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UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,)
21 Plaintiff,)
22 vs.)
23 PACIFIC GAS & ELECTRIC COMPANY,)
DAVEY TREE SURGERY COMPANY, and)
24 THE DAVEY TREE EXPERT COMPANY,)
25 Defendants.)

No. 2:09-cv-02868-JAM-JFM
STIPULATION AND ORDER *IN LIMINE*

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STIPULATION AND ORDER IN LIMINE

CASE No.: 2:09-cv-02868-JAM-JFM

1 IT IS HEREBY STIPULATED that

2 1. The following facts are undisputed.

3 a. On October 13, 2004, the Freds Fire ignited on National Forest System lands near
4 Kyburz, California adjacent to or under a PG&E 21,000 volt (21 KV) power line on or near the
5 transmission line easement, within the Eldorado National Forest.

6 b. PG&E contracted with Davey Tree for vegetation management services.

7 c. On the day of the fire, Davey Tree and its employees were performing removal and
8 trimming of designated trees as vegetation management contractor for PG&E.

9 d. The fire ignited during Davey Tree employee's removal of a tree between about
10 4:00 p.m. and 5:00 p.m.

11 e. About 4:20 p.m. on October 13, 2004, a large tree the Davey Tree employees were
12 cutting fell the opposite way it was intended to fall and it landed on the PG&E power lines causing
13 them to break.

14 f. The tree knocked the energized power line to the ground causing the fire.

15 g. Acts or omissions of Davey Tree employees during the tree removal led to the
16 ignition of the fire.

17 2. The only evidence or argument before the jury regarding the cause of Freds Fire,
18 Defendants' liability for Freds Fire, Pacific Gas & Electric Co.'s delegation of vegetation
19 management work to Davey, the qualifications and/or training of Davey employees and the
20 conduct of Davey employees on the day of the fire shall be the above-listed facts and the
21 undisputed facts contained in the pretrial conference order.

22 3. Plaintiff hereby withdraws any claim to prejudgment interest under California Civil
23 Code section 3288, which provides that the jury has discretion to award prejudgment interest. The
24 parties stipulate that Plaintiff's right to recover prejudgment interest, if such a right exists, shall be
25 decided by the Court after the jury reaches a verdict. All evidence and argument concerning any
26 claim or alleged right of Plaintiff to recover prejudgment interest, any loss by Plaintiff with
27 respect to the time-value of income, and any claim or alleged right to recover statutory or
28 regulatory penalties will be presented to the court outside the presence of the jury.

1 4. Plaintiff’s claimed right to recover double damages for timber pursuant to
2 California Civil Code section 3346, which Defendants dispute, is a legal issue and shall be decided
3 by the court after the jury returns a verdict. All evidence or argument regarding any claim or
4 alleged right of Plaintiff to recover any multiplier on the value of trees shall be excluded in the
5 presence of the jury.

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7 Based upon the parties’ foregoing stipulation, IT IS HEREBY ORDERED

8 Plaintiff’s requested *Motion in Limine* No. 1 to admit as established those facts identified
9 by the Court as material and undisputed in the order granting Plaintiff’s interlocutory summary
10 judgment motion is granted in part. The foregoing stipulated facts (a) through (g) are deemed
11 established. All other facts identified as material and undisputed in the order granting Plaintiff’s
12 interlocutory summary judgment motion are excluded.

13 Plaintiffs requested *Motion in Limine* No. 9 to exclude any evidence or argument
14 concerning Plaintiff’s interest claim to the extent such claim rests with the discretion of the Court
15 is granted pursuant to the foregoing stipulations regarding prejudgment interest.

16 Defendants’ *Motion in Limine No. 1* to exclude all evidence or argument regarding the
17 cause of the fire is granted in part. The foregoing stipulated facts (a) through (g) and the
18 undisputed facts contained in the pretrial conference order are admissible. All other evidence or
19 argument regarding the cause of the fire shall be excluded.

20 Defendants’ *Motion in Limine* No. 2 to exclude all evidence or argument regarding PG&E
21 delegating vegetation management work to Davey, the qualifications and/or training of Davey
22 employees, or the conduct of Davey employees on the day of the fire is granted in part. The
23 foregoing stipulated facts (a) through (g) and the undisputed facts contained in the pretrial
24 conference order are admissible. All other evidence or argument regarding PG&E delegating
25 vegetation management work to Davey, the qualifications and/or training of Davey employees, or
26 the conduct of Davey employees on the day of the fire shall be excluded.

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1 Defendants' *Motion in Limine* No. 4 to exclude all evidence or argument regarding the
2 heroism of any firefighters or agencies who or which attempted to suppress the fire is stipulated to
3 by the parties and hereby granted.

4 Defendants' *Motion in Limine* No. 8 to exclude all evidence or argument regarding any
5 other fires allegedly or actually caused by any defendant is stipulated to by the parties and hereby
6 granted.

7 Defendants' *Motion in Limine* No. 11 to exclude all evidence or argument regarding any
8 alleged reduction in public visitation or use of the Eldorado National Forest as a result of the fire
9 is stipulated to by the parties and hereby granted. The parties further stipulate that all evidence
10 regarding any increase in public visitation or use of the Eldorado National Forest as a result of the
11 fire shall also be excluded.

12 Defendants' *Motion in Limine* No. 12 to exclude all evidence or argument regarding any
13 damage to "Heritage Resources," including but not limited to the Pony Express trail is stipulated
14 to by the parties and hereby granted. Defendants' motion, and this order in limine, does not
15 pertain to any evidence or argument regarding any damage to habitat, the environment, trees, or
16 claims related to "intangible" damages.

17 Defendants' *Motion in Limine* No. 13 to exclude all evidence or argument regarding any
18 loss of the carbon-sequestration capacity of the forest as a result of the Freds Fire, including any
19 alleged link between forest fires and global warming or green house gases is stipulated to by the
20 parties and hereby granted.

21 Defendants' *Motion in Limine* No. 14 to exclude all evidence or argument regarding any
22 potential damage or loss to the yellow-legged frog or its habitat as a result of the Freds Fire is
23 stipulated to by the parties and hereby granted.

24 Defendants' *Motion in Limine* No. 15 to exclude all evidence or argument regarding any
25 claim or alleged right of Plaintiff to recover any statutory or regulatory penalties against
26 defendants for failing to pay claims presented by Plaintiff as a result of the fire is granted pursuant
27 to the foregoing stipulations regarding prejudgment interest.

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1 Defendants' *Motion in Limine* No. 16 to exclude all evidence or argument regarding any
2 claim or alleged right of Plaintiff to recover prejudgment interest or regarding any loss by Plaintiff
3 with respect to the time-value of income is granted pursuant to the foregoing stipulations
4 regarding prejudgment interest.

5 Defendants' *Motion in Limine* No. 17 to exclude all evidence or argument regarding any
6 claim or alleged right of Plaintiff to recover any multiplier on the value of trees is granted pursuant
7 to the foregoing stipulation regarding California Civil Code section 3346.

8 Defendants' *Motion in Limine* No. 18 to exclude all evidence or argument regarding
9 attorney time or fees incurred by any attorney in the prosecution or defense of this case is
10 stipulated to by the parties and hereby granted.

11 Defendants' *Motion in Limine* No. 19 to exclude any evidence or argument regarding the
12 fact that defense counsel is not from the Sacramento area is stipulated to by the parties and hereby
13 granted. The parties further stipulate that all evidence or argument regarding the fact that any
14 counsel is not from the Sacramento area shall be excluded.

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16 DATED: CARLSON, CALLADINE & PETERSON LLP
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18 By: /s/ Randy W. Gimple
19 RANDY W. GIMPLE
20 A.DAVID BONA
21 Attorneys for Defendant, DAVEY TREE SURGERY
22 COMPANY

23
24 DATED: NIXON PEABODY LLP
25
26 By: /s/ Robert M. Blum
27 ROBERT M. BLUM
28 Attorneys for Defendant,
DAVEY TREE SURGERY COMPANY

DATED: BENJAMIN B. WAGNER
United States Attorney

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By: /s/ Glen F. Dorgan
GLEN F. DORGAN
Attorneys for Plaintiff
UNITED STATES OF AMERICA

DATED:

FERRIS & BRITTON,
A PROFESSIONAL CORPORATION

By: /s/ Michael R. Weinstein
MICHAEL R. WEINSTEIN
Attorneys for Defendant
PACIFIC GAS AND ELECTRIC COMPANY

IT IS SO ORDERED.

Dated: August 29, 2011

/s/ John A. Mendez
HON. JOHN A. MENDEZ
U.S. DISTRICT COURT JUDGE