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2 MICHAEL D. PROUGH (No. 168741)
3 ROBERT M. FORNI, JR. (No. 180841)
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10 Attorneys for
11 NATIONAL UNION FIRE
12 INSURANCE COMPANY OF PITTSBURGH, PA

13 UNITED STATES BANKRUPTCY COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 In re) Case No. 01-30923 DM
17)
18 PACIFIC GAS AND ELECTRIC COMPANY,) Chapter 11
19 a California Corporation)
20 (I.D. No. 94-07426-40))
21 Debtor.)
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DECLARATION OF MICHAEL D. PROUGH SUPPORTING NATIONAL UNION'S RESPONSE TO CREDITORS EMERY'S AND CALDEWEY'S MOTION FOR RELIEF FROM AUTOMATIC STAY

Date: September 11, 2001
Time: 1:30 p.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, California

I, Michael D. Prough, declare as follows:

1. I am an attorney licensed to practice law before all courts of this state and this Court and a partner in Morison-Knox Holden Melendez & Prough, LLP, attorneys of record for National Union Fire Insurance Company of Pittsburgh, PA, a creditor of Pacific Gas & Electric Company in the above-referenced bankruptcy matter. I have personal knowledge of the matters stated herein, except as to those of which I am expressly informed and believe, and as to those matters, I believe them to be true. The following statements are true to my own knowledge, and if called as a witness I could competently testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of National Union's Proof of

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1 Claim in this matter, submitted August 31, 2001, including declarations by James Drake and
2 myself pertaining to the claim (but not the documents enclosed with my declaration due to their
3 voluminous nature). Those declarations are incorporated by reference as if fully set forth herein.

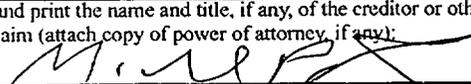
4 3. National Union filed an action for reimbursement and for declaratory relief against
5 PG&E on July 7, 1998 in the Sonoma County Superior Court, captioned National Union Fire
6 Insurance Company of Pittsburgh, PA v. Pacific Gas and Electric Company, Case No. 219514.
7 In that lawsuit, National Union seeks declaratory relief as well as reimbursement, in full, of all
8 amounts it has expended on behalf of PG&E on the defense and settlement of the underlying
9 Cavedale Fire claims and suits. That lawsuit has been stayed by the Sonoma County Superior
10 Court pending the final resolution of all underlying claims by the Cavedale Fire victims.

11 4. National Union has agreed to participate in the defense and indemnify PG&E as an
12 additional insured for the Cavedale Fire claims up to its \$20 million in policy limits under the
13 pertinent insurance contract, subject to a full reservation of rights, including the right to seek
14 reimbursement from PG&E for amounts expended by National Union to defend and indemnify
15 PG&E. National Union has spent \$16,415,842 to settle third-party claims against PG&E as of
16 the time of filing, and an additional \$1,670,858 in related defense fees and costs.

17 5. The moving parties for this motion did not serve the motion on this firm, despite the
18 fact that we are on the "Special Notice" list representing National Union and have been since
19 June. We have prepared this response as expeditiously as possible upon learning of the motion
20 and the claimants' representations concerning National Union's coverage commitments. I cannot
21 appear to argue this matter on September 11, 2001, because of a pre-scheduled (and already
22 once-continued) oral argument before the California Court of Appeal in Ventura.

23 I declare under penalty of perjury under the laws of the United States that the foregoing is
24 true and correct, and that this declaration was executed on September 6, 2001, at Walnut Creek,
25 California.

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27 
28 Michael D. Prough

UNITED STATES BANKRUPTCY COURT <u>Northern</u> DISTRICT OF <u>California</u>		PROOF OF CLAIM
Name of Debtor Pacific Gas & Electric Company		Case Number 01-30923 DM
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): National Union Fire Insurance Company of Pittsburgh, PA		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent: Michael D. Prough, Esq. Morison-Knox Holden Melendez & Prough 500 Ygnacio Valley Road, Suite 450 Walnut Creek, CA 94596 (925) 937-9990 Telephone number:		
Account or other number by which creditor identifies debtor: Creditor No. F-923-521752 Sonoma Cty. Sup.- Ct. Case No. 219514		Check here if this claim <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input checked="" type="checkbox"/> Other <u>Defense and settlement payments</u>		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ to _____ (date) (date)		
2. Date debt was incurred: <u>7/31/96 to present</u>		3. If court judgment, date obtained:
4. Total Amount of Claim at Time Case Filed: \$ <u>18,086,700.00</u> If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). *Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary.		
9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		
Date 8/28/01	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): 	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

1 WILLIAM C. MORISON-KNOX (No. 99981)
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6 Attorneys for
NATIONAL UNION FIRE INSURANCE
7 COMPANY OF PITTSBURGH, PA

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION

11 In re)	Case No. 01-30923 DM
)	
12 PACIFIC GAS AND ELECTRIC COMPANY,)	Chapter 11
a California Corporation)	
13 (I.D. No. 94-07426-40))	DECLARATION OF JAMES DRAKE
)	IN SUPPORT OF NATIONAL UNION
14 Debtor.)	FIRE INSURANCE COMPANY OF
)	PITTSBURGH, PA'S PROOF OF
)	CLAIM

16
17 I, James Drake, declare as follows:

18 1. I am employed as Complex Director, Excess Specialty Claims, for AIG Technical
19 Services, the claim administrator for National Union Fire Insurance Company of Pittsburgh, PA.
20 I have been employed by AIGTS for five years. As part of my responsibilities as Complex
21 Director, I am and have been principally responsible for overseeing National Union's
22 involvement in the defense and settlement of numerous claims and lawsuits that have been
23 brought against Pacific Gas and Electric Company arising out of the July 31, 1996 "Cavedale
24 Fire" that occurred in Sonoma County, California.

25 2. I have personal knowledge of the matters stated herein, except as to those of which I
26 am expressly informed and believe, and as to those matters, I believe them to be true. The
27 following statements are true to my own knowledge, and if called as a witness I could
28 competently testify thereto.

1 3. National Union's claim against PG&E relates to, and arises from, legal fees, costs and
2 settlement payments that it has paid to defend and settle, under a complete reservation of rights,
3 approximately thirty claims and lawsuits against PG&E stemming from the July 31, 1996
4 "Cavedale Fire" in Sonoma County, California. National Union agreed to defend and indemnify
5 for such claims under the terms of an insurance contract it had issued to Davey Tree Surgery
6 Company, policy no. BE309 61 60, under which PG&E has claimed entitlement to coverage as
7 an additional insured. National Union and PG&E dispute coverage under the insurance contract,
8 which dispute is the subject of a coverage lawsuit pending in Sonoma County, California that is
9 presently stayed by that Court. National Union expressly reserved its right under California law
10 to seek reimbursement from PG&E of all amounts expended by National Union in the event that
11 the coverage litigation establishes that National Union owed PG&E no duty to defend or
12 indemnify with respect to the Cavedale Fire claims and suits.

13 4. National Union has paid for the defense of PG&E and paid settlement sums toward
14 resolution of claims and suits brought by the following Cavedale Fire claimants:

- 15 a. Jeffrey Baker
- 16 b. Christopher and Sharon Jones
- 17 c. John Barber
- 18 d. Chalone Wine Group
- 19 e. Mr. And Mrs. Russell McNeill
- 20 f. County of Sonoma
- 21 g. Hanna Vineyards (property claims)
- 22 h. Robert Kamen / Jessandra Vineyards
- 23 i. Sky Vineyards
- 24 j. Matty and Wendy Nurmia
- 25 k. Robert Arbuthnot
- 26 l. Marvin Paoli
- 27 m. Diana Burke
- 28 n. Carmenet Vineyards

- 1 o. Sam Keen
- 2 p. Sky Farm
- 3 q. Lorenzo Petroni
- 4 r. Pacific Bell
- 5 s. Dan Schaefer Family Trust
- 6 t. Rainbow (and his attorney)
- 7 u. Phillip Coturi
- 8 v. Valley of the Moon Fire District
- 9 w. Liberty Mutual Insurance Company (subrogation claims)
- 10 x. Fireman's Fund Insurance Company (subrogation claims)
- 11 y. Allstate Insurance Company (subrogation claims)
- 12 z. Continental Insurance Company (subrogation claims).

13 5. In addition, National Union has also paid for the defense of claims and suits brought
14 by four claimants that still have pending, unresolved claims and suits against PG&E arising from
15 the Cavedale Fire:

- 16 aa. Hanna Vineyards (remaining damages)
- 17 bb. John and Deborah Emery
- 18 cc. Jeffrey Caldewey
- 19 dd. Dr. Roberts

20 6. National Union has expended \$1,670,858 on the defense of the above matters, subject
21 to a reservation of rights including the right to reimbursement if it is later determined that
22 National Union owed no defense obligations under its insurance contract or the law. National
23 Union has expended \$16,415,842 on the settlement of the claims identified in paragraph no. 4,
24 above, subject to a reservation of rights including the right to reimbursement if it is later
25 determined that National Union owed no indemnity obligations under its insurance contract or
26 the law. In light of the amount of the demands by the remaining claimants, National Union
27 anticipates that the pending claims may exhaust the remainder of National Union's \$20 million
28 in policy limits under its liability insurance contract. National Union intends to seek

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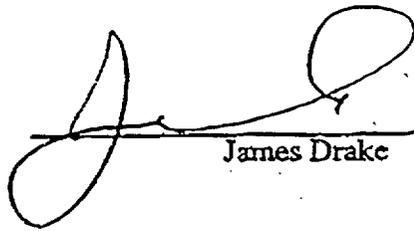
reimbursement of that entire \$20 million from PG&E.

7. National Union filed an action for reimbursement and for declaratory relief against PG&E on July 7, 1998 in the Sonoma County Superior Court, captioned National Union Fire Insurance Company of Pittsburgh, PA v. Pacific Gas and Electric Company, Case No. 219514.

(A true and correct copy of the complaint in that action is attached as Exhibit A to the Declaration of Michael D. Prough, filed concurrently herewith.) This litigation arises from a dispute between PG&E and National Union with respect to whether PG&E is entitled to liability insurance coverage for its liability arising from the "Cavedale Fire," under the terms of Davey Tree Surgery's insurance contract with National Union. PG&E claims to be an additional insured under National Union's insurance contract with Davey Trees, and therefore entitled to coverage up to the full \$20 million dollar limit. National Union contends that PG&E was entitled to no coverage for the Cavedale Fire claims and suits under the terms and conditions of the insurance contracts National Union issued to Davey Tree.

8. The Sonoma County Superior Court coverage action has been stayed by that court pending the resolution of the underlying claims and suits.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on August 30, 2001, at New York, New York.


James Drake

1 WILLIAM C. MORISON-KNOX (No. 99981)
MICHAEL D. PROUGH (No. 168741)
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6 Attorneys for
NATIONAL UNION FIRE
7 INSURANCE COMPANY OF PITTSBURGH, PA

8

9

UNITED STATES BANKRUPTCY COURT

10

NORTHERN DISTRICT OF CALIFORNIA

11

SAN FRANCISCO DIVISION

12

In re) Case No. 01-30923 DM

13

PACIFIC GAS AND ELECTRIC COMPANY,) Chapter 11

14

a California Corporation)
(I.D. No. 94-07426-40))

15

Debtor.)

16

) NATIONAL UNION FIRE
) INSURANCE COMPANY OF
) PITTSBURGH, PA'S PROOF OF
) CLAIM

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I, Michael D. Prough, declare as follows:

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1. I am an attorney licensed to practice law before all courts of this state and this Court and a partner in Morison-Knox Holden Melendez & Prough, LLP, attorneys of record for National Union Fire Insurance Company of Pittsburgh, PA, a creditor of Pacific Gas & Electric Company in the above-referenced bankruptcy matter. I have personal knowledge of the matters stated herein, except as to those of which I am expressly informed and believe, and as to those matters, I believe them to be true. The following statements are true to my own knowledge, and if called as a witness I could competently testify thereto.

2. National Union's claim for \$18,086,700 relates to \$1,670,858 in legal fees and costs and \$16,415,842 in settlement payments National Union paid on behalf of PG&E under a liability insurance contract to defend and resolve numerous third-party claims and lawsuits

Declaration of Michael D. Prough in Support of National Union's Proof of Claim

1 brought against PG&E arising out of the July 31, 1996 "Cavedale Fire" in Sonoma County,
2 California. Approximately thirty claimants brought claims and suits against PG&E because of
3 the Cavedale Fire. Twenty-six have settled their claims, and four remain pending. Those four
4 remaining claims may exceed the remaining limits on National Union's \$20 million liability
5 insurance policy. National Union and PG&E dispute whether National Union owes insurance
6 coverage for the claims and suits arising from the Cavedale Fire, but National Union has agreed
7 to defend and settle the claims up to the \$20 million policy limits on behalf of PG&E under a full
8 reservation of rights. If it is determined that National Union is correct that PG&E is entitled to
9 no insurance coverage for those claims and suits, then National Union will pursue its right to
10 recover all sums it has expended on behalf of PG&E including its full \$20 million policy limits.

11 3. Under California law, a liability insurer that disputes its duty to defend a third-party
12 claim or suit against the insured may provide the defense on behalf of the insured under a
13 reservation of rights, including the right to obtain reimbursement of all sums spent on the defense
14 of claims not potentially covered under the insurance contract. Buss v. Superior Court, 16
15 Cal.4th 35, 50-52 (1998).

16 4. Under California law, a liability insurer that disputes its duty to indemnify may
17 provide funds to settle a third-party claim or suit against the insured under a reservation of rights,
18 including the right to obtain reimbursement of all sums spent on the settlement of claims that are
19 not in fact covered under the insurance contract. Blue Ridge Insurance Co. v. Jacobsen, 25
20 Cal.4th 489, 502-03 (2001); Johansen v. CSAA, 15 Cal.3d 9 (1975).

21 5. National Union filed an action for reimbursement and for declaratory relief against
22 PG&E on July 7, 1998 in the Sonoma County Superior Court, captioned National Union Fire
23 Insurance Company of Pittsburgh, PA v. Pacific Gas and Electric Company, Case No. 219514.
24 (A true and correct copy of the complaint in that action is attached hereto as Exhibit A.) That
25 lawsuit was later stayed by the Sonoma County Superior Court pending the final resolution of all
26 underlying claims by the fire victims. That litigation arises from a dispute between PG&E and
27 National Union with respect to whether PG&E is entitled to liability insurance coverage for
28 causing the "Cavedale Fire," as a putative "additional insured" under the terms of Davey Tree

1 Surgery Company's insurance contract with National Union. National Union's liability insurance
2 contract with Davey Tree, bearing policy number BE 309 61 60, has policy limits of \$20 million.
3 It is excess to and partially follows form to an insurance contract between Davey Tree and
4 Employers Insurance of Wausau that provided \$1 million in liability limits. PG&E claims to be
5 an additional insured under National Union's insurance contract with Davey Trees, and therefore
6 claims it is entitled to coverage up to the full \$20 million liability limits. National Union
7 disputes whether PG&E's "additional insured" status under Davey Tree's insurance extends to
8 this loss and, if so, whether PG&E was entitled to the full \$20 million limit or a lesser sum.

9 6. The first two causes of action in National Union's Sonoma County lawsuit address the
10 question of whether PG&E qualifies as an "additional insured" that is entitled to coverage under
11 the terms of Davey Tree's insurance contract with National Union. Davey Tree's liability
12 insurance extends to protect PG&E against its own liability only to the extent that PG&E's
13 liability "arises from operations performed by Davey Tree." Davey Tree's insurance does not
14 provide plenary coverage for PG&E for losses caused by PG&E's own conduct (and not by
15 Davey Tree's operations), or for any loss suffered by any person that does not arise out of
16 operations performed by Davey Tree.

17 7. The primary issue to be decided in the first two causes of action of the Sonoma County
18 lawsuit (for reimbursement and for declaratory relief under the insurance contract) concerns
19 whether the Cavedale Fire "arose out of the operations of Davey Tree" or rather from PG&E's
20 own conduct or some other party's conduct. For purposes of that determination, PG&E's degree
21 of culpability (if any) is largely irrelevant. For example, if the fire were caused by neither PG&E
22 nor Davey Tree, National Union would still prevail (i.e., PG&E would have no coverage),
23 because the fire did not "arise out of operations performed by Davey Tree."

24 8. The first two causes of action in the National Union lawsuit can and likely will be
25 decided by answering the basic question of how the Cavedale Fire started. If it was a "pole-top
26 fire" caused by PG&E's conduct in the construction, maintenance and/or inspection of the
27 pertinent structures, as National Union contends, then it did not have anything to do with Davey
28 Tree's "operations" and PG&E would have no coverage under Davey Tree's insurance contract

1 with National Union. If the fire was caused by trees growing into electrical wires, as PG&E
2 contends, then the question becomes whether Davey Tree had or breached any duties under the
3 tree-trimming contract that led to that alleged tree/line contact such that the fire would be deemed
4 to have arisen from the operations of Davey Tree.

5 9. National Union's third cause of action in the Sonoma County action (for declaratory
6 relief with respect to the operation of the indemnity clause in the tree-trimming contract between
7 PG&E and Davey Tree) also seeks a determination that PG&E may not claim indemnification
8 from Davey Tree under their tree-trimming contract for each of four distinct, independently
9 sufficient, reasons: (1) the indemnity clause violates public policy because of the non-delegable
10 duties owed by a public electrical utility; (2) the loss did not arise out of Davey Tree's
11 performance of the tree-trimming contract; (3) the loss resulted from PG&E's sole negligence; or
12 (4) the loss resulted from PG&E's "wilful misconduct." Reasons 2, 3, and 4 simply track the
13 language of the indemnity provision from the standard form PG&E/Davey Tree contract written
14 by PG&E.

15 10. National Union has also contended that not only would a finding of "wilful conduct"
16 by PG&E affect its indemnity rights under the Davey Tree tree-trimming contract, but such a
17 determination would also bar insurance coverage for PG&E as a matter of public policy under
18 Insurance Code section 533. Such a determination would also make PG&E's debt to National
19 Union non-dischargeable under the provisions of 11 U.S.C. section 523(a)(6) and applicable law.

20 11. National Union dismissed without prejudice its fourth cause of action from the
21 Sonoma County action, relating to PG&E's application of a payment withholding clause in the
22 tree-trimming contract.

23 12. On July 29, 1998, PG&E filed a lawsuit in San Francisco against Davey Tree,
24 National Union, and Wausau. National Union then demurred to PG&E's later-filed San Francisco
25 lawsuit on the grounds that the Sonoma County Superior Court had "exclusive concurrent
26 jurisdiction" over the subject matter of the controversy. The San Francisco Superior Court
27 sustained National Union's demurrer and abated that lawsuit over PG&E's objection. The San
28 Francisco action is therefore stayed, leaving the National Union coverage action to proceed in

1 Sonoma County Superior Court.

2 13. On June 1, 1999, the Sonoma County Superior Court granted PG&E's motion and
3 stayed National Union's coverage action, pending the outcome of various third-party claims by
4 the individual persons and entities that suffered property damage in the Cavedale Fire. (A true
5 and correct copy of this Order is attached hereto as Exhibit B.) The Sonoma County Superior
6 Court coverage action remains stayed pending the outcome of all underlying suits.

7 14. Following PG&E's tender of these third-party claims to National Union, National
8 Union agreed to participate in the defense and indemnify PG&E as an additional insured under
9 the above-mentioned insurance contract up to its \$20 million in policy limits, subject to a full
10 reservation of rights, including the right to seek reimbursement from PG&E in full or in part for
11 all amounts expended by National Union to defend and indemnify PG&E. According to the
12 Declaration of James Drake (a true and correct copy of which is attached hereto as Exhibit C),
13 the claim representative for National Union handling the Cavedale Fire claims, National Union
14 has spent \$16,415,842 to settle third-party claims against PG&E as of the time of filing, and an
15 additional \$1,670,858 in related defense fees and costs. These sums, and the agreement by
16 National Union to front payments for settlements and judgments against PG&E for the
17 underlying Cavedale fire claims, do not include, and cannot include as a matter of public policy,
18 any payment by National Union to resolve PG&E's punitive damages exposure (if any) in the
19 underlying cases. (True and correct copies of correspondence confirming the same are attached
20 hereto as Exhibit D.)

21 15. National Union's claim for amounts owing at the time of filing totals \$18,086,700.
22 Mr. Drake's declaration (Exhibit C hereto) sets forth those claims and amounts. The actual
23 documentary support evidencing each and every defense and settlement payment in each of the
24 30 underlying claims and suits is not included herewith due to the voluminous nature of such
25 documentation and the confidential nature of each individual settlement, but is instead
26 summarized and totaled in Mr. Drake's declaration. National Union has settled each such claim
27 or suit with the active participation and involvement of PG&E and its defense counsel and does
28 not anticipate that PG&E will dispute the amounts of those expenditures. To the extent that

1 National Union might spend some or all of its remaining policy limits to resolve the remaining
2 Cavedale Fire claims, National Union reserves its right to seek reimbursement of those additional
3 sums from PG&E as well.

4 16. Attached hereto as Exhibit E is a copy of the insurance contract in dispute in the
5 Sonoma County coverage litigation, policy no. BE 309-61-60, effective September 1, 1995 to
6 September 1, 1998, entered into between National Union and Davey Tree.

7 17. Attached hereto as Exhibit F is a file copy of the primary insurance contract between
8 Wausau and Davey Tree, no. 1726-00-066371, effective September 1, 1995 to September 1,
9 1996, certain terms of which are incorporated into the National Union excess insurance contract
10 with Davey Tree at issue herein.

11 18. Attached hereto as Exhibit G is a file copy of the tree trimming contract between
12 PG&E and Davey Tree, no. N69-0131-90(2070), dated on or about December 14, 1990.

13 19. Attached hereto as Exhibit H are certain representative underlying complaints against
14 PG&E arising out of the Cavedale Fire, which are generally indicative of the types of claims
15 presented by the numerous Cavedale Fire claimants in their claims and suits.

16 20. National Union claims entitlement to pre-judgment interest on its claim for
17 \$18,086,700 at the rate of 10% per year until judgment is finally entered on National Union's
18 reimbursement action. Thus, interest presently is accruing at the rate of at least \$1,808,670 per
19 year and will continue to accrue until judgment is entered in the coverage action.

20 21. On or about June 14, 2001, I received service of PG&E's Proof of Claim form,
21 largely blank, identifying National Union as creditor no. F-923-521752, and designating National
22 Union's claim as "Unliquidated and Disputed." (A true and correct copy of PG&E's Proof of
23 Claim form is attached hereto as Exhibit I.) I am not aware that anyone else has filed a proof of
24 claim relating to National Union's claim in this matter.

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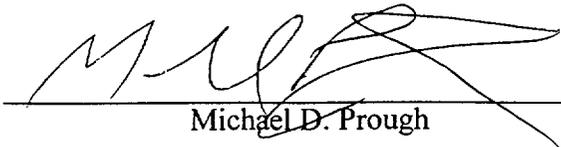
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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed on August 30, 2001, at Walnut Creek, California.



Michael D. Prough