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and all others similarly situated

11 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF KERN**

13 PETE FLORES, on behalf of himself and all) Case No.
14 others similarly situated,)
15 Plaintiffs,) **CLASS ACTION**
16 v.) **1. California Consumer Legal Remedies Act,**
17) **California *Civil Code* § 1770 *et seq.***
18 PACIFIC GAS AND ELECTRIC COMPANY,) **2. Unjust Enrichment**
19 a California company, PG&E) **3. Violation of Public Utilities Code § 451**
CORPORATION, a California company,) **4. Negligence**
20 WELLINGTON ENERGY, INC., a) **5. Breach of Contract**
21 Pennsylvania company, and DOE) **6. Fraud and Deceit**
22 DEFENDANTS 1-100,) **7. Violation of Public Utilities Code § 454**
23 Defendants.) **8. California False Advertising Act,**
24) **California *Business & Professions Code* §**
25) **17500 *et seq.***
26) **9. California Unfair Competition Law,**
27) **California *Business & Professions Code* §**
28) **17200 *et seq.***
) **10. Breach of Good Faith and Fair Dealing**
) **11. Negligent Misrepresentation**

DEMAND FOR JURY TRIAL

1 Plaintiff, on behalf of himself and all others similarly situated (collectively “Plaintiffs”),
2 alleges as follows. Plaintiff’s allegations are based on the investigation of counsel, and thus on
3 information and belief, except as to the individual actions of Plaintiff, as to which Plaintiff has
4 personal knowledge.

5 **THE PARTIES**

6 1. Plaintiff, PETE FLORES, resides in Bakersfield, California. A SmartMeter was
7 installed on his property and ever since, he has been billed for more electricity than he has used.

8 2. Pacific Gas and Electric Company and PG&E Corporation (collectively “PG&E”)
9 are companies both incorporated in California and both headquartered in San Francisco,
10 California. Pacific Gas and Electric is a public utility which provides gas and electricity to over
11 15 million people in central and northern California. It is a publicly traded company that had, in
12 2008, \$14.6 billion in revenues and \$1.33 billion in net income.

13 3. Wellington Energy, Inc., a subsidiary of Wellington Power Corporation, is an
14 independent contractor for PG&E which aided PG&E in installing SmartMeters, starting in 2006.
15 Wellington Energy is Pennsylvania based company that is registered to conduct business in
16 California and does conduct significant business in California.

17 4. Does 1 through 20 are corporations, companies or other entities whose identities are
18 currently unknown to Plaintiffs, and therefore sue such Defendants by such fictitious names.
19 Plaintiffs are informed and believe, and upon such information and belief allege, that such DOE
20 defendants designed and/or manufactured and/or placed into the stream of commerce the
21 SmartMeters which Plaintiffs allege gave rise to their claims in this matter, and/or who warranted
22 that those devices would accurately measure and report Plaintiffs’ electricity usage. Plaintiffs are
23 informed and believed and thereon allege that SmartMeters did not accurately measure and report
24 Plaintiffs’ electricity usage.

25 5. Does 21 through 40 are corporations, companies or other entities whose identities
26 are currently unknown to Plaintiffs, and therefore sue such Defendants by such fictitious names.
27 Plaintiffs are informed and believe, and upon such information and belief allege, that such DOE
28 defendants designed and/or manufactured and/or placed into the stream of commerce the wireless

1 generated by PG&E and sent to consumers, including Plaintiff and the Class.

2 18. This four-part SmartMeters system has caused Plaintiff and the Class to be
3 damaged, by overcharging them for their actual electricity usage.

4 19. This damage is evidenced by the fact that immediately prior to the installation of
5 the SmartMeters system, Plaintiff's bills were under \$200 on average and now they are \$500-\$600
6 on average, with no change in usage pattern on the part of Plaintiff.

7 20. Furthermore, it is not just Plaintiff who has been damaged, but a much larger class
8 of people as evidenced by the countless complaints on the internet, over 100 complaints to activist
9 group TURN (The Utility Reform Network), and the special meeting led by State Assemblyman
10 Dean Florez, on October 5, 2009 in Bakersfield, California.

11 21. On information and belief, Plaintiff and class members allege that at a time
12 unknown to Plaintiff, Defendants and Does 1-100 joined a conspiracy and knowingly and willfully
13 did agree together and conspire together, through the four part process above, the result of which
14 was and still is overcharging consumers.

15 22. The SmartMeter program is not optional. Consumers do not have a choice-PG&E
16 will install a SmartMeter in designated areas whether consumers want them or not.

17 23. Bakersfield and the Sacramento region are test areas for SmartMeters and there are
18 supposed to be over 10 million more SmartMeters installed throughout the state by 2012.
19 Consumers in the Bakersfield and Sacramento test areas should not have to bear the brunt of the
20 inadequacy and malfunctioning of the SmartMeters system at this time until the system is
21 remedied and repaired.

22 24. Defendants knew, should have known or were at least negligent in not knowing that
23 the SmartMeter system would overcharge consumers.

24 **CLASS ACTION ALLEGATIONS**

25 25. This action is properly maintainable as a class action. Plaintiff bring this class
26 action for injunctive relief and damages on behalf of the following class:

27 All California citizens who had a SmartMeter installed, within the four
28 years prior to the filing of the Complaint, by their electric company

1 PG&E and whose electricity bill has increased subsequent to such installation,
2 though usage patterns had not changed (the "Class").

3 26. Excluded from the class are governmental entities, Defendants, any entity in which
4 Defendants have a controlling interest, and Defendants' officers, directors, affiliates, legal
5 representatives, employees, co-conspirators, successors, subsidiaries, and assigns. Also excluded
6 from the Class is any judge, justice or judicial officer presiding over this matter and the members
7 of their immediate families and judicial staff.

8 27. **Numerosity:** The proposed Class is so numerous that individual joinder of all its
9 members is impracticable. Due to the nature of the trade and commerce involved, Plaintiffs
10 believe that the total number of Class members is at least in the hundreds of thousands and
11 members of the Class are numerous and geographically dispersed across California. While the
12 exact number and identities of the Class members are unknown at this time, such information can
13 be ascertained through appropriate investigation and discovery. The disposition of the claims of
14 the Class members in a class action will provide substantial benefits to all parties and to the Court.

15 28. **Common Question of Law and Fact Predominate:** There are many questions of
16 law and fact common to the representative Plaintiffs and the Class, and those questions
17 substantially predominate over any questions that may affect individual Class members. Common
18 questions of fact and law include, but are not limited to, the following:

- 19 A. Whether SmartMeters are designed and/or manufactured in such a way that
20 they do not accurately measure and report Plaintiffs' electricity usage.
- 21 B. Whether the wireless communications system, including its component
22 parts, which transmits the information from the Smart Meters does not
23 accurately report Plaintiffs' electricity usage to PG&E; and
- 24 C. Whether the computer software which monitors and processes the data
25 received from the wireless communications system, including its component
26 parts, which transmits the information from the SmartMeters does not
27 accurately report Plaintiffs' electricity usage and /or identify any
28 discrepancies in the data being reported.

1 29. These common questions of law and fact predominate over questions that may
2 affect individual Class members in that the claims of all Class members for each of the claims
3 herein can be established with common proof. Additionally, a class action would be “superior to
4 other available methods for the fair and efficient adjudication of the controversy,” because (1)
5 Class members have little interest in individually controlling the prosecution of separate actions
6 because the individual damages claims of each Class member are not substantial enough to
7 warrant individual filings; (2) Plaintiffs are not aware of other lawsuits against Defendants
8 commenced by or on behalf of members of the Class; and (3) because the disputed actions are
9 common to all Class members and because resolution of the claims of Plaintiffs will resolve the
10 claims of the remaining Class, certification does not pose any manageability problems.

11 30. **Typicality:** Plaintiffs’ claims are typical of the claims of the members of the Class.
12 Plaintiffs and all members of the Class have been similarly affected by Defendants’ common
13 course of conduct since they all have SmartMeters installed on their properties and are all paying
14 inflated electricity bills ever since the installation of the SmartMeters system.

15 31. **Adequacy of Representation:** Plaintiffs will fairly and adequately represent and
16 protect the interest of the Class. Plaintiffs have retained counsel with substantial experience in
17 handling complex class action litigation. Plaintiffs and their counsel are committed to prosecuting
18 this action vigorously on behalf of the Class and have the financial resources to do so.

19 32. **Superiority of Class Action:** Plaintiffs and the members of the Class suffered and
20 will continue to suffer harm as a result of Defendants’ unlawful and wrongful conduct. A class
21 action is superior to other available methods for the fair and efficient adjudication of the present
22 controversy. Class members have little interest in individually controlling the prosecution of
23 separate actions because the individual damages claims of each Class member are not substantial
24 enough to warrant individual filings. In sum, for many, if not most, Class members, a class action
25 is the only feasible mechanism that will allow them an opportunity for legal redress and justice.

26 33. Adjudication of individual class members’ claims with respect to the Defendants
27 could also, as a practical matter, be dispositive of the interests of other members not parties to the
28 adjudication.

FIRST CAUSE OF ACTION

Civil Code § 1770, et seq.

(Violation of the Consumer Legal Remedies Act)

(Against All Defendants)

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5 34. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
6 complaint.

7 35. The Consumer Legal Remedies Act (“CLRA”) creates a non-exclusive statutory
8 remedy for unfair methods of competition and unfair or deceptive acts or business practices. *See*
9 *Reveles v. Toyota by the Bay*, 57 Cal. App. 4th 1139, 1164 (1997). Its self-declared purpose is to
10 protect consumers against these unfair and deceptive business practices, and to provide efficient
11 and economical procedures to secure such protection. Cal. Civil Code §1760. The CLRA was
12 designed to be liberally construed and applied in favor of consumers to promote its underlying
13 purposes. *Id.*

14 36. More specifically, Plaintiffs allege that Defendants have violated paragraphs 5, 7,
15 and 9 of Cal. Civ. Code § 1770(a) by engaging in the unfair and/or deceptive acts and practices set
16 forth herein. Defendants’ unfair and deceptive business practices in carrying out the installation of
17 SmartMeters and their accompanying monitoring systems which do not accurately charge
18 consumers for their actual electric usage and continue to result in higher and inaccurate electric
19 bills to be paid by consumers, including Plaintiffs, in violation of the CLRA. Cal. Civil Code §
20 1770, et seq.

21 37. As a result of Defendants’ unfair and/or deceptive business practices, Plaintiffs
22 have suffered damage and lost money in that they paid for bills by PG&E that were incorrectly
23 inflated since the installation of the SmartMeters system. Furthermore, the SmartMeters system
24 does not have the benefits as represented, such as the benefit of saving consumers money.
25 Plaintiffs seek and are entitled to an order enjoining Defendants from continuing to engage in the
26 unfair and deceptive business practices alleged herein.

27 38. Pursuant to Section 1782 of the CLRA, Plaintiffs intend to notify Defendants in
28 writing of the particular violations of Section 1770 of the CLRA (the “Notice Letter”). If

1 Defendants fail to comply with Plaintiffs' demands within thirty days of receipt of the Notice
2 Letter, pursuant to Section 1782 of the CLRA, Plaintiffs will amend this Complaint to further
3 request damages under the CLRA.

4 **SECOND CAUSE OF ACTION**

5 **Unjust Enrichment**

6 **(Against All Defendants)**

7 39. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
8 complaint.

9 40. Through the conduct described herein, Defendants have received money belonging
10 to Plaintiffs and the Class through inaccurately high electricity bills collected by PG&E after the
11 installation of the SmartMeter system.

12 41. Defendants have reaped substantial profit by misrepresenting and/or concealing the
13 facts regarding the SmartMeter system's inability to accurately gage and reasonably charge
14 consumers for their electricity usage. Defendants have benefitted from the receipt of such money
15 that they would not have received but for their misrepresentation and/or concealment.

16 42. As a direct and proximate result of Defendants' misconduct as set forth herein,
17 Defendants have been unjustly enriched.

18 43. Under principles of equity and good conscience, Defendants should not be
19 permitted to keep the money belonging to Plaintiffs and the Class that Defendants have unjustly
20 received as a result of their actions.

21 **THIRD CAUSE OF ACTION**

22 **Public Utility Code § 451**

23 **(Violation of Requirement of Just and Reasonable Charges, Services and Rules)**

24 **(Against All Defendants)**

25 44. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
26 complaint.

27 45. California Public Utility Code § 451 governs Defendants and provides in relevant
28 part that, "All charges demanded or received by any public utility...shall be just and reasonable.

1 Every unjust or unreasonable charge demanded or received for such product or commodity or
2 service is unlawful.”

3 46. Defendants have violated Public Utility Code § 451 by charging Plaintiffs and
4 class members, as described above, unreasonable amounts since the installation of the SmartMeter
5 system. Further, such charges are not “just” as required by the code because there was no notice of
6 such rate increases and PG&E will not even admit that the rate increases have stemmed from the
7 installation of the SmartMeter system.

8 47. Because the charges by PG&E are both not just and are unreasonable, there should
9 be an injunction put in place to immediately stop such charges. Further, Plaintiffs and the Class
10 should be reimbursed because the charges at issue are, according to the public utility code,
11 “unlawful.”

12 **FOURTH CAUSE OF ACTION**

13 **Negligence**

14 **(Against All Defendants)**

15 48. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
16 complaint.

17 49. Defendants had a duty to their consumers, as a public utility, to charge just and
18 reasonable rates. Defendants also had a duty to sufficiently test the reliability of the SmartMeter
19 system and its billing functions before installing the SmartMeter system into hundreds of
20 thousands of consumers homes. Defendants had further duties once they were on notice by
21 consumers of the outrageous charges that were stemming from the operation of the SmartMeter
22 system.

23 50. Defendants breached their duty to Plaintiffs and class members. Plaintiffs and class
24 members have been and are currently dealing with the outrageous charges for electricity usage
25 from PG&E ever since the SmartMeters system was installed and operational.

26 51. Defendants’ breach proximately caused the damages to Plaintiffs and class
27 members, namely that Plaintiffs and class members have been financially and economically
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1 damaged when they were required, and continue to be required, to pay unreasonable electricity
2 charges.

3 **FIFTH CAUSE OF ACTION**

4 **Breach of Contract**

5 **(Against All Defendants)**

6 52. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
7 complaint.

8 53. Plaintiffs and class members were in a contractual agreement with Defendants to
9 receive electricity at a set rate that was reasonable and just, and Plaintiffs and the Class were
10 supposed to pay PG&E money in return for such services.

11 54. Defendants failed to deliver electricity at a set and reasonable rate as required.

12 55. Defendants breached the contract with Plaintiffs and the Class in overcharging for
13 the electricity PG&E was providing following the installation of the SmartMeters system.

14 56. Defendants' breach of contract proximately caused Plaintiffs and Class members to
15 sustain substantial losses in an amount to be proved at trial.

16 57. Plaintiff provided notice of such breach of contract to Defendants when he and
17 other Class members met with PG&E representatives personally on October 5, 2009 in
18 Bakersfield, California, for the purpose of bringing their concerns regarding Defendants' actions
19 and breach of contract to their attention. At that meeting, PG&E denied that there had been a
20 breach and refused to take any action to cure said breach.

21 **SIXTH CAUSE OF ACTION**

22 **Fraud and Deceit**

23 **(Against All Defendants)**

24 58. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
25 complaint.

26 59. PG&E made misrepresentations to both the Public Utility Commission to obtain
27 approval and in marketing the SmartMeter system to Plaintiff and the Class, when it claimed that
28 this system:

- 1 A. the system will save consumers money and benefit consumers,
- 2 B. the rates will be just and reasonable as required by statute, and
- 3 C. there will be no rate increases, or actions that result in rate increases, unless
- 4 approved by the Public Utilities Commission, also as required by statute.
- 5 D. that the new Smartmeter system will be utilized to create bills to
- 6 consumers that will accurately reflect energy used.

7 60. These above representations were and are false and/or misleading.

8 61. PG&E knew, should have known, or were reckless in not knowing that the
9 SmartMeters system would result in higher charges to Plaintiff and the Class.

10 62. PG&E made positive statements about SmartMeters in order to induce reliance, in
11 attempt to obtain public support for the SmartMeters system and to obtain approval by the PUC for
12 the SmartMeters system.

13 63. The Public Utilities Commission and Plaintiff and the Class were justified in
14 relying on the statements of PG&E. PG&E was in a superior position to make statements
15 regarding the SmartMeters system.

16 64. There has been resulting damage from these misrepresentations. Plaintiff and Class
17 members have suffered significant monetary damage since the SmartMeters system was deployed.

18 **SEVENTH CAUSE OF ACTION**

19 **Public Utility Code § 454**

20 **(Against All Defendants)**

21 65. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
22 complaint

23 66. California Public Utility Code § 454 provides in relevant part that, “no public utility
24 shall change any rate or so alter any classification, contract, practice, or rule as to result in any new
25 rate, except upon a showing before the commission and a finding by the commission that the new
26 rate is justified.”

27 67. PG&E has violated Public Utility Code § 454 by charging Plaintiff and class
28 members, as described above, higher and inaccurate rates since the installation of the SmartMeter

1 system. Such higher rates are unlawful under the code because there was no finding by the
2 commission that these new rates were “justified” as required.

3 68. There should be an injunction put in place to immediately stop billing practices
4 based on these heightened rates and Plaintiff and the Class should be reimbursed for any bills on
5 which they paid higher, unjustified rates.

6 **EIGHTH CAUSE OF ACTION**

7 **Business and Professions Code § 17500**

8 **(Violation of the False Advertising Act)**

9 **(Against All Defendants)**

10 69. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
11 complaint.

12 70. *Business and Professions Code* § 17500 provides that “[i]t is unlawful for any ...
13 corporation ... with intent ... to induce the public to enter into any obligation relating thereto, to
14 make or disseminate or cause to be made or disseminated ... from this state before the public in any
15 state, in any newspaper or other publication, or any advertising device, or by public outcry or
16 proclamation, or in any other manner or means whatever, including over the Internet, any
17 statement ... which is untrue or misleading, and which is known, or which by the exercise of
18 reasonable care should be known, to be untrue or misleading....”

19 71. Defendants misled consumers by making untrue statements, such that the
20 SmartMeters systems will save consumers money, and failing to disclose what is required as stated
21 in the Code, as alleged above.

22 72. As a direct and proximate result of Defendants’ misleading and false advertising,
23 Plaintiff and the members of the Class have suffered injury in fact and have lost money or
24 property.

25 73. The misleading and false advertising described herein presents a continuing threat
26 to Plaintiff and the Class in that Defendants persist and continue to engage in these practices, and
27 will not cease doing so unless and until forced to do so by this Court. Defendants’ conduct will
28 continue to cause irreparable injury to Plaintiff and the Class unless enjoined or restrained.

1 NINTH CAUSE OF ACTION

2 Business and Professions Code § 17200, et seq.

3 (Violation of the Unfair Competition Law)

4 (Against All Defendants)

5 74. Plaintiffs hereby incorporate, as if set forth in full, each and every preceding and
6 subsequent allegation in this complaint.

7 75. California Business and Professions Code § 17200, *et seq.*, (the “Unfair
8 Competition Law” or “UCL”) authorizes private lawsuits to enjoin acts of “unfair competition”
9 which includes any unlawful, unfair, or fraudulent business practice.

10 76. The UCL imposes strict liability. Plaintiffs need not prove Defendants intentionally
11 or negligently engaged in unlawful, unfair or fraudulent business practices—but only that such
12 practices occurred.

13 77. The material misrepresentations, concealment, and non-disclosures by Defendants
14 and DOES 1-100, as part of their marketing regarding the SmartMeter system, are unlawful,
15 unfair, and fraudulent business practices prohibited by the UCL.

16 78. In carrying out such marketing, Defendants have violated the Consumer Legal
17 Remedies Act, the False Advertising Law, and various other laws, regulations, statutes, and/or
18 common law duties. Defendants’ business practices alleged herein, therefore, are unlawful within
19 the meaning of the UCL.

20 79. The harm to Plaintiffs and members of the public outweighs the utility of
21 Defendants’ practices and, consequently, Defendants’ practices, as set forth fully above, constitute
22 an unfair business act or practice within the meaning of the UCL.

23 80. Defendants’ practices are additionally unfair because they have caused Plaintiff and
24 the class substantial injury, which is not outweighed by any countervailing benefits to consumers
25 or to competition, and is not an injury the consumers themselves could have reasonably avoided.

26 81. Defendants’ practices, as set forth above, have misled the general public in the past
27 and will mislead the general public in the future. Consequently, Defendants’ practices constitute a
28 fraudulent business practice within the meaning of the UCL.

1 82. Pursuant to Cal. Bus. & Prof. Code § 17204, an action for unfair competition may
2 be brought by any “person . . . who has suffered injury in fact and has lost money or property as a
3 result of such unfair competition.” Defendants’ wrongful misrepresentations and omissions have
4 directly and seriously injured Plaintiff and the putative class.

5 83. The unlawful, unfair, and fraudulent business practices of Defendants are ongoing
6 and present a continuing threat.

7 84. Pursuant to the UCL, Plaintiffs are entitled to preliminary and permanent injunctive
8 relief ordering Defendants to cease this unfair competition, as well as disgorgement and restitution
9 to Plaintiffs of all of Defendant’s revenues associated with their unfair competition, or such
10 portion of those revenues as the Court may find equitable.

11 **TENTH CAUSE OF ACTION**

12 **Breach of the Duties of Good Faith and Fair Dealing**

13 **(Against All Defendants)**

14 85. Plaintiffs hereby incorporate, as if set forth in full, each and every preceding and
15 subsequent allegation in this complaint.

16 86. As described above in the breach of contract cause of action, Defendants and
17 Plaintiffs were in a contractual relationship in which Defendants provided electric services in
18 exchange for monetary compensation from Plaintiff and the Class.

19 87. Plaintiff and Class members have fully performed their obligations with Defendants
20 under such transactions and agreements.

21 88. At all times, Defendants owed Plaintiff and Class members a duty to exercise and
22 act in good faith and deal fairly with them in the performance of such transactions and agreements.

23 89. Defendants have breached these duties and obligations in the manner and
24 particulars set for above, including but not limited to, failing to provide electricity and just and
25 reasonable rates to Plaintiff and Class members.

26 90. As a direct and proximate result of Defendants’ failure to abide and comply with
27 their obligations and duties, Plaintiff and Class members have suffered pecuniary damages in an
28 amount that has not yet been determined.

ELEVENTH CAUSE OF ACTION

Negligent Misrepresentation

(Against All Defendants)

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4 91. Plaintiffs hereby incorporate, as if set forth in full, paragraphs 1-33 of this
5 complaint.

6 92. PG&E made misrepresentations to both the Public Utility Commission to obtain
7 approval and in marketing the SmartMeter system to Plaintiff and the Class, when it claimed that
8 this system:

- 9 A. the system will save consumers money and benefit consumers,
10 B. the rates will be just and reasonable as required by statute, and
11 C. there will be no rate increases, or actions that result in rate increases, unless
12 approved by the Public Utilities Commission, also as required by statute.
13 D. that the new Smartmeter system will be utilized to create bills to
14 consumers that will accurately reflect energy used.

15 93. The representations made by PG&E were not true: consumers have not saved
16 money or received benefits from the Smart Meter system.

17 94. PG&E had no reasonable grounds for believing that SmartMeters would benefit
18 consumers by helping consumers save money.

19 95. PG&E made such positive statements about SmartMeters in order to induce
20 reliance, namely to get approval from the Public Utilities Commission and gain support from the
21 public, including Plaintiff and the Class.

22 96. The Public Utilities Commission and Plaintiff and the Class were reasonable in
23 relying on the statements of PG&E. There were no competing messages from any other
24 companies because PG&E is a monopoly and PG&E was in a superior position to make statements
25 regarding the SmartMeter system.

26 97. There has been resulting harm from these misrepresentations. Plaintiff and Class
27 members have suffered significant monetary damage since the SmartMeters system was deployed.
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98. The reliance by Plaintiff, the Class, and the PUC was a substantial factor in causing the harm.

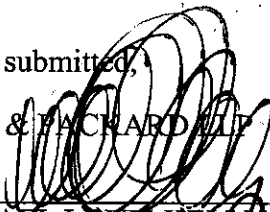
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other persons similarly situated, prays for judgment against Defendants, jointly and severally, in an amount to be determined at trial, as appropriate for:

1. Preliminary and permanent injunctive relief;
2. Restitution;
3. An award of statutory damages according to proof;
4. An award of general damages according to proof;
5. An award of special damages according to proof;
6. Attorneys' fees;
7. Costs of suit;
8. Prejudgment and post-judgment interest thereon; and
9. Such other and further relief as the Court deems just.

DATED: October 16, 2009

Respectfully submitted,
KIRTLAND & PACKARD LLP

By: 
MICHAEL LOUIS KELLY
ROBERT M. CHURELLA
BEHRAM V. PAREKH, of counsel
HEATHER M. PETERSON

*Counsel for Plaintiff and all others
similarly situated.*

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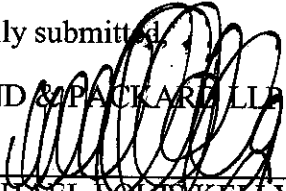
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all claims so triable.

DATED: October 16, 2009

Respectfully submitted,

KIRTLAND & PACKARD LLP

By: 

MICHAEL LOUIS KELLY
ROBERT M. CHURELLA
BEHRAM V. PAREKH, of counsel
HEATHER M. PETERSON

*Counsel for Plaintiff and all others
similarly situated.*

LAW OFFICES
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