

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN RE:)	
	)	Case No. 20-43597
BRIGGS & STRATTON CORPORATION,	)	Chapter 11
	)	Honorable Barry S. Schermer
Debtor.)	
)	
CLAUDIA HARTKE,	)	NOTICE OF HEARING AND
	)	COMBINED MOTION FOR RELIEF
Movant,	)	FROM AUTOMATIC STAY
)	
v.	)	Jenkins & Kling, P.C.
	)	150 N. Meramec Ave., Ste. 400
BRIGGS & STRATTON CORPORATION,	)	St. Louis, MO 63105
	)	(314) 721-2525
Respondent.	)	(314) 721-5525 (facsimile)
)	
	)	Hearing Date: November 18, 2020
	)	Hearing Time: 10:00 a.m.
	)	Response Deadline: November 11, 2020
	)	Courtroom: 5 North

NOTICE OF HEARING AND COMBINED MOTION FOR RELIEF
FROM THE AUTOMATIC STAY

WARNING: THIS MOTION FOR RELIEF FROM THE AUTOMATIC STAY SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE BY THE 11TH DAY OF NOVEMBER, 2020. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. THE DATE IS SET OUT ABOVE. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.



COME NOW Claudia Hartke, Liberty Mutual Insurance, Allstate Insurance Company, Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Company Grand Rapids, Michigan, Mid-Century Insurance Company (collectively, “Movants”) hereby move the Court for relief from the automatic stay as to Briggs & Stratton Corporation, a debtor in the above captioned Chapter 11 case (“Debtor”) and said Debtor’s bankruptcy estate to permit a pending consolidated state court lawsuit (*Hartke, et al. v. Segal, et al.*, Santa Clara County, California Superior Court, Consolidated Case No. 18CV333942, the “State Court Action”¹) to continue to be litigated in the Santa Clara County Superior Court to a final, non-appealable judgment and permit Movants to enforce any resulting judgment against any and all of Debtor’s applicable liability insurance proceeds. In support thereof, Movants state as follows:

Relief Requested

1. By this Motion, Movants seek relief from the automatic stay to litigate the State Court Action in the California courts to a final unappealable judgment and to enforce any resulting judgment against any and all of said Debtor’s applicable insurance coverage. Movants do not seek relief from stay at this time to enforce any resulting judgment against the Debtor’s bankruptcy estate beyond insurance coverage.

2. As discussed in further detail below, good cause exists under Bankruptcy Code² section 362(d)(1) to grant such relief because, *inter alia*, the Debtor only recently filed its Chapter 11 bankruptcy case, while the State Court Action has been pending in state court for over two years, involves multiple non-debtor parties, and the State Court Action can be resolved most expeditiously in the California courts.

3. Additional good cause exists under 11 U.S.C. § 524(e), which excludes the Debtors’ liability insurance carrier(s) from the protection of any bankruptcy discharge and by

¹ References herein to State Court Action also include the lawsuit filed by the California Department of Forestry and Fire Protection, State of California, County of Santa Clara Case No. 18CV335048, which arises from the Loma Fire, and which was consolidated as part of the State Court Action on October 25, 2019.

² All section references hereafter are to Title 11 of the United States Code unless noted otherwise.

virtue of the fact that the proceeds of any policy are not part of the Debtors' bankruptcy estate. *See Matter of Edgeworth*, 993 F. 2d 51, 55-56 (5th Cir. 1993).

4. Movants further request that any order granting relief from the automatic stay expressly waive the fourteen (14) day stay of order that is otherwise provided for by Rule 4001(a)(3) of the Federal Rules of Bankruptcy Procedure.

Jurisdiction and Venue

5. The Court has jurisdiction over this proceeding under 28 U.S.C. § 157 and 1334.

6. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

7. Movant brings this action pursuant to 11 U.S.C. § 362 and Rules 4001(a) and 9014 of the Federal Rules of Bankruptcy Procedure.

Background

8. The State Court Action involves damages resulting from a catastrophic fire that occurred in California on or about September 26, 2016 (the "Loma Fire"). Movant Claudia Hartke's ("Hartke") entire 20-acre residential property was destroyed by the fire, as was her home, all outbuildings, an income producing vineyard, and all personal property located at the property when the fire began.

9. On August 30, 2018, Hartke filed her original Complaint in the State Court Action. A true and correct copy of Hartke's original Complaint is attached hereto and incorporated herein by reference as Movants' **Exhibit "A"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure

10. On May 21, 2019, Hartke filed her First Amended Complaint, naming Debtor. A true and correct copy of Hartke's First Amended Complaint is attached hereto and incorporated herein by reference as Movants' **Exhibit "B"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure.

11. On August 12, 2019, Debtor filed its answer to Hartke's First Amended Complaint on. A true and correct copy of Debtor's Answer to Hartke's First Amended Complaint is attached hereto and incorporated herein by reference as Movants' **Exhibit "C"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure.

12. On August 16, 2019, Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Company Grand Rapids, Michigan, Mid-Century Insurance Company (collectively, "Farmers") filed a Subrogation Complaint in the State Court Action, which stems from damages that said insurer incurred for covered claims made by its insureds, who sustained building, contents and/or additional living expenses losses as a result of the Loma Fire. A true and correct copy of Farmers' Subrogation Complaint is attached hereto and incorporated herein by reference as Movants' **Exhibit "D"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure.

13. On August 23, 2019, Movant Liberty Mutual Insurance Company ("Liberty") filed a Subrogation Complaint in the State Court Action, which stems from damages that said insurer incurred for covered claims made by its insureds, who sustained building, contents and/or additional living expenses losses as a result of the Loma Fire. A true and correct copy of Liberty's Subrogation Complaint is attached hereto and incorporated herein by reference as Movants' **Exhibit "E"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure.

14. On August 23, 2019, Movant Allstate Insurance Company ("Allstate") filed its Complaint in Subrogation in the State Court Action, which stems from damages that said insurer incurred for covered claims made by its insureds, who sustained building, contents and/or additional living expenses losses as a result of the Loma Fire. A true and correct copy of

Allstate's Complaint in Subrogation is attached hereto and incorporated herein by reference as Movants' **Exhibit "F"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure.

15. Movants allege in the State Court Action that a gasoline powered generator, designed, mass produced, manufactured, marketed, distributed and/or sold by Debtor malfunctioned and/or was defective and caused or contributed to the Loma Fire.

16. The State Court Action also involves non-Debtor defendants, namely the owners of the real property at which the Loma Fire originated, and includes as another plaintiff the California Department of Forestry and Fire Protection ("Cal-Fire"). Cal-Fire has not named Debtor as a defendant in the State Court Action, nor has Cal-Fire alleged any product liability claims. A true and correct copy of Cal-Fire's Complaint is attached hereto and incorporated herein by reference as Movants' **Exhibit "G"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure.

17. The State Court Action involves five consolidated lawsuits deemed complex and operating under a Complex Case Order since October 25, 2019. A true and correct copy of Complex Case Order dated October 25, 2019 is attached hereto and incorporated herein by reference as Movants' **Exhibit "H"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure.

18. Pursuant to stipulated case management orders, to which Debtor's counsel was a signatory, the State Court Action was postured towards private mediation, with discovery focused on Debtor's gas-powered generators found at the property at which the Loma Fire originated. A true and correct copy of the Case Management Order filed February 25, 2020 is

attached hereto and incorporated herein by reference as Movants' **Exhibit "I"** as if fully stated and available upon request pursuant to the local rules of bankruptcy procedure.

19. As set forth in the Case Management Order filed February 25, 2020, the parties agreed to move the subject generators to a secure facility for testing and were in the process of determining the proper scope of additional testing when Debtor's bankruptcy petition was filed.

20. On July 20, 2020, Debtor filed a Petition under Chapter 11 of the Bankruptcy Code.

21. However, prior to the filing of the instant bankruptcy case, Debtor had agreed to produce certain generator documentation, as well as a copy of its applicable insurance policy(ies), before it filed for bankruptcy relief. Thus, not only is this information crucial to maintaining the present settlement posture of the State Court Action, but it should not present a burden for Debtor to produce such documentation assuming the same was likely already compiled for production before the bankruptcy stay was imposed.

Basis for Relief

22. Section 362(d)(1) of the Bankruptcy Code provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay "for cause, including the lack of adequate protection of an interest in property of such party in interest." "Cause" is not specifically defined in the Bankruptcy Code. What constitutes "cause" for granting relief from the automatic stay is decided on a case-by-case basis in the discretion of the Court. *In re Blan*, 237 B.R. 737, 739 (B.A.P. 8th Cir. 1999); *MacDonald v. MacDonald (In re MacDonald)*, 755 F.2d 715, 717 (9th Cir. 1985).

23. Where a motion for relief from stay seeks permission to engage in pending state court litigation, the bankruptcy court considers the same factors that would be at issue in a

motion for abstention under 28 U.S.C. § 1334. *In re Williams*, 256 B.R. 885, 894 (B.A.P. 8th Cir. 2001) (citing *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir. 1990)). Stated differently, if the bankruptcy court were to conclude that good cause would exist to abstain, then the court should conclude that good cause exists to lift the stay to enable such litigation to proceed. *Id.*

24. The twelve factors to consider under *Tucson Estates*, as adopted by *Williams*, are: (1) the effect or lack thereof on the efficient administration of the estate if a bankruptcy court recommends abstention; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty or unsettled nature of the applicable state law; (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than form of an asserted “core” proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden on the bankruptcy court docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; and (12) the presence in the proceeding of non-debtor parties. *Williams*, 912 F.2d at 1166 (citing *In re Tucson Estates, Inc.*, 912 F.2d at 1166).

25. Here, cause exists to grant relief from stay under the *Tucson Estates* factors adopted by *Williams*.

A. Cause Exists Under the *Tucson Estates* factors adopted by *Williams*.

(1) Lifting the stay will enhance the efficient administration of the bankruptcy estate.

26. In *Tucson Estates*, the Ninth Circuit stated that it is beneficial to allow “a claim to be adjudicated to final judgment in state court while preserving the issues of the status and enforceability of the claim to the bankruptcy court.” *Tucson Estates*, 912 F.2d at 1167.

27. This factor favors relief from stay which will have a clearly beneficial effect on the efficient administration of the estate. First, relief from stay will mean a much more rapid adjudication of Movants’ State Court Action claims. As noted, the case has been designated by the state court as complex and consolidated with five other cases for discovery and pre-trial purposes. All cases involve non-debtor parties as defendants; namely the owners of the land at which the Loma Fire originated, and additional defendants believed to be related to Debtor. In addition, while Cal-Fire’s case is pled against non-debtor defendants, it has been consolidated into the State Court Action. Additionally, discovery is ongoing with specified timelines set around testing of the subject generator(s) for purposes of confirming the manufacturer of each generator and whether a defect caused or contributed to the cause of the Loma Fire. If relief from stay is granted, the State Court Action can proceed more quickly to resolution and this Court or a district court would be relieved of the burden of coordinating substantial discovery and conducting a lengthy jury trial on state law issues.

28. Administration of the estate will be facilitated by adjudicating the State Court Action because that adjudication will determine the value of Movants’ claims. In sum, there is no need for a federal bankruptcy court to adjudicate these state law claims in order to administer the bankruptcy estate.

(2) State law issues predominate.

29. The State Court Action implicates only state law issues.

30. There are no bankruptcy issues to resolve.

31. This factor weighs strongly in favor of relief from stay.

(3) The difficulty or unsettled nature of the applicable law.

32. Though the law with respect to the State Court Action is mostly settled, there are some novel issues surrounding the applicable tree statutes specified in California Code of Civil Procedure § 733 and California Civil Code § 3346 and pled in the State Court Action, which enhance damages for destruction of trees.

33. Whether a case involves unsettled issues of state law is always significant. *Thompson v. Magnolia Petroleum Co.*, 309 U.S. 478, 483 (1940); *See In re Coan*, 95 B.R. 87, 90 (Bankr.N.D.Ill.1988); *Matter of L & S Indus., Inc.*, 989 F.2d 929, 935 (7th Cir. 1993); *see also In re Tucson Estates, Inc.*, 912 F.2d at 1166.

34. Given the uncertainty relating to these novel issues presented by the State Court Action, this factor weighs in favor of relief from stay.

(4) The presence of a related proceeding in state court.

35. The State Court Action was initially filed by HARTKE on or about August 30, 2018, and all Movants filed their lawsuits in the State Court Action well before Debtors filed their Chapter 11 petition.

36. This factor favors relief from stay.

(5) The jurisdictional basis, if any other than 28 U.S.C. § 1334.

37. There would be no federal jurisdiction over the State Court Action if not for the Debtor's bankruptcy filing.

38. The litigation involves only state law claims.

39. There is no federal question jurisdiction and no diversity of citizenship between the parties that would not be decided by a state law determination as to whether a corporation doing business in California is subject to process in state.

40. This factor favors relief from stay.

(6) The degree of relatedness to or remoteness from the bankruptcy case.

41. The issues to be decided in the State Court Action have no relation to the bankruptcy case and will liquidate Movants' claims against the Debtor.

42. While the State Court Action is being litigated, the bankruptcy court would reserve its right to address judgment enforcement as to the Debtor, if and when appropriate.

(7) The substance rather than the form of the asserted "core" proceeding.

43. The claims alleged in the State Court Action are not core proceedings.

44. The causes of action in the State Court Action include negligence, violations of California Civil Code § 3346, trespass, and products liability as to Debtor and non-debtor defendants as well as premises liability, violations of California Code of Civil Procedure § 733, and nuisance as to non-debtor defendants.

45. None of these claims are "core" as defined by 28 U.S.C. 157(b).

46. This factor favors relief from stay.

(8) The feasibility of severing state law claims from core matters, to allow judgments to be entered in state court, with enforcement left to the bankruptcy court.

47. Since the causes of action in the State Court Action involve only state law claims, there is no need to sever and maintain federal jurisdiction over any part of the State Court Action. The entire case can be severed from the remainder of the bankruptcy case.

48. If the Superior Court enters judgment against Debtor, the enforcement of the judgment beyond any applicable insurance coverage with respect to this Debtor is easily left to

the bankruptcy court (by way of administration of claims against the Debtor and of the property brought into the estate).

49. This factor favors relief from stay.

(9) The burden on the bankruptcy court's docket.

50. Movants anticipate continued discovery in conjunction with Debtor and other non-debtor plaintiffs and defendants in the consolidated State Court Action as well as a lengthy jury trial. This would impose a substantial burden on this Court or any district court if relief from stay is not granted and Movants' claims were tried here.

51. This factor favors relief from stay.

(10) The likelihood that the commencement of a proceeding in bankruptcy court involves "forum shopping" by one of the parties.

52. While Movants have no information on which to contend that Debtor has filed for bankruptcy in this Court for forum shopping purposes, the Debtor does obtain the benefit of selecting the forum if this Court hears this case.

53. Debtor did not challenge the State Court's jurisdiction to hear the State Court Action, thus, granting relief from stay is consistent with its position.

(11) The existence of a right to jury trial.

54. Movants all have a right to and have requested a jury trial on their claims in the State Court Action.

55. This factor strongly favors relief from stay.

(12) The presence in the proceeding of non-debtor parties.

56. As mentioned previously, there are numerous non-debtor defendants in the State Court Action, including the landowners where the Loma Fire originated and their business entities and agents.

57. Additionally, the State Court Action has been designated complex and consolidated for discovery and pre-trial purposes with four (4) other cases including the three subrogation cases and the case brought by Cal-Fire for its statutory fire suppression costs.

58. This factor favors relief from stay.

59. In summary, the majority of factors enumerated in *Tucson Estates* and as adopted by *Williams* weigh in favor of relief from stay.

B. Judicial Economy Supports Relief From Stay

60. In addition to the *Tucson Estates* factors adopted by *Williams*, judicial economy may be considered when a party seeks relief from stay to try a lawsuit in a non-bankruptcy court. *In re Wiley*, 288 B.R. 818, 822 (B.A.P. 8th Cir. 2003); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802, 807 (9th Cir.1985) (holding that “The prior extensive preparation for the damages retrial made proceeding with that trial efficient. The decision to lift the stay could be upheld on this ground alone.”).

61. Here, the Court should consider the significant extent to which the Superior Court has already involved itself in the State Court Action, both procedurally and substantively, over the past two years.

62. Since Hartke filed her initial lawsuit on August 30, 2018, the case has been designated as complex necessitating substantial involvement by the Superior Court, consolidated with four (4) other related cases for pretrial purposes, and discovery is ongoing with debtor and non-debtor defendants and third-party plaintiff Cal-Fire.

63. The State Court Action can be resolved most expeditiously in the California courts.

64. Relief from stay should be granted to allow the State Court Action to proceed as scheduled.

C. Insurance coverage for Debtors supports relief from stay

65. Movants are informed and believe that Debtors had available insurance coverage for products liability claims in place during the year that the Loma Fire occurred, 2016. In fact, during the recent meeting of creditors, Debtor's representative informed Movant's counsel that it had a products liability insurance policy in place in 2016, but that Debtors were self-insured for up to \$2,000,000 during the time applicable to the claims made in the State Court Action.

66. 11 U.S.C. § 524(e) excludes a liability insurance carrier from the protection of its insured's bankruptcy discharge where any proceeds would be made payable to a third-party creditor, not the Debtor. *Matter of Edgeworth*, 993 F. 2d at 55-56.

67. Given that Debtors have a policy of liability insurance in place that will afford a defense and coverage to Movant's claims (and presumably already has), this fact supports granting relief from stay.

D. Debtors' supposed \$2,000,000.00 self-insured retention also supports relief from stay.

68. Per information provided by Debtor's representative at the meeting of creditors conducted on September 2, 2020, the consolidated debtors are self-insured for up to \$2,000,000.00 for any product liability claim brought in 2016.

69. Because Debtor has yet to produce a copy of its liability policy(ies) applicable to the claims brought in the State Court Action, Movants cannot verify this information.

70. However, regardless of whether Debtor's liability carrier might have a "drop down" provision contained within any applicable policy (whereby the coverage is required to drop down and pay Debtors' self-insured retention in the event of bankruptcy or insolvency),

Debtor's liability insurer is obligated to indemnify Debtor for that portion of any judgment or settlement exceeding \$2,000,000 (per claim presumably), irrespective of the Debtor's inability to pay the claimed retention amount. *Home Ins. Co. of Illinois v. Hooper* 294 Ill. App. 3d 626 (1st Dist, 6th Div. 1998).

No Prior Request

71. No prior request for the relief sought in this motion has been made to this or any other court.

Conclusion

72. This is not a case in which the automatic stay should remain in place. The State Court Action was filed two years before Debtor filed for bankruptcy relief. All claims will need to be tried in some forum, and Movants believe that Debtor is already represented in the State Court Action by counsel provided by its insurance company. The Court should lift the automatic stay to permit the State Court Action to be litigated immediately to a final, non-appealable judgment in the California court and permit Movants to enforce any resulting judgment against any and all of Debtors' applicable insurance policies.

73. In the event this Court is not inclined to grant relief from the automatic stay, Movants respectfully request that limited relief from stay be granted, ordering that Debtor respond to the discovery requests previously served upon Debtor in the State Court Action, which seek insurance information, including, without limitation, the production of certified copies of all liability insurance policies applicable to the claims made in the State Court Action and information regarding the subject generators found at the scene of the Loma Fire, which counsel for Debtor in the State Court Action had previously agreed to produce upon entry of a protective order in the State Court Action.

WHEREFORE, Movants pray that the Court enter an order terminating the automatic stay to permit Movants to liquidate their claims against the Debtor to a final judgment and enforce any resulting judgment against any and all applicable insurance coverage, or, in the alternative, grant limited relief from the automatic stay so as to allow Movants to obtain the necessary insurance information relevant to their claims; and grant any such other relief as the Court deems just and proper under the circumstances.

Dated: October 15, 2020

Respectfully submitted,

JENKINS & KLING, P.C.

By: /s/ Sally Sinclair Perez
Sally Sinclair Perez, #66229MO
150 North Meramec Avenue, Ste. 400
St. Louis, Missouri 63105
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Attorney for Claudia Hartke, Liberty Mutual Insurance, Allstate Insurance Company, Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Company Grand Rapids, Michigan, Mid-Century Insurance Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 15th day of October, 2020, a true and correct copy of the foregoing pleading was filed electronically with the United States Bankruptcy Court for the Eastern District of Missouri, and served via the CM/ECF system to those parties receiving electronic notice and via First Class U.S. Mail, postage prepaid, to:

Briggs & Stratton Corporation
PO Box 702
Milwaukee, WI 53201

Carmody MacDonald, Attn: Rob Eggmann
120 S. Central Ave., Ste. 1800
St. Louis, MO 63105

All Creditors on the Master Service List who are not on the list to receive electronic notices for this case.

/s/ Julia M. Kozuszek

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

IN RE:)	
)	Case No. 20-43597
BRIGGS & STRATTON CORPORATION,)	Chapter 11
)	Honorable Barry S. Schermer
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CLAUDIA HARTKE,)	NOTICE OF HEARING AND
)	COMBINED MOTION FOR RELIEF
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v.)	Jenkins & Kling, P.C.
)	150 N. Meramec Ave., Ste. 400
BRIGGS & STRATTON CORPORATION,)	St. Louis, MO 63105
	)	(314) 721-2525
Respondent.	)	(314) 721-5525 (facsimile)

EXHIBIT SUMMARY

Pursuant to the Local Rules of Bankruptcy Procedure, the following exhibits are referenced in support of the Notice of Hearing and Combined Motion for Relief from the Automatic Stay filed by Claudia Hartke, Liberty Mutual Insurance, Allstate Insurance Company and Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Company Grand Rapids, Michigan, Mid-Century Insurance Company (collectively “Movants”). Copies of these exhibits will be provided as required by the Local Rules:

- A. Claudia Hartke’s original Complaint in the State Court Action, filed August 30, 2018
- B. Claudia Hartke’s First Amended Complaint in the State Court Action, filed May 21, 2019
- C. Briggs & Stratton Corporation’s Answer to Claudia Hartke’s First Amended Complaint in the State Court Action, filed August 12, 2019

- D. The Subrogation Complaint of Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Company Grand Rapids, Michigan, and Mid-Century Insurance Company in the State Court Action, filed August 16, 2019
- E. The Subrogation Complaint of Liberty Mutual Insurance in the State Court Action, filed August 23, 2019
- F. Complaint in Subrogation of Allstate Insurance Company in the State Court Action, filed August 23, 2019
- G. Complaint of California Department of Forestry and Fire Protection in the State Court Action, filed September 19, 2018
- H. Complex Case Order dated October 25, 2019 in the State Court Action
- I. Case Management Order filed February 25, 2020 in the State Court Action

Dated: October 15, 2020

Respectfully submitted,

JENKINS & KLING, P.C.

By: /s/ Sally Sinclair Perez

Sally Sinclair Perez, #66229MO
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St. Louis, Missouri 63105
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Facsimile: (314) 721-5525
sperez@jenkinsklings.com

Attorney for Claudia Hartke, Liberty Mutual Insurance, Allstate Insurance Company, Fire Insurance Exchange, Farmers Insurance Exchange, Foremost Insurance Company Grand Rapids, Michigan, Mid-Century Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of all documents supporting the Combined Motion for Relief from the Automatic Stay referenced above have been served on Counsel for the Debtor on October 15, 2020. Copies of the above documents are available to other parties in interest upon request.

/s/ Julia M. Kozuszek

Exhibit A

E-FILED
8/30/2018 1:24 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
18CV333942
Reviewed By: E. Fang

File No. [00202]
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Attorneys for Plaintiff,
CLAUDIA HARTKE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

CLAUDIA HARTKE,

Plaintiff,

vs.

ANDRE Y. SEGAL; SUZANNA G. SEGAL;
RAN BEN VAIS; JAKOB LAGGNER,
SAAS, LLC; GREEN ACRES FARM, INC.;
CAYA GROUP, LLC; WISH RIVER, LLC;
INTEGRAL EARTH, LLC AND DOES 1
THROUGH 50, INCLUSIVE,

Defendants.

CASE NO: 18CV333942

COMPLAINT FOR DAMAGES

1. Negligence
2. Negligence Per Se
3. Violation of CA Civil Code §§ 733 and 3346
4. Trespass

COMES NOW Plaintiff, CLAUDIA HARTKE (hereinafter "Plaintiff") and alleges the following:

JURISDICTION AND VENUE

1. This action arises out of the fire that started on Defendants' real property located at 35500 Loma Chiquita Road, in Los Gatos, California on or about September 26, 2016 ("Loma Fire"). The Loma Fire decimated Plaintiff's property including, but not limited to, a

1 residence, outbuildings, a vineyard, an olive orchard, hundreds of trees, and essentially all
2 naturally and landscaped foliage that existed at the property prior to the fire.

3 2. Venue is proper in the County of Santa Clara because the Plaintiff's and
4 Defendants' properties at issue in this case are situated within the County of Santa Clara,
5 California, and because the damage to Plaintiff's property occurred in the County of Santa
6 Clara.

7 **PARTIES**

8 3. At all times relevant hereto, Plaintiff, CLAUDIA HARTKE was, and remains,
9 the owner of the real property located at 35005 Loma Chiquita Road, Los Gatos, California
10 ("Hartke Property").

11 4. Plaintiff is informed and believes, and thereon alleges that at all times relevant
12 hereto, Defendants ANDRE Y. SEGAL and SUZANNA G. SEGAL held an ownership interest
13 in the real property located at 35500 Loma Chiquita Road, Los Gatos, California ("Segal
14 Property"), as well as used the Segal Property for business purposes.

15 5. Plaintiff is informed and believes, and thereon alleges that at all times relevant
16 hereto, Defendant RAN BEN VAIS was an individual residing at and/or using the Segal
17 Property for business purposes.

18 6. Plaintiff is informed and believes, and thereon alleges that at all times relevant
19 hereto, Defendant JAKOB LAGGNER was an individual using the Segal Property for business
20 purposes.

21 7. Plaintiff is informed and believes, and thereon alleges that at all times relevant
22 hereto, Defendant SAAS, LLC was a California limited liability company doing business in
23 Santa Clara County with an ownership interest in the Segal Property that it was also using for
24

1 business purposes.

2 8. Plaintiff is informed and believes, and thereon alleges that at all times relevant
3 hereto, Defendant GREEN ACRES FARM, INC. was a California corporation doing business
4 in Santa Clara County and/or Santa Cruz County with an ownership interest in the Segal
5 Property that it was also using for business purposes.

6 9. Plaintiff is informed and believes, and thereon alleges that at all times relevant
7 hereto, Defendant CAYA GROUP, LLC was a California limited liability company doing
8 business in Santa Clara County and/or Santa Cruz County with an ownership interest in the
9 Segal Property that it was also using for business purposes.

10 10. Plaintiff is informed and believes, and thereon alleges that at all times relevant
11 hereto, Defendant WISH RIVER, LLC was a California limited liability company doing
12 business in Santa Clara County and/or Santa Cruz County with an ownership interest in the
13 Segal Property that it was also using for business purposes.

14 11. Plaintiff is informed and believes, and thereon alleges that at all times relevant
15 hereto, Defendant INTEGRAL EARTH, LLC was a California limited liability company doing
16 business in Santa Clara County and/or Santa Cruz County with an ownership interest in the
17 Segal Property that it was also using for business purposes.

18 12. DOE Defendants 1 through 50, inclusive, whether individuals, corporations,
19 partnerships, limited liability companies, or otherwise, are fictitious names of Defendants whose
20 true names are, at this time, unknown to Plaintiff. Plaintiff is informed and believes, and
21 thereon alleges that each of said fictitiously-named Defendants contributed to the damages
22 herein alleged and Plaintiff will name such Defendants when their identities have been
23 ascertained.

1 13. Furthermore, Plaintiff alleges that the DOE Defendants in this action committed
2 the same or similar acts alleged as the named Defendants in this action. Therefore, all acts
3 alleged to have been committed by the named Defendants are also alleged to have been
4 committed by the DOE Defendants.

5 14. Plaintiff is informed and believes, and thereon alleges that each of the
6 Defendants is the agent, joint venturer, partner, and/or employee of each of the remaining
7 Defendants and in doing the things hereinafter alleged, each was acting within the course and
8 scope of said agency, joint venture, partnership and/or employment with the advance
9 knowledge, acquiescence or subsequent ratification of each and every remaining Defendant.

10 **ALTER EGO ALLEGATIONS**

11 15. Plaintiff is informed and believes, and thereon alleges that some of the
12 corporations, limited liability companies, and entities named as Defendants herein, including
13 but not limited to SAAS, LLC, GREEN ACRES FARM, INC., CAYA GROUP, LLC, WISH
14 RIVER, LLC and INTEGRAL EARTH, LLC, and DOES 1 through 50, (hereinafter
15 occasionally collectively referred to as the “ALTER EGO ENTITIES”), and each of them, were
16 at all times relevant hereto the alter ego limited liability companies and/or corporations of
17 individual Defendants ANDRE Y. SEGAL, SUZANNA G. SEGAL, RAN BEN VAIS, and/or
18 JAKOB LAGGNER by reason of the following:

19 (a) Plaintiff is informed and believes, and thereon alleges that said individual
20 Defendants, at all times herein mentioned, dominated, influenced and controlled
21 each of the ALTER EGO ENTITIES and the managers and/or officers thereof as
22 well as the business, property, and affairs of each of said entities.

23 (b) Plaintiff is informed and believes, and thereon alleges that at all times herein
24

1 mentioned, there existed and now exists a unity of interest and ownership
2 between said individual defendants and each of the ALTER EGO ENTITIES,
3 such that the individuality and separateness of said individual defendants and
4 each of the ALTER EGO ENTITIES have ceased.

5 (c) Plaintiff is informed and believes, and thereon alleges that at all times since
6 the formation and/or incorporation of each ALTER EGO ENTITY, each ALTER
7 EGO ENTITY has been and now is a mere shell and naked framework which
8 said individual defendants used as a conduit for the conduct of their personal
9 business, property and affairs.

10 (d) Plaintiff is informed and believes, and thereon alleges that at all times herein
11 mentioned, each of the ALTER EGO ENTITIES was created and continued
12 pursuant to a fraudulent plan, scheme and device conceived and operated by said
13 individual Defendants, whereby the income, revenue and profits of each of the
14 ALTER EGO ENTITIES were diverted by said individual Defendants to
15 themselves.

16 (e) Plaintiff is informed and believes, and thereon alleges that at all times herein
17 mentioned, each of the ALTER EGO ENTITIES was organized by said
18 individual defendants as a device to avoid individual liability and for the purpose
19 of substituting financially irresponsible limited liability companies and/or
20 corporations in the place and stead of said individual defendants, and each of
21 them, and accordingly, each ALTER EGO ENTITY was formed with
22 capitalization totally inadequate for the business in which said limited liability
23 company and/or corporation was engaged.

1 (f) Plaintiff is informed and believes, and thereon alleges that each ALTER EGO
2 ENTITY is insolvent.

3 (g) By virtue of the foregoing, adherence to the fiction of the separate existence
4 of each of the ALTER EGO ENTITIES would, under the circumstances,
5 sanction a fraud and promote injustice in that Plaintiff would be unable to realize
6 upon any judgment in her favor.

7 16. Plaintiff is informed and believes, and thereon alleges that at all times relevant
8 hereto, the individual defendants and the ALTER EGO ENTITIES acted for each other in
9 connection with the conduct hereinafter alleged and that each of them performed the acts
10 complained of herein or breached the duties herein complained of as agents of each other and
11 each is therefore fully liable for the acts of the other.

12 **GENERAL ALLEGATIONS**

13 17. On September 26, 2016, the Loma Fire started at the Segal Property.

14 18. The Loma Fire quickly spread to neighboring properties and destroyed a total of
15 4,474 acres, including the Hartke Property.

16 19. The fire was not contained until October 12, 2016.

17 20. The Hartke Property was completely destroyed by the fire that occurred on the
18 Segal Property, which damage included Plaintiff's residence, five (5) outbuildings, a producing
19 vineyard, an olive orchard and twenty (20) acres of natural and landscaped foliage, including
20 hundreds of foliage and trees such as mature Douglas Fir trees, Pine trees, Redwood trees,
21 several fruit trees, numerous mature Bay and Madrone tree groves, Sapphire Dragon trees, a
22 Walnut tree, Live Oak trees and Shrub Oak groves.

23 21. Plaintiff is informed and believes, and thereon alleges that Defendants, and each
24
25

1 of them, failed to maintain the Segal Property in a reasonably safe manner. Trash such as
2 computer equipment, lead acid batteries, piles of electrical debris, electrical extension cords, gas
3 fuel tanks and three (3) portable gasoline powered generators, lay in piles amongst trees and
4 shrubs. Defendant RAN BEN VAIS was found to have been using one of the portable gasoline
5 generators to supply electricity to a trailer that he occupied on the Segal Property, utilizing a
6 long electrical extension cord, which ran along the ground and through foliage from the portable
7 generator to the trailer. It was determined that the Loma Fire started in the area where the
8 gasoline powered generators, batteries, gas fuel tanks and trash and other debris was located.

9 22. The Hartke Property was completely destroyed; thus, Plaintiff has not lived at
10 the Property since the Loma Fire. Plaintiff intends to rebuild her home and move back to the
11 Hartke Property when she has the funds available to do so.

12 23. As a result of Defendants', and each of their, negligent maintenance and use of
13 the Segal Property, Plaintiff has been damaged, as alleged herein.

14 **FIRST CAUSE OF ACTION**
15 **(Negligence as to all Defendants)**

16 24. Plaintiff alleges and incorporates herein by reference the allegations contained in
17 Paragraphs 1 through 23 as though fully set forth herein in detail.

18 25. Defendants had a duty of care to engage in reasonable behavior with respect to
19 the use and maintenance of the Segal Property that would not cause harm to the Plaintiff's
20 property.

21 26. Defendants breached that duty of care by failing to use and/or maintain the Segal
22 Property in a reasonably safe manner, resulting in the Loma Fire which destroyed not only the
23 entire Hartke Property, but multiple homes, outbuildings and thousands of acres of natural
24 landscape in the area.

1 27. Because of Defendants' breach of their duty to use and/or maintain the Segal
2 Property in a reasonably safe manner, Plaintiff suffered extensive damages, including, but not
3 limited to, the total destruction of her residence, outbuildings, a vineyard, an olive orchard, and
4 all naturally occurring and landscaped foliage and trees.

5 28. Defendants' breach of duty has deprived Plaintiff from the use and enjoyment of
6 her property, as well as deprived Plaintiff from income through the sale of grapes and olives.

7 29. Plaintiff is informed and believes, and thereon alleges that the fire that started at
8 the Segal Property resulted in a trespass onto the Hartke Property. The trespass of the Loma
9 Fire resulted in the destruction of Plaintiff's residence, outbuildings, a vineyard, an olive
10 orchard and all naturally occurring and landscaped foliage and trees. The damages that Plaintiff
11 has suffered arose out of Defendants' negligence.

12 30. Defendants were negligent in destroying Plaintiff's trees in violation of
13 California Civil Code Sections 733 and 3346 as set forth below.

14 31. Defendants' negligence, resulting in the Loma Fire, was the cause of all of
15 Plaintiff's harm alleged herein.

16 32. Plaintiff prays for judgment as set forth below for the damages to the Hartke
17 Property, including, but not limited to, the value of all trees and foliage destroyed by the Loma
18 Fire, the cost to restore the Hartke Property, including the cost to rebuild Plaintiff's residence
19 and outbuildings destroyed by the fire, and the loss of scenic, environmental and aesthetic
20 value. Plaintiff further prays for judgment as set forth below for the damages to Plaintiff's
21 vineyard and olive orchard including, but not limited to, the past and future income lost from
22 the sale of grapes and olives from Plaintiff's vineyard and olive orchard, the cost to replant and
23 restore the vineyard and olive orchard, the value of lost income resulting from having to replant
24

1 and regrow the vineyard and olive trees to harvest maturity, and any other damages as
2 discovered in this action.

3 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

4 **SECOND CAUSE OF ACTION**
5 **(Negligence Per Se Against All Defendants)**

6 33. Plaintiff alleges and incorporates herein by reference the allegations contained in
7 Paragraphs 1 through 32 as though fully set forth herein in detail.

8 34. Defendants' negligence resulted in the destruction of Plaintiff's property.

9 35. As a result, Defendants further violated California Code of Civil Procedure §§
10 733 and 3346 as outlined below.

11 36. As a result of Defendants' negligence, Defendants further violated the Santa
12 Clara County Tree Preservation and Removal Ordinance.

13 37. The Defendants' negligence, resulting in violations of the above laws, caused
14 Plaintiff's entire property to be destroyed, thus causing substantial harm to Plaintiff.

15 38. Plaintiff prays for judgment as set forth below for the damages to Plaintiff's
16 property including, but not limited to, the value of the loss of trees, the cost of restoration, the
17 cost of reforestation of the property, the loss of scenic, environmental and aesthetic value.
18 Plaintiff further prays for judgment as set forth below for the damages to Plaintiff's vineyard
19 and olive orchard including, but not limited to, the value of the loss of the vineyard and olive
20 orchard, the cost of restoration of the vineyard and olive orchard, the value of lost future income
21 resulting from having to replant and regrow the vineyard and olive trees, and any other damages
22 as discovered in this action.

1 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

2 **THIRD CAUSE OF ACTION**
3 **(Violation of CA Civil Code §§ 733 and 3346 – as to all Defendants)**

4 39. Plaintiff alleges and incorporates herein by reference the allegations contained in
5 Paragraphs 1 through 38 as though fully set forth herein in detail.

6 40. California Civil Code §§ 733 and 3346 mandate enhanced damages for damage
7 or injury to trees or timber on the property of another.

8 41. Defendants' negligence by failing to maintain their property in a reasonably safe
9 manner resulted in the Loma Fire. The Loma Fire spread beyond Defendants' property and
10 trespassed onto Plaintiff's property, completely destroying all trees and other vegetation situated
11 on Plaintiff's property.

12 42. Defendants' actions are in violation of California Civil Code §§ 733 and 3346,
13 thereby entitling Plaintiff to relief in the form of the costs to restore the Hartke Property, which
14 costs should be doubled or trebled pursuant to the statutes governing Plaintiff's relief herein.

15 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

16 **FIFTH CAUSE OF ACTION**
17 **(Trespass as to all Defendants)**

18 43. Plaintiff alleges and incorporates herein by reference the allegations contained in
19 Paragraphs 1 through 42 as though fully set forth herein in detail.

20 44. At all times relevant hereto, Plaintiff was, and remains, the owner of the Hartke
21 Property.

22 45. Defendants, and each of them, intentionally or negligently caused the Loma Fire,
23 which unlawfully and without permission entered the Hartke Property and completely destroyed
24 the real property and all improvements thereon.

1 46. The Loma Fire was the actual and substantial cause of all damages sought by
2 Plaintiff herein.

3 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth:

- 4 1. General Damages in an amount to be proven at the time of trial;
5 2. Special Damages in an amount to be proven at the time of trial;
6 3. Punitive Damages in an amount to be proven at the time of trial;
7 4. Doubled or trebled damages as authorized by CA Civil Code §§ 733 and/or
8 3346;
9 5. Attorney's fees as authorized by CA Code of Civil Procedure § 1021.9;
10 6. For Plaintiff's costs of suit; and
11 7. For such other and further relief as the court may deem just and proper.

12
13 Dated: 7-30-18

DiBENEDETTO & LAPCEVIC, LLP

14
15 By: _____

ANNA DiBENEDETTO
Attorney for Plaintiff,
CLAUDIA HARTKE

Exhibit B

Filed
May 21, 2019
Clerk of the Court
Superior Court of CA
County of Santa Clara
18CV333942
By: rburciaga

Signed: 5/21/2019 04:50 PM



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10 Attorneys for Plaintiff,
11 CLAUDIA HARTKE

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SANTA CLARA

14 CLAUDIA HARTKE,
15
16 Plaintiff,

17 vs.

18 ANDRE Y. SEGAL; SUZANNA G. SEGAL;
19 RAN BEN VAIS; SAAS, LLC; GREEN
20 ACRES FARM, INC.; CAYA GROUP, LLC;
21 WISH RIVER, LLC; INTEGRAL EARTH,
22 LLC; AMERICAN HONDA MOTOR
23 COMPANY, INC.; BRIGGS & STRATTON,
24 INC.; MTD CONSUMER GROUP, INC.; MTD
25 PRODUCTS COMPANY, INC.; TECH-BILT,
26 LLC; AND DOES 1 THROUGH 50,
27 INCLUSIVE,
28 Defendants.

Case No.: 18CV333942

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Negligence
2. Premises Liability
3. Violation of CA Code Civ. Proc. § 733
and CA Civil Code § 3346
4. Trespass
5. Nuisance
6. Products Liability

21 COMES NOW Plaintiff, CLAUDIA HARTKE (hereinafter "Plaintiff") and alleges the
22 following:
23

24 **JURISDICTION AND VENUE**

25 1. This action arises out of the fire that started on Defendants' real property located
26 at 35500 Loma Chiquita Road, in Los Gatos, Santa Clara County, California on or about
27 September 26, 2016 ("Loma Fire"). The Loma Fire decimated Plaintiff's property, including,
28

1 but not limited to, her residence, several outbuildings, a vineyard, an olive orchard, hundreds of
2 trees, and essentially all naturally and landscaped foliage that existed at the property prior to the
3 fire. Photos of Plaintiff's property before and after the fire are attached hereto collectively as
4 **Exhibit "A"**.

5
6 2. Venue is proper in the County of Santa Clara because the fire occurred and the
7 properties at issue in this case are located in Santa Clara County, California.

8 **PARTIES**

9 3. Plaintiff alleges and incorporates herein by reference all allegations contained in
10 the previous paragraphs as though fully set forth herein.

11 4. At all times relevant hereto, Plaintiff CLAUDIA HARTKE was and is the owner
12 of the real property located at 35005 Loma Chiquita Road, Los Gatos, California ("Hartke
13 Property").
14

15 5. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
16 hereto, Defendants ANDRE Y. SEGAL and SUZANNA G. SEGAL (collectively "SEGALS")
17 held an ownership interest in the real property located at 35500 Loma Chiquita Road, Los Gatos,
18 California ("Segal Property") and/or used the Segal Property for business purposes.

19 6. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
20 hereto, Defendant RAN BEN VAIS ("VAIS") held an ownership interest in the Segal Property
21 and/or used the Segal Property for business purposes.
22

23 7. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
24 hereto, Defendant SAAS, LLC ("SAAS"), a California limited liability company, held an
25 ownership interest in the Segal Property and/or used the Segal Property for business purposes.
26
27
28

1 8. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
2 hereto, Defendant GREEN ACRES FARM, INC. ("GREEN ACRES"), a California corporation,
3 held an ownership interest in the Segal Property and/or used the Segal Property for business
4 purposes.

5 9. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
6 hereto, Defendant CAYA GROUP, LLC ("CAYA"), a California limited liability company, held
7 an ownership interest in the Segal Property and/or used the Segal Property for business purposes.
8

9 10. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
10 hereto, Defendant WISH RIVER, LLC ("WISH RIVER"), a California limited liability company,
11 held an ownership interest in the Segal Property and/or used the Segal Property for business
12 purposes.

13 11. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
14 hereto, Defendant INTEGRAL EARTH, LLC ("INTEGRAL EARTH"), a California limited
15 liability company, held an ownership interest in the Segal Property and/or used the Segal Property
16 for business purposes.
17

18 12. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
19 hereto, Defendant AMERICAN HONDA MOTOR CO., INC. (hereinafter "AMERICAN
20 HONDA") was a corporation licensed and qualified to do business in California engaged in the
21 design, manufacture, mass-production, marketing, distribution and sale of gasoline powered
22 generators.
23

24 13. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
25 hereto, Defendant BRIGGS & STRATTON, INC. (hereinafter "BRIGGS STRATTON") was a
26 corporation licensed and qualified to do business in California engaged in the design,
27
28

1 manufacture, mass-production, marketing, distribution and sale of gasoline powered generators.

2 14. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
3 hereto, Defendants MTD CONSUMER GROUP, INC. and MTD PRODUCTS COMPANY,
4 INC. were corporations licensed and qualified to do business in California as TECH-BILT, LLC
5 (hereinafter "TECH-BILT"), and engaged in the design, manufacture, mass-production,
6 marketing, distribution and sale of gasoline powered generators.
7

8 15. DOE Defendants 1 through 50, inclusive, whether individuals, corporations,
9 partnerships, limited liability companies, or otherwise, are fictitious names of Defendants whose
10 true names are, at this time, unknown to Plaintiff. Plaintiff is informed and believes, and thereon
11 alleges that each of said fictitiously-named Defendants contributed to the damages herein alleged
12 and Plaintiff will name such Defendants when their identities have been ascertained.
13

14 16. Furthermore, Plaintiff alleges that the DOE Defendants in this action committed
15 the same or similar acts alleged as the named Defendants in this action. Therefore, all acts alleged
16 to have been committed by the named Defendants are also alleged to have been committed by
17 the DOE Defendants.

18 17. Plaintiff is informed and believes, and thereon alleges, that each of the Defendants
19 is the agent, joint venturer, partner, and/or employee of each of the remaining Defendants and in
20 doing the things hereinafter alleged, each was acting within the course and scope of said agency,
21 joint venture, partnership and/or employment with the advance knowledge, acquiescence or
22 subsequent ratification of each and every remaining Defendant's act or omission.
23

24 **ALTER EGO ALLEGATIONS**

25 18. Plaintiff alleges and incorporates herein by reference all allegations contained in
26 the previous paragraphs as though fully set forth herein.
27
28

1 19. Plaintiff is informed and believes, and thereon alleges, that the corporations,
2 limited liability companies, and entities named as Defendants herein, including, but not limited
3 to SAAS, GREEN ACRES, CAYA, WISH RIVER, INTEGRAL EARTH, and DOES 1 through
4 50, (hereinafter collectively referred to as the "ALTER EGO ENTITIES"), and each of them,
5 were at all times relevant hereto the alter egos of the individual Defendants SEGALS, VAIS
6 and/or DOE Defendants 1 through 50, by reason of the following:
7

8 (a) Plaintiff is informed and believes, and thereon alleges, that said individual
9 Defendants, and each of them, at all times herein mentioned, dominated, influenced
10 and controlled each of the ALTER EGO ENTITIES and the managers and/or
11 officers thereof as well as the business, property, and affairs of each of said entities.

12 (b) Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, there existed and now exists a unity of interest and ownership between
14 said individual Defendants and each of the ALTER EGO ENTITIES, such that the
15 individuality and separateness of said individual Defendants and each of the
16 ALTER EGO ENTITIES have ceased.
17

18 (c) Plaintiff is informed and believes, and thereon alleges, that at all times since the
19 formation and/or incorporation of each ALTER EGO ENTITY, each ALTER EGO
20 ENTITY has been and now is a mere shell and naked framework which said
21 individual Defendants used as a conduit for the conduct of their personal business,
22 property and affairs.
23

24 (d) Plaintiff is informed and believes, and thereon alleges, that at all times herein
25 mentioned, each of the ALTER EGO ENTITIES was created and continued
26 pursuant to a fraudulent plan, scheme and device conceived and operated by said
27
28

1 individual Defendants, whereby the income, revenue and profits of each of the
2 ALTER EGO ENTITIES were diverted by said individual Defendants to
3 themselves.

4 (e) Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, each of the ALTER EGO ENTITIES was organized by said individual
6 Defendants as a device to avoid individual liability and for the purpose of
7 substituting financially irresponsible limited liability companies and/or
8 corporations in the place and stead of said individual Defendants, and each of them,
9 and accordingly, each ALTER EGO ENTITY was formed with capitalization
10 totally inadequate for the business in which said limited liability company and/or
11 corporation was engaged.
12

13 (f) Plaintiff is informed and believes, and thereon alleges, that at all times relevant
14 hereto each ALTER EGO ENTITY was insolvent.
15

16 (g) By virtue of the foregoing, adherence to the fiction of the separate existence of
17 each of the ALTER EGO ENTITIES would, under the circumstances, sanction a
18 fraud and promote injustice in that Plaintiff would be unable to realize upon any
19 judgment in her favor.
20

21 20. Plaintiff is informed and believes, and thereon alleges, that at all times relevant
22 hereto, the individual Defendants and the ALTER EGO ENTITIES acted for each other in
23 connection with the conduct hereinafter alleged and that each of them performed the acts
24 complained of herein or breached the duties herein complained of as agents of each other and
25 each is therefore fully liable for the acts of the other.

26 //
27
28

GENERAL ALLEGATIONS

21. Plaintiff alleges and incorporates herein by reference all allegations contained in the previous paragraphs as though fully set forth herein.

22. On September 26, 2016, the Loma Fire started on the Segal Property. The Loma Fire quickly spread to neighboring properties and destroyed a total of 4,474 acres, including the Hartke Property. The fire was not contained until October 12, 2016.

23. The Hartke Property was completely destroyed by the fire that started on the Segal Property, which damage included Plaintiff's residence, five (5) outbuildings, a producing vineyard, an olive orchard and twenty (20) acres of natural and landscaped foliage, including hundreds of trees such as mature Douglas Fir trees, Pine trees, Redwood trees, several fruit trees, numerous mature Bay and Madrone tree groves, Sapphire Dragon trees, a Walnut tree, Live Oak trees, and Shrub Oak groves.

24. Plaintiff is informed and believes, and thereon alleges, that the Loma Fire started as a result of a defective gasoline powered generator located on the Segal Property and/or Defendants, and each of their, misuse of same.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each of them, failed to use and/or maintain the Segal Property in a reasonably safe manner. Trash such as computer equipment, lead acid batteries, piles of electrical debris, electrical extension cords, gas fuel tanks and three (3) portable gasoline powered generators lay in piles amongst trees, leaves and shrubs. Defendants' tenant was found to have been using one of the gasoline powered generators to supply electricity to a trailer that he occupied on the Segal Property, utilizing a long electrical extension cord, which ran along the ground and through flammable foliage from the portable generator to the trailer.

FIRST CAUSE OF ACTION

**(Negligence as to SEGALS, VAIS, SAAS, GREEN ACRES, CAYA, WISH RIVER,
INTEGRAL EARTH and DOES 1 through 50)**

26. Plaintiff alleges and incorporates herein by reference all allegations contained in the previous paragraphs as though fully set forth herein.

27. At all times relevant hereto, Defendants, and each of them, owned, maintained, controlled, managed and operated the Segal Property.

28. Defendants, and each of them, had a duty to Plaintiff to use and maintain the Segal Property in a reasonable and safe manner.

29. Defendants, and each of them, breached their duty of care by failing to use and maintain the Segal Property, and/or any equipment providing power to the Segal Property, in a reasonable and safe manner.

30. As a direct and proximate result of the negligence of Defendants, and each of them, the Hartke Property was completely destroyed and Plaintiff has been deprived of the use and enjoyment of the Hartke Property.

31. As a further direct and proximate result of the negligence of Defendants, and each of them, Plaintiff has lost the income generated from the sale of grapes and olives that were growing on the Hartke Property.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

SECOND CAUSE OF ACTION

**(Premises Liability as to SEGALS, VAIS, SAAS, GREEN ACRES, CAYA, WISH
RIVER, INTEGRAL EARTH and DOES 1 through 50)**

32. Plaintiff alleges and incorporates herein by reference all allegations contained in the previous paragraphs as though fully set forth herein.

33. At all times relevant hereto, Defendants, and each of them, owned, maintained,

1 controlled, managed and operated the Segal Property.

2 34. Defendants, and each of them, had a duty to Plaintiff to use and maintain the Segal
3 Property in a reasonable and safe manner.

4 35. Defendants, and each of them, breached their duty of care by failing to use and
5 maintain the Segal Property, and/or any equipment providing power to the Segal Property, in a
6 reasonable and safe manner.

7
8 36. Plaintiff is informed and believes, and thereon alleges, that Defendants, and each
9 of them, negligently maintained, controlled, managed and operated the Segal Property, in that
10 Defendants knew, or in the exercise of reasonable care should have known, that any equipment
11 providing power to the Segal Property, which is located in a forested, high fire risk, area, posed
12 an unreasonable risk of harm to Plaintiff if not properly used and maintained,

13
14 37. As a direct and proximate result of the negligence of Defendants, and each of
15 them, the Hartke Property was completely destroyed and Plaintiff has been deprived of the use
16 and enjoyment of the Hartke Property.

17 38. As a further direct and proximate result of the negligence of Defendants, and each
18 of them, Plaintiff has lost the income generated from the sale of grapes and olives that were
19 growing on the Hartke Property.

20
21 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

22 **THIRD CAUSE OF ACTION**

23 **(Violation of CA CCP § 733 and CC § 3346 – as to SEGALS, VAIS, SAAS, GREEN
24 ACRES, CAYA, WISH RIVER, INTEGRAL EARTH and DOES 1 through 50)**

25 39. Plaintiff alleges and incorporates herein by reference all allegations contained in
26 the previous paragraphs as though fully set forth herein.

27 40. CA Code Civ. Proc. § 733 and CA Civil Code § 3346 mandate enhanced damages
28

1 for injury to trees or timber on the property of another.

2 41. Defendants', and each of their, negligent use, maintenance, operation and control
3 of the Segal Property, and/or any equipment located thereon, was willful or malicious, thereby
4 entitling Plaintiff to doubled damages at a minimum, and trebled damages based upon said willful
5 or malicious conduct.
6

7 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

8 **FOURTH CAUSE OF ACTION**
9 **(Trespass as to SEGALS, VAIS, SAAS, GREEN ACRES, CAYA, WISH RIVER,**
10 **INTEGRAL EARTH and DOES 1 through 50)**

11 42. Plaintiff alleges and incorporates herein by reference all allegations contained in
12 the previous paragraphs as though fully set forth herein.

13 43. At all times relevant hereto, Plaintiff was, and is, the owner of the Hartke Property.

14 44. Defendants, and each of them, intentionally or negligently caused the Loma Fire,
15 which unlawfully and without permission of Plaintiff entered the Hartke Property and destroyed
16 the real property, all improvements thereon, and all naturally occurring and landscaped foliage.

17 45. The Loma Fire was the actual and proximate of the damages sought by Plaintiff
18 herein.

19 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

20 **FIFTH CAUSE OF ACTION**
21 **(Nuisance as to SEGALS, VAIS, SAAS, GREEN ACRES, CAYA, WISH RIVER,**
22 **INTEGRAL EARTH and DOES 1 through 50)**

23 46. Plaintiff alleges and incorporates herein by reference all allegations contained in
24 the previous paragraphs as though fully set forth herein.

25 47. The aforementioned occupation, use and maintenance of the Segal Property
26 and/or any power generating equipment thereon, by Defendants, and each of them, constitutes a
27
28

1 nuisance within the meaning of California Civil Code § 3479 in that it was injurious to Plaintiff
2 and interfered with the peaceful and comfortable enjoyment of her property, which was
3 completely destroyed.

4 48. In maintaining the nuisance, Defendants, and each of them, were acting with full
5 knowledge of the consequences and damage that would result from a fire, and their conduct was
6 willful, oppressive and malicious; accordingly, Plaintiff is entitled to punitive damages against
7 Defendants, and each of them.
8

9 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

10 **SIXTH CAUSE OF ACTION**

11 **(Products Liability as to AMERICAN HONDA, BRIGGS STRATTON, TECH-BILT and
12 DOES 1 through 50)**

13 49. Plaintiff alleges and incorporates herein by reference all allegations contained in
14 the previous paragraphs as though fully set forth herein.

15 50. Plaintiff is informed and believes, and thereon alleges, that one or more portable
16 generators designed, mass produced, manufactured, marketed, distributed and/or sold by
17 AMERICAN HONDA, BRIGGS STRATTON, TECH-BILT and/or DOES 1-50 was/were
18 purchased by Defendants, and each of them, for use on the Segal Property and were used on the
19 Segal Property at all times relevant hereto.

20 51. Plaintiff is informed and believes, and thereon alleges, that on or about September
21 26, 2016, one or more gasoline powered generators designed, mass produced, manufactured,
22 marketed, distributed and/or sold by AMERICAN HONDA, BRIGGS STRATTON, TECH-
23 BILT and/or DOES 1-50, and used at the Segal Property, malfunctioned and was defective when
24 it left the possession or control of Defendants AMERICAN HONDA, BRIGGS STRATTON,
25 TECH-BILT and/or DOES 1-50, causing and/or contributing to the cause of the Loma Fire that
26 completely destroyed Plaintiff's property.
27
28

1 52. Plaintiff is informed and believes, and thereon alleges, that Defendants
2 AMERICAN HONDA, BRIGGS STRATTON, TECH-BILT and/or DOES 1-50 knew and
3 intended that the gasoline powered generators would be purchased and used by members of the
4 public without an inspection for defects.

5 53. Plaintiff is informed and believes, and thereon alleges, that the gasoline powered
6 generators designed, mass produced, manufactured, marketed, distributed and/or sold by
7 AMERICAN HONDA, BRIGGS STRATTON, TECH-BILT and/or DOES 1-50 were used in an
8 intended and reasonably foreseeable manner and that said generators failed to perform safely as
9 an ordinary consumer would expect when used in an intended and reasonably foreseeable manner.
10

11 54. Plaintiff is informed and believes, and thereon alleges, that the gasoline powered
12 generator(s) designed, mass produced, manufactured, marketed, distributed and/or sold by
13 AMERICAN HONDA, BRIGGS STRATTON, TECH-BILT and/or DOES 1-50, and purchased
14 for use at the Segal Property, was/were defective and unsafe for its/their intended purpose.
15

16 55. Plaintiff is informed and believes, and thereon alleges, that the danger of
17 combustion that resulted to any consumer from said defective gasoline powered generator(s) was
18 not readily apparent and adequate warnings were not provided.

19 56. Plaintiff is informed and believes, and thereon alleges, that said gasoline powered
20 generator(s) had defects including, but not limited to, electrical sparking and/or inadequate
21 heat/temperature resistance of components, defective design, defective manufacture, defective
22 assembly, defective integration of components and/or defective warnings that were not readily
23 apparent.
24

25 57. The defective gasoline powered generator(s) designed, mass produced,
26 manufactured, marketed, distributed and/or sold by AMERICAN HONDA, BRIGGS
27
28

1 STRATTON, TECH-BILT and/or DOES 1-50, are the actual and proximate cause of Plaintiff's
2 damages.

3 WHEREFORE, Plaintiff prays for judgment as follows:

- 4 1. General Damages in an amount to be proven at the time of trial;
- 5 2. Special Damages in an amount to be proven at the time of trial;
- 6 3. Punitive Damages in an amount to be proven at the time of trial;
- 7 4. Doubled or trebled damages as authorized by CA Code Civ. Proc. § 733 and Civil
8 Code § 3346;
- 9 5. Attorney's fees as authorized by CA Code of Civ. Proc. § 1021.9;
- 10 6. For Plaintiff's costs of suit; and
- 11 7. For such other and further relief as the court may deem just and proper.
- 12
- 13
- 14

15 Dated: May 14, 2019

DiBENEDETTO & LAPCEVIC, LLP

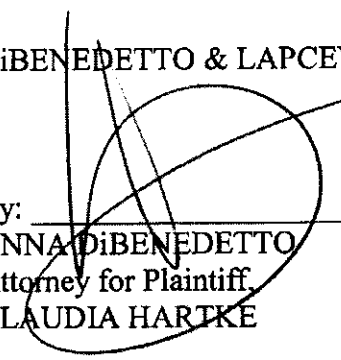
By: 
ANNA DiBENEDETTO
Attorney for Plaintiff
CLAUDIA HARTKE

EXHIBIT A











Exhibit C

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Attorneys for Defendants BRIGGS & STRATTON
CORPORATION; MTD CONSUMER GROUP
INC; MTD PRODUCTS COMPANY INC; TECH-
BILT, LLC

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

CLAUDIA HARTKE,

PLAINTIFF,

v.

ANDRE Y. SEGAL; SUZANNA G. SEGAL; RAN
BEN VAIS; SAAS, LLC; GREEN ACRES FARM,
INC.; CAYA GROUP, LLC; WISH RIVER, LLC;
INTEGRAL EARTH, LLC; AMERICAN HONDA
MOTOR COMPANY, INC.; BRIGGS &
STRATTON, INC.; MTD CONSUMER GROUP,
INC.; MTD PRODUCTS COMPANY, INC.;
TECH-BILT, LLC; AND DOES 1 THROUGH 50,
INCLUSIVE,

DEFENDANTS.

CASE No: 18CV333942

**ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT FOR DAMAGES**

CASE FILED: MAY 21, 2019

NOW COMES Defendants, BRIGGS & STRATTON CORPORATION, MTD CONSUMER
GROUP INC, MTD PRODUCTS COMPANY INC and TECH-BILT, LLC (collectively "These
Defendants") and in response to the plaintiff's First Amended Complaint, admit, deny and allege the
following:

JURISDICTION AND VENUE

1. These Defendants admit only that the "Loma Fire" occurred on or about September 26,
2016; deny that they own any real property on Loma Chiquita Road in Los Gatos, Santa Clara County,

1 California; and are without knowledge or information sufficient to form a belief as to the truth of the
2 remaining allegations in Paragraph 1.

3 2. These Defendants admit that venue is proper in Santa Clara County.

4 **PARTIES**

5 3. These Defendants reallege and incorporate by reference their responses to the previous
6 paragraphs as though fully set forth here.

7 4. These Defendants are without knowledge or information sufficient to form a belief as to
8 the truth of the allegations in Paragraph 4.

9 5. These Defendants are without knowledge or information sufficient to form a belief as to
10 the truth of the allegations in Paragraph 5.

11 6. These Defendants are without knowledge or information sufficient to form a belief as to
12 the truth of the allegations in Paragraph 6.

13 7. These Defendants are without knowledge or information sufficient to form a belief as to
14 the truth of the allegations in Paragraph 7.

15 8. These Defendants are without knowledge or information sufficient to form a belief as to
16 the truth of the allegations in Paragraph 8.

17 9. These Defendants are without knowledge or information sufficient to form a belief as to
18 the truth of the allegations in Paragraph 9.

19 10. These Defendants are without knowledge or information sufficient to form a belief as to
20 the truth of the allegations in Paragraph 10.

21 11. These Defendants are without knowledge or information sufficient to form a belief as to
22 the truth of the allegations in Paragraph 11.

23 12. These Defendants admit only that American Honda is a corporation which is engaged in
24 the design, manufacture, marketing, distribution and sale of gasoline powered generators and engines for
25 such generators, but are without knowledge or information sufficient to form a belief as to the truth of
26 the remaining allegations in Paragraph 12.

27 13. These Defendants deny the allegations in Paragraph 13 as stated. These Defendants
28 admit only the Briggs & Stratton Corporation (there is no such entity as "Briggs & Stratton, Inc.") is

1 organized and exists under the laws of the State of Wisconsin, that it is registered to do business in
2 California, and that during certain limited periods of time, it has designed, manufactured, marketed,
3 distributed and sold gasoline powered generators.

4 14. These Defendants deny the allegations in Paragraph 14 as stated, including, without
5 limitation, the allegation that there is any company or entity known as “Tech-Bilt, LLC” that is in any
6 way related to or affiliated with MTD Consumer Group Inc or MTD Products Company Inc.

7 15. These Defendants are without knowledge or information sufficient to form a belief as to
8 the truth of the allegations in Paragraph 15.

9 16. These Defendants are without knowledge or information sufficient to form a belief as to
10 the truth of the allegations in Paragraph 16.

11 17. These Defendants are without knowledge or information sufficient to form a belief as to
12 the truth of the allegations in Paragraph 17.

13 **ALTER EGO ALLEGATIONS**

14 18. These Defendants reallege and incorporate by reference their responses to the previous
15 paragraphs of the complaint as set forth above.

16 19. These Defendants are without knowledge or information sufficient to form a belief as to
17 the truth of the allegations in Paragraph 19 and all of its subparagraphs.

18 20. These Defendants are without knowledge or information sufficient to form a belief as to
19 the truth of the allegations in Paragraph 20.

20 **GENERAL ALLEGATIONS**

21 21. These Defendants reallege and incorporate by reference their responses to the previous
22 paragraphs of the complaint as set forth above.

23 22. These Defendants admit the Loma Fire started on or about September 26, 2016, but are
24 without knowledge or information sufficient to form a belief as to the truth of the remaining allegations
25 in Paragraph 22.

26 23. These Defendants are without knowledge or information sufficient to form a belief as to
27 the truth of the allegations in Paragraph 23.

28 24. These Defendants deny the allegations in Paragraph 24.

25. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25.

FIRST CAUSE OF ACTION

26. These Defendants reallege and incorporate by reference their responses to the previous paragraphs of the complaint as set forth above.

27. These Defendants deny the allegations in Paragraph 27 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 27 with respect to the other defendants.

28. These Defendants deny the allegations in Paragraph 28 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 28 with respect to the other defendants.

29. These Defendants deny the allegations in Paragraph 29 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 with respect to the other defendants.

30. These Defendants deny the allegations in Paragraph 30 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 with respect to the other defendants.

31. These Defendants deny the allegations in Paragraph 31 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 with respect to the other defendants.

WHEREFORE, These Defendants deny that Plaintiff is entitled to judgment against them as set forth in the First Amended Complaint.

SECOND CAUSE OF ACTION

32. These Defendants reallege and incorporate by reference their responses to the previous paragraphs of the complaint as set forth above.

33. These Defendants deny the allegations in Paragraph 33 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33 with respect to the other defendants.

1 34. These Defendants deny the allegations in Paragraph 34 as to themselves and are without
2 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34
3 with respect to the other defendants.

4 35. These Defendants deny the allegations in Paragraph 35 as to themselves and are without
5 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35
6 with respect to the other defendants.

7 36. These Defendants deny the allegations in Paragraph 36 as to themselves and are without
8 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36
9 with respect to the other defendants.

10 37. These Defendants deny the allegations in Paragraph 37 as to themselves and are without
11 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 37
12 with respect to the other defendants.

13 38. These Defendants deny the allegations in Paragraph 38 as to themselves and are without
14 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38
15 with respect to the other defendants.

16 WHEREFORE, These Defendants deny that Plaintiff is entitled to judgment against them
17 as set forth in the First Amended Complaint.

18 **THIRD CAUSE OF ACTION**

19 39. These Defendants reallege and incorporate by reference their responses to the previous
20 paragraphs of the complaint as set forth above.

21 40. Paragraph 40 is a statement of law to which no response is required, but These
22 Defendants deny it is an accurate statement of law and deny any allegations of fact in Paragraph 40.

23 41. These Defendants deny the allegations in Paragraph 41 as to themselves and are without
24 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 41
25 with respect to the other defendants.

26 WHEREFORE, These Defendants deny that Plaintiff is entitled to judgment against them
27 as set forth in the First Amended Complaint.

28 ///

FOURTH CAUSE OF ACTION

42. These Defendants reallege and incorporate by reference their responses to the previous paragraphs of the complaint as set forth above.

43. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43.

44. These Defendants deny the allegations in Paragraph 44 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 44 with respect to the other defendants.

45. These Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45.

WHEREFORE, These Defendants deny that Plaintiff is entitled to judgment against them as set forth in the First Amended Complaint.

FIFTH CAUSE OF ACTION

46. These Defendants reallege and incorporate by reference their responses to the previous paragraphs of the complaint as set forth above.

47. These Defendants deny the allegations in Paragraph 47 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47 with respect to the other defendants.

48. These Defendants deny the allegations in Paragraph 48 as to themselves and are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 with respect to the other defendants.

WHEREFORE, These Defendants deny that Plaintiff is entitled to judgment against them as set forth in the First Amended Complaint.

SIXTH CAUSE OF ACTION

49. These Defendants reallege and incorporate by reference their responses to the previous paragraphs of the complaint as set forth above.

50. These Defendants deny the allegations in Paragraph 50.

51. These Defendants deny the allegations in Paragraph 51.

52. These Defendants deny the allegations in Paragraph 52.

53. These Defendants deny the allegations in Paragraph 53.

54. These Defendants deny the allegations in Paragraph 54.

55. These Defendants deny the allegations in Paragraph 55.

56. These Defendants deny the allegations in Paragraph 56.

57. These Defendants deny the allegations in Paragraph 57.

AFFIRMATIVE DEFENSES

1. The First Amended Complaint fails, in whole or in part, to state a claim upon which relief can be granted against These Defendants or facts sufficient to constitute a cause of action against These Defendants.

2. Upon information and belief, Plaintiff's claims against These Defendants are barred by the applicable statutes of limitations, statutes of repose and/or by the doctrines of laches, waiver, estoppel, and/or unclean hands.

3. Upon information and belief, any injuries to Plaintiff were caused by her own contributory negligence and failure to exercise reasonable care for her own property.

4. Upon information and belief, if Plaintiff suffered any injuries as alleged in this action, said injuries were caused by the acts or omissions of persons or entities other than These Defendants, including, without limitation, other defendants, over whom These Defendants had no control. These Defendants had no duty or way to anticipate these acts or failure to act by other persons or entities and These Defendants are not liable or responsible for these acts or omissions. Said acts or omissions include, without limitation, use of portable generators for illegal purposes, failure to properly operate portable generators, failure to properly maintain and repair portable generators, failure to properly use portable generators, failure to properly guard against a portable generator causing a fire or other damage, failure to be prepared for the possibility of a wild fire starting, and other omissions or acts which caused, or were a substantial factor in causing, the Loma Fire.

5. Upon information and belief, to the extent that a portable generator or other product designed, marketed, manufactured or sold by one of These Defendants was in any way involved in the Loma Fire, which is denied, the owners and operators of said generator or product violated CA PRC §

4435, which provides in relevant part: “If any fire originates from the operation or use of any engine, machine, barbecue, incinerator, railroad rolling stock, chimney, or any other device which may kindle a fire, the occurrence of the fire is prima facie evidence of negligence in the maintenance, operation, or use of such engine, machine, barbecue, incinerator, railroad rolling stock, chimney, or other device”, and so are wholly responsible for causing, or being a substantial factor in causing, the Loma Fire.

6. Upon information and belief, to the extent that a portable generator or other product designed, marketed, manufactured or sold by one of These Defendants was in any way involved in the Loma Fire, which is denied, said generator or other product complied with all applicable regulations and standards and was properly designed and manufactured and had adequate warnings and instructions according to the state of the art at the time.

7. Upon information and belief, to the extent that a portable generator or other product designed, marketed, manufactured or sold by one of These Defendants was in any way involved in the Loma Fire, which is denied, said involvement was caused in whole or in part by the abuse, misuse, alteration, or modification of that portable generator or other product in a way which was not intended and was not reasonably foreseeable by These Defendants.

8. Upon information and belief, to the extent that Plaintiff suffered any injury or damages as a result of the Loma Fire, said injury or damages were caused by the acts or omissions of others, or the products or materials designed, manufactured and sold by entities other than These Defendants, which actions or products constitute an intervening and superseding cause of Plaintiff’s alleged injuries and damages.

9. Upon information and belief, Plaintiff has failed to mitigate her damages.

10. Plaintiff’s claims against These Defendants should be dismissed on the grounds of public policy because, among other things, the alleged damages are too remote and wholly out of proportion to the negligence alleged, or for other appropriate reason.

11. Upon information and belief, there are entities who have or will pay benefits to the Plaintiff for some or all of the losses claimed in this action, but Plaintiff has failed to join them and any other interested and necessary parties in this action.

///

12. Any damages awarded to Plaintiff are subject to reduction and/or setoff for amounts recovered by Plaintiff against other responsible individuals and entities and Plaintiff's proportionate share of liability for the damages.

13. Plaintiff's claims are barred to extent she lacks standing to maintain an action against These Defendants.

14. Plaintiff's claims are barred to the extent she either expressly or impliedly ratified or consented to the conduct of any of the defendants that is alleged to have caused the Loma Fire.

15. These Defendants presently have insufficient knowledge or information on which to form a belief as to whether they may have additional affirmative defenses available. These Defendants reserve the right to assert additional defenses in the event discovery indicates that additional affirmative defenses would be appropriate.

WHEREFORE, These Defendants pray for judgment as follows:

1. Dismissing the Plaintiff's claims against them on the merits and with prejudice;
2. Awarding them their costs;
3. Awarding them their attorneys' fees;
4. Awarding them such additional relief as may be proper.

DATE: AUGUST 12, 2019

FOLEY & LARDNER LLP
THOMAS F. CARLUCCI
NICHOLAS P. HONKAMP



By: _____

NICHOLAS P. HONKAMP
Attorneys for Defendants BRIGGS & STRATTON
CORPORATION; MTD CONSUMER GROUP
INC; MTD PRODUCTS COMPANY INC; TECH-
BILT, LLC

PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to this action; my current business address is 555 California Street, Suite 1700, San Francisco, CA 94104-1520.

On August 12, 2019, I served the foregoing document(s) described as: **ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

Anna DiBenedetto William A. Lapcevic DiBENEDETTO & LAPCEVIC, LLP 1101 Pacific Avenue, Suite 320 Santa Cruz, CA 95060 Email: wal@dl-lawllp.com anna@dl-lawllp.com	Todd Alan Angstadt Joseph William Tursi PHILLIPS, SPALLAS & ANGSTADT LLP 505 Sansome St, Fl 6 San Francisco, CA 94111 Email: tangstadt@psalaw.net jtursi@psalaw.net
<i>Attorneys for Plaintiff Claudia Hartke</i>	<i>Attorneys for Defendants SAAS, LLC; Andre Y. Segal; Suzanna G. Segal</i>
Greg E. Meisenholder ELLIOTT & ELLIOTT 333 W Santa Clara St, Ste 910 San Jose, CA 95113-1716 Email: gmeisenholder@elliottandelliott.com	
<i>Attorneys for Defendant Caya Group, LLC</i>	

X BY MAIL

— I placed the envelope(s) with postage thereon fully prepaid in the United States mail, at San Francisco, California.

X I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service; the firm deposits the collected correspondence with the United States Postal Service that same day, in the ordinary course of business, with postage thereon fully prepaid, at San Francisco, California. I placed the envelope(s) for collection and mailing on the above date following ordinary business practices.

X BY E-MAIL

X I served the foregoing document electronically via First Legal to the addressees above at the e-mail addresses listed therein.

X Executed on August 12, 2019, at San Francisco, California.

X I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Cherri Plainfield

Exhibit D

E-FILED
8/16/2019 6:40 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV353342
Reviewed By: M Vu

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Attorneys for Subrogation Plaintiffs
Fire Insurance Exchange, et al.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

FIRE INSURANCE EXCHANGE;
FARMERS INSURANCE EXCHANGE;
FOREMOST INSURANCE COMPANY
GRAND RAPIDS, MICHIGAN; and
MID-CENTURY INSURANCE
COMPANY,

Plaintiffs,

vs.

SAAS, LLC; ANDRE Y. SEGAL;
SUZANNA G. SEGAL; RAN BEN
VAIS; BRIGGS & STRATTON
CORPORATION; MTD PRODUCTS,
INC.; MTD CONSUMER GROUP,
INC.; MTD PRODUCTS COMPANY;
TROY-BILT, LLC; and DOES 1 through
50, Inclusive,

Defendants.

CASE NO. 19CV353342

**FARMERS' SUBROGATION
COMPLAINT FOR LOMA FIRE
DAMAGES**

Against Defts. SAAS, Segals, Vais, Does 1-25

1. Negligence
2. Trespass
3. Private Nuisance
4. Public Nuisance

Against Defts. Briggs & Stratton, MTD,
Troy-Bilt, Does 26-50

5. Strict Product Liability
6. Negligence

DEMAND FOR JURY TRIAL

BERGER KAHN
A Law Corporation
1 Park Plaza, Suite 340
Irvine, CA 92614

1 Subrogation Plaintiffs Fire Insurance Exchange; Farmers Insurance Exchange; Foremost
2 Insurance Company Grand Rapids, Michigan; and Mid-Century Insurance Company hereby
3 allege:

4 **JURISDICTION AND VENUE**

5 1. This action arises out of the fire that started on real property located at 35500
6 Loma Chiquita Road in Los Gatos, California on or about September 26, 2016 (“the Loma
7 Fire”). The Loma Fire damaged and/or destroyed Plaintiffs’ insureds’ properties, including but
8 not limited to, residences, outbuildings, landscaping, and personal property, and caused the
9 evacuation from and loss of use and enjoyment of those properties. Plaintiffs suffered damages
10 by making indemnity payments to its insureds for covered losses under their respective insurance
11 policies, in the approximate aggregate amount of \$3,858,844.50 as of July 2019.

12 2. Venue is proper in the County of Santa Clara because properties of the Plaintiffs
13 and Defendants are situated within the County of Santa Clara, California, and damages to
14 Plaintiffs’ insureds’ properties occurred in the County of Santa Clara.

15 **PARTIES**

16 3. At all relevant times, Subrogation Plaintiffs Fire Insurance Exchange; Farmers
17 Insurance Exchange; Foremost Insurance Company Grand Rapids, Michigan; and Mid-Century
18 Insurance Company (sometimes collectively “Subrogation Plaintiffs”) were and are insurance
19 carriers licensed to conduct and transact business in the State of California as insurance
20 companies.

21 4. Based on information and belief, Subrogation Plaintiffs allege that at all relevant
22 times, Defendant SAAS, LLC (“SAAS”) was a California limited liability company doing
23 business in Santa Clara County with an ownership interest in the real property located at 35500
24 Loma Chiquita Road, Los Gatos, California (“the Property”), which it used for business
25 purposes.

26 5. Based on information and belief, Subrogation Plaintiffs allege that at all relevant
27 times, Defendants Andre Y. Segal and Suzanna G. Segal (“the Segals”) held an ownership
28 interest in the Property and used the Property for business purposes.

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1 6. Based on information and belief, Subrogation Plaintiffs allege that at all relevant
2 times, the Segals were managing members of and employed by SAAS, and that they were acting
3 within the course and scope of their duties, responsibilities, and employment; and/or that the
4 Segals acted as property managers for the Property.

5 7. Based on information and belief, Subrogation Plaintiffs allege that at all relevant
6 times, Defendant Ran Ben Vais (“Vais”) was an individual residing at and/or using the Segal
7 Property for business purposes, and/or was an employee of SAAS or the the Segals, acting
8 within the course and scope of his employment and/or at the direction of the Segals.

9 8. Based on information and belief, Subrogation Plaintiffs allege that at all relevant
10 times, Defendant Briggs & Stratton Corporation was a corporation licensed and qualified to do
11 business in California that engaged in the design, manufacture, mass-production, marketing,
12 distribution and sale of gasoline powered generators.

13 9. Based on information and belief, Subrogation Plaintiffs allege that at all relevant
14 times, Defendants MTD Products, Inc; MTD Consumer Group, Inc.; and/or MTD Products
15 Company (collectively “MTD”) were corporations licensed and qualified to do business in
16 California as Tech-Bilt, LLC, under the brand name Tech Bilt (“Tech-Bilt”), and that MTD
17 was engaged in the design, manufacture, mass-production marketing, distribution and sale
18 of gasoline powered generators.

19 10. Based on information and belief, Subrogation Plaintiffs allege that at all relevant
20 times, Defendant Troy-Bilt, LLC was a subsidiary of and part of the MTD family brand.

21 11. Doe Defendants 1 through 50, inclusive, whether individuals, corporations
22 partnerships, limited liability companies, or otherwise, are fictitious names of Defendants
23 whose true names are unknown to Subrogation Plaintiffs at this time. Based on information
24 and belief, Subrogation Plaintiffs allege that at all relevant times, each of the fictitiously-named
25 Defendants contributed to the damages and things herein alleged. Subrogation Plaintiffs will
26 name such Defendants when their identities have been ascertained.

27
28

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Irvine, CA 92614

12. Based on information and belief, Subrogation Plaintiffs allege that the Doe Defendants committed the same or similar acts alleged as the named Defendants, such that acts alleged against the named Defendants are also alleged against the Doe Defendants.

13. Based on information and belief, Subrogation Plaintiffs allege that each of the Defendants is the agent, joint venturer, partner, and/or employee of each of the remaining Defendants and in doing the things hereinafter alleged, each was acting within the course and scope of said agency, joint venture, partnership and/or employment with the advance knowledge, acquiescence or subsequent ratification of each and every remaining Defendant.

GENERAL ALLEGATIONS

14. Subrogation Plaintiffs allege and incorporate by reference all allegations of the preceding paragraphs as though fully set forth herein.

15. On September 26, 2016, the Loma Fire started at the Property.

16. Based on information and belief, Subrogation Plaintiffs allege that when the Loma Fire started, Defendants SAAS, the Segals, Vais, and Does 1-50 owned, controlled, possessed, leased, or managed the Property.

17. Based on information and belief, Subrogation Plaintiffs allege that when the Loma Fire started, Defendants SAAS, the Segals, Vais, and Does 1-50 owned and used one or more portable generators ("the generator") powered by internal combustion engines using hydrocarbon fuel such as gas or diesel, and that the generator was instrumental in starting the Loma Fire.

18. Based on information and belief, Subrogation Plaintiffs allege that when the Loma Fire started, Defendant VAIS was living at the Property and taking care of marijuana plants growing on the Property, and operating the generator at the request or the direction of Defendants SAAS and/or the Segals, for purposes of cultivating the marijuana plants and powering a water well and his living quarters, all in a flammable area with heavy vegetation, abandoned structures, and debris.

19. Based on information and belief, Subrogation Plaintiffs allege that Defendants SAAS, the Segals, Vais, and Does 1-50 and each of them, failed to maintain the Property and

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maintain and operate the generator in a reasonably safe manner. Trash such as computer equipment, lead acid batteries, piles of electrical debris, electrical extension cords, gas and fuel tanks and three (3) portable gasoline powered generators lay in piles amongst trees and shrubs. Defendant Vais was using one of the portable gasoline generators to supply electricity for extended periods of time to a trailer that he occupied on the Property, by running a long electrical extension cord along the ground, through foliage, from the portable generator to the trailer. It was determined that the Loma Fire started in the area where the gasoline powered generators, batteries, gas fuel tanks and trash and other debris was located. Defendants failed to clear flammable vegetation, including high and dry grass, away from the generator, failed to have proper firefighting tools, and failed to have an individual present when the generator was running, particularly on a hot, windy day. Defendants allowed the fire to escape onto adjacent and neighboring properties, and cause damage to and destruction of Plaintiffs' insureds' properties.

20. Defendants knew or should have known that their failure to use and maintain the Property and use, maintain, and operate the generator in a reasonably safe manner would create a fire risk and the likelihood that a fire would escape control. Defendants should have taken precautions to prevent the starting and/or spreading of the fire.

21. Based on information and belief, Subrogation Plaintiffs allege that when the Loma Fire started, Defendants SAAS, the Segals, Vais, and Does 1-50 violated Health and Safety Code § 13001 by using the generator in a manner and place where it caused the Loma Fire to start and spread.

22. Based on information and belief, Subrogation Plaintiffs allege that when the Loma Fire started, Defendants SAAS, the Segals, Vais, and Does 1-50 violated the Public Resources Code by the following acts or omissions:

- Defendants failed to maintain at least 100 feet of defensible space from each side and the front and rear of a building or structure and allowed debris to accumulate near a building or structure. Public Resources Code § 4291.

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- Defendants allowed the Loma Fire to start, burn uncontrolled, and escape from their control. Public Resources Code § 4422.
- Defendants failed to use a spark arrester on the generator to prevent ignition of flammable material. Public Resources Code § 4422.
- Defendants failed to clear flammable material at least 10 feet from the generator operation. Public Resources Code § 4427.
- Defendants failed to have available a serviceable round point shovel and fire extinguisher and used the generator within 25 feet of flammable material. Public Resources Code § 4427, 4431.
- Defendants allowed the Loma Fire to start by using the generator, a device which may start a fire. Public Resources Code § 4435.

23. The Loma Fire quickly spread to neighboring properties and damaged and/or destroyed a total of 4,474 acres.

24. The Loma Fire caused evacuations from, and damage and/or destruction to, Subrogation Plaintiffs' Insureds' properties including, but not limited to, residences, outbuildings, and personal property, and caused the evacuation from and loss of use and enjoyment of those properties.

25. The Loma Fire was not contained until October 12, 2016.

26. Subrogation Plaintiffs made indemnity payments to its insureds for losses caused by the Loma Fire that were covered under their respective insurance policies, in the approximate aggregate amount of \$3,858,844.50 as of July 2019. As such, Subrogation Plaintiffs are equitably, contractually and legally subrogated to the claims, rights, and demands of each of its Insureds against all Defendants herein to the extent of the payments made, and to be made.

FIRST CAUSE OF ACTION

(Negligence as to Defendants SAAS, the Segals, Vais, and Does 1-25)

27. Subrogation Plaintiffs allege and incorporate each of the paragraphs set forth above as though fully set forth herein.

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28. Defendants SAAS, the Segals, Vais, and Does 1-25 had a duty of care to engage in reasonable behavior with respect to the use and maintenance of the Property, and the use, maintenance and operation of the generator that would not cause harm to the Plaintiffs.

29. Defendants knew or should have known that their failure to use and maintain the Property and use, maintain, and operate the generator in a reasonably safe manner would create a fire risk and the likelihood that a fire would escape control. Defendants should have taken precautions to prevent the starting and/or spreading of the fire.

30. Defendants breached that duty of care by failing to use and/or maintain the Property and generator in a reasonably safe manner, resulting in the Loma Fire which damaged and/or destroyed the properties of Plaintiffs' insureds and caused the evacuation from and loss of use and enjoyment of the properties.

31. Because of Defendants' breach of their duty to use and maintain the Property and use, maintain, and operate the generator in a reasonably safe manner, Defendants caused and allowed the Loma Fire to occur and escape control.

32. Defendants further violated the Health and Safety Code and the Public Resources Codes, enumerated in part above, which caused substantial harm to Subrogation Plaintiffs' insureds, and thus to Subrogation Plaintiffs.

33. Defendants' failure to exercise ordinary care and their violation of the above laws was the actual, legal, and proximate cause of Subrogation Plaintiffs' damages, measured by their required indemnity payments to their insureds for covered losses under the respective insurance policies. The final amount of payments will be determined. As of July 2019 the approximate aggregate amount of \$3,858,844.50 has been paid.

34. Subrogation Plaintiffs suffered damages by making indemnity payments to its insureds for covered losses under their respective insurance policies, in the approximate aggregate amount of \$3,858,844.50 as of July 2019.

SECOND CAUSE OF ACTION

(Trespass as to Defendants SAAS, the Segals, Vais, and Does 1-50)

35. Subrogation Plaintiffs allege and incorporate each of the paragraphs set forth above as though fully set forth herein.

36. At all relevant times, Subrogation Plaintiffs' insureds, and each of them, were the owners and/or lawful occupiers of properties damaged and/or destroyed by the Loma Fire.

37. Defendants, and each of them, intentionally or negligently caused the Loma Fire, which unlawfully and without permission entered Subrogation Plaintiffs' Insureds' properties and damaged and/or destroyed those properties.

38. Subrogation Plaintiffs' insureds did not grant permission for Defendants, and Does 1 through 50, and each of them, to cause the Loma Fire to enter their properties.

39. The Loma Fire was the actual and substantial cause of all damages Subrogation Plaintiffs seek.

THIRD CAUSE OF ACTION

(Private Nuisance as to Defendants SAAS, the Segals, Vais, and Does 1-25)

40. Subrogation Plaintiffs hereby incorporate each and every previous allegation as though fully set forth herein.

41. Subrogation Plaintiffs' insureds, and each of them, were the owners and/or lawful occupiers of properties damaged and/or destroyed by the Loma Fire.

42. By acting or failing to act, Defendants caused the Loma Fire, which was harmful to health and obstructed the free use of properties owned by Subrogation Plaintiffs' insureds, causing property damage and destructions, and requiring those insureds to evacuate and incur additional living expense covered by their respective insurance policies.

43. The Loma Fire interfered with Subrogation Plaintiffs' insureds' use and enjoyment of their property.

44. Neither Subrogation Plaintiffs' insureds nor Subrogation Plaintiffs consented to the Defendants' conduct or to the Loma Fire damaging and/or destroying Subrogation Plaintiffs' insureds' properties.

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45. An ordinary person would be reasonably annoyed or disturbed by the Loma Fire damaging and/or destroying their properties.

46. Subrogation Plaintiffs' Insureds were harmed and Subrogation Plaintiffs incurred damages as a result of the Defendants' conduct, which was a substantial factor in causing Subrogation Plaintiffs' damages.

47. There was no public benefit to the Loma Fire.

FOURTH CAUSE OF ACTION

(Public Nuisance as to Defendants SAAS, the Segals, Vais, and Does 1-25)

48. Plaintiffs hereby incorporate each and every previous allegation as though fully set forth herein.

49. By acting or failing to act, Defendants created the Loma Fire, which was harmful to health and was an obstruction to the free use of Subrogation Plaintiffs' insureds' properties, so as to interfere with the comfortable enjoyment of life and properties.

50. The Loma Fire affected a substantial number of people at the same time.

51. An ordinary person would be reasonably annoyed or disturbed by the Loma Fire.

52. There was no social utility to the Loma Fire.

53. Neither Subrogation Plaintiffs' insureds nor Subrogation Plaintiffs consented to the Loma Fire damaging and/or destroying Plaintiffs' insureds' properties.

54. Subrogation Plaintiffs' insureds and thus Subrogation Plaintiffs suffered harm and damages that were/are different from the type of harm suffered by the general public.

55. The Defendants' conduct was a substantial factor in causing harm to Subrogation Plaintiffs' insureds, and thus to Subrogation Plaintiffs.

FIFTH CAUSE OF ACTION

(Strict Product Liability as to Defendants Briggs & Stratton Corporation; MTD Products, Inc.; MTD Consumer Group, Inc.; MTD Products Company; Troy-Bilt, LLC; and DOES 26-50)

56. Plaintiffs hereby incorporate each and every previous allegation as though fully set forth herein.

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1 57. Defendants Briggs & Stratton Corporation; MTD Products, Inc; MTD Consumer
2 Group, Inc.; MTD Products Company; Troy-Bilt, LLC;. and DOES 26-50) (the “Product
3 Defendants”) designed, manufactured, mass produced, marketed, distributed, and/or sold the
4 generator that was purchased by or on behalf of Defendants SAAS, the Segals, Vais, and Does 1-
5 25 for use on the Property.

6 58. At all relevant times, the generator was in use at the Property.

7 59. Based on information and belief, Subrogation Plaintiffs allege that the Product
8 Defendants knew and intended that the generator would be purchased and used by members of
9 the public without being inspected for defects.

10 60. Based on information and belief, Subrogation Plaintiffs allege that the generator
11 contained a manufacturing defect when it left the possession of the Product Defendants.

12 61. Based on information and belief, Subrogation Plaintiffs allege that the generator
13 was defective and unsafe for its intended purpose.

14 62. Based on information and belief, Subrogation Plaintiffs allege that the generator
15 was used in an intended and reasonably foreseeable manner.

16 63. Based on information and belief, Subrogation Plaintiffs allege that on or about
17 September 26, 2016, the generator did not perform as safely as an ordinary consumer would have
18 expected it to perform when used or misused in an intended or reasonably foreseeable way,
19 starting a fire that damaged and destroyed Subrogation Plaintiffs’ insureds’ properties.

20 64. Subrogation Plaintiffs’ insureds were harmed and incurred damages as a result of
21 the generator’s failure to perform safely, and Subrogation Plaintiffs were therefore obligated to
22 make and did make payments under their respective policies of insurance and are thereby legally
23 and equitably subrogated to the rights of their insureds.

24 65. The generator’s defective design and failure to perform safely was a substantial
25 factor in causing monetary loss to Subrogation Plaintiffs.

26 66. The generator’s defective design and failure to perform safely was the actual and
27 proximate cause of monetary loss to Subrogation Plaintiffs.
28

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67. Based on information and belief, Subrogation Plaintiffs allege that the generator had potential risks, including but not limited to fire ignition, that was known and/or knowable in light of the scientific and mechanical/engineering knowledge that was generally accepted in the community at the time of the design, manufacture, distribution, and sale.

68. Based on information and belief, Subrogation Plaintiffs allege that the potential risks, including but not limited to fire ignition, presented a substantial danger when the generator was used or misused in an intended or reasonably foreseeable way.

69. Based on information and belief, Subrogation Plaintiffs allege that ordinary consumers and insureds would not have recognized the potential risks, including but not limited to fire ignition.

70. Based on information and belief, Subrogation Plaintiffs allege that the Product Defendants negligently failed to adequately warn or instruct of the potential risks, including but not limited to fire ignition.

71. Subrogation Plaintiffs were harmed and incurred damages as a result of the Product Defendants' failure to warn or instruct of the potential risks, including but not limited to fire ignition.

72. The lack of sufficient warnings or instructions was a substantial factor in causing harm to Subrogation Plaintiffs' insureds, and thus to Subrogation Plaintiffs.

73. The generator's lack of sufficient warnings or instructions was the actual and proximate cause of monetary loss to Subrogation Plaintiffs.

SIXTH CAUSE OF ACTION

**(Negligence as to Defendants Briggs & Stratton Corporation; MTD Products, Inc.;
MTD Consumer Group, Inc.; MTD Products Company; Troy-Bilt, LLC;
and DOES 26-50)**

74. Plaintiffs hereby incorporate each and every previous allegation as though fully set forth herein.

75. The Product Defendants designed, manufactured, supplied, installed parts on, inspected, labeled, and/or sold the generator.

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1 76. The Product Defendants were negligent in designing, manufacturing, supplying,
2 installing parts on, inspecting, labeling, and/or selling the generator.

3 77. Subrogation Plaintiffs' insureds were harmed and incurred damages as a result of
4 the Product Defendants' negligence, which was a substantial factor in causing harm to
5 Subrogation Plaintiffs' insureds, and thus to Subrogation Plaintiffs.

6 78. The Product Defendants knew or reasonably should have known that the
7 generator was dangerous or likely to be dangerous when used or misused in a reasonably
8 foreseeable manner.

9 79. The Product Defendants knew or reasonably should have known that users would
10 not realize the danger.

11 80. The Product Defendants negligently failed to adequately warn of the danger or
12 instruct on the safe use of the generator.

13 81. A reasonable manufacturer, distributor, or seller under the same or similar
14 circumstances would have warned of the danger or instructed on the safe use of the generator.

15 82. Subrogation Plaintiffs' insureds were harmed and incurred damages as a result of
16 the Product Defendants' failure to warn or instruct, which was a substantial factor in causing
17 harm to Subrogation Plaintiffs' insureds, and thus to Subrogation Plaintiffs.

18 **DEMAND FOR JURY TRIAL**

19 Subrogation Plaintiffs hereby demand trial by jury.

20 **PRAYER**

21 WHEREFORE, Plaintiffs Fire Insurance Exchange; Farmers Insurance Exchange;
22 Foremost Insurance Company Grand Rapids, Michigan; and Mid-Century Insurance Company
23 pray for judgment against Defendants, their respective agents and employees, and Does 1
24 through 50, and each of them, as set forth below:

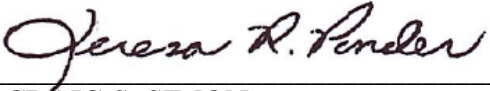
25 (1) For monetary damages in an amount to be proven at trial which exceeds the
26 jurisdictional minimum of this Court;

27 (2) For prejudgment interest in accordance with Civil Code §3287;
28

- 1 (3) For attorneys' fees and cost of suit to the extent allowed by California law; and
2 (4) For such other relief as the Court deems just and proper.

3
4 DATED: August 16, 2019

BERGER KAHN, A Law Corporation

5 By: 
6 CRAIG S. SIMON
7 TERESA R. PONDER
8 Attorneys for Plaintiffs
9 FIRE INSURANCE EXCHANGE;
10 FARMERS INSURANCE EXCHANGE;
11 FOREMOST INSURANCE COMPANY
12 GRAND RAPIDS, MICHIGAN; and MID-
13 CENTURY INSURANCE COMPANY
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Exhibit E

E-FILED
8/23/2019 4:58 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV353889
Reviewed By: L Del Mundo

1 Thomas M. Regan (SBN 113800)
2 COZEN O'CONNOR
3 501 W. Broadway, Suite 1610
4 San Diego, CA 92101
5 Telephone: 619.234.1700
6 Facsimile: 619.234.7831
7 Email: tregan@cozen.com

8 Attorneys for Plaintiff
9 LIBERTY MUTUAL INSURANCE

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

LIBERTY MUTUAL INSURANCE,
Plaintiffs,
vs.

SAAS, LLC; ANDRE Y. SEGAL;
SUZANNA G. SEGAL; RAN BEN
VAIS; BRIGGS & STRATTON
CORPORATION; MTD PRODUCTS,
INC.; MTD CONSUMER GROUP,
INC.; MTD PRODUCTS COMPANY;
TROY-BILT, LLC; and DOES 1 through
50, Inclusive,

Defendants.

CASE NO. 19CV353889

**SUBROGATION COMPLAINT FOR
LOMA FIRE DAMAGES**

Against Defts. SAAS, Segals, Vais, Does 1-25

1. Negligence
2. Trespass
3. Private Nuisance
4. Public Nuisance

Against Defts. Briggs & Stratton, MTD,
Troy-Bilt, Does 26-50

5. Strict Product Liability
6. Negligence

DEMAND FOR JURY TRIAL

1 Subrogation Plaintiff LIBERTY MUTUAL INSURANCE (hereinafter “Plaintiff”)
2 hereby alleges:

3 **JURISDICTION AND VENUE**

4 1. This action arises out of the fire that started on real property located at 35500
5 Loma Chiquita Road in Los Gatos, California on or about September 26, 2016 (“the Loma
6 Fire”). The Loma Fire damaged and/or destroyed Plaintiff’s insured’s property located at 5521
7 Twin Fall Road, Morgan Hill, California, including but not limited to, a residence, a car,
8 outbuildings, trees, and essentially all naturally and landscaped foliage that existed at the
9 property prior to the fire. Plaintiff suffered damages by making indemnity payments to its
10 insured for covered losses under their respective insurance policies, in the approximate aggregate
11 amount of \$873,638.57 as of July 2019.

12 2. Venue is proper in the County of Santa Clara because property of the Plaintiff and
13 Defendants are situated within the County of Santa Clara, California, and damages to Plaintiff’s
14 insured’s property occurred in the County of Santa Clara.

15 **PARTIES**

16 3. At all relevant times, Plaintiff was and is an insurance carrier licensed to conduct
17 and transact business in the State of California as an insurance company.

18 4. Based on information and belief, Plaintiff alleges that at all relevant times,
19 Defendant SAAS, LLC (“SAAS”) was a California limited liability company doing business in
20 Santa Clara County with an ownership interest in the real property located at 35500 Loma
21 Chiquita Road, Los Gatos, California (“the Property”), which it used for business purposes.

22 5. Based on information and belief, Plaintiffs alleges that at all relevant times,
23 Defendants Andre Y. Segal and Suzanna G. Segal (“the Segals”) held an ownership interest in
24 the Property and used the Property for business purposes.

25 6. Based on information and belief, Plaintiff alleges that at all relevant times, the
26 Segals were managing members of and employed by SAAS, and that they were acting within the
27 course and scope of their duties, responsibilities, and employment; and/or that the Segals acted as
28 property managers for the Property.

1 7. Based on information and belief, Plaintiff alleges that at all relevant times,
2 Defendant Ran Ben Vais (“Vais”) was an individual residing at and/or using the Segal Property
3 for business purposes, and/or was an employee of SAAS or the the Segals, acting within the
4 course and scope of his employment and/or at the direction of the Segals.

5 8. Based on information and belief, Plaintiff alleges that at all relevant times,
6 Defendant Briggs & Stratton Corporation was a corporation licensed and qualified to do
7 business in California that engaged in the design, manufacture, mass-production, marketing,
8 distribution and sale of gasoline-powered generators.

9 9. Based on information and belief, Plaintiff alleges that at all relevant times,
10 Defendants MTD Products, Inc; MTD Consumer Group, Inc.; and/or MTD Products
11 Company (collectively “MTD”) were corporations licensed and qualified to do business in
12 California as Tech-Bilt, LLC, under the brand name Tech Bilt (“Tech-Bilt”), and that MTD
13 was engaged in the design, manufacture, mass-production marketing, distribution and sale
14 of gasoline powered generators.

15 10. Based on information and belief, Plaintiff alleges that at all relevant times,
16 Defendant Troy-Bilt, LLC was a subsidiary of and part of the MTD family brand.

17 11. Doe Defendants 1 through 50, inclusive, whether individuals, corporations
18 partnerships, limited liability companies, or otherwise, are fictitious names of Defendants
19 whose true names are unknown to Plaintiff at this time. Based on information and belief,
20 Plaintiff alleges that at all relevant times, each of the fictitiously-named Defendants
21 contributed to the damages and things herein alleged. Plaintiff will name such Defendants
22 when their identities have been ascertained.

23 12. Based on information and belief, Plaintiff alleges that the Doe Defendants
24 committed the same or similar acts alleged as the named Defendants, such that acts alleged
25 against the named Defendants are also alleged against the Doe Defendants.

26 13. Based on information and belief, Plaintiff alleges that each of the Defendants is
27 the agent, joint venturer, partner, and/or employee of each of the remaining Defendants and in
28 doing the things hereinafter alleged, each was acting within the course and scope of said agency,

1 joint venture, partnership and/or employment with the advance knowledge, acquiescence or
2 subsequent ratification of each and every remaining Defendant.

3 **GENERAL ALLEGATIONS**

4 14. Plaintiff alleges and incorporates by reference all allegations of the preceding
5 paragraphs as though fully set forth herein.

6 15. On September 26, 2016, the Loma Fire started at the Property.

7 16. Based on information and belief, Plaintiff alleges that when the Loma Fire started,
8 Defendants SAAS, the Segals, Vais, and Does 1-50 owned, controlled, possessed, leased, or
9 managed the Property.

10 17. Based on information and belief, Plaintiff alleges that when the Loma Fire started,
11 Defendants SAAS, the Segals, Vais, and Does 1-50 owned and used one or more portable
12 generators ("the generator") powered by internal combustion engines using hydrocarbon fuel
13 such as gas or diesel, and that the generator was instrumental in starting the Loma Fire.

14 18. Based on information and belief, Plaintiff alleges that when the Loma Fire started,
15 Defendant VAIS was living at the Property and taking care of marijuana plants growing on the
16 Property, and operating the generator at the request or the direction of Defendants SAAS and/or
17 the Segals, for purposes of cultivating the marijuana plants and powering a water well and his
18 living quarters, all in a flammable area with heavy vegetation, abandoned structures, and debris.

19 19. Based on information and belief, Plaintiff alleges that Defendants SAAS, the
20 Segals, Vais, and Does 1-50 and each of them, failed to maintain the Property and maintain and
21 operate the generator in a reasonably safe manner. Trash such as computer equipment, lead acid
22 batteries, piles of electrical debris, electrical extension cords, gas and fuel tanks and three (3)
23 portable gasoline powered generators lay in piles amongst trees and shrubs. Defendant Vais was
24 using one of the portable gasoline generators to supply electricity for extended periods of time to
25 a trailer that he occupied on the Property, by running a long electrical extension cord along the
26 ground, through foliage, from the portable generator to the trailer. It was determined that the
27 Loma Fire started in the area where the gasoline powered generators, batteries, gas fuel tanks and
28 trash and other debris was located. Defendants failed to clear flammable vegetation, including

1 high and dry grass, away from the generator, failed to have proper firefighting tools, and failed to
2 have an individual present when the generator was running, particularly on a hot, windy day.
3 Defendants allowed the fire to escape onto adjacent and neighboring properties, and cause
4 damage to and destruction of Plaintiff's insured's property.

5 20. Defendants knew or should have known that their failure to use and maintain the
6 Property and use, maintain, and operate the generator in a reasonably safe manner would create a
7 fire risk and the likelihood that a fire would escape control. Defendants should have taken
8 precautions to prevent the starting and/or spreading of the fire.

9 21. Based on information and belief, Plaintiff alleges that when the Loma Fire started,
10 Defendants SAAS, the Segals, Vais, and Does 1-50 violated Health and Safety Code § 13001 by
11 using the generator in a manner and place where it caused the Loma Fire to start and spread.

12 22. Based on information and belief, Plaintiff alleges that when the Loma Fire started,
13 Defendants SAAS, the Segals, Vais, and Does 1-50 violated the Public Resources Code by the
14 following acts or omissions:

- 15 • Defendants failed to maintain at least 100 feet of defensible space from each side and
16 the front and rear of a building or structure and allowed debris to accumulate near a
17 building or structure. Public Resources Code § 4291.
- 18 • Defendants allowed the Loma Fire to start, burn uncontrolled, and escape from their
19 control. Public Resources Code § 4422.
- 20 • Defendants failed to use a spark arrester on the generator to prevent ignition of
21 flammable material. Public Resources Code § 4422.
- 22 • Defendants failed to clear flammable material at least 10 feet from the generator
23 operation. Public Resources Code § 4427.
- 24 • Defendants failed to have available a serviceable round point shovel and fire
25 extinguisher and used the generator within 25 feet of flammable material. Public
26 Resources Code § 4427, 4431.
- 27 • Defendants allowed the Loma Fire to start by using the generator, a device which
28 may start a fire. Public Resources Code § 4435.

23. The Loma Fire quickly spread to neighboring properties and damaged and/or destroyed a total of 4,474 acres.

24. The Loma Fire caused evacuations from, and damage and/or destruction to, Plaintiff's Insured's property including, but not limited to, a residence, a car, outbuildings, trees, and essentially all naturally and landscaped foliage that existed at the property prior to the fire.

25. The Loma Fire was not contained until October 12, 2016.

26. Plaintiff made indemnity payments to its insured for losses caused by the Loma Fire that were covered under their respective insurance policy, in the approximate aggregate amount of \$873,638.57 as of July 2019. As such, Plaintiff is equitably, contractually and legally subrogated to the claims, rights, and demands of its Insured against all Defendants herein to the extent of the payments made, and to be made.

FIRST CAUSE OF ACTION

(Negligence as to Defendants SAAS, the Segals, Vais, and Does 1-25)

27. Plaintiff alleges and incorporates each of the paragraphs set forth above as though fully set forth herein.

28. Defendants SAAS, the Segals, Vais, and Does 1-25 had a duty of care to engage in reasonable behavior with respect to the use and maintenance of the Property, and the use, maintenance and operation of the generator that would not cause harm to the Plaintiff.

29. Defendants knew or should have known that their failure to use and maintain the Property and use, maintain, and operate the generator in a reasonably safe manner would create a fire risk and the likelihood that a fire would escape control. Defendants should have taken precautions to prevent the starting and/or spreading of the fire.

30. Defendants breached that duty of care by failing to use and/or maintain the Property and generator in a reasonably safe manner, resulting in the Loma Fire which damaged and/or destroyed the property of Plaintiff's insured and caused the evacuation from and loss of use and enjoyment of the properties.

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1 31. Because of Defendants' breach of their duty to use and maintain the Property and
2 use, maintain, and operate the generator in a reasonably safe manner, Defendants caused and
3 allowed the Loma Fire to occur and escape control.

4 32. Defendants further violated the Health and Safety Code and the Public Resources
5 Codes, enumerated in part above, which caused substantial harm to Plaintiff's insured, and thus
6 to Plaintiff.

7 33. Defendants' failure to exercise ordinary care and their violation of the above laws
8 was the actual, legal, and proximate cause of Plaintiff's damages, measured by their required
9 indemnity payments to their insured for covered losses under the respective insurance policy.
10 The final amount of payments will be determined. As of July 2019 the approximate aggregate
11 amount of \$873,638.57 has been paid.

12 34. Plaintiff suffered damages by making indemnity payments to its insured for
13 covered losses under their respective insurance policy, in the approximate aggregate amount of
14 \$873,638.57 as of July 2019.

15 **SECOND CAUSE OF ACTION**

16 **(Trespass as to Defendants SAAS, the Segals, Vais, and Does 1-50)**

17 35. Plaintiff alleges and incorporates each of the paragraphs set forth above as though
18 fully set forth herein.

19 36. At all relevant times, Plaintiff's insured, was the owners and/or lawful occupiers
20 of property damaged and/or destroyed by the Loma Fire.

21 37. Defendants, and each of them, intentionally or negligently caused the Loma Fire,
22 which unlawfully and without permission entered Plaintiff's Insured's property and damaged
23 and/or destroyed that property.

24 38. Plaintiff's insured did not grant permission for Defendants, and Does 1 through
25 50, and each of them, to cause the Loma Fire to enter their property.

26 39. The Loma Fire was the actual and substantial cause of all damages Plaintiffs
27 seeks.

28 ////

THIRD CAUSE OF ACTION

(Private Nuisance as to Defendants SAAS, the Segals, Vais, and Does 1-25)

40. Plaintiff hereby incorporates each and every previous allegation as though fully set forth herein.

41. Plaintiff's insured was the owner and/or lawful occupiers of property damaged and/or destroyed by the Loma Fire.

42. By acting or failing to act, Defendants caused the Loma Fire, which was harmful to health and obstructed the free use of properties owned by Plaintiff's insured, causing property damage and destructions, and requiring the insured to evacuate and incur additional living expense covered by their respective insurance policy.

43. The Loma Fire interfered with Plaintiff's insured's use and enjoyment of their property.

44. Neither Plaintiff's insured nor Plaintiff consented to the Defendants' conduct or to the Loma Fire damaging and/or destroying Plaintiff's insured's property.

45. An ordinary person would be reasonably annoyed or disturbed by the Loma Fire damaging and/or destroying their property.

46. Plaintiff's Insured was harmed and Plaintiff incurred damages as a result of the Defendants' conduct, which was a substantial factor in causing Plaintiff's damages.

47. There was no public benefit to the Loma Fire.

FOURTH CAUSE OF ACTION

(Public Nuisance as to Defendants SAAS, the Segals, Vais, and Does 1-25)

48. Plaintiffs hereby incorporates each and every previous allegation as though fully set forth herein.

49. By acting or failing to act, Defendants created the Loma Fire, which was harmful to health and was an obstruction to the free use of Plaintiff's insured's property, so as to interfere with the comfortable enjoyment of life and properties.

50. The Loma Fire affected a substantial number of people at the same time.

51. An ordinary person would be reasonably annoyed or disturbed by the Loma Fire.

52. There was no social utility to the Loma Fire.

53. Neither Plaintiff's insured nor Plaintiff consented to the Loma Fire damaging and/or destroying Plaintiff's insured's property.

54. Plaintiff's insured and thus Plaintiff suffered harm and damages that were/are different from the type of harm suffered by the general public.

55. The Defendants' conduct was a substantial factor in causing harm to Plaintiff's insured, and thus to Plaintiff.

FIFTH CAUSE OF ACTION

**(Strict Product Liability as to Defendants Briggs & Stratton Corporation;
MTD Products, Inc.; MTD Consumer Group, Inc.; MTD Products Company;
Troy-Bilt, LLC; and DOES 26-50)**

56. Plaintiff hereby incorporates each and every previous allegation as though fully set forth herein.

57. Defendants Briggs & Stratton Corporation; MTD Products, Inc; MTD Consumer Group, Inc.; MTD Products Company; Troy-Bilt, LLC;. and DOES 26-50) (the "Product Defendants") designed, manufactured, mass produced, marketed, distributed, and/or sold the generator that was purchased by or on behalf of Defendants SAAS, the Segals, Vais, and Does 1-25 for use on the Property.

58. At all relevant times, the generator was in use at the Property.

59. Based on information and belief, Plaintiff alleges that the Product Defendants knew and intended that the generator would be purchased and used by members of the public without being inspected for defects.

60. Based on information and belief, Plaintiff alleges that the generator contained a manufacturing defect when it left the possession of the Product Defendants.

61. Based on information and belief, Plaintiff alleges that the generator was defective and unsafe for its intended purpose.

62. Based on information and belief, Plaintiff alleges that the generator was used in an intended and reasonably foreseeable manner.

1 63. Based on information and belief, Plaintiff alleges that on or about September 26,
2 2016, the generator did not perform as safely as an ordinary consumer would have expected it to
3 perform when used or misused in an intended or reasonably foreseeable way, starting a fire that
4 damaged and destroyed Plaintiff's insured's property.

5 64. Plaintiff's insured was harmed and incurred damages as a result of the generator's
6 failure to perform safely, and Plaintiff was therefore obligated to make and did make payments
7 under their respective policy of insurance and are thereby legally and equitably subrogated to the
8 rights of their insured.

9 65. The generator's defective design and failure to perform safely was a substantial
10 factor in causing monetary loss to Plaintiff.

11 66. The generator's defective design and failure to perform safely was the actual and
12 proximate cause of monetary loss to Plaintiff.

13 67. Based on information and belief, Plaintiff alleges that the generator had potential
14 risks, including but not limited to fire ignition, that was known and/or knowable in light of the
15 scientific and mechanical/engineering knowledge that was generally accepted in the community
16 at the time of the design, manufacture, distribution, and sale.

17 68. Based on information and belief, Plaintiff alleges that the potential risks,
18 including but not limited to fire ignition, presented a substantial danger when the generator was
19 used or misused in an intended or reasonably foreseeable way.

20 69. Based on information and belief, Plaintiff alleges that ordinary consumers and
21 insureds would not have recognized the potential risks, including but not limited to fire ignition.

22 70. Based on information and belief, Plaintiff alleges that the Product Defendants
23 negligently failed to adequately warn or instruct of the potential risks, including but not limited
24 to fire ignition.

25 71. Plaintiff was harmed and incurred damages as a result of the Product Defendants'
26 failure to warn or instruct of the potential risks, including but not limited to fire ignition.

27 72. The lack of sufficient warnings or instructions was a substantial factor in causing
28 harm to Plaintiff's insured, and thus to Plaintiff.

73. The generator's lack of sufficient warnings or instructions was the actual and proximate cause of monetary loss to Plaintiff.

SIXTH CAUSE OF ACTION

(Negligence as to Defendants Briggs & Stratton Corporation; MTD Products, Inc.; MTD Consumer Group, Inc.; MTD Products Company; Troy-Bilt, LLC; and DOES 26-50)

74. Plaintiff hereby incorporates each and every previous allegation as though fully set forth herein.

75. The Product Defendants designed, manufactured, supplied, installed parts on, inspected, labeled, and/or sold the generator.

76. The Product Defendants were negligent in designing, manufacturing, supplying, installing parts on, inspecting, labeling, and/or selling the generator.

77. Plaintiff's insured was harmed and incurred damages as a result of the Product Defendants' negligence, which was a substantial factor in causing harm to Plaintiff's insured, and thus to Plaintiff.

78. The Product Defendants knew or reasonably should have known that the generator was dangerous or likely to be dangerous when used or misused in a reasonably foreseeable manner.

79. The Product Defendants knew or reasonably should have known that users would not realize the danger.

80. The Product Defendants negligently failed to adequately warn of the danger or instruct on the safe use of the generator.

81. A reasonable manufacturer, distributor, or seller under the same or similar circumstances would have warned of the danger or instructed on the safe use of the generator.

82. Plaintiff's insured was harmed and incurred damages as a result of the Product Defendants' failure to warn or instruct, which was a substantial factor in causing harm to Plaintiff's insured, and thus to Plaintiff.

////

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury.

PRAYER

WHEREFORE, Plaintiff prays for judgment against Defendants, their respective agents and employees, and Does 1 through 50, and each of them, as set forth below:

- (1) For monetary damages in an amount to be proven at trial which exceeds the jurisdictional minimum of this Court;
- (2) For prejudgment interest in accordance with Civil Code §3287;
- (3) For attorneys' fees and cost of suit to the extent allowed by California law; and
- (4) For such other relief as the Court deems just and proper.

DATED: August 23, 2019

COZEN O'CONNOR

By: 

Thomas M. Regan
Attorneys for Plaintiffs
LIBERTY MUTUAL INSURANCE

Exhibit F

E-FILED
8/23/2019 1:08 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
19CV353780
Reviewed By: Yuet Lai

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Attorneys for Plaintiff
ALLSTATE INSURANCE COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

ALLSTATE INSURANCE COMPANY,)
)
Plaintiff,)
)
v.)
)
SAAS, LLC; ANDRE Y. WEGAL;)
SUZANNA G. SEGAL; RAN BEN VAIS;)
BRIGGS & STRATTON)
CORPORATION; MTD PRODUCTS,)
INC.; MTD CONSUMER GROUP, INC.;)
MTD PRODUCTS COMPANY; TROY)
BILT, LLC; and DOES 1 through 50,)
Inclusive;)
)
Defendants.)

Case No.: 19CV353780

**PLAINTIFF ALLSTATE
INSURANCE COMPANY'S
COMPLAINT IN SUBROGATION**

Subrogation Plaintiff ALLSTATE INSURANCE COMPANY hereby alleges:

JURISDICTION AND VENUE

1. This action arises out of the fire that started on real property located at 35500 Loma Chiquita Road in Los Gatos, California on or about September 26, 2016 ("the Loma Fire"). The Loma Fire damaged and/or destroyed Plaintiff's insureds' properties, including but not limited to, residences, outbuildings, landscaping, and personal property, and caused the evacuation from and loss of use and enjoyment of those properties. Plaintiff suffered damages

1 by making indemnity payments to its insureds for covered losses under its respective insurance
2 policies, in the approximate aggregate amount of \$163,356.71 as of August 2019.

3 2. Venue is proper in the County of Santa Clara because properties of the Plaintiff
4 and Defendants are situated within the County of Santa Clara, California, and damages to
5 Plaintiff's insureds' properties occurred in the County of Santa Clara.

6 **PARTIES**

7 3. At all relevant times, Subrogation Plaintiff Allstate Insurance Company was and
8 is an insurance carrier licensed to conduct and transact business in the State of California as an
9 insurance company.

10 4. Based on information and belief, Subrogation Plaintiff alleges that at all relevant
11 times, Defendant SAAS, LLC ("SAAS") was a California limited liability company doing
12 business in Santa Clara County with an ownership interest in the real property located at 35500
13 Loma Chiquita Road, Los Gatos, California ("the Property"), which it used for business
14 purposes.

15 5. Based on information and belief, Subrogation Plaintiff alleges that at all relevant
16 times, Defendants Andre Y. Segal and Suzanna G. Segal ("the Segals") held an ownership
17 interest in the Property and used the Property for business purposes.

18 6. Based on information and belief, Subrogation Plaintiff alleges that at all relevant
19 times, the Segals were managing members of and employed by SAAS, and that they were
20 acting within the course and scope of their duties, responsibilities, and employment; and/or that
21 the Segals acted as property managers for the Property.

22 7. Based on information and belief, Subrogation Plaintiff alleges that at all relevant
23 times, Defendant Ran Ben Vais ("Vais") was an individual residing at and/or using the Segal
24

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1 Property for business purposes, and/or was an employee of SAAS or the the Segals, acting
2 within the course and scope of his employment and/or at the direction of the Segals.

3 8. Based on information and belief, Subrogation Plaintiff alleges that at all relevant
4 times, Defendant Briggs & Stratton Corporation was a corporation licensed and qualified to
5 do business in California that engaged in the design, manufacture, mass-production,
6 marketing, distribution and sale of gasoline powered generators.

7 9. Based on information and belief, Subrogation Plaintiff alleges that at all relevant
8 times, Defendants MTD Products, Inc; MTD Consumer Group, Inc.; and/or MTD Products
9 Company (collectively "MTD") were corporations licensed and qualified to do business in
10 California as Tech-Bilt, LLC, under the brand name Tech Bilt ("Tech-Bilt"), and that MTD
11 was engaged in the design, manufacture, mass-production marketing, distribution and sale
12 of gasoline powered generators.

13 10. Based on information and belief, Subrogation Plaintiff alleges that at all relevant
14 times, Defendant Troy-Bilt, LLC was a subsidiary of and part of the MTD family brand.

15 11. Doe Defendants 1 through 50, inclusive, whether individuals, corporations
16 partnerships, limited liability companies, or otherwise, are fictitious names of Defendants
17 whose true names are unknown to Subrogation Plaintiff at this time. Based on information
18 and belief, Subrogation Plaintiff alleges that at all relevant times, each of the fictitiously-named
19 Defendants contributed to the damages and things herein alleged. Subrogation Plaintiff will
20 name such Defendants when their identities have been ascertained.

21 12. Based on information and belief, Subrogation Plaintiff alleges that the Doe
22 Defendants committed the same or similar acts alleged as the named Defendants, such that acts
23 alleged against the named Defendants are also alleged against the Doe Defendants.
24

1 13. Based on information and belief, Subrogation Plaintiff alleges that each of the
2 Defendants is the agent, joint venturer, partner, and/or employee of each of the remaining
3 Defendants and in doing the things hereinafter alleged, each was acting within the course and
4 scope of said agency, joint venture, partnership and/or employment with the advance
5 knowledge, acquiescence or subsequent ratification of each and every remaining Defendant.

6 **GENERAL ALLEGATIONS**

7 14. Subrogation Plaintiff alleges and incorporate by reference all allegations of the
8 preceding paragraphs as though fully set forth herein.

9 15. On September 26, 2016, the Loma Fire started at the Property.

10 16. Based on information and belief, Subrogation Plaintiff alleges that when the
11 Loma Fire started, Defendants SAAS, the Segals, Vais, and Does 1-50 owned, controlled,
12 possessed, leased, or managed the Property.

13 17. Based on information and belief, Subrogation Plaintiff alleges that when the
14 Loma Fire started, Defendants SAAS, the Segals, Vais, and Does 1-50 owned and used one or
15 more portable generators ("the generator") powered by internal combustion engines using
16 hydrocarbon fuel such as gas or diesel, and that the generator was instrumental in starting the
17 Loma Fire.

18 18. Based on information and belief, Subrogation Plaintiff alleges that when the
19 Loma Fire started, Defendant VAIS was living at the Property and taking care of marijuana
20 plants growing on the Property, and operating the generator at the request or the direction of
21 Defendants SAAS and/or the Segals, for purposes of cultivating the marijuana plants and
22 powering a water well and his living quarters, all in a flammable area with heavy vegetation,
23 abandoned structures, and debris.

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1 19. Based on information and belief, Subrogation Plaintiff alleges that Defendants
2 SAAS, the Segals, Vais, and Does 1-50 and each of them, failed to maintain the Property and
3 maintain and operate the generator in a reasonably safe manner. Trash such as computer
4 equipment, lead acid batteries, piles of electrical debris, electrical extension cords, gas and fuel
5 tanks and three (3) portable gasoline powered generators lay in piles amongst trees and shrubs.
6 Defendant Vais was using one of the portable gasoline generators to supply electricity for
7 extended periods of time to a trailer that he occupied on the Property, by running a long
8 electrical extension cord along the ground, through foliage, from the portable generator to the
9 trailer. It was determined that the Loma Fire started in the area where the gasoline powered
10 generators, batteries, gas fuel tanks and trash and other debris was located. Defendants failed to
11 clear flammable vegetation, including high and dry grass, away from the generator, failed to
12 have proper firefighting tools, and failed to have an individual present when the generator was
13 running, particularly on a hot, windy day. Defendants allowed the fire to escape onto adjacent
14 and neighboring properties, and cause damage to and destruction of Plaintiff's insureds'
15 properties.

16 20. Defendants knew or should have known that their failure to use and maintain the
17 Property and use, maintain, and operate the generator in a reasonably safe manner would create
18 a fire risk and the likelihood that a fire would escape control. Defendants should have taken
19 precautions to prevent the starting and/or spreading of the fire.

20 21. Based on information and belief, Subrogation Plaintiff alleges that when the
21 Loma Fire started, Defendants SAAS, the Segals, Vais, and Does 1-50 violated Health and
22 Safety Code § 13001 by using the generator in a manner and place where it caused the Loma
23 Fire to start and spread.
24

22. Based on information and belief, Subrogation Plaintiff alleges that when the Loma Fire started, Defendants SAAS, the Segals, Vais, and Does 1-50 violated the Public Resources Code by the following acts or omissions:

- Defendants failed to maintain at least 100 feet of defensible space from each side and the front and rear of a building or structure and allowed debris to accumulate near a building or structure. Public Resources Code § 4291.
- Defendants allowed the Loma Fire to start, burn uncontrolled, and escape from their control. Public Resources Code § 4422.
- Defendants failed to use a spark arrester on the generator to prevent ignition of flammable material. Public Resources Code § 4422.
- Defendants failed to clear flammable material at least 10 feet from the generator operation. Public Resources Code § 4427.
- Defendants failed to have available a serviceable round point shovel and fire extinguisher and used the generator within 25 feet of flammable material. Public Resources Code § 4427, 4431.
- Defendants allowed the Loma Fire to start by using the generator, a device which may start a fire. Public Resources Code § 4435.

23. The Loma Fire quickly spread to neighboring properties and damaged and/or destroyed a total of 4,474 acres.

24. The Loma Fire caused evacuations from, and damage and/or destruction to, Subrogation Plaintiff's Insureds' properties including, but not limited to, residences, outbuildings, and personal property, and caused the evacuation from and loss of use and enjoyment of those properties.

25. The Loma Fire was not contained until October 12, 2016.

1 26. Subrogation Plaintiff made indemnity payments to its insureds for losses caused
2 by the Loma Fire that were covered under its respective insurance policies, in the approximate
3 aggregate amount of \$163,356.71 as of August 2019. As such, Subrogation Plaintiff is
4 equitably, contractually and legally subrogated to the claims, rights, and demands of each of its
5 Insureds against all Defendants herein to the extent of the payments made, and to be made.

6 **FIRST CAUSE OF ACTION**

7 **(Negligence as to Defendants SAAS, the Segals, Vais, and Does 1-25)**

8 27. Subrogation Plaintiff alleges and incorporate each of the paragraphs set forth
9 above as though fully set forth herein.

10 28. Defendants SAAS, the Segals, Vais, and Does 1-25 had a duty of care to engage
11 in reasonable behavior with respect to the use and maintenance of the Property, and the use,
12 maintenance and operation of the generator that would not cause harm to the Plaintiff.

13 29. Defendants knew or should have known that their failure to use and maintain the
14 Property and use, maintain, and operate the generator in a reasonably safe manner would create
15 a fire risk and the likelihood that a fire would escape control. Defendants should have taken
16 precautions to prevent the starting and/or spreading of the fire.

17 30. Defendants breached that duty of care by failing to use and/or maintain the
18 Property and generator in a reasonably safe manner, resulting in the Loma Fire which damaged
19 and/or destroyed the properties of Plaintiff's insureds and caused the evacuation from and loss
20 of use and enjoyment of the properties.

21 31. Because of Defendants' breach of their duty to use and maintain the Property and
22 use, maintain, and operate the generator in a reasonably safe manner, Defendants caused and
23 allowed the Loma Fire to occur and escape control.
24

32. Defendants further violated the Health and Safety Code and the Public Resources Codes, enumerated in part above, which caused substantial harm to Subrogation Plaintiff's insureds, and thus to Subrogation Plaintiff.

33. Defendants' failure to exercise ordinary care and their violation of the above laws was the actual, legal, and proximate cause of Subrogation Plaintiff's damages, measured by its required indemnity payments to its insureds for covered losses under the respective insurance policies. The final amount of payments will be determined. As of August 2019 the approximate aggregate amount of \$163,356.71 has been paid.

34. Subrogation Plaintiff suffered damages by making indemnity payments to its insureds for covered losses under its respective insurance policies, in the approximate aggregate amount of \$163,356.71 as of August 2019.

SECOND CAUSE OF ACTION

(Trespass as to Defendants SAAS, the Segals, Vais, and Does 1-50)

35. Subrogation Plaintiff alleges and incorporates each of the paragraphs set forth above as though fully set forth herein.

36. At all relevant times, Subrogation Plaintiff's insureds, and each of them, were the owners and/or lawful occupiers of properties damaged and/or destroyed by the Loma Fire.

37. Defendants, and each of them, intentionally or negligently caused the Loma Fire, which unlawfully and without permission entered Subrogation Plaintiff's Insureds' properties and damaged and/or destroyed those properties.

38. Subrogation Plaintiff's insureds did not grant permission for Defendants, and Does 1 through 50, and each of them, to cause the Loma Fire to enter their properties.

39. The Loma Fire was the actual and substantial cause of all damages Subrogation Plaintiff seeks.

THIRD CAUSE OF ACTION

(Private Nuisance as to Defendants SAAS, the Segals, Vais, and Does 1-25)

40. Subrogation Plaintiff hereby incorporates each and every previous allegation as though fully set forth herein.

41. Subrogation Plaintiff's insureds, and each of them, were the owners and/or lawful occupiers of properties damaged and/or destroyed by the Loma Fire.

42. By acting or failing to act, Defendants caused the Loma Fire, which was harmful to health and obstructed the free use of properties owned by Subrogation Plaintiff's insureds, causing property damage and destructions, and requiring those insureds to evacuate and incur additional living expense covered by its respective insurance policies.

43. The Loma Fire interfered with Subrogation Plaintiff's insureds' use and enjoyment of their property.

44. Neither Subrogation Plaintiff's insureds nor Subrogation Plaintiff consented to the Defendants' conduct or to the Loma Fire damaging and/or destroying Subrogation Plaintiff's insureds' properties.

45. An ordinary person would be reasonably annoyed or disturbed by the Loma Fire damaging and/or destroying their properties.

46. Subrogation Plaintiff's Insureds were harmed and Subrogation Plaintiff incurred damages as a result of the Defendants' conduct, which was a substantial factor in causing Subrogation Plaintiff's damages.

47. There was no public benefit to the Loma Fire.

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/ /

FOURTH CAUSE OF ACTION

(Public Nuisance as to Defendants SAAS, the Segals, Vais, and Does 1-25)

48. Plaintiff hereby incorporates each and every previous allegation as though fully set forth herein.

49. By acting or failing to act, Defendants created the Loma Fire, which was harmful to health and was an obstruction to the free use of Subrogation Plaintiff's insureds' properties, so as to interfere with the comfortable enjoyment of life and properties.

50. The Loma Fire affected a substantial number of people at the same time.

51. An ordinary person would be reasonably annoyed or disturbed by the Loma Fire.

52. There was no social utility to the Loma Fire.

53. Neither Subrogation Plaintiff's insureds nor Subrogation Plaintiff consented to the Loma Fire damaging and/or destroying Plaintiff's insureds' properties.

54. Subrogation Plaintiff's insureds and thus Subrogation Plaintiff suffered harm and damages that were/are different from the type of harm suffered by the general public.

55. The Defendants' conduct was a substantial factor in causing harm to Subrogation Plaintiff's insureds, and thus to Subrogation Plaintiff.

FIFTH CAUSE OF ACTION

**(Strict Product Liability as to Defendants Briggs & Stratton Corporation;
MTD Products, Inc.; MTD Consumer Group, Inc.; MTD Products Company;
Troy-Bilt, LLC; and DOES 26-50)**

56. Plaintiff hereby incorporates each and every previous allegation as though fully set forth herein.

57. Defendants Briggs & Stratton Corporation; MTD Products, Inc; MTD Consumer Group, Inc.; MTD Products Company; Troy-Bilt, LLC; and DOES 26-50) (the "Product

1 Defendants”) designed, manufactured, mass produced, marketed, distributed, and/or sold the
2 generator that was purchased by or on behalf of Defendants SAAS, the Segals, Vais, and Does
3 1-25 for use on the Property.

4 58. At all relevant times, the generator was in use at the Property.

5 59. Based on information and belief, Subrogation Plaintiff alleges that the Product
6 Defendants knew and intended that the generator would be purchased and used by members of
7 the public without being inspected for defects.

8 60. Based on information and belief, Subrogation Plaintiff alleges that the generator
9 contained a manufacturing defect when it left the possession of the Product Defendants.

10 61. Based on information and belief, Subrogation Plaintiff alleges that the generator
11 was defective and unsafe for its intended purpose.

12 62. Based on information and belief, Subrogation Plaintiff alleges that the generator
13 was used in an intended and reasonably foreseeable manner.

14 63. Based on information and belief, Subrogation Plaintiff alleges that on or about
15 September 26, 2016, the generator did not perform as safely as an ordinary consumer would
16 have expected it to perform when used or misused in an intended or reasonably foreseeable
17 way, starting a fire that damaged and destroyed Subrogation Plaintiff’s insureds’ properties.

18 64. Subrogation Plaintiff’s insureds were harmed and incurred damages as a result of
19 the generator’s failure to perform safely, and Subrogation Plaintiff was therefore obligated to
20 make and did make payments under its respective policies of insurance and are thereby legally
21 and equitably subrogated to the rights of its insureds.

22 65. The generator’s defective design and failure to perform safely was a substantial
23 factor in causing monetary loss to Subrogation Plaintiff.

24

66. The generator's defective design and failure to perform safely was the actual and proximate cause of monetary loss to Subrogation Plaintiff.

67. Based on information and belief, Subrogation Plaintiff alleges that the generator had potential risks, including but not limited to fire ignition, that was known and/or knowable in light of the scientific and mechanical/engineering knowledge that was generally accepted in the community at the time of the design, manufacture, distribution, and sale.

68. Based on information and belief, Subrogation Plaintiff alleges that the potential risks, including but not limited to fire ignition, presented a substantial danger when the generator was used or misused in an intended or reasonably foreseeable way.

69. Based on information and belief, Subrogation Plaintiff alleges that ordinary consumers and insureds would not have recognized the potential risks, including but not limited to fire ignition.

70. Based on information and belief, Subrogation Plaintiff alleges that the Product Defendants negligently failed to adequately warn or instruct of the potential risks, including but not limited to fire ignition.

71. Subrogation Plaintiff was harmed and incurred damages as a result of the Product Defendants' failure to warn or instruct of the potential risks, including but not limited to fire ignition.

72. The lack of sufficient warnings or instructions was a substantial factor in causing harm to Subrogation Plaintiff's insureds, and thus to Subrogation Plaintiff.

73. The generator's lack of sufficient warnings or instructions was the actual and proximate cause of monetary loss to Subrogation Plaintiff.

/ /

/ /

SIXTH CAUSE OF ACTION

**(Negligence as to Defendants Briggs & Stratton Corporation; MTD Products, Inc.;
MTD Consumer Group, Inc.; MTD Products Company; Troy-Bilt, LLC;
and DOES 26-50)**

74. Plaintiff hereby incorporates each and every previous allegation as though fully set forth herein.

75. The Product Defendants designed, manufactured, supplied, installed parts on, inspected, labeled, and/or sold the generator.

76. The Product Defendants were negligent in designing, manufacturing, supplying, installing parts on, inspecting, labeling, and/or selling the generator.

77. Subrogation Plaintiff's insureds were harmed and incurred damages as a result of the Product Defendants' negligence, which was a substantial factor in causing harm to Subrogation Plaintiff's insureds, and thus to Subrogation Plaintiff.

78. The Product Defendants knew or reasonably should have known that the generator was dangerous or likely to be dangerous when used or misused in a reasonably foreseeable manner.

79. The Product Defendants knew or reasonably should have known that users would not realize the danger.

80. The Product Defendants negligently failed to adequately warn of the danger or instruct on the safe use of the generator.

81. A reasonable manufacturer, distributor, or seller under the same or similar circumstances would have warned of the danger or instructed on the safe use of the generator.

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California Subrogation

82. Subrogation Plaintiff's insureds were harmed and incurred damages as a result of the Product Defendants' failure to warn or instruct, which was a substantial factor in causing harm to Subrogation Plaintiff's insureds, and thus to Subrogation Plaintiff.

DEMAND FOR JURY TRIAL

Subrogation Plaintiff hereby demands trial by jury.


PRAYER

WHEREFORE, Plaintiff Allstate Insurance Company prays for judgment against Defendants, its respective agents and employees, and Does 1 through 50, and each of them, as set forth below:

- (1) For monetary damages in an amount to be proven at trial which exceeds the jurisdictional minimum of this Court;
- (2) For prejudgment interest in accordance with Civil Code §3287;
- (3) For attorneys' fees and cost of suit to the extent allowed by California law; and
- (4) For such other relief as the Court deems just and proper.

Dated: August 23, 2019

SCHROEDER LOSCOTOFF LLP



ERIC M. SCHROEDER, ESQ.
AMANDA R. STEVENS, ESQ.
MATTHEW H. GREEN, ESQ.
Attorneys for Plaintiff
ALLSTATE INSURANCE COMPANY

SCHROEDER LOSCOTOFF LLP
California Subrogation

Exhibit G

E-FILED
9/19/2018 2:56 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
18CV335048
Reviewed By: V. Taylor

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[EXEMPT FROM FILING FEES
PURSUANT TO GOVERNMENT
CODE SECTION 6103]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

**CALIFORNIA DEPARTMENT OF
FORESTRY AND FIRE PROTECTION,**

Plaintiff,

v.

**SAAS, LLC,
ANDRE SEGAL,
SUZANNA SEGAL,
RAN BEN VAIS,
and DOES 1 through 50, inclusive,**

Defendants

Case No. 18CV335048

**COMPLAINT FOR FIRE COST
RECOVERY (Health & Saf. Code, §§
13009, 13009.1)**

Plaintiff California Department of Forestry and Fire Protection (CAL FIRE) complains
against defendants SAAS, LLC, Andre Segal, Suzanna Segal, Ran Ben Vais, and Does 1 through
50, and each of them, and alleges the following:

INTRODUCTION

1. CAL FIRE brings this action against defendants SAAS, LLC, Andre Segal, Suzanna
Segal, Ran Ben Vais, and Does 1 through 50, and each of them, pursuant to Health and Safety
Code sections 13009 and 13009.1, as well as other statutes of the Public Resources Code and the
Health and Safety Code, to recover fire suppression, investigation, report-making, accounting,

1 and collection costs arising from a fire that started on or about September 26, 2016 (referred to
2 herein as the Loma Fire), due to defendants' negligence and/or violations of the law. CAL FIRE
3 also seeks pre-judgment interest on these costs pursuant to Civil Code section 3287 and an award
4 of all investigation and prosecution costs, including attorney's fees, expert fees, and costs
5 pursuant to Code of Civil Procedure section 1021.8.

6 **PARTIES**

7 2. CAL FIRE is, and at all times herein mentioned was, a state agency created within the
8 State of California, Natural Resources Agency. (Pub. Resources Code, § 701.) CAL FIRE is
9 responsible for providing fire protection, fire prevention, maintenance, and enhancement of the
10 state's forest, range, and brushland resources, contract fire protection, associated emergency
11 services, assistance in civil disasters and other non-fire emergencies, and for enhancing and
12 enforcing forest and fire laws. (Pub. Resources Code, §§ 713, 714.) CAL FIRE is authorized to
13 file this lawsuit pursuant to Government Code section 945.

14 3. Defendants SAAS, LLC, Andre Segal, Suzanna Segal, Ran Ben Vais, and Does 1
15 through 50, and each of them, are persons as defined in Health and Safety Code section 19 and
16 Public Resources Code section 4101.

17 4. CAL FIRE is informed and believes, and on that basis alleges, that defendants SAAS,
18 LLC, Andre Segal, Suzanna Segal, Ran Ben Vais, and Does 1 through 50, and each of them, are,
19 and at all times herein mentioned were, residents of, or doing business within, the County of
20 Santa Clara, State of California.

21 5. CAL FIRE is informed and believes, and on that basis alleges, that at all times
22 mentioned herein defendants Andre Segal and Suzanna Segal were managing members of and
23 employed by Defendant SAAS, LLC, acting within the course and scope of their duties and
24 responsibilities and employment by SAAS, LLC. CAL FIRE is further informed and believes,
25 and on that basis alleges, in the alternative, that at all times mentioned herein defendants Andre
26 Segal and Suzanna Segal were acting as property managers for the real property located at 35500
27 Loma Chiquita Road, Los Gatos, California (APN # 562-13-023) where the Loma Fire originated
28 (referred to herein as the Property).

1 6. CAL FIRE is informed and believes, and on that basis alleges, that at all times
2 mentioned herein defendant Ran Ben Vais was an employee of defendant SAAS, LLC, or of
3 defendant Andre Segal, or of defendant Suzanna Segal and was acting within the course and
4 scope of that employment and/or at the direction of defendant Andre Segal and/or at the direction
5 of defendant Suzanna Segal. At all times mentioned herein, by virtue of their roles, defendants
6 Andre Segal and Suzanna Segal held a position of authority over defendant Ran Ben Vais.

7 7. CAL FIRE is informed and believes, and on that basis alleges, that when the Loma
8 Fire started, on or about September 26, 2016, defendants SAAS, LLC, Andre Segal, Suzanna
9 Segal, and Does 1 through 50, and each of them, managed, leased, owned, controlled, or
10 possessed the Property.

11 8. CAL FIRE is informed and believes, and on that basis alleges, that when the Loma
12 Fire started, on or about September 26, 2016, defendants SAAS, LLC, Andre Segal, Suzanna
13 Segal, and Does 1 through 50, and each of them, were the owners of the generator, which was
14 powered by an internal combustion engine that used hydrocarbon fuel such as gasoline or diesel
15 (referred to herein as the Generator), that was instrumental in starting the Loma Fire.

16 9. CAL FIRE is informed and believes, and on that basis alleges, that at all times
17 mentioned herein defendant SAAS, LLC was a Limited Liability Company, formed and operating
18 under the laws of the State of California, managed by and employing defendants Andre Segal and
19 Suzanna Segal, and also employing defendant Ran Ben Vais.

20 10. CAL FIRE is informed and believes, and on that basis alleges, that at the request of
21 and at the direction of defendants SAAS, LLC, Andre Segal, and Suzanna Segal, defendant Ran
22 Ben Vais was living on the Property and operating the Generator on the Property on or about
23 September 26, 2016, when the Loma Fire started, and that the Generator was instrumental in
24 starting the Loma Fire on the Property.

25 11. The true names and capacities, whether individual, corporate, associate, or otherwise,
26 of defendants Does 1 through 50, inclusive, are unknown to CAL FIRE, who therefore sues these
27 Does by such fictitious names. CAL FIRE will amend this Complaint to show their true names
28 and capacities when the same have been ascertained. CAL FIRE is informed and believes, and on

1 that basis alleges, that each of these fictitiously named defendants Does 1 through 50, inclusive,
2 are legally responsible in some manner – negligently, strictly, or otherwise – for the events,
3 occurrences, and circumstances that form the basis of this lawsuit, and are thereby liable for the
4 damages, costs, and other relief sought herein.

5 12. CAL FIRE is informed and believes, and on that basis alleges, that at all times herein
6 mentioned each defendant was the agent, servant, employee, or contractor of each of the
7 remaining defendants and was at all times acting within the course and scope of that defendant's
8 authority as such agent, servant, employee, or contractor and with the permission and consent of
9 each defendant.

10 **JURISDICTION AND VENUE**

11 13. The amount in controversy is in excess of the minimal jurisdictional limits of this
12 Court.

13 14. Venue is appropriate in the County of Santa Clara because the Loma Fire ignited and
14 occurred in Santa Clara County, which gave rise to the obligations and liability herein alleged
15 against defendants, and because defendants reside in, own, manage, or operate property in, are
16 doing business within, and/or employ agents within Santa Clara County.

17 **FIRST CAUSE OF ACTION**

18 **(Fire Cost Recovery Pursuant to Health and Safety Code sections 13009 and 13009.1)** 19 **(Alleged Against All Defendants)**

20 15. Through this reference, CAL FIRE re-alleges and incorporates, as though fully set
21 forth here, all of the allegations contained in paragraphs 1 through 14, inclusive, of this
22 complaint.

23 16. Health and Safety Code sections 13009 and 13009.1 allow public entities to recover
24 fire suppression costs from persons who negligently, or in violation of the law, set or allow a fire
25 to be set or kindled, or allow a fire attended by them to escape onto public or private property.

26 17. CAL FIRE is informed and believes, and on that basis alleges, that defendants SAAS,
27 LLC, Andre Segal, Suzanna Segal, Ran Ben Vais, and Does 1 through 50, and each of them,
28 negligently set or ignited the Loma Fire on or about September 26, 2016, or allowed the fire to be

1 set, when defendant Ran Ben Vais operated the Generator or allowed the Generator to operate on
2 the Property for an extended period of time, all at the direction of defendants SAAS, LLC, Andre
3 Segal, and Suzanna Segal, on a hot, windy day, and did so without a shovel or fire extinguisher.
4 The operation of the Generator for an extended period of time in an area where there was heavy
5 growth of dried grasses intermixed with oak trees, conifers, and dried brush as well as abandoned
6 structures and other debris, created heat, embers, sparks, or other heated material which ignited a
7 fire in a receptive fuel bed of dried organic material. The fire originated in land covered by
8 annual grasses and scattered brush, and escaped from defendants' control.

9 18. Defendants Andre Segal and Suzanna Segal, acting as the managers of the property
10 and/or, in the alternative, in the course and scope of their employment with defendant SAAS,
11 LLC and Does 1-50, provided defendant Ran Ben Vais with the Generator for use in operating a
12 well on the Property and for powering his living quarters and employment needs on the Property
13 while defendant Ran Ben Vais worked as a caretaker watching over the cultivation of marijuana
14 plants being grown on the Property.

15 19. Defendants SAAS, LLC, Andre Segal and Suzanna Segal and Does 1-50 failed to
16 provide defendant Ran Ben Vais with a shovel or a fire extinguisher to control a fire should fire
17 break out from the dangerous condition created by the frequent and continued use of the
18 Generator in an area of high, dry grass, abandoned structures and other debris. Defendants, and
19 Does 1 through 50 knew, or should have known, that maintaining, using, and operating the
20 Generator in such a manner would create a risk of a fire and the likelihood that a fire, if ignited,
21 would escape control.

22 20. Defendants SAAS, LLC, Andre Segal, and Suzanna Segal and Does 1-50, and each of
23 them, should have taken precautions to prevent the situation that was present on the day of the
24 fire where dry grass was allowed to grow to a dangerous height, by clearing the vegetation earlier
25 in the season and also by clearing the area where the Generator operated of abandoned structures
26 and other debris. Defendants and Does 1 through 50 should have taken precautions prior to
27 operating the Generator on the Property to enable them to minimize and/or control a fire, if
28 ignited, and/or taken other precautions to prevent the starting and spreading of the fire. The

1 negligent maintenance, use, and operation of the Generator by defendants SAAS, LLC, Andre
2 Segal, Suzanna Segal, Ran Ben Vais, and Does 1 through 50, and each of them, set the Loma Fire
3 or allowed the fire to be set, and to escape control.

4 21. CAL FIRE is informed and believes, and on that basis alleges, that defendants' failure
5 to exercise ordinary care and/or their violations of law, as described herein, actually, legally, and
6 proximately caused CAL FIRE to incur: (1) fire suppression costs; (2) investigation and report-
7 making costs; and (3) costs relating to accounting for the Loma Fire and the collection of funds
8 pursuant to Health and Safety Code sections 13009 and 13009.1, including, but not limited to, the
9 administrative costs of operating a fire suppression cost recovery program. These costs were
10 reasonably incurred.

11 22. CAL FIRE is informed and believes, and on that basis alleges, that defendants SAAS,
12 LLC, Andre Segal, Suzanna Segal, Ran Ben Vais, and Does 1-50, and each of them, negligently
13 used, operated, entrusted, managed, maintained, and/or controlled the Generator so as to cause a
14 fire to be set on the Property, as alleged above. Defendants knew, or should have known, that
15 operating the Generator under the conditions alleged above created a specific risk of harm from
16 fire.

17 23. Defendants and Does 1 through 50, and each of them, had a duty to exercise care
18 regarding the maintenance of the Generator, particularly given that the Generator was used and
19 operated on the Property, an activity that has an inherent capacity to cause fires, including taking
20 reasonable precautions to prevent the starting and spreading of fire.

21 24. CAL FIRE is informed and believes, and on that basis alleges, that defendants and
22 Does 1 through 50, and each of them, knew, or should have known, that using the Generator
23 under these conditions was a fire hazard. Defendants SAAS, LLC, Andre Segal, and Suzanna
24 Segal and Does 1-50, and each of them, failed to exercise due care in maintaining the Generator
25 and/or directing their employee to operate and use the Generator even though it was used and
26 operated in an area where there were abandoned structures, debris, tall dry grass and other fuels,
27 on a hot windy day, for an extended period of time, and furthermore, doing so without providing
28

1 any meaningful fire suppression tools such as a shovel or fire extinguisher, causing unreasonable
2 harm to those in the area and the damages described in this complaint.

3 25. CAL FIRE is informed and believes, and on that basis alleges, that defendants SAAS,
4 LLC, Andre Segal, Suzanna Segal, Ran Ben Vais, and Does 1-50, and each of them, had
5 exclusive control and management of the Generator used on the Property. Because of their
6 exclusive control and management of the Generator, those defendants have superior access to
7 information concerning the precise sequence of events leading to the Loma Fire, and defendants'
8 negligence may be inferred from the general facts alleged in this complaint.

9 26. CAL FIRE is informed and believes, and on that basis alleges, that defendants and
10 Does 1 through 50, and each of them, negligently and/or in violation of the law owned,
11 controlled, operated, used, managed, and/or maintained the Generator that was instrumental in
12 kindling the Loma Fire. Defendants and Does 1 through 50, and each of them, failed to ensure
13 that necessary safety precautions were followed during the use, operation, and maintenance of the
14 Generator, including, but not limited to, inspecting for, identifying, and removing fire hazards.

15 27. CAL FIRE is informed and believes, and on that basis alleges, that defendants'
16 negligence as alleged above was a direct, foreseeable, legal, and proximate cause or substantial
17 contributing factor in causing the Loma Fire and CAL FIRE's costs that are sought by way of this
18 complaint.

19 28. Additionally, the defendants' acts and omissions violated the law, including but not
20 limited to Public Resources Code sections 4291, 4427, 4422, 4442, 4435, and 4431 and Health
21 and Safety Code section 13001. Each such act or omission of the law was a direct, foreseeable,
22 legal, and proximate cause and/or or a substantial contributing factor in causing the Loma Fire
23 and the costs incurred by CAL FIRE, which are sought by way of this complaint.

24 29. Public Resources Code section 4291 requires that any person who owns, leases,
25 controls, operates, or maintains a building or structure in, upon, or adjoining a mountainous area,
26 forest-covered lands, brush-covered lands, grass-covered lands, or land that is covered with
27 flammable material must maintain defensible space of at least 100 feet from each side and from
28 the front and rear of the building or structure. This section also requires that fuels shall be

1 maintained in a condition so that a wildfire burning under average weather conditions would be
2 unlikely to ignite the structure. CAL FIRE is informed and believes, and on that basis alleges,
3 that defendants and Does 1 through 50, and each of them, violated Public Resources Code section
4 4291 by failing to maintain a defensible space of at least 100 feet around the buildings or
5 structures that were burned by the Loma Fire, and by allowing debris to accumulate near
6 buildings or structures such that the debris was fuel for the fires that burned those buildings or
7 structures.

8 30. Public Resources Code section 4427 requires defendants to have both a serviceable
9 round point shovel and a backpack pump water-type fire extinguisher “fully equipped and ready
10 for use at the immediate area during the operation” of any motor or engine from which a spark,
11 fire, or flame may originate and which is located on or near any forest-covered land, brush-
12 covered land, or grass-covered land. These are portable fire suppression devices that are effective
13 in extinguishing fires and can provide a reliable, targeted stream of water to extinguish fire. CAL
14 FIRE is informed and believes, and on that basis alleges, that defendants and Does 1 through 50,
15 and each of them, violated Public Resources Code 4427 by failing to have both a serviceable
16 round point shovel and a backpack pump water-type fire extinguisher fully equipped and ready
17 for use at the immediate area during operation of the Generator, which is a motor or engine.

18 31. Public Resources Code section 4427 also requires defendants to clear “all flammable
19 material . . . for a distance of 10 feet,” from the area where any motor or engine is being used or
20 operated. CAL FIRE is informed and believes, and on that basis alleges, that defendants and
21 Does 1 through 50, and each of them, violated Public Resources Code 4427 by failing to clear all
22 flammable material for a distance of 10 feet from the area where defendants operated the
23 Generator, which is a motor or engine.

24 32. Public Resources Code section 4422 prohibits a person from allowing a fire to burn
25 uncontrolled on land which he owns or controls or allowing any fire kindled or attended by him to
26 escape from his control. CAL FIRE is informed and believes, and on that basis alleges, that
27 defendants and Does 1 through 50, and each of them, violated Public Resources Code section
28 4422 by allowing the Loma Fire to be kindled through use of the Generator on the Property, by

1 allowing that fire to burn in an uncontrolled fashion and/or by allowing the fire to escape
2 defendants' control, burning approximately an additional 4,474 acres of land.

3 33. Public Resources Code section 4442 requires the use of a spark arrester if a person
4 uses, operates, or allows to be used or operated, any internal combustion engine which uses
5 hydrocarbon fuels on any land covered with brush, grass, or forest. Additionally, spark arresters
6 affixed to the exhaust system of engines shall not be placed or mounted in such a manner as to
7 allow flames or heat from the exhaust system to ignite any flammable material. The Generator on
8 the Property was an internal-combustion engine which used hydrocarbon fuel. CAL FIRE is
9 informed and believes, and on that basis alleges, that defendants and Does 1 through 50, and each
10 of them, violated Public Resources Code section 4442 in failing to equip the Generator with a
11 spark arrester or by equipping the Generator with a spark arrester on the exhaust system in such a
12 manner that the heat from the exhaust system ignited flammable material.

13 34. Public Resources Code section 4435 states that when a fire originates from the
14 operation or use of any engine, machine, or any other device which may kindle a fire, the
15 occurrence of the fire is prima facie evidence of negligence in the maintenance, operation, or use
16 of such engine, machine, or other device. CAL FIRE is informed and believes, and on that basis
17 alleges, that the Loma Fire originated when defendants and Does 1 through 50, and each of them,
18 operated or used the Generator, which is an engine, a machine, and a device which may kindle a
19 fire. Under Public Resources Code section 4435, the occurrence of the Loma Fire is prima facie
20 evidence of negligence on the part of defendants. Defendants and Does 1 through 50, and each of
21 them, have the burden to show the use of the Generator, which is an engine, machine, or device
22 that may cause a fire, was not negligent.

23 35. Public Resources Code section 4431 states that a person who uses a portable tool
24 powered by a gasoline-fueled internal combustion engine on or near any forest-covered land,
25 brush-covered land, or grass-covered land, within 25 feet of any flammable material, must
26 provide for firefighting purposes one serviceable round point shovel, with an overall length of not
27 less than 46 inches, or one serviceable fire extinguisher. CAL FIRE is informed and believes, and
28 on that basis alleges in the alternative, that the Loma Fire originated when defendants and Does 1

1 through 50, and each of them, operated or used the Generator, which is a portable tool powered
2 by a gasoline-fueled internal combustion engine, which may kindle a fire. CAL FIRE is informed
3 and believes, and on that basis alleges, that defendants and Does 1 through 50, and each of them,
4 violated Public Resources Code section 4431 in failing to have a shovel or a fire extinguisher to
5 fight fires that might originate from the use of the Generator.

6 36. Health and Safety Code section 13001 states that every person is guilty of a
7 misdemeanor who, through careless or negligent action, places any substance or thing which may
8 cause a fire, in any place where it may directly or indirectly start a fire, or who uses or operates
9 any device which may cause a fire, who does not clear the material that can burn surrounding the
10 operation or take such other reasonable precautions necessary to insure against the starting and
11 spreading of fire. CAL FIRE is informed and believes, and on that basis alleges, that defendants
12 and Does 1 through 50, and each of them, violated Health and Safety Code section 13001 in using
13 the Generator on the Property and causing the Loma Fire.

14 37. Based on the foregoing facts, defendants' acts and omissions also violated Public
15 Resources Code 4021. These acts, omissions and violations of law were a direct, foreseeable,
16 and/or legal/proximate cause of the Loma Fire, and defendants were negligent *per se*.

17 38. As a direct, foreseeable, and/or legal/proximate result of defendants' negligence
18 and/or violation of law, CAL FIRE incurred reasonable costs in the sum of approximately
19 \$21,473,662.02 for (1) fire suppression; (2) investigation and report making; and (3) accounting
20 and collection of funds pursuant to Health and Safety Code sections 13009 and 13009.1,
21 including, but not limited to, the administrative costs of operating a fire suppression cost recovery
22 program. Pursuant to Health and Safety Code sections 13009 and 13009.1, CAL FIRE is entitled
23 to recover its fire suppression, investigation, administrative, accounting, and collection costs
24 arising from the Loma Fire, and such costs are collectible in the same manner as in the case of an
25 obligation under a contract, expressed or implied. As of the time of filing this Complaint, CAL
26 FIRE has incurred and will continue to incur additional administrative, collection, and litigation
27 costs as a result of the Loma Fire.
28

1 39. On or about March 23, 2018, CAL FIRE sent to defendants SAAS, LLC, Andre
2 Segal, and Suzanna Segal a Letter of Demand (via certified mail, return-receipt requested),
3 demanding payment to CAL FIRE in the amount \$21,473,662.02. On or about March 23, 2018
4 and on March 29, 2018, CAL FIRE sent to defendant Ran Ben Vais a Letter of Demand (via
5 certified mail, return-receipt requested), demanding payment to CAL FIRE in the amount
6 \$21,473,662.02. As of the date of filing of this Complaint, CAL FIRE has not received payment
7 from any defendant in any amount. Pursuant to Civil Code section 3287, CAL FIRE is entitled to
8 pre-judgment interest on these costs.

9 40. Pursuant to Code of Civil Procedure section 1021.8, the Attorney General is entitled
10 to recover all investigation and prosecution costs, including attorney's fees, expert fees, and costs.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, CAL FIRE prays for judgment to be taken against defendants SAAS, LLC,
13 Andre Segal, Suzanna Segal, Ran Ben Vais, and Does 1 through 50, and each of them, as follows:

14 1. For recovery of fire suppression, investigation, report making, administrative,
15 accounting, and collection costs related to the Loma Fire, in an amount according to proof as
16 allowed by Health and Safety Code sections 13009 and 13009.1, which are believed to be no less
17 than \$21,473,662.02;

18 2. For all costs of investigating and prosecuting this action, including expert fees,
19 reasonable attorney fees, and costs, as provided in Code of Civil Procedure section 1021.8;

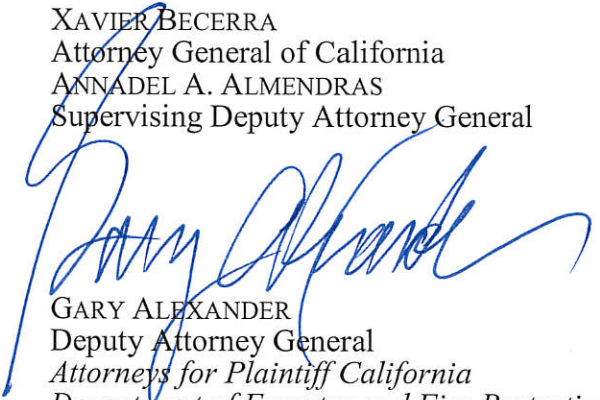
20 3. For pre-judgment and post-judgment interest as permitted by law; and

21 4. For such other and further relief as the Court deems just and proper.

1 Dated: September 19, 2018

Respectfully Submitted,

2 XAVIER BECERRA
3 Attorney General of California
4 ANNADEL A. ALMENDRAS
5 Supervising Deputy Attorney General

6 
7 GARY ALEXANDER
8 Deputy Attorney General
9 Attorneys for Plaintiff California
10 Department of Forestry and Fire Protection

11 *Code of Civil Procedure section 446 requires verification of the answer to this complaint.*
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Exhibit H

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

**191 N. FIRST STREET
SAN JOSE, CA 95113-1090**

**Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 10/25/2019 9:29 AM
Reviewed By: R. Walker
Case #18CV333942
Envelope: 3567908**

TO: FILE COPY

RE: **Hartke v. Segal, et al.**
CASE NUMBER: **18CV333942**

ORDER DEEMING CASE COMPLEX

WHEREAS, the Complaint was filed by Plaintiff **CLAUDIA HARTKE** ("Plaintiff") in the Superior Court of California, County of Santa Clara, on **August 30, 2018** and referred on October 15, 2019 to Department 1 (Complex Civil Litigation), the **Honorable Brian C. Walsh** presiding, for a ruling on the complexity issue;

IT IS HEREBY ORDERED that:

The Court determines that the above-referenced case is **COMPLEX** within the meaning of California Rules of Court 3.400. The matter remains assigned, for all purposes, including discovery and trial, to Department 1 (Complex Civil Litigation), the **Honorable Brian C. Walsh** presiding.

The parties are directed to the Court's local rules and guidelines regarding electronic filing and to the Complex Civil Guidelines, which are available on the Court's website.

Pursuant to California Rules of Court, Rule 3.254, the creation and maintenance of the Master Service List shall be under the auspices of (1) Plaintiff **CLAUDIA HARTKE**, as the first-named party in the Complaint, and (2) the first-named party in each Cross-Complaint, if any.

Pursuant to Government Code section 70616(c), each party's complex case fee is due within ten (10) calendar days of this date.

Plaintiff shall serve a copy of this Order on all parties forthwith and file a proof of service within seven (7) days of service.

Any party objecting to the complex designation must file an objection and proof of service within ten (10) days of service of this Order. Any response to the objection must be filed within seven (7) days of service of the objection. The Court will make its ruling on the submitted pleadings.

The Case Management Conference remains set for **December 13, 2019 at 10:00 a.m. in Department 1** and all counsel are ordered to attend in person.

Counsel for all parties are ordered to meet and confer in person at least 15 days prior to the First Case Management Conference and discuss the following issues:

1. Issues related to recusal or disqualification;
2. Issues of law that, if considered by the Court, may simplify or further resolution of the case, including issues regarding choice of law;
3. Appropriate alternative dispute resolution (ADR), for example, mediation, mandatory settlement conference, arbitration, mini-trial;

4. A plan for preservation of evidence and a uniform system for identification of documents throughout the course of this litigation;
5. A plan for document disclosure/production and additional discovery; which will generally be conducted under court supervision and by court order;
6. Whether it is advisable to address discovery in phases so that information needed to conduct meaningful ADR is obtained early in the case (counsel should consider whether they will stipulated to limited merits discovery in advance of certification proceedings), allowing the option to complete discovery if ADR efforts are unsuccessful;
7. Any issues involving the protection of evidence and confidentiality;
8. The handling of any potential publicity issues;

Counsel for Plaintiff is to take the lead in preparing a Joint Case Management Conference Statement to be filed 5 calendars days prior to the First Case Management Conference, and include the following:

1. A Statement as to whether additional parties are likely to be added and a proposed date by which all parties must be served;
2. Service lists identifying all primary and secondary counsel, firm names, addresses, telephone numbers, email addresses and fax numbers for all counsel;
3. A description of all discovery completed to date and any outstanding discovery as of the date of the conference;
4. Applicability and enforceability of arbitration clauses, if any;
5. A list of all related litigation pending in other courts, including Federal Court, and a brief description of any such litigation, and a statement as to whether any additional related litigation is anticipated (CRC 3.300);
6. A description of factual and legal issues – the parties should address any specific contract provisions the interpretation of which may assist in resolution of significant issues in the case;
7. The parties' tentative views on an ADR mechanism and how such mechanism might be integrated into the course of the litigation;
8. Whether discovery should be conducted in phases or limited; and if so, the order of phasing or types of limitations of discovery. If this is a class action lawsuit, the parties should address the issue of limited merits discovery in advance of class certification motions.

To the extent the parties are unable to agree on the matters to be addressed in the Joint Case Management Conference Statement, the positions of each party or of various parties should be set forth separately and attached to this report as addenda. The parties are encouraged to propose, either jointly or separately, any approaches to case management they believe will promote the fair and efficient handling of this case. The Court is particularly interested in identifying potentially dispositive or significant threshold issues the early resolution of which may assist in moving the case toward effective ADR and/or a final disposition.

The following hearings are reset from October 31, 2019 to **January 31, 2020 at 9:00 a.m. in Department 1**: (1) Demurrer by American Honda Motor Co., Inc. to the First Amended Complaint; and (2) Motion by American Honda Motor Co., Inc. to Strike Portions of the First Amended Complaint.

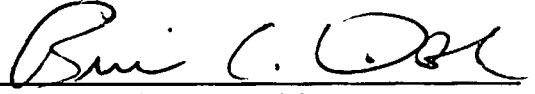
The following hearing is reset from January 7, 2020 to **January 31, 2020 at 9:00 a.m. in Department 1**: Motion by Plaintiff Claudia Hartke for Leave to File Second Amended Complaint.

This Order is issued to assist the Court and the parties in the management of this "Complex" case through the development of an orderly schedule for briefing and hearings. This Order shall not preclude the parties from continuing to informally exchange documents that may assist in their initial evaluation of the issues presented in this Case.

Plaintiff shall serve a copy of this Order on all the parties in this matter forthwith.

SO ORDERED.

Date: 10-23-19


Hon. **Brian C. Walsh**
Judge of the Superior Court

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line, (408) 882-2690 or the Voice/TDD California Relay Service, (800) 735-2922.

Exhibit I

Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 2/25/2020 1:05 PM
Reviewed By: R. Walker
Case #18CV333942
Envelope: 4079181

1 ANNA DiBENEDETTO (SBN 220833)
2 WILLIAM A. LAPCEVIC (SBN 238893)
3 DiBENEDETTO & LAPCEVIC, LLP
4 1101 Pacific Avenue, Suite 320
5 Santa Cruz, California 95060
6 Phone: 831-325-2674
7 Facsimile: 831-477-7617
8 Email: wal@dl-lawllp.com
9 Email: anna@dl-lawllp.com

10 Attorneys for Plaintiff,
11 CLAUDIA HARTKE

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28
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

11 CLAUDIA HARTKE,
12 Plaintiff,

13 vs.

14 ANDRE Y. SEGAL; SUZANNA G. SEGAL;
15 RAN BEN VAIS; SAAS, LLC; GREEN
16 ACRES FARM, INC.; CAYA GROUP, LLC;
17 WISH RIVER, LLC; INTEGRAL EARTH,
18 LLC; AMERICAN HONDA MOTOR
19 COMPANY, INC.; BRIGGS & STRATTON,
20 INC.; MTD CONSUMER GROUP, INC.; MTD
21 PRODUCTS COMPANY, INC.; TECH-BILT,
22 LLC; AND DOES 1 THROUGH 50,
23 INCLUSIVE,

24 Defendants.

Case No.: 18CV333942 [*Designated complex*]

Consolidated for Pre-Trial Purposes with Case
Nos. 17CV318806 (*State Farm*), 18CV335048
(*Cal-Fire*), 19CV353889 (*Liberty Mutual*),
19CV353780 (*Allstate*), 19CV353342 (*Fire
Ins Exchange*)

~~PROPOSED~~ CASE MANAGEMENT
ORDER

CMC Date: December 13, 2019
Time: 10:00 AM
Department: 1
Judge: Honorable Brian C. Walsh

Following the Case Management Conference that occurred on December 13, 2019, the
Court hereby orders the following:

1. The Parties are to meet and confer regarding the location, scope and protocol for
inspecting the generators and any other equipment or evidence removed from the scene of the

1 Loma Fire, including, but not limited to, the evidence presently stored at Cal-Fire's facility
2 located at 15670 Monterey Road, Morgan Hill, CA;

3 2. The Parties have agreed to submit the case to private mediation and shall meet
4 and confer regarding proposed mediators for the case, with each side suggesting three names for
5 a total of six proposed mediators. If the parties cannot agree on a mediator from the six names
6 proposed within a reasonable period of time, all six names will be provided to the Court and the
7 Court will select the private mediator for the case.
8

9 3. All related cases identified above are consolidated for discovery and pre-trial
10 purposes.

11 4. The next Case Management Conference is scheduled for March 20, 2020 at 10:00
12 a.m. in Department 1.

13 **IT IS SO ORDERED.**
14

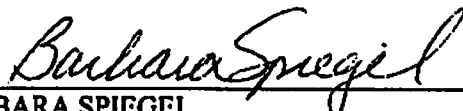
15 Dated 2-25-20
16


JUDGE OF THE SUPERIOR COURT
BRIAN C. WALSH

17 Approved as to Form:

18 Dated: 1/31/20
19

OFFICE OF THE ATTORNEY GENERAL

20 By: 
21 BARBARA SPIEGEL
22 Attorney for CALIFORNIA DEPARTMENT OF
FORESTRY AND FIRE PROTECTION

23 Dated: _____
24

BERGER KAHN, APC

25 By: _____
26 TERESA R. PONDER
27 Attorney for FIRE INSURANCE
28 EXCHANGE, ET AL.

1 Loma Fire, including, but not limited to, the evidence presently stored at Cal-Fire's facility
2 located at 15670 Monterey Road, Morgan Hill, CA;

3 2. The Parties have agreed to submit the case to private mediation and shall meet
4 and confer regarding proposed mediators for the case, with each side suggesting three names for
5 a total of six proposed mediators. If the parties cannot agree on a mediator from the six names
6 proposed within a reasonable period of time, all six names will be provided to the Court and the
7 Court will select the private mediator for the case.
8

9 3. All related cases identified above are consolidated for discovery and pre-trial
10 purposes.

11 4. The next Case Management Conference is scheduled for March 20, 2020 at 10:00
12 a.m. in Department I.

13 **IT IS SO ORDERED.**
14

15 Dated _____

JUDGE OF THE SUPERIOR COURT

17 Approved as to Form:

18 Dated: _____

OFFICE OF THE ATTORNEY GENERAL

20 By: _____
21 BARBARA SPIEGEL
22 Attorney for CALIFORNIA DEPARTMENT OF
FORESTRY AND FIRE PROTECTION

23 Dated: FEB 03 2019

BERGER KAHN, APC

25 By: *Teresa R. Ponder*
26 TERESA R. PONDER
27 Attorney for FIRE INSURANCE
28 EXCHANGE, ET AL.

1
2 Dated: 02/03/2020

SCHROEDER LOSCOTOFF STEVENS LLP

3
4 By: Armen R. Stevens
5 AMANDA R. STEVENS
6 Attorney for ALLSTATE INSURANCE
7 COMPANY

8
9 Dated: _____

PHILLIPS, SPALLAS & ANGSTADT LLP

10 By: _____
11 JOSEPH WILLIAM TURSI
12 Attorney for SEGAL DEFENDANTS and SAAS,
13 LLC

14
15 Dated: _____

FOLEY & LARDNER LLP

16 By: _____
17 THOMAS FRANCIS CARLUCCI
18 Attorney for BRIGGS & STRATTON
19 CORPORATION; MTD PRODUCTS, INC.; MTD
20 CONSUMER GROUP, INC.; MTD PRODUCTS
21 COMPANY; TROY BILT LLC

22
23 Dated: _____

COZEN O'CONNOR

24 By: _____
25 THOMAS MICHAEL REGAN
26 Attorney for LIBERTY MUTUAL INSURANCE
27
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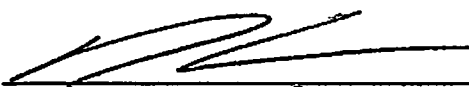
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2 Dated: _____

SCHROEDER LOSCOTOFF STEVENS LLP

3
4 By: _____
5 AMANDA R. STEVENS
6 Attorney for ALLSTATE INSURANCE
7 COMPANY

8
9 Dated: 2/12/20

PHILLIPS, SPALLAS & ANGSTADT LLP

10 By: 
11 Todd Angstadt / Orenstein Garber
12 Attorney for SEGAL DEFENDANTS and SAAS
13 LLC

14
15 Dated: _____

FOLEY & LARDNER LLP

16 By: _____
17 THOMAS FRANCIS CARLUCCI
18 Attorney for BRIGGS & STRATTON
19 CORPORATION; MTD PRODUCTS, INC.; MTD
20 CONSUMER GROUP, INC.; MTD PRODUCTS
21 COMPANY; TROY BILT LLC

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Dated: _____

SCHROEDER LOSCOTOFF STEVENS LLP

By: _____
AMANDA R. STEVENS
Attorney for ALLSTATE INSURANCE
COMPANY

Dated: _____

PHILLIPS, SPALLAS & ANGSTADT LLP

By: _____
JOSEPH WILLIAM TURSI
Attorney for SEGAL DEFENDANTS and SAAS,
LLC

Dated: **FEB 03 2019**

FOLEY & LARDNER LLP

By: 
THOMAS FRANCIS CARLUCCI
Attorney for BRIGGS & STRATTON
CORPORATION; MTD PRODUCTS, INC.; MTD
CONSUMER GROUP, INC.; MTD PRODUCTS
COMPANY; TROY BILT LLC

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10 JOSEPH WILLIAM TURSI
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13 Dated: _____

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15 THOMAS FRANCIS CARLUCCI
16 Attorney for BRIGGS & STRATTON
17 CORPORATION; MTD PRODUCTS, INC.; MTD
18 CONSUMER GROUP, INC.; MTD PRODUCTS
19 COMPANY; TROY BILT LLC

20 Dated: February 10, 2020

COZEN O'CONNOR

21 By: 
22 THOMAS MICHAEL REGAN
23 Attorney for LIBERTY MUTUAL INSURANCE
24
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