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THE CITY AND COUNTY OF SAN FRANCISCO

CV12 0711 EDL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE CITY AND COUNTY OF SAN
FRANCISCO,

Plaintiff,

vs.

The UNITED STATES DEPARTMENT OF
TRANSPORTATION; RAY LAHOOD,
Secretary of Transportation, sued solely in his
official capacity; the PIPELINE AND
HAZARDOUS MATERIALS SAFETY
ADMINISTRATION; and CYNTHIA L.
QUARTERMAN, Administrator of the
Pipeline and Hazardous Materials Safety
Administration, sued solely in her official
capacity,

Defendants.

Case No.

CV12 0711
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF FOR VIOLATIONS
OF THE NATURAL GAS PIPELINE SAFETY
ACT, 49 U.S.C. §§ 60101 ET SEQ.

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3 **INTRODUCTION**

4 1. In the United States, there are millions of miles of natural gas pipelines running
5 underground. Many of these pipelines are located beneath streets, homes, schools, hospitals, and other
6 buildings where millions of men, women and children live and work. In the City and County of San
7 Francisco alone, there are hundreds of miles of natural gas transmission and distribution pipelines
8 running beneath streets, homes, and buildings where more than 800,000 people live and work.

9 2. Because natural gas pipelines carry highly flammable and explosive fuel, sometimes at
10 high pressures, those pipelines pose a grave threat to the lives and property of the millions of men,
11 women, and children who live and work near them.

12 3. Recognizing the need to protect people, property, and the environment from this grave
13 threat, Congress enacted the Pipeline Safety Act ("Act"). Under the Act, the Secretary of
14 Transportation must prescribe minimum safety standards for natural gas pipelines and pipeline
15 facilities. Those standards must "provide adequate protection against risks to life and property posed
16 by pipeline transportation and pipeline facilities." 49 U.S.C. § 60102(a)(1). The Act further provides
17 that a state authority may assume responsibility for regulating intrastate pipelines and enforcing
18 federal safety standards for those pipelines. State authorities assume that responsibility by submitting
19 to the Secretary a certification that the authority has adopted each applicable pipeline safety standard
20 promulgated by the Secretary and is enforcing those standards in ways that include inspections
21 conducted by qualified employees. 49 U.S.C. § 60105(a) & (b). The Secretary has a duty under the
22 Act to oversee those state authorities to ensure that they are complying with their duties under their
23 certifications and to enforce federal pipeline safety standards to the extent that state authorities are not
24 doing so.

25 4. The Pipeline and Hazardous Materials Safety Administration ("PHMSA") and the
26 California Public Utilities Commission ("CPUC") are the federal and state regulators responsible for
27 protecting people, property, and the environment from the grave threat posed by natural gas pipelines
28 in California. For decades, the CPUC has assumed responsibility for regulating intrastate pipelines in
California and for enforcing federal safety standards for those pipelines by submitting a certification to

1 PHMSA. PHMSA has accepted the CPUC's certification and has disbursed federal funds to the CPUC
2 to carry out its pipeline safety program in compliance with its certification. As a result, PHMSA has a
3 duty under the Act to ensure that the CPUC is complying with its certification and that federal pipeline
4 safety standards are being enforced in California.

5 5. PHMSA, however, has been shirking that duty for over a decade, if not longer. As a
6 consequence, there have been a series of natural gas pipeline disasters in recent years that have
7 resulted in numerous deaths and injuries and widespread destruction of property. In the last three
8 years in California alone, these disasters include: (1) the rupture and explosion of a natural gas
9 transmission pipeline owned and operated by PG&E in San Bruno, California that killed eight people,
10 injured more than 50 others, and destroyed or damaged more than 100 homes in 2010; (2) the failure
11 and explosion of a natural gas distribution line owned and operated by PG&E in Rancho Cordova,
12 California that killed one person, injured five others, and damaged several homes in 2008; and (3) the
13 failure and explosion of a plastic distribution pipe owned and operated by PG&E in Cupertino,
14 California that severely damaged a two-story condominium in 2011.

15 6. Events surrounding these recent pipeline disasters paint a disturbing picture. They
16 reveal that, for over a decade, the CPUC has failed to enforce federal pipeline safety standards as
17 required by its certification and has allowed PG&E to blatantly violate those standards. This has
18 occurred because PHMSA has abdicated its duty to oversee the CPUC and to ensure that federal
19 pipeline safety standards are being enforced. Instead, PHMSA, together with the CPUC, have "placed
20 a blind trust in the companies that they were charged with overseeing – to the detriment of public
21 safety." Accident Report on the Pacific Gas and Electric Company Natural Gas Transmission Pipeline
22 Rupture and Fire in San Bruno, California on September 9, 2010 ("NTSB Report"), at 135.¹ As a
23 result, PHMSA, for all practical purposes, has allowed gas pipeline operators like PG&E to regulate
24 themselves and, in doing so, has improperly delegated its authority to enforce federal pipeline safety
25 standards to those operators. Not surprisingly, self-regulation has allowed PG&E, with the apparent
26 blessing of PHMSA and the CPUC, to pervasively and continuously violate federal pipeline safety
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28 ¹ The NTSB Report can be found at: <http://www.nts.gov/doclib/reports/2011/PAR1101.pdf>.

1 standards in order to maximize profits at the expense of safety. Simply put, PHMSA has violated the
2 Act by allowing the foxes to guard the henhouse.

3 7. Indeed, the NTSB has expressed "strong doubts about the quality and effectiveness of
4 enforcement at both the Federal and state levels. Although PHMSA and the CPUC have authority to
5 enforce pipeline safety regulations, the organizational failures of PG&E seen in this accident [the San
6 Bruno explosion] suggest that some operators are able to ignore certain standards without concern for
7 meaningful enforcement action against them." NTSB Report, at 123.

8 8. By abdicating its duties as a regulator and by improperly delegating those duties to gas
9 pipeline operators like PG&E, PHMSA has placed the lives and property of millions of men, women,
10 and children – including hundreds of thousands of men, women, and children in San Francisco – at
11 substantial and unnecessary risk.

12 9. In July and October 2011, the City and County of San Francisco ("City" or "San
13 Francisco"), understandably concerned about the safety of the hundreds of miles of natural gas
14 pipelines that run beneath the City, notified PHMSA and the CPUC about its intent to sue under the
15 Act. In the notices, the City identified numerous instances where PHMSA and the CPUC had
16 abdicated their duties under the Act and had, for all practical purposes, allowed gas operators like
17 PG&E to regulate themselves. The City also notified PHMSA and the CPUC that it would seek
18 injunctive relief requiring PHMSA and the CPUC to comply with their duties under the Act.

19 10. The CPUC initially responded to the notices by claiming that it "is carrying out its
20 statutory and regulatory responsibilities for pipeline safety in a manner that is not only lawful but
21 *exemplary.*" Ex. B at 1 (*italics added*). In a similar vein, Michael Peevey, the CPUC's President,
22 continues to blame others for the CPUC's failure to do its job. At a recent legislative hearing, Peevey
23 blamed California's Department of Finance and utility consumer representatives for the CPUC's failure
24 to ensure the safety of California's natural gas pipelines. Aug. 16, 2011 Hearing before the California
25 Senate Energy, Utilities and Communications Com. These claims are troubling in light of the
26 overwhelming evidence of the CPUC's failures over the past decade or more and the years it will take
27 the CPUC to develop a properly trained and effective pipeline safety staff. The CPUC, like PG&E,
28 must change its culture to prioritize safety, and such changes are unlikely to occur quickly.

1 11. Nonetheless, the CPUC has recently initiated several investigatory and rulemaking
2 proceedings regarding PG&E's failures and pipeline safety throughout California. The CPUC has also
3 recently taken various actions to restructure and increase its pipeline safety enforcement resources –
4 all ostensibly designed to address the concerns raised in the City's notices of intent to sue as well as
5 concerns raised by the National Transportation Safety Board ("NTSB") and a separate panel convened
6 by the CPUC. It remains to be seen whether the CPUC will conduct a thorough and independent
7 examination of its own failures and adopt meaningful reforms to its own practices or whether the
8 CPUC will revert to its past practice of failing to fulfill its duty to enforce federal pipeline safety
9 standards in compliance with its certification. In the meantime, the City is participating in the CPUC's
10 ongoing proceedings in the hopes of spurring meaningful change.

11 12. Regardless of what the CPUC may or may not do, PHMSA, the federally appointed
12 watchdog of the CPUC, has abjectly failed to oversee the CPUC's pipeline safety program or to ensure
13 that federal pipeline safety standards are enforced. In failing to do so, PHMSA has violated and
14 continues to violate its duties under the Act.

15 13. This has not changed since PHMSA received the City's notices of intent to sue. Indeed,
16 PHMSA has initiated no proceedings and taken no apparent action to address the concerns raised in
17 the City's notices of intent to sue. Although PHMSA has initiated a rulemaking proceeding focused on
18 the safety of onshore gas transmission pipelines through new rules governing gas pipeline operators in
19 the wake of the San Bruno explosion, it continues to refuse to recognize its *own* persistent failure to do
20 its job as a regulator and the need to correct those failings. Among other things, PHMSA has failed to
21 respond to the recommendations made by the NTSB in its report on the San Bruno explosion. Even
22 more troubling, PHMSA continues to refuse to accept responsibility for its ongoing violations of the
23 Act. For example, as late as November 25, 2011, PHMSA maintained that it administers "*a strong*
24 federal-state pipeline safety program." Ex. E at p. 2 (*italics added*). That statement could not be
25 further from the truth.

26 14. Unless PHMSA acknowledges and corrects its pervasive and ongoing failure to comply
27 with its duties under the Act, it is not a question of if another pipeline will explode but a question of
28 when. Until then, no one who lives or works near a natural gas pipeline will be safe.

1 **THE PARTIES**

2 15. Plaintiff City and County of San Francisco ("City" or "San Francisco") is a municipal
3 corporation and charter city organized under the laws of the State of California. A municipality such
4 as the City is a "person" entitled to enforce the Act pursuant to 49 U.S.C. § 60101(a)(17).

5 16. Defendant United States Department of Transportation ("Department of
6 Transportation" or "Department") is an executive department of the United States Government
7 organized under 49 U.S.C. § 101, et al. Defendant Ray LaHood is the United States Secretary of
8 Transportation ("Secretary of Transportation" or "Secretary"). The Department and its Secretary are
9 "governmental authorities" subject to suit pursuant to 49 U.S.C. § 60121(a)(1). The Secretary is sued
10 solely in his official capacity.

11 17. Defendant the Pipeline and Hazardous Materials Safety Administration ("PHMSA") is
12 an agency of the Department of Transportation. Defendant Cynthia Quarterman is the Administrator
13 of PHMSA ("Administrator").² PHMSA and its Administrator are "governmental authorities" subject
14 to suit pursuant to 49 U.S.C. § 60121(a)(1). The Administrator is sued solely in her official capacity.

15 **JURISDICTION**

16 18. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the
17 City's causes of action "aris[e] under" federal law, namely, 49 U.S.C. § 60121.

18 19. On July 14, 2011, the City notified Defendants and the CPUC of its intent to sue under
19 the Act. *See* 49 U.S.C. § 60121(a)(1)(A). A true and correct copy of the July 14, 2011 notice is
20 attached hereto as exhibit A. More than 60 days have passed since the City gave Defendants notice of
21 its intent to sue.

22 20. On September 16, 2011, the CPUC responded by claiming that it "is carrying out its
23 statutory and regulatory responsibilities for pipeline safety in a manner that is not only lawful but
24 *exemplary . . .*" The CPUC further contended it was already addressing the concerns identified by the
25 City even through the proceedings cited in its response focused *solely* on PG&E – and not on the
26
27

28 ² As used in the complaint, PHMSA refers to the agency and its predecessors.

1 CPUC's own misconduct. A true and correct copy of the CPUC's September 16, 2011 response is
2 attached hereto as exhibit B.

3 21. On October 12, 2011, the City notified Defendants and the CPUC of additional ongoing
4 violations of the Act. The City's supplemental notice of intent to sue attached and incorporated by
5 reference its original notice of intent to sue dated July 14, 2011. A true and correct copy of the
6 October 12, 2011 supplemental notice is attached hereto as exhibit C. More than 60 days have passed
7 since the City gave Defendants supplemental notice of its intent to sue.

8 22. On October 12, 2011, the City responded to the CPUC's September 16 letter. In its
9 response, the City explained that nothing cited in the CPUC's September 16 letter focused "in any
10 sustained manner on the [CPUC's] actions, omissions, or obligations under the Act; they are focused
11 almost exclusively on PG&E." The City also described several "intermediate steps" the CPUC should
12 take to address the issues raised in the City's notices of intent to sue. A true and correct copy of the
13 City's response is attached hereto as exhibit D.

14 23. Since receiving the City's notices of intent to sue and response, the CPUC has initiated
15 administrative proceedings and begun implementation of measures – including some of the steps
16 recommended in the City's October 12, 2011 response – ostensibly designed to address many of the
17 concerns raised in the City's notices of intent to sue.

18 24. By contrast, PHMSA has initiated *no* administrative proceedings and has taken *no*
19 apparent steps to address any of the issues raised in the City's notices of intent to sue.

20 25. Instead, on November 25, 2011, PHMSA responded to the City's notices of intent to
21 sue by claiming that it is "administering a *strong* federal-state pipeline safety program." PHMSA also
22 identified an Advance Notice of Proposed Rulemaking focused on improving the safety of onshore gas
23 transmission lines through new rules governing gas pipeline operators. PHMSA did not, however,
24 identify any administrative proceedings that focused on *its own* actions, omissions, or obligations
25 under the Act or any action it has taken in response to the City's notices of intent to sue or the NTSB's
26 recommendations. A true and correct copy of PHMSA's corrected response sent by facsimile on
27 December 1, 2011 is attached hereto as exhibit E.

1 26. Neither PHMSA nor the Secretary of Transportation "has begun and diligently is
2 pursuing an administrative proceeding for the violation[s]" alleged in this complaint. 49 U.S.C. §
3 60121(a)(1)(B). Indeed, PHMSA is not pursuing any administrative proceedings addressing the
4 violations of the Act alleged in this complaint.

5 27. Neither the Attorney General of the United States nor the California Attorney General
6 is pursuing a judicial proceeding related to the violations alleged in this complaint. *See* 49 U.S.C. §
7 60121(a)(1)(C).

8 28. Accordingly, this Court may freely exercise jurisdiction over this dispute.

9 **VENUE**

10 29. This Court has venue over this action pursuant to 28 U.S.C. § 1391(e)(2) and (3)
11 because (a) Defendants include officers and employees of the United States or any agency thereof
12 acting in their official capacities, and agencies of the United States, and a substantial part of the events
13 or omissions giving rise to the claims occurred in this District, and (b) Plaintiff resides in this District.

14 **FACTUAL ALLEGATIONS**

15 **I. WITHOUT MEANINGFUL REGULATORY OVERSIGHT, NATURAL GAS**
16 **TRANSMISSION AND DISTRIBUTION PIPELINES POSE A GRAVE THREAT TO**
17 **LIFE, PROPERTY, AND THE ENVIRONMENT.**

18 30. Natural gas pipelines are a critical component of our nation's infrastructure. There are
19 currently millions of miles of natural gas pipelines nationwide. In California alone, there are over
20 100,000 miles of gas pipelines. These pipelines deliver approximately 80% of the natural gas used in
California and serve over 10.5 million residential, commercial, and industrial customers.

21 31. Most gas pipelines are either transmission or distribution lines. Transmission lines
22 generally carry gas from supply sources to distribution centers or high volume customers. These
23 pipelines typically operate at high pressures, are large – sometimes more than 24 inches in diameter –
24 and made of steel. Distribution lines carry gas from the point of local supply to homes, businesses,
25 and institutions. These pipelines typically operate at lower pressures and are made of various
26 materials, including plastic, cast iron, and steel.

27 32. Transmission and distribution lines are largely invisible to the general public because
28 most of them are underground. Because these pipelines transmit highly flammable gas sometimes at

1 high pressures, they are inherently dangerous. Indeed, gas releases from transmission or distribution
2 pipelines can result in fires and explosions that cause serious injuries and death and destroy property
3 and even entire neighborhoods.

4 33. In 2010 alone, there were no fewer than 106 significant incidents in the United States
5 involving onshore natural gas transmission and distribution lines.³ Thirty-one of these incidents
6 resulted in a fatality or a serious injury requiring hospitalization.

7 34. Recently, the rupture of a natural gas transmission pipeline owned and operated by
8 PG&E on September 9, 2010 in San Bruno, California caused multiple deaths and widespread
9 destruction. According to the NTSB Report, "the rupture of Line 132 [in San Bruno] was caused by a
10 fracture that originated in the partially welded longitudinal seam of one of six short pipe sections,
11 which are known in the industry as 'pups.' " NTSB Report, at x. The rupture "produced a crater about
12 72 feet long by 26 feet wide" and resulted in the ignition of escaping gas – which "created an inferno."
13 *Id.* at x. The ignition of the released gas and the resulting fire destroyed 38 homes and damaged
14 another 70 homes. It also destroyed government property, such as streetlights, sidewalks, streets, and
15 utility poles. Eight people were killed, more than 50 people were injured, and many more were
16 evacuated from the area. It took PG&E "95 minutes to stop the flow of gas and to isolate the rupture
17 site – a response time that was excessively long and contributed to the extent and severity of property
18 damage and increased the life-threatening risks to the residents and emergency responders." *Id.* at x.

19 35. The San Bruno explosion was not an isolated incident. Less than two years earlier, the
20 failure and explosion of a distribution pipeline owned and operated by PG&E in Rancho Cordova, a
21 suburb of California's state capitol, Sacramento, killed one person, injured five others, and damaged
22 several homes.

23 36. Even more recently, on August 31, 2011, the failure of a defectively manufactured
24 plastic distribution pipe caused an explosion in a condominium complex in Cupertino, California. The
25 explosion blew the garage door off a condominium and caused a fire that severely damaged a home.

26 _____
27 ³ As defined by PHMSA, an incident is significant if it results in: (1) fatality or injury
28 requiring in-patient hospitalization; (2) \$50,000 or more in total costs; (3) highly volatile liquid release
of five barrels or more or other liquid releases of 50 barrels or more; or (4) liquid releases resulting in
an unintentional fire or explosion.

1 The owner escaped serious injury or death only because she happened to leave her home for lunch a
2 few minutes before the explosion.

3 37. These and other incidents involving the failure and explosion of natural gas pipelines
4 could have been prevented if PHMSA and the CPUC had been fulfilling their duties under the
5 pertinent statutes, regulations, and certifications. Indeed, the NTSB recently found that "PHMSA's
6 enforcement program and its monitoring of" the CPUC's pipeline safety program "have been weak and
7 have resulted in the lack of effective Federal oversight and state oversight exercised by the CPUC."
8 NTSB Report, at 123. In turn, "the ineffective enforcement posture of the CPUC permitted PG&E's
9 organizational failures to continue over many years." *Id.* As a result, "[i]t was not a question of if [the
10 San Bruno] pipeline would burst. It was a question of when." Deborah Hersman, Chairman of the
11 NTSB, Opening Statement: Pipeline Accident Report – San Bruno, California, September 9 2010
12 (Aug. 30, 2011) ("Hersman Opening Statement").⁴

13 **II. SAN FRANCISCO HAS A STRONG INTEREST IN THE SAFETY OF NATURAL**
14 **GAS TRANSMISSION AND DISTRIBUTION PIPELINES WITHIN ITS**
BOUNDARIES.

15 38. PG&E operates three natural gas transmission lines within the boundaries of San
16 Francisco: Lines 101, 109, and 132. These transmission pipelines run underneath or near a number of
17 critical facilities, including San Francisco General Hospital (the only level I trauma center serving the
18 City and northern San Mateo County), City College of San Francisco, major stretches of Highways
19 101 and 280, the Potrero Hill and Portola Recreation Centers, and numerous schools that serve
20 thousands of children in San Francisco.

21 39. Segments of Lines 101, 109, and 132 date as far back as the 1930's and were fabricated
22 using older techniques that present potential risks to pipeline integrity and therefore require special
23 forms of assessment and remediation. Indeed, the rupture of a segment of Line 132 – part of the same
24 pipeline that runs beneath critical facilities in San Francisco – caused the explosion in San Bruno that
25 killed and injured numerous people and destroyed or damaged more than 100 homes. Transmission
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27 _____
28 ⁴ The Opening Statement is available at:
<http://www.nts.gov/news/speeches/hersman/daph110830o.html>.

1 pipelines of similar vintage are currently running underneath not only San Francisco but numerous
2 other cities and counties throughout California.

3 40. PG&E also operates a vast web of distribution lines spanning the entire City. These
4 pipelines run beneath densely populated residential areas and business districts in which hundreds of
5 thousands of men, women, and children live and work.

6 41. The safety of these distribution lines is of particular concern to San Francisco and its
7 citizens. In August 1981, a PG&E distribution main failed at the intersection of Sacramento and
8 Battery streets in San Francisco as the result of a puncture during construction activity at the site. The
9 resulting explosion contaminated eight square blocks of San Francisco's financial district with gas
10 containing toxic PCBs, and necessitated the evacuation of 30,000 people. The NTSB's report on this
11 incident cited PG&E's inaccurate recordkeeping, PG&E's dispatch of employees who were not trained
12 or equipped to close valves, and PG&E's unacceptable delays in shutting down the pipeline as factors
13 that exacerbated the damage caused by the explosion. These findings are remarkably similar to the
14 findings made by the NTSB 30 years later on the San Bruno Explosion.

15 42. When natural gas transmission or distribution pipelines in the City fail, San Francisco's
16 police, emergency crews and firefighters are typically the first responders who place themselves at risk
17 of serious physical harm when they come to the aid and rescue of affected residents and visitors. San
18 Francisco General Hospital, the only level I trauma center in the area, typically provides emergency
19 care to victims of disasters, which would include pipeline explosions, and the City's Chief Medical
20 Examiner deals with the deceased. When homes, businesses, and neighborhoods are destroyed or
21 damaged by exploding gas pipelines, the property tax base of San Francisco declines. Streets,
22 sidewalks, utility poles, other underground facilities like water pipes and municipal transit stations and
23 equipment, parks, schools, libraries, and other government buildings may also be damaged or
24 destroyed by explosions caused by failed gas pipelines and need to be repaired or replaced. Many of
25 these costs caused by failed gas pipelines are borne by San Francisco and its taxpayers.

26 43. The safety of natural gas pipelines running beneath San Francisco depends on
27 meaningful regulatory oversight and enforcement by PHMSA. As the Chairman of the NTSB recently
28

1 explained, "[f]or government to do its job – safeguard the public – it cannot trust alone. It *must* verify
2 through effective oversight." NTSB Report, at 135 (emphasis added).

3 44. In investigating the San Bruno explosion, the NTSB, which is charged with
4 determining the cause of certain transportation and pipeline accidents⁷ and promoting the safe operation
5 of transportation systems, including natural gas pipelines, recently found that the failures of PHMSA
6 directly contributed to the San Bruno explosion, and that those failures are ongoing. The NTSB,
7 however, only has the power to investigate and make recommendations. It has no authority over
8 PHMSA and cannot compel any action whatsoever by PHMSA.

9 45. Until PHMSA corrects its violations of the Act, every person living, working or
10 otherwise located near a PG&E gas pipeline in San Francisco faces a similar risk of a sudden,
11 potentially devastating pipeline explosion causing death, injury, loss of loved ones, or widespread
12 destruction of property that the residents of San Bruno suffered in 2010, that the residents of Rancho
13 Cordova suffered in 2008, and that the residents of Cupertino suffered in 2011. As a result, San
14 Francisco has a strong interest in the safety of natural gas transmission and distribution lines operating
15 within its boundaries.

16 **III. THE FEDERAL PIPELINE SAFETY ACT IMPOSES DUTIES ON FEDERAL AND**
17 **STATE REGULATORS OF GAS PIPELINE OPERATORS.**

18 46. In 1968, Congress enacted the Pipeline Safety Act ("Act"), which mandates the
19 establishment of pipeline safety standards and provides for federal and state enforcement of those
20 standards. The purpose of the Act "is to provide adequate protection against risks to life and property
21 posed by pipeline transportation and pipeline facilities by improving the regulatory and enforcement
22 authority of the Secretary of Transportation." 49 U.S.C. § 60102(a)(1). Under the Act, the Secretary
23 must prescribe "minimum safety standards" for pipeline transportation and facilities. 49 U.S.C.
24 § 60102(a)(2). Those safety standards must be designed to ensure "gas pipeline safety" and to
25 "protect[] the environment." 49 U.S.C. § 60102(b)(1)(B)(1).

26 47. PHMSA is the agency within the Department of Transportation charged with
27 developing and enforcing regulations for the safe, reliable, and environmentally sound operation of the
28 nation's 2.3 million mile natural gas pipeline transportation system. As PHMSA states in its

1 Guidelines for States Participating in the Pipeline Safety Program (Revised Dec. 2010) ("Guidelines"),
2 PHMSA "is responsible for protecting the people and the environment in the United States through a
3 comprehensive pipeline safety program." Guidelines, at 1.

4 48. Although PHMSA may enforce federal pipeline safety standards itself, the Act provides
5 that a State may assume responsibility for regulating intrastate pipelines and enforcing federal safety
6 standards for those pipelines. To do so, a state authority must certify to the Secretary of
7 Transportation that, among other things, it has jurisdiction and authority to regulate intrastate pipeline
8 facilities, has adopted federal pipeline safety standards, and "is enforcing each adopted standard
9 through ways that include inspections conducted by State employees meeting the qualifications the
10 Secretary prescribes under section 60107(d)(1)(C) of this title." 49 U.S.C. § 60105(a) – (c).

11 49. As explained by PHMSA in its Guidelines, "[u]nder a certification, the State agency
12 assumes inspection and enforcement responsibility with respect to intrastate facilities over which it has
13 jurisdiction under State law." Guidelines, at 4. "State agency duties normally consist of operator
14 inspections, compliance and enforcement, safety programs, accident inspections, pipeline construction
15 inspections, and record maintenance and reporting." *Id.* at 2. "The effectiveness of the State agency's
16 pipeline safety efforts depends on information obtained through inspections and evaluation of operator
17 compliance." *Id.* at 22.

18 50. PHMSA also disburses federal funds to state authorities that certify that they are
19 enforcing federal pipeline safety standards. 49 U.S.C. § 60107; 49 C.F.R. § 198.11 (last amended
20 Nov. 30, 2009). PHMSA is only authorized to disburse funds that are "reasonably required for each
21 state agency to carry out a safety program for intrastate pipeline facilities under a certification or
22 agreement with the Administrator." 49 C.F.R. § 198.11. Thus, PHMSA may only disburse funds to a
23 state agency if, and to the extent that, the agency is meaningfully enforcing federal pipeline safety
24 standards in compliance with its certification. The amount of federal funds that a state agency receives
25 to carry out its safety program depends on the agency's "performance" – including, among other
26 things, the adequacy of the agency's operating practices, the quality of its inspections, investigations,
27 and enforcement/compliance actions, the adequacy of its recordkeeping, the qualifications of its
28

1 inspectors, and the number of state inspection person-days. 49 C.F.R. § 198.13 (last amended Mar. 8,
2 2005).

3 51. To ensure that state authorities are complying with their certifications, PHMSA has
4 broad authority to "conduct investigations, make reports, issue subpoenas, conduct hearings, require
5 the production of records, take depositions, and conduct research, testing, development,
6 demonstration, and training activities and promotional activities relating to prevention of damage to
7 pipeline facilities." 49 U.S.C. § 60117. If PHMSA determines that a state authority is not
8 satisfactorily enforcing federal pipeline safety standards, it has the power to "reject the certification,
9 assert United States Government jurisdiction, or take other appropriate action to achieve adequate
10 enforcement." 49 U.S.C. § 60105(f). PHMSA also has the power to "withhold any part of a payment
11 when" it "decides that the [state] authority is not carrying out satisfactorily a safety program or not
12 acting satisfactorily as an agent." 49 U.S.C. § 60107(b). Accordingly, PHMSA is responsible for
13 ensuring meaningful enforcement of pipeline safety standards, whether it enforces those standards
14 directly or through its oversight of state authorities that enforce those standards pursuant to their
15 certifications under the Act.

16 52. Thus, to protect people, property, and the environment from the grave threat posed by
17 natural gas pipelines, PHMSA must ensure that certified state authorities are requiring gas pipeline
18 operators to comply strictly with federal pipeline safety standards through meaningful inspections and
19 evaluations of the operator's maintenance and operations and through prompt correction of operator
20 violations of the Act through enforcement actions. At the very least, PHMSA must ensure that
21 certified state authorities have in place an effective system for monitoring whether an operator like
22 PG&E is maintaining and operating its pipelines in compliance with federal pipeline safety standards
23 and for enforcing those standards when the operator is not.

24 53. This is especially critical for ensuring the safety of natural gas transmission and
25 distribution pipelines because federal pipeline safety standards establish a performance-based
26 regulatory scheme. Under that scheme, gas pipeline operators, among other things, must adopt an
27 integrity management program that requires them to continuously gather and maintain certain data
28 about their pipeline systems, identify threats to pipeline integrity, select appropriate methods to assess

1 those threats, properly test for or assess those threats, remedy any problems identified by those tests or
2 assessments, and document the process. Without meaningful enforcement of federal pipeline safety
3 standards by PHMSA or the certified state authority and meaningful oversight by PHMSA over the
4 enforcement efforts of the certified state authority, gas pipeline operators, for all practical purposes,
5 regulate themselves and are free to disregard those standards without repercussion.

6 54. The failure of PHMSA to oversee state authorities like the CPUC and to ensure
7 compliance by gas pipeline operators like PG&E with federal pipeline safety standards violates the
8 Act and constitutes an improper delegation of its regulatory and enforcement authority to those
9 operators.

10 55. Recognizing the need for meaningful regulatory oversight in order to protect against the
11 risk to life, property, and the environment posed by natural gas pipelines, Congress expressly
12 authorized any "person" to pursue a civil action in federal district court against government regulators
13 who abdicate their duties under the Act. 49 U.S.C. Section 60121(a)(1) expressly includes "the United
14 States government and other governmental authorities" within the definition of "person[s]" against
15 whom a civil action may be brought.

16 **IV. PHMSA HAS ABDICATED ITS DUTY TO ENSURE THAT FEDERAL PIPELINE**
17 **SAFETY STANDARDS ARE ENFORCED AND HAS IMPROPERLY DELEGATED**
18 **ITS AUTHORITY TO DO SO TO GAS PIPELINE OPERATORS LIKE PG&E.**

19 **A. Overview Of PHMSA's Violations Of The Act.**

20 56. Under the Act, a state authority may submit a certification to the Secretary of
21 Transportation stating that the authority, among other things, (1) "has regulatory jurisdiction over the
22 standards and practices to which the certification applies," 49 U.S.C. § 60105(b)(1); (2) "has adopted,
23 by the date of certification, each applicable standard prescribed under" the Act "or, if a standard
24 under" the Act "was prescribed not later than 120 days before certification, is taking steps to adopt that
25 standard," 49 U.S.C. § 60105(b)(2); and (3) "is enforcing each adopted standard through ways that
26 include inspections conducted by State employees meeting the qualifications the Secretary prescribes
27 under section 60107(d)(1)(C) of" the Act, 49 U.S.C. § 60105(b)(3). If the Secretary does not reject
28 and thereby accepts this certification, then the Secretary "may not prescribe or enforce safety standards

1 and practices for an intrastate pipeline facility or intrastate pipeline transportation to the extent that the
2 safety standards and practices are regulated by" the certified state authority. 49 U.S.C. § 60105(a).

3 57. To fulfill the purposes of the Act under this regulatory scheme, the Secretary of
4 Transportation, through PHMSA, must oversee the enforcement of federal pipeline safety standards
5 for intrastate pipelines by state authorities like the CPUC pursuant to their certifications under the Act.
6 As the Chairman of the NTSB explained to a Senate Committee on June 24, 2010, "to ensure effective
7 risk-based integrity management programs are employed throughout the pipeline industry, PHMSA
8 must establish an aggressive oversight program that thoroughly examines each operator's decision-
9 making process for each element of its integrity management program."

10 58. To fulfill its duty under the Act to oversee certified state authorities and to ensure the
11 safety of our nation's natural gas pipelines through meaningful enforcement of federal pipeline safety
12 standards, PHMSA must identify appropriate protocols using objective criteria and meaningful metrics
13 for the authority's enforcement program, conduct bona fide audits of that program using objective
14 criteria and meaningful metrics, evaluate the data collected during those audits, demand operational
15 changes where indicated, and document the entire process so the efficacy of the enforcement program
16 may be evaluated. These are the minimum steps that PHMSA must take in order to fulfill its duties
17 under the Act.

18 59. To ensure that state authorities fulfill their inspection and enforcement duties in
19 compliance with their certifications under the Act, PHMSA purportedly conducts annual program
20 evaluations and reviews of information attached by the state authority to its certification. PHMSA
21 then scores the state authority to determine how closely its pipeline safety program aligns with
22 PHMSA standards. Based on these evaluations, reviews, and scores, PHMSA decides whether to
23 reject the certification of the state authority and whether to disburse federal funds (including the level
24 of funding) to that state authority for purposes of carrying out its pipeline safety program.

25 60. For over a decade, the CPUC has annually submitted a certification to PHMSA and
26 assumed inspection and enforcement responsibility over intrastate natural gas pipelines in California –
27 including the pipelines located in San Francisco. Each year, the CPUC has, among other things,
28 certified to PHMSA that it "has regulatory jurisdiction over the safety standards and practices of all

1 intrastate pipeline transportation within California," has adopted each federal safety standard
2 established under the Act, and "is enforcing" each of those standards. 49 U.S.C. § 60105(b)(1) & (3).
3 The CPUC has acknowledged that it has the power to enforce those safety standards "by injunctive
4 and monetary sanctions substantially the same as those provided under Sections 60120 and
5 60122(a)(1) and (b)-(f) of" the Act. The CPUC has also agreed "to cooperate fully in a system of
6 federal monitoring of the state program to assure the program is carried out in compliance with" its
7 certification. *See, e.g., U.S. D.O.T. / PHMSA Pipeline Safety 2009 Natural Gas Certification for*
8 *CPUC.*

9 61. Each year, PHMSA has accepted the CPUC's certification and has disbursed federal
10 funds to the CPUC for the purpose of performing activities reasonably required to carry out a safety
11 program for intrastate pipeline facilities. In 2006-2008, the CPUC received 37-40 percent of its annual
12 funding for its safety program from PHMSA. During that time, the maximum any state agency
13 received was 40-50 percent. In 2009 and 2010, the CPUC received about 64 percent of its annual
14 funding for its safety program from PHMSA; the maximum any state agency received during those
15 years was about 70 percent. *See NTSB Report, at 67.* The CPUC received federal Pipeline Safety
16 Base Grants of \$889,425 in 2008, \$1,405,283 in 2009, and \$1,304,798 in 2010. These funds may
17 *only* be used by the CPUC for the inspection of natural gas pipeline facilities to ensure compliance
18 with and enforcement of federal safety standards.

19 62. Although PHMSA has accepted the CPUC's certification and has given the CPUC
20 federal funds to carry out its pipeline safety program, PHMSA has never meaningfully evaluated the
21 CPUC's pipeline safety program.

22 63. Indeed, PHMSA is incapable of doing so because it has never identified, much less
23 utilized, metrics – i.e., objectively measurable criteria or guidelines – that would allow PHMSA to
24 evaluate, with any degree of accuracy, the effectiveness of a state authority's pipeline safety program.
25 Even more troubling, PHMSA has never identified, much less utilized, metrics that would allow
26 PHMSA or the CPUC to evaluate, with any degree of accuracy, the effectiveness of a gas pipeline
27 operator's safety program. As the NTSB found, PHMSA's oversight and audit protocols are
28

1 structurally inadequate to provide meaningful oversight over certified state authorities or gas pipeline
2 operators. *See* NTSB Report, at 121.

3 64. As a result, PHMSA, for all practical purposes, does not and cannot determine whether
4 the CPUC is fulfilling its duties under the Act or carrying out a safety program in compliance with its
5 certification or whether PG&E is fully complying with federal pipeline safety standards.

6 65. Lacking the ability to conduct meaningful evaluations of the CPUC's pipeline safety
7 program, PHMSA, instead, engages in a paperwork exercise that simply "checks the boxes." In other
8 words, PHMSA rubberstamps the certification of the CPUC and never actually determines whether the
9 federal funds it disburses to the CPUC are "reasonably required" to carry out its pipeline safety
10 program.

11 66. PHMSA also fails to take any corrective action even when it happens to discover that
12 the CPUC has failed to enforce federal pipeline safety standards. Indeed, PHMSA's certification
13 requirements do not even provide for the possibility of any enforcement action – short of
14 decertification – against a certified state authority like the CPUC.

15 67. Thus, for more than a decade, if not longer, the CPUC has, for all practical purposes,
16 operated its pipeline safety program with *no* federal oversight.

17 68. The absence of meaningful oversight by PHMSA has allowed the CPUC to shirk its
18 duty to enforce federal pipeline safety standards as required by its certification for over a decade, if not
19 longer.

20 69. In fact, because PHMSA has failed to identify or require the utilization of meaningful
21 metrics, the CPUC has been incapable of meaningfully inspecting and evaluating the safety programs
22 of gas pipeline operators like PG&E.

23 70. As a result, PG&E and possibly other gas pipeline operators have been pervasively and
24 continuously violating federal pipeline safety standards for over a decade, if not longer. As the NTSB
25 recently concluded, "the multiple and recurring deficiencies in PG&E operational practices indicate a
26 systemic problem." NTSB Report, at 118. This systemic problem – which caused the San Bruno
27 explosion – exists because PHMSA has violated its duties under the Act.

1 71. PHMSA has abdicated its duty to oversee the pipeline safety programs of certified state
2 authorities like the CPUC and to ensure that federal pipeline safety standards are being enforced. As a
3 result, PHMSA has, for all practical purposes, allowed gas pipeline operators like PG&E to regulate
4 themselves. In doing so, PHMSA has improperly delegated its regulatory and enforcement authority
5 under the Act to those operators. Simply put, PHMSA has violated the Act by allowing the foxes to
6 guard the henhouse.

7 72. Shockingly, PHMSA has done so intentionally. Linda Daugherty, PHMSA's Deputy
8 Associate Administrator for Policy and Program, explained, "*it is not the regulator's responsibility to*
9 *assure that operators comply* [with federal and state pipeline safety standards]. *It is the operator's*
10 *responsibility to assure that they comply.*" Transcript of March 2, 2011 NTSB Hearing into San Bruno
11 incident (Docket No. DCA-10-MP-008), at 417:23-25 (italics added).

12 73. As a result, opportunities to prevent tragedies like the recent pipeline explosions in San
13 Bruno, Rancho Cordova, and Cupertino were and continue to be lost.

14 74. Despite overwhelming evidence that PHMSA has abdicated its duties under the Act –
15 which include the findings of the NTSB and PHMSA's own admissions – PHMSA still maintains that
16 it administers "*a strong federal-state pipeline safety program.*" Ex. E at 2 (italics added). PHMSA's
17 head-in-the sand refusal to acknowledge its past and ongoing failures demonstrates that injunctive
18 relief is necessary to compel PHMSA to fulfill its duties under the Act. Indeed, there is no reason to
19 believe that PHMSA will comply with those duties absent court intervention, and every reason to
20 believe it will not.

21 **B. The Facts Demonstrate That PHMSA Has Abdicated Its Duties Under The Act**
22 **And Has Allowed The Improper Delegation Of Its Enforcement Authority Under**
23 **The Act To Gas Pipeline Operators Like PG&E.**

24 1. **Because PHMSA has never identified or utilized metrics necessary for**
25 **meaningful evaluations of the pipeline safety programs of certified state**
26 **authorities or gas pipeline operators, PHMSA cannot ensure that federal**
27 **pipeline standards are enforced.**

28 75. Federal pipeline safety standards establish a performance-based regulatory scheme that
depends on the individual gas pipeline operator to develop, implement, execute, evaluate, and adjust

1 its pipeline safety procedures, plans, programs and related activities to ensure the safe maintenance
2 and operation of its pipelines.

3 76. "[T]o provide adequate protection against risks to life and property posed by" natural
4 gas pipelines as required by the Act, 49 U.S.C. § 60102(a)(1), PHMSA and certified state authorities
5 must work together to ensure that gas pipeline operators comply with those standards.

6 77. PHMSA must, at a minimum, meaningfully inspect, audit, investigate, and evaluate the
7 certified state authority's pipeline safety program and enforcement activities. PHMSA must also
8 follow up on any deficiencies in those programs or activities as soon as they are uncovered.

9 78. PHMSA or the certified state authority must also, at a minimum, meaningfully inspect,
10 audit, investigate, and evaluate a gas pipeline operator's safety program and compliance activities.
11 PHMSA or the authority must also follow up on compliance deficiencies and violations committed by
12 an operator as soon as they are uncovered.

13 79. As the NTSB explained, "[t]he effectiveness of performance-based pipeline safety
14 programs is dependent on the *diligence and accountability* of both the operator *and the regulator* – the
15 operator for development and execution of its plan, and *the regulator for oversight of the operators.*"
16 NTSB Report, at 121 (italics added).

17 80. PHMSA, however, has not identified or utilized metrics necessary to measure, with any
18 degree of accuracy, the effectiveness of the pipeline safety program of a certified state authority like
19 the CPUC. As a result, PHMSA is incapable of determining whether the CPUC is enforcing federal
20 pipeline safety standards in compliance with its certification or whether the federal funds it disburses
21 to the CPUC are reasonably required to carry out its pipeline safety program.

22 81. PHMSA also has not identified or utilized or required certified state authorities like the
23 CPUC to identify or utilize metrics necessary to measure, with any degree of accuracy, the
24 effectiveness of the safety program of a gas pipeline operator like PG&E.

25 82. Meaningful enforcement of federal pipeline safety standards requires "the selection of
26 metrics that quantify the results against specified values to provide a rate of occurrence for either a
27 desired or undesired outcome." Those metrics should include "the number of incidents from internal
28 defects per mile of operating pipeline or the number of incidents in a specific location per total

1 incidents on a specific pipeline." Such metrics are critical because they provide a basis for comparing
2 the frequency of defects and help to identify specific locations on pipelines that are potentially
3 hazardous. They also allow regulators to "exercise more effective oversight by focusing on those
4 operators with problems, and to identify causes of critical safety problems." NTSB Report, at 121.

5 83. PHMSA has never asked, much less required, the CPUC to identify or utilize any
6 metrics that would allow the CPUC or gas pipeline operators to measure, with any degree of accuracy,
7 the success of their pipeline safety programs. As a result, neither PHMSA nor the CPUC has ever
8 identified or utilized any such metrics. NTSB Report, at p. 121.

9 84. Thus, neither PHMSA nor the CPUC can determine, with any reasonable degree of
10 certainty, whether a gas pipeline operator like the PG&E is complying with the performance-based
11 safety standards of the Act. Thus, "neither PG&E nor the CPUC is able to effectively evaluate or
12 assess the integrity of PG&E's pipeline system." NTSB Report, at 122.

13 85. Not surprisingly, PG&E has been able to violate federal pipeline safety standards for
14 decades with impunity "because performance measures were neither well defined nor evaluated with
15 respect to meeting performance goals." NTSB Report, at 121.

16 86. By failing to identify or utilize meaningful metrics, PHMSA has violated and continues
17 to violate its duty to oversee the CPUC and to ensure that federal pipeline safety standards are
18 meaningfully enforced. In doing so, PHMSA has left PG&E unregulated and allowed PG&E to evade
19 its obligations under the Act.

20 87. By disbursing federal funds to the CPUC even though it is incapable of determining
21 whether the CPUC's pipeline safety program complies with its certification, PHMSA has also violated
22 its duty to ensure that those funds are "reasonably required" to carry out a safety program.

23 **2. PHMSA conducts "check the boxes" evaluations that rubberstamp the**
24 **pipeline safety program of the CPUC and that, for all practical purposes,**
leave gas pipeline operators unregulated in California.

25 88. Each year, PHMSA purportedly evaluates the CPUC's regulation of gas pipeline
26 operators in California by performing onsite evaluations, reviewing the information the CPUC attaches
27 to its certification, and scoring the CPUC on how closely its pipeline safety program aligns with
28 PHMSA standards. In the area of safety program evaluation, PHMSA awarded the CPUC a score of

1 99.5 out of 100 in 2009, 99 out of 100 in 2008, and 100 out of 100 in the preceding years. As the
2 NTSB observed, these scores are "superior, if not outstanding." NTSB Report, at 122. Shockingly,
3 PHMSA continued to award the CPUC "superior, if not outstanding scores" even after the 2008
4 pipeline explosion in Rancho Cordova. Indeed, Zach Barrett, PHMSA's Director of State Programs,
5 testified that the CPUC "has a good inspection program. They have good qualified engineers that are
6 quite capable of doing inspections, investigations." Transcript of March 2, 2011 NTSB Hearing into
7 San Bruno incident (Docket No. DCA-10-MP-008) at 359:7-10; *see also* NTSB Report, at 70.

8 89. Each year, PHMSA has declined to reject and has thereby accepted the CPUC's
9 certification under the Act and has disbursed federal funds to the CPUC "to carry out a safety program
10 under" its certification. 49 U.S.C. § 60107(a). However, PHMSA's evaluations, reviews, and scoring
11 of the CPUC's pipeline safety program have been nothing more than paperwork exercises that merely
12 "check the boxes." In other words, PHMSA rubberstamps the CPUC's pipeline safety program. As
13 the NTSB recently concluded, "PHMSA's enforcement program and its monitoring of state oversight
14 programs have been weak and have resulted in the lack of effective Federal oversight and state
15 oversight exercised by the CPUC." NTSB Report, at 123.

16 90. For example, in October 2010, PHMSA, as part of its evaluation of the CPUC's
17 pipeline safety program, accepted the CPUC's verification "that their operators, except Southwest Gas
18 Company, have complied with Subpart O during their inspection reviews." (U.S. D.O.T. / PHMSA
19 2009 Natural Gas State Program Evaluation for CPUC, at p. 22, item 10.) PHMSA did so even though
20 the CPUC's May 2010 audit of PG&E found that PG&E had violated integrity management
21 requirements imposed by Subpart O and even though those violations had not been corrected by
22 PG&E at the time PHMSA made its evaluation in October 2010. This is just one of the many
23 examples where PHMSA conducted meaningless pro forma "evaluations" or "reviews" of the CPUC's
24 pipeline safety program.

25 91. Indeed, PHMSA has consistently given the CPUC an "A" grade for its pipeline safety
26 program even though PHMSA did not, for all practical purposes, review the CPUC's actual program or
27 performance. Indeed, the NTSB recently found that "PHMSA continue[s] to conduct audits that focus
28 on verification of paper records and plans rather than on gathering information on how performance-

1 based safety systems *are* implemented, executed, and evaluated, and whether problem areas *are* being
2 detected and corrected." NTSB Report, at 121 (italics added).

3 92. As a result, PHMSA has violated and continues to violate its duty to oversee the CPUC
4 and to ensure that federal pipeline safety standards are meaningfully enforced. In doing so, PHMSA
5 has left PG&E unregulated and allowed PG&E to evade its obligations under the Act.

6 93. By disbursing federal funds to the CPUC even though the CPUC, for all practical
7 purposes, failed to carry out a safety program in compliance with its certification under the Act,
8 PHMSA has also violated its duty to ensure that those funds are "reasonably required" to carry out a
9 safety program.

10 **3. For over a decade, PHMSA has ignored the CPUC's failure to maintain**
11 **adequate staffing, which made it impossible for the CPUC to enforce**
federal pipeline safety standards as required by its certification.

12 94. Each year, the CPUC has certified to PHMSA that it is enforcing federal pipeline safety
13 standards "through ways that include inspections conducted by State employees meeting the
14 qualifications the Secretary prescribes." 49 U.S.C. §§ 60105(a) and (b)(3). As PHMSA's Guidelines
15 explain, "[t]o meet the State agency's commitment to pipeline safety, each State agency must maintain
16 an adequate, base-level number of pipeline safety inspectors." Guidelines, at 12.

17 95. For over a decade, however, the CPUC, with PHMSA's knowledge and tacit approval,
18 has failed to maintain staffing sufficient in number, training, and experience to fulfill its inspection and
19 enforcement duties under the Act.

20 96. As early as 1998, PHMSA found that staffing at the CPUC "continues to be a problem."
21 In a 1998 letter to the CPUC, PHMSA pointed out that the CPUC needed to devote 28 person-years to
22 safety inspections but that the CPUC had only devoted 13.25 person-years in 1997, and with upcoming
23 staff departures, the CPUC was projected to devote only 9.84 person-years in 1998. The following
24 year, PHMSA found that the CPUC's inspection staffing in 1998 had fallen to 7.54 person-years. Sept.
25 28, 1998 letter from E.J. Ondak, U.S. D.O.T. Director, to R.A. Bilas, CPUC President.

26 97. In virtually every year since then, PHMSA has found that the CPUC failed to meet
27 either the staffing levels or the training requirements prescribed by the Secretary for safety inspections.
28 For example, in 2006, PHMSA found that the "low number of on-site inspection days not only reduces

1 public safety, but lowers the amount of federal funds allocated to your pipeline safety program." Jan/
2 12, 2006 letter from C. Hoidal, PHMSA Director, Western Region, to M. Peevey, CPUC President.

3 98. On information and belief, the number of days spent in the field by California's gas
4 pipeline safety inspectors have been woefully inadequate in comparison to other states. For example,
5 in New York, 20 inspectors worked approximately 4,300 field days in 2010. In contrast, California's
6 nine inspectors worked only 787 field days in 2010 even though California's gas pipeline system is
7 more than twice as large as New York's system. And almost half of those field days were spent
8 monitoring propane and mobile home park systems – *not* transmission or distribution pipelines.

9 99. The CPUC has also admitted to the NTSB that it does not perform annual audits
10 because it lacks sufficient resources to do so. *See* NTSB Report, at 67.

11 100. The CPUC's safety division has been woefully understaffed for many years. The panel
12 convened by the CPUC following the San Bruno explosion documented this severe understaffing.
13 Report of the Independent Review Panel: San Bruno Explosion (Revised Copy June 24, 2011) ("Panel
14 Report"), at 18-22, 88-91.⁵

15 101. For over a decade, PHMSA has known about the CPUC's longstanding failure to
16 maintain adequate staffing of its pipeline safety program. PHMSA has also acknowledged that the
17 CPUC's staffing deficiencies pose a grave threat to public safety. Based solely on those longstanding
18 staffing deficiencies, PHMSA knew or should have known that the CPUC did not have the ability to
19 determine whether PG&E was complying with federal pipeline safety standards. Nonetheless, aside
20 from some written warnings and a marginal reduction in federal funds disbursed to the CPUC,
21 PHMSA has never taken any corrective action against the CPUC – much less required the CPUC to
22 increase its staffing. Instead, PHMSA has continually awarded the CPUC "superior, if not
23 outstanding" scores, NTSB Report, at 122, and has continually given the CPUC a substantial
24 proportion of the federal funds it has requested to carry out its pipeline safety program.

25 102. Even worse, PHMSA itself has hampered the CPUC's ability to enforce federal pipeline
26 safety standards by limiting the availability of training courses even though those courses are

27 _____
28 ⁵ The Panel Report is available at: <http://www.cpuc.ca.gov/NR/rdonlyres/85E17CDA-7CE2-4D2D-93BA-B95D25CF98B2/0/cpucfinalreportrevised62411.pdf>.

1 mandatory. As a result, PHMSA has often denied the CPUC's inspectors access to these mandatory
2 courses due to over-subscription. Feb. 24, 2006 Letter from R. Stepanian, Interim Program Manager,
3 Utilities Safety and Reliability Branch, Consumer Protection and Safety Division to T. Finch, State
4 Liaison, Western Region, PHMSA. When the CPUC complained that its inspectors were unable to
5 sign up for training at the Department's Transportation Safety Institute, PHMSA responded "we
6 understand that newer inspectors are frequently 'wait listed.' I encourage that you maintain all
7 pertinent documentation of your enrollment efforts with" the Institute. Jan. 12, 2006 Letter from T.
8 Finch to R. Stepanian. In January 2007, PHMSA again acknowledged the difficulties in enrolling at
9 the Institute. But instead of taking measures to ensure that the CPUC's inspectors actually received the
10 necessary training, PHMSA again urged the CPUC to maintain all pertinent documentation.
11 PHMSA's emphasis on paperwork rather than training is symptomatic of the "check the boxes"
12 approach to pipeline safety exhibited by both PHMSA and the CPUC. *See* Panel Report, at 25-26, 98-
13 99.

14 103. As a result, PHMSA has violated and continues to violate its duty to oversee the CPUC
15 and to ensure that federal pipeline safety standards are meaningfully enforced. In doing so, PHMSA
16 has left PG&E unregulated and allowed PG&E to evade its obligations under the Act.

17 104. By disbursing federal funds to the CPUC even though the CPUC lacked personnel in
18 sufficient numbers, training, and experience to carry out a safety program in compliance with its
19 certification under the Act, PHMSA has also violated its duty to ensure that those funds are
20 "reasonably required" to carry out a safety program.

21 105. Although the CPUC has recently increased the size of its inspection staff and plans to
22 hire more inspectors, it did so in response to the NTSB Report and the report of its own panel. It did
23 not do so because of any corrective action by PHMSA. Indeed, PHMSA still has taken no corrective
24 action to require the CPUC to maintain adequate staffing. Given PHMSA's long history of ignoring
25 staffing deficiencies at the CPUC, there is no reason to believe that PHMSA will fulfill its duty under
26 the Act and ensure that the CPUC maintains adequate staffing in the future.

1 4. **PHMSA has created a regulatory scheme that improperly delegates**
2 **enforcement of federal pipeline safety standards to gas pipeline operators**
3 **like PG&E.**

4 106. Under the Act, the Secretary of Transportation, through PHMSA, has a duty to
5 prescribe "minimum safety standards for pipeline transportation and for pipeline facilities." 49 U.S.C.
6 § 60102(a)(2). Those standards must be: (1) "practicable"; and (2) "designed to meet the need for"
7 "pipeline safety" and "protecting the environment." 49 U.S.C. § 60102(b)(1). The Act also gives the
8 Secretary the power to enforce those standards through monetary civil penalties, injunctive relief and
9 other appropriate relief. The purpose behind the creation and enforcement of those standards "is to
10 provide adequate protection against risks to life and property posed by pipeline transportation and
11 pipeline facilities." 49 U.S.C. § 60102(a)(1).

12 107. Instead of prescribing and enforcing federal pipeline safety standards as required by the
13 Act, PHMSA has created a regulatory scheme that improperly delegates to gas pipeline operators
14 responsibility for the safe operation and maintenance of gas pipeline facilities. This regulatory scheme
15 grants pipeline operators broad discretion to decide what maintenance and safety practices are
16 necessary to ensure the safe operation of their pipelines. At the same time, PHMSA has failed to
17 ensure that operators comply with the few regulatory limits or standards that govern the operators'
18 exercise of this discretion. In failing to do so, PHMSA has improperly delegated the Secretary's
19 enforcement authority to gas pipeline operators like PG&E. As the NTSB Chairman stated before a
20 Senate Committee on June 24, 2010, "the NTSB discovered indications that PHMSA and operator
21 oversight of risk-based assessment programs, specifically integrity management programs and public
22 education programs, has been lacking and has failed to detect flaws and weaknesses in such
23 programs."

24 108. For example, PHMSA has long known about the threat to life and property posed by
25 plastic pipes known to be susceptible to cracking and failure. Questions regarding the safety of certain
26 types of plastic pipes used for natural gas distribution lines surfaced as early as the 1970's. In 1998,
27 the NTSB issued a special report – which found that plastic pipes made by Century Utility Products,
28 Inc. ("Century") suffered from "brittle-like cracking under stress intensification" leading to an
 increased risk of failure and explosion. The NTSB also found that much of the plastic pipes

1 manufactured and installed from the 1960's through the early 1980's may be susceptible to brittle-like
2 cracking and failure. Based on these findings, the NTSB recommended that PHMSA (1) *require* gas
3 pipeline operators to carefully monitor plastic pipes manufactured by Century and to replace those
4 pipes as soon as they indicated poor performance, and (2) determine whether other older plastic pipes
5 were susceptible to premature brittle-like cracking, inform operators of those findings, and require
6 operators to replace any pipes that exhibit poor performance.

7 109. Instead of implementing the NTSB's recommendations, PHMSA issued advisories that
8 merely *recommended* that gas pipeline operators monitor the performance of older plastic pipes and
9 consider replacing those pipes that indicated poor performance. Although the NTSB on several
10 occasions took issue with PHMSA's failure to *require* monitoring and replacement of plastic pipe
11 susceptible to cracking and premature failure, PHMSA, to this day, does not require replacement of
12 those pipes.

13 110. In December 2009, PHMSA, for the first time, promulgated regulations mandating
14 integrity management programs for distribution lines. Although those regulations purportedly require
15 operators of distribution lines to identify and assess the risks associated with their distribution
16 pipelines, including the risks associated with older plastic pipes, they do not require operators to take
17 any specific action if they find older plastic pipes that are susceptible to cracking and premature
18 failure. Instead, PHMSA continues to give operators broad discretion to determine whether to take
19 any actions regarding those older plastic pipes.

20 111. Indeed, PHMSA does not even require operators of distribution pipelines to report the
21 involvement of older plastic pipes in incident reports submitted to PHMSA. Instead, PHMSA merely
22 *encourages* those operators to report data regarding plastic pipe failures to the Plastic Pipe Database
23 Committee ("PPDC"), an entity established jointly by PHMSA and the American Gas Association, an
24 industry group. The PPDC keeps this data confidential and will not even share this data with PHMSA.
25 As a result, neither PHMSA nor a certified state authority can determine which plastic pipes present a
26 greater risk of rupture, how many of those pipes remain in use, and whether any additional safety
27 measures are necessary to prevent the rupture of those pipes. Thus, neither PHMSA nor a certified
28 state authority like the CPUC has any way of determining whether gas pipeline operators are

1 complying with the recently promulgated regulations requiring operators to identify and assess the
2 risks associated with older plastic pipes.

3 112. The consequences of this ongoing violation of the Act by PHMSA are serious. In 2011,
4 an older plastic pipe known to be susceptible to cracking and failure exploded in Cupertino, severely
5 damaging a home in a condominium complex. The owner only escaped serious injury or death
6 because she happened to leave her home minutes before the explosion.

7 **5. With PHMSA's knowledge and tacit approval, the CPUC for many years**
8 **has forsaken its duty to enforce federal pipeline safety standards and has**
9 **allowed PG&E to pervasively and continuously violate those standards.**

10 113. Under the Act, PHMSA has a duty to oversee the CPUC's pipeline safety program and
11 to ensure that the CPUC is enforcing federal pipeline safety standards in compliance with its
12 certification. PHMSA also has a duty to enforce federal pipeline safety standards to the extent that the
13 CPUC is not doing so.

14 114. For many years, however, the CPUC has forsaken its duty to enforce federal pipeline
15 safety standards and has improperly delegated its authority to do so to gas pipeline operators like
16 PG&E. Indeed, until it recently levied fines against PG&E in connection with the Rancho Cordova
17 and San Bruno explosions, the CPUC had not fined a utility for a violation of federal pipeline
18 standards since at least 1999.

19 115. As the NTSB aptly observed, "the ineffective enforcement posture of the CPUC
20 permitted PG&E's organizational failures to continue over many years." NTSB Report, at 123.
21 Indeed, "the organizational failures of PG&E seen in [the San Bruno] accident suggest that some
22 operators are able to ignore certain standards without concern for meaningful enforcement action
23 against them." *Id.* at 123.

24 116. PHMSA has long been aware of the CPUC's longstanding failure to enforce federal
25 pipeline safety standards and PG&E's longstanding violations of those standards. For example, in
26 2005, PHMSA and the CPUC conducted a joint audit of PG&E's gas transmission pipeline safety
27 program. During the audit, PHMSA reviewed, evaluated, and assisted in the CPUC's inspections and
28 evaluations of PG&E's safety program and performance. During that audit, PHMSA also learned of
some of PG&E's longstanding violations of federal pipeline safety standards.

1 117. Despite having firsthand knowledge of the many deficiencies in the CPUC's pipeline
2 safety program and PG&E's longstanding violations of federal pipeline safety standards, PHMSA has
3 *never* taken *any* corrective action whatsoever. Indeed, PHMSA has neither required the CPUC to
4 comply with its duty to enforce federal pipeline safety standards nor rejected the CPUC's certification
5 and asserted federal jurisdiction to require PG&E to meet those standards.

6 118. As the NTSB correctly found, "PHMSA's failure to recognize the CPUC's
7 ineffectiveness indicate[s] that more fundamental problems exist, particularly with enforcement
8 practices and policies." NTSB Report, at 122.

9 119. Thus, PHMSA has violated and continues to violate its duty to oversee the CPUC and
10 to ensure that federal pipeline safety standards are meaningfully enforced. In doing so, PHMSA has
11 left PG&E unregulated and allowed PG&E to evade its obligations under the Act. As the NTSB
12 recently concluded, "the multiple and recurring deficiencies in PG&E operational practices indicate a
13 systemic problem." NTSB Report, at 118.

14 120. By disbursing federal funds to the CPUC even though the CPUC, for all practical
15 purposes, failed to carry out a safety program in compliance with its certification under the Act,
16 PHMSA has also violated its duty to ensure that those funds are "reasonably required" to carry out a
17 safety program.

18 121. The consequences are severe. As the Chairman of the NTSB aptly stated, given the
19 myriad of operational and regulatory failings surrounding PG&E's natural gas pipelines, "it was not a
20 question of if" a pipeline would explode, but rather "a question of when." Hersman Opening
21 Statement.

22 122. PHMSA's violations of its duties under the Act are clear from the examples described
23 below. In each example, PHMSA knew or should have known about the CPUC's longstanding failure
24 to meaningfully enforce federal pipeline safety standards and PG&E's pervasive and longstanding
25 violations of those standards. Nonetheless, PHMSA took no corrective actions requiring either the
26 CPUC or PG&E to comply with their duties under the Act.

1 a. **With PHMSA's knowledge and tacit approval, the CPUC, for over a**
2 **decade, has conducted meaningless inspections that rubberstamp**
 the safety programs and performance of gas pipeline operators and
 effectively leave those operators unregulated.

3 123. As explained above, federal pipeline safety standards establish a performance-based
4 regulatory scheme for integrity management that depends on meaningful regulatory oversight of gas
5 pipeline operators by certified state authorities and PHMSA.

6 124. PHMSA's Guidelines make this clear. "The effectiveness of the State agency's pipeline
7 safety efforts depends on information obtained through inspections and evaluation of operator
8 compliance." Guidelines, at 22. Thus, the agency must conduct "a comprehensive and thorough
9 review of an operator's compliance records, operations and maintenance plans, emergency procedures,
10 public awareness plans, drug and alcohol programs and pipeline facilities. This would include, at a
11 minimum, an evaluation of such items as corrosion control, leakage surveys, overpressure protection
12 and pressure regulating equipment, repaired and/or active leaks, emergency valves, emergency
13 response, etc. This includes any field verification of an operator's compliance records" *Id.* at 23.
14 PHMSA's Guidelines further state that "[t]he State agency *must* conduct follow-up actions when
15 noncompliance is discovered during an inspection." *Id.* at 25 (italics added).

16 125. Although certified state authorities play a critical role in ensuring the safety of our
17 nation's natural gas pipelines, ultimate responsibility lies with PHMSA, the federal agency that has the
18 duty and power under the Act to protect the public from the dangers posed by those pipelines. Thus,
19 PHMSA has a duty under the Act to ensure that state authorities meaningfully inspect, audit,
20 investigate, and evaluate an operator's pipeline safety program and compliance activities.

21 126. PHMSA, however, has abdicated its duty to do so. Instead, PHMSA has allowed the
22 CPUC to conduct inspections of gas pipeline operators like PG&E that are generally paperwork
23 exercises where the CPUC simply "checks" boxes on a checklist. The CPUC does little, if any, field
24 auditing. Not surprisingly, the CPUC's paperwork exercises failed to uncover "systemic" violations by
25 PG&E of federal pipeline safety standards. As the NTSB recently concluded, the CPUC's paperwork
26 exercises "failed to uncover the pervasive and long-standing problems within PG&E" "despite the fact
27 that many of them should have been easy to detect." NTSB Report, at 120, 122.

1 127. The CPUC has performed these paperwork exercises for many years with PHMSA's
2 knowledge and tacit approval. In fact, PHMSA has allowed the CPUC to rubberstamp PG&E's
3 pipeline safety program for many years.

4 128. Even when the CPUC has discovered violations of federal pipeline safety standards by
5 PG&E, it has not conducted follow-up to ensure that PG&E corrects the violation. Again, PHMSA
6 knew or should have known that the CPUC had not conducted the follow-up required by PHMSA's
7 own Guidelines.

8 129. Indeed, PG&E's violations of federal pipeline safety standards and the CPUC's failure
9 to detect or correct those violations has in some instances been so flagrant and longstanding that
10 PHMSA's failure to detect or address PG&E's violations or the CPUC's failings can only be explained
11 by PHMSA's silent complicity or its complete abandonment of its oversight function.

12 130. For example, PHMSA and the CPUC purportedly conducted a joint audit of PG&E's
13 Integrity Management Program in 2005. But the joint audit was a "check the boxes" exercise that
14 failed to uncover many serious deficiencies in PG&E's safety program even though those deficiencies
15 were obvious and should have been easy to detect. The same is true for a second audit of PG&E's
16 integrity management program conducted by the CPUC in 2010 using PHMSA's inspection protocols.

17 131. None of these audits – including the joint audit conducted by PHMSA and the CPUC –
18 utilized any metrics that would allow PHMSA or the CPUC to compare the results of one audit to the
19 next. Without such metrics, the audits were blind assessments of operator performance conducted in a
20 vacuum that had little value and did little to help PHMSA or the CPUC identify trends or common
21 causes of critical safety problems.

22 132. As explained above, gas pipeline safety depends on the development and
23 implementation of a rigorous program to identify, find, assess, manage, eliminate or mitigate each
24 threat that may contribute to pipeline failure. This program uses risk analysis to prioritize resources
25 and activities so that the risks of each threat to public safety and the environment are minimized.

26 133. For these performance-based safety programs to effectuate the purposes of the Act,
27 PHMSA must exercise meaningful oversight and ensure that the requirements of the program are
28

1 being enforced by the CPUC. In particular, PHMSA must rigorously and knowledgeably ensure that
2 the CPUC and gas pipeline operators focus on safety and not on the financial interests of the operator.

3 134. PHMSA, however, has failed to do so. Instead, PHMSA has allowed the CPUC, for
4 many years, to forsake its duty to enforce federal pipeline safety standards in compliance with its
5 certification.

6 135. As a result, PG&E has been able to adopt an Integrity Management Program that
7 violates federal pipeline safety standards. For example, PG&E has: (1) failed to keep records of a kind
8 and in a manner sufficient to understand and assess pipeline vulnerabilities and risk and to operate and
9 maintain its transmission pipelines safely; (2) failed to properly identify pipeline segments in "High
10 Consequence Areas" ("HCAs"); (3) failed to identify high priority threats to the integrity of pipelines;
11 (4) failed to identify high-risk pipeline segments; (5) failed to perform assessments necessary to ensure
12 pipeline integrity; and (6) failed to identify and eliminate or remediate each threat that could contribute
13 to a pipeline rupture. Each of these failures is a serious violation of federal pipeline safety standards.
14 *See, e.g.*, 49 C.F.R. § 192.905 (last amended Dec. 22, 2003), § 192.911 (last amended June 8, 2006),
15 § 192.917 (last amended June 8, 2006), § 192.933 (last amended July 17, 2007), § 192.935 (last
16 amended Aug. 11, 2010); § 192.937 (last amended June 8, 2006), and § 192.947 (last amended Apr. 6,
17 2004).

18 136. The joint paperwork audit conducted by PHMSA and the CPUC in 2005 failed to
19 uncover many of these fundamental and serious violations even though those violations should have
20 been easy to detect.

21 137. For example, the 2005 joint audit failed to discover the huge gaps in PG&E's
22 recordkeeping. Those missing records contained basic pipeline information that is crucial for
23 determining the existence and nature of any threats to pipeline safety. These huge gaps in PG&E's
24 recordkeeping came to light solely because of the NTSB investigation following the San Bruno
25 pipeline explosion. If PHMSA had been fulfilling its duties under the Act, it and the CPUC, at a
26 minimum, would have discovered at least some, if not most, of those gaps during the 2005 joint audit,
27 if not earlier.

28

1 138. Even when PHMSA and the CPUC did find violations during its 2005 joint audit, they
2 failed to take any follow-up action. For example, neither PHMSA nor the CPUC followed up on the
3 finding in their 2005 joint audit that PG&E had violated federal regulations regarding automatic
4 shutoff vales ("ASVs") and remote controlled valves ("RCVs"). Federal regulations promulgated by
5 PHMSA give gas pipeline operators discretion to decide whether to install ASVs or RCVs so long as
6 those operators consider a list of factors. 49 C.F.R. § 192.935(c) (last amended Aug. 11, 2010).

7 139. In the 2005 joint audit, PHMSA and the CPUC found that PG&E had *never* evaluated
8 whether ASVs or RCVs "would be an efficient means of adding protection to a high consequence area
9 in the event of a gas release," as required by 49 C.F.R. § 192.935(a), (c) and (e) (last amended Aug.
10 11, 2010). In response, PG&E produced a memo that concluded, on the basis of industry sources
11 claiming that most of the damage from ruptured pipelines occurred in the first 30 seconds, that ASVs
12 or RCVs would have "little or no effect on increasing human safety or protecting properties." This
13 industry conclusion was biased, unsupported, and incorrect. Even more troubling, PG&E's memo, on
14 its face, did not explicitly weigh the relevant factors as required by federal regulation.

15 140. Despite finding that PG&E had failed to evaluate ASVs and RCVs as required by
16 federal regulation, neither PHMSA nor the CPUC followed up on that finding. Nor did either agency
17 review the memorandum that PG&E prepared in 2006 to determine whether its evaluation of ASVs
18 and RCVs complied with federal regulations. As the NTSB explained, "the CPUC apparently did not
19 evaluate the adequacy of [PG&E's response]. If it did, it failed to identify the flawed analysis that
20 concluded the use of ASVs would have little effect on increasing safety or protecting property."
21 NTSB Report, at 120.

22 141. Neither PHMSA nor the CPUC took *any* enforcement actions against PG&E to correct
23 *any* violations that it uncovered in their 2005 joint audit. Instead of issuing any citations or taking any
24 enforcement actions, both PHMSA and the CPUC treated the audit as a training exercise. The
25 Director of the Consumer Safety and Protection Division for the CPUC at the time even described the
26 audit as a "practice audit."
27
28

1 142. Neither PHMSA nor the CPUC followed up on their 2005 joint audit to determine
2 whether PG&E corrected any of the violations identified in the audit. Neither agency issued any
3 enforcement letters or initiated any proceedings to require PG&E to correct those violations.

4 143. The failure of PHMSA and the CPUC to follow up on their 2005 finding that PG&E
5 had violated federal regulations regarding ASVs and RCVs or to require PG&E to correct those
6 violations almost certainly increased the loss of life and destruction of property caused by the San
7 Bruno explosion.

8 144. In 2010, the CPUC performed a second audit of PG&E's Transmission Integrity
9 Management Program using PHMSA's inspection protocol in May 2010. Like the 2005 audit, this
10 audit failed to identify many of PG&E's violations of federal pipeline safety standards – including
11 numerous violations that contributed to the San Bruno explosion. Those violations include PG&E's
12 failure to maintain adequate records as required by federal pipeline safety standards, PG&E's failure to
13 properly evaluate whether ASVs or RCVs would have been effective in reducing risk to life and
14 property, and PG&E inadequate emergency response procedures.

15 145. Given PHMSA's abdication of its duty to oversee the CPUC's pipeline safety program,
16 the CPUC's failure to discover these violations in 2010 is hardly surprising. PHMSA did not require
17 the CPUC to identify or utilize metrics that would have enabled meaningful assessments of PG&E's
18 integrity management program. Indeed, PHMSA did nothing to ensure that the CPUC's 2010 audit
19 would be conducted in a minimally effective manner even though PHMSA knew or should have
20 known of the many deficiencies in the CPUC's audit procedures.

21 146. The CPUC also purportedly conducts audits of PG&E's Operations, Maintenance and
22 Emergency Plans. These plans are required by federal law. But once again, the CPUC's audits of
23 these plans are largely paperwork exercises that are performed in a "check the box" manner based on
24 the CPUC's questions and PG&E's answers. Indeed, the CPUC conducts little or no compliance
25 verification. Like the audits of PG&E's Integrity Management Plan, these audits rubberstamp PG&E's
26 plans and performance. PHMSA knew or should have known about the deficiencies in these audits
27 but did nothing about them.

1 147. The CPUC and PHMSA continue to conduct audits that focus on verifying paper
2 records and plans rather than on gathering information on how performance-based safety systems *are*
3 in fact implemented, executed, and evaluated, and whether problem areas *are* in fact being detected
4 and corrected. The NTSB recently reached this very same conclusion. NTSB Report, at 121.

5 148. This is just one of the many examples of PHMSA's ongoing violations of the Act –
6 which have allowed the CPUC to shirk its duties under its certification and PG&E to pervasively and
7 continuously violate federal pipeline safety standards.

8 **b. With PHMSA's knowledge and tacit approval, the CPUC, for over a**
9 **decade, failed to enforce federal standards mandating that pipeline**
10 **operators maintain adequate records to enable the operator and**
11 **regulators to ensure that pipelines are safe.**

12 149. For the performance-based regulatory scheme imposed by federal pipeline safety
13 standards to work, gas pipeline operators must maintain comprehensive records of their pipelines and
14 pipeline facilities and have those records readily accessible.

15 150. Thus, the Act requires gas pipeline operators to create and maintain records sufficient
16 to demonstrate compliance with federal pipeline safety standards. Further, the Act requires the
17 Secretary of Transportation to prescribe minimum standards for the information to be maintained by
18 operators and to be provided to the Secretary and to certified state authorities. *See* 49 U.S.C. §§
19 60102(d), 60117(b).

20 151. Recordkeeping requirements are pervasive throughout federal regulations, making it
21 plain that the obligation to keep complete and accurate records about pipeline manufacture,
22 installation, maintenance, and repairs is fundamental to the Act's purpose of protecting people and
23 property from the threat posed by natural gas pipelines. Without complete and accurate records, it is
24 impossible for an operator to comply with the minimum safety standards of the Act.

25 152. In particular, federal regulations require gas pipeline operators to prepare and regularly
26 update for each pipeline a manual to govern normal and abnormal operations and maintenance, and
27 emergency response. Those manuals must include the manufacturing, construction, operating, and
28 maintenance history of each pipeline. Indeed, the regulations governing an operator's integrity
management program require a comprehensive review of data and information on entire pipelines

1 "that could be relevant" to identify and assess potential threats to a pipeline segment. 49 C.F.R.
2 § 192.917(b) (last amended June 8, 2006).

3 153. To ensure that gas pipeline regulators comply with the critical recordkeeping
4 requirements of the Act, the CPUC must conduct "a comprehensive and thorough review of an
5 operator's compliance records" Guidelines, at 23. With PHMSA's knowledge and tacit approval,
6 however, the CPUC has failed to do so for over a decade, if not longer.

7 154. As a result, PG&E's records regarding pipeline conditions and features are so
8 incomplete, inaccurate or unavailable that they provide no assurance that its pipelines comply with
9 federal safety standards and are safe. Moreover, because PG&E lacks records sufficient to identify all
10 potential threats and fails to maintain such records in an accessible and searchable form, it has not
11 addressed all potential threats to pipeline integrity, such as manufacturing and construction defects like
12 faulty seam welds or the risk of seismic movement, as required by federal law.

13 155. PG&E's inability to produce complete and accurate records has been publicly
14 documented in connection with the San Bruno explosion. The most shocking fact illustrating the
15 breadth of PG&E's abject recordkeeping failures is PG&E's ongoing inability to produce
16 documentation showing the condition of pipelines it currently operates and supporting its rationale for
17 choosing the maximum allowable operating pressures for those pipelines. Setting the maximum
18 allowable operating pressure is among the most basic and important activities that an operator of a
19 natural gas pipeline must perform, and extensive records and documentation are required to make this
20 critical determination in a manner that ensures the safety of its pipelines. PG&E appears not to have
21 many of *the most basic* documents pertaining to its determinations of operating pressure. This failure
22 is just one example of PG&E's utter disregard for public safety and the egregious absence of any
23 meaningful regulatory oversight at any level.

24 156. Other notable examples of PG&E's blatant disregard for basic recordkeeping
25 requirements include: (1) PG&E's identification of Line 132 as a seamless pipe when in fact it was a
26 seam welded pipe; (2) PG&E's failure to identify that the ruptured pipe was constructed using short
27 sections of pipe, known as "pups"; (3) PG&E failure to produce records demonstrating the type and
28 grade of pipe that ruptured in San Bruno, even though pipe grade is essential for determining the safe

1 maximum allowable operating pressure; (4) PG&E's inability to demonstrate with records where the
2 pipe that ruptured was manufactured; (5) PG&E's inability to know when and where the pipeline
3 ruptured; (6) PG&E inability to promptly locate the shutoff valves for Line 132, each less than one
4 mile from the rupture, and PG&E's resulting inability to shut off the flow of gas until 95 minutes after
5 the explosion; and (7) PG&E's admission on December 30, 2011 that it had violated federal pipeline
6 safety standards for up to 20 years by failing to conduct leak inspections of nearly 14 miles of San
7 Francisco Bay area distribution pipelines after losing the maps of those pipelines. This type of
8 information should be readily accessible to a pipeline operator that has complied with federal pipeline
9 safety standards. The absence and inaccessibility of such important records means that PG&E is
10 unable to identify, prioritize, and mitigate threats to pipeline integrity.

11 157. The inadequacy and inaccuracy of PG&E's records related to pipeline safety is
12 longstanding and recently well-documented. The NTSB found that PG&E's inadequate recordkeeping
13 contributed to the gas pipeline failure in San Francisco in 1981. Like the San Bruno explosion, the
14 1981 failure involved the dispatch by PG&E of employees who were not trained or equipped to close
15 valves, and unacceptable delays in shutting down the pipeline. *See Pacific Gas & Electric Company*
16 *Natural Gas Pipeline Puncture, San Francisco, California, August 25, 1981, Pipeline Accident Report*
17 *NTSB/PAR-82/01* (Washington, DC: National Transportation Safety Board, 1982). The inadequacy
18 and inaccuracy of PG&E's records and compliance activities would have been obvious to the CPUC if
19 the CPUC had meaningfully reviewed PG&E's recordkeeping as required by the Act. Given the
20 pervasiveness, seriousness, and longevity of PG&E's recordkeeping failures, the CPUC plainly did not
21 require PG&E to comply with federal recordkeeping requirements for decades. Instead, the CPUC
22 placed "blind trust" in gas pipeline operators like PG&E. NTSB Report, at 135.

23 158. The CPUC's longstanding failure to detect and correct PG&E's recordkeeping and
24 compliance violations can only be explained by incompetence or silent complicity.

25 159. PHMSA knew or should have known that the CPUC was not enforcing the Act's
26 recordkeeping requirements. Indeed, PHMSA conducted a joint audit with the CPUC in 2005 of
27 PG&E's Integrity Management Program – which purportedly included an evaluation and review of
28 PG&E's recordkeeping. The deficiencies in PG&E recordkeeping should have been readily apparent

1 to PHMSA during this audit. Despite this, PHMSA never raised any concerns with the CPUC's
2 enforcement of the Act's recordkeeping requirements. In fact, PHMSA has *never* taken any corrective
3 action against the CPUC or PG&E with respect to the Act's recordkeeping requirements.

4 160. This is another example of PHMSA's ongoing violations of the Act – which have
5 allowed the CPUC to shirk its duties under its certification and PG&E to pervasively and continuously
6 violate federal pipeline safety standards.

7 c. **With PHMSA's knowledge and tacit approval, the CPUC did not**
8 **perform its duty to enforce federal standards requiring that**
9 **operators identify all "High Consequence Areas" in which**
10 **transmission pipeline failure would result in significant harm.**

11 161. Federal regulations require gas transmission pipeline operators to identify all high
12 consequence areas ("HCAs") through which their transmission lines run. HCAs are areas that are
13 densely populated or where substantial numbers of people are likely to be present (e.g., a hospital or a
14 recreational area), such that a pipeline rupture in the area would significantly endanger people and
15 property. Pipelines in HCAs must be included in an operator's integrity management plan and are
16 subject to more rigorous requirements regarding identification of threats to pipeline safety,
17 prioritization of assessments, and remediation of threats. Identifying HCAs is an essential step for
18 prioritizing threat elimination, mitigation activities, and risk analysis as required in any operator's
19 Integrity Management Program because gas pipeline failures that occur in HCAs pose an especially
20 high risk of harm to people and property.

21 162. In their 2005 joint audit of PG&E's Integrity Management Program, PHMSA and the
22 CPUC found that PG&E had failed to sufficiently explain its process for identifying HCAs, the critical
23 first step in the integrity management process, and that PG&E's Integrity Management Program failed
24 to include areas known to be HCAs.

25 163. Yet neither PHMSA nor the CPUC followed up on this finding, and neither required
26 PG&E to correct this violation of federal pipeline safety standards.

27 164. Five years later, in a May 2010 audit, the CPUC found that PG&E had used improper
28 data regarding pipeline pressures in determining whether a particular area was an HCA. As a result,
PG&E continues to fail to identify all HCAs. This violation of federal pipeline safety standards would

1 have been corrected by PG&E in 2005 if PHMSA had required the CPUC to follow up on their joint
2 2005 findings or had followed up itself and required PG&E to explain and correct what turned out to
3 be its faulty process for identifying HCAs.

4 165. As of the date of the filing of this complaint, the CPUC has still not required PG&E to
5 comply with the Act's HCA requirements, and PHMSA has *still* done nothing about that failure. On
6 an ongoing basis, this regulatory failure is placing lives and property in densely populated areas in San
7 Francisco and throughout California at risk.

8 166. PHMSA knew or should have known about PG&E's pervasive and longstanding
9 violation of federal pipeline safety standards governing HCAs and the CPUC's longstanding failure to
10 require correction of those violations. Yet, PHMSA has done nothing to require PG&E or the CPUC
11 to correct those violations.

12 167. This is another example of PHMSA's ongoing violations of the Act – which have
13 allowed the CPUC to shirk its duties under its certification and PG&E to pervasively and continuously
14 violate federal pipeline safety standards.

15 **d. For many years, PHMSA and the CPUC have allowed PG&E to**
16 **violate federal regulations requiring it to address and prioritize**
threats posed by defects in its pipelines.

17 168. Once a gas pipeline operator identifies the HCAs in its service territory, its next
18 obligation is to develop a baseline assessment plan ("BAP") for its service territory. The BAP must
19 include: (1) an identification of the potential threats to covered pipeline segments; (2) the methods
20 selected to assess the integrity of the pipeline, including an explanation of why the assessment method
21 was selected; (3) a schedule for completing the assessments; and (4) a procedure for minimizing
22 environmental and safety risks. 49 C.F.R. § 192.919 (last amended Dec. 22, 2003). Threat
23 identification is important because it defines what types of assessment technology should be used to
24 assess the risk of pipeline failure and whether a threat needs to be remediated.

25 169. Despite this obligation, PG&E does not: (1) identify all threats as required by federal
26 pipeline safety standards; (2) identify segments posing the highest risk of rupture or leaking; (3)
27 remediate significant anomalies; or (4) take programmatic actions to prevent or mitigate threats.

28

1 170. PG&E has pervasively and continuously violated these obligations under the Act. In
2 some instances, PG&E has done so with PHMSA's and the CPUC's knowledge and tacit approval. In
3 other instances, PHMSA or the CPUC should have known about PG&E's violations of the Act.

4 171. For example, federal pipeline safety standards state that an operator may consider a
5 manufacturing and construction defect to be stable and not warrant further assessment, only if the
6 operating pressure on the covered segment has not increased "above the maximum operating pressure
7 experienced during the preceding five years." 49 C.F.R. § 192.917(e)(3)(i) (last amended June 8,
8 2006.) If the pressure exceeds the five-year maximum operating pressure, then the operator must
9 consider that segment to be a high risk segment for the baseline assessment and all subsequent
10 assessments.

11 172. In addition, federal pipeline safety standards recognize that certain pre-1970's
12 manufacturing or construction methods may be particularly susceptible to failure – including rupture –
13 and therefore threaten pipeline integrity. These high risk pipelines include pipeline segments with low
14 frequency electric resistance welds and electric fusion welded steel pipelines more than 50 years old,
15 mechanically coupled pipelines, and pipelines joined by acetylene girth welds in areas where the
16 pipeline is exposed to land movement. Because these pipelines are more susceptible to failure, federal
17 pipeline safety standards state that if the operating pressure of these high risk pipeline segments
18 exceeds the five year maximum operating pressure, in addition to considering the segment as a high
19 risk for the baseline assessment or subsequent assessments, the operator "must select an assessment
20 technology or technologies with a proven application capable of assessing seam integrity and seam
21 corrosion anomalies." 49 C.F.R. § 192.917(e)(4) (last amended June 8, 2006). The assessment
22 technologies capable of assessing seam integrity are pressure testing and some specialized forms of in-
23 line inspection.

24 173. Instead of making sure that PG&E complies with federal testing requirements imposed
25 on these so-called "historic" pipelines, PHMSA and the CPUC, for many years, have allowed PG&E
26 to evade pressure tests or in-line inspection of its many miles of historic pipelines even when the
27 operating pressure on these lines has exceeded the five-year maximum operating pressure. As a result,
28

1 PG&E continues to violate federal pipeline safety standards by using "historic" pipelines known to be
2 particularly susceptible to failure without testing the integrity of those pipelines.

3 174. Under PG&E's Risk Management Instruction, Rev. 1 ("RMI-06") – which explains
4 how PG&E will carry out its risk management plan – if the pressure on an historic pipeline segment
5 that is particularly susceptible to failure exceeds the historic five year maximum operating pressure,
6 PG&E will not conduct the mandatory physical assessment of the seam integrity of the affected
7 segment as required by federal pipeline safety standards. Instead, PG&E will convene a committee to
8 review the pipeline's characteristics. This proposed review – referred to by PG&E as an "Engineering
9 Critical Assessment (ECA)" – requires only a review of the characteristics and pressure test history
10 of the affected pipeline segments "to determine whether or not the seam related manufacturing threat
11 has become unstable." Instead of performing an actual physical assessment of seam integrity as
12 required by law, PG&E proposes to convene a committee that will determine whether PG&E should
13 follow the law.

14 175. The CPUC has been aware of RMI-06 since at least 2010 and its subsequent
15 amendment since at least 2011. Nonetheless, the CPUC has taken no corrective actions to date against
16 PG&E. It has not even notified PG&E that RMI-06 violates federal pipeline safety standards, much
17 less required PG&E to change RMI-06 to provide for testing required by law.

18 176. This is another example where PHMSA's abdication of its duty under the Act to
19 oversee the CPUC and to ensure that federal pipeline safety standards are being enforced has allowed
20 the CPUC to shirk its duties under its certification and PG&E to pervasively and continuously violate
21 federal pipeline safety standards.

22 177. PHMSA's violation of its duty in this example is especially troubling. Many of PG&E's
23 transmission pipelines in San Francisco and the San Francisco Peninsula are older and likely to be at
24 high risk of failure because they have been constructed using manufacturing or construction methods
25 that are particularly susceptible to failure. For example, all three transmission lines running through
26 San Francisco have segments with manufacturing or construction defects or other conditions that
27 would require PG&E under sections 192.917(e)(3)(i) and (4) of title 49 of the Code of Federal
28 Regulations to prioritize and perform rigorous assessment of pipeline integrity if the line pressure

1 exceeds the five year historical maximum operating pressure. In addition, seismic movement in San
2 Francisco that can lead to pipeline failure is well-documented. By allowing PG&E to pervasively and
3 continuously violate federal safety standards requiring it to address and prioritize threats posed by
4 defects in its high risk pipelines, PHMSA continues to place the lives and property of Californians—
5 including San Franciscans – at grave risk.

6 **V. PHMSA'S VIOLATIONS OF THE ACT AND ITS CONTINUED REFUSAL TO**
7 **ACKNOWLEDGE, MUCH LESS CORRECT, THESE VIOLATIONS PLACE**
8 **MILLIONS OF CALIFORNIANS AT GRAVE RISK OF DEATH, INJURY, AND**
9 **PROPERTY DAMAGE.**

10 178. The failures of natural gas transmission and distribution pipelines pose a serious risk
11 not just to San Franciscans, but to all Californians because such ruptures and leaks often result in
12 explosions that cause widespread death and destruction. This risk is only increasing as pipelines age
13 and continue to be neglected by gas pipeline operators like PG&E. Indeed, the recent spate of pipeline
14 explosions in San Bruno, Rancho Cordova, and Cupertino provides ample evidence that the threat is
15 real and growing.

16 179. The conscious decision by PHMSA to abdicate its duty to ensure that federal pipeline
17 safety standards are being enforced and to delegate its authority to do so to gas pipeline operators like
18 PG&E has not only increased the risk of pipeline explosions resulting in death and destruction. That
19 decision has directly contributed to the pipeline explosions that have recently occurred in California.
20 Absent injunctive relief, there may well be more.

21 180. For example, the failings of PHMSA and the CPUC directly contributed to the San
22 Bruno explosion – which resulted in numerous deaths and injuries and widespread destruction.

23 181. The probable cause of the San Bruno explosion was PG&E's "inadequate quality
24 assurance and quality control in 1956" and "inadequate pipeline integrity management program, which
25 failed to detect and repair or remove the defective pipe section." NTSB Report, at xii. PG&E used
26 inferior and undocumented pipes, performed inferior work, ignored documentation requirements
27 normally performed during pipeline construction, and failed to maintain adequate control of critical
28 records needed to assure pipeline safety. PG&E further exacerbated the risk of rupture by
circumventing pipeline testing required by federal safety standards. PG&E also lacked trained

1 personnel and adequate records which prevented it from halting the massive burning of released gas
2 and the attendant death and destruction for hours after the rupture. Given the myriad of operational
3 and regulatory failings surrounding all of PG&E's natural gas pipelines, "[o]pportunities were missed
4 that could have – and should have – prevented this tragedy." Hersman Opening Statement. Thus, "[i]t
5 was not a question of if this pipeline would burst. It was a question of when." *Id.*

6 182. By abdicating its duties under the Act, PHMSA allowed the CPUC to forsake its duty
7 to enforce federal pipeline safety standards as required by its certification – which, in turn, allowed
8 PG&E to pervasively and continuously violate federal pipeline safety standards for over a decade, if
9 not longer. Indeed, the NTSB specifically faulted both PHMSA and the CPUC for allowing PG&E to
10 do so and concluded that the failings of PHMSA and the CPUC directly contributed to the explosion.
11 "The CPUC, as the regulator for pipeline safety within California, failed to uncover the pervasive and
12 long-standing problems within PG&E. Consequently, this failure precluded the CPUC from taking
13 any enforcement action against PG&E. The CPUC lost opportunities to identify needed corrective
14 action and to follow through and ensure that PG&E completed the prescribed corrective actions in a
15 timely manner. For its part, PHMSA rated the CPUC's pipeline safety program in the mid- to high-90s
16 in the years leading up to the San Bruno accident – a superior, if not outstanding, score. Furthermore,
17 PHMSA's participation in the 2005 joint audit with the CPUC of PG&E apparently did not make any
18 difference in uncovering PG&E's systemic problems or in accurately assessing the quality of oversight
19 exercised by the CPUC." NTSB Report, at 122. As the Chairman of the NTSB aptly summarized, the
20 "lax" system of oversight adopted by PHMSA and the CPUC "placed a blind trust in the companies
21 that they were charged with overseeing – to the detriment of public safety." *Id.* at 135.

22 183. Based on its investigation of the San Bruno explosion, the NTSB expressed "strong
23 doubts about the quality and effectiveness of enforcement at both the Federal and state levels." NTSB
24 Report, at 123. As NTSB member Robert Sumwalt stated during the August 30, 2011 hearing at
25 which the NTSB adopted the final report on the San Bruno incident: "This accident is not just about
26 the failure of a seam in a pipeline. Rather it's about a failure of an entire system – a system of checks
27 and balances that should have been put in place to prevent the disaster."
28

1 184. A panel convened by the CPUC to gather facts and make recommendations in the wake
2 of the San Bruno explosion reached a similar conclusion. The Panel stated that "the CPUC's role in
3 the auditing of Integrity Management must shift culturally to a destination beyond compliance. It
4 must summon up the courage and resources to monitor the prudence of the operator's program, its
5 effectiveness and analysis of the program results to manage the system risks." Panel Report, at 98-99.

6 185. If PHMSA had required the CPUC to meaningfully investigate the Rancho Cordova
7 explosion, many of PG&E's violations of federal pipeline safety standards would have been identified,
8 and the identification of those violations would have triggered an extensive review of PG&E's woeful
9 pipeline safety program. Thus, the tragedy at Rancho Cordova is yet another instance where PHMSA
10 and the CPUC failed to learn from their past mistakes and failed to take measures to comply with their
11 duties under the Act.

12 186. Instead, PHMSA "permitted PG&E's organizational failures to continue over many
13 years." NTSB Report, at 123. PHMSA failed to exercise its authority to ensure that the safety
14 standards of the Act were enforced and allowed the CPUC to place "blind trust" in gas pipeline
15 operators like PG&E. *Id.* at 135. As a result, PHMSA, for all practical purposes, has allowed those
16 operators to regulate themselves. In doing so, PHMSA has improperly delegated its authority under
17 the Act to gas pipeline operators like PG&E. Simply put, PHMSA has violated the Act by allowing
18 the foxes to guard the henhouse.

19 187. Despite this, PHMSA continues to refuse to acknowledge its own failings, much less its
20 direct contribution to recent pipeline explosions and the increased risk of future explosions. Instead, in
21 a November 25, 2011 response to San Francisco's notices of intent to sue, PHMSA stated that it "will
22 vigorously defend its record of administering a *strong* federal-state pipeline safety program." Ex. E at
23 2 (*italics added*).

24 188. Given these public pronouncements by PHMSA and given the failure by PHMSA to
25 initiate *any* administrative proceedings focused on its *own* misconduct, only one conclusion may be
26 drawn: PHMSA will continue its longstanding violations of the Act. As a result, it will remain a
27 question of when, and not if, another pipeline explosion will occur. San Francisco is left with one
28

1 option to ensure the safety of its citizens: to file this action to compel PHMSA to exercise its authority
2 under the Act to oversee the CPUC and to ensure that federal pipeline safety standards are enforced.

3 **CAUSES OF ACTION FOR DECLARATORY AND INJUNCTIVE RELIEF**

4 **FIRST CAUSE OF ACTION**

5 **Violation of the Pipeline Safety Act, 49 U.S.C. § 60101 ET SEQ.**

6 **(Against The U.S. DEPARTMENT OF TRANSPORTATION, PHMSA, Cynthia Quarterman,
in her official capacity, and Ray LaHood, in his official capacity)**

7 189. The City realleges and incorporates by reference paragraphs 1 through 188 as if fully
8 set forth herein.

9 190. Under the Act, PHMSA has a duty to prescribe minimum safety standards. *See* 49
10 U.S.C. § 60102(a)(2). PHMSA also has a duty to exercise oversight over certified state authorities
11 like the CPUC and to ensure that those authorities comply with their certification under the Act. *See*
12 49 U.S.C. § 60105. PHMSA also has a duty to enforce federal pipeline safety standards to the extent
13 that a state authority is not. *See* 49 U.S.C. § 60105(a).

14 191. As set forth above, PHMSA has violated those duties under the Act. In doing so,
15 PHMSA has abdicated its duty to oversee the CPUC's pipeline safety program and to ensure that
16 federal pipeline safety standards are being enforced and has improperly delegated its authority to do so
17 to gas pipeline operators like PG&E.

18 192. As a result, PHMSA is violating the Act on an ongoing and continuous basis in
19 contravention of the Act's purposes – which are to protect life, property, and the environment and to
20 ensure adequate governmental regulation of pipeline safety.

21 **SECOND CAUSE OF ACTION**

22 **Violation of the Pipeline Safety Act, 49 U.S.C. § 60101 ET SEQ.**

23 **(Against The U.S. DEPARTMENT OF TRANSPORTATION, PHMSA, Cynthia Quarterman,
in her official capacity, and Ray LaHood, in his official capacity)**

24 193. The City realleges and incorporates by reference paragraphs 1 through 192 as if fully
25 set forth herein.

26 194. Under the Act, PHMSA may disburse federal funds to the CPUC *only* to the extent
27 those funds are "reasonably required" by the CPUC "to carry out a safety program under a certification
28 under section 60105" *See* 49 U.S.C. § 60107(a)(1).

1 195. As set forth above, however, PHMSA is incapable of determining, with any degree of
2 accuracy, whether the CPUC is complying with its duties under the Act. Moreover, PHMSA has not
3 even attempted to meaningfully evaluate the CPUC's pipeline safety program before it has disbursed
4 federal funds to the CPUC.

5 196. In the absence of any meaningful oversight by PHMSA, the CPUC has, for decades,
6 forsaken its duty to enforce federal pipeline safety standards. Indeed, the CPUC still lacks the metrics
7 needed to assess, with any degree of accuracy, the effectiveness of PG&E's pipeline safety program.
8 As a result, the CPUC, for all practical purposes, has *not* been carrying out a safety program in
9 compliance with its certification under the Act.

10 197. Despite this, PHMSA has and continues to give the CPUC "superior, if not
11 outstanding," scores for its safety program and to disburse federal funds to the CPUC that are and were
12 not "reasonably required" by the CPUC to carry out a safety program in compliance with its
13 certification under the Act

14 198. As a result, PHMSA is violating the Act on an ongoing and continuous basis in
15 contravention of the Act's purposes – which are to protect life, property, and the environment and to
16 ensure adequate governmental regulation of pipeline safety.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE, PLAINTIFFS** pray for judgment against each Defendant as follows:

19 1. For a declaration that the Secretary of Transportation, the Administrator of PHMSA,
20 the Department of Transportation, and PHMSA have abdicated their duty to oversee certified state
21 authorities and to ensure that federal pipeline safety standards are enforced in violation of the Act and
22 have improperly delegated their authority to do so to gas pipeline operators like PG&E;

23 2. For a preliminary and permanent injunction requiring the Secretary of Transportation,
24 the Administrator of PHMSA, the Department of Transportation and PHMSA to comply with their
25 duty to oversee certified state authorities and to ensure that federal pipeline safety standards are
26 enforced as required by the Act and enjoining the Secretary, the Administrator, the Department, and
27 PHMSA from improperly delegating their authority to do so to gas pipeline operators like PG&E;

1 3. For a declaration that the Secretary of Transportation, the Administrator of PHMSA,
2 the Department of Transportation, and PHMSA have improperly disbursed federal funds to a state
3 authority that were not reasonably required to carry out the authority's pipeline safety program in
4 compliance with its certification to PHMSA in violation of the Act;

5 4. For a preliminary and permanent injunction requiring the Secretary of Transportation,
6 the Administrator of PHMSA, the Department of Transportation and PHMSA to only disburse federal
7 funds to a state authority that are reasonably required to carry out a pipeline safety program in
8 compliance with the authority's certification to PHMSA;

9 5. For reasonable attorneys' fees and costs; and

10 6. For such other and further relief as the court may deem just and proper.

11
12 Dated: February 14, 2012

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