

AUG 24 2023

BY: *Iridian Cuen*
Iridian Cuen, Deputy

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ROB BONIA
Attorney General of California
GARY E. TAVETIAN
Supervising Deputy Attorney General
ALLAN S. ONO (SBN 130763)
ROSS H. HIRSCH (SBN 204320)
Deputy Attorneys General
300 S Spring St., Suite 1702
Los Angeles, CA 90013-1256
Telephone: (213) 269-6347
E-mail: Allan.Ono@doj.ca.gov
Ross.Hirsch@doj.ca.gov
*Attorneys for Plaintiff California
Department of Forestry and Fire Protection*

EXEMPT FROM FILING FEES
PER GOV. CODE § 6103

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

**CALIFORNIA DEPARTMENT OF
FORESTRY AND FIRE PROTECTION,**

Plaintiff.

v.

**G.J. GENTRY GENERAL ENGINEERING,
INC., a California corporation; GARRETT
JOHN GENTRY, an individual; and DOES 1
to 50, inclusive,**

Defendants.

Case No. **CIV SB 2320241**

**COMPLAINT FOR FIRE COST
RECOVERY**

[Health & Saf. Code, §§ 13009, 13009.1]

[Code Civ. Proc. § 446 requires verification
of the answer to this complaint.]

Plaintiff, the California Department of Forestry and Fire Protection (Plaintiff or CAL FIRE), alleges as follows:

INTRODUCTION

1. CAL FIRE brings this action pursuant to Health and Safety Code sections 13009 and 13009.1, and various other provisions of the Public Resources and Health and Safety Codes, to recover fire suppression, investigation, administrative, accounting, and collection costs, totaling not less than \$1,077,407.12, incurred as a result of a fire (South Fire).

2. The South Fire started on August 25, 2021.

File by Fax

1 the Doe defendants, and each of them, are connected to and responsible for the acts complained
2 of herein.

3 11. CAL FIRE is informed and believes, and thereon alleges, that, at all times relevant
4 herein, each of the defendants was the agent and/or employee of, and/or engaged in a joint
5 venture with, each of the remaining defendants, and in doing the acts alleged herein, was acting
6 with the scope of such agency, employment, or joint venture.

7 **JURISDICTION AND VENUE**

8 12. Venue is appropriate pursuant to Code of Civil Procedure section 395. The South Fire
9 occurred in San Bernardino County giving rise to the obligations and liability herein alleged
10 against all defendants.

11 13. The amount in controversy exceeds the minimal jurisdictional limits of this Court.

12 **GENERAL ALLEGATIONS**

13 14. Unless otherwise stated, all allegations in this complaint are pled on information and
14 belief.

15 15. At all relevant times, entry to the Premises was controlled by a locked gate and was
16 not open to the public free of charge.

17 16. The undeveloped Premises was covered with cured annual grasses, buckwheat, and
18 other native brush. It was also heavily rutted and rocky due to the area being part of the alluvial
19 fan of both Lytle Creek and the Cajon Pass.

20 17. On August 25, 2021, CAL FIRE investigators responded to the scene of the South
21 Fire.

22 18. Defendant Gentry informed CAL FIRE investigators that the defendants were
23 operating an excavator with metal tracks to do some exploratory work on the undeveloped
24 Premises where a commercial building was going to be built (i.e., to see how much rock was in
25 the area) and subsequently observed smoke in their immediate vicinity.

26 19. Defendants called 911 at 1:29 p.m. to report the fire they observed.

27 20. Defendants unsuccessfully attempted to suppress the South Fire.

28 21. CAL FIRE responded and eventually suppressed the South Fire.

1 22. A CAL FIRE investigation team investigated the origin and cause of the South Fire.
2 On August 25, 2021, the investigators observed fire pattern indicators and identified a General
3 Origin Area and a Specific Origin Area. Inside of the Specific Origin Area they observed a large
4 rock with markings consistent with the metal tracks of the excavator and distinct burn indicators
5 consistent with a smoldering, incipient stage of fire. The investigators observed and obtained
6 metal shavings found in the area and obtained metal shaving samples from the tracks of the
7 excavator and retained those shavings as evidence with other evidence obtained as part of their
8 investigation. The investigation team subsequently determined the South Fire was caused by the
9 metal tracks of the excavator operated by defendants striking a rock and causing a spark, or
10 molten metal, to ignite receptive fuels.

11 23. Defendants, and each of them, failed to control the South Fire, which escaped the area
12 they were working in and the Premises and burned approximately 680 acres including destroying
13 or damaging 28 structures before CAL FIRE was able to suppress it.

14 24. Health and Safety Code sections 13009 and 13009.1 allow public entities to recover
15 fire suppression costs from persons who, negligently or in violation of the law, set fires or allow
16 fires to be set, or kindle or attend fires and allow them to escape onto public or private property.

17 25. As alleged herein, defendants, and each of them, set the South Fire or allowed the
18 South Fire to be set negligently and in violation of the law, including but not limited to Public
19 Resources Code sections 4421 and 4422, subdivision (b), and Health and Safety Code section
20 13001, and allowed the South Fire to escape onto public and private property.

21 26. As a direct, foreseeable, and proximate consequence of the South Fire, CAL FIRE
22 reasonably incurred not less than \$1,077,407.12 in fire suppression, investigation, administrative,
23 accounting, and collection costs. As of the time of filing this complaint, CAL FIRE has incurred
24 and will continue to incur additional administrative, collection, and litigation costs as a result of
25 the South Fire.

26 27. On or about April 27, 2023 CAL FIRE sent defendant Garrett Gentry a letter of
27 demand via certified mail, return receipt requested, demanding payment to CAL FIRE in the
28 amount of \$1,077,407.12. As of the date of filing this complaint, CAL FIRE has not received

1 payment from any defendant in any amount. Pursuant to Civil Code section 3287, CAL FIRE is
2 entitled to pre-judgment interest on these costs.

3 **FIRST CAUSE OF ACTION**

4 **(Health and Safety Code §§ 13009 and 13009.1 Cost Recovery – Against All Defendants)**

5 28. Paragraphs 1 through 27, inclusive, are incorporated herein by reference as though
6 fully set forth herein.

7 29. CAL FIRE is informed and believes, and on that basis alleges, that at all times
8 relevant to this complaint, defendants used, controlled, were in possession of, or were operating
9 the excavator on the Premises where the South Fire originated.

10 30. CAL FIRE is informed and believes, and on that basis alleges that defendants, and
11 each of them, negligently or in violation of the law: (1) set or kindled the South Fire; or (2)
12 allowed the South Fire to be set or kindled; or (3) kindled or attended to the South Fire and
13 allowed it to escape from their control.

14 31. CAL FIRE is informed and believes, and on that basis alleges, that defendants knew
15 or should have known of the fire danger associated with operating an excavator on the
16 undeveloped property, which was laden with rocks and cured vegetation, during midday in
17 August in San Bernardino, California.

18 **A. Negligence**

19 32. Defendants, and each of them, owed the public and CAL FIRE a duty to exercise
20 reasonable care in their use of the excavator in performing their exploratory work on the
21 undeveloped Premises and to avoid the reasonably foreseeable fire hazard presented by their use
22 of the excavator. Defendants owed a further duty to the public and CAL FIRE to take reasonable
23 precautions to prevent the starting and spreading of fire while operating the excavator, which has
24 an inherent capacity to cause fires.

25 33. CAL FIRE is informed and believes, and on that basis alleges, that defendants
26 breached their duty by operating the excavator on the Premises, which was laden with rocks and
27 covered in cured vegetation, during the middle of a hot August day in San Bernardino, California.
28 Defendants did not take reasonable care in timing their exploratory operation and in operating the

1 excavator so as to avoid scraping rocks with the excavator's metal tread. If defendants had
2 refrained from their activity, performed it at another time, avoided scraping rocks, or operated the
3 excavator as ordinary care, common sense, and the law required, their excavator operations would
4 not have caused the cured vegetation to ignite.

5 34. Defendants knew or should have known that operating a excavator on undeveloped
6 property laden with rocks and cured vegetation, during the middle of a hot August day when fuels
7 are most likely to be receptive to ignite a fire, posed a high risk of fire ignition and the need for a
8 corresponding response from fire agencies to suppress it.

9 35. CAL FIRE is informed and believes, and on that basis alleges, that defendants'
10 exploratory operation on the Premises caused the excavator to strike a rock as defendants were
11 operating the excavator on August 25, 2021, and this caused the ignition of the receptive cured
12 vegetation in the area, which became the South Fire.

13 36. Defendants careless and negligent operation of the excavator, discussed above,
14 caused CAL FIRE to incur the costs alleged in this complaint.

15 37. Wildland fires such as the South Fire ordinarily do not happen unless someone was
16 negligent. Defendants had exclusive control and management of the excavator and the Premises
17 on which they were operating at the time the South Fire ignited. Because of their exclusive
18 control and management of the excavator and the Premises on which they were operating,
19 defendants' negligence may be inferred from the general facts alleged in this complaint. CAL
20 FIRE did not cause or contribute to the events that created the harm alleged in this complaint.

21 38. Public Resources Code section 4435 provides, in pertinent part, that "[i]f any fire
22 originates from the operation or use of any engine, machine, . . . or any other device which may
23 kindle a fire, the occurrence of the fire is prima facie evidence of negligence in the maintenance,
24 operation, or use of such engine, machine, . . . or other device." The excavator was a device
25 which may kindle a fire, and CAL FIRE alleges on information and belief that the South Fire
26 originated from the defendants' operation and use of said excavator by defendants, and each of
27 them.

28

1 39. Because defendants, and each of them, negligently set the South Fire and/or
2 negligently allowed the South Fire to be set, defendants, and each of them, are liable for CAL
3 FIRE's suppression, investigation, administrative, accounting, and collection costs arising as a
4 direct, foreseeable, and proximate consequence of the South Fire as herein alleged pursuant to
5 Health and Safety Code sections 13009 and 13009.1.

6 **B. Violations of Law**

7 40. In addition to being negligent, the actions of defendants, individually and each of
8 them, violated the law, including but not limited to: Public Resources Code sections 4421 and
9 4422, subdivision (b), and Health and Safety Code section 13001.

10 **1. Violation of Law – Public Resources Code section 4421**

11 41. Public Resources Code section 4421 provides that “[a] person shall not set fire or
12 cause fire to be set to any forest, brush, or other flammable material that is on land that is not the
13 person's own land, or under the person's legal control, without the permission of the owner,
14 lessee, or owner's agent or lessee of the land.”

15 42. CAL FIRE is informed and believes, and thereon alleges, that defendants, and each of
16 them, set the South Fire, or caused it to be set, on land that was not their own or under their legal
17 control, without the permission of the owner, lessee, or owner's agent or lessee of the land, in
18 violation of Public Resources Code section 4421.

19 43. Because defendants, and each of them, violated Public Resources Code section 4421,
20 directly, foreseeably, and proximately causing CAL FIRE to incur suppression, investigation,
21 administrative, accounting, and collection costs arising from the South Fire as alleged herein,
22 defendants, and each of them, are liable to CAL FIRE for those costs pursuant to Health and
23 Safety Code sections 13009 and 13009.1.

24 **2. Violation of Law – Public Resources Code section 4422**

25 44. Public Resources Code section 4422 provides, in pertinent part, that “[a] person shall
26 not . . . [a]llow any fire kindled or attended by the person to escape from the person's control or to
27 spread to the land of any person other than from the land from which the fire originated.”

1 45. CAL FIRE is informed and believes, and thereon alleges, that defendants, and each of
2 them, allowed the South Fire, kindled by them, to escape from their control in violation of Public
3 Resources Code section 4422.

4 46. Because defendants, and each of them, violated Public Resources Code section 4422,
5 directly, foreseeably, and proximately causing CAL FIRE to incur suppression, investigation,
6 administrative, accounting, and collection costs arising from the South Fire as alleged herein,
7 defendants, and each of them, are liable to CAL FIRE for those costs pursuant to Health and
8 Safety Code sections 13009 and 13009.1.

9 **3. Violation of Law – Health and Safety Code section 13001**

10 47. Health and Safety Code section 13001 prohibits persons from carelessly or
11 negligently placing any “flaming or glowing substance, or any substance or thing which may
12 cause a fire, in any place where it may directly or indirectly start a fire” and from using or
13 operating a “welding torch, tar pot or any other device which may cause a fire,” without first
14 “clear[ing] the inflammable material surrounding the operation or tak[ing] such other reasonable
15 precautions necessary to insure against the starting and spreading of fire.”

16 48. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
17 them, operated an excavator with metal track, and carelessly and/or negligently placed a flaming
18 or glowing substance, or any substance or thing which may cause a fire, in a place where it started
19 a fire, and they also operated an excavator with metal track, which is a device which may cause a
20 fire, without taking reasonable precautions necessary to insure against the starting and spreading
21 of fire as alleged herein.

22 49. Because defendants, and each of them, violated Health and Safety Code section
23 13001, directly, foreseeably, and proximately causing CAL FIRE to incur suppression,
24 investigation, administrative, accounting, and collection costs arising from the South Fire as
25 alleged herein, defendants, and each of them, are liable to CAL FIRE for those costs pursuant to
26 Health and Safety Code sections 13009 and 13009.1.

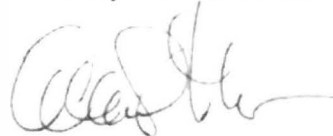
1 **PRAYER FOR RELIEF**

2 WHEREFORE, CAL FIRE prays for judgment against the defendants, and each of them, as
3 follows:

- 4 1. For not less than \$1,077,407.12 for fire suppression, investigation, administrative,
5 accounting, and collection costs associated with the South Fire;
- 6 2. For pre- and post-judgment interest on that sum as allowed by law;
- 7 3. For any additional costs of investigating and making reports with respect to the South
8 Fire, as provided by Health and Safety Code section 13009.1, subdivision (a)(1), in an amount to
9 be proven at trial;
- 10 4. For any additional administrative, accounting, and collection costs attributable to the
11 South Fire, as provided by Health and Safety Code section 13009.1, subdivision (a)(2), in an
12 amount to be proven at trial;
- 13 5. For all costs of investigating and prosecuting this action, including expert fees,
14 reasonable attorney's fees, and costs as provided in Code of Civil Procedure section 1021.8; and
- 15 6. For such other and further relief as this Court deems just and proper.

16
17 Dated: August 24, 2023

18 ROB BONTA
19 Attorney General of California

20 

21 ALLAN S. ONO
22 ROSS H. HIRSCH
23 Deputy Attorneys General
24 *Attorneys for Plaintiff*
25 *California Department of*
26 *Forestry and Fire Protection*

27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000