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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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SAN DIEGO COUNTY, CA

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

CIVIL DIVISION, CENTRAL COURT

City of San Diego, a Municipal corporation, Plaintiff, v. San Diego Gas & Electric Company; Sempra Energy Company; and DOES 1 through 50, inclusive, Defendants.	Case No. 37-2008-00086025-CU-PO-CTL COMPLAINT FOR DAMAGES Jury Trial Demanded

Comes now plaintiff CITY OF SAN DIEGO, a Municipal corporation ["CITY"], and files its Complaint against defendants San Diego Gas & Electric Company ["SDG&E"]; Sempra Energy ["Sempra Energy"]; and DOES 1 through 50, inclusive, alleging as follows:

GENERAL ALLEGATIONS

1. CITY is a charter municipal corporation, duly organized and existing by virtue of the laws of the State of California and a political subdivision of the State of California as defined in Government Code § 12650(b)(3).

2. This is a matter of unlimited jurisdiction insofar as it involves a claim by CITY for money damages in excess of $25,000.

3. CITY submits that jurisdiction and venue are proper before this Court, as CITY is a political subdivision operating within the County of San Diego and defendants maintain their

offices, transact business, have agents, or otherwise have their primary place of business within the City of San Diego.

4. At all times material herein SDG&E is, and was, a corporation and a regulated public utility company, organized and existing under the laws of the State of California and was doing business within the State of California, with its principal office at 101 Ash Street in San Diego, California.

5. At all times material herein, Sempra Energy is, and was, a corporation organized and existing under the laws of the State of California and was doing business within the State of California, with its principal office at 101 Ash Street in San Diego, California. At all times material herein, Sempra Energy owned, operated, and managed, or had substantial control of, SDG&E and its actions or activities.

6. The true names and capacities, whether individual, corporate or otherwise, of defendants named herein as DOES 1 through 50, inclusive, are unknown to CITY, which is informed and believes, and thereon alleges, that each of said fictitiously named defendants is liable to CITY in some manner in the causes of action herein alleged, and, therefore, CITY sues such defendants by said fictitious names. CITY will move to amend this complaint when the true names and capacities of said fictitiously named defendants have been ascertained.

7. CITY is informed and believes, and on this information and belief alleges, that at all times herein mentioned, each defendant herein was the agent and/or employee of each of the other defendants named herein, and in doing the things herein mentioned, was acting within the scope of his/her/its authority of such agency and/or employment, and with the permission and consent of said other defendants.

8. CITY is further informed and believes, and on that basis alleges, that defendants, including but not limited to SDG&E and Sempra Energy, are, and at all times herein mentioned were, each either a parent corporation and/or division/sub-division and/or subsidiary of the other defendants, and, as to any acts or omissions herein mentioned, were acting within the scope of any authority arising from said relationship(s), and with the control, authority, and consent of said other defendants.

9. CITY owns numerous parcels of real property, and improvements thereon, located within the City of San Diego. CITY also owns real property, and improvements thereon, that are located outside of CITY's limits or boundaries but within the County of San Diego.

10. The San Diego Fire Department ["SDFD"] is one of CITY's departments. SDFD provides fire protection/suppression service and other public safety services to CITY and to its residents.

11. SDFD personnel are employees of CITY, and CITY holds a certificate of consent to self-insure against workers' compensation claims and provides such employees with workers' compensation benefits as required by California law.

FACTUAL BACKGROUND

12. CITY refers to and incorporates herein by this reference, as though set forth in full, each and every allegation contained in paragraphs 1 through 11, above.

13. Several brush fires occurred in San Diego County in October, 2007, including the Witch Creek and Guejito fires. The Witch Creek fire originated east of Ramona on October 21, 2007, and burned to the west, driven by Santa Ana winds. The Guejito fire originated east of the San Diego Wild Animal Park in the early morning hours of October 22, 2007, and was also driven to the west by the Santa Ana wind conditions.

14. Several hours after the Guejito fire started it merged with the Witch Creek fire to become a single fire [the "merged fire"].

15. The merged fire burned for several days before it was contained and burned close to 198,000 acres. It also damaged or destroyed real and personal property, including more than 911 homes, 30 commercial buildings, 175 outbuildings and 239 vehicles.

16. A significant amount of the real and personal property that was damaged or destroyed in the merged fire was owned by the City of San Diego.

17. In addition to suffering significant property damage and related losses, CITY also expended significant resources in fighting the merged fire and faces further expenses as claims are made for workers' compensation benefits by CITY's fire fighters and other employees who were engaged in fire suppression or other relief activities.

18. The origin and cause of the merged fire are still being investigated but it has been determined that the Witch Creek and Guejito fires were both started by power lines and/or other electrical equipment, including but not limited to transmission lines or wires, utility poles, guy wires, transformers, insulators, current or circuit breakers and related equipment, component parts and materials [the "SDG&E transmission equipment"], all of which is, and was, placed, installed, owned and maintained by, and/or under the dominion, custody and control of, SDG&E.

FIRST CAUSE OF ACTION

(Negligence)

19. CITY refers to and incorporates herein by this reference, as though set forth in full, each and every allegation contained in paragraphs 1 through 18, above.

20. Defendants, and each of them, had a duty to design, install or construct, operate, maintain, inspect, and manage, and/or to recognize and cure defects, faults or deficiencies, in the SDG&E transmission equipment.

21. Defendants, and each of them, had a further duty to inspect, maintain and manage the areas adjacent to the SDG&E transmission equipment in a manner such as to reduce and/or eliminate the risk that any failure, breakdown or malfunction of said equipment could result in a fire starting in the area(s) adjacent to said equipment.

22. Defendants, and each of them, breached the aforesaid duties, which were owed to CITY, and to all of its residents, and were therefore negligent.

23. The Witch Creek fire and Guejito fire each occurred, and became the merged fire, as a result of this negligence on the part of said defendants.

22. As a further result of this negligence on the part of defendants, and each of them, and the fires caused by said negligence, CITY property was damaged or destroyed or suffered a diminution of value and CITY incurred, and will continue to incur, costs and expenses relating to or arising from fire suppression or other relief activities.

23. Based on the negligent acts or omissions of defendants, and each of them, CITY has suffered damages and losses related to the damage or destruction of its property in an amount to be proved at trial.

24. Based on the negligent acts or omissions of defendants, and each of them, CITY has suffered further damages and losses related to the diminution in value of its property in an amount to be proved at trial.

25. In addition to damages or losses related to the damage, destruction or diminution of value of its property, CITY is entitled under Health & Safety Code § 13009 to an award of damages against defendants, and each of them, for costs or expenses incurred as a result of fire suppression or other relief activities required to fight the merged fire and also incurred other costs in providing rescue or emergency medical services required because of the merged fire, all in an amount to be proved at trial.

SECOND CAUSE OF ACTION

(Negligence *per se*)

26. CITY refers to and incorporates herein by this reference, as though set forth in full, each and every allegation contained in paragraphs 1 through 25, above.

27. Defendants at all times herein had a duty to properly design, install or construct, operate, maintain, inspect, and manage the SDG&E transmission equipment in compliance with relevant provisions of the California Code and the California Code of Regulations.

28. In acting, or failing to act, in the manner described herein defendants failed to comply with California state law and regulations applicable to the operation of the transmission equipment in a manner to be proved at trial and were therefore negligent *per se*.

29. Based on the negligent acts or omissions of defendants, and each of them, and failure to comply with the California Code and the California Code of Regulations CITY has been damaged in an amount to be proved at trial.

THIRD CAUSE OF ACTION

(Liability for Workers' Compensation Benefits Owed by City; Labor Code § 3854)

30 CITY refers to and incorporates herein by this reference, as though set forth in full, each and every allegation contained in paragraphs 1 through 29 above.

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31 As a direct and proximate result of the negligence of defendants, and each of them, CITY employees, including but not limited to SDFD fire fighting personnel, suffered personal injuries in a manner and to an extent to be proved at trial.

32 CITY, as the employer of said employees, has incurred, or will incur, obligations for the medical care and treatment of said injuries and for other workers' compensation benefits pursuant to the operation of California Labor laws.

33 The total expense of and/or obligation for such workers' compensation benefits are not fully ascertainable at the time this complaint is filed because one or more of the injured employees are still receiving medical care, and are not yet permanent and stationary.

34. Based on the negligent acts or omissions of defendants, and each of them, CITY has suffered and will suffer damages and losses related to the expenses and obligations it has incurred or will incur because of claims made by CITY employees for workers' compensation benefits in an amount to be proved at trial.

FOURTH CAUSE OF ACTION

(Public Nuisance, Civil Code §§ 3479 and 3480 et seq.)

35. CITY refers to and incorporates herein by this reference, as though set forth in full, each and every allegation contained in paragraphs 1 through 34, above.

36. The acts and omissions of defendants, as described above, constituted a public nuisance within the meaning of the California Civil Code, §§ 3479 and 3480 et seq. in that the merged fire was harmful to health, indecent and offensive to the senses, and was an obstruction to the free use and enjoyment of property by CITY and its residents.

37. CITY has been damaged by the acts and omissions of defendant and the nuisance created thereby in an amount to be proved at trial.

FIFTH CAUSE OF ACTION

(Trespass)

38. CITY refers to and incorporates herein by this reference, as though set forth in full, each and every allegation contained in paragraphs 1 through 37, above.

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39. At all times relevant herein CITY has been the owner of certain real and personal property that was damaged and/or destroyed in the merged fire.

40. Defendants, and each of them, were engaged in the business of providing electric power to CITY and its residents for consumption and had the duties set forth above related to the installation, operation, maintenance, repair, construction, inspection and management of the SDG&E transmission equipment and the inspection, maintenance and management of the areas adjacent to the SDG&E transmission equipment in a manner such as to reduce and/or eliminate the risk that any failure, breakdown or malfunction of the SDG&E transmission equipment could result in a fire starting in the area(s) adjacent to said equipment.

41. The merged fire occurred as a result of defendants' failure to properly install, operate, maintain, repair, construct, inspect and manage the SDG&E transmission equipment and inspect, maintain and manage the areas adjacent to the SDG&E transmission equipment, with the resulting damage and destruction of CITY's real and other property.

42. Defendants' acts and omissions, as described above, were substantial factors in causing the damage and destruction of CITY's real and other property.

43. CITY in no way consented to the merged fire caused by the acts and omissions of defendant entering onto and damaging or destroying CITY's property.

44. Defendants' acts and omissions and the merged fire caused thereby resulted in a trespass on CITY's real and other property and caused damage and destruction to said property.

45. Based on defendants' conduct as described above, and the resulting trespass on CITY property, CITY is entitled to recover compensatory damages in an amount to be proved at trial.

WHEREFORE, CITY prays judgment against defendants, and each of them, as follows as to the counts set forth above:

AS TO CITY'S FIRST AND SECOND CAUSES OF ACTION:

1. For actual money damages in an amount to be proven at trial for losses or damage suffered by CITY related to the destruction or damage of CITY's real and other property in the

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merged fire and/or for any diminution of value of said property resulting from the negligent acts and omissions of defendants, and each of them;

AS TO CITY'S THIRD CAUSE OF ACTION:

2. For actual money damages in an amount to be proven at trial to compensate CITY for the expenses and obligations CITY has incurred, or will incur, because of claims made by its employees for workers' compensation benefits due to injuries sustained or suffered by CITY's employees as a result of the merged fire;

AS TO CITY'S FOURTH CAUSE OF ACTION:

3. For actual money damages in an amount to be proven at trial to compensate CITY for the public nuisance created by the acts and omissions of defendants;

AS TO CITY'S FIFTH CAUSE OF ACTION:

4. For compensatory damages in an amount to be proven at trial for any losses or damage suffered by CITY as a result of defendants' trespass on CITY property as alleged herein;

AS TO ALL CAUSES OF ACTION:

5. For pre-judgment interest on any awards of damages at the highest legal rate from date of loss pursuant to Civil Code § 3287;

6. For reasonable attorney's fees and costs of suit incurred herein; and

7. For such other and further relief as the Court may deem proper.

Dated: June 19, 2008

MICHAEL J. AGUIRRE, City Attorney

By _____

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R. Clayton Welch
Attorneys for Plaintiff,
City of San Diego