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8 Of Attorneys for Plaintiffs

9 **IN THE CIRCUIT COURT OF THE STATE OF OREGON**  
10 **FOR THE COUNTY OF MARION**

11 SHYLA ZEOBER, JAYCE DELHOYO,  
12 KAIDEN DELHOYO, CARL WILLSON,  
13 JAMES WILLSON, JOHNNY WHEELER,  
GRACE WELLMAN, JASON WELLMAN,  
14 TERRY WELLMAN, HEATHER  
WEAVER, RYAN WEAVER, JAMES  
15 VAUGHN, ALEXIS WILLIAMS,  
SAMANTHA WILLIAMS, RICKEY  
16 THOMAS, UTE THOMAS, TRINA  
THOMAS, CALEB STEEPLES, SHALYNN  
17 HICKS, ALEXANDER CALDWELL  
MOTLEY, SOPHIA CALDWELL  
18 MOTLEY, DONALD TESDAL, MICHELE  
TESDAL, EVON TESDAL, LAUREN  
19 TESDAL, SAM TESDAL, THOMAS  
TESDAL, MICHAEL SULLIVAN,  
20 DEANNA SULLIVAN, TREVIN CONNER,  
AIDEN SULLIVAN, HEATHER ADAIR  
21 SULLIVAN, THOMAS STROSCINE,  
22 DARYL STROSCINE, GRANT SPEER,  
MARCUS SPEARS, DOUG GIBSON,  
23 STEPHEN SMITHER, CAROLE SMITHER,  
MIRANDA SMITH, ROBERT  
24 SHELLABARGER JR., AYDEN  
25 COFFMAN, ROXANNA SCHROEDER,  
FREDRICK SCHROEDER, SCOT  
26 ROONEY, MISTI ROONEY, LYLE  
ROGERS JR., WAYNE REPOSA, LINDA  
27 REPOSA, GARY RAMAGE, JOANN  
ROBINSON, and SADIE ROBINSON,  
28

Case No.: \_\_\_\_\_  
COMPLAINT  
(Negligence; Nuisance; Trespass)  
Prayer: \$750,000,000  
Fee Authority: ORS 21.160(e)  
JURY TRIAL REQUESTED  
CLAIM NOT SUBJECT TO MANDATORY  
ARBITRATION



1 3.

2 On Labor Day, wildfires predictably erupted in the region after high winds knocked down  
3 power lines owned, operated, and improperly maintained by defendant. Defendant's downed  
4 power lines subsequently sparked—igniting nearby trees and brush—and razed more than 193,000  
5 acres—destroying homes, businesses, and lives. This mega fire, which came to be known as the  
6 Beachie Creek fire or the Santiam fire, completely destroyed over 1,300 structures, including 470  
7 homes and claimed the lives of at least 8 individuals.

8 4.

9 The Beachie Creek fire could have been prevented had PacifiCorp properly maintained its  
10 equipment or instituted a public safety power outage (i.e., de-energizing). Instead, PacifiCorp kept  
11 its improperly maintained power lines energized even after receiving a multitude of warnings days  
12 before high winds toppled its improperly maintained electric infrastructure.

13 5.

14 Now, hundreds of families, including plaintiffs, are displaced from their homes with no  
15 assurances of whether they will be compensated for the damage wrought to their lives. They are  
16 left not knowing where they will sleep, whether they will be able to afford temporary shelter, or  
17 whether they will even be able to rebuild their lives, all amid a dangerous pandemic.

18 6.

19 As a result, plaintiffs have suffered devastating property damage, economic losses, and  
20 disruption to their homes, businesses, lives, and livelihoods.

21 **PARTIES**

22 7.

23 All plaintiffs are natural persons and residents of the State of Oregon.

24 8.

25 Defendant PacifiCorp is a corporation organized and existing under the laws of the State  
26 of Oregon with its principal place of business located at 825 NE Multnomah Street, Suite 2000,  
27 Portland, Oregon 97232.



1 14.

2 Indeed, Oregon recognizes these dangers and statutorily mandates that public utilities, like  
3 PacifiCorp, furnish adequate and safe service, equipment and facilities.

4 15.

5 Furthermore, the Oregon Public Utility Commission mandates that utilities adhere to safety  
6 standards such as maintaining a minimum vegetation clearance from its electrical lines to provide,  
7 *inter alia*, reasonable service continuity, and fire prevention.

8 16.

9 PacifiCorp is aware of the risks posed by its electrical delivery system and what precautions  
10 it needs to take to avoid catastrophic wildfires like the Beachie Creek fire.

11 17.

12 The Beachie Creek fire is not PacifiCorp's first wildfire. In 2018, PacifiCorp's failure to  
13 maintain its infrastructure—and in that instance, failure to properly install, inspect, and maintain  
14 its power line connectors—caused the Ramsey Canyon fire in Jackson County, Oregon. The  
15 Ramsey Canyon fire destroyed nearly 2,000 acres of federal, state, and private land. PacifiCorp  
16 agreed to pay a \$3.4 million civil settlement to the State of Oregon.

17 18.

18 Events like the Ramsey Canyon fire and various other devastating wildfires have caused  
19 PacifiCorp's President and CEO, Stefan Bird, to recognize that electrical companies play a role in  
20 significantly increasing risks of wildfires in the Western United States:

21 As the frequency, intensity and duration of wildfires has increased in the west,  
22 electrical companies need to take measures to reduce the risk of catastrophic  
23 wildfires during extreme weather conditions, recognizing the importance of a  
statewide approach; a collaborative stakeholder process is necessary to reduce  
the overall risk.<sup>1</sup>

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27 <sup>1</sup> Stefan Bird, Utility Preparedness for Wildfire, PacifiCorp (Sept. 26, 2019), [https://  
28 www.oregon.gov/gov/policy/Documents/9.26.2019%20Wildfire%20Mitigation%20Plans.pdf](https://www.oregon.gov/gov/policy/Documents/9.26.2019%20Wildfire%20Mitigation%20Plans.pdf)

1 **II. PacifiCorp Knew of Elevated Fire Risks in Oregon During the Labor Day Weekend.**

2 19.

3 Over the Labor Day weekend, the Beachie Creek fire erupted and devastated communities  
4 along Santiam Highway Route 22 including Detroit, Gates, Mill City, and Lyons. The fire—which  
5 was classified as a mega fire—burned 193,573 acres, destroyed 1,323 structures, including 470  
6 homes, and claimed the lives of at least 8 individuals.

7 20.

8 In the days leading up to the Beachie Creek fire, weather conditions existed in Oregon that  
9 were ripe for disastrous wildfires. The U.S. Drought Monitor indicated that on the week of  
10 September 1, 2020 nearly 81% of Marion County fell into drought category D2, indicating severe  
11 drought, and nearly 12% of the county fell into category D1, indicating moderate drought  
12 conditions. A week later, on September 8, Marion County was facing even greater dry conditions  
13 with 17% of the county in the D1, moderate drought category, and nearly 83% in the D2 severe  
14 drought category.

15 21.

16 The U.S. National Weather Service (“NWS”) has been issuing severe weather warnings in  
17 Marion County since at least August 2020. These warnings include several “Red Flag,” “Excessive  
18 Heat,” and “Heat Advisory” warnings.

19 22.

20 A Red Flag Warning alerts resident, emergency responders, and utilities (like PacifiCorp)  
21 of the onset, or potential onset, of critical weather and dry conditions that could lead to rapid or  
22 dramatic increases in wildfires. Red Flag Warnings are one of the highest alerts. Fire agencies take  
23 Red Flag Warnings seriously and “respond by positioning additional firefighting resources,  
24 increasing detection flights and prevention patrols, or extending staffing hours. The forecasts are  
25 critical information for planning prescribed burns.”<sup>2</sup>

26 \_\_\_\_\_  
27 <sup>2</sup> What is a red flag warning? | OSU Extension Service, <https://extension.oregonstate.edu/forests/fire/what-red-flag-warning> (last visited March 10, 2021).  
28

In the days leading up to Labor Day weekend, the NWS issued several more severe weather warnings:

a. On September 2, 2020 the NWS issued a Red Flag Warning for Marion County stating that “critical fire weather conditions are either occurring now, or will shortly.” The NWS issued this warning due to high winds between 10 and 15 mph, with gusts up to 25 mph, and low relative humidity. The NWS further cautioned that “conditions may be favorable for rapid fire spread which may threaten life and property.”

b. On September 4, 2020 the NWS issued a Fire Weather Watch for Marion County lasting until September 9. The NWS warned that “critical fire weather conditions are forecast to occur” due to high winds and low relative humidity.

c. On September 5, 2020 the NWS issued yet another Fire Weather Watch for Marion County lasting until September 9.

d. On September 5, 2020 the NWS issued a Red Flag Warning for Marion County lasting until September 8. The NWS stated that “hot, dry, and windy conditions are expected” in the region. It further cautioned that “these winds have the potential to reach historic speeds for early to mid September.” Like the previous Fire Weather Watches and Red Flag Warnings, the NWS stated that “critical fire weather conditions are either occurring now, or will shortly” and that “[c]onditions may be favorable for rapid fire spread which may threaten life and property.”

e. On September 6, 2020 the NWS issued a High Wind Watch for Marion County lasting until September 8. The NWS forecast high winds between 25 and 40 mph with gusts up to 75 mph. Most importantly, the NWS warned that “damaging winds could blow down trees and power lines. Widespread power outages are possible.”

f. On September 6, 2020 the NWS once again issued a Red Flag Warning in Marion County lasting until September 9. The NWS again reiterated that forecast “winds

1 have the potential to reach historic speeds” and that humidity level “are expected to reach  
2 critical levels.”

3 g. On September 7, 2020 the NWS issued a High Wind Warning in Marion  
4 County lasting until September 8. The NWS cautioned that wind gusts can reach up to 75  
5 mph and that “[p]eople should avoid being outside in forested areas and around trees and  
6 branches. If possible, remain in the lower levels of your home during the windstorm, and  
7 avoid windows.” The NWS specifically warned that such high winds could cause trees to  
8 be blown down thus leading to power outages: “Tree limbs and even whole trees will be  
9 susceptible to being blown down. Be prepared for power outages.” And finally, the NWS  
10 highlighted that such “[c]onditions will be favorable for rapid fire spread.”

11 24.

12 The NWS widely publicized the adverse weather conditions forecast for the Labor Day  
13 weekend. Indeed, the NWS Portland, Oregon office warned the public by making several posts on  
14 its Facebook page featuring the Fire Weather Watch in the region where “hazardous fire weather  
15 conditions are possible.” It also made a post about the “High Fire Danger” in the region and warned  
16 of “favorable conditions for rapid fire spread.” See Figures 1-2.



25 **(Figure 1)**



**(Figure 2)**

25.

In the time leading up to the Beachie Creek fire, PacifiCorp was closely monitoring the adverse weather conditions in Oregon, including information disseminated by the NWS. On September 7, PacifiCorp issued the following statement on its Twitter page: “High winds are forecast for later today in many parts of our area. For storm ready tips, visit us at <http://pacificpower.net/prepare>.” The Twitter post also incorporated and quoted the NWS Portland’s Twitter post warning that the projected high winds are “on track” for the next 24-48 hours. *See Figure 3.*



**(Figure 3)**

26.

PacifiCorp posted the same message on its verified Facebook page also incorporating a statement made by the NWS Portland office. The post included graphics featuring the Red Flag and High Wind warnings issued for that weekend along with details on the adverse weather conditions highlighting the low relative humidity in the region and forecast wind gusts up to 75 mph. *See Figure 4.*



**(Figure 4)**

27.

In summary, PacifiCorp was keenly aware of adverse weather conditions during the Labor Day weekend resulting from severe droughts in the region together with historic high winds having the potential to knock down power lines. PacifiCorp understood the severity of these weather conditions and chose to warn its customers but failed to take preemptive measures (or any measures at all) designed to prevent fire risks.

**III. PacifiCorp’s Negligent Practices Caused the Beachie Creek Fire.**

28.

PacifiCorp knows how to respond to severe weather conditions that pose a foreseeably high wildfire risk and what factors contribute to those risks. Yet, PacifiCorp failed to act to prevent the Beachie Creek fire.

29.

In light of the increasing number of wildfires in the West—including PacifiCorp’s own Ramsey Canyon fire—PacifiCorp implemented new policies in June 2019 aimed at “keeping

1 communities safe during those high-wind and dry condition.” These new policies “include clearing  
2 vegetation around power lines and poles, increasing inspections at facilities, training their field  
3 crews in wildfire suppression, [...] installing local weather stations to help identify high fire risk  
4 days [and implementing] ‘Public Safety Power Shutoffs’ if dangerous weather is expected in high  
5 fire risk areas.”<sup>3</sup>

6 30.

7 PacifiCorp’s own records show that vegetation contact with its electrical lines plays a  
8 significant role in causing power line faults. In a testimony before the Public Utility Commission  
9 of Oregon, David M. Lucas, PacifiCorp’s Vice President, stated: “PacifiCorp’s records indicate  
10 that 34 percent of outages are related to some form of contact. Of that, approximately 57 percent  
11 are associated with vegetation.”<sup>4</sup>

12 31.

13 PacifiCorp acknowledges that wildfires have grown more common and have become more  
14 intense in the past years. In its “2020 Fire Season Outlook,” PacifiCorp stated that “fire season  
15 across the Western United States increased by nearly six weeks over a 20 year span (1992 – 2012)”  
16 and “Mega Fires (more than 100,000 acres) increased threefold in the last 10 years.”

17 32.

18 To mitigate wildfire risks, various utility companies in the West utilize so-called public  
19 safety power shutoffs (“PSPS”) during high wildfire risk conditions. This strategy involves  
20 preemptively shutting off power or de-energizing power lines in an at-risk region for a period of  
21 time. Because no electricity flows through the de-energized equipment, that equipment cannot  
22 spark and ignite a fire—even if high winds or trees knock down power lines.

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23  
24 <sup>3</sup> Erin Ross, *Oregon Utility Announces Wildfire Prevention Policies In Wake Of California*  
25 *Tragedies*, OPB (June 13, 2019), <https://www.opb.org/news/article/pacific-power-wildfire-risk-prevention/>

26 <sup>4</sup> *Reply Testimony of David M. Lucas Before The Public Utility Commission Of Oregon*, The  
27 Public Utility Commission of Oregon (June 2020)

1 33.

2 In May 2020, PacifiCorp revealed its “Wildfire Mitigation and Public Safety Power Shutoff  
3 (PSPS) Preparation” plan. According to the plan, PacifiCorp will consider various metrics—  
4 predominately precipitation and winds—when determining to implement a PSPS. PacifiCorp also  
5 considers the following factors when determining to implement a PSPS:<sup>5</sup>

- 6 a) Dry trees and brush and other potential wildfire fuel
- 7 b) High, sustained winds
- 8 c) Extremely low humidity
- 9 d) Current and forecasted weather conditions from multiple third parties and our  
10 own weather stations
- 11 e) Population density
- 12 f) Real-time observation from on-the-ground experts
- 13 g) Input from local public safety and health agencies

14 34.

15 It is apparent that PacifiCorp knows that shutting down power during adverse weather  
16 conditions reduces fire risks.

17 35.

18 Nonetheless, PacifiCorp did not implement a PSPS in Marion County during the Labor  
19 Day weekend when historically high winds capable of knocking down power lines and prolonged  
20 period of drought created adverse weather conditions.

21 36.

22 Other utility companies, however, heeded the warnings. Consumer Power, a small electric  
23 cooperative that operates in the region, shut off its grid at 7 pm on Labor Day amid high fire  
24 danger. James Ramseyer, a member service director and spokesman for Consumer Power stated

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25  
26  
27 <sup>5</sup> Public Safety Power Shutoff, Pacific Power, <https://www.pacificpower.net/outages-safety/wildfire-safety/public-safety-power-shutoff.html> (last visited March 8, 2021).

1 “[a]ll indications to us, in our service territory, was that those areas were at very high risk. We  
2 were at the highest level of danger we could be.”<sup>6</sup>

3 37.

4 Other electricity providers in the region chose to de-energized their power lines to prevent  
5 catastrophic wildfires. For example, Portland General Electric shut off power to approximately  
6 5,000 residents in the Mount Hood area. The Eugene Water & Electric Board also de-energized its  
7 power lines as a preemptive decision to mitigate the risk of wildfires. When defending its decision  
8 to implement a PSPS, the Eugene Water & Electric Board spokesperson told the press, “I know  
9 people weren’t happy, but the idea was not to be the cause of a fire.”

10 38.

11 Predictably, the historically high winds toppled energized power lines causing them to  
12 spark and ignite nearby fuel. In a September 10 press release, fire officials confirmed that downed  
13 powerlines were to blame for the Beachie Creek fire: “at least 13 new fires were started between  
14 Detroit and Mehama from downed powerlines during the peak of Monday’s wind event.”<sup>7</sup>

15 39.

16 Indeed, PacifiCorp acknowledged the historically high winds in the region and admitted  
17 that they did not shut off power during the Labor Day weekend. A PacifiCorp representative stated:

18 The winds that blew through the Santiam Canyon were atypical and very  
19 different and much faster-moving from what we would normally see.  
20 Pacific Power did not perform a Public Safety Power Shutoff prior to the  
21 historic windstorm. However, we did de-energize lines at the request of  
22 local emergency agencies to allow firefighters to do their jobs safely.

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23 <sup>6</sup> Zach Urness, *In wake of wildfires, Pacific Power says Santiam Canyon wasn’t in ‘power*  
24 *shutoff area,’* Salem Statesman Journal (Sept. 24, 2020), [https://www.statesmanjournal.com/](https://www.statesmanjournal.com/story/news/2020/09/24/oregon-wildfires-beachie-creek-fire-santiam-canyon-pacific-power/3503357001/)  
25 [story/news/2020/09/24/oregon-wildfires-beachie-creek-fire-santiam-canyon-pacific-power/3503](https://www.statesmanjournal.com/story/news/2020/09/24/oregon-wildfires-beachie-creek-fire-santiam-canyon-pacific-power/3503357001/)  
26 [357001/](https://www.statesmanjournal.com/story/news/2020/09/24/oregon-wildfires-beachie-creek-fire-santiam-canyon-pacific-power/3503357001/)

27 <sup>7</sup> *Beachie Creek Fire (\*Incident Name Update) Update Sept. 10 2020 - InciWeb the*  
28 *Incident Information System* (Sept. 10, 2020), [https://inciweb.nwcg.gov/incident/article/7001/55](https://inciweb.nwcg.gov/incident/article/7001/55449/)  
[449/](https://inciweb.nwcg.gov/incident/article/7001/55449/)

1 40.

2 Firefighters assigned to the Beachie Creek fire saw firsthand when energized power lines  
3 tumbled down at the Old Gates Elementary School. According to the Wall Street Journal, “[a]s  
4 winds picked up on Sept. 7, a tree hit an electric line, causing power to arc into a metal fence and  
5 igniting vegetation around a wildfire command center in the town of Gates.” Sgt. Jeremy Landers  
6 of the Marion County Sheriff’s Office stated that his agency had “numerous accounts of power  
7 lines down and arcing from those lines” along State Highway 22.<sup>8</sup>

8 41.

9 Several area residents also saw the devastation that the live power lines have caused in the  
10 region. A Gates resident, for example, saw five transformers blow up from his porch. Several other  
11 eyewitnesses described an explosion of power line transformers that threw sparks around the Old  
12 Gates Elementary School.<sup>9</sup>

13 42.

14 Had PacifiCorp de-energized its power lines and implemented a PSPS before historic  
15 winds whipped through the region, the devastation caused by the Beachie Creek fire would have  
16 been prevented. Rick Stratton, a wildfire expert and analyst, told a local publication that “[i]f the  
17 power lines hadn’t gone down, this [wildfire] would be a different story. We’d be talking about a  
18 much different level of impact. Those original fires did move in a way we’ve never seen in this  
19  
20  
21

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22  
23 <sup>8</sup> Rebecca Smith and Katherine Blunt, *Oregon Fires Show Power Lines Pose Threat Beyond*  
24 *California*, The Wall Street Journal (Sept. 17, 2020), <https://www.wsj.com/articles/oregon-fires-show-power-lines-pose-threat-beyond-california-11600353002>

25 <sup>9</sup> Zach Urness, *In wake of wildfires, Pacific Power says Santiam Canyon wasn’t in ‘power*  
26 *shutoff area,’* Salem Statesman Journal (Sept. 24, 2020), <https://www.statesmanjournal.com/story/news/2020/09/24/oregon-wildfires-beachie-creek-fire-santiam-canyon-pacific-power/3503357001/>  
27  
28

1 area, but when you add multiple new ignitions, right next to homes, during extreme weather, that's  
2 a terrible mix.”<sup>10</sup>

### 3 PLAINTIFFS' EXPERIENCES

4 43.

5 Plaintiffs are all victims of the Beachie Creek fire who suffered substantial losses.

6 44.

7 The following are typical examples and narratives from plaintiffs who suffered losses  
8 during the Beachie Creek fire:

9 a. Plaintiff Doug Gibson lost his home, his workers' trailers, and his mushroom farm  
10 in Gates, Oregon, to the Beachie Creek fire. Doug had been living on the 2.5-acre  
11 property for 20 years and housed two farmworkers for at least 14 years. After the  
12 fire destroyed his home and multiple people's livelihood, Doug took refuge at a  
13 local pastor's home.

14 b. Plaintiffs Rickey and Ute Thomas lost their home of 25 years in Lyons, Oregon, to  
15 the Beachie Creek fire. The pair also lost six beloved cats, five chickens, several  
16 pieces of valuable family heirlooms, and important marriage and property title  
17 documentation. The night of the fire, Rickey was startled awake by Ute while the  
18 fires were consuming part of their property and “fireballs” were flying outside. The  
19 pair drove through flames until they reached a Safeway parking lot. Rickey and Ute  
20 stayed in a hotel room for 2 months while cleaning the charred remains of their  
21 home. They now live in a small trailer. Because of stress and their current living  
22 situation, Rickey and Ute have been unable to resume routines and habits, such as  
23 fostering local felines.

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24  
25  
26 <sup>10</sup> Zach Urness, *As frustration mounts, here's what we know about the cause of the Santiam*  
27 *Canyon wildfires*, Salem Statesman Journal (Oct. 28, 2002), [https://www.statesmanjournal.com/  
28 story/news/2020/10/25/beachie-creek-santiam-wildfires-oregon-department-forestry/5999851002/](https://www.statesmanjournal.com/story/news/2020/10/25/beachie-creek-santiam-wildfires-oregon-department-forestry/5999851002/)

1 c. Plaintiff Grant Speer lost his trailer home of 14 years in Gates, Oregon, to the  
2 Beachie Creek fire. Grant also lost important property documents, treasured family  
3 pictures, life-long scrapbooks, and all necessary living furniture. The night of the  
4 fire, Grant was woken up by a good Samaritan banging on the side of his trailer.  
5 When he went outside, Grant could see flames rolling down a hillside. Grant  
6 grabbed his medication and drove through flames and the deafening roar of falling  
7 trees. The roads were extremely congested, and Grant recalls worrying about the  
8 traffic speed and the looming flames. That night, Grant slept in the Salem  
9 fairgrounds parking lot and later drove to a friend's home in Eugene, Oregon. Grant  
10 returned home several weeks later only to find the charred remains of his trailer  
11 home. Grant, a retired and disabled veteran, spent the remainder of his savings in a  
12 small '83 motorhome and now stays on a friend's property far from the area he once  
13 called home.

14 **FIRST CLAIM FOR RELIEF**  
15 **Negligence**

16 45.

17 Plaintiffs reallege paragraphs 11 through 43 above.

18 46.

19 Defendant has a duty to apply a level of care corresponding with and proportionate to the  
20 danger of designing, engineering, constructing, operating, and maintaining electrical transmission  
21 and distribution systems.

22 47.

23 Defendant has a duty of vigilant oversight in the maintenance, use, operation, repair, and  
24 inspection appropriate to the changing conditions and circumstances of their electrical  
25 transmission and distribution systems.

1 48.

2 Defendant has special knowledge and expertise far above that of a layperson that it was  
3 required to apply to the design, engineering, construction, use, operation, inspection, repair, and  
4 maintenance of electrical lines, infrastructures, equipment, and vegetation in order to assure safety  
5 under all the local conditions in its service area, including but not limited to, those conditions  
6 identified herein.

7 49.

8 In addition, defendant had notice from prior experience that red flag warnings due to the  
9 combination of high winds, heat, and dry conditions posed a likely threat of damage to defendant's  
10 electrical infrastructure and could spark wildfires.

11 50.

12 Defendant negligently breached its duties of care in one or more of the following ways:

- 13 a. Failing to conduct reasonably prompt, proper, and frequent inspections of the  
14 electrical transmission lines, wires, and associated equipment;
- 15 b. Failing to design, construct, monitor, and maintain high voltage transmission  
16 and distribution lines in a manner that would avoid igniting and/or spreading  
17 fire during foreseeable and expected long, dry seasons;
- 18 c. Failing to design, construct, operate, and maintain high voltage transmission  
19 and distribution lines and equipment to withstand foreseeable conditions and  
20 avoid igniting and/or spreading fires;
- 21 d. Failing to maintain and monitor high voltage transmission and distribution  
22 lines in known fire-prone areas to avoid igniting and/or spreading fires;
- 23 e. Failing to keep equipment in a safe condition at all times to prevent fires;
- 24 f. Failing to inspect vegetation within proximity to energized transmission and  
25 distribution lines and maintain at a safe distance to avoid igniting and/or  
26 spreading fires;

- 1 g. Failing to de-energize power lines during foreseeable and expected fire-prone
- 2 conditions;
- 3 h. Failing to de-energize power lines after the fire's ignition;
- 4 i. Failing to properly investigate, vet, hire, train, and supervise employees and
- 5 agents responsible for maintenance and inspection of the distribution lines and
- 6 proximate vegetation;
- 7 j. Failing to implement and follow regulations and reasonably prudent practices
- 8 to avoid igniting and/or spreading fire; and
- 9 k. Failing to properly investigate, monitor, and maintain vegetation sufficient to
- 10 mitigate the risk of fire.

11 51.

12 Defendant knew, or in the exercise of reasonable care should have known, that such  
13 negligence in one or more of the above ways would create a foreseeable risk of harm to others,  
14 including to plaintiffs.

15 52.

16 Defendant's actions did in fact result in damages to plaintiffs, including property damage,  
17 loss of cherished possessions, economic losses, business losses, emotional distress, annoyance,  
18 disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs  
19 related to evacuation and/or relocation.

20 53.

21 The full extent of plaintiffs' injuries and damages continue and are still under investigation,  
22 subject to further amendment. Upon information and belief, plaintiffs have suffered losses in a  
23 reasonable amount to be determined by the jury, but not to exceed: \$75,000,000 for the costs of  
24 repair, depreciation, and/or replacement of destroyed, and/or lost personal and/or real; \$75,000,000  
25 in loss of wages, earning capacity, and/or business profits or proceeds and/or any related  
26 displacement expenses; and \$500,000,000 in noneconomic damages.

1 54.

2 Defendant's negligence was a substantial factor in causing plaintiffs' damages.

3 55.

4 Defendant operated its electrical infrastructure in close geographic proximity to plaintiffs,  
5 and with knowledge of the homes and businesses in close proximity to those wires. As a result,  
6 Defendant's operation of its wires was plainly intended to affect plaintiffs.

7 **SECOND CLAIM FOR RELIEF**  
8 **Private Nuisance**

9 56.

10 Plaintiffs incorporate paragraphs 11 through 43 above.

11 57.

12 Plaintiffs own and/or occupy property harmed by the Beachie Creek fire. At all relevant  
13 times, plaintiffs had a right to occupy, enjoy, and/or use their property without interference by the  
14 defendant.

15 58.

16 Plaintiffs owned and occupied their land in an ordinary and lawful manner prior to  
17 defendant's interference with their use of it.

18 59.

19 Defendant's interference with plaintiffs' use of their property was unreasonable in one or  
20 more of the following ways:

21 a. The destruction of plaintiffs' land and improvements due to fire was extensive,  
22 resulting in substantial losses;

23 b. As a provider of high voltage electric services, defendant was engaged in an ultra-  
24 hazardous activity and was under a heightened duty of care to avoid foreseeable risks attendant to  
25 this activity, including the risk of fire in areas of dense vegetation;

26 c. Defendant could have reasonably prevented or avoided the harm to plaintiffs'  
27 property by properly inspecting and maintaining their infrastructure and equipment, shutting down  
28

1 or reducing power when it became aware of high wind warnings and advisories in effect, and other  
2 measures as alleged above.

3 d. Defendant's negligent acts and omissions, as alleged in paragraphs 47-58 above  
4 constituted culpable conduct; and

5 e. Defendant's culpable conduct was a substantial factor in causing plaintiffs'  
6 damages in an amount to be proven at trial, but estimated to be approximately \$75,000,000.

7 60.

8 Plaintiffs also seek the reasonable cost of repair or restoration of the property to its original  
9 condition and/or loss-of-use damages in an amount to be determined at trial but estimated to be  
10 \$75,000,000.

11 61.

12 Defendant's conduct was willful and wanton, and with a conscious contempt and disdain  
13 for the disastrous consequences which defendant knew could occur as a result of its dangerous  
14 conduct. Plaintiffs will move to amend their Complaint to add a claim for punitive damages before  
15 trial.

16 **THIRD CLAIM FOR RELIEF**  
17 **Trespass To Land**

18 62.

19 Plaintiffs incorporate paragraphs 11 through 43 above.

20 63.

21 During the relevant time, plaintiffs were the owners and lawful occupiers of real property  
22 damaged by the Beachie Creek fire.

23 64.

24 Defendant had a duty to use reasonable care not to enter, intrude on, or invade plaintiffs'  
25 real properties.

1 65.

2 As an operator and supplier of high voltage electrical utilities, defendant engaged in an  
3 ultra-hazardous activity. Defendant's negligent conduct and omissions in carrying out this ultra-  
4 hazardous activity allowed the Beachie Creek fire to ignite and/or spread out of control, which  
5 entered plaintiffs' land, causing destruction to both the land and improvements.

6 66.

7 Plaintiffs did not grant permission for defendant to cause the Beachie Creek fire to enter  
8 their properties.

9 67.

10 As a result of defendant's trespass, plaintiffs have suffered and will continue to suffer  
11 damages, including but not limited to damage to property, discomfort, annoyance, and emotional  
12 distress in an amount to be proved at the time of trial.

13 70.

14 Plaintiffs seek the reasonable cost of repair or restoration of the property to its original  
15 condition and/or loss-of-use damages in an amount to be determined at trial but estimated to be  
16 \$75,000,000.

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, plaintiffs respectfully request that this Court enter an Order:

19 A. Awarding costs of repair, depreciation, and/or replacement of destroyed, and/or lost  
20 personal and/or real property in the approximate sum of \$75,000,000;

21 B. Awarding loss of wages, earning capacity, and/or business profits or proceeds  
22 and/or any related displacement expenses in an amount determined by the jury to be fair and  
23 reasonable, but not to exceed \$75,000,000;

24 C. Noneconomic damages in an amount determined by the jury to be fair and  
25 reasonable, but not to exceed \$500,000,000; and

26 D. For costs and disbursements herein.  
27  
28

1 Dated: March 10, 2021.

2 Respectfully submitted,  
3 **JOHNSON JOHNSON LUCAS & MIDDLETON, P.C.**

4 s/ Derek C. Johnson

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