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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

RUBEN SIZEMORE,
Plaintiff,

No. C 13-00169 WHA

v.

**ORDER REQUESTING
FURTHER BRIEFING**

PACIFIC GAS & ELECTRIC
RETIREMENT PLAN and EMPLOYEE
BENEFIT COMMITTEE OF THE
PACIFIC GAS & ELECTRIC
RETIREMENT PLAN,
Defendants.

At a hearing on defendants' motion for summary judgment, plaintiff contended for the first time that the standard of review should be *de novo* due to an improper delegation of authority by a member of the PG&E appeals committee, Mr. Hyun Park, to another PG&E employee, Mr. Sanford Hartman. A subsequent order granted defendants' administrative motion for supplemental briefing on this issue. In connection with this supplemental briefing, defendants produced new documents to plaintiff.

Contrary to what was said at the hearing, plaintiff now concedes that his argument regarding Mr. Hartman was incorrect (Dkt. No. 45 at 1). Based on the newly-produced documents, however, plaintiff raises another new argument regarding the standard of review. Plaintiff now argues that Mr. Park was not properly serving on the appeals committee, and therefore had no authority to delegate to Mr. Hartman.


1 Plaintiff complains that defendants have once again failed to produce a relevant
2 document necessary to analyze this new issue: a June 21, 2006 resolution. Because there has
3 not yet been any formal discovery in this matter, the basis for plaintiff's complaint is that
4 defendants failed to identify this document in their initial or supplemental disclosures. Plaintiff,
5 however, refused to stipulate to allowing the 2006 resolution into the record.

6 Defendants argue that the 2006 resolution establishes that Mr. Park was in fact a proper
7 member of the appeals committee and have filed an administrative motion to add the 2006
8 resolution to the record. Defendants explain that they failed to produce the document because its
9 substance was referenced in a footnote of another document already in the record, and up until
10 plaintiff's most recent submission, defendants "did not see the need for further authentication of
11 the June 21, 2006 Resolution" (Dkt. No. 47 at 2).

12 Defendants' request to submit the 2006 resolution is **GRANTED**. Defendants shall submit
13 the 2006 resolution, a declaration authenticating it, and up to two pages of argument relating to
14 the 2006 resolution by **JUNE 18 AT NOON**. Plaintiff may file a response not to exceed four pages
15 by **JUNE 20 AT NOON**. At this point, the summary judgment briefing will be closed; no new
16 arguments will be permitted.

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18 **IT IS SO ORDERED.**

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20 Dated: June 17, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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