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18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 IN AND FOR THE COUNTY OF SAN JOAQUIN

20 PEOPLE OF THE STATE OF  
21 CALIFORNIA,

22 Plaintiff,

23 v.

24 PACIFIC BELL TELEPHONE COMPANY  
dba AT&T California, a California  
25 corporation,

26 Defendant.

No.

**COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE  
RELIEF**

27 \_\_\_\_\_  
PLAINTIFF, PEOPLE OF THE STATE OF CALIFORNIA, allege as follows:

28 **PLAINTIFF**

1 1. Plaintiff, PEOPLE OF THE STATE OF CALIFORNIA (“People”), brings its actions by  
2 and through Bill Lockyer, Attorney General of the State of California (“Attorney General”),  
3 and by and through Thomas J. Orloff, District Attorney of Alameda County; Steve Cooley,  
4 District Attorney of Los Angeles County, Dean D. Flippo, District Attorney of Monterey  
5 County ; Bonnie M. Dumanis, District Attorney of San Diego County; James P. Willett, District  
6 Attorney of San Joaquin County; David Paulson, District Attorney of Solano County; and  
7 Michael J. Aguirre, City Attorney of the City of San Diego (collectively “the Local  
8 Prosecutors”).

9 2. Pursuant to California Health and Safety Code section 25145.4, the Attorney General  
10 may bring a civil action in the name of the People of the State of California to enjoin any  
11 violation of Chapter 6.5 of Division 20 of the California Health and Safety Code (hereinafter  
12 “Chapter 6.5”) and seek civil penalties for violations of the provisions of Chapter 6.5.

13 3. Pursuant to California Health and Safety Code section 25182, the Local Prosecutors at a  
14 request of a unified program agency may bring a civil action in the name of the People of the  
15 State of California to enjoin any violation of Chapter 6.5 and to seek civil penalties for  
16 violations of the provisions of Chapter 6.5 which are under the jurisdiction of the unified  
17 program agency.

18 4. Pursuant to California Health and Safety Code section 25299.02, the Attorney General  
19 and the Local Prosecutors may bring a civil action in the name of the People of the State of  
20 California for violations of state law dealing with the underground storage of hazardous  
21 substances, as set forth in Chapter 6.7 of Division 20 of the California Health and Safety Code  
22 (hereinafter “Chapter 6.7”).

23 5. Pursuant to California Health and Safety Code section 25299.01, the Attorney General  
24 and the Local Prosecutors may apply to a superior court for an injunction or an order directing  
25 compliance against any person who has engaged in, is engaged in, or is about to engage in any  
26 acts or practices which violate Chapter 6.7.

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28 6. Pursuant to the California Health and Safety Code section 25514, the Attorney General

1 or the Local Prosecutors may bring an action for civil penalties for violations of California  
2 Health and Safety Code sections 25503.5 to 25505, inclusive, or sections 25508 to 25520,  
3 inclusive. Pursuant to California Health and Safety Code section 25516, the Attorney General  
4 or the Local Prosecutors, when requested by an administering agency, may bring an action to  
5 enjoin a violation of Chapter 6.95 of Division 20 of the California Health and Safety Code  
6 (hereinafter "Chapter 6.95") or these prosecuting agencies can seek the same relief upon their  
7 own motion.

8 7. Pursuant to California Business and Professions Code sections 17203, 17204, and  
9 17206, the Attorney General and the Local Prosecutors may bring actions in the name of the  
10 People of the State of California in a superior court for an injunction against any person who  
11 engages, had engaged, or proposes to engage in unfair competition and for civil penalties for  
12 each act of unfair competition.

13 8. Plaintiff brings this action without prejudice to any other action or claims which it may  
14 have based on separate, independent and unrelated violations of Chapters 6.5, 6.7, or 6.95 of  
15 Division 20 of the California Health and Safety Code by Pacific Bell Telephone Company dba  
16 AT&T California and/or on facts which are not alleged in this Complaint.

17 **DEFENDANT**

18 9. Defendant Pacific Bell Telephone Company dba AT&T California (fka SBC California)  
19 ("AT&T" or "Defendant") is a California corporation which does or did business in the State of  
20 California at the facilities identified in Exhibit "A" which is incorporated herein by reference  
21 (hereinafter collectively referred to as "Covered Facilities"). AT&T owned and/or operated  
22 underground tank systems at the Covered Facilities that are used to store motor vehicle fuel or  
23 served to supply emergency generators.

24 10. AT&T is or, at all times relevant to the claims in this complaint, was legally responsible  
25 for compliance with the provisions of the California Health and Safety Code including Chapters  
26 6.5, 6.7, and 6.95 of Division 20 at its Covered Facilities.

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28 **VENUE**

1 11. Venue is proper in this county pursuant to California Health and Safety Code section  
2 25299.03 in that violations alleged in the Complaint occurred in the County of San Joaquin and  
3 that the other statewide violations alleged in the complaint are related to such violations.

4 **GENERAL ALLEGATIONS**

5 12. Plaintiff and AT&T have entered into a series of agreements to toll any applicable  
6 statute of limitations. As a result of these agreements, the period of time from December 21,  
7 2004 through January 14, 2006 inclusive, ("Tolling Period") will not be included in computing  
8 the time limited by any statute of limitations under the causes of action that may arise out of  
9 claims covered by the tolling agreement. Those claims include the claims that are brought in  
10 this action.

11 13. Subject to the terms of the tolling agreements identified in Paragraph 12, Plaintiff is  
12 informed and believes and thereupon alleges that AT&T has engaged in the following actions at  
13 its Covered Facilities within five years of the date that this Complaint was filed:

- 14 a. Failed to test secondary containment systems installed prior to January 1, 2001,  
15 by January 1, 2003, in accordance with California Code Regulations, Title 23  
16 section 2637(a);
- 17 b. Failed to test every thirty-six months secondary containment systems installed  
18 prior to January 1, 2001, in accordance with California Code of Regulations,  
19 Title 23 section 2637(a);
- 20 c. Failed to test secondary containment systems installed on or after January 1,  
21 2001, in accordance with the schedule required by California Code of  
22 Regulations, Title 23 section 2637(a);
- 23 d. Failed to replace secondary containment system by December 31, 2002 which  
24 AT&T determined could not be tested in accordance with California Code of  
25 Regulations, Title 23 section 2637 with a system that could be tested in  
26 accordance with that regulation, and failed to qualify for the alternative for  
27 testing with enhanced leak detection, in accordance with California Code of  
28 Regulations, Title 23 section 2637(b);

- 1 e. Failed to repair underground tank systems within a reasonable time after the  
2 systems were found to have failed a secondary containment test performed  
3 pursuant to California Code of Regulations, Title 23 section 2637;
- 4 f. Failed to submit a copy of the secondary containment test report to the local  
5 agency within 30 days of completion of the test in accordance with California  
6 Code of Regulations, Title 23 section 2637(e);
- 7 g. Failed to notify the local agency at least 48 hours prior to conducting testing in  
8 accordance with California Code of Regulations, Title 23 section 2637(f);
- 9 h. Failed to annually test and certify underground storage tank monitoring systems  
10 in accordance with California Code of Regulations, Title 23 section 2638;
- 11 i. Repaired underground storage tank systems without required permits or  
12 authorization from the appropriate permitting agencies;
- 13 j. Failure to address an actual fuel alarm at the earliest possible opportunity in  
14 violation of California Code of Regulations, Title 23 section 2630(d) due to  
15 routine allowance of water in the secondary containment.
- 16 k. Failed to temporarily cease operation of an underground tank system as required  
17 by California Health and Safety Code section 25298;
- 18 l. Failure to establish and maintain financial responsibility for taking corrective  
19 action and compensating third parties pursuant to California Health and Safety  
20 Code sections 25292.2 and 25299.31.
- 21 m. Failed to provide adequate training to employees pursuant to California Code  
22 Regulations, Title 22 sections 66265.16 and 66265.56;
- 23 n. Failed to maintain documentation of training of employees pursuant to California  
24 Code of Regulations, Title 22 section 66265.16;
- 25 o. Failed to provide adequate training of all employees to respond to a hazardous  
26 material spill or release from an underground storage tank system, including the  
27 failure to familiarize employees with the underground storage tank monitoring  
28 plan and release report procedures in the business response plan pursuant to

1 California Health and Safety Code section 25504;

- 2 p. Failed to maintain adequate hazardous material safety emergency response  
3 procedures, and adequate hazardous waste safety emergency response  
4 procedures pursuant to California Code of Regulations, Title 22 section  
5 66265.56;
- 6 q. Failed to report releases of hazardous materials to an administering agency  
7 pursuant to California Health and Safety Code section 25507(a).

8 **FIRST CAUSE OF ACTION**

9 14. Plaintiff realleges Paragraphs 1 through 13, inclusive.

10 15. AT&T is liable for civil penalties as set forth in California Health and Safety Code  
11 section 25189(b) for each intentional or negligent violation of rules, regulations, standards, or  
12 requirements regarding hazardous waste set forth above.

13 16. AT&T must immediately and permanently be enjoined from further violations of  
14 Chapter 6.5.

15 **SECOND CAUSE OF ACTION**

16 17. Plaintiff realleges Paragraphs 1 through 13, inclusive.

17 18. AT&T is liable for civil penalties as set forth in California Health and Safety Code  
18 section 25189.2(b) for each violation of the rules, regulations, standards or requirements  
19 regarding hazardous waste set forth above.

20 19. AT&T is liable for civil penalties as set forth in California Health and Safety Code  
21 section 25189.2(b) for each violation of the rules, regulations, standards or requirements set  
22 forth above.

23 20. AT&T must immediately and permanently be enjoined from further violations of  
24 Chapter 6.5.

25 **THIRD CAUSE OF ACTION**

26 21. Plaintiff realleges Paragraphs 1 through 13, inclusive.

27 22. To the extent that AT&T is the operator of the underground tank systems at the Covered  
28 Facilities, AT&T is liable for civil penalties as set forth in California Health and Safety Code

1 section 25299(a) for each violation of the rules, regulations, standards or requirements  
2 applicable to each underground storage tank as set forth above.

3 23. AT&T, as the operator of the underground tank systems, must immediately and  
4 permanently be enjoined from further violations of Chapter 6.7.

5 **FOURTH CAUSE OF ACTION**

6 24. Plaintiff realleges Paragraphs 1 through 13, inclusive.

7 25. To the extent that AT&T is the owner of the underground tank systems at the Covered  
8 Facilities, AT&T is liable for civil penalties as set forth in California Health and Safety Code  
9 section 25299(b) for each violation of the rules, regulations, standards or requirements  
10 applicable to each underground storage tank as set forth above.

11 26. AT&T, as the owner of underground tank systems, must immediately and permanently  
12 be enjoined from further violations of Chapter 6.7.

13 **FIFTH CAUSE OF ACTION**

14 27. Plaintiff realleges Paragraphs 1 through 13, inclusive.

15 28. AT&T is a person who is required to notify a local agency prior to undertaking  
16 secondary containment testing pursuant to California Code of Regulations, Title 23 section  
17 2637. AT&T is liable for civil penalties as set forth in California Health and Safety Code  
18 section 25299(c) for each underground storage tank for which AT&T intentionally failed to  
19 provide the appropriate notification.

20 29. AT&T must immediately and permanently be enjoined from further notification of  
21 violations of Chapter 6.7.

22 **SIXTH CAUSE OF ACTION**

23 30. Plaintiff realleges Paragraphs 1 through 13, inclusive.

24 31. Pursuant to Health and Safety Code section 25516, a district attorney or city attorney, at  
25 the request of an administering agency within the prosecuting agency's jurisdiction, or on the  
26 district attorney's or city attorney's own motion, may apply to the superior court for an order  
27 directing compliance with Chapter 6.95.

28 32. The Local Prosecutors and the Attorney General are authorized to bring this cause of

1 action pursuant to California Health and Safety Code section 25516.1.

2 33. AT&T is liable for civil penalties as set forth in California Health and Safety Code  
3 section 25514 for each violation of the California Health and Safety Code section 25504(c) as  
4 set forth above.

5 34. AT&T must immediately and permanently be enjoined from further violations of  
6 Chapter 6.95.

7 **SEVENTH CAUSE OF ACTION**

8 35. Plaintiff realleges Paragraphs 1 through 34, inclusive.

9 36. By the acts described herein, AT&T engaged in daily acts of unlawful and/or unfair  
10 competition prohibited by California Business and Professions Code sections 17200-17208.  
11 Each act constitutes an unlawful and/or unfair business practice.

12 37. Pursuant to California Business and Professions Code section 17206, AT&T is liable for  
13 civil penalties for each violation.

14 38. AT&T must immediately and permanently be enjoined from engaging in activity that  
15 violates Chapters 6.5, 6.7 and 6.95 of Division 20 of the California Health and Safety Code  
16 which thereby constitutes unfair competition within the meaning of California Business and  
17 Professions Code section 17200.

18 WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

19 1. A permanent injunction requiring AT&T to comply with those provisions of  
20 California Health and Safety Code, Division 20, Chapter 6.5 which it is alleged to have  
21 violated;

22 2. A permanent injunction requiring AT&T to comply with those provisions of  
23 California Health and Safety Code, Division 20, Chapter 6.7 which it is alleged to have  
24 violated;

25 3. A permanent injunction requiring AT&T to comply with those provisions of  
26 California Health and Safety Code, Division 20, Chapter 6.95 which it is alleged to have  
27 violated;

28 4. A permanent injunction prohibiting AT&T from engaging in activity that



1 violates the provisions of Chapters 6.5, 6.7 and 6.95 of Division 20 of the California Health and  
2 Safety Code as alleged in this complaint which thereby constitutes unfair competition within the  
3 meaning of California Business and Professions Code section 17200;

4 5. Civil penalties according to proof against AT&T pursuant to California Health  
5 and Safety Code section 25189;

6 6. Civil penalties according to proof against AT&T pursuant to California Health  
7 and Safety Code section 25299;

8 7. Civil penalties according to proof against AT&T pursuant to California Health  
9 and Safety Code section 25514;

10 8. Civil penalties according to proof against AT&T pursuant to California Business  
11 and Professions Code section 17206 for each act of unfair competition engaged in by AT&T;

12 9. Grant the Plaintiff its cost of inspection, investigation, attorneys fees,  
13 enforcement, prosecution, and suit, herein; and,

14 10. Grant such other and further relief as the Court deems just and proper.

15 RESPECTFULLY REQUESTED:

16 Dated: January \_\_ 2006

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24 Dated: January \_\_ 2006

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1 Dated: January \_\_ 2006

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14 Dated: January \_\_ 2006

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20 Dated: January \_\_ 2006

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1 Dated: January \_\_ 2006

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7 Dated: January \_\_ 2006

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