Case No. 19-16180

UNITED STATES COURT OF APPEALS, NINTH CIRCUIT

Appeal from District Court Judgment - Case No. 3:2018-cv-01860-JSW

DEBORAH COONEY, Plaintiff/Appellant,

vs.

CITY OF SAN DIEGO, ET AL, Defendants/Respondents.

EMERGENCY MOTION UNDER CIRCUIT RULE 27-3(a)

FOR PRELIMINARY INJUNCTION OR TEMPORARY RESTRAINING ORDER (TRO) TO HALT ONGOING AND IMMINENT DEPLOYMENT OF THE FLORIDA POWER & LIGHT (FPL) SMART GRID

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CIRCUIT RULE 27-3 CERTIFICATE

The following information is presented in accordance with Circuit Rule 27-3(a)(3):

(i) Telephone numbers, e-mail addresses, and office addresses of the attorneys for the parties

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(ii) Facts showing the existence and nature of the claimed emergency

1. On December 17, 2018, FPL purchased the City of Vero Beach electric utility.
2. On May 5, 2019, Appellant received a flyer from FPL stating its intention to install Smart Meters in the neighborhood.

3. On May 8, 2019, Appellant sent two letters to FPL, rejecting the Smart Grid and asserting her Fourth, Fifth, and Fourteenth Amendment right to be free of harmful Smart Grid emissions. FPL ignored this.
4. Appellant has witnessed hundreds of Smart Meters being installed in her community. FPL is proceeding with Smart Grid deployment.

(iii) When and how counsel for the other parties were notified and whether they have been served with the motion

On Aug. 5, 2019, Appellant sent an email to the four attorneys for the Respondents, as listed above, alerting them to the impending emergency motion. Appellant also telephoned the Clerk and left a voicemail. On Aug. 8, 2019, Appellant served the Motion on all four Respondents, as reflected in the attached Declaration of Service. Although Appellant is not required to serve defaulted Respondent FPL, she sent them a copy of the Motion, anyway.

VERIFICATION

I hereby certify that to avoid irreparable harm relief is needed in less than 21 days.

I declare under penalty of perjury under the laws of the State of California and the United States that every statement in this Motion is true and correct and that this declaration was executed on Aug. 8, 2019. I further certify that this Motion is submitted in good faith.

___/s/Deborah Cooney_____

Deborah Cooney

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PLAINTIFF'S MOTION FOR TRO OR PRELIMINARY INJUNCTION

Pursuant to Federal Rule of Appellate Procedure (FRAP) Rule 8(a)(2) and Circuit Rule 27-3(a), "Plaintiff"/"Appellant" Deborah Cooney, in propria persona, hereby moves this Court of Appeals for a preliminary injunction to prevent "Defendant"/ "Respondent" Florida Power & Light (FPL) from continuing its ongoing and/or imminent deployment of a Smart Grid in and around Plaintiff's home and community. At the time of this writing, deployment is in progress. Time is of the essence. Appellant exercises her right to present this Motion to Judge William Fletcher pursuant to FRAP Rules 27(c) allowing a single judge to act alone on a motion and 8(a)(2)(D) which states,

> "But in an exceptional case in which time requirements make that procedure impracticable, the motion may be made to and considered by a single judge."

INTRODUCTION

As stated in the Plaintiff's 2015 cert petition in the Underlying Case (Ex. 1), "We live in a fast-paced society where technological innovations make possible the most unthinkable forms of trespass. Never before have policy-makers had to confront this issue. Recent uproar over the revelations of former government contractor, Edward Snowden, has sparked a public policy debate about our national surveillance programs. Similar information technologies are being deployed at the state level for various purposes, such as measuring energy consumption. The Smart Grid is one such program. At the heart of this matter lies the ultimate question of whether the federally-mandated and federally-funded Smart Grid violates constitutional rights."

"The information age is upon us. Private multinational corporations like IBM, the inventor of everything "Smart", as well as a host of other companies, stand eager to capitalize on the information technology (IT) craze. The Petitioner asks this Court to contemplate whether our society's recent preoccupation with information-gathering violates constitutional rights. For the benefit of all citizens, government agents, contractors, investors, suppliers, and the like, this issue must be addressed forthwith. We are all desperate for the Court's guidance. This case presents an actual controversy which affords the Court a much-needed opportunity to impart its wisdom. This Court should assume the mantle.

The constitutional challenges include not only access to private information, but also the nonconsensual placement of radio frequency (RF) radiation-emitting devices on private property, the physical occupation of the airspace of private residences and businesses, and the physical and/or psychological injury and other harm that it causes. In the past, we transmitted radio signals for the purpose of entertainment or emergency services communication. Our homes were equipped with receivers, but transmitters were properly sited in remote, non-residential areas. We all benefited from this safe communal use of technology and we consented to its presence in our homes and private property.

Today, the commons have been taken without consent and solely for private gain. Indeed, even our private possessions have been usurped in the same endgame.

Transmitters, such as Smart Meters, have been placed in and on our homes without our knowledge or permission. Magnetic data now streams through our homes, our personal possessions, our bodies, and even our children's bodies. Scientific studies show alarming biological effects. Researchers have determined that nothing less than the human genome, itself, is at stake. We withdraw consent. We now assert our rights. We require the Court's assistance for enforcement."

BACKGROUND

Title XIII of the Energy Independence and Security "Act" of 2007, updated with 50% matching grants in 2009, allows, but does not require, 2-way transmission of data between customers and utilities known as a Smart Grid. The Act does not specify how the data should be transmitted. The utilities chose and the state commissions approved wireless transmissions, which cause physical and psychological injury, destroy the environment, exceed FCC limits, and usurp federal rights. (Ex. 1-7, 12) The Act requires customer control and consent. (42 USC § 17381(8)) The utilities have not complied. The customers do not consent. The Smart Grid further breaches the utility franchise agreements, which allow the use of public right-of-ways, but not private property.

PROCEDURAL HISTORY

The Amended Verified Complaint (Ex. 2) was filed on August 20, 2018, naming 135 of the 190 Defendants, in a 42 U.S. Code §§ 1983, 1985, and/or 1986 civil rights

and 18 U.S. Code § 1964 RICO Act action. FPL, a state contractor by virtue of utility franchise agreements and a recipient of federal funds earmarked for the Smart Grid, is one of the named Defendants. FPL has defaulted. FPL does not oppose the preliminary injunction, nor did FPL bother to defend itself against the suit. This emergency Motion is directed only to FPL, and does not affect any other parties. There is no opposition.

The Amended Verified "Complaint" states numerous claims for relief based upon various legal theories. The claim relevant to this Motion is summarized as follows. FPL has abridged, continues to abridge, and is likely to abridge Plaintiff's federal rights by deploying a federal and state sanctioned Smart Grid, which is causing, has caused, and is likely to cause serious injury and catastrophic loss to Plaintiff and thousands of others. (Ex. 3-7) The deployment violates constitutional rights:

1. First Amendment Freedom of Speech: Plaintiff cannot express her love of nature and health by keeping her person, home, and business free of toxic electromagnetic frequency (EMF) radiation. EMF radiation interferes with the very formulation of speech in the brain and impairs cognitive function (Ex. 1-7), and thus curtails speech.

2. Free Exercise Clause: Plaintiff 's religious practice requires her to keep her body, home, and business free of toxins, including EMF radiation.

3. Right to petition the government for redress of grievances: Plaintiff has not been heard in various courts and administrative proceedings regarding EMFs.

4. Fourth Amendment protection from unlawful search and seizure: The Smart Grid is a permanent physical occupation of Plaintiff's person, home, and business.

5. Fifth Amendment protection of life and liberty: Smart Grid EMFs have injured Plaintiff forced her out of several homes and communities. This is an infringement on her liberty interest to live, work, and travel freely. Plaintiff's husband and cat were killed by the deadly installations.

6. Private property being taken for public use without just compensation: The airwaves in Plaintiff's home and business and the cells of her body have been taken for data transmission without consent or compensation.

7. Ninth Amendment Right to Privacy, including the right to be free from vexatious digital noise and disturbance in one's own person, home and workplace.

8. Fourteenth Amendment Due Process violations: Various public officials committed ethical breaches, abdicated public duties, were bribed or unduly influenced in connection with the Smart Grid and EMF radiation. Thousands of injuries have been reported. (Ex. 1-7, 12)

Plaintiff has complied with FRAP Rule 8(a)(1)(C) by first requesting the injunction in the District Court. The Amended Complaint requests a preliminary injunction

against the entire Smart Grid in California, Florida, West Virginia, and across the US, as the Twenty-Fifth Claim for Relief in paragraph 196. (Ex. 2) The claim in the Complaint includes the tiny sliver of Florida that is the subject of this Motion. On March 18, 2019, the District Court dismissed the entire complaint with prejudice for failure to state a claim, while denying leave to amend. (Ex. 8) On May 14, 2019, the District Court denied a motion to amend judgment. (Ex. 9)

Plaintiff alerted the District Court to some of these recent developments in the May 6, 2019, reply. (Ex. 10) However, FPL's gross negligence in steamrolling ahead with Smart Grid deployment notwithstanding the Plaintiff's objections could not have been presented in the District Court given the time frame. Plaintiff has fulfilled her FRAP Rule 8(a)(2)(A) duty to

> "(i) show that moving first in the district court would be impracticable; or (ii) state that, a motion having been made, the district court denied the motion or failed to afford the relief requested…"

An IFP motion is pending in this Court after the District Court neither granted nor denied it. No reasons were stated other than an error made by the Clerk of this Court, who ordered that the IFP motion be presented in this Court rather than in the District Court as required by FRAP Rule 24(a)(1). Plaintiff was not required to file an IFP motion in either court because she is proceeding pursuant to FRAP Rule 24(a)(3).

Thus, this Court may grant the preliminary injunction as well as the appeal without granting the IFP motion.

FACTS

The undisputed and indisputable facts clearly show that:

1.FPL is proceeding with Smart Grid deployment with reckless indifference to Plaintiff' rights.

2. Plaintiff has duly notified FPL of her objections. (Ex. 11)

3. Since 2010, Plaintiff has suffered injuries, damages, and gross violations of her rights from Smart Grid deployments in and around her home and workplace in California, Florida, West Virginia, and in other locations. (Ex. 1-7, 12)

4. Plaintiff has diligently notified FPL and other Defendants of their transgressions and asked for remediation, to no avail.

5. Plaintiff has diligently filed legal actions to address these issues in various courts of law including this action and a previous Underlying Case in this Court (No. 14-17564, appealing the District Court Case No. C 12 6466 CW) (Ex. 1, 2, 12)

6. The Amended Verified Complaint states that FPL and other Defendants have committed both intrinsic and extrinsic fraud on the courts to ensure that Plaintiff's legal claims never saw the light of day. (Ex. 1, 2, 12) The facts include bribes and/or undue influence of judges, clerks, and other public officials; lying and misleading

courts and other official bodies; false arrest and malicious prosecution; destroying Plaintiff's homes and businesses; stealing Plaintiff's personal property; and curtailing Plaintiff's access to food, gasoline, telephone, computers, libraries, internet, courts, legal counsel, transportation, housing, and other necessities.

7. FPL defaulted by failing to defend or even respond after being duly served with the Summons and Complaint. (Ex. 13)

8. There is no reason not to grant the preliminary injunction. All parties will benefit. No party will be prejudiced or harmed. No party has opposed. All parties have been afforded ample opportunity to respond.

9. Plaintiff and others will suffer irreparable harm if the preliminary injunction is not granted. (Ex. 1-7, 12)

10. Granting the preliminary injunction will save FPL millions of dollars by maintaining the existing electric grid, rather than installing a faulty Smart Grid, which will only have to be later removed and replaced with a safe electric grid.

11. Granting the preliminary injunction will save FPL millions of dollars in damages from lawsuits claiming injuries and other harm.

12. Granting the preliminary injunction will protect the public health, prevent harm, and preserve the rights of all residents and visitors of Vero Beach.

13. Granting the preliminary injunction serves the public interest and fosters the public good.

STANDARD FOR ISSUANCE OF A TRO/PRELIMINARY INJUNCTION

In deciding an application for a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure (FRCP), this Court looks to the following factors:

1. The movant has shown a likelihood of success on the merits.
2. There is a likelihood that the movant will suffer irreparable harm in absence of a preliminary injunction.
3. The balance of equities tips in the movant's favor.
4. The injunction is in the public interest.

(*Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009); *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008); *CTIA—The Wireless Ass'n v. City of Berkeley*, 854 F.3d 1105, 1114 (9th Cir. 2017)).

"'[A] stronger showing of one element may offset a weaker showing of another.' *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). For example, 'a preliminary injunction could issue where the likelihood of success is such that 'serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff's] favor.'' *Id*. at 1132 (quoting *Clear Channel Outdoor, Inc. v. City of Los Angeles*, 340 F.3d 810, 813 (9th Cir. 2003))." (*CTIA*,

supra). To determine whether to issue a temporary restraining order, this Court must apply the same analysis used to evaluate a motion for preliminary injunction. (*McCarthy v. Servis One, Inc.*, 2017 U.S. Dist. LEXIS 32622, at *9–10 (N.D. Cal. Mar. 7, 2017).

A preliminary injunction is "a device for preserving the status quo and preventing the irreparable loss of rights before judgment." (*Sierra On-Line, Inc*., 739 F.2d at 1422; *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981)). However, "'[i]f the currently existing status quo itself is causing one of the parties irreparable injury, it is necessary to alter the situation so as to prevent the injury ...'" (*Golden Gate Rest. Ass'n v. City of San Francisco,* 512 F.3d 1112, 1116 (9th Cir. 2008) (citations omitted)). An "injunction [that] prevents future constitutional violations [is] a classic form of prohibitory injunction." (*Hernandez v. Sessions*, 872 F.3d 976, 998 (9th Cir. 2017) (collecting cases); see *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co*., 571 F.3d 873, 878 (9th Cir. 2009)).

PLAINTIFF IS SUFFERING IRREPARABLE HARM

In a brilliant opinion authored by Judge Fletcher, this Court proclaims, "Irreparable harm is relatively easy to establish in a First Amendment case. '[A] party seeking preliminary injunctive relief in a First Amendment context can establish irreparable injury ... by demonstrating the existence of a colorable First Amendment claim.'

Sammartano v. First Judicial District Court , 303 F.3d 959, 973 (9th Cir. 2002) (citation omitted), abrogated on other grounds by *Winter v. Natural Res. Def. Council* ., 555 U.S. 7, 22, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008)." (*CTIA—The Wireless Ass'n v. City of Berkeley*, 854 F.3d 1105, 1123 (9th Cir. 2017)). "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." (*Id*. citing *Elrod v. Burns*, 427 U.S. 347, 373, 96 S.Ct. 2673, 49 L.Ed.2d 547 (1976)).

"[T]he test for granting a preliminary injunction is 'a continuum in which the required showing of harm varies inversely with the required showing of meritoriousness,' when the harm claimed is a serious infringement on core expressive freedoms, a plaintiff is entitled to an injunction even on a lesser showing of meritoriousness." (*Id*. citing *Sammartano*, 303 F.3d at 973–74).

There is overwhelming evidence that irreparable harm to the Plaintiff is "likely in the absence of an injunction." (*Arc of California v. Douglas*, 757 F.3d 975, 990 (2014) (quoting *Winte*r, 555 U.S. at 22)). Plaintiff's harm either has occurred, is occurring, is immediately threatened to result, or is certain to become irreversible absent injunctive relief from this Court. "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" (*Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347,

373 (1976)); see also, *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014); *Hernandez*, 872 F.3d at 994–95.)

Therefore, Plaintiff has met the burden to demonstrate irreparable harm by demonstrating infringement of rights under the constitution, the First Amendment, and the Due Process Clause. (*Id*. at 995; *Am. Trucking Ass'n, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1059 (9th Cir. 2009) (citations omitted)). Further, without injunctive relief, Plaintiff will likely lose the ability to achieve the required remedy, which would lock-in irreparable harm.

PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS

To assert a claim for prospective injunctive relief, a plaintiff must demonstrate "that he is realistically threatened by a repetition of [the violation]." (*City of Los Angeles*, 461 U.S. at 109). Courts have "enumerated two ways in which a plaintiff can demonstrate that such injury is likely to recur." (*Mayfield v. United States*, 599 F.3d 964, 971 (9th Cir. 2010)). "First, a plaintiff may show that the defendant had, at the time of the injury, a written policy, and that the injury 'stems from' that policy." (*Armstrong v. Davis*, 275 F.3d 849, 861 (9th Cir. 2001), abrogated on other grounds by *Johnson v. California*, 543 U.S. 499, 504–05 (2005)). A policy is "'a deliberate choice to follow a course of action ... made from among various alternatives by the official or officials responsible for establishing final policy with

respect to the subject matter in question.'" (*Fairley v. Luman*, 281 F.3d 913, 917-18 (9th Cir. 2002) (per curiam) (citations omitted)). A policy may consist of actions or inaction. (See *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)).

"Second, the plaintiff may demonstrate that the harm is part of a 'pattern of officially sanctioned . . . behavior, violative of the plaintiffs' [federal] rights.'" (*Id*. (alterations in original) (quoting *LaDuke v. Nelson*, 762 F.2d 1318, 1323 (9th Cir. 1985))). Here, FPL's ongoing deployment of a Smart Grid, as challenged herein, include both written policies and a pattern of officially sanctioned behavior that give rise to Plaintiff's injuries. Plaintiff seeks to enjoin FPL's conduct of those systemic policies and patterns which most immediately threaten to worsen the status quo for Appellant during the pendency of this appeal and adversely affect the options that FPL has after final judgment to devise a plan to bring the electrical grid into constitutional compliance.

DEFENDANTS KNOWINGLY, WITH DELIBERATE INDIFFERENCE, PLACE PLAINTIFF'S LIFE, HEALTH, AND WELL-BEING IN DANGER

A "state-created danger" claim under the Due Process Clause arises where: (1) "the state affirmatively places the plaintiff in danger"; and (2) "act[s] with 'deliberate indifference' to a 'known or obvious danger'. . . ." (*Pauluk v. Savage*, 836 F.3d 1117, 1122 (9th Cir. 2016) (citations omitted)). Here, FPL has longstanding knowledge of the well-documented and profound dangers of EMF radiation, as well

as the economically and technologically feasible alternatives, such as maintaining a safe analog grid or constructing a safely wired Smart Grid. Unless immediately enjoined, FPL will affirmatively cause irreparable injury to Plaintiff and others.

DEFENDANTS' HISTORIC AND ONGOING AFFIRMATIVE CONDUCT HAS PLACED PLAINTIFF IN DANGER

Plaintiff must show "the state engaged in 'affirmative conduct' that placed him or her in danger." (*Pauluk*, 836 F.3d at 1124 (quoting *Patel v. Kent Sch. Dist*, 648 F.3d 965, 974 (9th Cir. 2001))). Affirmative conduct is conduct that creates, exposes, or increases a risk of harm that Plaintiff would not have faced to the same degree absent such conduct. (*Hernandez v. City of San Jose*, 897 F.3d 1125, 1134-35 (9th Cir. 2018); *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs*., 489 U.S. 189, 196 (1989)). Smart Grid deployment meets these criteria. (Ex. 1-7, 12)

FPL HAS ACTED WITH DELIBERATE INDIFFERENCE TO THE KNOWN OR OBVIOUS DANGERS TO WHICH IT EXPOSES PLAINTIFF

To establish "deliberate indifference," Plaintiff must show: (1) Defendants' actual knowledge of or willful blindness to; (2) an unusually serious risk of harm; and (3) Defendants either failed to take obvious steps to address the risk or exposed a claimant to the risk. (*L.W. v. Grubbs*, 92 F.3d 894, 900 (9th Cir. 1996)). FPL's present conduct recklessly disregards the substantial risk of harm to Plaintiff and others in the community. (See *Farmer v. Brennan*, 511 U.S. 825, 836 (1994) ("acting or failing to act with deliberate indifference to a substantial risk of serious

harm . . . is the equivalent of recklessly disregarding that risk.") See also *Farmer*, 511 U.S. at 843 ("[I]t does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a [claimant] faces an excessive risk. . . for reasons personal to him or because all in his situation face such a risk.")).

Plaintiff is thus likely to succeed and, at a minimum, has raised "serious questions," on the merits of the state-created danger claim. (*Alliance for the Wild Rockies*, 632 F.3d at 1135; *County of Sacramento v. Lewis*, 523 U.S. 833, 853 (1998) ("When such extended opportunities to do better are teamed with protracted failure even to care, indifference is truly shocking.")

THE BALANCING OF EQUITIES FAVORS AN INJUNCTION

"To determine which way the balance of the hardships tips, a court must identify the possible harm caused by the preliminary injunction against the possibility of the harm caused by not issuing it." (*Univ. of Hawaii Professional Assembly v. Cayetano*, 183 F.3d 1096, 1108 (9th Cir. 1999)). Courts regularly maintain the status quo while litigation is pending. (See *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617, 627 (2018) (nationwide stay of the Waters of the United States Rule); *Gonzalez v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 423 (2006) (Controlled Substances Act); *Hills v. Gautreaux*, 425 U.S. 284 (1976) (approving permanent, affirmative structural injunction correcting federal agency's systemic due process violations).

The balance of equities favors an injunction here because FPL "suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented." *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017)(quoting *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013)); *Ariz. Dream Act Coal.*, 757 F. 3d at 1069 (when a plaintiff establishes a constitutional violation, plaintiff also establishes that "the balance of equities favor a preliminary injunction."); *Melendres*, 695 F.3d at 1002 (the balance of equities favors "prevent[ing] the violation of a party's constitutional rights.").

An injunction will pose no real harm to FPL or anyone else. In fact, an injunction will prevent fiscal harm by temporarily halting public and private investments in the ill-conceived and deeply flawed Smart Grid. Even if there were minimal financial repercussions, "[f]aced with such a conflict between financial concerns and preventable human suffering, we have little difficulty concluding that the balance of hardships tips decidedly in plaintiffs' favor." *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983); *Hernandez*, 872 F.3d at 995-96; *Golden Gate Rest. Ass'n*, 512 F.3d at 1126 (balance of hardships tips in favor of party seeking to prevent human suffering). Similarly, any purported claims of administrative burdens caused by the injunction are insufficient to outweigh the harm to Plaintiff and others. (*Hernandez*, 872 F.3d at 995.) "[P]hysical and emotional suffering shown by plaintiffs ... is far

more compelling than the possibility of some administrative inconvenience or monetary loss…" (*Lopez*, 713 F.2d at 1437.)

PRELIMINARY INJUNCTION PROMOTES THE PUBLIC INTEREST

This case involves issues of great public import. This Court has an opportunity to decide whether to continue to "cook" people in their own homes with extraordinarily harmful RF and microwave radiation or whether to enjoin the ongoing technological holocaust. Rarely is a court presented with such an overarching issue which could destroy or save all of humanity. Science confirms that the human genome, itself, is at stake. This is a once in a lifetime chance for a court of law to act, not only judiciously, but also heroically.

This injunction advances the public interest in several important ways. "Courts of equity have much greater latitude in granting injunctive relief 'in furtherance of the public interest... than when only private interests are involved.'" *City of Los Angeles*, 461 U.S. at 133 (quoting *Virginian Ry. Co. v. Sys. Fed'n No. 40*, 300 U.S. 515, 552 (1937)). This case involves important public interests that can only be served by an injunction in this case. First, "public interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution." (*Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005); *Arizona Dream Act Coal.*, 757 F.3d at 1069 (the public interest favors an injunction when a plaintiff establishes "a likelihood that Defendants' policy violates the U.S.

Constitution"); *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002)). Second, "[t]he 'general public has an interest in the health' of state residents." (*Stormans, Inc.*, 586 F.3d at 1139 (citing *Golden Gate Rest. Ass'n*, 512 F.3d at 1126)). This is particularly true with respect to the protection of children, elderly, and disabled persons who are being physically and psychologically harmed by the Smart Grid. Finally, the injunction would serve the public interest by promoting economic and national security. Utility costs are typically born by customers and rate-payers, not management and shareholders. The Smart Grid is easily hacked.

THE SCOPE OF THIS PRELIMINARY INJUNCTION IS LIMITED

Finally, the scope of the requested injunctive relief is limited "to the necessities of the particular case." (*Weinberger v. Romero–Barcelo*, 456 U.S. 305, 312 (1982)). The requested injunctive relief seeks nothing more than to preserve during the pendency of the appeal Plaintiff's ability to obtain the ultimate remedy. This requested relief is confined to FPL's Smart Grid installations in Plaintiff's immediate vicinity. The threat to Plaintiff's rights posed by these new installations is significant, as biological harm from EMFs is cumulative and irreversible. (Ex. 1-7, 12) Enjoining ongoing Smart Grid deployment in Plaintiff's community is the minimum effective relief that Plaintiff could seek. The requested relief thus achieves a "nice adjustment and reconciliation between the competing claims" in this case.

(*Weinberger*, 456 U.S. at 312), and is minimally commensurate with the scale of the violations to Plaintiff's constitutional rights. The relatively-narrow scope of Appellant's requested injunctive relief, which is "no broader than [that] required by the precise facts" of this case, militates strongly in Plaintiff's favor. (*Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc*., 528 U.S. 167, 193(2000)).

PLAINTIFF SHOULD NOT BE REQUIRED TO POST A BOND

When a party shows that it is likely to succeed on the merits, no bond should be required. (*Van De Kamp v. Tahoe Reg'l Planning Agency*, 766 F.2d 1319, 1326 (9th Cir. 1985), amended by 775 F.2d 998 (9th Cir. 1985)). Plaintiff does not have significant resources at her disposal to protect constitutional rights. Furthermore, Plaintiff is pursuing this litigation in the public interest. A court has the discretion to dispense with the security requirement where giving security would effectively deny access to judicial review. (*Save Our Sonoran, Inc. v. Flowers*, 408 F.3d 1113, 1126 (9th Cir. 2005)(citation omitted); *Tenakee Springs v. Clough*, 915 F.2d 1308, 1314 n.4 (9th Cir. 1990)). Under these circumstances, a bond should not be required.

CONCLUSION

For the foregoing reasons, this Court should issue a preliminary injunction or TRO during the pendency of this appeal. As the Supreme Court noted in the civil rights context, "[t]he reconciliation of competing values in a desegregation case is, of course, a difficult task with many sensitive facets but fundamentally no more so than

remedial measures courts of equity have traditionally employed." (*Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 31 (1971)). Based on the foregoing evidence, this Court has "the necessary predicate for the entry of a remedial order," structured to address the nature and scope of relief appropriate under the circumstances. (*Hills v. Gautreaux*, 425 U.S. at 297 ("Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.")

COURT SHOULD GRANT PRELIMINARY INJUNCTION

In the absence of opposition, the Court is required to grant the well-taken Motion which is fully supported by facts and law. (*United States v. Warren*, 601 F.2d 471 (9th Cir. 1979); *Ghazali v. Moran*, 46 F.3d 52 (9th Cir. 1995)). No party has opposed, nor has the District Court found otherwise. Plaintiff's First, Fourth, Fifth, Ninth, and Fourteenth Amendment rights must be restored. The public health must be protected. FPL must be enjoined from deploying the Smart Grid.

Respectfully submitted,

DATE: August 8, 2019 /s/ Deborah Cooney

Deborah Cooney, Plaintiff/Appellant In Propria Persona

STATEMENT OF RELATED CASES

Pursuant to Circuit Rule 28-2.6, the following related cases are pending in this Court:

Underlying Cases:

Cooney v. SDG&E et al, No. 14-17564

Cooney v. California et al, No. unknown –

District Court Case No. 3:2013cv00677 and 3:2013cv01373

Cases that raise the same or closely related issues (EMF radiation):

CTIA—The Wireless Ass'n v. City of Berkeley, No. 16-15141

Sprint Corporation v. FCC and United States of America

Consolidated Case Nos. 19-70123, 19-70124, 19-70125, 19-70136, 19-70144, 19-70145, 19-70146, 19-70147, 19-70326, 19-70339, 19-70341, and 19-70344

Santa Fe Alliance for Public Health and Safety, et al v. City of Santa Fe et al,

New Mexico District Court No. 1:18-cv-01209-LF-JHR

CERTIFICATE OF COMPLIANCE

I certify that this Motion contains 20 pages and 4,551 words, excluding the portions exempted by Federal Rules of Appellate Procedure, Rules 27(a)(2)(B) and 32 (f). The Motion's type size and type face comply with Federal Rules of Appellate Procedure, Rule 32(a)(5) and (6).

DATE: August 8, 2019 ___/s/ Deborah Cooney_____

Deborah Cooney, Plaintiff/Appellant In Propria Persona

DECLARATION OF SERVICE

CASE NAME: Cooney v. San Diego, et al

CASE NUMBER: 19-16180 appeal from District Court No. 3:2018-cv-01860-JSW

I declare:

On August 8, 2019, I served the following document(s):

PLAINTIFF'S EMERGENCY MOTION UNDER CIRCUIT RULE 27-3(a)
with EXHIBITS 1-13

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I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on August 8, 2019, at Vero Beach, FL.

___/s/Deborah Cooney_____
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