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INTERNATIONAL UNION OF
7 OPERATING ENGINEERS,
LOCALS 3, 12, 39 and 501

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OF ORIGINAL FILED
Los Angeles Superior Court

OCT 14 2009

John A. Clarke, Executive Officer/Clerk
By SHAUNNA WESLEY, Deputy

8 SUPERIOR COURT OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

10 INTERNATIONAL UNION OF
11 OPERATING ENGINEERS,
12 LOCALS 3, 12, 39 and 501,

13 Petitioners/Plaintiffs,

14 v.

15 ARNOLD SCHWARZENEGGER, as
16 Governor of the State of California; DAVID
17 GILB as Director of the Department of
18 Personnel Administration; JOHN CHIANG,
19 Controller of the State of California;
20 EDMUND G. BROWN, JR., as Attorney
21 General of the State of California; STEVE
22 POIZNER, Insurance Commissioner of the
23 State of California; CARRIE LOPEZ,
24 Director of the Department of Consumer
25 Affairs; GEORGE VALVERDE, Director of
26 the Department of Motor Vehicles; KEN
27 LEWIS, Chief Executive Officer of the Public
28 Employees' Retirement System; STEVE
HARDY, Director of the Department of
Alcoholic Beverage Control; J. A. FARROW,
Commissioner of the California Highway
Patrol; JOAN BORUCKI, Director of the
California State Lottery Commission; DON
KOCK, Director of the Department of Fish
and Game; TONY SAUER, Director of the
Department of Rehabilitation; MARY D.
NICHOLS, Chairman of the Air Resources
Board; PATRICK HENNING, Director of
the Employment Development Department;
LESTER SNOW, Director of the Department
of Water Resources; BRIDGETT LUTHER,
Director of the Department of Conservation;
DAVID MAXWELL-JOLLY, Director of the

Case No. BC 423409

FIRM

AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

1 Department of Health Care Services; MARK
2 HORTON, Director of the Department of
3 Public Health; JOHN A. WAGNER,
4 Director of the Department of Social
5 Services; WILL KEMPTON, Director of the
6 California Department of Transportation;
7 RUTH COLEMAN, Director of the
8 Department of Parks and Recreation;
9 WILLIAM H. WADE, Adjutant General of
10 the Military Department; WILL BUSH,
11 Director of the Department of General
12 Services; LINDA ADAMS, Secretary for
13 Environmental Protection; and DOES 1
14 through 100,

15 Respondents/Defendants.

16 INTRODUCTION

17 1. On December 19, 2008, Governor Arnold Schwarzenegger issued Executive Order S-16-08,
18 which made a number of proclamations relating to a General Fund deficit, at that time projected
19 to grow to \$42 billion over the following 18 months. The order further proclaimed that "a
20 furlough will reduce current spending and immediately improve the state's ability to meet its
21 obligations to pay for essential services of the State . . ." The order directs the Department of
22 Personnel Administration ("DPA") to implement two furloughs per month "regardless of funding
23 source" but directs DPA to allow limited exemptions through "a limited exemption process."
24 Other than the general "power and authority vested in me by the Constitution and statutes of the
25 State of California," the only specific authority cited in the order was Government Code section
26 3516.5.

27 2. On February 19, 2009, the Legislature passed a budget to close the \$42 billion deficit
28 referenced in the Executive Orders. That same day, Governor Schwarzenegger held a press
conference in which he announced that he would sign the budget on Friday, February 20, 2009.

On February 20, 2009, Governor Arnold Schwarzenegger signed the budget passed by the
Legislature the previous day. The budget purported to resolve the deficits in the fiscal years 2008-
09 and 2009-10. The passage of the budget eliminates the stated basis for the furloughs. To the
extent the Executive Order purported to be authorized under the emergency provisions of
Government Code section 3516.5, the emergency is over.

1 3. On July 1, 2009, Governor Arnold Schwarzenegger issued Executive Order S-13-09, which
2 made a number of similar proclamations relating to a General Fund deficit, then projected to be
3 "at least \$3 billion worse than projected putting the size of the State's shortfall at more than \$24
4 billion for fiscal years 2008-09 and 2009-10." The order further proclaimed that "an additional
5 furlough day per month is necessary to continue to reduce current spending and immediately
6 improve the State's ability to meet its obligations to pay for essential services of the State . . ." The
7 order directs the Department of Personnel Administration ("DPA") to implement three furlough
8 days per month "regardless of funding source" but directs DPA to allow limited exemptions
9 through "a limited exemption process." Other than the general "power and authority vested in
10 me by the Constitution and statutes of the state of California," the only specific authority cited in
11 the order was Government Code section 3516.5.

12 4. Many employees impacted by the furloughs are not paid out of the General Fund. There
13 are dozens of state agencies and departments which are funded in whole or in part by federal
14 funds, user fees, or other sources of revenue apart from the General Fund. Furloughing these
15 employees does not result in any General Fund savings. Accordingly, the furloughs have no
16 rational basis and are arbitrary, capricious, and thereby unlawful. Moreover, furloughing those
17 employees is a wasteful mismanagement of fiscal and personnel resources by agencies who have
18 been charged with carrying out specific missions, and which are unable to do so as a result of the
19 furloughs.

20
21 **I.**
22 **PARTIES**

23 5. Petitioner/Plaintiff International Union of Operating Engineers ("IUOE") is, and at all times
24 herein mentioned was, a labor union organized and existing under the laws of the state of
25 California, with its principal place of business in the County of Sacramento, State of California.
26 IUOE is the exclusive bargaining representative of various craft and maintenance workers in state
27 Bargaining Unit 12. IUOE represents approximately 11,000 employees in more than 35 different
28 state departments, boards and commissions. Many IUOE members are paid salaries from revenue

1 sources other than General Fund revenues. IUOE is a state taxpayer.

2 6. Respondent/Defendant ARNOLD SCHWARZENEGGER is the elected Governor of the
3 State of California. Pursuant to Government Code section 3513, subdivision (j), and section 3517,
4 the Governor is the employer of state employees in Bargaining Unit 12, for purposes of bargaining
5 or meeting and conferring in good faith under the Ralph C. Dills Act. Governor Schwarzenegger
6 is named in his official capacity only.

7 7. Respondent/Defendant DAVID GILB is the Director of the California Department of
8 Personnel Administration (DPA) and is responsible for managing the non-merit aspects of the
9 state's personnel system. DPA serves as the Governor's designated representative for purposes
10 of collective bargaining, and for purposes of meeting and conferring with the exclusive
11 representatives. (See Gov. Code § 19815.2; Gov Code. § 3517.) Mr. Gilb is named in his official
12 capacity only.

13 8. Respondent/Defendant JOHN CHIANG is a constitutional officer and is the elected State
14 Controller of the State of California. (Cal. Const. Art. V, § 11.) Pursuant to Government Code
15 section 12410, the State Controller shall superintend the fiscal concerns of the state. The Controller
16 shall audit all claims against the state, and may audit the disbursement of any state money, for
17 correctness, legality, and for sufficient provisions of law for payment. In addition, the Controller
18 shall draw warrants on the Treasurer for the payment of money directed by law to be paid out of
19 the State Treasury, but a warrant shall not be drawn unless authorized by law. (Gov. Code §
20 12440.) Mr. Chiang is named in his official capacity only.

21 9. Respondent/Defendant EDMUND G. BROWN, JR., is the Attorney General of the State of
22 California and is the head of the Department of Justice. (Government Code sec. 12510.) The
23 Department of Justice employees IUOE members in positions funded by sources other than the
24 General Fund. Attorney General Brown is named in his official capacity only.

25 10. Respondent/Defendant STEVE POIZNER is the Insurance Commissioner of the State of
26 California and is the head of the Department of Insurance. (Ins. Code Sec. 12906.) The
27 Department of Insurance employs an IUOE member in a position funded by sources other than
28 the General Fund. Mr. Poizner is sued in his official capacity only.

11. Respondent/Defendant CARRIE LOPEZ is the Director of Consumer Affairs which employs

1 IUOE members in positions funded by sources other than the General Fund. Ms. Lopez is sued
2 in his official capacity only.

3 12. Respondent/Defendant GEORGE VALVERDE is the Director of the Department of Motor
4 Vehicles which employs IUOE members in positions funded by sources other than the General
5 Fund. Mr. Valverde is sued in his official capacity only.

6 13. Respondent/Defendant KEN LEWIS is the Chief Executive Officer of the Public Employees'
7 Retirement System, which employs IUOE members in positions funded by sources other than the
8 General Fund. Mr. Lewis is sued in his official capacity only.

9 14. Respondent/Defendant STEVE HARDY is the Director of the Department of Alcoholic
10 Beverage Control which employs an IUOE member in a position funded by sources other than the
11 General Fund. Mr. Hardy is sued in his official capacity only.

12 15. Respondent/Defendant J. A. FARROW is the Commissioner of the California Highway
13 Patrol, which employs IUOE members in positions funded by sources other than the General
14 Fund. Mr. Farrow is sued in his official capacity only.

15 16. Respondent/Defendant JOAN BORUCKI is the Director of the California State Lottery
16 Commission which employs IUOE members in positions funded by sources other than the General
17 Fund. Ms. Borucki is sued in her official capacity only.

18 17. Respondent/Defendant DON KOCK is the Director of the Department of Fish and Game
19 which employs IUOE members in positions funded by sources other than the General Fund. Mr.
20 Kock is sued in his official capacity only.

21 18. Respondent/Defendant TONY SAUER is the Director of the Department of Rehabilitation
22 which employs an IUOE member in a position funded by sources other than the General Fund.
23 Mr. Sauer is sued in his official capacity only.

24 19. Respondent/Defendant MARY D. NICHOLS is the Chairman of the Air Resources Board
25 which employs an IUOE member in a position funded by sources other than the General Fund.
26 Ms. Nichols is sued in her official capacity only.

27 20. Respondent/Defendant PATRICK HENNING is the Director of the Employment
28 Development Department which employs IUOE members in positions funded by sources other
than the General Fund. Mr. Henning is sued in his official capacity only.

1 21. Respondent/Defendant LESTER SNOW is the Director of the Department of Water
2 Resources which employs IUOE members in positions funded by sources other than the General
3 Fund. Mr. Snow is sued in his official capacity only.

4 22. Respondent/Defendant BRIDGETT LUTHER is the Director of the Department of
5 Conservation which employs IUOE members in positions funded by sources other than the
6 General Fund. Mr. Luther is sued in his official capacity only.

7 23. Respondent/Defendant DAVID MAXWELL-JOLLY is the Director of the Department of
8 Health Care Services which employs IUOE members in positions funded by sources other than
9 the General Fund. Mr. Maxwell-Jolly is sued in his official capacity only.

10 24. Respondent/Defendant MARK HORTON is the Director of the Department of Public
11 Health which employs IUOE members in positions funded by sources other than the General
12 Fund. Dr. Horton is sued in his official capacity only.

13 25. Respondent/Defendant JOHN A. WAGNER is the Director of the Department of Social
14 Services which employs an IUOE member in a position funded by sources other than the General
15 Fund. Mr. Wagner is sued in his official capacity only.

16 26. Respondent/Defendant WILL KEMPTON is the Director of the California Department of
17 Transportation which employs IUOE members in positions funded by sources other than the
18 General Fund. Mr. Kempton is sued in his official capacity only.

19 27. Respondent/Defendant RUTH COLEMAN is the Director of the Department of Parks and
20 Recreation which employs IUOE members in positions funded by sources other than the General
21 Fund. Ms. Coleman is sued in her official capacity only.

22 28. Respondent/Defendant Major General WILLIAM H. WADE II is the Adjutant General of
23 the Military Department which employs IUOE members in positions funded by sources other than
24 the General Fund. Major General Wade is sued in his official capacity only.

25 29. Respondent/Defendant WILL BUSH is the Director of the Department of General Services
26 which employs IUOE members in positions funded by sources other than the General Fund. Mr.
27 Bush is sued in his official capacity only.

28 30. Respondent/Defendant LINDA ADAMS is the Secretary for Environmental Protection
which employs IUOE members in positions funded by sources other than the General Fund. Ms.

1 Adams is sued in her official capacity only.

2 31. DOES 1 through 100 are the heads of various additional agencies, departments, boards and
3 commissions which employ IUOE members in positions which are funded by sources other than
4 the General Fund. Petitioner/Plaintiff will identify those persons with more specificity after
5 discovery and investigation.

6 **II.**
7 **VENUE**

8 32. The California Attorney General has an office within the City and County of Los Angeles,
9 making Los Angeles County an appropriate venue. (Code of Civ. Proc. § 401.)

10 **III.**
11 **THE EXECUTIVE ORDERS**

12 33. The Governor's Executive Orders (a true and correct copy of which are attached as Exhibits
13 A and B), made a number of proclamations relating to a perceived fiscal cash crisis, and the
14 Legislature's failure to "effectively" address the crisis.

15 34. Other than the general "power and authority vested in me by the Constitution and statutes
16 of the State of California," the only specific authority cited in the orders was Government Code
17 section 3516.5. Section 3516.5 does not define "emergency" nor does it empower the Governor to
18 "furlough" state employees or otherwise reduce their wages. It merely provides an exception to
19 the requirement of providing notice to, and an opportunity to bargain with, the exclusive
20 representatives of employees of the state prior to effecting changes to the terms and conditions
21 of employment.

22 35. The orders specifically direct DPA to adopt and implement a furlough of represented state
23 employees. (Exhibit A, p. 2.) A furlough of three days per month results in a pay reduction of
24 approximately 13.8 percent per month.

25 36. The first finding in the Executive Orders refers exclusively to the looming General Fund
26 deficit. The Executive Orders are silent as to the status of the many Special Fund agencies which
27 employ IUOE members, and for which there is no looming deficit or fiscal emergency.

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IV.
SPECIAL FUND AGENCIES

37. The Department of Insurance ("DOI") employs approximately one (1) IUOE member. The salary of the IUOE member at DOI is funded entirely by fees imposed on insurance premiums. Not a single General Fund dollar goes to support the budget of DOI. Accordingly, furloughs at DOI result in reduced state services while achieving no savings whatsoever to the General Fund. On the contrary, every dollar not paid to DOI employees incrementally increases the state's budget deficit, in that the state loses the income tax revenue that DOI employees would pay on that income with no offsetting decrease in state spending.

38. The Department of Consumer Affairs ("DCA") employs approximately seven (7) IUOE members. DCA is funded from a variety of more than 40 special funds, the vast majority of which are generated from licensing fees imposed upon the licenses of the various professions which are regulated by bureaus within DCA. Not a single General Fund dollar goes to support the budget of DCA. Accordingly, furloughs at DCA result in reduced state services while achieving no savings whatsoever to the General Fund. On the contrary, every dollar not paid to DCA employees incrementally increases the state's budget deficit, in that the state loses the income tax revenue that DCA employees would pay on that income with no offsetting decrease in state spending.

39. The Department of Motor Vehicles ("DMV") employs approximately 23 IUOE members. DMV is funded entirely through a variety of approximately five (5) special funds, whose revenues are generated largely by vehicle registration and license fees. Not a single General Fund dollar goes to support the budget of DMV. Accordingly, furloughs at DMV result in reduced state services while achieving no savings whatsoever to the General Fund. On the contrary, every dollar not paid to DMV employees incrementally increases the state's budget deficit, in that the state loses the income tax revenue that DMV employees would pay on that income with no offsetting decrease in state spending.

40. The Public Employees' Retirement System ("PERS") employs approximately three (3) IUOE members. The PERS budget receives no General Fund dollars whatsoever. Rather, the PERS budget is funded from a variety of approximately nine (9) different special funds. Accordingly,

1 furloughs at PERS result in reduced state services while achieving no savings whatsoever to the
2 General Fund. On the contrary, every dollar not paid to PERS employees incrementally increases
3 the state's budget deficit, in that the state loses the income tax revenue that PERS employees
4 would pay on that income with no offsetting decrease in state spending.

5 41. The Department of Alcoholic Beverage Control ("ABC") employs approximately one (1)
6 IUOE member. The ABC budget is funded entirely out of federal dollars and the Alcoholic
7 Beverages Control Fund which generates money from the sale of liquor licenses. The ABC budget
8 receives no General Fund dollars. Accordingly, furloughs at ABC result in reduced state services
9 while achieving no savings whatsoever to the General Fund. On the contrary, every dollar not
10 paid to ABC employees incrementally increases the state's budget deficit, in that the state loses the
11 income tax revenue that ABC employees would pay on that income with no offsetting decrease
12 in state spending.

13 42. The California Highway Patrol ("CHP") employs approximately 542 IUOE members. The
14 CHP budget is funded entirely out of a variety of approximately seven special funds, the vast
15 majority of which comes from the Motor Vehicles Account, State Transportation Fund. The CHP
16 budget receives no General Fund dollars. Accordingly, furloughs at CHP result in reduced state
17 services while achieving no savings whatsoever to the General Fund. On the contrary, every
18 dollar not paid to CHP employees incrementally increases the state's budget deficit, in that the
19 state loses the income tax revenue that CHP employees would pay on that income with no
20 offsetting decrease in state spending.

21 43. The California State Lottery Commission ("CSLC") employs approximately 36 IUOE
22 members. The CSLC is funded entirely through the sales of lottery tickets. The CSLC budget
23 receives no General Fund dollars. Accordingly, furloughs at CSLC result in reduced state services
24 while achieving no savings whatsoever to the General Fund. On the contrary, every dollar not
25 paid to CSLC employees incrementally increases the state's budget deficit, in that the state loses
26 the income tax revenue that CSLC employees would pay on that income with no offsetting
27 decrease in state spending.

28 44. The Department of Fish and Game ("DFG") employs approximately 31 IUOE members.
Approximately 84% of DFG's budget is paid for directly with special fund dollars consisting of

1 approximately 20 special funds. Less than 17 percent of DFG's budget comes from the General
2 Fund. All IUOE member positions at DFG are funded entirely from these special funds.
3 Accordingly, furloughs at DFG result in reduced state services while achieving no savings
4 whatsoever to the General Fund. On the contrary, every dollar not paid to DFG employees
5 incrementally increases the state's budget deficit, in that the state loses the income tax revenue that
6 DFG employees would pay on that income with no offsetting decrease in state spending.

7 45. The Department of Rehabilitation ("DOR") employs approximately one (1) IUOE member.
8 Approximately 82% of DOR's budget is paid for directly with federal dollars. Approximately
9 three other special funds contribute another 3% of the DOI budget. Less than 15 percent of DOR's
10 budget comes from the General Fund. All IUOE member positions at DOR are funded entirely
11 from these federal or special funds. Accordingly, furloughs at DOR result in reduced state
12 services while achieving no savings whatsoever to the General Fund. On the contrary, every
13 dollar not paid to DOR employees incrementally increases the state's budget deficit, in that the
14 state loses the income tax revenue that DOR employees would pay on that income with no
15 offsetting decrease in state spending.

16 46. The Air Resources Board ("ARB") employs approximately one (1) IUOE member.
17 Approximately 99.9% of ARB's budget is paid for out of a variety of approximately 9 different
18 special funds. Less than 3 hundredths of one percent of the ARB budget comes from the General
19 Fund. Furloughs in this agency have a negligible effect on the General Fund. In fact, given the
20 minuscule percentage of General Fund dollars that go to the ARB budget, furloughs at ARB
21 actually increase the state's budget deficit, in that the state loses the income tax revenue that ARB
22 employees would pay on that income with no offsetting decrease in state spending.

23 47. The Employment Development Department ("EDD") employs approximately 21 IUOE
24 members. Approximately 90% of EDD's budget is paid for directly with federal dollars.
25 Approximately seven other special funds contribute almost the entire remaining balance of EDD's
26 total budget. Less than one-quarter of one percent of EDD's budget comes from the General
27 Fund. Furloughs in this agency have a negligible effect on the General Fund. In fact, given the
28 minuscule percentage of General Fund dollars that go to the EDD budget, furloughs at EDD
actually increase the state's budget deficit, in that the state loses the income tax revenue that EDD

1 employees would pay on that income with no offsetting decrease in state spending.

2 48. The Department of Water Resources ("DWR") employs approximately 587 IUOE members.
3 Approximately 98% of DWR's budget is paid for out of a variety of approximately 20 different
4 special funds, including, but not limited to: 1) payments from the state water contractors for
5 deliver of water; 2) the sale of excess electricity supplied by various generating facilities; 3)
6 surcharges on payments from California ratepayers to the three investor-owned utilities (PG&E,
7 Southern California Edison and San Diego Gas & Electric). Less than two percent of DWR's
8 budget comes from the General Fund. Furloughs in this agency have a negligible effect on the
9 General Fund. In fact, given the minuscule percentage of General Fund dollars that go to the
10 DWR budget, furloughs at DWR actually increase the state's budget deficit, in that the state loses
11 the income tax revenue that DWR employees would pay on that income with no offsetting
12 decrease in state spending.

13 49. The Department of Conservation ("DOC") employs approximately two (2) IUOE members.
14 Approximately 99% of DOC's budget is paid for out of a variety of approximately 22 different
15 special funds, the majority of which comes from the California Beverage Container Recycling
16 Fund. Only approximately one percent of DOC's budget comes from the General Fund.
17 Furloughs in this agency have a negligible effect on the General Fund. In fact, given the minuscule
18 percentage of General Fund dollars that go to the DOC budget, furloughs at DOC actually
19 increase the state's budget deficit, in that the state loses the income tax revenue that DOC
20 employees would pay on that income with no offsetting decrease in state spending.

21 50. The Department of Health Care Services ("DHCS") employs approximately three (3) IUOE
22 members. More than half of DHCS's budget comes directly from federal Medicaid dollars. DHCS
23 is also funded by approximately a dozen other special funds. The salaries of IUOE members
24 employed by DHCS are paid for in large part out of these funds, and thus furloughs in this agency
25 have only a marginal effect on the General Fund.

26 51. The Department of Public Health ("DPH") employs approximately 17 IUOE members.
27 Approximately half of DPH's budget comes directly from federal dollars. Approximately 39% of
28 DPH's budget comes from a variety of special funds. The salaries of IUOE members employed
by DPH are paid for in large part out of these funds. Only 11% of the DPH budget comes from

1 the General Fund, and thus furloughs in this agency have only a marginal effect on the General
2 Fund.

3 52. The Department of Justice ("DOJ") employs approximately four (4) IUOE members. More
4 than half of DOJ's budget comes from a variety of approximately 30 different special funds. The
5 salaries of many other IUOE members employed at DOJ are paid in whole or in part out of special
6 funds or federal dollars. Thus, furloughs in this agency have only a marginal effect on the General
7 Fund.

8 53. The Department of Social Services ("DSS") employs approximately one (1) IUOE member.
9 Approximately 30% of DSS's budget comes from federal dollars. Another 20% of the budget
10 comes from a variety of approximately 20 different special funds. The salaries of the IUOE
11 member employed by DSS is paid for in large part out of these funds, and thus furloughs in this
12 agency have only a marginal effect on the General Fund.

13 54. The California Department of Transportation ("CalTRANS") employs approximately 4,652
14 IUOE members. Approximately 27% of CalTRANS's budget comes from federal dollars. Another
15 60% of the budget comes from a variety of approximately 21 different special funds. Only 13%
16 of the CalTRANS budget is funded by the General Fund. The salaries of IUOE members
17 employed by CalTRANS are paid for in large part out of these federal and special funds, and thus
18 furloughs in this agency have only a marginal effect on the General Fund.

19 55. The Department of Parks and Recreation ("DPR") employs approximately 1,018 IUOE
20 members. Approximately 80% DPR's budget comes from a variety of approximately 16 different
21 special funds, including some federal dollars. Less than 20% of the DPR budget comes from the
22 General Fund. Accordingly, furloughs in this agency have only a marginal effect on the General
23 Fund.

24 56. The Military Department ("DM") employs approximately 78 IUOE members.
25 Approximately 70% DM's budget comes from a variety of approximately 5 different special funds,
26 including some federal dollars. Just over 30% of the DM budget comes from the General Fund.
27 Accordingly, furloughs in this agency have only a marginal effect on the General Fund.

28 57. The Secretary for Environmental Protection ("SEP") employs approximately two (2) IUOE
members. Approximately 99.8% SEP's budget comes from a variety of approximately 17 different

1 special funds and accounts. Just over .1% of the SEP budget comes from the General Fund.
2 Accordingly, furloughs in this agency have only a marginal effect, if any, on the General Fund.
3 58. The Department of General Services ("PGS") employs approximately 488 IUOE members.
4 Approximately 99.5% PGS's budget comes from a variety of approximately 16 different special
5 funds and accounts. Just over .5% of the PGS budget comes from the General Fund. Accordingly,
6 furloughs in this agency have only a marginal effect, if any, on the General Fund.

7 **V.**
8 **DUTIES OF RESPONDENT AGENCIES**

9 59. Each of the named respondent agencies has been authorized and charged by the Legislature
10 to carry out their respective missions. To that end, the agencies have sought, and the Legislature
11 has approved, funding for positions occupied by IUOE members. The special funds appropriated
12 for those provisions are required by law to be expended in a manner that furthers their intended
13 purpose. By authorizing, funding, and filling positions with IUOE members, both the respondents
14 and the Legislature have determined that the duties of those IUOE members are essential to
15 carrying out the mission of the agency and ensuring the proper administration of those special
16 funds.

17 60. Implementing a mandatory furlough of three days per month on IUOE members employed
18 in the respondent agencies means that IUOE members are not able to carry out their duties as
19 intended. As a result, important work deemed necessary to the proper administration of the
20 aforesaid special funds will not be completed. Vital health and welfare services will be hindered,
21 and public safety will be detrimentally impacted as a result of the respondent agencies' decision
22 to furlough IUOE members and prevent them from performing their necessary duties.

23 61. Moreover, many of the IUOE members employed at the respondent agencies have state and
24 federal mandates to meet in terms of deadlines or quotas. Forcing these IUOE members to be
25 furloughed three days per month hinders their ability to comply with these mandates, limits the
26 ability of the respondent agencies to fulfill their respective missions, and jeopardizes the state's
27 ability to meet its obligations.

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VI.
FURLOUGH EXEMPTION FOR SPECIAL FUND AGENCIES

62. The action taken by respondents is quite overbroad in light of the emergency which they claim justifies the action. They are seeking to unilaterally impose furloughs on employees in agencies where there is no justification for their actions. As a result, the furlough has no rational basis and is arbitrary, capricious, and unlawful. Even if section 3516.5 could be read to confer some power during emergencies, any power must be limited to the emergency presented. Accordingly, to the extent respondents seek to justify their action on the basis of the emergency, the furloughs have no rational basis and are arbitrary, capricious, and unlawful.

63. There is no statutory authorization for furloughs. In fact, the Government Code expressly prohibits departments from unilaterally reducing the work time of employees against their will. (Gov. Code § 19996.22, subd. (a).)

64. The Government Code specifies that "[t]enure of civil service employment is subject to good behavior, efficiency, the necessity of the performance of the work, and the appropriation of sufficient funds." (Gov. Code § 18500, subd. (c)(6).) The Legislature has already passed, and the Governor has already signed, a budget appropriations bill for Fiscal Year 2009-2010. Accordingly, the funds have already been appropriated, and there is no basis to mandate the furloughs. Any such furlough therefore has no rational basis and is arbitrary, capricious, and unlawful.

VII.
DUTY OF THE CONTROLLER

65. It is clear that "the Controller has the power, indeed the duty, to ensure that the decisions of an agency that affect expenditures are within the fundamental jurisdiction of the agency." (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1335.) Moreover, the Controller's "power of audit does include the duty to ensure that the expenditure in question is authorized by law." (*Ibid.*) The Legislature has specifically provided that "a warrant shall not be drawn unless authorized by law" (Gov. Code § 12440.)

66. Any attempt by an administrative agency (such as DPA) to exercise control over matters which the Legislature has not seen fit to delegate to it (such as salary reductions) is not authorized by law and in such case the agency's actions can have no force or effect. The Controller therefore has a duty to refrain from issuing pay warrants that are arbitrarily reduced by virtue of DPA's

1 implementation of the furlough.

2
3 **FIRST CAUSE OF ACTION**
4 **(Petition for Writ of Mandate)**

5 67. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if
6 fully set forth herein.

7 68. The Executive Orders issued on December 19, 2008 and July 1, 2009, as applied to IUOE
8 members employed in agencies funded by sources other than the General Fund, violates the law
9 because the furloughs have no rational basis and are arbitrary and capricious. The sole rationale
10 for the furloughs was the deficit to the General Fund. The sole authority cited was Government
11 Code section 3516.5. Furloughs of employees in agencies or positions that are not funded by the
12 General Fund are thus without justification, and specifically without the justification articulated
13 in the Executive Orders.

14 69. Petitioner/Plaintiff has an immediate and direct interest affected by this proceeding in that
15 employees have a right not to be arbitrarily furloughed and further have a right not to have their
16 pay reduced as proposed by the Executive Orders.

17 70. Respondents/Defendants Governor Schwarzenegger, Director David Gilb, and Controller
18 John Chiang each have a clear, present, and ministerial duty to conform to the laws of the State
19 of California and to avoid violations or arbitrary applications of the law.

20 71. Respondent/Defendant Controller Chiang has a duty to audit claims and to conclude that,
21 since the furloughs have no rational basis and are arbitrary and capricious, the Controller has a
22 duty to ensure that salaries not be reduced as a result of the furlough.

23 72. As a matter of law, the the furloughs have no rational basis and are arbitrary, capricious,
24 and thereby unlawfully applied; Petitioner/Plaintiff has a reasonable likelihood of success on the
25 merits.

26 73. Petitioner/Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of
27 law, other than the relief sought in this petition, in that there is no other legal remedy to prevent
28 or enjoin the implementation of the arbitrary furlough and its reduction of salary and hours.

74. Petitioner/Plaintiff and its members have suffered and will continue to suffer irreparable
harm and injury due to the arbitrary furlough order, including the denial of the protection of the

1 laws regarding their salaries, and the actual economic loss of salary, which in turn will
2 proximately cause some members to be at risk of losing their homes, cars, and ability to purchase
3 the basic necessities of life.

4 75. Petitioner/Plaintiff has no administrative remedy which will result in preventing or
5 enjoining the arbitrary furlough and its reduction of salary and hours.

6
7 **SECOND CAUSE OF ACTION**
(Petition for Writ of Prohibition)

8 76. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if
9 fully set forth herein.

10 77. The Executive Orders issued on December 19, 2008 and July 1, 2009, as applied to IUOE
11 members employed in agencies funded by sources other than the General Fund, violate the law
12 because the furloughs have no rational basis and are arbitrary and capricious. The sole rationale
13 for the furloughs was the deficit to the General Fund. The sole authority cited was Government
14 Code section 3516.5. Furloughs of employees in agencies or positions that are not funded by the
15 General Fund are thus without justification.

16 78. Petitioner/Plaintiff has an immediate and direct interest affected by this proceeding in that
17 employees have a right not to be arbitrarily furloughed and further have a right not to have their
18 pay reduced as proposed by the Executive Orders.

19 79. Respondents/Defendants Governor Schwarzenegger, Director David Gilb, and Controller
20 John Chiang each have a clear, present, and ministerial duty to conform to the laws of the State
21 of California and to avoid violations of the law.

22 80. Respondent/Defendant Controller Chiang has a duty to audit claims and to conclude that,
23 since the furloughs have no rational basis and are arbitrary, capricious, and unlawful, the
24 Controller has a duty to ensure that salaries not be reduced as a result of the furlough.

25 81. As a matter of law, the furloughs have no rational basis and are arbitrary and capricious;
26 Petitioner/Plaintiff has a reasonable likelihood of success on the merits.

27 82. Petitioner/Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of
28 law, other than the relief sought in this petition, in that there is no other legal remedy to prevent
or enjoin the implementation of the arbitrary furlough and its reduction of salary and hours.

1 83. Petitioner/Plaintiff and its members have suffered and will continue to suffer irreparable
2 harm and injury due to the arbitrary furlough order, including the denial of the protection of the
3 laws regarding their salaries, and the actual economic loss of salary, which in turn will
4 proximately cause some members to be at risk of losing their homes, cars, and ability to purchase
5 the basic necessities of life.

6 84. Petitioner/Plaintiff has no administrative remedy which will result in preventing or
7 enjoining the arbitrary furlough and its reduction of salary and hours.

8
9 **THIRD CAUSE OF ACTION**
(Complaint for Declaratory and Injunctive Relief)

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

12 86. The Governor and DPA have already implemented the furloughs on IUOE members
13 beginning February 6, 2009, which has impacted all the pay checks disbursed since the end of
14 February.

15 87. The Controller has implemented a reduction in pay corresponding to the equivalent of
16 three days of salary per month.

17 88. The furlough orders have no rational basis and is arbitrary, capricious, and unlawful.
18 Judicial relief is urgently needed to prevent the Governor and the DPA from continuing to violate
19 the law by imposing the arbitrary furlough program which began in February 2009.

20 89. As a result of the Executive Orders and subsequent implementation of the furloughs, an
21 actual controversy has arisen and now exists between Petitioner/Plaintiff and
22 Respondents/Defendants regarding the furlough of IUOE members and the reduction of their
23 salaries.

24 90. Petitioner/Plaintiff desires a declaration of their rights with respect to the Governor and
25 DPA's furlough of state employees and reduction of their salaries through one or more unlawful
26 executive orders.

27 91. Such a declaration is necessary and appropriate at this time in order to avoid the continued
28 implementation of these arbitrary provisions which will adversely affect the rights of
Petitioner/Plaintiff. Respondent/Defendants actions will result in irreparable injury and harm to

1 IUOE members including the denial of protection of the laws regarding their salaries. The loss
2 of such rights cannot be compensated fully by damages or other forms of legal relief.

3 92. As a matter of law, the furloughs have no rational basis and are arbitrary and capricious;
4 Petitioner/Plaintiff has a reasonable likelihood of success on the merits.

5 93. Therefore, Petitioner/Plaintiff seeks temporary, preliminary and permanent injunctive relief
6 directing Respondents/Defendants to cease and desist taking action to furlough IUOE members,
7 and prohibiting them from reducing their pay under an unlawful Executive Orders.

8
9 **FOURTH CAUSE OF ACTION**
(Complaint for Declaratory and Injunctive Relief)

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

12 95. Mandating furloughs for IUOE members employed by respondent agencies is a wasteful
13 mismanagement of the special funds used to pay for the positions occupied by those IUOE
14 members, and a wasteful mismanagement of the personnel resources of the respondent agencies.
15 (Code of Civ. Proc. § 526a.) The furloughs achieve no substantial benefit to the General Fund and
16 deprive the People of California of essential services.

17 96. As a result of the Executive Orders and subsequent implementation of the furloughs, an
18 actual controversy has arisen and now exists between Petitioner/Plaintiff and
19 Respondents/Defendants regarding the furlough of IUOE members and the reduction of their
20 salaries.

21 97. Petitioner/Plaintiff desires a declaration of their rights with respect to the propriety of the
22 respondent agencies' decision to implement the furloughs to the detriment of the people of the
23 State of California. The furloughs are a wasteful mismanagement of funds and resources.

24 98. Such a declaration is necessary and appropriate at this time in order to avoid the continued
25 implementation of these arbitrary provisions which will adversely affect the rights of
26 Petitioner/Plaintiff. Respondent/Defendants actions will result in irreparable injury and harm to
27 IUOE members including the denial of protection of the laws regarding their salaries. The loss
28 of such rights cannot be compensated fully by damages or other forms of legal relief.

99. As a matter of law, the furlough orders have no rational basis and is arbitrary, capricious,

1 and unlawful, and Petitioner/Plaintiff has a reasonable likelihood of success on the merits.

2 100. Therefore, Petitioner/Plaintiff seeks temporary, preliminary and permanent injunctive relief
3 directing Respondents/Defendants to cease and desist taking action to furlough IUOE members,
4 and prohibiting them from reducing their pay under an unlawful Executive Orders.

5
6 **WHEREFORE**, Petitioner/Plaintiff IUOE respectfully prays that:

7 1. The Court issue a peremptory writ in the first instance ordering
8 Respondents/Defendants Governor Schwarzenegger and Director Glib to set aside the portions
9 of the Governor's Executive Orders S-16-08 and S-13-09 calling for a furlough and salary reduction
10 for IUOE members employed in respondent agencies because the Executive Orders have no
11 rational basis and is arbitrary, capricious, and unlawful.

12 2. The Court issue a peremptory writ in the first instance commanding
13 Respondent/Defendant Controller Chiang to ensure that salaries not be reduced as a result of the
14 arbitrary furlough.

15 3. The Court issue a peremptory writ commanding Respondent/Defendant Governor
16 Schwarzenegger to exempt Petitioner/Plaintiff employees in Respondents/Defendants agencies
17 from the furloughs.

18 4. The Court issue a declaration that the portions of the Governor's Executive Orders
19 S-16-08 and S-13-09 calling for a furlough and salary reduction for IUOE employees in
20 Respondents/Defendants agencies are unlawful and arbitrary in that the Governor and DPA have
21 violated and continue to violate the law by furloughing IUOE members based on a perceived
22 General Fund deficit when such furloughs have no impact on the General Fund.

23 5. The Court issue a preliminary and permanent injunction directing the Governor,
24 DPA and the Controller to cease and desist taking action to furlough IUOE employees by reducing
25 their hours and reducing their pay under the Executive Orders.

26 6. The Court issue a declaration that the furlough of IUOE members employed in the
27 respondent agencies is a wasteful mismanagement of government funds and personnel resources
28 which will adversely affect the rights of Petitioner/Plaintiff and will endanger the health, welfare,
and public safety of the People of California, and is therefore unlawful.

1 7. The Court issue a preliminary and permanent injunction directing the Governor,
2 DPA and the Controller to cease and desist taking action to furlough IUOE members employed
3 at the respondent agencies because the furloughs are a wasteful mismanagement of government
4 funds and personnel resources which will adversely affect the rights of Petitioner/Plaintiff and will
5 endanger the health, welfare, and public safety of the People of California.


6 8. The Court issue a peremptory writ commanding Respondent/Defendant Controller
7 Chiang to re-pay all salaries, together with interest at the legal rate, reduced as a result of the
8 arbitrary furlough.

9 9. Petitioner/Plaintiff be awarded attorneys fees and costs of suit incurred in this action.

10 10. Such other and further relief as found just and proper by the Court.

11
12
13 Dated: October 13, 2009

Respectfully Submitted,
LEVY, STERN & FORD

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17 By: 
18 TRINA RODERICK, ESQ.
19 Attorneys for Defendants
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