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SUPERIOR COURT  
OF CALIFORNIA  
SACRAMENTO COUNTY

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF SACRAMENTO  
9

10 CALIFORNIA ASSOCIATION OF )  
PROFESSIONAL SCIENTISTS, )  
11 Petitioner/Plaintiffs, )

12 vs. )

13 CALIFORNIA STATE PERSONNEL )  
14 BOARD; CALIFORNIA DEPARTMENT OF )  
HUMAN RESOURCES; and CALIFORNIA )  
15 DEPARTMENT OF FISH AND WILDLIFE )  
16 Respondents/Defendants. )

Case No.: 34-2016-80002426

) **REPLY TO THE MEMORANDA OF**  
) **POINTS & AUTHORITIES IN**  
) **OPPOSITION TO THE VERIFIED**  
) **PETITION FOR WRIT OF MANDATE**  
) **[C.C.P § 1085] AND COMPLAINT FOR**  
) **DECLARATORY AND INJUNCTIVE**  
) **RELIEF**

) Date: March 17, 2017

) Time: 9:00 AM

) Dept: 31

) Judge: Hon. Michael Kenny

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... ii

INTRODUCTION ..... 1

ARGUMENT ..... 2

I. RESPONDENT CONFUSES THE PRESCRIPTION OF CLASSIFICATIONS WITH THE ALLOCATION OF EMPLOYEES TO CLASSIFICATIONS ..... 2

    A. Allocation is Not Classification..... 2

    B. The Use or Misuse of Non-Scientific Supervisory and Specialist Classifications Has No Bearing on the Instant Case..... 3

    C. CalHR Policy Does Not Supersede State Constitutional or Statutory Law ..... 3

        1. CalHR’s Salary-Setting Function Does not Trump the Board’s Power to Determine Civil Service Classification ..... 3

        2. State law requires only that SPB “consider” the recommendations of CalHR..... 4

II. THE STATE PERSONNEL BOARD FAILED TO EXECUTE ITS DUTY WHEN IT FAILED TO EXERCISE ITS JURISDICTION OVER THIS MATTER ..... 4

    A. The State Constitution Authorizes Solely the State Personnel Board to Develop the Personnel Classification Plan..... 4

    B. SPB’s 2016 Letter Refusing to Exercise Jurisdiction Does Not Support CalHR’s Arguments But Does Support Finding That SPB Failed to Execute Its Constitutionally-Prescribed Duties..... 5

III. NO ADMINISTRATIVE PROCESS REQUIRED EXHAUSTION PRIOR TO THE INSTANT ACTION ..... 6

CONCLUSION..... 6

TABLE OF AUTHORITIES

Page

**CALIFORNIA STATE CONSTITUTION:**

Article VII.....2, 5

Article VII, Section 3.....5

**CALIFORNIA STATUTES:**

California Code of Civil Procedure Section 1085.....1

Government Code Section 3520.5.....1

Government Code Section 3527.....2

Government Code Section 3537.....2

Government Code Section 18800.....5

Government Code Section 18802.....4

Government Code Section 18701 et seq.....2

Government Code Section 19818.....2

Government Code Section 19818.6.....2, 6

Government Code Section 19818.10.....4

**CALIFORNIA CODE OF REGULATIONS:**

Title 2, Section 341.....4



1 to Government Code section 3527(c) and 3537) representing excluded-employee Senior  
2 Environmental Scientist Supervisors (contrary to CalHR's assertion otherwise).

3 **ARGUMENT**

4 **I. RESPONDENT CONFUSES THE PRESCRIPTION OF CLASSIFICATIONS WITH**  
5 **THE ALLOCATION OF EMPLOYEES TO CLASSIFICATIONS.**

6 **A. Allocation is Not Classification.**

7 CalHR correctly insists it has the authority to administer the Personnel Classification Plan,  
8 including the allocation of every position to the appropriate class of the classification plan under  
9 Government Code Section 19818.6. CalHR incorrectly implies, however, that the terms "allocation"  
10 and "classification" are synonymous. They are not. CAPS does not dispute CalHR's authority over  
11 the allocation of positions, but that is not what is at issue here.  
12

13 The SPB retains the exclusive jurisdiction to classify positions in the state civil service under  
14 Government Code Section 18701 et seq. and Article VII of the California State Constitution. Nothing  
15 in Section 19818.6 alters their exclusive jurisdiction. Section 19818.6 merely grants CalHR  
16 administration and allocation authority. To analogize: the Board creates a file folder for each type of  
17 work performed by the state, gives each a title and a description, and orders them in a file box.  
18 CalHR is responsible for filling each file with the resumes of qualified people to execute the duties  
19 described for each. State law calls the file folders "classifications" and the process of filling each file  
20 folder is called "allocation."  
21

22 Government Code section 19818 vests CalHR with the power to administer, not create, the  
23 Personnel Classification Plan. Section 19818.6 gives CalHR the power to allocate each position to the  
24 appropriate class in the classification plan that is created by the State Personnel Board. Here, CalHR  
25 attempts to read into Section 19818.6 the authority to create reporting relationships. The statute  
26 grants no such authority.  
27  
28

1 Throughout its opposition, CalHR asserts its allocation authority but fails to offer support for  
2 its ability to violate the Personnel Classification Plan. CalHR violates the Plan when it directs Senior  
3 Environmental Scientist Supervisors to supervise Senior Environmental Scientist Specialists despite  
4 even its own documents clearly describing the classifications as peers to be supervised by an  
5 Environmental Program Manager I. (RJN Ex. E, p 49; Ex. D, p 40) This is not an argument against  
6 CalHR's allocation of employees within the available civil service classifications. As evidenced by  
7 the 2014 DFW memorandum, CalHR was not reallocating people to positions but rather *reimagining*  
8 *the duties of the classifications themselves*. The state body with the authority to alter classifications is  
9 the State Personnel Board, exclusively.  
10

11 **B. The Use or Misuse of Non-Scientific Supervisory and Specialist Classifications**  
12 **Has No Bearing on the Instant Case.**

13 CalHR refers to practices (not laws) applied to other classifications not at issue in this matter.  
14 It matters not that CalHR has allowed the Senior Information Systems Analyst (Supervisory) to  
15 supervise incumbents in the Senior Information Systems Analyst (Specialist) classification. CalHR  
16 still provides no legal authority for its impermissible alteration of the Board-adopted Environmental  
17 Scientist classification series. The practice CAPS challenges here exceeds CalHR's authority.  
18

19 **C. CalHR Policy Does Not Supersede State Constitutional or Statutory Law.**

20 **1. CalHR's Salary-Setting Function Does not Trump the Board's Power to**  
21 **Determine Civil Service Classifications.**

22 CalHR offers no statutory basis for its salary relationship policy and no statutory basis for  
23 internal salary policies preempting the State Personnel Board's exclusive jurisdiction over the  
24 establishment of classification specifications.  
25

26 CalHR argues that the California Code of Regulations dictates that for a classification to  
27 supervise another classification it "must have a salary of ten percent or more than the reporting  
28

1 classification.” (*CalHR’S Opposition Brief, page 13*) It cites Title 2, Section 431 which merely  
2 defines the promotional salary relationship between classes. Even if CalHR’s internal salary  
3 relationship policy were reflected in 2 CCR Section 431 (which it is not), the regulation would not  
4 mean what CalHR says it means. The regulation does not prescribe salary relationships between  
5 supervisors and subordinates and CalHR lacks the authority to use salaries as an excuse to  
6 impermissibly alter classification specifications.  
7

8 *2. State law requires only that SPB “consider” the recommendations of CalHR.*

9 CalHR implies that Government Code section 18802 provides it with more than the right to  
10 provide a recommendation to SPB. It does not. Section 18802 merely requires the Board to consider  
11 the recommendations of CalHR when it establishes, combines, alters, or abolishes classifications.  
12 Government Code section 19818.10 also provides CalHR with the task of assessing the adequacy of  
13 the Personnel Classification Plan and “*recommend[ing]* changes.” (emphasis added)  
14

15 In this case, the Board fulfilled section 18802’s requirement when it reviewed CalHR’s  
16 recommendations in 2001 and 2013 regarding changes to the Environmental Scientist class series. In  
17 both 2001 and 2013, CalHR described both species of Senior Environmental Scientist classes as peers  
18 reporting to Environmental Program Managers I. (RJN Ex. E, p 49; Ex. D, p 40) It made no  
19 recommendations to the contrary.<sup>1</sup>  
20

21 **II. THE STATE PERSONNEL BOARD FAILED TO EXECUTE ITS DUTY WHEN IT**  
22 **FAILED TO EXERCISE ITS JURISDICTION OVER THIS MATTER.**

23 **A. The State Constitution Authorizes Solely the State Personnel Board to Develop**  
24 **the Personnel Classification Plan.**

25 CalHR argues that it maintains statutory authority and discretion to allocate positions to  
26 classifications. While this is true, it is not true that this authority to allocate positions to  
27

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28 <sup>1</sup> Note, however, that nothing in statute requires the Board to adopt CalHR’s recommendations.

1 classifications supersedes the SPB's jurisdiction over the establishment, abolishment, or amending of  
2 classifications. CalHR misleads the Court when it conflates the creation of classifications and their  
3 reporting structures with the allocation of positions to various classifications. SPB's jurisdiction  
4 derives directly from Article VII of the California State Constitution. Furthermore, Government Code  
5 section 18800 reinforces the assignment of the duty to create and adjust classes of positions to the  
6 Board.  
7

8 **B. SPB's 2016 Letter Refusing to Exercise Jurisdiction Does Not Support CalHR's**  
9 **Arguments But Does Support Finding That SPB Failed to Execute Its**  
10 **Constitutionally-Prescribed Duties.**

11 CalHR argues that the Board did not find any violation of the class specifications or of any  
12 civil service law. (*CalHR's Opposition Brief page 10*) The Board's April 8, 2016 letter, however,  
13 refuses to find its jurisdiction "justified" over this dispute. It made no substantive finding regarding  
14 CalHR's violation of the Personnel Classification Plan. In fact, the Board did not even deny it has  
15 jurisdiction over this matter. The Board said it "continues to believe than an exercise of its  
16 jurisdiction over reporting relationships between the two class specifications does not appear  
17 justified." (*Declaration of Alvin Gittisriboongul, Exhibit A; SPB's Opposition Brief, page 1*) The  
18 Board erred when it failed to exercise its jurisdiction over this matter and in doing so, failed in its  
19 responsibility over the civil service. Here, CalHR and DFW acted outside of their specific grant of  
20 authority and SPB failed to uphold its constitutional duty to enforce the civil service statutes under  
21 Article VII, Section 3. There is no discretion afforded to the Board in Article VII, Section 3. The  
22 State Constitution assigns the Board a clear and present duty to "enforce the civil service statutes."  
23 The Board cannot simply choose not to do so.  
24  
25

26 For all of the reasons cited above, even if the Court does not order CalHR and DFW to cease  
27 their impermissible use of the Senior Environmental Scientist Supervisor classification, it must, in the  
28



1 alternative, order the Board to exercise its jurisdiction over the matter and address DFW's use of the  
2 Senior Environmental Scientist Classification. In the letter, the Board refers to the controversy as  
3 potentially a "classification planning issue." Such issues routinely come before the Board for their  
4 consideration of CalHR recommendations. The Board cannot simply refuse its constitutionally-  
5 prescribed duty in establishing the Personnel Classification Plan.  
6

7 **III. NO ADMINISTRATIVE PROCESS REQUIRED EXHAUSTION PRIOR TO THE**  
8 **INSTANT ACTION.**

9 CalHR argues that CAPS failed to exhaust the administrative process for addressing  
10 misallocation claims under Government Code section 19818.6. (*CalHR Opposition Brief page 16*)  
11 Once again, CalHR confuses allocation and classification. CAPS is not challenging a misallocation of  
12 positions, but rather challenges the impermissible amendment of a civil service classification series.  
13 This misunderstanding is highlighted in the Declaration of Manpreet Singh which is cited as support  
14 for departmental need allowing DFW and CalHR to consider the number of incumbents in a class  
15 when justifying the allocation of positions for Environmental Program Manager I. CAPS does not  
16 challenge the allocation of positions to any position in the Environmental Scientist Class Series.  
17 CAPS challenges the redefining of what a class within that series can do relative to other classes in  
18 that series. *That* work belongs to the Board alone – and the State Constitution and statute require it to  
19 act.  
20  
21

22 **CONCLUSION**

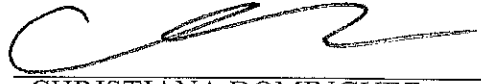
23 Allocation is not classification. CalHR has the authority to allocate employees among  
24 available classifications, however, here it attempts to alter the classifications themselves by assigning  
25 reporting relationships that conflict with the SPB-adopted Environmental Scientist Series  
26 classification specifications.  
27  
28

1 Even if this Court does not order CalHR and DFW to cease the impermissible use of the  
2 Senior Environmental Scientist Supervisory classification, the Court must find the State Personnel  
3 Board failed to exercise its jurisdiction over this controversy and order it to execute its  
4 constitutionally-mandated, clear and present duty to enforce the civil service statutes and uphold the  
5 Personnel Classification Plan.  
6

7 Respectfully Submitted,  
8

9 CALIFORNIA ASSOCIATION OF  
10 PROFESSIONAL SCIENTISTS

11 DATED: March 2, 2017

12   
13 CHRISTIANA DOMINGUEZ  
14 Attorney for CAPS  
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