



1 wildfires, leaving thousands of victims who suffered from those  
2 wildfires owed billions of dollars, plus thousands more of  
3 traditional non-fire creditors of various types, also owed  
4 billions of dollars.

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

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

## 23 **II. OVERVIEW OF DECISION**

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

4 Debtors filed extensive exhibits to support confirmation.  
5 In addition, they filed the following sworn statements in lieu  
6 of direct oral testimonies: Declaration of Christina Pullo  
7 (Dkt. #7507) ("Pullo Dec"); Declaration of Jason P. Wells (Dkt.  
8 #7510) ("Wells Dec"); Declaration of John Boken (Dkt. #7514)  
9 ("Boken Dec"); and Declaration of Kenneth S. Ziman (Dkt. #7512)  
10 ("Ziman Dec"), and in conjunction with the Pullo Dec, Wells Dec  
11 and Boken Dec, the "Supporting Declarations".

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

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22 <sup>1</sup> The following discussion constitutes the court's findings of  
23 fact and conclusions of law in narrative form as authorized by  
24 Fed. R. Bankr. P. 7052(a). Appellate courts in the Ninth  
25 Circuit review decisions "with special scrutiny" when a trial  
26 court "engage[s] in the regrettable practice of adopting the  
27 findings drafted by the prevailing party wholesale." *Stormans,*  
28 *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.

1 **III. COMPLIANCE WITH BANKRUPTCY CODE SECTION 1129(a) AND (b)<sup>2</sup>**

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

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

8 The Disclosure Statement,<sup>3</sup> the Disclosure Statement  
9 Supplement, the Plan, the Disclosure Statement and Solicitation  
10 Procedures Order, the Solicitation Packages, the Ballots  
11 (including, without limitation, the Direct Fire Claim Ballots  
12 and the Fire Victim Master Ballots), the Notices of Non-Voting  
13 Status, and the Confirmation Hearing Notice, have been  
14 transmitted, served, and published in compliance with the  
15 Disclosure Statement and Solicitation Procedures Order, the  
16 Rules, the Bankruptcy Local Rules, and the Scheduling Order.  
17 Such transmittal, service, and publication were adequate and  
18 sufficient, and no other or further notice is or shall be  
19 required.

20 The Plan Proponents (and, as applicable, each of their  
21 respective Representatives) participated in good faith in  
22 negotiating at arm's length the Plan and all contracts,  
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24 <sup>2</sup> Unless otherwise indicated, all chapter, section and rule  
25 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532,  
26 and to the Federal Rules of Bankruptcy Procedure, Rules 1001-  
9037 (the "Rules").

27 <sup>3</sup> All capitalized terms used throughout have the meanings set  
28 forth in the underlying documents that appear throughout the  
record of this case; for brevity they are not redefined here.

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

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

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

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

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

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

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

18 Class 5A-I (HoldCo Public Entities Wildfire  
19 Claims), Class 5A-II (HoldCo Subrogation Wildfire  
20 Claims), Class 5A-III (HoldCo Fire Victim  
21 Claims), Class 10A-I (HoldCo Common Interests),  
22 Class 10A-II (HoldCo Rescission or Damage  
23 Claims), Class 3B-I (Utility Impaired Senior Note  
24 Claims), Class 3B-III (Utility Short-Term Senior  
25 Note Claims), Class 3B-IV (Utility Funded Debt  
26 Claims), Class 5B-I (Utility Public Entities  
27 Wildfire Claims), Class 5B-II (Utility  
28 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).

1 The Wells Dec, the Boken Dec, the Ziman Dec, the Debtors'  
2 exhibits, and the record establish the following: the Plan, the  
3 Plan Documents, and the various documents and agreements set  
4 forth in the Plan Supplement and the Exhibits to the Plan  
5 provide adequate and proper means for the Plan's implementation,  
6 including, without limitation, (i) the imposition of the  
7 Channeling Injunction, (ii) the establishment and funding of the  
8 Fire Victim Trust, the Subrogation Wildfire Trust, and the  
9 Public Entities Segregated Defense Fund, (iii) payment in Cash  
10 in satisfaction of the Public Entities Wildfire Claims, (iv) the  
11 issuance of the New Utility Funded Debt Exchange Notes, the New  
12 Utility Long-Term Notes, and the New Utility Short-Term Notes,  
13 the Plan Funding Documents (as defined below), and Debt Backstop  
14 Approval Order, or any similar approvals granted following the  
15 conclusion of trial, as applicable, (v) the issuances and  
16 incurrences necessary to obtain or effectuate the Plan Funding  
17 or the Exit Financing, the Plan Funding Documents, and Debt  
18 Backstop Approval Order or any similar approvals granted  
19 following the conclusion of trial, as applicable, and (vi) the  
20 offer, sale, distribution, and issuance of any equity  
21 securities, equity forward contracts or other equity-linked  
22 securities necessary to obtain any of the Plan Funding or as  
23 otherwise contemplated by the Plan, the Backstop Commitment  
24 Letters, or the Equity Backstop Approval Order, as applicable  
25 (including, without limitation, to authorize and reserve for  
26 issuance New HoldCo Common Stock to be issued pursuant to any  
27 such transaction or upon the exercise, conversion or settlement

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1 of any such equity forward contracts or other equity-linked  
2 securities). The Plan complies with section 1123(a)(5).

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

9 To the extent known and determined, the identity and  
10 affiliation of the persons who will serve as members of the New  
11 Board have been disclosed in the Plan Supplement [and on the  
12 record of the Confirmation Hearing], with the identities of the  
13 remaining members of the boards of directors or managers of the  
14 Reorganized Debtors to be disclosed, together with their  
15 affiliations, on or before the Effective Date as provided in  
16 Exhibit G of the Plan Supplement, which sets forth who shall  
17 serve as officers of the Reorganized Debtors (as may be modified  
18 pursuant to the Plan Supplement). The Plan Proponents have  
19 established that the appointment to, or continuance in, such  
20 positions of such persons is consistent with the interests of  
21 the holders of Claims against and Interests in the Debtors and  
22 public policy. Additionally, the Subrogation Wildfire Trust  
23 Agreement and the Fire Victim Trust Agreement, attached as  
24 Exhibits C and D, respectively, to the Plan Supplement, name the  
25 Subrogation Wildfire Trustee and the Fire Victim Trustee,  
26 respectively. The Plan satisfies sections 1123(a)(7) and  
27 1129(a)(5).

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1 The provisions of the Plan, including, without limitation,  
2 approval of the Public Entities Plan Support Agreements, are  
3 appropriate and not inconsistent with the applicable provisions  
4 of the Bankruptcy Code. The Court's prior approvals of the  
5 settlements embodied in the Subrogation Claims RSA, the Tort  
6 Claimants RSA, the Noteholder RSA, the Federal Agency  
7 Settlement, and the State Agency Settlement remain in full force  
8 and effect. The Plan satisfies section 1123(b).

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

11 The Plan is in accord with applicable provisions of Title  
12 11, as required by section 1129(a)(1).

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

16 Any payment made or to be made by any of the Debtors for  
17 services or for costs and expenses in or in connection with the  
18 Chapter 11 Cases, or in connection with the Plan and incident to  
19 the Chapter 11 Cases has been approved by, or is subject to the  
20 approval of, the Court as reasonable. Pursuant to the decision  
21 of the California Public Utilities Commission (the "CPUC" or the  
22 "Commission") in I.19-09-016 [approving the Plan], the Utility  
23 shall reimburse the Commission for payment of the fees and  
24 expenses incurred by the Commission for its outside counsel and  
25 financial advisor for services rendered relating to the Chapter  
26 11 Cases, related proceedings and associated financings, and  
27 will not seek cost recovery of the Commission's costs for such  
28 fees and expenses. Such reimbursement for fees and expenses

1 incurred by the Commission shall not be subject to any further  
2 approval or review for reasonableness by the Court, the fee  
3 examiner for the Chapter 11 Cases, or any other party in  
4 interest. The foregoing constitute compliance with section  
5 1129(a)(4).

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

13 The Disclosure Statement, the Disclosure Statement  
14 Supplement, the Plan, the Plan Supplement, the Boken Dec, and  
15 the other evidence proffered or adduced at the Confirmation  
16 Hearing (i) are persuasive and credible, (ii) have not been  
17 controverted by other evidence, and (iii) establish that each  
18 holder of an impaired Claim or Interest either has accepted the  
19 Plan or will receive or retain under the Plan, on account of  
20 such Claim or Interest, property of a value, as of the Effective  
21 Date, that is not less than the amount such holder would receive  
22 or retain if the Debtors were liquidated under chapter 7 of the  
23 Bankruptcy Code on such date. The Plan satisfies section  
24 1129(a)(7).

25 The Non-Voting Classes are Unimpaired under the Plan and  
26 are presumed to have accepted the Plan pursuant to section  
27 1126(f). As reflected in the Pullo Dec and Voting  
28 Certification, Classes 5A-I (HoldCo Public Entities Wildfire

1 Claims), 5A-II (HoldCo Subrogation Wildfire Claims), 5A-III  
2 (HoldCo Fire Victim Claims), 10A-I (HoldCo Common Interests),  
3 3B-I (Utility Impaired Senior Note Claims), 3B-II (Utility  
4 Reinstated Senior Note Claims), 3B-IV (Utility Funded Debt  
5 Claims), 5B-I (Utility Public Entities Wildfire Claims), 5B-II  
6 (Utility Subrogation Wildfire Claims), and 5B-III (Utility Fire  
7 Victim Claims) have voted to accept the Plan.

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

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

24 The evidence proffered or adduced at the Confirmation  
25 Hearing establishes that the Plan, subject to the occurrence of  
26 the Effective Date, is feasible and that confirmation of the  
27 Plan is not likely to be followed by liquidation, or the need  
28 for further financial reorganization of the Debtors or the

1 Reorganized Debtors. The Plan complies with section  
2 1129(a)(11).

3 All fees payable under section 1930 of chapter 123 of title  
4 28 of the United States Code, as determined by the Court, have  
5 been paid or will be paid pursuant to Section 12.5 of the Plan.  
6 Pursuant to Section 12.5 of the Plan, on the Effective Date, and  
7 thereafter as may be required, such fees, together with  
8 interest, if any, pursuant to section 3717 of title 31 of the  
9 United States Code, shall be paid by each of the Debtors. The  
10 Plan complies with section 1129(a)(12).

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

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

23 The Debtors are not individuals, and therefore, section  
24 1129(a)(15) is inapplicable.

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

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

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

7 The principal purpose of the Plan is not the avoidance of  
8 taxes or the avoidance of the application of section 5 of the  
9 Securities Act of 1933, thereby satisfying section 1129(d).

#### 10 **IV. DISCUSSION OF OBSTACLES TO CONFIRMATION**

##### 11 **A. Registration Rights Agreement**

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

19 The Plan Proponents, the TCC and the Trustee, with the  
20 invaluable assistance of Judge Randall Newsome as court-  
21 appointed mediator, resolved their differences, agreed upon  
22 crucial elements defining how to value Effective Date equity to  
23 be issued to the Trust and the equitable means of protecting the  
24 Fire Victim Trust, the diluted old equity and the new equity  
25 under various circumstances. These have been embodied in, among  
26 other documents, the Order Approving the Parties' Joint  
27 Stipulation Regarding the Registration Rights Agreement and  
28

1 Related Agreement of the Fire Victim Trust (Dkt. #7918) and the  
2 Order Approving the Parties' Joint Stipulation Regarding  
3 Normalized Estimated Net Income (Dkt. #7919).

4 **B. Securities Claim Litigation**

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

8 **C. Objection by Mr. William B. Abrams**

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

23 For the reasons stated elsewhere in this Memorandum  
24 Decision, the court has determined that the Plan is feasible and  
25 thus will OVERRULE Mr. Abrams' feasibility argument on the basis  
26 of the powerful and virtually uncontroverted evidence presented  
27 by the Debtors. And while the court appreciates Mr. Abrams'  
28

1 concerns about the fairness of the negotiated Plan, it disagrees  
2 with him that the TCC has been "hushed and gagged" about  
3 deficiencies. To the contrary, the TCC has appeared and  
4 challenged provisions of the Plan that it finds problematic, but  
5 it nonetheless supports confirmation.

6 As to Mr. Abrams' concerns that investors have highjacked  
7 the plan process, the court notes that multiple parties have  
8 participated in this case, including separate groups of  
9 unsecured creditors represented by the OCUC and the TCC. These  
10 various parties have actively and consistently acted to protect  
11 their own constituencies' interests. The mediator was able to  
12 get all these parties to reach agreements satisfactory to each  
13 of them. That mediation was not controlled by equity holders;  
14 they were just one group of many participating in the process.

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

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

24 **D. Objection by Oklahoma Firefighters Pension and**  
25 **Retirement System.**

26 The Oklahoma Firefighters Pension and Retirement System  
27 ("OFPRS") objects to the release of Debtors' unassigned claims  
28 and causes of action against former officers and directors. In

1 particular, OFPRS contends that Debtors' assignment of certain  
2 claims and causes of action to creditors is too narrow, as  
3 section 1.8 of the Plan limits the recovery for such claims  
4 "solely to the extent of any directors and officers' Side B  
5 Insurance Coverage." OFPRS asserts that this provision  
6 constitutes an improper discharge. The court disagrees.

7 As the court discusses elsewhere, this court's decision in  
8 *PG&E I* allows a debtor to confirm a plan that releases its  
9 claims against third parties. Here, Debtor has agreed to carve  
10 out of the Plan's release provisions and to assign to creditors  
11 certain of its claims against third parties, on the condition  
12 that any recovery on these claims would be limited to its Side B  
13 Insurance Coverage. Debtor did not propose this restriction in  
14 a vacuum; rather, the parties in the mediated settlement  
15 involving Debtors, the TCC, the OCC and others agreed that  
16 liability would be limited to Side B Insurance Coverage.  
17 Furthermore, OFPRS's class (Class 10A-I -- Holdco Common  
18 Interests) voted overwhelmingly to accept the Plan,  
19 notwithstanding the limitation on the source of recovery.  
20 Accordingly, the court hereby OVERRULES the objection filed by  
21 OFPRS.

#### 22 **E. Objections by the OCUC and Others**

23 Over the last few weeks, Plan Proponents, the OCUC and  
24 other objecting parties have filed a flurry of documents  
25 relating to the OCUC's initial objection (Dkt. #7300) to  
26 confirmation. At a hearing on June 16, 2020, counsel for  
27 Debtors indicated that the parties have resolved most of the  
28



1 contested matters, with three remaining issues requiring  
2 resolution by the court. The following are the court's  
3 decisions on them.

4 1. Modification of Plan Section 8.2(e).

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

15 [T]he Debtors' proposed modifications to  
16 Section 8.2(e) of the Plan and Paragraph 34(d) of  
17 the Confirmation Order continue to refer to the  
18 "full release and satisfaction of any Claims against  
19 any Debtor or defaults by any Debtor . . . arising  
20 under any assumed executory contract or unexpired  
21 lease." See Debtors' Response at 4-5 (emphasis  
22 added). *This is contrary to Bankruptcy Code section  
23 365(b)(1)(A), which is expressly limited to  
24 "defaults."*

25 *Id.* (emphasis added).

26 Debtors, on the other hand, argue that defaults should be  
27 handled in a manner consistent with section 365, alluding to  
28 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:

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

21 See Plan Proponents' Response filed on June 14, 2020 (Dkt.  
22 #7939 at pgs. 2-3). To the extent a particular assignment of a  
23 claim is not "permitted under applicable law," an unsecured  
24 creditor retains its right to assert that defense.

25 The OCUC objected to this proposed modification, contending  
26 that Debtors were wrongfully attempting to assume the benefits  
27 of executory contracts without assuming their burdens, citing  
28 *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).<sup>4</sup>

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<sup>4</sup> 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*

1 The problem arises upon consideration of the consequences  
2 of a debtor's assumption of an executory contract, whether under  
3 section 365 or as part of a plan as contemplated by section  
4 1123(b)(2). Rejection is easy to apply, and the concepts are  
5 well established. But assumption is permissible whether or not  
6 there has been a default. If the former, section 365(a)  
7 operates (with certain exceptions); if the latter, the debtor  
8 must cure defaults, provide compensation and/or provide adequate  
9 assurances, etc. See sections 365(b)(A)-(C).

10 The Plan, in Section 8.2, sets forth how monetary defaults  
11 must be dealt with. To be consistent with section 1124,  
12 particularly with assumed contracts on which there are no  
13 defaults, the counterparty must be afforded all of the rights  
14 preserved for it under the "cure", "reinstate", and "compensate"  
15 (twice) provisions of subsections (A)-(D) and the "not otherwise  
16 alter" provisions of subsection (E). Debtors' proposed "release  
17 and satisfaction" and "or nonmonetary" revisions to section  
18 8.2(e) and Paragraph 34(d) of the OCP are too ambiguous,  
19 particularly since assumption includes executory contracts  
20 having no extant defaults. The OCUC's insistence on the precise

21  
22 \_\_\_\_\_  
23 *Transport, Inc.*), 993 F.2d 915, 923 (1st Cir. 1993) ("The sole  
24 purpose served by section 502(e)(1)(B) is to preclude redundant  
25 recoveries on identical claims against *insolvent* estates in  
26 violation of the fundamental Code policy fostering equitable  
27 distribution among all creditors of the same class") (emphasis  
28 added).

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

1 language of section 365, and the court's appreciation of section  
2 1124, should control. Counsel should meet and confer on  
3 appropriate language for the OCP.

4 2. Definition of Fire Claim

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

11 The definition is clear. A claim asserted by a provider of  
12 goods and services, whether or not a counterparty to an assumed  
13 executory contract, that suffered damages from the Fires (as  
14 defined in Section 1.86), is impaired and should be channeled to  
15 the Fire Victims Trust. If its damages were not caused by or  
16 "in any way arising out of the Fires" (See Section 1.78), but  
17 arise out of the rejection of an executory contract or are part  
18 of the cure of an assumed one, they should be dealt with under  
19 Article VIII of the Plan and section 365.

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

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

27 The OCUC and others object to what the Debtors call a  
28 "modest" request for an extension of fifteen additional business

1 days to amend their schedules to assume or reject executory  
2 contracts. While it is regrettable that this request has become  
3 necessary, the press of the business of confirmation is heavy  
4 even for the Debtors and their attorneys. The impact on  
5 opponents is slight, and the discrete and possibly indefensible  
6 question of whether to move a contract being assumed to one  
7 being rejected is more disappointing to the counterparty than  
8 its burden in calculating its damages. The converse is more  
9 problematical, but not something any party who does business  
10 with Debtors cannot handle. Because of the obvious solvency of  
11 the Debtors, the court does not worry that this slight  
12 adjustment to the timing for a very particular issue would have  
13 altered any counterparty's decision to object to confirmation.

14 For consistency, the Debtors' requested extension and the  
15 additional time for responses should be the same: thirty days  
16 (calendar, not business) both ways. Debtors should upload an  
17 order granting these extensions or include them in the OCP.

#### 18 **F. Exculpation and Release Clauses**

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

##### 21 1. Release of Claims Held by Debtors (Plan Section 22 10.9(a))

23 Section 10.9(a) releases certain rights and causes of  
24 action held by Debtors, excluding the Assigned Rights and Causes  
25 of Action defined in section 1.8 of the Plan. Multiple parties  
26 objected to these releases. Significantly, Debtors are not  
27 releasing all claims against the released parties, but only  
28 those claims that it will continue to hold as of and after the

1 Effective Date. Consequently, Section 10.9(a) is not "a broad  
2 sweeping provision that seeks to discharge or release nondebtors  
3 from any and all claims that belong to others." *Blixseth v.*  
4 *Credit Suisse (In re Blixseth)*, No. 16-35304, 2020 WL 3089263,  
5 at \*5 (9th Cir. June 11, 2020). As noted by the Ninth Circuit  
6 in *Blixseth*, "a discharge in bankruptcy does not extinguish the  
7 debt itself but merely releases the debtor from personal  
8 liability.... The debt still exists, however, and can be  
9 collected from any other entity that may be liable." *Id.* at 6.  
10 *Id.* at \*5-6, citing *Landsing Diversified Props.-II v. First*  
11 *Nat'l Bank & Tr. Co. of Tulsa (In re W. Real Estate Fund)*, 922  
12 F.2d 592, 600 (10th Cir. 1990) (alteration in original) (quoting  
13 *In re Lembke*, 93 B.R. 701, 702 (Bankr. D.N.D. 1988)); see also  
14 *Lewis v. Scott (In re Lewis)*, 97 F.3d 1182, 1185 (9th Cir.  
15 1996).

16 Moreover, this court has previously held that claims held  
17 by a debtor are property of the estate and may be released as  
18 part of a plan. See *In re Pac. Gas & Elec.*, 304 B.R. 395, 416-  
19 18, n.26 ("PG&E I") ("it is permissible for a plan to provide  
20 for the settlement or adjustment of any claim 'belonging to the  
21 debtor or to the estate.'"). That said, such a release by  
22 Debtors of claims belonging to them can be approved only if it  
23 represents a valid exercise of their business judgment and  
24 satisfies the fair, reasonable, and adequate standard set by  
25 Rule 9019, as defined by the Ninth Circuit in *Martin v. Kane (In*  
26 *re A&C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986). *PG&E I*,

1 304 B.R. at 416.<sup>5</sup> Nonetheless, this court also acknowledged in  
2 *PG&E I* that a Rule 9019 review may not be necessary when  
3 creditors have overwhelmingly voted in favor of the plan; here,  
4 however, some of the objecting creditors hold unimpaired claims  
5 and thus were unable to vote on the plan. Section 10.9(a) does  
6 not compel third parties to release whatever claims they could  
7 assert, individually or collectively, against the Released  
8 Parties. Such third parties can still pursue whatever claims  
9 they may have against the Released Parties.

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

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

15 Section 10.9(b) of the Plan provides that Releasing Parties  
16 (defined in Section 1.180 as the Debtors, the Reorganized  
17 Debtors, and "any holder of a Claim or Interest that is  
18 solicited and voluntarily indicates on a duly completed Ballot  
19 [that it] opts into granting such releases") have released  
20 Debtors and other non-debtor parties identified in section  
21 1.179.

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22  
23 <sup>5</sup> Debtors have not demonstrated how the proposed releases set  
24 forth in section 10.9(a) satisfy the requirements set forth in  
25 *A&C Propertiess* for determining whether a settlement is fair and  
26 reasonable under Rule 9019. The factors to be weighed by a  
27 court include: (a) the probability of success in the litigation;  
28 (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.*

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

13 Section 524(e) provides that "[e]xcept as provided in  
14 subsection (a)(3) of this section, discharge of a debt of the  
15 debtor does not affect the liability of any other entity on, or  
16 the property of any other entity for, such debt." While the  
17 Ninth Circuit stated in *Lowenschuss* that it "has repeatedly  
18 held, without exception, that [section] 524(e) precludes  
19 bankruptcy courts from discharging the liabilities of non-  
20 debtors," those holdings arose in cases where voting creditors  
21 did not affirmatively opt to discharge non-debtors. In these  
22 cases, creditors or classes of creditors were deemed to have  
23 consented to releases of third parties simply by voting in favor  
24 of the plan or by not voting at all. As this court observed in  
25 *PG&E I, Lowenschuss* is inapplicable when a non-debtor has  
26 consented to the third-party release:

27 This court is bound by, and does not question, the  
28 legal principle set forth in *Lowenschuss*, in *In re*



1           *American Hardwoods, Inc.*, 885 F.2d 621, 626 (9th Cir.  
2           1989), and in *Underhill v. Royal*, 769 F.2d 1426, 1432  
3           (9th Cir. 1985) that liabilities of nondebtors cannot  
4           be discharged through a plan. This legal principle,  
5           however, is inapplicable here because (unlike in  
6           *Lowenschuss, American Hardwoods, and Underhill* ) the  
7           Plan does not discharge or release nondebtors from  
8           claims that belong to others (except the Commission,  
9           which has consented to the release).

10          *PG&E I*, 304 B.R. at 418 n.26. See also *In re Station Casinos,*  
11          *Inc.*, No. 09-52477, 2011 WL 6813607 (Bankr. D. Nev. June 08,  
12          2011) (“A release of non-debtor third parties voluntarily and  
13          knowingly given by a creditor or equity holder in connection  
14          with a chapter 11 plan does not implicate the concerns regarding  
15          third party releases discussed by the Ninth Circuit Court of  
16          Appeals in *Lowenschuss*). The court concludes that *Lowenschuss*  
17          does not bar the voluntary opt-in releases contained in the Plan  
18          and therefore OVERRULES objections to these provisions.

### 19                   3.    Exculpation Provisions

20          Multiple parties, including the United States Trustee,  
21          objected to provisions exculpating non-debtors for actions taken  
22          in the course of the plan approval process. The Ninth Circuit  
23          rejected similar objections in the *Blixseth*. The court held  
24          that section 524(e) does not bar an exculpation clause  
25          protecting “various participants in the Plan approval process.”  
26          *Blixseth*, 2020 WL 3089263, at \*5. Citing *In re PWS Holding*  
27          *Corp.*, 228 F.3d 224, 245-46 (3d Cir. 2000), the Ninth Circuit  
28          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-

1 debtors there were members of the creditors' committee  
2 and related professionals and individuals. At the same  
3 time, and more broadly, *PWS* stated that "Section  
4 524(e), by its terms, *only* provides that a discharge  
5 of the debtor does not affect the liability of  
6 nondebtors on claims by third parties against them *for*  
7 *the debt discharged in bankruptcy*," *id.* at 245  
8 (emphasis added), and held that the partial  
9 exculpation for acts committed during the process of  
10 developing and confirming a Chapter 11 plan did not  
11 "affect the liability of another entity on a debt of  
12 the debtor within the meaning of § 524(e)," *id.* at  
13 247.

14 *Blixseth*, 2020 WL 3089263, at \*6.

15 In concluding that the Bankruptcy Code does not prohibit an  
16 exculpation clause protecting various parties who participated  
17 in the approval process, the Ninth Circuit held that any such  
18 exculpation clause should relate only to that process. *Id.* at  
19 \*5. Section 10 covers a lot of players, a number of documents  
20 and a number of events and activities. That reach is consistent  
21 with the complexities and difficulties of these cases, and  
22 comports with the contours of such a provision as recognized in  
23 *Blixseth*. The court **OVERRULES** these objections.

#### 24 **G. Objections by Patricia Garrison, et. al.**

25 Creditor Patricia Garrison (Dkts. #7194, #7378), along with  
26 the parties that joined her (Dkts. #7309, #7451), objected on  
27 the grounds that the Plan impermissibly classified fire victims  
28 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

1 other claims in the class. Further, claims that are similar may  
2 be placed into separate classes "if the debtor can show a  
3 business or economic justification for doing so." *In re Loop*  
4 *76, LLC*, 465 B.R. 525, 536 (9th Cir. BAP 2012), aff'd, 578 F.  
5 App'x 644 (9th Cir. 2014) (citing *Barakat v. Life Ins. Co. of*  
6 *Va. (In re Barakat)*, 99 F.3d 1520, 1526 (9th Cir.1996). Debtors  
7 have separated these claims into three categories: Fire Victim  
8 Claims, Subrogation Wildfire Claims, and Public Entities  
9 Wildfire Claims. They argue that separate classification is  
10 necessary because, specific to the Subrogation Wildfire Claims,  
11 those claims are based on different legal theories of liability.  
12 Further, each class receives distributions through different  
13 procedures tailored to that class, and the classes have accepted  
14 different treatment pursuant to executed settlement agreements.  
15 For these reasons, Debtors have provided an adequate business  
16 justification for separate classification and the court  
17 OVERRULES Ms. Garrison on this point.

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

28 The court OVERRULES these objections.

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

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

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

21           One final thought about these objections is in order. From  
22 comments made at the confirmation trial by Ms. Freeman's  
23 counsel, and thereafter in a post-confirmation CERTAIN FIRE  
24 VICTIMS PROPOSED MODIFICATIONS TO DEBTORS PLAN AND CONFIRMATION  
25 ORDER (Dkt. #7935), it is apparent that the real objection here  
26 is that there should have been a better outcome, whether with  
27 more money, more stock, less involvement by hedge funds or even  
28 liquidation. The court ignored those proposed modifications and

1 OVERRULES these objections now. The impaired classes have voted  
2 for the present Plan, and to sustain these objections would be  
3 to ignore the wishes of that very strong majority.

4 **I. Brief Summary of Prior Rulings**

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

9 The court incorporates by reference its Memorandum Decision  
10 Regarding Postpetition Interest (Dkt. #5226) and its  
11 Interlocutory Order Regarding Postpetition Interest (Dkt.  
12 #5669). As postpetition interest is provided for in the Plan as  
13 required, this decision effectively overrules all objections  
14 which raise improper payment of postpetition interest, including  
15 the UCC (Dkt. #7300), the Ad Hoc Trade Claim Holders (Dkt.  
16 #7288), and Mizuho Bank, Ltd (Dkt. #7221). Any other objections  
17 not specifically listed here are also OVERRULED on this point.

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

24 Finally, the court incorporates by reference its prior  
25 decision regarding challenges to the Fire Victims Trust  
26 Agreement and the Claims Resolution Procedures, namely, the  
27 Memorandum on Objection of Adventist Health, A&T, Paradise  
28

1 Entities and Comcast to Trust Documents (Dkt. #7597). Parties  
2 including the SLF Fire Victims Group (Dkt. #7544), Mary Wallace  
3 (Dkt. #7367),<sup>6</sup> Helen Sedwick (Dkt. #7377), the International  
4 Church of the Foursquare Gospel (Dkt. #7308), Eric and Julie  
5 Carlson (Dkt. #7363),<sup>7</sup> and Karl Knight (Dkt. #7366) all objected  
6 to confirmation on grounds that were already dealt with by this  
7 court's decision and are OVERRULED, setting aside any objections  
8 related to the aforementioned "Issue 2" (see the Corrected Joint  
9 Statement, Dkt. #7875) which will be dealt with by separate  
10 order or in the OCP. Any other objections not specifically  
11 listed here are also OVERRULED on this point.

12 **J. Remaining Objections**

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

19 //

20 //

21 //

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

26 <sup>7</sup> Creditors here also asserted that they should be permitted  
27 to vet Trust Oversight Committee members as they are appointed,  
28 and the court OVERRULES this objection as there is no legal  
basis for the court to order this.

1 **V. CONCLUSION**

2 The court intends to issue the OCP on Friday, June 19,  
3 2020, after counsel for the Debtors has had an opportunity to  
4 revise it in accordance with any provisions of the Memorandum  
5 Decision and any developments occurring before then. To that  
6 end, it has scheduled a hearing on **June 19, 2020, at 12:00 Noon**  
7 to resolve any remaining disagreements about the form of the  
8 OCP. Participation at the hearing will be limited to counsel  
9 for the Plan Proponents, the two Official Committees and any  
10 party to the reserved disputes identified in this Memorandum  
11 Decision.

12 \*\*END OF MEMORANDUM DECISION\*\*