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SIERRA PACIFIC INDUSTRIES

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. SIERRA PACIFIC INDUSTRIES, et al., Defendant. AND ALL RELATED CROSS-ACTIONS.	Case No. 2:09-CV-02445-KJM-EFB **DECLARATION OF E. ROBERT WRIGHT, ESQ.**

I, E. ROBERT WRIGHT, declare:

1. I am an attorney at law, duly licensed to practice before all courts of the State of California and the United States District Court, Eastern District of California. I am currently Senior Counsel for a California non-profit environmental public interest organization having its office in Sacramento, California. I have personal knowledge of the following facts, except those stated on information and belief, which I believe to be true. If called to testify, I could and would testify competently to the contents hereof.

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2. I obtained a B.S. in Business Administration from the University of California, Berkeley in 1966, and after serving as a Captain in the U.S. Army, obtained a J.D. from Harvard Law School in 1971.

3. I am an AV Martindale-Hubbell rated lawyer, and have practiced law in California for 40 years. During my career, my practice of law has included practice as a California Deputy Attorney General, Environmental Unit; law firm partner (shareholder); and Assistant U.S. Attorney (AUSA) for the Eastern District of California serving as counsel on major wildland fire cost recovery actions, as well as on environmental and white collar crime prosecutions. I retired from the government (U.S. Attorney's Office) at the end of 2010, and in February of 2011, I started a legal program for the environmental public interest organization I represent.

4. I also served as an Adjunct Professor of Environmental Law at San Joaquin College of Law in Fresno from 1990 to 2003 while a law firm member and then as a lawyer in the U.S. Attorney's Office. Additionally, among some of my significant legal victories, I obtained a decision in a national class action that school buildings are damaged by the mere presence of asbestos, *In re: Asbestos School Litigation*, 1991 WL 175819 (E.D. Pa. 1991). I obtained a decision that the nationwide U.S. Forest Service anti-wilderness (in my view) land management planning known as RARE II (roadless area review and evaluation) violated the National Environmental Policy Act, *California v. Berglund*, 483 F.Supp. 465 (E.D. Cal. 1980), *affirmed*, 690 F.2d 753 (9th Cir. 1982). I also led the inter-disciplinary planning team that developed the Regional Plan adopted by the California Tahoe Regional Planning Agency in 1975. I have also been a speaker/lecturer at a conference attended by both attorneys and fire investigators on the topic of "Prosecuting Fire Fighting Cost Recovery Actions."

5. I joined the Office of the United States Attorney for the Eastern District of California in December of 1997, and among other things, prosecuted civil actions within the Affirmative Civil Enforcement Unit (ACE). I had years of experience as a litigation partner (shareholder) in a private law firm before joining the Office of the United States Attorney. In 2008, I sought a special position that had been created to head up the Eastern District's efforts to recover damages, where appropriate, caused by fires on federal lands, particularly on our national

forests. I obtained the position I sought, reflected by an email to all personnel in the office from then U.S. Attorney McGregor Scott on June 8, 2008, stating: "As I previously informed you, our office has received funding from the Department for an Affirmative Fire Litigation Team, composed of an AUSA, a paralegal, and a financial auditor. I am pleased to announce that Bob Wright has been selected to fill the AUSA position and head up our efforts in this field. In short order we will begin the process to recruit to backfill behind Bob in the defensive civil division. Please join me in congratulating Bob."

6. In September 2007, the Moonlight Fire burned over 40,000 acres of National Forest lands located within the Plumas and Lassen National Forests. As a consequence, the fire fell within the jurisdiction of the Eastern District of California for purposes of any civil cost recovery action. With respect to an action for damages, the Moonlight Fire caused substantial damage to the Plumas and Lassen National Forests, and the United States incurred substantial costs in helping to suppress the fire.

7. By the summer of 2008, as the lawyer heading up the Eastern District's Fire Litigation Team, I had become particularly interested in the Moonlight Fire because of the apparent substantial damage it had caused. It was the largest wildland fire that I knew of on National Forest lands within our jurisdiction that might be a subject for a damage recovery action. Even though that fire had not yet been referred to our office by the Forest Service for evaluation and possible civil recovery action, I caused the retaining of several expert consultants and visited the fire site with consultants and another AUSA on about October 2, 2008. We met at the claimed area of origin with fire investigators Joshua White of Cal Fire and Diane Welton of the United States Forest Service. Consistent with their joint investigation and jointly authored Origin and Cause Investigative Report (prepared on behalf of Cal Fire and the U.S. Forest Service) (the "Report"), the investigators both claimed that the fire was caused by a rock-strike from a metal tracked bulldozer working in their selected "area of origin." My recollection is there were four of us in the vehicle including Ms. Welton, Joshua White, another AUSA and myself during the vehicle ride back from the site to either an office or the place where several of us were going to be staying overnight. Ms. Welton told us that there was "something we should tell you" and then

went on to explain that Marion Mathews, another U.S. Forest Service investigator and a supervisor who visited the alleged origin of the fire with Welton and White about five days after the fire began, had wanted the investigators to declare a larger general origin area for the fire. In hindsight, I believe that Matthews thought that the fire may well have originated in a location different from where the investigators had alleged. Welton claimed that she and White resisted Ms. Matthews' suggestion, claiming that they were confident in their evaluation of the origin area. I believed at the time and up until early February 2014 that investigators White and Welton were scrupulously honest and trustworthy in their conduct of the investigation and preparation of the Report.

8. The expert consultants who were with me at the site on or about October 2, 2008, to review the investigation and Report were Mike Cole and Cy Holmes, both retired Cal Fire investigators. I had also retained Paul Steensland, a retired Forest Service investigator, with the approval of my immediate supervisor at the time, the then- head of the civil ACE unit, Ken Newman, to conduct a paper review of the Report. Marion Matthews had objected to my intention to retain Mr. Steensland, so I did not have him meet us at the site. The only criticism I recall one or more of the consultants having of the investigation and the Report was that there should have been more flags and more photographs. At the time I understood that to be a common criticism of fire origin and cause investigations by experts. It turns out that the criticism with respect to flags and photographs was significant.

9. Because of the prevalence of arson as a cause of many wildland fires, I believe that proper wildland fire origin and cause investigations begin and remain as law enforcement criminal investigations, at least in part, and at least until arson or other criminal conduct is excluded as a potential cause. My recollection is that both U.S. Forest Service and Cal Fire persons assigned to investigate the origin and cause of wildland fires are law enforcement agents.

10. At the end of 2008, with the change in the national administration, McGregor Scott left the Office of the United States Attorney to become a partner at Orrick, an international law firm, and he was replaced with an interim U.S. Attorney, Lawrence Brown.

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11. I sought and obtained an "early referral" of the Moonlight Fire for a civil recovery action because I thought that the case was a strong one in terms of being able to establish liability and because I believed the resulting damage to National Forest lands was extensive. My recollection is that ordinarily the Forest Service would not refer a case to us before it determined the amount of claimed damages. We did obtain a referral of the Moonlight Fire prior to the Forest Service determining the amount of claimed damages. My wish to get started with litigation of the Moonlight Fire case as soon as possible was based on my belief that it is generally best for the plaintiff, given the burdens of proving liability and damages, to litigate sooner rather than later. On August 31, 2009, about two years after the Moonlight Fire began, I filed a Complaint against various Defendants: the owners of the land on which the Moonlight Fire started, Howell's Forest Harvesting (the independent contractor that had been operating bulldozers in the area on September 3, 2007, to install ecological water berms on skid trails), and Sierra Pacific Industries, the timber company that had hired Howell's.

12. In 2009, the same year in which I filed the Moonlight Fire action, I received a Special Act Award. In the words of then-acting U.S. Attorney Lawrence Brown's Memorandum to me dated April 7, 2009: "To recognize the valuable contribution that you made to our office for your outstanding accomplishments in concluding your defensive cases while making a very successful transition to the new fire litigation position, I am granting you a cash award in the amount of $2500 (before taxes). . . Thank you for your dedication and hard work." On July 16, 2009, I received a "Time-Off Award." The memorandum from then-acting U.S. Attorney Brown stated: "In recognition of your work in helping to achieve exceptional results in litigation during the first half of 2009, I am awarding you one day off pursuant to my authority under our 'Time-Off' Award program. Thank you for your excellent work."

13. In the spring of 2009, just a few months before filing the Moonlight Fire complaint, the Civil Chief within the Office of the United States Attorney was AUSA David Shelledy. At that time, I was handling another wildland fire civil cost recovery matter on behalf of the United States. I determined that I was ethically obligated to disclose a document to the defense that called into question the viability of the government's prosecution in that matter. I

sought assistance from the Department of Justice's Professional Responsibility Advisory Office (PRAO) in Washington, D.C. to obtain advice on the proper course of conduct. PRAO exists to provide ethical advice to DOJ attorneys helping to insure that DOJ attorneys conduct litigation appropriately and consistent with ethical requirements, and provides protection for AUSA's from internal discipline by the Department's Office of Professional Responsibility (OPR) if disclosure of all material facts are made to PRAO and the attorney then acts in accordance with PRAO's recommendations. PRAO strongly supported my view of what my professional responsibilities required. As a result, we dismissed that action.

14. Thereafter, in the fall of 2009, shortly after I filed the Moonlight Fire action, I was faced with a disagreement about my desire to carry out what I thought were my ethical obligations. In particular, with respect to a different wildland fire prosecution, AUSA David Shelledy was resisting my determination that my professional responsibilities required me to disclose to the defense a document that was helpful to the defense. In this regard, the document in question showed a significant (approximately $10 million) calculation error. The Forest Service person who had determined the original amount of damages used in the government's demand for payment which normally precedes referral to our office for litigation, had determined in writing that she had made a mistake, and the claimed damages were actually $10 million lower than had previously been asserted. I sought advice from PRAO to obtain support for the proper exercise of my professional responsibilities.

15. After receiving advice from PRAO opining that it was my ethical obligation to disclose the $10 million reduction to the defense, Mr. Shelledy intervened. He first sent an email to PRAO, questioning the advice and counsel the office provided on the matter. When that failed, he sent me another email which said, "OK, Bob, that's a beginning. Now what can you do to avoid creating an ethical obligation to volunteer a harmful document?"

16. As a lawyer for the DOJ and member of the California Bar, I believed that I had a broad duty of candor to the court and a responsibility to seek justice and develop a full and fair record. In response to Mr. Shelledy, I explained: "David, pursuing our theory of timber loss requires disclosure. The only way I am aware of to moot the disclosure requirement would be to

drop the claim for timber losses, which would result in a lower damages number than simply disclosing the harmful document." Mr. Shelledy responded by calling my comment "flippant."

17. PRAO then brought that particular matter to conclusion via an October 23, 2009, email from PRAO attorney Kandice Wilcox with a directive that could not have been clearer: "... Part of the issue in making a false statement means not only an affirmative mis-statement but deliberately withholding information which refutes the position you assert...." Ultimately, we provided the harmful document to the defendants in our initial disclosures at the outset of the litigation, and that case has since settled.

18. Thereafter, Mr. Shelledy treated me with hostility. The internal struggles that I encountered in 2009 with respect to my professional concerns on these wildland fire actions marked the first time in my 40 years of practicing law that I felt pressured to engage in unethical conduct as a lawyer. Attached hereto as **Exhibit A** is a true and correct copy of redacted notes I prepared concerning my ethical concerns and what I perceived to be pressure from Mr. Shelledy within the Office of the United States Attorney.

19. In November 2009, following the brief tenure of an interim United States Attorney, a long time AUSA within the Eastern District, Benjamin Wagner, was appointed as the United States Attorney for the Eastern District of California.

20. Approximately two months later, on January 4, 2010, the recently appointed United States Attorney Benjamin Wagner sent an email commending me for one of my successes on another wildland fire action. In pertinent part, U.S. Attorney Wagner wrote, "Congratulations to Bob Wright, for negotiating a $2.8 million settlement in the Birch Fire case. . . . The company contested liability. . . . Nonetheless, Bob was able to achieve a settlement in excess of all the suppression costs incurred by the Forest Service." Attached hereto as **Exhibit B** is a true and correct copy of Mr. Wagner's full email commendation.

21. Despite the U.S. Attorney's praise of my performance, Mr. Shelledy separately approached me later that same day and said that he was removing me from the Moonlight Fire prosecution. Moreover, Mr. Shelledy also gave me what, in my many years of experience with the U.S. Attorney's Office, was an unprecedented instruction: he told me that I was precluded

from working on the Moonlight Fire matter in any capacity whatsoever. At that time, Mr. Shelledy's decision came out of the blue and was to me inexplicable. He told me it seemed that lately we disagreed about almost everything. But in fact, there were only two things we had disagreed about. One was the duty of attorneys to sometimes have to disclose a harmful fact or document to the court or other side. The other was his insistence that our damages experts only talk to Forest Service personnel in the presence of the AUSA. It was noteworthy in that regard that the document revealing the $10 million overcharge in the fire case I referred to above was discovered by my expert, a retired Forest Service employee, during his one-on-one conversation with the Forest Service person who discovered her own mistake. Had I or another AUSA been present, I do not believe that action and document would have been revealed.

22. The Moonlight Fire action would ultimately generate the largest wildland fire civil cost recovery damage claim in history, and I was the AUSA who had been designated to head up the Affirmative Fire Litigation Team, so my removal from case came as a surprise, especially in light of my employment history. As noted, I had received a public commendation that very day from the U.S. Attorney for my work on a prior wildfire cost recovery action and a Special Act Award and Time-Off Award earlier in 2009 based on my work. Additionally, my performance appraisal signed by then ACE Chief Ken Newman and Civil Chief Shelledy on January 19, 2010, two weeks after the Moonlight Fire case was taken from me, indicated outstanding performance as to "ethics and professionalism", and successful performance as to the other four rated elements. Additionally, on April 9, 2010, I received a Special Act Award, in the words of U.S. Attorney Wagner: "To recognize the valuable contribution that you made to our office with your coordination of wild fire litigation, I am granting you a cash award in the amount of $2500 (before taxes). . .." There was nothing in the record critical of my handling of the Moonlight Fire case, or indeed, any other fire litigation matter.

23. I learned during the first week of January 2010 that Mr. Shelledy reassigned the Moonlight Fire Case to AUSA Kelli Taylor, a lawyer in the civil defensive litigation unit. I spoke with Ms. Taylor that week for about 20 – 40 minutes. I told her that I would be happy to help her with the case in any way I could, including taking and defending depositions when that phase of

the case commenced, but that I understood from Mr. Shelledy that I was precluded from working on the case at all. Ms. Taylor told me that she had the same understanding that I was removed from the case completely. There was never at any time any debriefing of me as to the Moonlight Fire case. I simply turned over all my notes and files on the case to Ms. Taylor.

24. I immediately appealed Mr. Shelledy's decision to take me off the Moonlight Fire case to United States Attorney Benjamin Wagner. I told him at the conclusion of our meeting that "There is something wrong here." Also, either in that meeting or during another meeting in November or December of 2009, I told Mr. Wagner about the two prior situations requiring PRAO involvement and corrective action, but he cut off the discussion saying those events took place before he was the U.S. Attorney. By email dated January 5, 2010, and notwithstanding his public commendation of my performance on wildfire litigation the day before, Mr. Wagner stated that he would not overturn Mr. Shelledy's decision to reassign the case. Attached hereto as **Exhibit C** is a true and correct copy of Mr. Wagner's January 5, 2010, email.

25. Shortly thereafter, I wrote to PRAO describing my removal from the Moonlight Fire action because I was considering retaining private counsel to attempt to get the case back and wanted to know what restrictions, if any, there might be on what I could communicate to private counsel. (Ultimately, I did not institute any administrative or other proceeding attempting to regain the Moonlight Fire case.) My email stated in pertinent part that: "I am 65 years old and my primary claims will be age discrimination, and retaliation for not attempting to skirt advice I sought and obtained from PRAO, discussed below. There are several clusters of facts I have identified that I believe would help my personal case. These pertain to our internal settlement posture in another Fire case (. . . Fire) I have. Also involved is PRAO guidance I obtained for the same case, . . . Fire (PRAO attorney Kandice Wilcox) which established that I was correct, to the effect that an internal Forest Service revaluation of timber value loss down by about $10 million from what the Forest Service had publicly billed the defendants, would at some point have to be disclosed to the defendants during litigation based on our litigation position." In response, I was informed by PRAO attorney Alan Sibarium that because I would be adverse to the government,

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PRAO would be unable to provide advice on the matter. Attached hereto as **Exhibit D** is a true and correct copy of my email to PRAO.

26. On March 9, 2010, I provided a written statement via email to Michael Simmons, an EEO Specialist at the Executive Office for United States Attorneys in support of a colleague attorney's complaint of discrimination. In pertinent part, I stated (at page 5 of my statement) "I had to go to the Department's PRAO (Professional Responsibility Advisory Office) twice in what should have been no-brainers. Sometimes a party, including the government as a plaintiff, has to disclose a document or fact to the court or the other side even though it is 'harmful.' PRAO agreed with me both times that we had to make the disclosures. I was put through stress and hostility for no good reason in pursuit of doing the right thing ethically." I believe that my statement was obtained and reviewed by Mr. Shelledy and Carolyn Delaney, then First Assistant U.S. Attorney, and possibly also U.S. Attorney Wagner, later in March or April 2010 so that Office management was aware of my contention about experiencing hostility for doing the right thing ethically.

27. After the first week of January 2010, the federal Moonlight Fire action proceeded without my involvement. It was like I had been "screened" from the case. In December of 2010, I retired from the government at the age of 66.

28. Thereafter, in May of 2011, long time Department of Justice attorney Eric Overby, a highly respected and senior ACE litigator from the U.S. Attorney's Office for the District of Utah in Salt Lake City, phoned me. He had joined the Eastern District of California's office after my retirement in order to assist with the Moonlight Fire case and, I believe, other fire cases. During that call, Mr. Overby asked me the following question as I recall, "Is it just me, or is there something seriously wrong in the Eastern District Civil Division management?" Later in May of 2011, I also met in person with Mr. Overby at his request where he discussed his dissatisfaction with the prosecution of fire cases by the Eastern District. Later in 2011, Mr. Overby told me that he had spoken to Mr. Wagner about leaving the fire litigation team and had raised ethical concerns during the conversation. Mr. Overby also told me that Mr. Wagner had said he was satisfied with the conduct of Civil Chief Shelledy and then-Affirmative Chief Taylor. Mr.

Overby told me during 2011 that he was so concerned with the management of affirmative civil fire cases that he was working on that he changed his plan to stay on in the Eastern District and instead returned to the U.S. Attorney's Office for the District of Utah after failing to achieve any satisfaction from his meeting with U.S. Attorney Wagner.

29. In February 2014, I read reports through major news outlets that the Honorable Leslie C. Nichols – a judge who had been assigned by California's Chief Justice under the Assigned Judge's Program to preside over the state Moonlight Fire actions – had made findings that the prosecution of the action was "corrupt and tainted," and that the Moonlight Fire investigators had repeatedly testified falsely under oath at depositions.

30. I ultimately obtained copies of two February 4, 2014, orders issued by Judge Nichols in the state Moonlight Fire action, which together imposed terminating sanctions against Cal Fire. Upon reading the rationale and factual predicate for the sanction award, I noted that the misconduct found by the Court if true would not be limited to that of Cal Fire or the Office of the California Attorney General. It was clear particularly from reading page 17, footnote 13 of the February 4, 2014, order granting Sierra Pacific's Motion for Fees, Expenses and Monetary and Terminating sanctions, that an AUSA, probably Ms. Taylor, had attended the same meeting in January 2011 at the "US Attorneys' office" where a Forest Service fire investigator "would admit one thing to a table of 'friends' and then refuse to admit the same thing once put under oath [at deposition]." The judge found it troubling that "Cal Fire's lead counsel would be present at the meeting with Reynolds and still sit idly by as Reynolds, a person Cal Fire hired as a consultant, denied in his deposition what he conceded in Cal Fire's counsel's presence several weeks earlier." Just as the Deputy Attorney General sat "idly by" during the later false or misleading testimony, neither did AUSA Taylor or any other USAO attorney, if any, with knowledge of the true facts take corrective action.

31. Following my review and consideration of Judge Nichols' February 4, 2014, orders, I eventually obtained a copy of the Moonlight Fire Origin and Cause Investigation Report that I had not had in my possession for over three years. I also requested and obtained a copy of the Plumas National Forest Fire Origin Investigation Report (US 71938; Ex. 421 Reynolds Dep.)

prepared by Forest Service investigator Reynolds and obtained in discovery after the case was reassigned from me, during the litigation. That document, which was not included in the Report, includes a sketch (US 71939) showing a single point of origin about ten feet away I am told from the two points of origin sketched by Forest Service investigator Welton and included in the Report (tab 3, CDFM 58). The document withheld from the Report shows that the search for the point of origin began on September 4, 2007 at about 1400, and that the origin was released by "J.W." [Josh White] meaning that the determination of point of origin was concluded on September 5, 2007, at about 1015 (US 71938). I was also shown the photographs that were obtained later during discovery that had been taken by White or Reynolds showing the white flag they had placed at the original point of origin during their investigation that were also not included in the Report and were discussed by Judge Nichols in his orders. The Reynolds Report and the white flag photographs establish conclusively that on September 4 and 5, 2007, White and Reynolds determined a point of origin different from the point(s) of origin claimed by White and Welton in the presence of Matthews on September 8, 2007, and that is reflected in the Report. The fact that the investigators, including White, determined three days after September 5, 2007, that there was something wrong with the original determination was concealed in the Report. The change in the point of origin and the reasons for the change should have been, but were not, disclosed in the Report. These omissions from the Report were material. Had I been left in charge of the Moonlight Fire action, and as depositions began and I obtained government documents such as the Reynolds Report and the white flag photographs, I would have insisted that the material omissions from the Report had to be disclosed to defendants through counsel regardless of the impact of such disclosures on the government's case. I would have sought to make the disclosures in writing to create a record of what was disclosed and when the disclosures were made. Instead, the investigators and government attorneys who were present at the January 2011 meeting apparently obstructed discovery of the truth by such means as investigator witnesses claiming that what might look like a white flag was instead a "chipped rock." The only reason not to have simply disclosed the original point of origin determination, and then the change in the Report or at least later during the litigation, would be to wrongly evade the adverse

impact of the change on the perceived validity of the investigation and the credibility of the investigators. I believe that the omissions of the change in claimed point of origin and reasons for the change, the Reynolds report and sketch, and the white flag photographs from the Report, were intentional and that the omissions warranted being considered for possible charges against persons determined responsible for the omissions as obstructions of justice under 18 U.S.C. § 1519. I believe the AUSA(s) with knowledge of the facts constituting violations of federal criminal law by federal employees responsible for material omissions in the Report of Investigation and/or possible perjured testimony during their depositions were under a duty to report same to the Attorney General pursuant to 28 U.S.C. § 535(b). I also believe if the AUSA(s) concealed and failed to make the violations and/or possible perjured testimony known that would warrant consideration for possible charges for misprision of a felony under 18 U.S.C. § 4. Finally, I believe that continued prosecution of even a badly damaged civil case would likely not have been a realistic possibility. This is because the credibility of the investigation and the investigators would have been destroyed. For example, if the concealments from the Report of Investigation were not discovered by an AUSA(s) before January 2011, that would be more than three years after the ignition of the fire. I do not believe it would have been realistic for an expert to have been able to credibly determine, without relying on the discredited original investigation and Report of Investigation, a point of origin for the Moonlight Fire and that the Moonlight Fire was caused by a rock-strike from a bulldozer so long after the ignition of the fire.

32. On about January 6, 2010, a non-attorney on the staff told me that she had thought something was up when Mr. Shelledy requested that she bring to him a copy of the Moonlight Fire Report on or about December 22, 2009. In light of what has finally been exposed regarding the Moonlight Fire action, I suspect that someone connected with the Forest Service or Cal Fire communicated with Civil Division management in late 2009 that there was or might be a problem with the Moonlight Fire investigation and Report, and that with my zero-tolerance of litigation misconduct by the government, I should be removed from the case. There would be no rational reason whatsoever to preclude me from even assisting on the case unless there was concern I might learn something that would trigger my sense of ethical obligations and professional

responsibility that some disclosure of something would be required in the case. Whether or not my suspicions are correct, I had created a clear record in 2009 for Eastern District Civil Division management about the importance of the duty of candor to the courts, and the responsibility of California Bar members to seek justice and develop a full and fair record when representing the government in civil actions. I recall that cases I had cited in 2009 in email communications with PRAO and internally within our office regarding the disclosures required in the two fire cases I have referred to above included *U.S. v. Shaffer Equipment Co.*, 11 F.3d 450 (4th Cir. 1993) (broad duty of candor to the court), on remand, 158 F.R.D. 80 (1994), and *City of Los Angeles v. Decker*, 18 Cal.3d 860 (1977) (responsibility to seek justice and "develop a full and fair record").

33. After I learned of Judge Nichols' orders in the state Moonlight Fire action, I would have immediately called Eric Overby to discuss what we should do but I knew that he had passed away in 2012. I considered contacting Joshua White and Deputy Attorney General Tracy Winsor who were criticized for their conduct by the state court judge. Also, at some point in 2010 Mr. White and Ms. Winsor came across me in a hallway when they were present at the USAO to attend a meeting with my successors on the Moonlight Fire case. They both seemed uncomfortable and troubled and expressed to me that they wished that I still had the federal case. It was a very short and chance meeting and I do not recall anything else being said. Ultimately, I did not attempt to contact either of them.

34. I received a phone call later in February 2014 from retired Cal Fire agent Mike Cole who was a consultant I had originally retained for the Moonlight Fire investigation. He asked if I had seen the state court orders, I said I had, and we discussed the situation. During a phone conversation I had with him a few days later, I asked if he had been in contact with any of the attorneys for the Defendants. He replied that he had and I responded saying that under the circumstances I would be willing to talk to counsel for one or more of the Defendants. I was contacted by defense counsel. I concluded that an injustice appeared to have occurred in view of Judge Nichols' findings regarding the investigation that served as the basis for the action that I had filed, and also confirmed that in my own mind by obtaining and reviewing a copy of the Report of Investigation as well as reviewing copies of the exhibits I have referred to above. I

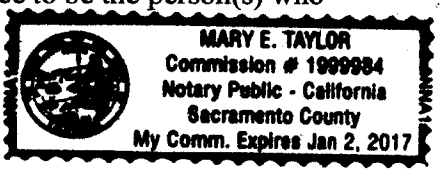
concluded it was my ethical obligation to do what I could within the contours of my ethical obligations to take corrective action, particularly since I had set the federal civil action in motion by preparing and filing the Complaint. Accordingly, I hereby provide this declaration to whoever may be asked to review the prosecution of the federal Moonlight Fire action.

I declare under penalty of perjury pursuant to the laws of the State of California and the United States that the foregoing is true and correct and that this Declaration was executed on June 12 2014, at Sacramento, California.

E. ROBERT WRIGHT

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

Subscribed and sworn to (or affirmed) before me on this 12th day of June, 2014, by E. ROBERT WRIGHT, who proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.



Signature: Mary E. Taylor (seal)
Notary Public, State of California

My Commission Expires: January 2, 2017

EXHIBIT A

EXHIBIT A

By September and October 2009 I was involved in the second of two situations in which I had gone to the Department's Professional Advisory Responsibility Office (PRAO). Sometimes ethical and/or professional responsibility duties can require an attorney representing the United States to disclose certain information or documents to the other side even though the disclosure will be harmful to the Government's case.

Earlier that year, we had dismissed a fire case ("Jack's Fire" [dummy name]) I had inherited from an attorney no longer with our Office, when PRAO's opinion confirmed my opinion that the case raised some ethical issues.

By September, in the Bill's Fire (dummy name case discussed above) I had raised an ethical issue pertaining to whether we would eventually need to disclose that the Forest Service had internally revalued its determination of timber loss downward by about $10 million, reducing our total claim from about $25 million to about $15 million. By the end of the PRAO process, the Civil Chief e-mailed the PRAO attorney, Sue Smith [dummy name] questioning the opinion she had reached. She replied in an e-mail repeating that disclosure would be required.

The Civil Chief then e-mailed me asking what we could do to not make the disclosure: "OK, Bob, that's a beginning. Now what can you do to avoid creating an ethical obligation to volunteer a harmful document?"

I answered: "David, pursuing our theory of timber loss requires disclosure. The only way I'm aware of to moot the disclosure requirement would be to drop the claim for timber loss, which would result in a lower damages number than simply disclosing the harmful document."

Shortly thereafter, the Civil Chief told me my response was "flippant".

On October 23, 2009, PRAO attorney Sue Smith [dummy name] concluded the matter with language that no one could misunderstand or misinterpret: ".... Part of the issue is making a false statement means not only an affirmative mis-statement but deliberately withholding information which refutes the position you assert. ..."

I had been right all along – we could not conceal from defendants, jury, and court all the way through a trial that the Forest Service had internally found that its public bill and demand for payment was about $10 million too high.

I was also shocked that when I spotted some ethical issues that troubled me but did not trouble the Civil Chief, and PRAO confirmed I was right and he was wrong, I was treated with hostility. One reason we have PRAO is to prevent line attorneys from being pressured into unethical conduct by supervisors. I was never thanked for having spotted a serious ethical issue that could have resulted in findings of misconduct by a judge against the Government during eventual litigation.

EXHIBIT B

EXHIBIT B

Wright, E.Robert (USACAE)

From: Wagner, Ben (USACAE)
Sent: Monday, January 04, 2010 1:01 PM
To: USACAE-ALLEDCA
Subject: Congratulations to Bob Wright on Settlement of Birch Fire case

Congratulations to Bob Wright, for negotiating a $2.8 million settlement in the Birch Fire case. The fire burned approximately 2,600 acres of the Inyo National Forest in July 2002. Southern California Edison started the fire by failing to maintain power lines. The company contested liability, however, and our burden at trial would have been challenging. Nonetheless, Bob was able to achieve a settlement in excess of all the suppression costs incurred by the Forest Service. Because the settlement amount also includes resource losses, part of the recovery is committed by statute to reforestation efforts on the affected forest, which will provide direct environmental benefits. Congratulations also to Brande Gustafson, Josh Iverson, Lydia Edinborough, and Deb Duckett, who provided excellent assistance on the case.

--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
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EXHIBIT C

EXHIBIT C

Wright, E.Robert (USACAE)

From: Wagner, Ben (USACAE)
Sent: Tuesday, January 05, 2010 5:04 PM
To: Wright, E.Robert (USACAE)
Cc: Delaney, Carolyn (USACAE)
Subject: Discussion about Moonlight Fire

Bob:

I raised the concerns which you expressed this morning regarding the proposed reassignment of the Moonlight Fire case with David Shelledy, and discussed the matter in detail with David and Carolyn. I understand your concerns, and I also appreciate that you are reluctant to give up the case, given the work that you have put into it. However, I believe that David has carefully considered the needs of the office, the demands of the particular case, and the resources of the Civil Division in making his decision about reassigning it. I will not over rule that decision.

I appreciate all the work you are doing on the fire litigation, and I also appreciate hearing from you about your concerns. Even when we disagree about particular case assignments or other matters, it is important to maintain open communication.

--Ben

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EXHIBIT D

EXHIBIT D

would have been January 2010

Wright, E.Robert (USACAE)

To: Siberium, Alan D. (PRAO) (SMO)
Subject: restrictions on disclosure of information to private counsel

Alan,

Thank you very much for taking my phone call this morning. To summarize, I exclusively bring affirmative civil fire damage recovery cases here in the Eastern District of California (Sacramento). Last week, my largest case, over the "Moonlight Fire" was taken from me over my objections and given to another attorney in this Office. This case involves over $100 million in damages, and is far and away the biggest fire case I have. I recovered enough over the weekend to prepare a draft brief on my behalf in my imminent effort to try and get the case back.

I have made initial contact to a DOJ EEO contact (left a voice message this morning) to commence what will be primarily an age discrimination claim against the government for downsizing my position and so forth. I am 65 years old and my primary claims will be age discrimination, and retaliation for not attempting to skirt advice I sought and obtained from PRAO, discussed below.

There are several clusters of facts I have identified that I believe would help my personal case. These pertain to our internal settlement posture in another Fire case([redacted] Fire) I have. Also involved is PRAO guidance I obtained for the same case, [redacted] Fire (PRAO attorney Kandice Wilcox) which established that I was correct, to the effect that an internal Forest Service revaluation of timber value loss down by about $10 million from what the Forest Service had publicly billed the defendants, would at some point have to be disclosed to the defendants during litigation based on our litigation position.

And so, my questions are what are the limits on what I can tell my personal attorney when I retain one, and are there required prophylactic measures I will need to take.

Again, thanks for talking to me and I look forward to receiving guidance from you.

E. Robert (Bob) Wright. (916) 554-2702. 1/11/10.

Alan called back same day, said he had talked to Dep. chief, & since I'm adverse to Re Govt, they could not give me any PRAO advice, even referral to general rules in the area.