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8 *Attorneys for Petitioners/Plaintiffs*

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 MELINDA DART, CALIFORNIA FEDERATION
12 OF TEACHERS, SERVICE EMPLOYEES
13 INTERNATIONAL UNION LOCAL 99, MARTY
14 HITTELMAN, and BILL A. LLOYD,

15 *Petitioners/Plaintiffs,*

16 v.

17 ARNOLD SCHWARZENEGGER, in his official
18 capacity as the Governor of the State of California;
19 MICHAEL C. GENEST, in his official capacity as
20 the Director of the Department of Finance for the
21 State of California; JOHN CHIANG, in his official
22 capacity as the Controller of the State of California;
23 and DOES ONE through FIVE

24 *Respondents/Defendants,*

CASE NO.:
**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

DATE:
TIME:
DEPT:

25 Petitioners/plaintiffs MELINDA DART, CALIFORNIA FEDERATION OF TEACHERS,
26 SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 99, MARTY HITTELMAN, and BILL
27 A. LLOYD bring this petition for writ of mandate and complaint for declaratory and injunctive relief
28 pursuant to California Code of Civil Procedure sections 1085, 1060 and 526a, and allege as follows:

1 required – it simply attempts to dodge that question. Petitioners/plaintiffs believe this is because the
2 State knows the answer. This action is brought to make clear that *restoration is required whenever*
3 *falling revenues lead to cuts in education*, and to ensure that the current and ongoing reductions in
4 education funding are restored as soon as the State is able to do so.

5
6 **PARTIES**

7 1. Petitioner/plaintiff MELINDA DART is a 4th grade teacher in the Jefferson Elementary
8 School District and a member of the California Federation of Teachers. DART is a registered voter in
9 the City and County of San Francisco where she is also a taxpayer. She has been liable to pay, and
10 within one year has paid, a tax within the City and County of San Francisco. She brings this action in
11 her individual capacity as a taxpayer pursuant to Code of Civil Procedure section 526a to restrain the
12 unlawful appropriation of State General Fund revenues for purposes other than those required by article
13 XVI, section 8 of the California Constitution.

14 2. Petitioner/plaintiff CALIFORNIA FEDERATION OF TEACHERS (“CFT”) is the
15 California affiliate of the American Federation of Teachers (“AFT”). The CFT is composed of 135 local
16 unions. The CFT represents over 100,000 faculty and other educational employees working at every
17 level of the educational system in California, from Head Start to the University of California. The CFT
18 has been a strong advocate of education reform based on high standards for both teachers and students,
19 and is actively engaged in efforts to protect adequate education funding in California. CFT members
20 are directly affected by the State’s appropriations to school districts and community college districts;
21 any error in the calculation of the State’s minimum funding guarantee pursuant to article XVI, section 8
22 (“Proposition 98”) which results in less funding for education than is legally required directly impacts
23 CFT members. CFT brings this action on its own behalf and on behalf of its members. CFT members
24 would otherwise be entitled to bring this suit in their own right, the interests that CFT seeks to protect in
25 this litigation are germane to its purpose, and neither the claim nor the relief sought herein require the
26 participation of individual members.

27 3. Petitioner/plaintiff SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 99
28 (“SEIU 99”) is a union representing over 37,000 education workers working in pre-school and

1 kindergarten, through grade school, high school and college. SEIU 99 members include teachers, para-
2 educators, custodians, cafeteria workers and others working in administrative offices throughout
3 Southern California. SEIU 99 members are directly affected by the State's appropriations to school
4 districts and community college districts; any error in the calculation of the State's minimum funding
5 guarantee pursuant to article XVI, section 8 ("Proposition 98") which results in less funding for
6 education than is legally required directly impacts SEIU 99 members. SEIU 99 brings this action on its
7 own behalf and on behalf of its members. SEIU 99 brings this action on its own behalf and on behalf of
8 its members. SEIU 99 members would otherwise be entitled to bring this suit in their own right, the
9 interests that SEIU 99 seeks to protect in this litigation are germane to its purpose, and neither the claim
10 not the relief sought herein require the participation of individual members.

11 4. Petitioner/plaintiff MARTY HITTELMAN is the President of CFT. Before his election
12 he served as CFT's Senior Vice-President, and also led the CFT's Community College Council, which
13 represents community college faculty and classified employees. HITTELMAN was previously a high
14 school teacher, teaching math at Los Angeles Valley College. HITTELMAN is a registered voter in the
15 County of Los Angeles where he is also a taxpayer. He has been liable to pay, and within one year has
16 paid, a tax within the County of Los Angeles. He brings this action in his individual capacity as a
17 taxpayer pursuant to Code of Civil Procedure section 526a to restrain the unlawful appropriation of State
18 General Fund revenues for purposes other than those required by article XVI, section 8 of the California
19 Constitution.

20 5. Petitioner/plaintiff BILL A. LLOYD serves as Executive Director of SEIU 99. LLOYD
21 is a registered voter in Alameda County where he is also a taxpayer. He has been liable to pay, and
22 within one year has paid, a tax within the County of Alameda. He brings this action in his individual
23 capacity as a taxpayer pursuant to Code of Civil Procedure section 526a to restrain the unlawful
24 appropriation of State General Fund revenues for purposes other than those required by article XVI,
25 section 8 of the California Constitution.

26 6. Respondent/defendant ARNOLD SCHWARZENEGGER is Governor of the State of
27 California and is sued in his official capacity. As chief executive officer of the State, he is responsible
28 for executing the Constitution and laws of the State of California. He also is responsible for presenting

1 to the Legislature a budget for each fiscal year containing recommended state expenditures and the
2 calculation of the minimum school funding guarantee required by article XVI, section 8 of the California
3 Constitution. As Governor, SCHWARZENEGGER also has authority pursuant to article IV, section
4 10(f) of the California Constitutions to take certain actions specified therein in the event of a fiscal
5 emergency.

6 7. Respondent/defendant MICHAEL C. GENEST is Director of the Department of Finance
7 for the State of California and is sued in his official capacity. The Director of Finance is the chief
8 executive officer of the Department of Finance and has general powers of supervision over all matters
9 concerning the financial policies of the State. (Gov. Code, § 13070.) As the chief fiscal advisor to the
10 Governor, the Director of Finance directs the preparation of the Governor's Budget each year. He also
11 has a statutory duty to propose necessary adjustments to the Governor's Budget each May. (Gov. Code,
12 § 13308.) Together with the Superintendent of Public Instruction, respondent/defendant GENEST is
13 responsible for calculating and certifying the minimum school funding guarantee of article XVI, section
14 8 of the California Constitution.

15 8. Respondent/defendant JOHN CHIANG is the Controller of the State of California and is
16 sued in his official capacity. Respondent/defendant CHIANG is responsible for the administration of
17 the state's finances, including school funding, and is responsible for allocating money to meet
18 deficiencies in Proposition 98 funding. Respondent/defendant CHIANG is named in this action for
19 remedial purposes only. References to "respondents/defendants" herein do not refer to CHIANG unless
20 specifically indicated.

21 9. Respondents/defendants DOES ONE through FIVE are responsible for the finances of
22 the public school system in the State of California and for the implementation of the minimum school
23 funding guarantee of article XVI, section 8 of the California Constitution.

24
25 **JURISDICTION**

26 10. This Court has jurisdiction over this matter and authority to issue a Peremptory Writ of
27 Mandate pursuant to Code of Civil Procedure section 1085. Petitioners/plaintiffs are beneficially
28 interested in the proper construction of article XVI of the California Constitution, the Budget Acts for

1 Fiscal Year 2008-2009, the Budget Act for 2009-2010, and the implementation of their provisions in
2 accordance with law. Petitioners/plaintiffs are entitled to a Peremptory Writ of Mandate because
3 Respondents/defendants have failed to act in accordance with law and Petitioners/plaintiffs have no
4 plain, speedy, or adequate remedy at law to correct that failure.

5 11. This Court has jurisdiction over this matter and authority to issue permanent and
6 temporary injunctions pursuant to Code of Civil Procedure section 526 and 526a. Petitioners/plaintiffs
7 are entitled to injunctive relief as without that relief respondents'/defendants' failure to set aside the
8 moneys lawfully required for the support of the public school system by article XVI, section 8 of the
9 California Constitution and failure to specifically provide for maintenance factor required by subdivision
10 (d) of section 8 for the 2008-2009 and 2009-2010 budgets will cause irreparable harm and injury to the
11 public schools of the State of California, to the students who attend those schools and to the teachers and
12 other employees of those schools, including members of CFT and SEIU 99.

13 12. This Court has jurisdiction over this matter and authority to issue declaratory relief
14 pursuant to Code of Civil Procedure sections 1060 and 1062. There is an actual controversy between
15 petitioners/plaintiffs and respondents/defendants concerning the proper construction to be given article
16 XVI, section 8, subdivision (d) of the California Constitution in the adoption of the budgets for fiscal
17 years 2008-2009 and 2009-2010, as well as future budgets. This court has jurisdiction to issue a
18 declaration of the rights and of the parties pursuant to Code of Civil Procedure sections 1060 and 1062.

19
20 **FACTUAL ALLEGATIONS**

21 **[History and Purpose of Proposition 98]**

22 13. On November 8, 1988, the people of the State of California adopted Proposition 98,
23 which amended article XVI, section 8 of the California Constitution to provide a guaranteed minimum
24 funding level for K-12 public schools and community college districts.

25 14. Proposition 98 amended subdivision (a) of section 8 of article XVI of the California
26 Constitution to provide that “[f]rom all state revenues there *shall first be set apart* the moneys to be
27 applied by the State for support of the public school system and public institutions of higher education.”
28 (Emphasis added.) Section 8 does not require a specific annual appropriation for public education

1 purposes, but instead mandates that the State “first set apart” a specific amount of money each year for
2 education-related appropriations, with the actual amount to be determined by the formulas contained in
3 section 8, subdivision (b).

4 15. As originally enacted, Proposition 98 provided that the moneys to be applied by the State
5 for the support of school districts and community colleges in a given year was required to be the higher
6 of (1) the percentage of General Fund Revenues appropriated for school districts and community college
7 districts in Fiscal Year 1986-87 (referred to as Test 1, or the “percentage of revenues” test, currently set
8 at 40.1%) or (2) the amount actually allocated for school districts and community college districts in the
9 previous fiscal year, adjusted for enrollment growth and inflation based on the lesser of U.S. CPI or
10 California per capita income (referred to as Test 2, or the “maintenance of effort” test). (Former Cal.
11 Const., art. XVI, § 8, subds.(a)(1)-(2).) These tests were designed to ensure that if revenues are rising,
12 schools must receive a guaranteed percentage of those revenues (Test 1); if revenues are flat or falling,
13 schools are guaranteed at least what they received the previous year, adjusted for changes in the student
14 population and inflation (Test 2).

15 16. The “moneys to be applied by the State” for the support of education consist primarily of
16 General Fund revenues derived from tax revenues (largely personal income tax revenues and sales tax
17 revenues), local property tax revenues, and miscellaneous other sources, including the State Lottery.

18 17. Proposition 98 also authorized the Legislature to suspend the minimum funding
19 guaranteed by that provision, but allowed it to do so only if enacted by an urgency statute with a
20 separate two-thirds vote specifically focused on suspension, and allowed it for no more than one year.
21 (Cal. Const., art. XVI, § 8, subd. (h).)

22 18. The basic purpose of Proposition 98 is to provide public schools and community college
23 districts with a guaranteed and stable source of funding and to ensure that, over time, education spending
24 reflects long-term growth in population and per capita personal income.

25 19. On June 5, 1990, the people of the State of California approved Proposition 111, a
26 legislative constitutional amendment. Proposition 111 amended several provisions of the Constitution to
27 provide additional fiscal flexibility to the State. One provision of Proposition 111 loosened the spending
28 limitations of article XIII B, while another amended the minimum funding guarantee in article XVI.

1 Absent specific identification to the contrary, when reference is made hereafter in this petition and
2 complaint to “Proposition 98” it is intended to refer to the 1988 enactment as amended in 1990.

3 20. Proposition 111 amended the language of Proposition 98 in several ways. First, it
4 amended section 8(a)(2) to delete the use of U.S. CPI and allowed the Test 2 inflation factor to be
5 determined only by enrollment and changes in California per capita personal income. Second, it
6 provided an alternative method for calculating inflation in low revenue years. Now referred to as Test 3,
7 this method of calculating the minimum funding guarantee takes the previous year’s funding and adjusts
8 it for changes in enrollment and per capita General Fund revenues rather than personal income. It
9 provides an alternative to Test 2 only in those years in which it applies. (Cal. Const., art. XVI, § 8,
10 subd. (b)(3).)

11 21. The Test 2/Test 3 alternatives apply as follows: During years in which growth in per
12 capita personal income exceeds growth in per capita General Fund revenues plus ½ of one percent, the
13 “maintenance of effort” calculation is determined by using prior year spending adjusted by the change in
14 per capita revenues. In years in which the change in per capita personal income is less than the change
15 in per capita revenues plus ½ of one percent, the “maintenance of effort” guarantee is determined by
16 using prior year spending adjusted by the change in per capita personal income. The applicable
17 “maintenance of effort” formula is then compared to the Test 1 “percentage of revenues” formula to
18 determine the actual minimum funding guarantee for that fiscal year. (Cal. Const., art. XVI, § 8, subd.
19 (b)(1)-(3).)

20 22. While Proposition 111 provided an alternative inflation factor for “bad revenue” years, it
21 also added language to ensure that in years in which Test 3 was used, the State would have to restore the
22 amount it saved in subsequent years. Section 8, subdivision (d) provides that “[i]n any year in which
23 school districts and community college districts are allocated funding pursuant to paragraph (3) of
24 subdivision (b) or pursuant to subdivision (h), they shall be entitled to a maintenance factor, equal to the
25 difference between (1) the amount of General Fund moneys which would have been appropriated
26 pursuant to paragraph (2) of subdivision (b) if that paragraph had been operative or the amount of
27 General Fund moneys which would have been appropriated pursuant to subdivision (b) had not been
28 suspended, and (2) the amount of General Fund moneys actually appropriated to school districts and

1 community college districts in that fiscal year.”

2 23. Proposition 111 thus allows the State to use the Test 3 formula (or Test 3 combined with
3 Test 1) to *temporarily* reduce funding when declining revenues make Test 2 unduly burdensome for the
4 State, but requires that the amount that would have been required by Test 2 be restored later through the
5 maintenance factor.

6 24. Maintenance factor payments are not required to begin until state revenues begin
7 improving, and the exact amount of the required repayment in a given year depends on how quickly
8 revenues are growing. The minimum amount to be restored in any year is required to be equal to the
9 product of General Fund revenues from proceeds of taxes and one-half of the difference between the
10 percentage growth in per capita General Fund proceeds of taxes and California per capita personal
11 income. As payments are made, they become part of the “base” for that year’s funding and are included
12 for the purpose of calculating the following year’s minimum funding requirement under Test 2 or 3.
13 (Cal. Const., art. XVI, § 8, subd. (e).)

14 25. For purposes of preparation of the budget, the State is directed to use the “best available
15 estimate until actual data becomes available.” (Ed. Code, § 41206, subd. (a).) The estimated revenues,
16 attendance and personal income figures to be used for the minimum funding guarantee thus change over
17 time as actual data becomes available.

18 26. Within nine months following the end of any fiscal year, the Superintendent of Public
19 Instruction and the Director of Finance are required to recalculate, as necessary, and jointly certify all
20 actual data pertaining to school districts. (Ed. Code, § 41206, subd. (b).)

21 27. If certification of actual school district data for a fiscal year reveals a deficiency in the
22 minimum funding guarantee for that fiscal year, the Controller “shall [] set aside” an amount of funding
23 necessary to make up the minimum funding guarantee shortfall. If the Legislature fails to appropriate
24 the funds set aside to remedy the minimum funding guarantee shortfall within 90 days, such funds “shall
25 be allocated by the Controller” to the school districts. (*Ibid.*)

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1 **[Fiscal Years 2007-08, 2008-2009 and 2009-2010 and The State's Failure to Comply with Article**
2 **XVI, Section 8, Subdivision (d) of the California Constitution.]**

3 28. As of the end of Fiscal Year 2007-08, it is undisputed that the State owed school districts
4 approximately \$1.5 billion in outstanding maintenance factor obligations. Repayment of this amount
5 would normally be required as revenues begin to increase, pursuant to article XVI, section 8, subdivision
6 (e). The State's most recent revenue estimates indicate that this is likely to be Fiscal Year 2010-11.

7 29. Based on May, 2008 funding estimates the State indicated that, because the change in
8 General Fund per capita revenue was less than the change in per capita personal income, Test 3 applied
9 rather than Test 2 to determine the "maintenance of effort" amount. Since Test 3 resulted in a higher
10 appropriation than Test 1, it was determined that the Proposition 98 minimum funding guarantee for
11 Fiscal Year 2008-09 would be determined by the provisions of Test 3.

12 30. On September 23, 2008 the budget for fiscal year 2008-2009 was enacted. (Chapters 268
13 and 269, Statutes 2008). Based on the application of Test 3, the General Fund appropriation pursuant to
14 article XVI, section 8 for that year was approximately \$43 billion, subsequently reduced to
15 approximately \$42 billion by amendments to the 2008-09 budget.

16 31. Following enactment of the budget for fiscal year 2008-2009, it became apparent that the
17 general fund revenue assumptions and other economic indicators used for the Proposition 98
18 calculations would require significant modification. On December 19, 2008, the Governor, acting
19 pursuant to Section 10 (f) of Article IV of the California Constitution, declared a fiscal emergency and
20 called the Legislature into special session to deal with the emergency.

21 32. On February 20, 2009, a package of budget-related measures for both Fiscal Year 2008-
22 09 and Fiscal Year 2009-10 was enacted into law. One of these measures was Senate Bill 4. (Chapter
23 12, Third Extraordinary Session, 2009 ("SB 4").)

24 33. SB 4 amended the 2008-09 budget, reduced appropriations in support of the public
25 schools, and made a number of statutory changes to implement its provisions. Those changes included
26 the deferral of some funds that were scheduled to be received by school districts in 2008-2009, repeal of
27 some appropriations that would have been otherwise received by school districts in 2008-2009, and a
28 redirection of general fund appropriations from school districts to other purposes.

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1 34. In the course of amending the 2008-09 budget, the State determined that because of
2 further drops in General Fund revenues, the amount required by Test 3 was less than the amount
3 required by Test 1, and the Proposition 98 education appropriation for Fiscal Year 2008-2009 would
4 therefore be calculated in accordance with Test 1.

5 35. The effect of the February budget cuts was not only to substantially reduce education
6 funding for Fiscal Year 2008-09, but also to reduce the base to be used to determine minimum funding
7 guarantee for Fiscal Year 2009-2010. It has essentially the same effect as a suspension of Proposition
8 98 but, according to respondents/defendants, did not require a two-thirds vote and does not require
9 restoration, as would be required by suspension.

10 36. Upon information and belief, the appropriation actually made pursuant to article XVI,
11 section 8 for Fiscal Year 2008-09 is approximately \$7.9 billion below the amount that would have been
12 required by Test 2 and a maintenance factor in that amount was thereby created pursuant to section 8,
13 subdivision (d).

14 37. Also as part of the February, 2009 budget package, a budget for fiscal year 2009-2010
15 was enacted. (Chapter 1, Third Extraordinary Session, 2009.) As with Fiscal Year 2008-09, preliminary
16 funding estimates for Fiscal Year 2009-10 indicate that Test 3 will apply rather than Test 2 to determine
17 the "maintenance of effort" amount. Because that amount was projected to be less than the amount
18 required by Test 1, the State determined that the revenues to be applied by the State for support of
19 education for Fiscal Year 2009-2010 pursuant to article XVI, section 8 would also be calculated in
20 accordance with Test 1.

21 38. Upon information and belief, the projected difference between the amount that would be
22 required to be appropriated for Fiscal Year 2009-2010 pursuant to Test 2 and the amount appropriated
23 pursuant to Test 1 will be at least \$2.6 billion and will likely be substantially more. Pursuant to
24 subdivision (d) of section 8, school districts are entitled to maintenance factor repayments in the amount
25 of the final difference.

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The Dispute Over the Maintenance Factor and Proposition 1B

1
2 39. Although respondents/defendants have asserted that the 2008-09 and 2009-10 budget cuts
3 are permanent absent other legislative action, the California Legislative Analyst's Office has
4 acknowledged that there is a dispute over the proper application of article XVI, section 8, subdivision
5 (d) under the circumstances present in the 2008-09 and 2009-10 fiscal years.

6 40. Petitioners/plaintiffs, members of the education community, and others, maintain that
7 article, XVI section 8, subdivision (d) requires a maintenance factor to be repaid by the State in any year
8 in which Test 3 is used rather than Test 2 for purposes of comparison with Test 1. Since 2008-09 and
9 2009-10 require the State to compare Test 3 and Test 1, the education community has maintained that a
10 maintenance factor must be provided.

11 41. Respondents/defendants maintain that article XVI, section 8, subdivision (d) only
12 requires that a maintenance factor be provided in a year in which the actual appropriation is determined
13 pursuant to Test 3. Since the preliminary funding estimates indicate that that 2008-09 and 2009-10 are
14 Test 3 years for purposes of calculating the maintenance of effort test, but the appropriation will be
15 determined by Test 1, respondents/defendants maintain that no maintenance factor is created or required
16 under these circumstances.

17 42. As part of the budget package approved in February, 2009, the Legislature also enacted
18 Senate Bill 19 (Chapter 7, Third Extraordinary Session, 2009 ("SB 19").) This bill authorized the State
19 to hold a Special Election on May 19, 2009 and placed several measures on that ballot. Included among
20 the measures is Proposition 1B.

21 43. Proposition 1B, if enacted, would amend article XVI to add a new section 8.3. In lieu of
22 the maintenance factor payments that would otherwise be required by subdivision (d) of section 8 for
23 fiscal years 2007-08 and 2008-09, Proposition 1B provides that \$9.3 billion would be repaid to K-12
24 school districts and community college districts beginning in 2011-12. It does not otherwise amend or
25 clarify section 8, subdivision (d).

26 44. The provisions of Proposition 1B vary from Proposition 98 in several important ways.
27 First, Proposition 1B "freezes" the amount of any restoration at \$9.3 billion. Under section 8,
28 subdivision (d), the maintenance factor would be the difference between the amount owed in accordance

1 with Test 2 and the amount actually received. If there are further cuts during 2008-09, Proposition 98
2 would require restoration of those additional amounts, but Proposition 1B would not.

3 45. Under Proposition 98, repayment of any maintenance factor would begin when State
4 revenues begins to improve, estimated to be in Fiscal Year 2010-11. The amount of those payments
5 would vary with increases in General Fund revenues. Proposition 1B defers any repayment to Fiscal
6 Year 2011-12 and limits the amount of the annual repayment to 1.5% of General Fund revenues
7 (currently approximately \$1.5 billion). The net effect of Proposition 1B is likely to be a deferral in the
8 timing of repayment of the maintenance amount and payments of amounts less than would be required
9 under Proposition 98. Because any amounts repaid do not become part of the base until the year in
10 which they are paid, the differences in the amount and timing of repayments between Proposition 98 and
11 Proposition 1B are likely to adversely impact the education funding level for many years if Proposition
12 1B is adopted.

13 46. If Proposition 1B is adopted by the voters, the language of that measure will replace the
14 requirements of article, XVI section 8, subdivision (d) for Fiscal Years 2007-08 and 2008-09 and will
15 eliminate the need to interpret the current constitutional requirement for those years. However,
16 Proposition 1B does not clarify the constitutional language or resolve the current legal dispute over the
17 meaning of subdivision (d) for 2009-10 or any future year in which the minimum funding guarantee is
18 determined by Test 1 because the amount required by Test 1 exceeds Test 3 but is below Test 2.

19 47. If Proposition 1B is not enacted by the voters on May 19, 2009, the proper interpretation
20 of article, XVI section 8, subdivision (d) for Fiscal Year 2008-09 will be required as well as for Fiscal,
21 Year 2009-10 and the future.

22
23 **FIRST CAUSE OF ACTION**

24 **Writ of Mandate – Code of Civil Procedure Section 1085**
25 **(Violation of Article XVI, Section 8, Subd. (d) of the California Constitution)**

26 48. Petitioners/plaintiffs re-allege and incorporate by reference as if fully set forth herein the
27 allegations of paragraphs 1 through 47 above.

28 49. Respondents/Defendants, and those public officers and employees acting by and through

1 their authority, have a clear, present and ministerial duty to comply with the requirements of article XVI,
2 section 8, of the California Constitution, including subdivision (d) of section 8 and have failed to
3 perform their duty to comply with those requirements.

4 50. Petitioners/plaintiffs are beneficially interested in a peremptory writ of mandate to
5 compel respondents/defendants, and those public officers and employees acting by and through their
6 authority, to direct respondents/defendants to perform their duties imposed by law as follows: 1) that
7 respondent/defendant Schwarzenegger determine the appropriate maintenance factor for any fiscal year
8 in which article XVI, section 8, subdivision (b)(3) is used in lieu of (b)(2) to determine the maintenance
9 of effort amount, including but not limited to Fiscal Years 2008-09 and 2009-10, and that he present to
10 the Legislature a budget for each fiscal year reflecting the appropriate maintenance factor payments as
11 part of his calculation of the minimum school funding guarantee required by article XVI, section 8 of the
12 California Constitution and provide for any required maintenance factor payments in accordance with
13 article XVI, section 8, subdivision (e); that respondent/defendant Genest direct the preparation of the
14 Governor's Budget each year to include the appropriate maintenance factor for any fiscal year in which
15 article XVI, section 8, subdivision (b)(3) is used in lieu of (b)(2) to determine the maintenance of effort
16 amount, including but not limited to Fiscal Years 2008-09 and 2009-10 and provide for any required
17 maintenance factor payments in accordance with article XVI, section 8, subdivision (e), and that he
18 calculate and certify the minimum school funding guarantee of article XVI, section 8 of the California
19 Constitution in accordance with this determination; that respondent/defendant Chiang allocate any
20 money necessary to meet deficiencies in Proposition 98 funding.

21 **SECOND CAUSE OF ACTION**

22 **Declaratory Relief - Code of Civil Procedure § 1060**
23 **(Violation of Article XVI, Section 8, Subd. (d) of the California Constitution)**

24 51. Petitioners/Plaintiffs re-allege and incorporate by reference as if fully set forth herein the
25 allegations contained in paragraphs 1 through 50 above.

26 52. An actual controversy has arisen and now exists between the petitioners/plaintiffs and
27 respondents/defendants as to the nature of the requirement imposed upon the State by article XVI,
28 section 8 of the California Constitution, including subdivision (d) of section 8. Petitioners/plaintiffs

1 contend that article XVI, section 8(d) requires the State of California to provide a maintenance factor in
2 any fiscal year in which the inflation factor set forth in article XVI, section 8, subdivision (b)(3) is used
3 in lieu of that set forth in (b)(2) to determine the maintenance of effort amount, including but not limited
4 to Fiscal Years 2008-09 and 2009-10, and that the amount of the maintenance factor be equal to the
5 difference between the amount actually appropriated in that fiscal year for the support of education
6 pursuant to article XVI, section 8 and the amount that would have been required if article XVI, section
7 8, subdivision (b)(2) had been in effect.

8 53. Respondents/defendants contend that article XVI, section 8, subdivision (d) does not
9 require a maintenance factor to be provided in any fiscal year in which the minimum funding
10 requirement is calculated in accordance with article XVI, section 8, subdivision (b)(1).

11 54. Petitioners/plaintiffs desire a judicial determination of their rights and a declaration of
12 whether article XVI, section 8, subdivision (d) requires respondents/defendants and the State of
13 California to provide a maintenance factor in any fiscal year in which the inflation factor set forth in
14 article XVI, section 8, subdivision (b)(3) applies rather than subdivision (b)(2) irrespective of whether
15 the amount required for that year is ultimately calculated in accordance with article XVI, section 8,
16 subdivision (b)(1) or (b)(3), and whether the determinations of respondents/defendants that no
17 maintenance factor is to be provided in these circumstances violates article XVI, section 8.

18 55. A judicial determination is necessary and proper at this time and under these
19 circumstances in order to determine whether the actions of Respondents/defendants are unlawful, and to
20 determine the proper construction of the requirements of article XVI, section 8, subdivision (d).

21
22 **THIRD CAUSE OF ACTION**

23 **Injunction - Code of Civil Procedure § 526**
24 **(Violation of Article XVI, Section 8, Subd. (d) of the California Constitution)**

25 56. Petitioners/Plaintiffs re-allege and incorporate by reference as if fully set forth herein the
26 allegations contained in paragraphs 1 through 55 above.

27 57. The actions of respondents/defendants have caused, and continue to cause, great and
28 irreparable harm to petitioner/plaintiffs and the relief sought by petitioners/plaintiffs requires a

1 continuing restraint on the actions of respondents/defendants in order to prevent a multiplicity of judicial
2 proceedings.

3 58. Petitioners/plaintiffs seek a prohibitory injunction to restrain respondents/defendants, and
4 those public officers and employees acting by and through their authority, from implementing the
5 requirements of article XVI, section 8, subdivision (d) in a manner that fails to provide a maintenance
6 factor in any fiscal year in which the inflation factor set forth in article XVI, section 8, subdivision (b)(3)
7 is used in lieu of that set forth in (b)(2) to determine the maintenance of effort amount, including but not
8 limited to Fiscal Years 2008-09 and 2009-10.

9 59. Petitioners/plaintiffs seek a mandatory injunction to compel respondents/defendants, and
10 those public officers and employees acting by and through their authority, to ensure that the proper
11 maintenance factor is determined for each fiscal year and that the Governor's Budget and the Budget
12 Act each year properly reflect any outstanding maintenance factor and provide for any required
13 maintenance factor payments in accordance with article XVI, section 8, subdivision (e).

14
15 WHEREFORE, Petitioners/Plaintiffs pray for relief as follows:

- 16 1. That this Court order the issuance of the peremptory writ of mandate as requested;
17 2. That this Court issue a declaratory judgment as requested;
18 3. That this Court enjoin Respondents/Defendants, and those public officers and employees
19 acting on their behalf, from continued violation of article XVI, section 8, subdivision (d) as requested;

20 60. 4. That this Court enter an order compelling Respondents/Defendants to provide a
21 maintenance factor reimburse in any fiscal year in which the inflation factor set forth in article XVI,
22 section 8, subdivision (b)(3) is used in lieu of that set forth in (b)(2) to determine the maintenance of
23 effort amount, including but not limited to Fiscal Years 2008-09 and 2009-10 and to provide for any
24 required maintenance factor payments in accordance with article XVI, section 8, subdivision (e)..

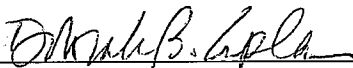
- 25 5. That this Court order an award of attorneys fees to Petitioners/Plaintiffs; and
26 6. That this Court provide such other and further relief as the Court deems appropriate.

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2 Dated: May 7, 2009

3 Respectfully submitted,

4 OLSON HAGEL & FISHBURN LLP
5 Deborah B. Caplan
6 Lance H. Olson
7 N. Eugene Hill

8 By: 
9 DEBORAH B. CAPLAN
10 Attorneys for Petitioners
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555 CAPITOL MALL, SUITE 1425, SACRAMENTO, CA 95814

VERIFICATION

I, MARTY HITTELMAN, declare that I am a Petitioner herein.

I have read the foregoing PETITION FOR WRIT OF MANDATE and know the contents thereof. The same is true of my own knowledge, except as to those matters which are herein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Dated this 7th day of May, 2009 in Sacramento, California.



MARTY HITTELMAN