

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

In re:

Peabody Energy Corporation, et al.,  
Reorganized Debtors.

Case No. 16-42529-399  
CHAPTER 11

Jointly Administered

Hearing Date and Time:  
September 19, 2017 at 10:00 a.m.  
(Central)

Response Deadline:  
September 12, 2017 at 4:00 p.m.  
(Central)

Hearing Location:  
United States Courthouse  
Thomas F. Eagleton Federal Building  
5th Floor, North Courtroom  
111 South Tenth Street  
St. Louis, Missouri 63102

**MOTION OF REORGANIZED PEABODY ENERGY  
CORPORATION FOR ENTRY OF AN ORDER ENFORCING THE DISCHARGE  
AND INJUNCTION SET FORTH IN THE CONFIRMATION ORDER AND PLAN**

**TABLE OF CONTENTS**

	<b>Page</b>
I. Preliminary Statement.....	2
II. Jurisdiction and Venue.....	4
III. Background.....	6
A. General Case History .....	6
B. The California State Actions.....	6
C. Notice of Important Information During the Debtors' Bankruptcy Cases .....	8
1. Notice of Commencement .....	8
2. Notice of Prepetition Claims Bar Dates.....	9
3. Notice of Disclosure Statement Hearing.....	10
4. Notice of Confirmation Hearing .....	10
5. Notice of Effective Date of Plan and Administrative Claims Bar Date.....	11
D. Relevant Provisions of the Plan and Confirmation Order .....	12
1. Applicable Discharge and Injunction Provisions.....	12
a. Complete Satisfaction, Discharge and Release.....	12
b. Discharge and Termination.....	12
c. Injunction .....	13
2. Provisions Relating to the EPA Settlement .....	14
a. Other Provisions Regarding Release; Discharge; Injunction.....	14
3. Relevant Definitions .....	15
a. Definition of "Claim" .....	15
b. Definition of "Environmental Law".....	15
c. Definition of "Governmental Unit" .....	15
d. Definition of "Liabilities" .....	16
e. Definition of "Reorganized Debtors".....	16
IV. Basis for Relief Requested.....	16
A. The PEC Causes of Action Violate the Plan's and Confirmation Order's Discharge and Injunction Provisions .....	16
1. The PEC Causes of Action Constitute Both Claims and Liabilities.....	18
2. The PEC Causes of Action Arose Prior to the Plan's Effective Date .....	19
B. The EPA Settlement Is Inapplicable to the PEC Causes of Action .....	21

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
1. Section V.E.6.a.i.A of the Plan Is Inapplicable to the PEC Causes of Action .....	22
a. The PEC Causes of Action Do Not Fall Within the Definition of "Environmental Law" .....	23
b. The PEC Causes of Action Are Not Based on PEC's Post-Effective Date Relationship to Real Property or Mining Operations .....	26
2. Section V.E.6.a.i.B of the Plan Is Inapplicable to the PEC Causes of Action .....	28
C. The Plaintiffs Received Proper and Sufficient Notice of the Bar Dates .....	30
V. Reservation of Rights .....	32
VI. Notice .....	32
VII. No Prior Request .....	33

**TABLE OF AUTHORITIES**

	<b>Page</b>
<b>CASES</b>	
<u>Am. Elec. Power Co. v. Connecticut</u> , 564 U.S. 410 (2011).....	24
<u>Cal Dep't of Health Servs. v. Jensen (In re Jensen)</u> , 995 F.2d 925 (9th Cir. 1993) .....	21
<u>Charter Asset Corp. v. Victory Markets, Inc. (In re Victory Markets, Inc.)</u> , 221 B.R. 298 (B.A.P. 2d Cir. 1998).....	23
<u>Chemetron Corp. v. Jones</u> , 72 F.3d 341 (3d Cir. 1995).....	32
<u>Creator's Way Associated Labels, Inc. v. Mitchell (In re Mitchell)</u> , 249 B.R. 55 (Bankr. S.D.N.Y. 2000).....	18, 19
<u>Dahlin v. Archer-Daniels-Midland Co.</u> , 2015 WL 11675667 (S.D. Iowa Sept. 29, 2015) .....	31
<u>Evans v. Dearborn Mach. Movers Co., Inc.</u> , 200 F.2d 125 (6th Cir. 1953) .....	4
<u>Hughes v. Davidson-Hues</u> , 330 S.W.3d 114 (Mo. Ct. App. 2010).....	27
<u>In re Apex Oil Co.</u> , 91 B.R. 860 (Bankr. E.D. Mo. 1988) (Schermer, J.) .....	30
<u>In re Eagle-Picher Indus., Inc.</u> , 255 B.R. 700 (Bankr. S.D. Ohio 2000).....	25
<u>In re Flight Transp. Corp. Sec. Litig.</u> , 874 F.2d 576 (8th Cir. 1989) .....	18
<u>In re New York Trap Rock Corp.</u> , 153 B.R. 642 (Bankr. S.D.N.Y. 1993).....	32
<u>In re Pan Am. Hosp. Corp.</u> , 364 B.R. 832 (Bankr. S.D. Fla. 2007) .....	30

In re Patriot Coal Corp.,  
539 B.R. 812 (Bankr. E.D. Mo. 2015).....4

In re President Casinos, Inc.,  
418 B.R. 332 (Bankr. E.D. Mo. 2009).....30

LTV Corp., LTV v. Back (In re Chateaugay Corp.),  
201 B.R. 48 (Bankr. S.D.N.Y. 1996).....5

Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.),  
304 F.3d 223 (2d Cir. 2002).....4

McSherry v. Trans World Airlines, Inc.,  
81 F.3d 739 (8th Cir. 1996) .....20

Missouri v. U.S. Bankr. Court for E. D. of Arkansas,  
647 F.2d 768 (8th Cir. 1981) .....29

Mullane v. Cent. Hanover Bank & Trust Co.,  
339 U.S. 306 (1950).....31

O'Connor v. Great Lakes Pipe Line Co.,  
63 F.2d 523 (8th Cir. 1933) .....25

Rederford v. U.S. Airways, Inc.,  
589 F.3d 30 (1st Cir. 2009).....19

Sanchez v. Northwest Airlines, Inc.,  
659 F.3d 671 (8th Cir. 2011) .....18, 20

Travelers Indem. Co. v. Bailey,  
557 U.S. 137 (2009).....4

United States v. Commonwealth Cos. (In re Commonwealth Cos.),  
913 F.2d 518 (8th Cir. 1990) .....29

Williams v. Citifinancial Mortgage Co. (In re Williams),  
256 B.R. 885 (8th Cir. B.A.P. 2001).....4

Williams v. Placid Oil Co. (In re Placid Oil Co.),  
753 F.3d 151 (5th Cir. 2014) .....30, 31

**STATUTES**

11 U.S.C. § 101(5) .....15  
11 U.S.C. § 101(27).....15, 16  
11 U.S.C. § 105.....1  
11 U.S.C. § 362(b)(4) .....29  
11 U.S.C. § 524.....1  
11 U.S.C. § 1141.....1, 17  
11 U.S.C. § 1142.....1  
28 U.S.C. § 157.....4  
28 U.S.C. § 1334.....4  
28 U.S.C. § 1408.....5  
28 U.S.C. § 1409.....5

**OTHER AUTHORITIES**

Black's Law Dictionary (10th ed. 2014) .....25

Pursuant to sections 105, 524, 1141 and 1142 of title 11 of the United States Code (the "Bankruptcy Code"), Reorganized Peabody Energy Corporation ("PEC") files this motion (the "Motion") requesting the entry of an order (a) enforcing the discharge and injunction provisions set forth in the *Order Confirming Second Amended Joint Plan of Reorganization of Debtors and Debtors in Possession as Revised on March 15, 2017* [Docket No. 2763] (the "Confirmation Order") and the *Second Amended Joint Plan of Reorganization of Debtors and Debtors in Possession as Revised on March 15, 2017* (the "Plan") attached as Appendix I to the Confirmation Order in respect of three Complaints (as defined below) filed in the California State Courts (as defined below) and subsequently removed to the California Federal Court (as defined below); and (b) granting other related relief. In particular, for the reasons described herein, PEC seeks the entry of an order enjoining the Plaintiffs (as defined below) from prosecuting the PEC Causes of Action (as defined below), and requiring the Plaintiffs to dismiss with prejudice the Complaints<sup>1</sup> with respect to PEC. In support of this Motion, PEC respectfully represents as follows:<sup>2</sup>

---

<sup>1</sup> The Complaints are as follows:

- (a) The complaint (the "San Mateo Complaint"), attached hereto as Exhibit A, filed by the County of San Mateo ("San Mateo"), individually and on behalf of the people of the State of California (the "People" and, with San Mateo, the "San Mateo Plaintiffs"), in the California Superior Court of the County of San Mateo (the "San Mateo Court"), commencing the action captioned: *County of San Mateo v. Chevron Corp., et al.*, Case No. 17 CIV-03222;
- (b) The complaint (the "Imperial Beach Complaint"), attached hereto as Exhibit B, filed by the City of Imperial Beach ("Imperial Beach"), individually and on behalf of the People (collectively with Imperial Beach, the "Imperial Beach Plaintiffs"), in the California Superior Court of the County of Contra Costa (the "Contra Costa Court"), commencing the action captioned: *City of Imperial Beach v. Chevron Corp., et al.*, Case No. C17-01227; and
- (c) The complaint (the "Marin Complaint" and, collectively with the San Mateo Complaint and the Imperial Beach Complaint, the "Complaints"), attached hereto as Exhibit C, filed by the County of Marin ("Marin"), individually and on behalf of the People (collectively with Marin, the San Mateo Plaintiffs and the Imperial Beach Plaintiffs, the "Plaintiffs"), in the California Superior Court of the County of Marin (collectively with the San Mateo Court and the Contra Costa Court, the "California State Courts"), commencing the action captioned: *County of Marin v. Chevron Corp., et al.*, Case No. CIV17-02586.

## I. PRELIMINARY STATEMENT

1. In the Complaints, the Plaintiffs contend that PEC's activities with respect to the sale of coal have raised carbon dioxide levels, thereby causing sea levels to rise and damaging the Plaintiffs' property in California.<sup>3</sup> Based on these allegations, less than four months after PEC emerged from chapter 11, the Plaintiffs have sued PEC, among others, for damages under various tort theories (i.e., nuisance, strict liability, negligence and trespass) and have also requested "equitable relief to abate the nuisances [caused by PEC's sale of coal]." Putting aside the Complaints' lack of underlying legal merit, the Complaints themselves appear to represent nothing more than the Plaintiffs' decision to "wait out" PEC's bankruptcy cases in an attempt to avoid the discharge and injunction provisions contained in the Plan and Confirmation Order. See Plan, §§ V.E.2.a, V.E.2.b, V.E.3.a; Confirmation Order, ¶¶ 22-23, 29-30. Further, the Plaintiffs' attempt to halt PEC's business operations (by enjoining a coal mining company from selling coal) would eviscerate the successful reorganization of PEC in this Court, which preserved the jobs of approximately 6,700 employees and substantial retiree and other employee benefits.

2. The Plaintiffs' Complaints seek to obliterate PEC's fresh start by requesting damages and equitable relief against PEC based upon PEC's *prepetition* conduct. Indeed, the allegations in the Complaints that support the PEC Causes of Action all occurred

---

After the Plaintiffs filed the Complaints in the California State Courts, the actions underlying the Complaints were subsequently removed to U.S. District Court for the Northern District of California (the "California Federal Court"), where such actions are currently pending with the following case numbers: (a) 17-cv-04929-MEJ; (b) 4:17-cv-04934-KAW; and (c) 17-cv-04935-MEJ.

<sup>2</sup> A copy of the proposed order will be made available on the Debtors' (as defined below) case website at <http://www.kcellc.net/peabody>.

<sup>3</sup> Capitalized terms used but not defined in this Preliminary Statement have the meanings ascribed to such terms in the rest of this Motion.

*between 1965 and 2015*—well before PEC commenced bankruptcy proceedings on April 13, 2016 and even further before PEC emerged from bankruptcy on April 3, 2017.

3. PEC's Plan and this Court's Confirmation Order unambiguously provide that such *pre-Effective Date* claims were discharged when the Plan became effective on April 3, 2017. Specifically, the Plan and Confirmation Order provide that "Confirmation will, as of the Effective Date . . . *discharge the Debtors from all Claims or other Liabilities that arose on or before the Effective Date.*" See Plan, § V.E.2.a; Confirmation Order, ¶ 29 (emphasis added). Because the PEC Causes of Action constitute both "Claims" and "Liabilities" that arose "before the Effective Date," they are discharged and enjoined under the Plan and Confirmation Order.

4. Contrary to what the Plaintiffs are likely to assert, nothing in PEC's settlement with the U.S. Environmental Protection Agency (the "EPA") concerning the EPA's formal and informal confirmation objections (the "EPA Settlement") alters this fact.<sup>4</sup> The EPA Settlement, and the Plan provisions relating thereto, exist largely for the purpose of making clear that the EPA and other similar governmental bodies tasked with enforcing environmental laws and regulations that relate to PEC's ongoing mining operations are able to enforce such laws and regulations with respect to PEC's *post-Effective Date* conduct. It would be illogical to interpret the EPA Settlement in any other way, especially one that would allow the Plaintiffs to recover damages or obtain other relief based solely upon PEC's *pre-Effective Date* mining operations. Allowing the Plaintiffs to pursue the PEC Causes of Action would impermissibly violate the Plan and deviate from treatment afforded to other pre-Effective Date litigation claims under the Plan.

---

<sup>4</sup> The United States Department of Interior, the states of Illinois, Kansas, Missouri, Montana and Oklahoma, the Eastern Shawnee Tribe of Oklahoma, the Ottawa Tribe, the Peoria Tribe of Indians of Oklahoma, the Seneca-Cayuga Nation, the Wyandotte Nation, the Miami Tribe of Oklahoma and the Cherokee Nation joined the EPA in the filing of the *United States', States', and Tribes' Objection to Debtors' Second Amended Joint Plan of Reorganization* [Docket No. 2648].

5. Even though the relief requested in the Complaints is meritless, any use of judicial resources to adjudicate the underlying merits of the Complaints in light of the Plan injunction and this Court's Confirmation Order is unnecessary and wasteful. As set forth in greater detail below, the plain terms of the Plan and Confirmation Order prevent the Plaintiffs from prosecuting the PEC Causes of Action.

## II. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334, Article IX of the Plan and Paragraph III.W of the Confirmation Order. The instant matter also is a core proceeding under 28 U.S.C. § 157(b).

7. "Bankruptcy Court[s] plainly [have] jurisdiction to interpret and enforce [their] own prior orders." Travelers Indem. Co. v. Bailey, 557 U.S. 137, 151 (2009) (citing Local Loan Co. v. Hunt, 292 U.S. 234, 239 (1934)); Williams v. Citifinancial Mortgage Co. (In re Williams), 256 B.R. 885, 892 (8th Cir. B.A.P. 2001) ("It is . . . well established that bankruptcy courts retain jurisdiction after a case has been dismissed or closed to interpret or enforce previously entered orders."); Evans v. Dearborn Mach. Movers Co., Inc., 200 F.2d 125, 128 (6th Cir. 1953) (finding that a bankruptcy court has the inherent power to enforce its own judgments). "A bankruptcy court retains post-confirmation jurisdiction to interpret and enforce its own orders, particularly when disputes arise over a bankruptcy plan of reorganization." Luan Inv. S.E. v. Franklin 145 Corp. (In re Petrie Retail, Inc.), 304 F.3d 223, 230 (2d Cir. 2002); see also In re Patriot Coal Corp., 539 B.R. 812, 818 (Bankr. E.D. Mo. 2015) (court held that it had jurisdiction to enforce debtor's confirmation order, stating that "[a] court retains jurisdiction to enforce its own orders and this includes bankruptcy courts that retain jurisdiction to enforce their order").

8. "The retention of jurisdiction by the bankruptcy court after confirmation is particularly appropriate where, as here, the bankruptcy court expressly retains jurisdiction under the plan." LTV Corp., LTV v. Back (In re Chateaugay Corp.), 201 B.R. 48, 66 (Bankr. S.D.N.Y. 1996). This Court's Confirmation Order provides:

The Bankruptcy Court properly retains exclusive jurisdiction over the matters set forth in Article IX of the Plan and, subject to Article IX of the Plan, the Bankruptcy Court properly retains exclusive jurisdiction over (1) any matter arising under the Bankruptcy Code, (2) arising in, or related to, the Chapter 11 Cases, the Plan or this Order after Confirmation thereof and after the Effective Date and (3) any other matter or proceeding that is within the Bankruptcy Court's jurisdiction pursuant to 28 U.S.C. § 1334 or 28 U.S.C. § 157.

Confirmation Order, ¶ III.W. Notably, Article IX of the Plan provides that this Court retains jurisdiction to, among other things:

Enter such orders as may be necessary or appropriate to implement or consummate the provisions of the Plan and all contracts, instruments, releases and other agreements or documents entered into or delivered in connection with the Plan, the Disclosure Statement and the Confirmation Order; . . .

Resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of the Plan or any contract, instrument, release or other agreement or document that is entered into or delivered pursuant to the Plan[;] . . . [and]

Hear and determine any matter, case, controversy, suit, dispute, or Causes of Action regarding the existence, nature and scope of the releases, injunctions, and exculpation provided under the Plan, and issue injunctions, enforce the injunctions contained in the Plan and the Confirmation Order . . . .

Plan, §§ IX.F, IX.G, IX.I.

9. In addition to this Court possessing the requisite jurisdiction, this Court also is the appropriate venue pursuant to 28 U.S.C. §§ 1408 and 1409.

### **III. BACKGROUND**

#### **A. General Case History**

10. On April 13, 2016 (the "Petition Date"), PEC and certain of its direct and indirect subsidiaries (collectively, the "Debtors," and, on and after the Effective Date, the "Reorganized Debtors") commenced their respective chapter 11 cases. On March 16, 2017, this Court held a hearing in respect of confirmation of the Plan. On March 17, 2017, this Court entered the Confirmation Order. The Plan became effective on April 3, 2017 at 4:01 p.m. (ET) (the "Effective Date").

#### **B. The California State Actions**

11. On July 17, 2017, less than four months after the occurrence of the Effective Date, the Plaintiffs filed the three Complaints in the California State Courts against PEC and served the Complaints on other corporate entities with no relationship to PEC (collectively with PEC, the "Defendants"). The actions underlying the Complaints were subsequently removed to the California Federal Court, and are currently pending in the California Federal Court.

12. The Complaints assert various causes of action against PEC (the "PEC Causes of Action") and similar causes of action against the other Defendants. The Defendants consist of numerous major nationwide energy extractors, producers, refiners and distributors, including ExxonMobile Corp., Shell Oil, Arch Coal, Inc. and Marathon Oil, among others. The Plaintiffs allege that:

Defendants' [*sic*] are responsible for a substantial portion of the total greenhouse gases emitted between 1965 and 2015. Defendants, individually and collectively, are responsible for extracting, refining, processing, producing, promoting and marketing fossil fuel products, the normal and intended use of which has led to the emission of a substantial percentage of the total volume of greenhouse gases released into the atmosphere since 1965.

Complaints, ¶ 14.

13. The Plaintiffs allege the Defendants are "directly responsible for 227.6 gigatons of CO<sub>2</sub> emissions between 1965 and 2015, representing 20.3% of total emissions" during this time period. Complaints, ¶ 7. The Plaintiffs further allege that such emissions will lead to "extreme flooding" on California's Pacific coast by 2050 and rising sea levels in the Plaintiffs' jurisdictions. Complaints, ¶ 8.

14. The Complaints seek money damages and to "abate the nuisance caused by sea level rise in [San Mateo's, Imperial Beach's and Marin's] jurisdiction[s]." Complaints, ¶ 12.

15. The Complaints generally take issue with PEC's pre-Effective Date conduct, although they also contain vague allegations that PEC's coal shipments in California may be continuing. Complaints, ¶ 22. First, the Plaintiffs allege that PEC exported "substantial volumes of coal through coal shipping terminals in California," including exports out of the Los Angeles Export Terminal from 1997 to 2003. Complaints, ¶ 22. Second, the Plaintiffs allege that PEC engaged in "a national climate change science denial campaign" in 1991. Complaints, ¶ 118. Third, the Plaintiffs allege that PEC is "linked to . . . groups that undermine the scientific basis linking Defendants' fossil fuel products to climate change and sea level rise." Complaints, ¶ 138. With respect to post-Effective Date conduct, the Plaintiffs merely allege that PEC "continues to export coal out of California ports." Complaints, ¶ 22.

16. Based on these allegations against PEC, and other allegations against other Defendants, the Plaintiffs levy various tort-based causes of action against the Defendants. The eight PEC Causes of Action include: (a) one count for public nuisance on behalf of the People; and (b) seven counts on behalf of San Mateo, Imperial Beach and Marin, including counts for (i) public nuisance, (ii) strict liability for failure to warn, (iii) strict liability for design defect,

(iv) private nuisance, (v) negligence, (vi) negligence for failure to warn and (vii) trespass.

See San Mateo Complaint, ¶¶ 179-267; Imperial Beach Complaint, ¶¶ 176-264; Marin Complaint, ¶¶ 180-268.

### C. Notice of Important Information During the Debtors' Bankruptcy Cases

17. During the chapter 11 cases and in accordance with applicable rules, Court orders and the Bankruptcy Code, the Debtors provided valid and sufficient notice of the events set forth below.

#### 1. Notice of Commencement

18. On April 15, 2016, this Court entered an order [Docket No. 119] (the "Commencement Notice Order")<sup>5</sup> authorizing the Debtors to provide notice of the commencement of their cases via regular mail to "those entities entitled to receive the Commencement Notice pursuant to Bankruptcy Rule 2002(a) and Local Bankruptcy Rule 2002-1." See Commencement Notice Order, ¶ 4. The Debtors provided such notice to the California Secretary of State, the California State Distribution Unit, the California Franchise Tax Board and the California Officer of State Controller (the "California Entities"), among others. See Certificate of Service [Docket No. 602]. In the Commencement Notice Order, this Court deemed such notice sufficient under the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Rules of Bankruptcy Procedure for the United States Bankruptcy Court for the Eastern District of Missouri (the "Local Bankruptcy Rules"). See Commencement Notice Order, ¶ 4.

---

<sup>5</sup> *Order Pursuant to Sections 105(a), 107(c), 342 and 521 of the Bankruptcy Code, Bankruptcy Rules 1007(a), 2002(a), 2002(f) and 9037 and Local Bankruptcy Rules 1002(C), 1007-7, 1009, 2002-1 and 2002-2 (I) Authorizing the Debtors and Debtors in Possession to File a Redacted Creditor Mailing Matrix; (II) Deeming that Certain Procedures Satisfy the Requirements of Local Bankruptcy Rules 1007-7 and 1009; (III) Approving the Manner of Service of the Order and Notice of the Commencement of the Debtors' Chapter 11 Cases; and (IV) Authorizing the Filing of a Consolidated List of Top 50 Unsecured Creditors* [Docket No. 119].

## 2. Notice of Prepetition Claims Bar Dates

19. On June 16, 2016, this Court entered the *Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* [Docket No. 771] (the "Bar Date Order"). The Bar Date Order provided that, with limited exceptions, any person or entity (other than a governmental unit) asserting a claim against the Debtors that arose prior to the Petition Date was required to submit a proof of claim on or before August 19, 2016 (the "General Bar Date"). The Bar Date Order also established October 11, 2016 as the deadline for governmental units asserting claims against the Debtors (whether secured, unsecured priority or unsecured nonpriority) that arose prior to the Petition Date (the "Governmental Bar Date" and together with the Bar Date Order, the "Prepetition Claims Bar Dates").

20. The Debtors provided notice of the Prepetition Claims Bar Dates by (a) publication in the *St. Louis Dispatch* and the national editions of *The Wall Street Journal* and *USA Today* (the "Newspapers") (see Affidavit of Publication [Docket No. 916]) and (b) actual service on, among others, the California Entities (see Certificate of Service [Docket No. 845]). In the Bar Date Order, in response to the Debtors' request for authority to provide notice of the Prepetition Claims Bar Dates to "unknown" creditors by publication,<sup>6</sup> this Court deemed such publication notice to be "good, adequate and sufficient publication notice of the [Prepetition Claims] Bar Dates." Bar Date Order, ¶ 18. In addition, the Debtors' service of notice of the Prepetition Claims Bar Dates complied with this Court's mandate for the Debtors to serve such notice on "all known potential claimants and their counsel (if known), including all entities listed in the Schedules as potentially holding claims." Bar Date Order, ¶ 19. Notably,

---

<sup>6</sup> In the motion seeking to establish the Prepetition Claims Bar Dates, the Debtors noted that "unknown" creditors with claims against the Debtors could exist, including "claims of entities with potential unasserted causes of action against the Debtors," and asked that this Court approve notice to such "unknown" creditors by publication. *See Motion of the Debtors for an Order Establishing Bar Dates for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof* [Docket No. 585], ¶ 30.

after the Debtors provided this notice, the Plaintiffs did not file any Claims in these chapter 11 cases prior to the Prepetition Claims Bar Dates (or thereafter).

### **3. Notice of Disclosure Statement Hearing**

21. On January 26, 2017, this Court held a hearing to approve the Debtors' *Disclosure Statement with Respect to Joint Plan of Reorganization of Debtors and Debtors in Possession* [Docket No. 1821] (as amended, the "Disclosure Statement"). Prior to the Disclosure Statement hearing, the Debtors provided notice of this hearing and the applicable objection deadline by (a) publication in the Newspapers (see Affidavit of Publication [Docket No. 1904]) and (b) actual service on, among others, the California Entities (see Certificate of Service [Docket No. 1853]). In an order entered on January 27, 2017 [Docket No. 2234],<sup>7</sup> this Court approved the Disclosure Statement and found that the Debtors provided adequate and proper notice of the hearing.

### **4. Notice of Confirmation Hearing**

22. On March 16, 2017, this Court held a hearing in respect of confirmation of the Debtors' Plan. Prior to the confirmation hearing, the Debtors provided notice of (a) the time and date of the confirmation hearing, (b) the Plan's voting deadline and (c) the applicable objection deadline by (i) publication in the Newspapers (see Affidavit of Publication [Docket No. 2351]) and (ii) actual service on, among others, the California Entities and the California Attorney General (see Affidavit of Service [Docket No. 2357]). In the Confirmation Order, this Court found that the Debtors had provided adequate and proper notice of the hearing.

See Confirmation Order, ¶¶ I.G, II.B.1.

---

<sup>7</sup> *Order (I) Approving Second Amended Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Second Amended Joint Plan of Reorganization, (III) Scheduling Hearing on Confirmation of Second Amended Joint Plan of Reorganization and (IV) Approving Related Notice Procedures* [Docket No. 2234]; see also Confirmation Order, ¶ II.B.9.

**5. Notice of Effective Date of Plan and Administrative Claims Bar Date**

23. On April 3, 2017 at 4:01 p.m. (ET), the Effective Date occurred. On that same date, the Debtors filed the *Notice of (I) Entry of Order Confirming Second Amended Joint Plan of Reorganization of Debtors and Debtors in Possession as Revised March 15, 2017 and (II) Occurrence of Effective Date and Bar Dates for Filing Certain Claims* (the "Effective Date Notice") [Docket No. 2867] with this Court. The Effective Date Notice notified parties that this Court had established May 3, 2017 as the bar date for the assertion of postpetition administrative claims (the "Administrative Claims Bar Date" and, with the Prepetition Claims Bar Dates, the "Bar Dates"). Id. at ¶ 7. The Debtors provided notice of the Effective Date and the Administrative Claims Bar Date by (a) publication in the Newspapers (see Affidavit of Publication [Docket No. 2876]) and (b) actual service on, among others, the California Entities and the California Attorney General (see Certificate of Service [Docket No. 2892]). In the Confirmation Order, this Court approved the Effective Date Notice and the publication and service thereof as constituting "good and sufficient notice pursuant to Bankruptcy Rules 2002 and 3020(c)(2) of entry of . . . [the Confirmation Order] and the occurrence of the Effective Date," and concluded that "no other or further notice need be given." See Confirmation Order, ¶ 99.

24. In addition to the notice given by the Debtors referenced above, the Plaintiffs acknowledge in the Complaints that they were aware of the Debtors' bankruptcy cases before filing the Complaints. See San Mateo Complaint, ¶ 138 n.145 (citing certificate of service for notice of commencement of the Debtors' bankruptcy cases); Imperial Beach Complaint, ¶ 138 n.141 (same); Marin Complaint, ¶ 138 n.144 (same).

**D. Relevant Provisions of the Plan and Confirmation Order**

25. The relief requested in this Motion is based on various provisions of the Debtors' Plan and this Court's Confirmation Order. For the Court's convenience, these provisions are quoted below.

**1. Applicable Discharge and Injunction Provisions**

**a. Complete Satisfaction, Discharge and Release**

*Except as provided in the Plan or in the Confirmation Order, the rights afforded under the Plan and the treatment of Claims and Interests under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims* (other than Intercompany Claims, except to the extent provided in the Restructuring Transactions) and termination of all Interests (other than Subsidiary Debtor Interests) *arising on or before the Effective Date*, including any interest accrued on Claims from and after the Petition Date. *Except as provided in the Plan or in the Confirmation Order, Confirmation will, as of the Effective Date* and consistent with Exhibit IV.F.1 to the Plan: (a) *discharge the Debtors from all Claims or other Liabilities that arose on or before the Effective Date* and all debts of the kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, *whether or not* (i) *a proof of Claim based on such debt is Filed or deemed Filed pursuant to section 501 of the Bankruptcy Code*, (ii) *a Claim based on such debt is allowed pursuant to section 502 of the Bankruptcy Code* or (iii) *the holder of a Claim based on such debt has accepted the Plan*; and (b) terminate all Interests and other rights of holders of Interests in the Debtors other than Subsidiary Debtor Interests.

Plan, § V.E.2.a; Confirmation Order, ¶ 29 (emphasis added).

**b. Discharge and Termination**

In accordance with Section V.E.2.a, *except as provided in the Plan or the Confirmation Order, the Confirmation Order will be a judicial determination, as of the Effective Date* and consistent with Exhibit IV.F.1 to the Plan, *of a discharge of all Claims and other debts and Liabilities against the Debtors* and a termination of all Interests and other rights of the holders of Interests in the Debtors (other than Subsidiary Debtor Interests), pursuant to, and solely to the full extent provided by, sections 524(a)(1), 524(a)(2) and 1141(d) of the Bankruptcy Code, and such discharge will void any judgment obtained against the Debtors or Reorganized Debtors at any time, to the extent that such judgment relates to a discharged Claim or terminated Interest. For the avoidance of doubt,

pursuant to section 1141(d)(3) of the Bankruptcy Code, the confirmation of the Plan does not discharge the Gold Fields Debtors.

Plan, § V.E.2.b; Confirmation Order, ¶ 29 (emphasis added). Paragraph 30 of the Confirmation Order also provides:

*Except as specifically set forth in the Plan or this Order, Confirmation will, as of the Effective Date, pursuant to, and solely to the full extent provided by, sections 524 and 1141 of the Bankruptcy Code, discharge the Reorganized Debtors of and from all Claims and other debts and Liabilities, in accordance with Section V.E.2 of the Plan, and no creditors shall have recourse against any Reorganized Debtor or any of their assets or property on account of such Claims and other debts and Liabilities; provided, however, for the avoidance of doubt, pursuant to section 1141(d)(3) of the Bankruptcy Code, the confirmation of the Plan does not discharge the Gold Fields Debtors.*

Confirmation Order, ¶ 30 (emphasis added).

**c. Injunction**

*On the Effective Date, except as otherwise provided herein or in the Confirmation Order:*

- a. *All Persons who have been, are or may be holders of (a) Claims or (b) Interests, shall be enjoined from taking any of the following actions against or affecting the Debtors, their Estates or assets or the Reorganized Debtors, or the respective assets or property thereof, with respect to such Claims or Interests (other than actions brought to enforce any rights or obligations under the Plan and appeals, if any, from the Confirmation Order):*
  - i. *commencing, conducting or continuing* in any manner, directly or indirectly, *any suit*, action or other proceeding of any kind *against* the Debtors, their Estates or Assets or *the Reorganized Debtors*, or the respective assets or property thereof;
  - ii. enforcing, levying, attaching, collecting or otherwise *recovering by any manner or means*, directly or indirectly, *any judgment*, award, decree or order *against* the Debtors, their Estates or Assets or the *Reorganized Debtors*, or the respective assets or property thereof . . . .

Plan, § V.E.3.a; Confirmation Order, ¶¶ 22-23 (emphasis added).<sup>8</sup>

## 2. Provisions Relating to the EPA Settlement

### a. Other Provisions Regarding Release; Discharge; Injunction

Nothing in this Plan or the Confirmation Order:

i. releases, discharges, exculpates, precludes or enjoins the enforcement of:

A. ***any liability or obligation to, or any claim or any cause of action by, a Governmental Unit*** (which, solely for purposes of this section, shall include federally recognized Indian Tribes) ***under any applicable Environmental Law to which any Reorganized Debtor is subject to the extent that it is the owner, lessee, permittee or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, claim or cause of action is based in whole or in part on acts or omissions prior to the Effective Date, but only to the extent applicable Environmental Law imposes such claim or cause of action on such Reorganized Debtor in its capacity as the self bond guarantor, owner, lessee, permittee or operator of real property or a mining operation after the Effective Date)***; provided, that all of the Debtors' or Reorganized Debtors' claims, defenses or Causes of Action related thereto under applicable Environmental Law are likewise preserved;

B. ***any claim of a Governmental Unit*** (which, solely for purposes of this section, shall include federally recognized Indian Tribes) ***under any Environmental Law, or other applicable police or regulatory law, in each case that, in accordance with the Bankruptcy Code and bankruptcy law, arises from the mining operation of any Reorganized Debtor***; provided, that all of the Debtors' or Reorganized Debtors' claims, defenses or Causes of Action related thereto under any Environmental Law, or other applicable police or regulatory law, are likewise preserved . . . .

Plan, § V.E.6.a.i; Confirmation Order, ¶ 24 (emphasis added).

---

<sup>8</sup> Paragraph 22 of the Confirmation Order states "assets *for* the Reorganized Debtors" rather than "Assets *or* the Reorganized Debtors." See Confirmation Order, ¶ 22.

**3. Relevant Definitions**

**a. Definition of "Claim"**

26. The Plan defines the term "Claim" as "a claim, as defined in section 101(5) of the Bankruptcy Code, against a Debtor or its Estate." Plan, § I.A.46. In turn, the Bankruptcy Code defines the term "claim" as:

(A) a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured" or (B) a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, disputed, undisputed, secured, or unsecured."

11 U.S.C. § 101(5).

**b. Definition of "Environmental Law"**

27. The Plan defines "Environmental Law" as:

*all federal, state and local statutes, regulations and ordinances concerning pollution or protection of the environment, or environmental impacts on human health and safety, including the Atomic Energy Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; the Emergency Planning and Community Right to Know Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Resource Conservation and Recovery Act; the Safe Drinking Water Act; the Surface Mining Control and Reclamation Act; the Toxic Substances Control Act; and any state or local equivalents of the foregoing.*

Plan, § I.A.92 (emphasis added).

**c. Definition of "Governmental Unit"**

28. The Plan adopts the Bankruptcy Code's definition of the term

"Governmental Unit," which is as follows:

United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.

Plan, § I.A.126; 11 U.S.C. § 101(27).

**d. Definition of "Liabilities"**

29. The Plan defines Liabilities as:

any and all *Claims*, obligations, suits, judgments, damages, demands, debts, rights, *Causes of Action*,<sup>[9]</sup> and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, *arising in law, equity or otherwise, that are based* in whole or in part *on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence taking place on or prior to the Effective Date*.

Plan, § I.A.144 (emphasis added).

**e. Definition of "Reorganized Debtors"**

30. The Plan defines "Reorganized Debtors" as:

*on and after the Effective Date*, subject to the Restructuring Transactions, *each of the Debtors as to which the Plan is confirmed*, including but not limited to Reorganized PEC, but excluding the Gold Fields Debtors.

Plan, § I.A.193 (emphasis added).

**IV. BASIS FOR RELIEF REQUESTED**

**A. The PEC Causes of Action Violate the Plan's and Confirmation Order's Discharge and Injunction Provisions**

31. The PEC Causes of Action constitute both Claims and Liabilities (as such terms are defined above) that arose prior to the Plan's Effective Date. As such, the PEC Causes of Action are subject to the Plan's and Confirmation Order's discharge and injunction provisions.

---

<sup>9</sup> The Plan goes on to define "Causes of Action" as:

*any claim, cause of action*, controversy, demand, right of setoff or recoupment, cross claim, counterclaim, demand, right, action, lien, indemnity, contribution, guaranty, suit, obligation, liability, debt, damage, judgment, account, remedies, defense, power, privilege, license, and franchise of any kind or character whatsoever, known, unknown, fixed or contingent, matured or unmatured, suspected or unsuspected, liquidated or unliquidated, disputed or undisputed, secured or unsecured, foreseen or unforeseen, direct or indirect, choate or inchoate, assertable directly or derivatively (including without limitation, under alter ego theories), *whether arising before, on or after the Petition Date, in contract or in tort, in law or in equity, or pursuant to any other theory of law*.

Plan, § I.A.43 (emphasis added).

The Plan and Confirmation Order contain discharge provisions, providing that, with certain exceptions:

- (a) "the rights afforded under the Plan and the treatment of Claims . . . under the Plan will be in exchange for and in complete satisfaction, discharge and release of all Claims . . . arising on or before the Effective Date . . . ." (Plan, § V.E.2.a; Confirmation Order, ¶ 29);
- (b) "Confirmation will, as of the Effective Date . . . discharge the Debtors from all Claims or other Liabilities that arose on or before the Effective Date . . . whether or not . . . a proof of Claim based on such debt is Filed . . . ." (Plan, § V.E.2.a; Confirmation Order, ¶ 29);
- (c) "the Confirmation Order will be a judicial determination, as of the Effective Date . . . of a discharge of all Claims and other debts and Liabilities against the Debtors[,] . . . pursuant to, and solely to the full extent provided by, sections 524(a)(1), 524(a)(2) and 1141(d) of the Bankruptcy Code . . . ." (Plan, § V.E.2.b; Confirmation Order, ¶ 29); and
- (d) "Confirmation will, as of the Effective Date, pursuant to, and solely to the full extent provided by, sections 524 and 1141 of the Bankruptcy Code, discharge the Reorganized Debtors of and from all Claims and other debts and Liabilities . . . and no creditors shall have recourse against any Reorganized Debtor or any of their assets or property on account of such Claims and other debts and Liabilities . . . ." (Confirmation Order, ¶ 30).

32. In addition to these provisions, section 1141(d)(1)(A) of the Bankruptcy Code provides that, except as otherwise provided in a debtor's plan, confirmation of a debtor's plan discharges the debtor from any pre-confirmation debt, whether or not a creditor files a proof of claim. See 11 U.S.C. § 1141(d)(1) ("[T]he confirmation of a plan . . . (A) discharges the debtor from any debt that arose before the date of such confirmation . . . whether or not . . . a proof of the claim based on such debt is filed or deemed filed . . .").

33. Further, the Plan and Confirmation Order contain injunction provisions that, among other things, enjoin claimholders from "commencing, conducting or continuing . . . any suit, action or other proceeding" against the Reorganized Debtors based on such claimholders' discharged Claims. See Plan, § V.E.3.a; Confirmation Order, ¶¶ 22-23.

34. As explained below, because the PEC Causes of Action constitute both Claims and Liabilities that arose before the Plan's Effective Date, the PEC Causes of Action are subject to the discharge and injunction provisions set forth in the Plan and Confirmation Order.

**1. The PEC Causes of Action Constitute Both Claims and Liabilities**

35. The PEC Causes of Action constitute Claims. The Plan defines the term "Claim" by incorporating the definition set forth in the Bankruptcy Code. See Plan, § I.A.46 (defining "Claim" as "a claim, as defined in section 101(5) of the Bankruptcy Code, against a Debtor or its Estate"); see also supra ¶ 26 (setting forth Bankruptcy Code's definition of "claim"). The Eighth Circuit has stated the definition of the term "claim" under the Bankruptcy Code is subject to a broad interpretation. See Sanchez v. Northwest Airlines, Inc., 659 F.3d 671, 675 (8th Cir. 2011) ("The term 'claim' is, in turn, defined broadly.") (citing Johnson v. Home State Bank, 501 U.S. 78, 83 (1991)); In re Flight Transp. Corp. Sec. Litig., 874 F.2d 576, 583 (8th Cir. 1989) ("Congress sought the *broadest possible definition of a claim*, intending that virtually all obligations to pay money be amenable to treatment in bankruptcy proceedings.") (emphasis added).

36. Moreover, the fact that the PEC Causes of Action seek both money damages and equitable relief (see Complaints, § VII (seeking, among other things, compensatory damages, punitive damages, disgorgement of profits and the equitable relief of abatement)), in no way impacts the conclusion that the PEC Causes of Action are Claims under the Bankruptcy Code and the Plan. See Creator's Way Associated Labels, Inc. v. Mitchell (In re Mitchell),

249 B.R. 55, 59 (Bankr. S.D.N.Y. 2000) ("An equitable remedy, such as an injunction, will 'give rise to a right to payment,' and therefore be discharged, if payment of a monetary remedy is an alternative to the equitable remedy.") (emphasis and citations omitted); see also Rederford v. U.S. Airways, Inc., 589 F.3d 30, 36 (1st Cir. 2009) ("Allowing claims for equitable relief that could be reduced to payment to be raised after the discharge from bankruptcy would defeat the goal of evenhanded treatment by essentially granting creditors raising such claims what amounts to priority over all other creditors.").

37. The PEC Causes of Action also constitute "Liabilities." The Plan defines Liabilities as:

*any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, Causes of Action,<sup>[10]</sup> and liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, arising in law, equity or otherwise, that are based in whole or in part on any act, event, injury, omission, transaction, agreement, employment, exposure or other occurrence taking place on or prior to the Effective Date.*

See Plan, § I.A.144 (emphasis added). Again, because the PEC Causes of Action seek both money damages and equitable relief (see Complaints, § VII), the PEC Causes of Action constitute "Liabilities."

## 2. The PEC Causes of Action Arose Prior to the Plan's Effective Date

38. The Complaints attempt to vitiate PEC's "fresh start" by seeking redress for PEC-related conduct and alleged, related harm that occurred prior to the Effective Date. As set forth above, such conduct falls within the "Claims" and "Liabilities" discharged under the

---

<sup>10</sup> In relevant part, the Plan defines "Causes of Action" as:

any claim, cause of action, controversy, demand . . . of any kind or character whatsoever, . . . whether arising before, on or after the Petition Date, in contract or in tort, *in law or in equity*, or pursuant to any other theory of law.

Plan, § I.A.43 (emphasis added).

Plan and Confirmation Order. While the Eighth Circuit has yet to definitively adopt any test with respect to the issue of when a claim arises in a bankruptcy case, two Eighth Circuit decisions make clear that a claim exists for purposes of a bankruptcy case when an alleged unlawful action and the corresponding alleged harm have each occurred. McSherry v. Trans World Airlines, Inc., 81 F.3d 739, 740 (8th Cir. 1996) (deciding that an employment discrimination claim accrued at the time of an employee's termination, because "both the allegedly unlawful actions and the harm occurred on the date of termination"); Sanchez, 659 F.3d at 675 ("[Claimant]'s cause of action, which had accrued but had not been fully exhausted prior to the confirmation of [the debtor's reorganization plan], matured into a 'claim' within the meaning of § 101(5)(A) at the time [the debtor] rescinded [the claimant's] promotion on March 31, 2007.").

39. Similar to both McSherry and Sanchez, the misconduct alleged in the Complaint and corresponding alleged harm existed prior to the Effective Date. Although the Complaints include conclusory allegations that PEC continues to export coal through California after the Effective Date, all of the Complaints' specific factual allegations (only some of which apply to PEC) are alleged to have occurred well before the Effective Date (e.g., the launching of "a national climate change science denial campaign" in 1991; the allegation that PEC is "linked to . . . groups that undermine the scientific basis linking Defendants' fossil fuel products to climate change and sea level rise"). See Complaints, ¶¶ 4, 22, 118, 138. Indeed, the Complaints only contain specific allegations regarding PEC's California coal sales through 2003, and the Complaints' main focus is on PEC's activities between 1965 and 2015—well before the Plan's April 3, 2017 Effective Date. See Complaints, ¶¶ 14, 22.

40. Similarly, the Complaints make clear that the harm alleged therein also occurred prior to the Effective Date. Complaints, ¶ 6 (alleging that Defendants' conduct "has contributed substantially to the buildup of [carbon dioxide] in the environment that drives sea level rise"). As the PEC Causes of Action rely on specific factual allegations that Plaintiffs allege occurred prior to the Plan's Effective Date (indeed, before the Debtors' *Petition Date*) and the resulting alleged harm also occurred prior to the Effective Date, the PEC Causes of Action are Claims subject to the discharge and injunction provisions set forth in the Plan and Confirmation Order.<sup>11</sup>

**B. The EPA Settlement Is Inapplicable to the PEC Causes of Action**

41. Pursuant to the EPA Settlement, the Debtors included two specific sections in the Plan that contained certain clarifying language to address post-Effective Date environmental-related enforcement actions undertaken by governmental bodies. These provisions are Section V.E.6.a.i.A of the Plan ("Section V.E.6.a.i.A") and Section V.E.6.a.i.B of the Plan ("Section V.E.6.a.i.B"), which are also included in Paragraph 24 of the Confirmation Order. Neither of these Plan Sections has any effect on the discharge of the PEC Causes of Action.

---

<sup>11</sup> Even if this Court applies the so-called "fair contemplation test," or "relationship test," this Court should still consider the PEC Causes of Action to have arisen prior to the Effective Date. The fair contemplation test looks to whether the potential claimant had a prepetition relationship with the debtor or could reasonably foresee the conduct that would result in a cause of action prior to the bankruptcy filing. See Cal Dep't of Health Servs. v. Jensen (In re Jensen), 995 F.2d 925, 927, 930 (9th Cir. 1993) (finding that a state's claim for postpetition cleanup costs under CERCLA was a prepetition claim because the conduct causing the cleanup occurred prepetition and the state had sufficient knowledge of this cause of action against the debtor). Here, based on the facts set forth above, this Court should find that, under the fair contemplation test, the PEC Causes of Action arose prior to the Effective Date because PEC's conduct, as alleged in the Complaints, should have put the Plaintiffs on notice that they could have brought the PEC Causes of Action against PEC prior to the Effective Date.

**1. Section V.E.6.a.i.A of the Plan Is Inapplicable to the PEC Causes of Action**

42. Section V.E.6.a.i.A of the Plan provides as follows:

Nothing in this Plan or the Confirmation Order:

i. releases, discharges, exculpates, precludes or enjoins the enforcement of:

A. ***any liability or obligation to, or any claim or any cause of action by, a Governmental Unit*** (which, solely for purposes of this section, shall include federally recognized Indian Tribes) ***under any applicable Environmental Law to which any Reorganized Debtor is subject to the extent that it is the owner, lessee, permittee or operator of real property or a mining operation after the Effective Date (whether or not such liability, obligation, claim or cause of action is based in whole or in part on acts or omissions prior to the Effective Date, but only to the extent applicable Environmental Law imposes such claim or cause of action on such Reorganized Debtor in its capacity as the self bond guarantor, owner, lessee, permittee or operator of real property or a mining operation after the Effective Date)***; provided, that all of the Debtors' or Reorganized Debtors' claims, defenses or Causes of Action related thereto under applicable Environmental Law are likewise preserved.

Plan, § V.E.6.a.i.A; Confirmation Order, ¶ 24 (emphasis added).

43. As an initial matter, the First Count of the Complaints, asserted by San Mateo, Imperial Beach and Marin on behalf of the "People," falls outside of Section V.E.6.a.i.A. Section V.E.6.a.i.A only applies to causes of action brought by a "Governmental Unit." See Plan, § V.E.6.a.i.A; Confirmation Order, ¶ 24. Because the "People" do not constitute a "Governmental Unit" (see supra ¶ 28 (setting forth Plan's definition of "Governmental Unit")), Section V.E.6.a.i.A is inapplicable to the cause of action asserted by the "People" (i.e., the First Count in the Complaints).

44. Moreover, as explained in greater detail below, Section V.E.6.a.i.A does not apply to the PEC Causes of Action because the PEC Causes of Action (a) are not based on an

"*Environmental Law*" and (b) do not relate to a "*Reorganized Debtor*" in its capacity as a "*self bond guarantor, owner, lessee, permittee or operator of real property or a mining operation after the Effective Date.*" Plan, § V.E.6.a.i.A; Confirmation Order, ¶ 24 (emphasis added).

a. **The PEC Causes of Action Do Not Fall Within the Definition of "Environmental Law"**

45. None of the PEC Causes of Action fall within the Plan's definition of "Environmental Law." See Plan, §§ I.A.92, V.E.6.a.i.A; Confirmation Order, ¶ 24. Because the Plan is a contract between the Debtors and their creditors, this Court should interpret the Plan based on its plain language. See Charter Asset Corp. v. Victory Markets, Inc. (In re Victory Markets, Inc.), 221 B.R. 298, 303 (B.A.P. 2d Cir. 1998) ("[A] confirmed plan holds the status of a binding contract as between the debtor and its creditors. As with any contract, the starting point for review of a plan is its plain language.") (citations omitted).

46. The Plan defines "Environmental Law" as:

*all federal, state and local statutes, regulations and ordinances concerning pollution or protection of the environment, or environmental impacts on human health and safety*, including the Atomic Energy Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; the Emergency Planning and Community Right to Know Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Resource Conservation and Recovery Act; the Safe Drinking Water Act; the Surface Mining Control and Reclamation Act; the Toxic Substances Control Act; *and any state or local equivalents of the foregoing.*

See Plan, § I.A.92 (emphasis added).

47. Other than the Complaints' reference to statutory nuisance actions (see Complaints, ¶ 12), the Complaints do not contain any reference to "statutes, regulations or ordinances." As such, it appears the Plaintiffs are asserting their non-nuisance PEC Causes of Action (*i.e.*, the causes of action for failure to warn, design defect, negligence and trespass) based on common law. The Plan's definition of the term "Environmental Law," however, only

encompasses rights based on *statute, regulation or ordinance*—i.e., "all federal, state and local *statutes, regulations and ordinances* concerning[, *inter alia*,] pollution . . . and any state or local equivalents of the foregoing." See Plan, § I.A.92 (emphasis added). Accordingly, to the extent the failure to warn, design defect, negligence and trespass PEC Causes of Action are based on common law, such causes of action fall outside the plain language the Plan utilizes to define "Environmental Law," rendering Section V.E.6.a.i.A inapplicable to those PEC Causes of Action.

48. With respect to the Plaintiffs' state law nuisance claims, it is particularly relevant that a state law falls within the definition of "Environmental Law" **only if** the state law is an "equivalent[] of" the federal law falling within the definition of "Environmental Law." See Plan, § I.A.92. Importantly, nuisance is a federal common law tort (see Am. Elec. Power Co. v. Connecticut, 564 U.S. 410 (2011)); common law torts are omitted from the Plan's definition of "Environmental Law." Given that federal nuisance actions are excluded from the definition of "Environmental Law," state nuisance actions (whether based on statute or common law) are similarly excluded. In other words, because state nuisance laws are not "equivalents" of any federal law that constitutes an "Environmental Law," state nuisance laws themselves are not "Environmental Laws."

49. Further, **all** of the PEC Causes of Action fall outside the definition of "Environmental Law" for an additional reason. The Plan's definition of "Environmental Law" includes only those statutory, regulation or ordinance-based actions that "**concern[] pollution or protection of the environment, or environmental impacts on human health and safety.**" See Plan, § I.A.92 (emphasis added). In contrast, the PEC Causes of Action are general torts for nuisance, failure to warn, design defect, negligence and trespass (many of which can be asserted by individuals). See San Mateo Complaint, ¶¶ 179-267; Imperial Beach Complaint, ¶¶ 176-264;

Marin Complaint, ¶¶ 180-268. As general torts, rather than actions alleging the breach of a specific law relating to environmental protection, the PEC Causes of Action do not "concern[] pollution or protection of the environment, or environmental impacts on human health and safety," as is necessary to fit within the Plan's definition of "Environmental Law."

50. The interpretive canon of *ejusdem generis* further supports the conclusion that the PEC Causes of Action fall outside the Plan's definition of "Environmental Law." Black's Law Dictionary defines *ejusdem generis* as "[a] canon of construction holding that when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed." Black's Law Dictionary (10th ed. 2014); see also In re Eagle-Picher Indus., Inc., 255 B.R. 700, 706 (Bankr. S.D. Ohio 2000) (applying the rule of construction *ejusdem generis* to interpret a clause of the debtor's plan of reorganization under Ohio law); O'Connor v. Great Lakes Pipe Line Co., 63 F.2d 523, 527 (8th Cir. 1933) ("Calling upon [*ejusdem generis*] to help in the construction of this contract, it is apparent that the term 'premises' is used as a general term following the specific terms, crops, surfaces, fences, and that it should be limited to the things of a like nature . . .").<sup>12</sup>

51. Here, applying *ejusdem generis* to the Plan's definition of "Environmental Law," a cause of action falls within the Plan's definition of "Environmental Law" **only if** it is similar to the other statutes specifically listed in the definition—i.e., the "Atomic Energy Act; the Clean Air Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; the Emergency Planning and Community Right to Know Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the Resource Conservation and Recovery Act; the

---

<sup>12</sup> Black's Law Dictionary also provides the following example of *ejusdem generis*: "For example, in the phrase horses, cattle, sheep, pigs, goats, or any other farm animals, the general language or any other farm animals—despite its seeming breadth—would probably be held to include only four-legged, hoofed mammals typically found on farms, and thus would exclude chickens." Black's Law Dictionary (10th ed. 2014).

Safe Drinking Water Act; the Surface Mining Control and Reclamation Act; the Toxic Substances Control Act." See Plan, § I.A.92. The application of *ejusdem generis* to the Plan's definition of "Environmental Law" is particularly appropriate, as the definition itself requires any unlisted state and local statutes to be the "*equivalents of*" the specifically listed statutes.

52. In contrast to the statutes listed in the Plan's definition of "Environmental Law," the PEC Causes of Action are based upon general theories of tort. They possess no similarities to the specific environmental enforcement laws set forth in the Plan's definition of "Environmental Law," much less act as the "equivalents" required to fit within the Plan's definition of "Environmental Law." As such, none of the PEC Causes of Action is based on an "Environmental Law," and thus none of the PEC Causes of Action falls within Section V.E.6.a.i.A.

**b. The PEC Causes of Action Are Not Based on PEC's *Post-Effective Date Relationship to Real Property or Mining Operations***

53. Even if this Court were to conclude that the PEC Causes of Action are based on "Environmental Laws," the PEC Causes of Action still do not fall within Section V.E.6.a.i.A because the PEC Causes of Action are not based on liability arising from PEC's *post-Effective Date* relationship to *real property* or *mining operations*.

54. Section V.E.6.a.i.A only applies to causes of action against any Reorganized Debtor liable "*in its capacity as the self bond guarantor, owner, lessee, permittee or operator of real property or a mining operation after the Effective Date.*" See Plan, § V.E.6.a.i.A; Confirmation Order, ¶ 24 (emphasis added). This language ("self bond guarantor, owner, lessee, permittee or operator of real property or a mining operation after the Effective Date") limits Section V.E.6.a.i.A to claims based on a Reorganized Debtor's *post-Effective Date* relationship to *real property* or *mining operations*.

55. But the PEC Causes of Action are not based on PEC's post-Effective Date relationship to real property or mining operations. In contrast, the specific allegations in the Complaints that support the PEC Causes of Action relate only to PEC's prepetition sale of coal or involvement with groups that seek to undermine a connection between coal and climate change. See Complaints, ¶¶ 118, 138. Indeed, the Complaints contain only general assertions that PEC has "continue[d] to export coal out of California ports" after the Effective Date. See Complaints, ¶ 22. Thus, because the PEC Causes of Action are based on PEC's coal *sales* activity and not on PEC's post-Effective Date relationship to real property or mining operations, the PEC Causes of Action do not fall within Section V.E.6.a.i.A.

56. If this Court were to interpret Section V.E.6.a.i.A to cover the PEC Causes of Action, this Court would effectively read out of the Plan the language in Section V.E.6.a.i.A that limits Section V.E.6.a.i.A to *land owner* or *mine operator* causes of action. Under any such interpretation, this Court would essentially hold that Section V.E.6.a.i.A applies to causes of action that are only *generally related* to PEC's businesses, given that almost all of PEC's operations can be tied to its mining of coal. Such an interpretation cannot be correct, given that courts should avoid interpreting contractual language to render it meaningless. See Hughes v. Davidson-Hues, 330 S.W.3d 114, 120 (Mo. Ct. App. 2010) ("We will not construe a contractual provision so as to render it meaningless; rather, we will favor an interpretation that gives each provision function and sense."); see also Confirmation Order, ¶ 98 (Plan governed by Missouri law).

57. Accordingly, because the PEC Causes of Action are not based on PEC's *post-Effective Date* relationship to *real property* or *mining operations*, the PEC Causes of Action do not fall within Section V.E.6.a.i.A.

**2. Section V.E.6.a.i.B of the Plan Is Inapplicable to the PEC Causes of Action**

58. Section V.E.6.a.i.B of the Plan provides as follows:

Nothing in this Plan or the Confirmation Order:

i. releases, discharges, exculpates, precludes or enjoins the enforcement of: . . .

B. ***any claim of a Governmental Unit*** (which, solely for purposes of this section, shall include federally recognized Indian Tribes) ***under any Environmental Law, or other applicable police or regulatory law, in each case that***, in accordance with the Bankruptcy Code and bankruptcy law, ***arises from the mining operation of any Reorganized Debtor***; provided, that all of the Debtors' or Reorganized Debtors' claims, defenses or Causes of Action related thereto under any Environmental Law, or other applicable police or regulatory law, are likewise preserved . . . .

Plan, § V.E.6.a.i.B; Confirmation Order, ¶ 24 (emphasis added).

59. Section V.E.6.a.i.B of the Plan is also inapplicable to the PEC Causes of Action. First, the Complaints' First Count, asserted by the "People," falls outside of Section V.E.6.a.i.B. This is because Section V.E.6.a.i.B only covers claims brought by a "Governmental Unit" and, as explained above, the People do not constitute a "Governmental Unit."

60. Second, Section V.E.6.a.i.B of the Plan applies solely to claims based on the "***mining operation of any Reorganized Debtor.***" Plan, § V.E.6.a.i.B; Confirmation Order, ¶ 24 (emphasis added). The PEC Causes of Action, however, do not relate to the ***Reorganized Debtors' mining operations***. As an initial matter, the PEC Causes of Action do not relate to the ***Reorganized Debtors*** because the PEC Causes of Action stem from PEC's ***prepetition*** conduct, and the Reorganized Debtors did not come into existence until the Effective Date.<sup>13</sup>

---

<sup>13</sup> The Plan defines "Reorganized Debtors" as: "***JO***n and after the Effective Date, subject to the Restructuring Transactions, ***each of the Debtors as to which the Plan is confirmed***, including but not limited to Reorganized PEC, but excluding the Gold Fields Debtors." See Plan, § I.A.193 (emphasis added).

See Complaints, ¶ 14 (alleging harmful conduct from 1965 to 2015). Further, the PEC Causes of Action do not relate to PEC's *mining operations* because the PEC Causes of Action are based upon PEC's *sale of coal* regardless of where it was mined. For these reasons the PEC Causes of Action do not fall within Section V.E.6.a.i.B.

61. Third, Section V.E.6.a.i.B of the Plan applies only to claims based on an "Environmental Law" or "other applicable police or regulatory law." See Plan, § V.E.6.a.i.B; Confirmation Order, ¶ 24. The PEC Causes of Action are not based on "Environmental Laws," as explained above.

62. Further, the PEC Causes of Action are not based on any "police or regulatory law." Although the Plan includes no specific definition of the term "police or regulatory law," similar language is set forth in the Bankruptcy Code (11 U.S.C. § 362(b)(4)). Section 362(b)(4) of the Bankruptcy Code provides an exception to the automatic stay for a governmental unit's actions to enforce its "police and regulatory" powers. 11 U.S.C. § 362(b)(4). As the Eighth Circuit has explained, this exception is limited, and does not protect government actions that "primarily relate to the protection of the *pecuniary interest* in the debtors' property and not to matters of public safety and health." See Missouri v. U.S. Bankr. Court for E. D. of Arkansas, 647 F.2d 768, 776 (8th Cir. 1981) (emphasis added). Indeed, governmental actions that seek to "force the payment of a prepetition debt" or "otherwise give the government a pecuniary advantage over [other creditors]" do not fall within the section 362(b)(4) stay exception. United States v. Commonwealth Cos. (In re Commonwealth Cos.), 913 F.2d 518, 524 (8th Cir. 1990).

63. Here, because the PEC Causes of Action seek damages from PEC, the Plaintiffs are first and foremost attempting to "force the payment" of damages. As a result, the

PEC Causes of Action are not based on a "police or regulatory law." See In re Apex Oil Co., 91 B.R. 860, 864 (Bankr. E.D. Mo. 1988) (Schermer, J.) (when government entity instituted enforcement action to recover damages based on debtor's federal regulatory violations, court held that action was not exercise of "police" or "regulatory" power because action was "in pursuit of a pecuniary interest rather than protecting health, safety or welfare"); In re Pan Am. Hosp. Corp., 364 B.R. 832, 837 (Bankr. S.D. Fla. 2007) (police and regulatory power stay exception does not apply when government is seeking to "collect a pre-petition debt on behalf of a community of creditors").

**C. The Plaintiffs Received Proper and Sufficient Notice of the Bar Dates**

64. During their chapter 11 cases, the Debtors provided the Plaintiffs with proper and sufficient notice of the Bar Dates. As an initial matter, the Debtors provided the State of California, through service upon the California Secretary of State and the other California Entities, with actual notice of the Bar Dates, in addition to other significant information regarding the Debtors' chapter 11 cases (such as the commencement of the Debtors' chapter 11 cases, the Disclosure Statement hearing, the Plan confirmation hearing, the Confirmation Order and the Effective Date of the Plan). See Certificates / Affidavits of Service [Docket Nos. 602, 845, 1853, 2357, 2892]. Such notifications put the Plaintiffs on notice of the Debtors' Bar Dates.

65. Nevertheless, such actual notice was in fact not required, given that the Plaintiffs were "unknown" creditors during the Debtors' chapter 11 cases. Indeed, it is well-settled that unknown creditors are entitled only to publication notice of key information about a debtor's bankruptcy case. See In re President Casinos, Inc., 418 B.R. 332, 335 (Bankr. E.D. Mo. 2009) (stating that "[n]otice by publication is generally used to give notice to unknown creditors or known creditors who cannot be otherwise located"; holding that publication notice to creditor was insufficient because creditor was not "unknown"); Williams v. Placid Oil Co.

(In re Placid Oil Co.), 753 F.3d 151, 155 (5th Cir. 2014) ("[T]he debtor need only provide 'unknown creditors' with constructive notice by publication."); Dahlin v. Archer-Daniels-Midland Co., 2015 WL 11675667, at \*10 (S.D. Iowa Sept. 29, 2015) ("[F]or unknown claimants, notification by publication will generally suffice.") (citation omitted); see also Bar Date Order, ¶ 18 ("[T]he Debtors shall publish notice of the Bar Dates . . . in [the Newspapers], which publication is hereby approved and shall be deemed good, adequate and sufficient publication notice of the Bar Dates.").

66. During their chapter 11 cases, the Debtors properly provided the Plaintiffs with publication notice of the Bar Dates, the Disclosure Statement hearing, the Plan confirmation hearing, the Confirmation Order and the Effective Date of the Plan. See Affidavits of Publication [Docket Nos. 916, 1904, 2351, 2876]. As explained below, this publication notice was sufficient because the Plaintiffs were unknown creditors.

67. An unknown creditor is a creditor whose "interests are either conjectural or future, or, although they could be discovered upon investigation, do not in due course of business come to knowledge [of the debtor]." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 317 (1950); Dahlin, 2015 WL 11675667, at \*10 (same).

68. The allegations underlying the PEC Causes of Action demonstrate that the Plaintiffs were unknown creditors. The basis of the PEC Causes of Action is that, since 1965, PEC's sale of fossil fuels has created global harm, which has allegedly damaged the Plaintiffs. Notably, these allegations are not specific to PEC, and could generally be levied against any fossil fuel producer whose products pass through California. Indeed, the vague nature of these allegations show that *anyone in the world* could possess actions similar to the PEC Causes of Action. Accordingly, because the Complaints' allegations would not lead a reasonable person to

conclude that the Plaintiffs possessed the PEC Causes of Action, the Plaintiffs were unknown creditors during the Debtors' chapter 11 cases, and thus only entitled to publication notice. See Chemetron Corp. v. Jones, 72 F.3d 341, 346-49 (3d Cir. 1995) (when debtor lacked ability to "identify, locate, and provide actual notice" to claimants, court held claimants were "unknown creditors" such that publication notice of bar date was sufficient); In re New York Trap Rock Corp., 153 B.R. 642, 646 (Bankr. S.D.N.Y. 1993) (finding that a government agency that failed to file a claim for environmental cleanup was an unknown creditor even though the debtor had a real estate contract with another agency of the same governmental entity).

#### V. RESERVATION OF RIGHTS

69. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any claim against PEC; (b) a waiver of PEC's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; or (e) a waiver of PEC's rights under the Bankruptcy Code or any other applicable law, including, without limitation, PEC's right to file a motion requesting an order requiring Plaintiffs to show cause why they should not be sanctioned.

#### VI. NOTICE

70. In accordance with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Docket No. 114] (the "Case Management Order"), notice of this Motion has been given to (a) the Plaintiffs and their counsel; (b) all parties on the Master Service List (as defined in the Case Management Order); and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002 as of the time of service. In light of the nature of the relief requested, PEC submits that no further notice is necessary.

**VII. NO PRIOR REQUEST**

71. No prior request for the relief sought in this Motion has been made to this Court or any other court in connection with these chapter 11 cases.

WHEREFORE, PEC respectfully requests that the Court (a) grant the relief requested herein and (b) grant such other further relief as the Court may deem proper.

Dated: August 28, 2017  
St. Louis, Missouri

Respectfully submitted,

/s/ Steven N. Cousins

Steven N. Cousins, MO 30788  
Jaimie L. Mansfield, MO 60948  
John G. Willard, MO 67049  
Armstrong Teasdale LLP  
7700 Forsyth Boulevard, Suite 1800  
St. Louis, MO 63105  
Telephone: (314) 621-5070  
Facsimile: (314) 612-2239  
Email: [scousins@armstrongteasdale.com](mailto:scousins@armstrongteasdale.com)  
Email: [jmansfield@armstrongteasdale.com](mailto:jmansfield@armstrongteasdale.com)  
Email: [jwillard@armstrongteasdale.com](mailto:jwillard@armstrongteasdale.com)

Heather Lennox (admitted *pro hac vice*)  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, OH 44114  
Telephone: (216) 586-3939  
Facsimile: (216) 579-0212  
Email: [hlennox@jonesday.com](mailto:hlennox@jonesday.com)

Matthew C. Corcoran (admitted *pro hac vice*)  
Jones Day  
325 John H. McConnell Boulevard, Suite 600  
Columbus, Ohio 43215  
Telephone: 614-281-3822  
Facsimile: 614-461-4198  
Email: [mccorcoran@jonesday.com](mailto:mccorcoran@jonesday.com)

*Attorneys for Reorganized Peabody Energy Corporation*