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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

Amber Sampson, an individual; **Patrick Alexander**, individually and as next friend of **K1.A**, a minor, and **K2.A**, a minor,

Plaintiffs,

vs.

Hawaiian Electric Industries, Inc.; a Hawai'i corporation; **Hawaiian Electric Company, Inc.**, a Hawai'i corporation; **Hawai'i Electric Light Company, Inc.**, a Hawai'i corporation; **Maui Electric Company Limited**, a Hawai'i corporation; **The County of Maui**, a municipal corporation; **The State of Hawaii**; and **DOES 1** through **100**, inclusive,

Defendants.

CASE NO. _____
(Other Non-Motor Vehicle Tort - Maui Fire)

COMPLAINT; DEMAND FOR JURY TRIAL

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I. INTRODUCTION

1. Beginning August 8, 2023, a series of wildfires initiated a path of death and destruction on the island of Maui. Within days, the wildfires (“Maui Fires”) burned over 2,500 acres, destroyed over 2,200 structures, and killed over 115 people. Over 338 people remain missing. The death toll continues to rise.



Paula Ramon | AFP | Getty Images (<https://www.cnbc.com/2023/08/13/hawaii-maui-wildfires-death-toll-.html>)

2. The Maui Fires and the devastation that followed are not the result of one single failure. They are the culmination of *years* of the Defendants’ respective failures to respond to the rapidly mounting wildfire risk in the State of Hawai‘i. Each and every Defendant should be held accountable to the full extent of applicable law.

3. Defendants Hawaiian Electric Industries, Inc., Hawaii Electric Company, Hawaii Electric Light Company, and Maui Electric Company (the “Utility Defendants”) abdicated their duty to safely provide electrical power to the citizens of Hawai‘i. The Utility Defendants should have proactively de-energized their high-voltage electrical lines, a standard practice that utilities have adopted over the past decade. Instead of taking steps to ensure that high winds and dry conditions in fire-prone areas did not ignite catastrophic wildfires, Defendants chose to ignore the lessons learned from past utility caused wildfires that produced catastrophic results.

4. Although the Utility Defendants’ electrical facilities sparked the Maui Fires, the spark was only part of the story.

5. While the Maui Fires raged, when every split second counted, thousands were caught off guard because they were not warned. Instead of issuing warnings that could reach their citizens, the County of Maui and the State of Hawai‘i (the “Public Entity Defendants”) kept critical safety alarms silent. That silence was reckless and served to aggravate the growing calamity.

6. Instead, the Public Entity Defendants issued notifications through channels that relied on electricity, internet, or cellular service—all of which were susceptible to disruption or destruction by the Maui Fires. Accordingly, the Public Entity Defendants’ warning systems failed to warn the people who needed the warnings most. Both the Public Entity Defendants are directly responsible for these failures because they designed, constructed, operated and/or maintained alert systems that, as created and/or implemented, failed to warn the public about the Maui Fires, thus exacerbating the scope and magnitude of death and destruction. In addition, the Public Entity Defendants failed to ensure that their property, including flammable vegetation, was managed and maintained in order to mitigate against or prevent the ignition and spread of the Maui Fires.

7. As a result of these failures and others, as hereafter alleged, the deadliest wildfire in over 100 years of our Country’s history tore through the island of Maui, and, in a matter of days, destroyed thousands of homes and businesses, reduced thousands of acres to ash, claimed over 115 lives, and tore the fabric of families, communities, and an entire state.

II. PARTIES

A. Plaintiffs

8. Plaintiff **Amber Sampson** is, and at all times relevant was, a natural person and citizen and resident of the County of Maui, State of Hawai‘i. At the time of the Maui Fires, Amber rented residential real property and held an interest in personal property located in Lāhainā, Hawai‘i. The Lāhainā Fire completely destroyed Amber’s property and caused her personal injuries and severe emotional distress.

9. Plaintiff **Patrick Alexander** is, and at all times relevant was, a natural person and citizen and resident of the County of Maui, State of Hawai‘i. At the time of the Maui Fires, Patrick

rented residential real property and held an interest in personal property located in Lāhainā, Hawai‘i. The Lāhainā Fire completely destroyed Patrick’s property and caused him personal injuries and severe emotional distress.

10. Plaintiff **K1.A.** is, and at all times relevant was, a natural person, a minor, and citizen and resident of the County of Maui, State of Hawai‘i. At all times relevant, Plaintiff Patrick Alexander and Plaintiff Amber Sampson were the natural parents of K1.A. Plaintiff K1.A. brings this action by and through minor's next friend, Plaintiff Patrick Alexander. K1.A. was born in May 2021 and, at the time of the fire, was just over two years old. The Lāhainā Fire caused K1.A. personal injuries and severe emotional distress.

11. Plaintiff **K2.A.** is, and at all times relevant was, a natural person, a minor, and citizen and resident of the County of Maui, State of Hawai‘i. At all times relevant, Plaintiff Patrick Alexander and Plaintiff Amber Sampson were the natural parents of K2.A. Plaintiff K2.A. brings this action by and through minor's next friend, Plaintiff Patrick Alexander. K2.A. was born in August 2023 and, at the time of the fire, was just seven days old. The Lāhainā Fire caused K2.A. personal injuries and severe emotional distress.

B. Defendants

12. Defendant **Hawaiian Electric Industries, Inc.** (“**HEI**”) is, and at all times relevant was, a Hawai‘i corporation with its principal place of business in Honolulu, Hawai‘i. **HEI** is a holding company and parent company of Defendant **Hawaiian Electric**. **HEI**’s subsidiaries provide electrical service to about 95% of the population of the State of Hawai‘i. **HEI** was responsible for ensuring that its subsidiaries complied with all laws and regulations applicable to public utilities operating in the State of Hawai‘i.

13. Defendant **Hawaiian Electric Company** (“**Hawaiian Electric**”) is, and at all times relevant was, a Hawai‘i corporation with its principal place of business in Honolulu, Hawai‘i. **Hawaiian Electric** is a direct subsidiary of **HEI** and the parent company of Defendants **Hawaii Electric Light** and **Maui Electric**, which have done business as **Hawaiian Electric** since 2019.

14. Defendant **Hawai‘i Electric Light Company** (“**Hawai‘i Electric Light**”) is, and at all times relevant was, a Hawai‘i corporation with its principal place of business in Honolulu, Hawai‘i.

Defendant Hawai‘i Electric Light is an electrical utility and subsidiary of, and since 2019 has done business as, Defendant Hawaiian Electric.

15. Defendant **Maui Electric Company Limited** (“**Maui Electric**”) is, and at all times relevant was, a Hawai‘i corporation with its principal place of business in Kahului, Hawai‘i. Defendant Maui Electric is an electrical utility and subsidiary of Defendants Hawaiian Electric.

16. “**The Utility Defendants**” are, and at all times relevant were, public utilities subject to regulation by the Hawaii Public Utilities Commission and bound by all laws and regulations applicable to public utilities operating in the State of Hawai‘i. Further, The Utility Defendants are, for all purposes, a singular operational entity whose funding, direction, control, shareholders, officers, and managers, are so intertwined such that each subsidiary and/or parent is the alter ego of all others.

17. Defendant **County of Maui** (“**The County**”) is, and at all times relevant was, a municipal corporation chartered under the laws of the State of Hawai‘i. **The County**, like any other landowner, was responsible for ensuring that its property was managed in a way that did not create or facilitate the risk of a wildfire igniting or spreading. Further, **The County**, had a duty to provide public safety services and warn the public of risks presented by the Maui Fire.

18. Defendant **State of Hawai‘i** (“**The State**”) is, and at all times relevant was, a sovereign state of the United States of America. **The State**, like any other landowner, was responsible for ensuring that its property was managed in a way that did not create or facilitate the risk of a wildfire igniting or spreading. Further, The State is responsible for the design, construction, and management of emergency alert systems and, accordingly, had a duty to exercise reasonable care with respect to those systems, their creation, their maintenance, and their operation.

19. **The County** and **The State** (“**Public Entity Defendants**”) are not immune from suit.

C. Doe Defendants

Except as described herein, and despite diligent investigation, Plaintiffs are ignorant of the true names and/or capacities of the Defendants sued as Does 1 through 100 (“**Does 1-100**”), inclusive. Therefore, Plaintiffs sue such Defendants by such fictitious names pursuant to Rule 17, subdivision (d) of the Hawai‘i Rules of Civil Procedure. Following further investigation and discovery, and within a reasonable time after discovering the identity of any of Does 1-00, Plaintiffs will seek leave of this

Court to amend this Complaint to allege their true names and capacities when ascertained. These fictitiously named Doe Defendants are responsible in some manner for the acts, occurrences, and events alleged herein. These Doe Defendants aided, abetted, and/or conspired with Defendants in the wrongful acts and course of conduct, or otherwise negligently caused the damages and injuries claimed herein and are responsible in some manner for the acts, occurrences, and events alleged in this Complaint.

D. Agency, Joint Venture, and Concert of Action

20. At all times relevant, Defendants were the agents, servants, employees, partners, aiders and abettors, co-conspirators, and/or joint venturers of each of the other Defendants and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, enterprise, conspiracy, and/or joint venture, and each Defendant has ratified and approved the acts of each of the remaining Defendants. Each Defendant aided and abetted, encouraged, and rendered substantial assistance to the other Defendant in breaching their obligations to Plaintiffs. In taking action to aid and abet and substantially assist the commission of these wrongful acts and other wrongdoings alleged herein, each of the Defendants acted with an awareness of their primary wrongdoing and realized their conduct would substantially assist the accomplishment of the wrongful conduct, wrongful goals, and wrongdoing.

III. JURISDICTION

21. This Court has subject matter jurisdiction over all causes of action alleged herein pursuant to section 603-21.5, subdivision (a)(2) of the Hawai‘i Revised Statutes.

22. This Court has personal jurisdiction over all parties to this action because every party is either domiciled in or has sufficient minimum contacts with the State of Hawai‘i such that the exercise of personal jurisdiction comports with due process.

23. Venue is proper in this Court pursuant to section 603-36 of the Hawai‘i Revised Statutes because the claims for relief arose in this Circuit.

//

IV. FACTUAL ALLEGATIONS

A. The Lāhainā Fire Destroyed Plaintiffs' Home and Made them Flee for their Lives

24. On August 8, 2023, Amber Sampson, Patrick Alexander, and their two children were at home in Lāhainā, Hawai‘i. Amber was still recovering from the birth of K2.A. just 7 days before. Her parents were visiting from the mainland to help. Early in the day, they lost electricity. Amber’s mother had a medical condition which required operation of a medical device, so Patrick went to Kahului to buy a generator.

25. While Patrick was gone, Amber’s father noticed the approaching fire. He initially suggested they pack a bag as a precaution, but then realized they needed to get out immediately. Amber, her parents, and the 2 children got in her car to make their escape. Amber says that if her father had not been there, they never would have realized how close they were to the danger. They received no other warning of the fire’s approach and the need to evacuate.

26. They drove through thick smoke filled with flying embers. As they passed by the senior home Hale Mahaolu, they saw some of the elderly people outside the home with their walkers, but without any help. It took over an hour and a half for them to just drive a few blocks. Then their car died, leaving them trapped. Amber thought they would all die. Fortunately, another family stopped to help, loading all 5 of them into their car and driving them to the Lāhainā Civic Center.

27. Meanwhile, Patrick could not get back to Lāhainā. He could not reach Amber or her parents, and he had no idea if his family was even alive.

28. Amber, the 2 children, and her parents spent the night at the Civic Center. They had no cell service and so had no way to reach Patrick or find out if he was alive. In the morning, they were evacuated from the Civic Center and taken to Ka’anapali by bus with the others who had spent the night. Only then was Amber’s mother finally able to reach Patrick by text, letting them know that his family was alive and confirming that he also had survived the tragedy.

29. Once the family was reunited, their infant, K2.A., needed to be taken to the hospital for smoke inhalation. Their 2-year-old, K1.A., has been so traumatized that he will not let Patrick leave his side, and his sleep is filled with nightmares.

30. Patrick and Amber spent years working and saving to create a home for their growing family in the town of Lāhainā. Tragically, the Lāhainā Fire completely destroyed their home and all of its contents. Compounding the disaster, Patrick works in the tourism industry. The Lāhainā Fire impacted his ability to work and earn income for his family.

31. The Alexanders experienced personal injuries which included, but are not limited to, exposure to heat, particulates, and physical matter and the inhalation of smoke, ash, chemicals, toxins, and other environmental pollutants. The trauma and distress this family experienced during their evacuation will endure and affect their lives substantially. The stress, anxiety, distress, and uncertainty they are experiencing and will continue to experience as they prepare to try to rebuild their lives compounds their emotional trauma. Further, both bring all available claims for lost oncome.

B. For Years, Wildfire Risk Steadily Increased on The Island of Maui

32. On August 8, 2023, a series of wildfires (“Maui Fires”)—including the Lāhainā, Pūlehu/ Kīhei, and Upcountry fires—ignited and tore through the island of Maui.

33. This tragedy was decades in the making. For over 20 years, the island of Maui, and particularly its western shore, experienced numerous wildfires with increasing frequency and severity. Ongoing drought conditions led to drier brush and vegetation which, because not properly cleared, became standing fuel awaiting a spark.

34. Electrical facilities—not properly inspected, maintained, and operated—provided that spark. Warnings, if not properly communicated, would cause delay when every second mattered. But for years, the Utility Defendants, the County, and the State ignored the known and obvious wildfire risks and failed to take the action necessary to keep the public safe.

35. The County was aware of and publicly acknowledged the increasing wildfire risk on the island of Maui. Between 2006 to 2019, the federal government declared disasters for four separate wildfires on the island of Maui: the Ma’alaea Fire (2006), Olowalu Fire (2007), Mā‘alaea Fire (2010), and Kahana Ridge Fire (2019).¹ Since at least 2015, The County identified and publicly described both drought and wildfire as “hazards” in its Hazard Mitigation Plan.

¹ 2020 Maui County Hazard Mitigation Plan at 118, Table 15, <https://www.mauicounty.gov/DocumentCenter/View/125977/2020-Maui-County-Hazard-Mitigation-Plan-Final> (accessed August 17, 2023)

36. By 2020, The Maui County Hazard Mitigation Plan showed that a substantial number of critical facilities in West Maui were located in areas with high wildfire risk.²

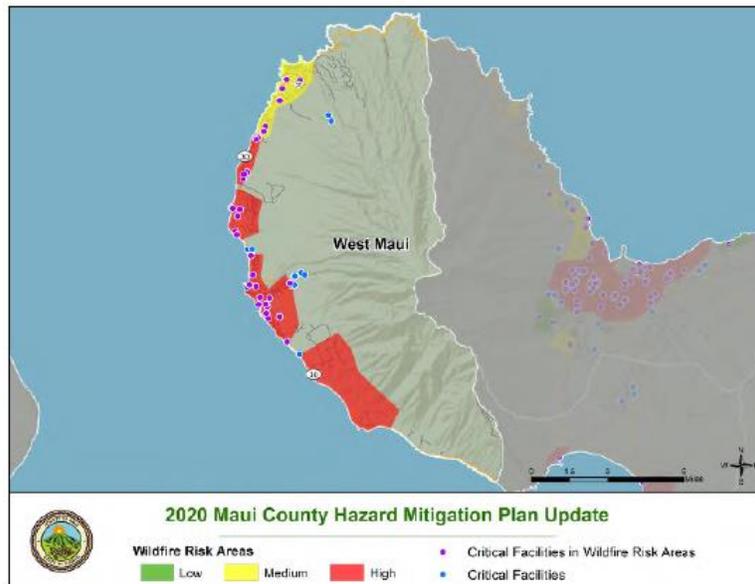


Figure 264. Critical Facilities in Wildfire Risk Areas in the West Maui Community Planning Area.

In addition to buildings and identified critical facilities, utility lines, roads and bridges are vulnerable to the impact of wildfires. When utility lines are damaged by wildfires, functionality of water, sewer, gas, and electricity systems may be compromised.²²⁹ Because of their geographic extent, roads and utility lines can have a greater chance of being impacted by wildfire events. Further, if any section of a road or utility line is damaged by a wildfire, the entire system may be impacted. For instance, a wildfire that results in one area of a road or a bridge being impassible may block accessibility to other roads or locations.

37. The County was clearly concerned about the growing wildfire risk on the island. In 2020, The County filed suit against several fossil fuel producers in response to growing concerns over environmental impacts of climate change – including the increased risk of wildfire on the island.

38. In its 2020 Complaint, the County specifically alleges that “[w]ildfires are becoming **more frequent, intense, and destructive**” in the county and that changing weather patterns “provide prime conditions for fast-growing grasses and invasive species, followed by prolonged periods of drought and hotter averages, which desiccate vegetation thereby **increasing the fuel available for fires.**”

39. The County also alleged that its “fire ‘season’ now runs year-round, rather than only a few months of the year” and, in **2019**, “called ‘**the year of fire**’ on Maui, 26,000 acres burned in the

² *Id.* at 513.

County—**more than six times the total area burned in 2018**—with two fires in July 2019 that burned 9,200 acres and another in October 2019 that burned 4,100 acres.³

40. Similarly, West Maui was categorized as having a “highly likely” probability— more than a 90% chance—of wildfires each year on average.⁴

41. In July 2021, the County’s Cost of Government Commission issued a report on “Wildfire Prevention and Cost Recovery on Maui” (the “Report”). The Report makes explicit what the Defendants knew for years: “the number of incidents from a combination of wild/brush/forest fires appears to be **increasing**, and that this increase **poses an increased threat to citizens, properties, and sacred sights**.” In addition, “[i]sland communities are **particularly vulnerable** because populations tend to be clustered and dependent on single highways, often located on the island’s edge.”⁵

42. Meanwhile, the “the average area burned per year in Hawai‘i has increased **300%** over the past century,” with ignitions accounting for **95%** of wildfires. Critically, over one-third of Hawai‘i’s neighborhoods are in the “**extreme** fire hazard category.”⁶ Research also suggests that “Hawai‘i lands burned by wildfires were increasing substantially over time, but at a **higher rate than on the fire-prone U.S. Mainland**.”⁷

³ <https://www.mauicounty.gov/DocumentCenter/View/124390/Maui-County-Climate-Change-Litigation-Complaint>, at ¶¶ 173-174, 196 (accessed August 17, 2023).

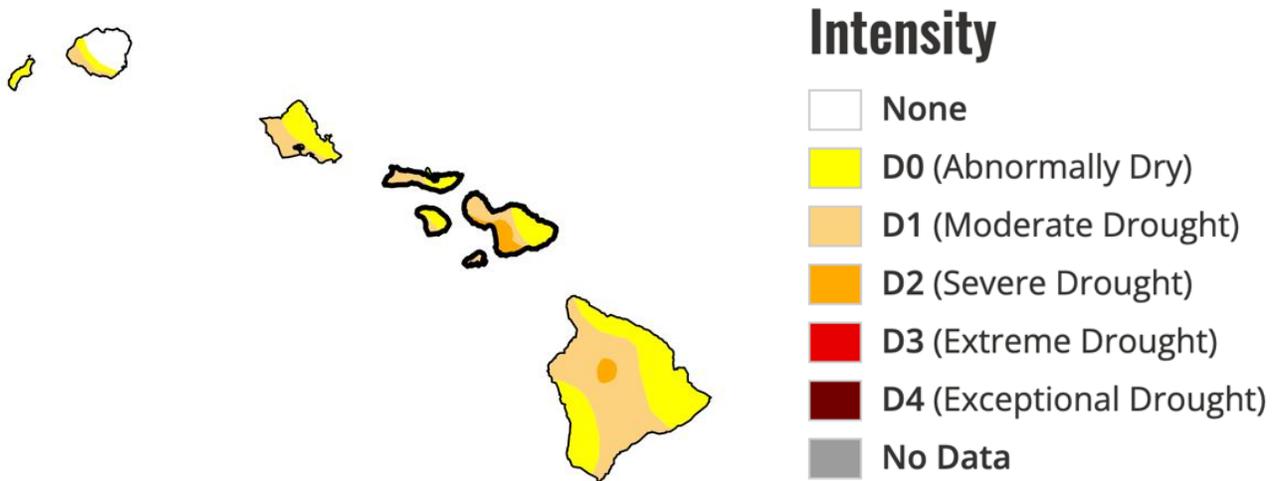
⁴ *West Maui Had Been Warned It was at High Risk for Wildfires*, The New York Times, August 12, 2023, <https://www.nytimes.com/2023/08/12/us/west-maui-wildfires-risk.html>. (accessed August 17, 2023)

⁵ *Report on Wildfire Prevention and Cost Recovery on Maui*, Cty. of Maui Cost of Gov. Comm’n. (2021), at 1-2. (accessed August 17, 2023)

⁶ <https://pacificfireexchange.org/resource/slide-presentation-overview-of-wildfire-in-hawaii/> (2023) (accessed August 16, 2023)

⁷ *The Contemporary Scale and Context of Wildfire in Hawai‘i*, Pacific Science, 69(4):427–444 (Oct. 2015), <https://doi.org/10.2984/69.4.1>. (accessed August 16, 2023)

43. According to the U.S. Drought Monitor, at the time of the Maui Fires approximately 40% of The County was classified as “abnormally dry,” over 38% was classified as “moderate drought,” and over 20% was classified as “severe drought.”⁸



44. But the risk of wildfire does not disappear simply because a drought gets better. After wet winters, vegetation—particularly grasses—grow substantially. When the seasons change and those same grasses dry, they become a bulk supply of readily ignitable fuel.⁹ To combat the risk of wildfire, the Report urges responsible parties to “routinely inspect power transmission lines and rights of way” and that both The County *and* the utilities should be tasked with corrective action.¹⁰

45. For years, the Utility Defendants, The County, and The State knew that wildfire risk was increasing across the state and on the island of Maui. In light of these risks, the Utility Defendants and the County should have taken reasonable steps to protect the public from a catastrophic wildfire by properly clearing vegetative fuels, maintaining electrical facilities, and developing warning systems that would protect the public in the event of a wildfire.

46. Tragically, they did not. Death and destruction followed.

⁸ U.S. Drought Monitor, Maui County, HI, https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?fips_15009. (accessed August 16, 2023)

⁹ *Hawaii Is Losing As Much Of Its Land To Wildfires As Any Other State*, Nathan Eagle, August 26, 2019,

<https://www.civilbeat.org/2019/08/hawaii-is-losing-as-much-of-its-land-to-wildfires-as-any-other-state/>. (accessed August 17, 2023)

¹⁰ See, Note 5, *supra*, at 12.



Courtesy SFGate.com



Courtesy SFGate.com

C. “2018 Should Have Been a Wakeup Call”

47. This was not the first time that hurricane-fueled winds helped ignite overgrown, drought-stricken brush in the hills above West Maui. The West Maui Fires ignited in the same manner five years earlier. The fires burned 2,100 acres and destroyed 21 homes. It was extinguished just before it reached Lāhainā.¹¹

48. At the time, Maui County Officials admitted that they dodged a bullet. “We could have had a lot of deaths,” said Herman Andaya, the administrator of the Maui County Emergency Management Agency in 2018—who remained in his job until resigning just the August 8, 2023 fires.¹²

49. The same failures seen in 2018 caused the 2023 catastrophe: utility lines remained energized despite hurricane-fueled winds, all-hazard sirens were silent, fire hydrants ran dry, and those in the fire’s path were not notified because of destroyed communications infrastructure.¹³ Defendants had five years to address the failures of the 2018 fires, but they neglected to address the known risks posed by wildfires on West Maui.

D. The Utility Defendants Failed to Mitigate Known and Obvious Wildfire Risks

50. Defendant HEI is a publicly traded energy holding company based in Honolulu, Hawai‘i. HEI has three electrical utility subsidiaries: Defendant Hawaiian Electric; Defendant Hawai‘i Electric Light, and Defendant Maui Electric. Collectively, the Utility Defendants furnish electricity to 95% of Hawai‘i’s population.

51. The Utility Defendants, and each of them, breached their duties of care to the general public and to Plaintiffs including by: (1) failing to implement a proactive de-energization program; (2) failing to properly design, construct, inspect, maintain, manage, and operate their electrical facilities in

¹¹ Brianna Sacks and Justine McDaniel, *Terrifying fire struck Maui in 2018. Officials were warned of a repeat*, The Washington Post, August 22, 2023 (<https://www.washingtonpost.com/weather/2023/08/22/maui-fire-2018-lahaina-warning/>).

¹² Lewis Kamb and Evan Bush, *Maui dodged catastrophe in wildfires five years ago but missed an opportunity to prevent future disaster, residents say*, nbcnews.com, August 24, 2023 (<https://www.nbcnews.com/news/us-news/maui-officials-warned-lahaina-wildfires-2018-critics-rcna101515>).

¹³ . See Note 11, *supra*.

a manner that would prevent a wildfire ignition; (3) failing to properly clear, cut, trim, remove, or manage vegetation at or near electrical facilities which could pose a risk of ignition,

52. As public utilities, the Utility Defendants were required to comply with all applicable laws, rules, regulations, and orders issued by the State of Hawai‘i and its Public Utilities Commission relating to the furnishing of electricity to members of the public.

53. The Utility Defendants furnish electricity to the public through electrical grids, including on the island of Maui (the “Maui Grid”). The Maui Grid is made up of various electrical facilities designed, constructed, inspected, maintained, operated, and managed by the Utility Defendants. Some of these electrical facilities run underground, out of the reach of most weather and environment.

54. Other parts of the Maui Grid are above ground. The familiar and ubiquitous above ground electrical facilities include the wooden poles and overhead lines that stretch above roads and power homes all across the State of Hawai‘i.

55. As the Utility Defendants acknowledge, “[o]verhead lines are more vulnerable to adverse weather conditions and objects contacting lines[.]”¹⁴ Indeed, one of The Report’s recommendations emphasizes that ignitions “caused by human action and should be preventable,” and that “[a]boveground power lines that fail, short, or are low hanging can cause fire ignition (sparks) that could start a wildfire, particularly in windy or stormy conditions.”¹⁵

56. Further, in a recent filing with the Hawaii Public Utilities Commission, the Utility Defendants admitted that “[t]he risk of a utility system causing a wildfire ignition is significant” and knew they needed to “[m]itigate the probability of [their] facilities becoming the origin or contributing source of ignition for a wildfire,” “[p]revent [their] facilities from contributing to the severity or breadth of wildfires,” and “[i]dentify and implement operational procedures to ensure the Companies can respond effectively to a wildfire.”¹⁶

¹⁴ <https://www.hawaiianelectric.com/about-us/power-facts/undergrounding-utility-lines> (accessed August 16, 2023)

¹⁵ See Note 5, *supra*, at 12.

¹⁶ 2022 EPRM, Hawaiian Electric at 26;

https://www.hawaiianelectric.com/documents/about_us/our_vision_and_commitment/resilience/20220630_resilience_EPRM_application.pdf (accessed August 15, 2023)

57. The Utility Defendants also recognized that weather, including high winds, plays a role in fire ignition. For example, the Utility Defendants stated that “[d]etection of high risk conditions” such as wind speed and relative humidity could trigger “procedures to minimize the risk of wildfires and enable experience response.”¹⁷

58. The wildfire risks facing Maui were not unique, but widely recognized in the utility industry. Accordingly, and for years, major electric utilities have acted to mitigate the risks of wildfire ignition posed by aboveground and overhead facilities with a simple solution: shutting off the power through proactive de-energization.

59. Proactive de-energization is the process by which a utility alters or eliminates the flow of energy to certain circuits in response to a risk of ignition. Some factors considered when deciding to proactively de-energize a circuit including high winds, low humidity, “red flag” warnings, drought conditions, the presence of dry vegetative fuel, and fire threats to electrical infrastructure.¹⁸

60. All of these factors were present when the Maui Fires began. On August 7, 2023, the Maui Emergency Management Agency warned citizens that extreme winds could topple power lines. The same day, the National Weather Service issued statewide red flag warnings.¹⁹

61. Over a decade ago, major electrical utilities in fire-prone areas began using proactive de-energization to reduce the risk of, and hopefully prevent, the ignition of a wildfire by their electrical facilities. One prominent example of proactive de-energization is San Diego Gas & Electric Company (“SDG&E”). SDG&E serves 1.4 million retail electric customers in a 4,100 square mile service area, which spans two counties in Southern California. After its electrical facilities ignited catastrophic wildfires during high winds and under drought conditions, SD&G applied for and, in 2012 received, authority to implement a proactive de-energization program for its electrical facilities in certain circumstances. Using its proactive de-energization program, SDG&E can identify equipment at risk of causing an ignition due to weather, alter the flow of electricity in its grid, and notify customers days in

¹⁷ *Id.* at 50.

¹⁸ <https://prepareforpowerdown.com/> (accessed August 16, 2023)

¹⁹ <https://www.khon2.com/always-investigating/maui-fire-timeline-and-warnings-forecast-through-engulfment/> (accessed August 17, 2023).

advance of that alteration. Since implementing its proactive de-energization program over a decade ago, SDG&E’s electrical facilities have not sparked a single catastrophic wildfire.

62. Since 2012, other major utilities have implemented similar programs. Even Pacific Gas & Electric Company (“PG&E”), whose overhead electrical facilities ignited the North Bay Fires in 2017 and caused the deaths of 44 people, began to implement a proactive de-energization program in the fall of 2018.

63. The Utility Defendants reviewed the wildfire mitigation plans of SD&GE and PG&E—both of which implemented proactive de-energization programs—“to identify best practices that would be appropriate for Hawai‘i’s environment and weather conditions.”²⁰ But instead of learning from other fatal tragedies, the Utility Defendants remained defiant and refused to implement a proactive de-energization program to combat wildfire risk. Accordingly, when high winds arrived on the island of Maui in August 2023, the Utility Defendants’ electrical facilities were not prepared. But it was too late.

64. An eyewitness’ video taken on August 8, 2023 near Lāhainā, Hawaii shows the Utility Defendants’ overhead distribution lines falling to the ground under strong winds and igniting brush along the roadway.²¹ According to the eyewitness, the scene looked “like somebody lit a fuse from a firework . . . [the fire] just followed a straight line all the way up to the pole where the [line] was, and it landed in a bigger pile of dry grass, and that just ignited” and “in a matter of minutes, that whole place was just engulfed.”



65. Later, the eyewitness alerts a first responder that “the line is live on the ground[.]”

²⁰ See Note 13, *supra*, at 52.

²¹ Video and eyewitness interview available at: <https://www.usatoday.com/videos/news/nation/2023/08/16/videos-put-scrutiny-downed-power-lines-possible-cause-deadly-maui-wildfires/8355836001/> (accessed August 17, 2023)

66. Had the Utility Defendants developed, implemented, and executed a “best practice” program to proactively de-energize its electrical facilities when weather conditions developed like those of August 2023, including the forecasted high winds and red flag warnings, they would have reduced or eliminated the risk of their electrical facilities igniting the Maui Fires.

67. The Utility Defendants also had a duty to exercise reasonable care in the design, construction, inspection, maintenance, management, and operation of the Maui Grid and all of their electrical facilities.

68. But according to reports following the fire, the high winds began to topple the Utility Defendants’ overhead electrical circuits—creating yet another potential ignition source.²²

69. The Utility Defendants failed to implement policies, practices, and procedures which would ensure those same facilities, and any of the component parts of products of which those facilities consisted, could withstand forces generated by high winds or contact from nearby vegetation. By failing to implement such policies, the Utility Defendants abdicated and otherwise breached their duties to the public and to Plaintiffs to furnish electricity in a safe and reasonable manner and without igniting a catastrophic wildfire.

70. To the extent that the Utility Defendants engaged in operations intended to maintain their electrical facilities, they failed to ensure that those operations were properly planned, budgeted for, and executed by the individuals or entities assigned to carry them out.

71. Rather than spend the resources necessary to develop a comprehensive program to reduce wildfire risk, the Utility Defendants refused to act until they knew they could recoup the costs of developing such a program from their ratepayers. In sum, the Utility Defendants waited to implement the necessary protocols because they wanted citizens to pay for their own safety.

72. Plaintiffs are informed, and thereon alleged, that the Utility Defendants were aware of the foreseeable risks associated with the operations of their electrical facilities, including the ability or inability of those facilities to withstand high wind conditions, red-flag warnings, and vegetation contact, but failed to do so as part of a management-level practice of deferring critical maintenance and inspection in favor of cheaper solutions.

²² See Note 16, *supra*.

73. As a result, the Utility Defendants’ electrical facilities were unable to withstand the surrounding environmental conditions and vegetation, which caused or contributed to the ignition and spread of the Maui Fires and caused the harms herein alleged.

74. On August 27, 2023, Hawaiian Electric admitted that their equipment caused the August 8, 2023 fire that began at approximately 6:30 a.m. That fire was a substantial factor in bringing about the injuries and damage suffered by victims of the Maui Fires.



E. The Public Entity Defendants Negligently Maintained their Property

75. The Public Entity Defendants, like any other landowner and like the Utility Defendants, were responsible for ensuring that their property and land did not pose a risk of igniting or facilitating the spread of a wildfire. Accordingly, the Public Entity Defendants had a duty to ensure that vegetation – including trees, grasses, and other ignitable ground cover – was managed in a way that would mitigate against the risk of wildfire ignition and spread.

76. Plaintiffs are informed, and thereon alleged, that the Public Entity Defendants did not implement policies, practices, or procedures that could be expected to clear or manage vegetation on their property. As a result, vegetation accumulated on the Public Entity Defendants’ property and, at the time of the Maui Fires, was in a readily ignitable state.

77. When the Maui Fires began, the Public Entity Defendants’ property facilitated the spread of the fire, at least in part, because the vegetation on the property was improperly managed.

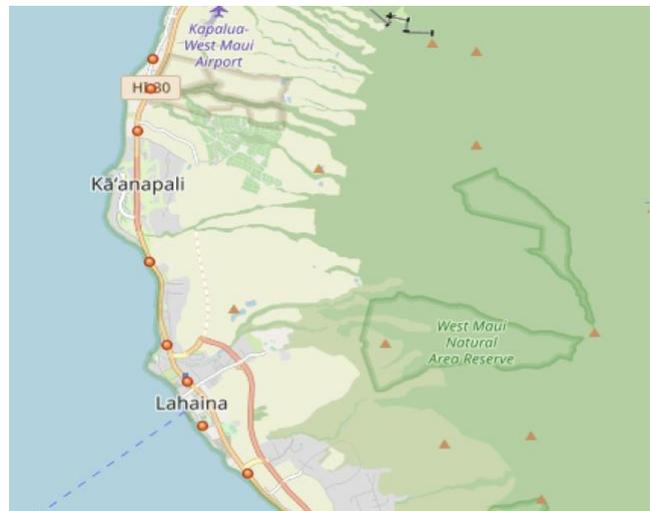
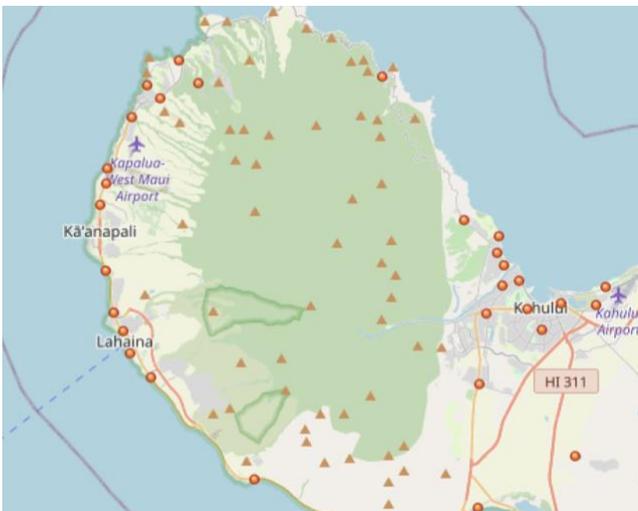
This mismanagement of property increased the severity of the Maui Fires and contributed to the death and destruction that followed.

78. Had the Public Entity Defendants taken reasonable steps to manage vegetation on their property, the Maui Fires – including the Lāhainā, Pūlehu/Kīhei, and Upcountry Fires – would not have ignited or spread at such a rate, intensity, or severity. Instead, the Maui Fires ignited and spread, ambushing the citizens of the island – including Plaintiffs.

F. The Public Entity Defendants Negligently Responded to the Maui Fires

79. The Utility Defendants may have ignited the Maui Fires, but The Public Entity Defendants contributed to the extent of its destruction by, among other things: (1) failing to engage a warning system reasonably calculated to alert the public of the impending danger; (2) relying on channels of warning that could reasonably be expected to function under the circumstances; (3) misleading the public about the true nature and purpose of its warning systems; (4) failing to evaluate, design, or implement warning systems capable of communicating the impending danger of the Maui Fires to the public; and (5) conducting operations in a manner that caused or contributed to a particularized and foreseeable risk of harm to Plaintiffs.

80. With the Maui Fires bearing down on the island, every second mattered. But when it mattered most, The County failed to warn the public, including by failing to activate warning sirens.



81. For years, the County operated part of a statewide “All-Hazard” outdoor warning system (“All-Hazard System” or “AHS”), which is the “the largest single integrated public safety

outdoor siren warning system in the world.”²³ AHS consists of a series of sirens and equipment located throughout the County of Maui. There are 80 total sirens in the County, and approximately 14 sirens run along the coast of West Maui. The sirens are battery powered and charge using solar panels.

82. The State designed, constructed, and maintained AHS, but The County shares operational and testing responsibility for the system. Thus, both Public Entity Defendants are responsible for ensuring the system functions as intended.

83. According to The County, AHS “can be used for a variety of both natural and human-caused events; **including tsunamis . . . wildfires . . . and more.**”

84. When deployed in response to a natural hazard, a steady three-minute siren sounds at 121 decibels. These sirens instruct members of the public to “evacuate low-lying areas near the coastline, tune [a] radio or television to any local station, and listen for emergency information and instructions.”

85. Clearly, AHS is not simply to instruct members of the public from one place to another, but to seek information through specific channels such as radio and television. Yet, in 2019, 2020, and 2021, Herman Andaya, the former administrator of The County’s Emergency Management Agency, “repeatedly called sounding . . . the sirens ‘a last resort’.” For example, in a 2019 meeting of The County’s public safety commission, Andaya claimed that “for the most part, people don’t get their information from sirens.”²⁴

86. And in 2021, Andaya claimed that the sirens were “for people who are outside, outdoors, or don’t have their phones on them, who are not close to a TV or radio or, you know, things like that. So those – that’s what the siren is really meant for.”

i. The Public Entity Defendants were Negligent by Keeping Alarms Silent

87. AHS is a different method of communicating an emergency to the public than a radio, television, phone, or the internet. One of the primary differences is that it does not rely on the electrical grid or cell towers to operate. Instead, it uses solar-powered batteries.

²³ <https://www.mauisirens.com/> (accessed August 17, 2023)

²⁴ <https://www.nbcnews.com/news/us-news/maui-emergency-management-director-sirens-lahaina-fire-rcna100464> (accessed August 17, 2023)

88. Therefore, AHS has a distinct advantage over the alternative means of communicating because it can function even if the electrical grid or cellular tower are damaged by a wildfire.

89. Similarly, reports indicate that The State also failed to activate sirens which could have been used to alert unsuspecting citizens of the Maui Fires.

90. Indeed, according to the Hawaii Emergency Management Agency: “**Nobody at the state and nobody at the county attempted to activate those sirens based on our records**[.]”²⁵

91. The Public Entity Defendants’ failure to activate sirens in response to the Maui Fires created delay and hesitation. Delay and hesitation increased the risk of harm to those in the path of the fire and for some, cost them their lives. Under these circumstances, silence was negligence.

ii. The Public Entity Defendants Negligently Implemented Warning Systems

92. Before the Maui Fires, The Public Entity Defendants each assumed the responsibility of notifying the public in the event of disaster such as a wildfire through warning systems.

93. To alert the public, The Public Entity Defendants chose certain tools and technologies, including AHS, which is “just one part” of the larger Hawaii Statewide Alert and Warning System” (“SAWS”).²⁶

94. The Public Entity Defendants had a duty to exercise reasonable care in designing, constructing, and maintaining AHS, SAWS, and other alert systems to ensure that such systems were reasonably calculated to communicate the nature and extent of potential harm to the public at large, including to Plaintiffs.

95. By refusing to implement such systems at the time of the Maui Fires, The Public Entity Defendants implicitly admit that the systems in place before the Maui Fires were not up to the task.

96. Instead, The Public Entity Defendants relied on notifications broadcast on televisions, radio stations, and to mobile phones.²⁷ But all of these notification methods relied on external service to relay and receive a message.

²⁵ <https://www.cnn.com/2023/08/12/us/hawaii-emergency-warning-system-maui-wildfires/index.html> (accessed August 17, 2023)

²⁶ See Note 20, *supra*.

²⁷ See Note 22, *supra*.

97. Televisions rely on cable or internet service. Cell phones rely on internet or cellular service. These external services depend on external hardware, often located outdoors, that is easily susceptible to wildfire.²⁸ Therefore, the very systems on which The Public Entity Defendants relied to convey their emergency messages were susceptible to interference and destruction. As a result, notifications intended for unsuspecting citizens never reached their targets.

98. The Public Entity Defendants relied upon a flawed system that could not reasonably be expected to communicate the impending risks of harm to the public, but rather one that could easily and obviously be impacted and eliminated by the Maui Fires. This was the system they designed, constructed, and maintained.

99. As a result, members of the public, including Plaintiffs experienced delays in responding to the Maui Fires and, as a result, suffered the damages alleged herein.

100. Ultimately, the events which combined to ignite, spread, and delay response to the Maui Fires were the result of years of inaction and poor planning by the Utility Defendants, the County, and the State.

101. As a result of the Defendants' individual and collective failures, Plaintiffs and communities throughout the island of Maui suffered substantial and irreparable harm.

102. Plaintiffs did not cause or contribute to, nor could they avoid, the harms alleged herein, and share no fault for the harms they suffered. They are among the many innocent victims of a tragedy brought about by the Defendants' wrongful conduct.

V. CAUSES OF ACTION

FIRST CAUSE OF ACTION **NEGLIGENCE OF THE UTILITY DEFENDANTS**

103. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

104. At all times relevant, the Utility Defendants, and each of them, were engaged in the activity of furnishing electricity for public use to retail electric customers in the State of Hawai'i.

105. In order to furnish electricity or power within the State of Hawai'i to members of the public, the Utility Defendants deliberately designed, constructed, inspected, and maintained electrical

²⁸ <https://www.cnn.com/2023/08/09/tech/cell-service-outages-maui-fires/index.html> (accessed August 17, 2023)

facilities. The Utility Defendants' electrical facilities included overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware.

106. At all times relevant, the Utility Defendants knew or should have known their electrical facilities, and all components thereof, carried an inherent risk of fire ignition. The risks of fire ignition are not unique to the Utility Defendants' electrical facilities and, indeed, are well known and publicly acknowledged throughout the utility industry.

107. At all times relevant, the Utility Defendants knew or should have known that vegetation near electrical facilities, including hazard trees, facility protect trees, and other vegetation, including vegetation outside of the right of way of an electrical facility, could damage facilities and cause an ignition during weather events such as a "red flag" warning event.

108. Despite knowing and publicly acknowledging these risks, the Utility Defendants failed to implement a vegetation management program that included the removal of trees outside the right of way of electrical facilities.

109. Indeed, the Utility Defendants did not have a comprehensive policy, practice, or procedure to inspect, evaluate, identify, or remediate certain vegetation that posed a risk of contacting electrical facilities and, in turn, causing an ignition.

110. Similarly, the Utility Defendants' vegetation management practices did not account for the inspection, evaluation, identification, and remediation of invasive species with weak root systems or which were prone to failure during high winds.

111. At all times relevant, the Utility Defendants, and each of them, owed Plaintiffs a duty to exercise reasonable care in the design, construction, inspection, maintenance, and operation of their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware.

112. The Maui Fires and the harms alleged herein were the direct and proximate result of the Utility Defendants' negligent, reckless, or unlawful conduct, including conduct which, in isolation or in combination with other factors, constituted a breach of their duty to Plaintiffs.

113. The Utility Defendants, and each of them, breached their duties to Plaintiffs, including, among other action and inaction, by:

- (a) failing to comply with the applicable statutory, regulatory, and/or professional standards of care, including the laws of the State of Hawai‘i and the rules, regulations, and orders of the Hawaii Public Utilities Commission;
- (b) failing to evaluate, design, implement, and execute policies, practices, and procedures reasonably calculated to mitigate against the risks their electrical facilities igniting a fire, including the development and use of a program to proactively de-energize those facilities when warranted by environmental conditions, such as “red flag” warnings;
- (c) failing to de-energize power lines during fire prone conditions, including during forecasted and publicly broadcasted “red flag” warnings, high winds, or any other environmental conditions reasonably foreseeable to contribute to the ignition of a fire;
- (d) failing to evaluate, design, implement, and execute methods of isolating, closing, or otherwise limiting or restricting the flow of electricity through electrical facilities;
- (e) failing to de-energize power lines after obtaining actual or constructive knowledge that a fire had actually ignited and/or when it was not possible under the circumstances to eliminate the possibility that a fire had ignited;
- (f) failing to evaluate, design, implement, and execute policies, practices, and procedures reasonably calculated to provide warnings to members of the public in the event of a fire ignition;
- (g) failing to timely and properly design, construct, inspect, maintain, manage, operate, and/or monitor their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware;
- (h) failing to evaluate, design, implement, and execute policies, practices, and procedures reasonably calculated to mitigate against the risk of vegetation causing their electrical facilities to ignite a fire;

- (i) failing to properly implement, execute, or oversee vegetation management practices, including those concerning the cutting, trimming, pruning, clearing, removal, or other management of vegetation designed for the purpose of avoiding foreseeable contact with their electrical facilities;
- (j) failing to make their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware, safe under all the exigencies created by surrounding circumstances and conditions;
- (k) failing to conduct adequate, reasonably prompt, proper, effective, and/or frequent inspections of their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware;
- (l) failing to design, construct, monitor, and/or maintain their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware in a manner reasonably calculated to prevent ignition of a fire;
- (m) failing to install the equipment necessary and/or to inspect and repair the equipment installed, to prevent their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware from improperly sagging, operating, and/or contacting other metal wires placed on its poles and igniting fires;
- (n) failing to keep all electrical facilities, regardless of age, voltage, style, material, or construction, in a safe condition at all times in order to prevent a fire ignition;
- (o) failing to properly train or supervise their agents, contractors, or employees responsible for maintenance and inspection of their electrical facilities and/or vegetation near those facilities;
- (p) failing to assess, budget, allocate, reserve, or distribute funds reasonably necessary to ensure their electrical facilities would not, because of a deficiency in the manner in which they were designed, constructed, inspected, maintained, managed, or overseen, pose a risk of fire ignition.

114. Further, and at all times relevant, the Utility Defendants, and each of them, were subject to the standards for electric services in the State of Hawai‘i and all rules, regulations, standards, and orders set forth by the Hawai‘i Public Utilities Commission, including HPUC General Order Nos. 6 and 7.

115. General Order No.7 of the HPUC sets forth standards for electrical utility service in the State of Hawai‘i and required the Utility Defendants to exercise reasonable care to reduce hazards to which its employees, customers, and general public may be subjected.

116. Further, at all times relevant, General Order No.7 required the Utility Defendants to comply with acceptable standards for the design, construction, inspection, maintenance, and operation of overhead electrical distribution lines, including overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, and connecting hardware with the standards set forth in General Order No. 6.

117. Plaintiffs are informed and thereon allege that Defendants’ electrical facilities, including overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, and connecting hardware did not satisfy the requirements of General Orders No. 6 or No. 7.

118. Plaintiffs are among the class of persons whom General Orders Nos. 6 and 7 are intended to protect, and the class of harms they suffered were among the harms that General Orders Nos. 6 and 7 are intended to protect against.

119. As a direct and proximate result of the Utility Defendants’ violations of General Orders Nos. 6 and 7, the Maui Fires ignited and spread, causing the damages herein alleged.

120. As a direct and proximate result of the Utility Defendants’ negligence, the Maui Fires ignited and spread, causing the damages herein alleged.

121. As a direct and proximate result of the Utility Defendants’ negligence, the Maui Fires damaged or destroyed property in which Plaintiffs had an interest and, further, interfered with the ownership, control, use, enjoyment, and value of the same property, including through the creation and discharge of environmental pollutants.

122. As a direct and proximate result of the Utility Defendants' negligence, Plaintiffs incurred and will continue to incur expenses and other economic damages related to the damage to their property, including costs relating to storage, clean-up, disposal, repair, depreciation, and/or replacement of their property and remediation of environmental pollutants and other related consequential damages in an amount according to proof at trial.

123. As a direct and proximate result of the Utility Defendants' negligence, Plaintiffs suffered damage to or loss of real property, including through the creation and discharge of environmental pollutants, the loss of vegetation, trees, and structures, the creation of hydrophobic soil conditions, and a loss of use, benefit, goodwill, diminution in value and/or enjoyment of such property in an amount according to proof at trial.

124. As a direct and proximate result of the Utility Defendants' negligence, Plaintiffs suffered injury to their health and strength, including through exposure to heat, toxins, smoke, ash, particulates, metals and environmental pollutants all of which caused and continue to cause Plaintiffs great mental pain and suffering, including worry, emotional distress, humiliation, embarrassment, anguish, anxiety, and nervousness compensable in an amount according to proof at trial in accordance with the laws of the State of Hawai'i. Plaintiffs are informed, and thereon allege, that such injuries have resulted in debilitating injury in an amount according to proof at trial.

125. As a direct and proximate result of the Utility Defendants' negligence, Plaintiffs employed, and continues to employ, requisite and reasonably necessary medical care including by and through physicians and other health care providers, and, accordingly, incurred medical and incidental expenses for such examination, treatment, rehabilitation, and care, and will continue to incur expenses for treatment of such injuries, in an amount according to proof at trial.

126. As a direct and proximate result of the Utility Defendants' negligence, Plaintiffs suffered loss of income, loss of earning capacity, loss of profits, increased expenses due to displacement, and/or other consequential economic losses in an amount according to proof at trial.

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SECOND CAUSE OF ACTION
NEGLIGENCE OF THE COUNTY & THE STATE

127. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

128. At all times relevant, the County and the State (collectively, “Public Entity Defendants”) had a duty to act in a manner reasonably calculated to protect the public, including Plaintiffs, from hazards presented by an impending hazard, including wildfire. The Public Entity Defendants’ duties included taking reasonable steps to evaluate, design, and implement a system of warnings which could be expected to alert members of the public to the potential dangers posed by an impending hazard such as a wildfire as well as properly managing all property under their control, including through the use of proper vegetation management practices.

129. The Public Entity Defendants breached their duties to the public and Plaintiffs including, among other action and inaction, by:

- (a) failing to issue warnings reasonably calculated to communicate the harm presented by a wildfire to members of the public, including by failing to activate its “All-Hazards” warning system at or near the time of the ignition and spread of the Maui Fires in affected areas;
- (b) failing to design, construct, inspect, and maintain a warning system reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public;
- (c) failing to develop and implement an operational policy, practice, or procedure reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public;
- (d) failing to issue communications and warnings which were reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public in the event that members of the public did not have electrical service, cellular service, or internet service;
- (e) failing to exercise reasonable care in the ownership, management, and care of their property, easements, fixtures, and appurtenances such that they created an unreasonable risk of harm to Plaintiffs, including through their failure to implement policies, practices, or procedures concerning vegetation management to mitigate against or prevent the spread of fire on or near their property.

130. As a direct and proximate result of the Public Entity Defendants' negligence, the Maui Fires spread with inadequate warning and caused or contributed to the damages herein alleged.

131. As a direct and proximate result of the Public Entity Defendants' negligence, the Maui Fires damaged or destroyed property in which Plaintiffs had an interest and, further, interfered with the ownership, control, use, enjoyment, and value of the same property, including through the creation and discharge of environmental pollutants.

132. As a direct and proximate result of the Public Entity Defendants' negligence, Plaintiffs incurred and will continue to incur expenses and other economic damages related to the damage to their property, including costs relating to storage, clean-up, disposal, repair, depreciation, and/or replacement of their property and remediation of environmental pollutants and other related consequential damages in an amount according to proof at trial.

133. As a direct and proximate result of the Public Entity Defendants' negligence, Plaintiffs suffered damage to or loss of real property, including through the creation and discharge of environmental pollutants, the loss of vegetation, trees, and structures, the creation of hydrophobic soil conditions, and a loss of use, benefit, goodwill, diminution in value and/or enjoyment of such property in an amount according to proof at trial.

134. As a direct and proximate result of the Public Entity Defendants' negligence, Plaintiffs suffered injury to their health and strength, including through exposure to heat, toxins, smoke, ash, particulates, metals and environmental pollutants all of which caused, and continue to cause Plaintiffs great mental pain and suffering, including worry, emotional distress, humiliation, embarrassment, anguish, anxiety, and nervousness compensable in an amount according to proof at trial in accordance with the laws of the State of Hawai'i. Plaintiffs are informed, and thereon allege, that such injuries have resulted in debilitating injury in an amount according to proof at trial.

135. As a direct and proximate result of the Public Entity Defendants' negligence, Plaintiffs employed, and continues to employ, requisite and reasonably necessary medical care including by and through physicians and other health care providers, and, accordingly, incurred medical and incidental expenses for such examination, treatment, rehabilitation, and care, and will continue to incur expenses for treatment of such injuries, in an amount according to proof at trial.

136. As a direct and proximate result of the Public Entity Defendants' negligence, Plaintiffs suffered loss of income, loss of earning capacity, loss of profits, increased expenses due to displacement, and/or other consequential economic losses in an amount according to proof at trial.

THIRD CAUSE OF ACTION
PREMISES LIABILITY – ALL DEFENDANTS

137. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

138. At all times relevant, the Utility Defendants owned easements, rights of way, or interests in real property in the area of origin of the Maui Fires. Further, the Utility Defendants owned and operated electrical facilities, appurtenances, improvements, and all components upon such easements, rights of way, or interests for the purpose of furnishing electricity to the public.

139. As holders of such property interests, the Utility Defendants owed Plaintiffs a duty to exercise reasonable care in the use such property.

140. The Utility Defendants, and each of them, acted wantonly, unlawfully, carelessly, recklessly, and/or negligently in failing to properly inspect, manage, maintain, and/or control such property and the electrical facilities, appurtenances, improvements, and components thereon, such that said property was in an unsafe condition and created a foreseeable risk of fire ignition, and in failing to warn of or eliminate such a condition.

141. At all times relevant, the Public Entity Defendants owned easements, rights of way, or interests in real property in the area of origin of the Maui Fires. Further, the Public Entity Defendants owned and operated warnings systems, appurtenances, improvements and all components upon such easements, rights of way, or interests for the purpose of alerting the public, including Plaintiffs, to hazards, including wildfires.

142. As a holder of such property interests, the Public Entity Defendants owed Plaintiffs a duty to exercise reasonable care in the ownership, use, management, and control of such property, including in the management of vegetation, grasses, and other ignitable material at or near such property – particularly those at or near the Utility Defendants' Electrical Facilities.

143. The Public Entity Defendants acted wantonly, unlawfully, carelessly, recklessly, and/or negligently in failing to properly inspect, manage, maintain, and/or control such property and the warning systems, appurtenances, improvements, and components thereon, such that said property was

in an unsafe condition and created a foreseeable risk of fire ignition, and in failing to warn of or eliminate such a condition.

144. As a direct and proximate result of Defendants' conduct, the Maui Fires ignited and spread, causing the damages herein alleged.

145. As a direct and proximate result of Defendants' conduct, the Maui Fires damaged or destroyed property in which Plaintiffs had an interest and, further, interfered with the ownership, control, use, enjoyment, and value of the same property, including through the creation and discharge of environmental pollutants.

146. As a direct and proximate result of Defendants' conduct, Plaintiffs incurred and will continue to incur expenses and other economic damages related to the damage to their property, including costs relating to storage, clean-up, disposal, repair, depreciation, and/or replacement of their property and remediation of environmental pollutants and other related consequential damages in an amount according to proof at trial.

147. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered damage to or loss of real property, including through the creation and discharge of environmental pollutants, the loss of vegetation, trees, and structures, the creation of hydrophobic soil conditions, and a loss of use, benefit, goodwill, diminution in value and/or enjoyment of such property in an amount according to proof at trial.

148. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered injury to their health and strength, including through exposure to heat, toxins, smoke, ash, particulates, metals and environmental pollutants all of which caused, and continue to cause Plaintiffs great mental pain and suffering, including worry, emotional distress, humiliation, embarrassment, anguish, anxiety, and nervousness compensable in an amount according to proof at trial in accordance with the laws of the State of Hawai'i. Plaintiffs are informed, and thereon allege, that such injuries have resulted in debilitating injury in an amount according to proof at trial.

149. As a direct and proximate result of Defendants' conduct, Plaintiffs employed, and continues to employ, requisite and reasonably necessary medical care including by and through physicians and other health care providers, and, accordingly, incurred medical and incidental expenses

for such examination, treatment, rehabilitation, and care, and will continue to incur expenses for treatment of such injuries, in an amount according to proof at trial.

150. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered loss of income, loss of earning capacity, loss of profits, increased expenses due to displacement, and/or other consequential economic losses in an amount according to proof at trial.

FOURTH CAUSE OF ACTION
PUBLIC NUISANCE – ALL DEFENDANTS

151. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

152. At all times relevant, Plaintiffs held an interest in or occupied property at or near the site of the Maui Fires and had a right to occupy, enjoy, and/or use their property without interference by the Defendants or the consequences of the Defendants' conduct.

153. At all times relevant, the Utility Defendants owed Plaintiffs and the public a duty to design, construct, inspect, maintain, manage, and operate their electrical facilities in Maui County in a manner that did not threaten harm or injury to the public.

154. The Maui Fire has caused widespread devastation across the island of Maui. Thousands of structures, including residences and businesses, have been reduced to rubble. Thousands of acres have been turned to ash. Culturally significant and sacred spaces and artifacts have been extinguished. In the process, the Maui Fires created conditions harmful to the health of the public, such as smoke, ash, soot, and other forms of environmental pollution and air, soil, and water pollution which interfered with Plaintiffs' comfortable occupancy, use, and/or enjoyment their property. Plaintiffs did not consent to nor could they have avoided the Defendants' wrongful conduct or the consequences thereof.

155. The hazardous condition that the Defendants created and/or permitted to exist affected a substantial number of people within the general public, including Plaintiffs and constituted a public nuisance under the common law and the laws of the State of Hawai'i.

156. The damaging effects of Defendants' poor maintenance of fire hazards, warning systems, and the resulting wildfire are ongoing and affect the public at large. Because of the fire's location, temperature, and duration, extensive areas of hydrophobic soils developed within the fire's perimeter. This may also cause significant post fire runoff hazards to occur, including hillside erosion, debris flow hazards, and sediment laden flow hazards. As a result, large quantities of ash and sediment

will be deposited in perennial and ephemeral watercourses. Hazardous chemicals, debris, toxins, and debris will be found in the air, water, and soils of the affected areas and surrounding regions for years to come and constitute substantial environmental pollution.

157. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered harm that is different from the type of harm suffered by the general public. Specifically, Plaintiffs lost the occupancy, possession, use, and/or enjoyment of their land, real, and/or personal property, including, but not limited to: a reasonable and rational fear that the area is still dangerous; a diminution in the fair market value of their property; an impairment of the salability of their property; soils that have become hydrophobic; exposure to an array of toxic substances on their land; and a lingering smell of smoke, and/or constant soot, ash, and/or dust in the air.

158. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered, and will continue to suffer, discomfort, anxiety, fear, worries, and stress attendant to the interference with their occupancy, possession, use, and/or enjoyment of their property, as alleged above.

159. A reasonable, ordinary person would be annoyed or disturbed by the condition created by Defendants and the resulting fire.

160. Defendants' conduct was, and is, unreasonable and the seriousness of the harm to the public, including Plaintiffs, outweighs the social utility, if any, of Defendants' conduct.

161. Defendants' conduct, whether individually or collectively, as set forth above which caused or contributed to the devastation of the Maui Fires were not an isolated incident but are an ongoing and/or a repeated course of conduct, and Defendants' prior conduct and/or failures have resulted in other fires and damage to the public.

162. Defendants, through their individual and collective conduct, failed to ensure the safe delivery of electricity to residents through the operation of power lines in the affected area and the reasonable warning, and Defendants' individual and/or collective failure to do so exposed every member of the public, residing and/or owning property in Maui County, to a foreseeable danger of personal injury, death, and/or a loss of or destruction real and personal property.

163. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered a condition which constitutes a public nuisance as defined in the common law and the laws of the State of Hawai'i.

Plaintiff have standing to maintain an action for public nuisance because the nuisance is one that is especially injurious and/or offensive to the senses of the Plaintiffs, unreasonably interferes with the comfortable enjoyment of their properties, unlawfully obstructs the free and customary use of Plaintiffs' property, and caused individualized harm, injury, and damages as alleged herein.

164. As a direct and proximate result of the Defendants' conduct, as set forth above, Plaintiffs and the public at large suffered the harms herein alleged.

165. For these reasons, Plaintiffs seek a permanent injunction ordering the Utility Defendants to stop their continued violations of HPUC General Orders Nos. 6 and 7.

166. Plaintiffs also seek an order directing Defendants, and each of them, to abate the existing and continuing nuisances described above.

FIFTH CAUSE OF ACTION
PRIVATE NUISANCE – ALL DEFENDANTS

167. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

168. As a direct and proximate result of Defendants' conduct, including through their proliferation of environmental pollutants, Plaintiffs suffered obstructions to, interference with, and invasion of, their right to freely use or enjoy their property and experienced unreasonable harm and substantial actual damages constituting a nuisance, under the common law and under the laws of the State of Hawai'i.

169. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered harm, injury, and damages in an amount according to proof at trial.

SIXTH CAUSE OF ACTION
TRESPASS – ALL DEFENDANTS

170. Plaintiffs incorporate each and every allegation above as though fully set forth herein.

171. At all times relevant, Plaintiffs held interests in property as owners, tenants, or lawful occupants. The property was located in Maui County in the State of Hawai'i and suffered damage from the Maui Fires.

172. As a direct and proximate result of Defendants' conduct, the Maui Fires ignited, spread, and harmed, injured, or otherwise trespassed upon the property in which Plaintiffs held their respective interests without consent from Plaintiffs, whether express or implied.

173. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered from a trespass, including through the proliferation of metals, toxins, chemicals, and other environmental pollutants, which caused, and continues to cause, damages in an amount to be proven at trial.

174. As a direct and proximate result of Defendants' conduct, Plaintiffs have hired and retained counsel to recover compensation for loss and damage and are entitled to recover all attorneys' fees, expert fees, consultant fees, and litigation costs and expense, as permitted under the laws of the State of Hawai'i and in an amount to be proven at trial.

175. As a direct and proximate result of Defendants' conduct, Plaintiffs suffered injuries to timber, trees, vegetation, and other natural features of their property in an amount according to proof at trial.

VI. PRAYER FOR RELIEF

176. Wherefore, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

- (a) Repair, depreciation, or replacement of damaged, destroyed or lost personal or real property;
- (b) Loss of the use or benefit of damaged, destroyed, or lost personal or real property;
- (c) Past and future medical expenses and any other expenses according to proof;
- (d) General damages for fear, worry, annoyance, disturbance, inconvenience, mental anguish, emotional distress, loss of quiet enjoyment of property, personal injury, and pain and suffering;
- (e) All costs of suit, including reasonable attorneys' fees, appraisal fees, engineering fees, expert fees, and all other costs or fees arising from the prosecution of this action;
- (f) Lost wages, earning capacity, or business profits, use, goodwill, or proceeds or any related displacement costs;
- (g) Prejudgment and post-judgment interest in the maximum amount permitted by law;
- (h) For any and all other such further relief as this Court deems just and proper.

177. Further, and in addition to the prayers set forth above, Plaintiffs pray for judgment against the Utility Defendants, and each of them, for punitive and exemplary damages as permitted by law.

DATED this 7th day of September, 2023, in Wailuku, Maui, Hawai'i.

/s/ Cynthia K. Wong
Cynthia K. Wong
Attorney For Plaintiffs

/s/ James S. Bostwick
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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI‘I

Amber Sampson, an individual; **Patrick Alexander**, individually and as next friend of **K1.A**, a minor, and **K2.A**, a minor,

Plaintiffs,

vs.

Hawaiian Electric Industries, Inc.; a
Hawai‘i corporation;
Hawaiian Electric Company, Inc., a
Hawai‘i corporation;
Hawai‘i Electric Light Company, Inc., a
Hawai‘i corporation;
Maui Electric Company Limited, a
Hawai‘i corporation;
The County of Maui, a municipal
corporation;
The State of Hawaii; and
DOES 1 through **100**, inclusive,

Defendants.

CASE NO. _____
(Other Non-Motor Vehicle Tort - Maui Fire)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY

Plaintiffs demand a trial by jury on all issues so triable.

DATED this 7th day of September, 2023, in Wailuku, Maui, Hawai‘i.

/s/ Cynthia K. Wong

Cynthia K. Wong
Attorney For Plaintiffs

/s/ James S. Bostwick

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