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And Many Wildfire Victim Creditors
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9 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA
10 **SAN FRANCISCO DIVISION**

11 *In re:*)
12 PG&E CORPORATION) **Case No. 19-30088 (DM)**
13 -and-) Chapter 11
) (Lead Case)
14) (Jointly Administered)
15 PACIFIC GAS AND ELECTRIC) **MOTION FOR THE APPOINTMENT OF**
COMPANY) **AN EXAMINER OF VOTING**
Debtors.) **PROCEDURAL IRREGULARITIES**
16 Affects PG&E Corporation) **PURSUANT TO SECTION 1104(c) OF**
17 Affects Pacific Gas & Electric) **THE BANKRUPTCY CODE AND**
) **BANKRUPTCY RULE 2007.1**
18 Affects Both Debtors) Date: June 4, 2020
) Time: 9:30 a.m. (Pacific Time)
19 *All papers shall be filed in the Lead Case,*) Place: By Video
20 *No.19-30088 (DM)*) United States Bankruptcy Court
) Courtroom 17, 16th Floor
21 _____) San Francisco, CA 94102
Objection Deadline: June 2, 2020

22 Karen Gowins and Many Wildfire Victims, by and through their undersigned counsel,
23 hereby respectfully files this *Motion for an Appointment of An Examiner of Voting Procedural*
24 *Irregularities Pursuant to Section 1104(c) of the Bankruptcy code and Bankruptcy Rule 2007.1.*

25 **JURISDICTION AND VENUE**

26 The United State Bankruptcy Court for the Northern District of California (“the Court”)
27 has jurisdiction to appoint an examiner under 28 U.S.C. sections 147 and 1334. Venue is proper
28

MOTION FOR THE APPOINTMENT OF AN EXAMINER OF VOTING PROCEDURAL IRREGULARITIES
PURSUANT TO SECTION 1104(c) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 2007.1

1 under 28 U.S.C. sections 1408 and 1409.

2 This is a core proceeding pursuant to 28 U.S.C. section 147(b)(2). The statutory bases of
3 the relief requested here are sections 1104 of the Bankruptcy Code and Rule 2007.1 of the Federal
4 Rules of Bankruptcy Procedure.

5 BACKGROUND

6
7 On January 29, 2019, the Debtors each filed the Court a voluntary petition for relief under
8 Chapter 11 of the Bankruptcy Code. No trustee has been appointed and Debtors remain in
9 possession.

10 The *Order (I) Approving Proposed Disclosure Statement for Debtors' and Shareholder*
11 *Proponents Joint Chapter 11 Plan of Reorganization; (II) Approving Form and Manner of Notice*
12 *of Hearing on Proposed Disclosure Statement; (III) Establishing and Approving Plan Solicitation*
13 *and Voting Procedures; (IV) Approving Forms of Ballots, Solicitation Packages and Related*
14 *Notices; and (V) Granting Related Relief*, (Dkt. No. 6340), states: “[t]he **Solicitation Agent, on**
15 **behalf of the Debtors and the Shareholder Proponents, shall cause the Solicitation Packages**
16 **to be mailed by March 31, 2020, or as soon as reasonably practicable thereafter (the**
17 **Solicitation Deadline.)”** p. 11:3-6.

18
19 The above order further states: “**The Voting Deadline. In accordance with the**
20 **Scheduling Order, the Voting Deadline shall be May 15, 2020 at 4:00 p.m.** (Prevailing Pacific
21 Time)” p. 19:17-18.

22
23 However, many Fire Victim Claimants did not receive the ballots and disclosure materials
24 mandated by the above Order of the Court, or received them after May 15, 2020, the voting
25 deadline. And, attorneys selecting the “Indirect Solicitation Method” did not receive the ballots
26 and disclosure materials until they requested them and well into April although Debtors were

1 required to see that they were mailed on March 31, 2020. (See Exhibits A-J)

2 Moving parties believe that a thorough, independent investigation of any fraud, neglect,
3 incompetence misconduct, mismanagement or irregularity on the part of Debtors and their
4 Noticing Agent is in the best interest of the Fire Victim Creditors in these jointly administered
5 bankruptcy cases.

7 RELIEF REQUESTED

8 By this Motion, the undersigned respectfully requests that the Court enter an Order
9 pursuant to 11 U.S.C. section 1104(c) to conduct a thorough and independent investigation of
10 potential misconduct and mismanagement on the part of the Debtors and Noticing Agent to
11 determine whether Debtors' conduct was in the best interests of the bankruptcy estate.

12 ARGUMENT

13 Section 1104(c) of the Bankruptcy Code mandates the appointment of an examiner under
14 circumstances such as those present here:
15

16 (c) If the court does not order the appointment of a trustee under this section, then at any
17 time before the confirmation of a plan, on request of a party in interest or the United States
18 trustee, and after notice and a hearing, the court **shall** order the appointment of an
19 examiner to conduct such an investigation of the debtor as is appropriate, including **an
investigation of any allegations of fraud, dishonesty, incompetence, misconduct,
mismanagement, or irregularity in the management of the affairs of the debtor** of or
by current or former management of the debtor, if—

- 20 (1) such appointment is in the interests of creditors, any equity security holders,
and other interests of the estate; or
21 (2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods,
22 services, or taxes, or owing to an insider, exceed \$5,000,000.

23 The list of investigations in Section 1104 (c) is illustrative, not exhaustive. *See e.g.*
24 *Gordon Props., LLC v. First Owners' Ass'n of Forthy Six Hundred Condmnium (In re Gordon*
25 *Props., LLC)* 514 B.R. 449, 458 (Bankr. E.D. Va. 2013). The statute's requirements for the
26

1 appointment of an examiner are that (1) no trustee has been appointed; (2) no plan has been
2 confirmed; (3) a party in interest or the United States Trustee has requested an examiner; and (4)
3 either (i) appointment of an examiner is in the interests of the creditors of the estate or (ii) the
4 debtors' fixed, liquidated, unsecured debts to non-insiders exceed \$5 million. The first three
5 conditions are clearly satisfied in the instant matter – no trustee has been appointed, no plan has
6 been confirmed, and parties in interest (Gowins and Many Wildfire Victim Creditors) have
7 requested an examiner. The first prong of the last condition is also satisfied, as more fully
8 discussed below, because the appointment of an examiner is in the interests of the creditors of the
9 estate. Prong two of the last condition is also met because Debtors' clearly have more than \$5
10 million in debt.
11

12
13 The appointment of an examiner is in the best interests of creditors where such
14 appointment allows for a thorough and independent examination and is necessary to be made into
15 very serious allegations. *In re JNL Funding Corp.* 438 Bank. 356 (E.D.N.Y. 2010)

16 The docket of the Court contains many examples of violations of the Court's order that
17 Fire Victim Creditors were to have ballots mailed to them or their attorneys (depending on which
18 voting method was selected) by March 31, 2020. And, the deadline to vote was May 15, 2020.
19 The following Exhibits hereto are illustrative of these violations.
20

21 Exhibit 'A' – demonstrates a Fire Victim Creditor did not receive a ballot until three and one-half
22 hours before the voting deadline; another Fire Victim Creditor did not receive a ballot until three
23 days before the deadline and a third Fire Victim Creditor received a ballot, but no *disclosure*
24 materials.

25 Exhibit 'B' – A Fire Victim Creditor received a voting package **after the deadline.**

26 Exhibit 'C' – A Fire Victim Creditor received a voting package **after the deadline.**

