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PROFESSIONAL ENGINEERS IN CALIFORNIA
5 GOVERNMENT and CALIFORNIA ASSOCIATION
OF PROFESSIONAL SCIENTISTS
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9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SACRAMENTO
11

12 PROFESSIONAL ENGINEERS IN
13 CALIFORNIA GOVERNMENT;
14 CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

15 Petitioners/Plaintiffs,

16 v.

17
18 ARNOLD SCHWARZENEGGER, Governor,
19 STATE OF CALIFORNIA; DEPARTMENT
OF PERSONNEL ADMINISTRATION;
20 STATE CONTROLLER JOHN CHIANG; and
DOES 1 THROUGH 20, INCLUSIVE

21 Respondents/Defendants.
22
23

CASE NO.

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

Date:
Time:
Dept:

24 **I. Introduction**

25 This Court's intervention is required at this time to prevent the illegal implementation of
26 a Governor's Executive Order calling for a furlough and related pay cut to various state
27 employees, including the professional engineers and professional scientists employed by the
28 State of California.

1 Two months ago, the Governor announced he would bypass collective bargaining and
2 attempt to have the Legislature approve a furlough plan by statute. With the Legislature not
3 taking up the Governor's furlough plan, the Governor now seeks through an executive order to
4 bypass not just collective bargaining, but also to bypass the Legislature - the entity which
5 possesses the salary setting function for state employees - in implementing a unilateral furlough
6 and pay cut. The law is clear that the Governor and the Department of Personnel Administration
7 cannot unilaterally and by executive fiat reduce the salaries payable to state employees and
8 cannot reduce their hours. The Governor and DPA lack the authority to implement this furlough
9 plan by executive order.

10 By this verified petition and complaint, Petitioners/Plaintiffs PROFESSIONAL
11 ENGINEERS IN CALIFORNIA GOVERNMENT and CALIFORNIA ASSOCIATION OF
12 PROFESSIONAL SCIENTISTS petition this Court for the issuance of a writ of mandate
13 pursuant to Code of Civil Procedure section 1085 and file this action for declaratory relief
14 pursuant to Code of Civil Procedure section 1060 by alleging as follows:

15 **II. Parties**

16 1. Petitioner/Plaintiff PROFESSIONAL ENGINEERS IN CALIFORNIA
17 GOVERNMENT (PECG) is, and at all times herein mentioned was, a nonprofit 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, State of California. PECG is the duly certified exclusive
20 collective bargaining representative of employees in State Bargaining Unit 9, the Professional
21 Engineers unit pursuant, to Government Code section 3520.5. PECG also is a supervisory
22 employee organization under Government Code section 3527 subdivision (c) in that it represents
23 members who are supervisory employees under subdivision (g) of Government Code section
24 3513. PECG represents approximately 13,000 state employees who would be covered by
25 Executive Order S-16-08. PECG and the affected employees represented by PECG are therefore
26 beneficially interested in Respondents/Defendants faithful performance of the legal duties at
27 issue in this case.

28 2. Petitioner/Plaintiff CALIFORNIA ASSOCIATION OF PROFESSIONAL

1 SCIENTISTS (CAPS) is, and at all times herein mentioned was, a nonprofit corporation
2 organized and existing under the laws of the State of California, with its principal place of
3 business in the County of Sacramento, State of California. CAPS is the duly certified exclusive
4 collective bargaining representative of employees in State Bargaining Unit 10, the Professional
5 Scientific unit, pursuant to Government Code section 3520.5. CAPS also is a supervisory
6 employee organization under Government Code section 3527 subdivision (c) in that it represents
7 members who are supervisory employees under subdivision (g) of Government Code section
8 3513. CAPS represents approximately 3,000 state employees who would be covered by
9 Executive Order S-16-08. CAPS and the affected employees represented by CAPS are therefore
10 beneficially interested in Respondents/Defendants faithful performance of the legal duties at
11 issue in this case.

12 3. Respondent/Defendant Governor ARNOLD SCHWARZENEGGER is the elected
13 Governor of the State of California. The Governor is the employer of state employees in
14 Bargaining Units 9 and 10 for the purposes of bargaining or meeting and conferring in good faith
15 under the Ralph C. Dills Act. (Gov. Code § 3513 (j).) The Governor is the employer of state
16 employed engineers and scientists excluded from bargaining for the purposes of meeting and
17 conferring under the Excluded Employee Bill of Rights. (Gov. Code § 3527 (e).) GOVERNOR
18 SCHWARZENEGGER is sued in his official capacity only.

19 4. Respondent/Defendant CALIFORNIA DEPARTMENT OF PERSONNEL
20 ADMINISTRATION (DPA) is, and at all times herein mentioned was, a department of the State
21 of California with the responsibility of managing the nonmerit aspects of the state's personnel
22 system and as serving as the Governor's designated representative for purposes of collective
23 bargaining with the responsibility to conduct negotiations and enter into collective bargaining
24 agreements with the exclusive bargaining representatives for state bargaining units under the
25 Ralph C. Dills Act and to meet and confer on matters relating to supervisory employer-employee
26 relations. (Gov. Code § 19815.2; Gov. Code § 3517 and § 3527.)

27 5. Respondent/Defendant STATE CONTROLLER JOHN CHIANG is a state
28 constitutional officer as the duly elected Controller of the State of California. (Cal. Const., art.

1 V, §11.) Among various other duties, the Controller shall superintend the fiscal concerns of the
2 state. The Controller shall audit all claims against the state and may audit the disbursement of
3 any state money for correctness, legality, and for sufficient provisions of law for payment. (Gov.
4 Code § 12410.) The Controller shall draw warrants on the Treasurer for the payment of money
5 directed by law to be paid out of the State Treasury; but a warrant shall not be drawn unless
6 authorized by law, and unless unexhausted specific appropriations by law are available to meet it.
7 (Gov. Code § 12440.) The Controller is sued in his official capacity only.

8 6. The true names and capacities of Respondents/Defendants named herein as DOES 1
9 through 20, inclusive, are unknown to Petitioners/Plaintiffs who therefore sue such
10 Respondents/Defendants by such fictitious names, and Petitioners/Plaintiffs will amend this
11 complaint to show their true names and capacities when the same have been ascertained.
12 Petitioners/Plaintiffs are informed and believe and thereon allege that each of the
13 Respondents/Defendants are in some manner responsible for the acts complained of herein.

14 **III. Venue**

15 7. Respondents/Defendants engaged in all of the acts alleged herein within the County
16 of Sacramento. Accordingly, venue in this County is proper.

17 8. Furthermore, the California Attorney General has an office within the City of
18 Sacramento, making Sacramento Country an appropriate venue. (Code of Civil Procedure §
19 401(1).)

20 **IV. The Governor's December 19, 2008 Executive Order**

21 9. Article III, section 3 of the Constitution of the State of California states: "The
22 powers of state government are legislative, executive and judicial. Persons charged with the
23 exercise of one power may not exercise either of the others except as permitted by this
24 Constitution."

25 10. Article V, section 1 of the Constitution of the State of California states: "The
26 supreme executive power of this State is vested in the Governor. The Governor shall see that the
27 law is faithfully executed."

28 11. Government Code section 12010 states in relevant part, "[t]he Governor shall

1 supervise the official conduct of all executive and ministerial officers.”

2 12. The Governor is authorized to issue directives, communicated verbally or by formal
3 written order, to subordinate executive officers concerning the enforcement of law. An executive
4 order is a formal written directive of the Governor by which interpretation, or the specification of
5 detail, directs and guides subordinate officers in the enforcement of a particular law. (63
6 Ops.Cal.Atty.Gen. 583 (1980), 1980 WL 96881 (Cal.A.G.).)

7 13. The Governor may not invade the province of the Legislature and is not
8 empowered, by executive order or otherwise, to amend the effect of, or to qualify the operation of
9 existing legislation. (*Lukens v. Nye* (1909) 156 Cal. 498, 503-504.)

10 14. On December 19, 2008, the Governor issued Executive Order S-16-08 (Executive
11 Order). (A true and correct copy of the Executive Order is attached hereto as “Exhibit A” and
12 incorporated herein as though fully set forth.)

13 15. In the Executive Order, among other items, the Governor orders the DPA to adopt a
14 plan to implement a “furlough” of represented state employees and supervisors for two days per
15 month beginning February 1, 2009 and ending June 31, 2010. Through this furlough employees
16 would have their hours reduced by two days per month. This reduction in hours would be
17 accompanied by a cut in pay equal to approximately ten percent (10%) of each employees salary.
18 The Executive Order says “a furlough will reduce current spending and immediately improve the
19 State’s ability to meet its obligations to pay for essential services of the State so as to not
20 jeopardize its residents’ health and safety in the current and next fiscal year.”

21 16. Respondents/Defendants rely upon Government Code section 3516.5 as the
22 authority for the Executive Order and the salary and hour cut that they seek to implement through
23 the Executive Order. Government Code section 3516.5 states:

24 “Except in cases of emergency as provided in this section, the employer shall give
25 reasonable written notice to each recognized employee organization affected by
26 any law, rule, resolution, or regulation directly relating to matters within the scope
27 of representation proposed to be adopted by the employer, and shall give such
28 recognized employee organizations the opportunity to meet and confer with the
administrative officials or their designated representatives as may be properly
designated by law.

1 In cases of emergency when the employer determined that a law, rule, resolution,
2 or regulation must be adopted immediately without prior notice or a meeting with
3 the recognized employee organization, the administrative officials or their
4 designated representatives as may be properly designated by law shall provide
such notice and opportunity to meet and confer in good faith at the earliest
practical time following adoption of such law, rule, resolution, or regulation.”

5 17. Government Code section 3516.5 is merely a provision regarding the state
6 employer’s obligation to provide notice and opportunity to meet and confer under the state
7 collective bargaining law over the impact of a law, rule, resolution or regulation related to
8 matters within the scope of representation. Section 3516.5 does not provide any statutory
9 authority to “furlough” state employees or otherwise implement a cut to their salaries or hours of
10 work.

11 18. Setting compensation for state employees is a legislative function. The Legislature
12 has provided that salaries for rank-and-file state employees and other terms and conditions of
13 employment shall be set through collective bargaining. (*Lowe v. Resources Agency* (1991) 1
14 Cal.App.4th 1140.)

15 19. Government Code section 19826 in relevant part states:

16
17 “(a) The department shall establish and adjust salary ranges for each class of
18 position in the state civil service subject to any merit limits contained in Article
19 VII of the California Constitution. The salary range shall be based on the
20 principle that like salaries shall be paid for comparable duties and responsibilities.
21 In establishing or changing these ranges, consideration shall be given to the
prevailing rates for comparable service in other public employment and in private
business. The department shall make no adjustments that require expenditures in
excess of existing appropriations that may be used for salary increase purposes.
The department may make a change in salary range retroactive to the date of
application for these changes.

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

25 20. Under Section 19826 subdivision (b), where an exclusive representative has been
26 selected, the DPA has no authority to change the salary. Since the Legislature has chosen not to
27 delegate this salary setting function to the DPA with respect to represented employees under the
28 Dills Act, the Legislature necessarily retains that role for itself. Government Code section 19826

1 expressly and unambiguously precludes the reduction of represented employee wages.

2 (*Department of Personnel Administration v. Greene* (1992) 5 Cal.App.4th 155.)

3 21. Government Code section 19851 states in relevant part:

4 “It is the policy of the state that the workweek of the state employee shall be 40
5 hours, and the workday of state employees eight hours, except that workweeks
6 and workdays of a different number of hours may be established in order to meet
7 the varying needs of the different state agencies.”

8 22. Government Code section 19852 states:

9 “When the Governor determines that the best interests of the state would be
10 served thereby, the Governor may require that the 40-hour workweek established
11 as the state policy in Section 19851 shall be worked in four days in any state
12 agency or part thereof.”

13 23. The Professional Engineers in California Government is the exclusive
14 representative of state employees in Bargaining Unit 9. The California Association of
15 Professional Scientists is the exclusive representative of state employees in Bargaining Unit 10.
16 The pay of these represented employees and the hours of all employees may not be unilaterally
17 cut as proposed by the Governor and his DPA as proposed in the Governor’s Executive Order.
18 For employees excluded from collective bargaining, the hours may not be reduced by the
19 Governor and his DPA as proposed in the Governor’s Executive Order, therefore the salaries
20 may not be reduced.

21 24. Respondents/Defendants have violated and continue to violate provisions of the
22 Constitution of the State of California and the statutes of the state by enacting and enforcing
23 Executive Order S-16-08. This Executive Order violates the constitutional principles of the
24 separation of powers and is directly contrary to existing law by reducing the pay and by reducing
25 the hours of state employees.

26 **V. The Controller Has a Duty Not to Decrease Salaries as Called for in the
27 December 19, 2008 Executive Order**

28 25. The State Controller has the power and the duty to ensure that the decisions of an
agency that affect expenditures are within the fundamental jurisdiction of the agency. The

1 Legislature has specifically provided that “a warrant shall not be drawn unless authorized by
2 law...” (Gov. Code § 12440.) An attempt by an administrative agency to exercise control over
3 matters which the Legislature has not seen fit to delegate to it is not authorized by law and in
4 such case the agency’s actions can have no force or effect. (*Tirapelle v. Davis* (1993) 20
5 Cal.App.4th 1317, 1335.)

6 26. Here, the Governor and DPA’s proposed furlough conflicts with Government Code
7 section 19826 subdivision (b). Where an exclusive representative has been selected, the DPA
8 has no authority to change the salary. Since the Governor and the DPA have no authority to
9 implement the furlough, the furlough has no force or effect and the Controller has a duty to
10 ensure that salaries not be reduced as a result of the proposed furlough.

11
12 **FIRST CAUSE OF ACTION**
13 **(Petition for Writ of Mandate)**

14 27. Petitioners/Plaintiffs PEGC and CAPS hereby incorporate by reference all of the
15 foregoing paragraphs as if fully set forth herein.

16 28. On December 19, 2008 the Governor issued Executive Order S-16-08 which
17 instructs the DPA to implement a furlough and pay cut to state employees to reduce current
18 spending.

19 29. The Executive Order violates the Constitution of the State of California, Article III,
20 section 3 and Article V, section 1. The Executive Order violates the doctrine of separation of
21 powers and the Governor’s obligation to uphold the laws of the State by seeking to perform the
22 legislative function of salary setting in conflict with statute and by cutting the hours of state
23 employees in conflict with the statutes setting forth the hours of state employees. The Executive
24 Order is in conflict with existing statute and is unlawful.

25 30. Petitioners/Plaintiffs PEGC and CAPS and their members have an immediate and
26 direct interest affected by this proceeding in that employees have a right not to be illegally
27 furloughed and have a right not to have their pay cut as proposed by the Governor’s Executive
28 Order.

1 that they violate the separation of powers doctrine of the California Constitution and the salary
2 setting provisions of Government Code section 19826 and the hours of work provisions of
3 California law found at Government Code section 19851. Respondents/Defendants Governor
4 and DPA are without the authority to furlough state employed engineers and scientists by
5 reducing their hours and are without the authority to cut the pay of state employed engineers and
6 scientists.

7 40. As a result of this Executive Order, an actual controversy has arisen and now exists
8 between Petitioners/Plaintiffs and Respondents/Defendants regarding the furlough of state
9 employed engineers and scientists and the cut of their work hours and salary reduction.

10 41. Petitioners/Plaintiffs PEGG and CAPS desire a declaration of their rights and the
11 rights of their affected members with respect to the Governor and DPA's intent to furlough state
12 employed engineers and scientists through an unlawful executive order and the rights of their
13 members to not have their salaries reduced and the right to not have their hours worked reduced
14 by this unlawful Executive Order.

15 42. Such a declaration is necessary and appropriate at this time in order to avoid
16 implementation of these illegal provisions which would adversely impact the rights of
17 Petitioners/Plaintiffs. Respondents/Defendants actions will result in injury and harm to state
18 employees including the denial of the protection of the laws regarding their salaries and their
19 hours of work. The loss of such rights cannot be compensated fully by damages or other form of
20 legal relief.

21 43. Because the Executive Order is in direct conflict with existing statutes and is
22 therefore unlawful, Petitioners/Plaintiffs are entitled as a matter of law not to have their salaries
23 and hours cut, therefore Petitioners/Plaintiffs have a reasonable likelihood of success on the
24 merits regarding the petition for writ of mandamus and declaratory relief cause of action.

25 44. Therefore, Petitioners/Plaintiffs seek temporary, preliminary and permanent
26 injunctive relief directing Respondents/Defendants to cease and desist taking action to furlough
27 state employed engineers and scientists by reducing their hours and reducing their pay under an
28 unlawful Executive Order which conflicts with statute.

1 **PRAYER**

2 WHEREFORE, Petitioners/Plaintiffs respectfully pray for judgment against
3 Respondents/Defendants, and each of them, as follows:

4 On Petitioners/Plaintiffs' First Cause of Action for Writ of Mandate:

5 1. That the Court issue a peremptory writ in the first instance commanding the
6 Governor and DPA to comply with their mandatory duties under Article III, section 3 and Article
7 V, section 1 of the California Constitution and Government Code sections 19826 and 19851 and
8 to set aside the portions of the Governor's Executive Order S-16-08 calling for a furlough and
9 salary reduction for state employed engineers and scientists in that the Executive Order is
10 unlawful and illegal.

11 2. That the Court issue a peremptory writ in the first instance commanding
12 Respondent/Defendant Controller Chiang to ensure that salaries not be reduced as a result of the
13 illegal furlough.

14 3. For costs of suit incurred in this action and for such other relief as the Court deems
15 proper.

16 On Petitioners/Plaintiffs' Second Cause of Action for Declaratory and Injunctive Relief:

17 1. That the Court issue a declaration that the portions of the Governor's Executive
18 Order S-16-08 calling for a furlough and salary reduction for state employed engineers and
19 scientists are unlawful and illegal in that the Governor and DPA have violated and continue to
20 violate with the provisions of Article III, section 3 and Article V, section 1 of the California
21 Constitution and Government Code sections 19826 and 19851 by calling for and implementing a
22 furlough and salary reduction for state employed engineers and scientists.

23 2. That the Court issues a preliminary and permanent injunction directing the
24 Governor, DPA and the Controller to cease and desist taking action to furlough state employed
25 engineers and scientists by reducing their hours and reducing their pay under an unlawful
26 Executive Order.

1 3. For costs of suit incurred in this action and for such other relief as the Court deems
2 proper.

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4 Dated: December 22, 2008


GERALD JAMES
Attorney for Petitioners PECG and CAPS

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VERIFICATION

I, Bruce J. Blanning, am the Executive Director to the Professional Engineers in California Government, a Petitioner and Plaintiff in the instant action.

I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive Declaratory Relief and know its contents. All facts alleged in the petition and complaint are true of my own personal knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this affidavit was executed on this 22st day of December, 2008 at Sacramento, California.


BRUCE J. BLANNING

