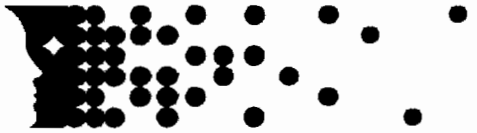

CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS

PROFESSIONAL ENGINEERS
IN CALIFORNIA GOVERNMENT

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April 22, 2010

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COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk
BY_____ Deputy

Deena C. Fawcett
Clerk of the Court/Administrator
Court of Appeal
Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, CA 95814-4719

RE: Professional Engineers in California Government et al. v. John Chiang, as State Controller, etc.; Arnold Schwarzenegger, as Governor, etc., et al.
C061011, Sacramento Superior Court Case No. 34-2008-80000126
Supplemental Reply Letter Brief of Appellants Professional Engineers in California Government and California Association of Professional Scientists

Dear Clerk of the Court:

By letter dated January 29, 2010, the Court directed the parties to provide additional briefing in response to five questions. Appellants Professional Engineers in California Government (PECG) and the California Association of Professional Scientists (CAPS) filed an initial supplemental letter brief on March 1, 2010, as did Appellant State Controller John Chiang. Respondents Governor Schwarzenegger and Department of Personnel Administration (DPA) filed a joint supplemental letter brief on April 1, 2010. Appellants PECG and CAPS here file this supplemental reply letter brief.

Question 1

The Legislature Established the Workweek of State Employees at 40 Hours - The Governor Has No Authority to Reduce That Workweek

In Section 19851, the Legislature established the 40 hour workweek allowing a limited exception to meet "the varying needs of the different state agencies." Respondents argue that the 40 hour workweek is only the "policy" of the state, not a mandate, and that the

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plain and common sense meaning allows discretion to adjust workweeks above or below 40 hours per workweek. Respondents argue this discretion can be exercised without a showing of any evidence of actually ascertaining the varying needs of the different state agencies.

Initially, the Governor's assertion that the 40 hour work week is only "policy" which can be ignored by the Governor must be rejected. The statue uses mandatory language in determining that the workweek of state employees "shall" be 40 hours. (*In re Estate of Miramontes-Najera* (2004) 118 Cal.App.4th 750, 758.) The Legislature declares state policy by passing laws. (*State Bd. of Education v. Honig* (1993) Cal.App.4th 720, 750.) The Governor has no authority to ignore this mandate. Instead, hours of work are subject to bargaining, or in the absence of an agreement, to control by the Legislature.

As Section 19851 is supersedable, the parties could mutually agree to a different number of hours and a to different salaries, but have not. In fact, as discussed in the response to question 2 in this brief, any authority the Governor may have under Section 19851 with respect to adjusting the hours of represented employees covered by the Unit 9 PECG MOU or the Unit 10 CAPS MOU has been negotiated away by the Governor. Any authority to adjust hours is taken away by the labor contract which mandates 40 hour workweeks without exception (the PECG MOU) and the labor contract which requires a 40 hour workweek and precludes the "lockout" of represented employees (the CAPS MOU). Add to this the clear legal conclusion that the state employer is precluded from reducing the salaries of represented state employees (Government Code section 19826(b) and *Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317, 1325) and the Governor has no authority for the furlough program.

As Appellants PECG and CAPS and the Controller have argued in the principal and supplemental briefs, nothing in the legislative history refers to reducing workweeks below 40 hours. Respondents have not identified any legislative history supporting a finding that a reduction below 40 hours was contemplated by the Legislature. Respondents did not acknowledge the 1962 AG's opinion interpreting this statute which states that departments have the authority to fix the daily working hours of employees provided the 40-hour minimum workweek is observed. (39 Ops.Cal.Atty.Gen 261, 262-263.)

To the extent the July 3, 1947 letter from CSEA urging the passage of AB 292 (the 1947 amendments to Section 18020) is helpful at all in ascertaining the legislative intent behind

the passage of 18020, the letter clearly urges the passage of the bill so that "the forty hour week could be established for all employees where comparable work in other public agencies and private employment is already established on a forty hour week basis." (Respondents' April 1, 2010 RJN, Ex. 4.)

In parsing Section 19851(a), Respondents argue that if the Governor lacks the authority to lower the workweeks of state employees below 40 hours, it "would render the exception language in the in the first sentence of the code section mere surplusage in light of the last sentence [of Section 19851(a).]." The first sentence of 19851(a) provides - "It is the policy of the state that the workweek of the state employee shall be 40 hours...except that workweeks and workdays of a different number of hours may be established to meet the varying needs of the different state agencies." The second sentence provides that state policy is to avoid the payment of overtime. The third sentence provides an exception to the overtime policy by stating, "This policy does not restrict the extension of regular working-hour schedules on an overtime basis in those activities and agencies where it is necessary to carry on the state business properly during a manpower shortage."

According to the Respondents, reading the exception language in the first sentence and the last sentence as addressing the same point renders the language in the first sentence superfluous. That assertion is wrong as they do not address the same point. The first sentence of the statute establishes the 40 hour work week and allows for longer workweeks to be established. The third sentence states that while the state's policy is to avoid overtime, sometimes work shifts will need to be extended when overtime work is necessary. Working overtime, either occasionally or on a more regular basis, by extending a regular working-hour schedule does not change the legislatively mandated 40 hour workweek.

PECG and CAPS contend that the Governor only has the discretion to adjust the work week to greater than 40 hours per week and that to the extent an MOU governs hours of work, the Governor has no authority to adjust hours at all. However, even if the Governor had the authority to reduce hours to meet the varying needs of the different state agencies (and this authority was not in conflict with a controlling MOU), the Governor's actions here would not otherwise comply with Section 19851 as there is no indication or evidence in the record that the Governor's proposed reduction in hours was designed to "meet the varying needs of the different state agencies." Respondent has a mandatory duty to consider those varying needs. There is no evidence in the record to support the

Governor's compliance with that duty.

Respondent argues that the Governor has discretion under Section 19851 (a) to reduce hours of all state employees and that the Appellants have the burden to demonstrate how the Governor's exercise of discretion to uniformly furlough all state employees in the face of a fiscal and cash crisis was "beyond the bounds of reason or violated the plain language of the code section." (Respondents Supplemental Letter Brief, Pages 6- 7.)

In reviewing an administrative action in a mandamus action, "courts must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." (*Sequoia Union High School Dist. v. Aurora Charter High School* (2003) 112 Cal.App.4th 185, 195.) An agency action must be overturned if it is "lacking in evidentiary support". (*Ibid.*)

Whether the duty is mandatory (considering the varying needs of each state agency) or discretionary (the act of considering the needs and reaching a decision), there is no evidence supporting the Governor's compliance with his obligations under Section 19851 to assess the varying needs of each state agency.

Question 2

The Parties Could Agree to a Furlough Provision in an MOU, But Clearly Neither PECG Nor CAPS Has Done So.

PECG and CAPS responded that the parties could agree to a furlough provision in an MOU and that such an agreement would require legislative approval as it would conflict with existing law. Respondents agree, but then erroneously claim that the current MOUs between the state and Appellants PECG and CAPS contain provisions authorizing furloughs. Respondents claim that such furlough authorization is contained in the incorporation of Section 19851 and is contained in the State's Rights clause of the MOUs. (Supplemental Letter Brief at Pages 13-15.)

Respondents argue that Section 19851 is incorporated into the PECG and the CAPS MOUs - therefore the MOUs provide the state employer with authority to furlough

employees covered by these MOUs. This argument fails for two reasons. First, the express terms of each MOU expressly conflict with the authority Respondents claim Section 19851 provides, therefore the MOUs control. Second, allowing a cut in hours does not allow the cut in pay which is also part of the challenged furlough program as pay is both expressly provided for in the MOUs and is protected by Section 19826 (b) which says the state employer cannot cut pay of represented employees.

It is clear that if a provision of an MOU is in conflict with Section 19851, the MOU shall be controlling without further legislative action. (Gov. Code § 3517.6.) Respondents' Supplemental Letter Brief cites only a portion of the parties' agreed to supersession language in the PECG Unit 9 MOU, omitting the part listed below in italics:

> The following Government Code Sections and all DPA regulations and/or rules related thereto are hereby incorporated into this MOU. *However, if any other provision of this MOU is in conflict with any of the Government Code Sections listed below or the regulations related thereto, such MOU provision shall be controlling. The Government Code Sections listed below are cited in Section 3517.6 of the Dills Act.*

(JA. I, Tab N, p. 000192.) The supersession clause CAPS Unit 10 MOU contains similar language. (JA II, Tab O, p 000301.) In both the Unit 9 MOU and the Unit 10 MOU, Section 19851 is one of the "Government Code Sections listed below".

The PECG Unit 9 MOU provides unequivocally, "Unless otherwise specified herein, the regular work week of full-time Unit 9 employees shall be forty (40) hours." (JA. I, Tab N, p. 000172.) There is no exception to this mandatory statement of the 40-hour work week elsewhere in the PECG Unit 9 MOU. On that basis, the work week of Unit 9 employees shall be 40 hours. As the MOU controls, the Governor may not unilaterally reduce the hours of Unit 9 employees. Any supersedable statute, interpreted to the contrary, would be superseded by the PECG Unit 9 MOU. (Gov. Code § 3517.6.) Respondents have no answer to this argument.

Although Respondents only argue that the Unit 9 MOU incorporates Section 19851, the language in the MOU is in fact very different from the statute. To the extent the Governor argues that the statute simply lists the "policy" of the state is a 40 hour workweek, as opposed to a mandate of a 40 hour workweek, the MOU leaves no

uncertainty by stating at 8.4 subdivision (a): "the regular work week of full-time Unit 9 employees shall be forty (40) hours." While the statute says "workweeks and workdays of a different number of hours may be established in order to meet the varying needs of the different state agencies", the Unit 9 MOU does not contain this language. Instead, it provides at 8.4 subdivision (b):

> Varying work shifts (swing shift, night shift, or any work shift other than a traditional day shift) may be established by the employer in order to meet the needs of the state agencies.
> (JA. I, Tab N, p. 000172.)

Allowing varying *work shifts* is very different than allowing *work weeks* of a different number of hours. The plain language of the MOU implies a work shift to be the starting and stopping time for a workday, not the duration of a day, much less the duration of a work week.

Quite simply, the Unit 9 MOU mandates a 40-hour workweek. To the extent this mandate conflicts with Government Code section 19851, the MOU's 40 hour workweek controls.

The CAPS Unit 10 MOU also contains the 40-hour work week. The CAPS MOU incorporates Section 19851 into the MOU by stating:

> "12. Workweek
> 19851 Sets 40-hour work week and 8- hour day.
> 19843 Directs DPA to establish and adjust work week groups."
> (JA II, Tab O, p. 000305.)

Clearly, the agreement is for a 40-hour work week. The only exception to the 40-hour work week in the CAPS Unit 10 MOU is found in the provision which allows *upon request of a Unit 10 employee*, a consideration of reduced worktime shall not be unreasonably denied by the employer. (JA II, Tab O, p. 000281.) This provision is consistent with the Reduced Worktime Act found at Government Code section 19996.19 et seq. As the 40-hour work week listed in the MOU controls, the Governor may not unilaterally reduce the hours of Unit 10 employees.

Respondents have no response to CAPS' argument that the Unit 10 MOU contains a "No Lockout" provision which precludes the Governor's "partial closing" of state offices preventing state scientists from working their full 40-hour workweeks is contrary to the Unit 10 MOU (JA II, Ex. O, p. 000301.)

The PECG Unit 9 MOU calls for Unit 9 employees to be paid no less than salaries received by their counterparts subject to a salary parity survey. (JA I, Tab N, p. 000123.) The Unit 9 MOU also contains an appendix listing classifications and the salary schedule for those classifications. (JA I, Tab N, p. 000205.) So to comply with the Unit 9 contractual provisions regarding salaries, the salaries bargained for must be actually received. There is no provision in the Unit 9 MOU which allows salaries to be reduced by the furlough program or for any other reason

Similarly, the CAPS Unit 10 MOU contains a provision on salaries. The CAPS MOU calls for a salary increase to take effect on July 1, 2006, a second increase to take effect on July 1, 2007, and various labor market adjustments to take effect January 1, 2007 (JA II, Ex. O, p. 000230, 000240-000242.) The Unit 10 MOU also contains an appendix listing classifications and the salary schedule for those classifications. (JA. II, Ex. O, p. 000331.) So to comply with the Unit 10 contractual provisions regarding salaries, the salaries bargained for must be actually received. There is no provision in the Unit 10 MOU which allows salaries to be reduced by the furlough program or for any other reason.

The State's Rights Clauses of the MOUs Do Not Provide the Authority to Furlough Unit 9 or Unit 10 Employees

The PECG Unit 9 MOU State Rights clause provides in its entirety: "All the functions, rights, powers and authority not specifically abridged by this MOU are retained by the employer." (JA I, Tab N, p. 000187.) Retaining rights you might possess is far different from gaining new rights. As discussed above, while PECG contends the Governor and DPA have no authority in statute to cut hours or cut pay of state employees, if they do have such power, it is specifically abridged by the hours of work provision which mandates a 40-hour workweek and salary provisions of the Unit 9 MOU.

The CAPS Unit 10 State Right's clause is applicable only to rights which are not abridged or limited by the Agreement. (JA II, Tab O, p. 000300.) As discussed above, the 40-hour

workweek and the salaries to be paid are covered by the MOU. There is therefore no retained state right, in an emergency or otherwise, to cut hours or cut pay of Unit 10 employees.

Question 3

Section 3516.5 Does Not Provide Any Substantive Authority to Act, It Only Provides a Waiver of the State Employer's Bargaining Obligation Prior to Implementing

On Page 20 of Respondents' Supplemental Brief, Respondents state with regard to Section 3516.5, "The purpose of the code section is to allow the Governor to override the terms of an MOU during an emergency." Not only is that not the purpose of Section 3516.5, it is flat wrong. The key difference between the parties in this case is the view of the Governor's authority during an emergency.

Respondents contend that in a fiscal emergency, the Governor can unilaterally take an action to override an existing negotiated labor contract. Although PECG and CAPS contend that no emergency as defined by the Dills Act exists here, even if it did, the Governor does not gain any additional authority during an emergency. Instead, Section 3516.5 gives the Governor the ability to take an action he otherwise has the authority to take first, while meeting his bargaining obligation as soon as practical thereafter.

The Governor could only implement a furlough by either negotiating for a furlough, or bargaining to impasse and then seeking and obtaining legislative approval to implement a "last, best and final offer".

The MOUs between the parties are binding contracts containing negotiated provisions which have been approved by the Legislature and the Governor and expressly cover hours of work and salaries. These labor contracts control. In this case the contracts expressly continue under Government Code section 3517.8 and the Governor as the state employer must continue to honor the contract. The Governor and the Unions can negotiate in good faith for a successor contract, but the terms of the contract continue. If an MOU has expired, only the Legislature can adjust salaries - as this power is expressly retained by the Legislature. (Government Code § 19826.) If an MOU has expired, only the Legislature can adjust salaries by reducing the state employees workweek.

There is nothing in the statutory scheme which remotely suggests the Governor could take action to override existing MOUs, especially in light of the fact that labor contracts are protected by the Contracts Clause of the United States and California Constitutions. (*Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296.) If the Governor had followed the law in an attempt to implement furloughs - he could have negotiated and either reached agreement, or reached an impasse in negotiations. At that point, he would not be free to implement his "last, best and final offer." Instead he could submit his furlough offer to the Legislature for its approval or disapproval. (Government Code section 3517.8.) In light of this statutory framework, the Governor's contention's in this case must be rejected.

In their Supplemental Brief, Respondents concede that "Government Code section 3516.5 does not provide the Governor with any new substantive authority." (Respondents' Supplemental Brief at Page 21.) Despite this acknowledgment, Respondents then make the sweeping argument that during an emergency, Section 3516.5 permits the state employer to unilaterally adopt a rule, resolution or regulation - even if the proposed change is covered by and would conflict with an existing MOU or law. Adjusting pay and adjusting hours (in the absence of an MOU where the parties agree to do so subject to legislative approval) are legislative acts that under the Dills Act, the Legislature has expressly reserved for itself. There is no support for the Governor's argument that Section 3516.5 fundamentally shifted the balance of power away from the legislative branch and to the executive branch.

The challenge at issue here is to an Executive Order adopted by the Governor. An executive order is a formal written directive of the Governor by which interpretation, or the specification of detail, directs and guides subordinate officers in the enforcement of a particular law. (63 Ops.Cal.Atty.Gen 583 (1980) WL 96881 (Cal.A.G.).) By definition this act could not be a law - whether it were a new law or a law that conflicted with existing law.

As noted in the Respondent's Supplemental Brief, the legislative history does not provide a great deal of insight into Section 3516.5. As the Controller's reference to the legislative history notes, the language was added after concerns were raised about whether the parties were required to negotiate when faced with proposed changes in the law or regulations that affected matters within scope. Section 3561.5 addressed an ongoing duty to bargain while a contract is in place and negotiations would not otherwise be in process.

(Controller's Supplemental Brief, Page 8; Controller's Supplemental RJN, Ex. G.) The legislative history contains no mention that Section 3516.5 increases a Governor's power in emergency situations.

In an effort to provide *some* argument that Section 3516.5 provides authority, Respondents look to federal labor law precedent. Respondents note that in interpreting provisions of the various labor relations statutes, including the Dills Act, California court's routinely turn to precedents established under the National Labor Relations Act ["NLRA"], 29 U.S.C. section 151 et seq. What Respondents fail to note is that the courts (and the state Public Employment Relations Board) do so "when interpreting identical or similar language in the NLRA." (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d. 608.) Respondents do not allege that there is any language similar to Section 3516.5 in the federal statutes.

Respondents assert that the "critical inquiry" with respect to this dispute is what constitutes an "emergency" under Section 3516.5. This misses the point of this challenge to the Governor's actions. The "critical inquiry" in this case is whether the Governor has the substantive power to cut hours and wages. In the private sector cases relied upon by the Governor, the "economic exigency exception" at best can relieve a duty to bargain - it does not provide the employer with any additional substantive powers. Respondent is unable to cite to any case where an employer's substantive powers are expanded.

For example the Governor cites *Dixon Distributing Co.* (1974) 211 NLRB 241 for the notion that even "during a contract term, matters arise where the exigencies and economics of a situation seem to require prompt action." In *Dixon Distributing*, the employer needed to change delivery routes for drivers because of new beer accounts. The ALJ found that the bargaining session over those changes, although it was short and no agreement was reached, was sufficient to satisfy the bargaining obligation because "That it did not actually result in an agreement is of no consequence, for an impasse in bargaining, as long as the bargaining has been in good faith, permits a company to effect whatever changes it had proposed to make." So at impasse under the NLRA, this private employer had the authority to implement changes in delivery routes. Under the impasse procedures of the Dills Act, the state employer must submit any or all of its "last, best and final offer" to the Legislature for its determination. (Government Code § 3517.8.)

Respondents here stretch arguments regarding private sector "economic exigency exceptions" which may excuse a private employers obligation to bargain before implementation to attribute a meaning to Section 3516.5 which would eviscerate collective bargaining and would allow the state employer the ability to impair its own labor contracts. This stretch must be rejected.

In making its argument over 3516.5, Respondents ignore PECG and CAPS arguments regarding the role of a Governor and the role of the Legislature regarding wages and hours. In doing so Respondent ignores this Court's ruling that in the absence of an agreement, the terms and condition of state employment will continue to be determined by the Legislature. (*Department of Personnel Administration v. Superior Court (Greene)* (1992) 5 Cal.App.4th 155, 177.)

The Legislature has made clear that in the absence of an MOU, the Legislature retains the ultimate authority over wages and hours of work. (*Tirapelle v. Davis* (1993) 20 Cal.App.4th 1317.) Under Section 3516.5, "emergency" action is allowed to be exercised without first bargaining only for something the Governor would otherwise have the substantive power to implement after fulfilling his bargaining duty.

Question 4

Section 3516.5 is Not Designed to Override the Terms of an MOU or Impose New Terms

Respondents here argue that if 3516.5 does not allow furloughs which override the terms of an existing MOU, that section would be "rendered ineffective as a mechanism by which the Governor can respond quickly during an emergency situation." (Supplemental Brief, Page 20.) As discussed above, there is simply nothing in the plain language of the Section 3516.5 or the legislative history of that Section which remotely suggests a fundamental shift in power over terms and conditions of employment from the Legislature to the Governor during an "emergency".

Respondents argue that had the Legislature intended the Governor bypass bargaining before simply "enforcing" an existing law in an emergency, it would not have used the word "adopted" by the state employer in Section 3516.5. PECG and CAPS agree that

"adopted" refers to something new. But for the Governor, that "something new" cannot be something the Governor lacks the authority to adopt.

Interestingly, Respondents note that 3516.5 includes the language related to a "law", but for obvious separation of powers issues, Respondents cannot and do not argue that the Governor may "adopt" a "law". As PECG and CAPS contend, in the absence of a controlling MOU, only a law enacted by the Legislature can cut state employees hours and wages. Clearly, if in an emergency the Legislature adopted a law on a manner within the scope of negotiations, the state employer would have to provide notice and opportunity to bargain at the earliest practical time following the adoption of such law.

Respondents argue that "given the breadth of the MOUs, if section 3516.5 only permitted the adoption of laws, rules, resolutions or regulations not covered by the existing MOU, the Governor would be precluded from issuing an executive order adopting a rule affecting state employment to address an emergency." That is exactly correct. Once approved by the Legislature, an MOU covering state employees becomes an "indubitably binding" contract on the parties. (*California Association of Highway Patrolmen v. Department of Personnel Administration* (1986) 185 Cal.App.3d 352. Generally, neither the court nor the legislature may impair the obligation of a valid contract. (Cal.Const., Art I, 9.)

The terms of a labor agreement are definitive and permit no discretion. (*Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328.) While there is precedent for impairing contractual rights contained in a public sector MOU, the standards are understandably extremely high before the state employer could do so and for the state employer, it could only be accomplished by legislation. (*Sonoma County Organization of Public Employees v. County of Sonoma* (1979) 23 Cal.3d 296.)

The plain language of Section 3516.5 supports PECG and CAPS argument that if an emergency truly existed and an MOU did not control, the Governor could use the emergency provision to bypass the bargaining obligation prior to implementing a change the state employer has the authority to make, and then fulfill the obligation under Section 3516.5 by bargaining as soon as practical.

Question 5

A fiscal emergency is not the type of emergency included within the meaning of Section 3516.5.

Respondent agrees that looking to Section 3523 is appropriate in determining the definition of "emergency" under 3516.5 as both are par of the Dills Act. However, despite emergency being defined in the bargaining context as an act of God, natural disaster, or other emergency or calamity affecting the state" which requires negotiations immediately, the Governor reiterates arguments that a "fiscal emergency" declared under Article IV, Section 10(f) of the California Constitution is an emergency under Section 3516.5.

The term "emergency" in Section 3516.5 specifically relates to the employer determining in the bargaining context that it must act immediately because of an act of God, natural disaster or other calamity, without the time to meet-and-confer. Here, the Governor made a determination in December 2008 that he would cut salaries beginning six weeks later in February 2009 and lasting for 17 months. This determination that salaries needed to be cut six weeks later could not meet the definition of "emergency" for bargaining purposes.

Even if somehow a "fiscal emergency" met this criteria, the Governor's powers are clearly defined by the Constitution. The Governor may call a special session by proclamation and submit proposed legislation to address the fiscal emergency. Section 3516.5 does not expand a Governor's power during a fiscal emergency.

Respectfully submitted,

Gerald A. James
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Attorney for Appellants Professional Engineers in California Government and California Association of Professional Scientists

c: See Attached Service List

PROOF OF SERVICE BY MAIL

Court of Appeal Case No. CO61011

Case: Professional Engineers in California Government et al., Plaintiffs and Appellants, v. John Chiang, as State Controller, etc., Defendant and Appellant; Arnold Schwarzenegger, as Governor, etc., et al., Defendants and Respondents.

I the undersigned, declare that:

I am a resident of the State of California and over the age of 18 years and not a party to the within entitled cause. The address of my business is 455 Capitol Mall, Suite 501, Sacramento, California 95814. On April 22, 2010, I mailed a copy of the within document **PECG and CAPS APPELLANTS' SUPPLEMENTAL LETTER BRIEF** to the parties listed below by placing a true copy of said documents, enclosed in a postage paid sealed envelope, for collection and mailing following our ordinary business practices.

I am readily familiar with this business's practice of collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope(s) with postage fully prepaid.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 22, 2010, at Sacramento, California.

Melanie Ely