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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 In re:  
19 PG&E CORPORATION,  
- and -  
20 PACIFIC GAS AND ELECTRIC  
COMPANY,  
21 Debtors.

Civil Case No. 19-05257 (JD)  
Bankruptcy Case No. 19-30088 (DM)  
Chapter 11  
(Lead Case) (Jointly Administered)

**DEBTORS' MOTION PURSUANT TO 11  
U.S.C. §§ 105(A) AND 502(C) TO  
ESTABLISH ESTIMATED AMOUNT OF  
FIRE VICTIM CLAIMS FOR ALL  
PURPOSES OF THE CHAPTER 11  
CASES**

Date: May 21, 2020  
Time: 10:00 a.m.  
Ctrm: 11  
Judge: Hon. James Donato



1 PG&E Corporation and Pacific Gas & Electric Company (together, “**PG&E**” or the  
2 “**Debtors**”) submit this Motion to Establish the Estimated Amount of Fire Victim Claims For All  
3 Purposes of the Chapter 11 Cases (“**Motion**”).

4 **I. PRELIMINARY STATEMENT**

5 On December 6, 2019, after extensive negotiations and assistance from a court-  
6 appointed mediator, the TCC, the Debtors, the Shareholder Proponents of the Plan (as defined below),  
7 and attorneys representing over 70% of individual holders of Fire Victim Claims (as defined below,  
8 collectively “**The Parties**”) entered into a Restructuring Support Agreement (“**Tort Claimant RSA**”)  
9 wherein the Parties agreed to settle Fire Victim Claims by establishing a trust (the “**Fire Victim**  
10 **Trust**”) under the Plan for the benefit of Fire Victim Claims. Pursuant to the Plan, the Fire Victim  
11 Trust will be funded with \$6.75 billion in cash and PG&E stock valued at \$6.75 billion and the  
12 assignment of certain rights and causes of action. *See Tort Claimant RSA, Debtors’ Mot. Pursuant to*  
13 *11 U.S.C. § 363(b) and Fed. R. Bankr. P. 6004 and 9019 Authorizing the Debtors and TCC to Enter*  
14 *into Restructuring Support Agreement, Ex. A, Bankr. Dkt. No. 5038-1 (Dec. 9, 2019).*<sup>2</sup> Certain of the  
15 terms of the Tort Claimant RSA have been incorporated in the Debtors’ Amended Plan of  
16 Reorganization. *Debtors’ Amended Plan of Reorganization, Bankr. Dkt. No. 6320 (Mar. 16, 2020)*  
17 (as may be further amended, modified or supplemented, the “**Plan**”), §§ 5.4, 6.7.

18 Following briefing, notice and a hearing on the matter, the Bankruptcy Court approved  
19 the Tort Claimant RSA on December 19, 2019, pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C.  
20 § 363(b). Following the approval of the Tort Claimant RSA, this Court stayed the pending claims  
21 estimation proceedings until further notice. Further to and as contemplated by the Tort Claimant RSA,  
22 upon the satisfaction of the conditions precedent contained in the Tort Claimant RSA and described  
23 below, the Debtors seek an order from this Court (1) adopting the \$13.5 billion amount agreed to by  
24 the Parties in the Tort Claimant RSA as the amount of the Fire Victim Claims pursuant to 11 U.S.C.

25 \_\_\_\_\_  
26 <sup>2</sup> “Bankr. Dkt. No.” refers to documents filed in *In re PG&E Corp. and Pacific Gas & Electric Co.*,  
Case No. 19-bk-30088 (DM) (Bankr. N.D. Cal).

1 § 502(c) for all purposes in the Debtors' chapter 11 cases (including, without limitation, for  
2 distribution to the Fire Victim Trust under the Plan), and (2) resolving and closing the estimation  
3 proceedings before this Court.

4 This Court has already expressed the opinion that the Parties' agreed amount is the best  
5 estimate of the value of the Fire Victim Claims for 11 U.S.C. § 502(c) purposes. Likewise, in other  
6 estimation proceedings, courts have found that a settlement value, reached after vigorous arms' length  
7 negotiations, can serve as a valid indicator of the value of unliquidated claims for estimation under 11  
8 U.S.C. § 502(c). Here, the Debtors, the TCC and attorneys representing over 70% of individual  
9 holders of Fire Victim Claims have reached a settlement, embodied in the Tort Claimant RSA, that  
10 was approved by the Bankruptcy Court, establishing \$13.5 billion as the aggregate value of the Fire  
11 Victim Claims.

12 On March 17, 2020, the Bankruptcy Court approved the Debtors' disclosure statement  
13 for the Plan, which will now be disseminated to, *inter alia*, the individuals and entities that hold Fire  
14 Victim Claims to give them the opportunity to vote to accept or reject the Plan. The Tort Claimant  
15 RSA requires that the class of Fire Victim Claims vote as a class to accept the Plan under 11 U.S.C.  
16 §1126(c) as determined by the Bankruptcy Court (the "**Consenting Fire Claimants Threshold**  
17 **vote**"), as a condition precedent to estimating the Fire Victim Claims at \$13.5 billion. If the class of  
18 Fire Victim Claims votes to accept the Plan, their votes will demonstrate further support for the \$13.5  
19 billion amount agreed to in the Tort Claimant RSA and satisfy this condition.

20 Accordingly, the Debtors ask the Court, following the occurrence of all relevant  
21 conditions precedent, including the satisfaction of the Consenting Fire Claimants Threshold vote, to  
22 adopt the \$13.5 billion amount as the estimated amount of the Fire Victim Claims for all purposes of  
23 the Debtors' chapter 11 cases (including, without limitation, for distribution to the Fire Victim Trust  
24 under the Plan), and conclude the estimation proceedings.

1 **II. FIRE VICTIM CLAIMS**

2 For the purposes of this Motion, the scope of “**Fire Victim Claims**,” is the same as  
 3 used in the Plan and means any Fire Claim that is not a Public Entities Wildfire Claim, Subrogation  
 4 Wildfire Claim, or a Subrogation Butte Fire Claim. Certain other relevant definitions from the Plan  
 5 that are used in the definition of Fire Victim Claim include the following:<sup>3</sup>

6 **Fire Claim** means any Claim against the Debtors in any way arising out of the Fires,  
 7 including, but not limited to, any Claim resulting from the Fires for (a) general and/or specific  
 8 damages, including any Claim for personal injury, wrongful death, emotional distress and  
 9 similar claims, pavement fatigue, damage to culverts, ecosystem service losses, municipal  
 10 budget adjustments/reallocation, lost revenue and tax impacts, local share of reimbursed fire  
 11 clean-up costs, future estimated infrastructure costs, water service losses, lost landfill capacity,  
 12 costs related to unmet housing (e.g., housing market impact due to the Fires and adjustments  
 13 for increased homeless population), and/or hazard mitigation costs (including, watershed  
 14 restoration and hazardous tree removal expenses); (b) damages for repair, depreciation and/or  
 15 replacement of damaged, destroyed, and/or lost personal and/or real property; (c) damages for  
 16 loss of the use, benefit, goodwill, and enjoyment of real and/or personal property; (d) damages  
 17 for loss of wages, earning capacity and/or business profits and/or any related displacement  
 18 expenses; (e) economic losses; (f) damages for wrongful injuries to timber, trees, or underwood  
 19 under California Civil Code § 3346; (g) damages for injuries to trees under California Code of  
 20 Civil Procedure § 733; (h) punitive and exemplary damages under California Civil Code §§  
 21 733 and 3294, California Public Utilities Code § 2106, or otherwise, (i) restitution; (j) fines or  
 22 penalties; (k) any and all costs of suit, including all attorneys’ fees and expenses, expert fees,  
 23 and related costs, including all attorneys and other fees under any theory of inverse  
 24 condemnation; (l) for prejudgment and/or postpetition interest; (m) other litigation costs  
 25 stemming from the Fires; and (n) declaratory and/or injunctive relief. For avoidance of doubt  
 26 and without prejudice to the Debtors’ right to object to any such Claim, “Fire Claim” shall not  
 27 include any (x) Claim for substantial contribution under section 503(b) of the Bankruptcy  
 28 Code, (y) Subordinated Debt Claim, HoldCo Common Interest or HoldCo Rescission or  
 Damage Claim, or (z) Ghost Ship Fire Claim. The Fire Claims shall not include claims arising  
 from any fire other than the Fires (including, without limitation, the Kincade Fire or any  
 postpetition fire) or any Administrative Expense Claims.

20 **Fires** means the fires that occurred in Northern California, listed on Exhibit A to the  
 Plan, which includes the 2015 Butte Fire, the 2018 Camp Fire and the following 22 2017 North  
 Bay Fires: (1) Adobe; (2) Atlas; (3) Blue; (4) Cascade; (5) Cherokee; (6) Highway 37; (7)  
 Honey; (8) LaPorte; (9) Lobo; (10) Maacama; (11) McCourtney; (12) Norrbom; (13) Nuns;  
 (14) Oakmont/Pythian; (15) Partrick; (16) Pocket; (17) Point; (18) Potter/Redwood; (19)  
 Pressley; (20) Sullivan; (21) Sulphur; and (22) Tubbs.

23 **Public Entities Wildfire Claim** means any Fire Claim against the Debtors, including  
 24 any Claim pleaded or asserted or that could have been pleaded or asserted based on the factual  
 25 allegations set forth in the Public Entities Operative Complaints or that were filed or could be

25 <sup>3</sup> Other capitalized terms used by the definitions below and not otherwise defined herein have the  
 26 meanings set forth in the Plan.

1 filed by the Public Entities in connection with the Chapter 11 Cases whether arising under  
2 California law or any other applicable law of the United States (state or federal) or any other  
3 jurisdiction, in each case whether such claims are absolute or contingent, direct or indirect,  
4 known or unknown, foreseen or unforeseen, in contract, tort or in equity, under any theory of  
5 law.

6 **Subrogation Wildfire Claim** means any Fire Claim (other than a Fire Claim arising  
7 from the Butte Fire (2015)) that arises from subrogation (whether such subrogation is  
8 contractual, equitable, or statutory), assignment (whether such assignment is contractual,  
9 equitable, or statutory), or otherwise in connection with payments made or to be made by the  
10 applicable insurer to insured tort victims, and whether arising as a matter of state or federal  
11 law, including, without limitation, under section 509 of the Bankruptcy Code, including  
12 attorneys' fees and interest. For the avoidance of doubt, Subrogation Wildfire Claims shall  
13 include both "Paid" and "Reserved" claims, each as defined in the Subrogation Claims RSA.  
14 Subrogation Wildfire Claims shall not include (a) the claims of any Governmental Unit (as  
15 defined in section 101(27) of the Bankruptcy Code) or (b) any Fire Claim asserting direct injury  
16 to a fire victim, regardless of whether the claimant is an insured and has received or will receive  
17 a recovery from their insurer, and any such claims are not the subject of, or compromised  
18 under, the Subrogation Claims RSA.

19 **Subrogation Butte Fire Claim** means any Fire Claim arising from the Butte Fire  
20 (2015) that arises from subrogation (whether such subrogation is contractual, equitable, or  
21 statutory), assignment (whether such assignment is contractual, equitable, or statutory), or  
22 otherwise in connection with payments made or to be made by the applicable insurer to insured  
23 tort victims, and whether arising as a matter of state or federal law, including, without  
24 limitation, under section 509 of the Bankruptcy Code, including attorneys' fees and interest.  
25 Subrogation Butte Fire Claims shall not include the claims of any Governmental Unit (as  
26 defined in section 101(27) of the Bankruptcy Code).

### 27 **III. BACKGROUND**

28 PG&E commenced its chapter 11 cases on January 29, 2019, following a series of  
devastating wildfires in Northern California in 2017 and 2018. A key goal of the chapter 11 cases was  
"the need for an orderly, fair, and expeditious process to assess and resolve PG&E's potential liabilities  
resulting from the 2017 and 2018 wildfires". *Amended Declaration of Jason P. Wells In Support of  
First Day Motions and Related Relief*, Bankr. Dkt. No. 263 at 4 (January 31, 2019). On July 18, 2019,  
the Debtors sought the Bankruptcy Court's approval of procedures for the estimation of the Fire  
Claims under 11 U.S.C. § 502(c), which makes the estimation of unliquidated claims mandatory when  
it avoids undue delay in the administration of the chapter 11 cases. *See Debtors' Mot. Pursuant to 11  
U.S.C. §§ 105(a) and 502(c) For the Establishment of Wildfire Claims Estimation Procedures*, Bankr.  
Dkt. No. 3091 (July 18, 2019) (the "**Estimation Motion**"). On August 23, 2019, upon

1 recommendation by Bankruptcy Judge Dennis Montali, this Court partially withdrew the reference  
2 from the Bankruptcy Court to estimate the Fire Claims under 28 U.S.C. § 157(b) and 11 U.S.C.  
3 § 502(c). *See Order Adopting Recommendation for Withdrawal of Reference of Proceeding in Part;*  
4 *Order of Assignment*, Bankr. Dkt. No. 3671 (Aug. 22, 2019). The Parties prepared for a two-week  
5 estimation hearing to determine the aggregate value of the Fire Claims, set to begin on February 18,  
6 2020 (the “**Estimation Proceedings**”).

7 In September 2019, the Debtors reached a settlement of Fire Claims (as defined above)  
8 held by the Ad Hoc Committee of Subrogation Claim Holders (the “**Subrogation Group**”). *See*  
9 *Debtors’ Mot. for Entry of Order Pursuant to 11 U.S.C. § 363(b) and 105(a) and Fed. R. Bankr. P.*  
10 *6004 and 9019 Authorizing Debtors to Enter Restructuring Support Agreement with Consenting*  
11 *Subrogation Claimholders*, Bankr. Dkt. No. 3992 (Sept. 24, 2019) (the “**Subrogation RSA**”). In the  
12 Subrogation RSA, the Debtors and the Subrogation Group agreed to an amount of \$11 billion versus  
13 a total claimed amount of over \$20 billion to settle the subrogation Fire Claims. *Id.* at 7. Fire Claims  
14 held by other entities, for whom the TCC acts as a fiduciary, remained outstanding and were the subject  
15 of the Estimation Proceedings pending before this Court.

16 On December 6, 2019, following good faith negotiations with the aid of a court-  
17 appointed mediator, the Debtors, the Shareholder Proponents of the Plan, the TCC and attorneys  
18 representing over 70% of individual holders of Fire Victim Claims reached a settlement of the amount  
19 and form of consideration to be provided to satisfy the Fire Victim Claims, as well as other terms and  
20 conditions, all of which were embodied in the Tort Claimant RSA. In the Tort Claimant RSA, the  
21 Parties agreed to the establishment of the Fire Victim Trust under the Plan. PG&E also agreed to  
22 assign its rights and causes of action against, among others, third party contractors to the Fire Victim  
23 Trust. *See Tort Claimant RSA*, Dkt. No. 5038-1. The parties to the Tort Claimant RSA also exchanged  
24 other consideration to support the settlement. Among other things, (a) the Debtors agreed to settle  
25 certain pending individual claims relating to the Tubbs fire that were scheduled to go to trial in January  
26 2020, (b) the TCC agreed to support the Plan, including providing a letter to holders of Fire Victim

1 Claims recommending that they vote to accept the Plan, (c) attorneys representing over 70% of  
2 individual holders of Fire Victim Claims agreed to use reasonable efforts to advise and recommend to  
3 their clients to support and vote to accept the Plan, and (d) all parties agreed to refrain from taking  
4 actions that would delay, impede or interfere with confirmation of the Plan.<sup>4</sup>

5 Under the terms of the Tort Claimant RSA, within three days of the entry of an order  
6 by the Bankruptcy Court approving the Debtors' disclosure statement, the Debtors must seek an "order  
7 approving settlement of the Estimation Matters, pursuant to Federal Rule of Bankruptcy Procedure  
8 9019 and Section 502(c) of the Bankruptcy Code, which shall provide for the aggregate estimation  
9 and aggregate allocation of the Fire Victim Claims in the amount of the Aggregate Fire Victim  
10 Consideration for all purposes in these Chapter 11 Cases (including, without limitation, for distribution  
11 to the Fire Victim Trust under the Amended Plan)". See Tort Claimant RSA, Dkt. No. 5038-1 at  
12 § 2(e). Neither the Debtors nor the Shareholder Proponents would have agreed to estimate the Fire  
13 Victim Claims at \$13.5 billion unless all of the terms and conditions contained the Tort Claimant RSA,  
14 including the satisfaction of the Consenting Fire Claimants Threshold vote, were part of the same  
15 integrated agreement. For these reasons, the entry of an order estimating the Fire Victim Claims at  
16 \$13.5 billion is expressly conditioned on the prior satisfaction of the Consenting Fire Claimants  
17 Threshold vote. The hearing on the Motion is to be set no later than the date of the hearing on  
18 confirmation of the Plan, which is scheduled to begin on May 27, 2019.

19 The Parties filed a motion in the Bankruptcy Court to approve the Tort Claimant RSA  
20 pursuant to Fed. R. Bankr. P. 9019 and 11 U.S.C. § 363(b) on Dec. 9, 2019. See *Debtors' Mot.*  
21 *Pursuant to 11 U.S.C. § 363(b) and Fed. R. Bankr. P. 6004 and 9019 Authorizing the Debtors and*  
22

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23 <sup>4</sup> The Debtors reserve all rights to terminate the Tort Claimant RSA based on any existing or future  
24 default by the TCC or any other signatory. The consideration the Debtors bargained for in the Tort  
25 Claimant RSA is premised on compliance by all parties with the terms of that agreement and  
26 satisfaction of the Consenting Fire Claimants Threshold vote. For that reason, the Debtors are not  
seeking a hearing on this Motion until May 21, 2020, the Thursday preceding the hearing on  
confirmation of the Plan.

1 *TCC to Enter into Restructuring Support Agreement*, Dkt. No. 5038 (Dec. 9, 2019). On Dec. 19, 2019,  
2 after a hearing on the matter, the Bankruptcy Court approved the Tort Claimant RSA. *See Order*  
3 *Authorizing Debtors to Enter into Restructuring Support Agreement with TCC, Consenting Fire*  
4 *Claimant Professionals, and Shareholder Proponents*, Bankr. Dkt. No. 5174 (Dec. 19, 2019) (“**Order**  
5 **Approving Tort Claimant RSA**”). The Parties requested that this Court order the case stayed  
6 pending further order. On Dec. 20, 2019, this Court granted the request and vacated the Feb. 18, 2020  
7 estimation hearing and all pre-hearing dates. *See Docket Order*, Dkt. No. 276 (Dec. 20, 2019).<sup>5</sup>

8 The Debtors filed an Amended Plan of Reorganization in the Bankruptcy Court on  
9 March 16, 2020. *See Amended Plan of Reorganization*, Dkt. No. 6320 (Mar. 16, 2020). The Debtors  
10 also filed an amended disclosure statement for that plan on March 16, 2019. *Amended Disclosure*  
11 *Statement*, Dkt. No. 6322 (Mar. 16, 2020). The Bankruptcy Court approved the disclosure statement  
12 on March 17, 2020. *Order Approving Debtors’ Disclosure Statement and Solicitation Procedures*,  
13 Dkt. No. 6340 (Mar. 17, 2020). In accordance with the terms of the Tort Claimant RSA, the Debtors  
14 are now filing this Motion.

15 **IV. THE COURT SHOULD ESTIMATE THE FIRE VICTIM CLAIMS AT THE**  
16 **STIPULATED AMOUNT AGREED TO BY THE PARTIES IN THE TORT**  
17 **CLAIMANT RSA**

18 Estimation under 11 U.S.C. § 502(c) is “a summary procedure whereby the Court  
19 *estimates* the value of a claim. A bankruptcy court need only reasonably estimate the probable value  
20 of a claim.” *In re N. Am. Health Care, Inc.* 544 B.R. 684, 688 (C.D. Cal. 2016). Congress did not  
21 impose any specific procedural requirements under § 502(c). Instead, courts have “broad discretion”  
22 over the methods to be used for estimation and the determination of the value of the claims. *In re*  
23 *Corey*, 892 F.2d 829, 834 (9th Cir. 1989). After satisfaction of all relevant conditions precedent,  
24 including the Consenting Fire Claimants Threshold vote, this Court should estimate the Fire Victim  
Claims in the amount agreed to by the Parties in the Tort Claimant RSA.

25 \_\_\_\_\_  
26 <sup>5</sup> “Dkt. No.” refers to documents filed in these proceeding, *In re PG&E Corp. and Pacific Gas &*  
*Electric Co.*, No. 19-cv-05257-JD (N.D. Cal.).



1 *Owens Corning v. Credit Suisse First Bos.*, 322 B.R. 719, 721 (D. Del. 2005) (debtor’s “extensive pre-  
2 bankruptcy history of asbestos litigation can serve as a reliable guide to the validity and value of  
3 pending and future claims”); *Eagle-Picher*, 189 B.R. at 691 (“Valuation of claims should be based  
4 upon settlement values for claims close to the filing date of the bankruptcy case”); *In re Specialty*  
5 *Prods. Holding Corp.*, No. BR 10–11779–JKF, 2013 WL 2177694 at \*1-3 (Bankr. D. Del. May 20,  
6 2012) (estimating aggregate value of asbestos claims based on debtors’ settlement history).

7           As this Court noted, the Parties have reached an actual settlement, embodied in the Tort  
8 Claimant RSA, which has been approved by the Bankruptcy Court, and the amount agreed to by the  
9 Parties thus serves as the best evidence of the reasonable value of the claims for the purpose of  
10 estimation. (*See e.g.*, Dec. 17, 2019, District Court Status Conference Tr. at 9:2-11 (“[W]e started this  
11 estimation process by looking at other settlements and inferring from those other settlements what the  
12 value would be here. Now we have the gold standard. You have actually settled.”)). The Bankruptcy  
13 Court has approved the Tort Claimant RSA under Fed. R. Bankr. P. 9019 and 11 U.S.C. § 363(b) and  
14 found that it “represents a valid and sound exercise of the Debtors’ business judgment”, after a hearing  
15 on the matter. *See* Order Approving Tort Claimant RSA, Bankr. Dkt. No. 5174 at 3. Fed. R. Bankr.  
16 P. 9019 requires that a settlement or compromise be “fair and equitable” and “in the best interest of  
17 the [debtor’s] estate.” *In re A & C Properties*, 784 F.2d 1377, 1381-82 (9th Cir. 1986).

18           Accordingly, following the occurrence of all relevant conditions precedent (including  
19 the satisfaction of the Consenting Fire Claimants Threshold vote), this Court should adopt the \$13.5  
20 billion amount as the estimated amount of the Fire Victim Claims for all purposes of the Debtors’  
21 chapter 11 proceedings (including, without limitation, for distribution to the Fire Victim Trust under  
22 the Plan), and conclude the estimation proceedings.

1  
2 Dated: March 20, 2020

3  
4 **WEIL, GOTSHAL & MANGES LLP**  
5 **CRAVATH, SWAINE & MOORE LLP**  
6 **KELLER BENVENUTTI & KIM LLP**

7 */s/ Kevin J. Orsini*  
8 \_\_\_\_\_  
9 Kevin J. Orsini

10 *Attorneys for Debtors and Debtors in Possession*

11  
12 “Pursuant to Local Rule 5-1(i)(3), I, Thomas B. Rupp, attest that concurrence in filing this  
13 document has been obtained from the other signatories.”

14 KELLER BENVENUTTI KIM LLP

15 */s/ Thomas B. Rupp* \_\_\_\_\_

16 Thomas B. Rupp