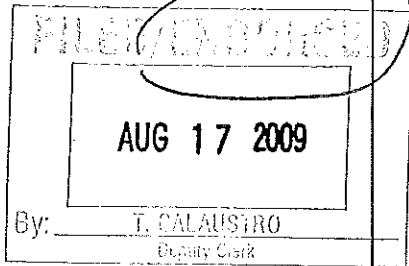


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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10 CALIFORNIA ASSOCIATION OF ) Case No.: 34-2009-80000148-CU-WM-GDS  
11 PSYCHIATRIC TECHNICIAN )  
12 ) FIRST AMENDED PETITION FOR WRIT  
13 vs. ) OF MANDATE AND COMPLAINT FOR  
14 ) DECLARATORY RELIEF  
15 )  
16 ) Date:  
17 ) Time:  
18 ) Dept:  
19 )  
20 Respondents/Defendants )

21  
22 Petitioner/Plaintiff alleges as follows:

- 23 1. On December 19, 2008, California Governor Arnold Schwarzenegger issued  
24 Executive Order S-16-08. Among other things the Executive Order proclaimed that California  
25 faced a “fiscal and cash crisis,” and in order to save money, directed the Department of  
26 Personnel Administration (DPA) to adopt a plan to furlough state employees for two days per  
27 month, effective February 1, 2009 through June 30, 2010.  
28 2. On January 9, 2009, the DPA issued its furlough plan (See memo attached as Exhibit  
29 1). The plan required state employees to select and take two furlough days each month or, if not  
30 feasible, to accrue two furlough days per month to be taken later “when feasible” and/or within  
two years of the end of the furlough program. The DPA furlough plan further provides that

1 7. Respondent/Defendant DPA is and, at all relevant times was, the agency of the State  
2 of California designated as the Governor's bargaining representative under the Dills Act. The  
3 DPA represents the Governor as the employer in all matters pertaining to California state  
4 employer-employee labor relations, and it is responsible for all issues related to salaries and  
5 benefits, job classifications and training. DPA is responsible for implementing the furlough  
6 plans directed by the Executive Orders.

7 8. Respondent/Defendant JOHN CHIANG is the duly-elected controller for the State of  
8 California, sued herein in his official capacity only. Among other duties, the Controller is  
9 responsible for administering the fiscal condition and responsibilities of the State of California.  
10 The Controller is charged with auditing all claims against the State and may audit the  
11 disbursement of any state money for accuracy, propriety and legality. The Controller is charged  
12 with drawing warrants on the State Treasury for the payment of money directed by law. Such  
13 warrants must be made as authorized and required by law.

14 9. Petitioner/Plaintiff is ignorant of the true names and capacities of  
15 Respondents/Defendants sued herein as Does 1 through 10 and therefore sues these  
16 Respondents/Defendants by such fictitious names. Petitioner/Plaintiff will amend this  
17 Petition/Complaint to state their true names and capacities once they have been ascertained.  
18 Petitioner/Plaintiff is informed and believes, and on that basis alleges, that each of these  
19 Respondents/Defendants is in some manner responsible for the acts complained of herein.

20 **FIRST CAUSE OF ACTION**

21 **(Writ of Mandate—Code of Civil Procedure section 1085**  
22 **Violation of Labor Code section 212)**

23 10. California Labor Code section 212 provides in relevant part that:

24 (a) No person, or agent or officer thereof, shall issue in payment of wages due, or to  
25 become due, or as an advance on wages to be earned:

26  
27 (1) An order, check, draft, note, memorandum or other acknowledgment of  
28 indebtedness, unless it is negotiable and payable in cash, on demand, without discount  
at some established place of business in the state, . . . .

29 (2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or  
30 purporting to be payable or redeemable otherwise than in money.

1 “[F]urlough hours have no cash value and may not be cashed out. Employees get no money for  
2 furlough hours leftover when they separate.” The result of the furlough plan is that employees’  
3 salaries are adjusted to reflect two unpaid furlough days per month. The DPA’s plan resulted in  
4 an approximate 10% salary decrease for all affected employees.

5 3. In an order dated February 11, 2009, the Court ruled that Respondents/Defendants had  
6 the statutory authority to furlough state employees due to the State’s fiscal crisis.

7 4. On July 1, 2009, the Governor issued Executive Order S-13-09. This order effective  
8 July 1, 2009 through June 30, 2010 required the DPA to adopt an amended plan to furlough state  
9 employees three days per month instead of two days per month. Again, the purpose of this  
10 Executive Order was to address the projected deficit in the General Fund. The DPA adopted a  
11 plan implementing Executive Order S-13-09 and effective July 10, 2009, state employees were  
12 to be furloughed three days per month or, if not feasible, to accrue three furlough days per month  
13 to be taken within two years of the expiration of the furlough plan. Again, the plan provides that  
14 the three furlough days have no cash value. Implementation of the three day furlough plan  
15 results in a loss of salary of approximately 15% per month for state employees.

16 5. Petitioner/Plaintiff CALIFORNIA ASSOCIATION OF PSYCHIATRIC  
17 TECHNICIANS (CAPT) is, and at all times herein mentioned was, a non-profit corporation  
18 organized and existing under the laws of the State of California, with its principal place of  
19 business in the County of Sacramento. CAPT is the duly-certified exclusive collective  
20 bargaining representative (pursuant to Government Code section 3520.5) for approximately 7000  
21 civil service employees in State Bargaining Unit 18 (Bargaining Unit 18). These employees are  
22 employed in state developmental centers, state mental hospitals and state prisons. They are  
23 responsible for the care and well being of developmentally disabled persons and persons  
24 suffering from mental illness living in those facilities 24 hours per day, 365 days per year.  
25 CAPT brings this action on behalf of itself and members of Bargaining Unit 18 affected by the  
26 implementation of the Executive Orders and furlough plans.

27 6. Respondent/Defendant ARNOLD SCHWARZENEGGER is the duly-elected  
28 Governor of the State of California, sued herein in his official capacity only. The Governor is  
29 the employer of the civil service employees in Bargaining Unit 18 (Government Code section  
30 3513), and issued the Executive Orders directing the three day per month furlough of state  
employees.

1 11. Under the Governor's Executive Orders and the DPA amended furlough plan,  
2 Bargaining Unit 18 members who are not furloughed three days per month because of  
3 operational needs at state developmental centers, state mental hospitals and state prisons are  
4 required to work 40 hours per workweek and "accrue" three furlough days per month to be use  
5 within two years following the end of the furlough program. In those workweeks in which a  
6 furlough day is "accrued" Bargaining Unit 18 members work 40 hours in the week but only  
7 receive payment for 32 hours. Paying for 32 hours in a workweek when 40 hours have been  
8 worked and requiring Bargaining Unit 18 members to "accrue" furlough days that have no cash  
9 value is a violation of Labor Code section 212.

10 12. At all times mentioned herein, Respondents/Defendants have been able to perform  
11 their duty as required under section 212 and pay wages in cash for all hours worked in a  
12 workweek. However, Respondents/Defendants refuse to do so. Petitioner/Plaintiff has no plain,  
13 speedy or adequate remedy in the ordinary course of law other than the relief sought in this  
14 action to compel Respondents/Defendants to comply with section 212. Therefore,  
15 Petitioner/Plaintiff seeks a peremptory writ of mandate compelling Respondents/Defendants to  
16 comply with their mandatory duty under section 212 and pay wages in cash for all hours worked  
17 by Bargaining Unit 18 members in a workweek.

18 13. Petitioner/Plaintiff and the Bargaining Unit 18 members it represents are beneficially  
19 interested in Respondents/Defendants' performance of their legal under section 212 because said  
20 members are directly and negatively impacted by the three day per month furlough ordered in the  
21 Executive Orders and implemented by DPA in that they are not being in cash for wages in  
22 workweeks in which they are required to "accrue" a furlough day.

## 23 24 **SECOND CAUSE OF ACTION**

### 25 **(Declaratory Relief for Violation of Labor Code section 212)**

26  
27 14. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs  
28 as fully set forth herein.

29 15. Labor Code section 212 requires that Respondents/Defendants pay employees cash  
30 for all hours worked in workweek. Under the Executive Orders and the furlough plans,  
Bargaining Unit 18 members who cannot take furlough days because of operational needs are

1 required to work 40 hours in a workweek but only receive wages for 32 hours in those  
2 workweeks in which a furlough day is "accrued."

3 16. Respondents/Defendants have a duty under section 212 to pay wages in cash to  
4 employees for all hours worked in a 40 hour workweek. The failure of Respondents/Defendants  
5 to comply with this duty by requiring Bargaining Unit 18 members to "accrue" three furlough  
6 days per month that have no cash value is a violation section 212.

7 17. An actual controversy has arisen and now exists between Petitioner/Plaintiff and  
8 Respondents/Defendants concerning their respective rights, duties and obligations under section  
9 212. Petitioner/Plaintiff contends that under the Executive Orders and furlough plans  
10 Respondents/Defendants are violating section 212 by requiring Bargaining Unit 18 member to  
11 work 40 hours in a workweek but only paying wages in cash for 32 hours in those workweeks in  
12 which furlough days are "accrued." Petitioner/Plaintiff is informed and believes that  
13 Respondents/Defendants contend that implementation of the Executive Orders and furlough  
14 plans do not violate section 212.

15 18. Petitioner/Plaintiff desires a judicial determination of the rights and obligations of  
16 Bargaining Unit 18 members and those of the Respondents/Defendants under section 212 and the  
17 Executive Orders and furlough plans. Petitioner/Plaintiff requests this court declare that under  
18 section 212 Respondents/Defendants must pay wages in cash to Bargaining Unit 18 members for  
19 all hours worked in a workweek.

### 20 21 **THIRD CAUSE OF ACTION**

#### 22 **(Writ of Mandate—Code of Civil Procedure section 1085** 23 **Failure to comply with Executive Orders)**

24 19. Petitioner/Plaintiff hereby incorporates by reference all of the foregoing paragraphs  
25 as fully set forth herein.

26 20. Pursuant to the Governor's Executive Orders and the Court's Order of February 11,  
27 2009, state employees such as those in Bargaining Unit 18 are required to be furloughed three  
28 days per month. Respondents/Defendants, therefore, have a duty to furlough said employees  
29 three days per month. However, notwithstanding this duty, Respondents/Defendants are not  
30 furloughing Bargaining Unit 18 members three days per month. Instead, said members are

1 required to work their full monthly schedules and “accrue” three furlough days per month that  
2 have no cash value. The failure to furlough Bargaining Unit 18 members three days per month is  
3 a violation of the Governor’s Executive Orders and this Court’s Order of February 11, 2009.

4 21. At all times mentioned herein, Respondents/Defendants have been able to perform  
5 their duty as required by the Governor’s Executive Orders and the Court’s Order of February 11,  
6 2009. However, Respondents/Defendants refuse to do so. Petitioner/Plaintiff has no plain,  
7 speedy or adequate remedy in the ordinary course of law other than the relief sought in this  
8 action to compel Respondents/Defendants to comply with the Governor’s Executive Orders and  
9 the Court’s Order of February 11, 2009. Therefore, Petitioner/Plaintiff seeks a peremptory writ  
10 of mandate compelling Respondents/Defendants to comply with their mandatory duty and  
11 furlough Bargaining Unit 18 members three days per month.

12 22. Petitioner/Plaintiff and Bargaining Unit 18 members it represents are beneficially  
13 interested in Respondents/Defendants’ faithful performance of their legal duties because  
14 Petitioners/Plaintiffs are directly and negatively impacted by the failure to take three furlough  
15 days per month in that they are being required to work yet only “accrue” furlough days that have  
16 no cash value.

#### 17 **FOURTH CAUSE OF ACTION**

#### 18 **(Writ of Mandate—Code of Civil Procedure Section 1085** 19 **Violation of Government Code section 19826)**

20 23. Petitioners/Plaintiffs hereby incorporate by reference all of the foregoing paragraphs  
21 as fully set forth herein.

22 24. Government Code section 19826 provides in relevant part that:

23 (b) Notwithstanding any other provision of law, the department *shall not*  
24 *establish, adjust, or recommend a salary range for any employees* in an  
25 appropriate unit where an employee organization has been chosen as the  
exclusive representative pursuant to Section 3520.5. (Emphasis added).

26 25. Immediately prior to signing Executive Order S-13-09, the Governor proposed an  
27 annual salary reduction for state employees, including Bargaining Unit 18 members of 5%. The  
28 Legislature refused to enact such legislation. Subsequently, the Governor signed Executive  
29 Order S-13-09 that required a third furlough day for state employees, including Bargaining Unit  
30 18 members, for the period July 1, 2009 through June 30, 2010. The requirement of a third

1 furlough day is, in fact, the 5% reduction in salary that the Governor sought through the  
2 proposed legislation that the Legislature refused to enact. The Executive Order authorizes the  
3 DPA to implement the salary reduction/third furlough day.

4 26. As legal authority for the third furlough day, the Governor cites only Government  
5 Code section 3516.5 while making reference to the "power and authority vested in [him] by the  
6 Constitution and statutes of the State of California." The Executive Order does not cite any  
7 specific constitutional provision or statute that authorizes the Governor or DPA to reduce the  
8 salaries of state employees for 12 months.

9 27. Through section 19826(b), the Legislature enunciated a clear decision not to delegate  
10 its salary function to DPA with respect to represented employees. Thus absent legislative  
11 approval of salary reductions, Respondents/Defendants are prohibited from implementing any  
12 salary reduction for Bargaining Unit 18 members because CAPT is the exclusive representative  
13 pursuant to Government Code section 3520.5.

14 28. DPA, through Executive Order S-13-09, implemented a 5% salary reduction for  
15 Bargaining Unit 18 members effective July 1, 2009, thus violating section 19826(b) and the duty  
16 not to reduce the salaries of Bargaining Unit 18 members as set forth in that section.

17 29. At all times herein mentioned, Respondents/Defendants have been able to perform  
18 the duty described above. Notwithstanding such ability, Respondents/Defendants have failed  
19 and refused, and continue to fail and refuse to perform their statutory duty under section  
20 19826(b).

21 30. Petitioner/Plaintiff does not have a plain, speedy or adequate remedy in the ordinary  
22 course of law, other than the relief sought in this action in that there is no adequate legal remedy  
23 to prevent the illegal salary reduction imposed by Executive Order S-13-09 on Bargaining Unit  
24 18 members.

#### 25 PRAYER

26 WHEREFORE, Petitioner/Plaintiff prays for the following relief:

#### 27 FIRST CAUSE OF ACTION

28 1. That the Court issue a peremptory writ of mandate ordering Respondents/Defendants  
29 to comply with Labor Code section 212 and pay cash wages to Bargaining Unit 18 members for  
30 all hours worked in a workweek.

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SECOND CAUSE OF ACTION

2. For a declaration that Labor Code section 212 requires payment of wages in cash for all hours worked in a workweek and Bargaining Unit 18 members who work 40 hours in a workweek must be paid wages in cash for all hours worked in the workweek and that the "accrual" of three furlough days per month with no cash value violates section 212.

THIRD CAUSE OF ACTION

3. That this Court issue a peremptory writ of mandate ordering Respondents/Defendants to comply with the Governor's Executive Orders and the DPA amended furlough plan and furlough Bargaining Unit 18 members three days per month and not permit the "accrual" of furlough days that have no cash value.

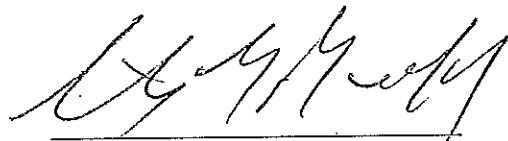
FOURTH CAUSE OF ACTION

4. That this Court issue a peremptory writ of mandate ordering Respondents/Defendants to rescind the 5% salary reduction implemented through Executive Order S-13-09 for Bargaining Unit 18 members.

5. For reasonable attorney's fees

6. For such other relief as the Court deems just and proper.

Dated: August 14, 2009



Steven B. Bassoff—Attorney for  
Petitioner/Plaintiff

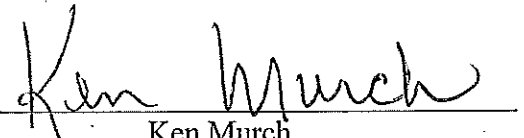
VERIFICATION

I, Ken Murch am a Labor Consultant for the California Association of Psychiatric Technicians (CAPT) the Petitioner/Plaintiff herein and am authorized to execute this on CAPT's

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behalf. I have read the foregoing Petition for Writ of Ordinary Mandate and Complaint for Declaratory Relief and that the matters stated therein are true and correct, and are within my personal knowledge. As to those matters alleged on information and believe it is my belief that said matters are true and correct.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on August 14, 2009 at Sacramento, California.

  
Ken Murch