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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JEANYNE JAMES, ROBIN COLBERT,
JANE DREVO, SAM DREVO, BROOKE
EDGE AND BILL EDGE, SR., LORI
FOWLER, IRIS HAMPTON, JAMES
HOLLAND, RACHELLE MCMASTER,
KRISTINA MONTOYA, NORTHWEST
RIVER GUIDES, LLC, SHARIENE
STOCKTON AND KEVIN STOCKTON,
VICTOR PALFREYMAN, PALFREYMAN
FAMILY TRUST, and DUANE BRUNN,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PACIFICORP, an Oregon corporation; and
PACIFIC POWER, an Oregon registered
electric utility and assumed business name of
PACIFICORP,

Defendants.

Nos. 20CV33885 (Lead)
20CV37430, 21CV33595,
22CV13946, 22CV26326,
22CV29694, 22CV29976,
22CV30450, 22CV41640

**DEFENDANT PACIFICORP'S
MOTION TO MODIFY SCOPE OF
CLASS CONTACT ORDER**

Expedited Hearing Requested

Assigned to: Hon. Steffan Alexander

UTCR 5.010 AND 5.050 STATEMENTS

Defendants PacifiCorp and Pacific Power (collectively “PacifiCorp” or “Defendant”),
through their counsel, conferred in good faith with Plaintiffs, though their counsel, by email
and telephone regarding the subject of this motion, but the parties were unable to resolve
their disputes. PacifiCorp requests oral argument on this Motion and estimates that 10
minutes will be required. Official court reporting services are requested.

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1 **MOTION**

2 PacifiCorp seeks an order modifying the Court’s November 7, 2022 Order Re:
3 Stipulated Motion to Limit Defendants’ Contact with Class Members (“Class Contact
4 Order”). Specifically, PacifiCorp seeks to modify the language in the required response to
5 class member inquiries to allow PacifiCorp to communicate directly with unrepresented class
6 members who have affirmatively reached out to PacifiCorp regarding potential settlement.
7 This motion is supported by the following points and authorities, the Declaration of Alison
8 Plessman (“Plessman Decl.”) filed herewith, and the pleadings and papers on file in this case.
9 As noted in the accompanying Motion for Expedited Consideration, PacifiCorp seeks
10 expedited consideration of this motion in light of the pending class member inquiry.

11 **POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 There is currently no option for an unrepresented class member to talk directly to
14 PacifiCorp about settling their individual damages claim, even if the unrepresented class
15 member *wants* to settle directly with PacifiCorp, and even if PacifiCorp *wants* to settle
16 directly with the unrepresented class member. That is because under the November 7, 2022
17 Class Contact Order, PacifiCorp is required to provide the following response to any
18 incoming communications from class members about this litigation:

19 Thank you for your [voicemail/email/call] regarding the [Echo
20 Mountain Complex, Santiam Canyon fire, South Obenchain
21 fire or Two Four Two fire]. PacifiCorp has been sued in the
22 class-action case *James, et al. v. PacifiCorp, et al.* (No.
23 20CV33885), which is pending in Multnomah County Circuit
24 Court. The lawsuit at issue—which arises from the Echo
25 Mountain Complex, Santiam Canyon fire, South Obenchain
26 fire and Two Four Two fire—has been certified as a class
action. I understand you may be a class member. More
information about the lawsuit and for class members can be
found here: <https://www.pacificorpfirelitigation.com/>, as well
as in the attached notice approved by the Court.

The notice summarizes your legal rights and options in this
lawsuit. We are providing you a copy of this notice because

1 PacifiCorp’s attorneys and claims department may not be
2 authorized to discuss the lawsuit with you due to your status as
3 a potential class member. You may direct any questions
4 regarding the class action to class counsel, who can be reached
5 at 503-217-6722 or 888-607-5808 or by emailing
6 PacifiCorpFireLitigation@edelson.com.

7 (See Class Contact Order at 3.)

8 The problem with this current required response is that if an unrepresented class
9 member visits the class action website, then they will be informed that they are allowed to
10 pursue their individual damages claim without being represented by lead class counsel.¹ But
11 if they decide that they wish to remain unrepresented and continue to discuss their claim with
12 PacifiCorp, then PacifiCorp would again be required to send the same template response
13 directing the unrepresented class member back to the website and back to lead class counsel.
14 There is no way to break out of this cycle.

15 Until recently, this problem has largely been theoretical. But on July 1, 2024, counsel
16 for PacifiCorp received an anonymous email from an individual purporting to be a member
17 of the *James* class seeking to withdraw from the class action and settle directly with
18 PacifiCorp. Here is the relevant text from that email:

19 Given the confirmed certification of the class action and
20 acknowledging that the withdrawal of a single plaintiff would
21 not impact this status, is Pacificorp open to negotiating a small
22 settlement with an individual plaintiff who opts to withdraw
23 from the class action? Additionally, this person would be
24 amenable to including a non-disclosure agreement as part of
25 such a settlement. Signed anonymous but a class action
26 plaintiff who would rather just settle and move on.

22 ¹ Specifically, Question 18 of the FAQ section of the website states: “If Plaintiffs are
23 successful at the Issues Trial, you may want Lead Counsel to continue to represent you, or, if
24 you wish, a different attorney who has not been involved in the litigation may be available to
25 represent you in later proceedings to determine whether you are entitled to any damages and,
26 if so, the amount of your damages.” Question 22 of the FAQ section further states: “The
Issues Trial is only meant to answer the Certified Issues and the amount of damages for the
class representatives. After the Certified Issues are answered, each Class Member will be
responsible for proving, if they so choose, whether they are entitled to any damages and, if
so, the amount of damages.” (See Plessman Decl., Ex. 3.)

1 (See Plessman Decl., Ex. 1.) The same individual later called and left a voicemail for
2 PacifiCorp’s counsel on July 17, 2024. The voicemail expressed that this individual and
3 another individual were both “curious if there is an option to extricate ourselves from the
4 lawsuit” and settle with PacifiCorp directly. (Plessman Decl. ¶ 5.)² Initially, it was unclear
5 to PacifiCorp whether the email inquiry was legitimate given the anonymous nature of the
6 message. The July 17, 2024 voicemail, which referenced the email, provided further
7 indication that the inquiry was likely genuine, which prompted PacifiCorp to immediately
8 bring the issue to the attention of Plaintiffs on July 18, 2024 and request a conferral to
9 discuss the possibility of a stipulation to modify the Class Contact Order. (*Id.* ¶ 6.) Plaintiffs
10 did not respond, so PacifiCorp followed up on July 22, 2024, and the parties were then able
11 to schedule a conferral to take place on July 24, 2024. (*Id.*) PacifiCorp has not yet
12 responded to either the email or the voicemail in question pending guidance from this Court
13 on how to handle this novel situation. (*Id.* ¶ 7.)

14 The current Class Contact Order does not address this unrepresented class member’s
15 concerns. PacifiCorp therefore seeks an order modifying the Class Contact Order to (1)
16 allow PacifiCorp to communicate with unrepresented class members who reach out to
17 PacifiCorp about potential settlement and (2) edit the language in the message that
18 PacifiCorp is required to send in response to class member inquiries.

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24 ² During the parties’ conferral on this motion, Plaintiffs’ counsel suggested that any
25 citation to these communications would violate paragraph 3 of the Class Contact Order,
26 which limits PacifiCorp’s ability to use post-certification communications. But on its face
that provision only applies to communications “from May 13, 2022, to the present,” *i.e.*,
November 7, 2022, which is the date on which the Court entered the Class Contact Order.
As a result, paragraph 3 does not apply to the communications at issue.

1 **II. ARGUMENT**

2 It cannot be the case that an unrepresented class member has no avenue of settling
3 with PacifiCorp other than by retaining lead class counsel to represent them in their
4 individual damages claim. But that is the inevitable outcome under the current class member
5 communications rules laid out in the Class Contact Order. The email and voicemail sent to
6 PacifiCorp’s counsel both make clear that the class member in question (1) desires to
7 withdraw from the class, and (2) wishes to engage directly with PacifiCorp regarding
8 potential settlement. And there is no indication in either the email or the voicemail that the
9 class member is currently represented by lead counsel.³ In any event, there is no dispute that
10 the deadline for opting out of the class has passed, which means that the individual is now
11 bound by the Phase I class findings. This motion does not seek to extend the opt-out
12 deadline or allow this individual to belatedly opt out.

13 But just because an unrepresented class member is now bound by the Phase I class
14 findings does not mean they must also be bound to be represented by lead counsel or bound
15 to the Phase II trial proposal contemplated by lead counsel. Indeed, it is not hard to imagine
16 that some rational class members might want to resolve their cases without having to wait for
17 the next trial (and indeed, may not want to even sit through a trial at all or participate in the
18 formal discovery procedures that come before any trial). And it is certainly the case that
19 nothing in the class action notice prohibits class members from pursuing their individual
20 damages claims through alternative avenues—including by negotiating alternative
21 settlements with PacifiCorp with the assistance of other law firms or even doing so directly
22 with PacifiCorp without the help of any other law firm.⁴

23 _____
24 ³ During the meet and confer, lead counsel took the position that the individual who
25 left the voicemail for PacifiCorp’s counsel was a represented party. For the avoidance of
doubt, PacifiCorp does not seek leave to further communicate with any represented parties
beyond sending the modified response it proposes in this motion.

26 ⁴ Lead class counsel have apparently taken the position that they can prevent other
law firms from representing class members in pursuing their individual damages claims
against PacifiCorp. PacifiCorp will be filing a separate Reply in response to Plaintiffs’ July

1 To the extent that lead counsel now try to argue that they currently represent all
2 remaining class members, their own prior statements and the broader record in this case show
3 otherwise.⁵ For example, in support of their common benefit fee request, lead counsel
4 expressly represented: “Although Lead Counsel represent many of the class members
5 pursuant to individual representation agreements, *many others who meet the class definition*
6 *are represented by other attorneys or are unrepresented.*” (August 4, 2023 Lead Counsel’s
7 Motion to Enter Order Re: Common Benefit Fee at 10 (emphasis added).)

8 The class action notice similarly confirms that lead counsel’s representation of class
9 members is limited to the certified class issues, and that after the class action trial, class
10 members are not obligated to hire lead class counsel to represent them in pursuing their
11 individual damages claims:

12 If you have not signed an agreement with one or more of the
13 law firms serving as Lead Counsel, you may choose to hire a
14 different lawyer, but you do not need to because *Lead Counsel*
is working on your behalf, so long as you do not ask to be
excluded from the class, *with respect to the Certified Issues*.

15 If Plaintiffs are successful at the Issues Trial, you may want
16 Lead Counsel to continue to represent you, *or, if you wish, a*
different attorney who has not been involved in the litigation
may be available to represent you in later proceedings to
17 *determine whether you are entitled to any damages and, if so,*

18 _____
19 18 2024 opposition to the June 14, 2024 Motion to Clarify Scope of Class Representation
20 filed by Interested Parties Warren Allen LLP, Spreter Petiprin, and Swigart Law Group,
APC, which seeks to clarify the scope of lead class counsel’s representation of class
members in their damages claims.

21 ⁵ As explained in PacifiCorp’s concurrently filed Reply, lead counsel has pointed to
22 no evidence that they represent or have entered into engagement agreements with every
23 single remaining class member in connection with individual damages issues. Lead counsel
24 might try to argue that because they are working on the pending Case Management Order
25 No. 10 dispute as well as the appeal, then they must continue to represent all class members.
26 That is wrong. The Case Management Order No. 10 dispute by necessity extends only to the
the damages claims of lead class counsel’s clients—the plaintiffs who have actually entered
into retention agreements with class counsel. There is no basis for lead counsel to be setting
damages trials or agreeing to discovery on behalf of class members who have not entered
into retention agreements with them. As for the appeal, the judgments that have been entered
in this case so far—and that are being appealed—have been explicitly limited to the
individual named plaintiffs who have actually proceeded to trial and secured jury awards.

1 *the amount of your damages*. These later proceedings may or
2 may not occur, depending on the outcome of the Issues Trial.

3 (Plessman Decl., Ex. 2 at 10.)

4 The class action notice further dispels any possible ambiguity about whether
5 individual damages claims are encompassed within the certified class issues: they clearly are
6 not. The notice states: “After the Certified Issues are answered, each Class Member will be
7 responsible for proving, if they so choose, whether they are entitled to damages and, if so, the
8 amount of damages.” (*Id.* at 11.) At this point, the certified issues have been answered. The
9 individual damages determinations are underway. Nowhere in the class action notice (or any
10 other rule or order) is there any requirement that a class member *must* retain lead class
11 counsel in order to pursue their individual damages claim against PacifiCorp. To the
12 contrary, it is well established that individuals are entitled to litigate without counsel. *See*
13 *Johnson v. Premo*, 355 Or 866, 872, 333 P3d 288, 291 (2014) (“[A]n individual litigant
14 generally has the right to represent himself or herself in court.”).

15 Nor would allowing individual class members to independently settle their damages
16 claims deprive lead class counsel of compensation for their labor during the issues-class
17 phase of this case. That is what the common benefit assessment is for, requiring PacifiCorp
18 to set aside 10% of any settlements reached with class members. Beyond that, there is no
19 need (and no basis) to additionally grant lead class counsel a monopoly on permissible
20 communications with class members during the individualized issues phase of this litigation.
21 There is no basis to elevate the financial interests of lead class counsel over the interests of
22 individual unrepresented class members, not to mention the broader benefits that out-of-court
23 resolution brings to the parties and the court system as a whole.

24 PacifiCorp therefore requests an order modifying the scope of the Class Contact
25 Order to allow PacifiCorp to communicate with unrepresented class members for the sole
26 purpose of discussing the potential settlement of individual damages claims in response to

1 affirmative settlement-related outreach by unrepresented class members to PacifiCorp. To be
2 clear, PacifiCorp is *not* seeking to conduct any affirmative outreach to class members,
3 whether represented or unrepresented. PacifiCorp merely seeks the ability to substantively
4 respond to unrepresented class members who reach out to PacifiCorp for the purpose of
5 discussing potential settlement of their individual damages claims.

6 In addition, PacifiCorp requests the following modifications (indicated in red text) to
7 the required response to class member inquiries:

8 Thank you for your [voicemail/email/call] regarding the [Echo
9 Mountain Complex, Santiam Canyon fire, South Obenchain
10 fire or Two Four Two fire]. PacifiCorp has been sued in the
11 class-action case *James, et al. v. PacifiCorp, et al.* (No.
12 20CV33885), which is pending in Multnomah County Circuit
13 Court. The lawsuit at issue—which arises from the Echo
14 Mountain Complex, Santiam Canyon fire, South Obenchain
15 fire and Two Four Two fire—has been certified as a class
16 action. I understand you may be a class member. More
17 information about the lawsuit and for class members can be
18 found here: <https://www.pacificorpfirelitigation.com/>, as well
19 as in the attached notice approved by the Court.

20 The notice summarizes your legal rights and options in this
21 lawsuit. ~~We are providing you a copy of this notice because
22 PacifiCorp's attorneys and claims department may not be
23 authorized to discuss the lawsuit with you due to your status as
24 a potential class member.~~ You may direct any questions
25 regarding the class action to class counsel, who can be reached
26 at 503-217-6722 or 888-607- 5808 or by emailing
PacifiCorpFireLitigation@edelson.com.

~~Or, if you are not currently represented by a lawyer and wish to
discuss your individual damages claim directly with
PacifiCorp, then you may reply to this message [or send an
email to TBD] with a statement confirming that you are not
currently represented by an attorney and are interested in
discussing your individual damages claim directly with
PacifiCorp. We encourage you to consult with a lawyer and
consider your options before you move forward with any
further contact with PacifiCorp.~~

III. CONCLUSION

For the reasons explained above, PacifiCorp respectfully requests that the Court
modify the scope of the existing Class Contact Order to (1) allow PacifiCorp to communicate

1 with class members who affirmatively reach out to PacifiCorp regarding potential settlement;
2 and (2) edit the language in the required response to class member inquiries.

3 DATED: July 24, 2024

STOEL RIVES LLP

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/s/ Per A. Ramfjord

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CERTIFICATE OF SERVICE

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I hereby certify that I served a true and correct copy of the foregoing document titled
DEFENDANT PACIFICORP’S MOTION TO MODIFY SCOPE OF CLASS CONTACT ORDER on the following named person(s) or party(ies) on the date and by the method(s) indicated below.

- mailing with postage prepaid.
- hand delivery.
- overnight delivery.
- email. (courtesy copy only)
- email pursuant to agreement among parties/counsel dated July 16, 2024, consenting to service via email.
(Plaintiffs James, et al. only)
- eService via OJD eFile. (if registered)

If by mail or overnight delivery, a true copy of the above referenced document(s) was served upon said person(s) or party(ies), contained in a sealed envelope or package, addressed to said person(s) or party(ies) at their last-known address(es) indicated below.

Service List Attached

DATED: July 24, 2024

/s/ Per A. Ramfjord
PER A. RAMFJORD, OSB 934024
Of Attorneys for Defendants PacifiCorp and Pacific Power

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