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12 CITY AND COUNTY OF SAN FRANCISCO

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15 UNITED STATES BANKRUPTCY COURT
16 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION

17 In re
18
19 PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,
20 Debtor.

21 Tax Id # 94-0742640
22
23

CASE NO. 01-30923 DM

Chapter 11

DATE: June 18, 2001
TIME: 9:30 a.m.
PLACE: 232 Pine St., 22nd Floor
San Francisco, CA
JUDGE: Honorable Dennis Montali

24 SAN FRANCISCO'S EVIDENTIARY OBJECTIONS TO
25 THE DECLARATION OF RUSSELL M. JACKSON IN SUPPORT OF
26 DEBTOR'S MOTION ORDER AUTHORIZING (1) CONTINUANCE OF PREPETITION
EMPLOYEE SEVERANCE AND DISPLACEMENT PROGRAMS, (2) ESTABLISHMENT
27 OF MANAGEMENT RETENTION PROGRAM, AND (3) HONORING CERTAIN
PREPETITION EMPLOYEE COMPENSATION (FED. R. BANKR. P. 9017 AND LOC.
BANKR. R. 9013-1(d)(2))
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50-275/323

Acc'd, Add: ~~to~~ Kids Ogc Mail Center

1 TO THE HONORABLE DENNIS MONTALI, UNITED STATES BANKRUPTCY JUDGE,
2 THE DEBTOR, AND OTHER INTERESTED PARTIES.

3 The City and County of San Francisco ("San Francisco") hereby objects to the
4 testimony contained in the Declaration of Russell M. Jackson in support of Debtor's Motion for
5 Order Authorizing (1) Continuance of Prepetition Employee Severance and Displacement
6 Programs, (2) Establishment of Management Retention Program, and (3) Honoring of Certain
7 Prepetition Employee Compensation, with respect to the allegations contained in paragraphs 13,
8 14 and 17.

9 The paragraphs above enumerated are devoid of the detail normally expected in
10 competent, truthful testimony and, indeed, are nothing more than a verification of the motion filed
11 by the Debtor. Since declarations are a form of evidence, they must comply with all the rules of
12 evidence. As argued *infra* the declaration proffered by Russell M. Jackson ("Jackson") in support
13 of the Debtor's motion for the establishment of a Management Retention Program does not
14 comply with the rules of evidence and therefore San Francisco objects to the same and these
15 objections should be sustained.

16 THE OBJECTIONS

17 The court in United States v. Dibble, 429 F.2d 598 (9th Cir, 1970) held that
18 declarations (1) must be based on personal knowledge, (2) set forth facts admissible into evidence,
19 and (3) show affirmatively that the affiant is competent to testify regarding the matters stated in
20 the affidavit. As stated in Doff v. Brunswick Corporation, 372 F.2d 801, 804 (9th Cir. 1967), cert.
21 denied 389 U.S. 820 (1967), "[M]ore is required from an affiant than mere hearsay and legal
22 conclusion." Instead, the declaration must be based on specific facts within the witness's personal
23 knowledge about which he is competent to testify. In the case at bar, the declaration of Jackson is
24 without probative value and is replete with hearsay, lack of foundation, and legal conclusions.
25 San Francisco's specific objections are as follows:

26 1. "I am informed and believe that retention of these employees is particularly
27 important in view of the significant challenges that PG&E faces, including not only bankruptcy,
28

1 but also electrical blackouts, implementation of significant rate increases, and the probability of
2 strong, negative customer reaction to the foregoing.” Objection. Lack of foundation, conclusion,
3 and hearsay.

4 2. “I am informed and believe that the current situation, involving both an
5 energy crisis in California and PG&E’s entering bankruptcy proceedings, raises retention issues of
6 a widespread nature that requires the use of a more structured program tailored to the situation and
7 consistently applied throughout the utility.” Objection. Lack of foundation, conclusion, and
8 hearsay.

9 3. “I am informed and believe that these most essential employees would be
10 difficult or impossible to replace. PG&E expects that its Management Retention Program will
11 significantly increase its ability to retain the critical knowledge and skills of its most essential
12 management employees. Based upon the foregoing in my opinion the program is in the best
13 interests of PG&E and its estate, including all parties in interest.” Objection. Lack of foundation,
14 conclusion, and hearsay.

15 4. “I am informed and believe that implementation of the retention program
16 for essential programs is common to companies in bankruptcy proceedings or other difficult
17 transition periods, and as reflected in Exhibit 4 attached hereto, the Management Retention
18 Program MRP is comparable (if not less generous) to similar retention programs approved by
19 courts in other large chapter 11 cases, when the relative size of the various debtors, number of
20 covered employees, and amount of payments are taken into account.” Objection. Lack of
21 foundation, conclusion, and hearsay.

22
23 CONCLUSION

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25 Paragraphs 13, 14 and 17 constitute a mere verification of the relevant portions of
26 the Debtor’s motion. It contains no competent evidence probative toward the determination of the
27 ultimate issues before the court.

1 **WHEREFORE** San Francisco respectfully requests that its evidentiary objections
2 be sustained, and that the aforesaid paragraphs and in particular the quotations herein cited be
3 stricken in their entirety.

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5 Respectfully submitted,

6
7 Louise H. Renne,
8 L. Joanne Sakai,
9 Theresa Mueller, and
10 D. Cameron Baker

11 and

12 DATED: June 11, 2001

13 **SULMEYER, KUPETZ, BAUMANN & ROTHMAN**
14 A Professional Corporation

15 By: 

16 Irving Sulmeyer

17 Attorneys for Creditors City and County of San
18 Francisco