

Judge enters ‘limited’ gag order in North Bay fire lawsuit

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JACKSON

SAN FRANCISCO — As trial nears for a lawsuit filed by property owners in Sonoma and Napa county over a 2017 fire that killed 22 people, a judge issued a “limited” protective order aimed at preventing attorneys from making comments to the media she said might make it difficult to find an impartial jury.

San Francisco County Judge Teri L. Jackson signed an order Friday that gives PG&E Co. much — but not all — of what its lawyers requested. Attorneys for the utility voiced concern about statements by plaintiffs’ attorneys to television stations and newspapers challenging the California Department of Forestry and Fire Protection’s conclusion that PG&E was not responsible for the Tubbs fire.

Jury selection is scheduled to start Jan. 7, and Jackson has asked to receive weekly emails on the status of discovery. *California North Bay Fire Cases*, CJC-17-004955 (S.F. County Sup. Ct., filed Nov. 20, 2017).

PG&E’s lawyers — led by Brad D. Brian with Munger, Tolles & Olson LLP and Evan R. Chesler of Cravath, Swaine & Moore LLP — were especially upset with media comments by plaintiffs’ attorneys suggesting there was video evidence not considered by Cal Fire investigators and photos highlighted by plaintiffs’ attorney Steven M. Campora of Dreyer Babich Buccola Wood & Campora LLP he said proved state investigators were wrong.

“These claims — which include exaggerated statements such as that there are ‘tons of evidence’ CAL FIRE did not consider and that Plaintiffs’ counsel ‘know that the origin of the fire actually happened somewhere else’ than where CAL FIRE found — are, unsurprisingly, circulated widely and frequently in the many press articles regarding the case,” Kevin J. Orsini of Cravath wrote in his motion for a protective order.

Plaintiffs’ attorneys, led by Khaldoun A. Baghdadi and Michael A. Kelly of Walkup, Melodia, Kelly & Schoenberger and Frank M. Pitre of Cotchett, Pitre & McCarthy LLP, objected to the proposed order by pointing out PG&E executives trumpeted the Cal Fire findings, including in a statement by the company’s new CEO, Bill Johnson.

Baghdadi, in a written response, argued PG&E’s proposed order violated the First Amendment and asked Jackson to deny it.

“While PG&E has been publicly vocal about Cal Fire’s conclusion and the company’s innocence, this motion seeks a gag order restricting plaintiffs’ constitutional rights, silencing any statements contrary to PG&E’s position,” he wrote.

Jackson, in her order, appears to be trying to chart a middle ground. She noted the coordinated cases have received a lot of publicity since U.S. Bankruptcy Judge Dennis Montali decided in August to allow the Tubbs lawsuits to move ahead in state court even after PG&E filed for bankruptcy protection.

She ordered attorneys on both sides not to make extrajudicial statements about specific evidence in the case before it’s presented at trial, including documents, photographs, videos, exhibits and deposition testimony. The judge added that less restrictive means are either unavailable or insufficient “to cure the prejudice that it likely to result absent entry of this Order.”

But in her Friday order, Jackson ruled attorneys could make “general statements” either supporting Cal Fire’s conclusion PG&E didn’t start the fire or saying evidence will show the utility is liable.

PG&E attorneys did not return phone calls and emails seeking comment Monday.

Plaintiffs’ lawyers Campora and Baghdadi could not be reached for comment.