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10 IN THE UNITED STATES DISTRICT COURT FOR THE
11 EASTERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) Case: 1:09-cv-01136 LJO JLT
13)
14 Plaintiff,) **STIPULATION AND ORDER REGARDING**
15 v.) **CASE SCHEDULE**
16)
17 NORTH KERN MACHINERY, INC.,)
18 d/b/a NORTH KERN MACHINERY,)
19 NORTH KERN MACHINERY COMPANY,)
20 SOUTH KERN MACHINERY COMPANY,)
SOUTH KERN MACHINERY, INC.,)
and KERN MACHINERY, INC.)
Defendants.)

21 Plaintiff United States of America ("United States"), and
22 Defendants Kern Machinery, Inc., et al, ("Defendants") respectfully
23 submit this stipulation regarding the case schedule.

24 While the parties have been diligent in their efforts to
25 complete discovery, the parties respectfully request a continuance
26 of the discovery and related deadlines based on the following:

27 1. In this action, Plaintiff seeks recovery of the costs
28 incurred in suppressing a fire in the Sequoia National Forest.

1 Plaintiff alleges that the fire originated in the engine
2 compartment of a John Deere excavator while under the control of
3 employees of Defendant KERN MACHINERY. Defendant denies any
4 liability. This case is complicated to a degree by the fact that
5 Defendant did not own the John Deere excavator at issue. The
6 original owner of the excavator abandoned the tractor on forest
7 lands, and Defendant was hired by a third party, Agricredit, to
8 retrieve the excavator subject to a lien.

9 2. Plaintiff had difficulty locating and scheduling the
10 deposition of the Agricredit representative who hired Defendant.
11 The Agricredit representative, Brandy Brandberry, left Agricredit's
12 employment prior to this action and suffers from a disability that
13 required some accommodation. However, Mr. Brandberry's deposition
14 was finally completed in mid-May 2010. At the deposition, Mr.
15 Brandberry testified concerning several matters that now require
16 significant follow-up discovery and investigation:

17 A. Mr. Brandberry testified that he generated documents
18 and diary notes concerning the excavator at issue. These documents
19 are in the possession of Agricredit. Plaintiff has subpoenaed
20 these documents, but they are not due to be produced until later
21 this month, and Plaintiff anticipates that the information in the
22 records may necessitate further discovery.

23 B. Mr. Brandberry testified concerning the substance of
24 conversations that he had with a Forest Service employee (Mr.
25 Payne) prior to the fire. Defendant has requested that Plaintiff
26 produce Mr. Payne for his deposition, but he has since retired from
27 the Forest Service, and Plaintiff is experiencing some difficulties
28 in locating him.

1 C. Mr. Brandberry testified concerning the substance of
2 conversations he had with an employee of Defendant (Mr. Beggs)
3 prior to and after the fire. Plaintiff has requested that
4 Defendant produce Mr. Beggs for his deposition. However, Mr. Beggs
5 resides in a remote town in eastern Oregon, and the parties are
6 working to arrange Mr. Beggs' travel to Fresno for his deposition.

7 D. Mr. Brandberry testified concerning the likely
8 whereabouts of the original owner of the excavator (Mr. Geaney),
9 and Defendant is following up on this lead to locate and depose
10 this witness.

11 Based on the foregoing, the parties jointly request that the
12 case schedule be modified as follows:

	<u>Old Dates</u>	<u>Proposed New Dates</u>
15 Non-Expert Discovery	06/18/10	08/20/10
16 Expert disclosure:	06/16/10	09/10/10
17 Supplemental Expert disclosure:	07/8/10	10/01/10
18 Expert discovery:	08/13/10	11/05/10
19 Non-Dispositive motion 20 filing deadline:	08/13/10	11/05/10
21 Dispositive motion filing deadline:	08/13/10	11/05/10
22 Pre-Trial Conference:	09/27/10	12/13/10
23 Trial:	11/15/10	01/24/11
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28 ///		

Respectfully submitted,

Dated: June 14, 2010

BENJAMIN B. WAGNER
United States Attorney

By: /s/ Glen F. Dorgan
GLEN F. DORGAN
Assistant United States Attorney
Attorney for Plaintiff

Dated: June 14, 2010

LAW OFFICES OF
WILD, CARTER & TIPTON

/s/ Robert G. Eliason
ROBERT G. ELIASON
Attorney for Defendants

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19 Plaintiff,) ORDER REGARDING
20) CASE SCHEDULE
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22 d/b/a NORTH KERN MACHINERY,)
23 NORTH KERN MACHINERY COMPANY,)
SOUTH KERN MACHINERY COMPANY,)
SOUTH KERN MACHINERY, INC.,)
and KERN MACHINERY, INC.)
24 Defendants.)
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29 Based upon the stipulation of the parties, and good cause
30 appearing therefore, IT IS HEREBY ORDERED that the case schedule is
31 modified as follows:

	<u>Old Dates</u>	<u>New Dates</u>
25 Non-Expert Discovery	06/18/10	08/20/10
26 Expert disclosure:	06/16/10	09/10/10
27 Supplemental Expert disclosure:	07/8/10	10/01/10
28 Expert discovery:	08/13/10	11/05/10

1 Non-Dispositive motion 08/13/10 11/05/10
2 filing deadline:
3 Dispositive motion 08/13/10 11/05/10
4 filing deadline:
5 Pre-Trial Conference: 09/27/10 12/13/10 at
6 Trial: 11/15/10 01/24/11 at
7 8:30 a.m.,
Ctrm. 4 (LJO)
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9 IT IS SO ORDERED.
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Dated: June 14, 2010

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE