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 SIERRA PACIFIC INDUSTRIES

IN THE UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA,  
  
 Plaintiff,  
  
 v.  
  
 SIERRA PACIFIC INDUSTRIES, *et al.*,  
  
 Defendants.

Case No. 2:09-cv-02445-JAM-EFB

**STIPULATION AND ORDER  
 PERMITTING THE UNITED STATES  
 OF AMERICA TO FILE SECOND  
 AMENDED COMPLAINT AND TO  
 WITHDRAW ITS MOTION TO DISMISS  
 SPI'S COUNTERCLAIMS AND TO  
 STRIKE CERTAIN OF ITS  
 AFFIRMATIVE DEFENSES**

[Fed.R.Civ.P. 16]

AND RELATED CROSS-ACTIONS.

Pursuant to Rule 16 of the Federal Rules of Civil Procedure, Plaintiff the United States of America, Defendants Sierra Pacific Industries, *et al.* (collectively “Defendants”) and Third Party-Defendant Caterpillar, Inc., through their respective counsel, hereby submit the following stipulation and proposed order to grant the United States leave to file a second amended complaint.

### **RECITALS**

1. On August 31, 2009, the United States filed its complaint in this action. On October 22, 2009, the United States filed a First Amended Complaint, which is the operative complaint in this action. Service has been completed on all named Defendants.

2. Defendants have filed answers to the First Amended Complaint and asserted various cross-claims and third-party claims. Sierra Pacific Industries (“SPI”) has also asserted counterclaims against the United States.

3. On February 11, 2010, this Court entered its status (pretrial scheduling) order that, among other things, provided that amendment would only be allowed by leave of Court with good cause shown.

4. On March 15, 2010, the United States filed a motion to dismiss SPI’s counterclaims and to strike certain of its affirmative defenses [Docket No. 47]. The motion is noticed to be heard by the Court on May 19, 2010.

5. Subsequent to the Court’s February 22, 2010 scheduling order, discovery has occurred in consolidated actions pending in California superior court that arise from the same Moonlight Fire that is at issue in this action. The parties have also begun written discovery in this matter.

6. Based on the discovery that has occurred to date, the United States seeks leave of Court to file a Second Amended Complaint to assert additional claims against some or all of the Defendants.

7. Additionally, absent the filing of an amended pleading by the United States, SPI might seek leave to make various amendments to its answer and counterclaims against the United States, including amendments based on information obtained on or around May 3, 2010, concerning the Herger Feinstein Quincy Library Group Forest Recovery Act.

8. The parties agree that it is in the interest of judicial efficiency to permit the United States to file the Second Amended Complaint attached hereto as Exhibit A and to allow Defendants, including SPI, to file any appropriate responsive pleadings.

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2 9. By reaching such agreement, the parties in no way concede, explicitly or implicitly, the  
3 truth or legal sufficiency of any allegations in the Second Amended Complaint or in any pleadings by  
4 Defendants in response to the Second Amended Complaint. Nor do any of the parties waive any  
5 defenses, claims, or arguments they have to Second Amended Complaint or to any pleadings by  
6 Defendants in response to the Second Amended Complaint.

7 10. Permitting the United States to file the attached Second Amended Complaint, which will  
8 entitle Defendants, including SPI, to file new responsive pleadings, will also render moot the United  
9 States's motion to dismiss and motion to strike, set for hearing on May 19, 2010.

### 10 **STIPULATION**

11 Based on the foregoing recitals, the parties hereby STIPULATE that:

12 1. The United States shall file the attached Second Amended Complaint no later than twenty  
13 (20) days from the date of an order of the Court granting the United States leave to file a Second  
14 Amended Complaint;

15 2. Defendants shall file their responsive pleadings to the Second Amended Complaint no later  
16 than twenty (20) days after the United States files its Second Amended Complaint;

17 3. The United States shall have twenty (20) days to file a responsive pleading to any  
18 counterclaims asserted by Defendants against the United States;

19 4. The parties expressly reserve the right to file any appropriate responsive pleading  
20 permitted under Federal Rule of Civil Procedure 12, or otherwise, to the Second Amended Complaint and  
21 to any counterclaims asserted by Defendants, and in no way waive any defense, claims, or argument to the  
22 allegations stated in the Second Amended Complaint or to any pleadings filed in response thereto;

23 5. The United States shall withdraw its motion to dismiss and to strike [Docket No. 47] upon  
24 an order of the Court granting the United States leave to file a Second Amended Complaint; and

25 6. All remaining dates and deadlines as set by the Court in its February 11, 2010 Scheduling  
26 Order remain and are otherwise unaffected by this Stipulation and Proposed Order.

1 DATED: May 13, 2010

**BENJAMIN B. WAGNER**  
**UNITED STATES ATTORNEY**

2  
3 By: /s/ Kelli L. Taylor  
4 KELLI L. TAYLOR  
TODD A. PICKLES  
Assistant U.S. Attorneys

5 Attorney for Plaintiff,  
6 UNITED STATES OF AMERICA

7 DATED: May 13, 2010

**DOWNEY BRAND LLP**

8 By: /s/ William R. Warne  
9 WILLIAM R. WARNE

10 Attorney for Defendant,  
11 SIERRA PACIFIC INDUSTRIES

12 DATED: May 13, 2010

**RUSHFORD & BONOTTO, LLP**

13 By: /s/ Phillip R. Bonotto  
14 PHILLIP R. BONOTTO, Esq.

15 Attorney for Defendant,  
16 EUNICE E. HOWELL, individually and d/b/a  
17 HOWELL'S FOREST HARVESTING  
COMPANY

18 DATED: May 13, 2010

**MATHENY, SEARS, LINKERT & JAIME**  
**LLP**

19 By: /s/ Richard S. Linkert  
20 RICHARD S. LINKERT, Esq.  
21 Attorney for Defendants,

22 W.M. BEATY AND ASSOCIATES, INC. and  
23 LANDOWNER DEFENDANTS

24 DATED: May 14, 2010

**SEDGWICK, DETERT, MORAN & ARNOLD**

25 By: /s/ Frederic Grannis  
26 FREDERIC GRANNIS, Esq.

27 Attorney for Third Party Defendant,  
28 CATERPILLAR INC.

1 **ORDER**

2 This matter came before the Court on the parties' Stipulation to Permit the United States of  
3 America to File a Second Amended Complaint and to Withdraw Its Motion to Dismiss SPI's  
4 Counterclaims and to Strike Certain of Its Affirmative Defenses. For the reasons stated in the Stipulation  
5 and for good cause showing under Rule 16 of the Federal Rules of Civil Procedure, the Court ADOPTS  
6 the Stipulation and GRANTS the relief requested therein.

7 Accordingly, IT IS HEREBY ORDERED THAT:

8 1. The United States is granted leave to file the attached Second Amended Complaint and the  
9 Defendants may file any appropriate responsive pleadings thereto, all in accordance with the times set  
10 forth in the Stipulation. The United States may also file a responsive pleading to any counterclaims  
11 asserted against it in accordance with the times set forth in the Stipulation.

12 2. The United States's motion to dismiss [Docket No. 47] is withdrawn and the hearing set  
13 for May 19, 2010 is vacated.

14 3. All remaining dates and deadlines as set by the Court's February 11, 2010 Scheduling  
15 Order remain as set and are otherwise unaffected by this Order.

16 IT IS SO ORDERED.

17 DATED: May 21, 2010

18 /s/ John A. Mendez  
19 Honorable John A. Mendez  
20 United States District Judge  
21 Eastern District of California  
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