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17 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
18 **COUNTY OF SACRAMENTO**

19 **HEATHER BURCHETT and GRIFFIN**
20 **BURCHETT, by and through his Guardian**
21 **ad Litem, Heather Burchett,**

22 Plaintiff,

23 vs.

24 **THE STATE OF CALIFORNIA**
25 **DEPARTMENT OF FORESTRY AND FIRE**
26 **PROTECTION; SUPERTANKER**
27 **SERVICES, LLC; GARRETT PRATER;**
28 **JACOBIE WALTERS; and DOES 1 through**
50,

Defendants.

FILED
Superior Court Of California,
Sacramento
07/24/2019
mwilliams8
By _____, Deputy
Case Number:
34-2019-00261326

Case No.:

COMPLAINT FOR DAMAGES;
DEMAND FOR JURY TRIAL

BY FAX

PARTIES AND JURISDICTION

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3 1. Plaintiff Heather Burchett is an individual residing in Salt Lake County, State of
4 Utah and was married to decedent Matthew Burchett (referred to herein as "Matthew") at all
5 relevant times and is therefore a wrongful death heir of Matthew Burchett pursuant to California
6 Code of Civil Procedure § 377.60.

7 2. Plaintiff Griffin Burchett is the minor child for plaintiff Heather Burchett and
8 decedent Matthew Burchett. He resides in Salt Lake County, State of Utah. He is therefore a
9 wrongful death heir of Matthew Burchett pursuant to California Code of Civil Procedure §
10 377.60. He appears in this action through his mother and Guardian ad Litem, Heather Burchett.
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12 3. Defendant Global SuperTanker Services, LLC dba Global SuperTanker
13 (collectively herein "Global SuperTanker"), is a Colorado corporation doing business in the State
14 of California.
15

16 4. The State of California Department of Forestry and Fire Protection (fka CDF)
17 aka Cal Fire (herein CalFire), is a political subdivision or entity of the State of California, with
18 headquarters located at 1416 9th Street, Sacramento, Sacramento County, California.
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20 5. At all relevant times, CalFire acted through its employees and representatives,
21 including defendants CalFire Division C Supervisor, Garrett Prater and Trainee Jacobie Waters,
22 who were each acting in the course and scope of their employment with CalFire.

23 6. The true names and/or capacities, whether individual, corporate, associate
24 or otherwise, of the Defendants, Does 1 through 50, inclusive, and each of them, are
25 unknown to Plaintiffs, who therefore sues said Defendants by such fictitious names.
26 Plaintiffs are informed and believe, and thereupon allege, that each of the Defendants
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1 fictitiously named herein as a Doe is legally responsible, negligently or in some other
2 actionable manner, for the events and happenings hereinafter referred to and that said
3 Defendants proximately caused Plaintiffs' injuries as hereinafter alleged. Plaintiffs will
4 seek leave of court to amend this Complaint to insert the true names and/or capacities of
5 such fictitiously named Defendants when the same have been ascertained.
6

7 7. Plaintiffs are informed and believe, and thereupon allege, that at all times
8 mentioned herein, Defendants, and each of them, including Does 1 through 50, inclusive,
9 and each of them, were the agents, servants, employees and/or joint venturers of their
10 codefendants, and were, as such, acting within the course, scope and authority of said
11 agency, employment and/or joint venture, and that each and every defendant, as
12 aforesaid, when acting as a principal, was negligent in the selection and hiring of each
13 and every defendant as an agent, employee and/or joint venturer.
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16 8. Plaintiffs, through counsel, served by certified mail Government Tort Claims
17 upon CalFire on or about February 11, 2019. The Claims were rejected or otherwise denied on
18 or about February 21, 2019. A copy of the Government Tort Claims are attached hereto as
19 Exhibit A and incorporated by this reference.
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22 GENERAL ALLEGATIONS

23 9. Matthew Burchett was an experienced Battalion chief and firefighter with
24 Draper City and was also a leader with the Utah Multi-Agency Taskforce ("Utah Taskforce").
25

26 10. On approximately July 29, 2018, CalFire placed large resource orders out of
27 state to assist with unprecedented fire activity throughout the state.
28

1 11. The Utah Taskforce, including Matthew Burchett, responded to the request and
2 they arrived on or about August 3, 2018 to assist the other firefighters who were attempting to
3 manage the Mendocino Complex Fire ("Mendocino Fire") outside of Sacramento, California.

4 12. As the Taskforce leader, Matthew attended daily operational briefings and
5 "breakouts" through the CalFire Division C Supervisor, Garrett Prater, and Jacobie Waters and
6 others, which addressed daily weather, topography, hazards, safety concerns and other aspects
7 relating to their duties.

8
9 13. On August 13, Matthew's Taskforce was requested to reinforce a dozer line and
10 place a hose lay to hold a firing operation

11 14. As the Taskforce leader, Matthew attended daily operational briefings and
12 "breakouts" through the CalFire Division C Supervisor, Garrett Prater, and Jacobie Waters and
13 others, which addressed daily weather, topography, hazards, safety concerns and other aspects
14 relating to their duties.

15
16 15. On August 13, Matthew's Taskforce was requested to reinforce a dozer line and
17 place a hose lay to hold a firing operation.

18
19 16. Matthew and the Taskforce dutifully carried out their assigned responsibilities.

20 17. Beginning at approximately 1:00 p.m., aircraft firefighting operations were
21 requested to drop retardant adjacent to the dozer line as a reinforcement to "hold the line."

22 18. As part of these drops, Division C, through its supervisor and/or trainees, was to
23 coordinate communications between Air Attack, the Aerial Supervision Module ("ASM") and
24 the ground forces.

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26 19. At all relevant times, Matthew and several others, including the Division C
27 Trainee, were performing their ground force activities and were at all times "in the black," which
28

1 is a safe drop zone.

2 20. At approximately 5:25 p.m., a Very Large Airtanker ("VLAT") or 747 airplane,
3 believed to be owned and operated by Defendant Global SuperTanker and its employees,
4 contractors or agents, dropped retardant in the safe drop zone.

5 21. The VLAT and its pilot had not performed drops in the area and was not
6 familiar with the heavy vegetation and elevation changes along the flight path.

7 22. The VLAT initiated the retardant drop directly over Matthew and other ground
8 forces.

9 23. The retardant drop was performed at less than 100 feet above the treetops,
10 which is a much lower elevation than the required heights for such retardant drops.

11 24. As a result, the expected "misting" of the retardant did not occur and the
12 retardant struck the surface, where Matthew and others were located, with incredible force.

13 25. The retardant struck and uprooted an 87-foot tall Douglas fir with a 15-inch
14 diameter at breast height.

15 26. The tree fell directly onto Matthew and several others.

16 27. Matthew sustained fatal injuries and died at the site.

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21 **FIRST CAUSE OF ACTION**

22 **(Negligence against Global SuperTanker and Does 1-25)**

23 28. Plaintiffs incorporate each of the allegations set forth above as though fully set
24 forth herein.

25 29. Plaintiffs have a cause of action against Defendant Global SuperTanker
26 pursuant to California's Wrongful Death Statute, CCP § 377.60 et seq, as the statutory wrongful
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1 death heirs of Matthew Burchett.

2 30. Defendants, their divisions, departments, agents and employees owed duties of
3 care to the plaintiffs which they breached, by among other things:

4 a. Making a retardant drop at an elevation that is not reasonable or
5 permissible;

6 b. Making a retardant drop in the improper location and without
7 understanding the elevation changes along the flight path;

8 c. Creating an unreasonably hazardous condition for Matthew Burchett and
9 other fire fighters at the Mendocino Fire;

10 d. Failing to properly warn or protect ground forces, including Matthew,
11 from the unreasonably hazardous conditions;

12 e. Failing to properly communicate with Division C and other personnel in
13 the area of the retardant drop;

14 f. Improperly executing retardant drops without obtaining authorization or
15 feedback from ground forces;

16 g. Failing to follow applicable regulations, statutes, and guidelines for
17 retardant drops at the Mendocino Fire;

18 h. Failing to properly hire, train and supervise its employees; and

19 i. Otherwise failing to use the reasonable care required of them under the
20 circumstances.

21 31. As a direct and proximate result of Defendant's wrongful acts, omissions and
22 negligence, Plaintiffs have suffered and will suffer a loss of financial support, loss of inheritance,
23 the loss of gifts and benefits, funeral and burial expenses, and household services.
24

1 32. As a direct and proximate result of Defendant's wrongful acts, omissions and
2 negligence, Plaintiffs have experienced and will experience a loss of Matthew Burchett's love,
3 companionship, comfort, care, assistance, protection, affection, society, moral support, training,
4 guidance, and intimate relations associated with Matthew Burchett's death.

5 33. Defendant's wrongful acts, omissions and negligence as described above was a
6 proximate cause of Matthews death and of Plaintiffs' damages as set forth herein.
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9 **SECOND CAUSE OF ACTION**

10 **(Negligent Act or Omission of Public Employee Against State of California, Garrett**
11 **Prater, Jacobie Waters, and Does 26-50)**
12

13 34. Plaintiffs incorporate each of the allegations set forth above as though fully set
14 forth herein.

15 35. Plaintiffs have a cause of action against Defendant CalFire through its
16 employees and/or independent contractors, Defendants Garrett Prater, Jacobie Waters and Does
17 26 to 50 (herein "CalFire Defendants") pursuant to CCP § 815.2 et seq. and California's
18 Wrongful Death Statute, CCP § 377.60 et seq.
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20 36. Pursuant to CCP § 815.4 et seq., CalFire is also liable for the independent acts
21 and omissions of its independent contractors, which may include but is not limited to Defendant
22 Global SuperTanker and Does 1 to 25, for the acts and omissions set forth in the First Cause of
23 Action.
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25 37. CalFire, its divisions, departments, agents and employees owed duties of care to
26 the plaintiffs which they breached, by among other things:
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28

1 a. Creating an unreasonably hazardous condition for Matthew Burchett and
2 other fire fighters at the Mendocino Fire;

3 b. Failing to properly warn or protect ground forces, including Matthew
4 Burchett, from the unreasonably hazardous conditions;

5 c. Failing to properly communicate with Global SuperTanker and other
6 personnel in the area of the retardant drop;

7 d. Failing to follow applicable regulations, statutes, and guidelines for
8 communicating with firefighting personnel at the Mendocino Fire;

9 e. Failing to properly hire, train and supervise its employees; and

10 f. Otherwise failing to use the reasonable care required of them under the
11 circumstances.
12

13
14 38. As a direct and proximate result of Defendant's wrongful acts, omissions and
15 negligence, Plaintiffs have suffered and will suffer a loss of financial support, loss of inheritance,
16 the loss of gifts and benefits, funeral and burial expenses, household services.

17
18 39. As a direct and proximate result of Defendant's wrongful acts, omissions and
19 negligence, Plaintiffs have experienced and will experience a loss of Matthew Burchett's love,
20 companionship, comfort, care, assistance, protection, affection, society, moral support, training,
21 guidance, and intimate relations associated with Matthew Burchett's death.

22 40. Defendant's wrongful acts, omissions and negligence as described above was a
23 proximate cause of Matthews death and of Plaintiffs' damages as set forth herein.
24

25 / / /

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand that this Court enter judgment in favor of Plaintiffs as follows:

(a) For non-economic damages in an amount to be determined at trial, including but not limited to the loss of Matthew Burchett's love, companionship, comfort, care, assistance, protection, affection, society, moral support, training, guidance, and intimate relations;

(b) For economic damages in an amount to be determined at trial, including but not limited to the loss of financial support, loss of inheritance, the loss of gifts and benefits, funeral and burial expenses, household services;

(c) For other out-of-pocket, incidental and consequential damages;


(d) For litigation expenses, costs, interest and attorney fees to the extent allowed by law or otherwise permitted by this Court;

(e) For such other relief as the court deems appropriate.

Dated: July 22, 2019

Law Office of Daniel M. O'Leary

By:


DANIEL O'LEARY
Lawyers for Plaintiffs

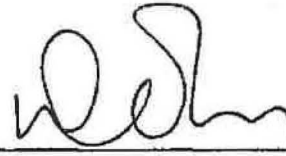
DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial.

Dated: July 22, 2019

Law Office of Daniel M. O'Leary

By:



DANIEL O'LEARY
Lawyers for Plaintiffs

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60350 COURTHOUSE
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OF CALIFORNIA
SACRAMENTO COUNTY