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1 DOWNEY BRAND LLP
WILLIAM R. WARNE (SBN 141280)
2 MICHAEL J. THOMAS (SBN 172326)
ANNIE S. AMARAL (SBN 238189)
3 MEGHAN M. BAKER (SBN 243765)
621 Capitol Mall, 18th Floor
4 Sacramento, CA 95814-4731
Telephone: (916) 444-1000
5 Facsimile: (916) 444-2100
bwarne@downeybrand.com
6 mthomas@downeybrand.com
aamaral@downeybrand.com
7 mbaker@downeybrand.com

8 BRACEWELL & GIULIANI LLP
RICHARD W. BECKLER
9 D.C. Bar No. 262246
(*Pro Hac Vice*)
10 JENNIFER T. LIAS
Virginia Bar No. 85608
11 (*Pro Hac Vice*)
2000 K Street NW, Suite 500
12 Washington, DC 20006-1809
Telephone: (202) 828-5874
13 Facsimile: (800) 404-3970
richard.beckler@bgllp.com
14 jennifer.lias@bgllp.com

15 Attorneys for Defendant/Cross-Defendant
SIERRA PACIFIC INDUSTRIES

17 UNITED STATES DISTRICT COURT
18 EASTERN DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,

21 Plaintiff,

22 v.

23 SIERRA PACIFIC INDUSTRIES, et al.,

24 Defendants.

25 AND ALL RELATED CROSS-ACTIONS.
26

MATHENY SEARS LINKERT & JAIME, LLP
RICHARD S. LINKERT (SBN 88756)
JULIA M. REEVES (SBN 241198)
3638 American River Drive
Sacramento, CA 95864
Telephone: (916) 978-3434
Facsimile: (916) 978-3430

Attorneys For Defendants W.M. BEATY &
ASSOCIATES, INC. AND ANN MCKEEVER
HATCH, as Trustee of the Hatch 1987 Revocable
Trust, et al.

RUSHFORD & BONOTTO, LLP
PHILLIP R. BONOTTO (SBN 109257)
DEREK VANDEVIVER (SBN 227902)
1010 Hurley Way, Suite 410
Sacramento, CA 95825
Telephone: (916) 565-0590

Attorneys for Defendant, EUNICE E. HOWELL,
INDIVIDUALLY and d/b/a HOWELL'S FOREST
HARVESTING

Case No. 2:09-CV-02445-WBS-AC

**SUPPLEMENTAL DECLARATION OF E.
ROBERT WRIGHT, ESQ.**

Date: April 13, 2015
Time: 2:00 p.m.
Dept: Courtroom 5, 14th floor
Judge: Hon. William B. Shubb

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1 I, E. ROBERT WRIGHT, declare:

2 1. I became a declarant in the Moonlight Fire matter when I signed a declaration on
3 June 12, 2014 that I had prepared that was submitted to the Department of Justice Office of
4 Professional Responsibility (OPR) in July 2014. That same declaration was filed in this action on
5 October 9, 2014 (Document 593-4). I make this declaration in response to certain statements by
6 declarants Benjamin B. Wagner, United States Attorney, and David T. Shelledy, Assistant U.S.
7 Attorney, in their declarations (Documents 627, and 628 respectively) filed in this action on
8 February 17, 2015. I have personal knowledge of the following facts, except those stated on
9 information and belief, which I believe to be true. If called to testify, I could and would testify
10 competently to the contents hereof.

11 2. Mr. Wagner states that during my appeal to him on January 5, 2010 to retain the
12 Moonlight Fire case, "I do not recall any discussion with Bob about concerns over ethical issues."
13 (Wagner Decl. ¶ 11). The United States' Brief signed by Mr. Shelledy, follows up on the Wagner
14 Declaration stating, "Wright did not raise any ethical concerns (id.), which casts considerable
15 doubt on his accusations now." (United States' Brief in Opposition to Motion for Relief from
16 Judgment (hereafter "U.S. Brief"), Document 626, filed February 17, 2015 at 109:5-6). I did not
17 raise any ethical concerns about the Moonlight Fire case because I did not have any ethical
18 concerns about the case at that time. If I had had ethical concerns about the case I would not have
19 met first with Mr. Shelledy and then with Mr. Wagner in an effort to keep the case. I would have
20 instead been thankful to be free from the case. With respect to ethical issues raised by the current
21 motion: first, items raising ethical concerns included the Plumas National Forest Fire Origin
22 Investigation Report and sketch prepared by Forest Service investigator Reynolds and the white
23 flag photographs. Those items establish conclusively that on September 4 and 5, 2007,
24 investigator Reynolds and Cal Fire investigator White determined a point of origin different from
25 the point(s) claimed by investigator White and Forest Service investigator Welton on September
26 8, 2007, that is reflected in the official Report. Those items and the issues about the change in the
27 origin determination and allegedly false deposition testimony about the change were unknown to
28 me until I learned of the State court ruling in the Moonlight Fire case in February 2014. Second,

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1 the U.S. Brief responds to issues involving, “The core of Sierra Pacific’s claim is that because the
2 red dot [investigation determined fire origin] is outside the smoke plume, and because the treetops
3 immediately surrounding the red dot are not burned, the fire could not have started there.” (U.S.
4 Brief at 63:23-25). I did have concerns about whether the retained surveyor Chris Curtis (referred
5 to in U.S. Brief at 66:9-10) when he completed his work would determine that the determined fire
6 origin was in the area that had burned or was inside the smoke plume. Those concerns were not
7 “ethical” concerns because his surveying work had not been completed and his determination was
8 going to be what it was going to be. I both hoped and expected that his survey when completed
9 would show that the investigation determined fire origin was in the burned area or inside the
10 smoke plume as shown by the air attack video. The fact that the determined fire origin was
11 apparently outside the smoke plume and burned area shown by the air attack video was unknown
12 to me until after I learned of the State court rulings in the Moonlight Fire case in February 2014.
13 Third, I had learned about the unorthodox activity of the Forest Service lookout (Caleb Lief, U.S.
14 Brief at 78:16-21) at the Red Rock Lookout from, I believe, Karen Juska (U.S. Brief at 78:16-21)
15 during the time I had the Moonlight Fire case. I had no ethical concerns at the time about the
16 Lookout issue for the case because my expectation was that Karen Juska’s information would be
17 disclosed promptly during the litigation given my disclosure practices; defense counsel would try
18 to maximize any benefit from the information; and I would try to eliminate or minimize any
19 damage to the case from the information. Because I knew that Ms. Juska’s information had been
20 intentionally omitted from the Report of Investigation I believed it to be information to be
21 disclosed promptly during the litigation independent of discovery procedures to avoid any
22 appearance of fraud in the case.

23 3. Both Mr. Shelledy (Shelledy Decl. ¶ 24, 25, 26, and 28) and Mr. Wagner (Wagner
24 Decl. ¶ 8, 9, and 11), now criticize my performance in 2009 as a basis for reassigning the
25 Moonlight Fire case on January 4, 2010. They follow up on their criticism in their Brief. (U.S.
26 Brief at 108-109). My direct supervisor at all times during my work on fire recovery cases until
27 February 2010, one month after the Moonlight Fire case was reassigned, was “the Chief of our
28 Affirmative Litigation Unit: Hon. Kendall J. Newman. . .” (Shelledy Decl. ¶ 4)(For clarity I will

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1 hereafter refer to Hon. Kendall J. Newman as “Chief Newman”). My direct supervisor, Chief
2 Newman, was not included when Mr. Wagner discussed the reassignment with Mr. Shelledy and
3 then First Assistant U.S. Attorney now Hon. Carolyn K. Delaney. (Wagner Decl. ¶ 11). I waive
4 personal privacy issues as to my written performance appraisal signed by Chief Newman as
5 Rating Official and Mr. Shelledy as Reviewing Official on January 19, 2010, two weeks after the
6 Moonlight Fire case was reassigned. I attach a true and correct copy of the Performance Appraisal
7 as Exhibit 1. The first page shows an outstanding rating as to ethics and professionalism,
8 successful ratings as to case handling, advocacy, productivity, and writing, and an overall rating
9 of successful. The written comments on the second page show that during the rating period I did
10 not have the opportunity to litigate many cases, and “negotiated very good resolutions” in three
11 cases named in the paragraph. Mr. Shelledy now states as a reason for the reassignment “he [Mr.
12 Wright] attended multiple mediation sessions in a case without interviewing a key witness to
13 determine the strength of our damages claim.” (Shelledy Decl. ¶ 25). He was referring to the
14 Freds Fire case. My January 19, 2010 written Performance Appraisal signed by Chief Newman
15 and Mr. Shelledy states that “although the case did not settle, Mr. Wright also did a good job
16 mediating the Fred’s Fire.”(Ex. 1 p. 2)(emphasis in original). As to “advocacy” the Appraisal
17 stated that “Mr. Wright had limited opportunities to showcase his advocacy skills” and “However,
18 Mr. Wright did a good job advocating for the successful resolution of the matters identified in
19 category 1 above, and at the mediation in Fred’s Fire.” (*Id.*) As to “productivity”, the Appraisal
20 stated, “As noted in category 1 above, Mr. Wright did a good job negotiating very good
21 resolutions in the Birch Fire (\$2.8 million); Lundy Fire (\$79,643); and Bell and Scott Fires
22 (\$690,000) and attempting to settle the Fred’s Fire. He also filed 6 complaints in fire cases [which
23 included the Moonlight Fire case], but he is aware that his productivity will depend upon his
24 ability to effectively litigate those matters to trial or favorably resolved.” (*Id.*) Under my
25 outstanding rating for “ethics and professionalism”, Chief Newman had explained in addition to
26 my “highest ethical and professional standards” that “Mr. Wright has worked closely to provide

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1 advice to USDA OGC and members of the fire team, to encourage earlier referrals of fire matters,
2 and he has volunteered to provide training at an upcoming wildland fire litigation conference.”
3 (*Id.*)

4 4. Chief Newman and Mr. Shelledy met at the same time with me in person to
5 discuss the Appraisal, as was the normal practice, probably on January 26, 2010 which was the
6 date I signed the Appraisal. It was Chief Newman who spoke during the meeting and he was very
7 positive about my performance. He stated words to the effect that the reason I was not rated
8 outstanding in the other elements was that the cases had not started coming in yet, meaning the
9 cases I had filed in 2009 had not been litigated or resolved yet, as of the end of 2009. Mr.
10 Shelledy was also present and he did not disagree with anything that Chief Newman said. Also,
11 Chief Newman had attended one of the Freds Fire mediations with me, I believe in either
12 September or October of 2009. Afterwards, he took me aside and said that as my supervisor he
13 had asked attorney Rachel Birkey for her evaluation of me. Attorney Birkey was my agency
14 contact for fire cases for the Forest Service as an attorney in the U.S. Department of Agriculture
15 General Counsel office in San Francisco. Chief Newman told me that Attorney Birkey’s
16 evaluation of me was to the effect of outstanding and words to the effect that I was the best or her
17 favorite attorney to work with, in the four U.S. Attorney Districts that she worked with in
18 California. I set forth in my original declaration my commendations and awards from April 2009
19 through April 2010. (Wright Decl. ¶¶ 12, 22).

20 5. I have set forth the official, verifiable, communicated, and contemporaneous
21 appraisal of my performance in 2009 prior to and immediately following the reassignment of the
22 Moonlight Fire case as it is quite different from what is now falsely claimed five years later in
23 litigation in the declarations of Mr. Shelledy and Mr. Wagner.

24 6. Mr. Wagner now diminishes my achievement of a settlement in the Birch Fire case
25 and the import of the congratulatory email about that result that he had sent to the entire office.
26 (Wagner Decl. ¶ 8). Contrary to what he says now, on January 15, 2010, Mr. Wagner by email
27 memorandum awarded to me an “On-The-Spot Award” stating, “In recognition of your excellent
28 result for the United States by negotiating a \$2.8 million settlement in the Birch Fire case, I am

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1 awarding you \$250 pursuant to my authority under our “On-the-Spot” award program. Thank you
2 for your excellent work.” (I attach a true and correct copy of Mr. Wagner’s message as Exh. 2).

3 7. Mr. Wagner in addition to now criticizing my performance, also criticizes the
4 performance of our former colleague, deceased Assistant U.S. Attorney Eric Overby. (Wagner
5 Decl. ¶¶ 17, 20). Mr. Overby telephoned me asking if there was something seriously wrong in
6 the Civil Division management. He then met with me at his request to discuss his dissatisfaction
7 with the prosecution of fire cases by the Eastern District in May of 2011. (Wright Decl. ¶ 28). In
8 contrast to what Mr. Wagner says, every person I ever discussed Mr. Overby with described him
9 as an outstanding lawyer in every respect. Mr. Overby later told me he had spoken to Mr.
10 Wagner about leaving the fire litigation team, raised ethical concerns during his conversation and
11 then left the Office after failing to achieve any satisfaction from his meeting with Mr. Wagner.
12 (Wright Decl. ¶ 28). Mr. Wagner is now claiming that Mr. Overby immediately upon arrival “was
13 repeatedly displaying poor judgment, was not communicating well with others, and was
14 impervious to supervision.” (Wagner Decl. ¶ 20). Mr. Overby from what I knew would not have
15 quietly submitted to directives that he felt were unethical without objecting.

16 8. In addition to the ethical concerns I had raised about two other wildland fire cases
17 prior to the reassignment of the Moonlight Fire case, and the ethical concerns Mr. Overby told me
18 he raised with Mr. Wagner during the Moonlight Fire litigation, another Moonlight Fire attorney
19 had concerns about U.S. Attorney Office Civil Division management during the Moonlight Fire
20 litigation. Then Assistant U.S. Attorney Neil MacDonald called me at my environmental non-
21 profit office in January 2012. I did not know Mr. MacDonald. He had joined the U.S. Attorney
22 Office at some point after I left. He was working in the same physical office I had there before I
23 left and thus had my old U.S. Attorney Office direct line telephone number. I returned his call and
24 Mr. MacDonald started out by saying that he had become a big fan of my work on the fire cases.
25 He was working on fire cases including the Moonlight Fire case. He expressed concerns about
26 management of the fire cases and wanted to meet with me in person to discuss what was going
27 on. He wanted to meet somewhere in person outside of the U.S. Attorney Office either during
28 evening or weekend hours. His wish to meet me in confidence outside the Office may be because

1 it was well known within the Affirmative Litigation Unit that I had a dispute with management
2 over disclosure obligations in the Freds Fire case and that the Moonlight Fire case was reassigned
3 from me shortly thereafter. I said I would be willing to meet with him at any time I was available
4 during business hours Monday through Friday at a place of his choosing. The meeting did not
5 come about. He called again in June 2012, but we did not connect and we did not get together. At
6 some point thereafter Mr. MacDonald left the U.S. Attorney Office for other employment as a
7 lawyer. If it turns out that Mr. MacDonald had ethical concerns about the Moonlight Fire case and
8 wanted to confer with me about his concerns, he tried and it is my fault that we did not meet.

9 9. Mr. Shelledy sets forth his version of the Freds Fire Professional Responsibility
10 Advisory Office (PRAO) subject in his declaration. (Shelledy Decl. ¶¶ 7-21). His claim that he
11 “probably *prompted* its [subject document] disclosure” (Shelledy Decl. ¶ 22)(emphasis in
12 original) is false. He was trying to stop me from disclosing the document. After receiving advice
13 from PRAO opining that it was my ethical obligation to disclose the subject document,
14 Mr. Shelledy emailed me saying, “OK, Bob, that’s a beginning. Now what can you do to avoid
15 creating an ethical obligation to volunteer a harmful document.” (Wright Decl. ¶ 15). The subject
16 document was an undisclosed written redetermination by the Forest Service person determining
17 timber loss damages to be approximately \$10 million lower than she had previously determined.
18 (Wright Decl. ¶ 14). Her previous determination which amounted to an unintentional \$10 million
19 overcharge was the basis for the government’s official demand for payment. We were in pre-
20 filing mediation with the prospective defendants in an effort to resolve the case pre-filing. (This
21 declaration, above, ¶ 4). I believed the document needed to be disclosed to avoid fraud. Mr.
22 Shelledy himself states “In September 2009, Bob proposed to give opposing counsel a document
23 prepared by a Forest Service employee calculating the value of burned timber.” (Shelledy Decl. ¶
24 8). Mr. Shelledy was resistant to producing the \$10 million dollar overcharge document so it was
25 necessary for me, and the Office’s own Professional Responsibility Officer (Shelledy Decl. ¶ 15),
26 to go to PRAO for advice on whether disclosure was required. In Mr. Shelledy’s words, “The
27 manipulation [by Wright] worked. On October 19, 2009, Bob finally got the answer he wanted.”
28 (Shelledy Decl. ¶ 16). Though I did not “manipulate,” I did want to make the disclosure because

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1 I did not want to defraud the prospective defendants. Mr. Shelledy was not going to allow me to
2 make the disclosure without support from PRAO. I note that this time period is barely more than
3 two months before the Moonlight Fire case was reassigned from me. Our District Professional
4 Responsibility Officer and I believed even after the final answer had come from PRAO that we
5 might still need to pursue an issue. PRAO had clearly opined that the timber loss damages
6 correcting document would have to be disclosed to the defendants if litigation was filed. We were
7 concerned that if the prospective defendants in the Freds Fire matter reached an agreement on a
8 damages number to settle the matter in the on-going pre-filing mediation, PRAO had still not
9 answered the question of whether disclosure to the prospective defendants of the subject
10 document would be necessary before we could conclude a pre-filing settlement with those
11 companies. I believed that we would have to make such disclosure to avoid fraud. The way that
12 our District Professional Responsibility Officer and I concluded the matter was that if I reached
13 agreement on a settlement number in the mediation, we would communicate with PRAO again to
14 obtain clear and unequivocal advice on whether disclosure of the corrected determination would
15 be required before we could conclude a settlement. The requirement of obtaining Department of
16 Justice settlement approval given the amount of the claim would have provided time to resume
17 communications with PRAO about whether disclosure would be required prior to actually
18 concluding a pre-filing settlement. A settlement dollar number was not tentatively agreed to in
19 the mediation so that the final unresolved issue was never resubmitted by us and opined upon by
20 PRAO. I produced the subject document to the defendants as a part of our initial disclosures at the
21 outset of the litigation (Wright Decl. ¶ 17); I defended the deposition of the Forest Service
22 employee who made the original and then the corrected Forest Service damages determination;
23 she was questioned about her correction and her reasons for it; defense counsel were appreciative
24 of the fact that the document was included in our initial disclosures; the case was ultimately
25 concluded with a settlement for millions of dollars and I did not give rise to any fraud claims
26 against the government.

27 10. Mr. Shelledy claims that I acknowledge only the third and fourth responses from
28 PRAO. (Shelledy Decl. ¶ 11). I only had language from those responses because I had quoted

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1 from them in communications before I left the Office. I did not take copies of the PRAO emails
2 with me when I retired from the government. I do not have and have not had for the past four
3 years electronic or paper copies of any of the PRAO emails. I agree with Mr. Shelledy that all the
4 correspondence with PRAO should be filed in the case. (Shelledy ¶ 12). I do not agree with Mr.
5 Shelledy's request that the filing of the emails be "*in camera*." (Shelledy Decl. ¶ 12).

6 11. Mr. Shelledy implies that he did not know I had produced the subject Freds Fire
7 document with our initial disclosures until he saw my Declaration. (Shelledy Decl. ¶ 21). I told
8 him in the presence of Chief Newman during the fall of 2009 that I planned on producing the
9 subject document with our initial disclosures if litigation was filed. I produced the document at
10 the beginning of the litigation to avoid any potential fraud in the case from the start.

11 12. Mr. Shelledy says the reason he did not just reassign primary responsibility for the
12 Moonlight Fire case but removed me from it completely is "because I [Mr. Shelledy] was
13 concerned he [Wright] would be resentful of the reassignment (which it is now clear he was), and
14 I did not want his attitude and poor performance to be an added burden for Kelli in running the
15 case." (Shelledy Decl. ¶ 30). The written record, however, establishes that on January 15, 2010
16 Mr. Wagner sent an email to me with the subject "Thanks" stating, "Bob: I heard recently that
17 you were working effectively with Kelli Taylor on the transition involving the Moonlight fire
18 case. I know you were not in agreement with the decision to reassign the case, but I want you to
19 know that your professionalism in working toward a smooth transition in that case is noted and
20 very much appreciated. Ultimately, we are all working towards the common good of the office
21 and of the United States, and your team work is vitally important. -Ben" (A true and correct copy
22 of the message is attached as Exh. 3).

23 13. Mr. Shelledy suggests that I came forward to become a declarant because I was
24 left "bitter" (Shelledy Decl. ¶ 8; U.S. Brief at 107:19). His comments are wrong. I came forward
25 because I concluded I had an ethical obligation to do so, particularly since I had set the federal
26 Moonlight Fire action in motion by preparing and filing the complaint. (Wright Decl. ¶ 34). Since
27 Mr. Shelledy has raised the issue of why I came forward, there was one other reason for my
28 coming forward. I believe it imperative in our free country for government agents to be honest in

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1 their investigations and preparation of Reports of Investigation. I also believe it imperative that
 2 when government attorneys ascertain that the honesty standard has not been met, they need to
 3 make disclosures of the issues to defense counsel and the court in subsequent civil or criminal
 4 litigation founded upon the investigation. My career included about 2 ½ years in the early 2000's
 5 when I was a prosecutor in the Eastern District's Criminal Division in the Fresno Office. I
 6 continued to prosecute a few criminal matters for four more years while in the Civil Division in
 7 Sacramento until Chief Newman insisted, which was understandable given the workload that I
 8 would have to work exclusively on fire damage recovery cases if I got the fire litigation position.
 9 I learned from my experience that law enforcement agents are generally evaluated by jurors with
 10 a significantly higher level of trust than is true of other witnesses. I believe that we and our
 11 descendants are potentially all at risk if government agents can fail to be honest in their
 12 investigations and Reports of Investigation and that if departures occur, those departures are not
 13 disclosed by government lawyers bringing civil or criminal actions based upon the investigations.
 14 Dishonesty in an investigation or Report of Investigation always goes to the credibility of the
 15 agents involved. I do not believe that the ends justify the means. Unlike all other individuals and
 16 entities, the government can conduct official investigations and has the power to bring civil and
 17 criminal actions arising out of the investigations. My responsibility for initiating the federal
 18 Moonlight Fire civil action and the honesty standard that I believe must be the hallmark of civil
 19 recovery and enforcement actions and criminal prosecutions in our country are the reasons why I
 20 came forward.

21 14. Mr. Shelledy brings up demonstrably false allegations he and Assistant U.S.
 22 Attorney Taylor made against me in the middle of December 2010 right before my retirement
 23 from the government. (Shelledy Decl. ¶¶ 32, 33; U.S. Brief 107:8-19). The allegations about my
 24 abilities and performance as a lawyer were made in a letter signed by Ms. Taylor on December
 25 15, 2010. The allegations are neither pertinent nor relevant as they pertain to events at the end of
 26 2010 long after the Moonlight Fire case was reassigned at the beginning of 2010. Mr. Shelledy's
 27 allegations against me were made to the court, and Mr. Wagner allowed them to be made, without
 28 disclosing to the court that I responded to the allegations in a 10 page letter dated December 30,

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1 2010, along with exhibits. I addressed the letter to Mr. Wagner and personally handed it to his
2 assistant on that date and told her that she needed to hand it to him as soon as she saw him. My
3 letter included both my responses to the false allegations as well as my report of misconduct by
4 Mr. Shelledy and Ms. Taylor in making false and misleading statements in the December 15,
5 2010 letter signed by Ms. Taylor and retaliation. My letter told Mr. Wagner that he needed to
6 present this situation to the appropriate Department of Justice organization of what I believed to
7 be extremely serious misconduct by two of his managers. On December 30, 2010, I also mailed a
8 copy of my long letter addressed to Mr. Wagner along with a two-page report of misconduct letter
9 to the Department of Justice, Office of the Inspector General, Investigations Division, in
10 Washington D.C. All Department of Justice employees are required to report any evidence of
11 misconduct. (USAM 1-4.100, July 17, 2007). Persons normally respond to serious allegations if
12 they believe the allegations are untrue. I never received any substantive response to my report of
13 misconduct. The only response I ever received to my report of misconduct was a letter dated
14 February 25, 2011, from the Department of Justice, Office of the Inspector General,
15 Investigations Division acknowledging receipt of my correspondence and claiming that “the
16 matters that you raised are more appropriate for review by another office or Agency. Therefore,
17 your complaint has been forwarded to: Executive Office for United States Attorneys” in
18 Washington D.C. I have attached a true and correct copy of the Office of Inspector General letter
19 as Exhibit 4. (I redacted our home address from the copy. My wife wrote lightly in pencil “Rec’d
20 3-5-11” above the date, meaning that is the date the letter arrived at our home and the date when
21 she opened the letter and wrote the date received). I have never heard anything more since. Even
22 though the issues I raised in my two letters/reports of misconduct go to the credibility of Mr.
23 Shelledy and Ms. Taylor, I did not bring them up in my original declaration because I wanted to
24 confine my declaration to what I thought was relevant. I did not want to bring up matters
25 damaging to the credibility of Mr. Shelledy and Ms. Taylor that appeared to me to be distant from
26 the issues my declaration presented to OPR in July of 2014. I only bring them up now because
27 Mr. Shelledy has brought up the allegations that he and Ms. Taylor made against me at the end of
28 2010 in his declaration and Brief without telling the court that I promptly responded to them by

1 denying those allegations and asserting they were false based upon the supporting evidence I
 2 provided. (I do have true and correct copies of the December 15, 2010 letter signed by Ms.
 3 Taylor, my 10 page December 30, 2010 letter along with its 19 pages of exhibits, my short report
 4 of misconduct letter of December 30, 2010 to the Office of the Inspector General, and the
 5 February 25, 2011 acknowledgment of receipt from the Office of the Inspector General).

6 15. Mr. Shelledy failed to disclose my responses to allegations he makes to the court
 7 in ¶ 32 and ¶ 33 of his declaration (and in U.S. Brief 107:8-19) about unacceptable performance.
 8 He did not tell the court that I had responded that the fire team obtained \$ 27 million in total
 9 affirmative fire recoveries in 2010, of which I, with the support of our staff, had recovered \$ 20
 10 million of that total in my second full year in the fire position. Mr. Shelledy tells the court that I
 11 “made an unconditional offer of settlement without obtaining authority in advance” (Shelledy
 12 Decl. ¶ 32:3-4). He did not tell the court that my December 30, 2010 response was that the
 13 allegation was false, the Sawmill Fire recovery I obtained resulted in a \$ 1 million policy limits
 14 recovery, and the total amount claimed by the Forest Service for the fire was a little over \$ 1.1
 15 million. I explained that the claim was false and documented the falsity with 10 pages of exhibits
 16 that I attached to my letter. Mr. Shelledy tells the court that “His initial disclosures for one case
 17 had blanks (literally) for claimed damages where amounts were required.” (Shelledy Decl. ¶ 32:8-
 18 9). He did not tell the court that my December 30, 2010 response was that we specifically left
 19 some novel theories for damage calculations blank in the initial disclosures for future
 20 consideration, that cases are often filed before all damages have been ascertained and that Mr.
 21 Shelledy was sent our initial disclosures in draft form before they were filed and never said
 22 anything about them. Mr. Shelledy makes allegations (Shelledy ¶ 32: 9-13) about my obtaining an
 23 Interlocutory Summary Judgment on liability in the Fred’s Fire case, *United States v. Pacific Gas*
 24 *and Electric Co.*, 2010 WL 2836190 (E.D. Cal. 2010). He did not tell the court that my response
 25 was that the allegation against me was a retaliatory effort to turn something good into something
 26 bad. He did not disclose my response that in addition to establishing liability in the case, I
 27 conceived of and accomplished a broader goal I had in mind. One of the issues the court
 28 determined was that the language in the easement for the powerline right-of-way established strict

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1 contractual liability without fault against the utility. I knew that same language was included in
2 that utility's easements involved in two other fires. He failed to disclose my response that as a
3 result of my successful motion, we were able to maintain in two other fires that by way of
4 offensive collateral estoppel (and also in-District precedent) the utility had strict contractual
5 liability without fault in those two fires as well. I understand that all three of those fires were
6 subsequently settled for millions of dollars.

7 16. Finally, Mr. Shelledy asserts that I am "lashing out at our office in this case."
8 (Shelledy Decl. ¶ 33:18-19). Far from lashing out at the Office, with the sole exception of the
9 three government declarants (Mr. Wagner, Mr. Shelledy, Ms. Taylor) of February 17, 2015, every
10 attorney in the Office, first in the Fresno Office and then in the Sacramento Office who I had any
11 contact with appeared to my knowledge at all times to maintain the very highest ethical and
12 professional responsibility standards.

13 17. Lastly, no one from the Department of Justice including OPR has contacted me or
14 met with me as of this date even though my original declaration was submitted to OPR in July of
15 2014. I remain available to meet with any appropriate Department of Justice person about this
16 matter.

17 I declare under penalty of perjury pursuant to the laws of the State of California and the
18 United States that the foregoing is true and correct and that this Declaration was executed on
19 March 6, 2015, at Sacramento, California.

20
21 
22 E. ROBERT WRIGHT

EXHIBIT 1

EXHIBIT 1

DISCLOSURE STATEMENT: This information is personal. It must be appropriately safeguarded from improper disclosure and it should only be made available for review by appropriate management levels having a need to know.

Employee Information			
Name of Employee	E. Robert Wright	SSN	REDACTED
Position Title	Assistant United States Attorney	Job Title Series Grade	AD-905
Rating Period (from to)	January 1, 2009 - December 31, 2009	Organizational Division	Civil Division

Rating Official's Signature	Date	Employee Signature	Date
<i>[Signature]</i>	11/14/09	<i>[Signature]</i>	11/7/09

Rating Official's Signature	Date	Employee Signature	Date
<i>[Signature]</i>	7/30/09	<i>[Signature]</i>	7/30/09

Rating Category	Exceeds Expectations	Meets Expectations	Needs Improvement
1 Case Handling		✓	
2 Advocacy		✓	
3 Ethics and Professionalism			✓
4 Productivity		✓	
5 Writing		✓	
6			

Unacceptable	Successful	Outstanding
	✓	

Appraisal Type (check one)	Annual	Interim	
Rating Official's Signature	Date	Employee Signature	Date
<i>[Signature]</i>	1/14/10	<i>[Signature]</i>	1/14/10

E. ROBERT WRIGHT
2009 Performance Appraisal Comments

1. Case Handling (Successful)

During this rating period, Mr. Wright did not have an opportunity to litigate many cases, but that opportunity should arise during the next rating period because he did file 6 complaints. Mr. Wright worked with other members of the fire team, OGC counsel, Forest Service personnel, and consultants to prepare the matters for litigation. Additionally, Mr. Wright negotiated very good resolutions in the Birch Fire (\$2.8 million); Lundy Fire (\$79,643); and Bell and Scott Fires (\$690,000). Although the case did not settle, Mr. Wright also did a good job mediating the Fred's Fire. All results and expected outcomes in Mr. Wright's work plan were satisfied.

2. Advocacy (Successful)

During this rating period, Mr. Wright had limited opportunities to showcase his advocacy skills. We anticipate that those opportunities will arise as more of those matters proceed into litigation. However, Mr. Wright did a good job advocating for the successful resolution of the matters identified in category 1 above, and at the mediation in Fred's Fire.

3. Ethics and Professionalism (Outstanding)

Mr. Wright prides himself on observing the highest ethical and professional standards (although he needs to ensure that he always performs the legal analysis accompanying his ethical obligations). Mr. Wright has worked closely to provide advice to USDA OGC and members of the fire team, to encourage earlier referrals of fire matters, and he has volunteered to provide training at an upcoming wildland fire litigation conference.

4. Productivity (Successful)

As noted in category 1 above, Mr. Wright did a good job negotiating very good resolutions in the Birch Fire (\$2.8 million); Lundy Fire (\$79,643); and Bell and Scott Fires (\$690,000), and attempting to settle the Fred's Fire. He also filed 6 complaints in fire cases, but he is aware that his productivity will depend upon his ability to effectively litigate those matters to trial or favorably resolved.

EXHIBIT 2

EXHIBIT 2



U.S. DEPARTMENT OF JUSTICE

*United States Attorney
Eastern District of California*

*Benjamin B. Wagner
United States Attorney*

Robert T. Matsui
United States Courthouse
501 I Street, Suite 10-100
Sacramento, CA 95814

Phone 916/554-2700
Fax 916/554-2900
TTD 916/554-2855

January 15, 2010

MEMORANDUM

TO: E. ROBERT WRIGHT
Assistant U.S. Attorney

FROM: BENJAMIN B. WAGNER *B.B.W.*
United States Attorney

RE: On-The-Spot Award

In recognition of your excellent result for the United States by negotiating a \$2.8 million settlement in the Birch Fire case, I am awarding you \$250 pursuant to my authority under our "On-the-Spot" award program. Thank you for your excellent work.

BBW/mw

cc: AUSA David T. Shelledy
AUSA Kendall J. Newman
FAUSA Carolyn K. Delaney
Official Personnel File

EXHIBIT 3

EXHIBIT 3

Wright, E.Robert (USACAE)

From: Wagner, Ben (USACAE)
Sent: Friday, January 15, 2010 6:08 PM
To: Wright, E.Robert (USACAE)
Subject: Thanks

Bob:

I heard recently that you were working effectively with Kelli Taylor on the transition involving the Moonlight fire case. I know you were not in agreement with the decision to reassign that case, but I want you to know that your professionalism in working toward a smooth transition in that case is noted and very much appreciated. Ultimately, we are all working towards the common good of the office and of the United States, and your team work is vitally important.

--Ben

Benjamin B. Wagner | United States Attorney | Eastern District of California
Robert T. Matsui United States Courthouse | 501 I Street, Suite 10-100 | Sacramento, CA 95814
t 916/554-2730 | f 916/554-2874

EXHIBIT 4

EXHIBIT 4



U.S. Department of Justice

Office of the Inspector General

Investigations Division

*Per [unclear]
3-5-11*

1425 New York Avenue NW, Suite 7100
Washington, D.C. 20530

February 25, 2011

E. Robert Wright

address redacted

Dear Mr. Wright:

The purpose of this letter is to acknowledge receipt of your correspondence. The matters that you raised are more appropriate for review by another office or Agency. Therefore, your complaint has been forwarded to:

Executive Office for United States Attorneys
600 E Street NW
Suite 5500
Washington, D.C. 20530

Any further correspondence regarding this matter should be directed to this office.

I hope this answers any questions you have relative to this matter.

Sincerely,

Office of the Inspector General
Investigations Division