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Exempt from fees per Gov't code 6103  
To the benefit of the City of San Diego

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PEOPLE OF THE STATE OF CALIFORNIA  
11 AND THE CITY OF SAN DIEGO

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF SAN DIEGO, CENTRAL DISTRICT

14 PEOPLE OF THE STATE OF CALIFORNIA ) Case No.  
15 and THE CITY OF SAN DIEGO, )

16 )  
17 Plaintiffs, )

18 v. )

19 KINDER MORGAN ENERGY PARTNERS, )  
L.P., KINDER MORGAN MANAGEMENT, )  
20 L.L.C., SFPP, LP., KINDER MORGAN )  
21 OPERATING L.P. "D", KINDER MORGAN )  
G.P., INC., SANTA FE PACIFIC )  
22 PIPELINES, INC., SCOTT MARTIN and )  
23 DOES 1-100, )

24 Defendants. )

**COMPLAINT:**

- 25 ) (1) **BY THE PEOPLE FOR PUBLIC**  
26 ) **NUISANCE**  
27 ) (2) **BY THE CITY FOR PUBLIC**  
28 ) **NUISANCE**  
) (3) **BY THE CITY FOR PRIVATE**  
) **NUISANCE**  
) (4) **BY THE CITY FOR TRESPASS**  
) (5) **BY THE CITY FOR**  
) **NEGLIGENCE**  
) (6) **BY THE CITY FOR**  
) **NEGLIGENCE PER SE**  
) (7) **BY THE PEOPLE FOR**  
) **VIOLATION OF HEALTH &**  
) **SAFETY CODE § 25249.5**  
) (8) **BY THE PEOPLE FOR**  
) **VIOLATION OF BUSINESS &**  
) **PROFESSIONS CODE § 17200**  
) (9) **BY THE CITY FOR**  
) **DECLARATORY RELIEF**

26 ) JURY TRIAL DEMAND  
27 )

28 ) ACTION FILED: August \_\_, 2007

1 The PEOPLE OF THE STATE OF CALIFORNIA (the “People”), and the CITY OF  
2 SAN DIEGO (the “City”), by and through MICHAEL J. AGUIRRE, CITY ATTORNEY  
3 FOR THE CITY OF SAN DIEGO (collectively, “Plaintiffs”), allege as follows:

4 **SUMMARY OF THE CASE**

5 1. Clean, drinkable water is a necessity for life. Such water is one of  
6 California’s most precious resources. Over decades, the defendants (“Defendants”), either  
7 directly or acting in concert or through affiliation with other Defendants, dumped hundreds  
8 of thousands of gallons of dangerous poisons and harmful chemicals into drinking water  
9 which otherwise would be available to serve the growing needs of San Diegans. Some of  
10 these chemicals are known to the State of California to cause cancer. Some are known  
11 reproductive toxicants which can cause birth defects or other developmental harm. The  
12 water polluted by Defendants’ conduct will never be safe to drink until it is cleaned up.  
13 Defendants have been dawdling for over a decade and a half on a “cleanup” which is  
14 comprised more of delay than progress. At the pace Defendants want to set for cleanup, it  
15 will still be many more years before anyone can safely use the water Defendants so  
16 brazenly ruined.

17 2. In 2003, Defendants were embroiled in a lengthy legal battle which resulted  
18 in a determination that Defendants were 100% responsible for, and liable for, the poisons  
19 they had released into the groundwater beneath San Diego. Yet Defendants continue to  
20 delay the cleanup and continue to delay the time when San Diegans can get the full use of  
21 their property as well as the water rights they own and should be allowed to use and enjoy.

22 3. Defendants took decades to make this mess, and have had decades to clean it  
23 up. Enough is enough. The time is now for Defendants to take care of this problem, to  
24 remove these poisons from this precious resource. It is also time for Defendants to pay San  
25 Diego and its citizens for all the injury which Defendants’ reckless disregard for the  
26 environment and the rights of others has caused. Defendants, either directly or acting in  
27 concert or through affiliation with other Defendants, are notorious polluters, and most  
28 recently have been fined nearly \$5 million for their polluting activities, and disregard for

1 the environment and the rights of others, elsewhere in California. It is time for Defendants  
2 to account for their polluting conduct in San Diego.

3 4. Put simply, in causing the pollution and delaying its cleanup, Defendants  
4 acted with a conscious, despicable and reckless disregard for the City’s and the public’s  
5 rights, financial position and well being, and/or intended to deprive the City and the public  
6 of property or legal rights or otherwise cause injury.

7 5. There is no doubt that Defendants are the cause of this pollution, and are  
8 responsible for its cleanup. The State of California has already made this determination.  
9 So has a Judge in a legal case, when on March 21, 2003, Judge Robert T. Altman (retired)  
10 ordered Defendants here, either directly or acting in concert or through affiliation with  
11 other Defendants, to “assume the responsibility and risk related to all future remediation  
12 and cleanup work on or under . . . all properties at the [the Mission Valley Terminal in San  
13 Diego] subject to [Defendants’] control and on or under the entire Qualcom[m] lot and on  
14 or under any locations to which the existing contamination may spread.” Right now,  
15 Defendants are partially and incompletely “cleaning up” the poisons by pumping out *and*  
16 *throwing away* up to 238,000 gallons of water each and every day. That water alone is  
17 enough to supply 6,000 San Diegans. At this rate – and even with this waste – Defendants  
18 recently proposed they be allowed to take until 2034 to finish the cleanup!

19 6. The City owns Qualcomm Stadium and the approximately 166 acres of real  
20 property constituting the various parcels of land under and surrounding the stadium, which  
21 is generally located on the western side of U.S. Interstate Highway 15 and south of Frairs  
22 Road (collectively referred to herein as the “Property”). The Property is located in the  
23 Mission Valley area of the City of San Diego. The City also owns Pueblo water rights to  
24 the groundwater located underneath and in the vicinity of the Property. Pueblo water rights  
25 are an interest in real property. The groundwater subject to the City’s Pueblo water rights  
26 sometimes shall be referred to in this Complaint as the Pueblo Groundwater.

27 7. Defendants in this action are large corporate members of the oil, gas and  
28 energy industry or affiliated businesses or individuals. As described below, Defendants

1 have contaminated, polluted, continue to contaminate and pollute, and suffer and maintain  
2 conditions resulting in the continuation of the contamination and pollution, of the City's  
3 Property and Pueblo Groundwater. To date, Defendants' activities to remediate and curb  
4 the pollution and contamination they created, and continue to create, have been too little,  
5 too slow, too unproductive, too sporadic and otherwise too unavailing to be effective.

6 8. The City files this lawsuit for damages to remediate the Property, cleanse the  
7 Pueblo Groundwater, and to ensure that the public's interests in the Property and in the  
8 Pueblo Groundwater are vindicated and made whole.

9 9. The People bring this action for injunctive relief, civil penalties and  
10 abatement of a public nuisance to end unlawful releases of carcinogens and reproductive  
11 toxicants, to end unlawful business practices and to end extensive, widespread pollution.

### 12 **THE PARTIES**

13 10. Plaintiffs are: (1) the People of the State of California, and (2) the City of  
14 San Diego, both acting by and through the City Attorney for the City of San Diego,  
15 California, Michael J. Aguirre. At all times relevant to this complaint, Plaintiff City of San  
16 Diego was and is a chartered municipal corporation organized and existing by virtue of the  
17 Constitution of the State of California. The City's population exceeds 750,000 persons.

18 11. Plaintiffs are informed and believe, and on that basis allege, that at all times  
19 mentioned herein, defendant Kinder Morgan Energy Partners, L.P. ("KMP") was and is a  
20 Delaware limited partnership authorized to do business in California.

21 12. Plaintiffs are informed and believe, and on that basis allege, that at all times  
22 mentioned herein, defendant Kinder Morgan Management, L.L.C. ("KMR") was and is a  
23 Delaware limited liability company which, by virtue of a delegation of control agreement  
24 with defendant Kinder Morgan G.P., Inc., manages KMP.

25 13. Plaintiffs are informed and believe, and on that basis allege, that at all times  
26 mentioned herein, defendant SFPP, L.P. ("SFPP") was and is a Delaware limited  
27 partnership with its principal place of business in the city of Orange, California. Plaintiffs  
28 are further informed and believe, and on that basis allege, that SFPP was and is a subsidiary

1 of KMP and the operating partner for the Mission Valley Terminal.

2 14. Plaintiffs are informed and believe, and on that basis allege, that at all times  
3 mentioned herein, defendant Kinder Morgan Operating L.P. “D” (“KM Operating D”) is a  
4 Delaware limited partnership that is the general partner of SFPP.

5 15. Plaintiffs are informed and believe, and on that basis allege, that at all times  
6 mentioned herein, defendant Kinder Morgan G.P., Inc., (“KMGP”) was and is a Delaware  
7 corporation and the general partner of KMP and of KM Operating D.

8 16. Plaintiffs are informed and believe, and on that basis allege, that at all times  
9 mentioned herein, defendant Santa Fe Pacific Pipelines, Inc. (“SFP Pipelines”) was and is a  
10 Delaware corporation with its principal place of business in the city of Orange, California.

11 17. Plaintiffs are informed and believe, and on that basis allege, that defendant  
12 Scott Martin is an employee and/or officer of KMP and/or one or more additional  
13 Defendants, and that defendant Scott Martin has direct responsibility for, and/or authority  
14 over, the remediation operations by Defendants under, and in the vicinity of, the Property  
15 and the Mission Valley Terminal. Plaintiffs are further informed and believe, and on that  
16 basis allege, that defendant Scott Martin is a resident of the State of California whose place  
17 of business and employment is in the State of California.

18 18. Defendants KMP, KMR, SFPP, KM Operating D, KMGP, SFP Pipelines and  
19 Scott Martin will be referred to collectively hereinafter as “Defendants.”

20 19. Plaintiffs are informed and believe, and on that basis allege, that at all times  
21 mentioned herein, Defendants, and each of them, were acting at the behest, for the benefit,  
22 and as the agents of the other Defendants. Further, each of the Defendants aided and  
23 abetted the tortious, unlawful and otherwise actionable conduct of the others.

24 20. Plaintiffs currently are unaware, despite reasonably diligent effort to obtain  
25 the relevant information, of the true names and capacities of the defendants sued herein as  
26 DOES 1 through 100, inclusive, and therefore sue those defendants by such fictitious  
27 names. Plaintiffs will amend this Complaint to allege these defendants’ true names and  
28 capacities when such are ascertained. Plaintiffs are informed and believe and on that basis

1 allege that the fictitiously named defendants are responsible in some manner for the  
2 occurrences herein alleged, and that Plaintiffs' damages as allege herein were proximately  
3 caused by such defendants. As used herein, "Defendants" also includes DOES 1 through  
4 100, inclusive.

5 21. All Defendants named herein were at all times acting as the agent and  
6 employee of each other Defendant, and, in doing the acts and omissions herein alleged,  
7 were acting within the scope of their agency and employment and with the permission and  
8 ratification of the remaining Defendants. Where an act or omission by the Defendants is  
9 alleged, the allegation is that the act or omission was done or omitted directly by each  
10 Defendant or by acting in concert or through affiliation with other Defendants.

11 22. At all times relevant to this complaint, each Defendant that is a business  
12 entity was a person doing business as that term is used in Health and Safety Code section  
13 25249.11(a) and was a person as that term is used in Business and Professions Code section  
14 17201. Plaintiffs are informed and believe, and on that basis allege, that at all times  
15 relevant to this Complaint each Defendant that is a business entity had and has ten or more  
16 employees.

### 17 **JURISDICTION AND VENUE**

18 23. This Court has jurisdiction over this case, and the subject matter of this case,  
19 under California Constitution Article VI, section 10, because this case is a cause not given  
20 by statute to other trial courts.

21 24. This Court has jurisdiction over Defendants because Defendants do sufficient  
22 business in California, are residents of California and/or have other sufficient minimum  
23 contacts in and with California, to support and justify this Court's exercise of jurisdiction  
24 over Defendants by California's courts consistent with traditional notions of fair play and  
25 substantial justice as well as all other applicable constitutional principles.

26 25. Venue in this Court is proper because the cause arises in the County of San  
27 Diego, California, where the conduct and physical conditions which give rise to this cause,  
28 and which would be subject to this Court's injunction as requested in this complaint, are

1 located, have occurred, and continue to occur. The facts underlying this complaint  
2 occurred in San Diego County. The property which is the subject of this action is located in  
3 San Diego County, in the State of California. Venue is proper within the Central District of  
4 the San Diego Superior Court, pursuant to San Diego Superior Court Rule 1.2.2.

5 **THE PROPERTY AT ISSUE**

6 26. The Property at issue herein includes, but is not necessarily limited to, the  
7 approximately 166 acres underlying and surrounding Qualcomm Stadium (the “Stadium”)  
8 and its adjoining parking lots, all of which are in San Diego, California. Plaintiff City of  
9 San Diego owns the Property, including but not necessarily limited to the Stadium and the  
10 various parcels of land under the Stadium and its parking lots.

11 **MISSION VALLEY TERMINAL**

12 27. Plaintiffs are informed and believe, and on that basis allege, that Defendants  
13 own and/or operate the Mission Valley Terminal (“MVT”) located at 9950 Mission San  
14 Diego Road, San Diego, California (located just northeast of, and adjacent to, the Stadium),  
15 and are engaged in the business of the transport, storage, and distribution of petroleum  
16 products, including gasoline, jet fuel, and diesel fuel.

17 28. Plaintiffs are informed and believe, and on that basis allege, that the MVT is  
18 an approximately 10.5 acre petroleum tank and pipeline facility used to distribute  
19 petroleum products in and around San Diego County. Plaintiffs are informed and believe,  
20 and thereon allege, that the MVT facility is connected with underground petroleum product  
21 pipelines from Long Beach, California which bring petroleum products to the MVT, from  
22 which the pipelines’ contents are distributed through one or more manifolds to other pipes  
23 and storage tanks at the facility. Plaintiffs are informed and believe, and thereon allege,  
24 that tanker trucks then transport the petroleum products from the MVT facility to retailers  
25 and industrial users throughout San Diego County and the surrounding area.

26 29. Plaintiffs are informed and believe, and on that basis allege, that San Diego  
27 Pipeline owned the MVT in 1963, that the MVT was then acquired by Santa Fe Pacific  
28 Pipeline Partners, L.P., and that, in 1998, ownership and control of MVT was acquired by

1 KMP by virtue of its acquisition of Santa Fe Pacific Pipeline Partners, L.P. San Diego  
2 Pipeline (and subsequently at least one of the Defendants) entered into renewable leases  
3 with a number of oil companies, including Shell Oil Company (“Shell”), Mobil Oil  
4 Company (“ExxonMobil”), Texaco, Inc. (“Texaco”),<sup>1</sup> Unocal Oil Products (“Unocal”),  
5 and Powerine Oil Company (“Powerine”).

6 30. Plaintiffs are informed and believe, and on that basis allege, that KMP bought  
7 out Powerine’s and Unocal’s interests in the MVT subsequent to 1998 and assumed  
8 Powerine’s and Unocal’s obligations pursuant to Cleanup and Abatement Order 92-01 (as  
9 amended) issue by the California Regional Water Quality Control Board, San Diego  
10 Region, agreed to run ExxonMobil’s operations at the MVT, and acquired ExxonMobil’s  
11 third party terminaling operation at MVT. Plaintiffs are informed and believe, and thereon  
12 allege, that Defendant KMP currently owns and operates a number of aboveground  
13 petroleum product storage tanks at the MVT through its operating partnership, Defendant  
14 SFPP, and that those storage tanks have a capacity of approximately 18.7 million gallons.  
15 Plaintiffs are further informed and believe, and on that basis allege, that the total capacity  
16 of the tanks owned by KMP and others at the MVT is approximately 25 million gallons.

17 31. Gasoline contains a number of constituents and additives, each of which  
18 separately, as well as in combination, present a significant risk to human health, safety, and  
19 the environment.

### 20 **THE CONTAMINATION OF QUALCOMM STADIUM**

21 32. Plaintiffs are informed and believe, and thereon allege, that commencing at a  
22 time presently unknown to the City, and continuing to this day, Defendants, and each of  
23 them, engaged in acts and omissions, continue to engage in acts and omissions and suffer  
24 and maintain conditions that have caused pollution and contamination to contaminate and  
25 pollute Plaintiffs’ Property and the Pueblo Groundwater. Plaintiffs are informed and

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiffs are informed and believe, and on that basis allege, that Shell and Texaco  
28 entered into a joint venture as Equilon Enterprises, LLC and that Shell acquired Texaco’s  
interests and obligations at the MVT.



1 believe, and thereon allege, that in committing these acts and omissions, Defendants, and  
2 each of them, acted with a conscious, despicable and reckless disregard of the City's and  
3 the People's rights, financial position and well-being, and/or intended to deprive the City  
4 and the People of property or legal rights or otherwise cause injury.

5 33. In 1992, the California Regional Water Quality Control Board, San Diego  
6 Region ("Regional Board"), the governmental agency currently overseeing Defendants' soil  
7 and groundwater remediation activities, issued Cleanup and Abatement Order 92-01 (as  
8 amended, the "Cleanup and Abatement Order") as a result of pervasive soil and  
9 groundwater contamination at, and in the vicinity of, the MVT. Subsequent to its issuance,  
10 the Cleanup and Abatement Order has been amended five times by the Regional Board.  
11 Plaintiffs are informed and believe, and on that basis allege, that not once in the fifteen  
12 years since the Cleanup and Abatement Order was issued has any Defendant ever suggested  
13 a material acceleration of any cleanup deadline or material step in that process, but that, in  
14 fact, Defendants have repeatedly sought delays of the cleanup and of material interim steps.

15 34. Plaintiffs are informed and believe, and on that basis allege, that a significant  
16 contributing factor to the issuance of the Cleanup and Abatement Order was contamination  
17 emanating from Defendants' spill or release of gasoline from a pipeline near the manifold  
18 at the MVT. Plaintiffs are informed and believe, and thereon allege, that at all times  
19 relevant herein, and continuing to this day, Defendants' operations, acts and omissions at  
20 the MVT and offsite, as well as Defendants' operations, acts and omissions pursuant to the  
21 Cleanup and Abatement Order, have resulted and continue to result in spills, releases,  
22 discharges and migration of, among other things, gasoline, other petroleum hydrocarbons  
23 and fuel additives, all of which emanate from the MVT and contaminate and pollute, and/or  
24 exacerbate the contamination and pollution of, the City's Property and Pueblo  
25 Groundwater. Plaintiffs are informed and believe, and thereon allege, that at all times  
26 relevant herein, and continuing to this day, Defendants' acts and omissions in connection  
27 with their remedial activities pursuant to the Cleanup and Abatement Order have delayed  
28 the cleanup of the contamination and pollution, and/or exacerbated the contamination and

1 pollution, of the Property and the City's Pueblo Groundwater.

2 35. The Regional Board, through the Cleanup and Abatement Order, directed all  
3 of the responsible parties<sup>2</sup> to initiate cleanup of the petroleum hydrocarbon contamination<sup>3</sup>  
4 to groundwater. The responsible parties were also directed to conduct a site assessment  
5 addressing, among other things, whether such contamination had migrated off-site. The  
6 Cleanup and Abatement Order also ordered that the responsible parties prevent either free  
7 or dissolved product from migrating off-site. The Cleanup and Abatement Order included a  
8 final cleanup date of January 1, 1996.

9 36. In 1992, the contamination plume from the MVT manifold extended under  
10 the Stadium parking lot.<sup>4</sup> The contamination crossed the Stadium parking lot traveling  
11 south toward the San Diego River. It has been estimated that, at one time, as much as  
12 300,000 gallons of liquid petroleum products and related constituents were located beneath  
13 the Property.<sup>5</sup> Some estimates suggest that more than 100,000 gallons of petroleum  
14 hydrocarbons remain beneath the Property.

15 37. Defendants' Corrective Action Plan ("Corrective Action Plan") proposed  
16 three pumping wells to be operated in the Stadium parking lot. In May 1994, the Regional

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17 <sup>2</sup> The entities originally named in the Cleanup and Abatement Order included SFPP,  
18 Shell, ExxonMobil and Powerine. However, plaintiffs are informed and believe, and on  
19 that basis allege, that Defendants are the only remaining responsible parties by virtue of  
20 subsequent amendments to the Cleanup and Abatement Order, as well as by agreements  
21 entered into by the Defendants to assume the obligations of other entities vis-à-vis the  
22 MVT.

23 <sup>3</sup> Petroleum hydrocarbon waste constituents include, but are not limited to, benzene,  
24 ethylbenzene, xylene, toluene, oxygenate additives (e.g., methyl *tert*-butyl ether  
25 ("MTBE")), total petroleum hydrocarbons (TPH), and degradation products thereof (e.g.,  
26 TBA).

27 <sup>4</sup> While the leaks and/or spills occurred on the MVT site, the impact of the  
28 contamination has been found to extend to the soil and groundwater under the Property, and  
the MTBE plume extended over 5,000 feet at one time, beyond the Property and underneath  
the San Diego River to the other side of the river.

<sup>5</sup> Other estimates suggest that approximately 50,000 gallons of petroleum  
contamination under the Property has yet to be remediated by Defendants, with a similar  
amount underneath the MVT.

1 Board issued Addendum 1 to the Cleanup and Abatement Order, extending the final  
2 cleanup date to January 1, 1999 pursuant to a request by Powerine. The Defendants'  
3 cleanup did not begin until 1994 and consisted of pumping and treating groundwater and  
4 then discharging the treated water into the Murphy Canyon Creek, a tributary of the San  
5 Diego River.

6 38. Plaintiffs are informed and believe and thereon allege that Defendants failed  
7 to comply with the Regional Board's Cleanup and Abatement Order for much of the 1990s.  
8 For example, although the Corrective Action Plan approved by the Regional Board required  
9 three pumping wells to be operated to prevent the MVT contamination from spreading off-  
10 site, plaintiffs are informed and believe, and on that basis allege, that Defendants<sup>6</sup> failed to  
11 operate the three pumping wells pursuant to the Regional Board's directive and failed to  
12 prevent off-site migration of contaminants, including MTBE,<sup>7</sup> to the soil and groundwater  
13 under the Property.

14 39. After Defendants belatedly initiated groundwater pumping in 1994, the  
15 Regional Board ordered Defendants to cease groundwater pumping in December of 1994,  
16 when it was discovered that Defendants had been releasing petroleum into Murphy Canyon  
17 Creek. In December 1996, the Regional Board restricted Defendants' groundwater  
18 pumping when it was discovered that the water being discharged into Murphy Canyon  
19 Creek contained excessive levels of arsenic. All told, Plaintiffs are informed and believe,  
20 and thereon allege, that for much of the 1990s, Defendants failed to comply with the  
21 Regional Board's directives regarding the contamination and pollution at, under and  
22 emanating from the MVT terminal, which contamination and pollution was migrating to,  
23 beneath and into the soil and groundwater at the Property. Plaintiffs are informed and  
24 believe, and thereon allege, that for at least one span of time during this time period,

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25 <sup>6</sup> Subsequent to 1998, Defendants assumed the obligations of both Powerine and  
26 SFPP under the Cleanup and Abatement Order.

27 <sup>7</sup> In 1996, MTBE was discovered as a result of groundwater monitoring. MTBE is a  
28 chemical additive to gasoline used to help clean vehicle emissions, but imparts a bad odor  
and taste to water and does not break down in the environment easily.

1 Defendants failed utterly to operate their remediation system and even turned it off for a  
2 significant period of time.

3 40. Plaintiffs are informed and believe, and thereon allege, that Defendants have  
4 consistently employed a remediation strategy which relies on delay, obfuscation,  
5 administrative inaction and leniency by the Regional Board, and natural attenuation of the  
6 soil and groundwater contaminants in derogation of the duty they owe to remediate  
7 aggressively and quickly San Diego's and its citizens' Property and Pueblo Groundwater.  
8 As a result of Defendants' commission of these acts and omissions, in conjunction with  
9 their failure to carry out their obligations to the City, and pursuant to the Cleanup and  
10 Abatement Order, in a reasonable and prudent manner, Defendants have acted, and  
11 continue to act, with a conscious, despicable and reckless disregard of the City's and the  
12 public's rights, financial position and well-being, and such acts or omissions are intended to  
13 deprive the City and the public of property or legal rights or otherwise cause injury.

14 41. As a result of Defendants' acts and omissions, the Regional Board has  
15 repeatedly extended Defendants' deadlines for the remediation of the soil and groundwater  
16 under the Property. Starting with the initial Cleanup and Abatement Order, Defendants'  
17 original cleanup deadline was 1996. As of the most recent amendment to the original  
18 Cleanup and Abatement Order, Addendum 5, and despite Defendants' remarkable proposal  
19 for an off-site cleanup deadline of 2034, the current cleanup deadline imposed by the  
20 Regional Board is December 31, 2010 for the removal of residual light non-aqueous phase  
21 petroleum liquid ("LNAPL") from subsurface soil and groundwater beyond the MVT and  
22 December 31, 2013 to reduce concentrations of dissolved phase petroleum hydrocarbon  
23 waste constituents in the off-property (beyond the MVT) pollution area to attain  
24 background water quality conditions.

25 42. The City is informed and believes, and thereon alleges, that Defendants will  
26 not meet the current cleanup deadlines of 2010 and 2013, respectively, set forth in  
27 Addendum 5 to the Cleanup and Abatement Order.

28 43. Additionally, on December 7, 2005, a tanker truck owned by Merit Oil, a

1 distributor for Unocal 76, was involved in an incident at the entrance to the Stadium.  
2 Apparently, the vehicle had exited the MVT and, while turning, one of the two tanker  
3 trailers attached to the truck overturned, struck a wall near the entrance to the Stadium and  
4 burst into flames. Approximately 4,000 gallons of gasoline spilled and caught fire, but  
5 some gasoline escaped into storm drains and into the San Diego River. The City is  
6 informed and believes, and thereon alleges, that although the majority of the spill was  
7 remediated, while studying the effects of the spill, the City discovered another previously  
8 unknown plume of petroleum contamination emanating from the MVT and affecting the  
9 Property. The City is informed and believes, and on that basis alleges, that the newly  
10 discovered contamination is not attributable to the tanker truck spill, but originates from  
11 Defendants' operations at the MVT.

#### 12 **THE GROUNDWATER AT ISSUE**

13 44. All water within the State, including groundwater, is the property of the  
14 people of the State of California. California Water Code §§ 102 and 104. As to all water,  
15 the Legislature of the State of California has determined, as set forth in California Water  
16 Code § 13000, that "the people of the State have a primary interest in the conservation,  
17 control, and utilization of the water resources of the State, and that the quality of all waters  
18 of the State shall be protected for use and enjoyment of the people of the State."

19 45. The City has "Pueblo water rights" to the groundwater under the City of San  
20 Diego, including the groundwater under and in the area of the Property. Pueblo water  
21 rights, which are an interest in real property, are the highest priority water rights in  
22 California. The City's Pueblo water rights accrued under Spanish and Mexican law and  
23 came with San Diego upon California's accession into the United States. Historically, San  
24 Diego relied on groundwater subject to its Pueblo water rights for drinking water purposes.  
25 In the past, groundwater from the area of the Property was sufficient to meet San Diego's  
26 demands. To date, the contamination and pollution at, and emanating from, the MVT have  
27 thwarted, delayed and prevented the City's plans to bring this source of drinking water back  
28 into production. Groundwater from beneath the Property was used in the past for drinking

1 water, has been officially identified as a sources of drinking water, and is planned and  
2 intended to used in the future as a source of drinking water. As a result of Defendants' acts  
3 and omissions, San Diego now has delayed its plans for using this groundwater for drinking  
4 until no earlier than 2010. Even this date is imperiled as a result of Defendants' acts and  
5 omissions. Thus, the City's planned development and use of the Mission Valley  
6 groundwater for drinking water has been and continues to be thwarted by Defendants'  
7 contamination of the groundwater at the Property.

8 **FIRST CAUSE OF ACTION**

9 (By the People For Public Nuisance Against All Defendants)

10 46. The People re-allege and incorporate Paragraphs 1-45, as if fully set forth  
11 herein.

12 47. This cause of action is brought in the name of the People of the State of  
13 California by and through Michael J. Aguirre, City Attorney for the City of San Diego, who  
14 is authorized pursuant to section 731 of the California Code of Civil Procedure to bring a  
15 civil action to abate a public nuisance as defined in sections 3479 and 3480 of the  
16 California Civil Code.

17 48. The negligent, reckless, and/or intentional acts and omissions of the  
18 Defendants, as alleged herein, which include and are not limited to the continuing  
19 contamination and pollution of, and the slow, sporadic and ineffective measures to  
20 remediate or cleanup, the soil and groundwater under and around the Property, give rise to  
21 a public nuisance within the meaning of California Civil Code section 3480, which affects  
22 not only the peace and dignity of the People, but also the City of San Diego and the entire  
23 community of the City of San Diego, and/or the comfort and convenience of a considerable  
24 number of residents of, and visitors to, the City of San Diego.

25 49. The contamination and pollution by Defendants' poisons, including the  
26 gasoline and petroleum, of the Property and Pueblo Groundwater, has varied over time and  
27 can be reasonably abated. The City has engaged and/or will engage in investigation,  
28 treatment programs and/or abatement. The People seek the abatement and enjoinder of

1 the nuisance and all legally available damages and costs, the value of which is within the  
2 jurisdiction of the court.

3 50. Because the contamination created by the negligent, reckless, and/or  
4 intentional acts and omissions of the Defendants has resulted in contamination and  
5 pollution of the Property, which continues, and threatens to continue, to spread to adjacent  
6 properties, and farther into the groundwater supply of the City and for which the City  
7 possesses a legally cognizable property interest by virtue of its Pueblo water rights, and a  
8 legally cognizable property interest on behalf of its residents, it is of great public concern.  
9 As a result, the City has incurred and will continue to incur substantial and necessary  
10 response costs, including investigatory expenses, attorneys' fees, consulting fees, oversight  
11 costs, interest and other response costs. For the aforesaid reasons, the City has and will  
12 suffer injuries different in kind from those suffered by the general public.

13 51. The negligent, reckless, and/or intentional acts and omissions of the  
14 Defendants which resulted in the contamination and pollution of, and threatens to continue  
15 to contaminate and pollute, the Property and Pueblo Groundwater as well as the public's  
16 right to use and enjoy its groundwater supply, is also a public nuisance as defined by  
17 Chapter 5, Article 4, Division 7, section 54.0701 *et seq.* of the San Diego Municipal Code,  
18 for which the People seek remedies in accordance therewith.

19 52. The People assert that litigation against the Defendants is necessary because  
20 it raises issues of public importance and policy that are in need of vindication by litigation,  
21 presents the necessity of enforcement of said issues and rights resulting from special  
22 burdens that fall upon the City, and will benefit the health and safety of the community.

23 53. The People are entitled to recover from the Defendants all costs presently  
24 incurred or that may be incurred in investigating and verifying the contamination of the  
25 MVP and the Property, and for future costs to remediate the Property and the groundwater  
26 of Mission Valley. The People are also entitled to all available remedies described in the  
27 San Diego Municipal Code as described in Chapter 5, Article 4, Division 7. The exact  
28 amount owing will be determined at trial according to proof. The People also seek the

1 abatement and enjoining of the nuisance and all legally available damages and costs, the  
2 value of which is within the jurisdiction of this court.

3 **SECOND CAUSE OF ACTION**

4 (By the City For Public Nuisance Against All Defendants)

5 54. The City hereby re-alleges and incorporates by reference Paragraphs 1  
6 through 53, inclusive, of this Complaint.

7 55. The negligent, reckless, and/or intentional acts and omissions of Defendants,  
8 and each of them, as alleged herein, which include and are not limited to the continuing  
9 contamination and pollution of, and the slow, sporadic and ineffective measures to  
10 remediate or cleanup, the soil and groundwater under and around the Property, give rise to  
11 a public nuisance within the meaning of California Civil Code sections 3479 and 3480,  
12 which affects not only the City but also the entire community of the City, and/or the  
13 comfort and convenience of a considerable number of residents of, and visitors to, the City,  
14 although the extent of damages inflicted upon individuals may be unequal.

15 56. The City is specially and adversely affected by the nuisance.

16 57. The City owns and holds property rights, including ownership of the Property  
17 and of the Pueblo water rights. The City's injury is separate and distinct from that of the  
18 public at large.

19 58. Because the contamination and pollution created by the negligent, reckless,  
20 and intentional acts and omissions of Defendants, and each of them, has resulted in  
21 contamination and pollution of the Property, and that such contamination and pollution  
22 continues, and threatens to continue, to spread to adjacent properties, and farther into the  
23 groundwater supply of the City and for which the City possesses a legally cognizable  
24 property interest by virtue of its Pueblo water rights, and a legally cognizable property  
25 interest on behalf of its residents, it is of great public concern. As a result, the City has  
26 incurred and will continue to incur substantial and necessary response costs, including  
27 investigatory expenses, attorneys' fees, consulting fees, oversight costs, interest and other  
28 response costs. For these reasons, among others, the City, as the owner of the Property and



1 of the Pueblo groundwater interests, has and will suffer injuries different in kind from those  
2 suffered by the general public.

3 59. The negligent, reckless, and intentional acts and omissions of Defendants,  
4 and each of them, which resulted in the contamination and pollution, and threatens to  
5 continue to contaminate and pollute, the Property and Pueblo Groundwater, as well as  
6 impairing the public's right to use and enjoy its groundwater supply, is also a public  
7 nuisance as defined by Chapter 5, Article 4, Division 7, section 54.0701 *et seq.* of the San  
8 Diego Municipal Code, for which the City seeks remedies in accordance therewith.

9 60. The City has not consented to and does not consent to this nuisance.  
10 Defendants, and each of them, knew or should have known that the City would not consent  
11 to this nuisance.

12 61. The contamination and pollution by Defendants' poisons, including the  
13 gasoline and petroleum, of the City's Property and Pueblo Groundwater, has varied over  
14 time and can be reasonably abated. The City has engaged and/or will engage in  
15 investigation, treatment programs, and/or abatement.

16 62. As a direct and proximate result of Defendants', and each of their, nuisance,  
17 the City has been, and will continue to be, injured, harmed and damaged in an amount to be  
18 determined at trial.

19 63. As a result of Defendants' commission of these acts and omissions, in  
20 conjunction with their failure to carry out their obligations to the City, and pursuant to the  
21 Cleanup and Abatement Order, in a reasonable and prudent manner, Defendants have acted,  
22 and continue to act, with a conscious, despicable and reckless disregard of the City's and  
23 the public's rights, financial position and well-being, and such acts or omissions are  
24 intended to deprive the City and the public of property or legal rights or otherwise cause  
25 injury. Defendants, and each of them, have therefore engaged in oppressive or malicious  
26 conduct that justifies, for the purpose of punishing them and deterring them from engaging  
27 in such actions in the future, an award of exemplary and punitive damages in an amount to  
28 be proven at trial.

**THIRD CAUSE OF ACTION**

(By the City For Private Nuisance Against All Defendants)

64. The City hereby re-alleges and incorporates by reference Paragraphs 1 through 63, inclusive, of this Complaint.

65. The City owns and holds property rights, including ownership of the Property and of the Pueblo groundwater interests.

66. The negligent, reckless, and/or intentional acts and omissions of Defendants, and each of them, as alleged herein, which include and are not limited to the continuing contamination and pollution of, and the slow, sporadic and ineffective measures to remediate or cleanup, the soil and groundwater under and around the Property, give rise to a nuisance within the meaning of California Civil Code section 3479 which, to the extent (if any) not constituting a public nuisance within the meaning of California Civil Code section 3480, constitutes a private nuisance within California Civil Code section 3481.

67. Such nuisance has interfered with the City’s use or enjoyment of its Property and of its Pueblo groundwater rights.

68. The City has not consented to, and does not consent to, this nuisance. Defendants, and each of them, knew or should have known that the City would not consent to this nuisance.

69. The contamination and pollution by Defendants’ poisons, including the gasoline and petroleum, of the City’s Property and Pueblo Groundwater, has varied over time and can be reasonably abated. The City has engaged and/or will engage in investigation, treatment programs and/or abatement.

70. As a direct and proximate result of Defendants’, and each of their, nuisance, the City has been, and will continue to be, injured, harmed and damaged in an amount to be determined at trial. Among other things, the City has incurred and will continue to incur substantial and necessary response costs, including investigatory expenses, attorneys’ fees, consulting fees, oversight costs, interest and other response costs, as a direct and proximate result of the contamination and pollution created by the negligent, reckless, and intentional

1 acts and omissions of Defendants, and each of them, which has resulted in contamination  
2 and pollution of the Property which continues, and threatens to continue, to spread to  
3 adjacent properties, and farther into the groundwater supply of the City and for which the  
4 City possesses a legally cognizable property interest by virtue of its Pueblo water rights.

5 71. As a result of Defendants' commission of these acts and omissions, in  
6 conjunction with their failure to carry out their obligations to the City, and pursuant to the  
7 Cleanup and Abatement Order, in a reasonable and prudent manner, Defendants have acted,  
8 and continue to act, with a conscious, despicable and reckless disregard of the City's rights,  
9 financial position and well-being, and such acts or omissions are intended to deprive the  
10 City of property or legal rights or otherwise cause injury. Defendants, and each of them,  
11 have therefore engaged in oppressive or malicious conduct that justifies, for the purpose of  
12 punishing them and deterring them from engaging in such actions in the future, an award of  
13 exemplary and punitive damages in an amount to be proven at trial.

#### 14 **FOURTH CAUSE OF ACTION**

15 (By the City For Trespass Against All Defendants)

16 72. The City re-alleges and incorporates Paragraphs 1 through 71, as though fully  
17 set forth herein.

18 73. The City is the owner and/or possessor of property and/or property rights,  
19 including the Property and the Pueblo groundwater interests.

20 74. The City is informed and believes and thereon alleges that, without the  
21 permission of Plaintiffs, Defendants, and each of them, interfered with and/or entered onto,  
22 and continue to interfere with and/or enter onto, the City's Property and its Pueblo  
23 groundwater interests by negligently, recklessly, intentionally and/or wrongfully  
24 contaminating and polluting the City's Property and Pueblo Groundwater.

25 75. The City is informed and believes and thereon alleges that Defendants, and  
26 each of them, used, stored, handled, released and discharged gasoline and petroleum  
27 products and wastes, and continue to do so, in such a manner as to result in the continual  
28 release, discharge and migration of gasoline and petroleum pollution and contamination

1 resulting in the contamination and pollution of the City's Property and Pueblo  
2 Groundwater.

3 76. The City is informed and believes and thereon alleges that Defendants, and  
4 each of them, employed and continue to employ machinery, fixtures, trade fixtures,  
5 equipment and pipelines which they knew, or should have known, were inadequate, old,  
6 leaking, and/or defective, and thereby created a substantial known danger that poisons,  
7 including gasoline and petroleum pollution and contamination would be released and would  
8 migrate down gradient to the City's Property and groundwater subject to the City's Pueblo  
9 water rights.

10 77. The City is informed and believes and thereon alleges that Defendants, and  
11 each of them, retained consultants and controlled and/or directed, and continue to control  
12 and/or direct, such consultants' cleanup and remediation activities (or the lack thereof) at  
13 the MVT and at the Property in such a manner, and with such a conscious, despicable and  
14 reckless disregard of the City's and the public's rights, financial position and well-being, as  
15 to cause and permit past and continuing pollution and contamination of the City' Property  
16 and Pueblo Groundwater.

17 78. The City is informed and believes and thereon alleges that Defendants, and  
18 each of them, have controlled and directed, and continue to control and direct, the cleanup  
19 and remediation activities (or the lack thereof) at the MVT and at the Property in such a  
20 manner, and with such a conscious, despicable and reckless disregard of the City's and the  
21 public's rights, financial position and well-being that they have employed and continue to  
22 employ business practices and strategies such that when Defendants, and each of them,  
23 learned, or reasonably should have learned, that they were not going to meet the Regional  
24 Board's cleanup time deadlines, they failed and continue to fail to undertake reasonable,  
25 appropriate, or necessary action to reduce, remediate, or abate the past and continuing  
26 pollution and contamination of the City's Property and Pueblo Groundwater.

27 79. The City is informed and believes and thereon alleges that Defendants, and  
28 each of them, have engaged, and continue to engage, in the acts and omissions alleged

1 above with such a conscious, despicable and reckless disregard of the City's and the  
2 public's rights, financial position and well-being, as to cause and permit past and  
3 continuing pollution and contamination of the City's Property and Pueblo Groundwater.

4 80. The contamination and pollution by Defendants' poisons, including the  
5 gasoline and petroleum, of the City's Property and Pueblo Groundwater, has varied over  
6 time and can be reasonably abated. The City has engaged and/or will engage, in  
7 investigation, treatment programs, and/or abatement.

8 81. As a direct and proximate result of Defendants', and each of their, trespass,  
9 the City has been, and will continue to be, injured, harmed and damaged in an amount to be  
10 determined at trial.

11 82. For the reasons alleged herein, the City is entitled to an award of exemplary  
12 and punitive damages against the Defendants.

### 13 **FIFTH CAUSE OF ACTION**

14 (By the City For Negligence Against All Defendants)

15 83. The City re-alleges and incorporates Paragraphs 1 through 82, as though fully  
16 set forth herein.

17 84. Defendants, and each of them, owe, and have owed, a duty to the City to  
18 exercise reasonable care in using, storing, handling, distributing, controlling, transporting  
19 and/or disposing gasoline and/or petroleum products, including the waste, pollution and  
20 contamination related thereto.

21 85. Defendants, and each of them, owe, and have owed, a duty to the City to  
22 exercise reasonable care in eliminating, speedily and effectively, the poisons Defendants  
23 have released (including gasoline and petroleum contamination and pollution) at, under, on  
24 and in the City's Property and Pueblo Groundwater.

25 86. Defendants, and each of them, knew or should have known that if they failed  
26 to properly exercise reasonable care in using, storing, handling, distributing, controlling,  
27 transporting and/or disposing these poisons, gasoline and/or petroleum products, including  
28 the waste, pollution and contamination related thereto, and in eliminating speedily and

1 effectively the gasoline and petroleum contamination and pollution at, under, on and in the  
2 City's Property and Pueblo Groundwater, damage would result to the City.

3 87. Defendants, and each of them, breached, and are continuing to breach, their  
4 duty of care to the City by negligently, carelessly and recklessly contaminating and  
5 polluting the City's Property and Pueblo Groundwater.

6 88. Defendants, and each of them, breached, and are continuing to breach, their  
7 duty of care to the City by negligently, carelessly and recklessly using, storing, handling,  
8 releasing and discharging gasoline and petroleum products and wastes, and continuing to  
9 do so, in such a manner as to result in the continual release, discharge and migration of  
10 gasoline and petroleum resulting in the contamination and pollution of the City's Property  
11 and Pueblo Groundwater.

12 89. Defendants, and each of them, breached, and are continuing to breach, their  
13 duty of care to the City by negligently, carelessly and/or recklessly employing and  
14 continuing to employ machinery, fixtures, trade fixtures, equipment and pipelines which  
15 they knew or should have known were, and know or should know are, inadequate, old,  
16 leaking, and/or defective, and thereby created and create a substantial known danger that  
17 gasoline and petroleum pollution and contamination would be released and would migrate  
18 down gradient to the City's Property and Pueblo Groundwater.

19 90. Defendants, and each of them, breached, and are continuing to breach, their  
20 duty of care to the City by negligently, carelessly and recklessly retaining consultants and  
21 controlling and/or directing, and continuing to control and direct, their cleanup and  
22 remediation activities (or the lack thereof) at the MVT and at the Property in such a  
23 manner, and with such a conscious, despicable and reckless disregard of the City's and the  
24 public's rights, financial position and well being, as to cause and permit pollution and  
25 contamination to pollute and contaminate, and continue to pollute and contaminate, the  
26 City's Property and Pueblo Groundwater.

27 91. Defendants, and each of them, breached, and are continuing to breach, their  
28 duty of care to the City by negligently, carelessly and recklessly controlling and directing

1 Defendants' cleanup and remediation activities (or the lack thereof) at the MVT and at the  
2 Property in such a manner, and with such a conscious, despicable and reckless disregard of  
3 the City's and the public's rights, financial position and well being that they have employed  
4 and continue to employ business practices and strategies such that when Defendants, and  
5 each of them, learned, or reasonably should have learned, that they were not going to meet  
6 the Regional Board's cleanup time deadlines, they failed and continue to fail to undertake  
7 reasonable, appropriate, or necessary action to reduce, remediate, or abate the pollution and  
8 contamination that has contaminated and polluted and continues to contaminate and pollute  
9 the City's Property and Pueblo Groundwater.

10 92. As a proximate result of Defendants', and each of their, negligence, as herein  
11 alleged, the City has been, and will continue to be, injured, harmed and damaged in an  
12 amount to be determined at trial.

13 93. For the reasons alleged herein, the City is entitled to an award of exemplary  
14 and punitive damages against the Defendants.

### 15 **SIXTH CAUSE OF ACTION**

16 (By the City For Negligence *Per Se* Against All Defendants)

17 94. The City re-alleges and incorporates Paragraphs 1 through 93, as though fully  
18 set forth herein.

19 95. The City is informed and believes and thereon alleges that Defendants, and  
20 each of them, negligently, carelessly and recklessly engaged, and continue to engage, in the  
21 practice of using, storing, handling, releasing, distributing, discharging and remediating  
22 poisons, including gasoline and petroleum products and wastes, and continuing to do so, in  
23 such a manner as to result in the continual release, discharge and migration of these  
24 pollutants and contaminants resulting in the contamination and pollution of the City's  
25 Property and Pueblo Groundwater.

26 96. The City is informed and believes and thereon alleges that Defendants, and  
27 each of their, acts and omissions as alleged above were and are in violation of California  
28 Water Code sections 13050, 13350 and 13387, California Health and Safety Code sections

1 5411, 5411.5, and California Fish and Game Code section 5650.

2 97. The statutes and regulations which Defendants, and each of them, have  
3 violated and continue to violate, were enacted to protect persons, such as the City, as well  
4 as the environment from the dangers and injuries posed by Defendants', and each of their,  
5 illegal and improper activities and conduct, and to prevent damages such as those sustained  
6 by Plaintiff.

7 98. As a direct and proximate result of the negligence *per se* of Defendants, and  
8 each of them, the City has suffered damages, and will continue to incur additional damages,  
9 in an amount to be established according to proof at trial.

10 **SEVENTH CAUSE OF ACTION**

11 (By the People for Violation of Health & Safety Code § 25249.5 Against All Defendants  
12 except Defendant Scott Martin and any natural person Doe Defendants)

13 99. The People re-allege and incorporate Paragraphs 1 through 98, as if fully set  
14 forth herein.

15 100. The Safe Drinking Water and Toxic Enforcement Act of 1986, California  
16 Health and Safety Code § 25349.5 et seq. ("Proposition 65"), prohibits discharges and  
17 releases such as Defendants' and provides for injunctive and other relief, as well as for civil  
18 penalties.

19 101. Enforcement of Proposition 65, including actions seeking to enjoin violations  
20 of Health and Safety Code § 25249.5 and civil actions seeking assessment and recovery of  
21 civil penalties for violations of California Health and Safety Code § 25249.5, may be  
22 brought in any court of competent jurisdiction.

23 102. Proposition 65 was adopted as an initiative statute passed by of vote of the  
24 People of the State of California in the general election of November 1986. Proposition 65  
25 is codified in the California Health and Safety Code at § 25249.5 et seq.

26 103. Proposition 65 prohibits business from knowingly discharging or releasing  
27 chemicals known to the State of California to cause cancer and/or reproductive toxicity  
28 (such as birth defects or other reproductive harm) into water or onto land where such



1 chemicals pass or probably will pass into a source of drinking water.

2 104. The applicable code section is California Health and Safety Code § 25249.5,  
3 which provides:

4 “No person in the course of doing business shall knowingly discharge or  
5 release a chemical known to the state to cause cancer or reproductive  
6 toxicity into water or onto or into land where such chemical passes or  
7 probably will pass into any source of drinking water, notwithstanding  
8 any other provision or authorization of law except as provided in Section  
9 25249.9.”

10 105. Proposition 65 includes within the term “source of drinking water” both  
11 currently used and potential sources of drinking water, and expressly includes “water which  
12 is identified or designated in a water quality control plan adopted by a regional [water  
13 quality control] board as being suitable for domestic or municipal uses.” (See Health and  
14 Safety Code § 23249.11(d).) The groundwater beneath Mission Valley has been so  
15 identified, has been utilized for domestic or municipal purposes in the past and is slated to  
16 be so utilized in the future. The groundwater beneath Mission Valley is a “source of  
17 drinking water” under Health & Safety Code § 25249.10(d).

18 106. Proposition 65, at California Health and Safety Code § 25249.8, contains and  
19 establishes procedures for developing a list of chemicals which are “known” to the State of  
20 California to cause cancer and/or reproductive toxicity. That list of such chemicals is  
21 contained in the California Code of Regulations at § 12000 of Title 22. All of the  
22 chemicals alleged in this complaint as providing a basis for this cause of action and as  
23 providing a basis for the relief, both injunctive and civil penalties, sought by and for the  
24 People of the State of California are known to the State of California to cause cancer and/or  
25 reproductive toxicity, and all such chemicals are listed at least once on the list set forth at §  
26 12000 of Title 22 of the California Code of Regulations.

27 107. Chemicals released, and threatened to be released, by the defendants into  
28 water or onto or into land where such chemicals pass or probably will pass into a source of

1 drinking water include benzene, ethylbenzene and toluene. Benzene initially was listed on  
2 February 2, 1987 as a chemical known to the state to cause cancer and was listed on  
3 December 26, 1997 as a chemical known to the state to cause male developmental  
4 reproductive toxicity. Ethylbenzene initially was listed on June 11, 2004 as a chemical  
5 known to the state to cause cancer. Toluene initially was listed on January 1, 1991 as a  
6 chemical known to the state to cause developmental reproductive toxicity.

7 108. Under § 25249.9(a) of Proposition 65, the discharge and release prohibition  
8 of § 25249.5 goes into effect as to each chemical known to the State of California to cause  
9 cancer or reproductive toxicity 20 months after that particular chemical is listed as  
10 described above. All of the chemicals alleged in this complaint, as providing a basis for  
11 this cause and as providing a basis for the relief, both injunctive and civil penalties, sought  
12 by and for the People of the State of California have been so listed for more than 20  
13 months.

14 109. Under § 25249.9(b) of Proposition 65, the discharge and release prohibition  
15 of § 25249 does not apply to “any discharge or release that meets both of the following  
16 criteria: (1) The discharge or release will not cause any significant amount of the  
17 discharged or released chemical to enter any source of drinking water; (2) The discharge or  
18 release is in conformity with all other laws and with every applicable regulations, permit,  
19 requirement, and order. In any action to enforce Section 25249.5, the burden of showing  
20 that a discharge or release meets the criteria of this subdivision shall be on the defendant.”

21 110. Without agreeing to any alteration of the allocation of the burden of proof set  
22 forth at Health and Safety Code § 25249.9(b) or otherwise applicable, the People allege that  
23 Defendants’ discharges or releases at issue have caused and will cause a significant amount  
24 of the discharged or released chemicals to enter a source of drinking water and that  
25 Defendants will not be able to show that such discharges or releases are in conformity with  
26 all other laws and with every applicable regulations, permit, requirement, and order.

27 111. Any person “violating or threatening to violate” Proposition 65 “may be  
28 enjoined by any court of competent jurisdiction” under section 25249.7. A person threatens

1 to violate Proposition 65 by creating “a condition in which there is a substantial probability  
2 that a violation will occur.” (See Health and Safety Code § 25249.11(e).)

3 112. Persons that violate Proposition 65 are liable for civil penalties of up to  
4 \$2,500 per day for each violation, in addition to injunctive relief. (See California Health  
5 and Safety Code § 25249.7(b).)

6 113. Proposition 65 authorizes certain city attorneys, including any city attorney of  
7 a city having a population in excess of 750,000, to bring civil enforcement actions for  
8 injunctive relief and civil penalties where there is a violation, or threatened violation, of §  
9 25249.5 of Proposition 65. (See California Health and Safety Code § 25249.7(c).) The  
10 City of San Diego has a population in excess of 750,000. Michael Aguirre is the City  
11 Attorney for the City of San Diego. Accordingly, this cause of action is brought in the  
12 name of the People of the State of California, by and through Michael J. Aguirre, City  
13 Attorney for the City of San Diego.

14 114. Defendants, except for defendant Scott Martin and any natural person Doe  
15 Defendants, in the course of doing business in the State of California, have stored and  
16 transported, and continue to store and transport, large volumes of petroleum products in and  
17 through the City of San Diego. Among the facilities used for such storage and  
18 transportation of petroleum productions are petroleum storage tanks and pipelines in  
19 various locations in the City of San Diego, including but not limited to storage tanks and  
20 manifolds located at the MVT and pipelines leading to and from such storage tanks and  
21 manifolds.

22 115. The petroleum products stored and transported by Defendants as described  
23 above contain, and at all times relevant to this Complaint have contained, chemicals known  
24 to the State of California to cause cancer, reproductive toxicity (such as birth defects or  
25 other reproductive harm), or both cancer and reproductive toxicity. These chemicals  
26 include, but are not necessarily limited to, benzene, ethylbenzene and toluene. The  
27 presence of such chemicals in such petroleum produces is, and at all times relevant to this  
28 Complaint has been, known to Defendants and each of them.

1           116. The People are informed and believe, and on that basis allege, that  
2 Defendants have, within the past year, tested, and/or have caused their agents or employees  
3 to test, and/or have become aware of the results of third party testing of, Defendants'  
4 petroleum pipeline and storage facilities and equipment at the MVT, and that those tests  
5 show releases of chemicals known to the State of California to cause cancer and/or  
6 reproductive toxicity.

7           117. The People are informed and believe, and on that basis allege, that  
8 Defendants have, within the past four years, and for a period covering that entire four-year  
9 period, been in possession of test results that document and made Defendants aware of  
10 releases at the MVT of chemicals known to the State of California to cause cancer and/or  
11 reproductive toxicity.

12           118. The People are informed and believe, and on that basis allege, that  
13 Defendants know that such releases of chemicals known to the State of California to cause  
14 cancer and/or reproductive toxicity are occurring and have occurred within the past year  
15 and for the past year, and that such releases have occurred within the past four years and for  
16 the past four years.

17           119. The People are informed and believe, and on that basis allege, that  
18 Defendants know that such releases of chemicals known to the State of California to cause  
19 cancer and/or reproductive toxicity are occurring and have occurred into water or onto or  
20 into land where such chemicals pass or probably will pass into a source of drinking water.

21           120. The operation of the MVT facility, including, but not limited to, the pipelines,  
22 manifolds, tanks and other equipment and systems associated therewith, have resulted in,  
23 and continues to result in, actual discharges and releases, and has posed, and continues to  
24 pose, a substantial threat of continuing and future discharge or release of gasoline and other  
25 refined petroleum products "into water or onto land where such chemical passes or  
26 probably will pass into any source of drinking water" in violation of Health & Safety Code  
27 § 25249.5.

28           121. The People are informed and believe, and on that basis allege, that

1 Defendants, and each of them, have and continue to knowingly discharge or release  
2 chemicals known to the State of California to cause cancer and/or reproductive toxicity,  
3 that such discharges or releases of chemicals known to the State of California to cause  
4 cancer and/or reproductive toxicity have occurred within the past four years and for the past  
5 four years and continue to occur within the past year and for the past year, there is a  
6 substantial probability that such discharges or releases will occur in the near future if  
7 Defendants do not act to prevent such releases, and that such discharges or releases of  
8 chemicals known to the State of California to cause cancer and/or reproductive toxicity are  
9 occurring and have occurred into water or onto or into land where such chemicals pass or  
10 probably will pass into a source of drinking water.

11 122. By engaging in and committing the acts alleged above, Defendants, except  
12 defendant Scott Martin and any natural person Doe Defendants, in the course of doing  
13 business, knowingly have discharged or released within the past year and for the past year,  
14 and threaten to continue to release or discharge, chemicals – including but not necessarily  
15 limited to benzene, ethylbenzene, and toluene – known to the State of California to cause  
16 cancer or reproductive toxicity into water or onto or into land where such chemicals pass or  
17 probably will pass into a source of drinking water.

18 123. Defendants, except defendant Scott Martin and any natural person Doe  
19 Defendants, have failed, and continue to fail to comply with Proposition 65, as petroleum  
20 products containing, among other constituents, benzene, ethylbenzene and toluene have  
21 been for the past four years, within the past four years, for the past year, within the past  
22 year and currently are being released and discharged from and around the MVT site and  
23 have passed or with a substantial probability will pass into a source of drinking water.  
24 Such conduct constitutes (1) a violation of California Health and Safety Code Section  
25 25249.5 and (2) a threatened violation of California Health and Safety Code Section  
26 25249.5.

27 124. Such violations of California Health and Safety Code Section 25249.5  
28 renders Defendants, except defendant Scott Martin and any natural person Doe Defendants,

1 liable to the People for civil penalties of up to \$2,500 per day for each violation in addition  
2 to any other penalties established by law.

3 **EIGHTH CAUSE OF ACTION**

4 (By the People for Violation of Business and Professions Code section 17200 et. seq.  
5 Against All Defendants except defendant Scott Martin and any natural person Doe  
6 Defendants.)

7 125. The People re-allege and incorporate Paragraphs 1 through 124, as though  
8 fully set forth herein.

9 126. The Unfair Competition Law is codified at Business and Professions Code  
10 sections 17200 et seq.

11 127. The Unfair Competition Law defines “unfair competition” to mean and  
12 include any “unlawful, unfair or fraudulent business practice.” (See California Business  
13 and Professions Code Section 17200.) .

14 128. Violations of other laws also are violations of the Unfair Competition Law.

15 129. Under the Unfair Competition Law, any “person performing or proposing to  
16 perform an act of unfair competition within this state may be enjoined in any court of  
17 competent jurisdiction.” (See California Business and Professions Code Section 17203.)

18 130. The Unfair Competition Law also provides for a civil penalty of \$2,500 for  
19 each violation. (See California Business and Professions Code Section 17206(a).)

20 131. The Unfair Competition Law supports, in appropriate circumstances,  
21 disgorgement of profits gained from violations of the Unfair Competition Law and  
22 restitution of money and property obtained in violation of the Unfair Competition Law.  
23 Such disgorgement of profits and restitution is appropriate here.

24 132. Under Sections 17204 and 17206 of the Unfair Competition Law, certain city  
25 attorneys may bring a civil action in the name of the People of the State of California for  
26 injunctive relief and civil penalties respectively. (See California Business and Professions  
27 Code sections 17204 and 17206(a).)

28 133. The relief (including penalties) under the Unfair Competition Law is

1 cumulative and is in addition to “remedies or penalties available under all other laws of this  
2 state.” (See California Business and Professions Code Section 17205.)

3 134. Defendants, except defendant Scott Martin and any natural person Doe  
4 Defendants, in the course of doing business, knowingly discharged or released within the  
5 past four years and for the past four years chemicals – including but not necessarily limited  
6 to benzene, ethylbenzene, and toluene – known to the State of California to cause cancer or  
7 reproductive toxicity into water or onto or into land where such chemical passes or  
8 probably will pass into a source of drinking water.

9 135. On April 26, 2005, in the Superior Court of California for the County of  
10 Solano, Defendants entered, and the Court accepted, a plea of guilty to two counts of the  
11 “crime of failing to notify the Office of Energy Services immediately . . . when responsible  
12 for the discharge of threatened discharge of oil in marine waters.”

13 136. On April 26, 2005, in the Superior Court of Solano, Defendants entered, and  
14 the court accepted, a plea of guilty to two counts of the “crime of water pollution.”

15 137. One April 26, 2005, in the Superior Court of Solano, Defendants agreed to be  
16 placed on probation for three years.

17 138. Conditions of probation included requirements that Defendants: (a) “with  
18 regard to any release or threatened release of a hazardous material or pollutant substance . .  
19 . from any of its pipelines, conveyance systems, facilities, or any other operation” in  
20 California, within 60 days of entering its guilty pleas, ensure that each and every one of its  
21 “employees and agents be trained and instructed to immediately notify all appropriate  
22 response agencies” of any such release; (b) “with regard to future analysis of pipelines and  
23 evaluation inspection indications” performed in California of its pipelines, “ensure that flaw  
24 interaction is considered in the evaluation of inspection indications, using recognized  
25 standards” and make certain determinations and evaluations of data discrepancies in  
26 evaluating pipeline integrity, as well as taking other specified steps regarding inspections,  
27 analyses and data; (c) “with regard to a pipeline mechanical integrity program” in  
28 California, perform within a specified time frame no greater than April 26, 2006, an

1 independent audit of the mechanical integrity program “to ensure that the program meets  
2 the requirements of all applicable regulations and that the program is being implemented”  
3 in California, and provide the audit immediately to specified state agencies; and (d) “when  
4 replacing or relocating any pipeline section, or installing any section of new pipeline  
5 greater than one mile in length” in California and which is within, or less than a mile from  
6 specified areas, install (at a minimum) sensor points and manual shut off valves meeting  
7 specified requirements to provide the ability to “manually segregate and seal” pipeline  
8 sections experiencing abnormal situations or indications of pipeline failure.

9 139. On information and belief, Defendants failed to comply with one or more  
10 than one, or all, of such probation conditions.

11 140. On information and belief, such failure occurred with respect to one or more  
12 of Defendants’ pipelines, conveyance systems, facilities, other operations and related  
13 activities within the City of San Diego.

14 141. On information and belief, such failure also occurred with respect to one or  
15 more of Defendants’ pipelines, conveyance systems, facilities, other operations and related  
16 activities within the State of California outside the City of San Diego.

17 142. On July 19, 2006, the County of San Diego Department of Environmental  
18 Health Hazardous Materials Division (“HMD”) issued a “Notice of Deficiency” to  
19 Defendants for the MVT stating that the “documentation of compliance is unsatisfactory  
20 and does not address State regulations or statutes with regards to the following violations:  
21 “(1) Lack of certification of waste conveyance piping (together with failure to explain the  
22 hazardous characteristics of wastestreams and failure to have an independent assessment of  
23 at least one waste storage tank); (2) Failure to submit a workplan for closure of a tank  
24 system; (3) Failure to register underground storage tank (“UST”) systems and serious  
25 failure to comply with violations for UST systems (including statements that “HMD  
26 believes the longer Kinder Morgan fails to address the basic UST regulations, the greater  
27 the risk to the environment and public health and safety,” and “Kinder Morgan SFPP  
28 continued reluctance to comply with County ordinance and State UST law in an appropriate



1 manner is unacceptable.”); (4) Failure to provide a site map clear enough to identify the  
2 UST systems and the hazard symbols; (5) Failure to provide the name of the USTs’ owner  
3 and the complete mailing address as required by Section 2711 of Title 23 of the California  
4 Code of Regulations; and (6) Failure to obtain information, register or formally close a  
5 UST.

6 143. By committing the acts alleged above, each Defendant, except defendant  
7 Scott Martin and any natural person Doe Defendants, has engaged in unlawful business  
8 practices which constitute unfair competition with the meaning of Business and Professions  
9 Code Section 17200.

10 144. Such violations render each Defendant, except defendant Scott Martin and  
11 any natural person Doe Defendants, liable to the People for civil penalties of up to \$2,500  
12 per day for each violation.

13 145. Defendants’ operations at the MVT were in violation of the Unfair  
14 Competition Law for no less than the entire four-year time period immediately preceding  
15 the filing of this action and continuing without interruption thereafter. The Unfair  
16 Competition Law supports, in appropriate circumstances, disgorgement of profits gained  
17 from violations of the Unfair Competition Law and restitution of money and property  
18 obtained in violation of the Unfair Competition Law. Such disgorgement of profits and  
19 restitution is appropriate here.

20 146. To the full extent permitted by and under the Unfair Competition Law,  
21 Defendants should be required to disgorge all of their profits, and to make restitution of all  
22 money and property obtained, to the full extent such profits, or such money and property,  
23 were obtained from operating the MVT in violation of the Unfair Competition Law during  
24 the four-year time period preceding the filing of this action and continuing so long as  
25 Defendants continue to violate the Unfair Competition Law.

26 **NINTH CAUSE OF ACTION**

27 (By the City for Declaratory Relief Against All Defendants)

28 147. Plaintiffs re-allege and incorporate Paragraphs 1 through 146, as though fully

1 set forth herein.

2 148. An actual controversy has arisen and now exists between the City and  
3 Defendants concerning their respective rights and duties related to the pollution and  
4 contamination at, under, beneath, in and affecting the City's Property and Pueblo  
5 Groundwater. In particular, Defendants, and each of them, knew or should have known  
6 that Defendants' past and current practices regarding the use, control, distribution, and  
7 handling of these poisons, including gasoline and petroleum products, and the remediation  
8 and cleanup of the discharges, releases and migration thereof, was dangerous, ineffective  
9 and/or created an unreasonable risk of harm and damage to the public and to the City. As a  
10 direct and proximate result of Defendants, and each of their, acts and omissions, the City  
11 must take costly action to remove and/or abate the pollution and contamination that is at,  
12 under, beneath, on, in and affecting the City's Property and Pueblo Groundwater.

13 149. Defendants, and each of them, have failed to reimburse the City for the City's  
14 investigation, response costs and damages related to the contamination and pollution caused  
15 by Defendants. Defendants deny any responsibility or liability for these costs, damages and  
16 expenses and for those costs, damages and expenses the City will incur in the future.

17 150. A judicial declaration is necessary and appropriate at this time under the  
18 circumstances in order that the City may ascertain its rights and duties as against  
19 Defendants, in conjunction with an award of damages, to the extent necessary to provide  
20 full relief to the City.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, The People pray for judgment against all Defendants on the First,  
23 and against all Defendants except defendant Scott Martin and any natural person Doe  
24 Defendants on the Seventh and Eighth Causes of Action, as follows:

- 25 1. Pursuant to the First Cause of Action, for relief and orders of abatement or  
26 enjoinder;
- 27 2. Pursuant to the Seventh and Eighth Causes of Action, as provided by Health and  
28 Safety Code Section 25249.7 and Business and Professions Code Section 17203,

1 respectively, enter such preliminary injunctions, permanent injunctions, other  
2 equitable relief, or other orders prohibiting Defendants from discharging or  
3 releasing chemicals known to the State of California to cause cancer and/or  
4 reproductive toxicity, into water or onto or into land, where such chemicals pass  
5 or probably will pass into a source of drinking water, as the People shall specify  
6 in further application to the Court;

- 7 3. Pursuant to the Seventh and Eighth Causes of Action, grant civil penalties  
8 according to proof;
- 9 4. Pursuant to the Eighth Cause of Action, restitution of all money and property  
10 obtained by Defendants at MVT, to the extent such profits, money or property  
11 resulted from a violation of the Unfair Competition Law and disgorgement of all  
12 profits earned by the defendants at the MVT to the extent such profits were  
13 earned in violation of the Unfair Competition Law;
- 14 5. Pursuant to the First Cause of Action, for compensatory damages according to  
15 proof;
- 16 6. For litigation expenses, including but not limited to attorneys' fees;
- 17 7. For costs of suit incurred herein; and
- 18 8. For such other and further relief as the Court may deem just and proper.

19 The City prays for judgment against Defendants on the Second, Third, Fourth, Fifth,  
20 Sixth and Ninth Causes of Action as follows:

- 21 1. Compensatory damages, according to proof;
- 22 2. Punitive damages in an amount sufficient to punish and to deter Defendants from  
23 ever committing the same or similar acts;
- 24 3. All available remedies as described or permitted pursuant to Chapter 5, Article 4,  
25 Division 7, section 54.0701 *et seq.* of the San Diego Municipal Code;
- 26 4. For relief and orders of abatement or enjoinder;
- 27 5. For an award of litigation expenses, including but not limited to attorneys' fees;
- 28 6. For costs of suit incurred herein;

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- 7. For a declaration of the rights and remedies of the parties; and
- 8. For such other and further relief as the Court may deem just and proper.

Dated: August \_\_\_\_\_, 2007

MICHAEL J. AGUIRRE, City Attorney

By \_\_\_\_\_  
Donald McGrath, II  
Executive Assistant City Attorney

Attorneys for Plaintiffs  
People of the State of California and the  
City of San Diego