

1 JEFFREY L. SCHAFFER (No. 91404)  
2 ETHAN P. SCHULMAN (No. 112466)  
3 LINDA Q. FOY (No. 148764)  
4 HOWARD, RICE, NEMEROVSKI, CANADY,  
5 FALK & RABKIN  
6 A Professional Corporation  
7 Three Embarcadero Center, 7th Floor  
8 San Francisco, California 94111-4065  
9 Telephone: 415/434-1600  
10 Facsimile: 415/217-5910

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11 Attorneys for Debtor and Debtor in Possession  
12 PACIFIC GAS and ELECTRIC COMPANY

13 UNITED STATES BANKRUPTCY COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16 In re  
17 PACIFIC GAS and ELECTRIC  
18 COMPANY, a California corporation,  
19 Debtor.

Case No. 01-30923 DM  
Chapter 11 Case

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEBTOR'S MOTION FOR VALUATION  
OF CLAIM FOR FEASIBILITY  
PURPOSES (GILBERT MEDEIROS,  
CLAIM NO. 7057)

20 Federal I.D. No. 94-0742640

Date: October 2, 2002  
Time: 1:30 p.m.  
Place: 235 Pine Street, 22nd Floor  
San Francisco, California  
Judge: Hon. Dennis Montali

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1 INTRODUCTION AND SUMMARY OF CLAIM

2 Claimant Gilbert Medeiros ("Medeiros") was employed as a Gas Fitter at Pacific  
3 Gas & Electric's ("PG&E") Marysville facility. He was terminated in February 1999 for  
4 diverting energy by tampering with the meter and transformer at his residence; energy theft  
5 is cause for immediate termination under the collective bargaining agreement governing  
6 Medeiros' employment. Medeiros challenged his termination in a grievance filed by his  
7 union. The grievance panel found that his discharge was for just and sufficient cause.  
8 Medeiros then filed a lawsuit and has filed this Claim in pro per, seeking \$200,000 for  
9 alleged wrongful termination.

10 Medeiros's claim cannot succeed as a matter of law. First, it is preempted by  
11 Section 301 of the Labor Management Relations Act, and Medeiros cannot state a claim  
12 under that Section. Part I, infra. Second, even if there were no Section 301 preemption, the  
13 evidence that Medeiros was responsible for the diversion of energy at his home is  
14 overwhelming and cannot be overcome by Medeiros's mere, repeated and unsupported  
15 insistence that he is not responsible. Part II, infra. Such conduct provides ample  
16 justification for termination and establishes that Medeiros's claim of termination without  
17 good cause is meritless.

18  
19 FACTUAL AND PROCEDURAL BACKGROUND

20 At the time of his termination, Medeiros was a Gas Fitter whose job duties  
21 included welding and equipment operation at the Marysville facility. Declaration of  
22 Maureen Fries ("Fries Decl.") Ex. 4-A at 13. Medeiros's employment was governed by a  
23 collective bargaining agreement ("CBA") between PG&E and Local 1245 of the  
24 International Brotherhood of Electrical Workers ("Local 1245").

25 In or around October 1998, PG&E learned from one of its meter readers that the  
26 meter at what turned out to be Medeiros's residence was in an inverted position. While  
27 attempting to install a metering device on the transformer pole serving Medeiros's home,  
28 PG&E discovered that there was an unauthorized splice box on the pole with illegal

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1 connections going to Medeiros's property and bypassing the PG&E meter. Following  
2 further investigation and monitoring, PG&E discovered that Medeiros's meter was in fact  
3 running backwards, that the seal on his meter had been cut and replaced and that the meter  
4 itself appeared to have been removed and reinstalled numerous times. The company's  
5 investigation was thoroughly documented by written reports and photographs. Fries Decl.  
6 Ex. 5 (Declaration of Gil Smith) and Exs. 4-A through 4-C. When confronted with the  
7 evidence of energy theft, Medeiros offered explanations that, on further investigation, were  
8 unsupported. Fries Decl. Ex. 6 (Declaration of James Moore) and Exs. 6-A through 6-E.

9 Under the Positive Discipline Policy negotiated between PG&E and Local 1245,  
10 theft of electricity is grounds for automatic termination of employment. See Fries Decl.  
11 Ex. 4-B at 4, 5, 7. On February 17, 1999, Medeiros was given written notice of his  
12 termination based upon diversion of energy. Fries Decl. Ex. 4-D. Medeiros denied the theft  
13 and said that a third party must have done it, but he offered no evidence or information to  
14 support this claim. Local 1245 filed a grievance on Medeiros's behalf challenging his  
15 termination as "without just cause." Fries Decl. Ex. 4-E. Following the grievance  
16 proceeding, the parties issued a Memorandum of Decision in July 1999 finding  
17 "considerable circumstantial evidence" that Medeiros had diverted energy and ruling that  
18 "the discharge was for just and sufficient cause." Fries Decl. Ex. 4-G.

19 In February 2000, Medeiros filed an action in Butte County Superior Court (the  
20 "Civil Action") alleging tortious discharge, unlawful termination and "breach of good faith"  
21 and seeking damages for lost earnings and benefits, humiliation and mental anguish against  
22 both PG&E and individual PG&E employees, in an amount "in excess of \$100,000." Fries  
23 Decl. Ex. 4-H. PG&E removed the action to federal court based upon preemption under  
24 Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185(a), and  
25 Defendants moved for summary judgment in October 2000 on the ground of preemption.  
26 Fries Decl. Exs. 2-7. The court had not yet ruled on the motion at the time PG&E filed its  
27 Chapter 11 petition. The Civil Action was stayed as to PG&E, and the court subsequently  
28 issued an order staying the entire proceeding until thirty (30) days after this Court lifts the

1 bankruptcy stay, at which time PG&E is to refile its motion for summary judgment.

2  
3 ARGUMENT

4 I.

5 MEDEIROS'S CLAIM IS PREEMPTED BY SECTION 301 OF THE  
6 NLRA AND HE HAS NOT AND CANNOT STATE A CLAIM  
7 UNDER THAT STATUTE.<sup>1</sup>

8 The Collective Bargaining Agreement between PG&E and Medeiros's union  
9 provides that the exclusive procedure for challenging discharge of an employee is to bring a  
10 grievance pursuant to specified Grievance Procedures (Fries Decl. Ex. 4-C §102.2.) and that  
11 the resolution of a timely grievance "shall be final and binding on the Company, Union and  
12 the grievant." Id. §102.4; see Vaca v. Sipes, 386 U.S. 171 (1967) (individual employee's  
13 remedies are governed exclusively by grievance procedure). Any claim challenging  
14 Medeiros's discharge as lacking in good cause is governed by the terms of the CBA and  
15 therefore subject to federal preemption under Section 301 of the Labor Management  
16 Relations Act. NLRB v. City Disposal Sys., Inc., 465 U.S. 822, 836, 840-41 (1984)  
17 (individual employee's action to enforce terms of a collective bargaining agreement is  
18 "concerted activity" preempted by the NLRA).

19 Furthermore, in view of the final disposition of his grievance finding that  
20 Medeiros' discharge "was for just and sufficient cause," Medeiros cannot state a claim under  
21 Section 301 of the Act in the absence of an additional claim against the union for breach of  
22 the duty of fair representation, which Medeiros has not alleged (see Fries. Decl. Ex. 4-H)  
23 and which is in any event time-barred. See Hines v. Anchor Motor Freight, Inc., 424 U.S.  
24 554, 562-65 (1976) (where collective bargaining agreement contains procedures for final  
25 settlement of disputes, courts cannot undertake review of merits of final determination  
26 except in conjunction with a claim of breach of duty of fair representation against union);

27 <sup>1</sup>This basis for valuing Medeiros's claim at \$0 is set forth in greater detail in PG&E's  
28 papers in support of PG&E's pending Motion for Summary Judgment in the Civil Action.  
See Fries Decl. Ex. 4-A through 4-H.

1 DelCostello v. International Bhd. of Teamsters, 462 U.S. 151, 172 (1983) (six month statute  
2 of limitations for Section 301 claim). Medeiros has not, and cannot, state a claim under  
3 Section 301 of the Act.

4 For this reason alone, PG&E will prevail on its summary judgment motion, and  
5 Medeiros's Civil Action will be dismissed with prejudice.

6  
7 II.

8 THE EVIDENCE OF GOOD CAUSE FOR MEDEIROS'S  
9 TERMINATION WAS OVERWHELMING AND  
10 UNCONTROVERTED.

11 Even if Medeiros were somehow able to evade Section 301 preemption, the final,  
12 nonappealable effect of the adverse grievance findings and decision, and the time bar to any  
13 Section 301 claim, the underlying independent evidence of good cause for his termination is  
14 overwhelming. Hines, 424 U.S. at 570-71 (individual employee suing under Section 301  
15 must prove both breach of duty by union and that discharge was in violation of collective  
16 bargaining agreement).

17 The declarations, attached exhibits and security report of the PG&E employees  
18 who conducted the investigation into Medeiros's inverted meter and confirmed the illegal  
19 lines bypassing the meter and leading to the transformer pole to his property (Fries Decl.  
20 Exs. 5, 6), and the Joint Statement of Facts of the investigating committee on Medeiros's  
21 grievance (Fries Decl. Ex. 4-F) present a compelling case that Medeiros illegally diverted  
22 energy to his own use in violation of Positive Discipline Guidelines and as a ground for  
23 immediate termination.

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CONCLUSION

For the above reasons, PG&E contends that Medeiros's wrongful discharge claim is demonstrably meritless and that the estimated value of the claim is zero.

DATED: August 30, 2002.

Respectfully,

JEFFREY L. SCHAFFER  
ETHAN SCHULMAN  
LINDA Q. FOY  
HOWARD, RICE, NEMEROVSKI, CANADY,  
FALK & RABKIN  
A Professional Corporation

By: Linda Q. Foy  
LINDA Q. FOY

Attorneys for Debtor and Debtor in Possession  
PACIFIC GAS AND ELECTRIC COMPANY

HOWARD  
RICE  
NEMEROVSKI  
CANADY  
FALK  
& RABKIN  
A Professional Corporation