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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
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13 **RICHARD T. NEWTON; FRANK M.**
14 **MCNEAL; and SEAN A. BEATON,**
15 Plaintiffs/Consenters,

16 v.

17 **ARNOLD SCHWARZENEGGER, in his**
18 **official capacity as Governor of the State of**
19 **California; DEBBIE ENDSLEY, in her**
20 **official capacity as the Director of the**
21 **California Department of Personnel**
22 **Administration; JOHN CHIANG, in his**
23 **official capacity as the Controller of the**
24 **State of California; MATTHEW CATE, in**
25 **his capacity as the Secretary of the**
26 **California Department of Corrections and**
27 **Rehabilitation; BERNARD WARNER, in**
28 **his official capacity as the Chief Deputy**
Secretary of the California Division of
Juvenile Justice; STEPHEN MAYBERG, in
his official capacity as the Director of the
California Department of Mental Health,
and DOES 1 THROUGH 10, INCLUSIVE,

Defendants/Respondents.

CV 09-5887 VRW

**ANSWER OF CALIFORNIA STATE
CONTROLLER JOHN CHIANG TO
COLLECTIVE ACTION COMPLAINT
FOR LATE PAYMENT OF WAGES,
IMPROPER RECORD KEEPING, AND
FAILURE TO PROPERLY CALCULATE
AND PAY OVERTIME WAGES UNDER
THE FAIR LABOR STANDARDS ACT
(29 U.S.C. Section 201 et seq.)**

Judge The Honorable Vaughn R.
Walker

Action Filed: December 16, 2009

1 Defendant JOHN CHIANG, CALIFORNIA STATE CONTROLLER (“Controller”) hereby
2 answers the Collective Action Complaint of Plaintiffs/Consenters as follows. Each numbered
3 paragraph below answers the corresponding numbered paragraph in the Complaint. All
4 allegations not expressly admitted are denied.

5 **JURISDICTION**

6 1. The Controller admits that the Fair Labor Standards Act (“FSLA”) of 1938 is codified
7 at 29 U.S.C. § 201. *et seq.*, and that this Court has jurisdiction over this dispute.

8 **VENUE**

9 2. The Controller admits the allegations of this paragraph.

10 **INTRODUCTION**

11 3. The Controller admits that many state workers have been subject to furloughs
12 reducing their work schedules and pay rates. The Controller admits that accrued furlough hours
13 are not included in overtime calculations. *Ex Parte Young*, 209 U.S. 123 (1908) speaks for itself,
14 and its applicability to this suit is not a matter of fact which must be admitted or denied. Exhibit
15 A to the complaint speaks for itself and requires neither an admission nor a denial. The rest of the
16 allegations in this paragraph are denied.

17 **PARTIES**

18 4. The Controller admits that the named Plaintiffs and accompanying Consenters are
19 employed by the State of California, but, lacking knowledge of their specific job duties, denies
20 the balance of the allegations of the paragraph.

21 5. The Controller admits that Consent Forms which list the names Plaintiffs are attached
22 to the Complaint as Exhibit B, but such forms speak for themselves and require neither an
23 admission nor a denial.

24 6. The Controller admits that Consent Forms which list the names Consenters are
25 attached to the Complaint as Exhibit C, but such forms speak for themselves and require neither
26 an admission nor a denial.

27 7. The Controller admits the allegations of this paragraph.
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1 20. The Controller denies violating the FLSA and its regulations and bulletins. The
2 Controller lacks knowledge regarding whether the other defendants have violated the FLSA and
3 its regulations and bulletins, and on that basis denies these allegations.

4 **THIRD CLAIM – VIOLATION OF THE FLSA BY FAILING TO KEEP**
5 **ADEQUATE PAYROLL RECORDS**

6 21. The Controller refers to the admissions and denials set forth in paragraphs 1 through
7 20 above, and incorporates them by reference here.

8 22. The Controller denies violating the FLSA and its regulations and bulletins. The
9 Controller lacks knowledge regarding whether the other defendants have violated the FLSA and
10 its regulations and bulletins, and on that basis denies these allegations.

11 **DEFENDANT’S AFFIRMATIVE DEFENSES**
12 **FIRST AFFIRMATIVE DEFENSE**

13 **(Failure to State a Claim)**

14 23. The Complaint fails to state a claim upon which relief can be granted.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Qualified Immunity)**

17 24. All claims brought against the Controller under federal law are barred by qualified
18 immunity.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Eleventh Amendment Sovereign Immunity)**

21 25. To the extent that the claims of the Complaint purport to seek relief against the State
22 of California, such claims are barred by the sovereign immunity afforded the state by the
23 Eleventh Amendment of the federal constitution.

24 Wherefore, the Controller prays as follows:

- 25 1. That the Court render a decision that is consistent with law;
26 2. That the State Controller be awarded the costs, expenses, and attorneys’ fees
27 incurred in this proceeding; and
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3. That the Court grant the State Controller such additional relief as it deems proper.

Dated: January 19, 2010

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
ZACKERY P. MORAZZINI
Supervising Deputy Attorney General

/s/ Ross C. Moody

ROSS C. MOODY
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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: Newton, et al. v. Schwarzenegger, et al.

No.: CV 09-5887 VRW

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

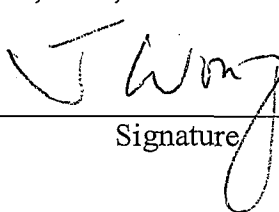
On January 19, 2010, I served the attached **ANSWER OF CALIFORNIA STATE CONTROLLER JOHN CHIANG TO COLLECTIVE ACTION COMPLAINT FOR LATE PAYMENT OF WAGES, IMPROPER RECORD KEEPING, AND FAILURE TO PROPERLY CALCULATE AND PAY OVERTIME WAGES UNDER THE FAIR LABOR STANDARDS ACT (29 U.S.C. Section 201 et seq.)** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Leanne M. Kent
California Correctional Peace Officers
Association
Legal Department
755 Riverpoint Drive, Suite 200
West Sacramento, CA 95605-1634

Jennifer Lynn Ragan
California Correctional Peace Officers
Association
Legal Department
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West Sacramento, CA 95605-1634

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on January 19, 2010, at San Francisco, California.

J. Wong
Declarant


Signature