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November 15, 2019

In re PG&E Corporation and Pacific Gas and Electric Company
No. 3:19-cv-05257-JD (N.D. Cal.)

Dear Judge Donato:

We write on behalf of Pacific Gas and Electric Company and PG&E Corporation (collectively, “PG&E” or the “Debtors”) regarding the discovery of certain wildfire claimants who are relevant to these estimation proceedings. In particular, the Debtors and the Official Committee of Tort Claimants (the “TCC”) have been unable to reach an agreement on two issues: (1) the Debtors’ discovery of non-testifying wildfire claimants, and (2) the scope of the Debtors’ depositions of the TCC’s fact witnesses. The Debtors certify that the parties met and conferred regarding these issues but were unable to reach a resolution. The Debtors’ position with respect to both issues is set forth below.

1. Discovery of Individual Non-Testifying Claimants with Suspicious Claims

A. Background

On November 8, 2019, the Debtors served the TCC with 18 Requests for Production (“RFPs”) directed at seven individual claimants whom the Debtors identified as filing duplicative and/or exceptionally large monetary claims, which appear suspicious.¹ The claimants at issue have collectively asserted over \$350 million in damages. One claim asserts \$280 million for the destruction of a 500-pound emerald,

¹ The Debtors’ First Set of Requests for Production of Documents to the Official Committee as Representative of Certain Claimants, served on November 8, 2019, also included 14 Requests directed at Caymus Vineyards and the Wagner Family of Wines (“Caymus”). The TCC has indicated that Mike Carlson, one of the fact witnesses disclosed by the TCC, will be testifying regarding the business losses allegedly incurred by Caymus. Accordingly, the TCC’s objection to discovery of non-testifying witnesses does not seem to extend to the RFPs concerning Caymus.

which the claimant alleges he kept at his residence in Paradise and was destroyed in the Camp Fire. This claimant and his wife together submitted an additional four duplicate claims of \$4,500,000. Another claimant asserts \$1,300,000 for a mobile home property located at least one mile outside of the Camp Fire perimeter.

The Debtors issued a narrow set of document requests for these claimants. Specifically, the Debtors requested that the seven claimants produce documents, such as appraisal reports, receipts and other records, supporting their asserted claims. With respect to the claim for the \$280 million emerald, the Debtors also requested documents establishing that the claimant was the legal owner and in possession of the subject emerald at the time of the Camp Fire, documents sufficient to show efforts undertaken by the claimant to secure and protect the emerald and documents showing that the emerald was damaged or destroyed. The Debtors also served a notice for the depositions of the claimants asserting the \$280 million claim.

The purpose of serving this discovery is to evaluate the extent to which a discount should apply to account for false or overvalued claims as part of the overall estimation process.

B. The Dispute

Although the TCC agreed to accept service for these discovery requests, TCC counsel has indicated that they “object to PG&E seeking discovery from non-testifying victims in the estimation proceeding, which will estimate the value of the fire victim claims as a whole rather than on an individual victim-by-victim basis”. (Email from K. Morris, November 12, 2019.) The TCC asserts that this discovery is unduly burdensome and not relevant to the estimation proceedings.

C. The Debtors’ Position

The Debtors believe that the TCC’s position is without merit for the reasons outlined below.

First, the existence of exceptionally large and potentially inflated claims is relevant to the estimation proceedings. The asserted value of the seven individual claims is approximately \$370 million. This amount is no doubt significant to the “value of fire victim claims as a whole” and the overall amount of money that is set aside for wildfire victims at the end of the estimation proceeding. Further, the Debtors have a good faith basis to suspect that these claims may be false and/or inflated. The Debtors seek to investigate these claims to aid the Court in determining the extent to which its estimate of claims should take into account inflated or baseless claims. Courts have held that discovery into potentially false claims for this purpose is appropriate as part of the estimation of mass tort claims in bankruptcy. See *In re Garlock Sealing Tech., LLC*, 504 B.R. 71, 84 (Bankr. Del. 2014) (allowing the debtors in an estimation proceeding to seek discovery associated with potentially fraudulent settlements that led to inflated settlements of asbestos claims).

Second, the narrow discovery that the Debtors have served on a limited set of claimants is not unduly burdensome. The Debtors served discovery on only seven individual claimants of over 70,000 filed claims. The requests demand basic ownership or appraisal records which are reasonable items to request from alleged owners of such valuable property. If these records do not exist for some reason, the individual claimant should state that in his or her individual responses to the requests. Further, according to their proofs of claim, all but one of the individual claimants whom the Debtors have identified are represented by counsel. The burden of responding to this discovery, in contrast with the magnitude of the claims the individuals assert against the estate, is minimal.

Accordingly, the Debtors request that this Court overrule the TCC's objections (and any separate objections by individual claimants).

2. Depositions of TCC Fact Witnesses

The Debtors served RFPs and have sought depositions of the fact witnesses that the TCC disclosed who will be testifying regarding their "personal account of [their] and/or [their] family's evacuation and losses", several of which have already been scheduled. On a meet and confer with the TCC on November 14, 2019, TCC counsel stated that any depositions of the TCC witnesses should be limited to the qualitative experience of the wildfire claimants, as the TCC does not intend to put on testimony regarding the quantitative losses incurred by these individuals.²

The Debtors believe it is inappropriate for the TCC to predetermine the scope of the depositions of their witnesses in this manner. The TCC has pointed to no authority that limits the depositions to the subject matter of the TCC's direct testimony. The Debtors of course agree to be sensitive to the witnesses' time and have limited the depositions to half a day each and issued only limited document requests (some of which the Debtors have effectively agreed to withdraw). Nevertheless, barring the Debtors from asking questions regarding these witnesses' claims, in advance of the depositions, is unduly restrictive to the Debtors' right to seek discovery of the TCC's fact witnesses who will be testifying during the estimation proceedings.

² The TCC has also stated that, subject to the objection of the individual claimants, the witnesses would produce the following documents if they exist and if they are readily accessible: (1) post-fire appraisal records; (2) documents relating to witnesses' intent to rebuild; (3) documents relating to claimed business losses; (4) medical records and other documents relating to physical injury and emotional distress; and (5) documents, including photographs and videos, relating to the witnesses' evacuations. PG&E does not intend to seek further documentation from the TCC witnesses.

Respectfully,

/s/ Kevin J. Orsini

Kevin J. Orsini

Cravath, Swaine & Moore LLP

Attorneys to the Debtors and Debtors in Possession

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

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/s/ Thomas B. Rupp

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