

CASE MATERIALS
Official 2017 Mock Trial Materials
for the
THIRTY-SEVENTH ANNUAL
UTAH LAW RELATED EDUCATION
MOCK TRIAL PROGRAM



State of Utah
v.
Lee Morgan Hatch

Case No. 16cr0987

Rewritten and Adapted to Utah Law by Kristina Kindl

Original case from the State Bar of Wisconsin

FACT SUMMARY

On May 28, 2016, a fire destroyed 1,875 acres in Elk Creek State Park, including Elk Creek State Campground. While no one was killed in the fire, over 50 individuals were treated for smoke inhalation, and many suffered first- and second-degree burns. Unfortunately, five individuals suffered third-degree burns and are still in the hospital. The fire, which spread through the campground's 75 camping sites, destroyed 47 RVs, 23 boats, 12 ATVs, 53 trucks, 14 automobiles, and 17 tents. Personal items inside these RVs and tents were destroyed as well. Through the course of an investigation into the cause of the fire, it was discovered that a private property owner, Lee Morgan Hatch, had built a fire on his/her neighboring property earlier in the night in celebration of the Memorial Day holiday. Given the windy conditions that evening, the prosecution alleges that sparks flew from Hatch's fire into the air; specifically, into Elk Creek State Park, thereby igniting trees and brush. The resulting fire spread through the park and campground, including the official, designated campsites occupied by numerous campers, one of whom was Larry Lumina. The eyewitness testimony from those at the party differs on the nature and size of Hatch's fire, and the two experts disagree on the cause of the fire.

STIPULATIONS

1. The map of Hatch's property and the state campground was drawn by Park Ranger Hernandez and is NOT to scale.
2. The injuries and property damage outlined in the various affidavits and exhibits are an accurate reflection of the damages sustained; all such injuries and property damage were caused by fire. No objections to the damage calculations and/or injury reports will be entertained.
3. Elk Creek State Park, including the Elk Creek State Campground, is considered wild-land for the purposes of assessing suppression costs.
4. All exhibits included in the case materials are authentic and accurate. No objections to the authenticity of exhibits will be honored.
5. All signatures on witness affidavits and other documents are authentic. If asked, a witness must acknowledge signing the document(s) and must attest to the content of the documents(s) and the date(s) indicated therein. The witness affidavits are deemed to be given under oath or affirmation.
6. No objections to the sufficiency of the indictment will be entertained.
7. The defendant has plead not guilty.
8. The defendant voluntarily has waived his/her Fifth Amendment rights and will testify at trial.

9. Lee Morgan Hatch, defendant, waives his/her right to a trial by jury.
10. The State of Utah, prosecution, asks the Court to hold a bench trial to determine the guilt of the defendant.
11. There are no jurisdictional issues in this case.

WITNESSES

For the Prosecution

Park Ranger Chris Hernandez
Kennedy Price
Eli Mohamed

For the Defense

Lee Morgan Hatch
Brett Anderson
Ryan Finau

EXHIBITS

1. Fire Restriction Order, Released on May 13, 2016
2. Kennedy Price's Photo of Hatch's Fire, May 28, 2016
3. Eli Mohamed's Photo of Elk Creek State Park, May 30, 2016
4. Map drawn by Park Ranger Chris Hernandez
5. Curriculum Vitae of Eli Mohamed
6. Curriculum Vitae of Ryan Finau
7. Article from *Elk River Times*, "Memorial Day Ends in Tragedy as Fire Destroys State Park Campground, Injuries 53 People," dated May 29, 2016

**IN THE MOCK TRIAL COURT
ELK RIVER COUNTY, STATE OF UTAH**

STATE OF UTAH Prosecution, v. LEE MORGAN HATCH, Defendant.	INFORMATION Case No. 16cr0987
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The undersigned Prosecutor for Elk River County, State of Utah, states on information and belief that the defendant, Lee Morgan Hatch, on or about May 28, 2016, within Elk River County, State of Utah, committed the following:

COUNT 1

CAUSING A CATASTROPHE, a second-degree felony, in violation of *Utah Code Ann.* §76-6-105 as follows: That at the time and place aforesaid, the defendant caused the widespread injury or damage to persons or property by fire.

Or, in the alternative, the lesser included offenses of:

RECKLESS BURNING, a class A misdemeanor, in violation of *Utah Code Ann.* §76-6-104 as follows: That at the time and place aforesaid, the defendant recklessly started a fire which endangered human life; having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either failed to take reasonable measures to put out or control the fire or failed to give a prompt fire alarm; or damaged the property of another by reckless use of fire.

ABANDONING A FIRE, a class A misdemeanor, in violation of *Utah Code Ann.* §76-6-104.5 as follows: That at the time and place aforesaid, the defendant abandoned a fire without first completely extinguishing it and did not intend to return to the fire.

THIS INFORMATION IS BASED ON INFORMATION OBTAINED FROM THE FOLLOWING WITNESS(ES): Park Ranger Chris Hernandez, Kennedy Price, and Eli Mohamed.

The bases for the charges are as follows: On May 28, 2016, weather conditions in the County of Elk River were windy and dry. The Department of Natural Resources had issued a fire-restriction order and had suspended the issuance of burning permits. Early in

the afternoon of May 28, 2016, Hatch began building a fire out of brush that s/he had cleared from his/her property at 217 Charleston Road, Elk River, Elk River County, Utah.

Hatch continued to feed the fire into the night. Sparks flew from the fire into the air. The windy conditions blew the sparks into the Elk Creek State Park, including the Elk Creek State Campground, causing trees and brush to ignite. The resulting fire spread through seventy-five (75) official, designated campsites occupied by over 200 campers; destroying 1,875 acres of state park land, \$6,593,500.00 in personal property, and causing the State to incur approximately \$156,256 in fire-suppression costs.

STATEMENT OF PROBABLE CAUSE: The undersigned Prosecutor is the Elk River County Attorney and has probable cause to believe that the defendant, Lee Morgan Hatch, committed one or more criminal offenses, based upon credible information received from Utah Park Ranger, Chris Hernandez; Fire Investigator, Eli Mohamed; and eye-witness observations of Kennedy Price.

Authorized on June 6, 2016, for presentment and filing:

G. Afton Ririe

G. Afton Ririe, Elk River County Attorney

By: G. Afton Ririe
Elk River County Attorney
09387439

LEGAL AUTHORITIES

Utah Code Annotated

Section 76-6-105. Causing a catastrophe -- Penalties.

- (1) Any person is guilty of causing a catastrophe if the person causes widespread injury or damage to persons or property by:
- (a) use of a weapon of mass destruction as defined in Section 76-10-401; or
 - (b) explosion, fire, flood, avalanche, collapse of a building, or other harmful or destructive force or substance that is not a weapon of mass destruction.
- (2) Causing a catastrophe is:
- (a) a first degree felony if the person causes the catastrophe knowingly and by the use of a weapon of mass destruction;
 - (b) a second degree felony if the person causes the catastrophe knowingly and by a means other than a weapon of mass destruction; and
 - (c) a class A misdemeanor if the person causes the catastrophe recklessly.
- (3) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section 76-6-104. Reckless burning.

- (1) A person is guilty of reckless burning if the person:
- (a) recklessly starts a fire . . . which endangers human life;
 - (b) having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm;
 - (c) builds or maintains a fire without taking reasonable steps to remove all flammable materials surrounding the site of the fire as necessary to prevent the fire's spread or escape; or
 - (d) damages the property of another by reckless use of fire.
- (2)(a) A violation of Subsection (1)(a) or (b) is a class A misdemeanor.
- (b) A violation of Subsection (1)(c) is a class B misdemeanor.
- (c) A violation of Subsection (1)(d) is:
- (i) a class A misdemeanor if damage to property is or exceeds \$1,500 in value;
 - (ii) a class B misdemeanor if the damage to the property is or exceeds \$500 but is less than \$1,500 in value; and
 - (iii) a class C misdemeanor if the damage to property is or exceeds \$150 but is less than \$500 in value.
- (a) Any other violation under Subsection (1)(d) is an infraction.

Section 76-6-104.5. Abandoned fire -- Penalties.

- (1) A person is guilty of abandoning a fire if, under circumstances not amounting to the offense of arson, aggravated arson, or causing a catastrophe under Title 76, Chapter 6, Part 1,

Property Destruction, the person leaves a fire:

(a) without first completely extinguishing it; and

(b) with the intent to not return to the fire.

(3) A violation of Subsection (1)

(a) is a class C misdemeanor if there is no property damage;

(b) is a class B misdemeanor if property damage is less than \$1,000 in value; and

(c) is a class A misdemeanor if property damage is or exceeds \$1,000 in value.

(4) If a violation of Subsection (1) involves a wildland fire, the violator is also liable for suppression costs under Section 65A-3-4.

(5) A fire spreading or reigniting is prima facie evidence that the person did not completely extinguish the fire as required by Subsection (1)(a).

Section 65A-3-4. Liability for causing wildland fires.

(1) A person who negligently, recklessly, or intentionally causes or spreads a wildland fire shall be liable for the cost of suppressing that wildland fire, regardless of whether the fire begins on:

(a) private land;

(b) land owned by the state;

(c) federal land; or

(d) tribal land.

(2) The conduct described in Subsection (1) includes any negligent, reckless, or intentional conduct, and is not limited to conduct described in *Utah Code Ann.* §65A-3-2.

(3) A person who incurs costs to suppress a wildland fire may bring an action under this section to recover those costs.

(4) A person who suffers damage from a wildland fire may pursue all other legal remedies in addition to seeking damages under Subsection (3).

Section 76-2-103. Definitions.

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(3) Recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Section 76-2-104. Culpable mental state – Higher mental states included.

(2) If acting recklessly is sufficient to establish the culpable mental state for an offense, that element is also established if a person acts intentionally or knowingly.

(3) If acting knowingly is sufficient to establish the culpable mental state for an offense, that element is also established if a person acts intentionally.

BURDEN OF PROOF

The burden of proof rests with the prosecution. The following are definitions and explanations that will assist you in either building your case against the defendant, or in defending Lee Morgan Hatch.

- (1) The defendant is presumed to be innocent of the charges. This presumption remains in effect unless and until, from all the facts/evidence presented at trial, the trier of fact is convinced beyond a reasonable doubt that the defendant is guilty of the alleged crime(s). Beyond a reasonable doubt is the highest standard of proof used in the United States court system.
- (2) The prosecution, State of Utah, has the burden of proving the guilt of the defendant beyond a reasonable doubt. Beyond a reasonable doubt means that no other logical explanation--or reasonable alternative--can be drawn from the facts/evidence presented at trial except that Lee Morgan Hatch committed the crime, thereby overcoming the presumption that a person is innocent until proven guilty. It does not mean that no doubt exists as to the accused's guilt, but only that no reasonable doubt is possible from the evidence presented.
- (3) The defendant is not required to prove his/her innocence.
- (4) If the judge has a reasonable doubt as to the defendant's guilt, the judge will pronounce the defendant not guilty. If the judge has no doubt as to the defendant's guilt, or if his/her only doubts are unreasonable doubts, then the prosecutor has proven the defendant's guilt beyond a reasonable doubt, and the defendant should be pronounced guilty.

LESSER INCLUDED OFFENSE

The crime of “causing a catastrophe” includes the lesser offenses of “reckless burning” and/or “abandoned fire.” The judge may consider the lesser offense if:

- (1) He or she finds the defendant not guilty of “causing a catastrophe”; *and*
- (2) The evidence is sufficient to establish that the defendant committed only the lesser crime.

The defendant cannot be found guilty of either lesser-included offense unless the State has proved each element of the lesser-included offense beyond a reasonable doubt.

Some of the key differences between causing a catastrophe, reckless burning, and abandoned fire focus on the amount of damage and the required mental state (Causing a catastrophe and reckless burning require that the State prove that the defendant acted recklessly, while the crime of abandoned fire requires that the State prove that the defendant intended to not return to the fire.).

**IN THE MOCK TRIAL COURT
ELK RIVER COUNTY, STATE OF UTAH**

STATE OF UTAH

Prosecution,

v.

LEE MORGAN HATCH,

Defendant.

**AFFIDAVIT OF
CHRIS HERNANDEZ**

Case No. 16cr0987

CHRIS HERNANDEZ, having been duly sworn, hereby states the following:

1. I have been a park ranger for 15 years with Utah's Department of Natural Resources. I became a park ranger after receiving my bachelor's degree in Law Enforcement from Weber State University.
2. As part of my training to become a park ranger, I had to go through the Peace Officer Standards and Training ("POST") required of all peace officers in Utah. I did field training all over the state before officially being awarded my position. Most of my 15 years have been spent in the Elk River area. I investigate all kinds of crimes, including battery, burglary, and illegal firearm use. I also enforce state regulations concerning hunting and fishing, and environmental laws concerning pollution and illegal burning.
3. I live in nearby Midway. I love the outdoors. And, in my free time, I enjoy fishing, hunting, training horses, and taking care of injured animals. I prefer to spend my free time as far away from the "weekend" crowd as possible, but it is getting really difficult to do since Elk River draws so many people from out-of-state. People just love the fact that Elk Creek State Park has a beautiful reservoir surrounded by mountains; it is the perfect place for camping, boating, fishing, and hiking.
4. I always wanted to be a park ranger; it allows me to be outside and do good things for others. However, most people around here think park rangers are snitches because we enforce environmental laws and stop people from illegal hunting and fishing, but I know I protect the public as well as the environment. Plus, my uncle, Louis Hernandez, is a notorious DNR violator, so I have a lot of first-hand knowledge about the need for competent park rangers.
5. In the summer, fires are one of the biggest issues for the DNR. They are caused by careless campers, reckless land clearers, fireworks, illegal ATV use, and a whole host

of other man-made dangers. Here in Utah, we get a lot of fires caused by lightning strikes, but that doesn't mean that the fires started by careless humans aren't just as dangerous or catastrophic.

6. I never cease to be amazed at how reckless landowners can be when it comes to abandoning fires. At the DNR, we have seen a three-fold increase in the number of abandoned fires, and over 25% of them require a fire-suppression response. Abandoned and escaped campfires remain the primary cause of unwanted wildland fires, burning thousands of acres yearly, and, in some cases, have caused the loss of lives and homes.
7. I remember a few years ago when we had to evacuate the Maple Bench campground due to a human-caused fire at Spring Lake. Just last summer, we saw some major fires that were the result of abandoned campfires, like the Peterson Hollow Fire which destroyed over 1000 acres of wildland and cost over \$1 million in firefighting efforts. I remember thinking that the stars aligned in a bad way to cause the perfect conditions for that fire; there were hot, dry temperatures and gusty winds.
8. While the conditions last year were dry, they were not nearly as dry as this year. That's why this most recent fire, started by Lee Hatch, is so disturbing. You'd think s/he would have been more careful.
9. On May 28, 2016, because it was the weekend before Memorial Day, there were a lot of campers and landowners in the woods around Elk River, and the Elk Creek State Campground was practically full. Most of the day I was assigned to Elk Creek Reservoir to enforce fishing and boating regulations. Water safety is a big concern for the people in Elk River, especially around the reservoir. While I was on the reservoir, I could see several smaller smoking camp fires at the park's campground. I radioed my colleagues, Cody Garritson and Aaron Morton, who were assigned to the campground. I let them know of the fires and told them to go check them out, but really they looked to be smaller campfires and would not be a problem, even with the dry, windy conditions.
10. That night I was planning on camping in the campground. I do that sometimes when I'm assigned to work at Elk Creek State Park for the whole weekend. After work, I visited some friends who live south of the campgrounds; while driving there, I noticed a lot of dark smoke coming from a clearing in the woods. From what I know now, it was coming from Hatch's property.
11. While my friends and I were saying our goodbyes around 11:00 p.m., we could hear fire trucks racing north toward the state park. We stepped outside the house to see what was going on, and it looked like the whole park was engulfed in fire.
12. I had just told my friends that I had to leave to see if I could be of any help when I was officially called from my off-duty status to respond to a fire at the campground. When I got there, it was a scene from my nightmares; there were huge flames raging through the campground. Fire crews from all over Elk County, plus other state crews, were battling the blaze and laying down retardant lines to stop the fire from spreading farther.

13. I learned from the first responders that the fire was 80% contained, thanks in large part to the reservoir, and that they were able to evacuate all the campers. Unfortunately, it looked like at least five people had suffered from third-degree burns, and many more were being treated for smoke inhalation and first- or second-degree burns. While most of the injuries weren't life threatening, the campers who had been evacuated had lost all of their belongings. Given the number of RVs, ATVs, and boats I had seen in the campground earlier that day, I cannot even imagine the total loss.
14. The fire chief was on-site, and we interviewed witnesses at the scene. I also spoke to Garritson and Morton about the fires I had seen earlier in the day. After considering all available information and the dark smoke I saw earlier in the evening, the fire chief and I decided to investigate Lee Hatch's property the next morning.
15. When we arrived at Hatch's, there was evidence of a large fire consisting of logs, brush, and other combustibles. There appeared to be quite a bit of pine that was burnt. Pine is especially dangerous in dry conditions because it sends sparks high into the air. The fire must have been large because it was still smoldering at 7:00 a.m. on Sunday.
16. I talked to Hatch, and s/he denied making anything more than a campfire. S/he admitted s/he was burning pine branches that s/he had cleared from his/her land. Hatch admitted it was a hot fire, so s/he could cook food on it for his/her guests. Hatch seemed rather annoyed with me for asking questions. Hatch muttered something under his/her breath about being picked on because s/he is from California--something about the DNR out to get people from out-of-state.
17. Normally, in this part of the state, state law does not require a burning permit for a campfire. But, if the fire is really a brush fire or a bonfire, then a burning permit is required. The burning permit is required for two reasons--one, to make sure people don't burn when the conditions are bad, like they were on May 28, 2016; and two, to make sure the local fire department will have enough firefighters on hand in case the fire gets out of hand. The DNR was not issuing burning permits on May 28, 2016, because it was too dry and windy.
18. Hatch's recklessness amazes me. Just last year I had to ticket Hatch for an illegal fire. It seems s/he does not appreciate how deadly fire can be; now all these families have had to suffer the consequences of Hatch's bullheadedness.

Pursuant to *Utah Code Ann.* §78B-5-705, I declare, under criminal penalty of the State of Utah, that the foregoing is true and correct.

DATED the 2nd day of June, 2016.

Chris Hernandez

Chris Hernandez, Park Ranger

Subscribed and sworn before me on this, the 2nd day of June, 2016.

Barbara Billings
Barbara Billings, Notary Public

**IN THE MOCK TRIAL COURT
ELK RIVER COUNTY, STATE OF UTAH**

STATE OF UTAH

Prosecution,

v.

LEE MORGAN HATCH,

Defendant.

**AFFIDAVIT OF
KENNEDY PRICE**

Case No. 16cr0987

KENNEDY PRICE, having been duly sworn, hereby states the following:

1. My name is Kennedy Price, and I live in Elk River, Elk River County, Utah. In fact, I live just down the road from the land Lee purchased. I've lived in Elk River for my entire life, and I met Lee shortly after s/he bought his/her property.
2. Normally, I'm not much of a fan of folks from California who buy "weekend land" here because they usually aren't really interested in the locals. They're also usually rich and obnoxious; you know the type--people who mainly come for the world-class skiing, but drop by a few times during the summer to hike and check on their property. They act like they are doing the locals a favor by visiting our little town, but Lee seemed like s/he might be a little different since s/he grew up in the area. Lee seemed like s/he was interested in being in Elk River and wanted to fit in.
3. Lee comes over from California on weekends and other times of the year to work on his/her property, and I've seen Lee out there burning brush a couple of times. Lee seems really into it. I rarely see him/her doing much other work on the land--just lots of brush collection and burning.
4. One time awhile back, I remember the volunteer fire department had to go out to Lee's to tell him/her that s/he needed a permit to be burning all the stuff that s/he was burning. My friend, Tristan, was volunteering for the department at the time, and he later told me that Lee seemed like kind of a bonehead when it came to local rules and fire safety and common sense and all that.
5. Anyway, on May 28th, Lee invited a bunch of folks over to see all of the work that s/he had done on his/her property. Lee said we'd just all hang out, build a fire, and cook out. Lee said since it was Memorial Day weekend, s/he wanted to show off all the work s/he'd done, including the big, stone fire ring s/he built. It sounded like a pretty good time, so I decided to go. I even brought along a couple of pints of fresh huckleberries.

6. I remember the weather being a little strange that day. I think it was really nice and clear in the morning, but then it became really windy and a little cloudy in the afternoon. When I got to Lee's place, s/he already had a pretty big fire going. I was surprised to see it, given how windy it was. I thought to myself, "I wouldn't feel comfortable tending a fire like that in these conditions," but Lee seemed unconcerned and not at all worried about it, so I tried to relax.
7. My nephew is always telling me that I need to post more pictures on social media, so my friends and family can see what I am doing. I took a picture of the fire when I first got to Lee's house to post on my Facebook page, so everyone would know I had a fun Memorial Day weekend. Even though the fire got bigger as the night went on, what with Lee throwing more branches on the fire, I gave the picture of what it looked like early on to the prosecutor after I was questioned about the fire at Lee's.
8. Like the bonehead s/he is, after the fire was already roaring, Lee decided to set up a spit over the fire to cook some chicken. Lee then used the superhot embers that s/he generated from the fire to make a cake in a Dutch oven. When Lee was cooking, s/he was making jokes and laughing and goofing around with his/her friends and family.
9. Lee didn't really seem to be paying too much attention to how big the fire was getting and how it was sort of jumping outside of the fire ring a bit. The other guests didn't really seem to notice, either. I said to Lee, "Hey, Lee, watch your fire there." Lee then kinda poked some of the coals that had started to escape back inside the ring and stomped on some burning embers that had landed on the ground outside the fire ring.
10. Once Lee took the cake out of the Dutch oven, everyone oohed and aahed and was really into the cake. I think I said something, though, to the guy sitting next to me like, "Geesh, that's a really big fire," and the guy agreed. I then said it louder to Lee, but Lee just shrugged it off. I let it go, and we all had some of the cake. I didn't pay too much attention to the fire. The cake was pretty tasty.
11. When everyone finished eating, we just sat around the fire talking. Lee kept adding more and more pine branches to the fire. As the pine burned, I could hear the sap popping, and I could see the sparks flying into the air.
12. I thought it was a little odd that s/he kept adding more wood because the fire was already so big, and the wind was really blowing. Lee seemed to think it was really cool that the fire was sending off sparks that were shooting all over the place, but it just made me nervous. I really can't stand it when people don't respect how powerful a fire can be.
13. After sitting around talking for a while, I decided to head home around 9:30 p.m. The fire was making me nervous, but, truthfully, I was more just bored with the conversation and wanting to get home. On my way home, I heard some fire trucks and assumed the fire department had seen the flames at Lee's and was making Lee put out his/her fire.

Pursuant to *Utah Code Ann.* §78B-5-705, I declare, under criminal penalty of the State of Utah, that the foregoing is true and correct.

DATED the 2nd day of June, 2016.

Kennedy Price

Kennedy Price

Subscribed and sworn before me on this, the 2nd day of June, 2016.

Dirk Benedict

Dirk Benedict, Notary Public

**IN THE MOCK TRIAL COURT
ELK RIVER COUNTY, STATE OF UTAH**

<p style="text-align: center;">STATE OF UTAH</p> <p style="text-align: center;">Prosecution,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">LEE MORGAN HATCH,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">AFFIDAVIT OF ELI MOHAMED</p> <p style="text-align: center;">Case No. 16cr0987</p>
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ELI MOHAMED, having been duly sworn, hereby states the following:

1. I am the owner of Wildfire Consulting Services in Washington, D.C. Wildfire Consulting Services provides expertise in fire management, particularly for forested areas. I am a Type 2 Certified Fire Investigator. There are three levels of fire investigation certification, and mine is the middle level. Most of the fires that I have investigated have been forest fires. It was exciting to have this opportunity to investigate a fire which appears to have started in an open field as a grass and brush fire.
2. On May 30, 2016, I was asked to determine the origin of the fire which burned through the Elk Creek State Park, including the campground. Although I live in Washington, D.C. now, I am very familiar with the area around Elk River, having gone to college in Utah and having been a paid, on-call firefighter for the Elk River Fire Department back in the late 1970's.
3. Based upon my investigation, my knowledge, and my experience, my professional opinion is that Lee Hatch's campfire was the source of the fire.
4. One of the first people I spoke to was Lucy Lumina, a camper who had brought her family up to spend the Memorial Day weekend boating on the reservoir. She told me their family had arrived at the Elk Creek State Campground on May 28, 2016, and set up their tent in a designated campsite near a forested area and the reservoir.
5. After they set up camp, she had to look for their little boy, Lucky, who had wandered off for awhile. She found him off to the northwest, wandering near the railroad tracks, in an open field. They thought about having a campfire, but decided it was too windy for a campfire. In any event, her husband, Larry, said he was tired, and Lucy was not willing to supervise Lucky around a campfire.

6. According to Lucy, they eventually all went to sleep in the tent in sleeping bags pretty early because they wanted to get out on the reservoir bright and early the next day. Lucy woke up some time later in the night because she heard a roaring sound and crackling.
7. She woke immediately because it reminded her of the sounds she had heard years ago at college when she had escaped a dormitory fire. She began yelling, got herself, Lucky, and Luna, her daughter, out of the tent. She saw Larry unzipping his own sleeping bag as she left the tent. He fumbled with it as though the zipper was stuck, but she focused on the children and assumed Larry would follow her right out of the tent.
8. She could feel the heat from the fire, and the children were coughing and complaining that it was hard to breathe. As she looked around, all she could see were flames moving toward them. It seemed like the whole campground was fleeing the fire; firefighters were calling out directions and moving everyone toward the road.
9. As she was hurrying toward the road, she realized Larry was not behind her, and she grabbed a firefighter to tell him that her husband was stuck in their tent. Other campers were milling on the side of the road, but Larry did not show up. Later she learned that while Larry had been rescued, he had suffered third-degree burns from the fire.
10. In beginning my investigation, I viewed the area where the tent had been because it was the northernmost officially designated camping site in the Elk Creek State Campground. The tent had been in a clearing, a short distance away from a forested area to the west. Obviously, nothing was left of the tent.
11. The burned area extended south of the campground itself and ran south along the edge of the reservoir through the park. More significantly, the burned area extended to the north and west, ending by the railroad tracks on the west. Hatch's property is to the northwest of the burned area, just on the other side of the railroad tracks. One of the pictures I took of the burned forest area is part of the evidence today.
12. I then looked at "directional indicators." Directional indicators include cupping, char patterns, and stalk patterns. When a fire burns away a tree trunk, the stump is "cupped" on the side facing the fire. Such stumps have a sharpened point which faces away from the fire. These trees were cupped on the north-northwest. Based upon the cupping of the trees at the campsite, the fire approached the campground from the north-northwest.
13. The char patterns reinforced my view that the fire came from the north-northwest. Charring usually is deeper on the side of the tree or other fuel that faced the oncoming fire. This deeper charring occurs because that particular side took more of

the heat of the fire. As expected, the charring was deeper on the north-northwest of the trees, reinforcing the finding that the fire approached the campground from the north-northwest.

14. In addition, I examined the open field to the north of the area. I saw a few unburned stalks of grass. Stalks that fall backwards as the fire first burns the grass stem sometimes are unburned. They usually point in the direction the fire came from. These unburned stalks were pointing toward Hatch's property.
15. I know that the direction of the fallen stalks can be influenced by the wind, and I considered whether the wind could have blown them in that direction. I also considered whether other people coming through the area after the fire could have caused that pattern. I would not have relied on the stalk patterns alone, but mention them only because they supported my other findings.
16. By the time of my investigation, the fire was out. I, therefore, was able to follow the various directional indicators, including the brush, grass, and trees. As a fire dies out, there is less damage and charring. By moving into the areas which were more damaged, I knew I was getting closer to the fire's origins.
17. When I reached an area just east of the railroad tracks and just east of Hatch's property, my directional indicators became contradictory. Some indicators suggested that the fire was moving west, some east, and some south. At a fire's origin, contradictory directional indicators are often present because the fire is undeveloped and does not yet have a direction it is moving.
18. In addition, in that same general area, there was a portion of burn in which the grass was burned, but some brush remained. Finding fire damage only close to the ground is also common at the fire's origin.
19. I then began searching around that area and asking around for possible sources of the fire. I learned of Hatch's fire that s/he made on May 28, 2016. That fire was in the correct direction to have been the cause of the state park and campground fire. I remembered Hatch from my time in Elk River because s/he had been a neighbor of my parents'. Hatch has never had much sense, and s/he's been reckless as long as I've known him/her.
20. I remember when Hatch ended up in the emergency room because the orange juice was frozen, and s/he decided to use a carving knife to get it out of the can; sliced his/her thumb right open. Worse, there was the time that Hatch climbed a rickety ladder with a chainsaw to cut down a branch that anyone else would have used a pruning saw on. Hatch didn't even make sure the ladder was on even ground. Lee was very lucky s/he did not kill himself/herself.
21. In any event, I looked at the Hatch fire site and Hatch's property. The distance from Hatch's fire to the origin of the campground fire was small enough that, on a windy

day, blowing particles and ash could have blown east to the open field. By Hatch's own admission, his/her fire was sending out "lots of little sparks" and needles. Sparks and other burning material can travel long distances, especially in windy conditions.

22. Everyone in the area except Hatch knew that starting a fire on May 28, 2016, was dangerous. There had been no rain for far too long. The temperature had been in the high 90's earlier in the week. It had cooled down from there, but it was still quite hot. All of Elk River knew there was an extreme fire danger. Heck, I heard that the Elk River firefighters had been working hard for days putting out various fires.
23. The local newspaper ran a story with a great picture of Captain Thueson; I cannot believe he is still the Captain. I loved working with him back in my firefighting days. Captain Thueson was begging people to be very careful and comply with the burning ban in effect.
24. Worse, the winds were particularly brisk on Saturday, and the strength of the winds just kept increasing. It was not even good kite weather because it was too windy to control a kite. But Hatch, reckless Hatch, thought it was a good time to build a fire. Worse, by his/her own admission, Hatch broke one of the important safety rules of fires: Don't leave a fire until it's "out cold."
25. I ruled out other possible ways the fire could have started. People in the houses to the west of the railroad tracks mentioned to me that the Miller kid and some of his friends were on the railroad tracks on Saturday afternoon. I spoke to Dirk Miller and his friends, as well as the people who saw them playing. They said they spent much of the afternoon looking for glass insulators. They denied having cigarettes, lighters, or flares, and no one saw them with any of those things.
26. My investigation told me that the area of origin was in the open field north of the tree stand and campground. Just to be thorough, I spoke to the Elk River firefighters about the grass fire to the east of the reservoir. No matter what Hatch says, that grass fire was not the cause of the fire at Elk Creek State Park and Campground.
27. First, the fire came from a different direction based on the directional indicators. Second, that grass fire was out by early Saturday evening. These current Elk River firefighters are really good at their jobs, just as we were in the old days. They would not say a fire was out if it were not completely out.
28. Although the wind can lift burning particles as it did from Hatch's fire, the wind was coming from the west on the night of May 28, 2016, and the early morning of May 29, 2016. The wind that night would have blown particles from the grass fire away from the campground. Based on all available reports, evidence, and interviews, it is my expert opinion that Hatch's negligence in maintaining proper control of his/her fire resulted in the catastrophic destruction at Elk Creek State Park and Campground.

Pursuant to *Utah Code Ann.* §78B-5-705, I declare, under criminal penalty of the State of Utah, that the foregoing is true and correct.

DATED the 3rd day of June, 2016.

Eli Mohamed

Eli Mohamed

Subscribed and sworn before me on this, the 3rd day of June, 2016.

Beverly Cumberbatch

Beverly Cumberbatch, Notary Public

**IN THE MOCK TRIAL COURT
ELK RIVER COUNTY, STATE OF UTAH**

STATE OF UTAH

Prosecution,

v.

LEE MORGAN HATCH,

Defendant.

**AFFIDAVIT OF
LEE MORGAN HATCH**

Case No. 16cr0987

LEE MORGAN HATCH, having been duly sworn, hereby states the following:

1. My name is Lee Hatch, and my home residence is 711 Cheltenham Drive, Sherman Oaks, California, just outside of Los Angeles. I have lived there for the past seven years after graduating from the nanotechnology program at the University of Utah.
2. I would have liked to find a job closer to Elk River, where I grew up and where I consider home, but those nano jobs don't exactly grow on trees. So I had to go where I had a job offer, but I hate LA!
3. I was lucky enough to be able to purchase a small parcel of land on the edge of Elk River a few years ago; at least I make enough to afford that. It is only about five acres, but I don't need any more than that. My dream is to one day be able to retire back in Elk River.
4. When I bought my land, it was sort of an overgrown jungle. I come back to work on it every chance I get. I have been clearing the land slowly, trying to preserve natural plant species, and not to destroy the rural character of the parcel. I hate it in the city where they bulldoze all the trees, then build apartments or condos. After that they try to landscape, but they destroyed all the natural beauty!
5. I have many large trees which should provide protection from the elements all year round. I have some pines to provide shelter to the critters as well as several natural berry trees for the wildlife.
6. Clearing the brush is refreshing for me. I use a brush hook to chop down the little stuff, then pile it, for at least a little while, to let it dry out before I burn it. Hard work is a good way to release the stress that builds up living in the city.

7. The Elk River County Fire Warden told me it was a good idea to clear and burn the brush, so the nutrients are returned to the soil. He said burning was the best way to dispose of brush; otherwise, it would be a fire hazard. It was also good because it prevents the spread of some tree diseases carried by insects.
8. A couple of years ago, when I didn't know the local rules, I was burning a small pile of branches when the local fire department showed up. Scared the heck out of me! Turns out I was supposed to get a burning permit from the local fire warden, and I hadn't. I learned that sometimes, when weather conditions favor the rapid spread of a fire, the town imposes burning bans. The fine was \$198.00, but I guess that was a cheap lesson.
9. I don't think there were any burning bans on during the month of May. I know from looking at the DNR website in January that I can always have a campfire, and just because my fire wasn't at a designated campsite and was in the middle of my property in a special rock ring I created to make fires in, I figure it is all the same thing.
10. Well anyway, it was a great Saturday morning to be in Elk River. I had my friends coming over for an evening cookout, and I was going to show them I knew how to really cook outdoors! I had learned in scouts how to bake using a cast-iron Dutch oven, so I was going to bake a cake for Memorial Day. It really isn't that hard; you can bank the superhot embers on one edge of the fire ring. Then you place the Dutch oven directly on top of the embers and cover the whole thing up with red-hot logs. Then wait a few hours.
11. As the day progressed, the weather went downhill. It got windy, and a few clouds were starting to build in the west; the side benefit was that it helped keep the mosquitoes down and us more comfortable as we worked.
12. I had finished clearing for the day and started piling up the branches. I thought I would start a little fire just to have one going. It always seems to keep down the mosquitoes when you have a fire. I planned on using that fire to create the embers for my Dutch oven cooking. Then I was also going to roast chicken over the fire on my new spit at the same time.
13. The wind also helped keep the fire going. I noticed that a little grass had burnt around the fire, but didn't think much of it--that usually happens.
14. The cake turned out great; I had even bought frosting for it. Everybody thought that was really cool to be able to bake over a fire.
15. As the evening progressed, more branches were added to the fire because the fire was so pretty. Pine branches seem to take a while to dry out, but then when the needles finally catch, they sound a little like firecrackers and send out lots of little sparks. The sparks would drift off into the sky leaving a trail. It was kinda pretty, like Mother Nature's fireworks.

16. My friend Kennedy left kind of early, around 9:30 p.m. or so, but the rest of us stayed and kept talking around the fire.
17. A little while later, we did notice that a fire off to the east seemed to be burning. We heard the fire department tanker trucks going by pretty frequently, and I was wondering if I should be worried because the flames seemed to be pretty close. But my friends said they saw the fire department dealing with a grass fire just east of the reservoir. It had gotten out of hand earlier in the day, and it was probably the fire we could see. Even though it looked pretty close, I figured if it was on the other side of the reservoir, I was safe.
18. I suppose I would have been more alarmed and concerned if I heard better. I damaged my hearing when I was young by not wearing hearing protection when I was shooting and working with machinery. It usually isn't a problem because I lip read well, but I don't bother to try and listen to the radio anymore. It all sounds like mush.
19. I was top gun at the goggle-eye trap club when I was at Elk River High. I shot on Dan's Pretty Good Grocery's team; we got first place three years in a row! I still have the trophies on my wall. But my hearing paid the price for not wearing ear protection consistently!
20. The authorities say I started the fire that burnt down the park and campground. NO WAY! My fire never left my property; there is green grass all around the perimeter of my land! I think some careless driver threw out a cigarette, or kids started that fire. I made sure my fire was down to burning embers before I went to sleep.
21. My neighbors said they saw some kids playing on the railroad tracks yesterday afternoon. They could have started it with some old flares or something. Besides, everyone knows railroad trains or lightening always seem to start the grass fires around here.

Pursuant to *Utah Code Ann.* §78B-5-705, I declare, under criminal penalty of the State of Utah, that the foregoing is true and correct.

DATED the 3rd day of June, 2016.

Lee Morgan Hatch

Lee Morgan Hatch

Subscribed and sworn before me on this, the 3rd day of June, 2016.

Jim Bullock

Jim Bullock, Notary Public

**IN THE MOCK TRIAL COURT
ELK RIVER COUNTY, STATE OF UTAH**

STATE OF UTAH

Prosecution,

v.

LEE MORGAN HATCH,

Defendant.

**AFFIDAVIT OF
BRETT ANDERSON**

Case No. 16cr0987

BRETT ANDERSON, having been duly sworn, hereby states the following:

1. My name is Brett Anderson. I live with my uncle, Kyle Anderson, in an apartment above Anderson's Hardware Store, 120 Main Street, in downtown Elk River. The store is owned by my Uncle Kyle, and I have worked there since I was a kid.
2. I love working in the store! For one thing, Uncle Kyle is one of those people other people just like to be around. He is kind of a local legend around Elk River and not just because he is a hardware guru. He is funny and charming, and he is especially good with little kids. I am trying to learn the business from Uncle Kyle, and someday I am going to buy him out. That's the plan, anyway.
3. On Saturday, May 28th, I was working in the store when a friend of mine, Romey Hatch, dropped in to invite me to a cookout that night. Romey said his uncle/aunt, Lee Hatch, was having some friends out to his/her place for a Memorial Day weekend cookout; nothing fancy--just some meat and potatoes cooked over an open fire. Well, it wasn't quite that simple; Lee was going to bake a cake, too.
4. Romey wasn't all that anxious to go, and neither was I. Lee can be a bit of a pain sometimes. Ever since s/he moved to California seven years ago, Lee has been on a "back to nature" kick, acting like a modern day Paul/Paulette Bunyan. Lee goes on and on to anyone who will listen about how unnatural life in the city is.
5. Lee comes back to Elk River all the time and plays lumberjack on his/her small piece of land. Lee even wears one of those ridiculous red and black plaid shirts, complete with suspenders and blue jeans tucked into high leather boots. Lee looks like a cartoon character, but everyone knows Lee's heart is in the right place, so nobody gives him/her a hard time about it.

6. Lee cooks over an open fire a lot, too, and has gotten real good at it. So even though we knew we'd have to listen to Lee talk about our impending environmental doom, we decided to go. The food would make it all worthwhile.
7. After the store closed at 5:00 p.m., I picked Romey up and headed out to Lee's. As we passed Louis Hernandez's place, we heard what sounded like fireworks or gunshots. No surprise there--Louis is always shooting at something. We also noticed smoke off to the east, and we were a bit concerned because it was getting fairly windy. The railroad tracks are off in that direction, and sometimes railroad clearing crews pile up the brush they clear from the tracks and burn it. They usually watch their fires, but not always. Sometimes the piles smolder for days unattended.
8. Sometimes the crews pile the brush up, and kids come along and start them on fire, just for something to do. You know what they say about Elk River--no matter how hot it gets during the day, there's still nothing to do at night. I know, for a fact, one kid in particular, Dirk Miller, has started brush piles on fire before. He is one troubled kid! Around Elk River his nickname is "Fireball." I heard that he was arrested for starting fires in store dumpsters last fall, but the cops couldn't prove it, and they had to let him go.
9. Dirk was in Anderson's Hardware on Wednesday or Thursday before the fire trying to buy some Orion Emergency Flares, but I wouldn't sell them to him. Uncle Kyle has very strict policies about selling anything like that to kids. Anderson's Hardware even stopped selling spray paint to anyone under 18 after a graffiti epidemic several years ago. Even if there wasn't a store policy against it, I would never sell anything dangerous to a kid like Dirk Miller.
10. Anyway, the day after Dirk was in the store his uncle/aunt, Kennedy Price, came in and bought six Orion flares and some black powder. Black powder is a low explosive used by war re-enactors. It comes in two grades, one for muskets and one for cannons. When I asked which one s/he wanted, Kennedy didn't seem to know the difference. Kennedy gave me some lame story about using it to scare birds out of his/her huckleberry patch.
11. We keep very good records on who buys that stuff--it's the law! Federal law requires the customer to show identification and sign for black powder. After Kenney left, I looked in the book; that was the first time s/he had bought black powder at Anderson's.
12. When Romey and I got to Lee's, I told some of the other people there about the smoke. Some of them had seen it, too, and a few said they had seen a grass fire, or something. Kennedy was there, and s/he seemed unusually interested, or I should say upset, about the fire in the east. Kennedy seemed inappropriately nervous and agitated. I can't exactly put my finger on it, but something else was going on with Kennedy.

13. Like I said before, Dirk Miller is Kennedy's nephew, and I know how disturbing that kid can be, so maybe it was something on the home front--Dirk is living with Kennedy for the summer.
14. I guess the topic got dropped after Lee accidentally fell into his/her own pond. Lee was demonstrating the "proper" technique for using a brush hook when s/he lost his/her balance and toppled backwards into the pond. I guess Lee didn't hear us yelling to watch out. Lee is always doing things like that. Anyway, Lee was a good sport about it, and it was pretty funny, so we all had a good laugh and just forgot about the fire in the east.
15. We did have a fire of our own. It was a small fire--the one Lee used to cook the food. After the food had been cooked, we kept the fire going. There's nothing like sitting around an open campfire to bring people together. We put some of the pine branches that Lee had cleared on the fire, and they went up with a crackle. Some of the sparks drifted off into the sky, but I am sure they all faded to black before hitting the ground.
16. At one point, Lee even told Romey to check on the sparks as they drifted off toward the railroad tracks. I don't remember seeing Romey do it, but we were being very careful, especially since we could hear the fire department's tankers going by. We assumed they were dealing with the fire off to the east.
17. The party was unexpectedly fun. For one thing, after Lee fell into the pond s/he seemed to get off his/her high horse about the environment and just concentrate on having a good time with good people. Everyone was relaxed and had some funny story or joke to tell. It was a blast! Well, not everyone. Kennedy continued to be edgy.
18. At one point, Kennedy snapped at Lee to "watch that damn fire of yours!" It was entirely uncalled for and out of place. The fire was fine. If I had to guess, I would say Kennedy doesn't like Lee very much. Also, having Dirk living in your house would make anyone nervous about fire, I suppose. Still, there was no excuse for snapping like that at Lee, and it was really embarrassing.
19. Romey and I left Lee's place between 10 and 11 p.m. Before we left, I offered to douse the fire, but Lee said s/he was going to stay up awhile and watch it burn down on its own. As we headed back into town, we were passed by several fire tankers headed toward the campground. The sky was glowing from a fire, and I thought it was weird that the grass fire was still burning and that it seemed so close.
20. Because we aren't firefighters, we didn't think there was anything we could do to help, so we just decided to head home. I dropped Romey off at his place and went back to my apartment above Anderson's Hardware.

21. I read the article in the newspaper about the fire at the state park campground, and how the DNR park ranger thinks that fire was started by sparks from a neighbor burning brush. All I can say is that if that is true, it wasn't Lee Hatch! It had to be some other neighbor.
22. Kennedy is a neighbor of Lee's; maybe it came from his/her place! You will never convince me that Lee's small fire had anything to do with this tragedy. It wasn't that big of a fire, and we kept a pretty good eye on it. Like I said before, Lee is sort of a tree hugger these days, and s/he made sure someone was attending the fire at all times. Sure, the wind carried away some hot sparks, but I'm sure they were dead before they hit the ground. It would have been a physical impossibility for those sparks to start a fire!

Pursuant to *Utah Code Ann.* §78B-5-705, I declare, under criminal penalty of the State of Utah, that the foregoing is true and correct.

DATED the 3rd day of June, 2016.

Brett Anderson

Brett Anderson

Subscribed and sworn before me on this, the 3rd day of June, 2016.

John Wheeler

John Wheeler, Notary Public

**IN THE MOCK TRIAL COURT
ELK RIVER COUNTY, STATE OF UTAH**

<p style="text-align: center;">STATE OF UTAH</p> <p style="text-align: center;">Prosecution,</p> <p style="text-align: center;">v.</p> <p style="text-align: center;">LEE MORGAN HATCH,</p> <p style="text-align: center;">Defendant.</p>	<p style="text-align: center;">AFFIDAVIT OF RYAN FINAU</p> <p style="text-align: center;">Case No. 16cr0987</p>
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RYAN FINAU, having been duly sworn, hereby states the following:

1. I am the president of Forensic Consultants, Inc. We are forensic consultants in just about every area of products liability, property damage, and personal injury. As indicated on my attached CV, I have a bachelor's and master's in electrical engineering, an M.B.A., and also a Certified Safety Professional.
2. I have over 40 years of experience investigating the cause and origin of fires. I am a member of the National Fire Protection Association—NFPA--and sit on the committee that drafted NFPA 921, and the older NFPA 907M, *Guide for Fire and Explosion Investigations*.
3. I have written 12 texts and 75 articles on determining the cause and origin of fires, and I've given over 100 seminars. I have acted as a consultant to the Departments of Natural Resources and other state agencies investigating fires in 30 states, including Wisconsin, Minnesota, Iowa, Michigan, Illinois, California, Utah, Nevada, Arizona, Oregon, and Washington. I am also a consultant for the National Wildlife Federation's Education Committee.
4. In this case, I was retained by the attorneys for Lee Hatch about a week after the fire when it began to appear that people were blaming Hatch for the fire that destroyed Elk Creek State Campground and injured all those people. My standard consulting fee is \$450 an hour and \$750 an hour for testifying, with a minimum of one day for testifying. My associates are billed at varying lesser amounts depending on their qualifications. So far, we have billed Hatch's attorneys \$34,397.
5. I was retained and asked to address two questions: (1) Did the rock-ring fire on Lee Hatch's property spread to the east and cause the wildland fire at the state park and campground; and (2) Was Lee Hatch reckless in starting and maintaining the fire on his property. In my expert opinion, to a reasonable degree of scientific certainty, the answer to both questions is a resounding, "NO."

6. The conclusion by the prosecution that Lee Hatch's fire started the wildland fire at Elk Creek State Park is pure speculation and founded on an incorrect interpretation of the fire scene.
7. Wildfire investigations are particularly difficult, and it is easy to miscalculate the area of origin, let alone the actual cause. As opposed to a building fire where ventilation is easily identifiable, in a wildfire there are three different types of winds: meteorological, diurnal, and fire winds. With no building to contain the fire and block the winds, wildfires shift directions and speed up from the wind.
8. Prosecution's expert Eli Mohamed, generally correctly describes the spread of the fire, but leaps to an unsupported conclusion that the cause was a stray ember lifting into the air and crossing yards of grass to land fortuitously on a patch of dry enough grass to start it on fire.
9. First, the so-called embers that witnesses spoke about were crackles from branches lifting off into the air. These almost certainly died out before ever reaching the ground.
10. While secondary fires can be caused by wind-borne embers or firebrands, these are generally hot embers from an already existing forest fire that get blown by the wind and start spot fires in new locations a distance away from the original fire. These are not the small sparkles that float up into the air from an ordinary campfire with a much lower heat intensity. Anyone who has made or watched a campfire (or had a fire in an outdoor fire place in their backyard) has seen these small sparkles and knows that they drift up and then go out. They lack the staying power or the heat intensity to start spot fires.
11. Second, a simple look at the map of the scene will show anyone that the prosecution's story is full of hot air. As with any hot and windy summer day in this part of the country, the winds were coming out of the southwest as opposed to the cool winds from the northwest or north. Directly to the east of Hatch's property are the railroad tracks and Elk Creek Reservoir.
12. If indeed a stray ember blew out of Hatch's campfire, it would have needed to clear the rear of his/her property, and then it would have needed to clear the railroad tracks. If it was still hot enough when it landed across the tracks, it most likely would have landed in the northwest quadrant of the park. On the other hand, the open field where the prosecution claims the fire started is far to the southeast of Hatch's property. It is highly improbable for the Hatch fire to have generated a hot ember that drifted in that direction. Anything is possible, but that is an unlikely scenario.
13. A key factor in wilderness fires is the location of the heel versus the head of the fire. The heel is near the origin of the fire, away from the spreading portion and burns slowly against the wind or downhill. The fire head, on the other hand, is where the

fire is spreading fast and furious. The head is generally on the opposite side of the heel. The head of the fire was in the campground where the Luminas had pitched their tent. The fire was so intense there that it is fortunate no lives were lost.

14. Although the heel appears to be to the north-northwest of the campground, the type and characteristic of the fuel sources is a huge factor in the spread of the fire. The drier and smaller surface fuels (also called fine fuels), here the brush and scrub, burn much more readily than the living sap-filled pine trees to the west and south of the campground.
15. Thus, the origin is to the north-northeast, and the fire then spread quickly through the prairie--away from the reservoir and its moister vegetation straight to the camp grounds-- at the same time becoming hotter and hotter in order to start to burn and char the trees on the edge. The winds created by the fire moving in the southwest direction then meet the southeast meteorological winds creating a swirling effect and burning in multiple directions.
16. Thus, the fire does spread in a general southeast direction away from the Hatch property and leaves evidence, such as cupping indicating so, but this is due to the fuel source, not because the fire came from the Hatch property. Don't forget--to have come from Hatch's fire as alleged by the prosecution, the embers had to clear his property and the railroad tracks. The origin is one thing; the cause is another. Here, I believe the actual cause is undetermined---we only know the approximate origin.
17. For some reason unknown to me, the authorities did not seem to investigate the possibility that kids were playing around the railroad tracks and started the fire just off to the east of the tracks. Maybe they would rather blame an outsider than a local juvenile delinquent.
18. I heard that the local teenagers like to hang out under the small trestle smoking pot and drinking beer. Some kids were seen there earlier in the day. A stray cigarette or match is a likely cause of the fire and fits the fire patterns. All it would take is one match in that dry brush and "poof." Unfortunately, after the heat of this fire, one match is not going to be found. I did, however, notice beer cans under the trestle.
19. The prosecution also discounts the possibility of lightning. It is a scientifically accepted fact that dry lightning causes a majority of the forest fires in this country. It is even more common here in the West, where one study estimated that 70% of the wildfires are caused by lightning. I reviewed the meteorological data for that day, and there were storm conditions passing through the area, but I could not find any specific evidence of lightning strikes in the general area.
20. In terms of Hatch's care in making and maintaining the fire, there was nothing wrong or improper in his/her behavior. Hatch built a fire in a cleared area surrounded by green grass, exactly how one should build a fire.

21. Although I would like to have seen a pile of dirt or sand to throw on it to control the fire, it was perfectly proper. There seem to be differing stories, but according to Hatch, s/he kept an eye on the fire and made sure it was almost out before s/he went to bed--as s/he should have--although dousing with water would have been better. Not totally extinguishing it, however, has no connection to the fire over in the park. Instead, the potential danger is only that someone might walk into a still hot fire and burn themselves.
22. In sum, it is my expert opinion that Hatch neither caused the fire that destroyed the campground and injured those campers, nor was Hatch reckless in starting and maintaining his/her fire. The actual cause of the fire remains undetermined.

Pursuant to *Utah Code Ann.* §78B-5-705, I declare, under criminal penalty of the State of Utah, that the foregoing is true and correct.

DATED the 3rd day of June, 2016.

Ryan Finau

Ryan Finau

Subscribed and sworn before me on this, the 3rd day of June, 2016.

Jennifer Gray

Jennifer Gray, Notary Public

EXHIBITS

EXHIBIT 1



State of Utah

Department of Natural Resources
Division of Forestry, Fire and State Lands

Release Date: Friday, May 13, 2016

Fire Restriction Order

Effective May 13, 2016 through May 31, 2016

Utah State Division of Forestry and State Lands in cooperation with Elk River Fire District is enacting fire restrictions beginning May 13, 2016, which affect all of Elk River County. These restrictions will remain in effect until May 31, 2016, or until conditions improve.

The current weather conditions and the conditions of vegetation in the affected areas have created risk of wildland fire. Due to these conditions, a ban on the use of all fireworks and open fires in the restricted areas has been implemented (unless specifically approved). Campfires are allowed in approved fire pits only.

Although this notice allows for campfires, it does not mean that we can let our guard down. Conditions vary greatly throughout Elk River County, and it is important that everyone use good judgment when deciding to have a campfire. If a campfire gets out of control and creates a wildland fire, the individuals responsible for the campfire may be held responsible for the costs associated with fighting the fire.

We ask the public to please exercise good fire safety practices when having campfires. Here are some tips:

1. Ensure that your campfire pit is in an area where the fire may not spread to other vegetation. A distance of 25 feet is recommended from the fire pit to other combustible materials.
2. Keep the fire no larger than 3 feet in diameter and 2 feet in height.
3. Have a means to extinguish the fire.
4. Fires must be attended by an adult at all times.
5. Completely extinguish the fire when done with the activity.

If you need further assistance, please contact Elk River Fire District at (435) 121-3434 or visit www.elkriverfiredistrict.com.

Sincerely,

Sam Madden
Fire Marshal; Elk River Fire District

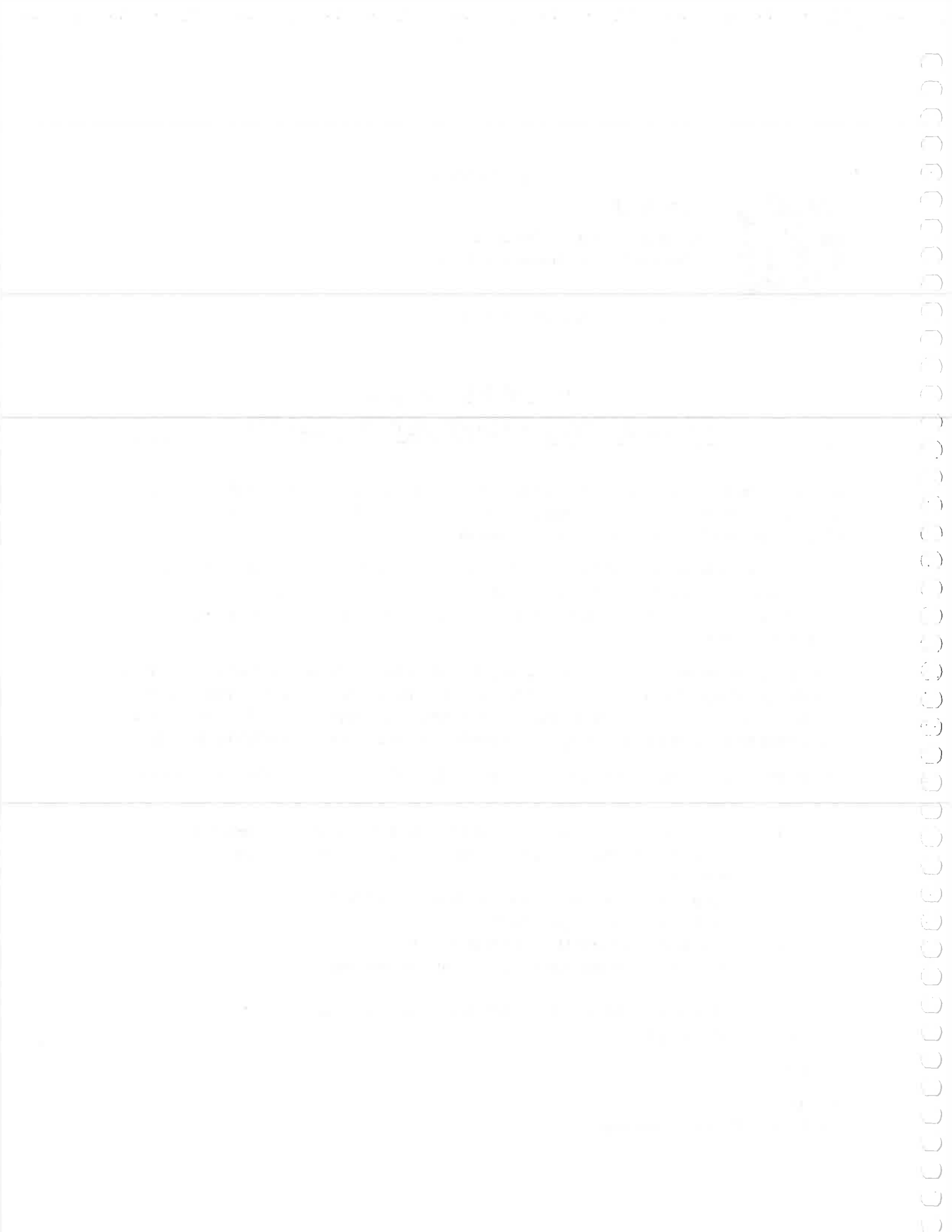


EXHIBIT 3



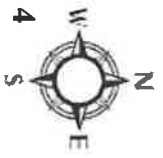


EXHIBIT 4

Elk Creek
State Park

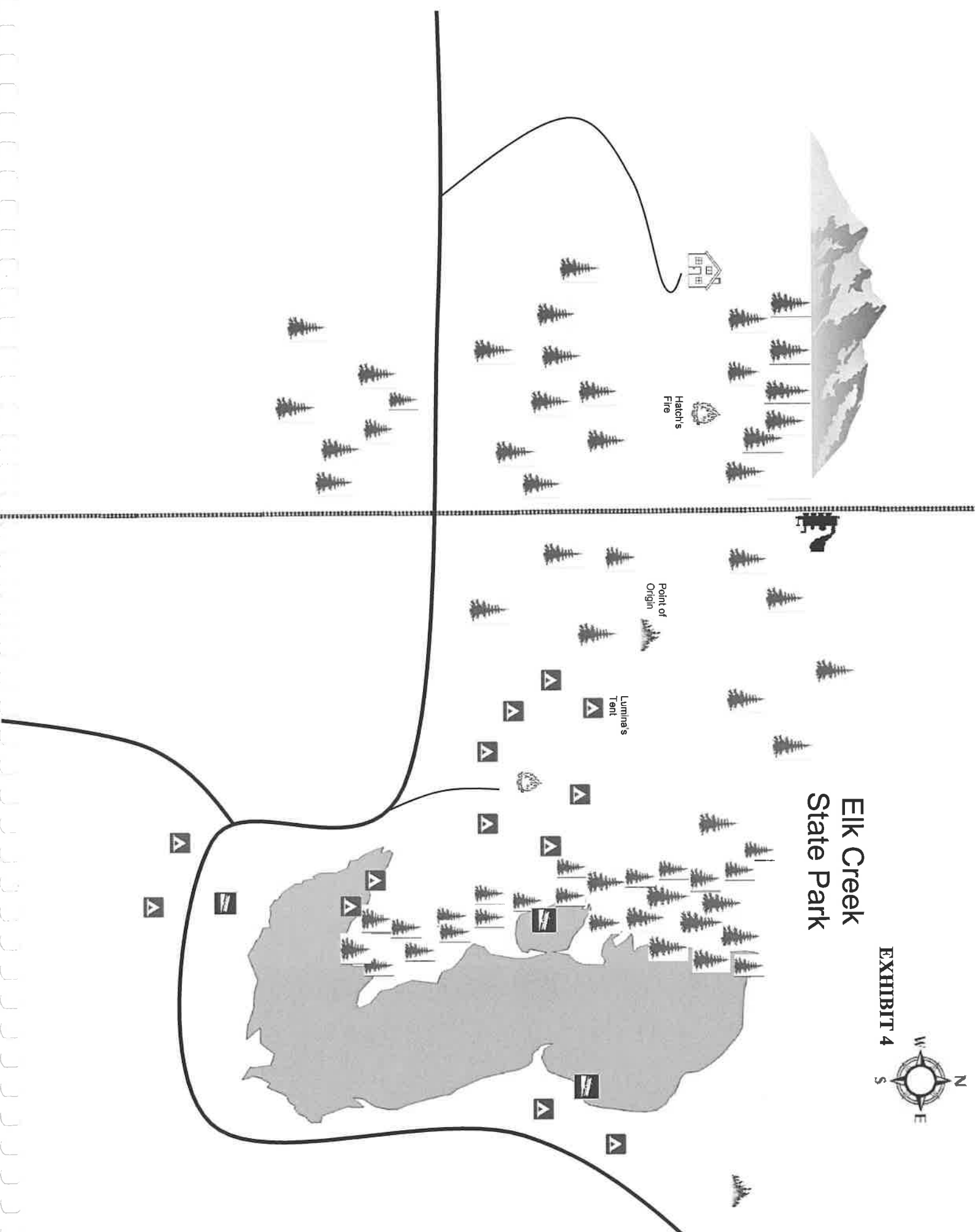


EXHIBIT 5

ELI MOHAMED

Curriculum Vitae

EDUCATION

Michigan State University

Ph.D. in Silviculture, Department of Forestry, 2002

Purdue University

Master of Science in Forest Biology, Department of Forestry and Natural Resources, 1996

Research assistant to Professor Hugh Fuego; investigating the improvement of genetic resistance of butternut trees.

I.A.A.I. Certified Fire Investigator, 1983

Utah State University

Bachelor of Science in Forestry (with high honors), Department of Forestry, 1988

EXPERIENCE

Wildfire Consulting Services, Washington D.C.

Owner and President, 2008 to present

U.S.D.A. Forest Service, Uwharrie National Forest, Troy, North Carolina

Assistant Fire Management Officer, 2003-2008

U.S.D.A. Forest Service, Pacific Northwest Research Station, Portland, Oregon

Forester, 1996-2000

U.S.D.A. Forest Service, Sequoia National Forest, Porterville, California

Crew Superintendent, 1991-1994

Society to Protect Our Trees, Samoa, California

Executive Director, 1989-1991

Clearwater Fire Department, Clearwater, Wisconsin

Paid, On-call, Firefighter, 1986-1988

Elk River Fire Department, Elk River, Utah

Paid, On-call Firefighter, 1978

HONORS AND AWARDS

Certified Forester, Society of American Foresters, 2010

Best Presentation, Society of American Foresters' Annual Meeting, "*Investigating Forest Fires in the Rain*," 2011

EXHIBIT 6

RYAN FINAU

Curriculum Vitae

EDUCATION

Everest College, B.E.E.E., 1956
University of Phoenix, M.E.E.E., 1958
DeVry University, M.B.A., 1982
Registered Professional Engineer
Wisconsin, Minnesota, Utah, California, Texas, Arizona
Dee's Safety School, 1987
Certified Safety Professional, C.S.P., Certified Fire and Explosion Investigator
(CFEI Reg. No. 7845-7897)

PROFESSIONAL ASSOCIATIONS

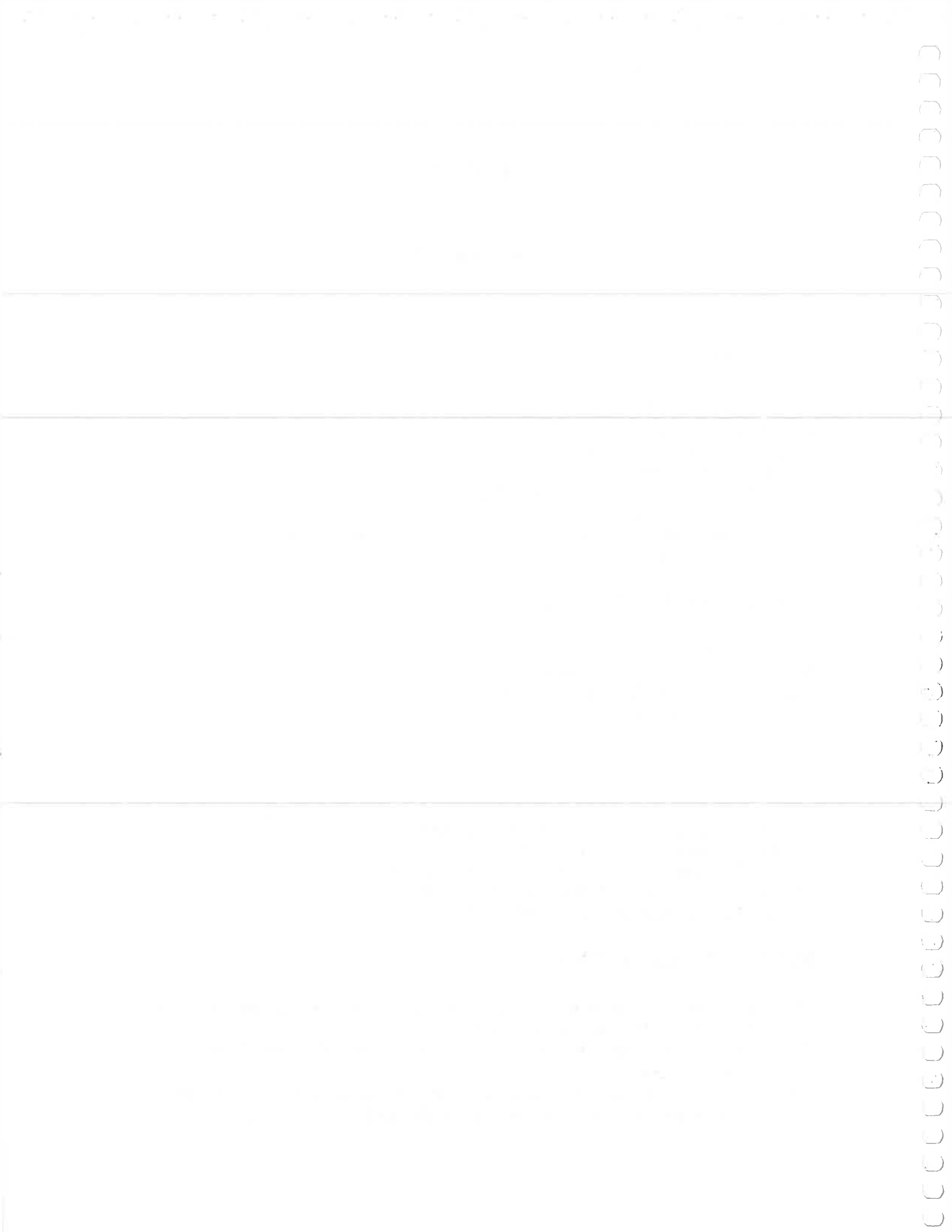
ASTM International
National Fire Protection Association
National Association of Fire Investigators
International Association of Fire Investigators
National Wildlife Association

EXPERIENCE

Forensic Consultants, Inc., President, 2003 to present
Forensic Consultants, Inc., Vice-President, 1987 to 2003
Forensic Consultants, Inc., Fire Investigator, 1975 to 1987
Time and Space Company, Technician, 1971 to 1975
Widgets, Inc., Electrical Engineer, 1958 to 1971

RECENT PUBLICATIONS

"The Use of Sonic Implements in Detecting the Presence of Gaseous Signatures from Toxic Fires," Burn Magazine, Summer 2014.
"Diurnal Versus Fire Winds: Which are Truly Determinative of Fire Spread," Hot Winds Magazine, Spring 2013.
"Is Anyone Out There? Do Aliens Really Exist: An Examination of Electrical Evidence," UFOs, Aliens, and Other Unexplained Phenomena Quarterly, Fall 2012.



ORGANIZATIONS/COMMITTEES

NFPA 921 Drafting Committee

NFPA 907M Drafting Committee, "*Guide for Fire and Explosion Investigations*"

NFPA Steering Committee

ASTM Electrical Engineering Standards Subcommittee

National Wildlife Forest Preservation Commission

Greater Orlando Chamber of Commerce

EXHIBIT 7

Memorial Day Ends in Tragedy as Fire Destroys State Park Campground, Injures 53 People

May 29, 2016

ELK RIVER -- The California fires south of Lake Tahoe have garnered the nation's attention, but the unusually hot and prolonged dry weather in Utah has caused a catastrophe here as well. Over the past weekend, a fire raged through the Elk Creek State Park and Campground, sending 53 people to local hospitals for treatment due to smoke inhalation and burns. The fire has destroyed over 1,875 acres of wildland and scorched 75 designated camping sites; destroying 47 RVs, 23 boats, 12 ATVs, 53 trucks, 14 automobiles, and 17 tents.

One local man, Larry Lumina, suffered third-degree burns, but his family credits the heroism of firefighters for saving his life when they rescued him from his burning tent. Lumina had become trapped in his sleeping bag and had been rendered unconscious when the firefighters pulled him to safety. Lumina's wife, Lucy Lumina, and their two small children, Lucky and Luna, were able to escape with minor burns and smoke inhalation. All three were treated at Elk River County Hospital and then transported to University Hospital, where all are reported to be in stable and good condition at the time of this report. Mr. Lumina remains in critical condition and has suffered extensive nerve damage due to his burns; his surgery is scheduled for later this week to lessen the severe scarring and contracture. Four other individuals, whose identities have not yet been revealed, also suffered from third-degree burns and are being treated at nearby hospitals.

According to Department of Natural Resources Park Ranger, Chris Hernandez, the department believes the fire was caused when a neighboring property owner started a large bonfire to celebrate Memorial Day weekend. According to Park Ranger Hernandez, the property owner allowed sparks to escape, which in turn caused the park fire.

The matter is still under investigation, but Park Ranger Hernandez said Assistant District Attorney V. Parker Stevens is reviewing all of the reports and will make a decision by the end of the week. The combination of high temperatures, along with brisk winds and dry conditions, has increased the fire danger across much of Utah and the nation.

