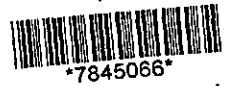


RS



FILED
ALAMEDA COUNTY

FEB 25 2010

CLERK OF THE SUPERIOR COURT

By Vicki Daybell ✓

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES AND
HEARING OFFICERS IN STATE
EMPLOYMENT,

Petitioner/Plaintiff,

vs.

ARNOLD SCHWARZENEGGER as, Governor
of the State of California; DAVID GILB as
Director of the Department of Personnel
Administration; JOHN CHIANG, Controller of
the State of California; EDMUND G. BROWN
JR., Attorney General of the State of California;
STEVE POIZNER, Insurance Commissioner of
the State of California; PRESTON
DUFAUCHARD, Corporations Commissioner of
the Department of Corporations; CINDY EHNES,
Director of the Department of Managed Health
Care; JEFF DAVI, Real Estate Commissioner of
the Department of Real Estate; CARRIE LOPEZ,
Director of the Department of Consumer Affairs;
GEORGE VALVERDE, Director of the
Department of Motor Vehicles; MIKE
CHRISMAN, Secretary of the California Energy
Resources Conservation and Development
Commission; ANNE STAUSBOLL, Chief
Executive Officer of the Public Employees'
Retirement System; RONALD P. SCHAFER,
Chairperson of the Santa Monica Mountains

Case No. RG09-453982

ORDER AFTER HEARING

Conservancy; DOUGLAS BOSCO, Chairman of the California State Coastal Conservancy; JULIE NAUMAN, Executive Officer of the Victim Compensation and Government Claims Board; ALAN KERZIN, Executive Director of the State Council on Developmental Disabilities; MARY-ANN WARMERDAM, Director of the Department of Pesticide Regulation; JACK EHNES, Chief Executive Officer of the State Teachers' Retirement System; GLENN POMEROY, Chief Executive Officer of the California Earthquake Authority; WILLIAM HARAF, Commissioner of the Department of Financial Institutions; STEVE HARDY, Director of the Department of Alcoholic Beverage Control; FRED ARMENDARIZ, Chairman of the Alcoholic Beverage Control Appeals Board; RAYNOR T. TSUNEYOSHI, Director of the Department of Boating and Waterways; TERRI CIAU, Executive Director of the Gambling Control Commission; JOHN P. DONNELLY, Executive Director of the Wildlife Conservation Board; J. A. FARROW, Commissioner of the California Highway Patrol; KIRK BREED, Executive Director of the California Horse Racing Board; JOAN BORUCKI, Director of the California State Lottery Commission; LLOYD THRONE, Director of the Department of Community Services and Development; L. STEVEN SPEARS, Acting Executive Director of the California Housing Finance Agency; MARK LEARY, Executive Director of the California Integrated Waste Management Board; RON DIEDRICH, Director of the Office of Administrative Hearings; DESTIE OVERPECK, Acting Chief Deputy Administrative Director of the Division of Workers Compensation; DON KOCK, Director of the Department of Fish and Game; CALEB CHEUNG, Commission Chair of the Commission on Teacher Credentialing; BONNIE GARCIA, Chair of the California

Unemployment Insurance Appeals Board; TONY SAUER, Director of the Department of Rehabilitation; MARY D. NICHOLS, Chairman of the Air Resources Board; LYNN JACOBS, Director of the Department of Housing and Community Development; PATRICK HENNING, Director of the Employment Development Department; LESTER SNOW, Director of the Department of Water Resources; PATRICK WRIGHT, Executive Director of the California Tahoe Conservancy; BRIDGETT LUTHER, Director of the Department of Conservation; DOROTHY RICE, Executive Director of the State Water Resources Control Board; DAVID MAXWELL-JOLLY, Director of the Department of Health Care Services; MARK HORTON, Director of the Department of Public Health; JOHN A. WAGNER, Director of the Department of Social Services; WILL KEMPTON, Director of the California Department of Transportation; MAZIAR MOVASSAGHI, Acting Director of the Department of Toxic Substances Control; JON DUNCAN, Director of the Department of Industrial Relations; LYNN DAUCHER, Director of the California Department of Aging; RUTH COLEMAN, Director of the Department of Parks and Recreation; DALE BONNER, Secretary of the Business, Transportation, and Housing Agency; KAREN HUMPHREY, Executive Director of the California Postsecondary Education Commission; JOSEPH MILLER, Chairman of the Workers' Compensation Appeals Board; DEBRA BOWEN, Secretary of State for the State of California; CHARLES PATILLO, General Manager of the California Prison Industry Authority; TOM FLESH, President of the New Motor Vehicle Board; PAUL D. THAYER, Executive Officer of the California State Lands Commission; STEVE THARRATT, M.D., Director of the Emergency Medical Services Authority; A. G. KAWAMURA, Secretary of the California Department of Food and Agriculture; WILL BUSH, Director of the

Department of General Services; ROGER BRAUTIGAN, Acting Secretary of the Department of Veterans Affairs; LESLEY CUMMINGS, Executive Director of the Managed Risk Medical Insurance Board, and DOES 1 through 100,

Defendants/Respondents.

The parties appeared before the court on February 22, 2010 to discuss disagreements between the parties relating to the form of judgment and form of writ presented to the court for its consideration following the decision of this case and the two companion cases raising almost identical causes of action.

The court has considered the argument of counsel and the papers filed in this case and the other two cases and has made the following determinations:

Issue 1. Scope of Application of the Writ

The Court's Order applies to and affects each Respondent and all employees of each Respondent. It is not limited by bargaining unit or union membership.

While CASE is a representative of some employees in Respondent Departments and Agencies and therefore has standing to pursue this case, the matter is not a class action on behalf of any defined class. The lawsuit's theory for relief is that the Governor issued Executive Orders implementing a furlough/wage reduction program and that those Orders are invalid and illegal because he failed to comply with mandatory requirements found in the Government Code. Its object was a determination of the legality of the Orders; CASE

members were not the only employees in Respondent Departments and Agencies affected by them. It follows that the Order of this Court must apply to all employees of the Respondent Departments and Agencies affected by the illegal Executive Orders.

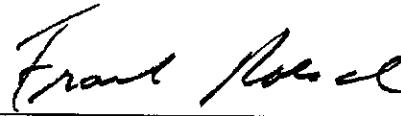
While the logic that the furloughs are illegal because the Governor did not comply with the mandatory requirements relating to the formation of the Executive Orders also leads to the conclusion that the Governor's furlough orders are likewise unlawful as applied to agencies funded by General Fund funds, this Court cannot and will not extend the Court's Order to those State Agencies and their employees. The pleadings in this case and the theories underpinning the claims for relief argued in this case (and the choice of Respondents named in this case) make clear that the relief sought is limited to the named Respondents.

Issue 2. Salary and Wages Wrongfully Withheld

The same logic that limits application of the court's order to Respondents named herein, namely the substance of the pleadings filed herein, applies to the issue of salary/wages not paid due to the Governor's unlawful furlough orders. The question of salary/wages wrongfully withheld is clearly incidental (see CCP Section 1095) to the theory of relief plead by Petitioner seeking invalidation of the Executive Orders that created the furlough/wage reduction programs. Not only did the Second Amended Petition specifically seek such incidental relief (see Paragraph 2 and 3 of the prayer of the Second Amended Petition), but such incidental relief also follows directly and logically even if the petition had not specifically requested such relief. The Court's Judgment and Writ will include language

that salary and wages withheld pursuant to the implementation of the Governor's Executive Order be paid both prospectively and retroactively.

Date: February 24, 2010



Frank Roesch
Judge of the Superior Court.

CLERK'S DECLARATION OF MAILING

I certify that I am not a party to this cause and that on the date stated below I caused a true copy of the foregoing ORDER AFTER HEARING, JUDGMENT FOR PETITIONER AND PEREMPTORY WRIT OF MANDATE to be mailed first class, postage pre paid, in a sealed envelope to the persons hereto, addressed as follows:

Patrick J. Whalen, Esq.
The Law Office of Brooks Ellison
1725 Capitol Avenue
Sacramento, CA 95814

David W. Tyra, Esq.
Kronick, Moskovitz, Tiedemann & Girard
400 Capitol Mall, 27th Floor
Sacramento, CA 95814

Ross C. Moody, Deputy Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Jenny Esquivel, Esq.
Will M. Yamada, Esq.
Department of Personnel Administration
1515 S Street, North Bldg., Suite 400
Sacramento, CA 95811

Aparna Sridhar, Esq.
Sturmwasser & Woocher LLP
10940 Wilshire Blvd., Suite 2000
Los Angeles, CA 90024

Ronald B. Turovsky, Esq.
Manatt, Phelps & Phillips, LLP
11355 West Olympic Blvd.
Los Angeles, CA 90064-1614

Alison Sultan White, Esq.
Manatt, Phelps & Phillips, LLP
One Embarcadero Center, 30th Floor
San Francisco, CA 94111.

Jeffrey R. Rieger, Esq.
Reed Smith
2 Embarcadero Center, Suite 2000
San Francisco, CA 94111

Harvey L. Leiderman, Esq.
Reed Smith
101 Second Street, Suite 1800
San Francisco, CA 94105

Jerry Whitfield
California Department of Insurance, Legal Division
45 Fremont Street
San Francisco, CA 94105

I declare under penalty of perjury that the same is true and correct.
Executed on February 26, 2010.

By: Vicki Daybell
Vicki Daybell, Deputy Clerk
Department 31