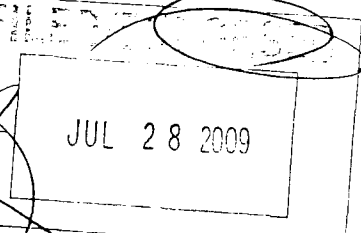


ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): K. William Curtis (SBN 95753) / Will M. Yamada (SBN 226669) California Department of Personnel Administration 1515 S Street, N. Bldg., Ste 400, Sacramento, CA, 95811-7528 TELEPHONE NO.: 916-324-0512 FAX NO.: 916-323-4723 ATTORNEY FOR (Name): California Department of Personnel Administration		FOR COURT USE ONLY 	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 Ninth Street MAILING ADDRESS: CITY AND ZIP CODE: Sacramento, CA, 95814 BRANCH NAME:		By: _____ CASE NUMBER: 342009-00054223 JUDGE: DEPT.:	
CASE NAME: DPA v. PECG			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	

All five (5) items below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental /Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 1800 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties d. Large number of witnesses
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states or countries, or in a federal court
 c. Substantial amount of documentary evidence f. Substantial post-judgment judicial supervision

3. Type of remedies sought (check all that apply):
 a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): 1) Injunctive Relief (CCP § 1281.8(b)); and 2) Declaratory Relief (CCP § 1060)

5. This case is is not a class action suit.

Date: July 28, 2009

Will M. Yamada, Attorney at Law

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 201.8.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

COPY

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT,
and DOES 1 through 50, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CALIFORNIA DEPARTMENT OF PERSONNEL
ADMINISTRATION

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California, County of Sacramento
720 Ninth Street, Sacramento, CA, 95814

CASE NUMBER:
(Número del Caso)

34-2009-00054223

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
K William Curtis, 1515 S Street, N. Bldg, Ste 400, Sacramento, CA, 95811, 916-324-0512

DATE:
(Fecha)

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

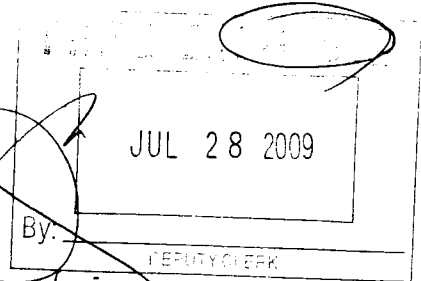
[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

1 K. WILLIAM CURTIS
Chief Counsel, State Bar No. 095753
2 WARREN C. STRACENER
Deputy Chief Counsel, State Bar No. 127921
3 LINDA MAYHEW
Assistant Chief Counsel, State Bar No. 155049
4 WILL M. YAMADA
Labor Relations Counsel, State Bar No. 2226669
5 DEPARTMENT OF PERSONNEL ADMINISTRATION
1515 S Street, North Building, Suite 400
6 Sacramento, CA 95811-7258
Telephone: (916) 324-0512
7 Facsimile: (916) 323-4723
E-mail: willyamada@dpa.ca.gov
8



34-2009-00054223

9 DAVID W. TYRA, State Bar No. 116218
KRISTIANNE T. SEARGEANT, State Bar No. 245489
10 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
A Law Corporation
11 400 Capitol Mall, 27th Floor
Sacramento, California 95814
12 Telephone: (916) 321-4500
Facsimile: (916) 321-4555
13 E-mail: dtyra@kmtg.com
14

Department
Assignments
Case Management 39
Law and Motion 54
Minors Compromise 22

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

15 Attorneys for Plaintiff
CALIFORNIA DEPARTMENT OF PERSONNEL
16 ADMINISTRATION

17 SUPERIOR COURT OF CALIFORNIA

18 COUNTY OF SACRAMENTO

19 CALIFORNIA DEPARTMENT OF
PERSONNEL ADMINISTRATION,

CASE NO.

21 Plaintiff,

**COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

22 v.

23 PROFESSIONAL ENGINEERS IN
CALIFORNIA GOVERNMENT, and
24 DOES 1 through 50, inclusive,

26 Defendants.
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Plaintiff CALIFORNIA DEPARTMENT OF PERSONNEL ADMINISTRATION

hereby allege as follows:

1. Over plaintiff's objection, defendants, and each of them, have improperly invoked a provision in the expired Memorandum of Understanding seeking to arbitrate their grievance over the Governor and DPA's adoption and implementation of the two furlough days per month. Defendants seek to employ this expired arbitration provision to arbitrate the question of whether the Governor was authorized pursuant to an Executive Order declaring a fiscal emergency to implement a two day furlough per month for all represented employees including Bargaining Unit 9. Defendants seek to arbitrate this issue despite the fact that defendants have already litigated and lost in Sacramento Superior Court the exact same issue and have in fact appealed this decision to the Third District Court of Appeals. By this action, plaintiff seeks to enjoin this arbitration due to the pendency of litigation between the parties on the very same issue before the California Third District Court of Appeals. In an effort to prevent duplicative efforts and the possibility of conflicting rulings, plaintiff requests injunctive relief to prevent irreparable harm as well as to prevent the frustration of plaintiff's rights to a meaningful and appropriately focused arbitration between the parties over this issue.

GENERAL ALLEGATIONS
(PARTIES)

2. Plaintiff, CALIFORNIA DEPARTMENT OF PERSONNEL ADMINISTRATION ("DPA") is a California state agency statutorily created for the purposes of managing the non-merit aspects of the state's personnel system. (Gov. Code § 19815.2.)

3. Plaintiff represents the Governor as the "employer" in all non-merit aspects of state employment. Plaintiff has jurisdiction over the state's financial relationship with the State employees, including matters of salary, layoffs and non-disciplinary demotions. For purposes of collective bargaining, the director of the DPA is designated as the Governor's representative to meet and confer with recognized employee organizations under the Ralph C. Dills Act. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1322-1323.)

1 12. In response to the unanticipated budget deficit, the Governor, on
2 November 6, 2008, issued a special session proclamation calling for an emergency session of the
3 Legislature to immediately address this statewide crisis. (Copy of Governor's 11-06-08 Special
4 Session Proclamation, attached hereto as **Exhibit E** and incorporated herein by reference.) On
5 the same day, the Governor also issued a letter to all state workers informing them of some of the
6 plans he was proposing in order to save state funds which would impact state workers. (Copy of
7 Governor's 11-6-08 letter to state employees, attached hereto as **Exhibit F** and incorporated
8 herein by reference.) In the letter, the Governor also informed state employees he would be
9 convening the Legislature to attempt to seek a comprehensive solution to the entire budget crisis.

10 13. The Legislature convened in special session in or about early November of
11 2008 in an effort to resolve the pending budget crisis. No resolution was reached. On December
12 1, 2008, the Governor issued a proclamation addressing the deepening financial crisis and the
13 likelihood that "this fiscal year's deficit will cause the State to miss payroll and school payments
14 at the beginning of 2009." (Copy of Governor's 12-1-08 Proclamation, attached hereto as
15 **Exhibit G** and incorporated herein by reference.) In this proclamation, the Governor also
16 reconvened the Legislature for another special session to address the fiscal emergency. The
17 Department of Finance also recalculated its estimates and found revenues for the 2008-2009 fiscal
18 year were expected to be \$14.8 billion below the estimate at the time the 2008-2009 budget was
19 enacted. The deficit had increased by more than \$3 billion in the span of approximately two
20 months. The State Department of Finance also determined the State's inability to reach a solution
21 on the State's deficit had caused the deficit to increase and the State would now have a \$41.6
22 billion deficit by the end of the 2009-2010 fiscal year. As a result of the devastating budget
23 deficit, the conclusion reached was that the State will run out of funds by February 2009.

24 14. Faced with a financial catastrophe of unprecedented proportions, and the
25 fact that a solution acceptable to both the Governor and the Legislature was proving elusive, the
26 Governor, by virtue of his constitutional and statutory authority, issued an Executive Order on
27 December 19, 2008, directing the implementation of a two-day a month furlough plan for all state
28 employees commencing in February 2009 and ending in June 2010. Based on the proclaimed

1 fiscal emergency, the Governor issued the subject Executive Order without meeting and
2 conferring in advance with public employee unions pursuant to Government Code section 3516.5.
3 (Copy of 12-19-08 Executive Order S-16-08, referred to hereafter as “the Executive Order”,
4 attached hereto as **Exhibit H** and incorporated herein by reference.) In the Executive Order, the
5 Governor reiterated the fact that absent immediate action, the State will run out of cash in
6 February of 2009 and will not be able to meet its obligations. (*Id.*)

7 15. On December 19, 2008, the California State Controller, John Chiang,
8 released a statement urging the Governor and Legislature to reach a resolution in order to prevent
9 the State from running out of cash in late February. (Copy of 12-19-08 Chiang Press Release,
10 attached hereto as **Exhibit I** and incorporated herein by reference.) On December 22, 2008, the
11 State Controller sent a letter to the Governor and the Legislature, reiterating the severity of the
12 fiscal crisis the State was facing. (Copy of 12-22-08 Letter from Chiang, attached hereto as
13 **Exhibit J** and incorporated herein by reference.) In this letter, Controller Chiang stated,

14 [I]f current projections hold true, the State is less than seventy days
15 from running out of cash. Worse, my office’s analyses indicate
16 there will be no shelter from the storm as the State’s cash position
17 will remain negative throughout the remainder of the fiscal year.
18 As I indicated during the recent Legislative Budget Session, the
19 failure of the Governor and the Legislature to quickly arrive at an
20 agreement to responsibly address the State’s \$41 billion budget
21 crisis would begin a cascading series of regrettable actions
22 necessary to conserve the State’s dwindling case reserves. (*Id.*)

23 16. On January 13, 2009, the Director of the Department of Finance, Michael
24 Genest, issued a special report titled “California at the Brink of Financial Disaster” detailing the
25 State’s financial crisis and the immediate harm that will be caused when the State runs out of
26 cash. (Copy of “California at the Brink of Disaster”, attached hereto as **Exhibit K** and
27 incorporated herein by reference.)¹

28 ¹ On February 19, 2009, the Legislature agreed on a new State budget which, in relevant part,
included a spending reduction of \$1.4 billion in state employee payroll over the next 17 months. The
budget agreement specified that this reduction will be achieved through a combination of furloughs,
layoffs, elimination of two state holidays, and overtime reform. Despite the budget agreement, state
employees continue to be subject to the furloughs implemented per the Governor’s Executive Order until
and unless labor agreements are entered into between the State and employee organizations.

1 17. Within less than one month following the Governor's issuance of the
2 Executive Order, state employee organizations filed suit in Sacramento County Superior Court
3 challenging the Governor's authority to furlough state employees.

4 18. On December 22, 2008, the first petition for writ of mandate and complaint
5 for injunctive and declaratory relief ("petition") was filed in Sacramento County Superior Court
6 by Defendant PECG and California Association of Professional Scientists ("CAPS"), Case No.
7 2008-80000126, against the Governor and Department of Personnel Administration. PECG and
8 CAPS represent, and filed their petitions on behalf of, all state employees in Bargaining Units 9
9 and 10. (Copy of December 22, 2008, Petition for Writ of Mandate, attached hereto as **Exhibit L**
10 and incorporated herein by reference.)

11 19. On January 5, 2009, a second petition was filed in Sacramento County
12 Superior Court by petitioner California Attorneys, Administrative Law Judges and Hearing
13 Officers in State Employment ("CASE"), Case No. 2009-80000134, against the Respondents.
14 CASE represents, and filed its petition on behalf of, all state employees in Bargaining Unit 2.

15 20. On January 7, 2009, a third petition was filed in Sacramento County
16 Superior Court by Service Employees International Union, Local 1000 ("SEIU"), Case No. 2009-
17 80000135, against Respondents. SEIU represents, and filed its petition on behalf of, all state
18 employees in Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21.

19 21. On January 12, 2009, a fourth petition was filed in Sacramento County
20 Superior Court by California Correctional Peace Officers Association ("CCPOA"), Case No. 34-
21 2009-80000137, against Respondents. CCPOA represents, and filed its petition on behalf of, all
22 state employees in Bargaining Unit 6.

23 22. On January 23, 2009, a fifth petition was filed in Sacramento County
24 Superior Court by CDF Firefighters ("CDFF"), Case No. 34-2009-00032732, against
25 Respondents. CDFF represents, and filed its petition on behalf of, all state employees in
26 Bargaining Unit 8.

27 23. On January 23, 2009, a sixth petition was filed in Sacramento County
28 Superior Court by California Association of Psychiatric Technicians ("CAPT"), Case No. 34-

1 2009-80000148, against Respondents. CAPT represents, and filed its petition on behalf of, all
2 state employees in Bargaining Unit 18. The CAPT petition has not yet been served on
3 Respondents.

4 24. On January 9, 2009, the parties in Case No. 2008-80000126
5 (PECG/CAPS), Case No. 2009-80000134 (CASE) and 2009-80000135 (SEIU) appeared and
6 stipulated that a hearing on the merits in those cases would be heard by Judge Patrick Marlette on
7 January 29, 2009. On January 29, 2009, the Court heard oral argument on Case Nos. 2008-
8 80000126, 2009-80000134 and 2009-80000135. All parties were present and appeared at the
9 hearing. On January 30, 2009, Judge Marlette issued an amended and final order denying all of
10 Petitioners' writs and entering judgment for the Respondents. Judge Marlette's Final Order states
11 in relevant part:

12 The Court accordingly rules that, with regard to the issues raised by
13 all petitioners regarding the Governor's authority to make the
14 challenged order, the petitions for writ of mandate are denied and
15 judgment shall be entered for the defendants (respondents) on the
16 complaints for declaratory relief. This ruling applies to both state
17 employees represented by all of the petitioners under the Dills Act
and to those state employees represented by petitioners PECG and
CAPS who are excluded from the Dills Act by law, as the
authorities on which the Court has relied in finding that the
Governor has the authority to take the challenged action apply to
both classes of employees.

18 The court also found that the provisions of the Governor's Executive Order constitute "a rule in
19 that they establish a standard of *general application to state employees*." (Copy of Judge
20 Marlette's 1-30-09 Amended Final Ruling, attached hereto as **Exhibit M** and incorporated herein
21 by reference.)

22 25. On February 3, 2009 PECG filed a Notice of Appeal of Judge Marlette's
23 January 30, 2009 ruling. (Copy of PECG's Notice of Appeal, attached hereto as **Exhibit N** and
24 incorporated herein by reference.) The other labor organizations involved in the January 30, 2009
25 ruling have also filed appeals to the Judge Marlette's ruling. PECG's original opening brief was
26 filed and served on DPA on July 17, 2009. (Copy of PECG's Opening Briefing, attached hereto
27 as **Exhibit O** and incorporated herein by reference.)² Respondent, Governor and DPA's

28 ² In lieu of an error in the transcripts included in the Joint Appendix, the Third District Court of Appeals has ordered

1 opposition is scheduled to be filed 30 days after PECG re-files its opening brief.

2 **B. The Present Dispute Between the Parties.**

3 26. On or about February 20, 2009, PECG filed a fourth level labor grievance
4 with the DPA on behalf of all of its Unit 9 members pertaining to the two day furlough program.
5 (Copy February 20, 2009 Grievance, attached hereto as **Exhibit P** and incorporated herein by
6 reference.)

7 27. On February 23, 2009, DPA sent PECG a letter acknowledging receipt of
8 their grievance. (Copy of February 23, 2009 Letter, attached hereto as **Exhibit Q** and
9 incorporated herein by reference.)

10 28. On March 3, 2009, DPA, pursuant to the authority granted it to administer
11 state employee relations, denied PECG's grievance. (Copy of March 3, 2009 DPA Denial,
12 attached hereto as **Exhibit R** and incorporated herein by reference.)

13 29. On or about March 18, 2009, PECG filed an amended grievance with DPA
14 on behalf of all of its members pertaining to the two day furlough program. (Copy of March 18,
15 2009, PECG Amended Grievance, attached hereto as **Exhibit S** and incorporated herein by
16 reference.)

17 30. On April 2, 2009, DPA, pursuant to the authority granted it to administer
18 state employee relations denied PECG's amended grievance. (Copy of April 2, 2009, DPA
19 Denial, attached hereto as **Exhibit T** and incorporated herein by reference.)

20 31. On or about April 14, 2009, PECG sent a Notice to DPA requesting
21 arbitration of the two day furlough grievance. (Copy of April 14, 2009, PECG Request for
22 Arbitration, attached hereto as **Exhibit U** and incorporated herein by reference.)

23 32. On or about April 30, 2009, Will M. Yamada, an attorney with DPA's legal
24 division sent PECG a letter advising PECG he would be handling the matter and all future
25 correspondence should be directed to him. In this letter Mr. Yamada specifically reserved all
26

27
28 the transcript be corrected and that Appellant's opening brief be refiled within 15 days after the corrected transcript.
Accordingly, appellant PECG will file a revised opening brief.

1 arbitration defenses including timeliness and arbitrability. (Copy of April 30, 2009, DPA Letter,
2 attached hereto as **Exhibit V** and incorporated herein by reference.)

3 33. On or May 21, 2009, Gerald James the attorney for PECG telephoned Mr.
4 Yamada from DPA and asked about selecting an arbitrator for the PECG grievance. Mr. Yamada
5 informed Mr. James that DPA had concerns about whether PECG's grievance was arbitrable in
6 lieu of the Sacramento Superior Court decision and the pending appeal. Mr. Yamada informed
7 Mr. James he would provide a formal response the following week.

8 34. On May 29, 2009, DPA sent PECG a letter informing them that they
9 would neither agree or refuse to arbitrate until after a decision was rendered in the pending Third
10 District Court of Appeals case pertaining to the furloughs. DPA also reserved all defenses
11 including arbitrability and timeliness. (Copy of May 29, 2009 DPA Letter, attached hereto as
12 **Exhibit W** and incorporated herein by reference.)

13 35. On July 27, 2009, nearly two months later, Mr. James telephoned Mr.
14 Yamada and again asked whether DPA would be willing to arbitrate PECG's two day furlough
15 grievance. Mr. Yamada informed Mr. James that DPA was maintaining its position from the May
16 29, 2009 letter. Mr. James informed Mr. Yamada that PECG would be likely be filing a petition
17 to compel arbitration in response to DPA's position.

18 **FIRST CAUSE OF ACTION**

19 **(Injunctive Relief pursuant to CCP § 1281.8(b))**

20 36. Plaintiff refers to paragraph 1 through 35 above and by such reference
21 incorporates the same herein as though realleged in full.

22 37. California Code of Civil Procedure section 1281.8(b) provides in part that
23 "a party to an arbitration agreement may file ... an application for a provisional remedy in
24 connection with an arbitrable controversy, but only upon the ground that the award to which the
25 applicant may be entitled may be rendered ineffectual without provisional relief."

26 38. The arbitration award to which DPA is entitled is one consistent with
27 Sacramento Superior Court's January 30, 2009 ruling. PECG has admitted and conceded to the
28 Superior Court's jurisdiction by having filed and litigated the matter on its merits. PECG then

1 filed an appeal to the Third District Court of Appeals. The Appeal is in the briefing stage and
2 PECG has already filed an opening brief.³ (**Exhibit O**.) Therefore, plaintiff is entitled to have
3 the Third District Court of Appeal render a final decision on PECG's appeal and to then have an
4 arbitrator render a decision on this same issue consistent with the precedent established by the
5 Third District Court of Appeal. (See *Carey v. Westinghouse Electric Corp.* (1964) 375 U.S. 262,
6 272.)

7 39. PECG is attempting to circumvent the Sacramento Superior Court's
8 decision and the authority of the Third District Court of Appeals forthcoming decision by
9 concurrently litigating the same issue before an arbitrator. DPA has already offered to revisit
10 PECG's request to arbitrate this matter after a decision is rendered by the Third District Court of
11 Appeals. PECG insists on litigating this matter on two different fronts at the same time to have
12 two different opportunities to prevail and also creating a significant risk of conflicting decisions.
13 For this very reason, California Code of Civil Procedure section 1281.2, subdivision (c)
14 authorizes the Court to refuse to enforce arbitration agreements when there is a pending action in
15 an appropriate forum, which may lead to "conflicting rulings on common issues of law or fact,"
16 or to stay arbitral proceedings when the issues to be heard in arbitration is an issues which is the
17 subject of a pending action between the same parties and a determination in such a pending action
18 may resolve the issue or render arbitration unnecessary.

19 40. If an injunction does not issue enjoining PECG's demand for arbitration
20 described above, plaintiff will suffer significant harm because the arbitration proceeding is
21 duplicative, repetitious, and a waste of the parties' resources in light of the extensive litigation
22 pending before the Third District Court of Appeals on the same issue. (See *Woodlawn Cemetery*
23 *v. Local 365, Cemetery Workers and Greens Attendants Union* (2nd Cir. 1991) 930 F.2d 154,
24 156.) Plaintiff will suffer significant harm were it forced to re-litigate in arbitration the very
25 issues it is already litigating extensively before the Third District Court of Appeals. Plaintiff
26 already has spent considerable time and money litigating this very issue before the Third District

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28 ³ As discussed above, in lieu of the mistake in the reporter's transcript, PECG must file an amended opening brief
within 15 days of when the corrected transcript is filed with the Appellate Court.

1 Court. The parties have already participated in a hearing on the merits of PECG's case before the
2 Sacramento Superior Court. Plaintiff is now continuing to expend time and money on this issue
3 in the appeal PECG is pursuing in the Third District. Without an injunction, the State would be
4 required to duplicate its efforts in an arbitration proceeding. The expenses spent on the
5 arbitration could not be recouped. The State also stands to suffer from irreparable harm by being
6 faced with potentially conflicting decisions, one from the arbitrator and one from Third District
7 Court of Appeal on the fundamental issue of whether the Governor was authorized to issue an
8 Executive Order adopting a two day furlough per month plan in response to the State's fiscal
9 crisis.

10 41. Plaintiff is likely to succeed on the merits of this action as they have
11 already prevailed in Sacramento Superior Court on the question of the Governor's Executive
12 Authority to order and implement furloughs on state represented employees.

13 42. Plaintiffs have no adequate remedy at law absent injunctive relief. If an
14 injunction does not issue, plaintiff will be forced into an arbitration prematurely without the
15 benefit of the Third District Court of Appeals resolution of the underlying issue to be arbitrated.
16 Although the State has objected to the arbitrability of this issue and has even offered to revisit this
17 issue after the Third District Court of Appeals has rendered a decision, PECG is now threatening
18 to file a Petition to Compel Arbitration. In contrast, defendants will not be harmed by the
19 issuance of the requested injunctive relief because they will still have the ability to litigate their
20 position with respect to the furloughs as the briefing before the Third District Court of Appeals
21 has already commenced. (See Code of Civ. Proc. § 1281.8(b); *Davenport v. Blue Cross* (1997)
22 52 Cal.App.4th 435, 450; *Wolley v. Embassy Suites* (1991) 227 Cal.App.3d 1520.)

23 **SECOND CAUSE OF ACTION**

24 **(Declaratory Relief CCP § 1060)**

25 43. Plaintiff hereby refers to paragraphs 1 through 42, inclusive, and by such
26 references incorporates the same herein as though realleged in full.

27 44. An actual controversy has arisen and now exists between plaintiff and
28 defendants, and each of them, concerning their respective rights and obligations. Plaintiff

1 disagrees with defendants' assertions that their grievance pertaining to the two day furloughs is an
2 arbitral issue in lieu of the pending appeal before the Third District Court of Appeals. It is the
3 State's position that the Third District Court of Appeal is the proper, and exclusive, forum for
4 addressing the legality of the Governor's Executive Order.

5 45. Plaintiff seeks a ruling from this Court that an arbitration should not take
6 place between the parties on the question of whether the Governor's Executive Order
7 implementing the furloughs was proper until such time as the Third District Court of Appeals has
8 adjudicated all issues on the same subject filed by PECG against plaintiff.

9 46. It is plaintiff's position that no arbitrator should hear this matter which is
10 currently pending before the Third District Court of Appeals. At a minimum, DPA requests this
11 Court issue a stay of any arbitration on this matter until the Third District Court of Appeals has
12 issued a ruling on whether the Governor's Executive Order adopting the furloughs was lawful.

13 **PRAYER**

14 WHEREFORE, PLAINTIFF prays judgment be entered against Defendant, as
15 follows:

16 1. For temporary, preliminary, and permanent injunctive relief against
17 defendants, and each of them, enjoining defendants, and any and all persons acting by, under, or
18 in concert with them, from seeking to arbitrate any claim relating to the adoption and
19 implementation of the furloughs;

20 2. Alternatively, for an order staying any arbitration proceeding relating to the
21 aforementioned subject of furloughs until all matters filed with the Third District Court of
22 Appeals on this subject have been fully adjudicated;

23 3. For declaratory relief that plaintiff is not bound to arbitrate the issue of
24 furloughs at least until such issue has been fully resolved by the Third District Court of Appeals
25 through the appeal filed by defendants against plaintiff.

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- 4. For costs of suit incurred herein;
- 5. For such costs and further relief as the Court deems just and proper.

Dated: July 28, 2009

Respectfully submitted,

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Chief Counsel

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By:



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