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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

CENTRAL DIVISION

IN RE: 2007 WILDFIRE INDIVIDUAL
LITIGATION - WITCH CREEK/GUEJITO
FIRES

Case Nos. CPU-PO-CTL 2008 00093080

I/C Judge: Richard E.L. Strauss
Dept.: C-75

**BRIEF IN SUPPORT OF MOTION RE
THE COMBINED WITCH/GUEJITO
TRIAL**

Date: June 19, 2013

Time: 10:00 a.m.

1. Procedural History And Present Status Of The Combined Witch/Guejito Trial

Starting on October 15, 2009, and again on January 27, 2010, counsel comprising PCG-1 requested the Court set trial dates and structures for the Witch/Guejito and Rice Canyon fire trials. (Exhibit 1, Proposed Trial Plan , October 15, 2009; Exhibit 2, Joint Order Following

1 October 15, 2009, Status Conference; Exhibit 3, PCG-1 Proposed Case Management Order Re
2 Trial Plan and Memorandum In Support, January 27, 2010).

3 On May 17, 2010, two written stipulations were presented to the Court. The first was a
4 “Stipulation Re Mediation Protocol And Order,” which provided for mediation of Witch Creek
5 fire cases. (Exhibit 4, Stipulation Re Mediation Protocol And Order, May 17, 2010) This
6 stipulation was expressly “conditioned upon and in consideration of the parties entering a
7 separate stipulation regarding trial plans and trial dates.” (*Id.* at p. 7 ¶22)

8 The second stipulation, entitled “Stipulation Re Trial Plan,” provided:

9 SDG&E will support PCG-1's request to the Court to set a combined Witch/Guejito trial
10 to follow the verdict in the CGO [Clearly Guejito Only] trial no later than six months
thereafter or, if no trial occurs, on a date not earlier than April 1, 2011.

11 (Exhibit 5, Stipulation Re Trial Plan, ¶ 2)

12 None of the plaintiffs represented by PCG-1 counsel were part of the Clearly Guejito
13 Only (CGO) trial, and at their request the Court entered an order that plaintiffs represented by
14 PCG-1 were not in privity with any plaintiff(s) in the CGO trial. The CGO trial never occurred,
15 because the parties settled.

16 On December 15, 2010, January 26, 2011, August 15, 2011, September 26, 2011, and
17 February 1, 2012, PCG-1 moved and/or requested orders setting trial dates and for a trial
18 structure for the combined Witch/Guejito trial. (Exhibit 6, Motion by PCG-1 For A Case
19 Management Order Re Witch/Guejito Trial and Brief In Support, December 15, 2010; Exhibit 7,
20 Status Conference Statement By PCG-1, January 26, 2011; Exhibit 8, PCG-1's Motion for a Case
21 Management Order Re The Combined Witch/Guejito Trial and Motion for Bifurcation and Joint
22 Trial Of Common Liability Issues And Briefs In Support, August 15, 2011; Exhibit 9, PCG-1's
23 Status Conference Statement, September 26, 2011; Exhibit 10, PCG-1's Motion for A Case
24 Management Order Re The Combined Witch/Guejito Trial And Brief In Support, February 1,
25 2012.)

26 On November 29, 2012, fourteen named plaintiffs brought a motion for the Court to set a
27 trial date for the combined Witch/Guejito trial. The motion was taken off calendar by counsel's
28 agreement because most of the moving plaintiffs had settled by the date of the hearing. (Exhibit

1 11, Notice of Motions And Motions Re The Combined Witch/Guejito Trial, November 29,
2 2012). On that date, the Court set March 21, 2013, for hearing another motion to set a trial date
3 and the pending motion for transfer of the Rice Canyon fire case. (Exhibit 12, Excerpts of
4 Reporter's Transcript, November 29, 2012, p. 25-6)

5 On March 21, 2013, fourteen named plaintiffs brought a motion for the Court to set a
6 date for trial of their cases. (Exhibit 13, Notice of Motions and Motions Re The Combined
7 Witch/Guejito Trial, March 21, 2013) After hearing argument, the Court declined to set a trial
8 date and continued the cases until June 19, 2013, for further case management. (Exhibit 14,
9 Excerpts of Reporter's Transcript, March 21, 2013)

10 While the Court has set trial dates from time to time, the Court vacated those trial dates
11 several months in advance of each date. Three years after the Stipulation Re Trial Plan was
12 entered, there is no trial date for the combined Witch/Guejito trial. (Exhibit 15, Orders Following
13 Status Conference, July 26, 2012, p. 2)

14 **2. Summary Of The Motion To Set Dates**

15 This motion is made by individuals and businesses harmed by the 2007 Witch/Guejito
16 fire complex. The governments and insurance companies have settled; only individual and
17 business cases remain, five and a half years after the October 2007 fires.

18 By the time of trial, the cases of the moving plaintiffs will have been on file for between
19 five and a half and two years. (Exhibit 1 to Motion, List of Moving Plaintiffs) In their counsel's
20 judgment, the fire losses in each case approximate or exceed one million dollars. Each moving
21 plaintiff has been to mediation at least once and some more than once. The date of submission of
22 their mediation demands is not relevant, because all of the moving plaintiffs have been to
23 mediation and their cases have not settled.

24 Nine of the moving plaintiffs were also moving plaintiffs in the March 21, 2013, motion
25 for a trial date, and all nine were subject to previous motions by PCG-1 for trial.

26 The moving plaintiffs urge the Court to consolidate their cases for trial on a date certain
27 and to set dates for exchange of expert witness information and files.

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1 **A. The Proposed Trial Date - April 18, 2014.** Plaintiffs propose the Court set April 18,
2 2014, as the date on which the Court will commence jury selection for the combined
3 Witch/Guejito trial. This date is ten months after this hearing, which will give the parties ample
4 time to settle the few remaining cases that involve actual fire damage and to prepare for trial. So
5 trial can commence on April 18, motions *in limine* should be heard in March 2014.

6 **B. The Number Of Trial Plaintiffs.** This motion seeks trial of all issues for the
7 moving plaintiffs' cases or for that lesser number of them the Court decides is manageable. If the
8 Court decides on a fewer number of trial plaintiffs, counsel for plaintiffs must be the ones to
9 select the trial plaintiffs. Plaintiffs bear the burden of proof. The only reason for a defendant or
10 the Court to select a trial plaintiff is for bellwether purposes - to provide standards for resolution
11 of other pending cases.

12 But this litigation is far beyond utility of a bellwether case, even if one could formerly
13 have been chosen from the myriad factual variations presented by these fire cases. The vast
14 majority of fire cases have settled, and standards for settlement were set in the mediation process
15 long ago. There is no need for a trial to set standards for settlement or anything else; the only
16 purpose for a trial is to resolve unsettled cases.

17 There is no valid reason for a defendant or the Court to select any trial plaintiff.

18 **C. A Brief Description Of Moving Plaintiffs' Cases**

19 The following is a brief description of the moving plaintiffs' cases:

20 1. Terry and Carol Terrebossy: Complaint filed on April 11, 2008. Mr. Terrebossy, a
21 Naval Academy graduate, and his wife lived on a multi-structure property outside of Ramona.
22 The fire destroyed two structures and damaged their home. They also suffered business loss.

23 2. Joseph Cebe and Cebe Farms, Inc.: Complaint filed on August 4, 2008. Mr. Cebe and
24 Cebe Farms, Inc., bred unique colored chickens for ethnic markets in Southern California, which
25 Cebe Farms dominated for decades. The fire destroyed one of Cebe Farms' breeding facilities
26 and with it entire, unique breeding lines which cannot be replaced, costing Cebe Farms half its
27 market share. Two photographs of fire damage to Cebe Farms stock are attached as Exhibits 16
28 and 17.

1 3. Estate of Romero and Carolyn Andersen: Complaint filed on October 3, 2008. This
2 case seeks damages for the death of Dr. Romero, who died from complications from prolonged
3 exposure to smoke and poor air quality.

4 4. Stephen and Shawn Shields, Transportation Property Company, Inc., and Lago Vista
5 Palm, LLC: Complaint filed on October 21, 2008. The Shields' nursery, office, and the data base
6 which they used to operate a truck terminal sales business were destroyed by the fire, causing a
7 large business loss in addition to property loss. Two photographs of fire damage to the Shields'
8 property are attached as Exhibits 18 and 19.

9 5. E.A. Ranches, Kenneth Cramer and Trust: Complaint filed on October 18, 2010. This
10 estate near Ramona suffered destruction by fire of a home, a manager's residence, an office,
11 fences, barns, and many oak and other trees which covered this fully utilized 960 acre
12 thoroughbred race horse ranch. Two photographs of fire damage to E.A. Ranch property are
13 attached as Exhibits 20 and 21.

14 6. Henry Ranch Escondido, LP: Complaint filed on December 7, 2011. This 55 acre
15 producing avocado ranch suffered complete destruction of its avocado trees and partial
16 destruction of its palm grove.

17 7. Mesa Grande Band of Mission Indians: Complaint filed on March 23, 2012. The Mesa
18 Grande Band evacuated dozens of members from its housing development and ranch in advance
19 of the fire. Thousands of mature oak trees were destroyed, and the band suffered severe fire
20 damage to its equipment, buffalo herd, vegetation, and infrastructure.

21 8. David and Jan Lee: Complaint filed on March 23, 2012. The fire destroyed the Lee's
22 20 acre avocado ranch and their home on the same property. Photographs of fire damage to the
23 Lees' property are attached as Exhibits 22 and 23.

24 9. William and Linda Hensley and Delila Murray: Complaint filed on October 21, 2008,
25 and March 23, 2012. These plaintiffs suffered substantial fire damage to their Poway property,
26 but their home was spared. The fire and smoke aggravated the Crohn's disease suffered by Mr.
27 Hensley to the point he has become fully disabled.

28 10. Cyrus and Patty Moinzadeh: Complaint filed May 17, 2012. Mr. And Mrs.

1 Moinzadeh and their three children lost their Rancho Santa Fe home and all of its contents and
2 landscaping, which were completely destroyed by the fire. Photographs of fire damage to their
3 home are shown on Exhibits 24 and 25.

4 11. Leith Clotfelter, Clotfelter Investments LP, and Bruce Jackson: Complaint filed on
5 June 4, 2012. Bruce Jackson and his wife Leith Clotfelter suffered the total loss of two rental
6 homes and several outbuildings, containing antiques and heirlooms, as well as a number of trees.
7 Two photographs of the fire damage to the Jackson/Clotfelter property are attached as Exhibits
8 26 and 27.

9 The fire loss suffered by each plaintiff was significant, and trial is necessary to obtain
10 remedy for the loss.

11 **3. The Court Must Set Dates For Trial Of Moving Plaintiffs' Cases And For Exchange Of** 12 **Expert Witness Information and Files**

13 At the hearing on November 29, 2012, counsel for both sides expressed to the Court their
14 expectation that all cases capable of settling would be resolved by March 2013. (Exhibit 12,
15 Excerpts of Reporter's Transcript, November 29, 2012, p. 22-4) Hearing this, the Court
16 observed: "Okay. We'll continue, it will be a discussion of how to manage the cases that are left
17 after the completion of the mediation process, so we'll take that up March 21 at 10:00." (Exhibit
18 12, Excerpts of Reporter's Transcript, November 29, 2012, p. 26 lines 18-21.) On March 21,
19 2013, the Court continued the matter until June 19, 2013, for further case management. (Exhibit
20 15, Excerpts of Reporter's Transcript, March 21, 2013)

21 The best way to manage the remaining unsettled cases is to set a meaningful trial date. It
22 is unfair and contrary to law for the Court to wait to set trial until after all cases have been
23 through the mediation process. Many cases seeking small amounts of damages were filed shortly
24 before expiration in mid-2012 of the statutes of limitations for property and tree damage. By
25 contrast, many of the moving plaintiffs' case are much older, the losses in all of moving
26 plaintiffs' cases are more substantial, and their counsel will be prepared for trial.

27 All parties understand that plaintiffs' counsel for many of the still unresolved cases do not
28 intend to go to trial. Of all plaintiffs' counsel, only PCG-1, Jack Winters, and the group of
Roye/Jang/Hubert have access to the liability evidence necessary to try this case, which is stored

1 in repositories built up over years of document productions, depositions, and expert submissions.
2 All other plaintiffs' counsel have declined to participate or continue to participate in sharing even
3 the minimal cost of evidence retention, and as a consequence have removed their cases from trial
4 eligibility. PCG-1 counsel have spent large sums in the retention of liability expert witnesses and
5 will be ready for trial when the time comes.

6 Trial must commence after the passage of six years following the worst disaster to befall
7 the San Diego community. The first cause of action in plaintiffs' master complaint, filed in 2008,
8 is for inverse condemnation, which has priority over all other civil cases. "Proceedings under this
9 title take precedence over all other civil actions in the matter of setting the same for hearing or
10 trial in order that such proceedings shall be quickly heard and determined." (C.C.P. §1260.010)

11 The law requires the Court to move aggressively toward final resolution of cases by trial.
12 Judicial management of complex litigation "should begin early and be applied continuously and
13 actively, based on knowledge of the circumstances of each case." (*Judicial Administration*
14 *Standard* 3.10(a)) The Court "should assume an aggressive role at the earliest possible time to
15 efficiently move the case to settlement or trial." (*Ibid.*, Advisory Committee Comment) The
16 Trial Court Delay Reduction Act requires judges "to eliminate delay in the progress and ultimate
17 resolution of litigation." (*Govt. Code* §68607) Trial judges must "adopt a trial setting policy
18 which, to the maximum extent possible, schedules a trial date within the time standards" set by
19 the Judicial Council, which is two years for most cases and three years for "exceptional" cases.
20 (C.C.P. §68607(e); *Standards of Judicial Administration* §2.2(g))

21 A trial court must make "steady progress toward trial" and not let settlement efforts
22 "delay or divert the pretrial process."

23 Important as is the judge's role as a catalyst for settlement, it must not be permitted to
24 interfere with the steady progress of the case toward trial. Settlement efforts should not
25 be permitted to delay or divert the pretrial process. Both can and should operate
26 effectively on parallel tracks. Although the final result of a trial may be uncertain, there
27 should be no uncertainty that a final judgment will be entered one way or the other by a
28 certain date.

(California Judicial Council, Deskbook On the Management of Complex Civil Litigation
(2010) §2.91 p. 1-1.)

"It is, after all, the uncertainty of whether one is likely to win or lose that often drives the

1 parties' settlement demands toward a number upon which all can agree." (*Id.* at §2.06 p. 2-7 to
2 2-8)

3 Both sides have ample resources to operate on the parallel tracks contemplated by the
4 Judicial Council- trial preparation and mediation of the few remaining cases. Other plaintiffs
5 who filed late or who will never go to trial should not be put ahead of the plaintiffs who filed
6 their complaints years ago, have conducted extensive liability discovery, have responded to
7 discovery requests, have been to mediation, and who will be prepared for trial. The purpose of
8 the law is to bring cases expeditiously to trial.

9 For any unsettled cases other than those of moving plaintiffs, plaintiffs will move to
10 bifurcate and join their common liability issues with those of the trial plaintiffs. (See Exhibit 8,
11 PCG-1's Motion for a Case Management Order Re The Combined Witch/Guejito Trial and
12 Motion for Bifurcation and Joint Trial Of Common Liability Issues And Briefs In Support,
13 August 15, 2011) After the liability trial, the joined cases will either settle or undergo brief
14 damages trials. In this way, the combined Witch/Guejito trial will efficiently serve to resolve all
15 remaining Witch/Guejito cases.

16 The Court must set dates for trial of moving parties' cases and for exchange of expert
17 witness information and files.

18 **5. Conclusion**

19 In the interest of justice, the moving plaintiffs request the Court to no longer delay trial
20 and set a trial date for the combined Witch/Guejito trial.

21
22 Dated: May 25, 2013


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