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7	Attorneys for Third-Party Defendant	
8	CATERPILLAR INC. (Erroneously sued as Caterpillar, Inc.)	
9		
10	UNITED STATES DISTRICT COURT	
11	EASTERN DISTRIC	CT OF CALIFORNIA
12	UNITED STATES OF AMERICA,	Case No. 2:09-CV-02445-KJM (EFB)
13	Plaintiff,	STIPULATION AND ORDER FOR
14	v.	DISMISSAL OF THIRD-PARTY COMPLAINTS AGAINST
15	SIERRA PACIFIC INDUSTRIES, et al.,	CATERPILLAR INC.
16	Defendants.	
17	AND RELATED CROSS-ACTIONS.	
18	AND RELATED CROSS-ACTIONS.	
19		
20	Plaintiff the United States of America, Third-Party Defendant Caterpillar Inc., and	
21	Defendants Eunice E. Howell, W.M. Beaty and Associates, Inc. and Ann McKeever Hatch, et al.	
22	(collectively "Defendants"), by and through their respective counsel of record, recite and	
23	stipulate as follows:	
24	RECI	TALS
25	1. WHEREAS , on May 26, 2010, the	he United States of America filed its Second
26	Amended Complaint against Defendants, asserting claims for negligence, liability under	
27	California Health and Safety Code §§ 13007-13009.1 and Civil Code §§ 3287 and 3288,	
28	negligence per se, trespass by fire, negligent sup	ervision, and negligent hiring. The United States

did not sue third party defendant Caterpillar Inc. and did not include any product liability cause of action in its complaint. Instead, the United States of America's claims are based on the theories asserted in the complaint including, without limitation, that the September 3, 2007 Moonlight Fire was ignited by contact between the tracks of a Caterpillar Model 527 Track Skidder, serial number 4NS00150, and rocks in the origin that caused friction, heat, sparks and/or metal fragments.

- 2. **WHEREAS**, Defendants Eunice E. Howell, W.M. Beaty and Associates, Inc. and Ann McKeever Hatch, et al., have filed third-party complaints against Caterpillar Inc., the manufacturer of the subject track skidder, alleging claims for implied equitable indemnity, contribution, and declaratory relief;
- 3. **WHEREAS**, the basis for these third-party complaints is the concern by the third-party complainants that the United States of America might allege as a basis for its claims that a defect in the track skidder contributed to the Moonlight Fire's ignition; and
- 4. **WHEREAS**, in order to facilitate Caterpillar Inc.'s dismissal as a third-party defendant to this action, all parties wish to clarify that no allegation is being made that the Moonlight Fire was ignited by a defect in the design, manufacture, or warnings of the subject track skidder.

STIPULATION

WHEREFORE, it is hereby stipulated by and between the parties, by and through their respective counsel of record, that:

- 1. Plaintiff United States of America is not alleging wrongdoing by Caterpillar Inc. and nor is it asserting a claim that a defect in the design, manufacture, or warnings of Caterpillar Model 527 Track Skidder, serial number 4NS00150, contributed to the ignition of the Moonlight Fire;
- 2. The third-party complaint attached hereto as Exhibit "A," which was filed against Caterpillar Inc. on or about December 23, 2009, by Eunice E. Howell, individually and doing business as Howell's Forest Harvesting, shall be dismissed in its entirety, with prejudice;

1	3. The third-party complaint attached hereto as Exhibit "B", which was filed against	
2	Caterpillar Inc. on or about January 15, 2010, by W.M. Beaty and Associates, Inc. shall be	
3	dismissed in its entirety, with prejudice;	
4	4. The third-party complaint attached hereto as Exhibit "C", which was filed against	
5	Caterpillar Inc. on January 15, 2010, by Ann McKeever Hatch, as Trustee of the Hatch 1987	
6	Revocable Trust, et al., shall be dismissed in its entirety, with prejudice; and	
7	5. Caterpillar Inc. shall bear its own attorney's fees and costs to the extent those fees	
8	and costs were incurred in defense of this action and are unrelated to its defense of the pending	
9	state court lawsuits based on the Moonlight Fire.	
10	IT IS SO STIPULATED THROUGH COUNSEL OF RECORD	
11		
12	DATED: June 10, 2011 OFFICE OF THE UNITED STATES ATTORNEY	
13		
14	By: /s/ Kelli L. Taylor	
15	Kelli L. Taylor Todd A. Pickles	
16	Attorneys for Plaintiff UNITED STATES OF AMERICA	
17		
18	DATED: June 10, 2011 MATHENY SEARS LINKERT & JAIME, LLP	
19		
20	By:/s/ Richard Stone Linkert Richard Stone Linkert	
21	Attorneys for Defendant W.M. BEATY AND ASSOCIATES, INC., ANN	
22	MCKEEVER HATCH, AS TRUSTEE OF THE HATCH 1987 REVOCABLE TRUST, ET AL.	
23	HATCH 1907 REVOCABLE TROST, ET AL.	
24	DATED: June 10, 2011 LAW OFFICES OF RUSHFORD & BONOTTO LLP	
25		
26	By: <u>/s/ Phillip R. Bonotto</u> Phillip R. Bonotto	
27	Attorneys for Defendant EUNICE E. HOWELL, INDIVIDUALLY AND DBA	
28	DATED: June 10, 2011 EUNICE E. HOWELL, INDIVIDUALLY AND DBA HOWELL'S FOREST HARVESTING SEDGWICK LLP	

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2	By: <u>/s/ Steven D. Di Saia</u>
3	Steven D. Di Saia Frederic F. Grannis
4	Steven D. Di Saia Steven D. Di Saia Frederic F. Grannis Matthew G. Stein Attorneys for Third-Party Defendant CATERPILLAR INC.
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ORDER

IT IS SO ORDERED.

Dated: June 14, 2011.

UNITED STATES DISTRICT JUDGE