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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF SAN FRANCISCO

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10 CALIFORNIA ASSOCIATION OF ) Case No.: CPF-09-509695  
11 PROFESSIONAL SCIENTISTS, PATTY )  
12 VELEZ, VALERIE BROWN, CHRIS ) PETITIONERS’/PLAINTIFFS’ POINTS  
13 ROGERS AND JEFF TIEDEMAN ) AND AUTHORITIES IN SUPPORT OF  
14 ) PETITION FOR WRIT OF MANDATE AND  
15 ) COMPLAINT FOR DECLARATORY  
16 vs. ) RELIEF  
17 )  
18 ARNOLD SCHWARZENEGGER, as ) Date: January 21, 2010  
19 Governor of the State of California; ) Time: 9:30 a.m.  
20 DEPARTMENT OF PERSONNEL ) Dept: 301  
21 ADMINISTRATION; JOHN CHIANG, as )  
22 State Controller, JAN FRANK, as President of )  
23 the STATE COMPENSATION INSURANCE )  
24 FUND and Does 1 through 50, inclusive )  
25 )  
26 )  
27 Respondents/Defendants )

28 **INTRODUCTION**

29 The California Association of Professional Scientists (CAPS) is the exclusive  
30 representative of state employees in State Bargaining Unit 10 (Unit 10). Unit 10 is comprised of  
approximately 3500 state civil service employees who work throughout the various departments  
in the State of California as scientists or in classifications related to scientific work.  
Plaintiff/Petitioner Patty Velez (Velez) is the President of CAPS. She is employed by the  
California Department of Fish and Game. Plaintiff/Petitioner Valerie Brown (Brown) is the Vice  
President of CAPS. She is employed by the California Department of Public Health. Petitioner  
Chris Rogers (Rogers) is a member of the CAPS Board of Directors and is also employed by the

1 California Department of Public Health. Petitioner/Plaintiff Jeff Tiedeman is a member of  
2 CAPS, and is employed by the State Compensation Insurance Fund (SCIF).

3 This matter was originally filed with four causes of action. Now, CAPS is only pursuing  
4 the First Cause of Action—Petition for Writ of Mandate—Code of Civil Procedure section  
5 1085.<sup>1</sup> In Executive Orders dated December 19, 2008 and July 1, 2009, Respondent/Defendant  
6 Arnold Schwarzenegger (Governor) directed that employees of the State of California including  
7 those represented by CAPS in Unit 10 take three furlough days per month through June 30, 2010  
8 in order to address an estimated \$42 billion deficit in the State General Fund. The result of the  
9 imposed furlough days on Unit 10 employees is that each month their salaries are reduced by  
10 approximately 15%.

11 CAPS contends that numerous Unit 10 members are employed and paid by Special Fund  
12 departments and agencies of the State that do not receive any General Fund monies for payment  
13 of employee salaries or receive a negligible portion of General Fund monies to pay salaries.<sup>2</sup>  
14 Therefore, furloughing these employees three days per month does reduce the deficit in the  
15 General Fund and does not achieve the purpose of the Executive Orders—to reduce the deficit in  
16 the State’s General Fund. As such the Governor’s decision to furlough special fund employees is  
17 arbitrary, capricious and constitutes an abuse of discretion. CAPS seeks a Writ of Mandate  
18 ordering the Respondents/Defendants to rescind the furlough of Unit 10 Special Fund employees  
19 as provided for in the Executive Orders and the furlough plan adopted by Respondent/Defendant  
20 Department of Personnel Administration.

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22 **STATEMENT OF FACTS**

23 CAPS is the exclusive representative for Unit 10 as provided under the Dills Act. Unit  
24 10 members are employed in various departments and agencies of the State of California as  
25 scientists or in classifications related to scientific work. The named Petitioners/Plaintiffs are  
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27 <sup>1</sup> As a result of other litigation, Respondent/Defendant Jan Frank, as President of the State Compensation Insurance  
28 Fund (SCIF) has exempted employees of SCIF, including those represented by CAPS from the furloughs directed by  
29 Executive Orders S-16-08 and S-13-09. Therefore, the Second Cause of Action and Third Cause of Action of the  
30 Petition/Complaint have been dismissed.

<sup>2</sup> See Declaration of Kurt R. Sjoberg page 6-7.

1 either on the Board of Directors of CAPS, members of CAPS, and in the case of Velez and  
2 Brown, the President and Vice President of CAPS.

3 In the Manual of State Funds, the California Department of Finance defines “General  
4 Fund” as the “principal operating fund for the majority of governmental activities and consists of  
5 all money received in the Treasury that is not required by law to be credited to any other fund.”  
6 Major taxes of the state are the principal source of money to the General Fund (primarily  
7 Personal Income, Sales and Bank and Corporation taxes.)<sup>3</sup>

8 The Manual of State Funds also describes more than 1,000 Special Funds used by the  
9 State of California. Special Fund monies come from specific sources and have constraints  
10 attached regarding what these funds can be used to support. Special Funds derive their revenues  
11 from fees, licenses and charges, and the expenditures from these funds are limited to serving the  
12 mandated activities for which the fund was created.<sup>4</sup> For example, the California Beverage  
13 Container Recycling Fund’s proceeds are based on fees, fines and redemption values related to  
14 containers sold, and the administering state agencies can only make expenditures from the Fund  
15 for use in regulating the activities specified by the Fund. Consequently, the General Fund has no  
16 claim on the fund or ability to use the fund for any purpose other than those stipulated under the  
17 Special Fund’s related law or regulation.<sup>5</sup>

18 The State of California has always treated Special Funds as separate and distinct from the  
19 General Fund and complied with the associated statutory purposes of those funds. Special Funds  
20 do not contribute to General Fund growth, nor do they cause General Fund deficits. Under the  
21 California Constitution, the General Fund is subject to the State Appropriation Limits whereas  
22 Special Funds financed by other forms of revenue—such as charges, licenses, fees, proceeds of  
23 asset sales, and settlement funds—are not subject to the limit. (California Constitution, Article  
24 XIII B). This distinction clearly demonstrates the difference between the General Fund as the  
25 State’s “principal operating fund” spending all the monies in the Treasury “not required by laws  
26 to be credited to any other fund,” and the funds residing in the more than 1000 Special Funds  
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28 <sup>3</sup> See Declaration of Kurt R. Sjoberg page 3.

29 <sup>4</sup> See Declaration of Kurt R. Sjoberg page 3.

30 <sup>5</sup> See Declaration of Kurt R. Sjoberg page 3.

1 that serve unique programs or groups funded specifically by charges, licenses and fees related to  
2 that purpose or group's activities.<sup>6</sup> The State Constitution's language exempting non-tax  
3 revenues (Special Funds) from the State's general tax appropriation limits offers evidence of the  
4 recognition that Special Funds were created to fund specific activities not paid for by the broad  
5 taxpaying public, and thus were not available to pay for the overall activities to operate the State  
6 Government.

7         Although many Unit 10 members are employed by State agencies, departments,  
8 commissions and bureaus that receive a combination of General Funds and Special Funds, many  
9 primarily operate with Special Funds. Thus, for the most part Unit 10 employees provide  
10 services exclusively in support of legally mandated activities unrelated to the General Fund. The  
11 following is a list of State agencies, departments and bureaus where a predominant number of  
12 Unit 10 employees work and whose operating fund sources are at least 70% funded from Special  
13 Funds (Special Fund percentages are in parentheses): Air Resources Board (99.66%),  
14 Department of Boating and Waterways (100%), California Tahoe Conservancy (96.88%),  
15 California Waste Management Board (100%), Colorado River Board of California (100%),  
16 Department of Conservation (99.62%), Department of Consumer Affairs (100%), Department of  
17 Public Health (83.95%), Department of Fish and Game (70.64%), Department of General  
18 Services (98.83%), Department of Industrial Relations (79.35%), Office of Statewide Health  
19 Planning and Development (99.38%), Department of Pesticide Regulation (100%), Resources  
20 Agency (84.85%), Toxic Substance Abuse Control Board (84.55%), Department of  
21 Transportation (100%), Department of Water Resources (90.30%) and Water Resources Control  
22 Board (72.11%).

23         These departments alone represent more than 50,000 represented employees who have  
24 been included in the State's three-day furlough program despite the fact that the departments  
25 they work for have little to no impact on General Fund spending nor do they have the ability to  
26 provide the State with any savings to help mitigate its multi-billion dollar General Fund deficit.<sup>7</sup>

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29 <sup>6</sup> Declaration of Kurt R. Sjoberg page 4.

30 <sup>7</sup> Declaration of Kurt R. Sjoberg page 7.

1 In Executive Order S-13-09, the Governor announced implementation of a three-day  
2 furlough plan for all employees “regardless of the funding source.” As justification of expanded  
3 furloughs to include special funded, represented state employee, the Governor cited the need for  
4 “additional borrowing form available resources such as special funds.” However, the Governor’s  
5 “justification” is not persuasive.

6 When the State borrows from Special Funds the State Director of Finance orders the State  
7 Controller to transfer the borrowed funds from the selected Special Fund to the General Fund for  
8 expenditure. The State is required to pay interest on the Special Fund loan.<sup>8</sup> Further, if the  
9 Special Fund needs the loan to be repaid to operate its programs or activities, the funds are to be  
10 returned from the General Fund. For example, the State transferred more than \$99 million from  
11 the California Beverage Container Recycling Fund in 2009 as a loan to the General Fund.  
12 However, a provision in the Budget Act for 2009-10 provides that: “The repayment shall be  
13 made so as to ensure that the programs supported by the California Beverage Container  
14 Recycling Fund **are not adversely affected** by the loan, but no later than June 30, 2013.”<sup>9</sup>  
15 (emphasis added). Similarly, a \$2 million loan from the Occupational Therapy Fund contains  
16 language stating that: “Repayment shall be made so as to ensure that the programs supported by  
17 the Occupational Therapy Fund are not adversely affected by the loan through **reduction in**  
18 **services** or through increased fees.”<sup>10</sup> (emphasis added).

19 The mandated services and programs paid for with Special Funds are wide ranging,  
20 including many that provide for the health and safety of California’s residents. These Special  
21 Funds are used to assure that air quality is maintained, water is free of toxic chemicals from  
22 pesticides or oil spills, hospitals are built to earthquake standards, public health programs  
23 provide adequate care and workers are safe on the job. Each of these programs is funded by  
24 Special Funds whose revenues are unrelated to the General Fund and furloughing special-funded  
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27 <sup>8</sup> Declaration of Kurt R. Sjoberg page 5.

28 <sup>9</sup> Declaration of Kurt R. Sjoberg page 5.

29 <sup>10</sup> Declaration of Kurt R. Sjoberg page 5.

1 state employees generates no benefit to the General Fund due to spending restrictions underlying  
2 the Special Funds' purposes.<sup>11</sup>

3 Executive Order S-13-09 results in approximately a 15% reduction in personnel services  
4 provided by departments and agencies that are funded by Special Funds. It is inconceivable that  
5 such cuts would not "adversely affect" or cause a "reduction in services" to the programs  
6 supported by Special Funds. A reduction in staff resources associated with furloughs from  
7 agencies and departments using Special Funds diminishes the special-funded agencies ability to  
8 fulfill the function it is required to perform under its legislative authorization. Therefore, the  
9 logic that the reduced spending of Special Funds generated by furloughs would allow for  
10 additional General Fund borrowing is flawed since the Special Fund loans must be repaid (with  
11 interest) if they are needed to fulfill the special-funded agencies' obligations to the payers of the  
12 associated licenses, fees or other charges. Thus, the furlough and borrowing demands on Special  
13 Funds outlined in Executive Order S-13-09 do not comport with the restrictive and limited use of  
14 Special Funds.

## 15 ARGUMENT

### 16 **1. PETITIONERS/PLAINTIFFS MAY BRING THIS ACTION TO ENFORCE THE** 17 **EMPLOYMENT RIGHTS OF UNIT 10 MEMBERS AS WELL AS THEIR OWN** 18 **EMPLOYMENT RIGHTS**

19 CAPS is the exclusive representative of Unit 10. As such, it may bring this action in its  
20 own name to enforce the employment rights of Unit 10 members. *California School Employees*  
21 *Association v. Willits Unified School District* (1966) 243 Cal.App.2d 776, 780-781, *Professional*  
22 *Firefighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2<sup>nd</sup> 276, 285.

23 The individually named Petitioners/Plaintiffs also may pursue this action. As employees  
24 of the State of California, members of CAPS, Unit 10 members, and employees who are subject  
25 to the three-day furloughs imposed by the Governor's Executive Orders and a 15% reduction in  
26 their salaries they have a special interest and a beneficial interest in this action. Code of Civil  
27 Procedure section 1086, *Associated Builders & Contractors, Inc. v. San Francisco Airports*  
28 *Commission* (1999) 21 Cal.4<sup>th</sup> 352, 362-363.

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<sup>11</sup> Declaration of Kurt R. Sjoberg page 7.

1 **2. A WRIT OF MANDATE UNDER CODE OF CIVIL PROCEDURE SECTION 1085 IS**  
2 **THE APPROPRIATE REMEDY TO CHALLENGE THE ABUSE OF DISCRETION**  
3 **AND ARBITRARY AND CAPRICIOUS ACTION ENGAGED IN BY THE GOVERNOR**  
4 **IN ORDERING FURLOUGHS FOR SPECIAL FUND EMPLOYEES WHEN SUCH**  
5 **FURLOUGHS DO NOT REDUCE THE GENERAL FUND DEFICIT.**

6 The Governor's stated purpose for issuing Executive Orders S-16-008 and S-13-09 was  
7 to reduce the deficit in the General Fund by furloughing state employees three days per month.  
8 The problem with the Governor's plan is that furloughing State employees who work for  
9 departments and agencies that are funded by Special Funds does not achieve the purpose of the  
10 Executive Orders. Not only are Special Funds not part of the General Fund of the State, Special  
11 Funds are restricted in their use to serve the purpose of the fund, and are not generated by taxes  
12 but instead by fees, licenses and other charges that must be used in a mandated way.  
13 Furloughing employees who are Special Fund employees saves the General Fund nothing as  
14 their salaries and benefits are paid for through the fees, licenses and other charges for their  
15 respective Special Fund.

16 Additionally, if the State borrows from a Special Fund it not only must repay the loan,  
17 but must pay interest that creates additional deficits in the General Fund. Further, limitations on  
18 the use of Special Funds provides that if borrowing by the State adversely affects the fund or  
19 causes a reduction in services of the fund, the loan must be repaid. Certainly, furloughing  
20 employees from Special Fund departments and agencies reduces the services provided by the  
21 Special Fund and adversely affects the Fund. Therefore, furloughing Special Fund employees  
22 achieves no savings for the General Fund, and in fact may create greater deficits in the General  
23 Fund because of the interest that must be paid from the General Fund when repaying Special  
24 Fund loans.

25 While mandamus is not available to control the discretion exercised by a public official  
26 or board, it is available to correct an abuse of discretion by such party. *Glendale City*  
27 *Employees' Association, Inc v. City of Glendale* (1975) 15 Cal.3d 328, 344. Also, a writ of  
28 mandate will issue against the Governor in the appropriate case. *Hollman v. Warren* (1948) 32  
29 Cal.2d 351, 355.

30 Here, the Governor through the other Respondents/Defendants has abused his discretion  
and acted in an arbitrary and capricious manner by ordering Special Fund employees to be  
furloughed for three days per month in order to reduce the deficit in the State's General Fund,

1 when furloughing Special Fund employees, including those in Unit 10 and the individually  
2 named Petitioners/Plaintiffs in this action, does not reduce the General Fund deficit. In fact,  
3 there is a strong argument that it will increase the General Fund deficit because if funds are  
4 borrowed by the State from Special Funds the loans must be repaid with interest.<sup>12</sup>

5 Issuance of a writ of mandate rescinding the furloughs imposed on Special Fund  
6 employees is appropriate because furloughing such employees does not achieve the purpose of  
7 reducing the General Fund deficit, thus constituting an abuse of discretion on the part of  
8 Respondents/Defendants.

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10 **3. THE STATE MAY NOT BORROW AGAINST A SPECIAL FUND WHERE IT WILL**  
11 **INTERFERE WITH THE OBJECT FOR WHICH A SPECIAL FUND WAS CREATED.**

12 As discussed above, the Governor's justification for furloughing Special Fund employees  
13 is to have additional funds from which to borrow to offset the deficit in the State's General Fund.  
14 Presumably, by reducing the salaries of furloughed employees by 15% there will be additional  
15 monies in Special Funds that the State can borrow. However, the State is not permitted to  
16 borrow from a Special Fund where it will interfere with the object for which the Special Fund  
17 was created. Government Code section 16310, *Daugherty v. Riley* (1934) 1 Cal.2d 298, 310.  
18 Additionally, interest must be paid on loans taken from Special Funds. Government Code  
19 section 16310.

20 Special Funds are unique as the revenue received by a Special Fund is generated by fees,  
21 licenses and charges and the use of these Funds is restricted to support the purpose of the Fund.  
22 When employees who work for specially funded agencies and departments are required to take  
23 three furlough days per month it is obvious that the special fund for which they are working is  
24 being interfered with as is the purpose of the fund in question. As noted in the Declaration of  
25 Kurt R. Sjoberg,<sup>13</sup> the Department of Public Health is supported by several Special Funds,  
26 including the Radiation Control Fund, Genetic Disease Testing Fund, and Licensing and  
27 Certification Program Fund. The revenues in these funds are generated from fees charged for  
28 licenses, permits, certifications, registrations and tests related to each of the individual program's

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<sup>12</sup> Declaration of Kurt R. Sjoberg pages 5-6.

<sup>13</sup> Declaration of Kurt R. Sjoberg pages 7-8.

1 activities. These funds are used to enforce the following public health and safety laws and  
2 regulations: Licensing of radioactive materials, permitting and certifying environmental  
3 laboratories, inspection of facilities using radiation, medical facility licensing and certification,  
4 investigation of radiation incidents, surveillance of radioactive contamination in the  
5 environment, screen, detect and prevent disabilities and death caused by genetic and congenital  
6 disorders, and certification of health care providers who use X-ray machines. Can it be seriously  
7 argued that furloughing specially funded employees such as those in Unit 10 who work at the  
8 Department of Public Health does not adversely affect the programs and/or result in a reduction  
9 in services to the public? Furloughing specially funded employees so that funds can be loaned  
10 from the Special Funds to the General Fund violates Government Code section 16310 because it  
11 results in a diminution of service for the specially funded programs.

12 The Governor abused his discretion and acted in an arbitrary and capricious manner when  
13 he ordered that specially funded state employees, including those in Unit 10 and the individually  
14 named Plaintiffs/Petitioners, to be furloughed three days per month. The furloughs do not reduce  
15 the deficit in the General Fund, and furloughing specially fund employees so that borrowing  
16 against the Special Funds can be increased violates section 16310.

### 17 **CONCLUSION**

18 Based on all of the foregoing, a writ of mandate should issue ordering  
19 Respondents/Defendants to rescind the Executive Orders that require employees in Unit 10 who  
20 are employed by specially funded agencies and departments of the State and the individually  
21 named Petitioners/Plaintiffs to take three furlough days per month.  
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23 Dated: December 16, 2009  
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STEVEN B. BASSOFF  
28 Attorney for  
29 Petitioners/Plaintiffs  
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