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9 **SUPERIOR COURT OF STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

11 Coordination Proceeding Special Title
12 (Rule 3.550)
13 **SOUTHERN CALIFORNIA FIRE CASES**

JCCP Case No. 4965
For Filing Purposes: BC698429

**REPLY BRIEF IN SUPPORT OF THE
OPT-OUT PLAINTIFFS’ MOTION TO
LIFT STAY AND SET A TRIAL DATE**

Date: February 15, 2022
Time: 1:45 p.m.
Dept: 10 (Spring Street Courthouse)
Judge: Hon. Daniel J. Buckley

19 **I. INTRODUCTION**

20 Over *four years* after the wildfire that destroyed their homes and businesses, the Opt-Out
21 Plaintiffs are moving this Court to lift the stay on discovery and set a meaningful trial date. Edison
22 quite clearly does not want to face a trial in this case and is opposed. The touchstones of Edison’s
23 opposition are that: (1) its legal fees and costs will go up if it has to “fight a war on two fronts”; and
24 (2) plaintiffs who choose to opt out of the protocol or whose cases do not settle should have to wait
25 at least another two years (*6 years after they were injured by Edison*) before they receive justice.

26 In other words, Edison believes it is entitled to special dispensation because it harmed
27 thousands of victims instead of just a handful, and that there should be two classes of plaintiffs, with
28 second-class plaintiffs (i.e., those who wish to exercise their right to trial) going to the back of the

1 line. Neither argument withstands even passing scrutiny and plaintiffs respectfully submit that this
2 Court should grant their motion.

3 **II. AT ITS CURRENT PACE, THE MEDIATION PROTOCOL WILL NOT HAVE ADDRESSED THE**
4 **CLAIMS OF THE REMAINING OPT-IN PLAINTIFFS FOR MORE THAN 12 MONTHS; IF THE**
5 **DISCOVERY STAY IS EXTENDED, PLAINTIFFS WHOSE CASES DO NOT RESOLVE WILL HAVE**
6 **HAD TO WAIT MORE THAN *FIVE YEARS* BEFORE COMPLETING LIABILITY DISCOVERY.**

7 One thing that Edison and Plaintiffs can agree on is that the results of the mediation protocol
8 “speak for themselves.”¹

9 The stated goal of the protocol is to mediate at least 150 cases per month. Edison has
10 averaged just 84 and has never met the 150-mediation threshold. Further, in the last six months, the
11 average has dropped to 49 mediations per month, which is less than 1/3 of the goal. At this pace, not
12 every opt-in plaintiff will have had the opportunity to participate for at least another 12 months. If
13 this were a classroom, and the mediation protocol was a test, Edison would be receiving an “F” as it
14 is completing just 56% (84 out of 150) of the agreed-upon goal over the life of the program.

15 And of course, not all opt-ins will resolve their claims. Indeed, at the current “remarkable
16 85% success rate,”² there will be roughly 792 opt-in plaintiffs whose cases did not resolve.³
17 Combined with the 110 Opt-Outs,⁴ *there will be 892 plaintiffs still waiting to begin litigation more*
18 *than five years after the fire.* Such an abject failure cannot comport with due process.

19 **III. TRIAL DATES SETTLE CASES.**

20 If 15 years of litigating utility-caused wildfires has taught us anything, it is that meaningful
21 trial dates accelerate the pace of settlements. While this was true in the 2007 San Diego fires, the
22 2013 Powerhouse Fire and the 2015 Butte Fire, one need look no further than *this* case for empirical
23 proof.

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25 ¹ Opp. at 3.

26 ² *Id.* at 4.

27 ³ This estimate is based on the claimed 85% success rate, the number of plaintiffs whose cases
28 have resolved (2,941 according to the Jan. 11, 2022 joint status report), and the 1,822 remaining opt-
ins.

⁴ Opp. at 5.

1 The only reason that there is a settlement program in this case at all is that this Court had
2 scheduled the first bellwether trial for January 2021. It was not until November 2020 – within 60
3 days of that trial – that Edison agreed to the mediation protocol and the parties agreed to the stay.
4 And since the inception of the protocol, one case, *Simple Avo*, failed to resolve through mediation
5 and was set for a damages-only trial. *Simple Avo* then promptly settled.⁵

6 Accordingly, while Edison claims that the “serial trials” requested by the Opt-Outs would be
7 onerous for the parties and the Court, common sense and experience teach us otherwise.

8 In the last two decades, *no* utility in this state has defended a wildfire case at trial. Of course,
9 it may well be that there is a first time for everything and if Edison really wants a trial, the
10 undersigned Opt-Outs are happy to accommodate them. But the argument that there will be at least
11 eight, serial trials rolling through March 2024,⁶ is simply not accurate. In the only California utility-
12 caused wildfire in which a trial has occurred in the recent memory (the 1993 Guejito Fire caused by
13 SDG&E), the parties had a trial in which liability and damages were decided. The hundreds of
14 remaining cases then settled through mediations.

15 **IV. EDISON CAN AND SHOULD CONTINUE THE MEDIATION PROTOCOL WHILE ALSO LITIGATING**
16 **THE CASES OF THE OPT-OUT PLAINTIFFS.**

17 A recurring theme in wildfire litigation over the past two decades is that tortfeasor utilities –
18 seeking outsized leverage over the settlement process – claim that they lack the bandwidth to
19 participate in negotiations while also managing the discovery process. Edison is sticking to the same
20 playbook.

21 Throughout its opposition here and in the Woolsey Fire cases, Edison time-and-again insists
22 that it should not be forced to “fight a war on two fronts.”⁷ More specifically, this \$23 *billion*
23 company⁸ complains that it simply does not have the resources to manage the settlement program
24 and litigate at the same time, that its attorneys’ fees will increase by “nearly 300%,” and “that expert
25

26 ⁵ The trial-setting conference in *Simple Avo* took place on November 15, 2021. The stipulated
27 judgment was entered on January 7, 2022.

28 ⁶ Opp. at 11.

⁷ See, e.g., *id.* at 5, 9; see also Dec. of Derek Flores, Ex. D at 7.

⁸ [Edison Market Cap 2006-2021 | EIX | MacroTrends](#)

1 and vendor fees will likewise increase substantially.”⁹

2 Edison, then, apparently believes it is entitled to preferential treatment because it burned
3 down so many homes and businesses that it can’t possibly be expected to participate in the legal
4 process for more than one type of plaintiff at a time. And the corollary, of course, is that plaintiffs
5 who actually want to see the inside of a courtroom will have go to the back of the line.

6 As set forth in the Opt-Out Plaintiffs’ motion, however, the reality is that this massive utility
7 company has ample resources for both. But as long as there is a stay on discovery, it enjoys outsized
8 leverage in its settlement negotiations, while the Opt Outs become second-class plaintiffs and are
9 relegated to the back of the bus.¹⁰

10 **V. CONCLUSION**

11 By any objective measure, the Opt-Out Plaintiffs are not asking this Court to force Edison to
12 “fight a war on two fronts,” but rather, to merely walk and chew gum at the same time. Edison’s
13 counsel currently is litigating liability in 4 other fires (two of which have Edison as the defendant)
14 and a myriad of other complex cases across the country. And if, for some reason, Edison’s current
15 counsel really cannot litigate liability and settle cases at the same time, Edison can bring in
16 Murchison & Cumming (and experienced and well-respected local firm that has actually defended
17 Edison *in this JCCP*) to assist Hueston Hennigan.

18 Edison seeks to prevent trials for one reason and one reason only: it gives them an unfair
19 bargaining advantage over the plaintiffs whose homes, businesses and (in some cases) lives Edison
20 has destroyed.

21 The victims of Edison’s negligence deserve better. After waiting for over four years, they
22 deserve their day in court.

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26 ⁹ Opp. at 10.

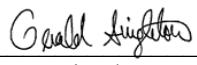
27 ¹⁰ As set forth in Plaintiffs’ motion, Edison’s true argument would more accurately be that its
28 counsel “can litigate liability cases in every state in the country, and in numerous other complex fire
cases (two of which involve Edison as the defendant), but they cannot litigate liability in this
particular case.”

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Accordingly, the Opt-Out Plaintiffs respectfully request that the Court lift the discovery stay and set a meaningful trial date sometime in August or September 2022.

Respectfully submitted,
SINGLETON SCHREIBER, LLP

Dated: February 7, 2022

By: 
Terry Singleton
Gerald Singleton
Brett J. Schreiber
John C. Lemon
Attorneys for Opt-out Plaintiffs

1 *Re: Southern California Wildfire Litigation JCCP 4965*

2 **PROOF OF SERVICE**

3 I am employed in the County of San Diego; I am over the age of eighteen years and not a
4 party to the within entitled action; my business address is 450 A Street, 5th Floor, San Diego,
5 California 92101. Today, I caused to be served the within document(s) described as:

6 **REPLY BRIEF IN SUPPORT OF THE OPT-OUT PLAINTIFFS' MOTION TO LIFT**
7 **STAY AND SET A TRIAL DATE**

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

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

13 Executed on February 7, 2022, at San Diego, California.

14 

15 _____
16 Kristyne Moreno