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27 **UNITED STATES DISTRICT COURT**

28 **EASTERN DISTRICT OF CALIFORNIA**

BECKY GREER; TIMOTHY C. BUDNIK;  
ROSARIO SAENZ; and IAN CARTY,  
Individually and as “Class Representatives,”

Plaintiffs,

v.

PACIFIC GAS AND ELECTRIC  
COMPANY, and DOES 1 through 10,  
inclusive,

Defendants.

Case No. 1:15-CV-01066—EPG

**CLASS ACTION**

**STIPULATION FOR  
PROTECTIVE ORDER AND  
ORDER THEREON  
[Fed. R. Civ. P. 26(c)]**

Hon. Erica P Grosjean

Complaint filed: July 10, 2015

1           Through their respective attorneys of record, pursuant to Rule 26(c) of the  
2 Federal Rules of Civil Procedure and Local Rule 141.1, Plaintiffs Becky Greer, Timothy C.  
3 Budnik, Rosario Saenz, Ian Carty and Haley Markwith (collectively “Plaintiffs”) and  
4 Defendants Pacific Gas and Electric Company (“PG&E”) and IBEW Local 1245 (the “IBEW”)  
5 hereby stipulate to the following protective order for the purpose of preventing unnecessary  
6 disclosure or inappropriate use of confidential, private, proprietary and/or trade secret business  
7 information contained in certain documents, deposition testimony or discovery responses  
8 provided during the course of the above entitled lawsuit (the “Action”).

9           IBEW seeks by this Protective Order to prevent disclosure of: 1) the names,  
10 contact information, and employment status or history, personnel file and/or Union affiliation,  
11 of PG&E employees within the bargaining units represented by IBEW who are not parties to  
12 this action; 2) confidential internal union communications and/or documents, including but not  
13 limited to grievance files and negotiating notes, disclosure of which could jeopardize IBEW’s  
14 ability to negotiate on a level playing field with signatory employers.

15           PG&E concurs with the IBEW’s and Plaintiffs’ desire for a protective order and  
16 further seeks by this Protective Order to prevent disclosure of: 1) the names, contact  
17 information, and employment status or history, personnel file, confidential information, and/or  
18 Union affiliation, of PG&E employees within the bargaining units represented by IBEW who  
19 are not parties to this action; 2) confidential internal PG&E communications and/or documents,  
20 including but not limited to grievance files and negotiating notes.

21           Protection of this information should be addressed by a court order as opposed  
22 to private agreement, because the imprimatur of a court order will enhance the effectiveness of  
23 the protections set out below. Also, the court’s continuing jurisdiction to enforce this  
24 agreement, as provided below, will enable the parties to remedy any breach of or disputes  
25 regarding this order, as opposed to the more cumbersome and uncertain procedures for  
26 enforcing a private agreement.

27           1. Accordingly, the Parties stipulate to entry of a Protective Order, as set out  
28 below: During this Action, one or more parties may produce certain documents, provide

1 written discovery responses and/or provide or elicit deposition testimony containing  
2 confidential, private, proprietary and/or trade secret business information.

3         2.         The protections conferred by this Protective Order cover not only all items or  
4 information, regardless of the medium or manner in which it is generated, stored, or maintained  
5 (including, among other things, testimony, transcripts, and tangible things), that are produced  
6 or generated in disclosures or responses to discovery in this matter that has been designated as  
7 “Confidential” and subject to this Protective Order (i.e., “Protected Material”), but also (1) any  
8 information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or  
9 compilations of Protected Material; and (3) any testimony, conversations, or presentations by  
10 Parties or their Counsel that might reveal Protected Material.

11         3.         Documents produced by a person, entity, party, or counsel may stamp or  
12 otherwise label that document with the words “Confidential – Subject to Protective Order”  
13 prior to production, which shall render that document and the information contained in it  
14 subject to this Protective Order. Stamping or otherwise marking “Confidential – Subject to  
15 Protective Order” on the first page of any multi-page document shall designate all pages of the  
16 document as confidential and subject to this Order, unless otherwise expressly indicated by the  
17 party producing that document. To the extent practicable, only confidential information should  
18 be designated accordingly. For example, a single, confidential word or sentence does not  
19 render an entire page confidential.

20         4.         A party that makes original documents or materials available for inspection  
21 need not designate them for protection until after the inspecting party has indicated which  
22 material it would like copied and produced. During the inspection and before the designation,  
23 all of the material made available for inspection shall be deemed strictly confidential and  
24 subject to this Order. After the inspecting party has identified the documents it wants copied  
25 and produced, the producing party must determine which documents, or portions thereof,  
26 qualify for protection under this Order. Then, before producing the specified documents, the  
27 producing party must affix the “Confidential – Subject to Protective Order” legend to each  
28 page that contains Protected Material.

1           5.       For information produced in some form other than documentary and for any  
2 other tangible items, the producing party shall affix in a prominent place on the exterior of the  
3 container or containers in which the information or item is stored the legend “Confidential –  
4 Subject to Protective Order.”

5           6.       With respect to written discovery responses provided by a party, either that  
6 party or its counsel may designate a particular response (or portion of a response) as containing  
7 confidential information by stamping or otherwise marking the word “Confidential – Subject to  
8 Protective Order” on the page or pages containing that discovery response or by explicitly  
9 stating within the response itself that the information contained therein is confidential and  
10 subject to a protective order, either of which designation shall render that response and the  
11 information contained in it subject to this Protective Order. Again, the confidentiality  
12 designation is intended to be limited and cover only “Confidential” information as detailed in  
13 paragraph 3, above.

14           7.       Except as noted below, the original and all attorneys’ copies of deposition  
15 transcripts shall initially be considered not to contain confidential information and shall only be  
16 subject to the relevant provisions of this Order if the requesting attorney for a party at the  
17 deposition on the record designates portions of the testimony confidential, or within ten (10)  
18 days after receipt of the transcript writes to the court reporter and opposing counsel to identify  
19 the specific portions of testimony which are deemed by him or her to include confidential  
20 information. The reporter shall promptly conform the original copy and counsel shall conform  
21 their copies in accordance with the requesting attorney’s designation. All deposition testimony  
22 of a witness which is designated “Confidential” shall be contained in a separate transcript, the  
23 first page of which shall bear the legend “Confidential – Subject to Protective Order.” To  
24 facilitate “Confidential” designation of deposition testimony within 10 days of receipt of the  
25 transcript, the parties shall treat all deposition testimony during that 10-day period as  
26 provisionally designated “Confidential” subject to the protections of this Order.

27           8.       Any document, information or testimony designated as “Confidential – Subject  
28 to Protective Order” in accordance with paragraphs 2, 3 and/or 4 above shall not be used for

1 any purpose whatsoever other than in connection with the prosecution, defense or settlement  
2 of this Action. Such document/information/testimony shall not be delivered, exhibited,  
3 furnished or disclosed in whole or in part to any person, firm, entity or organization except to  
4 (a) counsel of record for the parties in this Action, and counsel and staff in Defendant PG&E  
5 and IBEW's in-house Law Departments; (b) persons regularly employed by the law firms  
6 representing Plaintiff and/or the firms representing Defendants PG&E and IBEW; (c) court  
7 personnel in connection with the performance of their responsibilities relative to this Action;  
8 (d) court reporters transcribing testimony of witnesses in this Action; (e) expert witnesses and  
9 consultants (including professional jury or trial consultants, and mock jurors) retained for the  
10 purpose of assisting counsel for a party in defending or prosecuting this Action; or (f) a witness  
11 at deposition to whom disclosure is necessary for this litigation to the extent he/she agrees on  
12 the record to be bound by this order and either authored the document or information in  
13 question or has a need to know or be shown the document or information in the course of  
14 providing testimony. However, nothing herein shall in any way limit a party's ability to use or  
15 disclose documents/information/testimony which its own counsel has designated "Confidential  
16 – Subject to Protective Order." Disclosure of documents/information/testimony designated as  
17 "Confidential – Subject to Protective Order," or use of the aforementioned confidential  
18 documents/information/testimony in a manner that runs contrary to this Paragraph by a party  
19 whose counsel made that designation, or by that party's counsel shall constitute waiver of the  
20 protections otherwise provided in the Order by that designation, relieving other parties or their  
21 counsel from the restrictions imposed by this Order.

22 9. Any person to whom delivery, exhibition or disclosure is made of any  
23 document, information or testimony described in paragraphs 2, 3 and/or 4 above shall be  
24 subject to the provisions of this protective order. That includes all persons described in  
25 paragraph 8. Persons described in paragraph 8(a), (b), (c) and (d) need not sign the  
26 Acknowledgement and Agreement attached as Exhibit "A", but shall be informed by counsel  
27 of the terms of this Order, and are subject to its provisions. Prior to delivery, exhibition or  
28 disclosure of covered documents/information/testimony to the persons qualified to receive

1 it/them under paragraph 8 (e), and/or (f), counsel for the party making disclosure shall provide  
2 each such person a copy of the protective order and shall secure from that person a signed  
3 confidentiality acknowledgement in the form attached hereto as **Exhibit “A.”** That  
4 acknowledgement shall state that the person receiving or seeing the covered  
5 document/information/testimony has read this order, that he/she may not and shall not divulge  
6 any document, information or testimony designated “Confidential – Subject to Protective  
7 Order” except in strict accordance with the terms and conditions of this Order, and that he/she  
8 will not utilize any document, information or testimony designated “Confidential” for any  
9 purpose other than in connection with the prosecution or defense of this Action. All originals  
10 of signed confidentiality acknowledgements shall be maintained by counsel for the party  
11 responsible for making the disclosure and shall be made available to the producing party’s  
12 counsel upon reasonable request.

13           10. Any party or counsel who files or intends to file a paper or other document with  
14 the Court which reflects, contains or includes any document/information/testimony designated  
15 as “Confidential” by an opposing party or that party’s counsel pursuant to the terms of this  
16 protective order, including any copies, reproductions, abstracts, summaries or quotations of or  
17 from such document/information/testimony, shall comply with the Local Rules governing such  
18 filing, including Local Rule 141.

19           11. Any party challenging a “Confidential” designation shall initiate the dispute  
20 resolution process by providing written notice of each designation it is challenging and  
21 describing the basis, if known, for each challenge. Notice under this paragraph can be served  
22 by e-mail to all counsel. To avoid ambiguity as to whether a challenge has been made, the  
23 written notice must recite that the challenge to confidentiality is being made in accordance with  
24 this specific paragraph of this Protective Order. The parties shall attempt to resolve each  
25 challenge in good faith and must begin the process by meeting and conferring directly (in voice  
26 to voice dialogue; other forms of communication are not sufficient) within seven (7) days of  
27 the date of service of notice. In conferring, the party making the designation must explain the  
28 basis for its belief that the confidentiality designation is proper. A challenging party may seek

1 judicial intervention only if it has engaged in this meet and confer process first or establishes  
2 that the designating party is unable or unwilling to participate in the meet and confer process in  
3 a timely manner.

4 12. Nothing herein shall prevent any party from bringing an appropriate motion  
5 upon ex parte or regular notice before the Court to have a “Confidential – Subject to Protective  
6 Order” designation of a document/information/testimony imposed in whole or in part, lifted in  
7 whole or in part, or to determine whether the use or disclosure of such  
8 document/information/testimony should be restricted other than in accordance with this  
9 protective order. The party seeking to have the Court make a “Confidential” designation has  
10 the burden of proof of establishing the confidential nature of the  
11 document/information/testimony. Furthermore, nothing herein shall affect any party’s right to  
12 make a formal motion upon ex parte or regular notice to the Court for a protective order  
13 pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and/or applicable Local Rule,  
14 with regard to any particular document/information/testimony, including for the purpose of  
15 seeking restrictions greater than those specified herein. Frivolous challenges to a designation,  
16 and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and  
17 burdens on other parties) may expose the challenging party to sanctions.

18 13. The parties agree to meet and confer before the final pretrial conference in this  
19 Action to arrive at a proposal for how information designated “Confidential- Subject to  
20 Protective Order” will be handled at trial.

21 14. Within sixty (60) days from the final termination of this Action, including any  
22 appeals, the parties and their counsel shall either (1) return all materials designated  
23 confidential, together with any and all copies, summaries and excerpts thereof, to counsel for  
24 the party producing such materials, or (2) destroy all such materials and certify in writing to the  
25 counsel for the party producing such materials that they have been destroyed. In accordance  
26 with this paragraph, the parties and their counsel shall also return to counsel or destroy all  
27 extracts or summaries of documents/information/testimony designated “Confidential – Subject  
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1 to Protective Order,” except for those materials which in the reasonable, good faith judgment  
2 of counsel constitute attorney work product.

3 15. If a party or its counsel inadvertently permits the production or disclosure of  
4 documents/information/testimony of a confidential, private, proprietary or trade secret nature  
5 without designating it “Confidential – Subject to Protective Order” in accordance with this  
6 Protective Order, that party or its counsel may thereafter designate the material as  
7 “Confidential – Subject to Protective Order” by identifying the specific  
8 document/information/testimony in letters addressed to all parties (through their respective  
9 counsel), and at that time designating the document/information/testimony as “Confidential –  
10 Subject to Protective Order.” From the date of receipt of any such letter, all parties and their  
11 respective counsel shall treat the specific document/information/testimony as confidential in  
12 accordance with the terms of this Protective Order, subject to further direction from the Court.

13 16. If a party learns that, by inadvertence or otherwise, it has disclosed Protected  
14 Material to any person or in any circumstance not authorized under this Protective Order, that  
15 party must immediately (a) notify in writing the designating party of the unauthorized  
16 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material,  
17 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms  
18 of this Order, and (d) request such person or persons to execute the “Acknowledgment and  
19 Agreement to Be Bound” that is attached hereto as Exhibit A.

20 17. The obligations of confidentiality contained in this protective order shall remain  
21 effective following the termination of the Action and the Court shall retain jurisdiction to  
22 enforce all provisions of this Order as well as to remedy any violation of it. In addition, the  
23 Court shall at all times have jurisdiction to resolve any dispute which may arise under the  
24 terms of this Protective Order on an ex parte basis or upon a regularly noticed motion,  
25 including but not limited to issues concerning whether some document/information/testimony  
26 has been improperly designated as “Confidential – Subject to Protective Order.”

27 18. By stipulating to the entry of this Protective Order, no party waives any right it  
28 otherwise would have to object to disclosing or producing any information or item on any

1 ground not addressed in this Protective Order. Similarly, no Party waives any right to object on  
2 any ground to use in evidence of any of the material covered by this Protective Order. The  
3 designation of any document, information or testimony shall not be construed as an admission  
4 of relevance or admissibility. This Order may only be introduced into evidence by a party in  
5 connection with a motion or other proceeding to enforce the terms or obtain clarification of this  
6 order.

7 19. Nothing in this Order prevents a party from redacting those portions of a  
8 document which are not responsive to document requests, or from redacting confidential,  
9 private or privileged information, or from substituting unique identifiers for persons' names, to  
10 protect their privacy.

11 20. Plaintiffs, Defendant PG&E, and Defendant IBEW Local 1245 are each  
12 separate and distinct parties in this action. Thus, a document designated "Confidential" by  
13 Defendant PG&E must be treated as "Confidential," in accordance with the above, by Plaintiffs  
14 and Defendant IBEW Local 1245, and each of them. Likewise, a document designated  
15 "Confidential" by Defendant IBEW Local 1245 must be treated as "Confidential," in  
16 accordance with the above, by Plaintiffs and Defendant PG&E, and each of them.

17 21. A non-party that produces documents or information in response to a subpoena  
18 or other third party discovery, including at or in connection with a deposition, has the same  
19 right to designate such documents and information as Confidential as the Parties to the Action,  
20 and once so designated, all such documents and information will be subject to the terms of this  
21 Order.

22 22. Nothing in this Order abridges the right of any person to seek its modification  
23 by the court in the future.

24 **IT IS SO STIPULATED.**

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**ORDER**

The Court has reviewed the above stipulation and adopts it except that the terms related to judicial intervention outlined in paragraphs 11 and 12 will not be automatic; rather, the Court will determine on a case-by-case basis whether judicial intervention is warranted. In order to file a motion under this paragraph, counsel must receive permission from the Court following an informal telephone conference. A party wishing to schedule such a conference should contact chambers at (559) 499-5962 to receive available dates. The Court will schedule the conference as soon as possible, taking into consideration the urgency of the issue. Prior to the conference, the Court will require the parties to submit letter briefs of no more than 3 pages in length to chambers for review. Telephonic conferences will not be on the record and the Court will not issue a formal ruling at that time. Nevertheless, the Court will attempt to provide guidance to the parties to narrow or dispose of the dispute. If no resolution is reached, the Court will consider whether the filing of a formal motion is appropriate.

The Court declines to adopt paragraph 17 to the extent it is inconsistent with Local Rule 141.1(f).

IT IS SO ORDERED.

Dated: August 17, 2016

/s/ Eric P. Grogan  
UNITED STATES MAGISTRATE JUDGE