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7 *California State Personnel Board*

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

10 CALIFORNIA ASSOCIATION OF ) Case No.: 34-2016-80002426  
11 PROFESSIONAL SCIENTISTS, )  
12 ) **RESPONDENT/DEFENDANT CALIFORNIA**  
Petitioner/Plaintiffs, ) **STATE PERSONNEL BOARD'S**  
13 v. ) **OPPOSITION TO MEMORANDUM OF**  
14 CALIFORNIA STATE PERSONNEL ) **POINTS AND AUTHORITIES IN SUPPORT**  
BOARD; CALIFORNIA DEPARTMENT ) **OF THE VERIFIED PETITION FOR WRIT**  
15 OF HUMAN RESOURCES; and ) **OF MANDATE [C.C.P. § 1085] AND**  
CALIFORNIA DEPARTMENT OF FISH ) **COMPLAINT FOR DECLARATORY AND**  
16 AND WILDLIFE, ) **INJUNCTIVE RELIEF**  
17 Respondents/Defendants. ) [Exempt from fees (Gov. Code § 6103)]  
18 ) Date: March 17, 2017  
19 ) Time: 9:00 a.m.  
20 ) Dept.: 31  
21 ) Judge: Michael P. Kenny  
22 ) Date Filed: August 18, 2016

21 This case involves a dispute between Petitioner California Association of Professional  
22 Scientists (CAPS) and Respondents California Department of Human Resources (CalHR) and  
23 California Department of Fish and Wildlife (DFW) concerning the reporting relationships between  
24 the civil service classifications of Senior Environmental Scientist (Supervisor) and Senior  
25 Environmental Scientist (Specialist) employed by DFW. Respondent California State Personnel  
26 Board (SPB) has declined to involve itself in this dispute and has informed CAPS that it believes  
27 that an exercise of its jurisdiction over the reporting relationships between the two class

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[1]

1 specifications does not appear justified. (See Exhibit A to Declaration of Alvin Gittisriboongul  
2 filed herewith.) Therefore, SPB opposes the issuance of any order against it in this action.


3 It is unclear what relief, if any, CAPS seeks against SPB in this action. Code of Civil  
4 Procedure section 1085 authorizes a court to issue a writ of mandate “to any inferior tribunal,  
5 corporation, board, or person, to compel the performance of an act which the law specially enjoins,  
6 as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use  
7 and enjoyment of a right or office to which the party is entitled, and from which the party is  
8 unlawfully precluded by that inferior tribunal, corporation, board, or person.” Thus, the court may  
9 issue a writ to compel a public agency to perform an act required by law. (Code Civ. Proc., §  
10 1085; *Young v. Gannon* (2002) 97 Cal.App.4th 209, 221.) However, “a writ can be granted only  
11 where the administrative agency has a clear, present, and usually ministerial duty to perform, and  
12 the petitioner has a clear, present, and beneficial right to the performance of that duty. (*People ex*  
13 *rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 491, 96 Cal.Rptr. 553, 487 P.2d 1193;  
14 *California Correctional Supervisors Organization, Inc. v. Department of Corrections* (2002) 96  
15 Cal.App.4th 824, 827, 117 Cal.Rptr.2d 595 (CCSO).)” (*Marvin Lieblein, Inc. v. Shewry* (2006)  
16 137 Cal.App.4th 700, 713.) “Where a statute leaves room for discretion, a challenger must show  
17 the official acted arbitrarily, beyond the bounds of reason or in derogation of the applicable legal  
18 standards. [Citation]” (*California Correctional Supervisors Organization, Inc. v. Department of*  
19 *Corrections* (2002) 96 Cal.App.4th 824, 827.)

20 Nothing in either the Petition or Petitioner’s Memorandum of Points and Authorities  
21 (MPA) describes any specific wrongdoing or failure by SPB to perform any clear, present and  
22 ministerial duty that Petitioner was entitled to have performed. In the absence of a showing that  
23 SPB failed to perform such a duty, no writ may be issued against SPB. Nonetheless, the prayer to  
24 the Petition appears to request issuance of a writ of mandate directing both CalHR and SPB to  
25 “enforce the duly approved classification scheme” or, in the alternative, that SPB “convene a  
26 hearing as to the proper use of the Senior Environmental Scientist (Supervisory) classification.”  
27 (Petition at p.9:13-19.) It its MPA, however, Petitioner asks only that the court find that the use of  
28 the classes by CalHR and DFW violates the state Constitution, state law, and SPB rules. (MPA at

1 p. 12:11-12.) Therefore, SPB presumes that CAPS no longer seeks any affirmative relief against  
2 SPB. In the event CAPS seeks a remedy against SPB, SPB requests the opportunity to respond to  
3 any such request.

4 Dated: February 16, 2017

Respectfully submitted,  
ALVIN GITTISRIBOONGUL  
Chief Counsel

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DOROTHY BACSKAI EGEL  
9 *Attorneys for Respondent/Defendant*  
10 *California State Personnel Board*

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1 **DECLARATION OF SERVICE**

2 CASE NAME: California Association of Professional Scientists v. California State Personnel  
3 Board, et al.

4 CASE NO.: 34-2016-80002426

5 I am employed in the County of Sacramento, California. I am over the age of 18 years and  
6 not a party to the within action. My business address is 801 Capitol Mall, Legal – MS – 53,  
7 Sacramento, California 95814.

8 On February 16, 2017, I served the following document(s) on the below-mentioned  
9 addressee(s):

10 **RESPONDENT/DEFENDANT CALIFORNIA STATE PERSONNEL BOARD'S**  
11 **OPPOSITION TO MEMORANDUM OF POINTS AND AUTHORITIES IN**  
12 **SUPPORT OF THE VERIFIED PETITION FOR WRIT OF MANDATE [C.C.P. §**  
13 **1085] AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

14 Sacramento County Superior Court  
15 720 9<sup>th</sup> Street  
16 Sacramento, CA 95814

17 Christiana Dominguez, Legal Counsel  
18 California Association of Professional Scientists  
19 455 Capitol Mall, Suite 500  
20 Sacramento, CA 95814  
21 Attorneys for Respondents

22 Shannan Truong, Labor Relations Counsel  
23 California Department of Human Resources  
24 State of California  
25 1515 S. Street, North Building, Suite 400  
26 Sacramento, CA 95811  
27 Attorneys for CalHR and DFW

28 The following is the procedure in which service of this document was affected:

[ ] (By United States mail)

U.S. Postal Service (Placing sealed envelope with postage thereon fully prepared in the designated area for out-going mail in accordance with this office's practice, whereby mail deposited in a U.S. mailbox in Sacramento County, at the close of the business day.)

[X] (By overnight delivery)

I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses indicated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

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(By personal service)

I caused such envelope to be delivered by hand to the location(s) of the addressee(s), as listed above.

(By facsimile)

Sent via facsimile machine before sealing envelope, facsimile number: (pursuant to stipulation of above entitled party as indicated above.)

(By electronic service)

Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the document to be sent to the person(s) at the electronic notification addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California on February 16, 2017.

C. RUBIO

Declarant



Signature