

## Appendix C

**Summary of Evidence and Argument on Defendants' Accusations During the Litigation****I. THE IMAGINARY "WHITE FLAG CONSPIRACY" ACCUSATION**

<b>The United States Produced the Documents (Def. Br., Dkt. 593-3, p. 11-14, 27-41)</b>		
<b>Defendants Exhibit #</b>	<b>Document Description</b>	<b>Production Date</b>
Exhibit 30 to Warne Dec., Dkt. 596-31 thru 36	The Report of Investigation	July 6, 2010
Exhibit 31 to Warne Dec., Dkt. 597 and 597-1	The investigation photographs	August 20, 2010
Exhibit 31 to Warne Dec., Dkt. 597 p. 37-43	White Deposition Excerpts	March 8, 2011
Exhibit 32 to Warne Dec., Dkt. 597-2	Native JPEGs of the investigation photos	August 20, 2010
Exhibit 33 to Warne Dec., Dkt. 597-3, p. 1-10	Email Reynolds, Welton and White (9/8/07) and Reynolds's draft origin and cause report	October 15, 2010
Exhibit 33 to Warne Dec., Dkt. 597-3, p/ 11-15	Reynolds Deposition Excerpts	March 22, 2011
Exhibit 34 to Warne Dec., Dkt. 597-4, p. 1-2	Reynolds draft form "Fire Investigation Report" and draft sketch	October 15, 2010
Exhibit 34 to Warne Dec., Dkt. 597-4, p. 3-7	Reynolds Deposition Excerpts	March 23, 2011
Exhibit 35 to Warne Dec., Dkt. 597-5	Origin and Cause Report and sketch	July 6, 2010
Exhibit 36 to Warne Dec., Dkt. 597-6, p. 1-46	Email between Carlson and White (9/16/07) and draft Investigation Report	October 15, 2010
Exhibit 36 to Warne Dec., Dkt. 597-6, p. 47-51	Carlson Deposition Excerpts	August 3, 2011
Exhibit 37 to Warne Dec., Dkt. 597-7	Fire Progression Maps	July 6, 2010
Exhibit 38 to Warne Dec., Dkt. 597-8	Reynolds's draft sketch	October 15, 2010, May 2011
Exhibit 39 to Warne Dec., Dkt. 597-9, p.1	Welton's sketch	July 6, 2010
Exhibit 39 to Warne Dec., Dkt. 597-9, p. 2-5	Welton Deposition Excerpts	March 21, 2011

1	Exhibit 41 to Warne Dec., Dkt. 597-11; 597-12	White Deposition Excerpts	Nov. 15, 2010 Nov. 16, 2010 Nov. 17, 2010 Nov. 18, 2010 Nov. 19, 2010 Nov. 22, 2010 Feb. 7, 2011 Feb. 8, 2011 Feb. 9, 2011 May 11, 2011 May 12, 2011 May 17, 2011 May 18, 2011
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9	Exhibit 42 to Warne Dec., Dkt. 597-13	White Deposition Excerpts	March 7, 2011 March 9, 2011
10	Exhibit 45 to Warne Dec., Dkt. 597-16	Reynolds Deposition Excerpts	March 22, 2011 March 23, 2011 March 24, 2011
11			
12	Exhibit 46 to Warne Dec., Dkt. 597-17	Reynolds Deposition Excerpts	Nov. 15, 2011
13	Exhibit 48 to Warne Dec., Dkt. 597-19	Welton Deposition Excerpts	March 21, 2011 August 15, 2011
14	Exhibit 49 to Warne Dec., Dkt. 597-20	Disc of defendants' compilation of Welton Deposition Excerpts	March 21, 2011
15	Exhibit 50 to Warne Dec., Dkt. 597-21, p. 1-15	Matthews Deposition Excerpts	April 26, 2011
16	Exhibit 51 to Warne Dec., Dkt. 597-22	Carlson Deposition Excerpts	August 3, 2011 August 4, 2011
17	Exhibit 53 to Warne Dec., Dkt. 597-24, p. 1-12	Woolley Deposition Excerpts	October 21, 2011
18	Exhibit 53 to Warne Dec., Dkt. 597-24, p. 13	Scene Diagram, Exhibit to Woolley Deposition	February 8, 2011
19	Exhibit 53 to Warne Dec., Dkt. 597-24, p. 14	Reynolds draft sketch, Exhibit to Woolley Deposition	October 15, 2010
20	Exhibit 57 to Warne Dec., Dkt. 597-28	Reynolds draft form "Fire Investigation Report"	October 15, 2010
21	Exhibit 58 to Warne Dec., Dkt. 597-29	Photos of metal fragments	August 20, 2010
22	Exhibit 59 to Warne Dec., Dkt. 597-28, p. 2	Reynolds draft sketch	October 15, 2010
23	Exhibit 60 to Warne Dec., Dkt. 597-31	Native photo and JPEG of the metal fragments	August 20, 2010
24	Exhibit 62 to Warne Dec., Dkt. 597-33, p. 1-6	Email re: Greens Fire Report (9/9/07); Greens Fire Report	October 15, 2010
25	Exhibit 62 to Warne Dec., Dkt. 597-33, p. 7-15	Reynolds Deposition Excerpts	March 23, 2011
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Exhibit 63 to Warne Dec., Dkt. 597-34	Holbrook Deposition Excerpts	May 31, 2011 April 5, 2011 April 6, 2011
Exhibit 64 to Warne Dec., Dkt. 597-35, p. 1-2	Photos of the “white flag rocks”	August 20, 2010
Exhibit 64 to Warne Dec., Dkt. 597-35, p. 3-6	White Deposition Excerpts	Nov. 17, 2010

(Taylor Dec., ¶ 3.)

<b>Defendants Questioned Witnesses at Deposition</b>			
<b>Deponent</b>	<b>Title/Role</b>	<b>Date</b>	<b>Deposition Excerpts<sup>1</sup></b>
Doug Allen	U.S. Arson Expert	10/24/11	1 R.E. US 3-4
Alan Carlson	Cal Fire employee	8/3/11 8/4/11	2 R.E. US 363-64 2 R.E. US 383-94
Dr. Erik Christiansen	U.S. origin and ignition expert	11/18/11	2 R.E. US 557-67
Kelly Close	U.S. fire behavior expert	3/5/12	3 R.E. US 580-83
Chris Curtis	U.S. survey expert	11/7/11	3 R.E. US 680-84
Larry Dodds	U.S. origin and cause investigator	10/17/11	3 R.E. US 774-80
Craig Endicott	Forest Service Special Agent in Charge	6/14/11	4 R.E. US 874-81
Frank Holbrook	Fire Investigator hired by Howell’s insurer	5/31/11 6/1/11	5 R.E. US 1249-54 5 R.E. US 1285-86
Ivan Houser	Cal Fire Forester	4/18/11 4/19/11	5 R.E. US 1308-09, 1314-22 5 R.E. US 1329-38, 1341-43
Marion Matthews	U.S.F.S. Special Agent	4/26/11	7 R.E. US 1804-15
Cliff Merck	U.S. mechanic expert	10/7/11	7 R.E. US 1842-55
Dave Reynolds	Forest Service Fire Prevention Technician	3/23/11 3/24/11 11/15/11	8 R.E. US 2182-84 8 R.E. US 2202-06, 2211-14 8 R.E. US 2224-33, 2236-39
Patrick Shires	U.S. geologist expert	11/9/11	9 R.E. US 2377-78
John Wallace	U.S. geologist expert	10/25/11	9 R.E. US 2515-16
Diane Welton	U.S.F.S. Special Agent	3/21/11 8/15/11	9 R.E. US 2594-95, 2602-04, 2607-08 10 R.E. US 2611-14, 2646-64
Josh White	Cal Fire Investigator	11/16/10 11/17/10 11/18/10 3/8/11 3/9/11	10 R.E. US 2708-15, 2721-28 10 R.E. US 2786-88 10 R.E. US 2832-41 11 R.E. US 2984-97 11 R.E. US 3027-36

<sup>1</sup> The deposition excerpts listed in this appendix are representative examples of the testimony elicited on each topic and are not meant to be comprehensive.

**Defendants Retained Experts**

<b>Deponent</b>	<b>Title/Role</b>	<b>Date</b>	<b>Deposition Excerpts/Reports</b>
Dean Bundy	Origin-and-Cause	6/15/11	1 R.E. US 198-201
John Lentini	Expectation Bias	6/13/11 9/7/11	6 R.E. US 1562 6 R.E. US 1569-70
Duane Miller	Surveyor	7/29/11 9/27/11	7 R.E. US 1886 7 R.E. US 1870-82
Gary White	Origin-and-Cause	6/15/11	10 R.E. US 2668, 2670
Walt Wruble	Origin-and-Cause	6/16/11	11 R.E. US 3181-82

**Defendants Argued to the Court**

<b>Date</b>	<b>Document</b>	<b>Docket</b>	<b>Description</b>
8/4/10	SPI Request to Extend Scheduling Order	59 p. 12	“Recent discovery efforts have raised additional doubts about the integrity of the Investigative Report.”
12/21/11	SPI Request Lengthy Trial	344 p. 1	“The government’s only hope is to get in and out before the jury overcomes its natural disinclination to believe that government investigators and administrators would <i>cover up exculpatory evidence, manufacture inculpatory evidence, and commit perjury.</i> ”
2/29/12	SPI Motion for Summary Judgment	417-1 p. 1	“This is a case about certain managers and employees of the California Department of Forestry (‘Cal Fire’) and the United States Forest Service (‘USFS’) <i>engaging in misconduct in order to lay blame for the huge 2007 fire in Northern California on pre-selected defendants. It is a case about overreaching. Even worse, it is a case about ignoring, covering up, and manufacturing evidence.</i> As a result of this misconduct, the USFS, along with complicit investigators from Cal Fire, released an official Joint Origin and Cause Report in early summer 2009. That report told the story that the state and federal investigators wanted to tell, but it did not tell the truth.”

1 2 3 4 5 6 7 8 9 10 11	6/7/12	Ds' Portion Joint Pre-Trial Statement	524 p. 66-67	“[We] have been talking as clearly and loudly as possible about the <b>government’s spoliation of evidence, manufacturing of evidence, perjury, suborning perjury, and obstruction of justice</b> – all of which amounts to some very unclean hands. . . . Defendants’ equitable defenses are based on government investigators’ intentional failure to properly investigate the fire, cover-up of relevant evidence, manufacturing of evidence, and intentionally untruthful deposition testimony and sworn interrogatory responses about the same. These actions not only establish Defendants’ equitable affirmative defenses but bear on the credibility of the government investigators upon whose testimony Plaintiff’s own case depends. In fact, some of the evidence of the government investigators’ misconduct is to be found in the investigators’ own photographs of the alleged point of origin. There is no way to try this case while hiding the evidence of the government’s wrongdoing from the jury.”
12 13	6/7/12	Ds' Portion Joint Pre-Trial Statement	524, p. 12-21	Defendants listed 300 “core disputed facts” in the pretrial statement, including “facts” denouncing the integrity of the investigation. Facts ## 86-198.
14 15	6/14/12	Sierra Pacific’s Opp. To U.S. Motion <i>in Limine</i> #2	531 p. 3	“Here, the investigators’ work was more than slovenly; it was dishonest.”
16 17 18 19	6/14/12	Sierra Pacific’s Opp. To U.S. Motion <i>in Limine</i> #3	531 p. 8	“As hard as it is to believe that federal and state investigators would act in the way defendants intend to demonstrate here, this case is what it is. . . . Defendants have been accused of starting a fire they did not start by investigators who chose their defendant without conducting an investigation, and who then overlooked or ignored substantial evidence to the contrary.”
20 21 22 23 24 25 26 27 28	6/25/12	Sierra Pacific Trial Brief	563 p. 1, 4, 20	“These investigative missteps, which also include the <b>suppression of evidence and other acts of deception</b> , are too numerous to recount in this brief, but will be more fully explored at trial through exhibits as well as percipient and expert witness testimony.” . . . “Dismissal is warranted where <b>a party engaged deliberately in deceptive practices that undermine the integrity of judicial proceedings. Defendants will prove that government investigators engaged in widespread dishonesty</b> in an attempt to pin the Moonlight Fire on defendants they believed could pay a lot of money. Among other things, <b>the investigators ignored and destroyed exculpatory evidence, manufactured inculpatory evidence, and lied under oath.</b> ”

1 **II. THE “BUSH ADMISSION” ACCUSATION**

2 **The United States Produced the Documents**  

3 **(Def. Br., Dkt. 593-3, 41-42)**

Defendants' Exhibit #	Document Description	Production Date
4 Exhibit 30 to Warne Dec., Dkt. 596-31 thru 36	The Report of Investigation	July 6, 2010
5 Exhibit 41 to Warne Dec., Dkt. 597-11	White Deposition Excerpts	February 7, 2011
6 Exhibit 70, Warne Dec., Dkt. 597-41, p. 1	Bush's signed statement	July 6, 2010
7 Exhibit 70 to Warne Dec., Dkt. 597-41, p. 2-7	Reynolds Deposition Excerpts	March 22, 2011
8 Exhibit 71, Warne Dec., Dkt. 597-42	SPI's partial Transcription of audio recording	Audio produced Oct. 15, 2010
9 Exhibit 72, Warne Dec., Dkt. 597-43	White's interview summary of Bush	July 6, 2010
10 Exhibit 73 to Warne Dec., Dkt. 597-44	Bush Deposition Excerpts	April 29, 2010

11 (Taylor Dec., ¶ 6.)

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15 **Defendants Questioned the Investigators and Hired Experts**

Witness	Title/Role	Date	Testimony
16 Terri Harper	SPI Transcriptionist	3/22/11	2 R.E. US 284-315
17 Bruce Koenig	SPI Audio Expert	4/29/11 10/13/11	6 R.E. US 1538-39 6 R.E. US 1542
18 Dave Reynolds	USFS Fir Prevention Tech.	3/22/11	8 R.E. US 2135-40, 2143-45
19 Josh White	Cal Fire Investigator	2/7/11 3/7/11 3/9/11 5/11/11 5/18/11	10 R.E. US 2885-89 11 R.E. US 2955-63 11 R.E. US 3024-26 11 R.E. US 3042-44 11 R.E. US 3086-87

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22 **III. THE “WHITE DECLARATION” ACCUSATION**

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24 As discussed in the United States' Opposition, Sierra Pacific's accusation regarding the White  

25 declaration is redundant. (Opp. at 57-58.) The evidence and argument regarding Sierra Pacific's  

26 imaginary “white flag conspiracy” accusation, the Bush admission, events at the Red Rock Lookout, and  

27 the three other fires are set forth in sections I, II, VII and VII herein.

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1 **IV. THE “AIR ATTACK VIDEO” ACCUSATION**

2 **The United States Produced the Documents**  

3 **(Def. Br., Dkt. 593-3, 70-72)**

Defendants' Exhibit #	Document Description	Production Date
4 Exhibit 30 to Warne Dec., Dkt. 596-31, p. 44-45	Report of Investigation Conclusion	July 6, 2010
5 Exhibit 39 to Warne Dec., Dkt. 597-9	Welton Sketch	July 6, 2010
6 Exhibit 39 to Warne Dec., Dkt. 597-9	Welton Deposition Excerpts	March 21, 2011
7 Exhibit 45 to Warne Dec., Dkt. 597-16 at 22-24	Reynolds Deposition Excerpts	March 22, 2011
8 Exhibit 48 to Warne Dec., Dkt. 597-19	Welton Deposition Excerpts	March 21, 2011 August 15, 2011
9 Exhibit 110 to Warne Dec., Dkt. 598-29	Curtis Deposition Excerpts	November 7, 2011
10 Exhibit 111 to Warne Dec., Dkt. 598-30	Air Attack Video	August 20, 2010
11 Exhibit 111 to Warne Dec., Dkt. 598-30	Johnson Deposition Excerpts	March 25, 2011

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14 (Taylor Dec., ¶ 7.)

15 **Defendants Questioned Witnesses at Deposition**

Deponent	Title/Role	Date	Testimony
16 Dr. Erik Christiansen	U.S. Origin-and-Cause and Ignition Expert	11/18/11	2 R.E. US 569-72
17 Kelly Close	U.S. Fire Behaviorist Expert	3/5/12	3 R.E. US 608-10
18 Larry Craggs	U.S.F.S. Incident Commander	4/7/11	3 R.E. US 617-18
19 Chris Curtis	U.S. Survey Expert	11/7/11	3 R.E. US 685-92, 701, 705
20 Les Curtis	U.S.F.S. Air Attack	3/17/11	3 R.E. US 714-15, US 720-25
21 Walt Darran	Cal Fire Pilot	1/17/12	3 R.E. US 728-36
22 Larry Dodds	U.S. Origin-and-Cause Expert	10/17/11	3 R.E. US 784-87
23 Earl Johnson	Pilot	3/25/11	6 R.E. US 1470-77
24 Jeff Pudlicki	Beaty Forester	12/13/10	8 R.E. US 2071-76
25 Dave Reynolds	U.S.F.S. Fire Prevention Tech.	11/15/11	8 R.E. US 2248-49
26 Dr. Ali Reza	U.S. Expert	11/7/11	8 R.E. US 2284-92
27 Diane Welton	U.S.F.S. Special Agent	8/15/11	10 R.E. US 2616-17
28 Neil Wheeler	U.S. Wind Expert	11/14/11	10 R.E. US 2663-64

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<b>Defendants Retained Experts</b>			
<b>Witness</b>	<b>Role</b>	<b>Date</b>	<b>Report/Deposition</b>
Jason Dorris	SPI Animator	11/10/11	3 R.E. US 798-807, 809-837
Tim Feller	SPI Forester	8/1/11 3/9/12	4 R.E. US 887 4 R.E. US 891-92
Paul Kayfetz	SPI Photogrammetrist	6/15/11 7/22/11 11/17/11	6 R.E. US 1518 6 R.E. US 1520 6 R.E. US 1531-36
Chris Lautenberger	SPI Modeler	10/9/14	Report, Dkt. 598-32, p. 38



**V. THE “SCENE DIAGRAM” ACCUSATION**

<b>The United States Produced the Documents (Def. Br., Dkt. 593-3, 72-74)</b>		
<b>Defendants’ Exhibit #</b>	<b>Document Description</b>	<b>U.S. Production Date</b>
Exhibit 30 to Warne Dec., Dkt. 596-31	Report of Investigation	July 6, 2010
Exhibit 39 to Warne Dec., Dkt. 597-9, p. 1	Welton’s Sketch	July 6, 2010
Exhibit 39 to Warne Dec., Dkt. 597-9, p. 2-5	Welton Deposition Excerpts	March 21, 2011
Exhibit 40 to Warne Dec., Dkt. 597-10, p. 1-2	Scene Diagram	February 8, 2011
Exhibit 40 to Warne Dec., Dkt. 597-10, p. 3-12	White Deposition Excerpts	February 9, 2011
Exhibit 42 to Warne Dec., Dkt. 597-13	White Deposition Excerpts	March 7, 2011 March 9, 2011
Exhibit 45 to Warne Dec., Dkt. 597-16	Reynolds Deposition Excerpts	March 22, 2011 March 23, 2011 March 24, 2011
Exhibit 48 to Warne Dec., Dkt. 597-19	Welton Deposition Excerpts	March 21, 2011 August 15, 2011
Exhibit 110 to Warne Dec., Dkt. 598-29, p. 1-15	Chris Curtis Deposition Excerpts	November 7, 2011

(Taylor Dec., ¶ 3.)

<b>Defendants Questioned Witnesses At Depositions about the Sketch and Diagram</b>			
<b>Witness</b>	<b>Title/Role</b>	<b>Date</b>	<b>Deposition Excerpts/Reports</b>
Alan Carlson	Cal Fire	8/4/11	2 R.E. US 374-83
Chris Curtis	US Survey Expert	6/16/11 11/7/11	3 R.E. US 665-70 3 R.E. US 693-700
Dave Reynolds	USFS Fire Prevention Technician	3/24/11 11/15/11	8 R.E. US 2197-201 8 R.E. US 2245-47
Diane Welton	USFS Special Agent	3/21/11 8/15/11	9 R.E. US 2584-85 10 R.E. US 2615, 2644-45
Josh White	Cal Fire Origin and Cause investigator	11/17/10 11/18/10 11/19/10 11/22/10 2/9/11 3/8/11 5/11/11 5/12/11 5/18/11 11/28/11	10 R.E. US 2756-60 10 R.E. US 2842-54 10 R.E. US 2857 10 R.E. US 2864-68 11 R.E. US 2904-22 11 R.E. US 2998-3002 11 R.E. US 3045-46 11 R.E. US 3051-55 11 R.E. US 3101-06 11, R.E. US 3112-14, 3117-18

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<b>Defendants' Experts Offered Opinions</b>			
<b>Witness</b>	<b>Title/Role</b>	<b>Date</b>	<b>Excerpt</b>
Gary White	Origin and Cause Expert	6/15/11	10 R.E. US 2667-69

**VI. THE “CLOSE EXPERT REPORT” ACCUSATION**

<b>The United States Produced the Documents (Def. Br., Dkt. 593-3, 74-77)</b>		
<b>Defendants’ Exhibit #</b>	<b>Document Description</b>	<b>Production Date</b>
Exhibit 48 to Warne Dec., Dkt. 597-19	Welton Deposition Excerpts	March 21, 2011 August 15, 2011
Exhibit 111 to Warne Dec., Dkt. 598-30	Close Elevations	June 15, 2011
Ex. 112, Warne Dec., Dkt. 598-31, p. 13	Close Deposition Excerpts	March 5, 2012

(Taylor Dec., ¶ 9.)

<b>Defendants Hired Experts</b>			
<b>Witness</b>	<b>Role/Title</b>	<b>Date</b>	<b>Testimony</b>
Chris Lautenberger	SPI Modeler	10/9/14 11/15/11	Report, Dkt. 598-32, p. 37-40 Depo., Dkt. 598-34, p. 1, 4-7

**VII. THE “THREE OTHER FIRES” ACCUSATION**

<b>The United States Produced the Documents (Def. Br., Dkt. 593-3, 59-64)</b>		
<b>Exhibit #</b>	<b>Document Description</b>	<b>Production Date</b>
Exhibit 30 to Warne Dec., Dkt. 596-36, p. 179-82	Lyman Fire Report of Investigation	July 6, 2010
Exhibit 30 to Warne Dec., Dkt. 596-36, p. 194-199	Sheep Fire Report of Investigation	July 6, 2010
Exhibit 51 to Warne Dec., Dkt. 597-22	Carlson Deposition Excerpts	August 3, 2011 August 4, 2011
Exhibit 100 to Warne Dec., Dkt. 598-19	CDF Lyman Demand, dated Sept. 24, 2007	October 15, 2010
Exhibit 100 to Warne Dec., Dkt. 598-19, p. 7-11	Harp Deposition Excerpts	May 6, 2011
Exhibit 101 to Warne Dec., Dkt. 598-20	CDF Letter re Lyman Fire, dated December 10, 2007	October 15, 2010
Exhibit 101 to Warne Dec., Dkt. 598-20, p. 3	CDF Letter re Lyman Fire, dated January 6, 2008	October 15, 2010
Exhibit 102 to Warne Dec., Dkt. 598-21	Gutierrez Deposition Excerpts	October 19, 2011
Exhibit 103 to Warne Dec., Dkt. 598-22	Anderson Deposition Excerpts	July 14, 2011
Exhibit 104 to Warne Dec., Dkt. 598-23	Howell Deposition Excerpts	September 10, 2010 September 11, 2010
Exhibit 105 to Warne Dec., Dkt. 598-35	Foster Deposition Excerpts	March 3, 2011
Exhibit 106 to Warne Dec., Dkt. 598-36	The 2007 Greens Fire Report	July 6, 2010
Exhibit 107 to Warne Dec., Dkt. 598-37	The 2010 Greens Fire Report	January 3, 2011
Exhibit 108 to Warne Dec., Dkt. 598-27	Harp Deposition Excerpts	May 6, 2011
Exhibit 109 to Warne Dec., Dkt. 598-28	U.S. Interrogatory Responses, Set #6	December 30, 2011

(Taylor Dec., ¶ 10.)

<b>Witnesses Were Deposed</b>			
<b>Witness Name</b>	<b>Title/Role</b>	<b>Date</b>	<b>Deposition Excerpts</b>
Les Anderson	Cal Fire Investigator	7/14/11	1 R.E. US 7-10
Damon Baker	Howell's Side Rod	4/27/10 8/8/11	1 R.E. US 13-31 1 R.E. US 34, 51-54
Phil Battaglia	Beaty Forester	12/15/10	1 R.E. US 57-76
Don Beaty	Beaty Owner	8/11/11	1 R.E. US 95-131
Kevin Boston	U.S. Expert Forester	9/22/11	1 R.E. US 155-77

1	Robert Brown	Howell's Skidder	5/24/10 5/25/10	1 R.E. US 180-91 1 R.E. US 194
2	J.W. Bush	Howell's Equipment Operator	4/29/10 4/30/10	1 R.E. US 215-33, 257-65 1 R.E. US 268-80
3	William Butler	Landowner	4/15/10	2 R.E. US 317
4	Alan Carlson	U.S.F.S. Forest Supervisor	8/3/11	2 R.E. US 365
5	Larry Craggs	U.S.F.S. Incident Commander	4/7/11	3 R.E. US 627-37
6	Kelly Crismon	Howell's Equipment Operator	7/29/10 7/30/10 8/2/10	3 R.E. US 643-46 3 R.E. US 653-57 3 R.E. US 661-63
7	Les Curtis	U.S.F.S. Air Attack	3/17/11	3 R.E. US 716
8	Russell DeMarce	Howell's Skidder Operator	5/18/10	3 R.E. US 739-40
9	Bill Dietrich	Owner Dietrich Falling	9/8/10 9/9/10	3 R.E. US 743-52 3 R.E. US 755-58
10	Tom Downing	SPI District Manager	7/28/10	3 R.E. US 840-45
11	Craig Endicott	U.S.F.S. Special Agent In Charge	6/13/11	3 R.E. US 867-71
12	Danny Finch	Howell's Knot Bumper	7/19/10	4 R.E. US 915-17
13	John Forno	SPI Mill Forester	9/13/10 10/26/10	4 R.E. US 923-33 4 R.E. US 949, 954-60, 973-80
14	Brigitte Foster	USFS Fire Prevention Technician	3/3/11	4 R.E. US 1004-08
15	John Garland	U.S. Expert Forester	9/12/11	4 R.E. US 1026-43
16	Dennis Garrison	SPI Forester	9/30/10	4 R.E. US 1046-67
17	George Gonzales	Cal Fire Investigator	1/20/11	4 R.E. US 1069-70
18	Greg Gutierrez	Cal Fire Investigator	10/19/11	4 R.E. US 1073-87
19	Dave Harp	Cal Fire investigator	5/6/11	4 R.E. US 1096-1111
20	Ron Heinbockel	U.S.F.S. Fire Manager	5/16/11	4 R.E. US 1128-1131
21	Ivan Houser	Cal Fire Forester	4/18/11 4/20/11	5 R.E. US 1301-05 5 R.E. US 1346-49
22	Eunice Howell	Owner Howell's Forest Harvesting	9/10/10 9/11/10 8/9/11	5 R.E. US 1387-1402 5 R.E. US 1405-09 5 R.E. US 1412-40, 1443-55
23	Karen Juska	U.S.F.S. Fire Prevention Technician	1/26/11	6 R.E. US 1480
24	Mike Mitzel	SPI District Manager	10/27/10 10/28/10	7 R.E. US 1888-96 7 R.E. US 1899, 1904-06
25	William Molumby	U.S.F.S. Type-1 Team Incident Commander	8/29/11	7 R.E. US 1912-13
26	John Moore	Owner Sugarpine Aviation	8/9/10	7 R.E. US 1916-21
27	Edward Murphy	SPI Manager	7/26/10 8/12/11	7 R.E. US 1924 7 R.E. US 1940-1975
28				

1	Giovanni Paoli	CAT Repair	11/2/10	7 R.E. US 1998
2	Rodney Pedersen		12/22/11	8 R.E. US 2061
3	Jeff Pudlicki	Beaty Forester	12/13/10 12/14/10	8 R.E. US 2077-86 8 R.E. US 2089-94
4	Gerald Quigley	Defendants' Fire Investigator; Co-Op Patrol	10/10/11	8 R.E. US 2097-2102
5	Dave Reynolds	U.S.F.S. Fire Prevention Technician	3/23/11 3/24/11	8 R.E. US 2148-68 8 R.E. US 2207
6	Glenn Schall	Beaty Forester	11/3/10	9 R.E. US 2327, 2329, 2332-52
7	Alan Setzer	U.S.F.S. Fire Manager	8/10/11	9 R.E. US 2356-57
8	Patrick Shires	U.S. Expert Geologist	11/9/11	9 R.E. US 2367-76, 2379-80
9	Jesse Sisneros	Fire Fighter	12/21/11	9 R.E. US 2386-88
10	Dale Stocks	Howell's Faller	5/25/10 5/26/10	9 R.E. US 2398-2415 9 R.E. US 2418-26
11	Arlo Stroing	Owner Storing Ranch	2/28/11	9 R.E. US 2429, 2432-35
12	John Truett	U.S.F.S. Operations Chief	8/8/11	9 R.E. US 2483-84
13	John VanDuyn	Beaty Forester	9/17/10 1/12/11	9 R.E. US 2487-89 9 R.E. US 2492-97
14	Dan Voth	Howell's Faller	7/20/10	9 R.E. US 2500-04
15	John Wallace	U.S. Expert Geologist	10/25/11	9 R.E. US 2507-14, 2517
16	Joe Waterman	Cal Fire	12/5/11	9 R.E. US 2520-22
17	Diane Welton	U.S.F.S. Special Agent	3/21/11	9 R.E. US 2596-2601
18	Josh White	Cal Fire Investigator	11/17/10 11/18/10 2/9/11 3/7/11 3/9/11 5/11/11 5/12/11 5/18/11	10 R.E. US 2740-44 10 R.E. US 2793-2822 11 R.E. US 2930-31 11 R.E. US 2949-54 11 R.E. US 3022-23 11 R.E. US 3039-3041 11 R.E. US 3049-3052 11 R.E. US 3107-09
19	Leo Whitlock	SPI Roving Patrol	9/1/11	11 R.E. US 3170-73

<b>Defendants' Retained Experts</b>			
<b>Witness Name</b>	<b>Title/Role</b>	<b>Date</b>	<b>Testimony</b>
John Lentini	SPI Bias	6/13/11	6 R.E. US 1561-62
Edward Murphy	SPI Forester	8/1/11 2/22/12	7 R.E. US 1928-32 7 R.E. US 1982-86
Candace Roseberry	SPI Retained Forester	7/27/11 9/20/11	8 R.E. US-2302 8 R.E. US 2307-25

Defendants Argued to the Court			
Date	Document	Docket	Description
2/29/12	SPI Motion for Summary Judgment	417-1, p. 13	“The investigation report for the Lyman Fire is dated September 18, 2007, <i>but it was not published until September 24, 2007 – after the Moonlight Fire occurred and the same day that Cal Fire sent Howells [sic] a demand letter requesting that it pay the \$46,000 in suppression costs</i> incurred in fighting that fire. . . . The Greens Fire . . . report of investigation was not submitted until September 8, 2007, <i>five days after the Moonlight Fire occurred, and three days after the Moonlight Fire’s cause was ‘determined.’</i> ”
5/31/12	Ds’ Motion in Limine #3 re Sheep Fire	514, p. 7-10	[T]here is insufficient evidence to conclude that Howell caused the Sheep Fire. The only evidence in support of this conclusion is CDF’s report, <i>the probative value of which is not credible since the report was created after the U.S. and CDF jointly accused Defendants of causing the Moonlight Fire, i.e., with a view to possible litigation. . . .</i>
5/31/12	Ds’ Motion in Limine #5 re: Lyman Fire	514, p. 11-13	Defendants sought to exclude evidence that Howell’s had paid Cal Fire for suppression costs claiming she was <i>“bullied into making these payments.”</i> Defendants argued that the party admissions were “unduly prejudicial” because they were the “bases for Plaintiff’s negligent supervision claims,” and “may confuse the jury into believing that Sierra Pacific and/or Beaty necessarily should have done more with respect to supervising Howell’s.”
5/31/12	Ds’ Motion in Limine #5 re: Greens Fire	514, p. 11-13	With regard to the Greens Fire, defendants sought to prevent the jury from knowing they had generated <i>their own</i> documents saying Howell’s caused that fire: “Defendants anticipate that Plaintiff will attempt to introduce two Beaty documents containing statements that the Greens Fire was caused by a rock strike. These documents lack foundation under Rule 602. Glenn Schall is a Beaty forester who wrote at least one, and likely both, documents concerning the Moonville Sale, wherein he referenced the purported cause of the Greens Fire being a rock strike.”

6/7/12	Ds' Pre-Trial Statement	524, p. 67-68	<p>“[T]hese additional fires show a <b><i>pattern of fraud by government investigators</i></b> who, among other things, <b><i>created a false investigation report</i></b> on one of these other fires after the Moonlight Fire burned, then backdated it, in order <b><i>to manufacture evidence</i></b> in this case. . . . <b><i>the manufacturing of causation evidence</i></b> (regarding the Moonlight Fire and other fires upon which Plaintiff’s allegations depend) by multiple government investigators – <b><i>investigators who demonstrably lied under oath</i></b> and who to this day have failed to recant their false testimony. . . . <b><i>government investigators’ widespread pattern of intentional misconduct and dishonesty that provides the very foundation of Plaintiff’s case.</i></b> Defendants believe the Court will agree once they have had the opportunity to demonstrate the government’s wrongdoing at trial.”</p>
6/7/12	Ds' Pre-Trial Statement	524, p. 67-68	<p>Many of the more than 300 “core disputed facts” listed in defendants’ pre-trial statement concerned the three other fires including: investigator Foster’s creation of a “new” Greens Fire report in fall 2010; the alleged failure to properly investigate the fires; the timing of the reports in relation to the Moonlight Fire; and Cal Fire’s so-called “heartless” act of collecting payment for Lyman Fire suppression costs from Eunice Howell, whose employee had admitted to starting the fire. Facts 199-208 (Greens Fire); Facts 209- 214 (Lyman Fire); Facts 215 – 220 (Sheep Fire).</p>
6/25/12	Ds' Trial Brief	563, p. 8-9	<p>“Instead of showing a pattern of negligence, <b><i>these fire “investigations” show a pattern of fraud and deceit by the government’s investigators.</i></b> . . . “Defendants deposed these individuals [investigators Foster, Anderson Gutierrez and Harp about the three fires], and the depositions revealed manufactured evidence and facts contrived to support the Moonlight Fire report.”</p>



**VIII. THE IMAGINARY “RED ROCK COVER-UP” ACCUSATION**

<b>The United States Produced the Documents (Def. Br., Dkt. 593-3, 65-70)</b>		
<b>Defendants Exhibit #</b>	<b>Document Description</b>	<b>U.S. Production Date</b>
Exhibit 30 to Warne Dec., Dkt. 596-31	The Report of Investigation	July 6, 2010
Exhibit 85 to Warne Dec., Dkt. 598-4, p. 1-5	Juska Interview Statements, dated September 12, 2007	July 6, 2010
Exhibit 85 to Warne Dec., Dkt. 598-4, p. 6-10	Juska Deposition Excerpts	January 26, 2011
Exhibit 86 to Warne Dec., Dkt. 598-5, p. 1-2	Juska Memo	October 15, 2010
Exhibit 86 to Warne Dec., Dkt. 598-5, p. 3-7	Juska Deposition Excerpts	January 26, 2011
Exhibit 87 to Warne Dec., Dkt. 598-6, p. 1-3	Juska Memo	October 15, 2010
Exhibit 87 to Warne Dec., Dkt. 598-6, p. 4-9	Juska Deposition Excerpts	January 26, 2011
Exhibit 88 to Warne Dec., Dkt. 598-7, p. 1-2	Juska Memo	December 8, 2010
Exhibit 88 to Warne Dec., Dkt. 598-7, p. 3-8	Juska Deposition Excerpts	January 26, 2011
Exhibit 89 to Warne Dec., Dkt. 598-8	Heinbockel Email	December 8, 2010
Exhibit 90 to Warne Dec., Dkt. 598-9, p. 1-4	Heinbockel Fact Finding Interview	December 8, 2010
Exhibit 90 to Warne Dec., Dkt. 598-9, p. 5-8	Heinbockel Deposition Excerpts	May 16, 2011
Exhibit 91 to Warne Dec., Dkt. 598-10	SPI Interrogatories, Set #1	June 7, 2010
Exhibit 92 to Warne Dec., Dkt. 598-11	U.S. Response to SPI Interrogatories, Set #1	July 9, 2010
Exhibit 93 to Warne Dec., Dkt. 598-12	U.S. Response to SPI's RFA, set #1	July 16, 2010
Exhibit 94 to Warne Dec., Dkt. 598-13	U.S. Supplemental Response to Beaty RFA, set 2	January 6, 2012
Exhibit 95 to Warne Dec., Dkt. 598-14	Ds Video Montage of Deposition Excerpts	2011
Exhibit 96 to Warne Dec., Dkt. 598-15	Craggs Deposition Excerpts	April 7, 2011
Exhibit 97 to Warne Dec., Dkt. 598-16	Juska Deposition Excerpts	January 26, 2011
Exhibit 98 to Warne Dec., Dkt. 598-17	Heinbockel Deposition Excerpts	May 16, 2011

(Taylor Dec., ¶ 11.)

<b>Defendants Questioned Witnesses at Deposition</b>			
<b>Witness</b>	<b>Role/Title</b>	<b>Date</b>	<b>Deposition</b>
Herschel Beail	Sugarpine Pilot	8/9/10	1 R.E. US 80-92
Alan Carlson	Cal Fire (Retired)	8/3/11	2 R.E. US 366
Alice Carlton	Forest Supervisor	6/17/11	2 R.E. US 403-45
Rick Case	U.S.F.S. Incident Commander	8/9/11	2 R.E. US 452-64
Kelly Close	U.S. Expert Fire Behavior	3/5/12	3 R.E. US 584-606
Larry Craggs	U.S.F.S. Incident Commander	4/7/11	3 R.E. US 613-16, 619, 629
Chris Curtis	U.S. Expert Surveyor	11/7/11	3 R.E. US 706-11
Les Curtis	U.S.F.S. Air Attack	3/17/11	3 R.E. US 716-19
Larry Dodds	U.S. Expert Origin-and-Cause	10/17/11	3 R.E. US 761-73, 780-83
Pete Duncan	U.S.F.S. 30(b)(6)	8/5/11	3 R.E. US 848-52
Craig Endicott	U.S.F.S. Special Agent in Charge (Retired)	6/13/11 6/14/11	3 R.E. US 855-66 4 R.E. US 882-84
John Forno	SPI Mill Forester	9/13/10 10/26/10	4 R.E. US 920-22, 934-44 4 R.E. US 961-72, 980-93
Brigitte Foster	U.S.F.S. Fire Prevention Technician	3/3/11	4 R.E. US 996-1003
Maria Garcia	U.S.F.S. Deputy Forest Supervisor	8/21/11	4 R.E. US 1011-1020
John Garland	U.S. Expert Forester	9/12/11	4 R.E. US 1024-25
Ron Heinbockel	U.S.F.S. Fire Management	5/16/11	4 R.E. US 1114-27, 1131-33, 1137-38, 1145-48
Scott Henry	Cal Fire Firefighter	5/19/11	5 R.E. US 1170-72
Frank Holbrook	Howell's Insurer Origin Expert	6/1/11	5 R.E. US 1280-84
Ivan Houser	Cal Fire Forester	4/18/11 4/19/11	5 R.E. US 1306-07 5 R.E. US 1339-40
Randy Jennings	U.S.F.S. Battalion Chief	5/9/11	6 R.E. US 1458-67
Karen Juska	U.S.F.S. Fire Prevention Technician	1/26/11	6 R.E. US 1481-1515
Caleb Lief	Red Rock Lookout	1/25/11	6 R.E. US 1573-81, 1584-1615, 1622-79
Dave Loomis	U.S.F.S. Acting District Ranger	6/3/11	6 R.E. US 1690-1749
Richard Mangan	U.S. Expert Fire Suppression	11/16/11	7 R.E. US 1752-76
Marion Matthews	U.S.F.S. Special Agent in Charge	4/26/11	7 R.E. US 1779-98
Candy Miller	U.S.F.S. EEO Investigator	8/11/11	7 R.E. US 1858-63 7 R.E. US 1865-66

1	William Molumby	U.S.F.S. Incident Commander	8/29/11	7 R.E. US 1909-11
2	Scott Packwood	Cal Fire Firefighter	5/27/11	7 R.E. US 1992-95
3	Chris Parker	U.S. Expert Suppression Costs	11/11/11	7 R.E. US 2024-26
4	Danny Rackley	Cal Fire Firefighter	12/16/11	8 R.E. US 2118-22
5	Dave Reynolds	U.S.F.S. Fire Prevention Technician	3/22/11 3/24/11 11/15/11	8 R.E. US 2125-34 8 R.E. US 2217-18 8 R.E. US 2244
6	Ali Reza	U.S. Expert Engineer	11/7/11	8 R.E. US 2273-83, 2293-96
7	Allan Setzer	U.S.F.S. Fire Management Officer	8/10/11	9 R.E. US 2355, 2358-64
8	Scott Sibbald	U.S.F.S. bulldozer operator	8/5/11	9 R.E. US 2383
9	Jesse Sisneros	Cal Fire Firefighter	12/21/11	9 R.E. US 2391
10	Chuck Stevens	Logger	1/4/11	9 R.E. US 2394-95
11	Arlo Stroing	Owner Storing Ranch	2/28/11	9 R.E. US 2430-31
12	Kent Swartzlander	U.S.F.S. Incident Commander	8/24/11	9 R.E. US 2438-44
13	John Truett	U.S.F.S. Operations Chief	8/8/11	9 R.E. US 2479-83
14	Diane Welton	U.S.F.S. Special Agent	3/21/11 8/15/11	9 R.E. US 2526-74, 2593-94 10 R.E. US 2633-41, 2655-60
15	Josh White	Cal Fire Investigator	11/22/10 2/7/11 3/8/11 5/18/11 11/28/11	10 R.E. US 2869-72 10 R.E. US 2875-84 11 R.E. US 3018-19 11 R.E. US 3088-3100 11 R.E. US 3115-16, 3119-24, 3129

Defendants' Retained Experts				
Witness	Topic	Date	Testimony	
20	Timothy Feller	SPI Forester	8/1/11	4 R.E. US 887
21	Richard Fields	Lookout	6/15/11	4 R.E. US 895
22			9/2/11	4 R.E. US 898
23			10/20/11	4 R.E. US 901
24			11/10/11	4 R.E. US 904-07
25	Walt Wruble	Origin-and-Cause	6/16/11	11 R.E. US 3180

Defendants Argued to the Court				
Document	Date	Dkt. #	Brief Description	
26	SPI Counter Claim	1/15/10	23, p. 14-18	Accusing the United States of misconduct at the Red Rock Lookout including that on September 3, 2007, <i>the Red Rock Lookout employee was "using illegal drugs, socializing with guests, fighting, and failing to maintain a proper lookout for fire while on duty."</i>

SPI Opp. To U.S. Motion to Dismiss Counter Claims	5/5/10	49, p. 1-2	“On September 3, 2007, the Moonlight Fire catastrophically burned roughly 46,000 acres of those forests. Counterclaim ¶1. Instead of being quickly extinguished, the fire burned out of control because government personnel at the nearby Red Rock Lookout were fighting and perhaps <i>using illegal drugs while on duty instead of watching for smoke.</i> ”
SPI Answer	6/15/10	57 p. 13-20	“Sierra Pacific is informed and believes and thereon alleges that using <i>illegal drugs, socializing with guests, fighting, and failing to maintain a proper lookout or to otherwise watch for fire</i> while on duty constitute violations of the rules and regulations governing USFS fire lookout staff. . . . Sierra Pacific is informed and believes and thereon alleges that the <i>USFS suppressed evidence of this misconduct in an effort to protect its position in the instant litigation. Sierra Pacific is informed and believes and thereon alleges that, although the USFS wished to dismiss Lief for his misconduct soon after the Moonlight Fire, it waited two years to do so in order to obscure cause and effect.</i> ”
SPI’s Mtn for More Depositions	9/15/10	80 p. 29	“Sierra Pacific is informed that the United States subsequently learned about this staff misconduct and <i>attempted to suppress evidence of these events in an effort to protect its position in this litigation.</i> . . . Additionally, <i>the alleged cover-up</i> supports its alleged unclean hands defense. Sierra Pacific is informed and <i>believes that Ms. Garcia and Ms. Taylor have knowledge of the events that took place at the Red Rock Lookout Tower and the subsequent cover-up.</i> ”
SPI portion of Joint Statement	11/17/10	93 p. 2, 12-13	“Sierra Pacific alleges that Mr. Lief was engaged in various forms of misconduct at the time Ms. Juska arrived, including the <i>use of illegal drugs</i> . Because Mr. Lief was apparently engaged in improper activities, and because Mr. Lief and Ms. Juska were then engaged in this altercation, Mr. Lief was distracted from his duties of watching for fire, and therefore failed to spot or report the fire when it first became visible from the Red Rock Lookout Tower. . . . Sierra Pacific further alleges that soon after the Moonlight Fire broke out, Mr. Lief’s supervisors within the USFS were made aware of his misconduct on September 3, 2007, and <i>suppressed evidence of his misconduct in an effort to protect the USFS’s interest in the instant litigation.</i> ”

<p>1 SPI Obj. to 2 U.S. Request 3 for 4 Clarification</p>	<p>12/17/10</p>	<p>118 p. 2-3</p>	<p>“[E]ven the incomplete documents produced by the government <i>reveal a deliberate, fraudulent and years-long effort to cover up egregious misconduct that occurred at the Red Rock Lookout on the day that the Moonlight Fire ignited. This cover-up was motivated specifically by a desire to conceal the government’s failure to timely report the Moonlight Fire, thereby enhancing the government’s effort to extract monetary damages from Sierra Pacific and other private parties through the use of litigation tactics designed to conceal the truth.</i>”</p>
<p>7 SPI Notice of 8 Motion to 9 Compel; 10 Crime-Fraud 11 Motion</p>	<p>12/20/10</p>	<p>119, p. 3</p>	<p>“The incomplete documents produced by Plaintiff reveal a <i>deliberate, fraudulent, and years-long effort to cover up egregious misconduct that occurred at the Red Rock Lookout Tower on the day that the Moonlight Fire ignited. This cover-up was motivated specifically by a desire to conceal the government’s failure to timely report the Moonlight Fire, thereby enhancing Plaintiff’s effort to extract monetary damages from Sierra Pacific and other private parties through the use of litigation tactics designed to conceal the truth.</i> In light of facts revealed in documents Plaintiff has produced to date, the crime-fraud exception to the attorney-client privilege and work product doctrine applies.”</p>

SPI Joint Statement re: Crime-Fraud Motion	1/14/11	131 p.1-17	<p>“[W]hen federal employees <i>intentionally cover up</i> highly relevant and damaging facts, when sworn discovery responses are <i>intentionally spun to avoid telling the truth</i>, and when the <i>government’s counsel participate</i> in an effort to deny defendants access to information which, save for discovery, would be unknowable, the <i>legal system breaks down</i> and defendants’ right to due process under the law evaporates. Here, that has happened. . . . <i>[T]he United States’ responses were not only false</i>, but a brazen continuation of a long-running effort to hide what really happened on September 3, 2007. As detailed below, the U.S. Forest Service’s <i>scheme to cover up critical information harmful to its claim began immediately and, with the assistance of counsel, that scheme has extended through discovery in this matter</i>, as well as through its oppositions to Sierra Pacific’s present and past motions to compel. . . . Because of the government’s inexcusable conduct, and because of the conduct of its counsel, all of which was manifestly designed to perpetuate <i>a long-running cover-up</i>, . . . <i>The Forest Service and its counsel have engaged in a years-long cover-up of misconduct by Forest Service personnel at the Red Rock Lookout on the day the Moonlight Fire ignited</i>. As detailed below, the incomplete documents produced by the government reveal that <i>this cover-up was motivated by the Forest Service’s fear that the misconduct at Red Rock would harm its legal position</i>.”</p>
Hearing on SPI Crime-Fraud Motion	1/21/11	152, p. 10, 16, 17	<p>“[T]he point we’re trying to make is the individuals that are giving information to the representatives of the U.S.F.S. are the same individuals that engaged in a year-long cover-up of a critical series of events that took place at the Red Rock Lookout Tower. . . . in light of the responses that the government chose to make in response to requests for production, in response to more importantly interrogatories, and in response to requests for admissions, that we have a right to figure out and know exactly what was taking place on September 3, 2007 and thereafter regarding Caleb Leaf’s [sic] conduct. . . . pertain to the very issues that are set forth in the government’s untrue recitation of the events that took place in September 3, 2007.”</p>

SPI Motion for Re-consideration of Crime-Fraud Motion	2/8/11	142 p. 2-3, 14-15	<p>“Months after the USFS provided its verified discovery responses, and only after Sierra Pacific had succeeded on its motion to compel, the USFS finally produced documents that reveal a far different version of what actually occurred at Red Rock on September 3, 2007. Indeed, <i>these documents uncovered a long-running and on-going scheme by the USFS to cover up critical information harmful to its claims – a scheme that began immediately following the Moonlight Fire and that has now extended into formal discovery in this matter. The importance of what the government attempted to cover up cannot be overstated.</i> At roughly the same moment that the Moonlight Fire began, the very person who was responsible for spotting fire as quickly as possible was engaged in misconduct – including the possession of drug paraphernalia and other inappropriate behavior – that distracted and prevented him from performing his critical fire-spotting function. Sierra Pacific demonstrated in its underlying Motion to Compel that the government willfully failed to reveal these facts in response to pointed discovery requests seeking their disclosure. . . . <i>Because of the government’s inexcusable conduct, all of which was manifestly designed to perpetuate a long-running cover-up . . .</i></p>
SPI Motion for Summary Judgment	12/8/11	330 p. 6	<p>“At roughly the same moment that the Moonlight Fire began, Mr. Lief was <i>engaged in misconduct—including possession of drug paraphernalia and other inappropriate behavior</i>—that distracted and prevented him from performing his critical fire-spotting function. The <i>government attempted to cover up Mr. Lief’s misconduct</i> by, among other things, instructing USFS employees not to mention Mr. Lief’s misconduct during the investigation of the Moonlight Fire and <i>serv[ing] perjurious discovery responses</i> in this action denying any misconduct by Mr. Lief and providing a whitewashed account of his activities.”</p>
SPI Motion to Amend Scheduling Order	12/16/11	338 p. 11, 16	<p>“The <i>United States, not willing to own up to its malfeasance, refuses to admit to the cover-up</i> and has proffered at least four of its own expert witnesses to rebut Sierra Pacific’s claims. That is 17 to 19 witnesses to address the Red Rock issue alone.”</p>
SPI Motion for Lenghtier Trial	12/21/11	344 p. 11, 16	<p>Defendants claimed to need at least sixty days of trial so they can call, among others, 17-19 witnesses to testify about Caleb Lief urinating on his foot at the Red Rock Lookout and a grand so-called conspiracy to cover it up.</p>

SPI Opp. U.S. MSJ	1/27/12	384 p. 19	“Not only is this investigator the USFS’s lead investigator into what caused the Moonlight Fire, the Red Rock witness statements she drafted and included in the Origin and Cause report demonstrate an <i>extreme willingness to hide from public disclosure any information that might hurt the government’s effort to collect damages in this case.</i> Neither statement includes any reference to the fact that another federal employee discovered the employee stationed in the lookout urinating on his bare feet on the opposite side of the tower from the fire while it was burning, that she found a <i>marijuana pipe inside the tower, or that she smelled the heavy odor of marijuana on the lookout’s hand.</i> This investigator’s willingness to bury facts regarding Red Rock is consistent with her willingness to do so regarding other aspects of her origin and cause investigation.”
Ds Argument at Hearing on U.S. MSJ	2/10/12	411 p. 56- 57, 75- 76	Warne: “Certainly, the briefing never argues that the employee at the Red Rock Lookout could discretionarily determine <i>not to look for fires and instead to smoke marijuana and urinate publicly</i> , and do other kinds of misconduct that we have alleged and that the Court, on this motion, I think needs to take as true because it’s really a pleading motion, as we have pointed out. . . . <i>There is no discretion by a lookout to smoke pot instead of doing his job.</i> . . . And it doesn’t take expert testimony to know that a government employee being paid to look for fires is not acting reasonably if instead of doing his job he is doing drugs.”
Ds Pre-Trial Statement	6/7/12	524 p. 4-30	Defendants listed 329 “disputed core facts,” many of which concerned their Red Rock Lookout defenses; <i>see</i> Facts #56-65 re: allegations of what happened at the RRL on 9/3/07 and before; Facts #68-85 re: Welton learned of this claim but did not include the information in the ROI and Lief was given a “fully successful” performance review and subsequent employment information.
Ds Opp U.S. MIL	6/14/12	531 p. 1, 2, 5	“This <i>Court is already well aware of the facts surrounding Red Rock and of the concerted (though ultimately unsuccessful) attempt by numerous USFS personnel [to] hide them.</i> One of the people at the center of the cover-up was Diane Welton, the United States Forest Service’s lead Moonlight Fire investigator.... she <i>created false documents</i> in the form of Interview Reports ... <i>hid and falsified evidence</i> directly relevant to this case for the purpose of affecting the outcome of this case.”



1 2 3 4 5	Ds Opp. to U.S. <i>Daubert</i> re Fields	6/14/12	539 p. 34:11- 17	“Fields opined, among other things that, Lief’s supervisors contributed to the late spotting of the fire by failing to properly investigate earlier allegations that <b><i>Lief had illegal drugs at Red Rock; that USFS management’s failure to investigate Lief’s possession of illegal drugs</i></b> on the day of the fire – and, indeed, their <b><i>active suppression of information</i></b> regarding the same- is inconsistent with proper USFS procedure and therefore <b><i>constitutes a cover-up.</i></b> ”
6 7 8 9	SPI Trial Brief	6/25/12	563 p. 9-10	“Both Lief and Juska are listed as witnesses in the Report, and both gave statements to the USFS's lead investigator, Diane Welton. But Welton purposefully omitted the details of what Juska saw at the Red Rock Lookout Tower that afternoon, even though Juska reported the information and documented it separately from what Welton wrote in the Report.”
10 11 12 13 14 15 16	Ds argument at Final Pre- trial Hearing	6/26/12	572, p. 91-94	Warne: “I certainly don’t want to run afoul of this Court’s rulings as they exist, or will exist, pertaining to the Red Rock Lookout tower, as I preview that evidence . . . There is an email that went to Mr. Loomis, that was drafted by Mr. Heinbockel, and that e-mail sets forth the fact that he was forced to give Mr. Lief a satisfactory performance evaluation. In his deposition, Mr. Heinbockel testified that he did that, and that they rehired him the next season <b><i>so that the government could keep him on their team, and so he wouldn’t go, quote, shooting his mouth off.</i></b> And so those kinds of issues are, I think, in play, in light of your ruling on Red Rock.”

IX. THE "STATE FUND" ACCUSATION

<b>Defendants Questioned Witnesses</b>			
<b>Name</b>	<b>Title/Role</b>	<b>Date</b>	<b>Deposition</b>
Paul Bertagna	Retired Cal Fire	11/8/11	1 R.E. US 136-49
Alan Carlson	Cal Fire	8/3/11 8/4/11	2 R.E. US 320-63 2 R.E. US 369-71
Dave Harp	Cal Fire Investigator	5/6/11	4 R.E. US 1090-95
Scott Henry	Cal Fire Firefighter	5/19/11	5 R.E. US 1162-67, 1173-75
Mike Mitzel	SPI Forester	10/28/10	7 R.E. US 1900-03
Chris Parker	Retired Cal Fire; U.S. Suppression Expert	11/11/11 2/7/12	Dkt. 599-16, p. 1-31 7 R.E. US 2001-23; 8 R.E. US 2029-53
Rodney Pedersen	Retired Cal Fire	12/22/11	8 R.E. US 2062-68
Jesse Sisneros	Cal Fire Firefighter	12/21/11	9 R.E. US 2389-90
Josh White	Cal Fire Investigator	11/15/10 2/9/11 3/8/11 5/18/11 11/28/11	Dkt. 597-11, p. 1-4 10 R.E. US 2696-2705 11 R.E. US 2923-29 11 R.E. US 2972-73; Dkt. 597-12, p. 208 11 R.E. US 3125-28, 3130-33

<b>Defendants Disclosed Experts</b>			
<b>Witnesses</b>	<b>Role/Title</b>	<b>Date</b>	<b>Report</b>
John Lentini	SPI Expectation Bias	6/13/11	6 R.E. US 1563