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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PRUCO LIFE INSURANCE
COMPANY, an Arizona Corporation,

Plaintiff,

v.

CALIFORNIA ENERGY
DEPARTMENT, INC., a dissolved
California Corporation, TIMOTHY
BRYSON, an individual, MICKEY
NICHOLSON, an individual, JOHN J.
WALSH, an individual, EDWARD
SPOONER, a trustee of the LIVING
TRUST OF EDWARD SPOONER, LIFE
ADVANCE, LLC, a Nevada corporation,
JASON VOELKER, an individual; AND
DOES 2-10,

Defendants.

AND RELATED CROSS ACTIONS.

Case No.: 3:18-cv-02280-DMS-AHG

**ORDER GRANTING JOINT
MOTION FOR PROTECTIVE
ORDER**

[ECF No. 222]

1 Before the Court is the parties' Joint Motion for Protective Order. ECF No.
2 222. Having reviewed the joint motion and the parties' proposed protective order,
3 and good cause appearing, the Court **GRANTS** the joint motion except to the
4 extent the proposed order did not comply with the Court's Chambers Rules. *See*
5 Chmb.R. at 4 ("Any protective order submitted for the Court's signature must
6 contain the following two provisions: . . ."). The Court has added language
7 consistent with the Court's Chambers Rules to Paragraph 26, but otherwise enters
8 the following stipulated protective order exactly as submitted by the parties:

9 **PROTECTIVE ORDER**

10 The Court recognizes that at least some of the documents and information
11 ("materials") being sought through discovery in the above-captioned action are, for
12 competitive reasons, normally kept confidential by the parties. The parties Life
13 Advance, LLC, Mickey Nicholson, Jason Voelker and California Energy
14 Development Inc. have agreed to be bound by the terms of this Protective Order
15 ("Order") in this action.

16 The materials to be exchanged throughout the course of the litigation between
17 the parties may contain privileged information, trade secret or other confidential
18 research, technical, cost, price, marketing or other commercial information, as is
19 contemplated by Federal Rule of Civil Procedure 26(c)(1)(G). The purpose of this
20 Order is to protect the confidentiality of such materials as much as practical during
21 the litigation. **THEREFORE:**

22 **DEFINITIONS**

23 1. The term "confidential information" will mean and include information
24 contained or disclosed in any materials, including documents, portions of
25 documents, answers to interrogatories, responses to requests for admissions, trial
26 testimony, deposition testimony, and transcripts of trial testimony and depositions,
27 including data, summaries, and compilations derived therefrom that is deemed to be
28 confidential information by any party to which it belongs.

1 b. Designation as "CONFIDENTIAL - FOR COUNSEL ONLY": Any
2 party may designate information as "CONFIDENTIAL - FOR COUNSEL ONLY"
3 only if, in the good faith belief of such party and its counsel, the information is
4 among that considered to be most sensitive by the party, including but not limited to
5 trade secret or other confidential research, development, financial or other
6 commercial information.

7 5. In the event the producing party elects to produce materials for
8 inspection, no marking need be made by the producing party in advance of the initial
9 inspection. For purposes of the initial inspection, all materials produced will be
10 considered as "CONFIDENTIAL - FOR COUNSEL ONLY," and must be treated
11 as such pursuant to the terms of this Order. Thereafter, upon selection of specified
12 materials for copying by the inspecting party, the producing party must, within a
13 reasonable time prior to producing those materials to the inspecting party, mark the
14 copies of those materials that contain confidential information with the appropriate
15 confidentiality marking.

16 6. Whenever a deposition taken on behalf of any party involves a
17 disclosure of confidential information of any party:

18 a. the deposition or portions of the deposition must be designated
19 as containing confidential information subject to the provisions
20 of this Order; such designation must be made on the record
21 whenever possible, but a party may designate portions of
22 depositions as containing confidential information after
23 transcription of the proceedings; [A] party will have until
24 fourteen (14) days after receipt of the deposition transcript to
25 inform the other party or parties to the action of the portions of
26 the transcript to be designated "CONFIDENTIAL" or
27 "CONFIDENTIAL - FOR COUNSEL ONLY."
28

- 1 b. the disclosing party will have the right to exclude from
2 attendance at the deposition, during such time as the confidential
3 information is to be disclosed, any person other than the
4 deponent, counsel (including their staff and associates), the court
5 reporter, and the person(s) agreed upon pursuant to paragraph 8
6 below; and
- 7 c. the originals of the deposition transcripts and all copies of the
8 deposition must bear the legend "CONFIDENTIAL" or
9 "CONFIDENTIAL - FOR COUNSEL ONLY," as appropriate,
10 and the original or any copy ultimately presented to a court for
11 filing must not be filed unless it can be accomplished under seal,
12 identified as being subject to this Order, and protected from
13 being opened except by order of this Court.

14 7. All confidential information designated as "CONFIDENTIAL" or
15 "CONFIDENTIAL FOR COUNSEL ONLY" must not be disclosed by the receiving
16 party to anyone other than those persons designated within this order and must be
17 handled in the manner set forth below and, in any event, must not be used for any
18 purpose other than in connection with this litigation, unless and until such
19 designation is removed either by agreement of the parties, or by order of the Court.

20 8. Information designated "CONFIDENTIAL - FOR COUNSEL ONLY"
21 must be viewed only by counsel (as defined in paragraph 3) of the receiving party,
22 and by independent experts under the conditions set forth in this Paragraph. The right
23 of any independent expert to receive any confidential information will be subject to
24 the advance approval of such expert by the producing party or by permission of the
25 Court. The party seeking approval of an independent expert must provide the
26 producing party with the name and curriculum vitae of the proposed independent
27 expert, and an executed copy of the form attached hereto as Exhibit A, in advance
28 of providing any confidential information of the producing party to the expert. Any

1 objection by the producing party to an independent expert receiving confidential
2 information must be made in writing within fourteen (14) days following receipt of
3 the identification of the proposed expert. Confidential information may be disclosed
4 to an independent expert if the fourteen (14) day period has passed and no objection
5 has been made. The approval of independent experts must not be unreasonably
6 withheld.

7 9. Information designated "confidential" must be viewed only by counsel
8 (as defined in paragraph 3) of the receiving party, by independent experts (pursuant
9 to the terms of paragraph 8), by court personnel, and by the additional individuals
10 listed below, provided each such individual has read this Order in advance of
11 disclosure and has agreed in writing to be bound by its terms:

- 12 a) Executives who are required to participate in policy decisions
13 with reference to this action;
- 14 b) Technical personnel of the parties with whom Counsel for the
15 parties find it necessary to consult, in the discretion of such
16 counsel, in preparation for trial of this action; and
- 17 c) Stenographic and clerical employees associated with the
18 individuals identified above.

19 10. With respect to material designated "CONFIDENTIAL" or
20 "CONFIDENTIAL – FOR COUNSEL ONLY," any person indicated on the face of
21 the document to be its originator, author or a recipient of a copy of the document,
22 may be shown the same.

23 11. All information which has been designated as "CONFIDENTIAL" or
24 "CONFIDENTIAL -FOR COUNSEL ONLY" by the producing or disclosing party,
25 and any and all reproductions of that information, must be retained in the custody of
26 the counsel for the receiving party identified in paragraph 3, except that independent
27 experts authorized to view such information under the terms of this Order may retain
28 custody of copies such as are necessary for their participation in this litigation.

1 12. Before any materials produced in discovery, answers to interrogatories,
2 responses to requests for admissions, deposition transcripts, or other documents
3 which are designated as confidential information are filed with the Court for any
4 purpose, the party seeking to file such material must seek permission of the Court to
5 file the material under seal. No document shall be filed under seal unless counsel
6 secures a court order allowing the filing of a document, or portion thereof, under
7 seal. An application to file a document under seal shall be served on opposing
8 counsel, and on the person or entity that has custody and control of the document, if
9 different from opposing counsel. If opposing counsel, or the person or entity who
10 has custody and control of the document, wishes to oppose the application, they must
11 contact the chambers of the judge who will rule on the application to notify the Court
12 that an opposition to the application will be filed.

13 13. At any stage of these proceedings, any party may object to a designation
14 of the materials as confidential information. Unless a prompt challenge to a
15 designating party's confidentiality designation is necessary to avoid foreseeable,
16 substantial unfairness, unnecessary economic burdens, or a significant disruption or
17 delay of the litigation, a Party does not waive its right to challenge a confidentiality
18 designation by electing not to mount a challenge promptly after the original
19 designation is disclosed.

20 The party objecting to confidentiality must notify, in writing, counsel for the
21 designating party of the objected-to materials and the grounds for the objection. To
22 avoid ambiguity as to whether a challenge has been made, the written notice must
23 recite that the challenge to confidentiality is being made in accordance with this
24 specific paragraph of the Protective Order. The parties shall attempt to resolve each
25 challenge in good faith and must begin the process by conferring directly within
26 seven (7) days of the date of service of notice.

27 If the dispute is not resolved consensually between the parties within seven
28 (7) days of receipt of such a notice of objections, the objecting party may move the

1 Court for a ruling on the objection. The materials at issue must be treated as
2 confidential information, as designated by the designating party, until the Court has
3 ruled on the objection or the matter has been otherwise resolved.

4 14. All confidential information must be held in confidence by those
5 inspecting or receiving it, and must be used only for purposes of this action. Counsel
6 for each party, and each person receiving confidential information must take
7 reasonable precautions to prevent the unauthorized or inadvertent disclosure of such
8 information. If confidential information is disclosed to any person other than a
9 person authorized by this Order, the party responsible for the unauthorized
10 disclosure must immediately bring all pertinent facts relating to the unauthorized
11 disclosure to the attention of the other parties and, without prejudice to any rights
12 and remedies of the other parties, make every effort to prevent further disclosure by
13 the party and by the person(s) receiving the unauthorized disclosure.

14 15. No party will be responsible to another party for disclosure of
15 confidential information under this Order if the information in question is not labeled
16 or otherwise identified as such in accordance with this Order.

17 16. If a party, through inadvertence, produces any confidential information
18 without labeling or marking or otherwise designating it as such in accordance with
19 this Order, the designating party may give written notice to the receiving party that
20 the document or thing produced is deemed confidential information, and that the
21 document or thing produced should be treated as such in accordance with that
22 designation under this Order. The receiving party must treat the materials as
23 confidential, once the designating party so notifies the receiving party. If the
24 receiving party has disclosed the materials before receiving the designation, the
25 receiving party must notify the designating party in writing of each such disclosure.
26 Counsel for the parties will agree on a mutually acceptable manner of labeling or
27 marking the inadvertently produced materials as "CONFIDENTIAL" or
28 "CONFIDENTIAL - FOR COUNSEL ONLY" - SUBJECT TO PROTECTIVE

1 ORDER.

2 17. Nothing within this order will prejudice the right of any party to object
3 to the production of any discovery material on the grounds that the material is
4 protected as privileged or as attorney work product.

5 18. Nothing in this Order will bar counsel from rendering advice to their
6 clients with respect to this litigation and, in the course thereof, relying upon any
7 information designated as confidential information, provided that the contents of the
8 information must not be disclosed.

9 19. This Order will be without prejudice to the right of any party to oppose
10 production of any information for lack of relevance or any other ground other than
11 the mere presence of confidential information. The existence of this Order must not
12 be used by either party as a basis for discovery that is otherwise improper under the
13 Federal Rules of Civil Procedure.

14 20. Nothing within this order will be construed to prevent disclosure of
15 confidential information if such disclosure is required by law or by order of the
16 Court.

17 21. Upon final termination of this action, including any and all appeals,
18 counsel for each party must, upon request of the producing party, return all
19 confidential information, including sealed documents, to the party that produced the
20 information, including any copies, excerpts, and summaries of that information, or
21 must destroy same at the option of the receiving party, and must purge all such
22 information from all machine-readable media on which it resides. Notwithstanding
23 the foregoing, counsel for each party may retain all pleadings, briefs, memoranda,
24 motions, and other documents filed with the Court that refer to or incorporate
25 confidential information, and will continue to be bound by this Order with respect
26 to all such retained information. Further, attorney work product materials that
27 contain confidential information need not be destroyed, but, if they are not
28 destroyed, the person in possession of the attorney work product will continue to be

1 bound by this Order with respect to all such retained information.

2 22. The restrictions and obligations set forth within this order will not apply
3 to any information that: (a) the parties agree should not be designated confidential
4 information; (b) the parties agree, or the Court rules, is already public knowledge;
5 (c) the parties agree, or the Court rules, has become public knowledge other than as
6 a result of disclosure by the receiving party, its employees, or its agents in violation
7 of this Order; or (d) has come or will come into the receiving party's legitimate
8 knowledge independently of the production by the designating party. Prior
9 knowledge must be established by pre-production documentation.

10 23. The restrictions and obligations within this order will not be deemed to
11 prohibit discussions of any confidential information with anyone if that person
12 already has or obtains legitimate possession of that information.

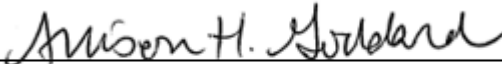
13 24. Transmission by email or some other currently utilized method of
14 transmission is acceptable for all notification purposes within this Order.

15 25. This Order may be modified by agreement of the parties, subject to
16 approval by the Court.

17 26. The Court may modify the terms and conditions of this Order *sua*
18 *sponte* for good cause, or in the interest of justice, or **for public policy reasons** ~~on~~
19 ~~its own order at any time in these proceedings~~. The parties prefer that the Court
20 provide them with notice of the Court's intent to modify the Order and the content
21 of those modifications, prior to entry of such an order.

22 **IT IS SO ORDERED.**

23 Dated: January 13, 2021

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25 _____
26 Honorable Allison H. Goddard
27 United States Magistrate Judge
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EXHIBIT A

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of

4 _____
5 _____ [print or type full address], declare under penalty of perjury that I
6 have read in its entirety and understand the Stipulated Protective Order that was
7 issued by the United States District Court for the Southern District of California
8 on (date) _____, 2021 in the case of *Pruco Life Insurance Company*
9 *v. California Energy Development, Inc.*, Case No. 18cv2280-DMS-AHG. I agree
10 to comply with and to be bound by all the terms of this Stipulated Protective Order
11 and I understand and acknowledge that failure to so comply could expose me to
12 sanctions and punishment in the nature of contempt. I solemnly promise that I will
13 not disclose in any manner any information or item that is subject to this Stipulated
14 Protective Order to any person or entity except in strict compliance with the
15 provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court
17 for the Southern District of California for the purpose of enforcing the terms of this
18 Stipulated Protective Order, even if such enforcement proceedings occur after
19 termination of this action.

20 I hereby appoint _____ [print or type
21 full name] of _____
22 [print or type full address and telephone number] as my California agent for service
23 of process in connection with this action or any proceedings related to enforcement
24 of this Stipulated Protective Order.

25 Date: _____ Signature: _____

26 Print Name: _____

27 _____
28 City, State where sworn and signed