

1 KAMALA D. HARRIS
Attorney General of California
2 PETER A. KRAUSE
Supervising Deputy Attorney General
3 ROSS C. MOODY
Deputy Attorney General
4 State Bar No. 142541
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-1376
6 Fax: (415) 703-1234
E-mail: Ross.Moody@doj.ca.gov
7 *Attorneys for Petitioners California Department of*
Finance and Dr. Jack Scott, Chancellor of the
8 *California Community Colleges*

**Exempt from Filing Fees --
Gov't Code § 6103**

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ORANGE
12

13 **CALIFORNIA DEPARTMENT OF**
14 **FINANCE and DR. JACK SCOTT,**
15 **CHANCELLOR OF THE CALIFORNIA**
16 **COMMUNITY COLLEGES,**

17
18 Petitioners and Plaintiffs,

19 v.

20 **JAN GRIMES, in her official capacity as**
21 **INTERIM ORANGE COUNTY AUDITOR-**
22 **CONTROLLER, and DOES 1 THROUGH**
23 **10,**

24 Respondents and Defendants.

Case No. _____

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

25 Plaintiffs and petitioners the California Department of Finance and Dr. Jack Scott,
26 Chancellor of the California Community Colleges, allege as follows:

27 Legislation passed in June 2011 changed the way Vehicle License Fees (VLF) are collected
28 and spent. As part of that process, the Legislature eliminated \$48 million in annual VLF funding
previously received by Orange County. After an attempt to restore those funds through
legislation failed, Orange County announced it would take the extraordinary step of flouting the

1 law and illegally redirecting property tax revenue payments from schools and community
2 colleges to the County's own general fund. This action, which the Orange County Auditor-
3 Controller has undertaken, violates both statute and the California Constitution and must be
4 enjoined.

5 Pursuant to Education Code sections 70901 and 71090, Government Code section 13070
6 and Code of Civil Procedure section 1085, the California Department of Finance and the
7 Chancellor of the California Community Colleges respectfully petition the Court for a writ of
8 mandate directing respondent Jan Grimes, Interim Orange County Auditor-Controller (Auditor-
9 Controller) to allocate Orange County tax revenues as required by law to schools and community
10 college districts, instead of illegally diverting those revenues to the County's general fund.

11 Plaintiffs and petitioners also request that the Court declare that the Auditor-Controller's re-
12 calculation of the County's Vehicle License Fee Adjustment Amount (VLFAA) for the current
13 fiscal year was illegal because it was based upon a fictitious set of circumstances other than the
14 last fiscal year's tax revenues as called for by statute. Plaintiffs and Petitioners seek an order
15 directing the Auditor-Controller to re-calculate the VLFAA based upon the County's last fiscal
16 year's tax receipts as required by Revenue and Taxation Code section 97.70 subdivision
17 (c)(1)(C), and, as a result, for the County to make the required payments to the Education
18 Revenue Augmentation Fund in the current fiscal year.

19 Finally, petitioners seek injunctive relief preventing the Auditor-Controller from adjusting
20 VLFAA proceeds in a manner other than that provided by law.

21 THE PARTIES

22 1. Petitioner and plaintiff Department of Finance (Finance) is a state government agency
23 with general supervisory powers over all matters concerning the financial and business affairs of
24 the State of California. (See Gov. Code, § 13000, et seq.) Finance is given these fiscal
25 supervisory powers in order to conserve the financial resources of the state, to prevent
26 improvidence, and to control the expenditure of state monies by governmental entities. Finance is
27 beneficially interested in this proceeding and is aggrieved by the Auditor-Controller's action of
28 ignoring the terms of Revenue and Taxation Code section 97.70 and failing to make payments

1 into the Education Revenue Augmentation Fund (ERAF) as required by law. If Orange County
2 is allowed to proceed with this improper recalculation of VLFAA, it will disrupt the flow of funds
3 called for in the Budget Act passed by the Legislature, and trigger new monetary obligations for
4 the state.

5 2. Petitioner and plaintiff Dr. Jack Scott is the Chancellor of the California Community
6 Colleges (the Chancellor) and the Chief Executive Officer of the Board of Governors of the
7 California Community Colleges. (See Educ. Code, § 70901.) The Chancellor and his staff are
8 responsible for, among other things, preparing the annual budget for the California Community
9 Colleges and establishing the method for determining and allocating state funds to the
10 Community Colleges. (See Educ. Code, § 71090.) The Chancellor is beneficially interested in
11 this proceeding and is aggrieved by the Auditor-Controller's decision to disregard the terms of
12 Revenue and Taxation Code section 97.70 and her legal duty to make prescribed payments into
13 the ERAF as required by law.

14 3. Respondent and defendant Auditor-Controller is the chief accounting officer for the
15 County of Orange.¹ (See Gov. Code, § 26881, et seq.) One of her duties is the allocation of
16 property tax revenues pursuant to Revenue and Taxation Code section 97.70.

17 4. Petitioners and plaintiffs are unaware of the true names and capacities of respondents
18 and defendants Does 1 through 10, inclusive, and they are therefore sued by such fictitious names
19 pursuant to Code of Civil Procedure section 474. Petitioners and plaintiffs allege on information
20 and belief that each such fictitiously named respondent and defendant is responsible or liable in
21 some manner for the events and happenings referred to herein, and petitioners and plaintiffs will
22 seek leave to amend this petition to allege their true names and capacities after the same have
23 been ascertained.

24
25
26 ¹ The Orange County Auditor-Controller who recalculated the VLFAA at the request of
27 the Board of Supervisors, David Sundstrom, is no longer employed by Orange County.
28 Petitioners are informed and believe that Jan Grimes has been named Interim Auditor-Controller.
Petitioners reserve the right to amend the pleadings to reflect true name of the Auditor-Controller
should a new person be appointed to that position.

GENERAL ALLEGATIONS

5. In 2003 the Legislature passed Senate Bill 1096, which established the Vehicle License Fee Swap. Senate Bill 1096 was designed to permanently reimburse cities and counties for the revenue they lost when the Vehicle License Fee rate was reduced from 2 percent to 0.65 percent. The mechanism used for this reimbursement was the transfer of revenues denoted "Vehicle License Fee Adjustment Amount" or "VLFAA" from the state to counties pursuant to a schedule set forth in Revenue and Taxation Code § 97.70.

6. Due to the troubles Orange County had in selling its bonds and other debts after its bankruptcy filing in December 1994, Senate Bill 1096 also gave Orange County special treatment from the state with respect to tax revenues. To help the County regain its financial stability, Senate Bill 1096 allocated additional sums to the County from VLF collected by the state so that these sums could be pledged toward debt service and the County could more easily sell its bonds and other indebtedness to the financial markets. Over time, financial stability returned to Orange County and the County was able to sell its bonds and indebtedness without needing special VLF revenues from the state pledged to service the debt. Chapter 610, Statutes of 2004 (AB 2115) amended Sections 97.70 and 11005 of the Revenue and Taxation Code to allow Orange County to continue to receive these special VLF funds and to use them for any purpose.

7. In 2011, the Legislature overhauled the VLF system and ended Orange County's special VLF financing arrangement by passing Senate Bill 89 (SB 89). SB 89 eliminated the portion of the VLF that had been given to Orange County in SB 1096. SB 89 was passed by the Legislature, signed by the Governor, and chaptered into law on June 30, 2011, with an effective date of July 1, 2011. By operation of SB 89, in fiscal year 2011-2012 the Orange County general fund would not receive \$48 million, which the County has said amounts to approximately 7.5 percent of its general fund budget.

8. Later in 2011, after the Legislature eliminated its special VLF funding, Orange County tried to restore the funding through legislation. Assembly Member Jose Solorio introduced Assembly Bill 43 (AB 43) which proposed to "increase the VLFAA for the County of Orange by \$48,000,000 and require that this increase be included in the calculation of the vehicle

1 license fee adjustment amount” by the Auditor-Controller for fiscal year 2011-2012 and for each
2 year thereafter. Orange County’s effort to restore the revenue failed. AB 43 passed the
3 Assembly, but was not brought to a vote in the Senate before the end of the legislative session.

4 9. When its legislation failed, Orange County was undeterred. It announced its intent to
5 ignore both the clear statutory formula for determining VLFAA and SB 89. Acting through its
6 Board of Supervisors, on November 10, 2011 Board Chairman Bill Campbell sent a
7 memorandum to the Auditor-Controller requesting that he:

8 calculate the County’s VLFAA for Fiscal Year 2011-2012 according to the amount
9 the County of Orange should receive under Revenue & Taxation Code § 97.70 without
10 offset or reduction by the amount of Vehicle License Fee revenues (“VLF”) the
11 County received before the State’s enactment of SB 89 effective July 1, 2011 (which
eliminated the County’s VLF set-aside, as discussed below) and to recalculate and
pay the County VLFAA for each year thereafter in the same fashion.

12 10. The Auditor-Controller stated his intention to honor the Board of Supervisors’ request
13 and recalculate the VLFAA in the manner requested, that is, in violation of state law. In the
14 Comprehensive Annual Financial Report for the County of Orange for 2011, the Auditor-
15 Controller announced that “as a result of the enactment of SB 89, the Auditor-Controller
16 recalculated the property taxes that must be allocated to the County and eliminated the reduction
17 in the County’s VLFAA which was attributable to the County’s pre-SB 89 VLF set aside.”

18 11. Under the provisions of Revenue and Taxation Code § 97.70, subdivision (a)(1)(A), a
19 county is permitted to reduce payments to its ERAF by the amount of the countywide VLFAA.
20 Orange County is attempting to use this subdivision to reduce its payment to its ERAF by
21 improperly calculating VLFAA in a manner not authorized by statute.

22 12. The Board of Supervisors and the Auditor-Controller have conceded that if the
23 VLFAA is recalculated by the Auditor-Controller in the manner indicated, the County intends to
24 transfer additional property tax revenues to the County’s general fund and fail to make, in full, its
25 scheduled payments to its ERAF. The Board of Supervisors has stated that the local schools and
26 community colleges will not suffer because once the County has diverted the revenue, the State
27 will “backfill” the sums the County owes to the ERAF, pursuant to its constitutional obligations
28 to fund education under Proposition 98. Board President Campbell has declared that through its

1 maneuvers, the County has "create[d] a \$73 million obligation to the state."

2 13. Although there is a mechanism to provide funds to K-12 education to help ameliorate
3 the effects of Orange County's actions, no such mechanism exists for funds allocated to
4 Community Colleges. The State is legally obligated to backfill Orange County's ERAF
5 allocations to school districts and other K-12 schools because these entities receive continuous
6 appropriations pursuant to the Budget Act and constitutional funding requirements. However, the
7 funds due the Community Colleges are not continuously appropriated, so the State is not
8 obligated to backfill any shortfall in Community College funds. As a result of the ERAF funding
9 shortfall being created by the County's action improperly altering the VLFAA amount, the
10 portion of the County's ERAF earmarked for distribution to Community Colleges will be reduced
11 by between \$12 and \$15 million dollars in fiscal year 2011-2012. This shortfall will be passed
12 along to all of California's Community Colleges in the form of a reduced apportionment of funds.
13 The County's properly calculated VLFAA should be paid to into the ERAF so that the Chancellor
14 can include these funds when determining funding distributions to Community Colleges
15 statewide.

16 14. Moreover, the statutory provisions which require backfilling are designed to remedy
17 shortfalls that occur as a result of reduced tax collections in the ordinary course of events, *not*
18 from a county's illegal manipulation of its fiscal affairs. The County of Orange should not be
19 rewarded for its refusal to follow the law. If the Auditor-Controller is not restrained from
20 illegally and improperly calculating the VLFAA for Orange County, millions of dollars which are
21 required by law to be placed in the County's ERAF for use by K-12 schools in the County and
22 Community Colleges statewide will instead go to the County's general fund.

23 15. Venue is proper in that the Auditor-Controller is resident in Orange County.

24 **FIRST CAUSE OF ACTION**

25 **(Petition for Writ of Mandate)**

26 16. Plaintiffs and Petitioners incorporate by reference the allegations contained in
27 paragraphs 1 through 15.

1 17. The computation of Orange County's VLFAA without offset for VLF revenues
2 received by the County violates Revenue and Taxation Code section 97.70.

3 18. To the extent that it purports to create a \$73.5 million claim payable by the state to
4 Orange County's ERAF, the Auditor-Controller's refusal to follow California law violates the
5 California Constitution and principles of separation of powers by invading the powers of the
6 Legislature to authorize spending of state funds.

7 19. Plaintiff and petitioner Department of Finance has an immediate and direct interest
8 affected by this proceeding in that the Department has a statutory duty to conserve the fiscal
9 resources of the state and prevent improvidence in connection with the use of public funds.

10 20. Plaintiff and petitioner the Chancellor of the California Community Colleges has an
11 immediate and direct interest affected by this proceeding in that the Chancellor is charged with
12 collecting and distributing funds for California Community Colleges in accordance with the
13 budget approved by the Legislature, as well as advocating and protecting the vital educational
14 mission of the colleges.

15 21. Defendant and respondent Jan Grimes, as the Interim Auditor-Controller for the
16 County of Orange, has a clear, present, and ministerial duty to conform to the laws of the State of
17 California and to avoid violations of law.

18 22. Defendant and respondent Grimes also has a duty to follow the terms of Revenue and
19 Taxation Code section 97.70 and to compute Orange County's VLFAA based upon the last fiscal
20 year's VLFAA with the growth factor specified in the statute, not to improperly inflate the
21 VLFAA for purposes of misdirecting revenue that the Legislature has statutorily directed toward
22 Orange County schools and California Community Colleges. The Auditor-Controller's action
23 altering the County's VLFAA is in direct conflict with existing statutes and is therefore unlawful,
24 and Finance has a reasonable likelihood of success on the merits. As a matter of law,
25 respondents and defendants, and each of them, have no right to disregard state law and instead to
26 devise their own methodology for calculating VLFAA.

27 23. Plaintiffs and petitioners California Department of Finance and the Chancellor of the
28 California Community Colleges have no plain, speedy, and adequate remedy in the ordinary

1 course of law other than the relief sought in this action. There is no other legal remedy to prevent
2 or enjoin the Auditor-Controller from improperly calculating Orange County's VLFAA and,
3 consequently, failing to make scheduled payments to the County's ERAF.

4 24. Community Colleges statewide and education stakeholders in Orange County and
5 elsewhere will suffer irreparable harm if the Auditor-Controller is not restrained from undertaking
6 the illegal and improper adjustment of VLFAA as scheduled payments to the ERAF will not be
7 made in full as required by operation of law. The ability of the community colleges to function
8 will be diminished, with cuts to programming and a reduction in the number of students who can
9 be served during the 2011-2012 fiscal year.

10 25. There exists no administrative remedy which will result in preventing or enjoining the
11 illegal adjustment planned by the Auditor-Controller.

12 **SECOND CAUSE OF ACTION**

13 **(Complaint for Declaratory and Injunctive Relief)**

14 26. Plaintiffs and Petitioners incorporate by reference the allegations contained in
15 paragraphs 1 through 25.

16 27. In apparent response to the November 10, 2011 request of the Orange County Board
17 of Supervisors, the Auditor-Controller has acted and adjusted the semi-annual allocation of
18 VLFAA in contravention of the requirements of Revenue and Taxation Code section 97.70.

19 28. The Auditor-Controller has announced in the County's Comprehensive Annual
20 Financial Report that the allocation of the VLFAA in Orange County has been calculated in a
21 manner which does not reflect the offset of VLF funds received by the County.

22 29. As a result of the Auditor-Controller's erroneous calculation of VLFAA, the County
23 will fail to make full scheduled payments to its ERAF. The County believes that the State will
24 backfill these payments, and has publicly stated that its action has created a \$73.5 million
25 obligation payable by the State.

26 30. In fact, while the State is required to backfill the payments to the ERAF which are
27 allocated to K-12 schools because of constitutional funding requirements and the existence of
28 continuing appropriations to these recipients, the backfill payments will require time to process

1 and make, and the delay to the K-12 schools will result in damage to school programming and
2 services. Moreover, because funding to Community College districts are not the subject of
3 continuing appropriations under the Budget Act, the State is under no obligation to backfill
4 payments to these districts unless and until additional legislation is passed. Accordingly,
5 California Community Colleges will suffer a statewide reduction in expected funding for the
6 2011-2012 fiscal year if the Auditor-Controller is permitted to proceed in this manner.

7 31. As a result of the altered calculation of the VLFAA, an actual controversy has arisen
8 and now exists between the parties.

9 32. Plaintiffs and petitioners desire a declaration of their rights with respect to the
10 Auditor-Controller's use of a method for adjusting VLFAA in Orange County which does not
11 comport with applicable statutes or the Constitution.

12 33. Such a declaration is necessary and appropriate at this time to address this illegal
13 calculation which injures the rights of plaintiffs and petitioners and the schools of Orange County
14 and Community Colleges statewide.

15 34. Respondents and defendants, and each of them, is barred, as a matter of law, from
16 deviating from the methodology provided in Revenue and Taxation Code section 97.70 in
17 calculating VLFAA.

18 35. Therefore, petitioners and plaintiffs seek permanent injunctive relief directing the
19 Auditor-Controller to cease and desist from calculating Orange County's VLFAA in a manner
20 which fails to offset VLF funds received by the County in the manner described in Revenue and
21 Taxation Code section 97.70.

22 WHEREFORE, petitioners and plaintiffs the California Department of Finance and
23 Chancellor Dr. Jack Scott pray:

24 1. That a writ of mandate issue pursuant to Code of Civil Procedure section 1085
25 directing respondent Auditor-Controller of Orange County, or such other respondents who may
26 be named later, to calculate VLFAA for the County pursuant to the requirements of Revenue and
27 Taxation Code section 97.70, including an offset for the VLF funds previously received by the
28 County, and that the Auditor-Controller pay in full the scheduled ERAF contributions for this

1 fiscal year as required by law.

2 2. The Court issue a declaration that the Auditor-Controller may not, consistent with
3 law, calculate the annual VLFAA for the County in a manner other than that provided in Revenue
4 and Taxation Code section 97.70, and must offset VLF funds received by the County when doing
5 so.

6 3. The Court issue a permanent injunction prohibiting the Auditor-Controller from
7 adjusting the annual VLFAA for the County in a manner other than that provided in Revenue and
8 Taxation Code section 97.70, and requiring the Auditor-Controller to offset VLF funds received
9 by the County when calculating the VLFAA.


10 4. That petitioners recover their costs of suit in this proceeding; and,

11 5. For such other relief as the Court deems proper.

12
13 Dated: April 5, 2012

Respectfully Submitted,

14 KAMALA D. HARRIS
15 Attorney General of California
16 PETER A. KRAUSE
Supervising Deputy Attorney General

17 
18
19 ROSS C. MOODY
Deputy Attorney General.
20 *Attorneys for Petitioner*
21 *California Department of Finance and Dr.*
Jack Scott, Chancellor of the California
Community Colleges

22 SA2011103727
23 20583727.doc
24
25
26
27
28