



Signed and Filed: October 2, 2023

*Dennis Montali*

DENNIS MONTALI  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re:	)	Bankruptcy Case
	)	No. 19-30088-DM
PG&E CORPORATION,	)	
	)	Chapter 11
- and -	)	
	)	Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,	)	
	)	
Reorganized Debtors.	)	
	)	
<input type="checkbox"/> Affects PG&E Corporation	)	
<input type="checkbox"/> Affects Pacific Gas and	)	
Electric Company	)	
<input checked="" type="checkbox"/> Affects both Debtors	)	
	)	
* All papers shall be filed in	)	
the Lead Case, No. 19-30088 (DM).	)	
	)	
	)	

**MEMORANDUM DECISION ON OBJECTION TO PROOF OF CLAIM  
OF SYNERGY PROJECT MANAGEMENT, INC.**

**I. Introduction**

The court held a hearing on September 12, 2023 on the Objection (Dkt. 13670) by the Reorganized Debtors ("Debtors") to the proof of claim filed by Synergy Project Management, Inc. ("SPM"). Appearances were noted on the record. For the reasons that follow, the court will sustain the objections and disallow

1 SPM's claim filed on October 20, 2019, as amended on May 10,  
2 2023.

3 **II. Background<sup>1</sup>**

4 The parties are quite familiar with SPM's status as a  
5 subcontractor of Ghilotti Brothers, Inc. ("GBI") pursuant to a  
6 sewer replacement and water main installation project in San  
7 Francisco in 2015 described generally as the "Haight Project".  
8 In short, the Haight Project began in the spring of 2015 and  
9 between April and October of 2015, at least six incidents  
10 occurred that are at the core of the present dispute. Five of  
11 the incidents have been described as "gas strikes"; one has been  
12 described as an "electrical strike".

13 After litigation before a hearing officer, the City and  
14 County of San Francisco ("CCSF") terminated SPM as the  
15 subcontractor for GBI. Over time, SPM blamed Debtors for causing  
16 the situation that led to those strikes; by June 2017, Debtors  
17 denied most of SPM's claims.

18 Debtors filed their Chapter 11 on January 29, 2019. On  
19 October 20, 2019, SPM filed Proof of Claim Co. 72390 ("Initial  
20 POC"). On May 10, 2023, SPM filed Amended Proof of Claim No.  
21 109882 ("Amended POC"). The Initial POC and the Amended POC  
22 each seek damages in the amount of \$5,697,441.76. The basis of  
23 the claim is "damages relating to strikes, fraud and related  
24 business damages." (See Initial POC and Amended POC at ¶ 8.)  
25 The Initial POC contains a four-and-a-half page narrative  
26 describing the five gas strikes and one electrical strike and

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27  
28 <sup>1</sup> The following discussion constitutes the court's findings of  
fact and conclusions of law. Fed. R. Bankr. P. 7052(a).

1 related impact delays totaling \$337,441.76 in damages. Each  
2 then adds "damage to business due to PG&E  
3 fraud/misrepresentations" in the amount of \$5,360,000. The  
4 narrative continues by reciting that Debtors made multiple  
5 representations to CCSF denying that they were responsible for  
6 the strikes that resulted in commencement of proceedings  
7 initiated by CCSF to remove SPM as GHI's subcontractor on the  
8 Haight Project. It adds the recital that its claims were denied  
9 by Debtors in May 2017. The narrative continues with the  
10 allegation that Debtors had a pattern of falsifying records and  
11 that in June 2019, SPM's counsel received evidence that Debtors  
12 knew that the second strike (on August 7, 2015) was not SPM's  
13 fault. There is no mention of the other five strikes or any  
14 other problems identified by the hearing officer as SPM's  
15 responsibility that led to its termination.

16 The narrative continues with a few sentences describing  
17 Debtors' alleged failure to comply with certain city regulations  
18 and Government Code provisions dealing with underground  
19 utilities. It contains in a final paragraph referring to SPM's  
20 termination from the Haight Project.

21 For no apparent reason, the Amended POC sets forth the  
22 entire SPM-GBI contract but does not repeat the narrative just  
23 summarized.

### 24 **III. Discussion**

#### 25 A. The Administrative Hearing

26 Both sides devote a lot of ink and a portion of the oral  
27 argument to the December 19, 2015 administrative hearing and its  
28 results. SPM contends that result was not dispositive in any

1 way for a variety of reasons. Debtors contend that the adverse  
2 ruling, and in particular the finding of the hearing officer  
3 that SPM caused at least four of the strikes based upon its  
4 unsafe practices, is dispositive under principles of collateral  
5 estoppel.

6 The legal analysis of that ruling under collateral estoppel  
7 principles is for another day. Questions about the reach of  
8 collateral estoppel principles applied to non-judicial  
9 administrative hearings, and which do not include the very same  
10 parties who later invoke them, are complex, sometimes uncertain,  
11 and certainly not necessary for speculation and conjecture by  
12 this court to resolve this dispute. As described below, the  
13 Initial POC and the Amended POC must be disallowed for  
14 independent and dispositive reasons.

15 B. Locate and Mark Program

16 The parties also spend time on the 2018 investigation by  
17 the California Public Utilities Commission whether or not  
18 Debtors' "Locate and Mark Program" of natural gas facilities  
19 violated various legal requirements. More specifically, the  
20 primary focus was on the submission of "tickets" relating to the  
21 program and the fact that Debtors' top management was unaware of  
22 some of the problems in administering that program while its own  
23 staff was aware of them. That was finally resolved and approved  
24 by an April 24, 2020 order of this court.

25 The court believes that the discussion of that dispute and  
26 its resolution is nothing more than a red herring, designed by  
27 SPM to distract from the underlying merits of the Objection to  
28 its claim, namely that it - not Debtors - caused five of the six

1 strikes and other problems that are solely the responsibility of  
2 SPM, and no one else. The court can find no indication that  
3 there is some causal connection between the failure to properly  
4 account for "tickets" and SPM's failures. If there was fraud  
5 involved in the Locate and Mark Program, SPM has not even come  
6 close to showing how it was a victim of such fraud, or  
7 reasonably relied to its detriment in any way.

#### 8 C. State Court Litigation

9 Finally, there is a lot of attention given to the state  
10 court litigation and various amendments initiated by SPM  
11 (originally with no fictitious defendants) and later naming as  
12 Doe defendants San Francisco's mayor and its later convicted  
13 former Director of Department of Public Works. Again, these  
14 allegations and the lengthy history of that litigation do not  
15 appear to have any direct bearing on Debtors' potential  
16 liability for the matters described in SPM's Proofs of Claim  
17 other than the notable absence of Debtors as parties to that  
18 litigation.

#### 19 D. The Franchise Agreement

20 An alternative theory of SPM's claim apparently turns on a  
21 1939 agreement between Debtors and CCSF regulating its  
22 supervision of Debtors' conduct as a utility serving the city in  
23 numerous ways. SPM argues that it is somehow a third-party  
24 beneficiary of that agreement and that therefore the four-year  
25 statute of limitations and saves its claims against Debtors.

26 As a preliminary matter, the Initial POC and the Amended  
27 POC, at paragraph 8 of each form, say nothing about any breach  
28 of contract or third-party beneficiary theory that might justify

1 the four-year statute of limitations. To repeat what is noted  
2 above, both Proofs of Claim allege fraud and related business  
3 damages of relating to the strikes. For that reason alone, the  
4 court rejects the third-party beneficiary franchise four-year  
5 contract theory of recovery.

6 E. Three-Year Statute of Limitation for Fraud

7 At bottom, this dispute turns on whether SPM can recover  
8 under non-contract theories based upon events that occurred more  
9 than three years prior to Debtors' Chapter 11 bankruptcy on  
10 January 29, 2019. The short answer, again, is that it cannot.

11 Despite SPM's contention that a breach of contract occurred  
12 in May, 2017 (See Opposition, Dkt. 13719 at ¶ 21: "Although the  
13 strikes occurred in 2015, the actual breach of contact occurred  
14 in May 2017 when PG&E denied SPM's claims for reimbursement"),  
15 the fact is that the operative events occurred in 2015. SPM  
16 sued CCSF in 2017 and after the original complaint, several  
17 amendments contained fairly routine and boilerplate recitals  
18 that Doe defendants were CCSF agents and employees whose  
19 identity could be discovered during the action and could be  
20 named as Doe defendants. It does not include in those  
21 boilerplate allegations Debtors or any of its own  
22 representatives, nor could it, as SPM knew well the totality of  
23 Debtors' involvement in the Haight Project. In fact, at least  
24 two Doe defendants were subsequently identified as Mayor Breed  
25 and Director Nuru but at no time was there ever any attempt to  
26 substitute Debtors in as Doe defendants.

27 SPM contends that California Code of Civil Procedure § 474  
28 ("CCP 474") allows it to add a fictitious defendant not known at

1 the time of the complaint. That is the law, but the  
2 unmistakable facts are that SPM knew of Debtors' involvement in  
3 the entire Haight Project from the inception, it obviously knew  
4 of the strikes that occurred in 2015 and it obviously knew that  
5 its claims were denied by Debtors no later than May 2017, prior  
6 to when it initiated the Superior Court litigation that it now  
7 relies on to justify treating Debtors as Doe defendants when  
8 they were not, nor could they have been.

9 CCP 474 is meant to protect the innocent plaintiff who does  
10 not know the identity of a prospective defendant at the time an  
11 action is brought. *Olden v. Hatchell*, 154 Cal. App. 3d 1032,  
12 1037 (1984). The Court in *Olden* elaborates:

13 Section 474 provides in pertinent part: 'When the  
14 plaintiff is ignorant of the name of a defendant, he  
15 must state that fact in the complaint, or the  
16 affidavit if the action is commenced by affidavit, and  
17 such defendant may be designated in any pleading or  
18 proceeding by any name, and when his true name is  
19 discovered, the pleading or proceeding must be amended  
20 accordingly . . . .'

21 *Id.* Finally, on this point, SPM's reliance on CCP 583.210 is  
22 misplaced and of no help, as that section deals with service of  
23 a summons.

24 From the foregoing, the court concludes that whether or not  
25 SPM could or should have named Debtors as defendants in the  
26 state court litigation, it did not, and it was too late to do so  
27 well before the January 2019 bankruptcy filings. The suggestion  
28 that alleged fraud was not known or discovered until years later  
is simply not credible, and in any event lacks even a minimum of  
specificity to justify including it after the fact.

1 **IV. Conclusion**

2 For the foregoing reasons, the court, even giving SPM the  
3 benefit of the narrative that accompanies its Initial POC but  
4 inexplicably was not included in the Amended POC, fails to state  
5 a claim or relief. Accordingly, the claims must be DISALLOWED.

6 The court is concurrently issuing an order disposing of the  
7 claims consistent with this Memorandum Decision.

8 **\*END OF MEMORANDUM DECISION\*\***

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