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Verified Petition for Writ of Prohibition and Complaint for Declaratory and Injunctive Relief

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those days, despite the fact that both days are specifically designated as holidays in the applicable Memorandum of Understanding ("MOU").

On behalf of its members, Petitioner seeks equitable, injunctive and declaratory relief as follows:

- A writ of prohibition prohibiting DPA from instructing or encouraging any State
   Department to violate the terms of the MOU;
- 2) A declaration that Petitioner and its members are entitled to the holidays expressed in the MOU;
- 3) An injunction prohibiting the Governor or any state officer from requiring Petitioner and its members to work on the holidays identified in the MOU
- 4) Any other relief this Court deems appropriate.

#### I. Parties

- 1. Petitioner/Plaintiff CALIFORNIA ATTORNEYS, ADMINISTRATIVE LAW JUDGES AND HEARING OFFICERS IN STATE EMPLOYMENT ("CASE"), is, and at all times herein mentioned was, a nonprofit corporation organized and existing under the laws of the state of California, with its principal place of business in the County of Sacramento, State of California. CASE is the exclusive collective bargaining representative of legal professionals in State Bargaining Unit 2 pursuant to Government Code section 3520.5. CASE represents approximately 3400 legal professionals employed at more than 80 different state departments, agencies, boards, and commissions.
- 2. Respondent/Defendant DEPARTMENT OF PERSONNEL ADMINISTRATION

  ("DPA") is responsible for managing the nonmerit aspects of the State's personnel system. DPA serves as the Governor's designated representative for purposes of collective bargaining, and for purposes of meeting and conferring with the exclusive representatives. (See Gov. Code § 19815.2; Gov. Code § 3517.)

#### II. Venue

- 3. Respondent/Defendant DPA is a state agency, and actions against it may be commenced in any city or county in which the Attorney General has an office, pursuant to Code of Civil Procedure section 401.
- 4. The California Attorney General has an office within the City of San Francisco, making San Francisco County an appropriate venue. (Code of Civ. Proc. § 401.)

## III. The Existing Memorandum of Understanding

- 5. CASE and DPA agreed to an MOU with a term of July 1, 2005, through June 30, 2007. Since the expiration of that MOU, the parties have been negotiating a successor agreement and those negotiations are ongoing. There has not been any agreement reached, and the parties have not reached impasse.
- 6. Pursuant to Government Code section 3517.8, subdivision (a), the terms of an expired MOU continue to be effective until the parties reach impasse.
- 7. Section 8.1.B of the CASE MOU specifies the holidays to which CASE members are entitled, and specifically includes both February 12 (Lincoln's Day), and the second Monday in October (Columbus Day, which this year falls on October 12).

# IV. Instructions by DPA to Departments Regarding Holidays

- 8. Beginning near the end of July, 2009, various state departments that employ members of CASE began notifying those employees that DPA had instructed them that Lincoln's Day and Columbus Day are no longer recognized holidays as a result of earlier legislative action.
- 9. CASE has received numerous telephone calls, emails and other communications from its members in various departments to the effect that the departments are planning to treat Columbus Day and Lincoln's Day as normal workdays, and that CASE members will not be given holiday credit for those days. CASE members have inquired as to their rights with respect to the holidays under the MOU.

# V. Efforts by CASE to Resolve the Intended Violation

- 10. Because the MOU clearly specifies that Lincoln's Day and Columbus Day are holidays for CASE members, CASE filed a unit-wide grievance on August 17, 2009 with DPA requesting DPA notify all departments that CASE members are entitled to the holidays specified in section 8.1.B of the MOU, including Lincoln's Day and Columbus Day. CASE specifically requested prompt action in light of the fact that Columbus Day was then rapidly approaching.
- 11. On September 14, 2009, CASE sent a letter to DPA requesting an update on the status of the grievance filed on August 17, 2009. To date no response has been received.
- 12. On September 14, 2009, CASE contacted DPA Chief Counsel Bill Curtis to inquire as to the status of the grievance. To date no response has been received.

## FIRST CAUSE OF ACTION

(Petition for Writ of Prohibition)

- 13. Petitioners/Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as if fully set forth herein.
- 14. DPA has instructed state departments to violate the express terms of the MOU in effect between the parties based on legislation which purports to modify the terms of the MOU relating to holidays. This is in direct violation of the state and federal constitutional provisions prohibiting the impairment of contracts. The breach of the MOU is imminent and absent immediate action, will occur on October 12, 2009, when departments will refuse to allow CASE members to enjoy the Columbus Day holiday specified in section 8.1.B of the MOU.
- 15. Petitioner/Plaintiff has an immediate and direct interest affected by this proceeding in that its members have a right to have their State employer honor the terms of a previously bargained-for MOU.
- 16. Respondent/Defendant DPA has a clear, present, and ministerial duty to conform to the State Constitution and the laws of the State of California, to avoid violations of the law, and to refrain from instructing others to abridge lawful and enforceable contractual rights.

- 17. The intended denial of enjoyment of the Columbus Day and Lincoln's Day holidays is a patent violation of the MOU based on a violation of the state and federal constitutional provisions prohibiting the impairment of contracts.
- 18. Petitioner/Plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this petition, in that there is no other legal remedy to prevent or enjoin the planned violation of the MOU.
- 19. Petitioner/Plaintiff and its members will suffer irreparable harm and injury if the MOU is violated, as the denied holidays can never be recovered once they have passed.
- 20. Petitioner/Plaintiff has sought to exhaust its administrative remedies to no avail, and there exists no administrative remedy which will result in preventing or enjoining the planned violation of the MOU.

### SECOND CAUSE OF ACTION

# (Complaint for Declaratory Relief)

- 21. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set forth herein.
- 22. Judicial relief is urgently needed to prevent Respondent from breaching the MOU by denying the holidays in clear violation of the express terms of the MOU and in violation of the state and federal constitutional provisions prohibiting the impairment of contracts.
- 23. As a result of the imminent approach of the Columbus Day holiday, and the instructions by DPA to deny CASE members that holiday, an actual controversy has arisen and now exists between Petitioner/Plaintiff and Respondent/Defendant regarding the rights of CASE members under the MOU.
- 24. Petitioner/Plaintiff desires a declaration of the rights of its members with respect to the Columbus Day and Lincoln's Day holidays provided in the MOU in light of the expressed intention by DPA to deny CASE members those holidays.

25. Such a declaration is necessary and appropriate at this time in order to avoid unilateral implementation of illegal holiday policies which conflict with the MOU and which would adversely affect the rights of Petitioner/Plaintiff and its members. Respondent's/Defendant's actions will result in irreparable injury and harm to Petitioner/Plaintiff and its members because the holidays, once denied, can never be recovered. The loss of such rights cannot be compensated fully by damages or other forms of legal relief.

## THIRD CAUSE OF ACTION

(Complaint for Injunctive Relief)

- 26. There is no legal justification for DPA's instructions to State departments to violate the terms of the MOU. The legislative action which purports to justify the intended violation of the MOU is a violation of the state and federal constitutional provisions prohibiting the impairment of contracts. The intended violation of the MOU is therefore unlawful, and Petitioner/Plaintiff has a reasonable likelihood of success on the merits.
- 27. Therefore, Petitioner/Plaintiff seeks temporary, preliminary and permanent injunctive relief prohibiting Respondent/Defendant from taking any action to violate, or to encourage others to violate, the provisions of the MOU relating to the holidays to which CASE members are entitled.

#### CONCLUSION

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WHEREFORE, Petitioner/Plaintiff CASE respectfully prays that:

- 1. The Court issue a peremptory writ in the first instance prohibiting Respondent/Defendant DPA from denying to Petitioner/Plaintiff and its members the holidays specified in section 8.1.B of the MOU.
- 2. The Court issue a declaration that any action by Respondent/Defendant which seeks to deny CASE members the holidays to which they are entitled under the MOU, or which seeks to encourage State Departments to deny such holidays, is an illegal and unilateral breach of the MOU.
- 3. The Court issue a preliminary and permanent injunction prohibiting Respondent/Defendant from taking any action to violate, or to encourage others to violate, the provisions of the MOU relating to the holidays to which CASE members are entitled.
  - 4. The Court award any other relief this Court deems appropriate.

Dated: 9/17/09

THE LAW OFFICE OF BROOKS ELLISON

PATRICK J. WHALEN

Attorneys for Plaintiff

CALIFORNIA ATTORNEYS

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IEARING OFFICERS IN STATE

EMPLOYMENT

### VERIFICATION

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I, Peter Flores, Jr., am the President of CASE, the Petitioner/Plaintiff in this proceeding. I have read the foregoing petition and know its contents. The facts stated therein are true and are within my personal knowledge. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on , 2009 at San Francisco, California. PETER FLORES, JR