



Signed and Filed: May 18, 2020

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,	)	
	)	Date: May 12, 2020
Debtors.	)	Time: 10:00 AM
	)	Place: Courtroom 17
<input type="checkbox"/> Affects PG&E Corporation	)	450 Golden Gate Ave.
<input type="checkbox"/> Affects Pacific Gas and	)	16th Floor
Electric Company	)	San Francisco, CA
<input checked="" type="checkbox"/> Affects both Debtors	)	
	)	
<i>* All papers shall be filed in</i>	)	
<i>the Lead Case, No. 19-30088 (DM).</i>	)	

**ORDER DENYING MOTION TO DESIGNATE VOTES**

On May 12, 2020, this court held a hearing on the Motion to Designate Improperly Solicited Votes Pursuant to 11 U.S.C. §§ 1125(b) and 1126(e) and Fed. R. Bankr. P. 2019 [dkt. 6799] ("Motion to Designate") filed by creditor William B. Abrams ("Abrams"). Appearances are reflected on the record. Several parties joined the motion: Karen Gowins (dkts. 6944 and 7073); Cheryl Maynard (dkt. 7004); wildfire survivors represented by

1 Wagner Law Group and Kabateck LLP (dkt. 6981); and wildfire  
2 survivors represented by Hallisey & Johnson, by Furth Salem  
3 Mason & Li, and the Law Offices of Francis Scarpella (dkt.  
4 7140), filing jointly.

5 Those opposing the Motion to Designate and/or the various  
6 joinders include Watts Guerra LLP (dkts. 6801, 6972, 6973, 6983  
7 and 7129) ("Watts Guerra") and wildfire survivors represented  
8 jointly by Marshack Hays LLP and the Singleton Law Firm, LLC  
9 (dkt. 6891). Debtors filed a response (dkt. 7128) to the Motion  
10 to Designate indicating that the procedures for the  
11 dissemination of the plan and disclosure statement, and all  
12 other solicitation materials (including recommendations prepared  
13 by counsel for wildfire survivors), complied with this court's  
14 Disclosure Statement and Solicitation Procedures Order (dkt.  
15 6340).

16 After considering the motion, joinders, oppositions,  
17 responses, replies, and declarations, the court concludes that  
18 (1) Watts Guerra and Mr. Watts did not violate applicable  
19 bankruptcy rules or law, (2) a designation of votes of any of  
20 the wildfire survivors would unduly disenfranchise them, and (3)  
21 any alleged violation of the California Code of Professional  
22 Responsibility can be addressed by the State Bar, not this  
23 court.

24 I. THE ALLEGATIONS

25 Abrams alleges that the votes of wildfire survivors  
26 represented by Watts Guerra should be designated (or  
27 disqualified) because Mr. Watts purportedly acted in bad faith  
28 in encouraging his clients to accept a plan incorporating the

1 global settlement terms reached by - among others - the Debtors,  
2 the Official Committee of Tort Claimants (the "TCC"), and by  
3 wildfire survivors represented by Watts Guerra and other  
4 counsel. This settlement followed a multi-day negotiation  
5 ordered by this court and facilitated by a former bankruptcy  
6 judge.

7 In particular, Abrams contends that Watts Guerra did not  
8 properly disclose that its operational credit facility with its  
9 former lender had been assigned (1) to Centerbridge Partners,  
10 L.P., a bondholder of Pacific Gas & Electric Company (the  
11 "Utility") and a shareholder of PG&E Corporation and a member of  
12 the AdHoc Committee of Utility Bondholders [dkt. 4407], and (2)  
13 to Apollo Global Management, LLC, a DIP-loan noteholder and a  
14 holder of two other prepetition notes executed by the Utility  
15 [dkt. 6747]. Ironically, the source of this purportedly  
16 undisclosed information was Watts Guerra itself, which informed  
17 its clients at town meetings and in written transcripts of the  
18 loan assignment almost immediately after learning about it [dkt.  
19 6973-1]. The record reflects that these disclosures were made  
20 at other town hall meetings, sometimes in writing, and for the  
21 most part well before the court approved the Debtors' Disclosure  
22 Statement.

23 Alleging (without particulars) that an all cash settlement  
24 with Debtors had been "bypassed by some survivor attorneys due  
25 to perverse financial incentives and cozy relationships with  
26 entrenched investors," Abrams contends that the votes of clients  
27 of Watts Guerra should not be included in any vote tally because  
28 the firm had a conflict of interest with those clients which

1 would require a written waiver from each client in order for  
2 that client's vote to count. In particular, he contends that  
3 Watts Guerra violated Fed. R. Bankr. P. 2019 and Rule 1.7 of the  
4 California Rules of Professional Conduct, thus justifying  
5 designation of the votes of a significant number of fellow  
6 wildfire survivors who are clients.

7 II. THE GOVERNING LAW

8 A. Sections 1125(b) and 1126(e)

9 The Bankruptcy Code prohibits the solicitation of  
10 acceptances or rejections of a plan of reorganization during the  
11 period beginning with the petition (here, January 29, 2019) and  
12 approval of a disclosure statement. See 11 U.S.C. § 1125(b).  
13 The court approved the Debtors' Proposed Disclosure Statement  
14 for Debtors' and Shareholder Proponents' Joint Chapter 11 Plan  
15 of Reorganization on March 17, 2020 (dkt. 6740).

16 Regardless whether Watts Guerra or Mr. Watts did or did not  
17 make adequate disclosure for purposes of California law  
18 regulating attorneys, there is nothing in the record that they  
19 engaged in any efforts to solicit votes for or against what  
20 became and is the proposed plan.

21 In determining whether to designate votes under section  
22 1126(e), the court must determine whether votes were solicited  
23 and procured in good faith.<sup>1</sup> The Bankruptcy Code does not define  
24 "good faith." Nonetheless, in a section 1126(e) case, the Ninth  
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26 <sup>1</sup> Section 1126(e) provides that "[o]n request of a party in  
27 interest, and after notice and a hearing, the court may  
28 designate any entity whose acceptance or rejection of such plan  
was not in good faith, or was not solicited or procured in good  
faith or in accordance with the provisions of this title."

1 Circuit held that a secured creditor acted in good faith even  
2 though it purchased unsecured claims and voted against a plan:

3 [T]he concept of good faith is a fluid one, and  
4 no single factor can be said to inexorably demand an  
5 ultimate result, nor must a single set of factors be  
6 considered. It is always necessary to keep in mind  
7 the difference between a creditor's self interest as  
8 a creditor and a motive which is ulterior to the  
9 purpose of protecting a creditor's interest. Prior  
10 cases can offer guidance, but, when all is said and  
11 done, the bankruptcy court must simply approach each  
12 good faith determination with a perspicacity derived  
13 from the data of its informed practical experience  
14 in dealing with bankrupts and their creditors.

15 *In re Figter Ltd.*, 118 F.3d 635, 639-40 (9th Cir. 1997).

16 Applying its "perspicacity" to the facts of this case, the  
17 court is satisfied that the votes cast by the clients of the  
18 Watts Guerra were not procured in bad faith. Watts Guerra  
19 repeatedly disclosed to its clients at least the general  
20 contours of the loan acquisition. The plan was the result of a  
21 court-mandated mediated negotiation between Debtors, creditors,  
22 shareholders and bondholders (through their respective official  
23 and ad hoc committees), and the wildfire survivors (through the  
24 TCC and several attorneys representing the survivors). While  
25 Mr. Watts played a significant role, so did many other counsel.  
26 The court approved the disclosure statement after these mediated  
27 negotiations and after Watts Guerra disclosed to its clients  
28 that Centerbridge and Apollo had acquired ownership of its  
credit facility.

Nothing was hidden, and nothing justifies a conclusion that  
an all-cash settlement was "bypassed" by Watts Guerra "due to  
perverse financial incentives and cozy relationships with

1 entrenched investors." Most important, these negotiations (and  
2 disclosures) took place BEFORE the court approved the Disclosure  
3 Statement and before Watts Guerra solicited votes of their  
4 clients and other wildfire survivors. Even after these repeated  
5 disclosures, Watts Guerra's clients cast their votes for and  
6 against the proposed plan; the court will not approve efforts to  
7 designate, disqualify and disenfranchise these votes.

8 B. Federal Rule of Bankruptcy Procedure 2019

9 Abrams also contends that the votes of the clients of Watts  
10 should be designated because Watts Guerra did not make certain  
11 disclosures purportedly required by Fed. R. Bankr. P. 2019. He  
12 cites no authority that the rule operates to counter what  
13 section 1126(e) validates on this record. Nonetheless, the  
14 court must address the applicability of Rule 2019 and the  
15 remedies for any violation of it.

16 Under Rule 2019, a group, committee or entity<sup>2</sup> must file a  
17 verified statement setting forth information called for in  
18 subdivision (c) if it consists of or represents "multiple  
19 creditors or equity security holders" and that "take[s] a  
20 position before the court" or "solicit[s] votes on the  
21 confirmation of a plan" on behalf of multiple creditors or  
22 equity security holders who are "acting in concert to advance  
23 their common interests". The entity must disclose each  
24 "disposable economic interest" it holds in relation to a debtor.  
25 Fed. R. Bankr. P. 2019(a) and (b).

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26  
27 <sup>2</sup> Section 101(15) of the Bankruptcy Code defines an entity as "a  
28 person, estate, trust, governmental unit, and United States  
Trustee. In turn, the definition of "person" in section 101(41)  
includes individuals, partnerships, and corporations.

1 Watts Guerra does not represent any group or committee; it  
2 does represent thousands of wildfire survivor claimants. If it  
3 represented its thousands of clients "acting in concert", it  
4 must make these required disclosures.

5 Rule 2019 does not apply to Watts Guerra as it had not  
6 appeared before this court to take any position until the  
7 pending motion against it was filed. Its clients have not acted  
8 in concert, as indeed a specifically organized group might have  
9 done. Moreover, Watts Guerra is not soliciting votes "on behalf  
10 of multiple clients." Some of these clients have voted against  
11 the plan, thus further demonstrating that the clients are not  
12 acting "in concert" with each other with respect to vote  
13 solicitation. A law firm providing legal advice to its clients  
14 and recommending that they vote in favor of the plan is not the  
15 type of conduct the rule is intended to address. If it were,  
16 every professional representing more than a single client would  
17 be obligated to make the disclosures required by the rule. That  
18 is not the traditional practice before this and other bankruptcy  
19 courts.

20 Consequently, Rule 2019 is simply inapplicable here. Even  
21 if it were applicable, the court has wide discretion in  
22 determining the remedy for a failure to comply, as Rule  
23 2019(e)(2)(C) permits the court to grant "other appropriate  
24 relief," including no relief. *In re Oklahoma P.A.C. First Ltd.*  
25 *P'ship*, 122 B.R. 387, 390 (Bankr. D. Ariz. 1990) ("a failure to  
26 comply with Bankruptcy Rule 2019(a) may result in the imposition  
27 of no sanctions or remedies under Bankruptcy Rule 2019(b).").

28

1 Disenfranchising the votes of individual wildfire survivors is  
2 not the appropriate remedy here.

3 III. CONCLUSION

4 The court has carefully considered the governing bankruptcy  
5 law, the arguments by counsel to various parties, and the  
6 differing opinions of the highly respected experts submitting  
7 declarations in support of positions asserted by Gowins and  
8 Watts Guerra. But no purpose would be served by parsing through  
9 those opinions because the applicable bankruptcy law vindicates  
10 Watts Guerra and Mr. Watts. The court concludes that the  
11 attenuated and disclosed relationship between Watts Guerra and  
12 Apollo and Centerbridge, prior to approval of the Disclosure  
13 Statement, does not justify designating the votes of the clients  
14 of Watts Guerra under section 1126(e) or sanctioning Watts  
15 Guerra under Rule 2019. If Watts Guerra did in fact violate the  
16 California Code of Professional Responsibility, any remedies for  
17 such violations are within the purview of the California State  
18 Bar. That purported violation does not implicate the Bankruptcy  
19 Code and Rules, and the clients of Watts Guerra should not be  
20 disenfranchised by a designation of their votes.

21 In light of the foregoing, Abrams' motion to designate  
22 votes is DENIED.

23 \*\*END OF ORDER\*\*



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