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7 **UNITED STATES DISTRICT COURT FOR THE**
8 **EASTERN DISTRICT OF WASHINGTON**

9 TOWNSEND RANCH LLC, a
Washington limited liability corporation;
10 ESTATE OF DAVID TOWNSEND;
EDWARD TOWNSEND; DANIEL
11 TOWNSEND; WILLIAM TOWNSEND;
NATHAN TOWNSEND; MALCOLM
and KELLY TOWNSEND, husband and
12 wife; TOWNSEND BROTHERS LLC, a
Washington limited liability corporation;
T3 RANCH LLC, a Washington limited
13 liability corporation; and SWEDE W.
ALBERT, an individual,

14 Plaintiffs,

15 v.

16 UNITED STATES OF AMERICA,
acting by and through the
DEPARTMENT OF INTERIOR and
BUREAU OF INDIAN AFFAIRS,

17 Defendant.

No. 2:23-cv-00170-TOR

**SECOND AMENDED
COMPLAINT FOR
DAMAGES**

18 Plaintiffs, by and through their undersigned attorneys, for their claims
19 against Defendant, state and allege as follows:
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1 **I. INTRODUCTION**

2 1.1 In the early morning hours of September 7, 2020, a fire started at the
3 old Omak Mill site in Okanogan County, Washington, eventually erupting into a
4 catastrophic wildfire. The old Omak Mill site contained one or more burn piles of
5 forest and timber scrap (a.k.a. “slash”) which had been long smoldering
6 (hereinafter “smoldering slash pile”) that flared up, resulting in the wildfire.

7 **II. PARTIES AND NON-PARTIES**

8 2.1 At all times material hereto, Plaintiff Townsend Ranch LLC was a
9 corporation organized and existing under the laws of the state of Washington, with
10 its principal place of business in Washington.

11 2.2 After the fire which is the subject of this lawsuit but prior to this
12 litigation, David Townsend, father of the other named Townsend Plaintiffs, passed
13 away. Edward Townsend has been appointed as the Personal Representative of
14 the Estate of David Townsend in a probate action filed in the Okanogan County
15 Superior Court. At the time of the fire, David Townsend was a resident of and had
16 an interest in real and personal property located in Okanogan County, Washington.

17 2.3 At all times material hereto, Plaintiff Edward Townsend was a
18 resident of and had an interest in real and personal property located in Okanogan
19 County, Washington.

1 2.4 At all times material hereto, Plaintiff Daniel Townsend was a resident
2 of Ferry County, Washington, and had an interest in real and personal property
3 located in Okanogan County, Washington.

4 2.5 At all times material hereto, Plaintiff William Townsend was a
5 resident of and had an interest in real and personal property located in Okanogan
6 County, Washington.

7 2.6 At all times material hereto, Plaintiff Nathan Townsend was a resident
8 of and had an interest in real and personal property located in Okanogan County,
9 Washington.

10 2.7 At all times material hereto, Plaintiffs Malcolm Townsend and Kelly
11 Townsend, husband and wife, were residents of and had an interest in real and
12 personal property located in Okanogan County, Washington.

13 2.8 At all times material hereto, Plaintiff Townsend Brothers LLC was a
14 corporation organized and existing under the laws of the state of Washington, with
15 its principal place of business in Washington.

16 2.9 At all times material hereto, Plaintiff T3 Ranch LLC was a
17 corporation organized and existing under the laws of the state of Washington, with
18 its principal place of business in Washington.

1 2.10 Plaintiffs above-named (Paragraphs 2.1 – 2.9) will be referenced
2 hereafter collectively as “Townsend Plaintiffs.”

3 2.11 At all times material hereto, Plaintiff Swede W. Albert (hereinafter
4 “Plaintiff Albert”) was a resident of and had an interest in real and personal
5 property located in Okanogan County, Washington.

6 2.12 Townsend Plaintiffs and Plaintiff Albert will be referenced hereafter
7 collectively as “Plaintiffs.”

8 2.13 At all times material hereto, Defendant United States of America,
9 acting by and through the Bureau of Indian Affairs (hereafter “BIA”) in the
10 Department of the Interior, is a sovereign entity hereby sued pursuant to 28 U.S.C.
11 § 2674 for damages.

12 2.14 The Confederated Tribes of the Colville Reservation (“Confederated
13 Tribes”), a non-party, is a federally recognized Indian tribe with the Colville
14 Business Council as its governing body. The Confederated Tribes occupy the
15 Colville Reservation in Eastern Washington.

16 2.15 The Confederated Tribes have self-determination contracts with the
17 BIA pursuant to the Indian Self-Determination and Education Assistance Act
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1 (“ISDEAA”), as amended, 25 U.S.C. § 5321(a)(2) (a.k.a “638 contracts”¹)
2 regarding fire protection services and forestry services.

3 2.16 The Colville Tribal Federal Corporation (CTFC) is a tribal
4 corporation headquartered in Omak, Washington and with its principal place of
5 business in Washington. Upon information and belief, CTFC operates as an arm
6 of the Confederated Tribes that manages the Tribes’ gaming and wood products
7 enterprises and provides revenue for the Tribes.²

8 2.17 Upon information and belief, CTFC is and at all times relevant to this
9 Complaint was the owner of the old Omak Mill site.

10 2.18 Upon information and belief, the fire started and/or spread as a result
11 of the negligent and wrongful acts or omissions of one or more employees of the
12 Confederated Tribes and/or CTFC, acting within the scope of their employment
13 while carrying out the 638 contracts.

17 ¹ A Reference to the Public Law Number of the ISDEAA, Pub. L. No. 93-
18 638.

19 ² <https://www.colvilletribes.com/contact-ctfc>.

1 4.3 The Townsend Property consists of approximately 8,269.25 acres
2 affected by fire, containing numerous improvements, including but not limited to
3 a house, outbuildings, fences, gates, sagebrush, crops, and many trees.

4 4.4 Plaintiff Albert owns 10 acres affected by fire, containing numerous
5 improvements, vehicles, and personal property, including a shop with his art
6 business and a salvage yard.

7 4.5 Upon information and belief, on or about September 7, 2020, the risk
8 of wildland fires was significant in Okanogan County.

9 4.6 Upon information and belief, on or about September 7, 2020,
10 moderate to significant winds were predicted in Okanogan County.

11 4.7 Upon information and belief, employees of the Confederated Tribes
12 and/or CTFC (hereinafter “tribal employees”) and/or BIA employees failed to
13 safely inspect, maintain, and monitor the smoldering slash pile on the old Omak
14 Mill property.

15 4.8 Despite actual knowledge of repeated safety concerns with this
16 chronically smoldering condition, and occasional small fire flare ups necessitating
17 extinguishment by nearby fire departments, CTFC negligently failed to maintain
18 the site, allowing this condition to perpetuate.

1 4.9 As a direct result, in the early morning hours of September 7, 2020,
 2 predicted moderate to significant NE winds carried burning embers from the long
 3 smoldering slash piles at the old Omak Mill to nearby dry grass fuels which erupted
 4 into a catastrophic wildfire.

Smoking Old Mill slash pile



Sept. 7, 2020 at 7:41 am



Sept. 7 2020 at 9:20 am



Sept. 7, 2020 at 9:42

18 4.10 The resulting fire swept southward, destroying thousands of acres of
 19 land and buildings, including land, equipment, and livestock owned by Plaintiffs.

1 A near 180-degree reversal of the wind direction on the following day led to the
2 same fire destroying the Omak Mill.

3 4.11 The fire destroyed real and personal/corporate properties, including
4 timber, grazing, and farmland for numerous parcels of land owned and/or operated
5 by the Townsend Plaintiffs and property owned by Plaintiff Albert.



13 Townsend Ranch engulfed in flames

14 4.12 Eventually, the fire merged with the Cold Springs Fire, which was
15 already burning in Washington state.

16 4.13 Under Washington statutory and common law, CTFC and its
17 agents/employees breached their duty to maintain the land (including the slash
18 pile) in a condition reasonably safe to the public (i.e., not likely to start wildfires).

19 4.14 Upon information and belief, before September 7, 2020, the United
20 States through the Department of Interior and BIA had entered into 638 contracts

1 with the Confederated Tribes of the Colville Reservation for Fire Protection
2 Services (Contract A20AV00075) and for Cooperative Forest Management
3 (Contract A20AV00089) of Colville tribal lands, including the old Omak Mill site.
4 The term of these contracts commenced on October 1, 2019, and ended on
5 September 30, 2022.

6 4.15 Contract A20AV00075 provided funding to the Confederated Tribes
7 for purposes of “providing essential firefighting and fire protection services” on
8 tribal lands.

9 4.16 Contract A20AV00089 provided funding to the Confederated Tribes
10 for purposes of administering a Cooperative Forestry Program in accordance with
11 Colville laws. This contract includes specific plans relating to Forestry, Forest
12 Administration (including oversight of a Cooperative Fire Management Program),
13 Forest Management Planning, Timber Sale Administration, Forest Development,
14 Forest Protection (including to “[m]onitor and provide corrective action to forest
15 stands impacted by wildfire . . . Actions may include prevention, suppression or
16 rehabilitation as need to address concerns/issues.”), and Woodlands Management.

17 4.17 Upon information and belief, the old Omak Mill property had been
18 used to deposit slash from the Confederation Tribes’/CTFC’s forestry and timber
19 operations, and as such, operations at the property fell within the provisions
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1 Contract A20AV00089. Additionally, fire control and prevention operations fall
2 within the provisions of both 638 contracts referenced herein.

3 4.18 Upon information and belief, the smoldering slash pile was above and
4 below ground level and was a chronic ignition source for nearby grasses and other
5 fuels.

6 4.19 Upon information and belief, the slash pile at issue was neither
7 inspected nor adequately maintained to ensure full extinguishment or prevent
8 smoldering. As a result, the smoldering slash pile continued at times to emit smoke
9 and embers above ground.

10 4.20 Upon information and belief, before September 7, 2020, the CTFC
11 and BIA were warned multiple times by city of Omak officials and employees, as
12 well as tribal fire department officials and tribal members that the smoldering slash
13 pile posed an extreme risk of wildfires. Multiple requests for fire preventative
14 maintenance were ignored by one or more CTFC or BIA employees.

15 4.21 Upon information and belief, before September 6, 2020, the
16 Confederated Tribes, CTFC, and BIA were on notice that the National Weather
17 Service predicted potentially significant northeast winds to occur on September 6
18 and 7, 2020. The risk of ignition at the slash pile into adjoining dry grass and fuels
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1 was obvious, but no measure of any type was made to prevent the wildfire that
2 occurred.

3 **V. CAUSES OF ACTION**

4 5.1 Plaintiffs hereby reallege and incorporate each and every allegation
5 as set forth in paragraphs 1.1–4.21 herein.

6 5.2 As used hereinafter, the term “Defendant” should be understood to
7 include all persons and entities for whom the United States of America is legally
8 liable, including the BIA and its employees, as well as the Confederated Tribes of
9 the Colville Reservation, the CTFC, and their employees acting within the scope
10 of their employment and carrying out 638 contracts.

11 5.3 Plaintiffs hereby assert each and every cause of action and claim in
12 equity support by the facts alleged in this Amended Complaint. Without limitation,
13 such causes of action and claims in equity include the following.

14 **NEGLIGENCE**

15 5.4 Defendant negligently, recklessly, and/or wrongfully failed to
16 maintain the slash pile on the old Omak Mill property; failed to fully extinguish
17 earlier fires and flare-ups; and failed to promptly respond to concerns about the
18 smoldering slash pile, including requests to promptly extinguish the fire that had
19 broken out on the morning of September 7, 2020.

1 5.5 As a direct and proximate result of this negligence, the smoldering
2 slash pile erupted into the catastrophic wildfire on the morning of September 7,
3 2020.

4 5.6 Defendant's negligence wrongfully injured and was a proximate cause
5 of waste and damage to the lands, trees, homes, other structures, fences and other
6 personal property and landscaping improvements of Plaintiffs.

7 **VI. DAMAGES**

8 6.1 Plaintiff Townsend Ranch LLC is owned by the five Townsend
9 brothers: Edward, Nathan, William, Daniel, and Malcolm. A total of 7,555.25
10 acres of land owned by Townsend Ranch LLC were destroyed in the fire,
11 consisting of 2,247 acres of forest, 1,284 acres of crops, and 4,008 acres of
12 range/grazing land.

13 6.2 Plaintiff Townsend Brothers LLC is owned by Edward Townsend and
14 Nathan Townsend and lies adjacent to the property owned by Townsend Ranch
15 LLC. A total of 664 acres were destroyed in the fire, consisting of 509 acres of
16 forest and 135 acres of range/grazing land.

17 6.3 Plaintiff T-3 Ranch LLC is the operating entity that runs the Ranch
18 and is owned by Edward Townsend, Nathan Townsend, and William Townsend.
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1 T-3 Ranch owns the machinery and cows and performs all of the operations. The
2 losses incurred by T-3 Ranch LLC includes, but is not limited to:

- 3 • Loss of machinery, equipment and feed;
- 4 • Loss of over 82 miles fencing and gates;
- 5 • Loss of structures, including a pumphouse, shed and barn;
- 6 • Livestock losses and damages
- 7 • Business interruption;
- 8 • Fire cleanup and restoration costs;
- 9 • Damages to roads;
- 10 • Post-fire weed control; and
- 11 • Sagebrush restoration.

12 6.4 All of the Townsend brothers, in addition to the losses described
13 above and the thousands of acres of tree losses, have incurred costs for fire cleanup
14 in their time.

15 6.5 William Townsend, who was living in a homestead on neighboring
16 property that was completely destroyed by the fire, lost all of his personal
17 belongings.

1 6.6 The Estate of David Townsend owned an additional 19 acres of
2 separate property used for grazing and incurred fencing damages and fire cleanup
3 costs.

4 6.7 Malcolm and Kelly Townsend separately own an additional 30 acres
5 of property that was damaged in the fire, consisting of 5 acres of forest, and 25
6 acres of range. They lost all fencing on this property and a shed.

7 6.8 Plaintiff Swede Albert owns 10 acres of property that was damaged
8 by the fire and also lost structures, including his shop with his art business, his
9 salvage yard, and multiple vehicles.

10 6.9 As a direct and proximate result of Defendant's negligence, Plaintiffs
11 have incurred damages to their real and personal property and are entitled to
12 compensation for these damages including, but not limited to, loss of trees, damage
13 to homes, fences and other personal property, landscaping improvements, loss of
14 crops, loss of livestock, loss of property value, damage to the natural grasses and
15 plants, other damages to natural soil nutrients, erosion to land, loss of natural
16 habitat for wildlife, inconvenience and substantial costs for labor associated with
17 removal of the burned trees and restoration of foliage, trees and other damaged or
18 destroyed property.

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1. For an award of damages against Defendant, compensating Plaintiffs for their real and personal property damages, costs of restoration and all consequential damages, in an amount to be proven at trial;
2. For an award of damages against Defendant, compensating Plaintiffs for any past and future related out-of-pocket expenses, in an amount to be proven at trial;
3. For an award of damages against Defendant, compensating Plaintiffs for their past and future mental anguish and emotional distress, in an amount to be proven at trial;
4. For an award of damages against Defendant, compensating Plaintiffs for the loss of use and enjoyment of their properties, in an amount to be proven at trial;
5. For an award of attorneys' fees against Defendant for the attorneys' fees incurred by Plaintiffs herein, in an amount to be proven at trial;
6. For an award of prejudgment interest on all out-of-pocket expense directly and proximately caused by Defendant's negligence, in an amount to be proven at trial;

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- 7. For an award against Defendant, compensating each Plaintiff for their litigation-related costs and disbursements incurred herein, in an amount to be proven at trial; and
- 8. For such other and further relief as the Court deems just and equitable.

DATED this 26th day of September, 2023.

EYMANN ALLISON JONES P.S.

/s/ Richard C. Eymann
 RICHARD C. EYMANN, WSBA #7470
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2023, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF System to:

- **John T Drake**
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s/ Richard C. Eymann

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