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ATTORNEYS FOR PLAINTIFF JOHN K. TROTTER,
JR., TRUSTEE OF THE PG&E FIRE VICTIM TRUST

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

JOHN K. TROTTER, JR., Trustee of the
PG&E Fire Victim Trust,

Plaintiff,

v.

DAVEY RESOURCE GROUP, INC.;
DAVEY TREE EXPERT COMPANY;
DAVEY TREE SURGERY COMPANY;
THE ORIGINAL MOWBRAYS TREE
SERVICE, INC.; WESTERN
ENVIRONMENTAL CONSULTANTS,
INC.; and DOES 1 through 25, inclusive,

Defendants.

Case No.

GGC-21-589438

COMPLAINT FOR DAMAGES

- 1) Breach of Contract (Performance and Express Contractual Indemnity)
- 2) Breach of Contract (Insurance)
- 3) Breach of Implied Duty of Good Faith and Fair Dealing
- 4) Equitable Indemnity
- 5) Negligence
- 6) Professional Negligence
- 7) Unjust Enrichment

JURY TRIAL DEMANDED

FILED
Superior Court of California
County of San Francisco

JAN 28 2021

CLERK OF THE COURT
BY: 
Deputy Clerk

1 Plaintiff John K. Trotter, Jr., Trustee of the PG&E Fire Victim Trust (the
2 "Trustee" or "Plaintiff"), brings this action against Davey Resource Group, Inc.,
3 Davey Tree Expert Company, Davey Tree Surgery Company, The Original Mowbrays
4 Tree Service Inc., and Western Environmental Consultants, Inc., (hereinafter
5 collectively referred to as "VM Defendants" or "Defendants") as follows:

6 **NATURE OF THE ACTION**

7 1. Prior to 2020, Pacific Gas & Electric Company ("PG&E")¹ owned and
8 operated a power grid and electrical system, which was the cause of several
9 catastrophic wildfires, including: the Butte Fire on September 9, 2015, the Adobe,
10 Atlas, Norrbom, Nuns, Partrick, Point, Sulphur, and Tubbs Fires on October 8 and 9,
11 2017², and the Camp Fire on November 8, 2018 (collectively, the "Wildfires"). Each of
12 these fires started because of separate and distinct failures to observe due care, as
13 well as the failure to fulfill statutory and contractual obligations on the part of the
14 defendants named herein.

15 2. On January 29, 2019, PG&E filed a voluntary Chapter 11 bankruptcy
16 petition in the United States Bankruptcy Court for the Northern District of
17 California, as a result of PG&E's substantial and overwhelming liabilities associated
18 with the 2015, 2017, and 2018 Wildfires caused by its electrical equipment. (*In re*
19 *PG&E Corp.* (Bankr. N.D. Cal.) Case No. 19-30088, Docket Entry Nos. 7711 and
20 8053.) After notice to all interested parties, the Bankruptcy Court confirmed a
21 bankruptcy plan binding on PG&E, its creditors, and all parties in interest, including
22 the victims of the Wildfires (the "Plan"), as of the Effective Date. (*In re PG&E, supra*,
23 Docket Entry No. 8053.)

24 _____
25 ¹ As used herein, "PG&E" refers to the former Pacific Gas & Electric Company as it
26 existed prior to the effective date of its Chapter 11 bankruptcy plan of July 1, 2020
(the "Effective Date"), and not the newly emerged Pacific Gas & Electric Company.

27 ² The Oakmont/Pythian Fire started on or about October 13, 2017. For ease of
28 reference to the firestorm commonly referred to as the "North Bay Fires", this
Complaint will refer to October 8 and 9, 2017 as the ignition dates.

1 3. The Plan provided, among other things, for the creation of the Fire
2 Victim Trust. *Id.* Pursuant to the Plan, by operation of federal law, PG&E assigned
3 to the Trust certain rights, claims, and causes of action (the "Assigned Rights and
4 Causes of Action"). The Assigned Rights and Causes of Action include "any and all
5 rights, claims, causes of action, and defenses related thereto relating directly or
6 indirectly to any of the prepetition Fires that the Debtors may have against vendors,
7 suppliers, third party contractors and consultants (including those who provided
8 services, directly or indirectly, regarding the Debtors' electrical system, system
9 equipment, inspection and maintenance of the system, and vegetation
10 management)." (*In re PG&E, supra*, Docket Entry No. 7712-1 at 1.) The claims
11 pursued by the Trustee in this Complaint are within the Assigned Rights and Causes
12 of Action.)

13 4. The Trust was established for two overall purposes: (1) to provide
14 compensation to victims of the Wildfires based on a claims-administration process;
15 and (2) to recover additional funds for the benefit of victims of the Wildfires,
16 including by bringing the Assigned Rights and Causes of Action on behalf of PG&E
17 against other responsible parties. This Complaint is an asset recovery action against
18 responsible third parties brought for the benefit of the victims of the Wildfires.

19 5. Each VM Defendant contributed to PG&E's failure to mitigate the risk
20 of wildfires through PG&E's systems for evaluating, inspecting and clearing trees
21 and vegetation overgrowth, as well as other vegetation hazards such as disease and
22 decay, in proximity to PG&E transmission and distribution lines, as necessary to
23 comply with California regulations regarding management of vegetation along utility
24 power lines. Each VM Defendant entered into lucrative contracts with PG&E to
25 implement its vegetation management programs, practices, policies, and procedures
26 (PG&E's "VM Program"). In those contracts, each VM Defendant promised PG&E
27 that it would perform VM Program services to reduce the risk of wildfire caused by

1 vegetation issues and otherwise assist PG&E in complying with its regulatory duties.
2 Each VM Defendant thereby joined PG&E in the solemn duty to prevent the deadly
3 and catastrophic wildfires that could be caused by PG&E equipment.

4 6. During the relevant time period, each VM Defendant participated in,
5 implemented and executed PG&E's VM Program.

6 7. All VM Defendants held themselves out as fully capable to advise
7 regarding, if not experts in, evaluating and managing trees and other vegetation
8 that, due to their proximity to power transmission and distribution lines, pose a risk
9 of damaging utility lines and causing fires. Each VM Defendant subsequently failed
10 to perform or negligently performed their duties. In addition to PG&E itself, the
11 known and foreseeable victim of wildfires, who would be injured and damaged by VM
12 Defendants' breach of their duties, were California residents and businesses in the
13 area of the PG&E electrical grid in Northern California. The VM Defendants' acts
14 and omissions were substantial contributing causes of the Wildfires.

15 8. The failures that caused the Wildfires arose from the combined conduct
16 of PG&E and VM Defendants, each of whom failed in their essential roles in reducing
17 the risk of fires caused by vegetation.

18 9. In the aftermath of the Wildfires, California regulatory officials
19 uncovered PG&E practices permitting dangerous conditions, which caused the
20 individual Wildfires, to go uncorrected. In particular, California regulatory officials
21 found that PG&E failed to abide by legal safety requirements for managing
22 vegetation near its power lines. These substandard, negligent and dangerous
23 practices were contributed to, caused, and/or exacerbated by VM Defendants'
24 breaches of their contractual duties and duties of care with respect to PG&E's VM
25 Programs.

26 ////

27 ////

GENERAL ALLEGATIONS

A. The Parties

10. Plaintiff Trustee of the PG&E Fire Victim Trust. Plaintiff John K. Trotter, Jr. is the duly appointed Trustee of the PG&E Fire Victim Trust (the "Fire Victim Trust" or the "Trust"), which was established pursuant to the Plan. The Trustee is a resident of the State of California. The Trust is a Delaware statutory trust.

11. The Plan resulted in the creation of the Trust. Case No. 19-30088, D.E. 8053. The Trust was established to administer individual victims' claims against PG&E related to the Wildfires, which were caused by PG&E's electrical equipment.

12. Defendant Davey Resource Group, Inc. Davey Resource Group, Inc., ("Davey Resource") is a corporation organized and existing under the laws of Delaware with its principal place of business in Kent, Ohio. At all relevant times, Davey Resource has been licensed to do business in and actually conducted business in the State of California. Davey Resource is a professional services company offering a suite of vegetation management services for utility operations, including performance of pre-inspection duties for utilities' vegetation management programs, auditing or quality control of vegetation management work, creation of vegetation clearance work orders, and other related vegetation management work. In the course of said business, Davey Resource was hired by and performed vegetation management services for PG&E in the State of California as herein alleged. On information and belief, at a minimum, Davey Resource performed such services in connection with the Atlas, Partrick, Nuns, and Tubbs Fires, and may have performed vegetation management services in connection with additional separate fires.

13. Defendant Davey Tree Expert Company. Davey Tree Expert Company ("Davey Tree Expert") is a corporation organized and existing under the laws of Ohio with its principal place of business in Kent, Ohio. At all relevant times, Davey Tree

Expert has been licensed to do business in and actually conducted business in the State of California. Davey Tree Expert is a professional services company offering a suite of vegetation management services for utility operations, including responding to vegetation management work orders, performance of line clearance for vegetation issues, recording and logging clearance work performed, and, in the course of said business, was hired by and performed vegetation management services for PG&E in the State of California as herein alleged. On information and belief, at a minimum, Davey Tree Expert performed such services in connection with the Adobe, Atlas, Norrbom, Nuns, Partrick, Tubbs, and Sulphur Fires, and may have performed vegetation management services in connection with additional separate fires.

14. Defendant Davey Tree Surgery Company. Davey Tree Surgery Company ("Davey Tree Surgery") is a corporation organized and existing under the laws of Delaware with its principal place of business in Kent, Ohio. At all relevant times, Davey Tree Surgery has been licensed to do business in and actually conducted business in the State of California. Davey Tree Surgery is a professional services company offering a suite of vegetation management services for utility operations, including responding to vegetation management work orders, performance of line clearance for vegetation issues, recording and logging clearance work performed, and, in the course of said business, was hired by and performed vegetation management services for PG&E in the State of California as herein alleged. On information and belief, at a minimum, Davey Tree Surgery performed such services in connection with the Adobe, Atlas, Norrbom, Nuns, Partrick, Tubbs, and Sulphur Fires, and may have performed vegetation management services in connection with additional separate fires.

15. Defendant Original Mowbrays Tree Service. The Original Mowbrays Tree Service, Inc. ("Mowbrays") is a corporation organized and existing under the laws of California with its principal place of business in San Bernardino, California.

1 Mowbrays is a professional services company offering a suite of vegetation
2 management services for utility operations, including responding to vegetation
3 management work orders, performance of line clearance for vegetation issues,
4 recording and logging clearance work performed, and, in the course of said business,
5 was hired by and performed vegetation management services for PG&E in the State
6 of California as herein alleged. On information and belief, at a minimum, Mowbrays
7 performed such services in connection with the Adobe and Nuns Fires, and may have
8 performed vegetation management services in connection separate additional fires.

9 16. Defendant Western Environmental Consultants. Western
10 Environmental Consultants, Inc. ("Western EC") is a corporation organized and
11 existing under the laws of California with its principal place of business in Willow
12 Grove, Pennsylvania. Western EC a professional services company offering a suite of
13 vegetation management services for utility operations, including performance of pre-
14 inspection duties for utilities' vegetation management programs, auditing or quality
15 control of vegetation management work, creation of vegetation clearance work orders,
16 and other related vegetation management work. In the course of said business,
17 Western EC was hired by and performed vegetation management services for PG&E
18 in the State of California as herein alleged. On information and belief, at a minimum,
19 Western EC performed such services in connection with the Adobe, Norrbom, and
20 Nuns Fires, and may have performed vegetation management services in connection
21 with additional separate fires.

22 17. At all relevant times, each VM Defendant was a business entity doing
23 business in the State of California. Each VM Defendant held itself out as an expert in
24 one or more of (1) performance of pre-clearance line inspection for vegetation issues,
25 (2) performance of line clearance of vegetation issues, or (3) auditing or quality
26 control of vegetation management work. At all relevant times, each Defendant was
27 hired by PG&E to perform services in connection with its VM Program, with such

1 services to be performed in California.

2 18. Each Defendant was a contractor, vendor, supplier, or third-party
3 contractor of PG&E, as defined in the Plan. Thus, PG&E's claims against the
4 Defendants are included in the Plan's Assigned Rights and Causes of Action. To the
5 extent that one or more of the Defendants have been purchased by, merged into, or
6 changed its form such that it is now owned and/or controlled by a successor, the
7 Trustee asserts the claims asserted herein against such successors, and such
8 successors are liable for the injuries and damages alleged herein. The Trust will seek
9 leave to amend this Complaint to identify any such successors, once information
10 regarding any successors is developed and/or confirmed.

11 19. The true names, capacities and basis for liability, whether individual,
12 corporate, partnership, or otherwise, of Doe Defendants 1 through 25, and each of
13 them, are unknown to the Trustee, who therefore sues said Defendants by such
14 fictitious names. The Trustee is informed and believes that each Defendant
15 designated herein as a Doe was in some manner legally responsible for the events,
16 acts, omissions, and damages alleged herein. Any reference herein to the Defendant
17 Consultants includes Doe Defendants 1 through 25, inclusive.

18 **B. Jurisdiction and Venue**

19 20. This Court has personal jurisdiction over VM Defendants because this
20 suit arises from the Wildfires, which occurred in California, caused damage to PG&E
21 in California, and was caused by Defendants' services performed pursuant to
22 contracts entered in San Francisco County. Each Defendant is qualified to do
23 business in the State of California.

24 21. Pursuant to California Code of Civil Procedure § 395(a), venue is proper
25 in this Court as the agreements that provide a basis for liability herein were entered
26 into in the County of San Francisco, State of California.

27 22. The allegations contained and remedies sought herein share common

1 questions of law and fact such that they should be coordinated or otherwise added on
2 to JCCP 4955, In Re California North Bay Fire Cases.

3 **C. Factual Allegations**

4 **1. PG&E's VM Programs**

5 23. PG&E is a utility company that supplies electrical power by way of
6 overhead conductors throughout California, from Humboldt County to Santa Barbara
7 County. PG&E has identified wildfires caused by its electrical equipment as a top
8 safety and enterprise risk.

9 24. To protect against the risk of wildfires caused by its electrical
10 equipment, PG&E utilized its VM Program. The policies, processes, procedures, and
11 practices of PG&E's VM Program are designed to comply with the regulations of the
12 California Public Utility Commission ("CPUC") and the California Department of
13 Forestry and Fire Protection ("CAL FIRE"), as well as other relevant laws, statutes
14 and regulations.

15 25. Through its VM Program, PG&E monitors approximately 100,000 miles
16 of high-voltage overhead lines across a 70,000-square mile service area. Within that
17 service area, PG&E is responsible for monitoring approximately 120 million trees
18 that have the potential to grow close to, or fall on, overhead lines.

19 26. During the relevant time period, PG&E's VM Program for its
20 distribution lines included but was not limited to, Catastrophic Event Memorandum
21 Account ("CEMA") patrols and Routine patrols. CEMA patrols were a system-wide
22 program of patrolling PG&E's service area, to identify, prescribe, and document work
23 to be conducted on hazardous trees that threatened PG&E's overhead lines. Routine
24 patrols involved patrolling and conducting tree work along PG&E's high-voltage
25 distribution lines to comply with CPUC General Order 95, Rule 35, and Public
26 Resources Code sections 4292 and 4293.

27 27. A CEMA patrol or Routine patrol consisted of pre-inspection, tree work,

1 and quality control analysis of the pre-inspection and tree work.

2 28. PG&E outsourced the entirety of these functions to third-party
3 vendors—the VM Defendants—that specialized in pre-inspection, tree work, or
4 quality control.

5 29. PG&E required onboarding or training to be completed by each VM
6 Defendant. Pursuant to contracts between PG&E and the VM Defendants, it is each
7 VM Defendant's responsibility to train its workforce.

8 30. Each year, PG&E spends several hundred million dollars on vegetation
9 management. As part of the vegetation management planning process, PG&E
10 determines annually the number of planned trees that need to be maintained, as well
11 as the annual pre-inspection time. To ensure reliability, pre-inspection contractors
12 are required to meet schedule attainment metrics for both CEMA and Routine
13 patrols.

14 31. The pre-inspection process involves a contractor's pre-inspectors, also
15 referred to as consulting utility foresters ("CUFs") or supervising consulting utility
16 foresters ("SCUFs"), patrolling the lines listed in PG&E's project management
17 database and looking for vegetation conditions that are potentially problematic for
18 PG&E's overhead lines.

19 32. Under PG&E's Vegetation Management Improvement Initiative
20 ("VMII"), pre-inspection contractors can earn an incentive if the actual number of
21 trees identified for work is less than the pre-set target number.

22 33. On January 12, 2012, the CPUC issued Decision 12-01-032, which
23 sought to reduce the risk of fire hazards associated with overhead power lines and
24 communication facilities. The CPUC decision required a determination of the risk of
25 catastrophic fires in the service territory of electrical utilities caused by their
26 overhead electrical facilities and the preparation of a fire prevention plan with an
27

1 effective date of December 21, 2012³. In response to CPUC Decision 12-01-032, PG&E
2 developed a companywide "Fire Prevention Plan."

3 34. PG&E has developed a number of wildfire safety plans since 2012. Each
4 VM Defendant was hired by PG&E to be an integral part of its safety plans, and
5 specifically the implementation and execution of VM Programs to improve safety,
6 reduce the risk of tree failure into PG&E lines, and prevent wildfires.

7 2. The Wildfires

8 (a) 2017 North Bay Fires

9 35. On Sunday, October 8, 2017, tragedy struck communities across
10 Northern California when a series of separate fires began to spark and spread. These
11 deadly fires quickly spread through neighborhoods and destroyed everything in their
12 path, including residences, vegetation, structures, and businesses.

13 36. The North Bay Fires are collectively some of the most destructive fires
14 in California's history. In just a few weeks, the fires caused the deaths of at least 44
15 people, hospitalized over 185 individuals, displaced about 100,000 people who were
16 forced to leave their homes and search for safety, burned over 245,000 acres, and
17 damaged or destroyed an estimated 14,700 homes, 3,600 vehicles, and 728
18 businesses. A summary of the specific and distinct fires relevant to this action is as
19 follows:

20 (i) The Nuns Fire

21 37. The Nuns Fire started near Highway 12, north of Glen Ellen, at around
22 10:00 P.M. on October 8, 2017. It later merged with the Norrbom, Adobe, Partrick,
23 Pressley, and Oakmont fires. Two separate broken power poles were reported at
24 Highway 12 north of Glen Ellen, where the Nuns Fire started. At 10:40 P.M. Sonoma
25 dispatchers were called to respond to a blown transformer at Oak Leaf and Old Oak
26 Lane. The Nuns Fire was the sixth most destructive in the state's history. An Alder
27

28 ³ https://www.pge.com/notes/rates/tariffs/tm2/pdf/ELEC_4167-E.pdf

1 tree stem fell onto open wire on PG&E's conductors and started the fire. After
2 merging with the Norrbom, Adobe, Partrick, Pressley and Oakmont/Pythian Fires,
3 the Nuns Fire burned a total of 56,556 acres, destroyed over 1,500 structures, and
4 killed three people.

5 (ii) The Adobe Fire

6 38. The Adobe Fire started on October 8, 2017 at Chateau St. Jean Winery
7 in Kenwood (Sonoma) when a Eucalyptus tree struck power lines on PG&E's Dunbar-
8 1101 12 kV circuit near 8555 Sonoma Highway. The Adobe Fire later merged into the
9 Nuns Fire.

10 (iii) The Partrick Fire

11 39. The Partrick Fire started on October 8, 2017 at 1721 Partrick Road in
12 the city of Napa when a Coast Live Oak tree struck power lines on PG&E's 12 kV
13 conductors. The Partrick Fire merged into the Nuns Fire.

14 (iv) The Norrbom Fire

15 40. The Norrbom Fire started on October 8, 2017 near 16200 Norrbom Road
16 in the city of Sonoma when a Black Oak tree branch failed and hit PG&E's power
17 lines, sparking and igniting the tree and surrounding terrain. The Norrbom Fire
18 later merged into the Nuns Fire.

19 3. VM Defendants' Engagement

20 41. Prior to 2017, each VM Defendant entered into a written contract with
21 PG&E that mandated the provision of vegetation management services. The specific
22 content has been designated as "Confidential" or otherwise restricted from public
23 disclosure in prior litigation involving these defendants. Plaintiff accordingly
24 describes the general terms and obligations imposed by the agreements, all of which
25 are in possession of the defendants.

- 26 a. patrolling distribution and transmission lines to identify and
27 assess required tree work, including such hazardous trees or

portions of trees with the potential to fail and come into contact with high voltage conductors, trees near power lines that could interfere with PG&E lines, vegetation with the potential to grow into the primary conductors before the next annual trim or which is currently causing strain/abrasion of the secondary conductors, or trees which will not hold minimum clearance,

- b. mandates on the required timing of certification and training for inspectors,
- c. prescribing work to be performed,
- d. entering work identified and prescription information into the PG&E Vegetation Management Data Base (VMDB),
- e. editing the data in VMDB and creating work request form(s), and
- f. either undertaking to perform the work requested or assigning the work to other PG&E contractors, as directed by PG&E.

Each VM Defendant is responsible for having a Quality Assurance Auditor to confirm contractual compliance. Such auditor is required to have specific educational or vocational training and experience. The essence of each VM Defendant's contract was to ensure the safe and reliable operation of all PG&E distribution lines in compliance with state laws and regulations.

42. Additionally, each VM Defendant's contract contained a requirement that each respective VM Defendant indemnify and hold harmless PG&E from liability arising from personal injury, property injury/damage, violations of laws, or strict liability imposed by law that is connected in any way with each VM Defendant's performance of or failure to perform under the contract.

43. Additionally, each VM Defendant's contract also obligates it to defend any action, claim, or suit asserting a claim which might be covered by the above indemnity, as well as pay all costs and expenses that may be incurred by PG&E in

1 enforcing the indemnity, including reasonable attorney's fees.

2 44. Each VM Defendant was aware that their contract required it to
3 indemnify PG&E even for liability that was not the result of VM Defendant's
4 negligence so long as the liability was in any way connected with Defendant's
5 performance of or failure to perform under the contract.

6 45. Separate and apart from the indemnity provisions in the VM
7 Defendants' contracts with PG&E, each VM Defendant's contract required Defendant
8 to maintain insurance coverage, including Commercial General Liability insurance,
9 for each occurrence where the VM Defendant's performance under the contract is an
10 any way connected with fire-related liability. It also required each VM Defendant to
11 add PG&E as an "Additional Insured" to its Commercial General Liability coverage
12 requirement with respect to liability arising out of or connected with the work
13 performed by or for each VM Defendant. Each contract did not specify or limit to
14 what insurance policies PG&E was to be added as an Additional Insured; rather,
15 PG&E was to be added as an Additional Insured on each policy covering an instance
16 where each VM Defendant was required to maintain Commercial General Liability
17 insurance. The Pre-Inspection Contract also required that each VM Defendant's
18 insurance policies must specify that Defendant's insurance is primary and that any
19 insurance or self-insurance maintained by PG&E shall not contribute with it.

20 46. Each VM Defendant's contract contains a provision stating that if it fails
21 to add PG&E as an Additional Insured, it must stand in the shoes of its insurance
22 carrier to the same extent as an insurer issuing ISO form occurrence coverage
23 without coverage deletions. Failure to do so, results in further damages, including
24 attorney's fees and punitive damages.

25 47. As part of their contracts, VM Defendants were required to attain
26 schedule requirements on a weekly basis to ensure that trees adjacent to or near
27 PG&E's system lines are adequately inspected. During the term of the contract,

1 however, Defendants continually and repeatedly fell behind their schedule
2 attainment requirements, including leading up to the Wildfires, sometimes by as
3 much as a year. In the North Bay Division alone, in October 2017, more than 3,000
4 trees were two months behind VM Defendants' pre-inspection schedule.

5 48. Moreover, in 2017, PG&E required its pre-inspection contractors,
6 including VM Defendants, to identify 23 percent of the trees marked for treatment to
7 be marked for removal. A removal designation served to both lower the risk of fire by
8 protecting the electrical equipment and by diminishing the need for future tree work
9 on trees with the potential to contact power lines. Yet VM Defendants routinely
10 missed the removal threshold.

11 49. At the time of the Wildfires, VM Defendants' pre-inspectors regularly
12 discussed amongst themselves how far behind schedule Defendants were in
13 complying with their contractual duties to inspect PG&E's power lines for hazardous
14 trees.

15 50. VM Defendants were aware that their pre-inspectors did not have
16 adequate training to identify trees subject to the relevant contractual standards.

17 51. VM Defendants were also aware that their pre-inspectors did not have
18 the contractually-required educational background and/or credentials to comply with
19 the Pre-Inspection Contract. VM Defendants also knew those inspectors were not
20 properly certified as required under the terms of the agreement.

21 52. VM Defendants were aware that their pre-inspectors did not know of or
22 have the requisite knowledge to understand how to determine whether an inspection
23 complied with requisite contractual and industry standards. Despite their awareness,
24 VM Defendants did not test their pre-inspectors' knowledge of the relevant inspection
25 and trimming standards. Nor did they ensure that their pre-inspectors read relevant
26 materials designed to educate them about the relevant inspection and trimming
27 standards.

1 53. VM Defendants were further aware that their pre-inspectors had rushed
2 through their pre-inspection work when they fell behind their scheduled attainment
3 requirements.

4 54. When VM Defendants fell behind schedule, their pre-inspectors would
5 attempt to rush through their work in order to qualify for contractual financial
6 incentives.

7 55. At all times herein alleged, and prior to the Wildfires, each VM
8 Defendant, was aware that if they failed to perform their duties, as required under
9 their agreements with PG&E, to the standard required of an expert in the industry,
10 there was a significant risk of fire, damage to property owned by members of the
11 general public, and the death to members of the general public. The VM Defendants
12 failed to inspect the trees as required under the terms of the contract, specifically
13 including, but not limited to, failing to inspect, prune, remove and identify trees as
14 required by PG&E Vegetation Management program.

15 56. Specifically, each VM Defendant was aware of the significant wildfire
16 risk posed by trees or other vegetation coming into contact with high voltage
17 electrical transmission and distribution lines during high wind events in Northern
18 California. More specifically, each VM Defendant was aware that prior to the
19 Wildfires, the State of California, and in particular the counties affected by the
20 Wildfires, had been in a prolonged state of drought. VM Defendants, and each of
21 them, knew or should have known that the drought conditions had existed for a
22 number of years and that fire danger was at an extraordinarily high level. VM
23 Defendants, and each them, as arborists and vegetation experts, were aware or
24 should have been aware that, at the time of the Wildfires, there was an abundance of
25 undergrowth and other fuels such that the risk of a catastrophic fire was high. Each
26 VM Defendant was aware that there had been a long history of large-scale wildfires
27 ignited during high winds, like the Santa Ana winds, causing trees to fall into PG&E

1 electrical equipment, as well as other utilities' electrical equipment, across
2 California.

3 57. Each VM Defendant knew or should have known that the members of
4 the public were at great risk if they failed to fulfill their duties and perform to the
5 standard of an expert in the utility arborist industry. Each VM Defendant knew that
6 if the lines came into contact with vegetation a fire would likely result and that,
7 given the drought and other weather conditions such as the Santa Ana winds, the
8 resulting fire could cause loss of life, personal injury, significant damage to real and
9 personal property, and other damage to members of the general public. The risk of
10 improperly trimmed or removed trees starting large-scale, costly, and deadly
11 wildfires by failing during high wind events and hitting electrical equipment was
12 well-documented and foreseeable to any reasonable company providing vegetation
13 management services to a utility. As a result of this known danger, each VM
14 Defendant had a heightened duty of care.

15 58. Each VM Defendant held itself out as fully competent to perform and as
16 a professional expert with sufficient expert skill, training, and knowledge to identify
17 and trim or remove dangerous vegetation in close proximity to PG&E's infrastructure
18 and electrical operations. Accordingly, each VM Defendant's conduct should be
19 assessed under such professional standards.

20 59. In addition, each VM Defendant had a duty to properly inspect and
21 identify trees and other vegetation that posed a risk to, or was endangered by,
22 PG&E's electrical lines, to mark such trees and other vegetation for work or removal,
23 and to remove or trim trees and other vegetation. Proper performance of these duties
24 was necessary for each VM Defendant to comply with applicable standards of care,
25 including but not limited to the Public Resources Code, industry standards, and
26 PG&E's policies and procedures.

27 60. Each VM Defendant received lucrative contracts from PG&E to mitigate

1 wildfire risk. Each VM Defendant executed one or more Master Services Agreements
2 ("MSA") with PG&E to provide vegetation management services in support of
3 PG&E's duty to operate its electrical equipment without causing fires. The primary
4 purpose of each MSA was to provide a set of terms, conditions, and requirements that
5 would apply to each VM Defendant's work for PG&E. In most cases, each VM
6 Defendant's work was also governed by a specific Contract Work Authorization
7 ("CWA") entered into under the respective MSA. The work performed by each VM
8 Defendant under the relevant CWA was intended to identify and mitigate the risk of
9 vegetation hitting PG&E transmission and distribution lines during high wind
10 events, and thus reduce the risk of widescale wildfires being ignited by PG&E lines
11 and dangerously spreading uncontrolled through communities across Northern
12 California.

13 61. Each VM Defendant was aware that if it failed to perform its
14 contractual duties to the standard required of a professional expert, a significant risk
15 existed of a catastrophic wildfire causing injury and death to persons within the fire
16 perimeters as well as extraordinary property damage.

17 62. Each VM Defendant undertook the duty to properly and reasonably
18 perform vegetation management work to identify and remediate vegetation issues
19 around PG&E lines.

20 63. Each VM Defendant undertook the duty to use its professional training
21 and experience, best efforts, and reasonable care to protect foreseeable victims of
22 fires caused by PG&E's equipment, namely, Californians in the areas serviced by
23 PG&E's electrical system.

24 64. Each VM Defendant, in performing under its contracts with PG&E,
25 understood and recognized that vegetation management services were for the benefit
26 of both PG&E and the citizens of California, who were at risk of injury and damage
27 from wildfires caused by tress or vegetation coming into contact with or otherwise

1 damaging PG&E's electrical system.

2 65. Each VM Defendant also failed to take contractually required and
3 industry-standard precautions that would have prevented the Wildfires from
4 occurring.

5 4. **PG&E Bankruptcy, Settlement and Assignment of Rights**
6 to the Fire Victim Trust

7 66. Each VM Defendant's respective failure to provide the contracted
8 services to PG&E, or to do so competently, caused devastating financial losses for
9 PG&E in the form of its own equipment losses, as well as liabilities (both via strict
10 liability and otherwise) to third parties who suffered death, personal injury, or
11 property damage as a result of the Wildfires.

12 67. As alleged above, PG&E under the Plan assigned to the Fire Victim
13 Trust the right to bring the Assigned Rights and Causes of Action to provide
14 compensation to victims of the Wildfires, including claims for damages and
15 indemnification on behalf of PG&E.

16 68. Among the claims resolved by the Plan were claims based on any theory
17 of inverse condemnation. (*See In re PG&E, supra*, Docket Entry No. 8053.)

18 69. Inverse condemnation is a legal principle, rooted in the California
19 Constitution whereby utilities such as PG&E are held strictly liable for damage
20 arising from fires caused by utility electrical equipment. (*See Cal. Const., art. I, § 19.*)

21 70. On November 26, 2019, the Bankruptcy Court held that inverse
22 condemnation applied to PG&E for all of the 2017 Northern California Wildfires and
23 the 2018 Camp Fire. (*See In re PG&E, supra*, Docket Entry No. 4895.)

24 71. As the Bankruptcy Court explained: "In short, the California
25 Constitution imposes strict liability in favor of the owner of property that has been
26 taken or damaged through a public use or purpose and does not concern itself with
27 the rights or liabilities of whom or what did the damage. It is a form of strict liability

1 imposed on the party causing, or whose equipment caused, the damage.” (*Id.* at 3.)

2 72. Each VM Defendant’s indemnity obligations to PG&E include, but are
3 not limited to, the obligation to indemnify PG&E for its strict liability associated with
4 inverse condemnation based on the Wildfires. This indemnification obligation, and
5 other indemnification obligations of the VM Defendants, are within the Assigned
6 Rights and Causes of Action assigned to the Trust.

7 73. As part of its Plan, PG&E agreed to settle its wildfire liabilities,
8 including but not limited to inverse condemnation liabilities, to injured third parties,
9 for a total of \$25.5 billion, of which \$13.5 billion was allocated for wildfire victims,
10 \$11 billion was allocated for the subrogated insurers of wildfire victims, and \$1
11 billion was allocated to certain public entities.

12 74. The \$13.5 billion allocated to wildfire victims was distributed to the
13 Trust for individual allocation to wildfire victims through a claims-handling process.

14 75. On July 1, 2020, the assignment of the Assigned Rights and Causes of
15 Action to the Trust became effective under the Plan.

16 76. Each VM Defendant has failed to indemnify PG&E for the damage
17 caused by the Wildfires.

18 77. Claims to recover for each VM Defendant’s failure to add PG&E as an
19 Additional Insured under its general liability policies as required under each VM
20 Defendant’s contracts with PG&E, are within the Assigned Rights and Causes of
21 Action assigned to the Trust.

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **For Breach of Contract – Performance and Express Contractual Indemnity** 25 **(Against All VM Defendants)**

26 78. The Trustee incorporates by reference, as though set forth in full herein,
27 paragraphs 1 through 77 of this Complaint.

1 79. Each VM Defendant and PG&E entered into a series of written
2 contracts in the form of MSAs and CWAs, as herein alleged.

3 80. PG&E performed all, or substantially all, of the significant conditions,
4 covenants, promises, and duties to be performed by it under its contracts with the
5 VM Defendants, or such obligations have been excused.

6 81. All of the conditions that were required for each VM Defendant to
7 perform under its respective contracts with PG&E have been satisfied and occurred.

8 82. A material term of each contract with the VM Defendants was that they
9 would perform vegetation management work to identify, remove or trim vegetation
10 within striking distance of PG&E's transmission and distribution lines pursuant to
11 regulatory and industry standards to prevent vegetation from coming into contact
12 with, or other damaging, PG&E equipment, especially during high wind events. VM
13 Defendants were aware that improperly managed vegetation presented a significant
14 risk of igniting wildfires.

15 83. A material term of each contract with the VM Defendants was that they
16 would perform vegetation management work to comply with regulatory requirements
17 of vegetation utility line clearance, including but not limited to:

- 18 a. pre-clearance inspection of PG&E transmission and distribution
19 lines to identify vegetation needing trimming, pruning or
20 removal,
- 21 b. timely clearance of vegetation in close proximity to PG&E
22 transmission and distribution lines identified as needing
23 trimming, pruning or removal,
- 24 c. proper training of employees to recognize hazardous and
25 dangerous trees and vegetation in close proximity to PG&E
26 transmission and distribution lines, and
- 27 d. compliance with vegetation management laws and regulations.

1 84. An express or implied term of each contract with the VM Defendants
2 was that they would provide competent vegetation management services to PG&E,
3 pursuant to its contractual obligations, so as to identify and mitigate vegetation that
4 posed a risk to PG&E lines, in compliance with the applicable statutes, regulations,
5 and standards.

6 85. The Wildfires were a direct, proximate, and legal result of each VM
7 Defendant's breach of the express and implied terms of its contracts with PG&E by
8 failing to perform vegetation management services with diligence and reasonable
9 care.

10 86. Each VM Defendant further failed to provide competent vegetation
11 management services to PG&E, pursuant to its contractual obligations to ensure the
12 proper maintenance and safe operation of PG&E's electrical equipment in compliance
13 with the applicable statutes, regulations and standards, resulting in the Wildfires.

14 87. Each VM Defendant's breaches under its respective contracts also
15 include failure to trim, prune or remove trees and other vegetation that posed a risk
16 of starting a fire by coming into contact or damaging PG&E's transmission or
17 distribution lines. Defendants further failed to institute or recommend increasing the
18 frequency and quality of inspections and line clearance as part of PG&E's VM
19 Program. VM Defendants' failures resulted in the Wildfires.

20 88. As a result of each VM Defendant's failure to perform its express and
21 implied contractual duties, PG&E has suffered damages, including incurring liability
22 for personal injury, wrongful death, and property damage caused by the Wildfires.
23 PG&E's liabilities arose from claims against it based on general negligence in the
24 management of the electrical infrastructure, negligent violations of law, strict
25 liability imposed by law, including inverse condemnation, damages incurred by
26 subrogated insurers who covered claims made by wildfire victims, and damages
27 sustained by certain public entities.

1 89. Pursuant to the Plan, on the Effective Date, PG&E settled its liability
2 from the Wildfires to such individuals and entities by, among other things, funding
3 and committing to fund the Fire Victim Trust.

4 90. Each VM Defendant, pursuant to its contracts with PG&E, is required
5 to indemnify PG&E for liability for personal injury and wrongful death claims, as
6 well as all personal damage actions against PG&E arising from each VM Defendant's
7 activity "connected in any way" to their vegetation management services and
8 performance under the contracts.

9 91. PG&E, pursuant to the Plan, assigned to the Fire Victim Trust the right
10 to recover from each VM Defendant its indemnity obligations to PG&E.

11 92. Additionally, each VM Defendant had a contractual duty to PG&E to
12 protect PG&E's electrical equipment from contact with or damage from trees and
13 other vegetation by taking due care to competently identify and remove or remediate
14 hazardous vegetation next to PG&E's lines.

15 93. Each VM Defendant reasonably could have foreseen that its failure to
16 meet its duties under its contracts would result in wildfires that would destroy
17 PG&E's electrical equipment, which occurred and caused PG&E to suffer damages.

18 94. As a result of each VM Defendant's breach of its contractual duties,
19 PG&E suffered damages in an amount to be proven at trial.

20 95. PG&E, pursuant to the Plan, assigned to the Fire Victim Trust the right
21 to recover damages from the VM Defendants, for the benefit of the victims of the
22 Wildfires, all damages suffered by PG&E based on the VM Defendant Consultants'
23 above-described breaches of their contractual duties, including their contractual
24 obligations to indemnify PG&E.

25 ////

26 ////

27 ////

SECOND CAUSE OF ACTION

For Breach of Contract - Insurance

(Against All VM Defendants)

96. The Trustee incorporates by reference, as though set forth in full herein, paragraphs 1 through 95 of this Complaint.

97. Each of the contracts between the VM Defendants and PG&E required that each VM Defendant maintain insurance coverage, including Commercial General Liability insurance with specified minimum coverage limits, and that VM Defendants add PG&E as an "Additional Insured" to their respective Commercial General Liability policies.

98. On information and belief, each VM Defendant breached its contracts by failing to ensure that PG&E was added as an "Additional Insured" to VM Defendants' respective Commercial General Liability policies.

99. On information and belief, PG&E timely tendered an indemnity demand to each VM Defendant's general liability insurers and demanded that they indemnify PG&E as an additional insured under the general liability policies.

100. None of the VM Defendants' insurers have paid any portion of the damages that PG&E has incurred. Consequently, PG&E has been deprived of the insurance coverage that each VM Defendant was obligated to provide under its contracts.

101. Because VM Defendants' insurance carriers have failed or refused to indemnify PG&E pursuant to an additional insured endorsement, each VM Defendant is obligated to stand in the place of its insurers and indemnify PG&E. Each VM Defendant breached its duty by failing to indemnify PG&E for any portion of the damages that PG&E incurred in settling the Wildfire claims and funding the Trust.

102. The Trust's damages include the amounts that PG&E would have

1 received under the VM Defendants' insurance policies for indemnity with respect to
2 the litigation arising out of the Wildfires had the VM Defendants' general liability
3 policy insurers acknowledged PG&E as an Additional Insured and performed the
4 duties they owed to PG&E as an Additional Insured.

5 103. Given that VM Defendants stand in the place of their insurers, the
6 Trust is entitled to an award of attorneys' fees and punitive damages pursuant to the
7 contract with PG&E.

8 **THIRD CAUSE OF ACTION**

9 **For Breach of Implied Covenant of Good Faith and Fair Dealing**

10 **(Against All VM Defendants)**

11 104. The Trustee incorporates by reference, as though set forth in full herein,
12 paragraphs 1 through 103 of this Complaint.

13 105. Each VM Defendant and PG&E entered into written contracts in the
14 form of MSAs and CWAs, as herein alleged.

15 106. PG&E performed all of the conditions required of it under the contracts
16 with each VM Defendants.

17 107. All of the conditions required for each VM Defendant to perform under
18 the contract had occurred.

19 108. In each PG&E contract with each VM Defendant, California law implies
20 a covenant of good faith and fair dealing, pursuant to which neither party may take
21 or fail to take action that would deprive the other party of the intended benefits of
22 the contract. In this case, the Defendant Consultants impliedly covenanted that in
23 performing vegetation management services each VM Defendant would focus its
24 efforts on the overall safety of the electrical system, and that all work on aspects of
25 the system would be in the context of overall planning for safety. PG&E had a right
26 under each such contract to receive the benefit of the most experienced and qualified
27 expertise on vegetation management services, which is what VM Defendants

1 purported to be selling, to mitigate its own risk and exposure and protect the safety
2 of Californians.

3 109. Each VM Defendant breached the implied covenant of good faith and
4 fair dealing when it stalled or otherwise delayed critical vegetation clearance work
5 without examining the overall impact that its delay would have on the risk of
6 vegetation-caused electrical grid fires. Each VM Defendant failed to execute its
7 vegetation management services such that it was capable of keeping up with the
8 amount of vegetation management work needed for PG&E to safely operate the grid,
9 thereby denying PG&E of the expertise for which it had bargained.

10 110. By reason of the VM Defendants' breach of the implied covenant of good
11 faith and fair dealing, PG&E suffered damages. PG&E has assigned to the Trust the
12 right to recover these damages for the benefit of the victims of the Wildfires.

13 **FOURTH CAUSE OF ACTION**

14 **For Equitable Indemnity (Comparative Fault Between and Among** 15 **Tortfeasors)** 16 **(Against All VM Defendants)**

17 111. The Trustee incorporates by reference, as though set forth in full herein,
18 paragraphs 1 through 110 of this Complaint.

19 112. As alleged herein, VM Defendants were negligent in the provision of
20 their vegetation management services to PG&E.

21 113. The negligent conduct of each VM Defendant was a substantial factor in
22 causing PG&E's equipment to ignite the Wildfires, which resulted in damage to life
23 and property and caused PG&E to incur billions of dollars in liability in funding the
24 Plan. PG&E has assigned to the Trust the right to recover these damages for the
25 benefit of the victims of the Wildfires.

26 114. Equity requires that each VM Defendant pay a proportionate share of
27 damages corresponding to its percentage of responsibility.

FIFTH CAUSE OF ACTION

For Negligence

(Against All VM Defendants)

115. The Trustee incorporates by reference, as though set forth in full herein, paragraphs 1 through 114 of this Complaint.

116. Each VM Defendant entered into contracts with PG&E, whereby each voluntarily and deliberately undertook the duty to act competently to identify and correct unsafe vegetation conditions, so as to ensure the proper maintenance and safe operation of PG&E's electrical system in compliance with the applicable statutes, regulations, and standards.

117. It was reasonably foreseeable that each VM Defendant's vegetation management services would directly impact Californians who required protection from deadly and devastating wildfires caused by vegetation hitting PG&E's electrical equipment during high wind events. Accordingly, each VM Defendant assumed a duty of care to both PG&E and to the foreseeable victims of wildfires caused by vegetation coming into contact with or otherwise damaging PG&E's electrical infrastructure.

118. Each VM Defendant breached its duty by failing to use reasonable care in the vegetation management work it performed, including by failing to identify, clear or mitigate vegetation issues that presented a significant risk of igniting wildfires. Specifically, each VM Defendant breached its duties by failing to (1) inspect trees and other vegetation so as to ensure compliance with the applicable statutes, regulations and standards; (2) timely and properly trim and remove vegetation; (3) properly identify trees and other vegetation that posed a threat to PG&E's electrical lines; and (4) train their employees to recognize hazardous and dangerous trees and other vegetation. Each VM Defendant also breached its duties by participating in a program that offered incentives to its employees for reducing the number of trees and

1 other plants that they marked trimming, removal, or other vegetation management
2 work.

3 119. Each VM Defendant further breached its duty by failing to use
4 reasonable care to identify and correct unsafe conditions to ensure the proper
5 maintenance and safe operation of PG&E's electrical equipment in compliance with
6 the applicable statutes, regulations, and standards, including with respect to the
7 dangerous conditions that caused the Wildfires.

8 120. As a result of VM Defendants' negligence in rendering vegetation
9 management services, Santa Ana winds caused various trees to come into contact
10 with PG&E electrical lines, which resulted in the Wildfires.

11 121. The negligence of each VM Defendant was a substantial contributing
12 cause of the Wildfires, resulting in catastrophic loss of life and property.

13 122. As a result of each VM Defendant's negligence, PG&E incurred liability
14 for personal injury, wrongful death, and property damage caused by the Wildfires.
15 PG&E's liabilities arose from claims against it based on general negligence in the
16 management of the electrical infrastructure, negligent violations of law, strict
17 liability imposed by law, including inverse condemnation, and damages incurred by
18 subrogated insurers who covered claims made by wildfire victims, and damages
19 suffered by certain public entities.

20 123. PG&E settled its liability to such individuals and entities as part of the
21 Plan, thereby suffering damages. In addition, PG&E suffered damages to its
22 equipment resulting from the Wildfires. Under the Plan, PG&E assigned to the Trust
23 the right to recover these damages as alleged in this Complaint.

24 **SIXTH CAUSE OF ACTION**

25 **For Professional Negligence**

26 **(Against All VM Defendants)**

27 124. The Trustee incorporates by reference, as though set forth in full herein,

1 paragraphs 1 through 123 of this Complaint.

2 125. Each VM Defendant represented to PG&E that it was a professional
3 expert vegetation management with specialized training and expert skill in
4 identifying and trimming and removing dangerous vegetation in close proximity to
5 utility infrastructure.

6 126. Each VM Defendant owed a duty to PG&E, as well as to reasonably
7 foreseeable fire victims of a PG&E-caused wildfire, to exercise the skill and care that
8 a skilled professional would use in the work performed for PG&E.

9 127. By reason of the foregoing, each VM Defendant breached its professional
10 duty of care, and failed to exercise the level of skill, care, and diligence that a
11 reasonable professional would exercise to assist PG&E to prevent wildfires resulting
12 from its electrical infrastructure.

13 128. Each VM Defendant failed to perform its services for PG&E in accord
14 with professional standards of care and their acts and omissions were a substantial
15 contributing cause of the Wildfires and resulting damages, as alleged herein. Under
16 the Plan, PG&E has assigned to the Trust the right to recover these damages from
17 each VM Defendant for the benefit of the victims of the Wildfires.

18 SEVENTH CAUSE OF ACTION

19 Unjust Enrichment

20 (Davey Resource Group, Inc., Davey Tree Expert Company; Davey Tree
21 Surgery Company; The Original Mowbrays Tree Service Inc.; Western
22 Environmental Consultants, Inc.; and Does 1 through 25)

23 129. The Trustee incorporates by reference, as though set forth in full herein,
24 paragraphs 1 through 128 of this Complaint.

25 130. Each Defendant failed to provide competent services to PG&E,
26 breaching to its contractual obligations, so as to ensure operation of PG&E's
27 electrical equipment in compliance with the applicable statutes, regulations and

1 standards, thereby causing the Wildfires.

2 131. As a result of each Defendant's failures, PG&E suffered damages as
3 alleged herein.

4 132. Nevertheless, and despite their failures to perform its obligations and
5 duties to prevent PG&E equipment from causing wildfires, Defendants received
6 substantial sums from PG&E for 'emergency' work authorized in the aftermath of the
7 2017 fires.

8 133. Accordingly, each Defendant was unjustly enriched at PG&E's expense
9 because each received the financial benefit of being awarded contracts with PG&E to
10 perform additional vegetation management work under higher rates, and on
11 information and belief, to perform work that should have already been performed
12 under non-emergency vegetation management contracts.

13 **PRAYER FOR RELIEF**

14 Wherefore, Plaintiff John K. Trotter, Jr., Trustee of the PG&E Fire Victim
15 Trust, prays for judgment against each VM Defendant as follows:

- 16 a. For damages according to proof at trial;
- 17 b. For complete or partial indemnity for the obligations and
18 damages incurred and Assigned to the Trustee;
- 19 c. For pre-judgment interest;
- 20 d. For attorney's fees and punitive damages according to
21 Defendants' contracts with PG&E;
- 22 e. For attorneys' fees, expert fees, consultant fees, and other
23 litigation expenses, as permitted by law;
- 24 f. For costs of suit herein;
- 25 g. For such other and further relief as the Court may deem just and
26 proper.
- 27

1 DEMAND FOR JURY TRIAL

2 Plaintiff hereby demands a jury trial.

3 Dated: January 28, 2021

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