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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 COUNTY OF SACRAMENTO

16  
17 CALIFORNIA CORRECTIONAL PEACE  
OFFICERS' ASSOCIATION,

18 Plaintiff/Petitioner,

19 v.

20 ARNOLD SCHWARZENEGGER, in his  
21 capacity as Governor of the State of  
California, STATE OF CALIFORNIA;  
22 DEPARTMENT OF PERSONNEL  
ADMINISTRATION; JOHN CHIANG in  
23 his capacity as the Controller of the State  
of California; and DOES 1 THROUGH 20,  
24 INCLUSIVE,

25 Defendants/Respondents.

FILED  
Superior Court Of California  
Sacramento  
Dennis Jones, Executive  
Officer  
01/12/2009  
porecenti  
By \_\_\_\_\_, Deputy  
Case Number:  
24-2009-00000137-CU-WM-GDS

1 Plaintiff/Petitioner alleges as follows:

2 **GENERAL ALLEGATIONS**

3 **Introduction**

4 1. On December 19, 2008, California Governor Arnold Schwarzenegger  
5 issued Executive Order S-16-08 ("Executive Order"). Among other things, the Executive  
6 Order proclaimed that that California faced a "fiscal and cash crisis", and, in order to save  
7 money, directed the Department of Personnel Administration ("DPA") to adopt a plan to  
8 furlough state employees for two days per month, effective February 1, 2009 through June  
9 30, 2010.

10 2. On January 9, 2009, the DPA issued its furlough implantation plan in a  
11 memorandum to all Agency Secretaries, Undersecretaries and Directors entitled "State  
12 Employee Furlough per Governor's Executive Order S-16-08" ("Furlough Memo"). Of  
13 critical importance to this case, the Furlough Memo directed that state employees who  
14 work in prisons would accrue two furlough days per month to be taken "when feasible",  
15 and that salaries would be adjusted to reflect two unpaid furlough days per month. The  
16 DPA's plan represents an approximate 10% decrease in salary for all affected employees.

17 3. The Executive Order and Furlough Memo run afoul of clear statutory law  
18 and legal precedent because Government Code § 19826(b) expressly prohibits  
19 Defendants/Respondents from decreasing the salary of represented employees.

20 **The Parties**

21 4. Plaintiff/Petitioner CALIFORNIA CORRECTIONAL PEACE  
22 OFFICERS' ASSOCIATION ("CCPOA") is, and at all times herein mentioned was, a  
23 non-profit corporation organized and existing under the laws of the State of California,  
24 with its principal place of business in the County of Yolo. CCPOA is the duly-certified  
25 exclusive collective bargaining representative (pursuant to Government Code section  
26 3520.5) for the approximately 30,000 employees in State Bargaining Unit 6 ("BU6") who  
27 are designated as "peace officers" under Penal Code § 803 *et seq.* CCPOA brings this  
28 action on behalf of itself and its members, having standing to do so under the doctrine

1 articulated by the United States Supreme Court in *Allee v. Medrano* (1974) 416 U.S. 802  
2 and by the California Supreme Court in *Professional Fire Fighters v. City of Los Angeles*  
3 (1963) 60 Cal.2d 276 and *Int'l Assoc. of Fire Fighters v. City of Palo Alto* (1963) 60  
4 Cal.2d 295.

5           5. BU6 members are employed by the California Department of Corrections  
6 and Rehabilitation (“CDCR”) in a variety of peace officer classifications including  
7 correctional officers, parole agents, and correctional counselors. BU6 members are  
8 involved in all custodial aspects of the incarceration of adult and juvenile inmates in  
9 California’s correctional facilities. Their responsibilities include feeding inmates, escort  
10 duties, supervising inmates 24-hours-per-day, parole agent services, and correctional  
11 counselor services. BU6 members also schedule and transport inmates for emergency  
12 medical treatment, respond to emergencies such as riots, transports inmates throughout the  
13 state (e.g., from prison to courts or to and from other prisons), and are entrusted to protect  
14 public safety by maintaining the overall security at all of California’s prisons.

15           6. CCPOA, and its respective members, are all beneficially interested in  
16 Defendants/Respondents’ faithful performance of their legal duties because plaintiffs and  
17 petitioners will be directly and negatively impacted by the unlawful salary reduction  
18 ordered in the Executive Order and Furlough Memo.

19           7. Defendant/Respondent ARNOLD SCHWARZENEGGER is the duly-  
20 elected Governor of the State of California, sued herein in his official capacity only. The  
21 Governor is the employer of the State employees in BU6 (Cal.Gov.Code § 3513), and  
22 issued the Executive Order directing the furlough/salary reduction.

23           8. Defendant/Respondent DEPARTMENT OF PERSONNEL  
24 ADMINISTRATION (“DPA”) is and, at all relevant times was, the agency of the State of  
25 California designated as the Governor’s bargaining representative under the Dills Act.  
26 (Cal.Gov.Code §§ 19815.4(g) and 3517.) The DPA represents the Governor as the  
27 employer in all matters pertaining to California state personnel employer-employee  
28 relations, and it is responsible for all issues related to salaries and benefits, job

1 classifications, and training. (Cal.Gov.Code § 19815, *et seq.*) DPA is responsible for  
2 implementing the furlough/salary reduction directed by the Executive Order.

3 9. Defendant JOHN CHIANG is the duly elected controller for the State of  
4 California, sued herein in his official capacity. Among other duties, the Controller is  
5 responsible for administering the fiscal condition and responsibilities of the State of  
6 California. The Controller is charged with auditing all claims against the State and may  
7 audit the disbursement of any state money for accuracy, propriety, and legality. (Cal.Gov.  
8 Code § 12410.) The Controller is charged with drawing warrants on the State Treasury  
9 for the payment of money directed by law. Such warrants must be made as authorized  
10 and required by law. (Cal.Gov.Code § 12440.)

11 10. Plaintiff/Petitioner is ignorant of the true names and capacities of  
12 Defendants/Respondents sued herein as DOES 1 through 10, and therefore sues these  
13 Defendants by such fictitious names. Plaintiff/Petitioner will amend this  
14 Petition/Complaint to state their true names and capacities once they have been  
15 ascertained. Plaintiff/Petitioner is informed and believe, and on that basis allege, that each  
16 of these Defendants/Respondents is in some manner responsible for the acts complained  
17 of herein.

#### 18 Venue

19 11. Venue in the Superior Court of Sacramento is proper because the  
20 California Attorney General has an office within the City and County of Sacramento.  
21 (Code Civ. Proc. §401(1) and §1109.)

#### 22 23 **The Executive Order and Subsequent Implementation of a Salary Decrease for Plaintiffs/Petitioners**

24 12. At the end of 2008, Defendant/Respondent SCHWARZENEGGER  
25 lobbied the Legislature in two specially convened legislative sessions to enact numerous  
26 cost-cutting measures designed to combat the growing fiscal crisis. Among his many  
27 proposals was a 2-day furlough of state employees. After the Legislature failed to  
28 implement any of the measures, Defendant/Respondent SCHWARZENEGGER took the

1 extraordinary step of issuing an Executive Order to accomplish his proposed furlough of  
2 state employees.

3 13. The December 19, 2008 Executive Order recounted the severity of the  
4 fiscal crisis facing California and the various steps the Governor had undertaken in an  
5 effort to convince the Legislature to act on his cost-cutting proposals. The Executive  
6 Order declared that the Legislature had failed to adequately address the “unprecedented  
7 statewide fiscal crisis” and that “immediate and comprehensive action” was needed to  
8 address it. As a result, the Executive Order directed the DPA to adopt a plan for 2 unpaid  
9 furlough days for all represented state employees.

10 14. On January 9, 2009, the DPA issued the Furlough Memo outlining how it  
11 would implement the Executive Order’s directives. The Furlough Memo advised that all  
12 general government operations will be closed on the first and third Friday of each month  
13 beginning with Friday, February 6, 2009, and employees shall not report to work on those  
14 days. For those state operations where such a close of business is unfeasible, the Furlough  
15 Memo outlined two types of “self-directed” furlough: 1) Employees to take two furlough  
16 days each month but on days chosen by the employee and approved by the supervisor; and  
17 2) Employees to accrue two furlough days per month to be taken at a later date “when  
18 feasible.” Because public safety dictates that prisons must operate on a 24/7 basis, BU6  
19 members automatically qualify for this second type of “self directed” furlough. Finally,  
20 the Furlough Memo advised that salaries will be adjusted—i.e., reduced—to reflect these  
21 unpaid furlough days.

22 15. As a result, starting in February 2009, BU6 employees will be subject to  
23 an immediate 10% salary decrease that has not been approved of by the Legislature.

24  
25 **Defendants/Respondents Ministerial Duty  
to Comply with Government Code § 19826**

26 16. Government Code § 19826 states, in pertinent part,

27 (b) Notwithstanding any other provision of law, the department  
28 *shall not establish, adjust, or recommend a salary range for any  
employees in an appropriate unit where an employee organization*

1 has been chosen as the exclusive representative pursuant to Section  
2 3520.5.

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

7 17. Through § 19826(b), the Legislature enunciated a clear decision not to  
8 delegate its salary setting function to the DPA with respect to represented employees.  
9 (*Department of Personnel Administration v. Greene* (1992) 5 Cal. App. 4<sup>th</sup> 155.) Thus,  
10 absent Legislative action, Defendants/Respondents are prohibited from implementing any  
11 salary decrease for BU6 members because CCPOA has been chosen as their exclusive  
12 representative pursuant to Government Code § 3520.5.

### 13 FIRST CAUSE OF ACTION

#### 14 Declaratory Relief for Violation of Government Code § 19826

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

17 19. Defendants/Respondents, and each of them, were responsible for the acts  
18 or omissions complained of herein.

19 20. An actual controversy has arisen and now exists between  
20 Plaintiff/Petitioner and Defendants/Respondents concerning their respective rights, duties,  
21 and obligations under the Government Code § 19826(b). Plaintiff/Petitioner contends  
22 that Defendants/Respondents have failed to comply with their statutory obligation under  
23 Government Code § 19826 by implementing a salary adjustment equivalent to a 10%  
24 salary decrease to BU6, a represented unit, without prior approval from the California  
25 Legislature. Plaintiff/Petitioner is informed and believes that Defendants/Respondents  
26 SCHWARZANEGGER and DPA dispute this contention.

27 21. At all times mentioned herein, Defendants/Respondents have been able to  
28 perform the duty described above. Notwithstanding such ability, Defendants/Respondents

1 fail and refuse, and continue to fail and refuse, to perform their statutory duty under  
2 Government Code § 19826.

3 22. Plaintiff/Petitioner desires a judicial determination of its rights and a  
4 declaration of Defendants/Respondents' obligations under Government Code § 19826(b).  
5 Plaintiff/Petitioner requests that this court declare that Defendants/Respondents are  
6 without authority to implement the proposed reduction in salary for BU6 members.

7 WHEREFORE, Plaintiff/Petitioner pray for the relief set forth below.

8 **SECOND CAUSE OF ACTION**

9 **Injunctive Relief for Violation of Government Code § 19826**

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

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

14 25. Government Code § 19826(b) prohibits Defendants/Respondents from  
15 implementing a salary adjustment equivalent to a 10% salary decrease to BU6, a  
16 represented unit, without prior approval from the California Legislature.

17 26. As a result, Plaintiff/Petitioner requests that this court enjoin  
18 Defendants/Respondents from implementing its unauthorized and illegal salary  
19 adjustment.

20 WHEREFORE, Plaintiff/Petitioner pray for the relief set forth below.

21 **THIRD CAUSE OF ACTION**

22 **Writ of Mandate/Prohibition (Code of Civil Procedure § 1085)**

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

25 28. Defendants/Respondents, and each of them, were responsible for the acts  
26 or omissions complained of herein.

27 29. Government Code § 19826, and the case law interpreting it, impose a  
28 clear, present, and ministerial duty that Defendants/Respondents shall not "adjust"

1 salaries. Despite this ministerial duty, Defendants/Respondents intend to decrease  
2 Plaintiff/Petitioner's members' salary approximately 10% in clear violation of their  
3 ministerial duty.

4 30. Plaintiff/Petitioner and its members have a clear, present and substantial  
5 right to require Defendants/Respondents to perform their duties under Government Code  
6 § 19826(b) and not implement a 10% salary decrease absent Legislative action.

7 31. At all times mentioned herein, Defendants/Respondents have been able to  
8 perform their ministerial duty described above. Notwithstanding such ability,  
9 Defendants/Respondents fail and refuse, and continue to fail and refuse, to perform their  
10 ministerial duty under Government Code § 19826.

11 32. Plaintiff/Petitioner has no right of appeal from the failure of the  
12 Defendants/Respondents to act as required by law, nor does Plaintiff/Petitioner have any  
13 available administrative remedy to contest the action, nor does Plaintiff/Petitioner have a  
14 plain, speedy or adequate remedy in the ordinary course of law other than the relief sought  
15 in this action. Therefore, Plaintiff/Petitioner seeks a peremptory writ of mandate  
16 compelling all Defendants/Respondents to comply with their mandatory duty under  
17 Government Code § 19826(b).

18 WHEREFORE, Plaintiff/Petitioner pray for the relief set forth below.

19 **PRAYER**

20 WHEREFORE, Petitioner prays for the following relief:

21 1. A declaration that Government Code section 19826(b) prohibits the  
22 Defendants/Respondents from reducing or otherwise adjusting the salaries of employees  
23 in BU6 without prior approval of the California Legislature.

24 2. An injunction ordering Defendants/Respondents to cease and desist from  
25 unlawfully reducing salaries of employees in BU6 without prior approval of the California  
26 Legislature.

27 3. A Writ of Mandate compelling Defendants/Respondents to continue to  
28 pay BU6 employees their full salaries and benefits without reduction or adjustment.

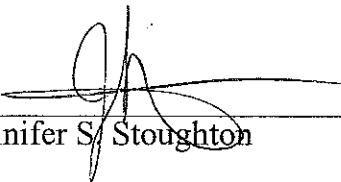


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## VERIFICATION

I, Jennifer S. Stoughton, am one of the attorneys for Plaintiff herein and am authorized to execute this on their behalf. I have read the foregoing Petition for Writ of Ordinary Mandate and Complaint for Injunctive and Declaratory Relief and am informed and believe, and thereon allege, that the matters stated therein are true and correct. I sign this verification on behalf of Plaintiff/Petitioner pursuant to Code of Civil Procedure §446, since an extenuating circumstance exists in that Plaintiff/Petitioner is absent from the county in which our office is located. Furthermore, the facts of this matter are within my knowledge and the facts themselves are not the subject of disagreement between the parties.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on January 12, 2009 at San Francisco, California.

  
\_\_\_\_\_  
Jennifer S. Stoughton