

1 R. Rex Parris, Esq. (SBN 96567)
2 rrexparris@rrexparris.com
3 Patricia K. Oliver, Esq. (SBN 193423)
4 poliver@rrexparris.com

PARRIS LAW FIRM

43364 10th Street West
Lancaster, California 93534
Telephone: (661) 949-2595
Facsimile: (661) 949-7524

7 Brian Panish, Esq. (SBN 116060)
8 panish@psblaw.com

Robert Glassman, Esq. (SBN 269816)
9 glassman@psblaw.com

PANISH SHEA & BOYLE LLP

11111 Santa Monica Boulevard, Suite 700
Los Angeles, California 90025
Telephone: (310) 477-1700
Facsimile: (310) 477-1699

Attorneys for Victims Demetrius Crump, et al.

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

OCT 18 2016

John A. Clarke, Executive Officer/Clerk

BY: [Signature] DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

SOUTHERN CALIFORNIA GAS COMPANY

Defendant.

Case No. 6SC00433

**VICTIMS' REQUEST FOR
WITHDRAWAL OF PLEA AGREEMENT;
DECLARATIONS OF R. REX PARRIS
AND ETHAN LITNEY IN SUPPORT
THEREOF**

COPY

Table of Contents

| | | |
|------|--|----|
| I. | INTRODUCTION | 1 |
| II. | FACTUAL BACKGROUND..... | 4 |
| | A. False Representations about Safety of Facility..... | 4 |
| | B. Failure to Notify the Community of the Blowout | 5 |
| | C. False Assurance of Safety of Community during Blowout | 6 |
| | D. Criminal Complaint Filed by D.A. on February 2, 2016..... | 7 |
| | E. The Los Angeles County District Attorney Was Notified Of Claims for Restitution.... | 8 |
| III. | ARGUMENT..... | 9 |
| | A. The Victims Have a Constitutional Right to Restitution | 10 |
| | B. The Plea Should be Withdrawn | 11 |
| | C. The Victims Request A Hearing To Consider Their Claims For Restitution Before the Court Sentences SoCalGas or Accepts the Plea Agreement | 11 |
| | D. The Plea Agreement with Defendant also Requires a Restitution Hearing..... | 13 |
| | E. The Court Has Discretion to Retain Jurisdiction to Provide for Full Restitution to the Victims..... | 15 |
| IV. | CONCLUSION..... | 16 |

TABLE OF AUTHORITIES

Cases

| | |
|---|------------------|
| <i>People v. Beck</i> (1993) 17 Cal. App. 4th 209 | 14 |
| <i>People v. Bernal</i> (2002) 101 Cal.App.4th 155 | 10, 14 |
| <i>People v. Brown</i> (2007) 147 Cal.App.4th 1213 | 10, 13, 14 |
| <i>People v. Cain</i> (2000) 82 Cal. App. 4 th 81 | 16 |
| <i>People v. Giordano</i> (2007) 42 Cal.4th 644 | 13, 15 |
| <i>People v. Gross</i> (2015) 238 Cal. App. 4 th 1313..... | 10 |
| <i>People v. Harvey</i> (1979) 25 Cal.3d 754 | 1, 4, 11, 14, 15 |
| <i>People v. Pierce</i> (2015) 234 Cal.App.4th 1334..... | 12 |
| <i>People v. Rowland</i> (1997) 51 Cal.App.4th 1745..... | 10, 14 |
| <i>People v. Valdez</i> (1994) 24 Cal.App.4th 1194 | 10, 14 |

Statutes

| | |
|---|------------|
| Civil Code § 1636..... | 14 |
| Health and Safety Code § 41700(a)..... | 2, 3, 7, 9 |
| Health and Safety Code Section 5510(a)..... | 2, 7 |
| Los Angeles County Code § 12.56.030..... | 2, 7 |
| Penal Code § 1191.1 | 11 |
| Penal Code § 1191.2..... | 15 |
| Penal Code § 1191.3(b) | 15 |
| Penal Code § 1202.4(f) | 9, 12 |
| Penal Code § 1202.46..... | 10, 15 |
| Penal Code § 1385..... | 4, 9 |
| Penal Code §1192.3..... | 1, 11, 14 |

Other Authorities

| | |
|--|-------|
| Black's Law Dictionary (10th ed. 2014) | 14 |
| California Judges Bench guides, Bench guide 83, Restitution, Administrative Office of the Courts, Judicial and Court Operations Services Division, Center for Judiciary Education and Research (Revised 2013) section 83.35..... | 4, 11 |
| Title 19 of the California Code of Regulations Section 2703(a)..... | 2, 7 |
| California Constitution, Article I, section 28 | 3, 10 |

1 **I. INTRODUCTION**

2 Every sentence in a criminal case must include a restitution order restoring the victim's
3 full economic losses or the sentence is invalid. Just as importantly, the actual conduct that gives
4 rise to the economic losses must be acknowledged by the defendant and the sentencing court. The
5 Legislature enacted laws to fully implement California Constitution, Article I, section 28, the
6 electorate's emphatic call for complete restitution to victims of crime and notice before any
7 dismissal. Penal Code section 1192.3, moreover, directs the court to obtain a waiver from the
8 defendant of any defense he may have to paying restitution arising from the dismissed count:

9 “(a) A plea of guilty or nolo contendere to an accusatory pleading charging a public
10 offense, other than a felony specified in Section 1192.5 or 1192.7, ***which public offense***
11 ***did not result in damage for which restitution may be ordered, made on the condition***
12 ***that charges be dismissed for one or more public offenses arising from the same or***
13 ***related course of conduct by the defendant which did result in damage for which***
14 ***restitution may be ordered***, may specify the payment of restitution by the defendant as a
condition of the plea or any probation granted pursuant thereto, so long as the plea is
freely and voluntarily made, there is factual basis for the plea, and the plea and all
conditions are approved by the court.”

15 “(b) If restitution is imposed which is attributable to a count dismissed pursuant to a plea
16 bargain, as described in this section, the court shall obtain a waiver pursuant to People v.
Harvey (1979) 25 Cal.3d 754 from the defendant as to the dismissed count.”

17 Penal Code § 1192.3 (emphasis added).

18 From the inception of this prosecution, attorneys for thousands of victims of the Porter
19 Ranch gas blowout have called upon the Los Angeles County District Attorney's Office (LADA),
20 and this Court, to effect complete restitution for the economic losses suffered as a result of
21 decisions by Defendant Southern California Gas Company (“Defendant” or “SoCalGas”).
22 Defendant ignored the public safety of its neighbors by disabling safety valves on their gas wells
23 to maximize gas storage to the peril of the residents of Porter Ranch and other neighborhoods
24 bordering its wells.

25 The LADA chose not to file felony charges against Defendant. They exercised their
26 discretion to instead file misdemeanor charges against the corporation and not to file any charges
27 against any individuals. The Misdemeanor Complaint filed in the Superior Court of the State of
28 California for the County of Los Angeles on February 2, 2016, charged Defendant with

1 misdemeanor violations of:

2 * Health and Safety Code Section 5510(a)(Count 1);

3 * Los Angeles County Code Section 12.56.030 (Count 2);

4 * Title 19 of the California Code of Regulations Section 2703(a) (Count 3); and

5 * Health and Safety Code Section 41700(a) (Count 4) in case 6SC00433. (Request for
6 Judicial Notice (“RJN”), Ex. 13.)¹

7 Count 4 was the most serious charge because it is based upon Defendant “discharg[ing] air
8 contaminants and other materials, to wit: **NATURAL GAS OR ITS COMPONENTS**
9 **(including, but not limited to, METHANE, METHYL MERCAPTAN, BUTYL**
10 **MERCAPTAN, BENZENE AND BUTANE)** that caused injury, detriment, nuisance, or
11 annoyance to any considerable number of persons or to the public, or that endangered the
12 comfort, repose, health, or safety of any of those persons or the public, or that caused or had a
13 natural tendency to cause, injury or damage to business or property.” (*Id.* (emphasis added).)

14
15 ¹ The failure to file a felony complaint coupled with the failure to acknowledge the victims’ restitution rights in the
16 plea agreement itself caused such great concern that the victims’ attorneys have referred the plea bargain to the
Attorney General’s Office for their input. The Court explained the importance of the Attorney General’s oversight in
Pitts v. County of Kern (1998) 17 Cal.4th 340, 346-348:

17 “In California, each county district attorney is supervised by the Attorney General. Since 1966, article V,
18 section 13 of the California Constitution has provided in substance: ‘Subject to the powers and duties of the
19 Governor, the Attorney General shall be the chief law officer of the State. It shall be the duty of the Attorney
General to see that the laws of the State are uniformly and adequately enforced. The Attorney General shall
20 have direct supervision over every district attorney ... in all matters pertaining to the duties of their ...
office[], and may require any of said officers to make reports concerning the investigation, detection,
21 prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem
advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately
22 enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of
which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the
powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney
23 General shall assist any district attorney in the discharge of the duties of that office’ (See *People v. Honig*
(1996) 48 Cal. App.4th 289, 354-355 [55 Cal. Rptr.2d 555] [Article V, section 13 of the California
24 Constitution ‘confers broad discretion upon the Attorney General to determine when to step in and prosecute
a criminal case.’] Since 1945, the Government Code has contained a similar provision.”

25 “In addition, Penal Code section 923, enacted in 1959, provides: ‘Whenever the Attorney General considers
26 the public interest requires, he may, with or without the concurrence of the district attorney, direct the grand
jury to convene for the investigation and consideration of such matters of a criminal nature as he desires to
27 submit to it. He may take full charge of the presentation of such matters to the grand jury, issue subpoenas,
prepare indictments, and do all other things incident thereto to the same extent as the district attorney may
28 do’ Finally, since 1957, Government Code section 12524 has authorized the Attorney General to
‘conference’ with the district attorneys to discuss their duties “with the view of uniform and adequate
enforcement” of state law.”

1 A few days after the LADA filed this case, attorneys representing many of SoCalGas's
2 victims put the LADA on notice that the victims were seeking restitution pursuant to the
3 California Constitution. (Parris Decl. ¶ 1.) The LADA made assurances to the victims'
4 representative that no plea agreement would be entered that did not include full restitution to the
5 victims for all of Defendant's criminal acts. (Id.)

6 An attorney for many victims, Ethan Litney, appeared at the pre-trial hearing and again
7 advised the LADA, and the defendant, that the victims are seeking restitution. (Parris Decl. ¶ 2;
8 Litney Decl. ¶ 1.) This hearing did not take place in open court, but instead took place in the jury
9 room. (Litney Decl. ¶ 2.) The commissioner ordered the victims' representative out of the jury
10 room, indicating this was not the time for seeking restitution. (Id. ¶ 6-7.)

11 Three months later, on September 13, 2016, the District Attorney's office announced that
12 it entered a plea agreement with SoCalGas. None of the victims of the Defendant's criminal acts
13 were consulted about the plea agreement in advance. (Parris Decl. ¶ 3; Litney Decl. ¶ 9.) The
14 settlement was presented to the court with no notice to, or input from, any of the victims.

15 Under the plea agreement, SoCalGas pleaded no contest to one misdemeanor count of
16 failing to immediately notify the Los Angeles Fire Department of the leak that began on or around
17 October 23, 2015. (RJN, Ex. 14.) The plea agreement does not require a probation report, which
18 would have resulted in notice to the victims and an opportunity to submit a claim for restitution.

19 Inexplicably, dismissal of Counts 2 through 4 is part of the bargain in the plea agreement.
20 (Id. at Att. A, p. 3.) Count 4 is being dismissed even though it should be indisputable SoCalGas
21 violated the underlying statute, Health and Safety Code Section 41700(a), which provides:

22 "Except as otherwise provided in Section 41705, ***a person shall not discharge from any***
23 ***source whatsoever quantities of air contaminants or other material that cause injury,***
24 ***detriment, nuisance, or annoyance to any considerable number of persons or to the***
25 ***public, or that endanger the comfort, repose, health, or safety*** of any of those persons or
the public, or that cause, or have a natural tendency to cause, injury or damage to business
or property." Id. (Emphasis added.)

26 There is nothing before the court indicating the dismissal of these counts is for any other
27 reason than to facilitate a plea. There are no facts recited, nor are there any facts, constituting a
28 defense to Counts II through IV. The settlement agreement instead provides in paragraph 1:

1 “Provided the terms of this agreement are complied with by Southern California Gas, the LADA
2 agrees to dismiss the remaining three counts contained within the complaint pursuant to Penal
3 Code section 1385 at the time of sentencing.” (RJN, Ex. 14, Att. A at p. 3.)

4 Neither this Court nor the LADA required the defendant to submit to a Harvey waiver on
5 Count 4 at the time of the plea. The victims strenuously insist on a Harvey waiver. Neither the
6 plea agreement, nor the court, so much as mentioned victim restitution as opposed to a restitution
7 fine during the plea. The court allowed what the Judges’ Benchbook on restitution calls a silent
8 plea about restitution. See California Judges Bench guides, Bench guide 83, Restitution,
9 Administrative Office of the Courts, Judicial and Court Operations Services Division, Center for
10 Judiciary Education and Research (Revised 2013) section 83.35 (“Benchbook”). This practice
11 may be fine with a traffic crash where restitution may await the probation report, but it is
12 unconscionable in this case where thousands of victims have suffered serious injuries and even
13 death because of the criminal acts of SoCalGas. The economic losses are extreme including the
14 diminution of the value of the victims’ homes because of this disaster,

15 The victims’ attorneys have spent many hundreds of hours and many thousands of dollars
16 compiling the economic losses to the victims. The law of California requires complete restitution
17 for these losses. That the LADA and this Court allowed a silent plea to be entered on the subject
18 of restitution has caused the victims great concern and torment. The victims expect and deserve
19 far better treatment at the sentencing hearing to be held on November 29, 2016.

20 As a show of good faith these concerns will be addressed, the victims request that: (1) the
21 silent plea be withdrawn; (2) their right to full restitution be explicitly expressed by the Court;
22 (3) a Harvey waiver be taken on Count 4 of the complaint; and (4) the case then be referred to the
23 probation department for a report on restitution. The victims’ attorneys are prepared to work with
24 the probation department, and the LADA, to prepare a comprehensive analysis of the economic
25 losses suffered by thousands of our citizens and neighbors in this disaster.

26 **II. FACTUAL BACKGROUND**

27 **A. False Representations about Safety of Facility**

28 For over 30 years, Defendant falsely reported to state officials that the gas storage wells

1 were safe, and falsely reported that well S-25 had a Subsurface Safety Valve (“SSSV”) designed
2 to prevent the release of any gases into the surrounding community. (See, Request for Judicial
3 Notice, Exhibits 1 & 2.) Every year the defendants made this misrepresentation to the State of
4 California. (Id., Exhibit 2) And, every year they knew the mandatory Subsurface Safety Valve on
5 well S-25 failed back in the 1970s and was removed to save costs and increase the injection
6 capacity of the well. (Id., Exhibit 3.) This information was concealed from state safety inspectors,
7 who instead received test reports showing an operational Subsurface Safety Valve (“SSSV”) in
8 place. (Id., Exhibit 2.)

9 Defendant knew this safety equipment stops uncontrolled toxic gas leaks. Defendant also
10 knew the safety valve was removed decades ago to hasten the injection of greater amounts of
11 natural gas into the storage formation.

12 By October 23, 2015, the inevitable happened. The casing in Well S-25 failed causing the
13 largest gas well blowout in the world’s history. Because the subsurface safety valve was no
14 longer in place, Well S-25 spewed benzene, hydrogen sulfide, methane, mercaptans, and
15 numerous other toxic substances into the atmosphere over the community of Porter Ranch,
16 California.

17 **B. Failure to Notify the Community of the Blowout**

18 For at least three days, Defendant kept the blowout a secret. Over 30,000 residents, their
19 homes, their children’s schools and businesses were exposed to toxic gases. (RJN, Ex.’s 6, 9, 10.)
20 When Defendant finally reported the blowout, they falsely reported to government officials and
21 the media that the “gas leak” posed no health risks to the surrounding community. (Id., Ex. 4.)
22 The Defendant knowingly and willfully misrepresented that the gas dissipated and the only gases
23 the residents were being exposed to were methane gas along with mercaptans (a toxic substance
24 added to natural gas so people will detect gas leaks and leave the area.). (Id.)

25 After the blowout, further investigation revealed that over 114 wells did not meet
26 rudimentary safety requirements. (RJN, Ex. 12.) These wells were ordered shut down until they
27 could be brought up to minimum safety standards. (Id.) Defendant was also ordered to plug old
28 wells because the gases could come up through those wells and into the community. (Id.)

1 **C. False Assurance of Safety of Community during Blowout**

2 When it reported the blowout, Defendant falsely asserted the well was too far away and
3 the natural gas dissipated before it reached the residents, and there was no public health threat:

4 “... the leak does not pose an imminent threat to public safety. The well is located in an
5 isolated, mountain area more than a mile away from and more than 1,200 feet higher than
6 the closest home or public area. . . . *In outdoor locations such as this, natural gas quickly dissipates into the air*, greatly reducing the possibility for ignition and further diluting the gas as it reaches the public.”

7 (RJN, Ex. 4 (emphasis added).) Defendant repeatedly told the victims the natural gas dissipated
8 in daily reports from October 28 to December 17, 2015. (*Id.*) Defendant also identified an oily
9 mist coming from the facility, but after initial concerns, Defendant told victims that “the mist
10 would *not travel beyond the facility*.” (emphasis added).) (RJN, Ex. 5.) Defendant also told
11 residents “*there was no reason to stay indoors*.” (*Id.*)

12 These representations by Defendant were made knowing that the community was being
13 exposed to benzene, hydrogen sulfide, formaldehyde and numerous other toxic substances. (RJN,
14 Ex.’s 9, 10.) Defendant made these false statements to the public knowing that long term
15 exposure to mercaptans causes chronic disease. The Defendant also knew that other highly toxic
16 gases were continuing to contaminate Porter Ranch and the surrounding communities, yet, they
17 intentionally denied all of this resulting in catastrophic consequences to the surrounding
18 communities. (*Id.*)

19 The County of Los Angeles and the City of Los Angeles initially believed Defendant’s
20 misrepresentations. Further investigation eventually revealed the true facts. Because of the
21 toxicity of the gas over Porter Ranch, on November 19, 2015, the Los Angeles County Public
22 Health Department ordered Defendant to pay for the relocation of residents. (*Id.*, Ex. 6.)
23 Defendant initially refused, necessitating a court order which Defendant resisted complying with
24 for months.

25 Environmental groups and the attorneys for the victims gathered evidence showing that
26 the representations by Defendant were false. They obtained an infrared camera in December of
27 2015 to capture evidence of natural gas, noxious odors, hazardous chemicals, and toxic pollutants
28 rolled in a plume down the hill and into the Porter Ranch community. (*Id.*, Ex. 7.) The oily mist

1 could not be seen with the naked eye or with infrared cameras. None of the residents had
2 information to refute the statements by Defendant until the oily mist built up on homes, cars, and
3 in playgrounds. (RJN, Ex.'s 8, 11.) Children, vulnerable people, and pets breathed in the oily
4 mist from the blowout for weeks *before* they knew the mist had traveled outside of Defendant's
5 facility.

6 Because of Defendant's intentional conduct, thousands of people in Porter Ranch suffered
7 a broad spectrum of injuries. Some had temporary reactions to the toxic gases while others
8 suffered catastrophic health consequences including death.

9 Thousands of residents in Porter Ranch were forced to stay in their homes. Their children
10 became sicker and sicker, pets died and soon the most vulnerable people in Porter Ranch died
11 from respiratory complications. The homes in Porter Ranch soon redefined the word
12 "uninhabitable." Still, Defendant resisted every attempt to protect the people of Porter Ranch.

13 Because of this conduct and other deliberate acts and misrepresentations, the largest gas
14 blowout in history occurred in a populated area poisoning thousands of people. Not since the
15 poison gas release in Bhopal, India have so many people been poisoned by the willful and
16 deliberate conduct of corporate executives.

17 **D. Criminal Complaint Filed by D.A. on February 2, 2016**

18 Knowing the pain suffered by thousands of families, the Los Angeles County District
19 Attorney's Office still chose not to file felony charges against the defendant SoCalGas. They
20 exercised their discretion to file misdemeanor charges against the corporation and not to file any
21 charges against any individuals. (RJN, Ex. 13.) The Misdemeanor Complaint in the Superior
22 Court charges Defendant with misdemeanor violations of:

- 23 • Health and Safety Code Section 5510(a)(Count 1);
- 24 • Los Angeles County Code Section 12.56.030 (Count 2);
- 25 • Title 19 of the California Code of Regulations Section 2703(a) (Count 3); and
- 26 • Health and Safety Code Section 41700(a) (Count 4) in case 6SC00433. (Ex. 13.)

27 Count 4 was the most serious charge because it is based upon Defendant "discharg[ing] air
28 contaminants and other materials, to wit: **NATURAL GAS OR ITS COMPONENTS**

1 (including, but not limited to, METHANE, METHYL MERCAPTAN, BUTYL
2 MERCAPTAN, BENZENE AND BUTANE) that caused injury, detriment, nuisance, or
3 annoyance to any considerable number of persons or to the public, or that endangered the
4 comfort, repose, health, or safety of any of those persons or the public, or that caused or had a
5 natural tendency to cause, injury or damage to business or property.” (Id. at p. 3 (bold added).)

6 **E. The Los Angeles County District Attorney Was Notified Of Claims for**
7 **Restitution**

8 A few days after the District Attorney’s Office filed this case, attorneys representing many
9 of Defendant’s victims put them on notice that the victims were seeking restitution under the
10 California Constitution. (Parris Decl. ¶ 1.) The District Attorney’s Office made assurances to the
11 victim’s representative that no plea agreement would be entered that did not include full
12 restitution to the victims for all of Defendant’s criminal acts. (Id. ¶ 2.)

13 An attorney for many victims, Ethan Litney, appeared at the pre-trial hearing and again
14 advised the LADA, and the defendant, that the victims are seeking restitution. (Parris Decl. ¶ 2;
15 Litney Decl. ¶ 1.) This hearing did not take place in open court, but instead took place in the jury
16 room. (Litney Decl. ¶ 2.) The victims’ attorney entered the jury room and notified the attorneys
17 from the Los Angeles District Attorney’s Office that he represented the victims of the Porter
18 Ranch gas blowout who seek to recover restitution from the Defendant. (Id. ¶ 3.) The
19 commissioner started the proceeding in the jury room with the deputy district attorneys, attorney
20 for Defendant, and an attorney for the victims. (Id. ¶ 5.) The commissioner, however, ordered
21 the victims’ representative out of the jury room, indicating this was not the time for seeking
22 restitution. (Id. ¶ 6-7.)

23 On September 13, 2016, the District Attorney’s office announced that it entered a plea
24 agreement with Defendant. None of the victims of the Defendant’s criminal acts were consulted
25 about the plea agreement in advance. (Parris Decl. ¶ 3; Litney Decl. ¶ 9.) Neither the LADA’s
26 Office, nor the Department of Probation, ever contacted any of the victims or their representatives
27 regarding the plea agreement and the victims’ right to restitution. The settlement was presented
28 to the court with no notice to, or input from, any of the victims.

1 Under the plea agreement, Defendant pleaded no contest to one misdemeanor count of
2 failing to immediately notify the California Emergency Management Agency, and the Los
3 Angeles Fire Department, of the leak that began on or around October 23, 2015. (RJN, Ex. 14.)
4 The plea agreement includes no requirement for a probation report, which would have resulted in
5 notice to the victims and an opportunity to submit a claim for restitution.

6 Inexplicably, dismissal of Counts 2 through 4 is part of the bargain reached in the plea
7 agreement. (*Id.* at p. 3.) Count 4 is being dismissed even though it should be indisputable that
8 Defendant violated the underlying statute, Health and Safety Code Section 41700(a) (Count 4),
9 which provides:

10 “Except as otherwise provided in Section 41705, a person shall not discharge from any
11 source whatsoever quantities of air contaminants or other material that cause injury,
12 detriment, nuisance, or annoyance to any considerable number of persons or to the public,
13 or that endanger the comfort, repose, health, or safety of any of those persons or the
14 public, or that cause, or have a natural tendency to cause, injury or damage to business or
15 property.”

16 There is nothing before the court indicating the dismissal of these counts is for any other
17 reason than to facilitate a plea. There are no facts recited, nor are there any facts, constituting a
18 defense to Counts 2 through 4. The settlement agreement instead provides in paragraph 1:
19 “Provided the terms of this agreement are complied with by Southern California Gas, the LADA
20 agrees to dismiss the remaining three counts contained within the complaint pursuant to Penal
21 Code section 1385 at the time of sentencing.” (RJN, Ex. 14, Att. 1, p. 3.)

22 **III. ARGUMENT**

23 Victims Demetrius Crump, Guy & Tracy Niizawa, Brian & Christine Katz, Danielle
24 Rabadi, and the 7,121 clients represented by counsel for the victims file this opening brief to
25 request that the Court reserve jurisdiction to allow the victims to seek restitution for every
26 economic loss sustained from the blowout. The restitution should include past and future medical
27 expenses, moving expenses, relocation expenses lost income, cleaning of homes and cars,
28 mileage, parking, transportation, diminution in property value, dues for services and amenities
that could not be used, boarding fees for pets, and medical care and loss of pets. The Court
should invoke its authority under Penal Code section 1202.4(f) to retain jurisdiction at the time of

1 sentencing to determine current and future damages.

2 **A. The Victims Have a Constitutional Right to Restitution**

3 The victims have a constitutional right to be heard. California Constitution, Article I, § 28
4 states :

5 “(b) in order to preserve and protect the victim’s rights to justice and due process, *a victim*
6 *shall be entitled to the following rights:*

7 “(1) To be treated with fairness and respect for his or her privacy and dignity, and
8 to be free from intimidation, harassment, and abuse, throughout the criminal or
9 juvenile justice process. . .

10 “(6) *To reasonable notice of and to reasonably confer with the prosecuting*
11 *agency, upon request, regarding, the arrest of the defendant if known by the*
12 *prosecutor, the charges filed, the determination whether to extradite the*
13 *defendant, and, upon request, to be notified of and informed before any pretrial*
14 *disposition of the case...*”

15 See, Cal. Const. Art. I, § 28 (emphasis added). The Porter Ranch residents have a “right to
16 restitution . . . [that] cannot be bargained away or limited, nor can the prosecution waive the
17 victim’s right to receive restitution.” People v. Gross (2015) 238 Cal. App. 4th 1313 (citing
18 People v. Valdez (1994) 24 Cal.App.4th 1194, 1202–1203; People v. Brown (2007) 147
19 Cal.App.4th 1213, 1226). Moreover, “[a] sentence without an award of victim restitution is
20 invalid.” Id. (quoting Brown, 147 Cal. App. 4th at p. 1225 and citing People v. Bernal (2002) 101
21 Cal.App.4th 155, 164–165; People v. Rowland (1997) 51 Cal.App.4th 1745, 1750–1752). Indeed,
22 on a motion of a victim, a court may at any time correct a sentence that is rendered invalid due to
23 the omission of a restitution order.” Id. (citing § 1202.46.)

24 The LADA’s Office failed to notify, contact or confer with the victims’ representatives
25 prior to entering the plea agreement with the defendant SoCalGas Company. The settlement was
26 presented to the court with no notice to, or input from, any of the victims. This plea agreement
27 bears every indication of an attempt by Defendant to cheat their victims out of their constitutional
28 right to restitution. Defendant reached a plea agreement dismissing this count with no notice to
the victims as required by law. Defendant could further sidestep a probation report which would
have resulted in notice to the victims and an opportunity to submit a claim for restitution.

1 **B. The Plea Should be Withdrawn**

2 Failing to take a Harvey waiver on Count 4, alone, in violation of Penal Code section
3 1192.3, requires withdrawal of the plea. Penal Code section 1192.3 directs the court to obtain a
4 waiver from the Defendant of any defense he may have to paying restitution arising from the
5 dismissed count:

6 “(a) *A plea of guilty or nolo contendere to an accusatory pleading charging a public*
7 *offense, other than a felony specified in Section 1192.5 or 1192.7, which public offense*
8 *did not result in damage for which restitution may be ordered, made on the condition*
9 *that charges be dismissed for one or more public offenses arising from the same or*
10 *related course of conduct by the defendant which did result in damage for which*
11 *restitution may be ordered, may specify the payment of restitution by the defendant as a*
12 *condition of the plea or any probation granted pursuant thereto, so long as the plea is*
13 *freely and voluntarily made, there is factual basis for the plea, and the plea and all*
14 *conditions are approved by the court.”*

15 “(b) If restitution is imposed which is attributable to a count dismissed pursuant to a plea
16 bargain, as described in this section, the court shall obtain a waiver pursuant to People v.
17 Harvey (1979) 25 Cal.3d 754 from the defendant as to the dismissed count.”

18 See Penal Code § 1192.3 (emphasis added).

19 Besides not so much as mentioning the victims’ right to restitution at the time of the plea,
20 the Court failed to refer this case to the probation department. Failing to refer this extraordinary
21 case to the probation department for a pre-sentence investigation report has prejudiced the
22 victims’ right to restitution. “A probation officer’s pre-sentence investigation report must include
23 information and recommendations pertaining to restitution fines and victim restitution. Pen C §
24 1203(b)(2)(D), (d), (g).” Benchbook § 83.45. While misdemeanors are often disposed of without
25 a probation report, (id.), this is anything but your typical misdemeanor guilty plea. The victims’
26 attorneys stand ready to assist the probation department in preparing a comprehensive analysis of
27 the victims’ economic losses. The Court would be remiss in depriving itself, and the victims, of a
28 pre-sentence investigation of restitution by the probation department.

29 **C. The Victims Request A Hearing To Consider Their Claims For Restitution**
30 **Before the Court Sentences SoCalGas or Accepts the Plea Agreement**

31 The Penal Code requires that victims be heard on the question of restitution. Penal Code
32 section 1191.1 states in part:

1 *"The victim, or up to two of the victims parents or if the victim is a minor, or the next of*
2 *kin of the victim if the victim has died, have the right to appear, personally or by*
3 *counsel, at the sentencing proceeding and to reasonably express his, her, or their views*
4 *concerning the crime, the person responsible, and the need for restitution.* The court in
imposing sentence shall consider the statements of victims, parents or guardians, and next
of kin made pursuant to this section and shall state on the record its conclusion concerning
whether the person would pose a threat to public safety if granted probation." (emphasis
added).

5 Victims of the Porter Ranch gas blowout, therefore, request a hearing to address their rights to
6 restitution. It is inexplicable why the victims were kept in the dark about the plea agreement. This
7 is not a mere technicality -- it is a Constitutional right that is held to be inviolable. Yet, with this
8 Defendant, it was overlooked.

9 The Penal Code requires Defendant to pay restitution to victim Demetrius Crump and all
10 victims for the economic losses arising out of the Defendant injection well blowout:

11 "In every case in which a victim has suffered economic loss as a result of the defendant's
12 conduct, the court shall require that the defendant make restitution to the victim or victims
13 in an amount established by court order, based on the amount of loss claimed by the
14 victim or victims or any other showing to the court.... The court shall order full restitution
unless it finds compelling and extraordinary reasons for not doing so and states them on
the record."

15 Penal Code §1202.4(f).

16 The judicial discretion to order less than full restitution to the victims is very narrow in the
17 wake of passing Marsy's Law in 2008. As the Court in People v. Pierce (2015) 234 Cal.App.4th
18 1334, 1338 n. 2, explained:

19 "Prior to the approval of Marsy's Law by the voters in 2008, article I, section 28,
20 subdivision (b) mandated that '[r]estitution shall be ordered from the convicted persons in
21 every case, regardless of the sentence or disposition imposed, in which a crime victim
22 suffers a loss, unless compelling and extraordinary reasons exist to the contrary.' (Cal.
23 Const. art. I, § 28, former subd. (b), as adopted June 8, 1982, italics added.) *Marsy's Law*
24 *removed that discretion, and article I, section 28, subdivision (b)(13)(B) now requires*
that '[r]estitution shall be ordered from the convicted wrongdoer in every case,
regardless of the sentence or disposition imposed, in which a crime victim suffers a
loss.' We encourage the Legislature to conform section 1202.4 in all respects in light of
Marsy's Law.") Id. (emphasis added).

25 The restitution must reimburse the victims for all economic losses: "To the extent
26 possible, the restitution order... shall be of a dollar amount that is sufficient to fully reimburse the
27 victim or victims for every determined economic loss incurred as the result of the defendant's
28 criminal conduct." Penal Code §1202.4(f)(3). Restitution also must include future expenses: "In

1 order to restore the economic status quo, to the extent that it is possible when a criminal act has
2 injured a victim, restitution orders must *not* be limited to the amount of money that has been paid
3 or lost prior to the restitution hearing.” People v. Giordano (2007) 42 Cal.4th 644, 658 (emphasis
4 added).

5 For decades Defendant violated health and safety laws regarding natural gas storage wells.
6 On behalf of the victims, we respectfully pray the court slow down the proceedings and hold
7 Defendant fully accountable for its criminal acts that forever afflicted the lives of so many people.

8 **D. The Plea Agreement with Defendant also Requires a Restitution Hearing**

9 It is unclear if it is the intention of Defendant to avoid restitution owed to the victims of
10 Porter Ranch. If so, the victims object. Any avoidance of restitution violates the law and should
11 be dealt with now. The Legislature and the people of the State of California removed all
12 discretion, and authority, from the trial court and the prosecution to bargain away the victims’
13 constitutional and statutory right to restitution, as such, it cannot properly be the subject of plea
14 negotiations. People v. Brown (App. 1 Dist. 2007) 147 Cal.App.4th 1213, 1226. The LADA’s
15 Office has uncharacteristically waived probation as a term of the settlement agreement allowing
16 the defendant to escape the court’s jurisdiction within months instead of years. Procedurally
17 Dismissal of Counts 2 through 4 may be appropriate if the bargain does not obviate the victims’
18 constitutional and statutory rights to full restitution.

19 The Settlement Agreement does appear to require the payment of restitution. Paragraph:
20 3(e) in the Settlement Agreement states:

21 “The Court will impose, and Defendant will pay at sentencing, all mandatory fines and
22 fees as required by the court, including any restitution fine to the State Restitution Fund
ordered pursuant to Penal Code § 1202.4.” (RJN, Ex. 14, Att. 1 at p. 2.)

23 This wording properly includes direct Victim Restitution for the three Counts dismissed
24 under the Settlement Agreement. (Id.) The phrase “including any restitution fine to the State
25 Restitution Fund pursuant to Penal Code § 1202.4” is properly interpreted as being expansive and
26 inclusive of paying restitution directly to the victims. (Id.) The word “include” means: “To
27 contain as a part of something. The participle *including* typically indicates a partial list <the
28 plaintiff asserted five tort claims, including slander and libel>. But some drafters use phrases such

1 as *including without limitation* and *including but not limited to* – which mean the same thing.”
2 Black’s Law Dictionary (10th ed. 2014) (italics in original). Relieving the defendant of paying
3 restitution to the victims arising from Counts 2, 3 and 4 would violate the California State
4 Constitution, the State restitution statutes, and the terms of the Plea Agreement. The Plea
5 Agreement, like any other contract, is interpreted to effectuate the intention of the parties, so far
6 as the same is lawful. See Civil Code, § 1636. Any other interpretation of the Plea Agreement
7 would be both illegal and unconstitutional.

8 The law in California is unequivocal: anyone who suffers economic loss as a result of
9 criminal conduct that resulted in economic loss to the victim, the court shall order restitution
10 payments to the victims when the count is dismissed. People v. Beck (1993) 17 Cal. App. 4th
11 209, 220 (a victim’s right to restitution is a constitutional one); see also People v. Valdez (1994)
12 24 Cal.App.4th 1194, 1202–1203; accord People v. Brown (2007) 147 Cal.App.4th 1213, 1226
13 (“Victim restitution cannot be bargained away by the People”). Moreover, “[a] sentence without
14 an award of victim restitution is invalid.” Brown, 147 Cal. Ap. 4th at 1225, 54 Cal.Rptr.3d 887;
15 People v. Bernal (2002) 101 Cal.App.4th 155, 164–165; People v. Rowland (1997) 51
16 Cal.App.4th 1745, 1750–1752.

17 The Legislature enacted numerous measures to ensure that a victim’s constitutional right
18 to restitution is protected. Penal Code section of 1192.3 directs the court to obtain a waiver from
19 the defendant of any defense he may have to paying restitution arising from the dismissed count:

20 “(a) A plea of guilty or nolo contendere to an accusatory pleading charging a public
21 offense, other than a felony specified in Section 1192.5 or 1192.7, ***which public offense***
22 ***did not result in damage for which restitution may be ordered, made on the condition***
23 ***that charges be dismissed for one or more public offenses arising from the same or***
24 ***related course of conduct by the defendant which did result in damage for which***
25 ***restitution may be ordered***, may specify the payment of restitution by the defendant as a
26 condition of the plea or any probation granted pursuant thereto, so long as the plea is
27 freely and voluntarily made, there is factual basis for the plea, and the plea and all
28 conditions are approved by the court.”

“(b) If restitution is imposed which is attributable to a count dismissed pursuant to a plea
bargain, as described in this section, the court shall obtain a waiver pursuant to People v.
Harvey (1979) 25 Cal.3d 754 from the defendant as to the dismissed count.”

27 Penal Code § 1192.3 (emphasis added).

28 The plea agreement leaves it to the court to decide which counts necessitate victim

1 restitution. Accordingly, at sentencing, the Court shall obtain a People v Harvey waiver, Penal
2 Code § 1191.3(b), and then award restitution to the victims.

3 The restitution hearing is intended to be procedurally accessible to the victims. See, e.g.,
4 Penal Code § 1191.2. Victims are entitled to representation and can submit their claims to the
5 court on Judicial Council forms the legislature intended to be provided to them by the Department
6 of Probation. Although, the procedure is not complicated, the thousands of victims requires an
7 innovative approach which the court may form.

8 **E. The Court Has Discretion to Retain Jurisdiction to Provide for Full**
9 **Restitution to the Victims**

10 Penal Code § 1202.46 provides for restitution hearings to be on kept open until full
11 restitution has been accomplished. It states:

12 “§ 1202.46. Retention of jurisdiction for purposes of imposing or modifying restitution.

13 “Notwithstanding Section 1170, when the economic losses of a victim cannot be
14 ascertained at the time of sentencing pursuant to subdivision (f) of Section 1202.4, the
15 court shall retain jurisdiction over a person subject to a restitution order for purposes of
16 imposing or modifying restitution until such time as the losses may be determined.
17 Nothing in this section shall be construed as prohibiting a victim, the district attorney, or a
18 court on its own motion from requesting correction, at any time, of a sentence when the
19 sentence is invalid due to the omission of a restitution order or fine without a finding of
20 compelling and extraordinary reasons pursuant to Section 1202.4.”

21 The California Supreme Court in People v. Giordano (2007) 42 Cal 4th 644, 659
22 summarizes how the court is to determine the victims right to full restitution. Restitution is
23 limited to economic losses, and the amount is left to the sound discretion of the court:

24 “The abuse of discretion standard is “deferential,” but it “is not empty.” (citations.) “[I]t
25 asks in substance whether the ruling in question ‘falls outside the bounds of reason’ under
26 the applicable law and the relevant facts [citations].” (*Ibid.*) ***Under this standard, while a
27 trial court has broad discretion to choose a method for calculating the amount of
28 restitution, it must employ a method that is rationally designed to determine the
surviving victim’s economic loss.*** To facilitate appellate review of the trial court’s
restitution order, the trial court must take care to make a record of the restitution hearing,
analyze the evidence presented, and make a clear statement of the calculation method used
and how that method justifies the amount ordered.” (*Id.* at 663.)

“Penal Code section 1202.4, subdivision (f) requires that restitution be ‘based on the
amount of loss claimed by the victim or victims or any other showing to the court.” *Id.* at
667 (emphasis added).

1 Once the victim makes a claim, it is the defendant's burden to demonstrate the amount is
2 excessive. The defendant does not have a right to cross examine witnesses, nor is the victim
3 required to present live testimony. People v. Cain (2000) 82 Cal. App. 4th 81, 87 (holding that
4 there is no right for defendants to confront and cross-examine witness and due process is only
5 violated "if the [restitution] hearing procedures are fundamentally unfair"). At the hearing, the
6 defendant will have a "full and fair opportunity to present affirmative evidence that [restitution]
7 received by the victim was not directly related to the crime." Id.

8 Here, due to the number of claims, the court could appoint a special master to review the
9 claims submitted by the victims, and allow the victims to submit evidence to the special master of
10 all the claims they contest. The court may limit Defendant's evidence to declarations. Once the
11 special master submits a report, Defendant could then contest any specific findings by way of a
12 motion. This is just an example of what the court can fashion. Many configurations are used in
13 class action settlements the court could adopt.

14 The court's primary Constitutional priority is to fully compensate the victims. Defendant
15 may not escape restitution simply because it is difficult to ascertain.

16 **IV. CONCLUSION**

17 In conclusion, not only must justice for the victims be a primary consideration of the
18 court, the appearance of justice must also be preserved by directly proceeding to restitution as
19 required by the California Constitution. Defendant is a multi-national politically connected
20 corporation. It rivals the economic size of many nations; its culpable conduct has resulted in
21 injury and death to countless people. It would be reprehensible if there is the slightest appearance
22 that the established law and the rules governing restitution were ignored to the benefit of the
23 Defendant and to the detriment of the victims.

24 DATE: October 18, 2016

Respectfully submitted,

PARRIS LAW FIRM



R. Rex Parris, Esq.
Attorneys for Victims

Declaration of R. Rex Parris

I, R. Rex Parris, declare:

I am an attorney duly licensed to practice before all courts of the State of California, and I am a principal in, and founding partner of, the R. Rex Parris Law Firm, attorneys of record for Mr. Demetrius Crump and the victims in Exhibit 1. The facts in this declaration are within my personal knowledge and, if called as a witness, I could and would competently testify as follows:

1. A few days after the District Attorney's Office filed this case, attorneys representing many of the Defendant's victims put them on notice that the victims were seeking restitution under the California Constitution. The District Attorney's Office made assurances to the victim's representative that no plea agreement would be entered that did not include full restitution to the victims for all of Defendant's criminal acts.

2. Following that communication, we had one of the associates from my firm appear at the pre-trial hearing and advise the District Attorney's Office, and the defendant, that the victims are seeking restitution. He reported afterwards that he notified the District Attorneys at the hearing, the attorneys from Defendant, and the commissioner of our clients' request to seek restitution. The commission then instructed this attorney to leave.

3. On September 13, 2016, the District Attorney's office announced that it entered a plea agreement with Defendant. None of the victims of the Defendant's criminal acts were consulted about the plea agreement in advance.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this Tuesday, October 18, 2016, in Lancaster, California.



R. Rex Parris, Esq.
Attorneys for Victims

Declaration of Ethan Litney

I, Ethan Litney, declare:

I am an attorney duly licensed to practice before all courts of the State of California. I worked as an associate at the R. Rex Parris Law Firm, attorneys for Mr. Demetrius Crump and thousands of other victims. The facts set forth in this declaration are within my personal knowledge and, if called as a witness, I could and would competently testify as follows:

1. On June 14, 2016, I went to the Santa Clarita court house to appear in what I believed to be a pre-trial hearing in the case of the People of the State of California v. Southern California Gas Company.

2. The hearing did not take place in open court, but instead, I was instructed by a bailiff to follow him into to a small room in the back of the court house, which I believed to be a jury room.

3. I entered the jury room and notified the attorneys from the Los Angeles District Attorney's Office that I represent the victims of the Porter Ranch gas blowout who seek to recover restitution from the Defendant.

4. When several individuals believed to be deputy district attorneys briefly left the jury room, I introduced myself to several attorneys from the law firm of Latham & Watkins representing the Defendant, Southern California Gas Co. I identified my law firm and again explained why I was present for the hearing.

5. After the deputy district attorneys returned, a judicial officer, who I believed to be a commissioner, entered the jury room. As the commissioner began speaking to the case at hand, an attorney who was present informed the commissioner that they were unfamiliar with who I was or why I was present.

6. I identified myself to the commissioner and stated that I was appearing to represent victims who are seeking restitution.

7. The commissioner said restitution would not be addressed that day and required me to leave the jury room.

8. When I left the jury room, the only counsel remaining appeared to be counsel for the Defendant and the deputy district attorneys. As far as I aware, there was no attorney for the victims present.

9. I have not personally heard from the LA District Attorney's office in connection with the issue of restitution since that time.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed October 17, 2016 in San Diego, California.

Ethan Litney, Esq.