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VENTURA
SUPERIOR COURT
FILED

APR 16 2018

MICHAEL D. PLANET
Executive Officer and Clerk
BY:  Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA**

Coordination Proceeding Special Title
(Rule 3.550)

SOUTHERN CALIFORNIA FIRE CASES

JUDICIAL COUNCIL COORDINATION
PROCEEDING NO. 4965

**ORDER RECOMMENDING
COORDINATION AND STAYING CASES
IN LOS ANGELES COUNTY SUPERIOR
COURT**

Background

Beginning on December 4, 2017, several major wildfires began in southern California. The Thomas fire started on December 4, 2017 in Ventura County, later spreading to Santa Barbara County and becoming the largest such fire in recorded state history.¹ The Rye and Creek fires both started on December 5, 2017 in Los Angeles County. On January 9, 2018, heavy rains on the burn scar area in Santa Barbara County resulted in a mudslide/debris flow in Montecito. The fires and mudslide resulted in massive property damage, personal injury and death. Many lawsuits related to these events have been filed, primarily targeting defendant Southern California Edison

¹ Media reports based on a Cal Fire damage assessment noted a total of at least 1,343 buildings destroyed or damaged by the Thomas fire. In the city of Ventura and nearby unincorporated areas 749 homes were destroyed and another 185 were damaged. The fire burned 281,893 acres in Ventura and Santa Barbara Counties.

1 (“SCE”). Plaintiffs’ counsel (“Petitioners”) in two such actions - *Poindexter et al. v. Southern*
2 *California Edison* (56-2018-00506356) and *Vitullo et al. v. Southern California Edison*
3 (BC688977) – filed with the Judicial Council of California a petition to coordinate eight cases
4 (“Petition”).²

5
6 Following a directive from the Chair of the Judicial Council, the Presiding Judge of the
7 Ventura County Superior Court assigned this court to hear the coordination motion.

8 **Cases at Issue**

9 Subsequent to the filing of the Petition and pursuant to California Rule of Court (“CRC”)
10 3.531(a), Petitioners provided notice to the Judicial Council and to this court of a number of
11 potential “add-on” cases. This court deems each of the add-on cases as included actions for
12 purposes of this Petition. (CRC 3.351(b).)³ The court is aware of two additional petitions for
13 coordination submitted to the Judicial Council (JCCP 4968 and JCCP 4970) both of which concern
14 the fire and mudslide events and reference cases that are at issue in this Petition (e.g., *Marquez et*
15 *al. v. Southern California Edison* (18CV00717).) Nevertheless, this order is limited to the included
16 actions presently before this court as set forth at Appendix A, attached hereto.
17

18 At the April 2, 2018 hearing on this matter, Petitioners orally represented that continuing
19 investigation had shown SCE equipment was not the source of the Creek fire. Accordingly,
20 Petitioners moved to excise the Creek fire from the petition.⁴ No parties objected to that proposal at
21 the hearing, and accordingly the court will not consider the Creek fire for purposes of this Petition.
22

23
24 ² *Lewis v. Southern California Edison* (56-2017-00505314); *Swart et al v. Southern California*
25 *Edison* (56-2018-00506300); *Martinez v. Southern California Edison* (56-2018-00506304);
26 *Bruckner et. al. v. Southern California Edison* (17CV05745); *Melring, et al. v. Southern*
27 *California Edison* (56-2017-00505080); *Scantlin v. Southern California Edison* (56-2017-
28 00505538). Petitioners subsequently eliminated the *Bruckner* case from the Petition.

³ Throughout this order, “included actions” refers to the actions identified in the initial Petition and those actions added on by the Petitioners.

⁴ Petitioners have informed this court they filed an amendment seeking to exclude the Creek fire cases. This court has not seen that filing.

1 The Court believes that the only included action involving the Creek fire is *Vitullo*, supra.
2 However, because the *Vitullo* action also addresses the Thomas fire, the Court considers the lawsuit
3 to be an included action.

4 **Discussion**

5 Coordination is governed by California Code of Civil Procedure (“CCP”) sections 404 and
6 404.1 *et seq.*, as well as CRC 3.520 *et seq.* The preliminary inquiry for this court is whether the
7 included actions are complex. (CRC 3.502.) In light of the existing and anticipated mass tort
8 claims and class actions, and the sheer number of existing and potential cases, the court deems all
9 the included actions to be provisionally complex. (CRC 3.400(c)(5).) The included actions will
10 involve a significant number of witnesses and a substantial amount of documentary evidence.
11 There are already a large number of separately represented parties. (CRC 3.400(b).) The court
12 finds that exceptional judicial management will be necessary to handle the included actions to
13 avoid placing unnecessary burdens on the court, to reduce litigation costs, and to expedite the
14 cases. (CRC 3.400(a).) The court finds the included actions to be complex.

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17 The second task for the court is to determine whether the included actions are to be
18 coordinated. This inquiry involves a series of factors set forth at CCP section 404.1.

19 *Predominance of common questions of fact or law.*

20 The included actions clearly share common questions of law and fact. While a review of
21 the complaints reflects some variation with respect to the legal theories of potential liability, the
22 causes of action are by and large the same: negligence, nuisance, inverse condemnation, trespass,
23 and premises liability. Although it may be true, as opponents point out, that the start times, areas of
24 origin and the location of each of the three fires is different, the common factual allegation across
25 the complaints is that the fires were caused by SCE’s power lines during the high wind events of
26 December 4th and 5th 2017. Without coordination, there is a high risk of duplication of effort
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1 (witnesses, documentation, and experts) to resolve causation, duty and legal responsibility.

2 Opponents of the Petition point out that experts on topics such as hydrology, geology and
3 forestry surveying (“mudslide experts”) will be necessary in the mudslide cases and yet irrelevant
4 to those actions concerning the Thomas fire alone. As alleged, however, the mudslide was the
5 proximate result of the Thomas fire denuding the surrounding hillsides of vegetation and altering
6 the soil. Consequently, SCE’s legal responsibility for the Thomas fire, if proven, is an essential
7 first step in resolving the mudslide cases. Thus, the mudslide cases will involve fire experts as well
8 as mudslide experts.
9

10 Claims for damages will be individualized; each plaintiff’s loss will be distinct. Here too,
11 however, oversight by one judge can streamline discovery and ensure that relevant items are
12 produced as to all pertinent cases with maximum efficiency.
13

14 Convenience of the parties, witnesses and counsel.

15 Coordination of the included actions will certainly impact those parties, witnesses and
16 counsel who reside or work outside the coordination county. The court is mindful that this impact
17 could be even more significantly felt by a plaintiff who has lost his or her home in the fires or
18 mudslide. This impact will be mitigated to some degree because SCE has indicated that it intends
19 to depose the plaintiffs in the county in which their cases originated. Telephonic appearance on
20 many pretrial matters can alleviate some of the burden on counsel.
21

22 “Coordination does not mean that all the cases must be tried in one forum.” (*Ford Motor*
23 *Warranty Cases* (2017) 11 Cal.App.5th 626, 644.) The coordination judge has the authority to
24 schedule hearings, conferences and trials at any location after considering the convenience of
25 parties, witnesses, and counsel. (CRC 3.541(b)(2).)

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1 Relative development of the actions and the work product of counsel.

2 The pre-trial work conducted in Santa Barbara Superior Court in *Leong et al. v. Southern*
3 *California Edison* (18CV00371) notwithstanding, the included actions are at the beginning stages
4 of litigation. Most of the included actions were stayed by this court's order of February 5, 2018,
5 pending the hearing on this matter.
6

7 Efficient utilization of judicial facilities and manpower and the calendar of the court.

8 A coordinated proceeding allows for one courthouse – as opposed to three or more
9 courthouses – to marshal the resources necessary to handle the included actions. Efficiencies can
10 be realized with respect to filings, docketing, exhibits, and courtroom resources. Coordination
11 before one judge ensures that one judicial officer knows the status of the entire litigation.
12

13 Disadvantages of duplicative and inconsistent rulings, orders or judgments.

14 Because of the recurring allegation that SCE's actions/inactions and equipment caused the
15 fires, there is a potential for inconsistent rulings across multiple venues. Divergent rulings
16 concerning duty, causation and legal liability could impact not just the cases involving the fire
17 plaintiffs but also those in which plaintiffs assert that the mudslide was the proximate result of
18 SCE's conduct. Such inconsistency would be chaotic and unjust to the fire and mudslide victim
19 plaintiffs as well as defendant SCE and other parties.
20

21 Likelihood of settlement without further litigation should coordination be denied.

22 The court offers no prediction on the likelihood of settlement of the included actions.
23 However, there appears to be merit to the argument that without a coordinated proceeding
24 settlement discussions could be hindered by actions proceeding in three counties with overlapping
25 factual and legal issues.

26 For the foregoing reasons, the court finds that coordination of the included actions is proper.
27 Petitioners ask that the court's order be limited to pre-trial proceedings. That is this court's
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1 recommendation, subject to the authority of the coordination trial court pursuant to CRC 3.543.

2 **Proper Superior Court for Coordination Proceedings**

3 “If a petition for coordination is granted, the coordination motion judge must, in the order
4 granting coordination, recommend to the Chair of the Judicial Council a particular superior court
5 for the site of the coordination proceedings.” (CRC 3.350(a).) “The coordination motion judge may
6 consider any relevant factors in making a recommendation for the site of the coordination
7 proceedings, including” the eight factors listed in CRC, rule 3.350(b). As explained below, upon
8 weighing the relevant factors, this court finds that the Los Angeles County Superior Court is best
9 equipped to handle the coordination proceedings.
10

11 *The number of included actions in particular locations.*

12 The breakdown by venue of the included actions is as follows: Ventura County (13); Santa
13 Barbara County (12) and Los Angeles County (11). This factor does not weigh in favor of or
14 against any particular county, but it is noteworthy that many plaintiffs who suffered damage
15 outside of Los Angeles County have filed their cases in Los Angeles.
16

17 *Whether the litigation is at an advanced stage in a particular court.*

18 None of the cases are at an advanced stage. This factor does not weigh in favor of or
19 against any particular venue.
20

21 *The efficient use of court facilities and judicial resources.*

22 The Los Angeles County Superior Court has a designated complex litigation department,
23 and has a relatively well-developed e-filing system. Neither Ventura County nor Santa Barbara
24 County has a department entirely devoted to complex litigation and neither can offer e-filing to the
25 degree offered by Los Angeles. At the hearing, proponents of the Petition estimated that there may
26 be thousands of additional case filings concerning the fires and the mudslide. By comparison,
27 Ventura had 10,159 total civil filings in 2017. The Los Angeles court system is better equipped
28

1 than either Ventura or Santa Barbara to handle such volume. This factor weighs in favor
2 of Los Angeles County.

3 The locations of witnesses and evidence.

4 The witnesses and evidence for the included actions will primarily be located in each of the
5 counties. However, most of SCE's witnesses are in Los Angeles County, where it is
6 headquartered. This factor slightly favors Los Angeles County, at least for the pretrial proceedings.
7 If and when the time comes for trial proceedings, this factor would likely favor trial in the county
8 where the damage took place.

9 The convenience of the parties and witnesses.

10 Los Angeles County is the most convenient venue for the petitioning parties and for SCE.
11 Ventura County and Santa Barbara County are convenient locations for other parties to the
12 included actions. That being said, as discussed in detail below, the ease of travel to and availability
13 of accommodations in Los Angeles County is greater than Ventura County or Santa Barbara
14 County. Overall, this factor weighs in favor of Los Angeles County.⁵

15 The parties' principal places of business.

16 While the plaintiffs in the actions reside in each of the three counties, SCE, the defendant
17 named in nearly all of the included actions, has its principal place of business in Rosemead in Los
18 Angeles County. All of the insurance carriers who have pending actions favor venue in Los
19 Angeles, as do the government entity plaintiffs who have appeared so far. This factor weighs in
20 favor of Los Angeles County.

21 The office locations of counsel for the parties.

22 Counsel for the parties have offices located in all three counties implicated by the included
23 actions, as well as other counties in California. This factor does not weigh in favor of or against any
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26 ⁵ It is the court's understanding that approximately 80% of the approximately 1000 plaintiffs who
27 have filed cases related to the fires and mudslides favor coordination in Los Angeles County.

1 particular venue.

2 *The ease of travel to and availability of accommodations in particular locations.*

3 The ease of travel to and availability of accommodations in Los Angeles County is
4 significantly greater than that of Ventura County and Santa Barbara County. Los Angeles County is
5 the most accessible option, and it is not far removed from the other counties involved. This factor
6 weighs in favor of Los Angeles.
7

8 In sum, after weighing all of the relevant factors, this court finds that the Los Angeles
9 County Superior Court is best equipped to handle coordination of these cases. Therefore, the court
10 recommends to the Judicial Council that Los Angeles County Superior Court be the site for the
11 pretrial coordination proceedings.

12 **Proper Appellate Court**

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14 “A judge assigned pursuant to Section 404 who determines that coordination is appropriate
15 shall select the reviewing court having appellate jurisdiction if the actions to be coordinated are
16 within the jurisdiction of more than one reviewing court.” (CCP §404.2.) All three counties in
17 which the included cases have been filed are within the Second Appellate District. Thus, the court
18 selects the Second District Court of Appeal.

19 **Interim Stay**

20 A request for an interim stay was made at the April 2nd hearing. The request is granted. The
21 included actions are stayed until further order of this court or the coordination trial judge pursuant
22 to CRC 3.529(b). Notwithstanding the stay, the parties to the included actions may conduct
23 examination of the physical evidence pursuant to the parties’ agreed upon inspection protocol.
24

25 **Conclusion**

26 The petition to coordinate (JCCP4965) is granted. This court recommends the Superior
27 Court of California, County of Los Angeles be the site for the coordinated pretrial proceedings, and
28

1 designates the Court of Appeal, Second District, as the reviewing court. The included cases are
2 subject to the limited stay described above.

3 Petitioners' counsel is directed to serve a copy of this order on (1) all parties to the included
4 coordinated actions, (2) the clerk of each court for filing in each included action, and (3) as
5 otherwise required by CRC 3.529.
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8 Dated: April 16, 2018

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9 Vincent J. O'Neill, Jr.
10 Judge of the Ventura County Superior Court
11 Coordination Motion Judge
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