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Sacramento
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By _____, Deputy
Case Number:
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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO

11 CALIFORNIA ASSOCIATION OF
12 PROFESSIONAL SCIENTISTS

13
14 Petitioner,

15 v.

16 STATE OF CALIFORNIA DEPARTMENT OF
17 PERSONNEL ADMINISTRATION; DAVID
18 GILB, DIRECTOR OF DEPARTMENT OF
19 PERSONNEL ADMINISTRATION; STATE
20 OF CALIFORNIA DEPARTMENT OF
21 FINANCE; MICHAEL GENEST, DIRECTOR
22 OF FINANCE; STATE CONTROLLER JOHN
23 CHIANG; and DOES 1 THROUGH 10,
24 INCLUSIVE

25 Respondents.

CASE NO.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY RELIEF**

Date:
Time:
Dept: 33

26 **I. Introduction**

27 This Court's intervention is required at this time to compel the State of California as the
28 employer to comply with its duty under the law to compensate certain supervisory scientific
classifications of employees consistent with the April 28, 2008 quasi-legislative salary

1 determinations made by the State of California Department of Personnel Administration.

2 This Petition addresses Fiscal Years 2005 - 2006, 2006 - 2007, 2007 - 2008 and the
3 upcoming Fiscal Year of 2008 - 2009. As discussed within this Petition, the obligations of the
4 various Respondents are different for the Fiscal Year 2008 - 2009 than for the other years as the
5 State Budget for 2008 - 2009 is pending.

6 The Legislature has provided the State of California Department of Personnel
7 Administration (DPA) with the authority to set salaries for employees excluded from collective
8 bargaining, including employees designated as supervisors. On behalf of fourteen classifications
9 of state employed scientist supervisors, in November 2006 the California Association of
10 Professional Scientists (CAPS) challenged the excluded employee pay plan for employees in
11 those classifications. CAPS alleged before the state DPA that in exercising its legislative salary
12 setting function, DPA's pay plan for state supervisory scientists violated the provisions of the law
13 which require comparable pay for comparable work.

14 In response to the challenge to the pay plan and request for additional compensation,
15 DPA held a quasi-legislative hearing. The DPA agreed with CAPS and found that the salaries of
16 the fourteen classifications of employees must be comparable to fourteen specific engineering
17 classifications. On April 28, 2008, DPA issued a written decision which set the salaries of the
18 fourteen classifications consistent with the finding by raising the supervisory scientist salaries to
19 reflect the historical parity with certain supervisory engineering classifications. In this
20 proceeding, CAPS seeks a declaration that the state is obligated by law to pay the employees in
21 the fourteen classifications the salaries as fixed by the DPA retroactive to 2005.

22 Despite DPA's salary determinations and the state employer's setting of the salaries at the
23 new appropriate levels required by law, the full salaries of the fourteen classifications and the
24 employees within those classifications have not been paid for the 2007 - 2008 fiscal year or any
25 prior fiscal years, and neither the Department of Finance, nor the DPA has taken any action to
26 seek funding for the salaries required to be paid for the 2008 - 2009 Fiscal Year which begins on
27 July 1, 2008.

28 It is clear the state has not complied with the law until the appropriate salaries are paid to

1 the state scientists in the fourteen classifications. This action is therefore necessary to compel the
2 state to pay the full salaries required by law for the current year and retroactively, and to compel
3 the state employer to take action necessary to present to the Legislature a request for an
4 appropriation sufficient to fund the additional increase called for in the 2008 - 2009 Fiscal Year.
5

6 By this verified petition and complaint, Petitioner alleges the following:

7
8 **II. Parties**

9 1. Petitioner **California Association of Professional Scientists (CAPS)** is, and at all
10 times herein mentioned was, a nonprofit corporation organized and existing under the laws of the
11 State of California, with its principal place of business in the County of Sacramento, State of
12 California.

13 2. Petitioner CAPS is a supervisory employee organization under Government Code
14 section 3527 subdivision (c) in that it represents members who are supervisory employees under
15 subdivision (g) of Government Code section 3513. Petitioner CAPS has filed a registration as an
16 excluded employee organization with the state and is recognized as a verified supervisory
17 employee organization. (Gov. Code § 3537.)

18 3. Petitioner CAPS represents approximately 332 state employees in the fourteen
19 supervisory scientific classifications covered by this Petition. CAPS and the affected employees
20 represented by CAPS are therefore beneficially interested in Respondents' faithful performance
21 of the legal duties at issue in this case.

22 4. Respondent **Department of Personnel Administration (DPA)** is, and at all times
23 herein mentioned was, a department of the State of California with the responsibility of serving
24 as the Governor's designated representative for purposes of meeting and conferring on matters
25 relating to supervisory employer-employee relations (Gov. Code §3527(e)) and is responsible for
26 setting the salaries of employees excluded from collective bargaining including the state
27 scientists in the fourteen classifications covered by this Petition (Gov. Code §19826).

28 5. Respondent **David Gilb** is the duly appointed Director of the DPA. (Gov. Code
§19815.3.) The duties of the Director of the DPA include administering and enforcing the laws

1 pertaining to personnel and formulating, adopting, amending, or repealing rules, regulations, and
2 general policies affecting the purposes, responsibilities and jurisdiction of the DPA and which
3 are consistent with the law and necessary for personnel administration. (Gov. Code §19815.4)
4 Director Gilb is sued in his official capacity only.

5 6. Respondent **Department of Finance** (Finance) is, and at times herein mentioned
6 was, a department of the State of California which exercises general powers of supervision over
7 the state's fiscal affairs, which include control and enforcement of the budgets of various state
8 agencies. (Gov. Code §§ 13070, 13320, 13323, 13337.)

9 7. Respondent **Michael Genest** is the duly appointed Director of the Department of
10 Finance. (Gov. Code § 13002.) Finance is under the control of Genest who shall perform all
11 duties, exercise all powers and jurisdiction, assume and discharge all responsibilities, and carry
12 out and effect all purposes vested by law in Finance. (Gov. Code §§ 13002, 13004.) Director
13 Genest is sued in his official capacity only.

14 8. Respondent **John Chiang** is a state constitutional officer as the duly elected
15 Controller of the State of California. (Cal. Const., art. V, §11.) Among various other duties, the
16 Controller shall superintend the fiscal concerns of the state. The Controller shall audit all claims
17 against the state and may audit the disbursement of any state money for correctness, legality, and
18 for sufficient provisions of law for payment. (Gov. Code § 12410.) The Controller shall draw
19 warrants on the Treasurer for the payment of money directed by law to be paid out of the State
20 Treasury; but a warrant shall not be drawn unless authorized by law, and unless unexhausted
21 specific appropriations by law are available to meet it. (Gov. Code § 12440.) The Controller is
22 sued in his official capacity only.

23 9. The true names and capacities of Respondents named herein as **Does 1 through 10**,
24 inclusive, are unknown to Petitioner who therefore sues such Respondents by such fictitious
25 names, and Petitioner will amend this complaint to show their true names and capacities when
26 the same have been ascertained. Petitioner is informed and believes and thereon alleges that each
27 of the Respondents are in some manner responsible for the acts complained of herein.

28

1 **III. DPA's April 28, 2008 Like Pay for Like Work Salary Determination Decision**

2 10. Pursuant to Government Code section 19826, the Legislature has delegated to the
3 Department of Personnel Administration (DPA) the salary setting function for various
4 employees, including supervisory employees excluded from collective bargaining. Specifically,
5 Government Code section 19826 (a) provides DPA with the authority to establish and adjust
6 salary ranges for each class of position in the state civil service subject to any merit limits
7 contained in Article VII of the California Constitution. In delegating the salary setting function
8 to the DPA, the Legislature instructed that the salary range shall be based on the principle that
9 like salaries shall be paid for comparable duties and responsibilities. The Legislature placed a
10 limit on the salary setting authority by instructing that the DPA shall make no adjustments that
11 require expenditures in excess of existing appropriations that may be used for salary increase
12 purposes.

13 11. Prior to 2005, there was a close alignment in salaries between the following
14 supervisory scientist classifications (underlined) and the comparable supervisory engineering
15 classifications (indented):

16 Supervising Hazardous Substances Scientist I

17 Supervising Hazardous Substances Engineer I

18 Supervising Hazardous Substances Scientist II

19 Supervising Hazardous Substances Engineer II

20 Senior Industrial Hygienist

21 Senior Safety Engineer¹

22 Senior Geologist (Supervisor)

23 Senior Engineering Geologist

24
25
26 ¹At page 21 of the April 28, 2008 DPA decision, there appears to be an error in that the
27 salary adjustment for Senior Industrial Hygienist is to pay the same as Senior Engineering
28 Geologist. Although the pay is the same, CAPS requested in writing that the DPA Director
correct this apparent error by listing Senior Safety Engineer as the comparable class. As CAPS
understands it, the DPA Director is working on a response.

1 Senior Seismologist

2 Senior Engineering Geologist

3 Senior Environmental Scientist

4 Senior Water Resources Control Engineer or Senior Engineer Water Resources

5 Senior Land and Water Use Scientist

6 Senior Engineering Geologist or Senior Engineer Water Resources

7 Land and Water Use Program Manager I

8 Supervising Engineer Water Resources

9 Environmental Program Manager I (Supervisory)²

10 Supervising Engineering Geologist, Supervising Engineer Water Resources

11 Supervising Water Resources Control Engineer

12 Energy Commission Supervisor II (Efficiency)³

13 Electric Generation System Specialist III

14 Energy Commission Supervisor II (Forecasting)

15 Electric Generation System Specialist III

16 Energy Commission Supervisor II (Technology Evaluation and Development)

17 Electric Generation System Specialist III

18 Supervising Integrated Waste Management Specialist I

19 Senior Waste Management Engineer

21 ²CAPS contended before the DPA that the comparable classes are Supervising Engineer
22 Geologist, Supervising Engineer Water Resources and Supervising Water Resources Control
23 Engineer. The DPA decision found instead Senior Engineer Geologist, Senior Engineer Water
24 Resources and Senior Water Resources Control Engineer to be the comparable classifications.
25 CAPS requested in writing that the DPA Director correct this apparent error. As CAPS
26 understands it, the DPA Director is working on a response.

26 ³For each Energy Commission Supervisor II comparison, CAPS contended the proper
27 comparable classification is Electric Generation Specialist III. The DPA decision found instead
28 the Electric Generation Specialist II to be the comparable classification. CAPS requested in
writing that the DPA Director to correct this apparent error. As CAPS understands it, the DPA
Director is working on a response.

1 Supervising Integrated Waste Management Specialist II

2 Supervising Waste Management Engineer

3 12. Historically, there has been a level of horizontal parity between the supervisory
4 scientific and supervisory engineering classifications. In setting the salaries, the state (through
5 the DPA since 1981) has historically paid the state supervisory scientists either the same, or
6 consistently paid the scientific classifications five or ten percent lower than comparable
7 engineering classifications. (April 28, 2008 Director's Decision, Page 21, Exhibit A to the
8 Declaration of Christopher Voight.)

9 13. Beginning in July 2005, the state began providing salary increases to employees in
10 the supervisory engineering classifications that far exceeded those of the supervisory scientists in
11 the comparable classifications. (See Relevant Portions of 2005, 2006 and 2007 Civil Service Pay
12 Scales, Attached as Exhibit B to the Declaration of Christopher Voight.) In July 2005, the salary
13 increase for supervising engineers was 7.7%. Supervisory engineers received additional salary
14 increases of 12.4% effective July 1, 2006 and 14.1% effective July 1, 2007 which widened the
15 pay differential which was once comparable. (Paragraph 7, Declaration of Christopher Voight.)

16 14. For example, Senior Seismologists, a supervisory scientist classification, have
17 historically been paid comparably to Senior Engineering Geologists, a supervisory engineering
18 classification. Prior to the salary increases in July 2005 for engineering supervisors taking effect,
19 the classification of Senior Seismologist was paid a maximum of \$6339 per month while the
20 comparable classification of Senior Engineering Geologist was paid a maximum of \$6490
21 meaning that prior to the supervisory engineering raise in July 2005, the Senior Seismologist was
22 paid 2.5% less than the Senior Engineering Geologist. (Paragraph 8, Declaration of Christopher
23 Voight.)

24 15. Senior Seismologists received the same salary adjustments as most other
25 supervisory scientists since July 2005 - no salary increase in July 2005, a 3.5% increase effective
26 July 2006, and a 3.4% increase effective July 2007. Senior Engineering Geologists received the
27 same salary adjustments as most other supervisory engineers since July 2005 - salary increases of
28 7.7% in July 2005, 12.4% in July 2006, and 14.1% in July 2007. (Paragraph 9, Declaration of

1 Christopher Voight.)

2 16. Although the salaries have historically been comparable, in July 2005 the Senior
3 Seismologist salaries lagged the Senior Engineering Geologist salaries by \$651 per month for a
4 10% salary lag. In July 2006 the salary lag grew to \$1296 per month for a 20% salary lag. In
5 July 2007, the salary lag grew to \$2172 per month for a 32% salary lag. (Paragraph 10,
6 Declaration of Christopher Voight.)

7 17. Following the Director's Decision, in early May 2008 the DPA provided CAPS
8 with a DPA prepared chart listing the annualized salary costs and funds for thirteen of the
9 classifications covered by the decision. It appears the Senior Geologist Supervisor classification
10 does not have any incumbents. The caption title reads "Scientist Unit 10 Supervisors to Unit 9
11 Supervisors - various levels per Legal Recommendation." The salary increases range from
12 10.06% to 32.15%. The annualized General Fund cost is \$1,781,293 with the other fund cost of
13 \$5,816,116. (Costing chart for implementing the DPA Director's Decision, Attached as Exhibit
14 C to the Declaration of Christopher Voight.)

15 18. The proposed 2008 - 2009 Fiscal Year budget contains funding for an additional
16 increase for employee compensation scheduled for July 1, 2008. In the past three years, the
17 supervisory engineers have received raises in correlation with the salary increases for the rank-
18 and-file engineering employees they supervise. As the rank-and-file engineering employees are
19 scheduled to receive another raise July 1, 2008, the supervisory engineers will likely receive an
20 increase on that date as well. (See 9800 Item Augmentation for Employee Compensation - 2008
21 Governor's Proposed Budget (Following May Revision), Exhibit D to the Declaration of
22 Christopher Voight.)

23 19. In meeting and conferring over the Fiscal Year 2005- 2006 pay plan for supervisory
24 scientists, CAPS took the position that the horizontal parity should be maintained and
25 supervisory scientists should be given salary increases. (2005 CAPS Supervisory Meet and
26 Confer Proposal, Exhibit E to the Declaration of Christopher Voight; April 28, 2008 Director's
27 Decision, Page 4, Exhibit A to the Declaration of Christopher Voight.)

28 20. Following the July 2006 increase for supervisory engineers, CAPS met and

1 conferred over the Fiscal Year 2006-2007 pay plan. CAPS took the position that the historical
2 parity between supervisory scientific and supervisory engineering classes should be reinstated by
3 raising the salaries of supervisory scientific classifications and that the pay plan should reflect
4 like pay for comparable work. In adopting the pay plan for 2006-2007, the DPA rejected CAPS'
5 position which sought to restore historical parity. (2006 CAPS Supervisory Meet and Confer
6 Proposal, Exhibit F to the Declaration of Christopher Voight.)

7 21. On November 3, 2006, CAPS, as a verified excluded employee organization and
8 the representative of the state's professional scientist supervisors, challenged the salary ranges for
9 fourteen supervisory scientist classifications claiming that the pay violated the principle that "like
10 salaries shall be paid for comparable duties and responsibilities." Specifically, CAPS contended
11 that in setting the salaries for the challenged classifications, the DPA has violated the legislative
12 mandate found in Government Code section 19826 to pay like salaries for comparable work.
13 (November 3, 2006 CAPS Salary Challenge and Request for Hearing, Exhibit G to the
14 Declaration of Christopher Voight.)

15 22. Director Gilb established an investigative hearing panel to hear the challenge to the
16 salary structure and the claim for additional compensation. The panel was charged with
17 investigating the claim that supervising scientists are performing comparable duties and have
18 comparable responsibilities to certain supervising engineering classes.

19 23. The panel held hearings on April 11 and 12, 2007, November 26, 27, 30, 2007 and
20 December 3, 2007. A total of 31 witnesses testified before the panel. On February 27, 2008 the
21 panel submitted its final report to Director Gilb.

22 24. On April 28, 2008, the 22 page Director's Decision was issued by DPA. In the
23 decision the DPA adopted the investigation panel's factual summary of the witness testimony,
24 exhibits and document review. (April 28, 2008 Director's Decision, Page 4, Exhibit A to
25 Declaration of Christopher Voight.)

26 25. The Director's Decision found that the testimony from witnesses working in the
27 various classifications, and from managers and human resource personnel in agencies and
28 departments using the classifications, indicates that the duties and responsibilities of supervising

1 scientists and supervising engineers are sometimes identical and/or comparable in terms of
2 organizational level and supervisory or managerial responsibility. The Decision noted that while
3 the supervising and management duties and responsibilities were similar, the classifications when
4 viewed as a whole were not identical. The Decision concludes that factual evidence presented by
5 the claimants and the employing agencies established the duties and responsibilities of the
6 subject supervising scientist classifications are similar but not identical to those assigned to the
7 subject supervising engineer classifications. (April 28, 2008 Director's Decision, Page 19 - 20,
8 Exhibit A to Declaration of Christopher Voight.)

9 26. In the Director's Decision, the DPA recommends salary adjustments to the
10 supervising scientist classifications based on historical State Personnel Board documents that
11 initially established classifications and historical pay scales as follows:

12 Supervising Hazardous Substances Scientist I

13 Pay the same as Supervising Hazardous Substances Engineer I

14 Supervising Hazardous Substances Scientist II

15 Pay the same as Supervising Hazardous Substances Engineer II

16 Senior Industrial Hygienist

17 Pay the same as Senior Engineering Geologist

18 Senior Geologist (Supervisor)

19 Pay the same as Senior Engineering Geologist

20 Senior Seismologist

21 Pay the same as Senior Engineering Geologist

22 Senior Environmental Scientist

23 Pay 10% less than Senior Water Resources Control Engineer or Senior Engineer
24 Water Resources

25 Senior Land and Water Use Scientist

26 Pay 5% less than Senior Engineering Geologist or Senior Engineer Water
27 Resources

28

1 Land and Water Use Program Manager I

2 Pay 5% less than Supervising Engineer Water Resources

3 Energy Program Manager I (Supervisory)

4 Pay the same as Senior Engineering Geologist, Senior Engineer Water Resources

5 Senior Water Resources Control Engineer

6 Energy Commission Supervisor II (Efficiency)

7 Pay 5% less than Electric Generation System Specialist II

8 Energy Commission Supervisor II (Forecasting)

9 Pay 5% less than Electric Generation System Specialist II

10 Energy Commission Supervisor II (Technology Evaluation and Development)

11 Pay 5% less than Electric Generation System Specialist II

12 Supervising Integrated Waste Management Specialist I

13 Pay 5% less than Senior Waste Management Engineer

14 Supervising Integrated Waste Management Specialist II

15 Pay 10% less than Supervising Waste Management Engineer

16 27. These salary determinations are the product of the Director's salary setting
17 consistent with his authority under Government Code section 19826. Although phrased in the
18 form of salary "recommendations," it is DPA that has the statutory authority to designate salaries
19 for these supervisory scientists. Those increased salaries have not been paid, despite the
20 mandatory language requiring horizontal parity. This mandatory language does not allow "a
21 power to consider, weigh, and then to reject." In interpreting Section 19826, the courts have
22 held, "The clause demands that the described principle be applied to reach dollar results." (*State*
23 *Trial Attorneys' Assn. v. State of California* (1976) 63 Cal.App.3d 298, 304.) Here, despite
24 DPA's finding of comparability of duties and responsibilities, comparable salaries are not being
25 paid and "dollar results have not been reached." The DPA has acted within its fundamental
26 statutory authority in fixing the salaries of these fourteen supervisory scientific classifications at a
27 level comparable to that of the comparable supervisory engineer classifications.

1 **IV. The Increased Salaries Must be Paid as There is an Appropriation to Fund**
2 **Payment of the Increased Salaries in the 2007-2008 State Budget**

3 28. DPA must cause the increased state scientist salaries to be paid when such action
4 can be taken without requiring expenditures in excess of current appropriations. (*State Trial*
5 *Attorneys' Association v. State of California* (1976) 63 Cal.App.3d 298, 305.)

6 29. On April 28, 2008, DPA asked Finance in writing to determine whether the salaries
7 are within existing salary appropriations. (Exhibit A to the Declaration of Christopher Voight.)
8 CAPS is not aware of any response to DPA from Finance. CAPS made a similar request of
9 Finance on May 2, 2008. (Exhibit H to the Declaration of Christopher Voight.) To date CAPS
10 has not received a written response. In DPA's request, Finance is not being asked to make a
11 policy determination on paying the increases or not, rather Finance is being asked to make a
12 factual determination as to whether there are funds to pay the increases. The DPA request
13 supports the position that the increased salaries must be paid if they are within existing
14 appropriations, otherwise, DPA would not have asked Finance whether the increased salaries
15 could be paid out of existing appropriations.

16 30. There is a line item in the State Budget Act titled "9800 Augmentation for
17 Employee Compensation." Each year the state budget reflects funding augmentation amounts for
18 state employee compensation adjustments. If the Legislature has already appropriated money in
19 prior years to pay for the economic terms of employee compensation, the funding for those
20 economic terms is included each year in departments budgets. When new economic terms
21 require funding not yet approved by the Legislature, the appropriations for those items appear in
22 the 9800 Item of the State Budget. (Paragraph 17, Declaration of Christopher Voight.)

23 31. The Final 2007-2008 State Budget Act was contained in Senate Bill 77 of the
24 Statutes of 2007. As passed by the Legislature, the 9800 Item contained: \$525,262,000 For
25 Augmentation for Employee Compensation from the General Fund; \$315,802,000 For
26 Augmentation for Employee Compensation, payable from other unallocated special funds; and
27 \$169,384,000 For Augmentation for Employee Compensation, payable from other unallocated
28 nongovernmental cost funds. (See Relevant Excerpts from the 2007 - 2008 State Budget Act,

1 Exhibit I to the Declaration of Christopher Voight.)

2 32. In signing the 2007-2008 Budget Act, Governor Schwarzenegger reduced the
3 General Fund Augmentation for Employee Compensation from \$525,262,000 to \$453,262,000.

4 33. The 9800 item general fund allocation is found at 9800-001-0001 and contains a
5 provisions that reads, "The funds appropriated in this item are for compensation increases and
6 increases in benefits related thereto of employees whose compensation, or portion thereof, is
7 chargeable to the General Fund, to be allocated by executive order by the Department of Finance
8 to the several state offices, departments, boards, bureaus, commissions, and other state agencies,
9 in augmentation of their respective appropriations or allocations, in accordance with approved
10 memoranda of understanding, or for employees excluded from collective bargaining, in
11 accordance with the salary and benefit schedules established by the Department of Personnel
12 Administration." This same language is repeated for Special Funds - 9800-001-0494 and
13 Nongovernment Cost Funds - 9800-001-988. (Exhibit I to the Declaration of Christopher
14 Voight.)

15 34. In response to a request from CAPS, the Controller has provided CAPS with
16 current balances in the 9800 Item of the State Budget as of June 24, 2008 as follows:

17	General Fund - 9800-001-0001	\$114,994,755
18	Special Funds - 9800-001-0494	\$39,214,948
19	Nongovernmental Cost 9800-001-098	\$103,428,963.

20 (Paragraph 19, Declaration of Christopher Voight.)

21 35. Finance has a duty to determine whether the higher salaries can be paid within
22 existing appropriations.

23 36. Although Finance has not made a determination of whether the increased
24 comparable salaries are within existing salary appropriations, CAPS contends that the approved
25 Fiscal Year 2007-2008 State Budget contains hundreds of millions of dollars of appropriated and
26 unexpended funds to pay the salary increases consistent with the DPA Director's decision for
27 2007-2008 and retroactively. This contention is squarely supported by the information on the
28 current balances of the three 9800 item funds as obtained from the Controller.

1 **V. Upon a Finding that Unexhausted Appropriations are Available to Meet the**
2 **Pay Claim, the State Controller Shall Pay the Increased Salaries as Fixed by**
3 **the DPA**

4 37. When salaries are fixed by DPA and the Legislature appropriates funds for
5 compensation increases, money must be drawn from the Treasury from the unexhausted
6 appropriation. The Controller shall draw warrants on the Treasurer for the payment of money
7 directed by law to be paid out of the State Treasury. (Gov. Code § 12440.) The Controller has a
8 basic duty to audit claims for correctness, legality, and for sufficient provisions of law for
9 payment. (Gov. Code § 12410.)

10 38. As the DPA has determined the increase in salaries for the fourteen classifications
11 of supervisory scientist employees and as the Legislature has appropriated funds for employee
12 compensation increases which have not been exhausted, the Controller must draw warrants to
13 pay the increased salaries out of the State Treasury.

14 **VI. Another Raise is Scheduled for Supervisory Engineers**

15 39. For the 2008-2009 fiscal year, Finance has placed an amount to fund new
16 additional salary increases in the 9800 Item of the proposed state budget. (Exhibit C to the
17 Declaration of Christopher Voight.) This is consistent with past actions of this and other
18 Administrations to list scheduled increases for rank-and-file employees in approved memoranda
19 of understanding and for related excluded employees (managers, supervisors and confidential
20 employees) in the 9800 Item as they constitute "new money."

21 40. If DPA determines that it will increase the salaries for engineering supervisors,
22 DPA and Finance have an obligation to include the same increases for the fourteen classifications
23 of state scientist supervisors covered by the quasi-legislative salary decision setting salaries at
24 horizontal parity with the engineering classifications and to pay those increased salaries out of
25 the 9800 Item of the 2008-2009 State Budget.

26 41. In May 2008, CAPS presented a meet and confer proposal seeking implementation
27 of the salary increases called for in the Director's April 28, 2008 Decision for the 2008-2009
28 Fiscal Year. (See May 12, 2008 CAPS Supervisory Meet and Confer Proposal, Exhibit J to the

1 Declaration of Christopher Voight.)

2 42. If Finance determines that the salary increases cannot be paid in the current fiscal
3 year as they would exceed existing appropriations, then DPA and Finance must include in the
4 proposed budget for the Legislature's consideration an increase that would move the salaries of
5 the fourteen classes from where they are now to where the correlating supervising engineering
6 classes will be effective July 1, 2008 or otherwise pay those increased salaries out of the 9800
7 item, or any other provision for salary, of the 2008-2009 State Budget.

8

9

FIRST CAUSE OF ACTION

10

(Declaratory Relief)

11

12 43. Petitioner realleges all the provisions of paragraphs 1 through 42 and incorporates
13 them by reference herein as if fully set forth.

14

15 44. Petitioner CAPS contends that the state supervisory scientists in the fourteen
16 classifications are entitled to the salaries as fixed in the DPA Director's salary setting decision
17 consistent with his authority under Government Code section 19826 for the 2007-2008 Fiscal
18 Year and retroactively to the 2005-2006 Fiscal Year. Despite DPA's determination, the DPA has
19 not acted within its fundamental statutory authority and obligation to determine that these are the
20 proper salaries that are to be paid retroactively back to the 2005-2006 Fiscal Year at a level
21 consistent with its factual findings of comparability with supervisory engineering classifications.

22

23 45. An actual controversy has arisen and now exists between Petitioner and Respondent
24 DPA over the proper salaries for the fourteen supervisory classifications for the Fiscal Years
25 2005 - 2006, 2006 - 2007, 2007 - 2008, and 2008 - 2009.

26

27 46. Petitioner CAPS desires a declaration of its rights and the rights of its affected
28 members with respect to the proper salary to be paid to employees in these fourteen
29 classifications and asks the Court to make a declaration that the employees in the fourteen
30 classifications are entitled to the salaries as determined by the DPA in the April 28, 2008
31 Director's Decision in each of the Fiscal Years 2005 - 2006, 2006 - 2007, 2007 - 2008, and 2008
32 - 2009.

1 47. Such a declaration is necessary and appropriate at this time in order to determine
2 the proper salary to be paid to employees in the fourteen state supervisory scientist classifications
3 now and retroactively.

4
5 **SECOND CAUSE OF ACTION**
6 **(Petition for Writ of Mandate)**

7 48. Petitioner realleges all the provisions of paragraphs 1 through 47 and incorporates
8 them by reference herein as if fully set forth.

9 49. Petitioner CAPS and its members have an immediate and direct interest affected by
10 this proceeding in that employees in the fourteen supervisory classifications have a legal right to
11 the increased salaries as determined by the DPA in the Director's Decision dated April 28, 2008.

12 50. Following DPA's determination that the fourteen classifications of supervisory
13 scientific employees perform work comparable to certain supervisory engineering classifications,
14 Respondents DPA and Gilb have a ministerial duty to set the salaries for the fourteen
15 classifications of supervisory scientists comparable to the classifications of supervisory engineers
16 in the manner set forth in the DPA Director's Decision dated April 28, 2008 both currently in the
17 2007 - 2008 Fiscal Year and retroactively to Fiscal Years 2005 - 2006 and 2006 - 2007.
18 Respondent DPA and Gilb's action in setting the salaries of the employees in the fourteen
19 classifications is unlawful in that it conflicts with Government Code section 19826 and the
20 mandate to pay like pay for comparable work.

21 51. Respondent Finance has a ministerial duty to determine whether the increased
22 salaries called for in the DPA Director's Decision dated April 28, 2008 can be paid out of
23 existing appropriations. To date, Finance has not made that determination.

24 52. Upon a determination that payment of the salaries called for in the DPA Director's
25 Decision dated April 28, 2008 will not exceed appropriations, Respondent State Controller
26 Chiang has a ministerial duty to pay the increased salaries called for in the DPA Director's
27 Decision.

28 53. Respondents DPA, Gilb, Finance and Genest have a duty to include in the proposed

1 budget for 2008 - 2009 for the Legislature's consideration an increase that would move the
2 salaries of the fourteen supervisory scientist classes from where they are now to where the
3 correlating supervising engineering classes will be effective July 1, 2008 or otherwise to pay
4 those increased salaries out of the 9800 Item, or any other appropriation for payment of salaries,
5 of the 2008-2009 State Budget.

6 54. Respondents DPA, Gilb, Finance, Genest and State Controller Chiang each have a
7 clear, present, and ministerial duty to conform to the laws of the State of California and to avoid
8 violations of the law.

9 55. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law,
10 other than the relief sought in this petition, in that there is no legal remedy to prevent or enjoin
11 the payment of an improper salary or compel the payment of a proper salary.

12 56. Petitioner has no administrative remedy which will result in preventing or
13 enjoining the payment of an improper salary or compelling the payment of a proper salary.

14
15 **PRAYER**

16 WHEREFORE, Petitioner respectfully prays for judgment against Respondents, and each
17 of them, as follows:

18 On Petitioner's First Cause of Action for declaratory relief:

19 1. That the Court declare that employees in the fourteen classifications are entitled to
20 the salaries comparable to the classifications of supervisory engineers as determined by the DPA
21 in the manner set forth in the April 28, 2008 Director's Decision in each of the Fiscal Years 2005
22 - 2006, 2006 - 2007, 2007 - 2008, and 2008 - 2009.

23 2. For costs of suit incurred in this action and for such other relief as the Court deems
24 proper.

25 On Petitioner's Second Cause of Action for writ of mandate:

26 1. That the Court issue a peremptory writ in the first instance commanding DPA and
27 Gilb to set the salaries for the fourteen classifications of supervisory scientists comparable to the
28 classifications of supervisory engineers in the manner set forth in the DPA Director's Decision

1 dated April 28, 2008 both currently in the 2007 - 2008 Fiscal Year and retroactively to Fiscal
2 Years 2005 - 2006 and 2006 - 2007.

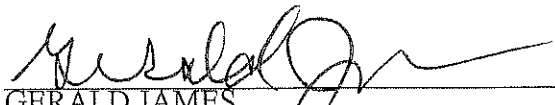
3 2. That the Court issue a peremptory writ in the first instance commanding Finance and
4 Genest to determine whether the increased salaries called for in the DPA Director's Decision
5 dated April 28, 2008 can be paid out of existing appropriations.

6 3. That the Court issue a peremptory writ in the first instance commanding State
7 Controller Chiang to pay the salaries for the fourteen classifications of supervisory scientists
8 comparable to the classifications of supervisory engineers in the manner set forth in the DPA
9 Director's Decision dated April 28, 2008 both currently in the 2007 - 2008 Fiscal Year and
10 retroactively to Fiscal Years 2005 - 2006 and 2006 - 2007.

11 4. That the Court issue a peremptory writ in the first instance commanding DPA and
12 Finance to include in the proposed budget for the Legislature's consideration an increase that
13 would move the salaries of the fourteen supervisory scientist classes to where the correlating
14 supervising engineering classes will be effective July 1, 2008.

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Dated: June 27, 2008

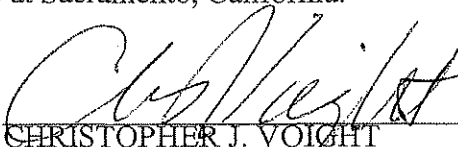

GERALD JAMES
Attorney for Petitioner CAPS

1 VERIFICATION

2
3 I, Christopher J. Voight, am the Staff Director to the California Association of
4 Professional Scientists, the Petitioner in the instant action.

5 I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory
6 Relief and know its contents. All facts alleged in the petition and complaint are true of my own
7 personal knowledge, except as to those matters which are alleged on information and belief, and
8 as to those matters, I believe them to be true.

9 I declare under penalty of perjury that the foregoing is true and correct and that this
10 affidavit was executed on this 27th day of June, 2008 at Sacramento, California.

11 
12 _____
13 CHRISTOPHER J. VOIGHT
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