

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’S MOTION FOR  
ENTRY OF CASE MANAGEMENT  
ORDER NO. 10**

ORAL ARGUMENT REQUESTED

Assigned to: Hon. Steffan Alexander

**UTCR 5.010 AND 5.050 STATEMENT**

The parties conferred regarding this Motion and were unable to reach agreement.  
Defendants PacifiCorp and Pacific Power (collectively “Defendant” or “PacifiCorp”) request  
oral argument and estimates that one hour will be required. Defendant also requests official  
court reporting services.

**MOTION**

PacifiCorp respectfully requests that the Court enter PacifiCorp’s proposed version of  
Case Management Order No. 10, which is attached to this Motion as Exhibit 1 (“PacifiCorp’s

1 Proposed CMO #10”). PacifiCorp’s Proposed CMO #10 and the process described below,  
2 which includes an exchange of damages information coupled with additional mediation,  
3 followed by a stay of any additional trials pending a ruling from the Court of Appeals on  
4 disputed legal issues, or alternatively, a series of bellwether trials involving randomly  
5 selected plaintiffs from different damages categories, offers the only realistic and efficient  
6 pathway to the actual resolution of the remaining claims of the class members.

7 This Motion is supported by the following points and authorities and the records and  
8 pleadings on file herein.

## 9 POINTS AND AUTHORITIES

### 10 I. INTRODUCTION

11 Earlier this year, the parties engaged in two initial damages trials followed by an  
12 attempted mediation. Unfortunately, those efforts did not work, in large measure because  
13 neither of the trials included truly representative claimants and because Plaintiffs have failed  
14 to supply meaningful data—data that other plaintiff groups have readily provided and that is  
15 a prerequisite to settlement—about both the number of individuals seeking damages under  
16 the class liability finding (the “Damages Plaintiffs”) and their particular claims. The other  
17 primary barrier to resolution is the open-ended nature of the class. Without finality,  
18 settlement is highly unlikely. The barrier to resolution in this case is *not* PacifiCorp.  
19 PacifiCorp has been able to settle nearly 1,800 claims in other Labor Day Fire cases—  
20 including both the *CW/Freres* and *Cady/Logan* plaintiff groups that had also been scheduled  
21 to go to trial in front of this Court. That fact alone belies Plaintiffs’ contention that  
22 PacifiCorp’s view of Oregon law makes it impossible to settle the claims of the Damages  
23 Plaintiffs. It also debunks Plaintiffs’ assertion that the only possible way to resolve such  
24 claims would be through the creation of a special docket with radically expedited trials for 50  
25 Damages Plaintiffs per month.

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1 Plaintiffs propose that the parties—and the entire Multnomah County court system—  
2 brute force their way through the entire slate of remaining damages trials for at least the next  
3 two to three years. This approach, which presumes the full resources of the courts can be  
4 commandeered to accommodate Plaintiffs’ demands, is unreasonable on its face. The parties  
5 have already tried an approach where Plaintiffs attempt to bully PacifiCorp into settlement  
6 based on sky-high damages awarded to unrepresentative plaintiffs. That did not work  
7 because those awards could not be reliably extrapolated to the remaining Damages  
8 Plaintiffs—especially given the lack of information about the number of such individuals and  
9 their claims. In short, Plaintiffs’ scorched earth approach is **guaranteed** to result in years of  
10 costly trials with no further chance of settlement.

11 The most reasonable next step is to try a modified plan that merges the lessons from  
12 the first two damages trials with a new discovery and bellwether framework that provides all  
13 parties with multiple offramps for meaningful potential out-of-court resolution. PacifiCorp’s  
14 Proposed CMO #10 is designed to overcome the two main impediments that have stalled  
15 progress in this case to date: **(1)** the lack of meaningful damages information about the  
16 remaining class members and **(2)** the lack of truly representative bellwether plaintiffs to serve  
17 as reliable datapoints. PacifiCorp’s proposal will move this case forward and make the most  
18 efficient use of everyone’s time without demanding an unworkable trial schedule, disruption  
19 to the trial court system, or massive due process violations. PacifiCorp’s proposal is the **only**  
20 proposal that preserves the possibility of out-of-court resolution—whether that comes in the  
21 form of a global resolution involving all remaining Damages Plaintiffs or partial resolution  
22 for certain categories of Damages Plaintiffs, such as by fire or other distinguishing criteria—  
23 **before** the parties embark on hundreds of new trials.

24 The full terms of PacifiCorp’s Proposed CMO #10 are contained in the attached  
25 Exhibit 1, but the key overview is as follows:

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- 1 • **Stage 1: Damages Questionnaires Followed By Mediation.** Plaintiffs will  
2 complete and produce damages questionnaires for each Damages Plaintiff  
3 household on a staggered basis. The damages questionnaires will provide a  
4 standard set of data for all claimants that will help the parties group the  
5 claimants into bellwether categories. After the submission and review of the  
6 entire universe of damages questionnaires, the parties shall engage in the first  
7 mandatory global mediation based on the additional damages data.
- 8 • **Stage 2: Stay or, in the Alternative, Fair and Meaningful Bellwether**  
9 **Process Followed by Further Mediation If Necessary.** If the post-  
10 questionnaire mediation is not successful, PacifiCorp requests that this Court  
11 stay any further trials pending a decision by the Court of Appeals, which  
12 would allow for the resolution of issues that could facilitate a negotiated  
13 resolution. In the alternative, if the Court determines that it is most prudent to  
14 move forward with trials, then PacifiCorp's plan envisions that the parties will  
15 proceed to a fulsome bellwether discovery and trial process. Six bellwether  
16 trials consisting of three randomly selected households each will be held every  
17 two months over the course of a year. Each trial will consist solely of  
18 households from one of the six bellwether categories based on (1) extent of  
19 property damage and (2) evacuation experience. Each trial will be preceded  
20 by a fair process for pretrial discovery and motion practice. After the  
21 conclusion of the sixth bellwether trial, the parties shall engage in the second  
22 mandatory global mediation based on the new bellwether datapoints.

23 Put simply, if the parties are going to start down the road of additional trials, then it is  
24 imperative that those trials be structured and sequenced in a way that maximizes the chances  
25 of out-of-court resolution at each step.

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1 Plaintiffs' proposal—which is really just a misguided attempt to exert maximum  
2 leverage on PacifiCorp at a huge cost to the entire court system—carries no chance of  
3 settlement and will all but guarantee hundreds of additional trials until verdicts (which will  
4 all be subject to appeal) are secured. PacifiCorp's proposal stakes out the most realistic path  
5 forward for meaningful settlement discussions and therefore provides the best—and indeed,  
6 the only—chance at actual resolution. PacifiCorp therefore requests that the Court enter  
7 PacifiCorp's Proposed CMO #10.

## 8 II. ARGUMENT

9 PacifiCorp's Proposed CMO #10 is designed to elicit (1) more detailed information  
10 about the number of Damages Plaintiffs and their claims through the use of damages  
11 questionnaires and (2) fair and representative damages datapoints based on randomly  
12 selected bellwether households tried across six fair and representative bellwether trials, each  
13 preceded by a fulsome and meaningful pretrial discovery period. Both of these components  
14 are intended to give the parties additional meaningful chances of global settlement without  
15 resorting to a mass trial plan designed to use up all of the limited resources of the Multnomah  
16 County court system over the next several years. To that end, PacifiCorp's proposal builds in  
17 two more mandatory global mediation checkpoints at which the parties must revisit  
18 settlement discussions following the provision of key pieces of thus far missing information.  
19 For all of the reasons explained below, PacifiCorp's proposal is the optimal path forward.

### 20 A. Stage 1: Damages Questionnaires Will Begin to Provide the Information 21 Necessary for Meaningful Global Settlement Discussions

22 The first hurdle that PacifiCorp's Proposed CMO #10 is designed to solve is the  
23 current lack of detailed and usable information about the Damages Plaintiffs, ranging from  
24 basic data like how many claimants there are and what claims they are asserting to other  
25 important details like the nature of their evacuation experiences and the basis for any  
26 noneconomic damages demands. This has been and continues to be a serious bar to global

1 resolution because as long as the number of claimants remains open-ended and as long as the  
2 nature of the additional claims remain unknown, it is near impossible to come up with any  
3 settlement valuation on a global scale. PacifiCorp's proposed solution to that problem is to  
4 require Plaintiffs to submit damages questionnaires on behalf of all remaining Damages  
5 Plaintiff member households to inform continued efforts at mediation before the parties  
6 embark on any further trials.

7 A proposed a form of damages questionnaire is attached as Exhibit A to PacifiCorp's  
8 Proposed CMO #10, and as the form makes clear, the questionnaire asks each household to  
9 identify and describe basic factual information regarding the nature and scope of the  
10 economic damages and noneconomic damages claims of the class member plaintiffs in that  
11 household. The purpose of the questionnaires—which would only need to be completed  
12 once on behalf of each household—would be to fill in the data gaps left by the current short-  
13 form complaints while sparing the parties from immediately undergoing more involved  
14 discovery efforts like depositions, property inspections, and medical examinations. (As  
15 discussed below, those other avenues of discovery would only be used later on during the  
16 post-questionnaire bellwether stage.) At the end of the damages questionnaires process, the  
17 parties would engage in another round of mandatory mediation, this time with a fuller picture  
18 of the claims of the class as a whole. And if mediation does not work out, then the  
19 questionnaires will nonetheless serve the additional purpose of providing the information  
20 necessary for the random selection of bellwether households at the next stage.

21 **1. Damages Questionnaires Are Necessary and Not Burdensome**

22 Adopting a damages questionnaire procedure in which Plaintiffs are required to  
23 submit damages questionnaires on behalf of the entire universe of remaining Damages  
24 Plaintiffs by a certain deadline will directly and efficiently supply the information that has  
25 thus far been missing from existing attempts at resolution. Until that information is provided,  
26 neither PacifiCorp nor Plaintiffs themselves can accurately place a value on the claims of all

1 of the Damages Plaintiffs. Exerting pressure through additional expedited trials without  
2 providing information or finality to the class size will do no more to resolve this case than  
3 securing additional verdicts that are not representative of the remaining claims.

4 Even if it were possible to use the existing Phase II verdicts as benchmarks for  
5 valuing the remaining Damages Plaintiffs' claims (and they are not reliable benchmarks at  
6 all, for the reasons explained below), the lack of detailed information about the respective  
7 *categories* of remaining claims means that it is impossible to reliably estimate which  
8 numbers should even be extrapolated in the first place and in what proportions. The existing  
9 mass short-form complaints simply do not shed sufficient light on these questions. One  
10 lesson learned from the first two Phase II trials is that the existing cookie-cutter complaints  
11 do nothing to reveal the true variety of injuries and experiences that Plaintiffs have  
12 experienced as a result of multiple fires occurring in several locations. Every single  
13 complaint included in the Mass Short-Form Complaints alleges the same amount of per-  
14 plaintiff damages, without distinction. And although there may be some variations in the  
15 boxes that are checked, nothing in the uniform pleadings reveals the true nature and scope of  
16 the claimants' damages.<sup>1</sup> (That is partly why it was so inappropriate for Plaintiffs to  
17 unilaterally file more than 1,000 additional complaints without any authorization or  
18 consultation—the whole point of the first two Phase II trials was to test out the various  
19 components of a potential longer Phase II process, figure out what worked, figure out what  
20 didn't work, and adjust accordingly. PacifiCorp believes that the short-form complaints  
21 standing alone did not work.<sup>2</sup>)

22 \_\_\_\_\_  
23 <sup>1</sup> By way of example only, the short-form complaints used for the January and February trials  
24 included a "check the box" option for "Damage to timber, trees, crops, livestock, animals, or  
25 vegetation." Nearly every Phase II, Trial 1 and 2 plaintiff checked that box, and the only  
way for PacifiCorp to discover whether a plaintiff was seeking timber-related losses or  
damage to a shrub was through discovery. But that information easily could have been  
provided in a damages questionnaire that would have saved the parties time and expense.

26 <sup>2</sup> As referenced in PacifiCorp's Proposed CMO #10, if the Court were to adopt the damages  
questionnaire and bellwether requirements proposed by PacifiCorp, then PacifiCorp would  
be willing to withdraw its pending motions to strike the mass short-form complaints and

1 It is separately necessary to identify the entire universe of all remaining Damages  
2 Plaintiffs to allow for the random selection of bellwether plaintiffs in the event that the post-  
3 questionnaire global mediation is not fruitful. If the mediation fails and the parties move into  
4 the bellwether stage, the best way to minimize any delay in the selection of bellwether  
5 households is for the parties to already have a full picture of all remaining households and  
6 their respective bellwether categories, which is information that can easily and efficiently be  
7 captured through the damages questionnaires.

8 Plaintiffs may object to the questionnaires altogether, arguing that PacifiCorp already  
9 has all the information it needs to resolve the case or that the questionnaire process is unduly  
10 burdensome. That is wrong. PacifiCorp does not even have confirmation of how many  
11 Damages Plaintiffs there are, much less sufficient information to accurately break down each  
12 claimant's potential economic or noneconomic damages. Moreover, while the three trials to  
13 date have resulted in verdicts, those verdicts are hardly "representative" of the damages  
14 suffered by all remaining claimants.

15 Plaintiffs may also argue that any additional information would be relatively  
16 meaningless since the damage awards in the trials to date have been comprised primarily of  
17 consistently high noneconomic damages. But this argument assumes that the claims that  
18 have been tried to verdict are in fact representative, which is simply not the case. Additional  
19 information is just as relevant to assessing exposure to noneconomic damages (regardless of  
20 whether PacifiCorp believes they are legally appropriate) as to economic damages.

21 Finally, any suggestion of undue burden also falls short. Plaintiffs' counsel have  
22 chosen to file short-form complaints on behalf of 1,365 Damages Plaintiffs. Each of those  
23 complaints seeks **\$30 million** in economic and noneconomic damages. Indeed, if this were a  
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25 would not oppose those mass short-form complaints serving as the operative complaints for  
26 those class members. PacifiCorp believes that the damages questionnaires could help supply  
the level of detail that is missing from the short-form complaints and therefore address many  
of PacifiCorp's concerns with the check-the-box nature of the short-form complaints.



1 normal case, then the filing of those 1,365 complaints would ostensibly trigger normal  
2 discovery obligations—like making those plaintiffs available for document productions,  
3 depositions, inspections, and medical examinations—all of which PacifiCorp would be  
4 agreeing to delay during this stage to give the parties a chance to engage in the much less  
5 burdensome avenue of damages questionnaires. Filling out a damages questionnaire is  
6 therefore the absolute minimum that Plaintiffs should be required to do as a productive first  
7 step in the discovery process. Plaintiffs’ counsel should have more detailed damages  
8 information for each of the individuals for whom they filed a short-form complaint. And  
9 after nearly four years of litigation, Plaintiffs’ counsel should be able to quickly gather  
10 similar damages information for the remaining Damages Plaintiffs who have been recruited  
11 but not yet filed. At this point, Plaintiffs’ counsel should therefore be required to compile  
12 and produce that information.

13 **2. Damages Questionnaires Can Be Submitted on Staggered Basis**

14 To the extent additional time is needed, PacifiCorp has offered a staggered  
15 submission schedule for the damages questionnaires under which Plaintiffs would be  
16 required to submit batches of 250 questionnaires—one questionnaire per household—every  
17 60 days. This should provide Plaintiffs sufficient time to work with each of the Damages  
18 Plaintiff households to secure the relevant information requested by the questionnaires and  
19 provide meaningful responses to the questionnaires, while simultaneously keeping the  
20 process moving by incorporating regular deadlines for submissions, review, and remediation  
21 (if needed).

22 PacifiCorp is not advocating for the type of long and detailed fact sheets that can be  
23 found in cases from other jurisdictions. *See, e.g., In re Shell Oil Refinery*, 136 FRD 588, 591  
24 (ED La 1991), *aff’d sub nom. Watson v. Shell Oil Co.*, 979 F.2d 1014 (5th Cir 1992), *on*  
25 *reh’g*, 53 F3d 663 (5th Cir 1994) (81-page damages questionnaire form). But Plaintiffs  
26 should be required to provide more than copy-and-paste complaints with uniform and

1 undifferentiated damages allegations. For example, the existing complaints do not reveal  
2 anything about the basis for each claimant's noneconomic damages demand. Nor is there  
3 space for a narrative description in which each claimant can explain why they are seeking a  
4 specific amount of noneconomic damages or what they each went through or how the fires  
5 affected them. These voids could be filled through the use of damages questionnaires.

6 PacifiCorp believes that the proposed schedule is reasonable in part because Plaintiffs  
7 have already been able to gather sufficient information to file mass short-form complaints on  
8 behalf of 1,365 Damages Plaintiffs. That suggests that they have been in contact with each  
9 of their client households and likely have access to additional damages information for each  
10 of those households. But PacifiCorp remains open to working with Plaintiffs on issues like  
11 the content of the questionnaires and the precise submission timelines. For example, if  
12 Plaintiffs prefer a longer questionnaire submission period to enable a later cutoff deadline for  
13 the identification of all remaining claims, then PacifiCorp is happy to accommodate that  
14 request. Similarly, if Plaintiffs prefer a shorter questionnaire submission period coupled with  
15 an earlier deadline to identify all Damages Plaintiffs members, then PacifiCorp would be  
16 willing to consider that request as well, as long as there remains enough time for the parties  
17 to review the questionnaires and identify any potential deficiencies.<sup>3</sup> The key is just that  
18 Plaintiffs systematically provide PacifiCorp with additional information about the full  
19 universe of remaining claims to enable productive mediation discussions at the end of the  
20 damages questionnaire stage.

21 **3. There Should Be a Deadline for Identifying All Damages Plaintiffs**

22 In addition, it is also critical that there is a final deadline by which all damages  
23 questionnaires must be submitted by all Damages Plaintiffs so the parties can gain some

24 <sup>3</sup> PacifiCorp's Proposed CMO #10 includes a process by which the parties will resolve any  
25 deficiencies in the submitted damages questionnaires without court intervention. *See*  
26 Margaret S. Williams, Jason A. Cantone, and Emery G. Lee III, *Plaintiff Fact Sheets in*  
*Multidistrict Litigation Proceedings A Guide for Transferee Judges*, 2019 WL 1441822  
(noting various ways in which courts handle deficient fact sheets).

1 finality about the actual universe of remaining claimants. Right now, PacifiCorp has no idea  
2 whether Plaintiffs intend to file additional short-form complaints, when they plan to file  
3 them, and how many additional complaints are out there. That is a barrier to resolution.  
4 PacifiCorp's Proposed CMO #10 contemplates that the date of the submission of the final  
5 batch of questionnaires will also serve as the deadline by which Plaintiffs must identify all  
6 remaining Damages Plaintiffs (via the process of submitting a damages questionnaire on  
7 behalf of that claimant). A cutoff deadline is necessary to ensure an end-date for the  
8 disclosure and identification of new class members, and courts routinely impose and enforce  
9 such deadlines. *See, e.g., In re Guidant Corp. Implantable Defibrillators Prod. Liab. Litig.*,  
10 496 F3d 863, 865-68 (8th Cir 2007) (district court dismissed claim when plaintiff failed to  
11 timely submit fact sheet); *Arias*, 752 F3d at 1015–16 (affirming district court's dismissal of  
12 plaintiffs after "plaintiffs' repeated failures to adequately complete the responses" by the  
13 court deadlines); *In re Engle Cases*, 283 F Supp 3d 1174, 1194 (MD Fla 2017) ("[T]he Court  
14 ordered Wilner to send questionnaires to each of the remaining 2,600 plaintiffs \*\*\* setting a  
15 November 2011 deadline for their return.").

16 The reason it is important to provide a complete picture of the remaining universe of  
17 Damages Plaintiffs is because it is near impossible to come up with a mutually satisfactory  
18 settlement valuation as long as the number remains open-ended. The damages questionnaires  
19 can supply two main pieces of missing information: (1) how many total remaining claims  
20 there are and (2) the general nature of the total remaining claims and their relative  
21 proportions. For example, it would make a difference for settlement valuation purposes to  
22 know that there are in fact 1,365 total remaining claims and that 95% of those claims involve  
23 individuals who experienced a total loss of their property and underwent harrowing  
24 evacuation experiences like Plaintiff Scott Johnson. It would similarly make a difference for  
25 settlement valuation purposes to know that there are actually 2,000 total remaining claims  
26 pending and that 60% of the remaining claims are smoke and ash or partial loss claims

1 involving individuals who did not undergo stressful evacuation experiences. And anything in  
2 between would be helpful to know as well.

3 Plaintiffs may object to a deadline, arguing that they still cannot yet identify all of the  
4 Damages Plaintiffs and that it would be unfair to impose any cutoff whatsoever on the ability  
5 of Plaintiffs' counsel to identify new claimants. Those arguments should be rejected.  
6 Plaintiffs' counsel have had nearly four years and multiple rounds of publicity from three  
7 trials with outsized verdicts to sign up Damages Plaintiffs. Allowing Plaintiffs to continue  
8 trying one case after another while publicizing each verdict to recruit still new potential  
9 claimants will never lead to closure. A deadline must be set.

10 **4. There Is Precedent for Damages Questionnaires in Mass Tort Cases**

11 Finally, to the extent there remains any lingering doubt about the appropriateness of  
12 damages questionnaires in this case, the use of similar questionnaires is strongly supported  
13 by ample precedent in other mass tort cases. *See, e.g., Arias v. DynCorp*, 752 F3d 1011,  
14 1014 (DC Cir 2014) (noting that the plaintiffs were required to "submit answers to  
15 questionnaires concerning their alleged injuries—a common trial management technique in  
16 toxic torts cases with multiple plaintiffs"). According to one empirical study, plaintiff fact  
17 sheets were ordered by courts in 87% of proceedings over a ten-year period where the  
18 number of plaintiffs exceeded 1,000. Margaret S. Williams, *Plaintiff Fact Sheets in*  
19 *Multidistrict Litigation: Products Liability Proceedings 2008-2018*, at 2. Plaintiff fact sheets  
20 have therefore been described as "relatively uncontroversial" given their widespread use in  
21 similar mass tort litigation. Nora Freeman Engstrom, *The Lessons of Lone Pine*, 129 Yale LJ  
22 2, 21 (October 2019). In short, it is common in mass-tort litigation to require plaintiffs to  
23 submit detailed information about their claims beyond what is contained in a complaint.

24 For example, the Multnomah County asbestos case management orders on which  
25 Plaintiffs rely fully support the use of damages questionnaires. As reflected in the Presiding  
26 Judge's General Order re Pleadings and Product Identification, as a matter of pleading in the

1 asbestos cases, the plaintiffs were permitted to proceed on complaints that may not have been  
2 sufficiently specific to comply with Oregon’s fact pleading requirements. (Berne Dec., Ex. 2  
3 at 10.) But within 60 days of filing or 10 days of service (and no later than 105 days before  
4 trial), the plaintiffs were additionally required to provide a product identification report with  
5 extensive information and details about their asbestos exposure. (*Id.* at 11-12.) The court  
6 recognized that if the plaintiffs were to proceed on facially deficient pleadings (and there can  
7 be no doubt that the Mass Short-Form Complaints here are just that), then additional  
8 information would be necessary to address individual issues.

9 Outside of Multnomah County, too, numerous courts facing massive numbers of  
10 individual damages claims—either as part of a class action structure or as part of a multi-  
11 district litigation structure—have recognized that requiring detailed information is essential  
12 to case management and resolution. *See, e.g., Acuna v. Brown & Root Inc.*, 200 F.3d 335,  
13 340 (5th Cir 2000) (upholding district court’s order in mass tort suit requiring plaintiffs to  
14 submit detailed information about their claims because “[e]ach plaintiff should have had a  
15 least some information regarding the nature of his injuries, the circumstances under which he  
16 could have been exposed to harmful substances, and the basis for believing that the named  
17 defendants were responsible for his injuries”); *In re Philips Recalled CPAP, Bi-Level PAP, &*  
18 *Mech. Ventilator Products Litig.*, 2024 WL 278641 (WD Pa Jan 24, 2024) (requiring the  
19 submission of fact sheets within 45 days of short-form complaints with “specific  
20 information” that was necessary to state a cause of action); *In re Lipitor (Atorvastatin*  
21 *Calcium) Mktg., Sales Practices & Products Liab. Litig.*, 227 F Supp 3d 452, 456 (DSC  
22 2017), *aff’d sub nom. In re Lipitor (Atorvastatin Calcium) Mktg., Sales Practices & Products*  
23 *Liab. Litig.*, 892 F3d 624 (4th Cir 2018) (requiring plaintiffs to serve fact sheets and  
24 mandatory disclosures).

25 These types of fact sheets and damages questionnaires are typically tailored to the  
26 information demands of the case at hand. For example, in one pharmaceutical product

1 liability case involving over 3,000 claims, a district court in South Carolina used fact sheets  
2 to ask for specific information about each plaintiff, such as their family, employment,  
3 criminal, litigation, and medical histories. *In re Lipitor (Astorvastatin Calcium) Marketing,*  
4 *Sales Practices and Products Liability Litigation*, MDL No. 2:14-mn-02502-RMG, Case  
5 Management Order No. 5, Dkt. 110-1 (SC D May 2, 2014). The fact sheets also required  
6 each plaintiff to provide details about their communications with the defendant and the  
7 plaintiff's alleged damages, including the injury alleged, the date the plaintiff was first aware  
8 of the injury, whether the injury is permanent, and whether the injury was diagnosed by a  
9 healthcare provider and the date of the diagnosis. *Id.* at 4.

10 In another example, in administering claims of nearly 20,000 parties from a Shell Oil  
11 refinery explosion, a district court in Louisiana entered an order requiring each plaintiff to  
12 submit "detailed information about each claim, which could then be used to streamline  
13 discovery and facilitate settlement." *In re Shell Oil Refinery*, 136 FRD 588, 591 (ED La  
14 1991), *aff'd sub nom. Watson v. Shell Oil Co.*, 979 F.2d 1014 (5th Cir 1992), *on reh'g*, 53 F3d  
15 663 (5th Cir 1994). The form, agreed upon by the parties, sought: (1) the status of the  
16 plaintiff (*i.e.*, adult, minor, *etc.*); (2) a two-page summary of damages; (3) schedules for  
17 various types of damages (*i.e.*, evacuation inconvenience, emotional distress, lost wages,  
18 *etc.*); and (4) releases for medical, employment, and tax information. *Id.* at 592 n7.

19 And finally, PacifiCorp has repeatedly secured agreement on the use of damages  
20 questionnaires from other plaintiff groups in other Labor Day Fire cases—cases that have  
21 since resolved without the need for burdensome trials. In general, both sides have recognized  
22 that damages questionnaires can serve as a useful intermediate discovery tool to drive  
23 settlement discussions by supplying necessary data prior to undertaking more involved  
24 avenues of discovery like depositions. Damages questionnaires make ample sense in this  
25 case, too, where the lack of information has been a major hurdle to productive mediation.

26 ///

1 **B. Stage 2: A Fair and Representative Bellwether Process Will Further Enable**  
2 **Meaningful Global Settlement Discussions**

3 In the event that the post-questionnaire mediation is not successful, PacifiCorp  
4 requests that this Court stay any further trials pending a decision by the Court of Appeals,  
5 which would allow for the resolution of issues that could facilitate a negotiated resolution. .  
6 If the Court remains disinclined to grant a stay, then PacifiCorp's Proposed CMO #10  
7 contemplates that the parties will proceed to a fulsome bellwether discovery and trial process.  
8 The proposed bellwether process is designed to address the other hurdle that has thus far  
9 impeded global settlement efforts: the lack of reliable and representative damages datapoints  
10 to inform the valuation of different types of claims. As explained below and as described in  
11 Exhibit 1, PacifiCorp's Proposed CMO #10 provides for a one-year bellwether process that is  
12 specifically designed to produce reliable and representative datapoints corresponding to six  
13 damages categories that PacifiCorp believes will have the largest bearing on advancing  
14 global resolution discussions.

15 **1. Further Phase II Trials Should Be Stayed Pending Resolution of Appeal**

16 Any additional Phase II trials and other proceedings should be stayed pending the  
17 outcome of PacifiCorp's appeal on a number of dispositive and disputed legal issues,  
18 including the availability of noneconomic damages and Plaintiffs' decision to use the class-  
19 action procedure in this case. Specifically, a stay is warranted for at least three reasons.<sup>4</sup>

20 **First**, PacifiCorp's appeal presents novel questions of Oregon law on issues ranging  
21 from the availability of noneconomic damages under ORS 477.089 to Plaintiffs' use of the

22 <sup>4</sup> Courts balance several factors in deciding whether to grant a stay, including "the likelihood  
23 of the appellant prevailing on appeal," "whether there is any support in fact or in law for the  
24 appeal," "the nature of the harm to the appellant, to other parties, to other persons and to the  
25 public that will likely result from the grant or denial of a stay," and "such other factors as the  
26 trial court considers important." ORS 19.350(3); *Does v. State*, 164 Or App 543, 547, 993  
P2d 822 (1999). The standard is focused on a "balancing of interests"—including  
considerations of judicial efficiency and burden on the parties. *Evans v. Or. State*  
*Penitentiary*, 87 Or App 514, 523, 743 P2d 168 (1987). All of these factors weigh in favor of  
granting a stay in this case at this stage for the reasons above and for the reasons previously  
explained.

1 class action mechanism to jointly litigate and try an “issues class” involving numerous  
2 different wildfires, with different alleged causes, affecting people in different ways.

3 **Second**, the outcome of PacifiCorp’s appeal could impact whether and how any  
4 additional damages trials should proceed. A stay, therefore, would prevent the expenditure of  
5 potentially unnecessary judicial resources. If class-wide liability or the causation findings are  
6 reversed on appeal, or if Plaintiffs’ choice to proceed as a class is held improper under ORCP  
7 32, then there would be no additional damages trials. Even a partial reversal could affect how  
8 any additional damages trials should be conducted.

9 **Third**, the balance of interests favors a stay. Not only would additional trials impose  
10 a potentially unnecessary burden on the Court system and PacifiCorp, but that burden will  
11 have served little or no purpose if one or more key issues is ultimately resolved in  
12 PacifiCorp’s favor. Meanwhile, if Plaintiffs prevail on appeal, they will still be able to  
13 pursue damages trials, and such an outcome will likely expedite and streamline future trials.  
14 A temporary delay now while the appellate courts opine on key, novel issues does not  
15 constitute a substantial harm. Indeed, the possibility that a stay might delay recovery of relief  
16 for *past* harms, as opposed to preventing future harms, rarely supports denial.<sup>5</sup>

17 Accordingly, a stay is the most efficient mechanism for ensuring that judicial  
18 resources are not expended on additional trials that may be unnecessary depending on the  
19 outcome of the appeal. Indeed, the parties have already tried two damages-only trials. They  
20 did not lead to resolution. If future damages-only trials result in similar verdicts where  
21 approximately 90% of the principal damages awarded constitute noneconomic damages—the

22 <sup>5</sup> See, e.g., *CMAX, Inc. v. Hall*, 300 F2d 265, 268–69 (9th Cir 1962) (affirming order  
23 postponing trial until conclusion of related proceeding that “might result in an order which  
24 would affect” the action, and holding that potential delay in recovery of money damages  
25 caused did not demonstrate irreparable damage); *Earl v. Boeing Co.*, 21 F4th 895, 900 (5th  
26 Cir 2021) (where “plaintiffs only seek money damages, it is not apparent why plaintiffs  
would be prejudiced by waiting on merits discovery until the end of the Rule 23(f)”; *Pena v.*  
*Taylor Farms P., Inc.*, 2015 WL 5103157, at \*6 (ED Cal Aug. 31, 2015) (because plaintiffs  
sought “only damages, not an injunction,” delay occasioned by stay pending appeal of class  
certification order did “not prevent the balance of hardships from tipping sharply in the  
defendants’ favor”).



1 availability of which is a key issue on appeal—then a mediated resolution will become more  
2 difficult and less likely.

3 Plaintiffs chose to proceed in a manner that has resulted in a fully appealable final  
4 judgment after three jury trials. This creates an opportunity to obtain appellate guidance on  
5 Plaintiffs’ novel approach and the many novel legal issues before any additional (potentially  
6 unnecessary) resources are expended.

7 **2. Alternatively, the Court Should Adopt PacifiCorp’s Bellwether Proposal**

8 As an alternative to a stay, PacifiCorp would respectfully request that the Court reject  
9 Plaintiffs’ proposal for a special docket and instead adopt the more realistic and reasonable  
10 bellwether discovery and trial process outlined in PacifiCorp’s CMO #10. At this stage, it  
11 would be a mistake to double down on a process that has thus far failed to result in any real  
12 resolution. If two trials staggered over the course of two months did not work, then there is  
13 no universe where five simultaneous trials every month over the course of the next three  
14 years with practically no gap for meaningful discovery is going to somehow yield a different  
15 outcome. Instead, the most productive next step—and the step that is most likely to lead to  
16 real resolution—would be to engage in the fulsome bellwether discovery and trial process  
17 outlined in PacifiCorp’s Proposed CMO #10.

18 **a. Overview of Bellwether Process**

19 PacifiCorp proposes that six bellwether trials should be held. Each bellwether trial  
20 will consist of three randomly selected households from the following six bellwether  
21 categories (for a total of eighteen bellwether households):

- 22 • (1) Total or Partial Property Loss + Saw Fire and Evacuated
- 23 • (2) Total or Partial Property Loss + Saw Fire or Evacuated, But Not Both
- 24 • (3) Total or Partial Property Loss + Did Not See Fire and Did Not Evacuate
- 25 • (4) Smoke and Ash + Saw Fire and Evacuated
- 26 • (5) Smoke and Ash + Saw Fire or Evacuated, But Not Both

- (6) Smoke and Ash + Did Not See Fire and Did Not Evacuate

These six bellwether categories are designed to capture the most consequential distinguishing factors among the class members based on the data generated so far from the first three sets of damages verdicts. One lesson from Phase II Trials 1 and 2 is that it is not enough to simply select representative claims along property damage lines. Given that noneconomic damages have made up an outsized proportion of each of the jury verdicts to date, any bellwether process must also account for variables in the bases for noneconomic damages. One such variable might be the extent of property loss itself. But another important variable that arose from the existing trials is evacuation experience, and in particular, whether a plaintiff saw fire while evacuating (as was true for nearly every one of the plaintiffs in Phase II Trials 1 and 2) or did not see fire while evacuating or did not evacuate at all.

“If a representative group of claimants are tried to verdict, the results of such trials can be beneficial for litigants who desire to settle such claims by providing information on the value of the cases as reflected by the jury verdicts.” *In re Chevron U.S.A., Inc.*, 109 F3d 1016, 1019 (5th Cir. 1997). Here, PacifiCorp’s bellwether proposal is abundantly reasonable and practical, and considerably more so than Plaintiffs’ proposal of trying 50 claims every month with Plaintiffs unilaterally frontloading the strongest, highest dollar-value noneconomic damages claims. Plaintiffs’ approach, meanwhile, would not only unnecessarily clog the court’s docket, but it would not yield information or outcomes that could genuinely guide this case to resolution. By contrast, holding six bellwether trials on these six representative damages categories will yield precisely the level of reliable and representative datapoints that could realistically drive this case to actual resolution.

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**b. Bellwether Plaintiffs Should Be Randomly Selected**

A critical component of PacifiCorp’s bellwether proposal is the random—as opposed to unilateral—selection of bellwether plaintiffs.<sup>6</sup> One of the main lessons learned from the first two Phase II trials is that allowing Plaintiffs to unilaterally select the trial participants results in unrepresentative verdicts that fail to serve as reliable datapoints for the rest of the class members. Random-sample bellwether trials offer a way to “achieve collective justice in mass tort cases” by using the “resulting verdicts as a basis for resolving the remaining case.” Alexandra D. Lahav, *Bellwether Trials*, 76 George Washington L Rev 576, 577-78 (2008). As Professor Lahav has explained, significant problems arise when one party is allowed to hand-select bellwether plaintiffs:

“Allowing the parties to pick” bellwether cases “not only produces a biased sample, it will also produce an intentionally biased one that predictably consists of outlier cases. Defendants and plaintiffs will both select cases that they are most likely to win and win big.”

Alexandra D. Lahav, *A Primer on Bellwether Trials*, 37 Rev Litig 185, 192 (2018).

It is well established that random selection is the optimal avenue for maximizing the effectiveness of the bellwether process. *See In re Chevron*, 109 F3d at 1019 (“A bellwether trial designed to achieve its value ascertainment function for settlement purposes or to answer troubling causation or liability issues common to the universe of claimants has as a core element representativeness—that is, the sample must be a randomly selected one of sufficient size so as to achieve statistical significance to the desired level of confidence in the result obtained.”); Manual Complex Lit. (Fourth) § 22.315 (“To obtain the most representative cases from the available pool, a judge should direct the parties to select test cases randomly or limit the selection to cases that the parties agree are typical of the mix of

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<sup>6</sup> PacifiCorp previously described the reasons for and benefits of random selection for bellwether trials, as well as the use of the bellwether mechanism more generally, in its Case Management No. 8 briefing last year. (TCF 8/7/2023 (Defendants PacifiCorp and Pacific Power’s Opposition to Plaintiffs’ Motion for Entry of Case Management Order No. 8, and Motion for Entry of Case Management Order No. 8).)

1 cases.”); Loren H. Brown, Matthew A. Holian, Arindam Ghosh, *Bellwether Trial Selection in*  
2 *Multi-District Litigation: Empirical Evidence in Favor of Random Selection*, 47 Akron L  
3 Rev 663, 690–91 (2014) (“By contrast, a random selection method cannot be manipulated by  
4 the parties and yields plaintiffs whose claims may be significantly more likely to be  
5 representative of the remainder of the docket, while eliminating any claim that the process is  
6 unfair. With random selection, the court and parties should feel more confidence in the  
7 process and be able to place more weight in the results of bellwether trials, which helps  
8 ensure that the bellwether process accomplishes its objectives.”).

9 The first two Phase II trials were not representative, in part, because the participants  
10 in those trials were not randomly selected. Instead, Plaintiffs hand-picked the plaintiffs that  
11 they thought were most likely “to win and win big”—including plaintiffs with extraordinarily  
12 emotional stories like Scott Johnson and Cory Staniforth. The problem with that approach is  
13 that it generates an unreliable and unrepresentative bellwether sample because there is no  
14 basis to support extrapolating those verdicts to the remaining 1,365 Damages Plaintiffs. The  
15 same holds true even for plaintiffs with nominal smoke and ash claims like Diane Turnbull  
16 and Stephen Nielsen—Plaintiff Nielsen, for example, experienced an atypically long  
17 displacement period, while Plaintiff Turnbull’s claim was presented hand-in-hand with the  
18 claim of the very sympathetic Upward Bound Camp for People with Special Needs.

19 The bellwether process embodied in PacifiCorp’s Proposed CMO #10 has a realistic  
20 chance of succeeding where the first two trials did not—but only if the bellwether households  
21 going forward are randomly selected. It does not make sense to double down on the same  
22 path of unilateral plaintiff selection that has already failed to yield representative results.

23 **c. Bellwether Plaintiffs Should Be Grouped for Trial By Category**

24 Another critical component of PacifiCorp’s bellwether proposal is the grouping of  
25 households into bellwether trials according to shared characteristics. In other words, each of  
26 the six bellwether trials will feature *only* households drawn from the same bellwether

1 category, as opposed to mixed trials involving numerous different types of claims (like the  
2 trials that have been held thus far). The purpose of siloing the bellwether trials by bellwether  
3 category would be to remove any potential for cross-contamination between different claim  
4 types. For example, a bellwether trial will not work if the parties suspect that verdicts have  
5 been driven up (or brought down) because of the presence of more serious (or less serious)  
6 claims in the same trial. The cleanest method of figuring out the most accurate value of a  
7 particular claim type—such as plaintiffs who experienced smoke and ash damage but saw  
8 fire during their evacuations—is to hold a bellwether trial consisting *only* of households that  
9 fit that same profile without any influence from any other household type.

10       Grouping by common characteristic is an approach that other courts have used when  
11 adjudicating individual damages claims in a large class of plaintiffs. For example, the  
12 Louisiana district court adjudicating the Shell refinery explosion grouped plaintiffs together  
13 “based on factors such as location of the claimant and/or his property at the time of the  
14 explosion, and the extent and nature of the damages.” *In re Shell Oil Refinery*, 136 FRD at  
15 596. The court stated that trials would proceed in “waves of five” and that the “goal is that  
16 after several waves are tried, a reasonable judgment value for each category of claims will  
17 emerge and can be used to facilitate settlement.” *Id.* Indeed, other courts have gone so far as  
18 to criticize the opposite approach of using mixed trials. *See In re Allied Chem. Corp.*, 227  
19 SW3d 652, 654 (Tex 2007) (critiquing court’s order where “five plaintiffs had little in  
20 common—ranging in age from 29 to 74, residing in various directions from two different  
21 sites, alleging exposure over different parts of seven decades, and suffering injuries from  
22 asthma and arthritis to miscarriages and heart disease, and in two cases damaged property”).

23       Grouping trials by common characteristics makes sense in this case too. After the  
24 trial of the grouped households, the parties will have a better understanding of the value of  
25 the group’s claims and can more realistically evaluate those claims for settlement purposes.  
26 At the end of the bellwether process, there will hopefully be “a reasonable judgment value

1 for each category of claims [that] will emerge and can be used to facilitate settlement.” *In re*  
2 *Shell Oil Refinery*, 136 FRD at 596.

3 **d. Each Bellwether Trial Should Be Preceded By a Fair and Efficient**  
4 **Process for Pretrial Discovery and Motion Practice**

5 Finally, PacifiCorp’s Proposed CMO #10 also includes a fair and efficient process for  
6 finalizing the pleadings, pretrial discovery and motion practice with respect to the households  
7 randomly selected for the bellwether trials.<sup>7</sup> In broad strokes, PacifiCorp’s Proposed CMO  
8 #10 provides for one bellwether trial every two months, with each bellwether trial to be  
9 preceded by a 180-day pretrial discovery and motion practice stage. This bellwether  
10 framework—in which the discovery clock for each trial will start on a staggered and  
11 overlapping basis—closely resembles the framework already set forth in Case Management  
12 Order No. 8, with the main differences being (1) more bellwether trials consisting of  
13 randomly selected plaintiffs and grouped by category and (2) a slightly longer 6-month  
14 discovery period than the 3.5-month period allowed for in Case Management Order No. 8 in  
15 order to accommodate the discovery difficulties that arose during the first two Phase II trials.

16 Specifically, to name just a few of the difficulties from Phase II Trials 1 and 2 that  
17 justify a longer discovery period this time around, Plaintiffs’ document productions were  
18 incomplete, untimely, and continued up to the week or days before trials, often requiring  
19 multiple rounds of follow-up from PacifiCorp. In addition, document production  
20 deficiencies sometimes did not become apparent until during depositions of the witnesses.  
21 The prior 3-month discovery schedule (and certainly the 1-month discovery schedule  
22 proposed by Plaintiffs) is simply not enough time to work through that process of collecting  
23 and producing documents, reviewing and analyzing documents, assessing gaps in the  
24

25 <sup>7</sup> As set forth in PacifiCorp’s Proposed CMO #10, PacifiCorp would file answers to the short  
26 form complaints of only the class members in the households randomly selected for the  
bellwether trials. PacifiCorp’s deadline for filing answers to all other short form complaints  
would be stayed pending further order of the Court.

1 document production, negotiating the parameters of the requests, and finally, going through  
2 the informal discovery dispute resolution process with the Court.

3 That process has been made all the more difficult given the tendency of Plaintiffs'  
4 counsel to raise every possible objection to even uncontroversial discovery requests and to  
5 run out the clock on conferrals until PacifiCorp has no choice but to either drop the dispute  
6 entirely or triage issues to be raised with the Court. Plaintiffs objected to third-party  
7 subpoenas and insisted (as they continue to do in their motion for entry of CMO No. 10) on  
8 strict compliance with the rules governing subpoenas. Plaintiffs' counsel repeatedly objected  
9 to ORCP 44 medical evaluations despite the fact that the Court had already entered an order  
10 governing ORCP 44 evaluations during Phase I, which required PacifiCorp to ultimately seek  
11 court confirmation that the prior order was still valid. Plaintiffs' counsel similarly objected  
12 to full and complete property inspections on grounds such as lack of relevance, requiring  
13 PacifiCorp to again seek and obtain a court order allowing those inspections and then  
14 required PacifiCorp to negotiate a property inspection protocol, while Plaintiffs' own real  
15 property experts had unfettered access to the plaintiffs' properties and testified that such  
16 inspections are an important part of the appraisal process. Deposition time was taken up with  
17 lengthy improper speaking objections and instructions that the plaintiffs not to answer basic  
18 questions about the basis for Plaintiffs' damages claims.

19 The facts about the Damages Plaintiffs' properties and the basis for their damages  
20 claims rest almost exclusively in Plaintiffs' possession and control. At a minimum, even if  
21 the Court accepts Plaintiffs' proposed case management order, PacifiCorp must be entitled to  
22 a process through which it can discover that information—from Plaintiffs themselves and  
23 third parties who may have relevant information—while also having sufficient time to  
24 prepare and present its defense.<sup>8</sup> While the submission of damages questionnaires will help

25 <sup>8</sup> As explained more fully in PacifiCorp's Opposition to Plaintiffs' Motion for Entry of Case  
26 Management Order No. 10, there are serious due process problems with the volume and pace  
of trials contemplated in Plaintiffs' proposal. For that reason, even if the Court is inclined to  
adopt a case management order that more closely resembles Plaintiffs' proposal, then

1 to group plaintiffs, select them for trial, and ultimately potentially facilitate any negotiated  
2 resolution, they are not a substitute for actual discovery, including document discovery,  
3 depositions, potential independent medical examinations, property inspections and third-  
4 party discovery if necessary.<sup>9</sup> Allowing 180 days for discovery would appropriately balance  
5 Plaintiffs' need for expediency with PacifiCorp's fundamental due process rights.<sup>10</sup>

6 Meanwhile, PacifiCorp's proposal also builds in as many efficiencies as possible. For  
7 example, PacifiCorp proposes that the parties would use the same neutral statement of the  
8 case for each of the six bellwether trials, as well as the same jury instructions and verdict  
9 forms previously used in Phase II, Trials 1 and 2 (preserving all past objections and modified  
10 to account for the specific class members whose claims are being tried and their damages).  
11 PacifiCorp also proposes that the trials be completed in six days (including jury  
12 deliberations), which is both reasonable and feasible given the duration of the Phase II, Trials  
13 1 and 2 in January and February. And PacifiCorp would be willing to work with Plaintiffs to  
14 expedite the offset motion process and submit those filings prior to trial despite there being  
15 no requirement to do so.

16  
17  
18 PacifiCorp must at the very least be afforded the six months minimum needed to conduct the  
19 basic discovery required to defend against each of these \$30 million claims. For the same  
20 reason, the discovery constraints proposed by Plaintiffs—including the constraints on  
21 deposition length and medical examinations, as well as the extremely compressed 30-day  
document discovery period—must be rejected. As outlined above, PacifiCorp's pretrial  
discovery proposal more appropriately balances efficiency considerations with basic  
constitutional due process guarantees.

22 <sup>9</sup> Again, PacifiCorp's proposal is consistent with other cases and authorities involving the  
23 adjudication of hundreds, if not thousands, of individual claims. In the Multnomah County  
24 asbestos cases, for example, the plaintiffs were required to affirmatively provide several  
categories of records; there were no time or other limitations on depositions or ORCP 44  
examinations; and the discovery cut off was 45 days before trial. (Berne Dec., Ex. 2 at 7-9.)

25 <sup>10</sup> The same holds true for the pretrial motion practice stage. For example, PacifiCorp must  
26 be given the opportunity to submit written motions in *limine* on new evidentiary issues that  
arise in connection with any new trials. Plaintiffs' desire for immediate resolution cannot  
entirely subsume PacifiCorp's basic right to make arguments in a meaningful way.



### III. CONCLUSION

For all of the reasons explained above, Defendant respectfully requests that the Court enter PacifiCorp's Proposed Case Management Order No. 10. PacifiCorp's proposal—which provides for multiple off-ramps for out-of-court mediation—offers the only pathway for even the *possibility* of resolving these remaining class member claims without burdening the entire Multnomah County court system with potentially hundreds of costly and contested trials, which is the guaranteed outcome of Plaintiffs' plan.

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## **Proposed Case Management Order No. 10**

The Court adopts the following Case Management Order No. 10 for Phase II trials pursuant to ORS 1.010(3) and (5), ORS 1.171(2)-(4), ORS 1.175(2), ORCP 1 B, ORCP 32 E, ORCP 36 B and C, ORCP 46 B, UTCR 7.020(5), UTCR 7.030(4), and the Court's inherent authority.<sup>1</sup>

1. **Purpose and Scope:** The purpose of this Order is to create a workable, efficient, and fair process for adjudicating the individual claims of representative bellwether households to aid in the ultimate resolution of the claims of the remaining *James* class members. The process shall be implemented through entry of this Order. This Order supersedes and replaces all prior case management orders to the extent its provisions are inconsistent with or overlap in whole or in part with a prior case management order. Any deadline in this Order may be extended upon good cause shown.
2. **Plaintiff Short-Form Complaints:** PacifiCorp will withdraw the pending motions to strike the mass short-form complaints. The already-filed short-form complaints shall be the operative complaints. With the exception of the short-form complaints for class members who are selected as bellwether plaintiffs (main and back-up), PacifiCorp's deadline for filing responses to all other absent class member short-form complaints will be stayed pending further order of the Court.
3. **Plaintiff Damages Questionnaires:** Each household shall prepare a damages questionnaire, a copy of which is attached as Exhibit A to this Order. The damages questionnaire shall apply to all members of the household, and individual members of a household do not need to submit individual questionnaires.
  - a. **Timing:** Within **60 days** after entry of this Order, Plaintiffs shall produce to PacifiCorp the first batch of 250 damages questionnaires. Within **60 days** after the first batch of damages questionnaires are produced, Plaintiffs shall produce the second batch of 250 damages questionnaires. Plaintiffs shall continue to produce damages questionnaires in batches of 250 every **60 days** until damages questionnaires for all remaining class member households have been produced.
  - b. **Addressing Deficiencies:** Within **30 days** after submission of each batch of damages questionnaires, PacifiCorp shall notify Plaintiffs in writing of any deficiencies. Within **14 days** after PacifiCorp identifies deficiencies in writing, Plaintiffs shall remediate deficiencies and produce revised questionnaires. If the parties are unable to resolve deficiencies at the end of this process, then the

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<sup>1</sup> PacifiCorp recognizes that the "Case Management Order No. 10" label has been used in reference to previous proposed case management orders that have not been entered on the docket. PacifiCorp therefore reuses the "Case Management Order No. 10" label for purposes of this motion but wishes to make clear that by now submitting the current Proposed Case Management Order No. 10, PacifiCorp does not waive, and expressly reserves, all arguments with respect to previous motions and orders denominated "Case Management Order No. 10."

parties shall utilize the informal discovery dispute procedure outlined below.

4. **Deadline for Identification of Remaining Class Members:** The date of the submission of the final batch of damages questionnaires shall be deemed the deadline by which Plaintiffs must identify (and provide short-form complaints and damages questionnaires on behalf of) all remaining *James* class members. Following this date, Plaintiffs may not file any new complaints on behalf of any new absent class members.
5. **Mandatory Post-Questionnaire Global Mediation Checkpoint:** Within **30 days** after the complete universe of damages questionnaires have been submitted and the time for remediating deficient questionnaires has passed, the parties are required to engage in global mediation with the objective of resolving the claims of the remaining class members using the information generated by the damages questionnaires.
6. **Overview of Bellwether Trial Process:**
  - a. **Six Bellwether Categories:** The six bellwether categories shall be:
    - (1) Total or Partial Property Loss + Saw Fire and Evacuated
    - (2) Total or Partial Property Loss + Saw Fire or Evacuated, But Not Both
    - (3) Total or Partial Property Loss + Did Not See Fire and Did Not Evacuate
    - (4) Smoke and Ash + Saw Fire and Evacuated
    - (5) Smoke and Ash + Saw Fire or Evacuated, But Not Both
    - (6) Smoke and Ash + Did Not See Fire and Did Not Evacuate
  - b. **Assignment of Households into Bellwether Categories:** Each household shall be assigned to one of the six bellwether categories above. The bellwether assignment process shall be informed by the responses to the damages questionnaires. If different individual members of the same household provide different responses to the bellwether selection questions, then the household shall be assigned to the category corresponding to the responses of the majority of the household members. For example, if three members of a household saw fire and evacuated, but one member of the same household did not see fire and did not evacuate, then the household will be assigned to the “saw fire and evacuated” categories. If there is an even split, then the household shall be assigned to the first responsive category in the list above. For example, if two members of a household saw fire and evacuated, but two other members of the same household did not see fire and did not evacuate, then the household as a whole will be assigned to the “saw fire and evacuated” category.
  - c. **Random Selection of Bellwethers:** If global mediation does not result in resolution, then no later than **3 days** after the completion of mediation, the parties will engage in the random selection of bellwethers. Three main bellwether households will be randomly selected from each of the six categories above. Three back-up bellwether households will also be randomly selected from each of the six categories above.

- d. **Bellwether Trial Scheduling:** No later than **3 days** after the random selection of bellwether households has been completed, the parties shall jointly submit to the Court all existing trial conflicts for the next year for purposes of aiding the scheduling of bellwether trials. The Court will then set the six bellwether trials. Bellwether trials shall be staggered to begin every two months subject to the availability of the Court. Each bellwether trial shall be preceded by a 180-day discovery period.
  - e. **Bellwether Trial Composition:** A total of six bellwether trials will be held. Each bellwether trial will comprise three households from each of the six categories above. By way of example, one bellwether trial will encompass three households who experienced total property loss and saw fire during evacuation, another bellwether trial will encompass three households who experienced total property loss and did not see fire during evacuation, and so on and so forth. The order of trials shall also be randomized.
  - f. **Substitution of Bellwether Households:** As described in more detail below, the parties shall conduct simultaneous discovery into both the main bellwether households and the back-up bellwether households. In the event that a main bellwether household drops out, the first back-up bellwether household will be substituted. Substitutions may be made without leave of court up until 30 days prior to the first day of trial.
7. **Bellwether Discovery Process:** Each bellwether discovery cycle shall last 180 days counting backwards from the first day of trial. The below discovery schedule shall apply to each bellwether trial.
- a. **Pleadings:** Defendants will submit answers to each plaintiff's damages complaint **170 days** before the first day of trial. Parties may amend pleadings without leave of court **60 days** prior to the first day of trial. Any response to an amended pleading is due within **10 days** of service of the amended pleading prompting the response. Other than expressly stated, nothing in this paragraph modifies the application of Oregon rules governing pleadings.
  - b. **Document Discovery:** Defendant's First Set of Requests for Production to All Individual Plaintiffs (October 2, 2023) shall be deemed continuing requests and applicable to all individual plaintiffs. Plaintiffs will complete document production for the bellwether households in response to existing requests for production no later than **150 days** prior to trial. The parties may submit new document requests up until **60 days** prior to the first day of trial.
  - c. **Deficiencies in Document Productions:** Defendants shall identify in writing any deficiencies or gaps in Plaintiffs' initial document production in response to Defendant's First Set of Requests for Production to All Individual Plaintiffs (October 2, 2023) no later than **120 days** prior to the first day of trial. Plaintiffs

must supplement the document productions, if warranted, no later than **90 days** prior to the first day of trial.

- d. **Depositions:** Depositions of bellwether Plaintiffs shall occur no later than **60 days** prior to the first day of trial. Depositions are limited to seven hours on the record. Extensions of time may be requested for good cause on a case-by-case basis.
- e. **ORCP 44 Medical Examinations:** Defendants must request any medical examinations for absent class members no later than **90 days** prior to the first day of trial. Examinations must occur no later than **30 days** prior to the first day of trial. Each party will produce medical examination reports within **30 days** of the completion of the medical examination or no later than **14 days** prior to the first day of trial, whichever is later. Other than the timing provisions in this paragraph, the same parameters laid out in the Court's March 7, 2023 Order shall apply.
- f. **Property Inspections:** Defendants must request real property inspections no later than **90 days** prior to the first day of trial. Property inspections shall be governed by ORCP 43. Property inspections shall occur no later than **45 days** prior to the first day of trial.
- g. **Discovery Disputes:** Any disputes that arise during the discovery process shall be resolved in summary fashion. The parties shall first meet and confer to resolve their disagreement. If they are unable to resolve their disagreement, they shall jointly approach the Court for relief within **3 days** after the completion of the conferral. The parties shall jointly submit a statement of their respective positions, not to exceed three double-spaced pages per side. There shall be no responses or replies unless ordered by the Court.
- h. **Discovery Deadline:** All discovery shall be completed at least **30 days** before the first day of trial. All discovery deadlines may be extended for good cause.
- i. **Motions for Summary Judgment:** Any party moving for summary judgment on an issue not addressed by the Court's prior ruling on an earlier summary judgment motion must do so no later than 43 days prior to the first day of trial. Response briefs will be due 33 days before the first day of trial. There will be no reply briefs.
- j. **Offset Information and Motions:** Plaintiffs shall request full insurance claims files from their insurers and produce those insurance documents to PacifiCorp no later than **120 days** prior to the first day of trial. The parties shall stipulate to the authenticity and accuracy of those insurance documents. PacifiCorp shall file a motion to offset economic damages **30 days** prior to the first day of trial. The response to the motion is due **7 days** later. The reply is due **5 days** later. This timeline is dependent on PacifiCorp receiving timely and complete insurance documentation from Plaintiffs. The motion and response shall not exceed five

pages. The reply shall not exceed three pages. The parties' prior arguments and objections in connection with offset in Phase I and Phase II, Trials 1 and 2, are restated in each bellwether trial.

8. **Bellwether Trial Process**

- a. **Neutral Statement of the Case, Jury Instructions, and Verdict Form:** The parties will draft a neutral statement of the case that will be used for all six bellwether trials. This neutral statement will be due no later than **30 days** prior to the first day of Bellwether Trial 1. The parties will then use the same neutral statement of the case for the remaining bellwether trials. The parties will use the same jury instructions and verdict form that were used in Phase II, though they will be modified to account for the specific plaintiffs and damages at issue.
- b. **Motions *In Limine*:** Motions *in limine* are due **30 days** prior to the first day of trial. Oppositions to motions *in limine* are due **15 days** prior to the first day of trial. Motions *in limine* must be limited to specific evidentiary issues not previously raised and resolved by the Court's prior rulings on Omnibus Motions *in Limine* for Phase I and Phase II, Trials 1 and 2.
- c. **Deposition Designations:** The parties must deposition designations no later than **40 days** prior to the first day of trial. Parties must exchange objections and counter-designations to deposition designations no later than **21 days** prior to the first day of trial. Parties must exchange responses or rebuttal designations no later than **14 days** before the first day of trial. Parties must file deposition designations **10 days** before the first day of trial.
- d. **Trial Exhibits:** The parties must exchange trial exhibit lists and stamped copies of all trial exhibits no later than **21 days** prior to the first day of trial. Objections to exhibits are due **14 days** prior to the first day of trial. Exhibit lists must be filed **10 days** prior to the first day of trial.
- e. **Witness List:** The parties will file their respective witness lists **10 days** before the first day of trial.
- f. **Testifying Expert Materials:** The file of a testifying expert must be turned over to the opposing party by 5:00 p.m. **2 days** before the expert is expected to testify. The file should include (1) the expert's current curriculum vitae; (2) materials the expert considered or relied upon in forming the expert's opinion; and (3) any demonstrative the expert intends to use. Parties must also provide an unredacted version of any exhibit that includes the expert's opinions or conclusions by 8:30 a.m. on the morning of the day the expert is expected to testify.
- g. **Pretrial Conference:** The Court will hold a pretrial conference **7 days** before the start of trial.

- h. **12-Person Jury:** Each trial shall be presented before a 12-person jury.
  - i. **Trial Schedule and Time Allocation:** The schedule for each trial shall be:
    - Day 1: Jury Selection and Opening Statements
    - Day 2: Plaintiffs' Case
    - Day 3: Plaintiffs' Case
    - Day 4: Defense Case
    - Day 5: Defense Case and Closing Statements
    - Day 6: Jury Deliberations
9. **Mandatory Post-Trial Global Mediation Checkpoint:** Within **30 days** after the verdict is rendered in the sixth and final bellwether trial, the parties are required to engage in global mediation with the objective of resolving the claims of the remaining class members using the datapoints generated by the six bellwether trials.



**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

Please submit only one damages questionnaire for each household. Individual household members do not need to submit their own questionnaires.

**PRELIMINARY QUESTIONS**

1. **Name:** \_\_\_\_\_

2. **Identification of All Other Household Members:**

*Please identify all other members of your household who resided at or lost property at the affected address. Please include minors, trusts, and estates. Even if a household member has already participated in a trial during Phase I, Phase II Trial 1, or Phase II Trial 2, please include that household member in response to this question.*

Name	Date of Birth

3. **Fire That Affected Property:**

- a. ☐ Santiam Canyon Fire
- b. ☐ Echo Mountain Complex Fire
- c. ☐ South Obenchain Fire
- d. ☐ 242 Fire

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

4. **Address of Affected Property:**

---

---

5. **Home Address on September 7, 2020 (If Different from Above):**

---

---

6. **Current Home Address:**

---

---

7. **Household Type (Check One):**

- a. ☐ Homeowner (owned and lived on land)
- b. ☐ Renter (lived on land but did not own)
- c. ☐ Landlord (owned but did not live on land)
- d. ☐ Business

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**BELLWETHER SELECTION QUESTIONS**

**8. Real Property Loss Bellwether Category (Check One):**

- a. ☐ Total Loss (main residential structure destroyed)
- b. ☐ Partial Loss (non-residential portions of property destroyed)
- c. ☐ Smoke and Ash (no burn damage, only smoke and ash)

**9. Observations of Fire (Check All That Apply):**

- a. ☐ Observed Fire on September 7, 2020 or September 8, 2020
- b. ☐ Did Not Observe Fire on September 7, 2020 or September 8, 2020

**10. If different household members provided different responses above, please identify how many household members provided each response:**

--

**11. Evacuation Experience (Check All That Apply):**

- a. ☐ Evacuated on September 7, 2020 or September 8, 2020
- b. ☐ Did Not Evacuate on September 7, 2020 or September 8, 2020

**12. If different household members provided different responses above, please identify how many household members provided each response:**

--

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

**PERSONAL INJURY**

13. Did any member of your household sustain any physical bodily injuries from the fire?

a. ☐ Yes

b. ☐ No

14. If yes, which household members sustained physical bodily injuries?

---

15. For any household members who answered yes to Question 13, please describe each person's physical bodily injuries, including when you sustained the injury and how you sustained the injury.

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

*(Question 15 Continued)*

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

16. **For any household members who answered yes to Question 13, have you sought medical treatment for your physical bodily injuries?**

a. ☐ Yes

b. ☐ No

17. **For any household members who answered yes to Question 16, please identify the medical providers who treated you.**

18. **Did any member of your household experience any mental suffering, emotional distress, or inconvenience and interference with normal and usual activities because of the fire?**

a. ☐ Yes

b. ☐ No

19. **If yes, which household members sustained experienced mental suffering, emotional distress, or inconvenience and interference with normal and usual activities?**

---

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

20. **For any household members who answered yes to Question 18, please describe each person's mental suffering, emotional distress, or inconvenience and interference with normal and usual activities.**

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

*(Question 20 Continued)*



**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

21. **For any household members who answered yes to Question 18, have you sought treatment for mental suffering, emotional distress, or inconvenience and interference with normal and usual activities?**

a. ☐ Yes

b. ☐ No

22. **For any household members who answered yes to Question 21, please identify the providers who treated you.**

23. **For any household members who answered yes to Question 18, have you received any medical diagnoses related to the mental suffering, emotional distress, or inconvenience and interference with normal and usual activities that you experienced because of the fire?**

a. ☐ Yes

b. ☐ No

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

24. **For any household members who answered yes to Question 23, please identify your diagnoses related to mental suffering, emotional distress, or inconvenience and interference with normal and usual activities.**

--

25. **For any household members who answered yes to Question 23, were you diagnosed with the same condition in the five years before the fire?**

a. ☐ Yes

b. ☐ No

26. **For any household members who answered yes to Question 25, please identify your prior diagnoses.**

--

27. **For any household members who answered yes to Question 25, please identify the providers who treated you.**

--

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**OBSERVATIONS AND EXPERIENCE ON LABOR DAY 2020**

28. **Did you personally witness the ignition of any fire(s)?**

a. ☐ Yes

b. ☐ No

29. **If yes, please describe what you witnessed.**

30. **Did you personally witness the spread of any fire(s) onto your property?**

a. ☐ Yes

b. ☐ No

31. **If yes, please describe what you witnessed.**

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**32. Evacuation Experience (Check All That Apply):**

- a. ☐ At Home During Fire
  - i. ☐ Evacuated
  - ii. ☐ Did Not Evacuate
- b. ☐ Not At Home During Fire
  - i. Where were you during the fire?  
  
\_\_\_\_\_

**33. Please describe the evacuation experience of each household member and the proximity and size of any fires that were observed:**

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

*(Question 32 Continued)*

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**REAL PROPERTY** (Skip this section if you were a renter.)

34. **Was the affected property your primary residence during the fire?**

a. ☐ Yes

b. ☐ No

35. **If no, what was the address of your primary residence?**

\_\_\_\_\_

36. **Please identify all legal owners of your real property.**

37. **When did you purchase your property?**

\_\_\_\_\_

38. **What was the purchase price?**

\_\_\_\_\_

39. **Please choose the option that best describes your property:**

a. ☐ Single Family House

i. ☐ Stick Built House

ii. ☐ Manufactured House

b. ☐ Condominium or Apartment

c. ☐ Mobile Home

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

d. ☐ Commercial Building(s)

e. ☐ Vacant Land

f. ☐ Other: \_\_\_\_\_

40. **Were there any other structures on your property?**

a. ☐ Yes

b. ☐ No

41. **What other structures did you have on your property?**

42. **Please describe the damage to your real property, including all of the structures on your real property.**

43. **Did you sell your property after the fire?**

a. ☐ Yes

1. Sale Price of Affected Property: \_\_\_\_\_

2. Date of Sale: \_\_\_\_\_

b. ☐ No

## James v. PacifiCorp, Case No. 20CV33885

## PERSONAL PROPERTY

44. **Did you experience damage to your personal property in the fire?**
- a. ☐ Yes
- b. ☐ No
45. **Have you created an inventory of the personal property that was damaged in the fire?**
- a. ☐ Yes
- i. Was this an inventory created for insurance purposes?
1. ☐ Yes
2. ☐ No
- b. ☐ No
46. **Did you lose any items of extraordinary financial value (over \$10,000)?**
- a. ☐ Yes
- b. ☐ No
47. **If yes, please describe the property you lost.**

[illegible]



**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**48. Did you lose any items of extraordinary sentimental value?**

a. ☐ Yes

b. ☐ No

**49. If yes, please describe the property you lost.**

**50. Were any of your pets lost or injured?**

a. ☐ Yes

b. ☐ No

**51. If yes, please describe the injuries to your pet(s).**

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**52. Did you have any livestock at the time of the fire?**

a. ☐ Yes

b. ☐ No

**53. Did you sustain any damage to your livestock?**

a. ☐ Yes

b. ☐ No

**54. If yes, please describe the damage to your livestock.**

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**ALTERNATIVE LIVING EXPENSES**

55. Were you required to temporarily relocate after the fire?

a. ☐ Yes

b. ☐ No

56. If yes, how long were you displaced from your property?

\_\_\_\_\_

57. Did you incur alternative living expenses?

a. ☐ Yes

b. ☐ No

58. If yes, how much did you incur in alternative living expenses?

\_\_\_\_\_

59. Please describe your displacement experience, including the location(s) where you stayed and the costs you incurred.

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

**TIMBER** (Skip this section if you are not seeking timber damages. Timber damages would include the loss of commercial timber, merchantable, or pre-merchantable timber. Timber damages do not include the loss of purely ornamental or aesthetic plants or trees.)

60. **Did you experience damage to your timber because of the fire?**

a. ☐ Yes

b. ☐ No

61. **How many acres of timber did you own on the date of the fire?**

\_\_\_\_\_

62. **How many acres of timber were damaged in the fire?**

\_\_\_\_\_

63. **Please describe the nature of your timber losses, including the extent of damage (total loss, partial loss) and the species and age classes of timber that was damaged.**

\_\_\_\_\_

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

64. Please describe any efforts to salvage timber after the fire.

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**LOST INCOME & BUSINESS LOSSES** (Skip this section if you are not seeking lost income or business losses.)

65. **Did you experience any lost income because of the fire?**

a. ☐ Yes

b. ☐ No

66. **How much income did you lose because of the fire?**

\_\_\_\_\_

67. **Please explain why you lost income (i.e., were you unable to work) because of the fire.**

68. **Did you own any business(es) that experienced financial losses because of the fire?**

a. ☐ Yes

b. ☐ No

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

**69. How much income did your business(es) lose because of the fire?**

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**70. If yes, please describe the nature of your business(es) and the source(s) of income for your business(es).**

**71. Please explain why your business(es) lost income because of the fire.**

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**OTHER EXPENSES**

72. **Did you experience any other losses or incur any other expenses that you have not already disclosed on this form?**

a. ☐ Yes

b. ☐ No

73. **If yes, please describe your other losses or expenses.**



**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**  
*James v. PacifiCorp, Case No. 20CV33885*

**INSURANCE**

74. **Did you have insurance coverage as of the date of the fire?**

a. ☐ Yes

b. ☐ No

75. **Who was your insurance provider(s)?**

\_\_\_\_\_

76. **What was your insurance policy number(s)?**

\_\_\_\_\_

77. **Did you make an insurance claim related to your losses in the fire?**

a. ☐ Yes

b. ☐ No

78. **Have you received any insurance payments in connection with your losses in the fire?**

a. ☐ Yes

b. ☐ No

79. **How much have you received in insurance proceeds?**

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

**AUTHORIZATION TO USE AND DISCLOSE HEALTH INFORMATION**

*(Please fill out one medical release form on behalf of each household member who responded to Questions 17, 22, or 27.)*

I authorize each of the following health care providers:

*(Please list names and addresses of each health care provider listed in your response(s) to Questions 17, 22, and 27.)*

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

***James v. PacifiCorp, Case No. 20CV33885***

**To release information requested for:**

**Name:**

**Date of Birth:**

**To Recipient:** Hueston Hennigan LLP, 523 West 6th St., Suite 400, Los Angeles, CA 90014

**For the Purpose Of:** Fulfilling Discovery Requests

**Please send the entire medical record (all information) to the above-named recipient.**

Patient Initials:

**I authorize all of my mental health information for the time period January 1, 2015 to present to be used, disclosed to, or received by the above-named recipient.**

Patient Initials:

***Must be initialed to be included in other documents. Records will not be released without your initials specifying that you have granted this specific release authority.***

**My signature indicates that I authorize the disclosure of the above information and understand the following:**

I understand that I may choose not to sign this authorization and that my choice not to sign will not be a basis to affect my ability to obtain treatment or my eligibility for health care benefits.

I understand I can cancel permission to use and disclose my information at any time in writing. The only exception is when action has been taken in reliance on the authorization. Unless revoked earlier, this consent will expire 365 days from the date of signing, or shall remain in effect for the period reasonably needed to complete the request.

I understand this change will not affect information that has already been shared.

I understand that federal and state law protects my health information. However, my information could be shared with agencies or businesses that may not be covered by this law. They could then share my information with others. I understand that they cannot share information regarding HIV/AIDS, mental health treatment, alcohol and drug treatment or genetic testing unless I give them permission by initialing this permission above or as otherwise permitted by law.

\_\_\_\_\_  
(Signature of Patient)

\_\_\_\_\_  
(Date)

**LABOR DAY FIRES DAMAGES QUESTIONNAIRE**

*James v. PacifiCorp, Case No. 20CV33885*

**VERIFICATION**

I certify under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct and that I have engaged in the best efforts to identify, locate, and supply all of the information requested in this damages questionnaire on behalf of myself and all of the identified members of my household. I acknowledge that I may supplement the above responses if necessary.

Name: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
SIGNATURE

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing document titled  
3 **DEFENDANT'S MOTION FOR ENTRY OF CASE MANAGEMENT ORDER NO. 10**  
4 on the following named person(s) or party(ies) on the date and by the method(s) indicated  
5 below.

- 6 ☐ mailing with postage prepaid. ☐ email. (courtesy copy only)  
7 ☐ hand delivery. ☒ email pursuant to agreement among  
8 parties/counsel dated October 29, 2020,  
9 consenting to service via email.  
10 (Plaintiffs James, et al. only)  
11 ☐ overnight delivery. ☒ eService via OJD eFile. (if registered)

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

15 **Service List Attached**

16 DATED: June 26, 2024

17 s/ Brad S. Daniels  
18 BRAD S. DANIELS, OSB 025178

19 Of Attorneys for Defendants PacifiCorp and  
20 Pacific Power  
21  
22  
23  
24  
25  
26

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