

1 BROOKS ELLISON
State Bar No. 122705
2 PATRICK J. WHALEN
State Bar No. 173489
3 THE LAW OFFICE OF BROOKS ELLISON
1725 Capitol Ave.
4 Sacramento, CA 95814
Telephone: (916) 448-2187
5 Facsimile: (916) 448-5346
E-mail: counsel@calattorneys.org

6 Attorneys for Plaintiff
7 California Attorneys, Administrative Law Judges,
And Hearing Officers in State Employment
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9
10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF ALAMEDA

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

15 Petitioner/Plaintiff,

16 vs.

17 ARNOLD SCHWARZENEGGER as, Governor
18 of the State of California; DAVID GILB as
Director of the Department of Personnel
19 Administration; JOHN CHIANG, Controller of
20 the State of California; EDMUND G. BROWN
JR., Attorney General of the State of California;
21 STEVE POIZNER, Insurance Commissioner of
the State of California; PRESTON
22 DUFAUCHARD, Corporations Commissioner
23 of the Department of Corporations; CINDY
EHNES, Director of the Department of
24 Managed Health Care; JEFF DAVI, Real Estate
Commissioner of the Department of Real
25 Estate; CARRIE LOPEZ, Director of the
Department of Consumer Affairs; GEORGE
26 VALVERDE, Director of the Department of
27 Motor Vehicles; ANNE STAUSBOLL, Chief
Executive Officer of the Public Employees'
28 Retirement System; RONALD P. SCHAFER,

Case No. RG09453982

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR RELIEF FROM
AUTOMATIC STAY**

Code of Civil Procedure §1110b

Date: March 23, 2010
Time: 9:00 a.m.
Dept.: 31

1 Chairperson of the Santa Monica Mountains
2 Conservancy; DOUGLAS BOSCO, Chairman
3 of the California State Coastal Conservancy;
4 JULIE NAUMAN, Executive Officer of the
5 Victim Compensation and Government Claims
6 Board; ALAN KERZIN, Executive Director of
7 the State Council on Developmental
8 Disabilities; MARY-ANN WARMERDAM,
9 Director of the Department of Pesticide
10 Regulation; JACK EHNES, Chief Executive
11 Officer of the State Teachers' Retirement
12 System; GLENN POMEROY, Chief Executive
13 Officer of the California Earthquake Authority;
14 WILLIAM HARAF, Commissioner of the
15 Department of Financial Institutions; STEVE
16 HARDY, Director of the Department of
17 Alcoholic Beverage Control; FRED
18 ARMENDARIZ, Chairman of the Alcoholic
19 Beverage Control Appeals Board; RAYNOR T.
20 TSUNEYOSHI, Director of the Department of
21 Boating and Waterways; TERRI CIAU,
22 Executive Director of the Gambling Control
23 Commission; JOHN P. DONNELLY, Executive
24 Director of the Wildlife Conservation Board; J.
25 A. FARROW, Commissioner of the California
26 Highway Patrol; KIRK BREED, Executive
27 Director of the California Horse Racing Board;
28 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

1 Rehabilitation; MARY D. NICHOLS, Chairman
2 of the Air Resources Board; LYNN JACOBS,
3 Director of the Department of Housing and
4 Community Development; PATRICK
5 HENNING, Director of the Employment
6 Development Department; LESTER SNOW,
7 Director of the Department of Water Resources;
8 PATRICK WRIGHT, Executive Director of the
9 California Tahoe Conservancy; BRIDGETT
10 LUTHER, Director of the Department of
11 Conservation; DOROTHY RICE, Executive
12 Director of the State Water Resources Control
13 Board; DAVID MAXWELL-JOLLY, Director
14 of the Department of Health Care Services;
15 MARK HORTON, Director of the Department
16 of Public Health; JOHN A. WAGNER, Director
17 of the Department of Social Services; WILL
18 KEMPTON, Director of the California
19 Department of Transportation; MAZIAR
20 MOVASSAGHI, Acting Director of the
21 Department of Toxic Substances Control; JON
22 DUNCAN, Director of the Department of
23 Industrial Relations; LYNN DAUCHER,
24 Director of the California Department of Aging;
25 RUTH COLEMAN, Director of the Department
26 of Parks and Recreation; DALE BONNER,
27 Secretary of the Business, Transportation, and
28 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

1 CUMMINGS, Executive Director of the
2 Managed Risk Medical Insurance Board, and
3 DOES 1 through 100,

4 Defendants/Respondents.

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I. INTRODUCTION

On December 31, 2009, this Court ruled that the furloughs were unlawful. A copy of that order is attached as Exhibit A. Following additional briefing and argument, this Court on February 25, 2010 issued a judgment memorializing that order. A copy of the judgment is attached as Exhibit B. Specifically, the judgment directed Governor Arnold Schwarzenegger to “cease and desist the furlough of such employees.” (Exh. B, p. 4 ¶2.) It also directed Controller John Chiang “to take any and all actions required by law to restore any salary wrongfully withheld as a consequence” of the furloughs. (Exh. B, pp. 4-5 ¶3).

On February 26, 2010, Respondents filed a notice of appeal, in which they made the following assertion:

The December 31, 2009 Order (Exhibit B), the February 25, 2010 Order (Exhibit C), and the February 25, 2010 Judgment for Petitioner (Exhibit D) granted a Writ of Mandate and attendant relief in this action. Therefore, the filing of this appeal automatically stays the effect of those Orders and the Judgment, as well as any subsequently issued Writ of Mandate itself. (*Hayworth v. City of Oakland* (1982) 129 Cal.App.3d723, 727.)

(Notice of Appeal, p. 2.)

Petitioner hereby moves to have the stay lifted and to give this Court’s judgment and writs of mandate immediate effect.

II. STATEMENT OF FACTS

The furloughs were first implemented in February, 2009. For the first five months of their implementation, most CASE members were furloughed two days per month. Starting on July 1, 2009, the furloughs were increased to three days per month. Each furlough day results in a pay reduction of 4.62% of the salary for all impacted CASE members. Since July 2009, the salaries of furloughed CASE members has been reduced approximately 14% per month, every month. (Decl. of Peter Flores, Jr., ¶ 2.)

Approximately 1,900 of our members are currently laboring under the Governor’s 3-furlough-days-per-month plan. Some CASE members work in departments that are closed three

1 Fridays per month. Other members work in agencies which have “self-directed” furloughs. In
2 these departments, the departments are not closed on “furlough Fridays” and the employees are
3 given the option of taking unpaid days off as operational needs permit, or banking the days for
4 use later. (Decl. of Peter Flores, Jr., ¶ 3.) Nonetheless, these employees are suffering a pay
5 reduction equivalent to three days per month.

6 CASE members are legal professionals who are required by section 6.3 of their
7 memorandum of understanding (“MOU”) “to work all hours necessary to accomplish their
8 assignments and fulfill their responsibilities.” (Decl. of Peter Flores, Jr., ¶ 5.) Because most of
9 our members have experienced an increase in their case loads, many CASE members are not able
10 to reduce their hours because they are contractually and ethically required to attend to their legal
11 work. As a result of these obligations, the vast majority of CASE members have not enjoyed any
12 reduction in their hours. (Decl. of Peter Flores, Jr., ¶ 6.) CASE members at departments that are
13 actually closed three Fridays per month frequently work on weekends, evenings, or, commonly,
14 on “furlough Fridays” just to keep up with the State’s pressing legal work. CASE members at
15 departments on self-directed furloughs have little opportunity to take any time off. (Decl. of
16 Peter Flores, Jr., ¶ 7.) As a result, CASE members are suffering a significant reduction in salary
17 without any corresponding reduction in hours worked.

18 Many CASE members are experiencing financial hardship as a result of the furloughs.
19 The salaries for legal professionals lag behind that of other public sector legal employers by as
20 much 50%. The starting salaries for state legal professionals is so low that most cannot afford in
21 the expensive urban areas where most CASE members are headquartered, including Los
22 Angeles, San Diego, and San Francisco. Furloughs and pay reductions for these CASE members
23 cause extreme financial hardship. (Decl. of Peter Flores, Jr., ¶ 9.)

24 Because CASE members must attend four-year colleges followed by three-year law
25 degree programs, CASE members generally start their careers at a later age, and typically have
26 greater financial obligations relative to other employees of similar seniority. Many members
27 have over \$100,000 in educational debt including both undergraduate college and law school.
28 Many have financial responsibility for their elder parents, and must at the same time budget for

1 the college expenses of their own children. The salary reduction imposed as a result of the
2 furloughs has placed many members in very precarious financial situations. (Decl. of Peter
3 Flores, Jr., ¶ 10.)

4 Many CASE members are prohibited by their department from engaging in the outside
5 practice of law, which prevents them from opportunities to supplement their income in an effort
6 to mitigate the impacts of the pay reduction. (Decl. of Peter Flores, Jr., ¶¶ 13-14.) If the
7 furloughs do not stop, the financial hardships will only be exacerbated. (Decl. of Peter Flores,
8 Jr., ¶ 12.)

9 10 **III. ARGUMENT**

11 A. The Stay Should Be Lifted to Allow Petitioner's Members to Receive the Full Wages To 12 Which They Are Lawfully Entitled

13 Respondents are correct that as a general matter, "the perfecting of an appeal stays
14 proceedings in the trial court upon the judgment or order appealed from or upon the matters
15 embraced therein or affected thereby, including enforcement of the judgment or order." (C.C.P.
16 § 916, subd. (a).) Petitioner respectfully requests this Court exercise its discretion to refrain from
17 implementing the automatic stay as to the entire order. Code of Civil Procedure, section 1110b,
18 provides as follows:

19 If an appeal be taken from an order or judgment granting a writ of mandate the
20 court granting the writ, or the appellate court, may direct that the appeal shall not
21 operate as a stay of execution if it is satisfied upon the showing made by the
22 petitioner that he will suffer irreparable damage in his business or profession if
the execution is stayed.

23 (C.C.P. § 1110b.) This Court thus has the discretion to depart from the general rule of an
24 automatic stay, and instead allow this Court's judgment to take effect during the pendency of the
25 appeal. (*See, e.g., D.H. Williams Construction, Inc. v. Clovis Unified School District* (2007) 146
26 Cal.App.4th 757, 762.)

27 In deciding whether to exercise the discretion afforded this Court pursuant to section
28 1110b, the appellate courts have provided some guidance. In *Social Services Union v. County of*

1 *San Diego* (1984) 158 Cal.App.3d 1126, local employee organizations sued over the
2 interpretation of their collective bargaining agreement and obtained a writ of mandate granting
3 their members two paid holidays (New Year's Eve and Christmas Eve). On appeal the appellate
4 court recognized that the trial court could have stayed the writ pending appeal, but "properly did
5 not do so because of irreparable damage to the employees who would have completely lost the
6 benefits of the writ had it been stayed." (*Id.* at p. 1131.)

7 The two paid holidays per year at issue in that case pale in comparison to the three paid
8 workdays *per month* at issue in the current case. CASE members are being deprived of a
9 significant amount of income on an ongoing basis, and are suffering irreparable harm as a result.
10 CASE members are losing approximately 14% of their salary every month. For each month that
11 the furloughs continue, the financial hardship to CASE members accumulates. What was one
12 late payment becomes two, then four. Interest and late fees on unpaid debts grows each month.
13 Any savings that may have been available before furloughs began gets depleted. This harm is
14 irreparable because money damages cannot fully compensate individuals who have lost their
15 homes, had their cars repossessed, and had their credit ratings plummet.

16 Furthermore, the magnitude of the harm that will be suffered is potentially enormous.
17 While the furloughs are expected to end on June 30, 2010, there is nothing that would prevent
18 the Governor from ordering that they continue. Each month, CASE members get farther and
19 farther behind in their bills. Only by putting a stop to the furloughs can this Court ensure that the
20 damage done by the unlawful furloughs does not continue to grow. Waiting until the appellate
21 process has resolved will ensure that the financial damage done by the furloughs will be almost
22 impossible to repair.

23
24 B. The Stay Should Be Lifted to End the Furloughs at the Impacted State Agencies

25 In addition to the hardships being suffered by CASE members, the citizens of California
26 are also suffering irreparable damage. As this Court found in its December 31, 2009 order,
27 furloughs at the named agencies has resulted in "interference with the object of the special fund
28 agencies, specifically the agencies' ability to carry out their missions." (Exhibit A, p. 11.) The

1 fees and tax dollars of the citizens of California have been specifically designated to fund the
2 operations of those agencies. Government Code section 16310 prohibits the diversion of those
3 funds when it interferes with the mission of those agencies.

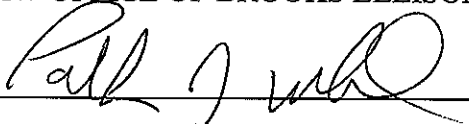
4 Each and every member of the public is entitled to the full benefit of the moneys
5 specially designated to the operations of the named agencies, and they are irreparably damaged
6 each day that the missions of those agencies are frustrated.

7
8 **IV. CONCLUSION**

9 For the foregoing reasons, Petitioner respectfully requests relief from the stay of the
10 judgment and the writs of mandate resulting from the Respondents' filing of the notice of appeal.

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14 Dated: March 3, 2010

THE LAW OFFICE OF BROOKS ELLISON

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16 PATRICK J. WHALEN

17 Attorney for Petitioners
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