

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (“Settlement Agreement”) is entered into by and between (i) the United States of America (“United States”), acting through the United States Attorney’s Office for the Eastern District of California, on behalf of the United States Department of Agriculture, Forest Service; (ii) Kernen Construction Company (“Kernen”); (iii) Bundy & Sons, Inc. d/b/a Bundy & Sons Logging (“Bundy”); (iv) American Guarantee & Liability Insurance Company (“American Guarantee”); (v) St. Paul Fire and Marine Insurance Company (“St. Paul”); (vi) First National Insurance Company of America (“First National”); and (vii) American States Insurance Company (“American States”). Kernen and Bundy are referred to collectively as “Defendants.” American Guarantee, St. Paul, First National, and American States are referred to collectively as “Insurers.” The United States, Kernen, Bundy, American Guarantee, St. Paul, First National, and American States are referred to collectively as “the Parties,” and each is individually referred to as a “Party.”

### II. PREAMBLE

As a preamble to this Settlement Agreement, the Parties agree to the following:

- A. Kernen is a partnership based in Blue Lake, California, that engages in construction, trucking, and hauling activities in Northern California.
- B. Bundy is a California corporation based in Weaverville, California, that conducts logging activities in Northern California.
- C. American Guarantee is an insurer of claims related to the Flat Fire against Kernen.
- D. St. Paul is an insurer of claims related to the Flat Fire against Kernen.

E. First National is an insurer of claims related to the Flat Fire against Bundy.

F. American States is an insurer of claims related to the Flat Fire against Bundy.

G. On July 10, 2017, the United States filed a civil action against Defendants in the United States District Court for the Eastern District of California, captioned United States of America v. Kern Construction and Bundy & Sons, Inc. d/b/a Bundy & Sons Logging, Case No. 2:17-cv-01424-WBS-DMC (“the Action”). The Action alleges that Defendants are liable to the United States for damages stemming from a fire known as the Flat Fire, which ignited on July 11, 2012, and burned approximately 1,688 acres, including 1,608 acres of National Forest System lands within the Shasta-Trinity National Forest, in Trinity County, California. The Action also includes Cross-Claims filed by Kern and Bundy against each other for indemnification and contribution and for declaratory relief regarding the Defendants’ rights to the same.

H. In the Action, the United States alleges: On July 11, 2012, Bundy hired Kern to haul a piece of Bundy’s heavy logging equipment, called a “feller buncher,” from one logging site to another using Kern’s “lowboy” trailer. The regular driver of the lowboy was unavailable, so Kern assigned Billy Wayne Hicks, Jr. (“Hicks”) to the job. Hicks and Bundy’s owner, William J. (“Joe”) Bundy, attempted to secure the feller buncher to the lowboy and, in doing so, placed the head of the feller buncher on a piece of steel welded to the back of the lowboy trailer, which Hicks referred to as the “light bar.” Sometime after leaving the loading site, at a stop near Weaverville, Hicks and Joe Bundy noticed that the head of the feller buncher had come unsecured, and they attempted to re-secure it. About 30 miles after Hicks and Joe Bundy departed from Weaverville heading west on Highway 299, Hicks realized that the head of

the feller buncher had come unsecured again and was dragging on the highway, creating a trail of orange sparks behind the lowboy. The United States alleges that the Flat Fire, as well as another smaller fire known as the “Point Fire,” were ignited by the sparks thrown from Bundy’s equipment being hauled by Kernen. The United States contends, among other things, that the Flat Fire ignited as a proximate result of Defendants’ negligent acts and/or omissions. The United States asserts, *inter alia*, causes of action for (i) common law negligence and negligence *per se* based on violations of 36 C.F.R. §§ 261.5(a), (c), and (e), 36 C.F.R. § 261.9(a), California Health and Safety Code §§ 13001 and 13002, and California Public Resources Code §§ 4421, 4422, and 4435; (ii) trespass by fire; (iii) negligent supervision; (iv) negligent hiring against Bundy, only; and (v) interest and penalties. The United States also asserts a claim for declaratory relief, seeking a judgment that California Health & Safety Code § 13009.2 is unconstitutional and inapplicable in cases brought by the United States. The Court has already granted partial summary judgment on this claim in favor of the United States. The United States’ claims and allegations against Defendants in the Action, and as set forth herein, shall hereinafter be referred to as the “Covered Conduct.”

I. This Settlement Agreement is not an admission of any negligence, wrongful conduct or liability by the Defendants, or a concession by the United States that its claims and allegations are not well-founded.

J. To avoid the delay, uncertainty, inconvenience, and expense of litigation, the Parties mutually desire to reach a full and final settlement of this matter, pursuant to the Terms and Conditions set forth below.

**NOW, THEREFORE**, in consideration of the mutual promises, covenants, conditions, terms, and obligations set forth in this Settlement Agreement, the Parties agree to settle this matter as follows:

### **III. TERMS AND CONDITIONS**

1. In consideration of the obligations of the Parties set forth in this Settlement Agreement, Bundy agrees that: (i) American States will pay on its behalf the total sum of two million dollars (\$2,000,000.00) and (ii) First National will pay on its behalf the total sum of one million dollars (\$1,000,000.00), for a total settlement payment of three million dollars (\$3,000,000.00) (the “Bundy Settlement Amount”) to the United States. American States and First National shall pay the full Bundy Settlement Amount to the United States by electronic funds transfer, pursuant to written instructions to be provided by the United States Attorney’s Office for the Eastern District of California promptly upon execution of this Settlement Agreement, within thirty (30) days of the Effective Date of this Settlement Agreement as defined in Paragraph 27 below.

2. In consideration of the obligations of the Parties set forth in this Settlement Agreement, Kernen agrees that: (i) American Guarantee will pay on its behalf the total sum of one million dollars (\$1,000,000.00) and (ii) St. Paul will pay on its behalf the total sum of five million dollars (\$5,000,000.00), for a total settlement payment of six million dollars (\$6,000,000.00) (the “Kernen Settlement Amount”) to the United States. American Guarantee and St. Paul shall pay the full Kernen Settlement Amount to the United States by electronic funds transfer, pursuant to written instructions to be provided by the United States Attorney’s Office for the Eastern District of California promptly upon execution of this Settlement

Agreement, within thirty (30) days of the Effective Date of this Settlement Agreement as defined in Paragraph 27 below.

3. Subject to the exceptions in Paragraphs 4 and 5, below, concerning excluded claims, in consideration of the obligations of the Parties to this Settlement Agreement, and conditioned upon the full payment of both the Bundy Settlement Amount by First National and American States and the Kernen Settlement Amount by American Guarantee and St. Paul, the United States (on behalf of itself, its officers, agents, agencies, and departments) hereby fully and finally releases the Defendants, the Insurers, and each of their current and former officers, directors, members, partners, agents, attorneys, insurers, employees, shareholders, parent corporations, direct and indirect subsidiaries, divisions, affiliates, predecessors, successors and assigns, and any of them from any and all liability for any civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, interest, penalties, and expenses, including any claims for compensatory damages, statutory damages, multiplied damages or punitive damages, which the United States has or may have arising from or related to the Covered Conduct.

4. The United States does not release its claim for declaratory relief alleged in Count V of the First Amended Complaint (ECF No. 43), which has already been adjudicated in the United States' favor, against any Defendant. The Parties agree as a material condition of the releases provided herein that they will submit to the Court a stipulated request for entry of judgment on the United States' claim for declaratory relief ("Stipulation"). The Parties further agree that the Stipulation shall be entered promptly following execution of this Settlement Agreement, and in no event later than December 10, 2018.

5. Notwithstanding any term of this Settlement Agreement, specifically reserved and excluded from the scope and terms of this Settlement Agreement as to any entity or person, including Defendants, are the following potential claims of the United States:

- a. Any civil, criminal, or administrative liability arising under Title 26, United States Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Any claim by the United States (or its agencies) not arising out of or related to the Covered Conduct; and
- d. Any liability based upon such obligations as are created by this Settlement Agreement.

6. In consideration of the obligations of the United States set forth in this Settlement Agreement, each Defendant and each Insurer hereby fully and finally releases the United States and its employees, servants, agents, agencies, and departments from any and all liability for any claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, interest, and expenses, including any claims for compensatory or punitive damages, which the Defendants and/or Insurers have or may have with respect to the Covered Conduct, including without limitation concerning the United States' investigation of the cause of the Flat Fire and prosecution of its claims in the Action.

7. Each Defendant further agrees to fully and finally release the other Defendant, and each of its current and former officers, directors, members, partners, agents, attorneys, insurers, employees, shareholders, parent corporations, direct and indirect subsidiaries, divisions, affiliates, predecessors, successors and assigns, and any of them from any and all liability for any

civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees, interest, penalties, and expenses, including any claims for compensatory damages, statutory damages, multiplied damages or punitive damages, which they have or may have arising from or related to the Covered Conduct, including but not limited to the Cross-Claims filed by Defendants in this Action.

8. Defendants, Insurers, and their undersigned counsel understand and acknowledge that the facts and/or potential claims or defenses with respect to liability or damages regarding the matters released herein may be different from the facts, claims, and/or defenses now believed to be true or available. Defendants, Insurers, and their undersigned counsel expressly accept and assume the risks of such possible difference in facts and/or potential claims or defenses; intend to waive and forego any potential future benefit from, or future reliance on, any unknown facts, claims, or defenses; and agree that this Settlement Agreement shall remain effective notwithstanding any unknown facts, claims, or defenses. In addition, Defendants, Insurers, and their undersigned counsel intend by this Settlement Agreement, and the releases contained herein, to release fully, finally and forever all unknown claims that arise out of or relate to the Covered Conduct, the Action, and the Flat Fire ("Unknown Claims"). Accordingly, this Settlement Agreement, and the releases contained herein, shall remain in full force as a complete release of such Unknown Claims notwithstanding the discovery or existence of any such additional or different claims and/or facts before or after the date of this Settlement Agreement. Defendants, Insurers, and their undersigned counsel hereby expressly waive all rights they may have by virtue of Section 1542 of the Civil Code of the State of California, or any comparable

provision under the law of any state, territory or country. Section 1542 of the California Civil Code provides that:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

9. Each of the Parties warrants and represents that it freely and voluntarily enters into this Settlement Agreement without any degree of duress or compulsion whatsoever, after having been apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants and represents that no other Party or its representative has made any promise, representation or warranty, express or implied, except as expressly set forth in this Settlement Agreement, and that no Party has relied on any inducements, promises, or representations made by any Party to this Settlement Agreement, or its representatives, or any other person, except as expressly set forth herein.

10. Defendants, Insurers, and their undersigned counsel further represent and warrant each of the following: (i) that the decision to enter into this Settlement Agreement is made based on that Party's own assessment of the risks and its own investigation of the facts regarding the Covered Conduct; (ii) that the decision to enter into this Settlement Agreement is not based on any representation of fact or law made by the United States; (iii) that Defendants and Insurers have had a full and fair opportunity to conduct their own investigation and assessment of the facts with assistance of counsel; (iv) that none of Defendants, Insurers, or their undersigned counsel is aware of any conduct that it believes to be in any way unethical, unfair, misleading, or deceptive by the United States or any of its employees, servants, agents, agencies or departments



in connection with the investigation of the Flat Fire, prosecution of the Action or negotiation of this Settlement Agreement, or any allegation of the same; and (v) that no representation or argument made by the United States to the Court or any ruling by the Court in this Action had any effect whatsoever on that Party's decision to enter into this Settlement Agreement.

11. To the fullest extent permissible by law, each of Defendants and Insurers hereby irrevocably waives and releases any and all rights it may have under Federal Rule of Civil Procedure 60 related to the Action or the Covered Conduct. Each of Defendants and Insurers represents and warrants that it is presently aware of no fact that could form the basis or part of the basis for a motion for relief from judgment pursuant to any provision of Rule 60 or any other applicable rule, statute, or common law principle.

12. Within five (5) business days after delivery of both the Bundy Settlement Amount and the Kernan Settlement Amount to the United States Attorney's Office for the Eastern District of California, as set forth in Paragraphs 1 and 2 of this Settlement Agreement, the Parties shall execute and file a stipulation of dismissal, through which the United States shall dismiss Counts I - IV and Count VI of the Action, as set forth in the First Amended Complaint, with prejudice, and through which each Defendant shall also dismiss its pending claims against any other Party to the Action with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1).

13. Each Party to this Settlement Agreement shall bear its own costs, attorneys' fees, and other expenses incurred in any manner in connection with the investigation, litigation, and resolution of this matter, including the preparation and performance of this Settlement Agreement.

14. Except as provided in Paragraphs 3, 6, and 7, this Settlement Agreement is intended to be for the sole benefit of the Parties only. The Parties do not release any claims against any other person or entity not expressly released by this Settlement Agreement.

15. Each individual signing this Settlement Agreement on behalf of the Defendants and/or the Insurers represents and warrants that he or she has the power, consent, and authorization of the Party on whose behalf he or she is signing to execute this Settlement Agreement.

16. The individuals signing on behalf of the United States represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

17. Each Party represents and warrants that it has not transferred anything being released under this Settlement Agreement, and is not aware of any such transfer, and that the Party is not aware of any prohibition of any type that prevents the Party from performing the terms of this Settlement Agreement.

18. Nothing in this Settlement Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of Title 26, United States Code (Internal Revenue Code).

19. This Settlement Agreement is binding on each of Defendants' and Insurers' successors in interest, transferees, and assigns.

20. Each Party warrants that it has been represented by, and has sought and obtained the advice of, independent legal counsel with regard to the nature, purpose, and effect

of this Settlement Agreement. The Settlement Agreement was negotiated by the Parties and their respective counsel, each of whom had the opportunity to participate in the drafting thereof. The Parties hereby declare that the terms of this Settlement Agreement have been completely read, fully understood, and voluntarily accepted following opportunity for review by legal counsel of their choice.

21. For purposes of construction, this Settlement Agreement shall be deemed to have been drafted by all Parties to this Settlement Agreement. The words of this Settlement Agreement shall not, therefore, be construed against any Party for that reason in any subsequent dispute, but shall be construed so as to affect their fair meaning, the Parties having waived the benefit of California Civil Code § 1654 and similar laws.

22. The Parties consent to the public disclosure of this Settlement Agreement, and of information about the Action and this Settlement Agreement.

23. This Settlement Agreement constitutes the complete agreement between the Parties, and supersedes and replaces all prior negotiations and agreements, whether written or oral, regarding the resolution of the claims between the Parties with respect to the subject matter hereof.

24. This Settlement Agreement may be executed in counterparts, each of which constitutes an original and all of which taken together shall constitute one valid and binding Settlement Agreement between the Parties.

25. This Settlement Agreement may not be altered, amended, or modified, except by a writing duly executed by authorized representatives of all Parties.

26. This Settlement Agreement is governed by the laws of the United States. The Parties agree that, should any judicial action be required to enforce or interpret this Settlement Agreement, or to resolve any dispute hereunder, the exclusive jurisdiction and venue for such action shall be in the United States District Court for the Eastern District of California.

27. This Settlement Agreement is effective, final, and binding as of the date of signature of the last signatory to the Settlement Agreement ("Effective Date"). Transmittal and receipt of facsimiles or PDF versions of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

28. All Parties agree to cooperate fully and to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

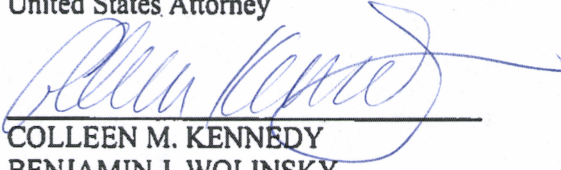
29. The statements set forth in Sections I and II of this Settlement Agreement are incorporated by reference herein as if set forth in full.

**THE UNITED STATES**

Dated: 12/7/18

McGREGOR W. SCOTT  
United States Attorney

By:

  
\_\_\_\_\_  
COLLEEN M. KENNEDY  
BENJAMIN J. WOLINSKY  
Assistant United States Attorneys  
Attorneys for the United States

**BUNDY & SONS, INC. d/b/a BUNDY & SONS LOGGING**

Dated: 12/7/2018

Bundy & Sons, Inc.  
William J. Bundy  
Bundy & Sons, Inc.  
By: William J. Bundy  
Its: President

**FIRST NATIONAL INSURANCE CO. OF AMERICA**

Dated: \_\_\_\_\_

\_\_\_\_\_  
First National Insurance Co. of America  
By:  
Its:

**AMERICAN STATES INSURANCE CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
American States Insurance Co.  
By:  
Its:

**KERNEN CONSTRUCTION CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kernen Construction Co.  
By:  
Its:

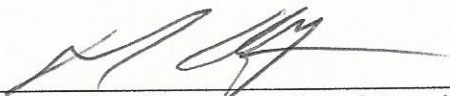
**BUNDY & SONS, INC. d/b/a BUNDY & SONS  
LOGGING**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bundy & Sons, Inc.  
By:  
Its:

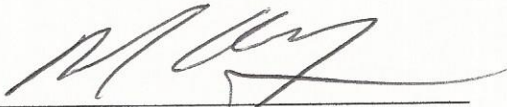
**FIRST NATIONAL INSURANCE CO. OF AMERICA**

Dated: 12/7/18

  
\_\_\_\_\_  
First National Insurance Co. of America  
By: *Michael Ohlinger*  
Its: *Sr. Technical Claims Specialist*

**AMERICAN STATES INSURANCE CO.**

Dated: 12/7/18

  
\_\_\_\_\_  
American States Insurance Co.  
By: *Michael Ohlinger*  
Its: *Sr. Technical Claims Specialist*

**KERNEN CONSTRUCTION CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Kernen Construction Co.  
By:  
Its:

**BUNDY & SONS, INC. d/b/a BUNDY & SONS  
LOGGING**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Bundy & Sons, Inc.  
By:  
Its:

**FIRST NATIONAL INSURANCE CO. OF AMERICA**

Dated: \_\_\_\_\_

\_\_\_\_\_  
First National Insurance Co. of America  
By:  
Its:

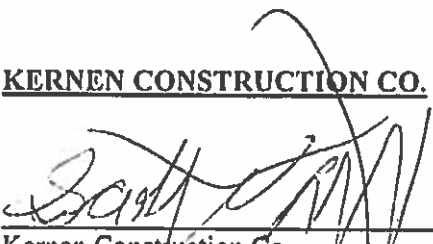
**AMERICAN STATES INSURANCE CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
American States Insurance Co.  
By:  
Its:


**KERNEN CONSTRUCTION CO.**

Dated: 12-6-18

  
\_\_\_\_\_  
Kernen Construction Co.  
By: Scott Farley  
Its: Partner

**AMERICAN GUARANTEE & LIABILITY  
INSURANCE CO.**

Dated: 12/3/18



American Guarantee & Liability Insurance Co.  
By: CHRIST ANDREW  
Its: CLAIM

**ST. PAUL FIRE AND MARINE INSURANCE CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
St. Paul Fire and Marine Insurance Co.  
By:  
Its:

Dated: \_\_\_\_\_

**RUSHFORD & BONOTTO LLP**

By: \_\_\_\_\_  
PHILLIP R. BONOTTO  
Attorney for Bundy & Sons, Inc.

Dated: \_\_\_\_\_

**LECLAIR RYAN LLP**

By: \_\_\_\_\_  
CHARLES H. HORN  
MICHELE C. KIRANE  
Attorneys for Kern Construction Co.



**AMERICAN GUARANTEE & LIABILITY  
INSURANCE CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
American Guarantee & Liability Insurance Co.  
By:  
Its:

**ST. PAUL FIRE AND MARINE INSURANCE CO.**

Dated: 12/16/18

Rebecca A. Williams  
St. Paul Fire and Marine Insurance Co.  
By: Rebecca A. Williams  
Its: 2 VP

Dated: \_\_\_\_\_

**RUSHFORD & BONOTTO LLP**

By: \_\_\_\_\_  
PHILLIP R. BONOTTO  
Attorney for Bundy & Sons, Inc.

Dated: \_\_\_\_\_

**LECLAIR RYAN LLP**

By: \_\_\_\_\_  
CHARLES H. HORN  
MICHELE C. KIRrane  
Attorneys for Kernen Construction Co.

**AMERICAN GUARANTEE & LIABILITY  
INSURANCE CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
American Guarantee & Liability Insurance Co.  
By:  
Its:

**ST. PAUL FIRE AND MARINE INSURANCE CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
St. Paul Fire and Marine Insurance Co.  
By:  
Its:

Dated: 12-6-18

**RUSHFORD & BONOTTO LLP**

By: PR Bonotto  
\_\_\_\_\_  
PHILLIP R. BONOTTO  
Attorney for Bundy & Sons, Inc.

Dated: \_\_\_\_\_

**LECLAIR RYAN LLP**

By: \_\_\_\_\_  
CHARLES H. HORN  
MICHELE C. KIRRANE  
Attorneys for Kernen Construction Co.

**AMERICAN GUARANTEE & LIABILITY  
INSURANCE CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
American Guarantee & Liability Insurance Co.  
By:  
Its:

**ST. PAUL FIRE AND MARINE INSURANCE CO.**

Dated: \_\_\_\_\_

\_\_\_\_\_  
St. Paul Fire and Marine Insurance Co.  
By:  
Its:


Dated: \_\_\_\_\_

**RUSHFORD & BONOTTO LLP**

By: \_\_\_\_\_  
PHILLIP R. BONOTTO  
Attorney for Bundy & Sons, Inc.

Dated: 12-06-18

**LECLAIR RYAN LLP**

By:   
\_\_\_\_\_  
CHARLES H. HORN  
MICHELE C. KIRRANE  
Attorneys for Kern Construction Co.