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FILED
Superior Court Of California
County Of Los Angeles

AUG 07 2018

Theresa K. Canales, Executive Officer/Clerk
By Claudia Esquivel Deputy

APPELLATE DIVISION OF THE SUPERIOR COURT
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

VICTIMS DEMETRIUS CRUMP et al.,

Appellants.

BR 053255

Santa Clarita Trial Court

No. 6SC00433

OPINION

INTRODUCTION

On February 2, 2016, the People filed a four-count misdemeanor complaint against defendant Southern California Gas Company related to a natural gas leak that occurred at defendant's Aliso Canyon/Porter Ranch gas storage facility in October 2015. Defendant was charged with failing to timely report the release of hazardous materials to the California Emergency Management Agency and to the unified program agency (Health & Saf. Code, § 25510, subd. (a)),¹ count 1); failing to report the gas leak to the forester and fire warden (L.A.

¹"(a) Except as provided in subdivision (b), the handler or an employee, authorized representative, agent, or designee of a handler, shall, upon discovery, immediately report any release or threatened release of a hazardous material to the unified program agency, and to the office, in accordance with the regulations adopted pursuant to this section. The handler or an employee, authorized representative, agent, or designee of the handler shall provide all state, city, or county fire or public health or safety personnel and emergency response personnel with access to the handler's facilities." (Health & Saf. Code, § 25510, subd. (a).)

1 County Code, § 12.56.030, count 2); failing to report the leak to the administering agency and
2 to the California Emergency Management Agency (former Cal. Code Regs., tit. 19, § 2703,
3 subd. (a), count 3); and discharging air contaminants (Health & Saf. Code, § 41700, subd. (a),
4 count 4).

5 The parties entered into a plea agreement whereby defendant pled no contest to count 1,
6 and the remaining counts were dismissed. Porter Ranch resident Demetrius Crump and other
7 victims of the leak (“the Victims”) filed a motion with the court seeking to set aside the plea
8 and to order victim restitution, which the court denied. The Victims appeal from the trial
9 court’s denial of their motion.

10 In the first instance, this appeal presents the question of whether the rights afforded to
11 crime victims under the state Constitution and implementing statutes include initiation of an
12 appeal of a substantive order issued in a criminal case. As explained below, we conclude the
13 Victims lack standing to pursue the appeal. However, we do find the Victims have a right to
14 seek a writ of mandate concerning the denial of their motion. We, therefore, treat the Victims’
15 appeal as a petition for a writ compelling the trial court to vacate its order denying their motion
16 to vacate the plea agreement and grant restitution and to issue an order granting their motion.
17 As the Victims did not establish below that any economic losses they sustained resulted from
18 the criminal conduct for which defendant was convicted, we deny the petition.

19 BACKGROUND

20 *The Settlement Agreement*

21 On September 12, 2016, the People notified Paul Kiesel, liaison counsel for
22 Victims/plaintiffs in the separate coordinated civil and class action cases filed as a result of the
23 gas leak, of the settlement agreement reached by the People and defendant and that the
24 agreement would be presented to the court for its consideration the next day.

25 On September 13, 2016, the court called the matter for a plea hearing. Under the terms
26 of the negotiated plea, defendant was required to plead no contest to count 1 and to pay at
27 sentencing a fine of \$75,000, which represented the maximum fine of \$25,000 for each of the
28 three days it failed to report the gas leak (see Health & Saf. Code, § 25515.3, subd. (a)).

1 Defendant would also pay at sentencing “all mandatory fines and fees as required by the court,
2 including any restitution fine to the State Restitution Fund ordered pursuant to Penal Code
3 [s]ection 1202.4.” The plea agreement did not require defendant to make restitution to any
4 person for any economic loss suffered as a result of defendant’s conduct.²

5 The court signed the settlement agreement, accepted defendant’s plea, and found
6 defendant guilty of count 1.

7 *The Sentencing Hearing and Victims’ Motion to Withdraw Plea Agreement*

8 On October 18, 2016, the Victims, represented by the Parris Law Firm and Panish
9 Shea & Boyle, LLP, filed a request for withdrawal of the plea agreement. In the motion, they
10 argued the plea should be withdrawn because it violated the Victims’ Bill of Rights Act
11 (Marsy’s Law) by failing to give the Victims reasonable notice prior to the disposition of the
12 case. They maintained that the plea agreement, which relieved defendant of paying restitution
13 under counts 2 through 4, violated their constitutional right to restitution, and the failure to take
14 a *Harvey*³ waiver on the dismissed count 4 required withdrawal of the plea. They also
15 requested to be heard on their claims for restitution before the court accepted the plea
16 agreement or sentenced defendant.

17 The People and defendant filed their respective oppositions to the Victims’ motion,
18 arguing, inter alia, they complied with Marsy’s Law because Kiesel had been notified of the
19 proposed settlement; the Victims still had the right to be heard regarding restitution at the
20 sentencing hearing; there was no right to restitution because there were no direct victims with
21 respect to count 1; there was no right to restitution on dismissed count 4 without a *Harvey*
22 waiver; the prosecutor properly exercised her discretion in reaching the plea agreement, as it
23 was in the best interest of the public at large; and the trial court properly approved the
24 settlement.

25
26 ²The negotiated plea required defendant to make substantive and costly improvements at the
27 facility and to implement policies and procedures to minimize any future occurrences of the problems
that led to the criminal charges.

28 ³*People v. Harvey* (1979) 25 Cal.3d 754 (*Harvey*).

1 The Victims filed their reply on November 28, 2016, arguing a restitution order was
2 required for count 1 because it was transactionally related to count 4.

3 On November 29, 2016, the matter was called for a sentencing hearing. The court asked
4 if there was "any legal cause why judgment should not be pronounced." Attorney Brian Panish
5 stated he was appearing on behalf of 7,225 victims. He argued "any sentence without an award
6 of restitution would be invalid and unconstitutional," and the court could "correct" this defect
7 by making a finding count 1 (failure to report) was transactionally related to dismissed count 4
8 (emission of hazardous gases). Alternatively, the court could "give the defendant an
9 opportunity to give a *Harvey* waiver" as to count 4.

10 Attorney R. Rex Parris also appeared and argued the trial court did not need a *Harvey*
11 waiver to impose restitution in the matter because counts 1 and 4 were transactionally related,
12 and it could "order full and complete restitution for every victim . . . whose health was
13 compromised, whose property values compromised because of the world's worst gas blowout
14 in history."

15 The court invited the individual victims to offer statements. Six of them spoke in open
16 court about the injuries they and their families suffered and the property damage they sustained
17 as a result of the gas leak.⁴

18 ⁴Maureen Capra stated she had been a Porter Ranch resident for over 42 years and for "all those
19 years" her health and the health of her daughter and granddaughter had been damaged; she also stated
20 her house required cleaning and painting because of the leak.

21 Danielle Rabadi indicated when the gas leak occurred, she and her husband left their home in
22 Porter Ranch and moved in with her in-laws. But because of her work, friends, and family, she often
23 returned to Porter Ranch and the exposure to the toxic elements would cause her to have headaches and
24 rashes.

25 Christine Katz informed the court that she and her family moved because the leak had caused
26 her family to be ill, sold their dream home at a loss, and were forced to get rid of all their possessions
27 because of "the oily residue that wouldn't come off." Their relocation to Newbury Park negatively
28 impacted their commute to jobs and schools.

Matthew Pakucko stated he and his girlfriend suffered heart palpitations and nose bleeds,
respectively, because of the leak. He operated a recording studio out of his house, but, due to the leak,
his business was "all but dead."

Gui Niizawa stated that during "the peak of this blowout in November," his son, Evan, stopped
breathing, and the following February, Evan passed away.

Elena Semper voiced her concern that the gas leak had affected the entire San Fernando Valley
because the blowout stretched five miles and there were "constant fugitive releases."

1 The prosecutor argued, among other things, that there is no right to restitution on count 1
2 and that the Victims conceded as much by arguing for restitution based on the facts underlying
3 count 4. The prosecutor also asserted counts 1 and 4 were not transactionally related and,
4 therefore, count 4 could not serve as a basis for restitution on count 1. She maintained an entity
5 could timely report a leak and still cause a public nuisance or, conversely, fail to report a leak
6 but not create a public nuisance.

7 Manuel Abascal, the attorney for defendant, citing to *Dix v. Superior Court* (1991) 53
8 Cal.3d 442 (*Dix*), asserted the Victims lacked standing to demand a withdrawal of the plea or
9 “to compel a prosecution” on count 4, and the court had no basis to “substitute its judgment for
10 the reasons articulated by the District Attorney’s Office.” He also argued that in a
11 nonprobationary context, such as the instant case, there would be no basis to impose restitution
12 on count 1 because the Victims were not “direct victims” of defendant’s failure to report a leak,
13 as “[t]he offense was not directed at any individuals.” He noted a *Harvey* waiver could not be
14 compelled and “the transactional relation” argument did not apply to this case. He cited to
15 *People v. Guevara* (1979) 88 Cal.App.3d 86, as a “good example” of using transactional
16 relationship between counts for purposes of sentencing enhancement.

17 Parris responded to the People’s argument that the Victims had conceded there was no
18 basis to award restitution on count 1. He stated, “We are not conceding that there is no
19 restitution for the three days. Presumably the requirement that you report to the regulatory
20 agencies, the release of these substances requires a truthful, an accurate report as to what’s
21 being released. If the victims of Porter Ranch had known immediately that Benzene,
22 Fluorocarbons, . . . were ultimately disclosed as being released in those three days, I can tell
23 you that there’s nobody in this courtroom that wouldn’t have packed up their children and left
24 immediately. These are known carcinogens. There is no safe amount. There was hydrogen
25 sulfide that was put onto these homes, if nothing else. [¶] During those three days, there’s a
26 consequence. The extent of that [*sic*] economic consequences is something the court has to
27 decide. But a good argument can be made for the fact that had they done their duty, had they
28 followed the law, had they reported exactly what they released into the environment, all of this

1 damage would have been prevented because I think the health department . . . would red tag all
2 those houses. It was that dangerous. So they do not get to say three days has no value in what
3 occurred and has no economic loss. That's ludicrous."

4 After having heard and considered the parties' arguments and the individual Victims'
5 statements, the court approved the plea agreement. In its written order, the court stated,
6 although the Victims' Bill of Rights and its implementing statutes gave the Victims limited
7 "standing" to intervene in a criminal action to assert their rights to notice, to be heard, and to
8 restitution for losses resulting from the crime of which the defendant was *convicted*, these
9 limited rights did not confer on the Victims general standing to intervene in the settlement
10 negotiations or to otherwise assert the right to restitution in connection with a *dismissed* charge
11 (count 4) pursuant to the negotiated disposition. The court found it could not order restitution
12 by imposing a *Harvey* waiver because any waiver of the protection against orders for restitution
13 as to the dismissed counts had to be voluntary. Regarding the disposition for count 1, the court
14 indicated there was no basis for restitution because there was no "obvious causation." It stated,
15 "The delay in the defendant's required notifications to various authorities upon discovery of the
16 gas leak did not cause the damage occasioned by the leak; the damage would have occurred
17 with or without the timely notification."

18 The court noted it was "treating the 'motion' as a demand for the victims to be heard,"
19 and found the People had complied with their duty under Marsy's Law to give notice to the
20 Victims prior to the disposition of the case.⁵ The court added the Victims had "conflated" their
21 right to notice and to be heard with "the concept of standing as it relates to full participation in
22 the determination of the outcome of a case in all its aspects." Therefore, as to all other relief

23
24 ⁵In its written order, the court stated, "The Court finds that the People have complied with
25 Marsy's Law (Cal. Const., art. I, § 28, subd. (b)(6)), by notifying prior to the taking of the plea, Paul
26 Kiesel, liaison counsel for what is represented to this Court as approximately 86 law firms involving
27 approximately 212 coordinated lawsuits under a Judicial Council Coordinated Proceeding order (JCCP
28 4861), currently in Department 311, of this Court. The appearance by motion of various counsel, each
representing multiple individual potential victims in this case, and the Court's unusual step of directly
sending out timely notices to counsel for all who have appeared setting a hearing date for victim input,
together with the People's initial notice to coordination counsel in the civil actions, satisfies the notice
requirements at issue."

1 requested by the Victims—"to vacate the plea, require restitution other than what is contained
2 within the written agreement of the parties, retain jurisdiction over restitution or, in the
3 alternative, to impose a *Harvey* waiver as a condition of the plea"—the motion was denied.

4 The instant appeal of the court's order denying the Victims' motion for restitution
5 followed.

6 DISCUSSION

7 The Victims contend they have a recognized right under the California Constitution and
8 Penal Code section 1204.4 to restitution for losses sustained as a result of defendant's criminal
9 conduct and, therefore, they necessarily have a corresponding right to appeal the court's order
10 denying them restitution.

11 *California Constitution and Penal Code Section 1202.4*

12 In 1982, Proposition 8, the Victims' Bill of Rights, was enacted. It amended the
13 California Constitution to codify a number of rights for victims. (Cal. Const., art. I, § 28.) The
14 right to restitution was among those rights guaranteed. (Cal. Const., art. I, § 28, subd. (b).) In
15 2008, the voters adopted Proposition 9, known as Marsy's Law and, as amended, article I,
16 section 28 of the California Constitution (hereafter "Section 28") lists 17 specific "rights to
17 which a victim is entitled '[i]n order to preserve and protect [the] victim's rights to justice and
18 due process.' [Citation.]" (See *People v. Hannon* (2016) 5 Cal.App.5th at p. 100.)
19 "Section 28, subdivision (b)(13)(A), describes the right to restitution in language similar to the
20 1982 enactment, stating 'It is the unequivocal intention of the People of the State of California
21 that all persons who suffer losses as a result of criminal activity shall have the right to seek and
22 secure restitution from the persons convicted of the crimes causing the losses they suffer.'"

23 (*Ibid.*)

24 Pertinent to this appeal, Section 28, subdivision (b), provides, in relevant part: "In order
25 to preserve and protect a victim's rights to justice and due process, a victim shall be entitled to
26 the following rights: [¶] . . . [¶] (6) To reasonable notice of and to reasonably confer with the
27 prosecuting agency, upon request, regarding, the arrest of the defendant if known by the
28 prosecutor, the charges filed, the determination whether to extradite the defendant, and, upon

1 *request, to be notified of and informed before any pretrial disposition of the case.* [¶] . . . [¶]
2 (8) *To be heard, upon request, at any proceeding, including any delinquency proceeding,*
3 *involving a post-arrest release decision, plea, sentencing, post-conviction release decision, or*
4 *any proceeding in which a right of the victim is at issue.* [¶] . . . [¶] (13) *To restitution.* [¶] (A) It
5 is the unequivocal intention of the People of the State of California that all persons who suffer
6 losses as a result of criminal activity shall have the right to seek and secure restitution from the
7 persons convicted of the crimes causing the losses they suffer. [¶] (B) Restitution shall be
8 ordered from the convicted wrongdoer in every case, regardless of the sentence or disposition
9 imposed, in which a crime victim suffers a loss. [¶] (C) All monetary payments, monies, and
10 property collected from any person who has been ordered to make restitution shall be first
11 applied to pay the amounts ordered as restitution to the victim.” (Italics added.)

12 Section 28, subdivision (c), provides, “(1) A victim, the retained attorney of a victim, a
13 lawful representative of the victim, or the prosecuting attorney upon request of the victim, *may*
14 *enforce the rights enumerated in subdivision (b)* in any trial or appellate court with jurisdiction
15 over the case as a matter of right. The court shall act promptly on such a request.” (Italics
16 added.)

17 As implemented by constitutional mandate, Penal Code section 1202.4 requires
18 restitution in every case, without respect to whether probation is granted. (*People v. Giordano*
19 (2007) 42 Cal.4th 644, 653.) The statute provides, in relevant part, “(a)(1) It is the intent of the
20 Legislature that a victim of crime who incurs an economic loss as a result of the commission of
21 a crime shall receive restitution directly from a defendant *convicted of that crime.* [¶] . . . [¶]
22 (3) The court, in addition to any other penalty provided or imposed under the law, shall order
23 the defendant to pay both of the following: [¶] (A) A restitution fine (B) Restitution to the
24 victim or victims, if any, in accordance with subdivision (f) [¶] . . . [¶] (f) . . . in every case
25 in which a victim has suffered economic loss as a result of the defendant’s conduct, the court
26 shall require that the defendant make restitution to the victim or victims” (Italics added.)

27 ///

28 ///

1 *The Victims' Standing to Appeal*

2 The Victims contend on appeal the negotiated disposition of this case, which resulted in
3 the dismissal of count 4, violated their constitutional right to restitution, and the trial court erred
4 in denying their motion to vacate the plea agreement and judgment.

5 *Relevant statutory provisions*

6 The Victims argue their right to restitution for losses sustained as a result of defendant's
7 criminal conduct is guaranteed by Section 28, subdivision (b)(13), and their right to appeal the
8 denial of restitution is embodied in Section 28, subdivision (c)(1), which specifically provides,
9 "A victim [or] the retained attorney of a victim . . . may enforce the rights enumerated in
10 subdivision (b) in any . . . appellate court with jurisdiction over the case as a matter of right."

11 We do not construe these provisions as affording a victim the right to file a direct appeal.
12 "'When interpreting statutes, we begin with the plain, commonsense meaning of the language
13 used by the Legislature. [Citation.] If the language is unambiguous, the plain meaning
14 controls. [Citation.]" [Citations.] "[C]ourts will not "interpret away clear language in favor of
15 an ambiguity that does not exist." [Citation.]" [Citations.]" (*People v. Dunbar* (2012) 209
16 Cal.App.4th 114, 117.)

17 By their plain terms, subdivisions (b) and (c) of Section 28 do not extend to victims *the*
18 *right to appeal*. Subdivision (b) lists numerous rights, both substantive (i.e., restitution) and
19 procedural (i.e., to notice and to be heard), but none of them includes the right to file an appeal.
20 Subdivision (c) permits a victim to enforce the rights enumerated in subdivision (b) in the
21 appellate court that has acquired jurisdiction over the matter—once an appeal has been filed.
22 (See *People v. Espinosa* (2014) 229 Cal.App.4th 1487, 1496 ["the filing of a notice of appeal
23 vests jurisdiction in the appellate court and divests the trial court of jurisdiction to make any
24 order affecting the judgment"].) Nothing in subdivision (c), however, indicates it is the victim
25 who can trigger the appellate court's jurisdiction by initiating the appeal.

26 "The right to appeal from an order or judgment in a criminal case is purely statutory; no
27 appeal . . . is proper unless expressly permitted by the Penal Code." (*People v. Hale* (1965) 232
28 Cal.App.2d 112, 125.) Notwithstanding an appealable judgment or order, it is a jurisdictional

1 and unwaivable rule that an appeal may be taken only by a party who has standing to appeal.
2 (*People ex rel. Allstate Insurance Co. v. Dahan* (2016) 3 Cal.App.5th 372, 377.) “Standing to
3 appeal is jurisdictional [citation] and the issue of whether a party has standing is a question of
4 law [citation].” (*People v. Hernandez* (2009) 172 Cal.App.4th 715, 719-720.)

5 Penal Code section 1466 governs the right of appeal in misdemeanor cases. In pertinent
6 part, it provides: “An appeal may be taken from a judgment or order, in an infraction or
7 misdemeanor case, to the appellate division of the superior court of the county in which the
8 court from which the appeal is taken is located . . . [¶] (a) By the people . . . [or] (b) By the
9 defendant” The Legislature did not authorize an appeal to be initiated by a nonparty
10 victim. The Victims fail to cite, and we have not uncovered, any cases which hold that a victim
11 may initiate an appeal of an order denying a motion to withdraw a plea agreement or an order
12 denying restitution.

13 We acknowledge that when the Legislature amended Section 28 in 2008, it added
14 subdivision (c), so that victims could “enforce” their rights in the appellate court. In so
15 amending Section 28, however, the Legislature specifically chose not to use the word “appeal”
16 or otherwise state “an appeal may be taken” by crime victims. (See Pen. Code, §§ 1466-1469,
17 1233-1246.) This is significant because the Legislature is presumed to know existing law when
18 it enacts a new law. (*Singh v. Superior Court* (2006) 140 Cal.App.4th 387, 400.) We, thus,
19 presume the Legislature was familiar with Penal Code section 1466 and the enabling phrase,
20 “An *appeal* may be taken.” The Legislature’s decision not to use the term “appeal” in
21 subdivision (c) then supports our conclusion that the enforcement rights referred to therein do
22 not include the right to initiate an appeal.

23 Criminal conduct is seen as an injury to the community at large, and the executive
24 branch of the government, as the representative of the community, has the sole responsibility
25 and authority to initiate and litigate criminal prosecutions. (*Steen v. Appellate Division* (2014)
26 59 Cal.4th 1045, 1053 [“California law leaves no doubt that the initiation of criminal
27 proceedings is a core, inherent function of the executive branch”]; Gov. Code, §§ 12550,
28 26500, 100, subd. (b).) Since the passage of the amendments to the Victims’ Bill of Rights, the

1 Legislature has not amended Penal Code section 1466 to include victims among those entitled
2 to initiate an appeal, nor has it enacted any change to Penal Code section 1202.4 to explicitly
3 extend appellate rights to the victims who are denied restitution by the trial court.

4 Although a victim is vested with specified constitutional and statutory rights, he or she is
5 not a party to the criminal proceedings, and because a victim is not a party in the criminal
6 proceedings, he or she does not enjoy the general right of appeal. Therefore, if the trial court
7 does not follow the law with respect to a crime victim's rights, any available remedy depends
8 on a legislative expansion of the rights of crime victims to appeal, or the People exercising their
9 right to appeal the court's ruling.

10 We thus distinguish between, on the one hand, a crime victim's specified procedural and
11 substantive rights afforded by the Constitution and the Penal Code and, on the other hand, the
12 crime victim's asserted right to intervene in the criminal action and independently seek
13 appellate review of the court's decision with respect to the plea agreement or the decision not to
14 issue a restitution order. We find the crime victim does not have an independent right to initiate
15 appellate review.

16 *Relevant case law*

17 Our conclusion in this regard is bolstered by case law. In *Dix*, at the prosecutor's
18 request, the court recalled the defendant's sentence pursuant to Penal Code section 1170 so that
19 the defendant would testify in another case and, in exchange, he could serve his sentence in
20 county jail rather than state prison. (*Dix, supra*, 53 Cal.3d at pp. 448-449.) The victim of the
21 crime objected to the recall of the defendant's sentence and sought a writ of
22 prohibition/mandate to compel reinstatement of the original sentence and to have him
23 immediately returned to prison. (*Id.* at p. 450.) The Court of Appeal ordered issuance of a
24 peremptory writ of mandate directing the trial court to vacate its recall order and to return the
25 defendant to prison. (*Ibid.*)

26 The California Supreme Court reversed the Court of Appeal's order, holding the victim
27 lacked standing to intervene because the "extraordinary writ proceeding [fell] within the
28 general rule that neither a crime victim nor any other citizen has a legally enforceable interest,

1 public or private, in the commencement, conduct, or outcome of criminal proceedings against
2 another.” (*Dix, supra*, 53 Cal.3d at p. 450.) The Court concluded the only parties to a criminal
3 action are the People and the accused (*id.* at p. 451), and because the victim is not a party, he or
4 she has no general standing to intervene in the criminal proceeding (*id.* at p. 448). The victim,
5 attempting to establish standing, pointed to “recent statutory and constitutional changes” that
6 had broadened victims’ rights, but the California Supreme Court noted the amendments did not
7 include a specific right to challenge the court’s recall order. (*Id.* at pp. 452-453.)

8 In *People v. Dehle* (2008) 166 Cal.App.4th 1380 (*Dehle*), the prosecutor requested to
9 have the victim’s attorney present the case for a restitution hearing; the court, over the
10 defendant’s objection, conducted the hearing in the prosecutor’s absence; and the defendant
11 appealed. (*Id.* at p. 1385.) The Court of Appeal emphasized the prosecutor’s role as a
12 representative of the People and agreed the district attorney’s absence from the restitution
13 hearing rendered the hearing invalid. (*Id.* at p. 1386.) Quoting *Dix*, the court stated, “‘The
14 district attorney of each county is the public prosecutor, vested with the power to conduct on
15 behalf of the People all prosecutions for public offenses within the county. [Citations.] Subject
16 to the supervision by the Attorney General [citations], therefore, the district attorney of each
17 county independently exercises all the executive branch’s discretionary powers in the initiation
18 and conduct of criminal proceedings. [Citations.] The district attorney’s discretionary
19 functions extend from the investigation and gathering of evidence relating to criminal offenses
20 [citation], through the crucial decisions of whom to charge and what charges to bring, to the
21 numerous choices the prosecutor makes at trial regarding “whether to seek, oppose, accept, or
22 challenge judicial actions and rulings.” [Citations.]’” (*Id.* at p. 1387, italics added.) *Dehle*,
23 therefore, recognized that there are two essential parties to a criminal action, the defendant and
24 the People.

25 The Victims argue that *Dix* and *Dehle* were decided before the 2008 amendment to the
26 Victims’ Bill of Rights, which added subdivision (c) to Section 28. We find instructive
27 *People v. Smith* (2011) 198 Cal.App.4th 415 (*Smith*), which was decided after the enactment of
28 Marsy’s Law and which specifically discussed *Dehle*. In *Smith*, the trial court held a contested

1 restitution hearing attended by the defense attorney, the victim's attorney, and a deputy district
2 attorney who had not tried the case. (*Id.* at p. 437.) Citing *Dehle*, the defense attorney objected
3 to the victim's attorney putting on the case for restitution without the prosecutor's participation.
4 (*Id.* at pp. 437-438.) The court concluded the case before it was distinguishable from *Dehle*,
5 stating, "This case is unlike *Dehle* because here, a deputy district attorney represented the
6 interests of the People at the restitution hearing. She expressed her desire to have [the victim's]
7 attorney proffer evidence and stated that the People had no further evidence beyond the
8 evidence presented by [the victim's] attorney." (*Id.* at p. 438.)

9 The discussion of *Dehle* in *Smith* supports the conclusion that *Dehle* remains good law
10 even after the enactment of Marsy's Law, and that the prosecutor's presence is essential to the
11 conduct of any critical stage in the proceedings. Therefore, any appeal of an order pertaining to
12 restitution would have to be initiated by the People—not the victim.

13 We also find *People v. Subramanyan* (2016) 246 Cal.App.4th Supp. 1 (*Subramanyan*) to
14 be persuasive. In that case, the defendant was convicted by his guilty plea to two counts of
15 drunk driving and ordered to pay \$12,800 in victim restitution. (*Id.* at p. Supp. 4.) After the
16 court denied the victim's request for additional restitution, the victim appealed the order.
17 (*Ibid.*) The appellate division held the victim lacked standing to appeal. (*Id.* at p. Supp. 7.)

18 The appellate division stated, "Although Marsy's Law permits a victim to enforce these
19 rights personally, nothing in Marsy's Law undermines *Dehle*'s requirement that the prosecutor
20 be present to represent the interests of the People before the court when the court determines
21 the amount of restitution. [¶] More importantly, Marsy's Law does not permit a victim to stand
22 in the role of the prosecutor and initiate a criminal prosecution or criminal appeal. . . . [¶] There
23 is no provision in Marsy's Law that specifically permits a victim to appeal a restitution order.
24 The Penal Code specifically directs that appeals are limited to the People or the defendant.
25 (Pen. Code, § 1466.) Penal Code section 1202.4 does not authorize an appeal by the victim
26 after a restitution hearing." (*Subramanyan, supra*, 246 Cal.App.4th at p. Supp. 7.)

27 The Victims assert the Court of Appeal in *Hannon* found *Subramanyan* was incorrectly
28 decided. In *Hannon*, the defendant pled no contest to misdemeanor theft by embezzlement, and

1 the trial court placed him on probation and ordered him to pay restitution to the victim.
2 (*Hannon, supra*, 5 Cal.App.5th at pp. 97-98.) During the pendency of the defendant's appeal of
3 the restitution award, the victim requested that he be permitted to file a victim impact
4 statement, and the court held the victim had the right to submit a statement under Section 28,
5 subdivision (b)(8), which permits a victim the right to be heard upon request. (*Id.* at p. 102.)

6 In a footnote, the court noted *Subramanyan's* holding that a victim has no right to appeal
7 is not easily reconciled with the plain language of Section 28, subdivision (c)(1), which allows
8 a victim to "enforce the rights enumerated in subdivision (b)." It stated, "If a victim does not
9 have a right to appeal an inadequate restitution award, and the People decline to appeal, then
10 the victim's claims of error may go unheard. Arguably, a victim has a right to appeal under
11 Section 28, subdivision (c)(1)" [Citation.] (*Hannon, supra*, 5 Cal.App.5th at p. 107,
12 fn. 7.)

13 The issue before the *Hannon* court was whether the victim had the right to submit a
14 victim impact statement in an appeal that was filed by a defendant, a party to the action.
15 Therefore, the court did not have occasion to address the issue presented in *Subramanyan*, or to
16 this court—whether a victim has standing to independently initiate an appeal when he or she is
17 not a party in the matter. The quoted language above in the *Hannon* case, therefore, is
18 nonbinding dicta. (See *Santisas v. Goodin* (1998) 17 Cal.4th 599, 620 ["An appellate decision
19 is not authority for everything said in the court's opinion but only 'for the points actually
20 involved and actually decided'"].)

21 The Victims are not parties to the criminal action, and Marsy's Law does not confer on
22 them general standing to independently pursue an appeal of a substantive order.

23 *Petition for Writ of Mandate*

24 The Victims contend that if we find they lack standing to file an appeal, at a minimum,
25 this court should treat the appeal as a petition for writ of mandate.

26 After filing, on December 28, 2016, a notice of appeal from the judgment and order
27 denying their motion to vacate the plea and judgment, on December 29, 2016, the Victims also
28 filed a petition for writ of mandate requesting that this court order the trial court to award the

1 Victims restitution. On January 5, 2017, we denied the petition stating the Victims had “an
2 adequate remedy at law via their direct appeal.” Such a ruling had the unintended effect of
3 suggesting this court had determined the Victims had standing to bring the appeal. However, in
4 summarily denying the writ petition, we did not address, analyze, or resolve the standing issue.
5 (See *Kowis v. Howard* (1992) 3 Cal.4th 888, 891 [summary “denial of a writ petition does not
6 establish law of the case unless the denial is accompanied by a written opinion following the
7 issuance of an alternative writ”].)

8 Then, on January 24, 2018, this court vacated the oral argument hearing and invited
9 supplemental briefing on whether we should treat the appeal as a petition for writ of mandate,
10 assuming this court improvidently denied the Victims’ first writ petition.

11 We have decided the Victims have no adequate remedy at law because they have no
12 standing to bring an appeal. We, however, conclude they do have a right to bring a writ
13 petition concerning the court’s denial of their motion to withdraw the plea agreement and order
14 restitution.

15 *Standing to bring writ petition*

16 Writ relief is available where there is not a plain, speedy, and adequate remedy in the
17 ordinary course of law. (Code Civ. Proc., § 1086.) According to well-established law, “only
18 parties with standing may pursue a mandamus action. A writ of mandate ‘must be issued upon
19 the verified petition of the party beneficially interested.’ [Citation.] ‘This provision has been
20 held to establish a standing requirement—the writ will issue only at the request of one who is
21 beneficially interested in the subject matter of the action. [Citation.]’ [Citation.]” (*Lindelli v.*
22 *Town of San Anselmo* (2003) 111 Cal.App.4th 1099, 1106-1107.) “A petitioner is beneficially
23 interested if he or she has “‘some special interest to be served or some particular right to be
24 preserved or protected over and above the interest held in common with the public at large.’”
25 [Citation.]” (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th
26 899, 913.) “A beneficial interest must be ‘direct and substantial.’ [Citation.]” (*Ibid.*)

27 The Victims claim *Melissa J. v. Superior Court* (1987) 190 Cal.App.3d 476 (*Melissa J.*)
28 is “dispositive” on the issue of standing to bring a writ petition. *Melissa J.* addressed a victim’s

1 restitution rights under Penal Code section 1191.1, which imposed upon the probation office a
2 requirement to notify the victim of all sentencing proceedings. (*Id.* at p. 478.) There, the trial
3 court had initially ordered the defendant convicted of child molestation to pay the nine-year-old
4 victim \$400 per month for psychological counseling, but it later terminated the restitution
5 requirement, only notifying the victim by letter. (*Id.* at pp. 477-478.) Because the victim
6 feared the trial court might not consider her a party to the proceeding, rather than filing a
7 motion for relief from the court's order, she filed a petition for extraordinary relief in the
8 appellate court challenging the termination of the monthly restitution payment. (*Id.* at p. 478.)

9 The Court of Appeal held the victim in that case had standing to challenge, by writ
10 petition, the ruling terminating restitution because she was not properly notified of the hearing
11 as required by Penal Code section 1191.1. (*Melissa J., supra*, 190 Cal.App.3d at pp. 478-479.)
12 It held that the "[p]roper determination of restitution rights cannot take place without notice and
13 an opportunity for the victim to be heard. Thus, as to restitution, the notice and right to appear
14 requirements are mandatory. If the requirements are not satisfied, the victim may challenge a
15 ruling regarding restitution." (*Id.* at p. 478.) Likewise, in the instant case, the Victims sought
16 to challenge the court's ruling that denied them restitution as to count 1.

17 The Victims also cite to *People v. Green* (2004) 125 Cal.App.4th 360 (*Green*). In
18 *Green*, the People seized property belonging to the defendant pursuant to a search warrant, but
19 they failed to petition the court for a protective order pursuant to Penal Code section 186.11
20 (the "Freeze and Seize Law") to preserve the property so that it could later be levied upon by
21 the court to pay victim restitution. (*Id.* at pp. 369-370.) The defendant's attorney filed a third
22 party claim against the proceeds from the sale of the defendant's property based on an attorney
23 lien for services rendered in the case. (*Id.* at pp. 365-366.) After the court distributed most of
24 the proceeds to the victims, the attorney appealed, and the Court of Appeal found the trial court
25 should have awarded all of the proceeds to the third party claimant attorney. (*Id.* at p. 377.)

26 As pointed out by the Victims, the *Green* court, in reversing the trial court's order
27 distributing the proceeds to the victims, stated in its disposition, "If the court makes an order
28 concerning restitution without notice to a victim, the victim, if aggrieved, is entitled to move to

1 vacate the order; if the trial court denies the motion, the victim is entitled to a writ of mandate.
2 [Citation.]” (*Green, supra*, 125 Cal.App.4th at p. 378, citing to *Melissa J., supra*, 190
3 Cal.App.3d at p. 479.)

4 Just as we find *Dix* strongly supports our conclusion that the Victims lack standing to
5 file an appeal (because they are not parties to the criminal proceedings), we find it equally
6 supportive of our conclusion that the Victims have standing to file a petition for writ of
7 mandate to challenge an order denying them restitution.

8 Although the California Supreme Court rejected the victim’s argument that he should be
9 allowed to intervene to challenge the recall order by way of a writ petition, the Court did not
10 dismiss the possibility that the rights under the California Constitution and enacting statutes—
11 “to restitution in appropriate circumstances, to receive notice, appear, and state views in
12 connection with deposition and sentencing”—could confer “special considerations of standing.”
13 (See *Dix, supra*, 53 Cal.3d at p. 453 [“The Constitution and statutes do accord individual . . .
14 victims certain ‘rights’ of a more specific and personal nature. These include the ‘right’ to
15 restitution in appropriate circumstances, and to receive notice, appear, and state views in
16 connection with disposition and sentencing. [Citations.] Whatever special considerations of
17 standing may apply to this limited category of ‘victims’ rights’ [citations], challenges based on
18 section 1170(d) do not implicate them”].)

19 “[T]he language of . . . [S]ection 28, subdivision (b) grants the right to receive restitution
20 for losses resulting from the crime of which the defendant was convicted. Implementing that
21 right, [Penal Code] section 1202.4 requires a defendant to pay restitution for losses resulting
22 from the criminal conduct supporting the crimes of which the defendant was convicted.”
23 (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1247.)

24 “Under the plain language of [Penal Code section 1202.4, subdivision (f)], . . . the court
25 may order restitution only to a ‘victim.’ [Citation.]” (*People v. Slattery* (2008) 167
26 Cal.App.4th 1091, 1095.) Here, by its plea to count 1, defendant was convicted of failing to
27 “immediately report [the] release . . . of a hazardous material to the unified program agency,
28 and to the office . . .” (Health & Saf. Code, § 25510, subd. (a).)

1 Nothing in the California Constitution permits the Victims to challenge the propriety of
2 the plea bargain or the exercise of prosecutorial discretion regarding the plea disposition,
3 including the dismissal of count 4. However, to the extent the Victims claim they were
4 improperly denied restitution when the court imposed sentence, they have established a
5 personal right or interest in the litigation that confers standing to bring a writ petition
6 challenging that denial.

7 We thus exercise our discretion to treat the Victims' purported appeal as a petition for
8 writ of mandate. (*H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357,
9 1366-1367.)

10 *Right to Restitution*

11 On appeal, the Victims clarify they do not seek reversal of the conviction; rather, they
12 seek restitution as part of the plea and sentence.

13 *No restitution on dismissed count 4*

14 In their motion to withdraw the plea agreement, the Victims argued the plea improperly
15 precluded them from recovering restitution under the dismissed count 4. The Victims claim
16 they suffered health problems and losses in the form of diminution in the value of their homes
17 as a result of the leak (count 4).

18 Penal Code section 1202.4, subdivision (f)(3), provides, under the governing statute, "To
19 the extent possible, [a] restitution order . . . shall be of a dollar amount that is sufficient to fully
20 reimburse the victim or victims for every determined economic loss incurred *as the result* of the
21 defendant's criminal conduct" (Italics added.)

22 "Courts have interpreted [Penal Code] section 1202.4 as limiting restitution awards to
23 those losses arising out of the criminal activity that formed the basis of the conviction.
24 "Subdivision (a)(3)(B) of section 1202.4 requires the court to order "the defendant"—meaning
25 the defendant described in subdivision (a)(1), who was "convicted of that crime" resulting in
26 the loss—to pay "[r]estitution to the victim or victims, if any, in accordance with
27 subdivision (f)." . . . Construed in light of subdivision (a)(1) and (3)(B), the term "criminal
28 conduct" as used in subdivision (f) means the criminal conduct for which the defendant has

1 been convicted.’ [Citation.]” (*People v. Woods* (2008) 161 Cal.App.4th 1045, 1049.) As
2 defendant was not convicted of count 4, there is no direct right to restitution under that
3 dismissed count.

4 *No restitution under count 1 based on transactional relationship to count 4*

5 Under *Harvey*, a defendant may not suffer “adverse sentencing consequences” based on
6 facts underlying the dismissed count unless the defendant gives his consent (*Harvey* waiver).
7 (*Harvey, supra*, 25 Cal.3d at p. 758.) The *Harvey* court recognized an exception permitting
8 consideration of dismissed charges where they were transactionally related to the admitted
9 offense. (*Ibid.*) The Victims argue that this case falls within the exception.

10 The Victims contend, as they did below, they are entitled to restitution because the
11 criminal conduct for which defendant was convicted in count 1 (failure to timely report) was
12 transactionally related to the conduct in count 4 (release of hazardous materials).

13 *People v. Martinez* (2017) 2 Cal.5th 1093 (*Martinez*) convinces us otherwise. In
14 *Martinez*, the defendant was charged with and pled guilty to a single count of felony
15 hit-and-run. (*Id.* at p. 1097.) As part of his sentence, defendant was ordered to pay the victim
16 \$425,654.63 in restitution for injuries suffered as a result of the accident. (*Ibid.*) The Court of
17 Appeal reversed the restitution order and the California Supreme Court affirmed that decision,
18 stating, “Under Vehicle Code section 20001(a), ‘[t]he occurrence of an injury accident is a
19 condition precedent’ to the imposition of a duty to stop, provide identification, and render aid—
20 ‘but [it] is not an element of the crime’ in the sense that it constitutes part of the conduct
21 forbidden by the statute. [Citation.]” (*Id.* at pp. 1102-1103.) “‘[T]he act made criminal’”
22 under the statute “‘is not the ‘hitting’ but the ‘running.’” [Citation.]” (*Id.* at p. 1102.)⁶

23 The California Supreme Court held that the trial court, in imposing a sentence for
24 hit-and-run, could not order direct victim restitution for the injuries suffered as a result of the
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26 ⁶“Defendant’s crime . . . was leaving the scene of the accident without presenting identification
27 or rendering aid. Thus, under section 1202.4, the trial court was authorized to order restitution for those
28 injuries that were caused or exacerbated by defendant’s criminal flight from the scene of the accident,
but it was not authorized to award restitution for injuries resulting from the accident itself.” (*Martinez*,
supra, 2 Cal.5th at p. 1098.)

1 collision preceding the charged offense. The Court rejected the People's argument that
2 restitution for injuries resulting from the accident is recoverable under Penal Code
3 section 1202.4 because involvement in the collision is an element of the offense, a fact that
4 must be proven to obtain a conviction on the hit-and-run offense. (*Martinez, supra*, 2 Cal.5th at
5 p. 1103.) The Court stated "the restitution power conferred by section 1202.4 stands in contrast
6 to a court's power to order restitution as a condition of probation," because in the latter context
7 the courts have broad discretion to impose probation conditions to foster rehabilitation and to
8 protect public safety, including the power to order restitution even when the loss was not
9 necessarily caused by the criminal conduct underlying the conviction. (*Id.* at p. 1101; see
10 *People v. Anderson* (2010) 50 Cal.4th 19, 29 ["Trial courts continue to retain authority to
11 impose restitution as a condition of probation in circumstances not otherwise dictated by
12 section 1202.4. . . . When section 1202.4 imposes its mandatory requirements in favor of a
13 victim's right to restitution, the statute is explicit and narrow"].) But in the nonprobationary
14 context, the trial court's restitution power is governed by Penal Code section 1202.4, which
15 "the Courts of Appeal have uniformly held, . . . authorizes trial court to order direct victim
16 restitution for those losses incurred as a result of the crime of which the defendant was
17 convicted. [Citations.]" (*Martinez, supra*, 2 Cal.5th at p. 1101.) The Court emphasized the
18 plain language of Penal Code section 1202.4, which "refers to losses incurred 'as a result of the
19 commission of a crime,' not as the result of attendant facts or circumstances the prosecution
20 must prove in order to obtain a conviction." (*Id.* at p. 1104.)

21 Just as the preceding collision could not form the basis of direct restitution in *Martinez*
22 for the offense of fleeing the scene of an injury accident, the gas leak cannot form the basis for
23 direct restitution in the case *sub judice* for the failure to report conviction. Based on our
24 reading of *Martinez*, transactional relationship is not the test for determining entitlement to
25 *direct victim restitution*. (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1123 ["nothing in
26 Proposition 8 or in Penal Code section 1203.04 purports to limit or abrogate the trial court's
27 discretion, under Penal Code section 1203.1, to order restitution as a condition of probation
28 where the victim's loss was not the result of the crime underlying the defendant's conviction,

1 but where the trial court finds such restitution will serve one of the purposes set out in Penal
2 Code section 1203.1, subdivision (j)”; *People v. Klaess* (1982) 129 Cal.App.3d 820, 823 [trial
3 court’s use of facts concerning two dismissed murder counts in imposing aggravated prison
4 term does not violate *Harvey* rule because transactionally related to the defendant’s admitted
5 offense]; *People v. Guevara, supra*, 88 Cal.App.3d at pp. 92-93 [trial court properly considered
6 dismissed weapons allegations charged as enhancements and kidnapping counts as aggravating
7 factors in sentencing, i.e., imposing maximum term]; see also *People v. Jessee* (2013) 222
8 Cal.App.4th 501, 510 [direct victim restitution under Penal Code section 1202.4 may only be
9 awarded for crimes the defendant is charged with and convicted of, even if the evidence shows
10 beyond a reasonable doubt and the trial court finds the defendant committed an uncharged
11 crime].)

12 It is true a trial court could, as the Victims point out, impose adverse sentencing
13 consequences based on the facts of a transactionally related dismissed count, but with regard to
14 imposing direct victim restitution, the court’s power to do so is circumscribed by the California
15 Constitution and Penal Code section 1202.4. Nothing in the California Constitution or the
16 Penal Code indicates a *dismissed charge* can or must give rise to a restitution award in the
17 nonprobationary context, as the Victims contend. We, therefore, conclude the trial court did
18 not err in denying restitution on the count 1 conviction based on its relationship to count 4.

19 *Restitution for victims of count 1 (failure to timely report)*

20 In order to obtain writ relief, the Victims must establish they are victims of the criminal
21 conduct for which defendant was convicted (Health & Saf. Code, § 25510, subd. (a)), and they
22 suffered economic losses attributable to that conduct.

23 Whether the Victims are victims under Penal Code section 1202.4 is a legal issue of
24 statutory construction which we review under a de novo standard. (*People v. Saint-Amans*
25 (2005) 131 Cal.App.4th 1076, 1084.)

26 The People argue the direct objects or victims of the crime in this case are the
27 governmental agencies to which defendant failed to immediately report the gas leak. We agree.
28 However, this does not mean, as a matter of law, the Victims were not also victimized and

1 suffered harm as a result of defendant's violation of Health and Safety Code section 25510,
2 subdivision (a).

3 "Under the plain language of [Penal Code section 1202.4, subdivision (f)], . . . the court
4 may order restitution only to a 'victim.' [Citation.]" (*People v. Slattery, supra*, 167
5 Cal.App.4th at p. 1095.)

6 "The case law has ascribed a precise meaning to the phrase 'direct victim,' as that phrase
7 has appeared in several restitution statutes. Thus, it is established that a statute 'permitting
8 restitution to entities that are "direct" victims of crime [limits] restitution to "entities *against*
9 *which* the [defendant's] crimes had been committed"—that is, entities that are the "immediate
10 objects of the [defendant's] offenses." [Citation.]' [Citation.]" (*People v. Runyan* (2012) 54
11 Cal.4th 849, 856,⁷ original italics; see *People v. Birkett* (1999) 21 Cal.4th 226, 234, 242
12 [insurance carriers precluded from obtaining restitution for indirect economic losses, such as
13 policyholder reimbursement, caused by defendant's auto theft].)

14 In the instant case, defendant pled no contest to a violation of Health and Safety Code
15 section 25510, subdivision (a), for failing to timely report the natural gas leak to the proper
16 authorities. Thus, the direct objects or victims of the crime in this case are certainly the
17 governmental agencies to which defendant failed to immediately report the leak, and those
18 agencies could possibly assert a claim for economic losses. For example, if the delay in
19 reporting caused the governmental agencies to incur additional expenses in responding to the
20 leak that could have otherwise been avoided by immediately reporting the leak, they would be

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22 ⁷In *People v. Runyan*, the defendant was convicted of gross vehicular manslaughter and driving
23 under the influence of alcohol and was ordered to pay victim restitution to the victim's estate,
24 representing the death-related loss in value to the decedent's business and property, and probate, estate
25 administration, and funeral expenses. (*People v. Runyan, supra*, 54 Cal.4th at pp. 853-854.) The
26 California Supreme Court concluded the restitution order was improper. (*Id.* at p. 856.) It stated a
27 direct victim is the person or entity against whom the defendant's crime was committed, that is, one
28 who is the immediate object of the offense (*id.* at p. 856), and the estate was not a direct victim of the
fatal collision; it was not the object of defendant's alcohol-related offenses (*id.* at p. 857). The
Supreme Court, however, noted that decedent's personal representative would have been able to
receive, on the decedent's behalf, restitution for economic losses the decedent personally incurred prior
to death as an actual victim of the defendant's crime. (*Id.* at p. 867.)

entitled to reimbursement for such expenses. (See Gov. Code, § 53150 et seq. [permitting restitutionary payments for emergency response by a public agency].)

At the sentencing hearing, the trial court correctly noted the losses on which the Victims were focused were not proximately caused by the three-day delay in reporting the leak, but rather, defendant's release of contaminants. (See *People v. Holmberg* (2011) 195 Cal.App.4th 1310, 1320-1321.) However, as argued by counsel for the Victims at the sentencing hearing, the Victims could also be deemed direct victims of the criminal conduct for which defendant was convicted and, therefore, be entitled to restitution as victims, if they could establish that they "suffered economic loss as a result of the defendant's conduct" in failing to immediately report the leak to the applicable agencies. (Pen. Code, § 1202.4, subd. (f).)) That the Victims suffered economic losses as a result of defendant's conduct that led to the charge in count 4 does not preclude a finding that they may have also suffered losses as a result of the criminal conduct reflected in count 1. (See *People v. Holmberg, supra*, 195 Cal.App.4th at p. 1322 ["defendant's conduct was a concurrent cause of the victims' losses"].)

"[Penal Code] section 1202.4, subdivision (f) unequivocally requires restitution of a victim for 'economic loss as a result of the defendant's conduct.' A victim's restitution right is to be broadly and liberally construed. [Citations.] . . . 'The intent of the voters is plain: every victim who suffers a loss shall have the right to restitution from those convicted of the crime giving rise to that loss.' [Citation.] The language of the first sentence in section 1202.4, subdivision (f) expressly indicates the victim's restitution right extends to "economic loss" resulting from the defendant's conduct." (*People v. Mearns* (2002) 97 Cal.App.4th 493, 500-501.)

The burden resided with the Victims to demonstrate defendant's criminal conduct, as embodied in count 1, was a substantial factor causing their injuries. (*People v. Foalima* (2015) 239 Cal.App.4th 1376, 1396-1397.) As to count 1, we agree with the court that the Victims failed to establish a causal connection between defendant's failure to timely report the leak and any claimed injuries or losses they sustained as a result of that criminal conduct.

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1 The Victims offered no evidence in their written motion, nor at the hearing on the
2 motion, and they made no satisfactory offer of proof to support the claim, made for the first
3 time at the hearing, that they were damaged by defendant's three-day delay in reporting the
4 leak. They did assert at the hearing that, had defendant reported the leak "immediately," the
5 health department would have "red tagged" the homes and then "all of this damage" could have
6 been prevented. Notably, however, the Victims did not elaborate on *what* damages were
7 specifically attributable to defendant's delay in reporting the leak, as opposed to the leak itself.
8 Indeed, the individual victims who spoke at the hearing exclusively addressed their right to
9 restitution for the losses and injuries they suffered as a result of the leak and their sustained
10 exposure to the leaked hazardous materials, not the delay in reporting the leak. No offer of
11 proof was made that certain victims would testify that, had the leak been immediately reported,
12 they could have responded immediately by evacuating their homes, and they would not have
13 sustained injuries during the three days defendant did not report the leak.

14 Simply put, the Victims had the opportunity to shine a light on any damages they could
15 attribute to defendant's failure to timely report the leak, but they offered no such evidence to
16 the court. Nor did they attempt to make an offer of proof concerning any damages they
17 suffered as a result of the criminal conduct alleged in count 1.

18 We, thus, conclude that, although the Health and Safety Code section 25510,
19 subdivision (a), violation to which defendant pled in count 1 may be deemed a charge "in
20 which a victim has suffered economic loss as a result of defendant's conduct" (Pen. Code,
21 § 1202.4, subd. (f)), the trial court's finding that the Victims did not establish a causal link
22 between that criminal conduct and their damages was supported by substantial evidence.

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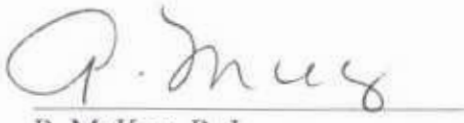
1 Therefore, the court's denial of the Victims' motion was not an abuse of discretion. (*People v.*
2 *Ortiz* (1997) 53 Cal.App.4th 791, 800; *People v. Thygesen* (1999) 69 Cal.App.4th 988, 993.)

3 DISPOSITION

4 The petition for writ of mandate is denied.

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8 Richardson, J.

9 We concur:

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12 P. McKay, P. J.

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Kumar, J.