

No. _____

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT**

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO,
Respondent,

ABAAN ABU-SHUMAYS et al.,
Real Parties in Interest.

From the Superior Court for the County of Sacramento,
No. JCCP 4853
The Honorable Allen H. Sumner (916) 874-5672

**PETITION FOR WRIT OF MANDATE, PROHIBITION,
OR OTHER APPROPRIATE RELIEF;
MEMORANDUM OF POINTS AND AUTHORITIES**

[Appendix of Exhibits Filed Concurrently]

Kenneth R. Chiate (S.B. No. 039554)
Kristen Bird (S.B. No. 192863)
Jeffrey N. Boozell (S.B. No. 199507)
Sarah Cole (S.B. No. 222719)
QUINN EMANUEL URQUHART &
SULLIVAN LLP
865 South Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
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Kathleen M. Sullivan (S.B. No. 242261)
Daniel H. Bromberg (S.B. No. 242659)
QUINN EMANUEL URQUHART &
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555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
Telephone: (650) 801-5000
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Counsel for Petitioner Pacific Gas and Electric Company

LIST OF REAL PARTIES IN INTEREST
(as of April 27, 2018)

Abu-Shumays, Abaan, (individually, and as trustees of the Abu-Shumays Family Trust Dated August 1, 1996); Abu-Shumays, Ahmad individually, and as trustees of the Abu-Shumays Family Trust Dated August 1, 1996);

Adamopoulos, Elaine & Elias

Adams, Adrienne Mary

Adams, Dixie; Long, Harry Franklin

Agasi-Horn, Cody Alan; Agasi-Horn, The Estate Of Cody Alan

Ahern, Laretta Ann; Ahern, Edward Joseph Carl (minor)

Akhtar, Jahan Z.

Alberts, Nikolas Paul

Alexander, Daniel Benjamin

Alexander, Irving David; Mildred Jane Alexander

Amerman, Carol A. & William R.

Ames, Stephen John

Ancar, Brandie Lou-Ann & Caleb Jon-Keith

Ancar, Keith O.; Mary Denise Ancar

Andersen, Edgar Fridtjov

Anderson, Cody Eric; Anderson, Matthew Robert Rife; Anderson, Scott Lee;
Hust, Kate Darlene

Anderson, Kinsey Lee; McClellan, Raven C.

Andrews, Richard

Anthenien, George and Patrice

Armstrong, Sharon

Arndt, Ilona; Berthiaume, Johnnie Sue; Berthiaume, Zackary Michael (Minor)

Eggers, Riley Grey (minor)

Atnip, Anthony Waco; Atnip, Christie Lynn; Atnip, Courtney Elaine; Costa, Colt
Ryan (minor)

Atnip, Kayla Anne; Atnip, Jeremiah Thomas; Atnip, Brynley Lynn (minor);

Atnip, Hank Waco (Minor)

Austin, David Jr.

Austin, David Sr.

Austin, Gloria Ann

Bainard, Jamie D.

Baker, Dana James

Baldwin, Suzette
Ballard, Gina; Ballard, Jeff; Wallace, Belinda J.
Banttari, Joel; Banttari, Monica
Barfield, Patricia Joyce; Johnson, Merlin Eugene
Barnett, Joshua; Robertson, Nadine Selma; Robertson, Lawrence William;
 Robertson, Heidi Yavone
Barr, Howard & Jennifer; Tristan Barr (minor)
Barretto, Lawrence S. & Lydia I.
Bartlett, Eldie F.; Bartlett, Kendrick A.; Bartlett, Peggy A.
Bartolomei, Michael James; Bartolomei, Pamela
Barton, Timothy T.; Barton, Paula K.; Barton, Amber C.
Basford, Richard
Beasom-Sweeney, Lorna Alice
Becken, Otto H.
Becker, James Allen; Dougherty, Katherine Idell
Bednarchik, Doug James
Beekhuis, Christiaan William; Richard Eckman
Bell, Douglas Alexander; Bell, Maren
Bellotti, Jon Christopher; Bellotti, Patricia E.; Domeier-Schaefer, Susan Jean;
 Simmons, Steve Owens
Benedetti, Daniel Wayne (as an individual, and as Trustee Of The Daniel W.
 Benedetti Revocable Living Trust, Dated July 7, 2006)
Berti, Christopher Kenneth; Sanchez, Patty Ann
Berton, Daviene Patricia; Hewes, Deborah Jane
Bickel, Jamie T.
Biggs-Adams, Carrie; Robert Dayne Adams
Birmingham, Brett J.; Finesse Floor Covering, Inc.
Bishopp, Laurie; Austin, Charles
Bissell, Malinda Ann; Annie Sierra Curtis
Bitner, Marcy Rene; Perucca, Joe Vincent; Bitner, Madison Grace (minor)
Blankenship, Michael J.; Blankenship, Cecilia Katie
Boitano, Amanda Lynn
Bolint, Jeff & Michelle Cousino
Bonifield, Jeffrey Scott
Boode, Arthur; Angulo, Addy
Borden, Debra K. & Steven G.

Bordon, Craig; Nick Panayotou; Mehrdad Varzendah
Bowe, Mark, Susan and Erin
Bradford, Robert Ryan
Branch, Todd Philip
Branstrom, Bryan
Brant, Tim; Merressa and Brandon Kohler
Braunworth, Douglas Eric; Braunworth, Kim Ellen
Braydis, Michael D.
Braydis, Michael D. (as trustee of The Braydis Family Trust)
Brennan, Kieran; BMK, LLC
Briones, Lisa
Briski, Gregory A.
Brodie, Colleen (individually, and as doing business as ABC Cleaning Service)
Brogan, Shawn Lee
Brotherton, Tabatha Sue; Coker, Thomas M.
Brown, Aryn Morganna; Greve, Lori Anne (as trustee of the Garnet E. Greve trust)
Brown, Don Maurice; Brown, Jill Colleen
Brown, Jeff and Lynn
Brown, Steven Dean; Brown, Judy Lee; Brown, Jameson Call; Brown, Stewart Steven
Bruno, Angela, individually and dba Highway Metals
Bryant, Shelley Ann
Buller, Yolanda and Glen and dba Cal Sierra Christmas Tree Farm
Bullock, John Gregory, trustee of 2004 Thomas E. Copley Revocable Trust
Bur, Scott & Vicki; Sean Clancy; dba Stark Realty and dba Twinkle Window Cleaning Service
Bur, Scott; Bur, Vicki; dba Stark Realty and dba Twinkle Window Cleaning Service
Burgstrom, Mary Helen; Lily Frances Castillo; Katie Lynn Castillo
Burich, Dawnielle
Burns, Linda & Michael
Burriss, Sheila Kay; Jakob Eddie Mederios
Burriss, Robert and Cynthia
Bush, Diane Urolia

Bussone, David; Koba, Steven; Koba, Nicholous; Koba, Pamela Marie,
individually and as trustee of the Pamela Maria Koba Family Trust of 2015
Butler, Alajandra and John
Butler, Alejandra and John
Butler, Alejandra; Butler, John K., Sr.
Butler, Amber Shandi; Gage, Levi Aaron; Gage, Nikolas Alexzander (Minor);
Gage, Thomas Greyson (Minor)
Buttram, Scott Alan; Buttram, Amily Kaitlyn Turnes; Wilson, Angela Sue
Byrd, Jeral and Sally
Cachuex, Jason
Cain, Michael and Barbara
Caires, Margaret; Juarez, Berancio
Calcagno, Ronald Steve; Calcagno, Debra J.
Camacho, Joann & Melba Donnell
Camblin, Mark
Campbell, Anna & Gagnon, George
Campo, Yvette Anjel
Canada, Charles W. and Cynthia A.
Canniff, Collin S.; Canniff, Galen M.; Canniff, Keely H.; Canniff, Mary M.;
Canniff, Michael L.; Figel, Sean M.
Cantine, Steven; Durkay, Lawrence
Carlisle, Donald and Hennessee, Patricia
Carlson, Steven; Rich Gulch Ranch Inc.; Nowhere Ranch Co; Johanna N. Sweigart
Carrasco, Derick James; Carrasco, Theresa Michelle; Carrasco, James Earl
(minor); Grosse, Ashton Michelle; Grosse, Scarlett Michelle (minor); Knippel,
Robert Louis (minor)
Carson, Christopher Jason; Carson, Amanda Ray; Larsen, Gregory; Larsen,
Jacqueline
Carson-Romano, Connie Jo (individually and as trustee of The Connie Jo
Romano 2012 Revocable Trust, Under Instrument Dated June 26, 2012)
Carson-Romano, Connie Jo; Romano, The Estate Of Michael Thomas, Jr.; Carson,
Thomas Dale Kimbrew
Carter, Sue A.; Alers, Glenn; Alers, Lyra (Minor); Alers, Rianna (Minor)
Casha, Susan J. and Thomas K.

Cashner, Gregg Michael; Cashner, Nancy Bernice; Brieno, Anthony G. (as an individual, and as trustee of the Anthony Brieno Trust established October 22, 2008)

Caspary, Barbara, Ricky, and Nicholas

Cassel, Bret Travis; Cassel, Carol Lynn

Castillo, Gerardo

Chamberlain, Mikaela Rose

Chambers, Frances Lillard

Chapman, Barbara Joan; McSweeney, Anne Shirley; Chapman, Clyde Macon, Jr. (as an individual, and as trustee of the Clyde M. Chapman Jr. Living Trust)

Charvet, Mary and Philip A.

Chase, Gregory & Claudine

Chastain, Samuel Curtis (as an individual, and as trustee of the Samuel Chastain Revocable Trust)

Chatfield, David

Chatterton, Clifford Raymond

Chavez, Adrian; Chavez, Rachelle; Murello, Christopher; Murello, Evelyn

Chavez, Rosa Azevedo; Chavez, Victor Gonzalez; Dominguez, Victor Gonzalez; Duffina, Vivian; Duffina, Cody; Duffina, David; Duffina, Dustin

Chenoweth, Jenoy and Chenoweth Vineyards, a general partnership; Clark, Bryan & Mara; Charles Clark (minor); Hanely, Jo, individually and as successor trustee of Roy Chenoweth and Jean Erie Chenoweth Family Trust, Dated October 31, 1991; McDonald, Allyson; White, Hayden; Clark, Sharon, individually and as trustee of the Crane Family Trust

Christopher, Steve

Church, Cody Nathaniel; Church, Katlyn Michelle; Church, Mark Jay; Church, Tammy Sue

Cipriani, Debra and Johnny, trustees of The Cipriani Revocable Trust Dated October 16, 2008,

Cipriani, Johnny and Debra A.; Cirpiani, Joshua

Clark, Gregory Charles; Baumler, Chris Joseph; Chacon, Adolfo Antonio

Clark, Kylie Chalee

Clark, Ralph & Sarah Sunday-Clark

Clark, Robert Larson; Clark, Terry Lee; Clark, Katherine Lee

Clark, Scott; Jones, Ashley; Dunlap, Gary

Clark, William R.

Clay, Cindy & Kevin; Joseph V. Dalli
Closs, Susan
Coath, James E. (individually and as sole proprietor of White Coat Productions, Inc.) & Justin
Coit, James
Colburn, Adam Gregory
Coleman, Addison; Sara Rader-Coleman; Coleman, Abigail; Annabella; and April (minor)
Collay, Michelle
Collins, Judy
Collum, Cynthia; Collum, Stephen and Vineyard Concepts, LLC
Conatser, Jennifer Joy
Conder, Durise Ann; Conder, Rodney Howard; Conder, Lynda Chanel (minor)
Conklin, Lois; Nichols, Ruth
Conley, Robert Andrew
Conrey, Anthony R.; Walls, Cheryl L.
Contreras, Steven Michael; Nevarez, Cheryl Ardell
Cook, Joshua M., Benton and Loretta
Copeland, Robert
Copley, Thomas
Corwin, Nicholas
Costanzo, Dennis (Trustee of Paul Savarese Trust)
County of Calaveras
Cowen, Michael Brian; Shannon Kathleen Cowen; Justice Lamar Cowen
Coyle, Bobbie
Craig, Amber Leann
Craig, Carolann; William Leonard Craig
Cribbs, John
Croft, Robert
Cummings, David Bruce
Currie, Michael Robert Joseph
Dalessi Foulger, Kathern (as administrator of the Estate Of Alice Hodge Dalessi)
Dalessi, Alice
Dalessi, Estate of Alice Hodge
Dang, Tuyet Anh
Darmer, Cathryn; Blurton, Eric; Blurton, Matthew

Darwin, Jeffrey Charles; Darwin, Tiffany Marie; Darwin, Kara Nicole (minor);
Darwin, Kilah Dae (minor); Darwin, Lucas Charles (minor)
Dashiell, Denise
Davis, Keith Allen
Davis, Steven and Linda
Davis-Joyce, Elizabeth
Dawson, Melissa
Viloria, Cristina
De Posta, Janice
Dean, Megan Rae; Vance, John Leroy
Deaton, Betsy Sue
Deckman, Lisa Anne Gardina; Deckman, Louis Albert; Deckman, Melisa Ann
Gardina; Page, Michael Steven; Page, Aaron Michael Carnahan (minor)
Decriscio, Kimberly D.
Del Papa, Giovanni Jr.; Vassey, Sammy and Susan
Delaney, Shaun
Derby, William Michael
Derencsenyi, Susan H.; Derencsenyi, Tibor Tamas; Derencsenyi, The Estate Of
Anna Viktoria
Desch, Eric Martin
Destefano, Joann Marie
Devaney, Barbara A.; Devaney, John R.
Dewey, Stephanie Nicole; Dewey, Annmarie Renee (minor); Briski, Chad David
Dhaliwal, Harwinter S., Kulwant K., Baldeep S., and Yubray S.
Dhaliwal, Tarlok S.; Dhaliwal, Balvir K.
Dickey, Denise R.; Mason A. Wood
Dickow, Teresa Marie
Dickstein, Diane & Elliott Vichinsky
Dillon, Ann & Southern Exposure Wellness
Dimenco, Michael Angelo; Norton, Mitchell Allen
Dix, Danielle and Dean
Dominguez, Richard Douglas, Jr.; Green, Amanda Summer; Dominguez, Skyler
Paige (minor)
Dorflinger, Glenn
Doroud, Seyed Mohammed
Duman, Janet; Duman, Steve

Dunajski, Kurt Paul; Lisa Lee Lavina Wreath
Dunlop, David M. (individually, and as trustees of the David and Janet Dunlop
Revocable Trust); Dunlop, Janet S. (individually, And As Trustees Of The
David and Janet Dunlop Revocable Trust)
Dyken, Carl Richard
Dyken, Harmony Lyn
Dyken, Silas
Earl, Robert M.; Earl, Sonja K.
Eastridge, Jean Rene Chipman
Eastridge, Paul L.
Ebbett, Denise and Ebbett, Roger
Ebbetts Pass Lumber Company, Inc.
Eckland, Matthew
Edson, Clifford & Silvia, Country Cliffs LLC
Edwards, Conrad
Ehrhardt, David; Ehrhardt, Garrett; Ehrhardt, Victoria Lynn; Lundgren, Kristine;
Lundgren, Mark
Elithrop, Maria and Vivian Elithorp
Elliott, Bruce Vernard; Cherie Elliott
Eriksen, Diana and Stein
Ervin, Kelly Ann; Ervin, Ronald William
Erz, Robert
Escalante, Ryan Nicholas; Guillemin, Samantha Kaitlyn
Eversole, Doris G.
Fairchild, Stephen Sr.
Farrell, James L.; Farrell, Kaila D.; Farrell, Tracilyn H.; Farrell, Kulani I. (minor)
Fernandez, Andrew Francis; Lamont Craig Fernandez
Ferretti, Hattie L.; Ong, Rebecca Cherie
Ferrucci, Robin
Fields, Bruce
Fields, Rickey Alan; Fields, Alice Pauline (individually, and as trustee of the Billy
Joe Fields and Alice Pauline Fields 2003 Family Trust)
Fields, Ricky Alan; Alice Pauline Fields
Finch, Gregory M.; Thomas, Shirley
Fine, Bonnie; Fine, Joshua

Fischer, Brandon Eric; Fischer, Jeremy Robert; Fischer, Lisa Denise; Fischer, Robert Emile
Fishman, Jonathan N.; Lawson, Heidi L.
Flicker Oaks LLC
Flores, Guliani M. Medina; Ocadio, Malinallilzin Medina
Floyd, Susanne
Foley, Kenneth and Lorraine
Forcier, Jeffrey
Forrest, Randayn; Forrest, Lakota Sequoia; Forrest, Madison Alisa (minor)
Fortner, Mitchell & Antonia
Foust, Bonita Leona (individually, and as trustee of the Bonita Foust Trust)
Fraire, Hector; Fraire, Blanca Cristina
Franklin, John Michael; Swift-Franklin, Kathy Sue
Franklin, Scott
Franklin, Tanya May; Franklin, Alec William (minor); Franklin, Lily Ann (minor)
Franz, Lawrence
Frates, Sandi
Freelen, Jill
French, Christina; Joshua; Mary; and John Ravera
Fucci, Angela Rene
Fulford, Corey Preston; Susan Jane Delacruz
Fuller, Donald A.
Fuller, Robert; Fuller, Connor Wayne O'Malley
Fulton, Chris
Funk, Christopher; Lauren P. Funk
Gabbay, Abraham
Gallagher, Sheralee
Garcia, Kelley Laine; Guillemine, Kenneth Ray
Gardina, Craig Sr. ; Gardina, Craig Michael Jr.
Garza, Laree Lynn; Garza, Victor R.
Gaschk, David W.; Sandra S. Gaschk
Gates, Gary Dean
Genesis PVB, LLC
George, John and Barbara
Geyser, Robbi T.

Gibbons, Catherine; Gibbons, Frederick, individually and as trustees of Frederick J. Gibbons and Catherine J. Gibbons 2002 Revocable Trust; Gilbreath, Jerry; Gilbreath, Patricia; Hammer, Gerald; Hammer, Nancy Kathleen, individually and as trustees of Jack and Marjory Tone Revocable Trust Dated March 2, 2001; Irvine, James; McCreery, Robert; McCreery, Susan, individually and as trustees of the Robert and Susan McCreert Family Trust; Peek, Christopher; Turinni, Karen; individually and as trustees of the Presley Peek Trust; Peek, Estate of Presley; Solinsky, Peter; Solinsky, Virginia; individually and as trustees of the Solinsky Family Trust; Tone, Lottie

Gideon, Raymond Alan; Duvall, Cari Delores

Giglione, Loretta and Randolph, trustees of Loretta Giglione 2009 Revocable Living Trust

Giglione, Randolph and Loretta

Gilbeau, Ariana Victoria; Gilbeau, Erin Brooke; Gilbeau, Henry Colt (minor)

Glenn, Lee; Jeanette Steinberg; Shurtliff, Richard

Gomez, Anthony Robert Joseph

Gonzalez, Antonio R.

Gonzalez, Jose Julian; Moreno, Oscar Baldemar

Goodwin, Nicholas

Gough, Glenn Gordon

Goulart, Floy Sarah Salyer (individually, and as trustee of the Floy Sarah Salyer Living Trust)

Gould, Ronald Brent

Grabow, Sean; Heacock, Emily

Grant, Gary Richard; Grant, Pamela Anne; Grant, Daisy Verna

Grant, Katherine & Lawrence

Grap, Arthur Ray

Grasse, Bret Eugene

Graver, Donna Mae; Laitinen, Dale Ray (individually, and as trustee of the Dale Laitinen Trust)

Graves, Dawn and Philip

Graves, Teresa Adrienne

Gray, George Albert; Gray, Robert L.

Gray, Theresa (individually, and as representatives of the Partnership Sumac Hollow); Hartz, Jay Nelson (individually, and as representatives of the Partnership Sumac Hollow)

Grayson, Nicholas Rexalerico
Green, Alyssa
Green, Barbara Jean; Green, William Hardy
Green, Camille Suzanne
Greenlee, Krystal; Greenlee, Izaiah Vincent Anthony (minor) Lovecchio, Gianni
Kingston Anthony (Minors, By And Through Their Guardian Ad Litem
Krystal Greenlee)
Greer, Scott; Greer, Lynne
Gregory, Robert K.; Hoffmaster, William J.; Marecak, Scott A.
Greve, Lori Anne
Grewal, Lakhmir
Griffing, Tom
Grisez, Jay Michael "Mike"; Rennels, Sue
Grisez, Jay Michael; Rennels, Sue Denise
Grizzel, John J. & Penelope
Groover, Morgan Knowles
Grow, Manuel Travis
Grutzmacher, Scott Edward; Guerrero, Cid Elizabeth
Gryder, Daniel R., Sr.; Theresa M. Gryder; Fernando I. Legorreta; Shannon R.
Legorreta; Adrian W. Legorreta; Katarina M. Legoretta
Guillemin, Ashley Anne
Guillemin, Richard Louis; Guillemin, Darla Jean; Guillemin, Zachary Ryan
(minor)
Gult, Randy
Gunn, Walter S.; Gunn, Karyn G.; Gunn, Emily; Perry, Grant
Guyton, Debrah, J. & Jillian S. Sandbothe
Haley, Dan and Julie
Hall, Rollin L.; Peggy Ann Hall; Kevin Hall; Keith Hall
Hall, Thomas Owen; Hall, Mary Rebecca
Halliday, Jean M. & Kurt R.
Ham, Tammy J. (individually, and as trustee of the Tammy J. Ham Revocable
Trust 2007)
Hamblin, Wayne and Ryan
Hamilton, Jack
Hammer, Michael; Hammer, Billie Anne
Hankins, Darryl & Sandra

Hargreaves, Renee
Harlan, Karen D.; Kenneth L. Harlan
Harp, Robert M.
Harrell, Lynn & Janet
Harrington, Iam
Harris, Kerry David; Harris, Dennisa Jo; Harris, Taylor Victoria; Cox, Haidyn Ray
David (minor); Harris, Sarah Elizabeth (minor)
Harris, Russell Mark; Elaine Ellen Harris
Harris, Thomas; Christina; and Olivia
Hart, Sarah, individually and as trustee of the Sarah Hart Trust dated November
2, 2007
Hartsock, Estate of Carl M.
Hass, Alvin W.; Hass, Ann C.
Hassell, Paula
Hauer, Jason Stanley; Christina FrieH Hauer; Van Kimmell Hauer
Haughton, Duncan Dewar (individually, and as trustees of the Duncan and
Maureen Haughton Living Trust); Haughton, Maureen Lucina (individually,
and as trustees of the Duncan and Maureen Haughton Living Trust)
Haviland, Viola Alice; Haviland, Burton
Hawkins, Elizabeth Anne; Hawkins, Joshua Robert; Hawkins, Alexander Martin
(minor)
Hayner, Daniel and Michael
Hayner, Heidi
Hayner, Kimalla, individually and as successor in interest for Daniel Hayner;
Hayner, Heidi
Heath, Gina
Heaton, Julia A.
Hector, Anthony Paul; Hector, Jean Sell; Hector, Jonathan Timothy; Hector, Laura
Rose; Hector, Matthew Eric; Hector, Nicholas William; Hector, Rebekah Ruth;
Hector, Sara Joy; Hector, David Eric
Hegel, Michael Dean; Hegel, Vicki Luanne
Heier, Travis Glenn (individually, and as representatives of the Estate Of
Wendelyn Duane Heier); Heier, Zachary Adam (individually, and as
representatives of the Estate Of Wendelyn Duane Heier)
Heise-Waymire, Linda and Sweet, Ernest August

Helioles, M. Scott (individually, and as trustees of the M. Scott and Phyllis Diane Helioles Trust); Helioles, Phyllis Diane (individually, and as trustees of the M. Scott and Phyllis Diane Helioles Trust)

Helwig, Randy Michael

Hemminger, Jim; Kim Dougherty

Hendrix, Karen L.

Henriquez, Bonnie R.

Hernandez, Joseph; Hernandez, Amanda; Christie, Temperance (minor); Glenn, Marysa (minor)

Hession, Terrence Scovil; Jarratt, Patty W.

Hie-Kosta, Kimberly Anne; Kosta, Arliss Gregory; Hie, Kaya Rain (minor); Hie-Kosta, Miale Yovonnenadine (minor); Kosta, Arliss Alton (minor)

Hill, Charles Henry, Jr.

Hill, Paul Frederick; Roxanne Lorna Hill, individually and as trustees of Hill Family Trust 2006

Hill, Stewart McCune, III

Hiner, Lois

Hiner, Lois; Smith, Kristen; Smith, Samuel; Smith, Zachary; Smith, Kitty

Hodson, Glenn (individually, and as trustees of the Hodson Family Trust); Hodson, Cecilia A. (individually, and as trustees of the Hodson Family Trust)

Hodson, Sarah

Hoekstra, Walter Charles (as trustees of the Bud and Maurie Hoekstra Living Trust); Hoekstra, Marguerite Lynn (as trustees of the Bud and Maurie Hoekstra Living Trust)

Hoekstra, Walter Charles; Marguerite Lynn Hoekstra

Hoffman, Robert indiv. & dba Mountain Ranch Winery, a sole proprietorship; Mountain Ranch Enterprises, LLC

Hoffman, Ronald W.; Ivy Morrow; Anne R. Kamper

Holt, Vaughn

Hooton, Karen; Quick-Vinciguerra, Mykelina; Vinciguerra, David; Quick, Kylie

Hopkins, Arthur

Hopwood, Jay David

Houle, Emilie; Kelly Craddock; Bodie Ray Craddock

Householder, Beverly and Mark

Housing Alternatives Inc.; Copello Square, LP; Grant, Brian (individually, and as Corporate Representative/CEO/General Manager Of Housing Alternatives

Inc.); Grant, Elva; Grant, Dave; Sufflie, Jennie; Benton, Ed (individually, and as Corporate Representatives Of Housing Alternatives Inc.)
Howard, Anthony Allen, Sr.; McGehee, Mary Regina; Howard, Anthony Allen, Jr.; Howard, Alexis Renee (minor); Howard, Angelina Mariyanna (minor)
Hughes, Anthony
Hughes, David B. and Anthony "Tony"
Hull, Harold Leslie; Hull, Judith Susan
Hunt, James & Jessica
Hurst, Jason A.
Hypolite, Carmen Legaspi; Aniu, Stephanie Pualani; Legaspi, Wanda Leilani
Inada, Minoru and Mitsuko; John Inada
Ingols, Chris
Iniguez, Nickoles A.; Rios, Kirk Gilbert; Rios, Esperanza; Rios, Maxymylyon Phillip (minor)
Jackson, Blair D. and Diane M.
Jaeger, Gloria E. Arce; Clayton L. Jaeger
James, Tyler L.; Harkins, Alexandra; James, Kenneth Lee (individually, and as trustees of the Kenneth L. and Patricia R. James 2000 Trust); James, Patricia R. (individually, and as trustees of the Kenneth L. and Patricia R. James 2000 Trust)
Jansson, David Paul (individually, and as doing business Aas Bonnie's Inn)
Jarratt, Patty W.
Jarratt, Richard C.
Jarrell, Robert; Theis, Keeli
Jeffers, Joseph Robert; Rose Mary Jeffers; Kaylee Nevaeh Lynn Jeffers; Laycee Kae Avalon Jeffers
Jenkins, David Allen, Jr.; Jenkins, David Allen, III (minor.); Jenkins, Lacey May (minor)
Jesus, Parisah Nichole; Daniel Aaron Jesus; Tiffany Elizabeth Fassett; Lily Rose Elizabeth Porto; Elizabeth Michele Beaufils
Jiran, Steven
Johanson, Donald and Jacqueline
John, Dolly Katherine
Johns, Patrick and Sharon
Johnson, Brian John

Johnson, Darren P.; Kristalyn A. Worth; Kamryn G. Johnson; Jayden A. Worth;
Corbin L. Johnson
Johnson, Derald W.; Johnson, Sharon R.
Johnson, Floyd Dennis; Johnson, Tammy Coraline
Johnson, Gordon L. (individually, and as trustees of the Johnson Family Trust
Dated May 20, 2011); Johnson, Linda M. (individually, and as trustees of the
Johnson Family Trust Dated May 20, 2011)
Johnson, Jessie Stephen; Johnson, Sebastian Uriah Stephen (minor)
Johnson, Ken Evan
Johnson, Raymond & Frances
Johnson, Tiler Marie; Guevara, Arianna (minor); Guevara, Lilianna (minor)
Johnson, William Ray (individually, and as trustee of the William R. Johnson 2017
Trust, Dated July 6, 2017)
Jones, Jeffrey & Christine
Joses, Elliot Harry (individually, and as trustees of the Elliot H. Joses And Cheryl
R. Joses Family Trust Dated March 7, 2002); Joses, Cheryl Ruth (individually,
and as trustees of the Elliot H. Joses And Cheryl R. Joses Family Trust Dated
March 7, 2002)
Joses-Minehart, Leanne Kaye; Minehart, Courtney Matthew; Minehart, Keifer
Cole Joses; Minehart, Colton Matthew Joses (minor)
Jost, Neil
Jungemann, William
Katsch, Michael
Kearney, Deborah
Keating, William; deVera, Emerita
Keith, Melton Ray, Jr. & Marc D. Rezin
Kelaita, Dean Matthew; Kelaita, Shannon Healy; Kelaita, David James (minor)
Kelly, Debra
Kelso, Sandra Lee (individually, and as trustee for the Second Amendment to the
Lawrence Provost Separate Property Family Trust)
Kenyon, Debra Lynn
Kenyon, Holly Michele; Kenyon, Myron David, III; Kenyon, Debra Lynn
Killian, Joann
Kinsey, Leslie Henry
Kleinheinz, Anne and Mike
Klith, Karen R.

Knaus, Paul D.; David K. Lakin; Michael Lakin Knaus; William Lakin Knaus;
Sarah Lakin Knaus; Clara Lakin Knaus; Nicholas Lakin Knaus; David Lakin
Knaus

Knowles, Barbara

Kohler, Scot Hugh (individually, and as trustees of the Kohler Living Trust);
Kohler, Deborah Ruth (individually, and as trustees of the Kohler Living
Trust)

Konietzny, William J.; Karen Diane Konietzny, indiv. and on behalf of The Robin's
Nest

Kovach, John Alexander; Carol Ann Kovach

Kramer, Clifford; Kramer, Anna Cheng

Krames, Elliot and Rosellen; Doubletree Ranch, LLC

Kuchins, Nancy

Lacasse, Joseph Louis and Kwak, Jiyoung

Lagerquist, Roy Robert

Lamberton, Robert James; Hill, Ann Stewart

Lames, Carlos

Lamica, Annette Irma; Lane Lamica

Landavazo, Ricardo and Landavazo, Francisco, Jr.

Landry, Kim Irene; Landry, Bryan Paul; Bertrand, Anthony Kadin (minor)

Larson, Reid A.

Lavagnino, Shari

Lavagnino, Shari L.; Brad Lyon

Lecount, Charles Edwin; Lecount, Diane Renee

Lee, Janet H.

Legorreta, Petro and Elvia

Leininger, Genesis; Leininger, Steve; Leininger, Chloe (minor); Leininger, Steven
(minor)

Leininger, Thomas and Susan

Lemos, Douglas Edwin, Natalie Irene Lemos, and Franklin Douglas Lemos, a
minor

Leschinsky, Glen Francis

Lessaos, Janet, individually and as successor in interest for Chris Fulton

Levasseur, Conrad; Levasseur, Margaret Rose

Lewis, Barbara J.; Lewis, Donald A.

Lewis, Terry A.; Lewis, Valerie A.

Lewis, Timothy C., Sr.; Deova M. Lewis; (minor clmnts Mykala & Jackson)
Leyva, Talia
Lienau, Frances Marie; Jon Jennings Shaffer
Link, Angelia Ellen
Link, Kenneth Donald; Link, Meghann Leigh; Link, Nataleigh Ann (minor)
Link, Kenneth W.
Linneman, Jamie; Deborah; Eric; Mark; Angelina and Emma (minors)
Littau, Donald; Littau, Lolita, individually and as trustees of the Littau Revocable
Trust dated April 21, 2005
Litzenberger, John Erik
Lock, Robert Earl; Lock, Ashley Renee (minor)
Locke, Kevin (individually, and as trustees of the Locke 2004 Revocable Trust and
Representatives of Locke Vineyards); Locke, Theresa (individually, and as
trustees of the Locke 2004 Revocable Trust and Representatives of Locke
Vineyards)
Looney, Martha
Lopez, Brian D.; Ronda L. Lopez; Barry Gwin; David Lopez
Lopez, Cynthia Ann; Nosanow, Todd Israel
Lopez, Melissa Annemarie; Lopez, Rebecca Rochelle
Lovecchio, Michael
Low, Reno, Nikko, and Savina; Sui King Fong; Van Au Duong
Lozano, Dena Marie; Lozano, Josiah Hugh; Lozano, Jeremiah Thomas (minor)
Lubich, Stephen
Lucas-Malotte, Karen Louise (individually, and as trustees of the Karl R. Malotte
and Karen L. Lucas-Malotte Joint Living Trust Dated 4/13/1998); Malotte, Karl
Raymond (individually, and as trustees of the Karl R. Malotte and Karen L.
Lucas-Malotte Joint Living Trust Dated 4/13/1998)
Lucich, Jacob; Vincent Lucich; Richard Arthur Lucich; Janet Lee Lucich
Luddon, Leighann Guglielmetti; Luddon, James; Guglielmetti, Bailey (minor);
Luddon, Riley (minor)
Luft, Carolyn Sue
Luft, Christine; Donald R. Luft, Jr.
Lundberg, Julia
Luther, John
Schmidt, Margaret

Lutzi, Teri Marie (individually, and as trustee of the Lutzi 2011 Revocable Trust,
Under Instrument Dated March 22, 2011)
Lynch, Marilyn Fischer (individually, and as trustee of the Marilyn Fischer Lynch
Revocable Trust)
M&C Equipment, LLC, a limited liability company
MacDonald, Jonathan Kane Kelly
Madeiros, Carl A.
Magann, David Matthew; Misthos, Kimberly Anne
Magar, Brandon; Squires, Courtney; Squires, Karson T. (minor)
Mahler, Lisa L.; (as representative of the Estate of Joan E. Landis and trustee of
the trust of Joan E. Landis) (Joses)
Main, Elizabeth Kay
Malta, Joseph Edward, Jr.
Malvini, Rocco
Manney, Camri I.
Manney, Gail; Jeff, Mary
Marcussen, Della
Marcussen, Lance Rozier
Marhenke, Mike; Hooker, Michele (as trustee of the 1999 Marhenke Family Trust)
Marin, Gloria Lee; Magistad, Donna Rae (individually, and as trustee of the
Gloria L. Marin Revocable Trust dated December 30, 2010)
Marker, Daniel S.
Markland, Richard Scott; Markland, Dacia Renee; Markland, Jenna Renee
(minor); Markland, Joshua Ryan (minor); Trimble, Tyler Austin (minor)
Marr, Dale and Kathleen and Marr, Kathleen; dba Adonai Light Works, and dba
Soul Expressions
Martin, Amanda Rheanne; Lopez, Anthony Rene; Lopez, Nayella Boe (minor)
Martin, Davie Allan; Martin, Dustin Hervey; Martin, Nina Lavonne
Martin, George Merriell
Martin, James Ernest (individually, and as an agent of Martin Realty)
Martin, Michael; Baird-Martin, Shannon; Travis Martin (minor) and Addison
Martin (minor)
Martin, Nadine Aderhold (individually, and as trustee of the Martin Family
Trust, Dated 7-22-99, and as representative of the Estate of Gene Douglas
Martin)
Martin, Robert G.; Helen L. Martin; Ryan D. Shamberger

Martin, Tawnya
Martinez, Jacob
Marvin, James Michael (individually, and as doing business As Big John's)
Marz, James Irvin; Marz, Carole Louise (individually, and as trustee of the Carole
L. Cuneo Marz Trust – 1999)
Mason, Gary P.; Pamela Weiser

Mason, Ken & Lynn
Mathes, Stephanie and Karen Goldsmith, individually and successors in interest
to the Estate of Owen Goldsmith and, Stephanie Mathes, representative of the
Estate of Owen Goldsmith
Mathre, Mark & Kathy
Matthews, Timothy; Samantha Storgaard
Maurer, Dena and Jeffery
Mauzy, Van
Mazie, Karen Ann; Mazie, Kenneth Charles, Jr.; Mazie, Hannah Elizabeth
(minor); Mazie, Kenneth Charles, III (minor)
McBride, Teresa
McBride, Teresa & Kathleen
McCarthy, Gregory
McCartney, Brady Shea Thomas; Bettencourt, Erica Marie; Taylor, Charlotte
Adele (minor)
McCartney, Debra G. and Dawn Akel (trustees of the Garamendi Family Trust)
McCartney, Philip James; McCartney, Rebecca Ann
McCloskey, Matthew Michael
McClure, Keith Alan; McClure, Hadassah Hard; McClure, Connor Alan (minor);
McClure, Mason Raymond (minor); McClure, Morgan Hallie (minor)
McCollum, Gwendolyn Marie
McCuen, Trenton
McDaniel, John & Sarah
McGee, Dianna Lynn; McGee, Emalie; Fine, Bonnie; McGee, Daniel; McGee, Alice
McGehee, Joe Dale, Jr.
McGregor, Jack Lawrence; McGregor, Carole Lynn; Adams, Lissa Elaine (minor);
Kaala, Angel Shylee (minor)
McGrew, Shanda
McGuire, Ronald W.; McGuire, Carol

McKee, The Estate Of William John
McKeown, Kathinka and Neil; McKeown, Robert (minor); McKeown, Cayah
(minor)
McKinney, Michael James (individually, and as agents of Flicker Oaks LLC and
Flicker Oaks LLC, A California Limited Liability Company); Miller, Deborah
Laurie (Individually, And As Agents Of Flicker Oaks LLC and Flicker Oaks
LLC, A California Limited Liability Company); McKinney, Stephanie Barshear
(individually, and as agents of Flicker Oaks LLC and Flicker Oaks LLC, A
California Limited Liability Company)
McKone, Samuel
McKone, Timothy E. and Anita
McLaughlin, Sharon
McLaughlin, Sharon, as a trustee of the Sharon R. McLaughlin 2008 Trust and the
Charles E. McLaughlin 2014 trust, and dba All Rock
McMillan, Troy Allen; McMillan, Michelle Lee
McMurtry, Judy Alison
McSweeney, Anne Shirley
Medina, Abel; Epifania Medina; Edgar Ornelas
Medina, Eduar; Dolores Percostegui; Teresa Medina
Medlock, Billy Ray
Meiring, Robert Lawrence; Meiring, Roberta Ann; Avila, Amanda Marie; Avila,
Marc Richard; Avila, Dylan Marcanthony (minor); Avila, Kaylee Ann (minor);
Avila, Shayna Marie (minor)
Melville, Lori J.
Mendoza, Steve; Iler, Natalie
Meres, Jerry D.; Meres, Amy C.
Meyer, Frank H.
Milet, Carol Jean; Hamann, Erik Howard; Hamann, Viktoria Kathleen; Hamann,
Austin James; Hamann, Thor Cole Jerome (minor)
Miley, Erin Gayle; Miley, Norman Lafayette, Jr.; Scobee, Craig
Miller, Gary Lee; Miller, Marian Janeel
Miller, Joan Marie; Miller, Mariah Sierra Theodora
Miller, Martin Russell; Miller, Maya Leigh (minor); Miller, Molly Jane (minor);
Miller, Russell O'Neil (minor)
Miller, Michael
Miller, Patrick

Miller, Patrick Neal
Millet, Carolyn J. (as trustee of the Carolyn J. Millet Revocable Trust)
Mills, Carlton Jr.
Mills, Tonja
Milo, Luigi Gerard; Milo, Crystal Dawn; Milo, Cody Luigi; Milo, Abigail Laura
(minor)
Mitchell, Stephen & Amber Nolan
Mitton, James, individually and as a trustee of the Testamentary Trust Established
Under the Elizabeth L. Mitton Trust Dated August 16, 2011; Mitton, Estate of
Raymond
Mobley, Ron
Mokelumne Hill Sanitary District; McCartney, Philip (as president and
representative Of Mokelumne Hill Sanitary District)
Moldovan, Richard Daniel; Vera K. Pearson
Moldovan, Richard; Vera Kay Pearson
Monley, Michael & Karen
Monteith, Raymond and Roberta
Montgomery, Brock Elam; Montgomery, Bryan G. (individually, and as trustee of
the Bryan Montgomery Living Trust)
Montgomery, Bryan
Moore, John Cody; Sullivan, Serene Star
Morales, Ben Frances; Morales, Denise Starre
Morgan, Lynda Kathleen
Morgan, Robert J.
Morning Star Group Enterprises, LLC
Morning Star Group Enterprises, LLC (As Doing Business As Hotel Leger)
Morris, Stanley Victor; Tameron Kaye Morris; Steven J. Morris; Evon M. Morris
Morse-Clarke, Nichole; Fuller, Jax Michael O'Malley (minor)
Mortimer, Steve and Regina; Alexis and Jared (minors
Morton, Felicity; Dyken, Cortez; Lefler, Sahara
Mountain Ranch Community Club, a California non-profit corporation
Moya, Maureen Alice (individually, and as trustees of the Robert C. Moya and
Maureen A. Moya Revocable Trust); Moya, Robert Chris (individually, and as
trustees of the Robert C. Moya and Maureen A. Moya Revocable Trust)
Mullen, Scott and Stephanie
Muller, James

Mundale, Peter F. (as trustees of The Peter F. Pamela S. Mundale Living Trust 2016); Mundale, Pamela S. (as trustees of The Peter F. Pamela S. Mundale Living Trust 2016)

Munslow, Cecile Nanette

Munson, Gerald Allan; Martin, Susan Benkman

Murawski, Russell

Murphy, Matthew W. & Margaret M.

Murray Creek Ranch Homeowners Association, Inc.

Muschalek, Franklin H., Jr.; Pamela K. Muschalek

Muschalek, Franklin H., Jr.; Pamela K. Muschalek (trustees)

Myers, Kerry

Myers, Richard D. and Carol L.

Naify, Jennifer Elizabeth

Nalewaja, Michael T.

Napper, Jane H.

Nathan, Randall; Calaveras Creek LLC; Rosaire Properties, Inc.; Tap Wine Systems, Inc.; Weinstein, Sidney (individually, and as a representative of Pauline's Pizza)

Needels, Nicole

Nelson, Melinda

Nelson, Tonia Michele

Nessler Jr., Ronald Jacob

Nester, Shirley Lee; Sewell, Debra Renae

Newell, David Edward; Newell, Mary Chala; Newell, Hallie Belle (minor)

Newman, Homer R.

Next Level Construction

Nichols, Travis

Niebur, Christopher Scott (individually, and as trustee of the Chris Niebur Trust Dated 2011)

Nielsen, Fletcher

Noble, William

Noguera, Richard Antonio; Noguera, Santino Lorenzo (minor)

Norwood, Adam O'neal; Norwood, Amanda Mary; Norwood, David Betcher; Norwood, Grace Lillian; Norwood, Mary Crowley

Nunes, Anthony Richard (individually, and as trustee of the living trust of
Anthony Richard Nunes and Patricia Nunes Established On The 15th Day Of
January, 1992)

Nunes, Joann; Mary Teresa De Bar; Estate of Mary Speziale (claimant)

Nunes, Terry and Rene

Nunn, Elorah

O'Grady, Michael, Susan, & Sean

Orr, Cathie Childress; John Robert Orr

Oviatt, Marsha and Nevin W.

Paden, Michael & Marjorie

Pagtakhan, Fatima Luceia Bonotan; Hughes, Douglas Keith, Jr.; Hughes, Keith
Raymond (minor)

Palmer, Michael; Palmer, Julia

Pargett, Ronald; Sharon Albaugh Pargett

Parker, Silas Daniel; Rummerfield, Erika Francine; Rummerfield, Joyce Louise;
Rummerfield, Eric Eugene, Sr.; Sandoval, Daniel David; Valdez, Shaina
Eveningstar; Williams, Bonnie Sue; Strickland, Andrew (minor); Alameda,
Amadaeous (minor)

Parker, Tracey

Paulk, Linda Sue; Paulk, Stacey Iometa; Paulk, Monty Charles

Paulsen, Linda Kim

Paulson, Audrey and Bruce

Peddy, Bruce V.

Perkins, Gerald

Perry, Christina Ann; Perry, Scott Eugene; Perry, Aubrey Nicole (minor);
Hoyopatubbi, Makayla Diana Rose (minor)

Pesout, James & Ann

Petersen, Derek; Petersen, Kendra

Petersen, Joseph; Petersen, Nancy

Peterson, Dustin; Mary Ann Saige Peterson; Shanna R. Braden; Ethan Merritt;
Issac Merritt

Peterson, James Eldon

Peterson, Mark F.; Inocencio, Cirilo; Inocencio, Nerissa; Peterson, Clarissa
Inocencio; Peterson, Taylor J.; Peterson, Charlie Ross (minor); Peterson,
Teagan Robert (minor)

Pettibone, Steven

Philpotts, Debra
Pierce, James Howard and Pierce, Patricia Irene
Pieri, Jesse
Pigeon, Monica S. & Whiskey Slide Investment Group, LLC
Pimley, Daniel
Piper, Nanette Pierre and Piper, Nevil Wilson
Plunkett, Tim Joe; Harding, Kathleen Ann (individually, and as trustee of the
Living Trust Of Kathleen A. Harding)
Polk, Rick L. and Terri L.
Ponderosa Way Trust Fund
Porter, Alfiea
Porto, Leon Michael
Powers, Robert Wayne, II
Pratt, Jennifer Leigh
Price, Chablee Nicole
Puccinelli, Magaret Ellen; Lubeck, Robert Darrell
Purcell, Brenna Mirinda; Purcell, Ceara Kathleen; Purcell, James Kevin; Purcell,
Sean Kevin; Quinn, Sheila Ann; Purcell, Tara Sheila (A Minor, By And
Through Her Guardian Ad Litem Sheila Ann Quinn)
Purcell, Ralph; Purcell, Laurel
Rader, Lorita R.
Rambur, Joseph
Rascon, Samuel Oswald, Jr. (individually, and as trustee of the Rascon Family
Trust, Dated October 8, 2008)
Ray, Joe Robert; Octavia Renne Ray; Stanley Ray Yetter; Eula Jane Yetter
Ray, Laura J.; Robert E.; Adam; Megan; Michael
Ray, Robert Joe (as trustees of the Life Estate Of Octavia Huntly); Ray, Octavia
Renee (as trustees of the Life Estate Of Octavia Huntly)
Raymundo, Brendan
Rayne, Jan and Ellory (minor claimant)
Re, Armando Ruben
Re, Michael Armand
Reeder, Tarrell Lee; Reeder, Tessie Hudson
Reeves, Jason Aric; Reeves, Araya Sunshine (minor) related to Robyn Allen
Reeves, Shane; Anna-Lena Raatz
Reif, Stanley W. and Debbie

Rettke, Jean
Reyes-Umana, Evelyn & Victor; Bodega del Sur Winery, Inc.
Reynolds, Regina; Reynolds, Thomas
Reynosa, David and Eve
Rhoads, Robert and Cheryl
Richards, Albert and Betty
Richards, Robert Louis
Richardson, Robert Lee (individually, and as trustees for the Robert Richardson Trust Dated June 13, 1994 As Restated On April 21, 2004); Buck, Carolyn L. (individually, and as trustees for the Robert Richardson Trust Dated June 13, 1994 As Restated On April 21, 2004)
Richmond, Jack D.
Richmond, Sharon
Richter, David and Garnier, Dominique
Rings, Arthur O. (individually, and as trustees of the Rings Family Trust Dated April 11, 2006); Rings, Jeanne E. (individually, and as trustees of the Rings Family Trust Dated April 11, 2006)
Ripley, Richard; Ripley, Marcy
Rivers, Joyce Elaine
Roberts, Elizabeth Anne
Roberts, Nancy Priscilla (individually, and as trustee of the Nancy Roberts Revocable Living Trust)
Robinett-Sabala, Joey; Summers, Phyllis Ann; Sanchez, Georgette LEEANNE; Sanchez, Allie Kathleen (minor)
Robinson, Benjamin; Christopher Robinson; Nicolas Robinson; Patricia Robinson; Charles Thompson
Robinson, Michael George
Robinson, Richard W. and Jennifer W.
Rock, Richard Lawrence (as representatives of the Murray Creek Homeowners Association); Schubert, Ronald Gerhart (as representatives of the Murray Creek Homeowners Association)
Rock, Richard Lawrence; Rock, Debbie Lynn
Rodgers, Jack B. & Thomas Paul
Rodriguez, Rosemary and Juan
Rofkahr, Jaime E. and Kenneth R.
Rogers, Rhiannon & Salazar, Jesse

Rose, Henry; Rose, Donna S.
Rose, Julie
Rose, Ronald
Rosero, Margarita Elizabeth; Rosero, Freddy Fernando; Rosero, Juan F.; Rosero,
Nickolas Francisco (minor)
Ross, April
Rouse, Allen James
Rowe, Rebecca
Rueger, Mark Allen; Terry Sue Rueger, individually and on behalf of Renegade
Winery
Ruhl, Margareth Elizabeth; Bogisich, Joseph Scott
Rummerfield, David Glen; Rummerfield, Gage Rodney Williams; Conder,
Chelsey Lee; (minor)
Rummerfield, Harold James; Rummerfield, Raquel; Rummerfield, Harold
(minor); Rummerfield, Shanelle (minor)
Rush, Richard C. and Teresa L.
Russett, Kenneth; Claire Villeneuve
Ruthrauff, Eric Marion; Ruthrauff, Kimberley Jean; Ruthrauff, Makayla Nicole;
Ruthrauff, Taylor Rives (minor)
Ryslunge, Susie
Sabelberg, Lori and Steven
Sabin, Raymond and Loana
Sachs, Chelsea and Jonah
Sadegi, Barry; James (Jim) Sadegi; Jeri Sadegi; Sweet Corn Properties, LLC
Sadegi, Barry; Sadegi, James; Sadegi, Jeri; Agoncillo, Priscilla Ciubal; Sweet Corn
Properties LLC
Sadler, Deborah C.; Grant, Fernanado D.; Marshall, Nicoy M.
Saefong, Cheng K.
Sala, Mark & Taunja
Saltzer, Samuel
Sampson, John and Maren
Samuel, Darin Ruiz; Peck, Matthew Louis
Sanchez-Thom, Sandra; Thom, Wallace V.
Sanders, Bill and Cheri; Cheri Sanders dba Mountain Candle Works
Sanfilippo, Joel
Santens, Brian

Santens, Brian
Santens, James
Santens, Mark William
Santer, Dean and Maxwell, Sally
Savarese, Paul
Savela, James William
Sawanwatana, Sheewapatana & Chaladpan
Sayers, Carolyn Irene; Sayers, James Alton; Sayers, Robert Harry; Sayers,
Benjamin James (minor); Sayers, Zackary Taylor (minor)
Schaechterle, Karl George
Schaller, Martin John
Schaller-Semplar, Preauna Joy
Schmidt, Kristine L.
Schmidt, Kyle Hart
Schrein, Donald; Hinshaw, Marvin Hugo
Schrein, Dusty; Destiny; Sierra
Schugart, John Raymond
Schulz, Robert
Schulze, Angela and Scott
Schunzel, John Paul; Schunzel, Tami Lynn
Schwartz, Susan; Millard, Moonlight Rose
Scott, Brandon
Scott, Robert A.; Leslie C. Kaulum
Secada, Frederick Paul; Secada, Cynthia Dawn
See, Lydia
See, Mary; Ravera, Kali; See, Isa (minor)
Seely, Ann Roberts (individually, and as trustees of the Steve & Ann Seely Trust);
Seely, Steven Scott (individually, and as trustees of the Steve & Ann Seely
Trust); Seely, Michael Thad (minor); Seely, Elizabeth Joy (minor)
Seibert, Jack
Sender, Natalie Arlene
Sharyer, Eric W. & Rachel
Shelley, Norma
Shinkle, Robert L. & Shelley G.
Shoneff, Joseph; Shoneff, Sallie
Shook, Mark

Shortal, Joseph Dean; Orr, Greta
Short-Miller, Katrina Renee; Matthew Justin Short-Miller
Short-Miller, Kloey Sequoia
Shouse, Abrilh
Shouse, William
Schubert, Ronald Gerhart (individually, and as trustees of the Ron and Elfi
Schubert Revocable Trust); Schubert, Elfriede J. (individually, and as trustees
of the Ron and Elfi Schubert Revocable Trust)
Sieck, David Gwynne
Siefert, Christian Daniel; Siefert, Amy Janel; Siefert, Adam Daniel (minor)
Sieretas, Cheyanne
Sifers, Thelbert
Silvas, Leonard
Silvas, Leonard James
Simunek, William
Singer, Daniel W. (individually, and as trustees of the Daniel W. Singer 2004
Separate Property Trust Dated December 21, 2004)
Singh, Surjit; Kaur, Birinder; Singh, Charanjit; Singh, Baljit (minor)
Slayter, David Lee; Slayter, Cordelia Rose
Smiley, Tabbetha Jean
Smith, Amy & Craig
Smith, Brian James
Smith, Debra
Smith, Desirae Alyse; Bermingham, Netaleigh Rae (minor); Bermingham, Johan
Matthew (minor)
Smith, Gary R. and Dorothy J.
Smith, Glenn Maurice
Smith, Jason
Smith, Jay R.; Emily M. Hubbs; Jayln N. Smith; Bella Clark
Smith, Kathy M.
Smith, Kimberly Ann
Smith, Lance Buck Paul; Samantha Lee Smith
Smith, Paula Ray
Smith, Scott Ryan
Soares, Arthur E., Jr. & Dianne
Solar, Joseph

Solliday, Hilde B.; Ottinger, Bryan
Sondossi, Mohammad; Barbara Wochocki
Soracco, Sam L.; Soracco, Genelle M.
Spanier, Andrew
Sparks, Kevin; Sparks, Marni; Sparks, Spencer
Spence, Teresa (as trustees of the Spence Family Trust Dated August 10,1993);
 Spence, Rodney (as trustees of the Spence Family Trust Dated August 10,1993)
Spengler, Rachel Danielle
Spigner, Christine Ann; Bustos, Heather Ann (minor); Spigner, David Jesse
 (minor)
Sprayberry, Sangchan; Yi Ya
Staaterman, Robert Alan; Staaterman, Robyn Susan
Stafford, William Samuel
Stapleton, Greg
Stark, David W. and Kathy
Steck, Paul
Steele, Camille
Stevens, Magdalena Nichole; Stevens, Richard Paul, Jr. (individually, and as
 trustees of the Richard Paul Stevens Living Trust Utd 7-28-08); Stevens,
 Richard Paul (individually, and as trustees of the Richard Paul Stevens Living
 Trust Utd 7-28-08)
Stewart, Jolene
Stewart, Karen Ann
Steyer, Gregory Carl
Stone, Daren Mitchell
Stone, Kathie
Stoughton, Carlos (individually, and as trustees of the John and Maria Stoughton
 Family Trust); Stoughton, Maria Cleofas (Individually, and as trustees of
 the John and Maria Stoughton Family Trust); Stoughton, John (individually,
 and as trustees of the John and Maria Stoughton Family Trust)
Street, Gay
Studley,David; Matson, Hallie
Stump, Donald Wayne (individually, and as trustees of the Stump 1993
 Revocable Trust and Representatives of Hathaway Holdings, LLC as Doing
 Business As Joma's Artisan Ice Cream); Stump, Joann (individually, and as
 trustees of the Stump 1993 Revocable Trust and Representatives of Hathaway

Holdings, LLC as Doing Business As Joma's Artisan Ice Cream); Hathaway Holdings, LLC (as Doing Business As Joma's Artisan Ice Cream)
Suess, Robin L.
Sullivan, Morton, individually and as Trustee to the Morton A. Sullivan trust Agreement dated June 18, 2004
Sutton, Krista Corinne; Walters, Brian
Swanfeldt, Kelly
Swanson, Steve and Desiree
Swanson, Steven W. and Desiree R. Swanson as trustees of The Swanson Family Trust
T & L Automotive Enterprises, LLC
Takara, Tari
Talley, Michael
Tallia, Jack
Tallia, Jack (as doing business as Sunset Automotive)
Tarrance, Donald
Taylor, Celene Ann; Taylor, Emmaline Rose (minor); Taylor, Abigail Neveah (minor)
Taylor, Michael Scott
Taylor, Richard
Tenev, Deetcho; Maria Deetcheva
Testa, Lydia & Stephen; Testa Environmental Corporation, a California corporation
The Outhouse Collection, LLC
Thomas, Marc M. and Susan K.; Thomas, Julie (minor)
Thompson, Christa
Thompson, James A. & Joanne H.
Thompson, Jeffrey J.; Thompson, Katherine E.; Thompson, Patricia L.
Thompson, Robin
Thompson, William Patrick
Thornton, Cherill
Thornton, Ross Labar
Timm, Gerald; Timm, Travis
Timm, Shelly
Tomasich, Susan Renee
Tomaszewski, Caslin and Ruckus Farms, Inc. a California mutual benefit corp

Toy, Stephen & Patricia
Tramel, James Ellison & Lavonne Marie
Travis, Thomas Clark; Cuneo-Travis, Emilie Joy; Travis, Ellie Jean (minor); Travis,
Evie Joy (minor); Travis, Wayde William (minor)
Triano, Tony (as trustees of the Triano Revocable Trust Dated May 24, 1990);
Triano, Jeannine (as trustees of the Triano Revocable Trust Dated May 24,
1990)
Triano, Tony and Jeannine
Troedel, Ben and Marilyn
Truelock, Jennifer Leanne; The Annie Sierra Curtis Trust
Trueman, Darren Calvin; Cameron; Christian; Kyle; & Yong Sook Kim
Tuck, Jane Lenore; Tuck, Jerry Neal
Tucker, Jacqueline Leanne Craig; Rhodes, James Tyler; Preslie Leann Tucker and
Jordan Allen Tucker (minors)
Tuckerman, David (individual and as trustee)
Turner, John Andrew
Turner, Mitchell
Turner, Patrick Bernard; Martin, Stephanie Ashley
Turner, Stefanie Ann Mason; Mason, Ashley Nicole; Turner, Justin Louis (minor);
Turner, Megan Anne (minor); Turner, Nicholas Ryan Mason (minor)
Tyler, Richard
Underhill, William C.
Upchurch, Ryan; Upchurch, Leah
Urbick, III, William P. and Betty
Valentine, Jerry and Maribeth (individual and as trustee)
Vallery, Van & Mercedes
Van Bebber, Cassie Ann; Leslie, Zachary James; Van Bebber, Donovan; Van
Bebber, Bailey, Van Bebber, Khalil
Van Over, Cheryl Ann; Cheri Ann Van Over
Van Tubergen, Allison
Vang, Mai & Xiong, Maila
Vang, Renee & Dylan (minor)
Vanover, Gilbert J.
Vasconcellos, Steven
Vassey, Sammy and Susan
Vaughn, Charles J.

Voss, Rebecca Ann
Vrismo, Casey; Desiree Williams; Anabelle Vrismo
Wade, Edmund Lee, Jr.; Wade, Patricia K.; Gregorn, Dwayne Gary; Wade,
 Edmund Lee, III (minor)
Wagner, Tamara Jan
Walker, James W. & Allyson
Wallace, Vicki
Walters, Brian
Wardlow, Jill
Warren, Paul
Webb, Charles Benjamin
Weber, Elizabeth H.; Weber, Roark T.
Wegener, Vicki; Wegener, Richard Alfred; Smith, Violet Shirley
Welch, Katherine; Welch, Mark
Weldy, Dennis James
Wenger, Michael Doug
Westfell, John
White, Thomas; Priscilla A. White
Whitfield, George
Whitten, Gail E.; Whitten, Robert W.
Wiebe, Karl
Wiebens, Peter and Mark; Wiebens Brown,
 Nicole
Wiegel, Debra Lee
Wilcox, Cordell
Wilcox, Stephen & Marjory
Willcox, Peggy Lee; Jetton, Tim Howard
Williams, Carolyn
Williams, Dean Lee
Williams, Jay and Sally
Williams, Patricia Ann; Williams, Richard Allen; Benscoter, Amos Theodore (by
 and through his power of attorney Patricia Ann Williams)
Williams, Timothy
Wilson, Christopher James; Owen Wilson
Wilson, Heather; Kaybree Wilson
Wilson, Melisa Jean; Dorso, Justin James; Dorso, Brian Vincent (minor)

Wilson, Rosemary
Wilson, Wesley Scott
Wingard, Kimberly
Wingo, Rhonda; William James Wingo
Winkler, Charlene (individually, and as trustee of the Charlene Winkler Family Trust)
Winn, Don (individually, and as trustee of the Winn Family Trust Dated 6-2-99);
Winn, Linda (individually, and as trustee of the Winn Family Trust Dated 6-2-99)
Wnorowski, Jonathan W.
Wolfington, Bill Bruce
Wrede, Kyle Vincent; Wrede, Makalya Jean; Goble, Ethan Nickolas (minor);
Wrede, Vincent James (minor)
Wright, Estate of Dennis Michael, Jr, represented by Janet Wright.
Wuslich, Kristina
Wuslich, Kristina Anne
Xiong, Mike & Macy Yang
Ya, Sisomphou
Yanoff, Ronald Shelley (individually, and as trustees of the Yanoff Family Trust);
Yanoff, Sandi Rae (individually, and as trustees of the Yanoff Family Trust)
Young, David and Marilyn
Young, Erie D.; Young, Susan K.
Young, Richard Kent
Youngblood, Allen Scott
Youngblood, Larry Blake; Tarbat, Christopher James
Zahniser, Albert; Judy Weddle
Zeitler, Michael Louis; Shawn Dee Zeitler
Zelmer, Barbara J.
Zelmer, Barbara J.
Zelmer, Barbara Jean; Zelmer, Robert Thomas
Zelmer, William
Zelmer, William Joseph
Zepeda, Zeferino Nunes
Ziegler, Sonya Rose
Ziemer, Gerhard; Segovia, Richard M. (individually and as co-trustee of the Ziemer Segovia Family Living Trust)

Ziller, Jerry
Zollo, Anthony

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(Cal. Rules of Court, rule 8.208)

Pursuant to California Rules of Court, rule 8.208, petitioner Pacific Gas and Electric Company hereby submits the following certificate of interested entities or persons:

1. The only entity or person that has a direct ownership interest of 10% or more in Pacific Gas and Electric Company is PG&E Corporation, which, together with a subsidiary, holds 100% of the issued and outstanding shares of Pacific Gas and Electric Company common stock and 95% of the total outstanding voting stock. No entity or person has a direct ownership interest of 10% or more in PG&E Corporation.

2. Pacific Gas and Electric Company knows of no other entity or person that has a financial or other interest in the outcome of the proceeding that it reasonably believes the Justices should consider in determining whether to disqualify themselves under California Rule of Court, rule 8.208.

Dated: May 9, 2018

By: _____


Kathleen M. Sullivan

*Counsel for Petitioner Pacific Gas
and Electric Company*

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INTRODUCTION

This petition raises a question of great public interest and importance to privately owned utilities, which serve over 75 percent of California's residents and play a vital role in California and its economy. Privately owned utilities are now caught in a whipsaw that requires judicial resolution. The issue raised in this petition profoundly affects the viability of privately owned utilities such as Pacific Gas and Electric Company ("PG&E") throughout the State.

On the one hand, the courts for the past two decades have held privately owned utilities strictly liable for inverse condemnation in the same way as government or other public entities. These judicial decisions have assumed that privately owned utilities can automatically recover inverse condemnation costs from the benefitted public just like government or other public entities can. On the other hand, the California Public Utilities Commission ("CPUC") has recently made clear that this assumption is "unsound" because there is "no guaranty" a privately owned utility can recover such costs. Instead, in order to recover, a privately owned utility must prove to the CPUC that it acted as a "prudent manager," a burden that "rests heavily" on the utility and that the CPUC has

now made clear it will assess without regard to the strict liability imposed under inverse condemnation. Government and public entities need not meet this standard. Thus, in one CPUC Commissioner's words, there is a "salient" difference between privately owned utilities and government and public entities because there is "no guaranty that ... private utilities can recover the cost [of inverse condemnation liability] from their rate payers." The application of inverse condemnation liability to privately owned utilities thus urgently requires judicial re-examination, a re-examination that CPUC Commissioners themselves have urged the courts to undertake.

This petition urges the Court to provide such re-examination by granting the writ and holding that inverse condemnation liability does not extend to PG&E in this case. The need for judicial review is underscored because the continued application of inverse condemnation to privately owned utilities such as PG&E will have grave practical consequences not only for privately owned utilities but also for the State's economy. Unreimbursed inverse condemnation liability would lead to financial hardship for privately owned utilities and higher rates for ratepayers because of higher insurance costs and decreased access to

capital markets. Indeed, following ignition of the Thomas Fire in the service territory of another privately owned utility, a Citi analyst wrote that there were “too many unknowns and significant risk,” rendering California utilities “uninvestable right now.” Yamamoto, *Market Notes: Tuesday, December 12, 2017*, Investitute (Dec. 12, 2017), <https://investitute.com/activity-news/market-notes-tuesday-december-12-2017/>. Such effects in turn would cause job losses with ripple effects throughout the State’s economy and harm California’s ability to achieve its environmental goals.

The Court of Appeal’s prior rulings extending inverse condemnation liability to privately owned utilities are two decades old and were based on the express assumption that privately owned utilities, just like governments and public entities, would be able to spread the cost of inverse condemnation liability among the benefitted public. As California courts have explained, the “underlying purpose” of inverse condemnation, which allows an action for compensation when property is taken or damaged for public use (Cal. Const., art. I, § 19), is “to distribute throughout the community the loss inflicted upon the individual by the making of the public improvements: to socialize the

burden ... that should be assumed by society.” (*Holtz v. Super. Ct.* (1970) 3 Cal.3d 296, 303, internal citations and quotation marks omitted.) Governments and other public entities can automatically socialize the costs of inverse condemnation because, by their very nature, they are funded by taxpayer dollars and also because they have the power to recover those costs by unilaterally raising taxes or rates. In sharp contrast, privately owned utilities have no such public funding or unilateral power because they are closely regulated by the CPUC, which determines whether or not they may recover their costs through the rates they charge their customers.

Despite this important distinction, two previous Court of Appeal decisions by the Second and Fourth Appellate Districts have extended inverse condemnation liability to privately owned utilities. (*Pacific Bell Tel. Co. v. S. Cal. Edison Co.* (“*Pacific Bell*”) (2012) 208 Cal.App.4th 1400; *Barham v. S. Cal. Edison Co.* (“*Barham*”) (1999) 74 Cal.App.4th 744.) Both decisions did so based on the express assumption that there is no meaningful difference between private and public utilities and that there is no evidence that the CPUC “would not allow

[the utility rate] adjustments to pass on damages liability.” (*Pacific Bell, supra*, 208 Cal.App.4th at p. 1407.)

A CPUC decision adopted November 30, 2017 has now disproved that assumption and rendered it “unsound.” Insisting that inverse condemnation liability is “not relevant” to the rate recovery process at all, the CPUC denied an application by a different privately owned utility, San Diego Gas & Electric Company (“SDG&E”), to recover \$379 million in uninsured costs resulting from the settlement of claims for inverse condemnation based on wildfires within SDG&E’s coverage area. Although that decision is not directly applicable to PG&E in this case, it has the same implications for PG&E in this case as it did for SDG&E.

In light of the CPUC’s decision disproving the fundamental basis for two decades of Court of Appeal law extending inverse condemnation liability to privately owned utilities, respondent court erred in denying PG&E’s renewed motion for a legal determination that it cannot be liable for inverse condemnation. That decision warrants this Court’s reversal on writ review. The trial court concluded that it was bound by *Barham* and *Pacific Bell* despite the fact

that the CPUC decision disproved the cost-spreading rationale for these decisions, which *Barham* and *Pacific Bell* adopted “without really grappling with the salient difference between public and private utilities, which is that there’s no guaranty that ... private utilities can recover the cost from their rate payers.” (8 App. 2793¹ at 21:29-22:15.) But this Court is not similarly bound by the Second and Fourth District’s prior decisions.

The respondent court also erred in declining review of PG&E’s arguments that continued application of inverse condemnation to PG&E in light of the CPUC decision would be unconstitutional, finding that such arguments were more appropriately addressed by the Court of Appeal. Application of inverse condemnation here would be an unconstitutional taking. Because liability has been imposed on PG&E without fault and with “no guaranty” that it can spread any losses it is forced to pay as a result of inverse condemnation claims, the application of inverse condemnation to PG&E is nothing more than the transfer by the government of private property from one private entity (PG&E) to another (the inverse plaintiff) without just compensation in violation of the

¹ App. 2793 is a video recording that has been lodged with the Court.

California Constitution and the Fifth Amendment of the United States Constitution (as incorporated against the states by the Fourteenth Amendment). In the alternative, the application of inverse condemnation to PG&E would be arbitrary and irrational and violate PG&E's substantive due process rights, as protected by the Fourteenth Amendment and the California Constitution.

To be clear, this petition does not seek to hold PG&E harmless from damage from wildfires or other sources of damage to private property. Unlike public entities that are subject to inverse condemnation suits, a privately owned utility such as PG&E enjoys no presumptive sovereign immunity from ordinary tort claims for such damage and can be (and has been) sued in wildfire cases for negligence and other torts. Indeed, plaintiffs in this coordinated proceeding allege numerous causes of action sounding in negligence, which are not at issue in this petition. All PG&E challenges here is whether privately owned utilities such as PG&E still may be liable for strict *inverse condemnation* liability in light of the CPUC's new restriction on passing through inverse condemnation costs to the benefitted ratepayers.

The tension between the prior appellate decisions and the new CPUC regulatory reality must be resolved one way or the other. In issuing their ruling, the CPUC Commissioners urged California courts to re-examine the law of inverse condemnation in light of the salient differences between privately owned utilities and government and public entities. Unlike the trial court, this Court is free to depart from the Second and Fourth Appellate District's decisions in *Barham* and *Pacific Bell*, recognize that the CPUC's recent decision has now disproved the core assumption underlying judicial extension of inverse condemnation liability to privately owned utilities, and order such claims dismissed in this case as to PG&E.

WHY WRIT RELIEF SHOULD BE GRANTED

The petition raises an extremely important question of law that warrants this Court's review: namely, whether privately owned utilities may be subject to strict inverse condemnation liability despite the CPUC's determination that inverse condemnation is "not relevant" to private utilities' recovery of their costs through the rate-setting and allocation process. The well-settled rationale for inverse condemnation claims is that the cost of public use of property should be

spread among the members of the public who benefit from that use. Unlike public entities, however, private utilities have no inherent ability to require the public to bear costs, and the recent CPUC decision disallowing SDG&E's recovery of inverse condemnation costs through its rates starkly declares inverse condemnation "not relevant" to rate recovery as a matter of law. That decision fundamentally undermines the core premise of *Barham* and *Pacific Bell*, namely, that private utilities have the same capacity as public entities unilaterally to recover inverse condemnation costs. It thus leaves private utilities to shoulder the burden of costs that *Barham* and *Pacific Bell* assumed would be shared across the benefitted public. Accordingly, inverse condemnation liability should not be applied against private utilities.

Review of this issue is urgently required now and should not await final judgment in this case. The threat of strict liability for more than \$1 billion in damages might necessitate PG&E's settlement with inverse condemnation plaintiffs, causing the important public policy issues presented in this petition to evade appellate review.

For all of these reasons, this Court should grant review now to clarify the extent to which inverse condemnation applies to privately owned utilities such as PG&E following the CPUC's recent decision that it will not automatically allow such utilities to spread inverse condemnation losses to the benefitted public through rate increases to ratepayers.

PETITION

Beneficial Interest Of The Petitioner, Capacities Of Respondent, And The Real Parties In Interest

1. Pacific Gas and Electric Company (“PG&E”) is a defendant in 66 complaints currently pending in the respondent court in a Judicial Council Coordination Proceeding entitled *Butte Fire Cases*, JCCP No. 4853. The complaints filed to date have included approximately 3,777 individual plaintiffs. As of April 26, 2018, 1,847 individual plaintiffs remain. Plaintiffs as of April 27, 2018, are listed above as the real parties in interest.

Authenticity Of Exhibits

2. All exhibits accompanying this petition are true and correct copies of documents on file with respondent court. The exhibits are incorporated by reference as though fully set forth in this petition. The exhibits are paginated consecutively, and exhibit page references are to this consecutive pagination.

Timeliness Of Petition

3. Although there is no strict deadline, as a general rule “a writ petition should be filed within the 60-day period that applies to appeals.” (*Cal West Nurseries, Inc. v. Super. Ct.* (2005) 129 Cal.App.4th 1170, 1173.)

4. Here the respondent court, Judge Allen H. Sumner presiding, issued a ruling denying PG&E's Renewed Motion for a Legal Determination of Inverse Condemnation Liability Pursuant to C.C.P. § 1260.040 on May 1, 2018, and PG&E filed this writ petition on May 9, 2018, well within sixty days of that ruling. PG&E's petition is timely.

Pending And Prior Appeals

5. Currently pending before the Court is another writ petition related to this coordination proceeding, PG&E and PG&E Corporation's Petition for Writ of Mandate, Prohibition, or Other Appropriate Relief, No. C085308, filed August 18, 2017. The pending writ petition concerns the trial court's denial of PG&E and PG&E Corporation's motion for summary adjudication as to plaintiffs' punitive damages claims. This Court issued an order to show cause on September 15, 2017. The pending writ is fully briefed and calendared for oral argument on June 22, 2018.

Background

A. PG&E And The CPUC

6. PG&E is a privately owned public utility, and PG&E Corporation is its corporate parent. (7 App. 2426.)

7. At the state level, privately owned utilities such as PG&E are regulated by the California Public Utilities Commission (“CPUC”). (Cal. Const., art. XII, § 3; Pub. Util. Code, §§ 701-853, 1001, 1002, 2101.) Whereas publicly owned utilities can set their own customer rates, the rates of privately owned utilities such as PG&E are set by the CPUC. (Cal. Const., art. XII, § 6; *Pac. Tel. & Tel. Co. v. City of Los Angeles* (1955) 44 Cal.2d 272, 280 [“the Legislature, pursuant to the authority contained in ... article XII of the Constitution ... , has vested in the Public Utilities Commission the exclusive jurisdiction to supervise and regulate public utilities and to prescribe the character and quality of the service and fix the compensation therefor”], citing Pub. Util. Code.)

8. Pursuant to Public Utilities Code section 451, rates received by a privately owned utility must be “just and reasonable.” (Pub. Util. Code § 451.) The CPUC has created the “prudent manager” standard, under which a utility

may recover costs only if it proves the costs were both reasonable and prudent. As characterized by the CPUC, the burden of proving prudence “rests heavily upon a utility.” (*In re Southern California Edison* (1990) 37 CPUC.2d 488, 499.)

9. The United States Supreme Court has long recognized that a public utility’s rates must “enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed.” (See *Fed. Power Comm’n v. Hope Nat. Gas Co.* (1944) 320 U.S. 591, 605; see also *L.A. Gas & Elec. Corp. v. R.R. Comm’n* (1933) 289 U.S. 287, 319 [“a public utility is entitled to such rates as will permit it to earn a return on the value of the property which it employs for the convenience of the public equal to that generally being made at the same time and in the same general part of the country on investments in other business undertakings which are attended by corresponding risks and uncertainties,” quoting *Bluefield Water Works Co. v. Pub. Serv. Comm’n* (1923) 262 U.S. 692, 693, internal quotation marks omitted].)

10. The CPUC rate-setting process is intended to serve those same purposes by allowing privately owned utilities to recover operating expenses,

capital costs, and a reasonable rate of return on invested capital. Thus, a utility is entitled to recover its reasonable expenses on a dollar-for-dollar basis as part of its rates, along with a reasonable rate of return on the value of its property devoted to public use. (See *S. Cal. Edison Co. v. Pub. Utils. Comm'n* (1978) 20 Cal.3d 813, 818-819; *Pac. Tel. & Tel. Co. v. Pub. Utils. Comm'n* (1965) 62 Cal.2d 634, 644-645.)

B. The Butte Fire And Plaintiffs' Claims

11. On September 9, 2015, the Butte Fire ignited in Amador County, California, when a tree contacted PG&E's powerline. (7 App. 2427.) PG&E constructed, owns, and maintains the powerline at issue. (7 App. 2427-28.)

12. By the time the fire was contained on October 1, 2015, it had burned over 70,800 acres in Calaveras and Amador Counties. (1 App. 80.) Hundreds of structures were damaged and two people perished. (*Ibid.*)

13. Following the fire, more than 3,700 individual plaintiffs who allegedly sustained damage caused by the fire and 64 insurers filed suit against PG&E and its contractors, ACRT, Inc. and Trees, Inc. (10 App. 3427.)

14. These individual actions were coordinated as the *Butte Fire Cases*, No. JCCP 4853, and assigned to the Honorable Allen H. Sumner, Superior Court for the County of Sacramento. (1 App. 87.)

15. In their Master Complaint, plaintiffs assert claims for inverse condemnation, negligence, public nuisance, private nuisance, premises liability, trespass, violation of Health and Safety Code section 13007, and violation of Public Utilities Code section 2106. (1 App. 93-95, 97-104.) There are also causes of action for wrongful death and survival on behalf of the two decedents. (1 App. 95-96.)

C. The Parties' May 2017 Cross-Motions On Inverse Condemnation Liability

16. On May 5, 2017, PG&E filed a motion for a legal determination pursuant to Code of Civil Procedure section 1260.040 that it was not liable for inverse condemnation. (1 App. 54.) Among other things,² PG&E argued that, as

² Even if inverse condemnation could apply to PG&E as a privately owned utility, it should not apply in this case for the additional reasons set forth in PG&E's May 5, 2017 motion. (See 1 App. 61-68.) PG&E reserves the right to challenge those aspects of the respondent court's prior June 22, 2017 ruling on appeal.

a privately owned utility, it should be not treated as a public entity for purposes of inverse condemnation law. (1 App. 68-71.)

17. In support of this argument, PG&E explained that “[t]he public policy justification for inverse condemnation liability—‘to distribute throughout the community the loss inflicted upon the individual by the making of the public improvements[]’ ... does not apply to PG&E.” (1 App. 70, quoting *Holtz v. Super. Ct.* (1970) 3 Cal.3d 296, 303.) This is because, “[u]nlike a governmental public entity ... , utilities such as PG&E do not have taxing authority and must obtain approval from the [CPUC] to raise rates.” (1 App. 70-71, citing Pub. Util. Code, §§ 451, 454, 728.)

18. In its May 2017 motion, PG&E pointed out that SDG&E’s application before the CPUC to recover costs related to wildfires occurring in 2007 was still being litigated ten years later as support for its contention that “such approval may be denied, or evaluated on principles other than inverse condemnation.” (1 App. 71.)

19. Plaintiffs filed their own motion for a legal determination as to PG&E’s inverse condemnation liability on May 16, 2017. (3 App. 768.) In

opposing that motion, PG&E again stressed that plaintiffs had failed to satisfy the requirement that the defendant be a “public entity” for purposes of inverse condemnation liability (5 App. 1614-17), again arguing (among other things) that “PG&E does not have taxing authority and must obtain approval from the [CPUC] to raise rates ... , which approval may be denied.” (5 App. 1616.)

D. The Court’s June 2017 Ruling On The Initial Inverse Condemnation Cross-Motions

20. Following oral argument on June 16, 2017, the trial court issued a ruling on June 22, 2017, granting plaintiffs’ motion and denying PG&E’s, finding that “PG&E may be held liable for inverse condemnation under California law even though it is a privately owned public utility.” (7 App. 2419.)

21. The trial court concluded, however, that a privately owned utility such as PG&E could be held liable for inverse condemnation. (7 App. 2429-2435.) In so doing, the trial court explicitly “reject[ed] PG&E’s argument the cost-sharing policy underlying inverse condemnation does not apply because it lacks the power to spread the cost of condemnation across the benefitted public.” (7 App. 2434.)

22. The trial court noted that the privately owned utility in *Pacific Bell* had raised a similar argument, but that the Court of Appeal “noted [the privately owned utility] had not pointed to any evidence supporting its implication the [C]PUC would not allow it adjustments to pass on damage liability during its periodic reviews.” (7 App. 2435, citing *Pacific Bell*, 208 Cal.App.4th at p. 1407.) At the time of the initial motions, the court found that “[s]uch evidence is similarly lacking here.” (*Ibid.*)

23. The Superior Court properly found that plaintiffs had failed to meet their burden as to PG&E Corporation “because there is no evidence the ... Corporation is a public entity that can be liable for inverse condemnation” (7 App. 2421), noting that PG&E Corporation “neither owns nor operates any electrical transmission and distribution facilities.” (7 App. 2421-22.)

E. The CPUC’s November 2017 Decision Denying Recovery Of Inverse Condemnation Costs To SDG&E

24. In September 2015, SDG&E, another privately owned utility, had applied to the CPUC to recover through its rates \$379 million in unreimbursed costs that SDG&E had paid when facing inverse condemnation liability in a case

involving 2007 wildfires that are unrelated to this case.³ (See generally 8 App. 2523-92.) Throughout the proceeding that followed, SDG&E asserted that the CPUC was required to allow cost recovery in light of the cost-spreading policy justification for inverse condemnation liability. (See, e.g., 8 App. 2530-33.)

25. On November 30, 2017, the CPUC adopted a final decision denying SDG&E's application for the recovery of costs related to the 2007 Wildfires. (See generally 8 App. 2682-2757.) The CPUC applied its administratively created "prudent manager" standard to deny cost recovery to SDG&E. (8 App. 2694.)

26. In its November 30, 2017 decision, the CPUC announced for the first time that the principles of inverse condemnation are irrelevant to its review of utility costs and rate recovery and allocation:

Inverse Condemnation principles are not relevant to a Commission reasonableness review under the prudent manager standard.... Even if SDG&E were strictly liable, we see nothing in the cited case law that would supersede this Commission's exclusive jurisdiction over cost recovery/cost allocation issues involving Commission regulated utilities.

³ SDG&E did not seek recovery of the full \$2.4 billion it incurred because some portions were recovered from insurance, third parties, and Federal Energy Regulatory Commission rates, and because SDG&E agreed to a voluntary contribution of 10% of the unreimbursed balance. (8 App. 2687, fn. 2.)

(8 App. 2749.)

27. During the meeting at which the SDG&E decision was adopted, the CPUC Commissioners affirmed the CPUC's policy but recognized that courts should revisit the continued application of inverse condemnation to private utilities that, unlike public utilities, cannot automatically spread inverse condemnation costs. (See generally 8 App. 2793.)

28. For example, Commissioner Rechtschaffen stated:

[I]t is worth noting that the doctrine of inverse condemnation as it's been developed by the courts and applied to public utilities may be worth re-examining in a sense that the courts applying the cases to public utilities have done so without really grappling with the salient difference between public and private utilities, which is that there's no guaranty that ... private utilities can recover the cost from their rate payers. So this is an issue that the legislature and the courts may wish to examine and may be called on to examine in the future.

But having said that, it doesn't change our obligation to rule that the utility can't recover unless they acted prudently.

(8 App. 2793 at 21:29-22:15.)

29. Other Commissioners agreed. For example, Commissioner Peterman remarked: "I also appreciate the revisions to the proposed decision,

clarifying that the legal doctrine of inverse condemnation does not displace the Commission’s reasonableness review of whether SDG&E was a prudent manager in this case.” (*Id.* at 19:10-19:26.)

30. On December 26, 2017, President and Commissioner Picker and Commissioner Guzman Aceves filed a joint concurrence. (8 App. 2758-66.) In their concurrence, they directly urged the courts to reconsider the rationale for applying inverse condemnation to privately owned utilities, specifically because “the logic for applying inverse condemnation to utilities—costs will necessarily be socialized across a large group rather than borne by a single injured property owner, regardless of prudence on the part of the utility—is unsound.” (8 App. 2760, 2764.)

31. The concurrence also stated that “the application of inverse condemnation to utilities in all events of private property loss [fails] to recognize important distinctions between public and private utilities and that the financial pressure on utilities from the application of inverse condemnation may lead to higher rates” resulting from “increase[s] in the cost of capital and the expense associated with insurance.” (8 App. 2765.)

32. In recent remarks before the California State Assembly Standing Committee on Utilities and Energy, President Picker noted that the CPUC is “concerned that the application of inverse condemnation to utilities [by the courts] in all events of private property loss would fail to recognize important distinctions between public and private utilities.” (10 App. 3179⁴ at 1:04:02-1:04:14.)

33. President Picker also recognized the risks inherent in the face of continued application of inverse condemnation liability to privately owned utilities, as well as the higher rates that their ratepayers may be forced to pay as a result:

[T]he financial pressure on utilities from inverse condemnation may lead to higher rates for ratepayers. Investor-owned utilities are partially dependent on capital markets to raise money and the insurance market to mitigate financial risk; if strict liability is imposed for damage associated with wildfires caused in whole or part by a utility infrastructure, the risk profile of the investor-owned utility may be questioned by investors and insurance providers alike. The increase in cost of capital and expense associated with insurance could lead to the higher rates for ratepayers, even in

⁴ App. 3179 is a video recording that has been lodged with the Court.

instances where the investor-owned utility complied with the Commission's safety standards.

(*Id.* at 1:04:14-1:04:58.)

34. Indeed, President Picker's presentation prompted California Assemblyman Jim Patterson, Vice Chair of the Utilities and Energy Committee, to warn that continued application of strict inverse condemnation liability to privately owned utilities through inverse condemnation will lead to an "immediate crisis" for investor-owned utilities ("IOUs") and the State of California:

We have an immediate crisis that is literally going to affect 70% of the population of the State of California that receives its electricity from utilities. And the problem is it's been pretty well directly stated, it's the strict liability standard. The utilities are being held 100% liable, even if they're 1%, even if they followed all appropriate rules and procedures. And this has led to uninsurability. It has probably turned into at least ... an investor freeze of ability to raise capital under these circumstances. We've already heard about one IOU given a premium of \$120 million for \$300 million worth of coverage. That's not insurance. PG&E is BBB+ right now, billions of dollars in market losses. Edison took a \$6 billion hit recently. I am really concerned that if this trend and if this arc of facts continues, I think we're heading towards bankruptcy for IOUs. I really think this is a coming crisis.

(*Id.* at 1:14:13-1:15:45.)

F. PG&E's Renewed Motion For A Legal Determination Of Inverse Condemnation Liability And The Trial Court's Ruling

35. Following the CPUC's adoption of its decision denying SDG&E's application on November 30, 2017, PG&E renewed its motion for a legal determination of inverse condemnation pursuant to Code of Civil Procedure section 1008, subdivision (b), on January 4, 2018. (7 App. 2448.)

36. The basis for PG&E's renewed motion was that the CPUC's decision and newly announced policy that strict inverse condemnation liability was "not relevant" to cost recovery eliminated the cost-spreading rationale underlying the judicial extension of inverse condemnation liability to private utilities, and was therefore a "new fact" warranting renewal of its May 2017 motion. (7 App. 2453-54, 2458-59.)

37. PG&E argued that the CPUC's new policy regarding recovery of inverse condemnation costs rendered prior appellate decisions that had held privately owned utilities strictly liable for inverse condemnation fairly distinguishable and non-binding. (7 App. 2459-60.)

38. PG&E also argued that application of inverse condemnation to it in light of the CPUC's policy would violate PG&E's constitutional rights. (7 App. 2460-2466.) Specifically, PG&E contended that "the combination of inverse condemnation and the CPUC's refusal to allow automatic pass-through of inverse condemnation costs exacts an uncompensated taking of PG&E's property in violation of the Takings Clause of the Fifth Amendment of the United States Constitution ... and Article I, Section 19 of the California Constitution." (7 App. 2462; see also 7 App. 2463-64.) Further, PG&E claimed that "the application of inverse condemnation to PG&E is arbitrary and irrational and therefore also violates PG&E's substantive due process rights under the California Constitution and the Fourteenth Amendment." (7 App. 2462-63; see also 7 App. 2464-66.)

39. The Superior Court heard oral argument on the renewed motion on April 26, 2018. (See generally 10 App. 3325-80.) At the hearing, the court made clear that it viewed PG&E's renewed motion "as a fairly straight-forward, stare decisis analysis." (10 App. 3343.) PG&E argued that "the cost-spreading rationale is the central rationale" for inverse condemnation, and that "the assumption [in *Barham* and *Pacific Bell*] was a community as a whole is paying

through cost spreading.” (10 App. 3347-48.) Noting that it was “just a lowly trial court” with “two appellate court decisions” from *Barham* and *Pacific Bell* and “law on stare decisis,” the trial court concluded that it “must follow decisions of the Court of Appeal,” and it “just d[id]n’t see the situation that [it] ha[d] before [it] that different from the analysis before the two Courts of Appeal” in *Barham* and *Pacific Bell*. (10 App. 3345-46.)

40. Although the Superior Court “underst[oo]d PG&E’s argument that the landscape is different today than when *Barham* and *Pacific Bell* came down,” it ultimately concluded, “for purposes of [its] analysis as a trial court, [it] d[id]n’t see that decision by the [C]PUC as being a factually distinct scenario from the issues that were before *Barham* and *Pacific Bell*.” (10 App. 3345.)

41. In a ruling dated May 1, 2018, the trial court denied PG&E’s renewed motion, concluding that “two decisions of the Court of Appeal holding privately owned public utilities can be liable under the doctrine of inverse

condemnation are still controlling authority this court must follow.”⁵ (10 App. 3392.)

42. Specifically, the trial court explained that it was bound to follow the appellate decisions in *Barham, supra*, 74 Cal.App.4th 744, and *Pacific Bell, supra*, 208 Cal.App.4th 1400, unless those decisions were “fairly distinguishable.” (10 App. 3396.) Although the court recognized that “[t]he language of *Barham* and *Pacific Bell* must be construed in light of the facts of each case as ‘an opinion’s authority is no broader than its factual setting,’” the court was “not persuaded either decision rested on the assumption that the utility would automatically be able to pass on its losses as rate increases to its customers.” (10 App. 3395-96,

⁵ Although the trial court had requested briefing as to whether Code of Civil Procedure section 1260.040 properly could be used to determine inverse condemnation liability following the Court of Appeal’s decision in *Weiss v. People ex rel. Department of Transportation* (2018) 20 Cal.App.5th 1156, 1175 (10 App. 3163-64, 3388), the court concluded that the due process concerns implicated by *Weiss* were not raised by PG&E’s motion. (10 App. 3389, fn. 5.) The court reasoned that “PG&E’s renewed motion does not concern disputed facts, nor does it require the court to weigh evidence,” because “the court is deciding a legal issue.” (*Ibid.*)

The Superior Court also recognized, over plaintiffs’ objection, that “PG&E’s renewed motion does not call upon the court to review the [C]PUC’s November 2017 Decision in violation of the Public Utilities Code.” (10 App. 3392, fn. 7.)

quoting *San Diego Cnty. Emps. Retirement Ass'n v. Cnty of San Diego* (2007) 151 Cal.App.4th 1163, 1183.)

43. The court also declined to entertain PG&E's constitutional arguments, explaining that "these constitutional arguments should be made to the appellate courts" because "[t]his court remains bound to follow *Barham* and *Pacific Bell*." (10 App. 3397.)

44. Finally, the trial court denied PG&E's request for certification under section 166.1. (10 App. 3381, 3397-98.) Although the court acknowledged "there are certainly 'substantial grounds for difference of opinion' on th[e] question" of whether privately owned utilities may be liable under the doctrine of inverse condemnation, it could "[n]ot represent that an interlocutory ruling from a third Court of Appeal 'may materially advance the conclusion' of this litigation." (10 App. 3397-98.)

G. The Current Status Of The Coordination Proceeding

45. Despite PG&E's ongoing efforts to settle these actions, many of which are currently in mediation, 1,847 individual plaintiffs remained as of the April 26, 2018 case management conference. (10 App. 3427.) Although PG&E

intends to continue to participate in the mediation program to resolve homeowner claims in a timely manner, absence of immediate appellate review of this critical issue may impede those efforts. (10 App. 3370.)

Basis For Relief

46. The Superior Court erred in denying PG&E's renewed inverse condemnation motion. Although the CPUC recently announced that strict inverse condemnation liability is "not relevant" to recovery of associated costs by privately owned utilities (8 App. 2749), the Superior Court concluded that it was constrained by the Second and Fourth Appellate District decisions in *Barham* and *Pacific Bell*. (10 App. 3415.)

47. *Barham* and *Pacific Bell*, however, were incorrectly decided in light of the CPUC's policy. In concluding that privately owned utilities such as PG&E may be subject to inverse condemnation liability, the Second and Fourth Appellate Districts in those cases failed, in one CPUC Commissioner's words, to "grappl[e] with the salient difference between public and private utilities, which is that there's no guaranty that private utilities can recover the cost from their ratepayers." (8 App. 2793 at 21:29-22:15.)

48. Strict inverse condemnation liability is a judicially developed doctrine premised upon the ability to spread unforeseen costs of a “public use” of property over the benefitted public. (See 7 App. 2453, citing *Belair v. Riverside Cnty. Flood Control Dist.* (1988) 47 Cal.3d 550, 558.) The recently announced CPUC policy has rejected that justification as to privately owned utilities, calling “the logic ... unsound.” (8 App. 2760, 2764.)

49. Consequently, CPUC members have called on California’s courts to re-examine the judicial doctrine of inverse condemnation as it is applied to privately owned utilities. (8 App. 2793 at 22:00-22:07; see also 8 App. 2760, 2764-66.) This Court—which is not bound by the Second and Fourth Appellate Districts’ decisions in *Barham* and *Pacific Bell*—will be the first after the CPUC’s recent decision to “grappl[e] with” this vital issue, an issue that has the potential to create an “immediate crisis” for privately owned utilities and the State. (See 10 App. 3179 at 1:14:13-1:15:45.)

50. The respondent court also erred in failing to address PG&E’s constitutional arguments, arguments that it concluded “should be made to the appellate courts.” (10 App. 3416.) Given the CPUC’s new policy, the application

of strict liability under inverse condemnation would be an unconstitutional taking of PG&E's property in light of the CPUC's new policy, forcing PG&E alone to bear the public burdens of inverse condemnation losses that were meant to be borne by all who benefit from a public improvement. (See 7 App. 2462-64.) Alternatively, the application of inverse condemnation would be arbitrary and irrational in violation of PG&E's substantive due process rights. (See 7 App. 2462, 2464-66.)

51. Continued application of inverse condemnation liability to privately owned utilities such as PG&E not only threatens the continued viability of the utilities themselves, but it also has the potential to cause serious harm to California consumers and the California economy.

Absence Of Other Remedies

52. Absent writ review, PG&E will suffer irreparable injury. PG&E has no right of appeal from the trial court's ruling denying its renewed motion, nor does it have a plain, speedy, or adequate remedy available aside from this petition. Thousands of cases have yet to be tried or mediated and the potential

for strict liability will prejudice PG&E in both the mediation process and in any trials.

53. An appeal following a lengthy trial is an inadequate remedy given the nature of this large and complex coordination proceeding. It would not serve the judicial system or any of the parties to force the parties to wait years to determine whether the Superior Court was correct on this legal issue, which will have a central and singularly significant impact on the entire progression of this litigation.

54. Inverse condemnation is a strict liability cause of action. Discovery, the goals and strategies of the parties, and certainly trial are all directly and greatly influenced by the presence or absence of this central claim.

55. Further, it is quite possible that PG&E will be compelled to pay damages on inverse condemnation claims that would be dismissed under the ultimately correct rule of law. If the threat of such liability compels settlements as a practical matter, no appeal would be filed and this Court would never have an opportunity to correct the legal error of respondent court or to clarify this important area of law. This case presents a unique and important opportunity

for this Court, and this writ petition may very well be this Court's best and only chance to act. (*Starbucks Corp. v. Super. Ct.* (2008) 168 Cal.App.4th 1436, 1453 [noting in another context that settlement due to the pressure from potentially large exposure is a "valid concern" that justifies early appellate review because it may be "too late" if the court waits].)

56. Just as important, any delays in the resolution of this fundamental issue may force some of the plaintiffs affected by the Butte Fire to wait even longer for final resolution of their claims. Plaintiffs who have already been waiting two-and-a-half years should not be made to endure the entirety of lengthy litigation, including inverse condemnation claims, only to be told that it was all for naught because of an erroneous decision by the Superior Court.

57. In the meantime, the nature of potential liability and exposure under California law will remain uncertain for all privately owned utilities operating in this State. Continued uncertainty about the issue—which will persist until an eventual judgment and appeal in the absence of writ review—could be very costly and could herald an "immediate crisis" for privately owned utilities and the State. (See 10 App. 3179 at 1:14:13-1:15:45.) The prospect of unlimited and

unrecoverable inverse condemnation liability for privately owned utilities “could well inhibit further construction of public works.” (See *Bunch v. Coachella Valley Water Dist.* (1997) 15 Cal.4th 432, 451.)

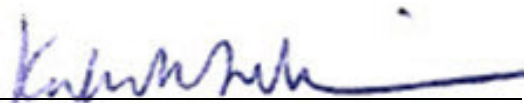
PRAYER

Petitioner Pacific Gas and Electric Company (“PG&E”) prays that this Court:

1. Either (a) issue a peremptory writ of mandate, prohibition, or other appropriate writ in the first instance directing respondent Superior Court to set aside and vacate its May 1, 2018 Ruling denying PG&E’s renewed inverse condemnation motion, and to enter a new order granting PG&E’s motion; or (b) issue an alternative writ directing the respondent court to set aside and vacate its May 1, 2018 Ruling, and to grant PG&E’s renewed motion, or to show cause why it should not be ordered to do so, and upon return of the alternative writ issue a peremptory writ of mandate, prohibition, or other appropriate writ directing the court to vacate its order and to enter a new order granting PG&E’s renewed motion.

2. Grant such other relief as this Court may deem just and proper.

Dated: May 9, 2018

By: 
Kathleen M. Sullivan
*Counsel for Petitioner Pacific Gas
and Electric Company*

VERIFICATION

I, Kathleen M. Sullivan, declare as follows:

I am one of the attorneys for petitioner Pacific Gas and Electric Company ("PG&E"). I have read the foregoing petition and know its contents. The facts alleged in the petition are within my own knowledge, and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than an officer or principal of PG&E, verify this petition.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on May 9, 2018 in Redwood Shores, California.



Kathleen M. Sullivan
*Counsel for Petitioner Pacific Gas and
Electric Company*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INVERSE CONDEMNATION LIABILITY CANNOT EXTEND TO PRIVATELY OWNED UTILITIES UNLESS THEY CAN SPREAD THE COSTS OF THAT LIABILITY ACROSS THE BENEFITTED PUBLIC

Article I, section 19 of the California Constitution provides that “[p]rivate property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.” (Cal. Const., art. I, § 19(a) (“Takings Clause”).) “This provision is the authority for both proceedings initiated by the public entity to ‘take[]’ property—otherwise known as ‘eminent domain’—and those initiated by the property owner for just compensation as a result of a taking—otherwise known as ‘inverse condemnation.’” (*Cal. State Auto. Ass’n Inter-Ins. Bureau v. City of Palo Alto* (2006) 138 Cal.App.4th 474, 479, citing *San Diego Metro. Transit Dev. Bd. v. Handlery Hotel, Inc.* (1999) 73 Cal.App.4th 517, 529.) Inverse condemnation differs from ordinary torts in significant ways. From a liability perspective, its strict liability is almost without comparison in the law. Perhaps most importantly here, inverse condemnation imposes liability—potentially very significant liability—without fault (*Locklin, supra*, 7 Cal.4th at p. 367) and without

the right to have a jury determine liability. (*Hensler v. City of Glendale* (1994) 8 Cal.4th 1, 15 [jury right in inverse condemnation actions “is limited to the question of damages”].) Further, plaintiffs are not required to prove foreseeability of harm (see, e.g., *Albers v. County of Los Angeles* (1965) 62 Cal.2d 250, 263-264), and courts have held that contributory negligence principles do not apply (*Blau v. City of L.A.* (1973) 32 Cal.App.3d 77, 85-87). Unlike ordinary torts, and contrary to the American rule, an inverse condemnation claim also permits recovery of attorneys’ fees. (Code Civ. Proc., § 1036.)

Whereas the California Legislature has enacted a comprehensive legislative scheme governing the formal exercise of the eminent domain power (see generally Eminent Domain Law, Code Civ. Proc., §§ 1230.010-1273.050), “[t]he law of inverse condemnation [ha]s [been] left for determination by judicial development.” (Cal. Law Revision Com. com, 19A West’s Ann. Code Civ. Proc. (1982 ed.) § 1230.020, p. 395.) The Supreme Court has “stressed that the limits of inverse condemnation liability in California ... derive from ... the construction, as a matter of interpretation and policy ... , of [California’s] constitutional

provision.” (*Customer Co. v. City of Sacramento* (1995) 10 Cal.4th 368, 409, in bank, internal quotation marks and citation omitted.)

In this case, the Court should hold that, in light of the fundamental policies underlying California’s Takings Clause, and the contrary policy now announced by the CPUC, inverse condemnation can no longer apply to privately owned utilities like PG&E in this case.

A. Cost-Spreading Is The Central Policy Underlying Inverse Condemnation Liability

California’s Takings Clause is designed to ensure that the costs of the public use of private property are shared by all the members of the public that benefit from the public use. This principle is foundational to the formal exercise of the power of eminent domain:

It is the purpose of eminent domain proceedings to distribute throughout the community the loss inflicted upon the individual by the making of public improvements. In the light of this public policy, the ideal to be aimed at is that the compensation awarded shall put the injured party in as good condition as he would have been in if the condemnation proceedings had not occurred.

Cormack, *Legal Concepts in Cases of Eminent Domain* (1931) 41 Yale L.J. 221, 224-225, cited in *Bacich v. Bd. of Control* (1943) 23 Cal.2d 343, 350.)

Inverse condemnation reverses the parties in the caption: it allows the private property owner to sue the government or other public entities that take or damage private property for “public use” to receive compensation, but the constitutional policy rationale is precisely the same as for formal exercises of eminent domain: the costs of any public use of private property should be spread across the benefitted public. “In other words, the underlying purpose of [California’s] constitutional provision *in inverse—as well as ordinary—condemnation* is ‘to distribute throughout the community the loss inflicted upon the individual by the making of the public improvements’: ‘to socialize the burden ... —to afford relief to the landowner in cases in which it is unfair to ask him to bear a burden that should be assumed by society.’” (*Holtz, supra*, 3 Cal.3d at p. 303, italics supplied, quoting *Bacich, supra*, 23 Cal.2d, at p. 350 and Mandelker, *Inverse Condemnation: Constitutional Limits of Public Responsibility* (1966) Wis. L.Rev. 3, 8.)

The Supreme Court has repeatedly reiterated this cost-spreading rationale for the imposition of inverse condemnation liability for over seventy-five years. (See *Bacich, supra*, 23 Cal.2d at p. 350 [“the policy underlying the eminent domain provision in the Constitution is to distribute throughout the community the loss inflicted upon the individual by the making of public improvements”]; see also, e.g., *Customer Co., supra*, 10 Cal.4th at p. 409 [“the relevant policy basis of article I, section [19], ... is to distribute throughout the community the loss inflicted upon the individual by [the public enterprise as deliberately conceived], internal quotation marks omitted; *Locklin v. City of Lafayette* (1994) 7 Cal.4th 327, 365 [“the underlying purpose of our constitutional provision in inverse—as well as ordinary—condemnation is to distribute throughout the community the loss inflicted upon the individual by the making of public improvements”], in bank, internal quotation marks omitted; *Belair, supra*, 47 Cal.3d at p. 558 [“the underlying purpose of our constitutional provision in inverse—as well as ordinary—condemnation is to distribute throughout the community the loss inflicted upon the individual”], in bank, internal quotation marks omitted; *Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 296 [“the policy underlying the

eminent domain provision in the Constitution is to distribute throughout the community the loss inflicted upon the individual by the making of the public improvements”], internal quotation marks omitted; *Holtz, supra*, 3 Cal.3d at p. 303 [“the underlying purpose of our constitutional provision in inverse—as well as ordinary—condemnation is to distribute throughout the community the loss inflicted upon the individual by the making of the public improvements”], internal quotation marks omitted; *Albers, supra*, 62 Cal.2d at p. 263 [“the policy underlying the eminent domain provision in the Constitution is to distribute throughout the community the loss inflicted upon the individual by the making of the public improvements”], in bank, internal quotation marks omitted; *Clement v. State Reclamation Bd.* (1950) 35 Cal.2d 628, 642 [“The decisive consideration is whether the owner of the damaged property if uncompensated would contribute more than his proper share to the public undertaking”], abrogated on other grounds as recognized by *Belair, supra*, 47 Cal.3d 550.

B. Inverse Condemnation Historically Has Applied Only To Governmental And Other Public Entities Based On The Cost-Spreading Rationale

The Takings Clause does not specify who may take or damage private property for “public use” if compensation is paid. But the term “public use” and the requirement of “compensation” are strong clues that the intended target of the Takings Clause’s framers was *governmental* entities, not private actors. (See Cal. Const., art. I, § 19(a).) Only government normally has the sole authority to act for “public use,” and only government normally has the coercive power of taxation that enables “compensation” from the public fisc. In other words, only government normally has the power to “socialize the burden ... that should be assumed by society” by spreading the cost of a public improvement over the benefitted public. (*Holtz, supra*, 3 Cal.3d at p. 303, internal quotation marks omitted.) For such reasons, this Court previously recognized that “it is elementary that an inverse condemnation action ... requires state action and, therefore, cannot be asserted against private parties.” (*Bach v. Cnty. of Butte* (1989) 215 Cal.App.3d 294, 307.)

Accordingly, the Supreme Court has long applied inverse condemnation to “the state” or “the government.” (See, e.g., *Customer Co.*, *supra*, 10 Cal.4th at p. 377; *Bauer v. Ventura Cnty.* (1955) 45 Cal.2d 276, 282-283 (1955), abrogated on other grounds as recognized by *Belair, supra*, 47 Cal.3d 550; *House v. Los Angeles Cnty. Flood Control Dist.* (1944) 25 Cal.2d 384, 388.) This is because when the government is sued in inverse condemnation, it may use the coercive power of taxation to ensure that losses be “distributed over the taxpayers at large rather than be borne by the injured individual.” (Van Alstyne, *Statutory Modification of Inverse Condemnation: The Scope of Legislative Power* (1967) 19 Stan. L. Rev. 727, 738.)

Inverse condemnation has been extended as well to other “public entities”—including public authorities and agencies as well as the State and its municipal subdivisions. The Eminent Domain Law defines a “public entity” to “include[] the state, a county, city, district, public authority, public agency, and any other political subdivision in the state.” (Code Civ. Proc., § 1235.190.) Privately owned utilities such as PG&E are conspicuously absent from this provision.

Extension of inverse condemnation liability to public entities again turns upon the fundamental cost-spreading rationale. (See, e.g., *Bunch, supra*, 15 Cal.4th at p. 451; *Customer Co., supra*, 10 Cal.4th at p. 409.) For example, an airport became a “public entity” after it was acquired by three cities. (See *Baker v. Burbank-Glendale-Pasadena Airport Auth.* (1985) 39 Cal.3d 862, 865, citing Gov’t Code, § 6500 [defining “public agency” as including “the federal government or any federal department or agency, this state, another state or any state department or agency, a county, county board of education, county superintendent of schools, city, public corporation, public district, regional transportation commission of this state or another state, a federally recognized Indian tribe, or any joint powers authority formed pursuant to this article by any of these agencies”].) The cities owning the airport were able to spread the costs of inverse condemnation liability on the part of the airport by using their taxing authority. (See generally Cal. Const., arts. XIII A, XIII C, & XIII D.)

Similarly, every inverse condemnation defendant in the seminal cases cited above that have developed the State’s inverse condemnation law was a government or other public entity. (See, e.g., *Bacich, supra*, 23 Cal.2d 343 [Board

of Control, California Toll-Bridge Authority, and State Department of Public Works]; *Customer Co.*, *supra*, 10 Cal.4th 368 [City of Sacramento and Sacramento County]; *Locklin*, *supra*, 7 Cal.4th 327 [City of Lafayette, County of Contra Costa, Contra Costa County Flood Control District, California Department of Transportation, and Bay Area Rapid Transit District]; *Belair*, *supra*, 47 Cal.3d 550 [Riverside County Flood Control District and State of California]; *Varjabedian*, *supra*, 20 Cal.3d 285 [City of Madera]; *Holtz*, *supra*, 3 Cal.3d 296 [San Francisco Bay Area Rapid Transit District and the City and County of San Francisco]; *Albers*, *supra*, 62 Cal.2d 250 [County of Los Angeles]; *Clement*, *supra*, 35 Cal.2d 628 [State Reclamation Board and Sacramento-San Joaquin Drainage District].) Every one of these entities had the power to fund inverse condemnation liability unilaterally through compulsory taxation, rates, or fees.

Likewise, the Supreme Court has held that a private actor acting jointly with a state actor may be liable for inverse condemnation. (See, e.g., *Breidert v. S. Pac. Co.* (1964) 61 Cal.2d 659, 662 [railroad was an active joint participant with city], citing *Talbott v. Turlock Irr. Dist.* (1933) 217 Cal. 504, 506 [irrigation district acting jointly with improvement district]). But again, these cases turn on the

cost-spreading rationale for inverse condemnation, as the private party may seek contribution from the state actor. (Civ. Code, § 1431.)

The cost-spreading rationale is particularly important in inverse condemnation because the Supreme Court has interpreted inverse condemnation liability to apply without fault: “any actual physical injury to real property proximately caused by the improvement as deliberately designed and constructed is compensable under article I, section 14, of our Constitution whether foreseeable or not.” (*Albers, supra*, 62 Cal.2d at pp. 262-264; see also *Holtz, supra*, 3 Cal.3d at p. 303.) Moreover, “a governmental entity may be held strictly liable, irrespective of fault, where a public improvement constitutes a substantial cause of the plaintiff’s damages even if only one of several concurrent causes.” (*Marshall v. Dep’t of Water & Power* (1990) 219 Cal.App.3d 1124, 1139, citing *Belair, supra*, 47 Cal.3d at p. 558.)

C. *Barham* and *Pacific Bell* Extended Inverse Condemnation Liability To Privately Owned Utilities Based On The Cost-Spreading Rationale

The Supreme Court has never held a private actor such as a privately owned utility—acting alone without a government entity—liable for inverse

condemnation. But some two decades ago, the Court of Appeal for the Fourth Appellate District made new law by for the first time extending inverse condemnation liability to a privately owned utility, Southern California Edison Company (“Edison”). *Barham, supra*, 74 Cal.App.4th 744. The Second District ruled similarly some years later, again upholding the imposition of inverse condemnation liability against Edison. *Pacific Bell, supra*, 208 Cal.App.4th 1400.

Taking their cue from the longstanding inverse condemnation law applicable to government and other public entities, *Barham* and *Pacific Bell* extended inverse condemnation to privately owned utilities on the express assumption that the cost-spreading rationale would fully apply. For example, *Barham*, quoting the Supreme Court’s decision in *Belair*, acknowledged that “[t]he fundamental policy underlying the concept of inverse condemnation is to *spread among the benefiting community* any burden disproportionately borne by a member of that community, to establish a public undertaking *for the benefit of all.*” (*Barham, supra*, 74 Cal.App.4th at p. 752, italics supplied, citing *Belair, supra*, 47 Cal.3d at p. 558.) And *Pacific Bell* expressly rejected Edison’s argument that it differed from a public utility or other public entity because it had no power to

raise rates unilaterally and depended entirely on the regulatory discretion of the CPUC as to whether inverse condemnation costs would be spread to the benefitted ratepayers. Indeed, *Pacific Bell* assumed that the cost-spreading rationale fully justified extending inverse condemnation to Edison, expressly finding that Edison “ha[d] not pointed to any evidence to support its implication that the [CPUC] would *not* allow [it] adjustments to pass on damages liability during its periodic reviews.” (*Pac. Bell, supra*, 208 Cal.App.4th at p. 1407, italics supplied.)

D. The CPUC Decision Has Fundamentally Undermined The Cost-Spreading Rationale As Applied To Privately Owned Utilities

The reasoning of *Barham* and *Pacific Bell* was flawed originally, because privately owned utilities have no coercive taxation power or unilateral ratemaking authority and cannot automatically spread costs because their rates are subject to CPUC approval. Indeed, pre-*Barham* decisions had distinguished a privately owned utility from a public entity precisely because it “cannot directly pass on its eminent domain [and inverse condemnation] costs to the ratepayers.” (See *Moreland Inv. Co. v. Super. Ct.* (1980) 106 Cal.App.3d 1017, 1022-23 [holding private utility is not governmental agency under Code of Civil

Procedure section 397 in part because it cannot directly pass on eminent domain costs to rate payers].)

But whether or not *Barham* and *Pacific Bell* were wrongly decided at the time, they are obviously wrong now. In the wake of the CPUC's decision denying SDG&E's application and newly declaring inverse condemnation "not relevant" to cost recovery through the rate-setting process, the assumption that privately owned utilities will be able to spread the costs of strict inverse condemnation liability has been disproven. It is now clear that, even if a private utility is held strictly liable in inverse condemnation, the CPUC will not automatically permit the private utility to spread the costs associated with its public improvement throughout the benefitted community. The CPUC Commissioners themselves have acknowledged that the Second and Fourth Appellate Districts in *Barham* and *Pacific Bell* had extended inverse condemnation to private utilities "without really grappling with the salient difference between public and private utilities, which is that there's no guaranty that ... private utilities can recover the cost from their rate payers." (8 App. 2793 at 21:48-22:00.)

This incompatibility between judicially created inverse condemnation principles and CPUC policy compels the conclusion that the prior Court of Appeal decisions extending inverse condemnation to privately owned utilities were founded upon an “unsound” rationale that requires re-examination. (See 8 App. 2760, 2764 [“the logic for applying inverse condemnation to utilities—costs will necessarily be socialized across a large group rather than borne by a single injured property owner, regardless of prudence on the part of the utility—is unsound”]; see also 8 App. 2793 at 22:00-22:07 [“this is an issue that the legislature and the courts may wish to examine and may be called on to examine in the future”]; 8 App. 2765-66 [urging the courts “to carefully consider the rationale for applying inverse condemnation in these types of cases”].)

The trial court, believing itself to be bound by *Barham* and *Pacific Bell*, denied PG&E’s renewed motion and held PG&E liable for inverse condemnation. (10 App. 3411-15.) Unlike the Superior Court, however, this Court is not bound to follow the decisions of the Second and Fourth Appellate Districts in *Barham* and *Pacific Bell*, and it should decline to do so because those decisions have now been revealed to be incorrectly decided. (*McCallum v. McCallum* (1987) 190

Cal.App.3d 308, 315, fn. 4 [“One district or division may refuse to follow a prior decision of a different district or division,” quoting 9 Witkin, Cal. Procedure (3d ed. 1985) Appeal, § 772, pp. 740–741].)

In concluding that neither *Barham* nor *Pacific Bell* “rested on the assumption that the utility would automatically be able to pass on its losses as rate increases to its customers,” the trial court erred because, as shown above, the Supreme Court has made clear that cost-spreading is the *sine qua non* of inverse condemnation. Unfettered by *Barham* and *Pacific Bell* as was the Superior Court, this Court should recognize the salient difference between PG&E and public entities that the trial court could not—namely, PG&E’s inability unilaterally and automatically to recover inverse condemnation costs. It should accordingly find that continued application of inverse condemnation to private entities such as PG&E under such circumstances would violate decades of Supreme Court precedent concerning the fundamental purpose of inverse condemnation liability.

E. No Other Reason Justifies Extending Inverse Condemnation To Privately Owned Utilities If The Cost-Spreading Rationale Is “Unsound”

Contrary to the trial court’s further erroneous suggestion (10 App. 3415), no other factors support the application of inverse condemnation liability to privately owned utilities now that *Barham’s* and *Pacific Bell’s* reliance on the cost-spreading rationale has been proven “unsound.”

1. “Quasi-Monopolistic Authority”

The trial court first erred in resting its ruling on PG&E’s supposed “monopolistic or quasi-monopolistic authority, deriving directly from its exclusive franchise provided by the state.” (10 App. 3415.) Although *Barham* and *Pacific Bell* likewise alluded to the monopolistic power of privately owned utilities, as the trial court noted (see *Pacific Bell, supra*, 208 Cal.App.4th at pp. 1406-1407; *Barham, supra*, 74 Cal.App.4th at p. 753), they misplaced reliance in doing so on *Gay Law Students Association v. Pacific Telephone & Telegraph Co.* (1979) 24 Cal.3d 458.

Gay Law Students held that the California Constitution’s Equal Protection Clause barred a privately owned utility, like a state actor, from engaging in

employment discrimination based on sexual orientation. (*Id.* at pp. 469, 472, 474.)

The Court reasoned that the grant of quasi-monopoly power to a private utility by the State limits competition that might otherwise discourage discriminatory practices and also enlists taxpayers in indirect support of the discriminatory practices. (*Id.* at pp. 470-471.)⁶

In stretching the context-specific holding of *Gay Law Students, Barham* and *Pacific Bell* failed to read *Gay Law Students* “in context.” (See *Pasillas v. Agric. Labor Relations Bd.* (1984) 156 Cal.App.3d 312, 348 [“*Gay Law Students* ... must be

⁶ Federal constitutional law is to the contrary, as the United States Supreme Court has held that privately owned utilities are not state actors merely because they are heavily regulated and enjoy government-granted monopoly status. (See *Jackson v. Metropolitan Edison Company* (1974) 419 U.S. 345, 351-352 [rejecting argument that privately owned utility was a state actor for purposes of a due process claim and holding that monopoly status was “not determinative” of state action].) Although the Court suggested in dicta that the due process analysis there might have been different if the action involved the “exercise by [the utility] of some power delegated to it by the State which is traditionally associated with sovereignty, such as eminent domain” (*id.* at pp. 351-353), the Court did not discuss inverse condemnation or its cost spreading rationale. Privately owned utilities cannot be held liable for inverse condemnation without the right to spread costs, for all the reasons set forth in this petition. In any event, the Butte Fire did not arise from the exercise by PG&E of a delegated power of eminent domain (indeed, the easement on which the powerline at issue operates was acquired in the private market). (App. 2427; see also App. 147-52.)

read in context, as addressing only the problem of *arbitrary discrimination* in employment (or membership) criteria affecting an individual's fundamental right to work."], emphasis in original; see also *Auto. Sprinkler Corp. v. S. Cal. Edison Co.* (1989) 216 Cal.App.3d 627, 633 [distinguishing *Gay Law Students* because it "considered [a] narrow issue" in the equal protection and employment discrimination context].) Properly read in context, *Gay Law Students* is inapplicable here.

Any quasi-monopoly status PG&E may enjoy is irrelevant to the salient policy upon which the Supreme Court has fashioned inverse condemnation liability, namely, the ability to distribute the cost of the public improvement over the benefitted public. Moreover, the policy concerns expressed in *Gay Law Students* are absent here. Obviously, there is no concern that taxpayers will be enlisted in supporting discriminatory policies. And unlike the concern that a quasi-monopolistic utility will be free to engage in employment discrimination without competitive checks, there are ample alternative mechanisms for discouraging privately owned utilities from engaging in conduct that damages private property. Most importantly, privately owned utilities, unlike

governmental entities traditionally subject to inverse condemnation liability, *may be sued in tort*.

Specifically, privately owned utilities are not public entities for purposes of sovereign immunity to tort liability. (See Gov't Code, § 811.2.) Thus private property owners may sue privately owned utilities *more freely than they may sue governmental entities*, not less.⁷ This is an important distinction for purposes of inverse condemnation. (See, e.g., *Albers, supra*, 62 Cal.2d at p. 256 ["The [constitutional] provision [from which inverse condemnation has been

⁷ Government entities historically have been protected against private tort claims by the sovereign immunity doctrine; since 1963, they have also been protected by the Tort Claims Act, Cal. Gov't Code sections 810 *et seq.* Even in instances where private individuals can sue public entities for damages, those public defendants have procedural advantages, statutory defenses, and additional statutory immunities not available to private defendants. (See, e.g., Cal. Gov't Code § 835.4; Cal. Law Revision Com. Com., reprinted at 32 West's Ann. Gov. Code (1995 ed.) foll. § 835.4 [public entity not liable if actions were reasonable; this defense recognizes that a public entity does not have the freedom of a private enterprise to decide not to engage in a particular activity]; § 830.6 [immunity for design or construction of public property]; § 911.2 [claim for injury to person or personal property must be presented within six months and real property within one year]; § 818 [public entities not liable for exemplary or punitive damages]; see also Van Alstyne, *supra*, 19 Stan. L. Rev. at p. 728 ["much of the progressive enlargement of inverse condemnation liability by California decisions during the past three decades appears to be attributable, in significant part, to judicial receptivity to use of inverse condemnation principles as an acceptable detour around governmental tort immunity"].)

developed] permits an action against the state, which cannot be sued without its consent. It is designed, not to create new causes of action, but to give a remedy for a cause of action that would otherwise exist.”], quoting *Archer v. City of Los Angeles* (1941) 19 Cal.2d 19, 24 .) Thus, applying *Gay Law Students* here turns the reasoning of that case on its head.

2. “Public Use”

The Superior Court also misplaced focus on the concept of “public use.” (See 10 App. 3415.) Although it is uncontested that PG&E’s electric distribution system serves a public use by benefiting the public, Supreme Court precedent still envisions that the costs of that public improvement are to be borne by the benefitted community: “the policy underlying the eminent domain provision in the Constitution is to distribute throughout the community the loss inflicted upon the individual by the making of public improvements.” (*Bacich, supra*, 23 Cal.2d at p. 350.) The public use analysis does not abrogate the cost-spreading rationale for inverse condemnation liability; rather, they are two sides of the same coin.

3. Non-“Immunity” From CPUC Regulation

Finally, in concluding that “the utility’s ability to pass on its losses as rate increases was not essential to the *Pac[ific] Bell* Court’s decision” (10 App. 3416), the Superior Court extrapolated from a footnote in *Pacific Bell*, in which the Second Appellate District indicated that, even if municipally owned and operated utilities were subject to CPUC regulation just as privately owned utilities are, it did “not believe [CPUC] regulation would immunize municipal utilities from inverse condemnation liability under the theory that they were no longer able to spread the cost of public improvements,” citing *Pacific Bell, supra*, 208 Cal.App.4th at p. 1407, fn. 6.) The trial court’s reliance on that footnote was misplaced.

First, the footnote is merely dicta that does not reflect any reasoned application of law to facts, and thus should have limited bearing on the Court’s decision. (*People v. Knoller* (2007) 41 Cal.4th 139, 169 [“An appellate decision is not authority for everything said in the court’s opinion but only for the points actually involved and actually decided.”], internal quotation marks omitted.) *Second*, the mere fact that CPUC regulation might not “immunize municipal

utilities from inverse condemnation liability” says nothing about the critical issue of cost spreading because municipal utilities are by their very nature publicly funded and able to socialize costs regardless of the applicable regulatory scheme. *Finally*, the footnote does not address whether such liability could still be applied once the CPUC announced (as it has here) a new substantive rule barring the automatic recovery of the costs of that liability to the benefitted public—here the ratepayers who benefit from the electric transmission and distributions system. *Pacific Bell* was decided in 2012, and therefore in a different context than PG&E now operates. In *Pacific Bell*, the privately owned utility could provide no “evidence to support its implication that the [CPUC] would not allow [it] adjustments to pass on damages liability during its periodic reviews.” (*Pacific Bell, supra*, 208 Cal. App. 4th at p. 1407.) Following the CPUC’s adoption of its decision declaring inverse condemnation liability “not relevant” to rate recovery, however, that evidence plainly has been provided. Thus, the relevant inquiry is no longer whether a utility is regulated by the CPUC but whether the CPUC will allow that utility to pass along its costs as the Supreme Court has long envisioned. The CPUC’s newly announced policy regarding cost-spreading

makes clear that inverse condemnation liability cannot be applied to privately owned utilities consistent with Supreme Court precedent.

II. APPLICATION OF INVERSE CONDEMNATION LIABILITY TO PRIVATELY OWNED UTILITIES IN THE ABSENCE OF COST-SPREADING WOULD BE UNCONSTITUTIONAL

The trial court, believing itself to be bound by *Barham* and *Pacific Bell*, declined to address PG&E's constitutional arguments, instead urging that "[t]hese constitutional arguments should be made to the appellate courts." (10 App. 3416.) This Court should therefore recognize that, following the CPUC's decision denying rate recovery of inverse condemnation costs, the application of inverse condemnation to privately owned utilities such as PG&E would violate their constitutional rights⁸ in addition to the settled principles of California law discussed above.

⁸ A Superior Court ruling on inverse condemnation constitutes state action that is subject to constitutional constraints. (See *N.Y. Times Co. v. Sullivan* (1964) 376 U.S. 254, 265 [freedom of speech and press]; *Shelley v. Kraemer* (1948) 334 U.S. 1, 14-18 [equal protection].)

A. Continued Application Of Inverse Condemnation To Privately Owned Utilities Would Violate The Takings Clauses Of The Fifth Amendment And Article I

The combination of inverse condemnation liability and the CPUC's refusal to allow automatic pass-through of inverse condemnation costs would exact an uncompensated taking of PG&E's property in violation of the Takings Clause of the Fifth Amendment of the United States Constitution as incorporated against the States through the Fourteenth Amendment and Article I, Section 19 of the California Constitution.

The Takings Clause of the Fifth Amendment provides: “[N]or shall private property be taken for public use, without just compensation.” (U.S. Const., 5th Amend.) The United States Supreme Court has explained that this clause “prevent[s] the government from forcing some people alone to bear the public burdens which, in all fairness and justice, should be borne by the public as a whole.” (*E. Enters. v. Apfel* (1998), 524 U.S. 498, 522, internal quotation marks omitted.) Article I, Section 19 of the California Constitution similarly provides that “[p]rivate property may be taken or damaged for a public use ... only when just compensation” has been paid.

If a private utility like PG&E is subject to strict liability for inverse condemnation, but cannot automatically recover its inverse condemnation costs because the CPUC will assess its conduct under its “reasonable and prudent manager” standard, application of inverse condemnation becomes a naked wealth transfer: a taking of private property from one private party (PG&E and its shareholders and investors) to give it to another private party (the inverse plaintiff) without just compensation. As explained above, the purpose of inverse condemnation is to spread losses sustained by one class of people that has been harmed by a public improvement to all who benefit from that improvement. That is the whole point behind the strict liability scheme. When applied to a public entity with the coercive power of taxation, or a public utility that can spread costs simply by increasing its rates with no requirement for regulatory approval, there is no uncompensated taking: All taxpayers or ratepayers bear the costs of the strict liability regime that has been developed for their common good. By contrast, given the CPUC’s policy of denying automatic rate recovery by a private utility, the application of strict liability under inverse condemnation would “forc[e] [PG&E] alone to bear the public burdens” of inverse

condemnation losses that were meant to be “borne by the public as a whole.” (See *E. Enters.*, *supra*, 524 U.S. at p. 522.) That uncompensated taking for public use would be unconstitutional.

All required elements of a takings claim would be met here if inverse condemnation is applied to PG&E. *First*, application of inverse condemnation here would force a considerable financial burden on PG&E. PG&E’s potential liability under inverse condemnation is substantial, and it is “clearly deprived of the amounts it must pay” to the injured landowners. (See *id.* at pp. 529-532 [finding considerable financial burden was imposed where the Coal Act required plaintiff to make considerable payments and where the Act did not guarantee a right to reimbursement].) Courts have recognized that limiting a utility’s rate-setting ability can, in some circumstances, constitute a taking. (See *Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299, 308 [“If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments.”]; *Ponderosa Tel. Co. v. Pub. Utils. Comm’n* (2011) 197 Cal.App.4th 48, 59 [holding that CPUC had engaged in impermissible appropriation by failing to permit rate

increase].) Where, as here, PG&E is forced to absorb inverse condemnation costs without any guarantee of rate recovery, its financial burden is sufficient to demonstrate a constitutional taking.

Second, application of inverse condemnation to PG&E after the CPUC has rejected the cost-spreading rationale on which such liability has always been predicated would plainly interfere with PG&E's reasonable investment-backed expectations. (*E. Enters.*, *supra*, 524 U.S. at pp. 524-525, 532.) As a privately owned entity, PG&E has relied for nearly two decades on the premise in *Barham* and *Pacific Bell* and the California Supreme Court's premise that imposition of inverse condemnation liability would be offset by ability to spread its costs through the rate recovery process. PG&E never expected on the one hand to be held strictly liable by courts for inverse condemnation costs, while on the other hand to be unable to recover those costs through its rates.⁹

⁹ Privately owned utilities also have investment-backed expectations that they will not be subjected to strict liability on theories other than inverse condemnation. (See, e.g., *Langley v. Pac. Gas & Elec. Co.* (1953) 41 Cal.2d 655, 660-661; *Pierce v. Pac. Gas & Elec. Co.* (1985) 166 Cal.App.3d 68, 85 [holding that the maintenance of high-voltage power systems by a public utility is not an ultrahazardous activity, which otherwise would subject the utility to strict liability]; *United Pac. Co. v. S. Cal. Edison Co.* (1985) 163 Cal.App.3d 700, 709-710.)

Further, as noted in the CPUC concurrence, “[i]nvestor owned utilities are partially dependent on the capital markets to raise money and the insurance market to mitigate financial risk.” (8 App. 2765.) Prior to the CPUC’s policy statements, the investment-backed expectation of the capital markets was aligned with PG&E’s expectations that it would not be subjected to strict liability and also precluded from cost spreading. Now, the unexpected situation where PG&E’s property is taken through the application of inverse condemnation without just compensation through the rate-setting process could change “the risk profile of investor-owned utilit[ies]” (*ibid.*), and thereby increase PG&E’s cost of obtaining the capital that it needs to continue to provide its customers with safe and reliable energy service.

Third, application of inverse condemnation to PG&E does not “adjust[] the benefits and burdens of economic life to promote the common good.” (*Lingle v. Chevron U.S.A. Inc.* (2005) 544 U.S. 528, 539, internal quotation marks omitted.)

Under inverse condemnation, PG&E has to pay landowners for damage to their

Holding privately owned utilities strictly liable in inverse condemnation without cost recovery distorts the allocation of risk that courts have determined best serves the public interest in the provision of electricity.

property caused (without fault) by PG&E's powerlines. In this circumstance, PG&E—and not the ratepayers who benefit from powerlines—is left to bear the costs alone.

B. Continued Application Of Inverse Condemnation To Privately Owned Utilities Would Violate Their Substantive Due Process Rights

Application of inverse condemnation to PG&E would also violate PG&E's substantive due process rights under the Fourteenth Amendment and the California Constitution. The Fourteenth Amendment protects against government deprivations of life, liberty, or property that are arbitrary and irrational. (See *State Farm Mut. Auto. Ins. Co. v. Campbell* (2003) 538 U.S. 408, 416-417 ["The Due Process Clause of the Fourteenth Amendment prohibits the imposition of grossly excessive or arbitrary punishments on a tortfeasor."]; *Action Apartment Ass'n v. Santa Monica Rent Control Bd.* (9th Cir. 2007) 509 F.3d 1020, 1025-1026 ["an arbitrary and irrational deprivation of real property ... might be 'so arbitrary or irrational that it runs afoul of the Due Process Clause,'" citing *Lingle*, *supra*, 544 U.S. at p. 542].)

As a threshold matter, inverse condemnation liability plainly deprives PG&E of its property, as PG&E is required to pay money damages. (See *Bd. of Regents v. Roth* (1972) 408 U.S. 564, 571-572 [“property interests protected by ... due process extend well beyond actual ownership of real estate, chattels, or money”].) Contrary to what would occur in the typical eminent domain or condemnation case, PG&E is not actually entitled to retain the “condemned” property, and thus receives no benefit in exchange for compensating the landowner. The only question, therefore, is whether this deprivation is arbitrary and irrational. (*Action Apartment, supra*, 509 F.3d at pp. 1025-1026.) It is, for at least two reasons.

First, taking PG&E’s property without a showing of fault and without automatic rate recovery is not substantially related to the stated cost-spreading justification for inverse condemnation. (See, e.g., *Sinaloa Lake Owners Ass’n v. City of Simi Valley* (9th Cir. 1989) 864 F.2d 1475, 1484-1487 [“To establish a violation of substantive due process, the plaintiffs must prove that the government’s action was ‘clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.’”].) As explained above, under

the CPUC's newly announced policy, PG&E cannot spread its costs without satisfying the CPUC's "prudent manager" standard through an extra-judicial administrative proceeding. It is arbitrary and irrational for a court, on one hand, to hold PG&E strictly liable for inverse condemnation on the theory that it can recover such costs from the public and for the CPUC, on the other to require PG&E, to recover those costs, to meet an administratively created standard that it has previously found a private utility has not met.¹⁰

Second, inverse condemnation is irrational as applied to PG&E. Government entities are protected against private claims by sovereign immunity or the Tort Claims Act, Government Code sections 810 *et seq.* Inverse condemnation therefore allows private property owners an opportunity to recover damages from government entities when no remedy may otherwise be available. PG&E, however, is a private corporation and is subject to general tort

¹⁰ It is significant that the regulator entrusted by the California Constitution with overseeing utilities, the CPUC, has expressed concerns with the application of inverse condemnation to private utilities for exactly this reason. (See, e.g., 8 App. 2749; 8 App. 2760, 2764-66; 8 App. 2793 at 21:29-22:15; 10 App. 3179 at 1:04:02-1:04:14.)

liability. Private individuals do not need inverse condemnation to recover for harm allegedly caused by PG&E. (See Code Civ. Proc., § 3333.)

III. CONTINUED APPLICATION OF INVERSE CONDEMNATION LIABILITY TO PRIVATELY OWNED UTILITIES WOULD HAVE NEGATIVE ECONOMIC CONSEQUENCES FOR THE STATE

In addition to the legal arguments discussed above that require reexamining *Barham* and *Pacific Bell*, the dangerous practical consequences of the current whipsaw compel reexamination by this Court. If left unaddressed, the whipsaw from the CPUC's decision threatens to impose unrecoverable inverse condemnation liabilities on privately owned utilities that will increase rates, impede reasonable rates of returns, and discourage investment.

The Supreme Court has long recognized that imposition of inverse condemnation liability must strike a delicate balance between compensating those whose property has unfairly been damaged and not discouraging beneficial public improvements. (See, e.g., *Bunch, supra*, 15 Cal.4th at p. 442; *Locklin, supra*, 7 Cal.4th at p. 368; *Belair, supra*, 47 Cal.3d at p. 565 & fn. 6; *Varjabedian, supra*, 20 Cal.3d at p. 296; *Holtz*, 3 Cal. 3d at p. 304 ["competing considerations ... caution against an open-ended, 'absolute liability' rule of

inverse condemnation [because] ... compensation[] allowed too liberally, will seriously impede, if not stop, beneficial public improvements because of the greatly increased cost," citing *Bacich, supra*, 23 Cal.2d at p. 350, internal quotation marks omitted].) Indeed, the Supreme Court has cautioned that "a public agency that undertakes to construct or operate a [public improvement] clearly must not be made the absolute insurer of" it. (*Belair, supra*, 47 Cal.3d at p. 565.) Until the inconsistency between *Barham* and *Pacific Bell* and the CPUC decision is resolved, however, privately owned utilities will indeed be made such absolute insurers, contravening the Supreme Court's admonition that inverse condemnation law should not be applied so as to discourage entities from undertaking publicly beneficial improvements.

Failure to restore the proper balance urged by the Supreme Court, but disrupted by the CPUC's decision, will have negative economic consequences for the State. Investor-owned utilities such as PG&E are a vital source of electric power for California's residents and businesses, accounting for approximately three-quarters of the electricity supply in California. (10 App. 3179 at 1:14:13-26.) Should California courts continue to hold privately owned utilities liable for

inverse condemnation while the CPUC refuses to allow automatic recovery of the unreimbursed costs of that liability, privately owned utilities will face increasing difficulty in obtaining capital from investors, which will threaten financial harm to the utilities and potentially render them economically unsustainable. It is clear the present uncertainty facing investor-owned utilities has been a cause for concern among their investors and the financial markets.¹¹

The concern for the continued financial viability of privately owned utilities is shared by the CPUC. In recent remarks before the California State Assembly Standing Committee on Utilities and Energy, CPUC President and Commissioner Picker recognized the risks inherent in the face of continued application of inverse condemnation liability to investor-owned utilities, as well as the higher rates that their ratepayers may be forced to pay as a result:

We're concerned that the application of inverse condemnation to utilities in all events of private property loss would fail to recognize important distinctions between public and private utilities, and that the financial pressure on utilities from inverse condemnation may lead to higher rates for ratepayers. Investor-owned utilities are partially dependent on

¹¹ Yamamoto, *supra*, <https://investitute.com/activity-news/market-notes-tuesday-december-12-2017/>.

capital markets to raise money and the insurance market to mitigate financial risk; if strict liability is imposed for damage associated with wildfires caused in whole or part by a utility infrastructure, the risk profile of the investor-owned utility may be questioned by investors and insurance providers alike. The increase in cost of capital and expense associated with insurance could lead to the higher rates for ratepayers, even in instances where the investor-owned utility complied with the Commission's safety standards.

(10 App. 3179 at 1:04:02-1:04:58.)

Although continued application of inverse condemnation liability to privately owned utilities undoubtedly will harm the utilities themselves, the ripple effect on California consumers, the economy, and the environment may prove even more profound. Privately owned utilities are vital to California's economy, employing more than 40,000 Californians and providing electric power to over three-quarters of California's residents through a service area that covers more than three-quarters of the State.¹² They also play an important role in

¹² PG&E employed approximately 22,980 full-time employees in 2017, SCE 12,234, and SDG&E 4,116. PG&E Corp., Annual Report (Form 10-K) at p. 8 (Feb. 9, 2018), *available at* <https://www.sec.gov/Archives/edgar/data/75488/000100498018000003/form10k.htm>; Edison International, Annual Report (Form 10-K) at p. 114 (Feb. 22, 2018), *available at* <https://www.sec.gov/Archives/edgar/data/92103/000082705218000046/eix-sce201710k.htm>; Sempra Energy, Annual Report

California's commitment to clean, renewable energy, meaning that the financial health of privately owned utilities has far-reaching implications for California's environmental goals as well as its economy.¹³

As California Assemblyman Jim Patterson, Vice Chair of the Utilities and Energy Committee, recently warned legislators at a State Assembly hearing, continued application of a strict liability standard to privately owned utilities through inverse condemnation will lead to an "immediate crisis" for the State:

We have an immediate crisis that is literally going to affect 70% of the population of the State of California that receives its electricity from utilities. And the problem is it's been pretty well directly stated, it's the strict liability standard. The utilities are being held 100% liable, even if they're 1%, even if they followed all appropriate rules and procedures. And this has led to uninsurability. It has probably turned into at least ... an investor freeze of ability to raise capital under these circumstances. We've already heard about one IOU given a premium of \$120 million for \$300 million worth of coverage. That's not insurance. PG&E is BBB+ right

(Form 10-K), at p. 36 (Feb. 27, 2018), *available at* <https://www.sec.gov/Archives/edgar/data/86521/>.

¹³ Cal. Energy Comm'n, *Tracking Progress*, at p. 1 (Dec. 2017), *available at* http://www.energy.ca.gov/renewables/tracking_progress/documents/renewable.pdf.

now, billions of dollars in market losses. Edison took a \$6 billion hit recently. I am really concerned that if this trend and if this arc of facts continues, I think we're heading towards bankruptcy for IOUs. I really think this is a coming crisis.

(10 App. 3179 at 1:14:13-1:15:45.) This Court should grant review in this case to determine whether California consumers and the State's economy should be jeopardized by the continued application of inverse condemnation to privately owned utilities in the wake of the CPUC's decision.

CONCLUSION

For the reasons stated above, petitioner PG&E respectfully requests that the Court grant the relief sought in the petition, vacate the ruling on PG&E's renewed inverse condemnation motion issued below, require respondent Superior Court to issue an order granting PG&E's motion, and provide such other and further relief as is just, proper, and equitable.

Dated: May 9, 2018

Respectfully Submitted,

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CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c), I hereby certify that the attached Petition for Writ of Mandate, Prohibition, or Other Appropriate Relief has a typeface of 13 points or more and contains 13,981 words, as determined by the word processing software used to generate the document.

DATED: May 9, 2018



Kathleen M. Sullivan