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12 Attorneys for Plaintiffs and the
 13 Proposed Plaintiff Class

14 **UNITED STATES DISTRICT COURT**

15 **FOR THE DISTRICT OF SOUTHERN CALIFORNIA**

16 ROBERT WALDON, an individual;
 17 SIR WALDON, INC., dba OGGI's
 18 PIZZA, a California Business Entity,
 19 individually and on behalf of all
 20 others similarly situated,

21 Plaintiffs,

22 v.

23 ARIZONA PUBLIC SERVICE
 24 COMPANY, an Arizona
 25 Corporation; PINNACLE WEST
 26 CAPITAL CORPORATION, an
 27 Arizona Corporation; and DOES 1
 28 through 100, inclusive.

Defendants.

Case No. '13CV2086 L WVG

CLASS ACTION

COMPLAINT FOR:
 NEGLIGENCE PER SE

DEMAND FOR JURY TRIAL

Plaintiffs ROBERT WALDON, an individual; SIR WALDON, INC., dba
 OGGI's PIZZA, a California Business Entity ("collectively PLAINTIFFS"),

1 individually and on behalf of all others similarly situated bring this action against
2 Defendants, ARIZONA PUBLIC SERVICE COMPANY, PINNACLE WEST
3 CAPITAL CORPORATION, and DOES 1 through 100, inclusive (collectively
4 “DEFENDANTS”), for damages and demand a trial by jury.

5 I.

6 NATURE OF THE ACTION

7 1. This case is an action brought to recover for the injuries sustained by
8 PLAINTIFFS and the members of the Plaintiff Class as a result of
9 DEFENDANTS’ negligent operation of their distribution and transmission
10 network, which is part of a larger national network, in violation of, among other
11 things, the North American Electric Reliability (NERC) Corporation’s mandatory
12 reliability standards. Arizona Public Service Company (“APS”) and its parent
13 company, Pinnacle West Capital, owed a duty to PLAINTIFFS to maintain and
14 operate their equipment in a reliable manner so that their outage would not spread
15 past Yuma, Arizona. DEFENDANTS failed to do so. The Plaintiff Class, defined
16 more fully below in paragraph 29, consists of all persons and business entities
17 located within the State of California who suffered economic damages as a result
18 of the electrical power interruption from the September 8, 2011 blackout.

19 2. At approximately 3:00 p.m. PDT on September 8, 2011, the North
20 Gila-Hassayampa 500 kV transmission line near Yuma, AZ tripped off line
21 causing an 11-minute system disturbance in the Pacific Southwest (“2011
22 Southwest Blackout”). The outage was not contained to the Hassayampa-North
23 Gila 500 kV transmission line (“H-NG line”), but instead spread from Arizona to
24 San Diego, Imperial, Orange and Riverside Counties causing cascading power
25 outages that left approximately 2.7 million customers without power for
26 approximately twelve (12) hours.

27 3. The disturbance occurred on a business day, during rush hour, which
28 knotted traffic for hours. Schools and business closed. Flights and public

1 transportation were disrupted. Food spoiled and businesses shut down. As a result
2 of the power outage, economic damages to the affected regions have been
3 conservatively estimated at approximately \$97 to \$118 million.

4 4. According to a press release by APS, a subsidiary of Pinnacle West
5 Capital Corporation, the H-NG transmission line near Yuma, Arizona, tripped off
6 line resulting in a “major power outage.”¹ APS states on their website that, “*the*
7 *outage appears to be related to a procedure an APS employee was carrying out*
8 *in the North Gila substation.*”²

9 5. Additionally, APS admits that “*operating and protection protocols*
10 *typically would have isolated the resulting outage to the Yuma area.*”³ However,
11 the outage was not isolated to the Yuma, Arizona area but instead spread to
12 California.

13 6. As detailed further below, according to a report published in April
14 2012 by the Federal Energy Regulatory Commission and the North American
15 Electric Reliability Corporation (“the Report”), the event could have been
16 prevented had the DEFENDANTS known crucial information of the workings of
17 their own system, and the power systems of neighboring utilities.⁴ This missing
18 knowledge and failure to plan ahead could have prevented the blackout from
19 snowballing from a single tripped line in Arizona to a blackout that left over 7
20 million people without power.

21 7. The Report details many areas where DEFENDANTS fell short,
22 including but not limited to when, after the initial power outage, APS operators
23 told nearby operators that they would be able to get the H-NG line back up in only
24 minutes, the lack of proper software for real time monitoring in APS facilities, and
25

27 ¹ *Cause of Widespread Outage Under Investigation APS Works to Restore Service to Customers in Yum Area*,
September 8, 2011. http://www.aps.com/main/news/releases/release_673.htm.

28 ² *Id.*

³ *Id.*

⁴ www.ferc.gov/legal/staff-reports/04-27-2012-ferc-nerc-report.pdf

1 the failure to require operators to constantly monitor their real time analysis
2 program.

3 **II.**

4 **PARTIES**

5 8. Plaintiff Robert Waldon is now and was at all times relevant to the
6 allegation in this complaint a Citizen of California, and a resident of San Diego
7 County. Plaintiff has suffered injury in fact and lost money and/or property as a
8 result of DEFENDANTS' acts.

9 9. Plaintiff Sir Waldon, Inc. dba Oggi's Pizza is a California corporation,
10 licensed to do business in California, and has so and continues to do so during all
11 relevant times as alleged in the complaint. Oggi's Pizza is located at 2562 Laning
12 Road, San Diego, CA 92106. Plaintiff has suffered injury in fact and lost money
13 and/or property as a result of DEFENDANTS' acts, including, but not limited to,
14 the loss of perishable inventory, and sales.

15 10. Defendant Arizona Public Service Company ("APS") is an Arizona
16 corporation which is licensed to do, and does do, business in California. APS'
17 principal place of business is located within Arizona.

18 11. Among other NERC registrations, APS is the transmission operator
19 and balancing authority for its territory. APS owns and operates transmission
20 facilities at the 500 (including H-NG), 345, 230, 115, and 69 kV levels, and owns
21 approximately 6,300 MW of installed generation capacity. APS also has significant
22 contacts with the State of California, including its participation in the national
23 power grid, and the damages and/or injuries complained of herein occurred within
24 the State of California.

25 12. Defendant Pinnacle West Capital Corporation ("PINNACLE") is an
26 Arizona corporation, which functions as a holding company for APS. APS and
27 PINNACLE file joint 10-K Statements with the United States Securities and
28 Exchange Commission ("U.S. SEC"). PINNACLE'S principal place of business is

1 located in Arizona. PINNACLE, by and through APS, has significant contacts with
2 the State of California.

3 13. PLAINTIFFS do not know the true names and capacities of
4 defendants DOES 1 through 100, inclusive, and therefore sue these Defendants
5 by fictitious names. PLAINTIFFS will amend this complaint to show their true
6 names and capacities when they have been ascertained. PLAINTIFFS are
7 informed and believe, and on the basis of that information and belief allege,
8 that each of those defendants was in some manner legally responsible for the
9 unlawful acts alleged in this complaint and for Plaintiffs' damages.

10 PLAINTIFFS are informed and believe and based thereon allege that at all relevant
11 times each of the defendants operated as a single enterprise and were the agent,
12 servant, employee, subsidiary, affiliate, partner, assignee, successor-in-interest,
13 alter ego, joint venturer, and/or other representative of each of the remaining
14 defendants and were acting in such capacity in doing the things herein alleged.
15 Each of the Doe Defendants is responsible in some manner for the conduct
16 alleged herein.

17 III.

18 JURISDICTION AND VENUE

19 14. The PLAINTIFFS are individuals or business entities, residents,
20 domiciliares, and property owners who, at all relevant times, resided in or
21 conducted a business within, and whom are citizens, of the State of California.

22 15. The DEFENDANTS are Arizona corporations who, at all relevant
23 times, were authorized to do business in Arizona and registered with the Arizona
24 Secretary of State.

25 16. This Court has jurisdiction over this action pursuant to 28 U.S.C.
26 §1332 and the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). The
27 matter in controversy in this class action exceeds \$5,000,000, exclusive of interest
28

1 and costs. In addition, pursuant to 28 U.S.C. § 1367, this Court has supplemental
2 jurisdiction over PLAINTIFFS' state law claims.

3 17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because
4 DEFENDANTS reside and/or transact business in this district and a substantial
5 part of the property that was damaged that is subject of this action is situated.

6 18. The activities of the DEFENDANTS and their co-conspirators, as
7 described herein, were within the flow of, were intended to, and did have direct,
8 substantial and reasonably foreseeable effects on the foreign and interstate
9 commerce of the United States.

10 IV.

11 FACTUAL BACKGROUND

12 A. FERC AND NERC

13 19. After the Northeast blackout of 2003, Congress amended the Federal
14 Power Act ("FPA") to add federal reliability standards to ensure that the nation's
15 interconnected electrical grid was reliable, adequate, and secure. In amending the
16 FPA, Congress granted the Federal Energy Regulatory Commission ("FERC")
17 jurisdiction over "all users, owners and operators of the bulk-power system... for
18 purposes of approving reliability standards...and enforcing compliance."⁵
19 Additionally, Congress provided FERC with the jurisdiction to resolve divergence
20 from the reliability standards and special oversight of the electrical grid system, as
21 established under the FPA.⁶

22 20. Congress also tasked the North American Electric Reliability
23 Corporation ("NERC") with establishing and enforcing reliability standards for the
24 bulk-power system.⁷ NERC, originally named the Electric Reliability Organization
25 ("ERO"), is a nonprofit corporation formed as a result of the Northeast Blackout of
26 1965, to promote the reliability of bulk electric systems of North America. NERC

27
28 ⁵ 16 U.S.C. §824(o)(b)(1).

⁶ See 16 U.S.C. §824(o).

1 promulgates reliability standards that apply to reliability planning and the reliable
2 operation of the bulk electric systems of North America.

3 21. These standards are set forth and monitored by FERC and NERC to
4 ensure that power is efficiently transmitted across the national power grid to reach
5 consumers. However, FERC does not provide either a procedure or a remedy for
6 damages and State law claims. "Reliability Standards are the planning and
7 operating rules that electric utilities follow to ensure the most reliable system
8 possible."⁸ A reliability standard defines certain obligations and requirements of
9 entities that operate, plan, and use the bulk electric systems of North America.

10 22. FERC and NERC intended the Mandatory Reliability Standards to
11 regulate safety of the bulk electric systems in North America and to protect the
12 general public, including PLAINTIFFS and the Class from blackouts by ensuring
13 the reliable, uninterrupted supply of electricity.

14 23. Bulk or wholesale electric supply interruptions between
15 interconnected public utilities affects the general public by disrupting the
16 distribution of electricity to individuals such as PLAINITFFS and other similarly
17 situated entities or persons. The ultimate purpose behind the federal regulation of
18 interstate electric transmissions is to prevent cascading blackouts like the 2011
19 Southwest Blackout.

20 **B. FERC & NERC INVESTIGATION AND JOINT REPORT**

21 24. Shortly after the 2011 Southwest Power Outage, FERC and NERC
22 opened a joint inquiry into the outage. Their joint report was issued in April 2012.

23 25. The power outage began with the loss of a single facility: APS's 500
24 kilovolt (kV) transmission line from Hassayampa to North Gila in Arizona. This
25 line, known as the Hassayampa-N. Gila (H-NG), is a large 500kV line that runs
26 power through the Phoenix area and into substations leading into California. At
27

28 ⁷ *Id.* §824(o)(a)(2).

⁸ <http://www.nerc.com/page.php?cid=1%7C7>

1 3:25 PM, an operator received a reading that there was a voltage imbalance and
2 dispatched a technician to investigate the issue. According to the official report, the
3 technician had done this same repair operation to other power lines approximately
4 a dozen times, and had with him written instruction from the Arizona Utility on the
5 exact steps to take when he arrived on site. Upon arrival, the technician verified
6 that he was at the correct power line with the operator, and then the operator
7 verbally verified steps 6 through 16 with the technician. The technician put a hash
8 mark next to each of the steps, as he orally verified that he needed to preform those
9 steps with the operator. After confirming the order of steps, the operator began to
10 perform step 6 -- after performing step 6 the technician had gotten preoccupied
11 with needed assistance in steps he knew would come later. This preoccupation led
12 him to accidentally mark down that he had completed step 8, instead of step 6. This
13 caused him to skip to step 9, thereby missing two crucial steps in the procedure.

14 26. As the technician erroneously continued to Step 9, opening an
15 adjacent line without first closing the malfunctioning line, the two lines created a
16 giant electric arc above him causing the entire line to trip under load at
17 approximately 3:27:39. The tripped H-NG line contained large amounts of power –
18 almost all of which was headed toward San Diego.

19 27. As a result of the line trip, flows redistributed across the remaining
20 lines into the San Diego, Imperial Valley, and Yuma areas. Immediately after the
21 H-NG line going down in Arizona, the Imperial Irrigation District's Coachella
22 Valley (CV) transformers increased to 130% of their normal rating and 118.5% of
23 their emergency rating. The Coachella Valley transformers are not nearly as large
24 as the Arizona 500kV line, and they could not handle the increased flows; the CV
25 lines tripped only 40 seconds after the Arizona line tripped. Many of the other lines
26 in the Imperial Valley Irrigation District areas are smaller than Arizona H-NG, and
27 after the Coachella Valley lines tripped, the system tried to push flows through the
28

1 other Imperial Valley lines, however, these lines are just as small and all tripped
2 when the increased power flow came through.

3 28. As the power lines east of San Diego all began to shut down, the
4 system tried to redirect power from the north, and began increasing flows from
5 Southern California Edison's San Onofre Nuclear Generating Station into San
6 Diego. The path from the nuclear generating station into San Diego is known as
7 "Path 44." During the power redirect, this path's flow increased 84%, which
8 equates to approximately 5,900 amps. The San Onofre Generating Station
9 (SONGS) has an automatic program in place that if the amperage on Path 44 were
10 to ever hit 8,000 amps, the generating station cuts off all power to the south. This
11 system known as "SONGS Separation Scheme" had never activated prior to
12 September 8th, 2011. As the final power lines to the east struggled with the
13 increased power surges, more power began surging through Path 44 and the
14 amperage on Path 44 eventually reached a high of 9,500 amps before the system
15 automatically activated the SONGS Separation Scheme, cutting off all power
16 going south.

17 V.

18 CLASS ACTION ALLEGATIONS

19 29. PLAINTIFFS bring this class action lawsuit on behalf of themselves
20 and as members of the proposed Class under the Provisions of Rule 23(a), (b)(2)
21 and (b)(3) of the Federal Rules of Civil Procedure.

22 30. PLAINTIFFS seek certification of the following class:

23 **Plaintiff Class (the "Class" and "Class members"):**

24 All individuals and business entities located within the States of
25 California who incurred economic damages from an electrical power
26 interruption due to the September 8, 2011 blackout. Specifically
27 excluded from this Class are the DEFENDANTS; the officers,
28 directors or employees of any DEFENDANT; any entity in which any

1 DEFENDANT has a controlling interest; and any affiliate, legal
2 representative, heir or assign of any DEFENDANT. Also excluded
3 from this Class are any federal, state or local governmental entities,
4 any judicial officer presiding over this action and the members of the
5 class. PLAINTIFFS reserve the right to amend the Class definition if
6 discovery and further investigation reveal that the Class should be
7 expanded or otherwise modified.

8 31. Class Identity: The Plaintiff Class is readily identifiable and is one for
9 which records should exist.

10 32. Numerosity: The Plaintiff Class comprises millions of individuals
11 throughout the State of California. The Class is so numerous that joinder of all
12 members of the Class is impracticable.

13 33. Typicality: PLAINTIFFS' claims are typical of the claims of members
14 of the Plaintiff Class. PLAINTIFFS and members of the Plaintiff Class sustained
15 damages arising out of DEFENDANTS' common course of conduct in violation of
16 law as complained of herein. The damages of each Class member was caused
17 directly by DEFENDANTS' wrongful conduct in violation of law as alleged herein
18 and the relief sought is common to the Class.

19 34. Commonality and Predominance: Common questions of law and fact
20 exist as to PLAINTIFFS and all Class members and predominant over any
21 questions which affect only individual members of the Class. These common
22 questions of law and fact include, without limitation:

- 23 a. Whether DEFENDANTS failure to comply with mandatory NERC
24 reliability standards regarding planning for contingencies constitutes
25 negligence per se under Arizona law;
26 b. Whether the alleged conduct violated mandatory NERC reliability
27 standards and constitutes negligence per se under Arizona law;
28

- c. Whether the conduct of DEFENDANTS, as alleged in this Complaint, caused injury or damage to the business or property of the PLAINTIFFS and the other members of the Plaintiff Class;
- d. Whether PLAINTIFFS and Class members are entitled to declaratory, injunctive and/or equitable relief; and
- e. Whether PLAINTIFFS and Class members are entitled to compensatory damages, including actual and statutory damages.

These and other questions of law or fact, which are common to the members of the Class, predominate over any questions affecting only individual members of the Plaintiff Class.

35. Adequacy: PLAINTIFFS will fairly and adequately protect the interests of the Plaintiff Class. PLAINTIFFS are an adequate representative of the Plaintiff Class and have no interests which are adverse to the interests of absent class members. PLAINTIFFS' interests are aligned with, and not antagonistic to, those of the other members of the Class. PLAINTIFFS have retained competent counsel who has experience and success in the prosecution of complex class action and consumer protection litigation.

36. Superiority: A class action is superior to other available methods for the fair and efficient adjudication of this controversy since individual joinder of all damaged Class members is impracticable. Class action treatment will eliminate the possibility of repetitious litigation. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous actions would engender. The damages suffered by individual Class members are relatively small, given the expense and burden of individual prosecution of the claims asserted in this litigation. Absent a class action, it would not be feasible for Class members to seek redress for the violations of law herein alleged. An important public interest will be served by addressing

1 this matter as a class action. The cost to the court system of adjudication of such
2 individualized litigation would be substantial. The trial and litigation of
3 PLAINTIFFS' claims will be manageable.

4 **VI.**

5 **FIRST CAUSE OF ACTION**

6 **(Negligence Per Se)**

7 37. PLAINTIFFS repeat and re-allege each and every allegation made
8 above, incorporating those allegations as though fully set forth herein.

9 38. DEFENDANTS, as a member of a national power distribution
10 network, have an obligation to adhere to applicable federal laws and
11 regulations in the use, design, installation, testing, inspection, maintenance,
12 operation, of their energy system and electrical equipment, including their
13 transmission lines and substations.

14 39. Among other things, Defendants violated the federal requirements
15 specified below in connection with the use, design, installation, testing,
16 inspection, maintenance, operation, service and repair of their energy system
17 and electrical equipment, including their transmission lines and substations.
18 Defendants' violations of NERC statutes include, without limitation, the
19 following:

- 20 a. Failing to properly design, construct, operate, maintain, inspect and
21 manage their electrical supply systems in compliance with all
22 relevant provisions of applicable orders, decisions, directions, rules
23 or statutes, including those delineated by, but not limited to, NERC
24 TOP-001-1a, TOP-001-2, TOP-002-2.1b, and TOP-004-2.
- 25 b. Failing to operate so that instability, uncontrolled separation, or
26 cascading outages would not occur as a result of the most severe
27 single contingency, in violation of TOP-004-2, Rule 2.
- 28

1 c. Failing to coordinate current day and/or next day planning with
2 neighboring transmission operators so that normal interconnection
3 operations could proceed in an orderly and consistent manner in
4 violation of TOP-002-2.1b, Rule 4.

5 d. Failing to maintain a set of current plans that were designed to
6 evaluate options and set procedures for reliable operation through
7 a reasonable future time period, in violation of TOP-002-2.1b, Rule
8 1.

9 e. Failing to plan to meet unscheduled changes in system
10 configuration and generation and dispatch (at a minimum N-1
11 Contingency Planning), in violation of TOP-002-2.1b, Rule 6.

12 40. DEFENDANTS' acts described herein violate the NERC
13 mandatory reliability standards that were created for the purpose of protecting
14 the general public, including Plaintiffs and the putative class, from cascading
15 blackouts, such as the one caused by DEFENDANTS. Thus, they constitute a
16 breach of duty subjecting DEFENDANTS to civil liability for all damages
17 arising therefrom under the theory of negligence *per se*.

18 41. As a direct and proximate result of DEFENDANTS' actions,
19 PLAINTIFFS were forced to, among other things, discard large quantities of
20 spoiled food, shut down their establishments and lose revenue and incur
21 economic damages.

22 42. PLAINTIFFS, as members of the general public, are within the
23 class of persons that the above-referenced federal statutes and regulations are
24 designed to protect and their injuries are the type of harm these statutes and
25 regulations are designed to prevent.

26 43. As a direct and proximate result of violations of the above-
27 referenced federal statutes and regulations by DEFENDANTS, PLAINTIFFS
28 sustained economic and other damages.

1 44. DEFENDANTS' duty here is specifically defined by federal law
2 through NERC's mandatory reliability standards. A duty clearly exists. The
3 violation of the NERC's mandatory reliability standards by DEFENDANTS
4 proximately and substantially caused the destruction, damage, and injury to
5 PLAINTIFFS.

6 45. DEFENDANTS' conduct was willful and wanton, and with a
7 conscious contempt and disdain for the disastrous consequences that
8 DEFENDANTS knew could occur as a result of their reckless conduct.

9 **VII.**

10 **PRAYER FOR RELIEF**

11 PLAINTIFFS' individually, and on behalf of the Class, pray for judgment
12 and relief against DEFENDANTS as follows:

- 13 A. For an order declaring this a class action pursuant to Rule 23 of the
14 Federal Rules of Civil Procedure on behalf of the proposed class
15 described herein and appointing PLAINTIFFS to serve as class
16 representatives and PLAINTIFFS' counsel, The Law Offices of
17 Alexander M. Schack, as Lead Counsel for the Class;
- 18 B. For damages arising from damaged, destroyed, and/or lost personal
19 property;
- 20 C. For actual, compensatory and punitive damages;
- 21 D. For an award of reasonable attorneys' fees and all costs and expenses
22 incurred in the course of prosecuting this action;
- 23 E. For pre-judgment and post-judgment interest at the legal rate from
24 September 8, 2011; and
- 25 F. For such other and further relief as the Court deems just and proper.
- 26
27
28

VIII.

DEMAND FOR A JURY TRIAL

PLAINTIFFS hereby demand a jury trial on all issues so triable, as provided by Rule 38 of the Federal Rules of Civil Procedure.

Date: September 6, 2013

Respectfully submitted,

/s/ Geoffrey J. Spreter

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