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October 30, 2009

Unit 6 Members,

Yesterday afternoon, the Superior Court of Sacramento issued a tentative ruling denying the States effort to consolidate all the furlough cases into one. In effect, the State was arguing that all the furlough cases should be combined and heard in Sacramento. This would have delayed our hearing until sometime next year, on top of combining us with all the other groups who have filed regarding furloughs.

After the tentative was published, the State opted not to contest the ruling, thus making it final. This means that barring any other delay, our case begins in Alameda Superior Court on November 16.

We have attached the Sacramento Superior Court order for your information.

CA  
Chuck

Department 29  
Superior Court of California  
County of Sacramento  
720 Ninth Street  
Timothy M. Frawley, Judge  
Frank Temmerman, Clerk

Hearing: Friday, October 30, 2009, 1:30 p.m.

<b>CALIFORNIA ASSOCIATION OF PSYCHIATRIC TECHNICIANS</b>	<b>Case Number: 34-2009-80000148</b>
<b>v.</b>	
<b>ARNOLD SCHWARZENEGGER, et al.</b>	

**Proceedings: Motion for Coordination of Actions**

**Filed By: David W. Tyra, Kronick, Moskowitz, Tiedemann & Girard,  
Attorneys for Respondents**

The following shall constitute the Court's tentative ruling on the above-entitled matter. The tentative ruling shall become the ruling of the Court unless a party desiring to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

**TENTATIVE RULING**

A. Motion to Coordinate

On August 31, 2009, Respondents in this action (hereinafter, the "*Psychiatric Technicians*" case) filed a motion for transfer of actions and coordination of proceedings under Code of Civil Procedure section 403 (the "Transfer Motion"). The Transfer Motion seeks, among other things, to transfer to this Court for purposes of coordination the following actions pending in other counties (the "Included Actions"):

*CASE v. Schwarzenegger, et al.*  
Alameda County Superior Court Case No. RG09453982

*Calif. Correctional Peace Officers Assn. v. Schwarzenegger, et al.*  
Alameda County Superior Court Case No. RGO9441544

*SEIU/Walker v. Schwarzenegger, et al.*  
Alameda County Superior Court Case No. RGO9456750

*Union of American Physicians & Dentists v. Schwarzenegger, et al.*  
Alameda County Superior Court Case No. RGO9456684

*CalPERS v. Schwarzenegger, et al.*  
San Francisco County Superior Court Case No. CPF-09-509754

The procedure for coordination of actions may be invoked when civil actions sharing a common question of fact or law are pending in different courts. (Cal. Civ. Proc. Code § 404.)

Under Code of Civil Procedure section 403, a motion for coordination of noncomplex actions must be supported by a showing that (1) the actions are noncomplex; (2) the actions meet the standards specified in Code of Civil Procedure section 404.1; and (3) the moving party has made a good faith effort to obtain agreement to the transfer from all parties to each action. (Cal. Civ. Proc. Code § 403.)

In this case, the Court concludes that the actions are noncomplex and that Respondents have made a good faith effort to obtain the agreement of the parties, but that Respondents have failed to establish that the actions meet the standards specified in Code of Civil Procedure section 404.1.

Code of Civil Procedure section 404.1 provides:

Coordination of civil actions sharing a common question of fact or law is appropriate if one judge hearing all of the actions for all purposes in a selected site or sites will promote the ends of justice taking into account [1] whether the common question of fact or law is predominating and significant to the litigation; [2] the convenience of parties, witnesses, and counsel; [3] the relative development of the actions and the work product of counsel; [4] the efficient utilization of judicial facilities and manpower; [5] the calendar of the courts; [6] the disadvantages of duplicative and inconsistent rulings, orders, or judgments; and, [7] the likelihood of settlement of the actions without further litigation should coordination be denied.

The Court addresses these factors below.

1. Whether Common Questions Of Fact Or Law Are Predominating And Significant

In determining whether a common question of fact or law is predominating and significant to the litigation, the Court recognizes a distinction between the action entitled *California Correctional Peace Officers Assn. v. Schwarzenegger, et al.* (Alameda County Court Case No. RGO9441544) (hereinafter, the "CCPOA" case), and the other Included Actions entitled *CASE v. Schwarzenegger, et al.* (Alameda County Case No. RG09453982), *SEIU/Walker v. Schwarzenegger, et al.* (Alameda County Case No. RGO9456750), *Union of American Physicians & Dentists v. Schwarzenegger, et al.* (Alameda County Case No. RGO9456684), and *CalPERS v. Schwarzenegger, et al.* (San Francisco County Case No. CPF-09-509754) (hereinafter referred to collectively as the "Special Fund" cases).

Aside from sharing the same basic premise that the Governor's furlough orders are unlawful, there are few similarities between the allegations in the Special Fund cases and the *Psychiatric Technicians* case.

In the *Psychiatric Technicians* case, the petitioner alleges that the furlough plan implemented for Bargaining Unit 18 members constitutes an unlawful salary reduction and a failure to pay wages for work performed, in violation of Government Code § 19826(b) and Labor Code § 212. The petitioner prays for an order compelling respondents to pay Bargaining Unit 18 members their wages in cash for all hours worked in a workweek or, in the alternative, to require Bargaining Unit 18 members to take their furlough days.

In contrast, the petitioners in the Special Fund cases argue that their members cannot be subjected to furloughs because their salaries are paid from special funds or federal funds, and not from the State's general fund. The petitioners in the Special Fund cases challenge the Governor's authority to furlough employees working at departments or in positions funded by sources other than the State's general fund.

Thus, the Special Fund cases have little in common, legally or factually, with the *Psychiatric Technicians* case. Accordingly, the Court has little difficulty in concluding that there are no predominating and significant questions of fact or law common to these cases.

Unlike the Special Fund cases, the allegations in the CCPOA case are similar to the allegations in the *Psychiatric Technicians* case. The petitioner in the CCPOA case alleges that, due to severe prison understaffing and restrictions on the use of overtime, the members of Bargaining Unit 6 are unable to use their furlough days in the time allotted under the furlough plan. As a result, the petitioner alleges, the furlough plan implemented for Bargaining Unit 6 members constitutes an unlawful salary reduction and a failure to pay wages for work

performed, in violation of Government Code § 19826(b) and Labor Code §§ 212, 223, and 1171.<sup>1</sup>

Due to the similarities between the allegations in the *CCPOA* case and the *Psychiatric Technicians* case, it is a closer question whether these cases share a common question of fact or law that is predominating and significant to the litigation. The cases share at least one significant legal issue, namely, whether "self-directed" furlough plans are lawful.

Nevertheless, it appears to this Court that the principal questions of fact and law in the cases are specific to the particular bargaining units involved in those cases, turning on whether the particular bargaining unit members will, in fact, be able to use their furlough days in the time allotted under their respective furlough plans. Therefore, even though the actions share some significant legal issues, the Court concludes that the predominating questions of fact and law in the actions are unique and different.

2. The Relative Development Of The Actions And The Work Product Of Counsel; The Efficient Utilization Of Judicial Facilities And Manpower; And The Calendar Of The Courts

As to the Alameda County cases, the relative development of the actions, the efficient utilization of judicial facilities and manpower, and the calendar of the courts favor denying the Transfer Motion. All four of the Alameda County writ petitions – including the *CCPOA* case -- are currently scheduled to be heard on their merits on November 16, 2009. Due to the demands on this Court's calendar, transferring the Alameda County cases to this Court would cause an unnecessary and undue delay, and waste scarce judicial resources. Therefore, these factors favor denying the Transfer Motion as to the Alameda County cases.

3. The Risk of Duplicative And Inconsistent Rulings, Orders, Or Judgments

Due to the similarities between the allegations in the *CCPOA* case and the *Psychiatric Technicians* case, coordination of those actions likely would decrease the risk of duplicative and/or inconsistent rulings, orders, or judgments. On the other hand, due to the factual differences between the cases, coordination would not eliminate the risk of inconsistent results; the same judge assigned to hear both cases could, based on the facts, reach opposite conclusions. On balance, however, this factor favors granting the Transfer Motion as to the *CCPOA* case.

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<sup>1</sup> Although not at issue here, the petitioner in the *CCPOA* case previously raised, and lost, the argument that it would be impossible for Bargaining Unit 6 members to use their furlough days in the time allotted, in *California Correctional Peace Officers Assn. v. Schwarzenegger, et al.* (Sacramento County Case No. 34-2009-80000137), which is now on appeal to the Third District Court of Appeal.

Because there are few similarities between the allegations in the Special Fund cases and the *Psychiatric Technicians* case, coordination of those cases is not likely to decrease the risk of duplicative or inconsistent rulings, orders, or judgments in any material way. Accordingly, this factor does not support granting the Transfer Motion as to the Special Fund cases.

4. The Convenience Of Parties, Witnesses, And Counsel; And The Likelihood Of Settlement Of The Actions Without Further Litigation

The remaining factors – the convenience of parties, witnesses, and counsel, and the likelihood of settlement of the actions without further litigation – do not appear to favor either side.

5. Conclusion

Taking all of the section 404.1 factors into account, the Court concludes that coordination of the Included Actions in Sacramento would not promote the ends of justice.

As to the Special Fund cases, there are virtually no factors supporting coordination of those cases with the *Psychiatric Technicians* case.

As to the *CCPOA* case, while there may be some benefit to coordinating the actions to reduce the risk of inconsistent adjudications, because the predominating questions of fact and law in the actions are unique and different, and because the *CCPOA* case has been significantly litigated and has an imminent date set for hearing on the merits, the Court concludes that coordination would not promote the ends of justice.

The motion to coordinate is therefore DENIED.

B. Motion to Consolidate

In addition to seeking to coordinate the Included Actions, the Transfer Motion also seeks to consolidate, with the above-entitled cause, the following action already pending in this Court:

*SEIU/Walker v. Schwarzenegger, et al.*  
Sacramento County Superior Court Case No. 34-2009-80000150

This request is DENIED.

The Sacramento *SEIU* case (Sacramento County Case No. 34-2009-80000150) seeks to invalidate the furloughs based on respondents' alleged failure to comply with the procedural requirements of the Administrative Procedures Act. The Sacramento *SEIU* case and the *Psychiatric Technicians* case do not involve a

common question of fact or law and, therefore, there is no basis for consolidation.

In their Reply, Respondents also seek to consolidate *CDF Firefighters v. Schwarzenegger, et al.* (Sacramento County Case No. 34-2009-00032732) with the *Psychiatric Technicians* case. The Court refuses to rule on this request due to lack of proper notice.

C. Requests for Judicial Notice

The requests for judicial notice filed in support of and in opposition to Respondent's motion are GRANTED.

D. Overall Conclusion

For the foregoing reasons, the Transfer Motion is DENIED.

In the event that this tentative ruling becomes the final ruling of the Court, this minute order shall be effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice shall be required.