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

16 DEBBIE L. ENDSLEY; CALIFORNIA  
DEPARTMENT OF PERSONNEL  
17 ADMINISTRATION,

18 Petitioners/Plaintiffs,

19 v.

20 JOHN CHIANG, sued herein in his  
official capacity only; OFFICE OF  
21 STATE CONTROLLER,

22 Respondents/Defendants.  
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25

26 JOHN CHIANG, in his official capacity  
as CONTROLLER OF THE STATE OF  
27 CALIFORNIA; and the OFFICE OF  
THE STATE CONTROLLER,  
28

No. 34-2010-80000591

***EX PARTE* APPLICATION BY CALIFORNIA  
CORRECTIONAL PEACE OFFICERS'  
ASSOCIATION FOR LEAVE TO INTERVENE  
PURSUANT TO CODE OF CIVIL  
PROCEDURE SECTION 387(B)**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF *EX PARTE*  
APPLICATION**

Date: July 16, 2010  
Time: 11:00 a.m.  
Place: Dept. 19  
Judge: Hon. Patrick Marlette

Complaint Filed: July 6, 2010

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Cross-Complainants,  
  
v.  
  
DEBBIE L. ENDSLEY, sued herein in  
her official capacity only;  
CALIFORNIA DEPARTMENT OF  
PERSONNEL ADMINISTRATION,  
  
Cross-Defendants.  
  
CALIFORNIA CORRECTIONAL  
PEACE OFFICERS' ASSOCIATION,  
  
Intervenor  
Respondent/Defendant.

I  
INTRODUCTION

Proposed Intervenor CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION ("CCPOA") is the exclusive collective bargaining representatives for approximately thirty-thousand hourly-paid public servants employed by Petitioners/ Plaintiffs DEPARTMENT OF PERSONNEL ADMINISTRATION and DEBBIE L. ENDSLEY ("Petitioners").<sup>1</sup> CCPOA hereby requests to join the lawsuit as an Intervenor Respondent/Defendant in Order to assert the rights of its members in litigating against Petitioners' request for relief.

Petitioners present their "Petition for Writ of Prohibition/Mandate (CCP § 1085); Complaint for Injunctive and Declaratory Relief" ("Petition") as an effort to enforce state law (i.e., *White v. Davis*, (2003) 30 Cal.4th 528 ("*White*") and *Gilb v. Chiang* (2010) \_\_ Cal.Rptr.3d \_\_) and a July 1, 2010 draft "Pay Letter" issued by Petitioners. The

<sup>1</sup> CCPOA represents approximately 30,000 peace officer employees in State Bargaining Unit 6 ("Unit 6"), as well as some Correctional Sergeants and Lieutenants who supervise Unit 6 employees. (Declaration of Charles L. Alexander, Jr. in Support of *Ex Parte* Application for Leave to Intervene ["Alexander Decl."], ¶ 3.) The vast majority of CCPOA members are paid by the State on an hourly basis. (Alexander Decl., ¶ 6.)

1 draft "Pay Letter" purported to direct Respondent/Defendant California State Controller  
2 John Chiang ("the Controller") to reduce the pay of hourly State employees, including  
3 those represented by CCPOA, to the minimum wage prescribed by the Fair Labor  
4 Standards Act ("FLSA"), 29 U.S.C. section 201 *et seq.*, which is currently \$7.25 per hour.  
5 Thus, Petitioners initiated this action for the purpose of forcing the Controller to reduce  
6 the compensation of State employees, including those represented by CCPOA, to the bare  
7 minimum required by the FLSA.

8 Most obviously, Respondents' proposed pay cut will severely impact CCPOA  
9 members' ability to support themselves and to provide for their families. (See Alexander  
10 Decl., ¶¶ 7 and 8.) Additionally, because approximately 15,000 CCPOA members are  
11 required by their employer to work overtime hours every month (see Declarations of  
12 Richard Warg and Jim Harrison in Support of *Ex Parte* Application) and the "Pay Letter"  
13 provides no exemption for employees who work overtime, reducing their pay to the  
14 minimum wage will also result in violations of their rights under the FLSA. This is  
15 because, as stated by the California Supreme Court in *White, supra*, "in order to comply  
16 with the FLSA, the state, during a budget impasse, ... must timely pay nonexempt  
17 employees who work overtime their full salary for all straight time worked plus one and  
18 one-half times their regular rate of pay for overtime." (30 Cal.4th at 578; see also *Biggs v.*  
19 *Wilson* (1993) 1 F.3d 1537, 1538.)

20 These necessary outcomes to enforcement of the draft "Pay Letter" create a  
21 basis for intervention *as of right* by CCPOA, so that it may appear in this matter to  
22 advocate the interests of the public servants it represents, who will bear the brunt of  
23 Petitioners' proposed action. (Code Civ.Proc. § 387(b).) Good cause existing for  
24 CCPOA to intervene, it respectfully requests that the Court grant it leave to intervene and  
25 permit CCPOA to file the proposed Complaint in Intervention attached hereto as  
26 Exhibit 1.

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II

ARGUMENT

**A. The Standard for Ruling on an *Ex Parte* Application**

California Rule of Court No. 3.1200 *et seq.* and Sacramento Superior Court Local Rules 2.04 and 3.14 set forth the procedural requirements for bringing an *ex parte* request for relief before the Court. These requirements are notice to all parties and a showing of good cause as to why *ex parte* relief should be granted.

**1. CCPOA Has Provided the Requisite Notice**

CCPOA has satisfied the notice requirement of California Rule of Court No. 3.1203 by, on July 12, 2010, advising Petitioners and Respondents in writing of its intent to intervene in this matter. (Yank Decl. at ¶ 2.) As of the time of this filing, Petitioners and Respondents had not responded to indicate whether they will oppose intervention. (Id. at ¶ 3.)

**2. Good Cause Exists for Intervention by CCPOA**

Notice having been given, the Court must determine whether the moving party meets the requirements to intervene. Code of Civil Procedure section 387 (“Section 387”) reads, in pertinent part:

(a) Upon timely application, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. ... A party served with a complaint in intervention may within 30 days after service move, demur, or otherwise plead to the complaint in the same manner as to an original complaint.

(b) If any provision of law confers an unconditional right to intervene or if the person seeking intervention claims an interest relating to the property or transaction which is the subject of the action and that person is so situated that the disposition of the action may as a practical matter impair or impede that person’s ability to protect that interest, unless that person’s interest is adequately represented by existing parties, the court shall, upon timely application, permit that person to intervene.

[Emphasis added.] CCPOA moves *ex parte* to intervene under subsection (b)—i.e., as having an unconditional right to intervene.

1           “Section 387 should be liberally construed in favor of intervention.” (*Lindelli*  
2 *v. Town of San Anselmo* (2006) 139 Cal.App.4th 1499, 1505, *citing Simpson Redwood Co.*  
3 *v State of California* (1987) 196 Cal.App.3d. 1192, *see also Mary R. v. B. & R. Corp.*  
4 (1983) 149 Cal.App.3d 308, 315, *Stillwell Hotel Co. v. Anderson* (1936) 16 Cal.App.2d  
5 636.) The court of appeal articulated the proper standard for intervention “as of right”  
6 under Code of Civil Procedure section 387(b) in *Hodge v. Kirkpatrick Development, Inc.*  
7 (*Hodge*) (2005) 130 Cal.App.4th 540, 547, as follows:

8           Intervention is mandatory (as of right) or permissive. A nonparty  
9 has a right under Code of Civil Procedure section 387, subdivision  
10 (b) to intervene in a pending action “if the person seeking  
11 intervention claims an interest relating to the property or  
12 transaction which is the subject of the action and that person is so  
situated that the disposition of the action may as a practical matter  
impair or impede that person’s ability to protect that interest,  
unless that person’s interest is adequately represented by existing  
parties.”<sup>2</sup>

13           Because determining whether “intervention should be allowed is best  
14 determined by a consideration of the facts of that case” (*In re Paul W.* (2007) 151  
15 Cal.App.4th 37, 57), a summary of the action is appropriate.

16           **a. The Underlying Action**

17           Petitioners sued to force the Controller to comply with the July 1, 2010 draft  
18 “Pay Letter” issued by Respondents. (See Petition at ¶ 30-32.) The draft “Pay Letter”  
19 purported to reduce the pay of hourly State employees to the FLSA minimum wage of  
20 \$7.25 per hour. (*Id.*)

21           Because the vast majority of CCPOA-represented employees are employed by  
22 the State on an hourly basis, if the “Pay Letter” is enforced, their incomes will be severely  
23

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24 <sup>2</sup> *Hodge, supra*, also delineates the section 387(a) standard for permissive intervention:

25           The trial court has discretion under Code of Civil Procedure section 387,  
26 subdivision (a) to permit a nonparty to intervene if: (1) the proper procedures  
27 have been followed; (2) the nonparty has a direct and immediate interest in the  
action; (3) the intervention will not enlarge the issues in the litigation; and (4)  
the reasons for the intervention outweigh any opposition by the parties  
presently in the action.

28 (130 Cal.App.4th at 547, fn.2.)

1 reduced, crippling them in their abilities to support themselves and to provide for their  
2 families. (See Alexander Decl, ¶¶ 6 through 8.)

3 Enforcement of the pay latter will also result in the State violating the FLSA  
4 and incurring liability to Unit 6 members who are required by their employer to work  
5 overtime, but whose pay will be set at the minimum wage according to the draft “Pay  
6 Letter.” Data produced by the Controller to CCPOA shows that, over a twelve month  
7 period, an average of 15,000 (see Declarations of Richard Warg and Jim Harrison) Unit 6  
8 members were required by the State to work overtime each month. The “Pay Letter”  
9 provides no exemption from these employees, so the reduction to minimum wage will  
10 necessarily violate the FLSA. This is because, as stated by the California Supreme Court  
11 in *White, supra*, “in order to comply with the FLSA, the state, during a budget impasse, ...  
12 must timely pay nonexempt employees who work overtime their full salary for all straight  
13 time worked plus one and one-half times their regular rate of pay for overtime.” (30  
14 Cal.4th at 578; see also *Biggs v. Wilson* (1993) 1 F.3d 1537, 1538.)

15 **b. The Proper Procedures Have Been Followed**

16 Moving parties have complied with section 387 procedures by requesting leave  
17 of this Court to intervene and by providing a proposed Complaint in Intervention  
18 concurrent with said request. CCPOA has standing to intervene on behalf of its members  
19 under the representation doctrines articulated in *Professional Fire Fighters v. City of Los*  
20 *Angeles* (1963) 60 Cal.2d 276; *International Association of Fire Fighters v. City of Palo*  
21 *Alto* (1963) 60 Cal.2d 295; and *California Federation of Teachers v. Oxnard Elementary*  
22 *School* (1969) 272 Cal.App.2d 514. As discussed above, the *ex parte* procedures have  
23 also been followed.

24  
25 **c. CCPOA’s Interests in the Action Are Direct and Immediate**

26 CCPOA’s interests in the action are self-evident. If the Petitioners obtain the  
27 relief they seek, the pecuniary interests and FLSA rights of the state employees  
28 represented by CCPOA will be greatly and, likely, irreparably harmed.



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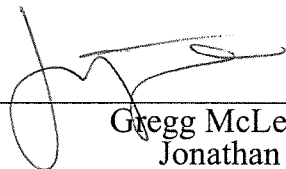
III

CONCLUSION

In light of these facts it is clear that all the prerequisites enumerated in *Hodge* for compulsory intervention under Code of Civil Procedure section 387(b) are met. Having followed the proper procedures, CCPOA has established that they have several direct and indirect interests in the litigation that existing parties cannot adequately represent. As reflected in the instant papers, as well as the concurrently-filed proposed Complaint in Intervention, there is good cause for intervention. The Court should therefore grant CCPOA's *Ex Parte* Application for Leave to Intervene.

Dated: July 12, 2010

CARROLL, BURDICK & McDONOUGH LLP

By  \_\_\_\_\_  
Gregg McLean Adam  
Jonathan Yank  
Marie A. Tenny  
Attorneys for Intervenor  
California Correctional Peace Officers'  
Association

# **EXHIBIT 1**

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

17 DEBBIE L. ENDSLEY; CALIFORNIA  
DEPARTMENT OF PERSONNEL  
18 ADMINISTRATION,

19 Petitioners/Plaintiffs,

20 v.

21 JOHN CHIANG, sued herein in his  
official capacity only; OFFICE OF  
22 STATE CONTROLLER,

23 Respondents/Defendants.

24 JOHN CHIANG, in his official capacity  
as CONTROLLER OF THE STATE OF  
25 CALIFORNIA; and the OFFICE OF  
26 THE STATE CONTROLLER,

27 Cross-Complainants,  
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No. 34-2010-80000591

**COMPLAINT IN INTERVENTION**

Complaint Filed: July 6, 2010

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v.
DEBBIE L. ENDSLEY, sued herein in her official capacity only; CALIFORNIA DEPARTMENT OF PERSONNEL ADMINISTRATION,  Cross-Defendants.
CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION,  Intervenor Respondent/Defendant.

By leave of Court, COMES NOW CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION ("CCPOA" or "Intervenor") and complains against Petitioners alleging as follows:

**PARTIES**

1. Intervenor CCPOA is a non-profit corporation organized and existing under the laws of the State of California. CCPOA is the union and exclusive recognized employee organization representing approximately 30,000 employees in State Bargaining Unit 6 ("BU6"), as well as certain correctional officers that supervise them, all of whom work for the State of California at institutions within the California Department of Corrections and Rehabilitation ("CDCR"), and whose employment with the State is administered by the Petitioner California Department of Personnel Administration ("DPA" or "Petitioner").

2. Intervenor presents this petition on behalf of itself and its members, having standing to do so under the doctrine articulated by the United States Supreme Court in *Allee v. Medrano* (1974) 416 U.S. 802, and the California Supreme Court in *Professional Fire Fighters v. City of Los Angeles* (1963) 60 Cal.2d 276, *International Association of Fire Fighters v. City of Palo Alto* (1963) 60 Cal.2d 295, and *Long Beach City Employees Assn. v. City of Long Beach* (1986) 41 Cal.3d 937, 941 n. 3.





1 interest in this case arising from the grave consequences its members would suffer if the  
2 relief requested were granted.

3 16. If Petitioner's Pay Letter is implemented and employees' wages are  
4 reduced to federal minimum wage, Intervenor's members would suffer direct pecuniary  
5 impact and the "availability of the essential necessities of life" for BU6 members would  
6 be greatly diminished. (*Davis, supra*, 30 Cal.4th at p. 559.) Furthermore, the reduction of  
7 wages and the accompanying financial hardship would be so extreme that collateral  
8 injuries are inevitable as well. Intervenor's members would face the inability to pay  
9 mortgages, cover health care expenses, qualify for loans, pay credit cards and other  
10 interest bearing accounts, provide transportation and food for their families, and make  
11 timely palimony and child support payments resulting in fines and possible criminal  
12 sanctions. (*See Declaration of Chuck Alexander In Support of CCPOA's Motion to*  
13 *Intervene ["Alexander Decl."].*)

14 17. *Biggs v. Wilson* (9th Cir. 1993) 1 F.3d 1537 held that FLSA requires  
15 the State of California to *timely* pay its employees despite any budget impasse.

16 18. Petitioner concedes that *Davis* provides that during a budget impasse,  
17 the State is still required to follow federal wage law. (Petition at pg. 4, lines 12-15.)  
18 However, the Pay Letter provides no guidance or instruction as to how the  
19 Defendants/Respondents are to comply with the mandate from *Davis* that "in order to  
20 comply with the FLSA, the state, during a budget impasse, ... must timely pay nonexempt  
21 employees who work overtime their full salary for all straight time worked plus one and  
22 one-half times their regular rate of pay for overtime." (*Davis, supra*, 30 Cal.4th at p. 578.)  
23 The SCO has stated that it cannot accurately determine which employees work overtime  
24 during a given pay period in order to pay those employees their full salary for all straight  
25 time worked on their regular pay day. (Exh. B, p. 3.)

26 19. Because of the nature of their work and understaffing in their  
27 department, the overwhelming majority of Intervenor's members will work overtime  
28 during the budget impasse. In addition to voluntary overtime shifts, BU6 members are

1 subject to working involuntary overtime shifts. Data provided by the SCO to Intervenor  
2 shows that over the last year, on average there were 15,000 BU6 employees working  
3 overtime shifts each month.<sup>1</sup> (See Declaration of Richard Warg In Support of CCPOA's  
4 Motion to Intervene.) This is approximately fifty-percent of the bargaining unit. (See  
5 Alexander Decl. at ¶ 3.)

6 20. Certain BU6 members, including Correctional Institution Firefighters,  
7 have planned overtime as part of their regular schedule (i.e., they receive federally-  
8 mandated overtime for certain *regularly scheduled* hours each pay period). Thus, the Pay  
9 Letter creates a significant likelihood that such employees will be deprived of their full  
10 wages mandated by *Davis* and *Biggs*.

11 21. Consequently, the relief requested by Petitioners in this action to  
12 facilitate their enforcement of the Pay Letter directly and adversely impacts Intervenor's  
13 members, and justifies intervention.

14 **FIRST CAUSE OF ACTION—INJUNCTIVE RELIEF**

15 **VIOLATION OF THE FAIR LABOR STANDARDS ACT 29 U.S.C. § 201-19: ENJOINING**

16 **REDUCTION OF INTERVENOR MEMBERS' WAGES**

17 22. By its terms, the FLSA applies to State employers (29 U.S.C. § 203(d),  
18 (e)(2)(C); see also *Davis, supra*, 30 Cal.4th at p. 545.)

19 23. Intervenor incorporates herein by reference all preceding paragraphs as  
20 though fully set forth herein.

21 24. By this action, Petitioners propose drastic pay cuts to thousands of  
22 public servants by requiring the Controller to pay State employees federal minimum  
23 wage.

24 \_\_\_\_\_  
25 <sup>1</sup> The data only counts an employee as working overtime if s/he worked four or more  
26 overtime shifts. Over the last year, the DPA instituted a furlough policy in which State  
27 employees, including those in BU6, were furloughed three days per month. Pursuant to  
28 DPA policy, furlough days do not count as "shifts worked" for purposes of calculating  
overtime. Thus, one would expect the average number of employees working overtime  
during the budget impasse to be higher than the data shows because furloughs are no  
longer in place.



Dated: July 12, 2010

CARROLL, BURDICK & McDONOUGH LLP

By



Gregg McLean Adam  
Jonathan Yank  
Marie A. Tenny

Attorneys for Intervenor  
California Correctional Peace Officers'  
Association

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# **EXHIBIT A**

**DEPARTMENT OF PERSONNEL ADMINISTRATION**

OFFICE OF THE DIRECTOR  
1515 "S" STREET, NORTH BUILDING, SUITE 400  
SACRAMENTO, CA 95811-7258



July 1, 2010

The Honorable John Chiang  
California State Controller  
300 Capitol Mall, Suite 1850  
Sacramento, California 95814

Dear Controller Chiang,

Today is July 1, 2010, and there is no state budget. Regrettably, we must take the steps outlined in the attached pay letter to adjust wages and salaries during this budget impasse. The six Bargaining Units with tentative agreements are not included because we are seeking and expect the Legislature to approve a continuous appropriation for these six units. We anticipate passage of a continuous appropriation for these bargaining units before the end of the month.

In May 2003, the California Supreme Court held in *White v. Davis* that in the absence of an approved state budget, the Controller has no legal authority to pay state employee wages and salaries except as required by federal labor law.

In 2008, the Department of the Personnel Administration (DPA) issued a pay letter directing the payment of wages and salaries in compliance with *White v. Davis*. You did not implement that pay letter. You cited your computer system as one of the reasons you could not pay minimum wage for state employees during a budget impasse. Based on your refusal, the DPA sued and won in the trial court. You appealed to the appellate court and we are waiting for a decision.

However, in June 2003, your predecessor, Steve Westly, stated that the "technical tasks involving changing pay for more than 200,000 employees can be accomplished." Based on this statement, it appears that there is a way to implement changes to your computer system to comply with *White v. Davis* and the Fair Labor Standards Act (FLSA).

I urge you to take the necessary steps to make changes to your computer system to comply with state law. My staff is prepared to work with you to develop and implement the necessary mechanisms to comply with the California Constitution, *White v. Davis*, and the Fair Labor Standards Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Debbie Endsley", written over a horizontal line.

Debbie Endsley  
Director

PAY LETTER: 10-XX  
ISSUE DATE:

**DEPARTMENT OF PERSONNEL ADMINISTRATION  
SECTION I**

For questions regarding Section I, call (916) 323-3343  
Technical questions will be referred to the Personnel Services Branch

To comply with federal labor law and the California Supreme Court's decision in White v. Davis, in the absence of an approved budget WWG 2, E, and SE classes shall be paid as follows:

**All Regular Pay for all employees is delayed until a budget is signed with the exception of the Bargaining Units identified below.** Until a Budget is signed employees in Work Week Group 2 and WWG E are eligible for Pay Differential XXX. Employees in WWG SE are not entitled to Regular Pay or the Minimum Wage Pay Differential in the absence of a Budget.

**SECTION 14: PAY DIFFERENTIALS**

PAY DIFFERENTIAL XXX  
WHITE VS. DAVIS NO BUDGET/MINIMUM WAGE PAY DIFFERENTIAL RANK AND  
FILE AND EXCLUDED EMPLOYEES is established: (Effective 07/01/10)

**Excluded from Minimum Wage Differential:**

Bargaining Units 5, 8, 12, 16, 18 and 19

**PAY DIFFERENTIAL XXX  
WHITE VS. DAVIS NO BUDGET/MINIMUM WAGE PAY DIFFERENTIAL -  
RANK AND FILE AND EXCLUDED EMPLOYEES**

Established: 07/01/10

CLASS TITLE	CB/ID	RATE	DEPARTMENT
All classes with WWG 2 designation with the exception of positions that have a continuous appropriation	R01, R02, R04, R06, R07, R09, R10, R11, R13, R14, R15, R17, R20, R21, S01, S04, S05, S06, S07, S08, S09, S11, S12, S13, S14, S15, S17, S20, U01, U04, U07, U09, U12, U15, U19, E, E97, E98, and confidential employees tied to the above rank-and-file bargaining units.	Rate 1	All Departments
All classes with WWG E designation with the exception of positions that have a continuous appropriation	R01, R02, R03, R07, R09, R10, R11, R17, R21, S01, S02, S03, S04, S06, S07, S08, S09, S10, S12, S11, S14, S15, S17, S18, S19, S20, S21, M01, M02, M05, M06, M07, M08, M09, M10, M11, M12, M13, M14, M15, M16, M17, M18, M19, M20, M21, M21, U01, U02, U09, U10, U19, E97, E98, E99	Rate 2	

RATE	EARNINGS ID
<p><b><u>RATE 1 -WWG 2</u></b></p> <p>Full-time employees shall be eligible for:</p> <p style="padding-left: 40px;">\$1,218 for a 21 day pay period \$1,276 for a 22 day pay period</p> <p>Intermittent employees shall be eligible for:</p> <p style="padding-left: 40px;">\$7.25 per hour</p> <p>Daily rate employees shall be eligible for:</p> <p style="padding-left: 40px;">\$58.00 per day</p>	

**SECTION 14:**

**PAY DIFFERENTIALS**

RATE	EARNINGS ID
<b><u>RATE 2 - WWG E</u></b>	
Full-time employees shall be eligible for: <p style="margin-left: 40px;">\$1,971.66 per pay period</p>	
Intermittent employees shall be eligible for: <p style="margin-left: 40px;">\$11.36 per hour</p>	
Daily rate employees shall be eligible for: <p style="margin-left: 40px;">\$91.00 per day</p>	

CRITERIA
<p>Employees in classes with a Work Week Group designation of 2 and E are eligible for this pay differential with the exception of employees in Bargaining Units 5, 8, 12, 16, 18, and 19. These bargaining units have a continuous appropriation and will receive their regular compensation.</p> <p>All health benefits will <b>not</b> be withheld from this minimum wage pay differential for 90 days.</p> <p>Group legal will be withheld from this minimum wage pay differential.</p> <p>Miscellaneous deductions will be withheld from this minimum wage payment.</p> <p>Employee's lump sum payments will <b>not</b> be based on this minimum wage payment.</p> <p>Disability payments which occurred prior to July 1, 2010 will <b>not</b> be subject to minimum wage.</p> <p>Supplemental payments for disability will be based on minimum wage as of July 1, 2010.</p>

IF APPLICABLE, SHOULD PAY DIFFERENTIAL BE:	
PRO RATED	Yes
SUBJECT TO QUALIFYING PAY PERIOD	No
ALL TIME BASES AND TENURE ELIGIBLE	Yes
SUBJECT TO PERS DEDUCTION	Yes

INCLUSION IN RATE TO CALCULATE THE FOLLOWING BENEFIT PAY	
OVERTIME	No
IDL	No
EIDL	No
NDI	No
LUMP SUM VACATION	No
LUMP SUM SICK	No
LUMP SUM EXTRA	No

# **EXHIBIT B**



**JOHN CHIANG**  
California State Controller

July 2, 2010

Debbie Endsley, Director  
Department of Personnel Administration  
1515 "S" Street, North Building, Suite 400  
Sacramento, CA 95811-7258

Dear Ms. Endsley:

Thank you for your letter of July 1, 2010, which includes a draft pay letter calling for the salaries and wages of most State employees to be reduced to the federal minimum of \$7.25 per hour while others, including criminal prosecutors and teachers, will receive no compensation.

Controller John Chiang agrees that it is regrettable that the new fiscal year has begun without a spending plan in place. It is also regrettable that innocent Californians pay the price whenever the Governor and lawmakers fail in their Constitutional responsibility to pass a timely and honestly-balanced budget. While the current focus is on state public servants, the list of those who have been called to shoulder the fiscal mismanagement of its Sacramento leaders during the past 36 months includes 450,000 IOU recipients, taxpayers who had more than \$3 billion of tax refunds withheld, businesses which provide goods to the State, and California taxpayers who must now pay millions in extra debt service to offset credit ratings which are the worst in the nation.

Your letter refers to segments of the 2003 Supreme Court decision in *White v. Davis* which provide that the State must follow the minimum requirements of the federal labor laws in the absence of a budget, but conveniently ignores the Court's declaration that "the Controller's claim of infeasibility was not fully litigated, and thus we do not believe it would be appropriate to attempt to definitively resolve the claim at this juncture." In short, the Court acknowledged then-Controller Davis's argument that system limitations coupled with existing labor laws prevent the State from reducing wages to the federal minimum level without violating various provisions of the federal Fair Labor Standards Act, but left the issue to be litigated at a future date. Today's ruling issued by the 3<sup>rd</sup> District Court of Appeal actually goes further by saying that "unfeasibility would arguably excuse the Controller from the declaratory judgment to comply with *White v. Davis* . . ."

Your letter quotes a June 2003 statement by then-Controller Westly who, in only his sixth month in office, offered a preliminary opinion that the State's payroll system could be reprogrammed to pay federal minimum wage. Thirteen months later, after having the opportunity to thoughtfully study the matter, he notified the Legislature that his office "had conducted a study and concluded it is

Debbie Endsley  
July 2, 2010  
Page 2

not feasible to pay some employees full salary and others minimum wage under the state's current payroll system." I have attached a copy of that letter and am willing to facilitate a meeting between you and the previous Controller's payroll chief to clarify any misunderstandings upon which you have come to detrimentally rely. I urge you to avail yourself of this opportunity, if for no other reason than to confer with someone who oversaw the design of the existing payroll system when it was built in the early 1970's and can inform your understanding of what this system can and cannot do.

I appreciate your offer to work with us in developing the necessary mechanisms to reduce 250,000 Californians' wages to the federal minimum or to zero. Let's begin with issues raised by then-payroll chief Don Scheppmann in his August 2008 letter addressed to your deputy director of labor relations. It provided your office with a list of legal and mechanical challenges that would need to be resolved in order to mitigate the risk of California taxpayers incurring billions of dollars in damages associated with violating federal labor laws and the Constitution. To date, we have received no response from you or your staff. If you have solutions to the identified challenges, it would be in the State's best interests for you to share them. While all the issues raised in the 2008 letter deserve your full attention, there are three vital challenges which your office has remained unusually silent. They have been summarized and are attached to this letter.

Finally, it is important to note that the Administration has been working in close partnership with the Controller on the nation's largest payroll modernization effort. The new payroll system will have the capacity to address the State's current and future business needs, including the lawful reduction of wages in the absence of a budget. As one of four Administration representatives to the project's six-person steering committee, you approved the current schedule which anticipates initial roll-out in 2011, and the subsequent decommissioning of the existing payroll system. In your role, you also know that no other state payroll system in the nation is asked to pay minimum wage during a budget stalemate or under any other circumstances.

As Controller Chiang has advised both the Governor and legislative leaders, California cannot afford another day of political paralysis in resolving the state budget crisis, nor can it afford a "shoot first, and aim later" approach to governing. In the form of budget slight-of-hand and reckless political stunts, too many mistakes have been made in recent years that have served to exacerbate the State's fiscal woes. Until we can properly manage the billion dollar risk associated with the Governor's minimum wage proposal, let's not add to that list of mistakes.

Sincerely,  
*Original signed by:*

COLLIN WONG-MARTINUSEN  
Chief-of-Staff  
California State Controller John Chiang

Attachments

- California utilizes a “negative payroll system, “which means that the calculation of state workers’ pay is completed **in advance** of the conclusion of the pay period. For example, during the July pay period (July 1 through July 31), State employees will receive their pay warrants on August 1<sup>st</sup>, but the State Controller will calculate payroll on or about July 20<sup>th</sup>. This negative payroll system is enshrined in State law and cannot be altered except by legislation or through collective bargaining.

California does not have a “real-time” attendance accounting system. Instead, state employees complete a time sheet reflecting actual hours worked during the first week of the subsequent pay period. For example, employees will generally complete their respective timesheets reflecting actual hours worked in the July pay period during the first week of August.

This begs the question: “With a negative payroll system and the lack of real-time attendance accounting, how does the Controller know who has worked overtime during the first 20 days of the month and who will work overtime during the final 10 days of the month?” In short, we don’t. Instead, we calculate payroll on the 20<sup>th</sup> of each month using the presumption that all employees have worked their full, normal hours.

As you already know, the FLSA provides that an employee who works overtime is entitled to full pay for their regular hours on his/her normal pay day, in addition to overtime wages. Because of the payroll environment described above, California will assuredly violate the FLSA should it attempt to pay its employees federal minimum wage. Returning to our example: On July 20<sup>th</sup>, the Controller will have no means to determine who has or will work overtime during the July pay cycle in order to comply with the overtime provisions of the FLSA.

Just so you get a sense of how many potential violations could occur: During the April 2010 payroll period, nearly 72,000 state employees worked more than 1.5 million hours of overtime.

- The California Constitution prohibits expenditures unless there is a legislative appropriation authorizing the spending. Most, but not all, appropriations are found in the annual budget act which is required to be enacted by no later than July 1 of each year and expires the following June 30. Regrettably, this Constitutional requirement has only been met 5 times in the past 20 years.

Because payroll is calculated on or about the 20<sup>th</sup> of every month, California is at substantial risk of violating the prompt pay provisions of the FLSA if it attempts to reduce wages to the federal minimum level. Specifically, if there is a budget impasse on the date on which the State calculates payroll, the Controller will be forced to make those calculations based on the presumption that there will be no budget agreement during the final 10 or 11 days of the month. If there is a budget agreement enacted during that window of time, it is infeasible for our existing Vietnam-era payroll system to undo the prior calculations and revert back to paying normal, full wages by the regular pay day.

- While reducing pay at the onset would be impossible without placing the State at risk of violating the overtime and prompt pay provisions of the FLSA, the time it would take to make state employees whole for wages owing in the wake of a budget deal would **guarantee** violations of the prompt pay provisions of the FLSA.

Our payroll technical experts estimate that it would take **at least 6 months** before all employees would be made whole once a budget is in place.

A recent example of the incredible task we face in restoring full pay followed a court ruling that determined that California's Governor acted unlawfully in furloughing employees at the State Compensation Insurance Fund, the California state agency responsible for providing worker's compensation insurance coverage to businesses. In fulfillment of the court's order to retroactively restore lost wages to this agency's 8,000 employees, it took 4+ weeks. Note that the universe of employees who would either be paid federal minimum wage or no wages is approximately 250,000.

# **CONTROLLER STEVE WESTLY**

## **STATE OF CALIFORNIA**

300 Capitol Mall  
Sacramento, CA 95814  
916.445.3028  
[www.controller.ca.gov](http://www.controller.ca.gov)

**FOR IMMEDIATE RELEASE:**  
July 8, 2004

**CONTACT: PAUL HEFNER**  
916-324-2356

## **Westly Pledges to Fund Key Services Until Budget Completed**

SACRAMENTO – Controller Steve Westly today outlined plans to keep state funds flowing to preserve vital services until a final budget is adopted.

“We all know we need a budget as soon as possible,” Westly said. “In the meantime, as the state’s chief financial officer, I will do everything I can to provide payments for essential services.”

In a letter to members of the Legislature, Westly said he would continue to pay the salaries of state employees, and to pay state vendors for services provided before the new fiscal year began July 1. In addition, Westly will continue making payments required by federal law, authorized by the State Constitution or allowed via continuous legislative appropriation.

Westly said that the state’s cash position is substantially improved from last year, due to passage of Proposition 57 and the improved economy.

But Controller Westly cautioned that while no large payments were immediately threatened, several claims will come due later this month – including payments to community colleges and to school districts for categorical programs – that cannot be paid until a budget is signed.

“The real date to watch for is July 28. That’s when I will not be able to make major payments to community colleges and California’s schools,” Westly said.

Westly said he cannot make payments to vendors for services provided since July 1. He also said he would continue the practice of withholding salaries and per diem from state elected officials and appointed staff until a budget is adopted.

Text of letter follows.

-More-



STEVE WESTLY  
California State Controller

July 8, 2004

Dear Legislators:

Thank you for working hard to finalize California's budget. To help you respond to your constituents' concerns, let me outline what obligations I can and cannot pay until a budget is signed into law.

The state's cash position is substantially better this year than last, due to passage of Prop. 57 and the improving economy.

As the State's chief financial officer, I will do everything I can to continue to provide payments for essential services. However, there are a number of constitutional and other restrictions that will prevent me from making payments scheduled for month's end to community colleges, school districts' categorical programs and local governments.

**What We Can Pay**

In the absence of a budget, I am authorized to make the following types of payments:

1. **State Employees** – In *Jarvis vs. Westly*, the state Supreme Court ruled that payment to state employees was proper under the Fair Labor Standards Act. The court left open the question of whether the payment was to be for full or minimum wages and whether or not minimum wage payments were feasible. My office did a study and concluded it is not feasible to pay some employees full salary and others minimum wage under the state's current payroll system. We are in the process of replacing our payroll system – which has been in place since the 1970s – but that work will not be completed until 2008.
2. **Prior Year Obligations** – These payments are for costs incurred in the prior fiscal year. These include vendor payments for services provided before June 30.
3. **Constitutional Authorizations** – These are financial obligations set out in the State Constitution, such as debt service and related interest payments, and revenue limit education payments.
4. **Federal Mandates** – Even without a budget, California must comply with federal law. Therefore, I will continue making federally mandated payments such as Medi-Cal and CalWorks.

5. **Continuous Legislative Appropriations** – I will continue to pay those expenses with ongoing authorization of the Legislature, such as unclaimed property payments and income tax refunds.

**What We Cannot Pay**

1. Payments to community colleges, school districts, local governments, some non-profit organizations and other entities not allowed as specified above.
2. Payments to vendors for services provided during the new fiscal year.
3. Salaries and per diem of state elected officials and their appointed staff.

I hope this information is helpful to you. Please call me if you have any questions.

Sincerely,

Original signed by:

STEVE WESTLY  
California State Controller

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# **EXHIBIT C**



To: Agency Secretaries and Undersecretaries  
From: Scott Reid, Cabinet Secretary  
Date: July 7<sup>th</sup>, 2010  
Re: Overtime Directive

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As we all know, the new fiscal year has begun without a State budget in place. As such, it is critical that we do everything we can to preserve cash and reduce our expenditures. Towards that end, departments and agencies are hereby directed to make every effort to eliminate the use of overtime. In limited situations where overtime cannot be avoided, it must be authorized in writing and in advance by the employee's supervisor.

Please ensure that this directive is shared with your respective departments and programs and thank you in advance for your assistance and cooperation.

If you have any question, please contact our office at (916)-445-6131. Thank you.

Scott Reid  
Cabinet Secretary