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14 Attorneys for Plaintiffs
BARBARA JEAN ZELMER and
15 ROBERT THOMAS ZELMER

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SACRAMENTO**

19 *Coordination Proceeding Special Title*
20 *(CRC 3.550)*

Case No. JCCP 4853

21 **JOINT NOTICE OF MOTION AND**
22 **MOTION FOR ENTRY OF**
23 **STIPULATED JUDGMENT**

24 BUTTE FIRE CASES

*[Stipulated Judgment and [Proposed]
Order Granting Motion For Entry of
Stipulated Judgment filed concurrently
herewith]*

25 DATE: October 26, 2018
26 TIME: 10:00 a.m.
DEPT.: 42
JUDGE: Hon. Allen H. Sumner

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD

2 PLEASE TAKE NOTICE that on October 26, 2018 at 10:00 o'clock a.m., or as soon
3 thereafter as the matter may be heard in Department 42 of the above-entitled court, located at 720
4 9th Street, Sacramento, California, Defendants Pacific Gas and Electric Company and PG&E
5 Corporation (collectively, "PG&E") and Plaintiffs Barbara Jean Zelmer and Robert Thomas Zelmer
6 (collectively, "Zelmers") will, and hereby do, move for an order entering the Stipulated Judgment
7 between the Zelmers, on the one hand, and PG&E, on the other hand.

8 This Motion is made pursuant to this Court's August 27, 2018 Order After Hearing on Case
9 Management Conference #21 requiring the parties to file a noticed motion prior to the Court entering
10 any stipulated final judgment between PG&E and the Zelmers.

11 This Motion is based on this Notice of Motion and Motion; the concurrently-filed Stipulated
12 Judgment; all other pleadings and papers on file in this action; and such other evidence as may be
13 presented at or before the hearing.

14
15 DATED: October 1, 2018

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

16
17
18 By 

19 Kenneth R. Chiate
20 Christopher Tayback
21 Kristen Bird
22 Jeffrey N. Boozell
23 QUINN EMANUEL URQUHART &
24 SULLIVAN, LLP

25
26
27
28 DATED: October 1, 2018

By 

Manuel Corrales
Attorney for the Zelmers

1 MOTION FOR ENTRY OF STIPULATED JUDGMENT

2 PG&E moves for entry of the concurrently-filed Stipulated Judgment pursuant to this
3 Court's August 27, 2018 Order After Hearing on Case Management Conference #21. In that Order,
4 the Court directed PG&E and the Zelmers to file a noticed motion requesting that the Court enter
5 any stipulated final judgment between the parties. Although the Zelmers, who were previously
6 represented by Gerald Singleton, were at one time part of a binding mediation protocol entered into
7 with PG&E, they opted out of that protocol prior to executing the Stipulated Judgment. *See* Ex. A
8 (Zelmers' Notice of Decision to Opt Out of the Binding Mediation Protocol).

9 California law permits a party who has received an "adverse determination of a critical issue"
10 to forego the remainder of the trial court proceedings and enter a stipulated judgment with the
11 opposing party in order to facilitate an immediate appeal. *See Bldg. Indus. Ass'n. v. City of*
12 *Camarillo*, 41 Cal. 3d 810, 817 (1986). The concurrently-filed Stipulated Judgment was agreed
13 upon by the parties in order to facilitate an appeal of this Court's June 22, 2017 order denying
14 PG&E's Motion for a Legal Determination of Inverse Condemnation Liability and granting
15 Plaintiffs' Motion for Determination of Defendant Pacific Gas and PG&E's Liability for Inverse
16 Condemnation (CCP §1260.040) and this Court's May 1, 2018 order denying PG&E's Renewed
17 Motion for a Legal Determination of Inverse Condemnation Liability. In those orders, this Court
18 ruled that PG&E was liable for inverse condemnation in this case, a clear "adverse determination of
19 a critical issue."

20 The Stipulated Judgment, which specifically reserves PG&E's right to appeal those orders,
21 will be final and appealable because it disposes of all of the causes of action in this case. All the
22 Zelmers' causes of action against PG&E, with the exception of inverse condemnation, have been
23 settled, and a request for dismissal with prejudice has been filed as to those settled claims. The
24 Stipulated Judgment resolves the last remaining claim, subject only to PG&E's right to appeal. The
25 parties have not reserved the right to return to trial after the appeal is decided. The Stipulated
26 Judgment is therefore final and appealable because it "fully resolve[s] all claims in the underlying
27 litigation." *Hensley v. San Diego Gas & Elec. Co.*, 7 Cal. App. 5th 1337, 1344 (2017), *reh'g*
28 *denied* (Feb. 17, 2017), *review denied* (May 17, 2017).

1 In addition, it is well settled that where the parties to a multi-party suit have distinct interests,
2 such as in a coordinated proceeding like this, the existence of similar claims made by other plaintiffs
3 will not prevent a judgment entered with respect to any single plaintiff from being treated as final.
4 *See Morehart v. Cnty. of Santa Barbara*, 7 Cal. 4th 725, 740 (1994), *as modified* (May 26, 1994)
5 (citing *Schonfeld v. City of Vallejo*, 50 Cal. App. 3d 401, 417 (1975)) (“Judgment in a multiparty
6 case determining all issues as to one or more parties may be treated as final even though issues
7 remain to be resolved between other parties.”); *Justus v. Atchison*, 19 Cal. 3d 564, 568 (1977) (“It
8 is settled that the rule requiring dismissal [of an appeal] does not apply when the case involves
9 multiple parties and a judgment is entered which leaves no issue to be determined as to one party.”),
10 *overruled on other grounds by Ochoa v. Superior Court*, 39 Cal. 3d 159 (1985). As such, the fact
11 that there are other plaintiffs who will remain active in this proceeding will not prevent the proposed
12 stipulated judgment from being immediately appealable once entered. *See, e.g., Katz v. Feldman*,
13 23 Cal. App. 3d 500, 503 n.2 (1972) (“Even though the case is left open as between [the defendant]
14 and the other plaintiffs . . . the judgment against Katz is final as to him. That is all that the so-called
15 ‘final judgment’ rule requires.”); *Justus*, 19 Cal. 3d at 568 (Appeal was proper because the
16 judgments, although not resolving the entire complaint, “disposed in each case of all the causes of
17 action in which the husbands are plaintiffs. It is irrelevant that the wives [whose claims were not
18 resolved] joined with the husbands as plaintiffs in one of these causes of action.”).

19 The parties therefore request that this Court approve the jointly-proposed Stipulated
20 Judgment and enter judgment as follows, subject to PG&E’s right to appeal this Court’s inverse
21 condemnation rulings: (1) the Zelmers shall take nothing on their claims against PG&E for
22 negligence, trespass, public nuisance, private nuisance, negligence per se, premises liability,
23 violation of California Public Utilities Code § 2106, and violation of California Health and Safety
24 Code § 130 (which have already been dismissed with prejudice, leaving inverse condemnation as
25 the Zelmers’ sole remaining cause of action); and (2) awarding the Zelmers \$850,000, inclusive of
26 fees and costs, on the their First Cause of Action for Inverse Condemnation in their Complaint
27 (Fourth Cause of Action for Inverse Condemnation in their Adoption Complaint).

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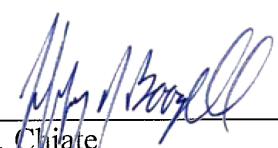
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PRAYER

WHEREFORE, the parties pray that the Court grant this motion in its entirety and enter judgment pursuant to the terms of the concurrently-filed Stipulated Judgment.

DATED: October 1, 2018

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

By 
Kenneth R. Chiate
Christopher Tayback
Kristen Bird
Jeffrey N. Boozell
QUINN EMANUEL URQUHART &
SULLIVAN, LLP

DATED: October 1, 2018

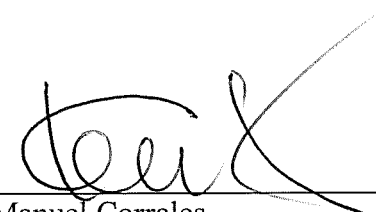
By 
Manuel Corrales
Attorney for the Zelmers

EXHIBIT A

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Counsel for Plaintiffs Barbara Zelmer
And Robert Zelmer

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

Coordination Proceeding
Special Title (CRC 3.550)
BUTTE FIRE CASES

This Document Relates to:

BARBARA ZELMER, ROBERT
ZELMER,

Plaintiffs,

vs.

PACIFIC GAS & ELECTRIC COMPANY,
et al.,

Defendants.

Assigned to the Honorable Allen H. Sumner
Department No. 42

CASE NO. JCCP 4853

**NOTICE OF DECISION TO OPT OUT
OF THE BINDING MEDIATION
PROTOCOL**

Section I, subsection C, of the settlement agreement between the two parties states as follows:


The Zelmers are signatories to a "Binding Mediation Protocol," whereby their claims would be resolved by binding mediation rather than litigation. However, the Zelmers may opt out of the Protocol pursuant to Paragraphs 6 and 7 of that document by providing written notice to PG&E. The Zelmers have provided written notice to PG&E of their decision to opt out of the Protocol prior to signing this agreement.

Pursuant to the parties' settlement agreement, the Zelmers hereby state that they are exercising their right to "opt out" of the Binding Mediation Protocol between the two parties and wish to have the stipulated judgment entered.

Dated: 8-30-18 
Plaintiff Barbara Zelmer

Dated: 9-4-18 
Plaintiff Robert Zelmer

APPROVED AS TO FORM:

Dated: 9/4/2018 
Manuel Corrales, Jr.
Attorney for Plaintiffs Barbara Zelmer and Robert Zelmer