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

12 Coordination Proceeding Special Title (Rule  
13 3.550)

JCCP Case No. 4965  
For Filing Purposes: BC698429

14 **SOUTHERN CALIFORNIA FIRE CASES**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF THE  
OPT-OUT PLAINTIFFS' MOTION TO  
LIFT THE DISCOVERY STAY AND SET A  
TRIAL DATE**

15  
16  
17 Date: February 15, 2022  
Time: 1:45 p.m.  
18 Dept: 1 (Spring Street Courthouse)  
19 Judge: Hon. Daniel J. Buckley  
20

21 **I. INTRODUCTION**

22 The Thomas Fire ignited on December 4, 2017. It burned over 280,000 acres, destroyed more  
23 than 1,000 buildings, and caused over \$2.2 billion in damages. Unfortunately, over four years later,  
24 roughly half of the more than 5,000 victims of this catastrophe still have not been made whole.

25 In the interest of resolving claims expeditiously, on November 6, 2020, the individual  
26 plaintiffs and Edison adopted the Resolution Protocol. The stated goal of the protocol was "to  
27 complete, on a monthly basis, non-binding mediations or informal settlement negotiations for at least  
28 //

1 150 [] households.”<sup>1</sup> One component of this protocol was the continued stay of discovery, which  
2 has been in place for the entirety of this litigation.

3 The protocol has fallen well short of its goal, however, averaging only 84 negotiations per  
4 month and failing to reach the 150-negotiation threshold even once.<sup>2</sup> Indeed, as of January 11, 2022,  
5 only 2,972 of the 5,181 individual plaintiffs in this case (57.5%) have settled their claims.<sup>3</sup> The  
6 estimated number of remaining households is 1,038.<sup>4</sup> At this pace (84 per month), it will take more  
7 than 12 months to negotiate or mediate those outstanding cases. And it should go without saying that  
8 not all cases have resolved or will resolve through the protocol.

9 In short, if this Court continues to stay discovery to accommodate the mediation protocol,  
10 plaintiffs whose cases have not resolved will have had to wait for more than five years before being  
11 permitted to undertake discovery, and roughly six years before getting to trial. Furthermore, as long  
12 as the protocol remains the exclusive path to resolving claims, Edison enjoys outsized leverage  
13 during mediations, particularly with respect to plaintiffs with complex cases. The Opt-out Plaintiffs  
14 represented by Singleton Schreiber, LLP accordingly move this Court to lift the stay on discovery  
15 forthwith and to set a firm trial date in July or August 2022.

16 **II. THIS COURT SHOULD LIFT THE STAY AND SET A MEANINGFUL TRIAL DATE IN AUGUST OR**  
17 **SEPTEMBER 2022.**

18 **A. California law and policy weigh heavily in favor of lifting the stay and setting a**  
19 **trial date.**

20 “[A] court ordinarily has inherent power, in its discretion, to stay proceedings when such a  
21 stay will accommodate the ends of justice.”<sup>5</sup> But this power is not unlimited, and trial courts should  
22 not alter the normal timing of discovery in the exercise of their discretionary powers “without good  
23 reason.”<sup>6</sup> Instead, “[p]arties should be encouraged to expedite discovery and should not needlessly

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24 <sup>1</sup> Resolution Protocol § B.1.

25 <sup>2</sup> See Jan. 11, 2022 Joint Status Report at 2. This average excludes January 2022, where only  
26 17 mediations had been completed as of January 11.

27 <sup>3</sup> Compare *id.* (2,209 estimated remaining plaintiffs); with Edison’s Nov. 29, 2021 Updated  
28 Report on Opt-In Plaintiffs at 2 (identifying approximately 5,190 total individual plaintiffs).

<sup>4</sup> Nov. 29, 2021 Joint Status Report at 2.

<sup>5</sup> *OTO, LLC v. Kho*, 8 Cal. 5th 111, 141 (2019) (quotations and citation omitted).

<sup>6</sup> *Rosemont v. Superior Court*, 60 Cal. 2d 709, 714 (1964).

1 be deprived of the advantages that normally flow from prompt action.”<sup>7</sup> Additionally, the 2021  
2 California Rules of Court set a goal of completing even exceptional cases within three years.<sup>8</sup>

3 Similarly, the “five-year rule” of the Code of Civil Procedure states that “[a]n action *shall* be  
4 brought to trial within five years after the action is commenced against the defendant.”<sup>9</sup> While the  
5 purpose of this rule is to require plaintiffs to act diligently and to protect defendants from the  
6 spoilation of evidence,<sup>10</sup> here it is the defendants – not the plaintiffs – who seek to continue the stay.  
7 The first complaints for the individual plaintiffs were filed on January 4, 2018. And at the current  
8 pace of negotiations, unless the stay is lifted, no plaintiff will be able to get to trial before January 4,  
9 2023 – the five-year deadline under § 583.310.

10 There are two important take-aways here. First, although § 583.310 was enacted to protect  
11 defendants, in this case the shoe is on the other foot. And the remaining plaintiffs – most of whom  
12 suffered catastrophic losses – should not be further prejudiced by the defendants’ refusal to prepare  
13 for trial. Second, after January 4, 2023, the remaining plaintiffs will be vulnerable to motions to  
14 dismiss under § 583.310.<sup>11</sup> Of course, they should not be forced to defend motions to dismiss for  
15 lack of due diligence when it is the defendants who are requesting the stay.

16 ***B. The one-size-fits-all approach of the protocol does not work for all plaintiffs;  
17 Edison’s refusal to negotiate the cases of plaintiffs who have not opted in,  
18 combined with the stay on discovery, has placed plaintiffs with complex  
cases in an untenable position.***

19 While the protocol has generally been successful in resolving (albeit at a less than ideal pace)  
20 the cases of individual plaintiffs who lost their homes in the fire, it has been significantly less  
21 productive when it comes to more complex cases, such as those of plaintiffs who lost large  
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24 <sup>7</sup> *Id.*

25 <sup>8</sup> See Cal. Rules of Court, rule 3.714(c)(2) (“If the court exempts the case from the case  
26 disposition time goals, the court must establish a case progression plan and monitor the case to  
ensure timely disposition consistent with the exceptional circumstances, with the goal of disposing  
of the case within three years.”).

27 <sup>9</sup> Code Civ. Proc., § 583.310 (emphasis added).

28 <sup>10</sup> See *Hill v. Bingham*, 181 Cal. App. 3d 1, 6 (1986).

<sup>11</sup> See Code Civ. Proc., § 583.360 (“mandatory” dismissal upon motion of the court or the  
defendant for failure to bring the case to trial “within the time prescribed in this article”).

1 commercial avocado orchards. Because the potential damages in many of these complex cases run  
2 into eight or nine figures, are predicated on significant expert-opinion testimony, and (because they  
3 are based on the specific practices and production of each grower) are highly individualized, these  
4 cases require a great deal of time to properly mediate and resolve. In short, they are not well suited  
5 to the program, which typically attempts to mediate 10-20 cases per day.

6 Further, Edison has refused to negotiate the cases of plaintiffs who have not opted in, which  
7 means – as long as discovery is stayed – entering the protocol is the only means of resolving a claim.  
8 This exclusivity has not been lost on Edison, which has used it as leverage to attempt to force deeply  
9 discounted settlements – particularly in large, complex cases.

10 This is the reason that many plaintiffs had neither opted in nor out before the Court set the  
11 OSC at the January 12, 2022 status conference. Plaintiffs with complex or out-of-the-ordinary cases  
12 did not want to opt into the protocol because they were aware that there is little chance of resolving  
13 their cases fairly. On the other hand, as unsatisfactory as it may be, the protocol is the only game in  
14 town; plaintiffs with complex cases who do not wish to participate have no idea how long they will  
15 have to wait to either go to trial or engage in meaningful negotiations. And as long as the Court  
16 continues to extend the stay on discovery, Edison will continue to use this leverage to force reluctant  
17 plaintiffs into the protocol and to settle cases for less than fair value.

18 This is extremely prejudicial to the individual plaintiffs, whose insurance coverage for  
19 additional living expenses (ALE) typically runs out after 36 months.<sup>12</sup> Accordingly, plaintiffs who  
20 have not yet been compensated for their losses have already lost this critical insurance coverage.  
21 And because many fire victims are significantly underinsured, they are currently paying for both  
22 rental homes and for the mortgages on the homes destroyed in the fire. This Court should not further  
23 prejudice the plaintiffs who have opted out by extending the stay.

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25 \_\_\_\_\_  
26 <sup>12</sup> See Cal. Ins. Code, § 2051.5(b)(2), which extended coverage from 12 to 36 months during a  
27 state of emergency. The Thomas Fire qualifies for this extended coverage because on May 18, 2019,  
28 the California Insurance Commissioner issued a Notice requiring insurers to extend ALE benefits to  
as long as 36 months if needed for claims made due to a state emergency such as a wildfire,  
regardless of any time limit in the policy.

1           **C.     *The pace of negotiations is lagging well behind both the stated goals of the protocol***  
2           ***and the pace of settlements in other wildfire cases.***

3           **1.     The protocol has never met its goal of 150 mediations per month and the**  
4           **pace has recently slowed to an average of just 49 per month.**

5           The protocol has objectively failed to meet its goal, averaging only 84 negotiations or  
6 mediations per month, and failing to reach the 150-negotiation threshold even once. Moreover, the  
7 pace of mediations is now moving in the wrong direction. According to the joint-case-management  
8 statement filed by the parties on January 11, the last time Edison mediated 100 or more cases was in  
9 August 2021. Since then, the most Edison has mediated in a single month is 71, less than 50% of the  
10 protocol’s goal.

11           Over the last five months, Edison has mediated the following number of cases:

- 12           • September 2021:           71
- 13           • October 2021:                42
- 14           • November 2021:               52
- 15           • December 2021:               70
- 16           • January 2022:                 30
- 17           • February 2022<sup>13</sup>:            33

18           This is in an average of just 49 cases negotiated per month over the past 6 months (from September  
19 2021 to February 2022), which is less than 1/3 of the protocol’s goal of 150 cases per month.

20           **2.     The pace of settlements here is lagging well behind the pace in similar**  
21           **wildfire cases throughout the state.**

22           Edison’s insistence that it is making sufficient progress through the mediation protocol  
23 should be contrasted with the pace of settlements in other wildfire cases. By way of comparison,  
24 more than 75% of households had settled their cases at the time PG&E declared bankruptcy and  
25 suspended settlement negotiations in the Butte Fire.<sup>14</sup> At the time PG&E declared bankruptcy in  
26 January 2019, 3 years and 4 months after the Butte Fire occurred, 3,045 of 4,019 individual plaintiffs

27           <sup>13</sup>       The numbers for January and February 2022 are the projections given by Edison in the Joint  
28 Status Report.

<sup>14</sup>       Dec. of Gerald Singleton at ¶ 2.

1 had settled their cases.<sup>15</sup> In the more recent 2020 Zogg Fire, settlements began in earnest within one  
2 year.<sup>16</sup> The Court in Zogg also set a trial date set for February 6, 2023, only 29 months from the date  
3 of the fire.<sup>17</sup>

4 Edison’s primary objection to lifting the discovery stay has been its desire to focus  
5 exclusively on the households who have chosen to opt into the mediation protocol. But if this Court  
6 keeps the discovery stay in place for as long as it takes for all households to have a single mediation  
7 under the protocol, the opt-out plaintiffs will not be able to make any progress on their cases for at  
8 least another year – if not longer – during which time memories will continue to fade and tangible  
9 evidence will be lost.<sup>18</sup> The time has come for the stay to be lifted and a trial date set so that these  
10 plaintiffs can be made whole.

11 ***D. Edison is capable of continuing the mediation protocol and preparing for trial.***

12 Throughout this case and other fire cases where Edison is represented by Hueston Hennigan,  
13 Edison has consistently argued that its ability to prepare for trial and conduct mediations is limited  
14 by Hueston Hennigan’s resources. That is, by the availability of senior partners at Hueston Hennigan  
15 who are purportedly indispensable. A closer look at Hueston Hennigan’s trial docket, as well as  
16 Edison’s other ample resources, belies this claim.

17 First, if Hueston Hennigan were truly overwhelmed by the demands of this case, it stands to  
18 reason that it would dedicate most of its lawyers to this case and not take on new projects. But the  
19 firm has *not* declined other work since being engaged by Edison in this case. On the contrary,  
20 roughly one year after agreeing to represent Edison here, Hueston Hennigan signed on to represent  
21 Edison in the 2018 Woolsey Fire, which is also pending in this court.

22 Since then, the firm has agreed to serve as lead defense counsel in at least four other utility  
23 wildfire cases. It represents Edison in the 2020 Silverado and Bobcat Fires, as well as PacifiCorp in  
24 the 2020 Slater Fire (being litigated in both California and Oregon) and in the 2020 Santiam/Beachie  
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27 <sup>15</sup> *Id.*

<sup>16</sup> *Id.* at ¶¶ 4-5.

<sup>17</sup> *Id.*

<sup>18</sup> *See Hill*, 181 Cal. App. 3d at 6.

1 Creek Fire in Oregon. And these are only the other major fire cases that Hueston Hennigan has taken  
2 on.<sup>19</sup>

3 Hueston Hennigan advertises that it has over 75 lawyers who are among the finest litigators  
4 in the nation. According to its website, the firm is “a force to be reckoned with,” “the go-to firm for  
5 bet-the-farm litigation,” a “national powerhouse,” and a “maximum trial threat.”<sup>20</sup> The website also  
6 lists several recent victories, including two where the lead counsel were Doug Dixon and John  
7 Hueston – both of whom are lead counsel for Edison in this case.

8 In one of the cases featured on the website, in May 2021, a trial team led by Dixon won a \$25  
9 million verdict in a complex patent case after a five-day jury trial.<sup>21</sup> In another, a team led by John  
10 Hueston “notched a landmark win”<sup>22</sup> for Endo Pharmaceuticals after a several-month bench trial in  
11 the California opioid litigation.<sup>23</sup> Significantly, according to Hueston, the firm has another opioid  
12 case set for trial in “April [2022] in San Francisco,” as well as others “that we have been invited to  
13 try” and that “we’re focused on fitting [] within our trial schedule for 2022.”<sup>24</sup>

14 If Hueston Hennigan has the resources try more opioid cases in 2022, it should certainly have  
15 the bandwidth to both mediate cases and prepare for trial in this case. At a minimum, the opt-out fire  
16 victims here should not be forced to wait another year to accommodate Hueston Hennigan’s desire  
17 to try more opioid cases.

18 Hueston Hennigan is also not alone here. Edison has retained Murchison & Cumming (an  
19 “AV-rated AmLaw 500 ‘Go-To’ law firm for litigation in California” with “more than 85 attorneys  
20 in [] six offices”),<sup>25</sup> led by an experienced fire litigator, Friedrich Seitz, to handle the Rye Fire in *this*  
21 JCCP. Seitz has “over 100 jury trials,” chairs the “Wildland Fire Litigation” group, and “is a  
22

23 <sup>19</sup> Dec. of Gerald Singleton at ¶ 7.

24 <sup>20</sup> [Hueston Hennigan | Disruptive Trial Lawyers](#)

25 <sup>21</sup> *Acorn Semi, LLC v. Samsung Electronics Co., Ltd. et al.* (E.D. Tex 2021).

26 <sup>22</sup> [Law360: How Hueston Hennigan Notched A Landmark Opioid Trial Win - Hueston  
Hennigan](#)

27 <sup>23</sup> *People of the State of California v. Purdue Pharma LP et al.* (Orange County Sup. Ct. 2021).

28 <sup>24</sup> [Law360: How Hueston Hennigan Notched A Landmark Opioid Trial Win - Hueston  
Hennigan](#)

<sup>25</sup> [Welcome to Murchison & Cumming, LLP \(murchisonlaw.com\)](#)

1 specialist in defending wildland fire cases.”<sup>26</sup> If Hueston Hennigan is truly unable to litigate and  
2 mediate at the same time, Edison can employ the Murchison & Cumming lawyers to handle the  
3 litigation.<sup>27</sup>

4 At the close of business on January 18, 2022, Edison International had a market cap of over  
5 \$24.2 billion. In the unlikely event that the formidable combination of Hueston Hennigan and  
6 Murchison & Cumming is inadequate to both continue mediations and prepare for trial, Edison  
7 certainly has the wherewithal to engage another similarly talented firm, such as Cravath, Swaine &  
8 Moore, which currently represents PG&E in the Kincade and Zogg Fires, Munger, Tolles & Olson,  
9 which represents PG&E in the Dixie Fires, or Quinn Emanuel, which represented PG&E in the Butte  
10 Fire and San Diego Gas & Electric in the 2007 San Diego Fires. In short, Edison’s claim that it  
11 cannot simultaneously mediate cases while preparing for trial is simply not credible.

12 **III. CONCLUSION**

13 The individual plaintiffs who have opted out of the mediation protocol respectfully ask this  
14 Court to terminate the discovery stay on or before February 15, 2022, and to set a meaningful trial  
15 date.

16 Respectfully submitted,  
17 SINGLETON SCHREIBER, LLP

18 Dated: January 19, 2022

19 By: Gerald Singleton  
20 Terry Singleton  
21 Gerald Singleton  
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23 John C. Lemon  
24 Attorneys for the Opt-out Plaintiffs

26 <sup>26</sup> [Los Angeles, California Attorney \(murchisonlaw.com\)](http://murchisonlaw.com)

27 <sup>27</sup> See also Dec. of Gerald Singleton at ¶ 6.  
28