

Long

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) Jeoffrey W. Steele
as (B) Counsel for (C) Center Land Company, Inc.

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) Eastern District of California

and has been assigned docket number (E) 2:05-CV-01180-DFL-KJM

This is not a formal summons or notification from the court, but rather my request that you sign and return the enclosed waiver of service in order to save the cost of serving you with a judicial summons and an additional copy of the complaint. The cost of service will be avoided if I receive a signed copy of the waiver within (F) 20 days after the date designated below as the date on which this Notice and Request is sent. I enclose a stamped and addressed envelope (or other means of cost-free return) for your use. An extra copy of the waiver is also attached for your records.

If you comply with this request and return the signed waiver, it will be filed with the court and no summons will be served on you. The action will then proceed as if you had been served on the date the waiver is filed, except that you will not be obligated to answer the complaint before 60 days from the date designated below as the date on which this notice is sent (or before 90 days from that date your address is not in any judicial district of the United States.)

If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 23rd day of June, 2005.



Signature of Plaintiff's Attorney or Unrepresented Plaintiff

- A - Name of individual defendant (or name of officer or agent of corporate defendant)
- B - Title, or other relationship of individual to corporate defendant
- C - Name of corporate defendant, if any
- D - District
- E - Docket number of action

SF/184412 1/NIEZ - Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

WAIVER OF SERVICE OF SUMMONS

http://www.jdsupra.com/docs/documentViewer.aspx?fid=f2390375-2bbe-4cff-a8fd-72bdb90730c9

TO: Thomas H. Clarke, Jr.
(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

I, Jeffrey Steele, on behalf of Center Land Company, acknowledge receipt of your request
(DEFENDANT NAME)

that I waive service of summons in the action of Pacific Gas and Electric v. Jesse Lange Distributors, et al.
(CAPTION OF ACTION)

which is case number 2:05-CV-001180-DFL-KJM in the United States District Court
(DOCKET NUMBER)

for the Eastern District of California

I have also received a copy of the complaint in the action, two copies of this instrument, and a means by which I can return the signed waiver to you without cost to me.

I agree to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that I (or the entity on whose behalf I am acting) be served with judicial process in the manner provided by Rule 4.

I (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after or within 90 days after that date if the request was sent outside the United States.

June 23, 2005
(Date Request Was Sent)

(DATE) (SIGNATURE)

Printed/Typed Name: Jeffrey W. Steele

As Counsel for Center Land Company, Inc.
(TITLE) (CORPORATE DEFENDANT)

Duty to Avoid Unnecessary Costs of Service of Summons

Rule 4 of the Federal Rules of Civil Procedure requires certain parties to cooperate in saving unnecessary costs of service of the summons and complaint. A defendant located in the United States who, after being notified of an action and asked by a plaintiff located in the United States to waive service of summons, fails to do so, will be required to bear the cost of such service unless good cause be shown for its failure to sign and return the

It is not good cause for a failure to waive service that a party believes that the complaint is unfounded, or that the action has been brought in an improper place or in a court that lacks jurisdiction over the subject matter of the action or over its person or property. A party who waives service of the summons retains all defenses and objections (except any relating to the summons or to the service of the summons), and may later object to the jurisdiction of the court or to the place where the action has been brought

A defendant who waives service must within the time specified on the waiver form serve on the plaintiffs attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served, within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received

NOTICE OF LAWSUIT AND REQUEST FOR WAIVER OF SERVICE OF SUMMONS

TO: (A) Jeffrey W. Steele
as (B) Counsel for (C) Center Land Company of Texas, Inc.

A lawsuit has been commenced against you (or the entity on whose behalf you are addressed.) A copy of the complaint is attached to this notice. It has been filed in the United States District Court for the (D) Eastern District of California

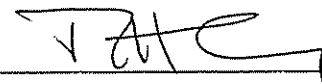
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If you do not return the signed waiver within the time indicated, I will take appropriate steps to effect formal service in a manner authorized by the Federal Rules of Civil Procedure and will then, to the extent authorized by those Rules, ask the court to require you (or the party on whose behalf you are addressed) to pay the full costs of such service. In that connection, please read the statement concerning the duty of parties to waive the service of the summons, which is set forth at the foot of the waiver form.

I affirm that this request is being sent to you on behalf of the plaintiff, this 23rd day of June, 2005.



Signature of Plaintiff's Attorney
or Unrepresented Plaintiff

- A - Name of individual defendant (or name of officer or agent of corporate defendant)
- B - Title, or other relationship of individual to corporate defendant
- C - Name of corporate defendant, if any
- D - District
- E - Docket number of action

SF/184412.1/NIEZ - Addressee must be given at least 30 days (60 days if located in foreign country) in which to return waiver

WAIVER OF SERVICE OF SUMMONS

TO: Thomas H. Clarke, Jr.

(NAME OF PLAINTIFF'S ATTORNEY OR UNREPRESENTED PLAINTIFF)

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(DEFENDANT NAME)

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(CAPTION OF ACTION)

which is case number 2:05-CV-001180-DFL-KJM in the United States District Court
(DOCKET NUMBER)

for the Eastern District of California

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I understand that a judgment may be entered against me (or the party on whose behalf I am acting) if an answer or motion under Rule 12 is not served upon you within 60 days after or within 90 days after that date if the request was sent outside the United States.

June 23, 2005,
(DATE REQUEST WAS SENT)

(DATE)

(SIGNATURE)

Printed/Typed Name: Jeffrey W. Steele

As Counsel for Center Land Company of Texas, Inc.
(TITLE) (CORPORATE DEFENDANT)

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A defendant who waives service must within the time specified on the waiver form serve on the plaintiffs attorney (or unrepresented plaintiff) a response to the complaint and must also file a signed copy of the response with the court. If the answer or motion is not served, within this time, a default judgment may be taken against that defendant. By waiving service, a defendant is allowed more time to answer than if the summons had been actually served when the request for waiver of service was received.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

PACIFIC GAS AND ELECTRIC COMPANY,

V.

SUMMONS IN A CIVIL CASE

JOHN P. CROWSTON, ET AL.,

CASE NUMBER: 2:05-CV-01180-DFL-KJM

**TO: Center Land Company of Texas, Inc.,
Center Land Company, Inc., Jesse M. Lange
Distributor Inc., John P. Crowston, Rebecca
Crowston, Michael R. Curry, Shell Oil Company**
Defendant's Address:

YOU ARE HEREBY SUMMONED and required to serve on

**Thomas H. Clarke Jr.
Ropers Majeski Kohn and Bentley
333 Market Street Suite 3150
San Francisco, CA 94105**

an answer to the complaint which is served on you with this summons, within **20** days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

JACK L. WAGNER

CLERK

/s/ - G. Servantes



(By) DEPUTY CLERK

ISSUED ON 2005-06-15 13:41:52.0, Clerk
USDC EDCA

NOTICE OF AVAILABILITY
VOLUNTARY DISPUTE RESOLUTION

Pursuant to the findings and directives of Congress in 28 U.S.C. §§ 651 *et seq.*, and in recognition of the economic burdens and delay in the resolution of disputes that can be imposed by full formal litigation, Local Rule 16–271 governs the referral of certain actions to the Voluntary Dispute Resolution Program ("VDRP") at the election of parties. Plaintiff or removing party is to provide all other parties with copies of the notice at the time service is effected or, for parties already served, no more than fourteen (14) days after receiving notice from the Court. After filing of the original complaint or removal action, any party who causes a new party to be joined in the action shall promptly serve a copy of the notice on the new party.

It is the Court's intention that the VDRP shall allow the participants to take advantage of a wide variety of alternative dispute resolution methods. These methods may include, but are not limited to, mediation, negotiation, early neutral evaluation and settlement facilitation. The specific method or methods employed will be determined by the Neutral and the parties.

PLEASE TAKE NOTICE that pursuant to Local Rule 16–271, *this Local Rule applies to* all civil actions pending before any District Judge or Magistrate Judge in the District except that actions in the following categories are exempt from presumptive inclusion: (i) prisoner petitions and actions, including habeas corpus petitions, (ii) actions in which one of the parties is appearing *pro se*, (iii) voting rights actions, (iv) social security actions, (v) deportation actions, (vi) Freedom of Information Act actions, and (vii) actions involving the constitutionality of federal, state or local statutes or ordinances. The fact that a case falls in a category that is exempt from the presumptive applicability of this Local Rule neither (1) precludes the parties to such a case from agreeing to participate in an Alternative Dispute Resolution ("ADR") process, nor (2) deprives the Court of authority to compel participation in an appropriate ADR proceeding.

Parties may elect Voluntary Dispute Resolution with the Court indicating that all parties to the action agree to submit the action to VDRP pursuant to Local Rule 16–271. Actions may not be assigned to VDRP over the objection of a party. (Copy of sample stipulation attached hereto.) **At the time of filing, a copy of the stipulation shall be provided to the VDRP Administrator designated below:**

Sacramento Cases
Voluntary Dispute Resolution
Program Administrator
United States District Court
501 I Street, Suite 4–200
Sacramento, CA 95814
(916) 930–4280

Fresno Cases
Voluntary Dispute Resolution
Program Administrator
United States District Court
1130 "O" Street , Room 5000
Fresno, CA 93721
(559) 498–7483

6/13/05

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco

1 THOMAS H. CLARKE, JR. (SBN 47592)
2 DENNIS J. BYRNE (SBN 172618)
3 ROPERS, MAJESKI, KOHN & BENTLEY
4 333 Market Street, Suite 3150
5 San Francisco, CA 94105
6 Telephone: (415) 543-4800
7 Facsimile: (415) 274-6301

8 JUAN JAYO (SBN 71337)
9 MARGARET PIETRAS (SBN 124598)
10 PACIFIC GAS and ELECTRIC COMPANY
11 P.O. Box 7442
12 San Francisco, CA 94120
13 Telephone: (415) 973-2193

14 Counsel for Plaintiff
15 PACIFIC GAS and ELECTRIC COMPANY

16 UNITED STATES DISTRICT COURT
17 EASTERN DISTRICT OF CALIFORNIA

18 PACIFIC GAS and ELECTRIC
19 COMPANY,
20
21 Plaintiff,

22 v
23 JESSE M. LANGE DISTRIBUTOR, INC.,
24 JOHN P. CROWSTON, REBECCA
25 CROWSTON, CENTER LAND CO.,
26 INC., CENTER LAND CO. OF TEXAS,
27 INC., MICHAEL R. CURRY, SHELL OIL
28 COMPANY, and DOES 1 THROUGH 100
29
30 Defendants.

CASE NO 2:05-CV-01180 DFL/KJM

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

- RCRA 6972(a)(1)(A)
- Nuisance
- Trespass
- Breach of Contract
- Negligence
- Unfair Business Practices
- Defective Product
- Declaratory Relief

DEMAND FOR A JURY TRIAL

JURISDICTION AND VENUE

1. This court has subject matter jurisdiction under 28 U.S.C. section 1331, in that this case arises under the laws of the United States, 42 U.S.C. section 6972 and 28 U.S.C. sections 2201 and 2202.

2. The court has supplemental jurisdiction under 28 U.S.C. section 1367(a) in that Pacific Gas and Electric Company's state law claims are so related to the claims over which the

1 Court exercises original jurisdiction that they form part of the same case or controversy under
2 Article III of the United States Constitution

3 3 Venue is proper in this judicial district pursuant to 28 U.S.C section 1391(b,c)
4 because a substantial part of the events giving rise to the claims occurred within the District,
5 because a substantial part of the property which is the subject of the action is situated within the
6 District, and because one or more defendants resides within the District, conducts business within
7 the District, and has engaged in, and continues to engage in, acts of selling and promoting goods
8 and products to consumers in the District.

9 PARTIES

10 4. Plaintiff Pacific Gas and Electric Company ("PG and E") is a California
11 corporation having its principle place of business in San Francisco, California.

12 5. On information and belief, PG and E alleges that defendant Shell Oil Company
13 ("SHELL") is a Delaware corporation qualified to conduct business in California with its
14 principle place of business in Texas. PG and E alleges further, on information and belief, that at
15 all times relevant to PG and E's claims defendant LANGE, as described below, was an alter ego
16 of SHELL and that SHELL was aware of and approved those actions of LANGE and the Other
17 Defendants which form the basis of PG and E's claims.

18 6. On information and belief, PG and E alleges that Jesse M. Lange Distributor, Inc
19 ("LANGE"), is a California corporation with its principle place of business in Chico, California,
20 and that LANGE operates what is commonly referred to as a tank farm and sells SHELL fuels
21 and solvents. On information and belief, PG and E alleges that the business entity known as
22 LANGE was operated as an unincorporated entity for several years prior to being incorporated.
23 As used herein, the term "LANGE" means both the incorporated and the unincorporated form of
24 that business owned, operated, managed, or controlled by defendant John P. Crowston or
25 individuals related to John P. Crowston by blood or by marriage. Prior to the operation of the
26 tank farm by defendant John P. Crowston or individuals related to John P. Crowston by blood or
27 by marriage, the tank farm was operated by SHELL or by deceased individuals known as Jesse
28 M. Lange, Cleo Lange, and Elizabeth Avery. On information and belief, PG and E alleges that

COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF

1 the original tank farm facility was constructed, operated, and maintained by SHELL.

2 7. On information and belief, PG and E alleges that defendant LANGE currently
3 owns real property with improvements thereon commonly known as 11226 Midway, Chico,
4 California, and has owned said property and improvements during a period of time during which
5 SHELL and LANGE conducted operations which form the basis of PG and E's claims.

6 8. On information and belief, PG and E alleges that defendant SHELL has owned
7 that real property with improvements thereon commonly known as 11226 Midway, Chico,
8 California, during a period of time during which SHELL and LANGE conducted operations
9 thereon which form the basis of PG and E's claims.

10 9. On information and belief, PG and E alleges that defendant Center Land
11 Company, Inc., has owned that real property with improvements thereon commonly known as
12 11226 Midway, Chico, California, or portions thereof, during a period of time during which
13 LANGE conducted operations thereon which form the basis of PG and E's claims. On
14 information and belief, PG and E alleges that Center Land Company was a California corporation
15 at the time of its ownership of 11226 Midway, that this business entity subsequently dissolved,
16 and that this business entity's successor-in-interest to its relevant liabilities is defendant Center
17 Land Company of Texas, Inc. On information and belief, PG and E alleges that defendant
18 Michael R. Curry was the President and sole Director of Center Land Co., Inc., and is the
19 President and one of two Directors of Center Land Co. of Texas, Inc. PG and E further alleges on
20 information and belief that Center Land Co., Inc. and Center Land Co. of Texas, Inc., were and
21 are, respectively, wholly dominated and controlled by defendant Michael R. Curry such that
22 Center Land Co., Inc., and Center Land Co. of Texas, Inc. were and are the alter ego of defendant
23 Michael R. Curry and that any individuality and separateness between defendant Curry and these
24 defendant corporations has or have ceased. Adherence to the fiction of the separate existence of
25 the corporations as entities distinct from defendant Curry would permit an abuse of the corporate
26 privilege and would sanction fraud and promote injustice. Further, on information and belief, PG
27 and E alleges that each of the corporations was undercapitalized, failed to observe corporate
28 formalities, and commingled assets with defendant Curry, each being a separate and independent

1 basis for disregarding the fiction of the separate existence of the corporations as entities distinct
2 from defendant Curry.

3 10. On information and belief, PG and E alleges that defendants DOES ONE to
4 THIRTY owned that real property with improvements thereon commonly known as 11226
5 Midway, Chico, California, during a period of time during which SHELL or LANGE conducted
6 operations which form the basis of PG and E's claims.

7 11. On information and belief, PG and E alleges that defendant John P Crowston is a
8 present or former officer and/or a director and/or manager of LANGE with authority to exercise
9 control over the operations of LANGE which form the basis of PG and E's claims, including
10 authority and power to determine whether LANGE obeys orders of regulatory and governmental
11 authorities.

12 12. On information and belief, PG and E alleges that defendant Rebecca Crowston is a
13 present or former officer and/or a director and/or manager of LANGE with authority to exercise
14 control over the operations of LANGE which form the basis of PG and E's claims, including
15 authority and power to determine whether LANGE obeys orders of regulatory and governmental
16 authorities.

17 13. On information and belief, PG and E alleges that defendants DOES THIRTY-ONE
18 to SIXTY are a present or former officer and/or a director and/or operator and/or manager of
19 LANGE with authority to exercise control over the operations of LANGE that form the basis of
20 PG and E's claims.

21 14. On information and belief, PG and E alleges that defendant SHELL is a current or
22 former owner and/or operator of the tank farm at 11226 Midway whose acts, operations,
23 omissions and decisions caused or resulted in releases or discharges which form the basis of PG
24 and E's claims.

25 15. On information and belief, PG and E alleges that defendants DOES SIXTY-ONE
26 to ONE HUNDRED did act or failed to act in a manner that contributed to the release or
27 discharge of the contaminants which form the basis of PG and E's claims, who acted or failed to
28 act in a manner that delayed the implementation of statutory and regulatory obligations to address

1 the release, discharge, characterization, or remediation of the contaminants which form the basis
2 of PG and E's claims, or who acted or failed to act in a manner that was not in conformance with
3 the requirements of regulatory agency orders or directives as noted herein

4 16 The true names of Defendants DOES 1 through 100 are unknown to PG and E at
5 this time. When their identities are ascertained, the complaint shall be amended to reflect their
6 true names.

7 17. Defendants Jesse M. Lange Distributor, Inc., John P. Crowston, Rebecca
8 Crowston, Center Land Co., Inc., Center Land Co. of Texas, Inc., Michael R. Curry, Shell Oil Co.
9 and DOES 1-100 shall herein be referred to as "The Defendants" or "Other Defendants", as the
10 context dictates.

11 18. On information and belief PG and E alleges that each of The Defendants was the
12 agent of the Other Defendants, and that each of The Defendants ratified the acts and omissions of
13 the Other Defendants as set forth herein.

14 FACTS COMMON TO ALL CLAIMS FOR RELIEF

15 19. On information and belief PG and E alleges that since approximately 1922 SHELL
16 and/or LANGE have operated a petroleum and Stoddard solvent bulk storage facility, commonly
17 known as a tank farm, at 11226 Midway, Chico, California. LANGE and SHELL have used an
18 assortment of above-ground and underground storage tanks to store SHELL fuel products and
19 solvents and assorted above-ground and underground piping systems to transfer fuel and solvents
20 between storage containers and delivery vehicles.

21 20. PG and E owns real property with improvements thereon commonly known as
22 11239 Midway, Chico, California. PG and E's property is located across Midway from
23 SHELL's/LANGE's petroleum and Stoddard solvent bulk storage facility.

24 21. In 1995, LANGE reported to the Regional Water Quality Control Board for the
25 Central Valley Region (the "Board") that an unauthorized release of petroleum had occurred at its
26 Midway facility. On direction of the Board, LANGE engaged consultants to evaluate the nature
27 and extent of contamination associated with releases and discharges from SHELL's/LANGE's
28 Midway facility. On information and belief, given the extent of the contaminant plume and the

COMPLAINT FOR DAMAGES AND
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1 quantity of free product found in the groundwater, PG and E avers that the releases and
2 discharges occurred and started many years preceding the report to the Board, and that said
3 releases and discharges continue to this day.

4 22 Investigations conducted by LANGE determined that as a result of the release and
5 discharge of SHELL petroleum from the facility considerable environmental contamination is
6 present in the soil and groundwater underlying SHELL's/LANGE's facility and the adjacent
7 properties. Free floating product ranging in depth from one inch to seven feet has been measured
8 atop the groundwater underlying SHELL's/LANGE's Midway facility. In addition, total
9 petroleum hydrocarbons and MTBE has been measured in groundwater at concentrations as high
10 as 4,000 parts per million.

11 23. All impacted groundwater noted herein is a potential source of drinking water
12 pursuant to California State Water Resources Control Board Resolution Number 88-63.

13 24. Environmental contaminants have migrated from SHELL's/LANGE's facility to
14 beneath PG and E's property on Midway since the flow of groundwater is from 11226 Midway
15 toward the PG and E property. Petroleum hydrocarbon vapors at concentrations as high as 1,535
16 parts per million have been measured in the soil underlying PG and E's property. The source of
17 the vapors is the release and discharge from the SHELL/LANGE facility. The presence of
18 contaminated groundwater beneath PG and E's property and the presence of petroleum
19 hydrocarbon vapors in the soil underlying PG and E's property impair PG and E's use and
20 enjoyment of its property.

21 25. The presence of hydrocarbon vapors in the soil and hydrocarbon contaminants in
22 the groundwater beneath and about the PG and E property constitute both a public and private
23 nuisance.

24 26. By allowing hazardous wastes to accumulate within the soil and in the
25 groundwater underlying the Midway facility, LANGE, SHELL and the Other Defendants have
26 created an unlicensed, unpermitted hazardous waste treatment, storage and disposal facility that
27 constitutes a public nuisance.

28 27. In October, 2003, PG and E and LANGE entered into a license agreement (the

1 “Agreement”) whereby LANGE obtained access to PG and E’s property for the purpose of
2 evaluating and remediating environmental contaminants that had migrated onto PG and E’s
3 property. See Exhibit B. Pursuant to the terms of the Agreement LANGE was to reimburse the
4 cost of PG and E employees who observed the actions of LANGE’s consultants in conducting the
5 work contemplated under the Agreement. To date, LANGE has failed to reimburse PG and E for
6 any of these costs that PG and E has incurred. Further, pursuant to Section 9 of the Agreement,
7 the statute of limitations was tolled until March 30, 2005, for any cause of action for which the
8 statute of limitations had not run as of December 20, 1999.

9 28. In 1999, the Board issued LANGE Cleanup and Abatement Order No. 99-709.
10 Pursuant to the terms of this Order LANGE is required to determine the full extent of
11 environmental contamination associated with its operations conducted at its Midway facility and
12 implement an appropriate remedial strategy for addressing the contamination so defined.
13 LANGE has failed to fulfill the terms of this Order. Specifically, neither LANGE nor the Other
14 Defendants have initiated or completed any of the following activities by the deadline set by the
15 Board, nor have they completed any of these activities as of the date of the filing of this
16 complaint:

- 17 o Implemented a workplan for enhanced free product recovery within 90 days of
18 January 20, 2003.
- 19 o Workplan for soil vapor extraction and vacuum enhanced groundwater pump-and-
20 treat.
 - 21 ▪ Obtain permits. Should have been completed within 25 days of August 13, 2003.
 - 22 ▪ Well installation and trenching. Should have been completed within 15 days of
23 September 17, 2003.
 - 24 ▪ Treatment system installed. Should have been completed within 15 days of
25 October 8, 2003.
 - 26 ▪ Pilot testing of system. Should have been completed within 60 days of October
27 29, 2003.
 - 28 ▪ Preparation of remedial action plan. Should have been completed within 20 days

1 of January 21, 2004.

- 2 o Workplan for in-situ chemical oxidation and bioaugmentation pilot studies, and
3 investigation of the intermediate zone aquifer
- 4 ▪ Project set-up Should have been completed within 70 days of July 16, 2003.
 - 5 ▪ Chemical oxidation pilot study. Should have been completed within 68 days of
6 June 6, 2003.
 - 7 ▪ Bioaugmentation pilot study. Should have been completed within 255 days of
8 July 16, 2003.
 - 9 ▪ Intermediate zone investigation. Should have been completed within 150 days of
10 July 16, 2003.
 - 11 ▪ Report of findings. Should have been completed within 28 days of July 7, 2004.
- 12 o Undertaken quarterly groundwater monitoring, as required, and made timely reports to
13 the Board, as required, since January 30, 2004.
- 14 o On or about November 11, 2004, affirmatively stated to Board staff that they will not
15 undertake or resume any corrective actions at the site even though there are moneys
16 available from a state fund to pay for the requisite activities.

17 29 The Board has not initiated any enforcement action against LANGE or the Other
18 Defendants to compel compliance with Order No. 99-709. On May 17, 2005, the Board did send
19 to LANGE a notice of administrative civil liability complaint seeking a penalty, but has taken no
20 further steps since that date to enforce, administratively or judicially, the complaint, nor has the
21 Board sought to compel LANGE to complete the above noted activities related to the
22 contamination.

23 30. No agency of the State of California or the U.S. Government has initiated any
24 enforcement action to require compliance with Order No. 99-709 or to require the remediation of
25 the contamination resulting from the releases and discharges from the LANGE facility.

26 31. By mailed correspondence dated March 14, 2005, PG and E issued the requisite
27 RCRA notice to the Administrator of the United States Environmental Protection Agency, the
28 Attorney General of the United States, the Board, LANGE, SHELL, other relevant governmental

1 agencies, and the other defendants of its intent to file this action. Because PG and E also brings
 2 this action in the public interest to enforce California's Safe Drinking Water and Toxic
 3 Enforcement Act of 1986 pursuant to Section 25249.5 of the California Health and Safety Code,
 4 PG and E also provided a copy of this notice to the Office of the California Attorney General and
 5 the District Attorney for the County of Butte, California. No public prosecutor or regulatory
 6 agency has brought an action pursuant to Section 25249.5 following receipt of said notice. A
 7 copy of this combined RCRA notice and notice pursuant to § 25249.5 H & S.C. is attached to this
 8 Complaint as Exhibit A. The notice was served by registered mail on SHELL, Center Land Co.,
 9 and Center Land Co. of Texas on March 17, 2005, March 18, 2005, and March 17, 2005,
 10 respectively. The notice was personally served on LANGE on March 18, 2005; on John P
 11 Crowston, March 19, 2005; on Rebecca Crowston, March 19, 2005; and, on Michael Curry,
 12 individually and as President of Center Land Co. and Center Land Co. of Texas, April 12, 2005.

13 FIRST CAUSE OF ACTION

14 (Resource Conservation and Recovery Act: 42 U.S.C. § 6972(a)(1)(A) Against The Defendants)

15 32. PG and E incorporates herein as if stated in full Paragraphs 1 through 31 of this
 16 Complaint.

17 33. 42 U.S.C. section 6972(a)(1)(A) provides that any person may commence a civil
 18 action on his own behalf against any person alleged to be in violation of any permit, standard,
 19 regulation, condition, requirement, prohibition or order which has become effective pursuant to
 20 the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. sections 6901 through 6992k

21 34. On information and belief PG and E alleges that Defendants LANGE, John P.
 22 Crowston, Rebecca Crowston, and DOES THIRTY-ONE TO SIXTY failed to satisfy their
 23 obligations under Order No. 99-709 issued by the Board, or aided and abetted in that failure.
 24 Order No. 99-709 is a "permit, standard, regulation, condition, requirement, prohibition or order"
 25 under RCRA within the meaning of Section 6972(a)(1)(A).

26 35. As a separate and independent basis for relief, on information and belief PG and E
 27 alleges that The Defendants have failed to satisfy their mandatory obligations under 23 C.C.R.
 28 Sections 2720 et seq. which holds that the following Responsible Party is required to address

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1 discharges, releases, and spills such as those upon or about the SHELL/LANGE Midway facility:
2 “(1) Any person who owns or operates an underground storage tank used for the storage of any
3 hazardous substance; (2) In the case of any underground storage tank no longer in use, any person
4 who owned or operated the underground storage tank immediately before the discontinuation of
5 its use; (3) Any owner of property where an unauthorized release of a hazardous substance from
6 an underground storage tank has occurred; and (4) Any person who had or has control over a
7 underground storage tank at the time of or following an unauthorized release of a hazardous
8 substance.” 23 C.C.R. Sections 2720 et seq. are a “permit, standard, regulation, condition,
9 requirement, prohibition or order” under RCRA within the meaning of Section 6972(a)(1)(A).

10 The chemicals at issues herein are hazardous substances within the meaning of 23 C.C.R.

11 Sections 2720 et seq.

12 36. As a separate and independent basis for relief, on information and belief PG and E
13 alleges that the disposal of petroleum products, including without limitation BTEX and MTBE, at
14 SHELL’s/LANGE’s facility constitutes the creation of an unlicensed hazardous waste treatment,
15 storage and disposal (“TSD”) facility in violation of state and federal law. Defendants SHELL,
16 LANGE, John P. Crowston, Rebecca Crowston, and DOES THIRTY-ONE TO SIXTY currently
17 lack and have lacked in the past the requisite federal permits required by 42 U.S.C. Section 6925
18 and 40 C.F.R. Sections 270.1 et seq. Defendants SHELL, LANGE, John P. Crowston, Rebecca
19 Crowston, and DOES THIRTY-ONE TO SIXTY also lacked any state permit even though their
20 business was not exempt from having a state permit. Sections 25200 et seq. H.&S.C.; 22 C.C.R.
21 Section 66270.1. 42 U.S.C. Section 6925, 40 C.F.R. Sections 270.1 et seq., Sections 25200 et
22 seq. H.&S.C., and 22 C.C.R. Section 66270.1 are a “permit, standard, regulation, condition,
23 requirement, prohibition or order” under RCRA within the meaning of Section 6972(a)(1)(A).

24 37. The release and discharge of the SHELL petroleum hydrocarbons stored at the
25 Midway facility constitutes a disposal of both a hazardous and a solid waste as contemplated by
26 RCRA section 6903(3), (5)(B) and (27).

27 38. PG and E therefore seeks injunctive relief in the form of an order compelling the
28 full compliance with Board Order 99-709 and 23 C.C.R. Sections 2720 et seq. by ordering The

1 Defendants to take such measures as are necessary to remove the nuisance posed by the presence
2 of contaminants in the soil and groundwater underlying the Midway properties of LANGE and
3 PG and E and remediate forthwith the impacted groundwater beneath and about these properties.
4 Further, PG and E seeks injunctive relief in the form of an order compelling Defendants SHELL,
5 LANGE, John P. Crowston, Rebecca Crowston, Jesse M. Lange, Cleo L. Lange, Elizabeth Avery
6 and DOES THIRTY-ONE TO SIXTY to take such measures as are necessary to remove the
7 nuisance posed by the presence of contaminants in the soil and groundwater underlying the
8 Midway properties of LANGE and PG and E and remediate forthwith the impacted soil of and
9 groundwater beneath and about these properties that arise from the illegal and unlicensed TSD
10 facility which they have created.

11 39. PG and E seeks an award of reasonable attorneys' fees and costs in the pursuit of
12 this action pursuant to 42 U.S.C. § 6972(e).

13 SECOND CAUSE OF ACTION

14 (Proposition 65 – Safe Drinking Water and Toxic Enforcement Act of 1986 Against Defendants
LANGE, SHELL, Center Land Co., Inc., and Center Land Co. of Texas, Inc.)

15 40. PG and E incorporates herein as if stated in full Paragraphs 1 through 31 of this
16 Complaint.

17 41. On information and belief PG and E alleges that LANGE, SHELL, Center Land
18 Co., Inc., and Center Land Co. of Texas, Inc., are businesses that employ ten or more people.

19 42. Section 25249.5 of the California Health and Safety Code prohibits the knowing
20 discharge of any chemical known to the State of California to cause cancer or reproductive
21 toxicity into water or onto or into land where such chemical passes or probably will pass into any
22 source of drinking water.

23 43. On information and belief PG and E alleges that on or before 1995, Defendants
24 LANGE, SHELL, Center Land Co., Inc., and Center Land Co. of Texas, Inc. knowingly and
25 continuously have discharged and released petroleum products into the soil of the
26 SHELL/LANGE Midway facility where these products are migrating and have migrated through
27 the groundwater and into the soil underlying PG and E's Midway property. The discharged and
28 released petroleum products contain chemicals known to the State of California to cause cancer

1 and/or reproductive harm. These chemicals include, but are not limited to, benzene, toluene, and
2 ethylbenzene

3 44. By the above described acts Defendants LANGE, SHELL, Center Land Co , Inc. ,
4 and Center Land Co. of Texas, Inc. are liable pursuant to Section 25249.7(b) for a civil penalty of
5 \$2,500 per day as a result of the discharge and release of said chemicals into the soil and
6 groundwater underlying the SHELL/LANGE Midway facility. PG and E requests an award of
7 25% of all such penalties pursuant to Section 25192 of the California Health & Safety Code

8 45. PG and E hereby seeks injunctive relief pursuant to Section 25249.7(a) of the
9 California Health and Safety Code in the form of an order that Defendants LANGE, SHELL,
10 Center Land Co , Inc , and Center Land Co. of Texas, Inc. cease all discharges and releases of
11 chemicals known by the State of California to cause cancer or reproductive toxicity, and
12 undertake and affect the immediate characterization and remediation of all such past and present
13 discharges and releases.

14 THIRD CAUSE OF ACTION

15 (Continuing Public Nuisance Against The Defendants)

16 46. PG and E incorporates herein as if stated in full Paragraphs 1 through 31 of this
17 Complaint.

18 47. In discharging petroleum products into the soil and groundwater underlying the
19 SHELL/LANGE Midway facility The Defendants have created a condition that is harmful to
20 health, offensive to the senses, and an obstruction to the free use and enjoyment of property. The
21 Defendants' conduct was unreasonable.

22 48. The pollution created or abetted by The Defendants not only adversely impacts PG
23 and E but also the People of the State of California who own all groundwater, including that
24 underlying SHELL's/LANGE's Midway facility and PG and E's Midway property, pursuant to
25 §§ 102 and 104 Water Code.

26 49. The seriousness of the resulting harm outweighs the social utility of The
27 Defendants' conduct

28 50. PG and E's injury is separate and distinct from that of the public because

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1 contaminants migrating in groundwater have both migrated to the groundwater beneath PG and
2 E's property and have escaped and volatized into the soil of PG and E's property, and separately
3 and independently because PG and E has expended monies to characterize the contamination and
4 oversee the investigative work undertaken by LANGE.

5 51. The pollution causing the continuing nuisance can be abated at a reasonable cost

6 52. PG and E has not consented to the discharge of contaminants into the soil and
7 groundwater underlying SHELL's/LANGE's facility, nor to the migration of said contaminants to
8 the groundwater or soil beneath its property.

9 53. As a proximate cause of the continuing nuisance created by The Defendants, PG
10 and E has incurred costs and suffered damages, and will continue to incur costs and suffer
11 damages until the soil and groundwater underlying SHELL's/LANGE's Midway facility and PG
12 and E's Midway property are remediated.

13 54. PG and E seeks injunctive relief requiring The Defendants to immediately cease
14 all releases and discharges and forthwith remediate the contamination. The continued
15 commission and omissions of the alleged acts by The Defendants will irreparably harm PG and E.
16 PG and E has no speedy or adequate remedy at law for this irreparable harm.

17 55. Because PG and E is in part benefiting the People of the State of California by
18 seeking remediation of groundwater owned by the People, PG and E requests its attorney's fees
19 pursuant to Section 1021.5 C.C.P.

20 FOURTH CAUSE OF ACTION

21 (Continuing Public Nuisance Per Se Against The Defendants)

22 56. PG and E incorporates herein as if stated in full Paragraphs 1 through 31 of this
23 Complaint.

24 57. On information and belief, PG and E alleges that as a result of the acts and
25 omissions of The Defendants the soil and groundwater underlying PG and E's Midway property
26 and SHELL's/LANGE's Midway facility are contaminated.

27 58. The presence of environmental contaminants in the soil and groundwater
28 underlying PG and E's Midway property and SHELL's/LANGE's Midway facility constitutes a

1 continuing public nuisance, as noted in the Third Cause of Action, above.

2 59. PG and E's injury is separate and distinct from that of the public because
3 contaminants migrating in groundwater have both moved to the groundwater beneath PG and E's
4 property and have escaped and volatilized into the soil of PG and E's property, and separately and
5 independently because PG and E has expended monies to characterize the contamination and
6 oversee the investigative work undertaken by LANGE.

7 60. The failure of Defendants LANGE, John P. Crowston, and Rebecca Crowston to
8 comply with the terms of Order No. 99-709, or to aid and abet in the failure to comply therewith,
9 constitutes a violation of the California Water Code and renders the resulting contamination of
10 the groundwater underlying PG and E's Midway property and SHELL's/LANGE's Midway
11 facility a continuing public nuisance per se.

12 61. As a separate and independent basis for this cause of action, the failure of The
13 Defendants to comply with their mandatory obligations pursuant to 23 C.C.R. Sections 2720 et
14 seq., as noted herein, constitutes a violation of the California Water Code and the California
15 Health & Safety Code and renders the resulting contamination of the groundwater underlying and
16 about PG and E's Midway property and SHELL's/LANGE's Midway facility a continuing public
17 nuisance per se.

18 62. As a separate and independent basis for this cause of action, the creation of an
19 unlicensed TSD facility in violation of state and federal law by Defendants SHELL, LANGE,
20 John P. Crowston, Rebecca Crowston, and DOES THIRTY-ONE TO SIXTY renders the
21 resulting contamination of the soil at SHELL's/LANGE's Midway facility and the groundwater
22 underlying and about PG and E's Midway property and SHELL's/LANGE's Midway facility a
23 continuing public nuisance per se.

24 63. The public nuisance condition created by The Defendants can be abated at a
25 reasonable cost.

26 64. As a proximate cause of the continuing public nuisance created by The
27 Defendants, PG and E has incurred costs and suffered damages, and will continue to incur costs
28 and suffer damages until the soil and groundwater underlying SHELL's/LANGE's Midway

1 facility and PG and E's Midway property are remediated.

2 65. PG and E seeks injunctive relief requiring The Defendants to immediately cease
3 all discharges and releases and forthwith remediate the contamination. The continued
4 commission and omissions of the alleged acts by The Defendants will irreparably harm PG and E.
5 PG and E has no speedy or adequate remedy at law for this irreparable harm.

6 66. Because PG and E is in part benefiting the People of the State of California by
7 seeking remediation of groundwater owned by the People, PG and E requests its attorney's fees
8 pursuant to Section 1021.5 C.C.P.

9 **FIFTH CAUSE OF ACTION**

10 (Continuing Private Nuisance Against The Defendants)

11 67. PG and E incorporates herein as if stated in full Paragraphs 1 through 31 of this
12 Complaint

13 68. On information and belief, PG and E alleges that as a result of the acts and
14 omissions of The Defendants the soil and groundwater underlying PG and E's Midway property
15 and SHELL's/LANGE's Midway facility is now contaminated.

16 69. The presence of environmental contaminants in the soil and groundwater
17 underlying PG and E's Midway property and SHELL'S/LANGE's Midway facility constitutes a
18 continuing nuisance in that it is injurious to health, or is indecent or offensive to the senses, or an
19 obstruction to the free use of property so as to interfere with the comfortable enjoyment of life or
20 property.

21 70. The nuisance created by The Defendants is substantial and unreasonably interferes
22 with PG and E's use and enjoyment of its Midway property.

23 71. PG and E's injury is separate and distinct from that of the public because
24 contaminants migrating in groundwater have both moved to the groundwater beneath PG and E's
25 property and have escaped into the soil of PG and E's property, and separately and independently
26 because PG and E has expended monies to characterize the contamination and oversee the
27 investigative work undertaken by LANGE.

28 72. The nuisance condition created by The Defendants can be abated at a reasonable

1 cost.

2 73. As a proximate cause of the continuing nuisance created by The Defendants, PG
3 and E has incurred costs and suffered damages, and will continue to incur costs and suffer
4 damages until the soil and groundwater underlying SHELL's/LANGE's Midway facility and PG
5 and E's Midway property are remediated.

6 74. PG and E seeks injunctive relief requiring The Defendants to immediately cease
7 all discharges and releases and forthwith remediate the contamination. The continued
8 commission and omissions of the alleged acts by The Defendants will irreparably harm PG and E.
9 PG and E has no speedy or adequate remedy at law for this irreparable harm.

10 75. Because PG and E is in part benefiting the People of the State of California by
11 seeking remediation of groundwater owned by the People, PG and E requests its attorney's fees
12 pursuant to Section 1021.5 C.C.P.

13 SIXTH CAUSE OF ACTION

14 (Continuing Trespass Against The Defendants)

15 76. PG and E incorporates herein as if stated in full Paragraphs 1 through 31 of this
16 Complaint.

17 77. The Defendants have no lawful right, authority or consent to dispose or cause the
18 disposal of petroleum products into the soil and groundwater underlying SHELL's/LANGE's
19 Midway facility and into the soil of and groundwater beneath PG and E's Midway property.

20 78. The Defendants, by their wrongful disposal of pollutants into the soil and
21 groundwater underlying SHELL's/LANGE's facility and PG and E's Midway property, and their
22 subsequent continued refusal to promptly and timely remove the pollutants, have unlawfully
23 interfered and continue to interfere with PG and E's exercise of its lawful property rights.

24 79. The pollution caused by the continuing trespass can be abated at a reasonable cost.

25 80. As a proximate cause of The Defendants' trespass, PG and E has incurred costs
26 and suffered damages, and will continue to incur costs and suffer damages until the pollution
27 discharged and released into the soil and groundwater underlying SHELL's/LANGE's facility
28 and PG and E's Midway property is remediated.

1 81. PG and E seeks injunctive relief requiring The Defendants to immediately cease
2 all discharges and forthwith remediate the contamination. The continued commission and
3 omissions of the alleged acts by The Defendants will irreparably harm PG and E. PG and E has
4 no speedy or adequate Remedy at law for this irreparable harm.

5 82. Because PG and E is in part benefiting the People of the State of California by
6 seeking remediation of groundwater owned by the People, PG and E requests its attorney's fees
7 pursuant to Section 1021.5 C.C.P.

8 SEVENTH CAUSE OF ACTION

9 (Negligence Per Se Against The Defendants)

10 83. PG and E incorporates herein as if stated in full Paragraphs 1 through 31, 34, 35
11 and 36 of this Complaint.

12 84. At all times The Defendants had a duty to conduct the operations of
13 SHELL's/LANGE's facility or to oversee the activities of their tenants in such a manner so as to
14 avoid the disposal or release of petroleum products into the soil and groundwater.

15 85. The Defendants knew or should have known that petroleum products were being
16 released, discharged and disposed of in the soil and groundwater underlying LANGE's Midway
17 facility

18 86. The Defendants also had a duty to respond to the resulting contamination and a
19 duty to prevent the further spread or migration of the discharged petroleum products.

20 87. The Defendants failed to satisfy their duties, including without limitation those
21 duties required of them as set forth in Paragraphs Number 28, 34, 35 and 36 above.

22 88. By their acts and omissions, The Defendants also violated California Health and
23 Safety Code Section 5411 which states: "[n]o person shall discharge sewage or other waste, or
24 the effluent of treated sewage or other waste, in any manner which would result in contamination,
25 pollution or a nuisance."

26 89. By their acts and omissions, The Defendants have also violated California Water
27 Code Sections 13304 and 13350 which prohibited LANGE, SHELL and the Other Defendants
28 from causing pollution to the groundwater underlying SHELL's/LANGE's Midway facility and

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1 requires them to take timely action to respond to the pollution they have caused.

2 90. PG and E is among the class of entities for whom the statutes The Defendants
3 violated were intended to protect.

4 91. The damages suffered by PG and E are a result of the statutory violations of The
5 Defendants and the statutes in question were intended to protect against the type of harm that PG
6 and E has suffered

7 92. As a proximate cause of The Defendants' statutory and regulatory violations, PG
8 and E has incurred costs and suffered damages, and will continue to incur costs and suffer
9 damages until the contaminants discharged into the soil and groundwater underlying
10 SHELL's/LANGE's facility and PG and E's Midway property are remediated.

11 93. PG and E seeks injunctive relief requiring The Defendants to immediately cease
12 all discharges and releases and forthwith remediate the contamination. The continued
13 commission and omissions of the alleged acts by The Defendants will irreparably harm PG and E.
14 PG and E has no speedy or adequate remedy at law for this irreparable harm.

15 94. Because PG and E is in part benefiting the People of the State of California by
16 seeking remediation of groundwater owned by the People, PG and E requests its attorney's fees
17 pursuant to Section 1021.5 C.C.P.

18 **EIGHTH CAUSE OF ACTION**

19 (Breach of Contract Against LANGE)

20 95. PG and E incorporates herein as if stated in full Paragraphs 1 through 31 of this
21 Complaint.

22 96. On or about October 6, 2003, LANGE and PG and E entered into a Licensing
23 Agreement (the "Agreement") to facilitate LANGE's investigation and remediation of the
24 environmental contamination of the soil and groundwater resulting from SHELL's and LANGE's
25 discharge of petroleum hydrocarbons at their Midway facility. The Agreement is set forth as
26 Exhibit B.

27 97. Pursuant to the terms of the Agreement, in exchange for access to PG and E's
28 Midway property for the purpose of installing monitoring wells and obtaining environmental

1 samples of soil and groundwater, LANGE agreed to reimburse PG and E for the costs incurred by
2 PG and E to have its employees assigned to observe the on-site actions of LANGE's consultants

3 98. To date, LANGE has failed to reimburse any of the costs incurred by PG and E as
4 contemplated by the Agreement

5 99. LANGE's conduct constitutes a breach of the Agreement.

6 100. As a proximate result of LANGE's breach of the Agreement, PG and E has
7 suffered damages in the form of costs incurred that have not been reimbursed.

8 101. Therefore, PG and E seeks an order that LANGE perform its obligations under the
9 Agreement and reimburse PG and E for the costs incurred by PG and E employees observing the
10 on-site activities of LANGE's consultants.

11 NINTH CAUSE OF ACTION

12 (Violation of California Business and Professions Code Section 17200 et seq. Against The
Defendants)

13 102 PG and E incorporates herein as if stated in full Paragraphs 1 through 101 of this
14 Complaint

15 103. By their release and disposal of SHELL petroleum products into the soil and
16 groundwater underlying SHELL's/LANGE's facility and contamination of PG and E's Midway
17 property, and their failure to timely and properly respond to this contamination, The Defendants
18 have violated California Health and Safety Code Section 5411, Water Code Sections 13304 and
19 13350, Civil Code Section 3479, Health & Safety Code Section 25249.5, and 23 C.C.R. Sections
20 2720 et seq. By their failure to carry out Order No. 99-709 and the requirements of 23 C.C.R.
21 Sections 2720 et seq, The Defendants have violated 42 U.S.C § 6972(a)(1)(A). By their failure
22 to license the TSD facility which they have created, Defendants SHELL, LANGE, John P.
23 Crowston, Rebecca Crowston, and DOES THIRTY-ONE TO SIXTY have violated state and
24 federal law, as noted herein.

25 104. An action for injunctive relief and restitution under the Unfair Competition Act is
26 specifically authorized by Sections 17203 and 17204 of the California Business and Professions
27 Code. PG and E seeks injunctive relief requiring The Defendants to immediately cease all
28 discharges and releases and forthwith remediate the contamination.

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco

1 105. In addition, PG and E, in bringing this action, acts within the public interest for the
2 protection of the citizens of California by seeking injunctive relief for the purpose of preventing
3 The Defendants from discharging and releasing contaminants, polluting soil and groundwater,
4 and failing to remediate their contamination. As such PG and E requests its attorney’s fees
5 pursuant to Section 1021.5 C.C.P.

6 **TENTH CAUSE OF ACTION**

7 (Defective Product Against Defendant SHELL Oil Co.)

8 106. PG and E incorporates herein as if stated in full Paragraphs 1 through 94 of this
9 Complaint.

10 107. On information and belief PG and E alleges that SHELL manufactured the
11 petroleum hydrocarbon products sold to, stored at, and distributed from the Midway facility

12 108. Said petroleum hydrocarbon products were defective at the time of manufacture
13 because they contained Methyl Tertiary Butyl Ether (“MTBE”).

14 109. The presence of MTBE rendered SHELL’s petroleum hydrocarbon products
15 defective at the time they left SHELL’s possession.

16 110. LANGE and the Other Defendants used SHELL’s defective products in a manner
17 that was reasonably foreseeable by SHELL.

18 111. As a result of the foreseeable use of SHELL’s defective product by LANGE and
19 the Other Defendants, MTBE entered the soil and groundwater underlying the 11226 Midway
20 property and the groundwater underlying the 11239 Midway property.

21 112. MTBE is an environmental contaminant of great concern to environmental
22 regulatory agencies because of its toxic properties and its ability to move rapidly through
23 groundwater.

24 113. As a proximate result of SHELL having provided its defective products to the
25 LANGE’s facility, PG and E has suffered harm in the form of the presence of hazardous
26 environmental contaminants, including MTBE, within the soil of and groundwater underlying PG
27 and E’s Midway property. Further, the public has suffered in that groundwater which is the
28 property of the People of the State of California has been adversely impacted.

1 114. The presence of MTBE in SHELL's petroleum hydrocarbon products sold to,
2 stored at, and distributed from the 11226 Midway facility have been a substantial factor in
3 causing the harm suffered by PG and E and the People of the State of California.

4 115. Because PG and E is in part benefiting the People of the State of California by
5 seeking remediation of groundwater owned by the People, PG and E requests its attorney's fees
6 pursuant to Section 1021.5 C.C.P.

7 **ELEVENTH CAUSE OF ACTION**

8 (Declaratory Relief Against The Defendants Pursuant to 28 U.S.C. § 2201 and California Code of
Civil Procedure Section 1060)

9 116. PG and E incorporates herein as if stated in full Paragraphs 1 through 115 of this
10 Complaint.

11 117. An actual controversy has arisen and now exists between PG and E and The
12 Defendants concerning their respective rights and duties in that PG and E contends that The
13 Defendants are responsible for obeying orders of the Board, halting all discharges and releases of
14 contaminants, immediately engaging in remedial activities to clean-up the soil and groundwater
15 contamination which PG and E contends they have created, reimbursing PG and E for its past
16 costs, compensating PG and E for its damages and losses, and paying any and all costs, fines, and
17 penalties imposed on PG and E or any other third party as a result of the contamination. In
18 contrast The Defendants dispute these contentions and contend that they have no duty to obey the
19 orders of the Board, halt discharges and releases, remediate the contamination, reimburse PG and
20 E for its past costs, compensate PG and E for its damages and losses, or pay any costs, fines, and
21 penalties imposed on PG and E or any other third party as a result of the contamination.

22 118. PG and E desires a judicial determination of its rights and duties, and a declaration
23 as to the liability of The Defendants to obey the orders of the Board, halt discharges and releases,
24 remediate the contamination, reimburse PG and E for its past costs, compensate PG and E for its
25 damages and losses, and pay any and all costs, fines, and penalties imposed on PG and E or any
26 other third party as a result of the contamination.

27 119. A judicial determination is appropriate and necessary at this time under the
28 circumstances in order that PG and E may ascertain its rights and duties, be relieved of the

1 financial and other burdens as set forth herein, and receive compensation for the detriment and
2 damages noted.

3 120. Further, PG and E seeks injunctive relief pursuant to 28 U.S.C. § 2202 and §§ 525
4 et seq. C.C.P. PG and E seeks injunctive relief requiring The Defendants to immediately obey the
5 Board's order, and to further cease all discharges and releases and forthwith characterize and
6 remediate the contamination.

7 121. In addition, PG and E, in bringing this action, acts within the public interest for the
8 protection of the citizens of California by seeking injunctive relief for the purpose of preventing
9 The Defendants from discharging contaminants, polluting soil and groundwater, and failing to
10 characterize and remediate their contamination. As such PG and E requests its attorney's fees
11 pursuant to Section 1021.5 C.C.P. and 42 U.S.C. § 6972(e).

12 PRAYER FOR RELIEF

13 Wherefore, PG and E prays for relief against The Defendant as follows:

14 1. With respect to the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth
15 and Eleventh Causes of Action PG and E seeks an Order compelling The Defendants' full
16 compliance with Board Order 99-709 and their obligations under 23 C.C.R. Sections 2720 et seq.,
17 and an order that The Defendants immediately take such measures as are necessary to
18 immediately remove the nuisance posed by the presence of hazardous and solid wastes in the soil
19 and groundwater underlying and about the SHELL/LANGE Midway facility and PG and E
20 property.

21 2. With respect to the Second and Ninth Causes of Action PG and E seeks an order
22 prohibiting all further discharges and releases of chemicals known to the State of California to
23 cause cancer and/or reproductive toxicity, and requiring LANGE, SHELL, Center Land Co., Inc.
24 and Center Land Co. of Texas, Inc. to immediately remediate the contamination that has been
25 caused by their acts and omissions. Further PG and E seeks the imposition of a civil penalty in
26 the amount of \$2,500 per day for each day of discharge and/or release of chemicals for a period of
27 four years. Finally, PG and E seeks an order requiring disgorgement of all monies saved by
28 LANGE, SHELL, Center Land Co., Inc. and Center Land Co. of Texas, Inc. by using PG and E's

1 Midway property and the groundwater of the State of California as a disposal site for their wastes.

2 3. With respect to the Third, Fourth, Fifth, Sixth, Seventh and Eleventh Causes of
3 Action PG and E seeks a determination that The Defendants are responsible and liable for all
4 necessary costs incurred and to be incurred in cleaning up the soil of and groundwater underlying
5 SHELL's/LANGE's Midway facility, the soil and groundwater of PG and E's Midway property,
6 and the groundwater about these properties as a result of the presence of substances released as a
7 result of operations at the SHELL/LANGE facility, and for compensation for all damages
8 suffered by PG and E according to proof.

9 4 With respect to the Eighth Cause of Action PG and E seeks an order compelling
10 LANGE's full compliance with the terms of the License Agreement and the reimbursement of all
11 PG and E employee time consumed in observing the on-site activities of LANGE's consultants
12 conducted pursuant to the terms of the Agreement.

13 5. With respect to the Tenth and Eleventh Causes of Action PG and E seeks a
14 determination that SHELL is responsible and liable for all necessary costs to be incurred in
15 cleaning up the soil and groundwater underlying SHELL's/LANGE's Midway facility, the soil
16 and groundwater underlying PG and E's Midway property, and the groundwater about the
17 properties as a result of the presence of SHELL's defective product, for compensation for all
18 damages suffered by PG and E according to proof, and for an Order requiring SHELL to
19 immediately remediate all contaminants that have impacted groundwater and soil.

20 6. With respect to the Eleventh Cause of Action, PG and E seeks a declaration that
21 The Defendants are both liable and obligated to immediately characterize and remediate the
22 contamination, and are responsible for any and all costs, fines, and penalties imposed on PG and
23 E or any other third party as a result of the contamination.

24 7. With respect to the First and Eleventh Causes of Action, PG and E seeks an award
25 of its attorney's fees and costs pursuant to 42 U.S.C. § 6972(e).

26 8 With respect to the Third through Seventh and Ninth through Eleventh Causes of
27 Action, PG and E seeks an award of its attorney's fees pursuant to Section 1021.5 C.C.P. for
28 providing a public benefit in causing groundwater of the State of California to be remediated.

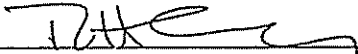
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9. With respect to the Second Cause of Action, pursuant to Section 25192 of the California Health & Safety Code PG and E seeks an award of 25% of any penalty imposed.

10. For such other relief as the Court deems just and proper.

Dated: June 13, 2005

ROPERS, MAJESKI, KOHN & BENTLEY

By: 
THOMAS H. CLARKE, JR.
DENNIS J. BYRNE
Attorneys for Plaintiff
PACIFIC GAS AND ELECTRIC
COMPANY

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco

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Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco

EXHIBIT A:
NOTICE TO THE DEFENDANTS AND GOVERNMENT AGENCIES

SAN FRANCISCO 333 Market Street
Los Angeles Suite 3150
New York San Francisco CA 94105
Redwood City Telephone (415) 543-4800
San Jose Facsimile (415) 274-6301
www.ropers.com

THOMAS H. CLARKE, JR
(415) 274-6387



TCLARKE@ROPER.S COM

**VIA REGISTERED MAIL (RETURN RECEIPT REQUESTED)
OR VIA PERSONAL SERVICE**

**NOTICE OF INTENT PURSUANT TO RESOURCE CONSERVATION AND
RECOVERY ACT (42 U.S.C. SECTION 6972(a)(1)(A)) AND SECTIONS 25249.5 &
25249.7(d) CALIFORNIA HEALTH & SAFETY CODE**

March 14, 2005

John P. Crowston, President
Jesse M. Lange Distributor, Inc.
11226 Midway
Chico, CA 95928

John P. Crowston
988 Palmetto Ave.
Chico, CA 95926-4029

Jesse M. Lange
830 Toyon Way
Chico, CA 95926-4035

Elizabeth N. Avery
114 Terrace Dr.
Chico, CA 95926-1509

President
Center Land Co., Inc.
5100 Underwood Rd.
Pasadena, TX 77507

President
Center Land Co. of Texas, Inc.
5100 Underwood Rd.
Pasadena, TX 77507

Catherine A. Lamboley
Sr. V.P. & General Counsel
Shell Oil Co.
1 Shell Plaza, 910 Louisiana St.
Houston, TX 77002

Rebecca L. Crowston
988 Palmetto Ave.
Chico, CA 95926-4029

Cleo L. Lange
830 Toyon Way
Chico, CA 95926-4035

Michael R. Curry
113 S.E. Citadel Dr.
Lees Summit, MO 64063-3630

President
Center Land Co. of Texas, Inc.
113 S.E. Citadel Dr.
Lees Summit, MO 64063-3630

President
Center Land Co., Inc.
113 S.E. Citadel Dr.
Lees Summit, MO 64063-3630



Cleo L. Lange, Trustee
Jesse Marlin Lange Trusts
830 Toyon Way
Chico, CA 95926-4035

With copies to:

Administrator
U.S. ENVIRONMENTAL PROTECTION
AGENCY
401 M Street, S.W.
Washington, D.C. 20460

Regional Administrator
U.S. ENVIRONMENTAL PROTECTION
AGENCY, Region 9
75 Hawthorne Street
San Francisco, CA 94105

U.S. Attorney General
10 Constitution Boulevard, N.W.
Washington, D.C. 20530

Secretary
CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
1001 I St.
Sacramento, CA 95814

Executive Director
CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL
1001 I St.
Sacramento, CA 95814

Chair
CALIFORNIA STATE WATER
RESOURCES CONTROL BOARD
901 P Street
Sacramento, CA 95814

Executive Officer
REGIONAL WATER QUALITY CONTROL
BOARD
11020 Sun Center Dr., Suite 200
Rancho Cordova, CA 95670-6114

Chairman and Executive Director
CALIFORNIA INTEGRATED WASTE
MANAGEMENT BOARD
1001 I St.
Sacramento, CA 95814

Attorney General
CALIFORNIA STATE ATTORNEY
GENERAL'S OFFICE
1300 I St.
Sacramento, CA 95814

Duty Officer
Department of Toxic Substances Control
Sacramento Regional Office
8800 Cal Center Drive
Sacramento, CA 95826-3268

Michael L. Ramsey
Butte County District Attorney
655 Oleander Avenue
Chico, CA 95926

Principal WRCE
Regional Water Quality Control Board
415 Knollcrest Dr., Suite 100
Redding, CA 96002



Ms. Karen Clementsen
Regional Water Quality Control Board
415 Knollcrest Dr., Suite 100
Redding, CA 96002

Mr. Eric Rapport
Regional Water Quality Control Board
415 Knollcrest Dr., Suite 100
Redding, CA 96002

Re: Jesse M. Lange Distributor Inc.
11226 Midway, Chico, California 95928-8219
42 U.S.C. §6972(a)(1)(A) and Proposition 65

NOTICE IS HEREBY GIVEN that 60 after the date of this notice, PACIFIC GAS and ELECTRIC COMPANY, a California corporation (hereinafter "PG and E"), owner of real property commonly known as 11239 Midway, Chico, California, intends to file suit under the Resource Conservation & Recovery Act ("RCRA"), 42 U.S.C. Section 6972(a)(1)(A), against Jesse M. Lange Distributor, Inc., John P. Crowston, Rebecca Crowston, Jesse M. Lange, Cleo L. Lange, Elizabeth Avery, Jesse Marlin Lange Trusts, Center Land Co., Inc., Center Land Co. of Texas, Inc., Michael R. Curry, and Shell Oil Co. (hereinafter collectively referred to as "The Owner/Operator"). This matter arises from the release of gasoline, including MTBE and BTEX, which have been found in the soil and groundwater on and about the tank farm of Jesse M. Lange Distributor at 11226 Midway, Chico, California ("The Contamination").

The Contamination at 11226 Midway, Chico, California ("The Site") has impacted soil at and groundwater beneath The Site, and groundwater beneath and about the property of PG and E. The Contamination also threatens the beneficial uses of the groundwater and the natural resources beneath and about The Site.

PG and E is informed and believes that The Owner/Operator has owned and operated, at all times relevant, either a tank farm located at The Site or held title to the real property upon which the tank farm is located, or both. The operation of the business has caused releases into the environment that have migrated through the soil profile and into the groundwater on and about The Site; these releases are continuing as of the date of this notice. PG and E is informed and believes that The Owner/Operator engaged in improper storage, use and disposal activities at The Site that allowed the release to occur. Further, PG and E is informed and believes that The Owner/Operator failed to properly construct and maintain its facilities such that releases could occur without being prevented from impacting the environment.

Additionally, PG and E is informed and believes that The Owner/Operator has undertaken neither timely nor appropriate site characterization and closure activities, nor has The Owner/Operator characterized or remedied any contaminant releases or discharges which may have occurred and adversely impacted the soil and groundwater of The Site, or the soil or groundwater of its neighbors, or the groundwater of the State of California (which under state



law is owned by the People of the State of California). These failures are in violation of the mandatory duties of The Owner/Operator under 23 C.C.R. Sections 2720 et seq.; 23 C.C.R. Sections 2720 et seq. are a “permit, standard, regulation, condition, requirement, prohibition or order” under RCRA within the meaning of Section 6972(a)(1)(A). The full and complete extent of these releases and discharges has not yet been determined because of The Owner/Operator’s unreasonable and invalid refusal to undertake appropriate characterization activities.

Additionally, in 1999, the Regional Water Quality Control Board (“Board”) issued to Jesse M. Lange Distributor, Inc. (“LANGE”) Cleanup and Abatement Order No. 99-709. Pursuant to the terms of this Order LANGE is required to determine the full extent of environmental contamination associated with operations conducted at The Site and implement an appropriate remedial strategy for addressing the contamination so defined. LANGE has failed to fulfill the terms of this Order. Specifically, neither LANGE nor any of the other entities noted in this Notice have initiated or completed any of the following activities by the deadline set by the Board, nor have they completed any of these activities as of the date of this Notice:

- Workplan for soil vapor extraction and vacuum enhanced groundwater pump-and-treat.
 - Obtain permits. Should have been completed within 25 days of August 13, 2003.
 - Well installation and trenching. Should have been completed within 15 days of September 17, 2003.
 - Treatment system installed. Should have been completed within 15 days of October 8, 2003.
 - Pilot testing of system. Should have been completed within 60 days of October 29, 2003.
 - Preparation of remedial action plan. Should have been completed within 20 days of January 21, 2004.
- Workplan for in-situ chemical oxidation and bioaugmentation pilot studies, and investigation of the intermediate zone aquifer.
 - Project set-up. Should have been completed within 70 days of July 16, 2003.
 - Chemical oxidation pilot study. Should have been completed within 68 days of June 6, 2003.



- Bioaugmentation pilot study. Should have been completed within 255 days of July 16, 2003.
- Intermediate zone investigation. Should have been completed within 150 days of July 16, 2003.
- Report of findings. Should have been completed within 28 days of July 7, 2004.

Order No. 99-709 is a "permit, standard, regulation, condition, requirement, prohibition or order" under RCRA within the meaning of Section 6972(a)(1)(A). On information and belief PG AND E avers that John and Rebecca Crowston, Jesse and Cleo Lange, Elizabeth Avery, the Jesse Marlin Lange Trusts, Center Land Co., Inc., Center Land Co. of Texas, Inc., Michael R. Curry, and Shell Oil Co. have aided and abetted in the refusal of Jesse M. Lange Distributor Inc. to obey Board Order 99-709.

Accordingly, pursuant to 42 U.S.C. § 6972(a)(1)(A), PG and E will seek judgment requiring The Owner/Operator to undertake all characterization and remedial activities required by Board Order 99-709 and 23 C.C.R. Sections 2720 et seq. In addition, PG and E will seek an injunction pursuant to state and Federal law ordering The Owner/Operator to undertake all further characterization and remediation activities necessary concerning any soil or groundwater contamination at, on, beneath and about The Site.

The Owner/Operator and the federal, state and local governmental entities noticed above are hereby placed on written notice of PG and E's intention to commence suit upon this matter. PG and E's action will seek all statutory, equitable and common law remedies available against The Owner/Operator, including but not limited to those available pursuant to RCRA.

NOTICE IS FURTHER GIVEN that 60 days after the date of this notice, PG and E intends to file suit under California Health & Safety Code §§ 25249.5 & 25249.7(d), against The Owner/Operator. The Contamination at The Site has already impacted groundwater, thereby threatening public sources of drinking water. The following Proposition 65 listed substances have been released from The Site:

- Benzene (CAS# 71432)
- Toluene (CAS# 108883)
- Ethylbenzene (CAS #100414)

The impacted groundwater is located immediately beneath and about The Site. Pursuant to State Water Resource Control Board Resolution 88-63, this aquifer is a presumptive source of drinking



water. Without justification or valid reason, the characterization of The Site and vicinity has not been completed by The Owner/Operator, as noted herein.

Accordingly, pursuant to Health & Safety Code, § 25249.7(b) PG AND E will seek judgment requiring The Owner/Operator to pay civil penalties in the amount of \$2,500 per day for each violation. In addition, PG and E will seek an injunction ordering The Owner/Operator to undertake all further characterization and remediation activities necessary concerning any soil or groundwater contamination at, on, beneath and about The Site.

The Owner/Operator and the state and local governmental entities noticed above are hereby placed on written notice of PG and E's intention to commence suit upon this matter. PG and E's action will seek all statutory, equitable and common law remedies available against The Owner/Operator.

PG and E may be contacted through its counsel, Thomas H. Clarke, Jr., Ropers, Majeski, Kohn & Bentley, 333 Market Street, Suite 3150, San Francisco, California 94105; (415) 543-4800.

Very truly yours,

Thomas H. Clarke, Jr.

THC:njl

EXHIBIT B

LICENSE AGREEMENT BETWEEN PG and E AND LANGE

Ropers Majeski Kohn & Bentley
A Professional Corporation
San Francisco

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**LICENSE AGREEMENT
FOR ENVIRONMENTAL INVESTIGATION ACTIVITIES
AT PG&E's CHICO SERVICE CENTER**

THIS License Agreement is made this 16th day of May, 2002, hereinafter called "the effective date", by and between PACIFIC GAS AND ELECTRIC COMPANY, a California corporation, hereinafter referred to as "PG&E," and, HANOVER INC. and JESSE M. LANGE, INC., hereinafter collectively referred to as "Licensee."

RECITALS:

PG&E owns the real property known as PG&E Chico Service Center, 11239 Midway, Chico, SBE 135-4-46, Parcel No. 2, hereinafter referred to as "the premises", situated in the City of Chico, County of Butte, State of California.

This License Agreement supersedes the License Agreement for Environmental Investigation Activities at PG&E's Chico Service Center, effective December 30, 1999, and the 1st Amendment to License Agreement dated January 24, 2001, both entered into by Hanover Environmental Services, Inc. and PG&E.

HANOVER INC., an environmental consulting company, is the agent for JESSE M. LANGE, INC. JESSE M. LANGE, INC. owns property near the premises identified as 11226 Midway, APN 040-320-007, hereinafter referred to as "the Site". Licensee wishes to continue to conduct environmental activities at the premises for the purpose of investigating, monitoring and remediating subsurface petroleum hydrocarbon contamination which is emanating from the Site.

Licensee has requested permission for Licensee, its agents or contractors to conduct certain environmental investigation, monitoring, and remedial activities on the premises as described hereinafter, and PG&E is willing to give such permission subject to the terms and conditions set forth herein.

PG&E and Licensee agree as follows:

1. ALLOWED USE OF PREMISES:

PG&E hereby gives permission to Licensee, its agents or contractors to enter the premises for the sole purpose of 1) installing two additional groundwater monitoring wells, in the locations and using the procedures described in the Revised Workplan for Additional Field Studies and Interim Remedial Measures, dated February 19, 2002, addendum letter dated March 26, 2002 and ground water sampling letter dated April 12, 1993, attach hereto as Exhibit A; 2) collecting groundwater samples four times per year, from the six wells installed on the premises by Licensee; and 3) maintaining the six groundwater monitoring wells. These activities are hereinafter referred to as "Licensee's activities." Licensee's activities shall be approved by and performed under the oversight of the Regional Water Quality Control Board.

Any other activities by Licensee may not be performed on the premises without a written amendment to this License Agreement.

2. TERM OF USE:

A. Commencement:

Licensee's activities may commence on the premises after it has complied with the following:

At least five days prior to each entry upon the premises, Licensee shall notify Fred Flint, PG&E's Senior Environmental Engineer, at 925-866-5808 in order that a representative of PG&E may be present to observe Licensee's activities to insure safety and protection of PG&E's property or facilities and compliance with the terms and conditions of this License Agreement.

PG&E reserves the right to request Licensee to provide additional information, reports, studies or other documents not included in the workplan.

B. Period of Use:

Licensee's use hereunder shall be for a period of three years from and after the effective date and shall automatically and without further notice or action by PG&E terminate on April 30th, 2005 or upon completion of Licensee's activities, whichever occurs first.

As provided under General Order No. 69-C of the California Public Utilities Commission, PG&E may revoke the permission given herein at will when it determines it is in the best interest of its several patrons or consumers to do so.

3. FEES:

Prior to the installation of the ground monitoring wells designated MW-16B and MW-17, Licensee shall deposit with PG&E at the address set forth herein, the sum of \$2,000.00 which shall be returned to Licensee by PG&E within 30 days of written notification of the proper closure of these groundwater monitoring wells, pursuant to Paragraph 4 described below. In the event Licensee fails to properly close or cap these monitoring wells or fails to restore the premises to its original condition, PG&E may elect to effect such closure and restoration as deemed necessary and utilize the deposit to cover the costs and expenses incurred for such removal or restoration.

In addition, Licensee shall pay to PG&E at the address set forth herein, or at such other place as PG&E shall designate in writing, the sum of \$650.00 due and payable upon delivery.

In addition, Licensee shall pay the cost of a PG&E representative, as may be required by PG&E to insure safety and protection of PG&E property as set forth hereinafter, and the cost of any repairs to any of PG&E's facilities or protection measures required therefor, within thirty (30) days after receipt of PG&E's invoice.

4. TERMINATION:

Upon the termination of this permission, at its sole expense Licensee shall remove all of Licensee's personal property, remove any remaining debris and waste material resulting from Licensee's activities, and restore the premises as nearly as possible to the condition that existed prior to its entry hereunder, including removal of all groundwater monitoring wells in accordance with applicable regulations. Licensee shall bear the entire cost of such removal and restoration, and PG&E shall bear no liability for any costs caused or related to any termination of this license agreement. In the event Licensee fails to remove its personal property or fails to restore the premises, PG&E may elect to remove Licensee's personal property and effect such removal or restoration as necessary and recover such costs and expenses therefor from Licensee.

5. CONDITION OF PREMISES:

Licensee acknowledges that there may be a presence of solid or hazardous wastes, hazardous substances, asbestos, polychlorinated biphenyls (PCBs), special nuclear or byproduct material, radon gas, formaldehyde, lead based paint, other lead contamination, fuel or chemical storage tanks, electric and magnetic fields or other potentially hazardous substances, materials, products or conditions on the premises, hereinafter referred to as "potential environmental hazards." Licensee shall take reasonable precautions to protect its employees, agents and contractors from any risk of harm from potential environmental hazards.

6. LICENSEE'S CONDUCT ON PREMISES:

A. Licensee shall use the premises at its sole risk and expense.

B. Licensee shall comply with all local, state, and federal laws, regulations, rules and orders which pertain or are applicable to the activities of Licensee hereunder including, but not limited to, those laws whether existing or new which relate to the use, storage, handling, treatment, or disposal of hazardous substances, materials or wastes, and those which relate to health, safety, noise, environmental protection, or air and water quality. Licensee shall furnish satisfactory evidence of such compliance upon request by PG&E.

C. Licensee shall notify PG&E in writing within three (3) business days of any investigation, order or enforcement proceeding against Licensee which in any way relates to the premises, the site, or to any suspected contamination on any other land near or adjacent to the premises owned or operated by Licensee. Such notice shall include a complete copy of any order, complaint, agreement, or other document which may have been issued, executed or proposed, whether draft or final.

D. Licensee shall not in any way interfere or permit any interference with the use by PG&E of its property. Interference shall include, but not be limited to, any activity by Licensee that places any of PG&E's gas or electric facilities in violation of any of the provisions of General Order Nos. 95 (Overhead Electric), 112 (Gas), and 128 (Underground Electric) of the Public Utilities Commission of the State of California or to any other applicable provisions of the laws and regulations of the State of California or other governmental agencies under which the operations of utility facilities are controlled or regulated.

E. Licensee shall not erect, handle, or operate any tools, machinery, apparatus, equipment, or materials closer to any of PG&E's high-voltage electric conductors than the minimum clearances set forth in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety; which minimum clearances are incorporated herein by reference; but in no event closer than ten (10) feet to any energized electric conductors or appliances.

F. Licensee shall not drill, bore, or excavate within ten (10) feet of any PG&E underground facility, including, but not limited to, gas pipelines, valves, regulators or electric conduits.

G. In the event PG&E's on-site representative determines that Licensee's activities in any way endanger any of PG&E's property, utility facilities, the environment, or the health and safety of any person or persons, PG&E's representative may, at his/her sole discretion, temporarily halt Licensee's activities until proper and appropriate protective measures may be taken to eliminate such endangerment. Licensee shall hold PG&E harmless from any claims in any way resulting from any delay under this paragraph. PG&E's right to halt activities under this paragraph shall not in any way affect or alter Licensee's obligations under the section designated 8. INDEMNITY, hereinafter, nor shall it relieve Licensee from any of its obligations hereunder that pertain to health, safety, or the protection of the environment.

7. ENVIRONMENTAL REQUIREMENTS:

A. At its sole expense, Licensee shall provide PG&E with copies of the results of all analytical tests, photos, geological logs, and reports generated as the result of Licensee's entry onto the premises as soon as they are available. Licensee shall not share the results of any such tests, photos, logs or reports to any other party or agency unless and until it has first provided PG&E a minimum of five days to review and comment on such information. At PG&E's sole discretion, failure to comply with this provision may result in immediate termination of this License Agreement.

B. Licensee shall replace any contaminated material with clean material meeting PG&E's specifications in the event Licensee excavates or removes any contaminated material while conducting its activities hereunder. Licensee shall be solely responsible for all costs related to the disposal of any soil or other material it excavates or removes hereunder whether or not such soil or other material is contaminated. Licensee shall cover, and store any contaminated material it encounters so as to isolate such contamination from exposure to land, the atmosphere and persons, and Licensee shall properly store and dispose of such contaminated material as required by Law. Licensee shall be responsible for the clean up of any releases of contaminated material and shall immediately report the details of any such releases to PG&E and to the appropriate regulatory agencies as required by Law.

C. PG&E shall have access to the premises and to the specific site locations of Licensee at all times. PG&E may take split samples of any air, soil or groundwater at its sole discretion but at its own expense.

8. INDEMNITY:

Licensee shall release, defend, and indemnify PG&E, its officers, agents and employees against all loss, damage, expense and liability resulting from injury to or death of persons, including, but not limited to, employees of PG&E or Licensee, or injury to property, including, but not limited to, property of PG&E or Licensee, or downtime for the loss of space or equipment, costs for replacement, and any other costs for consequential damages that are in any way related to the work performed by Licensee under this agreement, arising out of or in any way connected with Licensee's use of PG&E's property including any loss, damage, expense or liability caused or contributed to by the negligence, whether active or passive, of PG&E, excepting only such loss, damage, expense or liability as may be caused by the sole negligence or willful misconduct of PG&E. Furthermore, Licensee, its agents and contractors shall defend any suit brought by a third person against PG&E asserting a claim covered by this indemnity. Licensee, its agents and contractors shall pay any costs, including reasonable attorney's fees, that may be incurred by PG&E in enforcing this indemnity. In the event this indemnity is not enforceable, Licensee shall indemnify PG&E to the maximum extent allowed by law. The obligations under this Indemnity provision shall survive the termination or expiration of this License Agreement.

9. TOLLING OF STATUTE OF LIMITATIONS:

Licensee agrees that whatever periods of limitation may be applicable for the filing of any claim, complaint or other proceeding by PG&E against Licensee, for any liability, expense, costs, loss of or damage, injury or death to any person or property, past or future, arising out of or related to contamination of any nature emanating from the Site, which have not already run by December 20th 1999, shall be tolled and shall remain tolled and shall not commence to run again until March 30, 2005.

10. INSURANCE:

Licensee shall maintain in effect during the term of this license insurance as set forth on Exhibit "B," attached hereto and made a part hereof.

11. NOTICES:

Except as otherwise stated in paragraph 2.A., hereinabove, all notices required herein shall be given in writing and delivered personally, or sent by facsimile transmission, certified mail (return receipt requested) of the United States Postal Service, or nationally recognized overnight courier service and addressed as follows:

To PG&E:

Mr. Fred Flint
Pacific Gas and Electric Company
3400 Crow Canyon Rd.
San Ramon, CA 94516
Tel No. 925-866-5808
Fax No. 925-866-5681

Mr. Jim Clawson
Pacific Gas and Electric Company
460 Rio Lindo Avenue
Chico, CA 95926
Tel No. 530-894-4756
Fax No. 530-894-4737

To LICENSEE:

Mr. Dana Brown
Hanover Inc.
56 Hanover Lane, Suite 100
Chico, CA 95973
Tel No. 530-342-1333

Mr. John Crowston
Jesse M. Lange, Inc.
11226 Midway
Chico, CA 95928
Tel No. 530-342-8269

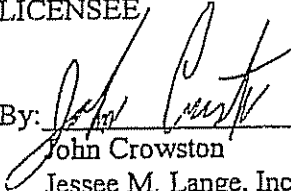
12. NO ASSIGNMENT:

This agreement is personal to Licensee, its agents, contractors or sub-contractors and is not assignable in whole or in part.

THIS AGREEMENT is executed by the parties hereto the day and year first hereinabove set forth.

LICENSEE

PACIFIC GAS AND ELECTRIC COMPANY

By: 
John Crowston
Jesse M. Lange, Inc.

By: 
Lu de Silva
Manager, Land Services

Date: 5-21-02

Date: 5.16.02

By: 
William Bono
Hanover Inc.

Date: 5/22/02

T22N, R1E
Section 36, S2
T21N, R1E
Section 1, N2
MDB&M
SBE 135-04-46, Parcel 2
Aff: 2122-01-2298 & 2306

EXHIBIT "B"

Licensee, shall maintain the following insurance coverage. Licensee is also responsible for its agents and contractors' maintaining sufficient limits of the same insurance coverage.

I. Workers' Compensation and Employers' Liability

A. Workers' Compensation insurance or self-insurance indicating compliance with all applicable labor codes, acts, laws or statutes, state or federal, where Licensee performs work.

B. Employers' Liability insurance shall not be less than \$1,000,000 each accident for injury or death.

II. Commercial General Liability

A. Coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions. Work that involves chemical spraying shall include coverage for pesticide and herbicide application.

B. The limit shall not be less than \$2,000,000 each occurrence for bodily injury, property damage and personal injury.

C. Coverage shall: a) By "Additional Insured" endorsement add as insureds PG&E, its directors, officers, agents and employees with respect to any liability arising out of work performed by or for the Licensee hereunder; b) Be endorsed to specify that the Licensee's insurance is primary and that any insurance or self-insurance maintained by PG&E shall not contribute with it.

III. Business Auto

A. Coverage shall be at least as broad as the Insurance Services Office (ISO) Business Auto Coverage form covering Automobile Liability, code 1 "any auto."

B. The limit shall not be less than \$2,000,000 each accident for bodily injury and property damage.

C. Coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2).

IV. POLLUTION LIABILITY

A. Pollution Liability shall include coverage for sudden and accidental losses.

B. The limit shall not be less than \$5,000,000 each occurrence for bodily injury and property damage.

V. Additional Insurance Provisions

- A. Before commencing performance hereof, Licensee's shall furnish PG&E with certificates of insurance and endorsements of all required insurance for Licensee.
- B. The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written notice has been given to PG&E.
- C. The documentation must be signed by a person authorized by that insurer to bind coverage on its behalf and shall be submitted to: Pacific Gas and Electric Company, Insurance Department - B24H, Post Office Box 770000, San Francisco, CA 94177. A copy of all such insurance documents shall be sent to PG&E's Land Department, Attn. Land Agent, 460 Rio Lindo Avenue, Chico, CA 95926.
- D. PG&E may inspect the original policies or require complete certified copies, at any time.
- E. Upon request, Licensee shall furnish PG&E the same evidence of insurance for its agents or contractors as PG&E requires of Licensee.

Attorney Identification
(include State Bar number)

Attorney(s) for:

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

PACIFIC GAS AND ELECTRIC COMPANY,
Plaintiff(s)

NO. 2:05-CV-01180-DEL-KJM

v.

STIPULATION TO ELECT
REFERRAL OF ACTION TO VOLUNTARY
DISPUTE RESOLUTION PROGRAM (VDRP)
PURSUANT TO LOCAL RULE 16-271

JOHN P. CROWSTON, ET AL.,
Defendant(s)

_____/

Pursuant to Local Rule 16-271, the parties hereby agree to submit the above-entitled action to
the Voluntary Dispute Resolution Program.

DATED: _____

Name:
Attorney(s) for Plaintiff(s)

Name:
Attorney(s) for Defendant(s)

Clarke, Thomas H.

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Wednesday, June 15, 2005 1:30 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:05-cv-01180-DFL-KJM PG&E Company v. Jesse M. Lange Distributor Inc , et al "Receipt"

*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was received from Servantes, G entered on 6/15/2005 at 1:29 PM PDT and filed on 6/15/2005

Case Name: PG&E Company v. Jesse M. Lange Distributor Inc., et al
Case Number: 2:05-cv-1180
Filer:
Document Number:

Docket Text:

RECEIPT number 203 6288 for \$250 for New Case from Ropers Majeski Kohn and Bentley.
(Servantes, G)

The following document(s) are associated with this transaction:

2:05-cv-1180 Notice will be electronically mailed to:

Thomas H Clarke , Jr tclarke@ropers.com,
nlee@ropers.com,jdigiacomo@ropers.com,dbyrne@ropers.com,tanastassiou@ropers.com,mmcpherson@

2:05-cv-1180 Notice will be delivered by other means to:

6/15/2005

Clarke, Thomas H.

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Wednesday, June 15, 2005 1:46 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:05-cv-01180-DFL-KJM PG&E Company v. Jesse M. Lange Distributor Inc., et al
"Civil New Case Documents for DFL"

*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was received from Servantes, G entered on 6/15/2005 at 1:44 PM PDT and filed on 6/15/2005

Case Name: PG&E Company v. Jesse M. Lange Distributor Inc., et al
Case Number: 2:05-cv-1180
Filer:
Document Number: 5

Docket Text:
CIVIL NEW CASE DOCUMENTS ISSUED; (Attachments: # (1) Consent Forms # (2) VDRP Forms)
(Servantes, G)

The following document(s) are associated with this transaction:

2:05-cv-1180 Notice will be electronically mailed to:

Thomas H Clarke tclarke@ropers.com,
nlee@ropers.com,jdigiacomo@ropers.com,dbyrne@ropers.com,tanastassiou@ropers.com,mmcpherson@

2:05-cv-1180 Notice will be delivered by other means to:

6/15/2005

Clarke, Thomas H.

From: caed_cmecf_helpdesk@caed.uscourts.gov
Sent: Wednesday, June 15, 2005 1:44 PM
To: caed_cmecf_nef@caed.uscourts.gov
Subject: Activity in Case 2:05-cv-01180-DFL-KJM PG&E Company v. Jesse M. Lange Distributor Inc., et al
\"Summons\"

*****NOTE TO PUBLIC ACCESS USERS*** You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

U.S. District Court

Eastern District of California - Live System

Notice of Electronic Filing

The following transaction was received from Servantes, G entered on 6/15/2005 at 1:41 PM PDT and filed on 6/15/2005

Case Name: PG&E Company v. Jesse M. Lange Distributor Inc., et al
Case Number: 2:05-cv-1180
Filer:
Document Number: 4

Docket Text:

SUMMONS ISSUED as to *Center Land Company of Texas, Inc., Center Land Company, Inc., Jesse M. Lange Distributor Inc., John P. Crowston, Rebecca Crowston, Michael R. Curry, Shell Oil Company* with answer to complaint due within *20* days. Attorney *Thomas H. Clarke Jr.* *Ropers Majeski Kohn and Bentley* *333 Market Street Suite 3150* *San Francisco, CA 94105*. (Servantes, G)

The following document(s) are associated with this transaction:

2:05-cv-1180 Notice will be electronically mailed to:

Thomas H Clarke tclarke@ropers.com,
nlee@ropers.com,jdigiacomo@ropers.com,dbyrne@ropers.com,tanastassiou@ropers.com,mmcpherson@

2:05-cv-1180 Notice will be delivered by other means to:

6/15/2005

6/15/05

ORDER RE JIRING JOINT STATUS REPORT

Document hosted at JDSUPRA™
<http://www.jdsupra.com/post/documentViewer.aspx?fid=f2390375-2bbe-4cff-a8fd-72bdb90730c9>

Case No.: 2:05-CV-01180-DEL-KJM

PACIFIC GAS AND ELECTRIC COMPANY,

Case Name: V.

JOHN P. CROWSTON, ET AL.,

This action has been assigned to Judge David F. Levi. Pursuant to the provisions of Fed. R. Civ. P. 16 and 26. **IT IS ORDERED THAT:**

1. Plaintiff(s) shall complete service of process on all parties within one hundred twenty (120) days of the date of filing of the complaint.

2. Concurrently with the service of process, or as soon thereafter as possible, plaintiff(s) shall serve upon each of the parties named herein, and upon all parties subsequently joined, a copy of this Order, and shall file with the Clerk a certificate reflecting such service;

3. In the event this action was originally filed in a state court and was thereafter removed to this court, the removing party or parties shall, immediately following such removal serve upon each of the other parties named herein, and upon all parties subsequently joined, a copy of this Order, and shall file with the Clerk a certificate reflecting such service;

4. Within sixty (60) days of service of the complaint on any party, or from the date of removal, the parties shall confer as required by Fed. R. Civ. P. 26(f) and shall prepare and submit to the court a joint status report that includes the Rule 26(f) discovery plan. The status report shall address the following matters:

- a) The nature of the case;
- b) Progress in the service of process;
- c) Possible joinder of additional parties;
- d) Any expected or desired amendment of pleadings;
- e) Jurisdiction and venue;

(CONTINUED)

ORDER REQUIRING JOINT STATUS REPORT – Continued

f) Anticipated motions and the scheduling of motions;

g) Anticipated discovery and the scheduling of discovery, including:

(1) what changes, if any, should be made in the timing, form, or requirement for disclosures under Rule 26(a), including a statement as to when disclosures under Rule 26(a)(1) were made or will be made;

(2) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused upon particular issues;

(3) what changes, if any, should be made in the limitations on discovery imposed under the Civil Rules and what other limitations, if any, should be imposed;

(4) the timing of the disclosure of expert witnesses and information required by Rule 26(a)(2);

h) Future proceedings, including setting appropriate cut-off dates for discovery, law and motion, and the scheduling of pretrial and trial;

i) Appropriateness of special procedures;

j) Estimate of trial time;

k) Modification of standard pretrial procedures specified by the rules due to the relative simplicity or complexity of the action or proceedings;

l) Whether the case is related to any other case, including any matters in bankruptcy;

m) Whether a settlement conference should be scheduled;

n) Any other matters that may add to the just and expeditious disposition of this matter.

5. The Court, upon review of the joint status report may:

a) Issue a scheduling order incorporating the suggestions of counsel as contained in the joint status report; or

b) By minute order, set a status conference to be held either by telephone or in chambers.

(CONTINUED)

ORDER REQUIRING JOINT STATUS REPORT – Continued

6. In cases involving public traded companies, the parties shall request post/documentViewer.aspx?fid=f2390375-2bbe-4cff-a8fd-72bdb90730c9

Judge Levi's recusal list by contacting Harry Vine at (916) 930-4091. In addition, any nongovernmental corporate party to an action assigned to Judge Levi shall file with the joint status report a statement identifying all its parent corporations and listing any publicly held company that owns 10% or more of the party's stock. A party shall supplement the statement within a reasonable time of any change in the information.

DATE: June 15, 2005

DAVID F. LEVI

UNITED STATES DISTRICT JUDGE

by: G. Servantes
Deputy Clerk

NOTICE OF AVAILABILITY OF A MAGISTRATE JUDGE

TO EXERCISE JURISDICTION AND APPEAL INSTRUCTIONS

You are hereby notified in accordance with 28 U.S.C §636(c), F.R.Civ.P.73 and Local Rule 73–305, the United States Magistrate Judges sitting in Sacramento and Fresno are available to exercise the court's case dispositive jurisdiction and to conduct any or all case despositive proceedings in this action, including motions to dismiss, motions for summary judgment, a jury or nonjury trial, and entry of a final judgment. Exercise of this jurisdiction by a Magistrate Judge is however, permitted only if all parties voluntarily consent. You may, without adverse substantive consequences, withhold your consent, but this will prevent the court's case dispositive jurisdiction from being exercised by a Magistrate Judge.

Any appeal from a judgment entered by a Magistrate Judge is taken directly to the United States Court of Appeals for the Ninth Circuit or, where appropriate, for the Federal Circuit in the same manner as an appeal from any other judgment of a District Court.

Whether or not the parties consent to pursuant to 28 U.S.C. § 636(c) the assigned Magistrate Judge will hear all motions except those case dispositive motions set forth in 28 U.S.C. § 636(b)(1)(A).

A copy of the Form for "Consent to / Decline of Jurisdiction of United States Magistrate Judge" is attached hereto for pro per use and attorney information. This form is available in fillable .pdf format on the court's web site at www.caed.uscourts.gov for all attorney ECF filers. This form may be filed through CM/ECF or by pro se litigants at the appropriate Clerk's Office location.

Office of the Clerk
501 I Street, Room 4–200
Sacramento, CA 95814

Office of the Clerk
1130 "O" Street , Room 5000
Fresno, CA 93721

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PACIFIC GAS AND ELECTRIC COMPANY,
Plaintiff(s)/Petitioner(s),

vs.

CASE NO. 2:05-CV-01180-DFL-KJM

JOHN P. CROWSTON, ET AL.,
Defendant(s)/Respondents(s).

IMPORTANT

IF YOU CHOOSE TO CONSENT OR DECLINE TO CONSENT TO JURISDICTION OF A UNITED STATES MAGISTRATE JUDGE, CHECK AND SIGN THE APPROPRIATE SECTION OF THIS FORM AND RETURN IT TO THE CLERK'S OFFICE.

**CONSENT TO JURISDICTION OF
UNITED STATES MAGISTRATE JUDGE**

In accordance with the provisions of Title 28, U.S.C. Sec. 636(c)(1), the undersigned hereby voluntarily consents to have a United States Magistrate Judge conduct all further proceedings in this case, including trial and entry of final judgment, with direct review by the Ninth Circuit Court of Appeals, in the event an appeal is filed.

Date: _____ Signature: _____

Print Name: _____
() Plaintiff/Petitioner () Defendant/Respondent
() Counsel for * _____

**DECLINE OF JURISDICTION OF
UNITED STATES MAGISTRATE JUDGE**

Pursuant to Title 28, U.S.C. Sec 636(c)(2), the undersigned acknowledges the availability of a United States Magistrate Judge but hereby declines to consent.

Date: _____ Signature: _____

Print Name: _____
() Plaintiff/Petitioner () Defendant/Respondent
() Counsel for * _____

**If representing more than one party, counsel must indicate name of each party responding.*

RETURN OF SERVICE

Service of the Summons and complaint was made by me (1)	DATE
NAME OF SERVER (PRINT)	TITLE

Check one box below to indicate appropriate method of service

Served personally upon the defendant. Place where served: _____

Left copies thereof at the defendant's dwelling house or usual place of bode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left: _____

Returned unexecuted: _____

Other (specify) : _____

STATEMENT OF SERVICE FEES

TRAVEL	SERVICES	TOTAL

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on _____ Date _____ *Signature of Server* _____

Address of Server _____