Case No. CV09-00209 - California Department of Forestry and Fire Protection v. Eunice E. Howell, *et al.*

Tentative Ruling: **Granted.** The motion by the California Department of Forestry and Fire Protection ("Cal Fire") to appoint a discovery referee for all purposes is granted in part.

There currently are four separate discovery motions pending before this Court, raising multiple issues between and/or among eight different parties, as well as issues relating to discovery propounded upon nonparty witnesses and scheduling disputes as to the depositions of 15 other party witnesses. These motions further appear to be part of a continuum, in that additional motions relating to discovery disputes between Cal Fire and defendant Sierra Pacific Industries ("SPI") may be on the horizon. Further, in the motion filed by SPI, an in camera review of 29 documents, and over 4,000 excerpts from documents, culled from the computer drives of nonparty witnesses is sought.

Accordingly, exceptional circumstances exist which necessitate the appointment of a discovery referee herein. *See*, *Taggares v. Superior Court* (1998) 62 Cal.App.4th 94, 105-106 ("exceptional circumstances"); *Code of Civil Procedure Section 639(a)(5)*.

The parties may submit the names of up to three nominees for a referee by or before April 16, 2012, *Code of Civil Procedure Section 640(b)*, after which date a referee shall be designated and appointed by Court order. Each party involved in a discovery matter referred to the referee shall be required to pay its pro-rata share of all fees and costs incurred with respect to such matter, pending any recommendation by the referee as to a reallocation thereof. *Taggares v. Superior Court, supra* 62 Cal.App.4th at 102.

Cal Fire's request that the discovery referee be authorized to monitor, and limit the scope of examination at, depositions, is denied without prejudice to renew, if warranted by future conduct.

Case No. CV09-00209 - California Department of Forestry and Fire Protection v. Eunice E. Howell, *et al.*

Tentative Ruling: **Granted.** The motion by Sierra Pacific Industries ("SPI") to enforce its discovery stipulation with nonparties Edwin and Jennifer Bauer ("Bauers") is granted in part.

The stipulation appears reasonably calculated to protect against disclosure of confidential attorney-client communications and information protected by the Bauers' right to privacy that may be included on disks containing documents and "hits" from their computer drives. The stipulation was entered into by counsel retained by the Bauers to represent them in connection with discovery in these actions, and thus is enforceable.

See, Young v. Rosenthal (1989) 212 Cal.App.3d 96, 115-116 (stipulations as to discovery within authority of counsel of record).

With the resignation of the Bauers' counsel, SPI and the Bauers have reached an impasse with respect to the terms of the stipulation requiring the review of the disks for privileged or confidential matter. Both SPI and the Bauers appear amenable to an in camera review of those disks, and SPI's motion is thus granted as to that review, which shall be conducted by the discovery referee to be appointed in this action for all purposes.

The balance of SPI's motion, and issues raised therein pertaining to the security and disposition of the mirror images (and any copies) of the Bauers' hard drives, the terms of a protective order, if appropriate, and whether this Court should admonish Edwin Bauer regarding contacts with other witnesses herein, are referred to the discovery referee. SPI shall pay all fees and costs relating to the reference of its motion.