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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF SACRAMENTO

14 DEBBIE L. ENDSLEY; CALIFORNIA
 15 DEPARTMENT OF PERSONNEL
 ADMINISTRATION

16 Petitioners/Plaintiffs,

17 v.

18 JOHN CHIANG, sued herein in his official
 19 capacity only; OFFICE OF STATE
 20 CONTROLLER

21 Respondents/Defendants.

) Case No.

) **PETITION FOR WRIT OF**
) **PROHIBITION/MANDATE (CCP § 1085);**
) **COMPLAINT FOR INJUNCTIVE AND**
) **DECLARATORY RELIEF**

) **Exempt from Fees**
) **(Gov. Code § 6103)**

22 Petitioners/Plaintiffs, DEBBIE L. ENDSLEY and the CALIFORNIA DEPARTMENT OF
 23 PERSONNEL ADMINISTRATION, hereby allege as follows:

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1 **GENERAL ALLEGATIONS**

2 **PARTIES**

3 1. Petitioner/Plaintiff DEBBIE L. ENDSLEY is the Director of the Department of
4 Personnel Administration, and sues herein in her official capacity only. DEBBIE L. ENDSLEY
5 (Endsley) is charged with administering and enforcing the laws pertaining to personnel, and to
6 perform such other duties that may be proscribed by law. (Gov. Code §§ 19815.3, 19815.4.)

7 2. Petitioner/Plaintiff CALIFORNIA DEPARTMENT OF PERSONNEL
8 ADMINISTRATION (DPA) is a California state agency statutorily created for the purposes of
9 managing the nonmerit aspects of the state’s personnel system. (Gov. Code § 19815.2.) DPA has
10 jurisdiction over the state’s financial relationship with its employees, including matters of salary,
11 layoffs, and nondisciplinary demotions. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322; Gov.
12 Code §§ 19816, 19825, 19826.)

13 3. Respondent/Defendant JOHN CHIANG, sued herein in his official capacity only is
14 the Controller for the State of California. JOHN CHIANG (Chiang) is a state constitutional officer
15 who is elected at the same time and places and for the same term as the Governor. (Cal. Const. art.
16 V, § 11.) The Controller is the head of the Office of State Controller. (Gov. Code § 12405.)

17 4. Petitioners/Plaintiffs Debbie Endsley and the DPA (hereinafter collectively
18 “Petitioners” or “DPA”) bring this action against Chiang in his official capacity only.

19 5. Respondents/Defendants OFFICE OF STATE CONTROLLER is a state department
20 charged with processing payroll transactions for state employees and auditing the disbursement of
21 state money. (Gov. Code §§ 12410, 12412.)¹

22 **VENUE**

23 6. The California Attorney General has an office within the County of Sacramento,
24 making that county an appropriate venue. (Civ. Proc. § 401(1).)

25 7. Both DPA and the Office of State Controller are headquartered in Sacramento
26 County.

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¹ Endsley and DPA shall be referred to collectively as “DPA” or “Petitioners.” Chiang and the Office of State Controller shall be referred to collectively as “Controller” or “Respondents.”

1 **FACTS APPLICABLE TO ALL CAUSES OF ACTION**

2 8. Article IV, section 12 of the California Constitution provides in part, “[t]he
3 Legislature shall pass the budget bill by midnight of June 15 of each year.” However, in recent years
4 the timely adoption of the budget bill in California has proven to be the exception rather than the
5 rule. (*White v. Davis* (2003) 30 Cal.th 528, 533.)

6 9. The Legislature regularly fails to meet this state constitutional deadline. The
7 Legislature has failed to meet the June 15 deadline in thirty-two of the past forty-one years. The
8 Legislature has failed to pass a budget until at least August 1 of the new fiscal year in eight of the
9 past eighteen years.

10 10. The budget for the current fiscal year expired on June 30, 2010.

11 11. At the time of filing this Petition for Writ of Mandate/Prohibition and Complaint for
12 Injunctive and Declaratory Relief, the Legislature has not passed a budget bill for Fiscal Year 2010-
13 2011.

14 12. The Office of State Controller and the Controller (hereafter collectively “the
15 Controller” or “Respondents”) are prohibited from paying full state employee salaries in the absence
16 of a budget or other available appropriation

17 13. In *White v. Davis*, the California Supreme Court held that in the absence of a state
18 budget or other available appropriation, state employees do not have a legal right to receive the
19 payment of their full salaries, except as minimally required by federal law. (*White v. Davis, supra*,
20 30 Cal.4th at 535.)

21 14 By paying state employees their full salaries in the absence of an available
22 appropriation, Respondents violate Article XVI, section 7 of the California Constitution, which
23 provides that “money may be drawn from the treasury only through an appropriation made by law
24 and upon a Controller’s duly drawn warrant.” (*White v. Davis, supra*, 30 Cal.4th at 566.)

25 15. By paying state employees their full salaries in the absence of an available
26 appropriation, Respondents also violate Government Code section 12440, which provides “the
27 Controller shall draw warrants on the Treasurer for the payment of money directed by law to be paid

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1 out of the State treasury; but a warrant shall not be drawn unless authorized by law, and unless,
2 except for refunds authorized by Section 13144, unexhausted specific appropriations provided by
3 law are available to meet it.” (*White v. Davis, supra*, 30 Cal.4th at 567.)

4 16. By paying state employees their full salaries in the absence of an available
5 appropriation, Respondents also violate Government Code section 9610, which provides that “the
6 fixing or authorizing the fixing of the salary of a State officer or employee is not intended to and
7 does not constitute an appropriation of money for the payment of the salary. The salary shall be paid
8 only in the event that monies are made available by another provision of law.” (*White v. Davis,*
9 *supra*, 30 Cal.4th at 567.)

10 17. During the Fiscal Year 2008-2009 budget impasse, Governor Schwarzenegger issued
11 an Executive Order directing the Controller to develop and implement the necessary mechanisms to
12 delay paying employees full salaries in accordance with *White v. Davis*. DPA also issued a Pay
13 Letter directing the Controller to comply with *White v. Davis* by refraining from paying employees
14 full salaries in the absence of a budget or other available appropriation, except as minimally required
15 by federal law.

16 18. Respondents refused to comply with the Governor’s Executive Order or with the
17 DPA Pay Letter during the Fiscal Year 2008-2009 budget impasse. Instead, the Controller paid full
18 employee salaries in the absence of a budget in violation of the California Constitution, California
19 law, and *White v. Davis*.

20 19. DPA initiated legal action in Sacramento County Superior Court during the Fiscal
21 Year 2008-2009 budget impasse in an effort to prohibit Respondents from violating the California
22 Constitution and *White v. Davis* and to enjoin Respondents from paying state employees full salaries
23 in the absence of a budget or other available appropriation, except as minimally required by federal
24 law. (*Gilb v. Chiang*, Sacramento County No. 34-2008-80000026 [*Gilb v. Chiang*].)

25 20. On March 18, 2009, the Sacramento County Superior Court entered a Ruling After
26 Hearing in favor of DPA in *Gilb v. Chiang*. (See Exhibit A of Plaintiffs’ Request for Judicial
27 Notice, filed concurrently herewith.) The Ruling After Hearing was attached and incorporated into
28 to the Sacramento Superior Court’s Final Judgment, which issued on April 13, 2009, in favor of

1 DPA. (*Id.*) In its final judgment, the Court declared that: (a) the Controller must follow the
2 decisions of DPA so long as DPA is acting within the fundamental authority delegated to it by the
3 Legislature, (b) DPA had the authority to issue a Pay Letter directing the Controller to pay state
4 employee salaries consistent with the California Constitution, State law and *White v. Davis*, (c) the
5 Controller is legally prohibited from paying state employees in the absence of a budget or other
6 available appropriation, except as minimally required by the Fair Labor Standards Act (FLSA), and
7 (d) DPA's Pay Letter did not on its face violate the FLSA. (*Id.*) In the Court's decision, the Court
8 expressly rejected each of the Controller's defenses, including Respondents' arguments that
9 limitations in the state payroll system rendered compliance with the Pay Letter impossible or
10 infeasible. (*Id.*)

11 21. Respondents appealed the Court's decision in *Gilb v. Chiang* to the Third Appellate
12 District Court of Appeal. (*Gilb v. Chiang*, Third Appellate District Court of Appeal No. C061947.)
13 On July 2, 2010, the District Court of Appeal affirmed the trial court's judgment in full. (*See Gilb,*
14 *as Director, etc. et al. v. Chiang, as Controller, etc. et al.* (July 2, 2010, C061947) __ Cal.App.4th
15 __; Exhibit B of Plaintiffs' Request for Judicial Notice.)

16 22. On July 1, 2010, DPA issued Pay Letter "10-" to Respondents, ordering Respondents
17 to comply with the California Constitution, State law, and *White v. Davis* by delaying payment of
18 full salaries to state employees in the absence of a budget or other available appropriation, except as
19 minimally required by federal law.

20 23. In a statement posted on the Controller's website, the Controller declared he would
21 refuse to comply with the July 1, 2010 Pay Letter. At the time of filing the instant Petition, the
22 Controller has not agreed to comply with the pay letter or with his obligations under the
23 Constitution, State Law and *White v. Davis* to delay payments of full salaries to state employees in
24 the absence of a budget or other available appropriation, except as minimally required by federal
25 law.

26 24. Respondents traditionally establish a "cut off" date after which no further payroll
27 adjustments may be submitted for the current payroll period. The "cut off" date for the July 2010
28 pay period is on or about July 22, 2010 with payday on July 30, 2010. If this Court does not issue an

1 order prohibiting Respondents from violating the California Constitution, State law, and *White v.*
2 *Davis*, in advance of this “cut-off” date, the Controller will pay all state employees their full salaries
3 even though there is no appropriation to pay such wages.

4 25. The payment of reduced wages for state employees pursuant to *White v. Davis* is only
5 a temporary condition. Once a state budget is adopted, state employees will receive their full
6 salaries including any unpaid wages due.

7 **FIRST CAUSE OF ACTION**

8 **(WRIT OF PROHIBITION/MANDATE C.C.P. § 1085)**

9 26. Petitioners hereby incorporate by reference all of the foregoing paragraphs as though
10 fully set forth herein.

11 27. Code of Civil Procedure section 1085 provides as follows:

12 “A writ of mandate may be issued by any court to any inferior tribunal,
13 corporation, board, or person, to compel the performance of an act
14 which the law specially enjoins, as a duty resulting from an office,
15 trust, or station, or to compel the admission of a party to the use and
16 enjoyment of a right or office to which the party is entitled, and from
17 which the party is unlawfully precluded by such inferior tribunal,
18 corporation, board, or person.” (Code Civ. Proc. § 1085, subd. (a).)

17 28. A writ of prohibition/mandate lies to prohibit a public official from violating the law
18 and also compels a public official to perform an official act required by law. (*Common Cause v.*
19 *Board of Supervisors* (1989), 49 Cal.3d 432, 442.) A writ must issue when there is no plain, speedy,
20 and adequate alternative remedy; the respondent has a duty to perform; and the petitioner has a clear
21 and beneficial right to performance. (*Payne v. Superior Court* (1976) 17 Cal.3d 908, 925.)

22 29. Petitioners have no plain, speedy, or adequate alternative remedy at law to prohibit
23 Respondents from violating the law or to challenge Respondents’ refusal to comply with DPA’s Pay
24 Letter requiring payment of salaries in accordance with the California Supreme Court decision in
25 *White v. Davis*.

26 30. Respondents have a legal duty to follow the law as set forth in the California Supreme
27 Court decision of *White v. Davis* and state law, and to comply with the DPA Pay Letter cited herein.

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