, in order to make less likely the need for the State to issue warrants in
4 payment of bills, and in order to preserve the State's ability to borrow money
5 externally when needed, is understandable. However, Respondents have failed to
6 show that the \$80 million to \$110 million likely to be saved through
7 implementation of the proposed furloughs between now and a decision on a
8 preliminary injunction will accomplish its purposes. Put another way, it appears
9 just as likely that the State's financial woes will continue – at least until a new
10 budget has been adopted by the Legislature and signed by the Governor – whether
11 the proposed furloughs are allowed to be implemented on August 13, 2010 or not.

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15 Hence, the Court finds, on the limited record before it, that the balance of
16 hardships tips in favor of Petitioners.

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18 Consequently, IT IS HEREBY ORDERED THAT Respondents Arnold
19 Schwarzenegger, as Governor of the State of California, the Department of
20 Personnel Administration, and John Chiang, as Controller of the State of
21 California, and their agents are ENJOINED AND RESTRAINED from
22 implementing and/or enforcing the provisions of Executive Order S-12-10 insofar
23 as they require the furlough of state workers in bargaining units and classifications
24 represented by Petitioners/Plaintiffs, and a resulting reduction in the salaries of
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1 those state workers, until the Court issues its decision on the order to show cause
2 herein.

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4 Dated: August 9, 2010.

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Steven A. Brick
7 Judge of the Superior Court
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