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

**COORDINATION PROCEEDING
SPECIAL TITLE (RULE 3.550)**

PARAQUAT CASES

This document relates to:
All Coordinated Actions

Case No. JCCP 5031
CIVMS 5031

**SUPPLEMENTAL BRIEF
REGARDING THE
APPROPRIATENESS OF USING
THE PREFERENCE CASES FOR
BELLWETHER TRIALS**

**Assigned for All Purposes to:
Hon. Edward G. Weil, Dept. 39**

I. INTRODUCTION

The Court, on February 10, 2022, ruled that Charlene Tenbrink, Roland Dooley, and Larry Cezario (the “Preference Cases”) meet the criteria for preference under Code of Civil Procedure rule 36. However, the Court expressed the need for information regarding the Preference Cases’ appropriateness as bellwether trials, as well as the preference committee’s assessment of those factors.

This supplemental brief is submitted by plaintiffs’ counsel in the Preference Cases, and is co-signed by Amy Eskin, Majed Nachawati, Alicia O’Neill, and Michael

ELECTRONICALLY

FILED

2/14/2022

**K. BIEKER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA - MARTINEZ
A.Stewart, DEPUTY CLERK**

1 Kelly, all of whom are members of the preference committee. Steven Brady, also a
2 member of the Preference Committee, and all counsel for the Isaak plaintiffs, have
3 expressed their disagreement with the Preference Protocol and committee
4 conclusions and have filed a petition to the California Supreme Court. The
5 undersigned agree that the three Preference Cases are appropriate for bellwether
6 trials because they are representative of the cases in this coordinated proceeding. In
7 particular, they are representative in the following respects: (1) exposure to
8 Paraquat, (2) Parkinson’s disease diagnosis, and (3) damages, disease stage, and
9 demographics. Therefore, trials in these three cases can reasonably be expected to
10 facilitate resolution of the consolidated cases.

11 **II. PERTINENT FACTS**

12 The preference committee, at the Court’s direction, met on a number of
13 occasions to discuss the Preference Cases. (Declaration of Khaldoun A. Baghdadi
14 [“Baghdadi Decl.”] at ¶ 2.) During these meetings, the committee members evaluated
15 not only preference factors but also the appropriateness of the proffered preference
16 cases as bellwether selections. (*Id.*) The bellwether evaluation focused primarily on
17 (1) verifiable and substantial exposure to Paraquat, (2) confirmation of the diagnosis
18 of Parkinson’s disease, as opposed to an atypical parkinsonism, and (3) stage of the
19 disease. (*Id.*) After consideration of these factors, the committee concurred that these
20 cases were appropriate as bellwether selection. (*Id.*)

21 **III. ARGUMENT**

22 **A. Applicable Standard for Bellwether Selection**

23 The coordination trial judge is empowered to manage all steps of pretrial,
24 discovery and trial proceedings to “expedite the just determination of the coordinated
25 actions without delay.” (California Rules of Court rule 3.541.)

26 Bellwether trials are essential to facilitate a global settlement of claims, which
27 is the goal of a coordinated proceeding. If selected effectively, bellwether cases can
28 inform the court and parties regarding resolution of the rest of the proceeding. (See

1 *Bellwether Trials*, California Deskbook on Complex Civil Litigation Management,
2 Judicial Council of California, Sec. 4.04 (2021)). This is because the knowledge gained
3 during bellwether trials allows meaningful negotiations to take place in light of real-
4 world evaluations of the litigation by multiple juries. (*Aggregate Litigation*, The
5 American Law Institute Principles of the Law, §2.02 (2010).)

6 Thus, the Court and parties should aim to select bellwether cases
7 representative of the plaintiff pool, by examining factors common to all coordinated
8 cases. (*Bellwether Trials*, California Deskbook on Complex Civil Litigation
9 Management, Judicial Council of California, Sec. 4.04 (2021)). Indeed, the term
10 “bellwether” finds its origin in the shepherding practice of placing a large bell on a
11 male sheep, known as a “wether,” which leads the flock. In litigation too, the right
12 bellwether is one that others will follow. (*Bellwether Civil Jury Trial Instructions*,
13 California Civil Jury Inst. Companion Handbook Sec. 1:11 (2021)).

14 **B. The Preference Cases Are Representative, and Therefore Are**
15 **Appropriate Bellwether Selections**

16 Following a preliminary review of the submitted PFS forms, the undersigned
17 respectfully submit that the Preference Cases are representative, and are
18 appropriate bellwethers. The undersigned are not aware of any respects in which the
19 Preference Cases are materially and significantly non-representative. (Baghdadi
20 Decl. ¶ 4.)

21 For the Court’s reference, an analytical summary of the first thirty-three
22 Plaintiff Fact Sheets is attached. (See Baghdadi Decl. at ¶ 3 & Exhibit 1 [“Exh. 1-PFS
23 Analysis”].) Counsel will be prepared to address the newest eleven plaintiff fact
24 sheets at the hearing, but it appears that the newest plaintiffs’ circumstances are
25 generally consistent with the first thirty-three. (Baghdadi Decl. ¶ 3.) All references to
26 “plaintiffs” below are to the first thirty-three Plaintiff Fact Sheets.

27 ////

28 ////

1 **1. Exposure to Paraquat**

2 **(a) The fact of exposure**

3 The scientific literature supports a latency period between paraquat exposure
4 and the onset of Parkinson’s disease that can be multiple decades. (Baghdadi Decl. at
5 ¶ 5.) Based on counsel’s experience working with plaintiffs in this action, the
6 majority of plaintiffs developed paraquat a decade or more after their paraquat
7 exposure. (*Id.*) In counsel’s experience, it is typical that these plaintiffs, almost all of
8 whom are long since retired, no longer have receipts or other work records to
9 document the purchase or use of paraquat. (*Id.*) Further, many of the plaintiffs are in
10 their 70s or 80s and suffer from memory loss, a known side effect of Parkinson’s
11 disease. (*Id.*) Thus, it is expected that the genuineness and extent of exposure will be
12 a disputed factual issue in these cases. (*Id.*) The fact that such a dispute exists in,
13 e.g., Cezario, does not undermine but rather supports the representativeness of that
14 case. (*Id.*)

15 Nonetheless, all three Preference Cases are submitted by plaintiffs who can
16 substantiate their exposure to Paraquat.

- 17 • Mr. Cezario can attest to his own use of Paraquat, and to identify the
18 method of application, and at least one co-worker who witnessed his use
19 of Paraquat. His amended Plaintiff Fact Sheet clarified the duration of
 his exposure. (Baghdadi Decl. at ¶ 6 & Exhibit 2 [“Exh. 2 - Cezario
 PFS”], at Sections X and XI.)
- 20 • Mr. Dooley can identify his Paraquat supplier, the specific individual
21 from whom he purchased Paraquat, the size of container in which he
22 obtained Paraquat, the method of application, and a witness to his use
 of Paraquat. (*Id.* at ¶ 7 & Exhibit 3 [“Exh. 3 – Dooley PFS”] at pp. 13-
 18.)
- 23 • Ms. Tenbrink can describe her Paraquat supplier, the method of
24 application of Paraquat, and was able to identify two witnesses to her
25 Paraquat use, and she produced her applicator’s license. (*Id.* at ¶ 8 &
 Exhibit 4 [“Exh. 4 – Tenbrink PFS”] at pp. 3-6.)

26 **(b) The decades during which exposure occurred**

27 The general time period during which exposure occurred is relevant, given that
28 the labeling, instructions, and prevailing protective equipment changed over time. In

1 addition, the time period during which exposure occurred will have a bearing on the
2 state of the defendants' knowledge and research at that point in time. (Baghdadi
3 Decl. at ¶ 9.)

4 The majority of plaintiffs in this coordinated action identify exposure for one or
5 more decades between the 1960s and the 2000s. (It appears only four plaintiffs had
6 exposure after 2010.) (*Id.* & Exhibit 1 at p. 3.)

7 The time periods of exposure for the Preference Plaintiffs are representative
8 because:

- 9 • Plaintiff Dooley was exposed to Paraquat from the 1960s through the
10 2000s.
- 11 • Plaintiff Cezario was exposed in the 1960s, 1970s, and 2000s.
- 12 • Plaintiff Tenbrink was exposed to Paraquat from 1993 to 2000.

13 (Baghdadi Decl. ¶10 & Exhibits 2-4.)

14 Thus, Dooley and Cezario are representative of the early and late exposures,
15 whereas Tenbrink is representative of the 8 out of 33 plaintiffs (27% of all plaintiffs)
16 who identified relatively late exposures to Paraquat (exposed only in and after the
17 1980s). (*Id.* & Exhibit 1 at p. 8.)

18 (c) Number of Years of Exposure

19 The number of years during which a plaintiff worked with Paraquat is a
20 rough, not perfect, indication of exposure. (Baghdadi Decl. at ¶ 11.) There was
21 insufficient data in the plaintiff fact sheets to calculate the number of days of
22 exposure for each plaintiff. (*Id.*) Thus, looking at exposure in terms of years, the
23 Preference Plaintiffs appear to be roughly representative of all plaintiffs.

- 24 • Plaintiff Cezario identifies 19 years of exposure,
- 25 • Plaintiff Dooley identifies 43, and
- 26 • Plaintiff Tenbrink identifies 8.

27 (Baghdadi Decl. ¶ 12; Exhibits 2-4.)

28 Out of all plaintiffs, thirteen (39%) had fewer than ten years of exposure.

(Baghdadi Decl. at ¶ 13.) Plaintiff Tenbrink falls into this group. (*Id.*) Twenty plaintiffs had ten or more years of exposure (nine had 10-19; six had 20-29; five had 30+). Plaintiffs Cezario and Dooley represent this latter group. (*Id.*)

(d) Nature and Manner of Work with Paraquat

The manner of paraquat use is understood to be relevant to the extent of exposure, and the pharmacokinetics (how it moves through the body into the bloodstream and brain). (Baghdadi Decl. at ¶ 15.) Counsel anticipates that expert testimony regarding exposure will need to take into account the specific method of application, and the nature of the work with Paraquat. (*Id.*)

The majority of the California plaintiffs were applicators working in an agricultural setting. Both Ms. Tenbrink and Mr. Dooley represent this population in that they were applicators working as farmers. (Baghdadi Decl. at ¶ 16 & Exhibit 1, p. 6.)

On the other hand, at least 6 (18%) of the California plaintiffs who submitted fact sheets applied Paraquat in the context of commercial landscaping, weed control, nursery fields, and grounds keeping. (Baghdadi Decl. at ¶ 17.) Mr. Cezario represents this segment of the plaintiff population in that he was not a licensed applicator; instead, he applied Paraquat provided by his employer in the context of commercial landscaping. (Baghdadi Decl. at ¶ 18.)

All three preference/bellwether plaintiffs used handheld sprayers to apply Paraquat, a method used by at least 19 of the plaintiffs (58%). (Baghdadi Decl. at ¶ 19 & Exhibit 1 at p. 7.) Both Mr. Dooley and Ms. Tenbrink used tractor sprayers as well, an application method used by at least 17 of the plaintiffs (51%). (*Id.*) Only two plaintiffs used neither method (they used airplanes and a spray rig), and one plaintiff does not recall the method of application. (*Id.*)

All three of the proffered preference/bellwether plaintiffs engaged in mixing and loading of Paraquat. (Baghdadi Decl. at ¶ 20 & Exhibit 1 at p. 6.) Among the plaintiffs who had a recollection and were able to answer this question, all but one

1 also engaged in mixing and loading. (Baghdadi Decl. at ¶ 21 & Exhibit 1 at p. 6.)

2 **2. Parkinson’s Disease**

3 **(a) Specialist-confirmed diagnosis with clinically-**
4 **evident Parkinson’s disease**

5 To counsel’s understanding, all plaintiffs in this coordinated proceeding claim
6 that they suffer from what is clinically diagnosed as “Parkinson’s disease,” a subtype
7 of a broader group of “parkinsonisms.” A clinical Parkinson’s disease diagnosis is one
8 of the defining characteristics of this litigation. (Baghdadi Decl. at ¶ 22.)

9 In the epidemiological literature, strong associations (doubling or tripling of
10 risk) have been found between occupational Paraquat exposure and clinically-
11 diagnosed “**Parkinson’s disease.**” (See, e.g., Baghdadi Decl. at ¶ 23; Exhibit 5 [Liou
12 HH, Tsai MC, Chen CJ, Jeng JS, Chang YC, Chen SY, Chen RC. *Environmental risk*
13 *factors and Parkinson’s disease: a case-control study in Taiwan.* Neurology. 1997
14 Jun;48(6):1583-8] & Exhibit 6 [Tanner CM, Kamel F, Ross GW, Hoppin JA, Goldman
15 SM, Korell M, Marras C, Bhudhikanok GS, Kasten M, Chade AR, Comyns K,
16 Richards MB, Meng C, Priestley B, Fernandez HH, Cambi F, Umbach DM, Blair A,
17 Sandler DP, Langston JW. *Rotenone, Paraquat, and Parkinson’s disease.* Environ
18 Health Perspect. 2011 Jun;119(6):866-72].)

19 The same cannot be said for other atypical forms of parkinsonism, which non-
20 specialists may confuse for Parkinson’s disease, but which do not share the same
21 underlying disease mechanism nor etiology. (Baghdadi Decl. at ¶ 26.) It is necessary
22 that the bellwether and preference cases have a clinical diagnosis of Parkinson’s
23 disease confirmed by a movement disorder neurologist. (Baghdadi Decl. at ¶ 27.)

24 All three preference/bellwether candidates have been diagnosed with
25 Parkinson’s disease, and have had that diagnosis confirmed by at least one
26 movement disorder specialist. (See Baghdadi Decl. at ¶ 28 & Exhibits 7, 8, and 9
27 [Declarations of Kristin Andruska, M.D.].)

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1 **(b) Family history**

2 Genetic risk factors exist for Parkinson’s disease, and should be considered.
3 (Baghdadi Decl. at ¶ 29.)

4 All but one of the 33 California plaintiffs have no known family history of
5 Parkinson’s disease. The proposed preference/bellwether plaintiffs consist of three
6 plaintiffs with no known family history of the disease. (Baghdadi Decl. at ¶ 30 &
7 Exhibit 1 at p. 2.)

8 **3. Demographics and Damages**

9 **(a) Disease Stage and Damages**

10 The Plaintiff fact sheets did not gather information regarding the plaintiffs’
11 disease stages. However, plaintiffs’ counsel are informed and believe that the
12 plaintiffs in this coordinated action are heterogeneous in their disease stages. Thus,
13 the Court and parties would be best served by a bellwether pool that includes a
14 variety of Parkinson’s disease stages and symptomatology. (Baghdadi Decl. at ¶ 31.)

15 As noted in the Court’s February 10, 2022 ruling, Mr. Cezario is 74 years old
16 and suffers from debilitating symptoms of Parkinson’s disease; Ms. Tenbrink is 82
17 years old and is in an early stage of the disease; and Mr. Dooley is 86 years old and
18 has ongoing, worsening symptoms. Thus, these Preference plaintiffs provide a
19 heterogeneous assortment of disease stages, and will provide a broad spectrum of
20 information on case value useful to resolution of other cases. (*Id.* at ¶ 32.)

21 **(b) Gender**

22 Of the 33 California plaintiffs who have submitted Plaintiff Fact Sheets, 4
23 (12% are women). The proposed preference/bellwether plaintiffs consist of two men
24 (67%) and one woman (Tenbrink) (33%). (Baghdadi Decl. at ¶ 33 & Exhibit 1 at p. 1.)

25 **(c) Location of Exposure**

26 The California plaintiffs were exposed throughout the state of California,
27 including primarily central valley, Southern California, and greater Bay Area
28 counties. (Baghdadi Decl. at ¶ 34 & Exhibit 1 at pp. 4 & 5 [exposure location map].)

1 The bellwether/preference plaintiffs are representative in that Mr. Dooley was
2 exposed in Stanislaus County, Ms. Tenbrink in Solano County, and Mr. Cezario in
3 Contra Costa County. (Baghdadi Decl. at ¶ 35; Exhibits 2-4; Exhibit 1 at pp. 4 & 5
4 [exposure location map].)

5 **C. These Preference Selections Would Aid Rather Than Disrupt the**
6 **MDL Proceedings**

7 To the extent that the Court chooses to consider the impact of trial setting in
8 this coordination proceeding on the multidistrict litigation (MDL), counsel provide
9 the following update.

10 Judge Rosenstengel of the Southern District of Illinois, in Case Management
11 Order 12, set out an initial pretrial schedule targeting a first trial date of November
12 2022. (Baghdadi Decl. at ¶ 36.) Although this case management disorder remains
13 operative, it is counsel's expectation based on discussions with court and counsel that
14 the pretrial and trial schedule in the MDL will be modified to reflect later dates. (*Id.*)

15 Thus, it is probable that the cases selected in this coordination proceeding will
16 have some practical "bellwether" impact on the MDL cases, and have the potential to
17 aid in resolution of a greater number of cases than those present in this California
18 litigation.


19 **IV. CONCLUSION**

20 For the foregoing reasons, counsel supports adoption of the Preference Cases
21 as bellwether trial selections.

22 Dated: February 14, 2022

WALKUP, MELODIA, KELLY & SCHOENBERGER

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24 By:



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Case No. JCCP 5031, CIVMS 5031

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26 **BY ELECTRONIC SERVICE:** I electronically served the document(s)
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28 case website and authorizing service of documents.

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2 persons at the e-mail address(es) listed based CA Rules of Court, Emergency Rules
3 Related to COVID-19, Emergency rule 12 “Electronic Service” and on notice provided
4 on March 12, 2020 that, during the Coronavirus (COVID-19) pandemic, this office
5 will be working remotely, not able to send physical mail as usual, and is therefore
6 using only electronic mail.

7
8 I declare under penalty of perjury under the laws of the State of California
9 that the foregoing is true and correct.

10 Executed on February 14, 2022, at San Francisco, California.

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Lily Connors