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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 **STATE OF CALIFORNIA, COUNTY OF LOS**
ANGELES, REGENTS OF THE UNIVERSITY
11 **OF CALIFORNIA, and BOARD OF TRUSTEES**
OF THE CALIFORNIA STATE UNIVERSITY,
12 **and ROES 1-200, ex rel. CHRISTOPHER J.**
SCHROEN, an individual,

13 Plaintiffs,

14 v.

15 **BP AMERICA PRODUCTION COMPANY, a**
Delaware corporation; BP ENERGY
16 **COMPANY, a Delaware corporation; BP**
CORPORATION NORTH AMERICA, INC.,
17 **Inc., an Indiana corporation; BP PRODUCTS**
18 **NORTH AMERICA, INC., a Maryland**
corporation; BP PLC, a UK corporation; and
19 **DOES 1-20,**

20 Defendants.

21 **THE PEOPLE OF THE STATE OF**
CALIFORNIA,

22 Plaintiff-Intervenor,

23 v.

24 **BP AMERICA PRODUCTION COMPANY, a**
Delaware corporation; BP ENERGY
25 **COMPANY, a Delaware corporation; BP**
CORPORATION NORTH AMERICA, INC.,
26 **Inc., an Indiana corporation; and DOES 1-20,**
27

28 Defendants.

Case No. CGC-12-522063

COMPLAINT IN INTERVENTION
OF THE PEOPLE OF THE STATE
OF CALIFORNIA

DEMAND FOR JURY TRIAL

1 Plaintiff, the People of the State of California, having filed a notice of intent to intervene
2 pursuant to Government Code section 12652, subdivision (c)(8)(D)(i), based on information and
3 belief, alleges for its complaint in intervention as follows:

4 INTRODUCTION

5 1. This action arises from Defendants' violations of the False Claims Act from
6 approximately April 2003 to the date of trial.

7 2. Defendants have overcharged the State of California and numerous California
8 political subdivisions¹ millions of dollars for natural gas purchases under three successive
9 contracts with the Department of General Services ("DGS"), an executive department in the
10 California Government Operations Agency.

11 3. The contracts entered into with DGS provide for the purchase of gas under two
12 different pricing structures: (1) the market (or index) price as of the beginning of the delivery
13 month; or (2) an alternative price, agreed upon by the parties ahead of time. The latter type of
14 purchases are referred to herein as "Special Pricing" purchases.

15 4. The contracts expressly prohibit Defendants from quoting a price for a Special
16 Pricing purchase "that exceeds the Market Price plus \$ 0.15 per MMBtu."²

17 5. Notwithstanding this provision, Defendants continually and systematically quoted the
18 state prices for Special Pricing purchases that exceeded the market price by more than \$0.15 per
19 MMBtu, thereby inducing the state to enter into hundreds of purchase agreements for overpriced
20 gas.

21 6. Defendants' internal communications report average state margins on the order of
22 \$0.25 per MMBtu or higher, or at least \$0.10 per MMBtu more than the state was supposed to
23 pay. In July 2009, Defendants reported that, for Defendants' relevant business region, the state
24 accounted for 35 percent of the customer profit margin, even though the state comprised only

25 ¹ The State of California and the relevant California political subdivisions may be referred
26 to herein collectively as the "state."

27 ² A Btu is a standard unit of measurement denoting the amount of heat energy in fuels. A
28 Btu is the amount of heat required to increase the temperature of a pound of water by one degree
Fahrenheit. An MMBtu stands for one million Btu's.

1 eight percent of their business by volume. “Squeezing gold out of that goose” is how one of
2 Defendants’ employees closest to the DGS account described transacting with the state for
3 Special Pricing volumes.

4 7. Through this action, the People seek to recover treble damages and penalties under
5 the False Claims Act, restitution and penalties under the Unfair Competition Law, prejudgment
6 interest, the costs of this action, and such other relief as the Court deems proper.

7 **PLAINTIFF**

8 8. Plaintiff is the People of the State of California (“Plaintiff, or the “People”).

9 9. Pursuant to Government Code section 12652, the People, by and through the Attorney
10 General, may elect to intervene and proceed with an action brought by a private person (the “qui
11 tam plaintiff”) under the False Claims Act, Government Code section 12652, subdivision (c)(1),
12 for violations of the Act (a “qui tam action”), and seek damages and penalties as provided in
13 section 12651, subdivision (a). Pursuant to section 12652, subdivision (e)(1), where the People
14 proceed with the action, the People shall have the primary responsibility for prosecuting the
15 action.

16 10. On July 2, 2012, Christopher J. Schroen, the qui tam plaintiff, brought this action as a
17 qui tam action.

18 11. On November 4, 2014, pursuant to Government Code section 12652, subdivision
19 (c)(8)(D)(i), the People gave notice that they intend to intervene and proceed with the action.

20 12. Pursuant to Business and Professions Code sections 17204 and 17206, the Attorney
21 General is authorized to bring a civil action in the name of the People of the State of California
22 for the assessment and recovery of restitution and civil penalties for each violation of the Unfair
23 Competition Law, Business and Professions Code sections 17200 to 17210.

24 **DEFENDANTS**

25 13. Defendant BP America Production Company is a Delaware Corporation, registered
26 with the California Secretary of State, and authorized to do business and doing business in
27 California.

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1 14. Defendant BP Energy Company (“BPE”) is a Delaware Corporation, registered with
2 the California Secretary of State, and authorized to do business and doing business in California.

3 15. Defendant BP Corporation North America, Inc. is an Indiana Corporation, registered
4 with the California Secretary of State, and authorized to do business and doing business in
5 California.

6 16. Plaintiff is ignorant of the names or capacities of the Defendants sued herein as
7 DOES 1 through 20, inclusive, which may include Defendants named in the qui tam plaintiff’s
8 complaint, and therefore sues such Defendants by fictitious names pursuant to California Code of
9 Civil Procedure section 474. Plaintiff will amend this complaint to allege the true names and
10 capacities of the fictitiously named Defendants once ascertained. On information and belief, the
11 fictitiously named Defendants are responsible for all or some the acts complained of herein.

12 17. At all times relevant to this complaint, Defendants, and each of them, were acting as
13 the agents, servants, employees, joint venturers, and/or representatives of each other, and were
14 acting within the course or scope of their agency, employment, and/or joint venture, with the full
15 knowledge, consent, permission, authorization, and ratification, either express or implied, of each
16 of the other Defendants in performing the acts alleged in this complaint.

17 18. Non-party employees and former employees, agents, or representatives of Defendants
18 who knew or should have known of the price caps, excessive quotes, and excessive charges
19 include, but are not limited to, the following:

- 20 a. Scott Bond, marketing originator, and marketing and origination manager, who
21 serviced the DGS account from April 2003 until April 2011, signed the DGS
22 contracts for BPE, was involved in the sale of Special Pricing volumes to DGS,
23 and signed numerous Special Pricing purchase Transaction Confirmations for
24 BPE;
- 25 b. Jason Tate, marketing originator, and marketing and origination manager, who
26 was Scott Bond’s manager in or about 2010, succeeded Bond on the DGS account
27 in April 2011, was involved in the sale of Special Pricing volumes to DGS, and
28 signed numerous Special Pricing purchase Transaction Confirmations for BPE;

- 1 c. Mark Smoot, marketing originator, and marketing and originator manager, who
2 was Scott Bond's manager during part of the time covered by the complaint;
- 3 d. Orlando Alvarez, current President and Chief Executive Officer of BPE, who
4 headed Defendants' marketing and origination organization, and managed Scott
5 Bond, Jason Tate, and Mark Smoot;
- 6 e. Kurt Batenhorst, Managing Director for Defendants' Structured Products
7 America organization and/or Managing Director for Defendants' financial
8 products origination organization, who supervised or managed some or all of the
9 structured products originators who sold Special Pricing volumes to DGS,
10 including Christopher Schroen;
- 11 f. Ben Go, Melodie Lu, Dome Promubol, Christopher Schroen, Will Shappley, and
12 Dianna Vo, structured products originators who sold Special Pricing volumes to
13 DGS;
- 14 g. Blue Jenkins, former Senior Vice President for Defendants' West Origination
15 organization, who was involved with the DGS account;
- 16 h. Brian Mock, marketing originator, and marketing and origination manager, who
17 was the named signatory on the first DGS contract and numerous DGS Special
18 Pricing purchase Transaction Confirmations;
- 19 i. Steve Provenzano, current Vice President of BPE, and former BPE Chief
20 Commercial Officer and/or Chief Operating Officer for Defendants' Structured
21 Products America organization, who managed Kurt Batenhorst and the structured
22 products originators who sold Special Pricing volumes to DGS; and,
- 23 j. Paul Reed, Chief Executive Officer of BP Integrated Supply and Trading, a BP
24 business organization that operates through the Defendant corporations.

25 **JURISDICTION AND VENUE**

26 19. The Court has subject matter jurisdiction pursuant to Article 6, section 10 of the
27 California Constitution.

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1 20. The Court has general jurisdiction over all Defendants because they have affiliations
2 with California that are so continuous and systematic as to render them essentially at home in
3 California. The Court has specific jurisdiction over all Defendants because they have
4 purposefully established contacts with California and the People’s causes of action arise out of
5 and are related to Defendants’ contacts with California.

6 21. During the period covered by this complaint, Defendants have operated, staffed, and
7 maintained a California regional office in Irvine, California. Many of Defendants’ employees,
8 agents, and representatives have worked in California on a full-time, part-time, or intermittent
9 basis, including individuals performing services under the state contracts at issue in this case.
10 The state contracts were entered into in California, many if not all of Defendants’ obligations
11 under the contracts were to be performed in California, and the contracts include a California
12 choice of law provision. False and fraudulent claims, records, and statements complained of
13 herein were prepared in and directed to and presented in California, and the complained-of
14 injuries and damages arise in California. In addition to their business with the state, Defendants
15 have other customers, contracts, facilities, and business operations located in California.

16 22. Venue is proper in this county because some of the obligations under the state
17 contracts were to be performed in this county, and some of the obligations, liability, and breaches
18 complained of herein arise in this county.

19 23. Among the entities receiving gas supplies and related services from Defendants under
20 the state contracts at issue in this action were the University of California San Francisco
21 (“UCSF”) and San Francisco State University (“SFSU”). These entities were participants in the
22 DGS Natural Gas Services program, described below. Gas supplies and services provided under
23 the state contracts were directed to these entities in San Francisco, and payments by these entities
24 for the gas and services they received were made or approved by these entities in San Francisco.
25 Some of the excessive price quotes giving rise to this action were directed to UCSF and SFSU in
26 San Francisco. Many of the false and fraudulent claims and statements complained of herein
27 were presented in, or directed to UCSF and SFSU in San Francisco, and some of the damages
28 sustained were sustained or caused in San Francisco.

1 **FACTUAL ALLEGATIONS**

2 **I. THE DGS NATURAL GAS SERVICES PROGRAM**

3 24. At all times relevant to this complaint, DGS has operated a program called the
4 Natural Gas Services (“NGS”) program.

5 25. The NGS program procures natural gas supplies and related services for California
6 state agencies and California political subdivisions that elect to participate in the program.
7 Participants during the period covered by this complaint include, without limitation, DGS itself,
8 several state executive agencies; California State University (“CSU”), including CSU’s San
9 Francisco campus, SFSU; the University of California (“UC”), including UC campuses in San
10 Francisco; and the County of Los Angeles.

11 **II. DEFENDANTS’ CONTRACTUAL OBLIGATIONS**

12 26. DGS and BPE entered into three successive master contracts under which BPE has
13 been, with limited exceptions, the “full requirements” supplier for the NGS program. Under the
14 contracts, BPE has obligations to procure natural gas required by program customers and to
15 provide related services, including coordinating the pipeline nominations and transportation
16 required for the delivery of natural gas to customers’ gas meters, and monitoring customers’
17 actual usage.

18 27. Collectively, the contracts provide for gas supplies flowing from April 1, 2003
19 through June 2016, though certain Special Pricing purchases transacted under the third contract
20 provide for gas to be supplied through June 2017.

21 **A. The Contracts Provide for Default Pricing and Special Pricing Purchases**

22 28. The DGS contracts include two pricing structures for gas to be supplied under the
23 contracts. The first pricing structure is “Default Pricing.”

24 29. The Default Pricing structure is a published index price—i.e., a price to be
25 determined as of the delivery month by reference to a specified, published gas price index for that
26 month. Default Pricing purchases are not at issue in this action.

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1 30. The second pricing structure has different names under the different contracts—
2 “Special Pricing,” “Special Request Pricing,” and “Risk Management Transaction Pricing”—and
3 is referred to herein as “Special Pricing.”

4 31. A Special Pricing purchase occurs when the parties agree to terms for BPE to supply
5 designated quantities of gas (“volumes”) in the future at prices in lieu of the Default Pricing.
6 Since March 2003, DGS and BPE have entered into hundreds of Special Pricing purchases.

7 **B. Defendants May Not Quote Prices for Special Pricing Purchases That Are**
8 **More Than \$0.15 per MMBtu Over the Market Price**

9 32. Each of the DGS contracts expressly prohibits BPE from quoting prices for Special
10 Pricing volumes that exceed the market price plus \$0.15 per MMBtu. These prohibitions are
11 sometimes referred to herein as the “price cap(s)” or the “cap(s).”

12 33. Specifically, the contracts between DGS and BPE are as follows.

13 34. In or about March 2003, BPE won the bid for the “DGS 2003 Full Requirements
14 Contract” (hereinafter the “2003 contract”), which was entered into as of March 6, 2003. The
15 2003 contract provides for BPE to supply the NGS program’s full natural gas requirements,
16 excluding specified volumes provided by other suppliers, from April 1, 2003 through March 31,
17 2006. A true and correct copy of the 2003 contract is attached to this complaint as Exhibit A.

18 35. The 2003 contract provides: “7. Special Pricing: DGS NGS may at any time during
19 normal trading hours for the New York Mercantile Exchange, request (“Special Requests”)
20 Supplier to provide designated quantities of gas (“Special Pricing Volumes”), at prices in lieu of
21 the default price structure. Supplier shall utilize reasonable efforts to provide such Special
22 Pricing Volumes at the specified price structures in accordance with the provisions of this
23 Contract and/or if this Contract does not address the specific event, in accordance with generally
24 accepted industry standards. **In no event shall Supplier submit a price quote in response to a**
25 **Special Request for Special Pricing Volumes that exceeds the Market Price plus \$ 0.15 per**
26 **MMBtu, inclusive of Supplier Commodity Fee.** DGS and Supplier agree that Market Price is
27 the price quoted for the specific price structure(s) on the Intercontinental Exchange (ICE) at the
28 time Special Pricing Volumes were agreed to. Such requests may include price structures that

1 include price caps, collars, cross-commodity pricing and options to purchase specified volumes at
2 the designated prices and similar structures. The prices shall be inclusive of all costs to the
3 applicable Point(s) of Delivery, including shrinkage.” (Emphasis added.)

4 36. In or about August 2005, BPE won the bid for the “DGS 2006 Full Requirements
5 Contract” (hereinafter the “2006 contract”), which was entered into as of August 16, 2005. The
6 2006 contract provides for BPE to supply the NGS program’s full natural gas requirements,
7 excluding specified volumes provided by other suppliers, from April 1, 2006 through June 30,
8 2009. On January 3, 2006, the parties agreed to extend the term of the 2006 contract by two
9 years, to June 30, 2011. A true and correct copy of the 2006 contract is attached to this complaint
10 as Exhibit B.

11 37. The 2006 contract provides: “7.2 Special Request Pricing[.] DGS NGS may at any
12 time during normal trading hours for the New York Mercantile Exchange, request (“Special
13 Requests”) Supplier to provide designated quantities of gas (“Special Pricing Volumes”), at prices
14 in lieu of the default price structure. Supplier shall utilize reasonable efforts to provide such
15 Special Pricing Volumes at the specified price structures in accordance with the provisions of this
16 Contract and/or if this Contract does not address the specific event, in accordance with generally
17 accepted industry standards. **In no event shall Supplier submit a price quote in response to a
18 Special Request for Special Pricing Volumes that exceeds the Market Price plus \$ 0.15 per
19 MMBtu, inclusive of Supplier Commodity Fee.** DGS and Supplier agree that Market Price is
20 the price quoted for the specific price structure(s) on such exchange as the parties may specify at
21 the time Special Pricing Volumes were agreed to. Such requests may include price structures that
22 include but not be limited to price caps, collars, cross-commodity pricing and options to purchase
23 specified volumes at the designated prices and similar structures. The prices shall be inclusive of
24 all costs to the applicable Point(s) of Delivery, including shrinkage.” (Emphasis added.)

25 38. In or about May 2008, BPE won the bid for the “DGS 2011 Full Requirements
26 Contract” (hereinafter the “2011 contract”), which was entered into as of June 12, 2008. The
27 2011 contract provides for BPE (as “Supplier”) to supply the NGS program’s full natural gas
28 requirements, excluding specified volumes provided by other suppliers, from July 1, 2011

1 through June 30, 2014. On May 17, 2010, the parties agreed to extend the term of the 2011
2 contract by two years, to June 30, 2016. Further, by agreement of the parties, the contract
3 governs certain volumes of gas flowing through 2017. The June 12, 2008 contract is referred to
4 herein as the “2011 contract.” A true and correct copy of the 2011 contract is attached to this
5 complaint as Exhibit C.

6 39. The 2011 contract provides: “7.5 Risk Management Transactions. DGS (RMT) may
7 at any time request Supplier to effect Risk Management Transactions under which the State
8 would purchase designated quantities of gas at prices in lieu of the Default Price Structure. 7.5.1
9 Response and Requests. Supplier shall utilize reasonable efforts to provide such Risk
10 Management Transactions in accordance with the provisions of this Contract and/or if this
11 Contract does not address the specific event, in accordance with generally accepted industry
12 standards. **In no event shall Supplier submit a price quote in response to a Risk
13 Management Transaction request that exceeds the market price plus \$ 0.15 per MMBtu,
14 inclusive of all Supplier costs.**” (Emphasis added.)

15 40. The 2011 contract further provides, at Exhibit B, Section 5.11, that, “Supplier shall
16 provide to DGS, upon request and in no event less than three times per week and on no greater
17 than forty eight (48) hours notice, indicative gas prices showing the forecast of prices which the
18 Supplier is offering to sell gas containing the following information: 5.11.1 For each forward
19 month for the term of the contract or beyond - the Malin and PG&E Citygate Prices; SoCalGas
20 Capacity Receipt Points and SoCalGas Capacity Prices; and, 5.11.2 For each forward month for
21 the term of the contract or beyond - Basis from NYMEX settle to Malin and PG&E Citygate,
22 each SoCalGas Receipt Point(s) and SoCalGas Capacity.”

23 41. Defendants signed each of the contracts.

24 42. The request for quotation (“RFQ”) documents for each of the contracts specified that,
25 by submitting a bid, BPE was agreeing to enter into the contracts as presented in the RFQ, which
26 included the price cap provisions. Prior to bidding on each of the contracts, Defendants received
27 or obtained a copy of the contract as part of the RFQ package.

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1 **III. DGS'S SPECIAL PRICING PURCHASES**

2 43. DGS and Defendants transacted hundreds of Special Pricing purchases during the
3 period covered by this complaint.

4 44. Each Special Pricing purchase is for the benefit of a single NGS program participant
5 (or "end taker") or a group of program participants. Specifically, some Special Pricing purchases
6 are transacted for a particular entity that desires to make such a purchase. These purchases are
7 referred to as "Special Purchases." In the balance of cases, Special Pricing purchases are
8 transacted for the benefit of one or more of the DGS NGS "pools" in which all or nearly all NGS
9 program participants share. These purchases are sometimes referred to as "pool purchases." In
10 the case of a pool purchase, the end takers are all the NGS program participants who share in the
11 relevant pool. As discussed below, the end takers of Special Pricing volumes are the entities that
12 ultimately pay for those volumes.

13 45. The terms of each Special Pricing purchase are confirmed in a written "Transaction
14 Confirmation," which is jointly executed by DGS and BPE. The Transaction Confirmation
15 specifies the prices to be invoiced for gas supplied under the terms of the Special Pricing
16 purchase.

17 46. With the exception of DGS itself, in its capacity as an end taker, Defendants do not
18 invoice any NGS program participants directly. Rather, Defendants send a monthly invoice to
19 DGS for all volumes of gas supplied during the month, including any and all Special Pricing
20 volumes that were supplied. DGS approves the invoices and the state controller issues the
21 payment.

22 47. In turn, based on Defendants' invoices to DGS, DGS sends invoices to all of the NGS
23 program participants. In this manner, DGS passes through Defendants' charges for Special
24 Pricing volumes to the relevant end takers. In the case of California political subdivision end
25 takers, the end takers make payments to the state for the invoiced amounts. In the case of state
26 agency end takers, which are also invoiced by DGS, the state remains the end payer.

27 48. Nancy Moon, an outside consultant to the NGS program, handled Special Pricing
28 purchases for DGS. Moon was the point of receipt for all or most of Defendants' price quotes,

1 which she shared with the NGS program manager and NGS program customers. With respect to
2 customers that made their own Special Pricing purchases—Special Purchases— Moon was
3 responsible for communicating the customers’ requests to Defendants and communicating
4 Defendants’ quotes to the customers. Moon was the person who placed the orders for DGS for
5 both pool purchases and Special Purchases. Moon was not authorized to sign Transaction
6 Confirmations, however. Transaction Confirmations were signed by the DGS NGS program
7 manager or, in some cases, by both the program manager and another DGS employee.

8 49. On Defendants’ end, Special Pricing purchases were typically handled by a structured
9 products (or financial products) originator, often with the involvement of the marketing originator
10 who was in charge of servicing the DGS account. In some cases, the marketing originator
11 handled the transaction directly. The structured products originator who handled the majority of
12 Special Pricing purchases was qui tam plaintiff Christopher Schroen. Other structured products
13 originators who handled DGS transactions included Ben Go, Melodie Lu, Dome Promubol, Will
14 Shappley, and Dianna Vo. The principal marketing originators involved in Special Pricing
15 purchases were Scott Bond and Jason Tate. Other individuals involved in sales of Special Pricing
16 volumes at times included, but were not limited to, Kurt Batenhorst, Orlando Alvarez, and Steve
17 Provenzano.

18 50. To acquire the financial products supporting the Special Pricing volume price offered
19 to DGS (e.g., swaps and options), originators were required to transact with one or more of
20 Defendants’ traders. The traders could buy and sell at the market price. The traders would quote
21 prices to the originator that included a mark up or margin above the market price. The traders
22 knew in many cases when the trades they were transacting were being done for DGS, and charged
23 the originators higher prices in such cases. The originators would transact with DGS at prices
24 that included additional mark ups or margins added by the originator. The originators generally
25 determined the prices to be quoted to DGS based on how much margin Defendants wanted to
26 make on the deal.

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1 51. With some possible exceptions, DGS and Defendants transacted at the prices
2 Defendants quoted. As described below, in the case of certain “trigger” orders, DGS and
3 Defendants transacted at prices DGS specified based on Defendants’ indicative price quotes.

4 **IV. DEFENDANTS ROUTINELY VIOLATED THE CONTRACTS AND OVERCHARGED THE**
5 **STATE**

6 **A. Defendants Regularly Quoted Prices Above the Cap**

7 52. Shortly after the parties entered into the 2003 contract, Scott Bond prepared a DGS
8 “Business Overview” in which he noted, “Margin is currently capped at \$.15/MMBtu.” Within a
9 short period of time, however, Defendants began systematically quoting and charging prices to
10 DGS for Special Pricing volumes that were more than \$0.15 per MMBtu above the market
11 price. When the 2006 and 2011 contracts were put out to bid, Defendants knew or should have
12 known that they had routinely not been complying with the price cap in the 2003 contract or even
13 attempting to comply. Defendants nonetheless bid on and entered into the 2006 and 2011
14 contracts that contained the price caps. Moreover, after entering in these contracts, Defendants
15 proceeded routinely to not comply with the contracts’ price cap provisions. Thus, at least with
16 regard to the 2006 and 2011 contracts, Defendants entered into the contracts without any intention
17 to comply with the price caps, and knew or should have known that they had no intention to
18 comply and would not comply. Defendants never disclosed any of these facts to the state.

19 53. Defendants never disclosed to the state they were quoting and charging prices above
20 the price caps. Defendants likewise never disclosed to the state their mark ups or margins in
21 excess of \$0.15 per MMBtu.

22 54. Defendants’ scheme worked because, as Defendants knew well, and at times worked
23 to ensure, Defendants had specialized and far superior knowledge regarding the market price for
24 what the state was buying, and the state was relying on Defendants to comply with the prohibition
25 against quoting prices more than \$0.15 above the market price. At least in most cases, the state
26 did not know, and could not reasonably know, what the market price was. Defendants could and
27 did take advantage of the state’s lack of visibility and knowledge regarding market prices, in
28 contravention of the contracts’ terms and purpose.

1 55. Defendants quoted prices for Special Pricing purchases and bid on and entered into
2 successive contracts that included the price caps based on market price, without ever questioning
3 DGS about the meaning or application of the term “market price” under the contracts, or
4 expressing to DGS any uncertainty as to how to apply the price caps. Moreover, Defendants bid
5 on, won, and entered into the second and third DGS contracts without disclosing their previous
6 and ongoing violations of the price cap to DGS.

7 56. Based on a preliminary review of more than 400 Special Pricing purchases, using
8 settlement prices from the Chicago Mercantile Exchange/NYMEX (“CME”) for the dates of the
9 Transaction Confirmations, more than 300 Special Pricing purchases include prices that were
10 more than \$0.15 per MMBtu over the market price. A different market price source would also
11 show prices over the price cap.

12 57. Many of Defendants’ excessive quotes are reflected in their own internal records and
13 communications. For example, since 2004, Defendants’ structured products organization has
14 maintained a database in which the originators have recorded their margins on customer
15 transactions, including DGS Special Pricing purchases. With adjustments that are immaterial for
16 present purposes, the margins were calculated by subtracting the originator’s cost for the price
17 structure being provided to DGS from the price paid for the structure by DGS. More than sixty
18 percent of the margins entered for DGS transactions through mid-July 2013 were in excess of
19 \$0.15 per MMBtu.

20 58. Defendants’ marketing and origination organization has also maintained databases or
21 spreadsheets reflecting the margins from DGS Special Pricing purchases, as well as distributing
22 reports or bulletins that reported the margins on notable DGS Special Pricing purchases. These
23 databases and documents reflect Special Pricing purchases with prices that were more than \$0.15
24 per MMBtu above the market price.

25 59. Other of Defendants’ communications and reports reflect quotes and charges in
26 excess of \$0.15 per MMBtu, on both a transactional and aggregate basis. The authors and
27 recipients of such communications include, but are not limited to, Orlando Alvarez, Scott Bond,
28 Kurt Batenhorst, Ben Go, Blue Jenkins, Melodie Lu, Dome Promubol, Steve Provenzano, Paul

1 Reed, Chris Schroen, Will Shappley, Mark Smoot, Jason Tate, Dianna Vo, various BP traders,
2 members of Defendants' Credit, Commercial, and Trade Control departments, and Defendants'
3 deal entry personnel. For example:

- 4 a. On May 6, 2005, Scott Bond asked structured products originator Dome
5 Promubol, "What [price] collar [for a Special Pricing volume purchase] will net
6 \$150k." Two DGS transactions were confirmed that day, with margins of \$0.24
7 and \$0.26 recorded in the originators' margin database.
- 8 b. On January 3, 2006, Bond wrote members of Defendants' Credit department,
9 "This [DGS] is a milestone customer for the west with average margins in the
10 \$.25/MMBtu area. . . . The margin is actually a very conservative estimate based
11 on what we have achieved with them over [sic] past few years."
- 12 c. On March 2, 2006, Bond wrote BP Credit Portfolio Manager, Scott Walker, "the
13 margins on this account [DGS] have ranged from \$.25 - \$.75/MMBtu." (For
14 perspective, a draft presentation dated July 6, 2006 reported that the average West
15 Marketing & Origination margin from risk management transactions was \$0.04
16 per MMBtu, and a presentation dated October 15, 2007, prepared by Orlando
17 Alvarez, head of the marketing and origination organization, and Scott Bond,
18 reported an average margin of \$0.06 for the Southwest Marketing & Origination
19 organization.)
- 20 d. On April 20, 2006, Bond e-mailed Defendants' Credit department that the
21 "margin expectation" for a three-year, 90,000 MMBtu per month Special Pricing
22 purchase requested by DGS was "in the \$.30 range."
- 23 e. Consistent with the foregoing, in or about August 2006, Kurt Batenhorst
24 reportedly described BP's structured products business for the west region as
25 being "a one trick pony with dgs."

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- 1 f. On March 12, 2007, Christopher Schroen recorded margins on Special Pricing
2 deals ranging from \$0.205 to \$0.47. On the same date, Schroen wrote Bond that
3 he had made “normal margins” on the deals. Bond responded, “bush league . . .
4 cheap base hit . . . less than par.”
- 5 g. On August 9, 2007, Nancy Moon asked Defendants for quotes for particular
6 volumes and terms. In response, Ben Go provided Scott Bond with prices that
7 had no margin included. Bond added \$0.20 to \$0.25 per MMBtu depending on
8 the period and sent the marked up prices to Nancy Moon.
- 9 h. On October 7, 2007, Bond sent prices to DGS for a Special Pricing purchase that
10 embedded a \$0.20 margin.

11 60. The following examples reflect additional, specific instances in which Defendants
12 quoted prices for Special Pricing volumes that exceeded the market price plus \$0.15 per MMBtu.

13 61. On August 27, 2007, Nancy Moon e-mailed Christopher Schroen a request for an
14 indicative price quote to purchase 20,000 MMBtu per month delivered at the SoCal Border for
15 December 2007 to June 2008. Schroen responded by e-mail that the price was \$7.22. The market
16 price was approximately \$6.92. The next morning, August 28, 2007, Moon e-mailed Schroen that
17 CSU San Diego wanted to purchase the Special Pricing volume as described for a price not to
18 exceed \$7.22. Schroen responded shortly thereafter by e-mail that Defendants had filled the order
19 at \$7.22. The market price was approximately \$6.97. The Special Pricing purchase was
20 confirmed in Transaction Confirmation 2006-229, which was dated August 28, 2007.

21 62. On October 5, 2007, Nancy Moon e-mailed Melodie Lu a request for an indicative
22 price quote for CSU San Jose to buy 25,000 MMBtu per month delivered at Malin for November
23 2007 to March 2008. Lu responded by e-mail the same day that the price was \$7.58. The market
24 price was approximately \$7.27. Moon replied by e-mail the same day with a request to purchase
25 12,500 MMBtu per month for November 2007 to March 2008 at a price not to exceed \$7.56, as
26 well as a cancellation of the standing DGS (for CSU San Jose) purchase request for 25,000
27 MMBtu per month for the same period at \$7.23 per MMBtu. Lu responded a short while later
28 that Defendants had filled the order for \$7.555. The Special Pricing purchase was confirmed in

1 Transaction Confirmation 2006-236, which was dated October 8, 2007 and executed by Scott
2 Bond.

3 63. In 2008, when Defendants were preparing to bid on the 2011 contract, Defendants
4 proposed several changes to the contract, including deleting the price cap provision. DGS
5 informed Defendants it would not consider changes to the contract, and Defendants withdrew
6 their proposed changes.

7 64. Defendants continued to quote prices to DGS for Special Pricing volumes that were
8 more than \$0.15 per MMBtu above the market price, as demonstrated by the following:

- 9 a. On June 27, 2008, Bond asked structured products originator Ben Go to prepare
10 Special Purchase pricing for DGS with “Margin = \$.25.”
- 11 b. On July 2, 2008, Kurt Batenhorst, the structured products manager, informed
12 Steve Provenzano, head of the structure products organization, that Defendants
13 had executed a DGS Special Pricing purchase with a margin of \$0.337.

14 65. Just how high DGS margins were was borne out in a written description of the DGS
15 account dated July 7, 2009. The document reports, “Department of General Services is a large
16 and important customer for the Southwest Rockies region, representing ca. \$5MM in average
17 annual margins. Department of General Services daily physical gas volumes total approximately
18 90,000 dcth **For the Southwest Rockies region, Department of General Services**
19 **represents 35% of the margin, earned on only 8% of business by volume.”** (Emphasis
20 added.) The document’s authors or contributors included Scott Bond, Kurt Batenhorst, Steve
21 Provenzano, and members of BP’s Credit department, and the report’s recipients included
22 Orlando Alvarez and Paul Reed.

23 66. In January 2010, Todd Little, a marketing originator and manager, wrote, “It is well
24 known that the number one Cadillac customer in California is DGS.”

25 67. On March 31, 2010, Kenny Foo, head of Defendants’ Credit department, supported
26 his subordinate’s recommendation to approve two DGS Special Pricing deals, which had
27 expected margins of approximately \$0.31 and \$0.48 respectively.

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1 68. Defendants were accustomed to charging DGS excessive prices. Scott Bond joked
2 about how Defendants' high margins on DGS deals were taken for granted. On April 14, 2010,
3 Kirk Ketcherside, a BP trader, e-mailed Bond about a DGS Special Pricing purchase with a \$4
4 million margin that had been left out of a weekly business report. Ketcherside responded, "Nice
5 job btw [by the way]." Bond replied, "Thanks. Everyone so used to squeezing gold out of that
6 goose, not a lot of love when it happens...LOL [laugh out loud]."

7 69. On May 19, 2011, Oxana Erdogan, a Commercial Development Director, Jason Tate,
8 Christopher Schroen, and Nathan Chiara, a Structuring Analyst, discussed the cash flow case for
9 potential, future DGS business. Erdogan reviewed a projection for the expected annual
10 origination margin, which equated to more than \$0.20 per MMBtu, as well as an additional
11 trading margin of \$0.09 per MMBtu. These figures were also discussed with Orlando Alvarez.

12 70. On June 18, 2010, Kurt Batenhorst requested and received approval from Steve
13 Provenzano for a Special Pricing deal with a margin of approximately \$0.35.

14 71. On January 9, 2012, Ben Go wrote Kurt Batenhorst that he had spoken with Steve
15 Provenzano, and that, in apparent reference to the DGS contract, "he [Provenzano] wants to stay
16 with 15cts on a new fixed price trade." Between January and August 2012, however, the
17 origination desk reported margins of more than \$0.15 per MMBtu on at least six Special Pricing
18 contracts.

19 72. On April 25, 2012, Go reported to Jason Tate on his profit on a DGS deal, which he
20 had elsewhere recorded as yielding an \$0.18 margin. Tate responded by asking, ".15?" Go
21 replied by asking Tate if he was available to talk "re recent Department of General Services deal
22 specifics."

23 73. On July 27, 2012, Go wrote instructions to financial products personnel regarding
24 potential DGS Special Pricing deals that might be transacted in his absence, writing "15cts
25 maximum margin per contract."

26 74. But on August 8, 2012, Tate wrote Will Shapley that "I would like to see at least .15"
27 on numbers being sent to Moon for a potential purchase.

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1 75. In October 2012, Defendants were preparing to bid on the 2016 DGS full
2 requirements contract. As did the previous contracts, the 2016 contract included a provision
3 prohibiting the supplier from submitting a price quote in response to a Special Pricing request that
4 exceeded the market price plus \$0.15 per MMBtu, inclusive of all supplier costs. On October 18,
5 2012, Defendants' Risk Manager Gary Taylor wrote of this provision in an internal BP e-mail:
6 "Reading it [sic] infers that we would have to make best efforts to acquire whatever we would sell
7 to them and then charge Department of General Services no more than market price plus \$.15.
8 Obviously this isn't exactly how our business works." Recipients included Ben Go and Jason
9 Tate, as well as Mark Hagan and Jared Kaiser, members of Defendants' commercial department.

10 76. On October 19, 2012, Steve Provenzano, Jason Tate, Ben Go, and members of
11 Defendants' Commercial Development and Credit departments discussed the business case for
12 bidding on the 2016 DGS contract. In their discussions, they used \$0.207 as "the standard
13 margin" they expected Defendants would charge DGS for Special Pricing volumes, with a higher
14 margin possible for "restructures"—i.e., Special Pricing purchases that, for example, lowered
15 prices on existing Special Pricing volumes in exchange for adding additional volumes.

16 77. As these and other communications reflect, it was well known throughout
17 Defendants' organization that Defendants were charging the state particularly high prices.
18 Communications among Defendants' Credit department and marketing and origination business
19 refer to DGS margins as "high," "strong," and "excellent." In an e-mail to Orlando Alvarez, Sam
20 Vickers, Defendants' Chief Operating Officer for gas, referred to DGS as a "higher margin"
21 customer. Sam Walker, a Credit Portfolio Manager for Defendants, similarly referred to DGS as
22 a "high-margin" counterparty.

23 78. As the originators were directed to embed margins greater than \$0.15 per MMBtu in
24 the prices they quoted DGS, so too were Defendants' traders informed that they could inflate
25 prices for DGS deals.

26 79. Defendants' traders added margins to the market prices, and the originators' margins
27 were stacked on top of that.

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1 80. In one case, for example, the originator told the trader that the offer and bid prices he
2 was asking for were “for DGS[,] so we have room.” In another case, the trader asked the
3 originator who the customer was. The originator responded, “DGS.” The trader replied,
4 “gotcha.” The originator then responded by typing “:-),” which is an emoticon, or textual
5 portrayal, for a smiling face.

6 81. Thus, for example, on December 15, 2011, when Kurt Batenhorst summarized the
7 annual marketing and origination margins for DGS for Steve Provenzano, he added, “Remember
8 ... the traders had at least this in their trades too... so double the numbers.”

9 **B. Defendants Used Excessive Quotes to Induce Orders For Prices Above the**
10 **Cap**

11 82. One type of Special Pricing purchase DGS and its customers transacted was a trigger
12 order or standing trigger order. In such transactions, DGS and its customers would use forward
13 prices quoted by Defendants to set prices at which Defendants were requested to provide Special
14 Pricing volumes if and when the market hit their price.

15 83. Defendants employed a scheme of systematically quoting inflated forward prices in
16 order to induce DGS and its customers to set prices for standing trigger orders that exceeded the
17 market price by more than \$0.15 per MMBtu. Specifically, the quoted prices would be
18 systematically inflated to incorporate margins in excess of \$0.15, if not well in excess of \$0.15,
19 particularly as the prices went further out in time. Defendants would fill the trigger orders if and
20 when the market price hit a level at which Defendants could fill the order while making their
21 desired minimum margin, which exceeded \$0.15 per MMBtu.

22 84. Thus, for example, on September 2, 2004, in apparent reference to a trigger order
23 DGS had placed, Scott Bond directed originator Dome Promubol, “Let’s fill these and make 25
24 cents.”

25 85. In a similar vein, on June 28, 2007, Scott Bond wrote Christopher Schroen that he
26 wanted to call Nancy Moon about a drop in prices. Schroen responded, “ok one sec[,] some uc
27 irvine triggers prob[ab]ly filled[,] wanna make sure we get o[ur] margin first.” In other words,
28 Schroen did not want to risk having UC Irvine’s trigger price lowered before Defendants had

1 been able to fill it and earn their excessive margin. Schroen recorded a \$0.355 margin on a UC
2 Irvine transaction dated the next day in the structured products margin database.

3 86. In a July 24, 2007 e-mail, Christopher Schroen explained to Kurt Batenhorst,
4 Managing Director for Structured Products, how the standing trigger order scheme worked.
5 Schroen explained that DGS trigger orders were calibrated to the price sheets Defendants
6 regularly sent to DGS that had Defendants' internal margin requirements embedded. Defendants
7 would not fill the orders unless they could meet their margin requirement. "If the market were to
8 miss," Schroen explained, "we go un triggered. She [Nancy Moon] is unaware of this."

9 87. On October 5, 2007, Nancy Moon requested pricing from Melodie Lu and placed a
10 trigger order after receiving it. Lu informed Bond she was about to fill the order, and asked
11 Bond, "are you ok with .22c? or you need me to hold out for .25?" Bond replied, ".25 is the
12 minimum we have set." Lu said she would hold out, and Bond wrote, "feel free to call nancy and
13 tell her they are 3 cents away and she will probably raise the order." Lu responded in part that
14 Moon had "asked me where [the] market was before she put in her order." Lu reported to Bond
15 shortly thereafter that she had filled the order for a margin of approximately \$0.27 per MMBtu.

16 88. In fact, Defendants took care in quoting DGS prices to make sure the prices were
17 sufficiently inflated to avoid revealing to DGS that a standing trigger order should have filled or
18 be close to filling, lest Defendants have to fill the order without receiving the excessive margin
19 they had contrived to obtain.

20 89. For example, on July 27, 2012, structured products originator Ben Go admonished his
21 peers Will Shappley, Dianna Vo, and others to make sure the prices in the price updates sent to
22 DGS were higher than the price in DGS's pending "GTC [standing trigger] order," lest DGS be
23 able to see the order "should have been filled." Similarly, on October 16, 2012, Go cautioned that
24 DGS had a pending GTC order at \$4.20 for July 2014 to June 2015, and "We are currently close
25 to that price with zero margin," so "we need to be careful" about any pricing that might be shown
26 to DGS for that period. In the same e-mail, Go gave instructions about the timing for sending
27 different types of price quotes to DGS. The instructions were designed to protect Defendants'
28 ability to embed high margins in their quotes without making the margins visible to DGS.

1 **C. Defendants Concealed Market Price and Margin Information From DGS**

2 90. In addition to quoting prices higher than \$0.15 above the market price and
3 manipulating quotes in light of outstanding trigger orders, Defendants also concealed market
4 price and margin information from DGS in order to be able to quote prohibited prices without
5 detection. Related, Defendants selectively withheld from DGS pricing information Defendants
6 provided to other customers.

7 91. For example, on October 23, 2007, Scott Bond, Christopher Schroen, and
8 Defendants' marketing analyst Danielle Rodriguez discussed the problem of how Defendants
9 should respond to Nancy Moon's request for certain price information that other of Defendants'
10 customers received. Schroen wrote, "We don't want to add Nancy to the [website] portal or the
11 distribution list since her account [i.e., margin] requirements are so sensitive. . . . We already
12 send her a tailored price sheet each day." When Bond responded that Defendants had previously
13 sent Moon one of the reports she was requesting, Schroen replied: "Jeez[.] Not good at all.[.] The
14 differences in prices are huge." Bond responded, "The weekly editions only show pricing for the
15 day. I don't have a problem showing her those but no monthly." Bond told Rodriguez she could
16 send Moon the weekly newsletters, "but no monthly newsletters."

17 92. Consistent with the foregoing, Defendants sent DGS forward fixed price quotes that
18 were markedly higher than the prices in reports provided to other customers, and more than \$0.15
19 per MMBtu above the market price, at least on average.

20 93. For example, on October 19, 2007, Chris Schroen e-mailed DGS a price sheet with
21 monthly fixed price indications for future gas delivered at the SoCal and Malin delivery points for
22 November 2007 through June 2012. Sixteen minutes earlier on the same day, Schroen had e-
23 mailed a BP Energy report containing different offer price indications to a customer distribution
24 list, not including DGS. For Malin, calendar year 2008, the price sent to non-DGS customers was
25 \$7.690, and the price sent to DGS was \$7.944—\$0.254 higher. For SoCal, calendar year 2008,
26 the non-DGS price was \$7.599 and the DGS price was \$7.853, again \$0.254 higher. For Malin,
27 calendar year 2009, the non-DGS price was \$8.037 and the DGS price was \$8.301—\$0.264
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1 higher. For SoCal, calendar year 2009, the non-DGS price was \$7.960, and the DGS price was
2 \$8.224—\$0.264 higher.

3 94. The quotes to DGS described in the preceding paragraph were also more than \$0.15
4 per MMBtu above the market price, based on the CME settlement prices. Specifically, taking the
5 average of the monthly prices, the market price for gas delivered at Malin for calendar year 2008
6 was approximately \$7.468, \$0.476 lower than the price quoted to DGS, and the market price for
7 calendar year 2009 was approximately \$7.922, \$0.379 lower than the price quoted to DGS. The
8 market price for gas delivered at SoCal for calendar year 2008 was approximately \$7.386, \$0.467
9 lower than the price quoted to DGS, and the market price for calendar year 2009 was
10 approximately \$7.847, \$0.377 lower than the price quoted to DGS.

11 95. On March 23, 2012, after Nancy Moon had requested access to prices in an online
12 “portal” so she could see market details, Ben Go wrote Jason Tate, in pertinent part, “But before
13 you turn it on, lets talk first. Why is she asking this? What is it for? How might this be used?
14 Can it hurt us? . . . We need to agree to how much margin that you want them to have in the
15 account, etc. . . . Has she been talking to Schroen?”

16 **V. FALSE CLAIMS ACT FACTS**

17 **A. The California False Claims Act**

18 96. In pertinent part, the False Claims Act provides for the award of treble damages and civil
19 penalties for, among other acts, (i) knowingly presenting or causing to be presented a false or
20 fraudulent claim for payment or approval to the state; (ii) knowingly making, using, or causing to be
21 made or used a false record or statement material to a false or fraudulent claim; and, (iii) benefiting
22 from the inadvertent submission of a false claim and then failing to disclose the false claim to the state
23 within a reasonable time after discovering the false claim.

24 **B. Claims, Records, and Statements**

25 97. The false or fraudulent “claims” in this case are the hundreds of invoices Defendants
26 sent DGS, and all the invoices DGS in turn sent to NGS program participants, that included
27 charges for Special Pricing volumes at prices above the price cap. The invoices were presented to
28 officers, employees, or agents of the state and the state’s political subdivisions.

1 98. The false or fraudulent “records or statements” include Defendants’ excessive quotes
2 for Special Pricing volumes, the Transaction Confirmations for Special Pricing volumes priced in
3 excess of the cap, and Defendants’ invoices to DGS.

4 **1. Falsity and Fraud**

5 99. By their acts and omissions described above, Defendants misrepresented the state was
6 getting what it had bargained for, misrepresented what market prices were, misrepresented the
7 amounts above the market price they were quoting and charging, misrepresented their intent to
8 comply with the price caps, misrepresented their compliance with the price caps, and concealed
9 their false and fraudulent acts.

10 **2. Knowledge**

11 100. As used herein, the term “knew” refers to having actual knowledge of information,
12 acting in deliberate ignorance of information, or acting in reckless disregard of information.

13 101. Defendants knew of the price caps.

14 102. Defendants knew they were quoting and charging prices in excess of the price caps.

15 103. Defendants knew they were quoting and charging prices without regard for the price
16 caps.

17 104. Defendants knew the claims, records, and statements at issue in this case involved the
18 payment, or related to the payment of, state and political subdivision funds.

19 **3. Damages**

20 105. For every month, or nearly every month, since April 2003, Defendants have sent an
21 invoice to DGS that includes charges for Special Pricing volumes at prices above the cap, and
22 have caused DGS to pass these charges on to the applicable California political subdivisions.

23 106. The state and political subdivisions have paid higher prices for natural gas than they
24 would have and should have but for Defendants’ acts complained of herein.

25 107. Damages include all amounts paid by the state and its political subdivisions for
26 Special Pricing volumes in excess of \$0.15 per MMBtu above the market price, including
27 amounts that should have been, but were not, credited by Defendants.

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1 108. Damages are continuing to accrue as Defendants issue invoices containing
2 overcharges.

3 109. The foregoing description of the People's damages is not intended to be exclusive.
4 The People may have sustained other or additional damages because of Defendants' acts as well.

5 **FIRST CAUSE OF ACTION**
6 **VIOLATIONS OF THE FALSE CLAIMS ACT**
7 **BY PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA**
8 **AGAINST ALL DEFENDANTS**
9 **(Government Code, § 12651, subd. (a)(1))**

10 110. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 109
11 of this complaint.

12 111. This is a claim for treble damages, civil penalties, and costs brought by the People
13 under the False Claims Act, Government Code sections 12650-12656.

14 112. Defendants knowingly presented or caused to be presented to officers or employees
15 of the state and political subdivisions thereof, false claims for payment or approval, in violation of
16 the False Claims Act.

17 113. Defendants knowingly presented or caused to be presented false or fraudulent claims
18 for payment or approval involving state and political subdivision funds, in violation of the False
19 Claims Act.

20 114. Defendants' false or fraudulent claims had the natural tendency to influence agency
21 action or were capable of influencing agency action.

22 115. The state and political subdivisions sustained damages because of Defendants' acts,
23 in amounts to be proved at trial.

24 **SECOND CAUSE OF ACTION**
25 **VIOLATIONS OF THE FALSE CLAIMS ACT**
26 **BY PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA**
27 **AGAINST ALL DEFENDANTS**
28 **(Government Code, § 12651, subd. (a)(2))**

116. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 115
of this complaint.

117. This is a claim for treble damages, civil penalties, and costs brought by the People
under the False Claims Act, Government Code sections 12650-12656.

1 118. Defendants knowingly made, used, or caused to be made or used false records or
2 statements to get false claims paid or approved by the state and political subdivisions, in violation
3 of the False Claims Act.

4 119. Defendants knowingly made, used, or caused to be made or used false records or
5 statements material to false or fraudulent claims involving state and political subdivision funds, in
6 violation of the False Claims Act.

7 120. Defendants' false records or statements had the natural tendency to influence, or were
8 capable of influencing, the payment or receipt of money, property, or services.

9 121. The state and political subdivisions sustained damages because of Defendants' acts,
10 in amounts to be proved at trial.

11 **THIRD CAUSE OF ACTION**
12 **VIOLATIONS OF THE FALSE CLAIMS ACT**
13 **BY PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA**
14 **AGAINST ALL DEFENDANTS**
15 **(Government Code, § 12651, subd. (a)(8))**

16 122. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 121
17 of this complaint.

18 123. This is a claim for treble damages, civil penalties, and costs brought by the People
19 under the False Claims Act, Government Code sections 12650-12656.

20 124. Defendants were the beneficiaries of inadvertent submissions of false claims,
21 subsequently discovered the falsity of the claims, and failed to disclose the false claims to the
22 state and political subdivisions within a reasonable time after discovery of the false claims.

23 125. To the extent any of Defendants' complained of acts were inadvertent at the time
24 committed, Defendants subsequently discovered they had quoted and charged prices in excess of
25 the market price plus \$0.15 per MMBtu, and failed to disclose the facts to the state or political
26 subdivisions within a reasonable time of such discovery.

27 126. Defendants' false or fraudulent claims had the natural tendency to influence agency
28 action or were capable of influencing agency action.

127. The state and political subdivisions sustained damages because of Defendants' acts,
in amounts to be proved at trial.

1 **FOURTH CAUSE OF ACTION**
2 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
3 **BY PLAINTIFF THE PEOPLE OF THE STATE OF CALIFORNIA**
4 **AGAINST ALL DEFENDANTS**
5 **(Business and Professions Code, § 17200)**

6 128. Plaintiff incorporates herein by reference the allegations in paragraphs 1 through 127
7 of this complaint.

8 129. This is a claim for restitution, other injunctive relief, and civil penalties, brought by
9 the People under the Unfair Competition Law, Business and Professions Code sections 17200-
10 17210.

11 130. Defendants have engaged in, and continue to engage in, unlawful, fraudulent, or
12 unfair acts or practices in the conduct of a business, which acts or practices constitute unfair
13 competition, as that term is defined in Business and Professions Code section 17200. Such acts
14 or practices include, but are not limited to, the following.

- 15 a. Defendants' violations of the False Claims Act, as alleged in the First, Second,
16 and Third Causes of Action above;
- 17 b. Defendants' unlawful, fraudulent, or unfair acts or practices in quoting and
18 charging excessive prices for Special Pricing volumes, as alleged; and,
- 19 c. Defendants' unlawful, fraudulent, or unfair acts or practices in bidding on and
20 entering into the DGS contracts without the intention to comply with the price
21 caps, as alleged.

22 131. Defendants' acts complained of herein had a tendency to deceive, and did deceive,
23 DGS and its customers.

24 132. Defendants' conduct has been a continuing violation of the Unfair Competition Law,
25 commencing in or about April 2003 and continuing to within four years of the commencement of
26 this action. Plaintiff did not discover the UCL claims until after the Attorney General received a
27 copy of the original complaint in this action on July 5, 2012 and began investigating the
28 complaint's allegations. Prior to that time, Plaintiff was not aware of any facts to put Plaintiff on
any type of notice of the claims. To the extent relevant, if at all, DGS did not discover the facts
relating to the UCL claims until after July 5, 2012 either. Prior to that time, DGS reasonably

1 relied on the contractual provision that prohibited Defendants from quoting prices for Special
2 Pricing volumes that are more than \$0.15 per MMBtu above the market price. Moreover, by
3 Defendants' acts alleged above, Defendants fraudulently concealed the existence of the UCL
4 claims.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, the People, pray for relief against all Defendants as follows:

- 7 A. Pursuant to Government Code section 12651, subdivision (a), three times the
8 amount of damages the state and political subdivisions have sustained because of
9 Defendants' acts in violation of the False Claims Act, in an amount to be
10 determined at trial;
- 11 B. Pursuant to Government Code section 12651, subdivision (a), the maximum
12 allowed civil penalty for each violation of the False Claims Act, in an amount to
13 be determined at trial;
- 14 C. Pursuant to Government Code section 12651, subdivision (a), and all other
15 applicable provisions of law, the costs of this action;
- 16 D. That the Court make such orders or judgments as may be necessary to restore to
17 any person in interest any money or property, real or personal, which may have
18 been acquired by means of unfair competition, as defined in the Unfair
19 Competition Law, under the authority of Business and Professions Code section
20 17203.
- 21 E. Pursuant to Business and Professions Code section 17203, that Defendants, and
22 each of them, be enjoined from engaging in violations of the Unfair Competition
23 Law, including without limitation the unfair, unlawful, and deceptive practices
24 alleged herein;
- 25 F. Pursuant to Business and Professions Code section 17206, the maximum civil
26 penalty for each violation of the Unfair Competition Law;
- 27 G. Prejudgment and postjudgment interest; and,
- 28 H. Such further additional relief as the Court deems proper.

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Dated: January 7, 2015

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
JACQUELINE S. DALE
Supervising Deputy Attorney General

/ s / Kenneth J. Sugarman

KENNETH J. SUGARMAN
Deputy Attorney General
*Attorneys for the People of the State of
California*

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JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: January 7, 2015

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California
JACQUELINE S. DALE
Supervising Deputy Attorney General

/ s / Kenneth J. Sugarman

KENNETH J. SUGARMAN
Deputy Attorney General
*Attorneys for the People of the State of
California*