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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF SACRAMENTO
10

11 CALIFORNIA ASSOCIATION OF
12 PROFESSIONAL SCIENTISTS

13 Petitioner,
14

15 v.

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

21 Respondents.
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CASE NO.
34-2008-00014476-CU-WM-GDS

**POINTS AND AUTHORITIES IN
SUPPORT OF VERIFIED PETITION
FOR WRIT OF MANDATE AND
COMPLAINT FOR DECLARATORY
RELIEF**

(Code Civ. Proc. §§ 1060, 1085, 1086)

Date: September 5, 2008
Time: 1:30 p.m.
Dept: 33

Hon. Lloyd G. Connelly

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24 **INTRODUCTION**

25 Having prevailed in a challenge to the salary of fourteen classifications of state
26 supervisory scientists, here the Petitioner California Association of Professional Scientists
27 (CAPS) brings this action to compel the State of California to compensate those state supervisory
28 scientists consistent with the April 28, 2008 quasi-legislative salary determinations made by the

1 state employer.

2 The State of California, Department of Personnel Administration (DPA) sets the salaries
3 for supervisory employees, subject only to a legislative appropriation to fund the salaries. It is
4 not in dispute that historically there has been horizontal parity between the fourteen supervisory
5 scientist classifications covered in this proceeding and certain supervisory engineering
6 classifications. Beginning in July 2005 and each July thereafter, supervisory engineers received
7 salary increases significantly higher than those of supervisory scientists.

8 In 2006, CAPS challenged the pay of these fourteen classifications of supervisory
9 scientists before the DPA alleging the pay violated the provisions of law which require
10 comparable pay for comparable work. DPA held a full evidentiary quasi-legislative hearing over
11 the salary for these employees over six days with 31 witnesses testifying. In a 22 page decision
12 issued April 28, 2008, the DPA agreed with CAPS' challenge to the salaries and found that
13 because the work of supervisory engineers and supervisory scientists was comparable, the
14 salaries of the fourteen supervisory scientist classifications must be increased to return to the
15 historical salary parity with certain comparable supervisory engineering classifications.

16 The supervisory scientist salary increases called for in the DPA Decision range from
17 10.06% to 32.15%. The same comparable supervisory engineers are scheduled to receive an
18 additional increase effective July 1, 2008 when the 2008 - 2009 State Budget Act is passed. At
19 that time, the salary increases called for in the quasi-legislative salary setting DPA Decision for
20 supervisory scientists will each increase by the amount of the supervisory engineer increases.
21 The increased salaries must be paid if they can be paid out of existing appropriations or out of a
22 new appropriation for the 2008 - 2009 Fiscal Year.

23 The "9800 Item" of the 2007-2008 State Budget Act contains hundreds of millions of
24 dollars of appropriated and unexhausted funds to pay the salary increases called for in the DPA
25 Director's April 28, 2008 Decision for 2007 - 2008 and retroactively. Additionally, the 2008 -
26 2009 proposed budget contains an augmentation to fund new additional salary increases for the
27 2008 - 2009 Fiscal Year.

28 Despite the finding of comparability and the mandate to pay "like-pay" for comparable

1 duties and responsibilities, comparable salaries are not being paid even though they can be paid
2 out of existing appropriations. Having concluded that the work is comparable and requires
3 comparable pay, Respondents' failure to pay employees in the fourteen state supervisory
4 classifications consistent with the DPA's April 28, 2008 Director's Decision is contrary to the
5 ministerial duty to pay the salaries required by the DPA Director's Decision and contrary to the
6 duty to pay salaries consistent with Government Code section 19826 and the mandate to pay like
7 pay for comparable work.

8 This petition seeks a peremptory writ and declaratory relief to compel respondents to pay
9 the proper salary to the fourteen state supervisory scientific classifications.

11 STATEMENT OF FACTS

12 The Legislature has provided the State of California Department of Personnel
13 Administration (DPA) with the statutory authority to set salaries for employees excluded from
14 collective bargaining, including employees designated as supervisors. As part of this delegation,
15 the Legislature has stated that the salary ranges "shall be based on the principle that like salaries
16 shall be paid for comparable duties and responsibilities." (Gov. Code § 19826.) This provision
17 has been construed to mandate "horizontal parity among comparable positions throughout the
18 civil service structure." (*State Trial Attorneys' Assn. v. State of California* (1976) 63 Cal.App.3d
19 298, 304.)

20 Historically, there has been horizontal parity between the fourteen supervisory scientist
21 classifications covered in this proceeding and certain supervisory engineer classifications.
22 In setting the salaries, the state (through the DPA since 1981) has historically paid the state
23 supervisory scientists either the same, or consistently paid the scientific classifications five or ten
24 percent lower than comparable engineering classifications. (April 28, 2008 Director's Decision,
25 Page 21, Exhibit A to the Declaration of Christopher Voight.)

26 Beginning in July 2005, the supervisory engineering classifications began receiving salary
27 increases which were higher than those of the supervisory scientist classifications. In meeting
28 and conferring over the Fiscal Year 2005- 2006 pay plan for supervisory scientists, CAPS took

1 the position that the horizontal parity should be maintained and supervisory scientists should be
2 given salary increases. (2005 CAPS Supervisory Meet and Confer Proposal, Exhibit E to the
3 Declaration of Christopher Voight.) CAPS maintained that position in meeting and conferring in
4 2006 - 2007. CAPS took the position that the historical parity between supervisory scientific and
5 supervisory engineering classes should be reinstated by raising the salaries of supervisory
6 scientific classifications and that the pay plan should reflect the legally required like pay for
7 comparable work. In adopting the pay plan for 2006 - 2007, the DPA rejected CAPS' position
8 which sought to restore historical parity. (2006 CAPS Supervisory Meet and Confer Proposal,
9 Exhibit F to the Declaration of Christopher Voight.)

10 Following additional salary increases for supervisory engineers in July 2006 which
11 widened the pay gap between supervisory classifications that were once compensated
12 comparably, CAPS initiated an administrative challenge to the salaries. On November 3, 2006,
13 CAPS, as a verified excluded employee organization and the representative of the state's
14 professional scientist supervisors, challenged the salary ranges for fourteen supervisory scientist
15 classifications claiming that the pay violated the principle that "like salaries shall be paid for
16 comparable duties and responsibilities." Specifically, CAPS contended that in setting the salaries
17 for the challenged classifications, the DPA has violated the legislative mandate found in
18 Government Code section 19826 to pay like salaries for comparable work. (November 3, 2006
19 CAPS Salary Challenge and Request for Hearing, Exhibit G to the Declaration of Christopher
20 Voight.)

21 DPA Director David Gilb established an investigative hearing panel to hear the challenge
22 to the salary structure and the claim for additional compensation. The panel was charged with
23 investigating the claim that supervising scientists are performing comparable duties and have
24 comparable responsibilities to certain supervising engineering classes. The panel held hearings
25 on April 11 and 12, 2007, November 26, 27, 30, 2007 and December 3, 2007. A total of 31
26 witnesses testified before the panel.

27 On April 28, 2008, the 22 page Director's Decision was issued by DPA. In the decision
28 the DPA adopted the investigation panel's factual summary of the witness testimony, exhibits

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

13 In the Director's Decision, the DPA recommends salary adjustments to the supervising
14 scientist classifications based on historical State Personnel Board documents that initially
15 established classifications and historical pay scales. These salary determinations are the product
16 of the Director's salary setting consistent with his authority under Government Code section
17 19826. (April 28, 2008 Director's Decision, Page 20 - 22, Exhibit A to Declaration of
18 Christopher Voight.) Despite these salary determinations, the increased salaries are not being
19 paid.

20
21 **THE LEGISLATIVE DELEGATION OF THE SALARY SETTING FUNCTION TO DPA**
22 **MANDATES THAT LIKE PAY BE PROVIDED FOR COMPARABLE WORK**
23

24 Government Code section 19826 is the statute giving the Department of Personnel
25 Administration the authority to establish and adjust salary ranges for each class and position in
26 state service. That section has two components regarding salary. The first says that the salary
27 range "shall be based on the principle that like salaries shall be paid for comparable duties and
28 responsibilities." The second says that in "establishing or changing these ranges, consideration

1 shall be given to the prevailing rates for comparable services in other public employment and in
2 private business.”

3 The courts have consistently interpreted Section 19826 (and its predecessor
4 Section 18850 when the State Personnel Board had the salary setting function before collective
5 bargaining and the creation of the DPA) as containing some mandatory provisions, and some
6 discretionary provisions. DPA has broad discretion to “consider” prevailing rates as a means of
7 attaining horizontal parity with non-state employment. That sentence has been construed as
8 requiring the SPB, and then the DPA as its successor, a direction to weigh, but not rigidly obey, a
9 particular criterion. In other words, a court will not compel DPA to set a salary for supervisors or
10 bargain with the rank-and-file at a level providing pay parity with other public sectors or private
11 business. (*State Trial Attorneys’ Assn. v. State of California* (1976) 63 Cal.App.3d 298.)

12 The same discretion is not available to DPA in evaluating “internal parity.” The second
13 sentence of 18550 (now 19826) has been construed to require internal parity. It has been
14 construed as “preemptory and imposes a mandatory duty.” The language mandates “horizontal
15 parity among comparable positions throughout the civil service structure.” (*State Trial Attorneys’*
16 *Assn. v. State of California* (1976) 63 Cal.App.3d 298, 304.)

17 In *State Trial Attorneys’*, four Caltrans lawyers filed a writ challenging the SPB’s
18 decision not to provide them parity with counsel for the Attorney General and the Legislative
19 Counsel. Prior to the statutory creation of the DPA, the SPB was delegated the salary setting
20 function by the Legislature. The level, or comparability of work, was not at issue in that case.
21 The SPB based its denial of “internal parity” on the relationship of attorney salaries to that of the
22 Director of Caltrans and Deputy Directors. The court rejected the SPB’s position and ordered
23 that the Caltrans attorneys be paid the same as the attorneys for the Attorney General and
24 Legislative Counsel, provided a legislative appropriation to do so was made. (*State Trial*
25 *Attorneys’ Assn. v. State of California* (1976) 63 Cal.App.3d 298.)

26 The question presented to the DPA in the quasi-legislative hearing and challenge to the
27 pay structure was whether the pay plan for the fourteen supervisory scientific classifications was
28 in accordance with the Government Code section 19826 mandate of like pay like work. CAPS

1 contended that because state scientific supervisory employees perform work of a similar and
2 comparable nature to state supervisory engineers, that DPA is required by law to provide like pay
3 to employees in those classifications.

4 On April 28, 2008, DPA issued a written decision which agreed that the evidence
5 demonstrated that factually the state scientist supervisors performed work of a comparable nature
6 to state supervisory engineers. On that basis, the DPA set the salaries of the fourteen
7 classifications consistent with the finding by raising the supervisory scientist salaries to reflect
8 the historical parity with certain supervisory engineering classifications. (April 28, 2008
9 Director's Decision, Exhibit A to the Declaration of Christopher Voight.) Just as in *State Trial*
10 *Attorneys' Assn. v. State of California*, Petitioners here are entitled to be paid the increased
11 salaries provided a legislative appropriation to do so is available.

12
13 **DPA's SETTING OF THE SALARIES IS WITHIN ITS STATUTORILY DELEGATED**
14 **AUTHORITY AND IS SUBJECT ONLY TO A LEGISLATIVE APPROPRIATION TO**
15 **PAY THE INCREASED SALARIES**

16
17 The Legislature created the DPA in 1981 for the purpose of managing the nonmerit
18 aspects of the state's personnel system. (Gov. Code § 19815.2.) In general, DPA has jurisdiction
19 over the state's financial relationship with its employees, including matters of salary, layoffs and
20 nondisciplinary demotions. (Gov. Code §§ 19816, 19816.2, 19825, 19826; *Tirapelle v. Davis*
21 (1993) 20 Cal.App.4th 1317, 1322.) The matter of setting employee compensation is a
22 legislative function which, in this instance, the Legislature has delegated to the DPA. (*Tirapelle*
23 *v. Davis* citing *Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 189.) The DPA can act
24 only to the extent and in the manner consistent with the legislative delegation of authority.

25 The one limit on the DPA's quasi-legislative salary authority is that the DPA "shall make
26 no adjustments which require expenditures in excess of existing appropriations which may be
27 used for salary increase purposes." (Gov. Code § 19826 (a).) The Legislature has not provided
28 that the decisions of the DPA should be held in abeyance or otherwise be subject to review by

1 anyone other than the Legislature. Where a department or agency acts within the authority
2 delegated to it by the Legislature, there must be deference to the department or agency with
3 review of the decision left to the courts or the Legislature. (*Tirapelle v. Davis* (1993)
4 20 Cal.App.4th 1317, 1332, 1335.)

5 The DPA Director's Decision makes factual conclusions that the work of supervisory
6 scientists and supervisory engineers has historically been comparable. On that factual basis, the
7 supervisory scientists in the fourteen classifications are entitled to the horizontal parity in each of
8 the fiscal years from the first engineering increase in July 2005 as DPA in setting the salaries of
9 those employees lacked the authority to ignore the mandate of horizontal parity required by
10 Government Code section 19826. A judicial determination after the termination of a fiscal year
11 and adjournment of the Legislature for the year is proper as termination of the fiscal year does
12 not foreclose appropriate salary adjustments. (*California State Police Association v. State*
13 *Personnel Board* (1981) 120 Cal.App.3d 674, 681.) This Court therefore can order compliance
14 with the law and the payment of increased salaries if an appropriation is available to pay.

15 Although phrased in the form of salary "recommendations," it is DPA that solely has the
16 statutory authority to designate salaries for these supervisory scientists. The Department of
17 Finance here only has a role of supervision or enforcement of the budget. (*Tirapelle v. Davis*
18 (1993) 20 Cal.App.4th 1317, 1322.) Finance is not being asked to make a policy determination
19 on paying the increases or not, rather Finance is only being asked to make a factual determination
20 as to whether there are funds to pay the increases.

21 The increased salaries have not been paid, despite the mandatory language requiring
22 horizontal parity. This mandatory language does not allow "a power to consider, weigh, and then
23 to reject." In interpreting Section 19826, the courts have held, "The clause demands that the
24 described principle be applied to reach dollar results." (*State Trial Attorneys' Assn. v. State of*
25 *California* (1976) 63 Cal.App.3d 298, 304.) Here, despite DPA's finding of comparability of
26 duties and responsibilities, comparable salaries are not being paid and "dollar results have not
27 been reached." The DPA has acted within its fundamental statutory authority in fixing the
28 salaries of these fourteen supervisory scientific classifications at a level comparable to that of the

1 comparable supervisory engineer classifications.

2
3 **THE 2007 - 2008 STATE BUDGET ACT CONTAINS APPROPRIATED AND**
4 **UNEXPENDED AMOUNTS TO PAY THE SALARY INCREASES**

5 Increasing pay for supervisory employees is a two step process. First, DPA must set or
6 adjust the pay. For the fourteen covered classifications, that task is completed as the quasi-
7 legislative DPA Decision has set the salaries. Second, there must be an appropriation by the
8 Legislature. DPA must cause the increased salaries to be paid when such an action can be taken
9 without requiring expenditures in excess of existing appropriations. (*State Trial Attorneys' Assn.*
10 *v. State of California* (1976) 63 Cal.App.3d 298, 305.)

11 Here, the fourteen state supervisory classifications are covered by a "judgment by which a
12 class of employees obtains relief compelling the Department to consider or reconsider their salary
13 range should be made subject to the availability to pay any resulting increases." (*Tirapelle v.*
14 *Davis* (1993) 20 Cal.App.4th 1317, 1326.) The cover sheet to the Director's Decision informed
15 CAPS that "the Department of Finance must make a determination on whether the recommended
16 adjustments are within existing salary appropriations." (Exhibit A to the Declaration of
17 Christopher Voight.)

18 CAPS has not been officially informed whether Finance has made a determination of
19 whether the increased salaries are within existing appropriations. CAPS contends that the
20 approved 2007 - 2008 State Budget Act contains hundreds of millions of dollars of appropriated
21 and unexpended funds to pay salary increases consistent with the DPA Director's decision in
22 2007 - 2008 and retroactively.

23 For the 2007 - 2008 Fiscal Year, the State Budget Act contains a provision a line item
24 titled "9800 Augmentation for Employee Compensation." (Exhibit I to the Declaration of
25 Christopher Voight.) The funds in that item are appropriated by the Legislature for
26 compensation increases "in accordance with the salary and benefit schedules established by the
27 Department of Personnel Administration." If the 9800 Item contains any unspent and available
28 appropriation, the Respondents must cause those salaries to be paid out of the unexhausted

1 appropriation.

2 The Office of the State Controller has informed CAPS that the 9800 Items for the General
3 Fund, Special Funds, and Nongovernmental Cost Funds contain well over \$250 million. As the
4 annualized cost to implement the DPA Director's Decision and raise the salaries of all employees
5 in the fourteen classifications is \$7,597,409 for 2007 - 2008, clearly the increases may be paid
6 out of existing appropriations.

7 Typically in the budget act the Legislature appropriates sums for the support of an agency
8 but does not provide a complete breakdown of how the funds will be spent. (*Tirapelle v. Davis*
9 (1993) 20 Cal.App.4th 1317, 1322.) The 2007 - 2008 State Budget Act is no different when
10 appropriating amounts for compensation increases. The Legislature has appropriated funds "in
11 accordance with the salary and benefit schedules established by the Department of Personnel
12 Administration." (Exhibit I to the Declaration of Christopher Voight.) Salary increases can be
13 determined mid-year, just as they were here, and can be paid if there is an existing appropriation.
14 DPA has asked Finance whether the increases can be paid out of an existing appropriation.

15 As the DPA has determined the increases in salaries for the fourteen classifications of
16 supervisory scientists and as the Legislature has appropriated funds for employee compensation
17 increases which have not been exhausted, the State Controller must draw warrants to pay the
18 increased salaries out of the State Treasury. (Gov. Code § 12440.)

19
20 **THE QUASI-LEGISLATIVE DPA SALARY SETTING FOR THE FOURTEEN STATE**
21 **SUPERVISORY SCIENTIST CLASSIFICATIONS APPLIES TO THE 2008 - 2009**
22 **FISCAL YEAR**

23 As noted above, DPA has made the factual determination that the work of supervisory
24 scientists is comparable to the work of supervisory engineers as part of the quasi-legislative
25 decision setting the salaries of the supervisory scientists in line with the historical horizontal
26 parity with the comparable supervisory engineers. DPA's "quasi-legislative" action of setting
27 salaries involves the formulation of rules to be applied in future cases. (*Lowe v. California*
28 *Resources Agency* (1991) 1 Cal.App.4th 1140, 1149, citing *Strumsky v. San Diego County*

1 *Employees Retirement Assn.* (1974) 11 Cal.3d 28, 34-35, fn.2.)

2 Every state agency must submit to Finance a complete and detailed budget setting forth
3 all proposed expenditures for the year. (Gov. Code § 13320.) Each agency must estimate and
4 call attention to the sums necessary for employee compensation. (Gov. Code § 19835.5) Finance
5 then assists the budget which the state Constitution requires the Governor to submit to the
6 Legislature. (Gov. Code § 13337.) (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1320 -
7 1321.)

8 For 2008 - 2009, the Administration has placed an amount to fund new additional salary
9 increases in the 9800 Item of the proposed state budget. (Exhibit C to the Declaration of
10 Christopher Voight.) If DPA determines that it will increase salaries for the comparable
11 engineering supervisors, equivalent increases must be provided to the fourteen supervisory
12 scientist classifications consistent with the April 28, 2008 quasi-legislative salary setting
13 decision. If Finance somehow determines that the salary increases cannot be paid in the 2007 -
14 2008 fiscal year as they would exceed existing appropriations, the increased salaries must be
15 placed in the proposed budget for the Legislature's consideration or must otherwise be paid out
16 of the 2008 - 2009 State Budget Act's 9800 item or any other provision for the payment of salary.

17
18
19 **PETITIONERS ARE ENTITLED TO DECLARATORY RELIEF UNDER CODE OF**
20 **CIVIL PROCEDURE SECTION 1060**

21 Under Code of Civil Procedure section 1060,

22
23 Any person interested under a written instrument, ... or under a contract, or who desires a
24 declaration of his or her rights or duties with respect to another, ... may, in cases of actual
25 controversy relating to the legal rights and duties of the respective parties, bring an
26 original action ... for a declaration of his or her rights and duties in the premises,
including a determination of any question of construction or validity arising under the
instrument or contract.

27 An action for declaratory relief lies when the parties are in fundamental disagreement over
28 construction of particular legislation, or they dispute whether a public entity has engaged in

1 conduct or established policies in violation of applicable law. (*Alameda County Land Use Assn.*
2 *v. City of Hayward* (1995) 38 Cal.App. 4th 1716, 1721-1723.) Declaratory relief is an available
3 remedy against the state or its agencies. (*Bess v. Park* (1955) 132 Cal.App.2d 49, 53.) The fact
4 that a party has another remedy does not deprive the court of the power to grant relief under the
5 law. (*Ibid.*)

6 In the instant case, an actual controversy exists. CAPS contends that consistent with the
7 DPA Director's Decisions findings, that the fourteen classifications of state supervisory scientists
8 are entitled to compensation which maintains the historical parity with the comparable
9 engineering positions retroactive to July 1, 2005 as the date that the historical parity was broken
10 and the date that the DPA began violating Government Code section 19826 and the like-pay-for-
11 like work mandate. In November 2005, CAPS petitioned DPA to restore the salary parity
12 effective July 1, 2005. (Exhibit E to the Declaration of Christopher Voight.)

13 To date, DPA, DOF and the Controller have refused to pay the increased salaries or to
14 acknowledge that the salaries are owed retroactive to July 1, 2005. DPA lacked the authority to
15 ignore the mandate of comparable pay for comparable work in each fiscal year covered by this
16 proceeding. CAPS is entitled to a declaration by this Court that DPA has not acted within its
17 fundamental statutory authority and obligation to determine that the proper salaries to be paid to
18 supervisory scientists retroactively back to 2005 - 2006 Fiscal Year at a level consistent with its
19 factual findings of comparability and asks this Court to make a declaration that the employees in
20 the fourteen classifications are entitled to the salaries as determined by the DPA in the April 28,
21 2008 Director's Decision in each of the Fiscal Years 2005 - 2006, 2006 - 2007, 2007 - 2008, and
22 2008 - 2009.

23
24 **A WRIT OF MANDATE IS APPROPRIATE TO COMPEL COMPLIANCE WITH THE**
25 **LAW**

26 This action is brought under Code of Civil Procedure section 1085 which provides that
27 "A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or
28 person, to compel the performance of an act which the law specifically enjoins, as a duty

1 resulting from an office, trust, or station...” Code of Civil Procedure section 1086 provides that
2 “The writ must be issued in all cases where there is not a plain, speedy, and adequate remedy, in
3 the ordinary course of law.”

4 Traditional mandate is appropriate to compel the performance of ministerial duties.
5 (*Glendale City Employees’ Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 334 - 338.)
6 Where a statute clearly defines the specific duties or course of conduct that a governing body
7 must take, that course of conduct becomes mandatory and eliminates any element of discretion.”
8 (*Great W. Sav. & Loan Ass’n v. City of Los Angeles* (1973) 31 Cal.App.3d 403, 413.)

9 Here there are three ministerial duties which must be compelled by writ. Respondents
10 DPA and Gilb have a ministerial duty to set the salaries of the fourteen classifications of
11 supervisory scientists comparable to the supervisory engineers, thus restoring the historical
12 parity. Petitioners are entitled to a writ of mandate directing compliance with the law to pay the
13 salaries called for in the April 28, 2008 quasi-legislative salary setting decision whenever
14 compliance can be achieved without violating the statute’s restriction against adjustments in
15 excess of existing appropriations. (*State Trial Attorneys’ Assn. v. State of California* (1976) 63
16 Cal.App.3d 298, 305.)

17 The Department of Finance and its Director Michael Genest have a ministerial duty to
18 determine whether the increased salaries for the fourteen state scientist supervisory
19 classifications can be paid out of existing appropriations. Finally, once the salaries are set and a
20 determination is made that the salaries can be paid out of existing appropriations, the Controller
21 must draw warrants to pay the increased salaries out of the State Treasury.

22 23 24 CONCLUSION

25 Petitioner respectfully requests that the Court issue a peremptory writ of mandate and
26 declaratory relief commanding respondents to comply with their obligations to set and pay the
27 salaries for the fourteen classifications of supervisory scientists comparable to the classifications
28 of supervisory engineers in the manner set forth in the DPA Director’s Decision dated April 28,

1 2008 both currently and retroactively in each Fiscal Year back to 2005 - 2006 when the
2 respondents first violated the mandate of paying comparable pay for comparable work in
3 Government Code section 19826.

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Dated: July 22, 2008


GERALD JAMES
Attorney for Petitioner CAPS