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Counsel for Official Committee of Tort Claimants

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

17 **In re:**

18 **PG&E CORPORATION**

19 **-and-**

20 **PACIFIC GAS AND ELECTRIC**
21 **COMPANY,**

Debtors.

- 22 Affects PG&E Corporation
23 Affects Pacific Gas and Electric Company
24 Affects both Debtors

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

Bankruptcy Case
No. 19-30088 (DM)

Chapter 11
(Lead Case)
(Jointly Administered)

**THE OFFICIAL COMMITTEE OF
TORT CLAIMANTS' MOTION FOR
ENTRY OF AN ORDER DIRECTING
SUPPLEMENTAL DISCLOSURE IN
THE FORM OF A LETTER FROM THE
TCC**

[Related Dkt. Nos. 6340, 6353, 6448, 6483]

Date: April 7, 2020 (REQUESTED)
Time: 10:00 a.m. (Pacific Time)
Place: **Telephonic Appearances Only**
United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

Objection Deadline: TBD

1 The Official Committee of Tort Claimants (the “TCC”) in the above-captioned chapter 11
2 cases PG&E Corporation (“PG&E Corp.”) and Pacific Gas and Electric Company (the “Utility”),
3 as debtors and debtors in possession (collectively, “PG&E” or the “Debtors”), submits this motion
4 (“Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the
5 “Proposed Order”), directing the Solicitation Agent¹ to send supplemental disclosure in the form
6 of a letter from the TCC attached hereto as **Exhibit B** (the “Proposed Letter”) and permitting the
7 TCC to send the supplemental report on May 1 that states whether the Debtors fixed the problems
8 identified in the Proposed Letter and if so, stating the resolution, or, alternatively, setting a hearing
9 on April 29, 2020 to approve the content of the letter to go out on May 1, 2020. In support of the
10 Motion, the TCC is filing contemporaneously herewith the declaration of Robert A. Julian (“Julian
11 Decl.”). Attached to the Julian Decl. is a copy of the transcript from the hearing this Court held on
12 March 25, 2020 (“March 25 Tr.”). Contemporaneously herewith, the TCC is submitting a motion
13 shortening time for this Court to hear this Motion, and is requesting that the Court hear this Motion
14 on Tuesday, April 7, 2020.

15 PRELIMINARY STATEMENT

16 On March 25, 2020, this Court held a status conference in the Cases. During the hearing,
17 Robert Julian, counsel for the TCC, outlined three pressing issues:

18 I want to advise you that we will be requesting the debtors to issue another
19 supplemental disclosure statement when new facts come out about resolution of a
20 pending matter between the debtors and equity and the TCC that is now in front of
21 Judge Randall Newsome a[t] a mediation. We believe these issues should be
22 resolved in the next few days. And the resolution should be noticed out in
23 supplemental disclosures to the victims so they can vote. Your honor, those issues
24 impact the value of the 6.75 billion dollars of stock that the victims trust is to receive
25 under the plan for the victims. And the victims need to know these facts in order to
26 vote on the plan. Your honor, the issues being mediated that impact the value of the
27 6.75 billion dollars of stock include the following three issues: one, what will be the
28 terms of the stock registration agreement that states who can sell the stock and when
and in what amounts after plan confirmation ... The second issue is will the 6.75
billion dollars of stock [have] 6.75 billion dollars of value upon issuance, under
current market conditions that are impacting the value of utility companies and their
stock. And the third issue is when will the stock and cash be issued and funded so
that the victims can make an informed choice.

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the Debtors’ Disclosure Statement, dated March 17, 2020 [Dkt. No. 6353] (“Disclosure Statement”).

1 March 25 Tr. at 10:1-17, 21-25 – 11:2. This Court then stated: “Today, from what you describe,
2 there’s nothing to disclose because there’s nothing resolved on these issues; they’re in mediation.
3 If tomorrow or the next day or some day in the future there’s a resolution, you’ll have to decide
4 then what to do. ... And my sense is if the mediation is unsuccessful, there’d be other questions
5 also.” *Id.* at 13:17-22, 24-25.

6 On March 27, 2020, counsel for the TCC and TCC representatives met with the Debtors
7 and the Shareholder Plan Proponents for the last time. *See* Julian Decl. at ¶ 5. At this point, the
8 mediation is at an impasse. *Id.* at ¶ 5. The TCC believes the parties have not made any substantial
9 progress, and the TCC believes it is important that the Proposed Letter be sent to Fire Victim
10 Claimants disclosing such issues. *Id.* at ¶¶ 5-7.

11 The information provided in the Proposed Letter may have a material impact on how and
12 when Fire Victim Claimants vote. The Proposed Letter is necessary to provide the Fire Victim
13 Claimants with adequate information regarding the Plan. In the Proposed Letter, the TCC states
14 that PG&E has until April 28, 2020, to reach a resolution of the problems raised by the TCC, and
15 the TCC will provide a supplemental report of the results of these proposals to the Fire Victim
16 Claimants on May 1, 2020. The TCC will also ask this Court for approval of the supplemental
17 report in advance of May 1, 2020. Thus, the TCC is asking Fire Victim Claimants withhold voting
18 until they receive the TCC's supplemental report on or about May 1, 2020. *See* Proposed Letter.

19 To this end, the TCC also requests the Court to approve the TCC sending a letter to the
20 victims on May 1, 2020, informing them if PG&E has fixed the problems identified in the Proposed
21 Letter and if so, stating the resolution, or, alternatively, the TCC requests the Court set a hearing
22 on April 29, 2020 to approve the content of the letter to go out on May 1, 2020.

23 **BASIS FOR RELIEF**

24 Committees often inform their constituents of their views on various aspects of
25 bankruptcies. Mass tort cases are no exception. As Professor S. Elizabeth Gibson noted in “Judicial
26 Management of Mass Tort Bankruptcy Cases” (Federal Judicial Center 2005):

27 Once a reorganization plan is proposed and approved for submission to a creditor
28 vote, the committee may inform its constituents of its position on the plan. When
the committee is a supporter or proponent of the plan, it can include a letter to this

1 effect in the solicitation package. When it opposes the plan, the creditors'
2 committee is permitted to explain the reasons for its opposition in a separate
mailing.

3 *Id.* at 51, available at https://www.uscourts.gov/sites/default/files/gibsjudi_1.pdf.

4 Approved committee communications regarding a plan are consistent with section 1125(b)
5 of the Bankruptcy Code, which “seeks to guarantee that a creditor receives adequate information
6 about the plan before the creditor is asked for a vote.” *In re California Fid., Inc.*, 198 B.R. 567, 571
7 (B.A.P. 9th Cir. 1996). Section 1125 of the Bankruptcy Code requires that a claimant have adequate
8 information about a plan when deciding to vote. When bankruptcy courts consider proposed
9 supplemental information after a disclosure statement has been approved, courts consider
10 communications that may include “expressions of views by particular creditors or creditor
11 constituencies, which [also] can and customarily do include argumentative matter and expressions
12 of opinion.” *In re Adelpia Commc'ns Corp.*, 352 B.R. 592, 597 (Bankr. S.D.N.Y. 2006). These
13 communications may state “the advantages or disadvantages of a proposed plan . . . , and unless they
14 are offensive for some other reason, [those statements] would normally be fair game for
15 presentation.” *Id.* at 601. This makes sense because “[t]he overriding goal in the voting phase of a
16 confirmation process is to provide the holders and interests with as much relevant and meaningful
17 information as possible.” *In re Apex Oil Co.*, 111 B.R. 245, 249 (Bankr. E.D. Mo. 1990).

18 The TCC asks the Court to approve sending the Proposed Letter to provide as much relevant
19 and meaningful information to Fire Victim Claimants as possible. The Proposed Letter is necessary
20 to provide the Fire Victim Claimants with adequate information regarding the Plan. The Proposed
21 Letter does not ask creditors to vote a particular way, but the Proposed Letter includes expressions
22 of the TCC’s views and opinions on the current state of the Debtors’ Plan and Disclosure Statements
23 if the issues identified above are not resolved. The TCC requests that this supplemental disclosure
24 be provided to the Fire Victim Claimants so that they have all of the information related to the Plan.
25 The TCC further requests that the Solicitation Agent be directed to serve the Proposed Letter on all
26 Fire Victim Claimants immediately upon entering the order on this Motion.

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1 resolution, or, alternatively, setting a hearing on April 29, 2020 to approve the content of the letter
2 to go out on May 1, 2020.

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4 Dated: April 6, 2020

BAKER & HOSTETLER LLP

5 By: /s/ Elizabeth A. Green
6 Elizabeth A. Green

7 *Counsel for Official Committee of Tort*
8 *Claimants*

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