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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

Coordination Proceeding Special Title (Rule 3.550) **SOUTHERN CALIFORNIA FIRE CASES**	Case No. JCCP 4965 For Filing Purposes: BC698429 [Hon. Daniel J. Buckley – Dept. 1] **SOUTHERN CALIFORNIA EDISON COMPANY'S AND EDISON INTERNATIONAL'S OPPOSITION TO MOTION TO LIFT STAY** Date: February 15, 2022 Time: 1:45 p.m. Dept: 1 (Spring Street Courthouse) Judge: Hon. Daniel J. Buckley

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I. INTRODUCTION

As Judge Highberger stated while overseeing the Woolsey Fire Cases, "[c]ase management in complex coordinated cases is designed to manage cases to settlement or other resolution short of trial because, as all involved understand, it is not possible to try each case." (Declaration of Derek R. Flores ("Flores Decl."), Ex. B [March 16, 2021, Tentative Order, *Woolsey Fire Cases*, JCCP No. 5000] at 2.) Real-world constraints require courts overseeing coordinated wildfire proceedings balance the competing interests of the parties for "the benefit of as many litigants as possible" (*id.*), even if that "requires individual due process rights to be subordinated to a degree . . . for the interest of the collective. (*Id.*, Ex. F [Aug. 13, 2021, Hearing Tr., *Woolsey Fire Cases*, JCCP No. 5000] at 23:2-6.)

Fourteen months ago, this Court granted Individual Plaintiffs' and Edison's joint request to stay discovery so that the parties could focus their efforts on mediation. The results speak for themselves: After just over fourteen months of the mediation program, approximately 1,678 households have opted in, 1,398 households have explored resolution, 1,183 households have settled their claims, and more than 80% of remaining plaintiffs have already opted-in to the settlement protocol. (*See* Jan. 12, 2022, Joint Status Report at 2–3.) This is a remarkable 85% success rate. Nearly 45% of all households have now settled their claims, compared to around 7% before the stay was imposed. (*See id.*)

The same reasons for this Court originally granting the discovery stay apply today: Individual Plaintiffs and Edison continue to jointly request that the Court extend the discovery stay because Edison has continued to demonstrate that it will expeditiously and earnestly engage in good-faith resolution efforts, and individual plaintiffs' counsel overwhelmingly agree that the settlement protocol provides fair compensation to their clients. (*See id.* at 6 ("In light of Edison Defendants and Individual Plaintiffs' continued success in resolving cases under the Resolution Protocol, Edison Defendants and Lead Plaintiffs jointly request that the Court extend the discovery stay. . . .").)

The Thomas Fire cases as a whole will be resolved quicker and more efficiently if Edison and the vast majority of plaintiffs continue to be permitted to focus on the settlement program alone,

rather than fighting a war on two fronts. A tremendous amount of discovery, including upwards of 100 depositions, remains before the first group of opt-out plaintiffs can proceed to trial. Crucially, a trial with the Singleton Opt-Out Plaintiffs would benefit only the small group of Singleton Opt-Out Plaintiffs. And such trials would not serve a bellwether purpose because, by definition, the handful of Singleton Opt-Out Plaintiffs are not representative. There are about 110 Singleton Opt-Out Plaintiffs, equal to just 4-5% of all plaintiffs remaining in this litigation. (*See id.* at 2-3; *id.*, Ex. A.)[1] Their request to lift the discovery stay is tantamount to a request to jump ahead of the approximately 1,822 plaintiffs who have affirmatively opted in but have not yet resolved their claims under the mediation protocol. (*See id.* at 3.)

Accordingly, Edison respectfully requests that the Court keep the discovery stay in place, so that it and the approximately 1,822 remaining opt-in plaintiffs can focus on resolution efforts without delay.

II. ARGUMENT

A. The Court Has Broad Discretion to Stay Discovery for the Benefit of Plaintiffs as a Whole

This Court has broad "inherent authority and responsibility to fairly and efficiently administer all of the judicial proceedings that are pending before it." (*People v. Engram* (2010) 50 Cal.4th 1131, 1146; *see also Peat, Marwick, Mitchell & Co. v. Super. Ct.* (1988) 200 Cal.App.3d 272, 287 ["The trial court's inherent powers have been recognized, endorsed and affirmed in a considerable body of authority, and the powers have been flexibly applied in response to the many vagaries of the litigation process."]; Cal. Code Civ. Proc. § 128 (a)(3) ["Every court shall have the power to . . . provide for the orderly conduct of proceedings before it"].) Included in this authority is "the inherent power to stay proceedings in the interests of justice and to promote judicial efficiency." (*Freiberg v. City of Mission Viejo* (1995) 33 Cal.App.4th 1484, 1489.)

A court must necessarily "decide between ensuring just for the many or justice for a few." (*See* June 6, 2020, Tentative Ruling ("In this case, [the court] chooses the many—without

[1] And there are only 47 opt-out plaintiffs not represented by the Singleton group. (*See* Jan. 12, 2022, Joint Status Report at 3; *id.*, Ex. A.)

reservation.").) Indeed, as Judge Highberger recognized in deciding to stay discovery in the coordinated Woolsey Fire cases, "[c]ase management in complex coordinated cases is designed to manage cases to settlement or other resolution short of trial because, as all involved understand, it is not possible to try each case." (Flores Decl., Ex. A [Feb. 2, 2021, Order on Several Motions for Trial Preference, *Woolsey Fire Cases*, JCCP No. 5000] at 9.) A court must facilitate "practical" resolutions because real-world constraints make "traditional neat, tidy litigated cases" for mass-tort plaintiffs impossible. (Flores Decl., Ex. G [Oct. 14, 2021, Hearing Tr., *Woolsey Fire Cases*, JCCP No. 5000] 5:4, 9-10.)

For these reasons, the coordination judge has all necessary authority to fashion rules and procedures to facilitate the efficient resolution of coordinated cases: "[I]f the prescribed manner of proceeding cannot, with reasonable diligence, be followed in a particular coordination proceeding, the assigned judge may prescribe any suitable manner of proceeding that appears most consistent with those statutes and rules." (Cal. Rules of Court, rule 3.504(c) [emphasis added].) Indeed, this Court has consistently recognized and exercised its inherent discretion over discovery and trial-setting in this coordinated proceeding. (*See, e.g.*, May 7, 2019, Ruling on Motion for Preference at 4 ("[C]ourts presiding over coordinated actions possess an express statutory authority that 'notwithstanding any other provision of law,' 'if the prescribed manner of proceeding cannot, with reasonable diligence, be followed in a particular coordination proceeding, the assigned judge may prescribe any suitable manner of proceeding . . . .'" (quoting Code of Civ. P. § 404.7; Cal. R. of Ct. 3.504(c))).)

Lengthy stays are neither uncommon nor unprecedented in complex proceedings such as this. For example, in a complex proceeding with claims regarding asbestos in more than 10,000 Los Angeles buildings, the Court of Appeal held that the trial court properly "exercised its inherent power to provide for the orderly conduct of the proceedings before it and followed the California Standards for Judicial Administration of Complex Litigation" when it issued a *four-year* stay to resolve statute-of-limitations and abatement issues. (*Highland Stucco & Lime, Inc. v. Super. Ct.* (1990) 222 Cal.App.3d 637, 644 [citation omitted].)

Extending the stay also does not risk dismissal of the Singleton Opt-Out Plaintiffs' cases under Section 583.310. (*Cf.* Mot. at 2–3 ("after January 4, 2023, the remaining plaintiffs will be vulnerable to motions to dismiss under § 583.310").)[2] Contrary to the Singleton Opt-Out Plaintiffs' assertion, *none* of the Singleton Opt-Out Plaintiffs filed suit in January 2018. (*Compare id.* at 2-3 ("the first complaints for the individual plaintiffs were filed on January 4, 2018"), *with* Flores Decl. ¶ 3 (first Singleton Opt-Out Plaintiffs filed suit in March 2018).) Rather, more than half of the Singleton Opt-Out Plaintiffs waited until December 2019 or later (i.e., approximately two or more years after the Thomas Fire) to file suit. (Flores Decl. ¶ 3.) Even if they had filed as early as January 2018 (none did), Edison cannot and would not argue that they failed to prosecute. (*See, e.g.*, Cal. Civ. Proc. Code § 583.340 (excluding time in which "[p]rosecution or trial of the action was stayed or enjoined").) Simply put, the Singleton Opt-Out Plaintiffs will not be "forced to defend motions for lack of due diligence." (Mot. at 3.)

B. The Settlement Program Remains the Most Efficient Mechanism to Bring these Proceedings to a Conclusion

The Thomas Fire settlement program is the most efficient way to resolve the vast majority of cases in this coordinated proceeding. Indeed, Judge Highberger described the similar Woolsey Fire settlement program as "a way where as many of these claims can be adjusted as soon as possible to reduce further friction costs so that people can get some fair share of money and get on with their lives." (Flores Decl., Ex. C [*Woolsey Fire Cases* March 16, 2021, Hearing Transcript] at 59:19–22.) Judge Highberger further noted that "the general interests of the collective for the plaintiffs is advanced by having mediation protocol as the sole subject of attention for the plaintiff and the defense bar at this time subject to a carve-out for holding mandatory settlement conferences for those who don't wish to participate in the mediation protocol as offered by Edison." (*Id.*, Ex. F [Aug. 13, 2021, Hearing Tr., *Woolsey Fire Cases*, JCCP No. 5000] at 23:9-15.) There is an even stronger

[2] Technically, the time period is not even five years, as the Singleton Opt-Out Plaintiffs claim, but five years and six months. (Compare Mot. at 3 (claiming there is a "five-year deadline"), with Emergency rule 10(a) ("Notwithstanding any other law, including Code of Civil Procedure section 583.310, for all civil actions filed on or before April 6, 2020, the time in which to bring the action to trial is extended by six months for a total time of five years and six months.").

argument today to keep the discovery stay in place while Edison and the vast majority of plaintiffs work to resolve their claims.

Edison has demonstrated that it will expeditiously and earnestly engage in resolution efforts with all willing individual plaintiffs. Individual Plaintiffs' Leadership agrees, having repeatedly filed joint requests with Edison requesting that this Court extend the stay. (*See, e.g.*, Jan. 12, 2022, Joint Status Report at 6.) And individual plaintiffs' counsel in the Woolsey Fire cases similarly agree, having attested that the settlement protocols provide fair compensation to individual plaintiffs and represents the best mechanism to resolve the many claims remaining in this coordinated proceeding. (Flores Decl., Ex. E [May 19, 2021, Hearing Transcript, *Woolsey Fire Cases*, JCCP No. 5000] at 29:6-14 [Mr. Frantz: "I can tell you wholeheartedly that our clients that have settled in mediation are extremely satisfied. . . . Edison has treated our clients very reasonably, and we think the mediation protocol should go [on] unhinged at this point."]; 29:22-30:1 [Mr. Robertson: "We believe the process has been extremely successful. . . . It works. Our clients are extremely happy with the results, and we intend to pursue that avenue."]; 30:9-12 [Ms. Hazam: "We continue to support the resolution protocol. We believe it is a fair and efficient manner in which to resolve the large majority of the cases in this litigation."].)

After just over fourteen months of the mediation program, approximately 1,678 households have opted in, 1,398 households have explored resolution, and 1,183 households have settled their claims. (Jan. 12, 2022, Joint Status Report at 2–3.) Edison's settlement rate is right at the 85% figure that Judge Highberger deemed a "remarkable success in the world of mass tort litigation." (Flores Decl., Ex. D [May 19, 2021, Minute Order, *Woolsey Fire Cases*, JCCP No. 5000] at 6.)

The Singleton Opt-Out Plaintiffs remain a small minority, representing just 5% of the approximately 2,209 individual plaintiffs remaining in this coordinated proceeding. (*See* Jan. 12, 2022, Joint Status Report at 3; *id.*, Ex. A.) Even counting all other opt-out plaintiffs not represented by Singleton, they account for only 7% of all remaining individual plaintiffs. The Singleton Opt-Out Plaintiffs do not identify *any* authority suggesting that the Court should place the interests of such a small majority above those of the vast majority in managing a coordinated proceeding. To the contrary, this Court "must manage this JCCP so that the general interests of the plaintiffs as a whole

are advanced, even if this means that the desires of a small set of the included plaintiffs to have their cases managed in some other fashion cannot be accommodated." (Flores Decl., Ex. D [May 19**,** 2021 Minute Order, *Woolsey Fire Cases*, JCCP No. 5000] at 9.)

C. Discovery Will Necessarily Divert Resources from Edison's Settlement Efforts

Contrary to the Singleton opt-out plaintiffs' arguments, Edison, like all litigants, faces real-world budgetary and staffing constraints. (*Cf.* Mot. at 6–8.) Edison's counsel and experts are not fungible commodities, and they cannot explore resolution at the same pace if forced to fight a war on two fronts, especially when considering the immense amount of discovery needed to prepare Thomas Fire cases for trial. Consistent with SCE's obligation to ratepayers, throughout the course of this litigation, Edison has endeavored to devote a substantial but appropriate level of resources to litigate and resolve plaintiffs' claims. Even in the absence of discovery, the settlement program has significantly strained Edison's legal team.

The parties estimate that upwards of 100 depositions are needed before trial. Although 162 liability depositions were completed prior to the discovery stay, the Singleton opt out plaintiffs propose approximately 10 more depositions of SCE personnel. (Jan. 12, 2022, Joint Status Report at 6 ("the Singleton Schreiber Plaintiffs expect to . . . take approximately 10 additional depositions").) Although 28 damages depositions were completed prior to the stay, those are unrelated to any of the 110 Singleton Opt-Out Plaintiffs. Only two expert depositions had been completed prior to the stay, and thus the vast majority of expert discovery on liability and damages issues remains to be completed—which the parties jointly estimate at 60 total expert depositions. (*Id.* ("the parties expect that there would be approximately 60 liability and damages expert depositions that will need to be completed based on the parties' prior expert disclosures").) And, for each plaintiff household, the adult family members, insurance adjusters, and damages experts must be deposed. (*Id.*) Other discovery obligations and pre-trial work will likewise divert Edison's resources from the mediation protocol. The Singleton Opt-Out Plaintiffs state that they will "issue additional written discovery," which may involve searching, reviewing, and producing thousands of additional documents. (*Id.*)

In addition to document discovery, the parties will need to resolve outstanding disputes, prepare fact and expert witnesses for trial, organize and categorize documentary evidence, prepare

pretrial statements, and prepare *in limine* motions. Given the tremendous amount of remaining discovery, Edison estimates that resuming litigation will increase Edison's attorneys' fees by nearly 300% alone, and that expert and vendor fees will likewise increase substantially. (*See* Flores Decl. ¶ 4.) And, as indicated previously, the knowledgeable and trusted experts (not to mention in-house and outside counsel) who are currently fully occupied with the settlement program would have to change their focus to litigation support if the stay is lifted. Thus, if the discovery stay is lifted, Edison will have no choice but to divert resources from the settlement program and towards these litigation activities, which may significantly delay the resolution of the opt-in plaintiffs' claims.

Importantly, the proposed trials for the Singleton Opt-Out Plaintiffs will not advance the Thomas Fire cases as a whole. The Singleton Opt-Out Plaintiffs acknowledge that they have atypical and complex damages, and therefore their trials would by definition not constitute a bellwether trial that would be useful for the balance of plaintiffs. (*See* Mot. at 3-4 (referring to their cases as "complex").) This Court has repeatedly rejected preference motions for nonrepresentative plaintiffs because permitting them to jump ahead of the thousands of other plaintiffs in this coordinated proceeding would create a "substantial risk of prejudice [ ] to both [Edison] and other Plaintiffs." (First Preference Order at 4; Second Preference Order at 5 (same).) Nothing has changed the calculus that would lead to a different outcome now, and it does not make sense just months later to revisit the question of whether a tiny fraction of non-bellwether plaintiffs can slow down a successful process that is working well for the roughly 97–98% of other plaintiffs seeking a speedy resolution of their claims.

The Singleton Opt-Out Plaintiffs complain that the protocol may not conclude until January 2023, and mention several other fire cases where they believe settlements progressed more quickly. Their logic is flawed in several ways. First, depositions in this proceeding did not get significantly underway until early 2019 when Cal Fire released its investigation report. Second, Covid-19 has thrown a wrench in litigation across the state, further delaying the litigation and resolution of cases. Third, the Singleton Opt-Out Plaintiffs' discussion of the settlement pace in the Butte Fire litigation is entirely inapposite here. On June 22, 2017—less than two years after the Butte Fire—the court found PG&E liable under an inverse condemnation theory for causing the Butte Fire. (*See* Jun. 22,

2017, Ruling on Submitted Matter: Inverse Condemnation Motions, *Butte Fire Cases*, JCCP No. 4853.) No such determination has been made in this case.

Moreover, it is unrealistic to argue that all the Singleton Opt-Out Plaintiffs' cases can or will be tried in the near future. With approximately 61 households opting out, (*see* Flores Decl. ¶ 2)—a smaller number than the average monthly number of plaintiffs that have settled under the protocol—then approximately 8 serial trials of 8 households each will be needed to resolve the opt-out plaintiffs' claims. If (1) the first trial is scheduled for September 2022; (2) each trial lasts six weeks; and (3) there is a six-week gap between each trial, then these 110 plaintiffs' claims will not be resolved until approximately March 2024, without taking into account the post-trial briefing and appellate process, which may itself take one year or more. In contrast, at its current pace, Edison will have explored resolution with the remaining opt-in plaintiffs by January 2023. For this reason, the Singleton Opt-Out Plaintiffs' focus on expiring ALE insurance benefits is misplaced: the approximately 1,822 remaining individual plaintiffs who have opted in will explore resolution of their claims within about 12 months at the current settlement pace—as the Singleton Opt-Out Plaintiffs admit, (*see* Mot. at 2)—while only a few dozen opt-out plaintiffs may resolve their trials by that time.

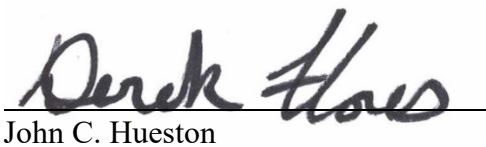
Given the real-world constraints faced by Edison and the Court, the most prudent course is to facilitate continued resolutions through the settlement protocol. While Edison believes that exploring resolution with nearly 100 households per month is great progress, it has the desire to increase that number to 150 households per month. The bottleneck is in the plaintiffs' slow submission of demand packages. Put simply, Edison can mediate only so many claims as it has received completed demands. And the opt-in deadline has been effective to separate the opt-in from opt-out plaintiffs, and also to identify those plaintiffs who lost contact with their counsel or otherwise do not wish to proceed with their claims.

III. CONCLUSION

Because the parties are making excellent settlement progress through the mediation protocol while discovery is stayed, Edison respectfully requests that the Court not lift the stay that has been repeatedly requested by both Individual Plaintiffs' Leadership and Edison, to allow individual plaintiffs and Edison to continue to pursue settlement.

Dated: February 1, 2022

HUESTON HENNIGAN LLP

By: 

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SOUTHERN CALIFORNIA FIRE CASES

JCCP No. 4965

ELECTRONIC PROOF OF SERVICE

I am over the age of 18 years and not a party to the within action. I am employed by Hueston Hennigan LLP whose business address is 620 Newport Center Drive, Suite 1300, Newport Beach, CA 92660.

On February 1, 2022, I caused to be served the following document(s) described as:

SOUTHERN CALIFORNIA EDISON COMPANY'S AND EDISON INERNATIONAL'S OPPOSITION TO MOTION TO LIFT STAY

on the interested parties in this action pursuant to the most recent Omnibus Service List by submitting an electronic version of the document(s) via file transfer protocol (FTP) to CaseHomePage through the upload feature at www.casehomepage.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 1, 2022, at Newport Beach, California.

Sarah Jones