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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
SIERRA PACIFIC INDUSTRIES, et  
al.,  
  
Defendants,  
  
AND ALL RELATED CROSS-ACTIONS.

CIV. NO. 2:09-02445 WBS AC  
  
ORDER

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On November 24, 2014, the court held a status conference to address defendant Sierra Pacific Industries' ("Sierra Pacific") motion to set aside the July 2012 settlement of this matter pursuant to Federal Rule of Civil Procedure 60(d)(3). The parties were represented by counsel at the conference.

Rule 60(d)(3) provides that a court may "set aside a

1 judgment for fraud on the court" at any time. Fed. R. Civ. P.  
2 60(d)(3). The parties agree that, unless Sierra Pacific can show  
3 fraud on the court under Rule 60(d)(3), its motion is untimely.  
4 See id. R. 60(b), (c)(1), (d)(3).

5 As agreed at the conference, before evaluating the  
6 merits of Sierra Pacific's accusations, the court will resolve  
7 the threshold issue of whether the alleged conduct giving rise to  
8 Sierra Pacific's Rule 60(d)(3) motion constitutes "fraud on the  
9 court." The court will therefore require the parties to submit  
10 briefs and hear oral argument limited to this threshold issue.

11 Focused briefing shall be submitted limited to: (1)  
12 identifying the test for "fraud on the court" under Rule 60(d)(3)  
13 and what Sierra Pacific must prove to seek relief under that  
14 subsection; (2) addressing whether, assuming the truth of Sierra  
15 Pacific's allegations, each alleged act of misconduct separately  
16 or collectively constitutes "fraud on the court" within the  
17 meaning of Rule 60(d)(3); and (3) explaining how and when Sierra  
18 Pacific discovered the alleged misconduct, specifically  
19 identifying whether Sierra Pacific learned of each alleged act  
20 before or after the settlement and dismissal of the case.

21 Sierra Pacific shall file its brief limited to the  
22 aforementioned issues no later than January 15, 2015. The  
23 government shall file an opposition limited to these issues no  
24 later than February 17, 2015. Sierra Pacific shall then file a  
25 reply similarly limited to the identified issues no later than  
26 March 9, 2015. Oral argument limited to that threshold issue  
27 will be heard at 2:00 p.m. on April 6, 2015. Sierra Pacific's  
28 request to reopen discovery is denied without prejudice.

1           The December 15, 2014 hearing on the government's  
2 motion to disqualify counsel for defendants is vacated. For that  
3 motion and Sierra Pacific's motion to temporarily stay its  
4 obligations under the settlement agreement, the court will not  
5 set hearing dates or require briefing until after it resolves the  
6 threshold issue of whether Sierra Pacific can seek relief under  
7 Rule 60(d)(3).

8           IT IS SO ORDERED.

9 Dated: November 24, 2014

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11 **WILLIAM B. SHUBB**  
12 **UNITED STATES DISTRICT JUDGE**  
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