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 7 and the Proposed Class

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9 **UNITED STATES DISTRICT COURT**
 10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 GABINO ORTIZ, ARTURO AMAYA, and
 BARBARA GEHRKE,

13 Plaintiffs,

14 v.

15 SPARK ENERGY GAS, LLC; SPARK
 16 ENERGY GAS, L.P.; and DOES 1 through
 100, inclusive,

17 Defendants.

Case No. 3:15-cv-02326-JSW

**~~PROPOSED~~ STIPULATED
 PROTECTIVE ORDER**

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22 Attorneys for Defendant
23 SPARK ENERGY GAS, LLC
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1 1. PURPOSES AND LIMITATIONS

2 Disclosure and discovery activity in this action are likely to involve production of
3 confidential, proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
7 all disclosures or responses to discovery and that the protection it affords from public disclosure
8 and use extends only to the limited information or items that are entitled to confidential treatment
9 under the applicable legal principles. The parties further acknowledge, as set forth in Section
10 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential
11 information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and
12 the standards that will be applied when a party seeks permission from the court to file material
13 under seal.

14 2. DEFINITIONS

15 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
16 information or items under this Order.

17 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
18 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
19 of Civil Procedure 26(c).

20 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as
21 well as their support staff).

22 2.4 Designated House Counsel: In-House Counsel who seek access to “HIGHLY
23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information in this matter.

24 2.5 Designating Party: a Party or Non-Party that designates information or items that it
25 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
26 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

1 2.6 Disclosure or Discovery Material: all items or information, regardless of the
2 medium or manner in which it is generated, stored, or maintained (including, among other things,
3 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
4 responses to discovery in this matter.

5 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to
6 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
7 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
8 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
9 or of a Party's competitor.

10 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
11 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
12 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
13 less restrictive means.

14 2.9 In-House Counsel: attorneys who are employees of a party to this action. In-
15 House Counsel does not include Outside Counsel of Record or any other outside counsel.

16 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
17 entity not named as a Party to this action.

18 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
19 action but are retained to represent or advise a party to this action and have appeared in this action
20 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

21 2.12 Party: any party to this action, including all of its officers, directors, employees,
22 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

23 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
24 Material in this action.

25 2.14 Professional Vendors: persons or entities that provide litigation support services
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
27 organizing, storing, or retrieving data in any form or medium) and their employees and
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1 subcontractors.

2 2.15 Protected Material: any Disclosure or Discovery Material that is designated as
3 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

4 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a
5 Producing Party.

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only Protected Material
8 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
9 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
10 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

11 However, the protections conferred by this Stipulation and Order do not cover the following
12 information: (a) any information that is in the public domain at the time of disclosure to a
13 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
14 a result of publication not involving a violation of this Order, including becoming part of the
15 public record through trial or otherwise; and (b) any information known to the Receiving Party
16 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
17 obtained the information lawfully and under no obligation of confidentiality to the Designating
18 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

19 4. DURATION

20 Even after final disposition of this litigation, the confidentiality obligations imposed by
21 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
22 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
23 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
24 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
25 including the time limits for filing any motions or applications for extension of time pursuant to
26 applicable law.

1 determine which documents, or portions thereof, qualify for protection under this Order. Then,
2 before producing the specified documents, the Producing Party must affix the appropriate legend
3 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each
4 page that contains Protected Material. If only a portion or portions of the material on a page
5 qualifies for protection, the Producing Party also must clearly identify the protected portion(s)
6 (e.g., by making appropriate markings in the margins) and must specify, for each portion, the
7 level of protection being asserted.

8 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
9 Designating Party identify on the record, before the close of the deposition, hearing, or other
10 proceeding, all protected testimony and specify the level of protection being asserted. When it is
11 impractical to identify separately each portion of testimony that is entitled to protection and it
12 appears that substantial portions of the testimony may qualify for protection, the Designating
13 Party shall have up to 21 days to identify the specific portions of the testimony as to which
14 protection is sought and to specify the level of protection being asserted. Only those portions of
15 the testimony that are appropriately designated for protection within the 21 days shall be covered
16 by the provisions of this Stipulated Protective Order. Alternatively, a Designating Party may
17 specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
18 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY.”

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
21 other proceeding to include Protected Material so that the other parties can ensure that only
22 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
24 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Transcripts containing Protected Material shall have an obvious legend on the title page
27 that the transcript contains Protected Material, and the title page shall be followed by a list of all
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1 pages (including line numbers as appropriate) that have been designated as Protected Material and
2 the level of protection being asserted by the Designating Party. The Designating Party shall
3 inform the court reporter of these requirements. Any transcript that is prepared before the
4 expiration of a 21-day period for designation shall be treated during that period as if it had been
5 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
6 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
7 actually designated.

8 (c) for information produced in some form other than documentary and for any other
9 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
10 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
11 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of
12 the information or item warrant protection, the Producing Party, to the extent practicable, shall
13 identify the protected portion(s) and specify the level of protection being asserted.

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
15 designate qualified information or items does not, standing alone, waive the Designating Party’s
16 right to secure protection under this Order for such material. Upon timely correction of a
17 designation, the Receiving Party must make reasonable efforts to assure that the material is
18 treated in accordance with the provisions of this Order.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
23 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
24 challenge a confidentiality designation by electing not to mount a challenge promptly after the
25 original designation is disclosed.

26 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
27 process by providing written notice of each designation it is challenging and describing the basis
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1 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
2 notice must recite that the challenge to confidentiality is being made in accordance with this
3 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
4 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
5 forms of communication are not sufficient) within 14 days of the date of service of notice. In
6 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
7 designation was not proper and must give the Designating Party an opportunity to review the
8 designated material, to reconsider the circumstances, and, if no change in designation is offered,
9 to explain the basis for the chosen designation. A Challenging Party may proceed to the next
10 stage of the challenge process only if it has engaged in this meet and confer process first or
11 establishes that the Designating Party is unwilling to participate in the meet and confer process in
12 a timely manner.

13 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
14 intervention, the Challenging Party may file a motion challenging a confidentiality designation at
15 any time if there is good cause for doing so, including a challenge to the designation of a
16 deposition transcript or any portions thereof. Any motion brought pursuant to this provision must
17 be accompanied by a competent declaration affirming that the movant has complied with the meet
18 and confer requirements imposed by the preceding paragraph.

19 The burden of persuasion in any such challenge proceeding shall be on the Designating
20 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose
21 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
22 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
23 file a motion to retain confidentiality as described above, all parties shall continue to afford the
24 material in question the level of protection to which it is entitled under the Producing Party's
25 designation until the court rules on the challenge.

1 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
2 deposition testimony or exhibits to depositions that reveal Protected Material may not be
3 disclosed to anyone except as permitted under this Stipulated Protective Order.

4 (h) the author or recipient of a document containing the information or a custodian or
5 other person who otherwise possessed or knew the information.

6 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
7 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
8 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

10 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
11 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
12 for this litigation;

13 (b) Designated In-House Counsel of the Receiving Party;

14 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
15 litigation, based upon whether the HIGHLY CONFIDENTIAL-ATTORNEY’S EYES ONLY
16 information relates to the expert’s field of expertise and anticipated testimony; (2) who have
17 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) before reviewing any
18 HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY information, the original of which
19 must be maintained by counsel for the Receiving Party, and made available to counsel for the
20 Producing Party within three (3) days after a conference satisfying Civil L.R. 37-1(a) has
21 occurred in anticipation of the Producing Party filing a motion to enforce the provisions of this
22 Stipulated Protective Order concerning disclosure of HIGHLY CONFIDENTIAL-ATTORNEYS’
23 EYES ONLY information to experts; (3) but review of any HIGHLY CONFIDENTIAL-
24 ATTORNEYS’ EYES ONLY information can only occur in the context of this lawsuit and no
25 copies of such information can be retained by any such experts or used in another proceeding;

26 (d) the court and its personnel;

27 (e) court reporters and their staff,

1 (f) professional jury or trial consultants, and Professional Vendors to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A); and

4 (g) the author or recipient of a document containing the information or a custodian or
5 other person who otherwise possessed or knew the information.

6 7.4 Counsel for the Receiving Party shall maintain copies of any signed
7 “Acknowledgment and Agreement to Be Bound” (Exhibit A) until sixty (60) days after the Final
8 Disposition of the action, in accordance with Paragraph 13.

9 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
10 LITIGATION

11 If a Party is served with a subpoena or a court order issued in other litigation that compels
12 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” that Party must:

14 (a) promptly notify in writing the Designating Party. Such notification shall include a
15 copy of the subpoena or court order;

16 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
17 other litigation that some or all of the material covered by the subpoena or order is subject to this
18 Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

19 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
20 Designating Party whose Protected Material may be affected.

21 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
22 court order shall not produce any information designated in this action as “CONFIDENTIAL” or
23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the
24 court from which the subpoena or order issued, unless the Party has obtained the Designating
25 Party’s permission. The Designating Party shall bear the burden and expense of seeking
26 protection in that court of its confidential material – and nothing in these provisions should be
27 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful
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1 directive from another court.

2 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
3 LITIGATION

4 (a) The terms of this Order are applicable to information produced by a Non-Party in
5 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
6 ATTORNEYS’ EYES ONLY.” Such information produced by Non-Parties in connection with
7 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
8 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request, to produce a
10 Non-Party’s confidential information in its possession, and the Party is subject to an agreement
11 with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

12 1. promptly notify in writing the Requesting Party and the Non-Party that
13 some or all of the information requested is subject to a confidentiality agreement with a Non-
14 Party;

15 2. promptly provide the Non-Party with a copy of the Stipulated Protective
16 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
17 the information requested; and

18 3. make the information requested available for inspection by the Non-Party.

19 (c) If the Non-Party fails to object or seek a protective order from this court within 14
20 days of receiving the notice and accompanying information, the Receiving Party may produce the
21 Non-Party’s confidential information responsive to the discovery request. If the Non-Party timely
22 seeks a protective order, the Receiving Party shall not produce any information in its possession
23 or control that is subject to the confidentiality agreement with the Non-Party before a
24 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
25 burden and expense of seeking protection in this court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Stipulated Protective
4 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the
5 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
6 Protected Material, (c) inform the person or persons to whom unauthorized disclosures were
7 made of all the terms of this Order, and (d) request such person or persons to execute the
8 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

9 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
10 MATERIAL

11 When a Producing Party gives notice to Receiving Parties that certain inadvertently
12 produced material is subject to a claim of privilege or other protection, the obligations of the
13 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
14 provision is not intended to modify whatever procedure may be established in an e-discovery
15 order that provides for production without prior privilege review. Pursuant to Federal Rule of
16 Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
17 communication or information covered by the attorney-client privilege or work product
18 protection, the parties may incorporate their agreement in the stipulated protective order
19 submitted to the court.

20 12. MISCELLANEOUS

21 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
22 seek its modification by the court in the future.

23 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
24 Order no Party waives any right it otherwise would have to object to disclosing or producing any
25 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
26 Party waives any right to object on any ground to use in evidence of any of the material covered
27 by this Protective Order.

1 12.3 Filing Protected Material. Without written permission from the Designating Party
2 or a court order secured after appropriate notice to all interested persons, a Party may not file in
3 the public record in this action any Protected Material unless such information belongs to the
4 Party. A Party that seeks to file under seal any Protected Material must comply with Civil Local
5 Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing
6 the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5, a sealing
7 order will issue only upon a request establishing that the Protected Material at issue is privileged,
8 protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving
9 Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied
10 by the court, then the Receiving Party may file the Protected Material in the public record
11 pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

12 12.4 Nothing in this Order shall apply to a Party's use of their own Protected Material
13 for any purpose during the course of this Lawsuit.

14 13. FINAL DISPOSITION

15 Within 60 days after the final disposition of this action, as defined in paragraph 4, each
16 Receiving Party must return all Protected Material to the Producing Party or destroy such
17 material. As used in this subdivision, "all Protected Material" includes all copies, abstracts,
18 compilations, summaries, and any other format reproducing or capturing any of the Protected
19 Material. Whether the Protected Material is returned or destroyed, the Receiving Party must
20 submit a written certification to the Producing Party (and, if not the same person or entity, to the
21 Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all
22 the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has
23 not retained any copies, abstracts, compilations, summaries or any other format reproducing or
24 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
25 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
26 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
27 product, and consultant and expert work product, even if such materials contain Protected
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1 Material. Any such archival copies that contain or constitute Protected Material remain subject to
2 this Protective Order as set forth in Section 4 (DURATION).

3
4 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.


5
6 DATED: February 25, 2016 /s/ Steven Weinmann
7 Steven Weinmann

8 Attorneys for Plaintiffs

9
10 DATED: February 24, 2016 /s/ Michelle D. Pector
11 Michelle D. Pector

12 Attorneys for Defendant Spark Energy Gas, LLC

13 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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15 DATED: February 29, 2016 
16 HONORABLE JEFFREY S. WHITE
17 UNITED STATES DISTRICT COURT

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on _____ [date] in the case of *Gabino Ortiz, Arturo Amaya, and Barbara Gehrke v. Spark Energy Gas, LLC, et al.*, Case No. 3:15-cv-02326-SBA. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt.

I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order. I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
[printed name]

Signature: _____
[signature]