

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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)
21CV33595, 20CV37430,
22CV26326, 22CV29976,
22CV30450, 22CV29694,
22CV29187, 22CV13946,
22CV29859, 22CV41640

**DEFENDANT PACIFICORP’S REPLY
IN RESPONSE TO PLAINTIFFS’
OPPOSITION TO MOTION TO
CLARIFY SCOPE OF CLASS
REPRESENTATION**

Assigned to: Hon. Steffan Alexander

PRELIMINARY STATEMENT

While PacifiCorp was not the movant seeking clarification of the scope of class representation, it submits this Reply brief to respond to the numerous misstatements and mischaracterizations directed at PacifiCorp in Plaintiffs’ Opposition to Motion to Clarify Scope of Class Representation (“Opposition”) filed on July 18, 2024.

///

///

///

I. INTRODUCTION

1
2 Lead counsel have crossed the line. While other law firms are securing meaningful
3 settlements for their clients, lead counsel have not. They believe that their clients should hold
4 out for the possibility of bigger settlements at some unknown future date. Such
5 disagreements in approach are common in mass tort litigation, and it is why clients choose
6 their lawyers and not the other way around. But such disagreements do not give lead counsel
7 license to spew false, specious, and defamatory accusations of “collusion” at PacifiCorp and
8 the law firms representing clients who do not agree with lead counsels’ approach.

9 PacifiCorp has paid or agreed to pay more than \$250 million to more than 450 people
10 affected by the Echo Mountain, South Obenchain, 242, and Beachie Creek fires. These
11 settlements often involved monthslong negotiations, were achieved with the assistance of at
12 least three different mediators, and were reached with persons represented by at least seven
13 different law firms spanning more than 20 separate lawsuits. These settled cases were at
14 various stages of maturity—some approaching the eve of trial, some still in the motion
15 practice stage—when out-of-court resolution was reached. But each of these settlements
16 provided other plaintiffs with fair compensation, closure, and the chance to move on.

17 Lead counsel have now turned their sights to one of those settlements—involving
18 hundreds of people who chose to opt out of the class and be represented by attorneys other
19 than lead counsel—because it threatens their perceived stronghold over the decisions of the
20 remaining class members in this case. In doing so, lead counsel have dragged PacifiCorp
21 into this fight—which really has nothing to do with PacifiCorp—by accusing PacifiCorp of
22 collusion and improper contact with class members. Not only that, but lead counsel are now
23 requesting the extraordinary remedy of seeking discovery into communications between
24 PacifiCorp and three firms representing hundreds of plaintiffs—Warren Allen LLP, Spreter
25 Petiprin, and Swigart Law Group, APC (“SSW”)—related to a so-called joint press release
26 (Opposition at 19–20)—a request that should be denied and that only underscores the extent

1 to which lead counsel are grasping at straws to drum up any support possible for their
2 meritless accusations.¹

3 Lead counsels’ conduct fits within a broader pattern of unfortunate behavior, and their
4 belief that they can make these baseless accusations in a signed court filing is concerning.
5 Against the backdrop of their own inability to obtain resolution for their clients while others
6 are obtaining resolution, it just demonstrates what they themselves decry: “There is a lot of
7 money to be made by law firms . . . at the expense of their clients.” (Opposition at 4.)
8 Unfortunately, counsels’ recklessness has also come at the reputational expense of
9 PacifiCorp, a business that has served as the backbone of Oregon’s economic growth for
10 more than a century.²

11 PacifiCorp therefore submits this Reply in response to lead counsel’s Opposition to the
12 Motion to Clarify Scope of Class Representation (“Motion to Clarify”) filed by Interested
13 Parties Warren Allen LLP, Spreter Petiprin, and Swigart Law Group, APC.

14 ///

15 ///

16 ///

17 ///

18

¹ To the contrary, it is well-established that discovery into opposing counsel
19 communications is disfavored. *See, e.g., Monster Energy co v. Vital Pharm., Inc.*, 2020 WL
20 2405295, at *9 (CD Cal Mar 10, 2010) (recognizing that when “there is present, on-going
21 litigation . . . discovery sought from opposing counsel is universally disfavored,” and “the
22 consensus among courts is to apply the heightened standard”); *Rygg v. Hulbert*, 2013 WL
264762, at *1 (WD Wash Jan 23, 2013) (quashing document production request served on
opposing counsel and they “are just as problematic as the deposition requests, and for the
same reasons”).

² Numerous media outlets have since picked up and reported on lead counsel’s filing.
23 *See, e.g.*, Jonathan Stempel, “Buffett’s PacifiCorp Suspected of Collusion by Wildfire
24 Victim’s Law Firms,” *Reuters*, July 19, 2024, available at
<[https://www.reuters.com/legal/buffetts-pacificorp-suspected-collusion-by-wildfire-victims-
law-firms-2024-07-19/](https://www.reuters.com/legal/buffetts-pacificorp-suspected-collusion-by-wildfire-victims-law-firms-2024-07-19/)>, last accessed July 23, 2024; Hannah Albarazi, “Utility, Attys
25 ‘Colluded’ On \$178M Ore. Wildfire Deal, Court Told,” *Law360*, July 19, 2024, available at <
[https://www.law360.com/pulse/daily-litigation/articles/1860250/utility-attys-colluded-on-
178m-ore-wildfire-deal-court-told](https://www.law360.com/pulse/daily-litigation/articles/1860250/utility-attys-colluded-on-178m-ore-wildfire-deal-court-told)>, last accessed July 23, 2024.

1 II. ARGUMENT

2 A. There Has Been No Collusion

3 Lead counsel do not—and cannot—cite any evidence in support of their baseless
4 accusations of collusion. It may be headline-grabbing, but it is all heat and no light. Instead,
5 they hinge their inflammatory accusation on the mere fact that SSW has managed to
6 negotiate a settlement for its clients at a price that lead counsel considers to be too small.³
7 This is nothing more than self-righteous condescension and greed on the part of lead counsel.
8 Apparently, they cannot fathom a universe where some people affected by the Labor Day
9 Fires might prefer to accept *hundreds of thousands of dollars* now to move on with their
10 lives. Indeed, PacifiCorp recently received an inquiry from an anonymous class member
11 who expressed precisely that sentiment as described in its Motion to Modify Scope of Class
12 Contact Order also filed today. It is not that surprising to think that a rational class member
13 might prioritize out-of-court resolution over the chance to go to trial.

14 ///
15 ///
16 ///
17 ///

18
19 ³ Lead class counsel’s characterization of this \$178 million total settlement
20 amounting to an average of \$440,000 per person as “paltry” is just objectively wrong.
21 (Opposition at 1.) The opposition brief cherry-picks the \$229 million Archie Creek Fire
22 settlement—which amounted to \$650,000 per person—as evidence for what the SSW
23 settlement must have been collusive, but that argument makes no sense. First, lead class
24 counsel ignores the fact that PacifiCorp has also reached other settlements—which are not
25 being challenged here—with other law firms that involve a lower per-person amount than the
26 SSW settlement here. Moreover, the Archie Creek Fire cases involved a completely different
set of facts and different set of potential defenses. There was no trial verdict in that case,
true, but there was also no pending appeal. And if lead counsel want to use the \$6 million
per person *James* trial verdicts as evidence for why the SSW settlement amount was too low,
then that exact same argument applies to the Archie Creek settlement, too—in fact, compared
to those trial awards, the Archie Creek settlement that supposedly passes muster is
significantly closer to the SSW settlement amount than the jury awards, which are the only
true outlier here.

1 There has been *no collusion* between PacifiCorp and SSW or any other law firm in
2 connection with any Labor Day Fire settlements. There has been *no contact or outreach*—
3 direct or indirect—from PacifiCorp to any class members whatsoever in violation of the
4 bounds of the Court’s November 7, 2022 Order Re: Stipulated Motion to Limit Defendants’
5 Contact with Class Members (“Class Contact Order”).⁴ (Dixon Decl. ¶ 11.) There was no
6 “joint press release.” There was only a June 3, 2024 press release posted by PacifiCorp on its
7 website—similar to other press releases that PacifiCorp issues in the normal course of
8 business. (*Id.* ¶ 10.) PacifiCorp had nothing to do with any in-person “litigation update” in
9 the Santiam Canyon supposedly hosted by SSW. (*Id.* ¶ 12.) PacifiCorp was not involved in
10 any social media advertising by SSW. (*Id.*) PacifiCorp had no knowledge of any “mailbox
11 stuffing” scenarios. (*Id.*) Lead counsel could have known these facts if they had simply
12 asked PacifiCorp before hurling unfounded accusations in a public court filing.

13 Instead, lead counsel appear unhappy that they might be losing their grip on the
14 monopoly that they thought they had over the representation of persons affected by the fires.
15 But being allowed to choose among different law firms—and different avenues of resolution
16 for these damages claims—is ultimately a good thing for persons affected by the fires. Lead
17 counsel bring up concepts like reverse auctions in their brief, but the lessons of basic
18 economics go both ways: competition is good, and choice is a sign of a healthy market. Lead
19 counsel are advising their clients—of which there are many—that they should go to trial or
20 hold out for more money from PacifiCorp. Some persons affected by the fires evidently do

21

22

23

24 ⁴ To the contrary, PacifiCorp has not had any communications about the subject of
25 these lawsuits at all outside of the required response outlined in the Class Contact Order. In
26 fact, PacifiCorp has concurrently filed a Motion to Modify the Scope of the Class Contact
Order to seek explicit guidance from the Court before responding to the class member
inquiry referenced in this Reply. There is just no basis for Plaintiffs to accuse PacifiCorp of
ignoring the rules and directly contacting class members.

1 not agree that is in their best interest, and they should be allowed to seek other counsel and
2 alternative settlement arrangements without being blocked at every turn by class counsel.⁵

3 **B. Interested Parties’ Interpretation of the Class Action Notice is Correct**

4 Interested Parties’ interpretation of the operative class action notice is correct: class
5 members are free to pursue their individual damages claims with the help of attorneys other
6 than class counsel. (*See* Motion to Clarify at 7–9.) Specifically, the class action notice
7 states:

8 If you have not signed an agreement with one or more of the
9 law firms serving as Lead Counsel, you may choose to hire a
10 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***.

11 If Plaintiffs are successful at the Issues Trial, you may want
12 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 determine whether you are entitled to any damages and, if so, the amount of your damages***. These later proceedings may or
13 may not occur, depending on the outcome of the Issues Trial.

14 (Dixon Decl., Ex. 2 at 10.) Lead counsel represent the class members ***only*** with respect to
15 the certified class issues. Lead class counsel does ***not*** automatically represent any class
16 member in connection with any individual damages claim. Class members are of course free
17 to retain lead counsel to represent them, as many class members have done so already. But

18 _____
19 ⁵ Indeed, this is an area where the interests of lead counsel may not align perfectly
20 with the interest of individual plaintiffs. *See, e.g.*, John H. Beisner, Matthew Shors, Jessica
21 Davidson Miller, Class Action "Cops": Public Servants or Private Entrepreneurs?, 57 Stan L
22 Rev 1441 (2005) (detailing the “growing public distrust of the class action device that is due,
23 in part, to a general perception that the main beneficiaries are the attorneys who receive
24 massive fee awards, rather than the allegedly injured consumers.”); John C. Coffee, Jr., The
25 Regulation of Entrepreneurial Litigation: Balancing Fairness and Efficiency in the Large
26 Class Action, 54 U Chi L Rev 877 (1987) (discussing the principal-agent problem arising
from the class counsel’s incentive to maximize their own profit at the possible expense of the
class, noting that “[i]t is no secret that substantial conflicts of interest between attorney and
client can arise in class action litigation.”); Nicholas Alejandro Bergara, Note, Nipping it in
the Bud: Fixing the Principal-Agent Problem in Class Actions by Looking to Qui Tam
Litigation, 97 NYU L Rev 275 (2002) (“[T]he very foundation of the class action system
generates an inherent conflict of interest between class counsel and class plaintiffs.”).

1 there is no requirement that every class member *must* be represented by lead counsel before
2 they are allowed to pursue their damages claims. The notice clearly states that class
3 members are allowed to choose someone else to represent them in their damages cases. That
4 is the only interpretation of the class action notice that makes sense. Otherwise, there would
5 have been no reason for the parties to go through the motions of requiring other law firms to
6 be assessed a 10% common benefit fee every time they secure a judgment or settlement on
7 behalf of a class member. Lead class counsel will still be compensated for every single class
8 member, no matter how they choose to resolve their individual damages claim.

9 It does not matter that lead counsel may be “still devoting thousands of hours” and a
10 “dozen attorneys” to this case.⁶ (Opposition at 15.) One would hope they are continuing to
11 do work on this case given that they represent more than 1,000 class members in connection
12 with their individual damages claims. But that does not mean that they represent or have
13 entered into engagement agreements with every single remaining class member. Nor could
14 they possibly have done so, given, for example, that certain commercial timber class
15 members were clearly represented by different counsel and already reached settlement
16 months ago. (*See Freres v. PacifiCorp*, Case No. 22CV29694; *CW Specialty v. PacifiCorp*,
17 Case No. 22CV41640.) Lead counsel did not challenge the legitimacy of those attorney
18 representations nor try to argue that lead counsel still represented those timber clients even
19 during their Phase II damages proceedings.

20

21 ⁶ To the extent that lead counsel is trying to point to their work on Case Management
22 Order No. 10 or the ongoing appeal as evidence that their representation of all class members
23 on the certified class issues has somehow extended into the current phase, that is plainly
24 wrong. The current Case Management Order No. 10 dispute by necessity can only extend to
25 the ongoing management of the damages claims of lead class counsel’s clients—the plaintiffs
26 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 that this process is working effectively. These outcomes are not the result of collusion, but
2 rather the actions of rational individuals making informed decisions. The Court should
3 therefore reject lead counsel's unfounded accusations of collusion, affirm the accuracy of
4 SSW's interpretation of the class action notice, and deny the request for discovery into
5 PacifiCorp's settlement communications with SSW.

6 DATED: July 24, 2024

STOEL RIVES LLP

7

/s/ Per A. Ramfjord

8

PER A. RAMFJORD, OSB No. 934024

9

per.ramfjord@stoel.com

10

BRAD S. DANIELS, OSB No. 025178

11

brad.daniels@stoel.com

12

REILLEY D. KEATING, OSB 073762

13

reilley.keating@stoel.com

14

SAMANTHA K. SONDAG, OSB 154244

15

samantha.sondag@stoel.com

16

Telephone: (503) 224-3380

17

-AND-

18

Alison L. Plessman, *pro hac vice*

19

aplessman@hueston.com

20

Rajan S. Trehan, *pro hac vice*

21

rajan.trehan@hueston.com

22

Stephanie W. Xiao, *pro hac vice*

23

sxiao@hueston.com

24

Khoa D. Nguyen, *pro hac vice*

25

knguyen@hueston.com

26

HUESTON HENNIGAN LLP

523 West 6th Street, Suite 400

Los Angeles, CA 90014

Telephone: (213) 788-4340

Christopher Galeano, *pro hac vice*

cgaleano@hueston.com

Tyler Dang, *pro hac vice*

tdang@hueston.com

HUESTON HENNIGA

Douglas J. Dixon, *pro hac vice*

ddixon@hueston.com

Thomas B. King, *pro hac vice*

tking@hueston.com

Craig A. Fligor, *pro hac vice*

cfligor@hueston.com

Michael P. Schneider, *pro hac vice*

mschneider@hueston.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

HUESTON HENNIGAN LLP
620 Newport Center Drive, Suite 1300
Newport Beach, CA 92660
Telephone: (949) 229-6840

-AND-

Blaine Evanson, *pro hac vice*
bevanson@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
3161 Michelson Drive
Irvine, California, 92612
Telephone: (949) 451-380

*Attorneys for Defendants PacifiCorp and
Pacific Power*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served a true and correct copy of the foregoing documents titled
3 **DEFENDANT PACIFICORP’S REPLY IN RESPONSE TO PLAINTIFFS’**
4 **OPPOSITION TO MOTION TO CLARIFY SCOPE OF CLASS REPRESENTATION**
5 on the following named person(s) on the date indicated below by

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

10
11 If by mail or overnight delivery, a true copy of the above referenced document was served
12 upon said persons, contained in a sealed envelope or package, addressed to said persons or at
13 their last-known addresses indicated below.

14 **Service List Attached**

15
16 DATED: July 24, 2024

17 /s/ Per A. Ramfjord
18 PER A. RAMFJORD, OSB No. 934024
19 Of Attorneys for Defendants PacifiCorp and
20 Pacific Power
21
22
23
24
25
26

1 Amy B. Hausmann
Nicholas H. Rosinia
2 Zoë Seaman-Grant
Landon Webster
3 EDELSON PC
350 N. LaSalle Street, 14th Floor
4 Chicago, IL 60654

abhausmann@edelson.com
nrosinia@edelson.com
zseaman-grant@edelson.com
lwebster@edelson.com

5 Derek C Johnson
Marilyn A Heiken
6 JOHNSON JOHNSON LUCAS &
MIDDLETON
7 975 Oak Street, Suite 1050
Eugene OR 97401

djohnson@justicelawyers.com
mheiken@justicelawyers.com
anibblett@justicelawyers.com

8 **Attorneys for Allen Plaintiffs, Cady Plaintiffs, and Logan Plaintiffs:**

9 Gerald Singleton
10 Susan Dussault
John Lemon
11 SINGLETON SCHREIBER LLP
591 Camino De La Reina Suite 1025
12 San Diego CA 92108

gsingleton@singletonschreiber.com
sdussault@singletonschreiber.com
jlemon@singletonschreiber.com

13 **Attorneys for Freres Timber and C.W. Specialty Lumber, Inc. Plaintiffs:**

14 Michael E. Haglund
Christopher Lundberg
15 Christopher T. Griffith
Matt Malmsheimer
16 HAGLUND KELLEY LLP, Attorneys at Law
2177 SW Broadway
17 Portland, OR 97201

haglund@hk-law.com
clundberg@hk-law.com
cgriffith@hk-law.com
mmalmsheimer@hk-law.com

18 **Attorneys for Bell Plaintiffs (22CV30450):**

19 Brady Mertz
BRADY MERTZ, PC
20 685 Church St NE
Salem, OR 97301

brady@bradymertz.com

21 Alexander Robertson, IV
22 ROBERTSON & ASSOCIATES, LLP
32121 Lindero Canyon Road, Suite 200
23 Westlake Village, CA 91361

arobertson@arobertsonlaw.com

24 Robert A. Curtis
FOLEY BEZEK BEHLE & CURTIS, LLP
25 15 W. Carrillo St.
Santa Barbara, CA 93101

rcurtis@foleybezek.com

26