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March 19, 2019

To: Attached Service List

Re: *Fishman v. Tiger Natural Gas Inc.*, Case No. 3:17-cv-05351 WHA (N.D. Cal.)

Dear Sir/Madam:

Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, defendant, Tiger Natural Gas, Inc. ("Defendant"), provides this notice of the proposed class action settlement in the above-referenced matter currently pending in the U.S. District Court for the Northern District of California. The other defendants in this case are John Dyet, an individual, and Community Gas Center Inc., a Colorado corporation.

A motion for preliminary approval of the proposed settlement was filed with the court on January 17, 2019, and the district court granted preliminary approval on February 22, 2019. In compliance with 28 U.S.C. § 1715(b), I have enclosed copies of the following documents:

1. The initial Complaint, its attachments, and any amended complaints accepted for filing (Exs. A-D)¹;
2. The Notice of Pendency of Class Action (Ex. E);
3. Plaintiff's Notice of Motion for Preliminary Approval of Settlement with Defendants, filed on January 17, 2019, with accompanying memorandum in support (Ex. F);
4. The Notice of Class Action Settlement mailed to all class members pursuant to the Preliminary Approval Order (Ex. G);
5. The Order Granting Preliminary Approval of Settlement Agreement and

¹ The Plaintiffs moved to amend their complaint a fourth time but ultimately withdrew that iteration; the Third Amended Complaint (enclosed with this notice) is the final operative complaint.

March 19, 2019

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Directing Notice to Class Members (Ex. H);

With regard to 28 U.S.C. § 1715(b)(2), a hearing to consider whether the class settlement should be given final approval is scheduled for **June 20, 2019, at 11:00 a.m.**

With regard to 28 U.S.C. § 1715(b)(3), class members have a right to seek exclusion from the class until May 9, 2019. Notice was mailed to all class members before March 11, 2019.

With regard to 28 U.S.C. § 1715(b)(4), there is no separate settlement agreement.

With regard to 28 U.S.C. § 1715(b)(5), there has been no separate written settlement or agreement contemporaneously made between class counsel and counsel for defendants. With regard to 28 U.S.C. § 1715(b)(6) and (8), there has been no final judgment or notice of dismissal yet filed relating to the proposed settlement. On February 22, 2019, the Court granted preliminary approval of Defendants' settlement. (Ex. H.)


With regard to 28 U.S.C. § 1715(b)(7), the class consists of 26,637 members, all of whom resided in California during the class period. However, numerous class members have since moved to different states. Under the terms of the settlement, each class member is eligible to receive a payment in the amount of approximately \$90.00; this sum represents the proposed amount of settlement *after* deduction for attorney fees and costs. Enclosed is a table listing the number of class members residing in each state and the estimated proportionate share of the claims of such members to the entire settlement. (Ex. I.).

All pleadings, motions, orders and other filed materials in the matter are available on Pacer at the following link: <https://www.ecf.cand.uscourts.gov>. Class Counsel's Motion for Final Approval of Settlement is due May 16, 2019 and will be available through the same link after it is filed.

Please contact me if you have any questions regarding this notice or require additional information.

Sincerely yours,

HOLLAND & KNIGHT LLP


Leah E. Capritta

LEC:lll
Enclosures

PROOF OF SERVICE TO SERVICE LIST

I am employed in the County of Cook, in the State of Illinois. I am over the age of 18 and not a party to the within action. My business address is 131 S. Dearborn Street, Chicago, Illinois 60603.

On March 19, 2019, I caused the Notification to Appropriate Federal and State Officials, pursuant to 28 U.S.C. § 1715, to be served as follows:

☒ **BY FIRST CLASS MAIL**

Following ordinary business practices, I placed the document for collection and mailing at the offices of Holland & Knight LLP, 131 S. Dearborn Street,, Chicago, Illinois, in a sealed envelope. I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service, and, in the ordinary course of business, such correspondence would be deposited with the United States Postal Service on the day on which it is collected at the business.

The Honorable William Barr U.S. Attorney General Office of the Attorney General 950 Pennsylvania Avenue NW Washington, D.C. 20503	The Honorable Kevin G. Clarkson 1031 W. 4th Avenue, Suite 200 Anchorage, AK 99501-1994
The Honorable Steven Marshall 501 Washington Ave. P.O. Box 300152 Montgomery, AL 36130-0152	The Honorable William Tong 55 Elm St. Hartford, CT 06106
The Honorable Chris Carr 40 Capitol Square, SW Atlanta, GA 30334-1300	The Honorable Clare E. Connors 425 Queen Street Honolulu, HI 96813
The Honorable Tom Miller Hoover State Office Bldg. 1305 E. Walnut Street Des Moines, IA 50319	The Honorable Lawrence Wasden 700 W. Jefferson Street, Suite 210 P.O. Box 83720 Boise, ID 83720-1000
The Honorable Kwame Raoul James R. Thompson Ctr. 100 W. Randolph Street Chicago, IL 60601	The Honorable Curtis T. Hill, Jr. Indiana Government Center South, 5th Floor 302 West Washington Street Indianapolis, IN 46204

The Honorable Andy Beshear 700 Capitol Avenue Capitol Building, Suite 118 Frankfort, KY 40601	The Honorable Maura Healey 1 Ashburton Place Boston, MA 02108-1698
The Honorable Aaron Frey State House Station 6 Augusta, ME 04333	The Honorable Dana Nessel P.O. Box 30212 525 W. Ottawa Street Lansing, MI 48909-0212
The Honorable Keith Ellison State Capital 75 Dr. Martin Luther King, Jr. Blvd., Ste. 102 Saint Paul, MN 55155	The Honorable Eric Schmitt Supreme Ct. Bldg. 207 W. High Street Jefferson City, MO 65101
The Honorable Tim Fox Justice Building 215 N. Sanders Street Helena, MT 59620-1401	The Honorable John Stein Dept. of Justice P.O. Box 629 Raleigh, NC 27602-0629
The Honorable Doug Peterson State Capitol P.O. Box 98920 Lincoln, NE 68509-8920	The Honorable Gordon MacDonald 33 Capitol Street Concord, NH 03301
The Honorable Letitia A. James Office of the Attorney General The Capitol Albany, NY 12224-0341	The Honorable Ellen F. Rosenblum Justice Building 1162 Court Street, NE Salem, OR 97301
The Honorable Peter Neronha 150 S. Main Street Providence, RI 02903	The Honorable Alan Wilson P.O. Box 11549 Columbia, SC 29211-1549
The Honorable Jason Ravnsborg Office of the Attorney General 1302 E Hwy 14, Suite 1 Pierre, SD 57501-8501	The Honorable Herbert H. Slatery III Office of the Attorney General and Reporter P.O. Box 20207 Nashville, TN 37202-0207
The Honorable TJ Donovan Vermont Attorney General's Office 109 State Street Montpelier, VT 05609	The Honorable Bob Ferguson 1125 Washington St SE PO Box 40100 Olympia, WA 98504

The Honorable Josh Kaul Wisconsin Department of Justice P.O. Box 7857 Madison, WI 53707-7857	California Public Utilities Commission 505 Van Ness Avenue San Francisco, CA 94102
Colorado Department of Regulatory Agencies Public Utilities Commission 1560 Broadway, Suite 250 Denver, CO 80202	Oklahoma Corporation Commission P.O. Box 52000 Oklahoma City, OK 73152-2000
Pennsylvania Public Utilities Commission Keystone Building 400 North Street Harrisburg, PA 17120	New Mexico Public Utility Regulation Commission 1120 Paseo De Peralta PERA Building P.O. Box 1269 Santa Fe, NM 87504
Division of Public Utility Regulation P.O. Box 1197 Richmond, Virginia 23218	Maryland Public Service Commission Terry Romine, Executive Secretary William Donald Schaefer Tower 6 St. Paul St., 16th Floor Baltimore, MD 21202
Nevada Public Utilities Commission 1150 E. William Street Carson City, NV 89701-3109	State of Utah Public Service Commission 160 East 300 South Salt Lake City, UT 84111
Arizona Corporation Commission Utilities Division 1200 W. Washington Street Phoenix, Az 85007-2996	Wyoming Public Service Commission Hansen Building 2515 Warren Avenue, Suite 300 Cheyenne, Wyoming 82002
Kansas Corporation Commission 1500 SW Arrowhead Road Topeka, KS 66604-4027	District of Columbia Public Service Commission 1325 G Street N.W., Suite 800 Washington, D.C. 20005
Public Utility Commission of Texas P.O. Box 13326 Austin, TX 78711-3326	Arkansas Public Service Commission P.O. Box 400 Little Rock, Arkansas 72203-0400
Louisiana Public Service Commission Galvez Building, 12th Floor 602 North Fifth Street P.O. Box 91154 Baton Rouge, Louisiana 70821-9154	Mississippi Public Service Commission P.O. Box 1174 Jackson, MS 39215-1174

Ohio Public Utilities Commission 180 East Broad Street Columbus, Ohio 43215	Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850
New Jersey Board of Public Utilities 44 S. Clinton Avenue Trenton, NJ 08625	

I declare under penalty of perjury under the laws of the United States of America that the above is true and correct. Executed on March 19, 2019, at Chicago, Illinois.



A

EXHIBIT A

Daniel L. Balsam (State Bar No. 260423)
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Attorneys for Plaintiffs and the Proposed Class

FILED

AUG 18 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chuls, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN (UNLIMITED JURISDICTION)

EMILY FISHMAN, individually and on
behalf of all others similarly situated;

Plaintiffs,

v.

TIGER NATURAL GAS INC., an Oklahoma
corporation; and
DOES 1-100;

Defendants.

) Case No.:

CIV 1703054

) **CLASS ACTION COMPLAINT FOR**
) **DAMAGES AND INJUNCTIVE RELIEF**

-) 1. BREACH OF ORAL CONTRACT
) 2. VIOLATIONS OF CONSUMERS
) LEGAL REMEDIES ACT (Civ. Code
) § 1770 *et seq.*)
) 3. FRAUD (Civ. Code § 1572)
) 4. NEGLIGENT
) MISREPRESENTATION
) 5. VIOLATIONS OF FALSE
) ADVERTISING LAW (Bus. & Prof.
) Code § 17500 *et seq.*)
) 6. VIOLATIONS OF UNFAIR
) COMPETITION LAW (Bus. & Prof.
) Code § 17200 *et seq.*)
) 7. VIOLATIONS OF CALIFORNIA
) RECORDING LAW (Pen. Code § 632)

) **JURY TRIAL DEMANDED**

COMES NOW PLAINTIFF EMILY FISHMAN and files this Class Action Complaint against TIGER NATURAL GAS INC. *et al* and alleges as follows:

I. NATURE OF THE ACTION

1. This class action arises out of Defendant Tiger Natural Gas Inc.'s ("Tiger") practice of falsely advertising its natural gas price protection program (the "Program") to California consumers.

2. Plaintiff Emily Fishman ("Fishman") brings this class action to recover monetary damages on behalf of herself and a Class defined as *"All California consumers who enrolled in Tiger's natural gas price protection program after receiving advertising (including telemarketing and bill inserts), claiming that the program is free and/or that the program can save consumers money versus their current gas provider's rates due to a rate cap, within: a) one year prior to the filing of this Action or after the filing of this Action for the Recording Law cause of action; b) two years prior to the filing of this Action or after the filing of the Action for the Breach of Oral Contract and Negligent Misrepresentation causes of action; c) within three years prior to the filing of this Action or after the filing of this Action for the Fraud and Consumers Legal Remedies Act causes of action; and/or d) within four years prior to the filing of this Action or after the filing of this Action for the False Advertising Law and Unfair Competition Law causes of action,"* with certain exclusions as described *infra*. Fishman also seeks injunctive relief, punitive damages, attorneys' fees, and costs, pursuant to statute.

II. PARTIES

3. Emily Fishman ("Fishman") is, and was at all relevant times, more than 18 years of age and a resident of Mill Valley, Marin County, California.

4. Tiger Natural Gas Inc. ("Tiger") is, and was at all relevant times, an Oklahoma corporation with a primary place of business in Tulsa, Oklahoma. Tiger has been in business for more than 25 years, supplying natural gas to more than 43,000 customers in more than 20 states. See <http://tigernaturalgas.com/about>. Tiger has been registered with the California Secretary of State to do business in California since 2002.

5. The true names and capacities, whether individual, corporate, associate, representative, alter ego or otherwise, of defendants and/or their alter egos named herein as DOES 1-100

1 inclusive are presently unknown to Plaintiffs at this time, and are therefore sued by such
 2 fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiffs will amend this
 3 Complaint to allege the true names and capacities of DOES 1-100 when the same have been
 4 ascertained. Plaintiffs are further informed and believe and thereon allege that DOES 1-100
 5 were and/or are, in some manner or way, responsible for and liable to Plaintiffs for the events,
 6 happenings, and damages hereinafter set forth below.

7 8 **III. JURISDICTION AND VENUE**

9 6. This California Superior Court has jurisdiction over the Action because: a) Fishman and
 10 the Class are citizens and residents of California; b) Tiger advertised to Fishman and the Class in
 11 California, *see* Code of Civil Procedure § 410.10; c) Fishman's personal damages are less than
 12 \$10,000, but she seeks a permanent injunctive not available in small claims court; d) Fishman
 13 brings this Action on behalf of a Class, and class actions cannot be litigated in small claims
 14 court; and e) Neither Fishman's nor any individual Class member's damages exceed \$75,000.

15 7. Venue is proper in this Court because Tiger's contract with Fishman was to be performed
 16 in Marin County, and Tiger's liability to Fishman arose in Marin County. *See* Code Civ. Proc.
 17 §§ 395, 395.5 and Civ. Code § 1780(d).

18 19 **IV. STATEMENT OF FACTS**

20 8. All allegations in this Complaint are based on information and belief and/or are likely to
 21 have evidentiary support after a reasonable opportunity for further investigation or discovery.
 22 Whenever allegations in this Complaint are contrary or inconsistent, such allegations shall be
 23 deemed alternative.

24 **A. Tiger's Natural Gas Price Protection Program**

25 9. One of Tiger's products is a natural gas price protection program (the "Program"), a
 26 purportedly free plan by which Tiger purportedly charges customers a variable rate for supplying
 27 natural gas, based on the market price, but with a price cap of \$0.69 per therm.¹

28
29
30 ¹ A "therm" – short for 100,000 British Thermal Units – represents the heat energy in natural
 31 gas. Natural gas is typically priced to customers in therms and the volume of gas used appears
 on billing statements in therms. *See* <http://mapawatt.com/2010/02/17/what-therm>.

10. When a customer chooses to purchase or “procure” gas from Tiger, the gas is delivered over existing pipes, e.g., by PG&E. Thus, a customer who buys gas from PG&E has a single line item for “Gas Charges” on his/her utility bill, whereas a customer who buys gas from Tiger has separate line items for “PG&E Gas Delivery Charges” and “Tiger Natural Gas Inc. Gas Procurement Charges.”

B. Tiger Called Fishman to Advertise its Natural Gas Price Protection Program

11. Prior to August 18, 2015, Fishman purchased natural gas from PG&E for home use.

12. On August 18, 2015, Tiger, by its agent/Customer Service Representative (“CSR”) Olivia Brown (“Brown”), called Fishman at her home (landline) telephone number (the “call”). Exhibit A is a transcript of the call and is incorporated in this Statement of Facts as if set forth in full.

Certain parts, including confidential information, are summarized and do not affect this Action.

13. Tiger’s objective in calling Fishman was to solicit her to sign up for the Program and buy Tiger’s natural gas, instead of continuing to buy natural gas from PG&E. Of course, PG&E would continue to deliver the gas.

14. Tiger never asked for Fishman’s consent to record the call. Indeed, Tiger never disclosed that it was recording the call. Fishman first learned that Tiger recorded the call on August 28, 2016.

15. Brown began the call by claiming that she was calling from “Community Gas Center.” Brown did not disclose that she was calling on behalf of Tiger until nearly four minutes into the call.

16. Tiger claimed that it was calling every single PG&E customer to advertise the Program and solicit their business.

17. Tiger admitted on the call that it knew it was advertising to a resident of California.

18. Tiger claimed that an 18.8% price increase for natural gas rates had already begin, and that Fishman would see another 33% increase over the next three years because the California Public Utilities Commission had already processed that request from PG&E.

19. The Public Utilities Commission did not approve a 33% rate increase, as Tiger falsely claimed. In fact, the PUC approved a 27% rate increase.² By misrepresenting the amount by

² Robert Walton, *California PUC Approves Gas Rate Hike for California Utilities and SoCal Gas*, UTILITYDIVE, June 28, 2016, <http://www.utilitydive.com/news/california-puc-approves-gas-rate-hike-for-california-utilities-and-socalgas/421697>.

1 which PG&E could raise its gas prices, Tiger attempted to make its own price cap seem even
2 more beneficial to consumers.

3 20. Tiger claimed that it set up a price protection program, by which it charges customers a
4 variable rate for natural gas based on the market price, with a price cap of 69 cents per therm.

5 21. To provide an example of the purported benefits of the purportedly "great program,"
6 Tiger posited that "Say for instance if PG&E down the line in the next year paid \$1.06 per therm
7 for the gas, you wouldn't be charged \$1.06 per therm for your gas. You would be charged 69
8 cents because it can never go over that price."

9 22. Tiger advised Fishman that "Everything will stay the same with your PG&E utility
10 service. So you'll pay that bill just like you do now."

11 23. Tiger stated several times that the Program was entirely free. Tiger never disclosed any
12 charges for the Program other than for buying the gas itself.

13 24. Tiger had superior knowledge than Fishman did about its own Program.

14 25. During the call on August 18, 2015, Fishman entered into an oral contract with Tiger to
15 buy its gas via the Program in reliance on Tiger's statements during the call. All terms of the
16 contract were stated in that call. *See Exhibit A.*

17 26. Only *after* the sales call concluded, an automated verification system stated that Tiger
18 would mail Fishman a copy of the terms and conditions within three business days. Fishman had
19 no idea what those additional terms might have been when she entered into the oral contract with
20 Tiger. Thus, those additional terms and conditions, provided after the oral contract was made,
21 were not part of the oral contract. *See Civ. Code § 1580.* Fishman does not recall if she ever
22 received the mailed copy of the Program's terms and conditions.

23 27. The automated verification process also stated that "PG&E will continue to deliver your
24 natural gas, send your monthly PG&E bill, and provide the exact same utility service."

25 28. Fishman is informed and believes and thereon alleges that Brown was following a script
26 prepared for her by Tiger (or perhaps Tiger's agent, such as a third-party direct marketing
27 agency) when Brown called her. Fishman is informed and believes and thereon alleges that
28 Brown and Tiger's other CSRs were required to follow that script as closely as possible, with
29 little if any room for deviation or improvisation.

30 29. Fishman is informed and believes and thereon alleges that all Class members received
31 comparable calls based on the same script. Even if every single word were not exactly the same,

1 Fishman is informed and believes and thereon alleges that all of Tiger's CSRs were instructed by
 2 Tiger to communicate, and did communicate, to all Class members that: a) the Program was free;
 3 b) the gas price would be capped at \$0.69 per therm; c) the Program is great; and d) the Program
 4 benefitted customers by capping the price below what PG&E (or their current gas provider)
 5 could possibly charge them, e.g. \$1.06 per therm.

6 30. Brown acted as Tiger's agent, within the scope of her authority, when she called
 7 Fishman. *See* Civ. Code § 2316.

8 31. Even if Brown did not have actual authority to make the claims that she made, Fishman
 9 reasonably believed the Brown had ostensible authority to make those claims on behalf of Tiger.
 10 *See* Civ. Code § 2317.

11 32. Fishman is informed and believes and thereon alleges that Tiger also called customers of
 12 other gas providers in California, not just PG&E.

13 **C. Fishman's Gas Bills Were Far More Expensive With Tiger Than They Would Have**
 14 **Been If She Had Stayed With PG&E**

15 33. Tiger supplied Fishman's natural gas beginning on September 17, 2015, with charges
 16 first appearing on the bill with the statement date of October 22, 2015.

17 34. Fishman is informed and believes and thereon alleges that Tiger did not charge her "a
 18 variable rate based on the market rate" for gas, but rather a rate that was much higher – in some
 19 months, as much as three times higher than PG&E's rate – as shown below.

Statement Date	PG&E Gas (\$/therm)	Tiger Gas (\$/therm)	Difference
10/22/2015	\$ 0.3263	\$ 0.6900	+ 111%
11/24/2015	\$ 0.3553	\$ 0.6900	+ 94%
12/23/2015	\$ 0.3897	\$ 0.6823	+ 75%
1/22/2016	\$ 0.3927	\$ 0.6709	+ 71%
2/24/2016	\$ 0.4058	\$ 0.6555	+ 62%
3/24/2016	\$ 0.2792	\$ 0.5900	+ 111%
4/25/2016	\$ 0.1944	\$ 0.6097	+ 214%
5/24/2016	\$ 0.2517	\$ 0.6513	+ 159%
6/23/2016	\$ 0.2380	\$ 0.6450	+ 171%

26 35. Fishman terminated the oral contract by calling Tiger in May 2016, after realizing that
 27 over nine months of Tiger bills, her gas prices were constantly and significantly higher than they
 28 would have been if she had stayed with PG&E, and the purported cap showed no signs of ever
 29 providing a benefit. The last day on which Tiger supplied Fishman's natural gas was June 15,
 30 2016, on the bill with the statement date of June 23, 2016. Tiger supplied Fishman with natural
 31 gas for 273 days.

36. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, if she had bought PG&E gas, she would have paid \$120.75 for gas procurement (excluding delivery).

37. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid \$233.54 for gas procurement (excluding delivery) – *93% more than PG&E*.

38. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid \$13.65 for Tiger's (undisclosed) \$0.05 daily charge, whereas if she had stayed with PG&E, there would have been *no* daily charges.

39. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid Tiger a total of \$247.19 for gas procurement plus daily charges, *more than double* the \$120.75 that she would have paid to PG&E for gas procurement and no daily charges if she had stayed with PG&E.

Statement Date	PG&E Gas	Tiger Gas + Daily Charge	Difference
10/22/2015	\$ 5.22	\$ 12.49	+ 139%
11/24/2015	\$ 12.08	\$ 25.06	+ 107%
12/23/2015	\$ 23.77	\$ 43.07	+ 81%
1/22/2016	\$ 29.45	\$ 51.82	+ 76%
2/24/2016	\$ 22.32	\$ 37.65	+ 69%
3/24/2016	\$ 10.89	\$ 24.51	+ 125%
4/25/2016	\$ 6.22	\$ 21.01	+ 238%
5/24/2016	\$ 6.04	\$ 17.18	+ 184%
6/23/2016	\$ 4.76	\$ 14.40	+ 203%
Total	\$ 120.75	\$ 247.19	+ 105%

40. Tiger knowingly misrepresented the fundamental value proposition of the Program when it called Fishman by setting up an impossible hypothetical situation, designed to confuse and mislead Fishman. In the nine months Fishman was a Tiger customer, PG&E's gas price ranged from \$0.3263 to \$0.4058 per therm, averaging \$0.3392. So even if PG&E did increase its rate by 33% as Tiger claimed – setting aside the fact that the Public Utilities Commission actually approved a 27% increase, *supra* – that would have been \$0.4511. A 33% increase on the highest month during that nine month period would have been \$0.5397. Thus, when Tiger called Fishman and posited that PG&E could charge its customers \$1.06 per therm (*double* what PG&E could actually charge), that was a deliberate misrepresentation meant to deceive Fishman about Tiger's gas prices, PG&E's possible gas prices, and the relative value of Tiger's Program. Tiger description of the Program as "great" was false because the price cap of \$0.69 per therm had no value whatsoever to Fishman or any other consumer, since PG&E's maximum possible rate –

1 \$0.5397 – was still nowhere close to the cap. And at the same time, Tiger charged significantly
2 more than PG&E charged for gas.

3 **D. Terms and Conditions on Tiger's Website Not Disclosed During the Call are Not**
4 **Binding**

5 41. According to the terms and conditions of the Natural Gas Purchase Agreement on Tiger's
6 website as of June 2016, Tiger states that the agreement was governed by Oklahoma law. But
7 Tiger said nothing about Oklahoma law during the call. Fishman did not know of this purported
8 term before the Parties entered into an oral contract, and never agreed to it. *See* Civ. Code
9 § 1580. Exhibit B is a true and correct copy of Tiger's Natural Gas Purchase Agreement on its
10 website as of June 2016 and is incorporated as if set forth in full in this Statement of Facts.

11 42. According to the terms and conditions of the Natural Gas Purchase Agreement on Tiger's
12 website at the time, in addition to the gas itself, Tiger also charges \$0.05 per day of service. *See*
13 Exhibit B. But Tiger said nothing about a \$0.05 daily charge during the call. Fishman did not
14 know of this purported term before the Parties entered into an oral contract, and never agreed to
15 it. *See* Civ. Code § 1580.

16 43. According to the terms and conditions of the Natural Gas Purchase Agreement on Tiger's
17 website at the time, there is no class action waiver/arbitration provision. *See* Exhibit B. Nor did
18 Tiger say anything about a class action waiver/arbitration provision during the call.

19 **E. Tiger's Website Falsely Claimed That There Were ZERO Complaints Filed with the**
20 **Better Business Bureau**

21 44. According to Tiger's website at the time, there were "ZERO complaints" with the Better
22 Business Bureau. Exhibit C is a true and correct copy of a page from Tiger's website,
23 <http://tigernaturalgas.com/switch-pge-customer-service>, as of July 2016 and is incorporated as if
24 set forth in full in this Statement of Facts.

25 45. According to the Better Business Bureau of Oklahoma's website, there were 20
26 complaints filed within the last three years prior to July 2016. Exhibit D is a true and correct
27 copy of a page from the Oklahoma BBB's website, [http://www.bbb.org/tulsa/business-](http://www.bbb.org/tulsa/business-reviews/natural-gas-companies/tiger-natural-gas-inc-in-tulsa-ok-33000688)
28 [reviews/natural-gas-companies/tiger-natural-gas-inc-in-tulsa-ok-33000688](http://www.bbb.org/tulsa/business-reviews/natural-gas-companies/tiger-natural-gas-inc-in-tulsa-ok-33000688), as of July 2016 and
29 is incorporated as if set forth in full in this Statement of Facts.
30
31

V. CLASS ACTION ALLEGATIONS

46. Fishman brings this Class Action for damages and injunctive relief on behalf of the following class: *"All California consumers who enrolled in Tiger's natural gas price protection program after receiving advertising (including telemarketing and bill inserts), claiming that the program is free and/or that the program can save consumers money versus their current gas provider's rates due to a rate cap, within: a) one year prior to the filing of this Action or after the filing of this Action for the Recording Law cause of action; b) two years prior to the filing of this Action or after the filing of the Action for the Breach of Oral Contract and Negligent Misrepresentation causes of action; c) within three years prior to the filing of this Action or after the filing of this Action for the Fraud and Consumers Legal Remedies Act causes of action; and/or d) within four years prior to the filing of this Action or after the filing of this Action for the False Advertising Law and Unfair Competition Law causes of action."*

47. Excluded from the Class are:

- Defendants' officers, directors, legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns.
- Any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

48. **Numerosity.** The proposed Class is so numerous that individual joinder of all its members is impractical. Due to the nature of the trade and commerce involved, and the fact that Tiger plainly stated that it was calling *all* PG&E customers (and perhaps customers of other gas companies such as Southern California Gas Company), Fishman believes that the total number of Class members is in the thousands and that members of the Class are numerous and geographically dispersed across California. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery.

49. **Commonality.** There is a well-defined community of interest in the questions of law and fact involved affecting the Class and these common questions predominate over any questions that may affect individual Class members. Common questions of fact and law include, but are not limited to, the following:

- a. Did Tiger advertise to Class Members that its natural gas price protection program was free?

- b. Did Tiger charge customers an undisclosed daily charge for participating in its natural gas price protection program?
- c. Did Tiger advertise to Class Members that it priced its gas based on the market rate?
- d. Did Tiger price its gas to Class Members far higher than the market rate?
- e. Did Tiger advertise to Class Members that the natural gas price protection program was a great program because it capped gas prices at a price below what PG&E (or another utility) could charge?
- f. Was the Tiger natural gas price protection program's price cap higher than what other utilities could have charged customers during the three year term of the customers' oral contract to buy Tiger gas, such that the price cap provided no benefit?

50. **Typicality.** Fishman's claims are typical of the claims of the members of the Class. Fishman and all members of the Class have been similarly affected by Tiger's common course of conduct since they all received the same advertising and: a) They were assessed with daily charges; b) The rate they paid for gas was far above the market rate; c) The price cap had no benefit or value because it was set higher than what the Class members' former utility could have charged them; d) They relied on Tiger's claims when they entered into oral contracts with Tiger; and e) Tiger knew at the time it advertised to Class members that its claims were not true.

51. **Adequacy.** Fishman will fairly and adequately represent and protect the interests of the Class. Fishman has no interests adverse to that of the Class. Fishman has retained counsel with substantial experience in handling complex multi-party litigation and prosecuting false advertising consumer actions. Fishman and her counsel are committed to vigorously prosecuting this Action on behalf of the Class.

52. **Superiority.** A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impractical. Even if individual class members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Tiger's common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all class members' claims in a single forum. The

1 conduct of this action as a class action conserves the resources of the parties and of the judicial
 2 system and protects the rights of the class members. Furthermore, for many, if not most, a class
 3 action is the only feasible mechanism that allows an opportunity for legal redress and justice.
 4 Adjudication of individual class members' claims with respect to Tiger would, as a practical
 5 matter, be dispositive of the interests of other members not parties to the adjudication, and could
 6 substantially impair or impede the ability of other class members to protect their interests.

7 8 FIRST CAUSE OF ACTION

9 [Breach of Oral Contract, Civ. Code § 1622]
 10 (By All Plaintiffs Whom Tiger Called Two Years Or Less Before this Action was Filed)
 11 (Against All Defendants)

12 53. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

13 54. Fishman brings this Action within two years of Tiger calling her to advertise the
 14 Program. *See* Code Civ. Proc. § 339.

15 55. Fishman and the Class on the one hand, and Tiger on the other hand, entered into oral
 16 contracts by which Plaintiffs agreed to participate in Tiger's natural gas price protection program
 17 and buy natural gas from Tiger. *See* Civ. Code § 1622.

18 56. By the terms of the contracts, Tiger offered Fishman and the Class a great Program
 19 because it was free, and gas was priced based on the market price, and the price cap was a
 20 consumer benefit because Plaintiffs' former utilities could charge more than that cap.

21 57. Fishman and the Class did all, or substantially all, of the significant things that the
 22 contract required, namely, pay for the gas.

23 58. All conditions required by the contracts for Tiger's performance had occurred.

24 59. Tiger breached the contracts by charging Fishman and the Class a daily charge of \$0.05
 25 in addition to the gas for participating in the Program, even though Tiger advertised the Program
 26 as free.

27 60. Tiger breached the contracts by charging Fishman and the Class prices not based on the
 28 market rate, and far more than the market rate. For example, even as PG&E's rates dropped by
 29 52% from February to April 2016 (\$0.4058 to \$0.1944/therm), Tiger's rates dropped by only 7%
 30 (\$0.6555 to \$0.6097).

1 61. Tiger breached its promises by failing to deliver any consumer benefits via the price cap,
2 in that the price cap was above what Fishman and the Class's former utilities could and did
3 charge for gas.

4 62. Fishman and the Class were harmed by Tiger's breach of contract.

5
6 WHEREFORE, Fishman and the Class pray for judgment against Defendants as hereinafter set
7 forth.

8
9 **SECOND CAUSE OF ACTION**

10 **[Violations of Consumers Legal Remedies Act, Civil Code § 1770 *et seq.*]**
11 **(By All Plaintiffs Whom Tiger Called Three Years Or Less Before this Action was Filed)**
12 **(Against All Defendants)**

13 63. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

14 64. Fishman brings this Action within three years of Tiger calling her to advertise the
15 Program. *See* Civ. Code § 1783.

16 65. The Consumers Legal Remedies Act ("CLRA") "shall be liberally construed and applied
17 to promote its underlying purposes, which are to protect consumers against unfair and deceptive
18 business practices and to provide efficient and economical procedures to secure such protection."
19 *See* Civ. Code § 1760.

20 66. Fishman and the Class members are "consumers" because each is an "individual who
21 seeks or acquires, by purchase or lease, any goods or services for personal, family, or household
22 purposes." *See* Civ. Code § 1761(d).

23 67. Tiger's natural gas is a "good" because it is a "tangible chattel bought [] for use
24 primarily for personal, family, or household purposes []." *See* Civ. Code § 1761(a).

25 68. Fishman and the Class members' dealings with Tiger to purchase its gas are
26 "transactions" because they are "agreement[s] between a consumer and any other person,
27 whether or not the agreement is a contract enforceable by action, and includes the making of, and
28 the performance pursuant to, that agreement." *See* Civ. Code § 1761(e).

29 69. The CLRA prohibits various "unfair methods of competition and unfair or deceptive acts
30 or practices undertaken by any person in a transaction intended to result or which results in the
31 sale or lease of goods or services to any consumer." *See* Civ. Code § 1770(a).

70. Tiger violated Section 1770(a)(1) ("Passing off goods or services as those of another"), 1770(a)(2) ("Misrepresenting the source, sponsorship, approval, or certification of goods or services") and (a)(3) ("Misrepresenting the affiliation, connection, or association with, or certification by, another") by claiming at the outset of the call to Fishman and the Class that its agent was calling on behalf of "Community Gas Center," which implies a neutral community organization, as opposed to a for-profit entity that competes with her established gas provider.

71. Tiger violated Section 1770(a)(5) ("Representing that goods or services have characteristics [or] benefits [] which they do not have") and Section 1770(a)(9) ("Advertising goods or services with intent not to sell them as advertised") by advertising to Fishman and the Class a "price protection" program that would purportedly cap gas prices at a rate lower than PG&E's rate, despite knowing that PG&E's rates would not be more expensive than Tiger's cap of \$0.69 during the next three years, and claiming that the cap of \$0.69 per therm has financial benefits versus PG&E gas.

72. Tiger violated Section 1770(a)(8) ("Disparaging the goods, services, or business of another by false or misleading representation of fact") by knowingly falsely claiming to Fishman and the Class that PG&E could charge \$1.06 per therm, twice the possible rate even assuming a 33% rate increase.

73. Tiger violated Section 1770(a)(5) ("Representing that goods or services have characteristics [or] benefits [] which they do not have") and Section 1770(a)(9) ("Advertising goods or services with intent not to sell them as advertised") by advertising to Fishman and the Class that its price protection program as free when in fact Tiger charges \$0.05 per day.

74. Tiger violated Section 1770(a)(2) ("Misrepresenting the source, sponsorship, approval, or certification of goods or services") and (a)(3) ("Misrepresenting the affiliation, connection, or association with, or certification by, another") by falsely claiming on its website that there had been ZERO complaints against Tiger with the Better Business Bureau (emphasis in original), *see Exhibit C*, thereby asserting absolute approval by the BBB, when in fact there had been 20 complaints filed against Tiger with the BBB of Eastern Oklahoma in the three years prior to July 8, 2016, only four of which had been resolved to the complainant's satisfaction, *see Exhibit D*.

75. Fishman sent a letter to Tiger by certified return-receipt mail on June 22, 2017, as required by Civil Code § 1782, demanding that Tiger immediately correct its unlawful marketing practices, including but not limited to: a) disclosing on its website and in all forms of advertising

1 (including telemarketing) that Tiger does not base its gas procurement prices on market rates; b)
2 disclosing on its website and in all forms of advertising (including telemarketing) that Tiger's
3 purported "cap" on gas procurement will not actually result in a lower price to consumers than
4 their current gas provider would charge; c) disclosing the \$0.05 daily customer charge on its
5 website and in all forms of advertising (including telemarketing); and d) removing all claims
6 from its website that there have been no complaints filed against Tiger with the Better Business
7 Bureau.

8 76. Fishman also demanded in her June 22, 2017 letter that Tiger notify her within 30 days
9 from its receipt of the letter that: a) Tiger had identified all similarly situated consumers (i.e.,
10 consumers who in the last three years agreed to purchase Tiger gas in reliance on claims that
11 Tiger's price cap could result in lower rates than PG&E, and consumers who in the last three
12 years agreed to enroll in Tiger's price protection program based on claims that the Program was
13 free); b) notified those consumers that Tiger is correcting its unlawful advertising practices; and
14 c) notified those consumers that upon their request, Tiger would reimburse all monies they paid
15 for Tiger gas in excess of PG&E's price for each month during which they were Tiger
16 customers, plus \$0.05 per day for each day that they were Tiger customers.

17 77. Tiger's response was due on June 22, 2017 plus 30 days plus five days for mailing in-
18 state, or July 27, 2017. Tiger did not provide a code-compliant response to Fishman's letter by
19 July 27, 2017 as required by Civil Code § 1782. In fact, Fishman had not received *any* response
20 as of the filing of this Action.

21 78. Tiger's violations of Civil Code § 1770 damaged Fishman and the Class. Section 1780
22 authorizes remedies of actual damages, injunctive relief, punitive damages, costs, and attorneys'
23 fees. Section 1781 allows Fishman to bring this lawsuit as a class action.

24
25 WHEREFORE, Fishman and the Class pray for judgment against Defendants as hereinafter set
26 forth.

27 //

28 //

29 //

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31 //

THIRD CAUSE OF ACTION

[Fraud, Civil Code § 1572]

**(By All Plaintiffs Whom Tiger Called Three Years Or Fewer Before this Action was Filed)
(Against All Defendants)**

79. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

80. Fishman brings this Action within three years of Tiger calling her to advertise its natural gas price protection program. *See* Code Civ. Proc. § 338(d).

81. Tiger, by its agents, represented to Fishman and the Class via telemarketing, bill inserts, and/or other forms of advertising that the Program was great because it was free, its gas price was based on market price, and the price cap delivered consumer benefits because the current utility could raise its prices to a price higher than the Program's cap. Specifically, Tiger made a false claim to Fishman when it stated as a fact that PG&E could raise its gas price to \$1.06 per therm within the next year. Tiger made this false claim in order to make its price cap of \$0.69 appear to deliver a consumer benefit, when in fact the price cap had no such benefit at all.

82. Tiger knew the representation that the Program was free was false.

83. Tiger knew that its representation that as part of the Program, it charged customers for gas based on the market price, was false.

84. Tiger knew that its representation that the Program's price cap delivered consumer benefits was false.

85. Tiger knew that its representations that PG&E would be raising its rates by 33%, and PG&E could charge customers \$1.06 per therm within the next year, was false.

86. Tiger knew that the representation that the Program was great for consumers was false.

87. Tiger knew the representations were false when its agents made such representations, and that its agents made such representations recklessly and without regard for the truth.

88. Tiger intended that Fishman and the Class rely on its representations.

89. Fishman and the Class reasonably relied on Tiger's representations.

90. Fishman and the Class were harmed by relying on Tiger's representations.

91. Fishman and the Class's reliance on Tigers' representations was a substantial factor in causing their harm.

1 WHEREFORE, Fishman and the Class pray for judgment against Defendants as hereinafter set
2 forth.

3
4 **FOURTH CAUSE OF ACTION**

5 **[Negligent Misrepresentation, Civil Code §§ 1573, 1577]**
6 **(By All Plaintiffs Whom Tiger Called Two Years Or Less Before this Action was Filed)**
7 **(Against All Defendants)**

8 92. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

9 93. Fishman brings this Action within two years of Tiger calling her to advertise its natural
10 gas price protection program. *See* Code Civ. Proc. § 338(d).

11 94. Tiger, by its agents, represented to Fishman and the Class via telemarketing, bill inserts,
12 and/or other forms of advertising important facts such as that the Program was great because it
13 was free, its gas price was based on market price, and the price cap delivered consumer benefits
14 because the current utility could raise its prices to a price higher than the Program's cap.
15 Specifically, Tiger made a false claim to Fishman when it stated as a fact that PG&E could raise
16 its gas price to \$1.06 per therm within the next year. Tiger made this false claim in order to
17 make its price cap of \$0.69 appear to deliver a consumer benefit, when in fact the price cap had
18 no such benefit at all.

19 95. Tiger's representation that the Program was free was not true.

20 96. Tiger's representation that as part of the Program, it charged customers for gas based on
21 the market price, was not true.

22 97. Tiger's representation that the Program's price cap delivered consumer benefits was not
23 true.

24 98. Tiger's representations that PG&E would be raising its rates by 33%, and PG&E could
25 charge customers \$1.06 per therm within the next year, were not true.

26 99. Tiger's representation that the Program was great for consumers was not true.

27 100. Although Tiger and its agents may have honestly believed that the above representations
28 were true, Tiger and its agents had no reasonable grounds for believing that the above
29 representations were true when they made the representations.

30 101. Tiger intended that Fishman and the Class rely on its representations.

31 102. Fishman and the Class reasonably relied on Tiger's representations.

1 103. Fishman and the Class were harmed by relying on Tiger's representations.

2 104. Fishman and the Class's reliance on Tigers' representations was a substantial factor in
3 causing their harm.

4
5 WHEREFORE, Fishman and the Class pray for judgment against Defendants as hereinafter set
6 forth.

7
8 **FIFTH CAUSE OF ACTION**

9 **[Violations of False Advertising Law, Business & Professions Code § 17500 *et seq.*]**
10 **(By All Plaintiffs Whom Tiger Called Four Years Or Less Before this Action was Filed)**
11 **(Against All Defendants)**

12 105. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

13 106. Fishman brings this Action within four years of Tiger calling her to advertise its natural
14 gas price protection program. *See* Bus. & Prof. Code § 17208.

15 107. Fishman has standing to bring claims under Business & Professions Code § 17500 *et seq.*
16 because she suffered injury in fact and lost money as the result of Tiger's false advertising, *see*
17 Bus. & Prof. Code § 17204, as described below.

18 108. Business & Professions Code § 17500 states:

19 It is unlawful for any person, firm, corporation or association, or any employee
20 thereof with intent directly or indirectly to dispose of real or personal property or
21 to perform services, professional or otherwise, or anything of any nature
22 whatsoever or *to induce the public to enter into any obligation* relating thereto, to
23 make or disseminate or cause to be made or disseminated before the public in this
24 state, or to make or disseminate or cause to be made or disseminated from this
25 state before the public in any state, in any newspaper or other publication, or any
26 advertising device, or by public outcry or proclamation, or in any other manner or
27 means whatever, including over the Internet, any statement, *concerning that real*
28 *or personal property or those services, professional or otherwise, or concerning*
29 *any circumstance or matter of fact connected with the proposed performance or*
30 *disposition thereof, which is untrue or misleading, and which is known, or which*
31 *by the exercise of reasonable care should be known, to be untrue or misleading,*
or for any person, firm, or corporation to so make or disseminate or cause to be so
made or disseminated any such statement as part of a plan or scheme with the
intent not to sell that personal property or those services, professional or
otherwise, so advertised at the price stated therein, or as so advertised. Any
violation of the provisions of this section is a misdemeanor punishable by
imprisonment in the county jail not exceeding six months, or by a fine not

1 exceeding two thousand five hundred dollars (\$2,500), or by both that
2 imprisonment and fine [emphasis added].

3 109. Tiger falsely claimed in its telemarketing call to Fishman and the Class that its natural
4 gas price protection program was great because: a) it was free; b) gas prices were based on
5 market prices; and c) gas prices were capped at a rate below which PG&E could charge her for
6 gas.

7 110. Tiger's claims were false because: a) Fishman and the Class were charged \$0.05 per day
8 to participate in the Program in addition to the cost of the gas; b) Tiger's gas prices were not
9 based on market prices but were actually much higher; and c) Tiger set up a hypothetical – and
10 impossible – scenario in which PG&E could charge Fishman \$1.06 per therm for gas within a
11 year, so Tiger's \$0.69 per therm price delivered consumer benefits, when in truth PG&E could
12 not charge anywhere near \$0.69 per therm, so the price cap had no benefit whatsoever.

13 111. Business & Professions Code § 17500.3 states:

14 It is unlawful for any person³ to solicit a sale or order for sale of goods or services
15 at the residence of a prospective buyer, in person or by means of telephone,
16 without clearly, affirmatively and expressly revealing at the time the person
17 initially contacts the prospective buyer, *and before making any other statement,*
18 *except a greeting, or asking the prospective buyer any other questions, that the*
19 *purpose of the contact is to effect a sale,* by doing all of the following:

18 (1) Stating the identity of the person making the solicitation.

19 (2) *Stating the trade name of the person represented by the person making the*
20 *solicitation.*

20 (3) Stating the kind of goods or services being offered for sale [emphasis added].

21 112. The first thing Tiger's CSR did after Fishman answered the phone was to provide her
22 [first] name: Olivia.

23 113. However, Brown did not identify Tiger before making any other statement except
24 greeting or asking Fishman any other questions. Instead, she claimed she was calling from
25 "Community Gas Center," which a reasonable consumer might believe to be a non-profit
26 organization, and has no obvious connection to Tiger.

27 114. Business & Professions Code § 17508 states:

28 (a) It shall be unlawful for any person doing business in California and
29 advertising to consumers in California to make *any false or misleading*
30 *advertising claim,* including claims that (1) purport to be based on factual,

31 ³ "As used in this chapter, 'person' includes any individual, partnership, firm, association, or
corporation." Bus. & Prof. Code § 17506.

1 objective, or clinical evidence, (2) compare the product's effectiveness or safety
2 to that of other brands or products, or (3) *purport to be based on any fact*
3 [emphasis added].

4 115. Tiger made a false claim to Fishman and the Class when it presented as a fact that PG&E
5 could raise its gas price to \$1.06 per therm within the next year. Tiger made this false claim in
6 order to make its price cap of \$0.69 per therm appear to deliver a consumer benefit, when in fact
7 the price cap had no such benefit because PG&E could not charge \$1.06 per therm, or any
8 amount higher than \$0.69 per therm.

9 116. Fishman and the Class were harmed by relying on Tiger's representations.

10 WHEREFORE, Fishman and the Class pray for judgment against Defendants as hereinafter set
11 forth.

12
13 **SIXTH CAUSE OF ACTION**

14 **[Violations of Unfair Competition Law, Business & Professions Code § 17200 *et seq.*]**
15 **(By All Plaintiffs Whom Tiger Called Four Years Or Less Before this Action was Filed)**
16 **(Against All Defendants)**

17 117. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

18 118. Fishman brings this Action within four years of Tiger calling her to advertise its natural
19 gas price protection program. *See* Bus. & Prof. Code § 17208.

20 119. Business & Professions Code § 17200 states:

21 As used in this chapter, unfair competition shall mean and include any unlawful,
22 unfair or fraudulent business act or practice and unfair, deceptive, untrue or
23 misleading advertising and any act prohibited by Chapter 1 (commencing with
24 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

25 120. Fishman and the Class have standing to bring claims under Business & Professions Code
26 § 17200 *et seq.* because they all lost money as the direct result of Tiger's false advertising. *See*
27 Bus. & Prof. Code § 17204.

28 121. Tiger's breach of oral contract, violations of the Consumer Legal Remedies Act (Civ.
29 Code § 1770 *et seq.*), fraud, negligent misrepresentation, and violations of the False Advertising
30 Law (Bus. & Prof. Code § 17500 *et seq.*) all serve as predicate actions constituting unfair
31 competition.

1 WHEREFORE, Fishman and the Class pray for judgment against Defendants as hereinafter set
2 forth.

3
4 **SEVENTH CAUSE OF ACTION**

5 **[Violations of California Recording Law, Penal Code § 632 *et seq.*]**
6 **(By All Plaintiffs Who Learned that Tiger Recorded its Calls to Them One Year Or Less**
7 **Before this Action was Filed, or After this Action was Filed)**
8 **(Against All Defendants)**

9 122. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

10 123. Fishman brings this Action within one year of learning that Tiger recorded its call to her.
11 *See* Code Civ. Proc. § 340.

12 124. Fishman is informed and believes and thereon alleges that other Class members do not
13 know, even as of the filing of this Action, that Tiger's calls to them were being recorded, so the
14 statute of limitations had not even started to run for the other Class members as of the filing of
15 this Action.

16 125. Penal Code § 632(a) prohibits:

17 A person [from] intentionally and without the consent of all parties to a
18 confidential communication, [using] an electronic amplifying or recording device
19 to eavesdrop upon or record the confidential communication, whether the
20 communication is carried on among the parties in the presence of one another or
21 by means of a telegraph, telephone, or other device, except a radio . . .

22 126. Penal Code § 632(c) states that a:

23 "confidential communication" means any communication carried on in
24 circumstances as may reasonably indicate that any party to the communication
25 desires it to be confined to the parties thereto, but excludes a communication
26 made in a public gathering or in any legislative, judicial, executive, or
27 administrative proceeding open to the public, or in any other circumstance in
28 which the parties to the communication may reasonably expect that the
29 communication may be overheard or recorded.

30 127. Tiger's calls to Fishman and the Class were objectively confidential communications
31 because a reasonable consumer would expect that communications involving his or her home
address and PG&E account number – which Fishman disclosed during the call but are redacted
from Exhibit A – would be confined to the parties to the call.

128. Tiger's call to Fishman was not made in any kind of public setting.

1 129. Neither Fishman nor a reasonable consumer would reasonably expect that Tiger's sales
2 call was being recorded precisely because so many other telemarketers *do* disclose that calls are
3 being recorded.

4 130. To the extent that Tiger may have called any Class members on cellular telephones, Tiger
5 also violated Penal Code § 632.7.

6 131. Although California's Recording Law is codified in the Penal Code, recipients injured by
7 violations of the statute have standing to pursue remedies even without demonstrating that they
8 suffered actual damages. *See* Pen. Code §§ 637.2(a), (c).

9
10 WHEREFORE, Fishman and the Class pray for judgment against Defendants as hereinafter set
11 forth.

12
13 **PRAYER FOR RELIEF**

14 **(Against All Defendants)**

15 **A. First Cause of Action for Breach of Oral Contract**

16 132. Restitution to Fishman and the Class of all monies paid to Tiger in excess of what they
17 would have paid to their former gas provider, plus statutory interest.

18 133. Attorneys' fees, because by prosecuting this action, Fishman expects to enforce an
19 important right affecting the public interest and thereby confer a significant benefit on the
20 general public or a large class of persons. The necessity and financial burden of private
21 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
22 should not, in the interest of justice, be paid out of the recovery of damages. *See* Code Civ. Proc.
23 § 1021.5.

24 134. Costs of suit. *See* Code Civ. Proc. §§ 1032, 1033.5.

25 **B. Second Cause of Action for Violations of the Consumers Legal Remedies Act**

26 135. Actual damages to Fishman (\$126.44) and to the Class of all monies paid to Tiger in
27 excess of what they would have paid to their former gas provider, but in no case less than
28 \$1,000, plus statutory interest. *See* Civ. Code § 1780(a)(1).

29 136. An Order from this Court prohibiting Tiger from engaging in the false advertising
30 described herein. *See* Civ. Code § 1780(a)(2).

1 137. Restitution to Fishman (\$126.44) and to the Class of all monies paid to Tiger in excess of
2 what they would have paid to their former gas provider, plus statutory interest. *See* Civ. Code
3 § 1780(a)(3).

4 138. Punitive damages in an amount to be determined by the jury and Court. *See* Civ. Code
5 § 1780(a)(4).

6 139. Attorneys' fees. *See* Civ. Code § 1780(3). Also, by prosecuting this action, Fishman
7 expects to enforce an important right affecting the public interest and thereby confer a significant
8 benefit on the general public or a large class of persons. The necessity and financial burden of
9 private enforcement is such as to make an award of attorneys' fees appropriate, and the
10 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See*
11 Code Civ. Proc. § 1021.5.

12 140. Costs of suit. *See* Civ. Code § 1780(3) and Code Civ. Proc. §§ 1032, 1033.5.

13 **C. Third Cause of Action for Fraud**

14 141. Restitution to Fishman (\$126.44) and to the Class of all monies paid to Tiger in excess of
15 what they would have paid to their former gas provider, plus statutory interest.

16 142. Punitive damages in an amount to be determined by the jury and Court. *See* Civ. Code
17 § 3294.

18 143. Attorneys' fees, because by prosecuting this action, Fishman expects to enforce an
19 important right affecting the public interest and thereby confer a significant benefit on the
20 general public or a large class of persons. The necessity and financial burden of private
21 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
22 should not, in the interest of justice, be paid out of the recovery of damages. *See* Code Civ. Proc.
23 § 1021.5.

24 144. Costs of suit. *See* Code Civ. Proc. §§ 1032, 1033.5.

25 **D. Fourth Cause of Action for Negligent Misrepresentation**

26 145. Restitution to Fishman (\$126.44) and to the Class of all monies paid to Tiger in excess of
27 what they would have paid to their former gas provider, plus statutory interest.

28 146. Attorneys' fees, because by prosecuting this action, Fishman expects to enforce an
29 important right affecting the public interest and thereby confer a significant benefit on the
30 general public or a large class of persons. The necessity and financial burden of private
31 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees

1 should not, in the interest of justice, be paid out of the recovery of damages. *See* Code Civ. Proc.
2 § 1021.5.

3 147. Costs of suit. *See* Code Civ. Proc. §§ 1032, 1033.5.

4 **E. Fifth Cause of Action for Violations of the False Advertising Law**

5 148. An Order from this Court prohibiting Tiger from engaging in the false advertising
6 described herein. *See* Bus. & Prof. Code § 17535.

7 149. Restitution to Fishman (\$126.44) and to the Class of all monies paid to Tiger in excess of
8 what they would have paid to their former gas provider, plus statutory interest.

9 150. Attorneys' fees, because by prosecuting this action, Fishman expects to enforce an
10 important right affecting the public interest and thereby confer a significant benefit on the
11 general public or a large class of persons. The necessity and financial burden of private
12 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
13 should not, in the interest of justice, be paid out of the recovery of damages. *See* Code Civ. Proc.
14 § 1021.5.

15 151. Costs of suit. *See* Code Civ. Proc. §§ 1032, 1033.5.

16 **F. Sixth Cause of Action for Unfair Competition**

17 152. An Order from this Court prohibiting Tiger from engaging in the false advertising
18 described herein. *See* Bus. & Prof. Code § 17203.

19 153. Restitution to Fishman (\$126.44) and the Class of all monies paid to Tiger in excess of
20 what they would have paid to their former gas provider, plus statutory interest. *See* Bus. & Prof.
21 Code § 17203.

22 154. Attorneys' fees, because by prosecuting this action, Fishman expects to enforce an
23 important right affecting the public interest and thereby confer a significant benefit on the
24 general public or a large class of persons. The necessity and financial burden of private
25 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
26 should not, in the interest of justice, be paid out of the recovery of damages. *See* Code Civ. Proc.
27 § 1021.5.

28 155. Costs of suit. *See* Code Civ. Proc. §§ 1032, 1033.5.

29 156. Disgorgement of all profits derived from unlawful advertising directed to California
30 consumers, with monies to be turned over the Unfair Competition Law Fund and used by the
31

1 California Attorney General to support investigations and prosecutions of California's consumer
2 protection laws. *See* Bus. & Prof. Code § 17206(d).

3 **G. Seventh Cause of Action for Violations of California Recording Law**

4 157. Statutory damages to Fishman and the Class in the amount of \$5,000 per violation, plus
5 statutory interest. *See* Pen. Code § 637.2(a)(1).

6 158. An Order from this Court prohibiting Tiger from making telemarketing calls to California
7 residents without disclosing that the calls are being recorded. *See* Pen. Code § 637.2(b).

8 159. Attorneys' fees, because by prosecuting this action, Fishman expects to enforce an
9 important right affecting the public interest and thereby confer a significant benefit on the
10 general public or a large class of persons. The necessity and financial burden of private
11 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
12 should not, in the interest of justice, be paid out of the recovery of damages. *See* Code Civ. Proc.
13 § 1021.5.

14 160. Costs of suit. *See* Code Civ. Proc. §§ 1032, 1033.5.

15 **H. Additionally**

16 161. Certification of the Proposed Class and notice thereto to be paid by Tiger.

17 162. Fishman seeks pre-judgment and post-judgment interest.

18 163. Fishman seeks any and all other and further relief as the Court may deem just and proper.

19
20 **DEMAND FOR JURY TRIAL**

21 Fishman demands a trial by jury.

22
23 THE LAW OFFICES OF DANIEL BALSAM

24
25 Date: August 18, 2017

BY: /s/ Daniel L. Balsam

26 DANIEL BALSAM
27 Attorneys for Plaintiff Emily Fishman
28 and the Proposed Class
29
30
31

Exhibit A

Transcript of Tiger's Call to Fishman

Tiger Natural Gas Inc. Call to Emily Fishman, August 18, 2015

CSR OLIVIA BROWN

0:00	TIGER NATURAL GAS INC.: Hi, this is Olivia from the Community Gas Center. I need to speak to the authorized person who handles the PG&E bill please.
0:09	EMILY FISHMAN: Oh. That's, that's me.
0:11	TIGER: Well good afternoon to you. I'm calling from the CGC customer service department regarding your PG&E account.
0:18	FISHMAN: Yeah?
0:18	TIGER: I'm just following up to give you a courtesy call regarding a notice that you received with your bill last year. Your account is currently subject to several rate increases which already started. The California...
0:29	FISHMAN: Which are I'm sorry?
0:31	TIGER: I said which has already started. It started, the 18.8% increase started this year, and then you'll see another 33% increase over the next three years. So we set up...
0:41	FISHMAN: Oh. Why is that?
0:43	TIGER: The California Public Utilities Commission has processed that request from PG&E. So what we do is we set up price protection for all the residential customers, which is a free service through PG&E's aggregation program, which will protect customers from the supply rate increases for the next three years.
1:02	FISHMAN: Oh. So all customers are being subject to an increase in pricing?
1:09	TIGER: Yes. Yes.
1:10	FISHMAN: Wow.
1:11	TIGER: Yes. In the letter, I know most people, if you're like me, you just take your bill, you open it, you pay what you have to pay, and you throw em away or you put 'em out. But in that letter last year...
1:20	FISHMAN: Yep. Yep
1:20	TIGER: It was telling you, it was telling you about the subject to several rate increases and umm...
1:25	FISHMAN: Ohhhh.
1:27	TIGER: It also had that, y'know, bold print where it tells you about the 33% increase for the next three years...
1:32	FISHMAN: Got it.
1:32	TIGER: And the 10% of this year. So basically what this program is, it's a great program because it's price protection, which gives you a variable rate based on the market price, with a cap at 69 cents. So of course when the cost of gas is down you do get the lower rate based on the lower cost, but when that cost of gas goes up and you know, most people are subject to the change, you won't, you'll be capped at a rate, excuse me, a rate cap of 69 cents. So say for instance if PG&E down the line in the next year paid \$1.06 per therm for the gas, you wouldn't be charged \$1.06 per therm for your gas. You would be charged 69 cents because it can never go over that price.
2:15	FISHMAN: And so, to participate in the program, what does that mean? Are you calling all of your, the PG&E customers?
2:26	TIGER: Yes, we're calling ehrrrrrrvery one of you guys. Alllllll of you [Laughs]. And...
2:28	FISHMAN: Right.
2:28	TIGER: And most people they get, they're on the program, they really enjoy the

Tiger Natural Gas Inc. Call to Emily Fishman, August 18, 2015

	program, and they stay with it. Some people feel like hey, the program's great, but it just didn't change my bill and it's still low so I don't need it, and you know, they just opt out and there's no fee for that either. There's no fee to set it up. It's all free. And the only reason that PG&E can't offer you it themselves is because the California Public Utilities Commission requires that a third party company which is us, that's unaffiliated with PG&E, set up the service, because it is against the law for them to profit off the gas itself.
3:01	FISHMAN: Interesting. Okay. Ummmm, and so to set this up, what is, what does that mean, I mean what does it take?
3:10	TIGER: Well, to set this up, what we do, how the process works, we, I'm going to verify all this information I have and make sure it's correct in my system, but then we, we just have you have your PG&E bill handy, we go through a couple things. First, we check to see if the services are directed to the same as on your PG&E bill, and then we
3:28	FISHMAN: Right.
3:28	TIGER: And then we need to know if you're with, we need to know if your bill says "current gas charges" or "current PG&E gas delivery charges," and we go over what those two things mean, and we just simply get your service agreement ID number and your rate schedule, and that's what pops up the automated system. And she just, you know, explains to you that Tiger Natural Gas will supply your gas, because a lot of people don't know you do have the option of picking who you want your gas supplier to be. And currently what PG&E does, every month they get their gas from just random sources, you know, and none of those gas people that they're getting it from are protected from future rate increases. So basically they can only secure your gas for one month, and after that month, it's not secure, and then you know, you just keep, it's a monopoly. So now they're able to deliver your gas from a supply source that's protected from rate increases for the next three years. And that's the PG&E core gas aggregation service.
4:26	FISHMAN: Okay. Well, sounds good.
4:27	TIGER: After she prompts, after she comes on the line, she's going to ask you a couple questions, and then she'll give you your confirmation number. And I'll still be on the line with you just in case you have any questions or anything that you need to be answered that can be understand.
4:43	FISHMAN: Right.
4:44	TIGER: And then every year, if it's, if it's something that you would like, every year we would send you a rate increase analysis report, and that basically tells you that PG&E bought your gas from, for such and such price, but how low of a price that you paid for your gas.
5:01	FISHMAN: Okay.
5:02	TIGER: And we keep you, you know, updated on all the little things. I'm just going to verify, I'm showing that the service address, I only have half of it, of where PG&E delivers your gas. I have your city as Mill Valley...
5:14	FISHMAN: Yes.
5:15	TIGER: I have your state as California.
5:16	FISHMAN: Yes.
5:17	TIGER: And I also have your zip code as 94941.
5:21	FISHMAN: Yes.

Tiger Natural Gas Inc. Call to Emily Fishman, August 18, 2015

5:22	[CSR confirms the spelling of Fishman's name, her street address, and that she only has one account.]
5:50	TIGER: Okay, so how it works, the price protection is going to start on your next available meter read date, and once you go through the automated system and add your confirmation number [unintelligible] you will be all set.
6:01	FISHMAN: Okay.
6:01	TIGER: PG&E will then automatically start delivering your gas from a gas source providing the rate increase protection, so your gas will be protected from now on.
6:09	FISHMAN: Okay.
6:09	TIGER: And everything will stay the same with your PG&E utility service. So you'll pay that bill just like you do now. If you have any emergencies or questions, you'll still contact them.
6:19	FISHMAN: Okay.
6:19	[At TIGER's request, FISHMAN looks at her PG&E bill to provide her service agreement ID number and rate schedule.]
11:21	[TIGER and advises Fishman of a forthcoming free program that will save 25% off electricity rates and says Tiger will contact her when it's available.]
12:01	[TIGER says PG&E requires FISHMAN go through an automated verification system to verify information.]
12:25	[TIGER says it's a three-year program and automatically renews but FISHMAN can call and opt out anytime she wants. If the program isn't available, FISHMAN will receive a variable rate pricing that's competitive with utilities, lower rate even when utility charges more.]
12:55	[TIGER says nothing changes with PG&E service, source of gas will be Tiger Natural Gas, who is registered with PG&E. PG&E utility service remains the same.]
13:09	[TIGER explains more on automated verification.]
14:08	[TIGER transfers FISHMAN to automated verification system.]

AUTOMATED SYSTEM

0:00	[Verification system confirms enrollment date, time, first & last name, service & mailing address, gas service ID #]
1:25	SYSTEM: Tiger will provide your natural gas supply in PG&E's core gas aggregation program, and you'll be guaranteed to receive reliable service, starting on your next available meter read. Tiger is an unaffiliated CTA that has completed PG&E's certification process. Your natural gas supply will receive price protection with a rate cap of 69 cents per therm for the next 36 months. PG&E will continue to deliver your natural gas, send your monthly PG&E bill, and provide the exact same utility service. If you understand and wish to enroll your gas accounts with Tiger as your natural gas supplier, please say "yes" after the tone and then press the pound key.
2:14	FISHMAN: Yes. #
2:16	SYSTEM: Accepted customers will be sent a confirmation letter and terms and conditions within three business days. Price protection will be applied to your gas supply and does not include PG&E's delivery charges; taxes; daily, quarter, and capacity costs. You can rescind this enrollment within three business days or cancel at any time

Tiger Natural Gas Inc. Call to Emily Fishman, August 18, 2015

	by contacting the Tiger enrollment agency at 888-ENERGY-HELP. If you understand, and you are the customer of record or an authorized person to choose a natural gas supplier, please say "yes" after the tone, and then press the pound key.
3:01	FISHMAN: Yes. #
3:03	SYSTEM: Your confirmation number is 5004285. Your confirmation number is 50004285.

Exhibit B

Tiger's Terms & Conditions as of June 2016

Natural Gas Purchase Agreement

1. Nature of Service:

Seller, Tiger, Inc., agrees to sell and Buyer agrees to purchase and receive natural gas to serve 100% of the gas requirements for location indicated in the form of guaranteed supply on a Firm basis.

2. Term:

Term of this Agreement shall commence and become effective the date of first gas deliveries available thereafter for 36 months, with yearly renewals thereafter unless canceled by either party upon 60 days written notice prior to yearly renewal.

3. Quantity:

Seller shall deliver or cause to be delivered to Buyer all natural gas requirements each month during the term including applicable LDC shrinkage.

4. Price:

The sale price shall be NGI Bidweek Survey index for California PG&E Citygate plus \$0.75 per MMBtu, based on historical usage with option to trigger fixed price for a fixed volume. Shortage/surplus gas will be bought/sold and priced at Gas Daily PG&E Citygate absolute high/low during the delivery month, unless otherwise agreed to by both parties. A written Transaction Confirmation shall be executed by both parties after a fixed price has been triggered to confirm agreed upon terms. There will be a \$.05 per day customer fee passed to Buyer for having Tiger's charges attached to PG&E's bill.

5. Delivery Point:

The point of delivery shall be PG&E Citygate. Tiger shall be responsible to purchase and pay for the firm transportation and all other cost associated with the transportation rates for delivery to the Citygate. Title to all gas shall pass from Seller to Buyer at the delivery point.

6. Quantity and Measurement:

All gas shall be measured in accordance with currently acceptable industry standards and shall meet the quality and BTU specification of the transporting pipelines.

7. Warranty of Title:

Seller warrants its title and right to sell all natural gas delivered here under and warrants that such gas shall be free and clear from liens and adverse claims and is in conformity with all valid laws, order, rules and regulations of duly constituted authorities having jurisdiction.

8. Billing and Payment:

Seller uses PG&E Consolidated Billing to bill and collect from Buyer. Seller's charges and applicable taxes will be included as separately identifiable charges on the Buyer's PG&E bill. Buyer shall render payment for combined PG&E and Seller charges to PG&E. Bills for service are due and payable upon presentation and will be considered past due if payment is not received by PG&E within 15 days after the bill is

transmitted. If payment is not made by the Buyer within 15 days, Seller reserves the right to separately bill interest on the unpaid balance at the rate of 1.5% per month (18% annualized rate) from the past due date until the past due balance is received. If Buyer fails to pay thirty (30) days after payment is due, Seller, in addition to any other remedy it may have hereunder, may suspend further delivery of gas until such amount is paid in full.

9. Force Majeure:

Neither party hereto shall be liable for any failure or performance due to causes beyond its reasonable control, the occurrence of which could not have been prevented by the exercise of due diligence, such as acts of God, acts of the other party, acts of civil or military authority, fires, strikes, floods, epidemics, war or riot.

10. Assignment:

This contract may not be assigned without the written consent of both parties. Such consent shall not be unreasonably withheld or delayed.

11. Governing Laws:

This contract shall be governed by the laws of the State of Oklahoma.

12. Taxes:

The price shall include taxes imposed prior to the delivery point. All other taxes shall be passed through to Buyer unless Seller is supplied an appropriate city, state or federal certificate of tax-exemption.

13. Liability:

Seller, TIGER, shall be liable for furnishing all gas requirements for Buyer on a firm basis (as outlined above), along with providing nomination data. Early termination damages may apply.

Exhibit C

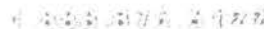
Page From Tiger's Website as of July 2016

Tiger Natural Gas » PG&E Landing Page

<http://tigernaturalgas.com/switch-pge-customer-service/>



INFO@TIGERNATURALGAS.COM

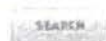


HOME	ABOUT	SERVICES	TESTIMONIALS	NEWS	FAQ	CONTACT	PARTNERS	AFFILIATES
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QUESTIONS?
Give us a call.
(888) 875.6122 ext. 4

SEARCH TIGER



WHY TIGER?

Why do over 30,000 Customers choose Tiger?



- Energy performance
- Cost savings
- Customer service
- 24/7 gas service
- Monthly payment plans
- A+ BBB Rating

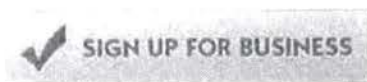
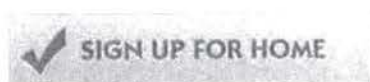


GET CONSISTENT ENERGY SAVINGS.

JOIN 25,000 PG&E CUSTOMERS SAVING 9-15%* EVERY YEAR.

Thousands of PG&E customers are lowering their energy bills and getting better customer service by switching to Tiger. As the largest third-party core natural gas provider in the PG&E area, we have a 20-year track record of consistent savings.

It's easy to make the switch. After you sign up, you continue to receive one bill from PG&E, with Tiger listed as your supplier.



California Restaurant Association
"The economic climate is tougher"



Better Business Bureau
A+ Customer Service Rating



PepsiCo Inc.
"Tiger's attention to detail has"

Tiger Natural Gas » PG&E Landing Page

<http://tigernaturalgas.com/switch-pge-customer-service/>

than anything we've seen in recent history, and yet still Tiger is committed to flexible and responsive service."

Jot Condie
President & CEO

20 years good standing
ZERO complaints

helped us control overhead costs. Their pricing is consistently competitive and they provide flexibility in their contract terms."

Daniel P. Lopez
Energy Procurement Manager

"Most Tiger customers save 9 to 15% or more, year after year."

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918.491.6998
1.888.875.8122
info@tigernaturalgas.com
1422 East 71st Street
Tulsa, OK 74138-5060

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Website Design by Aqua Villa



Enter your email here

SIGN UP



Exhibit D

Oklahoma BBB's Webpage for Tiger as of July 2016

Tiger Natural Gas, Inc. Review - Natural Gas Companies in Tulsa...

<http://www.bbb.org/tulsa/business-reviews/natural-gas-companies/t...>

Overview > Accredited Business Directory > Natural Gas Companies > Tiger Natural Gas, Inc.

BBB Business Review

BBB ACCREDITED BUSINESS SINCE 5/1/2008

Tiger Natural Gas, Inc.

Phone: (918) 491-6998

[View Additional Phone Numbers](#)

1422 East 71st Street Suite J, Tulsa, OK 74136

<https://tigernaturalgas.com/>



On a scale of A+ to F
Reason for Rating
[BBB Ratings System Overview](#)

BBB Business Reviews may not be reproduced for sales or promotional purposes.

Request a Quote

[Request a Quote from Tiger Natural Gas, Inc.](#)

BBB Accreditation

A BBB Accredited Business since 5/1/2008

BBB has determined that Tiger Natural Gas, Inc. meets BBB accreditation standards, which include a commitment to make a good faith effort to resolve any consumer complaints. BBB Accredited Businesses pay a fee for accreditation review/monitoring and for support of BBB services to the public.

BBB accreditation does not mean that the business' products or services have been evaluated or endorsed by BBB, or that BBB has made a determination as to the business' product quality or competency in performing services.

Reason for Rating

BBB rating is based on 13 factors. [Get the details about the factors considered.](#)

Factors that *raised* the rating for Tiger Natural Gas, Inc. include:

Tiger Natural Gas, Inc. Review - Natural Gas Companies in Tulsa...

<http://www.bbb.org/tulsa/business-reviews/natural-gas-companies/l...>

Length of time business has been operating
 Complaint volume filed with BBB for business of this size
 Response to 20 complaint(s) filed against business
 Resolution of complaint(s) filed against business

Customer Complaints Summary[Read complaint details](#)

20 complaints closed with BBB in last 3 years | 10 closed in last 12 months

Complaint Type	Total Closed Complaints
Advertising/Sales Issues	4
Billing/Collection Issues	4
Delivery Issues	2
Guarantee/Warranty Issues	0
Problems with Product/Service	10
Total Closed Complaints	20

[Read Complaints](#) | [Definitions](#) | [BBB Complaint Process](#) | [File a Complaint against Tiger Natural Gas, Inc.](#)
[See Trends in Complaints on Tiger Natural Gas, Inc.](#) | [View Complaints Summary by Resolution Pie Chart on Tiger Natural Gas, Inc.](#)

Customer Reviews Summary[Read customer reviews](#)

1 Customer Review on Tiger Natural Gas, Inc.

Customer Experience	Total Customer Reviews
Positive Experience	0
Neutral Experience	0
Negative Experience	1
Total Customer Reviews	1

[Read Customer Reviews](#) | [Submit a Customer Review](#) | [See Trends in Customer Reviews on Tiger Natural Gas, Inc.](#)

Government Actions

BBB knows of no government actions involving the marketplace conduct of Tiger Natural Gas, Inc..

What government actions does BBB report on?

Advertising Review

BBB has nothing to report concerning Tiger Natural Gas, Inc.'s advertising at this time.

Tiger Natural Gas, Inc. Review - Natural Gas Companies in Tulsa...

<http://www.bbb.org/tulsa/business-reviews/natural-gas-companies/t...>

What is BBB Advertising Review?

Additional Information

BBB file opened: March 03, 2005

Business started: 05/15/1991

Business started locally: 05/15/1991

Business incorporated 01/01/1991 in OK

Type of Entity

Corporation

Business Management

Lori Nalley, Owner/President

Mr. Johnathan Burris, Manager

Ms. Rachel Harvick, Operations

Contact Information

Customer Contact: Mr. Johnathan Burris, Manager

Principal: Lori Nalley, Owner/President

Business Category

Natural Gas Companies



Customer Review Rating plus BBB Rating Summary

Tiger Natural Gas, Inc. has received 3.68 out of 5 stars based on 1 Customer Reviews and a BBB Rating of A+.



BBB Customer Review Rating plus BBB Rating Overview

QUICK LINKS

[What is a BBB Business Review?](#)

[BBB Reporting Policy](#)

[About Enhanced Services](#)

[File a Complaint against Tiger Natural Gas, Inc.](#)

[Request a Quote from Tiger Natural Gas, Inc.](#)

[Accredited Business Directory](#)

CUSTOMER REVIEWS

[Read Customer Reviews](#)

[Submit a Customer Review](#)

[See trends in Customer Reviews for Tiger Natural Gas, Inc.](#)

B

EXHIBIT B

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Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

EMILY FISHMAN, individually and on behalf of all others similarly situated; and SUSAN FARIA, individually and on behalf of all others similarly situated;	) Case No.: 3:17-cv-05351-JCS))) FIRST AMENDED CLASS ACTION) COMPLAINT FOR DAMAGES AND) INJUNCTIVE RELIEF)
Plaintiffs,)
v.)
TIGER NATURAL GAS INC., an Oklahoma corporation;	) 1. VIOLATIONS OF CALIFORNIA) RECORDING LAW (Cal. Pen. Code) § 632 et seq.)
COMMUNITY GAS CENTER, a business entity of unknown organization, and DOES 2-100;	) 2. BREACH OF ORAL CONTRACT) (Cal. Civ. Code § 1622)
Defendants.	) 3. VIOLATIONS OF CONSUMERS) LEGAL REMEDIES ACT (Cal. Civ.) Code § 1750 et seq.)

-) 4. FRAUD (Cal. Civ. Code § 1572)
-) 5. NEGLIGENT MISREPRESENTATION (Cal. Civ. Code §§ 1573, 1577)
-) 6. VIOLATIONS OF FALSE ADVERTISING LAW (Cal. Bus. & Prof. Code § 17500 *et seq.*)
-) 7. VIOLATIONS OF UNFAIR COMPETITION LAW – UNLAWFUL PRONG – CALLING NUMBERS ON DO NOT CALL LIST (Cal. Bus. & Prof. Code § 17200 *et seq.*)
-) 8. VIOLATIONS OF UNFAIR COMPETITION LAW – UNLAWFUL PRONG – OTHER STATUTORY VIOLATIONS (Cal. Bus. & Prof. Code § 17200 *et seq.*)
-) 9. VIOLATIONS OF UNFAIR COMPETITION LAW – UNFAIR PRONG (Cal. Bus. & Prof. Code § 17200 *et seq.*)
-) 10. VIOLATIONS OF UNFAIR COMPETITION LAW – FRAUDULENT PRONG (Cal. Bus. & Prof. Code § 17200 *et seq.*)
-) JURY TRIAL DEMANDED

COME NOW PLAINTIFFS EMILY FISHMAN and SUSAN FARIA and file this First Amended Class Action Complaint against TIGER NATURAL GAS INC., COMMUNITY GAS CENTER, *et al* and allege as follows:

I. NATURE OF THE ACTION

1. This class action arises out of Defendant Tiger Natural Gas Inc.'s ("Tiger") practice of falsely advertising its natural gas price protection program (the "Program") to California consumers and businesses, via telemarketing calls made by its agent Community Gas Center ("CGC") that were recorded without the recipients' consent and, in some cases, were made to telephone numbers on the Do Not Call list, and fraudulently inducing them to enroll in Tiger's Program.

1 2. Plaintiffs Emily Fishman (“Fishman”) and Susan Faria (“Faria”) bring this Class Action
2 to recover monetary damages on behalf of themselves and a Class and Sub-Classes – defined in
3 detail below – of California consumers and businesses who received Sales Calls from CGC on
4 behalf of Tiger and whose calls were recorded without their consent. Tiger/CGC made some of
5 those Sales Calls to telephone numbers on the Do Not Call list. Some of the recipients of the
6 calls enrolled in Tiger’s Program after receiving false representations about PG&E’s gas pricing
7 and false representations and advertising (including telemarketing), claiming that Tiger’s
8 Program is free and/or that the Program can save customers money versus their current gas
9 provider’s rates due to a rate cap.

10 3. Plaintiffs seek restitution, injunctive relief, punitive damages, statutory damages,
11 attorneys’ fees, and costs, pursuant to statute.

12 13 **II. PARTIES**

14 4. Emily Fishman (“Fishman”) is, and was at all relevant times, more than 18 years of age
15 and a resident of Mill Valley, Marin County, California. Fishman had no prior business
16 relationship with Tiger/CGC before receiving their Sales Call and never requested to receive
17 their Sales Call.

18 5. Susan Faria (“Faria”) is, and was at all relevant times, more than 18 years of age and a
19 resident of Oakland, Alameda County, California. Faria had no prior business relationship with
20 Tiger/CGC before receiving their Sales Call and never requested to receive their Sales Call.
21 Faria was more than 65 years old when she received Tiger/CGC’s telephone solicitation. Faria
22 received Tiger/CGC’s Sales Call at her telephone number which was on the Do Not Call list at
23 the time and had been for more than 10 years.

24 6. Tiger Natural Gas Inc. (“Tiger”) is, and was at all relevant times, an Oklahoma
25 corporation with a primary place of business in Tulsa, Oklahoma. Tiger claims that it has been
26 in business for more than 25 years, supplying natural gas to more than 43,000 customers in more
27 than 20 states. *See* <http://tigernaturalgas.com/about>. Tiger has been registered with the
28 California Secretary of State to do business in California since 2002.

29 7. Community Gas Center (“CGC”) – formerly identified as DOE 1 – is, and was at all
30 relevant times, a business entity of unknown organization claiming its address to be both a Regus
31 executive suite in San Francisco, California and a Post Office Box in Largo, Florida. Plaintiffs

1 are informed and believe and thereon allege that CGC acts as Tiger's agent for purposes of
2 calling potential customers to advertise Tiger's products and services, and that Tiger wrote or at
3 least approved the telemarketing scripts executed by CGC and its agents when they called
4 Plaintiffs and Class Members.

5 8. The true names and capacities, whether individual, corporate, associate, representative,
6 alter ego or otherwise, of defendants and/or their alter egos named herein as DOES 2-100
7 inclusive are presently unknown to Plaintiffs at this time, and are therefore sued by such
8 fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiffs will amend this
9 Complaint to allege the true names and capacities of DOES 2-100 when the same have been
10 ascertained. Plaintiffs are further informed and believe and thereon allege that DOES 2-100
11 were and/or are, in some manner or way, responsible for and liable to Plaintiffs and the Class for
12 the events, happenings, and damages hereinafter set forth below.

13 14 **III. JURISDICTION AND VENUE**

15 9. Although neither Fishman, Faria, nor any other single Class Member claims damages
16 over \$75,000, Tiger removed this Action from the Superior Court of California, County of Marin
17 under the Class Action Fairness Act, claiming that there is more than \$5 million in controversy,
18 at least one Plaintiff (Fishman) is a citizen of a different state from Tiger (Oklahoma), and there
19 are more than 100 Class Members. *See* 28 U.S. § 1332(d).

20 10. Venue is proper in the U.S. District Court for the Northern District of California because
21 Tiger's contract with Fishman was to be performed in Marin County, within the Northern
22 District of California, and Tiger's liability to Fishman arose in Marin County. *See* 28 U.S.C.
23 § 1446(a).

24 25 **IV. STATEMENT OF FACTS**

26 11. All allegations in this Complaint are based on information and belief and/or are likely to
27 have evidentiary support after a reasonable opportunity for further investigation or discovery.
28 Whenever allegations in this Complaint are contrary or inconsistent, such allegations shall be
29 deemed alternative.

1 **A. Tiger's Natural Gas Price Protection Program**

2 12. One of Tiger's products is a natural gas price protection program (the "Program"), a
3 purportedly "free" plan by which Tiger purportedly charges customers a variable rate for
4 supplying natural gas based on the market price, but with a price cap of \$0.69 per therm.¹

5 13. When a customer chooses to purchase or "procure" gas from Tiger, the gas is delivered
6 over existing pipes, e.g., by PG&E. Thus, a customer who buys gas from PG&E has a single line
7 item for "Gas Charges" on his/her utility bill, whereas a customer who buys gas from Tiger has
8 separate line items for "PG&E Gas Delivery Charges" and "Tiger Natural Gas Inc. Gas
9 Procurement Charges."

10 14. In actuality, and as alleged in more detail below, Tiger's Program is far from "free." The
11 purportedly "free" Program also entailed a \$0.05 daily charge, for which Tiger never obtained its
12 customers' informed agreement. In fact, customers who signed up for Tiger's Program
13 immediately experienced a significant increase in their gas prices, because unknown to
14 consumers, Tiger adds a large surcharge to the market rates that the customers would otherwise
15 have been charged by PG&E (or other utility). And while Plaintiffs are informed and believe
16 and thereon allege that Tiger never charged more than \$0.69 per therm, Tiger fundamentally
17 misrepresented the value proposition of the Program by falsely leading prospective customers to
18 believe that PG&E would be raising its procurement rates and by setting a price cap far above
19 the maximum rate that PG&E could possibly charge.

20 **B. Tiger/CGC Called Fishman to Advertise the Tiger Natural Gas Price Protection**
21 **Program, Their Representations Were False, and They Recorded the Call Without**
22 **Fishman's Consent**

23 15. Prior to August 18, 2015, Fishman purchased natural gas from PG&E for home use.

24 16. On August 18, 2015, Tiger, by its agent CGC and CGC's Customer Service
25 Representative ("CSR") Olivia Brown ("Brown"), called Fishman at her home (landline)
26 telephone number (the "Sales Call"). Exhibit A is a transcript of the Sales Call and is
27 incorporated in this Statement of Facts as if set forth in full. Certain parts, including confidential
28 information, are summarized.

29
30 ¹ A "therm" – short for 100,000 British Thermal Units – represents the heat energy in natural
31 gas. Natural gas is typically priced to customers in therms and the volume of gas used appears
on billing statements in therms. See <http://mapawatt.com/2010/02/17/what-therm>.

1 17. Tiger/CGC's objective in calling Fishman was to solicit her to sign up for the Program
2 and buy Tiger's natural gas, instead of continuing to buy natural gas from PG&E. Of course,
3 PG&E would continue to deliver the gas.

4 18. Tiger/CGC recorded the Sales Call to Fishman. Tiger/CGC never asked for Fishman's
5 consent to record the Sales Call. Indeed, Tiger/CGC never disclosed to Fishman that they were
6 recording the Sales Call.

7 19. Fishman first learned that Tiger/CGC recorded the call on August 28, 2016. Fishman did
8 *not* hear periodic beeps during the Sales Call that might have suggested that Tiger/CGC were
9 recording it. After nine months of increased gas charges from Tiger's Program, and with no
10 signs that the Tiger program would ever save her money, Fishman contacted an attorney.

11 Fishman's counsel sent a letter to Tiger on July 8, 2016 – within one year of Fishman's
12 agreement to purchase Tiger gas – alleging various unlawful conduct. Tiger's former counsel,
13 Gregory Klatt, responded and claimed that Fishman had her facts wrong about Tiger's offering,
14 and to prove it, on August 28, 2016, Mr. Klatt voluntarily provided a recording of Tiger/CGC's
15 third-party verification call. The next day, Mr. Klatt voluntarily provided a recording of
16 Tiger/CGC's Sales Call to Fishman. The fact of the recording was within the exclusive
17 knowledge of Tiger/CGC, until Mr. Klatt provided it to Fishman's counsel, and Fishman could
18 not, by reasonable diligence, have discovered the fact of the recording any sooner than she did.
19 Fishman then filed this Action within one year of learning that Tiger/CGC had recorded the
20 Sales Call to her.

21 20. Brown began the Sales Call by claiming that she was calling from "Community Gas
22 Center." Brown did not disclose that she was really calling on behalf of Tiger until nearly four
23 minutes into the Sales Call.

24 21. Tiger/CGC expressly claimed that they were making Sales Calls to every single PG&E
25 customer to advertise the Program and solicit their business.

26 22. Tiger/CGC admitted on the Sales Call that they knew that Fishman was a resident of
27 California.

28 23. Tiger/CGC claimed that "several [PG&E] rate increases [had] already started," including
29 an "18.8% increase [for natural gas that] had started this year," and that Fishman would "see
30 another 33% increase over the next three years" because the "California Public Utilities
31 Commission ("PUC") has processed that request from PG&E," but Tiger's "price protection for

all the residential customers . . . will protect customers from the supply rate increases for the next three years.”

24. The PUC did not approve a 33% rate increase for PG&E’s natural gas *procurement* rates, as Tiger/CGC led Fishman to believe. In fact, the PUC approved a 27% rate increase *for gas transmission and storage*.² By misrepresenting the amount by which PG&E could raise its gas procurement prices, Tiger/CGC attempted to make Tiger’s own price cap seem even more beneficial to customers.

25. Tiger/CGC’s claim that an 18.8% price increase for PG&E’s natural gas procurement rates had already started for 2015 was false. PG&E gas procurement rates were not increasing by 18.8% when Tiger/CGC called Fishman in August 2015. In fact, PG&E’s average gas procurement rate in 2015 was \$0.38103 per therm, 34% *less* than the average rate in 2014 of \$0.57893 per therm. And PG&E’s average gas procurement rate in 2016 was \$0.31644, 17% *less* than 2015. PG&E’s average gas procurement rate from January-October 2017 was \$0.38096 per therm,³ slightly higher than 2016, but still 45% *less* than Tiger’s price cap of \$0.69 per therm.

26. Because PG&E still bills Tiger customers for gas delivery, gas delivery charges are a constant. Any savings that Tiger gas customers could possibly realize from enrolling with Tiger would have to be for gas procurement, not delivery. Put another way, regardless of how much PG&E might raise customers’ gas *delivery* charges, that has nothing whatsoever to do with any hypothetical savings on gas *procurement* charges customers might see by switching to Tiger.

27. Tiger/CGC falsely claimed that gas supply rates were increasing when in fact they were decreasing. PG&E’s delivery rates were increasing, but not supply rates.

28. Tiger/CGC claimed that Tiger had set up a “a price protection” program, which Tiger/CGC said was “a free service” “which will protect customers from . . . supply rate increases.” Tiger/CGC told Fishman, and other customers, that it would charge “a variable rate [for natural gas] based on the market price with a cap at 69 cents.” According to Tiger/CGC, “It’s all free.”

² Robert Walton, *California PUC Approves Gas Rate Hike for California Utilities and SoCal Gas*, UTILITYDIVE, June 28, 2016, <http://www.utilitydive.com/news/california-puc-approves-gas-rate-hike-for-california-utilities-and-socalgas/421697>.

³ PG&E Gas Rates, <https://www.pge.com/tariffs/GRF.SHTML#RESGAS> (last visited Oct. 5, 2017) and click “Residential (JAN 2014 – DEC 2015)” link.

1 29. Tiger/CGC did not disclose that, in fact, Tiger would add an undefined surcharge to the
2 “variable rate based on the market price,” that Tiger would use this surcharge to line its own
3 pockets, and that customers’ gas rates would immediately go up if they enrolled in the Program.

4 30. Tiger/CGC did not disclose that Tiger would add a daily charge of \$0.05 to the bills of
5 customers enrolled in the Program.

6 31. Tiger/CGC described the Program as “great” specifically because “Say for instance if
7 PG&E down the line in the next year paid \$1.06 per therm for the gas, you wouldn’t be charged
8 \$1.06 per therm for your gas. You would be charged 69 cents because it can never go over that
9 price.” But the Program was not, in fact, “great,” because PG&E’s rates would not be that high
10 even if PG&E had raised its procurement rates by 33%, as Tiger/CGC falsely claimed would
11 soon happen.

12 32. Tiger/CGC repeated several times that the Program was entirely “free.” According to
13 Tiger, the Program was “a free service” that would “protect customers.” Tiger/CGC never
14 disclosed any charges for the Program other than for buying the gas itself. Fishman did not
15 believe that Tiger was providing the gas itself for free, but relying on Tiger/CGC’s statements,
16 believed that there were no *other* charges. Also, Tiger never disclosed that a surcharge would be
17 added to the “variable rate based on the market price,” or that Tiger would immediately begin
18 charging customers more than PG&E would have charged for the same natural gas. Fishman did
19 not believe that Tiger would charge her more for gas than PG&E was already charging her, and
20 Fishman did not expect her bills to immediately and significantly increase as the direct result of
21 enrolling in Tiger’s Program.

22 33. By presenting a realistic-sounding scenario that nevertheless: a) falsely claimed PG&E’s
23 gas procurement rates were increasing when they were really decreasing, and b) included an
24 impossibly high price point for PG&E’s gas procurement well over Tiger’s price cap, Tiger/CGC
25 falsely ascribed a customer benefit to the Program and the price cap, and actually misled
26 Fishman – and would have misled any reasonable consumer – into believing that she would save
27 money on her gas bill by switching her gas procurement from PG&E to Tiger’s Program.

28 34. Tiger/CGC advised Fishman that “Everything will stay the same with your PG&E utility
29 service. So you’ll pay that bill just like you do now.”

30 35. Tiger/CGC had superior knowledge than Fishman did about the natural gas market and
31 Tiger’s Program.

1 36. During the Sales Call on August 18, 2015, Fishman entered into an oral contract with
2 Tiger, by its agent CGC, to buy Tiger's gas via the Program in reliance on Tiger/CGC's
3 statements during the Sales Call. All terms of the oral contract were stated in that Sales Call.
4 See Exhibit A.

5 37. Fishman is informed and believes and thereon alleges that Brown was following a script
6 prepared for her by Tiger/CGC when Brown called her. Fishman is informed and believes and
7 thereon alleges that Brown and Tiger/CGC's other CSRs were required to follow that script as
8 closely as possible, with little if any room for deviation or improvisation.

9 38. Fishman is informed and believes and thereon alleges that all Class members received
10 comparable Sales Calls by Tiger/CGC based on the same script. Even if every single word were
11 not exactly the same, Fishman is informed and believes and thereon alleges that:

- 12 • Tiger/CGC did not instruct any of the CSRs to notify and obtain consent from
13 prospective customers to record their telephone calls;
- 14 • Tiger/CGC's CSRs did not notify and obtain consent from prospective customers
15 to record their telephone calls;
- 16 • All of Tiger/CGC's Sales Calls were recorded;
- 17 • Tiger/CGC and their agents were not trained in the proper use of the Do Not Call
18 list and called prospective customers' telephone numbers on the Do Not Call list;
- 19 • Tiger/CGC instructed all of their CSRs to communicate to all Class Members, and
20 Tiger/CGC's CSRs did communicate to all Class Members, that PG&E had
21 already started significantly increasing its natural gas procurement rates and
22 would continue to do so;
- 23 • Tiger/CGC instructed all of their CSRs to communicate to all Class Members, and
24 Tiger/CGC's CSRs did communicate to all Class Members, that the Program is
25 "free" and Tiger's gas price would be capped at \$0.69 per therm, benefitting
26 Tiger's customers by capping the price below what PG&E (or their current gas
27 provider) could possibly charge them, e.g. \$1.06 per therm;
- 28 • Tiger/CGC instructed all of their CSRs not to inform Class Members, and the
29 CSRs did not in fact inform Class Members, that Tiger would immediately begin
30 charging customers a \$0.05 daily charge for participating in the Program; and
31

- Tiger/CGC instructed all of their CSRs not to inform Class Members, and the CSRs did not in fact inform Class Members, that Tiger would immediately begin adding a surcharge to the market price, thereby charging them more than PG&E (or their current gas provider) would have charged them for the same natural gas.

39. Brown acted as CGC and Tiger's agent, within the scope of her authority, when she called Fishman. *See* Cal. Civ. Code § 2316.

40. Even if Brown and CGC did not have actual authority to make the claims that she made, Fishman reasonably believed that Brown and CGC had ostensible authority to make those claims on behalf of Tiger. *See* Cal. Civ. Code § 2317.

41. Fishman is informed and believes and thereon alleges that Tiger/CGC also made Sales Calls to customers of other gas providers in California, not just PG&E.

42. Only *after* the Sales Call concluded, Brown switched Fishman to an automated verification system that asked for Fishman's consent to record *that* second call, and stated that Tiger would mail Fishman a copy of the terms and conditions within three business days. Fishman had no idea what those additional terms might have been when she entered into the oral contract with Tiger. Thus, those additional terms and conditions, provided after the oral contract was made, were not part of the oral contract. *See* Cal. Civ. Code § 1580. Fishman does not recall if she ever received the mailed copy of the Program's terms and conditions. Fishman did not agree to any terms and conditions beyond those stated during the Sales Call.

43. The automated verification process also stated that "PG&E will continue to deliver your natural gas, send your monthly PG&E bill, and provide the exact same utility service." The automated verification system also made no mention of any \$0.05 daily charge to participate in Tiger's Program.

C. Tiger/CGC Called Faria at Her Telephone Number on the Do Not Call List to Advertise the Tiger Natural Gas Price Protection Program, Their Representations Were False, and They Recorded the Call Without Faria's Consent

44. Prior to April 2015, Faria purchased natural gas from PG&E for home use.

45. In April or early May 2015, Tiger, either itself or by an agent, called Faria at her home (landline) telephone number.

46. Faria's home (landline) telephone number has been on the Do Not Call list since 2004, without any lapses.

47. Faria is informed and believe and thereon alleges that Tiger and CGC had not instituted procedures for maintaining a list of persons who request not to receive their telemarketing calls. *See* 47 C.F.R. 64.1200(d). Specifically, as evidenced by the very fact that she received a Sales Call from Tiger/CGC, Faria is informed and believes and thereon alleges that: a) Tiger and CGC do not have written policies, available upon demand, for maintaining a do-not-call list; and b) Tiger and CGC personnel engaged in any aspect of telemarketing were not informed and trained in the existence and use of the Do Not Call list.

48. Faria is informed and believes and thereon alleges that Tiger/Tiger's agent recorded the Sales Call to her without disclosure and without obtaining her consent.

49. Faria is informed and believes and thereon alleges that the Sales Call she received was substantively similar to the Sales Call that Fishman received. *See Exhibit A*. Faria is informed and believes and thereon alleges that Tiger/CGC's Sales Call to her was also recorded without her consent. Faria was also misled to believe that she would save money on her gas bill by switching her gas procurement from PG&E to Tiger. Faria was also misled to believe that PG&E was increasing its gas procurement rates when in fact the rates were decreasing, that it was free for her to participate in Tiger's Program, that her gas procurement rates would not go up with Tiger, and that there would be no additional charges (*e.g.*, \$0.05 per day or surcharges on top of the market rate for natural gas). Faria entered into an oral contract to enroll in Tiger's Program and purchase Tiger's gas in reliance on Tiger's statements. Faria does not recall ever receiving any subsequent terms and conditions in the mail, but even if she had, she did not agree to any subsequent terms and conditions.

D. Fishman's Gas Bills Were Far More Expensive With Tiger Than They Would Have Been If She Had Stayed With PG&E

50. Tiger supplied Fishman's natural gas beginning on September 17, 2015, with charges first appearing on the bill with the statement date of October 22, 2015.

51. Fishman is informed and believes and thereon alleges that Tiger did not charge her "a variable rate based on the market rate" for gas procurement, as promised during the sales call, but rather a rate that was much higher – in some months, as much as three times higher than PG&E's rate – as shown in the chart below.

Statement Date	PG&E Gas (\$/therm)	Tiger Gas (\$/therm)	Difference
10/22/2015	\$ 0.3263	\$ 0.6900	+ 111%
11/24/2015	\$ 0.3553	\$ 0.6900	+ 94%
12/23/2015	\$ 0.3897	\$ 0.6823	+ 75%
1/22/2016	\$ 0.3927	\$ 0.6709	+ 71%
2/24/2016	\$ 0.4058	\$ 0.6555	+ 62%
3/24/2016	\$ 0.2792	\$ 0.5900	+ 111%
4/25/2016	\$ 0.1944	\$ 0.6097	+ 214%
5/24/2016	\$ 0.2517	\$ 0.6513	+ 159%
6/23/2016	\$ 0.2380	\$ 0.6450	+ 171%

52. Fishman terminated the oral contract by calling Tiger in May 2016, after realizing that over nine months of Tiger bills, her gas prices were constantly and significantly higher than they would have been if she had stayed with PG&E, and the purported cap showed no signs of ever providing a benefit. The last day on which Tiger supplied Fishman's natural gas was June 15, 2016, on the bill with the statement date of June 23, 2016. Tiger supplied Fishman with natural gas for 273 days.

53. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, if she had bought PG&E gas, she would have paid \$120.75 for gas procurement (excluding delivery).

54. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid \$233.54 for gas procurement (excluding delivery) – *93% more than PG&E*.

55. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid \$13.65 for Tiger's (undisclosed) \$0.05 daily charge, whereas if she had stayed with PG&E, there would have been *no* daily charges.

56. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid Tiger a total of \$247.19 for gas procurement plus daily charges, *more than double* the \$120.75 that she would have paid to PG&E for gas procurement and no daily charges if she had stayed with PG&E, as shown in the following chart:

Statement Date	PG&E Gas	Tiger Gas + Daily Charge	Difference
10/22/2015	\$ 5.22	\$ 12.49	+ 139%
11/24/2015	\$ 12.08	\$ 25.06	+ 107%
12/23/2015	\$ 23.77	\$ 43.07	+ 81%
1/22/2016	\$ 29.45	\$ 51.82	+ 76%
2/24/2016	\$ 22.32	\$ 37.65	+ 69%
3/24/2016	\$ 10.89	\$ 24.51	+ 125%
4/25/2016	\$ 6.22	\$ 21.01	+ 238%
5/24/2016	\$ 6.04	\$ 17.18	+ 184%
6/23/2016	\$ 4.76	\$ 14.40	+ 203%
Total	\$ 120.75	\$ 247.19	+ 105%

57. In the nine months Fishman was a Tiger customer, PG&E's gas procurement price ranged from \$0.3263 to \$0.4058 per therm, averaging \$0.3392. So even if PG&E did increase its procurement rates by 33% as Tiger claimed – setting aside the fact that the Public Utilities Commission actually approved a 27% increase for *transmission and storage*, even as procurement rates were decreasing significantly – that would have been \$0.4511. A 33% increase on the highest month during that nine-month period would have been \$0.5397. Thus, when Tiger called Fishman and posited that PG&E could charge its customers \$1.06 per therm, that was a deliberate misrepresentation meant to deceive Fishman about Tiger's gas prices, PG&E's possible gas prices, and the relative value of Tiger's Program and the price cap.

58. Tiger's fraud and breach of contract were not that Tiger ever charged more than \$0.69 per therm (it didn't), but rather that Tiger/CGC knowingly misrepresented the fundamental value proposition of the Program in the first place when they called Fishman by: a) falsely claiming that PG&E's gas procurement rates were increasing when they were actually decreasing; b) expressly claiming that it was "free" to participate in the Program; and c) presenting an impossible scenario – namely, PG&E charging \$1.06 per therm for gas procurement within a year. These representations were false and were designed to confuse and mislead Fishman and other Enrollee Sub-Class Members, and they did confuse and mislead Fishman and other Enrollee Sub-Class Members. Tiger's failure to disclose that Fishman's and other Enrollee Sub-Class Members' gas prices would immediately go up, when affirmatively telling them that the Program was "a free service," also constitutes fraud and breach of contract, as further alleged below.

59. Indeed, Tiger/CGC's CSR Brown implicitly encouraged Fishman not to read her bill too closely... presumably because they feared that Fishman might quickly discover that she was paying twice as much for her natural gas procurement. Tiger/CGC's description of the Program

as “great” was not merely general advertising puffery, but instead materially false and misleading because Tiger/CGC provided specific (false) evidence of its greatness: a) by describing it as free despite the \$0.05 daily charge and despite the fact that her rates would immediately go up, and b) because the price cap of \$0.69 per therm had no value whatsoever to Fishman or any other consumer, since PG&E’s gas procurement rates were decreasing and PG&E’s maximum possible rate was still nowhere close to the cap. And at the same time, Tiger charged significantly more than PG&E charged for gas.

E. Faria’s Gas Bills Were Far More Expensive With Tiger Than They Would Have Been If She Had Stayed With PG&E

60. Tiger supplied Faria’s natural gas beginning on May 7, 2015, with charges first appearing on the bill with the statement date of June 9, 2015. Faria discovered that her gas prices had increased with Tiger after she received the June 9, 2015 bill, and promptly canceled service. Tiger supplied Faria’s gas for a second month, with a statement date of July 8, 2015, until the cancellation took effect. In total, Tiger supplied Faria’s gas for 61 days.

61. According to Faria’s PG&E bills, over the two months that she bought Tiger gas, she paid Tiger a total of \$61.87 for gas procurement plus daily charges, *more than double* the \$27.82 that she would have paid to PG&E for gas procurement and no daily charges if she had stayed with PG&E, as shown in the following chart:

Statement Date	PG&E Gas	Tiger Gas + Daily Charge	Difference
6/9/2015	\$ 13.70	\$ 32.87	+ 140%
7/8/2015	\$ 14.12	\$ 29.00	+ 106%
Total	\$ 27.82	\$ 61.87	+ 122%

F. Terms and Conditions Disclosed After Tiger’s Sales Call and the Formation of the Contract are Not Binding

62. Plaintiffs do not concede that Tiger mailed them any terms and conditions after the contracts was formed during the Sales Calls.

63. But, even if Tiger did mail Plaintiffs and the Enrollee Sub-Class terms and conditions after the Sales Calls, those terms and conditions are not binding because “Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal [each Plaintiff] has put [her] acceptance in the course of transmission to the proposer [Tiger/CGC] [].” *See* Cal. Civ. Code § 1583. Here, Tiger/CGC made offers during Sales Calls directed to California related to delivering natural gas in California, and Plaintiffs and the Enrollee Sub-Class accepted the offers, confirming the acceptance via the automated verification system.

1 Plaintiffs and the Enrollee Sub-Class never consented to anything that was not stated during the
2 Sales Calls. Even *if* Tiger could clarify the terms of the oral contract by subsequently mailing
3 terms and conditions to Plaintiffs and the Enrollee Sub-Class (which they do not concede), and
4 even if Tiger did mail terms and conditions to Plaintiffs and the Sub-Class (which they do not
5 concede), Tiger cannot materially change the terms of the contract by mailing a subsequent,
6 unaccepted offer to modify the contract.

7 64. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
8 after the contracts were formed, and that those terms and conditions state that the agreement was
9 governed by Oklahoma law. But Tiger/CGC said nothing about Oklahoma law during the Sales
10 Calls. Plaintiffs and the Enrollee Sub-Class did not know of this purported term before entering
11 into an oral contract with Tiger, and never agreed to it. *See* Cal. Civ. Code § 1580.

12 65. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
13 after the contracts were formed, and that those terms and conditions refer to a “daily nickel”
14 charge; i.e., Tiger would charge customers, in addition to the gas itself, \$0.05 per day of service.
15 But Tiger/CGC said nothing about a \$0.05 daily charge during the Sales Calls. Plaintiffs and the
16 Enrollee Sub-Class did not know of this purported term before entering into an oral contract with
17 Tiger, and never agreed to it. *See* Civ. Code § 1580.

18 66. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
19 after the contracts were formed, and that those terms and conditions refer to an “adder” charge of
20 up to \$0.20 per therm that Tiger would charge customers on top of the Bidweek Survey index for
21 California PG&E Citygate. But Tiger/CGC said nothing about an adder charge during the Sales
22 Calls. Plaintiffs and the Enrollee Sub-Class did not know of this purported term before entering
23 into an oral contract with Tiger, and never agreed to it. *See* Civ. Code § 1580. Moreover, even *if*
24 the adder charge were part of the contracts, Tiger’s procurement rate was *more* than 20 cents
25 higher than PG&E’s rate in each of Fishman’s nine months of Tiger service. *See* ¶ 51, *supra*.

26 67. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
27 after the contracts were formed, and that those terms and conditions say that Plaintiffs and the
28 Enrollee Sub-Class could cancel the agreement without penalty and rescind the agreement by
29 calling CGC within three business days of enrolling. But that would make the terms and
30 conditions unconscionable because: a) it is highly unlikely Plaintiffs and the Enrollee Sub-Class
31 would have received the mailing and had an opportunity to review it within three business days;

indeed, California law allows for five calendar days for mailing in-state and 10 calendar days for mailing out-of-state. *See* Cal. Code Civ. Proc. § 1013(a); and b) Plaintiffs and the Enrollee Sub-Class did not receive their first PG&E bill including Tiger gas until two months after the Sales Calls – and would not have had an opportunity within three business days to realize how much more Tiger was charging them for gas than PG&E would have charged them.

68. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that those terms and conditions do *not* contain an integration provision; therefore, the written terms and conditions (e.g. \$0.05 daily charge and adder charge) cannot supplant the oral representations Tiger/CGC made during the Sales Calls (e.g., totally free to participate in the Program).

69. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that those terms and conditions set forth a 36 month term that a customer can only cancel upon 90 days written notice to CGC prior to automatic renewal for another 36 month term. Nevertheless, Tiger allowed Plaintiffs to cancel service by making telephone calls after far less than 36 months of service. This further evidences that Tiger did not intend the supposedly-mailed terms and conditions to be binding where they conflict with the terms of the oral agreements previously made during the Sales Calls.

70. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that those terms and conditions do *not* contain a class action waiver/arbitration provision. Nor did Tiger/CGC say anything about a class action waiver/arbitration provision during the Sales Calls.

G. Tiger's Website Falsely Claimed That There Were ZERO Complaints Filed with the Better Business Bureau

71. According to Tiger's website at the time, there were "ZERO complaints" with the Better Business Bureau. Exhibit B is a true and correct copy of a page from Tiger's website, <http://tigernaturalgas.com/switch-pge-customer-service>, as of July 2016 and is incorporated as if set forth in full in this Statement of Facts.

72. According to the Better Business Bureau of Oklahoma's website, there were 20 complaints filed within the last three years prior to July 2016. Exhibit C is a true and correct copy of a page from the Oklahoma BBB's website, <http://www.bbb.org/tulsa/business->

1 *reviews/natural-gas-companies/tiger-natural-gas-inc-in-tulsa-ok-33000688*, as of July 2016 and
2 is incorporated as if set forth in full in this Statement of Facts.

3
4 **V. CLASS ACTION ALLEGATIONS**

5 73. Plaintiffs bring this Class Action for damages, restitution and injunctive relief on behalf
6 of the following Class (the “**Class**”): All California consumers and businesses who received a
7 telemarketing call from Tiger or its agents (including but not limited to CGC) that was recorded
8 without consent of the recipients, who became aware of the recording within one year prior to
9 the filing of this Action and continuing until final disposition of the Action.

10 74. Plaintiffs bring this Class Action for damages and injunctive relief on behalf of the
11 following Sub-Class (the “**Do Not Call Sub-Class**”): All California consumers and business who
12 received a telemarketing call from Tiger or its agents (including but limited to CGC) at a landline
13 or cellular telephone number that was registered on the Do Not Call list, within four years prior
14 to the filing of this Action and continuing until final disposition of the Action.

15 75. Plaintiffs bring this Class Action for damages and injunctive relief on behalf of the
16 following Sub-Class (the “**Enrollee Sub-Class**”): All California consumers and businesses who
17 enrolled in Tiger’s natural gas price protection program after receiving representations (including
18 via telemarketing) claiming that the program is “free” and/or that the program can save them
19 money versus their current gas provider’s rates due to a rate cap, within: a) two years prior to the
20 filing of this Action and continuing until final disposition of the Action for the Breach of Oral
21 Contract cause of action; b) within three years prior to the filing of this Action and continuing
22 until final disposition of the Action for the Fraud and Negligent Misrepresentation causes of
23 action; and/or c) within four years prior to the filing of this Action and continuing until final
24 disposition of the Action for the False Advertising Law and Unfair Competition Law causes of
25 action.

26 76. Plaintiffs bring this Class Action for damages and injunctive relief on behalf of the
27 following Sub-Class (the “**Consumer Enrollee Sub-Class**”): All consumer members, but not
28 business members, of the Enrollee Sub-Class, who enrolled in Tiger’s natural gas price
29 protection program after receiving representations (including via telemarketing) claiming that the
30 program is “free” and/or that the program can save consumers money versus their current gas
31 provider’s rates due to a rate cap, within three years prior to the filing of this Action and

1 continuing until final disposition of the Action for the Consumers Legal Remedies Act cause of
2 action.

3 77. Excluded from the Class and the Sub-Classes are:

- 4 • Defendants' officers, directors, legal representatives, employees, co-conspirators,
5 successors, subsidiaries, and assigns.
- 6 • Any judge, justice, or judicial officer presiding over this matter and the members
7 of their immediate families and judicial staff.

8 78. **Numerosity (Fed. R. Civ. Proc. 23(a)(1)).** The proposed Class and Sub-Classes are so
9 numerous that individual joinder of all its members is impractical. Due to the nature of the trade
10 and commerce involved, and the fact that Tiger/CGC expressly stated that they were calling *all*
11 PG&E customers (not to mention customers of other gas companies such as Southern California
12 Gas Company), Plaintiffs believe that the total number of Class and Sub-Class members is in the
13 thousands and that members of the Class and Sub-Classes are numerous and geographically
14 dispersed throughout California. While the exact number and identities of the Class and Sub-
15 Class members are unknown at this time, such information can be ascertained through
16 appropriate investigation and discovery.

17 79. **Commonality and Predominance (Fed. R. Civ. Proc. 23(a)(2), (b)(3)).** Common
18 questions of law and fact exist as to all members of the Class and Sub-Classes and predominate
19 over any questions that affect only individual members of the Class and Sub-Classes. There is a
20 well-defined community of interest in the questions of law and fact involved affecting the Class
21 and Sub-Classes, and these common questions predominate over any questions that may affect
22 individual Class and Sub-Class members. Common questions of fact and law include, but are
23 not limited to, the following:

- 24 a. Did Tiger/CGC call Class Members to advertise its natural gas price protection
25 program, and record those calls without the recipients' consent?
- 26 b. Did Tiger/CGC call Do Not Call Sub-Class Members at their telephone numbers
27 that were on the Do Not Call list?
- 28 c. Did Tiger/CGC allege to Enrollee Sub-Class Members that PG&E was in the
29 process of raising its gas procurement rates when in fact the rates were
30 decreasing?
- 31 d. Did Tiger/CGC represent to Enrollee Sub-Class Members that it was free to
participate in Tiger's natural gas price protection program?

- e. Did Tiger charge Enrollee Sub-Class Members an undisclosed \$0.05 daily charge for participating in its natural gas price protection program?
- f. Did Tiger/CGC represent to Enrollee Sub-Class Members that it priced its gas based on the market rate?
- g. Did Tiger price its gas to Enrollee Sub-Class Members far higher than the market rate?
- h. Did Tiger/CGC represent to Enrollee Sub-Class Members that PG&E could charge \$1.06 for natural gas procurement within a year?
- i. Did Tiger/CGC represent to Enrollee Sub-Class Members that the natural gas price protection program capped gas prices at a price below what PG&E (or another utility) could charge?
- j. Could PG&E (or another utility) charge Enrollee Sub-Class Members a rate for natural gas that was higher than Tiger's price cap?

80. **Typicality (Fed. R. Civ. Proc. 23(a)(3)).** Plaintiffs' claims are typical of the claims of the members of the Class and Sub-Classes. Tiger's calls to Plaintiffs and all members of the Class were recorded without their consent. Faria and all members of the Do Not Call Sub-Class received Tiger's calls at telephone numbers on the Do Not Call list. Plaintiffs and all members of the Enrollee Sub-Class who agreed to purchase Tiger's gas have been similarly affected by Tiger's common course of conduct since they all received the same representations and: a) They were assessed with \$0.05 daily charges; b) The rate they paid for gas was far above the market rate; c) The price cap had no benefit or value because it was set higher than what PG&E or the Sub-Class Members' other former utilities could have charged them; d) They relied on Tiger's claims when they entered into oral contracts with Tiger; and e) Tiger knew at the time represented to Sub-Class members that its representations were not true.

81. **Adequacy (Fed. R. Civ. Proc. 23(a)(4)).** Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Classes. Plaintiffs have no interests adverse to that of the Class and Sub-Classes. Plaintiffs have retained counsel with substantial experience in handling complex class actions and multi-party litigation and prosecuting false advertising consumer actions. Plaintiffs and their counsel are committed to vigorously prosecuting this Action on behalf of the Class and Sub-Classes.

82. **Superiority (Fed. R. Civ. Proc. 23(b)(1), (b)(3)).** A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual

1 joinder of all members of the Class and Sub-Classes is impractical. Even if individual Class and
2 Sub-Class Members had the resources to pursue individual litigation, it would be unduly
3 burdensome to the courts in which the individual litigation would proceed. Individual litigation
4 magnifies the delay and expense to all parties in the court system of resolving the controversies
5 engendered by Tiger/CGC's common course of conduct. The class action device allows a single
6 court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient
7 handling of all Class Members' claims in a single forum. The conduct of this Action as a Class
8 Action conserves the resources of the parties and of the judicial system and protects the rights of
9 the Class and Sub-Class Members. Furthermore, for many, if not most, a Class Action is the
10 only feasible mechanism that allows an opportunity for legal redress and justice. Adjudication of
11 individual class members' claims with respect to Tiger/CGC would, as a practical matter, be
12 dispositive of the interests of other members not parties to the adjudication, and could
13 substantially impair or impede the ability of other class members to protect their interests. All
14 Class Members seek the same statutory damages for Tiger/CGC recording the Sales Calls
15 without consent. Although individual Enrollee Sub-Class Members will claim different damages
16 based on how long each bought gas from Tiger, and whether they were senior citizens at the time
17 they entered into the oral contracts with Tiger, there are common issues as to liability and the
18 methodology for calculation would be identical (Tiger procurement price minus PG&E
19 procurement price, multiplied by usage, and adding \$0.05 per day and the tax differential), with
20 the same enhancement for recipients who were senior citizens when Tiger/CGC called them.

21 **83. Injunctive and Declaratory Relief (Fed. R. Civ. Proc. 23(b)(2)).** As alleged herein and
22 below, Tiger/CGC acted or refused to act on grounds that apply generally to the Class and Sub-
23 Classes, so that final injunctive relief or corresponding declaratory relief is appropriate
24 respecting the Class and Sub-Classes as a whole. In particular, as to the Do Not Call Sub-Class,
25 final injunctive and corresponding declaratory relief preventing Tiger and CGC from calling
26 numbers on the Do Not Call list is an appropriate remedy.

FIRST CAUSE OF ACTION

**[Violations of California Recording Law, Cal. Penal Code § 632 *et seq.*]
(By Plaintiffs Fishman and Faria and the Class)
(Against Tiger and CGC)**

84. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

85. Plaintiffs bring this Action within one year of learning that Tiger/CGC recorded the Sales Call to them. *See* Code Civ. Proc. § 340. As discussed in more detail above, Plaintiffs could not have, with reasonable diligence, discovered that the Sales Calls were recorded any sooner because such information was exclusively within the possession of Tiger/CGC until Tiger's former counsel provided a recording of the Sales Call to Fishman within one year of Tiger/CGC making the call, and Plaintiffs filed this Action within one year of learning the Sales Calls were recorded.

86. Plaintiffs are informed and believe and thereon allege that most if not all other Class Members do not know, even as of the filing of this Action, that Tiger/CGC's Sales Calls to them were being recorded, so the statute of limitations had not even started to run for the other Class Members as of the filing of this Action.

87. Cal. Penal Code § 632(a) prohibits:

A person [from] intentionally and without the consent of all parties to a confidential communication, [using] an electronic amplifying or recording device to eavesdrop upon or record the confidential communication, whether the communication is carried on among the parties in the presence of one another or by means of a telegraph, telephone, or other device, except a radio . . .

88. Cal. Penal Code § 632(c) states that a:

"confidential communication" means any communication carried on in circumstances as may reasonably indicate that any party to the communication desires it to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive, or administrative proceeding open to the public, or in any other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded.

89. Tiger/CGC's Sales Calls to Plaintiffs and Class Members contained objectively confidential communications because a reasonable consumer would expect that communications involving his or her home address and PG&E account number – which Plaintiffs disclosed

1 during the Sales Calls but are redacted from the transcript of the Sales Call to Fishman in Exhibit
2 A – would be confined to the parties to the call.

3 90. Tiger/CGC's Sales Calls to Plaintiffs were not made in any kind of public setting.

4 91. Neither Plaintiffs nor any reasonable consumer would reasonably expect that
5 Tiger/CGC's Sales Calls were being recorded precisely because so many other telemarketers *do*
6 disclose that calls are being recorded, particularly when confidential information is being
7 communicated.

8 92. Additionally, neither Plaintiffs nor any reasonable consumer would reasonably expect
9 that Tiger/CGC's *Sales* Calls were being recorded precisely because the subsequent automated
10 verification calls *did* request consent to record. And the fact that the second, verification call
11 obtained Plaintiffs' consent to record does not retroactively cure Tiger/CGC's failure to obtain
12 their consent to record the first *Sales* Calls.

13 93. To the extent that Tiger/CGC may have called any Class Members on cellular telephones,
14 Tiger/CGC also violated Cal. Penal Code § 632.7, which does not include the requirement of
15 confidential information.

16 94. Although California's Recording Law is codified in the Penal Code, recipients injured by
17 violations of the statute have standing to pursue remedies even without demonstrating that they
18 suffered actual damages. *See* Cal. Pen. Code §§ 637.2(a), (c).

19
20 WHEREFORE, Plaintiffs Fishman and Faria and the Class pray for judgment against Defendants
21 as hereinafter set forth.

22
23 **SECOND CAUSE OF ACTION**

24 **[Breach of Oral Contract, Cal. Civil Code § 1622]**
25 **(By Plaintiff Fishman and the Enrollee Sub-Class)**
26 **(Against Tiger)**

27 95. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

28 96. Fishman brings this Action within two years of Tiger calling her to advertise the
29 Program. *See* Cal. Code Civ. Proc. § 339.

30 97. Fishman and the Enrollee Sub-Class on the one hand, and Tiger on the other hand,
31 entered into oral contracts by which Fishman and Enrollee Sub-Class Members agreed to

1 participate in Tiger's natural gas price protection program and buy natural gas from Tiger. *See*
2 Cal. Civ. Code § 1622.

3 98. By the terms of the contracts, Tiger offered Fishman and Enrollee Sub-Class Members a
4 "free" Program, whereby gas would be priced based on the market price, with no added
5 surcharges or fees, and that there would be a price cap that was a consumer benefit because
6 Fishman and Enrollee Sub-Class Members' former utilities could charge more than that cap.

7 99. Fishman and Enrollee Sub-Class Members did all, or substantially all, of the significant
8 things that the contract required, namely, pay for Tiger's gas. Thus, Fishman and Enrollee Sub-
9 Class Members provided consideration to Tiger.

10 100. All conditions required by the contracts for Tiger's performance had occurred.

11 101. Tiger breached the contracts by charging Fishman and the Enrollee Sub-Class a daily
12 charge of \$0.05 in addition to the gas for participating in the Program, even though Tiger/CGC
13 had represented that the Program was free.

14 102. Tiger breached the contracts by charging Fishman and the Enrollee Sub-Class prices that
15 were not based on the market rate, and that were far more than the market rate. For example,
16 even as PG&E's gas procurement rate dropped by 52% from February to April 2016
17 (\$0.4058/therm to \$0.1944/therm), Tiger's rate dropped by only 7% (\$0.6555/therm to
18 \$0.6097/therm).

19 103. Tiger breached its promises by failing to deliver any customer benefits via the price cap,
20 in that the price cap was above what Fishman and the Enrollee Sub-Class's former utilities could
21 and did charge for gas.

22 104. Fishman and the Enrollee Sub-Class were harmed by Tiger's breach of contract.

23 105. Whatever terms and conditions Tiger might have mailed to Fishman and the Enrollee
24 Sub-Class after formation of the contracts have no bearing on and could not modify the oral
25 contracts formed during Tiger/CGC's Sales Calls, because, *inter alia*: (a) Plaintiffs are informed
26 and believe that any such subsequently-mailed terms and conditions contradicted the promises
27 during the Sales Calls; and (b) neither Plaintiffs nor Sub-Class Members agreed to be bound by
28 such subsequently-mailed terms and conditions.

29
30 WHEREFORE, Plaintiff Fishman and the Enrollee Sub-Class pray for judgment against
31 Defendants as hereinafter set forth.

THIRD CAUSE OF ACTION

**[Violations of Consumers Legal Remedies Act, Cal. Civil Code § 1750 *et seq.*]
(By Plaintiffs Fishman and Faria and the Consumer Enrollee Sub-Class)
(Against Tiger)**

106. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

107. Plaintiffs bring this Action within three years of Tiger calling them to advertise the Program. *See* Cal. Civ. Code § 1783.

108. The Consumers Legal Remedies Act ("CLRA") "shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." *See* Cal. Civ. Code § 1760.

109. Plaintiffs and Consumer Enrollee Sub-Class members are "consumers" because each is an "individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes." *See* Cal. Civ. Code § 1761(d).

110. Tiger's natural gas is a "good" because it is a "tangible chattel bought [] for use primarily for personal, family, or household purposes []." *See* Cal. Civ. Code § 1761(a). Tiger's natural gas price protection program is a "service" because it is "service for other than a commercial or business use, including services furnished in connection with the sale or repair of goods." *See* Cal. Civ. Code § 1761(b).

111. Plaintiffs and the Consumer Enrollee Sub-Class members' dealings with Tiger to purchase its gas are "transactions" because they are "agreement[s] between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement." *See* Cal. Civ. Code § 1761(e).

112. The CLRA prohibits various "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer." *See* Cal. Civ. Code § 1770(a).

113. Tiger violated Section 1770(a)(1) ("Passing off goods or services as those of another"), 1770(a)(2) ("Misrepresenting the source, sponsorship, approval, or certification of goods or services") and (a)(3) ("Misrepresenting the affiliation, connection, or association with, or certification by, another") by claiming at the outset of the call to Plaintiffs and the Sub-Class that its agents were calling on behalf of "Community Gas Center," which implies a neutral

1 community organization, as opposed to an agent for Tiger – a for-profit entity that competes with
2 their established gas providers.

3 114. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
4 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
5 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
6 Consumer Enrollee Sub-Class a “price protection” program that would purportedly cap gas
7 prices at a rate lower than PG&E’s rate, despite knowing that PG&E’s rates could not be more
8 expensive than Tiger’s cap of \$0.69 during the next three years, and claiming that the cap of
9 \$0.69 per therm has financial benefits versus PG&E gas.

10 115. Tiger violated Section 1770(a)(8) (“Disparaging the goods, services, or business of
11 another by false or misleading representation of fact”) by knowingly falsely claiming to
12 Plaintiffs and the Consumer Enrollee Sub-Class that PG&E’s natural gas procurement rates were
13 increasing when in fact they were decreasing, and that PG&E could charge \$1.06 per therm,
14 twice the possible rate even assuming Tiger’s false claim of a 33% PG&E rate increase were
15 true.

16 116. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
17 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
18 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
19 Consumer Enrollee Sub-Class that its price protection program as “free” when in fact Tiger
20 charges \$0.05 per day and when in fact enrolling in the price protection program would
21 immediately lead to a significant increase in customers’ gas prices

22 117. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
23 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
24 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
25 Consumer Enrollee Sub-Class that its gas would be priced at “a variable rate based on the market
26 price” when in fact the a surcharge was added to the market price to line Tiger’s pockets.

27 118. Fishman sent a letter to Tiger in California by certified return-receipt mail on June 22,
28 2017, as required by Cal. Civil Code § 1782, demanding that Tiger immediately correct its
29 unlawful marketing practices, including but not limited to: a) disclosing on its website and in all
30 forms of advertising (including telemarketing) that Tiger does not base its gas procurement
31 prices on market rates; b) disclosing on its website and in all forms of advertising (including

1 telemarketing) that Tiger's purported "cap" on gas procurement will not actually result in a lower
2 price to consumers than their current gas provider would charge; c) disclosing the \$0.05 daily
3 customer charge on its website and in all forms of advertising (including telemarketing); and d)
4 removing all claims from its website that there have been no complaints filed against Tiger with
5 the Better Business Bureau.

6 119. Fishman also demanded in her June 22, 2017 letter that Tiger notify her within 30 days
7 from its receipt of the letter that: a) Tiger had identified all similarly situated consumers (i.e.,
8 consumers who in the last three years agreed to purchase Tiger gas in reliance on claims that
9 Tiger's price cap could result in lower rates than PG&E, and consumers who in the last three
10 years agreed to enroll in Tiger's price protection program based on claims that the Program was
11 free); b) notified those consumers that Tiger is correcting its unlawful advertising practices; and
12 c) notified those consumers that upon their request, Tiger would reimburse all monies they paid
13 for Tiger gas in excess of their former gas provider's price for each month during which they
14 were Tiger customers, plus \$0.05 per day for each day that they were Tiger customers.

15 120. Tiger's response was due on June 22, 2017 plus 30 days plus five days for mailing in-
16 state, or July 27, 2017. Tiger did not provide a code-compliant response to Fishman's letter by
17 July 27, 2017 as required by Cal. Civil Code § 1782. In fact, Fishman had not received *any*
18 response to her June 22, 2017 letter as of the filing of this Action in the Superior Court of
19 California, County of Marin on August 18, 2017.

20 121. Tiger's violations of Cal. Civil Code § 1770 damaged Plaintiffs and the Consumer
21 Enrollee Sub-Class members. Section 1780 authorizes remedies of actual damages, injunctive
22 relief, punitive damages, costs, and attorneys' fees. Section 1781 allows Plaintiffs to bring this
23 lawsuit as a class action.

24 122. Tiger's violations of the CLRA when it/CGC called senior citizens, such as Plaintiff
25 Faria, carry additional damages as set forth by Cal. Civil Code § 1780(b). Faria and senior
26 citizens in the Consumer Enrollee Sub-Class suffered substantial economic damage from Tiger's
27 conduct, which caused their natural gas procurement bills to significantly increase versus their
28 PG&E natural gas procurement bills if they had not switched to Tiger.

29 123. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Consumer
30 Enrollee Sub-Class after formation of the contract have no bearing on and cannot retroactively
31

1 cure Tiger's CLRA violations, particularly if those terms and conditions contradict the promises
2 and representations made by Tiger/CGC during the Sales Calls.

3
4 WHEREFORE, Plaintiffs Fishman and Faria and the Consumer Enrollee Sub-Class pray for
5 judgment against Defendants as hereinafter set forth.

6
7 **FOURTH CAUSE OF ACTION**

8 **[Fraud, Cal. Civil Code § 1572]**

9 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
10 **(Against Tiger)**

11 124. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

12 125. Plaintiffs bring this Action within three years of Tiger calling them to advertise its natural
13 gas price protection program. *See* Cal. Code Civ. Proc. § 338(d).

14 126. Tiger, by its agents, fraudulently induced Plaintiffs and the Enrollee Sub-Class to enroll
15 in Tiger's Program. Apparent consent obtained by fraud is invalid. *See* Cal. Civ. Code § 1567.

16 127. Tiger, by its agents, represented to Plaintiffs and the Enrollee Sub-Class via
17 telemarketing that: a) PG&E's natural gas procurement rates were increasing when in fact they
18 were decreasing; b) the Program was "free"; c) Tiger's gas price was based on market price; and
19 d) the price cap delivered customer benefits because the current utility could raise its prices to a
20 price higher than the Program's cap.

21 128. Tiger – in the natural gas business – knew that its/CGC's representation that PG&E's
22 rates had already increased by 18.8% and would increase by 33% in the next three years was
23 false. In fact, PG&E's gas procurement rates were decreasing. This misrepresentation was
24 material because it made it appear that the Program's price cap could deliver a customer benefit.

25 129. Tiger knew that its/CGC's representation that the Program was free (a material fact) was
26 false, because Tiger charges \$0.05 per day to participate in the Program in addition to the price
27 of the gas itself, and because Tiger immediately raised customers' gas prices to levels that far
28 exceeded what the original utility would have charged.

29 130. Tiger knew that its/CGC's representation that as part of the Program, it charged
30 customers for gas based on the market price (a material fact), was false, because, in fact, Tiger
31 added a large surcharge to the market price to line its own pockets.

1 131. Tiger knew that its/CGC's representation that the Program's price cap delivered customer
2 benefits was false. Tiger/CGC made specific false claims to Plaintiffs when it (falsely) stated as
3 a fact that PG&E could raise its gas procurement price by 33% to \$1.06 per therm within the
4 next year. Tiger made this false claim in order to make its price cap of \$0.69 appear to deliver a
5 customer benefit, when in fact the price cap had no such benefit at all. Thus, Tiger's fraud was
6 not advertising a price cap of \$0.69 per therm with the intent of charging more than \$0.69, but
7 rather the knowing presentation of an impossible scenario in which PG&E could charge \$1.06
8 per therm, in order to make it appear that the price cap had any value at all to Tiger customers.

9 132. Tiger knew that its/CGC's representations that PG&E would be raising its gas
10 procurement rate by 33%, and PG&E could charge customers \$1.06 per therm within the next
11 year, was false.

12 133. Tiger knew that these representations were false when its agents made such
13 representations, and that its agents made such representations recklessly and without regard for
14 the truth.

15 134. Tiger intended that Plaintiffs and the Enrollee Sub-Class rely on its/CGC's
16 representations made during the Sales Calls.

17 135. Plaintiffs and the Enrollee Sub-Class reasonably relied on Tiger/CGC's representations
18 made during the Sales Calls by agreeing to sign up for the Program during the Sales Calls.

19 136. Plaintiffs and the Enrollee Sub-Class were harmed by relying on Tiger/CGC's
20 representations made during the Sales Calls, because they paid significantly more for natural gas
21 than they would have by staying with their current gas provider. But for Tiger/CGC's Sales
22 Calls, Plaintiffs and the Enrollee Sub-Class would not have been so harmed.

23 137. Plaintiffs and the Enrollee Sub-Class's reliance on Tiger/CGC's representations made
24 during the Sales Calls was a substantial factor in causing their harm.

25 138. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
26 Sub-Class after formation of the contract have no bearing on and cannot retroactively cure
27 Tiger's fraud, particularly if those terms and conditions contradict the promises and
28 representations made by Tiger/CGC during the Sales Calls.

29
30 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
31 against Defendants as hereinafter set forth.

FIFTH CAUSE OF ACTION

**[Negligent Misrepresentation, Cal. Civil Code §§ 1573, 1577]
(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)
(Against Tiger)**

139. Plaintiffs hereby incorporates the foregoing paragraphs as though set forth in full herein.

140. Plaintiffs bring this Action within three years of Tiger calling them to advertise its natural gas price protection program. *See* Code Civ. Proc. § 338(d).

141. “Because negligent misrepresentation is a species of fraud, and not common-law negligence, Plaintiff need not allege a duty of care.” *Gilmore v. Wells Fargo Bank N.A.*, 75 F. Supp. 3d 1255, 1269 (N.D. Cal. 2014). *See also Century Surety Company v. Crosby Insurance Inc.*, 124 Cal. App. 4th 116, 129 (4th Dist. 2004) (stating elements of the negligent misrepresentation cause of action without mentioning a duty of care).

142. Alternatively, to the extent that the Court believes that duty of care is a necessary element for a Negligent Misrepresentation cause of action, Tiger had a duty of care to Plaintiffs and the Enrollee Sub-Class because they are members of “a specific class of persons” (Tiger customers) involved in transactions (oral contracts to purchase Tiger gas) that Tiger, who supplied information to Plaintiffs and the Sub-Class, intended the information to influence. Tiger/CGC undertook to furnish prospective customers with false information about the Program to influence their purchase decisions. Further, Tiger/CGC supplied the information and directed their activity to a closed universe of third parties – current customers of PG&E and other gas utilities who might conceivably be interested in switching to Tiger. Finally, Tiger/CGC supplied information for the sort of use – influencing prospective customers’ purchase decisions – from which Plaintiffs and the Enrollee Sub-Class’ alleged losses arose. *See Apex Directional Drilling LLC v. SHN Consulting Engineers & Geologists Inc.*, 119 F. Supp. 3d. 1117, 1126-27 (N.D. Cal. 2015).

143. Tiger, by its agents, represented to Plaintiffs and the Enrollee Sub-Class via telemarketing and/or other forms of advertising important facts such as: a) PG&E’s natural gas procurement rates were increasing when in fact they were decreasing; b) the Program was free; c) Tiger’s gas price was based on market price; and d) the price cap delivered customer benefits because the current utility could raise its prices to a price higher than the Program’s cap.

1 144. Tiger – in the natural gas business – knew that its/CGC’s representation that PG&E’s
2 rates had already increased by 18.8% and would increase by 33% in the next three years was
3 false. In fact, PG&E’s gas procurement rates were decreasing. This misrepresentation was
4 material because it made it appear that the Program’s price cap could deliver a customer benefit.

5 145. Tiger/CGC’s representation that the Program was free (a material fact) was not true,
6 because it charges \$0.05 per day to participate in the Program in addition to the price of the gas
7 itself, and because Tiger immediately raised consumers’ gas prices to levels that far exceeded
8 what they would have paid their existing utility for the same gas.

9 146. Tiger/CGC’s representation that as part of the Program, Tiger charged customers for gas
10 based on the market price (a material fact), was not true. In fact, Tiger added a large surcharge
11 to the market price, resulting in gas charges significantly exceeding what customers would have
12 paid their existing utility for the same gas.

13 147. Tiger/CGC’s representation that the Program’s price cap delivered customer benefits was
14 not true. These statements go beyond general advertising puffery because Tiger/CGC made
15 specific false claims to Plaintiffs when it stated as a fact that PG&E could raise its gas
16 procurement price by 33% to \$1.06 per therm within the next year. Tiger made this false claim
17 in order to make its price cap of \$0.69 appear to deliver a customer benefit, when in fact the
18 price cap had no such benefit at all. Thus, Tiger’s fraud was not advertising a price cap of \$0.69
19 per therm with the intent of charging more than \$0.69, but rather the knowing presentation of an
20 impossible scenario in which PG&E could charge \$1.06 per therm, in order to make it appear
21 that the price cap had any value at all to Tiger customers.

22 148. Tiger/CGC’s representations that PG&E would be raising its gas procurement rate by
23 33%, and PG&E could charge customers \$1.06 per therm within the next year, were not true.

24 149. Tiger/CGC’s representation that the Program was great for customers was not true.

25 150. Even if Tiger/CGC may have honestly believed that the above representations were true,
26 Tiger/CGC had no reasonable grounds for believing that the above representations were true
27 when they made the representations.

28 151. Tiger intended that Plaintiffs and the Enrollee Sub-Class rely on its/CGC’s
29 representations made during the Sales Calls.

30 152. Plaintiffs and the Enrollee Sub-Class reasonably relied on Tiger/CGC’s representations
31 made during the Sales Calls.

1 153. Plaintiffs and the Enrollee Sub-Class were harmed by relying on Tiger/CGC's
2 representations made during the Sales Calls, because they paid significantly more for natural gas
3 than they would have by staying with their current gas provider. But for Tiger/CGC's Sales
4 Calls, Plaintiffs and the Enrollee Sub-Class would not have been so harmed.

5 154. Plaintiffs and the Enrollee Sub-Class's reliance on Tiger/CGC's representations made
6 during the Sales Calls was a substantial factor in causing their harm.

7 155. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
8 Sub-Class after formation of the contract have no bearing on and cannot retroactively cure
9 Tiger's negligent misrepresentation, particularly if those terms and conditions contradict the
10 promises and representations made by Tiger/CGC during the Sales Calls.

11
12 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
13 against Defendants as hereinafter set forth.

14
15 **SIXTH CAUSE OF ACTION**

16 **[Violations of False Advertising Law, Cal. Business & Professions Code § 17500 *et seq.*]**
17 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
18 **(Against Tiger)**

19 156. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

20 157. Plaintiffs bring this Action within four years of Tiger calling them to advertise its natural
21 gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

22 158. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17500
23 *et seq.* because they suffered injury in fact and lost money as the result of Tiger's false
24 advertising. *See* Cal. Bus. & Prof. Code § 17204. Fishman lost \$126.44 and Faria lost \$34.05,
25 plus taxes and sundry charges, by enrolling in Tiger's Program, as compared to their gas charges
26 if they had stayed with PG&E.

27 159. Cal. Business & Professions Code § 17500 states:

28 It is unlawful for any person, firm, corporation or association, or any employee
29 thereof with intent directly or indirectly to dispose of real or personal property or
30 to perform services, professional or otherwise, or anything of any nature
31 whatsoever or *to induce the public to enter into any obligation* relating thereto, to
make or disseminate or cause to be made or disseminated before the public in this
state, or to make or disseminate or cause to be made or disseminated from this

state before the public in any state, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, including over the Internet, any statement, *concerning that real or personal property or those services, professional or otherwise, or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading*, or for any person, firm, or corporation to so make or disseminate or cause to be so made or disseminated any such statement as part of a plan or scheme with the intent not to sell that personal property or those services, professional or otherwise, so advertised at the price stated therein, or as so advertised. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine [emphasis added].

160. Tiger falsely claimed in its Sales Calls to Plaintiffs and the Sub-Class that its natural gas price protection program was great *because*: a) it was free; b) gas prices were based on market prices; and c) gas prices were capped at a rate below which PG&E could charge them for gas.

161. Tiger's claims were false because: a) Plaintiffs and the Sub-Class were charged \$0.05 per day to participate in the Program in addition to the cost of the gas; b) Tiger's gas prices were not based on market prices but were actually much higher; and c) Tiger set up a hypothetical – and impossible – scenario in which PG&E could charge Plaintiffs \$1.06 per therm for gas procurement within a year so Tiger's price of \$0.69 per therm delivered customer benefits, when in truth PG&E's gas procurement rates were decreasing and it could not charge anywhere near \$0.69 per therm, so Tiger's price cap had no customer benefit whatsoever.

162. Cal. Business & Professions Code § 17500.3 states:

It is unlawful for any person to solicit a sale or order for sale of goods or services at the residence of a prospective buyer, in person or by means of telephone, without clearly, affirmatively and expressly revealing at the time the person initially contacts the prospective buyer, *and before making any other statement, except a greeting, or asking the prospective buyer any other questions, that the purpose of the contact is to effect a sale*, by doing all of the following:

- (1) Stating the identity of the person making the solicitation.
- (2) *Stating the trade name of the person represented by the person making the solicitation.*
- (3) Stating the kind of goods or services being offered for sale [emphasis added].

163. The first thing Tiger's CSR did after Fishman answered the phone was to provide her [first] name: Olivia.

1 164. However, Brown did not identify Tiger before making any other statement except
2 greeting or asking Fishman any other questions. Instead, she claimed she was calling from
3 "Community Gas Center," which a reasonable consumer might believe to be a non-profit
4 organization, and has no obvious connection to Tiger.

5 165. Cal. Business & Professions Code § 17508 states:

6 (a) It shall be unlawful for any person doing business in California and
7 advertising to consumers in California to make *any false or misleading*
8 *advertising claim*, including claims that (1) purport to be based on factual,
9 objective, or clinical evidence, (2) compare the product's effectiveness or safety
10 to that of other brands or products, or (3) *purport to be based on any fact*
11 [emphasis added].

12 166. Tiger made a false and/or misleading claim to Plaintiffs and the EnrolleeSub-Class when
13 it presented as a fact that PG&E could raise its gas procurement price to \$1.06 per therm within
14 the next year. Tiger made this false and/or misleading claim in order to make its price cap of
15 \$0.69 per therm appear to deliver a customer benefit, when in fact the price cap had no such
16 benefit because PG&E could not charge \$1.06 per therm, or any amount higher than \$0.69 per
17 therm.

18 167. Plaintiffs and the Enrollee Sub-Class were harmed by relying on Tiger's representations.

19 168. Tiger knew, or in the exercise of reasonable diligence should have known, that its
20 advertisements described above were false and/or misleading.

21 169. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
22 Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure
23 Tiger's False Advertising Law violations, particularly if those terms and conditions contradict
24 the promises and representations made by Tiger/CGC during the Sales Calls.

25 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
26 against Defendants as hereinafter set forth.

27 **SEVENTH CAUSE OF ACTION**

28 **[Violations of Unfair Competition Law ("UCL") – Unlawful Prong, Cal. Business &
29 Professions Code § 17200 *et seq.*]**

30 **(By Plaintiff Faria and the Do Not Call Sub-Class)**
31 **(Against Tiger and CGC)**

1 170. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

2 171. Faria brings this Action within four years of receiving a Sales Call from Tiger/CGC in
3 April or early May of 2015 at her landline telephone number that had been on the Do Not Call
4 list since January 2004, without lapses. *See* Cal. Bus. & Prof. Code § 17208.

5 172. Cal. Business & Professions Code § 17200 prohibits any “unlawful” act. The UCL’s
6 unlawful prong “borrows” violations of other laws and makes them independently actionable.

7 173. Tiger/CGC’s acts and practices alleged herein are “unlawful” within the meaning of the
8 UCL because they violated federal and state laws and regulations prohibiting calls to telephone
9 numbers on the Do Not Call registry.

10 The Telephone Consumer Protection Act and Implementing Regulations

11 174. The Telephone Consumer Protection Act (“TCPA”) at 47 U.S.C. § 227(c) incorporates
12 violations as set forth by 47 C.F.R. section 64.1200. In turn, 47 C.F.R. § 64.1200(c)(2) prohibits
13 telemarketers from calling telephone numbers on the Do Not Call registry.

14 175. Tiger/CGC violated the TCPA and 47 C.F.R. § 64.1200(c)(2) by calling Faria’s landline
15 telephone number that was on the Do Not Call list, and by making similar calls to the telephone
16 numbers of the Members of the Do Not Call Sub-Class, all of whose numbers, like Faria’s, were
17 on the Do Not Call list.

18 176. Tiger/CGC violated the TCPA and 47 C.F.R. section 64.1200(d)(1) and (d)(2) by calling
19 Faria’s landline telephone number, and the Do Not Call Sub-Class Members’ telephone numbers,
20 that were on the Do Not Call list because: a) Tiger and CGC do not have written policies,
21 available upon demand, for maintaining a do-not-call list; and b) Tiger and CGC personnel
22 engaged in any aspect of telemarketing were not informed and trained in the existence and use of
23 the Do Not Call list.

24 Federal Trade Commission’s Telemarketing Sales Rule

25 177. The Federal Trade Commission’s Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*, also
26 prohibits telemarketers from calling numbers on the Do Not Call list. The Telemarketing Sales
27 Rule was adopted pursuant to the authority of the Telemarketing and Consumer Fraud and Abuse
28 Prevention Act, 15 U.S.C. § 6101 *et seq.* (hereafter the “Telemarketing Fraud Act”). Congress
29 enacted the Telemarketing Fraud Act in order to “offer consumers necessary protection from
30 telemarketing deception and abuse.” *Id.* at § 6101(5).

31

1 178. Tiger/CGC were engaged in “telemarketing” within the meaning of the Telemarketing
 2 Sales Rule, which defines “telemarketing” as “a plan, program, or campaign which is conducted
 3 to induce the purchase of goods or services ... by use of one or more telephones and which
 4 involves more than one interstate telephone call.” 16 C.F.R. § 310.2(gg). Tiger/CGC were
 5 “telemarketers” within the meaning of the Telemarketing Sales Rule, which defines a
 6 telemarketer as “any person who, in connection with telemarketing, initiates or receives
 7 telephone calls to or from a consumer ...” *Id.* at § 310.2(ff). Tiger should be equally deemed a
 8 “telemarketer” because CGC acted as Tiger’s agent when CGC made the telemarketing calls. In
 9 addition, Tiger was a “seller” within the meaning of the Telemarketing Sales Rule because Tiger,
 10 in connection with a “telemarketing” transaction, provided or offered to provide services to
 11 customers in exchange for consideration. *Id.* at §310.2(dd).

12 179. The Telemarketing Sales Rule states that it is “an abusive telemarketing act or practice
 13 and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer
 14 to engage in,” a list of enumerated abusive acts, one of which is calling any number on the Do
 15 Not Call list. 16 C.F.R. § 310.4(b)(1)(iii)(B). CGC violated this provision by calling Faria and
 16 the Do Not Call Sub-Class at their telephone numbers that were on the Do Not Call list. Tiger
 17 violated this provision by causing CGC to make these calls, and because CGC was acting as
 18 Tiger’s agent in making the calls, as alleged above.

19 California Law Prohibiting Unsolicited and Unwanted Telephone Solicitations

20 180. Cal. Business & Professions Code § 17590 states the California Legislature’s intent to
 21 protect California residential and wireless telephone subscribers from telemarketing calls made
 22 to numbers on the Do Not Call registry.

23 181. Tiger/CGC violated Cal. Bus. & Prof. Code § 17592(c), (c)(1) by calling Faria and the
 24 Do Not Call Sub-Class at their telephone numbers that were on the Do Not Call list, seeking to
 25 sell Tiger’s goods and services, namely Tiger’s natural gas and the Program.

26 182. Plaintiff Faria suffered injury in fact and lost money as the direct result of all of
 27 Tiger/CGC’s “unlawful” acts and practices alleged above. *See* Cal. Bus. & Prof. Code § 17204.
 28 But for Tiger/CGC’s “unlawful” conduct, described herein, Faria would never have received a
 29 phone call from CGC and therefore would not have signed up for Tiger’s program and would
 30 never have paid the inflated gas prices and daily fees that Tiger charged her.

1 WHEREFORE, Plaintiff Faria and the Do Not Call Sub-Class pray for judgment against
2 Defendants as hereinafter set forth.

3
4 **EIGHTH CAUSE OF ACTION**

5 **[Violations of Unfair Competition Law (“UCL”) – Unlawful Prong, Cal. Business &
6 Professions Code § 17200 *et seq.*]**

7 **(By Plaintiffs Fishman and Faria and the Class)
8 (Against Tiger and CGC)**

183. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

184. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise its
10 natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

185. Cal. Business & Professions Code § 17200 prohibits any “unlawful” act or practice. The
12 UCL’s unlawful prong “borrows” violations of other laws and makes them independently
13 actionable.

14 **California Statutory Violations**

186. Tiger’s acts and practices alleged herein are “unlawful” within the meaning of the UCL
16 because they amount to violations of the California Recording Law (Cal. Pen. Code § 632 *et*
17 *seq.*), breach of oral contract (Cal. Civ. Code § 1622), violations of the Consumer Legal
18 Remedies Act (Cal. Civ. Code § 1750 *et seq.*), fraud (Cal. Civ. Code § 1572), negligent
19 misrepresentation (Cal. Civ. Code §§ 1573, 1577), and violations of the False Advertising Law
20 (Cal. Bus. & Prof. Code § 17500 *et seq.*), as described above. Each of these statutory violations
21 serves as predicate actions constituting “unlawful” conduct by Tiger.

187. CGC’s acts and practices alleged herein are “unlawful” within the meaning of the UCL
23 because they amount to violations of the California Recording Law (Cal. Pen. Code § 632 *et*
24 *seq.*), as described above. This statutory violation serves as a predicate action constituting
25 “unlawful” conduct by CGC.

26 **Violations of the FTC’s Telemarketing Sales Rule**

188. In addition, Tiger’s and CGC’s acts and practices alleged herein are “unlawful” within
28 the meaning of the UCL because they constitute “deceptive telemarketing acts or practices”
29 within the meaning of the Federal Trade Commission’s Telemarketing Sales Rule, 16 C.F.R.
30 § 310.4(a). In particular, the Rule provides that “[i]t is a deceptive telemarketing act or practice
31 and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; [and]

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;”

16 C.F.R. § 310.3(a)(1) (footnotes omitted).

189. The Rule also makes it unlawful for a seller or telemarketer to “misrepresent[], directly or by implication, in the sale of goods or services any of the following material information: (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer; [or] (ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;” *Id.* at § 310.3(a)(2).

190. As alleged above, Tiger/CGC are “telemarketers,” and their sales calls to Plaintiffs and the members of the Enrollee Sub-Class constitute “telemarketing,” within the meaning of the Telemarketing Sales Rule. *See* 16 C.F.R. § 310.2(ff), (gg). Also, Tiger is a “seller” within the meaning of the Telemarketing Sales Rule because Tiger, in connection with a “telemarketing” transaction, provides or offers to provide services to customers in exchange for consideration. *Id.* at § 310.2(dd).

191. Tiger/CGC violated the provisions of the Telemarketing Sales Rule quoted above by obtaining Plaintiffs’ and the Enrollee Sub-Class members’ consent to pay for Tiger’s natural gas as part of the Program without truthfully, clearly and conspicuously disclosing the total cost of the Program. In particular, Tiger/CGC failed to disclose that enrolling in the program would lead to an immediate increase in the cost of the natural gas and would include a \$0.05 daily charge. To the contrary, Tiger/CGC falsely represented that it was “free” to enroll in the program. Tiger/CGC also violated the quoted provisions of the Telemarketing Sales Rule by failing to truthfully, clearly and conspicuously disclose all material conditions associated with the program, including the fact that customers’ gas prices would go up, that a \$0.05 daily charge would be charged, and other material terms.

192. Tiger/CGC cannot escape liability for the violations of the Telemarketing Sales Rule by purporting to mail terms and conditions to Plaintiffs and the Enrollee Sub-Class members after

1 agreements were made during the Sales Calls, because, *inter alia*, the Rule is clear that the
2 required disclosures must be made *before* obtaining customers' consent to pay.

3 193. Plaintiffs suffered injury in fact and lost money as the direct result of all of Tiger/CGC's
4 "unlawful" acts and practices alleged above. *See* Cal. Bus. & Prof. Code § 17204. But for
5 Tiger/CGC's "unlawful" conduct, described herein, Plaintiffs would not become enrollees in
6 Tiger's natural gas protection program, and would not have paid any monies to Tiger for
7 purchase of natural gas, including Tiger's undisclosed surcharge and the daily fee.

8
9 WHEREFORE, Plaintiffs Fishman and Faria and the Class pray for judgment against Defendants
10 as hereinafter set forth.

11
12 **NINTH CAUSE OF ACTION**

13 **[Violations of Unfair Competition Law – Unfair Prong, Cal. Business & Professions Code**
14 **§ 17200 *et seq.*]**

15 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
16 **(Against Tiger and CGC)**

17 194. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

18 195. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise
19 Tiger's natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

20 196. Cal. Business & Professions Code § 17200 prohibits any "unfair" act.

21 197. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17200
22 *et seq.* because they suffered injury in fact and lost money as the direct result of Tiger/CGC's
23 unfair competition. *See* Cal. Bus. & Prof. Code § 17204. But for Tiger/CGC's unfair conduct,
24 described herein, Plaintiffs would never have signed up for Tiger's program and would never
25 have paid the inflated gas prices and daily fees that Tiger charged them.

26 198. Tiger/CGC's acts and practices, as alleged herein, are "unfair" under all three
27 formulations developed in the case law: the balancing test (*South Bay Chevrolet v. Gen. Motors*
28 *Acceptance Corp.*, 72 Cal. App. 4th 861 (4th Dist. 1999); *Klein v. Earth Elements, Inc.*, 59 Cal.
29 App. 4th 965 (1st Dist. 1997)), the tethering test (*Cel-Tech Communications, Inc. v. Los Angeles*
30 *Cellular Telephone Co.*, 20 Cal. 4th 163 (1999)), and the Section 5 test (*Camacho v. Automobile*
31 *Club*, 142 Cal. App. 4th 1394, 1403-05 (2d Dist. 2006)).

199. Tiger/CGC's Conduct was "Unfair" Under the Balancing Test: "Determination of whether a business practice or act is 'unfair' within the meaning of the [UCL] entails examination of the impact of the practice or act on its victim . . . balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the court must weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim." *Klein*, 59 Cal. App. 4th at 969-70 (citations omitted). "An unfair business practice occurs when the practice offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 647 (2d Dist. 1996) (citation omitted). Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to call telephone numbers on the Do Not Call list; there is no redeeming moral or ethical utility to have done so. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to record telephone calls without disclosing and obtaining consent. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to claim that PG&E's gas procurement rates were increasing when they were really decreasing and to create a false and impossible hypothetical situation – that PG&E could charge \$1.06 per therm for gas procurement – for the sole purpose of making Tiger's price cap appear to be a customer benefit when in fact Tiger intended to charge and actually charged customers far more for gas than PG&E would have. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to advertise the Program as "free" during the Sales Calls while failing to disclose that Tiger charges a \$0.05 daily fee. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to represent during the Sales Calls that Tiger's gas is based on the market price without disclosing a large "add-on" of unstated amount in order to line its own pockets... and then charging more than that add-on. As the California Supreme Court has explained in a similar context, "protection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society." *Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971).

200. Tiger/CGC's Conduct was "Unfair" Under the Tethering Test: Under the tethering test, which was developed in the context of actions between competitors, a "finding of unfairness must be tethered to some legislatively declared policy or proof of some actual or threatened impact on competition." *Cel-Tech*, 20 Cal. 4th at 186-87. Tiger/CGC's acts and practices of

calling telephone numbers on the Do Not Call list violated the legislatively-declared policies expressed in the Telephone Consumer Protection Act (47 U.S.C. § 227), the Telemarketing Sales Rule (16 C.F.R. § 310), Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising (47 C.F.R. § 64.1200), FCC Do Not Call Regulations (15 U.S.C. § 6153), and Unsolicited and Unwanted Telephone Solicitations (Cal. Bus. & Prof. Code § 17590 *et seq.*). Tiger/CGC violated not only the letter, but also the spirit and purpose, of each of these laws, thereby engaging in “unfair” conduct under the UCL’s “tethering test” by giving themselves an unfair advantage over their competitors who follow the law. Tiger/CGC’s false advertising and negligent misrepresentations that PG&E was increasing its gas procurement charges and regarding what PG&E could charge \$1.06 per therm in order to make it appear that the Program’s price cap had any customer value, to advertise that Tiger charged a rate based on the market rate without disclosing an “add-on” of unstated amount, and to advertise the Program as “free” without disclosing the \$0.05 daily charge or the surcharge added by Tiger to the cost of the gas, as described herein, also violated the legislatively-declared policies expressed in the Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*) and the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), thereby engaging in “unfair” conduct under the UCL’s “tethering test” by giving themselves an unfair advantage over their competitors.

201. Tiger/CGC’s Conduct is “Unfair” Under the Section 5 Test: Under the Section 5 test, which is derived from the liability standards governing the Federal Trade Commission Act, conduct is unfair if: “(1) the consumer injury is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) the injury could not reasonably have been avoided by consumers themselves.” *Boschma v. Home Loan Center, Inc.*, 198 Cal. App. 4th 230, 253 (4th Dist. 2011). Tiger/CGC’s practices have caused and are likely to cause substantial injury to Plaintiff and Enrollee Sub-Class Members, which injury is not and was not reasonably avoidable. Fishman was overcharged \$126.44 and Faria was overcharged \$34.05 vs. PG&E’s rates, plus taxes and sundry charges, in reliance on Tiger/CGC’s representations. Furthermore, Tiger/CGC’s practices of falsely representing that PG&E was increasing its gas procurement charges when it was really decreasing them, that PG&E could charge \$1.06 per therm in order to make it appear that the Program’s price cap had any customer value, advertising that Tiger charged a rate based on the market rate without disclosing an “add-on” of unstated amount, and falsely advertising the Program as “free” without disclosing the \$0.05 daily

1 charge or the Tiger surcharge, is not outweighed by any countervailing benefits to consumers. If
2 Tiger/CGC had not engaged in this “unfair” conduct, Tiger could not have charged the Enrollee
3 Sub-Class Members and would not have unfairly obtained monies from them.

4 202. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
5 Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure
6 Tiger/CGC’s “unfair” conduct alleged herein, particularly if those terms and conditions
7 contradict the promises and representations made by Tiger/CGC during the Sales Calls.
8

9 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
10 against Defendants as hereinafter set forth.
11

12 **TENTH CAUSE OF ACTION**

13 **[Violations of Unfair Competition Law – Fraudulent Prong, Cal. Business & Professions**
14 **Code § 17200 *et seq.*]**

15 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
16 **(Against Tiger and CGC)**

17 203. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

18 204. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise
19 Tiger’s natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

20 205. Cal. Business & Professions Code § 17200 prohibits any “fraudulent”⁴ act.

21 206. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17200
22 *et seq.* because they suffered injury in fact and lost money as the direct result of Tiger/CGC’s
23 unfair competition. *See* Cal. Bus. & Prof. Code § 17204. But for Tiger/CGC’s fraudulent
24 conduct, described herein, Plaintiffs would never have signed up for Tiger’s program and would
25 never have paid the inflated gas prices and daily fees that Tiger charged them.

26 207. Any reasonable consumer was likely to be deceived, and Plaintiffs were actually
27 deceived, by Tiger/CGC’s claims that: a) PG&E was increasing its gas procurement rates when
28 the rates were actually dropping; b) it was free to participate in the Program; and c) the price cap

29
30 ⁴ “‘Fraudulent,’ as used in the statute, does not refer to the common law tort of fraud but only
31 requires a showing members of the public ‘are likely to be deceived.’” *Chavez v. Bank of*
America Corporation, No. C-10-0653 JCS, 2012 U.S. Dist. LEXIS 62935 at *18 (N.D. Cal. May
4, 2012) (citation omitted).

1 of \$0.69 per therm had any customer benefit at all and could save them any money versus their
2 current gas provider. Thus, the unlawful, unfair, and fraudulent claims during Tiger/CGC's
3 Sales Calls were not that Tiger would never charge more than \$0.69 per therm – and Tiger didn't
4 do so – but rather by Tiger/CGC creating a false, impossible scenario in which PG&E *could*
5 charge \$1.06 per therm within a year to make it *appear* that the Program's price cap had any
6 customer value, even though Tiger knew PG&E could not do so.

7 208. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
8 Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure
9 Tiger/CGC's "fraudulent" conduct alleged herein, particularly if those terms and conditions
10 contradict the promises and representations made by Tiger/CGC during the Sales Calls.

11
12 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
13 against Defendants as hereinafter set forth.

14
15 **PRAYER FOR RELIEF**

16 **A. First Cause of Action for Violations of California Recording Law**

17 209. Statutory damages to Plaintiffs Fishman and Faria and the Class in the amount of \$5,000
18 per violation, plus statutory interest. *See* Cal. Pen. Code § 637.2(a)(1).

19 210. An Order from this Court prohibiting Tiger and CGC from making telemarketing calls to
20 California consumers and businesses without immediately disclosing that the calls are being
21 recorded and without obtaining the requisite consent. *See* Cal. Pen. Code § 637.2(b).

22 211. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
23 important right affecting the public interest and thereby confer a significant benefit on the
24 general public or a large class of persons. The necessity and financial burden of private
25 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
26 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
27 Proc. § 1021.5.

28 212. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

29 **B. Second Cause of Action for Breach of Oral Contract**

30 213. Damages to Plaintiff Fishman and the Enrollee Sub-Class in the amount of all monies
31 paid to Tiger in excess of what they would have paid to their former gas providers, plus taxes,

1 other sundry charges, and statutory interest, because Tiger received a benefit in the form of
2 monies, and Tiger's retention of that benefit at the expense of Plaintiff Fishman and the Enrollee
3 Sub-Class is unjust because was based on falsely advertising the Program as free and that the
4 price cap had any consumer benefits. Specifically, $\$247.19 - \$120.75 = \$126.44$ plus taxes,
5 sundry charges, and statutory interest for Fishman, and $\$61.87 - \$27.82 = \$34.05$ plus taxes,
6 sundry charges, and statutory interest for Faria.

7 214. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
8 important right affecting the public interest and thereby confer a significant benefit on the
9 general public or a large class of persons. The necessity and financial burden of private
10 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
11 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
12 Proc. § 1021.5.

13 215. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

14 **C. Third Cause of Action for Violations of the Consumers Legal Remedies Act**

15 216. Actual damages to Plaintiffs ($\$126.44$ to Fishman and $\$34.05$ to Faria, plus taxes, sundry
16 charges, and statutory interest) and the Consumer Enrollee Sub-Class of all monies paid to Tiger
17 in excess of what they would have paid to their former gas providers, but in no case less than
18 $\$1,000$, plus taxes, other sundry charges, and statutory interest. *See* Cal. Civ. Code § 1780(a)(1).

19 217. An Order from this Court prohibiting Tiger from engaging in the false advertising
20 described herein. *See* Cal. Civ. Code § 1780(a)(2).

21 218. Restitution to Plaintiffs ($\$126.44$ to Fishman and $\$34.05$ to Faria, plus taxes, sundry
22 charges, and statutory interest) and the Consumer Enrollee Sub-Class of all monies paid to Tiger
23 in excess of what they would have paid to their former gas providers, plus taxes, other sundry
24 charges, and statutory interest, because Tiger received a benefit in the form of monies, and
25 Tiger's retention of that benefit at the expense of Plaintiffs and the Consumer Enrollee Sub-Class
26 is unjust because was based on falsely advertising the Program as free and that the price cap had
27 any customer benefits. *See* Cal. Civ. Code § 1780(a)(3).

28 219. Punitive damages in an amount to be determined by the jury and Court. *See* Cal. Civ.
29 Code § 1780(a)(4).

30 220. Attorneys' fees. *See* Cal. Civ. Code § 1780(3), Fed. R. Civ. Proc. 54(d)(2). Also, by
31 prosecuting this action, Plaintiffs expect to enforce an important right affecting the public

1 interest and thereby confer a significant benefit on the general public or a large class of persons.
2 The necessity and financial burden of private enforcement is such as to make an award of
3 attorneys' fees appropriate, and the attorneys' fees should not, in the interest of justice, be paid
4 out of the recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

5 221. Costs of suit. *See* Cal. Civ. Code § 1780(3) and Fed. R. Civ. Proc. 54(d)(1).

6 **D. Fourth Cause of Action for Fraud**

7 222. An Order from this Court that Tiger fraudulently induced Plaintiffs Fishman and Faria
8 and the Enrollee Sub-Class into enrolling in Tiger's Program, and the agreements between Tiger
9 on the one hand, and Plaintiffs Fishman and Faria and the Enrollee Sub-Class on the other hand,
10 are void.

11 223. Damages to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry
12 charges, and statutory interest) and to the Enrollee Sub-Class in the amount of all monies paid to
13 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
14 sundry charges, and pre-and post-judgment interest.

15 224. Punitive damages in an amount to be determined by the jury and Court. *See* Cal. Civ.
16 Code § 3294.

17 225. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
18 important right affecting the public interest and thereby confer a significant benefit on the
19 general public or a large class of persons. The necessity and financial burden of private
20 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
21 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
22 Proc. § 1021.5.

23 226. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

24 **E. Fifth Cause of Action for Negligent Misrepresentation**

25 227. Damages to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry
26 charges, and statutory interest) and the Enrollee Sub-Class of all monies paid to Tiger in excess
27 of what they would have paid to their former gas providers, plus taxes, other sundry charges, and
28 pre- and post-judgment interest.

29 228. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
30 important right affecting the public interest and thereby confer a significant benefit on the
31 general public or a large class of persons. The necessity and financial burden of private

1 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
2 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
3 Proc. § 1021.5.

4 229. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

5 **F. Sixth Cause of Action for Violations of the False Advertising Law**

6 230. Against Tiger and CGC, one or more Orders from this Court prohibiting Tiger and CGC
7 from engaging in the false advertising described herein. *See* Cal. Bus. & Prof. Code § 17535.

8 231. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
9 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
10 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
11 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
12 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
13 unjust because was based on falsely advertising the Program as free and that the price cap had
14 any customer benefits.

15 232. Against CGC, restitution to Plaintiffs and to the Enrollee Sub-Class of all monies paid by
16 them to Tiger that in turn were passed on to CGC by Tiger. CGC received a benefit in such
17 monies at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for CGC to
18 retain.

19 233. Against Tiger and CGC, attorneys' fees, because by prosecuting this action, Plaintiffs
20 expect to enforce an important right affecting the public interest and thereby confer a significant
21 benefit on the general public or a large class of persons. The necessity and financial burden of
22 private enforcement is such as to make an award of attorneys' fees appropriate, and the
23 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See*
24 Cal. Code Civ. Proc. § 1021.5.

25 234. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

26 **G. Seventh and Eighth Causes of Action for Unfair Competition – Unlawful Prong**

27 235. Against Tiger and CGC, one or more Orders from this Court prohibiting Tiger and CGC
28 from engaging in the unlawful practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

29 236. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
30 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
31 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other

1 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
2 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
3 unjust because was based on falsely advertising the Program as free and that the price cap had
4 any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

5 237. Against CGC, restitution to Plaintiffs and to the Enrollee Sub-Class of all monies paid by
6 them to Tiger that in turn were passed on to CGC by Tiger. CGC received a benefit in such
7 monies at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for CGC to
8 retain.

9 238. Against Tiger and CGC defendants, attorneys' fees, because by prosecuting this action,
10 Plaintiffs expect to enforce an important right affecting the public interest and thereby confer a
11 significant benefit on the general public or a large class of persons. The necessity and financial
12 burden of private enforcement is such as to make an award of attorneys' fees appropriate, and the
13 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See*
14 Cal. Code Civ. Proc. § 1021.5.

15 239. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

16 **H. Ninth Cause of Action for Unfair Competition – Unfair Prong**

17 240. Against Tiger and CGC, one or more Orders from this Court prohibiting Tiger and CGC
18 from engaging in the unfair practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

19 241. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
20 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
21 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
22 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
23 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
24 unjust because was based on falsely advertising the Program as free and that the price cap had
25 any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

26 242. Against CGC, restitution to Plaintiffs and to the Enrollee Sub-Class of all monies paid by
27 them to Tiger that in turn were passed on to CGC by Tiger. CGC received a benefit in such
28 monies at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for CGC to
29 retain.

30 243. Against Tiger and CGC, attorneys' fees, because by prosecuting this action, Plaintiffs
31 expect to enforce an important right affecting the public interest and thereby confer a significant

1 benefit on the general public or a large class of persons. The necessity and financial burden of
2 private enforcement is such as to make an award of attorneys' fees appropriate, and the
3 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See*
4 Cal. Code Civ. Proc. § 1021.5.

5 244. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

6 **I. Tenth Cause of Action for Unfair Competition – Fraudulent Prong**

7 245. Against Tiger and CGC, one or more Orders from this Court prohibiting Tiger and CGC
8 from engaging in the fraudulent practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

9 246. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
10 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
11 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
12 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
13 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
14 unjust because was based on falsely advertising the Program as free and that the price cap had
15 any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

16 247. Against CGC, restitution to Plaintiffs and to the Enrollee Sub-Class of all monies paid by
17 them to Tiger that in turn were passed on to CGC by Tiger. CGC received a benefit in such
18 monies at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for CGC to
19 retain.

20 248. Against Tiger and CGC, attorneys' fees, because by prosecuting this action, Plaintiffs
21 expect to enforce an important right affecting the public interest and thereby confer a significant
22 benefit on the general public or a large class of persons. The necessity and financial burden of
23 private enforcement is such as to make an award of attorneys' fees appropriate, and the
24 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See*
25 Cal. Code Civ. Proc. § 1021.5.

26 249. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

27 **J. Additionally**

28 250. Certification of the Proposed Class, Do Not Call Sub-Class, Enrollee Sub-Class, and
29 Consumer Enrollee Sub-Class and notice thereto to be paid by Tiger.

30 251. Plaintiffs seek pre-judgment and post-judgment interest.

31 252. Plaintiffs seek any and all other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

THE LAW OFFICES OF DANIEL BALSAM

Date: October 6, 2017

BY: /s/ Daniel L. Balsam

DANIEL BALSAM
Attorneys for Plaintiffs
and the Proposed Class

Exhibit A

Transcript of Tiger/CGC's Call to Fishman

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

FIRST CALL – TIGER/CGC'S SALES CALL TO FISHMAN

0:00	COMMUNITY GAS CENTER: Hi, this is Olivia from the Community Gas Center. I need to speak to the authorized person who handles the PG&E bill please.
0:09	EMILY FISHMAN: Oh. That's, that's me.
0:11	CGC: Well good afternoon to you. I'm calling from the CGC customer service department regarding your PG&E account.
0:18	FISHMAN: Yeah?
0:18	CGC: I'm just following up to give you a courtesy call regarding a notice that you received with your bill last year. Your account is currently subject to several rate increases which already started. The California...
0:29	FISHMAN: Which are I'm sorry?
0:31	CGC: I said which has already started. It started, the 18.8% increase started this year, and then you'll see another 33% increase over the next three years. So we set up...
0:41	FISHMAN: Oh. Why is that?
0:43	CGC: The California Public Utilities Commission has processed that request from PG&E. So what we do is we set up price protection for all the residential customers, which is a free service through PG&E's aggregation program, which will protect customers from the supply rate increases for the next three years.
1:02	FISHMAN: Oh. So all customers are being subject to an increase in pricing?
1:09	CGC: Yes. Yes.
1:10	FISHMAN: Wow.
1:11	CGC: Yes. In the letter, I know most people, if you're like me, you just take your bill, you open it, you pay what you have to pay, and you throw em away or you put 'em out. But in that letter last year...
1:20	FISHMAN: Yep. Yep
1:20	CGC: It was telling you, it was telling you about the subject to several rate increases and umm...
1:25	FISHMAN: Ohhhh.
1:27	CGC: It also had that, y'know, bold print where it tells you about the 33% increase for the next three years...
1:32	FISHMAN: Got it.
1:32	CGC: And the 10% of this year. So basically what this program is, it's a great program because it's price protection, which gives you a variable rate based on the market price, with a cap at 69 cents. So of course when the cost of gas is down you do get the lower rate based on the lower cost, but when that cost of gas goes up and you know, most people are subject to the change, you won't, you'll be capped at a rate, excuse me, a rate cap of 69 cents. So say for instance if PG&E down the line in the next year paid \$1.06 per therm for the gas, you wouldn't be charged \$1.06 per therm for your gas. You would be charged 69 cents because it can never go over that price.
2:15	FISHMAN: And so, to participate in the program, what does that mean? Are you calling all of your, the PG&E customers?
2:26	CGC: Yes, we're calling ehhehhehvery one of you guys. Alllllll of you [Laughs]. And...
2:28	FISHMAN: Right.
2:28	CGC: And most people they get, they're on the program, they really enjoy the program, and they stay with it. Some people feel like hey, the program's great, but it just didn't

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

	change my bill and it's still low so I don't need it, and you know, they just opt out and there's no fee for that either. There's no fee to set it up. It's all free. And the only reason that PG&E can't offer you it themselves is because the California Public Utilities Commission requires that a third party company which is us, that's unaffiliated with PG&E, set up the service, because it is against the law for them to profit off the gas itself.
3:01	FISHMAN: Interesting. Okay. Ummmm, and so to set this up, what is, what does that mean, I mean what does it take?
3:10	CGC: Well, to set this up, what we do, how the process works, we, I'm going to verify all this information I have and make sure it's correct in my system, but then we, we just have you have your PG&E bill handy, we go through a couple things. First, we check to see if the services are directed to the same as on your PG&E bill, and then we
3:28	FISHMAN: Right.
3:28	CGC: And then we need to know if you're with, we need to know if your bill says "current gas charges" or "current PG&E gas delivery charges," and we go over what those two things mean, and we just simply get your service agreement ID number and your rate schedule, and that's what pops up the automated system. And she just, you know, explains to you that Tiger Natural Gas will supply your gas, because a lot of people don't know you do have the option of picking who you want your gas supplier to be. And currently what PG&E does, every month they get their gas from just random sources, you know, and none of those gas people that they're getting it from are protected from future rate increases. So basically they can only secure your gas for one month, and after that month, it's not secure, and then you know, you just keep, it's a monopoly. So now they're able to deliver your gas from a supply source that's protected from rate increases for the next three years. And that's the PG&E core gas aggregation service.
4:26	FISHMAN: Okay. Well, sounds good.
4:27	CGC: After she prompts, after she comes on the line, she's going to ask you a couple questions, and then she'll give you your confirmation number. And I'll still be on the line with you just in case you have any questions or anything that you need to be answered that can be understand.
4:43	FISHMAN: Right.
4:44	CGC: And then every year, if it's, if it's something that you would like, every year we would send you a rate increase analysis report, and that basically tells you that PG&E bought your gas from, for such and such price, but how low of a price that you paid for your gas.
5:01	FISHMAN: Okay.
5:02	CGC: And we keep you, you know, updated on all the little things. I'm just going to verify, I'm showing that the service address, I only have half of it, of where PG&E delivers your gas. I have your city as Mill Valley...
5:14	FISHMAN: Yes.
5:15	CGC: I have your state as California.
5:16	FISHMAN: Yes.
5:17	CGC: And I also have your zip code as 94941.
5:21	FISHMAN: Yes.
5:22	[CGC confirms the spelling of Fishman's name, her street address, and that she only has

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

	one account.]
5:50	CGC: Okay, so how it works, the price protection is going to start on your next available meter read date, and once you go through the automated system and add your confirmation number [unintelligible] you will be all set.
6:01	FISHMAN: Okay.
6:01	CGC: PG&E will then automatically start delivering your gas from a gas source providing the rate increase protection, so your gas will be protected from now on.
6:09	FISHMAN: Okay.
6:09	CGC: And everything will stay the same with your PG&E utility service. So you'll pay that bill just like you do now. If you have any emergencies or questions, you'll still contact them.
6:19	FISHMAN: Okay.
6:19	[At CGC's request, FISHMAN looks at her PG&E bill to provide her service agreement ID number and rate schedule.]
11:21	[CGC and advises Fishman of a forthcoming free program that will save 25% off electricity rates and says Tiger will contact her when it's available.]
12:01	[CGC says PG&E requires FISHMAN go through an automated verification system to verify information.]
12:25	[CGC says it's a three-year program and automatically renews but FISHMAN can call and opt out anytime she wants. If the program isn't available, FISHMAN will receive a variable rate pricing that's competitive with utilities, lower rate even when utility charges more.]
12:55	[CGC says nothing changes with PG&E service, source of gas will be Tiger Natural Gas, who is registered with PG&E. PG&E utility service remains the same.]
13:09	[CGC explains more on automated verification.]
14:08	[CGC transfers FISHMAN to automated verification system.]

SECOND CALL – AUTOMATED VERIFICATION SYSTEM

0:00	This is the Verbatim TPV system to confirm Tiger Natural Gas as your CTA gas source in PG&E's core gas aggregation program for your PG&E account. If I have your permission to record this call, please say yes after the tone and then press the pound key.
0:21	FISHMAN: Yes. #
0:23	[SYSTEM confirms enrollment date, time, first & last name, service & mailing address, gas service ID #]
1:25	SYSTEM: Tiger will provide your natural gas supply in PG&E's core gas aggregation program, and you'll be guaranteed to receive reliable service, starting on your next available meter read. Tiger is an unaffiliated CTA that has completed PG&E's certification process. Your natural gas supply will receive price protection with a rate cap of 69 cents per therm for the next 36 months. PG&E will continue to deliver your natural gas, send your monthly PG&E bill, and provide the exact same utility service. If you understand and wish to enroll your gas accounts with Tiger as your natural gas supplier, please say "yes" after the tone and then press the pound key.
2:14	FISHMAN: Yes. #
2:16	SYSTEM: Accepted customers will be sent a confirmation letter and terms and

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

	conditions within three business days. Price protection will be applied to your gas supply and does not include PG&E's delivery charges; taxes; daily, quarter, and capacity costs. You can rescind this enrollment within three business days or cancel at any time by contacting the Tiger enrollment agency at 888-ENERGY-HELP. If you understand, and you are the customer of record or an authorized person to choose a natural gas supplier, please say "yes" after the tone, and then press the pound key.
3:01	FISHMAN: Yes. #
3:03	SYSTEM: Your confirmation number is 5004285. Your confirmation number is 50004285.

Exhibit B

Page From Tiger's Website as of July 2016



INFO@TIGERNATURALGAS.COM



HOME

ABOUT

SERVICES

TESTIMONIALS

NEWS

FAQ

CONTACT

PARTNERS

AFFILIATES



SEARCH TIGER

SEARCH

WHY TIGER?

Why do over 30,000 Customers choose Tiger?



- Superior performance
- Cost Savings
- Excellent service
- 20 years in business
- Minority-owned business
- A+ BBB Rating

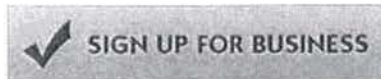


GET CONSISTENT ENERGY SAVINGS.

JOIN 25,000 PG&E CUSTOMERS SAVING 9-15%* EVERY YEAR.

Thousands of PG&E customers are lowering their energy bills and getting better customer service by switching to Tiger. As the largest third-party core natural gas provider in the PG&E area, we have a 20-year track record of consistent savings.

It's easy to make the switch. After you sign up, you continue to receive one bill from PG&E, with Tiger listed as your supplier.



California Restaurant Association

"The economic climate is tougher"



Better Business Bureau

A+ Customer Service Rating



PepsiCo Inc.

"Tiger's attention to detail has"

than anything we've seen in recent history, and yet still Tiger is committed to flexible and responsive service."

Jot Condie
President & CEO

20 years good standing
ZERO complaints

helped us control overhead costs. Their pricing is consistently competitive and they provide flexibility in their contract terms."

Daniel P. Lopez
Energy Procurement Manager

***Most Tiger customers save 9 to 15% or more, year after year.*

[Home](#) | [Services](#) | [Service Area](#) | [FAQs](#) | [Testimonials](#) | [Community](#) | [Help](#) | [Sitemap](#) | [Contact Us](#) | [Privacy Policy](#)

918.491.6996
1.888.875.6122
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1422 East 71st Street
Tulsa, OK 74136-5060

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Website Design by Aqua Vita



Enter your email here



Exhibit C

Oklahoma BBB's Webpage for Tiger as of July 2016

[Overview](#) > [Accredited Business Directory](#) > [Natural Gas Companies](#) > [Tiger Natural Gas, Inc.](#)

BBB Business Review

BBB ACCREDITED BUSINESS SINCE 5/1/2008

Tiger Natural Gas, Inc.

Phone: (918) 491-6998

[View Additional Phone Numbers](#)

1422 East 71st Street Suite J, Tulsa, OK 74136

<https://tigernaturalgas.com/>



**ACCREDITED
BUSINESS**



On a scale of A+ to F

Reason for Rating

[BBB Ratings System Overview](#)

BBB Business Reviews may not be reproduced for sales or promotional purposes.

Request a Quote

[Request a Quote from Tiger Natural Gas, Inc.](#)

BBB Accreditation

A BBB Accredited Business since 5/1/2008

BBB has determined that Tiger Natural Gas, Inc. meets BBB accreditation standards, which include a commitment to make a good faith effort to resolve any consumer complaints. BBB Accredited Businesses pay a fee for accreditation review/monitoring and for support of BBB services to the public.

BBB accreditation does not mean that the business' products or services have been evaluated or endorsed by BBB, or that BBB has made a determination as to the business' product quality or competency in performing services.

Reason for Rating

BBB rating is based on 13 factors. [Get the details about the factors considered.](#)

Factors that *raised* the rating for Tiger Natural Gas, Inc. include:

Length of time business has been operating

Complaint volume filed with BBB for business of this size

Response to 20 complaint(s) filed against business

Resolution of complaint(s) filed against business

Customer Complaints Summary

[Read complaint details](#)

20 complaints closed with BBB in last 3 years | 10 closed in last 12 months

Complaint Type	Total Closed Complaints
Advertising/Sales Issues	4
Billing/Collection Issues	4
Delivery Issues	2
Guarantee/Warranty Issues	0
Problems with Product/Service	10
Total Closed Complaints	20

[Read Complaints](#) | [Definitions](#) | [BBB Complaint Process](#) | [File a Complaint against Tiger Natural Gas, Inc.](#)

[See Trends in Complaints on Tiger Natural Gas, Inc.](#) | [View Complaints Summary by Resolution Pie Chart on Tiger Natural Gas, Inc.](#)

Customer Reviews Summary

[Read customer reviews](#)

1 Customer Review on Tiger Natural Gas, Inc.

Customer Experience	Total Customer Reviews
Positive Experience	0
Neutral Experience	0
Negative Experience	1
Total Customer Reviews	1

[Read Customer Reviews](#) | [Submit a Customer Review](#) | [See Trends in Customer Reviews on Tiger Natural Gas, Inc.](#)

Government Actions

BBB knows of no government actions involving the marketplace conduct of Tiger Natural Gas, Inc..

What government actions does BBB report on?

Advertising Review

BBB has nothing to report concerning Tiger Natural Gas, Inc.'s advertising at this time.

What is BBB Advertising Review?

Additional Information

BBB file opened: March 03, 2005

Business started: 05/15/1991

Business started locally: 05/15/1991

Business incorporated 01/01/1991 in OK

Type of Entity

Corporation

Business Management

Lori Nalley, Owner/President

Mr. Johnathan Burris, Manager

Ms. Rachel Harvick, Operations

Contact Information

Customer Contact: Mr. Johnathan Burris, Manager

Principal: Lori Nalley, Owner/President

Business Category

Natural Gas Companies



Customer Review Rating plus BBB Rating Summary

Tiger Natural Gas, Inc. has received 3.68 out of 5 stars based on 1 Customer Reviews and a BBB Rating of A+.



BBB Customer Review Rating plus BBB Rating Overview

QUICK LINKS

[What is a BBB Business Review?](#)

[BBB Reporting Policy](#)

[About Enhanced Services](#)

[File a Complaint against Tiger Natural Gas, Inc.](#)

[Request a Quote from Tiger Natural Gas, Inc.](#)

[Accredited Business Directory](#)

CUSTOMER REVIEWS

[Read Customer Reviews](#)

[Submit a Customer Review](#)

[See trends in Customer Reviews for Tiger Natural Gas, Inc.](#)

C

EXHIBIT C

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Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

EMILY FISHMAN, individually and on
behalf of all others similarly situated; and
SUSAN FARIA, individually and on behalf of
all others similarly situated;

Plaintiffs,

v.

TIGER NATURAL GAS INC., an Oklahoma
corporation;
COMMUNITY GAS CENTER INC., a
Colorado corporation, and
DOES 2-100;

Defendants.

) Case No.: 3:17-cv-05351-JCS

)
)
) **SECOND AMENDED CLASS ACTION**
) **COMPLAINT FOR DAMAGES AND**
) **INJUNCTIVE RELIEF**

)
) **1. VIOLATIONS OF CALIFORNIA**
) **RECORDING LAW (Cal. Pen. Code**
) **§ 632 et seq.)**
) **2. VIOLATIONS OF TELEPHONE**
) **CONSUMER PROTECTION ACT (47**
) **U.S.C. § 227 and 47 C.F.R. 64.1200)**
) **3. BREACH OF ORAL CONTRACT**
) **(Cal. Civ. Code § 1622)**

-) 4. BREACH OF THIRD-PARTY
) BENEFICIARY CONTRACT (Cal.
) Civ. Code § 1559)
-) 5. VIOLATIONS OF CONSUMERS
) LEGAL REMEDIES ACT (Cal. Civ.
) Code § 1750 *et seq.*)
-) 6. FRAUD (Cal. Civ. Code § 1572)
-) 7. NEGLIGENT
) MISREPRESENTATION (Cal. Civ.
) Code §§ 1573, 1577)
-) 8. VIOLATIONS OF FALSE
) ADVERTISING LAW (Cal. Bus. &
) Prof. Code § 17500 *et seq.*)
-) 9. VIOLATIONS OF UNFAIR
) COMPETITION LAW – UNLAWFUL
) PRONG – CALLING NUMBERS ON
) DO NOT CALL LIST (Cal. Bus. &
) Prof. Code § 17200 *et seq.*)
-) 10. VIOLATIONS OF UNFAIR
) COMPETITION LAW – UNLAWFUL
) PRONG – OTHER STATUTORY
) VIOLATIONS (Cal. Bus. & Prof. Code
) § 17200 *et seq.*)
-) 11. VIOLATIONS OF UNFAIR
) COMPETITION LAW – UNFAIR
) PRONG (Cal. Bus. & Prof. Code
) § 17200 *et seq.*)
-) 12. VIOLATIONS OF UNFAIR
) COMPETITION LAW –
) FRAUDULENT PRONG (Cal. Bus. &
) Prof. Code § 17200 *et seq.*)
-)
-) JURY TRIAL DEMANDED

COME NOW PLAINTIFFS EMILY FISHMAN and SUSAN FARIA and file this [Proposed]
Second Amended Class Action Complaint against TIGER NATURAL GAS INC.,
COMMUNITY GAS CENTER INC., *et al* and allege as follows:

I. NATURE OF THE ACTION

1. This class action arises out of Defendant Tiger Natural Gas Inc.'s ("Tiger") practice of
falsely advertising its natural gas price protection program (the "Program") to California
consumers and businesses, in violation of PG&E Gas Rule 23, via telemarketing calls made by

1 its agent Community Gas Center Inc. ("CGC") that were recorded without the recipients' consent
2 and, in some cases, were made to telephone numbers on the Do Not Call list, and fraudulently
3 inducing them to enroll in Tiger's Program.

4 2. Plaintiffs Emily Fishman ("Fishman") and Susan Faria ("Faria") bring this Class Action
5 to recover monetary damages on behalf of themselves and a Class and Sub-Classes – defined in
6 detail below – of California consumers and businesses who received Sales Calls from CGC on
7 behalf of Tiger and whose calls were recorded without their consent. Tiger/CGC made some of
8 those Sales Calls to telephone numbers on the Do Not Call list. Some of the recipients of the
9 calls enrolled in Tiger's Program after receiving false representations about PG&E's gas pricing
10 and false representations and advertising (including telemarketing), claiming that Tiger's
11 Program is free and/or that the Program can save customers money versus their current gas
12 provider's rates due to a rate cap.

13 3. Plaintiffs seek restitution, injunctive relief, declaratory relief, punitive damages, statutory
14 damages, attorneys' fees, and costs, pursuant to statute.

15 16 **II. PARTIES**

17 4. Emily Fishman ("Fishman") is, and was at all relevant times, more than 18 years of age
18 and a resident of Mill Valley, Marin County, California. Fishman had no prior business
19 relationship with Tiger/CGC before receiving their Sales Call and never requested to receive
20 their Sales Call.

21 5. Susan Faria ("Faria") is, and was at all relevant times, more than 18 years of age and a
22 resident of Oakland, Alameda County, California. Faria had no prior business relationship with
23 Tiger/CGC before receiving their Sales Call and never requested to receive their Sales Call.
24 Faria was more than 65 years old when she received Tiger/CGC's telephone solicitation. Faria
25 received Tiger/CGC's Sales Call at her telephone number which was on the Do Not Call list at
26 the time and had been for more than 10 years.

27 6. Tiger Natural Gas Inc. ("Tiger") is, and was at all relevant times, an Oklahoma
28 corporation with a primary place of business in Tulsa, Oklahoma. Tiger claims that it has been
29 in business for more than 25 years, supplying natural gas to more than 43,000 customers in more
30 than 20 states. *See* <http://tigernaturalgas.com/about>. Tiger has been registered with the
31 California Secretary of State to do business in California since 2002.

1 7. Community Gas Center Inc. ("CGC") – formerly identified as DOE 1 – is, and was at all
2 relevant times, a Colorado corporation falsely claiming its address to be a Regus executive suite
3 in San Francisco, California, and also claiming its address to be a Post Office Box in Glenwood
4 Springs, Colorado and, previously, a Post Office Box in Largo, Florida. Plaintiffs are informed
5 and believe and thereon allege that CGC acts as Tiger's agent for purposes of calling potential
6 customers to advertise Tiger's products and services, *see* Cal. Civ. Code § 2295, and that Tiger
7 wrote or at least approved the telemarketing scripts executed by CGC and its agents when they
8 called Plaintiffs and Class Members.

9 8. The true names and capacities, whether individual, corporate, associate, representative,
10 alter ego or otherwise, of defendants and/or their alter egos named herein as DOES 2-100
11 inclusive are presently unknown to Plaintiffs at this time, and are therefore sued by such
12 fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiffs will amend this
13 Complaint to allege the true names and capacities of DOES 2-100 when the same have been
14 ascertained. Plaintiffs are further informed and believe and thereon allege that DOES 2-100
15 were and/or are, in some manner or way, responsible for and liable to Plaintiffs and the Class and
16 Sub-Classes for the events, happenings, and damages hereinafter set forth below.

17 18 **III. JURISDICTION AND VENUE**

19 9. Although neither Fishman, Faria, nor any other single Class Member claims damages
20 over \$75,000, Tiger removed this Action from the Superior Court of California, County of Marin
21 under the Class Action Fairness Act, claiming that there is more than \$5 million in controversy,
22 at least one Plaintiff (Fishman) is a citizen of a different state from Tiger (Oklahoma), and there
23 are more than 100 Class Members. *See* 28 U.S. § 1332(d).

24 10. Venue is proper in the U.S. District Court for the Northern District of California because
25 Tiger's contract with Fishman was to be performed in Marin County, within the Northern
26 District of California, and Tiger's liability to Fishman arose in Marin County. *See* 28 U.S.C.
27 § 1446(a).

28 29 **IV. STATEMENT OF FACTS**

30 11. All allegations in this Complaint are based on information and belief and/or are likely to
31 have evidentiary support after a reasonable opportunity for further investigation or discovery.

1 Whenever allegations in this Complaint are contrary or inconsistent, such allegations shall be
2 deemed alternative.

3 **A. Tiger's Natural Gas Price Protection Program**

4 12. One of Tiger's products is a natural gas price protection program (the "Program"), a
5 purportedly "free" plan by which Tiger purportedly charges customers a variable rate for
6 supplying natural gas based on the market price, but with a price cap of \$0.69 per therm.¹

7 13. When a customer chooses to purchase or "procure" gas from Tiger, the gas is delivered
8 over existing pipes, e.g., by PG&E. Thus, a customer who buys gas from PG&E has a single line
9 item for "Gas Charges" on his/her utility bill, whereas a customer who buys gas from Tiger has
10 separate line items for "PG&E Gas Delivery Charges" and "Tiger Natural Gas Inc. Gas
11 Procurement Charges."

12 14. In actuality, and as alleged in more detail below, Tiger's Program is far from "free." The
13 purportedly "free" Program also entailed a \$0.05 daily charge, for which Tiger never obtained its
14 customers' informed agreement. In fact, customers who signed up for Tiger's Program
15 immediately experienced a significant increase in their gas prices, because unknown to
16 consumers, Tiger also adds a large surcharge to the market rates that the customers would
17 otherwise have been charged by PG&E (or other utility). And while Plaintiffs are informed and
18 believe and thereon allege that Tiger never charged more than \$0.69 per therm, Tiger
19 fundamentally misrepresented the value proposition of the Program by falsely leading
20 prospective customers to believe that PG&E would be raising its procurement rates and by Tiger
21 setting a price cap far above the maximum rate that PG&E could possibly charge.

22 15. Tiger/CGC's actions of advertising to and enrolling new customers for the Program is
23 regulated by Sections D-E and Schedule G-CT of PG&E Gas Rule 23 (effective January 1,
24 2008), which is a contract between PG&E and Core Transport Agents (such as Tiger).
25 Prospective customers like Plaintiffs Fishman and Faria and the Class are intended third-party
26 beneficiaries of Sections D-E and Schedule G-CT of PG&E Gas Rule 23.

27
28
29
30 ¹ A "therm" – short for 100,000 British Thermal Units – represents the heat energy in natural
31 gas. Natural gas is typically priced to customers in therms and the volume of gas used appears
on billing statements in therms. See <http://mapawatt.com/2010/02/17/what-therm>.

B. Tiger/CGC Called Fishman to Advertise the Tiger Natural Gas Price Protection Program, Their Representations Were False, and They Recorded the Call Without Fishman's Consent

16. Prior to August 18, 2015, Fishman purchased natural gas from PG&E for home use.

17. On August 18, 2015, Tiger, by its agent CGC and CGC's Customer Service Representative ("CSR") Olivia Brown ("Brown"), called Fishman at her home (landline) telephone number (the "Sales Call"). Exhibit A is a transcript of the Sales Call and is incorporated in this Statement of Facts as if set forth in full. Certain parts, including confidential information, are summarized.

18. Tiger/CGC's objective in calling Fishman was to solicit her to sign up for the Program and buy Tiger's natural gas, instead of continuing to buy natural gas from PG&E. Of course, PG&E would continue to deliver the gas.

19. Tiger/CGC recorded the Sales Call to Fishman. Tiger/CGC never asked for Fishman's consent to record the Sales Call. Indeed, **Tiger/CGC never disclosed to Fishman that they were recording the Sales Call.**

20. Fishman first learned that Tiger/CGC recorded the call on August 28, 2016. Fishman did *not* hear periodic beeps during the Sales Call that might have suggested that Tiger/CGC were recording it. After nine months of increased gas charges from Tiger's Program, and with no signs that the Tiger program would ever save her money, Fishman contacted an attorney. Fishman's counsel sent letters to Tiger on July 8, 2016 – within one year of Fishman's agreement to purchase Tiger gas – alleging various unlawful conduct and demanding that Tiger preserve relevant evidence. Tiger's former counsel, Gregory Klatt, responded and claimed that Fishman had her facts wrong about Tiger's offering, and to prove it, on August 28, 2016, Mr. Klatt voluntarily provided a recording of Tiger/CGC's third-party verification call to Fishman. The next day, Mr. Klatt voluntarily provided a recording of Tiger/CGC's Sales Call to Fishman. The fact of the recording was within the exclusive knowledge of Tiger/CGC, until Mr. Klatt provided it to Fishman's counsel, and Fishman could not, by reasonable diligence, have discovered the fact of the recording any sooner than she did. Fishman then filed this Action within one year of learning that Tiger/CGC had recorded the Sales Call to her.

21. Brown began the Sales Call by claiming that she was calling from "Community Gas Center." Brown did not disclose that she was really calling on behalf of Tiger until nearly four minutes into the Sales Call.

1 22. Tiger/CGC expressly claimed that they were making Sales Calls to every single PG&E
2 customer to advertise the Program and solicit their business.

3 23. Tiger/CGC admitted on the Sales Call that they knew that Fishman was a resident of
4 California.

5 24. Tiger/CGC claimed that “several [PG&E] rate increases [had] already started,” including
6 an “18.8% increase [for natural gas that] had started this year,” and that Fishman would “see
7 another 33% increase over the next three years” because the “California Public Utilities
8 Commission (“PUC”) has processed that request from PG&E,” but Tiger’s “price protection for
9 all the residential customers . . . will protect customers from the supply rate increases for the next
10 three years.”

11 25. The PUC did not approve a 33% rate increase for PG&E’s natural gas *procurement* rates,
12 as Tiger/CGC led Fishman to believe. In fact, the PUC approved a 27% rate increase *for gas*
13 *transmission and storage*.² By misrepresenting the amount by which PG&E could raise its gas
14 procurement prices, Tiger/CGC attempted to make Tiger’s own price cap seem even more
15 beneficial to customers.

16 26. Tiger/CGC’s claim that an 18.8% price increase for PG&E’s natural gas procurement
17 rates had already started for 2015 was false. PG&E gas procurement rates were not increasing
18 by 18.8% when Tiger/CGC called Fishman in August 2015. In fact, PG&E’s average gas
19 procurement rate in 2015 was \$0.38103 per therm, 34% *less* than the average rate in 2014 of
20 \$0.57893 per therm. And PG&E’s average gas procurement rate in 2016 was \$0.31644, 17%
21 *less* than 2015. PG&E’s average gas procurement rate from January-October 2017 was
22 \$0.38096 per therm,³ slightly higher than 2016, but still 45% *less* than Tiger’s price cap of \$0.69
23 per therm.

24 27. Because PG&E still bills Tiger customers for gas delivery, gas delivery charges are a
25 constant. Any savings that Tiger gas customers could possibly realize from enrolling with Tiger
26 would have to be for gas procurement, not delivery. Put another way, regardless of how much
27

28 ² Robert Walton, *California PUC Approves Gas Rate Hike for California Utilities and SoCal*
29 *Gas*, UTILITYDIVE, June 28, 2016, [http://www.utilitydive.com/news/california-puc-approves-](http://www.utilitydive.com/news/california-puc-approves-gas-rate-hike-for-california-utilities-and-socalgas/421697)
30 [gas-rate-hike-for-california-utilities-and-socalgas/421697](http://www.utilitydive.com/news/california-puc-approves-gas-rate-hike-for-california-utilities-and-socalgas/421697).

31 ³ PG&E Gas Rates, <https://www.pge.com/tariffs/GRF.SHTML#RESGAS> (last visited Oct. 5,
2017) and click “Residential (JAN 2014 – DEC 2015)” link.

1 PG&E might raise customers' gas *delivery* charges, that has nothing whatsoever to do with any
2 hypothetical savings on gas *procurement* charges customers might see by switching to Tiger.

3 28. Tiger/CGC falsely claimed that gas supply (procurement) rates were increasing when in
4 fact they were decreasing. PG&E's delivery rates were increasing, but not supply rates.

5 29. Tiger/CGC claimed that Tiger had set up a "a price protection" program, which
6 Tiger/CGC said was "a free service" "which will protect customers from ... supply rate
7 increases." Tiger/CGC told Fishman, and other customers, that it would charge "a variable rate
8 [for natural gas] based on the market price with a cap at 69 cents." According to Tiger/CGC,
9 "It's all free."

10 30. Tiger/CGC did not disclose that, in fact, Tiger would add an undefined surcharge to the
11 "variable rate based on the market price," that Tiger would use this surcharge to line its own
12 pockets, and that customers' gas rates would immediately go up if they enrolled in the Program.

13 31. Tiger/CGC did not disclose that Tiger would add a daily charge of \$0.05 to the bills of
14 customers enrolled in the Program.

15 32. Tiger/CGC described the Program as "great" specifically because "Say for instance if
16 PG&E down the line in the next year paid \$1.06 per therm for the gas, you wouldn't be charged
17 \$1.06 per therm for your gas. You would be charged 69 cents because it can never go over that
18 price." But the Program was not, in fact, "great," because PG&E's rates would not be that high
19 even if PG&E had raised its procurement rates by 33%, as Tiger/CGC falsely claimed would
20 soon happen.

21 33. Tiger/CGC repeated several times that the Program was entirely "free." According to
22 Tiger, the Program was "a free service" that would "protect customers." Tiger/CGC never
23 disclosed any charges for the Program other than for buying the gas itself. Fishman did not
24 believe that Tiger was providing the gas itself for free, but relying on Tiger/CGC's statements,
25 believed that there were no *other* charges. Also, Tiger never disclosed that a surcharge would be
26 added to the "variable rate based on the market price," or that Tiger would immediately begin
27 charging customers more than PG&E would have charged for the same natural gas. Fishman did
28 not believe that Tiger would charge her more for gas than PG&E was already charging her, and
29 Fishman did not expect her bills to immediately and significantly increase as the direct result of
30 enrolling in Tiger's Program.

31

1 34. By presenting a realistic-sounding scenario that nevertheless: a) falsely claimed PG&E's
2 gas procurement rates were increasing when they were really decreasing, and b) included an
3 impossibly high price point for PG&E's gas procurement well over Tiger's price cap, Tiger/CGC
4 falsely ascribed a customer benefit to the Program and the price cap, and actually misled
5 Fishman – and would have misled any reasonable consumer – into believing that she would save
6 money on her gas bill by switching her gas procurement from PG&E to Tiger's Program.

7 35. Tiger/CGC advised Fishman that "Everything will stay the same with your PG&E utility
8 service. So you'll pay that bill just like you do now."

9 36. Tiger/CGC had superior knowledge than Fishman did about the natural gas market and
10 Tiger's Program.

11 37. During the Sales Call on August 18, 2015, Fishman entered into an oral contract with
12 Tiger, by its agent CGC, to buy Tiger's gas via the Program in reliance on Tiger/CGC's
13 statements during the Sales Call. All terms of the oral contract were stated in that Sales Call.
14 See Exhibit A.

15 38. Fishman is informed and believes and thereon alleges that Brown was following a script
16 prepared for her by Tiger/CGC when Brown called her. Fishman is informed and believes and
17 thereon alleges that Brown and Tiger/CGC's other CSRs were required to follow that script as
18 closely as possible, with little if any room for deviation or improvisation.

19 39. Fishman is informed and believes and thereon alleges that all Class members received
20 comparable Sales Calls by Tiger/CGC based on the same script. Even if every single word were
21 not exactly the same, Fishman is informed and believes and thereon alleges that:

- 22 • Tiger/CGC did not instruct any of the CSRs to notify and obtain consent from
23 prospective customers to record their telephone calls;
- 24 • Tiger/CGC's CSRs did not notify and obtain consent from prospective customers
25 to record their telephone calls;
- 26 • All of Tiger/CGC's Sales Calls were recorded;
- 27 • Tiger/CGC and their agents were not trained in the proper use of the Do Not Call
28 list and called prospective customers' telephone numbers on the Do Not Call list;
- 29 • Tiger/CGC instructed all of their CSRs to communicate to all Class Members, and
30 Tiger/CGC's CSRs did communicate to all Class Members, that PG&E had
31

1 already started significantly increasing its natural gas procurement rates and
2 would continue to do so;

- 3 • Tiger/CGC instructed all of their CSRs to communicate to all Class Members, and
4 Tiger/CGC's CSRs did communicate to all Class Members, that the Program is
5 "free" and Tiger's gas price would be capped at \$0.69 per therm, benefitting
6 Tiger's customers by capping the price below what PG&E (or their current gas
7 provider) could possibly charge them, e.g. \$1.06 per therm;
- 8 • Tiger/CGC instructed all of their CSRs not to inform Class Members, and the
9 CSRs did not in fact inform Class Members, that Tiger would immediately begin
10 charging customers a \$0.05 daily charge for participating in the Program; and
- 11 • Tiger/CGC instructed all of their CSRs not to inform Class Members, and the
12 CSRs did not in fact inform Class Members, that Tiger would immediately begin
13 adding a surcharge to the market price, thereby charging them more than PG&E
14 (or their current gas provider) would have charged them for the same natural gas.

15 40. Brown acted as CGC and Tiger's agent, within the scope of her authority, when she
16 called Fishman. *See* Cal. Civ. Code § 2316.

17 41. Even if Brown and CGC did not have actual authority to make the claims that she made,
18 Fishman reasonably believed that Brown and CGC had ostensible authority to make those claims
19 on behalf of Tiger. *See* Cal. Civ. Code § 2317.

20 42. Fishman is informed and believes and thereon alleges that Tiger/CGC also made Sales
21 Calls to customers of other gas providers in California, not just PG&E.

22 43. Only *after* the Sales Call concluded, Brown switched Fishman to an automated
23 verification system that asked for Fishman's consent to record *that* second call, and stated that
24 Tiger would mail Fishman a copy of the terms and conditions within three business days.
25 Fishman had no idea what those additional terms might have been when she entered into the oral
26 contract with Tiger. Thus, those additional terms and conditions, provided after the oral contract
27 was made, were not part of the oral contract. *See* Cal. Civ. Code § 1580. Fishman does not
28 recall if she ever received the mailed copy of the Program's terms and conditions. Fishman did
29 not agree to any terms and conditions beyond those stated during the Sales Call.

30 44. The automated verification process also stated that "PG&E will continue to deliver your
31 natural gas, send your monthly PG&E bill, and provide the exact same utility service." The

1 automated verification system also made no mention of any \$0.05 daily charge to participate in
2 Tiger's Program, or any surcharge that Tiger would add to Fishman's bill in excess of the market
3 rate for natural gas.

4 **C. Tiger/CGC Called Faria at Her Telephone Number on the Do Not Call List to Advertise**
5 **the Tiger Natural Gas Price Protection Program, Their Representations Were False,**
6 **and They Recorded the Call Without Faria's Consent**

7 45. Prior to April 2015, Faria purchased natural gas from PG&E for home use.

8 46. In April or early May 2015, Tiger, either itself or by an agent, called Faria at her home
(landline) telephone number.

9 47. Faria's home (landline) telephone number has been on the Do Not Call list since 2004,
10 without any lapses.

11 48. Faria is informed and believe and thereon alleges that Tiger and CGC had not instituted
12 procedures for maintaining a list of persons who request not to receive their telemarketing calls.
13 See 47 C.F.R. 64.1200(d). Specifically, as evidenced by the very fact that she received a Sales
14 Call from Tiger/CGC, Faria is informed and believes and thereon alleges that: a) Tiger and CGC
15 do not have written policies, available upon demand, for maintaining a do-not-call list; and b)
16 Tiger and CGC personnel engaged in any aspect of telemarketing were not informed and trained
17 in the existence and use of the Do Not Call list.

18 49. Faria is informed and believes and thereon alleges that Tiger/Tiger's agent recorded the
19 Sales Call to her without disclosure and without obtaining her consent.

20 50. Faria is informed and believes and thereon alleges that the Sales Call she received was
21 substantively similar to the Sales Call that Fishman received. See Exhibit A. Faria is informed
22 and believes and thereon alleges that Tiger/CGC's Sales Call to her was also recorded without
23 her consent. Faria was also misled to believe that she would save money on her gas bill by
24 switching her gas procurement from PG&E to Tiger. Faria was also misled to believe that
25 PG&E was increasing its gas procurement rates when in fact the rates were decreasing, that it
26 was free for her to participate in Tiger's Program, that her gas procurement rates would not go up
27 with Tiger, and that there would be no additional charges (e.g., \$0.05 per day or surcharges on
28 top of the market rate for natural gas). Faria entered into an oral contract to enroll in Tiger's
29 Program and purchase Tiger's gas in reliance on Tiger's statements. Faria does not recall ever
30 receiving any subsequent terms and conditions in the mail, but even if she had, she did not agree
31 to any subsequent terms and conditions.

D. Fishman's Gas Bills Were Far More Expensive With Tiger Than They Would Have Been If She Had Stayed With PG&E

51. Tiger supplied Fishman's natural gas beginning on September 17, 2015, with charges first appearing on the bill with the statement date of October 22, 2015.

52. Fishman is informed and believes and thereon alleges that Tiger did not charge her "a variable rate based on the market rate" for gas procurement, as promised during the sales call, but rather a rate that was much higher – in some months, as much as three times higher than PG&E's rate – as shown in the chart below.

Statement Date	PG&E Gas Procurement (\$/therm)	Tiger Gas Procurement (\$/therm)	Difference
10/22/2015	\$ 0.3263	\$ 0.6900	+ 111%
11/24/2015	\$ 0.3553	\$ 0.6900	+ 94%
12/23/2015	\$ 0.3897	\$ 0.6823	+ 75%
1/22/2016	\$ 0.3927	\$ 0.6709	+ 71%
2/24/2016	\$ 0.4058	\$ 0.6555	+ 62%
3/24/2016	\$ 0.2792	\$ 0.5900	+ 111%
4/25/2016	\$ 0.1944	\$ 0.6097	+ 214%
5/24/2016	\$ 0.2517	\$ 0.6513	+ 159%
6/23/2016	\$ 0.2380	\$ 0.6450	+ 171%

53. Fishman terminated the oral contract by calling Tiger in May 2016, after realizing that over nine months of Tiger bills, her gas prices were constantly and significantly higher than they would have been if she had stayed with PG&E, and the purported cap showed no signs of ever providing a benefit. The last day on which Tiger supplied Fishman's natural gas was June 15, 2016, on the bill with the statement date of June 23, 2016. Tiger supplied Fishman with natural gas for 273 days.

54. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, if she had bought PG&E gas, she would have paid \$120.75 for gas procurement (excluding delivery).

55. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid \$233.54 for gas procurement (excluding delivery) – *93% more than PG&E*.

56. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid \$13.65 for Tiger's (undisclosed) \$0.05 daily charge, whereas if she had stayed with PG&E, there would have been *no* daily charges.

57. According to Fishman's PG&E bills, over the nine months that she bought Tiger gas, she paid Tiger a total of \$247.19 for gas procurement plus daily charges, *more than double* the

1 \$120.75 that she would have paid to PG&E for gas procurement and no daily charges if she had
2 stayed with PG&E, as shown in the following chart:

Statement Date	PG&E Gas Procurement	Tiger Gas Procurement + \$0.05 Daily Charge	Difference
10/22/2015	\$ 5.22	\$ 12.49	+ 139%
11/24/2015	\$ 12.08	\$ 25.06	+ 107%
12/23/2015	\$ 23.77	\$ 43.07	+ 81%
1/22/2016	\$ 29.45	\$ 51.82	+ 76%
2/24/2016	\$ 22.32	\$ 37.65	+ 69%
3/24/2016	\$ 10.89	\$ 24.51	+ 125%
4/25/2016	\$ 6.22	\$ 21.01	+ 238%
5/24/2016	\$ 6.04	\$ 17.18	+ 184%
6/23/2016	\$ 4.76	\$ 14.40	+ 203%
Total	\$ 120.75	\$ 247.19	+ 105%

11 58. In the nine months Fishman was a Tiger customer, PG&E's gas procurement price ranged
12 from \$0.3263 to \$0.4058 per therm, averaging \$0.3392. So even if PG&E did increase its
13 *procurement* rates by 33% as Tiger claimed – setting aside the fact that the Public Utilities
14 Commission actually approved a 27% increase for *transmission and storage*, even as
15 procurement rates were decreasing significantly – that would have been \$0.4511. A 33%
16 increase on the highest month during that nine-month period would have been \$0.5397. Thus,
17 when Tiger called Fishman and posited that PG&E could charge its customers \$1.06 per therm,
18 that was a deliberate misrepresentation meant to deceive Fishman about Tiger's gas prices,
19 PG&E's possible gas prices, and the relative value of Tiger's Program and the price cap.

20 59. Tiger's fraud and breach of contract were not that Tiger ever charged more than \$0.69 per
21 therm (it didn't), but rather that Tiger/CGC knowingly misrepresented the fundamental value
22 proposition of the Program in the first place when they called Fishman by: a) falsely claiming
23 that PG&E's gas procurement rates were increasing when they were actually decreasing; b)
24 expressly claiming that it was "free" to participate in the Program; and c) presenting an
25 impossible scenario – namely, PG&E charging \$1.06 per therm for gas procurement within a
26 year. These representations were false and were designed to confuse and mislead Fishman and
27 other Enrollee Sub-Class Members, they would have misled any reasonable consumer, and they
28 did confuse and mislead Fishman and other Enrollee Sub-Class Members. Tiger's failure to
29 disclose that Fishman's and other Enrollee Sub-Class Members' gas prices would immediately
30 go up, when affirmatively telling them that the Program was "a free service," also constitutes
31 fraud and breach of contract, as further alleged below.

60. Indeed, Tiger/CGC's CSR Brown implicitly encouraged Fishman not to read her bill too closely... presumably because they feared that Fishman might quickly discover that she was paying twice as much for her natural gas procurement. Tiger/CGC's description of the Program as "great" was not merely general advertising puffery, but instead materially false and misleading because Tiger/CGC provided specific (false) evidence of its greatness: a) by describing it as free despite the \$0.05 daily charge and surcharge on top of the market rate and despite the fact that her gas procurement rates would immediately go up, and b) because the price cap of \$0.69 per therm had no value whatsoever to Fishman or any other consumer, since PG&E's gas procurement rates were decreasing and PG&E's maximum possible rate was still nowhere close to the cap. And at the same time, Tiger charged significantly more than PG&E charged for gas.

E. Faria's Gas Bills Were Far More Expensive With Tiger Than They Would Have Been If She Had Stayed With PG&E

61. Tiger supplied Faria's natural gas beginning on May 7, 2015, with charges first appearing on the bill with the statement date of June 9, 2015. Faria discovered that her gas prices had increased with Tiger after she received the June 9, 2015 bill, and promptly canceled service. Tiger supplied Faria's gas for a second month, with a statement date of July 8, 2015, until the cancellation took effect. In total, Tiger supplied Faria's gas for 61 days.

62. According to Faria's PG&E bills, over the two months that she bought Tiger gas, she paid Tiger a total of \$61.87 for gas procurement plus daily charges, *more than double* the \$27.82 that she would have paid to PG&E for gas procurement and no daily charges if she had stayed with PG&E, as shown in the following chart:

Statement Date	PG&E Gas Procurement	Tiger Gas Procurement + \$0.05 Daily Charge	Difference
6/9/2015	\$ 13.70	\$ 32.87	+ 140%
7/8/2015	\$ 14.12	\$ 29.00	+ 106%
Total	\$ 27.82	\$ 61.87	+ 122%

F. Terms and Conditions Disclosed After Tiger's Sales Call and the Formation of the Contract are Not Binding

63. Plaintiffs do not concede that Tiger mailed them any terms and conditions after the contracts was formed during the Sales Calls.

64. But, even if Tiger did mail Plaintiffs and the Enrollee Sub-Class terms and conditions after the Sales Calls, those terms and conditions are not binding because "Consent is deemed to

1 be fully communicated between the parties as soon as the party accepting a proposal [each
2 Plaintiff] has put [her] acceptance in the course of transmission to the proposer [Tiger/CGC] [].”
3 *See* Cal. Civ. Code § 1583. Here, Tiger/CGC made offers during Sales Calls directed to
4 California related to delivering natural gas in California, and Plaintiffs and the Enrollee Sub-
5 Class accepted the offers, confirming the acceptance via the automated verification system.
6 Plaintiffs and the Enrollee Sub-Class never consented to anything that was not stated during the
7 Sales Calls. Even *if* Tiger could clarify the terms of the oral contract by subsequently mailing
8 terms and conditions to Plaintiffs and the Enrollee Sub-Class (which they do not concede), and
9 even if Tiger did mail terms and conditions to Plaintiffs and the Sub-Class (which they do not
10 concede), Tiger cannot materially change the terms of the contract by mailing a subsequent,
11 unaccepted offer to modify the contract. In fact, PG&E Gas Rule 23 – a contract between PG&E
12 and Tiger that, among other things, regulates how Tiger can solicit PG&E’s natural gas
13 customers like Plaintiffs Fishman and Faria – expressly states that subsequently-mailed written
14 terms and conditions cannot alter the terms that Tiger’s new customers agree to during the Sales
15 Calls.

16 65. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
17 after the contracts were formed, and that those terms and conditions state that the agreement was
18 governed by Oklahoma law. But Tiger/CGC said nothing about Oklahoma law during the Sales
19 Calls. Plaintiffs and the Enrollee Sub-Class did not know of this purported term before entering
20 into an oral contract with Tiger, and never agreed to it. *See* Cal. Civ. Code § 1580.

21 66. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
22 after the contracts were formed, and that those terms and conditions refer to a “daily nickel”
23 charge; i.e., Tiger would charge customers, in addition to the gas itself, \$0.05 per day of service.
24 But Tiger/CGC said nothing about a \$0.05 daily charge during the Sales Calls. Plaintiffs and the
25 Enrollee Sub-Class did not know of this purported term before entering into an oral contract with
26 Tiger, and never agreed to it. *See* Cal. Civ. Code § 1580.

27 67. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
28 after the contracts were formed, and that those terms and conditions refer to a surcharge of up to
29 \$0.20 per therm that Tiger would charge customers on top of the Bidweek Survey index for
30 California PG&E Citygate. But Tiger/CGC said nothing about a surcharge on top of the market
31 rate during the Sales Calls. Plaintiffs and the Enrollee Sub-Class did not know of this purported

1 term before entering into an oral contract with Tiger, and never agreed to it. *See* Cal. Civ. Code
2 § 1580. Moreover, even *if* the surcharge were part of the contracts, Tiger's procurement rate was
3 *more* than 20 cents higher than PG&E's rate in each of Fishman's nine months of Tiger service.
4 *See* ¶ 57, *supra*.

5 68. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
6 after the contracts were formed, and that those terms and conditions say that Plaintiffs and the
7 Enrollee Sub-Class could cancel the agreement without penalty and rescind the agreement by
8 calling CGC within three business days of enrolling. But that would make the terms and
9 conditions unconscionable because: a) it is highly unlikely Plaintiffs and the Enrollee Sub-Class
10 would have received the mailing and had an opportunity to review it within three business days;
11 indeed, California law allows for five calendar days for mailing in-state and 10 calendar days for
12 mailing out-of-state. *See* Cal. Code Civ. Proc. § 1013(a); and b) Plaintiffs and the Enrollee Sub-
13 Class did not receive their first PG&E bill including Tiger gas until two months after the Sales
14 Calls – and would not have had an opportunity within three business days to realize how much
15 more Tiger was charging them for gas procurement than PG&E would have charged them.

16 69. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
17 after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that
18 those terms and conditions do *not* contain an integration provision; therefore, the written terms
19 and conditions (e.g. \$0.05 daily charge and surcharge on top of the market rate) cannot supplant
20 the oral representations Tiger/CGC made during the Sales Calls (e.g., totally free to participate in
21 the Program).

22 70. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
23 after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that
24 those terms and conditions set forth a 36 month term that a customer can only cancel upon 90
25 days written notice to CGC prior to automatic renewal for another 36 month term. Nevertheless,
26 Tiger allowed Plaintiffs to cancel service by making telephone calls after far less than 36 months
27 of service. This further evidences that Tiger did not intend the supposedly-mailed terms and
28 conditions to be binding where they conflict with the terms of the oral agreements previously
29 made during the Sales Calls.

30 71. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
31 after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that

1 those terms and conditions do *not* contain a class action waiver/arbitration provision. Nor did
2 Tiger/CGC say anything about a class action waiver/arbitration provision during the Sales Calls.

3 **G. Tiger's Website Falsely Claimed That There Were ZERO Complaints Filed with the**
4 **Better Business Bureau**

5 72. According to Tiger's website at the time, there were "ZERO complaints" with the Better
6 Business Bureau. Exhibit B is a true and correct copy of a page from Tiger's website,
7 <http://tigernaturalgas.com/switch-pge-customer-service>, as of July 2016 and is incorporated as if
8 set forth in full in this Statement of Facts.

9 73. According to the Better Business Bureau of Oklahoma's website, there were 20
10 complaints filed within the last three years prior to July 2016. Exhibit C is a true and correct
11 copy of a page from the Oklahoma BBB's website, [http://www.bbb.org/tulsa/business-](http://www.bbb.org/tulsa/business-reviews/natural-gas-companies/tiger-natural-gas-inc-in-tulsa-ok-33000688)
12 [reviews/natural-gas-companies/tiger-natural-gas-inc-in-tulsa-ok-33000688](http://www.bbb.org/tulsa/business-reviews/natural-gas-companies/tiger-natural-gas-inc-in-tulsa-ok-33000688), as of July 2016 and
13 is incorporated as if set forth in full in this Statement of Facts.

14
15 **V. CLASS ACTION ALLEGATIONS**

16 74. Plaintiffs bring this Class Action for damages, restitution and injunctive relief on behalf
17 of the following Class (the "**Class**"): All California consumers and businesses who received a
18 telemarketing call from Tiger or its agents (including but not limited to CGC) that was recorded
19 without consent of the recipients, who became aware of the recording within one year prior to
20 the filing of this Action and continuing until final disposition of the Action.

21 75. Plaintiffs bring this Class Action for damages and injunctive relief on behalf of the
22 following Sub-Class (the "**Do Not Call Sub-Class**"): All California consumers and business who
23 received a telemarketing call from Tiger or its agents (including but limited to CGC) at a landline
24 or cellular telephone number that was registered on the Do Not Call list, within four years prior
25 to the filing of this Action and continuing until final disposition of the Action.

26 76. Plaintiffs bring this Class Action for damages and injunctive relief on behalf of the
27 following Sub-Class (the "**Enrollee Sub-Class**"): All California consumers and businesses who
28 enrolled in Tiger's natural gas price protection program after receiving representations (including
29 via telemarketing) claiming that the program is "free" and/or that the program can save them
30 money versus their current gas provider's rates due to a rate cap, within: a) two years prior to the
31 filing of this Action and continuing until final disposition of the Action for the Breach of Oral
Contract cause of action; b) within three years prior to the filing of this Action and continuing

1 until final disposition of the Action for the Fraud and Negligent Misrepresentation causes of
2 action; and/or c) within four years prior to the filing of this Action and continuing until final
3 disposition of the Action for the False Advertising Law and Unfair Competition Law causes of
4 action.

5 77. Plaintiffs bring this Class Action for damages and injunctive relief on behalf of the
6 following Sub-Class (the “**Consumer Enrollee Sub-Class**”): All consumer members, but not
7 business members, of the Enrollee Sub-Class, who enrolled in Tiger’s natural gas price
8 protection program after receiving representations (including via telemarketing) claiming that the
9 program is “free” and/or that the program can save consumers money versus their current gas
10 provider’s rates due to a rate cap, within three years prior to the filing of this Action and
11 continuing until final disposition of the Action for the Consumers Legal Remedies Act cause of
12 action.

13 78. Excluded from the Class and the Sub-Classes are:

- 14 • Defendants’ officers, directors, legal representatives, employees, co-conspirators,
15 successors, subsidiaries, and assigns.
- 16 • Any judge, justice, or judicial officer presiding over this matter and the members
17 of their immediate families and judicial staff.

18 79. **Numerosity (Fed. R. Civ. Proc. 23(a)(1)).** The proposed Class and Sub-Classes are so
19 numerous that individual joinder of all its members is impractical. Due to the nature of the trade
20 and commerce involved, and the fact that Tiger/CGC expressly stated that they were calling *all*
21 PG&E customers (not to mention customers of other gas companies such as Southern California
22 Gas Company), Plaintiffs believe that the total number of Class and Sub-Class members is in the
23 thousands and that members of the Class and Sub-Classes are numerous and geographically
24 dispersed throughout California. While the exact number and identities of the Class and Sub-
25 Class members are unknown at this time, such information can be ascertained through
26 appropriate investigation and discovery.

27 80. **Commonality and Predominance (Fed. R. Civ. Proc. 23(a)(2), (b)(3)).** Common
28 questions of law and fact exist as to all members of the Class and Sub-Classes and predominate
29 over any questions that affect only individual members of the Class and Sub-Classes. There is a
30 well-defined community of interest in the questions of law and fact involved affecting the Class
31 and Sub-Classes, and these common questions predominate over any questions that may affect

1 individual Class and Sub-Class members. Common questions of fact and law include, but are
2 not limited to, the following:

- 3 a. Did Tiger/CGC call Class Members to advertise its natural gas price protection
4 program, and record those calls without the recipients' consent?
- 5 b. Did Tiger/CGC call Do Not Call Sub-Class Members at their telephone numbers
6 that were on the Do Not Call list?
- 7 c. Did Tiger/CGC allege to Enrollee Sub-Class Members that PG&E was in the
8 process of raising its gas procurement rates when in fact the rates were
9 decreasing?
- 10 d. Did Tiger/CGC represent to Enrollee Sub-Class Members that it was free to
11 participate in Tiger's natural gas price protection program?
- 12 e. Did Tiger charge Enrollee Sub-Class Members an undisclosed \$0.05 daily charge
13 for participating in its natural gas price protection program?
- 14 f. Did Tiger/CGC represent to Enrollee Sub-Class Members that it priced its gas
15 based on the market rate?
- 16 g. Did Tiger price its gas to Enrollee Sub-Class Members far higher than the market
17 rate?
- 18 h. Did Tiger/CGC represent to Enrollee Sub-Class Members that PG&E could
19 charge \$1.06 for natural gas procurement within a year?
- 20 i. Did Tiger/CGC represent to Enrollee Sub-Class Members that the natural gas
21 price protection program capped gas prices at a price below what PG&E (or
22 another utility) could charge?
- 23 j. Could PG&E (or another utility) charge Enrollee Sub-Class Members a rate for
24 natural gas that was higher than Tiger's price cap?
- 25 k. Did Tiger/CGC violate PG&E Gas Rule 23 (Tiger's contract with PG&E that
regulates how it can solicit new customers), Sections D-E of which are for
customers' benefit, by their representations during the Sales Calls?

26 81. **Typicality (Fed. R. Civ. Proc. 23(a)(3)).** Plaintiffs' claims are typical of the claims of
27 the members of the Class and Sub-Classes. Tiger's calls to Plaintiffs and all members of the
28 Class were recorded without their consent. Faria and all members of the Do Not Call Sub-Class
29 received Tiger's calls at telephone numbers on the Do Not Call list. Plaintiffs and all members
30 of the Enrollee Sub-Class who agreed to purchase Tiger's gas have been similarly affected by
31 Tiger's common course of conduct since they all received the same representations and: a) They

1 were assessed with \$0.05 daily charges; b) The rate they paid for gas was far above the market
2 rate; c) The price cap had no benefit or value because it was set higher than what PG&E or the
3 Sub-Class Members' other former utilities could have charged them; d) They relied on Tiger's
4 claims when they entered into oral contracts with Tiger; and e) Tiger knew at the time
5 represented to Sub-Class members that its representations were not true.

6 **82. Adequacy (Fed. R. Civ. Proc. 23(a)(4)).** Plaintiffs will fairly and adequately represent
7 and protect the interests of the Class and Sub-Classes. Plaintiffs have no interests adverse to that
8 of the Class and Sub-Classes. Plaintiffs have retained counsel with substantial experience in
9 handling complex class actions and multi-party litigation and prosecuting false advertising
10 consumer actions. Plaintiffs and their counsel are committed to vigorously prosecuting this
11 Action on behalf of the Class and Sub-Classes.

12 **83. Superiority (Fed. R. Civ. Proc. 23(b)(1), (b)(3)).** A class action is superior to other
13 available methods for the fair and efficient adjudication of the present controversy. Individual
14 joinder of all members of the Class and Sub-Classes is impractical. Even if individual Class and
15 Sub-Class Members had the resources to pursue individual litigation, it would be unduly
16 burdensome to the courts in which the individual litigation would proceed. Individual litigation
17 magnifies the delay and expense to all parties in the court system of resolving the controversies
18 engendered by Tiger/CGC's common course of conduct. The class action device allows a single
19 court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient
20 handling of all Class Members' claims in a single forum. The conduct of this Action as a Class
21 Action conserves the resources of the parties and of the judicial system and protects the rights of
22 the Class and Sub-Class Members. Furthermore, for many, if not most, a Class Action is the
23 only feasible mechanism that allows an opportunity for legal redress and justice. Adjudication of
24 individual class members' claims with respect to Tiger/CGC would, as a practical matter, be
25 dispositive of the interests of other members not parties to the adjudication, and could
26 substantially impair or impede the ability of other class members to protect their interests. All
27 Class Members seek the same statutory damages for Tiger/CGC recording the Sales Calls
28 without consent. Although individual Enrollee Sub-Class Members will claim different damages
29 based on how long each bought gas from Tiger, and whether they were senior citizens at the time
30 they entered into the oral contracts with Tiger, there are common issues as to liability and the
31 methodology for calculation would be identical (Tiger procurement price minus PG&E

1 procurement price, multiplied by usage, and adding \$0.05 per day and the tax differential), with
2 the same enhancement for recipients who were senior citizens when Tiger/CGC called them.

3 84. **Injunctive and Declaratory Relief (Fed. R. Civ. Proc. 23(b)(2)).** As alleged herein and
4 below, Tiger/CGC acted or refused to act on grounds that apply generally to the Class and Sub-
5 Classes, so that final injunctive relief or corresponding declaratory relief is appropriate
6 respecting the Class and Sub-Classes as a whole. In particular: a) ordering Tiger/CGC to comply
7 with PG&E Gas Rule 23; and b) as to the Do Not Call Sub-Class, final injunctive and
8 corresponding declaratory relief preventing Tiger and CGC from calling numbers on the Do Not
9 Call list is an appropriate remedy.

10
11 **FIRST CAUSE OF ACTION**

12 **[Violations of California Recording Law, Cal. Penal Code § 632 *et seq.*]**
13 **(By Plaintiffs Fishman and Faria and the Class)**
14 **(Against Tiger and CGC)**

15 85. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

16 86. Plaintiffs bring this Action within one year of learning that Tiger/CGC recorded the Sales
17 Call to them. *See* Cal. Code Civ. Proc. § 340. As discussed in more detail above, Plaintiffs
18 could not have, with reasonable diligence, discovered that the Sales Calls were recorded any
19 sooner because such information was exclusively within the possession of Tiger/CGC until
20 Tiger's former counsel provided a recording of the Sales Call to Fishman within one year of
21 Tiger/CGC making the call, and Plaintiffs filed this Action within one year of learning the Sales
22 Calls were recorded.

23 87. Plaintiffs are informed and believe and thereon allege that most if not all other Class
24 Members do not know, even as of the filing of this Action, that Tiger/CGC's Sales Calls to them
25 were being recorded, so the statute of limitations had not even started to run for the other Class
26 Members as of the filing of this Action.

27 88. Cal. Penal Code § 632(a) prohibits:

28 A person [from] intentionally and without the consent of all parties to a
29 confidential communication, [using] an electronic amplifying or recording device
30 to eavesdrop upon or record the confidential communication, whether the
31 communication is carried on among the parties in the presence of one another or
by means of a telegraph, telephone, or other device, except a radio . . .

89. Cal. Penal Code § 632(c) states that a:

1 “confidential communication” means any communication carried on in
2 circumstances as may reasonably indicate that any party to the communication
3 desires it to be confined to the parties thereto, but excludes a communication
4 made in a public gathering or in any legislative, judicial, executive, or
5 administrative proceeding open to the public, or in any other circumstance in
6 which the parties to the communication may reasonably expect that the
7 communication may be overheard or recorded.

8 90. Tiger/CGC’s Sales Calls to Plaintiffs and Class Members contained objectively
9 confidential communications because a reasonable consumer would expect that communications
10 involving his or her home address and PG&E account number – which Plaintiffs disclosed
11 during the Sales Calls but are redacted from the transcript of the Sales Call to Fishman in Exhibit
12 A – would be confined to the parties to the call.

13 91. Tiger/CGC’s Sales Calls to Plaintiffs were not made in any kind of public setting.

14 92. Neither Plaintiffs nor any reasonable consumer would reasonably expect that
15 Tiger/CGC’s Sales Calls were being recorded precisely because so many other telemarketers *do*
16 disclose that calls are being recorded, particularly when confidential information is being
17 communicated.

18 93. Additionally, neither Plaintiffs nor any reasonable consumer would reasonably expect
19 that Tiger/CGC’s *Sales Calls* were being recorded precisely because the subsequent automated
20 verification calls *did* request consent to record. And the fact that the second, verification call
21 obtained Plaintiffs’ consent to record does not retroactively cure Tiger/CGC’s failure to obtain
22 their consent to record the first *Sales Calls*.

23 94. To the extent that Tiger/CGC may have called any Class Members on cellular telephones,
24 Tiger/CGC also violated Cal. Penal Code § 632.7, which does not include the requirement of
25 confidential information.

26 95. Although California’s Recording Law is codified in the Penal Code, recipients injured by
27 violations of the statute have standing to pursue remedies even without demonstrating that they
28 suffered actual damages. *See* Cal. Pen. Code §§ 637.2(a), (c).

29 WHEREFORE, Plaintiffs Fishman and Faria and the Class pray for judgment against Defendants
30 as hereinafter set forth.
31

SECOND CAUSE OF ACTION

**[Violations of Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* and
47 C.F.R. 64.1200]**

**(By Plaintiff Faria and the Do-Not-Call Sub-Class)
(Against Tiger and CGC)**

96. Faria hereby incorporates the foregoing paragraphs as though set forth in full herein.

97. Faria brings this Action within four years of receiving, at her landline telephone number that had been on the Do Not Call list since January 2004 without lapses, a Sales Call from Tiger/CGC in April or early May of 2015. *See* 28 U.S.C. § 1658.

98. Faria is informed and believes and thereon alleges that CGC, acting on behalf of Tiger, willfully and knowingly made the Sales Call to her using an “automatic telephone dialing system”; i.e., equipment that has the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and to dial such numbers. *See* 47 U.S.C. § 227(a)(1).

99. The Telephone Consumer Protection Act (“TCPA”) at 47 U.S.C. § 227(b)(2) and (c) incorporates violations as set forth by 47 C.F.R. 64.1200.

100. 47 C.F.R. 64.1200 (“Restrictions on Telemarketing, Telephone Solicitation, and Facsimile Advertising”) prohibits initiating any telephone solicitation to a residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry. *See* 47 C.F.R. 64.1200(c)(2).

101. Tiger/CGC never obtained prior express invitation or permission, in the form of a signed, written agreement, from Faria and the Do-Not-Call Sub-Class, stating that they agreed to be contacted by Tiger/CGC and including the telephone number to which the calls may be placed. *See* 47 C.F.R. 64.1200(c)(2)(ii).

102. Neither CGC nor its employees/agents who made the Tiger Sales Calls to Faria and the Do-Not-Call Sub-Class have personal relationships with Faria and the Do-Not-Call Sub-Class. *See* 47 C.F.R. 64.1200(c)(2)(iii).

103. Faria is informed and believes and thereon alleges that the Sales Call was not the result of error, and Tiger/CGC willfully and knowingly violated the TCPA. Specifically, Faria is informed and believes and thereon alleges that Tiger and CGC: a) have not established and implemented written procedures to comply with the national do-not-call rules; b) have not trained their personnel, and any entity assisting in their compliance, in procedures established

1 pursuant to the national do-not-call rules; c) have not maintained and recorded a list of telephone
2 numbers that they may not contact; d) have not used a process to prevent telephone solicitations
3 to telephone numbers on the do-not-call registry involving employing a version of the national
4 do-not-call registry obtained from the administrator of the registry no more than 31 days prior to
5 the date Tiger/CGC called her and maintained records documenting this process; e) have not
6 used a process to ensure that they do not sell, rent, lease, purchase, or use the national do-not-call
7 database, or any part thereof, for any purpose except compliance with 47 C.F.R. 64.1200 and
8 similar state or federal laws. *See* 47 C.F.R. 64.1200(c)(2)(i).

9 104. The TCPA authorizes a private right of action based on violations of the statute, or the
10 regulations prescribed thereunder. The TCPA authorizes statutory damages of \$500 per violation,
11 up to \$1,500 per violation, and injunctive relief. *See* 47 U.S.C. § 227(b)(3).

12
13 WHEREFORE, Plaintiff Faria and the Do-Not-Call Sub-Class pray for judgment against
14 Defendants as hereinafter set forth.

15
16 **THIRD CAUSE OF ACTION**

17 **[Breach of Oral Contract, Cal. Civil Code § 1622]**
18 **(By Plaintiff Fishman and the Enrollee Sub-Class)**
19 **(Against Tiger)**

20 105. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

21 106. Fishman brings this Action within two years of Tiger calling her to advertise the
22 Program. *See* Cal. Code Civ. Proc. § 339.

23 107. Fishman and the Enrollee Sub-Class on the one hand, and Tiger on the other hand,
24 entered into oral contracts by which Fishman and Enrollee Sub-Class Members agreed to
25 participate in Tiger's natural gas price protection program and buy natural gas from Tiger. *See*
26 Cal. Civ. Code § 1622.

27 108. By the terms of the oral contracts, Tiger offered Fishman and Enrollee Sub-Class
28 Members a "free" Program, whereby gas would be priced based on the market price, with no
29 added surcharges or fees, and that there would be a price cap that was a customer benefit because
30 Fishman and Enrollee Sub-Class Members' former utilities could charge more than that cap.

1 109. Fishman and Enrollee Sub-Class Members did all, or substantially all, of the significant
2 things that the oral contracts required, namely, pay for Tiger's gas. Thus, Fishman and Enrollee
3 Sub-Class Members provided consideration to Tiger.

4 110. All conditions required by the contracts for Tiger's performance had occurred.

5 111. Tiger breached the oral contracts by charging Fishman and the Enrollee Sub-Class a daily
6 charge of \$0.05 in addition to the gas for participating in the Program, even though Tiger/CGC
7 had represented that the Program was free.

8 112. Tiger breached the oral contracts by charging Fishman and the Enrollee Sub-Class prices
9 that were not based on the market rate, and that were far more than the market rate and far more
10 than PG&E would have charged. For example, even as PG&E's gas procurement rate dropped
11 by 52% from February to April 2016 (\$0.4058/therm to \$0.1944/therm), Tiger's rate dropped by
12 only 7% (\$0.6555/therm to \$0.6097/therm).

13 113. Tiger breached its promises by failing to deliver any customer benefits via the price cap,
14 in that the price cap was above what Fishman and the Enrollee Sub-Class's former utilities could
15 and did charge for gas.

16 114. Fishman and the Enrollee Sub-Class were harmed by Tiger's breach of oral contracts.

17 115. Whatever terms and conditions Tiger might have mailed to Fishman and the Enrollee
18 Sub-Class after formation of the contracts have no bearing on and could not modify the oral
19 contracts formed during Tiger/CGC's Sales Calls, because, *inter alia*: (a) Plaintiffs are informed
20 and believe that any such subsequently-mailed terms and conditions contradicted the promises
21 during the Sales Calls; (b) neither Plaintiffs nor Sub-Class Members agreed to be bound by such
22 subsequently-mailed terms and conditions; and (c) any such subsequently-mailed terms and
23 conditions that are inconsistent with the oral contracts formed during the Sales Calls are null and
24 void because, as alleged in the Fourth Cause of Action below, Tiger's contract with PG&E (i.e.
25 PG&E Gas Rule 23) prohibits Tiger from "alter[ing] the terms and conditions to which the
26 Customer agreed in the telephonic enrollment."

27
28 WHEREFORE, Plaintiff Fishman and the Enrollee Sub-Class pray for judgment against
29 Defendants as hereinafter set forth.
30
31

FOURTH CAUSE OF ACTION

**[Breach of Third-Party Beneficiary Contract, Cal. Civil Code § 1559]
(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)
(Against Tiger and CGC)**

116. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

117. PG&E Gas Rule 23 is a contract between PG&E and Core Transport Customers (“CTA”) (such as Tiger). The contract terms are clear enough that the parties could understand what each was required to do. The parties agreed to certain requirements that Tiger must meet in order to solicit PG&E natural gas customers.

118. At least part of PG&E Gas Rule 23 is intended to benefit third parties, namely customers such as Plaintiffs Fishman, Faria, and the Enrollee Sub-Class. Although Plaintiffs Fishman and Faria and the Enrollee Sub-Class are not expressly named parties to PG&E Gas Rule 23, Section D is expressly titled “Customer Protection” and Section E(1) is expressly titled “Non-Compliance with Customer Protection.” Exhibit D is a true and correct copy of pages 1 and 20-28 of PG&E Gas Rule 23 (effective date January 4, 2014).

119. Plaintiffs bring this Action within four years of Tiger/CGC’s breaches of PG&E Gas Rule 23. *See* Cal. Code Civ. Proc. § 337.

120. PG&E did all, or substantially all, of the significant things that the contract required it to do. Tiger/CGC failed to do numerous things that the contract required them to do, as described below.

121. PG&E Gas Rule 23, § D(1)(a) states that “The CTA or its authorized agent(s) shall comply with the Customer Sign-Up Process and obtain the Customer’s Authorization in accordance with the provisions of Schedule G-CT – Core Gas Aggregation Service.” Exhibit E is a true and correct copy of pages 1-6 of PG&E Gas Schedule G-CT (effective date December 1, 2014).

122. Page 4 of Schedule G-CT states that “The initial term (length) of service under a Customer Authorization will be twelve (12) consecutive months from the effective service date.” Tiger breached Schedule G-CT, and therefore PG&E Gas Rule 23 § D(1)(a), by purporting to bind new customers to a 36 month term during the Sales Calls.

123. PG&E Gas Rule 23, § D(1)(b) states that “The CTA, or its authorized agent(s), shall not make, with dishonest, fraudulent, or deceitful intent, material verbal or written

1 misrepresentations in the course of soliciting or serving core gas aggregation customers.” As
2 described elsewhere in detail and incorporated herein, Tiger/CGC misrepresented during the
3 Sales Calls: PG&E gas procurement prices, the \$0.05 daily charge, the surcharge on top of the
4 market rate, and the overall “value” of Tiger’s price cap, all of which hurt customers, and all for
5 the purpose of soliciting customers and benefiting Tiger/CGC.

6 124. PG&E Gas Rule 23, § D(1)(c) states that “The CTA or its authorized agent(s) shall not
7 with dishonest, fraudulent, or deceitful intent act to substantially benefit the CTA or its
8 employees, agents, or representatives, or to disadvantage customers.” As described elsewhere in
9 detail and incorporated herein, Tiger/CGC misrepresented during the Sales Calls: PG&E gas
10 procurement prices, the \$0.05 daily charge, the surcharge on top the market rate, and the overall
11 “value” of Tiger’s price cap, all of which hurt customers, and all for the purpose of soliciting
12 customers and benefiting Tiger/CGC.

13 125. After CGC completed its Sales Calls on behalf of Tiger, it switched Plaintiffs Fishman
14 and Faria and the Enrollee Sub-Class to a third-party automated verification system (“TPV”).
15 *See Exhibit A.*

16 126. PG&E Gas Rule 23, § E(2) sets forth requirements for TPV of customers’ agreement to
17 switch from PG&E to another gas provider, such as Tiger.

18 127. Section E(2)(i) states that TPV must provide a verbal statement and “verify the
19 customer’s acceptance of each of the principal terms and conditions for the service that will be
20 provided, including, but not limited to...”

21 128. Section E(2)(i)(2) states that TPV must state and verify acceptance of *all* material pricing
22 provisions, such as the price per therm. Section E(2)(i)(6) states that TPV must state and verify
23 acceptance of any fees or costs to the customer not referenced above. Tiger/CGC breached
24 Section E(2)(i)(2) and (6) because the TPV did not disclose or verify Fishman and Faria and the
25 Enrollee Sub-Class’ acceptance of the \$0.05 daily charge or the surcharge on top of the market
26 rate of up to \$0.20 per therm.

27 129. Section E(2)(i)(3) states that TPV must state and verify acceptance of the length of the
28 contract term. Tiger/CGC breached Section E(2)(i)(3) because, although the TPV stated a 36
29 month term, that term was void because Gas Rule 23 states that terms for new Tiger customers
30 must be 12 months. Tiger/CGC did not state or verify Fishman and Faria and the Enrollee Sub-
31 Class’ acceptance of a 12 month term.

1 130. Section E(2)(i)(10)(a) states that the TPV must advise customers that they have three
 2 business days *from the confirmation notice postmark date* to rescind enrollment with a new gas
 3 provider. Tiger/CGC breached Section E(2)(i)(10)(a) by merely stating that customers have
 4 three business days to cancel, which an ordinary consumer would likely believe begins on the
 5 day that TPV *made the statement*.

6 131. Section E(2)(i)(11)(a) states that if customer enrollment is by telephone, as was the case
 7 with Fishman, Faria, and the Enrollee Sub-Class, then the CTA (Tiger) must, “within three (3)
 8 business days, send the Customer a written confirmation that details the specific terms and
 9 conditions *agreed to by the Customer during the telephonic enrollment*” (emphasis added).
 10 Without conceding that Tiger sent any written confirmation at all to Fishman, Faria, and the
 11 Enrollee Sub-Class, even if Tiger did send a written confirmation, Tiger breached Section
 12 E(2)(i)(11)(a) by sending a written “confirmation” that did not confirm the terms of the oral
 13 contract (i.e., “It’s all free”), but actually added multiple terms that the new customers (i.e.
 14 Fishman, Faria, and the Enrollee Sub-Class) had not agreed to during the Sales Calls, namely the
 15 \$0.05 daily charge and the surcharge of up to \$0.20 per therm on top of the market rate. In fact,
 16 Section E(2)(i)(11)(a) continues: “Such confirmation shall in no way alter the terms and
 17 conditions to which the Customer agreed to in the telephonic enrollment.” Without conceding
 18 that Tiger sent any written confirmation at all to Fishman, Faria, and the Enrollee Sub-Class,
 19 Tiger breached Section E(2)(i)(10)(a) by sending a written “confirmation” that materially altered
 20 the terms and conditions to which Fishman, Faria, and the Enrollee Sub-Class agreed (i.e. “It’s
 21 all free”) during the Sales Calls by stating that Tiger would charge \$0.05 per day and add a
 22 surcharge of up to \$0.20 per therm on top of the market rate. So, it is not only the case that Tiger
 23 breached PG&E Gas Rule 23 by sending terms and conditions purporting to alter the oral
 24 contracts, but additionally, because PG&E Gas Rule 23 prohibits Tiger from sending terms and
 25 conditions that are inconsistent with the oral contracts made during the Sales Calls, Tiger lacked
 26 the authority to propose (much less enforce) any such terms. Therefore, any written terms and
 27 conditions that are inconsistent with the oral contracts are void and without force and effect.

28 132. Plaintiffs Fishman and Faria and the Enrollee Sub-Class were harmed by Tiger/CGC’s
 29 multiple breaches of PG&E Gas Rule 23.

30 133. Tiger/CGC’s breach of contract was a substantial factor in causing Plaintiffs Fishman and
 31 Faria and the Enrollee Sub-Class’ harm.

WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment against Defendants as hereinafter set forth.

FIFTH CAUSE OF ACTION

**[Violations of Consumers Legal Remedies Act, Cal. Civil Code § 1750 *et seq.*]
(By Plaintiffs Fishman and Faria and the Consumer Enrollee Sub-Class)
(Against Tiger)**

134. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

135. Plaintiffs bring this Action within three years of Tiger calling them to advertise the Program. *See* Cal. Civ. Code § 1783.

136. The Consumers Legal Remedies Act (“CLRA”) “shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.” *See* Cal. Civ. Code § 1760.

137. Plaintiffs and Consumer Enrollee Sub-Class members are “consumers” because each is an “individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.” *See* Cal. Civ. Code § 1761(d).

138. Tiger’s natural gas is a “good” because it is a “tangible chattel bought [] for use primarily for personal, family, or household purposes [].” *See* Cal. Civ. Code § 1761(a). Tiger’s natural gas price protection program is a “service” because it is “service for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.” *See* Cal. Civ. Code § 1761(b).

139. Plaintiffs and the Consumer Enrollee Sub-Class members’ dealings with Tiger to purchase its gas are “transactions” because they are “agreement[s] between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.” *See* Cal. Civ. Code § 1761(e).

140. The CLRA prohibits various “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.” *See* Cal. Civ. Code § 1770(a).

1 141. Tiger violated Section 1770(a)(1) (“Passing off goods or services as those of another”),
2 1770(a)(2) (“Misrepresenting the source, sponsorship, approval, or certification of goods or
3 services”) and (a)(3) (“Misrepresenting the affiliation, connection, or association with, or
4 certification by, another”) by claiming at the outset of the call to Plaintiffs and the Sub-Class that
5 its agents were calling on behalf of “Community Gas Center,” which implies a neutral
6 community organization, as opposed to an agent for Tiger – a for-profit entity that competes with
7 their established gas providers.

8 142. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
9 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
10 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
11 Consumer Enrollee Sub-Class a “price protection” program that would purportedly cap gas
12 prices at a rate lower than PG&E’s rate, despite knowing that PG&E’s rates could not be more
13 expensive than Tiger’s cap of \$0.69 during the next three years, and claiming that the cap of
14 \$0.69 per therm has financial benefits versus PG&E gas.

15 143. Tiger violated Section 1770(a)(8) (“Disparaging the goods, services, or business of
16 another by false or misleading representation of fact”) by knowingly falsely claiming to
17 Plaintiffs and the Consumer Enrollee Sub-Class that PG&E’s natural gas procurement rates were
18 increasing when in fact they were decreasing, and that PG&E could charge \$1.06 per therm,
19 twice the possible rate even assuming Tiger’s false claim of a 33% PG&E rate increase were
20 true.

21 144. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
22 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
23 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
24 Consumer Enrollee Sub-Class that its price protection program as “free” when in fact Tiger
25 charges \$0.05 per day and when in fact enrolling in the price protection program would
26 immediately lead to a significant increase in customers’ gas prices

27 145. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
28 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
29 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
30 Consumer Enrollee Sub-Class that its gas would be priced at “a variable rate based on the market
31 price” when in fact the a surcharge was added to the market price to line Tiger’s pockets.

1 146. Fishman sent a letter to Tiger in California by certified return-receipt mail on June 22,
2 2017, as required by Cal. Civil Code § 1782, demanding that Tiger immediately correct its
3 unlawful marketing practices, including but not limited to: a) disclosing on its website and in all
4 forms of advertising (including telemarketing) that Tiger does not base its gas procurement
5 prices on market rates; b) disclosing on its website and in all forms of advertising (including
6 telemarketing) that Tiger's purported "cap" on gas procurement will not actually result in a lower
7 price to consumers than their current gas provider would charge; c) disclosing the \$0.05 daily
8 customer charge on its website and in all forms of advertising (including telemarketing); and d)
9 removing all claims from its website that there have been no complaints filed against Tiger with
10 the Better Business Bureau.

11 147. Fishman also demanded in her June 22, 2017 letter that Tiger notify her within 30 days
12 from its receipt of the letter that: a) Tiger had identified all similarly situated consumers (i.e.,
13 consumers who in the last three years agreed to purchase Tiger gas in reliance on claims that
14 Tiger's price cap could result in lower rates than PG&E, and consumers who in the last three
15 years agreed to enroll in Tiger's price protection program based on claims that the Program was
16 free); b) notified those consumers that Tiger is correcting its unlawful advertising practices; and
17 c) notified those consumers that upon their request, Tiger would reimburse all monies they paid
18 for Tiger gas in excess of their former gas provider's price for each month during which they
19 were Tiger customers, plus \$0.05 per day for each day that they were Tiger customers.

20 148. Tiger's response was due on June 22, 2017 plus 30 days plus five days for mailing in-
21 state, or July 27, 2017. Tiger did not provide a code-compliant response to Fishman's letter by
22 July 27, 2017 as required by Cal. Civil Code § 1782. In fact, Fishman had not received *any*
23 response to her June 22, 2017 letter as of the filing of this Action in the Superior Court of
24 California, County of Marin on August 18, 2017.

25 149. Tiger's violations of Cal. Civil Code § 1770 damaged Plaintiffs and the Consumer
26 Enrollee Sub-Class members. Section 1780 authorizes remedies of actual damages, injunctive
27 relief, punitive damages, costs, and attorneys' fees. Section 1781 allows Plaintiffs to bring this
28 lawsuit as a class action.

29 150. Tiger's violations of the CLRA when it/CGC called senior citizens, such as Plaintiff
30 Faria, carry additional damages as set forth by Cal. Civil Code § 1780(b). Faria and senior
31 citizens in the Consumer Enrollee Sub-Class suffered substantial economic damage from Tiger's

1 conduct, which caused their natural gas procurement bills to significantly increase versus their
2 PG&E natural gas procurement bills if they had not switched to Tiger.

3 151. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Consumer
4 Enrollee Sub-Class after formation of the contract have no bearing on and cannot retroactively
5 cure Tiger's CLRA violations, particularly if those terms and conditions contradict the promises
6 and representations made by Tiger/CGC during the Sales Calls.

7
8 WHEREFORE, Plaintiffs Fishman and Faria and the Consumer Enrollee Sub-Class pray for
9 judgment against Defendants as hereinafter set forth.

10
11 **SIXTH CAUSE OF ACTION**

12 **[Fraud, Cal. Civil Code § 1572]**

13 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
14 **(Against Tiger)**

15 152. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

16 153. Plaintiffs bring this Action within three years of Tiger calling them to advertise its natural
17 gas price protection program. *See* Cal. Code Civ. Proc. § 338(d).

18 154. Tiger, by its agents, fraudulently induced Plaintiffs and the Enrollee Sub-Class to enroll
19 in Tiger's Program. Apparent consent obtained by fraud is invalid. *See* Cal. Civ. Code § 1567.

20 155. Tiger, by its agents, represented to Plaintiffs and the Enrollee Sub-Class via
21 telemarketing that: a) PG&E's natural gas procurement rates were increasing when in fact they
22 were decreasing; b) the Program was "free"; c) Tiger's gas price was based on market price; and
23 d) the price cap delivered customer benefits because the current utility could raise its prices to a
24 price higher than the Program's cap.

25 156. Tiger – in the natural gas business – knew that its/CGC's representation that PG&E's
26 rates had already increased by 18.8% and would increase by 33% in the next three years was
27 false. In fact, PG&E's gas procurement rates were decreasing. This misrepresentation was
28 material because it made it appear that the Program's price cap could deliver a customer benefit.

29 157. Tiger knew that its/CGC's representation that the Program was free (a material fact) was
30 false, because Tiger charges \$0.05 per day to participate in the Program in addition to the price
31

1 of the gas itself, and because Tiger immediately raised customers' gas prices to levels that far
2 exceeded what the original utility would have charged.

3 158. Tiger knew that its/CGC's representation that as part of the Program, it charged
4 customers for gas based on the market price (a material fact), was false, because, in fact, Tiger
5 added a large surcharge to the market price to line its own pockets.

6 159. Tiger knew that its/CGC's representation that the Program's price cap delivered customer
7 benefits was false. Tiger/CGC made specific false claims to Plaintiffs when it (falsely) stated as
8 a fact that PG&E could raise its gas procurement price by 33% to \$1.06 per therm within the
9 next year. Tiger made this false claim in order to make its price cap of \$0.69 appear to deliver a
10 customer benefit, when in fact the price cap had no such benefit at all. Thus, Tiger's fraud was
11 not advertising a price cap of \$0.69 per therm with the intent of charging more than \$0.69, but
12 rather the knowing presentation of an impossible scenario in which PG&E could charge \$1.06
13 per therm, in order to make it appear that the price cap had any value at all to Tiger customers.

14 160. Tiger knew that its/CGC's representations that PG&E would be raising its gas
15 procurement rate by 33%, and PG&E could charge customers \$1.06 per therm within the next
16 year, was false.

17 161. Tiger knew that these representations were false when its agents made such
18 representations, and that its agents made such representations recklessly and without regard for
19 the truth.

20 162. Tiger intended that Plaintiffs and the Enrollee Sub-Class rely on its/CGC's
21 representations made during the Sales Calls.

22 163. Plaintiffs and the Enrollee Sub-Class reasonably relied on Tiger/CGC's representations
23 made during the Sales Calls by agreeing to sign up for the Program during the Sales Calls.

24 164. Plaintiffs and the Enrollee Sub-Class were harmed by relying on Tiger/CGC's
25 representations made during the Sales Calls, because they paid significantly more for natural gas
26 than they would have by staying with their current gas provider. But for Tiger/CGC's Sales
27 Calls, Plaintiffs and the Enrollee Sub-Class would not have been so harmed.

28 165. Plaintiffs and the Enrollee Sub-Class's reliance on Tiger/CGC's representations made
29 during the Sales Calls was a substantial factor in causing their harm.

30 166. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
31 Sub-Class after formation of the contract have no bearing on and cannot retroactively cure

1 Tiger's fraud, particularly if those terms and conditions contradict the promises and
2 representations made by Tiger/CGC during the Sales Calls.

3
4 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
5 against Defendants as hereinafter set forth.

6
7 **SEVENTH CAUSE OF ACTION**

8 **[Negligent Misrepresentation, Cal. Civil Code §§ 1573, 1577]**
9 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
10 **(Against Tiger)**

11 167. Plaintiffs hereby incorporates the foregoing paragraphs as though set forth in full herein.

12 168. Plaintiffs bring this Action within three years of Tiger calling them to advertise its natural
13 gas price protection program. *See* Code Civ. Proc. § 338(d).

14 169. "Because negligent misrepresentation is a species of fraud, and not common-law
15 negligence, Plaintiff need not allege a duty of care." *Gilmore v. Wells Fargo Bank N.A.*, 75 F.
16 Supp. 3d 1255, 1269 (N.D. Cal. 2014). *See also Century Surety Company v. Crosby Insurance*
17 *Inc.*, 124 Cal. App. 4th 116, 129 (4th Dist. 2004) (stating elements of the negligent
18 misrepresentation cause of action without mentioning a duty of care).

19 170. Alternatively, to the extent that the Court believes that duty of care is a necessary element
20 for a Negligent Misrepresentation cause of action, Tiger had a duty of care to Plaintiffs and the
21 Enrollee Sub-Class because they are members of "a specific class of persons" (Tiger customers)
22 involved in transactions (oral contracts to purchase Tiger gas) that Tiger, who supplied
23 information to Plaintiffs and the Sub-Class, intended the information to influence. Tiger/CGC
24 undertook to furnish prospective customers with false information about the Program to
25 influence their purchase decisions. Further, Tiger/CGC supplied the information and directed
26 their activity to a closed universe of third parties – current customers of PG&E and other gas
27 utilities who might conceivably be interested in switching to Tiger. Finally, Tiger/CGC supplied
28 information for the sort of use – influencing prospective customers' purchase decisions – from
29 which Plaintiffs and the Enrollee Sub-Class' alleged losses arose. *See Apex Directional Drilling*
30 *LLC v. SHN Consulting Engineers & Geologists Inc.*, 119 F. Supp. 3d. 1117, 1126-27 (N.D. Cal.
31 2015).

1 171. Tiger, by its agents, represented to Plaintiffs and the Enrollee Sub-Class via
2 telemarketing and/or other forms of advertising important facts such as: a) PG&E's natural gas
3 procurement rates were increasing when in fact they were decreasing; b) the Program was free;
4 c) Tiger's gas price was based on market price; and d) the price cap delivered customer benefits
5 because the current utility could raise its prices to a price higher than the Program's cap.

6 172. Tiger – in the natural gas business – knew that its/CGC's representation that PG&E's
7 rates had already increased by 18.8% and would increase by 33% in the next three years was
8 false. In fact, PG&E's gas procurement rates were decreasing. This misrepresentation was
9 material because it made it appear that the Program's price cap could deliver a customer benefit.

10 173. Tiger/CGC's representation that the Program was free (a material fact) was not true,
11 because it charges \$0.05 per day to participate in the Program in addition to the price of the gas
12 itself, and because Tiger immediately raised consumers' gas prices to levels that far exceeded
13 what they would have paid their existing utility for the same gas.

14 174. Tiger/CGC's representation that as part of the Program, Tiger charged customers for gas
15 based on the market price (a material fact), was not true. In fact, Tiger added a large surcharge
16 to the market price, resulting in gas charges significantly exceeding what customers would have
17 paid their existing utility for the same gas.

18 175. Tiger/CGC's representation that the Program's price cap delivered customer benefits was
19 not true. These statements go beyond general advertising puffery because Tiger/CGC made
20 specific false claims to Plaintiffs when it stated as a fact that PG&E could raise its gas
21 procurement price by 33% to \$1.06 per therm within the next year. Tiger made this false claim
22 in order to make its price cap of \$0.69 appear to deliver a customer benefit, when in fact the
23 price cap had no such benefit at all. Thus, Tiger's fraud was not advertising a price cap of \$0.69
24 per therm with the intent of charging more than \$0.69, but rather the knowing presentation of an
25 impossible scenario in which PG&E could charge \$1.06 per therm, in order to make it appear
26 that the price cap had any value at all to Tiger customers.

27 176. Tiger/CGC's representations that PG&E would be raising its gas procurement rate by
28 33%, and PG&E could charge customers \$1.06 per therm within the next year, were not true.

29 177. Tiger/CGC's representation that the Program was great for customers was not true.
30
31

178. Even if Tiger/CGC may have honestly believed that the above representations were true, Tiger/CGC had no reasonable grounds for believing that the above representations were true when they made the representations.

179. Tiger intended that Plaintiffs and the Enrollee Sub-Class rely on its/CGC's representations made during the Sales Calls.

180. Plaintiffs and the Enrollee Sub-Class reasonably relied on Tiger/CGC's representations made during the Sales Calls.

181. Plaintiffs and the Enrollee Sub-Class were harmed by relying on Tiger/CGC's representations made during the Sales Calls, because they paid significantly more for natural gas than they would have by staying with their current gas provider. But for Tiger/CGC's Sales Calls, Plaintiffs and the Enrollee Sub-Class would not have been so harmed.

182. Plaintiffs and the Enrollee Sub-Class's reliance on Tiger/CGC's representations made during the Sales Calls was a substantial factor in causing their harm.

183. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee Sub-Class after formation of the contract have no bearing on and cannot retroactively cure Tiger's negligent misrepresentation, particularly if those terms and conditions contradict the promises and representations made by Tiger/CGC during the Sales Calls.

WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment against Defendants as hereinafter set forth.

EIGHTH CAUSE OF ACTION

**[Violations of False Advertising Law, Cal. Business & Professions Code § 17500 *et seq.*]
(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)
(Against Tiger)**

184. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

185. Plaintiffs bring this Action within four years of Tiger calling them to advertise its natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

186. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17500 *et seq.* because they suffered injury in fact and lost money as the result of Tiger's false advertising. *See* Cal. Bus. & Prof. Code § 17204. Fishman lost \$126.44 and Faria lost \$34.05,

1 plus taxes and sundry charges, by enrolling in Tiger's Program, as compared to their gas charges
2 if they had stayed with PG&E.

3 187. Cal. Business & Professions Code § 17500 states:

4 It is unlawful for any person, firm, corporation or association, or any employee
5 thereof with intent directly or indirectly to dispose of real or personal property or
6 to perform services, professional or otherwise, or anything of any nature
7 whatsoever or *to induce the public to enter into any obligation* relating thereto, to
8 make or disseminate or cause to be made or disseminated before the public in this
9 state, or to make or disseminate or cause to be made or disseminated from this
10 state before the public in any state, in any newspaper or other publication, or any
11 advertising device, or by public outcry or proclamation, or in any other manner or
12 means whatever, including over the Internet, any statement, *concerning that real*
13 *or personal property or those services, professional or otherwise, or concerning*
14 *any circumstance or matter of fact connected with the proposed performance or*
15 *disposition thereof, which is untrue or misleading, and which is known, or which*
16 *by the exercise of reasonable care should be known, to be untrue or misleading,*
17 or for any person, firm, or corporation to so make or disseminate or cause to be so
18 made or disseminated any such statement as part of a plan or scheme with the
19 intent not to sell that personal property or those services, professional or
20 otherwise, so advertised at the price stated therein, or as so advertised. Any
21 violation of the provisions of this section is a misdemeanor punishable by
22 imprisonment in the county jail not exceeding six months, or by a fine not
23 exceeding two thousand five hundred dollars (\$2,500), or by both that
24 imprisonment and fine [emphasis added].

18 188. Tiger falsely claimed in its Sales Calls to Plaintiffs and the Sub-Class that its natural gas
19 price protection program was great *because*: a) it was free; b) gas prices were based on market
20 prices; and c) gas prices were capped at a rate below which PG&E could charge them for gas.

21 189. Tiger's claims were false because: a) Plaintiffs and the Sub-Class were charged \$0.05 per
22 day to participate in the Program in addition to the cost of the gas; b) Tiger's gas prices were not
23 based on market prices but were actually much higher; and c) Tiger set up a hypothetical – and
24 impossible – scenario in which PG&E could charge Plaintiffs \$1.06 per therm for gas
25 procurement within a year so Tiger's price of \$0.69 per therm delivered customer benefits, when
26 in truth PG&E's gas procurement rates were decreasing and it could not charge anywhere near
27 \$0.69 per therm, so Tiger's price cap had no customer benefit whatsoever.

28 190. Cal. Business & Professions Code § 17500.3 states:

29 It is unlawful for any person to solicit a sale or order for sale of goods or services
30 at the residence of a prospective buyer, in person or by means of telephone,
31 without clearly, affirmatively and expressly revealing at the time the person
initially contacts the prospective buyer, *and before making any other statement,*

1 *except a greeting, or asking the prospective buyer any other questions, that the*
2 *purpose of the contact is to effect a sale, by doing all of the following:*

3 (1) Stating the identity of the person making the solicitation.

4 (2) *Stating the trade name of the person represented by the person making the*
5 *solicitation.*

6 (3) Stating the kind of goods or services being offered for sale [emphasis added].

7 191. The first thing Tiger's CSR did after Fishman answered the phone was to provide her
8 [first] name: Olivia.

9 192. However, Brown did not identify Tiger before making any other statement except
10 greeting or asking Fishman any other questions. Instead, she claimed she was calling from
11 "Community Gas Center," which a reasonable consumer might believe to be a non-profit
12 organization, and has no obvious connection to Tiger.

13 193. Cal. Business & Professions Code § 17508 states:

14 (a) It shall be unlawful for any person doing business in California and
15 advertising to consumers in California to make *any false or misleading*
16 *advertising claim*, including claims that (1) purport to be based on factual,
17 objective, or clinical evidence, (2) compare the product's effectiveness or safety
18 to that of other brands or products, or (3) *purport to be based on any fact*
19 [emphasis added].

20 194. Tiger made a false and/or misleading claim to Plaintiffs and the Enrollee Sub-Class when
21 it presented as a fact that PG&E could raise its gas procurement price to \$1.06 per therm within
22 the next year. Tiger made this false and/or misleading claim in order to make its price cap of
23 \$0.69 per therm appear to deliver a customer benefit, when in fact the price cap had no such
24 benefit because PG&E could not charge \$1.06 per therm, or any amount higher than \$0.69 per
25 therm.

26 195. Plaintiffs and the Enrollee Sub-Class were harmed by relying on Tiger's representations.

27 196. Tiger knew, or in the exercise of reasonable diligence should have known, that its
28 advertisements described above were false and/or misleading.

29 197. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
30 Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure
31 Tiger's False Advertising Law violations, particularly if those terms and conditions contradict
the promises and representations made by Tiger/CGC during the Sales Calls.

1 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
2 against Defendants as hereinafter set forth.

3
4 **NINTH CAUSE OF ACTION**

5 **[Violations of Unfair Competition Law (“UCL”) – Unlawful Prong, Cal. Business &
6 Professions Code § 17200 *et seq.*]**

7 **(By Plaintiff Faria and the Do Not Call Sub-Class)
8 (Against Tiger and CGC)**

9 198. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

10 199. Faria brings this Action within four years of receiving a Sales Call from Tiger/CGC in
11 April or early May of 2015 at her landline telephone number that had been on the Do Not Call
12 list since January 2004, without lapses. *See* Cal. Bus. & Prof. Code § 17208.

13 200. Cal. Business & Professions Code § 17200 prohibits any “unlawful” act. The UCL’s
14 unlawful prong “borrows” violations of other laws and makes them independently actionable.

15 201. Tiger/CGC’s acts and practices alleged herein are “unlawful” within the meaning of the
16 UCL because they violated federal and state laws and regulations prohibiting calls to telephone
17 numbers on the Do Not Call registry.

18 **The Telephone Consumer Protection Act and Implementing Regulations**

19 202. The Telephone Consumer Protection Act (“TCPA”) at 47 U.S.C. § 227(c) incorporates
20 violations as set forth by 47 C.F.R. section 64.1200. In turn, 47 C.F.R. § 64.1200(c)(2) prohibits
21 telemarketers from calling telephone numbers on the Do Not Call registry.

22 203. Tiger/CGC violated the TCPA and 47 C.F.R. § 64.1200(c)(2) by calling Faria’s landline
23 telephone number that was on the Do Not Call list, and by making similar calls to the telephone
24 numbers of the Members of the Do Not Call Sub-Class, all of whose numbers, like Faria’s, were
25 on the Do Not Call list.

26 204. Tiger/CGC violated the TCPA and 47 C.F.R. section 64.1200(d)(1) and (d)(2) by calling
27 Faria’s landline telephone number, and the Do Not Call Sub-Class Members’ telephone numbers,
28 that were on the Do Not Call list because: a) Tiger and CGC do not have written policies,
29 available upon demand, for maintaining a do-not-call list; and b) Tiger and CGC personnel
30 engaged in any aspect of telemarketing were not informed and trained in the existence and use of
31 the Do Not Call list.

Federal Trade Commission's Telemarketing Sales Rule

205. The Federal Trade Commission's Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*, also prohibits telemarketers from calling numbers on the Do Not Call list. The Telemarketing Sales Rule was adopted pursuant to the authority of the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101 *et seq.* (hereafter the "Telemarketing Fraud Act"). Congress enacted the Telemarketing Fraud Act in order to "offer consumers necessary protection from telemarketing deception and abuse." *Id.* at § 6101(5).

206. Tiger/CGC were engaged in "telemarketing" within the meaning of the Telemarketing Sales Rule, which defines "telemarketing" as "a plan, program, or campaign which is conducted to induce the purchase of goods or services ... by use of one or more telephones and which involves more than one interstate telephone call." 16 C.F.R. § 310.2(gg). Tiger/CGC were "telemarketers" within the meaning of the Telemarketing Sales Rule, which defines a telemarketer as "any person who, in connection with telemarketing, initiates or receives telephone calls to or from a consumer" *Id.* at § 310.2(ff). Tiger should be equally deemed a "telemarketer" because CGC acted as Tiger's agent when CGC made the telemarketing calls. In addition, Tiger was a "seller" within the meaning of the Telemarketing Sales Rule because Tiger, in connection with a "telemarketing" transaction, provided or offered to provide services to customers in exchange for consideration. *Id.* at §310.2(dd).

207. The Telemarketing Sales Rule states that it is "an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in," a list of enumerated abusive acts, one of which is calling any number on the Do Not Call list. 16 C.F.R. § 310.4(b)(1)(iii)(B). CGC violated this provision by calling Faria and the Do Not Call Sub-Class at their telephone numbers that were on the Do Not Call list. Tiger violated this provision by causing CGC to make these calls, and because CGC was acting as Tiger's agent in making the calls, as alleged above.

California Law Prohibiting Unsolicited and Unwanted Telephone Solicitations

208. Cal. Business & Professions Code § 17590 states the California Legislature's intent to protect California residential and wireless telephone subscribers from telemarketing calls made to numbers on the Do Not Call registry.

209. Tiger/CGC violated Cal. Bus. & Prof. Code § 17592(c). (c)(1) by calling Faria and the Do Not Call Sub-Class at their telephone numbers that were on the Do Not Call list, seeking to sell Tiger's goods and services, namely Tiger's natural gas and the Program.

210. Plaintiff Faria suffered injury in fact and lost money as the direct result of all of Tiger/CGC's "unlawful" acts and practices alleged above. *See* Cal. Bus. & Prof. Code § 17204. But for Tiger/CGC's "unlawful" conduct, described herein, Faria would never have received a phone call from CGC and therefore would not have signed up for Tiger's program and would never have paid the inflated gas prices and daily fees that Tiger charged her.

WHEREFORE, Plaintiff Faria and the Do Not Call Sub-Class pray for judgment against Defendants as hereinafter set forth.

TENTH CAUSE OF ACTION

[Violations of Unfair Competition Law – Unlawful Prong, Cal. Business & Professions Code § 17200 *et seq.*]

(By Plaintiffs Fishman and Faria and the Class) (Against Tiger and CGC)

211. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

212. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise its natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

213. Cal. Business & Professions Code § 17200 prohibits any "unlawful" act or practice. The Unlawful Competition Law's ("UCL") unlawful prong "borrows" violations of other laws and makes them independently actionable.

California Statutory Violations

214. Tiger's acts and practices alleged herein are "unlawful" within the meaning of the UCL because they amount to violations of the California Recording Law (Cal. Pen. Code § 632 *et seq.*), breach of oral contract (Cal. Civ. Code § 1622), violations of the Consumer Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*), fraud (Cal. Civ. Code § 1572), negligent misrepresentation (Cal. Civ. Code §§ 1573, 1577), and violations of the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), as described above. Each of these statutory violations serves as predicate actions constituting "unlawful" conduct by Tiger.

215. CGC's acts and practices alleged herein are "unlawful" within the meaning of the UCL because they amount to violations of the California Recording Law (Cal. Pen. Code § 632 *et seq.*), as described above. This statutory violation serves as a predicate action constituting "unlawful" conduct by CGC.

Violations of the Telephone Consumer Protection Act and Code of Federal Regulations

216. The TCPA, 47 U.S.C. § 227 *et seq.*, incorporates 47 C.F.R. 64.1200, which prohibits initiating any telephone solicitation to a residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry. *See* 47 C.F.R. 64.1200(c)(2). Tiger/CGC violated the TCPA by calling Faria and the Do-Not-Call Subclass' telephone numbers that were on the Do Not Call list. This statutory violation serves as a predicate action constituting "unlawful" conduct by Tiger/CGC.

Violations of the FTC's Telemarketing Sales Rule

217. In addition, Tiger's and CGC's acts and practices alleged herein are "unlawful" within the meaning of the UCL because they constitute "deceptive telemarketing acts or practices" within the meaning of the Federal Trade Commission's Telemarketing Sales Rule, 16 C.F.R. § 310.4(a). In particular, the Rule provides that "[i]t is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; [and]

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;"

16 C.F.R. § 310.3(a)(1) (footnotes omitted).

218. The Rule also makes it unlawful for a seller or telemarketer to "misrepresent[], directly or by implication, in the sale of goods or services any of the following material information: (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer; [or] (ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;" *Id.* at § 310.3(a)(2).

219. As alleged above, Tiger/CGC are "telemarketers," and their sales calls to Plaintiffs and the members of the Enrollee Sub-Class constitute "telemarketing," within the meaning of the

1 Telemarketing Sales Rule. *See* 16 C.F.R. § 310.2(ff), (gg). Also, Tiger is a “seller” within the
2 meaning of the Telemarketing Sales Rule because Tiger, in connection with a “telemarketing”
3 transaction, provides or offers to provide services to customers in exchange for consideration.
4 *Id.* at § 310.2(dd).

5 220. Tiger/CGC violated the provisions of the Telemarketing Sales Rule quoted above by
6 obtaining Plaintiffs’ and the Enrollee Sub-Class members’ consent to pay for Tiger’s natural gas
7 as part of the Program without truthfully, clearly and conspicuously disclosing the total cost of
8 the Program. In particular, Tiger/CGC failed to disclose that enrolling in the program would
9 lead to an immediate increase in the cost of the natural gas and would include a \$0.05 daily
10 charge. To the contrary, Tiger/CGC falsely represented that it was “free” to enroll in the
11 program. Tiger/CGC also violated the quoted provisions of the Telemarketing Sales Rule by
12 failing to truthfully, clearly and conspicuously disclose all material conditions associated with
13 the program, including the fact that customers’ gas prices would go up, that a \$0.05 daily charge
14 would be charged, and other material terms.

15 221. Tiger/CGC cannot escape liability for the violations of the Telemarketing Sales Rule by
16 purporting to mail terms and conditions to Plaintiffs and the Enrollee Sub-Class members after
17 agreements were made during the Sales Calls, because, *inter alia*, the Rule is clear that the
18 required disclosures must be made *before* obtaining customers’ consent to pay.

19 222. Plaintiffs suffered injury in fact and lost money as the direct result of all of Tiger/CGC’s
20 “unlawful” acts and practices alleged above. *See* Cal. Bus. & Prof. Code § 17204. But for
21 Tiger/CGC’s “unlawful” conduct, described herein, Plaintiffs would not become enrollees in
22 Tiger’s natural gas protection program, and would not have paid any monies to Tiger for
23 purchase of natural gas, including Tiger’s undisclosed surcharge and the daily fee.
24

25 WHEREFORE, Plaintiffs Fishman and Faria and the Class pray for judgment against Defendants
26 as hereinafter set forth.
27

28 **ELEVENTH CAUSE OF ACTION**

29 **[Violations of Unfair Competition Law – Unfair Prong, Cal. Business & Professions Code**
30 **§ 17200 *et seq.*]**

31 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
(Against Tiger and CGC)

223. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

224. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise Tiger's natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

225. Cal. Business & Professions Code § 17200 prohibits any "unfair" act.

226. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17200 *et seq.* because they suffered injury in fact and lost money as the direct result of Tiger/CGC's unfair competition. *See* Cal. Bus. & Prof. Code § 17204. But for Tiger/CGC's unfair conduct, described herein, Plaintiffs would never have signed up for Tiger's program and would never have paid the inflated gas prices and daily fees that Tiger charged them.

227. Tiger/CGC's acts and practices, as alleged herein, are "unfair" under all three formulations developed in the case law: the balancing test (*South Bay Chevrolet v. Gen. Motors Acceptance Corp.*, 72 Cal. App. 4th 861 (4th Dist. 1999); *Klein v. Earth Elements, Inc.*, 59 Cal. App. 4th 965 (1st Dist. 1997)), the tethering test (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163 (1999)), and the Section 5 test (*Camacho v. Automobile Club*, 142 Cal. App. 4th 1394, 1403-05 (2d Dist. 2006)).

Tiger/CGC's Conduct was "Unfair" Under the Balancing Test

228. "Determination of whether a business practice or act is 'unfair' within the meaning of the [UCL] entails examination of the impact of the practice or act on its victim . . . balanced against the reasons, justifications and motives of the alleged wrongdoer. In brief, the court must weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim." *Klein*, 59 Cal. App. 4th at 969-70 (citations omitted). "An unfair business practice occurs when the practice offends an established public policy or when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." *Podolsky v. First Healthcare Corp.*, 50 Cal. App. 4th 632, 647 (2d Dist. 1996) (citation omitted).

229. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to call telephone numbers on the Do Not Call list; there is no redeeming moral or ethical utility to have done so. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to record telephone calls without disclosing and obtaining consent.

230. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to claim that PG&E's gas procurement rates were increasing when they were really decreasing and to create a false and impossible hypothetical situation – that PG&E could charge \$1.06 per therm for gas procurement – for the sole purpose of making Tiger's price cap appear to be a customer benefit when in fact Tiger intended to charge and actually charged customers far more for gas than PG&E would have.

231. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to advertise the Program as "free" during the Sales Calls while failing to disclose that Tiger charges a \$0.05 daily fee. Tiger/CGC's conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to represent during the Sales Calls that Tiger's gas is based on the market price without disclosing a large "add-on" of unstated amount in order to line its own pockets... and then charging more than that add-on. As the California Supreme Court has explained in a similar context, "protection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society." *Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971).

232. Tiger/CGC's Sales Call, and Tiger's subsequent written "confirmation" that did not confirm the terms of the oral contract but rather materially altered them, are "unfair" within the meaning of the UCL because Tiger/CGC systematically breached the terms of PG&E Gas Rule 23, §§ D-E and Schedule G-CT, for which Plaintiffs Fishman and Faria and the Enrollee Sub-Class are third-party beneficiaries. *See, e.g., Arce v. Kaiser Foundation Health Plan Inc.*, 181 Cal. App. 4th 471, 489-90 (2d Dist. 2010).

233. Tiger/CGC's Sales Calls were particularly unfair because they constituted systematic breaches of PG&E's Gas Rule 23, §§ D-E and Schedule G-CT of which were set up for the benefit and protection of consumers like Plaintiffs Fishman and Faria.

Tiger/CGC's Conduct was "Unfair" Under the Tethering Test

234. Under the tethering test, which was developed in the context of actions between competitors, a "finding of unfairness must be tethered to some legislatively declared policy or proof of some actual or threatened impact on competition." *Cel-Tech*, 20 Cal. 4th at 186-87. Tiger/CGC's acts and practices of calling telephone numbers on the Do Not Call list violated the legislatively-declared policies expressed in the Telephone Consumer Protection Act (47 U.S.C. § 227), the Telemarketing Sales Rule (16 C.F.R. § 310), Restrictions on Telemarketing,

1 Telephone Solicitation, and Facsimile Advertising (47 C.F.R. § 64.1200), FCC Do Not Call
 2 Regulations (15 U.S.C. § 6153), and Unsolicited and Unwanted Telephone Solicitations (Cal.
 3 Bus. & Prof. Code § 17590 *et seq.*). Tiger/CGC violated not only the letter, but also the spirit
 4 and purpose, of each of these laws, thereby engaging in “unfair” conduct under the UCL’s
 5 “tethering test” by giving themselves an unfair advantage over their competitors who follow the
 6 law.

7 235. Tiger/CGC’s false advertising and negligent misrepresentations that PG&E was
 8 increasing its gas procurement charges and regarding what PG&E could charge \$1.06 per therm
 9 in order to make it appear that the Program’s price cap had any customer value, to advertise that
 10 Tiger charged a rate based on the market rate without disclosing an “add-on” of unstated amount,
 11 and to advertise the Program as “free” without disclosing the \$0.05 daily charge or the surcharge
 12 added by Tiger to the cost of the gas, as described herein, also violated the legislatively-declared
 13 policies expressed in the Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*) and the
 14 False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), thereby engaging in “unfair”
 15 conduct under the UCL’s “tethering test” by giving themselves an unfair advantage over their
 16 competitors who do honor the requirements of PG&E Gas Rule 23, §§ D-E and Schedule G-CT.

17 **Tiger/CGC’s Conduct is “Unfair” Under the Section 5 Test**

18 236. Under the Section 5 test, which is derived from the liability standards governing the
 19 Federal Trade Commission Act, conduct is unfair if: “(1) the consumer injury is substantial; (2)
 20 the injury is not outweighed by any countervailing benefits to consumers or competition; and (3)
 21 the injury could not reasonably have been avoided by consumers themselves.” *Boschma v.*
 22 *Home Loan Center, Inc.*, 198 Cal. App. 4th 230, 253 (4th Dist. 2011). Tiger/CGC’s practices
 23 have caused and are likely to cause substantial injury to Plaintiff and Enrollee Sub-Class
 24 Members, which injury is not and was not reasonably avoidable.

25 237. Fishman was overcharged \$126.44 and Faria was overcharged \$34.05 vs. PG&E’s rates,
 26 plus taxes and sundry charges, in reliance on Tiger/CGC’s representations. Furthermore,
 27 Tiger/CGC’s practices of falsely representing that PG&E was increasing its gas procurement
 28 charges when it was really decreasing them, that PG&E could charge \$1.06 per therm in order to
 29 make it appear that the Program’s price cap had any customer value, advertising that Tiger
 30 charged a rate based on the market rate without disclosing an “add-on” of unstated amount, and
 31 falsely advertising the Program as “free” without disclosing the \$0.05 daily charge or the Tiger

1 surcharge, is not outweighed by any countervailing benefits to consumers. If Tiger/CGC had not
2 engaged in this “unfair” conduct, Tiger could not have charged the Enrollee Sub-Class Members
3 and would not have unfairly obtained monies from them.

4 238. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
5 Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure
6 Tiger/CGC’s “unfair” conduct alleged herein, particularly if those terms and conditions
7 contradict the promises and representations made by Tiger/CGC during the Sales Calls.

8
9 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
10 against Defendants as hereinafter set forth.

11
12 **TWELFTH CAUSE OF ACTION**

13 **[Violations of Unfair Competition Law – Fraudulent Prong, Cal. Business & Professions**
14 **Code § 17200 *et seq.*]**

15 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**

16 **(Against Tiger and CGC)**

17 239. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

18 240. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise
19 Tiger’s natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

20 241. Cal. Business & Professions Code § 17200 prohibits any “fraudulent”⁴ act.

21 242. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17200
22 *et seq.* because they suffered injury in fact and lost money as the direct result of Tiger/CGC’s
23 unfair competition. *See* Cal. Bus. & Prof. Code § 17204. But for Tiger/CGC’s fraudulent
24 conduct, described herein, Plaintiffs would never have signed up for Tiger’s program and would
25 never have paid the inflated gas prices and daily fees that Tiger charged them.

26 243. Any reasonable consumer was likely to be deceived, and Plaintiffs were actually
27 deceived, by Tiger/CGC’s claims that: a) PG&E was increasing its gas procurement rates when
28 the rates were actually dropping; b) it was free to participate in the Program; and c) the price cap

29
30 ⁴ “‘Fraudulent,’ as used in the statute, does not refer to the common law tort of fraud but only
31 requires a showing members of the public ‘are likely to be deceived.’” *Chavez v. Bank of*
America Corporation, No. C-10-0653 JCS, 2012 U.S. Dist. LEXIS 62935 at *18 (N.D. Cal. May
4, 2012) (citation omitted).

of \$0.69 per therm had any customer benefit at all and could save them any money versus their current gas provider. Thus, the unlawful, unfair, and fraudulent claims during Tiger/CGC's Sales Calls were not that Tiger would never charge more than \$0.69 per therm – and Tiger didn't do so – but rather by Tiger/CGC representing to prospective customers a false, impossible scenario in which PG&E *could* charge \$1.06 per therm within a year to make it *appear* that the Program's price cap had any customer value, even though Tiger knew PG&E could not do so.

244. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure Tiger/CGC's "fraudulent" conduct alleged herein, particularly if those terms and conditions contradict the promises and representations made by Tiger/CGC during the Sales Calls.

WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment against Defendants as hereinafter set forth.

PRAYER FOR RELIEF

A. First Cause of Action for Violations of California Recording Law

245. Statutory damages to Plaintiffs Fishman and Faria and the Class in the amount of \$5,000 per violation, plus statutory interest. *See* Cal. Pen. Code § 637.2(a)(1).

246. An Order from this Court prohibiting Tiger and CGC from making telemarketing calls to California consumers and businesses without immediately disclosing that the calls are being recorded and without obtaining the requisite consent. *See* Cal. Pen. Code § 637.2(b).

247. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an important right affecting the public interest and thereby confer a significant benefit on the general public or a large class of persons. The necessity and financial burden of private enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

248. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

B. Second Cause of Action for Violations of Telephone Consumer Protection Act and Code of Federal Regulations

249. Statutory damages to Plaintiff Faria and the Do-Not-Call Sub-Class in the amount of \$1,500 per violation, because Defendants willfully and knowingly violated the TCPA and the

1 regulations prescribed thereunder, plus statutory interest. Alternatively, statutory damages to
2 Plaintiff Faria and the Do-Not-Call Sub-Class in the amount of \$500 per violation. *See* 47
3 U.S.C. § 227(b)(3)(B).

4 250. An Order from this Court prohibiting Tiger and CGC from making telemarketing calls to
5 California consumers and businesses whose telephone numbers are on the Do-Not-Call list. *See*
6 47 U.S.C. § 227(b)(3)(A).

7 251. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
8 important right affecting the public interest and thereby confer a significant benefit on the
9 general public or a large class of persons. The necessity and financial burden of private
10 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
11 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
12 Proc. § 1021.5.

13 252. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

14 **C. Third Cause of Action for Breach of Oral Contract**

15 253. Damages to Plaintiff Fishman and the Enrollee Sub-Class in the amount of all monies
16 (including but not limited to Tiger's surcharge on top of the market rate and the \$0.05 daily fee)
17 paid to Tiger in excess of what they would have paid to their former gas providers, plus taxes,
18 other sundry charges, and statutory interest, because Tiger received a benefit in the form of
19 monies, and Tiger's retention of that benefit at the expense of Plaintiff Fishman and the Enrollee
20 Sub-Class is unjust because was based on falsely advertising the Program as free and that the
21 price cap had any consumer benefits. Specifically, $\$247.19 - \$120.75 = \$126.44$ plus taxes,
22 sundry charges, and statutory interest for Fishman, and $\$61.87 - \$27.82 = \$34.05$ plus taxes,
23 sundry charges, and statutory interest for Faria.

24 254. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
25 important right affecting the public interest and thereby confer a significant benefit on the
26 general public or a large class of persons. The necessity and financial burden of private
27 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
28 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
29 Proc. § 1021.5.

30 255. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

31

D. Fourth Cause of Action for Breach of Third-Party Beneficiary Contract

256. An Order from this Court declaring that Plaintiffs Fishman and Faria and the Enrollee Sub-Class are third-party beneficiaries of PG&E Gas Rule 23 §§ D and E, and Schedule G-CT.

257. An Order from this Court declaring that Tiger/CGC's Sales Calls and purported subsequent mailings of terms and conditions to Plaintiffs Fishman and Faria and the Enrollee Sub-Class breached PG&E Gas Rule 23 §§ D and E, and Schedule G-CT.

258. An Order from this Court that Tiger/CGC must immediately stop breaching PG&E Gas Rule 23 §§ D and E, and Schedule G-CT, including but not limited to: Tiger/CGC only advertising the Program via truthful and non-misleading means, disclosing all material terms of the Program, and honoring the terms of the oral contacts made during the Sales Calls without mailing any inconsistent terms and conditions to new customers, much less attempting to enforce such inconsistent terms and conditions. In particular, an Order from this Court that Tiger must stop charging customers a \$0.05 daily rate and surcharges on top of the market rate.

259. Damages to Plaintiff Fishman and the Enrollee Sub-Class in the amount of all monies (including but not limited to Tiger's surcharge on top of the market rate, the \$0.05 daily fee) paid to Tiger in excess of what they would have paid to their former gas providers, plus taxes, other sundry charges, and statutory interest, because Tiger received a benefit in the form of monies, and Tiger's retention of that benefit at the expense of Plaintiff Fishman and the Enrollee Sub-Class is unjust because was based on falsely advertising the Program as free and that the price cap had any consumer benefits. Specifically, $\$247.19 - \$120.75 = \$126.44$ plus taxes, sundry charges, and statutory interest for Fishman, and $\$61.87 - \$27.82 = \$34.05$ plus taxes, sundry charges, and statutory interest for Faria.

260. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an important right affecting the public interest and thereby confer a significant benefit on the general public or a large class of persons. The necessity and financial burden of private enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

261. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

1 **E. Fifth Cause of Action for Violations of the Consumers Legal Remedies Act**

2 262. Actual damages to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry
3 charges, and statutory interest) and the Consumer Enrollee Sub-Class of all monies paid to Tiger
4 in excess of what they would have paid to their former gas providers, but in no case less than
5 \$1,000, plus taxes, other sundry charges, and statutory interest. *See* Cal. Civ. Code § 1780(a)(1).

6 263. An Order from this Court prohibiting Tiger from engaging in the false advertising
7 described herein. *See* Cal. Civ. Code § 1780(a)(2).

8 264. Restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry
9 charges, and statutory interest) and the Consumer Enrollee Sub-Class of all monies paid to Tiger
10 in excess of what they would have paid to their former gas providers, plus taxes, other sundry
11 charges, and statutory interest, because Tiger received a benefit in the form of monies, and
12 Tiger's retention of that benefit at the expense of Plaintiffs and the Consumer Enrollee Sub-Class
13 is unjust because was based on falsely advertising the Program as free and that the price cap had
14 any customer benefits. *See* Cal. Civ. Code § 1780(a)(3).

15 265. Punitive damages in an amount to be determined by the jury and Court. *See* Cal. Civ.
16 Code § 1780(a)(4).

17 266. Attorneys' fees. *See* Cal. Civ. Code § 1780(3), Fed. R. Civ. Proc. 54(d)(2). Also, by
18 prosecuting this action, Plaintiffs expect to enforce an important right affecting the public
19 interest and thereby confer a significant benefit on the general public or a large class of persons.
20 The necessity and financial burden of private enforcement is such as to make an award of
21 attorneys' fees appropriate, and the attorneys' fees should not, in the interest of justice, be paid
22 out of the recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

23 267. Costs of suit. *See* Cal. Civ. Code § 1780(3) and Fed. R. Civ. Proc. 54(d)(1).

24 **F. Sixth Cause of Action for Fraud**

25 268. An Order from this Court that Tiger fraudulently induced Plaintiffs Fishman and Faria
26 and the Enrollee Sub-Class into enrolling in Tiger's Program, and the agreements between Tiger
27 on the one hand, and Plaintiffs Fishman and Faria and the Enrollee Sub-Class on the other hand,
28 are void.

29 269. Damages to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry
30 charges, and statutory interest) and to the Enrollee Sub-Class in the amount of all monies paid to
31

1 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
2 sundry charges, and pre-and post-judgment interest.

3 270. Punitive damages in an amount to be determined by the jury and Court. *See* Cal. Civ.
4 Code § 3294.

5 271. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
6 important right affecting the public interest and thereby confer a significant benefit on the
7 general public or a large class of persons. The necessity and financial burden of private
8 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
9 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
10 Proc. § 1021.5.

11 272. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

12 **G. Seventh Cause of Action for Negligent Misrepresentation**

13 273. Damages to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry
14 charges, and statutory interest) and the Enrollee Sub-Class of all monies paid to Tiger in excess
15 of what they would have paid to their former gas providers, plus taxes, other sundry charges, and
16 pre- and post-judgment interest.

17 274. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
18 important right affecting the public interest and thereby confer a significant benefit on the
19 general public or a large class of persons. The necessity and financial burden of private
20 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
21 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
22 Proc. § 1021.5.

23 275. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

24 **H. Eighth Cause of Action for Violations of the False Advertising Law**

25 276. Against Tiger and CGC, one or more Orders from this Court prohibiting Tiger and CGC
26 from engaging in the false advertising described herein. *See* Cal. Bus. & Prof. Code § 17535.

27 277. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
28 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
29 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
30 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
31 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is

1 unjust because was based on falsely advertising the Program as free and that the price cap had
2 any customer benefits.

3 278. Against CGC, restitution to Plaintiffs and to the Enrollee Sub-Class of all monies paid by
4 them to Tiger that in turn were passed on to CGC by Tiger. CGC received a benefit in such
5 monies at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for CGC to
6 retain.

7 279. Against Tiger and CGC, attorneys' fees, because by prosecuting this action, Plaintiffs
8 expect to enforce an important right affecting the public interest and thereby confer a significant
9 benefit on the general public or a large class of persons. The necessity and financial burden of
10 private enforcement is such as to make an award of attorneys' fees appropriate, and the
11 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See*
12 Cal. Code Civ. Proc. § 1021.5.

13 280. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

14 **I. Ninth and Tenth Causes of Action for Unfair Competition – Unlawful Prong**

15 281. Against Tiger and CGC, one or more Orders from this Court prohibiting Tiger and CGC
16 from engaging in the unlawful practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

17 282. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
18 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
19 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
20 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
21 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
22 unjust because was based on falsely advertising the Program as free and that the price cap had
23 any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

24 283. Against CGC, restitution to Plaintiffs and to the Enrollee Sub-Class of all monies paid by
25 them to Tiger that in turn were passed on to CGC by Tiger. CGC received a benefit in such
26 monies at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for CGC to
27 retain.

28 284. Against Tiger and CGC defendants, attorneys' fees, because by prosecuting this action,
29 Plaintiffs expect to enforce an important right affecting the public interest and thereby confer a
30 significant benefit on the general public or a large class of persons. The necessity and financial
31 burden of private enforcement is such as to make an award of attorneys' fees appropriate, and the

attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

285. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

J. Eleventh Cause of Action for Unfair Competition – Unfair Prong

286. Against Tiger and CGC, one or more Orders from this Court prohibiting Tiger and CGC from engaging in the unfair practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

287. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to Tiger in excess of what they would have paid to their former gas providers, plus taxes, other sundry charges, and statutory interest, because Tiger received a benefit in the form of monies, and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is unjust because was based on falsely advertising the Program as free and that the price cap had any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

288. Against CGC, restitution to Plaintiffs and to the Enrollee Sub-Class of all monies paid by them to Tiger that in turn were passed on to CGC by Tiger. CGC received a benefit in such monies at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for CGC to retain.

289. Against Tiger and CGC, attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an important right affecting the public interest and thereby confer a significant benefit on the general public or a large class of persons. The necessity and financial burden of private enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

290. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

K Twelfth Cause of Action for Unfair Competition – Fraudulent Prong

291. Against Tiger and CGC, one or more Orders from this Court prohibiting Tiger and CGC from engaging in the fraudulent practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

292. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to Tiger in excess of what they would have paid to their former gas providers, plus taxes, other sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,

1 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
2 unjust because was based on falsely advertising the Program as free and that the price cap had
3 any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

4 293. Against CGC, restitution to Plaintiffs and to the Enrollee Sub-Class of all monies paid by
5 them to Tiger that in turn were passed on to CGC by Tiger. CGC received a benefit in such
6 monies at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for CGC to
7 retain.

8 294. Against Tiger and CGC, attorneys' fees, because by prosecuting this action, Plaintiffs
9 expect to enforce an important right affecting the public interest and thereby confer a significant
10 benefit on the general public or a large class of persons. The necessity and financial burden of
11 private enforcement is such as to make an award of attorneys' fees appropriate, and the
12 attorneys' fees should not, in the interest of justice, be paid out of the recovery of damages. *See*
13 Cal. Code Civ. Proc. § 1021.5.

14 295. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

15 **L. Additionally**

16 296. Certification of the Proposed Class, Do Not Call Sub-Class, Enrollee Sub-Class, and
17 Consumer Enrollee Sub-Class and notice thereto to be paid by Tiger.

18 297. Plaintiffs seek pre-judgment and post-judgment interest.

19 298. Plaintiffs seek any and all other and further relief as the Court may deem just and proper.

20
21 **DEMAND FOR JURY TRIAL**

22 Plaintiffs demand a trial by jury.

23
24 THE LAW OFFICES OF DANIEL BALSAM

25
26 Date: November 17, 2017

BY: /s/ Daniel L. Balsam

27 DANIEL BALSAM
28 Attorneys for Plaintiffs
29 and the Proposed Class
30
31

Exhibit A

Transcript of Tiger/CGC's Call to Fishman

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

FIRST CALL – TIGER/CGC'S SALES CALL TO FISHMAN

0:00	COMMUNITY GAS CENTER: Hi, this is Olivia from the Community Gas Center. I need to speak to the authorized person who handles the PG&E bill please.
0:09	EMILY FISHMAN: Oh. That's, that's me.
0:11	CGC: Well good afternoon to you. I'm calling from the CGC customer service department regarding your PG&E account.
0:18	FISHMAN: Yeah?
0:18	CGC: I'm just following up to give you a courtesy call regarding a notice that you received with your bill last year. Your account is currently subject to several rate increases which already started. The California...
0:29	FISHMAN: Which are I'm sorry?
0:31	CGC: I said which has already started. It started, the 18.8% increase started this year, and then you'll see another 33% increase over the next three years. So we set up...
0:41	FISHMAN: Oh. Why is that?
0:43	CGC: The California Public Utilities Commission has processed that request from PG&E. So what we do is we set up price protection for all the residential customers, which is a free service through PG&E's aggregation program, which will protect customers from the supply rate increases for the next three years.
1:02	FISHMAN: Oh. So all customers are being subject to an increase in pricing?
1:09	CGC: Yes. Yes.
1:10	FISHMAN: Wow.
1:11	CGC: Yes. In the letter, I know most people, if you're like me, you just take your bill, you open it, you pay what you have to pay, and you throw em away or you put 'em out. But in that letter last year...
1:20	FISHMAN: Yep. Yep
1:20	CGC: It was telling you, it was telling you about the subject to several rate increases and umm...
1:25	FISHMAN: Ohhhh.
1:27	CGC: It also had that, y'know, bold print where it tells you about the 33% increase for the next three years...
1:32	FISHMAN: Got it.
1:32	CGC: And the 10% of this year. So basically what this program is, it's a great program because it's price protection, which gives you a variable rate based on the market price, with a cap at 69 cents. So of course when the cost of gas is down you do get the lower rate based on the lower cost, but when that cost of gas goes up and you know, most people are subject to the change, you won't, you'll be capped at a rate, excuse me, a rate cap of 69 cents. So say for instance if PG&E down the line in the next year paid \$1.06 per therm for the gas, you wouldn't be charged \$1.06 per therm for your gas. You would be charged 69 cents because it can never go over that price.
2:15	FISHMAN: And so, to participate in the program, what does that mean? Are you calling all of your, the PG&E customers?
2:26	CGC: Yes, we're calling ehvvvvery one of you guys. Alllllll of you [Laughs]. And...
2:28	FISHMAN: Right.
2:28	CGC: And most people they get, they're on the program, they really enjoy the program, and they stay with it. Some people feel like hey, the program's great, but it just didn't

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

	change my bill and it's still low so I don't need it, and you know, they just opt out and there's no fee for that either. There's no fee to set it up. It's all free. And the only reason that PG&E can't offer you it themselves is because the California Public Utilities Commission requires that a third party company which is us, that's unaffiliated with PG&E, set up the service, because it is against the law for them to profit off the gas itself.
3:01	FISHMAN: Interesting. Okay. Ummmm, and so to set this up, what is, what does that mean, I mean what does it take?
3:10	CGC: Well, to set this up, what we do, how the process works, we, I'm going to verify all this information I have and make sure it's correct in my system, but then we, we just have you have your PG&E bill handy, we go through a couple things. First, we check to see if the services are directed to the same as on your PG&E bill, and then we
3:28	FISHMAN: Right.
3:28	CGC: And then we need to know if you're with, we need to know if your bill says "current gas charges" or "current PG&E gas delivery charges," and we go over what those two things mean, and we just simply get your service agreement ID number and your rate schedule, and that's what pops up the automated system. And she just, you know, explains to you that Tiger Natural Gas will supply your gas, because a lot of people don't know you do have the option of picking who you want your gas supplier to be. And currently what PG&E does, every month they get their gas from just random sources, you know, and none of those gas people that they're getting it from are protected from future rate increases. So basically they can only secure your gas for one month, and after that month, it's not secure, and then you know, you just keep, it's a monopoly. So now they're able to deliver your gas from a supply source that's protected from rate increases for the next three years. And that's the PG&E core gas aggregation service.
4:26	FISHMAN: Okay. Well, sounds good.
4:27	CGC: After she prompts, after she comes on the line, she's going to ask you a couple questions, and then she'll give you your confirmation number. And I'll still be on the line with you just in case you have any questions or anything that you need to be answered that can be understand.
4:43	FISHMAN: Right.
4:44	CGC: And then every year, if it's, if it's something that you would like, every year we would send you a rate increase analysis report, and that basically tells you that PG&E bought your gas from, for such and such price, but how low of a price that you paid for your gas.
5:01	FISHMAN: Okay.
5:02	CGC: And we keep you, you know, updated on all the little things. I'm just going to verify, I'm showing that the service address, I only have half of it, of where PG&E delivers your gas. I have your city as Mill Valley...
5:14	FISHMAN: Yes.
5:15	CGC: I have your state as California.
5:16	FISHMAN: Yes.
5:17	CGC: And I also have your zip code as 94941.
5:21	FISHMAN: Yes.
5:22	[CGC confirms the spelling of Fishman's name, her street address, and that she only has

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

	one account.]
5:50	CGC: Okay, so how it works, the price protection is going to start on your next available meter read date, and once you go through the automated system and add your confirmation number [unintelligible] you will be all set.
6:01	FISHMAN: Okay.
6:01	CGC: PG&E will then automatically start delivering your gas from a gas source providing the rate increase protection, so your gas will be protected from now on.
6:09	FISHMAN: Okay.
6:09	CGC: And everything will stay the same with your PG&E utility service. So you'll pay that bill just like you do now. If you have any emergencies or questions, you'll still contact them.
6:19	FISHMAN: Okay.
6:19	[At CGC's request, FISHMAN looks at her PG&E bill to provide her service agreement ID number and rate schedule.]
11:21	[CGC and advises Fishman of a forthcoming free program that will save 25% off electricity rates and says Tiger will contact her when it's available.]
12:01	[CGC says PG&E requires FISHMAN go through an automated verification system to verify information.]
12:25	[CGC says it's a three-year program and automatically renews but FISHMAN can call and opt out anytime she wants. If the program isn't available, FISHMAN will receive a variable rate pricing that's competitive with utilities, lower rate even when utility charges more.]
12:55	[CGC says nothing changes with PG&E service, source of gas will be Tiger Natural Gas, who is registered with PG&E. PG&E utility service remains the same.]
13:09	[CGC explains more on automated verification.]
14:08	[CGC transfers FISHMAN to automated verification system.]

SECOND CALL – AUTOMATED VERIFICATION SYSTEM

0:00	This is the Verbatim TPV system to confirm Tiger Natural Gas as your CTA gas source in PG&E's core gas aggregation program for your PG&E account. If I have your permission to record this call, please say yes after the tone and then press the pound key.
0:21	FISHMAN: Yes. #
0:23	[SYSTEM confirms enrollment date, time, first & last name, service & mailing address, gas service ID #]
1:25	SYSTEM: Tiger will provide your natural gas supply in PG&E's core gas aggregation program, and you'll be guaranteed to receive reliable service, starting on your next available meter read. Tiger is an unaffiliated CTA that has completed PG&E's certification process. Your natural gas supply will receive price protection with a rate cap of 69 cents per therm for the next 36 months. PG&E will continue to deliver your natural gas, send your monthly PG&E bill, and provide the exact same utility service. If you understand and wish to enroll your gas accounts with Tiger as your natural gas supplier, please say "yes" after the tone and then press the pound key.
2:14	FISHMAN: Yes. #
2:16	SYSTEM: Accepted customers will be sent a confirmation letter and terms and

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

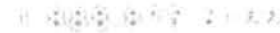
	conditions within three business days. Price protection will be applied to your gas supply and does not include PG&E's delivery charges; taxes; daily, quarter, and capacity costs. You can rescind this enrollment within three business days or cancel at any time by contacting the Tiger enrollment agency at 888-ENERGY-HELP. If you understand, and you are the customer of record or an authorized person to choose a natural gas supplier, please say "yes" after the tone, and then press the pound key.
3:01	FISHMAN: Yes. #
3:03	SYSTEM: Your confirmation number is 5004285. Your confirmation number is 50004285.

Exhibit B

Page From Tiger's Website as of July 2016



INFO@TIGERNATURALGAS.COM



HOME

ABOUT

SERVICES

TESTIMONIALS

NEWS

FAQ

CONTACT

PARTNERS

AFFILIATES



SEARCH TIGER



WHY TIGER?

Why do over 38,000 Customers choose Tiger?



Lower gas prices
Cost savings
Customer service
20 years in business
Strength across business
A+ BBB Rating



GET CONSISTENT ENERGY SAVINGS.

JOIN 25,000 PG&E CUSTOMERS SAVING 9-15%* EVERY YEAR.

Thousands of PG&E customers are lowering their energy bills and getting better customer service by switching to Tiger. As the largest third-party core natural gas provider in the PG&E area, we have a 20-year track record of consistent savings.

It's easy to make the switch. After you sign up, you continue to receive one bill from PG&E, with Tiger listed as your supplier.



SIGN UP FOR HOME



SIGN UP FOR BUSINESS

SEE SAMPLE COST SAVINGS

SEE SAMPLE COST SAVINGS



California Restaurant Association

"The economic climate is tougher



Better Business Bureau

A+ Customer Service Rating



PepsiCo Inc.

"Tiger's attention to detail has

than anything we've seen in recent history, and yet still Tiger is committed to flexible and responsive service."

Jot Condie
President & CEO

20 years good standing
ZERO complaints

helped us control overhead costs. Their pricing is consistently competitive and they provide flexibility in their contract terms."

Daniel P. Lopez
Energy Procurement Manager

***Most Tiger customers save 9 to 15% or more, year after year.*

[Home](#) | [Services](#) | [Service Area](#) | [FAQs](#) | [Testimonials](#) | [Community](#) | [Help](#) | [Sitemap](#) | [Contact Us](#) | [Privacy Policy](#)

918.491.6998
1.888.875.6122
info@tigernaturalgas.com
1422 East 71st Street
Tulsa, OK 74136-5060

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Website Design by Aqua Vita



New Mexico
Restaurant
Association

Enter your email here

SIGN UP



Exhibit C

Oklahoma BBB's Webpage for Tiger as of July 2016

[Overview](#) > [Accredited Business Directory](#) > [Natural Gas Companies](#) > [Tiger Natural Gas, Inc.](#)

BBB Business Review

BBB ACCREDITED BUSINESS SINCE 5/1/2008

Tiger Natural Gas, Inc.

Phone: (918) 491-6998

[View Additional Phone Numbers](#)

1422 East 71st Street Suite J, Tulsa, OK 74136

<https://tigernaturalgas.com/>



On a scale of A+ to F
Reason for Rating
[BBB Ratings System Overview](#)

BBB Business Reviews may not be reproduced for sales or promotional purposes.

Request a Quote

[Request a Quote from Tiger Natural Gas, Inc.](#)

BBB Accreditation

A BBB Accredited Business since 5/1/2008

BBB has determined that Tiger Natural Gas, Inc. meets BBB accreditation standards, which include a commitment to make a good faith effort to resolve any consumer complaints. BBB Accredited Businesses pay a fee for accreditation review/monitoring and for support of BBB services to the public.

BBB accreditation does not mean that the business' products or services have been evaluated or endorsed by BBB, or that BBB has made a determination as to the business' product quality or competency in performing services.

Reason for Rating

BBB rating is based on 13 factors. Get the details about the factors considered.

Factors that *raised* the rating for Tiger Natural Gas, Inc. include:

Length of time business has been operating
 Complaint volume filed with BBB for business of this size
 Response to 20 complaint(s) filed against business
 Resolution of complaint(s) filed against business

Customer Complaints Summary[Read complaint details](#)

20 complaints closed with BBB in last 3 years | 10 closed in last 12 months

Complaint Type	Total Closed Complaints
Advertising/Sales Issues	4
Billing/Collection Issues	4
Delivery Issues	2
Guarantee/Warranty Issues	0
Problems with Product/Service	10
Total Closed Complaints	20

[Read Complaints](#) | [Definitions](#) | [BBB Complaint Process](#) | [File a Complaint against Tiger Natural Gas, Inc.](#)
[See Trends in Complaints on Tiger Natural Gas, Inc.](#) | [View Complaints Summary by Resolution Pie Chart on Tiger Natural Gas, Inc.](#)

Customer Reviews Summary[Read customer reviews](#)

1 Customer Review on Tiger Natural Gas, Inc.

Customer Experience	Total Customer Reviews
Positive Experience	0
Neutral Experience	0
Negative Experience	1
Total Customer Reviews	1

[Read Customer Reviews](#) | [Submit a Customer Review](#) | [See Trends in Customer Reviews on Tiger Natural Gas, Inc.](#)

Government Actions

BBB knows of no government actions involving the marketplace conduct of Tiger Natural Gas, Inc..

What government actions does BBB report on?

Advertising Review

BBB has nothing to report concerning Tiger Natural Gas, Inc.'s advertising at this time.

What is BBB Advertising Review?

Additional Information

BBB file opened: March 03, 2005

Business started: 05/15/1991

Business started locally: 05/15/1991

Business incorporated 01/01/1991 in OK

Type of Entity

Corporation

Business Management

Lori Nalley, Owner/President

Mr. Johnathan Burris, Manager

Ms. Rachel Harvick, Operations

Contact Information

Customer Contact: Mr. Johnathan Burris, Manager

Principal: Lori Nalley, Owner/President

Business Category

Natural Gas Companies



Customer Review Rating plus BBB Rating Summary

Tiger Natural Gas, Inc. has received 3.68 out of 5 stars based on 1 Customer Reviews and a BBB Rating of A+.



BBB Customer Review Rating plus BBB Rating Overview

QUICK LINKS

[What is a BBB Business Review?](#)

[BBB Reporting Policy](#)

[About Enhanced Services](#)

[File a Complaint against Tiger Natural Gas, Inc.](#)

[Request a Quote from Tiger Natural Gas, Inc.](#)

[Accredited Business Directory](#)

CUSTOMER REVIEWS

[Read Customer Reviews](#)

[Submit a Customer Review](#)

[See trends in Customer Reviews for Tiger Natural Gas, Inc.](#)

Exhibit D

Pages from PG&E Gas Rule 23

(Effective Date Jan. 4, 2014)



Pacific Gas and Electric Company
San Francisco, California
U 39

Cancelling
Revised

Revised
Revised

Cal. P.U.C. Sheet No.
Cal. P.U.C. Sheet No.

30871-G
29674-G

GAS RULE NO. 23
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

Sheet 1

A. GENERAL

This Rule applies to Core Transport Agents (CTA) providing gas aggregation service to Customers in a Core Transport Group(s) (Group) in accordance with the provisions of Schedule G-CT—Core Gas Aggregation Service, and the Core Gas Aggregation Service Agreement (CTA Agreement) (Form 79-845). To provide gas aggregation service, the CTA shall meet credit requirements set forth herein.

B. ESTABLISHMENT OF CREDIT

1. APPLICATION FOR CREDIT

The CTA shall complete and submit a California Gas Transmission Credit Application (Credit Application) (Form No. 79-868) to PG&E on an annual basis or whenever the Daily Contract Quantity (DCQ) for the Customers in the Group increases by 25,000 therms per day or more. The DCQ for the Group is the Annual Contract Quantity, as specified in Schedule G-CT, divided by 365. The Group DCQ will be the basis for evaluating the CTA's secured or unsecured credit limit, as set forth herein.

In the event the CTA accepts a storage allocation pursuant to Schedule G-CT, the CTA shall be subject to applicable storage credit requirements as set forth in gas Rule 25.

A creditworthiness evaluation may be conducted by an outside credit analysis agency, to be determined by PG&E, with final credit approval granted by PG&E. Credit reports will remain strictly confidential between the credit analysis agency and PG&E.

To assure the continued validity of an established unsecured credit limit, the CTA shall furnish financial information satisfactory to PG&E upon PG&E's request. If PG&E determines that a financial change has or could affect adversely the CTA's creditworthiness, or if the CTA does not provide the requested financial information, PG&E may, in its discretion, reduce the unsecured credit limit or terminate the CTA Agreement.

Establishment of credit for gas transmission services (transportation, all storage including core firm storage, parking and lending) is provided for in gas Rule 25.

(T)

(Continued)

Advice Letter No: 3436-G
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed December 5, 2013
Effective January 4, 2014
Resolution No. _____



Pacific Gas and Electric Company
San Francisco, California
U 39

Revised
Original
Cancelling

Cal. P.U.C. Sheet No.
Cal. P.U.C. Sheet No.

30879-G
29248-G

GAS RULE NO. 23
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

Sheet 20

D. CUSTOMER PROTECTION

1. ENROLLMENT OF CUSTOMERS

- a. The CTA or its authorized agent(s) shall comply with the Customer Sign-Up Process and obtain the Customer's Authorization in accordance with the provisions of Schedule G-CT – Core Gas Aggregation Service.
- b. The CTA, or its authorized agent(s), shall not make, with dishonest, fraudulent, or deceitful intent, material verbal or written misrepresentations in the course of soliciting or serving core gas aggregation customers.
- c. The CTA or its authorized agent(s) shall not with dishonest, fraudulent, or deceitful intent act to substantially benefit the CTA or its employees, agents, or representatives, or to disadvantage customers.

E. TERMINATION OF SERVICE

1. NONCOMPLIANCE WITH CUSTOMER PROTECTION

In accordance with the provisions of this Section E, PG&E may terminate the CTA Service Agreement for the CTA's failure to comply with Section D above.

- a. Customers may submit a complaint to PG&E if they believe the CTA's actions were in violation of Section D, above.
- b. If PG&E receives a complaint from a Customer, PG&E shall provide the CTA with an opportunity to investigate and resolve the complaint with the Customer. PG&E shall provide the CTA with relevant information, including a description of the complaint and Customer contact information, to investigate and resolve the complaint. If the complaint concerns an unauthorized enrollment, then PG&E shall also provide the CTA with the Customer's relevant Service Account Number(s). (T)
- c. Responses to a Customer complaint are due back to PG&E and the Customer within three (3) business days, starting with the day following PG&E's notification. If additional time is needed to resolve the complaint, the CTA must submit a written (e-mail is acceptable) request to PG&E within the same three (3) business day period describing why additional time is needed. PG&E, at its discretion, may grant the CTA an extension of three (3) additional business days, resulting in a total of six (6) business days, to achieve resolution. (T)

(Continued)

Advice Letter No: 3436-G
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed December 5, 2013
Effective January 4, 2014
Resolution No.



Pacific Gas and Electric Company
 San Francisco, California
 U 39

	Revised	Cal. P.U.C. Sheet No.	30880-G
Cancelling	Original	Cal. P.U.C. Sheet No.	29249-G

GAS RULE NO. 23 Sheet 21
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

1. NONCOMPLIANCE WITH CUSTOMER PROTECTION (Cont'd.)

- d. The CTA's response to PG&E will explain the resolution, the date that the Customer was informed of the resolution, and the means of communication with the Customer. (T)
- e. Regardless of the CTA's initial resolution of the Customer complaint, PG&E may request written documentation of the Customer's authorization for enrollment, marketing materials, the sales call or Third-Party Verification (TPV) for any complaint. (T)
- f. If PG&E does not receive a response from the CTA indicating resolution by the specified deadline, or if PG&E, or the Customer, finds a problem with the information provided, PG&E shall provide the CTA with an opportunity to provide supporting evidence, such as, marketing material (for a general complaint), or proof of authorized enrollment (in instances where the complaint is about an unauthorized enrollment). (T)
- 1) Within three (3) business days of PG&E's request for supporting evidence (beginning with the first business day following the request), the CTA shall provide supporting evidence to PG&E or the Customer, if requested. Acceptable forms of supporting evidence consist of the following: (T)
 - a) An electronic or facsimile copy of the Customer's signed Core Gas Aggregation Service Agreement Customer Authorization For Core Gas Aggregation Service (Form 79-845A) (Attachment A) or similar Customer correspondence or evidence (e.g., e-mail or electronic confirmation file); or (T)
 - b) The audio recording of the independent TPV of the Customer's enrollment; or (T)
 - c) An electronic or facsimile copy of any marketing material related to the enrollment that was provided to the Customer. (T)

(Continued)

Advice Letter No: 3436-G
 Decision No.

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Pacific Gas and Electric Company
San Francisco, California
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Cancelling
Original

Revised
Original

Cal. P.U.C. Sheet No.
Cal. P.U.C. Sheet No.

30881-G
29250-G

GAS RULE NO. 23 Sheet 22
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

1. NONCOMPLIANCE WITH CUSTOMER PROTECTION (Cont'd.)

- g. After reviewing the aforementioned TPV or signed Attachment A, together with any other pertinent documentation or information, PG&E shall make a determination of whether or not the Customer's enrollment authorization was properly obtained. (T)
- 1) If the Customer disagrees with PG&E's determination that the authorization for enrollment was properly obtained, PG&E shall request additional supporting documentation such as marketing materials, terms and conditions or the recording of the full sales call. The CTA will provide the requested information within two (2) business days. Upon completion of its final review, PG&E will notify the CTA of its decision and the reason for its decision. (T)
- 2) If PG&E finds a problem with the CTA's response and the supporting documentation submitted (e.g., vague documentation or practices that may not follow the guidelines in Section D, above), PG&E, at its discretion, may request additional supporting documentation, such as marketing materials, terms and conditions or the recording of the full sales call. The CTA will provide the requested information within two (2) business days. Upon completion of its final review, PG&E will notify the CTA of its decision and the reason for its decision. (T)
- 3) If PG&E finds that the enrollment authorization was improperly obtained, the CTA shall have an opportunity to contest PG&E's decision. The CTA shall have two (2) business days to contest PG&E's decision and PG&E will have one (1) business day after receiving the CTA's statement of contest to render a final decision.
- 4) If PG&E determines that the Customer's enrollment authorization was not properly obtained, PG&E may count this instance as a Non-Compliance Event (Non-Compliance Event) and shall request that the CTA immediately submit a service cancellation request to PG&E by electronic means for that Customer and waive any early termination fee for the Customer. The CTA shall take all corrective actions within one (1) business day of PG&E's request. (T)

(Continued)

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GAS RULE NO. 23

Sheet 23

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS**E. TERMINATION OF SERVICE (Cont'd.)****1. NONCOMPLIANCE WITH CUSTOMER PROTECTION (Cont'd.)**

g. (Cont'd.) (N)

- 5) If PG&E finds that the written documentation or the sales call and TPV indicate that a CTA is in violation of Section D, that complaint may be used as a recordable instance of verifiable non-compliance and counted as a Non-Compliance Event.

If the Customer complaint involves multiple Service Accounts and the CTA is found to be in violation of Section D, the complaint will be counted as a single Non-Compliance Event if the supporting documentation establishes that the complaint involving these Service Accounts was the result of a single event. (T)

- h. PG&E shall share any materials, including recordings, documents, TPVs, sales calls, written contracts, marketing or other materials, provided by the CTA with the Customer, or the Customer's authorized agent, provided that such agent is not another CTA, at their request. In order to receive information or act on a Customer's behalf, the third-party agent must have written authorization from the Customer. Such authorization must be submitted to PG&E in the form of a completed and current Authorization to Receive Customer Information or Act Upon a Customer's Behalf (PG&E Form 79-1095 (English) or Form 79-1096 (Spanish)). (T)

All materials, including recordings, documents, TPVs, sales calls, written contracts, marketing or other materials, provided by the CTA to PG&E in accordance with the provisions of Section E. will be managed by PG&E in a strictly confidential manner. PG&E may not disclose the materials provided by the CTA within or outside of PG&E except to the extent necessary to manage compliance with Section D., above. (T)

(Continued)

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GAS RULE NO. 23

Sheet 24

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

2. THIRD PARTY VERIFICATION

A TPV should not use the phrase "PG&E's Customer Choice Program," which is misleading to customers. Instead, the TPV should refer to "Core Gas Aggregation Service." (T)

TPV will verify, at a minimum, the following topics.

- a. The name and title of the person authorizing, or authorizing on the Customer's behalf, the Customer's enrollment with the CTA. (T)
- b. The name of the CTA and the identity of the independent third-party verifier.
- c. A verbal request for, and the customer's provision of, the customer's Service Account Number. In the case of multiple accounts, the main site Service Account Number would suffice with the customer's verbal confirmation of the number of Service Accounts to be enrolled.
- d. A verbal request for, and the Customer's provision of, the Customer's mailing address. (T)
- e. A verbal request for, and the Customer's provision of, the Customer's service address. (T)
- f. A verbal statement and the Customer's acknowledgement that the call is being recorded. (T)
- g. A verbal question and the Customer's acknowledgement that the Customer understands that the CTA is not affiliated with PG&E, and that the Customer wishes to enroll his PG&E gas account with the CTA to buy gas from the CTA, and that PG&E will continue to deliver the gas to the Customer's home or business. (T)
(T)
- h. A verbal question and the Customer's acknowledgement that the Customer is the Customer of record or is authorized to switch to CTA by the Customer of record. (T)
(T)

(Continued)

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GAS RULE NO. 23

Sheet 25

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

2. THIRD PARTY VERIFICATION (Cont'd.)

- i. A verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to:
 - 1) The service(s) that will be provided.
 - 2) All material pricing provisions, such as, the price per therm.
 - 3) The length of the contract term.
 - 4) Effective date of contract.
 - 5) The contract termination date, **and** any fees for early termination by the Customer. (T)
 - 6) Any fees or costs to the Customer not referenced above. (T)
 - 7) If applicable, whether the CTA will perform a credit check and require a deposit, including the amount.
 - 8) Who will bill for the service(s).
 - 9) A verbal statement and the Customer's acknowledgement that the CTA will, within three (3) business days, send the Customer a written confirmation that details the terms and conditions of the verbal contract that were summarized in the telephone call. (T) (T)
 - 10) Customers are advised both verbally and in the written confirmation all of the following:
 - a) The Customer is allowed a three (3) business day period from the confirmation notice postmark date to rescind the enrollment. (T)
 - b) The Customer should contact the CTA to rescind the enrollment. (T)
 - c) The CTA's telephone number that the Customer should use to rescind the enrollment. (T)

(Continued)

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GAS RULE NO. 23

Sheet 26

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

2. THIRD PARTY VERIFICATION (Cont'd.)

i. (Cont'd.)

- 11) If Customer enrollment is by telephone, following the telephonic enrollment, the CTA shall: (T)
- a) Within three (3) business days, send the Customer a written confirmation that details the specific terms and conditions agreed to by the Customer during the telephonic enrollment. Such confirmation shall in no way alter the terms and conditions to which the Customer agreed to in the telephonic enrollment. (T)
- b) The CTA shall retain the audio recording of the sales call for one (1) year and the TPV of the Customer's enrollment for two (2) years. (T)

3. PENALTIES DUE TO NON-COMPLIANCE

- a. Definition of an incident of verified non-compliance (Non-Compliance Event): (T)
- 1) A documented Customer complaint where the CTA is unable to provide supporting evidence that the complaint is invalid after following the steps outlined in Section E.1. (T)
- b. Non-Compliance Events will be counted in two (2) separate Customer segments, commercial or residential, in accordance with gas Schedule G-CP, or its successor. (T)
- c. It is recognized that multiple Customer complaints related to unauthorized enrollment may result from a single sales person employed by a CTA or its authorized agent(s) that may cause the CTA to be non-compliant with Section E.1. If written, electronic, or audio documentation show that multiple complaints were related to a single common individual representative of the CTA, such multiple complaints will be treated as a single Non-Compliance Event for purposes of Section E.3., if the CTA cooperates with PG&E to resolve, within a reasonable time frame, the non-compliant activities of that representative. (T)

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GAS RULE NO. 23
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

Sheet 27

E. TERMINATION OF SERVICE (Cont'd.)

3. PENALTIES DUE TO NON-COMPLIANCE (Cont'd.)

- d. If a CTA triggers the limits of verified Non-Compliance Events described in Table 1, below, PG&E may immediately suspend the CTA's ability to enroll any new Customer accounts, of the type – residential, commercial, or both – involved with the complaints for the following three (3) calendar months. A CTA, for the purpose of event tracking and suspension, includes any subsidiaries. (T)

Table 1: Rolling Time Periods and Non-Compliance Event Limits

Rolling Period (days)	Incident Limit - Verified Non-Compliance Events		
	Combined Commercial + Residential	Commercial	Residential
30	7	3	6
60	11	5	10
90	15	7	14
180	22	11	20

- e. PG&E will record the date when the Customer, or its authorized agent, first contacts PG&E to report a complaint against a CTA. This date, the incident date, will be used when counting incidents of Non-Compliance Events. A Non-Compliance Event will not be counted if the enrollment or underlying activity that generated the complaint occurred prior to May 17, 2012. (T)
- f. PG&E will notify the CTA via e-mail that an incident of verified non-compliance will be counted as a Non-Compliance Event towards their limit, as well as the incident date, after the incident has followed the process outlined in Section E.1. (T)

(Continued)

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GAS RULE NO. 23

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GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

3. PENALTIES DUE TO NON-COMPLIANCE (Cont'd.)

- g. Within five (5) business days of PG&E's suspension notification, a CTA shall have the right to appeal the suspension through the CPUC's dispute resolution process. If the CPUC determines that the suspension action is justified, the suspension will be effective on the effective date of the CPUC's determination. If the CPUC does not respond, or chooses to remain uninvolved, the suspension will begin thirty (30) days from when the CPUC was notified.
- h. The first incident of non-compliance marks the first day to begin the count for the 30, 60, and 90 and 180-day rolling time periods listed in Table 1 in Section E.3.d. Following a CTA's suspension, the incident count is returned to zero (0) when a CTA's ability to enroll new Customers is reinstated. (T)
- i. In a one hundred and eighty (180) day period, if a CTA has incurred two (2) suspensions, as counted from the effective ending date of the first suspension to the first date of the second suspension, as described in Section E.3, PG&E shall have the sole discretion to terminate a CTA's Service Agreement with thirty (30) days' prior notice. Termination of the CTA's Service Agreement for non-compliance with Section D will follow the process outlined for termination due to non-payment in Section C.6, above. A terminated CTA may reestablish its ability to provide gas aggregation service under PG&E's tariffs with the prior approval of PG&E.

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Exhibit E

Pages from PG&E Gas Schedule G-CT

(Effective Date Dec. 1, 2014)



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GAS SCHEDULE G-CT CORE GAS AGGREGATION SERVICE

Sheet 1

APPLICABILITY: This schedule* applies to transportation of natural gas for Core End-Use Customers (as defined in Rule 1*) (Customer) who aggregate their gas volumes and who obtain natural gas supply service from parties other than PG&E. The provisions of Schedule G-CT apply to Core End-Use Customers and to the Core Transport Agents (CTA) who supply them with natural gas and provides or obtains services necessary to deliver such gas to PG&E's Distribution System. Rule 23 also sets forth terms and conditions applicable to Core Gas Aggregation Service. In addition, pursuant to Decision (D.) 14-08-043 and Public Utilities Code Section 983, the California Public Utilities Commission shall accept, compile and attempt to informally resolve consumer complaints regarding CTAs.

(T)
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(T)

A group of Core End-Use Customers who aggregate their gas volumes shall comprise a Core Transport Group (Group). The minimum aggregate gas volume for a Group is 12,000 decatherms per year. The Customer must designate a CTA, who is responsible for providing gas aggregation services to Customers in the Group as described herein and in Rule 23. Aggregation of multiple loads at a single facility or aggregation of loads at multiple facilities shall not change the otherwise-applicable rate schedule for a specific facility. Customers electing service under this schedule must request such service for one hundred (100) percent of the core load served by the meter. Schedule G-CT must be taken in conjunction with a core rate schedule.

Core volumes are eligible for service under this schedule, whether or not noncore volumes are also delivered to the same premises. However, core volumes cannot be aggregated with noncore volumes in order to meet the minimum term requirement for noncore service. Service to core volumes associated with noncore volumes under this schedule applies to all core volumes on the noncore premises.

CTAs, on behalf of a Group, may receive service on PG&E's Backbone Transmission System by utilizing Schedules G-AFT, G-SFT, G-AA, G-NFT, or G-NAA. CTAs may also receive service from PG&E's Storage facilities by utilizing Schedules G-CFS, G-SFS, G-NFS, G-PARK, or G-LEND.

TERRITORY: This schedule applies everywhere within PG&E's natural gas Service Territory.

RATES: Customers taking service under Schedule G-CT will receive and pay for service under their otherwise-applicable core rate schedule; except that Customers who procure their own gas supply will not pay the Procurement Charge specified on their otherwise-applicable core rate schedule.

Pursuant to Schedule G-SUR, Customers will be subject to a franchise fee surcharge for gas volumes purchased from parties other than PG&E and transported by PG&E. Customers will also be responsible for any applicable costs, taxes and/or fees incurred by PG&E in receiving gas to be delivered to such Customers.

See Preliminary Statement, Part B for the Default Tariff Rate Components.

* PG&E's gas tariffs are available on-line at www.pge.com.

(Continued)

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30855-G

GAS SCHEDULE G-CT CORE GAS AGGREGATION SERVICE

Sheet 2

SHRINKAGE:	Transportation volumes will be subject to a shrinkage allowance in accordance with Rule 21.	
CURTAILMENT OF SERVICE:	Service on this schedule may be curtailed. See Rule 14 for details.	
REGISTRATION:	In accordance with Decision (D.) 14-08-043, unless otherwise exempt, a CTA offering gas aggregation service to residential or small commercial customers is required to register with the California Public Utilities Commission. Registered CTAs shall ensure that any person or entity performing marketing or sales activities, or administering its service agreements on the CTA's behalf, complies with the rules adopted in D.14-08-043 and subject to Public Utilities Code Section 983.5.	(N) I I I I (N)
SERVICE AGREEMENT:	Before PG&E will provide gas aggregation service under this schedule to a CTA, the CTA and PG&E shall execute a <u>Core Gas Aggregation Service Agreement</u> (Form 79-845) (CTA Agreement) and a Gas Transmission Service Agreement (GTSA) (Form 79-866) and applicable attachments and exhibits.	
CUSTOMER SIGN-UP PROCESS:	<p>The CTA may use one of the two methods specified below for transmitting requests (Customer Authorizations) to PG&E in order to sign up new Customers for Core Gas Aggregation Service, or for switching a Customer from one CTA to another CTA.</p> <p><u>Electronic Sign-Up:</u> The CTA shall transmit notice of Customer Authorizations to PG&E using the electronic format acceptable to PG&E, a Direct Access Service Request (DASR). The CTA will pay the switching charges specified in Schedule G-ESP when a DASR is accepted by PG&E.</p> <p>The CTA may obtain a Customer's Authorization in the same manner set forth for requesting changes in an aggregator or supplier of electric service as specified in Public Utilities Code Section 366.5, including third-party verification where required, and aggregator or supplier liability for the violation of verification procedures (Third-Party Verification Option). Under this option, PG&E shall have no responsibility for verifying the Customer's or CTA's manner of complying with the provisions of Public Utilities Code Section 366.5.</p> <p>If the Customer Authorization is subject to third-party verification, the CTA shall not electronically submit notice of the Customer's Authorization to PG&E until three (3) business days after the third-party verification, as specified in Public Utilities Code Section 366.5, subdivisions (a) for commercial Customers, or (b) residential Customers, has been performed. In addition to any other right to revoke an offer, a non-residential Customer has until midnight of the third (3rd) business day after the day on which the third party verification occurred to cancel a Customer Authorization and, in accordance with D.14-08-043, a residential customer has until midnight of the thirtieth (30th) calendar day after the date the first bill for gas aggregation service from the CTA is issued to cancel a Customer Authorization. A Customer must provide written notice to the CTA at the address specified in their CTA Agreement. If such notice is given by mail, cancellation is effective when the notice is deposited in the mail and it has been properly addressed with postage prepaid. Cancellation by the Customer is effective if it indicates the intention of the Customer not to be bound by the contract. It is the responsibility of the CTA to ensure that all cancellation requests made by Customers are honored, in accordance with Public Utilities Code Sections 989.1 and 989.5, as amended by D.14-08-043 for residential gas customers.</p>	(T) I I (T) (T) (T) (T) (T) (L)

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GAS SCHEDULE G-CT CORE GAS AGGREGATION SERVICE

Sheet 3

CUSTOMER
SIGN-UP
PROCESS
(Cont'd.):

If a Customer cancels its Customer Authorization pursuant to Public Utilities Code Section 989.1, a Customer Authorization shall not be submitted for that Customer. If a Customer Authorization has already been submitted, the CTA shall, within twenty-four (24) hours, direct PG&E to cancel the Customer Authorization.

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The CTA can also obtain a Customer Authorization by having the Customer sign a copy of the Core Gas Aggregation Service Agreement Customer Authorization for Core Gas Aggregation Service (Form 79-845A) (Attachment A), or by signing a form provided by the CTA (CTA Form). The CTA Form must include all of the terms and conditions specified in Attachment A. If the CTA has the Customer sign a CTA Form or a copy of the Attachment A, the CTA shall retain the Customer Authorization for three (3) years and shall provide the original Customer Authorization within three (3) business days of PG&E's request. PG&E reserves the right to review the language in the CTA Form, to ensure it conforms with the language in Attachment A.

After a Customer signs a copy of a CTA Form or the Attachment A, the CTA may electronically submit notice of the Customer's Authorization to PG&E immediately upon the Customer's signing. Third-party verifications are not necessary if the Customer's signature is obtained.

Paper copies of a signed CTA Form or an Attachment A will not be accepted by PG&E for processing.

In accordance with the provisions of gas Rule 3, PG&E may reject any notice of Customer Authorization if the information provided is false, incomplete, or inaccurate in any material respect.

PG&E will accept Customer Authorizations for processing on a first-come, first-served basis. Each Customer Authorization shall be time stamped by PG&E. In the event that more than one Customer Authorization is submitted for a service account, the first valid Customer Authorization for that account will be processed and subsequent requests will be denied until the switch to the pending CTA occurs.

For those Customer Authorizations received and accepted by PG&E on or before the fifteenth (15th) day of any calendar month, Core Gas Aggregation Service will begin no later than the next calendar month's meter reading date for the service account(s) specified on the Customer Authorization. For Customer Authorizations received after PG&E's most recent offer of firm pipeline or storage capacity, PG&E shall not be under any obligation to offer corresponding capacity to a new CTA or additional capacity to an existing CTA for the remaining month(s) of the current capacity allocation period to serve the accounts specified on such Customer Authorizations. However, PG&E will attempt to include pipeline or storage capacities to service such accounts in PG&E's subsequent pipeline or storage capacity allocations to CTAs, provided that it causes no delay in the offer of such capacity by the scheduled offer date as specified below under *Allocation of Firm Pipeline Capacity and Allocation of Core Firm Storage*.

By agreement of all participants, PG&E, the CTA, and the Customer may implement a different beginning date for the service requested in a Customer Authorization. No later than five (5) business days before the beginning date of service for a Customer under a Customer Authorization, PG&E shall send Customer usage data to the new CTA. Such data shall be for the past twelve (12) months, or if such data is not available, for the time it is available.

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GAS SCHEDULE G-CT CORE GAS AGGREGATION SERVICE

Sheet 4

TERM: The initial term (length) of service under a Customer Authorization will be twelve (12) consecutive months from the effective service date. Service shall continue month to month thereafter, regardless of the provisions or terms of any agreement between the Customer and the CTA, and each new Customer Authorization will establish a new twelve (12) month term of service with continuing month to month thereafter. There is no minimum stay period for a Customer returning to PG&E's procurement service before it can begin a new twelve (12) month term of service under a new Customer Authorization. (T)

TERMINATION OF CUSTOMER AUTHORIZATION: After the expiration of the initial twelve (12) month term, a Customer Authorization may be terminated as specified below:

1. The Customer or the CTA submits to PG&E a notice to terminate the Customer Authorization. Such notice will be referred to as the "Customer Termination". If the CTA submits the Customer Termination electronically, the CTA is obligated to notify the Customer of such termination. For Customers requesting the CTA to terminate service, the CTA shall submit the Customer Termination to PG&E within ten (10) business days of receiving the Customer's Termination request. For Customer Terminations received and accepted by PG&E on or before the fifteenth (15th) day of a calendar month, PG&E shall terminate Core Gas Aggregation Service to the Customer on the next month's meter reading date. PG&E shall provide procurement service, as specified in the applicable rate schedule, unless the Customer switches to a new CTA as described below. (T)

All requests and terminations from the CTA must be submitted using the electronic format acceptable to PG&E (DASR), unless otherwise agreed to by PG&E.

2. The Customer directly contacts the CTA or PG&E to request to terminate the Customer Authorization and return to PG&E procurement service, as specified in the applicable rate schedule. Such contact may occur prior to the end of the initial twelve (12) month term but the resulting Customer Termination will not become effective until the initial twelve (12) month term has been completed. If the Customer contacts PG&E on or before the fifteenth (15th) day of any calendar month, Core Gas Aggregation Service will terminate and PG&E will provide procurement service, as specified in the applicable rate schedule, to the Customer no later than the next month's meter reading date for the specified account(s), unless a later month's meter reading date is specified by the Customer. For Customers requesting the CTA to terminate service, the CTA shall submit to PG&E within ten (10) business days the Customer Termination. (T)
3. A CTA, other than the CTA currently serving the Customer, submits a new Customer Authorization to PG&E requesting that the Customer begin service with the new CTA. If accepted by PG&E, the new Customer Authorization will terminate service from the existing CTA and begin service with the new CTA on the same effective service date. The effective service date will follow switching rules as stated above. Each new Customer Authorization will not become effective until the initial twelve (12) month term of the existing Customer Authorization has expired, or the existing Customer Authorization has been terminated by other means specified herein, and a new twelve (12) month term of service will be established.

(Continued)

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30858-G

20052-G

GAS SCHEDULE G-CT CORE GAS AGGREGATION SERVICE

Sheet 5

TERMINATION OF CUSTOMER AUTHORIZA- TION (Cont'd.):

At any time, a Customer Authorization may be terminated under the following conditions:

1. The CTA terminates service to the Customer for failure to pay for services provided by the CTA and notifies PG&E, by submitting Customer Termination request to PG&E in the electronic format acceptable to PG&E. Upon termination, the Customer will receive PG&E procurement service as specified in the applicable rate schedule. For Customer Terminations received, and accepted by PG&E on or before the fifteenth (15th) day of any calendar month, PG&E procurement service, as specified in the applicable rate schedule, will begin for the specified Customer no later than the next calendar month's meter reading date for the service account specified on the Customer Termination. (T)
2. The Customer no longer receives PG&E service at the meter location specified by the Customer Authorization. In such event, the Customer Authorization for any given account will automatically terminate as of the date the Customer's PG&E gas account is closed. In the event a Customer wishes to obtain Core Gas Aggregation Service or switch to another CTA under a different account, the Customer and CTA must follow Paragraphs 1. or 2. above to implement a new Customer Authorization. (D)
3. A Customer eligible for noncore service chooses to become a noncore Customer. In such event, the Customer Authorization for the specified account will terminate on the date that noncore service begins. (T)
4. The CTA and the Customer mutually agree to terminate service prior to the initial 12-month term by communicating the Customer Termination request to PG&E using one of the following methods: (T)
 - a) The CTA notifies PG&E by submitting a termination notice to PG&E in the electronic format acceptable to PG&E, or
 - b) The Customer may directly contact PG&E to request termination. PG&E will accept such a termination request only if the CTA has previously submitted an Authorization For Early Termination (Form 79-845, Attachment H) to PG&E.

(Continued)

Advice Letter No: 3436-G
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed December 5, 2013
Effective January 4, 2014
Resolution No. _____



Pacific Gas and Electric Company
San Francisco, California
U 39

Revised
Cancelling Revised

Cal. P.U.C. Sheet No.
Cal. P.U.C. Sheet No.

30859-G
29665-G

GAS SCHEDULE G-CT CORE GAS AGGREGATION SERVICE

Sheet 6

**TERMINATION OF
CUSTOMER
AUTHORIZATION
(Cont'd.):**

A CTA Agreement, and all Customer Authorizations for Customers receiving service from the CTA in accordance with that CTA Agreement, shall terminate, regardless of whether the initial twelve (12) month term of a Customer Authorization has expired, if any of the following occur:

1. The CTA goes out of business.
2. PG&E cancels the applicable CTA Agreement due to: (a) the CTA's failure to pay PG&E in accordance with its tariffs for services rendered to the CTA or, (b) for otherwise failing to comply with the terms of gas Rule 23 or the CTA Agreement or, (c) the CTA's failure to comply with the Firm Winter Capacity Requirement. (T)
3. If a Group's Annual Contract Quantity (ACQ) drops below 12,000 decatherms, the Customer Authorization for each Customer will be terminated, without further notice, effective for each account, as of the next calendar month's meter reading date. When all Customer Authorizations have been terminated the applicable CTA Agreement is canceled automatically. Under paragraphs 2., 3., and 4. above, PG&E will thereafter send written notice of cancellation of the CTA Agreement and all affected Customer Authorizations to the CTA and all affected Customers to the extent practicable, but in no event shall any failure to provide, or a delay in providing, such notice to Customers affect PG&E's rights to cancel said CTA Agreement. (T)

If a Customer Authorization is terminated and the Customer continues to receive service at the meter location, the Customer will receive PG&E procurement service as specified in the applicable rate schedule. PG&E may recall capacity, in PG&E's sole discretion, if such capacity is necessary to serve the returning Customer(s); provided, however that PG&E shall not recall such capacity unless and until the aggregated net change due to Customer Terminations exceeds the lower of ten percent (10%) of the CTA's prior effective DCQ or 100 decatherms per day.

The CTA shall remain responsible for any charges due for PG&E service provided under the CTA Agreement prior to its cancellation, whether or not such charges are billed after such cancellation. The Customer shall remain responsible for any charges due for PG&E service provided under the Customer Authorization prior to its termination, whether or not such charges are billed after such termination.

**CONTRACT
QUANTITIES:**

PG&E will process new Customer Authorizations on a monthly basis. For each new Customer Authorization, PG&E shall determine the Annual Contract Quantity (ACQ) for each Customer's account. The ACQ will be based on the Customer's monthly historical gas use. (T)

(Continued)

Advice Letter No: 3436-G
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed December 5, 2013
Effective January 4, 2014
Resolution No.

D

EXHIBIT D

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Attorneys for Plaintiffs and the Proposed Class

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

EMILY FISHMAN, individually and on
behalf of all others similarly situated; and
SUSAN FARIA, individually and on behalf of
all others similarly situated;

Plaintiffs,

v.

TIGER NATURAL GAS INC., an Oklahoma
corporation;
COMMUNITY GAS CENTER INC., a
delinquent Colorado corporation;
JOHN DYET, an individual; and
DOES 3-100;

Defendants.

) Case No.: 3:17-cv-05351-WHA

)

)

) **THIRD AMENDED CLASS ACTION**

) **COMPLAINT FOR DAMAGES AND**

) **INJUNCTIVE RELIEF**

)

) **1. VIOLATIONS OF CALIFORNIA**
RECORDING LAW (Cal. Pen. Code
§ 632 et seq.)

) **2. BREACH OF ORAL CONTRACT**
(Cal. Civ. Code § 1622)

) **3. VIOLATIONS OF PG&E GAS RULE**
23

)

)

)

-) 4. BREACH OF THIRD-PARTY
-) BENEFICIARY CONTRACT (Cal.
-) Civ. Code § 1559)
-) 5. VIOLATIONS OF CONSUMERS
-) LEGAL REMEDIES ACT (Cal. Civ.
-) Code § 1750 *et seq.*)
-) 6. FRAUD (Cal. Civ. Code § 1572)
-) 7. NEGLIGENT
-) MISREPRESENTATION (Cal. Civ.
-) Code §§ 1573, 1577)
-) 8. VIOLATIONS OF REGULATIONS
-) ON CORE TRANSPORT AGENTS
-) (Cal. Pub. Util. Code §§ 980-989.5)
-) 9. VIOLATIONS OF FALSE
-) ADVERTISING LAW (Cal. Bus. &
-) Prof. Code § 17500 *et seq.*)
-) 10. VIOLATIONS OF UNFAIR
-) COMPETITION LAW – UNLAWFUL
-) PRONG – CALLING NUMBERS ON
-) DO NOT CALL LIST (Cal. Bus. &
-) Prof. Code § 17200 *et seq.*)
-) 11. VIOLATIONS OF UNFAIR
-) COMPETITION LAW – UNLAWFUL
-) PRONG – OTHER STATUTORY
-) VIOLATIONS (Cal. Bus. & Prof. Code
-) § 17200 *et seq.*)
-) 12. VIOLATIONS OF UNFAIR
-) COMPETITION LAW – UNFAIR
-) PRONG (Cal. Bus. & Prof. Code
-) § 17200 *et seq.*)
-) 13. VIOLATIONS OF UNFAIR
-) COMPETITION LAW –
-) FRAUDULENT PRONG (Cal. Bus. &
-) Prof. Code § 17200 *et seq.*)
-)
-) JURY TRIAL DEMANDED

COME NOW PLAINTIFFS EMILY FISHMAN and SUSAN FARIA and file this Third Amended Class Action Complaint (“3AC”) against TIGER NATURAL GAS INC. *et al.* and allege as follows:

I. NATURE OF THE ACTION

1
2 1. This Class Action arises out of Defendant Tiger Natural Gas Inc.'s ("Tiger") practice of
3 falsely advertising its natural gas price protection program (the "Program") to California
4 consumers and businesses, in violation of Cal. Public Utilities Code §§ 980-989.5 and the PG&E
5 Gas Rule 23 tariff (approved by the California Public Utilities Commission), and in breach of the
6 Core Gas Services Agreement contract between Tiger and PG&E, which expressly incorporates
7 the terms of PG&E Gas Rule 23. Tiger falsely advertised its Program via Sales Calls made by its
8 Telemarketing Agents, including but not limited to Community Gas Center Inc. ("CGC"), owned
9 by John Dyet, that were recorded without the recipients' consent and, in some cases, were made
10 to telephone numbers on the Do Not Call list.¹ Tiger and its Telemarketing Agents fraudulently
11 induced prospective customers to enroll in Tiger's Program, at which point Tiger breached the
12 oral contracts formed during the Sales Calls.

13 2. Plaintiffs Emily Fishman ("Fishman") and Susan Faria ("Faria") bring this Class Action
14 to recover monetary damages on behalf of themselves and a Class and Sub-Classes – defined in
15 detail below – of California consumers and businesses who received Sales Calls from Tiger's
16 Telemarketing Agents on behalf of Tiger and whose calls were recorded without their consent.
17 Tiger and/or its Telemarketing Agents made some of those Sales Calls to telephone numbers on
18 the Do Not Call list. Some of the recipients of the calls enrolled in Tiger's Program in reliance
19 on Tiger's false representations and advertising (including telemarketing), claiming that: a) that
20 their former Gas Companies would be increasing the price for natural gas procurement; b)
21 Tiger's Program is free and/or that the Program can save customers money versus their current
22 gas provider's rates due to the Program's price cap; and/or c) Tiger's gas procurement price is
23 based on the market price.

24 3. Plaintiffs seek damages/restitution, injunctive relief, declaratory relief, punitive damages,
25 statutory damages, attorneys' fees, costs, and pre- and post-judgment interest, pursuant to statute.
26
27
28
29

30
31 ¹ "Do Not Call list" refers to "The national do-not-call registry of persons who do not wish to
receive telephone solicitations that is maintained by the Federal Government." See 47 C.F.R.
64.1200(c)(2).

II. PARTIES

4. Emily Fishman (“Fishman”) is, and was at all relevant times, more than 18 years of age and a resident of Mill Valley, Marin County, California. Fishman had no prior business relationship with Tiger/CGC before receiving their Sales Call and never requested to receive their Sales Call. When Fishman enrolled in the Program, she became one of Tiger’s Core Gas Customers.

5. Susan Faria (“Faria”) is, and was at all relevant times, more than 18 years of age and a resident of Oakland, Alameda County, California. Faria had no prior business relationship with Tiger/CGC before receiving their Sales Call and never requested to receive their Sales Call. Faria was more than 65 years old when she received Tiger/CGC’s telephone solicitation. Faria received Tiger/CGC’s Sales Call at her telephone number which was on the Do Not Call list at the time and had been for more than 10 years. When Faria enrolled in the Program, she became one of Tiger’s Core Gas Customers.

6. Tiger Natural Gas Inc. (“Tiger”) is, and was at all relevant times, an Oklahoma corporation with a primary place of business in Tulsa, Oklahoma. Tiger claims that it has been in business for more than 25 years, supplying natural gas to more than 43,000 customers in more than 20 states. *See* <http://tigernaturalgas.com/about>. Tiger has been registered with the California Secretary of State to do business in California since 2002. Tiger is a Core Transport Agent (“CTA”) – “a non-utility gas supplier who purchases gas on behalf of residential and small commercial end-use customers.” *See* California Public Utilities Commission, <http://www.cpuc.ca.gov/General.aspx?id=4812> (last visited Mar. 12, 2018).

7. Community Gas Center Inc. (“CGC”) – formerly identified as DOE 1 – was at all relevant times a Colorado corporation falsely claiming its addresses to be a Regus executive suite in San Francisco, California; a Post Office Box in Glenwood Springs, Colorado; a Post Office Box in Largo, Florida; and a residential address in New Port Richey, Florida. Plaintiffs are informed and believe and thereon allege that, as of the filing of the 3AC, CGC’s corporate status with the Colorado Secretary of State is “delinquent.” Plaintiffs are informed and believe and thereon allege that CGC acted as Tiger’s Telemarketing Agent for purposes of calling potential customers to advertise Tiger’s Program, *see* Cal. Civ. Code § 2295, and that Tiger wrote or at least approved the telemarketing scripts executed by CGC and its telemarketers when they called Plaintiffs and Class Members. Plaintiffs are informed and believe and thereon allege that CGC

1 was, at all relevant times, undercapitalized in light of the risks it voluntarily assumed by
2 engaging in the unlawful acts alleged herein.

3 8. Plaintiffs are informed and believe and thereon allege that John Dyet (“Dyet”) – formerly
4 identified as DOE 2 – was at all relevant times the owner and chief executive officer of CGC.
5 Plaintiffs are informed and believe and thereon allege that Dyet was personally involved with the
6 unlawful acts alleged herein. Plaintiffs are informed and believe and thereon allege that Dyet
7 and CGC also shared physical assets and addresses such that they failed to follow proper
8 corporate formalities, and each is an alter ego of the other. Plaintiffs hereafter refer to
9 Community Gas Center Inc. and John Dyet collectively as “CGC.”

10 9. DOE Defendants 3-50, inclusive, are Tiger’s Telemarketing Agents who, similar to CGC,
11 acted as Tiger’s agent for purposes of making Sales Calls to prospective customers to advertise
12 Tiger’s Program. The true identities of these Telemarketing Agents are presently unknown.
13 Plaintiffs sometimes refer to CGC and DOEs 3-50, inclusive, collectively as Tiger’s
14 “Telemarketing Agents.” Plaintiffs will amend this Complaint to allege the true names and
15 capacities of DOES 3-50 when the same have been ascertained.

16 10. The true names and capacities, whether individual, corporate, associate, representative,
17 alter ego or otherwise, of defendants and/or their alter egos named herein as DOES 51-100
18 inclusive are presently unknown to Plaintiffs at this time, and are therefore sued by such
19 fictitious names pursuant to California Code of Civil Procedure § 474. Plaintiffs will amend this
20 Complaint to allege the true names and capacities of DOES 51-100 when the same have been
21 ascertained. Plaintiffs are further informed and believe and thereon allege that DOES 51-100
22 were and/or are, in some manner or way, responsible for and liable to Plaintiffs and the Class and
23 Sub-Classes for the events, happenings, and damages hereinafter set forth below.

24 25 **III. JURISDICTION AND VENUE**

26 11. Although neither Fishman, Faria, nor any other single Class Member claims damages
27 over \$75,000, Tiger removed this Action from the Superior Court of California, County of Marin
28 under the Class Action Fairness Act, claiming that there is more than \$5 million in controversy,
29 at least one Plaintiff (Fishman) is a citizen of a different state from Tiger (Oklahoma), and there
30 are more than 100 Class Members. *See* 28 U.S.C. § 1332(d).

12. Jurisdiction is proper in this Court pursuant to Cal. Public Utilities Code § 983(b): “Notwithstanding other provisions, core gas customers shall have the option to proceed with a complaint against a core transport agent either through an action filed in the judicial court system or through a complaint filed with the commission.” Although two causes of action implicate a tariff – PG&E Gas Rule 23 – Plaintiffs do *not* challenge the terms, adequacy, or reasonableness of the tariff. Therefore, this Court’s assumption of jurisdiction over the third and fourth causes of action does not hinder or interfere with the CPUC’s authority. *See* Cal. Pub. Util. Code § 1759; *North Star Gas Co. v. Pacific Gas & Electric Co.*, No. 15-cv-02575-HSG, 2016 U.S. Dist. LEXIS 131684 (N.D. Cal. Sep. 26, 2016); *Davis v. Southern California Edison Co.*, 236 Cal. App. 4th 619 (2d Dist. 2015).

13. Venue is proper in the U.S. District Court for the Northern District of California because Tiger’s contracts with Fishman and Faria were to be performed in Marin County and Alameda County, respectively, within the Northern District of California, and Tiger’s liability to Fishman and Faria arose in Marin County and Alameda County, respectively. *See* 28 U.S.C. § 1446(a). However, Plaintiffs defined the Class to be state-wide, as discussed below.

IV. STATEMENT OF FACTS

14. All allegations in this Complaint are based on information and belief and/or are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Whenever allegations in this Complaint are contrary or inconsistent, such allegations shall be deemed alternative.

A. Tiger’s Natural Gas Price Protection Program

15. One of Tiger’s offerings is a natural gas price protection program (the “Program”), a purportedly “free” plan by which Tiger purportedly charges customers a variable rate for supplying natural gas based on the market price, but with a price cap (at least, as to Fishman) of \$0.69 per therm.²

16. When a customer chooses to purchase or “procure” gas from Tiger, the gas is delivered over existing pipes by the customer’s Gas Company (in the case of Fishman and Faria, by PG&E). Thus, a customer who buys gas from PG&E has a single line item for “Gas Charges” on

² A “therm” – short for 100,000 British Thermal Units – represents the heat energy in natural gas. Natural gas is typically priced to customers in therms and the volume of gas used appears on billing statements in therms. *See* <http://mapawatt.com/2010/02/17/what-therm>.

1 his/her utility bill, whereas a customer who buys gas from Tiger has separate line items for
2 “PG&E Gas Delivery Charges” and “Tiger Natural Gas Inc. Gas Procurement Charges.”

3 17. In actuality, and as alleged in more detail below, Tiger’s Program is not free at all. The
4 purportedly “free” Program also entailed a \$0.05 daily charge, for which Tiger never obtained its
5 customers’ informed agreement. In fact, customers who signed up for Tiger’s Program
6 immediately experienced a significant increase in their gas prices, because unknown to
7 consumers, Tiger also adds a large surcharge to the market rates that the customers would
8 otherwise have been charged by their Gas Company (in the case of Fishman and Faria, by
9 PG&E). And while Plaintiffs are informed and believe and thereon allege that Tiger never
10 charged Class Members more than its stated price cap, Tiger fundamentally misrepresented the
11 value proposition of the Program by: a) falsely leading prospective customers to believe that
12 their Gas Company (in the case of Fishman and Faria, PG&E) would be raising its procurement
13 rates when in fact their procurement rates were dropping. On information and belief, Tiger used
14 the same false representation that prospective customers’ Gas Companies other than PG&E
15 would be raising their prices in its Sales Calls; b) setting a theoretical “price cap” far above the
16 maximum rate that the prospective customer’s Gas Company (in the case of Fishman and Faria,
17 PG&E) could possibly charge, such that the purported price cap would not and could not ever
18 “protect” customers from their former Gas Companies’ (nonexistent) price increases or save
19 them any money; and c) failing to disclose the daily nickel and per-therm surcharges.

20 18. Plaintiffs are informed and believe and thereon allege that Tiger, by its Telemarketing
21 Agents (CGC and DOEs 3-50), solicited customers for the Program from Gas Companies state-
22 wide. Plaintiffs’ belief derives from the fact that customers in Northern and Southern California
23 posted similar complaints about Tiger on Yelp.com. Exhibit A is a true and correct copy of
24 Tiger’s one-star review page on Yelp.com. Plaintiffs are informed and believe and thereon
25 allege Tiger’s Sales Calls to prospective Southern California customers were similar to those
26 made to Plaintiffs Fishman and Faria, although referencing other Gas Companies instead of
27 PG&E, because PG&E only operates in Northern California.

28 19. Tiger/CGC’s actions of advertising to PG&E customers and enrolling them in the
29 Program is regulated by Sections D-E and Schedule G-CT of the PG&E Gas Rule 23 tariff
30 (effective January 1, 2008).

20. Exhibit B is a true and correct copy of pages 1 and 20-28 of the PG&E Gas Rule 23 tariff (effective date January 4, 2014). *See also* Plaintiffs' Request for Judicial Notice (Docket #63 at Ex. A).

21. Exhibit C is a true and correct copy of pages 1-6 of Schedule G-CT, part of the PG&E Gas Rule 23 tariff (effective date December 1, 2014). *See also* Plaintiffs' Request for Judicial Notice (Docket #63 at Ex. B).

22. PG&E Gas Rule 23 – and of particular relevance the restrictions on Core Transport Agents who solicit customers from PG&E – is expressly incorporated by reference into the Core Gas Aggregation Service Agreement (“CGAS”) contract between PG&E and CTAs (such as Tiger).

23. Exhibit D is a true and correct copy of a template PG&E CGAS contract; page 6 expressly incorporates PG&E Gas Rule 23 and Schedule G-CT. *See also* Plaintiffs' Request for Judicial Notice (Docket #63 at Ex. C). Plaintiffs are informed and believe and thereon allege that Tiger signed such a CGAS contract with PG&E.

B. Tiger/CGC Called Fishman to Advertise the Tiger Natural Gas Price Protection Program, Their Representations Were False, and They Recorded the Call Without Fishman's Consent

24. Prior to August 18, 2015, Fishman purchased natural gas from PG&E for home use.

25. On August 18, 2015, Tiger, by its agent CGC and CGC's telemarketer Olivia Brown (“Brown”), called Fishman at her home (landline) telephone number (the “Sales Call”). Exhibit E includes a transcript of the Sales Call and is incorporated in this Statement of Facts as if set forth in full. Certain parts, including confidential information, are summarized.

26. Tiger/CGC's objective in calling Fishman was to solicit her to sign up for the Program and buy Tiger's natural gas, instead of continuing to buy natural gas from PG&E. As mentioned above, PG&E would continue to deliver the gas.

27. Tiger/CGC recorded the Sales Call to Fishman. Tiger/CGC never asked for Fishman's consent to record the Sales Call. In fact, Tiger/CGC never disclosed to Fishman that they were recording the Sales Call.

28. Fishman first learned that Tiger/CGC recorded the call on August 28, 2016. Fishman did not hear periodic beeps during the Sales Call that might have suggested that Tiger/CGC were recording it. After nine months of increased gas charges from Tiger's Program, and with no signs that the Tiger Program would ever save her money, Fishman contacted an attorney.

1 Fishman's counsel sent letters to Tiger on July 8, 2016 – within one year of Fishman's
 2 agreement to purchase Tiger gas – alleging various unlawful conduct and demanding that Tiger
 3 preserve relevant evidence. Tiger's former counsel, Gregory Klatt, responded and claimed that
 4 Fishman had her facts wrong about Tiger's offering, and to prove it, on August 28, 2016, Mr.
 5 Klatt voluntarily provided a recording of Tiger/CGC's Third Party Verification call ("TPV Call")
 6 to Fishman. The next day, Mr. Klatt voluntarily provided a recording of Tiger/CGC's Sales Call
 7 to Fishman. The fact of the recording was within the exclusive knowledge of Tiger/CGC, until
 8 Mr. Klatt provided it to Fishman's counsel, and Fishman could not, by reasonable diligence,
 9 have discovered the fact of the recording any sooner than she did. Fishman then filed this Action
 10 within one year of learning that Tiger/CGC had recorded the Sales Call to her.

11 29. Brown began the Sales Call by claiming that she was calling from "Community Gas
 12 Center." Brown did not disclose that she was really calling on behalf of Tiger until nearly four
 13 minutes into the Sales Call.

14 30. Tiger/CGC expressly claimed that they were making Sales Calls to every single PG&E
 15 customer to advertise the Program and solicit their business.

16 31. Tiger/CGC admitted on the Sales Call that they knew that Fishman was a resident of
 17 California.

18 32. Tiger/CGC claimed that "several [PG&E] rate increases [had] already started," including
 19 an "18.8% increase [for natural gas that] had started this year," and that Fishman would "see
 20 another 33% increase over the next three years" because the "California Public Utilities
 21 Commission ("CPUC") has processed that request from PG&E," but Tiger's "price protection
 22 for all the residential customers . . . will protect customers from the supply rate increases for the
 23 next three years."

24 33. The CPUC did not approve a 33% rate increase for PG&E's natural gas *procurement*
 25 rates, as Tiger/CGC led Fishman to believe. In fact, the CPUC approved a 27% rate increase *for*
 26 *gas transmission and storage*.³ By misrepresenting the amount by which PG&E could raise its
 27 gas procurement prices, Tiger/CGC attempted to make Tiger's own price cap seem even more
 28 beneficial to customers.

29 _____
 30 ³ Robert Walton, *California PUC Approves Gas Rate Hike for California Utilities and SoCal*
 31 *Gas*, UTILITYDIVE, June 28, 2016, <http://www.utilitydive.com/news/california-puc-approves-gas-rate-hike-for-california-utilities-and-socalgas/421697>.

34. Tiger/CGC's claim that an 18.8% price increase for PG&E's natural gas procurement rates had already started for 2015 was false. PG&E gas procurement rates were not increasing by 18.8% when Tiger/CGC called Fishman in August 2015. In fact, PG&E's average gas procurement rate in 2015 was \$0.38103 per therm, 34% less than the average rate in 2014 of \$0.57893 per therm.⁴ PG&E's average gas procurement rate in 2016 was \$0.31644, 17% less than 2015, and less than half of the Program's price cap. PG&E's average gas procurement rate in 2017 was \$0.37140 per therm,⁵ slightly higher than 2016, but still 46% less than Tiger's price cap of \$0.69 per therm.

35. Because PG&E still bills Tiger customers for gas delivery, gas delivery charges are a constant. Any savings that Tiger gas customers could possibly realize from enrolling in Tiger's Program would have to be for gas procurement, not delivery. Put another way, regardless of how much PG&E might raise customers' gas *delivery* charges, that has nothing whatsoever to do with any hypothetical savings on gas *procurement* charges customers might theoretically see by switching to Tiger.

36. Tiger/CGC falsely claimed that PG&E's gas supply (procurement) rates were increasing when in fact they were decreasing. PG&E's delivery rates were increasing, but not supply rates.

37. Tiger/CGC claimed that Tiger had set up a "a price protection" program, which Tiger/CGC said was "a free service" "which will protect customers from ... supply rate increases." Tiger/CGC told Fishman, and other prospective customers, that it would charge "a variable rate [for natural gas] based on the market price with a cap at 69 cents." According to Tiger/CGC, "It's all free."

38. Tiger/CGC did not disclose that, in fact, Tiger would add an undefined surcharge to the "variable rate based on the market price," that Tiger would use this surcharge to line its own pockets, and that customers' gas rates would immediately go up if they enrolled in the Program.

39. Tiger/CGC did not disclose that Tiger would add a daily charge of \$0.05 to the bills of customers enrolled in the Program.

⁴ PG&E Gas Rates, <https://www.pge.com/tariffs/GRF.SHTML#RESGAS> (last visited Oct. 5, 2017) and click "Residential (JAN 2014 – DEC 2015)" link.

⁵ PG&E Gas Rates, <https://www.pge.com/tariffs/GRF.SHTML#RESGAS> (last visited Mar. 29, 2018) and click "Residential (JAN 2016 – DEC 2017)" link.

1 40. Tiger/CGC described the Program as “great” specifically because “Say for instance if
2 PG&E down the line in the next year paid \$1.06 per therm for the gas, you wouldn’t be charged
3 \$1.06 per therm for your gas. You would be charged 69 cents because it can never go over that
4 price.” But the Program was not, in fact, “great,” because PG&E’s rates would not be that high
5 even if PG&E had raised its procurement rates by 33%, as Tiger/CGC falsely claimed would
6 happen.

7 41. Tiger/CGC repeated several times during the Sales Call that the Program was entirely
8 “free.” See Exhibit E. According to Tiger, the Program was “a free service” that would “protect
9 customers.” Tiger/CGC never disclosed any charges for the Program other than for buying the
10 gas itself. Fishman did not believe that Tiger was providing the gas itself for free, but relying on
11 Tiger/CGC’s statements, Fishman believed that there were no *other* charges. Also, Tiger never
12 disclosed that a surcharge would be added to the “variable rate based on the market price,” or
13 that Tiger would immediately begin charging customers more than PG&E would have charged
14 for the same natural gas. Fishman did not believe that Tiger would charge her more for gas than
15 PG&E was already charging her, and Fishman did not expect her bills to immediately and
16 significantly increase as the direct result of enrolling in Tiger’s Program.

17 42. By presenting a realistic-sounding scenario that nevertheless: a) falsely claimed PG&E’s
18 gas procurement rates were increasing when they were really decreasing, and b) included an
19 impossibly high price point for PG&E’s gas procurement well over Tiger’s price cap, Tiger/CGC
20 falsely ascribed a customer benefit to the Program and the price cap, and actually misled
21 Fishman – and would have misled any reasonable consumer – into believing that she would save
22 money on her gas bill by switching her gas procurement from PG&E to Tiger’s Program.

23 43. Tiger/CGC advised Fishman that “Everything will stay the same with your PG&E utility
24 service. So you’ll pay that bill just like you do now.”

25 44. Tiger/CGC had superior knowledge than Fishman did about the natural gas market and
26 Tiger’s Program.

27 45. During the Sales Call on August 18, 2015, Fishman entered into an oral contract with
28 Tiger, by its agent CGC, to buy Tiger’s gas via the Program in reliance on Tiger/CGC’s
29 statements during the Sales Call. All terms of the oral contract were stated in that Sales Call.
30 See Exhibit E.

1 46. Fishman is informed and believes and thereon alleges that Brown was following a script
2 prepared for her by Tiger/CGC when Brown called her. Fishman is informed and believes and
3 thereon alleges that Brown and Tiger/CGC's other telemarketers were required to follow that
4 script as closely as possible, with little if any room for deviation or improvisation.

5 47. Fishman is informed and believes and thereon alleges that all Class members received
6 comparable Sales Calls by Tiger or its Telemarketing Agents (CGC and DOEs 3-50) based on
7 the same template script. Even if every single word were not exactly the same, Fishman is
8 informed and believes and thereon alleges that:

- 9 • Tiger and its Telemarketing Agents did not instruct any of their telemarketers to
10 notify and obtain consent from prospective customers to record their telephone
11 calls;
- 12 • Tiger and its Telemarketing Agents' telemarketers did not notify and obtain
13 consent from prospective customers to record their telephone calls;
- 14 • All of Tiger and its Telemarketing Agents' Sales Calls were recorded;
- 15 • Tiger and its Telemarketing Agents instructed all of their telemarketers to
16 communicate to all Class Members, and Tiger and its Telemarketing Agents'
17 telemarketers did communicate to all Class Members (at least those in Northern
18 California), that their current gas provider (PG&E in the case of Fishman and
19 Faria) had already started significantly increasing its natural gas procurement
20 rates and would continue to do so;
- 21 • Tiger and its Telemarketing Agents instructed all of their telemarketers to
22 communicate to all Class Members, and Tiger and its Telemarketing Agents'
23 telemarketers did communicate to all Class Members, that the Program is "free"
24 and Tiger's gas price would be capped at a certain price, e.g. \$0.69 per therm,
25 benefitting Tiger's customers by capping the price below what their current gas
26 provider (PG&E in the case of Fishman and Faria) could possibly charge them,
27 e.g. \$1.06 per therm;
- 28 • Tiger and its Telemarketing Agents instructed all of their telemarketers not to
29 inform Class Members, and the telemarketers did not in fact inform Class
30 Members, that Tiger would immediately begin charging customers a \$0.05 daily
31 charge for participating in the Program; and

- Tiger and its Telemarketing Agents instructed all of their telemarketers not to inform Class Members, and the telemarketers did not in fact inform Class Members, that Tiger would immediately begin adding a surcharge to the market price, thereby charging them more than their current gas provider (PG&E in the case of Fishman and Faria) would have charged them for the same natural gas.

48. Brown acted as CGC and Tiger's agent, within the scope of her authority, when she made the Sales Call to Fishman. *See* Cal. Civ. Code § 2316.

49. Even if Brown and CGC did not have actual authority to make the claims that she made, Fishman reasonably believed that Brown and CGC had ostensible authority to make those claims on behalf of Tiger. *See* Cal. Civ. Code § 2317.

50. Tiger/CGC's description of the Program to Fishman as "great" was not merely general advertising puffery, but instead materially false and misleading because Tiger/CGC provided specific and quantifiable, yet false, evidence of its purported greatness: a) by describing it as free despite the \$0.05 daily charge and surcharge on top of the market rate and despite the fact that her gas procurement rates would immediately go up; b) because the price cap of \$0.69 per therm had no value whatsoever to Fishman (or any other customer), since PG&E's gas procurement rates were decreasing and PG&E's maximum possible rate was far below the price cap, and at the same time, Tiger charged significantly more than PG&E charged for gas procurement; c) Tiger/CGC's false claims that PG&E was increasing its procurement rates by 33% when in fact PG&E's procurement rates were decreasing; and d) Tiger's presentation of a seemingly realistic scenario in which PG&E could charge \$1.06 per therm. The fact that Tiger/CGC used specific prices and rate increases take the Sales Calls beyond mere "puffery" and into the realm of actionable false advertising. *See Cook, Perkiss & Liehe Inc. v. Northern California Collection Service Inc.*, 911 F.2d 242, 246 (9th Cir. 1990); *Southland Sod Farms v. Stover Seed Company*, 108 F.3d 1134, 1145 (9th Cir. 1997).

51. Only *after* the Sales Call concluded, Brown switched Fishman to an automated verification system that asked for Fishman's consent to record that second TPV Call, and stated that Tiger would mail Fishman a copy of the terms and conditions within three business days. Exhibit E includes a transcript of the TPV Call and is incorporated in this Statement of Facts as if set forth in full. Fishman had no idea what those additional terms might have been when she entered into the oral contract with Tiger. Thus, those additional terms and conditions, provided

1 after the oral contract was made, were not part of the oral contract. *See* Cal. Civ. Code § 1580.
 2 Fishman does not recall if she ever received the mailed copy of the Program's terms and
 3 conditions. Fishman did not agree to any terms and conditions beyond those stated during the
 4 Sales Call. Moreover, a *verification* call by definition is verifying an agreement already made; a
 5 verification call cannot add new terms.

6 52. The TPV Call, *see Exhibit E*, also stated that "PG&E will continue to deliver your natural
 7 gas, send your monthly PG&E bill, and provide the exact same utility service." The TPV Call
 8 made no mention of any \$0.05 daily charge to participate in Tiger's Program, or any surcharge
 9 that Tiger would add to Fishman's bill in excess of the market rate for natural gas. The TPV Call
 10 vaguely referred to "daily costs" ("Price protection will be applied to your gas supply and does
 11 not include PG&E's delivery charges; taxes; daily, quarter, and capacity costs"), but that
 12 language cannot refer to either the daily nickel charge or the per-therm surcharge.⁶

13 53. Tiger/CGC advertised the Program with a three-year term in both the Sales Call ("So
 14 what we do is we set up price protection [] which will protect customers from the supply rate
 15 increases for the next three years"; "So now they're able to deliver your gas from a supply source
 16 that's protected from rate increases for the next three years") and during the TPV Call ("Your
 17 natural gas supply will receive price protection with a rate cap of 69 cents per therm for the next
 18 36 months"). *See Exhibit E*. Tiger/CGC never referred to a one year/12 month term in the Sales
 19 Call or the TPV Call; the only stated term was three years/36 months. Moreover, without
 20 conceding that Tiger mailed terms and conditions for the Program to Plaintiffs Fishman and
 21 Faria and that any such terms and conditions, if mailed, were binding, *infra*, the applicable terms
 22 and conditions for which Tiger (improperly) requested judicial notice (Dockets #9, 9-1, 9-2)
 23 clearly demonstrate Tiger's intent to bind prospective customers to a three-year term.⁷

24
 25 ⁶ Grammatically, "daily, quarter, and capacity costs" – set apart from PG&E's delivery charges –
 26 must all be related. And, they must all refer to *Tiger's* costs, because Fishman by definition
 27 cannot have a "capacity cost" because she is a consumer; she does not store natural gas. Tiger's
 28 costs and Tiger's charges are not the same thing. What Tiger pays to drill for its own gas or buy
 29 it from others is a cost; the daily nickel that Tiger adds to its customers' bills is a charge. And,
 30 the TPV Call did not refer to the per-therm surcharge at all, for that surcharge – even *if* it could
 be described as a cost – cannot be described as a daily, quarter, or capacity cost. It is simply an
 arbitrary charge that Tiger tacks on, on top of the market rate, to line its own pockets.

31 ⁷ **"Term:** The Primary Term of this Agreement shall commence and become effective the date of
 the enrollment or date of first gas deliveries available thereafter for 36 months with a Post-

C. Tiger/CGC Called Faria at Her Telephone Number on the Do Not Call List to Advertise the Tiger Natural Gas Price Protection Program, Their Representations Were False, and They Recorded the Call Without Faria's Consent

54. Prior to April 2015, Faria purchased natural gas from PG&E for home use.

55. In April or early May 2015, Tiger, either itself or by an agent, called Faria at her home (landline) telephone number.

56. Faria's home (landline) telephone number has been on the Do Not Call list since 2004, without any lapses.

57. Faria is informed and believes and thereon alleges that Tiger/Tiger's agent recorded the Sales Call to her without disclosure and without obtaining her consent.

58. Faria recalls the Sales Call she received. Faria is informed and believes and thereon alleges that the Sales Call she received was substantively similar to the Sales Call that Fishman received. *See Exhibit E.* Faria is informed and believes and thereon alleges that Tiger/CGC's Sales Call to her was also recorded without her consent. Faria was also misled to believe that she would save money on her gas bill by switching her gas procurement from PG&E to Tiger. Faria was also misled to believe that PG&E was increasing its gas procurement rates when in fact the rates were decreasing, that it was free for her to participate in Tiger's Program, that her gas procurement rates would not go up with Tiger, and that there would be no additional charges (e.g., \$0.05 per day or surcharges on top of the market rate for natural gas). Faria entered into an oral contract to enroll in Tiger's Program and purchase Tiger's gas in reliance on Tiger's statements. Faria does not recall ever receiving any subsequent terms and conditions in the mail, but even if she had, she did not agree to any subsequent terms and conditions.

D. Fishman's Gas Bills Were Far More Expensive With Tiger Than They Would Have Been If She Had Stayed With PG&E

59. Tiger supplied Fishman's natural gas beginning on September 17, 2015, with charges first appearing on the bill with the statement date of October 22, 2015.

60. Fishman is informed and believes and thereon alleges that Tiger did not charge her "a variable rate based on the market rate" for gas procurement, as promised during the Sales Call,

Primary Term consisting of automatic renewals for the same term of 36 months thereafter on a continuous basis unless canceled by either party upon ninety (90) days written notice prior to renewal. Tiger shall act as Customer's exclusive CTA to administer Core Gas Aggregation Service under these terms."

but rather a rate that was much higher – in some months, as much as three times higher than PG&E’s rate – as shown in the chart below.

Statement Date	PG&E Gas Procurement (\$/therm)	Tiger Gas Procurement (\$/therm)	Difference
10/22/2015	\$ 0.3263	\$ 0.6900	+ 111%
11/24/2015	\$ 0.3553	\$ 0.6900	+ 94%
12/23/2015	\$ 0.3897	\$ 0.6823	+ 75%
1/22/2016	\$ 0.3927	\$ 0.6709	+ 71%
2/24/2016	\$ 0.4058	\$ 0.6555	+ 62%
3/24/2016	\$ 0.2792	\$ 0.5900	+ 111%
4/25/2016	\$ 0.1944	\$ 0.6097	+ 214%
5/24/2016	\$ 0.2517	\$ 0.6513	+ 159%
6/23/2016	\$ 0.2380	\$ 0.6450	+ 171%

61. Fishman terminated the oral contract by calling Tiger in May 2016, after realizing that over nine months of Tiger bills, her gas prices were constantly and significantly higher than they would have been if she had stayed with PG&E, and the purported cap showed no signs of ever providing a benefit. The last day on which Tiger supplied Fishman’s natural gas was June 15, 2016, on the bill with the statement date of June 23, 2016. Tiger supplied Fishman with natural gas for 273 days.

62. According to Fishman’s PG&E bills, over the nine months that she bought Tiger gas, if she had bought PG&E gas, she would have paid \$120.75 for gas procurement (excluding delivery).

63. According to Fishman’s PG&E bills, over the nine months that she bought Tiger gas, she paid \$233.54 for gas procurement (excluding delivery) – *93% more than PG&E*.

64. According to Fishman’s PG&E bills, over the nine months that she bought Tiger gas, she paid \$13.65 for Tiger’s (undisclosed) \$0.05 daily charge, whereas if she had stayed with PG&E, there would have been *no* daily charges.

65. According to Fishman’s PG&E bills, over the nine months that she bought Tiger gas, she paid Tiger a total of \$247.19 for gas procurement plus daily charges, *more than double* the \$120.75 that she would have paid to PG&E for gas procurement and no daily charges if she had stayed with PG&E, as shown in the following chart:

Fishman Statement Date	Usage (therms)	PG&E Procure (\$/therm)	PG&E Procure \$	Tiger Procure (\$/therm)	Tiger Procure \$	Tiger Daily Nickel	Tiger Total \$	Difference
10/22/2015	16	\$0.3263	\$ 5.22	\$0.6900	\$ 11.04	\$ 1.45	\$ 12.49	\$ 7.27
11/24/2015	34	\$0.3553	\$ 12.08	\$0.6900	\$ 23.46	\$ 1.60	\$ 25.06	\$ 12.98
12/23/2015	61	\$0.3897	\$ 23.77	\$0.6823	\$ 41.62	\$ 1.45	\$ 43.07	\$ 19.30
1/22/2016	75	\$0.3927	\$ 29.45	\$0.6709	\$ 50.32	\$ 1.50	\$ 51.82	\$ 22.37
2/24/2016	55	\$0.4058	\$ 22.32	\$0.6555	\$ 36.05	\$ 1.60	\$ 37.65	\$ 15.33
3/24/2016	39	\$0.2792	\$ 10.89	\$0.5900	\$ 23.01	\$ 1.50	\$ 24.51	\$ 13.62
4/25/2016	32	\$0.1944	\$ 6.22	\$0.6097	\$ 19.51	\$ 1.50	\$ 21.01	\$ 14.79
5/24/2016	24	\$0.2517	\$ 6.04	\$0.6513	\$ 15.63	\$ 1.55	\$ 17.18	\$ 11.14
6/23/2016	20	\$0.2380	\$ 4.76	\$0.6450	\$ 12.90	\$ 1.50	\$ 14.40	\$ 9.64
Total	356	\$0.3392	\$120.75	\$0.6560	\$233.54	\$13.65	\$247.19	\$ 126.44

66. In the nine months Fishman was a Tiger customer, PG&E's gas procurement price ranged from \$0.1944 to \$0.4058 per therm, averaging \$0.3392. So even if PG&E did increase its *procurement* rates by 33% as Tiger claimed – setting aside the fact that the CPUC actually approved a 27% increase for *transmission and storage*, even as procurement rates were decreasing significantly – that would have been \$0.4511. A 33% increase on the highest month during that nine-month period would have been \$0.5397. Thus, when Tiger/CGC called Fishman and posited that PG&E could charge its customers \$1.06 per therm, that was a deliberate misrepresentation meant to deceive Fishman about Tiger's gas prices, PG&E's possible gas prices, and the relative value of Tiger's Program and the price cap.

67. Tiger's fraud and breach of contract were not that Tiger ever charged Fishman more than \$0.69 per therm (it didn't), but rather that Tiger/CGC knowingly misrepresented the fundamental value proposition of the Program in the first place when they made the Sales Call to Fishman by: a) falsely claiming that PG&E's gas procurement rates were increasing when they were actually decreasing; b) expressly claiming that it was "free" to participate in the Program; and c) presenting an impossible scenario – namely, PG&E charging \$1.06 per therm for gas procurement within a year. These representations were false and were designed to confuse and mislead Fishman and other Enrollee Sub-Class Members, they would have misled any reasonable consumer, and they did confuse and mislead Fishman and other Enrollee Sub-Class Members. Tiger's failure to disclose that Fishman's and other Enrollee Sub-Class Members' gas prices would immediately go up, when affirmatively telling them that the Program was "a free service," also constitutes fraud and breach of contract, as further alleged herein.

68. Indeed, Tiger/CGC's telemarketer Olivia Brown implicitly encouraged Fishman not to read her bill too closely... presumably because they feared that Fishman might quickly discover that she was paying twice as much for her natural gas procurement.

E. Faria's Gas Bills Were Far More Expensive With Tiger Than They Would Have Been If She Had Stayed With PG&E

69. Tiger supplied Faria's natural gas beginning on May 7, 2015, with charges first appearing on the bill with the statement date of June 9, 2015. Faria discovered that her gas prices had increased with Tiger after she received the June 9, 2015 bill, and promptly canceled service. Tiger supplied Faria's gas for a second month, with a statement date of July 8, 2015, until the cancellation took effect. In total, Tiger supplied Faria's gas for 61 days.

70. According to Faria's PG&E bills, over the two months that she bought Tiger gas, she paid Tiger a total of \$61.87 for gas procurement plus daily charges, *more than double* the \$27.82 that she would have paid to PG&E for gas procurement and no daily charges if she had stayed with PG&E, as shown in the following chart:

Faria Statement Date	Usage (therms)	PG&E Procure (\$/therm)	PG&E Procure \$	Tiger Procure (\$/therm)	Tiger Procure \$	Tiger Daily Nickel	Addtl Oakland Tax	Tiger Total \$	Difference
6/9/2015	42	\$0.3262	\$ 13.70	\$0.6900	\$ 28.98	\$ 1.60	\$ 2.29	\$ 32.87	\$ 19.17
7/8/2015	37	\$0.3816	\$ 14.12	\$0.6900	\$ 25.53	\$ 1.45	\$ 2.02	\$ 29.00	\$ 14.88
Total	79	\$0.3522	\$ 27.82	\$0.6900	\$ 54.51	\$ 3.05	\$ 4.31	\$ 61.87	\$ 34.05

F. Terms and Conditions Disclosed After Tiger's Sales Call and the Formation of the Contract are Not Binding

71. Plaintiffs Fishman and Faria do not concede that Tiger mailed them any terms and conditions after the contracts was formed during the Sales Calls.

72. But, even if Tiger did mail Plaintiffs and the Enrollee Sub-Class terms and conditions after the Sales Calls, those terms and conditions are not binding because "Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal [each Plaintiff] has put [her] acceptance in the course of transmission to the proposer [Tiger/CGC] []." See Cal. Civ. Code § 1583. Here, Tiger/CGC made offers during Sales Calls directed to prospective California customers related to supplying natural gas in California, and Plaintiffs Fishman and Faria and the Enrollee Sub-Class accepted the offers, confirming the acceptance via the TPV Calls. Plaintiffs and the Enrollee Sub-Class never consented to anything that was not stated during the Sales Calls. Even if Tiger could clarify the terms of the oral contract by

1 subsequently mailing terms and conditions to Plaintiffs and the Enrollee Sub-Class (which they
 2 do not concede), and even if Tiger did mail terms and conditions to Plaintiffs and the Sub-Class
 3 (which they do not concede), Tiger cannot change the material terms of the contract by mailing a
 4 subsequent, unaccepted offer to modify the contract.⁸ In fact, PG&E Gas Rule 23 at
 5 § E(2)(i)(11)(a) – a tariff that is also incorporated into the Core Gas Aggregation Services
 6 contract between PG&E and Tiger (regulating, among other things, how Tiger can solicit
 7 PG&E’s natural gas customers like Plaintiffs Fishman and Faria) – expressly states that
 8 subsequently-mailed written terms and conditions cannot alter the terms that Tiger’s new
 9 customers agree to during the Sales Calls. *See Exhibit B.*

10 73. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
 11 after the contracts were formed, and that those terms and conditions state that the agreement was
 12 governed by Oklahoma law. But Tiger/CGC said nothing about Oklahoma law during the Sales
 13 Calls. Plaintiffs and the Enrollee Sub-Class did not know of this purported term before entering
 14 into an oral contract with Tiger, and never agreed to it. *See Cal. Civ. Code § 1580.*

15 74. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
 16 after the contracts were formed, and that those terms and conditions refer to a “daily nickel”
 17 charge; i.e., Tiger would charge customers, in addition to the gas itself, \$0.05 per day of service.
 18 But Tiger/CGC said nothing about a \$0.05 daily charge during the Sales Calls. A vague
 19 reference to undefined costs in the second TPV Call cannot create a “meeting of the minds.”
 20 Plaintiffs and the Enrollee Sub-Class did not know of this purported term before entering into an
 21 oral contract with Tiger, and never agreed to it. *See Cal. Civ. Code § 1580.* Moreover, as
 22 described above, the \$0.05 is not a cost to Tiger; it is an arbitrary charge to customers and
 23 revenue to Tiger.

24 75. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
 25 after the contracts were formed, and that those terms and conditions refer to (undefined)
 26 surcharges and, after the initial 36 month term, another surcharge of up to \$0.20 per therm that

27 ⁸ Tiger previously demonstrated confusion by Plaintiffs’ simultaneous allegations that: 1) they do
 28 not recall receiving written terms and conditions, and yet 2) the written terms and conditions
 29 contradict and attempt to change the terms of the oral contracts. These allegations can be easily
 30 reconciled. Plaintiffs are relying on Tiger’s Executive Vice President Johnathan Burris’
 31 declaration that the terms and conditions attached as Exhibit 2 to his declaration, for which Tiger
 requested judicial notice (Dockets #9, 9-1, 9-2), were the terms and conditions that applied to
 California customers like Fishman.

1 Tiger would charge customers on top of the Bidweek Survey index for California PG&E
2 Citygate. But Tiger/CGC said nothing about such surcharges during the Sales Calls. Plaintiffs
3 and the Enrollee Sub-Class did not know of these purported terms before entering into an oral
4 contract with Tiger, and never agreed to them. *See* Cal. Civ. Code § 1580. Finally, as described
5 above, these surcharges are not costs to Tiger; they are charges to customers and revenue to
6 Tiger.

7 76. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
8 after the contracts were formed, and that those terms and conditions say that Plaintiffs and the
9 Enrollee Sub-Class could cancel the agreement without penalty and rescind the agreement by
10 calling CGC within three business days of enrolling. But that would make the terms and
11 conditions unconscionable because: a) it is highly unlikely Plaintiffs and the Enrollee Sub-Class
12 would have received the mailing and had an opportunity to review it within three business days;
13 indeed, California law allows for five calendar days for mailing in-state and 10 calendar days for
14 mailing out-of-state. *See* Cal. Code Civ. Proc. § 1013(a); and b) Plaintiffs and the Enrollee Sub-
15 Class did not receive their first PG&E bill including Tiger gas until two months after the Sales
16 Calls – and would not have had an opportunity, within three business days, to realize how much
17 more Tiger was charging them for gas procurement than PG&E would have charged them.

18 77. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
19 after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that
20 those terms and conditions do not contain an integration provision; therefore, the written terms
21 and conditions (e.g. \$0.05 daily charge and surcharge on top of the market rate) cannot supplant
22 the oral representations Tiger/CGC made during the Sales Calls (e.g., totally free to participate in
23 the Program).

24 78. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions
25 after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that
26 those terms and conditions set forth a 36 month term that a customer can only cancel upon 90
27 days' written notice to CGC prior to automatic renewal for another 36 month term.
28 Nevertheless, Tiger allowed Plaintiffs to cancel service by making telephone calls after far less
29 than 36 months of service. This further evidences that Tiger did not intend the supposedly-
30 mailed terms and conditions to be binding where they conflict with the terms of the oral
31 agreements previously made during the Sales Calls.

79. Tiger may claim that it mailed Plaintiffs and the Enrollee Sub-Class terms and conditions after the contracts were formed, but Plaintiffs are informed and believe and thereon allege that those terms and conditions do not contain a class action waiver/arbitration provision. Nor did Tiger/CGC say anything about a class action waiver/arbitration provision during the Sales Calls.

G. Tiger's Website Falsely Claimed That There Were ZERO Complaints Filed with the Better Business Bureau

80. According to Tiger's website at the time, there were "ZERO complaints" with the Better Business Bureau. Exhibit F is a true and correct copy of a page from Tiger's website, <http://tigernaturalgas.com/switch-pge-customer-service>, as of July 2016 and is incorporated as if set forth in full in this Statement of Facts.

81. According to the Better Business Bureau of Oklahoma's website, there were 20 complaints filed within the last three years prior to July 2016. Exhibit G is a true and correct copy of a page from the Oklahoma BBB's website, <http://www.bbb.org/tulsa/business-reviews/natural-gas-companies/tiger-natural-gas-inc-in-tulsa-ok-33000688>, as of July 2016 and is incorporated as if set forth in full in this Statement of Facts.

V. CLASS ACTION ALLEGATIONS

82. Plaintiffs bring this Class Action for damages, restitution, and injunctive relief on behalf of the following Class (the "**Class**"): All California consumers and businesses who received a telemarketing Sales Call from Tiger or its Telemarketing Agents that was recorded without consent of the recipients, who became aware of the recording within one year prior to the filing of this Action and continuing until final disposition of the Action. The Class includes California consumers and businesses in Northern California (within PG&E's territory) *and* outside of Northern California (within the territories of other Gas Companies).

83. Plaintiffs bring this Class Action for damages and injunctive relief on behalf of the following Sub-Class (the "**Do Not Call Sub-Class**"): All California consumers and business who received a telemarketing call from Tiger or its Telemarketing Agents (CGC and DOEs 3-50) at a landline or cellular telephone number that was registered on the Do Not Call list, within four years prior to the filing of this Action and continuing until final disposition of the Action. Although the Third Amended Complaint no longer states a cause of action for violations of the Telephone Consumer Protection Act, the Do Not Call Sub-Class is still relevant because Tiger's

1 Sales Calls to numbers on the Do Not Call list violate other statutes which serve as predicate
2 violations for Plaintiffs' Unfair Competition Law causes of action.

3 84. Plaintiffs bring this Class Action for damages, restitution, and injunctive relief on behalf
4 of the following Sub-Class (the "**Enrollee Sub-Class**"): All California consumers and businesses
5 who enrolled in Tiger's natural gas price protection program after receiving representations
6 (including via telemarketing) claiming that the program is "free" and/or that the program can
7 save them money versus their current gas provider's rates due to a rate cap, within: a) two years
8 prior to the filing of this Action and continuing until final disposition of the Action for the
9 Breach of Oral Contract cause of action; b) within three years prior to the filing of this Action
10 and continuing until final disposition of the Action for the Fraud, Negligent Misrepresentation,
11 and Violations of Regulations on Core Transport Agents causes of action; and/or c) within four
12 years prior to the filing of this Action and continuing until final disposition of the Action for the
13 False Advertising Law and Unfair Competition Law causes of action.

14 85. Plaintiffs bring this Class Action for damages, restitution, and injunctive relief on behalf
15 of the following Sub-Class (the "**PG&E Enrollee Sub-Class**"): All California consumers and
16 businesses, previously customers of PG&E, who enrolled in Tiger's natural gas price protection
17 program after receiving representations (including via telemarketing) claiming that the program
18 is "free" and/or that the program can save them money versus their current gas provider's rates
19 due to a rate cap, within: a) two years prior to the filing of this Action and continuing until final
20 disposition of the Action for the Breach of Oral Contract cause of action; b) within three years
21 prior to the filing of this Action and continuing until final disposition of the Action for the PG&E
22 Gas Rule 23, Fraud, Negligent Misrepresentation, and Violations of Regulations on Core
23 Transport Agents causes of action; and/or c) within four years prior to the filing of this Action
24 and continuing until final disposition of the Action for the Breach of Third Party Beneficiary
25 Contract, False Advertising Law, and Unfair Competition Law causes of action.

26 86. Plaintiffs bring this Class Action for damages, restitution, and injunctive relief on behalf
27 of the following Sub-Class (the "**Consumer Enrollee Sub-Class**"): All consumer members, but
28 not business members, of the Enrollee Sub-Class and PG&E Enrollee Sub-Class, who enrolled in
29 Tiger's natural gas price protection program after receiving representations (including via
30 telemarketing) claiming that the program is "free" and/or that the program can save consumers
31 money versus their current gas provider's rates due to a rate cap, within three years prior to the

1 filing of this Action and continuing until final disposition of the Action for the Consumers Legal
2 Remedies Act cause of action.

3 87. Excluded from the Class and the Sub-Classes are:

- 4 • Defendants' officers, directors, legal representatives, employees, co-conspirators,
5 successors, subsidiaries, and assigns.
- 6 • Any judge, justice, or judicial officer presiding over this matter and the members
7 of their immediate families and judicial staff.

8 88. **Numerosity (Fed. R. Civ. Proc. 23(a)(1)).** The proposed Class and Sub-Classes are so
9 numerous that individual joinder of all its members is impractical. Due to the nature of the trade
10 and commerce involved, and the fact that Tiger/CGC expressly stated that they were calling *all*
11 PG&E customers (not to mention Tiger's solicitation of customers of other California Gas
12 Companies such as Southern California Gas Company), Plaintiffs believe that the total number
13 of Class and Sub-Class members is in the thousands or even hundreds of thousands, or millions
14 (based on CGC's representations that it was calling all PG&E customers) and that members of
15 the Class and Sub-Classes are numerous and geographically dispersed throughout California.
16 While the exact number and identities of the Class and Sub-Class members are unknown at this
17 time, such information can be ascertained through appropriate investigation and discovery.

18 89. **Commonality and Predominance (Fed. R. Civ. Proc. 23(a)(2), (b)(3)).** Common
19 questions of law and fact exist as to all members of the Class and Sub-Classes and predominate
20 over any questions that affect only individual members of the Class and Sub-Classes. There is a
21 well-defined community of interest in the questions of law and fact involved affecting the Class
22 and Sub-Classes, and these common questions predominate over any questions that may affect
23 individual Class and Sub-Class members. Common questions of fact and law include, but are
24 not limited to, the following:

- 25 a. Did Tiger and its Telemarketing Agents call Class Members to advertise its
26 natural gas price protection program, and record those calls without the recipients'
27 consent?
- 28 b. Did Tiger and its Telemarketing Agents call Do Not Call Sub-Class Members at
29 their telephone numbers that were on the Do Not Call list?
- 30 c. Did Tiger and its Telemarketing Agents allege to Enrollee Sub-Class Members
31 that California Gas Companies (including but not limited to PG&E) were in the
process of raising their gas procurement rates when in fact the rates were
decreasing?

- d. Did Tiger and its Telemarketing Agents represent to Enrollee Sub-Class Members that it was free to participate in Tiger's natural gas price protection program?
- e. Did Tiger charge Enrollee Sub-Class Members an undisclosed \$0.05 daily charge for participating in its natural gas price protection program?
- f. Did Tiger and its Telemarketing Agents represent to Enrollee Sub-Class Members that it priced its gas based on the market rate?
- g. Did Tiger price its gas to Enrollee Sub-Class Members far higher than the market rate?
- h. Did Tiger and its Telemarketing Agents represent to Enrollee Sub-Class Members that California Gas Companies (including, but not limited to, PG&E) could charge more for natural gas procurement than they really could?
- i. Did Tiger and its Telemarketing Agents represent to Enrollee Sub-Class Members that the natural gas price protection program capped gas prices at a price below what California Gas Companies (including but not limited to PG&E) could charge?
- j. Would it have been possible for any California Gas Company (including but not limited to PG&E) to charge Enrollee Sub-Class Members a rate for natural gas procurement that was higher than Tiger's price cap?
- k. As to the PG&E Enrollee Sub-Class, did Tiger and its Telemarketing Agents violate the PG&E Gas Rule 23 tariff regulating solicitation of prospective customers?
- l. As to the PG&E Enrollee Sub-Class, did Tiger and its Telemarketing Agents breach the CGAS contract between Tiger and PG&E, which expressly incorporates PG&E Gas Rule 23, and of which Tiger's prospective customers are intended third-party beneficiaries?

90. **Typicality (Fed. R. Civ. Proc. 23(a)(3)).** Plaintiffs' claims are typical of the claims of the members of the Class and Sub-Classes. Tiger's calls to Plaintiffs and all members of the Class were recorded without their consent. Faria and all members of the Do Not Call Sub-Class received Tiger's calls at telephone numbers on the Do Not Call list. Plaintiffs and all members of the Enrollee Sub-Class who agreed to purchase Tiger's gas have been similarly affected by Tiger's common course of conduct since they all received the same representations and: a) They were assessed with \$0.05 daily charges; b) The rate they paid for Tiger's gas in the Program was far above the market rate; c) The price cap had no benefit or value because it was set higher than what the Sub-Class Members' other former Gas Companies (including but not limited to PG&E)

could have charged them; d) They relied on Tiger and its Telemarketing Agents' claims when they entered into oral contracts with Tiger; and e) Tiger knew at the time that its/its Telemarketing Agents' representations to Sub-Class members were not true.

91. **Adequacy (Fed. R. Civ. Proc. 23(a)(4)).** Plaintiffs will fairly and adequately represent and protect the interests of the Class and Sub-Classes. Plaintiffs have no interests adverse to that of the Class and Sub-Classes. Plaintiffs have retained counsel with substantial experience in handling complex class actions and multi-party litigation and prosecuting false advertising consumer actions. Plaintiffs and their counsel are committed to vigorously prosecuting this Action on behalf of the Class and Sub-Classes.

92. **Superiority (Fed. R. Civ. Proc. 23(b)(1), (b)(3)).** A Class Action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class and Sub-Classes is impractical. Even if individual Class and Sub-Class Members had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Tiger and its Telemarketing Agents' common course of conduct. The Class Action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class Members' claims in a single forum. The conduct of this Action as a Class Action conserves the resources of the parties and of the judicial system and protects the rights of the Class and Sub-Class Members. Furthermore, for many, if not most, a Class Action is the only feasible mechanism that allows an opportunity for legal redress and justice. Adjudication of individual class members' claims with respect to Tiger and its Telemarketing Agents would, as a practical matter, be dispositive of the interests of other members not parties to the adjudication, and could substantially impair or impede the ability of other class members to protect their interests. All Class Members seek the same statutory damages for Tiger and its Telemarketing Agents recording the Sales Calls without consent. Although individual Enrollee Sub-Class Members will claim different damages/restitution based on how long each bought gas from Tiger, and whether they were senior citizens at the time they entered into the oral contracts with Tiger, there are common issues as to liability and the methodology for calculation would be identical (Tiger procurement price minus former Gas Company procurement price, multiplied by usage, and adding \$0.05 per day and the tax

1 differential), with the same enhancement for recipients who were senior citizens when Tiger or
2 its Telemarketing Agents called them.

3 93. **Injunctive and Declaratory Relief (Fed. R. Civ. Proc. 23(b)(2)).** As alleged herein and
4 below, Tiger and its Telemarketing Agents (CGC and DOEs 3-50) acted or refused to act on
5 grounds that apply generally to the Class and Sub-Classes, so that final injunctive relief or
6 corresponding declaratory relief is appropriate respecting the Class and Sub-Classes as a whole.

7
8 **FIRST CAUSE OF ACTION**

9 **[Violations of California Recording Law, Cal. Penal Code § 632 *et seq.*]**
10 **(By Plaintiffs Fishman and Faria and the Class)**
11 **(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

12 94. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

13 95. Plaintiffs bring this Action within one year of learning that Tiger/CGC recorded the Sales
14 Call to them. *See* Cal. Code Civ. Proc. § 340. As discussed in more detail above, Plaintiffs
15 could not have, with reasonable diligence, discovered that the Sales Calls were recorded any
16 sooner because such information was exclusively within the possession of Tiger/CGC until
17 Tiger's former counsel provided a recording of the Sales Call to Fishman within one year of
18 Tiger/CGC making the call, and Fishman filed this Action within one year of learning the Sales
19 Call was recorded.

20 96. Although California's Recording Law is codified in the Penal Code, recipients injured by
21 violations of the statute have standing to pursue remedies even without demonstrating that they
22 suffered actual damages. *See* Cal. Pen. Code § 637.2(a), (c).

23 97. Plaintiffs are informed and believe and thereon allege that most if not all other Class
24 Members do not know, even as of the filing of this Action, that Tiger/CGC's Sales Calls to them
25 were being recorded, so the statute of limitations had not even started to run for the other Class
26 Members as of the filing of this Action.

27 **A. Tiger's Sales Calls to Landline Telephone Numbers are Confidential Because the Sales**
28 **Calls Involved Confidential Information**

29 98. Cal. Penal Code § 632(a) prohibits:

30 A person [from] intentionally and without the consent of all parties to a
31 confidential communication, [using] an electronic amplifying or recording device
to eavesdrop upon or record the confidential communication, whether the

1 communication is carried on among the parties in the presence of one another or
2 by means of a telegraph, telephone, or other device, except a radio . . .

3 99. Cal. Penal Code § 632(c) states that a:

4 “confidential communication” means any communication carried on in
5 circumstances as may reasonably indicate that any party to the communication
6 desires it to be confined to the parties thereto, but excludes a communication
7 made in a public gathering or in any legislative, judicial, executive, or
8 administrative proceeding open to the public, or in any other circumstance in
which the parties to the communication may reasonably expect that the
communication may be overheard or recorded.

9 100. Plaintiffs are informed and believe and thereon allege that corporate Defendants have no
10 basis to understand what objectively reasonable consumer beliefs would be in this situation.

11 Indeed, the California Supreme Court stated in *Kearney v. Salomon Smith Barney Inc.* that
12 “California consumers are accustomed to being informed at the outset of a telephone call
13 whenever a business entity intends to record the call.” 39 Cal. 4th 95, 118 n.10 (2006).

14 101. Tiger and its Telemarketing Agents’ Sales Calls to Plaintiffs and Class Members
15 contained objectively confidential communications because a reasonable consumer would expect
16 that communications involving his or her home address, billing and usage information, rate
17 schedule, and Gas Company account number – which Plaintiffs disclosed during the Sales Calls
18 but are redacted from the transcript of the Sales Call to Fishman as shown in Exhibit E – would
19 be confined to the parties to the call.

20 102. Tiger and its Telemarketing Agents’ Sales Calls to Plaintiffs were not made in any kind
21 of public setting.

22 103. Plaintiffs did not hear any beeps during the Sales Calls that would have indicated that the
23 Sales Calls were being recorded.

24 104. Neither Plaintiffs nor any reasonable consumer would reasonably expect that Tiger and
25 its Telemarketing Agents’ Sales Calls were being recorded precisely because so many other
26 telemarketers *do* disclose that calls to California are being recorded, particularly when
27 confidential information is being communicated.

28 105. Additionally, neither Plaintiffs nor any reasonable consumer would reasonably expect
29 that Tiger and its Telemarketing Agents’ Sales Calls were being recorded precisely because the
30 subsequent TPV Calls did request consent to record. And the fact that the second TPV Calls
31

1 obtained Plaintiffs' consent to record does not retroactively cure Tiger and its Telemarketing
2 Agents' failure to obtain their consent to record the first Sales Calls.

3 106. Finally, Cal. Public Utilities Code §§ 985, 985(a) expressly states that CTAs must keep
4 "Customer information [] confidential unless the customer consents in writing. This shall
5 encompass confidentiality of customer-specific billing, credit, or usage information."

6 107. The fact that PG&E Gas Rule 23 requires the recording of Sales Calls, without
7 addressing consent one way or the other, does not mean that Tiger and its Telemarketing Agents
8 can ignore the consent requirement of Cal. Penal Code § 632 *et seq.* If there were any conflict
9 between the statute and the tariff, a California statute like Cal. Penal Code § 632 would override
10 a state agency regulation like PG&E Gas Rule 23. *See PaintCare v. Mortensen*, 233 Cal. App.
11 4th 1292, 1306 (2d Dist. 2015) ("Regulations that are inconsistent with a statute, alter or amend
12 it, or enlarge or impair its scope are void"); *Brown v. Superior Court*, 213 Cal. App. 4th 61, 71
13 (4th Dist. 2013) ("The language of a statute controls over an inconsistent regulation"). But, here,
14 it was possible and would have been easy for Tiger and its Telemarketing Agents to comply with
15 both PG&E Gas Rule 23 and the California Recording Law by recording the Sales Calls after
16 obtaining the call recipients' consent.

17
18 WHEREFORE, Plaintiffs Fishman and Faria and the Class pray for judgment against Defendants
19 as hereinafter set forth.

20
21 **SECOND CAUSE OF ACTION**

22 **[Breach of Oral Contract, Cal. Civil Code § 1622]**
23 **(By Plaintiff Fishman and the Enrollee Sub-Class)**
24 **(Against Tiger)**

25 108. Fishman hereby incorporates the foregoing paragraphs as though set forth in full herein.

26 109. Fishman brings this Action within two years of Tiger calling her to advertise the
27 Program. *See* Cal. Code Civ. Proc. § 339.

28 110. Fishman and the Enrollee Sub-Class on the one hand, and Tiger on the other hand,
29 entered into oral contracts by which Fishman and Enrollee Sub-Class Members agreed to
30 participate in Tiger's natural gas price protection program and buy natural gas from Tiger. *See*
31 Cal. Civ. Code § 1622.

1 111. By the terms of the oral contracts, Tiger offered Fishman and Enrollee Sub-Class
2 Members a “free” Program, whereby gas would be priced based on the market price, with no
3 added surcharges or fees, and that there would be a price cap that was a customer benefit because
4 Fishman and Enrollee Sub-Class Members’ former utilities could charge more than that cap.

5 112. Fishman and Enrollee Sub-Class Members did all, or substantially all, of the significant
6 things that the oral contracts required, namely, pay for Tiger’s gas. Thus, Fishman and Enrollee
7 Sub-Class Members provided consideration to Tiger.

8 113. All conditions required by the contracts for Tiger’s performance had occurred.

9 114. Tiger breached the oral contracts by charging Fishman and the Enrollee Sub-Class a daily
10 charge of \$0.05 in addition to gas procurement for participating in the Program, even though
11 Tiger/CGC had represented that the Program was free.

12 115. Tiger breached the oral contracts by charging Fishman and the Enrollee Sub-Class prices
13 that were not based on the market rate, and that were far more than the market rate and far more
14 than PG&E would have charged. For example, even as PG&E’s gas procurement rate dropped
15 by 52% from February to April 2016 (\$0.4058/therm to \$0.1944/therm), Tiger’s rate dropped by
16 only 7% (\$0.6555/therm to \$0.6097/therm).

17 116. Tiger breached its promises by failing to deliver any customer benefits via the price cap,
18 in that the price cap was above what Fishman and the Enrollee Sub-Class’s former utilities could
19 and did charge for gas.

20 117. Fishman and the Enrollee Sub-Class were harmed by Tiger’s breach of oral contracts.

21 118. Whatever terms and conditions Tiger might have mailed to Fishman and the Enrollee
22 Sub-Class after formation of the contracts have no bearing on and could not modify the oral
23 contracts formed during Tiger and its Telemarketing Agents Sales Calls, because, *inter alia*: a)
24 Plaintiffs are informed and believe that any such subsequently-mailed terms and conditions
25 contradicted the promises during the Sales Calls; b) neither Plaintiffs nor Sub-Class Members
26 agreed to be bound by such subsequently-mailed terms and conditions; and c) any such
27 subsequently-mailed terms and conditions that are inconsistent with the oral contracts formed
28 during the Sales Calls are null and void because, as alleged in the Third and Fourth Causes of
29 Action below, PG&E Gas Rule 23 and Tiger’s CGAS contract with PG&E (incorporating PG&E
30 Gas Rule 23), *see Exhibits B-D*, prohibit Tiger from “alter[ing] the terms and conditions to
31 which the Customer agreed in the telephonic enrollment.”

WHEREFORE, Plaintiff Fishman and the Enrollee Sub-Class pray for judgment against Defendants as hereinafter set forth.

THIRD CAUSE OF ACTION

**[Violations of PG&E Gas Rule 23 Tariff]
(By Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-Class)
(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

119. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

120. PG&E Gas Rule 23 is a tariff, approved by the California Public Utilities Commission, authorizing Core Transport Agents, such as Tiger, to supply natural gas to residential and commercial customers. PG&E Gas Rule 23 regulates customer protection matters, establishing requirements and protocols for matters at issue here, specifically customer enrollment (Section D), termination of service (Section E), and additional requirements for obtaining customer authorization/verification and cancellation, including that the initial term of service is 12 months (Schedule G-CT). *See Exhibits B-C.*

121. As a filed tariff approved by the CPUC, PG&E Gas Rule 23 has the same force and effect of a statute, so Plaintiffs can therefore sue for violation of the tariff. *See Trammell v. Western Union Telegraph Company*, 57 Cal. App. 3d 538, 550-51 (1st Dist. 1976); *Ball v. GTE Mobilnet*, 81 Cal. App. 4th 529, 541-42 (3d Dist. 2000) (stating that the seventh cause of action, alleging charging full rates for incomplete calls for bucket plans in violation of CPUC tariffs, survived defendant's demurrer).

122. However, Plaintiffs do *not* challenge the terms, adequacy, or reasonableness of PG&E Gas Rule 23. Therefore, this Court's assumption of jurisdiction over this cause of action does not hinder or interfere with the CPUC's authority. *See* Cal. Pub. Util. Code § 1759. This Court can determine that Tiger and its Telemarketing Agents violated PG&E Gas Rule 23 and that would in no way hinder or interfere with the CPUC's ability to regulate Tiger. Courts are not precluded from acting in aid of, rather than in derogation of, the CPUC's jurisdiction. *Hartwell Corp. v. Superior Court*, 27 Cal. 4th 256, 275 (2002). Courts may therefore entertain actions which seek to enforce, rather than challenge, obligations created by the CPUC. *North Star Gas Company*, U.S. Dist. LEXIS 131684 at *36-37.

1 123. Plaintiffs bring this Action within three years of Tiger calling them to advertise its natural
2 gas price protection program. *See* Cal. Code Civ. Proc. § 338(a).

3 124. PG&E Gas Rule 23, § D is expressly titled “Customer Protection” and reads as follows:

4 D. CUSTOMER PROTECTION

5 1. ENROLLMENT OF CUSTOMERS

6 a. The CTA or its authorized agent(s) shall comply with the Customer
7 Sign-Up Process and obtain the Customer’s Authorization in accordance
8 with the provisions of Schedule G-CT – Core Gas Aggregation Service.

9 b. The CTA, or its authorized agent(s), shall not make, with dishonest,
10 fraudulent, or deceitful intent, material verbal or written
11 misrepresentations in the course of soliciting or serving core gas
12 aggregation customers.

13 c. The CTA or its authorized agent(s) shall not with dishonest, fraudulent,
14 or deceitful intent act to substantially benefit the CTA or its employees,
agents, or representatives, or to disadvantage customers.

15 125. PG&E Gas Rule 23, Schedule G-CT – referenced in § D(1)(a) – sets forth additional
16 requirements for obtaining customer authorization/verification and cancellation, including that
17 the initial term of service is 12 months.

18 126. PG&E Gas Rule 23, § E(1) is expressly titled “NON-COMPLIANCE WITH
19 CUSTOMER PROTECTION” and states that PG&E may terminate the CTA Service Agreement
20 for the CTA’s failure to comply with § D, and outlines a process by which customers may – not
21 “must” – submit a complaint to PG&E for the CTA’s violations of § D. In case of a customer
22 complaint, PG&E has the right to request that the CTA provide written documentation/
23 recordings of the customer’s authorization for enrollment, marketing materials, the sales calls,
24 and third party verification.

25 127. PG&E Gas Rule 23, § E(2) (“THIRD PARTY VERIFICATION”) sets forth additional
26 requirements for CTAs (and their agents) during the second TPV Call, including disclosure of all
27 material pricing provisions, such as price per therm, the length of the contract term, and any
28 other fees or costs. Section E(2) also expressly prohibits CTAs from mailing written terms and
29 conditions that alter the terms and conditions to which new customers agreed during the Sales
30 Calls..
31

1 **A. Tiger/CGC Violated Tariff Terms Related to Contract Duration**

2 128. PG&E Gas Rule 23, § D(1)(a) states that “The CTA or its authorized agent(s) shall
3 comply with the Customer Sign-Up Process and obtain the Customer’s Authorization in
4 accordance with the provisions of Schedule G-CT – Core Gas Aggregation Service.”

5 129. Page 4 of PG&E Gas Rule 23, Schedule G-CT states that “The initial term (length) of
6 service under a Customer Authorization will be twelve (12) consecutive months from the
7 effective service date.” PG&E Gas Rule 23, § E(2)(i)(3) requires that Tiger disclose the length
8 of the contract term.

9 130. Tiger/CGC violated Schedule G-CT, and therefore PG&E Gas Rule 23, §§ D(1)(a) and
10 E(2)(i)(3), by attempting to bind new customers to a three year/36 month term during the Sales
11 Calls. Nothing in the Sales Call or the TPV Call disclosed a one year/12 month term; the only
12 stated measure of contract duration was three years/36 months.

13 **B. Tiger/CGC Violated Tariff Terms Related to Pricing**

14 131. PG&E Gas Rule 23, § D(1)(b) states that “The CTA, or its authorized agent(s), shall not
15 make, with dishonest, fraudulent, or deceitful intent, material verbal or written
16 misrepresentations in the course of soliciting or serving core gas aggregation customers,” and
17 § D(1)(c) states that “The CTA or its authorized agent(s) shall not with dishonest, fraudulent, or
18 deceitful intent act to substantially benefit the CTA or its employees, agents, or representatives,
19 or to disadvantage customers.”

20 132. PG&E Gas Rule 23, § E(2)(i)(2) requires that Tiger disclose all material pricing
21 provisions, and § E(2)(i)(6) requires that Tiger disclose any fees or costs not referenced above.

22 133. As described elsewhere in detail and incorporated herein, Tiger/CGC failed to disclose or
23 misrepresented during the Sales Calls: a) PG&E gas procurement prices and trends; b) the \$0.05
24 daily charge; c) the surcharge on top of the market rate; and d) the overall “value” of Tiger’s
25 Program’s price cap, all of which hurt customers, and all for the purpose of soliciting customers
26 and benefiting Tiger/CGC. Specifically:

27 134. Tiger/CGC did not clearly disclose that Tiger would charge customers \$0.05 daily as part
28 of the “it’s all free” program. Tiger/CGC’s vague reference to “daily charges” without
29 specifying how much that charge might be cannot constitute valid disclosure and create a
30 “meeting of the minds” such that Plaintiffs agreed to the charge. Tiger/CGC also failed to
31

clearly disclose in the Sales Call or the TPV Call its additional, arbitrary surcharges on top of the market rate, which do not seem to be a daily, quarter, or capacity cost.

135. Tiger/CGC induced Plaintiffs to sign up for the Program by expressly claiming in the Sales Call that PG&E's supply rates would be increasing for three years, when in truth PG&E's supply/procurement rates were falling and it was PG&E's delivery/transmission rates that would be increasing, which means that even new Tiger customers would still be paying those rate increases because PG&E still delivers Tiger gas.

136. Tiger/CGC falsely induced Plaintiffs to sign up for the Program by claiming that PG&E could charge \$1.06 per therm within a year for gas procurement, in order to make the Program's price cap of \$0.69/therm appear to be a customer benefit, even though PG&E could not have charged rates as high as \$0.69/therm.

C. Tiger/CGC Violated Tariff Terms Related to Third Party Verification Calls

137. After each of Plaintiffs Fishman and Faria and the Enrollee Sub-Class's Sales Calls were completed, there was a second TPV Call to verify the new customers' acceptance of Tiger's offer to enroll them in the Program. *See Exhibit E.*

138. PG&E Gas Rule 23, § E(2) sets forth requirements for TPV Calls to verify customers' agreement to switch from PG&E to another gas provider, such as Tiger.

139. PG&E Gas Rule 23, § E(2)(i) states that TPV Calls must provide a verbal statement and "verify the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to...." PG&E Gas Rule 23, § E(2)(i)(2) states that TPV Calls must state and verify acceptance of *all* material pricing provisions, such as the price per therm. PG&E Gas Rule 23, § E(2)(i)(6) states that TPV Calls must state and verify acceptance of any fees or costs to the customer not referenced above.

140. Tiger/CGC violated PG&E Gas Rule 23, § E(2)(i)(2) and (6) because the TPV Calls did not disclose or verify Plaintiffs Fishman and Faria and the Enrollee Sub-Class' acceptance of the \$0.05 daily charge and undefined surcharges on top of the market rate.

141. PG&E Gas Rule 23, § E(2)(i)(10)(a) states that the TPV Calls must advise customers that they have three business days *from the confirmation notice postmark date* to rescind enrollment with a new gas provider.

142. Tiger/CGC violated PG&E Gas Rule 23, § E(2)(i)(10)(a) by merely stating that customers have three business days to cancel, which an ordinary consumer would likely believe begins on the day that the TPV Call *made the statement*.

D. Tiger Violated Tariff Terms Related to Written Confirmation of Terms and Conditions

143. PG&E Gas Rule 23, § E(2)(i)(11)(a) states that if customer enrollment is by telephone, as was the case with Fishman, Faria, and the Enrollee Sub-Class, then the CTA (Tiger) must, “within three (3) business days, send the Customer a written confirmation that details the specific terms and conditions *agreed to by the Customer during the telephonic enrollment*” (emphasis added).

144. Without conceding that Tiger sent any written confirmation at all to Plaintiffs Fishman and Faria and the Enrollee Sub-Class, even if Tiger did send a written confirmation, Tiger violated PG&E Gas Rule 23, § E(2)(i)(11)(a) by sending a written “confirmation” that did not confirm the terms of the oral contract (i.e., “It’s all free”), but actually added multiple terms that the new customers (i.e. Fishman, Faria, and the Enrollee Sub-Class) had not agreed to during the Sales Calls, namely the \$0.05 daily charge and undefined the surcharges on top of the market rate.

145. In fact, PG&E Gas Rule 23, § E(2)(i)(11)(a) continues: “Such confirmation shall in no way alter the terms and conditions to which the Customer agreed to [sic] in the telephonic enrollment.”

146. Without conceding that Tiger sent any written confirmation at all to Plaintiffs Fishman and Faria and the Enrollee Sub-Class, the written confirmation Tiger claims it sent violated PG&E Gas Rule 23, § E(2)(i)(10)(a) because it purported to materially alter the terms and conditions to which Plaintiffs Fishman and Faria and the Enrollee Sub-Class agreed (i.e. “It’s all free”) during the Sales Calls by stating that Tiger would charge \$0.05 per day and add undefined surcharges on top of the market rate. So, it is not only the case that Tiger violated PG&E Gas Rule 23 by sending terms and conditions purporting to alter the oral contracts, but additionally, because PG&E Gas Rule 23 prohibits Tiger from sending terms and conditions that are inconsistent with the oral contracts made during the Sales Calls, Tiger lacked the authority to propose (much less enforce) any such terms. Therefore, any written terms and conditions that are inconsistent with the oral contracts are void and without force and effect.

1 147. Plaintiffs Fishman and Faria and the Enrollee Sub-Class were harmed by Tiger/CGC's
2 multiple violations of PG&E Gas Rule 23.

3 148. Tiger/CGC's violations of PG&E Gas Rule 23 was a substantial factor in causing
4 Plaintiffs Fishman and Faria and the Enrollee Sub-Class' harm.

5
6 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
7 against Defendants as hereinafter set forth.

8
9 **FOURTH CAUSE OF ACTION**

10 **[Breach of Third-Party Beneficiary Contract, Cal. Civil Code § 1559]**
11 **(By Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-Class)**
12 **(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

13 149. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

14 150. PG&E Gas Rule 23 is a tariff, approved by the California Public Utilities Commission,
15 authorizing Core Transport Agents, such as Tiger, to supply natural gas to residential and
16 commercial customers. PG&E Gas Rule 23 regulates customer protection matters, establishing
17 requirements and protocols for matters at issue here, specifically customer enrollment (Section
18 D), termination of service (Section E), and additional requirements for obtaining customer
19 authorization/verification and cancellation, including that the initial term of service is 12 months
20 (Schedule G-CT). *See Exhibits B-C.*

21 151. The Core Gas Aggregation Services ("CGAS") Agreement between Tiger and PG&E
22 expressly incorporates PG&E Gas Rule 23. *See Exhibit D at *6.* Thus, the CGAS Agreement
23 between Tiger and PG&E converts the tariff's terms into contractual terms.

24 152. Plaintiffs bring this Action within four years of Tiger breaching the CGAS contract
25 between Tiger and PG&E, of which Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-
26 Class are intended third-party beneficiaries. *See Cal. Code Civ. Proc. § 337.*

27 153. The CGAS contract at PG&E Gas Rule 23, § D is expressly titled "Customer Protection"
28 and reads as follows:

29 **D. CUSTOMER PROTECTION**

30 **1. ENROLLMENT OF CUSTOMERS**

1 a. The CTA or its authorized agent(s) shall comply with the Customer
2 Sign-Up Process and obtain the Customer's Authorization in accordance
3 with the provisions of Schedule G-CT – Core Gas Aggregation Service.

4 b. The CTA, or its authorized agent(s), shall not make, with dishonest,
5 fraudulent, or deceitful intent, material verbal or written
6 misrepresentations in the course of soliciting or serving core gas
7 aggregation customers.

8 c. The CTA or its authorized agent(s) shall not with dishonest, fraudulent,
9 or deceitful intent act to substantially benefit the CTA or its employees,
10 agents, or representatives, or to disadvantage customers.

11 154. The CGAS contract at PG&E Gas Rule 23, Schedule G-CT – referenced in § D(1)(a) –
12 sets forth additional requirements for obtaining customer authorization/verification and
13 cancellation, including that the initial term of service is 12 months.

14 155. The CGAS contract at PG&E Gas Rule 23, § E(1) is expressly titled “NON-
15 COMPLIANCE WITH CUSTOMER PROTECTION” and states that PG&E may terminate the
16 CTA Service Agreement for the CTA's failure to comply with § D, and outlines a process by
17 which customers may – not “must” – submit a complaint to PG&E for the CTA's violations of
18 § D. In case of a customer complaint, PG&E has the right to request that the CTA provide
19 written documentation /recordings of the customer's authorization for enrollment, marketing
20 materials, the sales calls, and third party verification.

21 156. The CGAS contract at PG&E Gas Rule 23, § E(2) (“THIRD PARTY VERIFICATION”)
22 sets forth additional requirements for CTAs (and their agents) during the second TPV Call,
23 including disclosure of all material pricing provisions, such as price per therm, the length of the
24 contract term, and any other fees or costs. Section E(2) also expressly prohibits CTAs from
25 mailing written terms and conditions that alter the terms and conditions to which new customers
26 agreed during the Sales Calls..

27 157. The terms of the CGAS contract – including PG&E Gas Rule 23 – are clear enough that
28 the parties could understand what each was required to do. The parties agreed to certain
29 requirements that Tiger must meet in order to solicit PG&E's natural gas customers.

30 158. PG&E did all, or substantially all, of the significant things that the contract required it to
31 do. Tiger/CGC failed to do numerous things that the contract required them to do, as described
below.

159. Plaintiffs bring this Action within four years of Tiger/CGC's breaches of the CGAS contract. *See* Cal. Code Civ. Proc. § 337.

A. Plaintiffs are Intended Third Party Beneficiaries of the CGAS Contract, or at Minimum, PG&E Gas Rule 23 Sections D-E and Schedule G-CT, Expressly Incorporated by Reference into the CGAS Contract

160. *Shell v. Schmidt* held:

It is not required that the third party beneficiary be specifically named as a beneficiary. All that section 1559 requires is that the contract be "made expressly for the benefit of third parties," and "expressly" simply means "in an express manner; in direct or unmistakable terms; explicitly; definitely; directly."

126 Cal. App. 2d 279, 290 (1st Dist. 1954) (citation omitted). "The test in deciding whether a contract inures to the benefit of a third person is whether an intent to so benefit the third person appears from the terms of the agreement." *Luis v. Orcutt Town Water Company*, 204 Cal. App. 2d 433, 442 (2d Dist. 1962). The fact that PG&E might also benefit from Gas Rule 23 – because it prohibits Tiger from engaging in fraudulent advertising to wrongfully acquire PG&E's natural gas customers – does not bar Plaintiffs' claims as third party beneficiaries. *See Murphy v. Allstate Insurance Company*, 17 Cal. 3d 937, 943 (1976) ("A third party beneficiary may enforce a contract expressly made for his benefit. (Civ. Code, § 1559.) And although the contract may not have been made to benefit him alone, he may enforce those promises directly made for him"); *Arata v. Bank of America*, 223 Cal. App. 2d 199, 205 (3d Dist. 1963) ("The contract does not have to be for the exclusive benefit of a third party to be enforceable by him; both contracting parties can receive benefits under an enforceable third party beneficiary contract"); *Embury v. King*, 191 F. Supp. 2d 1071, 1086 (N.D. Cal. 2001) ("A third party beneficiary may enforce a contract expressly made for his benefit although the contract may not have been made to benefit him alone").

161. It is not required that the third party beneficiary be specifically named as a beneficiary. All that Cal. Civil Code § 1559 requires is that the contract be "made expressly for the benefit of third parties," and "expressly" simply means "in an express manner; in direct or unmistakable terms; explicitly; definitely; directly."

162. At least part of the CGAS Agreement between Tiger and PG&E – namely PG&E Gas Rule 23, §§ D-E and Schedule G-CT – is intended to benefit third parties, namely customers such as Plaintiffs Fishman, Faria, and the Enrollee Sub-Class.

1 163. Although Plaintiffs Fishman and Faria and the Enrollee Sub-Class are not expressly
 2 named parties to the CGAS or PG&E Gas Rule 23, as stated above, the CGAS contract at PG&E
 3 Gas Rule 23, § D is expressly titled “CUSTOMER PROTECTION” and § E(1) is expressly titled
 4 “NON-COMPLIANCE WITH CUSTOMER PROTECTION.” The terms of these sections
 5 require truthful advertising and prohibit Tiger from acting to benefit itself and to harm
 6 customers. Section E(2) sets forth additional disclosure requirements for Tiger (and its agents)
 7 during the second TPV Call, again, to ensure customers know all material pricing provisions.
 8 Schedule G-CT sets forth additional requirements for obtaining customer authorization/
 9 verification and cancellation, including stating that the initial term of service is 12 months.

10 164. Here, PG&E and Tiger entered into the CGAS contract and agreed to terms – including
 11 those set forth in PG&E Gas Rule 23, §§ D-E and Schedule G-CT – that on their face are
 12 intended to protect Tiger’s prospective and actual customers from Tiger engaging in fraudulent
 13 misrepresentations when it solicits them; therefore, Plaintiffs and the Enrollee Sub-Class are
 14 intended third-party beneficiaries of these sections. PG&E Gas Rule 23 clearly prohibits Tiger
 15 from defrauding prospective customers. Tiger cannot point to who else might be the primary
 16 beneficiary of such terms, if not Plaintiffs. The language speaks for itself; Tiger’s prospective
 17 and actual customers are not merely “incidental” beneficiaries; the language on its face clearly
 18 indicates intent to protect them from Tiger’s false advertising.

19 **B. Tiger/CGC Breached CGAS Contractual Terms Related to Contract Duration**

20 165. The CGAS contract at PG&E Gas Rule 23, § D(1)(a) states that “The CTA or its
 21 authorized agent(s) shall comply with the Customer Sign-Up Process and obtain the Customer’s
 22 Authorization in accordance with the provisions of Schedule G-CT – Core Gas Aggregation
 23 Service.”

24 166. Page 4 of PG&E Gas Rule 23, Schedule G-CT states that “The initial term (length) of
 25 service under a Customer Authorization will be twelve (12) consecutive months from the
 26 effective service date.” PG&E Gas Rule 23 § E(2)(i)(3) requires that Tiger disclose the length of
 27 the contract term.

28 167. Tiger/CGC breached the CGAS contract at Schedule G-CT and PG&E Gas Rule 23
 29 §§ D(1)(a) and E(2)(i)(3), by attempting to bind new customers to a three year/36 month term
 30 during the Sales Calls. Nothing in the Sales Call or the TPV Call disclosed a one year/12 month
 31 term; the only stated measure of contract duration was three years/36 months.

1 **C. Tiger/CGC Breached CGAS Contractual Terms Related to Pricing**

2 168. The CGAS contract at PG&E Gas Rule 23, § D(1)(b) states that “The CTA, or its
3 authorized agent(s), shall not make, with dishonest, fraudulent, or deceitful intent, material
4 verbal or written misrepresentations in the course of soliciting or serving core gas aggregation
5 customers,” and § D(1)(c) states that “The CTA or its authorized agent(s) shall not with
6 dishonest, fraudulent, or deceitful intent act to substantially benefit the CTA or its employees,
7 agents, or representatives, or to disadvantage customers.”

8 169. The CGAS contract at PG&E Gas Rule 23, § E(2)(i)(2) requires that Tiger disclose all
9 material pricing provisions, and § E(2)(i)(6) requires that Tiger disclose any fees or costs not
10 referenced above.

11 170. As described elsewhere in detail and incorporated herein, Tiger/CGC failed to disclose or
12 misrepresented during the Sales Calls: a) PG&E gas procurement prices and trends; b) the \$0.05
13 daily charge; c) the surcharge on top of the market rate; and d) the overall “value” of Tiger’s
14 Program’s price cap, all of which hurt customers, and all for the purpose of soliciting customers
15 and benefiting Tiger/CGC. Specifically:

16 171. Tiger/CGC did not clearly disclose that Tiger would charge customers \$0.05 daily as part
17 of the “it’s all free” program. Tiger/CGC’s vague reference to “daily charges” without
18 specifying how much that charge might be cannot constitute valid disclosure and create a
19 “meeting of the minds” such that Plaintiffs agreed to the charge. Tiger/CGC also failed to
20 clearly disclose in the Sales Call or the TPV Call its additional, arbitrary surcharges on top of the
21 market rate, which do not seem to be a daily, quarter, or capacity cost.

22 172. Tiger/CGC induced Plaintiffs to sign up for the Program by expressly claiming in the
23 Sales Call that PG&E’s supply rates would be increasing for three years, when in truth PG&E’s
24 supply/procurement rates were falling and it was PG&E’s delivery/transmission rates that would
25 be increasing, which means that even new Tiger customers would still be paying those rate
26 increases because PG&E still delivers Tiger gas.

27 173. Tiger/CGC falsely induced Plaintiffs to sign up for the Program by claiming that PG&E
28 could charge \$1.06 per therm within a year for gas procurement, in order to make the Program’s
29 price cap of \$0.69/therm appear to be a customer benefit, even though PG&E could not have
30 charged rates as high as \$0.69/therm.

1 **D. Tiger/CGC Breached CGAS Contractual Terms Related to Third Party Verification**
2 **Calls**

3 174. After each of Plaintiffs Fishman and Faria and the Enrollee Sub-Class's Sales Calls were
4 completed, there was a second TPV Call to verify the new customers' acceptance of Tiger's offer
5 to enroll them in the Program. *See Exhibit E.*

6 175. The CGAS contract at PG&E Gas Rule 23, § E(2) sets forth requirements for TPV Calls
7 to verify customers' agreement to switch from PG&E to another gas provider, such as Tiger.

8 176. The CGAS contract at &E Gas Rule 23, § E(2)(i) states that TPV Calls must provide a
9 verbal statement and "verify the customer's acceptance of each of the principal terms and
10 conditions for the service that will be provided, including, but not limited to...." The CGAS
11 contract at PG&E Gas Rule 23, § E(2)(i)(2) states that TPV Calls must state and verify
12 acceptance of *all* material pricing provisions, such as the price per therm. PG&E Gas Rule 23,
13 § E(2)(i)(6) states that TPV Calls must state and verify acceptance of any fees or costs to the
14 customer not referenced above.

15 177. Tiger/CGC breached the CGAS contract at PG&E Gas Rule 23, § E(2)(i)(2) and (6)
16 because the TPV Calls did not disclose or verify Plaintiffs Fishman and Faria and the Enrollee
17 Sub-Class' acceptance of the \$0.05 daily charge and undefined surcharges on top of the market
18 rate.

19 178. The CGAS contract at PG&E Gas Rule 23, § E(2)(i)(10)(a) states that the TPV Calls
20 must advise customers that they have three business days *from the confirmation notice postmark*
21 *date* to rescind enrollment with a new gas provider.

22 179. Tiger/CGC breached the CGAS contract at PG&E Gas Rule 23, § E(2)(i)(10)(a) by
23 merely stating that customers have three business days to cancel, which an ordinary consumer
24 would likely believe begins on the day that the TPV Call *made the statement*.

25 **E. Tiger Breached CGAS Contractual Terms Related to Written Confirmation of Terms**
26 **and Conditions**

27 180. The CGAS contract at PG&E Gas Rule 23, § E(2)(i)(11)(a) states that if customer
28 enrollment is by telephone, as was the case with Fishman, Faria, and the Enrollee Sub-Class,
29 then the CTA (Tiger) must, "within three (3) business days, send the Customer a written
30 confirmation that details the specific terms and conditions *agreed to by the Customer during the*
31 *telephonic enrollment*" (emphasis added).

181. Without conceding that Tiger sent any written confirmation at all to Plaintiffs Fishman and Faria and the Enrollee Sub-Class, even if Tiger did send a written confirmation, Tiger breached the CGAS contract at PG&E Gas Rule 23, § E(2)(i)(11)(a) by sending a written “confirmation” that did not confirm the terms of the oral contract (i.e., “It’s all free”), but actually added multiple terms that the new customers (i.e. Fishman, Faria, and the Enrollee Sub-Class) had not agreed to during the Sales Calls, namely the \$0.05 daily charge and undefined surcharges on top of the market rate.

182. In fact, the CGAS contract at PG&E Gas Rule 23, § E(2)(i)(11)(a) continues: “Such confirmation shall in no way alter the terms and conditions to which the Customer agreed to [sic] in the telephonic enrollment.”

183. Without conceding that Tiger sent any written confirmation at all to Plaintiffs Fishman and Faria and the Enrollee Sub-Class, the written confirmation Tiger claims it sent breached the CGAS contract at PG&E Gas Rule 23, § E(2)(i)(10)(a) because it purported to materially alter the terms and conditions to which Plaintiffs Fishman and Faria and the Enrollee Sub-Class agreed (i.e. “It’s all free”) during the Sales Calls by stating that Tiger would charge \$0.05 per day and add undefined surcharges on top of the market rate. So, it is not only the case that Tiger breached the CGAS contract at PG&E Gas Rule 23 by sending terms and conditions purporting to alter the oral contracts, but additionally, because the CGAS contract at PG&E Gas Rule 23 prohibits Tiger from sending terms and conditions that are inconsistent with the oral contracts made during the Sales Calls, Tiger lacked the authority to propose (much less enforce) any such terms. Therefore, any written terms and conditions that are inconsistent with the oral contracts are void and without force and effect.

184. Plaintiffs Fishman and Faria and the Enrollee Sub-Class were harmed by Tiger/CGC’s multiple breaches of the CGAS contract at PG&E Gas Rule 23.

185. Tiger/CGC’s breaches of the CGAS contract at PG&E Gas Rule 23 was a substantial factor in causing Plaintiffs Fishman and Faria and the Enrollee Sub-Class’ harm.

WHEREFORE, Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-Class pray for judgment against Defendants as hereinafter set forth.

FIFTH CAUSE OF ACTION

**[Violations of Consumers Legal Remedies Act, Cal. Civil Code § 1750 *et seq.*]
(By Plaintiffs Fishman and Faria and the Consumer Enrollee Sub-Class)
(Against Tiger)**

186. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

187. Plaintiffs bring this Action within three years of Tiger and/or its Telemarketing Agents calling them to advertise the Program. *See* Cal. Civ. Code § 1783.

188. The Consumers Legal Remedies Act (“CLRA”) “shall be liberally construed and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection.” *See* Cal. Civ. Code § 1760.

189. Plaintiffs and Consumer Enrollee Sub-Class members are “consumers” because each is an “individual who seeks or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.” *See* Cal. Civ. Code § 1761(d).

190. Tiger’s natural gas is a “good” because it is a “tangible chattel bought [] for use primarily for personal, family, or household purposes [].” *See* Cal. Civ. Code § 1761(a).

Tiger’s natural gas price protection program is a “service” because it is “service for other than a commercial or business use, including services furnished in connection with the sale or repair of goods.” *See* Cal. Civ. Code § 1761(b).

191. Plaintiffs and the Consumer Enrollee Sub-Class members’ dealings with Tiger and its Telemarketing Agents (CGC and DOEs 3-50) to purchase its gas are “transactions” because they are “agreement[s] between a consumer and any other person, whether or not the agreement is a contract enforceable by action, and includes the making of, and the performance pursuant to, that agreement.” *See* Cal. Civ. Code § 1761(e).

192. The CLRA prohibits various “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.” *See* Cal. Civ. Code § 1770(a).

193. Tiger violated Section 1770(a)(1) (“Passing off goods or services as those of another”), 1770(a)(2) (“Misrepresenting the source, sponsorship, approval, or certification of goods or services”) and (a)(3) (“Misrepresenting the affiliation, connection, or association with, or

1 certification by, another”) by claiming at the outset of the call to Plaintiffs and the Sub-Class that
2 its agents were calling on behalf of “Community Gas Center” rather than Tiger itself.

3 194. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
4 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
5 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
6 Consumer Enrollee Sub-Class a “price protection” program that would purportedly cap gas
7 prices at a rate lower than PG&E’s rate, despite knowing that PG&E’s rates could not be more
8 expensive than Tiger’s cap of \$0.69 during the next three years, and claiming that the cap of
9 \$0.69 per therm has financial benefits versus PG&E gas.

10 195. Tiger violated Section 1770(a)(8) (“Disparaging the goods, services, or business of
11 another by false or misleading representation of fact”) by knowingly falsely claiming to
12 Plaintiffs and the Consumer Enrollee Sub-Class that PG&E’s natural gas procurement rates were
13 increasing when in fact they were decreasing, and that PG&E could charge \$1.06 per therm,
14 twice the possible rate even assuming Tiger’s false claim of a 33% PG&E rate increase were
15 true.

16 196. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
17 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
18 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
19 Consumer Enrollee Sub-Class that its price protection program as “free” when in fact Tiger
20 charges \$0.05 per day and when in fact enrolling in the price protection program would
21 immediately lead to a significant increase in customers’ gas prices

22 197. Tiger violated Section 1770(a)(5) (“Representing that goods or services have
23 characteristics [or] benefits [] which they do not have”) and Section 1770(a)(9) (“Advertising
24 goods or services with intent not to sell them as advertised”) by representing to Plaintiffs and the
25 Consumer Enrollee Sub-Class that its gas would be priced at “a variable rate based on the market
26 price” when in fact the a surcharge was added to the market price to line Tiger’s pockets.

27 198. Fishman sent a letter to Tiger in California by certified return-receipt mail on June 22,
28 2017, as required by Cal. Civil Code § 1782, demanding that Tiger immediately correct its
29 unlawful marketing practices, including but not limited to: a) disclosing on its website and in all
30 forms of advertising (including telemarketing) that Tiger does not base its gas procurement
31 prices on market rates; b) disclosing on its website and in all forms of advertising (including

1 telemarketing) that Tiger's purported "cap" on gas procurement will not actually result in a lower
2 price to consumers than their current gas provider would charge; c) disclosing the \$0.05 daily
3 customer charge on its website and in all forms of advertising (including telemarketing); and d)
4 removing all claims from its website that there have been no complaints filed against Tiger with
5 the Better Business Bureau.

6 199. Fishman also demanded in her June 22, 2017 letter that Tiger notify her within 30 days
7 from its receipt of the letter that: a) Tiger had identified all similarly situated consumers (i.e.,
8 consumers who in the last three years agreed to purchase Tiger gas in reliance on claims that
9 Tiger's price cap could result in lower rates than PG&E, and consumers who in the last three
10 years agreed to enroll in Tiger's price protection program based on claims that the Program was
11 free); b) notified those consumers that Tiger is correcting its unlawful advertising practices; and
12 c) notified those consumers that upon their request, Tiger would reimburse all monies they paid
13 for Tiger gas in excess of their former gas provider's price for each month during which they
14 were Tiger customers, plus \$0.05 per day for each day that they were Tiger customers.

15 200. Tiger's response was due on June 22, 2017 plus 30 days plus five days for mailing in-
16 state, or July 27, 2017. Tiger did not provide a code-compliant response to Fishman's letter by
17 July 27, 2017 as required by Cal. Civil Code § 1782. In fact, Fishman had not received *any*
18 response to her June 22, 2017 letter as of the filing of this Action in the Superior Court of
19 California, County of Marin on August 18, 2017. Although Tiger was not required by law to
20 respond to Fishman's letter, Fishman's allegation that Tiger failed to timely respond is necessary
21 and proper to support her claim for damages under the CLRA.

22 201. Tiger's violations of Cal. Civil Code § 1770 damaged Plaintiffs and the Consumer
23 Enrollee Sub-Class members. Section 1780 authorizes remedies of actual damages, injunctive
24 relief, punitive damages, costs, and attorneys' fees. Section 1781 allows Plaintiffs to bring this
25 lawsuit as a Class Action.

26 202. Tiger's violations of the CLRA when it/CGC called senior citizens, such as Plaintiff
27 Faria, carry additional damages as set forth by Cal. Civil Code § 1780(b). Faria and senior
28 citizens in the Consumer Enrollee Sub-Class suffered substantial economic damage from Tiger's
29 conduct, which caused their natural gas procurement bills to significantly increase versus their
30 PG&E natural gas procurement bills if they had not switched to Tiger.

1 203. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Consumer
2 Enrollee Sub-Class after formation of the contract have no bearing on and cannot retroactively
3 cure Tiger's CLRA violations, particularly if those terms and conditions contradict the promises
4 and representations made by Tiger and its Telemarketing Agents during the Sales Calls.

5
6 WHEREFORE, Plaintiffs Fishman and Faria and the Consumer Enrollee Sub-Class pray for
7 judgment against Defendants as hereinafter set forth.

8
9 **SIXTH CAUSE OF ACTION**

10 **[Fraud, Cal. Civil Code § 1572]**

11 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
12 **(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

13 204. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

14 205. Plaintiffs bring this Action within three years of Tiger calling them to advertise its natural
15 gas price protection program. *See* Cal. Code Civ. Proc. § 338(d).

16 206. Tiger, by its Telemarketing Agents, fraudulently induced Plaintiffs and the Enrollee Sub-
17 Class to enroll in Tiger's Program. Apparent consent obtained by fraud is invalid. *See* Cal. Civ.
18 Code § 1567.

19 207. Tiger, by its Telemarketing Agents, represented to Plaintiffs and the Enrollee Sub-Class
20 via the Sales Calls that: a) their Gas Companies' (e.g. PG&E) natural gas procurement rates were
21 increasing when in fact they were decreasing; b) the Program was "free"; c) Tiger's gas price
22 was based on market price; and d) the price cap delivered customer benefits because the current
23 utility could raise its prices to a price higher than the Program's cap.

24 208. Tiger – in the natural gas business – knew that representations by its Telemarketing
25 Agents that PG&E's rates had already increased by 18.8% and would increase by 33% in the
26 next three years was false. In fact, PG&E's gas procurement rates were decreasing. This
27 misrepresentation was material because it made it appear that the Program's price cap could
28 deliver a customer benefit.

29 209. Tiger knew that representations by its Telemarketing Agents that the Program was free (a
30 material fact) was false, because Tiger charges \$0.05 per day to participate in the Program in
31

1 addition to the price of the gas itself, and because Tiger immediately raised customers' gas prices
2 to levels that far exceeded what the original utility would have charged.

3 210. Tiger knew that representations by its Telemarketing Agents that as part of the Program,
4 it charged customers for gas based on the market price (a material fact), was false, because, in
5 fact, Tiger adds a large surcharge to the market price to line its own pockets.

6 211. Tiger knew that representations by its Telemarketing Agents that the Program's price cap
7 delivered customer benefits was false. Tiger and its Telemarketing Agents made specific false
8 claims to Plaintiffs (or at a minimum, CGC made false claims to Plaintiff Fishman) when they
9 (falsely) stated as a fact that PG&E could raise its gas procurement price by 33% to \$1.06 per
10 therm within the next year. Tiger made this false claim in order to make its price cap of \$0.69
11 appear to deliver a customer benefit, when in fact the price cap had no such benefit at all. Thus,
12 Tiger's fraud was not advertising a price cap of \$0.69 per therm with the intent of charging more
13 than \$0.69, but rather the knowing presentation of an impossible scenario in which PG&E could
14 charge \$1.06 per therm, in order to make it appear that the price cap had any value at all to Tiger
15 customers.

16 212. Tiger knew that representations by its Telemarketing Agents that PG&E would be raising
17 its gas procurement rate by 33%, and PG&E could charge customers \$1.06 per therm within the
18 next year, was false.

19 213. Plaintiffs are informed and believe and thereon allege that Tiger, by its Telemarketing
20 Agents, made similar misleading claims about the purported "benefits" of Tiger's Program to
21 prospective customers who were, at the time, buying gas from other Gas Companies.

22 214. Tiger knew that these representations were false when its Telemarketing Agents made
23 such representations, and that its Telemarketing Agents made such representations recklessly and
24 without regard for the truth.

25 215. Tiger intended that Plaintiffs and the Enrollee Sub-Class rely on representations made by
26 its Telemarketing Agents during the Sales Calls.

27 216. Plaintiffs and the Enrollee Sub-Class reasonably relied on representations made by Tiger
28 and its Telemarketing Agents during the Sales Calls by agreeing to sign up for the Program
29 during the Sales Calls.

30 217. Plaintiffs and the Enrollee Sub-Class were harmed by relying on representations made by
31 Tiger and its Telemarketing Agents during the Sales Calls, because they paid significantly more

1 for natural gas than they would have by staying with their current gas provider. But for Tiger
2 and its Telemarketing Agents' Sales Calls, Plaintiffs and the Enrollee Sub-Class would not have
3 been so harmed.

4 218. Plaintiffs and the Enrollee Sub-Class's reliance on representations made by Tiger and its
5 Telemarketing Agents during the Sales Calls was a substantial factor in causing their harm.

6 219. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
7 Sub-Class after formation of the contract have no bearing on and cannot retroactively cure
8 Tiger's fraud, particularly if those terms and conditions contradict the promises and
9 representations made by Tiger and its Telemarketing Agents during the Sales Calls.

10
11 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
12 against Defendants as hereinafter set forth.

13
14 **SEVENTH CAUSE OF ACTION**

15 **[Negligent Misrepresentation, Cal. Civil Code §§ 1573, 1577]**
16 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
17 **(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

18 220. Plaintiffs hereby incorporates the foregoing paragraphs as though set forth in full herein.

19 221. Plaintiffs bring this Action within three years of Tiger calling them to advertise its natural
20 gas price protection program. *See* Cal. Code Civ. Proc. § 338(d).

21 222. "Because negligent misrepresentation is a species of fraud, and not common-law
22 negligence, Plaintiff need not allege a duty of care." *Gilmore v. Wells Fargo Bank N.A.*, 75 F.
23 Supp. 3d 1255, 1269 (N.D. Cal. 2014). *See also Century Surety Company v. Crosby Insurance*
24 *Inc.*, 124 Cal. App. 4th 116, 129 (4th Dist. 2004) (stating elements of the negligent
25 misrepresentation cause of action without mentioning a duty of care).

26 223. Alternatively, to the extent that the Court believes that duty of care is a necessary element
27 for a Negligent Misrepresentation cause of action, Tiger had a duty of care to Plaintiffs and the
28 Enrollee Sub-Class because they are members of "a specific class of persons" (Tiger customers)
29 involved in transactions (oral contracts to purchase Tiger gas) that Tiger, who supplied
30 information to Plaintiffs and the Sub-Class, intended the information to influence. Tiger and its
31 Telemarketing Agents undertook to furnish prospective customers with false information about

1 the Program to influence their purchase decisions. Further, Tiger and its Telemarketing Agents
2 supplied the information and directed their activity to a closed universe of third parties – current
3 customers of PG&E and other Gas Companies who might conceivably be interested in switching
4 to Tiger. Finally, Tiger its Telemarketing Agents supplied information for the sort of use –
5 influencing prospective customers’ purchase decisions – from which Plaintiffs and the Enrollee
6 Sub-Class’ alleged losses arose. *See Apex Directional Drilling LLC v. SHN Consulting*
7 *Engineers & Geologists Inc.*, 119 F. Supp. 3d. 1117, 1126-27 (N.D. Cal. 2015).

8 224. Tiger, by its Telemarketing Agents, represented to Plaintiffs and the Enrollee Sub-Class
9 via telemarketing and/or other forms of advertising important facts such as: a) Gas Companies’
10 natural gas procurement rates were increasing when in fact they were decreasing; b) the Program
11 was free; c) Tiger’s gas price was based on market price; and d) the price cap delivered customer
12 benefits because the current Gas Company could raise its prices to a price higher than the
13 Program’s price cap.

14 225. Tiger – in the natural gas business – knew that its/CGC’s representation that PG&E’s
15 rates had already increased by 18.8% and would increase by 33% in the next three years was
16 false. In fact, PG&E’s gas procurement rates were decreasing. This misrepresentation was
17 material because it made it appear that the Program’s price cap could deliver a customer benefit.

18 226. Plaintiffs are informed and believe and thereon allege that Tiger, by its Telemarketing
19 Agents, made similar misleading claims about the purported “benefits” of Tiger’s Program to
20 prospective customers who were, at the time, buying natural gas from other Gas Companies.

21 227. Tiger and its Telemarketing Agents’ representations that the Program was free (a material
22 fact) was not true, because Tiger charges \$0.05 per day to participate in the Program in addition
23 to the price of the gas itself, and because Tiger immediately raised consumers’ gas prices to
24 levels that far exceeded what they would have paid their existing utility for the same gas.

25 228. Tiger and its Telemarketing Agents’ representations that as part of the Program, Tiger
26 charged customers for gas based on the market price (a material fact), was not true. In fact,
27 Tiger added a large surcharge to the market price, resulting in gas charges significantly
28 exceeding what customers would have paid their existing utility for the same gas.

29 229. Tiger and its Telemarketing Agents’ representations that the Program’s price cap
30 delivered customer benefits was not true. These statements go beyond general advertising
31 puffery because, for example, Tiger and its Telemarketing Agents made specific false claims to

1 Plaintiffs (or at a minimum, CGC made false claims to Plaintiff Fishman) when they (falsely)
2 stated as a fact that PG&E could raise its gas procurement price by 33% to \$1.06 per therm
3 within the next year. Tiger made this false claim in order to make its price cap of \$0.69 appear
4 to deliver a customer benefit, when in fact the price cap had no such benefit at all. Thus, Tiger's
5 negligent misrepresentation was not advertising a price cap of \$0.69 per therm with the intent of
6 charging more than \$0.69, but rather presenting an impossible scenario in which PG&E could
7 charge \$1.06 per therm, in order to make it appear that the price cap had any value at all to Tiger
8 customers.

9 230. Tiger and its Telemarketing Agents' representations that PG&E would be raising its gas
10 procurement rate by 33%, and PG&E could charge customers \$1.06 per therm within the next
11 year, were not true.

12 231. Tiger and its Telemarketing Agents' representations that the Program was great for
13 customers was not true.

14 232. Even if Tiger and its Telemarketing Agents may have honestly believed that the above
15 representations were true, Tiger and its Telemarketing Agents had no reasonable grounds for
16 believing that the above representations were true when they made the representations.

17 233. Tiger and its Telemarketing Agents intended that Plaintiffs and the Enrollee Sub-Class
18 rely on their representations made during the Sales Calls.

19 234. Plaintiffs and the Enrollee Sub-Class reasonably relied on Tiger and its Telemarketing
20 Agents' representations made during the Sales Calls.

21 235. Plaintiffs and the Enrollee Sub-Class were harmed by relying on Tiger and its
22 Telemarketing Agents' representations made during the Sales Calls, because they paid
23 significantly more for natural gas than they would have by staying with their current gas
24 provider. But for Tiger and its Telemarketing Agents' Sales Calls, Plaintiffs and the Enrollee
25 Sub-Class would not have been so harmed.

26 236. Plaintiffs and the Enrollee Sub-Class's reliance on Tiger and its Telemarketing Agents'
27 representations made during the Sales Calls was a substantial factor in causing their harm.

28 237. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
29 Sub-Class after formation of the contract have no bearing on and cannot retroactively cure
30 Tiger's negligent misrepresentation, particularly if those terms and conditions contradict the
31 promises and representations made by Tiger and its Telemarketing Agents during the Sales Calls.

WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment against Defendants as hereinafter set forth.

EIGHTH CAUSE OF ACTION

**[Violations of Regulations on Core Transport Agents, Cal. Pub. Util. Code §§ 980-989.5]
(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)
(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

238. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

239. Plaintiffs bring this Action within three years of Tiger calling them to advertise its natural gas price protection program. *See* Cal. Code Civ. Proc. § 338(a).

240. Tiger is a Core Transport Agent.

241. Plaintiffs Fishman and Faria and the Enrollee Sub-Class are Core Gas Customers.

242. Cal. Public Utilities Code § 983.5(b) requires truthfulness when Core Transport Agents solicit customers:

A core transport agent may have its registration suspended or revoked, immediately or prospectively, in whole or in part, for any of the following acts:

(1) Making material misrepresentations in the course of soliciting customers, entering into service agreements with those customers, or administering those service agreements.

(2) Dishonesty, fraud, or deceit with the intent to substantially benefit the core transport agent or its employees, agents, or representatives, or to disadvantage retail gas customers. []

243. Although Plaintiffs Fishman and Faria and the Enrollee Sub-Class do not have the power to revoke Tiger's registration as a CTA, by setting forth conditions under which the CPUC can revoke a CTA's registration, the statute clearly indicates Legislative intent to prohibit CTAs from engaging in false advertising to solicit customers.

244. Tiger and its Telemarketing Agents violated the requirements of truthfulness sent forth in Cal. Pub. Util. Code § 983.5(b) by: a) representing that it could bind prospective customers to a 36-month term; b) purporting to bind new customers to a 36-month term; c) misrepresenting PG&E's gas procurement prices and trends; d) representing that the Program is "all free"; e) failing to disclose the Program's \$0.05 daily charge; f) falsely representing that PG&E could charge \$1.06 per therm for gas procurement within a year of the Sales Call to Fishman; g) misrepresenting the overall "value" of Tiger's Program's price cap in light of the maximum rates

1 that Tiger's customers' former gas providers could charge; and h) purportedly mailing written
2 terms and conditions that did not comport with and indeed attempted to change the terms to
3 which Tiger's new customers agreed during the Sales Calls.

4 245. Tiger and its Telemarketing Agents made these false claims in order to benefit
5 themselves, at the expense of Tiger's customers, who ended up paying significantly more for
6 Tiger's natural gas than they would have paid to their former gas providers.

7 246. Cal. Public Utilities Code § 986(a) requires clear written notice of pricing terms:

8 [A] core transport agent offering gas service to core gas customers shall, prior to
9 the commencement of service, provide the potential customer with a written
10 notice of the service describing the price, terms, and conditions of the service. The
11 notices shall include all of the following:

(1) A clear description of the price, terms, and conditions of service, including all
of the following:

12 (A) The price of gas expressed in a format that makes it possible for core gas
13 customers to compare and select among similar products and services on a
14 standard basis. The commission shall adopt rules to implement this subdivision.
15 The commission shall require disclosure of the total price of gas on a cents-per-
16 therm basis, including the costs of all gas services and charges regulated by the
17 commission. The commission shall also require estimates of the total monthly bill
18 for the gas service at varying consumption levels, including the costs of all gas
19 services and charges regulated by the commission. In determining these rules, the
commission may consider alternatives to the cents-per-therm disclosure if other
information would provide the customer with sufficient information to compare
among alternatives on a standard basis.

20 247. Plaintiffs Fishman and Faria do not concede that Tiger mailed written terms and
21 conditions for the Program to them and the Enrollee Sub-Class prior to the commencement of
22 service. But, even assuming that Tiger did timely mail the terms and conditions for which it
23 (improperly) requested judicial notice (Docket #9, 9-1, 9-2), the written terms and conditions
24 violate Cal. Public Utilities Code § 986 by: a) burying the Program's daily \$0.05 charge instead
25 of clearly disclosing it; b) referring to the Program's price cap only by reference to the TPV Call
26 instead of clearly disclosing the actual price cap; c) admitting that the price does *not* include
27 taxes, surcharges, daily nickel, capacity, and transportation charges, rather than disclosing the
28 *total* price of gas on a cents-per therm basis; d) failing to express the price of gas in a format that
29 makes it possible to compare and select among similar products and services on a standard basis,
30 because the terms and conditions do not clearly state the rate, price cap, and additional charges;
31

1 and e) failing to provide estimates of the total monthly bill for gas services at varying
2 consumption levels.

3
4 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
5 against Defendants as hereinafter set forth.

6
7 **NINTH CAUSE OF ACTION**

8 **[Violations of False Advertising Law, Cal. Business & Professions Code § 17500 *et seq.*]**
9 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
10 **(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

11 248. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

12 249. Plaintiffs bring this Action within four years of Tiger calling them to advertise its natural
13 gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

14 250. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17500
15 *et seq.* because they suffered injury in fact and lost money as the result of Tiger and its
16 Telemarketing Agents' false advertising. *See* Cal. Bus. & Prof. Code § 17204. Fishman lost
17 \$126.44 and Faria lost \$34.05, plus taxes and sundry charges, by enrolling in Tiger's Program, as
18 compared to their gas charges if they had stayed with PG&E.

19 251. Cal. Business & Professions Code § 17500 states:

20 It is unlawful for any person, firm, corporation or association, or any employee
21 thereof with intent directly or indirectly to dispose of real or personal property or
22 to perform services, professional or otherwise, or anything of any nature
23 whatsoever or *to induce the public to enter into any obligation* relating thereto, to
24 make or disseminate or cause to be made or disseminated before the public in this
25 state, or to make or disseminate or cause to be made or disseminated from this
26 state before the public in any state, in any newspaper or other publication, or any
27 advertising device, or by public outcry or proclamation, or in any other manner or
28 means whatever, including over the Internet, any statement, *concerning that real*
29 *or personal property or those services, professional or otherwise, or concerning*
30 *any circumstance or matter of fact connected with the proposed performance or*
31 *disposition thereof, which is untrue or misleading, and which is known, or which*
by the exercise of reasonable care should be known, to be untrue or misleading,
or for any person, firm, or corporation to so make or disseminate or cause to be so
made or disseminated any such statement as part of a plan or scheme with the
intent not to sell that personal property or those services, professional or
otherwise, so advertised at the price stated therein, or as so advertised. Any
violation of the provisions of this section is a misdemeanor punishable by

1 imprisonment in the county jail not exceeding six months, or by a fine not
2 exceeding two thousand five hundred dollars (\$2,500), or by both that
3 imprisonment and fine [emphasis added].

4 252. Tiger and its Telemarketing Agents falsely claimed in its Sales Calls to Plaintiffs and the
5 Sub-Class that its natural gas price protection program was great *because*: a) it was free; b) gas
6 prices were based on market prices; and c) gas prices were capped at a rate below which their
7 current Gas Companies could charge them for gas.

8 253. Tiger and its Telemarketing Agents' claims were false because: a) Plaintiffs and the Sub-
9 Class were charged \$0.05 per day to participate in the Program in addition to the cost of the gas;
10 b) Tiger's gas prices were not based on market prices but were actually much higher; and c)
11 Tiger set up a hypothetical – and impossible – scenario in which PG&E could charge Plaintiffs
12 \$1.06 per therm for gas procurement within a year so Tiger's price of \$0.69 per therm delivered
13 customer benefits, when in truth PG&E's gas procurement rates were decreasing and it could not
14 charge anywhere near \$0.69 per therm, so Tiger's price cap had no customer benefit whatsoever.

15 254. Plaintiffs are informed and believe and thereon allege that Tiger, by its Telemarketing
16 Agents, made similar misleading claims about the purported "benefits" of Tiger's Program to
17 prospective customers who were, at the time, buying gas from other Gas Companies.

18 255. Cal. Business & Professions Code § 17500.3 states:

19 It is unlawful for any person to solicit a sale or order for sale of goods or services
20 at the residence of a prospective buyer, in person or by means of telephone,
21 without clearly, affirmatively and expressly revealing at the time the person
22 initially contacts the prospective buyer, *and before making any other statement,*
23 *except a greeting, or asking the prospective buyer any other questions, that the*
24 *purpose of the contact is to effect a sale,* by doing all of the following:

25 (1) Stating the identity of the person making the solicitation.

26 (2) *Stating the trade name of the person represented by the person making the*
27 *solicitation.*

28 (3) Stating the kind of goods or services being offered for sale [emphasis added].

29 256. The first thing Tiger's and CGC's telemarketer did after Fishman answered the phone
30 was to provide her [first] name: Olivia.

31 257. However, Olivia Brown did not identify Tiger before making any other statement except
greeting or asking Fishman any other questions. Instead, she claimed she was calling from
"Community Gas Center."

258. Cal. Business & Professions Code § 17508 states:

(a) It shall be unlawful for any person doing business in California and advertising to consumers in California to make *any false or misleading advertising claim*, including claims that (1) purport to be based on factual, objective, or clinical evidence, (2) compare the product's effectiveness or safety to that of other brands or products, or (3) *purport to be based on any fact* [emphasis added].

259. Tiger and its Telemarketing Agents made a false and/or misleading claim to Plaintiffs and the Enrollee Sub-Class when it presented as a fact that PG&E could raise its gas procurement price to \$1.06 per therm within the next year. Tiger and its Telemarketing Agents made this false and/or misleading claim in order to make its price cap of \$0.69 per therm appear to deliver a customer benefit, when in fact the price cap had no such benefit because PG&E could not charge \$1.06 per therm, or any amount higher than \$0.69 per therm.

260. Plaintiffs are informed and believe and thereon allege that Tiger, by its Telemarketing Agents, made similar misleading claims about the purported "benefits" of Tiger's Program to prospective customers who were, at the time, buying gas from other Gas Companies.

261. Plaintiffs and the Enrollee Sub-Class were harmed by relying on Tiger and its Telemarketing Agents' false representations.

262. Tiger knew, or in the exercise of reasonable diligence should have known, that its advertisements described above were false and/or misleading.

263. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure Tiger's False Advertising Law violations, particularly if those terms and conditions contradict the promises and representations made by Tiger and its Telemarketing Agents during the Sales Calls.

WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment against Defendants as hereinafter set forth.

TENTH CAUSE OF ACTION

[Violations of Unfair Competition Law ("UCL") – Unlawful Prong, Cal. Business & Professions Code § 17200 *et seq.*]

(By Plaintiff Faria and the Do Not Call Sub-Class)

(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))

1 264. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

2 265. Faria brings this Action within four years of receiving a Sales Call from Tiger/CGC in
3 April or early May of 2015 at her landline telephone number that had been on the Do Not Call
4 list since January 2004, without lapses. *See* Cal. Bus. & Prof. Code § 17208.

5 266. Cal. Business & Professions Code § 17200 prohibits any “unlawful” act. The UCL’s
6 unlawful prong “borrows” violations of other laws and makes them independently actionable.

7 267. Tiger/CGC’s acts and practices alleged herein are “unlawful” within the meaning of the
8 UCL because they violated federal regulations and California state law, other than the Telephone
9 Consumer Protection Act (47 U.S.C. § 227), prohibiting calls to telephone numbers on the Do
10 Not Call list.

11 **A. Violations of the Federal Trade Commission’s Telemarketing Sales Rule**

12 268. The Federal Trade Commission’s Telemarketing Sales Rule, 16 C.F.R. § 310 *et seq.*
13 prohibits telemarketers from calling numbers on the Do Not Call list. The Telemarketing Sales
14 Rule was adopted pursuant to the authority of the Telemarketing and Consumer Fraud and Abuse
15 Prevention Act, 15 U.S.C. § 6101 *et seq.* (hereafter the “Telemarketing Fraud Act”). Congress
16 enacted the Telemarketing Fraud Act in order to “offer consumers necessary protection from
17 telemarketing deception and abuse.” *Id.* at § 6101(5).

18 269. Plaintiffs are informed and believe and thereon allege that Tiger and its Telemarketing
19 Agents: a) do not have written procedures to comply with all national Do Not Call rules; b) have
20 not trained their personnel, and any entity assisting in their compliance, in procedures established
21 pursuant to the national Do Not Call rules; and c) have not maintained and recorded a list of
22 telephone numbers that Tiger may not contact.

23 270. Tiger and its Telemarketing Agents were engaged in “telemarketing” within the meaning
24 of the Telemarketing Sales Rule, which defines “telemarketing” as “a plan, program, or
25 campaign which is conducted to induce the purchase of goods or services ... by use of one or
26 more telephones and which involves more than one interstate telephone call.” 16 C.F.R.

27 § 310.2(gg). Tiger and its telemarketing Agents were “telemarketers” within the meaning of the
28 Telemarketing Sales Rule, which defines a telemarketer as “any person who, in connection with
29 telemarketing, initiates or receives telephone calls to or from a consumer” *Id.* at § 310.2(ff).

30 Tiger should be equally deemed a “telemarketer” because its Telemarketing Agents acted as
31 Tiger’s agents when they made the telemarketing calls. In addition, Tiger was a “seller” within

the meaning of the Telemarketing Sales Rule because Tiger, in connection with a “telemarketing” transaction, provided or offered to provide services to customers in exchange for consideration. *Id.* at §310.2(dd).

271. The Telemarketing Sales Rule states that it is “an abusive telemarketing act or practice and a violation of this Rule for a telemarketer to engage in, or for a seller to cause a telemarketer to engage in,” a list of enumerated abusive acts, one of which is calling any number on the Do Not Call list. 16 C.F.R. § 310.4(b)(1)(iii)(B). CGC violated this provision by making Sales Calls to Faria and the Do Not Call Sub-Class at their telephone numbers that were on the Do Not Call list. Tiger violated this provision by causing its Telemarketing Agents to make these Sales Calls, and because CGC was acting as Tiger’s agent in making the calls, as alleged above.

B. Violations of California Law Prohibiting Unsolicited and Unwanted Telephone Solicitations

272. Cal. Business & Professions Code § 17590 states the California Legislature’s intent to protect California residential and wireless telephone subscribers from telemarketing calls made to numbers on the Do Not Call list.

273. Tiger and its Telemarketing Agents violated Cal. Bus. & Prof. Code § 17592(c), (c)(1) by calling Faria and the Do Not Call Sub-Class at their telephone numbers that were on the Do Not Call list, seeking to sell Tiger’s goods and services, namely Tiger’s natural gas and the Program.

274. Plaintiff Faria suffered injury in fact and lost money as the direct result of all of Tiger/CGC’s “unlawful” acts and practices alleged above. *See* Cal. Bus. & Prof. Code § 17204. But for Tiger/CGC’s “unlawful” conduct, described herein, Faria would never have received a phone call from Tiger/CGC and therefore would not have signed up for Tiger’s program and would never have paid the inflated gas prices and daily fees that Tiger charged her.

WHEREFORE, Plaintiff Faria and the Do Not Call Sub-Class pray for judgment against Defendants as hereinafter set forth.

ELEVENTH CAUSE OF ACTION

[Violations of Unfair Competition Law – Unlawful Prong, Cal. Business & Professions Code § 17200 *et seq.*]

**(By Plaintiffs Fishman and Faria and the Class)
(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

275. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

276. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise its natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

277. Cal. Business & Professions Code § 17200 prohibits any “unlawful” act or practice. The Unlawful Competition Law’s (“UCL”) unlawful prong “borrows” violations of other laws and makes them independently actionable.

A. California Statutory Violations

278. Tiger’s acts and practices alleged herein are “unlawful” within the meaning of the UCL because they amount to violations of the California Recording Law (Cal. Pen. Code § 632 *et seq.*), breach of oral contract (Cal. Civ. Code § 1622), violations of the Consumer Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*), fraud (Cal. Civ. Code § 1572), negligent misrepresentation (Cal. Civ. Code §§ 1573, 1577), violations of Regulations on Core Transport Agents (Cal. Pub. Util. Code §§ 980-989.5), and violations of the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), as described above. Each of these statutory violations – as well as violations of the PG&E Gas Rule 23 tariff, which has the force and effect of a statute – serves as a predicate action constituting “unlawful” conduct by Tiger.

279. Tiger’s Telemarketing Agents’ acts and practices alleged herein are “unlawful” within the meaning of the UCL because they amount to violations of the California Recording Law (Cal. Pen. Code § 632 *et seq.*), fraud (Cal. Civ. Code § 1572), negligent misrepresentation (Cal. Civ. Code §§ 1573, 1577), violations of Regulations on Core Transport Agents (Cal. Pub. Util. Code §§ 980-989.5), and violations of the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), as described above. Each of these statutory violations – as well as violations of the PG&E Gas Rule 23 tariff, which has the force and effect of a statute – serves as a predicate action constituting “unlawful” conduct by Tiger’s Telemarketing Agents.

B. Violations of the Federal Trade Commission’s Telemarketing Sales Rule

280. In addition, Tiger’s and its Telemarketing Agents’ acts and practices alleged herein are “unlawful” within the meaning of the UCL because they constitute “deceptive telemarketing acts or practices” within the meaning of the Federal Trade Commission’s Telemarketing Sales Rule, 16 C.F.R. § 310.4(a). In particular, the Rule provides that “[i]t is a deceptive telemarketing act or practice and a violation of this Rule for any seller or telemarketer to engage in the following conduct:

(1) Before a customer consents to pay for goods or services offered, failing to disclose truthfully, in a clear and conspicuous manner, the following material information:

(i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of the sales offer; [and]

(ii) All material restrictions, limitations, or conditions to purchase, receive, or use the goods or services that are the subject of the sales offer;”

16 C.F.R. § 310.3(a)(1) (footnotes omitted).

281. The Rule also makes it unlawful for a seller or telemarketer to “misrepresent[], directly or by implication, in the sale of goods or services any of the following material information: (i) The total costs to purchase, receive, or use, and the quantity of, any goods or services that are the subject of a sales offer; [or] (ii) Any material restriction, limitation, or condition to purchase, receive, or use goods or services that are the subject of a sales offer;” *Id.* at § 310.3(a)(2).

282. As alleged above, Tiger and its Telemarketing Agents are “telemarketers,” and their Sales Calls to Plaintiffs and the members of the Enrollee Sub-Class constitute “telemarketing,” within the meaning of the Telemarketing Sales Rule. *See* 16 C.F.R. § 310.2(ff), (gg). Also, Tiger is a “seller” within the meaning of the Telemarketing Sales Rule because Tiger, in connection with a “telemarketing” transaction, provides or offers to provide services to customers in exchange for consideration. *Id.* at § 310.2(dd).

283. Tiger and its Telemarketing Agents violated the provisions of the Telemarketing Sales Rule quoted above by obtaining Plaintiffs’ and the Enrollee Sub-Class members’ consent to pay for Tiger’s natural gas as part of the Program without truthfully, clearly and conspicuously disclosing the total cost of the Program. In particular, Tiger and its Telemarketing Agents failed to disclose that enrolling in the program would lead to an immediate increase in the cost of the natural gas and would include a \$0.05 daily charge. To the contrary, Tiger and its Telemarketing Agents falsely represented that it was “free” to enroll in the program. Tiger and its Telemarketing Agents also violated the quoted provisions of the Telemarketing Sales Rule by failing to truthfully, clearly and conspicuously disclose all material conditions associated with the program, including the fact that customers’ gas prices would go up, that a \$0.05 daily charge would be charged, that a large but unstated per-therm surcharge would be added, and other material terms.

1 284. Tiger and its Telemarketing Agents cannot escape liability for the violations of the
2 Telemarketing Sales Rule by Tiger purporting to mail terms and conditions to Plaintiffs and the
3 Enrollee Sub-Class members after agreements were made during the Sales Calls, because, *inter*
4 *alia*, the Rule is clear that the required disclosures must be made *before* obtaining customers'
5 consent to pay.

6 285. Plaintiffs suffered injury in fact and lost money as the direct result of all of Tiger and its
7 Telemarketing Agents' "unlawful" acts and practices alleged above. *See* Cal. Bus. & Prof. Code
8 § 17204. But for Tiger and its Telemarketing Agents' "unlawful" conduct, described herein,
9 Plaintiffs would not become enrollees in Tiger's natural gas protection program, and would not
10 have paid any monies to Tiger for purchase of natural gas, including Tiger's undisclosed
11 surcharge and the daily fee.

12
13 WHEREFORE, Plaintiffs Fishman and Faria and the Class pray for judgment against Defendants
14 as hereinafter set forth.

15
16 **TWELFTH CAUSE OF ACTION**

17 **[Violations of Unfair Competition Law – Unfair Prong, Cal. Business & Professions Code**
18 **§ 17200 *et seq.*]**

19 **(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)**
20 **(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

21 286. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

22 287. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise
23 Tiger's natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

24 288. Cal. Business & Professions Code § 17200 prohibits any "unfair" act.

25 289. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17200
26 *et seq.* because they suffered injury in fact and lost money as the direct result of Tiger and its
27 Telemarketing Agents' unfair competition. *See* Cal. Bus. & Prof. Code § 17204. But for Tiger
28 and its Telemarketing Agents' unfair conduct, described herein, Plaintiffs would never have
29 signed up for Tiger's Program and would never have paid the inflated gas prices and daily fees
30 that Tiger charged them.

31 290. Tiger and its Telemarketing Agents' acts and practices, as alleged herein, are "unfair"
under all three formulations developed in the case law: the balancing test (*South Bay Chevrolet v.*

1 *Gen. Motors Acceptance Corp.*, 72 Cal. App. 4th 861 (4th Dist. 1999); *Klein v. Earth Elements,*
 2 *Inc.*, 59 Cal. App. 4th 965 (1st Dist. 1997)), the tethering test (*Cel-Tech Communications, Inc. v.*
 3 *Los Angeles Cellular Telephone Co.*, 20 Cal. 4th 163 (1999)), and the Section 5 test (*Camacho v.*
 4 *Automobile Club*, 142 Cal. App. 4th 1394, 1403-05 (2d Dist. 2006)).

5 **A. Tiger and its Telemarketing Agents' Conduct was "Unfair" Under the Balancing Test**

6 291. "Determination of whether a business practice or act is 'unfair' within the meaning of the
 7 [UCL] entails examination of the impact of the practice or act on its victim . . . balanced against
 8 the reasons, justifications and motives of the alleged wrongdoer. In brief, the court must weigh
 9 the utility of the defendant's conduct against the gravity of the harm to the alleged victim."

10 *Klein*, 59 Cal. App. 4th at 969-70 (citations omitted). "An unfair business practice occurs when
 11 the practice offends an established public policy or when the practice is immoral, unethical,
 12 oppressive, unscrupulous or substantially injurious to consumers." *Podolsky v. First Healthcare*
 13 *Corp.*, 50 Cal. App. 4th 632, 647 (2d Dist. 1996) (citation omitted).

14 292. Tiger and its Telemarketing Agents' conduct was "unfair" under this test because it was
 15 immoral, unscrupulous, and unethical to call telephone numbers on the Do Not Call list; there is
 16 no redeeming moral or ethical utility to have done so.

17 293. Tiger and its Telemarketing Agents' conduct was "unfair" under this test because it was
 18 immoral, unscrupulous, and unethical to record telephone calls without disclosing and obtaining
 19 consent; there is no redeeming moral or ethical utility to have done so.

20 294. Tiger and its Telemarketing Agents' conduct was "unfair" under this test because it was
 21 immoral, unscrupulous, and unethical to claim that Gas Companies' (e.g. PG&E) gas
 22 procurement rates were increasing when they were really decreasing and to create false and
 23 impossible hypothetical situations – e.g. that PG&E could charge \$1.06 per therm for gas
 24 procurement within a year of Tiger/CGC's call to Plaintiff Fishman – for the sole purpose of
 25 making Tiger's price cap appear to be a customer benefit when in fact Tiger intended to charge
 26 and actually charged customers far more for gas than the customers' current Gas Companies
 27 would have charged.

28 295. Plaintiffs are informed and believe and thereon allege that Tiger, by its Telemarketing
 29 Agents, made similar misleading claims about the purported "benefits" of Tiger's Program to
 30 prospective customers who were, at the time, buying gas from other Gas Companies.

296. Tiger and its Telemarketing Agents' conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to advertise the Program as "free" during the Sales Calls while failing to disclose that Tiger charges a \$0.05 daily fee.

297. Tiger and its Telemarketing Agents' conduct was "unfair" under this test because it was immoral, unscrupulous, and unethical to represent during the Sales Calls that Tiger's gas is based on the market price without disclosing a large "add-on" surcharge of unstated amount in order to line its own pockets.

298. As the California Supreme Court has explained in a similar context, "protection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society." *Vasquez v. Superior Court*, 4 Cal. 3d 800, 808 (1971).

299. Tiger and its Telemarketing Agents' Sales Calls were particularly "unfair" as to the PG&E Enrollee Sub-Class because they constituted systematic violations of PG&E Gas Rule 23, a CPUC-approved tariff, which is also incorporated into the CGAS contract between Tiger and PG&E that was created to protect consumers like Plaintiffs Fishman and Faria and the Enrollee Sub-Class from precisely the sort of false advertising Tiger and its Telemarketing Agents employed in their Sales Calls.

300. Tiger and its Telemarketing Agents' Sales Calls, and Tiger's subsequent written "confirmation" that did not confirm the terms of the oral contract but rather materially altered them, are "unfair" within the meaning of the UCL because Tiger systematically breached the terms of the Core Gas Aggregation Service contract between Tiger and PG&E, which expressly incorporated the PG&E Gas Rule 23 tariff, for which Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-Class are third-party beneficiaries (at least as to PG&E Gas Rule 23, §§ D-E and Schedule G-CT). *See, e.g., Arce v. Kaiser Foundation Health Plan Inc.*, 181 Cal. App. 4th 471, 489-90 (2d Dist. 2010). Tiger's written terms and conditions are also unfair because they did not make the disclosures required by Regulations on Core Transport Agents (Cal. Pub. Util. Code § 986(a), which would enable customers to compare offerings across CTAs.

301. Tiger and its Telemarketing Agents' Sales Calls, and Tiger's subsequent written "confirmation" that did not confirm the terms of the oral contract but rather purported to materially alter them, are "unfair" within the meaning of the UCL because Tiger and its Telemarketing Agents systematically and willfully breached the terms of the Core Gas Aggregation Services contract, which expressly incorporates PG&E Gas Rule 23, §§ D-E and

Schedule G-CT, and of which Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-Class are third-party beneficiaries. *See, e.g., Arce v. Kaiser Foundation Health Plan Inc.*, 181 Cal. App. 4th 471, 489-90 (2d Dist. 2010).

B. Tiger and its Telemarketing Agents' Conduct was "Unfair" Under the Tethering Test

302. Under the tethering test, which was developed in the context of actions between competitors, a "finding of unfairness must be tethered to some legislatively declared policy or proof of some actual or threatened impact on competition." *Cel-Tech*, 20 Cal. 4th at 186-87.

Tiger and its Telemarketing Agents' acts and practices of calling telephone numbers on the Do Not Call list violated the legislatively-declared policies expressed in the Telemarketing Sales Rule (16 C.F.R. § 310), FCC Do Not Call Regulations (15 U.S.C. § 6153), and Unsolicited and Unwanted Telephone Solicitations (Cal. Bus. & Prof. Code § 17590 *et seq.*). Tiger and its Telemarketing Agents violated not only the letter, but also the spirit and purpose, of each of these laws, thereby engaging in "unfair" conduct under the UCL's "tethering test" by giving themselves an unfair advantage over their competitors who follow the law.

303. Tiger and its Telemarketing Agents' false advertising and negligent misrepresentations that California Gas Companies (including but not limited to PG&E) were increasing its gas procurement charges and regarding what PG&E could charge \$1.06 per therm in order to make it appear that the Program's price cap had any customer value, to advertise that Tiger charged a rate based on the market rate without disclosing an "add-on" of unstated amount, and to advertise the Program as "free" without disclosing the \$0.05 daily charge or the surcharge added by Tiger to the cost of the gas, as described herein, also violated the legislatively-declared policies expressed in the Consumers Legal Remedies Act (Cal. Civ. Code § 1750 *et seq.*), Regulations on Core Transport Agents (Cal. Pub. Utils. Code §§ 980-989.5), and the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), thereby engaging in "unfair" conduct under the UCL's "tethering test" by giving themselves an unfair advantage over their competitors who do honor the requirements of PG&E Gas Rule 23, §§ D-E and Schedule G-CT and the CGAS Agreement between Tiger and PG&E (incorporating that tariff), and Regulations on Core Transport Agents.

C. Tiger and its Telemarketing Agents' Conduct is "Unfair" Under the Section 5 Test

304. Under the Section 5 test, which is derived from the liability standards governing the Federal Trade Commission Act, conduct is unfair if: "(1) the consumer injury is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3)

the injury could not reasonably have been avoided by consumers themselves.” *Boschma v. Home Loan Center, Inc.*, 198 Cal. App. 4th 230, 253 (4th Dist. 2011). Tiger and its Telemarketing Agents’ practices have caused and are likely to cause substantial injury to Plaintiffs Fishman and Faria and Enrollee Sub-Class Members, which injury is not and was not reasonably avoidable.

305. Fishman was overcharged \$126.44 and Faria was overcharged \$34.05 vs. PG&E’s gas procurement rates, plus taxes and sundry charges, in reliance on Tiger and its Telemarketing Agents’ false representations. Furthermore, Tiger and its Telemarketing Agents’ practices of falsely representing that Gas Companies’ gas procurement charges were rising when they were really falling, that Gas Companies could charge certain artificially high rates in order to make it appear that the Program’s price cap had any customer value, advertising that Tiger charged a rate based on the market rate without disclosing an “add-on” surcharge of unstated amount, and falsely advertising the Program as “free” without disclosing the \$0.05 daily charge or the Tiger surcharge, is not outweighed by any countervailing benefits to consumers. Tiger and its Telemarketing Agents’ actions violated Regulations on Core Transport Agents (Cal. Pub. Util. Code §§ 980-989.5). If Tiger and its Telemarketing Agents had not engaged in this “unfair” conduct, Tiger could not have charged the Enrollee Sub-Class Members and would not have unfairly obtained monies from them.

306. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure Tiger and its Telemarketing Agents’ “unfair” conduct alleged herein, particularly if those terms and conditions contradict the promises and representations made by Tiger and its Telemarketing Agents during the Sales Calls.

WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment against Defendants as hereinafter set forth.

THIRTEENTH CAUSE OF ACTION

[Violations of Unfair Competition Law – Fraudulent Prong, Cal. Business & Professions Code § 17200 *et seq.*]

**(By Plaintiffs Fishman and Faria and the Enrollee Sub-Class)
(Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50))**

1 307. Plaintiffs hereby incorporate the foregoing paragraphs as though set forth in full herein.

2 308. Plaintiffs bring this Action within four years of Tiger/CGC calling them to advertise
3 Tiger's natural gas price protection program. *See* Cal. Bus. & Prof. Code § 17208.

4 309. Cal. Business & Professions Code § 17200 prohibits any "fraudulent"⁹ act.

5 310. Plaintiffs have standing to bring claims under Cal. Business & Professions Code § 17200
6 *et seq.* because they suffered injury in fact and lost money as the direct result of Tiger and its
7 Telemarketing Agents' unfair competition. *See* Cal. Bus. & Prof. Code § 17204. But for Tiger
8 and its Telemarketing Agents' fraudulent conduct, described herein, Plaintiffs would never have
9 signed up for Tiger's Program and would never have paid the inflated gas prices and daily fees
10 that Tiger charged them.

11 311. Any reasonable consumer was likely to be deceived, and Plaintiffs were actually
12 deceived, by Tiger and its Telemarketing Agents' claims that, e.g.: a) PG&E was increasing its
13 gas procurement rates when the rates were actually dropping; b) it was free to participate in the
14 Program; and c) the price cap of \$0.69 per therm had any customer benefit at all and could save
15 them any money versus their current gas provider. Thus, the unlawful, unfair, and fraudulent
16 claims during Tiger and its Telemarketing Agents' Sales Calls were not that Tiger would never
17 charge more than its stated rate cap – and Plaintiffs believe that Tiger didn't do so – but rather by
18 Tiger and its Telemarketing Agents representing to prospective customers a false, impossible
19 scenario in which e.g. PG&E *could* charge \$1.06 per therm within a year to make it *appear* that
20 the Program's price cap had any customer value, even though Tiger knew PG&E could not do
21 so.
22

23 312. Plaintiffs are informed and believe and thereon allege that Tiger, by its Telemarketing
24 Agents, made similar misleading claims about the purported "benefits" of customers switching
25 gas procurement from other Gas Companies to Tiger.

26 313. Whatever terms and conditions Tiger might have mailed to Plaintiffs and the Enrollee
27 Sub-Class after formation of the contracts have no bearing on and cannot retroactively cure
28 Tiger/CGC's "fraudulent" conduct alleged herein, particularly if those terms and conditions

29
30 ⁹ "Fraudulent," as used in the statute, does not refer to the common law tort of fraud but only
31 requires a showing members of the public 'are likely to be deceived.'" *Chavez v. Bank of America Corporation*, No. C-10-0653 JCS, 2012 U.S. Dist. LEXIS 62935 at *18 (N.D. Cal. May 4, 2012) (citation omitted).

1 contradict the promises and representations made by Tiger and its Telemarketing Agents during
2 the Sales Calls, and where such the changed terms violate PG&E Gas Rule 23, the CGAS
3 contract between Tiger and PG&E, and/or Regulations on Core Transport Agents (Cal. Pub. Util.
4 Code §§ 980-989.5).

5
6 WHEREFORE, Plaintiffs Fishman and Faria and the Enrollee Sub-Class pray for judgment
7 against Defendants as hereinafter set forth.

8
9 **PRAYER FOR RELIEF**

10 **A. First Cause of Action for Violations of California Recording Law**

11 314. Statutory damages to Plaintiffs Fishman and Faria and the Class in the amount of \$5,000
12 per violation, plus statutory interest. *See* Cal. Pen. Code § 637.2(a)(1).

13 315. An Order from this Court prohibiting Tiger and its Telemarketing Agents (CGC and
14 DOES 3-50) from making telemarketing calls to California consumers and businesses without
15 immediately disclosing that the calls are being recorded and without obtaining the requisite
16 consent. *See* Cal. Pen. Code § 637.2(b).

17 316. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
18 important right affecting the public interest and thereby confer a significant benefit on the
19 general public or a large class of persons. The necessity and financial burden of private
20 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
21 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
22 Proc. § 1021.5.

23 317. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

24 **B. Second Cause of Action for Breach of Oral Contract**

25 318. Damages/restitution to Plaintiff Fishman and the Enrollee Sub-Class in the amount of all
26 monies (including but not limited to Tiger's surcharge on top of the market rate and the \$0.05
27 daily fee) paid to Tiger in excess of what they would have paid to their former gas providers,
28 plus taxes, other sundry charges, and statutory interest, because Tiger received a benefit in the
29 form of monies, and Tiger's retention of that benefit at the expense of Plaintiff Fishman and the
30 Enrollee Sub-Class is unjust because was based on falsely advertising the Program as free and
31 that the price cap had any consumer benefits. Specifically, \$247.19 - \$120.75 = \$126.44 plus

1 taxes, sundry charges, and statutory interest for Fishman, and $\$61.87 - \$27.82 = \$34.05$ plus
2 taxes, sundry charges, and statutory interest for Faria.

3 319. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
4 important right affecting the public interest and thereby confer a significant benefit on the
5 general public or a large class of persons. The necessity and financial burden of private
6 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
7 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
8 Proc. § 1021.5.

9 320. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

10 **C. Third Cause of Action for Violations of PG&E Gas Rule 23 Tariff**

11 321. Damages/restitution to Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-Class in
12 the amount of all monies (including but not limited to Tiger's surcharge on top of the market rate
13 and the \$0.05 daily fee) paid to Tiger in excess of what they would have paid to PG&E, plus
14 taxes, other sundry charges, and statutory interest, because Tiger received a benefit in the form of
15 monies, and Tiger's retention of that benefit at the expense of Plaintiffs Fishman and Faria and
16 the PG&E Enrollee Sub-Class is unjust because was based on falsely advertising the Program as
17 free and that the price cap had any consumer benefits. Specifically, $\$247.19 - \$120.75 = \$126.44$
18 plus taxes, sundry charges, and statutory interest for Fishman, and $\$61.87 - \$27.82 = \$34.05$ plus
19 taxes, sundry charges, and statutory interest for Faria.

20 322. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
21 important right affecting the public interest and thereby confer a significant benefit on the
22 general public or a large class of persons. The necessity and financial burden of private
23 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
24 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
25 Proc. § 1021.5.

26 323. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

27 **D. Fourth Cause of Action for Breach of Third-Party Beneficiary Contract**

28 324. An Order from this Court declaring that Plaintiffs Fishman and Faria and the PG&E
29 Enrollee Sub-Class are third-party beneficiaries of the Core Gas Aggregation Services contract
30 (or at least PG&E Gas Rule 23 §§ D and E, and Schedule G-CT, as expressly incorporated by
31 reference into the CGAS contract) between PG&E and Tiger.

1 325. An Order from this Court declaring that Tiger and its Telemarketing Agents' (CGC and
2 DOEs 3-50) Sales Calls and Tiger's purported subsequent mailings of terms and conditions to
3 Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-Class breached the CGAS contract
4 between PG&E and Tiger.

5 326. An Order from this Court that Tiger and its Telemarketing Agents must immediately stop
6 breaching the CGAS contract (or at a minimum, the part of the contract incorporating PG&E Gas
7 Rule 23 §§ D and E, and Schedule G-CT), including but not limited to: Tiger and its
8 Telemarketing Agents only advertising the Program via truthful and non-misleading means,
9 disclosing all material terms of the Program, and honoring the terms of the oral contacts made
10 during the Sales Calls, without attempting to add or change any terms during the TPV Calls, and
11 without mailing any inconsistent terms and conditions to new customers, much less attempting to
12 enforce such inconsistent terms and conditions. In particular, an Order from this Court that Tiger
13 must stop charging customers a \$0.05 daily rate and surcharges on top of the market rate where
14 those terms were not clearly disclosed during the Sales Calls.

15 327. Damages/restitution to Plaintiffs Fishman and Faria and the PG&E Enrollee Sub-Class in
16 the amount of all monies (including but not limited to Tiger's surcharge on top of the market
17 rate, the \$0.05 daily fee) paid to Tiger in excess of what they would have paid to their former gas
18 providers, plus taxes, other sundry charges, and statutory interest, because Tiger received a
19 benefit in the form of monies, and Tiger's retention of that benefit at the expense of Plaintiff
20 Fishman and the Enrollee Sub-Class is unjust because was based on falsely advertising the
21 Program as free and that the price cap had any consumer benefits. Specifically, \$247.19 -
22 \$120.75 = \$126.44 plus taxes, sundry charges, and statutory interest for Fishman, and \$61.87 -
23 \$27.82 = \$34.05 plus taxes, sundry charges, and statutory interest for Faria.

24 328. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
25 important right affecting the public interest and thereby confer a significant benefit on the
26 general public or a large class of persons. The necessity and financial burden of private
27 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
28 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
29 Proc. § 1021.5.

30 329. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).
31

1 **E. Fifth Cause of Action for Violations of the Consumers Legal Remedies Act**

2 330. Actual damages/restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
3 taxes, sundry charges, and statutory interest) and the Consumer Enrollee Sub-Class of all monies
4 paid to Tiger in excess of what they would have paid to their former gas providers, but in no case
5 less than \$1,000, plus taxes, other sundry charges, and statutory interest. *See* Cal. Civ. Code
6 § 1780(a)(1).

7 331. An Order from this Court prohibiting Tiger from engaging in the false advertising
8 described herein. *See* Cal. Civ. Code § 1780(a)(2).

9 332. Damages/restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes,
10 sundry charges, and statutory interest) and the Consumer Enrollee Sub-Class of all monies paid
11 to Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
12 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
13 and Tiger's retention of that benefit at the expense of Plaintiffs and the Consumer Enrollee Sub-
14 Class is unjust because was based on falsely advertising the Program as free and that the price
15 cap had any customer benefits. *See* Cal. Civ. Code § 1780(a)(3).

16 333. For each consumer who was more than 65 years old on the date that s/he received the
17 Sales Call from Tiger and its Telemarketing Agents and enrolled in the Program, \$5,000 in
18 addition to other remedies. *See* Cal. Civil Code § 1780(b).

19 334. Punitive damages in an amount to be determined by the jury and Court. *See* Cal. Civ.
20 Code § 1780(a)(4).

21 335. Attorneys' fees. *See* Cal. Civ. Code § 1780(3), Fed. R. Civ. Proc. 54(d)(2). Also, by
22 prosecuting this action, Plaintiffs expect to enforce an important right affecting the public
23 interest and thereby confer a significant benefit on the general public or a large class of persons.
24 The necessity and financial burden of private enforcement is such as to make an award of
25 attorneys' fees appropriate, and the attorneys' fees should not, in the interest of justice, be paid
26 out of the recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

27 336. Costs of suit. *See* Cal. Civ. Code § 1780(3) and Fed. R. Civ. Proc. 54(d)(1).

28 **F. Sixth Cause of Action for Fraud**

29 337. An Order from this Court that Tiger and its Telemarketing Agents (CGC and DOEs 3-50)
30 fraudulently induced Plaintiffs Fishman and Faria and the Enrollee Sub-Class into enrolling in
31

1 Tiger's Program, and the agreements between Tiger on the one hand, and Plaintiffs Fishman and
2 Faria and the Enrollee Sub-Class on the other hand, are void.

3 338. Damages/restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes,
4 sundry charges, and statutory interest) and to the Enrollee Sub-Class in the amount of all monies
5 paid to Tiger in excess of what they would have paid to their former gas providers, plus taxes,
6 other sundry charges, and pre-and post-judgment interest.

7 339. Punitive damages in an amount to be determined by the jury and Court. *See* Cal. Civ.
8 Code § 3294.

9 340. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
10 important right affecting the public interest and thereby confer a significant benefit on the
11 general public or a large class of persons. The necessity and financial burden of private
12 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
13 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
14 Proc. § 1021.5.

15 341. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

16 **G. Seventh Cause of Action for Negligent Misrepresentation**

17 342. Damages/restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes,
18 sundry charges, and statutory interest) and the Enrollee Sub-Class of all monies paid to Tiger in
19 excess of what they would have paid to their former gas providers, plus taxes, other sundry
20 charges, and pre- and post-judgment interest.

21 343. Attorneys' fees, because by prosecuting this action, Plaintiffs expect to enforce an
22 important right affecting the public interest and thereby confer a significant benefit on the
23 general public or a large class of persons. The necessity and financial burden of private
24 enforcement is such as to make an award of attorneys' fees appropriate, and the attorneys' fees
25 should not, in the interest of justice, be paid out of the recovery of damages. *See* Cal. Code Civ.
26 Proc. § 1021.5.

27 344. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

28 **H. Eighth Cause of Action for Violations of Regulations on Core Transport Agents**

29 345. Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50), one or more Orders
30 from this Court prohibiting Tiger and its Telemarketing Agents from engaging in the false
31

1 advertising described herein, and requiring Tiger to make the required written disclosures prior
2 to commencing service to Core Gas Customers. *See* Cal. Pub. Util. Code § 989.5(a)(4).

3 346. Actual damages to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus taxes, sundry
4 charges, and statutory interest) and the Enrollee Sub-Class of all monies paid to Tiger in excess
5 of what they would have paid to their former gas providers, plus taxes, other sundry charges, and
6 pre- and post-judgment interest. *See* Cal. Pub. Util. Code § 989.5(a)(1).

7 347. Exemplary damages for Tiger and its Telemarketing Agents' intentional or willful actions
8 described herein, in an amount to be determined by the jury and Court. *See* Cal. Pub. Util. Code
9 § 989.5(a)(3).

10 348. Attorneys' fees. *See* Cal. Pub. Util. Code § 989.5(a)(2), Fed. R. Civ. Proc. 54(d)(2).
11 Also, by prosecuting this action, Plaintiffs expect to enforce an important right affecting the
12 public interest and thereby confer a significant benefit on the general public or a large class of
13 persons. The necessity and financial burden of private enforcement is such as to make an award
14 of attorneys' fees appropriate, and the attorneys' fees should not, in the interest of justice, be
15 paid out of the recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

16 349. Costs of suit. *See* Cal. Pub. Util. Code § 989.5(a)(2) and Fed. R. Civ. Proc. 54(d)(1).

17 **I. Ninth Cause of Action for Violations of the False Advertising Law**

18 350. Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50), one or more Orders
19 from this Court prohibiting Tiger and its Telemarketing Agents from engaging in the false
20 advertising described herein. *See* Cal. Bus. & Prof. Code § 17535.

21 351. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
22 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
23 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
24 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
25 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
26 unjust because was based on falsely advertising the Program as free and that the price cap had
27 any customer benefits.

28 352. Against Tiger's Telemarketing Agents, damages/restitution to Plaintiffs and to the
29 Enrollee Sub-Class of all monies paid by them to Tiger that in turn were passed on by Tiger to its
30 Telemarketing Agents. Tiger's Telemarketing Agents received a benefit in such monies at the
31 expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for them to retain.

1 353. Against Tiger and its Telemarketing Agents, attorneys' fees, because by prosecuting this
2 action, Plaintiffs expect to enforce an important right affecting the public interest and thereby
3 confer a significant benefit on the general public or a large class of persons. The necessity and
4 financial burden of private enforcement is such as to make an award of attorneys' fees
5 appropriate, and the attorneys' fees should not, in the interest of justice, be paid out of the
6 recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

7 354. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

8 **J. Tenth and Eleventh Causes of Action for Unfair Competition – Unlawful Prong**

9 355. Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50), one or more Orders
10 from this Court prohibiting Tiger and its Telemarketing Agents from engaging in the unlawful
11 practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

12 356. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
13 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
14 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
15 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
16 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
17 unjust because was based on falsely advertising the Program as free and that the price cap had
18 any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

19 357. Against Tiger's Telemarketing Agents, damages/restitution to Plaintiffs and to the
20 Enrollee Sub-Class of all monies paid by them to Tiger that in turn were passed on to the
21 Telemarketing Agents by Tiger. Tiger's Telemarketing Agents received a benefit in such monies
22 at the expense of Plaintiffs and the Enrollee Sub-Class that it would be unjust for them to retain.

23 358. Against Tiger and its Telemarketing Agents, attorneys' fees, because by prosecuting this
24 action, Plaintiffs expect to enforce an important right affecting the public interest and thereby
25 confer a significant benefit on the general public or a large class of persons. The necessity and
26 financial burden of private enforcement is such as to make an award of attorneys' fees
27 appropriate, and the attorneys' fees should not, in the interest of justice, be paid out of the
28 recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

29 359. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).
30
31

1 **K. Twelfth Cause of Action for Unfair Competition – Unfair Prong**

2 360. Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50, one or more Orders
3 from this Court prohibiting Tiger and its Telemarketing Agents from engaging in the unfair
4 practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

5 361. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
6 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
7 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
8 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
9 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is
10 unjust because was based on falsely advertising the Program as free and that the price cap had
11 any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

12 362. Against Tiger's Telemarketing Agents, restitution to Plaintiffs and to the Enrollee Sub-
13 Class of all monies paid by them to Tiger that in turn were passed on to the Telemarketing
14 Agents by Tiger. Tiger's Telemarketing Agents received a benefit in such monies at the expense
15 of Plaintiffs and the Enrollee Sub-Class that it would be unjust for them to retain.

16 363. Against Tiger and its Telemarketing Agents, attorneys' fees, because by prosecuting this
17 action, Plaintiffs expect to enforce an important right affecting the public interest and thereby
18 confer a significant benefit on the general public or a large class of persons. The necessity and
19 financial burden of private enforcement is such as to make an award of attorneys' fees
20 appropriate, and the attorneys' fees should not, in the interest of justice, be paid out of the
21 recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

22 364. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

23 **L. Thirteenth Cause of Action for Unfair Competition – Fraudulent Prong**

24 365. Against Tiger and its Telemarketing Agents (CGC and DOEs 3-50), one or more Orders
25 from this Court prohibiting Tiger and its Telemarketing Agents from engaging in the fraudulent
26 practices described herein. *See* Cal. Bus. & Prof. Code § 17203.

27 366. Against Tiger, restitution to Plaintiffs (\$126.44 to Fishman and \$34.05 to Faria, plus
28 taxes, sundry charges, and statutory interest) and to the Enrollee Sub-Class of all monies paid to
29 Tiger in excess of what they would have paid to their former gas providers, plus taxes, other
30 sundry charges, and statutory interest, because Tiger received a benefit in the form of monies,
31 and Tiger's retention of that benefit at the expense of Plaintiffs and the Enrollee Sub-Class is

1 unjust because was based on falsely advertising the Program as free and that the price cap had
2 any customer benefits. *See* Cal. Bus. & Prof. Code § 17203.

3 367. Against Tiger's Telemarketing Agents, restitution to Plaintiffs and to the Enrollee Sub-
4 Class of all monies paid by them to Tiger that in turn were passed on to the Telemarketing
5 Agents by Tiger. Tiger's Telemarketing Agents received a benefit in such monies at the expense
6 of Plaintiffs and the Enrollee Sub-Class that it would be unjust for them to retain.

7 368. Against Tiger and its Telemarketing Agents, attorneys' fees, because by prosecuting this
8 action, Plaintiffs expect to enforce an important right affecting the public interest and thereby
9 confer a significant benefit on the general public or a large class of persons. The necessity and
10 financial burden of private enforcement is such as to make an award of attorneys' fees
11 appropriate, and the attorneys' fees should not, in the interest of justice, be paid out of the
12 recovery of damages. *See* Cal. Code Civ. Proc. § 1021.5.

13 369. Costs of suit. *See* Fed. R. Civ. Proc. 54(d)(1).

14 **L. Additionally**

15 370. Certification of the Proposed Class, Do Not Call Sub-Class, Enrollee Sub-Class, PG&E
16 Enrollee Sub-Class, and Consumer Enrollee Sub-Class, and notice thereto to be paid by Tiger.

17 371. Plaintiffs seek pre-judgment and post-judgment interest.

18 372. Plaintiffs seek any and all other and further relief as the Court may deem just and proper.

19
20 **DEMAND FOR JURY TRIAL**

21 Plaintiffs demand a trial by jury.

22
23 THE LAW OFFICES OF DANIEL BALSAM

24 Date: June 9, 2018

BY: /s/ Daniel L. Balsam

25 DANIEL BALSAM
26 Attorneys for Plaintiffs
27 and the Proposed Class
28
29
30
31

Exhibit A

Tiger's One-Star Review Page on Yelp.com

Find **tacos, cheap dinner, Max's**

Near **Tulsa, OK**

Restaurants

Nightlife

Home Services

Write a Review

Events

Talk

Log In

Tiger Natural Gas Inc ✓ Claimed

17 reviews [Details](#)

Propane [Edit](#)

1422 E 71st St
Tulsa, OK 74136

[Get Directions](#)

[\(918\) 491-6998](tel:(918)491-6998)

tigernaturalgas.com

[Request a quote](#)

[Send to your Phone](#)



Ask the Community

Yelp users haven't asked any questions yet about **Tiger Natural Gas Inc.**

Recommended Reviews for Tiger Natural Gas Inc

Your trust is our top concern, so businesses can't pay to alter or remove their reviews. [Learn more](#)

Search within the reviews

Sort by **Yelp Sort** Language **English (17)**



Steve B.
Palm Beach Gardens, FL
 164 friends
 1 review

2/3/2016

I have done business with Tiger Natural Gas for the last 4 years and I've had the best Natural Gas Service that I could ever expect. Tiger is a professional company from the CEO to the phone receptionist. I have business connections with several restaurants through-out Florida That use Tiger Gas and all of them are happy with the price, billing and customer service. I recommend Tiger to all commercial clients who are concerned with competitive pricing and quality service.

Tae K.
Glendora, CA
 0 friends
 2 reviews
 1 photo

3/9/2016

SCAM
I been waiting for 3 years and they renewal the contract without notice. I was complain about this happen, but they don't give a fuck.

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[Edit business info](#)

More business info

Accepts Credit Cards **Yes**

George C.
First to review

From the business

Tiger Natural Gas is an award-winning retail energy provider supplying 28,000 accounts nationwide. Tiger specializes in Natural Gas Supply & Procurement, Customer Support Services, ...

[Learn more about Tiger Natural Gas Inc](#)

You might also consider

Other Propane Nearby

now I need to pay early termination fees, so please do not make any contract with this stupid company. don't make any mistake that I just did.




additional.
they actually send me the first agreement from 2013 december, voice record, which is make a contract. from voice record, it didn't even mention that they will automatically renew or other stuff.

I check them out, its 1000% Scam.
really bad customers services.

guys don't even make any mistake that I just got.

Find more Propane near Tiger Natural Gas Inc

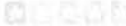
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 **Comment from Jonathan B. of Tiger Natural Gas Inc**
Business Employee
3/9/2016 • Good Afternoon,



Tiger is the process of sending you the contract so you may see the terms. When you... [Read more](#)

 2/1/2016
This company is an absolute scam. They called my household while I was not home, promised savings, and switched us off of PG&E just from the verbal confirmation of whom they spoke with. We have ended up paying hundreds of dollars more in gas charges as a result, before I could figure out what was going on. If you live in northern CA, DO NOT SIGN UP FOR THIS COMPANY. They are deceitful and have bad business practices, which is evident from all of the other reviews. If I could publicise this beyond yelp I would.

 **Comment from Jonathan B. of Tiger Natural Gas Inc**
Business Employee
2/1/2016 • Good Afternoon,

Tiger would like to help you out with your concerns and address them. Tiger is unable... [Read more](#)



 9/3/2016 •  Updated review
I contacted Tiger company today and spoke to a guy named 'Jeff' I explained to him that I did not signed up for the service. He said that he can shoot me an email of voice recording. When I opened it was just my dad anwering 'yes' yes to what?!!! Where is the whole conversation???? As I was so furious and called PG&E and they said all they can do is send cancellation letter behalf of me but there is no guarantee. And it can take up to 30days. I cannot pay penny more for another 30days of service that I did not agree to!! So I dlosed my PG&E account and reopen it with my husband's name. People!! If you can't cancel your tigernatural gas scam just call your utility provider and ask them to close your account and open new account! Their scam service don't transfer to your new account. But I still want to get reimbursed for \$1000 I had to pay to this scum company!! People we need to make claim and take this scam company to court!!! And have them pay back God knows how many innocent people they scammed and made millions from!! Let's bring this company down!!!

 8/28/2016 • Previous review

People please be aware of this company! SCAM SCAM!!!! I am so upset that this business is legit and... [Read more](#)




Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee
9/6/2016 · Cindy,

Tiger is sorry you feel this way and we would be more than happy to provide you with the... [Read more](#)



Emily F.
Mill Valley, CA
0 friends
1 review

 4/6/2016

This company needs to be sued! What a SCAM. They got me on a bad day and I switched over to them as my gas supplier. I am paying hundreds of dollars more than I would have had I stayed with PG&E.

Deceitfull! DO NOT SIGN UP. I am going to see what can be done to sue these people. There needs to be a class action suit against them.



Jae S.
Elk Grove, CA
0 friends
1 review

 9/8/2016

Robin from community gas center called today and have me believed that she is calling behalf of California Utility Commission to protect my gas price from PG &E. I asked her whether she is soliciting for third party and she denied. So I gave her all the informations she asked and told me to answer the recorded question. And she gave me a toll free number and extension number for any question. After I hung up, I realized that I was scammed to enter a contract I did not want. I called her back the number she gave me and all I heard was advertisements and could not reach her. I called PG & E and I was able to get the tiger natural gas company phone number. I called Tiger Natural Gas Company and explained what happened and ask them to cancel the contract since I got into a contract about an hour ago. The guy told me that they did not have my contract but they will block the contract when it get to them so I gave my service agreement I'd #. The guy told me also that I might get a letter from PGE saying that Tiger NaturalGas as my provider and then told me to call back if that happens. Let's wait what happens to my contract. I will post when it finally end.




Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee
9/8/2016 · Jae,

Thank you for the information! Community Gas Center is an outside agent and are not employeeed... [Read more](#)



Mark C.
Los Altos, CA
39 friends
25 reviews

 3/20/2015

SCAM. They called promising lower natural gas prices if I switched from PG&E to Tiger Natural Gas. They almost guaranteed savings. So I asked if they in fact guaranteed it to which they replied well we don't formally do that. Long discussion ensued and I got the sales representative to send me something in writing saying that at the end of 12 months, they would do an analysis of my "savings" and if I paid more, they would refund the difference. 18 months later, I contact the person and say I never heard from them with the results of the analysis, as they promised. Many phone calls later I finally got an analysis and Tiger Natural Gas CHARGED ME MORE, NOT LESS THAN IF I HAD JUST STAYED WITH PG&E.

DO NOT SWITCH TO TIGER NATURAL GAS if you expect lower prices than PG&E natural gas.



Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee

3/23/2015 • Mark,

Tiger does not guarantee a savings as we do not know what the gas market will do. It sounds... [Read more](#)



Chris O.
Oakland, CA
0 friends
33 reviews
1 photo

5/15/2016

These guys have been charging my elderly parents hundreds of extra dollars for who knows how long.



Alice C.
San Jose, CA
83 friends
193 reviews
288 photos

12/7/2014

Seriously, DO NOT SIGN UP FOR THIS FREAKING COMPANY'S GAS! YOU WILL TOTALLY REGRET THIS, I BET YOU! My parents own a restaurant and they were keep call them about getting a cheaper gas and will save a lot of money from the current PG&E system. So why not save more, since it costs some money for running the business. Also, I was worried that this might be scam or something might happened, so I asked the lady that if I can get out whenever I wanted, because I didn't wanted to be part of the long contract. The lady said that "Don't worry, we don't have any contract, so you can call us back if you are not saving." However, my parents ended up paying for more than then PG&E and called them about getting out of their system. WOW, I can only say WOW to what they said. When I called them after 3 months, that I wanted to cancel this freaking service. Why they told me is that I have 3 years contract that I am even aware of and they said I can't cancel the contract. And that they have a proof of phone record of the conversation. So I requested for a copy (like everyone in this page). However, I am waiting for almost 6 months of that freaking copy of conversation, which they will never release (I guessing according to what everyone says).

SERIOUSLY, I DON'T REALLY KNOW ABOUT BUSINESS BUT YOU GUYS SHOULD NOT EVEN SAY DIFFERENT THINGS BEFORE AND AFTER THE AGREEMENT. FURTHERMORE, I HOPE THERE ARE MORE PEOPLE WHO GOT THIS SCAMED AND TO GO TO THE COURT FOR BEING NOT HONEST WITH THE CUSTOMERS, WHO ARE WILING TO BE PART OF IT. I HOPE PEOPLE (WHO IS AFFECTED FROM THIS COMPANY) COME ALL TOGETHER AND SUE THIS COMPANY FOR BILLING US ENORMOUS AMOUNT OF BILLS.



Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee

12/9/2014 · Tiger Natural Gas would like to reach out and help you in any way possible. We would like to send... [Read more](#)



Nancy T.
Coto De Caza, CA
27 friends
3 reviews

2/27/2015

DO NOT SIGN UP WITH THIS COMPANY! They are very misleading, first in that there IS a contract, but never told, second that you WILL NOT save \$\$

This is a nightmare for all us struggling companies trying to save a buck. Should have know it was too good to be true

BYER BEWARE
SHAME ON YOU TIGER NATURAL GAS



Kami D.
Santa Rosa, CA
1 friend
7 reviews

6/17/2015

So thank you for all of your reviews it has helped me so much. I got a call today for someone from Community Gas Center saying "That I had to go with TIGER NATURAL GAS INC. that it was the new law in the state of CA". Told the man NO.. and called PG&E and found out other wise.. Shame on community gas center and Tiger Natural gas for making people feel like they have to do this..

 **Comment from Jonathan B. of Tiger Natural Gas Inc**
Business Employee
6/19/2015 · Kami,

Thank you for the information provide. Tiger has contacted the outside agent to let them know... [Read more](#)




Edie Z.
La Crescenta, CA
0 friends
2 reviews

6/22/2014

This company is a scam. do not accept any offer from them....once you said YES to them, they will record your voice and they will charge you what ever they desire. You not only are not going to save money but you will end up paying more. This company pays YELP to take the reviews away but please check the NOT RECOMMENDED REVIEWS and you will see how people think about this company.


STAY AWAY FROM THIS COMPANY!!



Susan F.
Oakland, CA
4 friends
18 reviews

6/15/2015

Oh, I certainly wish I had read these reviews before I too was scammed into believing that I would be charged less than the rates I was paying PG&E. Tiger Natural Gas now says I signed up for a price protection. Their price protection (and what they're allowed to charge) is approximately double what PG&E charges. When you get the cold call from them promising to lower your rates, just hang up; don't give them the time of day. Also, as I recall, they wanted to verify my signing up with them by recording my responses over the phone. Tiger told me how I must respond to all questions . . . agreeing to everything. So, in order to get what I thought would be lower prices, I dutifully followed their instructions. Little did I know that the "price protection" would be very costly.

 **Comment from Jonathan B. of Tiger Natural Gas Inc**
Business Employee

7/14/2015 • Susan,

Tiger has made two calls to try and straighten this out with you. When the outside consultant... [Read more](#)



Jolie H.
San Ramon, CA
0 friends
4 reviews

3/17/2015

A scam. They told me I would save money by switching to them. I reviewed my gas bill in the last 6 months. They consistently charge me more than PG&E would have charged me based on PG&E's " Gas procurement credit. I am calling them to cancel and they get my phone number, then told me a supervisor will call me. I will see what happened.



Susan S.
Stockton, CA
0 friends
5 reviews
6 photos

10/1/2014

This people are so scam. I owned a restaurant and one the rep from this company call and said that he can save me money on natural gas by switching over to his company. He also asked me to help him out by becoming his customer so I said ok I'll help him out. Fast forward a year gone by. I don't see any saving but instead I end up pay more so I them to cancel but now they told there's a 3 years contract that I agree by verbally over the phone with their rep that day. I told them that I never agree to anything. They told me they have the phone conversation recorded. So I requested for a copy and told me they will email it to me. I've been waiting, waiting and waiting and till now I still having seen it. I don't speak much English but I know what a contract is.



Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee

10/22/2014 • Tiger Natural Gas would like to take the time to state that the savings is not guaranteed. The...
[Read more](#)



Bee B.
San Francisco, CA
22 friends
5 reviews
35 photos

2/25/2015

this company is a scam. they switched me from pge to their company twice within two years without my authorization. when i call them up, they gave me the usually run around. i will call my local tv station to see how many people are affected by this bad and illegal business practice and see what we can do about it. probably a class action.



Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee

2/26/2015 • Tiger Natural Gas has been in business for over 20 years. Tiger would never enroll an account with...
[Read more](#)



George C.
San Francisco, CA
0 friends
25 reviews

6/27/2013 • Updated review

Got a call back from Tiger Natural Gas that when you sign up for service, there is a money back guarantee provided you use their service for 1 year with 9-15 percent price reduction guarantee???? Agent claimed it was in the recorded telephone conversation during the sign up process. She was supposed to forward that information to me but I am still waiting.....

6/26/2013 • Previous review

Signed up for tiger natural gas since they claimed they can save me around 10 percent over my... Read more

Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee

6/26/2013 • Tiger Natural Gas, Inc advertises a range of savings that our customers will likely experience if...
Read more

Page 1 of 1

15 other reviews that are not currently recommended

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15 reviews for Tiger Natural Gas Inc that are not currently recommended

Note: The reviews below are not factored into the business's overall star rating.



Jaroslaw H.
Olivehurst, CA
0 friends
2 reviews

1/4/2017

Keep away from those guys! It's a SCAM. I've been trying to get rid of them for over a half a year. Will take them to court, eventually



Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee

1/11/2017 · Tiger Natural Gas has looked over all records and we do not have an account with this gentlemen.



Jutta P.
Paradise, CA
0 friends
2 reviews

8/18/2016

Terrible company. Never thought I would fall for a scam, but it happened. The lady who had called me late last year made it sound like I would save money on gas, and that, if I don't see any savings, I just need to call Tiger Natural Gas and get switched back to PG&E. When I noticed that my bill now includes a charge for gas from Tiger and a gas delivery charge from PG&E, thereby raising my rates, I called Tiger Natural Gas back in May to be switched back. I spoke to a guy named Brent, who assured me he would do this, but it may take a month. My current bill still shows I am receiving gas from Tiger, and when I spoke to Brent today he claims to have no record of me ever having called and spoken to him directly or having left messages on his phone. Really bad customer service. Today he gave me a confirmation number that Tiger will contact PG&E so I will be switched back, and I should get a confirmation letter within 7 to 10 days. No mention of a long-term contract was made at any time, so there better not be a termination fee. If so, I am fully prepared to contact a lawyer. What a horrible company with deceptive pricing and very poor customer service.



Dia L.
Temecula, CA
0 friends
4 reviews

5/6/2016

Like everyone else said it is a scam. Johnathan keeps coming up with excuses but it is obvious with the past 20 reviews they will say anything. They keep calling you to sign up for their gas. Their main advertisement is that you will save money, but you do not save. I have accumulated two years of bills from Tiger and compared them to our previous gas company, we were paying a lot more with Tiger Gas. We are in California. During the sign up process I asked more than a couple times if we could cancel whenever the representative said yes. Turns out that was a lie along with everything that came out of their mouth about savings. This company needs to be shut down.



Margie I.
Thornton, CA
0 friends
1 review

4/21/2015 · Updated review

This is the worst company ever. They treat their customers with a big bag of lies with side order of bending people over. What's worse is when you try to bring B.B.B. into the situation to help them lie to them. If you even have an inkling of a thought to use them and their services think twice. They should be ashamed of their selves for taking advantage of and deceiving their customers. Businesses like this should be banned. If you do

business with them then you will find out the hard way.

4/1/2015 • Previous review

I just want to inform any one who is thinking about using this company that one, they lie about... Read more



Joe K.
Chino Hills, CA
2 friends
6 reviews
4 photos

10/22/2014

So it's been about 9 months now since I have had tiger natural gas provide my gas services and I have not seen any savings in my gas bill. The company promises that customers who switch to tiger gas will see savings but instead I have seen an increase of about 20% more in my gas bill than what I used to pay with Southern California Gas Co. Do not trust these phonies!!!! I got stuck in a three year contract with this company and had to pay an early termination fee in order to return to so cal gas to provide my services once again.



Tom C.
Redondo Beach, CA
0 friends
1 review

8/6/2014

Gas costs more with tiger. I cancelled after aprox 8 mos and was charged the average of one months gas bill plus \$300.00 cancellation fee. Beware!



Jeff G.
Los Angeles, CA
0 friends
4 reviews

6/4/2014 • Updated review

If I could write my review without a star...I would have done that. We think Tiger does not deserve a star. Our experience with TIGER was HORRIBLE. First of all, once you said YES to them over the phone, they record your voice and you are trapped for 36 months. We were promised to save money with Tiger but, we just received two separate bills one from our gas company and one from Tiger. Our gas bill used to be \$299-\$320 but right now we are paying around \$222 to our gas company and \$170-\$250 to Tiger. There is no savings here. DO NOT BELIEVE THEIR SWEET TALK at the beginning. If you want to cancel your contract, you should pay \$300 termination fee. Why is there a contract if this is not a scam!!!

If you are planning on getting into contract with Tiger, please do yourself a favor and check BBB's website bbb.org and you would see the same exact complaints filed there. I wish I had done my research before getting myself into this mess.

5/28/2014 • Previous review

If I could write my review without a star...I would have done that. We think Tiger does not deserve... Read more



Comment from Jonathan B. of Tiger Natural Gas Inc
Business Employee

5/30/2014 • Tiger Natural Gas has been in business for over 20 years and prides ourselves on the brand of our... Read more



Jacqueline W.
Stockton, CA
0 friends
2 reviews

12/15/2013

I have been with Tiger Natural Gas for over a year now and have not had a single month in which I have saved any money. On average I have had to pay \$2.00 more per month, so in the last 12 months I have paid over \$24.00 more by switching over to Tiger. This is the exact opposite of what they had promised me. I will be switching back to PG&E. Do not let them convince you to switch to their company.



Vicky W.
Fremont, CA
0 friends
7 reviews
3 photos

8/2/2013

company is s scam. Do not sign up! It will cost you.



Gabriel E.
Hialeah, FL
0 friends
1 review

7/20/2016

I am a Tiger customer for almost a year, we are a restaurant owners located in Florida, so far every thing is running good, good service , good customer service, I have no complaints at all. I recommend this company based in my experience.

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15 reviews for Tiger Natural Gas Inc that are not currently recommended

Note: The reviews below are not factored into the business's overall star rating.

- Dave C.

Wesley Chapel, FL

0 friends

1 review
- ★★★★★

6/23/2016
- I have nothing but respect for Tiger natural Gas. I am a small business owner and anyone that has been in business for themselves would know sometimes things are difficult and every dollar matters. Their customer service is beyond anything I've dealt with any of the 20 or so accounts that I need everyday to operate. (Especially Brian) I would never think to change companies. I'm very pleased and have saved a lot of money from my previous natural gas provider. This is coming from a business owner for 16 years. I've seen and have heard every bait and switch method
- Miguel E.
- Delray Beach, FL
- 0 friends
- 1 review
- ★★★★★
- 6/22/2016
- Tiger is a very good company, actually I've doing business for the last two years and they allow me to pay my bills when I can, no pressure no treats.
- When I was in need to something I just called and they listened.
- I recommend them.
- Philip L.
- Stockton, CA
- 0 friends
- 3 reviews
- ★★★★★
- 6/21/2016
- I contacted Tiger Customer Service after a local rep had signed my mother up for their service. I was very pleased with their description of the service and decided to continue the contract to see how well it works for my mother. Both the receptionist and the Customer Service Rep were friendly, knowledgeable, professional, and thorough in representing their Company's service.
- Nathan W.
- Los Angeles, CA
- 0 friends
- 1 review
- ★★★★★
- 6/20/2016
- Great company! Competitive pricing, experienced staff and first class customer service. I will long continue to use Tiger and cannot recommend them enough.
- Selzer B.
- Breckenridge, CO
- 0 friends
- 1 review
- ★★★★★
- 6/20/2016
- Our company has worked with Tiger Natural Gas for many years. I find their prices to be very competitive. I also find their staff professional and easy to work with, and we continue to migrate natural gas contracts over to them. I definitely recommend Tiger Natural Gas!

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Exhibit B

Pages from PG&E Gas Rule 23
(Effective Date Jan. 4, 2014)



Pacific Gas and Electric Company
San Francisco, California
U 39

	Revised	Cal. P.U.C. Sheet No.	30871-G
Cancelling	Revised	Cal. P.U.C. Sheet No.	29674-G

GAS RULE NO. 23

Sheet 1

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

A. GENERAL

This Rule applies to Core Transport Agents (CTA) providing gas aggregation service to Customers in a Core Transport Group(s) (Group) in accordance with the provisions of Schedule G-CT—Core Gas Aggregation Service, and the Core Gas Aggregation Service Agreement (CTA Agreement) (Form 79-845). To provide gas aggregation service, the CTA shall meet credit requirements set forth herein.

B. ESTABLISHMENT OF CREDIT

1. APPLICATION FOR CREDIT

The CTA shall complete and submit a California Gas Transmission Credit Application (Credit Application) (Form No. 79-868) to PG&E on an annual basis or whenever the Daily Contract Quantity (DCQ) for the Customers in the Group increases by 25,000 therms per day or more. The DCQ for the Group is the Annual Contract Quantity, as specified in Schedule G-CT, divided by 365. The Group DCQ will be the basis for evaluating the CTA's secured or unsecured credit limit, as set forth herein.

In the event the CTA accepts a storage allocation pursuant to Schedule G-CT, the CTA shall be subject to applicable storage credit requirements as set forth in gas Rule 25.

A creditworthiness evaluation may be conducted by an outside credit analysis agency, to be determined by PG&E, with final credit approval granted by PG&E. Credit reports will remain strictly confidential between the credit analysis agency and PG&E.

To assure the continued validity of an established unsecured credit limit, the CTA shall furnish financial information satisfactory to PG&E upon PG&E's request. If PG&E determines that a financial change has or could affect adversely the CTA's creditworthiness, or if the CTA does not provide the requested financial information, PG&E may, in its discretion, reduce the unsecured credit limit or terminate the CTA Agreement.

Establishment of credit for gas transmission services (transportation, all storage including core firm storage, parking and lending) is provided for in gas Rule 25.

(T)

(Continued)

Advice Letter No: 3436-G
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed	December 5, 2013
Effective	January 4, 2014
Resolution No.	



Pacific Gas and Electric Company
 San Francisco, California
 U 39

Cancelling
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Revised
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Cal. P.U.C. Sheet No.
 Cal. P.U.C. Sheet No.

30879-G
 29248-G

GAS RULE NO. 23

Sheet 20

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

D. CUSTOMER PROTECTION

1. ENROLLMENT OF CUSTOMERS

- a. The CTA or its authorized agent(s) shall comply with the Customer Sign-Up Process and obtain the Customer's Authorization in accordance with the provisions of Schedule G-CT – Core Gas Aggregation Service.
- b. The CTA, or its authorized agent(s), shall not make, with dishonest, fraudulent, or deceitful intent, material verbal or written misrepresentations in the course of soliciting or serving core gas aggregation customers.
- c. The CTA or its authorized agent(s) shall not with dishonest, fraudulent, or deceitful intent act to substantially benefit the CTA or its employees, agents, or representatives, or to disadvantage customers.

E. TERMINATION OF SERVICE

1. NONCOMPLIANCE WITH CUSTOMER PROTECTION

In accordance with the provisions of this Section E, PG&E may terminate the CTA Service Agreement for the CTA's failure to comply with Section D above.

- a. Customers may submit a complaint to PG&E if they believe the CTA's actions were in violation of Section D, above.
- b. If PG&E receives a complaint from a Customer, PG&E shall provide the CTA with an opportunity to investigate and resolve the complaint with the Customer. PG&E shall provide the CTA with relevant information, including a description of the complaint and Customer contact information, to investigate and resolve the complaint. If the complaint concerns an unauthorized enrollment, then PG&E shall also provide the CTA with the Customer's relevant Service Account Number(s). (T)
- c. Responses to a Customer complaint are due back to PG&E and the Customer within three (3) business days, starting with the day following PG&E's notification. If additional time is needed to resolve the complaint, the CTA must submit a written (e-mail is acceptable) request to PG&E within the same three (3) business day period describing why additional time is needed. PG&E, at its discretion, may grant the CTA an extension of three (3) additional business days, resulting in a total of six (6) business days, to achieve resolution. (T)

(Continued)

Advice Letter No: 3436-G
 Decision No.

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 Vice President
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San Francisco, California
U 39

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Cal. P.U.C. Sheet No.

30880-G
29249-G

GAS RULE NO. 23

Sheet 21

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

1. NONCOMPLIANCE WITH CUSTOMER PROTECTION (Cont'd.)

- d. The CTA's response to PG&E will explain the resolution, the date that the Customer was informed of the resolution, and the means of communication with the Customer. (T)
- e. Regardless of the CTA's initial resolution of the Customer complaint, PG&E may request written documentation of the Customer's authorization for enrollment, marketing materials, the sales call or Third-Party Verification (TPV) for any complaint. (T)
- f. If PG&E does not receive a response from the CTA indicating resolution by the specified deadline, or if PG&E, or the Customer, finds a problem with the information provided, PG&E shall provide the CTA with an opportunity to provide supporting evidence, such as, marketing material (for a general complaint), or proof of authorized enrollment (in instances where the complaint is about an unauthorized enrollment). (T)
- 1) Within three (3) business days of PG&E's request for supporting evidence (beginning with the first business day following the request), the CTA shall provide supporting evidence to PG&E or the Customer, if requested. Acceptable forms of supporting evidence consist of the following: (T)
 - a) An electronic or facsimile copy of the Customer's signed Core Gas Aggregation Service Agreement Customer Authorization For Core Gas Aggregation Service (Form 79-845A) (Attachment A) or similar Customer correspondence or evidence (e.g., e-mail or electronic confirmation file); or (T)
 - b) The audio recording of the independent TPV of the Customer's enrollment; or (T)
 - c) An electronic or facsimile copy of any marketing material related to the enrollment that was provided to the Customer. (T)

(Continued)

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GAS RULE NO. 23 Sheet 22
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

1. NONCOMPLIANCE WITH CUSTOMER PROTECTION (Cont'd.)

- g. After reviewing the aforementioned TPV or signed Attachment A, together with any other pertinent documentation or information, PG&E shall make a determination of whether or not the Customer's enrollment authorization was properly obtained. (T)
- 1) If the Customer disagrees with PG&E's determination that the authorization for enrollment was properly obtained, PG&E shall request additional supporting documentation such as marketing materials, terms and conditions or the recording of the full sales call. The CTA will provide the requested information within two (2) business days. Upon completion of its final review, PG&E will notify the CTA of its decision and the reason for its decision. (T)
- 2) If PG&E finds a problem with the CTA's response and the supporting documentation submitted (e.g., vague documentation or practices that may not follow the guidelines in Section D, above), PG&E, at its discretion, may request additional supporting documentation, such as marketing materials, terms and conditions or the recording of the full sales call. The CTA will provide the requested information within two (2) business days. Upon completion of its final review, PG&E will notify the CTA of its decision and the reason for its decision. (T)
- 3) If PG&E finds that the enrollment authorization was improperly obtained, the CTA shall have an opportunity to contest PG&E's decision. The CTA shall have two (2) business days to contest PG&E's decision and PG&E will have one (1) business day after receiving the CTA's statement of contest to render a final decision. (T)
- 4) If PG&E determines that the Customer's enrollment authorization was not properly obtained, PG&E may count this instance as a Non-Compliance Event (Non-Compliance Event) and shall request that the CTA immediately submit a service cancellation request to PG&E by electronic means for that Customer and waive any early termination fee for the Customer. The CTA shall take all corrective actions within one (1) business day of PG&E's request. (T)

(Continued)

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30882-G
29251-G

GAS RULE NO. 23

Sheet 23

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

1. NONCOMPLIANCE WITH CUSTOMER PROTECTION (Cont'd.)

g. (Cont'd.)

(N)

- 5) If PG&E finds that the written documentation or the sales call and TPV indicate that a CTA is in violation of Section D, that complaint may be used as a recordable instance of verifiable non-compliance and counted as a Non-Compliance Event.

If the Customer complaint involves multiple Service Accounts and the CTA is found to be in violation of Section D, the complaint will be counted as a single Non-Compliance Event if the supporting documentation establishes that the complaint involving these Service Accounts was the result of a single event.

(T)

- h. PG&E shall share any materials, including recordings, documents, TPVs, sales calls, written contracts, marketing or other materials, provided by the CTA with the Customer, or the Customer's authorized agent, provided that such agent is not another CTA, at their request. In order to receive information or act on a Customer's behalf, the third-party agent must have written authorization from the Customer. Such authorization must be submitted to PG&E in the form of a completed and current Authorization to Receive Customer Information or Act Upon a Customer's Behalf (PG&E Form 79-1095 (English) or Form 79-1096 (Spanish)).

(T)

(T)

(T)

All materials, including recordings, documents, TPVs, sales calls, written contracts, marketing or other materials, provided by the CTA to PG&E in accordance with the provisions of Section E. will be managed by PG&E in a strictly confidential manner. PG&E may not disclose the materials provided by the CTA within or outside of PG&E except to the extent necessary to manage compliance with Section D., above.

(T)

(T)

(Continued)

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29252-G

GAS RULE NO. 23 Sheet 24
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

2. THIRD PARTY VERIFICATION

A TPV should not use the phrase "PG&E's Customer Choice Program," which is misleading to customers. Instead, the TPV should refer to "Core Gas Aggregation Service." (T)

TPV will verify, at a minimum, the following topics.

- a. The name and title of the person authorizing, or authorizing on the Customer's behalf, the Customer's enrollment with the CTA. (T)
- b. The name of the CTA and the identity of the independent third-party verifier.
- c. A verbal request for, and the customer's provision of, the customer's Service Account Number. In the case of multiple accounts, the main site Service Account Number would suffice with the customer's verbal confirmation of the number of Service Accounts to be enrolled.
- d. A verbal request for, and the Customer's provision of, the Customer's mailing address. (T)
- e. A verbal request for, and the Customer's provision of, the Customer's service address. (T)
- f. A verbal statement and the Customer's acknowledgement that the call is being recorded. (T)
- g. A verbal question and the Customer's acknowledgement that the Customer understands that the CTA is not affiliated with PG&E, and that the Customer wishes to enroll his PG&E gas account with the CTA to buy gas from the CTA, and that PG&E will continue to deliver the gas to the Customer's home or business. (T)
(T)
(T)
- h. A verbal question and the Customer's acknowledgement that the Customer is the Customer of record or is authorized to switch to CTA by the Customer of record. (T)
(T)

(Continued)

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GAS RULE NO. 23

Sheet 25

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

2. THIRD PARTY VERIFICATION (Cont'd.)

- i. A verbal statement and the customer's acceptance of each of the principal terms and conditions for the service that will be provided, including, but not limited to:
 - 1) The service(s) that will be provided.
 - 2) All material pricing provisions, such as, the price per therm.
 - 3) The length of the contract term.
 - 4) Effective date of contract.
 - 5) The contract termination date, **and** any fees for early termination by the Customer. (T)
 - 6) Any fees or costs to the Customer not referenced above. (T)
 - 7) If applicable, whether the CTA will perform a credit check and require a deposit, including the amount.
 - 8) Who will bill for the service(s).
 - 9) A verbal statement and the Customer's acknowledgement that the CTA will, within three (3) business days, send the Customer a written confirmation that details the terms and conditions of the verbal contract that were summarized in the telephone call. (T)
(T)
 - 10) Customers are advised both verbally and in the written confirmation all of the following:
 - a) The Customer is allowed a three (3) business day period from the confirmation notice postmark date to rescind the enrollment. (T)
 - b) The Customer should contact the CTA to rescind the enrollment. (T)
 - c) The CTA's telephone number that the Customer should use to rescind the enrollment. (T)

(Continued)

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GAS RULE NO. 23 Sheet 26
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

2. THIRD PARTY VERIFICATION (Cont'd.)

i. (Cont'd.) (N)

11) If Customer enrollment is by telephone, following the telephonic enrollment, the CTA shall: (T)

a) Within three (3) business days, send the Customer a written confirmation that details the specific terms and conditions agreed to by the Customer during the telephonic enrollment. Such confirmation shall in no way alter the terms and conditions to which the Customer agreed to in the telephonic enrollment. (T)

b) The CTA shall retain the audio recording of the sales call for one (1) year and the TPV of the Customer's enrollment for two (2) years. (T)

3. PENALTIES DUE TO NON-COMPLIANCE

a. Definition of an incident of verified non-compliance (Non-Compliance Event):

1) A documented Customer complaint where the CTA is unable to provide supporting evidence that the complaint is invalid after following the steps outlined in Section E.1. (T)

b. Non-Compliance Events will be counted in two (2) separate Customer segments, commercial or residential, in accordance with gas Schedule G-CP, or its successor. (T)

c. It is recognized that multiple Customer complaints related to unauthorized enrollment may result from a single sales person employed by a CTA or its authorized agent(s) that may cause the CTA to be non-compliant with Section E.1. If written, electronic, or audio documentation show that multiple complaints were related to a single common individual representative of the CTA, such multiple complaints will be treated as a single Non-Compliance Event for purposes of Section E.3., if the CTA cooperates with PG&E to resolve, within a reasonable time frame, the non-compliant activities of that representative. (T)

(Continued)

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GAS RULE NO. 23
GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

Sheet 27

E. TERMINATION OF SERVICE (Cont'd.)

3. PENALTIES DUE TO NON-COMPLIANCE (Cont'd.)

- d. If a CTA triggers the limits of verified Non-Compliance Events described in Table 1, below, PG&E may immediately suspend the CTA's ability to enroll any new Customer accounts, of the type – residential, commercial, or both – involved with the complaints for the following three (3) calendar months. A CTA, for the purpose of event tracking and suspension, includes any subsidiaries. (T)

Table 1: Rolling Time Periods and Non-Compliance Event Limits

Rolling Period (days)	Incident Limit - Verified Non-Compliance Events		
	Combined Commercial + Residential	Commercial	Residential
30	7	3	6
60	11	5	10
90	15	7	14
180	22	11	20

- e. PG&E will record the date when the Customer, or its authorized agent, first contacts PG&E to report a complaint against a CTA. This date, the incident date, will be used when counting incidents of Non-Compliance Events. A Non-Compliance Event will not be counted if the enrollment or underlying activity that generated the complaint occurred prior to May 17, 2012. (T)
- f. PG&E will notify the CTA via e-mail that an incident of verified non-compliance will be counted as a Non-Compliance Event towards their limit, as well as the incident date, after the incident has followed the process outlined in Section E.1. (T)

(Continued)

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GAS RULE NO. 23

Sheet 28

GAS AGGREGATION SERVICE FOR CORE TRANSPORT CUSTOMERS

E. TERMINATION OF SERVICE (Cont'd.)

3. PENALTIES DUE TO NON-COMPLIANCE (Cont'd.)

- g. Within five (5) business days of PG&E's suspension notification, a CTA shall have the right to appeal the suspension through the CPUC's dispute resolution process. If the CPUC determines that the suspension action is justified, the suspension will be effective on the effective date of the CPUC's determination. If the CPUC does not respond, or chooses to remain uninvolved, the suspension will begin thirty (30) days from when the CPUC was notified.
- h. The first incident of non-compliance marks the first day to begin the count for the 30, 60, and 90 and 180-day rolling time periods listed in Table 1 in Section E.3.d. Following a CTA's suspension, the incident count is returned to zero (0) when a CTA's ability to enroll new Customers is reinstated.
- i. In a one hundred and eighty (180) day period, if a CTA has incurred two (2) suspensions, as counted from the effective ending date of the first suspension to the first date of the second suspension, as described in Section E.3, PG&E shall have the sole discretion to terminate a CTA's Service Agreement with thirty (30) days' prior notice. Termination of the CTA's Service Agreement for non-compliance with Section D will follow the process outlined for termination due to non-payment in Section C.6, above. A terminated CTA may reestablish its ability to provide gas aggregation service under PG&E's tariffs with the prior approval of PG&E.

(T)

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Exhibit C

Pages from PG&E Gas Schedule G-CT
(Effective Date Dec. 1, 2014)



Pacific Gas and Electric Company
San Francisco, California
U 39

	Revised	Cal. P.U.C. Sheet No.	31674-G
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GAS SCHEDULE G-CT CORE GAS AGGREGATION SERVICE

Sheet 1

APPLICABILITY: This schedule* applies to transportation of natural gas for Core End-Use Customers (as defined in Rule 1*) (Customer) who aggregate their gas volumes and who obtain natural gas supply service from parties other than PG&E. The provisions of Schedule G-CT apply to Core End-Use Customers and to the Core Transport Agents (CTA) who supply them with natural gas and provides or obtains services necessary to deliver such gas to PG&E's Distribution System. Rule 23 also sets forth terms and conditions applicable to Core Gas Aggregation Service. In addition, pursuant to Decision (D.) 14-08-043 and Public Utilities Code Section 983, the California Public Utilities Commission shall accept, compile and attempt to informally resolve consumer complaints regarding CTAs.

(T)
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(T)

A group of Core End-Use Customers who aggregate their gas volumes shall comprise a Core Transport Group (Group). The minimum aggregate gas volume for a Group is 12,000 decatherms per year. The Customer must designate a CTA, who is responsible for providing gas aggregation services to Customers in the Group as described herein and in Rule 23. Aggregation of multiple loads at a single facility or aggregation of loads at multiple facilities shall not change the otherwise-applicable rate schedule for a specific facility. Customers electing service under this schedule must request such service for one hundred (100) percent of the core load served by the meter. Schedule G-CT must be taken in conjunction with a core rate schedule.

Core volumes are eligible for service under this schedule, whether or not noncore volumes are also delivered to the same premises. However, core volumes cannot be aggregated with noncore volumes in order to meet the minimum therm requirement for noncore service. Service to core volumes associated with noncore volumes under this schedule applies to all core volumes on the noncore premises.

CTAs, on behalf of a Group, may receive service on PG&E's Backbone Transmission System by utilizing Schedules G-AFT, G-SFT, G-AA, G-NFT, or G-NAA. CTAs may also receive service from PG&E's Storage facilities by utilizing Schedules G-CFS, G-SFS, G-NFS, G-PARK, or G-LEND

TERRITORY: This schedule applies everywhere within PG&E's natural gas Service Territory.

RATES: Customers taking service under Schedule G-CT will receive and pay for service under their otherwise-applicable core rate schedule; except that Customers who procure their own gas supply will not pay the Procurement Charge specified on their otherwise-applicable core rate schedule.

Pursuant to Schedule G-SUR, Customers will be subject to a franchise fee surcharge for gas volumes purchased from parties other than PG&E and transported by PG&E. Customers will also be responsible for any applicable costs, taxes and/or fees incurred by PG&E in receiving gas to be delivered to such Customers.

See Preliminary Statement, Part B for the Default Tariff Rate Components.

* PG&E's gas tariffs are available on-line at www.pge.com.

(Continued)

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31676-G
30856-G

GAS SCHEDULE G-CT CORE GAS AGGREGATION SERVICE

Sheet 3

CUSTOMER
SIGN-UP
PROCESS
(Cont'd.):

If a Customer cancels its Customer Authorization pursuant to Public Utilities Code Section 989.1, a Customer Authorization shall not be submitted for that Customer. If a Customer Authorization has already been submitted, the CTA shall, within twenty-four (24) hours, direct PG&E to cancel the Customer Authorization.

(L)
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(L)

The CTA can also obtain a Customer Authorization by having the Customer sign a copy of the Core Gas Aggregation Service Agreement Customer Authorization for Core Gas Aggregation Service (Form 79-845A) (Attachment A), or by signing a form provided by the CTA (CTA Form). The CTA Form must include all of the terms and conditions specified in Attachment A. If the CTA has the Customer sign a CTA Form or a copy of the Attachment A, the CTA shall retain the Customer Authorization for three (3) years and shall provide the original Customer Authorization within three (3) business days of PG&E's request. PG&E reserves the right to review the language in the CTA Form, to ensure it conforms with the language in Attachment A.

After a Customer signs a copy of a CTA Form or the Attachment A, the CTA may electronically submit notice of the Customer's Authorization to PG&E immediately upon the Customer's signing. Third-party verifications are not necessary if the Customer's signature is obtained.

Paper copies of a signed CTA Form or an Attachment A will not be accepted by PG&E for processing.

In accordance with the provisions of gas Rule 3, PG&E may reject any notice of Customer Authorization if the information provided is false, incomplete, or inaccurate in any material respect.

PG&E will accept Customer Authorizations for processing on a first-come, first-served basis. Each Customer Authorization shall be time stamped by PG&E. In the event that more than one Customer Authorization is submitted for a service account, the first valid Customer Authorization for that account will be processed and subsequent requests will be denied until the switch to the pending CTA occurs.

For those Customer Authorizations received and accepted by PG&E on or before the fifteenth (15th) day of any calendar month, Core Gas Aggregation Service will begin no later than the next calendar month's meter reading date for the service account(s) specified on the Customer Authorization. For Customer Authorizations received after PG&E's most recent offer of firm pipeline or storage capacity, PG&E shall not be under any obligation to offer corresponding capacity to a new CTA or additional capacity to an existing CTA for the remaining month(s) of the current capacity allocation period to serve the accounts specified on such Customer Authorizations. However, PG&E will attempt to include pipeline or storage capacities to service such accounts in PG&E's subsequent pipeline or storage capacity allocations to CTAs, provided that it causes no delay in the offer of such capacity by the scheduled offer date as specified below under *Allocation of Firm Pipeline Capacity and Allocation of Core Firm Storage*.

By agreement of all participants, PG&E, the CTA, and the Customer may implement a different beginning date for the service requested in a Customer Authorization. No later than five (5) business days before the beginning date of service for a Customer under a Customer Authorization, PG&E shall send Customer usage data to the new CTA. Such data shall be for the past twelve (12) months, or if such data is not available, for the time it is available.

(Continued)

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GAS SCHEDULE G-CT
CORE GAS AGGREGATION SERVICE

Sheet 4

- TERM:** The initial term (length) of service under a Customer Authorization will be twelve (12) consecutive months from the effective service date. Service shall continue month to month thereafter, regardless of the provisions or terms of any agreement between the Customer and the CTA, and each new Customer Authorization will establish a new twelve (12) month term of service with continuing month to month thereafter. There is no minimum stay period for a Customer returning to PG&E's procurement service before it can begin a new twelve (12) month term of service under a new Customer Authorization. (T)
- TERMINATION OF CUSTOMER AUTHORIZATION:** After the expiration of the initial twelve (12) month term, a Customer Authorization may be terminated as specified below:
1. The Customer or the CTA submits to PG&E a notice to terminate the Customer Authorization. Such notice will be referred to as the "Customer Termination". If the CTA submits the Customer Termination electronically, the CTA is obligated to notify the Customer of such termination. For Customers requesting the CTA to terminate service, the CTA shall submit the Customer Termination to PG&E within ten (10) business days of receiving the Customer's Termination request. For Customer Terminations received and accepted by PG&E on or before the fifteenth (15th) day of a calendar month, PG&E shall terminate Core Gas Aggregation Service to the Customer on the next month's meter reading date. PG&E shall provide procurement service, as specified in the applicable rate schedule, unless the Customer switches to a new CTA as described below. (T)
- All requests and terminations from the CTA must be submitted using the electronic format acceptable to PG&E (DASR), unless otherwise agreed to by PG&E.
2. The Customer directly contacts the CTA or PG&E to request to terminate the Customer Authorization and return to PG&E procurement service, as specified in the applicable rate schedule. Such contact may occur prior to the end of the initial twelve (12) month term but the resulting Customer Termination will not become effective until the initial twelve (12) month term has been completed. If the Customer contacts PG&E on or before the fifteenth (15th) day of any calendar month, Core Gas Aggregation Service will terminate and PG&E will provide procurement service, as specified in the applicable rate schedule, to the Customer no later than the next month's meter reading date for the specified account(s), unless a later month's meter reading date is specified by the Customer. For Customers requesting the CTA to terminate service, the CTA shall submit to PG&E within ten (10) business days the Customer Termination. (T)
 3. A CTA, other than the CTA currently serving the Customer, submits a new Customer Authorization to PG&E requesting that the Customer begin service with the new CTA. If accepted by PG&E, the new Customer Authorization will terminate service from the existing CTA and begin service with the new CTA on the same effective service date. The effective service date will follow switching rules as stated above. Each new Customer Authorization will not become effective until the initial twelve (12) month term of the existing Customer Authorization has expired, or the existing Customer Authorization has been terminated by other means specified herein, and a new twelve (12) month term of service will be established.

(Continued)

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20052-G

GAS SCHEDULE G-CT
CORE GAS AGGREGATION SERVICE

Sheet 5

**TERMINATION
OF CUSTOMER
AUTHORIZA-
TION (Cont'd.):**

At any time, a Customer Authorization may be terminated under the following conditions:

1. The CTA terminates service to the Customer for failure to pay for services provided by the CTA and notifies PG&E, by submitting Customer Termination request to PG&E in the electronic format acceptable to PG&E. Upon termination, the Customer will receive PG&E procurement service as specified in the applicable rate schedule. For Customer Terminations received, and accepted by PG&E on or before the fifteenth (15th) day of any calendar month, PG&E procurement service, as specified in the applicable rate schedule, will begin for the specified Customer no later than the next calendar month's meter reading date for the service account specified on the Customer Termination. (T)
2. The Customer no longer receives PG&E service at the meter location specified by the Customer Authorization. In such event, the Customer Authorization for any given account will automatically terminate as of the date the Customer's PG&E gas account is closed. In the event a Customer wishes to obtain Core Gas Aggregation Service or switch to another CTA under a different account, the Customer and CTA must follow Paragraphs 1. or 2. above to implement a new Customer Authorization. (D)
3. A Customer eligible for noncore service chooses to become a noncore Customer. In such event, the Customer Authorization for the specified account will terminate on the date that noncore service begins. (T)
4. The CTA and the Customer mutually agree to terminate service prior to the initial 12-month term by communicating the Customer Termination request to PG&E using one of the following methods: (T)
 - a) The CTA notifies PG&E by submitting a termination notice to PG&E in the electronic format acceptable to PG&E, or
 - b) The Customer may directly contact PG&E to request termination. PG&E will accept such a termination request only if the CTA has previously submitted an Authorization For Early Termination (Form 79-845, Attachment H) to PG&E.

(Continued)

Advice Letter No: 3436-G
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed December 5, 2013
Effective January 4, 2014
Resolution No.



Pacific Gas and Electric Company
San Francisco, California
U 39

Revised	Cal. P.U.C. Sheet No.	30859-G
Cancelling Revised	Cal. P.U.C. Sheet No.	29665-G

GAS SCHEDULE G-CT
CORE GAS AGGREGATION SERVICE

Sheet 6

**TERMINATION OF
CUSTOMER
AUTHORIZATION
(Cont'd.):**

A CTA Agreement, and all Customer Authorizations for Customers receiving service from the CTA in accordance with that CTA Agreement, shall terminate, regardless of whether the initial twelve (12) month term of a Customer Authorization has expired, if any of the following occur:

1. The CTA goes out of business.
2. PG&E cancels the applicable CTA Agreement due to: (a) the CTA's failure to pay PG&E in accordance with its tariffs for services rendered to the CTA or, (b) for otherwise failing to comply with the terms of gas Rule 23 or the CTA Agreement or, (c) the CTA's failure to comply with the Firm Winter Capacity Requirement. (T)
3. If a Group's Annual Contract Quantity (ACQ) drops below 12,000 decatherms, the Customer Authorization for each Customer will be terminated, without further notice, effective for each account, as of the next calendar month's meter reading date. When all Customer Authorizations have been terminated the applicable CTA Agreement is canceled automatically. Under paragraphs 2., 3., and 4. above, PG&E will thereafter send written notice of cancellation of the CTA Agreement and all affected Customer Authorizations to the CTA and all affected Customers to the extent practicable, but in no event shall any failure to provide, or a delay in providing, such notice to Customers affect PG&E's rights to cancel said CTA Agreement. (T)

If a Customer Authorization is terminated and the Customer continues to receive service at the meter location, the Customer will receive PG&E procurement service as specified in the applicable rate schedule. PG&E may recall capacity, in PG&E's sole discretion, if such capacity is necessary to serve the returning Customer(s); provided, however that PG&E shall not recall such capacity unless and until the aggregated net change due to Customer Terminations exceeds the lower of ten percent (10%) of the CTA's prior effective DCQ or 100 decatherms per day.

The CTA shall remain responsible for any charges due for PG&E service provided under the CTA Agreement prior to its cancellation, whether or not such charges are billed after such cancellation. The Customer shall remain responsible for any charges due for PG&E service provided under the Customer Authorization prior to its termination, whether or not such charges are billed after such termination.

**CONTRACT
QUANTITIES:**

PG&E will process new Customer Authorizations on a monthly basis. For each new Customer Authorization, PG&E shall determine the Annual Contract Quantity (ACQ) for each Customer's account. The ACQ will be based on the Customer's monthly historical gas use. (T)

(Continued)

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Exhibit D

Template PG&E Core Gas Aggregation Services
Agreement



Pacific Gas and Electric Company
San Francisco, California
U 39

Revised
Cancelling

Revised
Revised

Cal. P.U.C. Sheet No.
Cal. P.U.C. Sheet No.

30889-G
29994-G

Gas Sample Form No. 79-845
Core Gas Aggregation Service Agreement

**Please Refer to Attached
Sample Form**

Advice Letter No: 3436-G
Decision No.

Issued by
Brian K. Cherry
Vice President
Regulatory Relations

Date Filed December 5, 2013
Effective January 4, 2014
Resolution No. _____



CORE GAS AGGREGATION SERVICE AGREEMENT

This Core Gas Aggregation Service Agreement (CTA Agreement or Agreement) is made by and between Pacific Gas and Electric Company (PG&E), a California Corporation, and _____, to be known as a Core Transport Agent (CTA). PG&E and CTA are collectively herein referred to as "Parties" and individually as "Party." CTA requests that PG&E provide Core Gas Aggregation Service to CTA on behalf of its Core Transport Group (Group). CTA shall be considered an Agent for the Group, and for individual Group members, who are Core End-Use Customers receiving transportation service and who have selected the CTA as their gas supplier, pursuant to Schedule G-CT.

The CTA agrees to abide by the applicable sections of PG&E's tariffs as well as the terms and conditions stated in this Agreement and Attachments hereto. The Attachments described below are hereby made a part of this Agreement and specify terms and conditions of Core Gas Aggregation Services provided by PG&E pursuant to its tariffs, including Schedule G-CT, and gas Rules 23 and 25.

TERM OF AGREEMENT

This Agreement will become effective as of _____ (Effective Service Date) and will remain in effect unless terminated by the CTA or PG&E in accordance with this Agreement, Schedule G-CT and/or gas Rules 23 and 25.

ATTACHMENTS

(A) Customer Authorization for Core Gas Aggregation Service (Authorization). Attachment A provides one method by which CTA may obtain authorization from a Core End-Use Customer to act on the Customer's behalf to provide Core Gas Aggregation Service.

(B) Core Transport Group Summary (Group Summary). This Attachment is no longer in use.

(C) Allocation of Firm Pipeline Capacity (Pipeline Capacity Allocation). In accordance with Schedule G-CT, the CTA will be offered an allocation for each month in the capacity allocation period, of a pro rata share of the firm pipeline capacity contracted for and held by PG&E for its Core Customers on the Gas Transmission – Northwest Corporation (GTN), Foothills Pipe Lines Ltd. (Foothills), NOVA Gas Transmission Ltd. (NGTL), PG&E's Backbone Transmission System paths, Ruby Pipeline, El Paso Natural Gas Company, Kern River Gas Transmission, and Transwestern Pipeline Company (each of which is a Pipeline and, collectively, the "Pipelines"), which will be identified in Attachment C of this Agreement. If CTA has multiple CTA Agreements, the allocated volumes for Attachment(s) C with the same term will be combined and considered as one direct allocation with the Pipelines, unless otherwise agreed by the Parties. Executed Attachment C will record capacity amounts allocated and rejected.

(D) Core Firm Storage Allocation (Core Storage) PG&E will allocate to CTA a pro rata share of core firm storage capacity, which allocation shall be set forth in Attachment D of this CTA Agreement. Executed Attachment D will record amounts accepted, rejected, and allocated to the CTA. Amounts of core firm storage capacity held by the CTA (Allocated Storage) will be used according to Schedule G-CT and Schedule G-CFS and will be paid for by the CTA.

(E) Termination of Customer Authorization for Core Gas Transportation Service (Termination). This Attachment is no longer in use.



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CORE GAS AGGREGATION SERVICE AGREEMENT

(F) Formal Communications Between Parties (Communications). Any formal communications concerning this Agreement shall be in writing and shall be delivered by e-mail with read receipt verification, hand or certified delivery to the appropriate address shown in Attachment F and shall be deemed to be received as of the delivery or read receipt date. Operational communications regarding billing, capacity, forecasts, imbalances, and other matters will be directed as indicated on the most recent version of this Attachment, as provided by CTA. CTA will promptly submit changes in this Attachment to PG&E.

(G) Optional Assignment to Core Transport Agent of Firm Northern Pipeline Path Capacity. This Attachment is no longer in use.

(H) Authorization for Early Termination Any CTA who authorizes PG&E to terminate Core Gas Aggregation Service prior to the initial twelve (12) month term must execute an Attachment H.

(I) Certification of Alternate Resources for Rejected Storage Withdrawal Capacity (Alternate Resources) In accordance with Schedule G-CT, Alternate Resources are required to the extent that the CTA rejects all or part of the Initial Storage Allocation and/or a Mid-Year Storage Allocation Adjustment.

(J) Declaration of Alternate Firm Winter Capacity (Winter Capacity) Pursuant to Schedule G-CT, CTAs may be required, during the Winter Season, to contract for firm PG&E Redwood and PG&E Baja Backbone Transmission path capacity. If a CTA chooses not to accept any portion of PG&E's pro rata allocation of winter Backbone pipeline capacity, Attachment J must be executed and submitted for each winter month that the allocation is rejected and transmitted to PG&E within five (5) days of CTA's receipt of notice to meet their Firm Winter Capacity Requirement.

(K) Core Transport Agent Billing Agreement (Consolidated Billing Credits) Attachment K must be executed if: 1) the CTA provides consolidated billing and PG&E no longer sends end-users an information-only bill; 2) the CTA shall be responsible for providing the end-user with the required billing and Customer protection information; and 3) PG&E is to provide a billing credit to the CTA or the end-user for PG&E's avoided costs.

(L) Consolidated PG&E Billing In accordance with gas Rule 23, Attachment L must be executed if the CTA authorizes PG&E to provide Consolidated PG&E Billing.

BILLING AND PAYMENT

Pursuant to PG&E's tariffs, the CTA is ultimately responsible for paying PG&E for all charges associated with Core Gas Aggregation Service that PG&E provides to CTA on behalf of Customers in the Group.

PG&E will bill the CTA and the CTA will pay for services rendered under this Agreement. Bills are due and payable pursuant to Rules 23 and 25.

In the event of a billing dispute, the bill must be paid in full by CTA pending resolution of the dispute under California Public Utilities Commission (CPUC) procedures. Such payment shall not be deemed a waiver of CTA's right to a refund. The Agreement may not be subject to termination for any billing dispute pending before the CPUC.

CREDITWORTHINESS

CTA must meet creditworthiness requirements as set forth in gas Rules 23 and 25 before providing Core Gas Aggregation Service to a Group under this Agreement.



Pacific Gas and
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CORE GAS AGGREGATION SERVICE AGREEMENT

ALLOCATION OF FIRM PIPELINE CAPACITY

Subject to approval of the applicable Pipelines, PG&E will offer an allocation to CTA of a pro rata share of firm pipeline capacity contracted for and held by PG&E for its Core Customers on the Pipelines under the terms and conditions set forth herein and in Schedule G-CT.

Attachment C specifies the terms and conditions for direct allocation of firm pipeline capacity to the CTA for service to Customers in its Group. Attachment C must be executed by the CTA prior to the allocation of firm pipeline capacity. The allocation will be made for each month in a capacity allocation period pursuant to Schedule G-CT.

The CTA is responsible for all charges associated with pipeline capacity.

If the CTA defaults on its payments to the Pipelines and Pipelines bill PG&E for any unpaid charges, the CTA will be considered in violation of this CTA Agreement until CTA meets all outstanding financial obligations to the Pipelines and the Pipelines so notify PG&E. If CTA fails to pay the Pipelines, PG&E may terminate this CTA Agreement and/or reclaim the Firm Pipeline Capacity offered to and accepted by the CTA.

CTA shall indemnify, reimburse and otherwise hold PG&E harmless for all losses, reasonably incurred costs, expenses, damages, and liabilities relating to firm pipeline capacity covered by this Agreement or allocated pursuant to Schedule G-CT. Any Interstate Capacity allocated per Attachment C herein shall at all times be subject to the jurisdiction of the Federal Energy Regulatory Commission (FERC) and applicable FERC pipeline tariffs. Any Canadian Capacity allocated per Attachment C herein shall at all times be subject to the jurisdiction of the governing Canadian authorities and applicable Pipeline tariffs.

CTA CORE FIRM STORAGE ALLOCATION

PG&E will allocate to CTA their pro rata share of core firm storage capacity, under the terms and conditions set forth herein and in Schedule(s) G-CT and G-CFS. Attachment D, which specifies the terms and conditions for allocation of core firm storage allocation to the CTA for service to Customers in its Group, must be executed by the CTA prior to commencement of core firm storage service under this CTA Agreement.

For any and all storage capacity rejected from an Initial Storage Allocation and/or Mid-Year Storage Allocation Adjustment, CTA agrees to obtain Alternate Resources, as provided in Schedule G-CT, equivalent to the amount of withdrawal capacity rejected, for each month of the Winter Season. CTA agrees to provide timely monthly certifications of its Alternate Resources, as set forth in Attachment I to this Agreement.

For any and all rejected PG&E storage allocations, the CTA releases PG&E from any and all liability arising out of or associated with the CTA's rejection thereof and with the associated injection, inventory and withdrawal capacity not being available for the CTA's use. Further, the CTA shall indemnify PG&E for any and all losses, including direct and consequential damages, that arise from or are associated with: (i) any representation in the CTA's monthly certifications respecting Alternate Resources (Attachment I) which turn out to be inaccurate; (ii) any failure of the CTA's Alternate Resources to perform as compared to the storage resources which would have been available to the CTA from PG&E's allocated core storage capacity had the PG&E storage capacity not been rejected by the CTA; and/or (iii) any failure to provide such certifications as required in Schedule G-CT.

COMMUNICATIONS

Formal communications concerning this CTA Agreement shall be in writing and shall be delivered by e-mail with read receipt verification, hand or certified delivery to the appropriate address specified in Attachment F hereto and shall be deemed to be received as of the delivery date. The contact information designated on Attachment F may be changed from time to time, by the Party affected, upon receipt of a revised Attachment F by the other Party.



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CORE GAS AGGREGATION SERVICE AGREEMENT

ASSIGNMENT

Neither Party may assign all or any portion of this CTA Agreement without the written consent of the other Party provided, however, notice only, and not consent, is required if an assignment of PG&E's entire interest hereunder is made to a parent or affiliate of PG&E or to an entity succeeding to all or substantially all of the business properties and assets of PG&E or to the business function to which this Agreement relates. Any successor to, transferee, or assignee of the rights of a Party, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all terms and conditions of this Agreement to the same extent as though such successor, transferee or assignee were an original Party.

FORCE MAJEURE

- (a) In the event either CTA or PG&E is rendered unable, wholly or in part, by force majeure to carry out its obligations under this CTA Agreement, it is agreed that, upon such Party giving notice as soon as practicable in writing (or as soon as practicable by facsimile or telephone if confirmed in writing within seventy-two (72) hours) to the other Party no later than five (5) business days after the onset of the force majeure condition, then the obligations of the Party giving such notice, so far as they are affected by such force majeure, shall be suspended during the continuance of the effects of the cause; provided that such notice shall give the other Party reasonably full particulars of such force majeure, including the circumstances preventing or delaying performance hereunder; and provided that the Party subject to such force majeure shall remedy it so far as possible with all reasonable dispatch; and further provided, that no force majeure shall be cause for delay in the payment for services rendered.
- (b) The term "force majeure," as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockage, insurrection, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, high water, washouts, civil disturbances, explosions, breakage, blockage or accident to machinery or lines of pipe, the necessity for making non-routine repairs or non-routine alterations to machinery or lines of pipe, freezing lines of pipe, acts of civil or military authority (including, but not limited to, courts, or administrative or regulatory agencies), and any other cause, whether of the kind herein enumerated or otherwise, not within the control of the Party claiming suspension and which, by the exercise of due diligence, that Party is unable to prevent or overcome.
- (c) It is understood and agreed that the settlement of strikes or lockouts shall be entirely within the discretion of the Party having the difficulty, and the above requirement that any force majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes or lockouts when such course is inadvisable in the discretion of the Party having the difficulty.
- (d) It is understood and agreed that "force majeure" as used herein shall not include scheduled and routine maintenance and repairs of machinery and lines of pipe, operational flow orders, emergency flow orders or diversion orders in accordance with PG&E's gas Rule 14, financial considerations, or the unavailability of upstream or downstream transportation or supply.

GENERAL

PG&E shall have no liability to Group/Customer/CTA, or any assignee thereof, for any curtailments or interruptions of service or losses of gas pursuant to this Agreement and PG&E's tariffs. The liability of PG&E for any curtailments, interruptions of service or gas losses otherwise arising out of mistakes, omissions, interruptions, delays, errors or defects in any of the gas services or facilities used or furnished by PG&E shall in no event exceed an amount equal to any applicable pro rata charges for the period during which the services or facilities are affected by the mistake, omission, interruption, loss, delay, error or defect, provided, however, that the provisions hereof shall not apply to damages caused by willful misconduct, fraudulent conduct or violations of law by PG&E.



*Pacific Gas and
Electric Company*

CORE GAS AGGREGATION SERVICE AGREEMENT

No Party under this Agreement shall be assessed any special, punitive, consequential, incidental, or indirect damages, whether in contract or tort (including negligence) or otherwise, for any breach, actions or inactions arising from, out of, or related to this Agreement.

PG&E may accept e-mailed or facsimile copies of this Agreement and any other notices or agreements hereunder, and the same shall be binding on the CTA or Customer as though they were original signed documents. PG&E may accept the signature of any representative of the CTA or Customer on any such agreement or notice, and the same shall be binding on CTA or Customer without any obligation on PG&E's part to verify that the person so signing has authority to bind CTA or Customer provided that the CTA or Customer may, and has the affirmative obligation to, provide PG&E with a list of people authorized by the CTA or Customer to execute such documents or agreements with PG&E and, if the CTA or Customer provides such a list, PG&E shall limit its acceptance of and reliance on such documents accordingly.

With the exception of CPUC-approved tariff and rule changes, no subsequent waiver, modification or amendment of this Agreement or attachments shall be effective, including such changes the CPUC may direct as provided below, unless in writing and signed by a duly authorized representative of the Parties, provided, however, that modifications to Attachment A require the signature of the CTA and the Customer, but not PG&E.

This CTA Agreement does not change the obligations, restrictions or rights contained in other agreements between the Parties unless expressly set forth in this Agreement. The Parties agree that all understandings between them regarding the services to be provided under this Agreement are set forth or referenced in this Agreement. No agreements, representations, memoranda, or any other form of communication, written or oral, exchanged before the signing of this Agreement (other than PG&E's tariffs), shall be grounds for altering or interpreting the terms of this CTA Agreement.

The waiver by either Party of any breach of any term, covenant or condition contained in this Agreement, or any default in the performance of any obligations under this Agreement, shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation. Nor shall any waiver of any incident of breach or default constitute a continuing waiver of the same.

This Agreement shall be interpreted under the laws of the State of California. This Agreement and the obligations of the Parties are subject to all valid laws, orders, rules, and regulations of authorities (or the successors of those authorities) having jurisdiction over this Agreement or the Parties' actions thereunder.

This Agreement shall at all times be subject to any changes or modifications the CPUC may direct from time to time in the exercise of its jurisdiction. Such changes or modifications may be made to this Agreement or to PG&E's applicable tariff schedules and rules. This Agreement in all respects shall be and remains subject to PG&E's gas Rules in effect during the term of this Agreement, as they may change from time to time.

Complaints against the utility arising out of this Agreement shall be enforced only under the provisions of Section 1702 of the Public Utilities Code. Each Party shall be entitled to recover reasonable costs, including attorneys' fees, to collect payment for services performed or other amounts due and owing under this Agreement.

Neither CTA nor Customer shall take any action which may subject PG&E's gas operations or facilities to the jurisdiction of the FERC or any successor to the FERC. Any such action is cause for the immediate termination of this Agreement.



*Pacific Gas and
Electric Company*

CORE GAS AGGREGATION SERVICE AGREEMENT

Core Transport Agent:

	PACIFIC GAS AND ELECTRIC COMPANY
_____ CTA Name	_____
_____ Authorized Representative (Print)	_____ Authorized by (Print)
_____ Signature	_____ Signature
_____ Title	_____ Title
_____ Date	_____ Date

Incorporated Attachment(s): Applicable Attachment(s)

Gas Rules 1, 14, 21, 23, 25 and Schedules G-BAL, G-CFS, G-CT, G-ESP are available at www.pge.com/tariffs

Please contact an ESP Services Account Manager at (415) 973-2194 if you do not have access to a computer to view our Web Tariff Book or if you have difficulty opening the link

Exhibit E

Transcript of Tiger/CGC's Call to Fishman

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

FIRST CALL – TIGER/CGC’S SALES CALL TO FISHMAN

0:00	COMMUNITY GAS CENTER: Hi, this is Olivia from the Community Gas Center. I need to speak to the authorized person who handles the PG&E bill please.
0:09	EMILY FISHMAN: Oh. That's, that's me.
0:11	CGC: Well good afternoon to you. I'm calling from the CGC customer service department regarding your PG&E account.
0:18	FISHMAN: Yeah?
0:18	CGC: I'm just following up to give you a courtesy call regarding a notice that you received with your bill last year. Your account is currently subject to several rate increases which already started. The California...
0:29	FISHMAN: Which are I'm sorry?
0:31	CGC: I said which has already started. It started, the 18.8% increase started this year, and then you'll see another 33% increase over the next three years. So we set up...
0:41	FISHMAN: Oh. Why is that?
0:43	CGC: The California Public Utilities Commission has processed that request from PG&E. So what we do is we set up price protection for all the residential customers, which is a free service through PG&E's aggregation program, which will protect customers from the supply rate increases for the next three years.
1:02	FISHMAN: Oh. So all customers are being subject to an increase in pricing?
1:09	CGC: Yes. Yes.
1:10	FISHMAN: Wow.
1:11	CGC: Yes. In the letter, I know most people, if you're like me, you just take your bill, you open it, you pay what you have to pay, and you throw em away or you put 'em out. But in that letter last year...
1:20	FISHMAN: Yep. Yep
1:20	CGC: It was telling you, it was telling you about the subject to several rate increases and umm...
1:25	FISHMAN: Ohhhh.
1:27	CGC: It also had that, y'know, bold print where it tells you about the 33% increase for the next three years...
1:32	FISHMAN: Got it.
1:32	CGC: And the 10% of this year. So basically what this program is, it's a great program because it's price protection, which gives you a variable rate based on the market price, with a cap at 69 cents. So of course when the cost of gas is down you do get the lower rate based on the lower cost, but when that cost of gas goes up and you know, most people are subject to the change, you won't, you'll be capped at a rate, excuse me, a rate cap of 69 cents. So say for instance if PG&E down the line in the next year paid \$1.06 per therm for the gas, you wouldn't be charged \$1.06 per therm for your gas. You would be charged 69 cents because it can never go over that price.
2:15	FISHMAN: And so, to participate in the program, what does that mean? Are you calling all of your, the PG&E customers?
2:26	CGC: Yes, we're calling ehhhhhvery one of you guys. Alllllll of you [Laughs]. And...
2:28	FISHMAN: Right.
2:28	CGC: And most people they get, they're on the program, they really enjoy the program, and they stay with it. Some people feel like hey, the program's great, but it just didn't

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

	change my bill and it's still low so I don't need it, and you know, they just opt out and there's no fee for that either. There's no fee to set it up. It's all free. And the only reason that PG&E can't offer you it themselves is because the California Public Utilities Commission requires that a third party company which is us, that's unaffiliated with PG&E, set up the service, because it is against the law for them to profit off the gas itself.
3:01	FISHMAN: Interesting. Okay. Ummmm, and so to set this up, what is, what does that mean, I mean what does it take?
3:10	CGC: Well, to set this up, what we do, how the process works, we, I'm going to verify all this information I have and make sure it's correct in my system, but then we, we just have you have your PG&E bill handy, we go through a couple things. First, we check to see if the services are directed to the same as on your PG&E bill, and then we
3:28	FISHMAN: Right.
3:28	CGC: And then we need to know if you're with, we need to know if your bill says "current gas charges" or "current PG&E gas delivery charges," and we go over what those two things mean, and we just simply get your service agreement ID number and your rate schedule, and that's what pops up the automated system. And she just, you know, explains to you that Tiger Natural Gas will supply your gas, because a lot of people don't know you do have the option of picking who you want your gas supplier to be. And currently what PG&E does, every month they get their gas from just random sources, you know, and none of those gas people that they're getting it from are protected from future rate increases. So basically they can only secure your gas for one month, and after that month, it's not secure, and then you know, you just keep, it's a monopoly. So now they're able to deliver your gas from a supply source that's protected from rate increases for the next three years. And that's the PG&E core gas aggregation service.
4:26	FISHMAN: Okay. Well, sounds good.
4:27	CGC: After she prompts, after she comes on the line, she's going to ask you a couple questions, and then she'll give you your confirmation number. And I'll still be on the line with you just in case you have any questions or anything that you need to be answered that can be understand.
4:43	FISHMAN: Right.
4:44	CGC: And then every year, if it's, if it's something that you would like, every year we would send you a rate increase analysis report, and that basically tells you that PG&E bought your gas from, for such and such price, but how low of a price that you paid for your gas.
5:01	FISHMAN: Okay.
5:02	CGC: And we keep you, you know, updated on all the little things. I'm just going to verify, I'm showing that the service address, I only have half of it, of where PG&E delivers your gas. I have your city as Mill Valley...
5:14	FISHMAN: Yes.
5:15	CGC: I have your state as California.
5:16	FISHMAN: Yes.
5:17	CGC: And I also have your zip code as 94941.
5:21	FISHMAN: Yes.
5:22	[CGC confirms the spelling of Fishman's name, her street address, and that she only has

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

	one account.]
5:50	CGC: Okay, so how it works, the price protection is going to start on your next available meter read date, and once you go through the automated system and add your confirmation number [unintelligible] you will be all set.
6:01	FISHMAN: Okay.
6:01	CGC: PG&E will then automatically start delivering your gas from a gas source providing the rate increase protection, so your gas will be protected from now on.
6:09	FISHMAN: Okay.
6:09	CGC: And everything will stay the same with your PG&E utility service. So you'll pay that bill just like you do now. If you have any emergencies or questions, you'll still contact them.
6:19	FISHMAN: Okay.
6:19	[At CGC's request, FISHMAN looks at her PG&E bill to provide her service agreement ID number and rate schedule.]
11:21	[CGC and advises Fishman of a forthcoming free program that will save 25% off electricity rates and says Tiger will contact her when it's available.]
12:01	[CGC says PG&E requires FISHMAN go through an automated verification system to verify information.]
12:25	[CGC says it's a three-year program and automatically renews but FISHMAN can call and opt out anytime she wants. If the program isn't available, FISHMAN will receive a variable rate pricing that's competitive with utilities, lower rate even when utility charges more.]
12:55	[CGC says nothing changes with PG&E service, source of gas will be Tiger Natural Gas, who is registered with PG&E. PG&E utility service remains the same.]
13:09	[CGC explains more on automated verification.]
14:08	[CGC transfers FISHMAN to automated verification system.]

SECOND CALL – AUTOMATED VERIFICATION SYSTEM

0:00	This is the Verbatim TPV system to confirm Tiger Natural Gas as your CTA gas source in PG&E's core gas aggregation program for your PG&E account. If I have your permission to record this call, please say yes after the tone and then press the pound key.
0:21	FISHMAN: Yes. #
0:23	[SYSTEM confirms enrollment date, time, first & last name, service & mailing address, gas service ID #]
1:25	SYSTEM: Tiger will provide your natural gas supply in PG&E's core gas aggregation program, and you'll be guaranteed to receive reliable service, starting on your next available meter read. Tiger is an unaffiliated CTA that has completed PG&E's certification process. Your natural gas supply will receive price protection with a rate cap of 69 cents per therm for the next 36 months. PG&E will continue to deliver your natural gas, send your monthly PG&E bill, and provide the exact same utility service. If you understand and wish to enroll your gas accounts with Tiger as your natural gas supplier, please say "yes" after the tone and then press the pound key.
2:14	FISHMAN: Yes. #
2:16	SYSTEM: Accepted customers will be sent a confirmation letter and terms and

Tiger Natural Gas Inc./Community Gas Center Call to Emily Fishman, August 18, 2015

	conditions within three business days. Price protection will be applied to your gas supply and does not include PG&E's delivery charges; taxes; daily, quarter, and capacity costs. You can rescind this enrollment within three business days or cancel at any time by contacting the Tiger enrollment agency at 888-ENERGY-HELP. If you understand, and you are the customer of record or an authorized person to choose a natural gas supplier, please say "yes" after the tone, and then press the pound key.
3:01	FISHMAN: Yes. #
3:03	SYSTEM: Your confirmation number is 5004285. Your confirmation number is 50004285.

Exhibit F

Page From Tiger's Website as of July 2016



INFO@TIGERNATURALGAS.COM

1.888.875.6122

HOME	ABOUT	SERVICES	TESTIMONIALS	NEWS	FAQ	CONTACT	PARTNERS	AFFILIATES
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SEARCH TIGER

WHY TIGER?

Why do over 30,000 Customers choose Tiger?



Proven performance
Cost savings
Customer service
20 years in business
Minority-owned business
A+ BBB Rating



GET CONSISTENT ENERGY SAVINGS.

JOIN 25,000 PG&E CUSTOMERS SAVING 9-15%* EVERY YEAR.

Thousands of PG&E customers are lowering their energy bills and getting better customer service by switching to Tiger. As the largest third-party core natural gas provider in the PG&E area, we have a 20-year track record of consistent savings.

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SIGN UP FOR HOME



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SEE SAMPLE COST SAVINGS

SEE SAMPLE COST SAVINGS



California Restaurant Association

"The economic climate is tougher



Better Business Bureau

A+ Customer Service Rating



PepsiCo Inc.

"Tiger's attention to detail has

than anything we've seen in recent history, and yet still Tiger is committed to flexible and responsive service."

Jot Condie
President & CEO

20 years good standing
ZERO complaints

helped us control overhead costs. Their pricing is consistently competitive and they provide flexibility in their contract terms."

Daniel P. Lopez
Energy Procurement Manager

***Most Tiger customers save 9 to 15% or more, year after year.*

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918.491.6998
1.888.875.6122
info@tigernaturalgas.com
1422 East 71st Street
Tulsa, OK 74136-5060

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Website Design by Aqua Vita



New Mexico
Restaurant
Association

Enter your email here

SIGN UP



Exhibit G

Oklahoma BBB's Webpage for Tiger as of July 2016

Overview > Accredited Business Directory > Natural Gas Companies > Tiger Natural Gas, Inc.

BBB Business Review

BBB ACCREDITED BUSINESS SINCE 5/1/2008

Tiger Natural Gas, Inc.

Phone: (918) 491-6998

[View Additional Phone Numbers](#)

1422 East 71st Street Suite J, Tulsa, OK 74136

<https://tigernaturalgas.com/>



On a scale of A+ to F

Reason for Rating

[BBB Ratings System Overview](#)

BBB Business Reviews may not be reproduced for sales or promotional purposes.

Request a Quote

Request a Quote from Tiger Natural Gas, Inc.

BBB Accreditation

A BBB Accredited Business since 5/1/2008

BBB has determined that Tiger Natural Gas, Inc. meets BBB accreditation standards, which include a commitment to make a good faith effort to resolve any consumer complaints. BBB Accredited Businesses pay a fee for accreditation review/monitoring and for support of BBB services to the public.

BBB accreditation does not mean that the business' products or services have been evaluated or endorsed by BBB, or that BBB has made a determination as to the business' product quality or competency in performing services.

Reason for Rating

BBB rating is based on 13 factors. Get the details about the factors considered.

Factors that *raised* the rating for Tiger Natural Gas, Inc. include:

Length of time business has been operating
 Complaint volume filed with BBB for business of this size
 Response to 20 complaint(s) filed against business
 Resolution of complaint(s) filed against business

Customer Complaints Summary

[Read complaint details](#)

20 complaints closed with BBB in last 3 years | 10 closed in last 12 months

Complaint Type	Total Closed Complaints
Advertising/Sales Issues	4
Billing/Collection Issues	4
Delivery Issues	2
Guarantee/Warranty Issues	0
Problems with Product/Service	10
Total Closed Complaints	20

[Read Complaints](#) | [Definitions](#) | [BBB Complaint Process](#) | [File a Complaint against Tiger Natural Gas, Inc.](#)
[See Trends in Complaints on Tiger Natural Gas, Inc.](#) | [View Complaints Summary by Resolution Pie Chart on Tiger Natural Gas, Inc.](#)

Customer Reviews Summary

[Read customer reviews](#)

1 Customer Review on Tiger Natural Gas, Inc.

Customer Experience	Total Customer Reviews
Positive Experience	0
Neutral Experience	0
Negative Experience	1
Total Customer Reviews	1

[Read Customer Reviews](#) | [Submit a Customer Review](#) | [See Trends in Customer Reviews on Tiger Natural Gas, Inc.](#)

Government Actions

BBB knows of no government actions involving the marketplace conduct of Tiger Natural Gas, Inc..

What government actions does BBB report on?

Advertising Review

BBB has nothing to report concerning Tiger Natural Gas, Inc.'s advertising at this time.

What is BBB Advertising Review?

Additional Information

BBB file opened: March 03, 2005

Business started: 05/15/1991

Business started locally: 05/15/1991

Business incorporated 01/01/1991 in OK

Type of Entity

Corporation

Business Management

Lori Nalley, Owner/President

Mr. Johnathan Burris, Manager

Ms. Rachel Harvick, Operations

Contact Information

Customer Contact: Mr. Johnathan Burris, Manager

Principal: Lori Nalley, Owner/President

Business Category

Natural Gas Companies



[Directions](#) | [Enlarge](#)

Customer Review Rating plus BBB Rating Summary

Tiger Natural Gas, Inc. has received 3.68 out of 5 stars based on 1 Customer Reviews and a BBB Rating of A+.



BBB Customer Review Rating plus BBB Rating Overview

QUICK LINKS

[What is a BBB Business Review?](#)

[BBB Reporting Policy](#)

[About Enhanced Services](#)

[File a Complaint against Tiger Natural Gas, Inc.](#)

[Request a Quote from Tiger Natural Gas, Inc.](#)

[Accredited Business Directory](#)

CUSTOMER REVIEWS

[Read Customer Reviews](#)

[Submit a Customer Review](#)

[See trends in Customer Reviews for Tiger Natural Gas, Inc.](#)

E

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EXHIBIT E

NOTICE OF PENDENCY OF CLASS ACTION

If You Were A California Consumer or Business Customer of Pacific Gas & Electric, Inc. Who Enrolled in Tiger Natural Gas Inc.'s Capped-Rate Price Protection Program after Receiving a Telemarketing Call Advertising the Program Between August 18, 2013 and The Present:

PLEASE READ THIS NOTICE CAREFULLY. THE CLASS ACTION DISCUSSED BELOW WILL AFFECT YOUR LEGAL RIGHTS.

- Plaintiffs Emily Fishman and Susan Faria ("Plaintiffs") are the Plaintiffs in an action (the "Action") against Tiger Natural Gas, Inc. ("Tiger"), Community Gas Center, Inc. ("CGC") and John Dyet ("Dyet") (together, Tiger, CGC and Dyet are the "Defendants") in the United States District Court for the Northern District of California (the "Court").
- Plaintiffs allege in the Action claims including that telemarketers calling to advertise Tiger's Capped-Rate Program for the purchase of natural gas (the "Program") recorded sales calls without customers' permission, in violation of California law. The Defendants have denied this allegation. The Court has not decided who is right.
- In an Order dated November 20, 2018 (the "Order"), the Court ruled that the Action may proceed as a class action on behalf of customers enrolled in Tiger's Program (the "Class"). The Order approved Plaintiffs to proceed on *only* their claim that sales calls were recorded without customers' permission.
- In the Order, the Court appointed the following attorneys to act as "Class Counsel" on behalf of the Class: Kimberly A. Kralowec, Kathleen Styles Rogers, Daniel Balsam, and Jacob Harker.
- As a result of the Order, you have two options. Specifically, you may:
 1. Do nothing and allow your claim for recording your sales call without consent to be pursued by Plaintiffs and Class Counsel; or
 2. Exclude yourself from the Class if you do not want to participate in the Action or wish to file your own claim in another forum (such as a different court).

PLEASE CONTINUE TO READ THIS NOTICE CAREFULLY AS IT DESCRIBES THE BACKGROUND OF THIS CASE, OPTIONS AVAILABLE TO YOU, AND THE CONSEQUENCES OF THE OPTION YOU PURSUE

1. Background Of The Action

The Action was commenced on August 18, 2017. In their Third Amended Complaint (the "Complaint"), Plaintiffs allege facts including that telemarketers who called

prospective customers to market Tiger's Capped-Rate natural gas Program recorded sales calls without those customers' permission. Plaintiffs allege that by recording sales calls without permission, the Defendants have violated California law.

The Court has approved Plaintiffs' motion to move forward as a class action on their claim for recording calls without customers' permission. As relief for that claim, Plaintiffs will ask the Court to order Defendants to pay customers who enrolled in Tiger's Program statutory damages for recording sales calls without their permission, in addition to attorneys' fees and other relief. The title of the Action is *Fishman, et al. v. Tiger Natural Gas, Inc., et al.*, Northern District of California Case No. 3:17-cv-05351-WHA.

Tiger has raised defenses to Plaintiffs' claim, in particular that it is not responsible for the actions of CGC, Dyet or the other telemarketers who made calls to market Tiger's Program, and that it was not aware they recorded calls without customers' consent. Defendant John Dyet, who owned the telemarketing companies that contracted with Tiger, has taken the position that not all sales calls were recorded, and raised defenses including that the individual telemarketers he employed or contracted with were at fault, and not Dyet.

The Court has not decided whether Plaintiffs or Defendants are correct regarding this claim asserted by Plaintiffs or any defenses to this claim. A trial in the Action is scheduled to begin on May 6, 2019.

2. The Class Certification Ruling

A class action is a type of lawsuit in which one or several individuals prosecute claims on behalf of all members of a group of similarly-situated persons to obtain monetary or other relief for the benefit of the entire group. Class actions avoid the necessity of each member of a class having to file his or her own separate lawsuit to obtain relief. Class actions are used to decide legal and factual issues that are common to all members of a class.

In the Order, the Court permitted the Action to proceed as a class action on behalf of California consumers and businesses that were customers of PG&E at the time they enrolled in Tiger's Program after receiving a telemarketing call advertising the Program between August 18, 2013 and the present. The Court certified this "Customer Class" only on the claim for recording sales calls without customers' permission.

3. What Are Your Options?

As a result of the Order, you have two options if you are or were a Tiger customer enrolled in its Capped-Rate Program for natural gas supply from August 18, 2013 to the present:

A. DO NOTHING: You can do nothing and be represented by Plaintiffs and Class Counsel. In other words, you do not have to contact Class Counsel or the Court to identify yourself or take any other step to participate in the Action.

B. REQUEST EXCLUSION (OPT-OUT) FROM THE CLASS BY FEBRUARY 1, 2019. You can request exclusion from the Class if you do not want to participate in the Action or wish to file your own claim. In the law, this is known as “opting out.” If you wish to exclude yourself from the Class because you do not want to participate in the Action or because you wish to pursue your own claim, you **MUST** do so by February 1, 2019.

4. What Are The Consequences Of The Option You Pursue?

A. THE CONSEQUENCES OF DOING NOTHING:

(i) PLAINTIFFS AND CLASS COUNSEL WILL REPRESENT YOUR INTERESTS: If you do nothing, your interests will be represented by Plaintiffs and Class Counsel.

If you do nothing, and a settlement is reached with Defendants, or Plaintiffs are successful at trial, you may have the right to receive compensation from Defendants for recording your sales call without your consent, including statutory damages and interest. This also means that if you do nothing, and Plaintiffs lose at trial, you will be forever barred from suing the Defendants for compensation for recording your sales call without your consent.

(ii) COSTS AND ATTORNEYS' FEES: If you do nothing and allow Plaintiffs and Class Counsel to represent your interests, you will **NOT** be personally responsible for the costs or attorneys' fees in the Action whether Plaintiffs are or are not successful.

(iii) YOU MAY APPEAR IN THE ACTION: As a member of the Class, you may appear in the Action either on your own or through your own counsel (counsel is required for business customers). If you retain a lawyer to enter an appearance, you will be responsible for your counsel's costs and attorneys' fees.

B. THE CONSEQUENCES OF EXCLUDING YOURSELF, AND HOW TO OPT OUT OF THIS ACTION

(i) YOU WILL NOT BE BOUND BY A JUDGMENT: If you exclude yourself from the Class, you will **NOT** be bound by any judgment rendered in the Action, favorable or unfavorable. Also, you can decide to not assert any claim relating to the sales calls from telemarketers about Tiger's Program, or you can bring your own claim based on any theory in another forum (such as another Court).

(ii) **YOU WILL NOT SHARE IN ANY RECOVERY**: If you exclude yourself from the Class, you will **NOT** share in any recovery obtained by Plaintiffs and Class Counsel by settlement or trial in the Action.

(iii) **HOW TO OPT OUT**: If you wish to exclude yourself from the Class, you may send a letter to the third-party notice administrator with your full name and signature to:

Tiger Natural Gas Recorded Calls
Class Action Administrator
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

or send an email to the third-party notice administrator to info@NaturalGasCappedRateClassAction.com. Your letter or email must clearly state that you wish to exclude yourself from the “Tiger Natural Gas Recorded Calls Class Action.”

5. Who Are The Attorneys For The Class?
--

The Court appointed attorneys Kimberly A. Kralowec, Kathleen Styles Rogers, Daniel Balsam, and Jacob Harker to serve as Class Counsel for the Class. The contact information for Class Counsel is as follows:

Kimberly A. Kralowec Kathleen Styles. Rogers KRALOWEC LAW, P.C. 750 Battery Street, Ste. 700 San Francisco, CA 94111 Tel: (415) 546-6800 Fax: (415) 546-6801 kkralowec@kraloweclaw.com kr Rogers@kraloweclaw.com	Daniel L. Balsam THE LAW OFFICES OF DANIEL BALSAM 2601C Blanding Avenue #271 Alameda, CA 94501 Tel: (415) 869-2873 Fax: (415) 869-2873 legal@danbalsam.com	Jacob Harker LAW OFFICES OF JACOB HARKER 582 Market Street, Suite 1007 San Francisco, CA 94104 Tel: (415) 624-7602 Fax: (415) 684-7757 jacob@harkercounsel.com
--	---	---

If you have any questions regarding your rights as a Class member or the consequences of the option you wish to pursue, you may contact Class Counsel without charge.

Alternatively, you are free to represent yourself or retain your own attorney to represent you in the Action at your own expense.

PLEASE DO NOT CONTACT THE COURT

6. There Is A Website You May View

There is a dedicated website regarding the Action with important documents and rulings you may wish to review. The website address is:
www.NaturalGasCappedRateClassAction.com.

7. Defendants Do Not Admit Liability

This Notice is not an admission by the Defendants or an expression of any opinion of the Court concerning the merits of the Action, or a finding by the Court that the claim asserted by Plaintiffs is valid. This Notice is intended solely to advise you of the Action and of your rights in connection with it.

Dated: December 4, 2018

Hon. William Alsup
Judge of the United States District Court for
the Northern District of California

F

EXHIBIT F

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22 Fax: (415) 684-7757
23 Email: jacob@harkercounsel.com

24 Class Counsel for the Certified Class and Attorneys
25 for Plaintiffs and the Proposed Class and Sub-Class

26 **UNITED STATES DISTRICT COURT**

27 **FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)**

28 EMILY FISHMAN <i>et al</i>,	) Case No. 3:17-cv-05351-WHA
)
29 Plaintiffs,	) NOTICE OF MOTION AND
	) PLAINTIFFS' MOTION FOR
30 vs.	) PRELIMINARY APPROVAL OF CLASS
	) ACTION SETTLEMENT
31 TIGER NATURAL GAS, INC. <i>et al</i> ,)
	) Fed. R. Civ. P. 23(e)
32 Defendants.)
	) Date: February 21, 2019
	) Time: 8:00 am
	) Courtroom: 12 – 19th Floor
	) Judge: William Alsup

NOTICE OF MOTION AND MOTION FOR PRELIMINARY CLASS SETTLEMENT

PLAINTIFFS HEREBY GIVE NOTICE that on February 21, 2019, in Courtroom 12 of the United States District Court, located at 450 Golden Gate Avenue, San Francisco, CA 94102 at 8:00 a.m., or as soon thereafter as the matter may be heard, Plaintiffs Emily Fishman and Susan Faria will and hereby do move the Court for an Order pursuant to Federal Rule of Civil Procedure 23(e): a) preliminarily approving the proposed class action settlement; b) approving appointment of a settlement administrator; c) approving and directing distribution of notice to the class; d) approving the proposed *cy pres* recipient; and e) setting a final fairness and approval hearing.

The basis for this Motion is that the proposed settlement is fair, adequate, and reasonable and in the best interests of the class as a whole, and that the procedures proposed are adequate to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

The Motion will be based on this Notice of Motion and Motion; the Memorandum of Points and Authorities; the Declarations of Plaintiffs/class representatives Emily Fishman and Susan Faria, and their class counsel Kathleen Styles Rogers, Daniel Balsam, Jacob Harker; the Declarations of Teresa Walker and Lori Johnson of Defendant Tiger Natural Gas Inc.; the Declaration of Defendant John Dyet; and oral argument and any additional material that may be elicited at the hearing on the Motion.

Respectfully Submitted,

Dated: Jan. 17, 2019

THE LAW OFFICES OF DANIEL BALSAM

/s/ Daniel Balsam

Daniel Balsam

Attorney for Plaintiffs and the Class

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1 **I. INTRODUCTION**

2 By this Motion for Preliminary Approval of Class Settlement (“Motion”), Plaintiffs/class
3 representatives Emily Fishman (“Fishman”) and Susan Faria (“Faria”) seek preliminary approval
4 of a proposed settlement agreement with Defendants Tiger Natural Gas Inc. (“Tiger”),
5 Community Gas Center Inc. (“CGC”), and John Dyet (“Dyet”). The proposed settlement is fair,
6 reasonable, and adequate, *see Officers for Justice v. Civil Service Commission*, 688 F.2d 615,
7 625 (9th Cir. 1982), and meets the requirements of the recent amendments to Federal Rule of
8 Civil Procedure 23 (effective December 1, 2018) and recent updates to procedural guidance for
9 class action settlements issued by this Court on November 1, 2018 (the “Guidelines”). The
10 Court should grant preliminary approval of the proposed settlement.

11 **II. ISSUE PRESENTED**

12 Is the proposed settlement of the certified Recording Law claim (Cal. Pen. Code § 632 *et*
13 *seq.*) and the presently uncertified Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code
14 § 17200 *et seq.*) and Consumers Legal Remedies Act (“CLRA”) (Cal. Civ. Code § 1750 *et seq.*)
15 claims – to which all Parties have agreed – fair, reasonable, and adequate, pursuant to the
16 requirements for such settlements under Fed. R. Civ. P. 23 and the Court’s Guidelines?

17 **III. BACKGROUND**

18 **A. Summary of the Claims**

19 This lawsuit involves claims that Tiger, by its telemarketers Energy Choice Center Inc.
20 and Defendant CGC (both solely owned by Dyet), made unlawful telemarketing Sales Calls
21 advertising Tiger’s natural gas capped-price program (“Program”¹) to California consumers and
22 small businesses within the territory of Pacific Gas & Electric Company (“PG&E”), and that
23 Dyet personally and Tiger are both liable for Dyet’s companies’ unlawful telemarketing. *See*
24 Motion for Class Certification (Dkt. 177), generally.

25
26
27
28 ¹ The Program involves capping the rate a customer would pay for natural gas *supply* (aka
“procurement”), but has nothing to do with gas *delivery*.

The operative Third Amended Complaint (“3AC”) (Dkt. No. 101) contains 13 causes of action.² Relevant for this settlement, the 3AC alleges that the Sales Calls contained confidential information for which Plaintiffs and class members had a reasonable expectation of privacy, and that the Sales Calls were recorded without the consent of the recipients. Plaintiffs also allege that the Sales Calls – during which the contracts between Tiger and its new customers were formed – included material misrepresentations and omissions upon which Plaintiffs and the class relied, including:

- a) the California Public Utilities Commission (“CPUC”) had processed PG&E’s requests to increase gas supply prices, when in fact PG&E’s prices were decreasing, and that Tiger’s Program would protect customers from the [false] “supply rate increases”;³
- b) Tiger’s prices were variable based on the market price, when in fact they did not track market prices and were almost always at the maximum cap; and
- c) Tiger’s Program was free, when in fact there was a daily charge of \$0.05 or \$0.25.

In addition to these statements, the telemarketers promoting Tiger’s Program omitted Tiger’s price-per-therm (as opposed to the price cap) during the Sales Calls and during the subsequent Third-Party Verification Calls, and Tiger omitted both the price-per-therm *and* the price cap from the written terms and conditions that were allegedly mailed to new customers. The telemarketers’ misrepresentations and omissions, which Tiger reviewed and approved, misrepresented that Tiger’s Program and price cap of \$0.69 per therm delivered a benefit to

² California Recording Law (Cal. Pen. Code § 632 *et seq.*), breach of oral contract (Cal. Civ. Code § 1622), violations of PG&E Gas Rule 23, breach of third-party beneficiary contract (Cal. Civ. Code § 1559), violations of the Consumers Legal Remedies Act (“CLRA”) (Cal. Civ. Code § 1750 *et seq.*), fraud (Cal. Civ. Code § 1572), negligent misrepresentation (Cal. Civ. Code §§ 1573, 1577), violations of Regulations on Core Transport Agents (Cal. Pub. Util. Code §§ 980-989.5), violations of the False Advertising Law (Cal. Bus. & Prof. Code § 17500 *et seq.*), and four for violations of the Unfair Competition Law (Cal. Bus. & Prof. Code § 17200 *et seq.*).

³ PG&E’s *delivery* rates were increasing, but since PG&E delivers gas to Tiger’s customers, Tiger customers still have to pay PG&E’s higher delivery rates. This lawsuit is entirely about *supply* rates.

1 customers when in fact Tiger charged customers two-three times as much as PG&E would have
2 charged for the same gas usage.

3 Tiger's records show that it, by its telemarketers, enrolled 26,637 consumer and business
4 customers within PG&E's territory in Northern/Central California since August 18, 2013 (the
5 beginning of the class period). Order re Motion for Class Certification at *4 (Dkt. No. 250).

6 Dyet's telemarketing companies probably called 10 times that number,⁴ although Tiger claims it
7 never knew how many calls were made and Dyet claims that call logs were lost. Balsam Decl. at

8 ¶ 2. To avoid ascertainability issues that could have precluded certification of the class,

9 Plaintiffs subsequently redefined the class to exclude call recipients who did not enroll.

10 Therefore, the class is comprised of consumers and businesses who received a telemarketing call
11 and actually enrolled in the Program, i.e., those for whom Tiger has records.

12 The Court certified the class's claims under the California Recording Law. The Court
13 denied without prejudice certification of the UCL and CLRA claims, stating that although
14 Plaintiffs demonstrated they could theoretically calculate classwide damages, Plaintiffs had not
15 yet shown that they had the data in hand to do so. The Court (Magistrate Judge Hixson)
16 subsequently ordered Tiger to produce, by January 4, 2019, the consumption data for each
17 customer enrolled in Tiger's Program that Plaintiffs had requested in discovery (Dkt. No. 335 at
18 5:2-12). Since Plaintiffs already had PG&E and Tiger's gas supply prices during the class
19 period, the consumption data was the last piece Plaintiffs required to calculate classwide
20 damages without using consumption data from PG&E. Had the Parties not reached a settlement,
21 Plaintiffs would have filed a Second Supplemental Motion for Class Certification to address the
22 Court's concerns, and Class Counsel believe the Court would ultimately have certified the UCL
23 and CLRA claims.

24 Following the Court's direction to simplify the case, Plaintiffs limited the Trial Plan to
25 just the Recording Law, UCL, and CLRA claims. The other causes of action were not certified
26

27 ⁴ Direct Media Response Rate, CPA and ROI Benchmarks, [MARKETINGCHARTS.COM](https://www.marketingcharts.com/featured-53645) (Apr. 14,
28 2015), <https://www.marketingcharts.com/featured-53645> (citing data from the Direct Marketing Association).

1 by the Court and were not included as part of the settlement with Defendants. If the Court
2 approves the settlement, Plaintiffs intend to dismiss those remaining claims without prejudice.

3 **B. Procedural History**

4 ***1. Pre-Litigation***

5 Plaintiff Fishman, by counsel, sent a letter to Tiger on July 8, 2016, alleging violations of
6 the CLRA, threatening a class action, and demanding that Tiger take steps to preserve relevant
7 evidence. In response, Tiger promptly produced a recording of the Sales Call that CGC made to
8 Fishman, for the purpose of refuting her claims. However, Tiger did not direct Dyet to preserve
9 evidence of Sales Calls until September 2017 (Dkt. No. 249 at 3:23-25).

10 Fishman sent a second CLRA letter on June 22, 2017, and Tiger did not respond within
11 30 days. Order on Rule 37(e) Motion at *3 (Dkt. No. 249), Balsam Decl. in Support of Motion
12 for Class Certification at ¶ 36 and Ex. 32A-32B (Dkt. No. 177-1).

13 ***2. Complaint and Removal***

14 Fishman filed a putative class action against Tiger and DOE defendants on August 18,
15 2017 in the Superior Court of California, County of Marin. Tiger removed the Action to the U.S.
16 District Court for the Northern District of California on September 15 (Dkt. No. 1). On
17 September 22, Tiger filed a Motion to Dismiss (Dkt. No. 8).

18 ***3. First Amended Complaint***

19 Rather than opposing Tiger's Motion to Dismiss, Fishman – now joined by Faria – filed a
20 First Amended Complaint on October 6, 2017 (Dkt. No. 13), also adding "Community Gas
21 Center, a business entity of unknown organization" as a Defendant. However, Plaintiffs were
22 unable to serve "Community Gas Center" at the San Francisco address it falsely claimed on its
23 website (Dkt. No. 104-2).

24 ***4. Second Amended Complaint***

25 On November 14, 2017, Plaintiffs and Tiger stipulated to filing a Second Amended
26 Complaint ("2AC") (Dkt. No. 27), which properly named CGC as a Colorado corporation, and
27 after the Court granted the stipulation, Plaintiffs filed the 2AC (Dkt. No. 29) on November 17.
28

1 Plaintiffs discovered that in addition to CGC's false address in San Francisco, *supra*, the
 2 Glenwood Springs, Colorado street address Dyet used to sign up for a Post Office box for CGC
 3 (the same Post Office box that Dyet used to register CGC with the Colorado Secretary of State)
 4 was false too (Dkt. No. 64), as was another address Plaintiffs found in New Port Richey, Florida
 5 (Dkt. No. 73), and so Plaintiffs were unable to serve CGC. On February 22, 2018, in response to
 6 a Court order, Tiger provided Plaintiffs with the contact information for CGC's attorney Eric
 7 Allen in Salt Lake City, Utah. A paralegal in Allen's office stated that the office was authorized
 8 to accept service, and Plaintiffs promptly served the summons and 2AC by certified/return-
 9 receipt mail pursuant to Cal. Code of Civil Procedure § 415.40. On July 25, 2018, Allen
 10 personally confirmed to Plaintiffs' counsel via telephone that he was authorized to, and did in
 11 fact, accept service for CGC (Dkt. Nos. 171-1, 244-1).

12 On December 29, 2017, Tiger filed a Motion to Dismiss and a Motion to Strike the 2AC
 13 (Dkt. Nos. 49, 50), Plaintiffs opposed, and on March 8, 2018, the Court ruled mostly in
 14 Plaintiffs' favor (Dkt. No. 82): a) denying Tiger's claims for exclusive jurisdiction by the CPUC;
 15 b) granting only Tiger's Motion to Dismiss as to the Telephone Consumer Protection Act cause
 16 of action; and c) granting Plaintiffs leave to amend as to the other causes of action.

17 **5. Operative Third Amended Complaint**

18 Plaintiffs filed a Motion for Leave to Amend, attaching the [Proposed] Third Amended
 19 Complaint ("3AC") (Dkt. No. 85) on March 29, 2018. Tiger opposed (Dkt. No. 86), and on June
 20 4, the Court mostly granted Plaintiffs' MLAC (Dkt. No. 100), including: a) revised language as
 21 to claims under the PG&E Gas Rule 23 Tariff and for third-party beneficiary contract claims as
 22 to the Core Gas Aggregation Services ("CGAS") Agreement between Tiger and PG&E; b)
 23 maintaining the Do Not Call Sub-Class; c) adding Dyet as an individual Defendant; and d) again
 24 rejecting Tiger's argument for exclusive CPUC jurisdiction. Plaintiffs filed the 3AC on June 9
 25 (Dkt. No. 101).⁵

26
 27 ⁵ Plaintiffs filed a [Corrected] Motion for Leave to Amend to file a Fourth Amended Complaint
 28 ("4AC") (Dkt. No. 120) on July 9, 2018, which the Court granted (Dkt. No. 144). However, due
 to the Court's admonition that adding additional Dyet telemarketing companies could complicate
 certification, Plaintiffs elected not to file the [Proposed] 4AC (Dkt. No. 146).

The Court found that Dyet was evading service based on Plaintiffs' allegations that his claimed addresses were false, and on July 20, 2018, the Court authorized service of process on Dyet, and service of subpoenas to Dyet's other telemarketing companies by serving Dyet, via email (Dkt. No. 144). Plaintiffs did not seek to serve CGC by email at this time because they believed they had properly served CGC by serving Allen in February, *supra* (Dkt. No. 244-1). Dyet, acting *in pro per* at that point, filed an Answer to the 3AC (Dkt. No. 167) on August 16.

Tiger filed its Answer to the 3AC on June 25, 2018 (Dkt. No. 106). Because this Answer suffered from the same problems as its earlier Answer (Dkt. No. 22) – lack of factual support and purported affirmative defenses that are not really affirmative defenses – Plaintiffs filed another Motion to Strike/Motion for More Definite Statement (Dkt. No. 116) on July 7, similar to their prior Rule 12 Motion (Dkt. No. 24). On September 18, the Court granted Plaintiffs' Rule 12 Motion as to 34 of 35 defenses (Dkt. No. 175), giving Tiger leave to amend a few of the defenses. Tiger filed a [Proposed] Amended Answer (Dkt. No. 241) on November 13 and an Amended Answer (Dkt. No. 259) on November 26.

6. Class Certification and Inference Order

Plaintiffs filed their Motion for Class Certification (Dkt. No. 177) on September 20, 2018. Plaintiffs concurrently filed a Motion under Rule 37(e) (Dkt. No. 196) seeking discovery sanctions in the form of an inference order that all Sales Calls contained the same statements/omissions as the Sales Call to Fishman and were likewise recorded without consent. The basis of the requested inference was that Defendants failed to preserve and destroyed evidence of the other Sales Call recordings; recordings they were required to make and that Tiger was required to preserve under PG&E Gas Rule 23. At that point, the recording of the Sales Call to Fishman was the only one Defendants had produced. In fact, two months earlier, Tiger had stipulated that the Fishman Sales Call recording was the only one it had, and the Court had entered an Order to that effect (Dkt. Nos. 156, 157). Nevertheless, Dyet testified in his deposition in October 2018 that CGC had recorded additional Sales Calls (Dkt. No. 225), and Tiger was immediately able to produce these recordings when the Court *sua sponte* ordered it to do so (Dkt. Nos. 225, 231).

1 At the Court's request, Plaintiffs filed a [Corrected] Trial Plan (Dkt. No. 243) on
2 November 13, 2018, streamlining the class definitions and limiting the claims for which
3 Plaintiffs sought certification to the Recording Law claim, certain UCL claims⁶, and the CLRA
4 claim.

5 On December 4, 2018, the Court entered an Order (Dkt. No. 250) certifying the class as
6 to the Recording Law claim only. The Court did not certify the UCL and CLRA claims, as it
7 found that Plaintiffs had not demonstrated that the data existed to determine classwide damages.
8 The Court entered another Order (Dkt. No. 249) holding that the jury would be informed of
9 Defendants' failure to preserve and active destruction of evidence, and would be permitted to
10 decide that the Sales Call to Fishman was the same as all Sales Calls to class members, and that
11 the Court believed it would be reasonable for the jury to so find.

12 On December 16, 2018, Plaintiffs filed a Supplemental Motion for Class Certification
13 (Dkt. No. 313), supported by expert testimony, demonstrating that the data to support classwide
14 damages exists in PG&E's records, and how damages could be calculated. On December 19, the
15 Court denied the Motion (Dkt. No. 331) on the grounds that Plaintiffs did not have the data in
16 hand, but left the door open for another Supplemental Motion if and when Plaintiffs have the
17 data. At the time the Parties reached this settlement and the Court entered a stay, Tiger was due
18 to produce (by January 4, 2019) its customers' gas consumption data (Dkt. No. 335 at 5:2-12),
19 the last data necessary for Plaintiffs to calculate classwide damages (without necessity of
20 Plaintiffs' procuring any data from PG&E, the apparent unavailability of which had caused the
21 Court concern).

22 **7. CGC's Motion to Dismiss**

23 Due to Dyet's deposition testimony that he did not authorize his attorney Allen to accept
24 service of process on behalf of CGC, the Court denied Plaintiffs' request for entry of CGC's
25

26 ⁶ Per [Corrected] Trial Plan: a) unlawful prong, for violations of Regulations on Core Transport
27 Agents, PG&E Gas Rule 23, CLRA, False Advertising Law; b) unfair prong, for
28 misrepresentations as to Tiger's pricing and PG&E pricing, violations of Regulations on Core
Transport Agents; c) fraudulent prong, for misrepresentations as to Tiger's pricing and PG&E
pricing.

1 default (Dkt. No. 226) on November 4, 2018. On November 13, Plaintiffs filed a Motion to
2 serve CGC by serving Dyet by email (Dkt. No. 244), which – due to Dyet’s aforementioned false
3 addresses – the Court granted on December 6 (Dkt. No. 284). Plaintiffs immediately served
4 CGC. CGC filed a Motion to Dismiss on December 31 (Dkt. No. 360), arguing that Plaintiffs
5 failed to prosecute its action against CGC, while ignoring Plaintiffs’ documented history of
6 attempting to serve Dyet and his companies. The Parties reached a settlement, and the Court
7 stayed the Action, before Plaintiffs filed their Opposition to CGC’s motion.

8 **8. *Discovery Disputes***

9 The Parties engaged in extensive written discovery and depositions, which involved
10 substantial and contentious motion practice. Plaintiffs filed four discovery letter briefs against
11 Tiger (Dkt. Nos. 107, 132, 180, and 354/358), and one against Dyet (Dkt. No. 269). Tiger filed
12 one against Plaintiffs (Dkt. No. 261). Plaintiffs and Tiger filed seven joint letter briefs (Dkt.
13 Nos. 320, 321, 322, 346, 347, 348, 353). Plaintiffs and Dyet filed two joint letter briefs (Dkt.
14 Nos. 342, 343). Plaintiffs took 10 depositions (including one of CGC’s telemarketers and one of
15 Tiger’s former attorneys), and defended six; Tiger deposed each Plaintiff twice and both of
16 Plaintiffs’ ESI consultants. Several disputes arose during depositions that required Court
17 intervention. Harker Decl. at ¶ 2; Balsam Decl. at ¶¶ 3-4. Plaintiffs’ deposition of Dyet was
18 forthcoming when the case settled, and the Court also authorized Plaintiffs to take four additional
19 depositions of Tiger and its personnel, at Tiger’s expense, because Tiger’s Rule 30(b)(6) witness
20 was unprepared to discuss multiple topics noticed in advance, and because Tiger had not
21 produced requested documents before the first round of depositions. Harker Decl. at ¶ 3.

22 The Court (Judge Alsup and Magistrate Judge Hixson) ruled in Plaintiffs’ favor on most
23 of the discovery letter briefs as well as disputes that arose during depositions, *id.* at ¶ 4, although
24 it did not issue a ruling on Plaintiffs’ letter brief regarding privileged documents Tiger withheld
25 based on its asserted common interest privilege. The court also appointed a separate Special
26 Master, Daniel Garrie, to make findings with respect to Tiger’s allegations – which were never
27 formally briefed and that Plaintiffs never had an opportunity to oppose – that Plaintiffs did not
28 preserve unspecified information stored on their electronic devices. Plaintiffs filed two separate

1 discovery motions for a protective order regarding Garrie's scope of work (Dkt. Nos. 354, 3548).
2 Garrie had not completed his analysis at the time the Parties reached their settlement.

3 **C. Settlement Conference**

4 On December 21, 2018, Magistrate Judge Laporte confirmed the position of Judge Alsup
5 that the Parties could negotiate Plaintiffs' UCL and CLRA claims if and only if they were able to
6 first settle the Recording Law claim on behalf of the certified class. Balsam Decl. at ¶ 5. The
7 Parties entered the settlement conference on January 2, 2019 with certification of only the
8 Recording Law claim.

9 The Parties reached a classwide settlement for the certified Recording Law claim that
10 includes \$3.7 million and an injunction against Tiger and its telemarketers recording further
11 telemarketing sales calls without consent. Because Defendants represented there was no more
12 money to be had, the Parties then negotiated a classwide settlement for the uncertified UCL and
13 CLRA claims based on prospective, injunctive relief prohibiting Tiger from engaging in
14 misrepresentations and price omissions in marketing natural gas in PG&E's territory.

15 **IV. INFORMATION ABOUT THE SETTLEMENT**

16 Despite Tiger's stated intent to provide a draft written settlement agreement, it ultimately
17 declined to do so, and indicated its intent to stand on the agreement as read into the record at the
18 settlement conference. Balsam Decl. at ¶ 6 and Ex. 2.

19 **A. Settlement Class**

20 The Court's Order Re Class Certification (Dkt. No. 250) certified the following class
21 with respect to the members' Recording Law claim:

22 **Tiger/PG&E Customer Class:** All California consumers and businesses that
23 were customers of Pacific Gas & Electric Company for gas supply and/or gas
24 delivery at the time they enrolled in Tiger Natural Gas, Inc.'s ("Tiger") capped
25 rate price protection program (the "Program") after receiving a telemarketing
26 Sales Call advertising the Program, at any time from August 18, 2013 to the
27 present.⁷

28 ⁷ The Motion for Class Certification did not explicitly state as much, but Plaintiffs intended the
exclusions specified in the operative 3AC at ¶ 87 to carry over: Defendants' officers, directors,
legal representatives, employees, co-conspirators, successors, subsidiaries, and assigns; and any

1 Earlier versions of the class definition and the slightly-modified subsequent version from the
2 [Corrected] Trial Plan (Dkt. No. 243) are shown in Exhibit A to this Motion.

3 The Parties did not negotiate any different class definitions during the settlement
4 conference, so the settlement class is as stated in the Order Re Class Certification. Its members
5 include 26,637 consumer and small business customers, each of whom is entitled to identical
6 statutory recovery for the certified Recording Law claim.

7 The Trial Plan included UCL claims on behalf of the same, defined class, and proposed a
8 sub-class of consumers with additional claims under the CLRA (businesses do not have standing
9 under the CLRA). See Exhibit A.⁸

10 After the Parties settled the class's certified Recording Law claim, the Parties then agreed
11 to settle the uncertified UCL and CLRA claims for the consideration of important injunctive
12 relief. As discussed above in Section III(B)(6) and in the Court's Order re Class Certification
13 (Dkt. No. 250) and Order Denying Supplemental Motion for Class Certification (Dkt. No. 331),
14 the only obstacle to certification of the UCL and CLRA claims was Plaintiffs having data in hand
15 to calculate classwide damages. Since Plaintiffs seek only injunctive relief and not monetary
16 damages for the UCL and CLRA claims, this Court should certify these claims for the class (and
17 consumer sub-class) accordingly.

18 **B. Injunctive Relief**

19 The injunctive relief components are highly significant because they directly remedy the
20 conduct that is at issue in this Action; i.e., recording calls without the recipients' consent, and
21 making materially false claims/omissions. The settlement agreement states that "all Sales Calls
22 that are recorded in the future made by Tiger or by entities engaged by Tiger will contain a
23 warning at the beginning of the Sales Call that the call is being recorded" and that "Tiger [] and
24

25 judge, justice, or judicial officer presiding over this matter and the members of their immediate
26 families and judicial staff.

27 ⁸ The Trial Plan also proposed a potential sub-class of customers who were customers of YEP
28 Energy before enrolling in Tiger's Program. See Exhibit A. In its Order re Class Certification,
the Court ruled that the burden was on Tiger to demonstrate that any customer was a former YEP
customer for purposes of arguing that there were no actual damages.

1 any entities engaged by it [to] make Sales Calls in the future will not misrepresent Tiger's
2 charges or PG&E's charges in any such Sales Calls." Balsam Decl. at ¶ 6 and Ex. 2, 5:11-17.

3 Therefore, this injunctive relief benefits not only the class as currently defined, but all
4 consumers and small businesses in PG&E's territory to whom Tiger could market its gas supply.

5 **C. Monetary Relief via Common Fund; Comparable Settlements**

6 Plaintiffs' expert calculated statutory damages plus interest across the class for the
7 certified Recording Law claim to be \$183 million (26,637 class members x \$5,000 statutory
8 damages = \$133 million, plus \$50 million in interest) (Dkt. No. 308). This figure does not
9 include any actual damages for the uncertified UCL and CLRA claims, which were based on
10 Tiger's undisclosed daily charges and much higher prices vs. PG&E.

11 For the reasons detailed below, namely Defendants' limited financial resources and stated
12 intent to litigate to the bitter end if necessary, Plaintiffs have a good-faith belief that this
13 settlement of \$3.7 million – which is more than half of Tiger's retained earnings, Walker Decl. at
14 ¶ 5 – is in the best interest of the class. (Dyet is contributing \$400,000 towards the settlement via
15 cash payment to Tiger and waived commissions. However, Tiger agreed to fund the entire \$3.7
16 million settlement as a one-time payment to the class. Johnson Decl. at ¶ 9, Walker Decl. at
17 ¶ 17, Dyet Decl. at ¶ 5.)

18 Plaintiffs expect that each class member will receive more than \$90 for the certified
19 Recording Law claims, after payment from the Common Fund (\$3.7 million) for proposed
20 attorneys' fees (25% or \$925,000), costs not to exceed \$250,000, and incentive awards (\$3,000),
21 as approved by the Court. There is no provision for reversion; rather, any unclaimed funds will
22 be directed to a *cy pres* recipient, described below. While admittedly low compared to the
23 statutory damages of \$5,000 per call, this proposed settlement is within the range of other
24 recently-approved class action settlements for violations of Cal. Penal Code § 632 *et seq.* and
25 higher than many.

26 For example, in *McDonald v. Bass Pro Outdoor World LLC*, the court justified the
27 settlement relative to the \$5,000 statutory damages (\$132.57 per class member net after
28 attorneys' fees/expenses), as follows:

1 Though the proposed settlement would be considerably less than \$5,000 per class
2 member, “[t]he fact that a proposed settlement may only amount to a fraction of
3 the potential recovery does not, in and of itself, mean that the proposed settlement
4 is grossly inadequate and should be disapproved.” *Linney v. Cellular Alaska*
5 *P’ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

6 No. 13-cv-889-BAS(DHB), 2014 U.S. Dist. LEXIS 109080, at *20 (S.D. Cal. Aug. 5, 2014).

7 *Medeiros v. HSBC Card Services* ruled that a much lower gross settlement of \$7.54 per
8 class member was still reasonable, despite an objector’s argument that the potential statutory
9 damages of \$5,000 per call is much greater, because “even a fractional recovery of the possible
10 maximum recovery amount may be fair and adequate in light of the uncertainties of trial and
11 difficulties in proving the case”; “It is well-settled law that a cash settlement amounting to only a
12 fraction of the potential recovery will not per se render the settlement inadequate or unfair”; and
13 “The settlement amount could undoubtedly be greater, but it is not obviously deficient, and a
14 sizeable discount is to be expected in exchange for avoiding the uncertainties, risks, and costs
15 that come with litigating a case to trial.” No. CV 15-09093 JVS (AFMx), 2017 U.S. Dist.
16 LEXIS 178484, at *14-15 (C.D. Cal. Oct. 23, 2017) (citations omitted).

17 Exhibit B to this Motion sets forth recent approved class settlements for Recording Law
18 claims, ranging from \$606.56 per class member at the high end to \$0.75 at the low end. As
19 shown, the instant settlement of \$90 (estimated) per-class member is well within the range of
20 class action settlements approved for violations of Cal. Penal Code § 632 *et seq.* Moreover, class
21 members will receive this cash amount without needing to file claim forms or prove up actual
22 damages. The Class Administrator will simply mail out checks.

23 **D. Release of Claims**

24 For certified Recording Law claims, as stated during the settlement conference:

25 The settlement will consist of a payment of \$3.7 million from Tiger Natural Gas
26 to Plaintiffs and the certified class members [i.e., for the Recording Law claims].
27 It will also consist of releases between Plaintiffs and the certified class and Tiger,
28 as well as releases between Plaintiffs and certified class [members] and Mr. Dyet
 and [CGC].

 In addition, Tiger will agree that all sales calls that are recorded in the future
 made by Tiger or by entities engaged by Tiger will contain a warning at the
 beginning of the sales call that the call is being recorded.

1 For uncertified UCL and CLRA claims, as stated during the settlement conference:

2 Tiger agrees that it and any entities engaged by it [to] make sales calls in the
3 future, will not misrepresent Tiger's charges or PG&E's charges in any such sales
4 calls.

5 Balsam Decl. at ¶ 6 and Ex. 2, 5:5-17.

6 The agreement, as stated at the settlement conference, does not contain any releases
7 between Tiger and Dyet/CGC. *Id.* at ¶ 6 and Ex. 2, generally.

8 Plaintiffs will dismiss without prejudice the remaining claims in the operative 3AC (i.e.,
9 all claims except the Recording Law, UCL and CLRA claims that were discussed and released
10 during the settlement conference).

11 **E. The Settlement is Fair and Reasonable and Not the Result of Fraud or Collusion**

12 In *Officers for Justice*, the Ninth Circuit held:

13 The district court's ultimate determination will necessarily involve a balancing of
14 several factors which may include, among others, some or all of the following: the
15 strength of plaintiffs' case; the risk, expense, complexity, and likely duration of
16 further litigation; the risk of maintaining class action status throughout the trial;
17 the amount offered in settlement; the extent of discovery completed, and the stage
18 of the proceedings; the experience and views of counsel; the presence of a
19 governmental participant; and the reaction of the class members to the proposed
20 settlement. [] This is by no means an exhaustive list of relevant considerations,
nor have we attempted to identify the most significant factors. The relative degree
of importance to be attached to any particular factor will depend upon and be
dictated by the nature of the claims advanced, the types of relief sought, and the
unique facts and circumstances presented by each individual case.

688 F.2d at 625. All of these factors are satisfied here.

21 ***1. The Strength of Plaintiffs' Case***

22 This Court already certified the class's Recording Law claim, and coupled with
23 Defendants' destruction of evidence and the inference order under Rule 37(e), Plaintiffs believe
24 their case is very strong.

25 Plaintiffs believe they would have been able to pierce the corporate veil on Dyet's
26 defunct companies, not least because Dyet was the sole owner and casually flitted from one to
27 the next, transferring assets from one to another without consideration, and assigning contractual
28 benefits from one to another. For example, Stephanie Hubbard, one of Dyet's telemarketers, was

1 hired by CGC and came into work one day – same address, same desk, same computer – to learn
 2 that she now worked for Consumer Protection Association LLC; she did not even sign a new
 3 employment contract. Balsam Decl. at ¶ 3 and Ex. 1, 13:13-14:11 and 28:2-7. Moreover, Dyett
 4 signed a contract on behalf of CGC with Tiger with an effective date of September 1, 2014 –
 5 weeks before he actually created CGC on September 24, 2014 – and “CGC” made calls on
 6 behalf of Tiger in August 2014, even before the effective date. *Id.* at ¶ 7 and Ex. 3-4.

7 This Court had not yet certified the UCL and CLRA claims, but – had the Parties not
 8 reached this settlement on January 2 – Tiger would have been required to produce class
 9 members’ gas consumption data by January 4 that would have allowed Plaintiffs to calculate
 10 classwide damages, eliminating any need for Plaintiffs to seek data from PG&E. That appears to
 11 have been the sole barrier to certification on those claims.

12 Class Counsel believe Plaintiffs would have prevailed on the UCL and CLRA claims.
 13 While the telemarketer on the Sales Call to Fishman claimed that the CPUC had processed
 14 PG&E’s request for an 18.8% supply price increase, and that Tiger would protect Fishman from
 15 these “supply rate increases,” Plaintiffs can demonstrate through direct and incontrovertible
 16 evidence that the 18.8% is a consolidated figure for electricity generation, electricity delivery,
 17 and gas delivery, but *not* gas supply (Dkt. No. 177-1 at ¶¶ 7, 25 and Ex. 2A at 127:8-18, Ex. 21
 18 at *3). The telemarketer also represented that Tiger’s prices were variable based on the market
 19 price, *id.*; yet Plaintiffs can demonstrate that Tiger’s prices do not track market prices. The
 20 telemarketer repeatedly claimed that it was free to participate in the Program, *id.*; even though
 21 Tiger does not dispute that it really charges \$0.05 (or \$0.25) per day. Tiger never provided proof
 22 that it mailed written terms and conditions to new customers, and the terms and conditions it did
 23 produce do not comply with the Gas Rule 23 or the Public Utilities Code because they fail to
 24 state Tiger’s per-therm prices or even its price cap. Balsam Decl. at ¶ 8.

25 Class Counsel also believe Plaintiffs have a strong case to hold Tiger liable for the
 26 actions of its telemarketers who advertised its Program, not least because: a) Tiger aided and
 27 abetted the unlawful practices by reviewing and approving scripts that did not mention recording,
 28 *see* Cal. Pen. Code § 31; b) Tiger aided and abetted the unlawful practices by listening to actual

1 audio recordings that did not obtain consent to record and contained materially false statements/
2 omissions and failing to object, while continuing to profit from this business; c) Tiger delegated
3 its non-delegable obligation under PG&E Gas Rule 23 to preserve recordings of Sales Calls to
4 Dyet; and d) Tiger ratified and profited from Dyet's companies' actions.

5 As described above, class members' expected recovery here is well within the range of
6 other recent class settlements for violations of the California Recording Law, and far higher than
7 many approved settlements that do not even address the financial shortcomings of defendants
8 addressed here.

9 **2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation**

10 In Plaintiffs' view, the biggest risk of further litigation is not Plaintiffs' probability of
11 prevailing on their claims, but rather Defendants' inability to pay a judgment. Tiger is a family-
12 owned business with one shareholder. Johnson Decl. at ¶ 1, Walker Decl. at ¶ 2. Dyet is an
13 individual, and several of his companies are defunct. Balsam Decl. at ¶¶ 7, 9 and Ex. 4-6, Dyet
14 Decl. at ¶¶ 1, 4.

15 In negotiating the monetary relief for the class members' certified Recording Law claim
16 Plaintiffs were presented with the following facts. Tiger sells natural gas to its customers at
17 prices that it asserts yield only a small margin above Tiger's cost of gas,⁹ and that spread –
18 Tiger's net income – pays its employees' salaries, general expenses, etc. Walker Decl. at ¶¶ 3-4.
19 Tiger retains a certain amount of earnings in a "lockbox" account controlled by its financier
20 (which Tiger refers to as an "aggregator"). Tiger asks permission to withdraw monies from the
21 lockbox account to pay operating expenses, and Tiger must keep a certain amount of "float" cash
22 on hand, because it has to pay for gas before its customers pay Tiger. *Id.* at ¶¶ 8-16. Tiger, an S-
23 Corporation, also issues a "dividend" to its owner who uses it in its entirety to pay Tiger's taxes.
24 Johnson Decl. at ¶ 1, Walker Decl. at ¶ 6. Tiger's assets are mostly accounts receivable
25 (payments from its customers), its liabilities are mostly accounts payable (buying, transporting,
26 and storing gas and profit-sharing payments to Dyet's companies), and its net profits are small.

27 ⁹ Tiger's financial statements lump the ongoing commissions it pays to Dyet's telemarketing
28 companies into its cost of gas, as opposed to a separate line item for an advertising or "profit-
sharing" cost.

Walker Decl. at ¶¶ 3-4. Tiger could not pay a judgment of \$183 million or anywhere close to it, *id.* at ¶ 5, assuming of course that Plaintiffs are able to hold Tiger liable for Dyet's telemarketing companies' undeniable violations of California's Recording Law. More than half of Tiger's retained earnings are being directed to this settlement, and Tiger represented that anything more would not enable it to keep operating. Walker Decl. at ¶¶ 9-12, 15-16. Tiger does not have insurance to cover this settlement (or a judgment). *Id.* at ¶ 18.

"If the defendant is broke or nearly so with no prospect of future rehabilitation, a steeper discount may be warranted. This must be proven. Counsel should normally verify a claim of poverty via a sworn record, thoroughly vetted." (Dkt. No. 65 at ¶ 9). Similarly,

This means the workers would recover about 4.3% of what VEP allegedly owes them. If a defendant is to receive a discount of this magnitude, there must be good reasons why. And those reasons must be explained thoroughly at the preliminary approval stage. Scrutiny of a class settlement should be no less careful at preliminary approval than at final approval, and the parties must provide enough information "to allow the district court to carefully evaluate the strength of the claims, the risks of litigating those claims all the way through, and the value of the relief each class member will receive from the settlement."

As a partial justification for VEP's deep discount, plaintiffs' counsel asserts that VEP is experiencing financial difficulties, limiting its ability to pay a higher settlement or judgment. Courts should view such assertions with great caution, as employers tend to make threats about inability to pay more often than they are actually unable to pay. Therefore, if this sort of assertion is to be the basis for approval of a discounted class settlement, it must be supported with detailed evidence.

Hunt v. VEP Healthcare Inc., No. 16-CV-04790-VC, 2017 U.S. Dist. LEXIS 139700, at *1-3 (N.D. Cal. Aug. 22, 2017).

For the reasons set forth in Tiger and Dyet's Declarations, Class Counsel believes that Tiger and Dyet have sufficiently explained their inability to pay a judgment, and cannot pay more in settlement than the negotiated \$3.7 million. *See also* Declaration of Allan von Halle at ¶¶ 6-8.

Furthermore, Tiger has aggressively litigated this matter to the point that its attorneys' fees are likely to be substantially impacting its operating margins. Balsam Decl. at ¶ 10. Therefore, continuing litigation would only hurt the class's ultimate recovery. Given

Defendants' limited financial resources, it is in the class's interest to cut off the litigation as soon as possible.

Plaintiffs suggested at the settlement conference that Tiger could and should take a loan to increase the settlement to the class.¹⁰ *Id.* at ¶ 11. However, Tiger asserts that the terms of its Security Agreement and Supplier Agreement prohibit it from taking out such a loan. Johnson Decl. at ¶ 6, Walker Decl. at ¶¶ 11, 13.

Tiger indicated in no uncertain terms that if Plaintiffs' settlement demand were too high, Tiger would have no choice but to litigate the case through trial despite the very real risk of annihilating damages and bankruptcy because a settlement above a certain amount – an amount far below \$183 million – would force Tiger into bankruptcy. Balsam Decl. at ¶ 12. However, after trial (let alone an appeal), if Tiger prevails, it would not owe Plaintiffs anything, and if it loses, it would have to seek bankruptcy protection, Walker Decl. at ¶ 16, and Plaintiffs likely would not recover anything, especially since Tiger would likely pay millions more in attorneys' fees and costs to take this matter through trial. Of course, Dyet's companies' would be liable, but assuming Plaintiffs can pierce the corporate veils, Dyet also does not have anywhere near \$183 million to pay a judgment and would also declare bankruptcy. Dyet Decl. at ¶¶ 2, 6.

Had Plaintiffs continued to litigate, "the proceeds available for a settlement would have continued to be expended on defense-related costs." [] The decision to settle was therefore a pragmatic choice given that Plaintiffs "faced a real risk that any victory at trial would be mostly, if not wholly, symbolic due to the Company's financial condition and future prospects."

Hayes v. MagnaChip Semiconductor Corp., No. 14-cv-01160-JST, 2016 U.S. Dist. LEXIS 162120, at *17 (N.D. Cal. Nov. 21, 2016). Therefore, given this reality, Plaintiffs "have agreed to accept a smaller certain award rather than seek the full recovery but risk getting nothing." *Rieckborn v. Velti PLC*, No. 13-CV-03889-WHO, 2015 WL 468329, at *6 (N.D. Cal. Feb. 3, 2015) (citation omitted).

¹⁰ This discussion from the settlement conference is not made inadmissible by Federal Rule of Evidence 408 because it is not related to the "validity or amount of a disputed claim." Whether or not Tiger can borrow any money is related only to the settlement amount, which is very small and bears little connection to the size of the class's claims.

1 **3. The Risk of Maintaining Class Action Status**

2 The Court found that the class's Recording Law claims met all of the requirements of
3 Federal Rule of Civil Procedure 23. This ruling was based in part on its finding that Defendants
4 failed to preserve and destroyed evidence, namely, recordings of Sales Calls that Tiger was
5 required to keep pursuant to PG&E Gas Rule 23.

6 Although discovery has closed, if Defendants were somehow able to locate still more
7 Sales Call recordings, and those recordings were both admitted and indicated that a significant
8 number of telemarketers did in fact obtain recipients' consent to record, it is possible (but highly
9 unlikely) that the Court could decertify the class.

10 If Plaintiffs had succeeded in obtaining certification of the UCL and CLRA claims,
11 Plaintiffs similarly believe that the Court would be unlikely to decertify the claims, even if
12 Defendants somehow, after discovery closed, produced more Sales Call recordings indicating
13 substantially different messaging than the Fishman call.

14 **4. The Amount Offered in Settlement**

15 As detailed above, the Settlement provides real benefits to the class.

16 Although the monetary settlement is low compared to the statutory damages, Defendants
17 simply do not have \$183 million. If such a judgment were entered, Defendants have indicated
18 they would simply declare bankruptcy and the class would likely get nothing. Here, each class
19 member should receive more than \$90 – a significant amount, *not* a coupon or credit, and
20 without needing to prove actual damages or even file a claim.

21 Also, Defendants have agreed to injunctive relief that benefits not only Plaintiffs and the
22 class, but all consumers and small businesses in PG&E's territory in Northern/Central California.
23 This was Plaintiffs' primary goal; indeed, Plaintiffs previously turned down Tiger's offer of a
24 private monetary settlement without injunctive relief.

25 **5. The Extent of Discovery Completed and the State of the Proceedings**

26 "A settlement following sufficient discovery and genuine arms-length negotiation is
27 presumed fair." *Rodriguez v. Bumble Bee Foods, LLC*, No. 17cv2447-MMA (WVG), 2018 U.S.
28 Dist. LEXIS 69028, at *10 (S.D. Cal. Apr. 24, 2018).

The Parties reached this settlement after the Parties had an opportunity to diligently investigate the factual and legal aspects relevant to the allegations via the exchange of thousands of relevant documents, data, and multiple depositions, and after the Court certified the Recording Law claims. Class Counsel believes the Court would have certified the UCL and CLRA claims too, since once Tiger turned over its customers' gas consumption data, enabling Plaintiffs to calculate classwide damages without seeking data from PG&E. Although Defendants would have had to turn over more documents and data, and produce more witnesses for depositions ordered by the Court prior to the stay, Plaintiffs and Class Counsel are confident in the terms of the proposed settlement agreement, given the information garnered during discovery and during the settlement negotiations, and based, again, on Tiger's financial disclosures and apparent inability to pay a judgment.

6. The Experience and Views of Counsel

Although recommendations of counsel proposing the settlement are not conclusive, the Court can properly take them into account, particularly if they have been involved in litigation for some period of time, appear to be competent, have experience with this type of litigation, and discovery has commenced. *See* 2 H. Newberg, *Newberg on Class Actions* § 11.47 (2d ed. 1985). Indeed, "Absent evidence of fraud or collusion, courts also should accord 'great weight' to the recommendations of counsel." *Medeiros*, 2017 U.S. Dist. LEXIS 178484 at *15-16.

Counsel for Plaintiffs are qualified and experienced in litigation similar to the instant action, and believe that the settlement is fair, adequate, and reasonable under the circumstances.

7. Reaction of Class Members to the Proposed Settlement

While this question cannot be answered accurately until after the class members receive notice of the proposed settlement, Plaintiffs believe it will be welcomed by the vast majority of class members. While individual opt-outs could sue Tiger and theoretically obtain a higher judgment, they would incur attorneys' fees and costs as they battled experienced counsel, and may not be able to benefit from the rulings and inferences achieved by Class Counsel in this Action. As of January 17, of the nearly 27,000 class members, there have only been 33 opt-outs. Morrison (Angeion Group) Decl. at ¶ 5.

1 **8. *There is No Fraud or Collusion***

2 “As a general principle, the courts respect the integrity of counsel and presume the
3 absence of fraud or collusion in negotiating the settlement, unless evidence to the contrary is
4 offered.” *Hemphill v. San Diego Association of Realtors*, 225 F.R.D. 616, 621 (S.D. Cal. 2004)
5 (citation omitted). Also, “the presence of a mediator strongly suggests the absence of collusion
6 or bad faith by the parties or counsel.” *Walsh v. CorePower Yoga LLC*, No. 16-cv-05610-MEJ,
7 2017 U.S. Dist. LEXIS 163991, at *22 (N.D. Cal. Oct. 3, 2017).

8 Here, the Parties engaged in a settlement conference before Magistrate Judge Laporte, the
9 Parties did not collude or engage in fraud as to the settlement, and there is no evidence of any
10 collusion or fraud. Balsam Decl. at ¶ 13.

11 **V. SETTLEMENT ADMINISTRATION**

12 The settlement provides that the Common Fund shall pay for the class administration and
13 notice. Plaintiffs propose that Angeion Group of Philadelphia, an experienced class
14 administration company that efficiently disseminated the initial Notice of Pendency of Class
15 Action, be appointed as the class administrators for this Settlement. Angeion’s qualifications are
16 detailed in the Morrison (Angeion Group) Declaration.

17 Administration should be simple and straightforward, because Tiger has supplied its class
18 list with contact information, and class members do not need to submit any claim forms. All the
19 administrator needs to do is mail notice of the settlement, process opt-outs, receive the lump-sum
20 payment from Tiger, mail a check to each class member (calculating the pro rata amount after
21 this Court approves fees and costs), and mail any unclaimed funds to the *cy pres* recipient.

22 Plaintiffs obtained three bids for this project, and Angeion was the least expensive.
23 Rogers Decl. at ¶ 2. When the Court ordered that class notice must be accomplished via long-
24 form notice sent by first class mail instead of a postcard or email, Angeion adjusted its bid
25 modestly and reasonably and efficiently mailed the approved notice to the certified class. Its fees
26 are reasonable in light of the settlement amount and the administrator’s duties.

27 Plaintiffs’ attorneys have not worked with Angeion in the past two years. Plaintiffs and
28 their attorneys do not have any financial interest in Angeion or otherwise have a relationship

1 with Angeion that could create a conflict of interest. Rogers Decl. at ¶ 3, Balsam Decl. at ¶ 14,
2 Harker Decl. at ¶ 5.

3 **VI. NOTICE**

4 The Court certified the class for purposes of the Recording Law claim under Rule
5 23(b)(3). Plaintiffs sought certification of the UCL and CLRA claims under Rule 23(b)(3) as
6 well, and now seek certification of those claims for settlement purposes. Under Rule
7 23(e)(1)(B), “The court must direct notice in a reasonable manner to all class members who
8 would be bound by the proposal.”

9 Because Tiger already has class members’ contact information, and the third-party
10 administrator has already sent notice to the certified class, further notice should be relatively
11 easy. Plaintiffs’ proposal for the Class Notice is included in Exhibit C to this Motion.

12 Full costs of administration the proposed settlement (including the initial notice of class
13 certification, already mailed) are estimated by the third-party administrator to be \$59,993.

14 Morisson Decl. at ¶ 12 and Ex. A.

15 **VII. OPT-OUTS**

16 Plaintiffs’ proposal for opt-out language in the Class Notice is included in Exhibit C.

17 **VIII. OBJECTIONS**

18 Plaintiffs’ proposal for objections language in the Class Notice is included in Exhibit C.

19 **IX. ATTORNEYS’ FEES AND COSTS**

20 Defendants insisted on an overall cap of \$3.7 million for the settlement. In accordance
21 with this Court’s Order re: Factors for Class Settlement at § 8 (Dkt. No. 65), the Parties did not
22 discuss attorneys’ fees or costs, except for confirming that fees and costs must be included in the
23 \$3.7 million.

24 Plaintiffs will submit a separate Motion for Attorneys’ Fees and Costs in accordance with
25 Federal Rules of Civil Procedure 23(h) and 54(d) after the Court establishes a briefing
26 schedule.¹¹ Up to and including this Motion, Plaintiffs’ attorneys spent more than 3,450 hours

27
28 ¹¹ Plaintiffs’ understanding is that Defendants are not seeking recovery of any attorneys’ fees or costs.

on this case, which, at their ordinary billing rates, represents a lodestar of over \$1,882,827.50.¹² Plaintiffs intend to request fees calculated at the 9th Circuit's benchmark of 25% of the Common Fund, *see In re Cathode Ray Tube (CRT) Antitrust Litigation*, No. 3:07-cv-5944 JST, 2016 U.S. Dist. LEXIS 24951, at *274 (N.D. Cal. Jan. 28, 2016), or \$925,000 – which is half of the lodestar. Plaintiffs submit that this Court should view the request for attorneys' fees in light of the fact that Plaintiffs succeeded in obtaining not only significant monetary relief for the class but also targeted injunctive relief that will benefit all consumers and small businesses in PG&E's territory in Northern/Central California.

Class Counsel incurred/expect to incur an estimated \$230,000 in costs in this case on behalf of Plaintiffs and the class, including approximately \$67,000 for expert witness costs. Balsam Decl. at ¶ 16.

X. INCENTIVE AWARDS

Plaintiffs are aware that this Court's Order re: Factors for Class Settlement (Dkt. No. 65) states at § 12 that incentive awards are "red flags" because they are "too often simply ways to make a collusive or poor settlement palatable to the named plaintiff." In *Kakani v. Oracle Corp.*, No. C 06-06493 WHA, 2007 U.S. Dist. LEXIS 47515 at *15, 27 (N.D. Cal. June 19, 2007), Judge Alsup denied an incentive award of \$15,000 for each of three named plaintiffs.

On the other hand, in *In re LDK Solar Securities Litigation*, No. C 07-5182 WHA, 2010 U.S. Dist. LEXIS 87168 at *9-10 (N.D. Cal. July 29, 2010), Judge Alsup approved an incentive payment of \$4,000 (after costs). Judge Alsup also approved a \$500 incentive award for the named plaintiffs in *Etter v. Allstate Insurance Company*, No. C 17-00184 WHA, 2018 U.S. Dist. LEXIS 189136 at *11 (N.D. Cal. Nov. 4, 2018); and *Taylor v. West Marine Products Inc.*, No. C 13-04916 WHA, 2015 U.S. Dist. LEXIS 66705 at *6 (N.D. Cal. May 21, 2015).

Plaintiffs' counsel recommends modest incentive awards for Plaintiffs Fishman and Faria based on the amount of time and work they devoted to this Action, and the benefit to the Class. Tiger deposed Fishman and Faria not once, but twice each. Plaintiffs responded to two sets of

¹² Kimberly Kralowec: 101.6 hours at \$810, Kathleen Rogers: 1,238.9 hours at \$795, paralegal Gary Gray: 242.8 hours at \$305, Rogers Decl. at ¶¶ 4-6; Daniel Balsam: 1,173.0 hours at \$400, Balsam Decl. at ¶ 15; Jacob Harker: 696.8 hours at \$390, Harker Decl. at ¶ 6.

1 written discovery. Plaintiffs also suffered loss of privacy as forensic ESI searches reviewed their
 2 personal, confidential information. Plaintiffs discussed strategy with class counsel, made
 3 suggestions for discovery topics, and attended hearings and the settlement conference. Balsam
 4 Decl. at ¶ 17. Accordingly, Plaintiffs believe that an incentive payment (or, alternatively, framed
 5 as compensation for their time spent representing the class, *see In re Charles Schwab Corp.*
 6 *Securities Litigation*, No. C 08-01510 WHA, 2011 U.S. Dist. LEXIS 44547 at *32 (N.D. Cal.
 7 Apr. 19, 2011)) of \$1,500 each is justified.

8 Tiger stated that takes no position on incentive payments to Fishman and Faria so long as
 9 the overall settlement remains at \$3.7 million. Balsam Decl. at ¶ 18.

10 **XI. CY PRES AWARD**

11 Once this Court approves the final Common Fund, less attorneys' fees, costs, and any
 12 incentive awards, the remainder should be distributed among the class members in equal shares.
 13 The settlement does not contain a reversion for any unclaimed settlement funds, and it would be
 14 impractical and inefficient, due to administrative costs, to have small amounts of money (e.g.
 15 from uncashed checks) redistributed to class members. Accordingly, a *cy pres* mechanism
 16 makes sense.

17 Plaintiffs' proposed *cy pres* recipient is The Utility Reform Network ("TURN"), based in
 18 San Francisco. TURN is a nonprofit long engaged in protecting consumers from overreach by
 19 utilities in California, and which has been advocating for greater regulatory scrutiny over
 20 practices of Core Transport Agents such as Tiger. "TURN believes no one should be cut off
 21 from essential electricity, gas or phone service. We hold utility corporations accountable by
 22 demanding fair rates, cleaner energy and strong consumer protections." *See Exhibit D* to this
 23 Motion. TURN is able to receive and use *cy pres* awards. *See* \$375,000 Cy Pres Award
 24 Advances Consumers Interests, www.turn.org/about/cy-pres-award (last visited Jan. 9, 2019).
 25 TURN represented to Plaintiffs that it has pursued and is pursuing greater regulatory scrutiny of
 26 the practices of Core Transport Agents, such as Tiger, operating in California, which actions
 27 would benefit targeted gas customers such as members of the class going forward. Balsam Decl.
 28

at ¶ 19. Plaintiffs and their counsel do not have any personal or professional relationship with TURN. Rogers Decl. at ¶ 7, Balsam Decl. at ¶ 20, Harker Decl. at ¶ 7.

XII. TIMELINE

ACTION	TIME
“Notice Date”: Last day for Claims Administrator to mail Notice of Settlement to Class Members	15 days after preliminary court approval
Last day for Claims Administrator to provide Defense Counsel and Class Counsel with a declaration attesting to completion of the notice process	30 days after preliminary court approval
“Exclusion Deadline”: Last day for Class Members to request exclusion from the Settlement	50 days after preliminary court approval
“Objection Deadline”: Last day for Class Members to object to the Settlement	50 days after preliminary court approval
Last day for Parties to file any response to objections	60 days after preliminary court approval
Last day for Class Counsel to file motion for final approval of settlement, Class Representative’s service payment and application for attorneys’ fees and costs	60 days after preliminary court approval
Hearing on motion for final approval of settlement, Class Representative’s service payment, and application for attorneys’ fees and costs	To be determined by the Court

XIII. CLASS ACTION FAIRNESS ACT

No particular CAFA notice is required since this settlement does not involve coupons.

XIV. PAST DISTRIBUTIONS

Within the past two years, Kralowec Law has settled one action for which the settlement monies already have been paid and distributed, *Bluford v. Safeway Stores, Inc.*, Case No. CV014837 (Super. Ct. Cal. Cty. of Alameda) (consolidated with *Bluford v. Safeway Stores, Inc.*, Case No. CV028541 (Super. Ct. Cal. Cty. of Alameda) (together “*Bluford*”). *Bluford* was an employment action brought under the California Labor Code and UCL on behalf of a class of truck drivers in Northern California, who were not paid for rest breaks and whose pay stubs and calculated pay were indecipherable. That action spanned 13 years of litigation and two trips up to the California Court of Appeal. The class action administrator was Gilardi & Co. LLC (parent company Kurtzman Carson Consultants LLC (KCC)). Gilardi made repeated efforts to update

addresses of class members, many of whom had relocated or even passed away during the 13 years of litigation, but could not locate around 15-20% of the class members, and their checks were going uncashed (and would otherwise escheat to the State of California). Kralowec Law personally undertook, without further compensation, to locate class members using search methods including social media. They located many class members by searching names on Facebook and Google, calling children's schools and families' churches, and other efforts. The class members were not wealthy, and the sums they received (from as low as \$200 up to \$60,000) including years of interest, were substantial for many of the recipient families. In the end, 96% of the class, or 1,040 of the 1,081 class members (or their heirs), received and cashed their settlement checks, comprising 99.62% of the settlement fund. Rogers Decl. at ¶¶ 8-9.

The Law Offices of Daniel Balsam and Law Offices of Jacob Harker do not have comparable class settlements in the last two years involving the same or similar clients, claims, and/or issues. Balsam Decl. at ¶ 21, Harker Decl. at ¶ 8.

XV. CONCLUSION

Although the class's monetary recovery for Recording Law claims is low compared to the statutory violations, it is in line (or better, on a per-class member basis) than many other class settlements. Defendants simply do not have more monies for a larger settlement, much less to pay a \$183 million judgment, and this settlement, if approved, will also achieve valuable, prospective injunctive relief. If this case proceeds to trial, win or lose, it is highly unlikely that the class will do any better. The proposed settlement is fair, reasonable, and adequate, and this Court should grant this Motion for Preliminary Approval.

Respectfully Submitted,

Dated: Jan. 17, 2019

THE LAW OFFICES OF DANIEL BALSAM

/s/ Daniel Balsam

Daniel Balsam

Attorney for Plaintiffs and the Class

EXHIBIT A

EARLIER/SUBSEQUENT CLASS DEFINITIONS

From the [Corrected] Trial Plan, Nov. 13, 2018 (Dkt. No. 243):

Tiger/PG&E Customer Class: All California consumers and businesses that were customers of Pacific Gas & Electric Company for gas supply and/or gas delivery at the time they enrolled in Tiger Natural Gas, Inc.'s ("Tiger") capped rate price protection program (the "Program") after receiving a telemarketing Sales Call advertising the Program, at any time from August 18, 2013 to the present.

Tiger/PG&E Consumer Sub-Class: All California consumers, but not businesses, that were customers of Pacific Gas & Electric Company at the time they enrolled in Tiger Natural Gas, Inc.'s ("Tiger") capped rate price protection program (the "Program") after receiving a telemarketing Sales Call advertising the Program, at any time from August 18, 2013 to the present.

Tiger/YEP Customer Sub-Class: All California consumers and businesses that were customers of YEP Energy for their natural gas supply at the time they enrolled in Tiger Natural Gas, Inc.'s ("Tiger") capped rate price protection program (the "Program") after receiving a telemarketing Sales Call advertising the Program, at any time from August 18, 2013 to the present.

From the Motion for Class Certification, Sep. 20, 2018 (Dkt. No. 177):

Tiger/PG&E Customer Class: All California consumers and businesses that were customers of Pacific Gas & Electric Company at the time they enrolled in Tiger Natural Gas, Inc.'s ("Tiger") capped rate price protection program (the "Program") after receiving a telemarketing Sales Call advertising the Program, at any time from August 18, 2013 to the present.

Tiger/PG&E Consumer Sub-Class: All California consumers, but not businesses, that were customers of Pacific Gas & Electric Company at the time they enrolled in Tiger Natural Gas, Inc.'s ("Tiger") capped rate price protection program (the "Program") after receiving a telemarketing Sales Call advertising the Program, at any time from August 18, 2013 to the present.

From the Operative Third Amended Complaint, June 9, 2018 (Dkt. No. 101):

Class: All California consumers and businesses who received a telemarketing Sales Call from Tiger or its Telemarketing Agents that was recorded without consent of the recipients, who became aware of the recording within one year prior to the filing of this Action and continuing until final disposition of the Action. The Class includes California consumers and businesses in Northern California (within PG&E's territory) and outside of Northern California (within the territories of other Gas Companies).

Do Not Call Sub-Class: All California consumers and business who received a telemarketing call from Tiger or its Telemarketing Agents (CGC and DOEs 3-50) at a landline or cellular telephone number that was registered on the Do Not Call

list, within four years prior to the filing of this Action and continuing until final disposition of the Action. Although the Third Amended Complaint no longer states a cause of action for violations of the Telephone Consumer Protection Act, the Do Not Call Sub-Class is still relevant because Tiger's Sales Calls to numbers on the Do Not Call list violate other statutes which serve as predicate violations for Plaintiffs' Unfair Competition Law causes of action.

Enrollee Sub-Class: All California consumers and businesses who enrolled in Tiger's natural gas price protection program after receiving representations (including via telemarketing) claiming that the program is "free" and/or that the program can save them money versus their current gas provider's rates due to a rate cap, within: a) two years prior to the filing of this Action and continuing until final disposition of the Action for the Breach of Oral Contract cause of action; b) within three years prior to the filing of this Action and continuing until final disposition of the Action for the Fraud, Negligent Misrepresentation, and Violations of Regulations on Core Transport Agents causes of action; and/or c) within four years prior to the filing of this Action and continuing until final disposition of the Action for the False Advertising Law and Unfair Competition Law causes of action.

PG&E Enrollee Sub-Class: All California consumers and businesses, previously customers of PG&E, who enrolled in Tiger's natural gas price protection program after receiving representations (including via telemarketing) claiming that the program is "free" and/or that the program can save them money versus their current gas provider's rates due to a rate cap, within: a) two years prior to the filing of this Action and continuing until final disposition of the Action for the Breach of Oral Contract cause of action; b) within three years prior to the filing of this Action and continuing until final disposition of the Action for the PG&E Gas Rule 23, Fraud, Negligent Misrepresentation, and Violations of Regulations on Core Transport Agents causes of action; and/or c) within four years prior to the filing of this Action and continuing until final disposition of the Action for the Breach of Third Party Beneficiary Contract, False Advertising Law, and Unfair Competition Law causes of action.

Consumer Enrollee Sub-Class: All consumer members, but not business members, of the Enrollee Sub-Class and PG&E Enrollee Sub-Class, who enrolled in Tiger's natural gas price protection program after receiving representations (including via telemarketing) claiming that the program is "free" and/or that the program can save consumers money versus their current gas provider's rates due to a rate cap, within three years prior to the filing of this Action and continuing until final disposition of the Action for the Consumers Legal Remedies Act cause of action.

EXHIBIT B

CLASS SETTLEMENTS FOR RECORDING LAW VIOLATIONS

Amount per Class Member	Penal Code § 632 Class Settlements
\$606.56 net after attorneys' fees/expenses	<i>Reed v. 1-800 Contacts Inc.</i> , 2014 U.S. Dist. LEXIS 255 at *17 (S.D. Cal. Jan. 2, 2014).
\$132.57 net after attorneys' fees/expenses	<i>McDonald v. Bass Pro Outdoor World LLC</i> , No. 13-cv-889-BAS(DHB), 2014 U.S. Dist. LEXIS 109080, at *19-20 (S.D. Cal. Aug. 5, 2014).
\$97.27 net after attorneys' fees/expenses	<i>Zaklit v. Nationstar Mortgage LLC</i> , No. 5:15-cv-2190-CAS(KKx), Dkt. No. 107 (C.D. Cal. Jan. 11, 2019) (Motion for Preliminary Settlement).
\$96.50 net after attorneys' fees/expenses	<i>Stone v. Howard Johnson International Inc.</i> , No. 2:12-cv-01684-PSG-MAN, Dkt. No. 105 (C.D. Cal. Apr. 24, 2015); Dkt. No. 115 (June 15, 2015); Dkt. No. 123 (Nov. 30, 2015).
\$90+ net after attorneys' fees/expenses, estimated	<i>Fishman v. Tiger Natural Gas Inc.</i> , No. 3:17-cv-05351 (N.D. Cal.).
\$30, as stated in <i>Reed</i>	<i>Marenco v. Visa Inc.</i> , No. 10-8022 DMG (VBKx), 2011 U.S. Dist. LEXIS 140527 (C.D. Cal. Dec. 6, 2011).
\$10.82 net after attorneys' fees/expenses	<i>McCabe v. Six Continents Hotels Inc.</i> , No. 12-cv-04818 NC, 2015 U.S. Dist. LEXIS 85084, at *28 (N.D. Cal. June 30, 2015).
\$7.54 gross	<i>Medeiros v. HSBC Card Services</i> , No. CV 15-09093 JVS (AFMx), 2017 U.S. Dist. LEXIS 178484, at *12 (C.D. Cal. Oct. 23, 2017).
\$6.98, as stated in <i>Medeiros</i>	<i>Skuro v. BMW of North America, LLC</i> , Case No. 10-8672 GW (FFMx) (C.D. Cal. 2012).
\$5.37, as stated in <i>Medeiros</i>	<i>Batmanghelich v. Sirius XM Radio, Inc.</i> , Case No. 09-9190 VBF (JCx), 2011 U.S. Dist. LEXIS 155710 (C.D. Cal. Sep. 15, 2011).
\$4.70, as stated in <i>Medeiros</i>	<i>Cohorst v. BRE Properties, Inc. et. al.</i> , No. 10-cv-2666 JM, 2011 U.S. Dist. LEXIS 151719, (S.D. Cal. Jan. 18, 2012).
\$1.79, as stated in <i>Medeiros</i>	<i>Hoffman v. Bank of America, N.A.</i> , 12-cv-00539 DHB, Dkt. No. 67 (S.D. Cal. Nov. 6, 2014).
\$1.58, as stated in <i>Medeiros</i>	<i>Nader v. Capital One Bank, N.A.</i> , No. 12-cv-01265 DSF, 2014 U.S. Dist. LEXIS 194211 (C.D. Cal. Nov. 17, 2014).
\$0.75, as stated in <i>McCabe</i>	<i>Knell v. FIA Card Services</i> , 12-cv-00426 WVG, Dkt. No. 79 (S.D. Cal. Aug. 15, 2014).

Note: None of the Orders referenced the Defendant's (in)ability to pay a "full" judgment of \$5,000 per call.

Note: Where a settlement amount shows "as stated in *Reed/Medeiros/McCabe*," it means that *Medeiros/McCabe* is more recent than the actual case order.

EXHIBIT C
CLASS NOTICE

NOTICE OF SETTLEMENT OF CLASS ACTION

Fishman v. Tiger Natural Gas Inc., Case No. 3:17-cv-05351 WHA

**If You Were A California Consumer or Business Customer of Pacific Gas & Electric, Inc.
Who Enrolled in Tiger Natural Gas Inc.'s Capped-Rate Price
Protection Program after Receiving a Telemarketing Call Advertising the Program
Between August 18, 2013 and The Present A PROPOSED CLASS ACTION
SETTLEMENT MAY AFFECT YOUR RIGHTS.**

A court authorized this notice. This is not a solicitation from a lawyer. You are not being sued. However, your legal rights are affected by the information contained in this Notice.

**PLEASE READ THIS NOTICE CAREFULLY. It describes your rights and how to
receive money from the Settlement or exclude yourself from the Settlement.**

- This Notice describes a proposed settlement ("Settlement") of a pending class action lawsuit and your rights under this Settlement, including your right to receive money from this Settlement. If you do not want to be part of this Settlement, this Notice details the steps you must take to be excluded from it.
- The Court has not yet decided whether to grant final approval of the Settlement. No payments will be made unless and until the Court approves the Settlement.
- You need to decide whether to stay in the case and receive the benefits of the Settlement, object to the Settlement, or request exclusion from the Settlement. *If you wish to remain a Class Member and receive a monetary share of the Settlement, you do not have to do anything in response to this Notice.*
- The decision of whether to participate in, request to be excluded from, and/or object to the Settlement is entirely yours.

SUMMARY OF SETTLEMENT

- Plaintiff Emily Fishman filed an action (the "Action") against Tiger Natural Gas, Inc. ("Tiger"), Community Gas Center, Inc. ("CGC") and John Dyet ("Dyet") (together, Tiger, CGC and Dyet are the "Defendants") which was transferred to the United States District Court for the Northern District of California (the "Court"). Susan Faria ("Faria") later joined as an additional named plaintiff (Fishman and Faria together are "Plaintiffs").
- Plaintiffs alleged in the Action that telemarketers calling to advertise Tiger's Capped-Rate Program for the purchase of natural gas (the "Program") recorded sales calls without customers' consent; misrepresented facts including: that Pacific Gas & Electric Co.'s ("PG&E's") gas supply rates were increasing when they were decreasing; that Tiger's rates track the market rate when they did not; and that Tiger's Program was "free;" also, Plaintiffs alleged the telemarketers omitted to state material facts such as Tiger's price per therm which, for most of the class period, was higher than PG&E's price per therm,

and failed to send written terms and conditions that matched the terms and conditions customers agreed to during their telephone enrollment in Tiger's Program.

- Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action and this Settlement is in no way an admission by Defendants, or any of them, that it/they engaged in any unlawful behavior. The Court has not decided who is right.

The Settlement includes a payment by Defendant Tiger of **\$3,700,000**, as well as promises by Tiger to engage in certain behavior in future dealings with potential customers in California, as follows: (1) all sales calls that are recorded in the future made by Tiger or by entities engaged by Tiger will contain an advisement at the beginning of the sales call that the call is being recorded; and (2) Tiger and any entities engaged by it to make sales calls in the future will not misrepresent Tiger's charges or PG&E's charges in any such sales calls.

- As a recipient of a call advertising the Program, you are eligible to share and participate in the settlement benefits.

The Court has preliminarily approved the Settlement. Before deciding whether to grant final approval of the Settlement, the Court wishes to inform you of the general terms of the Settlement and your rights and options.

YOUR RIGHTS AND OPTIONS	
DO NOTHING AND RECEIVE YOUR MONETARY SHARE OF THE SETTLEMENT	If you do nothing and the Settlement receives final approval, you will automatically receive a Settlement check in the mail and will release certain claims against Defendants.
REQUEST TO BE EXCLUDED FROM THE SETTLEMENT	If you submit a request to be excluded from the Settlement on or before XXX, 2019 , you will receive no payment under this Settlement but will retain any right you may have to file your own lawsuit for the released claims.
OBJECT TO THE TERMS OF THE SETTLEMENT	If you do not want to be excluded from the Settlement but wish to object to the terms of the Settlement, you can submit an Objection on or before XXX, 2019 .

The Court will hold a Final Approval Hearing to consider whether the Settlement is fair, reasonable, and adequate, and to decide whether to give final approval to this Settlement. The hearing will be held at **X:XX** a.m. on **XX, 2019**, in the courtroom of the Honorable William Alsup at the United States District Court for the Northern District of California, Courtroom 12 – 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. If the Settlement is granted final approval by the Court after the Final Approval Hearing, the Court's judgment will be final and binding on you unless you request to be excluded from the Settlement. If you do not request

exclusion and if the Court grants final approval of the Settlement, you will be bound by the Court's orders and the terms and releases of the Settlement. You are not required to appear at the hearing. If you are a Class Member, you will be represented by attorneys for the Class ("Class Counsel") at no cost to you.

GENERAL INFORMATION

1. Why did I receive this Notice?

The purpose of this Notice is to inform you about this litigation, the certification of a class (the "Class"), the terms of the proposed settlement (the "Settlement"), and your rights in connection with a hearing to be held before the Court at XX:XX a.m. on XXX, 2019, to consider the fairness, reasonableness, and adequacy of the Settlement and related matters. This Notice also describes the steps to be taken by those who wish to be excluded from the Class and, for those who remain Class Members, your rights to receive a monetary award in the event the Settlement is approved by the Court. You may have received a Notice of Pendency of Class Action Prior to this Notice.

2. What is this Action about?

Plaintiffs initiated a class action lawsuit against Defendants and alleged that telemarketers calling to advertise Tiger's Capped-Rate Program for the purchase of natural gas (the "Program") recorded sales calls without customers' consent; misrepresented facts including: that Pacific Gas & Electric Co.'s ("PG&E's") gas supply rates were increasing when they were decreasing; that Tiger's rates track the market rate when they did not; and that Tiger's Program was "free;" also, Plaintiffs alleged the telemarketers omitted to state material facts such as Tiger's price per therm which, for most of the class period, was higher than PG&E's price per therm, and failed to send written terms and conditions that matched the terms and conditions customers agreed to during their telephone enrollment in Tiger's Program. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action and this Settlement is in no way an admission by Defendants, or any of them, that it/they engaged in any unlawful behavior.

3. Has the Court decided who is right?

No. The Court has only decided that you should get a copy of this Notice so that you can review the Settlement and determine whether you want to participate in the Settlement, object to it, or exclude yourself from the Settlement.

4. What is a class action and who is involved?

In a class action lawsuit, one or more people called Class Representatives are approved by the Court to pursue claims on behalf of themselves and other people. The Class Representatives in this case are Named Plaintiffs Emily Fishman and Susan Faria. The Class Representatives represent the Class (or Class Members). The Settlement will resolve the claims at issue for all Class Members who do not request to be excluded.

5. Am I a Class Member?

You are a member of the Class affected by the Settlement if you fit within this definition:

Settlement Class: All California consumers or business customers of Pacific Gas & Electric, Inc. who enrolled in Tiger Natural Gas Inc.'s Capped-Rate Price

Protection Program after receiving a telemarketing call advertising the Program between August 18, 2013 and the present.

Tiger/PG&E Consumer Settlement Sub-Class: All California consumers, but not businesses, that were customers of Pacific Gas & Electric Company at the time they enrolled in Tiger Natural Gas, Inc.'s ("Tiger") capped rate price protection program (the "Program") after receiving a telemarketing Sales Call advertising the Program, at any time from August 18, 2013 to the present.

You have received this Notice because Tiger's records reflect that you fit the definition outlined above, and therefore you are a Class Member in the proposed Settlement of this Action. It is estimated that there are approximately 26,650 Class Members affected by the Settlement.

6. Why is this Action being settled?

After months of extensive litigation, the Parties agreed to explore possible resolution of the Action. Under the supervision of a magistrate judge, the Parties engaged in settlement negotiations that resulted in the agreement to settle this Action as reflected in this Notice of Class Action Settlement and the underlying terms of settlement read into the record at the Settlement Conference (the "Settlement Agreement"). Because of the extensive discovery conducted between the Parties during litigation and settlement process, the Parties were able to reliably assess the merits of their respective positions and to reach a fair and equitable Settlement Agreement.

Based upon their investigation, Class Counsel and the Class Representatives have concluded that the terms of the proposed Settlement are fair, reasonable, and adequate, and in the best interests of the Class. In reaching this conclusion, Class Counsel has analyzed the benefits of the Settlement and the risk of an unfavorable outcome, the expense and length of the continued proceedings necessary to prosecute the Action, and Defendants' financial condition and ability to pay a judgment after trial larger than the agreed settlement of \$3.7 million.

Defendants have agreed to these settlement terms because they wish to avoid further costly, disruptive, and time-consuming litigation, and desire to obtain complete and final settlement of the claims of the Plaintiffs and Class Members. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in this Action and this Settlement is in no way an admission by Defendants, or any of them, that it/they engaged in any unlawful behavior.

7. Who represents the Class Members in the Action?

In class actions, Class Members are represented by Court-appointed lawyers ("Class Counsel"). In this case, you are represented by Kimberly Kralowec and Kathleen Styles Rogers of Kralowec Law Group, P.C.; Daniel Balsam of the Law Offices of Daniel Balsam; and Jacob Harker of the Law Offices of Jacob Harker. Class Counsel are experienced in handling similar cases, and the Court has determined that Class Counsel are qualified to represent you and all Class Members. You can contact Class Counsel at:

Kathleen Styles Rogers Kimberly Kralowec Kralowec Law, P.C. 750 Battery St., Ste. 700	Daniel Balsam The Law Offices of Daniel Balsam 2601C Blanding Ave. #271	Jacob Harker The Law Offices of Jacob Harker 582 Market, Ste. 1007
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San Francisco, CA 94111 Tel: (415) 546-6800 Fax: (415) 546-6801	Alameda, CA 94501 Tel: (415) 869-2873 Fax: (415) 869-2873	San Francisco, CA 94104 Tel: (415) 624-7602 Fax: (415) 684-7757
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8. Who is the Settlement Administrator?

The Settlement Administrator is a third party appointed by the Court to send this Notice, process and issue Settlement checks, and otherwise administer the Settlement. You may contact the Settlement Administrator to provide updated contact information or ask questions regarding the processing of Settlement awards at:

Tiger Natural Gas Recorded Calls Class Action Administrator
Angeion Group
1650 Arch Street, Suite
2210, Philadelphia, PA 19103

Email: info@NaturalGasCappedRateClassAction.com

The Settlement Administrator also maintains a website concerning this settlement, with Frequently Asked Questions, located at www.NaturalGasCappedRateClassAction.com. The website includes copies of Plaintiffs' Third Amended Complaint and other documents concerning this Action and Settlement.

SUMMARY OF SETTLEMENT TERMS

9. What have Defendants agreed to do under the Settlement?

Under the Settlement Agreement, Tiger has agreed to pay **\$3,700,000** to settle the certified class claims. Also, Tiger has agreed to engage in certain behavior in future dealings with potential customers in California, as follows: (1) all sales calls that are recorded in the future made by Tiger or by entities engaged by Tiger will contain an advisement at the beginning of the sales call that the call is being recorded; and (2) Tiger and any entities engaged by it to make sales calls in the future will not misrepresent Tiger's charges or PG&E's charges in any such sales calls.

10. How are Class Members' Settlement awards determined?

After deductions from the \$3,700,000 class fund for Court-approved payments for the expense of administering the Settlement, Service Awards, and Class Counsel's fees and expenses, the remaining sum will be distributed evenly among all participating Class Members (approximately 26,650 Class Members). Class Counsel estimates that each class member will receive a check in the approximate amount \$90.00 as a result of this Settlement.

11. Are there tax consequences for money I receive?

Class Members are responsible for the appropriate payment of any federal, state and/or local taxes on the Settlement payments they receive. The tax issues for each Class Member are unique to him or her, and each Class Member is advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this Settlement. This Notice does not constitute legal or tax advice regarding any federal, state or local tax issue, and nothing in this Notice is intended, written or should be used by any person for the purpose of avoiding any tax

liability or penalties. Class Counsel are not tax advisors and cannot give you advice on any tax matters.

12. How long do I have to cash my Settlement check?

Any checks not cashed after **six (6) months** from the date of the class-wide distribution shall be void. After that, the funds from uncashed Class Member Awards will be donated to The Utility Reform Network ("TURN"), a nonprofit entity approved by the Court.

13. What is a "Service Award"?

In class actions, the Court may provide specific Class Members a "Service Award" in recognition of the time, effort, and risks taken in litigating the case on behalf of the Class. In this Lawsuit, Class Counsel will apply for service awards of \$1,500 each for the Class Representatives to compensate them for the time and effort they devoted to representing the Class in this case, including the time they spent in depositions conducted by Defendants, time spent answering discovery and attending hearings and the Settlement Conference, and time spent consulting with Class Counsel about the case.

14. How much will it cost to administer the Settlement?

Class Counsel will apply to the Court for payment to the Settlement Administrator for its fees and costs, whose estimated costs are \$60,000.

15. How will Class Counsel be paid?

Class Members are not personally liable for any fees and costs. As is routine in class action cases, Class Counsel will request an award of attorneys' fees and expenses already incurred as well as the fees and expenses that will be incurred during the implementation of the Settlement. These fees and expenses have been incurred as Class Counsel have pursued these claims on behalf of Plaintiffs and the Class for over two years without receiving any compensation for their services or reimbursement of their out-of-pocket litigation expenses, which are substantial. Class Counsel have undertaken significant risks in pursuing this matter. They have done so with the understanding that if they obtained a recovery for the Class, their expenses would be reimbursed and they would receive fees from the fund recovered. Accordingly, Class Counsel will apply to the Court for an award not exceeding \$250,000 for their out-of-pocket litigation expenses (including the cost of expert reports) and attorneys' fees not to exceed 25% of the class fund.

RELEASE OF CLAIMS

16. What claims are being released under the Settlement?

Upon final Court approval of the Settlement, Class Members who do not request to be excluded will fully release Defendants from the following claims as they are alleged in Plaintiffs' Third Amended Complaint and as addressed in Plaintiffs' Proposed Trial Plan in Support of Motion for Class Certification: First Cause of Action for violation of California Penal Code section 632 *et seq.* (the "Recording Law claim"); Eleventh, Twelfth and Thirteenth Causes of Action for violation of California Business & Professions Code section 17200 *et seq.* (the "Unfair Competition Law" or "UCL" claims); and Fifth Cause of Action for violation of California Civil Code sections 1750 *et seq.* (the "Consumer Legal Remedies Act" or "CLRA" claim).

The Released Parties are John Dyet, an individual, Tiger, and CGC, their parents, subsidiaries and affiliated companies, and in the case of all such entities, their respective past and present owners, representatives, officers, directors, attorneys, agents, employees, insurers, predecessors, successors, and assigns.

YOUR RIGHTS AND OPTIONS

17. How do I participate in the Settlement?

You do not need to do anything to participate in the Settlement. If you are a Class Member and do not request to be excluded from the Settlement, you will automatically receive a Settlement check and release claims against the Released Parties (see Paragraph 16 above) without any further action on your part.

18. How do I request to be excluded from the Settlement?

If you want to exclude yourself ("opt out") from the Settlement (that is, not receive any money from the Settlement and not be bound by the Settlement), **you must mail a written statement to the Settlement Administrator with your handwritten signature** to the address set forth above (Paragraph 8) that you wish to be excluded from the Settlement. ("Exclusion Request"). The Exclusion Request must be signed by the Class Member who seeks to opt out and must contain his or her name, address and telephone number. No Exclusion Request may be made on behalf of a group of Class Members.

If you exclude yourself from this settlement, you will not be eligible to receive any money from or be bound by this Settlement. Neither the class administrator nor class counsel will be able to offer any legal advice regarding whether to exclude yourself from the Settlement. To be effective, your Exclusion Request must be postmarked no later than XXX, 2019.

19. How do I object to the Settlement?

You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different outcome; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number ***Fishman v. Tiger Natural Gas, Inc., Case Number 3:17-cv-05351-WHA***, (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before XXX, 2019.

You cannot both object to the Settlement and exclude yourself from the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement and you will not be able to exclude yourself from the Settlement.

FINAL APPROVAL HEARING

20. When will the Court consider whether to grant final approval of the Settlement?

The Court will hold a Final Approval Hearing to decide whether to grant final approval of the Settlement on XXX, 2019 at XXX:00 a.m. in the courtroom of the Honorable William Alsup at the United States District Court for the Northern District of San Francisco, Courtroom 12 – 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. It is not necessary for you to appear at this hearing. If you have timely submitted an objection to the Settlement, you may, but are not required to, appear at the hearing to argue your objection to the Court. Any attorney who will represent you at the Final Approval Hearing for the purposes of your objection must file a Notice of Appearance with the Court and serve the Notice of Appearance on Class Counsel (contact information in Paragraph 7 above) and counsel for Defendants (Thomas Leland of Holland and Knight 1801 California St., Ste. 5000, Denver CO, 80202 for Tiger and Christine Reilly of Manat, Phelps & Phillips LLP 11355 West Olympic Blvd., Los Angeles CA, 90064 for CGC and Dyet) by XXX, 2019. The hearing may be postponed without further notice to the class certification hearing, trial or other judicial resolution.

FURTHER INFORMATION

21. How do I receive more information?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at **www.NaturalGasCappedRateClassAction.com**; by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California (450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102) between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays; or by contacting Class Counsel (Paragraph 7).

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

EXHIBIT D

THE UTILITY REFORM NETWORK

From About Us, www.turn.org/about (last visited Jan. 9, 2019):

TURN believes no one should be cut off from essential electricity, gas or phone service. We hold utility corporations accountable by demanding fair rates, cleaner energy and strong consumer protections.

Our Work

For more than 40 years we have challenged California's powerful energy and telephone companies, saving consumers and small businesses millions, standing up for vulnerable Californians, and demanding reliable service and livable communities.

TURN Advocates:

Our skilled legal team saves consumers millions and advances groundbreaking policies and programs at the California Public Utilities Commission (CPUC) and in Sacramento.

TURN Assists:

Our consumer advisor helps customers to understand their bills, protect their privacy, challenge unfair practices and learn how to save money and the environment.

TURN Acts:

TURN provides consumers with accurate and understandable information about critical energy and phone issues, and mobilizes people statewide to demand change.

TURN's Mission

TURN champions the cleanest energy and highest quality phone service at the lowest prices possible for residential customers, low-income households, and small businesses through legal advocacy at the California Public Utilities Commission, state and federal policy development, and community organizing throughout California.

TURN's History

TURN began at the kitchen table of pioneering consumer advocate Sylvia Siegel, a fierce advocate who was tired of seeing her electric bills go up year after year, and realized all Californians were getting ripped off by a Public Utilities Commission that rubber-stamped rate hikes. She taught herself the complex laws and rules of utility rates and quickly learned how to use them to the benefit of the public, rather than corporate profits.

In the past 40 years, TURN has identified and exposed corporate waste and lack of oversight, and driven common sense public policy to protect all Californians. TURN has grown into an organization known and trusted nationally for our expertise in energy and telecommunications issues, and our commitment to renewable energy that is affordable for everyone.

1 Kimberly A. Kralowec (State Bar No. 163158)
2 Kathleen Styles Rogers (State Bar No. 122853)
3 KRALOWEC LAW P.C.
4 750 Battery Street, Suite 700
5 San Francisco, CA 94111
6 Tel: (415) 546-6800
7 Fax: (415) 546-6801
8 Email: kkralowec@kraloweclaw.com
9 krogers@kraloweclaw.com

7 Daniel L. Balsam (State Bar No. 260423)
8 THE LAW OFFICES OF DANIEL BALSAM
9 2601C Blanding Avenue #271
10 Alameda, CA 94501
11 Tel: (415) 869-2873
12 Fax: (415) 869-2873
13 Email: legal@danbalsam.com

12 Jacob Harker (State Bar No. 261262)
13 LAW OFFICES OF JACOB HARKER
14 582 Market Street, Suite 1007
15 San Francisco, CA 94104
16 Tel: (415) 624-7602
17 Fax: (415) 684-7757
18 Email: jacob@harkercounsel.com

16 Class Counsel for the Certified Class and Attorneys
17 for Plaintiffs and the Proposed Class and Sub-Class

18 **UNITED STATES DISTRICT COURT**

19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)**

21 EMILY FISHMAN <i>et al</i>,	) Case No. 3:17-cv-05351-WHA
)
22 Plaintiffs,	) DECLARATION OF DANIEL BALSAM
	) IN SUPPORT OF PLAINTIFFS' MOTION
23 vs.	) FOR PRELIMINARY APPROVAL OF
	) CLASS ACTION SETTLEMENT
24 TIGER NATURAL GAS, INC. <i>et al</i> ,)
	) Fed. R. Civ. P. 23(e)
25 Defendants.)
	) Date: February 21, 2019
26	) Time: 8:00 am
27	) Courtroom: 12 – 19th Floor
28	) Judge: William Alsup

1 I, Daniel Balsam, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California. I am co-counsel of
3 record for Plaintiffs/class representatives Emily Fishman, Susan Faria and the Class in the above-
4 referenced lawsuit against Defendants Tiger Natural Gas Inc. ("Tiger"), Community Gas Center
5 Inc. ("CGC"), and John Dyet ("Dyet"). I have personal knowledge of the matters stated below,
6 and if called on to testify, would do so truthfully.

7 2. Tiger has claimed during this litigation it never knew how many Sales Calls Dyet's
8 telemarketing companies made for Tiger's natural gas capped-rate program, and Dyet has
9 claimed that call logs were lost.

10 3. I deposed Stephanie Hubbard, one of CGC's telemarketers. Hubbard testified that she
11 was hired by CGC and came into work one day – same address, same desk, same computer – to
12 learn that she now worked for Consumer Protection Association LLC; she did not even sign a
13 new employment contract. Exhibit 1 is a true and correct copy of excerpts from the Hubbard
14 deposition.

15 4. I was present at, although I did not defend, Tiger's deposition of James Hollins
16 (Plaintiffs' first ESI consultant).

17 5. On December 21, 2018, Magistrate Judge Laporte confirmed the position of Judge Alsup
18 that the Parties could negotiate Plaintiffs' UCL and CLRA claims if and only if they were able to
19 first settle the Recording Law claim on behalf of the certified class.

20 6. Exhibit 2 is a true and correct copy of the transcript from the sealed proceeding at the end
21 of the January 2, 2019 settlement conference, filed under seal.

22 7. Dyet signed a contract on behalf of CGC with Tiger with an effective date of September
23 1, 2014. Exhibit 3 is a true and correct copy of the first page of the CGC-Tiger contract
24 (TNG_0000048), filed under seal. Exhibit 4 is a true and correct copy of CGC's information on
25 file with the Colorado Secretary of State, showing a formation date of September 24, 2014 and a
26 delinquent date of February 2, 2018. Tiger's "Master Sheet" (TNG_00001939) shows CGC
27 calling customers for Tiger as early as August 21, 2014.
28

1 8. Tiger never provided proof that it mailed written terms and conditions to new customers,
2 and the terms and conditions it did produce fail to state Tiger's per-therm prices or even its price
3 cap.

4 9. Exhibit 5 is a true and correct copy of Dyet's company CRM Marketing Group Inc.'s
5 information on file with the Florida Secretary of State, showing a dissolution date of September
6 27, 2013. Exhibit 6 is a true and correct copy of Dyet's company Energy Choice Center Inc.'s
7 information on file with the Florida Secretary of State, showing a dissolution date of Sember 22,
8 2017.

9 10. Tiger has aggressively litigated this matter to the point that its attorneys' fees are likely to
10 be substantially impacting its operating margins.

11 11. I suggested at the settlement conference that Tiger could and should take a loan to
12 increase the settlement to the class.

13 12. Tiger indicated in no uncertain terms that if Plaintiffs' settlement demand were too high,
14 Tiger would have no choice but to litigate the case through trial despite the very real risk of
15 annihilating damages and bankruptcy because a settlement above a certain amount – an amount
16 far below \$183 million – would force Tiger into bankruptcy.

17 13. The Parties did not collude or engage in fraud as to the settlement, and there is no
18 evidence of any collusion or fraud.

19 14. I do not have any financial interest in Angeion or otherwise have a relationship with
20 Angeion that could create a conflict of interest.

21 15. Up to and including this Motion, I spent approximately 1,173.0 hours on this Action. My
22 billing rate is \$400 per hour.

23 16. Class Counsel incurred/expect to incur approximately \$230,000 in costs in this case on
24 behalf of Plaintiffs and the class, including approximately \$67,000 for expert witness costs.

25 17. Tiger deposed Fishman and Faria not once, but twice each. Plaintiffs responded to two
26 sets of written discovery. Plaintiffs also suffered loss of privacy as forensic ESI searches
27 reviewed their personal, confidential information. Plaintiffs discussed strategy with class
28

1 counsel, made suggestions for discovery topics, and attended hearings and the settlement
2 conference.

3 18. Tiger stated that takes no position on incentive payments to Fishman and Faria so long as
4 the overall settlement remains at \$3.7 million.

5 19. On January 9, 2019, I spoke with Mark Toney, Executive Director of The Utility Reform
6 Network about the possibility of naming TURN as the *cy pres* recipient in this Action. Toney
7 represented that TURN has pursued and is pursuing greater regulatory scrutiny of the practices of
8 Core Transport Agents, such as Tiger, operating in California, which actions would benefit
9 targeted gas customers such as members of the class going forward.

10 20. I have no personal or professional relationship with TURN.

11 21. I do not have any comparable class settlements in the last two years involving the same or
12 similar clients, claims, and/or issues.

13
14 I declare under penalty of perjury under the laws of the United States that the foregoing is
15 true and correct and that this declaration was executed on January 17, 2019 at Alameda,
16 California.

17 /s/ Daniel Balsam

18 Daniel Balsam
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27
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Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

CIVIL ACTION NO. 3:17-cv-05351 WHA

EMILY FISHMAN et al,

Plaintiff,

vs

TIGER NATURAL GAS INC. et al,

Defendant.

_____/

DEPOSITION OF:	STEPHANIE HUBBARD
TAKEN BY:	Attorney for Plaintiff
DATE:	December 13, 2018
TIME:	1:00 p.m. - 3:32 p.m.
PLACE:	Executive Reporting Ulmerton Business Center 13555 Automobile Blvd. Suite 100 Clearwater, Florida 33762

Examination of the witness taken before:
Jessica Cruz-Segarra
Executive Reporting Service
13555 Automobile Boulevard, Suite 100
Clearwater, Florida 33762

Executive Reporting Service

1 A. Half and half.

2 Q. Okay. So Danielle Perry was your quality
3 control manager, and Ryan Valet was the manager?

4 A. The floor manager.

5 Q. The floor manager. How many people worked
6 at -- in general. I mean, I'm sure it fluctuated, but
7 how many people generally worked at CGC and at CPA?

8 A. CGC, when I first started, about 30. And the
9 Consumer Protection Agency, about five or six.

10 Q. And both companies, just to confirm, were in
11 the same address which you said was "1301 Seminole"?

12 A. Yes.

13 Q. So when you -- how did it come to pass that
14 you worked first for CGC and then for CPA?

15 MS. NEWMAN: Objection to form.

16 BY MR. BALSAM:

17 Q. You can still answer the question.

18 A. I don't know. I just -- one day we were the
19 "Community Gas Center," and the next day we were
20 "Consumer Protection Association." I didn't ask any
21 questions.

22 Q. Was any explanation given of why it changed
23 from one to the other?

24 A. No.

25 Q. Did it affect your compensation?

Executive Reporting Service

1 A. No.

2 Q. Did you sign a new contract?

3 A. No.

4 Q. So it just -- literally, Monday you're with
5 CGC, and Tuesday you're with CPA, and everything else
6 stayed the same?

7 A. Yes.

8 Q. Were you using the same computers?

9 A. Yes.

10 Q. Same telephones?

11 A. Yes.

12 Q. Did you have your own dedicated computer and
13 phone, or would you come in to work and just go to any
14 open desk?

15 A. We had our own desk.

16 Q. Okay. Do you know who Rebecca or
17 Becca Nguyen is?

18 A. Yes.

19 Q. Who is she?

20 A. I guess she's the manager that's under Ryan
21 and under John.

22 Q. So John Dyet and then Ryan?

23 A. No. John Dyet, Becca, and then Ryan.

24 Q. Okay. And what was Becca's role?

25 A. I really have no idea.

Executive Reporting Service

1 BY MR. BALSAM:

2 Q. When the transition happened from Community
3 Gas Center to Consumer Protection Association, were you
4 using the same computer?

5 A. Yes.

6 Q. Same desk?

7 A. Yes.

8 Q. Okay. When the person answered the phone --
9 sorry, strike that.

10 Would you press any kind of button, a
11 "Go" button, to tell the computer to dial a phone number?

12 A. If we were making outbound calls, yes.

13 Q. Okay. So it's when you press that button,
14 then you would see the pop-up with the phone number,
15 maybe the name and address, and then it would initiate
16 the phone call; is that correct?

17 A. Yes.

18 Q. And then the person would answer. Were these
19 phone calls recorded?

20 A. Yes.

21 Q. How did the recording happen?

22 MS. NEWMAN: Objection to form.

23 BY MR. BALSAM:

24 Q. You can still answer.

25 A. Well, I guess through the system itself,

Executive Reporting Service

Exhibit 2

DOCUMENT FILED UNDER SEAL

Exhibit 3

DOCUMENT FILED UNDER SEAL

Exhibit 4



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Summary

Details			
Name	Community Gas Center Inc.		
Status	Delinquent	Formation date	09/24/2014
ID number	20141583758	Form	Corporation
Periodic report month	September	Jurisdiction	Colorado
Principal office street address	113 9th Street #2361, Glenwood Springs, CO 81601, United States		
Principal office mailing address	P.O. Box 2361, Glenwood Springs, CO 81602, United States		

Registered Agent	
Name	JOHN DYET
Street address	113 9th Street #2361, Glenwood Springs, CO 81601, United States
Mailing address	P.O. Box 2361, Glenwood Springs, CO 81602, United States

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Name: Community Gas Center Inc.
 ID number: 20141583758

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#	Event	Date Filed	Date Posted	EffectiveDate ^(*)	Document # <small>(click to view)</small>	Comment
1	Articles of Incorporation	09/24/2014	09/24/2014	09/24/2014 01:21 PM	20141583758	
2	Periodic Report due	08/23/2015	08/23/2015	08/23/2015 02:51 AM		Periodic report due by: 11/30/2015
3	Periodic Report due in one week	11/24/2015	11/24/2015	11/24/2015 01:56 AM		Periodic report due by: 11/30/2015
4	Change in Status: Noncompliant for failure to file Periodic Report	12/01/2015	12/01/2015	12/01/2015 01:37 AM		Entity noncompliant and will become delinquent on: 01/31/2016
5	Report	12/17/2015	12/17/2015	12/17/2015 08:46 AM	20151798705	
6	Periodic Report due	08/23/2016	08/23/2016	08/23/2016 11:17 AM		Periodic report due by: 11/30/2016
7	Report	10/20/2016	10/20/2016	10/20/2016 12:00 PM	20161704951	
8	Periodic Report due	08/23/2017	08/23/2017	08/23/2017 02:37 AM		Periodic report due by: 11/30/2017
9	Periodic Report due in one week	11/24/2017	11/24/2017	11/24/2017 01:54 AM		Periodic report due by: 11/30/2017
10	Change in Status: Noncompliant for failure to file Periodic Report	12/01/2017	12/01/2017	12/01/2017 01:35 AM		Entity noncompliant and will become delinquent on: 01/31/2018
11	Change in status in one week: Delinquent for failure to file Periodic Report	01/24/2018	01/24/2018	01/24/2018 02:03 AM		One week until delinquent: 01/31/2018
12	Change in Status: Delinquent for failure to file Periodic Report	02/01/2018	02/01/2018	02/01/2018 01:41 AM		Entity has become delinquent for failure to file Periodic Report

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Exhibit 5

DIVISION OF CORPORATIONS



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

Detail by Entity Name

Florida Profit Corporation
CRM MARKETING GROUP INC.

Filing Information

Document Number	P09000059792
FEI/EIN Number	27-0633615
Date Filed	07/14/2009
State	FL
Status	INACTIVE
Last Event	ADMIN DISSOLUTION
FOR ANNUAL REPORT	
Event Date Filed	09/27/2013
Event Effective Date	NONE

Principal Address

1301 SEMINOLE BLVD
STE 155
LARGO, FL 33771

Changed: 04/26/2012

Mailing Address

1301 SEMINOLE BLVD - STE. 155
LARGO, FL 33771

Changed: 09/06/2012

Registered Agent Name & Address

ROHRET & ASSOCIATES
11125 PARK BLVD
STE 104-225
SEMINOLE, FL 33772

Name Changed: 04/26/2012

Address Changed: 03/16/2011

Officer/Director Detail

Name & Address

Title VPT

DYET, JOHN
PO BOX 1296
DUNEDIN, FL 34697

Annual Reports

Report Year	Filed Date
2011	03/16/2011
2012	04/26/2012

Exhibit 6

DIVISION OF CORPORATIONS



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Detail By Document Number](#) /

Detail by Entity Name

Florida Profit Corporation

ENERGY CHOICE CENTER INC

Filing Information

Document Number P11000078082
FEI/EIN Number 45-3155312
Date Filed 09/02/2011
Effective Date 09/01/2011
State FL
Status INACTIVE
Last Event ADMIN DISSOLUTION
FOR ANNUAL REPORT
Event Date Filed 09/22/2017
Event Effective Date NONE

Principal Address

1301 SEMINOLE BLVD
SUITE 155 & 157
LARGO, FL 33770

Changed: 03/04/2014

Mailing Address

P O BOX 27
NEW PORT RICHEY, FL 34656

Changed: 03/04/2014

Registered Agent Name & Address

Dyet, Linda, CFO
BOX 27
NEW PORT RICHEY, FL 34656

Name Changed: 04/12/2016

Address Changed: 04/12/2016

Officer/Director Detail

Name & Address

Title PTS

DYET, JOHN
P O BOX 47976
ST PETERSBURG, FL 33743

Annual Reports

Report Year	Filed Date
2014	03/04/2014
2015	04/22/2015
2016	04/12/2016

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Class Counsel for the Certified Class and Attorneys
for Plaintiffs and the Proposed Class and Sub-Class

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

EMILY FISHMAN *et al*,

Plaintiffs,

vs.

TIGER NATURAL GAS, INC. *et al*,

Defendants.

) Case No. 3:17-cv-05351-WHA

)

) **DECLARATION OF JACOB HARKER IN**

) **SUPPORT OF PLAINTIFFS' MOTION**

) **FOR PRELIMINARY APPROVAL OF**

) **CLASS ACTION SETTLEMENT**

)

) **Fed. R. Civ. P. 23(e)**

)

) Date: February 21, 2019

) Time: 8:00 am

) Courtroom: 12 – 19th Floor

) Judge: William Alsup

1 I, Jacob Harker, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California. I am co-counsel of
3 record for Plaintiffs/class representatives Emily Fishman, Susan Faria and the Class in the above-
4 referenced lawsuit against Defendants Tiger Natural Gas Inc. ("Tiger"), Community Gas Center
5 Inc. ("CGC"), and John Dyet ("Dyet"). I have personal knowledge of the matters stated below,
6 and if called on to testify, would do so truthfully.

7 2. I took nine depositions in this Action and defended six. Several disputes arose during
8 depositions that required court intervention.

9 3. Plaintiffs' deposition of Dyet was forthcoming when the case settled, and the Court also
10 authorized Plaintiffs to take four additional depositions of Tiger and its personnel, at Tiger's
11 expense.

12 4. The Court (Judge Alsup and Magistrate Judge Hixson) ruled in Plaintiffs' favor on most
13 of the discovery letter briefs as well as disputes that arose during depositions.

14 5. I do not have any financial interest in Angeion or otherwise have a relationship with
15 Angeion that could create a conflict of interest.

16 6. Up to and including this Motion, I spent approximately 696.8 hours on this Action. My
17 billing rate is \$390 per hour.

18 7. I have no personal or professional relationship with TURN.

19 8. I do not have any comparable class settlements in the last two years involving the same or
20 similar clients, claims, and/or issues.

21
22 I declare under penalty of perjury under the laws of the United States that the foregoing is
23 true and correct and that this declaration was executed on January 17, 2019 at San Francisco,
24 California.

25 /s/ Jacob Harker

26 Jacob Harker

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16 Class Counsel for the Certified Class and Attorneys for
17 Plaintiffs and the Proposed Class and Sub-Class

18 **UNITED STATES DISTRICT COURT**

19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)**

21 EMILY FISHMAN <i>et al</i>,	) Case No. 3:17-cv-05351-WHA
22 Plaintiffs,)
23 vs.	) DECLARATION OF KATHLEEN
24 TIGER NATURAL GAS, INC. <i>et al</i>,	) STYLES ROGERS IN SUPPORT OF
25 Defendants.	) PLAINTIFFS' MOTION FOR
	) PRELIMINARY APPROVAL OF CLASS
	) ACTION SETTLEMENT
	) Fed. R. Civ. P. 23(e)
)
	) Date: February 21, 2019
	) Time: 8:00 am
	) Courtroom: 12 – 19th Floor
	) Judge: William Alsup

1 I, Kathleen Styles Rogers, declare as follows:

2 1. I am an attorney licensed to practice law in the State of California. I am one of Class
3 Counsel for the certified class in the above-referenced lawsuit against Defendants Tiger Natural
4 Gas Inc. ("Tiger"), Community Gas Center Inc. ("CGC"), and John Dyet ("Dyet"). I have
5 personal knowledge of the matters stated below, and if called on to testify, would do so
6 truthfully.

7 2. In November of 2018 I personally contacted three reputable class action administration
8 firms for this project, ILYM Group, KCC, and Angeion Group. Angeion Group submitted the
9 least expensive bid and was the most responsive in the short time allotted for Plaintiffs to submit
10 a notice plan to the Court.

11 3. My firm (including Kimberly Kralowec, paralegal Gary M. Gray, and I) do not have any
12 financial interest in Angeion Group or otherwise have a relationship with Angeion Group that
13 could create a conflict of interest.

14 4. Up to and including this Motion, I spent approximately 1,238.9 hours on this Action. My
15 billing rate is \$795 per hour.

16 5. Up to and including this Motion, Kimberly Kralowec spent approximately 101.6 hours on
17 this Action. Her billing rate is \$810 per hour.

18 6. Up to and including this Motion, our paralegal, Gary Gray spent approximately 242.8
19 hours on this Action. His billing rate is \$305 per hour.

20 7. I have no personal or professional relationship with TURN, the proposed *cy pres*
21 recipient.

22 8. Within the past two years, Kralowec Law has settled one action for which the settlement
23 monies already have been paid and distributed, *Bluford v. Safeway Stores, Inc.*, Case No.
24 CV014837, (Alameda Cty. Super. Ct.) (consolidated with *Bluford v. Safeway Stores, Inc.*, Case
25 No. CV028541) (together "*Bluford*").

26 9. *Bluford* was an employment action brought under the California Labor Code and Unfair
27 Competition Law on behalf of a class of truck drivers in Northern California, who were not paid
28 for rest breaks and whose pay stubs and method of calculating pay were indecipherable. That

1 action spanned 13 years of litigation and two trips up to the California Court of Appeal. The
2 class action administrator was Gilardi & Co. LLC (parent company Kurtzman Carson
3 Consultants LLC (KCC)). Gilardi made repeated efforts to update addresses of class members,
4 many of whom had relocated or even passed away during the 13 years of litigation, but could not
5 locate around 15-20% of the class members, and their checks were going uncashed (and would
6 otherwise escheat to the State of California). Kralowec Law personally undertook, without
7 further compensation, to locate class members using search methods including social media.
8 They located many class members by searching names on Facebook and Google, calling
9 children's schools and families' churches, and other efforts. The class members were not
10 wealthy, and the sums they received (from as low as \$200 up to \$60,000) including years of
11 interest, were substantial for many of the recipient families. In the end, 96% of the class, or
12 1,040 of the 1,081 class members (or their heirs), received and cashed their settlement checks,
13 comprising 99.62% of the settlement fund.

14
15 I declare under penalty of perjury under the laws of the United States that the foregoing is
16 true and correct and that this declaration was executed on January 17, 2019 at San Francisco,
17 California.

18 /s/ Kathleen Styles Rogers
19 Kathleen Styles Rogers
20
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23
24
25
26
27
28

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Class Counsel for the Certified Class and Attorneys
for Plaintiffs and the Proposed Class and Sub-Class

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

EMILY FISHMAN <i>et al</i>,	) Case No.	3:17-cv-05351-WHA
)	
Plaintiffs,	)	DECLARATION OF ALLAN VON
	)	HALLE IN SUPPORT OF PLAINTIFFS'
vs.	)	MOTION FOR PRELIMINARY
	)	APPROVAL OF CLASS SETTLEMENT
TIGER NATURAL GAS, INC. <i>et al</i> ,)	
	)	Fed. R. Civ. P. 23(e)
Defendants.)	
	) Date:	February 21, 2019
	) Time:	8:00 am
	) Courtroom:	12 – 19th Floor
	) Judge:	William Alsup

1 I, Allan von Halle, declare as follows:

2 1. I am an individual over the age of 18 and a resident of the State of California. I have
3 personal knowledge of the matters stated below, and if called on to testify, would do so
4 truthfully.

5 2. My education includes a BA in mathematics/computer science (1974) (summa cum
6 laude, Phi Beta Kappa, and the Daus Prize as the top student in Mathematics), a MS in computer
7 science (1976), and an MBA in finance/accounting (1979), all from University of California, Los
8 Angeles.

9 3. I have been working in finance/accounting for 39 years; 30 years of which were in top
10 positions in finance and accounting at both controllership and CFO levels. This includes
11 mergers and acquisitions and valuations. In 2018, I was actively involved in the valuation and
12 analysis of two companies.

13 4. From 1979-1982, I was a Senior Accountant at Deloitte. From 1985-1999, I was the VP
14 Finance at Zero Corporation. From 2002-2005, I was the Group Controller at Stainless Industrial
15 Companies. From 2005-2007, I was a Certified Public Accountant at Locke Kasal Ferris. From
16 2007-2008, I was the Chief Financial Officer at JT Wimsatt Contracting Company. From 2009-
17 2014, I was the Chief Financial Officer at Malabar International. From 2014-2015, I was the
18 Chief Financial Officer at Motion Picture Industry Pension & Health Plans. Since 2015, I have
19 been an Interim Chief Financial Officer/Financial Consultant for various companies.

20 5. I am an active Certified Public Accountant, licensed by the State of California.

21 6. On December 19, 2018, Plaintiffs' attorney Daniel Balsam – a fellow MBA alumni from
22 UCLA – provided me with the audited balance sheet, income statement, and statement of cash
23 flows for 2015-2017 for an unknown company (the company's name was redacted from the
24 documents), for the purpose of determining how much the company could pay in a legal
25 settlement. On January 14, 2019, Balsam provided me with the accompanying notes for 2015-
26 2017, and the unaudited balance sheet and statement of operations for 2018 (through October
27 31). Balsam told me that this company is the lead defendant in a class action lawsuit, but I did
28 not, and still do not, know the name of the company, or the nature of the claims in this lawsuit. I

1 am signing the two pages of this Declaration without seeing the cover page that Balsam informs
2 me that he will attach with the case name, case number, etc.

3 7. I reviewed the company's financial statements for 2015-2017 and related footnotes and
4 auditor opinion, combined with a review of an unaudited interim income statement and balance
5 sheet for 2018.

6 8. In my professional opinion, if in fact that the defendant cannot borrow additional funds
7 from their lenders, a \$3.3 million settlement is reasonable, and this should not impede their
8 ability to operate successfully in the future. A higher settlement would likely impact its ability to
9 continue operating.

10 9. I expect to receive \$750 for my review of the defendant company's financials. I am not a
11 party to this Action (I live in Southern California) and I have no financial stake in the outcome of
12 this litigation.

13
14 I declare under penalty of perjury under the laws of the United States that the foregoing is
15 true and correct and that this declaration was executed on January¹⁶_____, 2019 at Sherman
16 Oaks, California.

17 Allan von Halle
18 Allan von Halle (Jan 16, 2019)

19 _____
20 Allan von Halle
21
22
23
24
25
26
27
28

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17 Class Counsel for the Certified Class and Attorneys
18 for Plaintiffs and the Proposed Class and Sub-Class

18 **UNITED STATES DISTRICT COURT**

19 **FOR THE NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)**

21 EMILY FISHMAN <i>et al</i>,	) Case No. 3:17-cv-05351-WHA
)
22 Plaintiffs,	) DECLARATION OF ANDY MORRISON,
	) ANGEION GROUP
23 vs.)
	) Fed. R. Civ. P. 23(e)
24 TIGER NATURAL GAS, INC. <i>et al</i> ,)
)
25 Defendants.	) Date: February 21, 2019
	) Time: 8:00 am
26	) Courtroom: 12 – 19th Floor
27	) Judge: William Alsup
28	

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EMILY FISHMAN, *et al.*
Plaintiffs,
v.

TIGER NATURAL GAS, INC., *et al.*,
Defendants.

Case No. 3:17-cv-05351-WHA

**DECLARATION OF ANDY MORRISON
ON ANGEION QUALIFICATIONS**

I, Andy Morrison, hereby declare as follows:

1. I submit this declaration for the purpose of providing the Court with information regarding the qualifications of Angeion Group to administer the settlement of EMILY FISHMAN *et al.* v. TIGER NATURAL GAS INC. *et al.*, Case No. 3:17-cv-05351-WHA.

2. I am a Project Manager with Angeion Group ("Angeion"), the settlement administrator retained in this matter. Angeion's office is located at 1801 Market Street, Suite 660, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

3. Angeion Group is a leading class action notice and claims administration company formed by a team of executives and notice and claims administration professionals who have overseen more than 2,000 class action settlements and distributed over \$10 billion to class members. The executive profiles as well as the company overview are available at http://www.angeiongroup.com/meet_the_team.htm.

4. Angeion has also administrated a multitude of class action settlements. A representative list of the settlements administered by Angeion can be located at <http://www.angeiongroup.com/cases.htm>. Through the administration of the settlements referenced above, Angeion has received, processed and secured data from defendants and other sources. Angeion has analyzed settlement class member data including performing deduplication, National Change of Address Searches (NCOA) and skip traces. Angeion has successfully implemented noticing campaigns involving direct mails notice, email notice, text noticing, printed media and digital media for millions of potential class members. Further, Angeion has analyzed and reported on class

member submitted data obtained through claim forms submitted via mail and online, class member correspondence, objections to the settlement, exclusion requests and other means. Angeion is experienced in the application of complex claim calculations and, where applicable, tax withholding and reporting, as required by federal, state, and local taxing authorities, as well as settlement agreements and court orders. Angeion has been responsible for the management of Qualified Settlement Funds and has served as escrow agent.

Notice

5. Upon the issuance of the Preliminary Approval Order, the notice process will commence. Angeion has received 33 opt-out requests from the pre-settlement mailing of 26,901 Class Members. Angeion will cause the mailing address information for the remaining 26,868 Class Members to be updated utilizing the National Change of Address (“NCOA”) database, which provides updated address information for individuals who have moved during the previous four years and filed a change of address with the United States Postal Service (“USPS”).

6. Mailed Notices returned to Angeion by the USPS with a forwarding address will be re-mailed to the new address and the Class Member database will be updated accordingly.

7. Mailed Notices returned to Angeion by the USPS without forwarding addresses will be subjected to an address verification search (commonly referred to as “skip tracing”) utilizing Lexis Nexis, a nationally recognized address search firm. Lexis Nexis combines numerous public record and publicly available sources, which contains nationwide person locator, authentication, and verification information for approximately 400 million unique individuals based in the US and territories. Its sources include national credit reporting companies header databases, current and historic address files, white page phone publisher data, an Electronic Directory Assistance type database, Social Security death records from the Social Security Administration, numerous public record sources, including motor vehicle registrations, driver’s license databases, voter registration databases, public license data and property ownership records, and data collected by marketing, registrations and warranty card aggregators.

8. For any class member where a new address is identified through the skip trace process, the Class Member database will be updated with the new address information and a Notice will be re-mailed to that address.

Website

9. Angeion will obtain a URL agreed upon by the parties and design a website dedicated to this matter. In accordance with the Settlement Agreement, the website will contain relevant documents including but not limited to Court Documents, Notices and the Claim Form as well as a prominent listing of important dates, and a "Contact Us" page that provides individuals the ability to contact Angeion via email.

Toll Free Hotline

10. Angeion will establish a toll-free hotline devoted to this case. The toll-free hotline utilizes an interactive voice response ("IVR") system to provide Settlement Class Members with responses to frequently asked questions and inform Settlement Class Members of important dates and deadlines pertaining to the Settlement. The toll-free hotline is accessible 24 hours a day, 7 days a week.

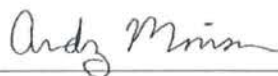
Fund Distribution

11. Angeion will establish and administer a Qualified Settlement Fund account. Upon the Court's approval of the Settlement, Angeion will issue payment to all Class Members who have not submitted an opt-out request.

Administration Costs

12. Angeion estimates its costs for administration of the settlement will be \$59,993. A Cost Estimate for Administration Services is attached hereto as Exhibit A.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Dated: January 17, 2019

Andy Morrison

EXHIBIT A



Angeion Group Project Proposal Schedule of Fees & Charges

Case/Project Name: *Fishman v Tiger Natural Gas Class Cert Notice Only--Revised*

Type of Case: Consumer

Submission Date: January 17, 2019

Firm(s) Submitted to : Kralowec Law

Firm(s) Contact : Kimberly A. Kralowec, Esq. & Kate Rogers, Esq.

Angeion Representative: Christian, Clapp, Esq., Steven Weisbrot, Esq. & Christopher Chimicles, MBA

	VOLUME		RATE (\$)	TOTAL (\$)
Case Management Fee				
Includes case set-up costs, data management fees and other applicable fees	1	One-Time Fee	2,500.00	1,000.00
				1,000.00
Notification Fees & Costs				
Mail to class members				
Set up, formatting and proofing the 4 page self-mailer notice	1	Per Hour	150.00	150.00
Generate the list of applicable addresses and standardizing the list	1	Per Hour	140.00	140.00
NCOA (National Change of Address)	1	One-Time Fee	195.00	195.00
Printing the 4-page self-mailer notice	26,868	Per Notice	0.15	4,030.20
Postage estimate for the self-mailer notices*	26,868	Per Notice	0.425	11,418.90
				15,934.10
Processing Undeliverable Direct Mail Notices				
Process notices returned as undeliverable (est. @ 10%)	2,687	Per Notice	1.00	2,687.00
Address Verification (Skip tracing) assuming a 60% hit rate	1,613	Per Hit	0.50	806.50
Print returned notices & notices that have a forwarding address (est. @ 1%)	1,640	Per Notice	0.55	902.00
Postage estimate for remailing returned notices to a new address*	1,640	Per Notice	0.455	746.20
				5,141.70
Angeion Media Plan				
Custom Audience Facebook campaign keyed to class members email addresses (<i>optional</i>)	-	One-Time Fee	4,750.00	-
				-



Angeion Group Project Proposal Schedule of Fees & Charges

Case/Project Name: *Fishman v Tiger Natural Gas Class Cert Notice Only--Revised*

Type of Case: Consumer

Submission Date: January 17, 2019

Firm(s) Submitted to : Kralowec Law

Firm(s) Contact : Kimberly A. Kralowec, Esq. & Kate Rogers, Esq.

Angeion Representative: Christian, Clapp, Esq., Steven Weisbrot, Esq. & Christopher Chimicles, MBA

	VOLUME		RATE (\$)	TOTAL (\$)
Processing Notice Requests and Class Member Correspondence				
Receive and respond to requests for Long Form Notice (includes printing and data entry)	2	Per Notice	2.50	5.00
Class member correspondence (returning emails and speaking to class members on the phone)	5	Per Hour	65.00	325.00
Special Letters to class members including project management time	-	Per Letter	5.00	-
Postage estimate for claimant responses & request for Notice*	2	Per Notice/Letter	0.505	1.01
				331.01
SUBTOTAL				
Website Requirements				
Set-up fee for Angeion Group website w/relevant case documents	1	One-Time Fee	1,750.00	1,750.00
Monthly maintenance/monthly hosting	8	Per Month	225.00	1,800.00
Revisions to website subsequent to set-up	-	Per Hour	160.00	-
Additional programming time for online claims filing if additional documentation needs to be uploaded or other programming requirements	-	Per Hour	200.00	-
				3,550.00
SUBTOTAL				
Call Center Requirements				
Set-up, design and implementation of IVR (Integrated Voice Response)	1	One-Time Fee	1,500.00	1,500.00
"IVR" Operating System (estimated number of minutes)	1,950	Per Minute	0.24	468.00
Monthly Maintenance Fee is \$75.00 if minimum usage time does not meet threshold	-	Per Month	75.00	-
Transcription Services (reporting once per week) for address updates, call backs and notice requests	-	Per Week	75.00	-
Per Transcription	-	Per Trans.	2.00	-
				1,968.00
SUBTOTAL				
Angeion Reporting Requirements				
Drafting court documents, affidavits, status reports and opt out reports to counsel	20	Per Hour	135.00	2,700.00
Additional reporting (e.g. class member address updates & other class member reporting reqs.)	4	Per Hour	75.00	300.00
				3,000.00
SUBTOTAL				



Angeion Group Project Proposal Schedule of Fees & Charges

Case/Project Name: *Fishman v Tiger Natural Gas Class Cert Notice Only--Revised*

Type of Case: Consumer

Submission Date: January 17, 2019

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Firm(s) Contact : Kimberly A. Kralowec, Esq. & Kate Rogers, Esq.

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	VOLUME		RATE (\$)	TOTAL (\$)
Process Opt Outs and Objections				
Review and process Opt Outs and Objections received	10	Per Form	6.50	65.00
				65.00
Distribution and Post Distribution				
Generate Distribution list & Post Distribution Services	20	Per Hour	100.00	2,000.00
Checks to Eligible Class Members	25,821	Per Check	0.35	9,037.35
Postage estimate for mailing checks*	25,821	Per Check	0.425	10,973.93
Process checks returned as undeliverable (includes data entry)	775	Per Check	2.00	1,550.00
Address Verification (Skip tracing) assuming a 80% hit rate	620	Per Hit	0.50	310.00
Print reissued checks (Checks mailed in 2-3 batches)	620	Per Check	3.25	2,015.00
Postage estimate for mailing reissued checks*	620	Per Check	0.505	313.10
				26,199.38
Tax Return				
Tax return for the QSF (1 year)	1	Per Return	1,750.00	1,750.00
Cy pres Distribution (if required)	5	Per Hour	150.00	750.00
Issuing 1099s as needed (where distribution exceeds \$600)	-	Per Form	5.00	-
Postage estimate for 1099s	-	Per Form	0.505	-
				2,500.00



Angeion Group Project Proposal Schedule of Fees & Charges

Case/Project Name: *Fishman v Tiger Natural Gas Class Cert Notice Only--Revised*

Type of Case: Consumer

Submission Date: January 17, 2019

Firm(s) Submitted to : Kralowec Law

Firm(s) Contact : Kimberly A. Kralowec, Esq. & Kate Rogers, Esq.

Angeion Representative: Christian, Clapp, Esq., Steven Weisbrot, Esq. & Christopher Chimicles, MBA

Other Relevant Costs

CAFA Notice

Postage and FedEx estimate charges for CAFA Notice

Sales tax if applicable

P.O. Box for Opt Outs & Objections

Photocopying

Scanning of all documents

Document Storage (estimated for 12 months) (estimate 2500 documents per bankers box)

Image Storage (estimated for 12 months)

	VOLUME		RATE (\$)	TOTAL (\$)
	-	One-Time Fee	1,750.00	-
	-	Estimated	450.00	-
		Estimated		
	2	Per Month	75.00	150.00
			NO CHARGE	NO CHARGE
	920	Per Page	0.07	64.40
	1	Per Box/Month	1.95	23.40
	920	Per Image/Month	0.006	66.24
		SUBTOTAL		304.04
		ESTIMATED PROJECT FEES & COSTS (excl. postage)		36,540
		ESTIMATED POSTAGE COSTS		23,453
		TOTAL ESTIMATED COSTS		59,993

All media/notification costs (includes media/printing/postage/email campaign) must be paid 14 days prior to the inception of the program.

Postcard notice and email notice are an estimate and are based upon volume, number of pages or other parameters. Pricing may increase or decrease if the volume, number of pages or other variable factors are altered.

The estimated hours listed in this proposal for services performed are minimum hourly estimates. Any additional time will be billed at the rates quoted in this proposal.

****Postage is an estimate.**

G

EXHIBIT G

NOTICE OF SETTLEMENT OF CLASS ACTION

Fishman v. Tiger Natural Gas Inc., Case No. 3:17-cv-05351 WHA

If You Were A California Consumer or Business Customer of Pacific Gas & Electric Company Who Enrolled in Tiger Natural Gas Inc.'s Capped-Rate Price Protection Program after Receiving a Telemarketing Call Advertising the Program Between August 18, 2013 and The Present, A PROPOSED CLASS ACTION SETTLEMENT MAY AFFECT YOUR RIGHTS.

A court authorized this notice. This is not a solicitation from a lawyer. You are not being sued. However, your legal rights are affected by the information contained in this Notice.

PLEASE READ THIS NOTICE CAREFULLY. It describes your rights and how to receive money from the Settlement or exclude yourself from the Settlement.

- This Notice describes a proposed settlement ("Settlement") of a pending class action lawsuit and your rights under this Settlement, including your right to receive money from this Settlement. If you do not want to be part of this Settlement, this Notice details the steps you must take to be excluded from it.
- The Court has not yet decided whether to grant final approval of the Settlement. No payments will be made unless and until the Court approves the Settlement.
- You need to decide whether to stay in the case and receive the benefits of the Settlement, object to the Settlement, or request exclusion from the Settlement. *If you wish to remain a Class Member and receive a monetary share of the Settlement, you do not have to do anything in response to this Notice.*
- The decision of whether to participate in, request to be excluded from, and/or object to the Settlement is entirely yours.

SUMMARY OF SETTLEMENT

- Plaintiff Emily Fishman filed an action (the "Action") against Tiger Natural Gas, Inc. ("Tiger"), Community Gas Center, Inc. ("CGC") and John Dyet ("Dyet") (together, Tiger, CGC and Dyet are the "Defendants") which was transferred to the United States District Court for the Northern District of California (the "Court"). Susan Faria ("Faria") later joined as an additional named plaintiff (Fishman and Faria together are "Plaintiffs").
- Plaintiffs alleged in the Action that telemarketers calling to advertise Tiger's Capped-Rate Price Protection Program for the purchase of natural gas (the "Program") recorded sales calls without customers' consent; misrepresented facts including: that Pacific Gas & Electric Co.'s ("PG&E's") gas supply rates were increasing when they were decreasing; that Tiger's rates track the market rate when they did not; and that Tiger's Program was "free;" also, Plaintiffs alleged the telemarketers omitted to state material facts such as Tiger's price per therm which, for most of the class period, was higher than PG&E's

price per therm, and failed to send written terms and conditions that matched the terms and conditions customers agreed to during their telephone enrollment in Tiger's Program.

- Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action and this Settlement is in no way an admission by Defendants, or any of them, that it/they engaged in any unlawful behavior. The Court has not decided who is right.

The Settlement includes a payment by Defendant Tiger of **\$3,700,000**, as well as promises by Tiger to engage in certain behavior in future dealings with potential customers in California, as follows: (1) all sales calls that are recorded in the future made by Tiger or by entities engaged by Tiger will contain an advisement at the beginning of the sales call that the call is being recorded; and (2) Tiger and any entities engaged by it to make sales calls in the future will not misrepresent Tiger's charges or PG&E's charges in any such sales calls.

- As a recipient of a call advertising the Program, you are eligible to share and participate in the settlement benefits.

The Court has preliminarily approved the Settlement. Before deciding whether to grant final approval of the Settlement, the Court wishes to inform you of the general terms of the Settlement and your rights and options.

YOUR RIGHTS AND OPTIONS	
DO NOTHING AND RECEIVE YOUR MONETARY SHARE OF THE SETTLEMENT	If you do nothing and the Settlement receives final approval, you will automatically receive a Settlement check in the mail and will release certain claims against Defendants.
REQUEST TO BE EXCLUDED FROM THE SETTLEMENT	If you submit a request to be excluded from the Settlement on or before May 9, 2019 , you will receive no payment under this Settlement but will retain any right you may have to file your own lawsuit for the released claims.
OBJECT TO THE TERMS OF THE SETTLEMENT	If you do not want to be excluded from the Settlement but wish to object to the terms of the Settlement, you can submit an Objection on or before May 9, 2019 .

The Court will hold a Final Approval Hearing to consider whether the Settlement is fair, reasonable, and adequate, and to decide whether to give final approval to this Settlement. The hearing will be held at **11:00 a.m. on June 20, 2019**, in the courtroom of the Honorable William Alsup at the United States District Court for the Northern District of California, Courtroom 12 – 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. If the Settlement is granted final approval by the Court after the Final Approval Hearing, the Court's judgment will be final and binding on you unless you request to be excluded from the Settlement. If you do not request

exclusion and if the Court grants final approval of the Settlement, you will be bound by the Court's orders and the terms and releases of the Settlement. You are not required to appear at the hearing. If you are a Class Member, you will be represented by attorneys for the Class ("Class Counsel") at no cost to you.

GENERAL INFORMATION

1. Why did I receive this Notice?

The purpose of this Notice is to inform you about this litigation, the certification of a class (the "Class"), the terms of the proposed settlement (the "Settlement"), and your rights in connection with a hearing to be held before the Court at 11:00 a.m. on June 20, 2019, to consider the fairness, reasonableness, and adequacy of the Settlement and related matters. This Notice also describes the steps to be taken by those who wish to be excluded from the Class and, for those who remain Class Members, your rights to receive a monetary award in the event the Settlement is approved by the Court. You may have received a Notice of Pendency of Class Action Prior to this Notice.

2. What is this Action about?

Plaintiffs initiated a class action lawsuit against Defendants and alleged that telemarketers calling to advertise Tiger's Capped-Rate Price Protection Program for the purchase of natural gas (the "Program") recorded sales calls without customers' consent; misrepresented facts including: that Pacific Gas & Electric Co.'s ("PG&E's") gas supply rates were increasing when they were decreasing; that Tiger's rates track the market rate when they did not; and that Tiger's Program was "free;" also, Plaintiffs alleged the telemarketers omitted to state material facts such as Tiger's price per therm which, for most of the class period, was higher than PG&E's price per therm, and failed to send written terms and conditions that matched the terms and conditions customers agreed to during their telephone enrollment in Tiger's Program. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Action and this Settlement is in no way an admission by Defendants, or any of them, that it/they engaged in any unlawful behavior.

3. Has the Court decided who is right?

No. The Court has only decided that you should get a copy of this Notice so that you can review the Settlement and determine whether you want to participate in the Settlement, object to it, or exclude yourself from the Settlement.

4. What is a class action and who is involved?

In a class action lawsuit, one or more people called Class Representatives are approved by the Court to pursue claims on behalf of themselves and other people. The Class Representatives in this case are Named Plaintiffs Emily Fishman and Susan Faria. The Class Representatives represent the Class (or Class Members). The Settlement will resolve the claims at issue for all Class Members who do not request to be excluded.

5. Am I a Class Member?

You are a member of the Class affected by the Settlement if you fit within this definition:

Tiger/PG&E Customer Settlement Class: All California consumers and businesses that were customers of PG&E at the time they enrolled in Tiger's capped-rate price protection program after receiving a telemarketing call advertising the program between August 18, 2013, and the present.

You have received this Notice because Tiger's records reflect that you fit the definition outlined above, and therefore you are a Class Member in the proposed Settlement of this Action. It is estimated that there are approximately 26,650 Class Members affected by the Settlement.

6. Why is this Action being settled?

After months of extensive litigation, the Parties agreed to explore possible resolution of the Action. Under the supervision of a magistrate judge, the Parties engaged in settlement negotiations that resulted in the agreement to settle this Action as reflected in this Notice of Class Action Settlement and the underlying terms of settlement read into the record at the Settlement Conference (the "Settlement Agreement"). Because of the extensive discovery conducted between the Parties during litigation and settlement process, the Parties were able to reliably assess the merits of their respective positions and to reach a fair and equitable Settlement Agreement.

Based upon their investigation, Class Counsel and the Class Representatives have concluded that the terms of the proposed Settlement are fair, reasonable, and adequate, and in the best interests of the Class. In reaching this conclusion, Class Counsel has analyzed the benefits of the Settlement and the risk of an unfavorable outcome, the expense and length of the continued proceedings necessary to prosecute the Action, and Defendants' financial condition and ability to pay a judgment after trial larger than the agreed settlement of \$3.7 million.

Defendants have agreed to these settlement terms because they wish to avoid further costly, disruptive, and time-consuming litigation, and desire to obtain complete and final settlement of the claims of the Plaintiffs and Class Members. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in this Action and this Settlement is in no way an admission by Defendants, or any of them, that it/they engaged in any unlawful behavior.

7. Who represents the Class Members in the Action?

In class actions, Class Members are represented by Court-appointed lawyers ("Class Counsel"). In this case, you are represented by Kimberly Kralowec and Kathleen Styles Rogers of Kralowec Law Group, P.C.; Daniel Balsam of the Law Offices of Daniel Balsam; and Jacob Harker of the Law Offices of Jacob Harker. Class Counsel are experienced in handling similar cases, and the Court has determined that Class Counsel are qualified to represent you and all Class Members. You can contact Class Counsel at:

Kathleen Styles Rogers Kimberly Kralowec Kralowec Law, P.C. 750 Battery St., Ste. 700 San Francisco, CA 94111 Tel: (415) 546-6800 Fax: (415) 546-6801	Daniel Balsam The Law Offices of Daniel Balsam 2601C Blanding Ave. #271 Alameda, CA 94501 Tel: (415) 869-2873 Fax: (415) 869-2873	Jacob Harker The Law Offices of Jacob Harker 582 Market, Ste. 1007 San Francisco, CA 94104 Tel: (415) 624-7602 Fax: (415) 684-7757
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8. Who is the Settlement Administrator?

The Settlement Administrator is a third party appointed by the Court to send this Notice, process and issue Settlement checks, and otherwise administer the Settlement. You may contact the Settlement Administrator to provide updated contact information or ask questions regarding the processing of Settlement awards at:

Tiger Natural Gas Recorded Calls Class Action Administrator
Angeion Group
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
Email: info@NaturalGasCappedRateClassAction.com

The Settlement Administrator also maintains a website concerning this settlement, with Frequently Asked Questions, located at www.NaturalGasCappedRateClassAction.com. The website includes copies of Plaintiffs' Third Amended Complaint and other documents concerning this Action and Settlement.

SUMMARY OF SETTLEMENT TERMS

9. What have Defendants agreed to do under the Settlement?

Under the Settlement Agreement, Tiger has agreed to pay **\$3,700,000** to settle the certified class claims. Also, Tiger has agreed to engage in certain behavior in future dealings with potential customers in California, as follows: (1) all sales calls that are recorded in the future made by Tiger or by entities engaged by Tiger will contain an advisement at the beginning of the sales call that the call is being recorded; and (2) Tiger and any entities engaged by it to make sales calls in the future will not misrepresent Tiger's charges or PG&E's charges in any such sales calls.

10. How are Class Members' Settlement awards determined?

After deductions from the \$3,700,000 class fund for Court-approved payments for the expense of administering the Settlement, Service Awards, and Class Counsel's fees and expenses (see paragraph 15), the remaining sum will be distributed evenly among all participating Class Members (approximately 26,650 Class Members). Class Counsel estimates that each class member will receive a check in the approximate amount of \$90.00 as a result of this Settlement.

11. Are there tax consequences for money I receive?

Class Members are responsible for the appropriate payment of any federal, state and/or local taxes on the Settlement payments they receive. The tax issues for each Class Member are unique to him or her, and each Class Member is advised to obtain tax advice from his or her own tax advisor with respect to any payments resulting from this Settlement. This Notice does not constitute legal or tax advice regarding any federal, state or local tax issue, and nothing in this Notice is intended, written or should be used by any person for the purpose of avoiding any tax liability or penalties. Class Counsel are not tax advisors and cannot give you advice on any tax matters.

12. How long do I have to cash my Settlement check?

Any checks not cashed after **six (6) months** from the date of the class-wide distribution shall be void. After that, the funds from uncashed Class Member Awards will be donated to The Utility Reform Network (“TURN”), a nonprofit entity approved by the Court.

13. What is a “Service Award”?

In class actions, the Court may provide specific Class Members a “Service Award” in recognition of the time, effort, and risks taken in litigating the case on behalf of the Class. In this Lawsuit, Class Counsel will apply for service awards of \$1,500 each for the Class Representatives to compensate them for the time and effort they devoted to representing the Class in this case, including the time they spent in depositions conducted by Defendants, time spent answering discovery and attending hearings and the Settlement Conference, and time spent consulting with Class Counsel about the case.

14. How much will it cost to administer the Settlement?

Class Counsel will apply to the Court for payment to the Settlement Administrator for its fees and costs, whose estimated costs are \$60,000.

15. How will Class Counsel be paid?

Class Members are not personally liable for any fees and costs. As is routine in class action cases, Class Counsel will request an award of attorneys’ fees and expenses already incurred as well as the fees and expenses that will be incurred during the implementation of the Settlement. These fees and expenses have been incurred as Class Counsel have pursued these claims on behalf of Plaintiffs and the Class for over two years without receiving any compensation for their services or reimbursement of their out-of-pocket litigation expenses, which are substantial. Class Counsel have undertaken significant risks in pursuing this matter. They have done so with the understanding that if they obtained a recovery for the Class, their expenses would be reimbursed and they would receive fees from the fund recovered. Accordingly, Class Counsel will apply to the Court for an award not exceeding \$250,000 for their out-of-pocket litigation expenses (including the cost of expert reports) and attorneys’ fees not to exceed 25% of the class fund (\$925,000).

RELEASE OF CLAIMS

16. What claims are being released under the Settlement?

Upon final Court approval of the Settlement, Class Members who do not request to be excluded will fully release Defendants from the following claims as they are alleged in Plaintiffs’ Third Amended Complaint and as addressed in Plaintiffs’ Proposed Trial Plan in Support of Motion for Class Certification: First Cause of Action for violation of California Penal Code section 632 *et seq.* (the “Recording Law claim”); Eleventh, Twelfth and Thirteenth Causes of Action for violation of California Business & Professions Code section 17200 *et seq.* (the “Unfair Competition Law” or “UCL” claims); and Fifth Cause of Action for violation of California Civil Code sections 1750 *et seq.* (the “Consumers Legal Remedies Act” or “CLRA” claim).

The Released Parties are John Dyet, an individual, Tiger, and CGC, their parents, subsidiaries and affiliated companies, and in the case of all such entities, their respective past and present owners, representatives, officers, directors, attorneys, agents, employees, insurers, predecessors, successors, and assigns.

YOUR RIGHTS AND OPTIONS

17. How do I participate in the Settlement?

You do not need to do anything to participate in the Settlement. If you are a Class Member and do not request to be excluded from the Settlement, you will automatically receive a Settlement check and release claims against the Released Parties (see Paragraph 16 above) without any further action on your part.

18. How do I request to be excluded from the Settlement?

If you want to exclude yourself (“opt out”) from the Settlement (that is, not receive any money from the Settlement and not be bound by the Settlement), **you must mail a written statement to the Settlement Administrator with your handwritten signature** to the address set forth above (Paragraph 8) that you wish to be excluded from the Settlement. (“Exclusion Request”). The Exclusion Request must be signed by the Class Member who seeks to opt out and must contain his or her name, address and telephone number. No Exclusion Request may be made on behalf of a group of Class Members.

If you exclude yourself from this settlement, you will not be eligible to receive any money from or be bound by this Settlement. Neither the class administrator nor class counsel will be able to offer any legal advice regarding whether to exclude yourself from the Settlement. To be effective, your Exclusion Request must be postmarked no later than May 9, 2019.

19. How do I object to the Settlement?

You can ask the Court to deny approval by filing an objection. You can’t ask the Court to order a different outcome; the Court can only approve or reject the Settlement. If the Court denies approval, no Settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must (a) clearly identify the case name and number *Fishman v. Tiger Natural Gas, Inc., Case Number 3:17-cv-05351-WHA*, (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before May 9, 2019.

You cannot both object to the Settlement and exclude yourself from the Settlement. If the Court rejects your objection, you will still be bound by the terms of the Settlement and you will not be able to exclude yourself from the Settlement.

FINAL APPROVAL HEARING

20. When will the Court consider whether to grant final approval of the Settlement?

The Court will hold a Final Approval Hearing to decide whether to grant final approval of the Settlement on June 20, 2019 at 11:00 a.m. in the courtroom of the Honorable William Alsup at

the United States District Court for the Northern District of San Francisco, Courtroom 12 – 19th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102. It is not necessary for you to appear at this hearing. If you have timely submitted an objection to the Settlement, you may, but are not required to, appear at the hearing to argue your objection to the Court. Any attorney who will represent you at the Final Approval Hearing for the purposes of your objection must file a Notice of Appearance with the Court and serve the Notice of Appearance on Class Counsel (contact information in Paragraph 7 above) and counsel for Defendants (Thomas Leland of Holland and Knight 1801 California St., Ste. 5000, Denver, CO, 80202 for Tiger and Christine Reilly of Manat, Phelps & Phillips LLP, 11355 West Olympic Blvd., Los Angeles CA, 90064 for CGC and Dyet) by May 9, 2019. The hearing may be postponed without further notice to the class certification hearing, trial or other judicial resolution.

FURTHER INFORMATION

21. How do I receive more information?

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at **www.NaturalGasCappedRateClassAction.com**; by accessing the Court docket in this case, for a fee, through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>; by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California (450 Golden Gate Avenue, 16th Floor, San Francisco, CA 94102) between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays; or by contacting Class Counsel (Paragraph 7).

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

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EXHIBIT H

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

EMILY FISHMAN and SUSAN FARIA,
individually and on behalf of others similarly
situated,

No. C 17-05351 WHA

Plaintiffs,

v.

**ORDER RE MOTION FOR
PRELIMINARY APPROVAL
OF CLASS SETTLEMENT**

TIGER NATURAL GAS INC., an Oklahoma
corporation; COMMUNITY GAS CENTER
INC., a Colorado corporation; JOHN DYET,
an individual; and DOES 3-100

Defendants.

INTRODUCTION

In this class action for violations of California's Recording Law, plaintiffs move for preliminary approval of a proposed class settlement. For the reasons below, the motion is **GRANTED.**

STATEMENT

Defendant John Dyet owned several telemarketing companies, including defendant Community Gas Center, Inc. Beginning in 2014, CGC called PG&E customers to promote defendant Tiger Natural Gas, Inc.'s capped-rate program, pursuant to which program Tiger's supply rate for natural gas would be capped at \$0.69 per therm. This case stems from alleged misrepresentations made during these phone solicitations to PG&E's customers. Plaintiffs further alleged that defendants recorded these sales calls without customers' consent.

Based on these allegations, plaintiff Emily Fishman filed her initial complaint in August 2017. Plaintiffs' most recent iteration of the complaint contained thirteen claims for relief, including for violations of California's Recording Law, California's Unfair Competition Law, and California's Consumers Legal Remedies Act. A November 2018 order certified the following class only with respect to plaintiffs' Recording Law claim, denying without prejudice certification as to the Section 17200 and CLRA claims (Dkt. Nos. 1, 101, 250):

Tiger/PG&E Customer Class: All California consumers and businesses that were customers of PG&E at the time they enrolled in Tiger's capped-rate price protection program after receiving a telemarketing call advertising the program between August 18, 2013, and the present.

With respect to the Section 17200 and CLRA claims, the class certification order explained that although plaintiffs had claimed they could show the existence of damages on an aggregate, classwide basis using PG&E's data, they had failed to show that such information existed or was available and, as a result, plaintiffs had failed to meet their burden of showing that FRCP 23(b)(3)'s requirements had been met as to their CLRA and Section 17200 claims. The order further provided that if plaintiffs obtained the necessary proof from PG&E, the Court would consider a supplemental motion for class certification (Dkt. No. 250).

Following a settlement conference with Magistrate Judge Elizabeth Laporte, the parties reached a settlement of plaintiffs' Recording Law claim. The parties also reached a class-wide settlement of plaintiffs' not-yet-certified Section 17200 and CLRA claims. Plaintiffs now move for preliminary approval of the class settlement (Dkt. No. 373). This order follows full briefing and oral argument.

ANALYSIS

Federal Rule of Civil Procedure 23(e) provides that "[t]he claims, issues, or defenses of a certified class . . . may be settled . . . only with the court's approval." Preliminary approval is appropriate if "the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible

1 approval.” *In re Tableware Antitrust Litig.*, 484 F. Supp. 2d 1078, 1079 (N.D. Cal. 2007) (Chief
2 Judge Vaughn Walker). Here, the proposed settlement agreement satisfies these requirements.

3 **1. BENEFIT TO CLASS MEMBERS.**

4 With respect to plaintiffs’ Recording Law claim, the proposed settlement establishes a
5 gross settlement fund of \$3.7 million, to be distributed evenly amongst the 26,637 class
6 members. Because California’s Recording Law provides for \$5,000 in statutory damages per
7 violation, this settlement amounts to 2.78% of the \$133 million in statutory damages that
8 plaintiffs contend are owed to the class. This is before any deductions from the settlement fund,
9 which deductions will include any future awards for plaintiffs’ attorney’s fees and litigation
10 expenses, any incentive award, and payments to the claims administrator. With respect to
11 plaintiffs’ Section 17200 and CLRA claims, the proposed settlement provides for injunctive
12 relief prohibiting Tiger from engaging in the misleading business practices alleged in this case
13 but does not provide for additional monetary compensation. Plaintiffs do not provide an
14 estimated amount of class-wide damages stemming from these statutory claims.

15 Although the settlement fund reflects a huge discount on plaintiffs’ claims, there exists a
16 serious risk that defendants would go bankrupt and the class would be left with much less (if
17 anything) even if plaintiffs did succeed at trial. In connection with this motion, defendants have
18 demonstrated their limited financial resources and inability to pay a more reasonable settlement.
19 Tiger is a family-owned business with one shareholder. The company contracts with an
20 aggregator which sells Tiger natural gas and extends to Tiger a line of credit for the purchase of
21 the gas. In return, Tiger’s aggregator exercises control over Tiger’s retained earnings and has a
22 first-position lien against all of Tiger’s assets. This relationship prohibits Tiger from obtaining a
23 loan to finance a larger settlement in this action. Moreover, Tiger’s annual net profits are modest
24 and more than half of Tiger’s retained earnings will be directed to the proposed \$3.7 million
25 settlement. Dyet, in turn, is an individual with limited savings. His telemarketing company
26 CGC is now defunct. Accordingly, continuing to litigate risks further limiting the class’s
27 ultimate recovery.

28

1 **2. SCOPE OF THE RELEASE.**

2 The proposed settlement agreement defines the class using the same definition set forth in
3 the class certification order. A subclass of only consumers (rather than consumers and
4 businesses) would be used for the CLRA claim. The proposed settlement agreement releases
5 only the Recording Law, Section 17200, and CLRA claims asserted in this action. The ten other
6 claims alleged in the operative complaint would be dismissed without prejudice. The scope of
7 the class definition and release in the proposed settlement agreement is therefore appropriately
8 tailored and thus falls within the range of possible approval.

9 **3. OTHER CONSIDERATIONS.**

10 Additional factors weigh in favor of granting preliminary approval. Relevant to the
11 question of whether the agreement appears to be “the product of serious, informed, noncollusive
12 negotiations,” the parties reached the proposed settlement after attending a settlement conference
13 with Magistrate Judge Laporte. Moreover, the proposed settlement agreement does not require
14 class members to participate in a claims process in order to claim their share of the settlement
15 fund.

16 In the event that any class member does not cash their settlement check, leftover funds
17 will go to a *cy pres* recipient. Plaintiffs propose that leftover funds be distributed to The Utility
18 Reform Network, a nonprofit “engaged in protecting consumers from overreach by utilities in
19 California” (Dkt. No. 373 at 48). Tiger disagrees that The Utility Reform Network should be a
20 *cy pres* recipient, but does not propose a specific alternative. This order overrules Tiger’s
21 objection and finds that TURN is an appropriate choice for a *cy pres* recipient.

22 **4. NOTICE.**

23 Under the proposed settlement, the claims administrator will use contact information
24 obtained from Tiger to send the settlement notice via first-class mail. The proposed class notice
25 satisfies the requirements of FRCP 23(c)(2)(B) and 23(e)(1), as it clearly describes of the nature
26 of the action, the estimate for each class member’s expected recovery, the implications of
27 objecting to the settlement, and the process for opting out of the settlement.

CONCLUSION

The terms of the parties' settlement agreement are hereby **PRELIMINARILY APPROVED** as being fair, reasonable and adequate to the members of the class, subject to further consideration at the final approval hearing. Plaintiffs' unopposed motion for preliminary approval of the settlement is **GRANTED**.

The Angeion Group is hereby **APPOINTED** as claims administrator. Provided that all missing information in the proposed notices is filled out, the proposed form of notice for the class is **APPROVED**. Tiger shall provide the claims administrator with the information necessary to conduct the mailing of the notices. Class notice should be distributed by **MARCH 11, 2019**.


The deadline to opt out of the settlement or to file objections to the settlement is **MAY 9, 2019**. The parties shall respond to any objections to the settlement by **MAY 16, 2019**. Class counsel shall file a motion for an award of attorneys' fees, costs and enhancement award on or before **APRIL 11, 2019**. By **MAY 16, 2019**, plaintiffs shall file a motion for final approval of the class settlement. A hearing to consider whether the class settlement should be given final approval, and on plaintiffs' motion for attorneys' fees, costs and enhancement awards, is **SET** for **JUNE 20 AT 11:00 A.M.**

The final pretrial conference and trial dates are hereby **VACATED** and will be reset if final approval is not granted.

Plaintiffs' administrative motion to file under seal in support of their motion for preliminary approval (Dkt. No. 371) is **GRANTED** on the grounds that the information sought to be sealed is either duplicative or relates to confidential settlement negotiations. Tiger and Dyet's administrative motions (Dkt. Nos. 370, 372) are **DENIED**. Tiger and Dyet shall re-file their declarations and related exhibits on the public docket by **FEBRUARY 29 AT NOON**.

IT IS SO ORDERED

Dated: February 22, 2019.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

EXHIBIT I

State	Number of Class Members	Settlement Amount	Estimated Proportionate Share
Alaska	7	\$630.00	0.02%
Alabama	5	\$450.00	0.01%
Armed Forces Pacific	1	\$90.00	0.00%
Arkansas	5	\$450.00	0.01%
Arizona	66	\$5,940.00	0.16%
California	25,857	\$2,327,130.00	63.00%
Colorado	30	\$2,700.00	0.07%
Connecticut	3	\$270.00	0.01%
District of Columbia	3	\$270.00	0.01%
Florida	28	\$2,520.00	0.07%
Georgia	17	\$1,530.00	0.04%
Hawaii	10	\$900.00	0.02%
Iowa	2	\$180.00	0.00%
Idaho	50	\$4,500.00	0.12%
Illinois	8	\$720.00	0.02%
Indiana	7	\$630.00	0.02%
Kansas	6	\$540.00	0.01%
Kentucky	4	\$360.00	0.01%
Louisiana	3	\$270.00	0.00%
Massachusetts	5	\$450.00	0.01%
Maryland	7	\$630.00	0.02%
Maine	3	\$270.00	0.01%
Michigan	5	\$450.00	0.01%
Minnesota	6	\$540.00	0.01%
Missouri	6	\$540.00	0.01%
Mississippi	5	\$450.00	0.01%
Montana	9	\$810.00	0.02%
North Carolina	12	\$1,080.00	0.03%
Nebraska	3	\$270.00	0.01%
New Hampshire	4	\$360.00	0.01%
New Jersey	2	\$180.00	0.00%
New Mexico	9	\$810.00	0.02%
Nevada	80	\$7,200.00	0.20%
New York	14	\$1,260.00	0.03%
Ohio	13	\$1,170.00	0.03%
Oklahoma	11	\$990.00	0.02%
Oregon	109	\$9,810.00	0.26%
Pennsylvania	12	\$1,080.00	0.03%
Rhode Island	2	\$180.00	0.00%
South Carolina	9	\$810.00	0.02%
South Dakota	2	\$180.00	0.00%
Tennessee	13	\$1,170.00	0.03%
Texas	77	\$6,930.00	0.19%

Utah	26	\$2,340.00	0.06%
Virginia	10	\$900.00	0.02%
Vermont	2	\$180.00	0.00%
Washington	60	\$5,400.00	0.15%
Wisconsin	8	\$720.00	0.02%
Wyoming	1	\$90.00	0.00%