

**ATTORNEY/CLIENT ENGAGEMENT AGREEMENT; DISCLOSURE
AND CONSENT REGARDING JOINT REPRESENTATION
FLSA Action Seeking Declaratory Relief Re: Furloughs
Newton v. Schwarzenegger, et al.**

This agreement for the performance of legal services and payment of attorney's fees (hereinafter referred as the "AGREEMENT") is between the California Correctional Peace Officers Association Legal Department (herein referred to as "ATTORNEYS") and Richard T. Newton, Frank McNeal, and Sean A. Beaton (hereinafter individually referred to as "CLIENT" and collectively referred to as "CLIENTS"). This AGREEMENT sets forth the terms and conditions upon which ATTORNEYS will provide professional services to CLIENTS and to obtain CLIENTS' written consent to the fee arrangement as well as to the joint representation of CLIENTS.

ATTORNEYS and CLIENTS agree that other persons similarly situated to CLIENTS may "Opt-In" to the lawsuit to be filed by ATTORNEYS on behalf of CLIENTS. Persons who Opt-In are herein referred to as "CONSENTERS."

1. CONDITIONS

This AGREEMENT will not take effect, and ATTORNEYS will have no obligation to provide legal services to anyone until CLIENTS return a signed copy of this AGREEMENT to ATTORNEYS.

2. SCOPE OF REPRESENTATION BY ATTORNEYS

ATTORNEYS are being retained to represent CLIENTS (and also to represent CONSENTERS) regarding alleged violations of the Fair Labor Standards Act, 29 U.S.C. § 210 et seq. (hereinafter "FLSA") arising from the implementation of the furlough program by CLIENTS' (and CONSENTERS') employer, the California Department of Corrections and Rehabilitation (herein "CDCR") and/or the California Department of Mental Health (herein "DMH"). All CLIENTS and CONSENTERS are, and must be, members of the California

Correctional Peace Officers Association (“CCPOA”) subject to the furlough program. CLIENTS (and CONSENTERS) claim that, by imposing furloughs, ARNOLD SCHWARZENEGGER, in his official capacity as Governor of the State of California; DEBBIE ENDSLEY, in her official capacity as the Director of the California Department of Personnel Administration; JOHN CHIANG, in his official capacity as the Controller of the State of California; MATTHEW CATE, in his official capacity as the Secretary of the CDCR; and STEPHEN MAYBERG, in his official capacity as Director of DMH, have violated, and continue to violate, the FLSA by failing to timely pay wages, keep accurate work hours and payroll records, and properly calculate and pay overtime hours as required by the FLSA. The legal action seeking declaratory relief brought by CLIENTS and CONSENTERS to address said violations shall hereinafter be referred to as the “FLSA ACTION.”)

ATTORNEYS will file and prosecute the FLSA ACTION on behalf of CLIENTS and CONSENTERS seeking a judicial declaration that the furlough program, as implemented by CDCR and DMH, violates the FLSA. ATTORNEYS are agreeing to represent CLIENTS and CONSENTERS only with respect to the FLSA ACTION and only to the extent the interests of each CLIENT and each CONSENTER are consistent with the interests of the class consisting of CLIENTS and CONSENTERS as described in the FLSA ACTION, to the extent the members of the class seek a judicial declaration that the furlough program, as implemented by CDCR and DMH, violates the FLSA. ATTORNEYS’ representation of CLIENTS, CONSENTERS, or any of them, does not include, and shall not include, representation of CLIENTS or CONSENTERS in any related or independent matters, or with regard to any matter in which the interests of any CLIENT or CONSENTER is or may be adverse to or divergent from the interests of the class in obtaining a judicial declaration that the furlough program, as implemented by CDCR and DMH, violates the FLSA.

One example of a matter or type of matter not coming within the scope of the services being provided by ATTORNEYS arises from the fact that standing to pursue monetary and/or injunctive relief as a result of the implementation of the furlough program rests with the United States Department of Labor (“DOL”); as such, **ATTORNEYS will not pursue monetary and/or injunctive relief on behalf of CLIENTS or CONSENTERS.** CLIENTS and/or

CONSENTERS may, independently and without the assistance of ATTORNEYS, ask the DOL to join the FLSA ACTION and to pursue monetary damages on their behalf under the FLSA (including back wages and benefits). However, **ATTORNEYS will not file a complaint with the DOL on behalf of CLIENTS or CONSENTERS, and will not pursue any claim for money damages on behalf of CLIENTS or CONSENTERS.** Information on how and where CLIENTS and/or CONSENTERS may file a complaint with DOL, as well as the applicable statute of limitations, is located at:

<http://www.dol.gov/esa/whd/regs/compliance/fairpay/complaint.htm>

ATTORNEYS also will not pursue any other related matters for CLIENTS or CONSENTERS. Thus, and for example, in the event CLIENTS and/or CONSENTERS do not prevail in the trial court, ATTORNEYS shall not be obligated to handle an appeal. Moreover, should ATTORNEYS decide to handle an appeal, that representation will require a separate engagement agreement between ATTORNEYS and any clients represented for that purpose.

ATTORNEYS' representation of CLIENTS and CONSENTERS also does not include, and shall not include, representation of CLIENTS or CONSENTERS in any independent matter or other matter. If CLIENTS, CONSENTERS, or any of them, desire representation in any matter other than pursuit of the FLSA ACTION, they must either: (i) pursue the procedures for obtaining legal representation as specified in the CCPOA Standard Operating Procedures Manual; or (ii) seek private counsel at their own expense.

3. ATTORNEYS' FEES AND COSTS

The FLSA includes provisions (29 U.S.C. § 216(b)) entitling the prevailing party to recover attorneys' fees and costs. CLIENTS possess the right to seek or to waive an award of statutory attorneys' fees as a condition of settlement of the FLSA ACTION. Fees for ATTORNEYS' time shall range from a low of not less than \$150 per hour for lawyers practicing one year or less, to a high of \$350 per hour or more for lawyers practicing fifteen years or more, and shall range from a low of \$75 per hour for junior legal assistants, paralegals or law clerks to \$100 per hour for senior legal assistants, paralegals or law clerks. CLIENTS agree that the right

to seek or to waive an award of attorneys' fees shall be decided by a majority vote of those persons who are designated as CLIENTS at the time such a decision needs to be made.

ATTORNEYS will advance all costs and expenses of the FLSA ACTION. Costs and expenses commonly include: service of process charges, filing fees, court and deposition reporters' fees, jury fees, notary fees, deposition costs, long distance telephone charges, messenger and other delivery fees, postage, photocopying and other reproduction costs, travel costs including parking, mileage, transportation, meals and hotel costs, investigation expenses, consultants' fees, expert witness, professional, mediator, arbitrator and/or special master fees and other similar items. Internal charges are billed at the following rates: (1) mileage – IRS Standard Mileage Rate; (2) printing and photocopying - 20 cents per page; (3) facsimile fees - \$1.00 per page; (4) messenger services - minimum charge of \$5.00 and \$10.00 per hour thereafter; (5) long distance telephone - rates as set by long distance carrier; (6) postage at cost; and (7) computerized legal research at cost.

If there is a finding that none of the CLIENTS and/or CONSENTERS is a prevailing party in the FLSA ACTION and that, as a consequence, there is no award of attorneys' fees or costs against any of the persons or entities who are defendants in that action, neither CLIENTS nor CONSENTERS shall have any obligation to reimburse ATTORNEYS for costs and expenses advanced or for ATTORNEYS' fees for time spent in connection with the FLSA ACTION.

It is also agreed by and among ATTORNEYS, CLIENTS and CONSENTERS, that if there is a settlement of the FLSA ACTION, and CLIENTS (by majority vote) waive an award of attorneys' fees and/or costs as part of the settlement, or agree to an award of attorneys' fees and/or costs that does not cover the full costs and expenses (without regard to attorneys' fees incurred) advanced by ATTORNEYS, CLIENTS shall be financially responsible to reimburse ATTORNEYS for all costs advanced by ATTORNEYS not otherwise paid by any of the defendants in the FLSA ACTION.

ATTORNEYS, CLIENTS, and CONSENTERS all agree that, if and to the extent there is an award of attorneys' fees and/or costs, and if ATTORNEYS remain as sole counsel of record

for CLIENTS and CONSENTERS through settlement, judgment or other conclusion of the FLSA ACTION, the entirety of the award of attorneys' fees and costs shall belong to ATTORNEYS and not to CLIENTS or CONSENTERS. If ATTORNEYS withdraw for good cause or are discharged prior to the conclusion of the FLSA ACTION, and/or if other attorneys are either substituted or associated in as counsel of record, that portion of the award attributable to the services provided by ATTORNEYS and the costs advanced by ATTORNEYS shall belong to ATTORNEYS, and not to CLIENTS or CONSENTERS, with the amount belonging to ATTORNEYS, on the one hand, and the amount belonging to other lawyers, on the other hand, to be determined by the court or by agreement between ATTORNEYS and other lawyers who claim an interest in any award of attorneys' fees and/or costs.

ATTORNEYS, CLIENTS, and CONSENTERS further agree that if a finding is made that any award of attorneys' fees and/or costs belongs to CLIENTS and/or CONSENTERS, rather than to any attorneys who represent them, ATTORNEYS shall nevertheless be entitled, as compensation for their services pursuant to this AGREEMENT, to receipt of 100% of all attorneys' fees and costs awarded if ATTORNEYS remain as sole counsel of record for CLIENTS and CONSENTERS through settlement, judgment or other conclusion of the FLSA ACTION. If ATTORNEYS withdraw for cause or are discharged prior to the conclusion of the FLSA ACTION, and/or if other attorneys are either substituted or associated in as counsel of record, ATTORNEYS shall be entitled to receive that portion of any award for fees and/or costs attributable to the services provided by ATTORNEYS and the costs advanced by ATTORNEYS, with the amount belonging to ATTORNEYS and the amount belonging to other lawyers to be determined by the court or by agreement between ATTORNEYS and other lawyers who claim an interest in any award of attorneys' fees and/or costs.

If all or any portion of any award for attorneys' fees and costs is deemed to belong to CLIENTS and/or CONSENTERS and/or other lawyers, ATTORNEYS shall have a lien against any such award of attorneys' fee and/or costs to the extent such award is attributable to the work performed by, and/or costs and expenses advanced by, ATTORNEYS. Such a lien potentially creates an adverse interest between ATTORNEYS, on the one hand, and CLIENTS and/or CONSENTERS, on the other hand, because the lien gives ATTORNEYS a security interest in

any such award. The lien becomes particularly significant if a dispute develops between ATTORNEYS, on the one hand, and CLIENTS (or CONSENTERS) or other lawyers representing them, on the other hand, regarding ownership of, or entitlement to, any portion of the award of attorneys' fees and costs. **Because of the potential adverse security interest created by the lien, CLIENTS and CONSENTERS are advised to consult with independent counsel regarding the lien and its effect.**

4. CLIENT DUTIES/CONSENER DUTIES

CLIENTS and CONSENTERS agree to be truthful with ATTORNEYS, to cooperate, to keep ATTORNEYS informed of developments, to abide by this AGREEMENT, and to keep ATTORNEYS informed of their addresses, telephone numbers, email addresses, and whereabouts at all times. CLIENTS and CONSENTERS also agree to appear at deposition or trial in the FLSA ACTION, if ATTORNEYS so request, to fully cooperate in responding to discovery in the FLSA ACTION, and generally to cooperate fully with ATTORNEYS in all matters related to the preparation and presentation of FLSA ACTION.

5. SETTLEMENT DECISIONS

Any and all decisions regarding settlement shall be made by majority vote of the persons designated as CLIENTS at the time. CONSENTERS hereby acknowledge that they have no right to control any aspect of the FLSA ACTION including settlement. Rather, CONSENTERS grant express authority to CLIENTS to make any and all decisions regarding prosecution of the litigation and settlement of the FLSA ACTION, and authorize CLIENTS to make such decisions by majority vote of the persons designated as CLIENTS at the time. CLIENTS and CONSENTERS also understand that any settlement is subject to approval by the Court.

CONSENTERS also expressly grant authority to CLIENTS and ATTORNEYS to enter into settlement agreements binding on each of them without their consent and without notice except to the extent, if any, the federal court adopts and approves any settlement notice procedures. CONSENTERS also understand that by granting settlement authority to CLIENTS,

to be exercised by a majority vote of CLIENTS, a settlement may be imposed on the entire class of CLIENTS and CONSENTERS even though the minority of the CLIENTS and/or any or all of the CONSENTERS object to or disagree with all or any aspect of any settlement.

6. NOTICE OF NO PROFESSIONAL LIABILITY INSURANCE

ATTORNEYS do not have professional liability insurance. ATTORNEYS are funded by the CCPOA. Each year, ATTORNEYS allocate a portion of their budget to self-insure losses, i.e., to cover financial obligations that may arise from acts, errors or omissions by ATTORNEYS. The amount set aside varies from year-to-year. ATTORNEYS do **not** represent or warrant that any amount of money set aside to cover financial obligations from ATTORNEYS' acts, errors or omissions would be adequate to compensate CLIENTS or CONSENTERS for damages arising from any acts, errors or omissions by ATTORNEYS.

7. ASSOCIATION OF OTHER COUNSEL

It is understood and agreed that ATTORNEYS may, at the sole discretion of ATTORNEYS, associate such other attorneys as co-counsel as ATTORNEYS may deem appropriate and/or necessary, or delegate to other attorneys some of the services to be provided to CLIENTS and/or CONSENTERS.

8. PRIVILEGED COMMUNICATIONS

It is understood and agreed that while communications between CONSENTERS and ATTORNEYS shall be privileged from disclosure to third parties, CONSENTERS do not have a right to obtain documents or files in possession of CLIENTS or ATTORNEYS that are confidential, privileged or private, pursuant to the duty of confidentiality which attorneys owe their clients, the attorney-client privilege, the work product privilege, the right of privacy, or any other privilege or provision of applicable law.

9. WITHDRAWAL OF ATTORNEYS

CLIENTS may discharge ATTORNEYS at any time, upon written notice to ATTORNEYS. ATTORNEYS may withdraw from representation of CLIENTS and/or CONSENTERS, or any of them: (a) with consent of CLIENTS as reflected by a majority vote of those persons designated as CLIENTS at the time; (b) upon court approval, or (c) if no court action has been filed, either as mandated or permitted under applicable law, including Rule 3-700 of the Rules of Professional Conduct and/or applicable case law. Either a refusal by CLIENTS to cooperate with ATTORNEYS or a refusal by CLIENTS to follow ATTORNEYS' advice on a material matter, among any number of other acts or omissions, establishes grounds for ATTORNEYS to withdraw. In the event of ATTORNEYS' withdrawal or CLIENTS' notice of discharge of ATTORNEYS, ATTORNEYS shall retain a right to obtain attorneys' fees for services rendered and to receive reimbursement of costs advanced pursuant to section 3 of this AGREEMENT.

10. DISCLAIMER OF GUARANTEE

Nothing in this AGREEMENT and nothing in ATTORNEYS' statements to CLIENTS or CONSENTERS, or any of them, is a promise or guarantee about the outcome of the FLSA ACTION or about any related or other matter. ATTORNEYS make no such promises or guarantees. ATTORNEYS' comments, if any, about the outcome of the FLSA ACTION or any other matter are expressions of opinion only, are neither promises nor guarantees, and shall never be construed as promises or guarantees. This disclaimer is absolute. Thus, notwithstanding the provisions of section 13 of this AGREEMENT, this section 10 is **not** subject to modification or amendment.

11. DISCLOSURE REGARDING JOINT REPRESENTATION OF CLIENTS, AND JOINT REPRESENTATION OF CLIENTS AND CONSENTERS

CLIENTS, by signing this AGREEMENT, and CONSENTERS, by signing an OPT-IN NOTICE AND CONSENT TO REPRESENTATION in the form attached hereto as Attachment A, hereby provide their informed written consent to ATTORNEYS jointly representing the

interests of CLIENTS and jointly representing the interests of CLIENTS and CONSENTERS in prosecuting the FLSA ACTION.

ATTORNEYS understand that (a) the joint representation of all CLIENTS, and (b) the joint representation of all CLIENTS and all CONSENTERS are desired by CLIENTS and CONSENTERS as a means of securing the economic and tactical advantage of joint representation. CLIENTS understand that they are free to retain their own independent counsel to represent their interests and are not required to be represented by ATTORNEYS. CONSENTERS understand that they are not obligated to opt-in to the FLSA ACTION, but could instead either not participate at all or else retain their own independent counsel.

When an attorney represents more than one client in a particular matter, potential or actual conflicts of interest may exist. ATTORNEYS are aware of no actual conflicts of interests between or among CLIENTS, or between CLIENTS, on the one hand, and CONSENTERS, on the other hand. However, even when the conflicts are only potential, California law and Rule 3-310(C)(1) of the Rules of Professional Conduct require attorneys to provide written disclosure of any reasonably foreseeable adverse consequences arising from the proposed joint representation and to obtain all clients' informed written consent.

While ATTORNEYS do not perceive any actual or reasonably foreseeable adverse consequences at this time, because all CLIENTS and all CONSENTERS are similarly situated employees of CDCR or DMH, and the relief requested in the FLSA ACTION, to wit, a judicial declaration that the furlough program violates the FLSA, CLIENTS and CONSENTERS should consider the following potential adverse consequences prior to agreeing to the proposed joint representation.

- While attorneys owe individual clients a duty of undivided loyalty, joint representation may result in divided or at least shared attorney-client loyalties. Thus, it is possible that issues may arise as to which ATTORNEYS' representation of any one CLIENT may be materially limited by ATTORNEYS'

representation of another CLIENT or CONSENTER. Neither ATTORNEYS, nor CLIENTS, nor CONSENTERS are aware of any such issues at this time.

- While attorneys owe clients a duty to preserve secrets and confidential communications, unless that duty is excused by the State Bar Act, the Rules of Professional Conduct or other law, as between joint clients, the attorney-client privilege generally does not protect communications that have taken place between any one client, on the one hand, and attorneys, on the other hand. Thus, and because attorneys have a duty to keep their clients reasonably informed of significant developments, CLIENTS hereby agree that everything disclosed by one of them may be disclosed to the other CLIENTS by ATTORNEYS.
- CONSENTERS are differently situated than CLIENTS for purposes of confidentiality. CONSENTERS hereby agree that confidential communications they may have with ATTORNEYS will be confidential but that said communications and/or information may be shared with CLIENTS.
- CONSENTERS further agree that they will not be entitled to receive confidential, privileged or private information of other CONSENTERS, of CLIENTS or of ATTORNEYS.
- However, the duty of confidentiality, attorney-client privilege, and work product privilege would also continue to protect all confidential communications from disclosure to any other persons or entities.
- Most typically, conflicts in joint representation cases arise with respect to: (i) litigation strategies that are chosen to attempt to obtain the best results for all clients but that can potentially impact each client differently; and (ii) settlement issues, inasmuch as particular clients may have different ideas regarding the propriety of a settlement.

- Only CLIENTS, and not CONSENTERS, have a right to participate in litigation strategy and settlement decisions, except to the extent that notice of any proposed settlement is provided to CONSENTERS and CONSENTERS may, in such circumstances, notify the Court regarding whether they consent or object to a proposed settlement.
- As between CLIENTS, they agree, as a dispute resolution mechanism, that a majority of the persons designated as CLIENTS at the time of any dispute shall prevail in any dispute regarding litigation strategies, settlement, or otherwise.

ATTORNEYS ask CLIENTS and CONSENTERS to read the disclosure and consent provisions of this AGREEMENT carefully, and to give due consideration to the decision regarding whether to provide written consent to become a CLIENT, identified as such in this AGREEMENT, or a CONSENTER.

CLIENTS and CONSENTERS are advised and encouraged to give due consideration to consult with independent counsel before becoming either a CLIENT or a CONSENTER.

12. STATUS INFORMATION

Attorneys have a duty to keep CLIENTS reasonably informed of significant developments. Non-confidential information about the status or progress of the lawsuit may be provided by ATTORNEYS through the CCPOA *Peacekeeper* publication, CCPOA's website: www.CCPOA.org, posting on appropriate facility bulletin boards, or in an alternate way deemed appropriate by ATTORNEYS. CLIENTS and CONSENTERS agree to the foregoing, or a similar method of communication to be determined by ATTORNEYS, as an adequate way in which ATTORNEYS will keep CLIENTS and CONSENTERS informed of significant developments.

13. ENTIRE AGREEMENT; MODIFICATION; SEVERABILITY

This AGREEMENT, including Attachment A, contains the entire agreement between and among CLIENTS, ATTORNEYS, and CONSENTERS with respect to their relationship. This AGREEMENT may be modified only by an instrument in writing signed by ATTORNEYS and CLIENTS. If the modification affects CONSENTERS, it requires either the signature of CONSENTERS or court approval. If any provision of this AGREEMENT is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire AGREEMENT will be severable and remain in effect.

14. ACKNOWLEDGEMENT OF COPY RECEIVED

Client acknowledges receipt of a copy of this AGREEMENT with execution thereof on the aforementioned date.

**CLIENTS' INFORMED WRITTEN CONSENT AND ACCEPTANCE
OF TERMS AND PROVISIONS OF AGREEMENT**

I have read and understood the foregoing terms and agree to them. By signing this agreement, I acknowledge that: (1) I have carefully read and fully understand the terms, provisions and disclosures set forth in this AGREEMENT; (2) I have carefully considered all of the circumstances and potential conflicts described in this AGREEMENT; (3) I have been advised of my right to consult with independent counsel regarding the terms, provisions and disclosures described in this AGREEMENT and have had a reasonable opportunity to do so; (4) I have had any and all questions I have about this AGREEMENT answered by ATTORNEYS or independent counsel of my choice; (5) I agree to abide by, and to be bound to, all terms and provisions of this AGREEMENT, and provide my informed written consent to, all terms, provisions and disclosures set forth in this AGREEMENT; and (6) I am in receipt of a fully executed duplicate of this AGREEMENT.

12/1/2009
Date

/S/
Client's Signature

SEAN A. BEATON

12/6.2009
Date

/S/
Client's Signature

FRANK M. McNEAL

12/4/2009
Date

/S/
Client's Signature

RICHARD T. NEWTON

REPRESENTATION ACCEPTED:

Date: 12/7/200

**CALIFORNIA CORRECTIONAL
PEACE OFFICERS ASSOCIATION
LEGAL DEPARTMENT
ATTORNEYS FOR
PLAINTIFFS/CONSENTERS**

By: /S/

JAMES P. HARRISON
Staff Attorney, CCPOA