

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL
MINUTE ORDER

Date: 06/25/2009

Time: 09:30:00 AM

Dept: C-75

Judicial Officer Presiding: Judge Richard E. L. Strauss
Clerk: Tipin Johnson

Bailiff/Court Attendant: Paul Darvin

ERM:

Reporter: James Partridge

Case Init. Date: 10/11/2008

Case No: 37-2008-00093086-CU-NP-CTL Case Title: In Re: 2007 Wildfire Class Litigation

Case Category: Civil - Unlimited

Case Type: Non-PI/PD/WD tort - Other

Event Type: Motion Hearing (Civil)

Moving Party: EdithCortez, GraceHays, KarenLeasum

Causal Document & Date Filed: Motion to Certify Class, 02/13/2009

Appearances:

For appearances, please see sign in sheet, attached hereto and incorporated herein.

The Court's tentative ruling is published but not read on the record as follows:

Plaintiffs' Motion for Certification of a Liability-Only Class is denied.

The standards for class certification under CCP § 382 are well-established. There must be an ascertainable class and a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented. (*Linder v. Thrifty Oil* (2000) 23 Cal.4th 429, 435.) For a class to be ascertainable there must be an objective and feasible way of identifying class members. The commonality requirement depends on three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims typical of the class; and (3) class representatives who can adequately represent the class." (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104. Where class certification is sought on the grounds that common questions predominate, plaintiff must also establish that class treatment is superior to alternative methods of adjudication. (*Caro v. Procter & Gamble Co.* (1993) 18 Cal. App. 4th 644, 654.) Plaintiffs' burden on moving for class certification "is not merely to show that some common issues exist, but, rather, to place substantial evidence in the record that common issues predominate." (*Lockheed Martin Corp.* at 1108.)

Plaintiffs have limited the motion to certification of an action against SDG&E on the issue of whether SDG&E caused the Witch, Guejito or Rice Canyon Fires. Plaintiffs contend class certification would put every absent class member on notice of their rights. This motion is denied on the grounds there is insufficient commonality among class members and a class action is an inferior method with which to proceed.

Commonality

For there to be commonality, the burden is on the moving party to show questions of law or fact common to the class predominate over the questions affecting the individual members. (*Richmond v. Dart Industries, Inc.*, (2001) 29 Cal. 3d 462, 470.) Essentially, this means "each member must not be required

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to individually litigate numerous and substantial questions to determine his [or her] right to recover following the class judgment; and the issues which may be jointly tried, when compared with those requiring separate adjudication, must be sufficiently numerous and substantial to make the class action advantageous to the judicial process and to the litigants." (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 460 (*San Jose*)). Here, there is insufficient commonality of law or fact. This case is similar to *San Jose* which arose from nuisance claims asserted against the airport and in which the plaintiffs were seeking diminution in value of real property. The Supreme Court held class certification was improper when each class members' right to recover depended on the facts peculiar to his or her case. (*Id.* at 459.) In this case, even if there was a determination SDG&E caused the Fires, there would have to be individual trials as to each class member. The causes of action asserted against SDG&E, particularly trespass, nuisance and inverse condemnation, require individual showings. A finding of causation of the fires is not equivalent to causing each class members' damages. Even Plaintiffs concede the effects of the fires will have to be tried individually. (Reply 4:10-12.) Thus, there is insufficient commonality among class members.

Plaintiffs cite to *Sav-on Drug Stores, Inc. s. Superior Court* (2004) 34 Cal.4th 319 in support of their arguments for class certification. Plaintiffs assert *Sav-on* makes it clear a class action is appropriate where some individual showing may be required to show damages. However, there is a distinction between some showing in order to recover damages and litigating numerous and substantial questions. The present case is more akin to *San Jose* than it is to *Sav-on*.

Superiority

In addition, Plaintiffs have failed to show class certification is superior to individual actions. In *San Jose*, the Supreme Court held such a class action was not superior when each member would have to litigate numerous and substantial issues in order to determine a right to recover. (*Id.* at 460.) The superiority factors the court should consider are: (1) the interest of each member in controlling his or her own case personally; (2) the difficulties that are likely to be encountered in managing a class action; (3) the nature and extent of any litigation by individual putative class members already in progress involving the same controversy; and (4) the desirability of consolidating all claims into a single action. (*Basurco v. 21st Century Ins. Co.* (2003) 108 Cal.App.4th 110, 121.) Plaintiffs have failed to show evaluation of these factors merit class certification.

Each individual class member has a strong interest in controlling his or her own case. Over seventy individual actions have been filed consisting of over 1,000 individual plaintiffs. There is no dearth of cases being pursued by individual parties which negates the argument there are some substantial number of unknown putative class members whose damages are going uncompensated, particularly when considering how many insurance claims, over 20,000, were made. This shows damaged numerous plaintiffs have taken a significant and active role in seeking compensation.

Based upon the type of certification sought, limited to the liability of SDG&E for causing the fire, a class action is not manageable. The court would have to entertain additional trials on the issues of damages, further complicating an already complex procedure. Plaintiffs have provided no guidelines as to how this could be accomplished more efficiently or simply than individual cases. And because of the variation of types and degree of damages incurred by each plaintiff, it is difficult to assume any single damage calculation would apply uniformly. There is no question each individual plaintiff will not have a trial on SDG&E liability for causing the fire. The moving parties have offered no suggestions as to how to manage and require participation from thousands of inactive class members. Thus, Plaintiffs have failed to show there a class action is superior to the current case management.

Plaintiffs' Requests for Judicial Notice are granted.

Defendant Cox's Requests for Judicial Notice are granted.

Plaintiffs' Motions to Strike the Declarations of Gimple, Singleton and Dreyer are denied.

The Court hears argument and confirms its tentative ruling.

-ttj-

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37-2008-00093086

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CASE TITLE

IN RE: WILDFIRE CLASS LITIGATION

ATTORNEYS' NAME - PRINT	ATTORNEYS' SIGNATURE	CLIENTS' NAME
Mickey McGinnis ER WITT		Hayes / Cortez HF / PE / SIC
CRAIG JOHNSON		Hayes / Cortez
Ken Royce		AAA et al
Alex Schack		Letson et al
Dora Watson		OS&W
John Johnson		Travelers
Jon Schofield		Curtis / Watson
Lana Simps		Cox
DOVIS BOND		Cox Com, Fire and Cox Com
Michael Wolski		Cox Com, Fire and Cox Com, Fire
Gavin Hickert		E. W. Williams
Bruce Baile		City of S. D.
Kathryn Megli		Cal Fire / Parks + Rec
Alan Juby		AAA of So Cal
Harry Olivar		SDG&E / Sempra
Ryan Landes		SDG&E / Sempra
Mark Wzner		Fire
MITCH WAGNER		Melroe
TERRY SINGLET		McDerm
Jerry Ramsey		Payne
Jim FORTY		Chalker
JEFF NEER		PAYNE
ROSTEN BIRD		SDG&E
		Curtis
MUS WIL		NEWARK

