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17
 18 UNITED STATES DISTRICT COURT

19 IN AND FOR THE NORTHERN DISTRICT OF CALIFORNIA

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 22 ADOLPH LOUIS VINCENT, JR,
 23 Plaintiff,
 24 v.
 25 PACIFIC GAS AND ELECTRIC
 COMPANY, RICK FUHRMAN, and
 26 DOES 1 through 15 inclusive
 27 Defendants.

) Case No. C07-705531 SI
)
) Date Action Filed: October 30, 2007
)
) CONFIDENTIALITY AGREEMENT AND
) [PROPOSED] STIPULATED PROTECTIVE
) ORDER

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 ATTORNEYS AT LAW
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1 IT IS HEREBY STIPULATED between Adolph Vincent, Jr. ("Plaintiff") and Pacific Gas
2 and Electric Company and Rick Fuhrman ("Defendants") (collectively "the Parties") in the
3 above-captioned matter ("the Litigation"), each Party being represented by and through their
4 respective attorneys, the undersigned, as follows:

5 1. This Confidentiality Agreement and Stipulated Protective Order (hereinafter "this
6 Agreement and Order") shall govern CONFIDENTIAL MATERIALS produced by or on behalf
7 of any Party and (notwithstanding any order terminating this Proceeding) shall be effective as to
8 the Parties from the date executed by their attorneys

9 2. This Agreement and Order governs any CONFIDENTIAL MATERIAL which a
10 Party or a nonparty produces in the litigation and (notwithstanding any order terminating this
11 Proceeding) shall remain in effect for a period of 60 days after an order concluding or otherwise
12 terminating this Proceeding is no longer subject to judicial review and/or all appeal rights are
13 exhausted; however, the confidentiality obligations of Reviewing Representatives as specified in
14 Paragraph 10 of this Agreement will remain in full force and effect for 2 years after an order
15 concluding or otherwise terminating this Proceeding is no longer subject to judicial review
16 and/or all appeal rights are exhausted.

17 3. For purposes of this Agreement:

18 a. The term "Reviewing Representative" is a person described in paragraphs 8 and
19 10.

20 b. (1) As used herein "CONFIDENTIAL INFORMATION" shall mean all
21 commercially sensitive, confidential or proprietary written, recorded or oral information or data
22 (including, without limitation, research, developmental, engineering, manufacturing, technical,
23 marketing, sales, financial, operating, performance, cost, business and process information or
24 data, know how, and computer programming and other software and software techniques) which
25 is provided by Defendants pursuant to this Agreement on a confidential basis and, in the case of
26 written or recorded information, which is marked "Confidential" or "Proprietary" or "Protected"
27 or "Highly Sensitive."
28

1 (2) The term “CONFIDENTIAL MATERIALS” includes (a) material that contains
2 CONFIDENTIAL INFORMATION as described above in paragraph 3 (b) (1) and is provided by
3 Defendants to the Receiving Party and designated by Defendants as protected; (b) any copy or
4 reproduction of such designated materials; (c) any information contained in or obtained from such
5 designated materials; (d) any other materials which are made subject to this Agreement by any
6 court or other body having appropriate authority, or by agreement of the parties hereto; and (e)
7 notes of CONFIDENTIAL MATERIALS.

8 (3) The term “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY
9 MATERIALS” refers to CONFIDENTIAL MATERIALS which PG&E believes contain
10 confidential trade secret, market-sensitive information such as business plans, strategic plans,
11 and/or financial projections proprietary to the PG&E, which, if disclosed to competitors could, in
12 such party’s judgment, detrimentally affect the ability of the PG&E to compete. The parties to
13 this Agreement expressly reserve all their legal rights to object to future production request(s) of
14 HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY MATERIALS based upon the trade
15 secret privilege or other basis.

16 (4) The term “notes of CONFIDENTIAL MATERIALS” includes notes of HIGHLY
17 CONFIDENTIAL ATTORNEYS’ EYES ONLY MATERIALS and means memoranda,
18 handwritten notes, or any other form of information which copies or discloses materials described
19 in the foregoing paragraph.

20 (5) CONFIDENTIAL MATERIALS shall not include (a) any information or
21 document contained in the files of the California Public Utilities Commission, or any other
22 federal or state agency, or any federal or state court, unless said information or document was
23 provided to the agency on a confidential basis and is not a public record, or is subject to a
24 protective order of such agency or court; or (b) information that is public knowledge or which
25 becomes public knowledge as a result of publication or disclosure by the Producing Party.

26 4. In addition to paragraph 3(b)(2) above, a party may also designate
27 CONFIDENTIAL MATERIALS those items provided through discovery and/or informally
28 which customarily are treated by that Party as confidential, proprietary, which are not available to

1 the public, and which the producing party contends contains or comprises information that is or
2 may be privileged, or which could, if disclosed, violate a personal privacy, proprietary, trade
3 secret, copyright, financial or other interest protected by law.

4 5. CONFIDENTIAL MATERIALS shall be made available under the terms of this
5 Agreement only to the Receiving Party and the Receiving Representative (as provided in
6 paragraphs 10.)

7 6. Any Party may designate any document as "CONFIDENTIAL MATERIAL" if
8 that Party or Party's counsel of record has a good faith opinion that the document is within the
9 scope of this Agreement. Once a Party has made this designation, then the Parties shall use the
10 document solely for the purposes of the Litigation, and not for any business, competitive,
11 governmental, or other purpose or function, or for any other proceeding, action or claim, and shall
12 not copy or disclose such document to anyone except as provided in this Agreement and Order,
13 absent a specific order by this Court or further stipulation of the Parties. The Parties also agree
14 not to violate trademark, copyright or other intellectual property protections as to any documents,
15 including videotapes, designated as "CONFIDENTIAL" provided the Parties are specifically
16 given notice, in writing that the confidential document is trademarked, copyrighted or otherwise
17 protected under legislation.

18 7. Each page of CONFIDENTIAL MATERIALS shall be marked
19 "CONFIDENTIAL" by the producing party. Each page of HIGHLY CONFIDENTIAL
20 ATTORNEYS' EYES ONLY MATERIAL shall be marked additionally as "HIGHLY
21 CONFIDENTIAL ATTORNEYS' EYES ONLY DOCUMENT." All CONFIDENTIAL
22 MATERIAL shall be maintained by the receiving party in a secure manner. Access shall be
23 limited to the Receiving Party and those reviewing representatives specifically authorized
24 pursuant to paragraph 10.

25 8. In the instance of deposition testimony, the deponent or counsel may invoke the
26 provisions of this Protective Order for any Party or non-party by giving notice to counsel for
27 the other Parties either in writing or on the record. Deposition transcripts, or portions thereof,
28 may be designated as Confidential by notifying all parties and the court reporter by letter of the

1 page(s), line(s) and exhibit(s) to be designated "CONFIDENTIAL MATERIAL" within
2 fourteen (14) days after service of the transcript. The court reporter shall be asked to mark the
3 face of the transcript appropriately. If any portion of a videotaped deposition is designated
4 CONFIDENTIAL MATERIAL, the videocassette and its container shall be labeled as provided
5 above. Nothing in this paragraph shall prevent a party from making specific designations on
6 the record during the deposition, and the court reporter shall mark the face of the transcript
7 appropriately in that event.

8 9. CONFIDENTIAL MATERIALS shall not be used except as necessary for the
9 conduct of this Proceeding; nor shall they be disclosed in any manner to any person except a
10 Reviewing Representative who is engaged in the conduct of these Proceedings and who needs
11 to know the information in order to carry out that person's responsibilities in these Proceedings.
12 Reviewing Representatives may make notes of CONFIDENTIAL MATERIALS which notes
13 must be maintained in a secure manner pursuant to paragraph 6. Each Party shall be entitled to
14 make only such copies of the CONFIDENTIAL INFORMATION as are reasonably necessary
15 for the accomplishment of its purposes for this Proceeding, provided that all such copies are
16 clearly marked as confidential, and that such copies shall be deemed CONFIDENTIAL
17 INFORMATION under this Agreement; all reports, summaries or other documents containing
18 information derived from CONFIDENTIAL INFORMATION shall also be deemed
19 CONFIDENTIAL INFORMATION under this Agreement.

20 Notwithstanding the other provisions of this Agreement, a Party may disclose
21 CONFIDENTIAL INFORMATION if that CONFIDENTIAL INFORMATION is required to
22 be disclosed by law or applicable legal process, including an order of court of competent
23 jurisdiction, provided that in the event that a Party becomes aware of any act which would
24 require the disclosure of CONFIDENTIAL INFORMATION, it shall so notify the other Party
25 in writing within **7 business days** of receipt of the request for disclosure.

26 10. a. A Reviewing Representative is an individual who is:
27 (1) An attorney who has made an appearance in this Proceeding for a Receiving
28 Party;

1 (2) An attorney, including in house counsel, paralegals, or other clerical staff
2 associated for purposes of this case with an attorney described in (1);

3 (3) An expert or an employee of an expert retained by Receiving Party for the
4 purpose of advising, preparing for, or testifying in this Proceeding;

5 b. Notwithstanding the foregoing, with respect to CONFIDENTIAL MATERIALS
6 considered HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY DOCUMENTS and/or
7 HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIALS by either party
8 hereto, both parties expressly reserve the right to object to future production requests of such
9 HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIALS and to their
10 dissemination to any Reviewing Representative.

11 11. Access to HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY
12 MATERIALS is limited to Reviewing Representatives described in paragraph 10a (1), (2), (3).
13 The same limitation applies to notes of HIGHLY CONFIDENTIAL ATTORNEYS' EYES
14 ONLY MATERIALS as defined in paragraph 3(b)(4). The parties agree that with respect to any
15 HIGHLY CONFIDENTIAL financial projections to be provided to Plaintiff's economic expert 1)
16 the parties will meet and confer prior to the disclosure of experts and, if unable to informally
17 resolve any dispute regarding Mr. Vincent's access to the information, 2) will request the Court's
18 intervention on an expedited basis.

19 12. Except with respect to HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY
20 MATERIALS, any Party and Reviewing Representative may disclose CONFIDENTIAL
21 MATERIALS to any other Reviewing Representative as long as the receiving Reviewing
22 Representative have executed and delivered a Nondisclosure Certificate to the Producing Party.
23 In the event that any Reviewing Representative to whom the CONFIDENTIAL MATERIALS are
24 disclosed ceases to be engaged in these Proceedings, or is employed or retained for a position
25 whereby that person is no longer qualified to be a Reviewing Representative under paragraph 10,
26 access to CONFIDENTIAL MATERIALS by that person shall be terminated.

27 13. a. If the Receiving Party intends to submit or use in this Proceeding any
28 CONFIDENTIAL MATERIALS such that the submission or use would result in a public

1 disclosure of those CONFIDENTIAL MATERIALS, including, without limitation, the
2 presentation of prepared testimony, cross-examination, briefs, comments, protests, or other
3 presentations before the court, the attorney for the Receiving Party shall contact the attorney for
4 the Producing Party as soon as possible and, where practicable, not later than 3 business days
5 prior to such use, and both counsel shall constructively explore means of identifying the
6 CONFIDENTIAL MATERIAL so that the confidentiality thereof may be reasonably protected
7 (including, but not limited to, submission of testimony and briefs under seal and clearing the
8 hearing room during examination, discussion, or argument concerning the CONFIDENTIAL
9 MATERIAL), while at the same time enabling an effective presentation.

10 ~~b. Filing Under Seal – Discovery Motions. When filing or opposing a motion
11 for discovery, counsel must file under seal any information designated as “CONFIDENTIAL
12 MATERIAL” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY” as well as any
13 materials setting forth the substance of that information. Counsel must deliver such information
14 and materials to the Clerk of the Court in a sealed envelope clearly marked as “CONFIDENTIAL
15 MATERIALS” or “HIGHLY CONFIDENTIAL ATTORNEYS’ EYES ONLY”.~~

16 c. Filing Under Seal – Non-Discovery Motions. When filing or opposing a
17 motion related to matters other than discovery, counsel must lodge conditionally under seal any
18 information designated as “CONFIDENTIAL MATERIALS” or “HIGHLY CONFIDENTIAL
19 ATTORNEYS’ EYES ONLY” as well as any materials setting forth the substance of that
20 information.

21 14. a. Before a Party or attorney allows any person (other than attorneys of record and
22 their employees, the US District Court, outside or inside counsel, or witnesses who are under oath
23 at deposition, as discussed below) to have access to documents marked “Confidential,” the other
24 Party or attorney shall first show that person a copy of this Agreement and Order and shall solicit
25 his or her agreement to its terms. Only persons listed in Paragraph 8 above may be shown such
26 documents. Attorneys shall maintain a record of all written agreements signed by persons to
27 whom they have given such documents.

Parties shall
comply with
Civil Local
Rule 79-5

1 b. If a deponent is allowed to have access during their deposition to documents
2 marked "Confidential", they are not required to sign an agreement in the form attached as Exhibit
3 A. However, they must be provided a copy of this Agreement and Order during the deposition
4 and they may not retain copies of confidential documents or view them outside of their deposition
5 or during breaks in the deposition. Confidential documents used as exhibits will be separately
6 bound and marked as "Confidential Exhibits."

7 15. If a Party or attorney for a Party desires to disclose any document marked
8 "Confidential" to any person who is not specifically authorized to have access to such
9 document pursuant to Paragraph 10, the Party or attorney shall not make such a disclosure until
10 the attorney has first met and conferred with the attorney for the Party who designated the
11 document as "Confidential." The attorneys will then have ten (10) days to negotiate, and if
12 they cannot agree, the Party seeking to disclose will have 10 days to file a motion with the
13 Court. While such a motion is pending before the Court, the attorneys shall not disclose the
14 document except as authorized in this Agreement and Order. The Party claiming
15 confidentiality shall bear the burden of supporting the designation. The Court may make any
16 orders it deems fair and equitable including conditioning disclosure upon execution of this
17 Agreement.

18 16. This Agreement and Order is not intended to govern the use of "Confidential"
19 material at the trial of this action. Procedures governing the use of "Confidential" material at
20 trial, if necessary, will be established by the Trial Court.

21 17. If any party, or such party's counsel, objects to the designation of any document,
22 testimony, information or material as "Confidential" the parties shall meet and confer in an
23 effort to resolve any such dispute. If the parties are unable to resolve such dispute, the
24 objecting party may bring a motion to have the contested information declared non-
25 Confidential. Unless and until an Agreement and Order is entered to the contrary, the
26 documents, testimony or material shall be given the "Confidential" treatment initially assigned
27 to it and provided for in this Protective Order.

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1 18. The restrictions imposed by this Agreement and Order may only be modified or
2 terminated by written stipulation of all parties or by order of this Court. This Agreement and
3 Order shall survive termination of this action except that (i) there shall be no restriction on
4 documents that have been used as exhibits in open court, and (ii) any Party may seek the written
5 permission of all other parties or further order of this Court, after notice to the other parties and
6 opportunity to be heard, to modify or dissolve this Protective Order.

7 19. Upon termination of the Litigation, including any appeals, the Parties shall
8 destroy the originals and copies of "Confidential" documents, unless a Party or non-party
9 requests in writing, return of any Confidential documents within ten (10) days of the
10 termination of the litigation. Returning of documents shall be at requesting party's expense.
11 No Party receiving confidential documents may copy them except as Exhibits for archive,
12 depositions, declarations or trial and for each co-counsel. No Party shall give the confidential
13 documents to anyone not covered by this Order.

14 20. Violations of this Agreement shall subject the violating Party to sanctions
15 permitted by the Discovery Act for discovery abuses as well as any other remedies available in
16 law or equity.

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NONDISCLOSURE CERTIFICATE

I hereby acknowledge that I, _____ [Name],

_____ [Position and Employer] am

about to receive confidential information supplied in connection with the above-captioned proceeding, Case No. C07-705531 SI [United States District Court, Northern District]. I certify that I understand that I understand that the CONFIDENTIAL INFORMATION, CONFIDENTIAL MATERIALS and/or HIGHLY CONFIDENTIAL ATTORNEYS' EYES ONLY MATERIALS are provided to me subject to the terms and restrictions of the CONFIDENTIALITY AGREEMENT AND STIIPULATED PROTECTIVE ORDER executed by Pacific Gas & Electric Company and Mr. Adolph Vincent, Jr. on November 26, 2008. I have been given a copy of said Agreement; I have read it, and I agree to be bound by its terms. I understand that the CONFIDENTIAL INFORMATION, CONFIDENTIAL MATERIALS, and/or HIGHLY CONFIDENTIAL ATTORNEYS EYES ONLY MATERIALS as contemplated in the Agreement, including any notes or other records that may be made regarding any such materials, shall not be disclosed to anyone except as expressly permitted by the Agreement.

Dated: _____