No. 22-

In the Supreme Court of the United States

PACIFIC GAS & ELECTRIC COMPANY, PETITIONER

v.

AD HOC COMMITTEE OF HOLDERS OF TRADE CLAIMS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a clear statement is required for the Bankruptcy Code to depart from past bankruptcy practice.

2. Whether an uncodified "solvent debtor" exception drawn from past bankruptcy practice survives in the Code and mandates payment of post-petition interest when the debtor is solvent (notwithstanding that the Code flatly disallows post-petition interest, 11 U.S.C. 502(b)(2)), and if so whether interest accrues at the uniform federal rate specified in 11 U.S.C. 726(a)(5), or instead accrues at rates that vary depending on uncodified equitable considerations.

CORPORATE DISCLOSURE STATEMENT

Petitioner Pacific Gas and Electric Company is a wholly-owned subsidiary of PG&E Corporation. PG&E Corporation has no parent company, and no publicly held corporation owns 10% or more of its common stock.

RELATED PROCEEDINGS

United States Bankruptcy Court (N.D.C.A.):

In re PG&E Corp., et al., No. 19-30088 (June 20, 2020).

United States District Court (N.D.C.A.):

Ad Hoc Committee of Holders of Trade Claims v. *Pacific Gas & Electric Co.*, No. 20-cv-04570 (May 20, 2021).

United States Court of Appeals (9th Cir.):

Ad Hoc Committee of Holders of Trade Claims v. *Pacific Gas & Electric Co.*, No. 21-16043 (Aug. 29, 2022), petition for reh'g denied, Oct. 5, 2022.

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Pacific Gas & Electric Company respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-56a) is published at 46 F.4th 1047. The opinion of the district court (App., *infra*, 57a-65a) is not published but available at 2021 WL 2007145. The opinion of the bankruptcy court (App., *infra*, 66a-82a) is published at 610 B.R. 308.

JURISDICTION

The court of appeals entered judgment on August 29, 2022. App., *infra*, 1a. The court of appeals denied a timely petition for rehearing en banc on October 5, 2022. App., *infra*, 219a. On November 30, 2022, this Court

granted PG&E's application to extend the time for filing a petition for a writ of certiorari to and including February 2, 2023. This Court has jurisdiction under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in the appendix to this petition.

INTRODUCTION

This case presents a fundamental question about interpretation of the Bankruptcy Code: whether a clear statement is required for the Code to depart from pre-Code bankruptcy practice. Time and again, this Court has emphasized that statutory interpretation "begins with the statutory text," and when it is unambiguous the inquiry "ends there as well." *National Ass'n of Mfrs.* v. *Department of Def.*, 138 S. Ct. 617, 631 (2018). This Court has also made clear that the same principle applies when interpreting the Code. Courts are obliged "to interpret the Code clearly and predictably using well established principles of statutory construction." *RadLAX Gateway Hotel* v. *Amalgamated Bank*, 566 U.S. 639, 649 (2012) (Scalia, J.). "As for pre-Code practices, they can be relevant to the interpretation of an ambiguous text." *Ibid.* But if a court "find[s] no textual ambiguity," pre-Code practice has no role to play. *Ibid.*

Over a vigorous dissent from Judge Ikuta, however, a divided panel of the Ninth Circuit took the "exact opposite approach." App., *infra*, 35a (Ikuta, J., dissenting). Instead of starting with text, the majority started with history, going back to practice in "eighteenth century English courts" and under prior bankruptcy statutes that have long since been repealed. *Id.* at 11a. Then, after finding a pre-Code historical practice—a "solvent debtor" exception to the general prohibition against

post-petition interest—the court asked whether the modern Code included a clear statement breaking from that past practice. See *id.* at 20a (looking for a "clear indication" that Congress had abrogated the historical practice); see also *id.* at 22a (finding no statement "unambiguously displac[ing]" that historical practice); *id.* at 25a (noting the lack of a provision "explicitly" entitling an "unimpaired creditor to *any* postpetition interest").

The same methodological question recently divided the Fifth Circuit as well. Over a forceful dissent from Judge Oldham, the Fifth Circuit "defer[red] to prior bankruptcy practice unless expressly abrogated," thus applying a "substantive canon of interpretation regarding the Bankruptcy Code." *In re Ultra Petroleum Corp.*, 51 F.4th 138, 153 (5th Cir. 2022). But as Judge Oldham explained, Congress does not need to "explicitly address[]" past practice to break from it: "'The Bankruptcy Code can of course override by implication when the implication is unambiguous.'" *Id.* at 163-64 (quoting *BFP* v. *Resolution Tr. Corp.*, 511 U.S. 531, 546 (1994)).

This Court should grant certiorari to reaffirm that there is no bankruptcy-specific canon of statutory interpretation that demands a clear statement to depart from historical practice. Unambiguous text is enough. Pre-Code practice "is a tool of construction, not an extratextual supplement." *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, NA*, 530 U.S. 1, 10 (2000). More broadly, this petition gives the Court the opportunity to cabin clear-statement rules, keeping the focus on the text Congress enacted rather than uncodified canons that distort the meaning of clear statutory text.

This methodological question is outcome-dispositive in deciding a question that is itself important: whether an uncodified "solvent debtor" exception survives and

mandates payment of post-petition interest (and if so, at what rates) when the debtor is solvent at the end of the bankruptcy. As Judge Ikuta explained, "[t]he text of the Code provides a clear answer: No." App., *infra*, 35a. The Code expressly disallows all claims for post-petition interest. 11 U.S.C. 502(b)(2). Congress made a limited exception for Chapter 7 cases (liquidations) involving solvent debtors, 11 U.S.C. 726(a)(5), but that exception does not apply here, in a Chapter 11 case (a business reorganization) with unimpaired unsecured creditors. The general rule therefore applies: post-petition interest is disallowed. 11 U.S.C. 502(b)(2). That is clear and plain. Congress does not need to add "'and the solvent-debtor exception doesn't apply.'" *Ultra*, 51 F.4th at 163 (Oldham, J., dissenting). "Congress need not speak superfluously to speak 'unmistakably.'" *Id.* at 163-64.

Even worse, without a textual basis for their rules, the Ninth and Fifth Circuits are now split on what the solvent-debtor exception requires. The Fifth Circuit requires courts to apply "the contractual interest rate." *Ultra*, 51 F.4th at 160. But the Ninth Circuit made the interest rate dependent on "compelling equitable considerations." App., *infra*, 34a. And the only codified exception to the prohibition on post-petition interest provides for interest at the uniform federal judgment rate. See 11 U.S.C. 726(a)(5). The Ninth Circuit's rule is thus doubly atextual, as it disregards the Code's general rule prohibiting post-petition interest *and* the Code's codified version of the solvent-debtor exception. At most, an unimpaired creditor is entitled to interest at the federal judgment rate—and PG&E has already paid respondents that full amount.

The vitality of the solvent-debtor exception has divided numerous lower courts, including in other large

bankruptcies. And having a rule that depends on ill-defined "equitable considerations" is especially problematic. It makes debtor-creditor relations inherently unpredictable and injects costly uncertainty and delay into the bankruptcy process. Debtors cannot know in advance what the rate will be, whether they will be able to pay it in full, and will not know which creditors will be able to vote on the plan. And *nobody* can learn the rule simply by reading the statutory text, because the words just aren't there. Certiorari is warranted.

STATEMENT

A. The Code's rule disallowing post-petition interest

"The Bankruptcy Code standardizes an expansive (and sometimes unruly) area of law." *RadLAX*, 566 U.S. at 649. "In Chapter 7, a trustee liquidates the debtor's assets and distributes them to creditors." *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 455 (2017). Chapter 11 provides for confirmation of a plan that "govern[s] the distribution of valuable assets from the debtor's estate and often keep[s] the business operating as a going concern." *Ibid.*

The Code also establishes rules governing creditors' rights and claims against the debtor. Relevant here, the Code "allow[s]" claims against the bankruptcy estate, 11 U.S.C. 502(a), subject to certain exceptions for kinds of claims that are disallowed and thus cannot be paid, 11 U.S.C. 502(b). Critically, the Code provides that a court must disallow any objected-to claim for "unmatured interest." 11 U.S.C. 502(b)(2). That provision flatly prohibits payment of post-petition interest, *i.e.*, interest that matures after the bankruptcy petition is filed.

B. The Code's limited exception for solvent debtors

Congress codified an express exception requiring the debtor in a Chapter 7 case to pay post-petition interest if the debtor is solvent. Section 726(a) specifies the order in which the bankruptcy estate's assets "shall be distributed" in a liquidation under Chapter 7. 11 U.S.C. 726(a). It provides that, if assets remain after the payment of all allowed claims, then the remaining funds "shall be distributed … in payment of interest at the legal rate from the date of the filing of the petition, on any [such] claim," before any property returns "to the debtor." 11 U.S.C. 726(a)(5) and (6).

Section 726(a)(5) thus provides that, in a Chapter 7 case in which the debtor is solvent at the end of the bankruptcy, the debtor must pay post-petition interest on any allowed unsecured claim at "the legal rate." It is well-settled that "the legal rate" refers to the uniform federal judgment rate set forth in 28 U.S.C. 1961(a). See 6 Collier on Bankruptcy ¶ 726.02(5) (16th ed. 2022); *e.g.*, *In re Cardelucci*, 285 F.3d 1231, 1234-36 (9th Cir. 2002).

Section 726(a)(5) applies "only" in a Chapter 7 case. 11 U.S.C. 103(b). But Congress also incorporated that same exception into Chapter 11's requirements for creditors whose rights or interests are "impaired" by a plan. 11 U.S.C. 1129(a)(7)(A). A class is "impaired" if "the plan" alters "the legal, equitable, [or] contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. 1124(1). The Code provides that each creditor in an impaired class must accept the plan or receive no less value than they would receive "if the debtor were liquidated under chapter 7 of this title on such date." 11 U.S.C. 1129(a)(7)(A). Section 726(a) defines how much the creditor would receive "if

the debtor were liquidated under chapter 7." *Ibid.* Accordingly, to confirm a Chapter 11 plan involving a solvent debtor, creditors whose rights or interests are altered by a plan must either vote in favor of the plan or be paid post-petition interest at the uniform rate specified in Section 726(a)(5).[1]

The Code thus prohibits payment of post-petition interest on any allowed unsecured claim, subject to the exception for solvent debtors in Section 726(a)(5) that applies in a Chapter 7 case and to impaired claims in a Chapter 11 case. But no Code provision allows for payment of post-petition interest to unimpaired unsecured creditors in a Chapter 11 case.

C. PG&E's bankruptcy

1. PG&E is one of the Nation's largest utilities, providing service to more than 16 million customers in Northern California. In 2017 and 2018, a series of catastrophic wildfires caused widespread damage in Northern California. PG&E faced enormous potential liability arising from the wildfires.

On January 29, 2019, PG&E filed voluntary petitions for Chapter 11 relief. At the time of filing, PG&E had $71.4 billion in assets and $51.7 billion in other liabilities. App., *infra*, 7a. In addition, although PG&E disputed its potential wildfire liability, it estimated its potential wildfire liability at more than $30 billion. *Ibid.*

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[1] Congress similarly incorporated Section 726(a)(5) into Chapter 13, providing that an individual debtor must pay holders of allowed unsecured claims "not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7." 11 U.S.C. 1325(a)(4). The Code also provides an exception for oversecured claims. See 11 U.S.C. 506(b).

2. During the bankruptcy, PG&E engaged in extensive negotiations with wildfire claimants, and consensually resolved its aggregate wildfire liability for amounts that left PG&E solvent at the end of its bankruptcy.

PG&E needed to confirm its Chapter 11 plan by a statutory deadline of June 30, 2020, to participate in a multi-billion dollar "go forward wildfire fund" that California established to compensate future fire victims. See Act of July 12, 2019, ch. 79, 2019 Cal. Stat. 1888. To meet the deadline, PG&E's plan proposed to leave a class of general unsecured claims "unimpaired." Unimpaired creditors are deemed to have voted in favor of a plan, thus eliminating the time and effort needed to solicit their votes. 11 U.S.C. 1126(f). Relying on the text of the Bankruptcy Code and Ninth Circuit precedent, PG&E proposed to pay each of those allowed claims in full, plus post-petition interest at the federal judgment rate specified in Section 726(a)(5). See *Cardelucci*, 285 F.3d at 1234-36.

Respondents, an ad hoc committee of hedge funds that purchased millions of dollars of trade claims below face value, objected. App., *infra*, 8a. They argued that, because PG&E was solvent, to be "unimpaired" the Plan needed to pay them post-petition interest at the varying state-law rates specified in their contracts or at California's 10% default rate. *Id.* at 7a-8a.

D. Procedural history

1. The bankruptcy court confirmed the plan over the respondents' objection. The court read *Cardelucci* as holding "that in chapter 11 cases involving solvent debtors, unsecured creditors are entitled to postpetition interest at the federal judgment rate" pursuant to Section 726(a)(5). App., *infra*, 72a. "Even if *Cardelucci* were not binding," the bankruptcy court would have "reach[ed]

the same conclusion." *Id.* at 68a. The court concluded that respondents were indeed "unimpaired" and rejected respondents' contention "that imposition of the Federal Interest Rate impairs them," because "[i]t is the Bankruptcy Code itself, not any plan provision, that imposes that rate." *Id.* at 81a-82a.

2. The district court affirmed. App., *infra*, 57a. It held that the bankruptcy court correctly followed *Cardelucci* "in ruling that the Federal Interest Rate is the postpetition rate applicable to" respondents' claims. *Id.* at 61a-62a, 65a.

3. A divided panel of the Ninth Circuit reversed and remanded in a published decision. App., *infra*, 1a-34a. In the Ninth Circuit, PG&E relied on *Cardelucci* to argue that it properly paid post-petition interest at the federal judgment rate. The panel concluded that *Cardelucci* did not apply to unimpaired creditors. *Id.* at 17a. But the majority and dissent diverged from there, with the majority holding that PG&E must pay interest at state-law rates but subject to "compelling equitable considerations," whereas Judge Ikuta would have held that respondents were not entitled to post-petition interest at all. *Id.* at 33a-35a.

a. The panel majority began its analysis with the history of "the common-law solvent-debtor exception." App., *infra*, 11a. The court explained that "eighteenth century English courts" developed a rule that a solvent debtor must "pay interest that accrued during bankruptcy before retaining value from an estate." *Ibid.* The court observed that American courts "imported" this doctrine. *Id.* at 11a-12a; *e.g.*, *Johnson* v. *Norris*, 190 F. 459, 462 (5th Cir. 1911); see also *City of New York* v. *Saper*, 336 U.S. 328, 330 n.7 (1949) (noting that Ameri-

can courts had "carried over" the solvent-debtor exception). The majority noted that this exception was "not codified, instead existing as a common-law exception to the Bankruptcy Act's prohibition on the collection of postpetition interest." App., *infra*, 12a.

The court then turned to the text of the Code and found no "clear indication" that Congress had abrogated that past bankruptcy practice. App., *infra*, 20a (quoting *Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998)); see also *id.* at 22a (finding no Code statement "unambiguously displac[ing]" historical practice). The court described the Code as "silent as to whether [unimpaired] creditors are entitled to any postpetition interest at all." *Id.* at 16a. The majority reasoned that Sections 502(b)(2) and 726(a)(5) do "not unambiguously abrogate the solvent debtor exception" because "the Code only applies § 726(a)(5)'s limited grant of interest 'at the legal rate' to impaired creditors, who (unlike unimpaired creditors) also receive other protections under the Code." *Id.* at 23a. The court similarly limited *Cardelucci* to cases in which Section 726(a)(5) applies. *Id.* at 17a-19a.

The majority acknowledged that any "contractual right" respondents had to post-petition interest was "superseded" by Section 502(b)(2)'s prohibition against such interest, which did not result in impairment. App., *infra*, 32a. But it held that a failure to compensate creditors for their "equitable right" to the same post-petition interest "results in impairment." *Id.* at 30a-31a. The majority reasoned "that the equitable prong of § 1124 applies differently when the debtor is solvent." *Id.* at 31a n.9. The majority held that, under the solvent-debtor exception, "unsecured creditors possess an 'equitable right' to postpetition interest" pursuant to their contracts "when the debtor is solvent," and the "failure to

provide for postpetition interest according to this equitable right as part of a bankruptcy plan results in impairment." *Id.* at 30a.

The majority further held that the interest rate depends upon "compelling equitable considerations" that would ordinarily follow state-law rates, but "could counsel in favor of payment of postpetition interest at a different rate." App., *infra*, 34a. The panel thus remanded to the bankruptcy court "to weigh the equities and determine what rate of interest [respondents] are entitled to in this instance." *Id.* at 33a.

b. Judge Ikuta dissented, stating that "[a]ll of the majority's justifications for this [holding] are flawed." App., *infra*, 44a. Judge Ikuta explained that "the Supreme Court has directed us to take the exact opposite approach" when analyzing the Code: "so long as the Code is clear, we do not refer to pre-Code practice." *Id.* at 35a (citing *United States* v. *Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989)). "Because the statutory text takes precedence, practices adopted by bankruptcy courts before the Code was enacted play a limited role." *Id.* at 37a.

Judge Ikuta observed that this Court has "relied on pre-Code practice merely to clarify ambiguities in the text of the Code, or to 'fill in the details of a pre-Code concept that the Code had adopted without elaboration,'" meaning that "pre-Code practice is 'a tool of construction, not an extratextual supplement.'" App., *infra*, 38a (quoting *Hartford Underwriters*, 530 U.S. at 11). Judge Ikuta explained that the majority based its contrary clear statement rule—that "pre-Code practice applies unless Congress clearly abrogated it"—on "statements taken out of context" from *Cohen* v. *de la Cruz*. *Id.* at 45a. In *Cohen*, Judge Ikuta observed, this Court

"faithfully followed the Supreme Court's textualist approach to the Code" by "first perform[ing] a thorough textual analysis" before looking to history "for confirmation of its interpretation" of the ambiguity. *Id.* at 46a.

Judge Ikuta found that "the text of the Code is clear and does not authorize an award of post-petition interest to unimpaired creditors." App., *infra*, 35a. Congress "implicitly incorporated this solvent debtor exception in certain circumstances, and therefore identified exceptions to § 502(b)(2)'s 'general rule disallowing postpetition interest.'" App., *infra*, 42a (citation omitted); see 11 U.S.C. 726(a)(5), 1129(a)(7)(A)(ii). But Congress "chose not to make a similar exception authorizing an award of post-petition interest to unsecured creditors holding unimpaired claims, regardless of whether the debtor ends up solvent." *Id.* at 43a. Accordingly, she concluded, "unsecured creditors holding unimpaired claims are governed by 'the general rule disallowing postpetition interest.'" *Id.* at 44a.

Judge Ikuta thus would have followed this "Court's direction," and "le[ft] it to Congress to decide whether creditors holding claims that are fully paid under a plan of reorganization are entitled to post-petition interest when the debtor is solvent." App., *infra*, 56a.

4. The Ninth Circuit denied a timely petition for rehearing, over Judge Ikuta's vote to grant the petition. App., *infra*, 219a-220a. The court issued an order staying its mandate pending the outcome of a petition for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

This Court should grant certiorari because the Ninth Circuit's methodology for statutory interpretation conflicts with this Court's precedents requiring courts to start with the statutory text—and end there as well—if

the text is unambiguous. In particular, the Ninth Circuit's demand for a clear statement to displace pre-Code bankruptcy practice conflicts with this Court's precedents establishing that pre-Code practice is relevant if, but only if, a court finds the Code to be ambiguous in the first place. *E.g.*, *RadLAX Gateway Hotel* v. *Amalgamated Bank*, 566 U.S. 639, 649 (2012); *United States* v. *Ron Pair Enters.*, 489 U.S. 235, 245 (1989).

The methodological question has recently divided panels of both the Ninth Circuit and the Fifth Circuit, prompting forceful dissents from Judge Ikuta below and from Judge Oldham in *In re Ultra Petroleum Corp.*, 51 F.4th 138 (5th Cir. 2022). And that methodological question is fundamental. Even if the panel's decision were "fairer from the standpoint of natural justice," the "greater and more enduring damage" of the panel's approach "consists in its destruction of predictability, in the Bankruptcy Code and elsewhere." *Dewsnup* v. *Timm*, 502 U.S. 410, 435 (1992) (Scalia, J., dissenting).

This case provides an unusually clean vehicle for resolving the question. Judge Ikuta reached a different bottom-line result because she broke from the majority on the methodology. If the majority had started and stopped with an unambiguous text, as Judges Ikuta and Oldham did, it could not have held that a historical "solvent-debtor" exception entitles creditors to post-petition interest accruing at varying rates that are subject to "compelling equitable considerations." App., *infra*, 34a. The Code flatly disallows all post-petition interest. 11 U.S.C. 502(b)(2). And no provision of the Code makes an exception to allow payment of such interest to unimpaired unsecured creditors at state-law rates—and much less at rates that depend on "compelling equitable

considerations." As this Court has made clear, principles of equity cannot override the text of the Code. See *Law* v. *Siegel*, 571 U.S. 415, 421 (2014).

This case further warrants certiorari because the Ninth Circuit's underlying holding that the interest rate depends on "equitable considerations" conflicts with the Fifth Circuit's holding in *Ultra* that post-petition interest must accrue at the state-law contractual default rate. And that conflict vividly illustrates the dangers of departing from unambiguous text. The Ninth and Fifth Circuits disregarded the Code's provision barring post-petition interest, *and* the Code's limited exception for solvent debtors that (when applicable) specifies payment of interest at the federal judgment rate, 11 U.S.C. 726(a)(5). Those decisions are thus two steps removed from the statutory text, and without text to guide them it is unsurprising that they reach divergent results.

The Ninth Circuit's opinion thus conflicts with this Court's precedents as to statutory methodology, and with the Fifth Circuit's rule for calculating post-petition interest for an unsecured unimpaired creditor. These questions are recurring and important. This case is an ideal vehicle for deciding both questions. This Court should grant certiorari and reverse.

I. The Majority's Approach To Statutory Interpretation Conflicts With The Court's Precedents And Produced The Wrong Result

A. This Court's precedents establish that unambiguous text of the Code controls over pre-Code bankruptcy practice

1. This Court's precedents establish that interpretation of a statute must "begin[] with the statutory text," and that when the text is unambiguous the inquiry

"ends there as well." *National Ass'n of Mfrs.* v. *Department of Def.*, 138 S. Ct. 617, 631 (2018) (citation omitted). "When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law, and all persons are entitled to its benefit." *Bostock* v. *Clayton Cnty., Georgia*, 140 S. Ct. 1731, 1737 (2020). "[T]he text of a law controls over purported legislative intentions unmoored from any statutory text." *Oklahoma* v. *Castro-Huerta*, 142 S. Ct. 2486, 2496 (2022).

This Court has also made clear that the same text-first approach applies to the Bankruptcy Code. Courts must "interpret the Code clearly and predictably using well established principles of statutory construction." *RadLAX*, 566 U.S. at 649. That inquiry must "begin with the understanding that Congress 'says in a statute what it means and means in a statute what it says there.'" *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (quoting *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 254 (1992)). When a "statute's language is plain, 'the sole function of the courts is to enforce it according to its terms.'" *Ron Pair*, 489 U.S. at 241 (citation omitted). Without ambiguity, "[t]he plain text of the Bankruptcy Code begins and ends our analysis." *Puerto Rico* v. *Franklin California Tax-Free Tr.*, 579 U.S. 115, 125 (2016).

2. Only in rare circumstances does the Court require a "clear statement" from Congress, such as to abrogate sovereign immunity or strip the federal courts of jurisdiction. See, *e.g.*, *Boumediene* v. *Bush*, 553 U.S. 723, 738 (2008); *Will* v. *Michigan Dep't of State Police*, 491 U.S. 58, 65 (1989). But clear-statement rules are typically limited to situations that "reflect some constitutional or quasi-constitutional value." Oral Arg. Tr. 63, *Ysleta del*

Sur Pueblo v. *Texas*, No. 20-493 (U.S. Feb. 22, 2022) (Kavanaugh, J.); see Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 Boston U. L. Rev. 109, 118-19 (2010) (cataloguing clear statement rules that advance constitutional values); John F. Manning, *Clear Statement Rules and the Constitution*, 110 Colum. L. Rev. 399, 401 (2010) (explaining that clear statement rules "derive from constitutional inspiration"); William N. Eskridge, Jr., *Quasi-Constitutional Law: Clear Statement Rules As Constitutional Lawmaking*, 45 Vand. L. Rev. 593, 619-29 (1992) (enumerating clear-statement rules reflecting "federalism-based values").

This Court's precedents squarely establish that a clear statement is not required for the Code to depart from pre-Code practice. "[P]re-Code practices … can be relevant to the interpretation of an *ambiguous* text." *RadLAX*, 566 U.S. at 649 (emphasis added). But such practices have no role to play when there is "no textual ambiguity." *Ibid.*; see also *Ron Pair*, 489 U.S. at 248 ("there is no reason to think that Congress, in enacting a contrary standard, would have felt the need expressly to repudiate" past practice). Pre-Code practice thus "is a tool of construction, not an extratextual supplement." *Hartford Underwriters*, 530 U.S. at 10.

B. The majority's approach conflicts with those precedents by demanding a clear statement to depart from pre-Code practice

As Judge Ikuta explained, the majority opinion conflicts with this Court's precedents by taking the "exact opposite approach." App., *infra*, 35a. The majority started with history—not text—and then concluded that historical practice controls "unless Congress clearly abrogated it." App., *infra*, 45a. In particular, after finding a historical practice of paying post-petition interest

to unsecured creditors before returning value to a solvent debtor, the majority looked for (and failed to find) a clear statement that "unambiguously displace[d]" that past practice. *Id.* at 22a.

The majority's analysis leaves no doubt that it was applying a clear-statement rule. It emphasized that no provision "explicitly entitles a supposedly unimpaired creditor to any postpetition interest," and that the Code does not "specif[y] the rate of postpetition interest a creditor must receive from a solvent debtor to be unimpaired." App., *infra*, 16a, 25a. And in the absence of such specific or explicit language, the majority viewed the Code as leaving a "statutory vacuum" and as being "silent as to whether such creditors are entitled to any postpetition interest at all." *Id.* at 16a.

That "reasoning fails because the majority's underlying principle—that pre-Code practice applies unless Congress clearly abrogated it—is wrong." App., *infra*, 45a (Ikuta, J. dissenting). Section 502(b)(2) unambiguously disallows post-petition interest, full stop. And the majority and dissent both agreed that no exception in the Code applies. That is not a "vacuum" or "silence." It is a clear answer.

To support its clear-statement rule, the majority relied on this Court's statement in *Cohen* v. *de la Cruz*, 523 U.S. 213, 221 (1998), that it "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." App., *infra*, 20a. But that misreads *Cohen* by taking that statement "out of context." *Id.* at 45a. *Cohen*'s analysis *started with the text*, identifying the "most straightforward reading" of the provision at issue. See 523 U.S. at 218. Only after analyzing the text did the

Court turn to history, which it used merely to "reinforce[]" its reading of the text. *Id*. at 221.

Cohen thus did not create a bankruptcy-specific clear-statement rule. Rather, it used historical practice as a secondary tool to confirm the better reading of a textual ambiguity. *Cohen* thus "faithfully followed" this Court's approach set forth in *Ron Pair*, *Hartford Underwriters*, and *RadLAX*. App., *infra*, 45a-46a. *Cohen* supports Judge Ikuta's text-first methodology, not the majority's clear-statement rule.

C. The majority's methodological error led it to the wrong result

As the dissent from Judge Ikuta illustrates, the choice of methodology is outcome-dispositive and the panel's error caused it to reach the wrong result.

1. Section 502(b)(2) disallows any claim for "unmatured interest." The Code provides a limited exception to pay post-petition interest "at the legal rate" when the debtor is solvent. 11 U.S.C. 726(a)(5). But that exception applies "only" in Chapter 7. 11 U.S.C. 103(b). Congress also incorporated that exception into Chapter 11 cases involving impaired unsecured creditors. See 11 U.S.C. 1129(a)(7)(A). But no Code provision makes that exception applicable to *un*impaired unsecured creditors in a Chapter 11 case. App., *infra*, 15a-16a, 43a-44a.

Thus, as Judge Ikuta explained, "Congress implicitly incorporated [the] solvent debtor exception in certain circumstances, and therefore identified exceptions to § 502(b)(2)'s 'general rule disallowing postpetition interest.'" App., *infra*, 42a (Ikuta, J., dissenting). But Congress "chose not to make a similar exception authorizing an award of post-petition interest to *unsecured* creditors holding *unimpaired* claims, regardless of whether the debtor ends up solvent." *Id.* at 43a. (emphasis added).

As a result, the "general rule disallowing postpetition interest" applies. *Id.* at 44a. And the Code is crystal clear about what the general rule is: The Code disallows all "unmatured interest." 11 U.S.C. 502(b)(2).

2. The majority described the Code as "silent as to whether such [unimpaired] creditors are entitled to any postpetition interest at all." App., *infra*, 16a. But the Code is not silent: The Code "goes for the jugular by flatly disallowing 'claim[s] for unmatured interest.'" *Ultra*, 51 F.4th at 163 (Oldham, J., dissenting) (quoting 11 U.S.C. 502(b)(2)). As Judge Oldham explained, Congress does not need to add "'and the solvent-debtor exception doesn't apply.'" *Ibid.* "Congress need not speak superfluously to speak 'unmistakably.'" *Id.* at 163-64.

The majority also reasoned that pre-Code practice provides an "equitable" right to post-petition interest because the solvent-debtor exception was grounded in considerations of equity and the Code defines claims as "unimpaired" only if "the plan" does not alter the holder's "legal, equitable, and contractual rights." 11 U.S.C. 1124(1). See App., *infra*, 12a-13a, 25a-26a. But Section 502(b)(2) disallows *all* rights to post-petition interest at contract or state law rates, without regard to whether those rights are "legal, equitable, [or] contractual." Respondents therefore lacked any right to payment (or a right to an equitable remedy) for such post-petition interest the moment bankruptcy was filed. The "plan" did not take that away. 11 U.S.C. 1124(1). The Code did.[2]

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[2] It is well-settled that, when the Code itself alters a creditor's rights, that does not "impair" the creditor because the Code defines impairment to occur only if "the plan" (not the Code) causes the change. *E.g.*, *In re Ultra Petroleum Corp.*, 943 F.3d 758, 763 (5th Cir. 2019) ("All agree that '[i]mpairment results from what the *plan* does, not what the statute does.'").

The majority asserted that "the equitable prong of § 1124 applies differently when the debtor is solvent." App., *infra*, 31a n.9. But the Code is not a chameleon, *Clark* v. *Martinez*, 543 U.S. 371, 382 (2005), and courts cannot invoke generalized principles of equity "to alter the balance struck by the statute." *Law* v. *Siegel*, 571 U.S. 415, 427 (2014).

Lacking a textual hook, the majority instead relied on legislative history. See App., *infra*, 24a-25a (citing H.R. Rep. No. 103-835, at 48 (1994)). But this Court has repeatedly held that courts cannot use legislative history to generate ambiguity. *Milner* v. *Department of Navy*, 562 U.S. 562, 574 (2011) ("Legislative history, for those who take it into account, is meant to clear up ambiguity, not create it."); see *Azar* v. *Allina Health Servs.*, 139 S. Ct. 1804, 1814 (2019) ("[The Court] won't allow 'ambiguous legislative history to muddy clear statutory language.'") (citation omitted).

Further, the Code's *statutory* history undermines the majority's reading of the text. See *Hubbard* v. *United States*, 514 U.S. 695, 702-03 (1995) (distinguishing statutory history from legislative history). When Congress enacted the Bankruptcy Code in 1978, Chapter 11's cross-reference to Section 726(a)(5) applied to "all unsecured creditors, impaired and unimpaired." *In re Hertz Corp.*, 637 B.R. 781, 800 (Bankr. D. Del. 2021); see Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 1129(a)(7), 92 Stat. 2549. The Code thus entirely eliminated *any* uncodified common-law solvent-debtor exception, completely displacing it with the codified exception set forth in Section 726(a)(5).

In 1984, Congress amended the Code so that the cross-reference to Section 726(a)(5) now applies only to impaired creditors—not unimpaired. Bankruptcy

Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 512(a)(7) & (10), 98 Stat. 333. Without that cross-reference, Section 726(a)(5) no longer applies to unimpaired creditors in a Chapter 11 case. See 11 U.S.C. 103(b). Rather, the general rule now applies: Post-petition interest is disallowed. 11 U.S.C. 502(b)(2). There is no indication that Congress silently resurrected an atextual historical practice that the Code had already entirely displaced. See *Hertz*, 637 B.R. at 800.

The majority's approach to statutory interpretation is thus fundamentally inconsistent with this Court's precedents, leads to the wrong result, and warrants this Court's review.

II. The Majority's "Compelling Equitable Considerations" Rule Conflicts With The Fifth Circuit's Decision In *Ultra* And Is Wrong

Even worse, the majority's "compelling equitable considerations" rule conflicts with the Fifth Circuit's decision in *Ultra* and departs from the text of the solvent-debtor exception that the Code actually codifies in Section 726(a)(5).

1. Even if the Code preserved "the equitable principle long understood to lie at [the] core" of the solvent-debtor exception, *Minerva Surgical, Inc.* v. *Hologic, Inc.*, 141 S. Ct. 2298, 2302 (2021), that would require payment of "interest that accrued during bankruptcy before retaining value from an estate." App., *infra*, 11a. It would not decide the rate at which post-petition interest accrues.

In deciding that question, the appropriate place to start—as always—is the text. Unlike prior bankruptcy statutes, the Code codifies a form of the solvent-debtor exception: It provides that, in circumstances in which post-petition interest must be paid to unsecured creditors because the debtor is solvent, interest accrues at

"the legal rate," meaning the federal judgment rate. 11 U.S.C. 726(a)(5); see also *Ultra*, 51 F.4th at 164 (Oldham, J., dissenting) ("[C]reditors should recover post-petition interest only at the federal judgment rate.").

Accordingly, at most, unimpaired creditors are entitled to post-petition interest at the federal judgment rate under Section 726(a)(5), just like impaired creditors and creditors in a Chapter 7 case. Nothing in the Code provides any support for the idea that unsecured creditors must be paid post-petition interest at state-law rates, much less state-law rates that are subject to modification depending on "compelling equitable considerations." App., *infra*, 34a. The Ninth Circuit's rule is thus doubly atextual, as it disregards both the general rule in Section 502(b)(2) *and* Congress's codified version of the solvent-debtor exception in Section 726(a)(5).[3]

2. The Ninth Circuit's "compelling equitable considerations" rule also conflicts with the Fifth Circuit's bright-line rule that "[c]reditors are entitled to what they bargained for with this solvent debtor." *Ultra*, 51 F.4th at 160. Under that approach, post-petition interest accrues at rates defined by state contract law (or state default-rate statutes). The Ninth Circuit, by contrast, held that courts must "weigh the equities" to "determine what rate of interest [creditors] are entitled to." App., *infra*, 33a. According to the majority, interest generally accrues "at the contractual or default state law rate," but that rate is "subject to any other equitable considerations" that the bankruptcy court may find. *Id.* at 10a, 34a.

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[3] It also breaks from the text of the 1978 version of the Code, under which Section 726(a)(5) expressly applied to unimpaired unsecured creditors. See p. 20, *supra*.

The Ninth Circuit and the Fifth Circuit's conflicting rules also illustrate the problems that arise when courts depart from the statutory text. Congress enacted the Code to standardize bankruptcy practice. *RadLAX*, 566 U.S. at 649. But in departing from the plain text of the Code, the Ninth and Fifth Circuits have now reached different results about what interest rate should apply.

III. The Questions Presented Are Important And Recurring

1. At the outset, the methodological question is fundamental. The "greater and more enduring damage" of giving unambiguous text a secondary role "consists in its destruction of predictability, in the Bankruptcy Code and elsewhere." *Dewsnup*, 502 U.S. at 435 (Scalia, J., dissenting); see also *Bank of Am., N.A.* v. *Caulkett*, 575 U.S. 790, 795 n.† (2015) (noting "methodological confusion" that "has enshrouded both the Courts of Appeals and … Bankruptcy Courts"). If courts cannot read plain text to mean what it says, and instead must engage in a detailed review of pre-Code practice and legislative history to resolve its meaning, then "innumerable statutory texts become worth litigating." *Dewsnup*, 502 U.S. at 435 (Scalia, J., dissenting). "[U]nfortunate future litigants will have to pay the price." *Ibid.* By contrast, "if we could achieve more agreement ahead of time on the rules of the road, there would be many fewer disputed calls in actual cases." Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2121 (2016).

This case is more broadly important because the Ninth and Fifth Circuits have effectively created another clear-statement rule. The Fifth Circuit openly acknowledged that it was applying a "substantive canon of statutory interpretation" that courts "must defer to prior bankruptcy practice unless expressly abrogated."

Ultra, 51 F.4th at 153. But as Justice Kagan has observed, substantive canons are "all over the place," and pose a fundamental problem: "how do we reconcile our views of all these different kinds of canons?" Oral Arg. Tr. 60, *Ysleta del Sur Pueblo* v. *Texas*, No. 20-493 (U.S. Feb. 22, 2022). This case accordingly gives the Court an opportunity to sharply limit the application of clear-statement rules and substantive canons that lack any constitutional or jurisdictional basis.

2. The underlying question of whether a solvent-debtor exception still survives and, if so, at which rate interest must accrue, is also important and recurring. "Although the concept of a solvent bankrupt may seem contradictory, the scenario occurred frequently enough for the common law to develop a special rule for such cases." App., *infra*, 11a. And it arises with frequency today, as market volatility and other factors have led to numerous debtors becoming solvent (or potentially solvent) by the end of the case in just the last few years. See, *e.g.*, *Ultra*, 51 F.4th at 158-59; *In re Mullins*, 633 B.R. 1, 24 (Bankr. D. Mass. 2021); *In re LATAM Airlines Grp. S.A.*, No. 20-11254, 2022 WL 2541298, at *20 (Bankr. S.D.N.Y. July 7, 2022); *Hertz*, 637 B.R. at 783.

Driven by different methodologies, different judges have reached different outcomes. Compare, *e.g.*, App., *infra*, 34a (requiring post-petition interest with rates depending on "equitable considerations"); *Ultra*, 51 F.4th at 158-59 (same, but based on contract rates); *Hertz*, 637 B.R. at 800-01 (applying the uniform federal-judgment rate set forth in Section 726(a)(5)); App., *infra*, 35a (Ikuta, J., dissenting) (no post-petition interest).

The Ninth Circuit's rule also has significant ramifications for restructuring practice. First, the majority's

decision casts a cloud of uncertainty over plan confirmation proceedings by requiring courts to weigh unknown "equitable" rights in determining how much interest must be paid if a debtor proves solvent. That rule prevents solvent debtors from knowing in advance what rate they must pay unimpaired creditors, whether they will be able to pay interest in full, and whether creditors will be deemed "impaired" and able to vote on the plan, thus generating uncertainty and delay.

Second, the decision threatens to impose significant additional costs on solvent debtors. It requires debtors and creditors to analyze and engage in litigation over provisions in numerous (and potentially thousands of) contracts governing interest and default interest payments. It will also invite costly litigation over any countervailing equities that weigh against payment of contractual or state-law default rates.

Third, the Constitution requires "uniform" bankruptcy laws. U.S. Const. Art. I, § 8, cl. 4; see also *Siegel* v. *Fitzgerald*, 142 S. Ct. 1770, 1781 (2022) (Bankruptcy Clause "does not permit the arbitrary, disparate treatment of similarly situated debtors based on geography"). But now, creditors in California will be treated differently from similarly-situated creditors in Texas. Moreover, the majority's approach would mean that different creditors of the same estate would accrue interest at varying rates, rather than at the uniform legal rate specified in Section 726(a)(5). And as a case wears on, creditors with higher contractual interest rates may extract a larger share of the estate's value than otherwise similarly-situated creditors. The majority's decision thus causes disuniformity both between creditors within a single bankruptcy, and disuniformity between different bankruptcies in different parts of the country.

IV. This Case Is An Ideal Vehicle

This case is an ideal vehicle. First, it squarely presents the methodological question. The key divide between the majority and the dissent is over whether a clear statement is required to depart from pre-Code practice. The majority demanded language that "unambiguously displace[d]" the solvent-debtor exception, or that "specifies the rate of postpetition interest a creditor must receive from a solvent debtor to be unimpaired." App., *infra*, 16a, 22a. Judge Ikuta took the "exact opposite approach: so long as the Code is clear, we do not refer to pre-Code practice." *Id.* at 35a (Ikuta, J., dissenting). Moreover, Judge Ikuta's dissent demonstrates that a different methodology is outcome-dispositive.

Second, this case squarely presents the question of whether a solvent-debtor exception continues to apply, and if so at what rate interest should accrue. Pursuant to its plan, and relying on *Cardelucci*, PG&E paid interest at the federal judgment rate. Respondents objected, demanding interest at state-law contract or default rates. And the only question on appeal was whether the bankruptcy court properly overruled their objection. The Ninth Circuit held that respondents' objection should have been sustained because they "enjoy an equitable right to contractual or state law default postpetition interest," subject to "compelling equitable considerations." App., *infra*, 33a. The majority thus rejected Judge Ikuta's position that the Code foreclosed payment of post-petition interest. *Id.* at 28a-31a. The majority also rejected the position that PG&E pressed below, that interest was due at the federal judgment rate pursuant to *Cardelucci*. *Id.* at 21a-22a. And the answer was outcome-dispositive: The majority vacated and remanded; Judge Ikuta would have affirmed.

The court of appeals thus passed on the appropriate methodology, as well as the substantive question of whether the solvent-debtor exception survives (and, if so, at what rate interest accrues). Accordingly, although PG&E paid interest at the federal judgment rate and defended that position on appeal, the methodological question and the question of whether interest is due at all (and if so, at what rate) are both fully preserved for this Court's review. *E.g.*, *Verizon Commc'ns, Inc.* v. *FCC*, 535 U.S. 467, 530 (2002). This petition accordingly squarely presents both questions, and they warrant this Court's review.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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FEBRUARY 2023

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 21-16043
D.C. No. 4:20-cv-04570-HSG

IN RE PG&E CORPORATION; PACIFIC GAS & ELECTRIC COMPANY,

Debtors,

AD HOC COMMITTEE OF HOLDERS OF TRADE CLAIMS,

Appellant,

v.

PACIFIC GAS AND ELECTRIC COMPANY,

Appellee.

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

Argued and Submitted December 6, 2021
San Francisco, California

Filed August 29, 2022

OPINION

Before: Carlos F. Lucero,[*] Sandra S. Ikuta, and Lawrence VanDyke, Circuit Judges.

Opinion by Judge Lucero;
Dissent by Judge Ikuta

SUMMARY[**]

Bankruptcy

The panel reversed the district court's order, which affirmed the bankruptcy court's ruling that in the chapter 11 proceeding of solvent debtor Pacific Gas and Electric Co., unsecured creditors whose claims were designated as unimpaired were limited to recovery of postpetition interest at the federal judgment rate, rather than the higher rates required by their contracts with PG&E and by California law governing contractual obligations not paid.

The chapter 11 plan classified the claims of these creditors, known as the Ad Hoc Committee of Holders of Trade Claims, as general unsecured claims and provided that the creditors would be paid the full principal amount of their claims plus postpetition interest at the federal judgment rate of 2.59 percent under 28 U.S.C. § 1961(a). The plan classified the creditors' claims as unimpaired, meaning that they were deemed to automatically accept the plan and

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[*] The Honorable Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

had no power to vote against it or argue that their treatment was not "fair and equitable" under 11 U.S.C. § 1129(b)(1) (providing that when a class of impaired creditors votes against a plan, the bankruptcy court may confirm the plan only if it is fair and equitable with respect to that class). Because the claims were designated as unimpaired, under 11 U.S.C. § 1124, the creditors' "legal, equitable, and contractual rights" were required to be "unaltered" by the reorganization plan.

Joining other circuits, the panel held that under the "solvent-debtor exception," the creditors possessed an equitable right to receive postpetition interest at the contractual or default state rate, subject to any other equitable considerations, before PG&E collected surplus value from the bankruptcy estate. The solvent-debtor exception is a common-law exception to the Bankruptcy Act's prohibition on the collection of postpetition interest as part of a creditor's claim.

The panel disagreed with the bankruptcy court's conclusion that *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002), was controlling because it established a broad rule that all unsecured claims in a solvent-debtor bankruptcy are entitled only to postpetition interest at the federal judgment rate, regardless of impairment status. The panel concluded that *Cardelucci* merely interpreted 11 U.S.C. § 726(a)(5), which requires that creditors of a solvent debtor receive postpetition interest at "the legal rate." Section 726(a)(5), however, applies only to impaired chapter 11 claims, and the panel concluded that *Cardelucci* therefore did not address what rate of postpetition interest must be paid on the Ad Hoc Committee's unimpaired claims.

The panel also disagreed with the bankruptcy court's alternative holding that the Bankruptcy Code

limited the Ad Hoc Committee to postpetition interest at the federal judgment rate. The panel held that passage of the Bankruptcy Code did not abrogate the solvent-debtor exception. Rather, the Code's text, history, and structure compelled the conclusion that creditors like the Ad Hoc Committee continue to possess an equitable right to bargained-for postpetition interest when a debtor is solvent. 11 U.S.C. § 502(b)(2) prohibits the inclusion of "unmatured interest" as part of an allowed claim, codifying the longstanding rule that interest as part of a claim stops accruing once a bankruptcy petition is filed. That bar is subject to a statutory exception under § 726(a)(5). The panel held, however, that § 726(a)(5) applies only to impaired creditors and therefore did not unambiguously abrogate the equitable solvent-debtor exception. The panel concluded that the statutory history of § 1124 and the Bankruptcy Code's structure also supported its conclusion that the solvent-debtor exception survived.

The panel concluded that under the solvent-debtor exception, the creditors had an equitable right to receive postpetition interest pursuant to their contracts. However, PG&E's plan did not compensate the creditors accordingly, but rather provided for interest at the lower federal judgment rate. The panel reversed and remanded to the bankruptcy court to weigh the equities and determine what rate of interest the creditors were entitled to.

Dissenting, Judge Ikuta wrote that the text of the Bankruptcy Code is clear that unsecured creditors holding unimpaired claims in bankruptcy under 11 U.S.C. § 1124(b) are not entitled to postpetition interest on their claims when the debtor is solvent. Judge Ikuta wrote that the majority erroneously held that pre-Code practice is binding unless the Code

clearly abrogates it. Rather, the Supreme Court has directed the courts to take the exact opposite approach: so long as the Code is clear, the courts do not refer to pre-Code practice. Judge Ikuta wrote that Congress chose not to make an exception entitling unimpaired creditors to postpetition interest at the contract or state default rates, and the statutory language provided no basis for the majority's theory that a creditor's "claim," which may not include postpetition interest, is nevertheless deemed "impaired" if the debtor turns out to be solvent and the creditor does not obtain postpetition interest at the end of the bankruptcy case.

COUNSEL

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OPINION

LUCERO, Circuit Judge:

This case involves an oddity in bankruptcy law: a solvent bankrupt. Specifically, it involves Pacific Gas & Electric Company ("PG&E"), which sought chapter 11 protection in a bid to proactively address massive potential liabilities related to a series of wildfires in Northern California. But PG&E was, and has remained, solvent. Its assets at the time of the bankruptcy filing exceeded its known liabilities by nearly $20 billion. As a result, several creditors—including plaintiffs, the Ad Hoc Committee of Holders of Trade Claims—claimed PG&E must pay postpetition interest at the rates required by their contracts in order for their claims to be "unimpaired" by the reorganization plan. *See* 11 U.S.C. § 1124(1). In other words, plaintiffs argued PG&E had to honor its contractual obligations before its shareholders reaped a surplus from the bankruptcy estate. The bankruptcy court and the district court disagreed. They concluded that *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002), and the text of the Bankruptcy Code limited plaintiffs to recovery of postpetition interest at the much lower federal judgment rate. We have jurisdiction under 28 U.S.C. § 158(d)(1) and REVERSE.

I

PG&E filed for chapter 11 bankruptcy in January 2019. The company initiated the proceedings in response to catastrophic wildfires that occurred in Northern California during the preceding years. Following the fires, PG&E faced tens of billions of dollars in potential liabilities to fire victims, in addition to the tens of billions of dollars the company owed pursuant to its

outstanding contractual commitments.[1] However, the company was solvent at the time of filing: it reported $71.4 billion in assets compared to $51.7 billion in known liabilities. PG&E nonetheless insisted bankruptcy was necessary to resolve its wildfire liabilities and ensure the liquidity needed to sustain operations. The company has never contested its ability to pay non-wildfire creditors in full.

After PG&E filed for bankruptcy, California enacted Assembly Bill 1054 ("A.B. 1054"). *See* Act of July 12, 2019, ch. 79, 2019 Cal. Stat. 1888 (codified in scattered sections of Cal. Pub. Util. Code). The act created a multi-billion-dollar safety net to compensate future victims of utility fires. Cal. Pub. Util. Code §§ 3284, 3288. For PG&E to participate in the fund, A.B. 1054 required that the bankruptcy court confirm its reorganization plan by June 30, 2020. *Id.* § 3292(b).

PG&E's proposed chapter 11 plan ("the plan") classified plaintiffs' non-wildfire-related claims as general unsecured claims. The plan provided that plaintiffs would be paid the full principal amount of these claims. It further stipulated that plaintiffs would receive postpetition interest at the federal judgment rate of 2.59 percent, *see* 28 U.S.C. § 1961(a), accruing from the date of PG&E's bankruptcy filing through the date of distribution. However, this interest rate was significantly lower than plaintiffs were entitled to under state law for contractual obligations not paid. Some of plaintiffs' contracts with PG&E contained bargained-for interest rates on unpaid obligations,

[1] In a declaration accompanying the bankruptcy filing, a PG&E executive estimated that the company's wildfire-related liabilities "could exceed $30 billion, without taking into account potential punitive damages, fines and penalties or damages with respect to 'future claims.'"

while California law sets a default interest rate of ten percent. *See* Cal. Civ. Code § 3289(b). Plaintiffs claim that, by paying them the lower federal judgment rate, PG&E's plan denied them roughly $200 million they would have received pursuant to interest rates in their contracts or, in the absence of such terms, the California default rate.

Notwithstanding the difference in interest payments, PG&E's plan classified plaintiffs' claims as "unimpaired," a statutory term used to denote which bankruptcy creditors are entitled to vote on a reorganization plan. *See* 11 U.S.C. § 1124. As supposedly unimpaired creditors, plaintiffs were deemed to automatically accept the plan and therefore had no power to vote. *See* 11 U.S.C. § 1126(f). Conversely, all classes of impaired claims were entitled to vote and could assert other statutory protections under the Bankruptcy Code if they voted against the plan. *See* 11 U.S.C. §§ 1129(a)(7), 1129(b)(1).

Plaintiffs and other unsecured creditors objected to the amount of postpetition interest provided under the plan. They argued that, because PG&E was solvent, they must receive interest at the contractual or default state law rates to be considered unimpaired. In a ruling prior to plan confirmation, the bankruptcy court disagreed. That court concluded it was bound by *Cardelucci*, which it read as establishing a broad rule that all unsecured creditors of a solvent-debtor, regardless of impairment status, are entitled only to postpetition interest at the federal judgment rate. The bankruptcy court alternatively ruled that, even if *Cardelucci* did not control, PG&E would prevail because the Bankruptcy Code limits unsecured creditors of a solvent debtor to interest at the federal judgment rate, and therefore plaintiffs' claims were not actually

impaired. The bankruptcy court confirmed PG&E's plan on June 20, 2020, thus satisfying the deadline set by A.B. 1054.

Plaintiffs appealed the bankruptcy court's confirmation order, which incorporated the postpetition interest order, to the district court. That court affirmed, adopting the bankruptcy court's reasoning that *Cardelucci* controlled the postpetition interest dispute. Plaintiffs appeal that ruling to us.

II

We review de novo a district court's decision on appeal from a bankruptcy court, applying the same standard of review to the bankruptcy court's decision as did the district court. *Northbay Wellness Grp., Inc. v. Beyries*, 789 F.3d 956, 959 (9th Cir. 2015). The bankruptcy court's conclusions of law, including its interpretation of the Bankruptcy Code, are reviewed de novo. *In re Smith*, 828 F.3d 1094, 1096 (9th Cir. 2016).

III

The question we must answer is this: what rate of postpetition interest must a solvent debtor pay creditors whose claims are designated as unimpaired pursuant to § 1124(1) of the Bankruptcy Code?[2] No circuit court has addressed this issue, and bankruptcy courts have reached different conclusions. *Compare In re Ultra Petroleum Corp.*, 624 B.R. 178, 203–04 (Bankr. S.D. Texas 2020) (unimpaired creditors must

[2] PG&E has said at previous stages of this litigation that, should plaintiffs prevail in the postpetition interest dispute, it would amend the plan to pay plaintiffs the amount of postpetition interest they are entitled to under the Code as unimpaired creditors.

receive postpetition interest at the contract rate), *with In re Energy Future Holdings Corp.*, 540 B.R. 109, 124 (Bankr. D. Del. 2015) (unimpaired creditors are entitled to interest "under equitable principles" at a rate "the Court deems appropriate"), *and In re The Hertz Corp.*, 637 B.R. 781, 800–01 (Bankr. D. Del. 2021) (unimpaired creditors need only receive interest at the federal judgment rate).

Plaintiffs contend that the bankruptcy and district courts in this case erred in holding that, as unimpaired creditors, they were only entitled to postpetition interest at the federal judgment rate of 2.59 percent. We agree that these rulings were in error. Under the long-standing "solvent-debtor exception," plaintiffs possess an equitable right to receive postpetition interest at the contractual or default state law rate, subject to any other equitable considerations, before PG&E collects surplus value from the bankruptcy estate. *Cardelucci*, which interpreted a statutory provision inapplicable to unimpaired creditors, does not hold otherwise. Moreover, we disagree with PG&E's assertion that this solvent-debtor exception was abrogated by passage of the Bankruptcy Code. To the contrary, the Code required PG&E's plan to leave "unaltered" all of plaintiffs' "legal, equitable, and contractual rights," § 1124(1)—including their equitable right to receive the bargained-for postpetition interest under the solvent-debtor exception. PG&E's plan failed to compensate plaintiffs accordingly.

A

Statutory analysis of the Bankruptcy Code is a "holistic endeavor." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988). Our analysis in this case requires reference to various statutory and historic sources. We

begin by summarizing (1) the common-law solvent-debtor exception, and (2) key provisions of the Bankruptcy Code.

1

Although the concept of a solvent bankrupt may seem contradictory, the scenario occurred frequently enough for the common law to develop a special rule for such cases. That rule, in short, is that a solvent debtor must generally pay postpetition interest accruing during bankruptcy at the contractual or state law rates before collecting surplus value from the bankruptcy estate.

The default rule in bankruptcy law is that interest ceases to accrue on a claim once a debtor has filed for bankruptcy. *See Sexton v. Dreyfus*, 219 U.S. 339, 344 (1911); 11 U.S.C. § 502(b)(2). This rule is one of necessity: in most chapter 11 cases, the debtor cannot pay all its creditors, and therefore payment of interest accruing after filing would diminish the value of the estate and result in disparate treatment of creditors. *See Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 163–64 (1946). But such concerns do not exist when a bankrupt has sufficient funds to pay all outstanding debts. *See Johnson v. Norris*, 190 F. 459, 462 (5th Cir. 1911) (emphasizing that the default rule halting accrual of interest during bankruptcy "was not intended to be applied to a solvent estate").

Accordingly, eighteenth century English courts developed the solvent-debtor exception, which required bankrupts to pay interest that accrued during bankruptcy before retaining value from an estate. *See, e.g.*, Bromley v. Goodere (1743) 26 Eng. Rep. 49, 51–52; 1 Atkyns 75, 79–81. American courts imported this doctrine and applied it under the Bankruptcy Act of

1898—the predecessor of the current Bankruptcy Code. *See, e.g.*, *City of New York v. Saper*, 336 U.S. 328, 330 n.7 (1949) (recognizing the solvent-debtor exception); *In re Beverly Hills Bancorp*, 752 F.2d 1334, 1339 (9th Cir. 1984) (same). The Supreme Court emphasized that "in the rare instances where the assets ultimately prove[] sufficient for the purpose, . . . creditors [are] entitled to interest accruing after adjudication." *Am. Iron & Steel Mfg. Co. v. Seaboard Air Line Ry.*, 233 U.S. 261, 266–67 (1914) ("*American Iron*").

The solvent-debtor exception was not codified, instead existing as a common-law exception to the Bankruptcy Act's prohibition on the collection of postpetition interest as part of a creditor's claim. *See* Bankruptcy Act of 1898, ch. 541, § 63, 30 Stat. 544, 562–63 (repealed) (stating that an allowed claim excludes "costs incurred and interests accrued after the filing of the petition"). Courts interpreted the exception as flowing from the purpose of bankruptcy law to ensure an equitable distribution of assets. *See Johnson*, 190 F. at 466; *Debentureholders Protective Comm. of Cont'l Inv. Corp. v. Cont'l Inv. Corp.*, 679 F.2d 264, 269 (1st Cir. 1982) ("*Debentureholders*") (calling the exception "fair and equitable"). The common-law absolute priority rule requires that a creditor be "made whole" before junior interests—including equity holders—take from the bankruptcy estate. *Consol. Rock Prods. Co. v. Du Bois*, 312 U.S. 510, 520–21 (1941); *see also Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 444 (1999). Without a solvent-debtor exception, a solvent bankrupt could reap a windfall at their creditors' expense, pocketing "money which the debtor had promised to pay promptly to the creditor." *Debentureholders*, 679 F.2d at 269.

In *American Iron*, for example, the Supreme Court awarded interest that accrued during a period of receiver administration at the Virginia statutory rate. 233 U.S. at 264, 267. The Court explained that the general bar on payment of interest on debts in a receivership did not mean the claims "had lost their interest-bearing quality." *Id.* at 266. Rather, it was "a necessary and enforced rule" to retain equitable distribution between creditors. *Id.* But the need for such a rule disappeared when "the estate proved sufficient to discharge the claims in full." *Id.* Similarly, multiple circuit courts hearing cases under the Bankruptcy Act concluded that, in a solvent-debtor bankruptcy, "the task for the bankruptcy court is simply to enforce creditors' rights according to the tenor of the contracts that created those rights." *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 791 F.2d 524, 528 (7th Cir. 1986); *see also Debentureholders*, 679 F.2d. at 270 (reversing plan confirmation where a solvent debtor did not pay creditors their "contractual right" to interest); *Ruskin v. Griffiths*, 269 F.2d 827, 832 (2d Cir. 1959) (concluding that equity required the debtor to pay interest on creditors' claims at the "expressly-bargained-for" rate).[3]

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[3] PG&E contends that early American cases recognizing the solvent-debtor exception, including *Johnson*, did not specify that postpetition interest should be paid at contractual or default state law rates. But it is unclear what other rates those courts could have contemplated. The statute setting a uniform federal judgment rate of interest, 28 U.S.C. § 1961, was not established until 1948. *See* Pub. L. 80-773, 62 Stat. 869, 957–58 (1948). Accordingly, a creditor's entitlement to postpetition interest accruing on debt would have naturally been understood to arise from state law, either pursuant to the parties' contracts or the applicable default state law rate. *See American Iron*, 233 U.S. at

In short, the solvent-debtor exception was well-established under the Bankruptcy Act. Under this exception, creditors of a solvent debtor were entitled to be made whole, including receiving postpetition interest pursuant to their contractual or state law default rates, before surplus value was returned to the bankrupt. *See Chicago, Milwaukee*, 791 F.2d at 529; *Debentureholders*, 679 F.2d. at 270; *Ruskin*, 269 F.2d at 832; Chaim J. Fortgang & Lawrence P. King, *The 1978 Bankruptcy Code: Some Wrong Policy Decisions*, 56 N.Y.U. L. Rev. 1148, 1164 (1981) (describing the "well-established" pre-Bankruptcy Code principle that, when a debtor is solvent, "all claims are to be paid the full amount of their principal plus interest, both prepetition and postpetition at the contractual rate").

2

With this history in mind, we turn to the modern Bankruptcy Code ("the Code"). Congress passed the Code in 1978, replacing the prior statutory regime under the Bankruptcy Act. *See* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549. "[W]hile pre-Code practice informs our understanding of the language of the Code, it cannot overcome that language." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 10 (2000) (cleaned up).

This case revolves around the Code's concept of impairment. Section 1124(1) of the Code provides that a claim is impaired unless the bankruptcy plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." We have said that Congress "defined impairment in the broadest possible terms"

266–67 (awarding the state law default rate in a solvent-debtor receivership case).

and "any alteration" of a creditor's legal, equitable, and contractual rights by a debtor's plan constitutes impairment. *In re L&J Anaheim Assocs.*, 995 F.2d 940, 942 (9th Cir. 1993) (cleaned up). A debtor, as part of a proposed plan, must specify which classes of claims are unimpaired. § 1123(a)(2).

Impaired creditors receive several protections during plan confirmation that are not afforded to unimpaired creditors. First, only impaired claim holders may vote on whether to confirm a plan. *See* § 1126(a). Conversely, unimpaired claimants are presumed to accept a plan. § 1126(f). Each class of impaired claims must vote to accept a plan for a consensual confirmation to occur. § 1129(a)(8).

Moreover, an impaired creditor who votes against a plan must receive value "not less than . . . such holder would so receive or retain if the debtor were liquidated under chapter 7" of the Code. § 1129(a)(7)(A)(ii). This provision, known as the best-interests-of-creditors test ("best-interests test"), incorporates by reference 11 U.S.C. § 726, which establishes the priority of distributions in chapter 7 liquidations. Section 726(a)(5) requires that creditors of a solvent debtor receive postpetition interest at "the legal rate"—a term we have said refers to the federal judgment rate established by 28 U.S.C. § 1961(a). *See Cardelucci*, 285 F.3d at 1234. Thus, pursuant to the best-interests test, a dissenting, *impaired* creditor of a solvent, chapter 11 debtor must receive postpetition interest on their claim at the federal judgment rate.

Conversely, no Code provision applies § 726(a)(5) to *unimpaired* chapter 11 claims. To the contrary, the Code expressly limits the application of § 726(a)(5) to chapter 7 liquidations. *See* 11 U.S.C. § 103(b) (stating that subchapter II of chapter 7, which includes § 726,

applies only to chapter 7 cases). Section 726(a)(5) applies to chapter 11 cases solely through the best-interests test, § 1129(a)(7), which is inapplicable to unimpaired creditors. *See Energy Future Holdings*, 540 B.R. at 123; 7 Collier on Bankruptcy ¶ 1129.02[7][a] (16th ed. 2021) (noting the best-interests test applies "only to creditors . . . who are members of impaired classes"). No provision of the Code specifies the rate of postpetition interest a creditor must receive from a solvent debtor to be unimpaired. *See Ultra Petroleum*, 624 B.R. at 202. In fact, the Code is silent as to whether such creditors are entitled to any postpetition interest at all. *Id.*

Finally, when a class of impaired creditors votes against a plan, the bankruptcy court may only confirm the plan if it is "fair and equitable" with respect to that class. § 1129(b)(1). Some courts have held a solvent debtor may be required to pay contractual or default interest, over and above the required federal judgment rate, to objecting, impaired creditors in order to satisfy this "fair and equitable" requirement and secure court approval of a reorganization plan. *See, e.g.*, *In re Dow Corning Corp.*, 456 F.3d 668, 680 (6th Cir. 2006); *In re Mullins*, 633 B.R. 1, 20 (Bankr. D. Mass 2021).

In this case, PG&E's confirmed plan provided for postpetition interest on plaintiffs' claims at the federal judgment rate—the same rate plaintiffs would be entitled to as impaired creditors. However, because plaintiffs were designated as unimpaired, they could not (1) vote on the reorganization plan or (2) argue that their treatment was not "fair and equitable" under § 1129(b)(1).

B

Turning to the decisions below, we first address whether *Cardelucci* controls this case. PG&E argues—and the bankruptcy and district courts held—that *Cardelucci* established a broad rule that all unsecured claims in a solvent-debtor bankruptcy are entitled only to postpetition interest at the federal judgment rate, regardless of impairment status. But *Cardelucci* merely held that the phrase "interest at the legal rate" in § 726(a)(5) refers to the federal judgment rate as defined by 28 U.S.C. § 1961(a). *Cardelucci*, 285 F.3d at 1234. As explained above, § 726(a)(5) only applies to *impaired* chapter 11 claims via the best-interests test. *See* 11 U.S.C. § 103(b); *Ultra Petroleum*, 624 B.R. at 202; *Energy Future Holdings*, 540 B.R. at 123–24. *Cardelucci* therefore does not tell us what rate of postpetition interest must be paid on plaintiffs' *unimpaired* claims.

Cardelucci involved a debtor who filed for bankruptcy after a state court entered a civil judgment in favor of the creditors. 285 F.3d at 1233. The parties agreed that the creditors were owed postpetition interest under § 726(a)(5), but they disagreed as to whether that provision required that interest be paid at the federal judgment or state law default rate. *Id.* This court opened its inquiry by explaining that the case involved "an award of postpetition interest *pursuant to 11 U.S.C. § 726(a)(5)*," and presented "the narrow but important issue of whether *such* postpetition interest is to be calculated using the federal judgment interest rate." *Id.* (emphasis added). We held that principles of statutory interpretation, among other reasons, compelled the conclusion that Congress intended "interest at the legal rate" in § 726(a)(5) to refer to the federal judgment rate. *Id.* at 1234–35

("Congress' choice of the phrase 'interest at the legal rate' suggests that it intended for bankruptcy courts to apply one uniform rate defined by federal statute.").

The bankruptcy and district courts in this case held that *Cardelucci* established a broad rule that all unsecured creditors of a solvent debtor are entitled to postpetition interest at the federal judgment rate. Indeed, *Cardelucci* did not expressly limit its holding to impaired claims; it did not refer to impairment status at all. *See id.* at 1234 ("Where a debtor in bankruptcy is solvent, *an unsecured creditor* is entitled to 'payment of interest at the legal rate from the date of the filing of the petition' prior to any distribution of remaining assets to the debtor." (quoting § 726(a)(5)) (emphasis added). PG&E thus contends *Cardelucci*'s holding extends to cases involving unimpaired claims.

This argument fails for a simple reason: *Cardelucci* interpreted language from a specific statutory provision—§ 726(a)(5)—that does not apply to unimpaired claims. Rather, as discussed above, § 726(a)(5) only applies to chapter 11 cases through the best-interests test, § 1129(a)(7), which itself only applies to impaired creditors. *See* § 103(b); *Ultra Petroleum*, 624 B.R. at 202; *Energy Future Holdings*, 540 B.R. at 123–24; 7 Collier on Bankruptcy ¶ 1129.02[7][a]. Though our opinion in *Cardelucci* did not say so, the creditors in that case were impaired. Indeed, the creditors in *Cardelucci* had to be impaired for § 726(a)(5) to apply in the first place. Moreover, the parties in *Cardelucci* agreed that the amount of interest owed hinged solely on the interpretation of § 726(a)(5). *See Cardelucci*, 285 F.3d at 1233. Thus, the fact that *Cardelucci* did not reference the creditors' impaired status—or limit the scope of its holding to impaired claims—is not surprising. But *Cardelucci* provides no textual basis

for applying § 726(a)(5) to unimpaired claims, nor could it for the reasons explained above.

We therefore decline to read *Cardelucci* as establishing the broad rule that PG&E advocates. *Cardelucci* merely held that the phrase "interest at the legal rate" in § 726(a)(5) refers to the federal judgment rate. *See, e.g.*, *Mullins*, 633 B.R. at 22 (citing *Cardelucci* for this proposition); *Ultra Petroleum*, 624 B.R. at 203 (same). But this holding does not answer what rate of interest is required where § 726(a)(5) does not apply—including for unimpaired claims. The bankruptcy and district courts erred in concluding that *Cardelucci* settles the issue before us.

C

The bankruptcy court alternatively held that even if *Cardelucci* does not limit plaintiffs to postpetition interest at the federal judgment rate, the Bankruptcy Code does. In essence, that court read several Code provisions as establishing a uniform postpetition interest rate for all unsecured claims in a solvent-debtor case. Because plaintiffs, in the bankruptcy court's view, received everything the Code entitled them to—that is, the full amount of their claims plus interest at the federal judgment rate—their "legal, equitable, and contractual rights" were not impaired under § 1124(1). *See In re Ultra Petroleum Corp.*, 943 F.3d 758, 763 (5th Cir. 2019) (holding impairment does not occur when the Code limits a creditor's rights); *In re PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 204 (3d Cir. 2003) (same).

Analyzing this aspect of the bankruptcy court's holding requires us to first address an antecedent question: did the Bankruptcy Code displace the historic solvent-debtor exception? As discussed above, this equitable rule—widely recognized and applied

under the Bankruptcy Act, even though it was not explicitly codified therein—entitled creditors to post-petition interest at the contract or default state law rate before a solvent debtor received surplus value from an estate. *See supra*, section III.A.1. We conclude passage of the Code did not abrogate the solvent-debtor exception, any more than passage of the Bankruptcy Act did so. The bankruptcy court thus erred in holding that the Code limits plaintiffs to recovery of postpetition interest at the federal judgment rate.

1

The Supreme Court has made clear that it "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998) (quotation omitted); *see also Midlantic Nat'l Bank v. N.J. Dep't of Env't Prot.*, 474 U.S. 494, 501 (1986) ("The normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific."). Thus, while "[t]he Bankruptcy Code can of course override by implication," any such implication must be "unambiguous." *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 546 (1994).[4]

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[4] The Dissent correctly recognizes the Supreme Court's admonition that pre-Code practice cannot abrogate the Code's plain text. *See* Dissent at 36–37. But for the reasons discussed below, we cannot say the Code's text is clear that the equitable solvent-debtor exception does not apply to creditors who are designated as unimpaired. *See infra* at 21–23. And pre-Code practice remains relevant to the construction of provisions that are "subject to interpretation" or contain ambiguities. *Hartford Underwriters*, 530 U.S. at 10 (quotations omitted). Moreover, as

In this case, the parties agree that courts recognized a common-law, solvent-debtor exception under the Bankruptcy Act. And contrary to arguments made by PG&E and in the Dissent, we discern from the contemporary Code no "clear indication" that Congress meant to severely limit the scope of the solvent-debtor exception. *Cohen*, 523 U.S. at 221. Rather, the Code's text, history, and structure compel the opposite conclusion: that creditors like plaintiffs continue to possess an "equitable right" to bargained-for post-petition interest when a debtor is solvent. § 1124(1).

PG&E argues—and the bankruptcy court agreed—that the combination of §§ 502(b)(2) and 726(a)(5) reflects Congressional intent to establish a uniform rate of postpetition interest for all unsecured claims when a debtor is solvent. Section 502(b)(2) prohibits the inclusion of "unmatured interest" as part of an allowed claim, codifying the long-standing rule that interest as part of a claim stops accruing once a bankruptcy petition is filed. *See Sexton*, 219 U.S. at 344. PG&E notes that § 502(b)(2)'s bar on postpetition interest is subject to only two statutory exceptions, including § 726(a)'s liquidation waterfall, which applies to impaired chapter 11 creditors through the best-interests test, § 1129(a)(7).[5] To the extent that courts allowed for recovery of contractual postpetition interest under the Bankruptcy Act, PG&E asserts these Code provisions indicate Congress' intent to depart from this practice and ensure all unsecured creditors of a solvent debtor receive the same rate of

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we explain, the Dissent's reading of the Code cannot be squared with Congress' subsequent action to amend the Code after its passage. *See infra* at 24–25, 28.

[5] The second exception, which applies to oversecured creditors and is located at 11 U.S.C. § 506(b), is not relevant to this dispute.

interest. The Dissent goes even farther, concluding that § 502(b)(2), alongside other Code provisions, mandates that creditors who are paid their allowed claims in full are not entitled to any postpetition interest, even when a debtor is solvent.

We are not persuaded. No Code provisions—alone or together—unambiguously displace the long-established solvent-debtor exception or preclude supposedly unimpaired creditors from asserting an equitable right to contractual postpetition interest. Notably, § 502(b)(2)'s prohibition on the collection of "unmatured interest" as part of a claim effectively restates its predecessor provision, § 63 of the Bankruptcy Act. Bankruptcy Act of 1898, ch. 541, § 63, 30 Stat. 544, 562–63 (repealed) (excluding from recovery "costs incurred and interest accrued after the filing of the petition"). The Senate Report accompanying the passage of the Bankruptcy Code emphasized that § 502(b) simply restated "principles of [then] present law." S. Rep. No. 95-989, at 63 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5849. The mere recodification of § 63—under which the equitable solvent-debtor exception was widely applied, *see, e.g.*, *Saper*, 336 U.S. at 330 n.7—fails to reflect any Congressional instruction to limit a solvent debtor's obligation to pay interest on claims against it.

Moreover, § 502(b)(2) simply excludes postpetition interest from "the amount of" a creditor's allowed claim. But "there is a significant distinction between whether postpetition interest can be *part of* an allowed claim and whether there are circumstances under which the debtor may be required to pay postpetition interest *on* an allowed claim." *Mullins*, 633 B.R. at 15 (emphasis added); *see also Ultra Petroleum*, 624 B.R. at 195 (explaining that while "interest as part of a

claim ceases to accrue upon the filing of a bankruptcy petition . . . in some circumstances, creditors may demand post-petition interest on their claims"); *Energy Future Holdings*, 540 B.R. at 111 (same). The text of § 502(b)(2) is entirely consistent with the conclusion that, in some instances, a creditor must receive postpetition interest *on* their allowed claim to be considered unimpaired.[6] Indeed, PG&E concedes that plaintiffs are entitled to some interest on their allowed claims in this case. Thus, PG&E's own argument forecloses the notion that § 502(b)(2) alone limits unimpaired creditors' ability to collect postpetition interest.

PG&E also points to § 726(a)(5). But that provision does not unambiguously abrogate the equitable solvent-debtor exception because, as explained above, it only applies to *impaired* chapter 11 creditors via the best-interests test, § 1129(a)(7). *See Ultra Petroleum*, 624 B.R. at 202; *Energy Future Holdings*, 540 B.R. at 123; 7 Collier on Bankruptcy ¶ 1129.02[7][a]. If Congress meant to limit all unsecured, chapter 11 creditors to interest at the federal judgment rate, it could have done so directly. Instead, the Code only applies § 726(a)(5)'s limited grant of interest "at the legal rate" to impaired creditors, who (unlike unimpaired creditors) also receive other protections under the Code, including the right to vote on a plan, § 1126(a), and the right to invoke § 1129(b)(1)'s "fair and equitable"

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[6] The Dissent claims there is "no basis" for distinguishing between interest payments made *on* as opposed to *part of* an allowed claim. Dissent at 39. Yet it is the Dissent that ignores both the text of § 502(b)(2) and the weight of authority acknowledging this difference. *See Ultra Petroleum*, 624 B.R. at 195; *Mullins*, 633 B.R. at 15; *Energy Future Holdings*, 540 B.R. at 111.

requirement. This scheme does not reflect a "clear" requirement to fully depart from the solvent-debtor exception's equitable rule that creditors are entitled to postpetition interest pursuant to their contracts. *Cohen*, 523 U.S. at 221.[7]

The statutory history of § 1124 also supports our conclusion that the equitable solvent-debtor exception

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[7] Seeking to overcome the lack of any statute applying § 726(a)(5) to unimpaired creditors, PG&E next argues that payment of postpetition interest in bankruptcy is analogous to payment of interest on a judgment in federal court. It is true that *Cardelucci* made such a comparison, albeit in dicta. *See Cardelucci*, 285 F.3d at 1235. PG&E reasons that Congress, by applying § 726(a)(5) to unsecured creditors via the best-interests test, confirmed that all awards of postpetition interest to such creditors, regardless of impairment status, are akin to awards of post-judgment interest given at the federal judgment rate.

We are not convinced. Once again, PG&E cannot overcome the fatal flaw in its argument: no statute applies § 726(a)(5) and its limited award of postpetition interest "at the legal rate" to unimpaired claims. Thus, there is no "clear indication" that Congress meant to modify the solvent-debtor exception to limit unimpaired creditors to interest at this amount. *Cohen*, 523 U.S. at 221.

Moreover, we disagree with PG&E that the historic cases discussing the solvent-debtor exception treated awards of post-petition interest as akin to post-judgment interest. PG&E points to passing language from *Johnson*, a Fifth Circuit case, noting that another court had compared allowed bankruptcy claims to judgments. *See Johnson*, 190 F. at 465 (citing *In re John Osborn's Sons & Co.*, 177 F. 184 (2d Cir. 1910)). But PG&E directs us to no other historic case that made such a comparison. To the contrary, cases applying the solvent-debtor exception under the Bankruptcy Act repeatedly emphasized that the equitable purpose of the exception was to require debtors to honor their "expressly-bargained-for" contracts, lest they realize a windfall. *Ruskin*, 269 F.2d at 832; *see also, e.g.*, *Chicago, Milwaukee*, 791 F.2d at 528; *Debentureholders*, 679 F.2d. at 270.

survives today. As noted above, no Code provision explicitly entitles a supposedly unimpaired creditor to *any* postpetition interest. *See Ultra Petroleum*, 624 B.R. at 202. However, Congress has foreclosed the possibility that creditors designated as unimpaired need not receive postpetition interest, despite this statutory vacuum. In 1994, Congress repealed a Code provision that stated that a creditor was unimpaired if it was paid the "the allowed amount of [its] claim." *See* § 1124(3) (repealed); Bankruptcy Reform Act of 1994, Pub. L. 103-394, § 213, 108 Stat. 4106, 4126. At least one court strictly interpreted § 1124(3), holding that a creditor may be classified as unimpaired if it was paid the full principal of its claim without any postpetition interest. *See In re New Valley Corp.*, 168 B.R. 73, 79–80 (Bankr. D.N.J. 1994). The House Reporter explained that the repeal of § 1124(3) was meant to preclude *New Valley*'s "unfair result" from occurring again. H.R. Rep. No. 103-835, § 214 at 48 (1994). These actions by Congress confirm that creditors of a solvent debtor who are designated as unimpaired *must* receive postpetition interest on their claim—notwithstanding § 502(b)(2), or the fact that no Code provision expressly entitles such creditors to unaccrued interest.

In addition to Congressional action, the solvent-debtor exception fits comfortably within the text of the Code—specifically, its requirement that a debtor's plan leave unaltered a creditor's "legal, *equitable*, and contractual rights." § 1124(1) (emphasis added); *see Law v. Siegel*, 571 U.S. 415, 421 (2014) ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." (quotation omitted)). While, as discussed, no Code provision legally entitles supposedly unimpaired creditors to postpetition interest,

pre-Code practice conclusively establishes creditors' equitable entitlement to contractual postpetition interest when a debtor is solvent, subject to any other countervailing equities. *See supra*, section III.A.1. Absent this equitable right, creditors whose claims were paid in full and designated as unimpaired would not be entitled to any postpetition interest—the exact result Congress sought to preclude by repealing § 1124(3). *See Energy Future Holdings*, 540 B.R. at 123 (explaining that unimpaired creditors' equitable right to interest "resolves a conflict between" § 502(b)(2) and the repeal of § 1124(3)).

Finally, our conclusion that the equitable solvent-debtor exception survives is supported by the Code's structure. The Code offers procedural and substantive protections for creditors who are impaired by a plan: including the right to vote on a plan, § 1126(a), and the ability for a dissenting, impaired class to invoke § 1129(b)(1)'s requirement that a plan be "fair and equitable" to be confirmed. By "defin[ing] impairment in the broadest possible terms," *L&J Anaheim*, 995 F.2d at 942 (quotation omitted), Congress ensured that creditors whose rights were altered in any way by a plan could avail themselves of these protections. *See PPI Enters.*, 324 F.3d at 203 ("The Bankruptcy Code creates a presumption of impairment so as to enable a creditor to vote on acceptance of the plan." (quotation omitted)).

But PG&E wants to have its cake and eat it too: it seeks to pay plaintiffs the same, reduced interest rate as impaired creditors, while depriving them of the statutory protections that impaired creditors enjoy. *See Energy Future Holdings*, 540 B.R. at 123 (equitable principles require that unimpaired creditors not be treated inferior to impaired creditors); *Ultra Petroleum*,

624 B.R. at 203 (same).[8] We decline to adopt a reading of the Code that permits PG&E to end-run these statutory rights while reaping a windfall of hundreds of millions of dollars. Such an outcome is contrary to both a plain text reading of the Code and equitable principles that persist under the modern bankruptcy regime. *See Dow Corning*, 456 F.3d at 671 ("[S]olvent-debtor cases present a situation where all parties ought to be granted the benefit of their bargains, unless the equities compel a contrary result."). Rather, a more sensible reading of the Code gives solvent debtors a choice: compensate creditors in full pursuant to the solvent-debtor exception or designate them as impaired claimants entitled to the full scope of the Code's substantive and procedural protections.

In sum, we agree with plaintiffs that the Code lacks any "clear indication," *Cohen*, 523 U.S. at 221, that Congress meant to displace the historic solvent-debtor exception. *See Ultra Petroleum*, 624 B.R. at 198–200 (holding the same). In so holding, we join multiple sibling circuits in recognizing that the equitable solvent-debtor exception—and its core principle that creditors should be made whole when the bankruptcy estate is sufficient—persists under the Code. *See Dow Corning*, 456 F.3d at 680 ("We conclude, like the other courts to have considered this issue, that there is a presumption that [contract or state law] default

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[8] Plaintiffs note that some courts (including one circuit court) have held that, in a solvent-debtor scenario, a "fair and equitable" plan under § 1129(b)(1) may require paying unsecured creditors interest at the contractual rate before the debtor can receive surplus value. *See Dow Corning*, 456 F.3d at 677–78; *Mullins*, 633 B.R. at 20. We express no opinion on this issue, but merely point out that PG&E's designation of plaintiffs as unimpaired precluded them from potentially making this argument to the bankruptcy court.

interest should be paid to unsecured claim holders in a solvent debtor case."); *Ultra Petroleum*, 943 F.3d at 765 ("As other circuits have recognized, absent compelling equitable considerations, when a debtor is solvent, it is the role of the bankruptcy court to enforce the creditors' contractual rights." (quotation omitted)); *Gencarelli v. UPS Cap. Bus. Credit*, 501 F.3d 1, 7 (1st Cir. 2007) ("This is a solvent debtor case and, as such, the equities strongly favor holding the debtor to his contractual obligations . . . ."). Accordingly, under the Code, unsecured creditors of a solvent debtor retain an equitable right to postpetition interest pursuant to their contracts, subject to any other equities in a given case. A failure to compensate creditors according to this equitable right as part of a bankruptcy plan results in impairment. *See* § 1124(1).

2

The Dissent adopts a radically different approach. It concludes that the Code's text clearly establishes that unsecured creditors are not entitled to *any* postpetition interest from a solvent debtor if they are paid their allowed claims in full. It is telling that not even PG&E advocates this position, instead conceding that the Code entitles plaintiffs, at minimum, to postpetition interest on their claims at the federal judgment rate. Likewise, post-*New Valley* courts all agree that a solvent debtor must pay creditors *some* postpetition interest to classify their claims as unimpaired. *See Ultra Petroleum*, 624 B.R. at 203–04; *Energy Future Holdings*, 540 B.R. at 124; *The Hertz Corp.*, 637 B.R. at 800–01.

This unanimity is not surprising. The Dissent's reading of the Code cannot be squared with Congress' repeal of § 1124(3) following the *New Valley* decision. As explained, Congress eliminated this provision

expressly to prevent *New Valley*'s "unfair result," which allowed solvent debtors to designate creditors as unimpaired simply because their allowed claims were paid in full. H.R. Rep. No. 103-835, § 214 at 48. To adopt the Dissent's reasoning would effectively nullify the 1994 amendment and allow solvent debtors to replicate "exactly the same result that led Congress to delete section 1124(3)" in the first place. *Energy Future Holdings*, 540 B.R. at 123; *see also PPI Enters.*, 324 F.3d at 203 (adopting bankruptcy court's holding that, after the repeal of § 1124(3), unimpaired creditors must receive interest from a solvent debtor). We have no grounds for ignoring Congress' clear instruction on this matter.

The Dissent nonetheless insists that Congress' repeal of § 1124(3) does not support our holding. In essence, it concludes that because Congress left various other provisions of the Code intact—and because these provisions, in the Dissent's view, clearly dictate that unsecured creditors paid their claims in full are unimpaired—the plaintiffs' claims remain governed by the "general rule disallowing postpetition interest." *See* Dissent at 43, 50 (quotation omitted). But that "general rule disallowing postpetition interest" derives from a provision—§ 502(b)(2)—that cannot carry the weight the Dissent ascribes to it. *See supra* at 21–23. We find it implausible that Congress meant to abrogate the equitable solvent-debtor exception by recodifying § 63 of the Bankruptcy Act, under which that exception was widely applied. Moreover, the fact that the best-interests test created by § 1129(a)(7) only applies to impaired creditors is hardly grounds for concluding that creditors designated as unimpaired need not receive any interest at all when a debtor is solvent, for the reasons explained above. *See supra* at 23–27.

More broadly, the Dissent's framing of the issue—that is, "whether unsecured creditors holding unimpaired claims . . . are entitled to postpetition interest," Dissent at 34—elides the antecedent question of what constitutes unimpairment in the first place. As discussed, the Code "creates a presumption of impairment," *PPI Enters.*, 324 F.3d at 203, by requiring that a debtor's plan "leave[] unaltered" an unimpaired creditor's "legal, *equitable*, and contractual rights," § 1124(1) (emphasis added). *See also L&J Anaheim*, 995 F.2d at 942 (emphasizing that Congress "define[d] impairment in the broadest possible terms" (citation omitted)). We clarify today that, pursuant to the solvent-debtor exception, unsecured creditors possess an "equitable right" to postpetition interest when a debtor is solvent. § 1124(1).[9] A failure to provide for

[9] The Dissent would hold that the "equitable rights" referred to by § 1124(1) encompass only a single right: the "right to an equitable remedy for breach of performance," which is part of a claim pursuant to 11 U.S.C. § 101(5). Dissent at 40, 51–52. But this novel reading relies on the faulty premise that the "equitable rights" contemplated by § 1124(1) encompass only those rights that are part of an allowed claim. Numerous courts have rejected this logic, holding that a claim may entitle its holder to postpetition interest as an equitable right when a debtor is solvent, even though such a right is not part of the claim itself. *See, e.g.*, *Ultra Petroleum*, 624 B.R. at 203–04, *Energy Future Holdings*, 540 B.R. at 124, *supra* at 51–52. That § 101(5) indisputably confers a statutory right to an equitable remedy *as part of a claim* is hardly grounds for construing § 1124(1)'s reference to equitable rights in the narrow fashion advocated by the Dissent. This is especially true, given that the Dissent's construction would conflict with the ample textual, historical, and structural evidence we survey above supporting the solvent-debtor exception's survival under the Code. *See supra* at 20–27.

Moreover, we do not hold (as the Dissent asserts) that claims "retroactively" become impaired when a creditor of a solvent debtor is denied postpetition interest. Dissent at 53. Impairment

postpetition interest according to this equitable right as part of a bankruptcy plan results in impairment. No Code provision dictates otherwise, and no other result coheres the Code with Congress' repeal of § 1124(3).[10]

3

Having concluded that the equitable solvent-debtor exception survives under the Code, we now address whether the bankruptcy court erred in holding that PG&E's plan provided plaintiffs with all the Code entitled them to as unimpaired creditors. We have little trouble concluding it did.

Once again, because PG&E designated the plaintiffs' claims as unimpaired, plaintiffs' "legal, equitable, and contractual rights" must be "unaltered" by the reorganization plan. § 1124(1). Prior to PG&E's bankruptcy filing, plaintiffs possessed a contractual right to interest on debts not paid—either at rates stipulated by their contracts or the California default rate of

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is a concept rooted in § 1124, "the plain language of [which] says that a creditor's claim is 'impaired' unless its rights are left 'unaltered' *by the Plan*." *L&J Anaheim*, 995 F.2d at 943 (emphasis added); *see also PPI Enters.*, 324 F.3d at 204 ("Impairment results from what the *plan* does . . . ." (quotation omitted) (emphasis in original)). Our holding "recognizes that the equitable prong of § 1124 applies differently when the debtor is solvent"—as PG&E undisputedly is in this case—by entitling claim holders to postpetition interest as an equitable right. *Ultra Petroleum*, 624 B.R. at 203. A failure by a bankruptcy plan to leave this equitable right unaltered results in impairment from the outset, unless and until a plan is amended accordingly.

[10] Although we rely on the text, history, and structure of the Code to reach today's result, even the Dissent's authorities acknowledge that pre-Code practice is relevant in interpreting sections of the Code that are otherwise incoherent or inconsistent. *See, e.g.*, *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240–41 (1989).

ten percent. *See* Cal. Civ. Code § 3289(b). But this contractual right, as applied to postpetition debts, was superseded by the Code—specifically, by § 502(b)(2)'s prohibition on the inclusion of "unmatured interest" as part of a claim. *See Ultra Petroleum*, 943 F.3d at 763.[11] As a result, plaintiffs' claims do not include any contractual right to postpetition interest. Moreover, plaintiffs did not have a legal right to interest on their claims, as no provision of the Code expressly provides for postpetition interest for unimpaired creditors. *Energy Future Holdings*, 540 B.R. at 123–24.

Because PG&E was solvent, however, plaintiffs' claims *did* entail an equitable right to receive postpetition interest under the solvent-debtor exception. *See Ultra Petroleum*, 624 B.R. at 203–04; *Dow Corning*, 456 F.3d at 678 (emphasizing that "equitable considerations operate differently when the debtor is solvent"). This equitable right entitled plaintiffs to recovery of interest pursuant to their contracts, subject to any countervailing equities, before PG&E's shareholders received surplus value. However, PG&E's plan did not compensate plaintiffs accordingly. Rather, the plan provided for postpetition interest at the much lower federal judgment rate of 2.59 percent. Thus, PG&E's

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[11] As our sibling circuits have held, an alteration of prebankruptcy rights that occurs by operation of the Code does not result in impairment. *Ultra Petroleum*, 943 F.3d at 763 ("The plain text of § 1124(1) requires that 'the plan' do the altering."); *PPI Enters.*, 324 F.3d at 204 ("[W]e must examine whether the plan itself is a source of limitation on a creditor's legal, equitable, or contractual rights."); *see also In re Sylmar Plaza, L.P.*, 314 F.3d 1070, 1075 (9th Cir. 2002) ("In enacting the Bankruptcy Code, Congress made a determination that an eligible debtor should have the opportunity to avail itself of a number of Code provisions which adversely alter creditors' contractual and nonbankruptcy rights." (quotation omitted)).

plan—and not the Code—altered plaintiffs' equitable right to postpetition interest under the solvent-debtor exception. *Ultra Petroleum*, 624 B.R. at 203–04; *Energy Future Holdings*, 540 B.R. at 123–24. The bankruptcy court erred in holding that plaintiffs received all that the Code entitled them to.

D

All that remains is to determine how much postpetition interest plaintiffs, as unimpaired creditors, are entitled to in this case. We reiterate that creditors of a solvent debtor—including plaintiffs in this case—enjoy an equitable right to contractual or state law default postpetition interest before allocation of surplus value from a bankruptcy estate. *See, e.g.*, *Dow Corning*, 456 F.3d at 679–80 (noting that the solvent-debtor exception entails "a presumption that [contractual or state law] default interest should be paid to unsecured claim holders"). However, we are cognizant of the Supreme Court's admonition that "exceptions to the denial of postpetition interest are not rigid," and that "the touchstone of each decision on allowance of interest in bankruptcy has been a balance of equities between creditor and creditor or between creditors and the debtor." *Ron Pair*, 489 U.S. at 248 (cleaned up). Accordingly, we remand to the bankruptcy court to weigh the equities and determine what rate of interest plaintiffs are entitled to in this instance.

We join our sibling circuits, however, in emphasizing that the solvent-debtor exception, though equitable in nature, does not give bankruptcy judges "free-floating discretion to redistribute rights in accordance with [their] personal views of justice and fairness." *Dow Corning*, 456 F.3d at 679 (quoting *Chicago, Milwaukee*, 791 F.2d at 528). Rather, "absent compelling equitable considerations, when a debtor is solvent,

it is the role of the bankruptcy court to enforce the creditors' contractual rights." *Ultra Petroleum*, 943 F.3d at 765 (quotation omitted). We are confident that in most solvent-debtor cases involving unimpaired creditors, the equitable role of the bankruptcy court will be "simply to enforce creditors' rights according to the tenor of the contracts that created those rights." *Chicago, Milwaukee*, 791 F.2d at 528. However, we acknowledge the possibility that cases could arise where payment of contractual or default interest could impair the ability of other similarly situated creditors to be paid in full, or where other "compelling equitable considerations" could counsel in favor of payment of postpetition interest at a different rate. *Dow Corning*, 456 F.3d at 679; *Ultra Petroleum*, 943 F.3d at 765.

We see no sign of any "compelling equitable considerations" in this case that would defeat the presumption that plaintiffs are entitled to contractual or default postpetition interest. However, we acknowledge that the record before us is limited.[12] We therefore remand to the bankruptcy court, which is most familiar with the facts of the case and the financial conditions of the parties.

IV

For the reasons stated, we REVERSE the district court's opinion affirming the bankruptcy court's postpetition interest ruling. We REMAND to the district court with instructions to remand to the bankruptcy court for further proceedings consistent with this opinion.

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[12] The record fails to disclose, for example, the extent of PG&E's solvency post-bankruptcy, or the precise amount of postpetition interest that would be owed to plaintiffs were the contract or default state law rates enforced.

IKUTA, Circuit Judge, dissenting:

This case raises the question whether unsecured creditors holding unimpaired claims in bankruptcy under 11 U.S.C. § 1124(b) are entitled to post-petition interest on their claims when the debtor is solvent. The text of the Code provides a clear answer: No. In order to reach the opposite result, the majority erroneously holds that pre-Code practice is binding unless the text of the Code clearly abrogates it. Maj. at 20–20, 27. But the Supreme Court has directed us to take the exact opposite approach: so long as the Code is clear, we do not refer to pre-Code practice. *See United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989). Here, the text of the Code is clear and does not authorize an award of post-petition interest to unimpaired creditors. I therefore dissent.

I

The debtor in this case is Pacific Gas & Electric Company (PG&E), a California-based utility company. Between 2015 and 2018, California suffered a series of catastrophic wildfires. PG&E faced over $30 billion in potential liability related to those wildfires, excluding punitive damages and civil penalties. Unrelated to the wildfires, PG&E also owed billions of dollars to traditional creditors. Although PG&E was solvent at the time it filed its petition in bankruptcy (its assets exceeded known liabilities by approximately $20 billion), PG&E concluded that it lacked the resources to resolve wildfire claims that had been asserted against it (as well as future wildfire claims related to the fires between 2015 and 2018) while also continuing to provide electric and gas services, invest in wildfire-related safety practices, and service the billions of dollars in traditional debt obligations. Accordingly, on January 29, 2019, PG&E filed for Chapter 11

bankruptcy, which would allow PG&E to continue its operations while also resolving all wildfire claims. In September 2019, PG&E filed its proposed bankruptcy plan.

The appellants here are unsecured trade creditors in PG&E's bankruptcy proceedings who formed the Ad Hoc Committee of Holders of Trade Claims ("Trade Committee"). In the Chapter 11 proceedings, PG&E proposed a plan that would give the members of the Trade Committee the full cash value of their allowed claims as of the date the petition was filed. Under 11 U.S.C. § 1124, these claims were not "impaired." The plan also provided that the members of the Trade Committee would receive interest on their claims at the federal judgment rate accruing from the petition date through the date of distribution.

Rather than argue that the plan should designate their claims as "impaired," the members of the Trade Committee argued that because PG&E was a solvent debtor, and the proposed plan treated their claims as unimpaired, they were entitled to post-petition interest on their claims at the rate provided for by contract or applicable state law. The bankruptcy court rejected this argument, concluding that, under *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002), unimpaired creditors in a solvent-debtor case are entitled to post-petition interest only at the federal judgment rate. The district court affirmed.

On appeal, the Trade Committee members assert that they are entitled to post-petition interest at the contract or state default rates. According to the Trade Committee, this result is compelled by the solvent-debtor exception which had been adopted and applied by bankruptcy courts before the Code was enacted. The Trade Committee asserts that we must interpret

the Code in light of this pre-Code practice, and the majority adopts this reasoning.

II

A

In order to address the Trade Committee's argument, it is crucial to understand the Supreme Court's framework for interpreting the Code. According to the Supreme Court, in interpreting the Code, as with any other congressional enactment, "we begin with the understanding that Congress 'says in a statute what it means and means in a statute what it says there.'" *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992)). Therefore, "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Id.* (cleaned up). "[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute." *Ron Pair*, 489 U.S. at 240–41.

Because the statutory text takes precedence, practices adopted by bankruptcy courts before the Code was enacted play a limited role. Indeed, the Court has recognized that Congress's intent in enacting the Code was to "codify creditors' rights *more clearly than the case law*." *Id*. at 248 (emphasis original) (cleaned up). Therefore, "[w]here the meaning of the Bankruptcy Code's text is itself clear . . . its operation is unimpeded by contrary . . . prior practice." *Hartford*, 530 U.S. at 10 (citation omitted); *see also Ron Pair*, 489 U.S. at 241 (holding that where Congress expresses its intent "with sufficient precision," then "reference to legislative history and to pre-

Code practice is hardly necessary"). The Supreme Court has relied on pre-Code practice merely to clarify ambiguities in the text of the Code, or to "fill in the details of a pre-Code concept that the Code had adopted without elaboration." *Hartford*, 530 U.S. at 11. In other words, pre-Code practice is "a tool of construction, not an extratextual supplement," *id.* at 10, and "there are limits to what may constitute an appropriate case" for employing that tool of construction, *Ron Pair*, 489 U.S. at 245.

B

It is important to understand how this interpretative framework works with the Code's statutory scheme. "A business may file for bankruptcy under either Chapter 7 or Chapter 11" of the Code. *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 978 (2017). "In Chapter 7, a trustee liquidates the debtor's assets and distributes them to creditors." *Id.* (citing 11 U.S.C. § 701 *et seq.*). "In Chapter 11, debtor and creditors try to negotiate a plan that will govern the distribution of valuable assets from the debtor's estate and often keep the business operating as a going concern." *Id.*

In a case filed under chapter 11 of the Code, the debtor-in-possession or trustee proposes a plan of reorganization, which designates "classes of claims" and interests. The Code defines the term "claim" as a "right to payment" or a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." 11 U.S.C. § 101(5). A claim is allowed in bankruptcy proceedings if the creditor files a proof of claim, and there is no objection. *Id.* § 502(a). If an objection is made, the bankruptcy court (after notice and a hearing) will allow the claim in the amount determined by the court subject to several exceptions. *Id.* § 502(b).

A key exception here is for "unmatured interest." *Id.* Section 502(b)(2) establishes that "creditors are not entitled to include un-matured or post-petition interest as part of their claims in the bankruptcy proceeding and cannot collect such interest from the bankruptcy estate." *In re Pardee*, 193 F.3d 1083, 1085 n.3 (9th Cir. 1999). In light of § 502(b)(2), there is no dispute that an allowed claim stops accruing interest as of the date the debtor files a petition in bankruptcy. *See In re Weiss*, 251 B.R. 453, 463 (Bankr. E.D. Pa. 2000). All other circuits are in accord.[1] Because § 502(b)(2) establishes "the general rule disallowing postpetition interest," *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 373 (1988), it "does not simply prohibit certain creditors from

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[1] *See Gencarelli v. UPS Cap. Bus. Credit*, 501 F.3d 1, 6 n.2 (1st Cir. 2007) (noting that § 502(b)(2) is an "explicit statutory provision" that bars post-petition interest); *SummitBridge Nat'l Invs. III, LLC v. Faison*, 915 F.3d 288, 295 (4th Cir. 2019) (describing § 502(b)(2) as a "general rule against allowance" of post-petition interest); *Matter of Johnson*, 146 F.3d 252, 260 (5th Cir. 1998) ("Post-petition interest is disallowed against the bankruptcy estate under section 502." (citation omitted)); *In re Kentucky Lumber Co.*, 860 F.2d 674, 676 (6th Cir. 1988) (citing § 502(b)(2) to explain the "general rule of actions in bankruptcy [] that unsecured creditors are not entitled to postpetition interest upon their allowable claims"); *Matter of Fesco Plastics Corp., Inc.*, 996 F.2d 152, 155 (7th Cir. 1993) ("[C]reditors cannot recover post-petition interest on their claims. This rule has been written into the Bankruptcy Code at 11 U.S.C. § 502(b)(2)."); *Bursch v. Beardsley & Piper, a Div. of Pettibone Corp.*, 971 F.2d 108, 114 (8th Cir. 1992) ("In general, under section 502(b), a creditor is not entitled to postpetition prejudgment interest because such interest is unmatured at the time of filing."); *United States v. Victor*, 121 F.3d 1383, 1387 (10th Cir. 1997) ("Section 502(b) does not simply prohibit certain creditors from filing a proof of claim for post-petition interest; it prohibits those creditors from collecting the interest from the bankruptcy estate.").

filing a proof of claim for post-petition interest; it prohibits those creditors from collecting the interest from the bankruptcy estate." *Victor*, 121 F.3d at 1387. There is no basis for the majority's interpretation of § 502(b)(2) as prohibiting interest *as part of* an allowed claim but not prohibiting interest *on* a claim once it is allowed. Maj. at 22–23.

Once the allowed claims have been identified, the trustee must specify which classes of claims are impaired and which are unimpaired. *See* 11 U.S.C. § 1123(a)(2), (3). An allowed claim is unimpaired if it "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest."[2] *Id.* § 1124(1). Reading this definition together with § 502(b)(2) and § 101(5) (defining a "claim" as a "right to payment" or a "right to an equitable remedy for breach of performance," *id.* § 101(5)), a claim is unimpaired so long as the proposed plan gives the creditor the same legal or contractual right to payment, or right to an equitable remedy, that the creditor had as of the date the petition was filed. Such a claim would include any interest that had matured by the time the petition was filed. *See id.* § 1124(1). The statutory language provides no basis for the majority's theory that a creditor's "claim," which may not include post-petition interest, *see* § 502(b), is nevertheless deemed "impaired" if the debtor turns out to be solvent and the creditor does not obtain post-petition interest at the end of the bankruptcy case. Maj. at 29–30 & n.9.

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[2] A claim may be unimpaired even if the holder of the claim is deprived of a contractual or legal right to demand accelerated payment under certain circumstances. 11 U.S.C. § 1124(2).

Because creditors with unimpaired claims are set to receive full payment of those claims under the plan, they are conclusively presumed to have accepted the plan. *See id.* § 1126(f). By contrast, creditors with impaired claims are entitled to vote on whether to accept or reject a plan, *see id.* § 1126(a), and the plan cannot be confirmed by consent unless each class of claims has accepted the plan, *see id.* § 1129(a)(8). If all classes of impaired claims do not accept the plan, the bankruptcy court can still approve the plan "provided the plan is fair and equitable and does not unfairly discriminate against any impaired claims, and the plan meets all the statutory requirements of § 1129(a)." *In re Barakat*, 99 F.3d 1520, 1524 (9th Cir. 1996) (internal citation omitted).

Although a claim stops accruing interest at the time the petition in bankruptcy is filed, § 502(b)(2), the members of the Trade Committee argue that they are nevertheless entitled to post-petition interest under the solvent debtor exception applied in pre-Code practice. Before the Code was enacted, bankruptcy proceedings were governed by the Bankruptcy Act of 1898 ("the Bankruptcy Act"). Like § 502(b)(2) of the modern Code, § 63 of the Bankruptcy Act prohibited an award of post-petition interest to creditors. *See* Bankruptcy Act of 1898, ch. 541, § 63, 30 Stat. 544, 562–63 (repealed) (excluding "costs incurred and interests accrued after the filing of the petition" from allowed claims). However, courts recognized equitable exceptions to § 63 of the Bankruptcy Act. *See Ron Pair*, 489 U.S. at 246. One of those equitable exceptions, known as the solvent-debtor exception, "allowed post-petition interest when the debtor ultimately proved to be solvent." *Id.*

In enacting the Code, Congress implicitly incorporated this solvent debtor exception in certain circumstances, and therefore identified exceptions to § 502(b)(2)'s "general rule disallowing postpetition interest." *Timbers of Inwood Forest*, 484 U.S. at 373. For example, although an allowed claim in a Chapter 7 case does not include post-petition interest, *see* 11 U.S.C. § 502(b), the holder of such a claim may nevertheless receive post-petition interest as part of the distribution of property of the estate after higher priority distributions have been made, *see id.* § 726(a)(5) (providing that the fifth priority of property distribution is "in payment of interest at the legal rate from the date of the filing of the petition" on an allowed claim.). The Code also implicitly incorporated the solvent debtor exception in the "best interest of creditors" tests set forth in § 1129(a)(7)(a)(ii).[3] This section provides that, to confirm a proposed plan, creditors with unsecured *impaired* claims must accept the plan or receive property of a value "as of the effective date of the plan, that is not less than . . . such holder would so receive or retain if the debtor were liquidated under chapter 7" of the Code. *Id.* 1129(a)(7). This means that a Chapter 11 plan cannot be confirmed unless each objecting, unsecured creditor holding impaired claims receives the same post-petition interest as that creditor would have received under § 726(a)(5) if the debtor's estate had been liquidated. *See In re Cardelucci*, 285 F.3d 1231, 1234 (9th Cir. 2002) (citing 11 U.S.C.

[3] The best interest of creditors test is also available in a Chapter 12 or Chapter 13 bankruptcy, *see* 11 U.S.C. § 1225(a)(4) and § 1325(a)(4).

§ 726(a)(5)). This section applies only to unsecured creditors holding impaired claims.[4] 11 U.S.C. § 1129(a)(7).

As these provisions demonstrate, "Congress knew how to draft the kind of statutory language that petitioner seeks to read into [the Code]." *State Farm Fire & Cas. Co. v. U.S. ex rel. Rigsby*, 137 S. Ct. 436, 444 (2016); *see* 11 U.S.C. §§ 506(b), 726(a)(5), 1127(a)(7), 1322(b)(10). But despite incorporating exceptions to the general rule disallowing post-petition interest into these specific sections, Congress chose not to make a similar exception authorizing an award of post-petition interest to unsecured creditors holding unimpaired claims, regardless of whether the debtor ends up solvent. As a general rule, "[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Hillman v. Maretta*, 569 U.S. 483, 496 (2013) (citation omitted). This canon of construction has even greater weight in the bankruptcy context, where the Supreme Court has warned us not "to inquire beyond the plain language of the statute," *Ron Pair*, 489 U.S. at 241,

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[4] Congress specified other circumstances where post-petition interest was allowed. Congress permitted an award of contract-rate interest for creditors holding secured claims, up to the amount of the creditor's collateral. *See* 11 U.S.C. § 506(b). Undersecured creditors are not entitled to post-petition interest. *Timbers of Inwood Forest*, 484 U.S. at 373. In a Chapter 13 bankruptcy, Congress also allowed for post-petition interest on nondischargeable debts "to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims," 11 U.S.C. § 1322(b)(10). Nondischargeable debts are specified in 11 U.S.C. § 523 and include tax debts, *id.* § 523(a)(1), debts for money procured through fraud, *id.* § 523(a)(2), and restitution payments under Title 18, *id.* § 523(a)(13).

where Congress's "statutory scheme is coherent and consistent," *id.* at 240. Accordingly, we should conclude that unsecured creditors holding unimpaired claims are governed by "the general rule disallowing postpetition interest," even in a solvent debtor case. *Timbers of Inwood Forest*, 484 U.S. at 373.

Therefore, because the members of the Trade Committee hold unsecured claims classified as unimpaired, I would hold that they are not entitled to post-petition interest, despite PG&E's solvency.

III

Notwithstanding the absence of any provision entitling an unimpaired creditor to post-petition interest, as the majority itself recognizes, *see* Maj. at 24, the majority nevertheless decides that unimpaired creditors are entitled to post-petition interest—even though Congress chose not to make an exception for such creditors. All of the majority's justifications for this addition are flawed.

A

The majority's central rationale is that unimpaired creditors are entitled to the post-petition interest they would have received under pre-Code practice because Congress did not expressly abrogate such practice. Maj. at 21–22. The majority's argument proceeds in several steps. First, it claims (contrary to the Supreme Court's direction) that there is a presumption that the Code incorporates pre-Code practice unless the Code contains a clear indication that Congress intended to abrogate that practice. *See* Maj. at 20–23 (citing *Cohen v. de la Cruz*, 523 U.S. 213, 221 (1998)). Under pre-Code practice, courts awarded post-petition interest to unimpaired creditors, even though § 63 of the Bankruptcy Act precluded the accrual of interest on a claim

once the petition in bankruptcy has been filed. Because Congress did not expressly state that bankruptcy courts must stop awarding post-petition interest to unimpaired creditors, and § 502(b)(2) is just a recodification of § 63, the majority infers that courts can continue to award post-petititon interest to unimpaired creditors notwithstanding § 502(b)(2). Maj. at 20–27.

This reasoning fails because the majority's underlying principle—that pre-Code practice applies unless Congress clearly abrogated it—is wrong. As explained above, courts must start with the language of the Code and rely on pre-Code practice only as "a tool of construction, not an extratextual supplement," *Hartford*, 530 U.S. at 10. "[A]s long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute," including by looking to pre-Code practice. *Ron Pair*, 489 U.S. at 240–41. Moreover, because "the [pre-Code] exceptions to the denial of postpetition interest are not rigid doctrinal categories" but are instead "flexible guidelines" that were "developed by the courts in the exercise of their equitable powers," there is "no reason to think that Congress, in enacting a contrary standard, would have felt the need expressly to repudiate it." *Id.* at 248 (cleaned up).

The majority bases its erroneous rule of interpretation on statements taken out of context from Supreme Court decisions. In its central statement of this "rule," the majority cites *Cohen v de la Cruz* for the proposition that the Supreme Court "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." Maj. at 20 (citing 523 U.S. at 221). But in context, *Cohen* faithfully followed the Supreme

Court's textualist approach to the Code. *Cohen* construed 11 U.S.C. § 523(a)(2)(A), which makes nondischargeable "any debt . . . for money . . . to the extent obtained by . . . actual fraud." 523 U.S. at 214–15. *Cohen* held that the statutory language encompassed an award against the debtor of treble damages, attorneys' fees, and costs due to the debtor's fraudulent conduct. *Id.* at 219. In so holding, *Cohen* first performed a thorough textual analysis, *see id.* at 217–21, and concluded that, "[w]hen construed in the context of the statute as a whole . . . § 523(a)(2)(A) is best read to prohibit the discharge of any liability arising from a debtor's fraudulent acquisition of money, property, etc., including an award of treble damages for the fraud," *id.* at 220–21. Only after an in-depth analysis of the statutory text did the Court turn to pre-Code practice for confirmation of its interpretation, stating that "[t]he history of the fraud exception *reinforces* our reading of § 523(a)(2)(A)." *Id.* at 221 (emphasis added). Because the statutory language in § 523(a)(2)(A) was substantially the same as the language in the Bankruptcy Act, the Court stated that it would not "read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure, and the change to the language of § 523(a)(2)(A) in 1984 in no way signals an intention to narrow the established scope of the fraud exception along the lines suggested by petitioner." *Id.* at 220–21 (cleaned up). In other words, the Court confirmed its interpretation of statutory language by reference to pre-Code interpretation of substantially the same statutory language. This by no means gives courts carte blanche to give creditors

rights unsupported by (and inconsistent with) the Code.[5]

Once the majority's erroneous approach is eliminated, there is no support for the majority's conclusion. The majority's boon to unimpaired creditors neither interprets an ambiguous phrase nor "fill[s] in the details of a pre-Code concept that the Code had adopted without elaboration," *Hartford*, 530 U.S. at 11. Instead, the majority overrides the scheme set forth in the Code, which does *not* allow for an award of post-petition interest to unimpaired creditors but rather adopted a different scheme that incorporated the solvent debtor exception in limited circumstances, *see* 11 U.S.C. §§ 506(b), 726(a), 1129(a)(7)(A)(ii), 1322(b)(10). In short, the majority is using pre-Code practice as an "extratextual supplement" in violation of Supreme Court directions, *Hartford*, 530 U.S. at 10, and therefore exceeds the "limits to what may constitute an appropriate case" for relying on pre-Code practice, *Ron Pair*, 489 U.S. at 245.

Contrary to the majority, its ruling is not supported by our sister circuits. Maj. at 27. None of the cases the majority cites awarded post-petition interest to *unimpaired* creditors pursuant to the solvent-debtor exception. For example, the Sixth Circuit held that *impaired* creditors in a solvent debtor case are generally entitled to post-petition interest at the contract

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[5] The majority's reliance on *Midlantic Nat. Bank v. New Jersey Dept. of Environmental Protection*, 474 U.S. 494 (1986), and *BFP v. Resolution Trust Corporation*, 511 U.S. 531 (1994), is equally flawed. *BFP* relied on pre-Code practice merely to clarify the meaning of an ambiguous phrase, *see* 511 U.S. at 543, 546–47, and *Midlantic* relied on pre-Code practice to "fill in the details" of the "codification of trustee's abandonment power" that "the Code had adopted without elaboration," *Hartford*, 530 U.S. at 11.

rate pursuant to 11 U.S.C. § 1129(b). *See In re Dow Corning Corp.*, 456 F.3d 668, 677–80 (6th Cir. 2006). The Sixth Circuit did not address unimpaired claims. The First Circuit held that a creditor could be entitled to bargained-for prepayment penalties because the debtor was solvent, *see Gencarelli v. UPS Cap. Bus. Credit*, 501 F.3d 1, 6 (1st Cir. 2007), but did not address post-petition interest, let alone whether such interest applies to unimpaired claims in a solvent debtor case. To the contrary, the First Circuit noted that cases addressing post-petition interest were "inapposite" because, unlike the prepayment penalties at issue in the case, post-petition interest is barred by "an explicit statutory provision." *Id.* at 6 n.2 (citing 11 U.S.C. § 502(b)(2)). Finally, although the Fifth Circuit stated in dicta that it discerned "no reason why the solvent-debtor exception could not apply" to unimpaired claims, *In re Ultra Petroleum Corp.*, 943 F.3d 758, 765 (5th Cir. 2019), this dicta lacks persuasive force, since the Fifth Circuit relied on *In re Dow*, which did not address unimpaired claims, *see* 456 F.3d at 677–80, and *In re Chicago, Milwaukee, St. Paul and Pac. R.R. Co.*, 791 F.2d 524, 528 (7th Cir. 1986), which was decided pursuant to the Bankruptcy Act, not the Code, *see id.* at 525–26.[6]

B

The majority also attempts to justify its decision that unimpaired creditors are entitled to post-petition interest based on legislative history. Even though "no Code provision legally entitles unimpaired creditors to

[6] Another case relied on by the majority, *Debentureholders Protective Comm. of Cont'l Inv. Corp. v. Cont'l Inv. Corp.*, 679 F.2d 264, 265 (1st Cir. 1982), was also decided pursuant to the Bankruptcy Act, not the Code, *see id.*

postpetition interest," Maj. at 25, the majority claims that "Congress has foreclosed the possibility that unimpaired creditors need not receive postpetition interest." Maj. at 24.

This bold statement is based on a 1994 amendment to the Code, deleting § 1124(3), which had stated that a claim was unimpaired if the proposed plan in a Chapter 11 bankruptcy provided the holder of such a claim "cash equal to . . . the allowed amount of such claim." 11 U.S.C. § 1124(3) (1993). A report of the House Judiciary Committee indicated that this amendment was intended to overrule a bankruptcy court decision, *In re New Valley Corp.*, 168 B.R. 73, 79 (1994), which ruled that unimpaired creditors were not entitled to post-petition interest when the debtor was solvent. In reaching this conclusion, *In re New Valley Corp.* relied on several sections of the Code, including § 1129(a)(7)(A) (applying the "best interest of creditors" test to impaired claims), § 502(b)(2) (providing that an allowed claim does not include unmatured interest); and § 1124(3) (providing that a claim that is paid in full is not impaired). *Id.* The report of the House Judiciary Committee explained that its deletion of § 1124(3) would establish that creditors who are paid in full could still be "impaired," and therefore entitled to post-petition interest under § 1129(a)(7) in a solvent debtor case. H.R. Rep. No. 103-835, § 214 at 48 (1994).[7] But according to the

[7] Specifically, according to the report, with this deletion "if a plan proposed to pay a class of claims in cash in the full allowed amount of the claims, the class would be impaired, entitling creditors to vote for or against the plan of reorganization," which would protect dissenting creditors by requiring compliance with the "best interests of creditors" test under § 1129(a)(7) of the Bankruptcy Code. H.R. Rep. No. 103-835, § 214 at 48.

report, the deletion of § 1124(3) would not affect § 1129(a)(7) of the Code, "which excluded from application of the best interests of creditors test classes that are unimpaired under section 1124." *Id.* The 1994 amendments did not delete or amend § 1129(a)(7)(a) or § 502(b)(2) in any relevant way, nor amend the Code to establish that an unimpaired creditor was entitled to post-petition interest.

The deletion of § 1124(3) and the House Judiciary Committee report provide no support for the majority's attempt to benefit unimpaired creditors. First, any reliance on legislative history is unwarranted where, as here, the Code's language is unambiguous.[8] *See Toibb v. Radloff*, 501 U.S. 157, 162 (1991). Second, even if the report merited consideration, it provides no support for the majority's rule that unimpaired creditors are entitled to post-petition interest. As indicated above, the report stated that the deletion of § 1124(3) was intended to expand the definition of impaired claims, so more creditors would be deemed to be holding impaired claims, and thus be entitled to post-petition interest under one of the established "best interests of creditors" tests. *See* H.R. Rep. No.

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[8] The majority confuses legislative history with legislation by referring to statements in this House Judiciary Committee report as "Congress' clear instruction on this matter," Maj. at 28, and as Congress's "express[]" statement that it intended to prevent the "unfair result" in *New Valley*. Maj. at 28. But "the best evidence" of Congress's instruction on a matter "is the statutory text adopted by both Houses of Congress and submitted to the President." *W. Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98–99 (1991). "[W]here, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms," and "reference to legislative history and to pre-Code practice is hardly necessary." *Ron Pair Enterprises, Inc*., 489 U.S. at 241.

103-835, § 214 at 48. But the report also makes clear that unimpaired creditors would still be deprived of post-petition interest. *See id.* Therefore, the report would not help creditors with unimpaired claims, because such claims (which cannot include postpetition interest, *see* § 502(b)) are not automatically transformed into impaired claims merely because a court determines that the creditor is entitled to post-petition interest in addition to the claim. *See infra* at Section III.C. Finally, the report fails on its own terms, because it does not accurately describe the effect of the deletion of § 1124(3). Although Congress eliminated the section defining a claim as unimpaired if the creditor obtains the full amount of the claim, this deletion did not provide any guidance for differentiating impaired from unimpaired claims, expressly state that claims such as the ones held by members of the Trade Committee should be classified as impaired, or alter the Code's "general rule disallowing postpetition interest." *Timbers of Inwood Forest*, 484 U.S. at 373.

C

The majority makes the related contention that § 1124(1), which states that a claim is impaired unless the plan "leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest," requires holding that an unsecured claim must be classified as impaired in a solvent debtor case unless the creditor obtains post-petition interest. The majority reasons that the term "equitable . . . rights" in § 1124(1) includes the right to post-petition interest under the solvent debtor exception, and "[a] failure to provide for postpetition interest according to this equitable right as part of a bankruptcy plan results in impairment." Maj. at 30.

This argument fails for multiple reasons.[9] First, § 1124(1) explains when a "class of claims or interests" is impaired. Because a claim cannot include post-petition interest, *see* § 502(b)(2), the failure of a plan to provide for payment of post-petition interest cannot impair the claim itself. The majority argues that even if a claim does not include post-petition interest, a claim can *entitle* its holder to such interest. Maj. at 29–30 n.9. But this ignores the language of § 1124(1), which explains only when a *claim* is impaired. The statute does not describe when a *holder's* equitable rights are impaired, nor is there any basis for concluding that a holder's loss of some equitable right under pre-Code practice would impair the holder's *claim*. Moreover, because the Code establishes that an allowed claim does *not* include post-petition interest, *see* § 502(b)(2), it is not plausible to read § 1124(1), as the majority does, as contemplating that a claim *must* include post-petition interest (when the debtor is solvent), or it would be impaired.

Second, the majority misinterprets the term "equitable . . . rights" in § 1124(1). By its terms, § 1124(1) focuses on the creditor's claim, and the scope of the rights included in that claim. Congress defined "claim" broadly to include any "right to payment" and any "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." § 101(5).[10] Therefore, a creditor's claim

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[9] As a threshold matter, the argument fails because the members of the Trade Committee did not distinctly argue to the bankruptcy court that their claims were impaired, and such an argument is therefore forfeited.

[10] Indeed, in enacting § 101(5), Congress intended to "adopt the broadest available definition of 'claim,'" including any "enforceable obligation," be it legal or equitable. *Johnson v. Home State*

includes equitable rights such as restitution, quantum meruit, or other equitable remedy to which the creditor has a right at the time of filing.[11] If the plan fails to provide for payment of any of these rights, then under § 1124(1), that claim is impaired. This is the only plausible reading of the term "equitable rights" in § 1124(1), because it gives effect to the statute's purpose of explaining when a claim is impaired due to the failure to pay the full amount of the allowed claim as of the date of the petition in bankruptcy. By contrast, interpreting the term "equitable rights" in § 1124(1) as authorizing a bankruptcy court to provide creditors with an equitable benefit beyond the amount of the allowed claim makes no sense, because a court's failure to provide such a benefit could not "impair" the allowed claim itself. Moreover, interpreting § 1124(1) as authorizing courts to provide creditors with extra-textual equitable benefits would be contrary to the Supreme Court's rulings that bankruptcy courts may not use equitable powers to provide benefits not permitted by the Code. *See Law v. Siegel*, 571 U.S. 415, 421–22 (2014) (holding that a bankruptcy court cannot make additional funds available to defray administrative expenses by imposing an "equitable surcharge" on a debtor's homestead exemption). "[W]hatever equitable powers remain in the bankruptcy courts must and

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Bank, 501 U.S. 78, 83 (1991); *see also In re Davis*, 778 F.3d 809, 813 (9th Cir. 2015) (explaining that the language of § 101(5) "permits the broadest possible relief in the bankruptcy court") (quoting H.R. Rep. 95-595, 309 (1978)).

[11] The majority argues that reading § 1124(1) as referring only to equitable rights that are part of the allowed claim is "novel" and based on a "faulty premise." Maj. at 29–30 n.9. To the contrary, it is based on the plain language of § 1124(1), and the definition of "claim" in § 101(5).

can only be exercised within the confines of the Bankruptcy Code." *Id.* at 421 (citations omitted).

Finally, the majority's holding that a "failure to provide for postpetition interest according to this equitable right as part of a bankruptcy plan results in impairment," Maj. at 30, means that an unimpaired claim automatically and retroactively becomes an impaired claim if the creditor is not awarded postpetition interest in a solvent debtor case. But such an unprecedented backwards-looking impact has no basis in the Code. "[T]he amount and priority of an unsecured creditor's claim is fixed on the date of the filing of the petition." *In re LCO Enterprises*, 12 F.3d 938, 941 (9th Cir. 1993). Obligations accruing *after* the petition is filed are not part of a claim, and so a debtor's failure to fulfill those obligations does not result in impairment. Even where post-petition interest is available, it is inherently an obligation that accrues *after* the petition for bankruptcy is filed. *See In re Pardee*, 193 F.3d at 1085 n.3; *see also Bursch v. Beardsley & Piper, a Div. of Pettibone Corp.*, 971 F.2d 108, 114 (8th Cir. 1992) (explaining that post-petition interest "is unmatured at the time of filing"). Indeed, as § 726(a)(5) indicates, the solvency of the debtor may be unknown until the property of the estate is being distributed.[12] Therefore, regardless whether a creditor

[12] The solvency of a debtor may not be known at the time the petition is filed. *See, e.g.*, *In re Kentucky Lumber Co.*, 860 F.2d 674, 675 (6th Cir. 1988) (describing a debtor that was "clearly perceived as insolvent on the date of confirmation of the plan" but "subsequently achieved a large and unexpected structured settlement" rendering the debtor solvent). Accordingly, the majority's statement that "[a] failure by a bankruptcy plan to leave this equitable right unaltered results in impairment *from the outset*, unless and until a plan is amended accordingly," Maj. at 29–30 n.9 (emphasis added), indicates that either *every* plan

is entitled to post-petition interest *in addition to* the amount of its claim under a solvent debtor exception, a creditor's failure to obtain post-petition interest does not affect a claim's designation as impaired or unimpaired, nor does it retroactively make an unimpaired claim "impaired."

D

Finally, the majority makes the policy argument that prohibiting unimpaired claimants from receiving post-petition interest (or limiting their post-petition interest to the same rate as impaired creditors) is inconsistent with "the Code's structure," Maj. at 26, because unimpaired creditors should not be treated worse than impaired creditors. But "the pros and cons of [treating different classes of creditors differently] are for the consideration of Congress, not the courts." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 649 (2012). "[I]t is not for the courts to alter the balance struck by the statute," *Siegel*, 571 U.S. at 427, especially after Congress "worked on the formulation of the Code for nearly a decade," *Ron Pair*, 489 U.S. at 240, and "standardize[d] an expansive (and sometimes unruly) area of law," *RadLAX*, 566 U.S. at 649. Rather, "the sole function of the courts is to enforce [the Code's plain language] according to its terms," *Ron Pair*, 489 U.S. at 241 (citation omitted), even if that "may produce inequitable results for trustees and creditors," *Siegel*, 571 U.S. at 426. Moreover, even if policy considerations were relevant,

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must include the statement that all unimpaired creditors are entitled to post-petition interest if the debtor turns out solvent, or that by force of law, the failure to distribute post-petition interest at the end of the bankruptcy case causes a nunc pro tunc transformation of a claim to the status of impairment "from the outset."

Congress could have chosen to give impaired creditors greater protections than unimpaired creditors, because impaired creditors (such as classes of wildfire victims here) may not receive payment of their claims in full. Thus, "depriving [unimpaired creditors] of the statutory protections that impaired creditors enjoy" does not "end-run th[e] statutory rights" of unimpaired creditors. Maj. at 26. To the contrary, it enforces the Code's express terms, and it is the majority that allows unimpaired creditors to end-run Congress's prohibition on post-petition interest.

* * *

Because I would follow the Supreme Court's direction, and leave it to Congress to decide whether creditors holding claims that are fully paid under a plan of reorganization are entitled to post-petition interest when the debtor is solvent, I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No. 20-cv-04570-HSG

Re: Dkt. No. 15

OFFICIAL COMMITTEE OF UNSECURED CREDITORS,

Plaintiff,

v.

PG&E CORPORATION,

Defendant.

ORDER AFFIRMING BANKRUPTCY COURT'S RULINGS ON POSTPETITION INTEREST

Pending before the Court is Appellant Ad Hoc Committee of Holders of Trade Claims' appeal of the Bankruptcy Court's Confirmation Order. Dkt. No. 15 ("Appellant's Brief") and Dkt. No. 23 ("Reply Brief"). Specifically, Appellant appeals the Bankruptcy Court's rulings regarding postpetition interest, which were incorporated by the Bankruptcy Court in its Confirmation Order. Dkt. No. 1-4 at 29. These prior rulings were set out in the Memorandum Decision Regarding Postpetition Interest, Dkt. No. 1-5 ("PPI Memorandum"), and the Interlocutory Order Regarding Postpetition Interest, Dkt. No. 1-6 ("PPI Order"). Appellees PG&E Corporation and Pacific Gas and Electric Company (collectively, "Debtors") oppose the appeal. Dkt. No. 21 ("Appellees' Brief"). For the following reasons, the

Court AFFIRMS the Bankruptcy Court's rulings on postpetition interest.

I. BACKGROUND

A. PG&E's Bankruptcy and Chapter 11 Plan

On January 29, 2019, the Debtors commenced voluntary cases for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of California ("Bankruptcy Court"). Significantly, the Debtors needed to propose a plan of reorganization that satisfied the requirements of A.B. 1054, including its June 30, 2020 deadline for plan confirmation. In light of the "increased risk of catastrophic wildfires," A.B. 1054 created the "Go-Forward Wildfire Fund" as a multi-billion dollar safety net to compensate future victims of public utility fires and thereby "reduce the costs to ratepayers in addressing utility-caused catastrophic wildfires," support "the credit worthiness of electrical corporations," like the Debtors, and provide "a mechanism to attract capital for investment in safe, clean, and reliable power for California at a reasonable cost to ratepayers." A.B. 1054 § 1(a). For the Debtors to qualify for the Go-Forward Wildfire Fund, however, A.B. 1054 required, among other things, the Debtors to obtain an order from the Bankruptcy Court confirming a plan of reorganization by June 30, 2020. *See* A.B. 1054 § 16, ch. 3, 3292(b). After more than sixteen months of negotiations among a variety of stakeholders, and following confirmation hearings that spanned several weeks, the Debtors' Plan of Reorganization dated June 19, 2020 ("Plan")[1] was confirmed by the Bankruptcy Court on June 20, 2020

[1] Capitalized terms not otherwise defined in this order have the meanings ascribed to them in the Plan.

and became effective on July 1, 2020 ("Effective Date").

B. The Postpetition Interest Dispute

Prior to confirmation, the Bankruptcy Court considered arguments from Debtors and Appellant, among others, about the applicable postpetition interest to be paid to four classes of allowed unsecured and unimpaired claims. PPI Memorandum at 1. Debtors argued that creditors in the four classes should receive interest calculated pursuant to 28 U.S.C. § 1961(a) ("the Federal Interest Rate"), relying on the Ninth Circuit's decision in *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002) ("*Cardelucci*"). *Id.* at 1-2. Certain creditor groups, including the Official Committee of Unsecured Creditors, the Ad Hoc Committee of Senior Secured Noteholders of Pacific Gas and Electric Company, and Appellant, argued that under California law, contract-based claims accrue interest at a contractual rate, and in the absence of such a rate, at the statutory rate of 10%. *See* Cal. Civ. Code § 3289.

On December 30, 2019, the Bankruptcy Court ruled that "the Debtors are correct, that *Cardelucci* controls and that the Federal Interest Rate applies to any Plan." PPI Memorandum at 2. On February 6, 2020, the Bankruptcy Court entered the PPI Order. In the PPI Order, the Bankruptcy Court again "conclude[d] that the Debtors are correct, that *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002) controls and that the Federal Interest Rate applies to the postpetition treatment of unsecured creditors under any Chapter 11 Plan of Reorganization proposed by Debtors." PPI Order at 2.

Appellant then filed a motion for leave to appeal in this Court. The Court found that the PPI Memorandum and Order did not constitute a final order for purposes

of appeal and denied Appellant's request for leave to appeal. *See Ad Hoc Comm. of Holders of Trade Claims v. PG&E Corp.*, 614 B.R. 344 (N.D. Cal. 2020) ("*Ad Hoc Comm.*").

II. LEGAL STANDARD

District courts have jurisdiction to hear appeals from final judgments, orders, and decrees of bankruptcy judges. 28 U.S.C. § 158. A district court reviews a bankruptcy court's decision by applying the same standard of review used by circuit courts when reviewing district court decisions. *In re Greene*, 583 F.3d 614, 618 (9th Cir. 2009). The district court reviews the bankruptcy court's findings of fact for clear error and its conclusions of law de novo. *In re Harmon*, 250 F.3d 1240, 1245 (9th Cir. 2001).

III. DISCUSSION

In its prior order on Appellant's motion for leave to appeal, the Court considered the same arguments offered by Appellant in the current appeal. *Ad Hoc Comm.*, 614 B.R. at 354-357. Despite Appellant's attempts, then and now, to narrow the scope of the Ninth Circuit's holding in *Cardelucci*, the Court continues to agree with the Bankruptcy Court "that *Cardelucci* 'controls' the issue of postpetition interest payable under the Plan." *Id.* at 355. As discussed in the prior order, *id.*, the Ninth Circuit framed the issue in *Cardelucci* as "present[ing] the narrow but important issue of whether such post-petition interest is to be calculated using the federal judgment interest rate or is determined by the parties' contract or state law." *Cardelucci*, 285 F.3d at 1233. The Ninth Circuit's holding remains clear: "Where a debtor in bankruptcy is solvent, an unsecured creditor is entitled to 'payment of interest at the legal rate,'" and "Congress

intended 'interest at the legal rate' in 11 U.S.C. § 726(a)(5) to mean interest at the federal statutory rate pursuant to 28 U.S.C. § 1961(a)." *Id.* at 1234. In support of this holding, the Ninth Circuit observed that application of the lower federal judgment rate did not violate an unsecured creditor's substantive due process rights, and that using that rate for all claims was "rationally related to legitimate interests in efficiency, fairness, predictability, and uniformity within the bankruptcy system." *Id.* at 1236.

Appellant attempts to distinguish *Cardelucci* by arguing that the plan in that case involved impaired claims, while the Debtors' Plan here proposes to leave general unsecured claims unimpaired, such that Section 726(a)(5) of the Bankruptcy Code—the section cited in *Cardelucci* to derive the "legal rate" for postpetition interest—is inapplicable. Appellant's Br. at 2-3, 17-18, 29-33; Reply at 6-12.

Appellant's contention that the Ninth Circuit's decision in *Cardelucci* is not controlling authority—and only applicable to a narrow set of facts—is unavailing. To the extent that Appellant believes that the Ninth Circuit never intended its ruling to apply to unimpaired claims, *Cardelucci* certainly does not say that. While the Ninth Circuit pinpointed a "narrow but important issue," it did not narrow the application of its holding. The "narrow but important issue" *Cardelucci* resolved is what "legal rate" applies to postpetition interest in a solvent debtor case. 285 F.3d at 1234 ("Where a debtor in bankruptcy is *solvent*, an *unsecured creditor* is entitled to 'payment of interest at *the legal rate* from the date of the filing of the petition' prior to any distribution of remaining assets to the debtor.") (emphasis added) (citation omitted).

That is precisely the issue resolved in the PPI Memorandum and Order.

The application of the federal rate to Appellant's claims is further supported by the Ninth Circuit's reasoning in *Cardelucci*. The Ninth Circuit explained that "[u]pon the filing of the bankruptcy petition, creditors with a claim against the estate must pursue their rights to the claim in federal court and entitlement to a claim is a matter of federal law." *Id.* at 1235. "As of the date of the filing of the petition, creditors hold a claim, similar to a federal judgment, against the estate, the payment of which is only dependent upon completion of the bankruptcy process." *Id.* "In this respect, the purpose of post-petition interest makes the award analogous to an award of post-judgment interest." *Id.* "It has long been the rule that an award of post-judgment interest is procedural in nature and thereby dictated by federal law." *Id.* Nothing in this explanation suggests that the Ninth Circuit intended an exception for unimpaired claims, as urged by Appellant. Appellant's Br. at 20-25. On the contrary, the Ninth Circuit's reasoning supports its observation that "applying a single, easily determined interest rate to *all* claims for post-petition interest ensures equitable treatment of creditors." *Id.* (emphasis added). While Appellant cites a number of out-of-circuit cases, including a recent bankruptcy court decision from the Southern District of Texas addressing the issue of postpetition interest, Reply at 2-6, the Court sees no reason to depart from the clear holding and reasoning of *Cardelucci*. *See Ad Hoc Comm.*, 614 B.R. at 356 ("[B]ecause the Ninth Circuit has directly decided the issue in *Cardelucci*, the cited out-of-circuit authority does not give rise to a substantial ground for difference of opinion justifying an interlocutory appeal.").

Nor is the Court persuaded by Appellant's argument that its narrow interpretation of *Cardelucci* is necessary to harmonize *Cardelucci* with the Ninth Circuit's decisions in *L&J Anaheim Assocs. v. Kawasaki Leasing Int'l, Inc.*, 995 F.2d 940 (9th Cir. 1993); *Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.)*, 314 F.3d 1070 (9th Cir. 2002); and *Pacifica L 51 LLC v. New Invs., Inc. (In re New Investments, Inc.)*, 840 F.3d 1137 (9th Cir. 2016). Appellant's Br. at 33. As the Court previously explained, *L & J Anaheim* did not specifically address postpetition interest. *Ad Hoc Comm.*, 614 B.R. at 355. *L & J Anaheim* did interpret Section 1124 of the Bankruptcy Code to mean that "'Congress define[d] impairment in the broadest possible terms,'" and that "'any alteration of [a creditor's] rights constitutes impairment even if the value of the rights is enhanced.'" *Id.* at 355-356 (quoting *L & J Anaheim*, 995 F.2d at 942). But the Ninth Circuit's interpretation of Section 1124 does not support Appellant's argument that the claims of its members must be considered impaired by the Plan unless postpetition interest is paid at the contractual or state statutory rate. Appellant's Br. at 21-25.

"[C]reditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 444 (2007) (quoting *Raleigh v. Ill. Dept. of Revenue*, 530 U.S. 15, 20 (2000)). As the Court previously explained, this means that there is no impairment where the Bankruptcy Code—and not the Debtors' Plan—modifies alleged non-bankruptcy contractual rights. *Ad Hoc Comm.*, 614 B.R. at 356. In other words, "a creditor's claim outside of bankruptcy is not the relevant barometer for impairment; we must

examine whether the plan itself is a source of limitation on a creditor's legal, equitable, or contractual rights." *In re PPI Enters. (U.S.), Inc.*, 324 F.3d 197, 204 (3d Cir. 2003).

Section 502(b)(2) of the Bankruptcy Code disallows unsecured claims for postpetition interest. And so ordinarily, holders of unsecured claims (like Appellant's members) have no right under the Bankruptcy Code to include such interest as part of their allowed claims. However, because the Debtors are presumed to be solvent, *Cardelucci* directs that the Debtors pay postpetition interest on allowed unsecured claims (at the "Federal Judgment Rate"). 285 F.3d at 1234. And like the Plan here, the plan in *Cardelucci* "provided for payment in full" of the unsecured claims at issue by using the "Federal Judgment Rate." *Id.* at 12333.[2]

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[2] Appellant's contention that *In re Sylmar Plaza* and *In re New Investments* are in tension with *Cardelucci* is also misplaced. Appellant's Br. at 33. Like *L & J Anaheim*, *Sylmar Plaza* did not address the appropriate rate of postpetition interest on an unsecured claim in a solvent debtor case. The Ninth Circuit held only that it was appropriate for a debtor to take advantage of the Bankruptcy Code's reinstatement provisions, even if doing so would adversely impact the creditor's contractual or nonbankruptcy rights. *Sylmar Plaza*, 314 F.3d at 1075 (rejecting the argument "that a plan intended to nullify the consequences of a default (thereby avoiding the higher post-default interest rate) does not meet the purposes of the Bankruptcy Code"). Similarly, *New Investments* dealt with cure and reinstatement provisions of the Bankruptcy Code that allow a debtor to "return to pre-default conditions . . . only by fulfilling the obligations of the underlying loan agreement and applicable state law." 840 F.3d at 1142. But Appellant's members' claims are not being cured and reinstated by the Plan. Nothing in the Ninth Circuit's decision in *New Investments* invalidates the Plan's provision for the payment of Appellant's member's claims plus postpetition

Because the Bankruptcy Court correctly applied Ninth Circuit precedent in ruling that the Federal Interest Rate is the postpetition rate applicable to the claims of Appellant's members, the Court AFFIRMS the Bankruptcy Court's rulings on postpetition interest.

IV. CONCLUSION

The Court AFFIRMS the Bankruptcy Court's PPI Memorandum and PPI Order. The Clerk is directed to terminate this appeal and close the case.

IT IS SO ORDERED.

Dated: 5/20/2021

/s/ Haywood S. Gilliam, Jr.
HAYWOOD S. GILLIAM, JR.
United States District Judge

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interest at the Federal Interest Rate, in accordance with *Cardelucci*.

APPENDIX C

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Bankruptcy Case No. 19-30088-DM

IN RE: PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

❑ Affects PG&E Corporation

❑ Affects Pacific Gas and Electric Company

☒ Affects both Debtors

* *All papers shall be filed in the Lead Case, No. 19-30088 (DM).*

Chapter 11
Jointly Administered

Date: December 11, 2019
Time: 10:00 AM
Place: Courtroom 17
450 Golden Gate Ave. 16th Floor
San Francisco, CA

MEMORANDUM DECISION REGARDING POSTPETITION INTEREST

I. INTRODUCTION

On December 11, 2019, the court heard oral argument on the discrete legal issue of the applicable postpetition interest to be paid to four classes of allowed unsecured and unimpaired claims, under any chapter 11 reorganization plan for solvent debtors PG&E Corporation and Pacific Gas and Electric Company ("Debtors"). The Debtors, joined by certain Shareholders, argue that creditors in all four classes should receive interest calculated pursuant to 28 U.S.C. § 1961(a) (the "Federal Interest Rate") in effect as of the petition date (January 29, 2019) these chapter 11 cases. That rate for these jointly administered cases is 2.59 percent. Debtors contend that use of the Federal Interest Rate is consistent with *In re Cardelucci*, 285 F.3d 1231 (9th Cir. 2002) ("*Cardelucci*"), which holds that unsecured creditors in a solvent case should receive postpetition interest calculated at the Federal Interest Rate.

Several parties, including the Official Committee of Unsecured Creditors, the Ad Hoc Committee of Senior Unsecured Noteholders, the Ad Hoc Committee of Holders of Trade Claims and others (collectively "Unsecured Creditors") oppose the motion. They urge application of various rates, generally determined by applicable contracts between the Debtors and the respective claimants, judgment rates or some other rate.

For the following reasons, the court concludes that the Debtors are correct, that *Cardelucci* controls and that the Federal Interest Rate applies to any Plan.

II. APPLICABLE LAW

Statutory construction of the Bankruptcy Code[1] is "a holistic endeavor" requiring consideration of the entire statutory scheme. *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.,* 484 U.S. 365, 371, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), cited by *In re BCE West, L.P.*, 319 F.3d 1166, 1171 (9th Cir. 2003).

In *Timbers*, the Supreme Court utilized this holistic approach to analyze five seemingly unconnected provisions of Title 11 in determining that oversecured creditors are entitled to receive postpetition interest. Applying a similar holistic approach, this court has looked to the structure of the Bankruptcy Code and the purposes behind its many parts to conclude while unsecured creditors are entitled to postpetition interest in a solvent estate, the Bankruptcy Code requires application of the Federal Interest Rate to those claims and that such an application does not impair these claims. Even if *Cardelucci* were not binding, the court would reach the same conclusion.

Chapter 5, subchapter I ("Creditors and Claims") of the Bankruptcy Code sets forth the guiding principles for filing and allowance of claims or interests, administrative expenses, determination of secured status and other provisions not important to the current analysis. In contrast, the court must apply the critical provisions of chapter 11, subchapter II ("The Plan"). Section 1123(a) states what a plan "shall" do or include. Section 1123(b) states what a plan "may" do or include. As a definitional matter, section 1124 explains that a class of claims or interest is impaired unless the plan leaves certain legal, equitable and

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[1] Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

contractual rights unaltered (§ 1124(1)), or cures, restates, or compensates the rights of class or interest members (§ 1124(2)(A)-(E)).

The structure of the Bankruptcy Code and the applicability of these definitional and empowering sections, therefore, dictate rights that are fixed as of the petition date and what rules apply after that. Nothing suggests that, absent specific rules, provisions dealing with prepetition entitlements carry over postpetition. For example, section 502(b)(2) clearly provides that a claim for "unmatured interest"[2] may not be allowed. An exception to the rule is found in section 506(b) that permits accrued interest to be allowed as long as the security is "greater than the amount of such claim."

The Unsecured Creditors' argument that somehow the definitions and remedies found in section 1124 override the plain impact of section 502(b)(2) is simply not persuasive and would require the court to ignore not only the plain words of the statute but also the holistic notion of treating them as part of a combined comprehensive instrument of definitions, applicability and implementation. Section 1124(1) describes what claims are unimpaired and section 1124(2) describes what is necessary for a plan to "unimpair" impaired claims. In contrast, chapter 5 ("Creditors and Claims") dictates how claims and interests are dealt with in the substantive chapters: 7, 11, 12 and 13. The subparts of section 502(b) list nine specific rules for affecting allowed claims.

An example not directly related to this case proves the point. Section 502(b)(4) disallows the claim of an

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[2] No one has suggested that "unmatured interest" means anything other than "postpetition interest."

insider or an attorney to the extent it exceeds the reasonable value of the services. Unsecured Creditors could not persuade the court or even make a convincing argument that somehow an insider or an attorney whose asserted claim exceeds a reasonable value could take refuge in section 1124((1)'s definitional provision and escape the clear intention of Congress to limit unreasonable claims for services in the same manner it has limited postpetition unsecured claims for unmatured interest. For the same reason, underlying non-bankruptcy law must give way to contrary provisions of the Bankruptcy Code. *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.,* 549 U.S. 443, 444 (2007) (quoting *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20 (2000).

With that background, the court turns to the applicability of *Cardelucci* and its clear message.

III. THIS COURT'S RESPONSIBILITY UNDER *STARE DECISIS*

This court is bound by the Ninth Circuit's *Cardelucci* decision unless it can be distinguished or overruled:

> Courts are bound by the decisions of higher courts under the principle of *stare decisis*. The doctrine derives from the maxim of the common law, "Stare decisis et non quieta movere," which literally means, "Let stand what is decided, and do not disturb what is settled." See 1B Jeremy C. Moore et al., Moore's Federal Practice ¶ 0.402[1] (2d ed. 1992). Moore's treatise describes the rule as follows:
>
> > The rule, as developed in the English law, is that a decision on an issue of law embodied in a final judgment is binding on the court that decided it and such

> other courts as owe obedience to its decisions, in all future cases. *Id.*
>
> Under this principle a decision of a circuit court of appeal is binding on all lower courts in the circuit, including district courts and bankruptcy courts (absent a contrary United States Supreme Court decision). *Zuniga v. United Can Co.*, 812 F.2d 443, 450 (9th Cir. 1987).
>
> This is true even if there is a split of opinion between the controlling circuit and another circuit court of appeals, and the lower court believes that the controlling circuit court is in error. *Zuniga*, 812 F.2d at 450; *Hasbrouck v. Texaco, Inc.*, 663 F.2d 930, 933 (9th Cir. 1981)[.]

In re Globe Illumination Co., 149 B.R. 614, 617 (Bankr. C.D. Cal. 1993) (multiple internal citations omitted).

Cardelucci is a published panel opinion by the Court of Appeals for the Ninth Circuit. It is binding on this court. *State Farm Fire & Cas. Ins. Co. v. GP West, Inc.,* 2016 WL 3189187, 90 F. Supp.3d 1003, 1018 (D. Haw. 2016) (citation and internal quotation marks omitted). *See Lair v. Bullock*, 798 F.3d 736, 747 (9th Cir. 2015) ("[W]e are bound by a prior three-judge panel's published opinions, ...") (citing *Miller v. Gammie*, 335 F.3d 889, 892–93 (9th Cir. 2003) (en banc)).

IV. THE HOLDING OF *CARDELUCCI*

In *Cardelucci*, the Ninth Circuit framed the issue before it as follows:

> This appeal presents the narrow but important issue of whether such post-petition interest is to be calculated using the (federal

> judgment rate) or is determined by the parties' contract or state law.

Cardelucci, 285 F.3d at 1231.

The Ninth Circuit held that in chapter 11 cases involving solvent debtors, unsecured creditors are entitled to postpetition interest at the federal judgment rate, not at not at contractual or state statutory rates. *Id.* at 1234. In so holding, the Ninth Circuit observed that application of the lower federal judgment rate did not violate an unsecured creditor's substantive due process rights (*id.* at 1236) and that utilization of federal judgment rate for all claims was rationally related to legitimate interests in efficiency, fairness, predictability, and uniformity within bankruptcy system. *Id.*

While the court pinpointed a "narrow but important issue," it did not narrow the application of its holding, which must be applied broadly given the structure of the Bankruptcy Code and the clear and plain meaning of its applicable provisions, as noted above.

In *Cardelucci*, the debtor and his opponents, holders of a state court judgment, set aside various differences and thereby permitted confirmation to proceed subject to a reservation of rights concerning the applicable postpetition interest rate.[3] The Ninth Circuit concluded that the reference by Congress to "the legal rate" in section 726(a)(5) was intentional, in that

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[3] While the opinion is silent on the specifics of that debtor's plan, the opponents' claim was impaired for reasons not relevant to this analysis. In the present case the Unsecured Creditors' claims are unimpaired. The Unsecured Creditors put the cart before the horse when they contend that the application of the "fair and equitable" test of section 1129(b) determines that their claims are impaired under section 1124.

Congress had rejected proposed language of "interest on claims allowed." *Cardelucci,* 285 F.3d at 1234. The court also emphasized that a single, easily determined rate for all postpetition interest ensures equitable treatment of creditors.[4] Although *Cardelucci* was a chapter 11 case, the reference to section 726(a)(5) was critical. Without that reference, the court would be compelled by section 502(b)(2) to allow claims "except to the extent that . . . (2) such claim is for unmatured interest."[5] There is no specific provision in chapter 11 that allows any interest on unsecured claims.[6] Without that reference, Unsecured Creditors would be left with no allowed postpetition interest.

The rule in the seventeen years since *Cardelucci* is clear: unsecured creditors of a solvent debtor will be paid the Federal Interest Rate whether their prepetition contracts call for higher or lower rates, or applicable state law judgment rates are higher, or there are no other applicable rates to consider. Nor is that rule limited to impaired claims. *Cardelucci* is unequivocal and articulates several reasons for broad application of its holding despite the recognition of the narrow issue presented:

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[4] In this case, given the vast array of creditors' claims, the equal application of such uniform policy is all the more compelling.

[5] The exception found in section 506(b) for secured claims has no bearing here.

[6] The court rejects the argument by the Ad Hoc Committee of Holders of Trade Claims that section 103(b) precludes consideration of section 726(a)(5). *Cardelucci* merely compared the chapter 7 outcome (apply the Federal Interest Rate) as part of the "best interest" test of Section 1129(a)(9) to compare whether creditors do better in chapter 7 or chapter 11.

1. The use of the term "legal rate" indicates the Congress intended the single source to be statutory because of the common use of the term when the Bankruptcy Code was enacted.
2. Using the federal rate promotes uniformity within federal law.
3. The analogous post-judgment interest entitlement compensates for being deprived of compensation for the loss of time between ascertainment of damages and payment.
4. Application of a single, easily determined rate ensures equitable treatment of creditors.
5. With a uniform rate, no single creditor will be eligible for a disproportionate share of the remaining assets.

Cardelucci, 285 F.3d at 1235-1236.

The Unsecured Creditors refer to the opinion's "parting note" to support their cause. The actual conclusion rejects a substantive due process argument that has not been developed here for good reasons. To this court, the "parting note" that dooms their cause is in the penultimate paragraph, and bears repeating:

> The Court recognizes that these two interests, fairness among creditors and administrative efficiency, may be of limited relevance in certain bankruptcy proceedings. Where there are only a few unsecured creditors seeking post-petition interest and there are sufficient assets to pay all claims for all interest (sic), there will be no concerns regarding equity among creditors or practicality. In those

> instances, a debtor may receive a windfall from the application of a lower federal interest rate to an award of post-petition interest. Nonetheless 'interest at the legal rate' is a statutory term with a definitive meaning that cannot shift depending on the interests invoked by the specific factual circumstances before the court. *See In re Thompson,* 16 F.3d 576, 581 (4th Cir. 1994).

Cardelucci, 285 F.3d at 1236.

Unsecured Creditors' reliance on older cases invoking the "absolute priority" rule in defense of postpetition interest at the contract rate are unavailing. *Consolidated Rock Products Co. v. Du Bois*, 312 U.S. 510 (1941), was decided under the former Bankruptcy Act and is of questionable viability now that the Bankruptcy Code includes sections 726(a)(5) and 502(b)(2). Similarly, *Debentureholders Protective Committee of Continential Inv. Corp. v. Continental Inv. Corp.*, 679 F.2d 264 (1st Cir. 1982), was decided under Chapter X of the former Bankruptcy Act and thus offers no guidance here.

The Ninth Circuit's decision in *L&J Anaheim Associates v. Kawasaki Leasing International, Inc.* (*In re L&J Anaheim Associates*), 995 F.2d 940 (9th Cir. 1993) does not change the outcome. *L&J Anaheim* was decided only a few months after *Cardelucci* and did not cite it, as it addressed an altogether different issue.

In *L&J Anaheim*, a secured creditor filed a chapter 11 plan that was opposed by the debtor. In order to achieve the statutory requirement for at least one impaired class, the creditor, Kawasaki, proposed changing its own state law remedies following debtor's breach. It eliminated its right to exercise various remedies under the California Uniform Commercial

Code, replacing those entitlements under its proposed plan with a requirement that its collateral and a related lawsuit be sold at public auction under procedures mandated by the Bankruptcy Code.

In determining that Kawasaki's rights were altered, and thus its claim was impaired, the court stated:

> At first blush the idea that an improvement in ones' position as a creditor might constitute 'impairment' seems nonsensical."

L & J Anaheim, 995 F.2d at 942.

The court examined the term of art adopted by Congress to replace language in the prior Bankruptcy Act and concluded that section 1124 created certainty in determining whether or not a creditor was impaired. Once again, section 1124 is definitional, describing improvement in the context of the plan presented as impairment. The court had no occasion to address whether, for an impaired class, postpetition interest was even relevant.

Of importance here is that the plan's own language altered Kawasaki's rights; in the present case, the Bankruptcy Code, and not the Plan, is what causes Unsecured Creditors to have their postpetition interest limited to the Federal Judgment Rate. The Plan is not the culprit.

A few months after *Cardelucci*, the Ninth Circuit *decided Platinum Capital, Inc. v. Sylmar Plaza, L.P. (In re Sylmar Plaza, L.P.*, 314 F.3d 1070 (9th Cir. 2002). There, the court addressed whether or not a plan proponent had proposed the plan in good faith under section 1129(a)(3) when its sole purpose was to enable the debtors to cure and reinstate an obligation. At that time, *Great W. Bank & Trust v. Entz-White*

Lumber and Supply, Inc. (In re Entz-White Lumber and Supply, Inc.), 850 F.2d 1338 (9th Cir. 1988), was good law. Under *Entz-White*, plan proponents were permitted to cure defaults under former section 1124(3), leaving the objecting creditor not impaired under section 1124. Perhaps predicting the crucial distinction between what a plan does and what the Bankruptcy Code does, the *Sylmar Plaza* court rejected the argument that a plan lacks good faith when it permits owners of a solvent debtor to avoid paying postpetition interest at the default interest rate. The fact that a creditor's contractual rights are adversely affected does not by itself warrant a bad faith finding. Quoting the bankruptcy court in *In re PPI Enters. (US), Inc.*, 228 B.R. 339 (Bankr. D. Del. 1998), the court stated:

> In enacting the Bankruptcy Code, Congress made a determination that an eligible debtor should have the opportunity to avail itself of a number of Code provisions which adversely altered creditors' contractual and non bankruptcy rights . . . .
>
> The fact that a debtor proposes a plan which it avails itself of an applicable Code provision does not constitute evidence of bad faith.

Sylmar Plaza, 314 F.3d at 1075 (citations omitted).

Cases cited by the *Sylmar Plaza* creditor to support a per se rule were distinguishable in that neither adopted or approved such a rule and, moreover, ". . . because none involved an objection to a plan by an unimpaired creditor." *Id.*

At oral argument counsel for one of the Unsecured Creditors argued that *Cardelucci* has been superseded by *In re New Investments, Inc.*, 840 F.3d 1137 (9th Cir.

2016). That argument is unavailing. The *New Investments* decision concludes that the 1994 amendments to section 1124 abrogated the holding of *Entz-White* that default interest rates could be eliminated by curing defaults under a plan. The decision does not even mention postpetition interest or *Cardelucci* and does not deal with unimpaired claims under section 1124(1) and thus is of no bearing on the issue presented or the outcome here.

V. IMPAIRED OR UNIMPAIRED CLAIMS ARE TREATED ALIKE

Unsecured Creditors attempt in vain to escape *Cardelucci's* impact by arguing that, unlike the impaired claim there, their claims will be unimpaired under a plan. The court rejects Unsecured Creditors' argument.

First, *Cardelucci*, in answering the narrow question, drew no distinction as to whether the rule it announced was confined only to impaired claims. The clear and unequivocal analysis based on section 726(b)(5) is obvious: it applies to all unsecured and undersecured claims in a surplus estate.

Second, no plan compels the payment of the Federal Interest Rate. Rather, the Bankruptcy Code does. A similar analysis was applied very recently by the Fifth Circuit in *In re Ultra Petroleum Corporation*, ___ F.3d ___, 2019 WL 6318074 (November 26, 2019). There, the court contrasted the treatment of creditors' claims outside of bankruptcy and whether the plan itself was a source of limitation on their legal, equitable and contractual rights, or rather the Bankruptcy Code. The court looked to the language of section 1124(1), defining not impaired when the plan ". . . leaves unaltered [the claimant's] legal, equitable

and contractual rights." The court ruled that a claim is impaired only if the plan itself does the altering, not what the Bankruptcy Code does.

Ultra Petroleum agreed with the only other court of appeals decision to draw the distinction between what a plan might do and what the Bankruptcy Code does do. *In Solow v. PPI Enterprises (U.S.) Inc. (In re PPI Enterprises (U.S.) Inc.),* 324 F.3d.197 (3d Cir. 2003) the court upheld confirmation of a plan notwithstanding a limitation on an objecting landlord's statutorily capped damages under section 502(b)(6). It held that where section 502(b)(6) alters a creditor's non-bankruptcy claim, there is no alteration of the claimant's "legal, equitable and contractual rights" for purposes of impairment under section 1124(1). *Id.* at 203.

The *PPI Enterprises* court agreed with the bankruptcy court's analysis in *In re American Solar King Corp.*, 90 B.R. 808 (Bankr. W.D. Tex. 1988) where the bankruptcy court made the following very thoughtful observation:

> A closer inspection of the language employed in [s]ection 1124(1) reveals 'impairment by statute to be an oxymoron.' Impairment results from what the plan does, not what the statute does. A plan which 'leaves unaltered' the legal rights of a claimant is one which by definition, does not impair the creditor. A plan which leaves a claimant subject to other applicable provisions of Bankruptcy Code does no more to alter a claimant's legal rights than does a plan which leaves a claimant vulnerable to a given state's usury laws or to federal environmental laws. The Bankruptcy Code itself is a statute which, like other statutes, helps to define the legal rights of

> person's, just as surely as it limits contractual rights. Any alteration of legal rights is a consequence not of the plan but of the bankruptcy filing itself.

American Solar, 90 B.R. at 819-20.

The *Ultra Petroleum* court noted that decisions from bankruptcy courts across the country have reached the same conclusion, agreeing that impairment results from what a plan does, not from what a statute does. Its conclusion reinforces the point:

> We agree with *PPI*, every reported decision identified by either party, and Collier's treatise. Where a plan refuses to pay funds disallowed by the Code, the Code - not the Plan – is doing the impairing.

Ultra Petroleum, 2019 WL 6318074 at *5.

Like the creditors in *Ultra* Petroleum, the Unsecured Creditors' complaint is with Congress and the Bankruptcy Code, not the drafters of a Plan. The Bankruptcy Code, not the Plan, limits them to the Federal Interest Rate.[7] The cases cited by Unsecured Creditors do not apply here, as the rights in those cases were impaired by the plan and not by operation of law. *See Acequia, Inc. v. Clinton (In re Acequia*), 787 F.2d 1352, 1363 (9th Cir. 1986) (shareholder voting rights altered by plan); *In re Rexford Properties, LLC*, 558 B.R. 352, 368 (Bankr. C.D. Cal 2016) (creditor's rights regarding ongoing business altered by plan).

There is no point in discussing section 1124(2), as that subsection is not relevant to the treatment of the

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[7] For the same reason, creditors who hold contractual claims calling for interest lower than 2.59% will fare better under the Plan.

four not impaired classes. Were Debtors to have proposed a treatment of the Unsecured Creditors' claims that cured, reinstated, or reversed any acceleration, then the analysis might be helpful. But because section 1124(1) is the operative section here, that ends the discussion.

Because the Plan leaves the Unsecured Creditors' claims not impaired, there is also no need to dwell on whether or not "fair and equitable" principles apply. They do not. Unimpaired Creditors, when treated as dictated by the Bankruptcy Code, are not impaired by the Plan. They are conclusively presumed to have accepted the Plan. Section 1126(f). Section 1129(b) is not available to them.[8]

VI. CONCLUSION

As a trial court in the Ninth Circuit, this court is bound to follow *Cardelucci* unless, as a matter of principled reasoning, it can be distinguished. No such grounds exist. The 1994 amendments to section 1124 predated *Cardelucci*. Thus, whether or not *Cardelucci* addressed the issue is not the point. Its rule is the law of this circuit until altered either by an *en banc* panel, the United States Supreme Court, legislation or some other controlling change in the law.

Even were *Cardelucci* not controlling, this court would follow the lead of *PPI* and *Ultra Petroleum* (and the lower court decisions cited by *Ultra Petroleum)*, and reject the contention of Objecting Creditors that imposition of the Federal Interest Rate impairs them.

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[8] For this reason, the court rejects as incorrect the bankruptcy court's reliance *In re Energy Future Holdings*, 540 B.R. 109 (Bankr. D. Del. 2015) on "equitable principles" to permit unsecured creditors in a solvent case to recover a contract rate or such other rate as it deemed appropriate.

It is the Bankruptcy Code itself, not any plan provision, that imposes that rate.[9]

The court is not concurrently entering an order consistent with this Memorandum Decision as was the case with its recent decision in the Inverse Condemnation action (Dkt. No. 4895). Because of the close relationship between the postpetition interest question and the issues presented in the forthcoming Make-Whole dispute, orders disposing of them both at the same time seems appropriate and efficient. Whether either or both questions should be certified for direct appeal or to treated as final for purposes of Fed. R. Bankr. P. 7054, can be visited later.

END OF MEMORANDUM DECISION

[9] *Ultra Petroleum* remanded the case to the bankruptcy court to decide the appropriate Make-Whole amounts, the appropriate postpetition interest rate, and the applicability of the solvent-debtor exception. If the three judges on the Fifth Circuit panel had been members of the Ninth Circuit, there is no doubt they would have been bound by *Cardelucci*, thus limiting the remand to the Make-Whole issue.

APPENDIX D

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Bankruptcy Case No. 19-30088-DM

IN RE: PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

❑ Affects PG&E Corporation

❑ Affects Pacific Gas and Electric Company

☒ Affects both Debtors

* *All papers shall be filed in the Lead Case, No. 19-30088 (DM).*

Chapter 11
Jointly Administered

Date: February 4, 2020
Time: 10:00 AM
Place: Courtroom 17
450 Golden Gate Ave. 16th Floor
San Francisco, CA

INTERLOCUTORY ORDER REGARDING POSTPETITION INTEREST

On December 30, 2019, the court issued a Memorandum Decision Regarding Postpetition Interest (Dkt. No. 5226). For reasons stated on p. 17 of the memorandum, the court deferred issuing an appealable order at that time. Since then, the disputed and somewhat related issue described by all parties as the Make-Whole issue has been tentatively resolved without a decision by the court. For that reason, the court believes an order on the postpetition interest issue is appropriate at this time.

Parties adverse to the Debtors on the postpetition interest issue have disagreed on what the court should do now. One group, the Ad Hoc Committee of Holders of Trade Claims, wants a certification that the court's decision and ensuing order is final under Fed. R. Civ. P. 54(b), incorporated via Fed. R. Bank. P 7054 and a direct certification of such an order or an interlocutory order to the court of appeals under 28 U.S.C. § 158(d)(2). The other group, the Ad Hoc Committee of Senior Unsecured Noteholders, wants the court to defer any action until it confirms Debtors' Plan of Reorganization under 11 U.S.C § 1141, thus making the underlying decision on postpetition interest final for all purposes.

The court has considered the arguments of both sides, and the somewhat neutral position of the Debtors at a hearing on February 4, 2020. Under the circumstances, the court decides not to adopt either sides' position and to leave the question of dealing with an interlocutory order for another court if there is an appeal.

Accordingly, and as an interlocutory order, the court concludes that the Debtors are correct, that *In re*

Cardelucci, 285 F.3d 1231 (9th Cir. 2002) controls and that the Federal Interest Rate applies to the postpetition treatment of unsecured creditors under any Chapter 11 Plan of Reorganization proposed by Debtors.

END OF INTERLOCUTORY ORDER

APPENDIX E

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Bankruptcy Case No. 19-30088-DM

IN RE: PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

❑ Affects PG&E Corporation

❑ Affects Pacific Gas and Electric Company

☒ Affects both Debtors

* *All papers shall be filed in the Lead Case, No. 19-30088 (DM).*

Chapter 11
Jointly Administered

MEMORANDUM DECISION – CONFIRMATION OF DEBTORS' AND SHAREHOLDER PROPONENTS' JOINT CHAPTER 11 PLAN OF REORGANIZATION

I. INTRODUCTION

These cases are among the most complex in U.S. bankruptcy history. They involve difficult legal, financial, practical and personal issues. They were filed because of overwhelming damage claims following the devasting 2015 – 2018 Northern California wildfires, leaving thousands of victims who suffered from those wildfires owed billions of dollars, plus thousands more of traditional non-fire creditors of various types, also owed billions of dollars.

There is no need to elaborate in detail. All of the victims, all of the over sixteen million PG&E customers in Northern California, indeed all of Northern California if not the rest of the country, know the story. The issue before the court comes down to one critical question: whether to confirm the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization ("the Plan"). If so, there are still steps necessary to implement that Plan to make it effective. Doing so, however, is one more important step toward facilitating the process of paying those victims and creditors. If the court does not confirm the Plan, the only option appears to be leaving the Debtors where they have been for the last seventeen months. Leaving tens of thousands of fire survivors, contract parties, lenders, general creditors, allegedly defrauded investors, equity owners and countless others with no other options on the horizon is not an acceptable alternative.

For the reasons that follow, the court will confirm the Plan.

II. OVERVIEW OF DECISION

Debtors have made a convincing case for confirmation of the Plan. To satisfy the June 30, 2020, deadline of AB 1054, the court will set forth the necessary elements of its decision to confirm the Plan and to dispose of objections to it. Later this week, it will hold a hearing to settle any final adjustments necessary for it to enter its Order Confirming Chapter 11 Plan ("OCP").[1]

Debtors filed extensive exhibits to support confirmation. In addition, they filed the following sworn statements in lieu of direct oral testimonies: Declaration of Christina Pullo (Dkt. #7507) ("Pullo Dec"); Declaration of Jason P. Wells (Dkt. #7510) ("Wells Dec"); Declaration of John Boken (Dkt. #7514) ("Boken Dec"); and Declaration of Kenneth S. Ziman (Dkt. #7512) ("Ziman Dec"), and in conjunction with the Pullo Dec, Wells Dec and Boken Dec, the "Supporting Declarations".

Having considered the Supporting Declarations, the exhibits and the arguments of counsel at the confirmation trial held between May 27 and June 8, 2020, the court concludes that the Plan should be confirmed.

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[1] The following discussion constitutes the court's findings of fact and conclusions of law in narrative form as authorized by Fed. R. Bankr. P. 7052(a). Appellate courts in the Ninth Circuit review decisions "with special scrutiny" when a trial court "engage[s] in the regrettable practice of adopting the findings drafted by the prevailing party wholesale." *Stormans, Inc. v. Wiesman*, 794 F.3d 1064, 1075 (9th Cir. 2015), *citing Silver v. Exec. Car Leasing Long–Term Disability Plan*, 466 F.3d 727, 733 (9th Cir. 2006), and *Sealy, Inc. v. Easy Living, Inc.*, 743 F.2d 1378, 1385 (9th Cir. 1984). Consequently, the court sees no need for adopting verbatim Debtors' proposed findings of fact and conclusions of law.

III. COMPLIANCE WITH BANKRUPTCY CODE SECTION 1129(a) AND (b)[2]

The following are factual determinations the court must make, together with legal conclusions the court must draw, as a predicate to issuance of the OCP that will follow.

The Debtors have the burden of proving satisfaction of the applicable elements of section 1129(a) and (b) by a preponderance of the evidence and have satisfied that burden.

The Disclosure Statement,[3] the Disclosure Statement Supplement, the Plan, the Disclosure Statement and Solicitation Procedures Order, the Solicitation Packages, the Ballots (including, without limitation, the Direct Fire Claim Ballots and the Fire Victim Master Ballots), the Notices of Non-Voting Status, and the Confirmation Hearing Notice, have been transmitted, served, and published in compliance with the Disclosure Statement and Solicitation Procedures Order, the Rules, the Bankruptcy Local Rules, and the Scheduling Order. Such transmittal, service, and publication were adequate and sufficient, and no other or further notice is or shall be required.

The Plan Proponents (and, as applicable, each of their respective Representatives) participated in good faith in negotiating at arm's length the Plan and all contracts, instruments, releases, agreements, and

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[2] Unless otherwise indicated, all chapter, section and rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037 (the "Rules").

[3] All capitalized terms used throughout have the meanings set forth in the underlying documents that appear throughout the record of this case; for brevity they are not redefined here.

documents related to, or necessary to, implement, effectuate, and consummate the Plan, including the Plan Settlements, Plan Documents, and all contracts, instruments, agreements, and documents to be executed and delivered in connection with the Plan.

As shown by the Pullo Dec, votes to accept or reject the Plan have been solicited and tabulated fairly, in good faith, and in a manner consistent with the Bankruptcy Code, the Rules, and the Solicitation Procedures as approved by the Court.

The Plan complies in all respects with the applicable provisions of the Bankruptcy Code, including without limitation, sections 1122 and 1123. In addition to providing for Administrative Expense Claims, Professional Fee Claims, DIP Facility Claims, and Priority Tax Claims, the Plan designates thirty (30) Classes of Claims and four (4) Classes of Interests. The Claims or Interests placed in each Class are substantially similar to other Claims or Interests, as the case may be. Valid business, factual, and legal reasons exist for separately classifying the various Classes of Claims or Interests. Such Classes do not unfairly discriminate between holders of Claims and Interests. The Plan satisfies section 1122 and 1123(a)(1).

Article III of the Plan identifies the Unimpaired "Non-Voting Classes":

> Class 1A (HoldCo Other Secured Claims), Class 2A (HoldCo Priority Non-Tax Claims), Class 3A (HoldCo Funded Debt Claims), Class 4A (HoldCo General Unsecured Claims), Class 5A-IV (HoldCo Ghost Ship Fire Claims), Class 6A (HoldCo Workers' Compensation Claims), Class 7A (HoldCo Environmental Claims), Class 8A (HoldCo Intercompany

> Claims), Class 9A (HoldCo Subordinated Debt Claims), Class 11A (HoldCo Other Interests), Class 1B (Utility Other Secured Claims), Class 2B (Utility Priority Non-Tax Claims), Class 3B-II (Utility Reinstated Senior Note Claims), Class 3B-V (Utility PC Bond (2008 F and 2010 E) Claims), Class 4B (Utility General Unsecured Claims), Class 5B-IV (Utility Ghost Ship Fire Claims), Class 6B (Utility Workers' Compensation Claims), Class 7B (2001 Utility Exchange Claims), Class 8B (Utility Environmental Claims), Class 9B (Utility Intercompany Claims), Class 10B (Utility Subordinated Debt Claims), Class 11B (Utility Preferred Interests), and Class 12B (Utility Common Interests).

Article III of the Plan identifies the Impaired "Voting Classes":

> Class 5A-I (HoldCo Public Entities Wildfire Claims), Class 5A-II (HoldCo Subrogation Wildfire Claims), Class 5A-III (HoldCo Fire Victim Claims), Class 10A-I (HoldCo Common Interests), Class 10A-II (HoldCo Rescission or Damage Claims), Class 3B-I (Utility Impaired Senior Note Claims), Class 3B-III (Utility Short-Term Senior Note Claims), Class 3B-IV (Utility Funded Debt Claims), Class 5B-I (Utility Public Entities Wildfire Claims), Class 5B-II (Utility Subrogation Wildfire Claims), and Class 5B-III (Utility Fire Victim Claims).

Article IV of the Plan specifies the treatment of Claims and Interests in such Voting Classes. The Plan complies with section 1123(a)(3).

The Plan provides for the same treatment by the Debtors for each Claim or Interest in each respective Class, unless the holder of a particular Claim or Interest has agreed to less favorable treatment of such Claim or Interest. The Plan complies with section 1123(a)(4).

The Wells Dec, the Boken Dec, the Ziman Dec, the Debtors' exhibits, and the record establish the following: the Plan, the Plan Documents, and the various documents and agreements set forth in the Plan Supplement and the Exhibits to the Plan provide adequate and proper means for the Plan's implementation, including, without limitation, (i) the imposition of the Channeling Injunction, (ii) the establishment and funding of the Fire Victim Trust, the Subrogation Wildfire Trust, and the Public Entities Segregated Defense Fund, (iii) payment in Cash in satisfaction of the Public Entities Wildfire Claims, (iv) the issuance of the New Utility Funded Debt Exchange Notes, the New Utility Long-Term Notes, and the New Utility Short-Term Notes, the Plan Funding Documents (as defined below), and Debt Backstop Approval Order, or any similar approvals granted following the conclusion of trial, as applicable, (v) the issuances and incurrences necessary to obtain or effectuate the Plan Funding or the Exit Financing, the Plan Funding Documents, and Debt Backstop Approval Order or any similar approvals granted following the conclusion of trial, as applicable, and (vi) the offer, sale, distribution, and issuance of any equity securities, equity forward contracts or other equity-linked securities necessary to obtain any of the Plan Funding or as otherwise contemplated by the Plan, the Backstop Commitment Letters, or the Equity Backstop Approval Order, as applicable (including, without limitation, to authorize and reserve for issuance New

HoldCo Common Stock to be issued pursuant to any such transaction or upon the exercise, conversion or settlement of any such equity forward contracts or other equity-linked securities). The Plan complies with section 1123(a)(5).

The certificates of incorporation, articles of incorporation, bylaws, limited liability company agreement or similar governing documents, as applicable, of each Debtor have been or will be amended on or prior to the Effective Date to prohibit the issuance of nonvoting equity securities in accordance with section 1123(a)(6).

To the extent known and determined, the identity and affiliation of the persons who will serve as members of the New Board have been disclosed in the Plan Supplement [and on the record of the Confirmation Hearing], with the identities of the remaining members of the boards of directors or managers of the Reorganized Debtors to be disclosed, together with their affiliations, on or before the Effective Date as provided in Exhibit G of the Plan Supplement, which sets forth who shall serve as officers of the Reorganized Debtors (as may be modified pursuant to the Plan Supplement). The Plan Proponents have established that the appointment to, or continuance in, such positions of such persons is consistent with the interests of the holders of Claims against and Interests in the Debtors and public policy. Additionally, the Subrogation Wildfire Trust Agreement and the Fire Victim Trust Agreement, attached as Exhibits C and D, respectively, to the Plan Supplement, name the Subrogation Wildfire Trustee and the Fire Victim Trustee, respectively. The Plan satisfies sections 1123(a)(7) and 1129(a)(5).

The provisions of the Plan, including, without limitation, approval of the Public Entities Plan Support

Agreements, are appropriate and not inconsistent with the applicable provisions of the Bankruptcy Code. The Court's prior approvals of the settlements embodied in the Subrogation Claims RSA, the Tort Claimants RSA, the Noteholder RSA, the Federal Agency Settlement, and the State Agency Settlement remain in full force and effect. The Plan satisfies section 1123(b).

The Plan is dated and identifies the entities submitting the Plan as proponents, thereby satisfying Rule 3016(a).

The Plan is in accord with applicable provisions of Title 11, as required by section 1129(a)(1).

The Plan Proponents have proposed the Plan in accord with the provisions of Title 11, in good faith and not by any means forbidden by law, as required by sections 1129(a)(2) and (3).

Any payment made or to be made by any of the Debtors for services or for costs and expenses in or in connection with the Chapter 11 Cases, or in connection with the Plan and incident to the Chapter 11 Cases has been approved by, or is subject to the approval of, the Court as reasonable. Pursuant to the decision of the California Public Utilities Commission (the "CPUC" or the "Commission") in I.19-09-016 [approving the Plan], the Utility shall reimburse the Commission for payment of the fees and expenses incurred by the Commission for its outside counsel and financial advisor for services rendered relating to the Chapter 11 Cases, related proceedings and associated financings, and will not seek cost recovery of the Commission's costs for such fees and expenses. Such reimbursement for fees and expenses incurred by the Commission shall not be subject to any further approval or review

for reasonableness by the Court, the fee examiner for the Chapter 11 Cases, or any other party in interest. The foregoing constitute compliance with section 1129(a)(4).

The CPUC has approved the Plan as satisfying the Wildfire Legislation (AB 1054) requirement that it be neutral, on average, to ratepayers. Any future rate increases will be subject to CPUC review processes and are not a result of the Plan. The Federal Energy Regulatory Commission has likewise consented to the Plan with respect to the treatment of the FERC Tariff Rate Proceedings. The Plan satisfies section 1129(a)(6).

The Disclosure Statement, the Disclosure Statement Supplement, the Plan, the Plan Supplement, the Boken Dec, and the other evidence proffered or adduced at the Confirmation Hearing (i) are persuasive and credible, (ii) have not been controverted by other evidence, and (iii) establish that each holder of an impaired Claim or Interest either has accepted the Plan or will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount such holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on such date. The Plan satisfies section 1129(a)(7).

The Non-Voting Classes are Unimpaired under the Plan and are presumed to have accepted the Plan pursuant to section 1126(f). As reflected in the Pullo Dec and Voting Certification, Classes 5A-I (HoldCo Public Entities Wildfire Claims), 5A-II (HoldCo Subrogation Wildfire Claims), 5A-III (HoldCo Fire Victim Claims), 10A-I (HoldCo Common Interests), 3B-I (Utility Impaired Senior Note Claims), 3B-II (Utility Reinstated Senior Note Claims), 3B-IV

(Utility Funded Debt Claims), 5B-I (Utility Public Entities Wildfire Claims), 5B-II (Utility Subrogation Wildfire Claims), and 5B-III (Utility Fire Victim Claims) have voted to accept the Plan.

The treatment of Administrative Expense Claims and Priority Non-Tax Claims pursuant to Sections 2.1, 2.2, 2.3, 4.2, and 4.17 of the Plan, respectively, satisfies the requirements of sections 1129(a)(9)(A) and (B). The treatment of Priority Tax Claims pursuant to Section 2.4 of the Plan satisfies the requirements of section 1129(a)(9)(C).

Classes 5A-I (HoldCo Public Entities Wildfire Claims), 5A-II (HoldCo Subrogation Wildfire Claims), 5A-III (HoldCo Fire Victim Claims), 10A-I (HoldCo Common Interests), 3B-I (Utility Impaired Senior Note Claims), 3B-III (Utility Short-Term Senior Note Claims), 3B-IV (Utility Funded Debt Claims), 5B-I (Utility Public Entities Wildfire Claims), 5B-II (Utility Subrogation Wildfire Claims), and 5B-III (Utility Fire Victim Claims) are Impaired under the Plan and have accepted the Plan, determined without including any acceptance of the Plan by any insider. The Plan complies with section 1129(a)(10).

The evidence proffered or adduced at the Confirmation Hearing establishes that the Plan, subject to the occurrence of the Effective Date, is feasible and that confirmation of the Plan is not likely to be followed by liquidation, or the need for further financial reorganization of the Debtors or the Reorganized Debtors. The Plan complies with section 1129(a)(11).

All fees payable under section 1930 of chapter 123 of title 28 of the United States Code, as determined by the Court, have been paid or will be paid pursuant to Section 12.5 of the Plan. Pursuant to Section 12.5 of

the Plan, on the Effective Date, and thereafter as may be required, such fees, together with interest, if any, pursuant to section 3717 of title 31 of the United States Code, shall be paid by each of the Debtors. The Plan complies with section 1129(a)(12).

Pursuant to Section 8.5 of the Plan, all Employee Benefit Plans are deemed to be, and shall be treated as, executory contracts under the Plan and, on the Effective Date, shall be assumed pursuant to sections 365 and 1123. All outstanding payments which are accrued and unpaid as of the Effective Date pursuant to the Employee Benefit Plans shall be made by the Reorganized Debtors on the Effective Date or as soon as practicable thereafter and, therefore, the Plan satisfies the requirements of section 1129(a)(13).

The Debtors are not required by a judicial or administrative order, or by statute, to pay any domestic support obligations, and therefore, section 1129(a)(14) is inapplicable.

The Debtors are not individuals, and therefore, section 1129(a)(15) is inapplicable.

Each of the Debtors is a moneyed, business, or commercial corporation or trust, and therefore, section 1129(a)(16) is inapplicable.

Section 1129(a)(8) has not been satisfied with respect to Class 10A-II. This discussion will be completed in the OCP or other order once the court is advised as to the outcome of the mediation referred to in Section IV, B.

The Plan is the only Plan currently on file, and therefore, section 1129(c) is inapplicable.

The principal purpose of the Plan is not the avoidance of taxes or the avoidance of the application

of section 5 of the Securities Act of 1933, thereby satisfying section 1129(d).

IV. DISCUSSION OF OBSTACLES TO CONFIRMATION

A. Registration Rights Agreement

A major issue of contention and distress with numerous fire survivors and others was the lack of detail about the ability of the Fire Victim Trustee to monetize any of the Trust's share of Debtor PG&E Corporation's publicly traded stock in the future. The court was reluctant to oversee an exercise in futility, namely confirming a Plan doomed to fail within weeks by not becoming effective.

The Plan Proponents, the TCC and the Trustee, with the invaluable assistance of Judge Randall Newsome as court-appointed mediator, resolved their differences, agreed upon crucial elements defining how to value Effective Date equity to be issued to the Trust and the equitable means of protecting the Fire Victim Trust, the diluted old equity and the new equity under various circumstances. These have been embodied in, among other documents, the Order Approving the Parties' Joint Stipulation Regarding the Registration Rights Agreement and Related Agreement of the Fire Victim Trust (Dkt. #7918) and the Order Approving the Parties' Joint Stipulation Regarding Normalized Estimated Net Income (Dkt. #7919).

B. Securities Claim Litigation

As of the date of this Memorandum Decision, the parties are engaged in mediation regarding this matter. The court will issue an appropriate order later.

C. Objection by Mr. William B. Abrams

During the course of these cases, creditor William B. Abrams has been an active and passionate advocate for the rights of fire victims like himself. He has filed multiple objections to confirmation of the Plan asserting, among other things, that that the Plan is not feasible as Debtors will lack financial viability to perform it. He has steadfastly argued that the Plan was not proposed in good faith and "has been leveraged for the primary purposes of investor short-term payouts at the detriment of plan integrity." He has observed that throughout the case, "the Debtors had every intention of leveraging the victim trust agreement, the registration rights agreement and the 'hush and gag' clauses within the TCC RSA to undermine the agreed $13.5B victim settlement and to make certain material changes to the financing of their plan."

For the reasons stated elsewhere in this Memorandum Decision, the court has determined that the Plan is feasible and thus will OVERRULE Mr. Abrams' feasibility argument on the basis of the powerful and virtually uncontroverted evidence presented by the Debtors. And while the court appreciates Mr. Abrams' concerns about the fairness of the negotiated Plan, it disagrees with him that the TCC has been "hushed and gagged" about deficiencies. To the contrary, the TCC has appeared and challenged provisions of the Plan that it finds problematic, but it nonetheless supports confirmation.

As to Mr. Abrams' concerns that investors have highjacked the plan process, the court notes that multiple parties have participated in this case, including separate groups of unsecured creditors represented by the OCUC and the TCC. These various parties have actively and consistently acted to protect their own

constituencies' interests. The mediator was able to get all these parties to reach agreements satisfactory to each of them. That mediation was not controlled by equity holders; they were just one group of many participating in the process.

Finally, Mr. Abrams' contentions that the Plan is detrimental to the fire victims is belied by the overwhelming acceptance of the Plan by these creditors. Mr. Abrams' desire for a better PG&E, for a better environment and a better Northern California, safe from wildfires, while aspirational and well-intended, is not something the Bankruptcy Code or this court can deliver.

The court therefore OVERRULES Mr. Abrams' objections to confirmation.

D. Objection by Oklahoma Firefighters Pension and Retirement System.

The Oklahoma Firefighters Pension and Retirement System ("OFPRS") objects to the release of Debtors' unassigned claims and causes of action against former officers and directors. In particular, OFPRS contends that Debtors' assignment of certain claims and causes of action to creditors is too narrow, as section 1.8 of the Plan limits the recovery for such claims "solely to the extent of any directors and officers' Side B Insurance Coverage." OFPRS asserts that this provision constitutes an improper discharge. The court disagrees.

As the court discusses elsewhere, this court's decision in *PG&E I* allows a debtor to confirm a plan that releases its claims against third parties. Here, Debtor has agreed to carve out of the Plan's release provisions and to assign to creditors certain of its claims against third parties, on the condition that any recovery on these claims would be limited to its Side B

Insurance Coverage. Debtor did not propose this restriction in a vacuum; rather, the parties in the mediated settlement involving Debtors, the TCC, the OCC and others agreed that liability would be limited to Side B Insurance Coverage. Furthermore, OFPRS's class (Class 10A-I -- Holdco Common Interests) voted overwhelmingly to accept the Plan, notwithstanding the limitation on the source of recovery. Accordingly, the court hereby OVERRULES the objection filed by OFPRS.

E. Objections by the OCUC and Others

Over the last few weeks, Plan Proponents, the OCUC and other objecting parties have filed a flurry of documents relating to the OCUC's initial objection (Dkt. #7300) to confirmation. At a hearing on June 16, 2020, counsel for Debtors indicated that the parties have resolved most of the contested matters, with three remaining issues requiring resolution by the court. The following are the court's decisions on them.

1. Modification of Plan Section 8.2(e).

The OCUC contends that the Plan Proponents have improperly designated General Unsecured Claims (as defined in the Plan) as unimpaired. In particular, the OCUC asserts that Section 8.2(e) and corresponding Paragraph 34(d) of the proposed OCP impermissibly provide for a broad and automatic disallowance of prepetition indemnification or contribution claims arising from the rejection or assumption of executory contracts, even when an affected creditor has filed a proof of claim asserting such a contingent claim. As the OCUC stated in its response filed on June 11, 2020 (Dkt. #7896):

> [T]he Debtors' proposed modifications to Section 8.2(e) of the Plan and Paragraph

> 34(d) of the Confirmation Order continue to refer to the "full release and satisfaction of any Claims against any Debtor or defaults by any Debtor . . . arising under any assumed executory contract or unexpired lease." *See* Debtors' Response at 4-5 (emphasis added). *This is contrary to Bankruptcy Code section 365(b)(1)(A), which is expressly limited to "defaults."*

Id. (emphasis added).

Debtors, on the other hand, argue that defaults should be handled in a manner consistent with section 365, alluding to comments made by the court at a hearing on June 4. Nonetheless, Debtors modified Section 8.2(e) of the Plan and Paragraph 34(d) of the proposed OCP as follows:

> Assumption or assumption and assignment of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any Claims ~~and Causes of Action~~ against any Debtor or defaults by any Debtor arising under any assumed executory contract or unexpired lease at any time before the date that the Debtors assume or assume and assign such executory contract or unexpired lease, whether monetary or nonmonetary, ~~including all Claims arising under sections 503(b)(9) or 546(c) of the Bankruptcy Code, any defaults of provisions restricting the change in control or ownership interest composition, or any other bankruptcy related defaults. Any proofs of Claim filed with respect to executory contract or unexpired lease that has been assumed or assumed and assigned shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Bankruptcy Court~~ to the fullest extent permitted under applicable law.

See Plan Proponents' Response filed on June 14, 2020 (Dkt. #7939 at pgs. 2-3). To the extent a particular assignment of a claim is not "permitted under applicable law," an unsecured creditor retains its right to assert that defense.

The OCUC objected to this proposed modification, contending that Debtors were wrongfully attempting to assume the benefits of executory contracts without assuming their burdens, citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 531 (1984); *Elliott v. Four Seasons Props. (In re Frontier Props., Inc.)*, 979 F.2d 1358, 1367 (9th Cir. 1992) ("the cost of assumption is nothing short of complete mutuality and requires performance in full just as if bankruptcy had not intervened.") (internal quotation omitted).[4]

The problem arises upon consideration of the consequences of a debtor's assumption of an executory contract, whether under section 365 or as part of a plan as contemplated by section 1123(b)(2). Rejection is easy to apply, and the concepts are well established. But assumption is permissible whether or not there has been a default. If the former, section 365(a) operates (with certain exceptions); if the latter, the

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[4] Citing First Circuit law, the OCUC also argued that section 502(e)(1)(B) is applicable only when an estate is insolvent. *Juniper Dev. Grp. v. Kahn (In re Hemingway Transport, Inc.)*, 993 F.2d 915, 923 (1st Cir. 1993) ("The sole purpose served by section 502(e)(1)(B) is to preclude redundant recoveries on identical claims against *insolvent* estates in violation of the fundamental Code policy fostering equitable distribution among all creditors of the same class") (emphasis added).

This court disagrees. Nothing in the plain language of section 502(e)(1) limits its applicability to insolvent estates. Furthermore, the court could not locate any Ninth Circuit cases that hold that solvent debtors cannot object to the allowance of claims.

debtor must cure defaults, provide compensation and/or provide adequate assurances, etc. *See* sections 365(b)(A)-(C).

The Plan, in Section 8.2, sets forth how monetary defaults must be dealt with. To be consistent with section 1124, particularly with assumed contracts on which there are no defaults, the counterparty must be afforded all of the rights preserved for it under the "cure", "reinstate", and "compensate" (twice) provisions of subsections (A)-(D) and the "not otherwise alter" provisions of subsection (E). Debtors' proposed "release and satisfaction" and "or nonmonetary" revisions to section 8.2(e) and Paragraph 34(d) of the OCP are too ambiguous, particularly since assumption includes executory contracts having no extant defaults. The OCUC's insistence on the precise language of section 365, and the court's appreciation of section 1124, should control. Counsel should meet and confer on appropriate language for the OCP.

2. Definition of Fire Claim

The OCUC also objects to the definition of "Fire Claim," contending that Debtors must clarify that claims for indemnification and contribution against Debtors asserted by providers of goods and services are not Fire Claims (and are thus not channeled to the Fire Victim Trust). Otherwise, the claims of those providers of goods and services are impaired.

The definition is clear. A claim asserted by a provider of goods and services, whether or not a counterparty to an assumed executory contract, that suffered damages from the Fires (as defined in Section 1.86), is impaired and should be channeled to the Fire Victims Trust. If its damages were not caused by or "in any way arising out of the Fires" (See Section 1.78),

but arise out of the rejection of an executory contract or are part of the cure of an assumed one, they should be dealt with under Article VIII of the Plan and section 365.

The court agrees with Debtors that "in the unlikely event that a dispute arises," a court can resolve them. But it is best to avoid ambiguity before the problem arises. Counsel for Debtors and the OCUC should also meet and confer on appropriate clarifying language for the OCP, consistent with this ruling.

3. Deadline for the Assumption and Rejection of Executory and Unexpired Leases

The OCUC and others object to what the Debtors call a "modest" request for an extension of fifteen additional business days to amend their schedules to assume or reject executory contracts. While it is regrettable that this request has become necessary, the press of the business of confirmation is heavy even for the Debtors and their attorneys. The impact on opponents is slight, and the discrete and possibly indefensible question of whether to move a contract being assumed to one being rejected is more disappointing to the counterparty than its burden in calculating its damages. The converse is more problematical, but not something any party who does business with Debtors cannot handle. Because of the obvious solvency of the Debtors, the court does not worry that this slight adjustment to the timing for a very particular issue would have altered any counterparty's decision to object to confirmation.

For consistency, the Debtors' requested extension and the additional time for responses should be the same: thirty days (calendar, not business) both ways.

Debtors should upload an order granting these extensions or include them in the OCP.

F. Exculpation and Release Clauses

The United States Trustee and others object to certain release and exculpation provisions of the Plan.

1. Release of Claims Held by Debtors (Plan Section 10.9(a))

Section 10.9(a) releases certain rights and causes of action held by Debtors, excluding the Assigned Rights and Causes of Action defined in section 1.8 of the Plan. Multiple parties objected to these releases. Significantly, Debtors are not releasing all claims against the released parties, but only those claims that it will continue to hold as of and after the Effective Date. Consequently, Section 10.9(a) is not "a broad sweeping provision that seeks to discharge or release nondebtors from any and all claims that belong to others." *Blixseth v. Credit Suisse (In re Blixseth)*, No. 16-35304, 2020 WL 3089263, at *5 (9th Cir. June 11, 2020). As noted by the Ninth Circuit in *Blixseth,* "a discharge in bankruptcy does not extinguish the debt itself but merely releases the debtor from personal liability. . . . The debt still exists, however, and can be collected from any other entity that may be liable." *Id.* at 6. *Id.* at *5-6, *citing Landsing Diversified Props.-II v. First Nat'l Bank & Tr. Co. of Tulsa (In re W. Real Estate Fund)*, 922 F.2d 592, 600 (10th Cir. 1990) (alteration in original) (*quoting In re Lembke*, 93 B.R. 701, 702 (Bankr. D.N.D. 1988)); *see also Lewis v. Scott (In re Lewis)*, 97 F.3d 1182, 1185 (9th Cir. 1996).

Moreover, this court has previously held that claims held by a debtor are property of the estate and may be released as part of a plan. *See In re Pac. Gas & Elec.*, 304 B.R. 395, 416–18, n.26 ("*PG&E I*") ("it is permissi-

ble for a plan to provide for the settlement or adjustment of any claim 'belonging to the debtor or to the estate.'"). That said, such a release by Debtors of claims belonging to them can be approved only if it represents a valid exercise of their business judgment and satisfies the fair, reasonable, and adequate standard set by Rule 9019, as defined by the Ninth Circuit in *Martin v. Kane (In re A&C Props.),* 784 F.2d 1377, 1381 (9th Cir. 1986). *PG&E I,* 304 B.R. at 416.[5] Nonetheless, this court also acknowledged in *PG&E I* that a Rule 9019 review may not be necessary when creditors have overwhelmingly voted in favor of the plan; here, however, some of the objecting creditors hold unimpaired claims and thus were unable to vote on the plan. Section 10.9(a) does not compel third parties to release whatever claims they could assert, individually or collectively, against the Released Parties. Such third parties can still pursue whatever claims they may have against the Released Parties.

In light of the foregoing, the court OVERRULES the objections to the release set forth in section 10.9(a) of the Plan.

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[5] Debtors have not demonstrated how the proposed releases set forth in section 10.9(a) satisfy the requirements set forth in *A&C Propertiess* for determining whether a settlement is fair and reasonable under Rule 9019. The factors to be weighed by a court include: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *Id.*

2. Release of Claims Held by Non-Debtors (Plan Section 10.9(b)

Section 10.9(b) of the Plan provides that Releasing Parties (defined in Section 1.180 as the Debtors, the Reorganized Debtors, and "any holder of a Claim or Interest that is solicited and voluntarily indicates on a duly completed Ballot [that it] opts into granting such releases") have released Debtors and other non-debtor parties identified in section 1.179.

Multiple parties have objected to this provision, contending that it is an improper release of claims held by non-debtors. The proposed release, however, is not universal or mandated. Rather, it requires the non-debtor parties to affirmatively opt-in to a release of their claims. As releases in Section 10.9(b) are consensual and require an affirmative opt-in by the affected creditor, the court determines that such releases do not violate section 524(e), which prohibits only non-consensual third-party releases. Consensual third-party releases do not run afoul of section 524(e) or governing Ninth Circuit law such *as Resorts Int'l v. Lowenschuss (In re Lowenschuss)*, 67 F.3d 1394, 1401-02 (9th Cir. 1995).

Section 524(e) provides that "[e]xcept as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." While the Ninth Circuit stated in *Lowenschuss* that it "has repeatedly held, without exception, that [section] 524(e) precludes bankruptcy courts from discharging the liabilities of non-debtors," those holdings arose in cases where voting creditors did <u>not</u> affirmatively opt to discharge non-debtors. In these cases, creditors or classes of creditors were deemed to have consented to releases of third parties simply by

voting in favor of the plan or by not voting at all. As this court observed in *PG&E I*, *Lowenschuss* is inapplicable when a non-debtor has consented to the third-party release:

> This court is bound by, and does not question, the legal principle set forth in *Lowenschuss*, in *In re American Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir. 1989), and in *Underhill v. Royal*, 769 F.2d 1426, 1432 (9th Cir. 1985) that liabilities of nondebtors cannot be discharged through a plan. This legal principle, however, is inapplicable here because (unlike in Lowenschuss, American Hardwoods, and Underhill) the Plan does not discharge or release nondebtors from claims that belong to others (except the Commission, which has consented to the release).

PG&E I, 304 B.R. at 418 n.26. *See also In re Station Casinos, Inc.,* No. 09-52477, 2011 WL 6813607 (Bankr. D. Nev. June 08, 2011) ("A release of non-debtor third parties voluntarily and knowingly given by a creditor or equity holder in connection with a chapter 11 plan does not implicate the concerns regarding third party releases discussed by the Ninth Circuit Court of Appeals in *Lowenschuss*). The court concludes that *Lowenschuss* does not bar the voluntary opt-in releases contained in the Plan and therefore OVERRULES objections to these provisions.

3. Exculpation Provisions

Multiple parties, including the United States Trustee, objected to provisions exculpating non-debtors for actions taken in the course of the plan approval process. The Ninth Circuit rejected similar objections in the *Blixseth*. The court held that section 524(e) does

not bar an exculpation clause protecting "various participants in the Plan approval process." *Blixseth*, 2020 WL 3089263, at *5. Citing *In re PWS Holding Corp.*, 228 F.3d 224, 245–46 (3d Cir. 2000), the Ninth Circuit observed:.

> Consistent with our analysis, the Third Circuit has upheld an exculpation clause similar to the one here at issue. *PWS*, 228 F.3d at 245–46. In doing so, the court took into account that the exculpated non-debtors there were members of the creditors' committee and related professionals and individuals. At the same time, and more broadly, *PWS* stated that "Section 524(e), by its terms, *only* provides that a discharge of the debtor does not affect the liability of nondebtors on claims by third parties against them *for the debt discharged in bankruptcy*," *id*. at 245 (emphasis added), and held that the partial exculpation for acts committed during the process of developing and confirming a Chapter 11 plan did not "affect the liability of another entity on a debt of the debtor within the meaning of § 524(e)," *id*. at 247.

Blixseth, 2020 WL 3089263, at *6.

In concluding that the Bankruptcy Code does not prohibit an exculpation clause protecting various parties who participated in the approval process, the Ninth Circuit held that any such exculpation clause should relate only to that process. *Id.* at *5. Section 10 covers a lot of players, a number of documents and a number of events and activities. That reach is consistent with the complexities and difficulties of these cases, and comports with the contours of such

a provision as recognized in *Blixseth*. The court OVERRULES these objections.

G. Objections by Patricia Garrison, et. al.

Creditor Patricia Garrison (Dkts. #7194, #7378), along with the parties that joined her (Dkts. #7309, #7451), objected on the grounds that the Plan impermissibly classified fire victims in different classes and that she has not been dealt with in good faith as required by section 1129(a)(3). Because the subject claims all arise from fires, Ms. Garrison believes they should be in the same class.

Section 1122(a) requires that a claim must be placed in a particular class only if the claim is substantially similar to other claims in the class. Further, claims that are similar may be placed into separate classes "if the debtor can show a business or economic justification for doing so." *In re Loop 76, LLC*, 465 B.R. 525, 536 (9th Cir. BAP 2012), aff'd, 578 F. App'x 644 (9th Cir. 2014) (citing *Barakat v. Life Ins. Co. of Va. (In re Barakat)*, 99 F.3d 1520, 1526 (9th Cir.1996). Debtors have separated these claims into three categories: Fire Victim Claims, Subrogation Wildfire Claims, and Public Entities Wildfire Claims. They argue that separate classification is necessary because, specific to the Subrogation Wildfire Claims, those claims are based on different legal theories of liability. Further, each class receives distributions through different procedures tailored to that class, and the classes have accepted different treatment pursuant to executed settlement agreements. For these reasons, Debtors have provided an adequate business justification for separate classification and the court OVERRULES Ms. Garrison on this point.

In addition, Ms. Garrison's second argument fails. A plan is proposed in good faith, in part, if creditors have been dealt with in a fundamentally fair manner. *See* section 1129(a)(3); *In re Stolrow's Inc.*, 84 B.R. 167, 172 (9th Cir. BAP 1988) (citing *In re Jorgensen*, 66 B.R. 104, 109 (9th Cir. BAP 1986). Debtors assert that fundamental fairness has been achieved here as the Plan consists of a mostly consensual resolution that addresses all claims and reflects considerable negotiation and agreement with all major parties. As such, the court agrees with Debtors that the Plan has been proposed in good faith.

The court OVERRULES these objections.

H. Objections by Anita Freeman, GER Hospitality, LLC, et al.

Creditors Anita Freeman, GER Hospitality, LLC, et al. filed a joint objection (Dkt. #7316) raising a number of issues that have mostly been dealt with in other parts of this Memorandum Decision. In this section, the court addresses a specific component of this objection, namely the split of consideration between stock and cash to fire victims. Ms. Freeman asserts that fire victims are impermissibly being treated differently from other creditors as they are receiving a distribution that includes shares of stock. The court iterates that this treatment was agreed upon by the parties in the Tort Claimants RSA, and that fire victims voted in favor of this treatment. As stated immediately above, the court has already found that separate classification of the different types of fire victims is permissible, and Ms. Freeman offers nothing to show that the separate treatment is discriminatory, or that the accepted treatment by the class is somehow impermissible.

As such, differing treatment is not an issue and the OVERRULES the objections on this point.

One final thought about these objections is in order. From comments made at the confirmation trial by Ms. Freeman's counsel, and thereafter in a post-confirmation CERTAIN FIRE VICTIMS PROPOSED MODIFICATIONS TO DEBTORS PLAN AND CONFIRMATION ORDER (Dkt. #7935), it is apparent that the real objection here is that there should have been a better outcome, whether with more money, more stock, less involvement by hedge funds or even liquidation. The court ignored those proposed modifications and OVERRULES these objections now. The impaired classes have voted for the present Plan, and to sustain these objections would be to ignore the wishes of that very strong majority.

I. Brief Summary of Prior Rulings

Several parties have raised objections related to issues that have been dealt with previously in this case. In this section, the court will dispose of the objections that have already been adjudicated by this court.

The court incorporates by reference its Memorandum Decision Regarding Postpetition Interest (Dkt. #5226) and its Interlocutory Order Regarding Postpetition Interest (Dkt. #5669). As postpetition interest is provided for in the Plan as required, this decision effectively overrules all objections which raise improper payment of postpetition interest, including the UCC (Dkt. #7300), the Ad Hoc Trade Claim Holders (Dkt. #7288), and Mizuho Bank, Ltd (Dkt. #7221). Any other objections not specifically listed here are also OVERRULED on this point.

The court incorporates by reference its Memorandum Decision on Inverse Condemnation (Dkt. #4895) and accompanying order (Dkt. #4949). Any objections not specifically listed here are OVERRULED on this point. The remaining "Issue 2" (*see* the Corrected Joint Statement, Dkt. #7875) will be dealt with by separate order or in the OCP.

Finally, the court incorporates by reference its prior decision regarding challenges to the Fire Victims Trust Agreement and the Claims Resolution Procedures, namely, the Memorandum on Objection of Adventist Health, A&T, Paradise Entities and Comcast to Trust Documents (Dkt. #7597). Parties including the SLF Fire Victims Group (Dkt. #7544), Mary Wallace (Dkt. #7367),[6] Helen Sedwick (Dkt. #7377), the International Church of the Foursquare Gospel (Dkt. #7308), Eric and Julie Carlson (Dkt. #7363),[7] and Karl Knight (Dkt. #7366) all objected to confirmation on grounds that were already dealt with by this court's decision and are OVERRULED, setting aside any objections related to the aforementioned "Issue 2" (*see* the Corrected Joint Statement, Dkt. #7875) which will be dealt with by separate order or in the OCP. Any other objections not specifically listed here are also OVERRULED on this point.

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[6] Ms. Wallace also objected on the ground that she did not have adequate time to vote for the Plan. The court accepts Debtors' representation that she was sent the relevant materials in early April and OVERRULES this objection.

[7] Creditors here also asserted that they should be permitted to vet Trust Oversight Committee members as they are appointed, and the court OVERRULES this objection as there is no legal basis for the court to order this.

J. Remaining Objections

Any objections to confirmation not dealt with specifically in this Memorandum Decision, or reserved for further order, are OVERRULED. Objections to the admissibility of any evidence offered in connection with the confirmation trial will be the subject of a separate order to be issued prior to or concurrently with the OCP.

V. CONCLUSION

The court intends to issue the OCP on Friday, June 19, 2020, after counsel for the Debtors has had an opportunity to revise it in accordance with any provisions of the Memorandum Decision and any developments occurring before then. To that end, it has scheduled a hearing on June 19, 2020, at 12:00 Noon to resolve any remaining disagreements about the form of the OCP. Participation at the hearing will be limited to counsel for the Plan Proponents, the two Official Committees and any party to the reserved disputes identified in this Memorandum Decision.

END OF MEMORANDUM DECISION

APPENDIX F

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Bankruptcy Case No. 19-30088 (DM)

IN RE: PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

❑ Affects PG&E Corporation

❑ Affects Pacific Gas and Electric Company

☒ Affects both Debtors

* *All papers shall be filed in the Lead Case, No. 19-30088 (DM).*

Chapter 11
(Lead Case)
(Jointly Administered)

ORDER CONFIRMING DEBTORS' AND SHAREHOLDER PROPONENTS' JOINT CHAPTER 11 PLAN OF REORGANIZATION DATED JUNE 19, 2020

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WHEREAS, on March 16, 2020, PG&E Corporation ("PG&E Corp.") and Pacific Gas and Electric Company (the "Utility" and together with PG&E Corp., the "Debtors"), as debtors and debtors in possession in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), and certain funds and accounts managed or advised by Abrams Capital Management, L.P. and certain funds and accounts managed or advised by Knighthead Capital Management, LLC (the "Shareholder Proponents"), collectively as "proponents of the plan" within the meaning of section 1129 of title 11 of the United States Code (the "Bankruptcy Code"), filed the *Debtors' and Shareholder Proponents Joint Plan of Chapter 11 Reorganization Dated March 16, 2020* [Docket No. 6320] (as thereafter amended on May 22, 2020 [Docket No. 7521], June 19, 2020 [Docket No. 8048], and as may be further modified, amended, or supplemented from time to time, and together with all exhibits and schedules thereto, the "Plan");[1]

WHEREAS, on February 10, 2020, Prime Clerk LLC (the "Solicitation Agent") on behalf of the Plan Proponents, caused the Fire Victim Plan Solicitation Directive to be transmitted to certain law firms as set forth in the *Certificate of Service* of Craig E. Johnson regarding the Fire Victim Plan Solicitation Directive [Docket No. 5839] (the "Solicitation Directive Certification");

WHEREAS, by Order dated February 11, 2020 [Docket No. 5732] (the "Scheduling Order"), the Court, among other things, established (i) May 27, 2020, as

[1] Capitalized terms used herein not otherwise defined have the meanings given to them in the Plan, a copy of which is annexed hereto as Exhibit A, or the Confirmation Memorandum (defined below), as applicable.

the date for the commencement of the hearing to consider confirmation of the Plan (the "Confirmation Hearing"), and (ii) May 15, 2020, at 4:00 p.m. (Prevailing Pacific Time) as the deadline for (a) filing and serving objections to confirmation of the Plan (the "Plan Objection Deadline") and (b) impaired creditors and interest holders in the voting Classes to submit votes to accept or reject the Plan (the "Voting Deadline");

WHEREAS, on March 16, 2020, the Court entered (i) an Order [Docket No. 6321] (the "Equity Backstop Approval Order"), which among other things, (a) approved the terms of, and the Debtors' entry into and performance under, the Backstop Commitment Letters with the Backstop Parties, and (b) authorized the incurrence, payment and allowance of all Equity Backstop Obligations (as defined in the Equity Backstop Approval Order) as administrative expense claims, and (ii) an Order [Docket No. 6323] (the "Debt Backstop Approval Order"), which among other things, (a) approved the terms of, and the Debtors' entry into and performance under, the Debt Financing Commitment Letters (as defined in the Debt Backstop Approval Order), and (b) authorized the incurrence, payment and allowance of all Debt Commitment Obligations (as defined in the Debt Backstop Approval Order) as administrative expense claims;

WHEREAS, on June 16, 2020, the Court entered an Order [Docket No. 7972] (the "Amended Equity Backstop Approval Order"), which among other things, (i) approved the terms of, and the Debtors' entry into and performance under, the Amended Equity Backstop Commitment Documents (as defined in the Motion, dated June 9, 2020 [Docket No. 7848] (the "Amended Equity Backstop Approval Motion")) with the Backstop

Parties, and (ii) authorized the incurrence, payment and allowance of the Additional Backstop Commitment Share Premium (as defined in the Amended Equity Backstop Approval Motion) as an administrative expense claim;

WHEREAS, on March 17, 2020, the Court entered an Order [Docket No. 6340] (together with all schedules and exhibits thereto, the "Disclosure Statement and Solicitation Procedures Order"), which among other things, (i) approved the *Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization* (a solicitation version of which is filed at Docket No. 6353, including any exhibits and schedules thereto and as further amended, supplemented, or modified, the "Disclosure Statement") as containing adequate information as provided under section 1125 of the Bankruptcy Code, (ii) approved the form and manner of notice of hearing on the proposed Disclosure Statement, (iii) approved the procedures for (a) soliciting and tabulating votes to accept or reject the Plan, including procedures for the solicitation of votes from the holders of Fire Victim Claims and the establishment of a Record Date for voting on the Plan and serving related notices, and (b) voting to accept or reject the Plan, including procedures for the solicitation of votes from holders of Fire Victim Claims and the electronic submission of votes, (iv) approved (a) the forms of Ballots and Solicitation Packages (each as defined in the Disclosure Statement and Solicitation Procedures Order) and procedures for the distribution thereof, including the form of master ballot for the submission of votes to accept or reject the Plan by attorneys representing multiple holders of Fire Victim Claims and related solicitation directive form and solicitation procedures for holders of Fire Victim Claims, and (b) the form of Notice of Non-

Voting Status to be sent to holders of Claims and Interests that are Unimpaired under the Plan and who are, pursuant to section 1126(f) of the Bankruptcy Code, conclusively presumed to accept the Plan or are otherwise deemed not entitled to vote on the Plan, and (v) approving the form and manner of the Confirmation Hearing Notice (as defined in the Disclosure Statement and Solicitation Procedures Order);

WHEREAS, on March 25, 2020, the Court entered an Order approving the *Supplement to Disclosure Statement for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization* [Docket No. 6483] (the "Disclosure Statement Supplement");

WHEREAS, commencing on March 30, 2020, the Solicitation Agent, on behalf of the Plan Proponents, caused the Solicitation Packages (as defined in the Disclosure Statement and Solicitation Procedures Order) to be transmitted to all creditors and interest holders in strict compliance with the Solicitation Procedures as set forth in the *Certificate of Service* of Christina Pullo regarding the Plan, Disclosure Statement, Disclosure Statement Supplement, Solicitation Packages, and notice of the Confirmation Hearing [Docket No. 6893] and supplemental Certificates of Service filed at Docket Nos. 7059, 7082, 7084, 7114, 7123, 7184, 7342, 7348, and 7426 (collectively, the "Solicitation Certifications"), and the foregoing service, including, without limitation, the service of Solicitation Packages, Ballots, Direct Fire Victim Ballots, and Fire Victim Master Ballots to the holders of Fire Victim Claims and HoldCo Rescission or Damage Claims, as applicable, is adequate as provided by Rule 3017 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules");

WHEREAS, the Debtors caused the Confirmation Hearing Notice to be served on all parties in accordance with the applicable provisions of the Bankruptcy Code and Bankruptcy Rules and as set forth in the Disclosure Statement and Solicitation Procedures Order, as evidenced by the Solicitation Certifications and the *Affidavit of Publication* of Christina Pullo regarding publication of the Confirmation Hearing Notice [Docket No. 6935] (the "Publication Affidavit");

WHEREAS, the Debtors caused the Confirmation Hearing Notice to be published once in each of: *The Wall Street Journal (National Edition), USA Today, The Los Angeles Times, San Francisco Chronicle, The Bakersfield Californian, The Fresno Bee, The Modesto Bee, The Sacramento Bee, The Press Democrat, The San Jose Mercury News, The East Bay Times, The Record, The Paradise Post, The Chico Enterprise Record, The San Francisco Examiner, The Record Searchlight, The Red Bluff Daily News, The Times Standard, The Ukiah Daily Journal, The Union, The Napa Valley Register, The Trinity Journal in Weaverville, The Mad River Union in Arcata, The Del Norte Triplicate in Crescent City, The Mount Shasta Herald in Mount Shasta, The Siskiyou Daily News in Yreka, The Modoc County Record in Alturas, The Ferndale Enterprise in Fortuna,* and *The Marin Independent Journal*; and posted an electronic copy of the Confirmation Hearing Notice on the Case Website, all in accordance with the Disclosure and Solicitation Procedures Order, as evidenced by the Publication Affidavit;

WHEREAS, on April 9, 2020, the Court entered the *Order Pursuant to 11 U.S.C. §§ 105 and 363 and Fed. R. Bankr. P. 9019 (I) Approving Case Resolution Contingency Process and (II) Granting Related Relief*

[Docket No. 6721], which was amended and superseded by the Order entered on April 24, 2020 [Docket No. 6937] (the "CRCP Order");

WHEREAS, on May 1, 2020, the Debtors filed their Plan Supplement in connection with the Plan [Docket No. 7037] (together with all exhibits and schedules thereto, as supplemented on May 22, 2020 [Docket No. 7503], May 24, 2020 [Docket No. 7563], June 2, 2020 [Docket No. 7712], June 5, 2020 [Docket No. 7810], June 8, 2020 [Docket No. 7841], June 10, 2020 [Docket No. 7879], June 11, 2020 [Docket No. 7894], and June 12, 2020 [Docket No. 7929], and as it may be further amended, modified, or supplemented from time to time, the "Plan Supplement");

WHEREAS, the Debtors transmitted or caused to be transmitted notices of the proposed treatment of executory contracts and unexpired leases under the Plan to all applicable contract and lease counterparties, as evidenced by the *Certificate of Service* of Jamie B. Herszaft [Docket No. 7085], the *Certificate of Service* of Andrew G. Vignali [Docket No. 7639], the *Certificate of Service* of Sonia Akter [Docket No. 7883], and the *Certificate of Service* of Alain B. Francoeur [Docket No. 7906], and the Certificate of Service of Andrew G. Vignali [Docket No. 7982];

WHEREAS, on May 22, 2020, the Plan Proponents filed their *Joint Memorandum of Law and Omnibus Response in Support of Confirmation of Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization* [Docket No. 7528] (the "Confirmation Memorandum");

WHEREAS, the Confirmation Hearing was held on May 27, 2020, May 28, 2020, May 29, 2020, June 1,

2020, June 3, 2020, June 4, 2020, June 5, 2020, June 8, 2020, and June 19, 2020;

WHEREAS, the Court has considered all the proceedings held before the Court, the compromises and settlements embodied in and contemplated by the Plan, including without limitation, the settlements embodied in the Public Entities Plan Support Agreements, the Subrogation Claims RSA, the Tort Claimants RSA, the Noteholder RSA, the Federal Agency Settlement and the State Agency Settlement (collectively, the "Plan Settlements"), the process contained in the CRCP Order, and the evidence regarding confirmation of the Plan, and taken judicial notice of the documents and pleadings filed in these Chapter 11 Cases;

WHEREAS, the Court made certain findings of fact and conclusions of law on the record of the Confirmation Hearing, and such findings and conclusions will be deemed to be incorporated herein in their entirety;

WHEREAS, on June 11, 2020, the Court entered the *Order Approving Plan Funding Transactions and Documents in Connection with Confirmation of Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated May 22, 2020* [Docket No. 7909] (the "Financing Approval Order"), which is part of and fully incorporated into this Confirmation Order;

WHEREAS, on June 12, 2020, the Court entered the *Order Approving the Parties' Joint Stipulation Regarding the Registration Rights Agreement and Related Agreements of the Fire Victim Trust (Docket No. 7913)* [Docket No. 7918], which is part of and fully incorporated into this Confirmation Order;

WHEREAS, on June 12, 2020, the Court entered the *Order Approving the Parties' Joint Stipulation Regarding Normalized Estimated Net Income (Docket No. 7914)* [Docket No. 7919], which is part of and fully incorporated into this Confirmation Order;

WHEREAS, on June 17, 2020, the Court entered the *Memorandum Decision – Confirmation of Debtors' and Shareholders' Joint Chapter 11 Plan of Reorganization* [Docket No. 8001] (the "Memorandum Decision"),[2] which is part of and fully incorporated into this Confirmation Order;

WHEREAS, the Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D. Cal. Feb. 22, 2016), and Bankruptcy Local Rule 5011-1(a); and this is a core proceeding pursuant to 28 U.S.C. § 157(b); and venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and

WHEREAS, the Court takes judicial notice of the official docket of the Chapter 11 Cases maintained by the Clerk of the Court and/or its duly appointed agent, including, without limitation, all pleadings and other documents filed, all orders entered, and the evidence and arguments made, proffered, or adduced at the hearings held before the Court during the pendency of the Chapter 11 Cases, including, but not limited to, the hearings to consider the adequacy of the Disclosure Statement, the Disclosure Statement Supplement, the

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[2] The reference in the Memorandum Decision to the *Memorandum on Objection of Adventist Health, AT&T, Paradise Entities and Comcast to Trust Documents* entered on May 26, 2020 [Docket No. 7597] refers to such decision as it was supplemented on the record of the hearing on June 11, 2020.

Solicitation Procedures, the Solicitation Packages, and the Disclosure Statement and Solicitation Procedures Order entered in connection therewith.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. Confirmation.

a. The Plan, annexed hereto as Exhibit A, is approved, as modified herein, and confirmed under section 1129 of the Bankruptcy Code. The terms of the Plan, all exhibits thereto, the Plan Supplement, the Financing Approval Order, and the Memorandum Decision are incorporated by reference into and are an integral part of the Plan and this Confirmation Order.

b. The documents contained in the Plan Supplement and exhibits to the Plan, and any amendments, modifications, and supplements thereto, and the execution, delivery, and performance thereof by the Debtors, are authorized and approved. The parties to the documents contained in the Plan Supplement and exhibits to the Plan may exchange signature pages prior to the Effective Date, as necessary or appropriate, to be held in escrow on the condition that such signature pages shall not be released from escrow until the Effective Date.

c. All documents necessary to implement the Plan, including without limitation, the exhibits to the Plan, the Plan Supplement, the Plan Documents, the Plan Funding Documents, and all other relevant and necessary documents shall, upon completion of documentation and execution, be valid, binding, and enforceable agreements and not be in conflict with any federal or state law.

2. Plan Modifications and Amendments.

a. All modifications and amendments made to the Plan and on the record at the Confirmation Hearing do not materially and adversely affect the treatment of holders of Claims or Interests under the Plan and comply with section 1127 of the Bankruptcy Code, and therefore, no additional disclosure or further solicitation is required. The Plan Proponents may institute proceedings in the Court to remedy any defect or omission or reconcile any inconsistencies in the Plan or this Confirmation Order with respect to such matters as may be necessary to carry out the purposes and effects of the Plan and any holder of a Claim or Interest that has accepted the Plan shall be deemed to have accepted the Plan as so amended, modified, or supplemented. Prior to the Effective Date, the Plan Proponents may make appropriate technical adjustments and modifications to the Plan and the documents contained in the Plan Supplement without further order or approval of the Bankruptcy Court; *provided*, that such technical adjustments and modifications do not materially and adversely affect the treatment of holders of Claims and Interests; *provided, further*, that no party may make material modifications or amendments to the Plan and the documents contained in the Plan Supplement (as amended, modified or supplemented) that are inconsistent with the Plan, this Confirmation Order, or the Bankruptcy Code without approval of the Bankruptcy Court.

b. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, the Plan or Plan Documents, including any amendments or modifications thereto, shall be in form and substance acceptable to the Governor of the State of California (the "Governor's Office") as of the Effective Date.

3. Compromises and Settlements. The compromises and settlements set forth in the Plan and/or described in the Confirmation Memorandum, including, without limitation, the Plan Settlements, the Public Entities Plan Support Agreements and the Wildfire OII Settlement, are the product of good faith, arm's-length negotiations, and to the extent not already approved, are approved and will be effective immediately and binding on all parties in interest.

4. Wildfire Legislation (A.B. 1054) Compliance.

a. The Debtors' insolvency proceeding is resolved pursuant to the Plan and is not subject to a stay.

b. The resolution of these proceedings provides funding or establishes reserves for, provides for assumption of, or otherwise provides for satisfying all prepetition wildfire claims asserted against the Debtors in the Chapter 11 Cases in the amounts agreed upon in any pre-insolvency proceeding settlement agreements or any post-insolvency settlement agreements, authorized by the Court through an estimation process or otherwise allowed by the Court, in satisfaction of California Public Utilities Code section 3292(b)(1)(B), enacted through Wildfire Legislation (A.B. 1054), through the payment of the consideration on account of the Fire Victim Claims as provided in the Plan and in the Tort Claimants RSA, payment of the consideration on account of the Subrogation Wildfire Claims as provided in the Plan and in the Subrogation Claims RSA, and payment of the consideration on account of the Public Entities Wildfire Claims as provided in the Plan and in the Public Entities Plan Support Agreements, in each case in restitution and in full and final satisfaction, settlement, release, and discharge of such claims. The foregoing settlements embodied in the Plan were accepted by the relevant

holders of Fire Claims in Classes 5A-I (HoldCo Public Entities Wildfire Claims), 5A-II (HoldCo Subrogation Wildfire Claims), 5A-III (HoldCo Fire Victim Claims), 5B-I (Utility Public Entities Wildfire Claims), 5B-II (Utility Subrogation Wildfire Claims), and 5B-III (Utility Fire Victim Claims).

5. Plan Classification Controlling. The classification of Claims and Interests for purposes of the distributions to be made under the Plan shall be governed solely by the terms of the Plan. For the avoidance of doubt, any Claims arising out of the 2015 Butte fires that are the subject of fully effective, valid and enforceable prepetition settlement agreements with the Debtor(s) are, and shall be treated as, Prepetition Executed Settlement Claims under the Plan.

6. Solicitation of Votes. Based on the record before the Court in these Chapter 11 Cases, the Plan Proponents and their directors, officers, employees, members, agents, advisors, and professionals have acted in "good faith" within the meaning of section 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Disclosure Statement and Solicitation Procedures Order, in connection with all their respective activities relating to the solicitation of acceptances or rejections of the Plan (including, without limitation, with respect to the solicitation of votes of holders of Fire Victim Claims and HoldCo Rescission or Damage Claims) and their participation in the activities described in section 1125 of the Bankruptcy Code, and are entitled to the protections afforded by section 1125(e) of the Bankruptcy Code. Such solicitation, including with respect to the third-party injunction, Channeling Injunction, third-

party release, and exculpation provisions of the Plan, also satisfies the requirements of due process.

7. Binding Effect. Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, and subject to the occurrence of the Effective Date, on and after the entry of this Confirmation Order, the provisions of the Plan shall bind every holder of a Claim against or Interest in any Debtor and inure to the benefit of and be binding on such holder's respective successors and assigns, regardless of whether the Claim or Interest of such holder is Impaired under this Plan and whether such holder has accepted the Plan.

8. Vesting of Assets. Pursuant to Section 10.2 of the Plan, upon the Effective Date, pursuant to sections 1141(b) and (c) of the Bankruptcy Code, all assets and property of the Debtors shall vest in the Reorganized Debtors, as applicable, free and clear of all Claims, Liens, charges, and other interests, except as otherwise provided in the Plan or in this Confirmation Order. The Reorganized Debtors may operate their businesses and use, acquire, and dispose of property free of any restrictions of the Bankruptcy Code or the Bankruptcy Rules and in all respects as if there were no pending cases under any chapter or provision of the Bankruptcy Code, except as otherwise provided in the Plan or this Confirmation Order.

9. Distributions. Pursuant to Section 5.1 of the Plan, except as otherwise provided in the Plan or in this Confirmation Order, the Wildfire Trust Agreements, or the Claims Resolution Procedures, the Disbursing Agent shall make all distributions to the appropriate holders of Allowed Claims, or such other persons designated by the Plan, in accordance with the terms of the Plan. Pursuant to Section 5.6 of the Plan, Fire Claims subject to the Channeling Injunction shall

not be administered by the Disbursing Agent and shall instead be administered by the Wildfire Trusts.

10. No Postpetition or Default Interest on Claims. Pursuant to Section 5.3 of the Plan, except as otherwise specifically provided for in the Plan or this Confirmation Order, or another order of the Court or required by the Bankruptcy Code, postpetition and/or default interest shall not accrue or be paid on any Claims, and no holder of a Claim shall be entitled to interest accruing on such Claim on or after the Petition Date.

11. Date of Distributions. Pursuant to Section 5.4 of the Plan, unless otherwise provided in the Plan, the Wildfire Trust Agreements, or the Claims Resolution Procedures, any distributions and deliveries to be made under the Plan shall be made on the Effective Date or as soon as reasonably practicable thereafter; *provided*, that the Reorganized Debtors may implement periodic distribution dates to the extent they determine appropriate. Holders of Fire Claims subject to the Claims Resolution Procedures shall receive distributions in accordance with the applicable Claims Resolution Procedures.

12. Disbursing Agent. Pursuant to Section 5.6 of the Plan, except as otherwise provided in the Plan or the Wildfire Trust Agreements, all distributions under the Plan shall be made by the Disbursing Agent, on behalf of the applicable Debtor, on and after the Effective Date as provided therein. Pursuant to Section 5.14 of the Plan, the Disbursing Agent shall be empowered to (i) effect all actions and execute all agreements, instruments, and other documents necessary to perform its duties under the Plan; (ii) make all applicable distributions or payments provided for under the Plan; (iii) employ professionals to represent it with respect

to its responsibilities; and (iv) exercise such other powers (A) as may be vested in the Disbursing Agent by further order of the Court (including any order issued after the Effective Date) or pursuant to the Plan or (B) as deemed by the Disbursing Agent to be necessary and proper to implement the provisions of this Plan.

13. Satisfaction of Claims. Unless otherwise provided by the Plan, any distributions and deliveries made on account of Allowed Claims under the Plan shall be in complete and final satisfaction, settlement, and discharge of and exchange for such Allowed Claims.

14. Setoffs and Recoupment.

a. Pursuant to Section 5.13 of the Plan, each Debtor or Reorganized Debtor, as applicable, or such Entity's successor or designee, may, pursuant to section 553 of the Bankruptcy Code or applicable nonbankruptcy law, offset or recoup against any Allowed Claim and the distributions to be made pursuant to the Plan on account of such Allowed Claim any and all Claims, rights, and Causes of Action that such Debtor or Reorganized Debtor or its successors may hold against the holder of such Allowed Claim; provided, that neither the failure to effect a setoff or recoupment nor the allowance of any Claim under the Plan will constitute a waiver or release by a Debtor or Reorganized Debtor or its successor of any Claims, rights, or Causes of Action that any such entity or it successor or designee may possess against such holder.

b. Except as provided in Section 10.7 of the Plan, any rights of setoff or recoupment or defenses thereto held by any Entity are expressly retained and preserved,

subject to any applicable limitations of the Bankruptcy Code.

15. Restructuring Transactions; Effectuating Documents.

a. Following the Confirmation Date or as soon as reasonably practicable thereafter, the Debtors or the Reorganized Debtors, as applicable, may take all actions as may be necessary or appropriate to effectuate any transaction described in, approved by, contemplated by, or necessary to effectuate the Plan or to obtain any of the Plan Funding and Exit Financing (collectively, the "Restructuring Transactions"), including (i) the execution and delivery of appropriate agreements or other documents of merger, amalgamation, consolidation, restructuring, conversion, disposition, transfer, arrangement, continuance, dissolution, sale, purchase, or liquidation containing terms that are consistent with the terms of the Plan, (ii) the execution and delivery of appropriate instruments of transfer, assignment, assumption, or delegation of any asset, property, right, liability, debt, or obligation on terms consistent with the terms of the Plan, (iii) the amendment, restatement, and, to the extent applicable, the filing of appropriate certificates or articles of incorporation, reincorporation, merger, consolidation, conversion, amalgamation, arrangement, continuance, or dissolution, or bylaws pursuant to applicable state or federal law, (iv) the execution and delivery of the Plan Documents, (v) the issuance of securities (including, without limitation, pursuant to the Plan Funding Transactions (as defined in the Financing Approval Order)), all of which shall be authorized and approved in all respects in each case without further action being required under applicable law, regulation, order, or rule (except such filings, approvals

and authorizations as may be required, necessary or desirable for offerings of securities not exempt from the Securities Act pursuant to section 1145 of the Bankruptcy Code), (vi) such other transactions that are necessary or appropriate to implement the Plan in a tax efficient manner, (vii) the cancellation of existing securities, (viii) the negotiation, preparation, execution, delivery of and performance under the Plan Funding Documents, prior to, on or after the Effective Date, to the extent necessary or appropriate to effectuate any of the Plan Funding Transactions, in each case without notice, hearing, or further order of the Court, and (ix) all other actions that the applicable Entities determine to be necessary or appropriate, including making filings or recordings that may be required by applicable law.

b. The Indenture of Mortgage, entered into by Pacific Gas and Electric Company and The Bank of New York Mellon Trust Company, N.A., as trustee, as may be amended or supplemented from time to time (the "FMB Indenture") shall (i) describe the properties to be encumbered by the lien of the FMB Indenture by any of the following methods: Assessor's Parcel Number, or by Instrument Number (or Book and Page Number) of the instrument conveying such property to Debtor (or its predecessor), or by metes and bounds, or by reference to a parcel map, or by other legally sufficient means; (ii) be presented to the various Recorders' Offices in the California counties where property of the Debtor is to be encumbered by the lien of the Indenture; and (iii) when so presented to such Recorders' Offices, then such Recorders' Offices are instructed and directed to accept such FMB Indenture for recording, and such Indenture shall be recorded and indexed against the subject properties in the

appropriate real property records maintained by such Recorders' Offices.

c. Each officer, or member of the board of directors, of the Debtors is (and each officer, or member of the board of directors of the Reorganized Debtors shall be) authorized to issue, execute, deliver, file, or record such contracts, securities, instruments, releases, indentures, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, the securities issued pursuant to the Plan and any Plan Funding Transactions in the name of and on behalf of the Reorganized Debtors, all of which shall be authorized and approved in all respects, in each case, without the need for any approvals, authorization, consents, or any further action required under applicable law, regulation, order, or rule (including any action by the stockholders or directors of the Debtors or the Reorganized Debtors) except for those expressly required pursuant to the Plan.

d. Any of the (i) respective chairperson of the board of directors, president, any vice president and (ii) any of the respective corporate secretary, chief financial officer, treasurer or any assistant secretary or assistant secretary of each Debtor are authorized to sign and file with the California Secretary of State an officer's certificate with respect to the amended and restated articles of incorporation of such Debtor, substantially in the form provided in Exhibits B-1 and C-1 of the Plan Supplement filed on June 8, 2020 [Docket No. 7841] (the "New Articles") without the need for any further action of the respective board of directors or shareholders of the Debtors.

e. All matters provided for in the Plan involving the corporate structure of the Debtors or Reorganized Debtors, or any corporate action required by the Debtors or Reorganized Debtors in connection therewith, including, but not limited to, (i) the amendment and restatement of the articles of incorporation of each of the Debtors or Reorganized Debtors, substantially in the form set forth in the New Articles, (ii) the amendment and restatement of the bylaws of each of the Debtors or Reorganized Debtors, substantially in the form set forth in Exhibits B-2 and C-2 of the Plan Supplement filed on June 8, 2020 [Docket No. 7841] (the "New Bylaws"), (iii) the establishment of a classified board of directors as substantially set forth in the New Bylaws, (iv) the establishment of restrictions on the transfer of certain securities of the Debtors and Reorganized Debtors (the "NOL Transfer Restrictions"), substantially in the form set forth in the New Articles (which NOL Transfer Restrictions may be implemented with like effectiveness in either the New Articles or New Bylaws on or prior to the Effective Date), and, (v) pursuant to and subject to Paragraph 21 below, the selection and appointment of the New Board, shall be deemed to have occurred and shall be in effect, without any requirement of further action by the stockholders or directors of the Debtors or Reorganized Debtors, and with like effect as though such action had been taken unanimously by the stockholders of the Debtors and Reorganized Debtors.

f. Upon the certification of the New Articles by the California Secretary of State, the Debtors (or, if applicable, the Reorganized Debtors) shall provide notice of the NOL Transfer Restrictions to all registered holders of shares of common stock of each of the Debtors in accordance with California Corporation Code Section 422(c) and California Commercial Code

Section 8204(2). Upon receipt of such notice, the NOL Transfer Restrictions shall become binding and effective with respect to all shares of common stock of each of the Debtors held by such registered holders.

16. Continued Corporate Existence and Certain CPUC Matters.

a. Pursuant to Section 6.3 of the Plan, except as otherwise provided in the Plan or in this Confirmation Order, the Debtors shall continue to exist after the Effective Date as Reorganized Debtors in accordance with the applicable laws of the respective jurisdictions in which they are incorporated or organized. On and after the Effective Date, without prejudice to the rights of any party to a contract or other agreement with any Debtor, each Reorganized Debtor may, in its sole discretion, take such action as permitted by applicable law and such Reorganized Debtor's organizational documents, as such Reorganized Debtor may determine is reasonable and appropriate. The Reorganized Debtors shall not amend their articles of incorporation, bylaws, or other governing documents in any manner inconsistent with the Plan or this Confirmation Order. The first annual meeting of the shareholders of the Reorganized Debtors shall be held on a date and at a time that is within fifteen (15) months of the certification of their respective amended and restated articles of incorporation by the California Secretary of State, as such date and time shall be designated by the New Boards of the respective Reorganized Debtors.

b. The Utility will comply with and implement the provisions of the CPUC Assigned Commissioner's Ruling dated February 18, 2020 ("ACR"), to the extent adopted by, and as modified by, the decision of the California Public Utilities Commission (the "CPUC" or

the "Commission") in I.19-09-016 approving the Plan (the "CPUC Decision") (except insofar as such provisions are in the future waived, modified or terminated by the CPUC). Except as expressly stated in the CPUC Decision or this paragraph, the provisions of the ACR regarding selection of members of the Boards,[3] responsibilities of Board committees,[4] and Board approvals of senior management,[5] will in any event expire on the earliest of (i) a continuous period of five years in which the Reorganized Utility has not entered Part II of the Enhanced Regulatory Oversight and Enforcement Process (as set forth in Appendix A to the CPUC Decision), (ii) a continuous period of two years in which the Reorganized Utility, having exited Part II of the Enhanced Regulatory Oversight and Enforcement Process, has not re-entered Part II, or (iii) the date on which the CPUC has approved a change in control of the Reorganized Debtors and associated termination of the Enhanced Regulatory Oversight and Enforcement Process. Notwithstanding the foregoing, the provision in the ACR regarding residency of directors[6] shall apply to the directors as of the Effective Date.

c. Pursuant to the CPUC Decision, the Utility will seek to implement a regional restructuring plan. The Utility will file an application with the CPUC by June 30, 2020 regarding its proposed restructuring, and will take interim steps in furtherance of its proposed regional restructuring.

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[3] ACR Proposal 4.

[4] ACR Proposals 2, 3, 10.

[5] ACR Proposals 1, 5.

[6] ACR Proposal 4.

17. Subrogation Wildfire Trust.

a. Establishment of the Subrogation Wildfire Trust. (i) The Plan Proponents are authorized to establish and implement the Subrogation Wildfire Trust in accordance with the terms of this Confirmation Order, the Plan, and the Subrogation Wildfire Trust Agreement, and (ii) the Subrogation Wildfire Trustee is authorized to carry out the purposes of the Subrogation Wildfire Trust, as set forth in and subject to the Plan and the Subrogation Wildfire Trust Agreement. Funding of the Subrogation Wildfire Trust as provided herein and in the Plan shall be in restitution and in full and final satisfaction, release, and discharge of all Subrogation Wildfire Claims. In accordance with the Subrogation Wildfire Trust Agreement and the Subrogation Wildfire Claim Allocation Agreement, each of which shall become effective as of the Effective Date, the Subrogation Wildfire Trust shall administer, process, settle, resolve, liquidate, satisfy, and pay all Subrogation Wildfire Claims. On the Effective Date, all Subrogation Wildfire Claims shall be channeled to the Subrogation Wildfire Trust and shall be subject to the Channeling Injunction.

b. Qualified Settlement Fund. Each trust comprising the Subrogation Wildfire Trust is intended to be treated, and shall be reported, as a "qualified settlement fund" for U.S. federal income tax purposes and shall be treated consistently for state and local tax purposes, to the extent applicable; *provided, however*, that the Reorganized Debtors may elect to treat any trust comprising the Subrogation Wildfire Trust as a "grantor trust" for U.S. federal income tax purposes, in which case each such trust shall be treated consistently for state and local tax purposes, to the extent applicable. The Subrogation Wildfire Trustee

and all holders of Subrogation Wildfire Claims shall report consistently with the foregoing. The Subrogation Wildfire Trustee shall be the "administrator," within the meaning of Treasury Regulations Section 1.468B-2(k)(3), of the Subrogation Wildfire Trust and, in such capacity, the Subrogation Wildfire Trustee shall be responsible for filing all tax returns of the Subrogation Wildfire Trust and, out of the assets of the Subrogation Wildfire Trust, the payment of any taxes due with respect to trust assets or otherwise imposed on the Subrogation Wildfire Trust (including any tax liability arising in connection with the distribution of trust assets), and shall be permitted to sell any assets of the Subrogation Wildfire Trust to the extent necessary to satisfy such tax liability (including any tax liability arising in connection with such sale).

c. Subrogation Wildfire Trustee. The Subrogation Wildfire Trust shall be governed by the Subrogation Wildfire Trust Agreement and administered by the Subrogation Wildfire Trustee. The powers and duties of the Subrogation Wildfire Trustee shall be as described in Section 6.5 of the Plan and shall include, but shall not be limited to, those responsibilities vested in the Subrogation Wildfire Trustee pursuant to the terms of the Subrogation Wildfire Trust Agreement, or as may be otherwise necessary and proper to (i) make distributions to holders of Subrogation Wildfire Claims in accordance with the terms of the Plan, this Confirmation Order, the Subrogation Wildfire Trust Agreement, and the Subrogation Wildfire Claim Allocation Agreement, and (ii) carry out the provisions of the Plan and this Confirmation Order relating to the Subrogation Wildfire Trust and the Subrogation Wildfire Claims.

d. Subrogation Wildfire Trust Advisory Board. The Subrogation Wildfire Trust Advisory Board shall be appointed on the Effective Date. The rights and responsibilities of the Subrogation Wildfire Trust Advisory Board shall be set forth in the Subrogation Wildfire Trust Agreement and Section 6.6 of the Plan. The Subrogation Wildfire Trust Advisory Board shall, as and when requested by the Subrogation Wildfire Trustee, or as is otherwise either (i) required under the Plan, this Confirmation Order, or the Subrogation Wildfire Trust Agreement, or (ii) contemplated by the Subrogation Wildfire Claim Allocation Agreement, consult with and advise the Subrogation Wildfire Trustee as to the administration and management of the Subrogation Wildfire Trust in accordance with the terms of the Plan, this Confirmation Order, and/or the Subrogation Wildfire Trust Agreement.

e. Costs and Expenses of the Subrogation Wildfire Trust. The Subrogation Wildfire Trust shall pay all expenses of the Subrogation Wildfire Trust from the assets of the Subrogation Wildfire Trust, as provided in the Subrogation Wildfire Trust Agreement.

f. Assignment of Rights. Nothing in this Confirmation Order, the Plan, or any of the Plan Documents shall be construed as addressing the merits of any purported assignment of rights to insurance policy proceeds, and each insurer's rights and defenses with respect to (a) any assignment of any insurance policies, and (b) any entitlements to insurance proceeds, are hereby expressly reserved.

g. Subrogation Wildfire Trust Escrow Agreement. The Debtors and Ad Hoc Subrogation Group have agreed as follows, which agreement is hereby approved by the Court, and the Debtors are hereby

authorized and directed to take all actions set forth below to implement such agreement:

i. Within two (2) business days of the Confirmation Date, the Debtors shall advance $5,000,000 in cash (the "Trustee Advance") of the $11,000,000,000 subrogation claims recovery by wire transfer to Willkie Farr & Gallagher LLP ("Willkie"), pursuant to wiring instructions to be provided by Willkie. Willkie shall use the Trustee Advance solely to pay the fees and expenses of the future Subrogation Wildfire Trustee incurred prior to the Effective Date of the Plan, and any unused portion of the Trustee Advance will be transferred to the Subrogation Wildfire Trust on the Effective Date of the Plan. If the Effective Date of the Plan does not occur, then such unused portion shall be returned to the Debtors.

ii. On the Effective Date of the Plan, the Debtors shall (i) fund $100,000,000 to the Subrogation Wildfire Trust, and (ii) place the remaining $10,895,000,000 (the "Subrogation Escrow Funds") in a segregated escrow or similar account (the "Subrogation Escrow Account"), established and owned by the Subrogation Wildfire Trust for the benefit of holders of Subrogation Wildfire Claims, which will be held at a financial institution reasonably acceptable to the Ad Hoc Subrogation Group and the Debtors (the "Subrogation Escrow Agent"), subject to an escrow agreement mutually acceptable to the Ad Hoc Subrogation Group and the Debtors (the "Subrogation Escrow Agreement"). The Subrogation Escrow Funds shall be held in the Subrogation Escrow Account in trust for the Subrogation Wildfire Trust beneficiaries and shall not be subject to any claim, lien or encumbrance of any kind.

iii. The Subrogation Escrow Funds shall be held in the Subrogation Escrow Account for the lesser of (i) fifteen (15) calendar days, or (ii) the amount of time needed to earn an amount in interest or appreciation on the Subrogation Escrow Funds equal to $3,986,950 (the "Holding Period"). The Subrogation Escrow Agent shall provide the Subrogation Trustee with written notice of the termination of the Holding Period within one (1) business day thereof. Immediately upon the conclusion of the Holding Period and without further action or notice required to be provided by the Reorganized Debtors or the Ad Hoc Subrogation Group, the Subrogation Escrow Agent shall transfer $10,895,000,000, plus any interest or appreciation accrued or earned in excess of $3,986,950 (the "Butte Settlement Payment") to the Subrogation Wildfire Trust. The remaining balance of the Subrogation Escrow Funds shall be paid by the Subrogation Escrow Agent in accordance with the Court's *Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving (I) Debtors' Agreement and Settlement with People of the State of California and (II) Granting Related Relief* [Docket No. 6785]. In the event the remaining balance of the Subrogation Escrow Funds is insufficient to pay the Butte Settlement Payment in full, the Reorganized Debtors shall be solely responsible for any such shortfall, and under no circumstances shall less than $10,895,000,000 be transferred to the Subrogation Wildfire Trust at the conclusion of the Holding Period in accordance with the Subrogation Escrow Agreement.

iv. The Subrogation Escrow Funds may only be invested in U.S. Federal Government securities with a term of one year or less or other short-term fixed income assets as approved by the Ad Hoc Subrogation

Group in its sole discretion. The Reorganized Debtors shall be solely responsible for the payment of any and all fees, expenses, taxes or other costs associated with the Subrogation Escrow Funds and the Escrow Agent and no such fees, expenses, taxes or other costs shall be deducted from the Escrow Funds (or any interest or appreciation earned thereon).

18. Fire Victim Trust.

a. Establishment of the Fire Victim Trust. (i) The Plan Proponents are authorized to establish and implement the Fire Victim Trust in accordance with the terms of this Confirmation Order, the Plan, the Fire Victim Trust Agreement and the Fire Victim Claims Resolution Procedures (the Fire Victim Trust Agreement together with the Fire Victim Claims Resolution Procedures, the "Fire Victim Trust Documents"), and (ii) the Fire Victim Trustee is authorized to carry out the purposes of the Fire Victim Trust, as set forth in and subject to the Plan, this Confirmation Order, and the Fire Victim Trust Documents. The Fire Victim Trust shall, among other tasks described in the Plan or the Fire Victim Trust Documents, administer, process, settle, resolve, liquidate, satisfy, and pay all Fire Victim Claims, and prosecute or settle all Assigned Rights and Causes of Action. On the Effective Date, all Fire Victim Claims shall be channeled to the Fire Victim Trust and shall be subject to the Channeling Injunction. The Fire Victim Trust shall be funded with the Aggregate Fire Victim Consideration. Funding of the Fire Victim Trust as provided herein and in the Plan shall be in restitution and full and final satisfaction, release, and discharge of all Fire Victim Claims. To the extent, if any, a holder of a Fire Victim Claim asserts damages against the Debtors or the Fire Victim Trust for

amounts covered by a policy of insurance, the Fire Victim Trust may receive a credit against the Fire Victim Claim of any such holder, its predecessor, successor, or assignee, for insurance coverage amounts as provided in the Plan, this Confirmation Order and the Fire Victim Trust Documents. In addition, coverage provisions of any insurance policy for losses resulting from a Fire and any funds received by any holder of a Fire Victim Claim, net of attorney's fees, shall satisfy, to the extent applicable, any amounts of restitution the Debtors or Reorganized Debtors might be subject to under Cal. Penal Code § 1202.4.

b. Qualified Settlement Fund. The Fire Victim Trust shall qualify as a "qualified settlement fund" for U.S. federal income tax purposes and shall be treated consistently for state and local tax purposes, to the extent applicable; provided, however, that the Reorganized Debtors may elect to treat any trust comprising the Fire Victim Trust as a "grantor trust" for U.S. federal income tax purposes, in which case each such trust shall be treated consistently for state and local tax purposes, to the extent applicable. The Fire Victim Trustee and all holders of Fire Victim Claims shall report consistently with the foregoing. The Fire Victim Trustee shall be the "administrator," within the meaning of Treasury Regulations Section 1.468B-2(k)(3), of the Fire Victim Trust and, in such capacity, the Fire Victim Trustee shall be responsible for filing all tax returns of the Fire Victim Trust and, out of the assets of the Fire Victim Trust, the payment of any taxes due with respect to trust assets or otherwise imposed on the Fire Victim Trust (including any tax liability arising in connection with the distribution of trust assets), shall be permitted to sell any assets of the Fire Victim Trust to the extent

necessary to satisfy such tax liability (including any tax liability arising in connection with such sale).

c. Fire Victim Trust Documents. On the Effective Date, the Fire Victim Trust Documents shall become effective.

d. Fire Victim Trust Administration. No parties other than holders of Fire Victim Claims shall have a right or involvement in the Fire Victim Trust Documents, the administration of the Fire Victim Trust, the selection of the Fire Victim Trustee, settlement fund administrator, claims administrator, or the Fire Victim Trust Oversight Committee. The Fire Victim Claims shall be administered by the Fire Victim Trustee, Claims Administrator, and the Fire Victim Trust Oversight Committee, as set forth in the Fire Victim Trust Documents, the Plan, and this Confirmation Order, independent of the Debtors and/or Reorganized Debtors, as applicable. The Fire Victim Claims shall be administered, allocated and distributed in accordance with applicable ethical rules and subject to adequate informed consent procedures. The Fire Victim Trustee shall receive settlement allocations consistent with Rule 1.8(g) of the Model Rules of Professional Conduct. The rules and procedures governing the administration and allocation of the funds from the Fire Victim Trust shall be objectively and consistently applied and transparent. No party other than holders of Fire Victim Claims, including but not limited to the Debtors, the Reorganized Debtors, and any holders of Claims or Interests other than holders of Fire Victim Claims, shall have any rights to any of the proceeds in the Fire Victim Trust, or any clawback or reversionary interest of any of the consideration (whether Cash or otherwise) allocated to any of the holders of Fire Victim

Claims generally or in the total amount funded to the Fire Victim Trust.

e. Fire Victim Trustee and Claims Administrator.

i. From and after the entry of this Confirmation Order, the beneficial interests in the Fire Victim Trust held by Beneficial Owners (as defined in the Fire Victim Trust Agreement), including a Fire Victim Claim, are not negotiable and shall be non-transferable other than if transferred by will, intestate succession, or otherwise by operation of law. Additionally, the holder of any interest in the Fire Victim Trust may assign, convey or otherwise transfer its interest in the Fire Victim Trust, including a Fire Victim Claim, to its successor by merger, consolidation, or by purchase or transfer of substantially all of the assets of the holder of the interests in the Fire Victim Trust. Moreover, any and all Fire Victim Trust Interests (as defined in the Fire Victim Trust Agreement) shall not be listed for trading on any national securities exchange and the Fire Victim Trustee shall not take any action the purpose of which is, or which would be in support of, the establishment of an active trading market in the beneficial interests in the Fire Victim Trust. No voluntary transfer of a beneficial interest in the Fire Victim Trust shall be effective or binding upon the Fire Victim Trust or the Fire Victim Trustee for any purpose, except as otherwise set forth in the Fire Victim Trust Agreement. In the case of a deceased individual Beneficial Owner, his or her executor or administrator shall provide written notice to the Fire Victim Trustee and deliver to the Fire Victim Trustee such documentation necessary to evidence the transfer by operation of law and identify the proper Person to succeed to such decedent's interests. The Fire Victim Trustee may fully rely on any such evidence provided

by a purported executor or administrator and shall have no duty to investigate.

ii. The Fire Victim Trust shall be governed by the Fire Victim Trust Documents, the Plan and this Confirmation Order, and administered by the Fire Victim Trustee, Claims Administrator, and Fire Victim Trust Oversight Committee. The power, rights, and responsibilities of the Fire Victim Trustee, Claims Administrator, and Fire Victim Trust Oversight Committee shall be as provided in the Fire Victim Trust Agreement and consistent with Sections 6.7 and 6.8 of the Plan and shall include the authority and responsibility to, among other things, take the actions set forth in Sections 6.7 and 6.8 of the Plan. Notwithstanding anything to the contrary in the Fire Victim Trust Documents, the Parties to the State Agency Settlement [Docket No. 7399-2] and the Federal Agency Settlement [Docket No. 7399-1] shall not be required to execute a Claimant Release and Indemnification in Connection with the Fire Victim Trust Award (as defined in the Fire Victim Trust Agreement).

iii. The Fire Victim Trustee will be appointed as the representative of each of the Debtors' estates pursuant to section 1123(a)(5), (a)(7), and (b)(3)(B) of the Bankruptcy Code and as such will be vested with the authority and power (subject to the Fire Victim Trust Agreement, the Plan, and this Confirmation Order) to, among other things: (i) administer, object to or settle Fire Victim Claims; (ii) make distributions to holders of Fire Victim Claims in accordance with the terms of the Fire Victim Trust Documents, the Plan, and this Confirmation Order; and (iii) carry out the provisions of the Plan and this Confirmation Order related to the Fire Victim Trust and the Fire Victim

Claims, including but not limited to prosecuting or settling all Assigned Rights and Causes of Action in his or her capacity as a trustee for the benefit of holders of Fire Victim Claims.

iv. Justice John K. Trotter, Jr. shall be the Fire Victim Trustee and Cathy Yanni shall be the Claims Administrator in accordance with the Fire Victim Trust Documents.

f. Fire Victim Trust Oversight Committee. The Fire Victim Trust Oversight Committee shall be appointed on or before the Effective Date and will be announced in a filing by the Fire Victim Trust with the Court and by a post on the Fire Victim Trust's website. The Fire Victim Trust Oversight Committee shall consist of members selected and appointed by the Consenting Fire Claimant Professionals and the Tort Claimants Committee. The rights and responsibilities of the Fire Victim Trust Oversight Committee shall be as set forth in Section VI of the Fire Victim Trust Agreement.

g. Assigned Rights and Causes of Action. Unless otherwise expressly provided under the Plan, on the Effective Date, all Assigned Rights and Causes of Action will vest in the Fire Victim Trust. On and after the Effective Date, the transfer of the Assigned Rights and Causes of Action to the Fire Victim Trust will be deemed final and irrevocable and distributions may be made from the Fire Victim Trust. The Fire Victim Trustee shall have the express authority and standing necessary to take all actions to prosecute or settle, as set forth in the Fire Victim Trust Documents, the Plan, and this Confirmation Order, any and all Assigned Rights and Causes of Action, including the ability to seek non-privileged discovery from the Reorganized Debtors in accordance with applicable law and consistent with the terms of Section 10.14 of the Plan. The

definition of Assigned Rights and Causes of Action in the Plan controls in any conflict between that definition and the Schedule of Retained Rights and Causes of Action previously filed as part of the Plan Supplement [Docket No. 7037]. The Court shall retain jurisdiction post-confirmation to resolve any dispute that may arise regarding the Schedule of Assigned Rights and Causes of Action and the Schedule of Retained Rights and Causes of Action. All rights and defenses of any Entity with respect to any Assigned Right and Cause of Action asserted by the Fire Victim Trust against such Entity may be asserted against the Fire Victim Trust, including seeking discovery from the Reorganized Debtors in accordance with applicable law. If the Effective Date has not occurred by August 29, 2020, and if the Tort Claimants RSA's automatic termination that is triggered by such an event has been waived pursuant to Section 3(a)(ii) of the Tort Claimants RSA, the Fire Victim Trustee shall be granted standing by the Debtors, so long as such waiver is in effect, to pursue any and all Assigned Rights and Causes of Action prior to the Effective Date. Immediately upon termination of such waiver, such standing shall terminate and all rights to pursue the Assigned Rights and Causes of Action shall automatically revert to the Debtors.

h. Funding on the Effective Date. On the Effective Date of the Plan: (i) the Debtors shall fund $5.4 billion in cash less any amounts as provided in the orders appointing Cathy Yanni and Justice John K. Trotter, entered at Docket Nos. 6759 and 6760 respectively, to the Fire Victim Trust by wiring instructions to be provided to the Debtors by the Fire Victim Trustee no less than two (2) business days prior to the Effective Date; and (ii) the Debtors or Reorganized Debtors, as applicable, shall transfer to the Fire Victim Trust the

New HoldCo Common Stock as provided in Sections 4.7 and 4.26 of the Plan. Justice John K. Trotter may take such action prior to the Effective Date as he determines necessary or appropriate to allow the Fire Victim Trust to be able to receive the foregoing funding on the Effective Date, including, without limitation, filing the certificate of trust and other documentation with the appropriate governmental entities, obtaining a tax identification number, and completing "Know Your Customer" documentation at the applicable financial institutions.

i. Offsets for Fire Victim Insurance Recoveries. For the reasons set forth in the *Memorandum on Objection of Adventist Health, AT&T, Paradise Entities and Comcast to Trust Documents entered on May 26, 2020* [Docket No. 7597], the process for assessing future offsets for available insurance recoveries set forth in Section 2.6 of the Fire Victim Trust Agreement is reasonable, proper and necessary and is approved in all respects.

j. Approval of Tax Benefit Payment Agreement. On and after the Confirmation Date, the Debtors and the Reorganized Debtors, as applicable, shall be authorized to execute, deliver, enter into, and perform under the Tax Benefit Payment Agreement.

k. Court Review of Claims. Notwithstanding anything to the contrary in the Plan, this Confirmation Order, or the Fire Victim Trust Documents, only the parties who timely submitted an objection to the Fire Victim Trust Documents as noted herein[7] shall have the right

[7] The parties who timely submitted objections to the Fire Victim Trust Documents are listed as follows: Adventist Health System/West and Feather River d/b/a Adventist Health Feather River, Paradise Unified School District, Northern Recycling and

to seek court review in accordance with Section IX of the Fire Victim Claims Resolution Procedures.

l. Modifications to Fire Victim Trust Documents. Notwithstanding anything to the contrary in the Plan, this Confirmation Order or the Fire Victim Trust Documents, any material amendment or modification of the Fire Victim Trust Documents that is inconsistent with the terms of the Plan, this Confirmation Order or the Bankruptcy Code, shall be subject to approval of the Court.

m. Attorneys' Fees. Notwithstanding anything to the contrary in the Plan, this Confirmation Order or the Fire Victim Trust Documents, nothing shall preclude a holder of a Fire Victim Claim from recovering attorneys' fees in accordance with California law in connection with its Fire Victim Claim asserted against the Fire Victim Trust.

n. Assumed Executory Contracts. The Fire Victim Trust shall not have any rights of the Debtors or Reorganized Debtors under any executory contract or unexpired lease that is assumed under section 365 of the Bankruptcy Code pursuant to the Plan or during the Chapter 11 Cases, except to the extent that an Assigned Right or Cause of Action arises under such an assumed executory contract or assumed unexpired

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Waste Services, LLC/Northern Holdings, LLC, Napa County Recycling & Waste Services, LLC/Napa Recycling & Waste Services, LLC, Christian & Missionary Alliance Church of Paradise, d/b/a Paradise Alliance Church, Paradise Irrigation District, AT&T Corp. and all affiliates, and Comcast Cable Communications, LLC and all affiliates [Docket Nos. 7072 and 7121], Butte County Mosquito and Vector Control District [Docket No. 7145], Eric and Julie Carlson [Docket Nos. 7207 and 7363], Karl Knight [Docket No. 7366], and Mary Kim Wallace [Docket No. 7367].

lease. The Debtors' or Reorganized Debtors' assumption of an executory contract or unexpired lease shall not impair or diminish an Assigned Right or Cause of Action that arises under such assumed executory contract or assumed unexpired lease.

o. Costs and Expenses of the Fire Victim Trust. Except as otherwise provided in Subparagraph h of this Paragraph 18, the Fire Victim Trust shall pay all expenses of the Fire Victim Trust from the assets of the Fire Victim Trust, as provided in the Fire Victim Trust Documents and under no circumstances shall any such expenses be paid by the Reorganized Debtors.

19. Public Entities Segregated Defense Fund. On the Effective Date, the Reorganized Debtors shall fund the Public Entities Segregated Defense Fund in accordance with the terms of the Public Entities Plan Support Agreements. The Public Entities Segregated Defense Fund shall be maintained by the Reorganized Debtors until the later of (i) the expiration of the applicable statute of limitations period for any and all Public Entities Third Party Claims and (ii) the conclusion of all litigation, including appeals, involving the Public Entities Third Party Claims.

20. Go-Forward Wildfire Fund.

a. On or about the Effective Date, the Debtors shall contribute, in accordance with the Wildfire Legislation (A.B. 1054), an initial contribution of approximately $4.8 billion and first annual contribution of approximately $193 million, to the Go-Forward Wildfire Fund in order to secure the participation of the Reorganized Debtors therein.

b. The Reorganized Debtors shall also be responsible for ongoing funding commitments to the Go-

Forward Wildfire Fund as required by the terms thereof and the Wildfire Legislation (A.B. 1054).

21. Officers and Boards of Directors.

a. The composition of the New Boards has been disclosed in accordance with section 1129(a)(5) of the Bankruptcy Code.

b. Except as otherwise provided in the Plan Supplement, or disclosed to the Court at the Confirmation Hearing, the officers of the respective Debtors immediately before the Effective Date, as applicable, shall serve as the initial officers of each of the respective Reorganized Debtors on and after the Effective Date.[8]

c. Except to the extent that a member of the board of directors of a Debtor continues to serve as a director of the respective Reorganized Debtor on and after the Effective Date, the members of the board of directors of each Debtor prior to the Effective Date, in their capacities as such, shall have no continuing obligations to the Reorganized Debtors on or after the Effective Date and each such director will be deemed to have resigned or shall otherwise cease to be a director of the applicable Debtor on the Effective Date.

d. Commencing on the Effective Date, the directors of each of the Reorganized Debtors shall be elected and serve pursuant to the terms of the applicable organizational documents of such Reorganized Debtor and may be replaced or removed in accordance with such organizational documents.

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[8] The identities of the Chief Safety Officer and the Chief Risk Officer of the Reorganized Debtors must be acceptable to the Governor's Office as of the Effective Date.

22. Management Incentive Plan. On or after the Effective Date, the Management Incentive Plan may be established and implemented at the discretion of the New Board and in compliance with the Wildfire Legislation (A.B. 1054).

23. Cancellation of Existing Securities and Agreements.

a. Pursuant to Section 6.13 of the Plan, except for the purpose of enabling holders of Allowed Claims to receive a distribution under the Plan as provided therein and except as otherwise set forth in the Plan, the Plan Supplement or this Confirmation Order, on the Effective Date, all agreements, instruments, and other documents evidencing any prepetition Claim or any rights of any holder in respect thereof shall be deemed cancelled, discharged, and of no force or effect. For the avoidance of doubt, in accordance with Sections 4.13, 4.15, 4.19, 4.33, and 4.34 of the Plan, none of the HoldCo Common Interests, the HoldCo Other Interests, the Utility Reinstated Senior Note Documents, the Utility Preferred Interests, or the Utility Common Interests shall be cancelled pursuant to the Plan. The holders of, or parties to, such cancelled instruments, Securities, and other documentation shall have no rights arising from or related to such instruments, Securities, or other documentation or the cancellation thereof, except the rights provided for pursuant to the Plan.

b. Except as otherwise set forth in the Plan or in this Confirmation Order, the Funded Debt Trustees shall be released and discharged from all duties and responsibilities under the applicable Funded Debt Documents; provided that, notwithstanding the releases in Article X of the Plan, entry of this Confirmation Order, or the occurrence of the Effective Date, each of

the Funded Debt Documents or agreements that governs the rights of the holder of a Claim shall continue in effect to the extent necessary to: (i) enforce the rights, Claims, and interests of the Funded Debt Trustees thereto vis-a-vis any parties other than the Released Parties; (ii) allow the holders of Allowed Funded Debt Claims, Utility Senior Note Claims, or Utility PC Bond (2008 F and 2010 E) Claim, as applicable, to receive distributions under the Plan, to the extent provided for under the Plan; (iii) appear to be heard in the Chapter 11 Cases or in any proceedings in the Court or any other court; (iv) preserve any rights of the Funded Debt Trustees to payment of fees, expenses, and indemnification obligations from or on any money or property to be distributed in respect of the Allowed Funded Debt Claims, Utility Senior Note Claims and Utility PC Bond (2008 F and 2010 E) Claims, solely to the extent provided in the Plan, including permitting the Funded Debt Trustees to maintain, enforce, and exercise a Charging Lien against such distributions; and (v) enforce any obligation owed to the Funded Debt Trustees under the Plan. For the avoidance of doubt, on and after the Effective Date, the Utility Senior Notes Trustee shall not be released from any duty or responsibility under or arising from the Utility Reinstated Senior Note Documents.

c. On the Effective Date, the DIP Facility Agents and the DIP Facility Lenders, and their respective agents, successors, and assigns shall be automatically and fully discharged of all of their duties and obligations associated with the DIP Facility Documents (other than any cooperation obligations customarily contained in pay-off letters or similar arrangements, to the extent applicable). The commitments and obligations, if any, of the DIP Facility Lenders to

extend any further or future credit or financial accommodations to any of the Debtors, any of their respective subsidiaries, or any of their respective successors or assigns under the DIP Credit Agreement shall fully terminate and be of no further force or effect on the Effective Date. To the extent that any provision of the DIP Facility Documents or DIP Facility Order are of a type that survives repayment of the subject indebtedness, such provisions shall remain in effect notwithstanding satisfaction of the DIP Facility Claims.

24. Cancellation of Certain Existing Security Agreements. Promptly following the payment in full or other satisfaction of an Allowed Other Secured Claim, the holder of such Allowed Other Secured Claim shall deliver to the Debtors or Reorganized Debtors, as applicable, any Collateral or other property of a Debtor held by such holder, together with any termination statements, instruments of satisfaction, or releases of all security interests with respect to its Allowed Other Secured Claim that may be reasonably required to terminate any related financing statements, mortgages, mechanics' or other statutory Liens, or list pendens, or similar interests or documents.

25. Issuance of New HoldCo Common Stock. On and after the Confirmation Date, HoldCo and Reorganized HoldCo, as applicable, shall be authorized to issue, or cause to be issued, subject to the occurrence of the Effective Date, the New HoldCo Common Stock in accordance with the Plan and the Plan Documents, including, without limitation, all New HoldCo Common Stock contemplated to be issued in connection with the Plan Funding Transactions, all without the need for any further corporate or shareholder action. All of the New HoldCo Common Stock so issued shall be duly

authorized, validly issued, and fully paid and non-assessable.

26. Approval of Rights Offering Procedures. The Rights Offering Procedures, substantially in the form attached hereto as Exhibit B, and the execution, delivery, and performance thereof by the Debtors, are authorized and approved.

27. Approval of Rights Offering. If applicable, following effectiveness of an appropriate registration statement registering the offer, issuance and distribution of Securities pursuant to the Rights Offering under the Securities Act, the Debtors shall, if they determine to implement the same, commence and consummate the Rights Offering in accordance therewith. New HoldCo Common Stock shall be issued to each holder of subscription rights that exercises its respective subscription rights pursuant to the Rights Offering Procedures and the Plan. The consummation of the Rights Offering shall be conditioned on the occurrence of the Effective Date. Amounts held by the subscription agent with respect to the Rights Offering prior to the Effective Date shall not be entitled to any interest on account of such amounts and no holder of subscription rights participating in the Rights Offering shall have any rights in New HoldCo Common Stock until the Rights Offering is consummated.

28. Plan Proponent Reimbursement. On the Effective Date, the Reorganized Debtors shall reimburse the Shareholder Proponents for their out-of-pocket expenses (excluding any professional fees) incurred in connection with the furtherance of the Debtors' reorganization, which in the aggregate shall not exceed $150,000.

29. Treatment of Utility Senior Note Trustee. Notwithstanding anything to the contrary in the Plan, on the Effective Date, the Reorganized Debtors shall pay to the Utility Senior Note Trustee, $5,000,000 (the "Utility Senior Note Trustee Fee Payment") in satisfaction of fees, costs, expenses, charges, disbursements, advancements and indemnities incurred by the Utility Senior Note Trustee in accordance with the Utility Senior Note Documents through the Effective Date of the Plan (the "Utility Senior Note Trustee Fees"). To the extent that the Utility Senior Note Trustee Fee Payment does not satisfy all Utility Senior Note Trustee Fees in full, the Utility Senior Note Trustee is authorized and permitted to recover and satisfy all remaining Utility Senior Note Trustee Fees through its Charging Lien against distributions on account of the Utility Impaired Senior Note Claims and Utility Short-Term Senior Note Claims, in accordance with the Plan and the Utility Impaired Senior Note Documents and the Utility Short-Term Senior Note Documents, respectively. The Plan Proponents shall not contest, challenge, dispute or object to the Utility Senior Note Trustee Fees, or directly or indirectly, cause any person or entity to object to or challenge, the Utility Senior Note Trustee Fees, for any reason or on any grounds, including but not limited to the reasonableness of such Utility Senior Note Trustee Fees.

30. Securities Act Registrations or Exemptions.

a. Pursuant to Section 6.19 of the Plan, the offer, sale, distribution and issuance of (a) the New HoldCo Common Stock (to be issued (A) to the Fire Victim Trust, (B) as Equity Commitment Premium as defined in and pursuant to the Backstop Commitment Letters, or (C) as Additional Backstop Commitment Share Premium as defined in and pursuant to the Amended

Equity Backstop Commitment Documents), New Utility Funded Debt Exchange Notes, New Utility Long-Term Notes and New Utility Short-Term Notes, shall be exempt from registration under (i) the Securities Act of 1933 and all rules and regulations promulgated thereunder and (ii) any state or local law requiring registration for the offer, issuance, or distribution of Securities (collectively, the "Registration Requirements"), pursuant to section 1145 of the Bankruptcy Code, without further act or action by any Entity, (b) any Securities issued in a private transaction shall be exempt from the Registration Requirements pursuant to section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder and (c) (w) New Holdco Common Stock pursuant to a Rights Offering or underwritten primary or secondary public equity offering, (x) equity-linked securities pursuant to a public offering, (y) the First Mortgage Bonds (as defined in the Plan Supplement [Docket No. 7037]) and (z) the Secured Notes (as defined in the Plan Supplement [Docket No. 7037]) shall be registered under the Securities Act pursuant to an appropriate registration statement. Any offer, issuance and distribution of Securities pursuant to any Backstop Commitment Letter shall be exempt from registration pursuant to section 4(a)(2) of the Securities Act and/or Regulation D promulgated thereunder.

b. Pursuant to section 1145 of the Bankruptcy Code, any securities issued under the Plan that are exempt from such registration pursuant to section 1145(a) of the Bankruptcy Code will be freely tradable by the recipients thereof, subject to (i) the provisions of section 1145(b)(1) of the Bankruptcy Code relating to the definition of an underwriter in section 2(a)(11) of the Securities Act of 1933, (ii) compliance with any rules and regulations of the Securities and Exchange

Commission, if any, applicable at the time of any future transfer of such securities or instruments, (iii) the restrictions, if any, on the transferability of such securities and instruments, including any restrictions on the transferability under the terms of the New Organizational Documents, (iv) any applicable procedures of DTC, and (v) applicable regulatory approval.

31. Claims Resolution Procedures Approved. Except as otherwise provided herein, the procedures for resolving Disputed Claims set forth in Article VII of the Plan are fair and reasonable and are hereby approved. On and after the Effective Date, the Subrogation Wildfire Trustee shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Subrogation Wildfire Claims without approval of the Court pursuant to the Subrogation Wildfire Trust Agreement and the Subrogation Wildfire Claim Allocation Agreement. On and after the Effective Date, the Fire Victim Trustee shall have the authority to compromise, settle, otherwise resolve, or withdraw any objections to Disputed Fire Victim Claims without approval of the Court pursuant to the Fire Victim Trust Documents.

32. Assumption or Rejection of Executory Contracts and Unexpired Leases.

a. Pursuant to Section 8.1 of the Plan, as of and subject to the occurrence of the Effective Date and the payment of any applicable Cure Amount, all executory contracts and unexpired leases to which any of the Debtors are parties shall be deemed assumed, unless such executory contract or unexpired lease (i) was previously assumed or rejected by the Debtors, pursuant to a Final Order, (ii) previously expired or terminated pursuant to its own terms or by agreement of the parties thereto, (iii) is the subject of a motion to

assume, assume and assign, or reject filed by the Debtors on or before the Confirmation Date, or (iv) is specifically designated as an executory contract or unexpired lease to be rejected on the Schedule of Rejected Contracts.

b. Pursuant to section 8.1(b) of the Plan, as of and subject to the occurrence of the Effective Date and the payment of any applicable Cure Amount, all power purchase agreements, renewable energy power purchase agreements, and Community Choice Aggregation servicing agreements of the Debtors shall be deemed assumed.

c. Except with respect to any timely filed Contract Assumption or Rejection Dispute that remains unresolved as of the date hereof, and subject to the occurrence of the Effective Date, entry of this Confirmation Order shall constitute approval of the assumptions, assumptions and assignments, or rejections provided for in the Plan pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Each executory contract and unexpired lease assumed pursuant to the Plan shall vest in, and be fully enforceable by, the applicable Reorganized Debtor in accordance with its terms, except as modified by the provisions of the Plan, any order of the Bankruptcy Court authorizing and providing for its assumption or assumption and assignment, or applicable law.

d. Notwithstanding Section 8.8(a) of the Plan, the Debtors shall have thirty (30) calendar days from the Confirmation Date to file amendments to the Schedule of Assumed Contracts (as defined in the Plan Supplement) and Schedule of Rejected Contracts, to remove executory contracts and unexpired leases previously listed on the Schedule of Assumed Contracts and to add executory contracts and unexpired leases to the

Schedule of Rejected Contracts. Any objection of a counterparty to an executory contract or unexpired lease that is added to the Schedule of Rejected Contracts or removed from the Schedule of Assumed Contracts pursuant to this subparagraph shall have thirty (30) calendar days from the date on which notice of such removal or addition is served on the counterparty to file an objection thereto, which objection may be resolved either consensually without further order of the Court, or, after notice and an opportunity to be heard, by a Final Order of the Court, with any rejection deemed approved as of the Effective Date. The rejection of any executory contract or unexpired lease added to the Schedule of Rejected Contracts pursuant to this subparagraph shall be deemed approved by the Court as of the Effective Date if an objection to the addition of such executory contract or unexpired lease is not timely filed as provided above. For the avoidance of doubt, the counterparty to an executory contract or unexpired lease that is added to the Schedule of Rejected Contracts shall have thirty (30) calendar days to file a claim for rejection damages following the later of (i) the Effective Date and (ii) if a timely objection to rejection is filed and is not consensually resolved by the parties, the entry of an order approving the rejection of such executory contract or unexpired lease. Nothing in this Paragraph 32(d) shall amend, modify, or supersede the provisions of Section 8.1(b) of the Plan or Paragraph 43 of this Confirmation Order.

33. Cure Payments and Cure Notices. Pursuant to Section 8.2 of the Plan, any defaults under an assumed or assumed and assigned executory contract or unexpired lease, shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by payment of the default amount, as reflected in the applicable cure

notice, in Cash on the Effective Date, subject to the limitations described in Section 8.2 of the Plan, or on such other terms as the parties to such executory contracts or unexpired leases and the Debtors may otherwise agree. Pursuant to Section 8.2(b) of the Plan, the Debtors distributed, or caused to be distributed, at least fourteen (14) days before the deadline set to file objections to confirmation of the Plan, assumption and cure notices to the applicable third parties. Any counterparty to an executory contract or unexpired lease that failed to object timely to the proposed assumption, assumption and assignment, or Cure Amount, is hereby deemed to have assented to such assumption, assumption and assignment, or Cure Amount. Notwithstanding anything herein or in the Plan to the contrary, (i) in the event that any executory contract or unexpired lease is removed from the Schedule of Rejected Contracts, a cure notice with respect to such executory contract or unexpired lease will be sent promptly to the counterparty thereof and a noticed hearing set to consider whether such executory contract or unexpired lease can be assumed or assumed and assigned, as applicable, and (ii) the right of any counterparty or holder of a Claim for a Cure Amount to investigate and/or challenge the calculation of interest with respect to any applicable Cure Amount, consistent with the Plan, is preserved.

34. Determination of Cure Disputes.

a. Pursuant to Section 8.2(c) of the Plan, in the event of an unresolved dispute regarding (i) any Cure Amount, (ii) the ability of the Reorganized Debtors or any assignee to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the executory contract or unexpired lease to be assumed, or (iii) any other

matter pertaining to assumption, assumption and assignment, or the Cure Amounts required by section 365(b)(1) of the Bankruptcy Code (each, a "Cure Dispute"), such Cure Dispute shall be resolved by a Final Order of the Court, which may be entered after the Effective Date.

b. Except as otherwise provided in this Confirmation Order, any issues with respect to timely filed Cure Disputes will be preserved and may be resolved in due course either consensually without further order of the Court, or, after notice and an opportunity to be heard, by a Final Order of the Court, which may be entered after the Effective Date.

c. If the Court makes a determination regarding any Cure Dispute (including, without limitation that the Cure Amount is greater than the amount set forth in the applicable cure notice), as set forth in Section 8.8(a) of the Plan, the Debtors or Reorganized Debtors, as applicable, shall have the right to alter the treatment of such executory contract or unexpired lease, including, without limitation, to add such executory contract or unexpired lease to the Schedule of Rejected Contracts, in which case such executory contract or unexpired lease shall be deemed rejected as of the Effective Date.

d. Pursuant to Section 8.2(e) of the Plan, assumption or assumption and assignment of any executory contract or unexpired lease pursuant to the Plan or otherwise shall result in the full release and satisfaction of any defaults by any Debtor arising under any assumed executory contract or unexpired lease at any time before the date that the Debtors assume or assume and assign such executory contract or unexpired lease to the fullest extent permitted under applicable law.

35. Rejection Damages Claims.

a. Pursuant to Section 8.3 of the Plan, in the event that the rejection of an executory contract or unexpired lease under the Plan results in damages to the other party or parties to such contract or lease, any Claim for such damages, if not evidenced by a timely filed proof of Claim prior to the Plan Proponents' filing of the Plan, shall be forever barred and shall not be enforceable against the Debtors or the Reorganized Debtors, or their respective estates, properties or interests in property, unless a proof of Claim is filed with the Court and served upon the Debtors or the Reorganized Debtors, as applicable, no later than thirty (30) days after the later of (i) the Confirmation Date or (ii) the effective date of the rejection of such executory contract or unexpired lease, as set forth on the Schedule of Rejected Contracts or order of the Court.

b. Except with respect to the objection filed by the City of Lafayette [Docket No. 7269] (the "Lafayette Rejection Dispute" and, together with the Cure Disputes, collectively, the "Contract Assumption or Rejection Disputes") and the unexpired leases and executory contracts added to the Schedule of Rejected Contracts pursuant to Paragraph 32(d) hereof, the rejection of all leases and contracts identified in the Schedule of Rejected Contracts is hereby approved. The Lafayette Rejection Dispute shall either be consensually resolved by the parties or submitted to the Court for resolution pursuant to a Final Order, after appropriate notice and an opportunity to be heard, and all parties' rights are reserved with respect thereto.

36. D&O Indemnification Obligations. Pursuant to Section 8.4 of the Plan, any and all obligations of the Debtors pursuant to their corporate charters,

agreements, bylaws, limited liability company agreements, memorandum and articles of association, or other organizational documents (including all Indemnification Obligations) to indemnify current and former officers, directors, agents, or employees with respect to all present and future actions, suits, and proceedings against the Debtors or such officers, directors, agents, or employees based upon any act or omission for or on behalf of the Debtors shall remain in full force and effect to the maximum extent permitted by applicable law and shall not be discharged, impaired, or otherwise affected by this Plan. All such obligations shall be deemed and treated as executory contracts that are assumed by the Debtors under the Plan and shall continue as obligations of the Reorganized Debtors. Any Claim based on the Debtors' obligations in Section 8.4 of the Plan shall not be a Disputed Claim or subject to any objection, in either case, by reason of section 502(e)(1)(B) of the Bankruptcy Code or otherwise.

37. Treatment of Certain Claims and Obligations.

a. Paragraph 13 of the Notice of the Schedule of Assumed Contracts (as defined in the Plan Supplement) filed with the Plan Supplement on May 1, 2020 [Docket No. 7037] shall be deleted.

b. A claim asserted by a provider of goods and services, whether or not a counterparty to an assumed executory contract, that suffered damages from the Fires (as defined in Section 1.86 of the Plan), is impaired and should be channeled to the Fire Victim Trust. If its damages were not caused by or "in any way arising out of the Fires" (*See* Section 1.78 of the Plan), but arise out of the rejection of an executory contract or are part of the cure of an assumed one, they should be dealt with under Article VIII of the Plan and section 365 of the Bankruptcy Code.

38. Employee Benefit Plans.

a. Pursuant to Section 8.5 of the Plan, as of the Effective Date, all Employee Benefit Plans are deemed to be, and shall be treated as, executory contracts under the Plan and, on the Effective Date, shall be assumed pursuant to sections 365 and 1123 of the Bankruptcy Code. All outstanding payments which are accrued and unpaid as of the Effective Date pursuant to the Employee Benefit Plans shall be made by the Reorganized Debtors on the Effective Date or as soon as practicable thereafter.

b. The deemed assumption of the Employee Benefit Plans pursuant to Section 8.5 of the Plan shall result in the full release and satisfaction of any Claims and Causes of Action against any Debtor or defaults by any Debtor arising under any Employee Benefit Plan at any time before the Effective Date. Any proofs of Claim filed with respect to an Employee Benefit Plan shall be deemed disallowed and expunged, without further notice to or action, order, or approval of the Court.

c. Notwithstanding anything to the contrary in the Plan or this Confirmation Order, the Reorganized Debtors shall continue and assume the Pacific Gas and Electric Company Retirement Plan (the "Defined Benefit Plan") subject to the Employee Retirement Income Security Act, the Internal Revenue Code, and any other applicable law, including (i) the minimum funding standards in 26 U.S.C. §§ 412, 430, and 29 U.S.C. §§ 1082, 1083 and (ii) premiums under 29 U.S.C. §§ 1306 and 1307. All proofs of claim filed by the Pension Benefit Guaranty Corporation with respect to the Defined Benefit Plan are deemed withdrawn on the Effective Date.

d. Collective Bargaining Agreements. Pursuant to Section 8.6 of the Plan, on or prior to the Effective Date, and subject to the occurrence of the Effective Date, the Debtors shall assume the Collective Bargaining Agreements. The prepetition grievance claims set out in the letter from the Debtors to IBEW Local 1245 dated May 15, 2020 shall be resolved in the ordinary course of business in accordance with the terms of the Collective Bargaining Agreements, and all parties reserve their rights with respect thereto.

39. Worker's Compensation Insurance Program. The Reorganized Debtors have elected to self-insure their workers' compensation liabilities with the authority of the Director (the "Director") of the Department of Industrial Relations (in accordance with section 3701 of the California Labor Code) (the "Self-Insurance Program") and participate in the Alternative Security Plan (as established pursuant to section 3701.8 of the California Labor Code) (the "ASP") upon emergence from these Chapter 11 Cases. The Director and CSISF have authorized such participation contingent on the Reorganized Debtors' ongoing compliance with the foregoing provisions of the California Labor Code. The following provisions of this Confirmation Order shall govern the Reorganized Debtors' transition from participation in accordance with the agreements and orders reflected in paragraph 4 of the DIP Facility Order to participation in the Self-Insurance Program and the ASP in accordance with applicable law under the foregoing provisions of the California Labor Code after the occurrence of the Effective Date:

a. Notwithstanding the entry of this Confirmation Order, until the occurrence of the Effective Date, the provisions of the DIP Facility Order shall continue to govern and the "CSISF Liens" as defined in the DIP

Facility Order and the CSISF Cash Collateral posted pursuant to paragraphs 4(b)(i) and (iv) of the DIP Facility Order shall remain in place.

b. Upon the occurrence of the Effective Date, and upon the posting of the required amount of the security deposit, if any, as determined by the Director and CSISF in accordance with section 3701 of the California Labor Code, the CSISF Liens shall be automatically released in accordance with paragraph (b)(vi) of the DIP Facility Order. All CSISF Cash Collateral currently held by CSISF and the Director shall be maintained and shall be applied toward the security deposit, if any, required to be posted by the Reorganized Debtors. To the extent such CSISF Cash Collateral is in excess of the amount of such security deposit, such excess shall be promptly returned to the Reorganized Debtors. Neither the Plan nor this Confirmation Order alters the rights of CSISF and the Director with respect to the Reorganized Debtors' continued participation in the Self-Insurance Program and the ASP after the Effective Date.

40. Insurance Policies. Pursuant to Section 8.7 of the Plan, all Insurance Policies (including D&O Liability Insurance Policies and tail coverage liability insurance), surety bonds, and indemnity agreements entered into in connection with surety bonds to which any Debtor is a party as of the Effective date shall be deemed to be and treated as executory contracts and shall be assumed by the applicable Debtors or Reorganized Debtors and shall continue in full force and effect thereafter in accordance with their respective terms.

41. Insurance Neutrality.

a. Nothing contained in the Plan, the Plan Documents, or this Confirmation Order shall in any way operate to impair, alter, supplement, change, expand, decrease, or modify, or have the effect of, impairing, altering, supplementing, changing, expanding, decreasing, or modifying, (i) the rights, obligations, or defenses of any of the Insurers[9] under any Insurance Policy, including but not limited to any duty that an Insurer has to pay claims and any right of an Insurer to seek payment or reimbursement from the Debtors or the Reorganized Debtors in connection with any claims paid pursuant to the Insurance Policies, irrespective of whether such claims arose, or any facts and circumstances in connection with such claims occurred, prior to the Effective Date, or (ii) the rights, obligations, or defenses of the Debtors or Reorganized Debtors or any other insureds under any Insurance Policy, including but not limited to any right to the payment of claims by an Insurer and any defense to an Insurer seeking payment or reimbursement from the Debtors or Reorganized Debtors in connection with any claims paid pursuant to the Insurance Policies, irrespective of whether such claims arose, or any facts and circumstances in connection with such claims occurred, prior to the Effective Date. For all issues relating to insurance coverage, the provisions, terms, conditions, and limitations of the Insurance Policies and governing law shall control.

b. None of (i) the Court's approval of the Plan or the Plan Documents, (ii) this Confirmation Order or any findings and conclusions entered with respect to

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[9] "Insurer" shall have the meaning set forth in section 23 of the California Insurance Code.

confirmation, nor (iii) any estimation or valuation of any Fire Claims, either individually or in the aggregate in the Chapter 11 Cases, shall, with respect to any Insurer, constitute a trial or hearing on the merits or an adjudication or judgment with respect to any Fire Claim or Insurance Policy.

42. Underwriters Proofs of Claim. Nothing in the Plan, the Plan Supplement (including, without limitation, paragraph 13 of the notice of the Schedule of Assumed Contracts (as defined in the Plan Supplement [Docket No. 7037])), the Plan Documents, or this Confirmation Order shall be deemed to disallow or constitute an objection to the proofs of claim (collectively, the "Underwriter Proofs of Claim") filed by or on behalf of the non-debtor parties (collectively, the "Underwriters") to (i) that certain Underwriting Agreement dated as of February 23, 2016 among Pacific Gas and Electric Company and the representatives party thereto, as representatives of the underwriters named therein, relating to $600,000,000 aggregate principal amount of 2.95% Senior Notes due March 1, 2026, (ii) that certain Underwriting Agreement dated as of November 28, 2016 among Pacific Gas and Electric Company and the representatives party thereto, as representatives of the underwriters named therein, relating to $400,000,000 aggregate principal amount of 4.00% Senior Notes due December 1, 2046 and $250,000,000 aggregate principal amount of Floating Rate Senior Notes due November 30, 2017 and (iii) that certain Underwriting Agreement dated as of March 7, 2017 among Pacific Gas and Electric Company and the representatives party thereto, as representatives of the underwriters named therein, relating to $400,000,000 aggregate principal amount of 3.30% Senior Notes due March 15, 2027 and $200,000,000 aggregate principal amount of 4.00%

Senior Notes due December 1, 2046, provided, however, that all rights and defenses of (i) the Underwriters with respect to the Underwriter Proofs of Claim and (ii) the Debtors or Reorganized Debtors with respect to the Underwriter Proofs of Claim, are, in each case, preserved. For the avoidance of doubt, no objection may be asserted to the Underwriter Proofs of Claim based on the contention that the Plan, the Plan Supplement (including, without limitation, paragraph 13 of the notice of the Schedule of Assumed Contracts [Docket No. 7037]), the Plan Documents or this Confirmation Order had disallowed the Underwriter Proofs of Claim.

43. Energy Procurement Agreements. On the Effective Date, all Energy Procurement Agreements are hereby assumed pursuant to Article VIII of the Plan. Notwithstanding the assumption of any Energy Procurement Agreement[10] pursuant to Article VIII of the Plan, the rights of the Debtors or Reorganized Debtors, as applicable, and any non-Debtor party to an Energy Procurement Agreement arising under any

[10] For the purposes of this Confirmation Order, "Energy Procurement Agreement" means any (i) power purchase agreements; (ii) interconnection, transmission, or metering and related agreements; (iii) an agreement for the supply, transportation or storage of natural gas; (iv) an agreement with providers of renewable portfolio standard shaping and firming; (v) capacity storage agreements; (vi) agreements for electrical standby service, (vii) generator facilities agreements; (viii) agreements to purchase or sell renewable energy credits, resource adequacy or renewable energy from or to the Debtors; or (ix) any other agreement related to the procurement or provision of products, commodities, and services related to electricity or natural gas to customers or gas-fired power plants (including agreements with electric generators and renewable energy generators), as well as all amendments, supplements, schedules and exhibits to each of the foregoing agreements.

Energy Procurement Agreement with respect to the resolution of disputes, claims or adjustments, including with respect to inadvertent overpayments and set-off and recoupment rights, regardless of whether such invoices or disputes relate to the period prior to or after the Effective Date, shall not be discharged, released, or deemed satisfied and shall be unaffected by the Plan or this Confirmation Order and remain in full force and effect between the parties thereto. The parties to any such Energy Procurement Agreements shall attempt to resolve any Claims, Causes of Action or defaults in the ordinary course; provided that if no such resolution is reached within forty-five (45) days following the entry of the Confirmation Order, either party may submit the dispute to the Court; provided further, that the failure of either party to submit to the Court any such dispute following the expiration of such 45 day period shall not result in the discharge, release, or deemed satisfaction of the disputed amount. The parties agree to submit to the jurisdiction of the Court to resolve any Claims, Causes of Action or defaults relating to the assumption of Energy Procurement Agreements by the Debtors; provided, however, that the exercise of any such jurisdiction shall not extend to any future disputes or claims arising under or related to any Energy Procurement Agreements that are unrelated to the assumption by the Debtors of such Energy Procurement Agreements and curing of any defaults as a result thereof.

a. Henrietta D Energy Storage LLC. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, the rights of the Debtors and Henrietta D Energy Storage LLC ("Henrietta") with respect to that certain Energy Storage Agreement, dated November 4, 2015 (the "ESA"), by and between Henrietta and the Utility shall not be diminished, modified, or altered in

any way by reason of the Plan or entry of this Confirmation Order, including with respect to any determination regarding the validity and amount of proof of Claim No. 79294 filed by Henrietta (the "Henrietta Claim"). In accordance with the Court's Order Approving Corrected Stipulation Between Debtor Pacific Gas and Electric Company and Henrietta D Energy Storage LLC for Limited Relief from the Automatic Stay, dated January 10, 2020 [Docket No. 5349] (the "Stipulated Order"), the parties shall utilize the dispute resolution processes articulated in Article 22 of the ESA to resolve their dispute regarding the validity of the Henrietta Claim and the outcome of that process will be binding upon the Parties. In accordance with the Stipulated Order, in the event that the dispute resolution processes articulated in Article 22 of the ESA, or a settlement, results in Henrietta having a claim against the Utility, that claim shall be treated as an allowed general unsecured claim in the Utility's chapter 11 case and receive payment as such in accordance with the terms of the Plan.

44. Ruby Transportation Service Agreement. Ruby Pipeline, L.L.C. ("Ruby") and the Utility are parties to Transportation Service Agreement ("TSA") No. 61009000 and TSA No. 61014000, both dated December 11, 2009, and applicable to Rate Schedule FT of Ruby's FERC Gas Tariff (the "Ruby Agreements") which Ruby Agreements, subject to the occurrence of the Effective Date, shall be assumed under, and in accordance with, the terms of the Plan and this Confirmation Order and, pending approval from the CPUC and FERC, shall be modified by agreement of the parties. Notwithstanding anything in the Plan that could be construed to the contrary, it is the intention of Ruby and the Utility that all claims and defenses of each of the parties related to the credit support issues and

most favored nations provisions raised pre-petition and as set forth in that certain standstill letter dated January 23, 2019 are preserved pending CPUC and FERC's approval of the modifications to the Ruby Agreements.

45. Debtors' Reservation of Rights.

a. Except as explicitly provided in the Plan or in this Confirmation Order, nothing herein or in the Plan shall waive, excuse, limit, diminish, or otherwise alter any of the defenses, claims, Causes of Action, or other rights of the Debtors or the Reorganized Debtors under any executory or non-executory contract or unexpired or expired lease.

b. Nothing in the Plan or in this Confirmation Order will increase, augment, or add to any of the duties, obligations, responsibilities, or liabilities of the Debtors or the Reorganized Debtors, as applicable, under any executory or non-executory contract or unexpired or expired lease.

46. Modifications, Amendments, Supplements, Restatements, or Other Agreements. Pursuant to Section 8.9 of the Plan, unless otherwise provided in the Plan, each executory contract or unexpired lease that is assumed shall include all modifications, amendments, supplements, restatements, or other agreements that in any manner affect such executory contract or unexpired lease, and executory contracts and unexpired leases related thereto, if any, including easements, licenses, permits, rights, privileges, immunities, options, rights of first refusal, and any other interests, unless any of the foregoing agreements has been previously rejected or repudiated or is rejected or repudiated under the Plan.

47. Case Resolution Contingency Process.

a. The Debtors shall comply with the terms of the Case Resolution Contingency Process, as approved by and defined under the CRCP Order. If the Effective Date of the Plan does not occur by September 30, 2020, the Debtors will appoint a Chief Transition Officer, as defined in the Case Resolution Contingency Process. If (a) the Chief Transition Officer is not appointed or retained as set forth above and in the Case Resolution Contingency Process, or (b) the Effective Date has not occurred by December 31, 2020, the Debtors shall pursue a Sale Process as defined and set forth in the Case Resolution Contingency Process.

b. The Utility, the California Governor's Office of Emergency Services ("Cal OES"), or another state agency or instrumentality shall contract or retain the Operational Observer (as defined in the CRCP Order) and the Utility shall pay (or, if Cal OES or any other state agency or instrumentality has previously paid, reimburse) the fees, costs and expenses of the Operational Observer. The Utility will not seek cost recovery of such fees, costs and expenses. Such reimbursement for fees, costs and expenses incurred for the Operational Observer shall not be subject to any further approval or review for reasonableness by the Court, the fee examiner for the Chapter 11 Cases, or any other party in interest.

c. The Debtors shall comply with the following additional commitments agreed to in connection with the *Case Resolution Contingency Process Motion* [Docket No. 6398] (the "CRCP Motion"). In particular:

i. Reorganized HoldCo shall not pay common dividends until it has recognized $6.2 billion in

Non-GAAP Core Earnings[11] after the Effective Date. The first $6.2 billion in Non-GAAP Core Earnings after the Effective Date shall be used to make capital investments or to permanently repay outstanding debt of the Reorganized Debtors.

ii. The Reorganized Utility shall not seek to recover Fire Victims Claims Costs in rates other than through its proposed Securitization (as defined in the CRCP Motion).

iii. If, pursuant to the Enhanced Regulatory Oversight and Enforcement Process, the Commission revokes the Utility's certificate of public convenience and necessity ("CPCN") for the provision of electrical and gas service, then the state of California (acting itself or through its designee) shall have the right to purchase all of the issued and outstanding equity interests of the Reorganized Utility (including common stock and any options or other equity awards issued or granted by the Reorganized Utility) or any of its successors. In that event, the Reorganized Debtors (or any successors) and the shareholders of the Reorganized Debtors are authorized and directed to cooperate in and to transfer such equity interests to the State of California (acting itself or through its designee), at an aggregate price to the holders of such equity

[11] "Non-GAAP Core Earnings" means GAAP earnings adjusted for those non-core items identified in the Disclosure Statement. Exhibit B, p. 168 [Docket No. 6353]. The non-core items identified in the Disclosure Statement are Bankruptcy and Legal Costs; Investigation Remedies and Delayed Cost Recovery; GT&S Capital Audit; Amortization of Wildfire Insurance Fund Contribution; and Net Securitization Inception Charge. Id. at 174.

interests equal to (i) the estimated one-year forward income computed by reference to rate base times equity ratio times return on equity (in each case as authorized by the CPUC and FERC), multiplied by (ii) the average one-year forward Price to Earnings ratio of the utilities then comprising the Philadelphia Utilities Index ("PHLX"), multiplied by 0.65 (the "Purchase Price"). The Reorganized Debtors (their successors and shareholders) are authorized and directed to complete such transfer as soon as the Purchase Price is deposited as provided under the applicable law of the State of California and all applicable requirements of law are met.

iv. The Reorganized Utility shall use the cash flows resulting from use of the net operating losses that result from payment of wildfire claims under the Plan in connection with the Securitization; however, if the Securitization is not approved or consummated, the Reorganized Utility shall use these cash flows to amortize the $6 billion in Temporary Utility Debt (as defined in the CRCP Motion).

v. Until the sunset date set forth in the CPUC Decision, the Reorganized Debtors shall use the skills matrix for nominating director candidates for election to the respective boards of directors, and in the event the Reorganized Debtors wish to modify the skills matrix, shall file a Tier 2 advice letter, giving the CPUC the opportunity to disapprove any such amendment.

vi. As a condition to the occurrence of the Effective Date, which condition may be waived with the consent of the Plan Proponents and the Governor's Office, the secured debt to be issued

in connection with the funding of the Plan shall receive an investment grade rating from at least one of Standard & Poor's or Moody's by the Effective Date.

48. Releases, Exculpations, and Injunctions.

a. The Court has core jurisdiction under sections 157(a) and (b) and 1334(a) and (b) of title 28 of the United States Code and authority under sections 105 and 1141 of the Bankruptcy Code to approve the injunctions, stays, releases, and exculpations set forth in the Plan, including in Sections 4.6, 4.7, 4.25, 4.26, and 10.3-10.9 of the Plan, and in this Confirmation Order.

b. Based upon the record of the Chapter 11 Cases, the representations of the parties, and/or the evidence proffered, adduced, and/or, presented at the Confirmation Hearing, the release, stay, exculpation, and injunction (including the Channeling Injunction) provisions contained in the Plan, including those set forth in Sections 4.6, 4.7, 4.25, 4.26, and 10.3-10.9 thereof, and in this Confirmation Order, are fair and equitable, consistent with the Bankruptcy Code and applicable law, are given for valuable consideration, and are in the best interests of the Debtors and their chapter 11 estates, and are approved and shall be effective and binding on all persons and entities.

c. The Channeling Injunction contained in Sections 4.6, 4.7, 4.25, 4.26, and 10.7 of the Plan, and in this Confirmation Order, which was adequately disclosed and explained on the relevant Ballots, in the Disclosure Statement, and in the Plan, is essential to effectuate the Plan and essential to the Debtors' reorganization efforts and is to be implemented in accordance with the Plan, the Subrogation Claims RSA, the Tort

Claimants RSA, and this Confirmation Order. Pursuant to the Channeling Injunction set forth in Sections 4.6, 4.7, 4.25, 4.26, and 10.7 of the Plan, and section 105(a) of the Bankruptcy Code, and as more fully set forth in Section 10.7 of the Plan and in this Confirmation Order, all Entities that have held or asserted, or that hold or assert any Subrogation Wildfire Claim or Fire Victim Claim shall be permanently and forever stayed, restrained, and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery from any Debtor or Reorganized Debtor or its assets and properties with respect to any Fire Claims.

49. Discharge of the Debtors. Upon the Effective Date and in consideration of the distributions to be made under the Plan, except as otherwise expressly provided in the Plan or in this Confirmation Order, the Debtors shall be discharged to the fullest extent permitted by section 1141 of the Bankruptcy Code; *provided, however*, that any liability of the Debtors arising from any fire or any other act or omission occurring after the Petition Date, including the Kincade Fire, that has not been satisfied in full as of the Effective Date shall not be discharged, waived, or released. In addition, (a) from and after the Effective Date neither the automatic stay nor any other injunction entered by the Bankruptcy Court shall restrain the enforcement or defense of any claims for fires or any other act or omission occurring after the Petition Date, including the Kincade Fire or the Lafayette fire, in any court that would otherwise have jurisdiction if the Chapter 11 Cases had not been filed and (b) no claims for fires or any other act or omission or motions for allowance of claims for fires or any act or omission occurring after the Petition Date need to be filed in the Chapter 11 Cases. Upon the Effective

Date, all holders of Claims against or Interests in the Debtors shall be forever precluded and enjoined, pursuant to section 524 of the Bankruptcy Code, from prosecuting or asserting any such discharged Claim against or Interest in the Debtors.

50. Term of Injunctions or Stays. Unless otherwise provided in the Plan, this Confirmation Order, or another Final Order, all injunctions or stays arising under or entered during the Chapter 11 Cases under section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the later of the Effective Date and the date indicated in the order providing for such injunction or stay. The Trading Order shall remain enforceable as to transfers through the Effective Date with respect to those persons having "beneficial ownership" of "PG&E Stock" (as such terms are defined in Trading Order). Accordingly, the Trading Order has no applicability or effect with respect to the trading of stock of Reorganized HoldCo on and after the Effective Date.

51. Injunction Against Interference with the Plan. Upon entry of this Confirmation Order, all holders of Claims against or Interests in the Debtors and other parties in interest, along with their respective present or former employees, agents, officers, directors, principals, and affiliates, shall be enjoined from taking any actions to interfere with the implementation or consummation of the Plan; provided, that nothing in the Plan or in this Confirmation Order shall preclude, limit, restrict or prohibit any party in interest from seeking to enforce the terms of the Plan, this Confirmation Order, or any other agreement or instrument entered into or effectuated in connection with the consummation of the Plan.

52. Injunction.

a. Except as otherwise provided in the Plan or in this Confirmation Order, as of the entry of this Confirmation Order but subject to the occurrence of the Effective Date, all Entities who have held, hold, or may hold Claims or Interests are, with respect to any such Claim or Interest, permanently enjoined after the entry of the Confirmation Order from: (i) commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including, any proceeding in a judicial, arbitral, administrative, or other forum) against or affecting, directly or indirectly, a Debtor, a Reorganized Debtor, or an estate or the property of any of the foregoing, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this subsection (i) or any property of any such transferee or successor; (ii) enforcing, levying, attaching (including any pre-judgment attachment), collecting, or otherwise recovering in any manner or by any means, whether directly or indirectly, any judgment, award, decree, or order against a Debtor, a Reorganized Debtor, or an estate or its property, or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Persons mentioned in this subsection (ii) or any property of any such transferee or successor; (iii) creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against a Debtor, a Reorganized Debtor, or an estate or any of its property, or any direct or indirect transferee of any property of, or successor in interest to, any of the foregoing Persons mentioned in this subsection (iii) or any property of any such transferee or successor; (iv) acting or proceeding in any manner, in any place

whatsoever, that does not conform to or comply with the provisions of the Plan to the full extent permitted by applicable law; and (v) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of the Plan; provided, that nothing contained herein shall preclude such Entities who have held, hold, or may hold Claims against a Debtor or an estate from exercising their rights, or obtaining benefits, pursuant to and consistent with the terms of the Plan, this Confirmation Order, or any other agreement or instrument entered into or effectuated in connection with the consummation of the Plan.

b. By accepting distributions pursuant to the Plan, each holder of an Allowed Claim or Interest will be deemed to have affirmatively and specifically consented to be bound by this Plan, including the injunctions set forth in the immediately preceding paragraph hereof.

c. For the avoidance of doubt, nothing in Section 10.6 of the Plan shall enjoin the continued prosecution or resolution of *In re PG&E Corp. Securities Litigation*, No. 18-3509 (N.D. Cal.) (the "Securities Action") against any non-Debtor defendant, except (a) with respect to any claim by any Releasing Party, and (b) to the extent that some or all of the claims asserted in the Securities Action are determined by an unstayed order of a court of competent jurisdiction to be derivative claims belonging to the Debtors, such argument and any opposition thereto being fully preserved.

53. CHANNELING INJUNCTION.

a. The sole source of recovery for holders of Subrogation Wildfire Claims and Fire Victim Claims shall be from the Subrogation Wildfire Trust and the Fire Victim Trust, as applicable. The holders of such

Claims shall have no recourse to or Claims whatsoever against the Debtors or the Reorganized Debtors or their assets and properties. Consistent with the foregoing, all Entities that have held or asserted, or that hold or assert any Subrogation Wildfire Claim or Fire Victim Claim shall be permanently and forever stayed, restrained, and enjoined from taking any action for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery from any Debtor or Reorganized Debtor or its assets and properties with respect to any Fire Claims, including all of the following actions:

i. commencing, conducting, or continuing, in any manner, whether directly or indirectly, any suit, action, or other proceeding of any kind in any forum with respect to any such Fire Claim, against or affecting any Debtor or Reorganized Debtor, or any property or interests in property of any Debtor or Reorganized Debtor with respect to any such Fire Claim;

ii. enforcing, levying, attaching, collecting or otherwise recovering, by any manner or means, or in any manner, either directly or indirectly, any judgment, award, decree or other order against any Debtor or Reorganized Debtor or against the property of any Debtor or Reorganized Debtor with respect to any such Fire Claim;

iii. creating, perfecting, or enforcing in any manner, whether directly or indirectly, any Lien of any kind against any Debtor or Reorganized Debtor or the property of any Debtor or Reorganized Debtor with respect to any such Fire Claims;

iv. asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, or recoupment

of any kind, whether directly or indirectly, against any obligation due to any Debtor or Reorganized Debtor or against the property of any Debtor or Reorganized Debtor with respect to any such Fire Claim; and

v. taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents, with respect to any such Fire Claim.

b. Reservations. Notwithstanding anything to the contrary in Section 10.7 of the Plan, this Channeling Injunction shall not enjoin:

i. the rights of holders of Subrogation Wildfire Claims and Fire Victim Claims to the treatment afforded them under the Plan, including the right to assert such Claims in accordance with the applicable Wildfire Trust Agreements solely against the applicable Wildfire Trust whether or not there are funds to pay such Fire Claims; and

ii. the Wildfire Trusts from enforcing their rights under the Wildfire Trust Agreements.

c. Modifications. There can be no modification, dissolution, or termination of the Channeling Injunction, which shall be a permanent injunction.

d. No Limitation on Channeling Injunction. Nothing in the Plan, this Confirmation Order, or the Wildfire Trust Agreements shall be construed in any way to limit the scope, enforceability, or effectiveness of the Channeling Injunction provided for in the Plan and in this Confirmation Order.

e. Bankruptcy Rule 3016 Compliance. The Debtors' compliance with the requirements of Bankruptcy Rule 3016 shall not constitute an admission that the Plan

provides for an injunction against conduct not otherwise enjoined under the Bankruptcy Code.

54. Exculpation. Pursuant to Section 10.8 of the Plan, notwithstanding anything in the Plan or this Confirmation Order to the contrary, and to the maximum extent permitted by applicable law, and except for the Assigned Rights and Causes of Action solely to the extent preserved by Section 10.9(g), no Exculpated Party[12] shall have or incur, and each Exculpated Party is hereby released and exculpated from, any Claim, Interest, obligation, suit, judgment, damage, demand, debt, right, Cause of Action, loss, remedy, or liability for any claim (including, but not limited to, any claim for breach of any fiduciary duty or any similar duty) in connection with or arising out of the administration of the Chapter 11 Cases; the negotiation and pursuit of the Public Entities Plan Support Agreements, the Backstop Commitment Letters, the Subrogation Claims RSA, the Tort Claimants RSA, the Noteholder RSA, the Exit Financing Documents, the Plan Funding, the DIP Facilities, the Disclosure Statement, the Plan, the Restructuring Transactions, the Wildfire Trusts (including the Plan Documents, the Claims Resolution Procedures and the Wildfire Trust Agreements), or any agreement, transaction, or document related to any of the foregoing, or the solicitation of votes for, or confirmation of, this Plan; the funding of this Plan; the occurrence of the Effective Date; the administration of the Plan or the property to be distributed under the Plan; any membership in (including, but not limited to, on an *ex officio* basis),

[12] For the avoidance of doubt, the defined terms "Exculpated Parties" and "Released Parties" each include, in addition to current and former directors, the directors named on Exhibit A of the Plan Supplement filed on June 10, 2020 [Docket No. 7879].

participation in, or involvement with the Statutory Committees; the issuance of Securities under or in connection with this Plan; or the transactions in furtherance of any of the foregoing; except for Claims related to any act or omission that is determined in a Final Order by a court of competent jurisdiction to have constituted actual fraud or willful misconduct, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to this Plan. The Exculpated Parties and each of their respective affiliates, agents, directors, officers, employees, advisors, and attorneys have acted in compliance with the applicable provisions of the Bankruptcy Code with regard to the solicitation and distributions pursuant to this Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of this Plan or such distributions made pursuant to this Plan, including the issuance of Securities thereunder. This exculpation shall be in addition to, and not in limitation of, all other releases, indemnities, exculpations, and any other applicable law or rules protecting such Exculpated Parties from liability.

55. Releases by the Debtors. As of and subject to the occurrence of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce the Plan and the Plan Documents, and except for the Assigned Rights and Causes of Action solely to the extent preserved by Section 10.9(g) of the Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, including, the service of the Released Parties to facilitate the reorganization of the Debtors, the implementation of the Restructuring, and except as otherwise provided in

the Plan or in this Confirmation Order, the Released Parties are deemed forever released and discharged, to the maximum extent permitted by law and unless barred by law, by the Debtors, the Reorganized Debtors, and the Debtors' estates, in each case on behalf of themselves and their respective successors, assigns, and representatives and any and all other Entities who may purport to assert any Cause of Action derivatively, by or through the foregoing Entities, from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses, remedies, or liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of the Debtors, the Reorganized Debtors, or the Debtors' estates, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that the Debtors, the Reorganized Debtors, or the Debtors' estates would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Chapter 11 Cases, the Fires, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the DIP Facilities, the Plan Funding, the Restructuring, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the Restructuring Transactions, the Public Entities Plan Support Agreements, the Backstop Commitment Letters, the Subrogation Claims RSA, the Tort Claimants RSA, the Noteholder RSA, the Exit

Financing Documents, the negotiation, formulation, or preparation of the Disclosure Statement and the Plan and related agreements, instruments, and other documents (including the Plan Documents, the Claims Resolution Procedures, the Wildfire Trust Agreements, Public Entities Plan Support Agreements, the Backstop Commitment Letters, the Subrogation Claims RSA, the Tort Claimants RSA, the Noteholder RSA, and the Exit Financing Documents), the solicitation of votes with respect to the Plan, any membership (including, but not limited to, on an *ex officio* basis), participation in, or involvement with the Statutory Committees, or any other act or omission, transaction, agreement, event, or other occurrence, and in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan.

56. Releases by Holders of Claims and Interests. As of and subject to the occurrence of the Effective Date, except for the rights that remain in effect from and after the Effective Date to enforce the Plan and the Plan Documents, and except for the Assigned Rights and Causes of Action solely to the extent preserved by Section 10.9(g) of the Plan, for good and valuable consideration, the adequacy of which is hereby confirmed, including, the service of the Released Parties to facilitate the reorganization of the Debtors and the implementation of the Restructuring, and except as otherwise provided in the Plan or in this Confirmation Order, the Released Parties, are deemed forever released and discharged, to the maximum extent permitted by law and unless barred by law, by the Releasing Parties from any and all claims, interests, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable

on behalf of the Debtors, and any claims for breach of any fiduciary duty (or any similar duty), whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, that such holders or their affiliates (to the extent such affiliates can be bound) would have been legally entitled to assert in their own right (whether individually or collectively) or on behalf of the holder of any Claim or Interest or other Entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtors, the Fires, the Chapter 11 Cases, the purchase, sale, or rescission of the purchase or sale of any Security of the Debtors or the Reorganized Debtors, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the DIP Facilities, the Plan Funding, the Restructuring, the restructuring of any Claim or Interest before or during the Chapter 11 Cases, the Restructuring Transactions, the Public Entities Plan Support Agreement, the Backstop Commitment Letters, the Subrogation Claims RSA, the Tort Claimants RSA, the Noteholder RSA, the Exit Financing Documents, the negotiation, formulation, or preparation of the Disclosure Statement, the Plan and related agreements, instruments, and other documents (including the Plan Documents, the Claims Resolution Procedures, the Wildfire Trust Agreements, Public Entities Plan Support Agreements, the Backstop Commitment Letters, the Subrogation Claims RSA, the Tort Claimants RSA, the Noteholder RSA, and the Exit Financing Documents), the solicitation of votes with respect to the Plan, any membership in (including, but not limited to, on an *ex officio* basis), participation in, or involvement with the Statutory Committees, or any

other act or omission, transaction, agreement, event, or other occurrence, and in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. Notwithstanding the above, the holders of Environmental Claims, Workers' Compensation Claims and 2001 Utility Exchange Claims retain the right to assert such Claims against the Reorganized Debtors in accordance with the terms of the Plan; and nothing in the Plan or this Confirmation Order shall be deemed to impose a release by holders of Fire Victim Claims of insurance claims arising under their insurance policies against holders of Subrogation Wildfire Claims, other than any rights such holder may elect to release as part of any settlement as set forth in Section 4.25(f)(ii) of the Plan.

57. Made-Whole Agreement. Except with respect to any settlement or other agreement regarding the Fire Victim Claims asserted by Adventist Health System/West, Feather River Hospital d/b/a Adventist Health Feather River and the parties to the State Agency Settlement [Docket No. 7399-2] and the Federal Agency Settlement [Docket No. 7399-1], any settlement or other agreement with any holder or holders of a Fire Victim Claim that fixes the amount or terms for satisfaction of such Claim, including by a post-Effective Date trust established for the resolution and payment of such Claim, shall contain as a condition to such settlement or other agreement that the holder or holders of such Claim contemporaneously execute and deliver a release and waiver of any potential made-whole claims against present and former holders of Subrogation Wildfire Claims, which release shall be substantially in the form attached to the Plan as Exhibit C thereto.

58. Release of Liens. Except as otherwise specifically provided in the Plan, this Confirmation Order, or in any contract, instrument, release, or other agreement or document created pursuant to the Plan, including the Exit Financing Documents, on the Effective Date and concurrently with the applicable distributions made pursuant to the Plan and, in the case of a Secured Claim, satisfaction in full of the portion of the Secured Claim that is Allowed as of the Effective Date, all mortgages, deeds of trust, Liens, pledges, or other security interests against any property of the estates shall be fully released and discharged, and all of the right, title, and interest of any holder of such mortgages, deeds of trust, Liens, pledges, or other security interests shall revert to the Reorganized Debtors and their successors and assigns, in each case, without any further approval or order of the Court and without any action or filing being required to be made by the Debtors.

59. Effectiveness of Releases. As further provided in Section 10.9(e) of the Plan, the releases contained in Article X of the Plan are effective regardless of whether those released matters are presently known, unknown, suspected or unsuspected, foreseen or unforeseen.

60. Injunction Related to Releases and Exculpation. The commencement or prosecution by any Person or Entity, whether directly, derivatively, or otherwise, of any Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, losses, or liabilities released pursuant to the Plan, including, the claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action, and liabilities released or exculpated in the Plan shall be permanently enjoined. For the avoidance of doubt, this injunction

shall not apply to the rights of the Fire Victim Trust to prosecute and settle any Assigned Rights and Causes of Action solely to the extent provided for in the Plan. Notwithstanding the above, the holders of Environmental Claims, Workers' Compensation Claims and 2001 Utility Exchange Claims retain the right to assert such Claims against the Reorganized Debtors in accordance with the terms of the Plan.

61. No Release or Exculpation of Assigned Rights and Causes of Action. Notwithstanding any other provision of the Plan, including anything in Section 10.8 and/or 10.9 thereof, the releases, discharges, and exculpations contained in this Plan shall not release, discharge, or exculpate any Person from the Assigned Rights and Causes of Action.

62. Subordination. The allowance, classification, and treatment of all Allowed Claims and Interests and the respective distributions and treatments thereof under the Plan take into account and conform to the relative priority and rights of the Claims and Interests in each Class in connection with any contractual, legal, and equitable subordination rights relating thereto, whether arising under general principles of equitable subordination, sections 510(a), 510(b), or 510(c) of the Bankruptcy Code, or otherwise. Pursuant to section 510 of the Bankruptcy Code, the Debtors reserve the right to reclassify any Allowed Claim (other than any DIP Facility Claims) or Interest in accordance with any contractual, legal, or equitable subordination relating thereto.

63. Retention of Causes of Action / Reservation of Rights.

a. Pursuant to Section 10.11 of the Plan, except as otherwise provided in Section 10.9 thereof, nothing in

the Plan or in this Confirmation Order shall be deemed to be a waiver or the relinquishment of any rights or Causes of Action that the Debtors or the Reorganized Debtors may have or which the Reorganized Debtors may choose to assert on behalf of their respective estates under any provision of the Bankruptcy Code or any applicable nonbankruptcy law, including (i) any and all Claims against any Person or Entity, to the extent such Person or Entity asserts a crossclaim, counterclaim, and/or Claim for setoff which seeks affirmative relief against the Debtors, the Reorganized Debtors, or their officers, directors, or representatives and (ii) for the turnover of any property of the Debtors' estates.

b. Nothing in the Plan or in this Confirmation Order shall be deemed to be a waiver or relinquishment of any rights or Causes of Action, right of setoff, or other legal or equitable defense that the Debtors had immediately prior to the Petition Date, against or with respect to any Claim left Unimpaired by the Plan. The Reorganized Debtors shall have, retain, reserve, and be entitled to assert all such claims, Causes of Action, rights of setoff, and other legal or equitable defenses that they had immediately prior to the Petition Date fully as if the Chapter 11 Cases had not been commenced, and all of the Reorganized Debtors' legal and equitable rights with respect to any Claim left Unimpaired by the Plan may be asserted after the Confirmation Date to the same extent as if the Chapter 11 Cases had not been commenced.

c. The Reorganized Debtors reserve and shall retain the applicable Causes of Action notwithstanding the rejection of any executory contract or unexpired lease during the Chapter 11 Cases or pursuant to the Plan. In accordance with section 1123(b)(3) of the Bankruptcy

Code, any Causes of Action that a Debtor may hold against any Entity shall vest in the Reorganized Debtors in accordance with the terms of the Plan. The Reorganized Debtors shall have the exclusive right, authority, and discretion to determine and to initiate, file, prosecute, enforce, abandon, settle, compromise, release, withdraw, or litigate to judgment any such Causes of Action and to decline to do any of the foregoing without the consent or approval of any third party or further notice to or action, order, or approval of the Bankruptcy Court.

d. Notwithstanding anything to the contrary in the Plan, no claims shall be brought under section 547 of the Bankruptcy Code to recover any payments made to any Person or Entity as a result of damages caused by wildfires.

64. AT&T.

a. Notwithstanding anything in the Plan or the Channeling Injunction to the contrary, but subject to the limitations under the Bankruptcy Code, any right of setoff or recoupment that AT&T Corporation or its affiliates ("AT&T") may be entitled to assert against the Debtors or Reorganized Debtors shall be preserved, and all rights of the Debtors and Reorganized Debtors to object to or challenge the assertion of any such right by AT&T shall be preserved.

b. Any executory contracts or unexpired leases between the Debtors and AT&T shall be deemed assumed on the Effective Date pursuant to Section 8.1 of the Plan; *provided, however*, notwithstanding the provisions of Section 8.2 of the Plan, AT&T shall have until the date that is forty-five (45) calendar days following entry of this Confirmation Order (or such later date agreed to by the Plan Proponents (or

following the Effective Date, the Reorganized Debtors) and AT&T) to object to the proposed Cure Amount with respect to any such executory contracts or unexpired leases (and any such Cure Dispute shall be governed by, and be subject to, the provisions of Article VIII of the Plan).

65. Special Provisions for Governmental Units.

a. Solely with respect to Governmental Units, nothing in the Plan or this Confirmation Order shall limit or expand the scope of discharge, release, or injunction to which the Debtors or the Reorganized Debtors are entitled under the Bankruptcy Code. Further, nothing in the Plan or this Confirmation Order, including Sections 10.8 and 10.9 of the Plan, shall discharge, release, enjoin, or otherwise bar (i) any liability of the Debtors or the Reorganized Debtors to a Governmental Unit arising on or after the Confirmation Date, (ii) any liability to a Governmental Unit that is not a Claim, (iii) any affirmative defense, valid right of setoff or recoupment of a Governmental Unit, (iv) any police or regulatory action by a Governmental Unit (except with respect to any monetary amount related to any matter arising prior to the Petition Date), (v) any action to exercise the power of eminent domain and any related or ancillary power or authority of a Governmental Unit, (vi) any environmental liability to a Governmental Unit that the Debtors, the Reorganized Debtors, any successors thereto, or any other Person or Entity may have as an owner or operator of real property after the Confirmation Date, or (vii) any liability to a Governmental Unit on the part of any Persons or Entities other than the Debtors or the Reorganized Debtors, except that nothing in Section 10.13 of the Plan or in this Paragraph 65 shall affect the exculpation in Section

10.8 of the Plan and Paragraph 54 of this Confirmation Order or the Debtors' releases in Section 10.9 of the Plan and Paragraph 55 of this Confirmation Order. Nothing in the Plan or this Confirmation Order shall enjoin or otherwise bar any Governmental Unit from asserting or enforcing, outside the Bankruptcy Court, any of the matters set forth in clauses (i) through (vii) above. Nothing in the Plan or this Confirmation Order shall affect the treatment of Environmental Claims and Environmental Performance Obligations as specified in Sections 4.10 and 4.30 of the Plan.

b. The identification of amounts paid under the Plan and this Confirmation Order as "restitution" does not preempt the California Franchise Tax Board's rights of review and determination as to the deductibility of such amounts as having been paid in restitution for California franchise tax purposes.

66. Special Provisions for CPUC. Notwithstanding anything in the Plan or this Confirmation Order to the contrary, any Claim of the CPUC shall be deemed satisfied and discharged as of the Effective Date in consideration of the distributions to be made under the Plan, provided that (a) confirmation and consummation of the Plan shall not affect any CPUC proceeding or investigation regarding pre-petition conduct that is pending as of the Plan Confirmation Date and listed on the Schedule of Pending Investigations (attached as Exhibit C hereto), or (b) any CPUC proceeding or investigation regarding postpetition conduct, or (c) any proceeding or investigation with respect to the Kincade Fire (it being understood that, in connection with such proceeding or investigation, the CPUC may investigate pre-petition and post-petition conduct, but the CPUC may impose penalties only for post-petition acts or omissions), whether or not pending as of the

Plan Confirmation Date, including any adjudication or disposition thereof, and any liability of the Debtors or Reorganized Debtors, as applicable, arising therefrom shall not be discharged, waived, or released pursuant to the Plan or this Confirmation Order.

67. Governmental Performance Obligations.

a. Nothing in this Confirmation Order, the Plan or the Plan Documents discharges, exculpates, absolves or releases the Debtors, the Reorganized Debtors, any Released Party, any non-debtor, or any other Person from any Environmental Claims held by any Governmental Unit or Environmental Performance Obligations to any Governmental Unit or impairs the ability of any Governmental Unit to pursue any Environmental Claims or Environmental Performance Obligations, or any claim, liability, right, defense, or Cause of Action under any Environmental Law against any Debtor, Reorganized Debtor, any Released Party, or any other Person.

b. All Environmental Claims held by any Governmental Unit or Environmental Performance Obligations to any Governmental Unit shall survive the Chapter 11 Cases as if they had not been commenced and be determined in the ordinary course of business, including in the manner and by the administrative or judicial tribunals in which such Environmental Claims or Environmental Performance Obligations would have been resolved or adjudicated if the Chapter 11 Cases had not been commenced; *provided*, that nothing in this Confirmation Order, the Plan, or the Plan Documents shall alter any legal or equitable rights or defenses of the Debtors or the Reorganized Debtors under non-bankruptcy law with respect to any such Environmental Claims or Environmental Performance Obligations. For the avoidance of doubt, the

Debtors and the Reorganized Debtors shall not raise the discharge injunction as a defense to the Environmental Claims or Environmental Performance Obligations.

c. Nothing in this Confirmation Order, the Plan, or the Plan Documents authorizes the transfer or sale of any governmental licenses, permits, registrations, authorizations or approvals, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under the law governing such transfers.

d. Notwithstanding anything in this Confirmation Order, the Plan, or the Plan Documents, the listing of a matter as an "executory contract" or an "unexpired lease" in the Debtors' schedules or Plan Documents (a "Potentially Assumed Contract/Lease") is without prejudice to any contention by any Governmental Unit that the matter is not in fact an executory contract or unexpired lease as set forth in section 365 of the Bankruptcy Code. With respect to any Cure Amount for a Potentially Assumed Contract/Lease for which the United States or any department, agency, or instrumentality of the State of California (collectively, the "Governmental Parties") is listed as the Non-Debtor Counterparty, all parties reserve all rights to dispute such Cure Amount. If any Governmental Party disputes (i) that any Potentially Assumed Contract/Lease is in fact an executory contract or unexpired lease or (ii) any Cure Amount, such Governmental Party shall have no later than ninety (90) days after the Confirmation Date (or such later date as may be mutually agreed upon between the applicable Governmental Party and the Debtors or Reorganized Debtors) to file and serve an objection

setting forth such dispute, and any such dispute shall be resolved by the Bankruptcy Court.

e. Nothing in this Confirmation Order, the Plan, or the Plan Documents shall affect or impair the United States' or any department, agency, or instrumentality of the State of California's rights and defenses of setoff and recoupment, or their ability to assert setoff or recoupment against the Debtors or the Reorganized Debtors and such rights and defenses are expressly preserved, all subject to the limitations in the Bankruptcy Code, if any.

f. Nothing in this Confirmation Order, the Plan, or the Plan Documents impairs, precludes, resolves, exculpates, enjoins or releases any obligation or liability to a Governmental Unit on the part of any non-Debtor.

g. Nothing in this Confirmation Order, the Plan, or Plan Documents shall discharge, release, enjoin, or otherwise bar (i) any obligation or liability to a Governmental Unit that is not a Claim, or (ii) any liability of the Debtors or the Reorganized Debtors to a Governmental Unit arising on or after the Confirmation Date. Notwithstanding any other provision in this Confirmation Order, the Plan, or the Plan Documents, nothing relieves the Debtors or the Reorganized Debtors from their obligations to comply with the Communications Act of 1934, as amended, and the rules, regulations and orders promulgated thereunder by the Federal Communications Commission ("FCC"). No transfer of any FCC license or authorization held by the Debtors or transfer of control of the Debtors or transfer of control of an FCC licensee controlled by the Debtors shall take place prior to the issuance of FCC regulatory approval for such transfer pursuant to applicable FCC regulations. The FCC's

rights and powers to take any action pursuant to its regulatory authority including, but not limited to, imposing any regulatory conditions on any of the above described transfers, are fully preserved, and nothing herein shall proscribe or constrain the FCC's exercise of such power or authority.

h. Nothing in this Confirmation Order, the Plan or the Plan Documents relieves the Debtors or the Reorganized Debtors from their obligations to comply with the Atomic Energy Act of 1954, as amended, and the rules, regulations and orders promulgated thereunder by the United States Nuclear Regulatory Commission (the "NRC").

i. The rights, duties and obligations of the Debtors under the 2003 Watershed Lands Obligations[13] shall be preserved and are unaffected by the Plan or this Confirmation Order, notwithstanding anything to the contrary contained therein or herein.

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[13] "2003 Watershed Lands Obligations" means the outstanding obligations of the Utility pursuant to the *Order Confirming Plan of Reorganization Under Chapter 11 of the Bankruptcy Code for Pacific Gas and Electric Company Proposed by Pacific Gas and Electric Company, PG&E Corporation and the Official Committee of Unsecured Creditors Dated July 31, 2003, as Modified* [Docket No. 14272], entered on December 22, 2003, in *In re Pacific Gas and Electric Company*, Case No. 01-30923 DM (Bankr. N.D. Cal.) to permanently protect the beneficial public values associated with certain land identified in that certain Settlement Agreement, dated December 19, 2003 and approved in CPUC Decision 03-12-035, among the Debtors and CPUC, and the related Stipulation Resolving Issues Regarding the Land Conservation Commitment that has not been made subject to a conservation easement or donated in accordance with the obligations set forth therein, which includes, for the avoidance of doubt, the Watershed Lands (as defined in and identified by the Settlement Agreement).

j. To the extent that any non-Debtor party to the FERC Tariff Rate Proceedings[14] is entitled to a refund from the Debtors or Reorganized Debtors pursuant to such proceedings, such refund obligation shall be an ongoing regulatory obligation of the Reorganized Debtors not subject to discharge or release by the Plan or this Confirmation Order, notwithstanding anything to the contrary contained therein or herein. All rights of such non-Debtor parties, the Debtors and/or the Reorganized Debtors to prosecute, defend, or appeal a finding of the FERC Tariff Rate Proceedings are preserved and may be exercised as if the Chapter 11 Cases had not been commenced.

k. The proceeds of the DWR Bond Charge[15] do not constitute property of the Debtors' estates. Notwith-

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[14] "FERC Tariff Rate Proceedings" means the pending TO Rate Revision Cases filed by PG&E at FERC seeking increases to its proposed electricity transmission rates in 2016, 2017, and 2018 and bearing FERC Docket Nos. ER16-2320-000, ER17-2154-000, and ER19-13-000, respectively, in which certain non-Debtor parties may receive refunds in amounts to be later determined by FERC.

[15] "DWR Bond Charge" means the charge imposed by the CPUC upon customers in the service areas of California's investor-owned utilities, as more fully defined in CPUC-DWR Rate Agreement, which is based on an estimate of the revenue needed to pay for DWR Bond Related Costs and the aggregate amount of electric power used by customers. The DWR Bond Charge is the property of DWR for all purposes under California law, and any funds the Utility received from customers as the billing and collection agent for the DWR Bond Charge are held in trust for the benefit of DWR, as provided by and consistent with Section 5.1(b) of the CPUC-DWR Rate Agreement, California Water Code section 80112, and applicable CPUC decisions and orders. The DWR Bond Charge does not include the Wildfire Fund Charge that the Utility collects from customers and remits to DWR, as more fully defined by the CPUC in its Decision on

standing anything in the Plan or this Confirmation Order to the contrary, DWR shall be entitled to pursue any Claim against or otherwise exercise any rights against the Debtors and Reorganized Debtors in respect of the proceeds of the DWR Bond Charge as if the Chapter 11 Cases had not been commenced; *provided that* any such action shall be subject to the terms of the CPUC-DWR Rate Agreement, applicable CPUC decisions and orders, the California Water Code, and any other applicable law.

68. Exchange Operators. The rights, duties and obligations of the Utility and the Reorganized Utility, as applicable, under its agreements with the California Independent System Operator Corporation and ICE NGX Canada Inc. (and certain of its affiliates and subsidiaries) and any tariffs incorporated therein, regardless of whether arising prior to or after the Petition Date or the Effective Date, shall be unaffected by the Plan or this Confirmation Order notwithstanding anything to the contrary contained therein.

69. Exemption from Transfer Taxes. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or exchange of any Security or property under the Plan or in connection with the transactions

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October 24, 2019 in D1910056, and other applicable CPUC decisions and orders.

"DWR Bond Related Costs" means the Bond Related Costs described in the CPUC-DWR Rate Agreement.

"CPUC-DWR Rate Agreement" means the agreement dated March 8, 2002 between the CPUC and DWR relating to the establishment of DWR's revenue requirements and charges in connection with power sold by DWR under Division 27, commencing with section 80000, of the California Water Code.

"DWR" means the California Department of Water Resources.

contemplated thereby, the creation, filing, or recording of any mortgage, deed of trust, or other security interest, the making, assignment, filing, or recording of any lease or sublease, or the making or delivery of any deed, bill of sale, or other instrument of transfer under, in furtherance of, or in connection with the Plan, or any agreements of consolidation, deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated in the Plan, shall constitute a "transfer under a plan" within the purview of section 1146 of the Bankruptcy Code and shall not be subject to or taxed under any law imposing a stamp tax or similar tax, to the maximum extent provided by section 1146(a) of the Bankruptcy Code. To the maximum extent provided by section 1146(a) of the Bankruptcy Code and applicable nonbankruptcy law, the Restructuring Transactions shall not be taxed under any law imposing a stamp tax or similar tax.

70. Final Fee Applications.

a. Pursuant to Section 2.2 of the Plan, all final requests for the payment of Professional Fee Claims against a Debtor, including any Professional Fee Claim incurred during the period from the Petition Date through and including the Effective Date, must be filed and served on the Reorganized Debtors no later than sixty (60) days after the Effective Date. All such final requests will be subject to approval by the Court after notice and a hearing in accordance with the procedures established by the Bankruptcy Code, the Interim Compensation Order, and any other prior orders of the Court regarding the payment of Professionals in the Chapter 11 Cases, and once approved by the Bankruptcy Court, promptly paid in Cash in the Allowed amount from the Professional Fee Escrow Account. If the Professional Fee Escrow

Account is insufficient to fund the full Allowed amount of all Professional Fee Claims, remaining unpaid Allowed Professional Fee Claims will be allocated among and paid in full in Cash directly by the Reorganized Debtors.

b. Prior to the Effective Date, the Debtors shall establish and fund the Professional Fee Escrow Account with Cash equal to the Professional Fee Reserve Amount. Such funds shall not be considered property of the estates of the Debtors or the Reorganized Debtors. Any amounts remaining in the Professional Fee Escrow Account after payment in full of all Allowed Professional Fee Claims shall promptly be paid to the Reorganized Debtors without any further action or order of the Court.

c. No later than ten (10) Business Days prior to the Effective Date, each Professional shall provide the restructuring advisors for the Debtors with an estimate of its unpaid Professional Fee Claims incurred in rendering services to the Debtors or their estates before and as of the Effective Date; *provided*, that such estimate shall not be deemed to limit the amount of fees and expenses that are the subject of the Professional's final request for payment of its Professional Fee Claims whether from the Professional Fee Escrow Account or, if insufficient, from the Reorganized Debtors. If a Professional does not timely provide an estimate as set forth above, the Debtors or Reorganized Debtors shall estimate the unpaid and unbilled fees and expenses of such Professional for purposes of funding the Professional Fee Escrow Account. The total amount of Professional Fee Claims estimated pursuant to this Section shall comprise the Professional Fee Reserve Amount. The Professional Fee Reserve Amount, as well as the return of any

excess funds in the Professional Fee Escrow Account after all Allowed Professional Fee Claims have been paid in full, shall be allocated to the applicable Debtor for whose benefit such Professional Fees Claims were incurred.

d. Except as otherwise specifically provided in the Plan or in this Confirmation Order, from and after the Effective Date, the Reorganized Debtors shall, in the ordinary course of business and without any further notice to or action, order, or approval of the Bankruptcy Court, pay in Cash the reasonable and documented legal, professional, or other fees and expenses incurred by the Reorganized Debtors. Upon the Effective Date, any requirement that Professionals comply with sections 327 through 331, 363, and 1103 of the Bankruptcy Code in seeking retention or compensation for services rendered after such date shall terminate, and the Reorganized Debtors may employ and pay any professional in the ordinary course of business without any further notice to or action, order, or approval of the Bankruptcy Court.

71. Fair and Equitable; No Unfair Discrimination. Although section 1129(a)(8) of the Bankruptcy Code has not been satisfied with respect to Class 10A-II (HoldCo Rescission or Damage Claims), the Plan is confirmable because the Plan satisfies section 1129(b) of the Bankruptcy Code with respect to such Class. Based on the Disclosure Statement, the Disclosure Statement Supplement, the Confirmation Memorandum, the *Declaration of Jason P. Wells in Support of the Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization* [Docket No. 7510], the *Plan Proponents' Joint Submission of Amended Plan and Confirmation Order Language Partially Resolving Confirmation Objection of the Public Employee Retire-*

ment Association of New Mexico [Docket No. 8016], the *Notice of Withdrawal of Securities Lead Plaintiff's Objections to Confirmation Except for the Determination of the Appropriate Insurance Deduction to be Applied to Allowed HoldCo Rescission or Damage Claims* [Docket No. 8017], the record of the Confirmation Hearing held on June 19, 2020, and the evidence proffered, adduced, or presented by the Debtors at the Confirmation Hearing, the Plan does not discriminate unfairly and is fair and equitable with respect to Class 10A-II (HoldCo Rescission or Damage Claims) as required by section 1129(b) of the Bankruptcy Code. Accordingly, upon confirmation of the Plan and the occurrence of the Effective Date, the Plan shall be binding on the members of Class 10A-II (HoldCo Rescission or Damage Claims).

72. Effectiveness of Order Upon Entry. Notwithstanding the applicability of Bankruptcy Rule 3020(e), the terms and conditions of the Confirmation Order shall be immediately effective and enforceable upon its entry.

73. Actions Taken Prior to Reversal or Modification of Order. If any or all of the provisions of the Confirmation Order are hereafter reversed, modified, or vacated by subsequent order of the Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity of the acts or obligations incurred or undertaken pursuant to, under, or in connection with the Plan prior to the Debtors' receipt of written notice of such Order. Notwithstanding any such reversal, modification, or vacatur of the Confirmation Order, any such act or obligation incurred or undertaken pursuant to, and in reliance on, the Confirmation Order prior to the effective date of such reversal, modification, or vacatur

shall be governed in all respects by the provisions of the Confirmation Order and the Plan and all related documents or any amendments or modifications thereto.

74. Non-Occurrence of the Effective Date. If the Effective Date does not occur on or before December 31, 2020, then: (a) the Plan will be null and void in all respects; and (b) nothing contained in the Plan or the Disclosure Statement shall: (i) constitute a waiver or release of any Claims, Interests, or Causes of Action by any Entity; (ii) prejudice in any manner the rights of any Debtor or any other Entity; or (iii) constitute an admission, acknowledgment, offer, or undertaking of any sort by any Debtor or any other Entity.

75. Substantial Consummation. On the Effective Date, the Plan shall be deemed to be substantially consummated under sections 1101 and 1127 of the Bankruptcy Code.

76. Dissolution of Statutory Committees. Pursuant to Section 12.1 of the Plan, on the Effective Date, the Statutory Committees shall dissolve, the current and former members of the Statutory Committees, including any ex officio members, and their respective officers, employees, counsel, advisors and agents, shall be released and discharged of and from all further authority, duties, responsibilities and obligations related to and arising from and in connection with the Chapter 11 Cases, except for the limited purpose of (i) prosecuting requests for allowances of compensation and reimbursement of expenses incurred prior to the Effective Date and objecting to any such requests filed by other Professionals, including any appeals in connection therewith, (ii) having standing and a right to be heard in connection with any pending litigation, including appeals, to which such committee is a party,

or (iii) prosecuting any appeals of this Confirmation Order.

77. Service of Notice of the Confirmation Order. Pursuant to Bankruptcy Rules 2002(f)(7) and 3020(c), the Plan Proponents are directed to serve promptly after the occurrence of the Effective Date, a notice of the entry of this Confirmation Order, which shall include notice of this Confirmation Order and notice of the Effective Date (the "Notice of Effective Date"), on all parties that received notice of the Confirmation Hearing; provided, however, that the Plan Proponents shall be obligated to serve the Notice of Effective Date only on the record holders of Claims or Interests as of the Confirmation Date; provided, further, that the Plan Proponents shall not be required to serve the Notice of Effective Date on any holder of Claims or Interests where the prior service of the notice of the Confirmation Hearing was returned as undeliverable and no forwarding address has been provided.

78. Jurisdiction. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Confirmation Order and as provided in Section 11.1 of the Plan.

79. Severability. Each term and provision of the Plan, as it may have been altered or interpreted in accordance with the foregoing, is (a) valid and enforceable pursuant to its terms; (b) integral to the Plan and may not be deleted or modified except in accordance with the terms of the Plan; and (c) nonseverable and mutually dependent.

80. Conflict Between Plan and Confirmation Order. If there is any direct conflict between the terms of the Plan and the Confirmation Order, the terms of the Confirmation Order shall control.

81. Reference. The failure specifically to include or reference any particular provision of the Plan or any related agreement in this Confirmation Order shall not diminish or impair the efficacy of such provision or related agreement, it being the intent of the Court that the Plan is confirmed in its entirety, the Plan and such related agreements are approved in their entirety, and the Plan Supplement is incorporated herein by reference.

END OF ORDER

APPENDIX G

Exhibit A

Debtors' and Shareholder Proponents Joint Plan of Chapter 11 Reorganization Dated June 19, 2020

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Bankruptcy Case No. 19-30088 (DM)

IN RE: PG&E CORPORATION,

- and -

PACIFIC GAS AND ELECTRIC COMPANY,

Debtors.

❑ Affects PG&E Corporation

❑ Affects Pacific Gas and Electric Company

☒ Affects both Debtors

* *All papers shall be filed in the Lead Case, No. 19-30088 (DM).*

Chapter 11
(Lead Case)
(Jointly Administered)

DEBTORS' AND SHAREHOLDER PROPONENTS' JOINT CHAPTER 11 PLAN OF REORGANIZATION DATED JUNE 19, 2020

PG&E Corporation and Pacific Gas and Electric Company, the above-captioned debtors and debtors in possession, certain funds and accounts managed or advised by Abrams Capital Management, L.P., and certain funds and accounts managed or advised by Knighthead Capital Management, LLC (together, the "Shareholder Proponents," and, collectively with the Debtors, the "Plan Proponents"), as plan proponents within the meaning of section 1129 of the Bankruptcy Code, propose the following joint chapter 11 plan of reorganization pursuant to section 1121(a) of the Bankruptcy Code.[1] Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in Article I of the Plan.

ARTICLE I.

DEFINITIONS, INTERPRETATION AND CONSENTS

DEFINITIONS. The following terms used herein shall have the respective meanings defined below (such meanings to be equally applicable to both the singular and plural):

* * *

1.76 Federal Judgment Rate means the interest rate of 2.59% as provided under 28 U.S.C. § 1961(a), calculated as of the Petition Date.

* * *

[1] The Plan and the Plan Supplement may be amended or supplemented, as necessary, to include relevant information contained in the submissions made by the Utility in connection with the proceeding regarding the Plan currently pending before the CPUC (Investigation (I).19-09-016), including but not limited to certain governance-related commitments.

1.90 General Unsecured Claim means any Claim against a Debtor, other than a DIP Facility Claim, Administrative Expense Claim, Professional Fee Claim, Priority Tax Claim, Other Secured Claim, Priority Non-Tax Claim, Funded Debt Claim, Workers' Compensation Claim, 2001 Utility Exchange Claim, Fire Claim, Ghost Ship Fire Claim, Intercompany Claim, Utility Senior Note Claim, Utility PC Bond (2008 F and 2010 E) Claim, Environmental Claim or Subordinated Debt Claim, that is not entitled to priority under the Bankruptcy Code or any Final Order. General Unsecured Claims shall include any (a) Prepetition Executed Settlement Claim, including but not limited to settlements relating to Subrogation Butte Fire Claims; and (b) Claim for damages resulting from or otherwise based on the Debtors' rejection of an executory contract or unexpired lease.

* * *

1.100 HoldCo General Unsecured Claim means any General Unsecured Claim against HoldCo.

* * *

1.223 Utility General Unsecured Claim means any General Unsecured Claim against the Utility.

* * *

ARTICLE III.

CLASSIFICATION OF CLAIMS AND INTERESTS

3.1 Classification in General. A Claim or Interest is placed in a particular Class for all purposes, including voting, confirmation, and distribution under the Plan and under sections 1122 and 1123(a)(1) of the Bankruptcy Code; provided that a Claim or Interest is placed in a particular Class for the purpose of receiving distributions pursuant to the Plan only to

the extent that such Claim or Interest is an Allowed Claim or Allowed Interest in that Class and such Allowed Claim or Allowed Interest has not been satisfied, released, or otherwise settled prior to the Effective Date.

3.2 Summary of Classification.

(a) The following table designates the Classes of Claims against, and Interests in, the Debtors and specifies which of those Classes are (i) Impaired or Unimpaired by the Plan, (ii) entitled to vote to accept or reject the Plan in accordance with section 1126 of the Bankruptcy Code, and (iii) presumed to accept or deemed to reject the Plan. In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Expense Claims and Priority Tax Claims have not been classified.

Class	Designation	Impairment	Entitled to Vote
	Claims Against and Interests in HoldCo		
Class 1A	HoldCo Other Secured Claims	Unimpaired	No (presumed to accept)
Class 2A	HoldCo Priority Non-Tax Claims	Unimpaired	No (presumed to accept)
Class 3A	HoldCo Funded Debt Claims	Unimpaired	No (presumed to accept)
Class 4A	HoldCo General Unsecured Claims	Unimpaired	No (presumed to accept)
Class 5A-I	HoldCo Public Entities Wildfire Claims	Impaired	Yes
Class 5A-II	HoldCo Subrogation Wildfire Claims	Impaired	Yes
Class 5A-III	HoldCo Fire Victim Claims	Impaired	Yes
Class 5A-IV	HoldCo Ghost Ship Fire Claims	Unimpaired	No (presumed to accept)
Class 6A	HoldCo Workers' Compensation Claims	Unimpaired	No (presumed to accept)
Class 7A	HoldCo Environmental Claims	Unimpaired	No (presumed to accept)
Class 8A	HoldCo Intercompany Claims	Unimpaired	No (presumed to accept)
Class 9A	HoldCo Subordinated Debt Claims	Unimpaired	No (presumed to accept)
Class 10A-I	HoldCo Common Interests	Impaired	Yes
Class 10A-II	HoldCo Rescission or Damage Claims	Impaired	Yes
Class 11A	HoldCo Other Interests	Unimpaired	No (presumed to accept)
	Claims Against and Interests in the Utility		
Class 1B	Utility Other Secured Claims	Unimpaired	No (presumed to accept)
Class 2B	Utility Priority Non-Tax Claims	Unimpaired	No (presumed to accept)
Class 3B-I	Utility Impaired Senior Note Claims	Impaired	Yes
Class 3B-II	Utility Reinstated Senior Note Claims	Unimpaired	No (presumed to accept)
Class 3B-III	Utility Short-Term Senior Note Claims	Impaired	Yes
Class 3B-IV	Utility Funded Debt Claims	Impaired	Yes
Class 3B-V	Utility PC Bond (2008 F and 2010 E) Claims	Unimpaired	No (presumed to accept)
Class 4B	Utility General Unsecured Claims	Unimpaired	No (presumed to accept)
Class 5B-I	Utility Public Entities Wildfire Claims	Impaired	Yes
Class 5B-II	Utility Subrogation Wildfire Claims	Impaired	Yes
Class 5B-III	Utility Fire Victim Claims	Impaired	Yes
Class 5B-IV	Utility Ghost Ship Fire Claims	Unimpaired	No (presumed to accept)
Class 6B	Utility Workers' Compensation Claims	Unimpaired	No (presumed to accept)
Class 7B	2001 Utility Exchange Claims	Unimpaired	No (presumed to accept)
Class 8B	Utility Environmental Claims	Unimpaired	No (presumed to accept)
Class 9B	Utility Intercompany Claims	Unimpaired	No (presumed to accept)
Class 10B	Utility Subordinated Debt Claims	Unimpaired	No (presumed to accept)
Class 11B	Utility Preferred Interests	Unimpaired	No (presumed to accept)
Class 12B	Utility Common Interests	Unimpaired	No (presumed to accept)

* * *

ARTICLE IV.

TREATMENT OF CLAIMS AND INTERESTS

* * *

4.4 Class 4A: HoldCo General Unsecured Claims.

(a) Treatment: In full and final satisfaction, settlement, release, and discharge of any Allowed HoldCo General Unsecured Claim, except to the extent that the Debtors or the Reorganized Debtors, as applicable, and a holder of an Allowed HoldCo General

Unsecured Claim agree to a less favorable treatment of such Claim, on the Effective Date or as soon as reasonably practicable thereafter, but in no event later than thirty (30) days after the later to occur of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim, each holder of an Allowed HoldCo General Unsecured Claim shall receive Cash in an amount equal to such holder's Allowed HoldCo General Unsecured Claim. The Allowed amount of any HoldCo General Unsecured Claim shall include all interest accrued from the Petition Date through the date of distribution at the Federal Judgment Rate.

(b) Impairment and Voting: The HoldCo General Unsecured Claims are Unimpaired, and holders of HoldCo General Unsecured Claims are presumed to have accepted the Plan.

* * *

4.23 Class 4B: Utility General Unsecured Claims.

(a) Treatment: In full and final satisfaction, settlement, release, and discharge of any Allowed Utility General Unsecured Claim, except to the extent that the Debtors or Reorganized Debtors, as applicable, and a holder of an Allowed Utility General Unsecured Claim agree to a less favorable treatment of such Claim, on the Effective Date or as soon as reasonably practicable thereafter, but in no event later than thirty (30) days after the later to occur of (i) the Effective Date and (ii) the date such Claim becomes an Allowed Claim, each holder of an Allowed Utility General Unsecured Claim shall receive Cash in an amount equal to such holder's Allowed Utility General Unsecured Claim. The Allowed amount of any Utility General Unsecured Claim shall reflect all interest

accrued from the Petition Date through the date of distribution at the Federal Judgment Rate.

(b) Impairment and Voting: The Utility General Unsecured Claims are Unimpaired, and the holders of Utility General Unsecured Claims are presumed to have accepted the Plan.

* * *

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

[Filed: Oct. 5, 2022]

No. 21-16043
D.C. No. 4:20-cv-04570-HSG

IN RE: PG&E CORPORATION; PACIFIC GAS & ELECTRIC COMPANY,

Debtors,

AD HOC COMMITTEE OF HOLDERS OF TRADE CLAIMS,

Appellant,

v.

PACIFIC GAS AND ELECTRIC COMPANY,

Appellee.

Northern District of California, Oakland

ORDER

Before: LUCERO,* IKUTA, and VANDYKE, Circuit Judges.

The full court has been advised of petitioner's petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter

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* The Honorable Carlos F. Lucero, United States Circuit Judge for the U.S. Court of Appeals for the Tenth Circuit, sitting by designation.

en banc. Fed. R. App. P. 35. Judge Ikuta voted to grant the petition and Judge VanDyke voted to deny it. Judge Lucero recommended denying the petition.

Accordingly, petitioner's petition for rehearing en banc, filed September 12, 2022 (ECF No. 50) is hereby DENIED.

APPENDIX I

1. 11 U.S.C. 101

Definitions

In this title the following definitions shall apply:

…

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or

(B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

2. 11 U.S.C. 103

Applicability of chapters

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(o), 555 through 557, and 559 through 562 apply in a case under chapter 15.

(b) Subchapters I and II of chapter 7 of this title apply only in a case under such chapter.

(c) Subchapter III of chapter 7 of this title applies only in a case under such chapter concerning a stockbroker.

(d) Subchapter IV of chapter 7 of this title applies only in a case under such chapter concerning a commodity broker.

(e) Scope of Application. — Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

(f) Except as provided in section 901 of this title, only chapters 1 and 9 of this title apply in a case under such chapter 9.

(g) Except as provided in section 901 of this title, subchapters I, II, and III of chapter 11 of this title apply only in a case under such chapter.

(h) Subchapter IV of chapter 11 of this title applies only in a case under such chapter concerning a railroad.

(i) Subchapter V of chapter 11 of this title applies only in a case under chapter 11 in which a debtor (as defined in section 1182) elects that subchapter V of chapter 11 shall apply.

(j) Chapter 13 of this title applies only in a case under such chapter.

(k) Chapter 12 of this title applies only in a case under such chapter.

(l) Chapter 15 applies only in a case under such chapter, except that—

(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

(2) section 1509 applies whether or not a case under this title is pending.

3. 11 U.S.C. 502:

Allowance of claims or interests

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;

(2) such claim is for unmatured interest;

(3) if such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;

(4) if such claim is for services of an insider or attorney of the debtor, such claim exceeds the reasonable value of such services;

(5) such claim is for a debt that is unmatured on the date of the filing of the petition and that is excepted from discharge under section 523(a)(5) of this title;

(6) if such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claim exceeds—

(A) the rent reserved by such lease, without acceleration, for the greater of one year, or 15 percent, not to exceed three years, of the remaining term of such lease, following the earlier of—

(i) the date of the filing of the petition; and

(ii) the date on which such lessor repossessed, or the lessee surrendered, the leased property; plus

(B) any unpaid rent due under such lease, without acceleration, on the earlier of such dates;

(7) if such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds—

(A) the compensation provided by such contract, without acceleration, for one year following the earlier of—

(i) the date of the filing of the petition; or

(ii) the date on which the employer directed the employee to terminate, or such employee terminated, performance under such contract; plus

(B) any unpaid compensation due under such contract, without acceleration, on the earlier of such dates;

(8) such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor; or

(9) proof of such claim is not timely filed, except to the extent tardily filed as permitted under

paragraph (1), (2), or (3) of section 726(a) or under the Federal Rules of Bankruptcy Procedure, except that—

(A) a claim of a governmental unit shall be timely filed if it is filed before 180 days after the date of the order for relief or such later time as the Federal Rules of Bankruptcy Procedure may provide; and

(B) in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required.

(c) There shall be estimated for purpose of allowance under this section—

(1) any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or

(2) any right to payment arising from a right to an equitable remedy for breach of performance.

(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

(e)(1) Notwithstanding subsections (a), (b), and (c) of this section and paragraph (2) of this subsection, the

court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that—

(A) such creditor's claim against the estate is disallowed;

(B) such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution; or

(C) such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

(2) A claim for reimbursement or contribution of such an entity that becomes fixed after the commencement of the case shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) of this section, the same as if such claim had become fixed before the date of the filing of the petition.

(f) In an involuntary case, a claim arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee and the order for relief shall be determined as of the date such claim arises, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(g)(1) A claim arising from the rejection, under section 365 of this title or under a plan under chapter 9, 11, 12, or 13 of this title, of an executory contract or unexpired lease of the debtor that has not been

assumed shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.

(h) A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(i) A claim that does not arise until after the commencement of the case for a tax entitled to priority under section 507(a)(8) of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(j) A claim that has been allowed or disallowed may be reconsidered for cause. A reconsidered claim may be allowed or disallowed according to the equities of the case. Reconsideration of a claim under this subsection does not affect the validity of any payment or transfer from the estate made to a holder of an allowed claim on account of such allowed claim that is not reconsidered, but if a reconsidered claim is allowed and is of the same class as such holder's claim, such holder may not receive any additional payment or

transfer from the estate on account of such holder's allowed claim until the holder of such reconsidered and allowed claim receives payment on account of such claim proportionate in value to that already received by such other holder. This subsection does not alter or modify the trustee's right to recover from a creditor any excess payment or transfer made to such creditor.

(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

(B) the offer of the debtor under subparagraph (A)—

(i) was made at least 60 days before the date of the filing of the petition; and

(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

(C) no part of the debt under the alternative repayment schedule is nondischargeable.

(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

(A) the creditor unreasonably refused to consider the debtor's proposal; and

(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).

4. 11 U.S.C. 726:

Distribution of property of the estate

(a) Except as provided in section 510 of this title, property of the estate shall be distributed—

(1) first, in payment of claims of the kind specified in, and in the order specified in, section 507 of this title, proof of which is timely filed under section 501 of this title or tardily filed on or before the earlier of—

(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

(B) the date on which the trustee commences final distribution under this section;

(2) second, in payment of any allowed unsecured claim, other than a claim of a kind specified in paragraph (1), (3), or (4) of this subsection, proof of which is—

(A) timely filed under section 501(a) of this title;

(B) timely filed under section 501(b) or 501(c) of this title; or

(C) tardily filed under section 501(a) of this title, if—

(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under section 501(a) of this title; and

(ii) proof of such claim is filed in time to permit payment of such claim;

(3) third, in payment of any allowed unsecured claim proof of which is tardily filed under section

501(a) of this title, other than a claim of the kind specified in paragraph (2)(C) of this subsection;

(4) fourth, in payment of any allowed claim, whether secured or unsecured, for any fine, penalty, or forfeiture, or for multiple, exemplary, or punitive damages, arising before the earlier of the order for relief or the appointment of a trustee, to the extent that such fine, penalty, forfeiture, or damages are not compensation for actual pecuniary loss suffered by the holder of such claim;

(5) fifth, in payment of interest at the legal rate from the date of the filing of the petition, on any claim paid under paragraph (1), (2), (3), or (4) of this subsection; and

(6) sixth, to the debtor.

(b) Payment on claims of a kind specified in paragraph (1), (2), (3), (4), (5), (6), (7), (8), (9), or (10) of section 507(a) of this title, or in paragraph (2), (3), (4), or (5) of subsection (a) of this section, shall be made pro rata among claims of the kind specified in each such particular paragraph, except that in a case that has been converted to this chapter under section 1112, 1208, or 1307 of this title, a claim allowed under section 503(b) of this title incurred under this chapter after such conversion has priority over a claim allowed under section 503(b) of this title incurred under any other chapter of this title or under this chapter before such conversion and over any expenses of a custodian superseded under section 543 of this title.

(c) Notwithstanding subsections (a) and (b) of this section, if there is property of the kind specified in section 541(a)(2) of this title, or proceeds of such property, in the estate, such property or proceeds shall be segregated from other property of the estate, and

such property or proceeds and other property of the estate shall be distributed as follows:

(1) Claims allowed under section 503 of this title shall be paid either from property of the kind specified in section 541(a)(2) of this title, or from other property of the estate, as the interest of justice requires.

(2) Allowed claims, other than claims allowed under section 503 of this title, shall be paid in the order specified in subsection (a) of this section, and, with respect to claims of a kind specified in a particular paragraph of section 507 of this title or subsection (a) of this section, in the following order and manner:

(A) First, community claims against the debtor or the debtor's spouse shall be paid from property of the kind specified in section 541(a)(2) of this title, except to the extent that such property is solely liable for debts of the debtor.

(B) Second, to the extent that community claims against the debtor are not paid under subparagraph (A) of this paragraph, such community claims shall be paid from property of the kind specified in section 541(a)(2) of this title that is solely liable for debts of the debtor.

(C) Third, to the extent that all claims against the debtor including community claims against the debtor are not paid under subparagraph (A) or (B) of this paragraph such claims shall be paid from property of the estate other than property of the kind specified in section 541(a)(2) of this title.

(D) Fourth, to the extent that community claims against the debtor or the debtor's spouse are not

paid under subparagraph (A), (B), or (C) of this paragraph, such claims shall be paid from all remaining property of the estate.

5. 11 U.S.C. 1124:

Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan—

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default—

(A) cures any such default that occurred before or after the commencement of the case under this title, other than a default of a kind specified in section 365(b)(2) of this title or of a kind that section 365(b)(2) expressly does not require to be cured;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law;

(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than

the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and

(E) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

6. 11 U.S.C. 1129:

Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title.

(2) The proponent of the plan complies with the applicable provisions of this title.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5)(A)(i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class of claims or interests—

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(1), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive—

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim;

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim regular installment payments in cash—

(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and

(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section

507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.

(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.

(16) All transfers of property under the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.

(b)(1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i)(I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such

junior claim or interest any property, except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors and equity security holders in determining which plan to confirm.

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of

the Securities Act of 1933. In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).