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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
17 **COUNTY OF CONTRA COSTA**

19 COORDINATION PROCEEDING  
20 SPECIAL TITLE (RULE 3.550)

22 PARAQUAT CASES

**CASE NO. JCCP 5031**  
**CIVMS5031**

Hon. Edward G. Weil, Coordination Judge  
(Department 39)

**DEFENDANTS' FURTHER CASE**  
**MANAGEMENT CONFERENCE**  
**STATEMENT**

Further CMC Date: February 15, 2022  
Further CMC Time: 9:00 a.m.

1       **I.       DEFENDANTS’ POSITIONS**

2               Defendants’ position on bellwether criteria, a bellwether protocol, and the case schedule  
3 are as follows.

4               **A.       Bellwether Analysis and Criteria**

5                       **1.       Analysis of Plaintiff Pool Given Current Information**

6               As of this filing, 44 plaintiffs have served Plaintiff Fact Sheets. Yet nearly all are  
7 deficient in some way, with the common issues including a failure to answer all questions, vague  
8 and/or cursory responses, repeated statements that “Plaintiff will supplement” missing or  
9 incomplete answers, and missing or incomplete authorizations for records. In fact, just one  
10 plaintiff has served complete authorizations, and that was only after receiving a deficiency letter  
11 from Defendants.<sup>1</sup> Only twenty-five plaintiffs (just over half) have served medical records,  
12 though they are often incomplete, and it is not clear why certain records, and not others, were  
13 provided. Indeed, many of the records that have been provided are from primary care physicians  
14 and do not address the plaintiff’s Parkinson’s disease or parkinsonism. (Of course, to ensure that  
15 they have complete and accurate records, Defendants want and need to request *all* records for *all*  
16 plaintiffs directly from medical providers.) In short, Defendants still need a lot of information.

17               Apart from that, much of the information Defendants have received appears dubious.  
18 Plaintiff Cezario is a good example. In moving for preference, Plaintiffs’ counsel represented  
19 that Cezario “ha[d] undergone rigorous vetting to ensure that his case is representative, [and] that  
20 he has genuine and credible evidence of paraquat exposure . . . .” (Memo Ps & As in Supp. Pl.  
21 Cezario Mot. for Preference at 9.) After this “rigorous vetting,” Cezario alleged two different  
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23               <sup>1</sup> Because of this lack of authorizations, Defendants cannot yet request the medical records  
24 they need. Entering Defendants’ proposed Case Management Order, which was discussed at the  
25 last CMC and addresses authorization deficiencies, will help to alleviate this problem. One  
26 particularly prevalent issue is nearly every plaintiff’s failure to identify the permissible time  
27 period for the authorization as requested at the top of each authorization. To address this,  
28 Defendants proposed a stipulation to clarify that the Case Management Order regarding  
authorization deficiencies shall allow Defendants’ authorized third-party litigation vendor,  
Litigation Management, Inc. (LMI), to fill in that missing information with the plaintiff’s date of  
birth, and that LMI may use each otherwise completed authorization to request records from the  
plaintiff’s date of birth to the present. As of this filing, Defendants had not yet heard back on the  
proposed stipulation.

1 periods of paraquat exposure in his PFS. In section XI, he alleged exposure from 1966–1985 on  
2 school grounds and 1999–2000 at a country club, and in sections IX and XIII, he alleged  
3 exposure from 1966–1985 and 1999/2000–2009, again on school grounds and at a country club.  
4 (As Defendants described in opposing Cezario’s preference motion, neither school grounds nor  
5 country clubs are permissible locations for paraquat use.) Plaintiffs’ consolidated reply in support  
6 of their preference motions confused the issue even further, as they claimed that “Cezario  
7 identifie[d] 19 years of exposure” and was representative because he “was exposed in the 1960s,  
8 1970s, and 2000s.” (Reply in Supp. Pls.’ Motion for Preference at 3–4.) Read together,  
9 Cezario’s “rigorously vetted” contentions in the PFS and reply did not make sense: 19 years  
10 would only cover a portion of his 1966–1985 alleged exposure window, and if he was actually  
11 exposed in the 1980s and 1990s as the PFS claimed, it is unclear why those decades were not  
12 listed in the reply brief.

13 Cezario served an amended PFS on February 9, the day before the scheduled argument on  
14 the preference motion. In this amended PFS, Cezario completely excised any claim that he used  
15 paraquat during his country club job. Instead, he now claimed that he only used paraquat  
16 between 1966–1985 at the Richmond Unified School District, and then only “around the fence  
17 line or other areas such as fire hydrants or pathways . . . not sprayed directly on any school  
18 building or playground.” (Notably, such use would have likely been illegal even in 1966  
19 according to the the paraquat label.) These sorts of uncertain claims—coming, in this example, in  
20 a case that apparently received careful attention from Plaintiffs’ counsel—and general dearth of  
21 information demonstrate the difficulty Defendants have in assessing the plaintiff pool.<sup>2</sup>

22 Based on what Defendants have received, though, they offer the following analysis for the  
23 Court’s consideration.

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25 <sup>2</sup> In moving for preference on behalf of Plaintiffs Cezario, Dooley, and Tenbrink,  
26 Plaintiffs’ counsel touted their purportedly diligent compliance with Case Management Order No.  
27 2 (despite leaving Defendants out of the process). But that process resulted in the selection of a  
28 preference motion on behalf of one plaintiff (Cezario) who had to serve a materially different PFS  
as described above and another (Dooley) who initially alleged exposure to paraquat beginning in  
1961—years before paraquat was even approved for use in the United States—before serving an  
amended PFS of his own to allege paraquat exposure beginning in 1966.

1                                   **a)      Length of Exposure**

2            The earliest date of alleged exposure is 1940 (Moon, who somewhat perplexingly was  
3 born the same year). Paraquat was not approved for use in the United States until 1964, however,  
4 and was not approved for widespread use until 1966. The latest date of exposure is 2021 (Reid  
5 and Tenbrink). The periods of exposure vary widely. At the high end, one plaintiff alleges more  
6 than 50 years of exposure (Reid) and others allege more than 40 (Dooley and Isaak, among  
7 others). At the low end, a few plaintiffs allege only three years of exposure (Harker, Ortega, and  
8 Swoverland), two allege two years (Dunn and Schiffens), and one alleges parts of two years  
9 (Lether). Thus, it is difficult to define a typical duration of exposure. Indeed, dates of exposure  
10 covering anywhere from six to 30 years are common among the remaining plaintiffs.

11                                   **b)      Frequency of Exposure**

12            Even if there were an ordinary period of exposure, it would still be impossible to  
13 determine the average total exposure given the information available. That is because very few  
14 plaintiffs provide any information regarding the frequency of exposure. Even though the PFS  
15 asks for the “Date of Use” for “each time [plaintiffs] used, handled, applied, or disposed of  
16 Paraquat,” as well as the “date and location” of “each time [plaintiffs] used, handled, disposed of,  
17 or allege [they] were exposed to Paraquat,” most plaintiffs merely provide a range of years, as  
18 discussed above, with no additional details. Where details are provided, they again vary widely.  
19 At the highest end, Plaintiff Tenbrink (another of the recent preference plaintiffs) claims to have  
20 sprayed paraquat 75 times per year—a number that seems impossible given that paraquat can  
21 only legally be applied five or fewer times per year in fruit or nut orchards, where she allegedly  
22 used it.<sup>3</sup> Plaintiff Brown says he used it once per week. Plaintiff Harker says once per month.  
23 Plaintiff Reid says eight times per year. Plaintiffs Ortega and Ritter say twice per year. And  
24 Plaintiffs Dunn and Swoverland say once per year. It is not clear, without much more  
25 information from many more plaintiffs, what constitutes representative frequency of exposure  
26 and, therefore, representative total exposure.

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28                                   <sup>3</sup> See [https://www.syngenta-us.com/current-label/gramoxone\\_sl\\_2.0](https://www.syngenta-us.com/current-label/gramoxone_sl_2.0) at 44-45.

1                                    **c)      Type of Use and Method of Exposure**

2            According to the PFS responses, the vast majority of plaintiffs used paraquat in an  
3 agricultural setting, typically on a farm and sometimes in an orchard.<sup>4</sup> It appears that  
4 approximately two-thirds to three-quarters of that group worked full time on the farm (*e.g.*,  
5 Crosby, Esparza, and Locey), and many owned the farm themselves (*e.g.*, Chandler, Dooley, and  
6 Isaak). The rest were commercial applicators who applied paraquat to the farm or orchard (*e.g.*,  
7 Brown, Cherry, and Lether). A few plaintiffs indicate that they were licensed applicators, but  
8 details are scant—while Plaintiff Locey provides a full license number, others say that they were  
9 trained but do not remember when or by whom (*e.g.*, Dunn), simply assert, without more, that  
10 they complied with all training and certification requirements through time (*e.g.*, Donaldson), or  
11 do not remember (*e.g.*, Peelman).

12            At least seven plaintiffs state that they used paraquat in non-agricultural settings,  
13 including at a horse ranch (Aguiar); on school grounds (Cezario); at a community college  
14 (Holland); on a golf course (Clark and Harker); near highways (Amkraut); or around the house  
15 (Borrelli, who used it on the farm too).

16            Most plaintiffs assert that they were exposed through direct application of paraquat,  
17 typically via a handheld sprayer (19 plaintiffs), backpack sprayer (five plaintiffs), tractor sprayer  
18 (19 plaintiffs), or some combination of the three.<sup>5</sup> Six plaintiffs claim exposure via airplane  
19 (Brown, Lether, Moon, Owens, Schiffers, and Vanoy). One plaintiff asserts exposure through  
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21            <sup>4</sup> The PFS responses are often far from clear with respect to the setting and manner in  
22 which paraquat was used and plaintiff was exposed. Piecing together Plaintiff Dunn's  
23 submissions, for example, it appears that he twice sprayed paraquat on beans (once in 1981 and  
24 once in 1982) using a truck sprayer while employed by USS Agrochemicals. He does not say  
25 anything about where those beans—or USS Agrochemicals—were located. As another example,  
26 Plaintiff Walker identifies farms in California and Oregon but does not say when he worked at  
27 those farms or if that work even corresponds to his dates of exposure. (He provided no  
28 employment details for the period of his alleged exposure.) He says he was exposed to paraquat  
but also that he did not spray paraquat—only that he helped his uncle in some way. At this point,  
Defendants are left to guess as to almost every detail of his exposure. Given these examples and  
more, Defendants are leery of attempting to provide exact numbers for any particular category.

<sup>5</sup> The numbers in parentheses in this sentence do not add up to the total number of  
plaintiffs who used sprayers, because some plaintiffs used more than one type of sprayer, some  
did not specify which type of sprayer they used, and some did not specify whether they used a  
sprayer at all.

1 handling and transporting paraquat (Hanes).

2 By Defendants' count, a handful of plaintiffs claim indirect exposure<sup>6</sup>: two who were  
3 exposed when they picked plants that someone else had sprayed with paraquat (De La Vega and  
4 Ledezma); one who alleges exposure from living near (but not on) a farm where paraquat was  
5 used (Morris); one who was an "aerial flagger" for an unnamed employer and who worked in  
6 some unspecified fashion with a plane that apparently applied paraquat (Schiffers); and one who  
7 was allegedly exposed without directly applying paraquat but who provides no details regarding  
8 that exposure (Walker).

9 **d) Other Chemical Use/Exposure**

10 Plaintiffs differ in their claims of other chemical use. One plaintiff lists out 15 other  
11 chemicals used since 1974 (Locey). About a third of the group acknowledges using Round Up  
12 (*e.g.*, Amaya, Clausen, Dooley, and Vanoy) or some other non-paraquat herbicide (*e.g.*, Hanes).  
13 Other plaintiffs say they used non-paraquat herbicides but do not specify or remember what those  
14 products were (*e.g.*, Aguiar and Borrelli). Some plaintiffs say they do not remember if they used  
15 other chemicals at all (Martinez) and some claim never to have used a chemical other than  
16 paraquat (*e.g.*, Amkraut, Cezario, Isaak, and Walker). Around half failed to answer the question  
17 entirely (*e.g.*, Lombardo, Phillips, and Tenbrink). And no plaintiff states the frequency of other  
18 chemical use—the best anyone offers is a range of years, with nothing more.

19 **e) Current Age**

20 John Walker is the youngest plaintiff, at 53. Katherine Crosby is the oldest, at 93. Thirty-  
21 one of the 44 plaintiffs for whom PFSs have been served are 70 or older.

22 **f) Age at Diagnosis and Stage of Disease**

23 At present, 25 plaintiffs have provided some subset of medical records. As noted above,  
24 many do not relate directly to the plaintiff's Parkinson's disease or parkinsonism, however. Thus,  
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26 <sup>6</sup> Once again, it is impossible to provide exact numbers based on the PFS responses  
27 received so far. Along with the examples provided in this paragraph, Plaintiff Hanes (as noted  
28 above) says he was exposed when he "handled" and "transported"—but did not spray—paraquat  
as an "Applicator Supervisor." Working with this minimal information, reasonable minds could  
differ as to whether that constitutes direct or indirect exposure.

Defendants cannot evaluate or compare the age at diagnosis, stage of disease, or overall health status for the majority of plaintiffs. Using the information Defendants do have, it appears that the youngest age of Parkinson's diagnosis is approximately 45 (Esparza) and the oldest is 83 (Isaak). Much more information is needed.

**g) Family History**

Only one plaintiff (Amaya) identifies in his PFS a family history of Parkinson's disease or another disease of the brain, spine, or nerves. Every other plaintiff states that he or she has no such family history. But Defendants have not had the opportunity to review the complete medical records of those plaintiffs to determine if those statements are borne out in the records. Defendants expect to identify more family history of Parkinson's or similar disease noted in the medical records—recently served medical records for Plaintiff Donaldson, for example, indicate a family history of dementia despite no mention of this history in the PFS.

**2. Criteria for Consideration**

Based on their review of the materials provided, Defendants identify the following factors as appropriate criteria for bellwether status.

**a) Days of Paraquat Use (Length and Frequency of Exposure)**

A threshold question in every case is how, when, and to what degree the plaintiff used or was exposed to paraquat. Yet that information remains missing in many cases. Thus, the best next step in the bellwether selection process would be for all plaintiffs to submit additional details regarding the specifics of their paraquat use so Defendants can determine the total number of days each plaintiff alleges to have used paraquat. Absent that, Defendants believe bellwether cases should not include plaintiffs with periods of exposure at the lowest or highest ends of the duration or frequency spectrums. Nor should they involve alleged exposure before 1964, given that paraquat was not approved for use in the United States until that year.

**b) Method of Exposure, Including Lawful Use**

Paraquat is typically used on farms and in orchards. Indeed, as previously discussed, paraquat is not to be used at schools or golf courses—a limitation that has been in place for

1 decades. While paraquat use in the United States is almost entirely done by tractor applications,  
2 among the plaintiffs here it appears to have been typically applied using a hand-held, backpack,  
3 or tractor sprayer. It is only occasionally applied by airplane. Given this, a representative case  
4 suitable for bellwether status should involve a plaintiff who applied paraquat in an agricultural  
5 setting using a tractor sprayer, hand sprayer, backpack sprayer, or some combination of the three.

6 **c) Other Chemical Use/Exposure**

7 As discussed above, it is nearly impossible at this point to know the extent of other  
8 chemical and pesticide use among the plaintiff pool. Yet this is important in choosing a  
9 bellwether plaintiff who is most representative of the pool. It might help in identifying an  
10 appropriate agricultural plaintiff, for example, as one might expect to see other chemicals and  
11 pesticides used alongside and in conjunction with paraquat. Or if plaintiffs and their experts plan  
12 to assert a connection between pesticide use generally and Parkinson's disease, the first trial  
13 should accurately represent the typical breadth and extent of all pesticide use.

14 **d) Stage of Disease, Including Confirmation of Parkinson's**  
15 **Diagnosis**

16 Defendants know very little about the status of most plaintiffs' health. The PFSs do not  
17 cover the subject, and Defendants have received only partial medical records from a portion of  
18 the plaintiffs. But this information is undoubtedly a critical consideration. At minimum, the  
19 parties and Court should know whether early-stage, mid-stage, or late-stage Parkinson's disease is  
20 most representative of the plaintiff pool, or whether a different type of parkinsonism is in fact  
21 most common. The Court recognized that the Parkinson's-parkinsonism divide might be "one of  
22 the big issues that is going to need to be addressed before people can properly evaluate the rest of  
23 their cases." (Tr. of Hearing on Mot. for Trial Preference at 36 (Sept. 30, 2021).) As an  
24 immediate next step, each plaintiff should notify Defendants regarding the basics of his or her  
25 disease, including date of initial diagnosis and precise information regarding current diagnosis.

26 **e) Family History**

27 While PFS responses indicate that only one plaintiff has a family history of neurological  
28 disease, Defendants expect that complete medical records might indicate otherwise.



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1 plaintiff pool as a whole, or a significant portion of the plaintiff pool, using criteria as established  
2 by the Court, including length and frequency of exposure; method of use, including lawful use;  
3 other chemical use; stage of disease; family history of Parkinson's or similar disease; and age.  
4 Eligibility for trial preference should also be a consideration. Neither side shall simply attempt to  
5 select the cases most favorable to its position.

6 4. After this assessment, the Parties shall meet and confer to see if they can reach  
7 agreement on any bellwether plaintiffs. If the Parties are able to reach agreement on at least four  
8 bellwether plaintiffs, they shall submit those selections to the Court by **April 8, 2022**. This  
9 submission shall include a brief summary of the selected Plaintiff(s), and a joint explanation of  
10 the Parties' rationale for their selection.

11 5. If the Parties are able to reach agreement pursuant to Paragraph 4, the Court shall  
12 assess the joint bellwether selections and determine which cases shall be tried, and in what order.

13 6. If any of the Parties' joint bellwether selections pursuant to Paragraph 4 are  
14 voluntarily dismissed, the parties shall meet and confer to select a replacement bellwether  
15 plaintiff, and submit their selection to the Court within fourteen days. If the parties are unable to  
16 reach agreement on a replacement, each side shall select a single potential replacement plaintiff  
17 using the same criteria of representativeness and submit that selection to the Court accompanied  
18 by an explanation of 500 words or less as to why that selection is a suitable bellwether. That  
19 submission must be made within fourteen days of the voluntary dismissal.

20 7. If the Parties are unable to reach agreement pursuant to Paragraph 4, each side  
21 (i.e., Plaintiffs and Defendants) shall select four bellwether plaintiffs for the Court's  
22 consideration. These selections shall be made by **April 22, 2022**, and shall include a brief  
23 explanation of no more than 2000 words total for why those four plaintiffs are most representative  
24 of the pool as a whole and therefore suitable bellwethers.

25 8. Following those selections, each side shall be entitled to strike one bellwether  
26 plaintiff from the other side's selections, and submit a brief of no more than 2000 words  
27 explaining its position on why the opposing side's selections are not suitable bellwethers under  
28

the representativeness criteria. Those briefs shall be submitted by **May 6, 2022**.

9. If any of the Parties' respective bellwether selections are voluntarily dismissed, the party who originally selected that bellwether shall have the opportunity to select a new bellwether plaintiff. That selection must be done within fourteen days of the dismissal, and shall be accompanied by an explanation of 500 words or less as to why that selection is a suitable bellwether.

10. Following the submission of the parties' positions pursuant to Paragraphs 7 and 8, the Court shall assess the bellwether selections and determine which cases shall be tried, and in what order.

### **C. Case Schedule**

Defendants propose the case schedule outlined below. It generally tracks the schedule most recently contemplated in the MDL and allows the parties and Court to efficiently coordinate the actions. It also avoids leapfrogging the MDL with respect to the timing of expert discovery, as addressed by the Court at the last CMC. Defendants expect, as the Court suspected, that both sides will use the same, or a substantially similar, slate of experts in this action and the MDL. As also addressed at the last CMC, plaintiffs' counsel in the MDL have taken the position that a November 2022 trial date was not tenable. This schedule alleviates those concerns and gives the parties certainty and structure as they prepare complex cases for trial.

Action	Defendants' Proposal	Current Proposed MDL Dates
Final determination of bellwether cases	5/20/2022	
Close of fact discovery for bellwether cases	8/15/2022	
Plaintiffs' expert disclosures	7/15/2022	5/15/2022
Depositions of Plaintiffs' experts	7/29/2022 – 9/2/2022	
Defendants' expert disclosures	8/15/2022	6/15/2022
Depositions of Defendants' experts	9/2/2022 – 10/7/2022	*Current proposed MDL schedule contemplates completion of all expert depositions by 9/2/2022
MSJ/Daubert/Sargon motions due	12/2/2022	10/5/2022

1	Opposition/replies to MSJ/ <i>Daubert</i> / <i>Sargon</i> motions due	Per code	11/2/2022, 1/16/2022
2	MSJ/ <i>Daubert</i> / <i>Sargon</i> hearings	2/24/2023	12/5/2022
3	MILs due	3/24/2023	1/13/2023
4	Opposition to MILs due (no replies)	4/7/2023	1/27/2023
5	MILs hearing	4/21/2023	2/17/2023
6	Final Pretrial Conference	5/8/2023	2/24/2023
7	Trial	5/22/2023	3/13/2023

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Dated: February 14, 2022

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**PROOF OF SERVICE BY E-MAIL**

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: 555 South Flower Street, Fiftieth Floor, Los Angeles, California 90012.

On February 14, 2022, I served a copy of the within document(s):

**DEFENDANTS' FURTHER CASE MANAGEMENT CONFERENCE STATEMENT**

**BY ELECTRONIC SERVICE:** by electronically serving the document(s) described above via File & ServeXpress on the recipients designated on the Transaction Receipt that is located on the File & ServeXpress website and as set forth below:

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 14, 2022, at Los Angeles, California.

  
Norma Martinez