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19 Attorneys for Plaintiffs

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA

21 IN AND FOR THE COUNTY OF SAN DIEGO

22 In Re: 2007 Wildfire Litigation

) Case Nos.
) 2008-00093080-CU-NP-CTL
) 37-2010-00091617-CU-NP-CTL
) 37-2012-00097539-CU-NP-CTL
) 37-2012-00098718-CU-NP-CTL

23 **PLAINTIFFS OPPOSITION TO SAN
24 DIEGO GAS & ELECTRIC COMPANY'S
25 MOTION FOR A CASE MANAGEMENT
26 ORDER**

27 This Document Relates to:

) Status Conference: June 19, 2013
) Time: 10:00 a.m.
) Dept: 75

28 In Re: 2007 Wildfire Individual Litigation-
Witch Creek/ Guejito Fires

In Re: 2007 Wildfire Individual Litigation-
Rice Canyon Fire

I.

SUMMARY OF OPPOSITION

For the past six years Plaintiffs have sought to schedule a trial to adjudicate their cases arising from the Rice Canyon and Witch Creek/Guejito Fires. Notwithstanding the success of the mediation program, the victims of the San Diego wildfires have patiently waited for an opportunity to seek redress for all harms caused by SDG&E. All of the remaining victims have suffered tremendously through these years – most losing their homes, possessions, and businesses in the aftermath of the fire. These are terrible losses to suffer, and it has been understandably very difficult for these people to move forward with their lives having been impacted so adversely without proper recourse.

Plaintiffs acknowledge the mediation program has been successful for others affected by these fires. Notwithstanding the success of the mediation program, there are cases that as SDG&E correctly points out will not likely settle; a sentiment Plaintiffs share. Although many victims have had to resolve their claims because of financial pressures or the need for closure, some of them have chosen to elect to have their day in court and to seek the full measure of justice to which they are entitled. That latter group of plaintiffs are the parties that have pressed their cases and causes. Plaintiffs are pleased that SDG&E has expressed a willingness to set a trial for these cases. However, Plaintiffs do not agree with the trial plan SDG&E has set forth; a trial plan which would severely prejudice and deprive them of their due process right to seek appropriately pled punitive damages.

As their numerous attempts to set trial suggest Plaintiffs are very eager to set a trial and welcome SDG&E's apparent willingness to do the same. However, the terms of the trial suggested by SDG&E are untenable given Plaintiffs' interests in this matter.

II

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs oppose this motion for two primary reasons. First, the proposed organization of the trial strays dramatically from standard civil trial organization. Second, a damages-only trial would severely prejudice Plaintiffs' properly pled causes of action and deprive them of their due process right to have a jury determine their claim for punitive damages.

1 **A. SDG&E's Proposed Trial Organization Requires Far Too Much Input From**
2 **Defendants Regarding How Plaintiffs' Cases Will be Tried**

3 From the Dicasts in ancient Athens through the royal courts of medieval Europe to our legal
4 system today, the plaintiff has always been the master of their own case. The system would not
5 function if the defendant was responsible for bringing the case to court. And as long as the plaintiff
6 follows proper procedure, he or she will get their day in court. But the system SDG&E has suggested
7 for trying these fire cases is a significant departure from the doctrinal keystones of this process. This
8 departure would unnecessarily hamper Plaintiffs' rights to organize their own cases.

9 In their Motion for a Case Management Order, SDG&E proposes a multi-step process through
10 which Plaintiffs will be chosen and agreed upon by both parties:

11 "June 19: Court orders all parties to meet and confer on selecting 16 specific cases/properties and
12 four trial dates for damages-only trials. Each damages-only trial will include four
13 cases.
14 July 19: All parties submit to the Court a stipulated list of cases and proposed trial dates. If the
15 parties cannot agree, each side shall submit their own proposed trial candidates and
16 proposed damages-only trial dates.
17 August 9: Parties submit to the Court oppositions to any contested issues regarding trial plaintiffs
18 and trial dates.
19 August 23: Parties submit replies regarding trial plaintiffs and trial dates.
20 August 30: Trial Setting Conference. The Court sets dates and plaintiffs for four separate
21 damages-only trials, with a liability trial to follow the four damages trials should it be
22 necessary. The Court also sets related deadlines for summary judgment motions,
23 discovery cutoffs, expert exchanges, etc."

24 This proposed plan is simply unacceptable to Plaintiffs because it gives SDG&E a voice in
25 decisions that are strictly in the realm of Plaintiffs' trial plans. There will undoubtedly be
26 disagreements between SDG&E and Plaintiffs regarding the order in which cases should be tried –
27 their proposed plan builds this inevitable conflict into its . Plaintiffs cannot agree with a plan that
28 would potentially see their cases continued indefinitely because SDG&E would prefer to try other

1 cases in their stead.

2 The posture of the case and its complexity make this proposed plan even more improper.
3 PCG-1 is comprised of several law firms many of which have several unresolved cases. The proposed
4 process would add an unnecessary party to the discussion of which of these unresolved cases should
5 take precedent. PCG-1 has had enormous success working amongst one another despite challenges
6 and (apparent) conflicts arising from the duty of loyalty to one's own clients. Were PCG-1 left to
7 select cases to go to trial, it would be accomplished using less of the Court's resources and time, with
8 less hostility than if SDG&E had a voice in the selection, and most importantly, taking less time for
9 these people to await justice.

10 Any trial setting plan must leave the decision of which cases to bring to trial to the Plaintiffs.
11 A decision to the contrary would use more of the Court's resources, foster unnecessary bickering and
12 delay between PCG-1 and SDG&E, and further delay Plaintiffs' day in court. SDG&E's Proposed
13 Case Management Order is simply more of the status quo that has seen these cases delayed for years.
14 By their own admission, during the case management plan's meet and confer period to "agree on trial
15 plaintiffs," "the parties will continue to work through the ever-decreasing number of remaining cases
16 in the mediation pipeline, nearly all of which are likely to settle in mediation." Defendants Motion
17 for CMO, at p. 8. Given SDG&E's assertion earlier in the same document that some cases are
18 unlikely to settle in mediation, this meet and confer period sounds more like another delay tactic.
19 These Plaintiffs don't need what SDG&E refers to as "breathing room" to resolve cases through
20 mediation, they need to have their cases heard as soon as possible.

21 **B. Damages-Only Trials Would Greatly Prejudice Plaintiffs**

22 Plaintiffs oppose the damages-only trial format proposed by SDG&E because it would prevent
23 them from seeking recovery of punitive damages at trial. Each of the operative Master Complaints
24 for each of the Plaintiffs have alleged claims for punitive or exemplary damages. All of the punitive
25 damages claims were pled correctly, and are still a part of each of the remaining Plaintiffs' cases –
26 claims they planned on bringing at trial. According to well-established California law, a claim for
27 punitive damages rests on "clear and convincing evidence that the defendant has been guilty of
28 oppression, fraud or malice. California Civil Code § 3294(a). In order to prove any one of these

1 elements that are essential to a punitive damages claim a plaintiff needs to present evidence that would
2 support such a finding. A damages only trial obfuscates this element, absolves defendant from
3 exposure, and deprives plaintiffs of their due process right to have the issue decided by the
4 community. Whether or not that is the logic behind SDG&E's desire to conduct damages-only trials
5 is immaterial – the effect such a decision would have is to rob Plaintiffs the opportunity to argue their
6 properly pled punitive damages claims.

7 SDG&E argues in their Proposed Case Management Order that time is the primary reason
8 damages-only trials would be preferable under these circumstances. SDG&E suggests that the
9 additional time necessary to prepare for and try an all-issues trial would be unfeasible. Yet “breathing
10 room” and meet and confer periods in hopes of mediating cases is preferable. PCG-1 has provided
11 SDG&E with estimates on trial duration on several occasion that are far more optimistic than their
12 estimates. SDG&E cannot in good faith claim prejudice by the length of an all-issues trial, while
13 suggesting these cases just need more time to go through the mediation process. The fact of the matter
14 is that Plaintiffs have sought to set a trial date since 2009, which SDG&E has opposed at every
15 opportunity. Plaintiffs should not now be prejudiced by SDG&E's earlier unwillingness to set trial
16 dates by the fact that SDG&E doesn't have the time to fully adjudicate Plaintiffs' claims. Plaintiffs
17 are the ones who have waited nearly 6 years to get their day in court – they are the ones facing the full
18 brunt of a longer trial. If they wish to prolong that suffering for the amount of time necessary to argue
19 their entire case in chief as it was properly pled, they should not be denied that choice.

20 Lastly, there is a strong public policy argument in favor of allowing Plaintiffs to plead punitive
21 damages at trial. SDG&E has attempted, on several occasions, to use the 2007 fires as justification
22 for a rate hike (to what are already some of the highest utility rates in the country). While those
23 attempts have heretofore been unsuccessful, there is no telling whether they will continue to be so in
24 the future. Plaintiffs must not be deprived of their due process right to bring an all-issues case to court
25 in order to support their claim for punitive damages. The evidence and a jury of it's peers will decide
26 whether SDG&E has engaged in behavior tantamount to oppressive, malicious, or fraudulent conduct.
27 Indeed, it seems unfathomable that SDG&E could pass any of the costs arising from the fire on to the
28 customer if a jury determined that their act and omissions in starting the 2007 San Diego wildfires was

1 tantamount to conduct that was indicative of a "conscious disregard" of the rights and safety of the
2 community at large . The public of San Diego County deserves the opportunity to learn if they should
3 be on the hook for SDG&E's role in the 2007 San Diego wildfires. The community and taxpayers of
4 San Diego county will be deprived of this opportunity if Plaintiffs are restricted to a damages-only
5 trials.

6 **III**

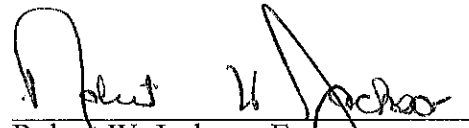
7 **CONCLUSION**

8 While Plaintiffs share SDG&E's apparent desire to arrange trials for remaining cases, the
9 Proposed Case Management Order submitted by defendants is simply unacceptable. Plaintiffs would
10 prefer the added trial length if it gave them the opportunity to fully adjudicate their claims.
11 Additionally, SDG&E should not be given the latitude to decide which Plaintiffs will be bringing their
12 cases to trial in what order.

13 Respectfully submitted,

14 Dated: June 5, 2013

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