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11 SACRAMENTO COUNTY

12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA
14 SACRAMENTO DIVISION

15 JOSEPH HARDESTY, et al.,
16 Plaintiffs,
17
18 v.
19 SACRAMENTO METROPOLITAN AIR
QUALITY MANAGEMENT DISTRICT, et
al.,
20 Defendants.

Case No.: 2:10-cv-02414-KJM-KJN
Consolidated with: 2:12-cv-2457-KJM-KJN

**STIPULATION AND ORDER
REGARDING PARTIES' MOTIONS IN
LIMINE**

Judge: Hon. Kimberly J. Mueller
Magistrate: Hon. Kendall J. Newman

Trial Date: Not yet set
Action Filed: September 8, 2010

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22 AND RELATED CONSOLIDATED CASES
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1 **STIPULATION REGARDING MOTIONS IN LIMINE**

2 Plaintiffs, Joseph and Yvette Hardesty (collectively, the “Hardestys”), and Defendant
3 County of Sacramento (“County”) stipulate as follows for purposes of trial in this matter:

4 1. This stipulation is intended to express the parties’ agreement regarding the resolution
5 of certain motions in limine, as detailed below, in advance of the Court’s hearing concerning the
6 same, scheduled for June 30, 2023. The parties agree that the agreements reached below shall be
7 incorporated into their Joint Pretrial Statement per Cal. E. D. Local Rule 281(b)(14).

8 **Hardesty Motions**

9 2. The Hardestys have filed motions in limine that seek to preclude the offering of
10 evidence or argument at trial of the following:

11 A. Any suggestion that the Hardestys have improperly failed to resume mining
12 at the Schneider Historic Mine (“SHM”) or could have resumed mining at SHM by the time
13 of trial or should resume mining at SHM in the future (Hardesty Motion in Limine No. 1);
14 and

15 B. Any reference to alternative sources of income as actual or potential
16 compensation for the County’s conduct or as mitigation of the Hardestys’ damages
17 (Hardesty Motion in Limine No. 2).

18 3. The County agrees not to introduce any documentary or testimonial evidence, offer
19 any expert opinion, or provide any argument regarding the subjects covered by Hardesty Motions
20 in Limine Nos. 1 and 2. The County’s stipulation to these motions includes the commitment not to
21 introduce evidence, offer expert opinion, or provide argument concerning the County’s restoration
22 of vested rights at SHM.

23 4. The County also agrees not to introduce any documentary or testimonial evidence,
24 offer any expert opinion, or provide any argument regarding the following matters, which are
25 addressed in Hardesty motions in limine the County did not oppose:

26 A. Hardesty Motion in Limine No. 3, which pertains to any reference to prior
27 arrests of, criminal charges against, criminal investigations of, or civil penalty actions
28 against Joseph Hardesty or his friend Richard (“Rick”) Churches;

1 B. Hardesty Motion in Limine No. 4, which pertains to any reference to mining
2 activity by plaintiffs at the Big Cut Mine in El Dorado County, including but not limited to
3 alleged violations, water discharge disputes, actions taken against Joseph Hardesty, any
4 related press or news articles, or orders shutting down the mine, or the existence or
5 settlement of the lawsuit brought by the State Mining & Geology Board; and

6 C. Hardesty Motion in Limine No. 5, which pertains to any reference to any
7 prior lawsuits between Schneider and the Hardestys or related orders.

8 **County Motions**

9 5. The County has filed motions in limine that seek to preclude the offering of evidence
10 or argument at trial of the following:

11 A. The business cost the Hardestys would incur if they were to erect a new
12 central mining (“wash”) plant at the SHM (County Motion in Limine No. 5); and

13 B. The business costs the Hardestys would incur generally, including the
14 securing of a new mining plant, equipment, rolling stock, and labor force, if they were to
15 resume mining at SHM (County Motion in Limine No. 7, first ground, § III.A).

16 6. The Hardestys agree not to introduce any documentary or testimonial evidence,
17 offer any expert opinion, or provide any argument regarding the subjects covered by County
18 Motion in Limine No. 5 and the above-referenced first ground of Motion in Limine No. 7 at § III.A.

19 7. Nothing in this Stipulation is intended to address or resolve the additional ground
20 the County has raised in its Motion in Limine No. 7 concerning loans the Hardestys took out and
21 the accrual of interest associated with those loans. (Motion in Limine No. 7, second ground,
22 § III.B.)

23 8. This Stipulation does not constitute an agreement regarding the legal or factual
24 arguments made by the County in Motion in Limine No. 5 or the above-referenced first ground of
25 Motion in Limine No. 7 at § III.A, and the Hardestys expressly reserve all rights to rebut such
26 arguments should the need arise. Instead, the Stipulation is solely an agreement not to introduce
27 evidence or argument regarding the subjects as stated in paragraph 6.

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9. The County’s pretrial motions in limine include County Motion in Limine No. 8, which seeks to require that the parties share demonstrative evidence and written presentations at least 48 hours prior to their being shown to the jury. The Hardestys opposed this motion. The parties now agree that they will agree to share opening statement demonstrative evidence 24 hours in advance and other demonstrative evidence by the night before its use in court. With this agreement, the County agrees that its Motion in Limine No. 8 shall be withdrawn.

So stipulated.

Dated: June 22, 2023

/s/ Justin P. Tschoepe
R. Paul Yetter (*pro hac vice*)
Justin P. Tschoepe (*pro hac vice*)
Christian J. Ward (*pro hac vice*)
YETTER COLEMAN LLP
Attorneys for Plaintiffs
JOSEPH and YVETTE HARDESTY

Dated: June 22, 2023

/s/ Derek P. Cole
Derek P. Cole
COLE HUBER LLP
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COUNTY OF SACRAMENTO

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ORDER

For good cause shown, the Court adopts the parties' Stipulation Regarding Motions in limine as set forth above. The motions in limine identified in the stipulation are resolved as set forth therein.

SO ORDERED.

Dated: June 26, 2023.



CHIEF UNITED STATES DISTRICT JUDGE