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10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 **United States of America,**
 13
 Plaintiff,
 14
 – v. –
 15
**Tarek M. Al-Shawaf; James D.
 16 Nowlin; Donna L. Nowlin; and Does 1
 through 5,**
 17
 Defendants.

No. 16-cv-1539
**Complaint for (1) Negligence;
 (2) Violation of California Public
 Resources Code § 4435; (3) Violation of
 California Health & Safety Code
 §§ 13007–13009.1; (4) Trespass by Fire;
 and (5) Interest and Penalties**
 Demand for Jury Trial

18
19
20 Plaintiff United States of America alleges as follows:

21 **I. Preliminary Statement**

22 1. This case seeks to recover damages the United States incurred from the
 23 Mountain Fire, which ignited on private property on July 15, 2013, and spread to the San
 24 Bernardino National Forest. The Mountain Fire burned for over two weeks, scorching
 25 approximately 27,531 acres, including approximately 15,535 acres of National Forest
 26 System lands.

27 **II. Parties**

28 2. Plaintiff United States of America is the federal government. The United

1 States, as sovereign, owns National Forest System lands in Riverside County, California
2 that are under the supervision, control, administration, and protection of the United
3 States Department of Agriculture, Forest Service (the Forest Service), an agency and
4 instrumentality of the United States.

5 3. Defendant Tarek M. Al-Shawaf is a natural person who at all times relevant
6 to the complaint owned the property known as “Gibraltar West” located at 53750
7 Highway 246 in the area of Riverside County, California known as Mountain Center.

8 4. Defendants James D. Nowlin and Donna L. Nowlin are natural persons who
9 at all times relevant to the complaint were employed by Al-Shawaf as caretakers of
10 Gibraltar West.

11 5. Defendant Does 1 through 5 are individuals and entities whose identity is
12 not currently known who are responsible for the damages caused to the United States as
13 alleged in this complaint.

14 **III. Jurisdiction and Venue**

15 6. The case arises under federal and California law, including federal and
16 California common law, California Health and Safety Code §§ 13001 and 13007–
17 13009.1, California Public Resources Code §§ 4421 and 4435, California Fire Code
18 § 605.1, California Civil Code §§ 1714(a) and 3287, 36 C.F.R. §§ 261.5 and 261.9(a),
19 and 31 U.S.C. § 3717.

20 7. This Court has jurisdiction under 28 U.S.C. § 1345.

21 8. Venue is proper under 28 U.S.C. § 1391(b) because a substantial part of the
22 events or omissions giving rise to the claims occurred in the Central District of
23 California.

24 **IV. General Allegations**

25 9. The Mountain Fire ignited on or about July 15, 2013, on private property in
26 Riverside County, California and spread to National Forest System lands within the San
27 Bernardino National Forest.

28 10. Investigators determined that the Mountain Fire ignited in a plastic

1 electrical junction box on the Gibraltar West property. The junction box housed
2 electrical wires running from the electrical panel of the main house on the property to a
3 water well on the property.

4 11. The junction box's lid was warped, not properly secured, and ajar. As a
5 result, an electrical discharge inside the box shot sparks and hot material out of the box
6 and onto dry ground vegetation below.

7 12. At all times relevant to the complaint, the electrical junction box and the
8 electrical wires from the property's main house to the well were owned, maintained, and
9 controlled by defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and
10 Does 1 through 5.

11 13. Defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and
12 Does 1 through 5 had non-delegable and statutory duties to properly inspect and
13 maintain their electrical equipment, electrical wires, and electrical junction boxes to
14 ensure that they were safe, properly secured, and clear from dangerous conditions.
15 Specific non-delegable duties of the defendants are set forth in, among other provisions,
16 California Fire Code § 605.1, 36 C.F.R. § 261.5, California Public Resources Code
17 § 4421, California Civil Code § 1714, and California Health and Safety Code § 13001.

18 14. The electrical equipment, electrical wires, and electrical junction boxes on
19 the Gibraltar West property that ignited the Mountain Fire are a "device which may
20 kindle a fire" within the meaning of California Public Resources Code § 4435.

21 15. Under California Public Resources Code § 4435, the origination of the
22 Mountain Fire from the operation or use of the electrical equipment, electrical wires, and
23 electrical junction boxes on the Gibraltar West property is prima facie evidence of the
24 defendants' negligence in the maintenance, operation, or use of the electrical equipment,
25 electrical wires, and electrical junction boxes.

26 16. The ignition of the Mountain Fire was an incident of a kind that ordinarily
27 does not occur in the absence of negligence. It was caused by activity within the
28 exclusive control of the defendants. It was not due to any act by the United States. Res

1 ipsa loquitur applies to this case.

2 17. Causing timber, tress, brush, or grass to burn except as authorized by permit
3 is prohibited by law, including 36 C.F.R. § 261.5(c) and California Public Resources
4 Code § 4421. Ignition of the Mountain Fire was not authorized by permit or by the
5 United States.

6 18. The Forest Service suppressed the Mountain Fire at substantial cost to the
7 United States. As a result of its efforts to extinguish the Mountain Fire, the Forest
8 Service sustained suppression costs in excess of 15 million dollars, natural resource
9 damages in excess of 9 million dollars, and emergency rehabilitation costs in excess of
10 300,000 dollars.

11 19. The damages to the United States include, but are not limited to: mitigation,
12 rehabilitation, and reforestation of burned areas; loss of and damage to timber, habitat,
13 wildlife, watershed, earth, scenery, and environment; aesthetic values; loss of use and
14 recreation; soil damage; and erosion.

15 20. The Forest Service has made demand on defendants Tarek M. Al-Shawaf,
16 James D. Nowlin, and Donna L. Nowlin for payment of the costs and damages incurred
17 by the United States to suppress the Mountain Fire and undertake emergency
18 rehabilitation efforts. Defendants Tarek M. Al-Shawaf, James D. Nowlin, and Donna L.
19 Nowlin have not paid any part of the sum demanded by the United States.

20 **CLAIMS FOR RELIEF**

21 **First Claim for Relief**

22 (Negligence)

23 21. The United States realleges paragraphs 1 through 20, inclusive, as if fully
24 set forth herein.

25 22. At all times relevant to this case, defendants Tarek M. Al-Shawaf, James D.
26 Nowlin, Donna L. Nowlin, and Does 1 through 5 had the duty to maintain their property,
27 electrical equipment, electrical wires, and electrical junction boxes in a manner so as to
28 prevent damage to the land and property of the United States.

1 23. Defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and
2 Does 1 through 5 breached their duty of care and were negligent in causing the Mountain
3 Fire, including but not limited to their failure to prevent damage to the land and property
4 of the United States; to take reasonable precautions to prevent and suppress fires; to
5 construct, maintain, and operate their electrical equipment, electrical wires, and electrical
6 junction boxes in a safe and effective working order; and to properly and safely
7 maintain, operate, use, and occupy their property through the provision of appropriate
8 training, instruction, and supervision of their agents and employees.

9 24. Among other acts and omissions, defendants Tarek M. Al-Shawaf, James
10 D. Nowlin, Donna L. Nowlin, and Does 1 through 5 breached their duty to use due care
11 and caution in the design, construction, maintenance, use, operation, and management of
12 their electrical equipment, electrical wires, and electrical junction boxes in the area of the
13 origin of the Mountain Fire on the Gibraltar West property.

14 25. The United States and its citizens are one of the classes of persons that
15 California Fire Code § 605.1, 36 C.F.R. § 261.5, California Public Resources Code
16 § 4421, California Civil Code § 1714, and California Health and Safety Code § 13001
17 are intended to protect. The violation of these provisions by defendants Tarek M. Al-
18 Shawaf, James D. Nowlin, Donna L. Nowlin, and Does 1 through 5 constitutes
19 negligence per se and was a substantial factor in causing the United States' damages as
20 alleged herein. Defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin,
21 and Does 1 through 5 are liable for these damages in an amount to be proven at trial.

22 26. The negligent acts, omissions, and violations of law by defendants Tarek M.
23 Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and Does 1 through 5, and their agents
24 and employees, caused the Mountain Fire to ignite and proximately caused the damages
25 the United States sustained.

26 27. Defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and
27 Does 1 through 5 are responsible for all costs and damages caused by their own
28

1 negligence and the negligence of their agents and employees, including those damages
2 under the common law and California Civil Code § 1714.

3 28. As a result of the negligence of defendants Tarek M. Al-Shawaf, James D.
4 Nowlin, Donna L. Nowlin, and Does 1 through 5, the United States incurred damages in
5 an amount to be established at trial.

6 **Second Claim for Relief**

7 (California Public Resources Code § 4435)

8 29. The United States realleges paragraphs 1 through 28, inclusive, as if fully
9 set forth herein.

10 30. Under California Public Resources Code § 4435, the origination of the
11 Mountain Fire from the operation or use of the electrical equipment, electrical wires, and
12 electrical junction boxes on the Gibraltar West property is prima facie evidence of the
13 negligence of defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and
14 Does 1 through 5 in the maintenance, operation, or use of the electrical equipment,
15 electrical wires, and electrical junction boxes. The negligence of defendants Tarek M.
16 Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and Does 1 through 5 was the
17 proximate cause of the damages the United States sustained as a result of the Mountain
18 Fire.

19 31. As a result of the negligence of defendants Tarek M. Al-Shawaf, James D.
20 Nowlin, Donna L. Nowlin, and Does 1 through 5, the United States incurred damages in
21 an amount to be established at trial.

22 **Third Claim for Relief**

23 (California Health & Safety Code §§ 13001 & 13007–13009.1;

24 California Civil Code § 3287)

25 32. The United States realleges paragraphs 1 through 31, inclusive, as if fully
26 set forth herein.

27 33. Defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and
28 Does 1 through 5, and their agents and employees, negligently or in violation of law

1 ignited the Mountain Fire, thereby setting fire to or allowing fire to be set to National
2 Forest System lands within the San Bernardino National Forest.

3 34. The Mountain Fire destroyed property of the United States and caused the
4 United States to incur fire suppression costs, rehabilitation costs, resource damages, and
5 other damages, including damages to the environment, in an amount to be established at
6 trial. Defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and Does 1
7 through 5 are liable for all damages to the United States resulting from the Mountain
8 Fire, including without limitation its fires suppression costs, damages for injury to
9 federal property, and the United States' administrative, investigative, accounting, and
10 collection costs, under California Health and Safety Code §§ 13001 & 13007–13009.1
11 and California Civil Code 3287, in an amount to be established at trial.

12 **Fourth Claim for Relief**

13 (Trespass by Fire)

14 35. The United States realleges paragraphs 1 through 34, inclusive, as if fully
15 set forth herein.

16 36. Defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and
17 Does 1 through 5, and their agents and employees, negligently or in violation of law
18 ignited the Mountain Fire, thereby setting fire to or allowing fire to be set to National
19 Forest System lands within the San Bernardino National Forest. Defendants Tarek M.
20 Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and Does 1 through 5, and their agents
21 and employees, negligently or in violation of law failed to control the burn, allowing it to
22 spread uncontrollably.

23 37. The Mountain Fire damaged and destroyed property of the United States,
24 including causing damage to approximately 15,535 acres of National Forest System
25 lands.

26 38. As a result of the Mountain Fire's trespass on the National Forest System
27 lands within the San Bernardino National Forest, the United States has incurred damages
28 in an amount to be established at trial, including but not limited to fire suppression costs,

1 rehabilitation costs, injury to trees, timber, and vegetation, reforestation costs,
2 environmental damages, and injury to wildlife habitat.

3 39. Defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and
4 Does 1 through 5 are also liable to the United States for wrongful injury to its timber,
5 trees, and underwood under California Civil Code § 3346.

6 **Fifth Claim for Relief**

7 (Interest and Penalties)

8 40. The United States realleges paragraphs 1 through 39, inclusive, as if fully
9 set forth herein.

10 41. Under California Health and Safety Code §§ 13009 & 13009.1 and 31
11 U.S.C. § 3717, the United States is entitled to recover its administrative, investigative,
12 accounting, and collection costs, as well as interest and late payment charges, in addition
13 to its resource damages and fire suppression costs from the Mountain Fire.

14 42. The United States demanded on February 17, 2016, that defendants Tarek
15 M. Al-Shawaf, James D. Nowlin, and Donna L. Nowlin pay the costs and damages
16 incurred by the United States due to the Mountain Fire. Defendants Tarek M. Al-Shawaf,
17 James D. Nowlin, and Donna L. Nowlin have not paid any part of the sum demanded by
18 the United States.

19 **PRAYER FOR RELIEF**

20 **Wherefore**, plaintiff United States of America prays for judgment against
21 defendants Tarek M. Al-Shawaf, James D. Nowlin, Donna L. Nowlin, and Does 1
22 through 5 as follows.

23 1. For damages against defendants Tarek M. Al-Shawaf, James D. Nowlin,
24 Donna L. Nowlin, and Does 1 through 5 for fire suppression costs, resource damages,
25 and other recoverable costs and damages arising from the Mountain Fire (including but
26 not limited to the costs of rehabilitation, restoration, and reforestation of the burned
27 areas, wrongful injury to the United States' trees, loss of timber and vegetation, loss of
28 habitat, environmental damages, soil damages, loss of use, loss of scenic views, and loss

1 of aesthetic values), investigation costs, accounting and administrative costs, interest,
2 and penalties as allowed under the law in an amount to be determined at trial;

3 2. For double or triple damages against defendants Tarek M. Al-Shawaf,
4 James D. Nowlin, Donna L. Nowlin, and Does 1 through 5 for wrongful injury to the
5 United States’ timber, trees, and underwood under California Civil Code § 3346;

6 3. For interest and late payment penalties against defendants Tarek M. Al-
7 Shawaf, James D. Nowlin, Donna L. Nowlin, and Does 1 through 5 under 31 U.S.C.
8 § 3717;

9 4. For costs of this case; and

10 5. For such other and further relief as the Court deems just and proper.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff United States of America demands a jury trial in this case.

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14 Dated: July 14, 2016

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19 /s/ Garrett Coyle
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