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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 SHELBY PHILLIPS, III, KATHERINE
14 A. PHILLIPS, MANUEL PASTRAN,
15 ODIN A. HOLLIN and ELLEN J.
16 HOLLIN as trustees of the HOLLIN
17 LIVING TRUST, SOMAR LEASING,
18 LLC, and CHARLES SERRANO and
19 BARBARA SLOAN as trustees of the
20 CHARLES SERRANO AND
21 BARBARA SLOAN 2012
22 REVOCABLE TRUST, on behalf of
23 themselves and all others similarly
24 situated,

25 Plaintiffs,

26 v.

27 UNION PACIFIC RAILROAD
28 COMPANY, successor to SOUTHERN
PACIFIC TRANSPORTATION
COMPANY; SFPP, L.P., previously
known as SANTA FE PACIFIC
PIPELINES, INC., previously known as
SOUTHERN PACIFIC PIPELINES,
INC.; KINDER MORGAN
OPERATING L.P. "D"; and KINDER
MORGAN G.P., INC.,

Defendants.

CASE NO. 8:15-CV-00718-JVS-DFM

**FIRST AMENDED CLASS
ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiffs Shelby Phillips, III, Katherine A. Phillips, Manuel Pastran, Odin
2 A. Hollin and Ellen J. Hollin as trustees of the Hollin Living Trust, Somar Leasing,
3 LLC, and Charles Serrano and Barbara Sloan as trustees of the Charles Serrano
4 and Barbara Sloan 2012 Revocable Trust, individually and on behalf of the classes
5 of similarly situated persons defined below, allege the following against Union
6 Pacific Railroad Company, successor to Southern Pacific Transportation Company
7 (the “Railroad”) and SFPP, L.P. (previously known as Santa Fe Pacific Pipelines,
8 Inc., which was previously known as Southern Pacific Pipelines, Inc.), Kinder
9 Morgan Operating L.P. “D”, and Kinder Morgan G.P., Inc. (collectively, the
10 “Pipeline”) (the Pipeline and Railroad collectively are referred to herein as
11 “Defendants”), based on personal knowledge with respect to themselves and on
12 information and belief derived from, among other things, investigation of counsel
13 and review of public documents as to all other matters.

14 **I. JURISDICTION AND VENUE**

15 1. This Court has jurisdiction over this case under 28 U.S.C. §
16 1332(d)(2)(A). This case is a class action, as defined by 28 U.S.C. §
17 1332(d)(1)(B), and the amount in controversy exceeds \$5,000,000, exclusive of
18 interest and costs. Plaintiffs, as more particularly set forth below, are citizens of
19 California, Oregon, Arizona, and New Mexico, and Defendants, as more
20 particularly set forth below, are citizens of Delaware, Texas, California, and
21 Nebraska.

22 2. This Court has personal jurisdiction over Defendant SFPP, L.P.
23 because SFPP, L.P. maintains its principal place of business in the city of Orange
24 in Orange County, California. This Court has personal jurisdiction over
25 Defendants SFPP, L.P., Kinder Morgan Operating L.P. “D”, and Kinder Morgan
26 G.P., Inc. because they purposefully avail themselves of the benefits of doing
27 business in the state of California by maintaining a pipeline throughout California,
28

1 including in this District. Additionally, this Court has personal jurisdiction over
2 Defendant Union Pacific Railroad Company because it purposefully avails itself of
3 the benefits of doing business in the state of California by maintaining a railroad
4 throughout California, including in this District.

5 3. Venue is proper in this District under 28 U.S.C. § 1391(b)(1) and (2)
6 because Defendant SFPP, L.P. resides in this District and a substantial part of the
7 events giving rise to the claims Plaintiffs and the classes assert in this lawsuit
8 occurred in this District.

9 **II. NATURE OF THE ACTION**

10 4. In the mid-19th Century, in a series of sweeping land grants, the
11 United States federal government granted railroads land to build and operate
12 transcontinental railroads. The initial congressional land grant was in 1862
13 (Railroad Act of 1862, Ch. 120, § 3, 12 Stat. 489), and subsequent congressional
14 land grants were passed in 1864 (Act of July 2, 1864, Ch. 216, §§ 1-22, 13 Stat.
15 356), in 1866 (30 U.S.C. § 21) (collectively, “Pre-1871 Acts”), and in 1875
16 (General Rights-of-Way Act of 1875, 18 Stat. 482, 43 U.S.C. § 934 et. seq.)
17 (“1875 Act”) (the Pre-1871 Acts and the 1875 Act collectively are referred to
18 herein as “Congressional Acts”).

19 5. Nearly all of the Railroad’s land was obtained by and through one of
20 the Congressional Acts that either restricted the Railroad’s use of the subsurface
21 for railroad purposes only or merely granted the Railroad a surface easement. Said
22 differently, under the Congressional Acts, the Railroad was not granted rights to
23 the subsurface under its right-of-ways.¹ Today, the Railroad’s lines cover 32,000
24 miles of track spanning 23 states in the western two-thirds of the United States.²

26 ¹ There are a few very limited exceptions where a railroad company, under the Pre-
27 1871 Acts, could use the subsurface for railroad purposes, such as for timber, coal,
28 and iron. *See* Pacific Railroad Act of 1862, ch. 120, § 3, 12 Stat. 489; Act of July

1 6. Despite having no right to do so, in the mid-1950s, the Railroad
2 granted purported easements to the Pipeline in the subsurface underlying the
3 Railroad’s right-of-way in order for the Pipeline to convey its oil, gas, and other
4 petroleum products across the western United States. Initially, when the Railroad
5 and Pipeline entered into master agreements in 1955 and 1956 wherein the
6 Railroad rented portions of the subsurface under its right-of-way to the Pipeline,
7 they were under the same corporate umbrella.

8 7. In the late 1980s—30 years after the initial alleged easements were
9 granted by the Railroad to the Pipeline—their parent company merged with
10 another company. The Railroad was divested, and the companies were no longer
11 sisters. Soon thereafter, disputes arose between the Railroad and the Pipeline
12 regarding the calculation of rent for the use of the land beneath the Railroad’s
13 right-of-way.

14 8. Various lawsuits were filed between the Railroad and Pipeline
15 regarding the fair market value of the rent the Railroad could charge the Pipeline
16 for the use of the subsurface.

17 9. On November 5, 2014, the 2nd District Court of Appeal of California
18 determined the Railroad did not acquire sufficient property interests from the
19 Congressional Acts to rent the subsurface to the Pipeline.³ In other words, the
20 Railroad was attempting to collect rent for the use of property owned by others—
21 either private third parties or the federal government (or its grantees).

22
23
24 2, 1864, ch. 216, § 1-22, 13 Stat. 356. However, none of those exceptions are
25 applicable to this matter.

26 ² <http://www.uprr.com/customers/shipping/where-can-i-ship.shtml> (last visited
27 April 22, 2015).

28 ³ See *Union Pac. R.R. Co. v. Santa Fe Pac. Pipelines, Inc.*, 231 Cal. App. 4th 134,
180 Cal. Rptr. 3d 173 (2014), *reh’g denied* (Dec. 5, 2014), *review denied* (Jan. 21,
2015).

1 10. This case involves approximately 1,871 miles of pipeline owned and
2 operated by the Pipeline and running through California, Arizona, Nevada, New
3 Mexico, Texas, and Oregon underneath the Railroad's right-of-way. Plaintiffs and
4 the classes of landowners they seek to represent are the owners of the property the
5 Railroad has purportedly been renting to the Pipeline.

6 11. The segments of the pipeline at issue can be approximately located by
7 comparing Kinder Morgan's System map⁴ with Union Pacific's System map⁵.
8 These maps are attached hereto as Exhibits A and B. The extent of overlap
9 between these maps (within California, Arizona, Nevada, New Mexico, Texas, and
10 Oregon) reveals the approximate location of the alleged easements the Railroad
11 granted to the Pipeline. Generally, the pipeline follows the railroad tracks from
12 approximately Portland, Oregon to Eugene, Oregon; San Francisco, California to
13 Fresno, California; Los Angeles, California to Las Vegas, Nevada; Los Angeles,
14 California to Phoenix, Arizona; and Phoenix, Arizona to El Paso, Texas.

15 12. Significantly, neither the Railroad nor the Pipeline obtained an
16 easement or other property rights from Plaintiffs and the classes to lay the pipeline.
17 Moreover, neither the Railroad nor the Pipeline have remitted to Plaintiffs and the
18 class members any of the rent payments collected or profits reaped for the use of
19 the property owned by Plaintiffs and the class members.

20 13. Due to Defendants' unlawful conduct, Plaintiffs, on behalf of
21 themselves and others, bring this lawsuit to recover damages, punitive damages,
22 restitution, and pre- and post-judgment interest, and request declarations that they
23 are the true owners of the property underneath the Railroad's right-of-way and that
24

25 _____
26 ⁴ http://www.kindermorgan.com/pages/asset_map/default.aspx (last visited May 5,
2015).

27 ⁵ https://www.up.com/aboutup/reference/maps/system_map/index.htm (last visited
28 May 5, 2015).

1 Defendants are not entitled to profit or collect rent from Plaintiffs' and class
2 members' land.

3 **III. PARTIES**

4 14. Plaintiffs Odin A. Hollin and Ellen J. Hollin, trustees of the Hollin
5 Living Trust, are citizens and residents of Marion County, Oregon. The Hollin
6 Living Trust is the fee owner of land in Marion County, Oregon identified as tax
7 parcel nos. 062W17C01000 and 062W2001300, through which Defendant Pipeline
8 installed and is operating a pipeline based on purported easements from Defendant
9 Railroad.

10 15. Plaintiffs Charles Serrano and Barbara Sloan, trustees of the Charles
11 Serrano and Barbara Sloan 2012 Revocable Trust, are citizens and residents of
12 Placer County, California. The Charles Serrano and Barbara Sloan 2012
13 Revocable Trust is the fee owner of land in Placer County, California identified as
14 tax parcel no. 062-251-017-510, through which Defendant Pipeline installed and is
15 operating a pipeline based on purported easements from Defendant Railroad.

16 16. Plaintiff Somar Leasing, LLC is an Arizona limited liability
17 corporation with its principal place of business in Avondale, Arizona. Plaintiff
18 Somar Leasing, LLC is the fee owner of land in Maricopa County, Arizona
19 identified as tax parcel no. 500-45-005D, through which Defendant Pipeline
20 installed and is operating a pipeline based on purported easements from Defendant
21 Railroad.

22 17. Plaintiffs Shelby Phillips, III and Katherine A. Phillips are citizens
23 and residents of Luna County, New Mexico. Plaintiffs Shelby Phillips, III and
24 Katherine A. Phillips are the fee owners of land in Luna County, New Mexico
25 identified as tax parcel nos. 3063139392394 and 3063139129396, through which
26 Defendant Pipeline installed and is operating a pipeline based on purported
27 easements from Defendant Railroad.

1 18. Plaintiff Manuel Pastran is a citizen and resident of Luna County,
2 New Mexico. Plaintiff Manuel Pastran is the fee owner of land in Luna County,
3 New Mexico identified as tax parcel no. 3053138197019, through which
4 Defendant Pipeline installed and is operating a pipeline based on purported
5 easements from Defendant Railroad.

6 19. Defendant Union Pacific Railroad Company, successor to Southern
7 Pacific Transportation Company, is a Delaware corporation with its principal place
8 of business in Nebraska (the "Railroad").

9 20. Defendant SFPP, L.P. is a Delaware limited partnership with its
10 principal place of business in the city of Orange in Orange County, California.
11 Defendant SFPP, LP acquired Santa Fe Pacific Pipelines, Inc., previously known
12 as Southern Pacific Pipelines, Inc. Defendant SFPP, L.P. is a subsidiary of Kinder
13 Morgan Energy Partners L.P., which is a subsidiary of Kinder Morgan, Inc.

14 21. Defendant Kinder Morgan Operating L.P. "D" is a Delaware limited
15 partnership with its principal place of business in Texas. Defendant Kinder
16 Morgan Operating L.P. "D" is also a subsidiary of Kinder Morgan, Inc.

17 22. Defendant Kinder Morgan G.P., Inc. is a Delaware corporation with
18 its principal place of business in Texas. Similarly, Defendant Kinder Morgan G.P.,
19 Inc. is a subsidiary of Kinder Morgan, Inc.

20 23. Defendants SFPP, L.P., Kinder Morgan Operating L.P. "D", and
21 Kinder Morgan G.P., Inc. are collectively referred to herein as the "Pipeline."

22 **IV. FACTUAL BACKGROUND**

23 **Historical Context of the Railroad's Right-of-Way**

24 24. As America spread west in the first half of the 19th century, its
25 frontier expanded from the Mississippi River to the coast of California and the
26 Oregon Territory. Access to the great expanses of the prairies and mountains, as
27 well as to the states and territories on the Pacific Coast, was necessary.

1 25. Beginning in approximately 1850, Congress embarked upon a policy
2 of subsidizing railroad construction by paying for it with “lavish grants from the
3 public domain.”⁶ With the onset of the Civil War, the need for a transcontinental
4 railroad took on particular urgency, and the ability to reach the west coast over
5 land was considered a military necessity.

6 26. President Abraham Lincoln signed the Pacific Railroad Act on July 1,
7 1862, and subsequent acts were signed by him and his successors. These initial
8 Pre-1871 Acts granted vast areas of land to several transcontinental railroads,
9 encouraging them to build tracks across the nation.

10 27. After the Civil War, Congress passed the General Right-of-Way Act
11 of 1875. Like the earlier acts in the 1860s, this legislation provided the railroads
12 with a right-of-way through public lands for the construction of a railroad;
13 however, now Congress made it clear that it was providing the railroads with
14 “mere easements” over the land on which they could lay their tracks and run their
15 trains.⁷ The railroads were given no fee interest in the property itself; rather, title
16 remained in the federal government.

17 28. Moreover, the Railroad’s use and occupation of the surface of the land
18 created no right of possession in the subsurface.

19 29. Much of the Railroad’s track in the western part of the United States
20 was acquired through the Congressional Acts.

21 30. As the need for rail service diminished, railroads sold, abandoned, or
22 discontinued their use of their tracks. Around the same time, pipelines appeared on
23 the scene, carrying oil, gas, coal slurry, and other fuels.

24 31. Over time, disputes over the rights of railroads, landowners, and the
25 government arose, resulting in numerous federal and state lawsuits and appellate
26

27 ⁶ *Great Northern Ry. Co. v. United States*, 315 U.S. 262, 273 (1942).

28 ⁷ *Great Northern*, 315 U.S. at 271.

1 decisions, as well as several landmark opinions from the United States Supreme
2 Court.

3 **The Railroad Leased, But Did Not Own the Subsurface of Its Right-of-Way**

4 32. In the mid-1950's, the Railroad and the Pipeline were sister
5 subsidiaries of Southern Pacific Corporation. The Railroad possessed a valuable
6 transportation corridor along the right-of-way granted to it initially by the
7 Congressional Acts. The Pipeline wished to obtain a longitudinal easement
8 through which to run its pipelines, which carried petroleum products.

9 33. Although serious doubts existed as to the Railroad's rights to the
10 subsurface beneath its right-of-way, the two sister companies entered into master
11 agreements in 1955 and 1956 wherein the Railroad rented portions of the
12 subsurface under its right-of-way to the Pipeline.

13 34. The sister companies chose to proceed under this arrangement despite
14 the United States Supreme Court's decision, in 1942, holding that railroads merely
15 had an easement over the surface of the land, and that title to the subsurface
16 remained in the federal government (or its grantee, if any) under the 1875 Act.⁸

17 35. Furthermore, in 1957, the United States Supreme Court clarified that
18 under the Pre-1871 Acts a railroad was only entitled to full use of the surface of the
19 land, and could only use the subsurface "for railroad purposes."⁹ The Pre-1871
20 Acts prohibited railroads from extracting minerals from the subsurface, because
21 such action was not considered a railroad purpose. Thus, the Congressional Acts
22 severely limited railroads' use of the subsurface underneath their rights-of-way.

23 36. Recognizing the limitations of the land grants under the Congressional
24 Acts, on several occasions, counsel for the Railroad questioned whether it had
25 sufficient property rights to grant easements to the Pipeline.

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27 ⁸ *Great Northern Ry. Co.*, 315 U.S. at 275.

28 ⁹ *United States v. Union Pacific R. Co.*, 353 U.S. 112, 114-15 & n. 1 (1957).

1 37. Despite acknowledging the ramifications of attempting to give away
2 property rights it did not own, the Railroad decided to continue to grant purported
3 easements to the Pipeline.

4 38. By 2005, the Pipeline owned approximately 1,871 miles of pipeline
5 running through California, Arizona, Nevada, New Mexico, Texas, and Oregon
6 underneath the Railroad's right-of-way.

7 39. In 1983, the parent company of the Railroad and Pipeline announced a
8 merger with Santa Fe Railroad, which eventually led to the Railroad being sold to a
9 third party. Because the Railroad and Pipeline were no longer sister companies
10 and up to that point the rental agreement was not negotiated at arm's length, in
11 1991, the Railroad sued the Pipeline seeking higher rent payments for the use of
12 the subsurface below the Railroad's right-of-way.

13 40. The 1991 lawsuit eventually settled with the Pipeline paying over \$5.5
14 million in return for the Railroad's dismissal of its claims. The settlement
15 agreement provided that the Railroad could seek an increase in rent to fair market
16 value every ten years following January 1, 1994. In July 1994, the parties entered
17 into a new agreement reiterating that rent would be calculated at fair market value.

18 41. In August 1994, when the two companies could not reach an
19 agreement on the new rental amount, the Railroad filed suit to determine the fair
20 market value of the purported easements. Ultimately, judgment was entered that in
21 January 1994 the base rent for the Pipeline's use of the subsurface was
22 approximately \$5 million annually.

23 42. For the ten year period beginning in 2004, the Railroad and Pipeline
24 again could not agree on the amount of the annual increase in rent. The Railroad
25 again sued the Pipeline seeking another 10-year increase in rent to fair market
26 value of the alleged easements granted by the Railroad to the Pipeline.

1 43. After 250 trial days, the trial court issued a comprehensive 105-page
2 statement of decision and entered judgment that the base annual rent commencing
3 on January 1, 2004, was \$14,080,487. Because the trial court entered judgment on
4 May 30, 2012, the “back rent” due at the time of the judgment was \$81,589,584
5 and prejudgment interest payable by the Pipeline to the Railroad was
6 \$19,372,195.50.

7 44. The Pipeline appealed the trial court’s decision, questioning, among
8 other things, whether the Railroad had sufficient interest in the land beneath its
9 right-of-way to grant the alleged subsurface easements and collect rent for their
10 use.

11 45. The 2nd District Court of Appeal of California agreed with the
12 Pipeline and issued an opinion finding that, under the Congressional Acts, the
13 Railroad *did not* have a sufficient interest in the land to collect rent from the
14 Pipeline. The court explained that under the Pre-1871 Acts the Railroad could
15 only use the subsurface for railroad purposes—the pipeline was not for a railroad
16 purpose—and that under the 1875 Act the Railroad was granted a mere easement
17 of the surface and had no rights to the subsurface.

18 46. The opinion specifically noted that the Railroad, in some instances,
19 may have sought and collected rent for the use of property owned by others—
20 including private landowners.

21 **Without Permission, the Defendants Trespassed On and**
22 **Profited From Plaintiffs’ and Class Members’ Land**

23 47. Because the Railroad did not have property rights in the subsurface of
24 its right-of-way pursuant to the Congressional Acts, the alleged easement
25 agreements granted by it to the Pipeline were of no effect and did not convey any
26 interest to the Pipeline (unless the Railroad had interests in the land other than
27 from the Congressional Acts; however, only the Railroad’s interests derived from
28

1 the Congressional Acts are at issue in this matter). Therefore, the Railroad could
2 not convey land owned by Plaintiffs and members of the classes.

3 48. Plaintiffs and the members of the classes are fee owners of the real
4 property that runs adjacent to the railroad bed owned by the Railroad where the
5 pipeline was installed.

6 49. The Railroad and Pipeline did not obtain an easement or other right to
7 use the subsurface of Plaintiffs' or class members' land. Rather, the Pipeline,
8 without compensation or permission, used the Plaintiffs' and class members'
9 subsurface land by installing its pipeline on their property.

10 50. Upon information and belief, the Pipeline has benefitted substantially
11 from the use of the land of Plaintiffs and the members of the classes, because it
12 would have faced higher costs had it fairly negotiated an arms-length transaction
13 with Plaintiffs and the members of the classes.

14 51. Furthermore, the Railroad without reimbursing or otherwise
15 compensating the Plaintiff property owners, charged the Pipeline rent for the use of
16 Plaintiffs' and the classes' property. The Plaintiffs and members of the classes
17 have received no compensation for the unauthorized use of their land.

18 52. The Railroad's and Pipeline's wrongful actions are ongoing and
19 continuing, and have caused and continue to cause harm to Plaintiffs and members
20 of the classes.

21 53. Upon information and belief, the Railroad knowingly engaged in a
22 plan to unlawfully deprive Plaintiffs and the classes of their property rights by
23 granting to the Pipeline the alleged right to construct a pipeline within the
24 subsurface of the Railroad's right-of-way in excess of the Railroad's property
25 rights and without notice or compensation to Plaintiffs and the classes.

26 54. Upon information and belief, the Railroad and Pipeline knew the
27 Railroad lacked sufficient property rights under the Congressional Acts to convey
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1 easements of the subsurface to the Pipeline; however, the Pipeline deliberately
2 installed and maintained a pipeline through Plaintiffs' and the class members' land
3 without authority from the true owners or compensation to those owners, and the
4 Railroad deliberately collected rent for the use of lands it did not own.

5 55. Because the pipeline was installed and maintained underneath the
6 Railroad's right-of-way, Plaintiffs and the classes were unaware that the pipeline
7 encroached their subsurface property and could not have discovered the existence
8 of the pipeline through reasonable diligence. Even if Plaintiffs and the classes
9 were aware of the existence of the pipeline, they were not aware and could not
10 have discovered through reasonable diligence, that the pipeline was not being used
11 for legitimate railroad purposes.

12 56. Moreover, Plaintiffs and members of the classes were not aware, and
13 could not have discovered with reasonable diligence, that the Railroad was
14 collecting rent from the Pipeline for the use of Plaintiffs' and the classes'
15 subsurface land.

16 57. The earliest Plaintiffs and members of the classes could have learned
17 or suspected the Pipeline was trespassing on their land and the Railroad was
18 collecting rent was November 5, 2014, when the 2nd District Court of Appeal of
19 California issued an opinion explaining the Railroad did not have sufficient
20 property interests from the Congressional Acts to grant easements or charge rent
21 for the subsurface underneath its right-of-way.

22 58. Further, upon information and belief, the Railroad and Pipeline
23 misrepresented or concealed their actions from Plaintiffs and the classes with the
24 intent to deceive and induce them to refrain from demanding compensation for the
25 Railroad's and Pipeline's unauthorized commercial use of their lands and acted in
26 such a fashion as to indicate that they had the right to install and maintain a
27 pipeline or collect rent therefrom despite their knowledge that they had no such
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1 right. Plaintiffs and the classes justifiably relied on the Railroad or Pipeline to
2 inform them of the Railroad's and Pipeline's intent to unlawfully use and profit
3 from the use of Plaintiffs' and the classes' lands. As a result of the fraudulent
4 concealment of the trespass, Plaintiffs and the classes assert tolling of the
5 applicable statute of limitations affecting the causes of action by Plaintiffs and the
6 members of the class.

7 59. Because the Railroad and Pipeline are not the owners of the property
8 where the pipeline was laid, they have trespassed and been unjustly enriched for
9 over 50 years, and they continue to do so today. Due to the Railroad's and
10 Pipeline's actions, Plaintiffs, on behalf of themselves and others similarly situated,
11 are seeking to recover damages, punitive damages, restitution, and pre- and post-
12 judgment interest and a declaration that they are the true owners of the property
13 underneath the Railroad's right-of-way and that the Railroad and Pipeline cannot
14 profit or collect rent from the land owned by Plaintiffs and the class members.

15 **V. CLASS ACTION ALLEGATIONS**

16 60. Plaintiffs bring this lawsuit as a class action under Fed. R. Civ. P. 23
17 on behalf of themselves and the classes defined as follows:

18 (a) Plaintiffs seek certification of a national class ("Nationwide Class") defined as
19 follows:

20 All landowners who own land in fee adjacent to and underlying the
21 railroad easement under which the pipeline is located.

22 (b) Plaintiffs Odin A. Hollin and Ellen J. Hollin, as trustees of the Hollin Living
23 Trust ("Oregon Plaintiffs"), seek certification of an Oregon sub-class
24 ("Oregon Class") defined as follows:

25 All landowners who own land in fee adjacent to and underlying the
26 railroad easement under which the pipeline is located within the
27 State of Oregon.

1 (c) Plaintiffs Charles Serrano and Barbara Sloan, trustees of the Charles Serrano
2 and Barbara Sloan 2012 Revocable Trust (“California Plaintiffs”), seek
3 certification of a California sub-class (“California Class”) defined as follows:

4 All landowners who own land in fee adjacent to and underlying the
5 railroad easement under which the pipeline is located within the
6 State of California.

7 (d) Plaintiff Somar Leasing, LLC (“Somar Leasing”) seeks certification of an
8 Arizona sub-class (“Arizona Class”) defined as follows:

9 All landowners who own land in fee adjacent to and underlying the
10 railroad easement under which the pipeline is located within the
11 State of Arizona.

12 (e) Plaintiffs Shelby Phillips, III, Katherine A. Phillips, and Manuel Pastran
13 (“New Mexico Plaintiffs”) seek certification of a New Mexico sub-class
14 (“New Mexico Class”) defined as follows:

15 All landowners who own land in fee adjacent to and underlying the
16 railroad easement under which the pipeline is located within the
17 State of New Mexico.

18 61. Excluded from the proposed classes are Defendants, their parents,
19 subsidiaries, officers, directors, affiliates, legal representatives, heirs, predecessors,
20 successors, and assigns. Also excluded are the United States of America, any
21 railroad, and the judges and court personnel in this case and any members of their
22 immediate families.

23 62. **Numerosity.** Fed. R. Civ. P. 23(a)(1). The members of the classes
24 are so numerous that the joinder of all members is impracticable. While the exact
25 number of class members is unknown to Plaintiffs at this time, based on
26 information and belief, the classes contain thousands of members. These members
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1 can be identified by searching records of the Tax Assessor and Recorder of Deeds
2 in a county-by-county search in each state.

3 63. **Commonality.** Fed. R. Civ. P. 23(a)(2) and (b)(3). There are
4 questions of law and fact common to the classes, which predominate over any
5 questions affecting only individual class members. These common questions of
6 law and fact include, without limitation:

- 7 a. whether Defendant Railroad attempted to grant easements in the
8 subsurface of its right-of-way to Defendant Pipeline;
- 9 b. whether Defendant Railroad lacks sufficient property interests
10 in the subsurface of its right-of-way under the Congressional
11 Acts to convey property rights in the subsurface beneath its
12 right-of-way to Defendant Pipeline;
- 13 c. whether Defendants installed, maintained, leased, and operated
14 a pipeline underneath Defendant Railroad's right-of-way
15 without seeking and obtaining the consent of Plaintiffs and the
16 members of the classes;
- 17 d. whether Defendants knew or had reason to know that
18 Defendant Railroad did not contain a sufficient ownership
19 interest in the subsurface underneath its right-of-way to grant
20 easements or other property rights to Defendant Pipeline;
- 21 e. whether Defendants acted with malice and a reckless
22 indifference to the rights of Plaintiffs and the members of the
23 classes;
- 24 f. whether Defendants have profited or been unjustly enriched by
25 their collection of rents or profits derived from property owned
26 by Plaintiffs and members of the classes; and

1 g. whether Defendants are liable to Plaintiffs and the members of
2 the classes for actual damages, punitive damages, restitution,
3 pre-judgment and post-judgment interest, and costs.

4 64. **Typicality.** Fed. R. Civ. P. 23(a)(3). Plaintiffs' claims are typical of
5 those of other class members because Plaintiffs, like the proposed class members,
6 own land adjacent to and underlying Defendant Railroad's right-of-way on which
7 Defendant Pipeline installed, maintained, and/or operated a pipeline without the
8 consent of the landowner and without the payment of compensation to the
9 landowner.

10 65. **Adequacy of Representation.** Fed. R. Civ. P. 23(a)(4). Plaintiffs
11 will fairly and adequately represent and protect the interests of the members of the
12 classes. Plaintiffs' attorneys are competent and highly experienced in litigating
13 class actions and property rights claims.

14 66. **Superiority.** Fed. R. Civ. P. 23(b)(3). A class action is superior to
15 other available methods for the fair and efficient adjudication of this controversy
16 because joinder of all the members of the classes is impracticable. Furthermore,
17 the adjudication of this controversy through a class action will avoid the possibility
18 of inconsistent and potentially conflicting adjudication of the asserted claims.
19 There should be no difficulty in managing this action as a class action.

20 67. Class certification is also appropriate under Fed. R. Civ. P. 23(a) and
21 (b)(2) because Defendants have acted or have refused to act on grounds generally
22 applicable to the classes, so that corresponding declaratory relief is appropriate to
23 the classes as a whole.

24 68. Furthermore, class certification under Fed. R. Civ. P. 23(b)(1) is
25 proper because prosecuting separate actions by individual class members would
26 create a risk of inconsistent or varying adjudications with respect to individual
27 class members that would establish incompatible standards of conduct for the party
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1 opposing the classes or adjudications with respect to individual class members that,
2 as a practical matter, would be dispositive of the interests of the other members not
3 parties to the individual adjudications or would substantially impair or impede their
4 ability to protect their interests.

5 **VI. CAUSES OF ACTION**

6 **Count I – Declaratory Judgment**

7 **(On Behalf of the Nationwide and State Sub-Classes)**

8 69. Plaintiffs incorporate by reference all preceding paragraphs as if fully
9 set forth herein.

10 70. Plaintiffs bring this claim individually and on behalf the proposed
11 Nationwide, Oregon, California, Arizona, and New Mexico Classes against
12 Defendants.

13 71. An actual dispute and controversy exists concerning Defendant
14 Pipeline’s right to occupy, use, and profit from land owned by Plaintiffs and the
15 members of the Classes for purposes of operating and maintaining a pipeline,
16 without consent and without compensating Plaintiffs and the members of the
17 Classes for its unauthorized use and occupation.

18 72. Furthermore, an actual dispute and controversy exists concerning
19 Defendant Railroad’s right to grant easements and collect rent for the use of
20 Plaintiffs’ and Class members’ land, without consent and without compensating
21 Plaintiffs and the members of the Classes for Defendants’ unauthorized actions.

22 73. Pursuant to 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57,
23 Plaintiffs and the members of the Classes request a declaration that Defendants
24 have no legal right to exercise dominion and control over, or to use, land owned by
25 Plaintiffs and the members of the Classes or collect rent or profit from the use of
26 Plaintiffs’ and the Classes’ land.

Count II – Trespass

(On Behalf of the Nationwide Class)

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3 74. Plaintiffs incorporate by reference paragraphs 1-68 above as if fully
4 set forth herein.

5 75. Plaintiffs bring this claim individually and on behalf of the
6 Nationwide Class against Defendants.

7 76. Defendant Railroad did not acquire a fee interest in the subsurface
8 below its surface right-of-way. Moreover, Defendant Railroad did not have
9 sufficient property interests in the subsurface below its right-of-way to convey any
10 property interest.

11 77. Despite its lack of property interest in the subsurface below its right-
12 of-way, Defendant Railroad purported to grant easements to Defendant Pipeline for
13 the construction of a pipeline in the subsurface of its right-of-way.

14 78. Defendant Railroad knew, or had reason to know, that it did not have
15 the authority to grant easements across Plaintiffs’ and the Nationwide Class’s land.

16 79. Defendant Railroad’s claim that it possesses sufficient rights to grant
17 easements in the subsurface underlying its right-of-way and collect rent therefrom,
18 is an ongoing unauthorized invasion of Plaintiffs’ and the Nationwide Class’s fee
19 ownership of the land.

20 80. Additionally, Defendant Pipeline, by entering upon the land of
21 Plaintiffs and the Nationwide Class and installing, maintaining, and operating
22 thereon its pipeline, without permission or right, has committed continuing and
23 permanent trespasses on Plaintiffs’ and the Nationwide Class members’ land.

24 81. Further, Defendant Pipeline’s transmission of petroleum products
25 through its pipeline constitutes an ongoing invasion of the fee ownership of
26 Plaintiffs and the Nationwide Class.

1 82. Neither Defendant Pipeline nor its predecessors have secured any
2 easements or sought condemnation or obtained by any other means a lawful right
3 to enter the land of Plaintiffs and the members of the Nationwide Class to install,
4 maintain, and operate a pipeline.

5 83. Defendant Pipeline knew, or had reason to know, that Defendant
6 Railroad did not have the authority to grant Defendant Pipeline the legal right to
7 install, maintain, or use a pipeline on Plaintiffs' and the Nationwide Class's land.

8 84. Nonetheless, through concerted action, Defendants entered into
9 agreements providing for Defendant Pipeline's installation, maintenance, and use
10 of a pipeline on land belonging to Plaintiffs and the Nationwide Class, and further
11 providing for Defendant Pipeline to pay Defendant Railroad rent over a period of
12 years for the purported right to install, maintain, and use a pipeline on land
13 belonging to Plaintiffs and the Nationwide Class.

14 85. Defendants have acted with malice or have shown a reckless and
15 outrageous indifference to the highly unreasonable risk of harm they have caused
16 Plaintiffs and the Nationwide Class, and have acted with a conscious indifference
17 to the rights of Plaintiffs and the Nationwide Class.

18 86. As a direct and proximate result of Defendants' trespasses upon the
19 land of Plaintiffs and the Nationwide Class, Defendants have realized substantial
20 revenue and profits from the commercial occupation and use of their land, but have
21 failed to pay any rents, revenue, or profits to Plaintiffs and the Nationwide Class.

22 87. Additionally, as a direct and proximate result of Defendants' actions
23 and continuing trespass, Plaintiffs and the Nationwide Class members have been
24 damaged by deprivation of the value of their land, of their right to determine
25 possession and use of their land, and by the damage to their land.

26 88. Plaintiffs and the Nationwide Class members request a judgment
27 against Defendants for damages from Defendants' trespasses and for the
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1 diminution in value of their property, and punitive damages in an amount sufficient
2 to deter further intentional or reckless acts by Defendants, in an amount to be
3 proved at trial.

4 **Count III – Unjust Enrichment / Quasi Contract**
5 **(On Behalf of the Nationwide Class)**

6 89. Plaintiffs incorporate by reference paragraphs 1-68 above as if fully
7 set forth herein.

8 90. Plaintiffs bring this claim individually and on behalf of the
9 Nationwide Class against Defendants.

10 91. As a result of Defendant Railroad collecting rent from Defendant
11 Pipeline’s unlawful use and occupation of Plaintiffs’ and the Nationwide Class
12 members’ land, Plaintiffs and the Nationwide Class members have been deprived
13 of the rents properly arising from their ownership and control of their land.
14 Specifically, Defendant Railroad has collected millions of dollars in the form of
15 rents properly payable to Plaintiffs and Nationwide Class members for the
16 collection of rent from Defendant Pipeline’s unlawful commercial use and
17 occupation of Plaintiffs’ and the Nationwide Class members’ land.

18 92. Defendant Railroad acted intentionally to obtain large profits at the
19 expense of Plaintiffs and the Nationwide Class members.

20 93. Defendant Railroad has been unjustly enriched by its receipt and
21 retention of millions of dollars of rent properly payable to Plaintiffs and the
22 Nationwide Class members and, under the circumstances and in good conscience,
23 Defendant Railroad should not be allowed to retain such rents.

24 94. Also, Defendant Pipeline installed a pipeline within the property of
25 Plaintiffs and the Nationwide Class members without notice to them or paying for
26 its use of their land.

1 95. Defendant Pipeline has maintained its pipeline for over 50 years
2 without paying Plaintiffs and the Nationwide Class fair market value for the use of
3 their property. Instead, Defendant Pipeline has obtained savings and profits from
4 the use of the pipeline without compensating Plaintiffs and the Nationwide Class.

5 96. Defendant Pipeline has been unjustly enriched by not paying fair
6 market rent to Plaintiffs and the Nationwide Class and reaping profits from the use
7 of land owned by Plaintiffs and the Nationwide Class.

8 97. Plaintiffs and Nationwide Class members request a judgment
9 requiring Defendants to disgorge and pay to them all sums they have received that
10 are properly due and owing to Plaintiffs and the Nationwide Class members as
11 rents or other benefits received from their unauthorized use of Plaintiffs' and the
12 Nationwide Class members' land, as restitution for Defendants' unjust enrichment.

13 **Count IV – Quiet Title / Slander of Title / Ejectment**

14 **(On Behalf of the Nationwide Class)**

15 98. Plaintiffs incorporate by reference paragraphs 1-68 above as if fully
16 set forth herein.

17 99. Plaintiffs bring these claims individually and on behalf of the
18 Nationwide Class against Defendants.

19 100. As fee owners, Plaintiffs and the Nationwide Class hold title that is
20 superior to the purported easements and agreements between Defendants relating
21 to the subsurface underneath Defendant Railroad's right-of-way.

22 101. Defendants wrongfully possess Plaintiffs' and the Nationwide Class's
23 subsurface property by granting easements and installing and maintaining a
24 pipeline.

25 102. In agreements between Defendants and in publicly-filed or published
26 documents, Defendants have made false and unfounded statements indicating or
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1 suggesting that they possess a right of occupancy or use of property owned by
2 Plaintiffs and the Nationwide Class.

3 103. Defendants' statements concerning their alleged interest in the real
4 property of Plaintiffs and the Nationwide Class were made with knowledge of their
5 falsity or with reckless disregard for whether they were false.

6 104. As a result of Defendants' slander of title of Plaintiffs and the
7 Nationwide Class in the subsurface of Defendant Railroad's right-of-way,
8 Plaintiffs and the Nationwide Class have sustained damages in the form of loss of
9 use of their property, loss in marketable value of their property, and expenses
10 necessary to obtain a judicial declaration that the titles of Plaintiffs and the
11 Nationwide Class are free and clear of any interest or right of use, possession, or
12 occupancy by Defendants.

13 105. Plaintiffs and the Nationwide Class request a judgment in their favor
14 that their title to the property underneath Defendant Railroad's right-of-way is
15 superior to the purported claims of Defendants. Further, Plaintiffs and the
16 Nationwide Class request that this Court enter judgment for possession of the land
17 and that Plaintiffs and the Nationwide Class be awarded rents, profits, and other
18 damages, including punitive damages, associated with Defendants' unlawful use of
19 their property and the reasonable cost of repair or restoration of the property to its
20 original condition.

21 **Count V – Trespass**

22 **(On Behalf of the Oregon Class)**

23 106. The Oregon Plaintiffs incorporate paragraphs 1-68 above as if fully
24 set forth herein.

25 107. The Oregon Plaintiffs bring this claim individually and on behalf of
26 the Oregon Class against Defendants.

1 108. Defendant Railroad did not acquire a fee interest in the subsurface
2 below its surface right-of-way. Moreover, Defendant Railroad did not have
3 sufficient property interests in the subsurface below its right-of-way to convey any
4 property interest.

5 109. Despite its lack of property interest in the subsurface below its right-
6 of-way, Defendant Railroad purported to grant easements to Defendant Pipeline for
7 the construction of a pipeline in the subsurface of its right-of-way.

8 110. Defendant Railroad knew, or had reason to know, that it did not have
9 the authority to grant easements across the Oregon Plaintiffs' and the Oregon
10 Class's land.

11 111. Defendant Railroad's claim that it possesses sufficient rights to grant
12 easements in the subsurface underlying its right-of-way and collect rent therefrom,
13 is an ongoing unauthorized invasion of the Oregon Plaintiffs' and the Oregon
14 Class's fee ownership of the land.

15 112. Additionally, Defendant Pipeline, by entering upon the land of the
16 Oregon Plaintiffs and the Oregon Class and installing, maintaining, and operating
17 thereon its pipeline, without permission or right, has committed continuing and
18 permanent trespasses on the Oregon Plaintiffs' and the Oregon Class members'
19 land.

20 113. Further, Defendant Pipeline's transmission of petroleum products
21 through its pipeline constitutes an ongoing invasion of the fee ownership of the
22 Oregon Plaintiffs and the Oregon Class.

23 114. Neither Defendant Pipeline nor its predecessors have secured any
24 easements or sought condemnation or obtained by any other means a lawful right
25 to enter the land of the Oregon Plaintiffs and the members of the Oregon Class to
26 install, maintain, and operate a pipeline.

1 115. Defendant Pipeline knew, or had reason to know, that Defendant
2 Railroad did not have the authority to grant Defendant Pipeline the legal right to
3 install, maintain, or use a pipeline on the Oregon Plaintiffs' and the Oregon Class's
4 land.

5 116. Nonetheless, through concerted action, Defendants entered into
6 agreements providing for Defendant Pipeline's installation, maintenance, and use
7 of a pipeline on land belonging to the Oregon Plaintiffs and the Oregon Class, and
8 further providing for Defendant Pipeline to pay Defendant Railroad rent over a
9 period of years for the purported right to install, maintain, and use a pipeline on
10 land belonging to the Oregon Plaintiffs and the Oregon Class.

11 117. Defendants have acted with malice or have shown a reckless and
12 outrageous indifference to the highly unreasonable risk of harm they have caused
13 the Oregon Plaintiffs and the Oregon Class, and have acted with a conscious
14 indifference to the rights of Plaintiffs and the Oregon Class.

15 118. As a direct and proximate result of Defendants' trespasses upon the
16 land of the Oregon Plaintiffs and the Oregon Class, Defendants have realized
17 substantial revenue and profits from the commercial occupation and use of their
18 land, but have failed to pay any rents, revenue, or profits to the Oregon Plaintiffs
19 and the Oregon Class.

20 119. Additionally, as a direct and proximate result of Defendants' actions
21 and continuing trespass, the Oregon Plaintiffs and the Oregon Class members have
22 been damaged by deprivation of the value of their land, of their right to determine
23 possession and use of their land, and by the damage to their land.

24 120. The Oregon Plaintiffs and the Oregon Class members request a
25 judgment against Defendants for damages from Defendants' trespasses and for the
26 diminution in value of their property, and punitive damages in an amount sufficient
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1 to deter further intentional or reckless acts by Defendants, in an amount to be
2 proved at trial.

3 **Count VI – Unjust Enrichment**
4 **(On Behalf of the Oregon Class)**

5 121. The Oregon Plaintiffs incorporate paragraphs 1-68 above as if fully
6 set forth herein.

7 122. The Oregon Plaintiffs bring this claim individually and on behalf of
8 the Oregon Class against Defendants.

9 123. As a result of Defendant Railroad collecting rent from Defendant
10 Pipeline’s unlawful use and occupation of the Oregon Plaintiffs’ and the Oregon
11 Class members’ land, the Oregon Plaintiffs and the Oregon Class members have
12 been deprived of the rents properly arising from their ownership and control of
13 their land. Specifically, Defendant Railroad has collected millions of dollars in the
14 form of rents properly payable to the Oregon Plaintiffs and the Oregon Class
15 members for the collection of rent from Defendant Pipeline’s unlawful commercial
16 use and occupation of the Oregon Plaintiffs’ and the Oregon Class members’ land.

17 124. Defendant Railroad acted intentionally to obtain large profits at the
18 expense of the Oregon Plaintiffs and the Oregon Class members.

19 125. Defendant Railroad has been unjustly enriched by its receipt and
20 retention of millions of dollars of rent properly payable to the Oregon Plaintiffs
21 and the Oregon Class members and, under the circumstances and in good
22 conscience, Defendant Railroad should not be allowed to retain such rents.

23 126. Also, Defendant Pipeline installed a pipeline within the property of
24 the Oregon Plaintiffs and the Oregon Class members without notice to them or
25 paying for its use of their land.

26 127. Defendant Pipeline has maintained its pipeline for over 50 years
27 without paying the Oregon Plaintiffs and the Oregon Class fair market value for
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1 the use of their property. Instead, Defendant Pipeline has obtained savings and
2 profits from the use of the pipeline without compensating the Oregon Plaintiffs and
3 the Oregon Class.

4 128. Defendant Pipeline has been unjustly enriched by not paying fair
5 market rent to the Oregon Plaintiffs and the Oregon Class and reaping profits from
6 the use of land owned by the Oregon Plaintiffs and the Oregon Class.

7 129. The Oregon Plaintiffs and the Oregon Class members request a
8 judgment requiring Defendants to disgorge and pay to them all sums they have
9 received that are properly due and owing to the Oregon Plaintiffs and the Oregon
10 Class members as rents or other benefits received from their unauthorized use of
11 the Oregon Plaintiffs' and the Oregon Class members' land, as restitution for
12 Defendants' unjust enrichment.

13 **Count VII – Quiet Title / Slander of Title / Ejectment**

14 **(On Behalf of the Oregon Class)**

15 130. The Oregon Plaintiffs incorporate paragraphs 1-68 above as if fully
16 set forth herein.

17 131. The Oregon Plaintiffs bring these claims individually and on behalf of
18 the Oregon Class against Defendants.

19 132. As fee owners, the Oregon Plaintiffs and the Oregon Class hold title
20 that is superior to the purported easements and agreements between Defendants
21 relating to the subsurface underneath Defendant Railroad's right-of-way.

22 133. Defendants wrongfully possess the Oregon Plaintiffs' and the Oregon
23 Class's subsurface property by granting easements and installing and maintaining a
24 pipeline.

25 134. In agreements between Defendants and in publicly-filed or published
26 documents, Defendants have made false and unfounded statements indicating or
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1 suggesting that they possess a right of occupancy or use of property owned by the
2 Oregon Plaintiffs and the Oregon Class.

3 135. Defendants' statements concerning their alleged interest in the real
4 property of the Oregon Plaintiffs and the Oregon Class were made with knowledge
5 of their falsity or with reckless disregard for whether they were false.

6 136. As a result of Defendants' slander of title of the Oregon Plaintiffs and
7 the Oregon Class in the subsurface of Defendant Railroad's right-of-way, the
8 Oregon Plaintiffs and the Oregon Class have sustained damages in the form of loss
9 of use of their property, loss in marketable value of their property, and expenses
10 necessary to obtain a judicial declaration that the titles of the Oregon Plaintiffs and
11 the Oregon Class are free and clear of any interest or right of use, possession, or
12 occupancy by Defendants.

13 137. The Oregon Plaintiffs and the Oregon Class request a judgment in
14 their favor that their title to the property underneath Defendant Railroad's right-of-
15 way is superior to the purported claims of Defendants. Further, the Oregon
16 Plaintiffs and the Oregon Class request that this Court enter judgment for
17 possession of the land and that the Oregon Plaintiffs and the Oregon Class be
18 awarded rents, profits, and other damages, including punitive damages, associated
19 with Defendants' unlawful use of their property and the reasonable cost of repair or
20 restoration of the property to its original condition.

21 **Count VIII – Trespass**

22 **(On Behalf of the California Class)**

23 138. The California Plaintiffs incorporate paragraphs 1-68 above as if fully
24 set forth herein.

25 139. The California Plaintiffs bring this claim individually and on behalf of
26 the California Class against Defendants.

1 140. Defendant Railroad did not acquire a fee interest in the subsurface
2 below its surface right-of-way. Moreover, Defendant Railroad did not have
3 sufficient property interests in the subsurface below its right-of-way to convey any
4 property interest.

5 141. Despite its lack of property interest in the subsurface below its right-
6 of-way, Defendant Railroad purported to grant easements to Defendant Pipeline for
7 the construction of a pipeline in the subsurface of its right-of-way.

8 142. Defendant Railroad knew, or had reason to know, that it did not have
9 the authority to grant easements of the California Plaintiffs' and the California
10 Class's land.

11 143. Defendant Railroad's claim that it possesses sufficient rights to grant
12 easements in the subsurface underlying its right-of-way and collect rent therefrom,
13 is an ongoing unauthorized invasion of the California Plaintiffs' and the California
14 Class's fee ownership of the land.

15 144. Additionally, Defendant Pipeline, by entering upon the land of the
16 California Plaintiffs and the California Class and installing, maintaining, and
17 operating thereon its pipeline, without permission or right, has committed
18 continuing and permanent trespasses on the California Plaintiffs' and the
19 California Class members' land.

20 145. Further, Defendant Pipeline's transmission of petroleum products
21 through its pipeline constitutes an ongoing invasion of the fee ownership of the
22 California Plaintiffs and the California Class.

23 146. Neither Defendant Pipeline nor its predecessors have secured any
24 easements or sought condemnation or obtained by any other means a lawful right
25 to enter the land of the California Plaintiffs and the members of the California
26 Class to install, maintain, and operate a pipeline.

1 147. Defendant Pipeline knew, or had reason to know, that Defendant
2 Railroad did not have the authority to grant Defendant Pipeline the legal right to
3 install, maintain, or use a pipeline on the California Plaintiffs' and the California
4 Class's land.

5 148. Nonetheless, through concerted action, Defendants entered into
6 agreements providing for Defendant Pipeline's installation, maintenance, and use
7 of a pipeline on land belonging to the California Plaintiffs and the California Class,
8 and further providing for Defendant Pipeline to pay Defendant Railroad rent over a
9 period of years for the purported right to install, maintain, and use a pipeline on
10 land belonging to the California Plaintiffs and the California Class.

11 149. Defendants have acted with malice or have shown a reckless and
12 outrageous indifference to the highly unreasonable risk of harm they have caused
13 the California Plaintiffs and the California Class, and have acted with a conscious
14 indifference to the rights of Plaintiffs and the California Class.

15 150. As a direct and proximate result of Defendants' trespasses upon the
16 land of the California Plaintiffs and the California Class, Defendants have realized
17 substantial revenue and profits from the commercial occupation and use of their
18 land, but have failed to pay any rents, revenue, or profits to the California Plaintiffs
19 and the California Class.

20 151. Additionally, as a direct and proximate result of Defendants' actions
21 and continuing trespass, the California Plaintiffs and the California Class members
22 have been damaged by deprivation of the value of their land, of their right to
23 determine possession and use of their land, and by the damage to their land.

24 152. The California Plaintiffs and the California Class members request a
25 judgment against Defendants for damages from Defendants' trespasses and for the
26 diminution in value of their property, and punitive damages in an amount sufficient
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1 to deter further intentional or reckless acts by Defendants, in an amount to be
2 proved at trial.

3 **Count IX – Quasi Contract**
4 **(On Behalf of the California Class)**

5 153. The California Plaintiffs incorporate paragraphs 1-68 above as if fully
6 set forth herein.

7 154. The California Plaintiffs bring this claim individually and on behalf of
8 the California Class against Defendants.

9 155. As a result of Defendant Railroad collecting rent from Defendant
10 Pipeline’s unlawful use and occupation of the California Plaintiffs’ and the
11 California Class members’ land, the California Plaintiffs and the California Class
12 members have been deprived of the rents properly arising from their ownership
13 and control of their land. Specifically, Defendant Railroad has collected millions
14 of dollars in the form of rents properly payable to the California Plaintiffs and the
15 California Class members for the collection of rent from Defendant Pipeline’s
16 unlawful commercial use and occupation of the California Plaintiffs’ and the
17 California Class members’ land.

18 156. Defendant Railroad acted intentionally to obtain large profits at the
19 expense of the California Plaintiffs and the California Class members.

20 157. Defendant Railroad has been unjustly enriched by its receipt and
21 retention of millions of dollars of rent properly payable to the California Plaintiffs
22 and the California Class members and, under the circumstances and in good
23 conscience, Defendant Railroad should not be allowed to retain such rents.

24 158. Also, Defendant Pipeline installed a pipeline within the property of
25 the California Plaintiffs and the California Class members without notice to them
26 or paying for its use of their land.

1 171. The California Plaintiffs bring this claim individually and on behalf of
2 the California Class against Defendants.

3 172. Defendants' acts and practices, as alleged in this First Amended Class
4 Action Complaint, constitute unlawful and unfair business practices, in violation of
5 the Unfair Competition Law, Cal. Bus. & Prof. Code § 17200, *et seq.*

6 173. Defendants engaged in unfair and unlawful business acts and
7 practices, among other things, by trespassing on the property of the California
8 Plaintiffs and the members of the California Class and by unjustly profiting and
9 collecting rent from the property of the California Plaintiffs and the members of
10 the California Class without authority.

11 174. Defendants have received unlawful benefits from the California
12 Plaintiffs and the California Class; however, Defendants have not remitted any of
13 those benefits to the California Plaintiffs and the members of the California Class.

14 175. The California Plaintiffs and the members of the California Class
15 request that this Court award them restitution damages for the benefits and profits
16 that were unfairly or unlawfully obtained by Defendants, and reasonable attorneys'
17 fees, in an amount to be proved at trial.

18 **Count XII – Trespass**
19 **(On Behalf of the Arizona Class)**

20 176. Plaintiff Somar Leasing incorporates paragraphs 1-68 above as if fully
21 set forth herein.

22 177. Plaintiff Somar Leasing brings this claim individually and on behalf
23 of the Arizona Class against Defendants.

24 178. Defendant Railroad did not acquire a fee interest in the subsurface
25 below its surface right-of-way. Moreover, Defendant Railroad did not have
26 sufficient property interests in the subsurface below its right-of-way to convey any
27 property interest.

1 179. Despite its lack of property interest in the subsurface below its right-
2 of-way, Defendant Railroad purported to grant easements to Defendant Pipeline for
3 the construction of a pipeline in the subsurface of its right-of-way.

4 180. Defendant Railroad knew, or had reason to know, that it did not have
5 the authority to grant easements of Plaintiff Somar Leasing's and the Arizona
6 Class's land.

7 181. Defendant Railroad's claim that it possesses sufficient rights to grant
8 easements in the subsurface underlying its right-of-way and collect rent therefrom,
9 is an ongoing unauthorized invasion of Plaintiff Somar Leasing's and the Arizona
10 Class's fee ownership of the land.

11 182. Additionally, Defendant Pipeline, by entering upon the land of
12 Plaintiff Somar Leasing and the Arizona Class and installing, maintaining, and
13 operating thereon its pipeline, without permission or right, has committed
14 continuing and permanent trespasses on Plaintiff Somar Leasing's and the Arizona
15 Class members' land.

16 183. Further, Defendant Pipeline's transmission of petroleum products
17 through its pipeline constitutes an ongoing invasion of the fee ownership of
18 Plaintiff Somar Leasing and the Arizona Class.

19 184. Neither Defendant Pipeline nor its predecessors have secured any
20 easements or sought condemnation or obtained by any other means a lawful right
21 to enter the land of Plaintiff Somar Leasing and the members of the Arizona Class
22 to install, maintain, and operate a pipeline.

23 185. Defendant Pipeline knew, or had reason to know, that Defendant
24 Railroad did not have the authority to grant Defendant Pipeline the legal right to
25 install, maintain, or use a pipeline on Plaintiff Somar Leasing's and the Arizona
26 Class's land.

1 186. Nonetheless, through concerted action, Defendants entered into
2 agreements providing for Defendant Pipeline's installation, maintenance, and use
3 of a pipeline on land belonging to Plaintiff Somar Leasing and the Arizona Class,
4 and further providing for Defendant Pipeline to pay Defendant Railroad rent over a
5 period of years for the purported right to install, maintain, and use a pipeline on
6 land belonging to Plaintiff Somar Leasing and the Arizona Class.

7 187. Defendants have acted with malice or have shown a reckless and
8 outrageous indifference to the highly unreasonable risk of harm they have caused
9 Plaintiff Somar Leasing and the Arizona Class, and have acted with a conscious
10 indifference to the rights of Plaintiffs and the Arizona Class.

11 188. As a direct and proximate result of Defendants' trespasses upon the
12 land of Plaintiff Somar Leasing and the Arizona Class, Defendants have realized
13 substantial revenue and profits from the commercial occupation and use of their
14 land, but have failed to pay any rents, revenue, or profits to Plaintiff Somar
15 Leasing and the Arizona Class.

16 189. Additionally, as a direct and proximate result of Defendants' actions
17 and continuing trespass, Plaintiff Somar Leasing and the Arizona Class members
18 have been damaged by deprivation of the value of their land, of their right to
19 determine possession and use of their land, and by the damage to their land.

20 190. Plaintiff Somar Leasing and the Arizona Class members request a
21 judgment against Defendants for damages from Defendants' trespasses and for the
22 diminution in value of their property, and punitive damages in an amount sufficient
23 to deter further intentional or reckless acts by Defendants, in an amount to be
24 proved at trial.

Count XIII –Unjust Enrichment
(On Behalf of the Arizona Class)

191. Plaintiff Somar Leasing incorporates paragraphs 1-68 above as if fully set forth herein.

192. Plaintiff Somar Leasing brings this claim individually and on behalf of the Arizona Class against Defendants.

193. As a result of Defendant Railroad collecting rent from Defendant Pipeline’s unlawful use and occupation of Plaintiff Somar Leasing’s and the Arizona Class members’ land, Plaintiff Somar Leasing and the Arizona Class members have been deprived of the rents properly arising from their ownership and control of their land. Specifically, Defendant Railroad has collected millions of dollars in the form of rents properly payable to Plaintiff Somar Leasing and the Arizona Class members for the collection of rent from Defendant Pipeline’s unlawful commercial use and occupation of Plaintiff Somar Leasing’s and the Arizona Class members’ land.

194. Defendant Railroad acted intentionally to obtain large profits at the expense of Plaintiff Somar Leasing and the Arizona Class members.

195. Defendant Railroad has been unjustly enriched by its receipt and retention of millions of dollars of rent properly payable to Plaintiff Somar Leasing and the Arizona Class members and, under the circumstances and in good conscience, Defendant Railroad should not be allowed to retain such rents.

196. Also, Defendant Pipeline installed a pipeline within the property of Plaintiff Somar Leasing and the Arizona Class members without notice to them or paying for its use of their land.

197. Defendant Pipeline has maintained its pipeline for over 50 years without paying Plaintiff Somar Leasing and the Arizona Class fair market value for the use of their property. Instead, Defendant Pipeline, has obtained savings and

1 profits from the use of the pipeline without compensating Plaintiff Somar Leasing
2 and the Arizona Class.

3 198. Defendant Pipeline has been unjustly enriched by not paying fair
4 market rent to Plaintiff Somar Leasing and the Arizona Class and reaping profits
5 from the use of land owned by Plaintiff Somar Leasing and the Arizona Class.

6 199. Plaintiff Somar Leasing and the Arizona Class members request a
7 judgment requiring Defendants to disgorge and pay to them all sums they have
8 received that are properly due and owing to Plaintiff Somar Leasing and the
9 Arizona Class members as rents or other benefits received from their unauthorized
10 use of Plaintiff Somar Leasing's and the Arizona Class members' land, as
11 restitution for Defendants' unjust enrichment.

12 **Count XIV – Quiet Title / Slander of Title / Ejectment**
13 **(On Behalf of the Arizona Class)**

14 200. Plaintiff Somar Leasing incorporates paragraphs 1-68 above as if fully
15 set forth herein.

16 201. Plaintiff Somar Leasing brings these claims individually and on behalf
17 of the Arizona Class against Defendants.

18 202. As fee owners, Plaintiff Somar Leasing and the Arizona Class hold
19 title that is superior to the purported easements and agreements between
20 Defendants relating to the subsurface underneath Defendant Railroad's right-of-
21 way.

22 203. Defendants wrongfully possess Plaintiff Somar Leasing's and the
23 Arizona Class's subsurface property by granting easements and installing and
24 maintaining a pipeline.

25 204. In agreements between Defendants and in publicly-filed or published
26 documents, Defendants have made false and unfounded statements indicating or
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1 suggesting that they possess a right of occupancy or use of property owned by
2 Plaintiff Somar Leasing and the Arizona Class.

3 205. Defendants' statements concerning their alleged interest in the real
4 property of Plaintiff Somar Leasing and the Arizona Class were made with
5 knowledge of their falsity or with reckless disregard for whether they were false.

6 206. As a result of Defendants' slander of title of Plaintiff Somar Leasing
7 and the Arizona Class in the subsurface of Defendant Railroad's right-of-way,
8 Plaintiff Somar Leasing and the Arizona Class have sustained damages in the form
9 of loss of use of their property, loss in marketable value of their property, and
10 expenses necessary to obtain a judicial declaration that the titles of Plaintiff Somar
11 Leasing and the Arizona Class are free and clear of any interest or right of use,
12 possession, or occupancy by Defendants.

13 207. Plaintiff Somar Leasing and the Arizona Class request a judgment in
14 their favor that their title to the property underneath Defendant Railroad's right-of-
15 way is superior to the purported claims of Defendants. Further, Plaintiff Somar
16 Leasing and the Arizona Class request that this Court enter judgment for
17 possession of the land and that Plaintiff Somar Leasing and the Arizona Class be
18 awarded rents, profits, and other damages, including punitive damages, associated
19 with Defendants' unlawful use of their property and the reasonable cost of repair or
20 restoration of the property to its original condition.

21 **Count XV – Action to Recover Rents**

22 **(On Behalf of the Arizona Class)**

23 208. Plaintiff Somar Leasing incorporates paragraphs 1-68 above as if fully
24 set forth herein.

25 209. Plaintiff Somar Leasing brings these claims individually and on behalf
26 of the Arizona Class against Defendants.
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1 218. Defendant Railroad’s claim that it possesses sufficient rights to grant
2 easements in the subsurface underlying its right-of-way and collect rent therefrom,
3 is an ongoing unauthorized invasion of the New Mexico Plaintiffs’ and the New
4 Mexico Class’s fee ownership of the land.

5 219. Additionally, Defendant Pipeline, by entering upon the land of the
6 New Mexico Plaintiffs and the New Mexico Class and installing, maintaining, and
7 operating thereon its pipeline, without permission or right, has committed
8 continuing and permanent trespasses on the New Mexico Plaintiffs and the New
9 Mexico Class members’ land.

10 220. Further, Defendant Pipeline’s transmission of petroleum products
11 through its pipeline constitutes an ongoing invasion of the fee ownership of the
12 New Mexico Plaintiffs and the New Mexico Class.

13 221. Neither Defendant Pipeline nor its predecessors have secured any
14 easements or sought condemnation or obtained by any other means a lawful right
15 to enter the land of the New Mexico Plaintiffs and the members of the New
16 Mexico Class to install, maintain, and operate a pipeline.

17 222. Defendant Pipeline knew, or had reason to know, that Defendant
18 Railroad did not have the authority to grant Defendant Pipeline the legal right to
19 install, maintain, or use a pipeline on the New Mexico Plaintiffs’ and the New
20 Mexico Class’s land.

21 223. Nonetheless, through concerted action, Defendants entered into
22 agreements providing for Defendant Pipeline’s installation, maintenance, and use
23 of a pipeline on land belonging to the New Mexico Plaintiffs and the New Mexico
24 Class, and further providing for Defendant Pipeline to pay Defendant Railroad rent
25 over a period of years for the purported right to install, maintain, and use a pipeline
26 on land belonging to the New Mexico Plaintiffs and the New Mexico Class.

1 224. Defendants have acted with malice or have shown a reckless and
2 outrageous indifference to the highly unreasonable risk of harm they have caused
3 the New Mexico Plaintiffs and the New Mexico Class, and have acted with a
4 conscious indifference to the rights of Plaintiffs and the New Mexico Class.

5 225. As a direct and proximate result of Defendants’ trespasses upon the
6 land of the New Mexico Plaintiffs and the New Mexico Class, Defendants have
7 realized substantial revenue and profits from the commercial occupation and use of
8 their land, but have failed to pay any rents, revenue, or profits to the New Mexico
9 Plaintiffs and the New Mexico Class.

10 226. Additionally, as a direct and proximate result of Defendants’ actions
11 and continuing trespass, the New Mexico Plaintiffs and the New Mexico Class
12 members have been damaged by deprivation of the value of their land, of their
13 right to determine possession and use of their land, and by the damage to their
14 land.

15 227. The New Mexico Plaintiffs and the New Mexico Class members
16 request a judgment against Defendants for damages from Defendants’ trespasses
17 and for the diminution in value of their property, and punitive damages in an
18 amount sufficient to deter further intentional or reckless acts by Defendants, in an
19 amount to be proved at trial.

20 **Count XVII – Unjust Enrichment / Quasi Contract**
21 **(On Behalf of the New Mexico Class)**

22 228. The New Mexico Plaintiffs incorporate paragraphs 1-68 above as if
23 fully set forth herein.

24 229. The New Mexico Plaintiffs bring this claim individually and on behalf
25 of the New Mexico Class against Defendants.

26 230. As a result of Defendant Railroad collecting rent from Defendant
27 Pipeline’s unlawful use and occupation of the New Mexico Plaintiffs’ and the New
28

1 Mexico Class members' land, the New Mexico Plaintiffs and the New Mexico
2 Class members have been deprived of the rents properly arising from their
3 ownership and control of their land. Specifically, Defendant Railroad has collected
4 millions of dollars in the form of rents properly payable to the New Mexico
5 Plaintiffs and the New Mexico Class members for the collection of rent from
6 Defendant Pipeline's unlawful commercial use and occupation of the New Mexico
7 Plaintiffs' and the New Mexico Class members' land.

8 231. Defendant Railroad acted intentionally to obtain large profits at the
9 expense of the New Mexico Plaintiffs and the New Mexico Class members.

10 232. Defendant Railroad has been unjustly enriched by its receipt and
11 retention of millions of dollars of rent properly payable to the New Mexico
12 Plaintiffs and the New Mexico Class members and, under the circumstances and in
13 good conscience, Defendant Railroad should not be allowed to retain such rents.

14 233. Also, Defendant Pipeline installed a pipeline within the property of
15 the New Mexico Plaintiffs and the New Mexico Class members without notice to
16 them or paying for its use of their land.

17 234. Defendant Pipeline has maintained its pipeline for over 50 years
18 without paying the New Mexico Plaintiffs and the New Mexico Class fair market
19 value for the use of their property. Instead, Defendant Pipeline, has obtained
20 savings and profits from the use of the pipeline without compensating the New
21 Mexico Plaintiffs and the New Mexico Class.

22 235. Defendant Pipeline has been unjustly enriched by not paying fair
23 market rent to the New Mexico Plaintiffs and the New Mexico Class and reaping
24 profits from the use of land owned by the New Mexico Plaintiffs and the New
25 Mexico Class.

26 236. The New Mexico Plaintiffs and the New Mexico Class members
27 request a judgment requiring Defendants to disgorge and pay to them all sums they
28

1 have received that are properly due and owing to the New Mexico Plaintiffs and
2 the New Mexico Class members as rents or other benefits received from their
3 unauthorized use of the New Mexico Plaintiffs' and the New Mexico Class
4 members' land, as restitution for Defendants' unjust enrichment. Further, the New
5 Mexico Plaintiffs and the New Mexico Class members request punitive damages to
6 deter Defendants' conduct.

7 **Count XVIII – Quiet Title / Slander of Title**
8 **(On Behalf of the New Mexico Class)**

9 237. The New Mexico Plaintiffs incorporate paragraphs 1-68 above as if
10 fully set forth herein.

11 238. The New Mexico Plaintiffs bring this claim individually and on behalf
12 of the New Mexico Class against Defendants.

13 239. As fee owners, the New Mexico Plaintiffs and the New Mexico Class
14 hold title that is superior to the purported easements and agreements between
15 Defendants relating to the subsurface underneath Defendant Railroad's right-of-
16 way.

17 240. In agreements between Defendants and in publicly-filed or published
18 documents, the Defendants have made false and unfounded statements indicating
19 or suggesting that they possess a right of occupancy or use of property owned by
20 the New Mexico Plaintiffs and the New Mexico Class.

21 241. Defendants' statements concerning their alleged interest in the real
22 property of the New Mexico Plaintiffs and the New Mexico Class were made with
23 knowledge of their falsity or with reckless disregard for whether they were false.

24 242. As a result of the Defendants' slander of title of the New Mexico
25 Plaintiffs and the New Mexico Class in the subsurface of Defendant Railroad's
26 right-of-way, the New Mexico Plaintiffs and the New Mexico Class have sustained
27 damages in the form of loss of use of their property, loss in marketable value of
28

1 their property, and expenses necessary to obtain a judicial declaration that the titles
2 of the New Mexico Plaintiffs and the New Mexico Class are free and clear of any
3 interest or right of use, possession, or occupancy by Defendants.

4 243. The New Mexico Plaintiffs and the New Mexico Class request a
5 judgment in their favor that their title to the property underneath Defendant
6 Railroad's right-of-way is superior to the purported claims of Defendants. Further,
7 the New Mexico Plaintiffs and the New Mexico Class request that this Court enter
8 judgment awarding the New Mexico Plaintiffs and the New Mexico Class rents,
9 profits, and other damages, including punitive damages, associated with
10 Defendants' unlawful use of their property.

11 **VII. PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs, individually and on behalf of members of the
13 Classes, pray for and request the following relief against Defendants Railroad and
14 Pipeline:

- 15 A. An order certifying this lawsuit as a class action, appointing Plaintiffs
16 as Class Representatives, and appointing Plaintiffs' counsel as Class
17 Counsel;
- 18 B. An order finding in favor of Plaintiffs and members of the Classes on
19 all counts asserted in this First Amended Class Action Complaint;
- 20 C. A declaration that Defendants have no legal right to exercise
21 dominion and control over, or to use, land owned by Plaintiffs and the
22 members of the Classes to construct and operate a pipeline or collect
23 rent therefrom;
- 24 D. A judgment awarding Plaintiffs and members of the Classes
25 restitution and all other forms of equitable monetary relief, including
26 equitable accounting, disgorgement, constructive trust, and punitive
27 damages;
- 28

- 1 E. A judgment awarding Plaintiffs and members of the Classes damages
2 as determined by the Court or jury, including compensatory damages,
3 statutory damages, and punitive damages in an amount sufficient to
4 deter Defendants from similar conduct in the future;
- 5 F. A judgment awarding pre-judgment and post-judgment interest on all
6 monetary sums awarded;
- 7 G. An order awarding costs;
- 8 H. An order awarding reasonable attorneys' fees to the California
9 Plaintiffs and the California Class for their claims arising under the
10 California Business and Professions Code §§ 17200, et seq.; and
- 11 I. An order of judgment awarding any such other and further relief as
12 this Court deems just and proper.

13 **VIII. JURY DEMAND**

14 Plaintiffs, individually and for the Classes they seek to represent, demand a
15 trial by jury on all claims or issues so triable.

16
17 DATED: May 13, 2015

Respectfully submitted,

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EXHIBIT A



EXHIBIT B

