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 12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT  
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 15 WESTERN DIVISION

16 UNITED STATES OF AMERICA,  
 17 Plaintiff[s],  
 18 v.  
 19 SOUTHERN CALIFORNIA EDISON  
 20 COMPANY, UTILITY TREE SERVICE,  
 21 FRONTIER COMMUNICATIONS, INC.  
 and Does 1 to 10,  
 22 Defendants.

No. CV 19-

COMPLAINT (1) STRICT LIABILITY  
 UNDER SPECIAL USE PERMIT; (2)  
 INDEMNITY UNDER SPECIAL USE  
 PERMIT; (3) BREACH OF THE  
 SPECIAL USE PERMIT; (4)  
 NEGLIGENCE; (5) VIOLATION OF  
 CALIFORNIA HEALTH AND SAFETY  
 CODE §§ 13007-13009.1; (6) CAL.  
 PUBLIC RESOURCES CODE §§ 4435  
 AND 4421, AND 36 C.F.R. § 261.5; (7)  
 TRESPASS BY FIRE; AND (8)  
 INTEREST AND PENALTIES

DEMAND FOR JURY TRIAL

1 Plaintiff, United States of America, alleges as follows:

2 **PARTIES**

3 1. Plaintiff United States of America (“United States”) is the federal  
4 government, and brings this action on behalf of the United States Department of  
5 Agriculture, Forest Service (“Forest Service”), an agency and instrumentality of the  
6 United States. Plaintiff United States, as sovereign, owns National Forest System lands  
7 in Santa Barbara County that are under the supervision, control, administration, and  
8 protection of the Forest Service.

9 2. Defendant Southern California Edison Company (“SCE”) was and is a  
10 public utility organized and existing under the laws of the State of California, including  
11 but not limited to relevant sections of the Public Utilities Code.

12 3. On information and belief, Defendant Utility Tree Service (“UTS”) is a  
13 California business entity, with its principle place of business in California and doing  
14 business in California.

15 4. On information and belief, Defendant Frontier Communications, Inc.  
16 (“Frontier”) is a Delaware Corporation, doing business within the Central District of  
17 California.

18 5. Doe Defendants 1 to 10 are individuals and entities, including parents and  
19 subsidiaries of the named Defendants, whose identities are currently not known and who  
20 are responsible for the damages caused to Plaintiff as alleged herein.

21 **JURISDICTION AND VENUE**

22 6. This action arises under Federal and California law, including Federal and  
23 California common law, California Health and Safety Code §§ 13007-13009.1,  
24 California Pub. Res. Code §§ 4293, 4421 and 4435, California Public Utilities Code §§  
25 451 and 2106, California Civil Code §§ 1714(a) and 3287, Title 36 Code of Federal  
26 Regulations 261.5 and 261.10, and 31 U.S.C. §§ 3711 and 3717, for damages the United  
27 States incurred in connection with the “Rey Fire”, which ignited on National Forest  
28 Systems lands in Santa Barbara County, California.



1           13. The energized power lines which fell and ignited the Rey Fire are a “device  
2 which may kindle a fire” within the meaning of California Public Resources Code §  
3 4435.

4           14. Pursuant to California Public Resources Code § 4435, the ignition of the  
5 Rey Fire is prima facie evidence of Defendants’ negligence in the maintenance,  
6 operation, or use of the power and communication lines.

7           15. SCE operated and maintained the subject power lines that caused the Rey  
8 Fire on National Forest System lands pursuant to a Special Use Permit (“SUP”) from the  
9 Forest Service.

10           16. At all times material to this action, the SUP and its terms and conditions  
11 were and are authorized by law, including 43 U.S.C. §§ 1746(h)(1) and (2), 1761 and  
12 1765, and 36 C.F.R. § 251.53 and 251.56.

13           17. SCE accepted all of the terms and conditions contained in the SUP. Under  
14 the SUP, SCE is strictly liable to the United States, obligated to indemnify the United  
15 States for any damage that its power lines caused and liable to the United States for its  
16 negligence.

17           18. Pursuant to paragraph 3 of the SUP, SCE was obligated to trim all branches  
18 near contact with the subject lines, and to remove all trees, live or dead, deemed to be  
19 hazardous or which might fall in contact with the subject lines.

20           19. Pursuant to paragraph 4 of the SUP, SCE was obligated to protect the scenic  
21 and esthetic values of the land in and adjacent to its right-of-way as far as possible  
22 during the operation of SCE’s power facilities.

23           20. Pursuant to paragraph 12 of the SUP, SCE was obligated to do everything  
24 reasonably within its power, and require its employees and contractors to do everything  
25 reasonably within their power to prevent and suppress fires on or near lands occupied  
26 under the SUP.

27           21. Pursuant to paragraph 24 of the SUP, SCE is obligated to indemnify  
28 Plaintiff for damage to property arising from SCE’s occupancy and use of National

1 Forest lands under the SUP.

2 22. Pursuant to paragraph 27 of the SUP, SCE shall pay Plaintiff for all  
3 damages to Federal property or resources and for all Federal fire suppression costs  
4 resulting directly or indirectly from SCE's use and occupancy of the area covered by the  
5 SUP, regardless of whether SCE is negligent or otherwise at fault.

6 23. At all times material to this action, the SUP constituted a valid and  
7 enforceable agreement between the United States and SCE.

8 24. On information and belief, UTS contracted with SCE and assumed  
9 responsibility to inspect the area around the subject power and communication lines for  
10 hazardous trees that might fall on the subject lines, and to trim or remove any hazardous  
11 trees that might fall on the subject lines, or to otherwise prevent such hazardous trees  
12 from falling on the subject lines.

13 25. SCE and UTS were informed of the potential danger the tree that fell on the  
14 subject lines posed, were aware of the danger that said tree might fall on the subject lines  
15 before it fell, and failed to take any action to prevent it from falling on the subject lines.

16 26. On information and belief, UTS and Doe Defendant 1, inspected the tree  
17 prior to it falling on the subject lines, knew or should have known that it was a hazardous  
18 tree and a danger to fall on the subject lines, but decided to take no action to prevent it  
19 from subsequently falling on the subject lines.

20 27. On information and belief, Doe Defendants 2-5 are the agents, contractors  
21 or sub-contractors of Defendants, and are responsible for causing the Rey Fire and  
22 Plaintiff's damages. On information and belief, Doe Defendants 6-10 are the parent  
23 companies, partners or subsidiaries of Defendants, and are vicariously liable or otherwise  
24 responsible for causing the Rey Fire and Plaintiff's damages.

25 28. Causing timber, trees, brush, or grass to burn except as authorized by permit  
26 is prohibited by law, including 36 C.F.R. § 261.5(c) and California Public Resources  
27 Code § 4421. Ignition of the Rey Fire was not authorized by permit or by the United  
28 States. Carelessly or negligently causing a fire that is not a prescribed fire that damages

1 the National Forest System is prohibited by 36 C.F.R. §§ 261.5.

2 29. The Forest Service suppressed the Rey Fire at substantial cost to the United  
3 States. As a result of its efforts to extinguish the Rey Fire, the Forest Service sustained  
4 suppression costs and rehabilitation costs in excess of \$26 million.

5 30. The damages to the United States include, but are not limited to: mitigation,  
6 rehabilitation and reforestation of burned areas; loss of and damage to timber, habitat,  
7 wildlife, watershed and earth protection; scenic and aesthetic values, and views;  
8 environmental damages, loss of use and recreation; soil damage and erosion.

9 31. The Forest Service has made demand on SCE for payment of the costs and  
10 damages incurred by the United States to suppress the Rey Fire and undertake  
11 emergency rehabilitation efforts. SCE has not paid any part of the sum demanded by the  
12 United States.

13 **CLAIMS FOR RELIEF**

14 **FIRST CLAIM FOR RELIEF**

15 **(Strict Liability under the Special Use Permit)**

16 32. Plaintiff realleges paragraphs 1 through 31, inclusive, as though fully and  
17 completely set forth herein.

18 33. SCE is strictly liable to the United States under the Special Use Permit  
19 without proof of negligence or that SCE is otherwise at fault, for all damages to Federal  
20 property or resources and for all Federal fire suppression costs the damages or loss the  
21 United States suffered as a result of the Rey Fire, in an amount to be established at trial.

22 **SECOND CLAIM FOR RELIEF**

23 **(Indemnity under the Special Use Permit)**

24 34. Plaintiff realleges paragraphs 1 through 33, inclusive, as though fully and  
25 completely set forth herein.

26 35. SCE agreed, among other obligations, to abide by the Special Use Permit  
27 terms and conditions. Specifically, SCE agreed to compensate the United States for all  
28 damages resulting directly or indirectly from its use and occupancy of the area covered

1 by the permit, including the power lines within the Los Padres National Forest. Such  
2 damages include, but are not limited to, all damages to the National Forest System lands  
3 and resources, and all suppression costs and emergency rehabilitation costs.

4 36. The Special Use Permit created a right of indemnity for the United States.

5 37. The Rey Fire resulted from and related to SCE's use and occupancy of the  
6 area covered by the Special Use Permit, including the power lines within the Los Padres  
7 National Forest.

8 38. Under the terms of the Special Use Permit, SCE is liable to the United  
9 States for the United States' damages resulting from the Rey Fire, in an amount to be  
10 established at trial.

### 11 **THIRD CLAIM FOR RELIEF**

#### 12 **(Breach of Special Use Permit)**

13 39. Plaintiff realleges paragraphs 1 through 38, inclusive, as though fully and  
14 completely set forth herein.

15 40. Title 36 of the Code of Federal Regulations, Section 261.10 prohibits the  
16 violation of any term or condition of a special-use authorization, contract, or approved  
17 operating plan.

18 41. SCE breached its obligations to the United States under the Special Use  
19 Permit in connection with the Rey Fire, including, but not limited to, its obligation under  
20 paragraph 3 to remove all hazardous trees or trees which might fall in contact with the  
21 subject lines, under paragraph 4 to protect the scenic and esthetic values of the land in  
22 and adjacent to its right-of-way, under paragraph 12 to do everything reasonably within  
23 its power, and require its employees and contractors to do everything reasonably within  
24 their power to prevent and suppress fires on or near lands occupied under the SUP, under  
25 paragraph 24 to indemnify Plaintiff for damage to property arising from SCE's  
26 occupancy and use of National Forest lands, and under paragraph 27 to pay Plaintiff for  
27 all damages to Federal property or resources and for all Federal fire suppression costs  
28 resulting directly or indirectly from SCE's use and occupancy of the area covered by the

1 SUP.

2 42. As a result of these breaches by SCE, the United States incurred damages in  
3 an amount to be established at trial. SCE is liable to the United States for these damages.

4 **FOURTH CLAIM FOR RELIEF**

5 **(Negligence – Against All Defendants)**

6 43. Plaintiff realleges paragraphs 1 through 42, inclusive, as though fully and  
7 completely set forth herein.

8 44. At all times relevant to this action, SCE breached its duty of care and was  
9 negligent in causing the Rey Fire, including, but not limited to, its failure to prevent  
10 damage to the land and property of the United States; to take reasonable precautions to  
11 prevent and suppress fires; to construct, maintain and operate its equipment and power  
12 lines in a safe and effective working order; and to properly and safely maintain, operate,  
13 use and occupy the premises of National Forest System lands as granted by the  
14 aforementioned special use permit and/or to ensure the proper and safe maintenance,  
15 operation, use and occupancy of National Forest System lands as granted by the  
16 aforementioned special use permit through the provision of appropriate training,  
17 instruction, and supervision of its agents and employees.

18 45. Amongst other acts and/or omissions, SCE breached its duty to use due care  
19 and caution in the design, construction, and maintenance of the SCE equipment and  
20 power lines in the area of the origin of the Rey Fire in the Los Padres National Forest;  
21 the maintenance and management of the area it used and occupied as granted by the  
22 aforementioned permit.

23 46. SCE violated the permit provisions and its general, statutory and regulatory  
24 duties by failing to properly construct and maintain its equipment and power lines,  
25 including in accordance with the requirements of General Order 95, maintain proper  
26 vegetation clearance around and below its power lines, and using a device, including its  
27 power lines and equipment, which may cause a fire and failure to take reasonable  
28 precautions to avoid starting and spreading a fire.

1           47. Frontier violated its general, statutory and regulatory duties by failing to  
2 properly construct and maintain its equipment and communication lines, including in  
3 accordance with the requirements of General Order 95, maintain proper vegetation  
4 clearance around and below its communication lines, and using a device, including its  
5 communication lines and equipment, which may cause a fire and failure to take  
6 reasonable precautions to avoid starting and spreading a fire.

7           48. Plaintiff and/or its constituent citizens are one of the classes of persons that  
8 California Public Resources Code §§ 4292, 4293, and 4294, California Public Utilities  
9 Code § 451, General Order 95, including but not limited to Rules 31.1, 31.2 and 35  
10 promulgated by the California Public Utilities Commission, and California Health and  
11 Safety Code § 13001 was intended to prevent. The violation of such provisions by SCE  
12 and Frontier constitutes negligence per se and was a substantial factor in causing the  
13 United States' damages as alleged herein. SCE and Frontier are liable for such damages,  
14 in an amount to be proven at trial.

15           49. On information and belief, UTS and Does 1-3 had a duty of care to properly  
16 inspect, trim, remove, and maintain hazardous trees in the area of the subject power and  
17 communication lines and trees that may fall on the subject power and communication  
18 lines. On information and belief, UTS and Does 1-3 breached their respective duties  
19 inspect, trim, remove and maintain the subject tree that fell on the subject lines and  
20 caused the ignition of the Rey Fire.

21           50. Defendants' negligent acts, omissions, and violations of law caused the Rey  
22 Fire to ignite and proximately caused the damages the United States sustained.

23           51. Defendant are responsible for all costs and damages caused by its own  
24 negligence, including those under common law, the special use permit, and California  
25 Civil Code § 1714.

26           52. Defendants' negligence, through their agents and employees, was the  
27 proximate cause of the Rey Fire.

28           53. As a result of Defendants' negligence, the United States incurred damages

1 in an amount to be established at trial. Defendants are liable for such damages.

2 **FIFTH CLAIM FOR RELIEF**

3 **(Cal. Health & Safety Code §§ 13001, 13007-13009.1,**  
4 **and California Civil Code § 3287 – Against All Defendants)**

5 54. Plaintiff realleges paragraphs 1 through 53, inclusive, as though fully and  
6 completely set forth herein. On or about August 18, 2016, Defendants, individually and  
7 collectively, negligently and/or in violation of law, ignited the Rey Fire, thereby setting  
8 fire to or allowing fire to be set to National Forest System lands within the Los Padres  
9 National Forest.

10 55. The Rey Fire destroyed property of the United States, and caused the United  
11 States to incur fire suppression costs, rehabilitation costs, resource damages, and other  
12 damages, including damages to the environment, to be established at trial.

13 56. Defendants are liable for all damages to the United States resulting from the  
14 Rey Fire, including without limitation, its fire suppression costs, damages for injury to  
15 federal property, and the United States' administrative, investigative, accounting, and  
16 collection costs, under California Health & Safety Code §§ 13001, 13007-13009.1, and  
17 California Civil Code § 3287, in an amount to be established at trial.

18 **SIXTH CLAIM FOR RELIEF**

19 **(Cal. Public Resources Code § 4435 – Against SCE and Frontier)**

20 57. Plaintiff realleges paragraphs 1 through 56, inclusive, as though fully and  
21 completely set forth herein.

22 58. Pursuant to California Public Resources Code § 4435, the origination of the  
23 Rey Fire from SCE's and Frontier's operation and/or use of the power and  
24 communication lines within the Los Padres National Forest is prima facie evidence of  
25 SCE's and Frontier's negligence in the maintenance, operation, or use of their equipment  
26 and power and communication lines. SCE's and Frontier's negligence was a substantial  
27 factor in proximately causing the damages the United States sustained as a result of the  
28 Rey Fire.



1 payment charges, in addition to its resource damages and fire suppression costs arising  
2 from the Rey Fire.

3 66. The United States has demanded that SCE pay the costs and damages  
4 incurred by the United States due to the Rey Fire. Defendants have not paid any part of  
5 the sum plaintiff demanded.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, plaintiff prays that the Court:

8 1. For damages in an amount to be determined at trial against Defendants for  
9 fire suppression costs, resource damages and other recoverable costs and damages  
10 arising from the Rey Fire (including, but not limited to, the costs of rehabilitation,  
11 restoration and reforestation of the burned areas, wrongful injury to Plaintiff's trees, loss  
12 of timber and vegetation, loss of habitat and environmental damages, damage to the soil,  
13 and loss of use, scenic views, aesthetic values as proven at trial), investigation costs and  
14 administration costs, plus interest and penalties, in an amount to be determined at trial as  
15 allowed under the law;

16 2. For double or triple damages for wrongful injury to Plaintiff's timber, trees  
17 and underwood pursuant to California Civil Code § 3346;

18 3. For damages in an amount to be determined at trial against Defendants for  
19 damage to real and personal property and any interest allowable under the law;

20 4. For damages in an amount to be determined at trial against Defendants for  
21 the sum of reasonable administrative costs incurred as a result of the Rey Fire and any  
22 interest allowable under the law;

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- 1           5.     For costs of this action; and
- 2           6.     For such other and further relief as the Court deems just and proper.

3  
4     Dated: August 16, 2019

Respectfully submitted,

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