

Complaint filed by Deborah Cooney, Plaintiff, In Propria Persona, against M. Peevey of CPUC, State of CA, Attorney General of the State of CA, SDG&E, and Itron Inc., alleging health impacts from smart meters.

Deborah Cooney, Plaintiff,  
In Propria Persona  
P. O. Box 282 Green Bank, WV  
24944-0282 858-467-0776  
elestecan@hotmail.com

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO

DEBORAH COONEY, Plaintiff,

Vs.

THE CALIFORNIA PUBLIC UTILITIES COMMISSION (CPUC); MICHAEL R. PEEVEY, PRESIDENT; THE STATE OF CALIFORNIA; KAMALA D. HARRIS, ATTORNEY GENERAL; SAN DIEGO GAS & ELECTRIC (SDG&E), ITRON, INC., AND DOES 1-20, INCLUSIVE; Defendants.

VERIFIED COMPLAINT JURY TRIAL DEMANDED

Comes now the "Plaintiff", Deborah Cooney, in propria persona, to allege and verify the following "Complaint":

#### I. PARTIES

PLAINTIFF: Deborah Cooney P. O. Box 282 Green Bank, WV 24944-0282 (858) 467-0776  
elestecan@hotmail.com

1. Plaintiff has been forced to take refuge in the National Radio Quiet Zone in Green Bank, WV, as a result of the injuries and losses that are the subject of the instant claim. She sleeps in a cabin without electricity and can tolerate being in electricity for only a few hours per day.

Plaintiff maintains the California residence listed below; however, Plaintiff has not been able to physically live in California for over a year. Given the Plaintiff's injuries, sensitivities, remote location, and financial constraints, she is requesting telephonic appearances to the full extent allowed by law. 5911 Chateau Dr. San Diego, CA 92117.

DEFENDANT: The California Public Utilities Commission ("CPUC") 505 Van Ness Avenue San Francisco, CA 94102 (415) 703-2782 phone (415) 703-1758 fax <http://www.cpuc.ca.gov>

2. With several offices throughout California, the CPUC headquarters are listed above. The CPUC is a regulatory agency established by the California Legislature to oversee the safe and effective delivery of various utility services. A public entity, the CPUC operates under the auspices of the executive branch of government of the State of California. It is entirely funded by taxpayer dollars levied on the citizens of California. The home page of the CPUC website states: “The CPUC regulates privately owned electric, natural gas, telecommunications, water, railroad, rail transit, and passenger transportation companies. The CPUC serves the public interest by protecting consumers and ensuring the provision of safe, reliable utility service and infrastructure at reasonable rates, with a commitment to environmental enhancement and a healthy California economy.”(Emphasis added.)

DEFENDANT: Michael R. Peevey, President: The California Public Utilities Commission (CPUC)  
Van Ness Avenue San Francisco, CA 94102 (415) 703-2782 phone

3. The CPUC website states: “Michael R. Peevey was appointed President of the California Public Utilities Commission (CPUC) by Governor Gray Davis on December 31, 2002, having been originally appointed to the CPUC by Governor Davis in March 2002. In December 2008 Governor Arnold Schwarzenegger reappointed Mr. Peevey to the CPUC for another six-year term. As President of the CPUC, Mr. Peevey is committed to protecting the public interest by promoting consumer needs, while challenging utilities to embrace new technologies and provide safe, high-quality services.” (Emphasis added.) The website describes Defendant Michael R. “Peevey’s” long career with Southern California Edison Company, one of the privately owned utilities which he is now entrusted to regulate, and further states, “He also serves as Chairman of the California Emerging Technology Fund.”

4. The California Emerging Technology Fund (CETF) is a private non-profit organization, created by the CPUC, under Defendant Peevey’s reign, to enable and justify the approval of the 2005 mergers of communication behemoths, SBC with AT&T, and MCI with Verizon, which violated the spirit of our anti-trust protections, if not the law, itself. Furthermore, the CETF website states its mission as follows: “accelerating the deployment and adoption of [wireless] broadband and other advanced communication services”, to penetrate “underserved” markets and maximize corporate profits, despite the overwhelming scientific and empirical evidence that these wireless technologies are harmful to humans.

DEFENDANT: The State of California State Capital, Suite 1173 Sacramento, CA 95814 <http://www.gov.ca.gov>.

5. The “State” of California is named as a separate defendant, as distinguished from Defendant

CPUC. Thus, we include any other agencies, such as the California Council on Science and technology (CCST) and the California Air Resources Board (CARB), which are commissioned to work in tandem with CPUC, and should have stepped in to prevent the gross negligence and mitigate the Plaintiff's injuries and damages. Defendant State remains liable for the misconduct of all of its agencies (including Defendant CPUC) and employees (including Defendant Peevey), whether or not they are specifically or separately named herein.

DEFENDANT: Kamala D. Harris, Attorney General State of California Department of Justice 1300 "T" Street Sacramento, CA 95814-2919(916) 445-9555 <http://www.oag.ca.gov>

6. Attorney General "Harris" is named as a Defendant in her official capacity. According to her website: "The Attorney General represents the people of California in civil and criminal matters....In addition, the Attorney General establishes and operates projects and programs to protect Californians from fraudulent, unfair, and illegal activities that victimize consumers or threaten public safety.

The Attorney General also enforces laws that safeguard the environment and natural resources...It is our duty to serve our state and work honorably every day to...:

- Enforce and apply all our laws fairly and impartially.
- Ensure justice, safety, and liberty for everyone." (Emphasis added.)

DEFENDANT: San Diego Gas & Electric ("SDG&E") P. O. Box 129831  
San Diego, CA 92112-9831(619) 696-2000 <http://www.sdge.com>

7. SDG&E is a wholly owned subsidiary of Sempra Energy, a California corporation. According to its website, "SDG&E is a Sempra Energy utility. Based in San Diego, Sempra Energy is a Fortune 500 energy service company with 2011 revenues of \$10 billion. With 17,500 employees worldwide, the Sempra Energy companies develop energy infrastructure, operate utilities, and provide related products and services to about 31 million consumers worldwide."

DEFENDANT: Itron, Inc. 2111 North Molter Road Liberty Lake, WA 99019-9469(509) 924-9900  
<https://www.itron.com>

8. "Itron" Inc. is a Washington state corporation with operations spanning around the globe, including several offices in California. The address listed above is Itron's headquarters. Some California office locations are listed below. The website reads: "Itron is a global technology company. We build solutions that help utilities measure, analyze, and manage energy and water. Our broad product portfolio includes electricity, gas, water, and thermal energy measurement and control technology; communications systems; software; and professional services. With thousands of

employees supporting nearly 8,000 utilities in more than 100 countries. Itron empowers utilities to responsibly and efficiently manage energy and water resources.”2107 Channing Way1111 Broadway Berkeley, CA 94704 Oakland, CA 94607(510) 549-9118(510) 844-2800

## II. JURISDICTION

9. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. section 1331 because Plaintiff’s claims arise under the laws of the United States.

10. This Court has diversity of citizenship jurisdiction over this action pursuant to 28 U.S.C. section 1332 because the matter in controversy exceeds \$75,000 exclusive of interests and costs and because the Plaintiff has been forced to flee to West Virginia to mitigate damages caused by Defendants (28 U.S.C. section 1332(a) (1)) and because Defendant Itron is a Washington corporation headquartered in Washington state. (28 U.S.C. section 1332 (c) (1))

11. This Court has original jurisdiction over the civil rights claims in this action pursuant to 28U.S.C. section 1343(a).

12. This Court has supplemental jurisdiction over this action pursuant to 28 U.S.C. section 1367 (a).

13. The declaratory and injunctive relief requested is authorized by 28 U.S.C. sections 2201 and 2202 and 15 U.S.C. section 1267(a) pertaining to hazardous substances.

## III. VENUE

14. Venue is appropriate in this judicial district pursuant to 28 U.S.C. section 1391(b)(1) because Defendants CPUC and Peevey are located in San Francisco and all Defendants reside in California. Although its principal place of business is in Washington, Defendant Itron, a corporate entity, is deemed to reside in California pursuant to 28 U.S.C. section 1391(c)(2) because it is subject to this Court’s jurisdiction.

15. Venue is appropriate in this judicial district pursuant to 28 U.S.C. section 1391 (b) (2) because a substantial part of the events and omissions giving rise to the claim occurred at Defendant CPUC’s offices in San Francisco.

## IV. STATEMENT OF THE CASE

16. This Complaint was originally filed in the Superior Court of California on August 19, 2012. The original Complaint was filed within the one year timeframe prescribed by the applicable statutes of

limitations. A claim was filed with Defendant State within the 6 month timeframe required by law for suing a public entity. The original Complaint was dismissed without prejudice so that it could be simultaneously re-filed in U.S. Court.

17. All Defendants were properly served by mail in accordance with California Code of Civil Procedure (CCCP) section 415.30. Defendant CPUC properly returned the Notice and Acknowledgement of Receipt, but Defendants SDG&E and Itron failed to do so.

18. Defendant CPUC, represented by Defendant Harris, demurred to the Complaint on November 15, 2012, claiming that the Attorney General's office, with all of their legal expertise, could not find a statute establishing their regulatory duty to the Plaintiff or the general public to oversee the safe delivery of utility services. Yet the following sections of the California Public Utilities Code plainly establish such a duty: 303(a) prohibits commissioners from holding an official relation to or financial interest in any person or company subject to their regulation; 315 requires Defendant CPUC to investigate accidents; 328 requires Defendant CPUC to ensure the safe delivery of natural gas and prohibits the utilities from assessing additional fees for safety;

30(f) and (g) requires Defendant CPUC to regulate the safe and healthy delivery of electricity;364 requires Defendant CPUC to establish standards for the high quality, safe, and reliable delivery of electricity, including reporting and review requirements;761 requires Defendant CPUC to fix unsafe rules, practices, equipment, appliances, facilities, services or methods; 2101 requires Defendant CPUC to enforce safety standards and prosecute violations;8360 requires Defendant CPUC to ensure the safety of the modern Smart Grid;8362 requires Defendant CPUC to ensure that the Smart Grid plan complies with state and federal law.8363 requires Defendant CPUC to implement the Smart Grid in a manner which does not compromise safety, integrity, or reliability;8364 requires public utilities to submit their Smart Grid plans to Defendant CPUC for approval.

19. The following sections of the California Government Code establish liability to the Plaintiff: 815.2 (a) A public entity is vicariously liable for the negligence of an employee.815.6. A public entity is liable for its failure to discharge a mandatory duty to protect: 820 (a). A public employee is liable for injury caused by his act or omission.820.8. Nothing exonerates a public employee from liability for injury caused by his own negligence.11120. The people retain sovereignty over the State agencies which serve them.

20. The following sections of the California Civil Code further establish Defendant CPUC's liability:43 Right of protection from bodily restraint or harm and from injury to personal relations.1708. All persons must abstain from injuring the person or property of another or infringing upon the rights of another. 1709 One who willfully deceives another is liable for

damages.

1710 Deceit is defined as an untrue assertion, suppression of a fact so as to mislead, or a false promise.<sup>1714</sup> (a) Liability for injury arises from want of ordinary care or skill.

21. Moreover, Defendant CPUC's own website advertises its regulatory duty to protect consumer safety. Its denial of this duty, via the Demurrer, could be construed as false advertising. It also begs the question: What purpose does Defendant CPUC serve if not to ensure the public safety? Why should we continue to fund Defendant CPUC with our tax dollars while they continue to shirk their duties?

22. In researching the law to prepare a response to the Demurrer, Plaintiff discovered significant issues of federal law which were beyond the scope of the California courts, such as U.S. Constitution, Amendments I, IV, V, IX, X and XIV, Right to free exercise of religion and right to petition the government for redress of grievances, Right of the people to be secure in persons and houses, Right to life, liberty, and property, due process of law, and private property not to be taken for public use, Rights retained by the people, Right to privacy, States shall not deprive citizens of privileges, life, liberty or property, due process of law, and/or equal protection of the laws.<sup>15</sup> U.S.C. ss. 1261-7 Commerce Code, Chapter 30 Hazardous Substances<sup>18</sup> U.S.C. ss. 241-2 Criminal Code, Chapter 13, Civil Rights, Conspiracy against rights, Deprivation of rights under color of law<sup>18</sup> U.S.C. section 371 Criminal Code, Chapter 19 Conspiracy to defraud United States<sup>18</sup> U.S.C. ss. 653 and 666 Criminal Code, Chapter 31 Embezzlement and Theft, Disbursing officer misusing public funds, Theft or bribery concerning programs receiving Federal funds<sup>18</sup> U.S.C. ss. 1001 and 1018 Criminal Code, Chapter 47 Fraud and False Statements.

<sup>2</sup> U.S.C. ss. 1983, 1985 and 1986 Public Health and Welfare Code, Chapter 21 Civil Rights, Civil action for deprivation of rights, Conspiracy to interfere with civil rights, Action for neglect to prevent<sup>42</sup> U.S.C. section 3515b Public Health and Welfare Code, Chapter 33, Subchapter I, Prohibition on funding certain experiments involving human participants <sup>42</sup> U.S.C. ss. 7401, 7412, 7470, and 7477 Public Health and Welfare Code, Chapter 85, Subchapter I, Air Pollution Prevention and Control, Clean air <sup>42</sup> U.S.C. section 9607 Public Health and Welfare Code, Chapter 103, Subchapter I, Hazardous Substances Releases, Liability, Compensation <sup>42</sup> U.S.C. section 13101 Public Health and Welfare Code, Chapter 133, Pollution Prevention, Pollution should be prevented or reduced at the source...<sup>42</sup> U.S.C. ss. 17381, and 17386 Public Health and Welfare Code, Chapter 152, Subchapter IX, Smart Grid, (8) Provision to consumers of timely information and control options, Matching Fund<sup>45</sup> CFR Part 46 Public Welfare, Protection of Human Subjects, known as the "Common Rule"<sup>23</sup>. Plaintiff traveled home to California in August, 2012, during the time that she was drafting the original Complaint. She had high hopes of living there again, since she had opted out of the Smart Meter program. Unfortunately, she continued to be bothered by the

high levels of ambient radiation from the Smart Grid surrounding her neighborhood and other areas of California. Because of the ill-conceived Smart Grid deployment, she could no longer live in her home state. Her return to West Virginia created an additional diversity of citizenship issue, which, by law, must be addressed in federal court.<sup>24</sup> Now is the most expeditious time to transfer the case to federal court. The case has scarcely begun. Service has not yet been completed on two of the Defendants. The Demurrer hearing date is not until February 22, 2013. In the interest of judicial economy and preserving public

U.S.C. ss. 1983, 1985 and 1986 Public Health and Welfare Code, Chapter 21 Civil Rights, Civil action for deprivation of rights, Conspiracy to interfere with civil rights, Action for neglect to prevent<sup>42</sup> U.S.C. section 3515b Public Health and Welfare Code, Chapter 33, Subchapter I, Prohibition on funding certain experiments involving human participants<sup>42</sup> U.S.C. ss. 7401, 7412, 7470, and 7477 Public Health and Welfare Code, Chapter 85, Subchapter I, Air Pollution Prevention and Control, Clean air <sup>42</sup> U.S.C. section 9607 Public Health and Welfare Code, Chapter 103, Subchapter I, Hazardous Substances Releases, Liability, Compensation<sup>42</sup> U.S.C. section 13101 Public Health and Welfare Code, Chapter 133, Pollution Prevention, Pollution should be prevented or reduced at the source...<sup>42</sup> U.S.C. ss. 17381, and 17386 Public Health and Welfare Code, Chapter 152, Subchapter IX, Smart Grid, (8) Provision to consumers of timely information and control options, MatchingFund<sup>45</sup> CFR Part 46 Public Welfare, Protection of Human Subjects, known as the "Common Rule"

23. Plaintiff traveled home to California in August, 2012, during the time that she was drafting the original Complaint. She had high hopes of living there again, since she had opted out of the Smart Meter program. Unfortunately, she continued to be bothered by the high levels of ambient radiation from the Smart Grid surrounding her neighborhood and other areas of California. Because of the ill-conceived Smart Grid deployment, she could no longer live in her home state. Her return to West Virginia created an additional diversity of citizenship issue, which, by law, must be addressed in federal court.

24. Now is the most expeditious time to transfer the case to federal court. The case has scarcely begun. Service has not yet been completed on two of the Defendants. The Demurrer hearing date is not until February 22, 2013. In the interest of judicial economy and preserving public funds, the Demurrer should never have been filed.

Defendant Harris should have been diligent enough to notice Defendant CPUC's statutory duty to the Plaintiff. With the Plaintiff's legal assistance provided in paragraphs 18-22 above, Defendant Harris should not need to file another demurrer in this Court. The Plaintiff humbly asks the Court to strike any similar demurrer, if filed again, as it is clearly for the sole purpose of harassing the Plaintiff and obstructing justice.

## V. STATEMENT OF FACTS

### A. PRECIPATORY ACTS OR OMISSIONS GIVING RISE TO CLAIM

25. Defendants recklessly approved, mandated, facilitated, or allowed the Smart Meter roll out without conducting adequate research as to the health effects of Smart Meter radiation on humans.

26. Defendants recklessly approved, mandated, facilitated, or allowed and continue to approve, mandate, facilitate, or allow the Smart Meter roll out, after being presented with reliable research, scientific and empirical evidence proving the detrimental health effects of Smart Meter and similar radiation on humans.

27. A letter dated July 9, 2011 was sent to Defendant CPUC from Ollie Johansson, Associate Professor, Dept. of Neuroscience, Karolinska Institute, Stockholm, Sweden, one of Europe's largest and most prestigious medical universities, which awards the Nobel Prize in Physiology or Medicine. Dr. Johansson has been studying the health effects of wireless devices for many years. Based on the body of evidence, he concluded that "EMR [Electromagnetic Radiation] exposures should be reduced now rather than waiting for proof of harm before acting. It is not in the public interest to wait." He also alerted Defendant CPUC to the World Health Organization (WHO) recent determination to include radio frequent radiation (such as emissions from Smart Meters) on the 2B list of carcinogens. (See <http://www.scribd.com/doc/55484389/Just-Say-No-Big-Brothers-Smart-Meters>, <http://ki.se/ki/jsp/polopoly.jsp?d=21984&a=54583&l=en>)

28. A letter to Defendant CPUC and a position paper by the American Academy of Environmental Medicine (AAEM) discusses harmful effects from smart meters and recommends a moratorium on smart meter use. (See <http://aaemonline.org/pressadvisoryemf.pdf>)

29. The American Academy of Environmental Medicine, a prominent, highly regarded, authoritative international association, established for over fifty years, with thousands of physician members, has called for "immediate caution regarding smart meter installations. Citing several peer-reviewed scientific studies, the AAEM concludes that "significant harmful biological effects occur from non-thermal RF exposure" showing causality. (Press Advisory, April, 2012). The AAEM also expresses concern regarding significant EMF, ELF, and RF fields on human health. AAEM calls for: "Immediate caution regarding Smart Meter installation due to potentially harmful RF exposure. Accommodation for health considerations regarding EMF and RF exposure, including exposure to wireless Smart Meter technology. Use of safer technology", amongst other conclusions. (See AAEM Press Release, April 12, 2012 <http://aaemonline.org/pressadvisoryemf.pdf>) Note: RF means radio frequency EMF means electromagnetic field ELF means extremely low frequency.



30. AAEM has also directly warned CPUC Commissioners about smart meter environmental hazards and public health risks in a resolution and letter dated January 19, 2012: "Dear [CPUC] Commissioners:

The Board of the American Academy of Environmental Medicine opposes the installation of wireless 'smart meters' in homes and schools based on a scientific assessment of the current medical literature (references available on request). Chronic exposure to wireless radio frequency radiation is a preventable environmental hazard that is sufficiently well documented to warrant immediate preventative public health action. As representatives of physician specialists in the field of environmental medicine, we have an obligation to urge precaution when sufficient scientific and medical evidence suggests health risks which can potentially affect large populations. The literature raises serious concern regarding the levels of radio frequency (RF – 3 kHz – 300 GHz) or extremely low frequency (ELF – 0- 300Hz) exposures produced by "smart meters" to warrant an immediate and complete moratorium on their use and deployment until further study can be performed." (See <http://www.scribd.com/doc/79470430/AAEM-Resolution>)

31. Other peer-reviewed studies that have been available to all of the Defendants and in the public domain include: Hill, AB. The Environment and Disease: Association or Causation? Proceedings of the Royal Society of Medicine. 1965; 58: 295 - 300.

Xu S, Zhou Z, Zhang L, et al. Exposure to 1800 MHz radio frequency radiation induces oxidative damage to mitochondrial DNA in primary cultured neurons. Brain Research. 2010;1311: 189 - 196.

Phillips JL, Singh NP, Lai H. Electromagnetic fields and DNA damage. Pathophysiology. 2009;16: 79 - 88.

Ruediger HW. Genotoxic effects of radiofrequency electromagnetic fields. Pathophysiology.2009; 16(2): 89 - 102.

Zhao T, Zou S, Knapp P. Exposure to cell phone radiation up - regulates apoptosis genes in primary cultures of neurons and astrocytes. Neurosci Lett. 2007; 412(1): 34 - 38.

Lee S, Johnson D, Dunbar K. 2.45 GHz radiofrequency fields alter gene expression on cultured human cells. FEBS Letters. 2005; 579: 4829 - 4836.

Demsia G, Vlastos D, Matthopoulos DP. Effect of 910 - MHz electromagnetic field on rat bone marrow. The Scientific World Journal. 2004; 4(S2): 48 - 54.

Lai H, Singh NP. Magnetic - field - induced DNA strand breaks in brain cells of the rat.

Environmental Health Perspectives. 2004; 112(6): 687 - 694. Available

from: <http://ehp03.niehs.nih.gov/article/info:doi/10.1289/ehp.6355>

Mashevich M, Foldman D, Kesar, et al. Exposure of human peripheral blood lymphocytes to electromagnetic fields associated with cellular phones leads to chromosomal instability.

Bioelectromagnetics. 2003; 24: 82 - 90.

Magras IN, Xenos TD. RF radiation - induced changes in the prenatal development of mice. Bioelectromagnetics. 1997; 18:455 - 461.

Ban R, Grosse Y, Lauby - Secretan B, et al. Carcinogenicity of radiofrequency electromagnetic fields. *The Lancet Oncology*. 2011; 12(7): 624 - 626. Available

from:[http://www.thelancet.com/journals/lanonc/article/PIIS1470 - 2045\(11\)70147 - 4/fulltext?](http://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(11)70147-4/fulltext?_eventId=login)

\_eventId=login

Hardell L, Carlberg M, Hansson Mild K. Use of cellular telephones and brain tumour risk in urban and rural areas. *Occup. Environ. Med.* 2005; 62: 390 - 394.

Nittby H, Brun A, Eberhardt J, et al. Increased blood - brain barrier permeability in mammalian brain 7 days after exposure to the radiation from a GSM - 900 mobile phone. *Pathophysiology*. 2009; 16: 103 - 112.

Awad SM, Hassan NS. Health Risks of electromagnetic radiation from mobile phone on brain of rats. *J. Appl. Sci. Res.* 2008; 4(12): 1994 - 2000. Leszczynski D, Joenvaara S. Non - thermal activation of the hsp27/p38MAPK stress pathway by mobile phone radiation in human endothelial cells: Molecular mechanism for cancer - and blood - brain barrier - related effects. *Differentiation*. 2002; 70: 120 - 129.

Santini R, Santini P, Danze JM, et al. Study of the health of people living in the vicinity of mobile phone base stations: 1. Influences of distance and sex. *Pathol Biol.* 2002; 50: 369 - 373 P15

Abdel - Rassoul G, Abou El - Fateh O, Abou Salem M, et al. Neurobehavioral effects among inhabitants around mobile phone base stations. *Neurotox.* 2007; 28(2): 434 - 440.

Hutter HP, Moshhammer H, Wallner P, Kundi M. Subjective symptoms, sleeping problems, and cognitive performance in subjects living near mobile phone base stations. *Occup. Environ. Med.* 2006; 63: 307 - 313.

Kolodynski AA, Kolodynska VV. Motor and psychological functions of school children living in the area of the Skrunda Radio Location Station in Latvia. *Sci. Total Environ.* 1996; 180: 87 - 93.

Rea WJ, Pan Y, Fenyves EJ, et al. Electromagnetic field sensitivity. *Journal of Bioelectricity*. 1991; 10(1 &2): 243 - 256.

McCarty DE, Carrubba S, Chesson AL, et al. Electromagnetic hypersensitivity: Evidence for a novel neurological syndrome. *Int. J. Neurosci.* 2011; 121(12): 670 - 676.

Ingole IV, Ghosh SK. Cell phone radiation and developing tissues in chick embryo - a light microscopic study of kidneys. *J. Anat. Soc. India.* 2006; 55(2): 19 - 23.

Lubec G, Wolf C, Bartosch B. Amino acid isomerisation and microwave exposure. *Lancet.* 1989; 334: 1392 - 1393.

Smith CW. Quanta and coherence effects in water and living systems. *Journal of Alternative and Complimentary Medicine.* 2004; 10(1): 69 - 78.

32. A March 11, 2011, posting on [stopsmartmeters.org](http://stopsmartmeters.org) reads: "San Francisco, CA- Facing mounting opposition to wireless 'smart' meters being rolled out by California utilities, including 10 local governments who have criminalized installations, and 23 more who have demanded that the CPUC stop the program because of widespread reports of health impacts, the Commission yesterday

signaled that it would ask one of California's utilities-PG&E- to develop a plan to allow customers to opt out of having a wireless meter installed- at customers' expense....

Environmental health advocates and a burgeoning grassroots movement to halt the installations welcomed the CPUC's admission that there is a health crisis with the smart meter program, but slammed the meager steps proposed to address it. According to Joshua Hart, Director of Stop Smart Meters!, 'Admitting that there is a problem is the first step to fixing that problem. However, an individual opt out at customer expense for PG&E customers is a diversion.... The bottom line is that these meters are hurting people- and no one deserves to be subject to powerful microwave radiation pulses 24 hours a day in their own home. 'The wireless meters have been widely reported to cause headaches, dizziness, ringing in the ears-even memory loss and heart palpitations among susceptible individuals due to bursts of microwave radiation. The movement against wireless meters is the sharp end of a growing movement demanding health-based standards for wireless technology. Michael Peevey, who Gov. Brown has allowed to continue chairing the Commission, has continually insulted individuals with electro-sensitivity, inferring that they are 'just making it up.' Peevey, the former President and Senior Executive of Southern California Edison (SCE) has ties to the telecommunications industry, and continues to chair the Commission that is meant to oversee the utilities, despite popular outrage about clear conflicts of interest. SCE plans to have installed 5.3million meters between 2009 and 2012. Health advocates say they will continue protests and civil disobedience until a moratorium is imposed on any further installation, independent hearings on health are scheduled at the state level, and the utilities are directed to remove unwanted meters.' (See<http://stopsmartmeters.org/2011/03/11/cpuc-admits-to-smart-meter-health-crisis-opt-out-plan-falls-short/>)

33. Defendant Peevey has breached ethics and violated the California Public Utilities Code section 303(a) by holding official relations to and a financial interest in several companies or persons subject to regulation by Defendant CPUC. Defendant Peevey serves as Chairman of the CETF alongside Expert Advisors, Kurt Rasmussen, Vice President of Verizon and Thomas Brill, Officer of SDG&E. This creates an official relationship. Both Verizon and SDG&E are regulated by Defendant CPUC. The CEFT received \$60 million in funding from Verizon and AT&T, two companies which are under the regulatory authority of Defendant CPUC. This creates a financial interest as well as an official relationship.

34. Defendant Peevey admitted the California Council on Science and Technology (CCST) study as the sole basis for safety recommendations for the Smart Grid, to the exclusion of all other peer-reviewed studies and recommendations from qualified health professionals. Bryan Hannegan serves on CCST's Council, yet he is a VP of the Electric Power Research Institute (EPRI), many of whose members are electric utilities, some of whom are under Defendant CPUC's regulation. This creates an official relationship and a conflict of interest prohibited by law.

35. Defendant Peevey may not have divested himself of stock, stock options, or pension funds from Southern California Edison, his former employer and a company under Defendant CPUC's regulatory authority. This would create a serious conflict of interest due to financial holdings. Defendant Peevey's actions suggest that he maintains a relationship with the public utilities under his regulatory authority which is a good deal cozier than arm's length. There must be some motive for his eagerness to undermine the public health and safety. Further discovery is needed on this issue.

36. A June 11, 2012, article in La Maison features Harvard-educated physician, Dr. David O. Carpenter, founder of the University at Albany School of Public Health, joined by more than 50 of his esteemed colleagues to "correct some of the gross misinformation" being propagated by industry-funded studies and corrupt government agencies, such as Defendant CPUC. Highlights include:

"A technical study performed by Sage Associates in California indicates that RF levels from various scenarios depicting normal smart meter installation and operation may violate even the out-of-date US public safety standards." "Wireless smart meters typically produce atypical, relatively potent and very short pulsed RF/microwaves whose biological effects have never been fully tested. They emit these millisecond-long RF bursts on average 9,600 times a day with a maximum of 190,000 daily transmissions and a peak level emission two and a half times higher than the stated safety signal, as the California utility Pacific Gas & Electric recognized before that State's Public Utilities Commission. Thus people in proximity to a smart meter are at risk of significantly greater aggregate of RF/microwave exposure than with a cell phone, not to mention the cumulative exposure received by people living near multiple meters mounted together, pole-mounted routers or utility collector meters using a third antenna to relay RF signals from 500 to 5,000 homes." "In addition to the erratic bursts of modulated microwaves emitted by wireless smart meters transferring usage data to electric, gas and water utilities, wireless as well as wired smart (power line communication) meters are also a major source of 'dirty electricity' (electrical interference of high frequency voltage transients typically of kilohertz frequencies). Some scientists, such as American epidemiologist Sam Milham, believe that many of the health complaints about smart meters may also be caused by dirty electricity generated by the «switching » power supply activating all smart meters." "As Australian Associate Professor of neurosurgery Vini G. Khurana reports, adverse neurological effects have been reported in people who sustain close proximity to wireless meters, especially under 10 feet (3 metres)." "This is why so many scientists and medical experts urgently recommend that measures following the Precautionary Principle be applied immediately..."

• David O. Carpenter, MD, Director, Institute for Health & the Environment, University at

Albany ,USA . • Franz Adlkofer , M.D., Chairman of the Pandora Foundation, Coordinator of the European Reflex Report on DNA-damage by cellphone radiation, Neuendorf, Germany

• M. S. H. Al Salameh, PhD, Professor of Electrical Engineering, University of Science & Technology, Irbid, Jordan

• Jennifer Armstrong, MD, Past President, American Society for Environmental Medicine, founder, Ottawa Environmental Health Clinic, Ontario, Canada

• Pierre L. Auger, MD, Occupational medicine, Multiclinique des accidentés 1464, Montreal, Quebec, Canada

• Igor Beliaev, PhD, Head research scientist, Cancer Research Institute, Slovak Academy of Sciences, Bratislava, Slovak republic

• Fiorella Belpoggi, PhD, Director Cesare Maltoni Cancer Research Center, Ramazzini Institute, Bologna, Italy

• Dominique Belpomme, MD, Director of the European Cancer and Environment Research Institute, Brussels, Belgium

• Martin Blank, PhD, former President, Bioelectromagnetics Society, Special Lecturer, Department of Physiology and Cellular Biophysics, Columbia University Medical Center, New York, USA

• Barry Breger , MD, Centre d'intégration somatosopique (orthomolecular medicine), Montreal, Quebec

• Simona Carrubba, PhD, Prof. Biophysics, Daemen College, Amherst, NY, Associate Researcher, Neurology, Buffalo General Hospital , Buffalo, NY

• John Cline, MD, Professor, Institute for Functional Medicine, Federal Way, WA, USA, Medical Director, Cline Medical Centre, Nanaimo, BC, Canada

• Alvaro Augusto de Salles, PhD, Professor of Electrical Engineering, Federal University of RioGrande do Sul, Porto Alegre, Brazil

• Christos Georgiou, Prof. Biochemistry, Biology Department, University of Patras, Greece

• Andrew Goldsworthy, PhD, Honorary lecturer in Biology, Imperial College, London, UK

• Claudio Gómez-Perretta, MD, Director, Centro de Investigación, Hospital Universitario LA Fe, Valencia, Spain

• Livio Giuliani, PhD, Senior Researcher, National Insurance Institute (INAIL), Chief of Radiation and Ultrasounds Research Unit, Rome, Italy

• Yury Grigoriev, PhD, Chair Russian National Committee on Non-Ionizing Radiation Protection, Moscow, Russia

• Settimio Grimaldi, PhD, Director, Institute of Translational Pharmacology (Neurobiology and molecular medicine), National Research Council, Rome, Italy

• Magda Havas, PhD, Centre for Health Studies, Trent University, Canada

• Lennart Hardell, MD, Professor of Oncology, University Hospital, Örebro, Sweden

• Denis L. Henshaw, PhD, Professor of Physics, Head of The Human Radiation Effects Group,

University of Bristol, UK

· Ronald B. Herberman, MD, Chairman of Board, Environmental Health Trust, and Founding Director emeritus, University of Pittsburgh Cancer Institute, USA

· Donald Hillman, PhD, Dairy Science, Professor Emeritus, Department of Animal Science, Michigan State University, USA

· Isaac Jamieson, PhD, Environmental Science (electromagnetic phenomena in the built environment), independent architect, scientist and environmental consultant, Hertfordshire, UK

· Olle Johansson, PhD, Professor of Neuroscience (Experimental Dermatology Unit), Karolinska Institute, Stockholm, Sweden

· Yury Kronn, PhD, Soviet authority on physics of nonlinear vibrations and high frequency electromagnetic vibrations, founder of Energy Tools International, Oregon, USA

· Vini G. Khurana, MBBS, Associate of Professor of Neurosurgery, Australian National University, Australia

· Henry Lai, PhD, Professor of Bioengineering, University of Washington School of Medicine, Seattle, WA, USA

· Abraham R. Liboff, PhD, Professor Emeritus, Department of Physics, Oakland University, Rochester, Michigan, USA

· Don Maisch, PhD, Researcher on radiation exposure standards for telecommunications frequency, EMFacts Consultancy, Tasmania, Australia

· Erica Mallery-Blythe, MD, Emergency Medicine Physician, England

· Andrew A. Marino, MD, Professor of Neurology, LSU Health Sciences Center, Shreveport, LA, USA

· Karl Maret, MD, President, Dove Health Alliance, Aptos, CA, USA

· Fiorenzo Marinelli, PhD, Researcher on biological effects of EMFs, Institute of Molecular Genetics, National Research Council, Bologna, Italy

· Andrew Michrowski, PhD, Director, Planetary Association for Clean Energy, Ottawa, Canada

· Sam Milham, MD, former chief epidemiologist, Washington State Department of Health, USA

· Joel M. Moskowitz, PhD, Director, Center for Family and Community Health, School of Public Health, University of California, Berkeley

· Gerd Oberfeld, MD, Public Health Department, Salzburg State Government, Austria

· Mike O'Carroll, PhD, Professor Emeritus (Applied Mathematics), University of Sunderland, UK

· Jerry L. Phillips, PhD, Director, Center for Excellence in Science, Department of Chemistry and Biochemistry, University of Colorado, USA

· John Podd, PhD, Professor of Psychology (experimental neuropsychology), Massey University, New-Zeland

· William J. Rea, MD, thoracic and cardiovascular surgeon, founder of the Environmental Health Center, Dallas, Tx, USA

· Elihu D. Richter, MD, Professor, Hebrew University-Hadassah School of Public Health and

Community Medicine, Jerusalem, Israel

· Leif G. Salford, MD, Senior Professor of Neurosurgery, Lund University, Sweden

· Nesrin Seyhan, MD, Founder and Chair of Biophysics, Medical Faculty of Gazi University, Turkey

· Cyril W. Smith, PhD, lead author of “Electromagnetic Man”, retired from Electronic and Electrical Engineering, University of Salford, UK

· Morando Soffritti, MD, Scientific Director of the European Foundation for Oncology and Environmental Sciences “B. Ramazzini” in Bologna, Italy

· Carlos Sosa, MD, surgeon affected by the Microwave syndrome, Medellin, Columbia

· Antoinette “Toni” Stein, PhD, Collaborative on Health and the Environment (CHE-EMF Working Group), Co-Coordinator, Berkeley, CA, USA

· Stanislaw Szmigielski, MD, PhD Professor of Pathophysiology, Consulting Expert, former director of Microwave Safety, Military Institute of Hygiene and Epidemiology, Warsaw, Poland

· Lauraine Vivian, PhD, Senior Lecturer, Primary Health Care Directorate, Faculty of Health Sciences, University of Cape Town, South Africa.

· Bradford S. Weeks, MD, Director, The Weeks Clinic, Clinton, WA, USA

· Stelios A. Zinelis, MD, Vice-President, Hellenic Cancer Society, Cefallonia, Greece (See <http://maisonsaine.ca/smart-meters-correcting-the-gross-misinformation/>)

37. In *Friedman v. Public Utilities Commission*, 2012 ME 90, the Maine Supreme Court decreed “Contrary to the Commission's conclusion, we are not persuaded that Friedman's health and safety concerns were “resolved”...”

## B. DEFENDANTS ARE VIOLATING BANS ON HUMAN EXPERIMENTATION

38. Defendants did not properly inform Plaintiff or any other California residents that they would be the subjects of a state-wide grand experiment on the health effects of Smart Meter radiation.

39. Defendants did not properly obtain the Plaintiff’s or other California residents’ consent to the experiment.

40. Defendants failed to implement proper controls over the experiment, follow sound scientific methods, or even record results. Defendants never followed up or kept records of the health effects that they were supposed to be studying. When presented with evidence of harm to the unwitting subjects, Defendants ignored, dismissed, discredited, or denied it. This is not proper procedure for a scientific study.

41. The EMF Safety Network published the following information:

**“\*CCST STUDY LEAVES SMART METER HEALTH QUESTIONS UNANSWERED\* Report Admits that Smart Meter Radiation ‘Continues to be of Concern’ San Francisco-**A coalition of health and environmental advocates opposing radiation-emitting ‘smart’ meters today questioned the recommendations of a report released yesterday, calling the installation of 10 million wireless meters throughout California a giant experiment on the population.’ The California Council on Science and Technology (CCST) released a draft of their Smart Meter report yesterday- a response to Assembly member Jared Huffman’s (D-San Rafael) request and question, ‘Are the FCC Safety Standards adequate to protect people from harm?’ The CCST report answers that the FCC safety standards are adequate for thermal impacts yet non-thermal impacts from radiation emitting devices like Smart Meters is still unknown. Despite this uncertainty, the report inexplicably gives the green light for continued installation.

Cindy Sage of Sage Associates, a professional environmental consultant who last week released a study showing that ‘smart’ meters likely exceed already high FCC limits on human exposure to microwaves, said ‘Installing millions of RF transmitters in peoples’ homes when we already have substantial scientific evidence about the risks of chronic, low-level RF is a risk not worth taking. Especially without any discussion, or disclosure to the public about trade-offs made without their knowledge or consent.’ The CCST study found that radiation from a ‘Smart’ Meter is forty times as high as a wireless wifi router, contradicting PG&E’s previous claim that the meters emit a minute fraction of the radiation of common household devices. ‘Comparing wireless meters to other wireless devices that are voluntary, and which many people choose not to use is not a fair comparison to government-mandated meters that expose people in their homes 24 hours a day.’ Sage says. Stop Smart Meters!, the EMF Safety Network, and other groups opposing ‘smart’ meters continue to receive reports from hundreds of people experiencing health impacts after the wireless meters are installed, including sleep problems, headaches, tinnitus and nausea. The California Public Utilities Commission has received over 2000 complaints of health impacts. The CCST report failed to interview anyone reporting health symptoms, and neglected to cite peer-reviewed findings of non-thermal biological damage from low level RF emissions.

The costs for having guessed wrong is likely to have enormous economic and public health consequences for Californians for decades to come,’ Sage concludes.” (See [http://emfsafetynetwork.org/?page\\_id=3299](http://emfsafetynetwork.org/?page_id=3299))

42. The CCST was established by the California Legislature, Assembly Concurrent Resolution No. 162, to achieve an economic development objective, with no directive or authority over the public health. Its composition is heavily weighted with industry executives and academic engineers, rather than bona fide health professionals. It is an entirely inappropriate vehicle for public policy research concerning matters of health and safety. (See <http://www.ccst.us/ccstinfo/charge.php>)



43. The following April 20, 2011, posting on StopSmartMeters.org features Daniel Hirsch, a lecturer and expert in nuclear policy at the University of California Santa Cruz. “And here are the two charts that seek to compare microwave radiation from smart meters to cell phones, microwaves and other devices. The first is from the CCST report- taken directly from EPRI- an energy industry front group. The second is from Mr. Hirsch’s analysis (pdf), corrected for whole body, cumulative exposure.

The CCST report mixed units and published this highly misleading chart, which was presented as fact by many media outlets. Why is our state legislature allowing their ‘independent’ health study to be hijacked by industry? We learned in 6th grade math class never to compare different units of measurements on one chart- perhaps the industry ‘scientists’ who prepared this chart never completed grade school?

Chart produced by Daniel Hirsch, corrected to represent cumulative, whole body exposure. When the chart is corrected to reflect the same units of measurement, it appears that smart meters are at least 100x more powerful than cell phones, which are increasingly being linked with braintumors.” (See <http://stopsmartmeters.org/2011/04/20/daniel-hirsch-on-ccsts-fuzzy-math/>)

44. The U.S. Court of Appeals for the D.C. Circuit has explained, “the ethical problems of conducting cancer experiments on human beings are too obvious to require discussion.”  
Environmental Defense Fund v. EPA, 510 F.2d 1292, 1299 (D.C. Cir. 1975).

45. In 1932, the U.S. Public Health Service and the Tuskegee Institute recruited about 600 poor, African-American farmers for the purpose of studying the natural progression of syphilis in men. The men volunteered under the impression that they were to receive free medical care for life. They were not informed that they had syphilis and their syphilis was never treated, even though by 1947 penicillin had become the standard treatment. The facts of this experiment became public in July 1972 whereupon the study was immediately terminated, but not before many of the men had died and had communicated syphilis to their wives and children. (See, Centers for Disease Control, “The Tuskegee Timeline”, see <http://www.cdc.gov/tuskegee/timeline.htm> (accessed 9/20/2012).

46. The Tuskegee syphilis experiment and other U.S. governmental sponsored human research horrors prompted Congress to pass the National Research Act of 1974 which created a commission to develop principles for the protection of human subjects in scientific experimentation.

47. Four years later, the commission produced: the “Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research, Report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research.” DHEW Publication

No. (OS) 78-0012.

(See [http://epahumanesting.files.wordpress.com/2012/08/ohrp\\_belmont\\_report.pdf](http://epahumanesting.files.wordpress.com/2012/08/ohrp_belmont_report.pdf)) (accessed 9/20/2012).

48. In 1991, the Belmont Report was incorporated into federal regulations at 45 CFR Part 46, also known as “the Common Rule.”

49. Federal rules found at 45 C.F.R. Part 46 apply “to all research involving human subjects conducted, supported or otherwise subject to [federal] regulation.” The Smart Grid is federally funded and subject to federal regulation.

50. 45 C.F.R. § 46.102 (i) defines “Minimal risk” as “the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.”

51. 45 C.F.R. § 46.111 prohibits risks to human subjects that are greater than minimal risks.

52. 45 C.F.R. § 46.111 prohibits imposing risks that are not reasonable in relation to anticipated benefits.

53. 45 C.F.R. § 46.116 prohibits human experimentation “unless the investigator has obtained the legally effective informed consent of the subject.”

54. 45 C.F.R. § 46.116 requires the informed consent to provide “a description of any reasonably or foreseeable risks or discomforts to the subject.”

55. 45 C.F.R. § 46.122 specifically prohibits expenditure of Federal funds for research involving human subjects unless the requirements of 45 C.F.R. Part 46 rules have been satisfied. The Smart Grid is federally funded.

56. 45 C.F.R. § 46.123 provides authority for an agency head to require agency support for any project be terminated or suspended in the manner prescribed in applicable program requirements, when the agency head finds an institution has materially failed to comply with the terms of 45 C.F.R. Part 46 rules. In this case the agency head refers to Defendant Peevey, President of Defendant CPUC.

57. 42 U.S.C. § 3515b states that no “funds appropriated by this Act or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts shall

be used to pay for any research program or project or any program, project, or course which is of an experimental nature, or any other activity involving human participants, which is determined by the Secretary or a court of competent jurisdiction to present a danger to the physical, mental, or emotional well-being of a participant or subject of such program, project, or course, without the written, informed consent of each participant or subject. ”

### C. DEFENDANTS FRAUDULENTLY RECEIVED FEDERAL FUNDS

58. The American Recovery and Reinvestment Act of 2009, signed into law by President Barack Obama on February 17, 2009, provided the U. S. Department of Energy with approximately \$11 billion in federal tax dollars to modernize the electric power grid. Of this sum, approximately \$4 billion funded the Smart Grid Investment Grant Program.

59. 42 U.S.C. Public Health and Welfare Code, Chapter 152, Subchapter IX authorizes the Smart Grid program and the fifty percent matching funds available for qualifying investments. 42U.S.C. section 17381(8) specifies a provision to consumers of timely information and control options. Defendant SDG&E has breached both the letter and the spirit of this directive to accurately inform consumers and allow them control of devices on their homes. Defendant SDG&E has intentionally misinformed or failed to inform consumers about the hazards and risks of the wireless Smart Grid equipment that they have chosen to purchase from Defendant Itron and possibly other manufacturers for home and neighborhood installation. Defendant SDG&E has refused to honor or even listen to consumer requests for healthier, safer equipment, thus denying them control options.

60. Under the 42 U.S.C. section 17386 guidelines for qualifying matching funds, Defendant SDG&E received approximately \$28 million on April 26, 2010 to implement an advanced wireless communication system, thus accelerating Smart Grid applications and devices. Defendant SDG&E also received approximately \$6 million on September 22, 2010 to develop a Smart Grid pilot program for demonstration purposes. Defendant SDG&E may have received additional funds unbeknownst to the Plaintiff. Defendant SDG&E used a portion of the Smart Grid matching funds to purchase defective Smart Meters and other equipment from Defendant Itron.

61. Defendant SDG&E intentionally made false statements, that its officers knew to be untrue, and suppressed or concealed the truth in order to procure the above-mentioned federal funding. In so doing, Defendant SDG&E violated: 18 U.S.C. section 371 Criminal Code, Chapter 19 Conspiracy to defraud United States, 18 U.S.C. ss. 653 and 666 Criminal Code, Chapter 31 Embezzlement and Theft, Disbursing officer misusing public funds, Theft or bribery concerning programs receiving Federal funds, and 18 U.S.C. ss. 1001 and 1018 Criminal Code, Chapter 47 Fraud and False Statements.

62. In its Smart Grid Deployment Plan, filed June 2011 with Defendant CPUC, Defendant SDG&E states:

“Empower Consumers to Actively Participate in the Operations of the Grid.”

“SDG&E’ s vision is customer - centric and its strategy requires that the utility place a high priority on implementing technologies that empower customers in ways they value...” Page 100

“SDG&E places its highest priority on safely ensuring reliability of service to customers.” Page 101

“The highest priority is assigned to ensuring safe and reliable service to Customers... support customers' preferences...making customer value a key component of SDG&E’ s investment decision - making process” Page 101 “The highest priority is placed on ensuring the safety and reliability of service to customers, and this strategy will help ensure that SDG&E is able to integrate growing levels of intermittent resources while maintaining safety and reliability.” Page 102 “ SDG&E’ s vision is customer - focused and will place a high priority on implementing technologies that empower customers in ways that customers value.... ongoing dialogue with customers....” Page 102“ SDG&E’s Smart Grid Deployment Plan places a high priority on reducing the total environmental footprint of the current electric generating and delivery system in the San Diego region... its vision of working with customers and other stakeholders to create a connected and sustainable smart energy future. This ensures that SDG&E’s technology investments create or contribute to a platform for functionality that its customers value and that empowers them...SDG&E’s Smart Grid Deployment Plan will significantly reduce the total environmental footprint of the electric system by creating a platform that will integrate technologies and services supporting California’ s emission reduction and other environmental goals.” Page 103 “Customer Empowerment - SDG&E is investing in an infrastructure to ensure that customers have the necessary information from the utility and third parties as well as the capabilities to make energy management decisions that meet their needs and desires...” Page 104 “SDG&E is deploying new Smart Grid technologies in conjunction with traditional infrastructure to ensure the safe, reliable, and efficient integration of PEV charging load with SDG&E’s overall system...” Page 105“ SDG&E’s Reliability and Safety program improves measurement, control, protection, and optimization to support the resiliency and responsiveness of the grid.” Page 107

<http://www.sdge.com/sites/default/files/documents/smartgriddeploymentplan.pdf>

63. Defendant SDG&E failed to comply with California law in its implementation of the Smart Grid as follows: California Public Utilities Code section 8360 requires the safe, reliable, efficient deployment of the modern Smart Grid, including (h) providing customers with timely information and control options; California Public Utilities Code section 8363 requires implementation of the Smart Grid in a manner which does not compromise safety, integrity, or reliability;

64. The following sections of the California Civil Code further establish the Defendants’ liability for the resulting injuries to the Plaintiff:43 Right of protection from bodily restraint or harm and from

injury to personal relations.<sup>1708</sup> All persons must abstain from injuring the person or property of another or infringing upon the rights of another.<sup>1709</sup> One who willfully deceives another is liable for damages.<sup>1710</sup> Deceit defined as an untrue assertion, suppression of a fact so as to mislead, or a false promise.<sup>1714(a)</sup> Liability for injury arises from want of ordinary care or skill.

65. Defendants CPUC and Peevey were entrusted with the duty to oversee the California Smart Grid implementation, including providing for the public safety and protection from bodily harm, requiring and reviewing plans and reports submitted by the utilities, including Defendant SDG&E. Through their own negligence, they failed to do so. Thus, by operation of state and federal law, they are liable for damages and injuries to the Plaintiff.

#### D. DEFENDANTS VIOLATED FEDERAL LAWS REGULATING POLLUTANTS

66. Under 15 U.S.C. section 1261 subsections (f)(1)(A)(i) and (g), RF radiation from Smart Meter equipment qualifies as a hazardous substance based on its toxicity, because it “has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through anybody surface.” The World Health Organization has classified it as a class 2B carcinogen. The Smart Meter equipment itself also qualifies as a “mechanical hazard” under 15U.S.C. section 1261 subsections (s) (2) (6) (7) (8) and (9). The Smart Meter equipment is a “banned hazardous substance” pursuant to 15 U.S.C. section 1261 subsection (q)(1)(A) because it is intended for use by children (and families and the general public) and it emits “a hazardous substance in such a manner as to be susceptible of access by a child...”

67. Defendant Itron violated 15 U.S.C. section 1263 subsection (a) by introducing a banned hazardous substance into interstate commerce. Defendant SDG&E violated 15 U.S.C. section 1263 subsection (c) by receiving and delivering a banned hazardous substance. 15 U.S.C. section 1264 subsection (a) provides for criminal penalties and subsection (c) provides for civil penalties of up to \$100,000 per violation not to exceed \$15,000,000 total. In addition, subsection (d) authorizes Defendant Harris to bring a civil action for injunction. This Court has jurisdiction to restrain violations pursuant to 15 U.S.C. section 1267(a).

68. Pursuant to 42 U.S.C. section 7401(a) (3) air pollution prevention and control is the primary responsibility of Defendant State.

69. 42 U.S.C. section 7412(b) (3) (B) requires the Administrator (of the EPA) to add any hazardous air pollutant to the list upon showing that it “may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.”

70. 42 U.S.C. section 7470 subsection (1) protects the public health from “any actual or potential

adverse effect” from air pollution or “emissions to the ambient air.” Subsection (3) “insure[s] that economic growth will occur in a manner consistent with the preservation of existing clean air resources.” Subsection (5) “assure[s] that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decision making process.” The Defendants have violated all of these provisions. Section 7477 empowers either Defendant State or the Administrator of the Environmental Protection Agency (EPA) to take enforcement measures, which include seeking injunctive relief.

71. Defendants are liable for the damages caused by their release of hazardous substances pursuant to 42 U.S.C. section 9607.

72. Pursuant to 42 U.S.C. section 13101 subsection (b), “pollution should be prevented or reduced at the source...”

#### E. DEFENDANTS CAUSED PERSONAL INJURY TO THE PLAINTIFF

73. Defendants recklessly and carelessly caused serious injury to the Plaintiff and the Plaintiff’s loved ones in her own home and community by installing harmful radiation devices on Plaintiff’s home and numerous similar radiation devices in the vicinity of Plaintiff’s community. The devices are commonly referred to as “Smart Meters.”

74. Defendants installed the Smart Meters without obtaining the Plaintiff’s informed consent, nor did they obtain the informed consent of any other resident of the home, nor the consent of the property owner.

75. Defendants repeatedly ignored and downplayed Plaintiff’s attempts to inform them of the damages that they were creating with the Smart Meters. On January 21, 2011, and May 9, 2011, Plaintiff sent letters to Defendants SDG&E, CPUC, and Harris, notifying them of their transgressions and requesting relief. None of the Defendants even deigned to respond to the Plaintiff’s health and safety issues. Numerous telephone calls to these Defendants were also unanswered or mishandled.

76. From January, 2011, through May, 2012, Defendants refused to remove the harmful equipment despite repeated requests by the Plaintiff. On May 31, 2012, the Plaintiff filed her “Opt-Out” notice, in which she again called for the removal of all Smart Grid equipment within a two-mile radius of her home. Again, she notified Defendant SDG&E of the health, safety, and legal issues. Although Defendants have recently removed two Smart Meters affixed to Plaintiff’s residence, they have failed to address the ambient radiation from millions of Smart Meters in the community, causing

further damages and failing to mitigate damages.

77. Furthermore, Defendants have the nerve to charge Plaintiff a fee for NOT providing her with Smart Meters.

78. By August 24, 2011, Plaintiff had sustained such serious injuries that her life was in jeopardy and she was forced to flee from her home and business in order to seek refuge from the radiation. Plaintiff continues to suffer some of the serious effects of the injury, such as tinnitus, a particularly distressing condition for a professional musician who depends on acute hearing.

Other symptoms have subsided as long as she stays away from electromagnetic radiation, which is getting more and more difficult to do.

79. In addition to pain and suffering caused by severe injuries from radiation, Plaintiff lost her home, her business, her means of making a living, her ability to live in California, her life style, her ability to live in electricity, the companionship of her domestic partner and significant other who developed a heart condition from the radiation but elected to remain at home and take heart medication, her cat who suffered and died from the radiation. Plaintiff has lost her liberty to travel freely about and is a virtual prisoner in the rapidly shrinking "safe" areas. Plaintiff has suffered catastrophic losses which were proximately caused by the Defendants' negligence.

#### F. DEFENDANTS VIOLATED PLAINTIFF'S RIGHTS

80. The Defendants have abridged the Plaintiffs civil rights under the United States Constitution as follows: First Amendment right to free exercise of religion Plaintiff believes in living in harmony with nature and keeping the body well-nourished, well-rested, and free of toxins. Defendants have infringed upon her right to practice this religious belief in the privacy of her own home. First Amendment right to petition the government for redress of grievances Defendants have refused to honor or even respond to Plaintiff's requests for safety and protection from harmful radiation in her own home. Fourth Amendment right of the people to be secure in persons and houses Defendants have violated Plaintiff's person (body) and home with their unwanted radiation. Defendants have imposed a permanent physical occupation of Plaintiff's residence without consent and without just compensation.

"At the very core" of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."

Silverman v. United States, 365 U. S. 505, 511 (1961)

Fifth Amendment right to life, liberty, and property Defendants have subjected Plaintiff to harmful

microwave and electromagnetic radiation which slowly “cooks” and kills. Although, to date, Plaintiff has been able to escape and stay alive, the transgression remains a concern. Defendants have proximately caused Plaintiff to lose her liberty to live, work, or travel in California. Defendants have proximately caused Plaintiff to lose her property, including her cat, Mimi, her business, and her savings. Fifth Amendment right to due process of law Defendants have refused to address Plaintiff’s grievances. Fifth Amendment protection from private property being taken for public use Defendants have used the airwaves in the Plaintiff’s home for public use without just compensation and without her informed consent. Defendants are guilty of trespassing and conversion. Ninth and Tenth Amendment rights retained by the people and right to privacy Defendants have conducted a toxic intrusion of Plaintiff’s person (body) and home, in ways that usurp power and disparage rights possessed by the Plaintiff. Fourteenth Amendment: States shall not deprive citizens of privileges, life, liberty or property, due process of law, and equal protection of the laws All of the above applies specifically to Defendants State, CPUC, Peevey, and Harris.

81. The infringement of civil rights described above are expressly prohibited by the Criminal Code, 18 U.S.C. ss. 241-2, Chapter 13, Civil Rights, Conspiracy against rights, Deprivation of rights under color of law. Civil remedies are set forth in the Public Health and Welfare Code, 42 U.S.C. ss. 1983, 1985, and 1986, Chapter 21, Civil Rights, Civil action for deprivation of rights, Conspiracy to interfere with civil rights, Action for neglect to prevent.

#### G. DEFENDANTS HAVE COMMITTED BATTERY

82. All Defendants were complicit in the intentional act of implementing the Smart Grid. All Defendants knew that the equipment would emit RF radiation, throughout California neighborhoods, including Plaintiff’s home. The RF radiation came into contact with the Plaintiff. It was harmful and offensive to the Plaintiff. It was the proximate cause of the Plaintiff’s injuries. Thus, all of the elements of battery are satisfied: Action, intent, and harmful or offensive contact. The Defendants are liable for the damages under California Civil Code ss.1708 and 1714(a).

#### H. DEFENDANTS SDG&E AND ITRON ARE LIABLE FOR THEIR DEFECTIVE PRODUCT

83. On or about August 24, 2011, Plaintiff was injured by the Smart Grid equipment, manufactured by Defendant Itron, installed by Defendant SDG&E, and approved or mandated by Defendant CPUC. Each of the Defendants knew that the product would be used without inspection by the Plaintiff for defects. The product was defective when it left the control of each Defendant. At the time of injury, the product was being used as intended. Plaintiff was an unwilling user and purchaser of the product, as well as an unwitting bystander.

84. Count One -- Strict Liability: Plaintiff’s injury was the legal proximate result of Defendant Itron,



who designed, manufactured, and assembled the product and Defendants SDG&E and CPUC who sold the product to the public.

85. Count Two – Negligence: Defendants Itron, SDG&E, and CPUC owed a duty to the Plaintiff to protect her from physical harm from their defective product.

86. Count Three – Breach of Warranty: Defendants breached an implied warranty of product safety.

#### I. PLAINTIFF HAS TAKEN RESPONSIBILITY TO MITIGATE DAMAGES

87. Plaintiff has lived an exemplary and healthy lifestyle. Plaintiff takes care of her health, eating fresh, nourishing, organic foods, drinking clean water and nothing else (no coffee or soft drinks), getting plenty of exercise and fresh air, going to the beach or natural landscape daily to practice yoga, swim, walk, hike, jog or bicycle. Consequently, Plaintiff has enjoyed excellent health.

88. Plaintiff is a teetotaler. Plaintiff has never used drugs, whether prescription or street drugs.

89. Plaintiff practices her religious belief in natural healing, using only gentle, safe, effective, traditional methods of healing from illness or injury. Plaintiff does not use forceful, harmful allopathic medicine.

90. Plaintiff has protected herself from second hand smoke and other chemical exposure.

91. Plaintiff has carefully avoided RF radiation by using a corded, land-based telephone, rather than a cell phone, avoiding wireless internet, keeping her distance from visible cell phone towers or cell phone users, keeping her distance from power lines.

92. One reason that the Plaintiff has been so diligent in avoiding radiation is because she is so sensitive to it. Exposure has always caused her to experience immediate, unpleasant symptoms including headaches, sinus congestion, nausea, and fatigue.

93. Plaintiff is still alive today because she acted swiftly to mitigate damages and injuries from the Smart Grid, perceptively noting her physical reactions to radiation fields. If she had not taken these precautions, she would most assuredly have succumbed to the onslaught, as did her cat, Mimi.

94. Plaintiff noticed that she felt better when she stepped out the door of her house than when she was inside the house. She could feel the immediate effects of radiation when she walked in the front door, experiencing a pins-and-needles feeling all over her skin, muscle contractions, stiffness, and pain, ataxia, dehydration, etc.

95. Plaintiff felt a shock to her heart every four hours, at exactly 1:00, 5:00, and 9:00, as if something was being transmitted every four hours, on the hour. The shock would initiate cascading heart attack symptoms: chest pain, shortness of breath, heart palpitations, nausea, circulatory problems, edema, numbness, and an impending sense of doom. She noticed that this did not occur when she was not at home.

96. Plaintiff began spending more time at the beach and refraining from sleeping at home, in order to preserve her health. Finally, on August 24, 2011, she left her home in search of a radiation-free place to recover, regain, and maintain her health.

#### J. DEFENDANTS ACTED WITH MALICE, FRAUD, AND OPPRESSION

97. Defendants maliciously installed or allowed the installation of Smart Meter radiation devices on and about the Plaintiff's residence, knowing or with reasonable diligence they should have known, that these devices emitted a high level of radiation that would jeopardize the health and safety of a chemically and electrically sensitive person such as the Plaintiff.

98. Defendants defrauded the Plaintiff and the general public by downplaying the effects or potential effects of such high levels of radiation.

99. Defendants reckless and criminal behavior was oppressive and harmful to the Plaintiff and her loved ones.

#### K. GROUNDS FOR INJUNCTIVE RELIEF

100. There is a substantial likelihood of success on the merits of this case.

101. The Plaintiff faces astronomical and irreparable damages and serious injury in her own home if injunction is not granted. Moreover, there are hundreds, if not thousands, of other Californians facing similar damages and injuries.

102. The balance of harm to the Plaintiff and the general public weighs in favor of the Plaintiff. There is no higher priority than public safety. The hardship to the Plaintiff and the general public greatly outweighs any costs that Defendants would incur through the issuance of the injunction as requested. In fact, the Defendants will actually save money, in the long run, by immediately removing unsafe equipment, thus mitigating damages and injuries to the population at large and reducing the number and dollar amount of claims for cancer, heart disease, and other ailments that manifest over time. Furthermore, the electric grid worked flawlessly before the Smart Grid

deployment. The Defendants could easily redeploy the old equipment already in their possession, until such time as new Smart Grid equipment could be designed, manufactured, procured, and properly tested for safety. In the alternative, and in light of the grave damage, the prohibitive cost, the insignificant benefit, and lack of public support, the Smart Grid project may have to be scrapped in its entirety.

103. The granting of the requested injunction would serve the public interest of the people of California by protecting all citizens and visitors from harmful radiation and by setting a precedent to protect citizens from potentially toxic intrusions in their own homes.

#### V. PLAINTIFF RETAINS ALL RIGHTS

104. Plaintiff reserves the right to amend the Complaint to correct legal errors or omissions due to her inexperience in legal matters, or to supplement with additional information which is revealed through discovery, or for any other reason.

105. The true names and capacities of Defendants sued herein as Does 1-20, inclusive, are unknown to the Plaintiff, and the Plaintiff therefore sues these Defendants under fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. These fictitiously named Defendants were involved in the design, approval, implementation, and furtherance of the acts complained of herein.

106. Plaintiff incorporates all paragraphs and causes of action into all other paragraphs and causes of action herein.

107. Plaintiff wishes to exercise the right to a civil jury trial conferred upon her by the Seventh Amendment to the U.S. Constitution.

108. Plaintiff appears in this action In Propria Persona or Pro Se, and asks that the issues raised herein be addressed “on the merits”, *Sanders v. United States*, 373 US 1, at 16, 17 (1963); and addressed with “clarity and particularity”, *McClesky v. Zant*, 111 S. Ct. 1454 at 470-71 (1991); and that the Plaintiff be afforded a full and fair evidentiary hearing, *Townsend v. Sain*, 372 US293 at p.1 (1962) See also *Picking v. Pennsylvania Railroad Co.*, 151 F.2d 240 (3rd Cir. 1945).

109. Plaintiff asks this Court to recognize the fact that this “Pro Se litigant’s pleadings are to be construed liberally and held to less stringent standards than lawyers.” *Haines v. Kerner*, Warden of Illinois State Penitentiary at Menard, 404 U.S. 519, 92 S. Ct. 594, 30 L. Ed. 2d, 652 (1972). See also *Platsky v. CIA*, 953 F. 2d 26 (1971), “Court errs if Court dismisses pro se litigant without instructions of how pleadings are deficient and how to ‘repair’ pleadings.”

110. "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end...Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." *Maty v. Grasselli Chemical Co.*, 303 US 197 (1938).

111. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment.[5] *Dent v. West Virginia*, 129 U. S. 114.Cf. *Slochower v. Board of Education*, 350 U. S. 551 *Wieman v. Updegraff*, 344 U. S. 183 And see *Ex parte Secombe*, 19 How. 9, 13." *Schware v. Board of Bar Examiners of NM*, 353 US 232, P. 238-9 (1957).

112. "[T]here [can] be no sanction or penalty imposed upon one because of his exercise of constitutional rights. In *Spevack v. Klein*, 385 U.S. 511, 87 S. Ct. 625, 17 L.Ed.2d 574 (1967)" *Sherar v. Cullen*, 481 F. 2d 945, P. 947 (1973).

## VI. STATEMENT OF PURPOSE

113. By this action, the Plaintiff endeavors to safeguard and protect the public health from the greatest scourge that humanity has ever faced, the horror of radiation. Although we are beginning to see the incipient stages of its devastation in our most sensitive and susceptible populations, the "canaries" among us, the full effects over time could potentially become crippling and irreversibly destructive to civilized society as we know it. We must take swift and decisive action to nip it in the bud. We cannot afford to continue this unwise and unethical experiment on living human subjects. We have more than enough evidence that our man-made radiation levels are dangerously high, already killing, injuring, and debilitating us.

It is time to pull the plug on this concentration-camp style of medical experimentation, being conducted without the informed consent of its unwitting and vulnerable subjects. It is time to invoke the precautionary principle and err on the side of prudence, rather than rushing headlong into a technological holocaust of epic proportions.

114. The Plaintiff has filed this action with the sincere hope of empowering the weak to stand up and push back against the tyranny of the strong, thus achieving balance and justice. The Plaintiff strives to be a role model, an inspiration, and even a mentor to others who wish to assert their legal rights in the face of unconscionable abuses. Most of the victims cannot afford to hire counsel, and are left with only two unsavory options: knuckle under, thereby enabling the abuse, emboldening the abusers, and encouraging future abuses of even greater magnitude; or make a significant investment of time, energy, and emotional fortitude into the pursuit justice through the legal system, taking the time to study the law, research the issues, painstakingly prepare the documents,

and thoughtfully compose the legal arguments. This is the dawning of the “pro per revolution” in which the people take back their power through proper legal channels. Echoing the wisdom of the heroic citizen activist, Ralph Nader, the corporate criminals may habitually tune out the voice of the people, but they understand and take heed when they are served with acivil lawsuit.

#### V11. REQUEST FOR RELIEF

115. WHEREFORE, Plaintiff respectfully requests the compensatory, declaratory and injunctive relief herein sought, as well as costs, and such other and further relief as the Court shall deem proper.

#### A.COMPENSATORY DAMAGES

##### First Claim for Relief

116. Although the Plaintiff has suffered losses of life’s priceless treasures, which cannot easily be reduced to dollar amounts, a conservative estimate is displayed below:

General Damages: Pain, suffering, and inconvenience.....	\$ 1,000,000
Emotional distress.....	\$ 500,000
Loss of consortium.....	\$ 500,000
Loss of use of home, hometown, home state.....	\$100,000,000
Loss of lifestyle.....	\$ 1,000,000
Special Damages: Medical expenses (to date).....	\$ 1,000
Future medical expenses (present value).....	\$ 50,000
Loss of earnings (to date).....	\$ 100,000
Loss of future earning capacity (present value).....	\$ 15,000,000
Loss of business.....	\$ 1,000,000
Punitive Damages.....	\$ 1,000,000
Total Damages.....	\$120,151,000

117. If the Court grants the declaratory and injunctive relief as requested below, the Plaintiff’s damages will be significantly diminished, and the Plaintiff will be willing to accept only \$20,000,000 in total compensatory damages, based on the possibility that she might be able to return home to California, reunite with her loved ones, and resume some semblance of her life there.

#### B.DECLARATORY AND INJUNCTIVE RELIEF

##### Second Claim for Relief

118. Plaintiff respectfully asks the Court to declare that Defendants CPUC, Peevey, State, and Harris, have a statutory duty to protect Plaintiff and the general population from bodily harm, including the deleterious effects of radiation emitted by the Smart Grid.

#### Third Claim for Relief

119. Plaintiff respectfully asks the Court to declare that Defendant Peevey has breached ethics and violated the California Public Utilities Code section 303(a) by holding an official relationship to and a financial interest in the companies and/or persons that he is entrusted with regulating. Furthermore, Defendant Peevey must show that he has divested himself of his stock, stock options, or pension plan from his former employer, Southern California Edison, which falls under the regulatory authority of Defendant CPUC.

#### Fourth Claim for Relief

120. Plaintiff respectfully asks the Court to declare that the Defendants violated 42 U.S.C. section 3515b and 45 CFR Part 46 by using Federal funds to subject the unsuspecting California population to a horrific human experiment on the non-thermal effects of non-ionizing radiation, without obtaining the informed consent of the participants, and/or by subjecting the participants to greater than minimal risk, and/or by imposing risks that are not reasonable in relation to anticipated benefits.

#### Fifth Claim for Relief

121. Plaintiff respectfully asks the Court to declare that the Defendant SDG&E violated 18U.S.C. ss. 371, 653, 666, 1001, and 1018 by making false and fraudulent statements in its Smart Grid Deployment Plan, by which it received Federal matching funds under 42 U.S.C. section 17386. Plaintiff further prays that the Court remand Defendant SDG&E and its officers to the U.S. Attorney General for criminal prosecution under the Title 18 Criminal Code.

#### Sixth Claim for Relief

122. Plaintiff respectfully asks the Court to issue a preliminary injunction pursuant to 15 U.S.C. section 1267(a) prohibiting all Defendants from transporting or receiving, or allowing the transport or receipt of hazardous substances, including Smart Meters and Smart Grid equipment, across state lines.

Plaintiff further requests that the Court declare that all Defendants are liable for damages caused by their complicity in the release of hazardous substances, pursuant to 42U.S.C. section 9607.

#### Seventh Claim for Relief

123. Plaintiff respectfully asks the Court to declare that Defendants CPUC, Peevey, State, and Harris violated Plaintiff's civil rights under the U. S. Constitution, the highest statutory authority, and thus, Defendants CPUC, Peevey, State, and Harris are liable for damages pursuant to 42U.S.C.

ss. 1983, 1985 and/or 1986.

#### Eighth Claim for Relief

124. Because of the declared infringement of state and federal law, and in order to promote and protect the public health and safety, and in the interest of significantly reducing monetary damages, Plaintiff prays for a preliminary injunction to immediately suspend and roll back the California Smart Grid program, remove all associated radio frequency and digital equipment, and replace with the original, safe, analog equipment which worked flawlessly for many years prior to the Smart Grid installation.

125. Plaintiff prays that the preliminary injunction be extended until such time as a safe, reliable, and efficacious Smart Grid can be designed, manufactured, procured, properly tested for health and safety, and implemented; or until the people, through a referendum or through their elected representatives, decide to discard, disband, and dismantle the Smart Grid program upon finding it to be a useless and wasteful diversion from the quest for clean, sustainable energy.

#### VIII. VERIFICATION

I, Deborah Cooney, verify and declare that the factual statements in the foregoing Complaint are true and correct to the best of my knowledge and belief, under penalty of perjury under the laws of the United States. Respectfully submitted,

Date: December 17, 2012

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Deborah Cooney, Plaintiff in Propria Persona