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14 And PG&E CORPORATION

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **IN AND FOR THE COUNTY OF SAN MATEO**

17
18 Coordination Proceeding Special Title
19 (Rule 3.550)

20 PG&E "SAN BRUNO FIRE" CASES

JCCP No. 4648 A
TORT ACTIONS

**DEFENDANT PACIFIC GAS AND
ELECTRIC COMPANY'S
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR SUMMARY
ADJUDICATION OF NEGLIGENT
INFLECTION OF EMOTIONAL
DISTRESS**

Date: June 22, 2012

Time: 9:00 a.m.

Dept.: 7

Judge: Honorable Steven L. Dylina

Referee: Honorable Ronald Sabraw

JCCP 4648

DEFENDANT PG&E'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR
SUMMARY ADJUDICATION OF NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS CLAIMS

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1 **I. INTRODUCTION**

2 PG&E accepts responsibility for the rupture of the pipeline that resulted in the loss of
3 life and property. Resolution of the claims of all those who are affected by the tragic accident is
4 a top priority for the Company. To facilitate the resolution of these cases and focus the issues,
5 PG&E asks the Court to rule on the proper application of California law to claims of negligent
6 infliction of emotional distress – to assist the parties in resolving the matters now before the
7 Court and to provide guidance for others whose cases are not yet set for trial.

8 On September 9, 2010, a rupture occurred on PG&E's natural gas transmission line
9 running through the Crestmoor Canyon neighborhood of San Bruno, California, resulting in an
10 explosion. Eight people lost their lives and many were injured, including some who suffered
11 serious burns. Many residents suffered damage to their house or their property. The events of
12 that evening were a terrible tragedy. Since the accident, PG&E has been working to support the
13 San Bruno community as it rebuilds and recovers.

14 One of the Company's highest priorities is resolving the claims of those affected by this
15 tragic accident. PG&E intends to continue its efforts to achieve this goal and it has not filed
16 this motion to diminish in any way the impact of this accident on those people affected. In
17 support of this goal, PG&E has admitted negligence. PG&E has admitted that its use of
18 transmission pipe on Line 132 beginning in 1956 with a defective weld was negligent, and this
19 negligence was a proximate cause of the rupture of the pipe on September 9, 2010.

20 As required by these proceedings, Plaintiffs' counsel filed a single Master Complaint
21 that includes all claims of all Plaintiffs. The Master Complaint includes, among other
22 allegations, causes of action sounding in negligence for wrongful death, physical injury,
23 property damage, emotional distress of bystanders, and emotional distress of direct victims in
24 the zone of danger. However, all Plaintiffs do not state facts in support of all the causes of
25 action that they adopt in the Master Complaint.

26 By this motion, PG&E asks the Court to determine by summary adjudication which
27 causes of action for negligent infliction of emotional distress may be asserted by certain
28 Plaintiffs, which also may be indicative of many other claims not set for trial. More

1 specifically, Plaintiffs who did not witness injuries to family members may not claim emotional
2 distress as bystanders, and Plaintiffs who were not in proximity to the location where this
3 accident happened may not make claims for emotional distress as direct victims.

4 Other Plaintiffs who are not included in this motion may have similar claims that have
5 not yet been discovered. The Court recently ordered the production of relevant records, and
6 Plaintiffs' depositions are scheduled to take place over the coming weeks. The claims that are
7 the subject to this motion may be representative of the other claims alleged by other Plaintiffs.
8 Nonetheless, PG&E recognizes that many Plaintiffs have satisfied the legal standards for
9 emotional distress claims. The Court's ruling on this motion will provide guidance to the
10 parties and counsel as they work toward resolution of all the cases that are pending before the
11 Court.

12 **II. BACKGROUND**

13 **A. Gas Transmission Pipeline 132 and the Incident**

14 Pacific Gas and Electric Company is a public utility operating in northern and central
15 California, delivering electricity and natural gas to approximately 5.2 million electric and
16 approximately 4.3 million natural gas customers. Although the Master Complaint does not
17 distinguish between the two defendants, we note that defendant PG&E Corporation is a holding
18 company, and defendant Pacific Gas and Electric Company (hereinafter "PG&E") is the public
19 utility. PG&E installed, owned and operated gas transmission pipeline 132. (UMF 1.)¹

20 Line 132 is approximately 46 miles long and runs the length of the San Mateo Peninsula
21 from Milpitas to San Francisco.² Originally constructed in 1948, a portion of Line 132 was re-
22 routed to accommodate housing development in the Crestmoor neighborhood in 1956. Line 132
23 is divided into numerical "segments" that correspond to different sections of the pipe. There are
24

25 ¹ Each undisputed material fact (hereinafter "UMF") is stated with cites to supporting
26 evidence in the Separate Statement of Undisputed Material Facts in Support of Defendant Pacific
27 Gas and Electric Company and PG&E Corporation's Motion for Summary Adjudication of
28 Negligent Infliction of Emotional Distress.

² The background facts in this section are verified in PG&E's supplemental response to
Form Interrogatory 15.1, attached as Exhibit 1 to the Evidence in Support of Defendants' Motion
for Summary Adjudication of Negligent Infliction of Emotional Distress; Declaration of Gayle
L. Gough in Support Thereof (hereinafter "Evidence").

1 approximately 357 segments in the total 46-mile length of Line 132, and the 20-foot section of
2 pipe that ruptured was part of Segment 180.

3 On September 9, 2010, Segment 180 ruptured at mile point 39.28, at the intersection of
4 Earl Avenue and Glenview Drive in San Bruno. (UMF 2.) The immediate explosion and fire
5 resulted in the tragic deaths of eight people, personal injuries to other individuals, and property
6 damage to nearby residences. Post-rupture metallurgical analyses of the 20-ft segment that
7 ruptured reveal that a section of the pipe was missing the interior weld along its longitudinal
8 seam. PG&E has admitted that its use of transmission pipe on Line 132 beginning in 1956 with
9 a defective weld was negligent, and this negligence was a proximate cause of the rupture of the
10 pipe on September 9, 2010.

11 **B. The Coordination Proceeding and the Master Complaint**

12 After the San Bruno accident, lawsuits were filed in San Mateo Superior Court and San
13 Francisco Superior Court seeking compensatory damages, punitive damages, and other relief for
14 physical injury, emotional distress, and property damage. PG&E filed a petition to coordinate
15 the actions. The unopposed petition was granted, and sixty-five actions were coordinated
16 before the Honorable Steven L. Dylina of the San Mateo Superior Court. Thereafter more
17 actions joined these proceedings, and there are now 378 Plaintiffs in the litigation.

18 On June 3, 2011, Plaintiffs' counsel filed the Master Complaint for wrongful death,
19 survival claims, negligence, intentional infliction of emotional distress, battery, strict liability,
20 nuisance, trespass, and inverse condemnation. The third cause of action in the Master
21 Complaint contains the allegations that are at issue in this motion for summary adjudication.

22 The third cause of action in the Master Complaint for "Negligence" states that PG&E
23 breached its duty to exercise the utmost care and diligence in maintaining and operating the
24 pipeline. (Evidence Ex. 2, Master Complaint, ¶¶ 87, 88.) As a result, Plaintiffs allege that they
25 "were injured physically, emotionally, and/or economically, and/or were in the zone of danger
26 of the fire, and reasonably feared for their lives as they attempted to escape the raging inferno,
27 and/or witnessed close family members sustain serious injury as they attempted to escape the
28 raging inferno." (*Id.* at ¶¶ 87-90.) Causes of action for bodily injury, property damage,

1 emotional distress caused by harm to family members, and emotional distress suffered by direct
2 victims in the zone of danger are included in the Master Complaint's allegations of negligence.
3 (*Id.* at ¶¶90, 91.)

4 Plaintiffs provided information about their individual claims by filing Adoption Forms
5 to designate the causes of action that they adopted in the Master Complaint and Claim Forms to
6 summarize basic facts. In August 2011, the Court lifted the stay on discovery to allow Plaintiffs
7 to request documents.³ In late November and December 2011, Plaintiffs began responding to
8 discovery by serving "Fact Sheets" and documents. Fact Sheets are still being served as new
9 Plaintiffs join the litigation and other Plaintiffs submit amendments.

10 In March 2012, the Court approved the selection of ten households for trial and eighteen
11 households as alternates. These cases were selected from four categories of cases ranging from
12 households who lost a family member to households where no one was at home when the
13 pipeline ruptured. In March 2012, the Court ordered the production of subpoenaed records
14 regarding Plaintiffs' claims. Depositions of Plaintiffs began on March 28, 2012. PG&E's
15 motions for summary adjudication are due on April 6, 2012, only nine days after these
16 depositions of trial plaintiffs began. Trial is set for July 23, 2012.

17 **C. Undisputed Material Facts re: Certain Emotional Distress Claims**

18 The following facts are taken from Plaintiffs' Adoption Forms, Claim Forms, and Fact
19 Sheets. Several Plaintiffs have appeared for depositions so additional information may be
20 provided as to them. The depositions of the other Plaintiffs are scheduled and will be taken as
21 soon as possible. Plaintiffs' judicial admissions and declarations of the material facts relevant
22 to their claims for emotional distress are undisputed for purposes of this motion. As stated
23 above, PG&E intends to continue its efforts to resolve Plaintiffs' claims and it has filed this
24 motion not to diminish in any way the impact of this accident on those people affected. PG&E
25 now moves for summary adjudication of the negligence cause of action for emotional distress
26 with respect to the following plaintiffs:

27
28 ³ In response to broad requests for all documents relating to various people and subjects,
PG&E produced more than 940,000 documents, comprised of more than 12 million pages.

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1. Timothy Gretter

On the date of the incident, Timothy Gretter lived with his parents, Diane and Gary Gretter, in the Crestmoor neighborhood at 1581 Claremont Drive. (UMF 3.) At the time of the explosion, Timothy was at Capuchino High School with the varsity football team. (UMF 4.) Timothy adopted the negligence cause of action and alleges he suffers from emotional distress. (UMF 5.) He is not claiming physical injury. (UMF 6.) Timothy also claims damage to personal property, which is not at issue in this motion. (Evidence Ex. 30.)

2. Joanne Healy

At the time of the incident, Joanne Healy lived with her husband, William Healy, at 2496 Trenton Drive, which is one-half mile from Crestmoor Canyon. (UMF 9.) She was alone in her home when the pipeline ruptured and thought something was wrong because she felt vibration and heard loud noise. (UMF 10, 11.) She looked outside her window to see what had happened and could see nothing wrong. (UMF 12.) Mrs. Healy did not investigate further, sat on her couch, and waited for her husband to come home. (UMF 13.) When Mr. Healy arrived, there was still no indication of smoke or flames on their side of the canyon. (UMF 14.) They climbed to their roof and could see a yellow-orange haze on the horizon. (UMF 15.) Later, watching television reports, Mrs. Healy came to understand what had happened. (UMF 16.)

Mrs. Healy adopted the negligence cause of action and alleges emotional distress, from experiencing the vibration and watching television reports about the rupture. (UMF 16, Evidence Exs. 3, 31.) She testified she was not injured in the incident or when she evacuated her home more than an hour after the rupture, and "was fine" a few minutes after leaving the scene. (UMF 17, 18.) She claims damage to personal property, which is not at issue in this motion. (Evidence Ex. 31, 23 (J Healy Depo. 64:5-11).)

3. William Healy

At the time of the pipeline rupture, William Healy was driving on Highway 35 about 10 minutes away from his residence. (UMF 21.) He did not witness any part of the explosion nor hear the noise of the explosion, although he felt heat as he drove home after the incident. (UMF 22.) He adopted the negligence cause of action and alleges severe mental and emotional distress.

1 (Evidence Exs. 4, 32.) When Mr. Healy evacuated from his house over an hour after the rupture,
2 he also lost his footing and stumbled, without falling, against his chimney as his hands were full.
3 (UMF 24.) He claims damage to personal property, which is not at issue in this motion.
4 (Evidence Ex. 32.)

5 **4. Maryann Jensen**

6 At the time of the incident, Maryann Jensen and her family lived at 1741 Earl Avenue in
7 San Bruno. (UMF 27.) No one in the Jensen family was home when the pipeline ruptured.
8 (UMF 28.) Maryann was at a friend's house at 445 Hazel Avenue in San Bruno. (UMF 29.)
9 Maryann adopted the negligence cause of action and alleges that she suffers from emotional
10 distress, but she does not allege physical injury. (UMF 30.) Maryann also claims damage to
11 personal property, which is not at issue in this motion. (Evidence Ex. 33.)

12 **5. Michael T. Jensen**

13 Michael T. Jensen, the son of Maryann Jensen, lived with his family at 1741 Earl Avenue
14 in San Bruno, but at the time of the pipeline rupture, Michael was with his mother at a friend's
15 house at 445 Hazel Avenue in San Bruno. (UMF 33.) Michael adopted the negligence cause of
16 action and alleges that he suffers from emotional distress. (UMF 34.) Michael does not allege
17 physical injury or property damage. (UMF 35.)

18 **6. Michael W. Jensen**

19 Michael W. Jensen, the father of the Jensen Family, was at work near Chestnut Street in
20 San Francisco at the time of the pipe rupture. (UMF 38.) He was not aware of the incident until
21 his wife called him to tell him about the explosion and assure him that she and their children
22 were unharmed. (UMF 39.) Because his wife and children were unharmed, Mr. Jensen finished
23 his work shift before returning to San Bruno 45 minutes later. (UMF 40.) Mr. Jensen adopted
24 the negligence cause of action and alleges that he suffers from emotional distress. (UMF 41.)
25 He did not suffer physical injury. (UMF 42.) He also claims damage to personal property,
26 which is not at issue in this motion. (Evidence Ex. 35.)

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1 **7. Sarah Jensen**

2 At the time of the incident Sarah Jensen was with her mother and brother at a friend's
3 house at 445 Hazel Avenue, San Bruno, CA. (UMF 45.) Sarah adopted the negligence cause of
4 action and alleges that she suffers from emotional distress. (UMF 46.) Sarah does not allege
5 physical injury. (UMF 47.)

6 **8. Julio Locon, Jr.**

7 Julio Locon, Jr. is the 17 year old son of Julio Locon and Antonia Falla-Locon, the
8 owners of the home at 2791 Concord Way in San Bruno, California. (UMF 50.) Julio Locon, Jr.
9 adopted the negligence cause of action and claims emotional distress and property damage.
10 (UMF 51.) At the time of the pipeline rupture, Julio Jr. was at Crocker Amazon Park in San
11 Francisco, California. (UMF 52.) Upon learning of the fire in San Bruno, he left and returned to
12 San Bruno. (UMF 53.) However, he did not go any further into the Crestmoor neighborhood
13 than the corner of Fairmont and Claremont, about a block south of Sneath Lane, where he found
14 his parents. (UMF 53.) He did not suffer physical injury. (UMF 54.) Julio Jr. saw a therapist
15 once, at the request of his mother. (UMF 55.) He also claims damage to personal property,
16 which is not at issue in this motion. (Evidence Ex. 37.)

17 **9. Christy O'Neill**

18 Christy O'Neill is the wife of Plaintiff Richard O'Neill and the owner of the home at
19 2730 Plymouth Way, a property that abuts Sneath Lane. (UMF 58, 59.) She was home when the
20 pipeline ruptured. (UMF 60.) Her home is more than 1,100 feet from the rupture site. (UMF
21 61.) She adopted the negligence cause of action and alleges severe mental and emotional
22 distress. (UMF 62.) She alleges physical injury but describes the injury as "subjected to and
23 experienced the associated extreme heat, deafening sound, shaking and smoke." (UMF 63.)
24 She does not state that any part of her body was affected. (UMF 64.) She claims damage to
25 personal property, which is not at issue in this motion. (Evidence Ex. 38.)

26 **10. Richard O'Neill**

27 Richard O'Neill, the husband of Christy O'Neill, resides at 2730 Plymouth Way, a
28 property that abuts Sneath Lane. (UMF 67, 68.) He was home when the pipeline ruptured,

1 although his home was more than 1,100 feet from the rupture site. (UMF 69, 70.) He adopted
2 the negligence cause of action and alleges severe mental and emotional distress. (UMF 71.) He
3 alleges physical injury but describes the injury as “subjected to and experienced the associated
4 extreme heat, deafening sound, shaking and smoke.” (UMF 72.) He does not state that any part
5 of his body was affected. (UMF 73.)

6 **11. Sonia Salinda**

7 Sonia Salinda is the wife of Ricardo Salinda, the mother of Richard Salinda, and the
8 owner of the home located at 1116 Glenview Drive. (UMF 76, 77.) She adopted the negligence
9 cause of action and claims emotional distress and property damage. (UMF 78.) At the time of
10 the pipeline rupture, Sonia was by herself at a gas station “at the intersection of Rollingwood and
11 Sneath.” (UMF 79.) This location is approximately one-half mile from the rupture site. (UMF
12 79.) Sonia alleges she “experienced anxiety and fear of nearly losing her husband and son from
13 the gas explosion” and emotional trauma from the loss of her belongings. (UMF 80.) She does
14 not claim physical injury. (UMF 81.)

15 **12. Adam Tafralis**

16 At the time of the incident Adam Tafralis was in Ontario, Canada. (UMF 84.) He was
17 not present when the pipeline ruptured. (UMF 84.) He did not suffer physical injury and does
18 not have any physical limitations due to the fire. (UMF 85.) Adam did not arrive in San Bruno
19 until a day and a half after the incident. (UMF 86.) Adam Trafalis adopted the negligence cause
20 of action and alleges he suffers severe emotional distress, and property damage. (UMF 87.) He
21 alleges, “Responding party suffers from mental and emotional distress related to loss of use and
22 enjoyment of the home and related to the severe physical, emotional and mental injuries
23 sustained by his farther, Gregg Tafralis. Responding party suffers from stress ... because he was
24 not home with his family at the time of the subject incident Responding party also suffers
25 emotional distress because he was released from his CFL contract after the fire” (UMF 88.)

26 **13. Alexa Tafralis**

27 Alex Tafralis, age 24, lived at home with her parents at 1100 Glenview Drive. (UMF
28 91.) She was not was not at home when the pipeline ruptured, and she did not suffer physical

1 injury. (UMF 92, 93.) She was driving south on Skyline Boulevard. (UMF 94.) Alexa adopted
2 the negligence cause of action and alleges she suffers severe emotional distress and property
3 damage. (UMF 95.) Alexa alleges, "Responding party suffers from emotional distress,
4 depression, stress, anxiety, nervousness and panic attacks resulting from the loss of her home in
5 the September 9, 2010, and the severe injuries sustained by her father, Gregory Tafralis.
6 Responding party suffers from loss and use and enjoyment of her home." (UMF 96.)

7 **14. Carlene Vasquez**

8 Carlene Vasquez was at the San Bruno Senior Center, 1555 Crystal Springs Road, San
9 Bruno, with her friends when the pipeline ruptured. (UMF 99.) Carlene heard about the incident
10 on the television at the Senior Center. (UMF 100.) Her husband Carlos was at home at 1127
11 Glenview Drive. (UMF 101.) Carlene did not suffer physical injury nor does she anticipate any
12 future physical injury as a result of the incident. (UMF 102.) The first time Carlene returned to
13 the Crestmoor neighborhood was not until four days after the incident. (UMF 103.) She adopted
14 the negligence cause of action and alleges she suffers severe emotional distress and property
15 damage. (UMF 104.) Carlene alleges, "Responding party suffers from sadness, discomfort,
16 nervousness, emotional turmoil, being tired, not always sleeping well, loss of sleep, inability to
17 concentrate, and lack of attention span all associated with the loss of her home and the personal
18 property ... destroyed by the fire, and concern for her husband, Carlos Vasquez" (UMF
19 105.)

20 **15. Catherine Viscarra**

21 Catherine Viscarra was not at her home at 1321 Claremont Drive when the pipeline
22 ruptured. (UMF 110.) She was in the car on highway 280 with her husband, Michael Viscarra,
23 driving to Foster City, when Mr. Viscarra first noticed smoke in his rearview mirror. (UMF 110,
24 115.) Catherine adopted the negligence cause of action and alleges she suffers emotional distress
25 and property damage. (UMF 108, 111.) Catherine did not suffer physical injury. (UMF 109.)

26 **16. Michael Viscarra**

27 Michael Viscarra adopted the negligence cause of action and alleges he suffers emotional
28 distress and property damage. (UMF 114) Michael Viscarra was on his way to Foster City to

1 with his wife Catherine at the time of the incident. (UMF 110, 115.) He saw smoke in the rear
2 view mirror as they drove south on highway 280. (UMF 116.) He did not learn that something
3 had happened in San Bruno until after he arrived in Foster City. (UMF 117.) Michael did not
4 suffer physical injury. (UMF 118.)

5 **17. Jordan Zapata**

6 Jordan Zapata was driving home from work in Millbrae, northbound on highway 280
7 with his girlfriend when the pipeline ruptured. (UMF 121.) Jordan did not suffer physical
8 injury. (UMF 122.) Jordan adopted the negligence cause of action and alleges he suffers
9 emotional distress and loss of past earnings. (UMF 123.) Jordan alleges that he suffers
10 emotional distress “as a result of the explosion and fire and the destruction and rebuilding of his
11 neighborhood.” (UMF 124.)

12 **III. LEGAL ANALYSIS**

13 **A. Summary Adjudication**

14 Summary adjudication is properly granted if there is no disputed question of material fact
15 and a cause of action alleged in the pleadings may be decided as a matter of law. (Code Civ.
16 Proc., § 437c(c), (f); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843; *Juge v. County*
17 *of Sacramento* (1993) 12 Cal.App.4th 59, 67 (matters at issue determined by pleadings).) “[T]he
18 purpose of summary adjudication ‘is to expedite litigation’” (See *Burton v. Security Pacific*
19 *Nat. Bank* (1988) 197 Cal.App.3d 972, 976-977.) A defendant moving for summary adjudication
20 may show that the plaintiff cannot establish an element of a cause of action. (See Code Civ.
21 Proc., § 437c, subd. (f)(1), (p)(2).) Where several causes of action are pleaded as one cause of
22 action in the complaint, summary adjudication is permitted on one or more of the causes of
23 action. (See *Lillenthal & Fowler v. Superior Court* (1993) 12 Cal.App.4th 1848, 1854; *CDF*
24 *Firefighters v. Ricard A. Maldonado* (2011) 200 Cal.App.4th 158, 165; *Allstate Insurance*
25 *Company v. Mel Rapton, Inc.* (2000) 77 Cal.App.4th 901, 909 (“[W]here a tortfeasor’s single act
26 causes the plaintiff to suffer both personal injury and property damage, there are two causes of
27 action.”))

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1 Here, summary adjudication of each cause of action for negligent infliction of emotional
2 distress, described above, is proper because these Plaintiffs have not sustained a physical injury,
3 witnessed an injury to a family member, or suffered emotional distress as a “direct victim” in
4 the zone of danger. Plaintiffs described in this motion may have compensable property
5 damages, but property damage does not support a claim for emotional distress.

6 **B. Claims for Negligent Infliction of Emotional Distress**

7 “Negligent infliction of emotional distress is a form of the tort of negligence, to which
8 the elements of duty, breach of duty, causation and damages apply. The existence of a duty is a
9 question of law.” (*Huggins v. Longs Drug Stores California, Inc.* (1993) 6 Cal.4th 124, 129-
10 130; *Marlene F. v. Affiliated Psychiatric Medical Clinic, Inc.* (1989) 48 Cal.3d 583, 588.)
11 “The law of negligent infliction of emotional distress in California is typically analyzed ... by
12 reference to two ‘theories’ of recovery: the ‘bystander’ theory and the ‘direct victim’ theory.”
13 (*Gu v. BMW of North America, LLC* (2005) 132 Cal.App.4th 195, 204 (quoting *Burgess v.*
14 *Superior Court* (1992) 2 Cal.4th 1064, 1071).)

15 Plaintiffs who did not witness injury to family members (i.e., plaintiffs who were *not*
16 “bystanders”) cannot establish a duty was breached by PG&E with respect to a “bystander
17 injury.” Plaintiffs who were not in geographic proximity to the pipeline rupture (who were not
18 “direct victims”) cannot establish a duty was breached by PG&E with respect to a “direct
19 victim” of emotional distress. In other words, certain Plaintiffs, as included in this motion,
20 cannot establish a cause of action for emotional distress on claims of bystander injury or direct
21 injury, and claims of property damage do not support allegations of emotional distress.

22 **1. Emotional Distress of Bystander**

23 Plaintiffs included in this motion have not alleged facts establishing a “bystander” claim
24 for emotional distress. A “bystander” claim seeks recovery for damages for emotional distress
25 caused by witnessing an injury to a close relation. (See, e.g., *Dillon v. Legg* (1968) 68 Cal.2d
26 728 (allowing mother’s cause of action for emotional distress caused by witnessing defendant
27 negligently crash his car into, thereby injuring and killing her infant child).) “[B]ystander
28 liability is premised upon a defendant’s violation of a duty not to negligently cause emotional

1 distress to people who observe conduct which causes harm to another.” (*Burgess v. Superior*
2 *Court* (1992) 2 Cal.4th 1064, 1072-73.)

3 “The [California] Supreme Court held to recover for negligent infliction of emotional
4 distress as a bystander the plaintiff must plead and prove he or she ‘(1) is closely related to the
5 injury victim; (2) is present at the scene of the injury-producing event at the time it occurs and is
6 then aware that it is causing injury to the victim; and (3) as a result suffers serious emotional
7 distress—a reaction beyond that which would be anticipated in a disinterested witness and
8 which is not an abnormal response to the circumstances.’” (*Ra v. Superior Court* (2007) 154
9 Cal. App. 4th 142, 148 (citing *Thing v. La Chusa* (1989) 48 Cal.3d 644, 667-68.))

10 The *Thing* court expressly disapproved suggestions in prior cases that a negligent actor
11 is liable to all those “who may have suffered emotional distress on viewing or learning about the
12 injurious consequences of his conduct,” rather than on viewing the injury-producing event itself.
13 (*Id.* at p. 668; see *Bird v. Saenz* (2002) 28 Cal.4th 910, 915–916 (describing *Thing*’s three
14 requirements as “mandatory” and “exclusive”).)

15 Plaintiffs Sonia Salinda, Adam Tafralis, Alexa Tafralis, and Carlene Vasquez allege
16 emotional distress as a result of injuries to relatives. Ms. Salinda alleged that she feared for the
17 safety of her husband and son, but she was at the gas station and was not present when any
18 injury occurred to them. Likewise, neither Adam Tafralis nor Alexa Tafralis was present when
19 any injury occurred to their father. (Compare *Scherr v. Las Vegas Hilton Hotels Corporation*
20 (1985) 168 Cal.App.3d 908 (wife could not state cause of action for emotional distress by
21 watching live news broadcast of hotel fire where husband was staying because she had did not
22 witness injury to husband.)) Carlene Vasquez also was not present to observe any injury to her
23 husband.

24 None of the Plaintiffs who are the subject of this motion have a cause of action for
25 negligent infliction of emotional distress based on a bystander claim. Other Plaintiffs may be
26 similarly situated, in that they may not have witnessed or been present as a “bystander” to
27 observe any injury to others, but records are just starting to be produced pursuant to subpoena
28 and depositions also are just starting.

1 necessarily attendant upon operating an airplane extends as far as those who fear for their own
2 safety in a crash, even though they remain literally untouched.” (*Id.* at 657.) In contrast to
3 *Wooden*, the court found that it did not. (*Ibid.*) The court held that “case law does not require
4 imposition of a duty on operators of airlines to avoid the emotional trauma inherent in any crash
5 to otherwise unhurt bystanders.” (*Id.* at 660.) Likewise, where the bystander is remote from the
6 incident and learns the details from the media, there is no cause of action for emotional distress.
7 (*Christensen v. Superior Court* (1991) 54 Cal.3d 868, 901.)

8 Plaintiffs who are the subject of this motion were not a “direct victim” of the pipeline
9 rupture. None was in proximity of the pipeline when the rupture occurred. None was
10 personally subjected to an unreasonable risk of physical injury or illness. Timothy Gretter was
11 at the high school with the varsity football team. William Healy was driving on Highway 35, at
12 least 10 minutes away by car. The Jensen family was at a friend’s house, except Mr. Jensen
13 who was at work in San Francisco. Julio Locon was in San Francisco. Sonia Salina was at a
14 gas station half a mile away. Adam Tafralis was in Canada. Alexa Tafralis was driving south
15 on Skyline Boulevard, and Jordan Zapata was driving north on highway 280. Carlene Vasquez
16 was not home and neither were the Viscarras, who were driving south on highway 280.

17 Christy and Richard O’Neill were at home, but their home was at the north end of the
18 neighborhood, abutting Sneath Lane. The O’Neills and Joanne Healy contend that they were
19 exposed to extreme heat, deafening sound, shaking and smoke. In *Lawson, supra*, the court
20 noted that the plaintiffs may have felt “heat, wind and vibration,” but concluded these
21 perceptions were not physical injury and the plaintiffs were not claiming more than emotional
22 distress, which the court determined was not recoverable. The O’Neills do not allege any
23 physical affect and the gravamen of their complaint is emotional distress at a location remote
24 from the rupture.

25 Likewise, Joanne Healy was at home, on the other side of Crestmoor Canyon, one-half
26 mile from the fire. She remained in her house for over an hour before leaving, and she learned
27 the details of the incident through television. She testified she was not physically injured in the
28 fire and felt “fine” after she left her home.

1 None of the Plaintiffs who are the subject of this motion have a cause of action for
2 negligent infliction of emotional distress as a direct victim of emotional distress.

3 **3. Emotional Distress Claims and Property Damage**

4 Emotional distress damages are generally not available in negligence claims
5 involving only property damage. (*Cooper v. Superior Court* (1984) 153 Cal.App.3d 1008,
6 1012 (plaintiff could not recover emotional distress when the defendant's tractor rolled onto
7 the plaintiff's property, causing damage to her home, grounds and swimming pool.)

8 In *Kelly v. CB&I Constructors, Inc.* (2009) 179 Cal.App.4th 442, 456, the court
9 permitted recovery for annoyance and discomfort damages on nuisance and trespass claims
10 while at the same time prohibiting recovery for emotional distress. (*Id.* at 456-57.) In *Kelly*
11 *v. CB&I Constructors, Inc.*, the court held that a nonresident property owner was not entitled
12 to recover annoyance and discomfort damages. (*Id.* at 459.) In reaching the conclusion that
13 only an occupant in possession of real property may recover an award for annoyance and
14 discomfort, the court clearly distinguished annoyance and discomfort from emotional
15 distress:

16 *But annoyance and discomfort damages are distinct from general*
17 *damages for mental and emotional distress. Annoyance and discomfort*
18 *damages are intended to compensate a plaintiff for the loss of his or her*
19 *peaceful occupation and enjoyment of the property. As the court explained*
20 *in Webster v. Boone (Colo.Ct.App. 1999) 992 P.2d 1183, 1185-1186, "We*
21 *recognize that annoyance and discomfort by their very nature include a*
22 *mental or emotional component, and that some dictionary definitions of*
23 *these terms include the concept of distress. Nevertheless, the 'annoyance*
24 *and discomfort' for which damages may be recovered on nuisance and*
25 *trespass claims generally refers to distress arising out of physical*
26 *discomfort, irritation, or inconvenience caused by odors, pests, noise, and*
27 *the like. ... Our cases have permitted recovery for annoyance and*
28 *discomfort damages on nuisance and trespass claims while at the same*
time precluding recovery for 'pure' emotional distress. ..." (Citations
omitted). [¶] *This view is consistent with the Supreme Court's holding in*
Kornoff, supra, 45 Cal.2d 265.

(*Kelly v. CB&I Constructors, Inc., supra*, 179 Cal.App.4th at 456-457 [emphasis added].)

Plaintiffs here allege claims for damage to property. Those claims do not permit
recovery for emotional distress. Even if they could state a claim for trespass or nuisance,
they would not be permitted to recover for emotional distress. (PG&E has been working

1 with many Plaintiffs to mitigate annoyance and discomfort damages.) The law does not
2 permit Plaintiffs to recover emotional distress based on harm to property.

3 **IV. CONCLUSION**

4 For all the reasons stated, PG&E respectfully requests that the Court rule as a matter of
5 law on the claims for emotional distress discussed in this motion. Rulings on these claims will
6 not preclude any Plaintiff from receiving compensation on all claims that they have properly
7 alleged. Further, other Plaintiffs may have similar claims that are not yet discovered, and the
8 Court's ruling will provide guidance to the parties as they move toward resolution of the cases.

9 DATED: April 6, 2012

Respectfully submitted,

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