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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re: **PG&E CORPORATION**, **- and -** **PACIFIC GAS AND ELECTRIC COMPANY,** **Debtors**.	Case Nos. 19 -30088(DM) Chapter 11 (Lead Case) (Jointly Administered) Adv. Pro. No. 19-_____(DM)
PG&E CORPORATION, PACIFIC GAS AND ELECTRIC COMPANY, **Plaintiffs,** **v.** **PUBLIC EMPLOYEES RETIREMENT ASSOCIATION OF NEW MEXICO, *et al.*,** **Defendants.**	**DEBTORS' MOTION FOR PRELIMINARY INJUNCTION AS TO ACTIONS AGAINST NON-DEBTORS AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT** Date: TBD Time: TBD Before: Hon. Dennis Montali United States Bankruptcy Court, Courtroom 17, 16th Floor 450 Golden Gate Ave San Francisco, CA 94102

PG&E Corporation ("**PG&E Corp.**") and Pacific Gas and Electric Company (the "**Utility**"), as debtors and debtors in possession (collectively, "**PG&E**" or the "**Debtors**") in the above-captioned Chapter 11 cases (the "**Chapter 11 Cases**"), and Plaintiffs in the above-captioned adversary proceeding, hereby move this Court, pursuant to 105 of title 11 of the United States Code (the "**Bankruptcy Code**"), Federal Rule of Civil Procedure 65 and Rule 65-2 of the Civil Local Rules for the Northern District of California (the "**Civil Local Rules**"), as made applicable in these proceedings pursuant to Rules 7001(7) and 7065 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), to preliminarily and permanently enjoin, during the course of the Chapter 11 Cases, the prosecution and continuation of twenty-two civil actions (the "**Related Actions**") that, although stayed against the Debtors, would irreparably harm the Debtors if allowed to proceed against the named non-debtor defendants (the "**Non-Debtor Defendants**"), with the same effect and to the same extent as would be the case if section 362(a) of the Bankruptcy Code applied.

This Motion is supported by the *Debtors' Complaint for Preliminary and Permanent Injunctive Relief as to Actions Against Non-Debtors*, the *Memorandum of Points and Authorities in Support of Debtors' Motion for Preliminary Injunction as to Actions Against Non-Debtors*, and the *Declaration of Elizabeth Collier in Support of Debtors' Motion for Preliminary Injunction as to Actions Against Non-Debtors*, as well as the exhibits attached thereto.

A proposed form of order granting the relief requested herein is annexed hereto as **Exhibit A** (the "**Proposed Order**").

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PG&E Corporation ("**PG&E Corp.**") and Pacific Gas and Electric Company (the "**Utility**"), as debtors and debtors in possession (collectively, "**PG&E**" or the "**Debtors**") in the above-captioned Chapter 11 cases (the "**Chapter 11 Cases**"), and as Plaintiffs in the above-captioned adversary proceeding, respectfully submit this memorandum of points and authorities in support of the Debtors' Motion ("**Motion**") for Preliminary Injunction as to Actions Against Non-Debtors (the "**Non-Debtor Defendants**"). The Debtors are currently engaged in a complex reorganization that has only just begun and requires their full attention in order to preserve estate assets and work toward a successful emergence from Chapter 11. The Debtors respectfully request that this Court exercise its authority under section 105 of title 11 of the United States Code (the "**Bankruptcy Code**") and enjoin twenty-two (22) actions that threaten the assets of the estates.

I. PRELIMINARY STATEMENT

This motion concerns twenty-two (22) civil actions (the "**Related Actions**") that, although stayed against the Debtors, would irreparably harm the Debtors if allowed to proceed against the Non-Debtor Defendants. As an initial matter, the Debtors owe the Non-Debtor Defendants indemnity obligations of some kind in each of the Related Actions. Moreover, the pleadings in each of the Related Actions, each of which also names at least one of the Debtors as a defendant, make clear that it is the Debtors' conduct—not that of the Non-Debtor Defendants—that sits at the core of the allegations. In other words, the Debtors are the real parties in interest, and any finding against the Non-Debtor Defendants would, in essence, constitute a finding against the Debtors without affording them an opportunity to mount their own defense. Given both their indemnity obligations and the identity of interest with the Non-Debtor Defendants, the litigation of the Related Actions would require key personnel of the Debtors to divert their time and energy from the reorganization. At this critical stage in these Chapter 11 Cases, and as is contemplated by the Bankruptcy Code, the focus of the Debtors' directors, officers and legal team should be devoted to maintaining operations, advancing safety initiatives, and working with the various stakeholders to develop a Chapter 11 plan that will be fair and acceptable to the Debtors' creditors as a whole—not defending prepetition claims of individual litigants.

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These concerns are particularly acute where the Related Actions concern the 2017 and 2018 Northern California wildfires. For example, as it relates to a securities class action brought against the Debtors and their current and former officers (the "**Securities Action**")[1] for alleged misstatements related to the Debtors' anti-wildfire practices and procedures, the Debtors must indemnify their officers to the fullest extent allowable under California law. Moreover, the causal nexus necessary to prove the securities holders' claims against the Debtors' officers would require a finding that the Debtors caused the 2017 or 2018 Northern California wildfires. If the court in the Securities Action were to make such a determination, it would harm the Debtors not only in that case, but in myriad other wildfire-related lawsuits in which the Debtors are involved. And because the Non-Debtor Defendants' potential exposure in the Securities Action (and other wildfire-related actions) far exceeds the proceeds available from the operative insurance policies (upon which the Debtors are co-insured and entitled to reimbursement of indemnification obligations), allowing those claims to proceed would reduce the distributions available to the *Debtors'* creditors. For these reasons and others, and as discussed further below, this Court has "related to" jurisdiction over the Securities Action, and should enjoin it under section 105 of the Bankruptcy Code.

Similarly, this Court can and should enjoin the remaining Related Actions, which fall into three distinct categories. The first category encompasses nineteen (19) separate actions, each brought against the Debtors and their employees (the "**Employee Actions**").[2] One alleges complex

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[1] *In re PG&E Corp. Securities Litig.*, 18-cv-03509 (N.D. Cal. Dec. 14, 2018).

[2] *Tiger Natural Gas, Inc. v. Pac. Gas & Elec. Comp., et al.*, No. 4:16-cv-06711-JSW (N.D. Cal. Nov. 18, 2016); *Van Norsdall v. Pac. Gas & Elec. Comp., et al.*, No. C17-00500 (Contra Costa Super. Ct. Mar. 10, 2017); *Mendoza v. Uprettee Elude Hubbard, et al.*, No. STK-CV-UAT-2017-0009560 (San Joaquin Super. Ct. Sept. 11, 2017); *Tanforan Indus. Park, LLC v. Pac. Gas & Elec. Comp., et al.*, No. CIV-1703383 (San Mateo Super. Ct. Sept. 14, 2017); *Freitas v. Pac. Gas & Elec. Comp., et al.*, No. 17-cv-03528 (Merced Super. Ct. Oct. 18, 2017); *Montellano v. Pac. Gas & Elec. Comp., et al.*, No. 17CVP-0290 (San Luis Obispo Super. Ct. Oct. 18, 2017); *Marroquin v. Pac. Gas & Elec. Comp., et al.*, No. BCV-18-100020 TSC (Kern Super. Ct. Jan. 4, 2018); *Farrell-Araque v. Contreras, et al.*, No. CGC-18-563730 (S.F. Super. Ct. Jan. 18, 2018); *Pagtuligan v. Pac. Gas & Elec. Comp., et al.*, No. CGC-18-564604 (S.F. Super. Ct. Feb. 26, 2018); *Senicero v. Borgan, et al.*, No. CGC-18-564790 (S.F. Super. Ct. Mar. 5, 2018); *Torres v. Pac. Gas & Elec. Comp., et al.*, No. CGC-18-564986 (S.F. Super. Ct. Mar. 13, 2018); *Iraheta v. Pac. Gas & Elec. Comp., et al.*, No. 18-CECG01035 (Fresno Super. Ct. Mar. 26, 2018); *Cruz v. Webb, et al.*, No. BCV-18-101137 (Kern Super. Ct. May 16, 2018); *Haywood v. Cordeiro, et al.*, No. BCV-18-101444 (Kern Super. Ct. June 18, 2018); *Remington v. Pac. Gas & Elec. Comp., et al.*, No. DR180635 (Humboldt Super. Ct. Sept. 4, 2018); *Payne v. Ogans, et al.*, No. RG18922651 (Alameda Super. Ct. Sept. 28, 2018); *Little v. PG&E Corp., et al.*, No. CV18-2183 (Yolo Super. Ct. Nov. 21, 2018); *State Farm Mutual Auto. Ins. Comp. v. Robert Parks, et al.*, No. CGC-18-572315 (S.F. Super. Ct. Dec. 24, 2018); *Okhomina v. Pac. Gas & Elec. Comp., et al.*, No. CGC-19-573060 (S.F. Super. Ct. Jan. 23, 2019).

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commercial claims, twelve allege torts related to motor vehicle accidents, four allege employment law violations, and two allege breaches of contract.[3] The second category encompasses a single negligence action against the Debtors and their contractors (the "**Contractor Action**")[4] for damages related to the 2018 Northern California wildfires. The third category encompasses a single negligence action against the Debtors and a third party ("**Third-Party Action**")[5] for alleged damages related to the conditions on a Utility worksite (the Employee, Contractor and Third-Party Actions, collectively, the "**Remaining Actions**"). This Court has jurisdiction to enjoin each of the Employee Actions, as the Debtors have an obligation to indemnify the Non-Debtor Defendants pursuant to resolutions of their boards and under applicable California law. This Court also has jurisdiction to enjoin the Contractor and Third Party Actions, as the Debtors' potential exposure through vicarious liability could adversely affect the estates as well.

With respect to each of the Related Actions, the Debtors have met the factors necessary for this Court to issue an injunction under section 105 of the Bankruptcy Code. First, at this early stage of the Chapter 11 Cases, it can hardly be argued that the Debtors are unlikely to reorganize. In addition to securing debtor-in-possession financing, the Debtors have taken an active role in obtaining relief to stabilize their businesses. Second, allowing the Related Actions to proceed against the Non-Debtor Defendants would irreparably harm the Debtors by, among other things, diverting the time, attention, and energy of the Debtors' key personnel from the reorganization, otherwise draining the estates' resources, and potentially subjecting the Debtors to the preclusive effects of collateral estoppel and record taint— especially with respect to those claims related to the 2017 and 2018 Northern California wildfires. Third, a mere delay of the Related Actions would not affect the substantive rights of any of the plaintiffs in the Related Actions, as their claims against the Debtors—the true parties in interest—can still be resolved through the bankruptcy claims reconciliation process as appropriate. Finally, public interest favors an injunction that allows the

[3] Although *Remington v. Pac. Gas & Elec. Comp., et al.*, No. DR180635 (Humboldt Super. Ct. Sept. 4, 2018), is considered an Employee Action for purposes of this Motion, the plaintiff in that case also names, as defendants, numerous of the Debtors' current and former directors and officers.

[4] *Christensen, et al., v. PG&E Corp., et al.*, No. 18CV03838 (Butte Super. Ct. Nov. 28, 2018).

[5] *Guzman v. Pac. Gas & Elec. Comp., et al.*, No. CGC-16-554005 (S.F. Super. Ct. Sept. 1, 2018).

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Debtors to maximize the assets of their estates, and focus on successfully emerging from Chapter 11—two paramount goals of the Bankruptcy Code.

II. RELEVANT BACKGROUND

PG&E Corp. is a holding company whose primary operating subsidiary is the Utility, an electricity and natural gas utility operating in northern and central California. *See* Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief, Case No. 19-30088 [Dkt. No. 263] (the "***Wells Decl.***") at 7. The Utility provides natural gas and utility services to approximately 16 million customers. *See id.*

The Debtors sought relief under Chapter 11 because it was the only viable option to resolve the potential liabilities that arose from the tragic wildfires that occurred in Northern California in 2017 and 2018, continue to deliver safe and reliable service to its 16 million customers, and remain economically viable. *See id.* at 3. As noted in PG&E's Form 8-K filed on January 14, 2019 with the United States Securities and Exchange Commission, PG&E's potential wildfire-related liability could exceed $30 billion, without taking into account potential punitive damages, fines and penalties or damages with respect to "future claims." *See id.* Chapter 11 will provide the Debtors and all parties in interest with one forum to comprehensively address and resolve the Debtors' wildfire liabilities in a fair and expeditious manner, and will ensure that all of the Debtors' similarly situated creditors receive equal treatment. *See id.* at 7.

A. The Securities Action

In the Securities Action, *In re PG&E Corp. Sec. Litig.*, 18-cv-03509 (N.D. Cal. Dec. 14, 2018), plaintiff Public Employees Retirement Association of New Mexico ("**PERA**"), individually and on behalf of all other persons similarly situated, alleges that the Debtors and six of their current and former officers (collectively, the "**Securities Defendants**") committed securities fraud.[6] *See* Declaration of Elizabeth Collier in Support of Debtors' Motion for Preliminary Injunction as to

[6] These current and former directors and officers are: Anthony F. Earley, Jr., former PG&E Corp. Chief Executive Officer and former Chairman of the PG&E Corp. Board; Geisha J. Williams, former PG&E Corp. Chief Executive Officer; Nickolas Stavropoulos, former PG&E Corp. President and Chief Operating Officer; Julie M. Kane, current PG&E Corp. Senior Vice President, Chief Ethics & Compliance Officer, and Deputy General Counsel; Christopher P. Johns, former Utility President and former Vice Chairman of the Utility Board; and Patrick M. Hogan, former Utility Senior Vice President of Electric Operations.

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Actions Against Non-Debtors (the "**Collier Decl.**"), Ex. E ¶ 1. The Securities Action concerns the exact same events—the 2017 and 2018 Northern California wildfires—that precipitated the Debtors' decision to seek protection under Chapter 11. Specifically, PERA alleges that, from April 29, 2015, through November 15, 2018, the Securities Action Defendants made false and misleading statements with the intent to conceal the Debtors' wildfire safety practices, including numerous and widespread violations of California safety regulations related to power lines. *See id.* ¶¶ 3–9. PERA further alleges that the Debtors' wildfire safety practices caused the 2017 and 2018 Northern California wildfires, which, in turn, caused significant financial losses to the Debtors' security holders. *Id.* ¶ 24. PERA concludes by seeking damages, pre- and post-judgment interest, and attorneys' fees and costs. *See id.* at 119. In order to prove their claims, PERA will surely seek extensive discovery from the Debtors' directors and officers, and that will necessarily distract the Debtors' key personnel from administering the estates.

B. The Employee Actions

In the nineteen (19) Employee Actions, various plaintiffs allege that the Debtors and their employees engaged in various wrongdoing, culminating in claims of, for example, breach of contract and personal injury. Although the Employee Actions name the Debtors' employees as co-defendants, the real targets of these lawsuits are the Debtors. For example, in *Tiger Natural Gas, Inc. v. Pac. Gas & Elec., et al.*, No. 4:16-cv-06711-JSW (N.D. Cal. Nov. 18, 2016), the plaintiff alleges that the Utility improperly performed in its capacity as a billing and collections agent acting on behalf of those (such as Tiger) who provide retail natural gas to end-user residential and commercial customers. *See* Collier Decl., Ex. F ¶ 1. The plaintiff's complaint alleges nine causes of action, only three of which name Non-Debtor Defendants. *See id.* ¶¶ 90–184. Moreover, in one of those three counts, the plaintiff only names the Utility's employees in order to recover from the Utility under a theory of respondeat superior. *See id.* ¶¶ 113–119. Specifically, that count alleges:

> The Individual Defendants committed the [challenged] activities within the time and space limits of their employment with [the Utility]. That is, the Individual Defendants committed the [challenged] activities while they were working in [the Utility's offices and with [the Utility's] systems. On information and belief, the Individual Defendants were motivated to commit the [challenged] activities for

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> the purpose of benefiting [the Utility] financially through increased profit and market share, and thereby benefiting themselves as the employees responsible.

Id. ¶ 116. For all of these grievances, the plaintiff in *Tiger* seeks compensatory damages (trebled as to counts one, two, and three), punitive damages, and attorneys' fees and costs. *See id.* at 36.

In *Okhomina v. Pac. Gas & Elec. Comp., et al.*, No. CGC-19-573060 (S.F. Super. Ct. Jan. 23, 2019), the plaintiff brings seven causes of action related to employment law, six against the Utility, and one against the Utility and one of the Utility's employees. *See* Collier Decl., Ex. G ¶¶ 29–88. In terms of relief, the plaintiff seeks compensatory damages, punitive damages, attorneys' fees and costs, and a "preliminary and/or permanent injunction enjoining and/or prohibiting [the Utility] from continuing the unfair and illegal business policy and practice of interfering with Plaintiff's and other former employees' employment with third parties." *See id.* at 16. This final request, in addition to the employee's absence from all but one cause of action, make clear that the Utility is the real target of *Okhomina*.

In *Senicero v. Borgan, et al.*, No. CGC-18-564790 (S.F. Super. Ct. Mar. 5, 2018), the plaintiff alleges personal injury and property damage stemming from an automobile accident allegedly caused by an employee of the Debtors, driving a vehicle owned by the Debtors, within the course and scope of his employment with the Debtors. *See* Collier Decl., Ex. H at 1–3. The plaintiff seeks compensatory damages (and prejudgment interest on those damages) for, among other things, wage loss, loss of use of property, hospital and medical expenses, and loss of earning capacity. *See id.* at 3. Like in *Okhomina*, although the plaintiff in *Senicero* names one of the Debtors' employees as a defendant, it is inarguable that his ultimate goal is to recover from the Debtors.

Because the Debtors are self-insured for claims against their employees up to $10 million, *see* Collier Decl. ¶ 15, a judgment against a Non-Debtor Defendant in the Employee Actions would have a direct impact on the estates. This Court should therefore enjoin the Employee Actions in order to protect the estates and give meaning to the automatic stay.

C. The Contractor Action

In the Contractor Action, *Christensen, et al., v. PG&E Corp.*, et al., 18-cv-03838 (Butte Super. Ct. Nov. 28, 2018), numerous plaintiffs allege that the Debtors, two of their contractors

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(Trees, Inc. and ACRT, Inc.), and 1–100 unnamed Doe defendants (collectively, the "Defendants") negligently maintained, repaired, operated, or inspected the Utility's power lines. *See* Collier Decl., Ex. 23 ¶ 11. The plaintiffs further allege that the Defendants' alleged negligence caused a fire near Pulga, California that began on or about November 8, 2018. The plaintiffs' complaint identifies eight causes of action (all name the Debtors, only three name the Debtors' contractors, and all are based on the same operative facts), and in terms of remedies, the plaintiffs seek compensatory damages (trebled or doubled for "injuries to timber, trees, or underwood on Plaintiffs' property"), punitive damages, and attorneys' fees and costs. *Id.* at 19–20. The allegations in *Christensen* cut to the heart of the Debtors' potential liability arising out of the 2017 and 2018 wildfires, and allowing any claims against the Non-Debtor Defendants to proceed would force the Debtors' key personnel to divert their attention away from the reorganization and seriously undermine the Debtors' efforts to address the substantial issues impacting the estates from those wildfires in this Court, to the detriment of all stakeholders. Moreover, if cases related to the 2017 and 2018 Northern California wildfires are allowed to proceed, any factual determinations made in those cases would necessarily impact the resolution of the wildfire claims that led the Debtors to seek Chapter 11 relief in the first place.

D. The Third-Party Action

In the Third-Party Action, *Guzman v. Pac. Gas & Elec. Comp., et al.*, No. CGC-16-554005 (S.F. Super. Ct. Sept. 1, 2016), the plaintiff alleges that the Utility and M Squared Construction, Inc. ("**M Squared**") violated the California Labor Code, the California Public Utilities Code, and various California regulations by negligently failing to maintain a safe and proper worksite. *See* Collier Decl., Ex. J ¶¶ 12–24. The plaintiff alleges that while working on the worksite, he unintentionally engaged an unmarked Utility power line, which caused him traumatic physical injuries. *See id.* ¶ 24. For these injuries, the plaintiff seeks damages, attorneys' fees, and costs from the Utility and M Squared, even though he did not work for the Utility or M Squared. *See id.* at 6. While there is no legal relationship between the Utility and M Squared, M Squared filed claims against the Utility for indemnity and contribution. *See* Collier Decl., Ex. K ¶¶ 1–14. The Utility, in turn, filed claims

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against M Squared for negligence, indemnity, and contribution, which were not automatically stayed. *See* Collier Decl., Ex. L ¶¶ 34–54.

III. ARGUMENT

When a debtor moves to enjoin an ongoing action against a non-debtor under the Bankruptcy Code, this Court's inquiry is two-fold. *See generally, In re Excel Innovations, Inc.*, 502 F.3d 1086 (9th Cir. 2007). First, the Court must ensure that it has subject matter jurisdiction over the non-debtor action. *See id.* at 1096–1100. Second, and contingent upon a finding of jurisdiction, the Court must determine whether the debtor is actually entitled to the preliminary injunction that it seeks. *See id*. Here, the facts and the law support granting the Motion and enjoining the Related Actions.

A. THE COURT HAS JURISDICTION OVER THE RELATED ACTIONS

This Court enjoys broad jurisdiction to enjoin "any or all cases . . . arising in or related to a case under title 11." *In re Am. Hardwoods, Inc.*, 885 F.2d 621, 623 (9th Cir. 1989) (quoting 28 U.S.C. § 157(a)). This includes the ability to enjoin any non-debtor action, so long as it "could conceivably have any effect on the estate being administered in bankruptcy." *Id.* (quoting *In re Fietz*, 852 F.2d 455, 457 (9th Cir. 1988)); *see also Contra Costa Cty. v. Fitch, Inc.*, No. C 10-05318 JSW, 2011 WL 13247847, at *3 (N.D. Cal. Jan. 31, 2011) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984))[7] ("It is settled . . . that a civil action 'need not necessarily be against the debtor or against the debtor's property' to be 'related to' the bankruptcy proceeding."). A non-debtor action could "conceivably have an[] effect on the estate being administered in bankruptcy . . . if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively)." *Am. Hardwoods*, 885 F.2d at 623.

Courts have "routinely found suits between non-debtors to be "related to" the bankruptcy, where the debtor is obligated to indemnify the non-debtor defendant." *In re Sizzler Restaurants Int'l, Inc.*, 262 B.R. 811, 818 (Bankr. C.D. Cal. 2001) (citing *In re Master Mortgage, Inc.*, 168 B.R. 930,

[7] The conceivable-effect test for "related to" jurisdiction became renowned following the Third Circuit's *Pacor* decision. *See Pacor*, 743 F.2d at 994 ("The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy*.") (emphasis in original). The Ninth Circuit formally adopted *Pacor*'s articulation four years later in *Feitz*. *See Feitz*, 852 F.2d at 457 ("We therefore adopt the *Pacor* definition quoted above.").

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934–35 (W.D. Mo. 1994) ("related to" jurisdiction exists where "there is an identity of interest between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete assets of the estate"). Indeed, this Court has jurisdiction to enjoin *any* action that raises even the "potential" for indemnification on the part of the debtor. *In re Mortgages Ltd.*, 427 B.R. 780, 786 (D. Ariz. 2010), *aff'd sub nom. PDG Los Arcos, LLC v. Adams*, 436 F. App'x 739 (9th Cir. 2011) (unpublished); *see also Sizzler Restaurants*, 262 B.R. at 818. That is so even in the absence of an "unconditional indemnification agreement" between the debtor and a non-debtor-defendant. *See Mortgages Ltd.*, 427 B.R. at 786 (quoting *Sizzler Restaurants*, 262 B.R. at 818-19). That is also so irrespective of the "financial impact of the [non-debtor actions] on the debtor's reorganization." *Hendricks v. Detroit Diesel Corp.*, No. C-09-3939 EMC, 2009 WL 4282812, at *6 (N.D. Cal. Nov. 25, 2009); *see also Hayden v. Wang*, No. 13-CV-03139-JST, 2013 WL 6021141, at *3 (N.D. Cal. Nov. 13, 2013).

While indemnification obligations are *sufficient* to demonstrate an "identity of interest" between the debtor and non-debtor parties—sometimes referred to as "special" or "unusual" circumstances[8]—such obligations are not *necessary*. *See, e.g.*, *Sizzler*, 262 B.R. at 819 ("[T]his court is persuaded by those cases which have refused to read *Pacor* as requiring an unconditional indemnification agreement."). For instance, "related to" jurisdiction also exists where proving a non-debtor's liability risks judgments or findings against the Debtors. *See, e.g.*, *Tuller v. Tintri, Inc.*, No. 17-cv-05714-YGR, 2018 WL 4385652, at *2–3 (N.D. Cal. Sept. 14, 2018) (finding special circumstances, or identity of interest, because there could be no determination as to the liability of the non-debtor defendants in a securities action "without first resolving whether [the debtor] made a material misrepresentation in violation of the securities laws at issue"); *In re W.R. Grace & Co.*, 386

[8] *See Boucher v. Shaw*, 572 F.3d 1087, 1093 n.3 (9th Cir. 2009) (quoting *In re Chugach Forest Prods.*, 23 F.3d 241, 247 n.6 (9th Cir. 1994) (so-called "extensions of the automatic stay" are in fact injunctions issued by the Bankruptcy Court after hearing and the establishment of "unusual need" to take this action to protect the administration of the bankruptcy estate); *In re Ripon Self Storage, LLC*, Nos. EC-10-1325-HKiD, EC-10-1326-HKiD, 2011 Bankr. WL 3300087, at *6–7 (B.A.P. 9th Cir. Apr. 1, 2011) ("The automatic stay may protect nondebtors only under 'unusual circumstances' where the interests of the debtor and the nondebtor are inextricably interwoven.") (citing *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 999 (4th Cir. 1986) ("unusual" circumstances arise "when there is such an identity of interest between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor")).

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B.R. 17, 30 (Bankr. D. Del. 2008) (exercising "related to" jurisdiction where the debtor's conduct and operations sits at the "core of the issues raised" against the non-debtors). Indeed, the United States Supreme Court has found that a court's "related to" jurisdiction confers authority over *all* matters that would logically be litigated as a single action because they involve numerous claims that derive from "a common nucleus of operative fact." *See Hoyt v. Aerus Holdings, L.L.C.*, 447 B.R. 283, 289 (Bankr. D. Ariz. 2011) (quoting *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)) ("*Gibbs* must have provided the meaning of 'related to' that Congress understood and intended when it codified bankruptcy jurisdiction under the Code, originally in 28 U.S.C. § 1471 and currently in 28 U.S.C. § 1334.").[9]

Here, the Debtors are obligated to indemnify each of the Non-Debtor Defendants—either by board resolution, statute, or other operation of law—and each claim relates directly to the Debtors' alleged conduct. Therefore, all of the Related Actions have not just a conceivable, but a direct and immediate effect on the Debtors' estates, and this Court possesses jurisdiction over each of them.

1. This Court Has Jurisdiction Over the Securities Action

The Securities Action affects the Debtors estates in three distinct, but equally harmful, ways. *First*, pursuant to certain resolutions of the Debtors' boards of directors (the "**Resolutions**"), the Debtors are obligated to indemnify and hold harmless, "to the fullest extent permissible under California law and the Corporation's Articles of Incorporation," each of the Non-Debtor Defendants in the Securities Action. *See* Collier Decl. ¶ 8. Specifically, the Debtors are obligated to indemnify and hold harmless these Non-Debtor Defendants for, *inter alia*, any "costs, charges, expenses, liabilities, and losses (including, without limitation, attorneys' fees)" that the Non-Debtor Defendants have incurred and will incur in response to the Securities Action. *See id.* In other words, the Debtors' obligations to indemnify the Non-Debtor Defendants in the Securities Action arose upon the filing of the operative complaint. Therefore, the Debtors' obligations to these Non-Debtor Defendants alone are sufficient to bring the Securities Action within the jurisdiction of this Court.

[9] *See also Mortgages*, 427 B.R. at 787 (quoting *In re Lockridge*, 303 B.R. 449, 454 (Bankr. D. Ariz. 2003)) (affirming the Bankruptcy Court's conclusion that "the term 'related to' has been defined by the Supreme Court to include matters that would logically be litigated as a single litigation unit because they involve claims that 'derive from a common nucleus of operative fact'").

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See Hendricks, 2009 WL 4282812, at *6; *see also Hayden*, 2013 WL 6021141, at *3 (where a debtor "has certain indemnification obligations to [a non-debtor defendant and the debtor's] directors and officers," a Bankruptcy Court has jurisdiction to enjoin that action because "any finding in [that] action . . . could alter [the debtor's] liabilities and have an effect on [the debtor's] estate").

Second, the Debtors and the Non-Debtor Defendants in the Securities Action are co-insured under the operative insurance policies. *See* Collier Decl. ¶ 14. Those policies insure the Debtors not only against liability for claims brought against them, but for indemnification claims brought against the Debtors by their officers. *See id.* Therefore, not only are the policies themselves property of the estates, but so are the related proceeds, and diminution of those proceeds affects the debtors' interest in and rights to recover the proceeds. *See In re Minoco Group of Companies, Ltd.*, 799 F.2d 517, 518–20 (9th Cir. 1986) ("[W]e see no significant distinction between a liability policy that insures the debtor against claims by consumers and one that insures the debtor against claims by directors and officers. In either case, the insurance policies protect against diminution of the value of the estate."); *In re Metro. Mortg. & Sec. Co.*, 325 B.R. 851, 857 (Bankr. E.D. Wash. 2005) (debtors and all other insureds had undivided, unliquidated interests in an identical asset, *i.e.*, the insurance policy proceeds); *In re CIRCLE K Corp.*, 121 B.R. 257, 261 (Bankr. D. Ariz. 1990) (noting that policy proceeds are estate assets because debtor could make a claim for reimbursement for indemnification claims paid).[10] In this case, any potential settlement between the putative class in the Securities Action and the Debtors' officers is likely to exhaust the Debtors' available coverage, and is therefore likely to deplete the assets of the Debtors' estates.

Third, the Debtors, and their estates, are the true targets of the Securities Action.[11] To succeed in the Securities Action, PERA must show that misstatements regarding the Debtors'

[10] *See also In re Leslie Fay Cos., Inc.*, 207 B.R. 764, 785 (Bankr. S.D.N.Y. 1997) ("a shared interest in the insurance proceeds was sufficient to bring those proceeds into the estate, irrespective of whether those policies also provided liability coverage for the debtor's directors and officers"); *In re Sacred Heart Hosp.*, 182 B.R. 413, 420 (Bankr. E.D. Pa. 1995) (indemnification interest in insurance policy proceeds is sufficient to bring those proceeds into the estate).

[11] The alleged misstatements by the Securities Action Officer Defendants are indistinguishable from those allegedly made by the Debtors. Indeed, to prove that the Securities Action Officer Defendants made misstatements, PERA must also prove that the *Debtors* made misstatements. *Compare, e.g.*, Collier Decl., Ex. E ¶ 3 ("**PG&E** repeatedly represented to its investors" that PG&E was in compliance with relevant laws and regulations); ¶ 26 ("**PG&E's** statements of compliance with safety regulations . . . misrepresented current facts"); ¶ 149 ("**the Company** misrepresented to investors that it would prioritize safety"); ¶ 222 ("**PG&E's** representation to the contrary was

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wildfire safety measures caused a drop in PG&E Corp.'s share price. If the Debtors did not cause the wildfires, then the Debtors' safety measures (or alleged misstatements regarding those safety measures) could have no plausible effect on PG&E Corp.'s share price. Accordingly, the complaint thus rests entirely on the contested premise that the Debtors' alleged inadequate wildfire safety measures caused the 2017 and 2018 Northern California wildfires. *See, e.g.*, Collier Decl., Ex. E ¶ 3 (PG&E's failure to comply with safety regulations proximately caused wildfires in 2017 and investors' consequent losses."); ¶ 104 ("PG&E's numerous, widespread safety violations actually caused or exacerbated **all** of the North Bay Fires.") (emphasis in original). Thus, the Debtors' conduct and operations are "at the core of the issues raised" in the Securities Actions. *W.R. Grace & Co.*, 386 B.R. at 30.

The facts necessary to prove PERA's claims against both the Debtors and their officers are so inextricably interwoven that discovery and proof on these issues will go straight to a number of matters confronting the Debtors in, and critical to the resolution of, these Chapter 11 Cases. Worse yet, if the Securities Action is permitted to proceed against the Non-Debtor Defendants, the Debtors could later "be bound to critical factual and legal issues determined in those proceedings by operation of collateral estoppel." *In re Union Tr. Philadelphia, LLC*, 460 B.R. 644, 657 (E.D. Pa. 2011); *see also In re Philadelphia Newspapers, LLC*, 407 B.R. 606, 615 (E.D. Pa. 2009) ("[I]f the suit against the Non-Debtors proceeded without the involvement of the Appellees, the Appellees may be later barred from defending these claims by operation of collateral estoppel."). Those factual and legal findings are directly pertinent to the wildfire victims' and indemnitees' claims against the estates, and the availability of insurance proceeds to satisfy those claims. Therefore, to protect the property of the estates this Court has and should exercise "related to" jurisdiction over the Securities Action.

materially false and/or misleading."); ¶ 231 (**PG&E's** representation that it met or exceeded regulatory requirements for pole integrity management was misleading); ¶ 234 (**PG&E** misrepresented existing and material facts to investors regarding its adherence to shut-off guidelines) (emphases added), *with* ¶¶ 198–204 (a Securities Action Officer Defendant (Julie Kane) reviewed and approved an alleged Debtors misrepresentation); ¶¶ 212–19 (same); ¶¶ 220–24 (same); ¶¶ 226–232 (same); ¶¶ 240–43 (same); ¶¶ 249–51 (same).

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2. This Court has Jurisdiction Over Each of the Remaining Actions

The Debtors' officers are not the only Non-Debtor Defendants to whom the Debtors owe indemnity obligations. The Debtors must also indemnify the Non-Debtor Defendants in the Remaining Actions by virtue board-approved resolutions, statute, or other operation of law.

Pursuant to the Resolutions, the Debtors must indemnify and hold harmless, "to the fullest extent permissible under California law and the Corporation's Articles of Incorporation," the majority of the Non-Debtor Defendants in the Employee Actions. Collier Decl. ¶ 9. This obligation includes, *inter alia*, any "costs, charges, expenses, liabilities, and losses (including, without limitation, attorneys' fees)" that the Non-Debtor Defendants have incurred and will incur in connection with the Employee Actions. *See id.*

Additionally, the Debtors must indemnify the Non-Debtor Defendants in the Employee Actions as a matter of law under section 2802 of the California Labor Code. Pursuant to that California statute, the Debtors have a nonwaivable legal duty to indemnify their employees for "all necessary expenditures or losses" incurred as a "direct consequence" of their decision to discharge their duties or adhere "to the directions" of their employer. *See* Cal. Labor Code § 2802(a); *see also Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 902 (N.D. Cal. 2009) (interpreting Cal. Labor Code § 2802(a)). This nonwaivable duty exists even if an employee is ultimately found to have acted unlawfully, so long as that employee did not believe that he was acting unlawfully at the time of the challenged action. *See* Cal. Labor Code § 2802(a). In each of the Employee Actions, either the Debtors have concluded that Non-Debtor Defendants have been named as a defendant as a direct consequence of actions or inactions arising from the discharge of his or her duties as an employee of the Debtors, or plaintiffs have alleged as much, and the Debtors have no basis to believe that is not the case. *See* Collier Decl. ¶¶ 11–12. Moreover, the Debtors have no basis to believe that any of their employees took any action that they believed to be unlawful at the time. *See id.* ¶ 13. Accordingly, under the circumstances, the Debtors have a nonwaivable legal duty to defend and indemnify the Non-Debtor Defendants in the Employee Actions for any costs and expenses (including attorneys' fees) that they have incurred and will incur as a result of the Employee Actions.

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With respect to the Contractor and Third-Party Actions, the Debtors' indemnity obligations arise as a matter of circumstance. Plaintiffs in *Christensen* (the Contractor Action) have alleged that the Debtors' and their contractors "negligently installed, constructed, maintained, operated, inspected, and/or repaired the Utility's power line and as a direct, proximate and legal result, the line caused a fire and Plaintiffs' damages." *See* Collier Decl., Ex. I ¶ 13. The Debtors, like all California utilities, have a non-delegable duty to maintain the safety of their electric utility systems. *See Snyder v. S. Cal. Edison Co*., 44 Cal. 2d 793, 801 (1955). This means that the Debtors "may be [held] vicariously liable for compensatory damages arising from [the] contractors' negligence, irrespective of fault." *Pac. Gas & Elec. Co. v. Superior Court*, 24 Cal. App. 5th 1150, 1175 (Ct. App. 2018). In *Guzman* (the Third-Party Action), plaintiff alleged that the Utility and co-defendant M Squared negligently failed to maintain a safe and proper worksite, and that plaintiff suffered severe injuries as a result. *See* Collier Decl., Ex. J ¶ 24. M Squared has since filed claims against the Utility for indemnity and contribution, which are of course stayed under section 362 of the Bankruptcy Code. *See id.*, Ex. K.

Factual differences aside, *Christensen* and *Guzman* both fall within this Court's jurisdiction for the same reason. In both cases, if the plaintiff(s) "ultimately prevail[] in their suit, on a theory of either direct negligence [as pled in *Christensen* and *Guzman*] or vicarious liability [as contemplated in *Christensen*], the [non-debtor] defendants may have contribution or indemnity claims against" the Debtors. *Passmore v. Baylor Health Care Sys.*, 823 F.3d 292, 296 (5th Cir. 2016). This, at a minimum, raises the "potential" for indemnification on the part of the Debtors, and brings the Contractor and Third-Party Actions within the jurisdiction of this Court. *See Mortgages Ltd.*, 427 B.R. at 787; *see also Passmore*, 823 F.3d at 296.

Moreover, as is the case with the Securities Action, the Debtors' conduct and operations are at the "core of the issues raised" in the Remaining Actions and, therefore are within this Court's "related to" jurisdiction. The Contractor Action (*Christensen*) also arises out of the 2018 Northern California wildfires, and the Third-Party Action (*Guzman*) arises out of injuries the plaintiff alleges he suffered after coming into contact with the Utility's unmarked power lines. As to the Employee

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Actions, the respective plaintiffs name as Non-Debtor Defendants individuals who were acting within the course and scope of their employment. Thus, all of the Related Actions are lawsuits *against the Debtors* that seek to recover *from the Debtors*. To that end, there can be no doubt that the continued prosecution of the Related Actions against the Non-Debtor Defendants would, let alone conceivably could, have an effect on the Debtors' estates. Therefore, they are subject to the jurisdiction of this Court.

B. THIS COURT SHOULD ENJOIN THE RELATED ACTIONS

When called upon to evaluate a request for a preliminary injunction, including with respect to staying actions against Non-Debtor Defendants, Bankruptcy Courts within the Ninth Circuit employ the "usual preliminary injunction standard," with one modification. *Excel*, 502 F.3d at 1094–95. Rather than demonstrate a strong likelihood of success on the merits, a bankruptcy debtor must demonstrate a reasonable likelihood of a successful reorganization. *Id*. Accordingly, a debtor seeking to stay a related action must demonstrate: (1) a reasonable likelihood of successful reorganization, (2) absent an injunction, the debtor will suffer irreparable harm, (3) a balance of the hardships favors the issuance of an injunction, and (4) an injunction advances the public interest. *See generally In re Fabtech Indus., Inc.*, No. 10-1144, 2010 WL 6452908 (B.A.P. 9th Cir. July 19, 2010). The Debtors have established each of these elements and the Motion should be granted.

1. The Debtors Have A Reasonable Likelihood of Successful Reorganization.

In the Ninth Circuit, a debtor seeking to enjoin a non-debtor action "must show a reasonable likelihood of a successful reorganization." *Excel*, 502 F.3d at 1095. To do so, the debtor must show that it has engaged in activities geared towards reorganization, describe what those "activities are [and explain] how [those activities] could meaningfully contribute to [the debtor's prospects] for reorganization." *Id.* at 1097. This is not a "high burden," and does not require the debtor to produce a specific plan of reorganization or speculate as to the likelihood of that plan's confirmation. *See Fabtech*, 2010 WL 6452908, at *4 (quoting *Excel*, 502 F.3d at 1097). Indeed, "[a]t this early stage of [a] Debtor's bankruptcy case," the debtor is often in "clear pursuit of several viable avenues of possible reorganization." *In re The Billing Res.*, No. 07-52890-ASW, 2007 WL 3254835, at *10

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(Bankr. N.D. Cal. Nov. 2, 2007). That is unsurprising given that "[t]he paramount policy and goal of Chapter 11, to which all other bankruptcy policies are subordinated, is the rehabilitation of the debtor." *In re Pac. Gas & Elec. Co.*, 283 B.R. 41, 59 (N.D. Cal. 2002) (quoting *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989)), *rev'd on other grounds sub nom. Pac. Gas & Elec. Co. v. California ex rel. California Dep't of Toxic Substances Control*, 350 F.3d 932 (9th Cir. 2003). And for that reason, the equities "favor[] the debtor at the beginnings of a case." *In re Linda Vista Cinemas, L.L.C.*, No. 4-10-BK-14551-JMM, 2010 WL 2105613, at *2 (Bankr. D. Ariz. May 25, 2010).

Although the Debtors' Chapter 11 Cases are newly-filed, they have already made "tangible progress" towards reorganization. *See* Wells Decl. at 6; *see also Linda Vista Cinemas*, 2010 WL 2105613, at *2 (recognizing that "tangible progress" is always must always be weighed vis-à-vis the date of filing). For example, the Debtors have secured $5.5 billion in DIP financing that will allow them to continue to operate as they reorganize, *see id.*, and the Debtors will continue to receive substantial cash flow from a customer base that relies upon the Debtors for critical services, such as electricity and natural gas. *See Billing Res.*, 2007 WL 3254835, at *10 (noting that a debtor's "projections of positive cash flow" support a finding that the debtor has "met its burden of showing a reasonable likelihood of a successful reorganization"). Indeed, in view of the importance of the services provided by the Debtors to both the community and the people that they serve, there can be little doubt that the Debtors will successfully reorganize. To that end, the Debtors' efforts are entitled to significant deference "at this very early stage of the proceedings," and effectively demonstrate a reasonable likelihood of successful reorganization. *See Linda Vista Cinemas*, 2010 WL 2105613, at *2.

Additionally, on January 31, 2019, this Court held a hearing to consider the "first day" relief requested by the Debtors. The Debtors' first day motions sought to stabilize their businesses by, among other things, requesting interim approval of the previously mentioned $5.5 billion debtor-in-possession financing facility, requesting authorization to continue utilizing their existing cash management system, and requesting permission to pay certain prepetition wages, taxes, lien

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claimants, and other vendors that are necessary to preserve and maintain the Debtors' operations in a safe and reliable manner. This Court granted each of the Debtors' "first day" motions—many of which were uncontested—on an interim basis. *See* Case No. 19-30088 [Dkt. Nos. 209–218].

Where, as here, the Debtors have established that they will "emerge from this Chapter 11," the Debtors respectfully submit that this Court should "allow them any possible breathing room." *In re Philadelphia Newspapers LLC*, 410 B.R. 404, 415 (Bankr. E.D. Pa. 2009), *aff'd sub nom. In re Philadelphia Newspapers, LLC*, 423 B.R. 98 (E.D. Pa. 2010). "Temporary freedom from the burdens of litigation is one such allowance that the Court can and [(respectfully) should] provide." *Id.*

2. Absent an Injunction, the Debtors Will Likely Suffer Irreparable Harm.

A "person or entity seeking injunctive relief must [also] demonstrate that irreparable injury is likely in the absence of an injunction." *Park Vill. Apartment Tenants Ass'n v. Mortimer Howard Trust*, 636 F.3d 1150, 1160 (9th Cir. 2011) (internal quotations omitted). For the reasons stated below, allowing any of the Related Actions to proceed at this time would irreparably harm the Debtors.

a. The Securities Action

In the bankruptcy context, "[i]rreparable harm may be found if an action would 'so consume the time, energy and resources of the debtor that it would substantially hinder the debtor's reorganization effort[s].'" *Fabtech*, 2010 WL 6452908, at *5 (quoting *In re Cont'l Airlines*, 177 B.R. 475, 481 n.6 (D. Del. 1993)). Specifically, "key participants" in a debtor's reorganization efforts must be free to focus their full attention on those efforts. *See id*. (quoting *In re PTI Holding Corp.*, 346 B.R. 820, 827 (Bankr. D. Nev. 2006)). To that end, numerous courts have "easily" found that "[a]ny material diversion" of a key participant's "time or energies . . . constitute[s] irreparable harm to the estate[s] and to the [Debtors'] reorganization effort[s]." *In re PTI Holding Corp.*, 346 B.R. 820, 827 (Bankr. D. Nev. 2006); *see also In re Ionosphere Clubs, Inc.*, 111 B.R. 423, 435 (Bankr. S.D.N.Y. 1990) (stating that a debtor seeking to reorganize "needs the full attention of its officers and directors," and where an ancillary lawsuit "would ultimately divert the debtor's resources and attention from the bankruptcy process, and possibly deprive this Court of control over issues central

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to its administration of the [estates], it is necessary to enjoin" that action pursuant to section 105), *aff'd in part sub nom., In re Ionosphere Clubs Inc.*, 124 B.R. 635, 641–42 (S.D.N.Y. 1991) (affirming the Bankruptcy Court's decision to enjoin the non-debtor actions).

Numerous courts have also enjoined securities actions to prevent the diversion of a debtor's key personnel. *See, e.g., In re Lomas Fin. Corp.*, 117 B.R. 64, 67 (S.D.N.Y. 1990) (affirming a Bankruptcy Court's finding that where a debtor has demonstrated that any defense of securities claims brought against the non-debtors would force the debtor's "key personnel" to "be distracted from participating in the reorganization process," the debtor has demonstrated "both immediate and irreparable harm"); *Circle K Corp.*, 121 B.R. at 262 (enjoining securities claims against non-debtors based, in part, upon the fact that if those proceedings were to continue, the "debtor expects to have to divert personnel and management to respond to discovery and monitor this litigation to protect its interests"); *In re Johns-Manville Corp.*, 26 B.R. 420, 428–30 (Bankr. S.D.N.Y. 1983) (same because, in part, the Court concluded that the debtor "face[d] more pressing obligations [that commanded] the attention of its officers, directors, counsel, financial analysts, and administrative personnel"), *aff'd*, 40 B.R. 219 (S.D.N.Y. 1984).

And that same rationale applies here. At this early stage of these proceedings, the Debtors' key personnel must be focused on the myriad issues arising out of these Chapter 11 Cases, and cannot be distracted by ancillary litigation. Here, the Securities Action arises out of a detailed, 120-page complaint that implicates six of the Debtors' current and former officers for alleged misstatements and omissions made over the course of a more than three-year period. *See* Collier Decl., Ex. E. The complaint also alleges that the Debtors' wildfire safety measures proximately caused the 2017 and 2018 Northern California wildfires—the same wildfires that precipitated these Chapter 11 Cases. *See id.* ¶¶ 3-17. Litigation of this nature, if permitted to proceed, will likely force "key participants" in the Debtors' reorganization efforts, including but not limited to the Debtors' directors, officers, and/or legal personnel, to engage in time-consuming discovery that will necessarily divert their attention away from their duties associated with administering the estates, undermine the administration of the Chapter 11 Cases, and irreparably harm the Debtors. *See* Collier

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Decl. ¶¶ 16-17; *see also In re Kenoyer*, 489 B.R. 103, 121–22 (Bankr. N.D. Cal. 2013) ("the generally accepted view is that § 362(a) does not prevent third-party discovery from a debtor which is directed to the claims asserted against non-debtor parties").

Moreover, given the Debtors' indemnification obligations, and because plaintiffs' claims in the Securities Action are ultimately directed at the Debtors, the Debtors' in-house legal team manages the defense of those Non-Debtor Defendants. *See* Collier Decl. ¶ 18. As such, the fact that the Securities Action has been ongoing as against the Non-Debtor Defendants has significantly diverted the attention of the Debtors' legal team, and other personnel integral to the reorganization process, away from these Chapter 11 Cases. *See id.* Forcing the Debtors' legal team to continue to manage the Securities Action would require the continuing attention and coordination of the Debtors' directors, officers, and legal personnel, thus re-directing their time and energies away from the Debtors' reorganization efforts, and thereby inflicting irreparable harm upon the Debtors. *See id.*

The Securities Action should also be enjoined because the Debtors share an identity of interest with the named Non-Debtor Defendants, creating an obvious and substantial risk of irreparable harm to the Debtors. *See, e.g.*, *Tuller*, 2018 WL 4385652, at *2 (refusing to lift the stay previously applied to claims brought in a securities action against the non-debtor defendants on the basis that "[t]here can be no determination as to the liability of the [non-debtor defendants] without first resolving" whether the debtor violated the securities laws); *W.R. Grace & Co.*, 386 B.R. 17, 33-34 (Bankr. D. Del. 2008) (staying several actions in a Montana state court against a non-debtor defendant in part because "the Montana Actions implicate[d] [the] Debtors' conduct and product" and thereby created a risk of irreparable harm to the debtor under the Ninth Circuit's *Excel* test).

Absent an injunction, the Debtors will likely, as a practical matter, be forced to engage. After all, the Debtors are "in privity" with all of their officers, which therefore creates a substantial risk that "in subsequent suits, [the Debtors] could be bound to critical factual and legal issues determined in [the Securities Action] by operation of collateral estoppel." *Union Tr. Philadelphia, LLC*, 460 B.R. at 657 (debtor's reorganization could be impacted by critical factual and legal issues determined in proceedings against non-debtors); *see also W.R. Grace & Co.*, 386 B.R. at 35

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("forcing the Debtors to now participate in the Montana Actions to prevent these adverse consequences (indemnity, collateral estoppel, and record taint) will encumber the estates with additional litigation burdens from which the stay specifically protects them"). And the risk of collateral estoppel, or record taint, is real. Uncontroverted evidence, witness testimony, or rulings may result in admissions or findings that severely prejudice the Debtors in matters directly relevant to the administration and resolution of the Chapter 11 Cases.

This is not a theoretical exercise. Allowing PERA's claims against the Non-Debtor Defendants to proceed will force the Debtors to either (a) direct their "key personnel" to divert their attention from what is an ongoing and highly complex reorganization, or (b) accept the risk of unfavorable rulings that are directly relevant to matters that will be before this Court and integral to the successful resolution of the Chapter 11 Cases. This Court should not force the Debtors to accept the Hobson's choice to either litigate, or face the risk of collateral estoppel. Both would irreparably harm the estates, and it would be more efficient to stay the Securities Action in its entirety.[12] This Court should thus enjoin the Securities Action.

b. The Remaining Actions

The Remaining Actions pose a similar threat of irreparable harm to the Debtors. As discussed *supra* at 17–20 in the context of the Securities Action, allowing any continuation of litigation in which one or both of the Debtors are named as parties will expose the Debtors' directors, officers, and/or legal personnel, each of which are key participants in these Chapter 11 Cases, to time-consuming discovery obligations that will necessarily divert their attention from their duties associated with administering the Chapter 11 Cases, undermine the Debtors' reorganization efforts, and irreparably harm the Debtors. *See* Collier Decl. ¶¶ 16-17; *see also In re Kenoyer*, 489 B.R. at 121–22. Moreover, the Remaining Actions already have and will, if permitted to proceed, force the Debtors' legal personnel to manage the defense of the Non-Debtor Defendants in the Employee Actions, as well as continue closely monitoring developments in the other Remaining Actions, thus

[12] *See, e.g., Wordtech Sys. v. Integrated Network Sols., Inc.*, No. 2:04-cv-01971-MCE-EFB, 2012 WL 6049592, at *3 (E.D. Cal. Dec. 5, 2012) (where claims against debtor and non-debtor were substantially similar and related, "the interests of judicial economy and efficiency are served by staying the entire case").

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re-directing their time and energies away from the reorganization efforts, and inflicting irreparable harm upon the Debtors. *See* Collier Decl. ¶ 18. This, again, "easily . . . constitute[s] irreparable harm to the estate[s]." *PTI Holding Corp.*, 346 B.R. at 827.

Also like in the Securities Action, the Debtors are the real party in interest in all of the Remaining Actions—whether through claims of indemnification (Employee, Contractor, and Third-Party Actions), duties arising out of statutory obligation (Employee Actions), claims of vicarious liability (Contractor Action), or claims of respondeat superior (Employee Actions). Thus, all of the Remaining Actions "implicate [the] Debtors' conduct" the same way the lawsuits at issue did in *W.R. Grace.* 386 B.R. at 34. Being, once again, "in privity" with almost all of the Non-Debtor Defendants in the Remaining Actions, the Debtors cannot risk being "bound to critical factual and legal issues determined in those proceedings by operation of collateral estoppel." *Union Tr. Philadelphia, LLC*, 460 B.R. at 657; *see also W.R. Grace*, 386 B.R. at 35. This Court should thus enjoin the Remaining Actions rather than force the Debtors to choose between litigation, collateral estoppel risk, and the prospects for reorganization. For all of these reasons, the Remaining Actions, like the Securities Action, pose a real and substantial threat of irreparable harm.

3. A Balance of the Harms Favors the Issuance of a Preliminary Injunction.

The issuance of a preliminary injunction does not pose a threat to any of the plaintiffs in the Related Actions for three reasons. *First*, this Court's decision to stay a pending action is "not substantive [in nature], but [is instead a] procedural [order]." *Matter of Clark*, 207 B.R. 559, 564 (Bankr. S.D. Ohio 1997). Section 108(c) will toll all of the Related Actions throughout the course of any potential stay, and any interim risk of lost or damaged discoverable material is "negligible." *In re Lantronix, Inc. Sec. Litig.*, No. CV 02-03899 PA, 2003 WL 22462393, at *2 (C.D. Cal. Sept. 26, 2003). In many of the Related Actions, such as the Securities and Contractor Actions, the parties have not yet commenced discovery. Other Related Actions are, by contrast, more developed, meaning that significant discoverable materials have "already been produced and [is] in the custody of third parties." *Id*.

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Second, the automatic stay in section 362 operates to stay all of the claims against the Debtors in the Related Actions, and the Debtors are the real party in interest as to each. *See supra* at 21. To stay the claims against the Non-Debtors in the Related Actions is merely to give meaning to "one of the [most] fundamental debtor protections provided by the bankruptcy laws." *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992). Any other result effectively renders the Debtors' automatic stay hollow, by authorizing the plaintiffs in the Related Actions to operate an end-run around the same.

Third, the plaintiffs in the Related Actions can file proofs of claim in these Chapter 11 Cases in order to seek to recover against the Debtors in connection with their asserted causes of action. What those plaintiffs should not be permitted to do is use the Related Actions to continue to pursue claims against Non-Debtor Defendants who the Debtors may ultimately be required to compensate as a result of various indemnity obligations. Rather, in keeping with basic bankruptcy principles, all of these claims should be addressed by this Court given that the issues involved are inextricably intertwined with issues being addressed in these Chapter 11 Cases. *See In re MacDonald/Assocs., Inc.*, 54 B.R. 865, 869 (Bankr. D.R.I. 1985) (enjoining a non-debtor action after finding that the "liability of the individual defendants is inseparable from that of the debtor").

4. An Injunction Advances the Public Interest.

In the Ninth Circuit, "courts have [long] recognized that . . . the public interest lies in promoting successful reorganization." *In re Family Health Servs., Inc.*, 105 B.R. 937, 945 (Bankr. C.D. Cal. 1989). That is, although the preliminary judgment standard requires a certain weighing of the equities, "the unquestioned public interest in promoting a viable reorganization of the debtor can be said to outweigh any contrary hardship to the plaintiffs" in the Related Actions. *See id*. (quoting *A.H. Robins*, 788 F.2d at 1008); *see also In re Marley Orchards Income Fund I, Ltd. P'ship*, 120 B.R. 566, 570 (Bankr. E.D. Wash. 1990) ("[T]he public interest is served by issuance of the injunction for it affords the debtor its continued opportunity to reorganize under the provisions of Chapter 11.").

That is particularly true where, as here, the Debtors are a utility that provides electricity and natural gas to approximately 16 million customers. *See* Wells Decl. at 7. The Debtors also employ

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over 24,000 employees and provide work for countless contractors, who go on to inject additional people and additional resources into the state's workforce. *See id.*; *see also In re Pac. Lifestyle Homes, Inc.*, No. 08-45328, 2009 WL 688606, at *4 (Bankr. W.D. Wash. Mar. 16, 2009) ("Certainly there is an interest in keeping the Debtor, who employs over 20 employees and who provides work for countless contractors, in business."). As a result, "[t]he public interest in successful reorganization is significant." *Fabtech*, 2010 WL 6452908, at *6 (quoting *PTI Holding Corp.*, 346 B.R. at 832) (alteration in original).

IV. CONCLUSION

The Debtors are currently engaged in a complex reorganization that has only just begun and requires their full attention in order to preserve and maximize the estates' assets and achieve a successful emergence from Chapter 11. As such, the Debtors respectfully request that this Court enjoin the Related Actions and allow the Debtors the full benefit of the "breathing spell" afforded to them under Chapter 11. Post-enjoinment, the Debtors will be able to dedicate all of their time and energies to stabilizing their businesses, meeting and conferring with their key creditor and shareholder constituencies, and formulating a chapter 11 plan that will allow them to successfully emerge from Chapter 11 and assure the ongoing supply of electricity and natural gas to their 16 million customers. Allowing the Related Actions to proceed will only frustrate this greater and more urgent purpose. For all of these reasons, and the reasons set forth above, the Debtors respectfully request that the Court stay the Related Actions until the Debtors emerge reorganized under Chapter 11.

Dated: February 15, 2019

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