

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO**

CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION

Plaintiffs/Respondents,

vs.

ARNOLD SCHWARZENEGGER, in his capacity
as Governor of the State of California;
CALIFORNIA DEPARTMENT OF PERSONNEL
ADMINISTRATION; CALIFORNIA
DEPARTMENT OF CORRECTIONS AND
REHABILITATION; CALIFORNIA
DEPARTMENT OF MENTAL HEALTH; and
CALIFORNIA DEPARTMENT OF JUVENILE
JUSTICE

Defendants/Appellants.

JOHN CHIANG, in his capacity as the Controller of
the State of California

Defendant

Court of Appeal Case No. A127292

(Superior Court Case No. RG-09-441544)

Appeal from the Superior Court, Alameda County
The Honorable Frank Roesch, Department 31, (510) 268-5105

**PETITIONERS' REPLY TO REAL PARTY IN INTEREST'S
OPPOSITION TO PETITION FOR WRIT OF MANDATE**

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ARNOLD SCHWARZENEGGER, as Governor of the
State of California; DEPARTMENT OF PERSONNEL
ADMINISTRATION; CALIFORNIA DEPARTMENT
OF CORRECTIONS AND REHABILITATION;
CALIFORNIA DEPARTMENT OF MENTAL
HEALTH; CALIFORNIA DEPARTMENT OF
JUVENILE JUSTICE

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I.

INTRODUCTION

This case involves claims by the California Correctional Peace Officers Association (“CCPOA”), the exclusive representative for state employees in Bargaining Unit 6 (“BU 6”), that the State’s self-directed furlough program violates various statutory provisions, which CCPOA contends create a clear, present, and ministerial duty the violation of which can be remedied through mandamus relief. In its Opening Brief, Appellants State of California, Governor Arnold Schwarzenegger, Department of Personnel Administration (“DPA”), Department of Corrections and Rehabilitation (“CDCR”), Department of Mental Health (“DMH”) and Department of Juvenile Justice (“DJJ”) (collectively, “Appellants”)¹ demonstrated to this Court the errors in the trial court’s December 17, 2009 Order Granting Petition for Writ of Mandate (AA, Vol. VII, Exh. 217, pp. 1686-1696) and why a writ of mandate should issue from this Court directing the trial court to vacate this Order and enter a new Order denying mandamus relief to CCPOA.

Nothing in the Opposition Brief filed by CCPOA effectively contradicts the arguments raised by Appellants in their Opening Brief. As the arguments below will demonstrate, the trial court erred in finding that

¹ By this Court’s Order of February 26, 2010, this appeal has been converted into a petition for writ of mandate. In order to avoid confusing the identification of the parties, the Governor, State of California, and related parties will continue to refer to themselves as “Appellants.”

the State's self-directed furlough program as applied to BU 6 employees, constitutes a reduction in salary ranges prohibited by Government Code section 19826(b). The trial court further erred in finding that Labor Code sections 223 and 1171 create mandatory ministerial duties that are violated by the State's self-directed furlough program. For these reasons, Appellants urge this Court to issue a writ of mandate directing the trial court to vacate its December 17, 2009 Order Granting Writ of Mandate and to enter a new order denying mandamus relief to CCPOA.

II.

ANALYSIS

A. **The Trial Court Erred By Granting CCPOA Mandamus Relief Due To The Availability Of A Plain, Speedy, And Adequate Remedy At Law.**

To obtain writ relief under Code of Civil Procedure section 1085, the petitioner must show there is no other plain, speedy, and adequate remedy; the respondent has a clear, present, and ministerial duty to act in a particular way; and the petitioner has a clear, present and beneficial right to performance of that duty. (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 593; *Branciforte Heights, LLC v. City Of Santa Cruz* (2006) 138 Cal.App.4th 914, 934.)

The trial court erred in granting CCPOA a writ of mandate in this action because CCPOA failed to establish the *prima facie* elements necessary for obtaining such relief. CCPOA's failure to establish a

violation of a clear, present, and ministerial duty will be addressed in the context of the discussion below regarding the alleged statutory duties at issue in this case. In addition to the failure to establish this element of its *prima facie* case, CCPOA also failed to demonstrate the absence of a plain, speedy, and adequate remedy at law.

As noted by Appellants in their Opening Brief, mandamus relief generally will not lie to resolve a dispute over unpaid wages to public employees. The decision in *Pomona Police Officers Association. v. City of Pomona* (1997) 58 Cal.App.4th 578, 590, is dispositive on this point, CCPOA's unavailing attempt to distinguish that case notwithstanding. (See CCPOA's Opposition to Petition for Writ of Mandate, p. 45.) In *Pomona Police Officers Association*, the court stated:

It is a general rule that the extraordinary remedy of mandate is not available when other remedies at law are adequate. [Citations.] In proceedings involving claims for wages by municipal employees or by parties to a contract with a municipality, it is generally held that an ordinary action at law for damages is adequate, and a writ of mandate will be denied. [Citation.]

(58 Cal.App.4th 578, 590.) This general rule applies, and the extraordinary remedy of mandate will be denied due to the existence of an adequate remedy at law, even when "additional time and effort would be consumed by its being pursued through the ordinary course of the law." (*Unnamed*

Physician v. Board of Trustees of Saint Agnes Medical Center (2002) 93 Cal.App.4th 607, 620.)

In its Opposition Brief, CCPOA does not contest that the California Labor Code provides for an adequate remedy at law by which BU 6 employees could pursue individual wage claims. (See e.g., Labor Code section 1194.) Rather, CCPOA raises two unpersuasive arguments in an attempt to deflect from the fact that the trial court erred in granting a writ of mandate despite the existence of an adequate remedy at law. First, CCPOA argues that the existence of an adequate remedy at law is being raised “for the first time on appeal.” (See CCPOA Opposition to Petition for Writ of Mandate, p. 44.) The inaccuracy of this statement is apparent on the face of the record before this Court. At the outset of their argument before the trial court, Appellants raised the issue of the adequacy of available remedies at law. (See Reporter’s Transcript of November 14, 2009 Hearing, 18:4-20:27.) In fact, in a colloquy between the trial court and CCPOA’s counsel, the trial court asked CCPOA’s counsel to address the argument that BU 6 employees had an adequate remedy at law:

THE COURT: His point (counsel for Appellants) is that an at-law remedy exists taking it out of the equitable –

MR. YANK: Your Honor, yes and no.

This exchange demonstrates that the existence of an adequate remedy at law is not being raised for the first time on appeal as CCPOA claims.

Second, CCPOA attempts to distinguish *Pomona Police Officers Association, supra*, by arguing that the writ in that case was not denied because of the existence of an adequate remedy at law but because petitioners in that case had failed to establish the violation of a clear, present, and ministerial duty. (See CCPOA Opposition to Petition for Writ of Mandate, pp. 45-46.) CCPOA misreads the decision in *Pomona Police Officers Association*. The court in *Pomona Police Officers Association* noted that in cases involving disputes in the realm of public employment “mandamus does not lie when there is no cause of action for reinstatement to a position, but merely a claim for damages for breach of contract.” (58 Cal.App.4th 578, 590.) The *Pomona Police Officers Association* court characterized this rule as “settled” in California law.

At its heart, CCPOA’s claim in this case involves a contention that self-directed furloughs result in its members working on furlough days and not being paid for those hours of work. In other words, this case is at its essence a claim for unpaid wages by some BU 6 employees who allegedly are not being paid fully for all hours worked. Thus, even assuming the merit of such a claim, it was error for the trial court to grant mandamus relief due to the availability of adequate remedies at law to address claims

for unpaid wages. This error in granting extraordinary equitable relief for what essentially is a legal claim was compounded by the trial court's erroneous finding that "the wage scale of employees represented by [CCPOA] were set by a memorandum of understanding with the State ..." (AA, Vol. VII, Exh. 217, pp. 1686-1696), a finding critical to the trial court's conclusion that the State's self-directed furlough program violated the various California Labor Code provisions relied upon by CCPOA. This finding was, in fact, erroneous because the undisputed evidence established that the parties' MOU had expired and the terms and conditions of BU 6 employees actually are governed by the implemented terms of the State's last, best, and final offer. (AA, Vol. VII, Exh. 186, pp. 1487-1489 [Declaration of Kristine Rodrigues at ¶ 3].)

Regardless of whether CCPOA's claim for unpaid wages are based on the erroneous finding that BU 6 wage scales are governed by an existing MOU between the State and CCPOA or that BU 6 employees are not being paid their full wage in violation of various statutory provisions asserted by CCPOA in this action, *i.e.*, Labor Code section 212, 223, or 1171, this case is an action for nonpayment of wages. Nevertheless, the trial court granted mandamus relief despite the fact that claims for nonpayment of wages do not justify mandamus relief because of the availability of an adequate remedy at law. (*Pomona Police Officers Assn.*, *supra*, 58 Cal.App.4th 578, 590.) Accordingly, this Court should issue a writ of mandate directing the

trial court to vacate its December 17, 2009 Order granting CCPOA mandamus relief and to enter a new order denying such relief in this case.

B. The Trial Court Erred In Finding That Self-Directed Furloughs, As Applied To BU 6 Employees, Constituted A Salary Reduction In Violation Of Government Code Section 19826(b).

The trial court ruled that the self-directed furloughs utilized by the State with respect to BU 6 employees working for CDCR and DMH constituted an impermissible salary reduction in violation of Government Code section 19826(b). That code section provides,

Notwithstanding any other provision of law, the department [DPA] 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.

As pointed out in Appellant's Opening Brief, this ruling by the trial court constituted error because while the adoption and implementation of furloughs results in a reduction in the hours worked by BU 6 employees, such a reduction in total hours and corresponding reduction in total compensation is not a salary range reduction in violation of Government Code Section 19826, subdivision (b). Employees' wage rates or salary ranges have not been reduced as a result of the self-directed furloughs. A furlough constitutes only a reduction in hours worked, not a reduction in the wage rate paid for that work.

Rather than address this argument, CCPOA instead rests its entire claim regarding the alleged violation of section 19826, subdivision (b) on

the holding in *Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal.App.4th 155. (See CCPOA’s Opposition to Petition for Writ of Mandate, p. 23 [*Greene* controls the outcome of this case.”].) However, *Greene* is inapposite for several reasons.

In *Greene*, the court held DPA could not implement a final wage proposal containing a salary reduction after having bargained to impasse. (*Id.*, at 172.) In particular, the *Greene* court held the Legislature retains “ultimate authority over state workers’ employment conditions,” and section 19826 was a specific delegation of this authority to the DPA with respect to unrepresented employees, but not with respect to represented employees. (*Id.*, at 177-8.) “As a consequence, the question of represented employees’ wages at impasse must ultimately be resolved by the Legislature itself.” (*Id.*, at 178.)

There are several key factual distinctions between the *Greene* case and this case. First and most significantly, *Greene* involved an across-the-board 5% *salary reduction* for employees. (*Id.*, at 164.) In *Greene*, employees were going to continue working their normal hours but receive 5% less pay, an effective reduction in their rate of pay. (*Id.*) Here, no such reduction in state employees’ rate of pay has occurred. Rather, state employees’ rate of pay has remained exactly the same; those employees have worked fewer hours for a temporary period. A change to the number

of hours worked has not impacted an employee's "salary range" as that term is used in Government Code section 19826(b).

As addressed in Appellants' Opening Brief, and completely ignored by CCPOA in its Opposition Brief, the above conclusion is supported by DPA regulations regarding salary issues. DPA regulations, enacted twenty years prior, define "salary range" as the "minimum and maximum rate currently authorized for the class." (Cal. Code Regs. tit. 2, § 599.666.1.) "Rate" for hourly employees is "any one of the dollar and cents amounts found within the salary range." (*Id.*) In this respect, "[m]onthly or hourly rates of pay may be converted from one to the other when the Director of [DPA] considers it advisable." (Cal. Code Regs. tit. 2, § 599.670.) In other words, "salary range" concerns the hourly rate an employee is paid. "Salary range" does not refer to the employee's "total compensation."

Second, *Greene* held section 19826, subdivision (b) only prohibited the state employer from altering salary ranges. The *Greene* court was never asked to consider the legality of furloughs. In fact, the *Greene* court held the state employer was authorized to reduce and limit employee total compensation in other ways. (See *Greene, supra*, 5 Cal.App.4th at 187.) For example, DPA has the authority to layoff employees which reduces the work force. (See Gov. Code, § 19997.) DPA is also authorized to reduce or eliminate overtime which directly reduces employees' total compensation. (See Gov. Code, § 19816.10.) None of these actions

implicate section 19826, subdivision (b). Indeed, although *Greene* held DPA could not unilaterally reduce employees' salaries, it nevertheless found DPA could unilaterally reduce an employee's benefits, even though this would limit an employee's total compensation. (See *Greene, supra*, 5 Cal.App.4th at 187.) The adoption of temporary furloughs is an alternative method of reducing employee total compensation without implicating Government Code section 19826, subdivision (b).

In short, *Greene* is inapposite to the present situation and its holding does not serve as a legal impediment to the Governor's exercise of his statutory and executive authority to direct furloughs of state employees, including the use of self-directed furloughs. Accordingly, this Court should issue a writ of mandate directing the trial court to vacate its December 17, 2009 Order granting mandamus relief to CCPOA and to enter a new order denying such relief in this case.

C. **The Trial Court Erred In Ruling The State's Self-Directed Furlough Program, As Implemented, Violates Labor Code Section 223.**

The trial court erred in ruling that Labor Code section 223 establishes a mandatory ministerial duty that was violated by the State's self-directed furlough program as implemented. Labor Code section 223 reads as follows:

Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a

lower wage while purporting to pay the wage designated by statute or by contract.

As noted by Appellants in their Opening Brief, Labor Code section 223 “was enacted to address the problem of employers taking secret deductions or ‘kickbacks’ from their employees.” (*Amaral v. Cintas Corporation* (2008) 163 Cal.App.4th 1157, 1205.) Courts that have found a violation of section 223 have done so strictly in the context of an employer scheme of either secret deductions or kickbacks. (See e.g., *Shalz v. Union School Dist.* (1943) 58 Cal.App.2d 599, 601-602, 605, finding that deductions by an employer from stipulated wages for repayment of exorbitant amounts charged to employees for lodging and transportation were in reality nothing more than devices to reduce the wage scale and thus violated section 223; *Kerr’s Catering Service v. Dept. of Industrial Relations* (1962) 57 Cal.2d 319, 328-329, in which the California Supreme Court found that an undisclosed accounting method utilized by the employer to charge back cash shortages to employees driving catering trucks constituted a “secret deduction” in violation of section.) Based on the consistent interpretation and application of Labor Code section 223 rendered by these cases, that code section is inapplicable here in that there is no evidence in the record, and CCPOA has never contended, that the State is exacting secret deductions or kickbacks from wages paid to BU 6 employees.

Rather than addressing this point or any of these cases cited by Appellants, CCPOA erroneously contends for the second time in its Opposition Brief that Appellants are raising an argument for the first time on appeal. (CCPOA's Opposition to Petition for Writ of Mandate, p. 34.) Appellants addressed the inapplicability of section 223 in their brief filed in the trial court (AA, Vol. V, Tab 164, p. 01222.) It mischaracterizes the record before this Court for CCPOA to argue that the inapplicability of section 223 is being raised for the first time on appeal.

An additional point raised by CCPOA in its Opposition Brief, and one that is raised for the first time in this Court, is that wages for BU 6 employees are not controlled by the former MOU between CCPOA and the State, but are set by statute. (See CCPOA's Opposition Brief, p. 31.) This argument is contrary to the position taken by CCPOA in the trial court in which it exclusively argued that the wage scale for BU 6 employees was, in fact, controlled by the former MOU. CCPOA now argues in its Opposition Brief that the wage scale for BU 6 employees is not only set pursuant to statute, but is set pursuant to Government Code section 19826, subdivision (b). (CCPOA's Opposition Brief, p. 31.) As the discussion above demonstrates, however, Government Code section 19826, subdivision (b) is not violated, or even implicated, by the State's self-directed furlough program. CCPOA cannot now bootstrap an argument that the State has

violated Labor Code section 223, by basing that argument on a flawed analysis of Government Code section 19826, subdivision (b).

The fact remains that there is no evidence in this case is violating Labor Code section 223. To the contrary, the facts here are that BU 6 employees who are unable to utilize their furlough time during the same pay period in which their pay is reduced receive “furlough credits” that can be used at a later time and which remain in effect until June 30, 2012 and which are captured and maintained through the State Controller’s Office as a designated employee leave usage bank. (AA, Vol. VI, Exh. 176, pp. 1419-1424 [Downs Decl. at ¶ 8]; AA, Vol. VII, Exh. 187, pp. 1490-1493 [Murch Decl. at ¶ 8].) Thus, BU 6 employees are receiving full value for all hours worked because those employees who are unable to utilize their furlough time within the same pay period as their pay is reduced have the ability to take a day off with pay at a later point in time when they take advantage of their furlough credits. Accordingly, the trial court’s ruling that the State’s self-directed furlough program, as applied to BU 6 employees, violates a mandatory ministerial duty embodied in Labor Code section 223 was erroneous. Accordingly, this Court should issue a writ of mandate directing the trial court to vacate its December 17, 2009 Order granting mandamus relief to CCPOA and to enter a new order denying such relief in this case.

D. **The Trial Court Erred In Ruling The State's Self-Directed Furlough Program, As Implemented, Violates Labor Code Section 1171.**

In its December 17, 2009 Order, the trial court ruled that when BU 6 employees “are required to work the same number of hours in the pay period, but are not paid for three days’ worth of time worked, they are not paid the minimum wage for those hours.” (AA, Vol. VII, Exh. 217, pp. 1686-1696.) As Appellants demonstrated in their Opening Brief, this ruling was erroneous because, unlike the plaintiffs in *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, CCPOA failed in the trial court to make a detailed evidentiary showing that BU 6 employees are not being paid wages for work performed. Specifically, in *Armenta* the court noted that at trial, the aggrieved employees “testified that they were not compensated for a myriad of tasks that primarily fell into the following categories: (1) travel time in company vehicles; (2) time spent loading equipment and supplies into the company vehicle; (3) time spent doing daily and weekly paperwork (foremen only); and (4) time spent in maintaining the company vehicles (foremen only).” (*Id.* at 317.) In contrast, the declarations submitted by BU 6 employees in the trial court in this case contained nothing more than conclusory statements regarding the hours worked over a 28-day pay period and the gross pay received. There was nothing in those declarations detailing specific hours and specific work for which the declarants were not

paid and, therefore, nothing on which the trial court could conclude that there was a minimum wage violation in this case.

In response to this argument, CCPOA makes two points unsupported by the record. First, CCPOA argues that it presented declarations from harmed employees showing the “individualized impact” of furloughs. (CCPOA’s Opposition to Petition for Writ of Mandate, p. 40.) However, CCPOA fails to quote from a single one of these declarations to show that the any of CCPOA’s declarants made the kind of particularized showing required by the *Armenta* decision for concluding that any of those declarants have not been paid wages for all hours worked.

Second, CCPOA contends in its Opposition Brief that the evidence in this case establishes that BU 6 will be unable to utilize “millions of hours” of furlough time prior to the expiration of the June 30, 2012 deadline for use of that time. (CCPOA’s Opposition to Petition for Writ of Mandate, p. 39.) This exaggerated claim finds no support in the record. A review of this evidence reveals that as of August 2009, the rate at which furlough hours were being utilized by BU 6 employees was at 78.79% of accumulated and available furlough hours. (AA, Vol. VI, Exh. 176, pp. 1419-1424 [Downs Decl. at ¶11].) As of October 16, 2009, approximately 5,200 BU6 staff had utilized 100% of their accumulated furlough hours. (*Id.* at ¶ 12.) Over 7,500 CDCR employees have utilized between 75% and 99% of their accumulated furlough hours. (*Id.*) Over 8,100 CDCR BU6

staff have used between 50% and 74% of their accumulated furlough hours. (*Id.*) Accordingly, over 20,800 CDCR BU6 employees have used 50% or more of their accumulated furlough hours. (*Id.*)

In response to this evidence, which came directly from the officials whose job it is to track furlough usage by BU 6 employees, CCPOA submitted an inherently flawed analysis performed by its expert, Richard Drogin. Mr. Drogin's analysis compared differing data sets (*i.e.*, a February-August average of furlough hours earned and a July-August average of furlough hours used), which resulted in a skewed conclusion by Mr. Drogin regarding furlough usage rates and the amount, if any, of unused furlough time at the end of the furlough period. (AA, Vol. VI, Exh. 169, pp. 1238-1249, [Declaration of Jerald Udinsky at ¶¶ 5-6.]) In addition, Mr. Drogin's analysis did not take into account the fact that CDCR and DMH have imposed a rule requiring BU6 employees to utilize furlough hours before taking any other paid leave benefit. Taking into account that rule change, the evidence adduced in the trial court established that CDCR and DMH are on track for 100% furlough utilization by June 30, 2012. As it is, current utilization is greater than 50% for the majority of BU6 employees. (*Id.* at ¶ 7.)

CCPOA argues in its Opposition Brief to this Court that Appellants are rearguing the evidence in pointing out the flawed and unreliable nature of Mr. Drogin's analysis. However, factual determinations made by a trial

court in granting a writ of mandate are reviewed under the substantial evidence test and “substantial evidence” in this context is not synonymous with “any” evidence. (See *People v. Bassett* 69 Cal.2d 122, 138-39.) Rather, the concept of substantial evidence “clearly implies that such evidence must be of ponderable legal significance. Obviously, the word [‘substantial’] cannot be deemed synonymous with ‘any’ evidence. It must be reasonable, credible, and of solid value.” (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) A flawed statistical analysis should not be considered substantial evidence when compared with the uncontradicted evidence of furlough usage set forth in declarations from state officials whose job is to track these statistics. CCPOA failed to adduce substantial evidence that furlough hours will not fully be used by BU 6 employees prior to the June 30, 2010 deadline and failed to adduce any evidence establishing “millions” of unused furlough hours. The evidence was insufficient to demonstrate that BU 6 employees are not being paid for hours worked. Accordingly, the trial court erred in finding that Labor Code section 1171 creates a ministerial duty that has been violated in this case. To correct this error, this Court should issue a writ of mandate directing the trial court to vacate its December 17, 2009 Order granting mandamus relief to CCPOA and to enter a new order denying such relief in this case.

E. **CCPOA Was Not Entitled To A Writ Of Mandate Based On An Alleged Violation Of Labor Code Section 212.**

CCPOA has filed a cross-appeal from the trial court's finding that it was not entitled to a writ of mandate based on an alleged violation of Labor Code section 212. That code section requires that the payment of wages be by "order, check, draft, note, memorandum, or other acknowledgement of indebtedness" that is "negotiable and payable in cash on demand ... at some established place of business in the state"

Labor Code section 212 does not "purport to deal with the problem of nonpayment of wages." (*People v. Hampton* (1965) 236 Cal.App.2d 795, 801 [46 Cal.Rptr. 338].) The purpose of the code section is to prevent the payment of wages by check or other instrument drawn on an account with insufficient funds to pay the check or instrument in full. (*Id.* at p. 802-803.) There is no issue in this case involving the State's payment of wages to BU 6 employees with checks drawn on accounts with insufficient funds. This statute has no applicability here and certainly does not create a ministerial duty under the circumstances of this case warranting the issuance of a writ of mandate ordering the Governor to set aside the Executive Orders directing temporary furloughs for state employees.

III.

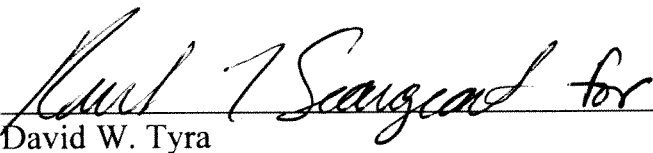
CONCLUSION

Based on the arguments raised both here and in their Opening Brief to this Court, Appellants State of California, Governor Arnold

Schwarzenegger, Department of Personnel Administration, Department of Corrections and Rehabilitation, Department of Mental Health, and Department of Juvenile Justice respectfully request that this Court issue a writ of mandate directing the trial court to vacate its December 17, 2009 Order Granting Petition for Writ of Mandate and to enter a new order denying such relief in this case.

Dated: May 13, 2010

KRONICK, MOSKOVITZ, TIEDEMANN &
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By  for
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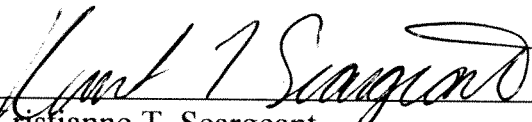
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ARNOLD SCHWARZENEGGER, as Governor of
the State of California; DEPARTMENT OF
PERSONNEL ADMINISTRATION;
CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION;
CALIFORNIA DEPARTMENT OF MENTAL
HEALTH; CALIFORNIA DEPARTMENT OF
JUVENILE JUSTICE

CERTIFICATE OF WORD COUNT

I, Kristianne T. Seargeant, Attorney for Defendants/Appellants Governor Arnold Schwarzenegger, Department of Personnel Administration, California Department of Corrections and Rehabilitation, California Department of Mental Health and California Department of Juvenile Justice, hereby declare under penalty of perjury that the number of words in Appellants Governor Arnold Schwarzenegger, Department of Personnel Administration, California Department of Corrections and Rehabilitation, California Department of Mental Health and California Department of Juvenile Justice's Reply to Real Party in Interest's Opposition to Petition for Writ of Mandate equals 4,375 words, as per the word count feature in Microsoft Word.

Dated: May 13, 2010

KRONICK, MOSKOVITZ, TIEDEMANN &
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By 
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PERSONNEL ADMINISTRATION;
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CORRECTIONS AND REHABILITATION;
CALIFORNIA DEPARTMENT OF MENTAL
HEALTH; CALIFORNIA DEPARTMENT OF
JUVENILE JUSTICE

PROOF OF SERVICE

I, May Marlowe, declare:

I am a citizen of the United States and employed in Sacramento County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 400 Capitol Mall, 27th Floor, Sacramento, California 95814. On May 13, 2010, I served a copy of the within document(s):

Petitioners' Reply to Real Party in Interest's Opposition to Petition for Writ of Mandate

- by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 13, 2010, at Sacramento, California.



May Marlowe