

COPY

1 LINDA LYE (SBN 215584)
2 DANIELLE LEONARD (SBN 218201)
3 Altshuler Berzon LLP
4 177 Post Street, Suite 300
5 San Francisco, California 94108
6 Telephone: (415) 421-7151
7 Facsimile: (415) 362-8064
8 E-Mail: llye@altshulerberzon.com
9 dleonard@altshulerberzon.com

6 GERALD JAMES (SBN 179258)
7 455 Capitol Mall, Suite 501
8 Sacramento, CA 95814
9 Telephone: (916) 446-0400
Facsimile: (916) 446-0489
E-mail: gjames@pecg.org

10 Attorneys for Petitioner/Plaintiff
11 PROFESSIONAL ENGINEERS IN
12 CALIFORNIA GOVERNMENT

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **COUNTY OF ALAMEDA**

15 PROFESSIONAL ENGINEERS IN CALIFORNIA
16 GOVERNMENT,

17 Petitioner/Plaintiff,

18 v.

19 ARNOLD SCHWARZENEGGER, Governor of the
20 State of California; DEBBIE ENDSLEY as Director of
21 the California Department of Personnel Administration;
22 JOHN CHIANG, State Controller of the State of
23 California; RANDALL IWASAKI as Director of the
24 California Department of Transportation; MARY D.
25 NICHOLS as Chairwoman of the Air Resources Board;
26 LESTER SNOW as Director of the Department of
27 Water Resources; DOROTHY RICE as Executive
28 Director of the State Water Resources Control Board;
RON DIEDRICH as Acting Director of the Department
of General Services; JOHN DUNCAN as Director of
the Department of Industrial Relations; MAZIAR
MOVASSAGHI as Acting Director of the Department
of Toxic Substances Control; BRIDGETT LUTHER as
Director of the Department of Conservation; MARK
HORTON as Director of the Department of Public
Health; KAREN DOUGLAS as Chairwoman of the

**ENDORSED
FILED
ALAMEDA COUNTY
JAN 21 2010
CLERK OF THE SUPERIOR COURT
By M. Hayes
Deputy**

Case No. 10494800

**VERIFIED PETITION FOR
WRIT OF MANDATE AND
COMPLAINT**

Dept:
Judge:

Action Filed: January 21, 2010

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Energy Resources Conservation and Development Commission (also known as the California Energy Commission); RUTH COLEMAN as Director of the Department of Parks and Recreation; PAUL THAYER as Executive Officer of the State Lands Commission; BRIAN STIGER as Director of the Department of Consumer Affairs; MARK LEARY as Executive Director of the Department of Resources, Recycling and Recovery (CalRecycle); RAYNOR T. TSUNEYOSHI as Director of the Department of Boating and Waterways; GEORGE VALVERDE as Director of the Department of Motor Vehicles; STEPHEN SPEARS as Acting Executive Director of the California Housing Finance Agency; J. A. FARROW as Commissioner of the California Highway Patrol; BONNIE NEALY as Chairwoman of the California Coastal Commission; EDMUND G. BROWN JR. Attorney General of the State of California; TONY SAUER as Director of the Department of Rehabilitation; PATRICK HENNING as Director of the Employment Development Department; ROGER BRAUTIGAN as Secretary of the Department of Veterans Affairs; LINDA ADAMS as Secretary of the Office of the Secretary of Environmental Protection; MATTHEW BETTENHAUSEN as Secretary of the California Emergency Management Agency; MARK CHURCH as Chairman of the Alfred E. Alquist Seismic Safety Commission; DANA BART FISHER, JR. as Chairman of the Colorado River Board of California; DEL WALTERS as Director of the California Department of Forestry and Fire Protection; DAVID CARLISLE as Director of the Office of Statewide Health Planning and Development; WILLIAM H. WADE as Director of the Military Department; and JOHN McCARMAN as Director of the Department of Fish and Game

Respondents/Defendants.

1 Petitioner/Plaintiff Professional Engineers in California Government (“PECG”) petitions this
2 Court for the issuance of a writ of mandate pursuant to Code of Civil Procedure section 1085
3 and submits this Complaint for declaratory and injunctive relief and alleges as follows:

4 **INTRODUCTION**

5 1. Governor Arnold Schwarzenegger and his implementing state agencies have
6 illegally furloughed state employees in violation of mandatory duties imposed by several state
7 statutes, including Government Code sections 19851 and 16310. Petitioner/Plaintiff
8 Professional Engineers in California Government (“PECG”) brings this petition for writ of
9 mandate and complaint for injunctive and declaratory relief in order to protect the rights of
10 approximately 13,000 state employees represented by PECG who have been subjected to these
11 unlawful furloughs.

12 2. Petitioner/Plaintiff PECG contends that the furloughs ordered by the Governor, a
13 Respondent/Defendant in this action, in Executive Orders S-16-08 and Executive Order S-13-09
14 and implemented by the remaining Respondent/Defendant state agencies violated and continue
15 to violate mandatory statutory duties set forth in Government Code §19851 and §16310, and is
16 arbitrary, capricious, and unlawful.

17 3. Specifically, Petitioner/Plaintiff contends that the furloughs of PECG-represented
18 employees violates Government Code §19851(a), which requires the minimum workweek of
19 state employees to be 40 hours, providing a narrow exception which authorizes the
20 establishment of “workweeks and workdays of a different number of hours” only “to meet the
21 varying needs of the different state agencies.” Respondents/Defendants’ conduct violates
22 §19851(a) because the *across-the-board* reduction in state employee work days violates
23 Respondents/Defendants’ mandatory duty not to alter the 40-hour workweek unless imposed “in
24 order to meet the *varying* needs of the *different* state agencies.” §19851(a) (emphasis added).

25 4. Upon information and belief, less than four percent the approximately 13,000
26 professional engineer and related positions represented by PECG are funded by the General
27 Fund. Upon information and belief, over ninety-six percent of the professional engineer and
28 related positions are funded by federal funds, special funds, bond funds, or other sources of
revenue apart from the General Fund. Furloughing the state’s professional engineers and related

1 employees also violates §19851(a) because those furloughs do not result in any savings to the
2 General Fund, and are therefore arbitrary, capricious and unlawful.

3 5. In addition, Petitioner/Plaintiff contends that the furloughs of PECG-represented
4 employees violates Government Code §16310. Respondents/Defendants have taken the position
5 that furloughs of non-General Fund employees frees up additional funding sources which the
6 State can then borrow to offset the General Fund deficit. Section 16310(a), however, prohibits
7 the transfer of non-General Fund sources to the General Fund if the “transfer that will interfere
8 with the object for which a special fund was created.” Because the furloughs were ordered and
9 implemented without regard to whether borrowing from the special funds would interfere with
10 the objects for which these special fund agencies were created, and because the furloughs of
11 PECG members for three days per month establishes a prima facie showing of interference with
12 the object of the special fund agencies by curtailing the agencies’ ability to carry out their
13 respective missions, Respondents/Defendants have also violated a mandatory duty imposed by
14 Government Code §16310(a).

15 6. Petitioner/Plaintiff PECG therefore seeks an order from this Court requiring
16 Respondent/Defendants to set aside those portions of the Executive Orders issued in violation of
17 mandatory duties in Government Code §§16310 and 19851, to cease and desist the furloughs of
18 employees represented by PECG, and to provide all other relief that this case may warrant.

19 PARTIES

20 7. Petitioner/Plaintiff PROFESSIONAL ENGINEERS IN CALIFORNIA
21 GOVERNMENT is, and at all times herein mentioned was, a nonprofit corporation organized
22 and existing under the laws of the State of California, with its principal place of business in the
23 County of Sacramento, State of California. PECG is the duly certified exclusive collective
24 bargaining representative of employees in State Bargaining Unit 9, the Professional Engineers
25 unit pursuant, to Government Code section 3520.5. PECG also is a supervisory employee
26 organization under Government Code section 3527 subdivision (c) in that it represents members
27 who are supervisory employees under subdivision (g) of Government Code section 3513.
28 PECG represents approximately 13,000 state employees covered by Executive Orders S-16-08
and S-13-09. PECG and the affected employees represented by PECG are therefore beneficially

1 interested in Respondents/Defendants faithful performance of the legal duties at issue in this
2 case.

3 8. Respondent/Defendant Governor ARNOLD SCHWARZENEGGER is the
4 elected Governor of the State of California. The Governor is the employer of state employees in
5 Bargaining Units 9 for the purposes of bargaining or meeting and conferring in good faith under
6 the Ralph C. Dills Act. (Gov. Code § 3513 (j).) The Governor is the employer of state
7 employed engineers excluded from bargaining for the purposes of meeting and conferring under
8 the Excluded Employee Bill of Rights. (Gov. Code § 3527 (e).) GOVERNOR
9 SCHWARZENEGGER is named in his official capacity only.

10 9. Respondent/Defendant DEBBIE ENDSLEY is the Director of the California
11 Department of Personnel Administration (“DPA”) and is responsible for managing the nonmerit
12 aspects of the state’s personnel system and as serving as the Governor’s designated
13 representative for purposes of collective bargaining with the responsibility to conduct
14 negotiations and enter into collective bargaining agreements with the exclusive bargaining
15 representatives for state bargaining units under the Ralph C. Dills Act and to meet and confer on
16 matters relating to supervisory employer-employee relations. (Gov. Code § 19815.2; Gov. Code
17 § 3517 and § 3527.)

18 10. Respondent/Defendant JOHN CHIANG is a state constitutional officer as the
19 duly elected State Controller of the State of California. (Cal. Const., art. V, §11.) Among
20 various other duties, the Controller shall superintend the fiscal concerns of the state. The
21 Controller shall audit all claims against the state and may audit the disbursement of any state
22 money for correctness, legality, and for sufficient provisions of law for payment. (Gov. Code
23 §12410.) The Controller shall draw warrants on the Treasurer for the payment of money
24 directed by law to be paid out of the State Treasury; but a warrant shall not be drawn unless
25 authorized by law, and unless unexhausted specific appropriations by law are available to meet
26 it. (Gov. Code §12440.) John Chiang is named in his official capacity only.

27 11. Respondent/Defendant RANDALL IWASAKI is the Director of the California
28 Department of Transportation which employs PECG members in positions funded by sources
other than the General Fund. Mr. Iwasaki is sued in his official capacity only.

1 12. Respondent/Defendant MARY D. NICHOLS is the Chairwoman of the Air
2 Resources Board which employs PECG members in positions funded by sources other than the
3 General Fund. Ms. Nichols is sued in her official capacity only.

4 13. Respondent/Defendant LESTER SNOW is the Director of the Department of
5 Water Resources which employs PECG members in positions funded by sources other than the
6 General Fund. Mr. Snow is sued in his official capacity only.

7 14. Respondent/Defendant DOROTHY RICE is the Executive Director of the State
8 Water Resources Control Board which employs PECG members in positions funded by sources
9 other than the General Fund. Ms. Rice is sued in her official capacity only.

10 15. Respondent/Defendant RON DIEDRICH is the Acting Director of the
11 Department of General Services which employs PECG members in positions funded by sources
12 other than the General Fund. Mr. Diedrich is sued in his official capacity only.

13 16. Respondent/Defendant JOHN DUNCAN is the Director of the Department of
14 Industrial Relations which employs PECG members in positions funded by sources other than
15 the General Fund. Mr. Duncan is sued in his official capacity only.

16 17. Respondent/Defendant MAZIAR MOVASSAGHI is the Acting Director of the
17 Department of Toxic Substances Control which employs PECG members in positions funded by
18 sources other than the General Fund. Mr. Movassaghi is sued in his official capacity only.

19 18. Respondent/Defendant BRIDGETT LUTHER is the Director of the Department
20 of Conservation which employs PECG members in positions funded by sources other than the
21 General Fund. Ms. Luther is sued in her official capacity only.

22 19. Respondent/Defendant MARK HORTON is the Director of the Department of
23 Public Health which employs PECG members in positions funded by sources other than the
24 General Fund. Mr. Horton is sued in his official capacity only.

25 20. Respondent/Defendant KAREN DOUGLAS is the Chairwoman of the Energy
26 Resources Conservation and Development Commission (also known as the California Energy
27 Commission) which employs PECG members in positions funded by sources other than the
28 General Fund. Ms. Douglas is sued in her official capacity only.

 21. Respondent/Defendant RUTH COLEMAN is the Director of the Department of

1 the Department of Parks and Recreation which employs PECG members in positions funded by
2 sources other than the General Fund. Ms. Coleman is sued in her official capacity only.

3 22. Respondent/Defendant PAUL THAYER is the Executive Officer of the State
4 Lands Commission which employs PECG members in positions funded by sources other than
5 the General Fund. Mr. Thayer is sued in his official capacity only.

6 23. Respondent/Defendant BRIAN STIGER is the Director of the Department of
7 Consumer Affairs which employs PECG members in positions funded by sources other than the
8 General Fund. Mr. Stiger is sued in his official capacity only.

9 24. Respondent/Defendant MARK LEARY is the Executive Director of the
10 Department of Resources, Recycling and Recovery (CalRecycle), the successor agency to the
11 California Integrated Waste Management Board which employs PECG members in positions
12 funded by sources other than the General Fund. Mr. Leary is sued in his official capacity only.

13 25. Respondent/Defendant RAYNOR T. TSUNEYOSHI is the Director of the
14 Department of Boating and Waterways which employs PECG members in positions funded by
15 sources other than the General Fund. Mr. Tsuneyoshi is sued in his official capacity only.

16 26. Respondent/Defendant GEORGE VALVERDE is the Director of the Department
17 of Motor Vehicles which employs PECG members in positions funded by sources other than the
18 General Fund. Mr. Valverde is sued in his official capacity only.

19 27. Respondent/Defendant L. STEPHEN SPEARS is the Acting Executive Director
20 of the California Housing Finance Agency which employs PECG members in positions funded
21 by sources other than the General Fund. Mr. Spears is sued in his official capacity only.

22 28. Respondent/Defendant J. A. FARROW is the Commissioner of the California
23 Highway Patrol which employs PECG members in positions funded by sources other than the
24 General Fund. Mr. Farrow is sued in his official capacity only.

25 29. Respondent/Defendant BONNIE NEALY is the Chairwoman of the California
26 Coastal Commission which employs PECG members in positions funded by sources other than
27 the General Fund. Mr. Bosco is sued in his official capacity only.

28 30. Respondent/Defendant EDMUND G. BROWN JR. is the Attorney General of
the State of California and is the head of the Department of Justice. (Gov. Code §12510.) The

1 Department of Justice employs PECG members in positions funded by sources other than the
2 General Fund. Attorney General Brown is sued in his official capacity only.

3 31. Respondent/Defendant TONY SAUER is the Director of the Department of
4 Rehabilitation which employs PECG members in positions funded by sources other than the
5 General Fund. Mr. Sauer is sued in his official capacity only.

6 32. Respondent/Defendant PATRICK HENNING is the Director of the Employment
7 Development Department which employs PECG members in positions funded by sources other
8 than the General Fund. Mr. Henning is sued in his official capacity only.

9 33. Respondent/Defendant ROGER BRAUTIGAN is the Secretary of the
10 Department of Veterans Affairs which employs PECG members in positions funded by sources
11 other than the General Fund. Mr. Brautigan is sued in her official capacity only.

12 34. Respondent/Defendant LINDA ADAMS is the Secretary of the Office of the
13 Secretary of Environmental Protection which employs PECG members in positions funded by
14 sources other than the General Fund. Ms. Adams is sued in her official capacity only.

15 35. Respondent/Defendant MATTHEW BETTENHAUSEN is the Secretary of the
16 California Emergency Management Agency which employs PECG members in positions funded
17 by sources other than the General Fund. Mr. Bettenhausen is sued in his official capacity only.

18 36. Respondent/Defendant MARK CHURCH is the Chairman of the Alfred E.
19 Alquist Seismic Safety Commission which employs PECG members in positions funded by
20 sources other than the General Fund. Mr. Church is sued in his official capacity only.

21 37. Respondent/Defendant DANA BART FISHER, JR. is the Chairman of the
22 Colorado River Board of California which employs PECG members in positions funded by
23 sources other than the General Fund. Mr. Fisher is sued in his official capacity only.

24 38. Respondent/Defendant DEL WALTERS is the Director of the California
25 Department of Forestry and Fire Protection which employs PECG members in positions funded
26 by sources other than the General Fund. Mr. Walters is sued in his official capacity only.

27 39. Respondent/Defendant DAVID CARLISLE is the Director of the Office of
28 Statewide Health Planning and Development which employs PECG members in positions
funded by sources other than the General Fund. Mr. Carlisle is sued in his official capacity only.

1 96% of PECG represented employees and for which there was no looming deficit or fiscal
2 emergency.

3 47. On July 1, 2009, the Governor issued Executive Order S-13-09 which amended
4 the furlough plan by adding a third day each month. The Executive Order was based on a
5 declaration that there was a need to reduce current spending due to a "cash crisis." Again, the
6 only legal authority cited was Government Code section 3516.5. The third furlough day took
7 effect July 1, 2009, and resulting in an additional reduction in pay of approximately 4.6% per
8 month for a total reduction of 13.8% per month.

9 48. Respondents/Defendants have attempted to justify the furlough of Special Fund
10 employees by arguing that those furloughs free up additional unallocated Special Fund monies,
11 which are then borrowable by the State to offset the General Fund deficit.

12 **II. Funds of the State**

13 49. The funds of the State are divided into two main groups, Governmental Cost
14 Funds and Nongovernmental Cost Funds. Governmental Cost funds consist of revenues derived
15 from taxes, licenses, and fees. There are two major fund types of Governmental Cost Funds: the
16 General Fund and Special Funds.

17 50. The General Fund is defined by the Department of Finance in its Manual of State
18 Funds as the "principal operating fund for the majority of governmental activities and consists
19 of all money received in the Treasury that is not required by law to be credited to any other
20 fund." Major taxes of the State are the principal source of money to the General Fund
21 (primarily Personal Income, Sales, and Bank and Corporation taxes.)

22 51. The Manual of State Funds also describes more than 1,000 Special Funds used
23 by the State of California. Unlike the General Fund, Special Fund monies come from specific
24 sources and have constraints attached regarding what these funds can be used to support.
25 Special Funds derive their revenues from fees, licenses and charges, and the expenditures from
26 these funds are limited to serving or remediating the activities in which the payers participate.

27 52. Federal funds that are received by the State do not represent a cost to state
28 government. Federal funds cannot be transferred to the General Fund or used for purposes other
than those specified by the federal government.

1 **III. Ninety-six Percent of Employees Represented by PEGC are Not Funded by the**
2 **General Fund**

3 53. State Bargaining Unit 9, represented by PEGC, currently consists of 11,076 full
4 time equivalent positions. Upon information and belief, over ninety-six percent of those PEGC
5 represented positions were funded by federal funds, special funds, and other selected bond
6 funds, and less than four percent of funding for those PEGC represented positions was through
7 the General Fund.

8 54. PEGC also currently represents 2,796 professional engineers and related
9 employees as supervisors or other excluded employees. Upon information and belief, these
10 positions are funded from the same sources as Bargaining Unit 9 positions, and thus these
11 PEGC-represented positions are also ninety-six percent funded by non-General Fund sources
12 with only four percent of funding coming from the General Fund.

13 **IV. PEGC-represented Employees Perform Important Functions at Special Fund**
14 **Agencies**

15 55. The Department of Transportation ("Caltrans") employs approximately 8,861
16 PEGC represented employees. Caltrans is funded exclusively from federal funds and special
17 funds. General Fund revenues do not support the budget of Caltrans. The salaries of PEGC
18 members at Caltrans are paid exclusively from federal or special funds. As a consequence,
19 furloughs at Caltrans diminish important state services while achieving no savings to the
20 General Fund.

21 56. The Air Resources Board ("ARB") employs approximately 951 PEGC
22 represented employees. For the 2009-2010 budget year, approximately 2.5% of the ARB budget
23 comes from federal dollars or other non-state funding sources. Over 97.49% of the ARB budget
24 comes from Special Funds and Selected Bond Funds. Only approximately two one-hundredths of
25 one percent of the ARB budget is funded by the General Fund. The salaries of PEGC members
26 employed by the ARB are paid almost entirely out of federal funds and special funds, and thus
27 furloughs of PEGC represented employees at ARB diminish important state services while
28 achieving no savings to the General Fund.

1 57. The Department of Water Resources (“DWR”) employs approximately 946
2 PECG represented employees. For the 2009-2010 budget year, over 86% of DWR’s budget
3 comes from federal dollars or other non-state funding sources. Approximately 12% of the
4 budget comes from Special Funds or Selected Bond Funds. Only about 2 percent of the DWR
5 budget is funded by the General Fund. The salaries of PECG members employed by DWR are
6 paid almost entirely out of federal funds and special funds, and thus furloughs of PECG
7 represented employees at DWR diminish important state services while having a minimal effect
8 on the General Fund.

9 58. The State Water Resources Control Board (“SWRCB”) employs approximately
10 705 PECG members. For the 2009-2010 budget year, approximately 32.5% of the SWRCB’s
11 budget comes from federal dollars or other non-state funding sources. Approximately 61% of
12 SWRCB’s budget comes from Special Funds and Selected Bond Funds. Approximately six and
13 one-half percent of SWRCB’s budget is funded by the General Fund. The salaries of PECG
14 members employed by the SWRCB are paid mostly out of federal funds and special funds, and
15 thus furloughs of PECG represented employees at the SWRCB diminish important state services
16 while having a minimal effect on the General Fund.

17 59. The Department of General Services (“DGS”) employs approximately 521 PECG
18 represented employees. For the 2009-2010 budget year, over 92% of DGS’s budget comes from
19 federal dollars or other non-state funding sources. Approximately 7.5% of the DGS’s budget
20 comes from Special Funds and Selected Bond Funds. Only a fraction of a percentage of the
21 DGS budget is funded by the General Fund. The salaries of PECG members employed by DGS
22 are paid almost entirely out of federal funds and special funds, and thus furloughs of PECG
23 represented employees at OSHPD diminish important state services while achieving no savings
24 to the General Fund.

25 60. The Department of Industrial Relations (“DIR”) employs approximately 436
26 PECG members. For the 2009-2010 budget year, approximately 20% of the DIR’s budget
27 comes from federal dollars or other non-state funding sources. Nearly 73% of DIR’s budget
28 comes from Special Funds. Approximately 7% of DIR’s budget is funded by the General Fund.
The salaries of PECG members employed by the DIR are mostly paid for out of federal and

1 non-state funds, and thus furloughs of PECG represented employees at the DIR diminish
2 important state services while having a minimal effect on the General Fund.

3 61. The Department of Toxic Substances Control ("DTSC") employs approximately
4 254 PECG members. For the 2009-2010 budget year, approximately 24% of the DTSC's
5 budget comes from federal dollars or other non-state funding sources. Approximately 65% of
6 DTSC's budget comes from Special Funds. Approximately 11% of DTSC's budget is funded
7 by the General Fund. The salaries of PECG members employed by the DTSC are paid mostly
8 out of federal funds and special funds, and thus furloughs of PECG represented employees at the
9 DTSC diminish important state services while having a minimal effect on the General Fund.

10 62. The Department of Conservation ("DOC") employs approximately 161 PECG
11 represented employees. For the 2009-2010 budget year, less than 1% of the DOC budget comes
12 from federal dollars or other non-state funding sources. Over 98.5% of the DOC budget comes
13 from Special Funds and Selected Bond Funds. Less than one-half of one percent of the DOC
14 budget is funded by the General Fund. The salaries of PECG members employed by the DOC
15 are paid almost entirely out of federal funds and special funds, and thus furloughs of PECG
16 represented employees at DOC diminish important state services while achieving no savings to
17 the General Fund.

18 63. The Department of Public Health ("DPH") employs approximately 158 PECG
19 represented employees. For the 2009-2010 budget year, over 67% of DPH's budget comes from
20 federal dollars or other non-state funding sources. Approximately 27% of the DPH's budget
21 comes from Special Funds and Selected Bond Funds. Under 6% of the DPH budget is funded
22 by the General Fund. The salaries of PECG members employed by DPH are paid mostly out of
23 federal funds and special funds, and thus furloughs of PECG represented employees at DPH
24 diminish important state services while achieving minimal savings to the General Fund.

25 64. The Energy Resources Conservation and Development Commission (also known
26 as the California Energy Commission) ("Energy Commission") employs approximately 112
27 PECG represented employees. For the 2009-2010 budget year, approximately 35% of the
28 Energy Commission budget comes from federal dollars or other non-state funding sources. The
remaining 65% comes from special funds. General Fund revenues do not support the budget of

1 the Energy Commission. The salaries of PECG members at the Energy Commission are paid
2 exclusively from federal or special funds. As a consequence, furloughs of PECG represented
3 employees at the Energy Commission diminish important state services while achieving no
4 savings to the General Fund.

5 65. The Department of Parks and Recreation ("DPR") employs approximately 86
6 PECG members. For the 2009-2010 budget year, approximately 9.5% of DPR's budget comes
7 from federal dollars or other non-state funding sources. Approximately 76% of DPR's budget
8 comes from Special Funds and Selected Bond Funds. Just over 14% of DPR's budget is funded
9 by the General Fund. The salaries of PECG members employed by DPR are paid for in large
10 part of federal and special funds, and thus furloughs of PECG represented employees at DPR
11 diminish important state services while having a minimal effect on the General Fund.

12 66. The State Lands Commission ("SLC") employs approximately 43 PECG
13 members. For the 2009-2010 budget year, approximately 17% of SLC's budget comes from
14 federal dollars or other non-state funding sources. Approximately 51.5% of SLC's budget
15 comes from Special Funds. Approximately 31.5% of SLC's budget is funded by the General
16 Fund. The salaries of PECG members employed by SLC are paid for in large part of federal and
17 special funds, and thus furloughs of PECG represented employees at SLC diminish important
18 state services while having a minimal effect on the General Fund.

19 67. The Department of Consumer Affairs ("DCA") employs approximately 41 PECG
20 represented employees. For the 2009-2010 budget year, approximately 1% of the DCA budget
21 comes from federal dollars or other non-state funding sources. The DCA is funded almost
22 exclusively from special funds. General Fund revenues do not support the budget of the DCA.
23 The salaries of PECG members are paid exclusively from special funds. As a consequence,
24 furloughs at DCA diminish important state services while achieving no savings to the General
25 Fund.

26 68. The Department of Resources, Recycling and Recovery (CalRecycle), the
27 successor agency to the California Integrated Waste Management Board, employs
28 approximately 23 PECG represented employees. CalRecycle is funded almost exclusively from
special funds, with a fraction of a percentage coming from federal funds or other non-state

1 funding sources. General Fund revenues do not support the budget of CalRecycle. The salaries of
2 PECG members are paid exclusively from special funds. As a consequence, furloughs of PECG
3 represented employees at the IWMB diminish important state services while achieving no
4 savings to the General Fund.

5 69. The Department of Boating and Waterways ("DBW") employs approximately 11
6 PECG represented employees. The DBW is funded exclusively from special funds. General
7 Fund revenues do not support the budget of the DBW. The salaries of PECG members are paid
8 exclusively from federal or special funds. As a consequence, furloughs at DBW diminish
9 important state services while achieving no savings to the General Fund.

10 70. The Department of Motor Vehicles ("DMV") employs approximately 9 PECG
11 members. For the 2009-2010 budget year, approximately 2% of the DMV's budget comes from
12 federal dollars or other non-state funding sources. Approximately 46% of DMV's budget comes
13 from Special Funds. Approximately 51.8% of DMV's budget is funded by the General Fund.
14 The salaries of PECG members employed by DMV are paid for in large part of federal and
15 special funds, and thus furloughs of PECG represented employees at DMV diminish important
16 state services while having a minimal effect on the General Fund.

17 71. The California Housing Finance Agency ("CHFA") employs approximately 8
18 PECG represented employees. The CHFA is funded exclusively from federal and special funds.
19 General Fund revenues do not support the budget of the CHFA. The salaries of PECG members
20 are paid exclusively from federal or special funds. As a consequence, furloughs of PECG
21 represented employees at CHFA diminish important state services while achieving no savings to
22 the General Fund.

23 72. The California Highway Patrol ("CHP") employs approximately 6 PECG
24 members. The CHP is funded exclusively from federal and special funds. General Fund
25 revenues do not support the budget of the CHP. The salaries of PECG members are paid
26 exclusively from federal or special funds. As a consequence, furloughs of PECG represented
27 employees at CHP diminish important state services while achieving no savings to the General
28 Fund.

73. The Coastal Commission ("CC") employs approximately 2 PECG represented

1 employees. For the 2009-2010 budget year, approximately 28% of the CC's budget comes from
2 federal dollars or other non-state funding sources. Approximately 9% of the CC's budget comes
3 from Special Funds. Approximately 63% of the CC's budget is funded by the General Fund.
4 The salaries of PECG members employed by CC are paid for in large part of federal and special
5 funds, and thus furloughs of PECG represented employees at the CC diminish important state
6 services while having a minimal effect on the General Fund.

7 74. The Department of Justice ("DOJ") employs approximately 2 PECG members.
8 For the 2009-2010 budget year, approximately 27.5% of the DOJ's budget comes from federal
9 dollars or other non-state funding sources. Approximately 26% of DOJ's budget comes from
10 Special Funds. Approximately 46.5% of DOJ's budget is funded by the General Fund. The
11 salaries of PECG members employed by the DOJ are paid for in large part of federal and special
12 funds, and thus furloughs of PECG represented employees at the DOJ diminish important state
13 services while having a minimal effect on the General Fund

14 75. The Department of Rehabilitation ("DOR") employs approximately 2 PECG
15 represented employees. For the 2009-2010 budget year, over 87% of DOR's budget comes from
16 federal dollars or other non-state funding sources. A fraction of one percent of the DOR budget
17 comes from Special Funds. Under 13 percent of the DOR budget is funded by the General
18 Fund. The salaries of PECG members employed by DOR are paid almost entirely out of federal
19 funds, thus furloughs of PECG represented employees at DOR diminish important state services
20 while having a minimal effect on the General Fund.

21 76. The Employment Development Department ("EDD") employs approximately 1
22 PECG represented employee. For the 2009-2010 budget year, almost all of EDD's budget
23 comes from federal dollars or other non-state funding sources. A fraction of one percent of
24 EDD's budget comes from Special Funds and a fraction of one percent of the EDD budget is
25 funded by the General Fund. The salaries of PECG members employed by EDD are paid almost
26 entirely out of federal funds and special funds, and thus furloughs of PECG represented
27 employees at EDD diminish important state services while achieving minimal savings to the
28 General Fund.

77. The Department of Veterans Affairs ("DVA") employs approximately 1 PECG

1 represented employee. For the 2009-2010 budget year, approximately 67% of the DVA's
2 budget comes from federal dollars or other non-state funding sources. A fraction of one percent
3 of the DVA's budget comes from Special Funds and Selected Bond Funds. Approximately 33%
4 of the DVA's budget is funded by the General Fund. The salaries of PECG members employed
5 by DVA are paid for in large part of federal and special funds, and thus furloughs of PECG
6 represented employees at the DVA diminish important state services while having a minimal
7 effect on the General Fund.

8 78. The Office of the Secretary of Environmental Protection ("OSEP") employs
9 approximately 6 PECG members. For the 2009-2010 budget year, approximately 27.5% of
10 OSEP's budget comes from federal dollars or other non-state funding sources. Approximately
11 62% of OSEP's budget comes from Special Funds. Less than 11% of OSEP's budget is funded
12 by the General Fund. The salaries of PECG members employed by OSEP are paid mostly out of
13 federal funds and special funds, and thus furloughs of PECG represented employees at OSEP
14 diminish important state services while having a minimal effect on the General Fund.

15 79. The California Emergency Management Agency ("CEMA") employs
16 approximately 2 PECG members. For the 2009-2010 budget year, approximately 82.5% of
17 CEMA's budget comes from federal dollars or other non-state funding sources. Approximately
18 9% of CEMA's budget comes from Special Funds and Selected Bond Funds. Just over 8% of
19 CEMA's budget is funded by the General Fund. The salaries of PECG members employed by
20 CEMA are paid mostly out of federal funds and special funds, and thus furloughs of PECG
21 represented employees at CEMA diminish important state services while having a minimal
22 effect on the General Fund.

23 80. The Alfred E. Alquist Seismic Safety Commission ("SSC") employs
24 approximately 2 PECG represented employees. For the 2009-2010 budget year, approximately
25 64% of the SSC budget comes from federal dollars or other non-state funding sources. The
26 remaining 36% comes from special funds. General Fund revenues do not support the budget of
27 the SSC. The salaries of PECG members at the SSC are paid exclusively from federal or special
28 funds. As a consequence, furloughs of PECG represented employees at the SSC diminish
important state services while achieving no savings to the General Fund.

1 81. The California River Board of California (“CRBC”) employs approximately 5
2 PECG represented employees. The CRBC is funded exclusively from federal and special funds.
3 General Fund revenues do not support the budget of the CRBC. The salaries of PECG members
4 are paid exclusively from federal or special funds. As a consequence, furloughs of PECG
5 represented employees at CRBC diminish important state services while achieving no savings to
6 the General Fund.

7 82. The California Department of Forestry and Fire Protection (“CAL FIRE”)
8 employs approximately 28 PECG represented employees. For the 2009-2010 budget year, over
9 59.5% of CAL FIRE’s budget comes from federal dollars or other non-state funding sources.
10 Approximately 1.5% of the CAL FIRE budget comes from Special Funds. Approximately 39%
11 of the CAL FIRE budget is funded by the General Fund. The salaries of PECG members
12 employed by CAL FIRE are paid largely out of federal funds and special funds, and thus
13 furloughs of PECG represented employees at CAL FIRE diminish important state services while
14 achieving minimal savings to the General Fund.

15 83. The Office of Statewide Health Planning and Development (“OSHPD”) employs
16 approximately 165 PECG represented employees. For the 2009-2010 budget year, over 11% of
17 OSHPD’s budget comes from federal dollars or other non-state funding sources. Approximately
18 88.6% of the OSHPD’s budget comes from Special Funds. Only a fraction of a percentage of
19 the OSHPD budget is funded by the General Fund. The salaries of PECG members employed
20 by OSHPD are paid entirely out of federal funds and special funds, and thus furloughs of PECG
21 represented employees at OSHPD diminish important state services while achieving virtually no
22 savings to the General Fund.

23 84. The Military Department (“MD”) employs approximately 8 PECG members. For
24 the 2009-2010 budget year, approximately 68.5% of the MD’s budget comes from federal
25 dollars or other non-state funding sources. Less than half of one percent of MD’s budget comes
26 from Special Funds. Approximately 31% of MD’s budget is funded by the General Fund. The
27 salaries of PECG members employed by the MD are paid for in large part of federal and non-
28 state funds, and thus furloughs of PECG represented employees at the MD diminish important
state services while having a minimal effect on the General Fund.

1 85. The Department of Fish and Game (“DFG”) employs approximately 11 PECG
2 represented employees. For the 2009-2010 budget year, approximately 26.5% of DFG’s budget
3 comes from federal dollars or other non-state funding sources. Approximately 64% of the
4 DFG’s budget comes from Special Funds and Selected Bond Funds. Approximately 9% of the
5 DFG budget is funded by the General Fund. The salaries of PECG members employed by DFG
6 are paid mostly out of federal funds and special funds, and thus furloughs of PECG represented
7 employees at DFG diminish important state services while achieving minimal savings to the
8 General Fund.

9
10 **V. Government Code Section 19851**

11 86. Government Code Section 19851(a) provides:

12 It is the policy of the state that the workweek of the state employee shall be 40 hours,
13 and the workday of state employees eight hours, except that workweeks and workdays of
14 a different number of hours may be established in order to meet the varying needs of the
15 different state agencies.

16 87. The furloughs imposed under Executive Orders S-16-08 and S-13-09 were
17 imposed across the board, and without consideration of “the varying needs of the different state
18 agencies” and are therefore unlawful.

19 88. Moreover, the approximately 13,000 professional engineers and related
20 professionals represented by PECG and employed by the Respondent/Defendant employing
21 agencies set forth above are not paid out of the General Fund at all or receive only a portion of
22 their salaries from the General Fund. However, all of these PECG-represented employees are
23 subjected to three days per month of furloughs. The decision to furlough these employees either
24 does not reduce the General Fund deficit at all or had such a negligible impact on the General
25 Fund deficit that the furloughs do not achieve there is no measurable impact on the Executive
26 Orders’ stated purpose of achieving General Fund savings. As such, the decision to furlough
27 these employees is arbitrary, capricious and constitutes an abuse of discretion.

28 **VI. Government Code Section 16310(a)**

 89. Government Code Section 16310(a) provides:

1 When the General Fund in the Treasury is or will be exhausted, the Controller shall
2 notify the Governor and the Pooled Money Investment Board. The Governor may order
3 the Controller to direct the transfer of all or any part of the moneys not needed in other
4 funds or accounts to the General Fund from those funds or accounts, as determined by
5 the Pooled Money Investment Board, including the Surplus Money Investment Fund or
6 the Pooled Money Investment Account. All moneys so transferred shall be returned to
the funds or accounts from which they were transferred as soon as there are sufficient
moneys in the General Fund to return them. No interest shall be charged or paid on any
transfer authorized by this section, exclusive of the Pooled Money Investment Account,
except as provided in this section. *This section does not authorize any transfer that will
interfere with the object for which a special fund was created . . .* [emphasis added]

7
8 90. The furloughs imposed under Executive Orders S-16-08 and S-13-09 have
9 interfered with the object of the Special Fund agencies named herein that employ the
10 professional engineers and related professionals represented by PECG.

11 91. The Special Funds and federal funds are required by law to be expended in a
12 manner that their intended purpose. Implementing a three day per month furlough of PECG
13 represented employees paid from these funding sources, for the stated purpose of allowing
14 greater borrowing of special fund monies by the State to replace the General Fund, means that
15 the PECG members are not able to carry out their duties as intended. Such action interferes
16 with the objects for which the special funds were created and the departments and agencies
17 ability to carry out their missions.

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

20 92. The State Controller has the power and the duty to ensure that the decisions of an
21 agency that affect expenditures are within the fundamental jurisdiction of the agency. The
22 Legislature has specifically provided that “a warrant shall not be drawn unless authorized by
23 law...” (Gov. Code § 12440.) The Controller has the “duty to ensure that expenditures are
24 authorized by law.” An attempt by an administrative agency to exercise control over matters
25 which the Legislature has not seen fit to delegate to it is not authorized by law and in such case
26 the agency’s actions can have no force or effect. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th
27 1317, 1335.) Since the Governor and the DPA have no authority to implement the furloughs,
28 the furloughs have no force or effect and the Controller has a duty to ensure that salaries not be
reduced as a result of the proposed furloughs.

1 **FIRST CAUSE OF ACTION**

2 **AGAINST ALL DEFENDANTS/RESPONDENTS**

3 **(Petition for Writ of Mandate: Violation of Mandatory Duty)**

4 93. Petitioner/Plaintiff PCEG hereby incorporates by reference all of the foregoing
5 paragraphs as if fully set forth herein.

6 94. At all relevant times, Defendants/Respondents have had a clear, present,
7 mandatory, and ministerial duty to provide a minimum workweek to state employees of 40
8 hours, and the workday of state employees eight hours, except that workweeks and workdays of
9 a different number of hours may be established in order to meet the varying needs of the
10 different state agencies. *See* Gov. Code Section 19851(a).

11 95. Despite their ability to perform this duty, Defendants/Respondents have violated
12 this mandatory duty by issuing and implementing Executive Orders S-16-08 and S-13-09 and
13 furloughing state employees across the board and without regard to the varying needs of
14 different state agencies. If Defendant/Respondents have any discretion, they have abused that
15 discretion by acting in a manner inconsistent California law by ordering and implementing these
16 furloughs.

17 96. As a separate and additional matter, at all relevant times,
18 Defendants/Respondents have also violated this mandatory duty by issuing and implementing
19 Executive Orders S-16-08 and S-13-09 with respect to employees in departments and agencies
20 funded by sources other than the General Fund. The Governor's sole justification for the
21 furloughs was to reduce the deficit to the General Fund. As applied to employees in
22 departments and agencies funded by sources other than the General Fund, the Executive Orders
23 are unlawful because there is no relationship between the stated purpose of the Orders. Because
24 there is no General Fund savings achieved by furloughing employees at state departments and
25 agencies that are funds from sources other than the General Fund, the furlough of these
26 employees is arbitrary and capricious. In issuing Executive Orders S-16-08 and S-13-09 the
27 Governor has abused his discretion as a matter of law.

28 97. As a separate and additional matter, at all relevant times,
Defendants/Respondents have had a clear, present, and ministerial duty to permit the borrowing

1 of Special Funds to replace a General Fund deficit only if the transfer of those special funds will
2 not interfere with the object for which a special fund was created. *See* Gov. Code Section
3 16310(a).

4 98. Despite their ability to perform this duty, Defendants/Respondents have violated
5 this duty by issuing and implementing Executive Orders S-16-08 and S-13-09 with respect to
6 employees in departments and agencies funded by sources other than the General Fund. If
7 Defendant/Respondents have any discretion, they have abused that discretion by acting in a
8 manner inconsistent with California law by ordering and implementing these furloughs.

9 99. As a separate and additional matter, Respondent/Defendant Controller Chiang
10 has a duty to audit claims and to conclude that since the Governor and DPA lack authority for
11 the furlough, it is illegal, and the Controller has a duty to ensure that salaries not be reduced as a
12 result of the furlough.

13 100. Despite his ability to perform this duty, Respondent/Defendant Controller Chiang
14 violated this duty by implementing Executive Orders S-16-08 and S-13-09 and implementing a
15 reduction in pay to the equivalent of three days of salary per month. If Defendant/Respondent
16 Controller Chiang has any discretion, he has abused that discretion by acting in a manner
17 inconsistent California law by implementing these furloughs and reductions in pay.

18 101. Petitioner/Plaintiff PECG and its members have an immediate and direct interest
19 affected by this proceeding in that employees have a right not to be illegally furloughed and
20 have a right not to have their pay cut by the Governor's Executive Order.

21 102. Petitioner/Plaintiff has no plain, speedy, and adequate remedy in the ordinary
22 course of law, other than the relief sought in this petition, in that there is no other legal remedy
23 to prevent or enjoin the implementation of the illegal furlough and its reduction of salary and
24 hours.

25 103. Petitioner/Plaintiff has no administrative remedy which will result in preventing
26 or enjoining the illegal furlough and its reduction of salary and hours.

1 **SECOND CAUSE OF ACTION**

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

3 104. Petitioner/Plaintiff PEGC hereby incorporates by reference all of the foregoing
4 paragraphs as if fully set forth herein.

5 105. Defendants/Respondents have issued and implemented Executive Orders
6 S-16-08 and S-13-09, and have furloughed and continue to furlough state employees, including
7 professional engineers represented by PEGC, beginning with the February 2009 pay period.

8 106. Respondent/Defendant Controller Chiang has implemented and continues to
9 implement a reduction in pay to the equivalent of three days of salary per month.

10 107. Judicial relief is needed to prevent Defendants/Respondents from continuing to
11 imposing the illegal furlough program which began in February 2009 and was amended in July
12 2009.

13 108. As a result of the Executive Orders and subsequent implementation of the
14 furloughs, an actual controversy has arisen and now exists between Petitioners/Plaintiffs and
15 Respondents/Defendants regarding the furlough of PEGC represented state engineers and the
16 reduction of their salaries.

17 109. Petitioner/Plaintiff PEGC desires a declaration of its rights and the rights of its
18 affected members with respect to the Respondents/Defendants' furlough of state employed
19 engineers through these unlawful executive orders and the rights of their members to not be
20 furloughed under these unlawful Executive Orders.

21 110. Such a declaration is necessary and appropriate at this time in order to avoid the
22 continued implementation of these illegal provisions which would adversely impact the rights of
23 Petitioner/Plaintiff.

24 111. Defendant/Respondents have caused, are causing, and will continue to cause
25 irreparable harm to PEGC-represented employees including the denial of the protection of the
26 laws regarding their salaries. The loss of such rights cannot be compensated fully by damages
27 or other form of legal relief. These harms will continue unless these Defendants are restrained
28 and enjoined by this Court.

112. As a matter of law, Defendant/Respondents lack the authority to impose these

1 furloughs and reduce the salaries of PECG-represented employees, and Petitioner/Plaintiff has a
2 great likelihood of success on the merits of their claims.

3 113. Therefore, Petitioner/Plaintiff seeks temporary, preliminary and permanent
4 injunctive relief directing Respondents/Defendants to cease and desist taking action to furlough
5 state employees by reducing their hours and reducing their pay under unlawful Executive
6 Orders.

7
8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, as remedies for the causes of action asserted above, Plaintiff/Petitioner
11 prays for relief as follows:

12 1. That the Court issue a peremptory writ of mandate ordering
13 Respondents/Defendants to set aside the Governor's Executive Orders S-16-08 and S-13-09
14 calling for a furlough and salary reduction;

15 2. That the Court issue a peremptory writ of mandate ordering
16 Respondent/Defendant Controller Chiang to immediately cease reducing the salaries of
17 employees as a result of the illegal furlough;

18 3. That the Court issue a preliminary and permanent injunction setting the
19 Governor's Executive Orders S-16-08 and S-13-09 calling for a furlough and salary reduction
20 for employees and restraining Defendants/Respondents from implementing those Executive
21 Orders and reducing employees' salaries as a result of those Executive Orders;

22 4. That the Court issue a declaratory judgment holding that
23 Defendants/Respondents have violated mandatory duties imposed by California law by enacting
24 and implementing Executive Orders S-16-08 and S-13-09 by furloughing and reducing the
25 salaries of employees;

26 5. That the Court issue an order requiring Defendants/Respondents to compensate
27 employees for lost income and benefits due to all unlawful furloughs;

28 6. Attorneys' fees and expenses;

7. Costs of this action; and

1 8. Such other and further relief as the nature of Plaintiffs/Petitioners' cause may
2 warrant.

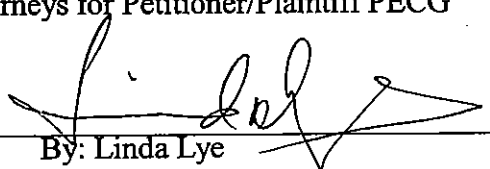
3
4 Dated: January 21, 2010

Respectfully Submitted,

5
6 LINDA LYE
DANIELLE LEONARD
7 Altshuler Berzon LLP

8 GERALD JAMES

9 Attorneys for Petitioner/Plaintiff PECG

10
11 
12 _____
By: Linda Lye

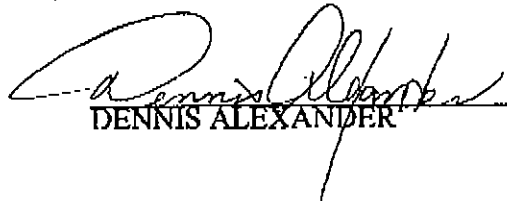
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Dennis Alexander, am a Labor Relations Consultant for the Professional Engineers in California Government, a Pctitioner and Plaintiff in the instant action.

I have read the foregoing Petition for Writ of Mandate and Complaint 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 21 day of January, 2010 at Sacramento, California.


DENNIS ALEXANDER