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**IN THE CIRCUIT COURT OF THE SECOND CIRCUIT**

**STATE OF HAWAII**

In re Maui Wildfire Cases

Case No. S.P. No. 2CSP-23-0000057  
(Other Non-Vehicle Tort – Maui Fire)

**INDIVIDUAL ACTION PLAINTIFFS' MOTION FOR ORDERS REGARDING OPERATION OF HRS § 663-10 AND APPLICATION FOR INTERLOCUTORY APPEAL UNDER HRS § 651-1(b); MEMORANDUM IN SUPPORT OF INDIVIDUAL ACTION PLAINTIFFS' MOTION FOR ORDER REGARDING OPERATION OF HRS § 663-10 AND APPLICATION FOR INTERLOCUTORY APPEAL UNDER HRS § 651-1(b); DECLARATION OF JESSE CREED; PROPOSED ORDER; NOTICE OF HEARING AND CERTIFICATE OF SERVICE**

Hearing Date: August 13, 2024  
Hearing Time: 10:00 a.m.  
Judge: Hon. Peter T. Cahill

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	2
II. FACTUAL BACKGROUND.....	3
III. ARGUMENT.....	8
A. In Light of the Global Settlement, the Exclusive Remedy for any Subrogation Lienholder to Recover Under Subrogation Is to Seek Reimbursement for Liens Under HRS § 663-10.....	8
B. <i>Yukumoto</i> is Not Limited to Health Insurers.....	13
C. Even if <i>Yukumoto's</i> Holding Is Limited to Contractual Subrogation, its Holding Must Be Extended to Equitable Subrogation.....	14
D. Even if <i>Yukumoto</i> Did Not Apply, Equitable Subrogation Requires that Subrogation Claimants Take, if at All, from Plaintiffs' Recovery .....	15
E. The Court Should Allow for an Appeal of its Interlocutory Order to Render It Final and Unappealable Under the Term Sheet .....	16
IV. CONCLUSION.....	17

**TABLE OF AUTHORITIES**

**Page**

**CASES**

*Fujioka v. Kam*,  
55 Haw. 7 (1973) ..... 16

*State Farm Fire and Casualty Co. v. Pacific Rent-All, Inc.*,  
90 Haw. 315 (1999) ..... 15, 18

*Yukumoto v. Tawarahara*,  
140 Haw. 285 (2017) ..... passim

**STATUTES**

HRS § 431:13-103 ..... 15

HRS § 431:13-103(1)..... 3, 6

HRS § 431:13-103(10)..... 10

HRS § 431:13-103(10)(a) ..... 13, 14, 16

HRS § 431:13-103(a)..... 9

HRS § 431:13-103(a)(10) ..... 9, 10, 11, 12

HRS § 431:13-103(a)(10)(A)..... 11

HRS § 602-58(a)..... 18

HRS § 602-58(a)(1) ..... 18

HRS § 651-1(b)..... 18, 19

HRS § 663-10 ..... passim

HRS § 663-10(a)..... 9

**OTHER AUTHORITIES**

2000 Haw. Sess. Laws Act 29, § 1 ..... 14

2002 Haw. Sess. Laws Act 228, § 1 ..... 14

**RULES**

Hawaii Rules of Professional Conduct 1.8(g)..... 18

HRCC Rule 12(c)..... 5

HRE Rule 201 ..... 16

**INDIVIDUAL ACTION PLAINTIFFS' MOTION FOR ORDER REGARDING  
OPERATION OF HRS § 663-10 AND APPLICATION FOR INTERLOCUTORY  
APPEAL UNDER HRS § 651-1(b)**

Today, the Individual Action Plaintiffs ("**Plaintiffs**" or "**Individual Plaintiffs**") and Defendants entered into a Term Sheet establishing a global settlement framework that seeks to resolve *all* Maui Fire claims for \$4.037 billion (the "**Global Settlement**"). In furtherance of implementing the Global Settlement, Plaintiffs move this Court under its complex-case authority set forth in Hawaii Rules of Circuit Court 12(c), HRS § 663-10, and inherent authority for an order ruling that (1) if the Global Settlement becomes effective, then, under Hawaii law, any subrogation lienholders' exclusive remedy for any Maui Fire claims would be asserting liens, if any, against their policyholders' respective settlement amounts. The Plaintiffs further respectfully request an order that as a consequence of the aforementioned ruling, the subrogation lienholders are barred from bringing or maintaining any independent claims against tortfeasors.

Finally, because a condition to the Global Settlement is that these orders become final and unappealable, Plaintiffs apply to the Court to allow for an appeal of these interlocutory orders under HRS § 651-1(b)). An interlocutory appeal would result in the speedy termination of this litigation by virtue of the Global Settlement becoming effective.

DATED: August 2, 2024

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Hearing Date: August 13, 2024  
Hearing Time: 10:00 a.m.  
Judge: Hon. Peter T. Cahill

**MEMORANDUM IN SUPPORT OF INDIVIDUAL ACTION PLAINTIFFS' MOTION  
FOR ORDER REGARDING OPERATION OF HRS § 663-10 AND APPLICATION FOR  
INTERLOCUTORY APPEAL UNDER HRS § 651-1(b)**

**I. INTRODUCTION**

On July 26, 2024, the Court entered a Sua Sponte Order of the Court re: Hearing on the Effect of HRS Section 663-10 on all Maui Fire Cases (the "Sua Sponte Order"). Liaison Counsel file this brief reflecting the official position of the Individual Action Plaintiffs ("Plaintiffs" or "Individual Plaintiffs").

Today, after a lengthy negotiation under the supervision of mediators appointed by this Court, the Plaintiffs and Defendants named in the Amended Master Complaint (plus West Maui Land and its affiliates) entered into a Term Sheet providing for a global settlement of \$4.037 billion for all claims involving the Maui Fires (the "**Global Settlement**"). (Decl. of Jesse Creed ("**Creed Decl.**"), Ex. 1 (the "**Term Sheet**"). The Global Settlement was achieved before the one-year anniversary of the Maui Fires due to the common belief shared by Plaintiffs and Defendants that the speedy resolution of the Maui Fire claims was in the best interest of the victims desperate for relief as well as core institutions of the State of Hawaii.

While subrogation insurance carriers participated in mediation sessions, the subrogation carriers have not signed the Term Sheet and therefore have not agreed to the Global Settlement. (Term Sheet Preamble). They remain "hold outs." The questions presented by the Sua Sponte Order will determine whether a condition to the \$4.037 billion Global Settlement can be met under longstanding Hawaii law, making vast sums of money available for the people and businesses that suffered. The condition to the Global Settlement requires, among other things, that this Court enter an order determining that if the Global Settlement becomes effective, a subrogation carriers' exclusive remedy under Hawaii law would be asserting liens against policyholders' recovery, thereby barring subrogation lienholders from bringing an independent action. (Term Sheet at ¶ 4(b)(i) & (ii)).

Plaintiffs respectfully request that the Court enter these orders, because these orders are the law in Hawaii. Specifically, Plaintiffs request an order ruling that if the Global Settlement becomes effective, then, under Hawaii law, (i) any subrogation lienholders' exclusive remedy for any Maui Fire claims would be asserting liens, if any, against their policyholders' respective

settlement amounts and (ii) as a consequence of the aforementioned order, the subrogation lienholders are barred from bringing or maintaining any independent claims against tortfeasors.

These rulings requested by the Plaintiffs flow directly from the plain language of HRS § 431:13-103(1) and HRS § 663-10 and are a direct extension of *Yukumoto v. Tawarahara*, 140 Haw. 285 (2017). Indeed, while the scale of *Yukumoto* pales in comparison to the Maui Fire cases, the parties in *Yukumoto* were aligned similar to the parties here: the plaintiff had settled with the tortfeasor defendant while the subrogation lienholder had not, and the subrogation lienholder had filed a complaint-in-intervention against the tortfeasor defendant. In *Yukumoto*, the Hawaii Supreme Court affirmed the trial court's ruling that "the statute [HRS § 663-10] provided [the lienholder's] exclusive remedy" in the case before it. *Id.* at 288. As a result, the Hawaii Supreme Court affirmed the *dismissal* of the lienholders' direct action against the tortfeasor based on these statutory provisions, holding that the lienholder was barred from bringing an independent claim upon settlement by the plaintiff with the defendant tortfeasor. *Id.* at 299. Plaintiffs simply request the Court apply *Yukumoto* to this case for all subrogation lienholders asserting rights that derive from the Plaintiffs' own Maui Fire claims.

## **II. FACTUAL BACKGROUND**

The reason for these lawsuits is well-known to everybody in Hawaii, if not the world. On August 8, 2023, a series of fires began on the island of Maui after several energized power lines ignited desiccated vegetation during foreseeably dry and windy conditions ("Maui Fires"). Shortly thereafter, the victims of the Maui Fires began making first-party claims on property insurance carriers and filing lawsuits against the parties they believed were responsible for causing the Maui Fires. The number of lawsuits proliferated rapidly, reaching over 600 lawsuits (each of which may contain multiple plaintiffs). (Creed Decl. ¶ 3). The number of victims represented by lawyers with unfiled complaints is believed to be close to 10,000. (*Id.*).

On October 27, 2023, to bring an orderly administration to an onslaught of lawsuits the Hawaii judiciary has never before seen, this Court entered an Order Granting Ex Parte Petition for the Coordination of Individual Plaintiffs Maui Fire Cases. (Creed Decl., Ex. 2). In that Order, the Court determined with respect to the Individual Plaintiffs Maui Fires Cases that it has the inherent authority to issue complex case management order(s) under the Rules of the Circuit Courts of the State of Hawaii and that all such cases be coordinated within a Special Proceeding



so that the Court "may issue complex case management orders that can be applicable to all such cases within the coordinated filings." (*Id.* at ¶¶ 1-3).

On January 2, 2024, the Court entered an Order Granting Request to Enter CMO No. 1 (Organization of the Plaintiffs' Leadership). (Creed Decl., Ex. 3). The Court appointed four liaison counsel responsible for coordinating litigation activities and established a Plaintiffs' Steering Committee to assist in the conduct of discovery and preparation of cases for trial. (*Id.* at Ex. 3, pp. 3-4).

On January 9, 2024, Court Appointed Liaison Counsel filed a Master Complaint in this Court under Special Proceeding No. 2CSP-23-0000057. (Creed Decl., Ex. 4). The Master Complaint identified as parties responsible for causing the Maui Fires: Hawaiian Electric Industries, Inc. and certain of its affiliates, Spectrum Ocean, LLC, Hawaiian Telcom, Inc. and certain of its affiliates, Trustees of the Bishop Estate, Hawaii Housing Finance and Development Corporation, the State of Hawaii, and the County of Maui. (*Id.* at Ex. 4 at ¶¶ 4-17).<sup>1</sup>

On January 12, 2024, over 140 insurance companies ("Subrogation Plaintiffs") filed a separate lawsuit in the Circuit Court of the First Circuit, seeking to recover compensation for the payments made to fire victims under their insurance contracts. (Creed Decl., Ex. 5). The Subrogation Plaintiffs' complaint failed to allege the identity of the insureds, the addresses of the properties at issue, the amount of the losses paid or incurred, or the fact that their insureds had been fully compensated for all losses or "made whole."<sup>2</sup> (*Id.*). The Subrogation Plaintiffs filed an action seeking to stand in the shoes of their insureds *without* joining the insureds as parties, potentially impairing the claims of the insureds to the extent that an adjudication on the merits of the Subrogation Plaintiffs' claims may bar their insureds' claims and to the extent that the Subrogation Plaintiffs recover funds from tortfeasors with limited capacity to pay their own insureds. (*Id.*).

As occurred at a massive scale in PG&E, it appears based on publicly available information that "significant" insurance carriers have already sold or are in active efforts to sell

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<sup>1</sup> On June 28, 2024, after granted leave by the Court, Plaintiffs filed a First Amended Master Complaint identifying Charter Communications, Inc., an affiliate of Spectrum Oceanic, LLC, as a party defendant. (Creed Decl. ¶ 7).

<sup>2</sup> Nor could they. In many cases, the insurers paid full policy limits, admitting that the insured had not been made whole.

their subrogation claims to Wall Street hedge funds. (Creed Decl., Ex. 6-8). In fact, over \$75 million in sales of subrogation claims, representing probably \$340 million in subrogation payouts, appears to have been arranged by a single dealer.<sup>3</sup> In PG&E wildfires, hedge funds bought billions of dollars of subrogation insurance claims, whereby the carriers sold their claims to hedge funds at a steep discount. In fact, one hedge fund the Baupost Group bought \$6.8 billion worth of subrogation claims in the PG&E fires – by far the largest subrogation claimholder – according to publicly-filed documents in the bankruptcy proceeding. (Creed Decl., Ex. 9 at p. 9). Many other hedge funds piled in, including Attestor Capital LLP (\$834 million in claims) and Strategic Value Partners, LLC (\$132,030,617.58). (Creed Decl., Ex. 9 at p. 8 & p. 20). Thus, the identity of the beneficial owner of the subrogation claims is unclear given the historical practices of insurance carriers in wildfires. What is clear is that the insurance carriers have a practice of selling their claims to funds that do not operate going concerns in Hawaii. In addition, Hawaii insurance companies have made \$4.2 billions in profits over the past ten years, according to publicly available data. (Creed Decl., Ex. 12 at ¶¶ 1 & 12).

On April 17, 2024, this Court appointed Hon. Louis M. Meisinger, Ret. as special settlement master under its complex-court authority set forth in HRCC Rule 12(c). (Creed Decl., Ex. 10). The Court also appointed Keith Hunter as "co-administrator of all mediation efforts." (*Id.*). On May 9, 2024, the Court appointed Hon. Daniel Buckley, Ret. as a co-special settlement master. (Creed Decl., Ex. 11).

As the Court is aware, these mediation professionals convened all the parties as well as subrogation carriers in an effort to mediate a resolution of the Maui Fire Cases. (Term Sheet at ¶ 1 (Recitals)). Individual Plaintiffs, Class Plaintiffs, Subrogation Plaintiffs, and Defendants all engaged over the course of months in multiple in-person and virtual mediation sessions. (Term Sheet at ¶ 1(c)).

On July 19, 2024, certain plaintiffs represented by Liaison Counsel Jesse Creed and Cynthia Wong filed complaints against their subrogation carriers in the Second Circuit. (Creed Decl., ¶¶ 16-17 & Ex. 12). Those complaints seek declaratory relief as to the authority of the subrogation carriers to assert independent and separate claims on behalf of the plaintiffs, to

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<sup>3</sup> The evidence shows that the claims are being sold at a 22%-25% discount. Therefore, the roughly \$75 million in publicized sale value represents a 22%-25% discount of the value of the total claim.

adjudicate or impair the plaintiffs' claims, and to recover any funds separate from the plaintiffs. (Creed Decl., Ex. 12). The complaints also allege bad faith claims against the carriers for seeking to recover funds ahead of the plaintiffs and for seeking recovery in violation of HRS §§ 431:13-103 and 663-10. (*Id.*). On the same day, these plaintiffs represented by Creed and Wong filed motions to intervene in the First Circuit subrogation action, which motions are set for hearing on August 14, 2024. (Creed Decl., ¶ 19 & Ex. 13).

On July 23, 2024, Liaison Counsel requested a status conference regarding the mechanics of resolving subrogation rights and liens in the context of a potential global settlement. (Creed Decl., Ex. 14). On July 26, 2024, the Court held a status conference. (Creed Decl., Ex. 15). Shortly thereafter, the Court issued the Sua Sponte Order. (*Id.*). In the Sua Sponte Order, after reciting the history of this complex litigation and describing the fundamental principles of "subrogation claims," the Court stated:

Thus despite the filing of a separate lawsuit pending in a different circuit, **THIS COURT FINDS AND CONCLUDES** that it has jurisdiction, authority ***and legal duty*** to review and resolve subrogation liens in the event of settlement of any Maui Fire Case. This authority flows from HRS Sec. 663-10. Because the subrogation claims are inextricably tied to the just, efficient, and economic determination of all the Maui Fire Cases, this Court has the authority to bring together all necessary persons and entities to achieve that result. This authority also derives from the designation of all the Maui Fire Cases as complex matters pursuant to HRCC Rule 12.

(*Id.* at p. 3). The Court set a hearing for August 13, 2024 at 10 AM HST "to review all matters that have or could arise by way of operation of HRS Sec 663-10 in the event that any single, group, or global resolution of the Maui Fire Cases is reached." (*Id.*).

On August 2, 2024, Plaintiffs and Defendants entered into the Global Settlement. The Global Settlement provides for the payment by the Defendants of \$4.036 billion to the Plaintiffs (as well as an additional estimated \$800 million of consideration in the form of a waiver by the County of its affirmative claims). (Term Sheet ¶ 3). No subrogation insurance carrier has agreed to the Term Sheet or the Global Settlement.

Among other things, as relevant here, the Global Settlement also requires as a condition to payment an order that under Hawaii law, if the Settlement Agreement between the Plaintiffs and Defendants becomes effective, "(i) the Subrogation Plaintiffs' exclusive remedy for any Maui Fires Claims would be asserting liens, if any, against their policyholders for their

respective shares of the Aggregate Settlement Amount, and (ii) the Subrogation Plaintiffs would be barred from bringing or maintaining any Maui Fires Claims against the [Defendants]." (Term Sheet ¶ 4(b)). The rationale under this condition is essentially an order restating the law of Hawaii: if plaintiffs assert their own claim against a tortfeasor and settle directly with a tortfeasor, the source of the subrogation lienholders' right to recovery is limited to the plaintiff's recovery.<sup>4</sup> Indeed, this rationale is what guides every personal injury or property damage tort case, day in and day out in Hawaii. If a subrogation lienholder wishes to recover in the event a plaintiff settles his, her, or its claims against the tortfeasor, the subrogation lienholder asserts the lien against the policyholders' recovery.

In addition, the Global Settlement provides, as a corollary to the order sought in this Court, that "The Parties will use best efforts to obtain, within 90 days or as soon thereafter as possible, from each trial court where any Subrogation Plaintiff's claim has been filed, judgments, orders, or opinions dismissing with prejudice all claims by Subrogation Plaintiffs against the Paying Parties." (Term Sheet ¶ 4(c)). The Global Settlement requires as a condition to payment that all these orders become "final and unappealable," which is defined as follows: "(aa) all parties with a right to appeal that order, judgment or opinion waive their right to do so; (bb) the time to appeal expires with no appeal filed; or (cc) the judgment, order, or opinion is affirmed by an appellate court with no further possibility of appeal." (Term Sheet ¶ 4(d)).

Finally, the Global Settlement will require each plaintiff who receives a payment from the global settlement to "indemnify the Defendants with respect to any individual liens asserted by any subrogated insurer against the IP arising out of or relating to the Maui Fires." (Term Sheet ¶ 5). In other words, if a plaintiff receives a recovery, the subrogation plaintiffs will, in effect, be suing the plaintiff who is the insurer's policyholder to recover the insurer's payments, setting up a direct competition between the subrogation plaintiffs and the plaintiff over the funds at issue.

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<sup>4</sup> If the Subrogation Plaintiffs contend that they are subrogated to policyholders who have not filed suit, that contention is simply false. In light of the class actions currently on file and contemplated to be resolved by the Global Settlement, every policyholder is considered represented by all plaintiffs or class members.

### III. ARGUMENT

#### A. In Light of the Global Settlement, the Exclusive Remedy for any Subrogation Lienholder to Recover Under Subrogation Is to Seek Reimbursement for Liens Under HRS § 663-10

As the Court explained in its Sua Sponte Order,

The recovery of losses paid by insurers, commonly known as subrogation claims, can arise from any number of lawful sources. Those legal theories may include statutory, contractual, or equitable sources. In general, a subrogation claim asserted by an insurer allows that paying entity to step into the shoes of its insured to whom payment has been made to recover what it paid as a result of the wrongful conduct of another.

Sua Sponte Order at p. 3. The Court has concluded in the Sua Sponte Order that it has the "jurisdiction, authority, and *legal duty* to review and resolve subrogation liens in the event of settlement of any Maui Fire Case. This authority flows from HRS Sec. 663-10." (*Id.*)

Implicit in the Court's order is that HRS § 663-10 requires the subrogation lienholder to seek a recovery exclusively from the plaintiffs' recovery. HRS § 663-10 is entitled "Collateral sources; protection for liens and rights of subrogation." This section provides:

[1] In any civil action in tort, [2] the court, [3] before any judgment or stipulation to dismiss the action is approved, [4] shall determine the validity of any claim of a lien [5] against the amount of the judgment or settlement [6] by any person who files timely notice of the claim to the court or to the parties in the action. The judgment entered, or the order subsequent to settlement, shall include a statement of the amounts, if any, due and owing to any person determined by the court to be a holder of a valid lien and to be paid to the lienholder out of the amount of the corresponding special damages recovered by the judgment or settlement.

HRS § 663-10. The statute defines a lien as "a lien arising out of a claim for payments made or indemnified from collateral sources, including health insurance or benefits, for costs and expenses arising out of the injury which is the subject of the civil action in tort." The statute also provides the remedy for lien resolution of unfiled claims: "If there is a settlement before suit is filed or there is no civil action pending, then any party may petition a court of competent jurisdiction for a determination of the validity and amount of any claim of a lien." *Id.*

This statute provides that the exclusive remedy for a lienholders' recovery is from a settling plaintiffs' recovery by virtue of the framework it sets out. *First*, it establishes that it is the court where the tort claim is pending – i.e. *this* Court – that resolves the lien. Therefore, to

the extent that all claimants agree to a global settlement of their claims in this Court, then this Court has the "jurisdiction, authority, and legal duty" to determine the validity of subrogation claims and their amounts from such recovery.<sup>5</sup> **Second**, the statute requires the Court to enter an order "determin[ing] the validity of any claim of a lien" and a "statement of the amounts, if any, due and owing to any person determined by the court to be a holder of a valid lien and to be paid to the lienholder." HRS § 663-10(a). **Third**, the statute applies to "any civil action in tort," which covers *all* the Maui Fire cases. The statute is not limited to personal injury actions, wrongful death actions, business loss actions, or property damage actions. The statute applies to all of those actions, as they are each a "civil action in tort." **Fourth**, the statute applies to property insurance liens given the broad definition of lien as any "lien arising out of a claim for payments made or indemnified from collateral sources, *including health insurance or benefits*." The use of the word "including" means that the collateral sources are not limited to health insurance or benefits, and no one disputes that the definition of "lien" extends to first-party property insurers as a collateral source.

In addition, HRS § 431:13-103(a)(10) limits the subrogation rights of an insurance carrier to reimbursement of amounts paid from a policyholders' recovery. HRS § 431:13-103(a) defines "unfair methods of competition and unfair or deceptive acts or practices in the business of insurance." *Id.* Subdivision (a)(10) bars an insurance carrier from "[r]efusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages." HRS § 431:13-103(a)(10). In the context of a limited fund global settlement like the one at issue here, this provision bars an insurance carrier from "limiting" coverage by withholding its consent to settlement of its policyholders' claims or by competing with its policyholders for limited funds. In particular, the indemnity required in the Term Sheet by Defendants (and, frankly, every settling tortfeasor) against subrogation claims effectively means that any claim for recovery by the subrogation plaintiffs "limits" the funds the insurance carriers made available to the plaintiffs.

Two simple scenarios demonstrate how insurance carriers violate HRS § 431:13-103(a)(10) when they interfere with their policyholder's ability to settle claims. In Scenario 1,

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<sup>5</sup> The class action plaintiffs and individual action plaintiffs will, under the Global Settlement, represent the total universe of potential claimants, which would cover every policyholder against whom a lien could be asserted.

imagine a fire caused by smalltown Electrical Company burned John Doe's \$5 million home. Insurer A paid out its policy limit of \$500,000. John Doe sued Electrical Company whose insurance coverage was limited to \$2 million. John Doe wishes to settle for the policy limits, but Insurer A does not because John Doe would not adequately reimburse Insurer A for its \$500,000 payment out of John Doe's \$2 million recovery from Electrical Company. As a result, Electrical Company refuses to settle. In this scenario, Insurer A has in substance and effect limited its coverage to John Doe based on his third-party claim by conditioning the settlement on the amount Insurer A would be reimbursed. Insurer A has said to John Doe, "Unless you give me back the policy coverage I gave you, I will not consent to the settlement." In this scenario, Insurer A clearly has "limit[ed] coverage available to [John Doe] because" of John Doe's third-party claim under HRS § 431:13-103(10).

Scenario 2 is a variation of this previous scenario. Recognizing Insurer A's position is in violation of HRS § 431:13-103(10), John Doe settles his entire claim with Electrical Company for \$2 million without Insurer A's consent. Electrical Company is satisfied settling without Insurer A because John Doe has agreed to indemnify Electrical Company against Insurer A's subrogation liens – a nearly universal provision on which a defendant insists in any tort lawsuit. As a result of the indemnity, any recovery by Insurer A from Electrical Company effectively takes money away from John Doe on a dollar-for-dollar – every dollar Insurer A recovers from Electrical Company is a dollar John Doe is required to pay under the indemnity. In this situation, Insurer A's assertion of its subrogation lien also puts it in violation of HRS § 431:13-103(10). By asserting its lien against Electrical Company directly, Insurer A is effectively "limit[ing] coverage" Insurer A previously provided to John Doe by taking back the coverage from John Doe's recovery.

Hawaii law does provide Insurer A with a way to protect its rights and prevent a double recovery by John Doe. HRS § 431:13-103(a)(10) provides Insurer A with the ability to seek "reimbursement of past benefits paid" under HRS § 663-10 where "damages are recovered by judgment or settlement of a third-party claim." HRS § 431:13-103(a)(10)(A). Therefore, when a plaintiff settles directly with the tortfeasor, HRS §§ 431:13-103(a)(10) and 663-10 limit the subrogation rights of an insurance carrier to reimbursement from the plaintiff's recovery.

Hawaii case law confirms this reading by virtue of HRS § 431:13-103(a)(10), HRS § 663-10 is the exclusive remedy for subrogation lienholders to assert their liens in the event of a

settlement of the claim by the policyholder. The orders Plaintiffs seek from this Court (and, at a later date, the Subrogation Plaintiffs' direct actions) are a clear and clean extension of the rulings of the trial court in *Yukumoto v. Tawarahara*, 140 Haw. 285, which were affirmed by the Hawaii Supreme Court. Accordingly, Plaintiffs devote substantial space to the procedural history and holdings of that case.

In *Yukumoto*, the plaintiff suffered catastrophic injuries in an auto collision on March 20, 2014. *Id.* at 287. The plaintiff and his wife sued the defendant driver. *Id.* Hawaii Medical Service Association (HMSA) filed a "Notice of Claim of Lien" in the case. *Id.* Thereafter, on November 6, 2011, the plaintiff settled directly with the defendant driver for policy limits of \$1.1 million. *Id.* Plaintiff filed a "Petition for Determination of Validity of Claim of Lien" under HRS § 663-10, claiming his "wage loss and general damages claim," which, in contrast to his insured medical damages, went uncompensated by any collateral source, was \$4 million. *Id.* Plaintiff contended in his Petition that he remained "undercompensated by approximately \$2,850,000." *Id.* Plaintiff further contended that the subrogation lienholder "has the burden of proving that the settlement or recovery duplicates medical expenses that were paid by the health insurer" to recovery anything on its lien. The lienholder HMSA claimed it had an independent "contractual lien or subrogation right[]" permitting it to recover any amount the plaintiffs recovered" and filed a motion to intervene to assert claims directly against the tortfeasors. *Id.* at 288. The motion to intervene by the subrogation plaintiff was granted and the subrogation plaintiff filed a direct complaint against the defendant driver seeking \$339,255.40 in addition to the settlement recovered by the plaintiff. *Id.* at 289. The trial court allowed the subrogation plaintiff to conduct limited "discovery as to whether or not there is duplication [of recovery from the collateral source and the defendant driver]" such that their lien rights under [HRS § 663-10 are] protected because if it's duplicative, then there is a reimbursement." *Id.* at 290. The subrogation plaintiff conceded that it could not prove that the recovery by the plaintiff from the defendant was duplicative of the benefits the subrogation plaintiff gave to the plaintiff. *Id.*<sup>6</sup>

Defendant driver, the tortfeasor, filed a motion to dismiss the subrogation plaintiff's action against her. *Id.* at 290. Defendant driver "argued that [the subrogation plaintiff] had no

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<sup>6</sup> In other words, HRS § 663-10 essentially imposes a make-whole rule on the lienholders by requiring the lienholder to prove that the plaintiff was fully compensated and therefore the plaintiff's compensation was duplicative of benefits provided by the lienholder.



standing to bring an action against her because the court had ruled that HMSA's subrogation rights were abrogated" by HRS § 663-10. *Id.* In opposition, the subrogation plaintiff argued that "its right of subrogation against [defendant driver] is separate and independent from its right of reimbursement from Mr. Yukumoto under HRS § 663-10, and will survive the Court's ruling as to a distribution of the proceeds." *Id.*

In the course of those proceedings, the trial court entered two specific orders, which are the exact orders Plaintiffs seek from this Court and the courts presiding over the subrogation plaintiffs' direct actions: (1) an order ruling that when the plaintiff settles with the tortfeasors, HRS § 663-10 "provided [the subrogation plaintiff's] exclusive remedy 'in this particular situation'" and to the extent any insurance policy is to the contrary, "HRS § 663-10 [and § 431:13-103(a)(10)] abrogated [the subrogation plaintiff's] right of subrogation against [defendant driver, i.e. the tortfeasor]," *id.* at 288 and (2) an order "grant[ing] the motion to dismiss" the subrogation plaintiff's claims against the tortfeasor, *id.* at 290.<sup>7</sup>

The Hawaii Supreme Court affirmed both rulings. *Id.* at 299. The Hawaii Supreme Court held that HRS § 663-10 and § 431:13-103(10)(a) "limited" the insurers' right to subrogation. *Id.* at 295. The Hawaii Supreme Court held that HRS § 663-10 had a "comprehensive scope" that was "reflected in the statute's declaration that it applies broadly to 'any claim of a lien.'" *Id.* The Hawaii Supreme Court surveyed the legislative history of HRS § 663-10 and § 431:13-103(10)(a) to confirm the following: (1) In 2000, the Legislature enacted Act 29 that enacted § 431:13-103(10)(a); (2) "Act 29 made clear that collateral sources were required to pay benefits, and *were limited to reimbursement under the statute in third-party personal injury situation*," and (3) "The legislature also limited reimbursement and subrogation for *all* insurance companies, excluding health insurers in HRS § 431:13-103(10)(a), while also applying the same restrictions to reimbursement and subrogation to health insurers in HRS § 663-10." *Id.* at 296-97. The Supreme Court quoted legislative history showing that the exemption of health insurers from HRS § 431:13-103(10)(a) motivated the Legislature to expressly extend HRS § 663-10 and therefore "place all of the rights and obligations of health

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<sup>7</sup> Plaintiffs or Defendants intend to seek the second order from the appropriate court(s). It is curious that the vast majority of insurance carriers filed lawsuits in the First Circuit knowing full well that their policyholders were filing lawsuits in the Second Circuit, as though they were seeking to avoid the mandates of HRS § 663-10 and to split Plaintiffs' causes of action.

benefit providers and consumers in Section 663-10 for third-party liability situations to create a uniform and comprehensive procedure." *Id.* at 297 (quoting H. Stand. Comm. Rep. No. 1330-00, in 2000 House Journal, at 1515 (emphasis added)).

The "uniform and comprehensive procedure" was intended to apply to both health insurers and property insurers. At the time of Act 29, HRS § 431:13-103(10)(a) applied to property carriers but expressly exempted health insurers. *See* 2000 Haw. Sess. Laws Act 29, § 1 at 55.<sup>8</sup> Therefore, property carriers were subject to the anti-subrogation regulations set forth in § 431:13-103(10)(a), which incorporated by express reference the procedures set forth in § 663-10. To create the "uniform and comprehensive procedure" regulation subrogation rights, the Legislature also expressly "include[ed] health insurance or benefits" as a collateral source regulated by § 663-10.

In 2001, the Legislature amended Act 29 to extend the same regulations for subrogation by property insurers set forth in § 431:13-103(10)(a) to health insurers. *See* 2002 Haw. Sess. Laws Act 228, § 1 (amending § 431:13-103(10)(a) to eliminate exemption of health insurers). As explained by the Hawaii Supreme Court, the purpose of Act 228 was to *extend* the insurance unfair trade practices with respect to subrogation rights to health insurers. *Yukumoto*, 140 Haw. at 297. By implication, Act 29's anti-subrogation provisions already applied to property carriers.

Accordingly, as the trial court ruled in *Yukumoto* which the Hawaii Supreme Court affirmed, Plaintiffs request that the Court enter an order that HRS § 431:13-103(10)(a) and HRS § 663-10 limit the property insurers' subrogation rights, to the extent valid, to their policyholders' recovery in the event of a settlement and therefore that the subrogation carriers are barred from pursuing an independent action against the settling defendants.

**B. *Yukumoto* is Not Limited to Health Insurers**

Plaintiffs anticipate that the subrogation insurers may argue that *Yukumoto* is limited to health insurers. While *Yukumoto* had a discussion about the difference between property

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<sup>8</sup> Act 29 added the following language: "(10) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that: (A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10; and (B) This paragraph shall not apply to entities licensed under chapter 386, 431:10C, 432, or 432D." Entities licensed under 432 and 432D are health insurers.

insurance and personal insurance, that discussion was intended to address the health insurers' contention that it had an "equitable common law right of subrogation." *Yukumoto*, 140 Haw. at 291. The Hawaii Supreme Court rejected the contention that the health insurer had any equitable subrogation rights and therefore the sole basis of its subrogation rights must be contractual. *Id.* And the Hawaii Supreme Court concluded that HRS §§ 431:13-103 and 663-10 limit contractual subrogation by making § 663-10 the exclusive remedy for subrogation claims in the event of a plaintiff's settlement.

C. **Even if *Yukumoto's* Holding Is Limited to Contractual Subrogation, its Holding Must Be Extended to Equitable Subrogation**

*Yukumoto* devoted a portion of its opinion to the difference between contractual and equitable subrogation. It did so in an effort to distinguish a 1999 Hawaii Supreme Court case, *State Farm Fire and Casualty Co. v. Pacific Rent-All, Inc.*, 90 Haw. 315 (1999). In *State Farm*, the Hawaii Supreme Court held that "in the context of fire and casualty insurance, if the insurer proves (1) that the tortfeasor had actual or constructive knowledge of the insurer's subrogation **right of reimbursement** or that the tortfeasor and insured colluded to destroy the insurer's subrogation right **and** (2) that the insurer's subrogation right of reimbursement is actually prejudiced by the insured's release of the tortfeasor, then the insurer may maintain a subrogation action against the tortfeasor." *Id.* at 330. "In other words, the insured's release of the tortfeasor will not affect the insurer's subrogation right of reimbursement when the tortfeasor acts inequitably and causes actual prejudice to the insurer." *Id.*

*State Farm* does not apply for two reasons. **First**, and **most importantly**, *State Farm* preceded the Legislature's enactment of Act 29 in 2000 establishing the legal basis of the holdings in *Yukumoto*, HRS § 431:13-103(a)(10). To the extent that *State Farm* is inconsistent with the statutory text of HRS § 431:13-103(a)(10) as interpreted by *Yukumoto*, then *Yukumoto's* interpretation of HRS § 431:13-103(a)(10) and § 663-10 control. The Legislature has the power to "change or entirely abrogate common law rules through its exercise of the legislative power under the Hawaii State Constitution," subject to the constitution. *Fujioka v. Kam*, 55 Haw. 7, 10 (1973). One year after *State Farm*, the Legislature did "change or entirely abrogate" any insurers' subrogation rights by enacting HRS § 431:13-103(a)(10) which barred insurers from

limiting coverage to policyholders (by, for example, taking money from their own settlement recovery) except to the extent permitted by HRS § 663-10.

**Second**, the subrogation carriers have not shown and cannot show that they will be "actually prejudiced" by the global settlement contemplated by the Term Sheet. Nor could they. The global settlement contemplated by the Term Sheet establishes an aggregate settlement amount of \$4.037 billion for all claimants (which by virtue of the individual action plaintiffs and class members will include all policyholders). According to the most recent news release of Hawaii's insurance division, the estimated total losses for all carriers is \$3.29 billion, which is less than the global settlement amount. (Creed Decl., Ex. 16).<sup>9</sup> Therefore, assuming that the carriers could prove in a § 663-10 proceeding that they are entitled to recover every dollar paid out of the plaintiffs' settlement, the global amount of \$4.037 billion is sufficient to cover all their losses. Therefore, the carriers have not proven and could never prove any actual prejudice by plaintiffs' settlement of the claims.

**D. Even if Yukumoto Did Not Apply, Equitable Subrogation Requires that Subrogation Claimants Take, if at All, from Plaintiffs' Recovery**

Even if *Yukumoto* did not apply, which it does, equitable subrogation principles would require the same result for two reasons. **First**, as discussed in the immediately preceding section, the Global Settlement exceeds the insurers' actual and estimated losses. Therefore, the insurers are not actually prejudiced by the Global Settlement. The insurers have the opportunity to show that they should be fully compensated from the Global Settlement through their right of reimbursement.

**Second**, as a creature of equity, equitable principles support the orders that in the event the Global Settlement becomes effective, subrogation lienholders' right to recover is exclusively from the policyholders' recovery. Equity requires that the subrogation lienholders' show that they will be actually prejudiced by the Global Settlement, which they cannot. If they continue to have any right to recovery against the tortfeasors, they will effectively be suing their

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<sup>9</sup> Of course, estimated losses is greater than the paid losses and a subrogation lienholder has no ripe subrogation claim until it has paid the loss. Paid losses were \$2.34 billion. (Creed Decl., Ex. 16 at p. 4). Plaintiffs request that the Court take judicial notice of Exhibit 16 under HRE Rule 201 given the data was collected by the Hawaii Insurance Division. (*Id.* at p. 1).

policyholders due to the indemnity provision to be required of all plaintiffs under the Global Settlement. (Term Sheet ¶ 5).

*Third*, if the Global Settlement becomes effective, the Global Settlement represents an equitable recovery for all Maui Fire claims such that the insurers could never show that their policyholders were "made whole." The Global Settlement resulted from a heavily negotiated and mediated settlement by mediators acting under this Court's authority. (Term Sheet ¶ 1). "The Mediators made a Mediators' Proposal that reflected their informed view of the maximum amount that the Paying Parties could fairly and practicably contribute based on the facts and circumstances of the case, including potential exposure, availability of insurance, and limitations on ability to pay." (Term Sheet ¶ 1(c)). And the contributions by the settling Defendants "exhaust available insurance for payment of Maui Fires Claims and/or include a Paying Party's own funds." (Term Sheet ¶ 1(d)).

**E. The Court Should Allow for an Appeal of its Interlocutory Order to Render It Final and Unappealable Under the Term Sheet**

As noted above, the Term Sheet requires any order from this Court to become "final and unappealable" within 9 months before the condition to the global settlement is met. A "final and unappealable" order is defined as: "(aa) all parties with a right to appeal that order, judgment or opinion waive their right to do so; (bb) the time to appeal expires with no appeal filed; or (cc) the judgment, order, or opinion is affirmed by an appellate court with no further possibility of appeal." (Term Sheet ¶ 4(d)). Because any order by this Court is interlocutory, the only provision that can render the Court's order final and unappealable within 9 months is provision (cc).

Plaintiffs apply for the Court to allow an appeal from its order under HRS § 651-1(b). That section provides, "Upon application made within the time provided by the rules of court, an appeal in a civil matter may be allowed by a circuit court in its discretion . . .from any interlocutory judgment, order, or decree whenever the circuit court may think the same advisable for the speedy termination of litigation before it." *Id.* There can be no question that an appeal from this Court's order will result in the "speedy termination of litigation." The global settlement will become ineffective without an appeal, causing the sprawling litigation to resume. By contrast, an appeal is a precondition to the global settlement becoming effective, which would terminate the litigation between Plaintiffs and Defendants in its entirety. Plaintiffs will request

that any appeal certified by this Court be transferred directly to the Hawaii Supreme Court under HRS § 602-58(a) on the basis that the question is "of imperative or fundamental public importance." HRS § 602-58(a)(1).<sup>10</sup>

#### IV. CONCLUSION

For the foregoing reasons, the Court should enter an order ruling that if Plaintiffs' settlement with the Defendants set forth in the Term Sheet becomes effective, then, under Hawaii law, any subrogation lienholders' exclusive remedy for any Maui Fire claims would be asserting liens, if any, against their policyholders' respective settlement amounts. The Plaintiffs further respectfully request an order that as a consequence of the aforementioned order, the subrogation lienholders are barred from bringing or maintaining any independent claims against tortfeasors. Finally, the Court should allow for an interlocutory appeal under HRS § 651-1(b).

DATED: August 2, 2024

PANISH | SHEA | RAVIPUDI LLP

By                   /s/ Jesse Creed                    
Jesse Creed  
Liaison Counsel for Individual Action Plaintiffs

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<sup>10</sup> If the Global Settlement becomes effective, then the aggregate settlement amount will be equitably divided among the class action and individual plaintiffs in accordance with the aggregate settlement rule set forth in Hawaii Rules of Professional Conduct 1.8(g) and longstanding mass-tort practices. After an equitable division is made, then this Court will be responsible (perhaps through the appointment of a Special Master under its complex-court authority) for managing the discovery permitted to the subrogation lienholders under *Yukumoto* and for determining the validity and amount of any lien. Plaintiffs may request evidentiary hearings, whether on a policyholder-by-policyholder basis as subrogation plaintiffs may contend or on a class-of-policyholders basis (i.e. all insureds of a single insurer) as Plaintiffs will contend, to determine whether the amount awarded to the policyholders at issue fully compensates them for the loss under the "made whole" doctrine.<sup>10</sup> See *State Farm*, 90 Haw. at 328 fn. 8 ("[A]n insurer's right to legal or equitable subrogation arises only when certain requirements are met," including the requirement that "the amount paid by the insurer must result in the insured's being made whole").

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*Liaison Counsel for Individual Action Plaintiffs*

**IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
STATE OF HAWAII**

In re Maui Wildfire Cases

Case No. S.P. No. 2CSP-23-0000057  
(Other Non-Vehicle Tort – Maui Fire)

**DECLARATION OF JESSE CREED**

Hearing Date: August 13, 2024  
Hearing Time: 10:00 a.m.  
Judge: Hon. Peter T. Cahill

## DECLARATION OF JESSE CREED

I, Jesse Creed, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am an attorney with Panish | Shea | Ravipudi LLP, attorneys of record for a number of Maui Fire plaintiffs and Individual Action Plaintiffs' Liaison Counsel. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. Attached hereto as Exhibit 1 is a true and correct copy of a fully executed Settlement Term Sheet dated August 2, 2024.

3. Upon information and belief, there are over 600 lawsuits filed related to the Maui Fires of August 2023 and the number of victims represented by lawyers is believed to be close to 10,000 people.

4. Attached hereto as Exhibit 2 is a true and correct copy of the Order Granting Ex Parte Petition for the Coordination of Individual Plaintiffs Maui Fire Cases entered on October 27, 2023 in the Special Proceeding.

5. Attached hereto as Exhibit 3 is a true and correct copy of the Order Granting Request to Enter CMO No. 1 (Organization of the Plaintiffs' Leadership) entered on January 2, 2024 in the Special Proceeding.

6. Attached hereto as Exhibit 4 is a true and correct copy of the Individual Plaintiffs' Master Complaint & Demand for Jury Trial filed on January 9, 2024 in the Special Proceeding.

7. On June 28, 2024, after granted leave by the Court, Plaintiffs filed a First Amended Master Complaint identifying Charter Communications, Inc., an affiliate of Spectrum Oceanic, LLC, as a party defendant.

8. Attached hereto as Exhibit 5 is a true and correct copy of the Complaint; Demand for Jury Trial filed in *Amguard Ins. Co., et al. v. Maui Electric Co., Ltd., et al.*, Case No. 1CCV-24-0000068 in the Circuit Court of the First Circuit.

9. Attached hereto as Exhibit 6 is a true and correct copy of an email Frank Pitre, Esq., co-counsel with Cynthia Wong, Esq. in this action, received from Cherokee Markets on July 15, 2024.



10. Attached hereto as Exhibit 7 is a true and correct copy of a post dated July 12, 2024 on X, formerly known as Twitter, by Valdimir Jelisavcic publicizing that Cherokee acted as a dealer in the November 2023 sale of \$57,130,074 in subrogation claims related to the Lahaina Fire. According to his Twitter/X account, Mr. Jelisavcic is an employee of Cherokee Acquisition. Seller was described as a "significant P&C."

11. Attached hereto as Exhibit 8 is a true and correct copy of a post dated July 22, 2024 on X, formerly known as Twitter, by Valdimir Jelisavcic publicizing that Cherokee acted as a dealer in the May 2024 sale of \$19,613,560 in subrogation claims related to the Lahaina Fire.

12. Attached hereto as Exhibit 9 is a true and correct copy of the Sixth Amended Verified Statement of the Ad Hoc Group of Subrogation Claim Holders Pursuant to Bankruptcy Rule 2019 filed in *In re PG&E Corporation*, Case No. 19-30088, Dkt. No. 5907 & 5907-1, on February 26, 2020.

13. Attached hereto as Exhibit 10 is a true and correct copy of the Court's Order Appointing Special Settlement Master and Co-Administrator entered on April 17, 2024 in the Special Proceeding.

14. Attached hereto as Exhibit 11 is a true and correct copy of the Court's Order Appointing Co-Special Settlement Master entered on May 9, 2024 in the Special Proceeding.

15. These mediation professionals convened all the parties as well as subrogation carriers in an effort to mediate a resolution of the Maui Fire Cases.

16. Attached hereto as Exhibit 12 is a true and correct copy of the Complaint filed in *Pagdilao, et al. v. FICOH, et al.*, Case No. 2CCV-24-0000659.

17. Cynthia Wong filed a virtually identical complaint on behalf of certain of her clients in *Castro v. FICOH*, Case No. 2CCV-24-0000660.

18. Attached hereto as Exhibit 13 is a true and correct copy of Motion of Nelda Pagdilao, Amir Sheikhan, Tina Leung, H. Eugene Smith, William B. Moffett II, Peter Basile, And Pundy, LLC to Intervene filed in *Amguard Ins. Co., et al. v. Maui Electric, et al.*, Case No. 1CCV-24-0000068.

19. Cynthia Wong filed a virtually identical motion to intervene on behalf of her clients in the same *Amguard* case.

20. Attached hereto as Exhibit 14 is a true and correct copy of a Letter dated July 23, 2024 to Judge Peter Cahill filed in the Special Proceeding.



# **EXHIBIT 1**

## Settlement Term Sheet

This Settlement Term Sheet (this “Term Sheet”) sets forth the principal terms of a proposed comprehensive global settlement of all claims arising from, related to, or in connection with the Maui Windstorm and Fires of August 2023, including the fires in Lahaina, Kula, and Olinda (the “Maui Fires”).

**THIS TERM SHEET DOES NOT ADDRESS ALL MATERIAL TERMS THAT WOULD BE REQUIRED IN CONNECTION WITH ANY SETTLEMENT AND IS SUBJECT TO FURTHER COMMENT AND NEGOTIATION IN ALL RESPECTS, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN. THERE WILL BE NO ENFORCEABLE SETTLEMENT UNTIL THE TERMS HAVE BEEN REDUCED TO A DEFINITIVE SETTLEMENT AGREEMENT (THE “SETTLEMENT AGREEMENT”), WHICH WILL SUPERSEDE THIS TERM SHEET.**

**THIS TERM SHEET HAS BEEN PRODUCED FOR COMPROMISE AND SETTLEMENT PURPOSES ONLY AND IS NOT AN ADMISSION OF LIABILITY OR DAMAGES IN ANY PROCEEDING. IN THE EVENT THE SETTLEMENT DOES NOT OCCUR FOR ANY REASON, THIS TERM SHEET SHALL NOT BE USED AS EVIDENCE IN ANY PROCEEDING FOR ANY PURPOSE, INCLUDING ANY BANKRUPTCY PROCEEDING.**

1. Recitals.

(a) This Term Sheet results from a mediation process that extended over several months, overseen by Judge Louis Meisinger (ret.), Judge Daniel Buckley (ret.), and Keith Hunter (collectively, the “Mediators”) who were appointed by the Court as settlement mediators in the Maui Fires Cases, 2CSP-23-57, Dkt. Nos. 470 & 796.

(b) Participants in the mediation included attorneys representing individual and class plaintiffs who have filed (or intend to file) tort and any other claims related to the Maui Fires, whether on an individual, representative, or class basis in state or federal court (collectively, the “IPs” or “Individual Plaintiffs”);<sup>1</sup> insurers who have subrogation claims related to the Maui Fires (the “Subrogation Plaintiffs”);<sup>2</sup> the State of Hawaii and all of its subdivisions, agencies, and departments (the “State”); the County of Maui (the “County”); Hawaiian Electric Company, Inc., Hawaiian Electric Industries, Inc. and their affiliates

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<sup>1</sup> Various IPs have brought suit in individual actions and class actions. IPs references both the individual actions and the class actions in state and federal court.

<sup>2</sup> Subrogation Plaintiffs include all plaintiffs in the following actions: *Amguard Insurance, et al. v. MECO, et al.*, No. 1CCV-24-0000068 (Haw. Cir. Ct.); *Certain Underwriters at Lloyd's London Subscribing to Policy Number TRIB223061 v. MECO, et al.*, No. 1CCV-24-0000179 (Haw. Cir. Ct.); *Hyundai Marine & Fire Insurance Company, Ltd. v. MECO, et al.*, No. 1CCV-24-0000437 (Haw. Cir. Ct.); *The Dentist Insurance Co. v. MECO, et al.*, No. 2CCV-24-0000668 (Haw. Cir. Ct.). Subrogation Plaintiffs also include any other insurance carriers with subrogation claims represented by any law firm in those actions.

(“Hawaiian Electric”); the Trustees of the Bishop Estate (“KS”); Spectrum Oceanic, LLC, Charter Communications, Inc., and certain affiliates (“Spectrum”); Cincinnati Bell Inc., Hawaiian Telcom, Inc., and certain affiliates (“Hawaiian Telcom”); and the West Maui Land Company, Inc. and certain affiliates (“West Maui Land”). The State, County, Hawaiian Electric, KS, Spectrum, Hawaiian Telcom, and West Maui Land will collectively be referred to as the “Paying Parties,” and each as a “Paying Party.” Collectively, those listed in this paragraph, except for the Mediators and the Subrogation Plaintiffs, will be referred to as the “Parties.”

(c) The Mediators engaged in multiple in-person and virtual mediation sessions over the course of months. The Mediators made a Mediators’ Proposal that reflected their informed view of the maximum amount that the Paying Parties could fairly and practicably contribute based on the facts and circumstances of the case, including potential exposure, availability of insurance, and limitations on ability to pay. The Mediators proposed that the Paying Parties contribute \$4.037 Billion in the aggregate (“Aggregate Settlement Amount”), according to a payment schedule, to reach a global settlement of all Maui Fires Claims (defined below). The Mediators also proposed what each Paying Party’s respective share of the Aggregate Settlement Amount would be.

(d) Contributions to the Aggregate Settlement Amount exhaust available insurance for the payment of Maui Fires Claims and/or include a Paying Party’s own funds.

2. Settlement Overview. Subject to further conditions to be set forth in the Settlement Agreement, the Parties desire to establish a comprehensive global settlement, resolving, releasing, and discharging forever all claims, counterclaims, crossclaims, rights, disputes, and causes of action of any kind or nature whatsoever, whether asserted or unasserted, known or unknown, suspected or unsuspected, fixed or contingent, in contract, statute, tort, equity, or otherwise, accrued or unaccrued, direct, or indirect, arising or resulting in any way from the Maui Fires (“Maui Fires Claims”).<sup>3</sup> To that end, the Paying Parties have agreed with the IPs to establish a comprehensive global settlement fund in the amount of the Aggregate Settlement Amount. Subject to further conditions set forth in this Term Sheet and to be set forth fully in the Settlement Agreement, the settlement must fully resolve all Maui Fires Claims, including those that have been brought or could have been brought by the Subrogation Plaintiffs, any other insurers or entities with subrogation claims, and any relevant federal agency or department.
3. Amounts to Be Contributed to the Settlement. Subject to the conditions set forth in this Term Sheet and the Settlement Agreement, the Paying Parties will collectively fund the Aggregate Settlement Amount, with each Paying Party’s respective share of the Aggregate Settlement Amount being that agreed upon by that Paying Party with the Mediators. Each Paying Party’s contribution to the One Ohana Fund, shall be a credit to its total individual

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<sup>3</sup> For the avoidance of doubt, the Maui Fires Claims exclude derivative and securities claims asserted in the following cases: *Bhangal v. HEL, et al.*, No. 3:23-cv-04332 (N.D. Cal.); *Rice v. Connors, et al.*, No. 1CCV-23-0001181 (Haw. Cir. Ct.); *In re Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc. Derivative Litigation*, No. 3:23-cv-06627 (N.D. Cal.); *Faris v. Seu, et al.*, No. 1:24-cv-00247 (D. Haw.); *Assad v. Seu, et al.*, No. 1:24-cv-00164 (D. Haw.).

settlement payment obligation hereunder, and the Aggregate Settlement Amount includes such contributions. The \$4.037 Billion Aggregate Settlement Amount is based on the Mediators' Proposal, which includes provisions contemplating that one or more Paying Party will make its contributions over time. For any Paying Party who the Mediators' Proposal contemplates making its contributions over time, in the event that the IPs agree with such Paying Party to accelerate that Paying Party's contributions to the Aggregate Settlement Amount, with a corresponding reduction in the nominal value of that Paying Party's total contribution, the Aggregate Settlement Amount will be reduced accordingly. In other words, the Aggregate Settlement Amount may be less than \$4.037 Billion if payments are accelerated by agreement.

**Table A**

<b>PAYING PARTY</b>	<b>SIGNATURE PAGE</b>
State	<b>Exhibit A</b>
County	<b>Exhibit B</b>
Hawaiian Electric	<b>Exhibit C</b>
KS	<b>Exhibit D</b>
Spectrum	<b>Exhibit E</b>
Hawaiian Telcom	<b>Exhibit F</b>
West Maui Land	<b>Exhibit G</b>

4. Agreement or Judgment Resolving Subrogation Claims. The Settlement Agreement shall provide that as a condition precedent to any obligations of the Paying Parties under the Settlement Agreement, in addition to all other requirements and conditions in the Settlement Agreement, one of the following two conditions (under sub-point (a) or sub-point (b)) must be met within 90 days from mutual execution and delivery of the Term Sheet:

(a) each and every Subrogation Plaintiff enters into a written agreement that provides for releases of all Maui Fires Claims against the Paying Parties and other related parties, and that agreement, including a list of all insurers who are parties to it, is provided to the Paying Parties, in which case no further conditions under paragraph 4(b) must be satisfied; or

(b) a trial court enters a judgment, order, or opinion determining that if the Settlement Agreement between the IPs and the Paying Parties becomes effective,

(i) the Subrogation Plaintiffs' exclusive remedy for any Maui Fires Claims would be asserting liens, if any, against their policyholders for their respective shares of the Aggregate Settlement Amount, and

(ii) the Subrogation Plaintiffs would be barred from bringing or maintaining any Maui Fires Claims against the Paying Parties,

Provided that within nine months from the date of each judgment, order, or opinion under (b), either

(x) each and every Subrogation Plaintiff enters into a written agreement that provides for releases of all Maui Fires Claims against the Paying Parties and other related parties, and that agreement, including a list of all insurers who are parties to it, is provided to the Paying Parties; or

(y) each such judgment, order or opinion under (b) is rendered final and unappealable.

(c) The Parties will use best efforts to obtain, within 90 days or as soon thereafter as possible, from each trial court where any Subrogation Plaintiff's claim has been filed, judgments, orders, or opinions dismissing with prejudice all claims by Subrogation Plaintiffs against the Paying Parties. The Settlement Agreement shall provide, in addition to all other requirements and conditions in the Settlement Agreement, that all claims brought by any insurer against any Paying Party for subrogation arising out of the Maui Fires shall be dismissed with prejudice in a final and unappealable order prior to the Initial Payment Due Date (as defined in Paragraph 9).

(d) For purposes of this paragraph 4, a judgment, order or opinion is rendered final and unappealable if any of the following occurs: (aa) all parties with a right to appeal that order, judgment or opinion waive their right to do so; (bb) the time to appeal expires with no appeal filed; or (cc) the judgment, order, or opinion is affirmed by an appellate court with no further possibility of appeal. The Paying Parties agree to join in any lawful and reasonable motions for expediting appellate review of each of the trial court's judgments, orders or opinions under paragraph (b).

(e) IPs will promptly notify the Paying Parties if, in their judgment, the conditions of paragraph 4(a) or 4(b) have been satisfied. The Paying Parties shall thereafter promptly notify the IPs if, in the Paying Parties' reasonable judgment, the conditions in paragraph 4(a) or 4(b) have been satisfied. If the Paying Parties contend that the conditions have not been satisfied, and the IPs dispute that determination, the issue shall be discussed further with the assistance of the Mediators.

5. Indemnity. The Settlement Agreement will require each IP who receives a payment to indemnify the Paying Parties with respect to any individual liens asserted by any subrogated insurer against that IP arising out of or relating to the Maui Fires.

6. Further Negotiation. The Parties, with the assistance of the Mediators, intend to memorialize the terms described in this Term Sheet in the Settlement Agreement. The Settlement Agreement will include a form(s) of release. That release will include a full and complete release in favor of the Paying Parties and their affiliates and related parties of all Maui Fires Claims that have been or could be asserted by, among others, all persons, companies or organizations who have asserted or could assert such claims, including individual plaintiffs and settlement class member-plaintiffs, any insurer or entity that has or may seek subrogation, all other Paying Parties, and all potentially relevant federal

agencies or departments to be identified in the Settlement Agreement. State, federal, and County releases are an indispensable part of this Settlement Agreement. The Settlement Agreement also will provide for all Paying Parties to execute releases in favor of all other Paying Parties and related parties.

7. The Settlement Agreement shall establish a framework to ensure it resolves and releases all Maui Fires Claims of any kind, including claims for damages, equitable relief, subrogation, lien payments, attorneys' fees, expert fees, costs and all remedies and amounts of any kind, and including all subrogation claims by insurers that have been or could be brought, whether or not Subrogation Plaintiffs. The Settlement Agreement will require represented IPs to provide the names of any insurers for property loss or business interruption that have paid them any sums arising out of or related to the Maui Fires and the amount of such payments. The Settlement Agreement will address the terms of the indemnity referenced in paragraph 5, the extent of any permitted opt outs, the requirements to opt out of the class, and required participation thresholds for agreed categories of claimants. Any and all amounts payable to any permitted opt outs from the class by Paying Parties shall be paid from the Aggregate Settlement Amount. The class settlement must address and provide for settlement and release of all putative class members' claims and provide a claims bar. For avoidance of doubt, this Term Sheet does not constitute any release of any claim that an Individual Plaintiff may have. The Settlement Agreement will set forth the conditions for releases—for example, any IPs who are not bound by a class settlement will retain the ultimate authority to settle their claims.
8. Stay of Litigation. Within 3 days following execution of this Term Sheet by all Parties, the Parties will jointly request each court in which their Maui Fires Claims are pending to stay further proceedings, including expert reports, discovery, and motions, and to vacate all trial and pre-trial dates. This stay does not apply to (a) claims, motions, or actions in any case that serve to resolve any disputes between or among Subrogation Plaintiffs, individual plaintiffs, or the plaintiff classes, (b) cases initiated by Subrogation Plaintiffs, and (c) proceedings in any case to approve and implement the Settlement Agreement. The Parties reserve all rights to request a lifting of the stay and the scheduling of new trial and pre-trial dates if the Settlement Agreement is not executed by November 1, 2024, or if the Settlement Agreement does not become effective by a date set forth therein.
9. Further Conditions to Settlement. No payment will be due until 30 calendar days after all conditions set forth in the Settlement Agreement have been met, including that the Paying Parties have obtained any necessary approvals. The date resulting from application of the first sentence shall be referred to herein as the "Initial Payment Due Date." All Maui Fires Claims shall be dismissed within ten days of the Initial Payment Due Date. The releases referenced in this Term Sheet shall be effective on the Initial Payment Due Date, and the Settlement Agreement shall set forth the remedies available to IPs for a failure of any Paying Party to make required payments as and when due.

*[Signature Pages Follow As Exhibits A through H]*



**EXHIBIT A**

The State of Hawaii and all of its subdivisions, agencies, and departments, together the “State,” hereby accept the terms of this Term Sheet.

The State will make its contribution in four equal installments, paid annually, with the first installment due on or before the Initial Payment Due Date, subject to approval by the Legislature.

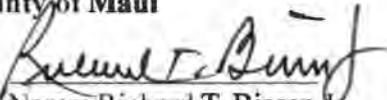
**State of Hawaii**

By: Anne E. Lopez  
Name: Anne E. Lopez  
Title: Attorney General of Hawaii  
Date: Aug 1, 2024

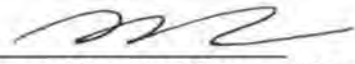
**EXHIBIT B**

The County of Maui hereby accepts the terms of this Term Sheet.

**County of Maui**

By:   
Name: Richard T. Bissen Jr.  
Title: Mayor, County of Maui  
Date:

**Approved as To Form**

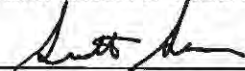
By:   
Name: Victoria Takayesu-Hamilton  
Title: Corporation Counsel, County of Maui  
Date:

**EXHIBIT C**

Hawaiian Electric Industries, Inc. and Hawaiian Electric Company, Inc, together “Hawaiian Electric,” hereby accept the terms of this Term Sheet.<sup>4</sup> Unless the IPs and Hawaiian Electric agree to a different payment schedule, Hawaiian Electric will make its contribution to the Aggregate Settlement Amount according to the following schedule:

Hawaiian Electric will make its contribution in four equal installments, paid annually, with the first installment due on or before the Initial Payment Due Date.

**Hawaiian Electric Industries, Inc.**

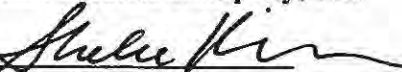
By: 

Name: Scott Seu

Title: President and CEO

Date: 8/2/2024

**Hawaiian Electric Company, Inc.**

By: 

Name: Shelee Kimura

Title: President and CEO

Date: 8/2/2024

---

<sup>4</sup> As affiliates of Hawaiian Electric, Maui Electric Company, Limited, and Hawaiian Electric Light Company, Inc., will also be released from all Maui Fires Claims, although they are not parties to the Settlement Agreement.

**EXHIBIT D**

Trustees of the Estate of Bernice Pauahi Bishop, Elliot Kawaiho‘olana Mills, Crystal Kaulani Rose, Jennifer Noelani Goodyear-Ka‘ōpua, Michelle Ka‘uhane, and Robert K.W.H. Nobriga, (collectively, “Kamehameha Schools” or “KS”) hereby accept the terms of this Term Sheet.<sup>5</sup> Unless the IPs and KS agree to a different payment schedule, KS will make its contribution to the Aggregate Settlement Amount according to the following schedule:

KS will make its contribution in four equal installments, paid annually, with the first installment due on the Initial Payment Due Date.

**Kamehameha Schools**

By: Livingston “Jack” Wong  
Name: Livingston “Jack” Wong  
Title: CEO  
Date: 8/2/2024


---

<sup>5</sup> Trustees Not Personally Liable. This instrument has been executed on behalf of the Trustees of the Estate of Bernice Pauahi Bishop in their fiduciary capacities as said Trustees, and not in their individual capacities. No personal liability or obligation under this instrument shall be imposed or assessed against said Trustees in their individual capacities.

**EXHIBIT E**

Spectrum Oceanic, LLC, Charter Communications, Inc., and certain affiliates, together “Spectrum,” hereby accept the terms of this Term Sheet.

**Spectrum Oceanic, LLC**

By: 

Name: Bronwyn F. Pollock  
Title: Partner, Mayer Brown LLP, Attorneys  
for Spectrum Oceanic, LLC, Charter  
Communications, Inc., and certain affiliates  
Date: August 1, 2024

**Charter Communications, Inc.**

By: 

Name: Bronwyn F. Pollock  
Title: Partner, Mayer Brown LLP, Attorneys  
for Spectrum Oceanic, LLC, Charter  
Communications, Inc., and certain affiliates  
Date: August 1, 2024

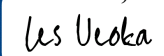
**EXHIBIT F**

Cincinnati Bell Inc., Hawaiian Telcom, Inc., and certain affiliates, together “Hawaiian Telcom,” hereby accept the terms of this Term Sheet.

**Cincinnati Bell Inc.**

By:   
6F914FE74DF3401...  
Name: Mary Talbott  
Title: Chief Legal Officer  
Date:

**Hawaiian Telcom, Inc.**

By:   
761273C3DAAE47A...  
Name: Les Ueoka  
Title: Associate General Counsel and Assistant Secretary  
Date:

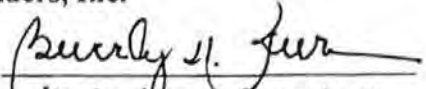
**EXHIBIT G**

West Maui Land Company, Inc., Peter Klint Martin, Individually and as Trustee of the Peter Klint Martin Revocable Trust, Peter Klint Martin Revocable Trust, Launiupoko Irrigation Company, Inc., Launiupoko Water Company, Inc., Launiupoko Water Development LLC, Hope Builders Holding LLC, Hope Builders LLC nka Hope Builders, Inc., Kauaula Land Company LLC, Kipa Centennial, LLC, Wainee Land & Homes, LLC, Makila Land Co., LLC, Makila Ranches Inc., Olowalu Elua Associates LLC, Donna Poseley, Individually and as Personal Representative of the Estate of Douglas Poseley, Jeanne Riley, Trustee of the Jeanne Riley Trust and Successor Trustee of the James Riley Trust, Makila Ranches Homeowners Association, Inc., JV Enterprises, LLC (collectively "West Maui Land") hereby accept the terms of this Term Sheet. West Maui Land will make its contribution on or before the Initial Payment Date.

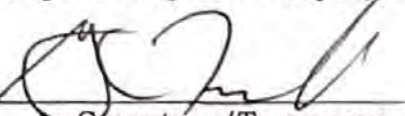
**West Maui Land Company, Inc.**

By:   
Its Secretary/Treasurer

**Hope Builders LLC nka Hope Builders, Inc.**

By:   
Its Assistant Secretary

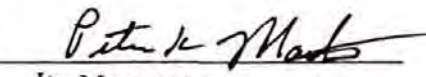
**Launiupoko Irrigation Company, Inc.**

By:   
Its Secretary/Treasurer

**Launiupoko Water Company, Inc.**

By:   
Its Secretary/Treasurer

**Hope Builders Holding LLC**

By:   
Its Manager

**Kauaula Land Company LLC**

By:   
Its Manager

**Kauaula Land Company LLC**

By:   
Its Manager

**Kipa Centennial, LLC**

By:   
Its Manager

**Makila Land Co., LLC**

By:   
Its Manager

**Wainee Land & Homes, LLC**

By:   
Its Manager

Peter Klint Martin  
Peter Klint Martin, Individually and  
and as Trustee of the Peter Klint  
Martin Revocable Trust

Jeanne Riley  
Jeanne Riley, Trustee of the Jeanne  
Riley Trust and Successor Trustee  
of the James Riley Trust

JV Enterprises, LLC

Makila Ranches Homeowners  
Association, Inc.

By: \_\_\_\_\_  
Its

By: Jeanne Riley  
Its

\_\_\_\_\_  
Donna Anne Poseley, Individually  
and as Personal Representative of  
the Estate of Douglas Poseley

Makila Ranches Inc.

Launiupoko Water Development LLC

By: Peter Klint Martin  
Its President

By: [Signature]  
Its Member

Olowalu Elua Associates LLC

By: Peter Klint Martin  
Its Manager



\_\_\_\_\_  
**Peter Klint Martin**, Individually and  
and as Trustee of the Peter Klint  
Martin Revocable Trust

**JV Enterprises, LLC**

By:   
Its owner

\_\_\_\_\_  
**Donna Anne Poseley**, Individually  
and as Personal Representative of  
the Estate of Douglas Poseley

**Launiupoko Water Development LLC**

By: \_\_\_\_\_  
Its \_\_\_\_\_

\_\_\_\_\_  
**Jeanne Riley**, Trustee of the Jeanne  
Riley Trust and Successor Trustee  
of the James Riley Trust

**Makila Ranches Homeowners  
Association, Inc.**

By: \_\_\_\_\_  
Its \_\_\_\_\_

**Makila Ranches Inc.**

By: \_\_\_\_\_  
Its \_\_\_\_\_

**Olowalu Elua Associates LLC**

By: \_\_\_\_\_  
Its \_\_\_\_\_

**Peter Klint Martin, Individually and  
and as Trustee of the Peter Klint  
Martin Revocable Trust**

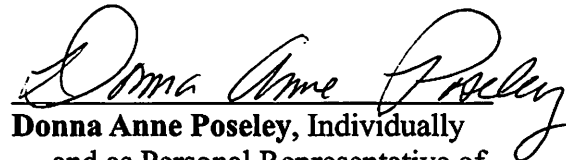
**Jeanne Riley, Trustee of the Jeanne  
Riley Trust and Successor Trustee  
of the James Riley Trust**

**JV Enterprises, LLC**

**Makila Ranches Homeowners  
Association, Inc.**

By: \_\_\_\_\_  
Its

By: \_\_\_\_\_  
Its

  
**Donna Anne Poseley, Individually  
and as Personal Representative of  
the Estate of Douglas Poseley**

**Makila Ranches Inc.**  
By: \_\_\_\_\_  
Its

**Launiupoko Water Development LLC**

**Olowalu Elua Associates LLC**

By: \_\_\_\_\_  
Its

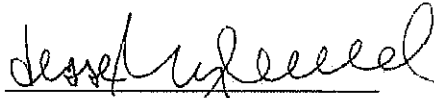
By: \_\_\_\_\_  
Its

**EXHIBIT H**

Without restricting the ability of any undersigned counsel to arrive at an independent professional judgment as to the acceptability of a settlement for a particular client, the undersigned counsel are informed and believe that the Aggregate Settlement Amount is an acceptable and appropriate amount to be divided among those entitled to receive any share of the proceeds of the global settlement contemplated by this Term Sheet, inclusive of any attorneys' fees, expert fees, and costs and amounts to be distributed to their respective clients and to other persons (e.g., absent class members and the Subrogation Plaintiffs) under the conditional global settlement detailed above.



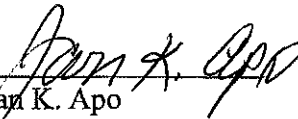
Name: Cynthia K. Wong  
Title: Liaison Counsel for Individual Action Plaintiffs  
Date: August 1, 2024



Name: Jesse Max Creed  
Title: Liaison Counsel for Individual Action Plaintiffs  
Date: August 1, 2024



Name: Jacob Lowenthal  
Title: Liaison Counsel for Individual Action Plaintiffs  
Date: August 1, 2024



Name: Jan K. Apo  
Title: Liaison Counsel for Individual Action Plaintiffs  
Date: August 1, 2024



Name: Alexander "Trey" Robertson, IV  
Title: Class Counsel in the Consolidated Class Complaint *In Re: Lahaina Fire Cases*, USDC Case No. 1:24-cv-00259-JAO-BMK  
Date: August 1, 2024

# **EXHIBIT 2**

CYNTHIA K. WONG  
ATTORNEY AT LAW, LLLC  
CYNTHIA K. WONG 6053  
[cyn@legalmaui.net](mailto:cyn@legalmaui.net)  
2035 Main Street, Suite 2  
Wailuku, HI 96793  
Telephone: (808) 727-2921

Electronically Filed  
SECOND CIRCUIT  
2CSP-23-0000057  
27-OCT-2023  
02:42 PM  
Dkt. 12 ORDG

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[NHossain@cpmlegal.com](mailto:NHossain@cpmlegal.com)  
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500 Ala Moana Blvd, Ste.400  
Honolulu, Hi 96813  
Telephone: (888) 547-7677

\* *Pro hac vice application forthcoming*

Petitioners

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
STATE OF HAWAII

IN THE MATTER OF THE PETITION FOR  
THE COORDINATION OF INDIVIDUAL  
PLAINTIFFS MAUI FIRE CASES.

SP. NO. \_\_\_\_\_  
(Other Non-Motor Vehicle Tort - Maui Fire)

ORDER GRANTING EX PARTE PETITION  
FOR THE COORDINATION OF  
INDIVIDUAL PLAINTIFFS MAUI FIRE  
CASES

ORDER GRANTING EX PARTE PETITION FOR THE  
COORDINATION OF INDIVIDUAL PLAINTIFFS MAUI FIRE CASES

Petitioner's ex parte petition for the coordination of individual plaintiffs Maui fire cases,  
having coming before the Honorable Peter T. Cahill, and the Court, having duly considered the ex

parte petition for the coordination of individual plaintiffs Maui fire cases, finds that, GOOD CAUSE APPEARING:

1. The Court has inherent authority to issue complex case management order(s) which may include any matters which may be conducive to the just, efficient, and economic determination of the case under Rule 12(c)(3)(B)(iii), Rules of the Circuit Courts of the State of Hawaii;

2. All cases designated as Individual Plaintiffs Maui Fire Cases have a common question of law or fact so that the Court may order a joint hearing of any or all the matters in issue in the actions; and may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay; and

3. It is in the best interests of the Court and conducive to the just, efficient, and economic determination of all Individual Plaintiffs Maui Fire Cases that the cases, both filed and to be filed, be coordinated within this Special Proceeding so that the Court may issue complex case management orders that can be applicable to all such cases within the coordinated filings.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that:

Petitioner's ex parte petition for the coordination of Individual Plaintiffs Maui Fires cases is granted, subject to the following:

a. Copies of this Petition be served on all parties, through their Hawaii counsel of record in the list attached hereto as Exhibit 1, within seven (7) days of the filing of the Petition;

b. Copies of this Petition be served on any other party, who is not represented by Hawaii counsel, through their agent for service of process in the list attached hereto as Exhibit 2, within seven (7) days of the filing of the Petition;

c. Petitioner shall file with this Court a Certificate of Service certifying service to all those listed in Exhibits 1 and 2;

d. All cases designated as Individual Plaintiffs Maui Fire Cases be coordinated in this Special Proceeding by having all Hawaii counsel for any designated Individual Plaintiffs Maui Fire Case enter his/her/their appearances herein, as well as counsel for defendants

listed in Exhibits 1 and 2, which will allow all parties to receive notice of the Court's entry of any complex case management orders through the JEFS management system;

e. All such Hawaii counsel shall file his/her/their respective appearances herein by filing a Notice of Appearance of Counsel within fourteen (14) days of service of the Petition;

f. Any interested persons or entities who are not parties to the Individual Plaintiffs Maui Fire Cases currently on file as of the filing of the Petition may file his/her/their respective appearances herein within fourteen (14) days of the service of the Petition;

g. Any party objecting or responding to this Petition must file his/her/their respective objections or responses with the Court and serve it on all interested parties within fourteen (14) days of the service of the Petition;

h. Any party objecting or responding to this Petition may ask for a hearing by submitting a request in writing with reasons explaining the need for a hearing. This request must be filed simultaneously with any objection or response to the Petition and copies served on all interested parties within fourteen (14) days of the service of the Petition.

i. The Court may enter any other orders as may be just and efficient for the coordination of the Individual Plaintiffs Maui Fire Cases to be entered within this Special Proceeding.

DATED: Wailuku, Maui, Hawaii, \_\_\_\_\_

OCT 27 2023

  
\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT



=====

ORDER GRANTING EX PARTE PETITION FOR THE COORDINATION OF INDIVIDUAL PLAINTIFFS MAUI FIRE CASES; In the Matter of the Petition for the Coordination of Maui Fire Cases; Special Proceeding No. \_\_\_\_\_; Second Circuit Court, State of Hawaii

=====

**EXHIBIT 3**



**CYNTHIA K. WONG**  
**ATTORNEY AT LAW, LLLC**  
CYNTHIA K. WONG 6053  
[cyn@legalmaui.net](mailto:cyn@legalmaui.net)  
2035 Main Street, Suite 2  
Wailuku, HI 96793  
Telephone: (808) 727-2921

**Electronically Filed**  
**SECOND CIRCUIT**  
**2CSP-23-0000057**  
**02-JAN-2024**  
**10:56 AM**  
**Dkt. 196 ORDG**

**PANISH SHEA BOYLE RAVIPUDI LLP**  
JESSE MAX CREED 11731  
[jcreed@psbr.law](mailto:jcreed@psbr.law)  
11111 Santa Monica Boulevard, Suite 700  
Los Angeles, CA. 90025  
Telephone: (310) 477-1700

**LOWENTHAL & LOWENTHAL LLLC**  
JACOB LOWENTHAL 9945  
[jlkl@lowenthal-hawaii.com](mailto:jlkl@lowenthal-hawaii.com)  
122 Maa Street, Suite B  
Kahului, HI 96732  
Telephone: (808) 242-5000

**APO, RECK & KUSACHI**  
JAN K. APO 2960  
[jankapo@jankapo.com](mailto:jankapo@jankapo.com)  
24 North Church Street, Suite 302  
Wailuku, HI 96793  
Telephone: (808) 244-6073

*Proposed Liaison for Individual Action Plaintiffs*

**IN THE CIRCUIT COURT OF THE SECOND CIRCUIT**

**STATE OF HAWAI'I**

IN THE MATTER OF THE PETITION  
FOR THE COORDINATION OF  
INDIVIDUAL PLAINTIFFS MAUI FIRE  
CASES

**S.P. NO. 2CSP-23-0000057**

ORDER GRANTING REQUEST TO ENTER  
CMO NO. 1 (ORGANIZATION OF THE  
PLAINTIFFS' LEADERSHIP)

**ORDER GRANTING REQUEST TO ENTER CMO NO. 1  
(ORGANIZATION OF THE PLAINTIFFS' LEADERSHIP)**

The request to enter CMO No. 1 (organization of the plaintiffs' leadership) filed on November 9, 2023, having come on for hearing on Wednesday, December 13, 2023, before the Honorable Peter T. Cahill, Judge of the Second Circuit Court, 2145 Main Street, Wailuku, Maui, Hawaii, at 9:00 a.m., CYNTHIA K. WONG, ESQ., JAN APO, ESQ., JACOB

LOWENTHAL, ESQ. appearing in Court, and JESSE CREED, ESQ. appearing remotely via Zoom, on behalf of petitioners, STEVEN TOM, ESQ. appearing in Court, and MICHAEL LAM, ESQ. appearing via Zoom on behalf of defendant STATE OF HAWAII, JOACHIM COX, ESQ. appearing in Court, and NICHOLAS FRAM, ESQ. appearing via Zoom on behalf of HAWAIIAN ELECTRIC INDUSTRIES, INC., HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC. and MAUI ELECTRIC COMPANY, LIMITED, DAVID MINKIN, ESQ. appearing in Court on behalf of defendant COUNTY OF MAUI, PAUL ALSTON, ESQ. appearing via Zoom on behalf of defendants TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, WESLEY CHING, ESQ. appearing via Zoom on behalf of WEST MAUI LAND COMPANY, and other counsel who have or will be filing a notice of appearance, appearing via Zoom and/or appearing in Court.

The Court, having duly considered the request, the position statement of the Trustees of the Estate of Bernice Pauahi Bishop and the response of certain defendants to petitioners' proposed case management order no. 1 - organization of individual plaintiffs' leadership filed by Hawaiian Electric Industries, Inc., Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc. and Maui Electric Company, Limited:

IT IS HEREBY ORDERED that:

1. This order only applies to cases in the Second Circuit Court;
2. This order is not intended to interfere with any other Circuit Court cases;
3. This order applies to cases that are pending in the Second Circuit Court;
4. This order applies to any cases with which the Court may proceed

following an order remanding the case from the United States District Court for the District of Hawaii that was subject to this Special Proceeding, absent entry of any order staying remand and is effective immediately upon remand.

IT IS FURTHER ORDERED THAT:

**I. PLAINTIFFS' LEADERSHIP STRUCTURE**

**A. INDIVIDUAL PLAINTIFFS**

Individual Plaintiffs include cases brought on behalf of individuals and businesses.

**1. INDIVIDUAL PLAINTIFFS' LIAISON COUNSEL**

To facilitate an orderly communication process between the Court and counsel, the following individuals shall serve as Liaison Counsel for cases involving Individual Plaintiffs:

Jan Apo

- A. APO, RECK & KUSACHI**  
24 North Church Street  
Suite 302  
Wailuku, HI 96793  
[jankapo@jankapo.com](mailto:jankapo@jankapo.com)  
Tel: 808-244-6073

Jesse Max Creed

- B. PANISH | SHEA | BOYLE | RAVIPUDI LLP**  
11111 Santa Monica Blvd.  
Suite 700  
Los Angeles, CA 90025  
[jcreed@psbr.law](mailto:jcreed@psbr.law)  
Tel: 310-477-1700

Jacob Lowenthal

- C. LOWENTHAL & LOWENTHAL, LLC**  
122 Maa Street B  
Kahului, HI 96732  
[jl@lowenthal-hawaii.com](mailto:jl@lowenthal-hawaii.com)  
Tel: 808-242-5000

Cynthia K. Wong

**D. CYNTHIA K. WONG, ATTORNEY AT LAW, LLLC**

2035 Main Street  
Suite 2  
Wailuku, HI 96793  
[cyn@legalmaui.net](mailto:cyn@legalmaui.net)  
Tel: 808-727-2921

Liaison Counsel for Individual Plaintiffs are members of the Individual Plaintiffs' Steering Committee ("Steering Committee") who have been selected following a collaborative and transparent process to fulfill the mandate afforded them by the Steering Committee.

Liaison Counsel are entrusted to speak in court to relay the consensus of the Steering Committee, and to facilitate ongoing and transparent communication among all Individual Plaintiffs. Liaison Counsel and the Steering Committee are responsible for organizing and facilitating the activities of the Individual Plaintiffs during pretrial proceedings, and in consultation with the Court, have the following duties and responsibilities.

- a. Appear before the Court and present the position of Individual Plaintiffs at all Case Management Conferences, Status Conferences, or other court-ordered hearings;
- b. Coordinate the briefing and argument of all motions directed at or brought by Individual Plaintiffs generally;
- c. Coordinate the filing of opposing briefs and argue motions in proceedings initiated by other parties against Individual Plaintiffs' interests (except as to matters directed to specific individual plaintiffs and their counsel or a specific Plaintiff group);
- d. Coordinate discovery proceedings on behalf of Individual Plaintiffs, including the initiation of liability written discovery, document production and the taking

of oral depositions on behalf of Individual Plaintiffs consistent with the requirements of the Hawaii Rules of Civil Procedure, the Rules of the Circuit Courts of the State of Hawaii, and/or any order of this Court;

- e. Nothing in this CMO shall prevent any individual attorney from serving liability discovery if, after consulting with Liaison Counsel and the Steering Committee, Liaison Counsel and the Steering Committee refuse to serve said discovery;<sup>1</sup>
- f. Coordinate any trial bellwether process for Individual Plaintiffs, subject to the Court's guidance;
- g. Coordinate work for the investigation and discovery of common liability and common causation of damages matters for all Individual Plaintiffs' counsel;
- h. Prepare and distribute periodic status reports to other Individual Plaintiffs' counsel;
- i. Coordinate the creation of sub-committees to conduct litigation and trial preparation for the benefit of Individual Plaintiffs that are necessary for execution of the foregoing responsibilities;
- j. To make available to the Court, counsel for Individual Plaintiffs, counsel for other Plaintiff groups, and counsel for Defendants a list of all Individual Plaintiffs' counsel;

---

<sup>1</sup> Any discovery activity directed to a specific Individual Plaintiff shall be handled by the attorney of that specific Plaintiff.

- k. To receive and distribute orders, notices, and correspondence from the Court and counsel for any other Plaintiff groups or any Defendant to Individual Plaintiffs' counsel as appropriate;
- l. To maintain a complete set of all filed pleadings and orders relating to the overall litigation and management of these actions, and to make such documents available to all other Individual Plaintiffs on reasonable notice and at reasonable times;
- m. To coordinate the filing of notices and papers by any Individual Plaintiff in situations where the Individual Plaintiffs have a common position.

In the event that all five Liaison Counsel are unavailable to convene, any three Liaison Counsel may act with respect to any decision consistent with their duties and obligations in this Order. At formal or informal status conferences or with respect to motion hearings, Liaison Counsel, after reasonable efforts to consult with other members of the Steering Committee, will coordinate the manner and method for communicating issues to the Court in order to efficiently and effectively communicate the positions of the Individual Plaintiffs.

In the event the Steering Committee determines that a Liaison Counsel structure with five members is impracticable, inefficient, or unworkable, or that the burden of the work is being disproportionately assigned or performed, the Steering Committee will evaluate by consensus and develop any appropriate means to remedy the situation, and each Liaison Counsel agrees to follow the decision arrived by consensus of the Steering Committee.

Although Liaison Counsel recognize the unique nature of their mandate to serve in this capacity, nothing in this Order confers any authority or obligation upon them to bind the substantive rights of Plaintiffs whom they do not represent. Rather, all Counsel for Individual

Plaintiffs maintain their rights and obligations with respect to their respective clients, and consistent with those obligations, shall be afforded the right to address the Court whenever they in good faith believe they must do so on matters that specifically implicate the interests of their clients. Moreover, Counsel for any Individual Plaintiff who objects to Liaison Counsel's execution of these duties and responsibilities preserves their right to raise their objections with the Court. In doing so, counsel for any Individual Plaintiff agrees to raise any such objections first with Liaison Counsel and the Steering Committee to afford the opportunity for a candid and transparent exchange with the goal of developing consensus.

**2. PLAINTIFFS' CULTURAL REPRESENTATIVE**

Jan K. Apo will serve as the Plaintiffs' Cultural Representative Liaison Counsel. In this role, Mr. Apo will perform the functions of maintaining appropriate communication with cultural groups impacted by litigation activities, on the one hand, and the Steering Committee, the Court, and the Defendants, on the other hand. Defendants will also appoint a Defendants' Cultural Representative Liaison Counsel.

**3. INDIVIDUAL PLAINTIFFS' STEERING COMMITTEE**

The following firms shall have a representative serve on the Steering Committee:

Andrews Thornton

Arias Sanguinetti

Becker Law Group

Bickerton Law Group

Bostwick & Peterson LLP  
Bridgford, Gleason, and Artinian  
Cotchett, Pitre & McCarthy, LLP  
Danko Meredith  
Edelson PC  
Fox Law, APC  
Frantz Law Group, APLC  
Keller Rohrback  
Lance Collins Law Office  
Leavitt Yamane & Soldner  
Levin Papantonio Rafferty  
McNicholas & McNicholas  
Moon Law APC  
Morgan & Morgan  
Parkinson Benson  
Potter Robins Cloud  
Singleton Schreiber  
Starn O'Toole Marcus & Fisher  
Strange LLP  
Stoll Berne  
Takitani Agaran  
The Law Office of Eric Ferrer



Walkup Melodia

Watts Guerra

The Steering Committee shall work in collaboration through sub-committees and/or Liaison Counsel to conduct discovery and to prepare the cases of Individual Plaintiffs for trial.

In the event the Steering Committee determines this number of members is impracticable, inefficient, or unworkable, or that the burden of the work is being disproportionately assigned or performed, the Steering Committee will evaluate by consensus and develop any appropriate means to remedy the situation, and each firm listed above agrees to follow the decision arrived by consensus of the Steering Committee.

**4. INDIVIDUAL PLAINTIFFS' COMMON COST COMMITTEE**


Liaison Counsel and all members of the Steering Committee shall jointly advance the funds necessary to prosecute Individual Plaintiffs' case. The initial assessment shall be \$25,000 per firm, and further assessments (equally shared among all firms) may be assessed by the Steering Committee as required. These funds shall be held in a joint account and administered by a committee established by the Steering Committee. If necessary, the Steering Committee may request appointment of a retired judicial officer to oversee this fund and/or process. These assessments shall be considered advances that are reimbursed by a common cost assessment to be proposed in a later order. If a member of the Steering Committee does not pay an assessment within 30 days of the assessment, and remains in arrears for more than 7 days after being advised in writing of the failure to pay, then the law firm's membership on the Steering Committee shall be forfeited.

Joint costs include the following: liability work-up, including, but not limited to, deposition costs; a joint evidence repository system; joint liability expert costs; etc. They do not include travel costs, meals, or lodging for attorneys, or any other such related costs. No individual client-related costs shall be considered Common Costs, unless exceptional circumstances exist and are approved by the committee or by order of this Court.

The Steering Committee shall prepare and propose a “common costs” order in which a percentage of the recovery (not to exceed 2%) of all settlements, judgments or arbitration awards shall be withheld and deposited into the common costs fund. A sub-committee shall be formed for the specific purpose of administering, distributing and accounting for any such funds. Any funds collected or disbursed pursuant to such Order shall solely be dedicated to common costs, and shall not be used for any other purpose.

Nothing in this Order shall be construed as affording any member of the Steering Committee with any right to seek or obtain attorney fees from any matter in which they are not counsel of record for that specific client, whether characterized as a common benefit fee or otherwise, and neither Liaison Counsel nor any other member of the Steering Committee shall seek any such common benefit attorney fees.

DATED: Wailuku, Maui, Hawaii, this 2<sup>nd</sup> day of JANUARY 2024.

  
\_\_\_\_\_  
JUDGE OF THE ABOVE-ENTITLED COURT



APPROVED AS TO FORM:

---

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NICHOLAS FRAM, ESQ.  
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HAWAII ELECTRIC COMPANY, INC.,  
HAWAII ELECTRIC LIGHT COMPANY, INC.,  
AND MAUI ELECTRIC COMPANY LIMITED

*s/ Steven E. Tom*

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COUNTY OF MAUI

*s/ Paul Alston*

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THE TRUSTEES OF THE ESTATE OF  
BERNICE PAUAIH BISHOP

---

WESLEY CHING, ESQ.  
Attorney for Defendant  
WEST MAUI LAND COMPANY

---

ORDER GRANTING REQUEST TO ENTER CMO NO. 1 (ORGANIZATION OF THE  
PLAINTIFFS' LEADERSHIP); IN THE MATTER OF THE PETITION FOR THE  
COORDINATION OF MAUI FIRE CASES; Case No. 2023-0000057, Second Circuit  
Court, State of Hawaii

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**EXHIBIT 4**

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**Dkt. 223 CMP**

**IN THE CIRCUIT COURT OF THE SECOND CIRCUIT**

**STATE OF HAWAI'I**

*In re Maui Fire Cases*

**S.P. NO. 2CSP-23-0000057**

**Individual Plaintiffs' Master Complaint &  
Demand for Jury Trial**

- 1) **Negligence – Utility Defendants**
- 2) **Negligence – Telecom Defendants**
- 3) **Negligence – Landowner Defendants**
- 4) **Negligence – County of Maui**
- 5) **Negligence – State of Hawai'i**
- 6) **Abnormally Dangerous Activity –  
Landowner & Public Entity Defendants**
- 7) **NIED**
- 8) **Premises Liability**
- 9) **Public Nuisance**
- 10) **Private Nuisance**
- 11) **Trespass**
- 12) **Inverse Condemnation – County of Maui**
- 13) **Inverse Condemnation – State of Hawai'i**
- 14) **Inverse Condemnation – Utility Defendants**
- 15) **Wrongful Death**
- 16) **Survival Action**

Circuit Judge: Hon. Peter T. Cahill

Division: 2

Trial Date: None set

## TABLE OF CONTENTS

PAGE NO.

I.	Introduction.....	1
II.	Parties .....	1
A.	Individual Plaintiffs .....	1
B.	Defendants .....	2
a.	Utility Defendants.....	2
b.	Telecom Defendants .....	3
c.	Landowner Defendants .....	3
d.	Public Entity Defendants .....	4
C.	Doe Defendants .....	5
D.	Agency, Joint Venture, and Concert of Action.....	5
III.	Jurisdiction.....	5
IV.	General Factual Allegations .....	6
A.	For Years, Wildfire Risk Steadily Increased in Hawai‘i and on Maui.....	6
B.	Defendants Received Warning of High Fire Risk Days Before the Maui Fires.....	9
C.	The Maui Fires Caused Unprecedented Destruction .....	11
i.	The Upcountry Fires – the Olinda and Kula Fires.....	11
ii.	The Lahaina Fire.....	13
iii.	Innocent Citizens Received no Warning of the Impending Disaster.....	17
V.	Defendant-Specific Allegations.....	22
A.	The Utility Defendants Failed to Prevent the Ignition and Spread of the Maui Fires .....	22
i.	The Utility Defendants Were Negligent by Not De-energizing their Facilities. ....	24
ii.	The Utility Defendants Negligently Designed, Constructed, Inspected, and Maintained their Electrical Facilities .....	26
B.	The Telecom Defendants Failed to Prevent the Ignition and Spread of Wildfire .....	30
C.	The Landowner Defendants Failed to Prevent the Ignition and Spread of Wildfire .....	34

D.	The Public Entity Defendants Failed to Prevent the Ignition and Spread of the Maui Fires .....	36
i.	The Public Entity Defendants Negligently Maintained their Property.....	36
ii.	The County Violated its Statutory Duties to Identify Potential Fire Hazards .....	37
E.	The Public Entity Defendants’ Negligently Designed Exit-Route Roadways .....	39
F.	The Defendants’ Individual and Collective Failures Cause Plaintiffs’ Harms.....	40
VI.	Causes of Action.....	41
	First Cause of Action – Negligence of Utility Defendants.....	41
	Second Cause of Action – Negligence of the Telecom Defendants .....	46
	Third Cause of Action – Negligence of the Landowner Defendants.....	52
	Fourth Cause of Action – Negligence of the County .....	54
	Fifth Cause of Action – Negligence of the State .....	56
	Sixth Cause of Action – Abnormally Dangerous Activity .....	57
	Seventh Cause of Action - Negligent Infliction of Emotional Distress.....	58
	Eighth Cause of Action – Premises Liability .....	59
	Ninth Cause of Action – Public Nuisance .....	61
	Tenth Cause of Action – Private Nuisance.....	64
	Eleventh Cause of Action – Trespass .....	65
	Twelfth Cause of Action – Inverse Condemnation – The County .....	66
	Thirteenth Cause of Action – Inverse Condemnation – The State .....	66
	Fourteenth Cause of Action – Inverse Condemnation – The Utility Defendants.....	67
	Fifteenth Cause of Action – Wrongful Death.....	68
	Sixteenth Cause of Action – Survival Action.....	68
VII.	Prayer for Relief .....	69
	DEMAND FOR JURY TRIAL .....	72

## **I. Introduction**

1. This case concerns the deadliest American wildfires of the past century. On August 8, 2023, a series of wildfires ignited on the island of Maui in the State of Hawai‘i. Those fires, including the Lahaina Fire, Olinda Fire, and Kula Fire (collectively the “Maui Fires”) tore across the island. Based on current estimates, the fires burned over 3,000 acres, destroyed 2,000 homes and 800 businesses, and killed 99 people. The full extent of the disaster is still unknown.

2. Individual Plaintiffs bring this action against various Defendants for their alleged contributions to the ignition, spread, and subsequent destruction of the Maui Fires.



*Figure 1: Lahaina, post-fire. (August 11, 2023; Hawai‘i Department of Land and Natural Resources.)*

## **II. Parties**

### **A. Individual Plaintiffs**

3. Individual Plaintiffs are the individuals and entities who are, and at all times relevant were, homeowners, renters, business owners, and other individuals and entities who suffered and continue to suffer personal injuries, property damage, business losses, and other damages as a result of the Maui Fires.



**B. Defendants**

**a. Utility Defendants**

4. 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.

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

6. Defendant **Hawai‘i Electric Light Company** (“**HELCO**”) 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 **HECO**.

7. Defendant **Maui Electric Company Limited** (“**MECO**”) 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, and since 2019 has done business as, Defendant **HECO**.

8. Defendants **HEI**, **HECO**, **HELCO**, and **MECO** (collectively, “**Utility Defendants**”) are, and at all times relevant were, public utilities subject to regulation by the Hawai‘i 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.

**b. Telecom Defendants**

9. Defendant **Spectrum Oceanic, LLC** (“**Spectrum**”) is, and at all times relevant was, a Delaware corporation with its principal place of business in St. Louis, Missouri. Spectrum is a telecommunications company and cable operator that serves retail customers in the State of Hawai‘i. Spectrum is a subsidiary of Charter Communications, Inc. To conduct its business, Spectrum designs, constructs, maintains, and inspects telecom infrastructure, including hardware and equipment affixed to structures and fixtures, including those at or near the areas of origin of the Maui Fires

10. Defendant **Cincinnati Bell, Inc.** (“**Cincinnati Bell**”) is, and at all times relevant was, an Ohio corporation with its principal place of business in Cincinnati, Ohio. In 2018, the Hawaiian Public Utilities Commission approved Cincinnati Bell’s purchase of **Hawaiian Telecom, Inc.**, the largest full-service provider of communication services in the Hawaiian Islands. Today, Cincinnati Bell conducts business in Hawai‘i as **Hawaii Telecom, Inc.** To conduct its business **Cincinnati Bell**, designs, constructs, maintains, and inspects telecom infrastructure, including hardware and equipment affixed to structures and fixtures, including those at or near the areas of origin of the Maui Fires.

11. Defendant **Hawaiian Telecom, Inc.** (“**Hawaiian Telecom**”) is, and at all times relevant was, a brand and subsidiary of Cincinnati Bell with its principal place of business in Cincinnati, Ohio. To conduct its business **Hawaiian Telecom** designs, constructs, maintains, and inspects telecom infrastructure, including hardware and equipment affixed to structures and fixtures, including those at or near the areas of origin of the Maui Fires.

12. Defendants **Spectrum, Cincinnati Bell, and Hawaiian Telecom** (collectively, “**Telecom Defendants**”) are, and at all times relevant were, telecommunications companies subject to regulation by the Hawai‘i Public Utilities Commission and bound by all laws and regulations applicable to public utilities operating in the State of Hawai‘i and the County of Maui.

**c. Landowner Defendants**

13. Defendants Elliot Kawaiho’olana Mills, Crystal Kauilani Rose, Jennifer Noelani Goodyear-Ka’opua, Michelle Ka’uhane, and Robert K.W.H. Nobriga, are, and at all times relevant were, Trustees of **The Bishop Estate**, the largest private landowner in the State of Hawai‘i. The Bishop Estate owns, controls, manages, and oversees the maintenance of property at or near the area of

origin and spread of the Lahaina Fire. **The Bishop Estate** holds interests in or title to, manages, controls, rents, or owns these properties as various entities, including **Bishop B P Tr Est** and **Kamehameha Schools**. For all purposes and at all times relevant, **The Bishop Estate Trustees**, including the Bishop Estate, all entities, subsidiaries, partnerships, or associations, whether formal or otherwise, operate as a single entity with the primary purpose of maintaining the assets of the Estate. Each act of each and every entity affiliated with or under the control or direction of the Estate is directly attributable to every other entity, rendering each entity the alter ego of every other entity.

14. Defendant **Hawai'i Housing Finance and Development Corporation** (“**HFDC**”) is, and at all times relevant was, a corporate landowner in the State of Hawai'i. **HFDC** owns, controls, manages, and oversees the maintenance of property at or near the area of origin and spread of the Lahaina Fire.

15. These holders of interest in real property, and others unknown to Plaintiffs, (collectively, “**Landowner Defendants**”) are, and at all times relevant were, subject to all laws and regulations applicable to persons owning, managing, and controlling property in the State of Hawai'i and the County of Maui.

**d. Public Entity Defendants**

16. 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 owns, controls, manages, and oversees the maintenance of property at or near the area of origin and spread of the Maui Fires and, 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, at all times relevant the County was bound by all duties and responsibilities set forth in the Maui County Code, the laws of the State of Hawai'i, and all applicable regulations.

17. 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** owns, controls, manages, and oversees the maintenance of property at or near the area of origin and spread of the Maui Fires and, 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, at all times relevant the State was bound

by all duties and responsibilities set forth in the laws of the State of Hawai‘i, and all applicable regulations.

**C. Doe Defendants**

18. 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 200 (“**Does 1-200**”), 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 1-200, 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**

19. 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**

20. 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.

21. 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 which arise out of or relate to the causes of action alleged herein such that the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice.

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

#### **IV. General Factual Allegations**

##### **A. For Years, Wildfire Risk Steadily Increased in Hawai‘i and on Maui**

23. Each of the Defendants knew or should have known that wildfire risk was steadily increasing in the Hawaiian Islands and specifically on the island of Maui years before the Maui Fires.

24. As certain agricultural practices have declined and drought conditions have become more severe, the total area of land burned in Hawai‘i has steadily increased over the past century.<sup>1</sup> Indeed, over the past decade Hawai‘i has seen an average of over 1,000 ignitions burning 20,000 acres per year.<sup>2</sup> Across Hawai‘i, some substantial fires included: the Waikoloa Village Fire (2003); Kawaihae Road Fire (2004); Akone Pule Highway Fire (2005); Nanakuli Brush Fire (2005); Waikele Fire (2005); Olowalu Fire (2007); Waialua Fire (2007); Puako Fire (2007); Kaunakakai Fire (2009); and Mana Road Fire (2021).

25. The island of Maui has not been spared from increasing wildfire risk. Between 1999 and 2019, there were 80 reported fires in the County of Maui. Twenty-eight of those fires were in West Maui, fourteen were in Kihei-Makena, and twelve were in Wailuku-Kahului.<sup>3</sup>

26. Catastrophic wildfires are not a novel concept for Maui. Indeed, since 2006, the federal government declared disasters for four separate wildfires on the island of Maui: the Ma‘alaea Fire (2006), Olowalu Fire (2007), Ma‘alaea Fire (2010), and Kahana Ridge Fire (2019).

27. In 2018, Hurricane Lane, a tropical cyclone that brought high winds to portions of the island of Maui, toppled power lines across western Maui and caused the rapid spread of fires that burned over 2,800 acres, destroyed 22 homes, and forced six-hundred people to flee for their lives.

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<sup>1</sup> <https://pacificfireexchange.org/region/hawaii/> (accessed August 22, 2023).

<sup>2</sup> *Id.*

<sup>3</sup> <https://www.mauicounty.gov/DocumentCenter/View/125977/2020-Maui-County-Hazard-Mitigation-Plan-Final?bidId=> (at p. 485).

28. Hurricane Lane was a red flag to each and every Defendant concerning the wildfire risks posed by high winds and drought conditions, proper management of private and public property, and the hardening of equipment and systems used to provide electrical or telecommunications service. Further, the dangers presented by the catastrophic fires of 2018 should have spurred action among all Defendants to update or adapt their policies, practices, and procedure relating to wildfire risk, public safety, property management, and emergency management.

29. In both 2018 and 2022, fields of dry grass near Lahaina ignited, causing substantial and widely known fires. Coupled with the regular high winds and dry conditions, these fires also served as prominent warning signs that should have been heeded.

30. Plaintiffs are informed, and thereon allege, that each and every Defendant knew or should have known of these wildfire and wind-driven events as well as the increasing wildfire risk on the island of Maui. Accordingly, each and every Defendant should have taken all appropriate measures to prevent or mitigate the risks of fire ignition and spread associated with the changing conditions long before the ignition of the Maui Fires.

31. The steadily increasing wildfire risks on Maui also coincided with increasingly severe and frequent fires in other parts of the world, including the western United States. As detailed herein, the Utility Defendants in particular were or should have been aware of catastrophic wildfires in other parts of the country, and particularly those caused or allegedly caused by the furnishing of electricity to retail customers.

32. By 2020, wildfire risk on the island had reached an untenable level and, in response, 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.<sup>4</sup>

33. In its Complaint, the County specifically alleged 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.”

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<sup>4</sup> <https://www.mauicounty.gov/DocumentCenter/View/124390/Maui-County-Climate-Change-Litigation-Complaint>, at ¶¶ 173-174, 196.

34. 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 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.<sup>5</sup> Similarly, West Maui was categorized as having a “highly likely” probability—or more than a 90% chance—of wildfires each year on average.<sup>6</sup>

35. The County continued to raise alarms over wildfire risk the following year. In July 2021, The County’s Cost of Government Commission issued a report on “Wildfire Prevention and Cost Recovery on Maui” (the “County Report”).

36. The County Report makes explicit what each and every Defendant 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 sites.” 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.”<sup>7</sup>

37. 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.”<sup>8</sup> 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.”<sup>9</sup>

38. One reason the fire risk continued to rise was because the County of Maui was in the midst of increasingly severe drought conditions. According to the U.S. Drought Monitor, 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” by August 2023.<sup>10</sup>

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<sup>5</sup> <https://www.mauicounty.gov/DocumentCenter/View/124390/Maui-County-Climate-Change-Litigation-Complaint>, at ¶¶ 173-174, 196 (accessed August 17, 2023).

<sup>6</sup> *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)

<sup>7</sup> *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)

<sup>8</sup> <https://pacificfireexchange.org/resource/slide-presentation-overview-of-wildfire-in-hawaii/> (2023) (accessed August 16, 2023)

<sup>9</sup> *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)

<sup>10</sup> U.S. Drought Monitor, Maui County, HI, [https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?fips\\_15009](https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?fips_15009). (accessed August 16, 2023)

39. But even if drought conditions improve, the risk of wildfire does not disappear. After wet winters, vegetation—particularly grasses—grow substantially. When the seasons change and those same grasses dry and become a bulk supply of readily ignitable fuel.<sup>11</sup>

40. Accordingly, the proper management of vegetation near ignition sources, whether they could themselves be the cause of a sparking event or merely fuel, was paramount at all times. Dry invasive grasses, thickets, bushes, and brush—particularly those located in areas with high fire risk and where an ignition could be difficult to detect or extinguish—needed proper and proactive management. Indeed, the County Report urged responsible parties to “routinely inspect power transmission lines and rights of way” while tasking the County *and* the utilities with corrective action.<sup>12</sup>

41. In light of these publicly acknowledged conditions and commonsense risks, each and every Defendant should have acted to prevent or mitigate the risk of wildfire ignition and spread. Instead, the Defendants individually and collectively failed to act in a reasonable manner and, as a result, caused or contributed to the ignition and spread of the Maui Fires.

**B. Defendants Received Warning of High Fire Risk Days Before the Maui Fires**

42. On August 4, 2023, the National Weather Service (“NWS”) issued a public notice via social media that Hawai‘i may experience impacts from the developing Hurricane Dora into the following week. Specifically, NWS cited the potential for strong and gusty trade winds, dry weather, and high fire danger.

43. On August 6, 2023, NWS issued a second public notice via social media. This time, the notice cautioned that impending weather, coupled with dry conditions, posed a “serious fire” and “damaging wind threat” and warned the public to “stay alert.” In addition, NWS issued a separate alert warning that although Hurricane Dora would not directly impact Hawai‘i it created “a threat of damaging winds [and] fire weather” from Monday, August 7, 2023 through Wednesday, August 9, 2023.

44. On August 7, 2023, NWS issued an updated warning. This time, the warning contained two critical components: a High Wind Watch and a Fire Warning for those portions of the state in the

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<sup>11</sup> *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)

<sup>12</sup> *See*, Note 7, *supra*, at 12.



path of the forecasted winds. Further, the warning noted that the winds could down electrical overhead facilities and facilitate the spread of a fire. The historic town of Lahaina, located on the western shore of the island of Maui, was subject to these warnings.

45. On August 8, 2023, the NWS issued both a High Wind Warning and a Red Flag Warning for portions of the State of Hawai‘i, including the island of Maui and, specifically, its western shore. According to NWS, a “Red Flag Warning” is reserved for circumstances in which “critical fire weather conditions [are] either occurring now or will occur shortly” and advises that “a combination of strong winds, low relative humidity, and warm temperatures can contribute to extreme fire behavior.”

46. In the August 8th notice, the NWS specifically warned that winds could reach between 30-45 miles per hour, with gusts up to 60 miles per hour. In addition, its Red Flag Warning forecast “[h]igh fire danger with rapid spread,” advised against any outdoor burning, and urged the public to stay safe and cautious.

47. Plaintiffs are informed, and thereon allege, that each and every Defendant knew or should have known of the impending weather conditions from August 4, 2023 onward and should have taken all appropriate measures to prevent against or mitigate the risks of fire ignition and spread associated with those warnings. Instead, and as alleged herein, Defendants individually and collectively failed to act properly in response to foreseeable risks and, as a result, caused or contributed to the ignition and spread of the Maui Fires.

48. Each of the Defendants, as alleged herein and detailed below, knew that their conduct under such conditions had a relationship to wildfire risk and public safety.

49. The Utility Defendants and the Telecom Defendants knew that their facilities had to be designed, constructed, inspected, and maintained in a way that did not increase the risk of wildfire ignition, particularly during drought conditions and when exposed to high winds.

50. The Landowner Defendants, as well as the County and the State, knew that vegetation on their property could readily serve as a fuel source for the ignition and spread of wildfire. Accordingly, they each knew or should have known that developing and implementing operating policies, practices, and procedures for managing or removing vegetation, including grasses, trees,

ground cover, dry brush, and others, was necessary so that they did not contribute to the ignition or spread of a wildfire.

51. Similarly, the County and the State knew that, in the event of a wildfire, citizens would rely on the County’s operating procedures, including emergency warning systems, to avoid personal injury or death.

52. All Defendants, regardless of their form or status, were required to comply with the laws and regulations of the State of Hawai‘i, including the Hawai‘i Revised Statutes and Hawai‘i Administrative Rules, as well as the Maui County Code and State Fire Code.

53. Yet, each and every Defendant, as alleged herein, fell short of their respective responsibilities. As a result of the Defendants’ individual and collective failures, the Maui Fires ignited and spread and caused Individual Plaintiffs the damages alleged herein.

**C. The Maui Fires Caused Unprecedented Destruction**

**i. The Upcountry Fires – the Olinda and Kula Fires**

54. Around 10:47 p.m. on August 7, 2023, as strong winds impacted the island of Maui, a security camera located at the Maui Bird Conservation Center in Upcountry Maui faced a nearby tree line. Suddenly, a flash of light shone behind the tree line. Sensors recording the activity in the Utility Defendants’ grid at the same time reported a substantial fault.



*Figure 2: Flash coinciding with fault (left); and post-fault fire (right) (August 11, 2023, San Diego Zoo Wildlife Alliance.)*

55. Shortly after the video footage captured the flash of light and the sensors identified the fault, residents reported a brush fire – later named the Olinda Fire. The Olinda Fire spread rapidly, burned over 1,000 acres of land, and destroyed multiple structures, including homes. In addition, the Olinda Fire caused various communities and Plaintiffs to flee for their lives.

56. Plaintiffs are informed, and thereon allege, that the Utility Defendants’ facilities, in isolation or in combination with the Telecom Defendants’ facilities, contributed to the ignition and spread of the Olinda Fire. Plaintiffs are further informed, and thereon allege, that the property surrounding the point of the ignition and spread of the Olinda Fire was mismanaged as alleged herein.

57. On August 8, 2023, a second fire – named the Kula Fire – ignited in Upcountry Maui near the Haleakala Highway. Several residents reported trees falling on downed power lines near the ignition point of the Kula Fire. Plaintiffs are informed, and thereon allege, that the Utility Defendants’ facilities, in isolation or in combination with the Telecom Defendants’ facilities, contributed to the ignition and spread of the Olinda Fire. To date, the Kula Fire has burned over 200 acres.



*Figure 3: Pole 28, the suspected ignition source of the Kula Fire.*

**ii. The Lahaina Fire**

58. In the early morning of August 8, 2023, sensors monitoring the Utility Defendants’ electrical grid observed two significant faults in the town of Lahaina.<sup>13</sup> Overnight and into the early morning of the 8th, sensors recorded approximately 34 faults on the Utility Defendants’ facilities in Lahaina. These faults coincided with consistent and strong wind conditions.

59. Around 3:00 a.m., a citizen living near Lahainaluna Road observed a bright flash from the direction of the Utility Defendants’ electrical facilities.

60. Just after 5:00 a.m., the Utility Defendants’ equipment reported an outage affecting approximately 1,000 customers. The Utility Defendants should have acted immediately – particularly in light of the Olinda Fire which ignited the previous evening and was still burning – to ensure that their electrical facilities had not caused an ignition.

61. Around 6:30 a.m., a brush fire was reported near the Utility Defendants’ electrical facilities near Lahainaluna Road. A nearby resident took to social media to live-stream what he was able to see from his home near Lahainaluna Road.



*Figure 4: Screenshots of witness video showing suspected ignition of the Lahaina Fire on August 8, 2023.*

<sup>13</sup> A “fault” is an abnormality in or disruption of the flow of electricity through an electrical circuit.

62. The video, posted to social media and shared by various news outlets, shows the Utility Defendants' overhead distribution lines falling to the ground under strong winds and igniting brush along the roadway.<sup>14</sup>

63. 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.”

64. As the eyewitness continues to record, he alerts a first responder that “the line is live on the ground[.]”



*Figure 5: Pole 25, the suspected ignition point of the Lahaina Fire.*

<sup>14</sup> 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)

65. In the face of this video evidence, the Utility Defendants have since admitted that their electrical facilities caused the brush fire near Lahainaluna Road on the morning of August 8, 2023. Plaintiffs are informed, and thereon allege, that the Utility Defendants' facilities, in isolation or in combination with the Telecom Defendants' facilities, contributed to the ignition and spread of the Lahaina Fire.

66. First responders initially reported that this blaze was completely contained.

67. Around 3:30 p.m., the Lahaina Fire broke containment and spread rapidly toward the town of Lahaina. In response, the County closed the Lahaina Bypass. Yet, neither the County nor the State issued warnings that could be expected to reach citizens in danger.

68. Public and private lands near the area of origin, which were not properly managed to prevent and/or mitigate the ignition or spread of wildfire, facilitated the rapid spread and devastating nature of the Lahaina Fire.

69. By 3:50 p.m., the Lahaina Fire had crossed the bypass and residences in Lahaina were burning. The town was in chaos. With essentially no warning, thousands of innocent people surrounded by a firestorm attempted to flee for their lives. They grabbed what little they could and attempted to escape the impending disaster. The roads out of Lahaina, including historic Front Street, were essentially gridlocked.

70. The fire raged for hours. It consumed hundreds of homes and businesses and, in the process, claimed dozens of lives. By the early evening of August 8, 2023, individuals desperate to escape the oncoming conflagration were jumping into the sea.

71. The Lahaina Fire was devastating. Current estimates are that over 2,100 acres were burned, 2,200 structures – nearly 90% of which were homes – were destroyed, and at least 99 people were killed. The rescue and recovery efforts are ongoing, and the full scale of the disaster is still unknown.



*Figure 7: Lahaina, post-fire. (August 11, 2023; Hawai'i Department of Land and Natural Resources.)*

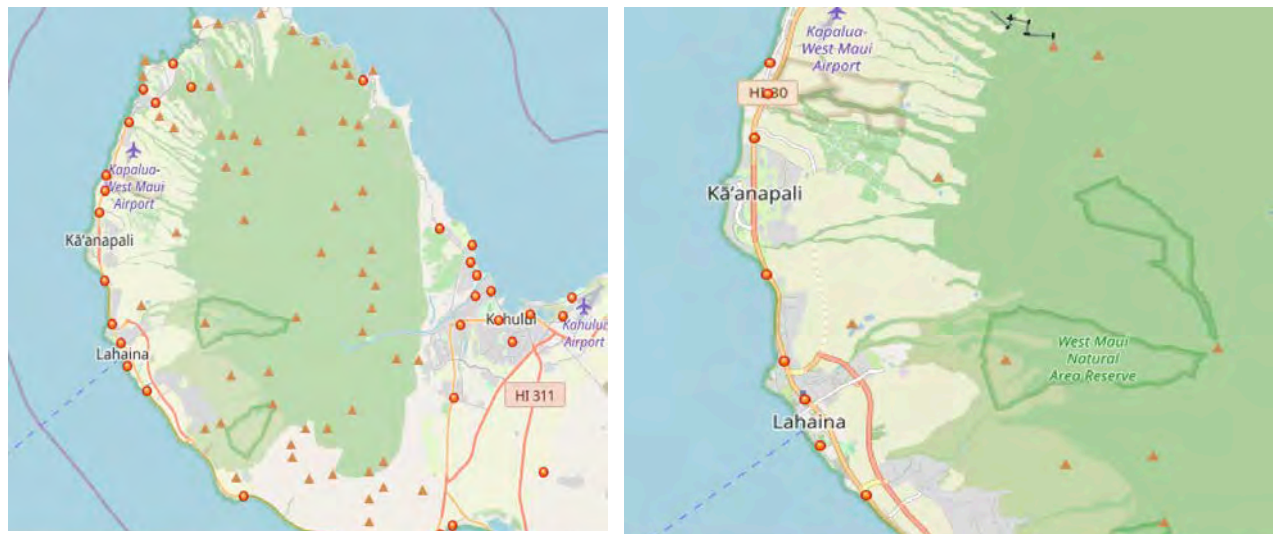


*Figure 6: Lahaina, post-fire. (August 11, 2023; Hawai'i Department of Land and Natural Resources.)*

**iii. Innocent Citizens Received no Warning of the Impending Disaster**

72. With the Maui Fires bearing down on the island, every second mattered. But when it mattered most, the Public Entity Defendants failed to activate their own warning sirens.

73. For years, the County operated part of a statewide “All-Hazard” outdoor warning system (“AHS”), which is the “the largest single integrated public safety outdoor siren warning system in the world.”<sup>15</sup> 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. Further, AHS is “just one part” of the larger Hawai‘i Statewide Alert and Warning System” (“SAWS”).<sup>16</sup>



74. The State constructed and maintained AHS and shared operational and testing responsibility for AHS with the County. Thus, both Public Entity Defendants are responsible for ensuring the system functions as intended and are activated to the extent required by policies and procedures in place. According to the County, AHS “can be used for a variety of both natural and human-caused events; including tsunamis . . . wildfires . . . and more.”

75. 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.”

<sup>15</sup> <https://www.mauisirens.com/> (accessed August 17, 2023)

<sup>16</sup> *Id.*



76. Clearly, AHS is not simply to instruct members of the public to move from one place to another, but also to seek information through specific channels such as radio and television. Yet, in 2019, 2020, and 2021, Defendant 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.”<sup>17</sup> 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.”

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

78. Similarly, reports indicate that the State also failed to activate sirens which could have been used to alert unsuspecting citizens of the Maui Fires. Indeed, according to the Hawai‘i Emergency Management Agency: “Nobody at the state and nobody at the county attempted to activate those sirens based on our records[.]”<sup>18</sup>

79. Instead of utilizing AHS, the Public Entity Defendants relied on notifications broadcast on televisions, radio stations, and to mobile phones. But all of these notification methods relied on external service to relay and receive a message. 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 destruction and/or damage from wildfires.<sup>19</sup>

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

<sup>18</sup> <https://www.cnn.com/2023/08/12/us/hawaii-emergency-warning-system-maui-wildfires/index.html> (accessed August 17, 2023)

<sup>19</sup> <https://www.cnn.com/2023/08/09/tech/cell-service-outages-maui-fires/index.html> (accessed August 17, 2023)

**iv. The Maui Fires Generated and Dispersed Substantial Environmental Pollution**

80. The Lahaina Fire, Olinda Fire, and Kula Fire – all of which are the direct and proximate result of the Defendants’ conduct alleged herein – resulted in substantial environmental pollution across the State of Hawai‘i, including in areas near the ignition and spread of the fires and the locations at or near Plaintiffs’ properties.

81. The environmental pollution created by the Maui Fires lead to the contamination of air, water, and soils on properties in which Plaintiffs held an interest as well as the contamination of public areas such that it constitutes a nuisance.<sup>20</sup>

82. The destruction of buildings, vehicles, boats, and other infrastructure materials caused the release of toxic chemicals into the air and soil on Maui. According to Dr. Andrew Whelton, a civil engineer assisting with the cleanup, “[w]e know beyond a reasonable doubt that the soil is now contaminated. The water is contaminated where the harbor is, [and] the air is contaminated” based both upon experience with prior fires and the scope of the destruction.<sup>21</sup>

83. The Maui Fires caused air pollution, including the release of ash, smoke, chemicals, metals, toxins, and other hazardous material in quantities and for durations which may endanger human health or welfare, plant or animal life, or property, or which may unreasonably interfere with the comfortable enjoyment of life and property throughout the State, including on Plaintiffs’ properties.

84. As recognized by the U.S. Environmental Protection Agency, wildfire smoke itself is a toxic substance and air pollutant that can cause serious health impacts.<sup>22</sup> Similarly, the destruction caused by the Maui Fires lead to the production of particulate pollution – including acids, organic chemicals, metals, soil, and dust particles.<sup>23</sup>

85. The U.S. Environmental Protection Agency (“EPA”) estimates that there are over 700,000 tons of ash, concrete slabs, and metal to be removed from Maui – about half the amount of debris removed from the World Trade Center site after 9/11.<sup>24</sup>

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<sup>20</sup> <https://www.reuters.com/graphics/HAWAII-WILDFIRE/CLEANUP/egpbmemanvq/>

<sup>21</sup> <https://www.insideindianabusiness.com/articles/purdue-prof-debris-removal-from-maui-wildfire-will-take-months>

<sup>22</sup> <https://www.epa.gov/sciencematters/science-behind-wildfire-smokes-toxicity>

<sup>23</sup> <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P1001EX6.txt>

<sup>24</sup> <https://www.washingtonpost.com/nation/2023/09/25/maui-recovery-debris-removal-rebuilding/>

86. In addition, preliminary ash samples taken from structures destroyed by the Kula Fire collected by the Hawaii Department of Public Health (“DOH”) show elevated levels of lead and cobalt and very high levels of arsenic.<sup>25</sup>

87. According to DOH, “the wildfire ash and dust are toxic and should be avoided. Based on the new preliminary data, the primary contaminant of concern is arsenic, a heavy metal that adheres to wildfire dust and ash.”<sup>26</sup> Further, DOH expects that the ash in Lahaina will be similar to the ash

Parameter	Unit	Lab Report #1	Lab Report #2	Lab Report #3	Mean Lab Reports	Soil Environmental Action Level
Arsenic	mg/kg	3,240	3,260	3,080	3,193	23
Cobalt	mg/kg	86	81	89	85	4.7
Lead	mg/kg	640	769	655	688	200

collected from Kula because the sampled homes were constructed during the same time period.<sup>27</sup>

88. The Maui Fires created environmental pollution that impacts water resources. Following the fires, researchers at the University of Hawai‘i at Mānoa Water Resources Research Center emphasized that “[w]ildfires can damage buried drinking water systems, building plumbing, catchment systems, and private drinking water wells making them unsafe to use. This knowledge, which comes from research carried out on similar major urban-wildfire incidents, is the reason why the Lāhainā and Kula water systems were put under a Do-Not-Use Advisory by Maui DWS.”<sup>28</sup>

89. It is well known that wildfires can contaminate natural waters, including drinking water sources, with ash pollution and sediment.<sup>29</sup> Further, research following the Tubbs Fire (2017) and Camp Fire (2018) in California confirmed “widespread drinking water chemical contamination” in water distribution networks and not solely source waters following wildfires.<sup>30</sup> Other research

<sup>25</sup> <https://health.hawaii.gov/news/newsroom/preliminary-kula-ash-samples-show-elevated-levels-of-toxic-substances/>

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> <https://www.wrrc.hawaii.edu/maui-post-fire-community-water-info-hub/>

<sup>29</sup> Proctor, CR, Lee, J, Yu, D, Shah, AD, Whelton, AJ. Wildfire caused widespread drinking water distribution network contamination. *AWWA Wat Sci.* 2020;e1183 at 2. <https://doi.org/10.1002/aws2.1183>

<sup>30</sup> *Id.* at 1.

determined that water distribution systems could become contaminated with volatile organic compounds and semi-volatile organic compounds.<sup>31</sup>

90. After the Maui Fires became contained, state and federal authorities began actively addressing environmental pollution. These efforts included the “assessment, removal, and disposal of incident-generated hazardous materials, response to actual and potential oil discharges, and clearance of marine debris and sunken or displaced vessels from designated waterways, including Lāhainā Harbor, in the aftermath of the Western Maui Wildfire.”<sup>32</sup> Similarly, the ashes from the fires of Lahaina undoubtedly contain heavy metals, residues, polychlorinated biphenyls (“PCB”), and more from burning plastics, asbestos, and other materials that could pollute the oceans near Lahaina as well as reefs and other marine life.<sup>33</sup>

91. The water pollution created by the Maui Fires includes the release and dispersion of solid refuse, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical waste, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, sediment, cellar dirt, and industrial, municipal, and agricultural waste into water throughout the State, including ground and surface water on Plaintiffs’ properties, which did or are likely to create a nuisance or render such waters unreasonably harmful, detrimental, or injurious to public health, safety, or welfare, including harm, detriment, or injury to public water supplies, fish and aquatic life and wildlife, recreational purposes, and agricultural and industrial research and scientific uses of such waters, or cause such waters to violate applicable water quality standards.

92. Current estimates are that the cleanup effort will cost hundreds of millions of dollars and over a year to complete.<sup>34</sup>

93. Accordingly, Plaintiffs seek an order from this Court compelling Defendants, and each of them, to remediate the environmental pollution created by their conduct.

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<sup>31</sup> Whelton, A. J., Seidel, C., Wham, B. P., Fischer, E. C., Isaacson, K., Jankowski, C., MacArthur, N., McKenna, E., & Ley, C. (2023). The Marshall Fire: Scientific and policy needs for water system disaster response. *AWWA Water Science*, e1318 at 1, 3, 9; <https://doi.org/10.1002/aws2.1318>.

<sup>32</sup> <https://www.news.uscg.mil/Press-Releases/Article/3514484/unified-command-expanded-to-address-maritime-hazards-and-pollution-threats-foll/>

<sup>33</sup> <https://www.civilbeat.org/2023/08/race-underway-to-glue-down-the-lahaina-fires-toxic-ash-before-rains-wash-it-into-the-ocean/>

<sup>34</sup> <https://www.washingtonpost.com/nation/2023/09/25/maui-recovery-debris-removal-rebuilding/>

## **V. Defendant-Specific Allegations**

### **A. The Utility Defendants Failed to Prevent the Ignition and Spread of the Maui Fires**

94. In addition to the general allegations set forth above, Plaintiffs make the following allegations specifically against the Utility Defendants and in support of the Causes of Action brought against the Utility Defendants and the damages set forth in the Prayer for Relief contained herein.

95. The Utility Defendants – HEI, HECO, HELCO, and MECO – designed, built, operate, and maintain the electrical facilities that ignited the Maui Fires in August 2023. These fires were not isolated incidents. Instead, they are the result of the deficient patterns and practices of a corporate monopoly more intent on making a profit than protecting the citizens it serves.

96. Over the past century, the Utility Defendants have formed a state-sanctioned monopoly that provides electrical service to 95% of the State of Hawai‘i. After first incorporating in 1891, Hawaiian Electric grew substantially. Eventually, the company set its sights on other utilities.

97. In the fall of 1968, HECO acquired Maui Electric Company, certain of its property interests, and its electrical facilities. Less than two years later, in the spring of 1970, HECO acquired Hawai‘i Electric Light, certain of its property interests, and its electrical facilities. With these purchases, Hawaiian Electric became the single largest provider of electrical service in the State of Hawai‘i. Today, all three utilities do business as HECO.

98. HEI was formed in 1983 and, today, is a publicly traded holding company. HEI and its board oversee its own business and the businesses of its subsidiaries, including HECO. Although HEI and HECO have separate boards of directors they are, for all purposes, one corporate entity. The Utility Defendants are, and at all times relevant were, regulated by the Hawai‘i Public Utilities Commission (HPUC) and subject to the regulations, orders, and general rules of the Commission, including HPUC General Orders Nos. 6 and 7, and the Hawai‘i Administrative Rules, as well as all laws of the State of Hawai‘i, including section 10.10.3.1 of the Hawai‘i State Fire Code.

99. The Utility Defendants furnish electricity to the public through electrical grids, including on the island of Maui. The Utility Defendants’ grid is made up of various electrical facilities both designed, constructed, inspected, maintained, operated, and managed by the Utility Defendants and by their predecessor entities. Some of these electrical facilities run underground, out of reach of

most weather and environment. Other parts of the 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.

100. Even though they act as one entity, the Utility Defendants’ grid is a patchwork of equipment designed and built by different subsidiaries at different times, including legacy facilities brought under HECO’s control by its various acquisitions of other utilities. Accordingly, different components of the electrical grid – which are subjected to harsh island elements – degrade at different rates and under different conditions. Knowing this, the Utility Defendants should have developed a robust and proactive asset strategy program for designing, constructing, inspecting, and maintaining equipment at risk of sparking a fire.

101. Similarly, the Utility Defendants knew that vegetation at or near its facilities posed a risk of wildfire ignition. Grasses at or near the rights of way used by the Utility Defendants and trees and other vegetation near the Utility Defendants’ electrical facilities were, and have been, readily ignitable fuel for sparks or contributing factors to sparking. In turn, the Utility Defendants should have developed and implemented an effective practice for identifying and mitigating vegetation-related wildfire risks, including vegetation which could cause or serve as fuel for a wildfire ignition.

102. As the Utility Defendants acknowledge, “[o]verhead lines are more vulnerable to adverse weather conditions and objects contacting lines[.]”<sup>35</sup> Indeed, one of the County Report’s recommendations emphasizes that most wildfires are “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.”<sup>36</sup>

103. Further, as recently as 2022, the Utility Defendants admitted in a filing with the HPUC that “[t]he risk of a utility system causing a wildfire ignition is significant” and that 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

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<sup>35</sup> <https://www.hawaiianelectric.com/about-us/power-facts/undergrounding-utility-lines> (accessed August 16, 2023)

<sup>36</sup> See Note 7, *supra*, at 12.

“[i]dentify and implement operational procedures to ensure the Companies can respond effectively to a wildfire.”<sup>37</sup>

104. 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 “will be used to trigger alternative operational procedures to minimize the risk of wildfires and enable experience response.”<sup>38</sup>

105. Similarly, the Utility Defendants knew that tropical storms and hurricanes posed foreseeable risks to their facilities. For example, their proposals for grid resilience enhancements to the HPUC stated that “the driver for these resilience enhancements is to prevent the failure of critical assets in severe event scenarios, such as a major storm or hurricane”<sup>39</sup> and that “Hurricane Lane in Hawai‘i provides an example of an all too real and recent ‘close-call’ that demonstrates the threats are not a distant future issue and why critical resilience investments should not be delayed.”<sup>40</sup>

106. Yet, despite their extensive knowledge of risks associated with their system, the Utility Defendants failed to take reasonable steps to mitigate against or prevent the risks of wildfire ignition, including the risks present during high winds and drought conditions.

**i. The Utility Defendants Were Negligent by Not De-energizing their Facilities.**

107. Although wildfire risks facing Maui were increasing, they were not unique. Wildfire is, and has been, a major concern of the utility industry for decades. In response to well-known concerns over utility-caused ignitions, several major electric utilities have developed a simple solution: shutting off the power through proactive de-energization.

108. 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

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<sup>37</sup> 2022 EPRM, Hawaiian Electric at 26;

[https://www.hawaiianelectric.com/documents/about\\_us/our\\_vision\\_and\\_commitment/resilience/20220630\\_resilience\\_EPRM\\_application.pdf](https://www.hawaiianelectric.com/documents/about_us/our_vision_and_commitment/resilience/20220630_resilience_EPRM_application.pdf) (accessed August 15, 2023)

<sup>38</sup> *Id.* at 50.

<sup>39</sup> *Application of Hawaiian Electric Company, Inc., Hawai‘i Electric Light Company, Inc., Maui Electric Company, Limited; Exhibits A through L; Verification; Docket No. 2022-0135*, Exhibit F, p. 3, HAWAI‘I PUB. UTIL. COMM’N (June 30 2022),

[https://www.hawaiianelectric.com/documents/about\\_us/our\\_vision\\_and\\_commitment/resilience/20220630\\_resilience\\_EPRM\\_application.pdf](https://www.hawaiianelectric.com/documents/about_us/our_vision_and_commitment/resilience/20220630_resilience_EPRM_application.pdf)

<sup>40</sup> *Id.*

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.<sup>41</sup>

109. All of these factors were present when the Maui Fires began. Accordingly, the Utility Defendants had actual knowledge or reason to know that their facilities did or could foreseeably create a risk of harm to the public.

110. Indeed, major electrical utilities in fire-prone areas began using proactive de-energization to reduce the risk of utility-caused wildfire over a decade ago. 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, SDG&E applied for and, in 2012 received, authority to implement a proactive de-energization program for its electrical facilities in certain circumstances.

111. 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 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.

112. Since 2012, other major utilities have implemented similar programs in wildfire-prone California, including Southern California Edison, PacifiCorp, Bear Valley Electric Service, and Liberty Utilities. 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.

113. By the Utility Defendants’ own admission, they reviewed the wildfire mitigation plans of SDG&E 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.”<sup>42</sup>

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<sup>41</sup> <https://prepareforpowerdown.com/> (accessed August 16, 2023)

<sup>42</sup> *Application of Hawaiian Electric Company, Inc., Hawai‘i Electric Light Company, Inc., Maui Electric Company, Limited; Exhibits A through L; Verification; Docket No. 2022-0135*, Exhibit C, p. 18, HAWAI‘I PUB. UTIL. COMM’N (June 30 2022), [https://www.hawaiianelectric.com/documents/about\\_us/our\\_vision\\_and\\_commitment/resilience/20220630\\_resilience\\_EPRM\\_application.pdf](https://www.hawaiianelectric.com/documents/about_us/our_vision_and_commitment/resilience/20220630_resilience_EPRM_application.pdf).



114. In fact, in their June 2022 Climate Adaptation Transmission and Distribution Resilience Program proposal to the HPUC, the Utility Defendants recognized that proactive de-energization programs were aimed at mitigating the risk of wildfires in the event of damage and failures on their facilities.<sup>43</sup>

115. 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.

116. Accordingly, when high winds arrived on the island of Maui in August 2023, the Utility Defendants' electrical facilities were not prepared. The power continued to flow through those facilities, and they caused or contributed to the ignitions of a series of major wildfires across Maui.

117. Despite knowing the risks associated with operating electrical facilities during high winds and drought conditions, the Utility Defendants chose not to implement a proactive de-energization plan nor otherwise alter or restrict the flow of electricity to or through their facilities when faced with an increased risk of wildfire ignition.

118. Plaintiffs are informed, and thereon allege, that the Utility Defendants' failure to implement such a proactive de-energization program constitutes a conscious disregard for a known safety risk and was made or ratified by the officers, directors, or managing agents of the Utility Defendants. Accordingly, the conduct was malicious and entitles Individual Plaintiffs to an award of punitive damages.

**ii. The Utility Defendants Negligently Designed, Constructed, Inspected, and Maintained their Electrical Facilities**

119. The Utility Defendants had the means, knowledge, and ability to design, construct, inspect and maintain their electrical facilities in a way that would harden or prepare those facilities for the risks of ignition presented by high winds and drought conditions.

120. Indeed, the Utility Defendants knew that their electrical facilities were not up to date or reasonably maintained to prevent an ignition. Plaintiffs are informed, and thereon allege, that deficiencies in the Utility Defendants' facilities are the result of the Utility Defendants' failures to properly budget for, plan for, and prioritize upgrades.

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<sup>43</sup> *Id.* at Exhibit F, p. 3–4.

121. Plaintiffs are further informed, and thereon allege, that the Utility Defendants’ long term and short-term incentive-based compensation programs for employees and executives did not take public safety, including safety related to electrical operations, fire ignitions, wildfire risk, and other critical safety metrics, into account. These deficiencies included, among others: not correlating executive compensation to public safety metrics; not developing or recording metrics for incentive-based compensation that drew the attention of employees, management, and executives to public safety risks; misaligning incentive-based compensation metrics with the ongoing design, construction, and maintenance of electrical facilities; and inadequate reporting of risks arising from electrical operations to management and executives.

122. In 2019, the Utility Defendants admitted to the HPUC that they had a substantial need to replace wooden poles in their grid and warned of a “serious public hazard” if those poles failed.<sup>44</sup>

123. In 2020, in response to a request from the HPUC, the Utility Defendants began to publicly acknowledge that the wooden poles throughout their system, a critical component of their electrical facilities and grid, were at risk of failure. For example, over 39% of the wooden poles within the Utility Defendants’ system were over 51 years old. These aging poles were also rated for their ability to withstand strong winds. These aging poles, which made up over a third of the Utility Defendants’ system, were rated for 56 miles per hour. As noted, the NWS’ August 8th notice specifically warned of gusts up to 60 miles per hour.

124. The issues facing the Utility Defendants’ aging and fragile infrastructure should have been enough to spur system hardening. The fires resulting from Hurricane Lane in 2018, caused by high winds in West Maui, were undoubtedly a red flag. Yet, the Utility Defendants continued to delay for one reason: money.

125. Between 2019 and 2020, the Utility Defendants apparently invested less than \$245,000 on wildfire-specific projects.<sup>45</sup>

126. In their 2022 Exceptional Project Recovery Mechanism (“EPRM”), the Utility Defendants sought a rate increase from the HPUC. Part of the Utility Defendants’ explanation for their

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<sup>44</sup> <https://abcnews.go.com/Business/wireStory/bare-electrical-wire-poles-replacement-maui-match-strong-102584387>

<sup>45</sup> <https://www.wsj.com/us-news/wildfire-risk-maui-hawaiian-electric-7beed21e>

request was to obtain additional funding for system hardening.<sup>46</sup> Within that request, the Utility Defendants sought \$7,708,000.00 to strengthen approximately 80 poles in Maui County. And, according to the Utility Defendants, these poles were in a “severe wood decay zone” which created the potential not just that poles may be vulnerable but may fail under certain conditions.

127. Meanwhile, the Utility Defendants continued to reap financial rewards from ratepayers. In fact, the Utility Defendants were financially secure and successful enough in August 2023 to declare a dividend of \$40 million to shareholders – four days before the ignition of the Maui Fires.

128. Despite needing to allocate funds for critical safety measures such as system hardening, the Utility Defendants provided officers with lavish compensation. According to a 2023 proxy statement submitted by HEI, and illustrated in the table below, the officers of Hawaiian Electric, including one former executive, collectively received over \$13,000,000.00 in total compensation between 2021 and 2022.<sup>47</sup>

#### 2022 SUMMARY COMPENSATION TABLE

NAME AND 2022 PRINCIPAL POSITIONS	YEAR	SALARY (\$) <sup>1</sup>	BONUS (\$) <sup>2</sup>	STOCK AWARDS (\$) <sup>3</sup>	NONEQUITY INCENTIVE PLAN COMPENSATION (\$) <sup>4</sup>	CHANGE IN PENSION VALUE AND NONQUALIFIED DEFERRED COMPENSATION EARNINGS (\$) <sup>5</sup>	ALL OTHER COMPENSATION (\$) <sup>6</sup>	TOTAL WITHOUT CHANGE IN PENSION VALUE (\$) <sup>7</sup>	TOTAL (\$)
<b>Scott W. H. Seu</b> HEI President & CEO ASB Chair	2022	875,000	—	1,830,874	869,129	236,512	—	3,575,003	3,811,515
	2021	506,667	—	821,405	599,588	1,002,005	—	1,927,660	2,929,665
	2020	419,750	—	651,282	394,587	999,547	—	1,465,619	2,465,166
<b>Paul K. Ito</b> HEI Executive Vice President, CFO & Treasurer*	2022	313,425	108,750	244,373	140,054	—	9,150	815,752	815,752
<b>Kurt K. Murao</b> HEI Executive Vice President, General Counsel, Chief Administrative Officer and Corporate Secretary	2022	428,667	—	467,085	255,475	—	15,281	1,166,508	1,166,508
	2021	402,000	—	499,262	443,638	252,374	14,873	1,359,773	1,612,147
	2020	352,000	—	369,992	244,954	315,725	—	966,946	1,282,671
<b>Shelee M. T. Kimura</b> Hawaiian Electric President & CEO	2022	450,000	—	814,267	249,909	—	—	1,514,176	1,514,176
<b>Ann C. Teranishi</b> ASB President & CEO	2022	605,000	—	600,723	764,357	—	56,774	2,026,854	2,026,854
	2021	473,707	—	626,520	600,098	—	23,996	1,724,321	1,724,321
<b>Gregory C. Hazelton</b> Former HEI Executive Vice President and CFO	2022	278,733	—	757,904	193,721	—	15,126	1,245,484	1,245,484
	2021	546,400	—	1,100,746	653,243	116,175	26,054	2,326,443	2,442,618
	2020	543,750	—	707,755	412,830	186,825	26,328	1,690,663	1,877,488

<sup>46</sup>[https://www.hawaiianelectric.com/documents/about\\_us/our\\_vision\\_and\\_commitment/resilience/20220630\\_resilience\\_EPRM\\_application.pdf](https://www.hawaiianelectric.com/documents/about_us/our_vision_and_commitment/resilience/20220630_resilience_EPRM_application.pdf) at 1-2, 43.

<sup>47</sup> HEI March 23, 2023 Proxy Statement, [https://s2.q4cdn.com/268623243/files/doc\\_financials/2022/ar/HEI-2023-Notice-of-Annual-Meeting-Proxy-Statement.pdf](https://s2.q4cdn.com/268623243/files/doc_financials/2022/ar/HEI-2023-Notice-of-Annual-Meeting-Proxy-Statement.pdf) at 51.

129. Clearly, the Utility Defendants had sufficient resources to contribute to critical safety upgrades before the Maui Fires. Indeed, it appears that the Utility Defendants’ compensation structure, which they describe as a “pay for performance design” emphasizes financial results over the safety and risk exposure to the Utility Defendants’ customers and the public.<sup>48</sup>

130. Further, in their September 19, 2023, letter to the House of Representatives’ Committee on Energy and Commerce, the Utility Defendants lauded the benefits of covered conductors. Specifically, they noted that covered conductors “improve reliability and mitigate fire risk by reducing the likelihood of faults caused by conductors making contact with objects, and contact between phases, or swing shorts.”<sup>49</sup> Yet, since 2019 the Utility Defendants only installed a total of 90,000 feet—or 17 miles—of covered conductor on the islands of Maui and Moloka‘i combined.<sup>50</sup>

131. Plaintiffs are informed, and thereon allege, that despite paying millions of dollars to executives and millions more in dividends, the Utility Defendants took actions that did not adequately or appropriately allocate resources to the design, construction, inspection, and maintenance of electrical facilities, including those facilities at or near the areas of origin of the Maui Fires.

132. In doing so, the Utility Defendants failed to operate a culture of corporate safety which, in turn, caused or contributed to the inadequate implementation of construction and design programs, inspections and maintenance, the hiring, training, retention, and oversight of qualified employees, agents, and contractors responsible for the design, construction, inspection, and maintenance of those facilities, including the placement of equipment and management of vegetation at or near that equipment.

133. The Utility Defendants were responsible for developing policies, practices, and procedures for ensuring that any employee, agent, or contractor performing activities which impacted their facilities was properly trained, prepared, and overseen to ensure that their conduct did not create a risk of harm to third parties.

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<sup>48</sup> *Id.* at 5.

<sup>49</sup> Letter to from Shelee Kimura, President and Chief Executive Officer, Hawaiian Electric, et al., to the Committee on Energy and Commerce of the United States House of Representatives, et al., (Sept. 19, 2023), *available at*

[https://www.hawaiianelectric.com/documents/about\\_us/news/2023/20230919\\_house\\_ccc\\_response.pdf](https://www.hawaiianelectric.com/documents/about_us/news/2023/20230919_house_ccc_response.pdf).

<sup>50</sup> *Id.*

134. Yet, by misaligning financial incentives for executives, employees, agents, and contractors, the Utility Defendants failed to exercise reasonable care in the oversight of those involved in its enterprise. In doing so, the Utility Defendants chose to place profits over safety.

135. In addition, the Utility Defendants failed to exercise reasonable care in the design, construction, inspection, and maintenance of their electrical facilities in a manner that ensured the safe delivery of electricity to members of the public.

136. HPUC General Order No. 6 sets forth the standards for the design and construction of overhead lines. HPUC General Order No. 7 sets forth the standards for electric utility service in the state of Hawai‘i. Other applicable rules and regulations, including H.A.R. § 6-73-13, sets forth standards for the installation, operation, and maintenance of overhead electrical supply and communication lines according to the National Electric Safety Code.

137. Plaintiffs are informed, and thereon alleged, that the Utility Defendants’ electrical facilities at or near the areas of the ignition and spread of the Maui Fires were not compliant with HPUC General Orders Nos. 6 or 7 or the standards established by H.A.R. § 6-73-13, among other laws and regulations.

138. Plaintiffs also are informed, and thereon allege, that the Utility Defendants’ failure to appropriately design, construct, inspect, and maintain their electrical facilities, including the proper management of vegetation near those facilities, despite having actual knowledge of the potential risks, constitutes a conscious disregard for a known safety risk and was made or ratified by the officers, directors, or managing agents of the Utility Defendants. Accordingly, the conduct was malicious and entitles Individual Plaintiffs to an award of punitive damages.

139. As a result of the Utility Defendants’ failures, Plaintiffs suffered substantial and irreparable harm as alleged herein.

**B. The Telecom Defendants Failed to Prevent the Ignition and Spread of Wildfire**

140. In addition to the general allegations set forth above, Plaintiffs make the following allegations specifically against the Telecom Defendants and in support of both the Causes of Action brought against the Telecom Defendants and the damages set forth in the Prayer for Relief contained herein.

141. The Telecom Defendants provide telecommunications services to citizens of Hawai‘i, including on the island of Maui. Accordingly, they are regulated by the Hawai‘i Public Utilities Commission and subject to the regulations, orders, and general rules of the Commission, including HPUC General Order No. 6 and the Hawai‘i Administrative Rules, as well as all laws of the State of Hawai‘i, including section 10.10.3.1 of the Hawai‘i State Fire Code.

142. To provide telecommunications services, the Telecom Defendants design, construct, inspect, and maintain certain physical infrastructure, including poles, cables, wiring, equipment, connectors, hardware and other component parts and products that are or combine to form telecom facilities.

143. In some instances, the Telecom Defendants own or control their own poles or physical fixtures and facilities to support their telecom infrastructure. In others, the Telecom Defendants enter into agreements with third parties, such as the Utility Defendants and Landowner Defendants, which permit them to use third party property, including utility poles or other structures, to support their telecom infrastructure. Accordingly, the Telecom Defendants own or otherwise have interests in property, easements, rights of way, and fixtures which are used or intended to be used in their businesses.

144. While some of the Telecom Defendants’ facilities are new, many of them are a patchwork of facilities constructed at different times, in part because they are subject to harsh island conditions, wear and require maintenance at different rates. Regardless of whether their telecom facilities are independently owned or part of a joint agreement with a third party, the Telecom Defendants had a duty to ensure that those facilities did not pose a risk of harm to third parties, including by causing or contributing to the ignition and spread of a wildfire.

145. To manage their facilities, the Telecom Defendants engaged in the hiring, training, and retention of employees, agents, and contractors responsible for the design, construction, inspection, and maintenance of those facilities, including the placement of equipment and management of vegetation at or near that equipment.

146. The Telecom Defendants were responsible for developing policies, practices, and procedures for ensuring that any employee, agent, or contractor performing activities which impacted

their facilities was properly trained, prepared, and overseen to ensure that their conduct did not create a risk of harm to third parties.

147. In order to ensure that their facilities did not pose a risk of harm, the Telecom Defendants should have taken steps to ensure that those facilities were designed, constructed, inspected, and maintained in accordance with, and where necessary in excess of, any industry standards for telecom facilities.

148. The Telecom Defendants were, at all times relevant, required to comply with the standards for overhead communications facilities as set forth in HPUC General Order No. 6 and H.A.R. § 6-73-13 and H.A.R. § 6-80-87.

149. In addition to, and coextensive with, their general duties under the law, the Telecom Defendants were, at all times relevant, required to: (i) design, construct, install, operate, and maintain their plants, facilities in a manner consistent with prudent and generally accepted telecommunications industry practices and standards; (ii) adopt and adhere to a maintenance program to ensure safe, adequate, and reliable service at all times; (iii) adopt and maintain service reliability procedures and standards; and (iv) adopt and maintain a suitable safety program pursuant to H.A.R. § 6-80-87, including subdivisions (4), (7), (9), and (12).

150. Further, and pursuant to H.A.R. § 6-73-13, the Telecom Defendants were required to comply with the standards set forth in the National Electric Safety Code.

151. Yet, the Telecom Defendants failed to exercise reasonable care in the design, construction, inspection, and maintenance of their telecom facilities which caused or contributed to the ignition of the Maui Fires. Examples of the Telecom Defendants' failures include, but are not limited to: (i) improperly loading or overloading wooden poles or other fixtures with their equipment, cabling, wiring, and other components; (ii) placing facilities in locations or in a manner that presented a foreseeable risk of energization and fire ignition as a result of contact with any third-party equipment or property; (iii) failing to properly inspect their own or nearby facilities which could foreseeable lead to an ignition; (iv) failing to inspect or maintain vegetation at or near their telecommunications facilities; (v) failing to ensure that the structures to which their equipment was attached was properly inspected and maintained in a manner that prevented against or mitigated the risk of an ignition.

152. Plaintiffs are further informed, and thereon allege, that the Telecom Defendants failed to properly design, construct, inspect, and maintain their facilities in a manner that complied with HPUC General Order No. 6, H.A.R. § 6-73-13, and H.A.R § 6-80-87. These failures include not developing, implementing, or allocating the resources necessary to harden their property or equipment; maintaining equipment in a manner that did not adversely impact other infrastructure – including electrical facilities – over time and under certain weather conditions such as high winds; and not inspecting, identifying, or repairing equipment which did or reasonably could pose a risk of causing or contributing to the ignition or spread of a wildfire.

153. In addition, the Telecom Defendants failed to develop or abide by standard policies, practices, and procedures related to the attachment of cable and wiring on wooden utility poles. Instead, the Telecom Defendants routinely overloaded their wooden poles and the wooden poles of third parties with excess equipment, cabling, wiring, or other physical infrastructure which caused or contributed to the wear or failure of those wooden poles over time.

154. The Telecom Defendants knew or should have known that the failure to properly append cabling and other equipment to wooden poles would increase the rate of wear or failure of those poles under normal circumstances. Similarly, the Telecom Defendants knew that improperly loading wooden poles with cabling and other equipment posed a common sense and particularized risk of harm when those poles and equipment were subjected to high winds.

155. Despite being aware of the commonsense risks posed by improperly maintaining their telecom facilities, the Telecom Defendants failed to take reasonable steps to design, construct, inspect, and maintain those facilities so that they, whether in isolation or in combination with other facilities, equipment, or property, did not cause or contribute to the ignition and spread of a wildfire.

156. Further, Plaintiffs are informed, and thereon allege, that the Telecom Defendants failed to ensure that the employees, agents, and contractors acting on their behalf with respect to the design, construction, inspection, and maintenance of their facilities were competent or adequately trained or managed. As a result, those individuals and entities acting on behalf of the Telecom Defendants were not properly qualified to work on the telecom facilities or were otherwise unaware of the risks posed by their actions.



157. By failing to properly conduct or oversee the design, construction, inspection, and maintenance of their facilities, including all overhead cables, wiring, hardware, fixtures, wooden and steel poles, and all attendant component parts and products, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components, the Telecom Defendants caused or contributed to the ignition and spread of the Maui Fires.

158. As a result of the Telecom Defendants' failures, Plaintiffs suffered substantial and irreparable harm as alleged herein.

**C. The Landowner Defendants Failed to Prevent the Ignition and Spread of Wildfire**

159. In addition to the general allegations set forth above, Plaintiffs make the following allegations specifically against the Landowner Defendants and in support of both the Causes of Action brought against the Landowner Defendants and the damages set forth in the Prayer for Relief contained herein.

160. For years, the Landowner Defendants knew that drought conditions and other environmental factors increased the presence of dry vegetation and grasses on or near their properties. The presence of these grasses posed a risk of harm by presenting the opportunity for causing a sparking event or by serving as ready fuel for a wildfire ignition.

161. Plaintiffs are informed, and thereon allege, that maintaining or permitting the presence of readily combustible grasses, ground cover, and vegetation presented an unreasonable danger. The content and volume of certain grasses, ground cover, and vegetation presented a substantial risk of harm in the event of an ignition.

162. Accordingly, the Landowner Defendants were responsible for ensuring that their property and land did not pose a risk of igniting or facilitating the spread of a wildfire and, at all times relevant, had a duty to ensure that vegetation – including trees, grasses, and other ignitable ground cover – as well as their properties generally, were managed in a way that would mitigate against the risk of wildfire ignition and spread.

163. In addition to, and coextensive with, their common law duties regarding the management of their property, the Landowner Defendants were, at all times relevant, required to

comply with H.R.S. § 132-8, which requires all property owners to keep their premises “reasonably safe from loss of life or injury to persons or property by fire.”

164. Plaintiffs are informed, and thereon allege, that the Landowner 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 Landowner Defendants’ property and, at the time of the Maui Fires was in a readily ignitable state.

165. When the Maui Fires began, the Landowner 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.

166. Had the Landowner Defendants taken reasonable steps to manage vegetation on their property, the Maui 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.

167. Similarly, the Landowner Defendants could have and should have taken steps to ensure that their properties would not otherwise cause or contribute to the ignition and spread of a wildfire. Such measures could have included clearing ground cover, developing fire breaks, removing impediments to fire extinguishment, surveying the property and identifying high risk areas, and communicating with external stakeholders including the Utility Defendants, the Telecom Defendants, the County, and the State to ensure that all potential hazards were identified and remediated.

168. Further, the Landowner Defendants negligently used, diverted, or mismanaged ground and surface waters at or near their properties that increased the hazardous conditions of those properties and contributed to the ignition the Maui Fires.

169. Plaintiffs are informed, and thereon allege, that the Landowner Defendants’ failures with respect to the management of their properties violated H.R.S. § 132-8.

170. As a result of the Landowner Defendants’ failures, Plaintiffs suffered substantial and irreparable harm as alleged herein.

**D. The Public Entity Defendants Failed to Prevent the Ignition and Spread of the Maui Fires**

**i. The Public Entity Defendants Negligently Maintained their Property**

171. In addition to the general allegations set forth above, Plaintiffs make the following allegations specifically against the Public Entity Defendants and in support of both the Causes of Action brought against the Public Entity Defendants and the damages set forth in the Prayer for Relief contained herein.

172. For years, the Public Entity Defendants knew that drought conditions and other environmental factors increased the presence of dry vegetation, grasses, and ground cover on or near their properties in the area of origin and spread of the Maui Fires. Those dry grasses and vegetation posed a risk of harm because they created a foreseeable risk of igniting and facilitating the spread of a catastrophic wildfire if not properly inspected, managed, or maintained.

173. Accordingly, the Public Entity Defendants were responsible for ensuring that their properties and lands, and other properties and lands over which they had a mandatory duty to inspect, 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 – as well as their properties generally, were managed in a way that would mitigate against the risk of wildfire ignition and spread.

174. Similarly, the Public Entity Defendants, including the County and the State, had a duty to ensure that any fixtures or property, including those attached to or located near the facilities of the Utility Defendants or the Telecom Defendants, were managed in a way that would mitigate against the risk of wildfire ignition and spread.

175. Plaintiffs are informed, and thereon allege, that the Public Entity Defendants failed to maintain their property in a manner that could be expected to clear or manage vegetation on their property and, further, follow operational procedures in place for the management of their property and the properties of others. As a result, vegetation accumulated on the Public Entity Defendants' properties and, at the time of the Maui Fires, was in a readily ignitable state. Plaintiffs further allege that the Public Entity Defendants' property, including property attached to or located near the facilities

of the Utility Defendants or the Telecom Defendants, caused or contributed to the ignition and spread of the Maui Fires.

176. 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.

177. Had the Public Entity Defendants taken reasonable steps to manage their properties, including the management of vegetation on their properties, the Maui 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.

178. Similarly, the Public Entity Defendants failed to follow operational and maintenance procedures to ensure that their properties would not otherwise cause or contribute to the ignition and spread of a wildfire. Such measures could have included inspecting property, clearing ground cover, developing fire breaks, removing impediments to fire extinguishment, surveying the property and identifying high risk areas, and communicating with external stakeholders including the Utility Defendants, the Telecom Defendants, and the Landowner Defendants to ensure that all potential hazards were identified and remediated.

**ii. The County Violated its Statutory Duties to Identify Potential Fire Hazards**

179. The County, by and through its Department of Fire and Public Safety, is responsible for identifying, recording, and directing the abatement of potential fire hazards through a system of documentation and code enforcement. At all times relevant, the County had a non-delegable duty to abide by all provisions of the Hawai'i Revised Statutes, including H.R.S. § 132-6, *et seq*, and the Maui County Fire Code.

180. Plaintiffs are informed, and thereon allege, that the County was subject to section 132-6 of the Hawai'i Revised Statutes, which provides that: “[e]ach county fire chief, in person or by officers or members of the fire chief's fire department designated by the fire chief for that purpose, shall inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings and state-owned airport facilities, for the purpose of ascertaining and causing to be corrected any conditions

liable to cause fire or any violation of any law, ordinance, rule, or order relating to fire hazard or to the prevention of fires.”

181. Further, H.R.S. § 132-6(b) requires the inspections be conducted “[a]t least once every five years, or as often as deemed practicable or necessary by the county fire chief at all other buildings and premises to provide fire prevention and pre-fire planning within the jurisdiction of the county fire chief.” Meanwhile, H.R.S. § 132-6(c) requires the County to create and retain a written report of each inspection.

182. H.R.S. § 132-6(e) further provides that when the County determines that a “law, ordinance, rule or order relating to protection from fire loss has been violated or that a condition exists which creates an unreasonable risk of fire loss, the fire chief shall prepare and serve upon the owner, occupant or other person responsible for the building or premises a written order setting forth the nature of the alleged violation or condition, the law, ordinance, rule or order violated, and the protections, safeguards, or other means or methods required to render the building or premises safe as required by law, ordinance, or rule.”

183. Further, and at all times relevant, the County was bound by all provisions of the Maui County Fire Code. Pursuant to the Maui County Fire Code, the County was required to ensure that “[c]ut or uncut weeds, grass, vines, and other vegetation shall be removed when determined . . . to be a fire hazard” (§ 10.13.10.1); “[w]hen [the relevant authority determines] total removal of growth is impractical due to size or environmental factors, approved fuel breaks shall be established” (§ 10.13.10.2); “remove combustible vegetation and combustible materials or establish firebreaks upon a property that has been deemed a fire hazard when corrective action has not been provided within the time-frame stated in the notice of violation” (10.13.10.4); maintain “[d]esignated fuel breaks and prescribed actions to abate a fire hazard shall be maintained at all times” (10.13.10.5); and to “[c]ut or uncut weeds, grass, vines and other vegetation shall be removed and maintained throughout the calendar year when determined by the chief to be a fire hazard. When the chief determines that total removal of growth is impractical due to size or environmental factors, approved fuel breaks shall be established. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks.” 1103.2.4.

184. Plaintiffs are informed, and thereon allege, that the County breached its duties under H.R.S. § 132-6 including by failing to perform inspections on a regular cadence either pursuant to the terms of the statute or as reasonably necessary to prevent the risk of ignition. Further, the County failed to document and issue notices concerning potential fire hazards that it did or reasonably should have identified.

185. Plaintiffs are informed, and thereon allege, that the County's action and inaction concerning the inspection and identification of fire hazards on property at or near the areas of origin and spread of the Maui Fires violated the duties promulgated under HRS § 132-6 and, by incorporation, the Maui Fire Code.

186. Plaintiffs are also informed, and thereon allege, that the County failed to comply with procedures set forth in its inspection programs in a way that would identify potential risks on properties it inspected, including but not limited to: (1) failing to make written reports of its inspections as required in HRS § 132-6(c); (2) failed to enforce the Maui County Fire Code as required in HRS § 132-6(a); and (3) failing to provide notice of unsafe and violative conditions to the landowners where dangerous conditions caused or contributed to the ignition and the spread of the Maui Fires as required by HRS § 132-6(e).

187. The County's failures with regards to its inspection duties and enforcement of the fire code were substantially magnified by its separate conduct in failing to design, build, and operate an effective warning system that could have alerted residents and visitors of the oncoming fires. Such emergency management failures exacerbated the County's already inexcusable conduct and breach of its duty of care to the public as outlined above.

188. As a direct and proximate result of the County's negligence, the Maui Fires ignited and spread.

#### **E. The Public Entity Defendants' Negligently Designed Exit-Route Roadways**

189. At all times relevant, the Public Entity Defendants owed Plaintiffs a duty to exercise reasonable care in the design, construction, inspection, and maintenance of public roadways at or near Lahaina. These duties included ensuring that roadways were in a condition that permitted the safe ingress and egress for motor vehicles in the event of a disaster-related evacuation.

190. Plaintiffs are informed, and thereon allege, that the Public Entity Defendants had actual or constructive notice, at least as of Hurricane Lane in 2018, that the roadways at or near the areas of origin of the Maui Fires, and particularly the Lahaina Fire, were not designed in a manner or in a condition that permitted safe ingress and egress for motor vehicles in the event of a disaster-related evacuation.

191. Despite this knowledge, the Public Entity Defendants failed to take reasonable action to ensure their roadways would not pose an increased risk of harm to individuals travelling in motor vehicles during an evacuation, and particularly a mass evacuation in the event of a disaster.

192. Accordingly, Plaintiffs fleeing the Maui Fires in vehicles were subjected to roadway conditions that impeded, delayed, or altered their evacuation routes and exposed them to personal injuries and emotional distress and, in some instances, death.

193. As a direct and proximate result of the Public Entity Defendants' negligent design of their roadways, Plaintiffs suffered the damages alleged herein.

**F. The Defendants' Individual and Collective Failures Caused Plaintiffs' Harms**

194. Each and every Defendant had the means, knowledge, and opportunity to prevent the ignition, spread, and fallout of the Maui Fires. Each and every Defendant failed.

195. The Maui Fires irreparably impacted Plaintiffs' lives. Many endure without housing and without jobs. Others mourn the losses of their parents, partners, siblings, children, and friends. Communities across the Hawaiian Islands and the country mourn with them.

196. Plaintiffs seek to hold each and every Defendant liable for their contributions to the Maui Fires and their impacts and, accordingly, seek a judgment holding every Defendant jointly and severally liable for the damages alleged in the maximum amount permitted by law.

## **VI. Causes of Action<sup>51</sup>**

### **First Cause of Action – Negligence of Utility Defendants**

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

198. 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.

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

200. At all times relevant, the Utility Defendants knew 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.

201. At all times relevant, the Utility Defendants knew 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.

202. At all times relevant, the Utility Defendants also knew or reasonably should have been aware of hazards associated with the operation of its electrical facilities under high-risk conditions, including high wind and drought conditions.

203. 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.

204. 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 making contact with electrical facilities and, in turn, causing an ignition.

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<sup>51</sup> Causes of Action Nos. 7, 8, 9, 10, 11, 15, and 16 are brought against each Defendant.



205. 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. Similarly, the Utility Defendants' vegetation management practices did not account for vegetation that could foreseeably be fuel for an ignition or cause an ignition or sparking event.

206. 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.

207. 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 duties to Plaintiffs.

208. At all times relevant, the Utility Defendants had actual knowledge of or a reasonable basis on which to anticipate the danger associated with its failure to reduce, restrict, or eliminate the flow of electricity through their facilities.

209. The Utility Defendants, and each of them, breached their duties to Plaintiffs, including, among other actions and inactions, 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 Hawai'i 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, dry spells or droughts, 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 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 install covered conductors or other insulated wires on their electrical facilities, including all overhead distribution circuits for the purpose of reducing the likelihood of faults occurring as a result of foreseeable contact between conductor with foreign objects, and with other electrical equipment;

- l. 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;
- m. 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;
- n. 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;
- o. 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;
- p. 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;
- q. 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;
- r. failing to ensure that the corporate governance and compensation structure of all entities properly incentivized the directors, officers, employees, and managing agents of the enterprise to consider and prioritize wildfire risk.

210. 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 Orders Nos. 6 and 7 and H.A.R. § 6-73-13.

211. H.A.R. § 6-73-13 and General Orders Nos. 6 and 7 set 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.

212. Further, at all times relevant, H.A.R. § 6-73-13 and General Orders Nos. 6 and 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.

213. Plaintiffs are informed and thereon allege that the Utility 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 H.A.R. § 6-73-13, General Order No. 6, or General Order No. 7.

214. Plaintiffs are among the class of persons whom H.A.R. § 6-73-13 and General Orders Nos. 6 and 7 are intended to protect, and the class of harms they suffered were among the harms that H.A.R. § 6-73-13 and General Orders Nos. 6 and 7 are intended to protect against.

215. As a direct and proximate result of the Utility Defendants’ violations of H.A.R. § 6-73-13 and General Orders Nos. 6 and 7, the Maui Fires ignited and spread, causing the damages herein alleged.

216. Further, and at all times relevant, the Utility Defendants, and each of them, were subject to section 10.10.3.1 of the Hawai‘i State Fire Code, which provides that “[o]utdoor fires shall not be built, ignited, or maintained upon hazardous fire areas without approval” as required.

217. Plaintiffs are informed, and thereon allege, that the Utility Defendants’ conduct, whether in isolation or in combination with the conduct of any other Defendant or any third-party, ignited an outdoor fire in a hazardous fire area without required approval in violation of section 10.10.3.1 of the Hawai‘i State Fire Code.

218. Plaintiffs are among the class of persons section 10.10.3.1 of the Hawai‘i State Fire Code seeks to protect, and the harm suffered by Plaintiffs are among the class of harms against which section 10.10.3.1 of the Hawai‘i State Fire Code seeks to prevent.

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

220. To the extent that damages are an inadequate remedy for the ongoing and reasonably foreseeable future harm caused by the Defendants’ conduct, Plaintiffs seek equitable relief.

221. 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, H.A.R. § 6-73-13, and any standards incorporated therein;

222. For these reasons, Plaintiffs also seek an injunction ordering all the Utility Defendants to remediate the ongoing public nuisance created by the Maui Fires, including those conditions prohibited by Chapter 20.04.010 of the Maui County Code.

223. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai‘i against the Utility Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**Second Cause of Action – Negligence of the Telecom Defendants**

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

225. At all times relevant, the Telecom Defendants, and each of them, were engaged in the activity of furnishing communications services to customers in the State of Hawai‘i.

226. In order to furnish electricity or power within the State of Hawai‘i to members of the public, the Telecom Defendants deliberately designed, constructed, inspected, and maintained telecom facilities. The Telecom Defendants’ facilities included overhead cables, wiring, hardware, fixtures, wooden and steel poles, and all attendant component parts and products, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components.

227. At all times relevant, the Telecom Defendants knew their facilities, and all components thereof, and particularly those connected to or near an electrical facility owned or operated by the

Utility Defendants, carried an inherent risk of fire ignition. The risks of fire ignition are not unique to the Telecom Defendants' facilities and, indeed, are well known and publicly acknowledged throughout the telecommunications industry.

228. At all times relevant, the Telecom Defendants knew that vegetation near their facilities, including hazard trees, facility protect trees, and other vegetation, including vegetation outside of the right of way of a telecom facility, could damage facilities and cause an ignition during weather events such as a "red flag" warning event.

229. At all times relevant, the Telecom Defendants also knew or reasonably should have been aware of hazards associated with the placement and operation of their facilities under high-risk conditions, including high wind and drought conditions, including the risks that the placement and loading of their facilities could materially impact the integrity and safety of nearby electrical facilities.

230. Despite knowing these risks, the Telecom Defendants failed to implement a vegetation management program that included the removal of vegetation at or near the site of their facilities, but which could be readily identified and remedied.

231. Indeed, the Telecom 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.

232. Similarly, the Telecom 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. Similarly, the Telecom Defendants' vegetation management practices did not account for vegetation that could foreseeably be fuel for an ignition or cause an ignition or sparking event.

233. At all times relevant, the Telecom Defendants, and each of them, owed Plaintiffs a duty to exercise reasonable care in the design, construction, inspection, maintenance, and operation of their telecom facilities, including all overhead cabling and wiring, all wooden poles or other stationary objects to which that cabling or wiring was attached, and all component parts and products of their telecom facilities, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components.

234. The Maui Fires and the harms alleged herein were the direct and proximate result of the Telecom 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.

235. At all times relevant, the Telecom Defendants had actual knowledge of or a reasonable basis on which to anticipate the danger associated with their failure to reduce, restrict, or eliminate the flow of electricity through their facilities.

236. The Telecom 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 Hawai'i Public Utilities Commission;
- b. failing to evaluate, design, implement, and execute policies, practices, and procedures reasonably calculated to mitigate against the risks of their telecom facilities igniting or contributing to the ignition of a fire;
- c. failing to timely and properly design, construct, inspect, maintain, manage, operate, and/or monitor their telecom facilities, including all cabling and wiring, all wooden poles or other stationary objects to which that cabling or wiring was attached, and all component parts and products of their telecom facilities, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components;
- d. failing to evaluate, design, implement, and execute policies, practices, and procedures reasonably calculated to mitigate against the risk of vegetation causing their telecom facilities to ignite or contribute to the ignition of a fire;
- e. failing to properly implement, execute, or oversee vegetation management practices actually designed, including those concerning the cutting, trimming, pruning, clearing, removal, or other management of vegetation for the purpose of avoiding foreseeable contact with their telecom facilities;

- f. failing to make their telecom facilities, including all cabling and wiring, all wooden poles or other stationary objects to which that cabling or wiring was attached, and all component parts and products of their telecom facilities, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components safe under all the exigencies created by surrounding circumstances and conditions, including high wind and drought conditions;
- g. failing to conduct adequate, reasonably prompt, proper, effective, and/or frequent inspections of their telecom facilities, including all cabling and wiring, all wooden poles or other stationary objects to which that cabling or wiring was attached, and all other component parts and products of their telecom facilities, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components;
- h. failing to design, construct, monitor, and/or maintain their telecom facilities, including all cabling and wiring, all wooden poles or other stationary objects to which that cabling or wiring was attached, and all other component parts and products of their telecom facilities, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components in a manner reasonably calculated to prevent ignition of a fire;
- i. failing to install the equipment necessary and/or to inspect and repair the equipment installed, to prevent their telecom facilities, including all cabling and wiring, all wooden poles or other stationary objects to which that cabling or wiring was attached, and all other component parts and products of their telecom facilities, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components from improperly sagging, operating, and/or making contact with other potential ignition sources, including electrical facilities owned and operated by the Utility Defendants;
- j. failing to keep all telecom facilities, regardless of age, voltage, style, material, or construction, in a safe condition at all times in order to prevent a fire ignition;



- k. failing to properly train or supervise their agents, contractors, or employees responsible for maintenance and inspection of their telecom facilities and/or vegetation near those facilities;
- l. failing to assess, budget, allocate, reserve, or distribute funds reasonably necessary to ensure their telecom 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;
- m. failing to ensure that the corporate governance and compensation structure of all entities properly incentivized the directors, officers, employees, and managing agents of the enterprise to consider and prioritize wildfire risk.

237. At all times relevant, the Telecom Defendants, and each of them, were subject to the standards for telecommunications 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 No. 6, H.A.R. § 6-73-13, H.A.R § 6-80-87, H.A.R. § 16-131-6, H.A.R. § 16-131-39.4 and any standards incorporated therein.

238. These regulations required the Telecom Defendants to meet the standards for overhead telecommunications facilities and also to: (i) design, construct, install, operate, and maintain their plants, facilities in a manner consistent with prudent and generally accepted telecommunications industry practices and standards; (ii) adopt and adhere to a maintenance program to ensure safe, adequate, and reliable service at all times; (ii) adopt and maintain service reliability procedures and standards; (iii) adopt and maintain a suitable safety program.

239. Plaintiffs are informed, and thereon allege, that the Telecom Defendants’ actions and inactions with respect to their telecom facilities associated with the ignition and spread of the Maui Fires, whether in isolation or in combination with the conduct of any other Defendant, constituted violations of HPUC General Order No. 6, H.A.R. § 6-73-13, H.A.R § 6-80-87, H.A.R. § 16-131-6, H.A.R. § 16-131-39.4, and any standards incorporated therein.

240. Plaintiffs are among the class of persons whom HPUC General Order No. 6, H.A.R. § 6-73-13, and H.A.R § 6-80-87 seek to protect, and the harms Plaintiffs suffered are among the class of

harms against which HPUC General Order No. 6, H.A.R. § 6-73-13, and H.A.R § 6-80-87 seek to protect.

241. As a direct and proximate result of the Telecom Defendants' violations of HPUC General Order No. 6, H.A.R. § 6-73-13, H.A.R § 6-80-87, H.A.R. § 16-131-6, H.A.R. § 16-131-39.4 and any standards incorporated therein, among others, the Maui Fires ignited and spread, causing the damages herein alleged.

242. Further, and at all times relevant, the Telecom Defendants, and each of them, were subject to section 10.10.3.1 of the Hawai'i State Fire Code, which provides that "[o]utdoor fires shall not be built, ignited, or maintained upon hazardous fire areas without approval" as required.

243. Plaintiffs are informed, and thereon allege, that the Telecom Defendants' conduct, whether in isolation or in combination with the conduct of any other Defendant or any third-party, ignited an outdoor fire in a hazardous fire area without required approval in violation of section 10.10.3.1 of the Hawai'i State Fire Code.

244. Plaintiffs are among the class of persons section 10.10.3.1 of the Hawai'i State Fire Code seeks to protect, and the harm suffered by Plaintiffs are among the class of harms against which section 10.10.3.1 of the Hawai'i State Fire Code seeks to prevent.

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

246. To the extent that damages are an inadequate remedy for the ongoing and reasonably foreseeable future harm caused by the Defendants' conduct, Plaintiffs seek equitable relief.

247. For these reasons, Plaintiffs seek a permanent injunction ordering the Telecom Defendants to stop their continued violations of HPUC General Order No. 6, H.A.R. §§ 6-80-87, 6-73-13, 16-131-6, 16-131-39.4, and any standards incorporated therein.

248. For these reasons, Plaintiffs also seek an injunction ordering the Telecom Defendants to remediate the ongoing public nuisance created by the Maui Fires, including those conditions prohibited by Chapter 20.04.010 of the Maui County Code.

249. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai‘i against the Telecom Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**Third Cause of Action – Negligence of the Landowner Defendants**

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

251. At all times relevant, the Landowner Defendants held interest in easements, rights of way, leaseholds, or other interests in real property in the areas of origin and spread of the Maui Fires. Further, the Landowner Defendants permitted the use of their property rights or interests via consent or contract.

252. At all times relevant, the Landowner Defendants were required to abide by all laws of the State of Hawai‘i and the County of Maui.

253. As holders of such property interests, the Landowner 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 and/or the appropriate distribution and management of water on their properties, including the diversion or extraction of surface and ground waters.

254. In addition to, and coextensive with, their common law duties regarding the management of their property, the Landowner Defendants were, at all times relevant, required to comply with H.R.S. § 132-8, which requires all property owners to keep their premises “reasonably safe from loss of life or injury to persons or property by fire.”

255. In light of the peculiar risks posed by the Utility Defendants’ electrical facilities and the Telcom Defendants’ facilities, especially during drought conditions and high winds, the Landowner Defendants owed Plaintiffs a heightened duty of care in order to ensure that their properties did not contribute to the ignition or spread of a wildfire.

256. The Landowner 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 – including all vegetation, grasses, brush, or flammable material – as well as any 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 conditions.

257. Similarly, the Landowner Defendants failed to take preparatory steps which, in the event of a fire ignition, could be reasonably calculated to prevent or mitigate the spread of the fire, including but not limited to the construction of fire breaks or other barriers.

258. Plaintiffs are further informed, and thereon allege, that the Landowner Defendants' conduct, whether in isolation or in combination with the conduct of any other Defendant or any third-party, constituted a violation of H.R.S. § 132-8.

259. Plaintiffs are among the class of persons section H.R.S. § 132-8 seeks to protect, and the harm suffered by Plaintiffs are among the class of harms against which H.R.S. § 132- seeks to prevent.

260. Further, and at all times relevant, the Landowner Defendants, and each of them, were subject to section 10.10.3.1 of the Hawai'i State Fire Code, which provides that "[o]utdoor fires shall not be built, ignited, or maintained upon hazardous fire areas without approval" as required.

261. Plaintiffs are informed, and thereon allege, that the Landowner Defendants' conduct, whether in isolation or in combination with the conduct of any other Defendant or any third-party, ignited an outdoor fire in a hazardous fire area without required approval in violation of section 10.10.3.1 of the Hawai'i State Fire Code.

262. Plaintiffs are among the class of persons section 10.10.3.1 of the Hawai'i State Fire Code seeks to protect, and the harm suffered by Plaintiffs are among the class of harms against which section 10.10.3.1 of the Hawai'i State Fire Code seeks to prevent.

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

264. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against the Landowner Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

#### **Fourth Cause of Action – Negligence of the County**

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

266. At all times relevant, the County was subject to section 132-6 of the Hawai‘i Revised Statutes, which provides that: “[e]ach county fire chief, in person or by officers or members of the fire chief’s fire department designated by the fire chief for that purpose, shall inspect all buildings, premises, and public thoroughfares, except the interiors of private dwellings and state-owned airport facilities, for the purpose of ascertaining and causing to be corrected any conditions liable to cause fire or any violation of any law, ordinance, rule, or order relating to fire hazard or to the prevention of fires.”

267. H.R.S. § 132-6(b) requires the inspections be conducted “[a]t least once every five years, or as often as deemed practicable or necessary by the county fire chief at all other buildings and premises to provide fire prevention and pre-fire planning within the jurisdiction of the county fire chief.” Meanwhile, H.R.S. § 132-6(c) requires the County to create and retain a written report of each inspection.

268. H.R.S. § 132-6(e) further provides that when the County determines that a “law, ordinance, rule or order relating to protection from fire loss has been violated or that a condition exists which creates an unreasonable risk of fire loss, the fire chief shall prepare and serve upon the owner, occupant or other person responsible for the building or premises a written order setting forth the nature of the alleged violation or condition, the law, ordinance, rule or order violated, and the protections, safeguards, or other means or methods required to render the building or premises safe as required by law, ordinance, or rule.”

269. At all times relevant, the County had a duty to exercise reasonable care in the design, construction, inspection, and maintenance of its property, including property at or near the areas of origin of the Maui Fires and nearby roadways and exit routes to ensure safe ingress and egress in the event of a disaster-related evacuation.

270. The County breached its duties to the public and Plaintiffs including, among other actions and inactions, including but not limited to by:

- a. failing to follow operational policies, practices, or procedures reasonably calculated and required to communicate the potential harm presented by a wildfire ignition to members of the public;
- b. failing to inspect premises within its jurisdiction on a cadence or in a manner required by H.R.S. § 132-6 or any other provision of law;
- c. failing to generate or retain records of potential fire hazards, including those required to be generated according to mandatory inspections;
- d. failing to generate and issues notices of violation to landowners pursuant to H.R.S. § 132-6;
- e. failing to exercise, as required by law, its authority under the Maui County Fire Code to remove hazardous vegetation, create fuel and firebreaks, and require other corrective action;
- f. 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;
- g. failing to design, construct, inspect, and maintain roadways that would foreseeable be used as means of ingress or egress in the event of a disaster-related evacuation in a manner that would not pose a risk of harm to individuals evacuating;

271. Plaintiffs are informed, and thereon allege, both alone and in conjunction with H.R.S. § 132-6, that the Maui County Fire Code section 1103.2.4 expressly or implicitly required the County to: (1) identify weeds, grasses, vines, or other vegetation which may pose a fire hazard; (2) determine whether vegetation on property can or cannot be removed completely; (3) determine whether and to what extent a fuel break must be established on a property; and (4) identify and designate areas that must be cleared of vegetation in order to establish a fuel break.

272. Plaintiffs are informed, and thereon allege, that the County breached its express or implied duties under H.R.S. § 132-6 and the Maui County Fire Code by failing to identify vegetation

which posed a hazard on its property or the property of others and by further failing to enforce firebreaks or other remedial measures, as required by statute or the County's own operating procedures, to make such property safe from fire hazard. The County's breach of its general duty to the public and Plaintiffs is supported by its breach of its statutory obligations which exist in part to protect the public from harm.

273. Plaintiffs are among the class of persons H.R.S. § 132-6 and the Maui County Fire Code seeks to protect, and the harm suffered by Plaintiffs are among the class of harms against which H.R.S. § 132-6 and the Maui County Fire Code seeks to prevent.

274. As a direct and proximate result of the County's conduct, the Maui Fires ignited and spread, causing the damages suffered by Plaintiffs.

275. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against the County as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

#### **Fifth Cause of Action – Negligence of the State**

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

277. At all times relevant, the State had a duty to exercise reasonable care in the design, construction, inspection, and maintenance of its property, including property at or near the areas of origin of the Maui Fires and nearby roadways and exit routes to ensure safe ingress and egress in the event of a disaster-related evacuation.

278. The State breached its duties to the public and Plaintiffs including, among other actions and inactions, by:

- a. 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;
- b. failing to properly inspect, document, and report potential fire hazards on or near the properties of others, including properties at or near the area of origin of the Maui Fires.

- c. failing to design, construct, inspect, and maintain roadways that would foreseeable be used as means of ingress or egress in the event of a disaster-related evacuation in a manner that would not pose a risk of harm to individuals evacuating;

279. As a direct and proximate result of the State's conduct, the Maui Fires ignited and spread, causing the damages suffered by Plaintiffs.

280. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against the State as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

#### **Sixth Cause of Action – Abnormally Dangerous Activity**

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

282. At all times relevant the Landowner Defendants and Public Entity Defendants, and each of them, permitted the growth and accumulation of readily ignitable vegetation, grasses, brush, or ground cover at or near the areas of origin of the Maui Fires, including in close proximity to the facilities of the Utility Defendants and the Telecom Defendants.

283. The vegetation fuels, which existed in bulk as a result of the Landowner Defendants' and the Public Entity Defendants' patterns and practices, created a potentially explosive fuel source for a wildfire ignition when left in close proximity to potential ignition sources, including the facilities of the Utility Defendants and the Telecom Defendants.

284. By maintaining substantial quantities of readily ignitable fuel at or near the areas of origin of the Maui Fires, the Landowner Defendants and Public Entity Defendants were engaged in an abnormally dangerous activity that created a substantial risk of harm to the public even if performed with reasonable care.

285. As a direct and proximate result of the Landowner Defendants' and Public Entity Defendants' respective abnormally dangerous activities of maintaining substantial quantities of combustible fuels near the facilities of the Utility Defendants and the Telecom Defendants, the Maui Fires ignited and spread and caused Plaintiffs the damages suffered by Plaintiffs.

286. The Landowner Defendants and the Public Entity Defendants are strictly liable for the harms caused by their abnormally dangerous activities. The abnormally dangerous activity alleged



created a high degree of risk of harm to persons and property by increasing the risk of a wildfire ignition and spread; there was, at all times relevant, a substantial likelihood that the abnormally dangerous activities of the Landowner Defendants and the Public Entity Defendants would be great; the Landowner Defendants and the Public Entity Defendants could not have made their abnormally dangerous activities safe through the exercise of reasonable care; Landowner Defendants and the Public Entity Defendants carried out an activity that is not a matter of common usage; the existence of drought and other environmental conditions, including high winds, made the activities of the Landowner Defendants and the Public Entity Defendants inappropriate to the place where it was carried out; and the value, if any, placed on the abnormally dangerous activity was substantially outweighed by its dangerous attributes.

287. As a direct and proximate result of the alleged abnormally dangerous activities of the Landowner Defendants and the Public Entity Defendants, the Maui Fires ignited and spread, causing the damages suffered by Plaintiffs.

288. The Landowner Defendants and the Public Entity Defendants are strictly liable for all harm resulting from their abnormally dangerous activities.

289. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**Seventh Cause of Action - Negligent Infliction of Emotional Distress**

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

291. Defendants, and each of them, were negligent as alleged above and, as a direct and proximate result of their negligence, the Maui Fires ignited and spread, causing the damages suffered by Plaintiffs.

292. As a direct and proximate result of Defendants' negligence, whether in isolation or in combination with the conduct of any other Defendant, Plaintiffs were exposed to risks, hazards, and conditions that were unreasonably dangerous and which would reasonably be expected to inflict serious emotional harm upon Plaintiffs.

293. As a further direct and proximate result of Defendants' respective and collective negligence, Plaintiffs suffered serious emotional distress.

294. Plaintiffs are entitled to recover for their serious emotional distress without respect to whether they may prove a predicate harm under the laws of the State of Hawai'i.

295. Regardless, Plaintiffs suffered physical impact or injury to their bodies, their property, or suffered a mental illness or injury or were placed in a physical peril or zone of danger, including the danger of a life-endangering threat, as a result of the Defendants' alleged conduct.

296. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

#### **Eighth Cause of Action – Premises Liability**

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

298. At all times relevant, the Defendants, and each of them, owned or held interests in easements, rights of way, or interests in real property in the area of origin of the Maui Fires.

299. Further, Defendants, including the Utility Defendants and Telecom Defendants, owned and operated facilities, appurtenances, improvements, and all components upon such easements, rights of way, or interests for the purpose of furnishing services to the public.

300. As holders of such property interests, Defendants owed Plaintiffs a duty to exercise reasonable care in the ownership, care, maintenance, management, and use of the property itself and all fixtures and appurtenances upon the property. Further, Defendants had a duty to ensure that Plaintiffs were not exposed to risks of an offsite injury as a result of Defendants' maintenance of their property, regardless of their legal relationship or relationships to the Plaintiffs.

301. The gravity of foreseeable harm posed by Defendants' ownership, control, and operation of their property, including the harm posed by the ignition and spread of wildfire, outweighs any conceivable burden imposed by engaging in safer, alternative conduct.

302. To the extent the condition or conditions on Defendants' property which caused or contributed to Plaintiffs' harms alleged herein were unnatural, Defendants are responsible for those harms because Defendants: created or contributed to the unnatural condition or conditions which

caused or contributed to Plaintiffs' injuries; consented or acquiesced to a third-party's creation of the condition or conditions; or failed to exercise reasonable care to make the condition safe after it was discovered, regardless of whether it was created with Defendants' consent or acquiescence.

303. To the extent the condition or conditions on Defendants' property which caused or contributed to Plaintiffs' harms alleged herein were natural, Defendants had a duty to ensure that those conditions did not pose a risk of injury to Plaintiffs, including the ignition and spread of wildfire.

304. Defendants, and each of them, knew and had superior knowledge to Plaintiffs concerning the dangers of Defendants' property interests, which placed Defendants in a better position to anticipate and take action to prevent the foreseeable injuries caused by their property, including the ignition and spread of wildfire.

305. The 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 facilities, appurtenances, improvements, and components thereon, such that said property was in an unsafe condition and created a foreseeable risk of fire ignition, that the condition of the property caused or contributed to the spread of wildfire, and that the property was not preemptively cared for in a manner so as to mitigate the risk of a fire igniting and spreading over the property.

306. To the extent that the danger associated with the condition of Defendants' property was open or obvious, Defendants are not absolved from their duty to prevent the harms herein alleged or their liability for their failure to prevent such harms.

307. As a direct and proximate result of Defendants' conduct, the Maui Fires ignited and spread, causing the damages suffered by Plaintiffs.

308. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

309. To the extent that damages are an inadequate remedy for the ongoing and reasonably foreseeable future harm caused by the Defendants' conduct, Plaintiffs seek equitable relief.

310. Accordingly, Plaintiffs seek also seek a permanent injunction directing Defendants, and each of them, to abate the existing and continuing dangerous conditions presented by their respective properties as described above.

### **Ninth Cause of Action – Public Nuisance**

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

312. 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.

313. At all times relevant, Defendants, and each of them, owed Plaintiffs a duty of care commensurate with their respective statuses, operations, interests, and as alleged above, to ensure that their respective actions or inactions, whether in isolation or in combination with the conduct of any other Defendants or third-party, did not cause or contribute to a threat of harm or injury to the public at large or Plaintiffs.

314. At all times relevant, Defendants, and each of them were required to comply with Chapter 20.04.010 of the Maui County Code, which provides that it is unlawful and a public nuisance for any person, firm, or corporation in the County of Maui to cause, permit or allow to escape into the open air, smoke, soot, poisonous gases, dirt, dust or debris of any kind from any smokestack, chimney, flue or incinerator, or any opening of any building, or from any smoldering or open fires under his or its charge or control in such a manner or in such a place as to cause annoyance, detriment, or injury to the health of persons or damage to property.

315. As a direct and proximate result of Defendants' conduct, the Maui Fires ignited and spread, causing the damages suffered by Plaintiffs. 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 and air, soil, and water pollution which interfered with Plaintiffs' comfortable occupancy, use, and/or enjoyment their

property. Plaintiffs did not consent nor could they have avoided the Defendants' wrongful conduct or the consequences thereof.

316. 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 and the County of Maui.

317. The damaging effects of Defendants' conduct and the resulting wildfires are ongoing and affect the public at large. Because of the fire's location, temperature, and duration, extensive areas of hydrophobic soil developed within the fire's perimeter. This caused 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.

318. Plaintiffs are informed, and thereon allege, that the conduct of the Defendants, as alleged herein, constituted, and continue to constitute a violation of Chapter 20.04.010 of the Maui County Code.

319. Plaintiffs are among the class of persons that Chapter 20.04.10 of the Maui County Code is intended to protect, and the harms suffered by Plaintiffs are among the class of harms against which Chapter 20.04.010 seeks to protect.

320. As a direct and proximate result of Defendants' violations of Chapter 20.04.10, Plaintiffs suffered and continued to suffer, the damages alleged herein.

321. 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.

322. 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.

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

324. 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.

325. Defendants' conduct, whether individually or collectively, as set forth above which caused or contributed to the devastation of the Maui Fires are not an isolated incident but are 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.

326. Defendants, through their individual and collective conduct, failed to take actions reasonably necessary to prevent against the ignition, spread, and fallout of a wildfire. 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.

327. 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 alleged herein.

328. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

329. To the extent that damages are an inadequate remedy for the ongoing and reasonably foreseeable future harm caused by the Defendants' conduct, Plaintiffs seek equitable relief.

330. 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, H.A.R. § 6-73-13, and any standards incorporated therein;

331. For these reasons, Plaintiffs seek a permanent injunction ordering the Telecom Defendants to stop their continued violations of HPUC General Order No. 6, H.A.R. §§ 6-80-87, 6-73-13, 16-131-6, 16-131-39.4, and any standards incorporated therein.

332. For these reasons, Plaintiffs also seek an injunction ordering all Defendants to remediate the ongoing public nuisance created by the Maui Fires, including those conditions prohibited by Chapter 20.04.010 of the Maui County Code.

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

#### **Tenth Cause of Action – Private Nuisance**

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

335. 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.

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

337. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

338. To the extent that damages are an inadequate remedy for the ongoing and reasonably foreseeable future harm caused by the Defendants' conduct, Plaintiffs seek equitable relief.

339. 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, H.A.R. § 6-73-13, and any standards incorporated therein;

340. For these reasons, Plaintiffs seek a permanent injunction ordering the Telecom Defendants to stop their continued violations of HPUC General Order No. 6, H.A.R. §§ 6-80-87, 6-73-13, 16-131-6, 16-131-39.4, and any standards incorporated therein.

341. For these reasons, Plaintiffs also seek an injunction ordering all Defendants to remediate the ongoing public nuisance created by the Maui Fires, including those conditions prohibited by Chapter 20.04.010 of the Maui County Code.

342. Plaintiffs also seek an order directing Defendants, and each of them, to abate the existing and continuing public nuisance, including any and all environmental pollution described above.

### **Eleventh Cause of Action – Trespass**

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

344. 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.

345. As a direct and proximate result of Defendants’ conduct alleged herein, 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.

346. 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.

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

348. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai‘i against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.



**Twelfth Cause of Action – Inverse Condemnation – The County**

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

350. Plaintiffs are, and at all times relevant were, private individuals who held lawful interests in real and personal property located in the State of Hawai‘i.

351. The County’s conduct, as alleged herein, caused or contributed to the ignition and spread of the Maui Fires and resulted in the destruction of, damage to, reduction of value or marketability of, or interference with Plaintiffs’ property interests.

352. The constitution of the State of Hawai‘i provides that private property shall not be taken or damaged for public use without just compensation.

353. As a public entity, the County is vested with the power of eminent domain.

354. To date, the County has not compensated Plaintiffs for the destruction of, damage to, reduction of value or marketability of, or interference with Plaintiffs’ property interests.

355. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai‘i, including the recovery of attorney’s fees and costs, against the County as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**Thirteenth Cause of Action – Inverse Condemnation – The State**

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

357. Plaintiffs are, and at all times relevant were, private individuals who held lawful interests in real and personal property located in the State of Hawai‘i.

358. The State’s conduct, as alleged herein, caused or contributed to the ignition and spread of the Maui Fires and resulted in the destruction of, damage to, reduction of value or marketability of, or interference with Plaintiffs’ property interests.

359. The constitution of the State of Hawai‘i provides that private property shall not be taken or damaged for public use without just compensation.

360. As a public entity, the State is vested with the power of eminent domain.

361. To date, the State has not compensated Plaintiffs destruction of, damage to, reduction of value or marketability of, or interference with Plaintiffs’ property interests.

362. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai‘i, including the recovery of attorney’s fees and costs, against the State as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**Fourteenth Cause of Action – Inverse Condemnation – The Utility Defendants**

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

364. Plaintiffs are, and at all times relevant were, private individuals who held lawful interests in real and personal property located in the State of Hawai‘i.

365. The Utility Defendants’ conduct, as alleged herein, caused or contributed to the ignition and spread of the Maui Fires and resulted in the destruction of, damage to, reduction of value or marketability of, or interference with Plaintiffs’ property interests.

366. The Utility Defendants operate a state-sanctioned monopoly that provides retail electrical service to approximately 95% of the population of the State of Hawai‘i.

367. In doing so, the Utility Defendants designed, constructed, inspected, maintained, and otherwise operated or oversaw the use of electrical facilities which caused or contributed to the ignition of the Maui Fires.

368. The Utility Defendants’ electrical facilities carried an inherent risk of fire ignition, and the Utility Defendants were well aware of that inherent risk prior to the Maui Fires, particularly under high winds conditions, “red flag” warnings, and drought conditions.

369. The constitution of the State of Hawai‘i provides that private property shall not be taken or damaged for public use without just compensation.

370. As a public utility, the Utility Defendants are vested with the power of eminent domain, including the power to condemn property for public use through the provision of electricity.

371. To date, the Utility Defendants have not compensated Plaintiffs for the destruction of, damage to, reduction of value or marketability of, or interference with Plaintiffs’ property interests.

372. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai‘i, including the recovery of attorney’s fees and costs, against the Utility Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

### **Fifteenth Cause of Action – Wrongful Death**

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

374. As a direct and proximate result of Defendants' conduct alleged herein, the Decedent, or Decedents, suffered physical impacts and injury which caused or contributed to their deaths.

375. As a direct and proximate result, Plaintiffs suffered the loss of society, companionship, comfort, consortium, and protection; marital care, attention, advice, or counsel; loss of care attention, advice, or counsel of a reciprocal beneficiary; loss of filial care or attention; or loss of parental care, training, guidance, or education as a result of the Decedents' death, and other harms permitted under H.R.S. § 663-3.

376. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai'i against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

### **Sixteenth Cause of Action – Survival Action**

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

378. As a direct and proximate result of Defendants' conduct alleged herein, Decedents perished as a result of the effects of the in the Maui Fires.

379. Prior to their deaths the Decedents suffered damages including costs for medical care, lost, damaged, or destroyed property, and pre-death impact or injury as well as attendant pain and suffering.

380. Had Decedents survived, they would be entitled to bring an action against Defendants, and each of them, to recover all damages accrued as a result of Defendants' wrongful conduct.

381. Pursuant to section 663-7 of the Hawai'i Revised Statutes, Plaintiffs brings this action against Defendants, and each of them, to recover all damages recoverable under the causes of action and claims not extinguished by any Decedent's death, including any and all claims for punitive or exemplary damages against and Defendant or group of Defendants as permitted under the laws of the State of Hawai'i.

382. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai‘i against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

## **VII. Prayer for Relief**

383. 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 incidental expenses in an amount 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, in an amount according to proof;
- (e) Damages for diminution in value of real and/or personal property
- (f) All costs of suit, including reasonable attorneys’ fees and all other costs or fees, arising from the prosecution of this action as permitted under the laws of the State of Hawai‘i;
- (g) Lost wages, earning capacity, or business profits, use, goodwill, or proceeds or any related displacement costs;
- (h) Prejudgment and post-judgment interest in the maximum amount permitted by law;
- (i) All costs and expenses incurred following relocation and all recoverable living expenses;
- (j) An order enjoining the Utility Defendants from violating HPUC General Orders Nos. 6 and 7; and H.A.R. § 6-73-13;
- (k) An order enjoining the Telecom Defendants from violating HPUC General Order No. 6 and H.A.R. §§ 6-80-87, 6-73-13, 16-131-6, 16-131-39.4, and any standards incorporated therein.

- (l) An order enjoining all Defendants to remedy the ongoing public nuisance created by the Maui Fires, including those conditions prohibited by Chapter 20.04.010 of the Maui County Code;
- (m) An order directing Defendants to abate all other private and public nuisances alleged herein;
- (n) An order directing Defendants to abate all environmental pollution, including the pollution of all waters and soils, as alleged herein;
- (o) For such other and further relief as the Court shall deem proper, all according to proof.

384. 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.

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

386. To the extent that Plaintiffs bring claims against for Wrongful Death or for a Survival Action on behalf of any Decedent, Plaintiffs pray for judgment against the Defendants, and each of them, as follows:

- (a) All compensable damages for wrongful death or survival damages as permitted under the laws of the State of Hawai‘i;
- (b) Loss of consortium; loss of love, society, solace, companionship, comfort, care, assistance, protection, affection, and/or moral support from Decedents in an amount according to proof;
- (c) Funeral and/or burial expenses and/or related medical expenses and/or removal of Decedents’ remains and other medical and/or emergency services related to their injury and death in an amount according to proof;
- (d) Economic losses, including but not limited to the loss of financial support, and/or the loss of household services in an amount according to proof of trial;

- (e) Losses and damages that the Decedents sustained before death, including all pre-death pain and suffering, emotional distress, and all other penalties or punitive or exemplary damages that the Decedents would have been entitled to recover had they lived;
- (f) All costs of suit, including reasonable attorneys' fees and all other costs or fees, arising from the prosecution of this action as permitted under the laws of the State of Hawai'i;
- (g) Prejudgment and post-judgment interest;
- (h) For such other and further relief as the Court shall deem proper, all according to proof.

Dated: January 9, 2024

By:

/s/ Jan K. Apo  
Jan K. Apo

/s/ Cynthia K. Wong  
Cynthia K. Wong

/s/ Jacob K. Lowenthal  
Jacob K. Lowenthal

/s/ Jesse M. Creed  
Jesse M. Creed

Liaison Counsel for Individual  
Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT  
STATE OF HAWAI‘I

*In re Maui Fire Cases*

**S.P. NO. 2CSP-23-000057**

(Other Non-Motor Vehicle Tort - Maui Fire)

**Demand for Jury Trial**

Circuit Judge: Hon. Peter T Cahill

Division: 2

Trial Date: None set.

**DEMAND FOR JURY TRIAL**

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

Dated: January 9, 2024

By:

/s/ Jan K. Apo  
Jan K. Apo

/s/ Cynthia K. Wong  
Cynthia K. Wong

/s/ Jacob K. Lowenthal  
Jacob K. Lowenthal

/s/ Jesse M. Creed  
Jesse M. Creed

Liaison Counsel for Individual  
Plaintiffs

# **EXHIBIT 5**



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Los Angeles, California 90067

Attorneys for Plaintiffs

**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII**

AMGUARD INSURANCE COMPANY;  
CONCERT SPECIALTY INSURANCE  
COMPANY; GENERAL CASUALTY  
COMPANY OF WISCONSIN; THE  
CINCINNATI INSURANCE COMPANY;  
UNIVERSAL PROPERTY & CASUALTY  
INSURANCE COMPANY; AMERICAN  
BANKERS INSURANCE COMPANY;  
STANDARD GUARANTY INSURANCE  
COMPANY; INTERINSURANCE

**CIVIL NO.** \_\_\_\_\_

(Other Non-Motor Vehicle Tort - Maui Fire)

**COMPLAINT; DEMAND FOR JURY TRIAL**

**Electronically Filed  
FIRST CIRCUIT  
1CCV-24-0000068  
12-JAN-2024  
01:44 PM  
Dkt. 1 CMPS**

EXCHANGE OF THE AUTOMOBILE CLUB; 21ST CENTURY CENTENNIAL INSURANCE COMPANY; FARMERS INSURANCE EXCHANGE; FARMERS PROPERTY AND CASUALTY INSURANCE COMPANY; FIRE INSURANCE EXCHANGE; FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN; MID-CENTURY INSURANCE COMPANY; FIRST FIRE & CASUALTY INSURANCE OF HAWAII, INC.; FIRST INDEMNITY INSURANCE OF HAWAII, INC.; FIRST INSURANCE COMPANY OF HAWAII, LTD.; FIRST SECURITY INSURANCE OF HAWAII, INC.; PENN-STAR INSURANCE COMPANY; UNITED NATIONAL INSURANCE COMPANY; ZEPHYR INSURANCE COMPANY, INC.; HAWAIIAN INSURANCE AND GUARANTY COMPANY, LTD.; ISLAND INSURANCE COMPANY, LTD.; TRADEWIND INSURANCE COMPANY, LTD.; ISLAND PREMIER INSURANCE COMPANY, LTD.; CRESTBROOK INSURANCE COMPANY; NATIONAL CASUALTY COMPANY; NATIONWIDE GENERAL INSURANCE COMPANY; NATIONWIDE MUTUAL INSURANCE COMPANY; SCOTTSDALE INSURANCE COMPANY; NAUTILUS INSURANCE COMPANY; GREAT DIVIDE INSURANCE COMPANY; PRIVILEGE UNDERWRITERS RECIPROCAL EXCHANGE; UNITED SERVICES AUTOMOBILE ASSOCIATION; USAA CASUALTY INSURANCE COMPANY; USAA GENERAL INDEMNITY COMPANY; GARRISON PROPERTY AND CASUALTY INSURANCE COMPANY; AMERICAN FAMILY CONNECT

PROPERTY AND CASUALTY  
INSURANCE COMPANY; AMERICAN  
FAMILY MUTUAL INSURANCE  
COMPANY, S.I.; HOMESITE  
INSURANCE COMPANY; HOMESITE  
INSURANCE COMPANY OF  
CALIFORNIA; HOMESITE INSURANCE  
COMPANY OF THE MIDWEST; ACE  
AMERICAN INSURANCE COMPANY;  
BANKERS STANDARD INSURANCE  
COMPANY; CHUBB CUSTOM  
INSURANCE COMPANY; FEDERAL  
INSURANCE COMPANY; GREAT  
NORTHERN INSURANCE COMPANY;  
ILLINOIS UNION INSURANCE  
COMPANY; INDEMNITY INSURANCE  
COMPANY OF NORTH AMERICA;  
INSURANCE COMPANY OF NORTH  
AMERICA; VIGILANT INSURANCE  
COMPANY; WESTCHESTER SURPLUS  
LINES INSURANCE COMPANY; ERIE  
INSURANCE COMPANY; ERIE  
INSURANCE EXCHANGE; GCUBE  
INSURANCE SERVICES, INC.; HCC  
INSURANCE HOLDINGS, INC.;  
GOLDEN BEAR INSURANCE  
COMPANY; MITSUI SUMITOMO  
INSURANCE COMPANY OF AMERICA;  
MITSUI SUMITOMO INSURANCE USA  
INC.; NATIONAL LIABILITY AND FIRE  
INSURANCE COMPANY;  
PHARMACISTS MUTUAL INSURANCE  
COMPANY; STILLWATER  
INSURANCE COMPANY;  
STILLWATER PROPERTY AND  
CASUALTY INSURANCE COMPANY;  
AMERICAN GUARANTEE AND  
LIABILITY INSURANCE COMPANY;  
STEADFAST INSURANCE COMPANY;  
ZURICH AMERICAN INSURANCE  
COMPANY; HARTFORD  
UNDERWRITERS INSURANCE  
COMPANY; HARTFORD FIRE

INSURANCE COMPANY;  
PHILADELPHIA INDEMNITY  
INSURANCE COMPANY; AMERICAN  
MODERN PROPERTY AND CASUALTY  
INSURANCE COMPANY; AMERICAN  
FAMILY HOME INSURANCE  
COMPANY; AMERICAN MODERN  
HOME INSURANCE COMPANY;  
CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NUMBER W353E5230101;  
CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON SUBSCRIBING TO  
POLICY NUMBER W2B1ED230401;  
CERTAIN UNDERWRITERS AT  
LLOYD'S LONDON AND INSURERS  
SUBSCRIBING TO POLICY NUMBER  
B0509BOWPN2251776; CERTAIN  
UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY  
NUMBER B080121322U23; CERTAIN  
UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY  
NUMBER W3432C220101; CERTAIN  
UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY  
NUMBER W34611230101; CERTAIN  
UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY  
NUMBER B1262PW0502723; CERTAIN  
UNDERWRITERS AT LLOYD'S  
LONDON SUBSCRIBING TO POLICY  
NUMBER W34507230101; NATIONAL  
FIRE & MARINE INSURANCE  
COMPANY; THE PRINCETON EXCESS  
AND SURPLUS LINES INSURANCE  
COMPANY; BRIDGEWAY INSURANCE  
COMPANY; GREAT LAKES  
INSURANCE SE; STARR SURPLUS  
LINES INSURANCE COMPANY; TOKIO  
MARINE AMERICA INSURANCE  
COMPANY; XL INSURANCE  
AMERICA, INC.; EVANSTON

INSURANCE COMPANY; MARKEL  
AMERICAN INSURANCE COMPANY;  
MARKEL INSURANCE COMPANY, AS  
A SUBROGEE AND AS ASSIGNEE OF  
MARKEL BERMUDA LIMITED;  
CRESTMONT INSURANCE COMPANY;  
CERTAIN UNDERWRITERS AT  
LLOYD'S OF LONDON SUBSCRIBING  
TO POLICY NUMBER B0509PN2251799;  
CERTAIN UNDERWRITERS AT  
LLOYD'S OF LONDON AND INSURERS  
SUBSCRIBING TO POLICY NUMBER  
B0509PN2251784; TRAVELERS EXCESS  
AND SURPLUS LINES COMPANY; THE  
TRAVELERS INDEMNITY COMPANY  
OF CONNECTICUT; THE STANDARD  
FIRE INSURANCE COMPANY; THE  
TRAVELERS HOME AND MARINE  
INSURANCE COMPANY; THE  
TRAVELERS INDEMNITY COMPANY  
OF AMERICA; THE TRAVELERS  
INDEMNITY COMPANY; TRAVELERS  
PROPERTY CASUALTY COMPANY OF  
AMERICA; NORTHFIELD INSURANCE  
COMPANY; WESTPORT INSURANCE  
CORPORATION; AXIS SURPLUS  
INSURANCE COMPANY; AMERICAN  
HALLMARK INSURANCE COMPANY  
OF TEXAS; STATE NATIONAL  
INSURANCE COMPANY; SWISS RE  
INTERNATIONAL SE (AUSTRALIA  
BRANCH); SWISS RE  
INTERNATIONAL SE (FRANCE  
BRANCH); SWISS RE CORPORATE  
SOLUTIONS ELITE INSURANCE  
CORPORATION; GREAT AMERICAN  
ASSURANCE COMPANY; GREAT  
AMERICAN ALLIANCE INSURANCE  
COMPANY; GREAT AMERICAN E&S  
INSURANCE COMPANY; GREAT  
AMERICAN INSURANCE COMPANY;  
NATIONAL INTERSTATE INSURANCE  
COMPANY; NATIONAL INTERSTATE

INSURANCE COMPANY OF HAWAII;  
IRONSHORE SPECIALTY INSURANCE  
COMPANY; LIBERTY INSURANCE  
CORPORATION; LIBERTY MUTUAL  
FIRE INSURANCE COMPANY;  
LIBERTY MUTUAL INSURANCE  
COMPANY; LIBERTY MUTUAL  
PERSONAL INSURANCE COMPANY;  
SAFECO INSURANCE COMPANY OF  
AMERICA; SAFECO INSURANCE  
COMPANY OF ILLINOIS; LANDMARK  
AMERICAN INSURANCE COMPANY;  
COVINGTON SPECIALTY INSURANCE  
COMPANY; ENDURANCE AMERICAN  
INSURANCE COMPANY; AGCS  
MARINE INSURANCE COMPANY;  
ALLIANZ GLOBAL RISKS US  
INSURANCE COMPANY; AMERICAN  
AUTOMOBILE INSURANCE  
COMPANY; FIREMAN'S FUND  
INSURANCE COMPANY; ADVENTIST  
RISK MANAGEMENT, INC.; GENCON  
INSURANCE COMPANY OF  
VERMONT; TOKIO MARINE  
SPECIALTY INSURANCE COMPANY;  
CERTAIN INTERESTED  
UNDERWRITERS AT LLOYD'S  
SUBSCRIBING TO POLICY PG2203220;  
CERTAIN INTERESTED  
UNDERWRITERS AT LLOYD'S  
SUBSCRIBING TO POLICY PG2203891;  
HDI GLOBAL INSURANCE COMPANY;  
PALMS INSURANCE COMPANY, LTD.;  
DB INSURANCE CO., LTD.; SENTINEL  
INSURANCE COMPANY, LTD.; STATE  
FARM FIRE AND CASUALTY  
COMPANY; STATE FARM MUTUAL  
AUTOMOBILE INSURANCE  
COMPANY; SWISS RE CORPORATE  
SOLUTIONS CAPACITY INSURANCE  
CORPORATION; SWISS RE  
CORPORATE SOLUTIONS AMERICA  
INSURANCE CORPORATION;

HARLEYSVILLE INSURANCE  
COMPANY OF NEW YORK

Plaintiffs,

vs.

MAUI ELECTRIC COMPANY,  
LIMITED; HAWAIIAN ELECTRIC  
COMPANY, INC.; HAWAII ELECTRIC  
LIGHT COMPANY, INC.; HAWAIIAN  
ELECTRIC INDUSTRIES, INC.;  
HAWAIIAN TELCOM  
COMMUNICATIONS, INC.; HAWAIIAN  
TELCOM, INC.; SPECTRUM OCEANIC,  
LLC; TIME WARNER CABLE  
INFORMATION SERVICES, LLC;  
CHARTER COMMUNICATIONS, INC.;  
CHARTER COMMUNICATIONS  
HOLDING COMPANY, LLC; CHARTER  
COMMUNICATIONS HOLDINGS, LLC;  
CHARTER COMMUNICATIONS, LLC;  
CHARTER COMMUNICATIONS  
OPERATING, LLC; CINCINNATI BELL,  
INC.; TRUSTEES OF THE ESTATE OF  
BERNICE PAUAHI BISHOP; DOE  
POWER UTILITIES, 1-10; DOE  
TELECOMS, 1-10; and DOE  
LANDOWNERS, 1-10; DOES 1-200,

Defendants.

## **COMPLAINT**

Plaintiffs, AmGUARD Insurance Company; Concert Specialty Insurance Company;  
General Casualty Company of Wisconsin; The Cincinnati Insurance Company; Universal  
Property & Casualty Insurance Company; American Bankers Insurance Company; Standard  
Guaranty Insurance Company; Interinsurance Exchange of the Automobile Club; 21st Century  
Centennial Insurance Company; Farmers Insurance Exchange; Farmers Property and Casualty

Insurance Company; Fire Insurance Exchange; Foremost Insurance Company Grand Rapids, Michigan; Mid-Century Insurance Company; First Fire & Casualty Insurance of Hawaii, Inc.; First Indemnity Insurance of Hawaii, Inc.; First Insurance Company of Hawaii, Ltd.; First Security Insurance of Hawaii, Inc.; Penn-Star Insurance Company; United National Insurance Company; Zephyr Insurance Company, Inc.; Hawaiian Insurance and Guaranty Company, Ltd.; Island Insurance Company, Ltd.; Tradewind Insurance Company, Ltd.; Island Premier Insurance Company, Ltd.; Crestbrook Insurance Company; National Casualty Company; Nationwide General Insurance Company; Nationwide Mutual Insurance Company; Scottsdale Insurance Company; Nautilus Insurance Company; Great Divide Insurance Company; Privilege Underwriters Reciprocal Exchange; United Services Automobile Association; USAA Casualty Insurance Company; USAA General Indemnity Company; Garrison Property and Casualty Insurance Company; American Family Connect Property and Casualty Insurance Company; American Family Mutual Insurance Company, S.I.; Homesite Insurance Company; Homesite Insurance Company of California; Homesite Insurance Company of the Midwest; Ace American Insurance Company; Bankers Standard Insurance Company; Chubb Custom Insurance Company; Federal Insurance Company; Great Northern Insurance Company; Illinois Union Insurance Company; Indemnity Insurance Company of North America; Insurance Company of North America; Vigilant Insurance Company; Westchester Surplus Lines Insurance Company; Erie Insurance Company; Erie Insurance Exchange; GCube Insurance Services, Inc.; HCC Insurance Holdings, Inc.; Golden Bear Insurance Company; Mitsui Sumitomo Insurance Company of America; Mitsui Sumitomo Insurance USA Inc.; National Liability and Fire Insurance Company; Pharmacists Mutual Insurance Company; Stillwater Insurance Company; Stillwater Property and Casualty Insurance Company; American Guarantee and Liability Insurance Company; Steadfast

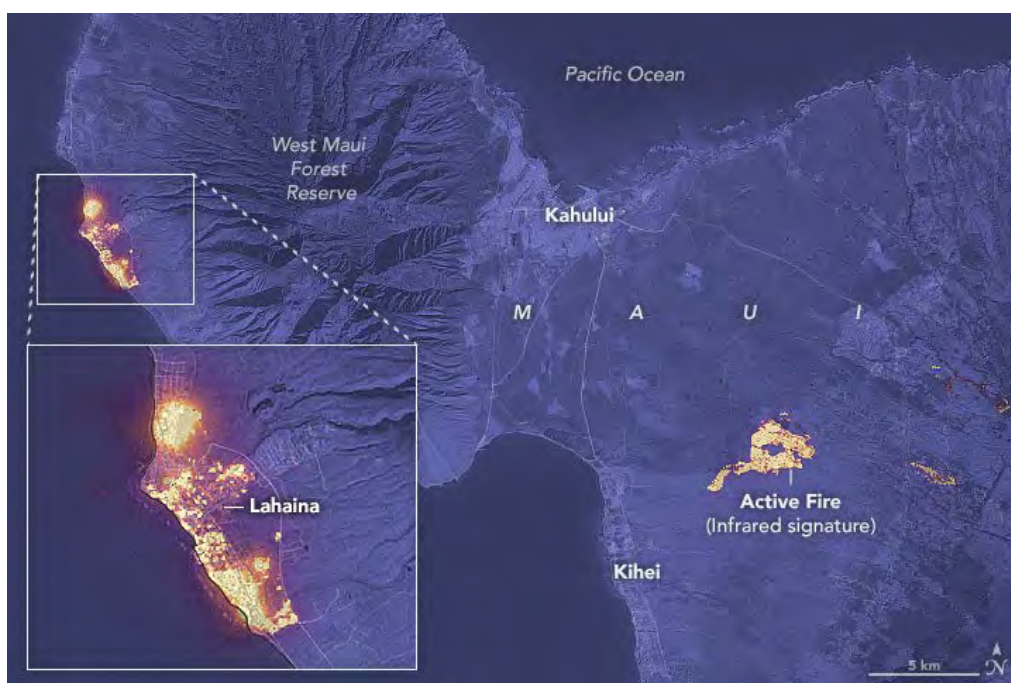


Insurance Company; Zurich American Insurance Company; Hartford Underwriters Insurance Company; Hartford Fire Insurance Company; Philadelphia Indemnity Insurance Company; American Modern Property and Casualty Insurance Company; American Family Home Insurance Company; American Modern Home Insurance Company; Certain Underwriters at Lloyd's London Subscribing to Policy Number W353E5230101; Certain Underwriters at Lloyd's London Subscribing to Policy Number W2B1ED230401; Certain Underwriters at Lloyd's London and Insurers Subscribing to Policy Number B0509BOWPN2251776; Certain Underwriters at Lloyd's London Subscribing to Policy Number B080121322U23; Certain Underwriters at Lloyd's London Subscribing to Policy Number W3432C220101; Certain Underwriters at Lloyd's London Subscribing to Policy Number W34611230101; Certain Underwriters at Lloyd's London Subscribing to Policy Number B1262PW0502723; Certain Underwriters at Lloyd's London Subscribing to Policy Number W34507230101; National Fire & Marine Insurance Company; The Princeton Excess and Surplus Lines Insurance Company; Bridgeway Insurance Company; Great Lakes Insurance SE; Starr Surplus Lines Insurance Company; Tokio Marine America Insurance Company; XL Insurance America, Inc.; Evanston Insurance Company; Markel American Insurance Company; Markel Insurance Company, as a Subrogee and as Assignee of Markel Bermuda Limited; Crestmont Insurance Company; Certain Underwriters at Lloyd's of London Subscribing to Policy Number B0509PN2251799; Certain Underwriters at Lloyd's of London and Insurers Subscribing to Policy Number B0509PN2251784; Travelers Excess and Surplus Lines Company; The Travelers Indemnity Company of Connecticut; The Standard Fire Insurance Company; The Travelers Home and Marine Insurance Company; The Travelers Indemnity Company of America; The Travelers Indemnity Company; Travelers Property Casualty Company of America; Northfield Insurance Company; Westport Insurance Corporation; Axis Surplus

Insurance Company; American Hallmark Insurance Company of Texas; State National Insurance Company; Swiss Re International SE (Australia Branch); Swiss Re International SE (France Branch); Swiss Re Corporate Solutions Elite Insurance Corporation; Great American Assurance Company; Great American Alliance Insurance Company; Great American E&S Insurance Company; Great American Insurance Company; National Interstate Insurance Company; National Interstate Insurance Company of Hawaii; Ironshore Specialty Insurance Company; Liberty Insurance Corporation; Liberty Mutual Fire Insurance Company; Liberty Mutual Insurance Company; Liberty Mutual Personal Insurance Company; Safeco Insurance Company of America; Safeco Insurance Company of Illinois; Landmark American Insurance Company; Covington Specialty Insurance Company; Endurance American Insurance Company; AGCS Marine Insurance Company; Allianz Global Risks US Insurance Company; American Automobile Insurance Company; Fireman's Fund Insurance Company; Adventist Risk Management, Inc.; Gencon Insurance Company of Vermont; Tokio Marine Specialty Insurance Company; Certain Interested Underwriters at Lloyd's subscribing to policy PG2203220; Certain Interested Underwriters at Lloyd's subscribing to policy PG2203891; HDI Global Insurance Company; Palms Insurance Company, Ltd.; DB Insurance Co., Ltd.; Sentinel Insurance Company, Ltd.; State Farm Fire and Casualty Company; State Farm Mutual Automobile Insurance Company; Swiss Re Corporate Solutions Capacity Insurance Corporation; Swiss Re Corporate Solutions America Insurance Corporation; Harleysville Insurance Company of New York and others (*see* ¶ 4) ("Plaintiffs"), by their undersigned attorneys, file this Complaint against Hawaiian Electric Industries, Inc., and others, (*see* ¶¶ 10-26), alleging the following upon information and belief.

## INTRODUCTION

1. This case concerns one of the deadliest utility-related wildfire events of the past century. On August 8, 2023, a series of wildfires ignited on the island of Maui in the State of Hawaii after several energized power lines ignited desiccated vegetation during foreseeably dry and windy conditions. One of those fires, referred to as the “Lahaina Fire,” ravaged the historic town of Lahaina: destroying culturally significant historical sites and landmarks while leaving widely publicized and plainly tragic destruction in fire’s wake. Based on currently documented information, the fire burned over 2,100 acres, destroyed 2,200 homes and businesses, and killed 100 people.



*Infrared Images from NASA's Earth Observatory*

*(Aug. 8, 2023, 10:25 p.m. HST)*

2. While State officials are still determining the full extent of the Lahaina Fire’s disastrous consequences, the evidentiary record is already clear that this tragedy was entirely preventable. The Lahaina Fire did not result from an unforeseeable series of events or spontaneously emerge from coincidentally harsh environmental conditions. In truth, the Defendants were well aware of the risks of wildfire associated with continuously operating

energized powerlines during dry and windy weather conditions, overloading aged utility poles so as to further weaken them structurally, and disregarding the excessive overgrowth of invasive, highly flammable vegetation. Collectively, these oversight failures all contributed to the most destructive – and deadliest – human-caused disaster in State history.

3. Seeking to hold the culpable parties responsible for their actions which contributed to the Lahaina Fire, and prevent the future reoccurrence of similar tragic events, Subrogation Plaintiffs bring this action against the above-captioned Defendants for their contributions to the Lahaina Fire’s ignition, spread, and ultimate destruction of the town of Lahaina.

### **PLAINTIFFS**

4. At all relevant times, Plaintiffs were entities authorized to conduct business as insurance companies in Hawaii, and to insure homeowners, renters, business owners, and other individuals and entities who suffered damage and loss to real property, personal property, commercial property, business losses, remediation expenses, adjusted living expenses, and other related damages arising from the Lahaina Fire. Specifically,

- (1) AmGUARD Insurance Company is an insurance company incorporated in the State of Pennsylvania
- (2) Concert Specialty Insurance Company is an insurance company domiciled in the State of Montana
- (3) General Casualty Company of Wisconsin is an insurance company incorporated in the State of Wisconsin
- (4) The Cincinnati Insurance Company is an insurance company incorporated in the State of Ohio
- (5) Universal Property & Casualty Insurance Company is an insurance company incorporated in the State of Florida
- (6) American Bankers Insurance Company is an insurance company incorporated in the State of Florida

- (7) Standard Guaranty Insurance Company is an insurance company incorporated in the State of Delaware
- (8) Interinsurance Exchange of the Automobile Club is a California interinsurance exchange with its principal place of business in the State of California
- (9) 21st Century Centennial Insurance Company is an insurance company incorporated in the State of Pennsylvania
- (10) Farmers Insurance Exchange is an insurance company incorporated in the State of Pennsylvania
- (11) Farmers Property and Casualty Insurance Company is an insurance company incorporated in the State of Rhode Island
- (12) Fire Insurance Exchange is an insurance company incorporated in the State of California
- (13) Foremost Insurance Company Grand Rapids, Michigan is an insurance company incorporated in the State of Michigan
- (14) Mid-Century Insurance Company is an insurance company incorporated in the State of California
- (15) First Insurance Company of Hawaii, Ltd. is an insurance company incorporated in the State of Hawaii
- (16) First Fire & Casualty Insurance of Hawaii, Inc. is an insurance company incorporated in the State of Hawaii
- (17) First Indemnity Insurance of Hawaii, Inc. is an insurance company incorporated in the State of Hawaii
- (18) First Security Insurance of Hawaii, Inc. is an insurance company incorporated in the State of Hawaii

- (19) Penn-Star Insurance Company is an insurance company incorporated in the State of Pennsylvania
- (20) United National Insurance Company is an insurance company incorporated in the State of Pennsylvania
- (21) Zephyr Insurance Company, Inc. is an insurance company incorporated in the State of Hawaii
- (22) Hawaiian Insurance and Guaranty Company, Ltd. is an insurance company incorporated in the State of Hawaii
- (23) Island Insurance Company, Ltd. is an insurance company incorporated in the State of Hawaii
- (24) Tradewind Insurance Company, Ltd. is an insurance company incorporated in the State of Hawaii
- (25) Island Premier Insurance Company, Ltd. is an insurance company incorporated in the State of Hawaii
- (26) Crestbrook Insurance Company is an insurance company incorporated in the State of Ohio
- (27) National Casualty Company is an insurance company incorporated in the State of Ohio
- (28) Nationwide General Insurance Company is an insurance company incorporated in the State of Ohio
- (29) Nationwide Mutual Insurance Company is an insurance company incorporated in the State of Ohio
- (30) Scottsdale Insurance Company is an insurance company incorporated in the State of Ohio
- (31) Nautilus Insurance Company is an insurance company incorporated in the State of Arizona

- (32) Great Divide Insurance Company is an insurance company incorporated in the State of North Dakota
- (33) Privilege Underwriters Reciprocal Exchange is a Florida domiciled reciprocal insurer with its principal place of business in New York
- (34) United Services Automobile Association is an insurance company incorporated in the State of Texas
- (35) USAA Casualty Insurance Company is an insurance company incorporated in the State of Texas
- (36) USAA General Indemnity Company is an insurance company incorporated in the State of Texas
- (37) Garrison Property and Casualty Insurance Company is an insurance company incorporated in the State of Texas
- (38) American Family Connect Property and Casualty Insurance Company is an insurance company incorporated in the State of Wisconsin
- (39) American Family Mutual Insurance Company, S.I. is an insurance company incorporated in the State of Wisconsin
- (40) Homesite Insurance Company is an insurance company incorporated in the State of Wisconsin
- (41) Homesite Insurance Company of California is an insurance company incorporated in the State of California
- (42) Homesite Insurance Company of the Midwest is an insurance company incorporated in the State of North Dakota
- (43) Ace American Insurance Company is an insurance company incorporated in the State of Pennsylvania
- (44) Bankers Standard Insurance Company is an insurance company incorporated in the State of Pennsylvania

- (45) Chubb Custom Insurance Company is an insurance company incorporated in the State of New Jersey
- (46) Federal Insurance Company is an insurance company incorporated in the State of Indiana
- (47) Great Northern Insurance Company is an insurance company incorporated in the State of Indiana
- (48) Illinois Union Insurance Company is an insurance company incorporated in the State of Illinois
- (49) Indemnity Insurance Company of North America is an insurance company incorporated in the State of Pennsylvania
- (50) Insurance Company of North America is an insurance company incorporated in the State of Pennsylvania
- (51) Vigilant Insurance Company is an insurance company incorporated in the State of New York
- (52) Westchester Surplus Lines Insurance Company is an insurance company incorporated in the State of Georgia
- (53) Erie Insurance Company is an insurance company incorporated in the State of Pennsylvania
- (54) Erie Insurance Exchange is an insurance company incorporated in the State of Pennsylvania
- (55) GCube Insurance Services, Inc. is an insurance company incorporated in the State of California
- (56) HCC Insurance Holdings, Inc. is an insurance company incorporated in the State of Delaware
- (57) Golden Bear Insurance Company is an insurance company incorporated in the State of California



- (58) Mitsui Sumitomo Insurance Company of America is an insurance company incorporated in the State of New York
- (59) Mitsui Sumitomo Insurance USA Inc. is an insurance company incorporated in the State of New York
- (60) National Liability and Fire Insurance Company is an insurance company incorporated in the State of Connecticut
- (61) Pharmacists Mutual Insurance Company is an insurance company incorporated in the State of Iowa
- (62) Stillwater Insurance Company is an insurance company incorporated in the State of California
- (63) Stillwater Property and Casualty Insurance Company is an insurance company incorporated in the State of New York
- (64) American Guarantee and Liability Insurance Company is an insurance company incorporated in the State of New York
- (65) Steadfast Insurance Company is an insurance company incorporated in the State of Illinois
- (66) Zurich American Insurance Company is an insurance company incorporated in the State of New York
- (67) Hartford Underwriters Insurance Company is an insurance company incorporated in the State of Connecticut
- (68) Hartford Fire Insurance Company is an insurance company incorporated in the State of Connecticut
- (69) Philadelphia Indemnity Insurance Company is an insurance company incorporated in the State of Pennsylvania
- (70) American Modern Property and Casualty Insurance Company is an insurance company incorporated in the State of Ohio

- (71) American Family Home Insurance Company is an insurance company incorporated in the State of Ohio
- (72) American Modern Home Insurance Company is an insurance company incorporated in the State of Ohio
- (73) Certain Underwriters at Lloyd's London Subscribing to Policy Number W353E5230101 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK
- (74) Certain Underwriters at Lloyd's London Subscribing to Policy Number W2B1ED230401 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK
- (75) Certain Underwriters at Lloyd's of London and Insurers Subscribing to Policy Number B0509BOWPN2251776 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK as well as foreign insurance companies subscribing to the same risk that are members of the London International Insurance and Reinsurance Market Association
- (76) Certain Underwriters at Lloyd's London Subscribing to Policy Number B080121322U23 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK
- (77) Certain Underwriters at Lloyd's London Subscribing to Policy Number W3432C220101 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK
- (78) Certain Underwriters at Lloyd's London Subscribing to Policy Number W34611230101 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK

- (79) Certain Underwriters at Lloyd's London Subscribing to Policy Number B1262PW0502723 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK
- (80) Certain Underwriters at Lloyd's London Subscribing to Policy Number W34507230101 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK
- (81) National Fire & Marine Insurance Company is an insurance company incorporated in the State of Nebraska
- (82) The Princeton Excess and Surplus Lines Insurance Company is an insurance company incorporated in the State of Delaware
- (83) Bridgeway Insurance Company is an insurance company incorporated in the State of Ohio
- (84) Great Lakes Insurance SE is an insurance company incorporated in Germany
- (85) Starr Surplus Lines Insurance Company is an insurance company incorporated in the State of Texas
- (86) Tokio Marine America Insurance Company is an insurance company incorporated in the State of New York
- (87) XL Insurance America, Inc. is an insurance company incorporated in the State of Delaware
- (88) Evanston Insurance Company is an insurance company incorporated in the State of Illinois
- (89) Markel American Insurance Company is an insurance company incorporated in the State of Virginia
- (90) Markel Insurance Company, as a Subrogee and as Assignee of Markel Bermuda Limited is an insurance company incorporated in the State of Virginia

- (91) Crestmont Insurance Company is an insurance company incorporated in the State of Hawaii
- (92) Certain Underwriters at Lloyd's of London Subscribing to Policy Number B0509PN2251799 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK
- (93) Certain Underwriters at Lloyd's of London and Insurers Subscribing to Policy Number B0509PN2251784 are a group of underwriters insuring risks as members of the Lloyd's insurance market based in London, UK as well as foreign insurance companies subscribing to the same risk that are members of the London International Insurance and Reinsurance Market Association
- (94) Travelers Excess and Surplus Lines Company is an insurance company incorporated in the State of Connecticut
- (95) The Travelers Indemnity Company of Connecticut is an insurance company incorporated in the State of Connecticut
- (96) The Standard Fire Insurance Company is an insurance company incorporated in the State of Connecticut
- (97) The Travelers Home and Marine Insurance Company is an insurance company incorporated in the State of Connecticut
- (98) The Travelers Indemnity Company of America is an insurance company incorporated in the State of Connecticut
- (99) The Travelers Indemnity Company is an insurance company incorporated in the State of Connecticut
- (100) Travelers Property Casualty Company of America is an insurance company incorporated in the State of Connecticut
- (101) Northfield Insurance Company is an insurance company incorporated in the State of Iowa

- (102) Westport Insurance Corporation is an insurance corporation incorporated in the State of Missouri with its principal place of business in the State of New York
- (103) Axis Surplus Insurance Company is an insurance company incorporated in the State of Connecticut
- (104) American Hallmark Insurance Company of Texas is an insurance company incorporated in the State of Texas
- (105) State National Insurance Company is an insurance company incorporated in the State of Texas
- (106) Swiss Re International SE (Australia Branch) is a foreign insurance company authorized to do business in the United States with its principal place of business in the State of New York
- (107) Swiss Re International SE (France Branch) is a foreign insurance company authorized to do business in the United States with its principal place of business in the State of New York
- (108) Swiss Re Corporate Solutions Elite Insurance Corporation is an insurance corporation with its principal place of business in the State of New York
- (109) Great American Assurance Company is an insurance company incorporated in the State of Ohio
- (110) Great American Alliance Insurance Company is an insurance company incorporated in the State of Ohio
- (111) Great American E&S Insurance Company is an insurance company incorporated in the State of Ohio
- (112) Great American Insurance Company is an insurance company incorporated in the State of Ohio

- (113) National Interstate Insurance Company is an insurance company incorporated in the State of Ohio
- (114) National Interstate Insurance Company of Hawaii is an insurance company incorporated in the State of Ohio
- (115) Ironshore Specialty Insurance Company is an insurance company incorporated in the State of Arizona
- (116) Liberty Insurance Corporation is an insurance corporation incorporated in the State of Illinois
- (117) Liberty Mutual Fire Insurance Company is an insurance company incorporated in the State of Wisconsin
- (118) Liberty Mutual Insurance Company is an insurance company incorporated in the State of Massachusetts
- (119) Liberty Mutual Personal Insurance Company is an insurance company incorporated in the State of New Hampshire
- (120) Safeco Insurance Company of America is an insurance company incorporated in the State of New Hampshire
- (121) Safeco Insurance Company of Illinois is an insurance company incorporated in the State of Illinois
- (122) Landmark American Insurance Company is an insurance company incorporated in the State of New Hampshire
- (123) Covington Specialty Insurance Company is an insurance company incorporated in the State of New Hampshire
- (124) Endurance American Insurance Company is an insurance company incorporated in the State of Delaware
- (125) AGCS Marine Insurance Company is an insurance company incorporated in the State of Illinois

- (126) Allianz Global Risks US Insurance Company is an insurance company incorporated in the State of Illinois
- (127) American Automobile Insurance Company is an insurance company incorporated in the State of Missouri
- (128) Fireman's Fund Insurance Company is an insurance company incorporated in the State of Illinois
- (129) Adventist Risk Management, Inc. is an insurance company incorporated in the State of Maryland
- (130) Gencon Insurance Company of Vermont is an insurance company incorporated in the State of Vermont
- (131) Tokio Marine Specialty Insurance Company is an insurance company incorporated in the State of Pennsylvania
- (132) Certain Interested Underwriters at Lloyd's subscribing to policy PG2203220 are members of various underwriting syndicates located in London, England. These syndicates severally subscribe to the insurance policy at issue, including but not limited to Rokstone Underwriting for and on behalf of Allianz Global Corporate & Specialty SE, UK Branch, Rokstone Underwriting for and on behalf of Mitsui Sumitomo Insurance Co. (Europe), Ltd. and Inigo Management Agent Limited on behalf of Syndicate 1301 at Lloyds of London. Each syndicate is organized under the laws of the United Kingdom and has its principal place of business in London, England
- (133) Certain Interested Underwriters at Lloyd's subscribing to policy PG2203891 are members of various underwriting syndicates located in London, England. These syndicates severally subscribe to the insurance policy at issue, including but not limited to Ascot Underwriting Ltd, Syndicate 1414 at Lloyd's of London, QBE Syndicate 1886 and Inigo Management Agent

Limited on behalf of Syndicate 1301 at Lloyds of London. Each syndicate is organized under the laws of the United Kingdom and has its principal place of business in London, England

- (134) HDI Global Insurance Company is an insurance company incorporated in the State of Illinois
- (135) Palms Insurance Company, Ltd. is an insurance company based in Bermuda
- (136) DB Insurance Co., Ltd. is an insurance company incorporated in the State of Hawaii
- (137) Sentinel Insurance Company, Ltd. is an insurance company incorporated in the State of Connecticut
- (138) State Farm Fire and Casualty Company is an insurance company incorporated in the State of Illinois
- (139) State Farm Mutual Automobile Insurance Company is an insurance company incorporated in the State of Illinois
- (140) Swiss Re Corporate Solutions Capacity Insurance Corporation is an insurance corporation with its principal place of business in the State of New York
- (141) Swiss Re Corporate Solutions America Insurance Corporation is an insurance corporation with its principal place of business in the State of New York
- (142) Harleysville Insurance Company of New York is an insurance company incorporated in the State of Ohio

5. The Lahaina Fire damaged property insured by Plaintiffs for certain policy holders (“Plaintiffs’ Insureds”).

6. Plaintiffs’ Insureds presented claims to the Plaintiffs for damage and loss to their real property, personal property, commercial property, business losses, remediation expenses, adjusted living expenses, and other related damages arising from the Lahaina Fire.



7. Consistent with the Plaintiffs’ policies of insurance, and the Plaintiffs’ obligations under the law, the Plaintiffs investigated, adjusted, and paid, or will pay, their Insureds for covered claims arising from the Lahaina Fire.

8. Plaintiffs have since paid to, or on behalf of, their Insureds a sum in excess of the jurisdictional minimum of this Court.

9. In consideration of Plaintiffs’ payments to their Insureds, the terms of their policies of insurance, equity, and by operation of law, Plaintiffs became actual, *bona fide* subrogees of Plaintiffs’ Insureds, and became subrogated to the rights and claims against any person or entity that may be liable for causing damage to Plaintiffs’ Insureds.

## DEFENDANTS

### **I. Utility Defendants**

10. Defendant **Hawaiian Electric Industries, Inc.** (“**HEI**”) is, and at all relevant times was, a Hawaii corporation with its principal place of business in Honolulu, Hawaii. **HEI** is a holding company and parent company. **HEI**’s subsidiaries provide electrical service to about 95% of the population of the State of Hawaii.

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

12. Defendant **Hawaii Electric Light Company, Inc.** (“**HEL**C”) is, and at all relevant times was, a Hawaii corporation with its principal place of business in Honolulu, Hawaii. Defendant **HEL**C is an electrical utility and subsidiary of, and since 2019 has done business as, Defendant **HECO**.

13. Defendant **Maui Electric Company, Limited** (“**MECO**”) is, and at all relevant times was, a Hawaii corporation with its principal place of business in Kahului, Hawaii. Defendant

MECO is an electrical utility and subsidiary of, and since 2019 has done business as, Defendant **HECO**.

14. Defendants **HEI, HECO, HELC, and MECO** (collectively, the “**Utility Defendants**”) are, and at all relevant times were, public utilities, as that term is defined by HRS § 269-1, operating under the terms of a franchise granted by the State of Hawaii and granted the power of eminent domain. At all relevant times the Utility Defendants provided important and essential electrical utility services for public use, were 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 Hawaii.

15. Plaintiffs have reviewed public and other records available in order to ascertain the true and full names and identities of all defendants in this action, but Plaintiffs have no further knowledge or information at this time regarding all responsible parties and are unable to ascertain the identity of defendants in this action designated as **Doe Power Utilities 1–10**. The Doe Power Utilities Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiffs, except that they may be connected in some manner with the named Defendants, such as being agents, servants, employees, employers, representatives, co-venturers, associates, or independent contractors of Defendants and/or were in some manner presently unknown to the Plaintiffs engaged in activities such as designing, manufacturing, selling, distributing, installing and/or providing materials and/or services to Defendants. The Doe Power Utilities Defendants’ true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiffs or their attorneys. Plaintiffs pray for leave to amend this Complaint to show the true names and capacities, activities, and/or responsibilities when the same has been discovered.

## II. Telecom Defendants

16. Plaintiffs are informed and believe that Defendant **Spectrum Oceanic, LLC** (“**Spectrum**”) is a limited liability corporation organized in the State of Delaware conducting business in the State of Hawaii.

17. Defendant **Charter Communications, Inc.** (“**Charter**”) is, and at all relevant times was, a Delaware corporation with its principal place of business in Stamford, Connecticut. Charter is a telecommunications company and cable operator that serves more than 32 million customers across the United States, including customers in the State of Hawaii. Charter is the parent company of multiple individual business entities, including **Time Warner Cable Information Services, LLC** (Hawaii), a Delaware limited liability company (“Time Warner”), which does business as Oceanic Time Warner. In addition, Defendants **Charter Communications Holding Company, LLC**; **Charter Communications Holdings, LLC**; **Charter Communications, LLC**; and **Charter Communications Operating, LLC** do business in the State of Hawaii as “**Charter**” and are all limited liability corporations organized in the State of Delaware. All of these Charter affiliates, subsidiaries, LLC’s and/or related entities are referred to collectively as “**Charter**.”

18. Plaintiffs are further informed and believe that **Charter** is the parent company of **Spectrum**, that **Charter** manages **Spectrum**, and that **Spectrum** is the trade name for **Charter**. To conduct its business, **Charter** designs, constructs, maintains, and inspects telecom infrastructure, including hardware and equipment affixed to structures and fixtures.

19. Plaintiffs are informed and believe that Defendant **Hawaiian Telcom Communications, Inc.**; and Defendant **Hawaiian Telcom, Inc.** (collectively, “Hawaiian Telcom”) are doing business in the ‘State of Hawaii, and operating under the trade name “Hawaiian Telcom.” Defendant **Hawaiian Telcom Communications, Inc.** is a corporation organized in the State of Delaware. Defendant **Hawaiian Telcom, Inc.** is a corporation organized in the State of Hawaii.

20. Defendant **Cincinnati Bell, Inc.** (“**Cincinnati Bell**”) is, and at all relevant times was, an Ohio corporation with its principal place of business in Cincinnati, Ohio. In 2018, the Hawaiian Public Utilities Commission approved Cincinnati Bell’s purchase of **Hawaiian Telecom, Inc.**, the largest full-service provider of communication services in the Hawaiian Islands, and related entities. Today, Cincinnati Bell conducts business in Hawaii as **Hawaii Telecom, Inc. Cincinnati Bell**, designs, constructs, maintains, and inspects telecom infrastructure, including hardware and equipment affixed to structures and fixtures.

21. Defendants **Spectrum, Charter, Hawaiian Telecom, and Cincinnati Bell** (collectively, “**Telecom Defendants**”) are, and at all relevant times were, telecommunications companies and public utilities, as that term is defined by HRS § 269-1(B), with the power of eminent domain. The Telecom Defendants are 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 Hawaii and the County of Maui.

22. Plaintiffs have reviewed public and other records available in order to ascertain the true and full names and identities of all defendants in this action, but Plaintiffs have no further knowledge or information at this time regarding all responsible parties and are unable to ascertain the identity of defendants in this action designated as **Doe Telecoms 1–10**. The Doe Telecom Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiffs, except that they may be connected in some manner with the named Defendants, such as being agents, servants, employees, employers, representatives, co-venturers, associates, or independent contractors of Defendants and/or were in some manner presently unknown to the Plaintiffs engaged in activities such as designing, manufacturing, selling, distributing, installing and/or providing materials and/or services to Defendants. The Doe Telecom Defendants’ true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiffs or their attorneys. Plaintiffs pray for leave to amend this

Complaint to show the true names and capacities, activities, and/or responsibilities when the same has been discovered.

### **III. Landowner Defendants**

23. Defendant **Trustees of the Estate of Bernice Pauahi Bishop** (“**The Bishop Estate**”) are, and at all relevant times have been, the largest private landowner in the State of Hawaii. The Bishop Estate, by and through its Trustees owns, controls, manages, and oversees the maintenance of property at or near the area of origin and spread of the Lahaina Fire. **The Bishop Estate** holds interests in or title to, manages, controls, rents, or owns these properties as various entities, including Bishop B P Tr Est. The Bishop Estate is also known by a trade name, “Kamehameha Schools.” For all purposes and at all relevant times, **The Bishop Estate**, including all entities, subsidiaries, partnerships, or associations, whether formal or otherwise, operates as a single entity with the primary purpose of maintaining the assets of **The Bishop Estate**.

24. Plaintiffs have reviewed public and other records available in order to ascertain the true and full names and identities of all defendants in this action, but Plaintiffs have no further knowledge or information at this time regarding all responsible parties and are unable to ascertain the identity of defendants in this action designated as **Doe Landowners 1–10**. The Doe Landowner Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiffs, except that they may be connected in some manner with the named Defendants, such as being agents, servants, employees, employers, representatives, co-venturers, associates, co-owners, or independent contractors of Defendants and/or were in some manner presently unknown to the Plaintiffs engaged in activities such as providing maintenance, repair, management, care, supervision, landscaping, consulting, or other services and/or materials to Defendants related to their properties. The Doe Landowner Defendants’ true names, identities, capacities, activities, and/or responsibilities are presently unknown to Plaintiffs or their attorneys. Plaintiffs pray for leave to amend this Complaint to show the true names and capacities, activities, and/or responsibilities when the same has been discovered.

25. **The Bishop Estate, and Doe Landowners** unknown to Plaintiffs, (collectively, “**Landowner Defendants**”) are, at all relevant times were, subject to all laws and regulations applicable to private persons owning, managing, and controlling land in the State of Hawaii and the County of Maui.

#### **IV. Other Doe Defendants**

26. 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 200 (“**Does 1-200**”), inclusive. Therefore, Plaintiffs sue such Defendants by such fictitious names pursuant to Rule 17, subdivision (d) of the Hawaii Rules of Civil Procedure. Following further investigation and discovery, and within a reasonable time after discovering the identity of any Does 1-200, 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 or abetted 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.

#### **V. Agency, Joint Venture, and Concert of Action**

27. At all relevant times, each of the named Defendants were the agents, servants, employees, partners, aiders and abettors, 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, 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.

28. Defendants' concurrent actions and omissions, in isolation or in combination with other factors, caused Plaintiffs' indivisible damages and injuries claimed herein.

### **JURISDICTION**

29. This Court has subject matter jurisdiction over all causes of action alleged herein pursuant to § 603-21.5(a)(3) of the Hawaii Revised Statutes.

30. This Court has personal jurisdiction over each Defendant either because Defendants are corporations created by or under the laws of this state, are domiciled in Hawaii, are organized under the laws of Hawaii, and/or maintain their principal place of business in Hawaii, transact business in Hawaii, perform work in Hawaii, provide services in Hawaii, derive substantial revenue from services used or consumed in Hawaii, and/or have interests in, use, or possess real property in Hawaii. Plaintiffs further allege that Defendants' tortious acts and omissions within this state caused Plaintiffs' Insureds to suffer damage within this state and each Defendant has sufficient minimum contacts with the State of Hawaii which arise out of or relate to the causes of action alleged herein such that the exercise of personal jurisdiction comports with traditional notions of fair play and substantial justice.

31. Venue is proper in this Court pursuant to section § 603-36(5) of the Hawaii Revised Statutes.

### **GENERAL FACTUAL ALLEGATIONS**

#### **I. For Years, the Risk of Wildfire Increased Steadily in Hawaii and on Maui**

32. Each of the Defendants knew or should have known the Hawaiian Islands are exposed to serious and steadily increasing risks of wildland fires.

33. The threat of hurricanes and their attendant high winds invariably loom over Hawaii and are common knowledge throughout the islands. A handful of hurricanes endanger the State

each year and disaster planning for the entire State must take into account predictable adverse and windy conditions.

34. All Defendants also knew or should have known the island of Maui was specifically at risk for the ignition and rapid spread of wildfires. All Defendants knew high winds had toppled power lines in the past, triggering wildfires. Additionally, all Defendants knew the dry, nonnative grasses surrounding Lahaina and on other parts of Maui constituted highly dangerous fuel loads capable of rapidly spreading those wildfires.

35. The frequency of brush fires on Maui is common knowledge, particularly in late summer and fall when the invasive non-native grasses dry out and turn most of Maui from green to brown. Every year, multiple brush fires break out across Maui, burning dozens, hundreds, or thousands of acres at a time and burning homes, businesses, and/or personal property. It is impossible to live, work, or own land on Maui without knowing that serious brush fires occur every year and that these fires spread rapidly in Maui's dry, non-native grasses.

36. As certain agricultural practices have declined and drought conditions have become more severe, the total area of land burned in Hawaii has steadily increased over the past century.<sup>1</sup> Indeed, over the past decade Hawaii has seen an average of over 1,000 ignitions and over 20,000 acres burned per year.<sup>2</sup> Significant historical Hawaii fires include: the Waikoloa Village Fire (2003); Kawahiae Road Fire (2004); Akone Pule Highway Fire (2005); Nanakuli Brush Fire (2005); Waikele Fire (2005); Olowalu Fire (2007); Waialua Fire (2007); Puako Fire (2007); and Kaunakakai Fire (2009).

37. The island of Maui has not been spared from increasing wildfire risk. Within the last 17 years, the National Weather Service has issued at least 65 separate red flag warnings or fire weather watches for the area including Lahaina.

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<sup>1</sup> <https://pacificfireexchange.org/region/hawaii/>, A Joint Program of the Hawai'i Wildfire Management Organization and University of Hawai'i at Mānoa (accessed 10/31/2023).

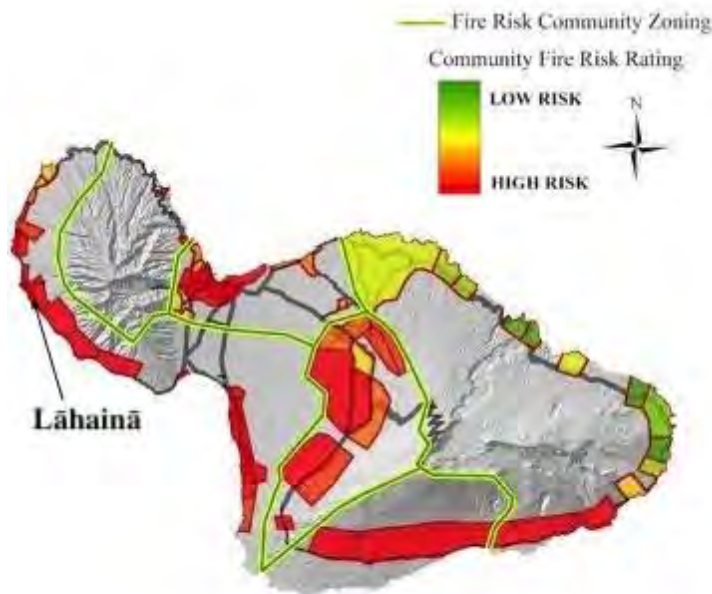
<sup>2</sup> *Id.*



38. Between 1999 and 2019, there were 80 reported fires in the County of Maui. Twenty-eight of those fires were in West Maui, 14 were in Kīhei-Mākena, and 12 were in Wailuku-Kahului.<sup>3</sup>

39. Catastrophic wildfires present a known and appreciable danger for Maui. Since 2006, the federal government declared disasters for four separate wildfires on the island of Maui: the Mā‘alaea Fire (2006), Olowalu Fire (2007), Mā‘alaea Fire (2010), and Kahana Ridge Fire (2019).

40. In 2014, as wildfire risk continued to build, the Hawaii Wildfire Management Organization issued a Wildfire Mitigation Plan (“2014 Plan”), cautioning that Lahaina’s proximity to grasslands, steep terrain, and frequent high winds makes it particularly susceptible to wildfire.<sup>4</sup>



<sup>3</sup> <https://www.maui-county.gov/DocumentCenter/View/125977/2020-Maui-County-Hazard-Mitigation-Plan-Final?bidId=> (at p. 485) (accessed 10/31/2023).

<sup>4</sup> Dan Frosch & Jim Carlton, *Hawaii Officials Were Warned Years Ago that Maui’s Lahaina Faced High Wildfire Risk*, WALL STREET JOURNAL, (Aug. 11, 2023), <https://www.wsj.com/articles/hawaii-maui-fire-risks-plans-government-e883f3a3>.

41. In the 2014 Plan, state and local officials laid out a multitude of mitigation measures that needed to be undertaken to shield the area around Lahaina from fires, including thinning vegetation near populated areas and working with landowners and utilities to help reduce fire risk on their property.<sup>5</sup>

42. In August 2018, winds ignited a fire that raged in the Kaua‘ula Valley in West Maui, uphill from Lahaina. That fire tore through fallow agricultural land near the same type of fallow agricultural land that fueled the Lahaina Fire. The 2018 fires burned 21 houses, 27 cars, and more than 2,100 acres; displaced a few dozen people; and caused more than \$4.3 million in damage.<sup>6</sup>

43. Later, researchers from the University of Hawaii and the East-West Center would connect the 2018 fires on Maui and O‘ahu to winds from the tropical cyclone “Hurricane Lane,” and the Honolulu Fire Department would attribute the O‘ahu fire to power lines arcing in Hurricane Lane’s high winds.<sup>7</sup>

44. Immediately after the 2018 fires, Maui residents raised many concerns regarding the danger of energized electric lines in dry, windy conditions with the then-mayor of Maui and State and County officials at a public meeting, asking: “Why didn’t Maui Electric shut off the power given the high winds and their equipment having caused other fires?” These questions raise the very same problems that led to and worsened the Lahaina Fire and its attendant impacts.<sup>8</sup>

45. At the very same 2018 meeting, residents asked County and State officials, “If the wind exceeds a certain amount, is Maui Electric required to shut down?” “Those wires are whipping up there. And that was the cause of the fire.” Officials responded, “That was not a conversation that was had” and confirmed MECO did not have a protocol in place to shut down

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<sup>5</sup> *Id.*

<sup>6</sup> Brianna Sacks & Justice McDaniel, *A terrifying fire struck Maui in 2018. Officials were warned of a repeat*, WASHINGTON POST, (Aug. 22, 2023), <https://www.washingtonpost.com/weather/2023/08/22/maui-fire-2018-lahaina-warning/>.

<sup>7</sup> Alison D. Nugent, Ryan J. Longman, Clay Trauernicht, Matthew P. Lucas, Henry F. Diaz, and Thomas W. Giambelluca, *Fire and Rain: The Legacy of Hurricane Lane in Hawai‘i*, (June 2020), <https://journals.ametsoc.org/view/journals/bams/101/6/BAMS-D-19-0104.1.xml>.

<sup>8</sup> *Id.*

power in advance of high winds. In the intervening five years between 2018 Fires and the Lahaina Fire, the Utility Defendants failed to develop any protocol to deenergize hazardous powerlines during high winds.<sup>9</sup>

46. Hurricane Lane served as warning and notice to each Defendant that high winds and drought conditions presented increased risk of wildfires. Further, the dangers presented by the catastrophic fires of 2018 should have spurred action among all Defendants to update or adapt their policies, practices, and procedure relating to wildfire risk, public safety, property management, and emergency management.

47. In both 2018 and 2022, fields of dry grass near Lahaina ignited, causing substantial and widely known fires. Coupled with the regular high winds and dry conditions, these fires also served as warning signs that placed Defendants on notice that proper management of private and public property and the hardening of equipment and systems used to provide electrical and telecommunications services were necessary for public safety.

48. In 2019, the Hawaii Wildfire Management Organization published a report entitled, “A Collaborative, Landscape-Level Approach to Reduce Wildfire Hazard Across Hawaii, 2018–19 Vegetation Management Rapid Mapping Assessment and Collaborative Action Planning – Maui Report.” This report contains multiple recommendations to reduce the risk of a wildfire in Lahaina, including fuel reduction; replacing invasive, fire-promoting grasses to less flammable species; and the construction of fire breaks in the area where the Lahaina Fire started.<sup>10</sup>

49. Michael Buck, a former top Hawaiian forestry official, shared a letter with Hawaii’s wildfire prevention community after the Lahaina Fire. In that letter, he lamented, “No landowner, public or private, should be allowed for any reason to maintain hundreds of acres of

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<sup>9</sup> *Id.*

<sup>10</sup> County of Maui, State of Hawaii, Cost of Government Commission, *Report on Wildfire Prevention and Cost Recovery on Maui, Exhibit D: Hawaii Wildfire Management Association, A Collaborative Landscape-Level Approach to Reduce Wildfire Hazard Across Hawaii: 2018–2019 Vegetation Management – Rapid Mapping Assessment and Collaborative Action Planning – Maui Report* (July 2021), <https://www.mauicounty.gov/DocumentCenter/View/129491/Report-on-Wildfire-Prevention--Cost-Recovery-on-Maui--Part-4-Exhibit-D-25-MB>, pp. 1, 4, 9, 11, 17, 18, 19, 20, 21, 25, 27.

flammable grass and fuel that threaten the lives of citizens” and that “[t]he Lahaina Fire was an avoidable tragedy.”<sup>11</sup>

50. Highly flammable grasses, such as buffelgrass and guinea grass, both native to Africa, have grown unchecked on Maui, ultimately dominating native species. These invasive grasses are pervasive and densely grown: amounting to between eight and twenty tons an acre on the island. By comparison, similar African grasses on the U.S. mainland grow at rates of between one or two tons an acre in open areas of the U.S. mainland. The tragic result of this dense concentration of non-native grasses was “explosive fire growth” because there was “just so much” highly flammable grass.<sup>12</sup>

51. In 2020, the Maui County Hazard Mitigation Plan Update warned that “[i]t is assumed that all current and future buildings, critical facilities, and populations in Maui County are at risk to wildfire.” Even more specific, the 2020 Maui County Hazard Mitigation Plan Update depicts Lahaina and all Lahaina buildings as occupying a “High” Wildfire Risk Area.<sup>13</sup>

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<sup>11</sup> Dan Frosch, Zusha Elinson, Jim Carlton & Christine Mai-Duc, *Everybody Knew the Invasive Grass of Maui Posed a Deadly Fire Threat, but Few Acted*, WALL STREET JOURNAL, (Aug. 25, 2023), (<https://www.wsj.com/us-news/climate-environment/maui-fire-invasive-grass-cf6dbca2>).

<sup>12</sup> *Id.*

<sup>13</sup> Maui Emergency Management Agency, County of Maui, Hawai‘i, *Hazard Mitigation Plan Update* (August 2020), <https://www.maui-county.gov/DocumentCenter/View/125977/2020-Maui-County-Hazard-Mitigation-Plan-Final>, pp. 489, 503.

Maui County Hazard Mitigation Plan Update

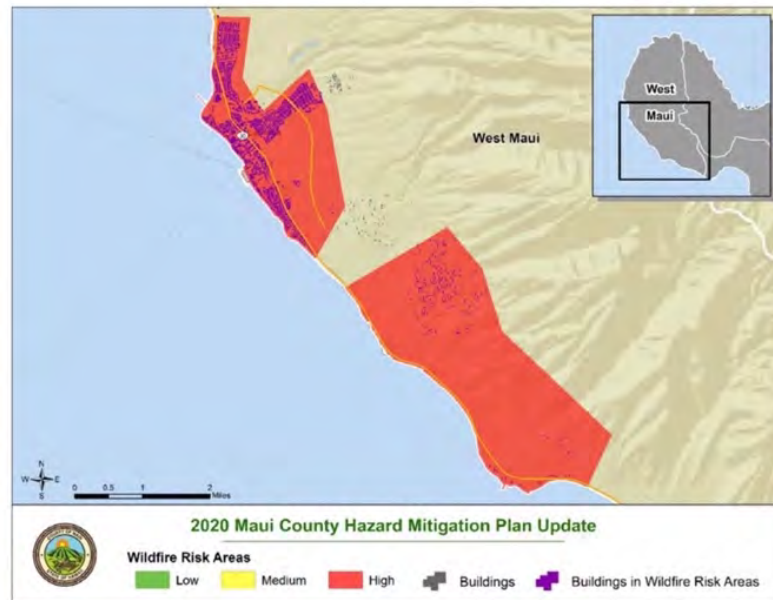


Figure 256. Buildings in Wildfire Risk Areas in Southern West Maui Community Planning Area.

52. The Mitigation Plan Update also warned that West Maui had a “Highly Likely (greater than 90% annual chance)” probability of experiencing wildfires.<sup>14</sup>

53. Plaintiffs are informed, and thereon allege, that each and every Defendant knew or should have known of these wildfire and wind-driven events as well as the increasing wildfire risk on the island of Maui. Accordingly, each and every Defendant should have taken all appropriate measures to prevent against or mitigate the risks of fire ignition and spread associated with the changing conditions long before the ignition of the Lahaina Fire.

54. The steadily increasing wildfire risks on Maui also corresponded to increasingly severe and frequent fires in other parts of the world, including the western United States. Defendants, in particular, were or should have been aware of catastrophic wildfires in other parts of the country, and particularly those caused or allegedly caused by utilities, telecoms and/or landowners through misconduct closely akin to that detailed herein.

<sup>14</sup> *Id.* Table 68 in the Hazard Mitigation Plan Update appears to mistakenly label the column depicting “the probability of a wildfire hazard” as “Landslide Probability.”

55. In a 2020 Complaint, Maui County specifically alleged 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.”

56. Maui 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 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.<sup>15</sup> Similarly, West Maui was categorized as having a “highly likely” probability—or more than a 90% chance—of wildfires each year on average.<sup>16</sup>

57. Maui County continued to raise alarms over wildfire risk the following year. In July 2021, The County’s Cost of Government Commission issued a report on “Wildfire Prevention and Cost Recovery on Maui” (the “Wildfire Prevention Report”).

58. The Wildfire Prevention Report makes explicit what each and every Defendant 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.”<sup>17</sup>

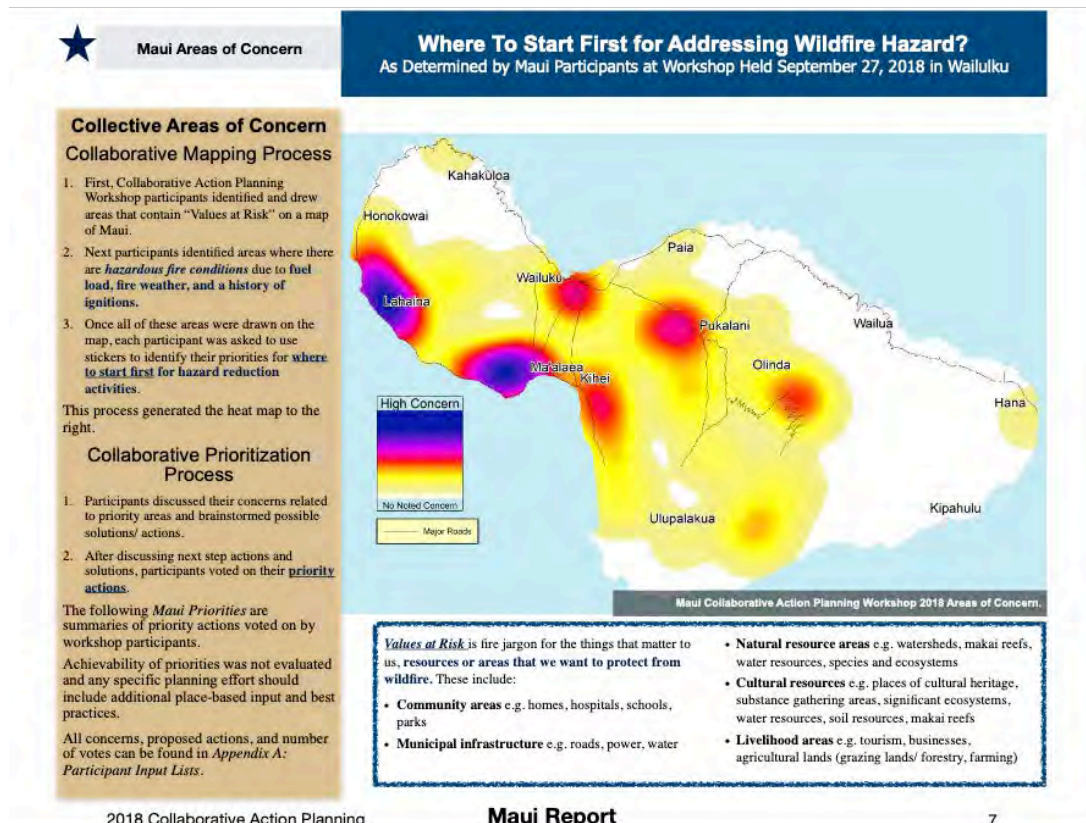
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<sup>15</sup> <https://www.mauicounty.gov/DocumentCenter/View/124390/Maui-County-Climate-Change-Litigation-Complaint>, at ¶¶ 173-174, 196. (accessed 10/31/2023).

<sup>16</sup> *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>

<sup>17</sup> *Report on Wildfire Prevention and Cost Recovery on Maui*, Cty. of Maui Cost of Gov. Comm’n. (July 2021), at 1-2.

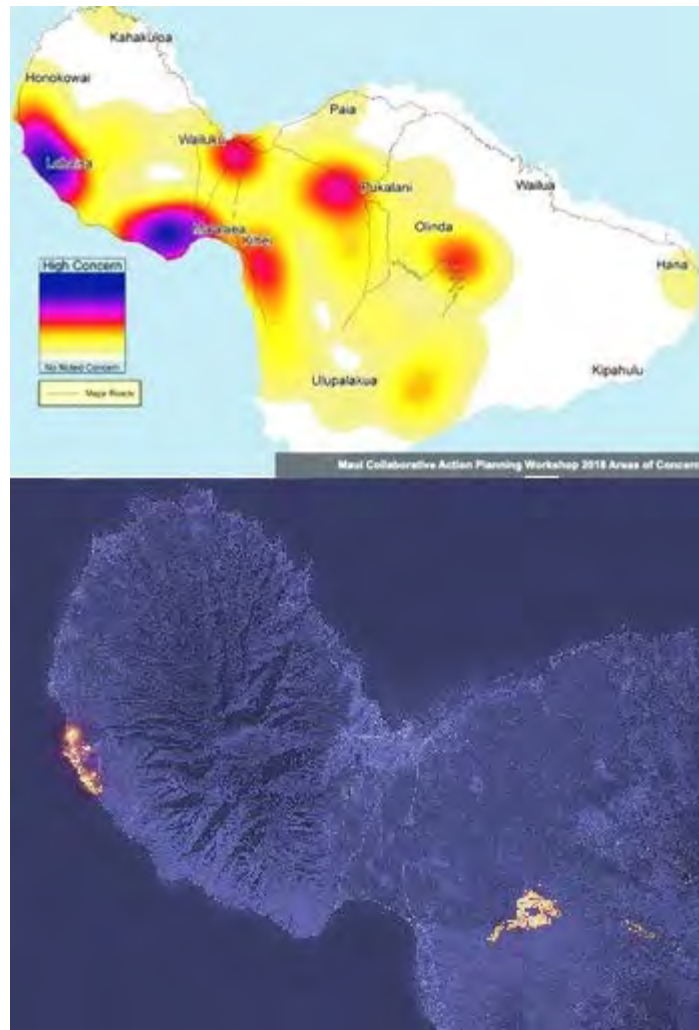
59. The Wildfire Prevention Report also included data showing that fires will continue increasing in frequency and severity; exhibits depicting which Maui communities were the most vulnerable to wildfires (including Lahaina); and the activities that increase wildfire risk (such as power lines):<sup>18</sup>



<sup>18</sup> Hawaii Wildfire Management Association, *A Collaborative Landscape-Level Approach to Reduce Wildfire Hazard Across Hawai'i: 2018–2019 Vegetation Management — Rapid Mapping Assessment and Collaborative Action Planning — Maui Report*, supra, <https://www.mauicounty.gov/DocumentCenter/View/129491/Report-on-Wildfire-Prevention--Cost-Recovery-on-Maui---Part-4-Exhibit-D-25-MB>, at pp. 2, 7–8.







61. The Wildfire Prevention Report also identified several problems and actionable solutions that would have lessened the risk of the Lahaina Fire, such as the “[r]eduction of alien plant life that serves as fuel” through the implementation of “an aggressive plan to replace these hazardous fuel sources with native plants to reduce combustible fuel while increasing water retention.” The Wildfire Prevention Report also explained 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,” which “is exacerbated by overgrown areas in the rights of way beneath the lines.” The Wildfire Prevention Report identified responsive action to the problems posed by power lines, which included routine inspections of “power transmission

lines and rights of way” and tasking “electric utility companies with corrective actions,” like “infrastructure upgrades” and fuel reduction.<sup>19</sup>

62. The Wildfire Prevention Report also concluded that creating additional fines or penalties for causing wildfires was unnecessary, in part, because wildfire victims and survivors could sue for negligence.<sup>20</sup>

63. The Utility Defendants also had specific knowledge of the risk of wildfire on Maui. In fact, HEI submitted a 2022 funding request to the Public Utilities Commission to offset the \$189.7 million HEI would need to spend to bolster its power grid statewide, which included wildfire-prevention measures.<sup>21</sup>

64. Jennifer Potter, who resigned from the Hawaii Public Utilities Commission in October 2022, and who lived in Lahaina on Maui, confirmed that the Utility Defendants knew about the wildfire risk to Maui: “There was absolutely knowledge within the state and within the electric industry that fire was a huge, huge concern on the island of Maui, and even more so than any of the other islands[.]”<sup>22</sup>

65. In fact, the Utility Defendants indicated in their funding request that “[t]he risk of a utility system causing a wildfire ignition is significant” and that the Utility Defendants sought funding, in part, to guard against their facilities being “the origin or a contributing source of ignition for a wildfire.”<sup>23</sup>

66. Meanwhile, the “the average area burned per year in Hawaii has increased 300% over the past century,” with ignitions accounting for 95% of wildfires. Critically, over one-third of Hawaii’s neighborhoods are in the “extreme fire hazard category.”<sup>24</sup> Research also suggests

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<sup>19</sup> *Report on Wildfire Prevention and Cost Recovery on Maui*, *supra*, <https://www.mauicounty.gov/DocumentCenter/View/129493/Report-on-Wildfire-Prevention--Cost-Recovery-on-Maui---Part-1-Report-Exhibits-A-B-33-MB>, at pp. 11–12.

<sup>20</sup> *Id.* at pp. 4, 6.

<sup>21</sup> Frosch & Carlton, *supra*, <https://www.wsj.com/articles/hawaii-maui-fire-risks-plans-government-e883f3a3>.

<sup>22</sup> *Id.*

<sup>23</sup> Brianna Sacks, *Hawaii utility faces scrutiny for not cutting power to reduce fire risks*, THE WASHINGTON POST, (Aug. 12, 2023), [https://www.washingtonpost.com/climate-environment/2023/08/12/maui-fire-electric-utility/?utm\\_campaign=wp\\_post\\_most&utm\\_medium=email&utm\\_source=newsletter&wpisrc=nl\\_most](https://www.washingtonpost.com/climate-environment/2023/08/12/maui-fire-electric-utility/?utm_campaign=wp_post_most&utm_medium=email&utm_source=newsletter&wpisrc=nl_most).

<sup>24</sup> <https://pacificfireexchange.org/resource/slide-presentation-overview-of-wildfire-in-hawaii/> (2023).

that “Hawaii lands burned by wildfires were increasing substantially over time, but at a higher rate than on the fire-prone U.S. Mainland.”<sup>25</sup>

67. The risk of wildfire on Maui does not depend entirely upon drought or rainfall conditions. Even 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.<sup>26</sup>

68. Accordingly, proper land management by property stakeholders of vegetation situated near potential ignition sources, whether it could be the cause of a sparking event or merely fuel, was of paramount importance. Dry invasive grasses, thickets, bushes, and brush – particularly those located in areas with high fire risk and where an ignition could be difficult to detect or extinguish – needed proper and proactive management. Indeed, the Wildfire Prevention Report urged utilities to “routinely inspect power transmission lines and rights of way.”<sup>27</sup>

69. The Landowner Defendants also knew, or should have known, about the acute risk of wildfire on their land on Maui. The Landowner Defendants knew their fallow agricultural land had been overtaken by dry, non-native grasses. They also knew, or had reason to know, that wildfires ravaged similar fallow agricultural land on Maui on multiple prior occasions, including as recently as 2018 when Hurricane Lane triggered fires that exploded through 2,100 acres of non-native grasses in the same region where they own, develop, and manage their land. The dangerous and unreasonable state of the Landowner Defendants’ property continued year after year until August 2023, resulting in conditions described by one pyrogeography scholar as: “The town was basically surrounded by a powder keg waiting to go off with a spark.”<sup>28</sup>

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<sup>25</sup> *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 10/31/2023).

<sup>26</sup> *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/>; Dan Frosch, Zusha Elinson, Jim Carlton & Christine Mai-Duc, *Everybody Knew the Invasive Grass of Maui Posed a Deadly Fire Threat, but Few Acted*, WALL STREET JOURNAL, (Aug. 25, 2023), <https://www.wsj.com/us-news/climate-environment/maui-fire-invasive-grass-cf6dbca2>.

<sup>27</sup> See, *Report on Wildfire Prevention and Cost Recovery on Maui*, *supra*, at p. 12.

<sup>28</sup> Imogen Piper, Joyce Lee, Elahe Izadi & Brianna Sacks, *Maui’s neglected grasslands caused Lahaina fire to grow with deadly speed*, WASHINGTON POST, Sept. 2, 2023), <https://www.washingtonpost.com/investigations/interactive/2023/lahaina-wildfires-invasive-grass-destruction/>.

70. “The hills above Lahaina’s historic downtown have been surrounded by non-native grasses for more than a century.” It is well known that “[t]he grasses — relics of the sugar cane plantations in the area that largely shuttered in 1999 — dried out the landscape.” Every year, the grasses “grew taller after winter rains,” then “[b]rushfires would sweep through and the species adapted and regrew, crowding out native grasses and moving close to homes.” Sadly, investigation has revealed “the geographic spread and density of non-native grasses were key elements to creating a fast-moving, uncontrollable fire” that ultimately devastated Lahaina.<sup>29</sup>

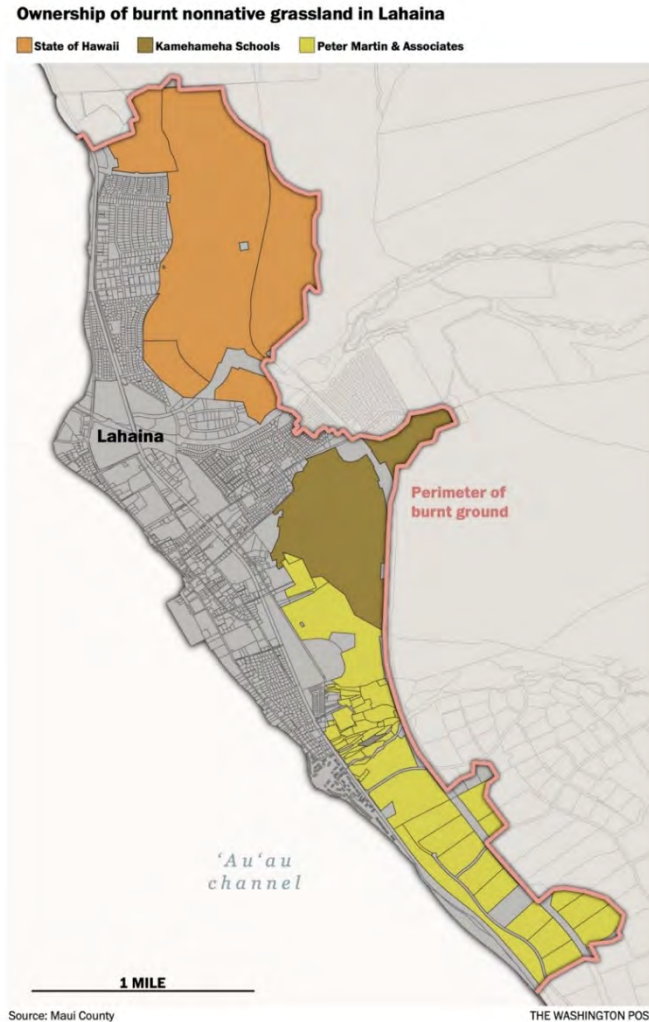
71. Activists and experts have also been sounding the alarm about the fire risk associated with non-native, invasive, and highly flammable grasses since at least 2018, describing the land around Lahaina as a “vast swath of vegetated fuels” and warning that landowners had “let these lands turn into match sticks.” As discussed, wildfire experts in Hawaii had named vegetation management of nonnative grasses as vital to mitigating fire risk on Maui.<sup>30</sup>

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<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

72. The Landowner Defendants own the fields in the area where the fires started and spread on August 8, 2023. Upon information and belief, the following graphic generally depicts the ownership of burnt nonnative grassland in Lahaina:<sup>31</sup>



73. None of the Landowner Defendants heeded the warnings from the Hawaii Wildfire Management Organization 2014 wildfire mitigation plan or from the 2019 Hawaii Wildfire Management Organization's Report—which specifically addressed landscaping and vegetation management on Maui.<sup>32</sup>

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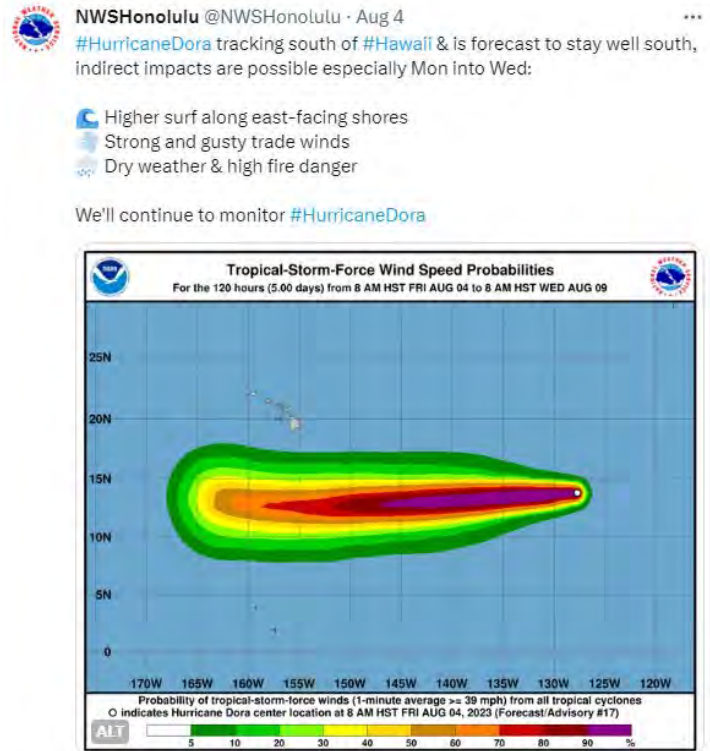
<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

74. In light of these publicly acknowledged conditions and commonsense risks, each and every Defendant should have acted to prevent against or mitigate the risk of wildfire ignition and spread. Instead, the Defendants individually and collectively failed to respond accordingly and, as a result, caused or contributed to the ignition and spread of the Lahaina Fire.

## II. Defendants Received Warning of High Fire Risk Days Before the Lahaina Fire

75. On August 4, 2023, the National Weather Service (“NWS”) issued a public notice via social media that Hawaii may experience impacts from the developing Hurricane Dora into the following week. Specifically, NWS cited the potential for “strong and gusty trade winds,” dry weather, and “high fire danger.”



76. On August 6, 2023, NWS issued a second public notice via social media. This time, the notice cautioned that impending weather, coupled with dry conditions, posed a “serious fire” and “damaging wind threat” and warned the public to “stay alert.” In addition, NWS issued a separate alert warning that although Hurricane Dora would not directly impact Hawaii it created

“a threat of damaging winds [and] fire weather” from Monday, August 7, 2023, through Wednesday, August 9, 2023.



77. On August 7, 2023, NWS issued an updated warning. This time, the warning contained two critical components: a High Wind Watch and a Fire Warning for those portions of the state which were in the path of the forecasted winds. Further, the warning noted that the winds could down electrical overhead facilities and facilitate the spread of a fire. The historic town of Lahaina, located on the western shore of the island of Maui, was subject to these warnings.

78. On August 8, 2023, the NWS issued both a High Wind Warning and a Red Flag Warning for portions of the State of Hawaii, including the island of Maui and, specifically, its western shore. According to NWS, a “Red Flag Warning” is reserved for circumstances in which “critical fire weather conditions either occurring now or will occur shortly” and advises that “a combination of strong winds, low relative humidity, and warm temperatures can contribute to extreme fire behavior.



79. In its August 8th notice, the NWS specifically warned that winds could reach between 30-45 miles per hour, with gusts up to 60 miles per hour. In addition, NWS’ Red Flag Warning forecasted “[h]igh fire danger with rapid spread,” advised against any outdoor burning, and urged the public to stay safe and cautious.



80. Plaintiffs are informed, and thereon allege, that each and every Defendant knew or should have known of the impending weather conditions from August 4, 2023, onward and should have taken all appropriate measures to prevent against or mitigate the risks of fire ignition and spread associated with those warnings.

81. Each of the Defendants knew that their conduct under such conditions had a relationship to wildfire risk and public safety.

82. The Utility Defendants and the Telecom Defendants knew their facilities had to be designed, constructed, inspected, and maintained in a way that did not increase the risk of wildfire ignition, particularly during drought conditions and when exposed to high winds.

83. The Landowner Defendants knew that vast amounts of invasive vegetation on their property could readily serve as a fuel source for the ignition and spread of wildfire. They knew that their properties were overrun with desiccated nonnative ground vegetation dry tinder and that their extensive holdings surrounded populated areas. Furthermore, the Landowner Defendants were aware that local fire codes required them to remediate the dangerous conditions on their property. Accordingly, the Landowner Defendants knew or should have known that developing and implementing operating policies, practices, and procedures for managing or removing vegetation was necessary, including grasses, trees, ground cover, dry brush, and others, so that they did not contribute to the ignition or spread of a wildfire.

84. All Defendants, regardless of their form or status, were required to comply with the laws and regulations of the State of Hawaii, including the Hawaii Revised Statutes and Hawaii Administrative Rules, as well as the Maui County Code and State Fire Code.

85. Yet, each and every Defendant fell short of their respective responsibilities. As a result of the Defendants' individual and collective failures, the Lahaina Fire ignited and spread and caused Plaintiffs' damages alleged herein.

### **III. Origins of the Lahaina Fire**

86. In their October 27, 2023 letter to the Honorable H. Morgan Griffith, Chair of the Federal Subcommittee on Oversight and Investigations of the House of Representatives, the Utility Defendants stated that multiple transmission lines serving West Maui “tripped offline” at around 5:00 a. m. on August 8<sup>th</sup>. The Utility Defendants were aware that another wildfire, the Olinda Fire, had already ignited the previous evening, and should have acted immediately to ensure that their electrical facilities were not compromised and had not caused an ignition.

87. The Utility Defendants transmission lines “tripped offline” when Utility Pole No. 7A located near Ho‘okahua Street, situated on the west back side of the Lahaina Intermediate School, split in two, causing the collapse of the upper section of the pole and resulting in a chain reaction of stress and strain along the Utility Defendants’ electrical conductors connected between Pole No. 7A and Pole No. 25 — located across Lahainaluna Road, and further downhill between Pole No. 25, and Pole No. 24. At Pole No. 25 one of the affixed distribution powerlines severed and fell to the ground. The following image depicts the location of Pole Nos. 7A, 25, and 24:



88. The following image depicts Pole No. 7A split in two along Ho'okahua Street, and the attached conductors in contact with the ground:



89. After Pole No. 7A split and collapsed, despite actual knowledge that their transmission lines had tripped and that wildfires were occurring elsewhere on Maui, at

approximately 6:00 a.m. the Utility Defendants manually re-energized the transmission line providing power to a circuit that included the downed distribution lines at Poles No. 7A, 24 and 25.

90. Thirty minutes later, at approximately 6:30 a.m., a brush fire was reported along Lahainaluna Road at the Utility Defendants' electrical facilities spanning Poles No. 24 and 25.

91. Subsequently, at 6:39 a.m., the same transmission line which the Utility Defendants had manually re-energized, tripped offline again.

92. A nearby resident described what he was able to see from his home near Lahainaluna Road during a social media livestream. The video, distributed on various news outlets, shows the Utility Defendants' felled overhead distribution lines and the ignited brush on the Landowner Defendants' property near the roadway.<sup>33</sup> 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 the whole place was just engulfed."

93. As the eyewitness continues to record, he alerts a first responder that "the line is live on the ground[.]"

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<sup>33</sup> 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/>, published August 15, 2023 (accessed October 31, 2023).



94. In the face of this video evidence, the Utility Defendants have since admitted that their electrical facilities caused the brush fire near Lahainaluna Road on the morning of August 8, 2023.

95. Private land within the general area of origin, owned, managed and maintained by the Landowner Defendants, had been neglected so as to increase the risk of a wildfire's ignition and spread.

96. The Landowner Defendants' land management failures permitted an overgrowth of dangerously dry and flammable invasive grasses to run wild on their property and facilitated the unimpeded growth and spread of the Lahaina Fire.

97. Furthermore, the private land, owned and maintained by the Landowner Defendants, lacked sufficient and properly maintained firebreaks required by local authorities and applicable fire codes that would have prevented the spread of the Lahaina Fire. Upon information and belief, at its initial stage the fire would have likely self-extinguished on the Landowner

Defendants' private land had the Landowner Defendants not allowed for vegetative overgrowth or otherwise constructed and/or maintained the appropriate firebreaks.

98. By 6:43 a.m., just four minutes after the Utility Defendants' manually re-energized transmission line had again tripped offline, the early stages of the Lahaina Fire were photographed by a local resident. The photograph below depicts the expanding fire spread and its consumption of the vegetative overgrowth that overlapped the Landowner Defendants' poorly maintained fire break access road. The absence of a properly constructed and maintained fire break access road, void of tinder dry ground vegetation overgrowth, permitted the fire to spread rapidly and gain strength.



99. Although efforts undertaken by local firefighters at first contained the spread of fire, conditions deteriorated such that by midafternoon a flare up of the initial fire, fueled by the tinder dry vegetative overgrowth located on the Landowner Defendants' property, caused intense and an uncontrolled rapid growth and spread of fire that quickly vaulted over Hawaii Route 3000, a four-lane bypass roadway, and onto additional unmaintained property owned by the Landowner



Defendants. By 3:50 p.m. the Lahaina Fire had spread to residential areas of Lahaina bordering the Landowner Defendants' untended property.

100. The fire raged for hours, consuming hundreds of homes and businesses. By early evening that same day, desperate local residents cut off from escape, were witnessed jumping into the ocean to evade its fury. In its wake, the Lahaina Fire tragically claimed the lives of 100 people and injured dozens more.

101. While the full scale of the physical impact upon the Town of Lahaina and its surroundings have yet to be fully tallied, the Lahaina Fire caused unprecedented and devastating property damage. Current estimates are that over 2,100 acres were burned and 2,200 structures, of which nearly 90% were homes, were destroyed.

### **DEFENDANT-SPECIFIC ALLEGATIONS**

#### **I. The Utility Defendants Failed to Prevent the Ignition and Spread of the Lahaina Fire**

102. In addition to the general allegations set forth above, Plaintiffs make the following allegations specifically against the Utility Defendants and in support of the Causes of Action brought against them.

103. The Utility Defendants – HEI, HECO, HELC, and MECO – designed, built, operated, and maintained the electrical facilities that ignited the Lahaina Fire in August 2023. This fire was not an isolated incident. Instead, it was the result of persistently inadequate and deficient business practices by the Utility Defendants.

104. Over the past century, the Utility Defendants have provided important and essential electrical utility services to the public pursuant to the terms of a franchise granted by the State of Hawaii. Today, that franchise agreement allows the Utility Defendants to operate a state-sanctioned monopoly that provides electrical service to 95% of the State of Hawaii.

105. After first incorporating in 1891, HECO grew substantially. Eventually, the company expanded its reach by acquiring other utilities. In the fall of 1968, HECO acquired Maui

Electric Company, Limited, certain of its property interests, and its electrical facilities. Less than two years later, in the spring of 1970, HECO acquired Hawaii Electric Light Company, Inc., certain of its property interests, and its electrical facilities. With these purchases, HECO became the single largest provider of electrical service in the State of Hawaii. Today, all three utilities do business as HECO.

106. HEI was formed in 1983 and, today, is a publicly traded holding company. HEI and its board oversee its own business and the businesses of its subsidiaries, including HECO.

107. The Utility Defendants are, and at all relevant times were, regulated by the Hawaii Public Utilities Commission (“HPUC”) and subject to the regulations, orders, and general rules of the Commission, including HPUC General Orders Nos. 6 and 7, and the Hawaii Administrative Rules, as well as all laws of the State of Hawaii.

108. The Utility Defendants are required to furnish electricity to all eligible members of the public through their electrical grids. The Utility Defendants’ 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 reach of most weather and environment. Other parts of the grid are above ground, including the familiar and ubiquitous wooden poles and overhead lines that stretch above roads and power homes across the State of Hawaii.

109. Even though they act as one entity, the Utility Defendants’ grid is a patchwork of equipment designed and built by different subsidiaries at different times, including legacy facilities brought under HECO’s control by its various acquisitions of other utilities. Accordingly, different components of the electrical grid – which are subjected to harsh island elements – degrade at different rates and under different conditions. Knowing this, the Utility Defendants were responsible for developing a robust and proactive asset strategy program for designing, constructing, inspecting, and maintaining equipment which presented the risk of sparking a fire.

110. Similarly, the Utility Defendants knew, or should have known, that vegetation at or near its facilities posed a risk of wildfire ignition. Grasses at or near the rights of way used by the Utility Defendants were, and have been, readily ignitable fuel for prior utility-caused wildfires. In turn, the Utility Defendants should have developed and implemented an effective practice for identifying and mitigating vegetation-related wildfire risks, including vegetation which could cause or serve as fuel for a wildfire ignition.

111. As the Utility Defendants acknowledge, “[o]verhead lines are more vulnerable to adverse weather conditions and objects contacting lines[...] and require more frequent repair[.]”<sup>34</sup> Indeed, one of the Report’s recommendations emphasizes that “[m]ost wild/brush/forest fires are 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. This condition is exacerbated by overgrown areas in the rights of way beneath the lines.”<sup>35</sup>

112. Further, and as recently as 2022, the Utility Defendants admitted in a filing with the HPUC that “[t]he risk of a utility system causing a wildfire ignition is significant” and that 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.”<sup>36</sup>

113. 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.”<sup>37</sup>

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<sup>34</sup> <https://www.hawaiianelectric.com/about-us/power-facts/undergrounding-utility-lines> (accessed October 31, 2023)

<sup>35</sup> *Report on Wildfire Prevention and Cost Recovery on Maui*, Cty. of Maui Cost of Gov. Comm’n. (2021) at pp. 10, 12.

<sup>36</sup> 2022 EPRM Application, Hawaiian Electric at 49;

[https://www.hawaiianelectric.com/documents/about\\_us/our\\_vision\\_and\\_commitment/resilience/20220630\\_resilience\\_EPRM\\_application.pdf](https://www.hawaiianelectric.com/documents/about_us/our_vision_and_commitment/resilience/20220630_resilience_EPRM_application.pdf) (accessed October 31, 2023).

<sup>37</sup> *Id.* at 50.

114. Yet, despite their extensive knowledge of risks associated with their system, the Utility Defendants failed to take reasonable steps to mitigate against or prevent the risks of wildfire ignition, including the risks present during high winds and drought conditions.

115. The Utility Defendants failed to adequately appropriate and allocate resources to the design, construction, inspection, and maintenance of electrical facilities, including those facilities at or near the areas of origin of the Lahaina Fire.

116. In doing so, the Utility Defendants failed to prioritize safety which, in turn, caused or contributed to the inadequate implementation of construction and design programs, inspections and maintenance, the hiring, training, retention, and oversight of qualified employees, agents, and contractors responsible for the design, construction, inspection, and maintenance of those facilities, including the placement of equipment and management of vegetation at or near that equipment.

117. The Utility Defendants were responsible for developing policies, practices, and procedures for ensuring that any employee, agent, or contractor performing activity which impacted their facilities was properly trained, prepared, and overseen to ensure their conduct did not create a risk of harm to third parties.

## **II. The Utility Defendants Negligently Failed to De-energizing their Facilities**

118. At all relevant times, the Utility Defendants were well aware that, although the significant wildfire risks facing Maui were increasing, they were not unique. Wildfire is, and has been, a major concern of the utility industry for decades. In response to well-known concerns over utility-caused ignitions, several major electric utilities have developed a simple solution: shutting off the power through proactive de-energization.

119. 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 include high winds, low humidity, “red flag”

warnings, drought conditions, the presence of dry vegetative fuel, and fire threats to electrical infrastructure.

120. All of these factors were present when the Lahaina Fire began. Accordingly, the Utility Defendants had actual knowledge, or reason to know, their facilities did, or could foreseeably, create a risk of harm to the public.

121. Indeed, major electrical utilities throughout the United States in fire-prone areas employ a Public Safety Power Shut-Off, or “PSPS” procedure, to proactively de-energize their electrical facilities to reduce the risk of, and hopefully prevent, the ignition of utility-caused wildfires.

122. Using a proactive de-energization program, utilities can identify equipment at risk of causing an ignition due to weather, alter the flow of electricity in their grid, and notify customers days in advance of that alteration.

123. By the Utility Defendants’ own admission, they reviewed the wildfire mitigation plans of other utilities which implemented proactive de-energization programs—“to identify best practices that would be appropriate for Hawaii’s environment and weather conditions.”<sup>38</sup>

124. Despite studying the best practices of other utilities, the Utility Defendants failed to implement a proactive de-energization program to combat wildfire risk.

125. Accordingly, when high winds arrived on the island of Maui in August 2023, the Utility Defendants were not prepared to implement a de-energization protocol. As a result, electricity continued to flow through the Utility Defendants’ facilities; causing the Lahaina Fire.

126. Despite knowing the risks associated with operating electrical facilities under high winds and in drought conditions, the Utility Defendants negligently failed to develop and implement a proactive de-energization plan, or to otherwise alter or restrict the flow of electricity to or through their facilities when faced with an increased risk of wildfire ignition.

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<sup>38</sup> *Id.* at 49.

### **III. The Utility Defendants' Electrical System, as Designed, Constructed, Inspected, and Maintained, Inherently Presented a Risk of Igniting a Wildfire**

127. The Utility Defendants had the means, knowledge, and ability to design, construct, inspect and maintain their electrical facilities in a way that would harden or prepare those facilities for the risks of ignition presented by high winds and drought conditions.

128. However, the Utility Defendants failed to update their electrical infrastructure in a manner that would prevent wildfires; choosing instead to delay or defer necessary upgrades and repairs. These design, construction, and maintenance choices consequently resulted in the Utility Defendants' electrical system presenting an inherent risk of causing a wildfire in adverse weather conditions.

129. In 2019, the Utility Defendants admitted to the HPUC that aging and outdated wooden poles utilized by their grid needed to be replaced and warned of a "serious public hazard" if those poles failed.<sup>39</sup>

130. In 2020, in response to a request from the HPUC, the Utility Defendants publicly acknowledged the wooden poles throughout their system were at risk of failure. For example, over 39% of the wooden poles within the Utility Defendants' system were over 51 years old. These aging poles were also rated for their ability to withstand strong wind. These aging poles, which made up over a third of the Utility Defendants' system, were rated for 56 miles per hour.

131. The issues facing the Utility Defendants' aging infrastructure should have been enough to spur system hardening. The fires resulting from Hurricane Lane in 2018 were undoubtedly a red flag. Yet, the Utility Defendants continued to delay replacement, repair, and reconstruction of these poles as a cost-saving measure.

132. In a 2022 rate increase application to the Hawaiian PUC to fund an "Exceptional Project Recovery Mechanism ("EPRM"), the Utility Defendants represented that increased rates

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<sup>39</sup> "Electrical wire, poles in need of replacement on Maui were little match for winds," Associated Press, August 26, 2023, <https://abcnews.go.com/Business/wireStory/bare-electrical-wire-poles-replacement-maui-match-strong-102584387> (accessed October 31, 2023).

were necessary to finance necessary system hardening measures.<sup>40</sup> Within that request, the Utility Defendants sought \$7,708,000.00 to strengthen approximately 80 poles located within a “severe wood decay zone” in Maui County.

133. Hawaii Public Utilities Commission General Order No. 6 sets forth the standards for the design and construction of overhead lines, including poles and other supporting structures. General Order No. 7 sets forth the standards for electric utility service in the state of Hawaii. Other applicable rules and regulations, including H.A.R. § 6-73-11, sets forth standards for the installation, operation, and maintenance of overhead electrical supply and communication lines according to the National Electrical Safety Code.

134. Plaintiffs are informed, and thereon allege, that the Utility Defendants’ electrical facilities at or near the areas of the ignition and spread of the Lahaina Fire were not compliant with General Orders Nos. 6 or 7 or the standards established by H.A.R. § 6-73-11, among other laws and regulations.

135. As a result of the Utility Defendants’ failures, Plaintiffs’ Insureds suffered substantial and irreparable damages as alleged herein.

#### **IV. The Telecom Defendants Failed to Prevent the Ignition and Spread of Wildfire.**

136. In addition to the general allegations set forth above, Plaintiffs make the following allegations specifically against the Telecom Defendants and in support of both the Causes of Action brought against the Telecom Defendants and the damages set forth in the Prayer for Relief contained herein.

137. The Telecom Defendants provide communications service to citizens of Hawaii, including on the island of Maui. Accordingly, they are regulated by the Hawaii Public Utilities Commission and subject to the regulations, orders, and general rules of the Commission, including General Orders No. 6 and the Hawaii Administrative Rules, as well as all laws of the State of Hawaii.

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<sup>40</sup>2022 EPRM Application, Hawaiian Electric at 1-2, 43.

138. To provide telecommunications services, the Telecom Defendants design, construct, inspect, and maintain certain physical infrastructure, including poles, cables, wiring, equipment, connectors, hardware and other component parts and products that are or combine to form telecom facilities.

139. In some instances, the Telecom Defendants own or control their own poles or physical fixtures and facilities to support their telecom infrastructure. In others, the Telecom Defendants enter into agreements with third parties, such as the Utility Defendants and Landowner Defendants, which permit the Telecom Defendants to use third party property, including utility poles or other structures, to support their telecom infrastructure. Accordingly, Telecom Defendants own or otherwise have interests in property, easements, rights of way, and fixtures which are used or intended to be used in their businesses.

140. While some of the Telecom Defendants' facilities are new, much of them are a patchwork of facilities constructed at different times, in part because they are subject to harsh island conditions, wear and require maintenance at different rates. Regardless of whether their telecom facilities are independently owned or part of a joint agreement with a third party, the Telecom Defendants had a duty to ensure that those facilities do not pose a risk of harm to third parties, including by causing or contributing to the ignition and spread of a wildfire.

141. To manage their facilities, the Telecom Defendants engaged in the hiring, training, and retention of employees, agents, and contractors responsible for the design, construction, inspection, and maintenance of those facilities, including the placement of equipment and management of vegetation at or near that equipment.

142. The Telecom Defendants were responsible for developing policies, practices, and procedures for ensuring any employee, agent, or contractor performing activity which impacted their facilities was properly trained, prepared, and overseen to ensure that their conduct did not create a risk of harm to third parties.



143. In order to ensure their facilities did not pose a risk of harm, the Telecom Defendants should have taken steps to ensure those facilities were designed, constructed, inspected, and maintained in accordance with, and where necessary in excess of, any industry standards for telecom facilities.

144. The Telecom Defendants were, at all times, relevant, required to comply with the standards for overhead communications facilities as set forth in HPUC General Order No. 6.

145. In addition to, and coextensive with, their general duties under the law, the Telecom Defendants were, at all relevant times, required to: (i) design, construct, install, operate, and maintain their plants and facilities in a manner consistent with prudent and generally accepted telecommunications industry practices and standards; (ii) adopt and adhere to a maintenance program to ensure safe, adequate, and reliable service at all times; (iii) adopt and maintain service reliability procedures and standards; (iv) adopt and maintain a suitable safety program pursuant to H.A.R § 6-80-87, and including subdivisions (4), (7), (9), and (12).

146. Further, and pursuant to H.A.R. § 6-73-11, the Telecom Defendants were required to comply with the standards set forth in the National Electrical Safety Code.

147. The Telecom Defendants failed to exercise reasonable care in the design, construction, inspection, and maintenance of their telecom facilities which caused or contributed to the ignition of the Lahaina Fire. Specifically, the Telecom Defendants improperly loaded wooden poles or other fixtures, regardless of ownership, with their equipment, cabling, wiring, and other components; placed their facilities, including any independently owned poles, cabling, wiring, or other components, in locations or in manner that presented both a foreseeable risk of negatively impacting the structural integrity of supporting poles and contrivances and of energization and fire ignition as a result of the structural failure of any element of owned or adopted facilities.

148. Plaintiffs are further informed, and thereon allege, that the Telecom Defendants failed to properly design, construct, inspect, and maintain their facilities in a manner that complied

with General Order No. 6 and H.A.R § 6-80-87. These failures included not developing, implementing, or allocating the resources necessary to hardening their property or equipment; maintaining equipment in a manner that did not adversely impact other infrastructure – including electrical facilities – over time and under certain weather conditions such as high wind; not inspecting, identifying, or repairing equipment which did or reasonably could pose a risk of causing or contributing to the ignition or spread of a wildfire.

149. In addition, the Telecom Defendants failed to develop or abide by standard policies, practices, and procedures related to the attachment of cable and wiring on wooden utility poles. Instead, the Telecom Defendants routinely overloaded their wooden poles and the wooden poles of third parties with excess equipment, cabling, wiring, or other physical infrastructure which caused or contributed to the wear or failure of those wooden poles over time.

150. The Telecom Defendants knew or should have known that the failure to properly append cabling and other equipment to wooden poles would increase the rate of wear or structural failure of those poles under normal circumstances. Similarly, the Telecom Defendants knew that improperly loading wooden poles with cabling and other equipment posed a common-sense and particularized risk of harm when those poles and equipment were subjected to increased wind velocity.

151. Despite being aware of the commonsense risks posed by improperly maintaining their telecom facilities, the Telecom Defendants failed to take reasonable steps to design, construct, inspect, and maintain those facilities so that they, whether in isolation or in combination with other facilities, equipment, or property, did not cause or contribute to the ignition and spread of a wildfire.

152. Further, Plaintiffs are informed, and thereon allege, that the Telecom Defendants failed to ensure that the employees, agents, and contractors acting on their behalf with respect to the design, construction, inspection, and maintenance of their facilities were competent or adequately trained or managed. As a result, those individuals and entities acting on behalf of the

Telecom Defendants were not properly qualified or trained to work on the telecom facilities or were otherwise unaware of the risks posed by their actions.

153. By failing to properly conduct or oversee the design, construction, inspection, and maintenance of their facilities, including all overhead cables, wiring, hardware, fixtures, wooden and steel poles, and all attendant component parts and products, including ground wires, electrical services, cell sites, fiber optic cables, coaxial cables, connecting hardware, and all other components, the Telecom Defendants caused or contributed to the ignition and spread of the Lahaina Fire.

154. As a result of the Telecom Defendants' failures, Plaintiffs' Insureds suffered substantial and irreparable damages as alleged herein.

#### **V. The Landowner Defendants Failed to Prevent the Ignition and Spread of Wildfire**

155. In addition to the general allegations set forth above, Plaintiffs make the following allegations specifically against the Landowner Defendants and in support of both the Causes of Action brought against the Landowner Defendants and the damages set forth in the Prayer for Relief contained herein.

156. For years, the Landowner Defendants knew that drought conditions and other environmental factors increased the presence of dry vegetation and grass on or near their property. The presence of these grasses in close proximity to power lines posed an extreme risk of harm by serving as ready fuel for causing the ignition and spread of wildfire.

157. Since at least 2014, state and local officials informed the public that "the majority of wildfires on Maui are caused by human error [...] especially near developments" and "power line right of ways[.]"<sup>41</sup> The 2014 Report specifically highlighted the risks caused by the fact that "sprawling dry, invasive, fire-prone grasslands surround many communities."<sup>42</sup> The 2014 Report then singled out The Bishop Estate in particular (by its trade name Kamehameha Schools) and

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<sup>41</sup> Hawai'i Wildfire Management Organization, *Western Maui Community Wildfire Protection Plan*, (2014) at p. 9.

<sup>42</sup> *Id.*

identified a “lack of communication” between local landowners, such as Kamehameha Schools, and local fire agencies as a top 10 “Wildfire Concern” for Maui.<sup>43</sup>

158. The Landowner Defendants were responsible for ensuring their property and land did not pose a risk of igniting or facilitating the spread of a wildfire. The Landowner Defendants had a duty to ensure their vegetation – including trees, grasses, and other ignitable ground cover – as well as their properties generally, were managed in a way that would mitigate against the risk of wildfire ignition and spread.

159. In addition to, and coextensive with, their common law duties regarding the management of their property, the Landowner Defendants were, at all relevant times, required to comply with H.R.S. § 132-8, which requires all property owners to keep their premises “reasonably safe from loss of life or injury to persons or property by fire.”

160. Plaintiffs are informed, and thereon allege, that the Landowner 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 Landowner Defendants’ property and, at the time of the Lahaina Fire, was in a readily ignitable state.

161. Publicly available photographs of the parcel of land located at or near the area of origin of the Lahaina Fire, owned by the Defendant, The Bishop Estate, dated October of 2019, demonstrate the land was poorly maintained and large quantities of highly flammable, dry, and non-native grasses were permitted to grow freely on the land.

162. Subsequently, in 2020, that same parcel of land owned by the Defendant, The Bishop Estate, failed a “Fire Brush Inspection” conducted by local authorities. As a result, The Bishop Estate was ordered to construct a firebreak on its property.

163. The same parcel of land was reinspected in September of 2023, shortly after the Lahaina Fire, and local officials found that The Bishop Estate had failed to properly maintain the firebreaks it had ordered three years earlier, specifically citing its “[f]ailure to maintain firebreak

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<sup>43</sup> *Id.* at Appendix D.

off homes along the south of Lahainaluna Rd.”<sup>44</sup> Furthermore, upon information and belief, local authorities found multiple other fire code violations on the property, including a “brush height” in excess of 18 inches, failure to construct a 100 ft. fire break, and a finding that the “extent of growth” on the Defendant’s land was “considered a fire hazard.”<sup>45</sup>

164. Had the Landowner Defendants taken reasonable steps to construct and/or maintain legally required firebreaks on their property, the Lahaina Fire would have been contained to its immediate area of origin, and likely self-extinguished before spreading to any adjacent parcels or properties.

165. When the Lahaina Fire began, the Landowner Defendants’ property facilitated the spread of the fire, at least in part, because their property was improperly and unsafely managed. This mismanagement of property increased the severity of the Lahaina Fire and contributed to the death and destruction that followed.

166. Had the Landowner Defendants taken reasonable steps to manage vegetation on their property, the Lahaina Fire would not have ignited or spread at such a rate, intensity, or severity. Instead, the Lahaina Fire ignited and spread, ambushing the citizens of the island – including Plaintiffs’ Insureds.

167. Similarly, the Landowner Defendants could have and should have taken steps to ensure their properties would not otherwise cause or contribute to the ignition and spread of a wildfire. Such measures could have included clearing ground cover, developing and/or maintaining existing fire breaks, removing impediments to fire extinguishment, surveying the property and identifying high risk areas, and communicating with external stakeholders including

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<sup>44</sup> County of Maui, Code Case Number: FD-BRUSH2023-00059, Parcel Number 2460180030000-50277, available at [https://mapps.co.maui.hi.us/EnerGov\\_Prod/selfservice/MauiCountyHIProd#/code/70068724-917e-4c85-8c83-46a5757e17ab](https://mapps.co.maui.hi.us/EnerGov_Prod/selfservice/MauiCountyHIProd#/code/70068724-917e-4c85-8c83-46a5757e17ab) (accessed October 31, 2023).

<sup>45</sup> County of Maui, Code Case Number: FD-BRUSH2023-00059, Parcel Numbers 2460180030000-50277 and 2460160320000-50258, available at [https://mapps.co.maui.hi.us/EnerGov\\_Prod/selfservice/MauiCountyHIProd#/inspectionDetail/inspection/7c6b169d-f4a6-422c-a617-fa25738eb0b7?tab=checklists](https://mapps.co.maui.hi.us/EnerGov_Prod/selfservice/MauiCountyHIProd#/inspectionDetail/inspection/7c6b169d-f4a6-422c-a617-fa25738eb0b7?tab=checklists) (accessed October 31, 2023).

the Utility Defendants, the Telecom Defendants, the County, and the State to ensure all potential hazards were identified and remediated.

168. Plaintiffs are informed, and thereon allege, that the Landowner Defendants' failures with respect to the management of their properties violated HRS § 132-8.

169. As a result of the Landowner Defendants' failures, Plaintiffs' Insureds suffered substantial and irreparable damages as alleged herein.

**FIRST CAUSE OF ACTION**  
**NEGLIGENCE**  
**(Against the Utility Defendants)**

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

171. The Utility Defendants engage in the business of generating, transmitting, and delivering electrical utility services for public use to retail electric customers in the State of Hawaii.

172. As a part of their normal business activities, the Utility Defendants have a duty to exercise reasonable care to avoid a foreseeable risk of injury to Plaintiffs' Insureds' property and businesses. The Utility Defendants further have a duty to act with reasonable skill and diligence while providing electrical service to the public and in performing any related work.

173. Specifically, the Utility Defendants owed Plaintiffs and their Insureds the following duties of care:

- a. To adequately design, construct, inspect, repair, and maintain their power poles, power lines, transformers, reclosers, and other electrical equipment including poles or structures jointly occupied by the Utility Defendants;
- b. To properly maintain, operate, and inspect their power lines, overhead electrical infrastructure, and electrical equipment properly to prevent foreseeable ignition of fires associated with their electrical equipment;

- c. To construct and/or reconstruct their power poles, power lines, and overhead electrical infrastructure, and electrical equipment in compliance with the standards contained within General Order 6 of the Hawaii Public Utilities Commission;
- d. To operate their electrical equipment, and provide electrical utility service for the public use, safely and in accordance with the standards contained within General Order 7 of the Hawaii Public Utilities Commission;
- e. To comply with local fire codes and regulations requiring adequate fire breaks in and around hazardous fire areas, compliance with designated fuel breaks and prescribed actions to abate a fire hazard, requiring maximum brush height of 18 inches, prohibiting brush within 30 ft. and/or 100 ft. of neighboring structures, and prohibiting the extent of brush growth from becoming a fire hazard, including but not limited to: Maui County Code 16.04D.230, 16.04D.250, 16.04D.170, and their amendments to NFPA 1, including, NFPA 1, § 10.1.1; NFPA 1, § 10.1.5; NFPA 1, § 10.13.10.1; NFPA 1, § 10.13.10.2; NFPA 1, § 10.13.10.3; NFPA 1, § 10.13.10.2.1; NFPA 1, § 10.13.2.5;
- f. To comply with NFPA 76, § 9.8, and to ensure that the management of all cables is based on the consideration of potential fuel load and hazards within any given telecommunications equipment area or hazard area;
- g. To properly manage, inspect, and monitor their electrical infrastructure, including power poles and other electrical equipment, to ensure the activities of third parties, including, but not limited to, the Telecom Defendants, did not overburden their electrical infrastructure or otherwise present an increased risk of fire;
- h. To conduct adequate vegetation management, such as clearing vegetation, trees, and tree limbs that could come into contact with their power lines and equipment;

- i. To conduct adequate vegetation management, including the clearing of highly flammable non-native grasses, in the areas beneath and immediately adjacent to the Utility Defendants' operation of their electrical equipment;
- j. To deenergize their power lines during a Red Flag Warning to prevent fires;
- k. To deenergize their power lines during a High Wind Watch to prevent fires;
- l. To deenergize their power lines during high fire danger warnings;
- m. To adjust their operations in response to fire weather conditions that could result in downed power lines and cause rapid and dangerous fire growth and spread on and after August 8, 2023;
- n. To deenergize their power lines after receiving notice the power lines had fallen into, or otherwise come into contact with, vegetation, structures, and/or foreign objects that presented a risk of igniting a fire;
- o. To deenergize their power lines after receiving notice that their overhead electrical infrastructure had already ignited fires;
- p. To implement reasonable policies, procedures, and equipment that would avoid igniting or spreading fire;
- q. To prevent the downing of power lines, which blocked evacuation routes during the Lahaina Fire;
- r. To replace old wooden power poles, which have exceeded their useful life, are in poor condition and fail to meet the National Electrical Safety Code; and
- s. To determine the cause of the electrical faults on their electrical facilities before restoring power to their electrical circuits.

174. At all relevant times, the Utility Defendants knew their electrical infrastructure, and all components thereof, carried an inherent risk of fire ignition. The inherent risk of fire associated with electrical infrastructure are well known, and publicly acknowledged throughout the utility industry.



175. At all relevant times, the Utility Defendants knew that vegetation near electrical facilities, including highly flammable non-native grasses, presented an active risk of wildland fire ignition during adverse weather events, such as a “Red Flag” warning event.

176. At all relevant times, the Utility Defendants knew that operating their electrical facilities during high-risk conditions, including high winds and drought, presented an increased risk of igniting a wildland fire.

177. Despite knowing, and publicly acknowledging these risks, the Utility Defendants’ vegetation management practices did not account for the inspection, evaluation, identification, and remediation of vegetation that could foreseeably provide the initial fuel for a wildfire, and/or could cause or otherwise contribute to a wildfire ignition.

178. At all relevant times, the Utility Defendants had actual knowledge of or a reasonable basis on which to anticipate the danger associated with its failure to reduce, restrict, or eliminate the flow of electricity through their facilities.

179. The Utility Defendants, and each of them, breached their duties to Plaintiffs’ Insureds, 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 Hawaii 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 of their electrical infrastructure igniting a fire;
- c. Failing to properly manage, inspect, and monitor their electrical infrastructure, including power poles and other electrical equipment, to ensure that the activities of third parties, including, but not limited to, the Telecom Defendants, did not overburden their electrical infrastructure or otherwise present an increased risk of fire;

- d. Failing to de-energize power lines during fire prone conditions, including during forecasted and publicly broadcasted “Red Flag” warnings, high winds, dry spells or droughts, or any other environmental conditions reasonably foreseeable to contribute to the ignition of a fire;
- e. Failing to evaluate, design, implement, and execute methods of isolating, closing, or otherwise limiting or restricting the flow of electricity through electrical facilities;
- f. Failing to de-energize power lines after obtaining actual or constructive knowledge that their power lines had already ignited a wildland fire;
- 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 the mitigation of highly flammable grasses in the areas immediately beneath and below their electrical infrastructure;
- 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; and
- 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.

180. The Lahaina Fire 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' Insureds, either alone or in combination with the negligent, reckless, or unlawful conduct by all Defendants as alleged herein.

181. As a direct and proximate result of the Utility Defendants' negligence, either alone or in combination with the negligent, reckless, or unlawful conduct by all Defendants as alleged herein, the Lahaina Fire ignited and spread, causing the damages herein alleged.

182. As a direct and proximate result of the Utility Defendants' negligence, either alone or in combination with the negligent, reckless, or unlawful conduct by all Defendants as alleged herein, Plaintiffs have paid or will pay their Insureds for their damages. Consequently, Plaintiffs are legally and equitably entitled to recover from the Utility Defendants the amounts they have paid and will pay to their Insureds.

183. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawaii against the Utility Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**SECOND CAUSE OF ACTION**  
**NEGLIGENCE**  
**(Against the Telecom Defendants)**

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

185. The Telecom Defendants were public utilities in the business of providing telecommunications services to retail customers in the State of Hawaii.

186. As a part of their normal business activities, the Telecom Defendants have a duty to exercise reasonable care to avoid a foreseeable risk of injury to Plaintiffs' Insureds' property and businesses. The Telecom Defendants further have a duty to act with reasonable skill and diligence while providing telecommunications services to the public and in performing any related work.

187. Specifically, the Telecom Defendants owed Plaintiffs' Insureds the following duties of care:

- a. To adequately design, construct, inspect, repair, and maintain their communications equipment, including associated poles and structures occupied or used by the Telecom Defendants;
- b. To properly maintain, operate, inspect, and repair their communications equipment properly to prevent foreseeable ignition of fires associated with their communications equipment;
- c. To construct and/or reconstruct the poles or other supporting structures connected to their communications equipment in compliance with the standards contained within General Order 6 of the Hawaii Public Utilities Commission;
- d. To jointly use poles which are subject to the appropriate grade of construction in compliance with the standards contained within General Order 6 of the Hawaii Public Utilities Commission;
- e. To operate their communications equipment, and provide telecommunications services for the public use, safely and in accordance with the standards contained within General Order 8 of the Hawaii Public Utilities Commission;
- f. To comply with local fire codes and regulations requiring adequate fire breaks in and around hazardous fire areas, compliance with designated fuel breaks and prescribed actions to abate a fire hazard, requiring maximum brush height of 18 inches, prohibiting brush within 30 ft. and/or 100 ft. of neighboring structures, and prohibiting the extent of brush growth from becoming a fire hazard, including but not limited to: Maui County Code 16.04D.230, 16.04D.250, 16.04D.170, and their amendments to NFPA 1, including, NFPA 1, § 10.1.1; NFPA 1, § 10.1.5; NFPA 1, § 10.13.10.1; NFPA 1, § 10.13.10.2; NFPA 1, § 10.13.10.3; NFPA 1, § 10.13.10.2.1; NFPA 1, § 10.13.2.5;

- g. To comply with NFPA 76, § 9.8, and to ensure that the management of all cables is based on the consideration of potential fuel load and hazards within any given telecommunications equipment area or hazard area;
- h. To properly manage, inspect, and monitor the poles or other supporting structures connected to their communications to ensure that they are not overburdened or otherwise present an increased risk of fire;
- i. To implement reasonable policies, procedures, and equipment that would avoid igniting or spreading fire;
- j. To prevent the downing of power poles and power lines; and
- k. To replace old wooden power poles, which have exceeded their useful life, are in poor condition and fail to meet the National Electrical Safety Code.

188. At all relevant times, the Telecom Defendants knew their communications equipment, particularly those connected to or near an electrical facility owned or operated by the Utility Defendants, carried an inherent risk of fire ignition. The inherent risk of fire associated with overloading or overburdening poles shared with electrical infrastructure is well known, and publicly acknowledged throughout the telecommunications industry.

189. The Telecom Defendants, and each of them, breached their duties to Plaintiffs' Insureds, 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 Hawaii 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 of their communications equipment igniting or contributing to the ignition of a fire;
- c. Failing to properly manage, inspect, and monitor their communications equipment, including poles, cabling, harnesses, or other related equipment, to ensure that their

communications equipment did not overburden structures associated with electrical infrastructure or otherwise present an increased risk of fire;

- d. Failing to make their communications equipment, including poles, cabling, harnesses, or other related equipment, safe under all the exigencies created by surrounding circumstances and conditions, including high wind and drought conditions;
- e. Failing to conduct adequate, reasonably prompt, proper, effective, and/or frequent inspections of their communications equipment, including poles, cabling, harnesses, or other related equipment;
- f. Failing to design, construct, monitor, and/or maintain their communications equipment, including poles, cabling, harnesses, or other related equipment, in a manner reasonably calculated to prevent ignition of a fire;
- g. Failing to maintain their communications equipment, including poles, cabling, harnesses, or other related equipment, in a safe condition at all times in order to prevent a fire ignition;
- h. Failing to properly train or supervise their agents, contractors, or employees responsible for maintenance and inspection of communications equipment, including poles or other supporting structures;
- i. Failing to assess, budget, allocate, reserve, or distribute funds reasonably necessary to ensure their communications equipment, including poles or other supporting structures, would not pose a risk of fire ignition;
- j. Failing to ensure that the corporate governance and compensation structure of all entities properly incentivized the directors, officers, employees, and managing agents of the enterprise to consider and prioritize wildfire risk.

190. The Lahaina Fire and the harms alleged herein were the direct and proximate result of the Telecom 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' Insureds, either alone or in combination with the negligent, reckless, or unlawful conduct by all Defendants as alleged herein.

191. As a direct and proximate result of the Telecom Defendants' negligence, either alone or in combination with the negligent, reckless, or unlawful conduct by all Defendants as alleged herein, the Lahaina Fire ignited and spread, causing the damages herein alleged.

192. As a direct and proximate result of the Telecom Defendants' negligence, either alone or in combination with the negligent, reckless, or unlawful conduct by all Defendants as alleged herein, Plaintiffs have paid or will pay their Insureds for their damages. Consequently, Plaintiffs are legally and equitably entitled to recover from the Utility Defendants the amounts they have paid and will pay to their Insureds.

193. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawaii against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**THIRD CAUSE OF ACTION**  
**NEGLIGENCE**  
**(Against the Landowner Defendants)**

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

195. At all relevant times, the Landowner Defendants had a possessory and/or legal interest in real property in the areas of origin and spread of the Lahaina Fire. Further, the Landowner Defendants permitted the use of their property rights or interests via consent or contract.

196. As holders of such property interests, the Landowner Defendants owed Plaintiffs' Insureds 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 or the appropriate distribution and management of water on their properties.



197. The Landowner Defendants were specifically aware that their real property presented a foreseeable risk of wildfire in the area of origin of the Lahaina Fire after local authorities ordered the Landowner Defendants to construct a firebreak on their property following a 2020 Fire Brush inspection.

198. Nevertheless, the Landowner Defendants failed to construct the required firebreaks on their property and permitted highly flammable and dry grasses to grow to a height in excess of 18 inches in a manner that constituted a fire hazard.

199. In light of the foreseeable and extreme risks of wildfire spreading across their land, and the foreseeable and extreme risks posed by the Utility Defendants' power lines, especially during drought conditions and high winds, the Landowner Defendants owed Plaintiffs' Insureds the following duties of care:

- a. To perform adequate vegetation management on their land to prevent the dangerous ignition and spread of a wildfire;
- b. To perform adequate vegetation management on their land within utility rights of way and within close proximity to both energized power lines and residential and commercial developments;
- c. To perform adequate vegetation management on, and adjacent to, access roads located on their land;
- d. To comply with HRS § 132-8;
- e. To comply with local fire codes and regulations requiring adequate fire breaks in and around hazardous fire areas, compliance with designated fuel breaks and prescribed actions to abate a fire hazard, requiring maximum brush height of 18 inches, prohibiting brush within 30 ft. and/or 100 ft. of neighboring structures, and prohibiting the extent of brush growth from becoming a fire hazard, including but not limited to: Maui County Code 16.04D.230, 16.04D.250, 16.04D.170, and their amendments to NFPA 1, including, NFPA 1, § 10.1.1; NFPA 1, § 10.1.5; NFPA 1,

§ 10.13.10.1; NFPA 1, § 10.13.10.2; NFPA 1, § 10.13.10.3; NFPA 1, § 10.13.10.2.1; NFPA 1, § 10.13.2.5;

- f. To construct fire breaks on their land to help control and prevent the dangerous spread of a wildfire;
- g. To maintain existing fire breaks on their land to help control and prevent the dangerous spread of a wildfire;
- h. To mitigate against the risk of vegetation causing electrical infrastructure located on their land to ignite a wildland fire;
- i. To implement and maintain safe vegetation management practices, including the mitigation of highly flammable vegetation in hazardous fire areas and under extra-hazardous conditions, including the areas immediately beneath and below high voltage electrical infrastructure on their land during high-wind, red flag, and drought conditions;
- j. To effectuate fuel reduction of highly flammable, non-native, and invasive grasses growing on the land they own, manage, administer, or exercise control over; and
- k. To perform fuel conversion on the land they own, manage, administer, or exercise control over by replacing invasive, non-native, highly flammable, and fire-promoting grasses with less flammable ground cover.

200. The Landowner Defendants, and each of them, acted carelessly, recklessly, and/or negligently in failing to properly inspect, manage, and/or maintain their property – including all vegetation, grasses, brush, or flammable material – in a safe condition such that said property presented a foreseeable risk of fire ignition.

201. The Landowner Defendants further failed to take preparatory steps which, in the event of a fire ignition, could be reasonably calculated to prevent or mitigate the spread of the fire including but not limited to the construction of fire breaks or other barriers.

202. Finally, after the ignition of the Lahaina Fire, the Landowner Defendants failed to exercise reasonable care to extinguish or mitigate the spread of the fires despite having the means and ability to take such action, including through the transport or allocation of water or other means of extinguishing or fighting the fire.

203. As a direct and proximate result of the Landowner Defendants' negligence, either alone or in combination with the negligent, reckless, or unlawful conduct by all Defendants as alleged herein, the Lahaina Fire ignited and spread, causing the damages herein alleged.

204. As a direct and proximate result of the Landowner Defendants' negligence, either alone or in combination with the negligent, reckless, or unlawful conduct by all Defendants as alleged herein, Plaintiffs have paid or will pay their Insureds for their damages. Consequently, Plaintiffs are legally and equitably entitled to recover from the Landowner Defendants the amounts they have paid and will pay to their Insureds.

205. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawaii against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**FOURTH CAUSE OF ACTION**  
**INVERSE CONDEMNATION**  
**(Against the Utility Defendants)**

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

207. Article I, Section 20 of the Hawaii State Constitution guarantees that "Private property shall not be taken or damaged for public use without just compensation."

208. At all relevant times, the Utility Defendants owned, maintained, and operated an electrical service distribution system (the "Electrical System") within Maui County for the public's use, utilizing and securing various easements and rights of way throughout Maui County for the transmission and distribution of its electricity.

209. Pursuant to HRS § 269-1, the Utility Defendants are in the business of furnishing electricity for public use and are legally defined as “public utilities” under Hawaii law.

210. The Utility Defendants conduct business as a regulated monopoly in their service territories, consistent with the terms of the franchise granted to them by the State of Hawaii. As a condition of that franchise, the Utility Defendants are obligated to provide essential electrical services to all eligible customers in the State of Hawaii without exception. At all relevant times, the Electrical System was a public improvement designed, constructed, and maintained for the purpose of transmitting electrical power to the public.

211. At all relevant times, the Utility Defendants had the power to exercise eminent domain as a public utility pursuant to HRS § 101-4.

212. The Utility Defendants’ Electrical System, as deliberately designed, constructed, and maintained by the Utility Defendants, caused and permitted the occurrence of a failure that ignited the Lahaina Fire.

213. The system protection devices on the Utility Defendants’ Electrical System were deliberately designed, constructed, and maintained such that the Electrical System would remain energized after a relay for a sufficient period and allow a fire to ignite.

214. The Utility Defendants owned and substantially participated in the design, planning, approval, construction, and operation of the Electrical System and public improvements for supplying electricity to the public for public use.

215. The Utility Defendants deliberately designed the Electrical System to utilize a suspended overhead design with uninsulated and uncovered conductors that travelled above dry, highly combustible vegetation and grasses.

216. Furthermore, the Utility Defendants deliberately designed the Electrical System to utilize poles or supporting structures that were vulnerable to failure during windy conditions.

217. The Utility Defendants’ choices in the design, construction, and maintenance of the Electrical system presented an inherent risk that their power poles and/or power lines would

fail, break, and/or sever during strong wind events, causing energized power lines to fall to the ground and ignite a wildland fire.

218. The Utility Defendants could have designed the subject Electrical System with underground and/or insulated conductors, but instead deliberately designed the subject Electrical System to utilize lines above ground that presented an increased risk of igniting a wildland fire.

219. The Utility Defendants deliberately chose to design and construct their Electrical System using uninsulated, bare, and exposed electrical conduit because of the lower cost as compared to installing insulated conduit or putting the lines underground. The Utility Defendants' adoption of these cost-saving designs presented inherent risk to property as any contact with those uninsulated, bare and exposed lines could and did start a fire.

220. The Utility Defendants' Electrical System, as deliberately designed, constructed, and maintained presented an inherent risk and danger of fire to private property. In supplying electricity to the public, the Utility Defendants knowingly accepted a risk that their Electrical System would damage and/or destroy private property by fire.

221. The Utility Defendants also have a responsibility to maintain and continuously upkeep their Electrical System, and to implement vegetation management programs and protocols to ensure the safe delivery of electricity to the public.

222. Plaintiffs are informed and believe the Utility Defendants adopted a "wait until it breaks" plan of maintaining their wooden power poles and overhead power lines as a cost-saving policy instead of performing necessary preemptive maintenance and repairs to prevent its wooden power poles and overhead power lines from failing, breaking, and/or severing during high-wind events.

223. The Utility Defendants' "wait until it breaks" maintenance plan further presented an inherent risk and danger of fire to private property. In adopting this plan of maintenance, the Utility Defendants knowingly accepted a risk that their Electrical System would damage and/or destroy private property by fire.

224. The conduct as described herein was a substantial factor in causing damage to a property interest protected by Article I, Section 20 of the Hawaii State Constitution and

permanently deprived Plaintiffs' Insureds of the use and enjoyment of their property. As a direct result of the "taking" of the property, Plaintiffs paid their Insureds in excess of the jurisdictional minimum of this Court.

225. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawaii, including the recovery of attorney's fees and costs, against the Utility Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**FIFTH CAUSE OF ACTION**  
**INVERSE CONDEMNATION**  
**(Against the Telecom Defendants)**

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

227. Article I, Section 20 of the Hawaii State Constitution guarantees that "Private property shall not be taken or damaged for public use without just compensation."

228. At all relevant times, the Telecom Defendants owned, maintained, and operated communications equipment within Maui County for the public's use, utilizing and securing various easements and rights of way throughout Maui County for the transmission and distribution of its electricity.

229. Pursuant to HRS § 269-1(B), the Telecom Defendants are legally defined as "public utilities" under Hawaii law incident to their status as "telecommunications carrier[s] or telecommunications common carrier[s]." Further, the Hawaii Public Utilities Commission has not exempted the Telecom Defendants from being classified as a public utility pursuant to HRS § 269-16.9.

230. At all relevant times, the Telecom Defendants had the power to exercise eminent domain as a public utility pursuant to HRS § 101-4.

231. The Telecom Defendants communications equipment as deliberately designed, constructed, and maintained by the Telecom Defendants, caused and permitted the occurrence of a failure of the attached poles or other supporting structures that ignited the Lahaina Fire.

232. The Telecom Defendants owned and substantially participated in the design, planning, approval, construction, and operation of their communications equipment, as attached to poles or other supporting structures, and other public improvements for supplying telecommunications services to the public for public use.

233. The Telecom Defendants deliberately designed their communications equipment to rely upon nearby power poles or other supporting structures utilized by the Utility Defendants' Electrical System as an inherent feature of their installation. This design inherently required the communications equipment to increase the loads on these poles or other supporting structures nearby dry, highly combustible vegetation and grasses.

234. Furthermore, the Telecom Defendants deliberately designed their communications equipment to utilize poles or supporting structures that were vulnerable to failure during windy conditions.

235. The Telecom Defendants' choices in the design, construction, and maintenance of their communications equipment presented an inherent risk that the nearby power poles and/or power lines would fail, break, and/or sever during strong wind events, causing energized power lines to fall to the ground and ignite a wildland fire.

236. The Telecom Defendants' communications equipment, as deliberately designed, constructed, and maintained, presented an inherent risk and danger of fire to private property. In supplying telecommunications services to the public, the Telecom Defendants knowingly accepted a risk that their communications equipment would damage and/or destroy private property by fire.

237. The Telecom Defendants also have a responsibility to maintain and continuously upkeep their communications equipment, including attached poles and other supporting structures, and to implement vegetation management programs and protocols to ensure the safe delivery of telecommunications services to the public.

238. Plaintiffs are informed and believe that the Telecom Defendants adopted a "wait until it breaks" plan of maintaining the wooden power poles and others supporting structures utilized by their communications equipment as a cost-saving policy instead of performing

necessary preemptive maintenance and repairs to prevent those wooden power poles and other supporting structures from failing, breaking, and/or severing during high-wind events.

239. The Telecom Defendants’ “wait until it breaks” maintenance plan further presented an inherent risk and danger of fire to private property. In adopting this plan of maintenance, the Telecom Defendants knowingly accepted a risk that their communications equipment would damage and/or destroy private property by fire.

240. The conduct as described herein was a substantial factor in causing damage to a property interest protected by Article I, Section 20 of the Hawaii State Constitution and permanently deprived Plaintiffs’ Insureds of the use and enjoyment of their property. As a direct result of the “taking” of the property, Plaintiffs paid their Insureds in excess of the jurisdictional minimum of this Court.

241. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawaii, including the recovery of attorney’s fees and costs, against the Telecom Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**SIXTH CAUSE OF ACTION**  
**PREMISES LIABILITY**  
**(Against All Defendants)**

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

243. At all relevant times, the Defendants, and each of them, owned or held interests in real property, easements, and/or rights of way, in the area of origin of the Lahaina Fire.

244. The Landowner Defendants owned the land located at or near the area of origin of the Lahaina Fire, and/or the Landowner Defendants owned the land whose dangerous condition facilitated, increased, and/or exacerbated the spread of the Lahaina Fire, including, but not limited to, the land located south of Lahainaluna Rd referred to by the Maui County Tax Assessor as Parcel # 2460180030000-50277.

245. Further, the Utility Defendants and Telecom Defendants, owned and operated electrical infrastructure, communications equipment, supporting poles and other supporting



structures attached to such real property, easements, and/or rights of way for the purpose of furnishing services to the public, all of which were located at or near the area of origin of the Lahaina Fire.

246. As holders of such property interests, each of the Defendants owed Plaintiffs' Insureds a duty to exercise reasonable care in the ownership, care, maintenance, management, and use of the property itself, including all improvements, fixtures, and appurtenances located on the property. Further, each of the Defendants had a duty to ensure that Plaintiffs' Insureds were not exposed to risks of an offsite injury as a result of Defendants' maintenance of their property, regardless of their legal relationship or relationships to the Plaintiffs' Insureds.

247. To the extent the condition or conditions on Defendants' property which caused or contributed to Plaintiffs Insureds' damages alleged herein were unnatural, Defendants are responsible for those harms because Defendants: created or contributed to the unnatural condition or conditions which caused or contributed to Plaintiffs Insureds' damages; consented or acquiesced to a third-party's creation of the condition or conditions; or failed to exercise reasonable care to make the condition safe after it was discovered, regardless of whether it was created with Defendants' consent or acquiescence.

248. The Defendants, as possessors of land, also have a duty to others outside the land for physical harm caused by a structure or other artificial condition on the land, which the possessor realizes or should realize will involve an unreasonable risk of harm, if (a) the possessor has created the condition, or (b) the condition is created by a third person with the possessor's consent or acquiescence while the land is in his possession, or (c) the condition is created by a third person without the possessor's consent or acquiescence, but reasonable care is not taken to make the condition safe after the possessor knows or should know of it. § 364 *Creation or Maintenance of Dangerous Artificial Conditions*, RESTATEMENT (SECOND) OF TORTS (1965).

249. To the extent the condition or conditions on Defendants' property which caused or contributed to Plaintiffs Insureds' damages alleged herein were natural, Defendants had a duty to

ensure that those conditions did not pose a risk of injury to Plaintiffs' Insureds, including the ignition and spread of wildfire. Because the natural but dangerous conditions were known, or by the exercise of ordinary care, could have been known by Defendants, it became the duty of the Defendants to exercise reasonable care and diligence to prevent the condition from damaging nearby persons or property. Medeiros v. Honomu Sugar Co., 21 Haw. 155 (1912).

250. Defendants, and each of them, knew and had superior knowledge to Plaintiffs' Insureds concerning the dangers of Defendants' property interests, which placed Defendants in a better position to anticipate and take action to prevent the foreseeable injuries caused by their property, including the ignition and spread of wildfire.

251. As possessors of interests in real property, easements, and/or rights of way, each of the Defendants were aware of the physical condition of the Lahaina Fire's area of origin, including the physical condition of electrical infrastructure, communications equipment, power poles and other supporting structures on the subject real property. On that basis, Defendants knew or should have known that hazardous conditions present on the land presented an unreasonable risk of harm to others.

252. The Defendants were also aware of local fire codes and regulations which: required fire breaks, required maximum brush height of 18 inches, prohibited brush growth within 30 ft. and/or 100 ft. of neighboring structures, and prohibited the extent of brush growth on their property from becoming a fire hazard.

253. Despite each of the Defendants' knowledge of the hazardous conditions on their real property, easements, and/or rights of way, Defendants did not take any reasonable steps to eliminate the unreasonable risk of harm their property interests posed to others.

254. The gravity of foreseeable harm posed by Defendants' ownership, control, and operation of their property, including the harm posed by the ignition and spread of wildfire, outweighs any conceivable burden imposed by engaging in safer, alternative conduct.

255. Plaintiffs are informed, and thereon allege, that the Defendants' failures with respect to the management of their properties and property interests violated HRS § 132-8.

256. The dangerous condition of Defendants' property interests directly and proximately led to the ignition of the Lahaina Fire, ultimately causing the damages suffered by Plaintiffs' Insureds.

257. As a direct and proximate result of the dangerous condition of each of the Defendants' property interests, Plaintiffs have paid or will pay their Insureds for their damages. Consequently, Plaintiffs are legally and equitably entitled to recover from the Defendants the amounts they have paid and will pay to their Insureds.

258. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawaii against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**SEVENTH CAUSE OF ACTION**  
**PRIVATE NUISANCE**  
**(Against All Defendants)**

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

260. At all relevant times Plaintiffs' insureds had a possessory interest in their real property, including the right to quiet use and enjoyment of that property.

261. Defendants, and each of them, through their conduct and breaches of statutory and common law duties as outlined above, acted unreasonably, negligently, and recklessly in a manner that foreseeably resulted in an invasion of Plaintiffs' Insureds' private use and enjoyment of their land and interfered with their legally protected possessory interests of their real property.

262. The gravity of harm resulting from the Defendants' conduct outweighs any countervailing interest protected by interfering with Plaintiffs' Insureds' property rights.

263. As a direct and proximate result of the nuisance resulting from Defendants' conduct, Plaintiffs have paid or will pay their Insureds for their damages. Consequently, Plaintiffs

are legally and equitably entitled to recover from the Defendants the amounts they have paid and will pay to their Insureds.

264. As a result of the foregoing, Plaintiffs suffered damages in an amount to be proven at trial.

**EIGHTH CAUSE OF ACTION**  
**TRESPASS**  
**(Against All Defendants)**

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

266. At all relevant times, Plaintiffs' Insureds held interests in real property in Maui County as owners, tenants, and/or lawful occupants.

267. Defendants, and each of them, through their intentional and/or negligent conduct and breaches of statutory and common law duties, as outlined above, directly and proximately caused the ignition of the Lahaina Fire; which subsequently harmed, injured, or otherwise trespassed upon the property in which Plaintiffs' Insureds held their respective interests.

268. Plaintiffs and their Insureds did not consent to Defendants' trespass upon the real property impacted by the Lahaina Fire.

269. As a direct and proximate result of Defendants' conduct, Plaintiffs' Insureds suffered damages from a trespass.

270. As a direct and proximate result of Defendants' trespass, Plaintiffs have paid or will pay their Insureds for their damages. Consequently, Plaintiffs are legally and equitably entitled to recover from the Defendants the amounts they have paid and will pay to their Insureds.

271. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawaii against Defendants as set forth in the Prayer for Relief contained herein, and in an amount according to proof at trial.

**PRAYER FOR RELIEF**

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

- (a) For monetary damages to real property, personal property, commercial property, business losses, remediation expenses, adjusted living expenses, and other related damages arising from the Lahaina Fire for which Plaintiffs have reimbursed their Insureds, in an amount to be proven at trial and which exceeds the jurisdictional minimum of this Court;
- (b) All costs of suit, including reasonable attorneys' fees and all other costs or fees, arising from the prosecution of this action as permitted under the laws of the State of Hawaii;
- (c) Prejudgment and post-judgment interest in the maximum amount permitted by law; and
- (d) For any and all other such further relief as this Court deems just and proper.

DATED: Honolulu, Hawaii  
January 12, 2024

**GROTEFELD HOFFMANN**

By:           /s/Vincent Raboteau            
Vincent Raboteau

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FOREMOST INSURANCE COMPANY GRAND  
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COMPANY, LTD.; ISLAND PREMIER  
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SCOTTSDALE INSURANCE COMPANY;  
INSURANCE COMPANY; NAUTILUS  
INSURANCE COMPANY; GREAT DIVIDE  
INSURANCE COMPANY; PRIVILEGE  
UNDERWRITERS RECIPROCAL EXCHANGE;  
USAA CASUALTY INSURANCE COMPANY;  
USAA GENERAL INDEMNITY COMPANY;  
GARRISON PROPERTY AND CASUALTY  
INSURANCE COMPANY; WESTPORT  
INSURANCE CORPORATION; AXIS SURPLUS  
INSURANCE COMPANY; AMERICAN  
HALLMARK INSURANCE COMPANY OF TEXAS;  
STATE NATIONAL INSURANCE COMPANY;  
SWISS RE INTERNATIONAL SE (AUSTRALIA  
BRANCH); SWISS RE INTERNATIONAL SE  
(FRANCE BRANCH); SWISS RE CORPORATE  
SOLUTIONS ELITE INSURANCE CORPORATION;  
UNITED SERVICES AUTOMOBILE  
ASSOCIATION; USAA CASUALTY INSURANCE  
COMPANY; USAA GENERAL INDEMNITY  
COMPANY; GARRISON PROPERTY AND  
CASUALTY INSURANCE COMPANY;  
ADVENTIST RISK MANAGEMENT, INC.;  
GENCON INSURANCE COMPANY OF  
VERMONT; DB INSURANCE CO., LTD.; SWISS



RE CORPORATE SOLUTIONS CAPACITY  
INSURANCE CORPORATION; SWISS RE  
CORPORATE SOLUTIONS AMERICA  
INSURANCE CORPORATION

**OGAWA, LAU, NAKAMURA & JEW**

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COMPANY OF NORTH AMERICA; VIGILANT INSURANCE COMPANY; WESTCHESTER SURPLUS LINES INSURANCE COMPANY; ERIE INSURANCE COMPANY; ERIE INSURANCE EXCHANGE; GCUBE INSURANCE SERVICES, INC.; HCC INSURANCE HOLDINGS, INC.; GOLDEN BEAR INSURANCE COMPANY; MITSUI SUMITOMO INSURANCE COMPANY OF AMERICA; MITSUI SUMITOMO INSURANCE USA INC.; NATIONAL LIABILITY AND FIRE INSURANCE COMPANY; PHARMACISTS MUTUAL INSURANCE COMPANY; STILLWATER INSURANCE COMPANY; STILLWATER PROPERTY AND CASUALTY INSURANCE COMPANY; AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY; STEADFAST INSURANCE COMPANY; ZURICH AMERICAN INSURANCE COMPANY; AGCS MARINE INSURANCE COMPANY; ALLIANZ GLOBAL RISKS US INSURANCE COMPANY; AMERICAN AUTOMOBILE INSURANCE COMPANY; FIREMAN'S FUND INSURANCE COMPANY



**OGAWA, LAU, NAKAMURA & JEW**

By:           /s/Michael F. O'Connor          

Michael F. O'Connor

*Counsel for Subrogation Plaintiffs*

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INSURANCE COMPANY, NORTHFIELD  
INSURANCE COMPANY, STARR SURPLUS  
LINES INSURANCE COMPANY, TRAVELERS  
EXCESS AND SURPLUS LINES COMPANY, THE  
TRAVELERS INDEMNITY COMPANY OF  
CONNECTICUT, THE STANDARD FIRE  
INSURANCE COMPANY, THE TRAVELERS  
HOME AND MARINE INSURANCE COMPANY,  
THE TRAVELERS INDEMNITY COMPANY OF  
AMERICA, TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, THE TRAVELERS  
INDEMNITY COMPANY, HARTFORD FIRE  
INSURANCE COMPANY, HARTFORD  
UNDERWRITERS INSURANCE COMPANY, AND  
SENTINEL INSURANCE COMPANY, LTD.

**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII**

AMGUARD INSURANCE COMPANY;  
CONCERT SPECIALTY INSURANCE  
COMPANY; GENERAL CASUALTY  
COMPANY OF WISCONSIN; THE  
CINCINNATI INSURANCE COMPANY;  
UNIVERSAL PROPERTY & CASUALTY  
INSURANCE COMPANY; AMERICAN  
BANKERS INSURANCE COMPANY;  
STANDARD GUARANTY INSURANCE  
COMPANY; INTERINSURANCE  
EXCHANGE OF THE AUTOMOBILE  
CLUB; 21ST CENTURY CENTENNIAL  
INSURANCE COMPANY; FARMERS  
INSURANCE EXCHANGE; FARMERS  
PROPERTY AND CASUALTY  
INSURANCE COMPANY; FIRE  
INSURANCE EXCHANGE; FOREMOST  
INSURANCE COMPANY GRAND  
RAPIDS, MICHIGAN; MID-CENTURY  
INSURANCE COMPANY; FIRST FIRE &  
CASUALTY INSURANCE OF HAWAII,  
INC.; FIRST INDEMNITY INSURANCE  
OF HAWAII, INC.; FIRST INSURANCE  
COMPANY OF HAWAII, LTD.; FIRST  
SECURITY INSURANCE OF HAWAII,  
INC.; PENN-STAR INSURANCE  
COMPANY; UNITED NATIONAL  
INSURANCE COMPANY; ZEPHYR  
INSURANCE COMPANY, INC.;  
HAWAIIAN INSURANCE AND  
GUARANTY COMPANY, LTD.;  
ISLAND INSURANCE COMPANY,  
LTD.; TRADEWIND INSURANCE  
COMPANY, LTD.; ISLAND PREMIER  
INSURANCE COMPANY, LTD.;  
CRESTBROOK INSURANCE  
COMPANY; NATIONAL CASUALTY  
COMPANY; NATIONWIDE GENERAL  
INSURANCE COMPANY;  
NATIONWIDE MUTUAL INSURANCE  
COMPANY; SCOTTSDALE  
INSURANCE COMPANY; NAUTILUS  
INSURANCE COMPANY; GREAT

**CIVIL NO.** \_\_\_\_\_

(Other Non-Motor Vehicle Tort - Maui Fire)

**DEMAND FOR JURY TRIAL**

DIVIDE INSURANCE COMPANY;  
PRIVILEGE UNDERWRITERS  
RECIPROCAL EXCHANGE; UNITED  
SERVICES AUTOMOBILE  
ASSOCIATION; USAA CASUALTY  
INSURANCE COMPANY; USAA  
GENERAL INDEMNITY COMPANY;  
GARRISON PROPERTY AND  
CASUALTY INSURANCE COMPANY;  
AMERICAN FAMILY CONNECT  
PROPERTY AND CASUALTY  
INSURANCE COMPANY; AMERICAN  
FAMILY MUTUAL INSURANCE  
COMPANY, S.I.; HOMESITE  
INSURANCE COMPANY; HOMESITE  
INSURANCE COMPANY OF  
CALIFORNIA; HOMESITE INSURANCE  
COMPANY OF THE MIDWEST; ACE  
AMERICAN INSURANCE COMPANY;  
BANKERS STANDARD INSURANCE  
COMPANY; CHUBB CUSTOM  
INSURANCE COMPANY; FEDERAL  
INSURANCE COMPANY; GREAT  
NORTHERN INSURANCE COMPANY;  
ILLINOIS UNION INSURANCE  
COMPANY; INDEMNITY INSURANCE  
COMPANY OF NORTH AMERICA;  
INSURANCE COMPANY OF NORTH  
AMERICA; VIGILANT INSURANCE  
COMPANY; WESTCHESTER SURPLUS  
LINES INSURANCE COMPANY; ERIE  
INSURANCE COMPANY; ERIE  
INSURANCE EXCHANGE; GCUBE  
INSURANCE SERVICES, INC.; HCC  
INSURANCE HOLDINGS, INC.;  
GOLDEN BEAR INSURANCE  
COMPANY; MITSUI SUMITOMO  
INSURANCE COMPANY OF AMERICA;  
MITSUI SUMITOMO INSURANCE USA  
INC.; NATIONAL LIABILITY AND FIRE  
INSURANCE COMPANY;  
PHARMACISTS MUTUAL INSURANCE  
COMPANY; STILLWATER  
INSURANCE COMPANY;  
STILLWATER PROPERTY AND  
CASUALTY INSURANCE COMPANY;



AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY; STEADFAST INSURANCE COMPANY; ZURICH AMERICAN INSURANCE COMPANY; HARTFORD UNDERWRITERS INSURANCE COMPANY; HARTFORD FIRE INSURANCE COMPANY; PHILADELPHIA INDEMNITY INSURANCE COMPANY; AMERICAN MODERN PROPERTY AND CASUALTY INSURANCE COMPANY; AMERICAN FAMILY HOME INSURANCE COMPANY; AMERICAN MODERN HOME INSURANCE COMPANY; CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER W353E5230101; CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER W2B1ED230401; CERTAIN UNDERWRITERS AT LLOYD'S LONDON AND INSURERS SUBSCRIBING TO POLICY NUMBER B0509BOWPN2251776; CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER B080121322U23; CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER W3432C220101; CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER W34611230101; CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER B1262PW0502723; CERTAIN UNDERWRITERS AT LLOYD'S LONDON SUBSCRIBING TO POLICY NUMBER W34507230101; NATIONAL FIRE & MARINE INSURANCE COMPANY; THE PRINCETON EXCESS AND SURPLUS LINES INSURANCE COMPANY; BRIDGEWAY INSURANCE COMPANY; GREAT LAKES INSURANCE SE; STARR SURPLUS

LINES INSURANCE COMPANY; TOKIO MARINE AMERICA INSURANCE COMPANY; XL INSURANCE AMERICA, INC.; EVANSTON INSURANCE COMPANY; MARKEL AMERICAN INSURANCE COMPANY; MARKEL INSURANCE COMPANY, AS A SUBROGEE AND AS ASSIGNEE OF MARKEL BERMUDA LIMITED; CRESTMONT INSURANCE COMPANY; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NUMBER B0509PN2251799; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON AND INSURERS SUBSCRIBING TO POLICY NUMBER B0509PN2251784; TRAVELERS EXCESS AND SURPLUS LINES COMPANY; THE TRAVELERS INDEMNITY COMPANY OF CONNECTICUT; THE STANDARD FIRE INSURANCE COMPANY; THE TRAVELERS HOME AND MARINE INSURANCE COMPANY; THE TRAVELERS INDEMNITY COMPANY OF AMERICA; THE TRAVELERS INDEMNITY COMPANY; TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA; NORTHFIELD INSURANCE COMPANY; WESTPORT INSURANCE CORPORATION; AXIS SURPLUS INSURANCE COMPANY; AMERICAN HALLMARK INSURANCE COMPANY OF TEXAS; STATE NATIONAL INSURANCE COMPANY; SWISS RE INTERNATIONAL SE (AUSTRALIA BRANCH); SWISS RE INTERNATIONAL SE (FRANCE BRANCH); SWISS RE CORPORATE SOLUTIONS ELITE INSURANCE CORPORATION; GREAT AMERICAN ASSURANCE COMPANY; GREAT AMERICAN ALLIANCE INSURANCE COMPANY; GREAT AMERICAN E&S INSURANCE COMPANY; GREAT AMERICAN INSURANCE COMPANY;

NATIONAL INTERSTATE INSURANCE COMPANY; NATIONAL INTERSTATE INSURANCE COMPANY OF HAWAII; IRONSHORE SPECIALTY INSURANCE COMPANY; LIBERTY INSURANCE CORPORATION; LIBERTY MUTUAL FIRE INSURANCE COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; LIBERTY MUTUAL PERSONAL INSURANCE COMPANY; SAFECO INSURANCE COMPANY OF AMERICA; SAFECO INSURANCE COMPANY OF ILLINOIS; LANDMARK AMERICAN INSURANCE COMPANY; COVINGTON SPECIALTY INSURANCE COMPANY; ENDURANCE AMERICAN INSURANCE COMPANY; AGCS MARINE INSURANCE COMPANY; ALLIANZ GLOBAL RISKS US INSURANCE COMPANY; AMERICAN AUTOMOBILE INSURANCE COMPANY; FIREMAN'S FUND INSURANCE COMPANY; ADVENTIST RISK MANAGEMENT, INC.; GENCON INSURANCE COMPANY OF VERMONT; TOKIO MARINE SPECIALTY INSURANCE COMPANY; CERTAIN INTERESTED UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY PG2203220; CERTAIN INTERESTED UNDERWRITERS AT LLOYD'S SUBSCRIBING TO POLICY PG2203891; HDI GLOBAL INSURANCE COMPANY; PALMS INSURANCE COMPANY, LTD.; DB INSURANCE CO., LTD.; SENTINEL INSURANCE COMPANY, LTD.; STATE FARM FIRE AND CASUALTY COMPANY; STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; SWISS RE CORPORATE SOLUTIONS CAPACITY INSURANCE CORPORATION; SWISS RE CORPORATE SOLUTIONS AMERICA INSURANCE CORPORATION;

HARLEYSVILLE INSURANCE  
COMPANY OF NEW YORK

Plaintiffs,

vs.

MAUI ELECTRIC COMPANY,  
LIMITED; HAWAIIAN ELECTRIC  
COMPANY, INC.; HAWAII ELECTRIC  
LIGHT COMPANY, INC.; HAWAIIAN  
ELECTRIC INDUSTRIES, INC.;  
HAWAIIAN TELCOM  
COMMUNICATIONS, INC.; HAWAIIAN  
TELCOM, INC.; SPECTRUM OCEANIC,  
LLC; TIME WARNER CABLE  
INFORMATION SERVICES, LLC;  
CHARTER COMMUNICATIONS, INC.;  
CHARTER COMMUNICATIONS  
HOLDING COMPANY, LLC; CHARTER  
COMMUNICATIONS HOLDINGS, LLC;  
CHARTER COMMUNICATIONS, LLC;  
CHARTER COMMUNICATIONS  
OPERATING, LLC; CINCINNATI BELL,  
INC.; TRUSTEES OF THE ESTATE OF  
BERNICE PAUAHI BISHOP; DOE  
POWER UTILITIES, 1-10; DOE  
TELECOMS, 1-10; and DOE  
LANDOWNERS, 1-10; DOES 1-200,

Defendants.

**DEMAND FOR JURY TRIAL**

Plaintiffs, through their undersigned counsel, demand a trial by jury on all issues so triable.

Dated: Honolulu, Hawaii, January 12, 2024

DATED: Honolulu, Hawaii  
January 12, 2024

**GROTEFELD HOFFMANN**

By:           /s/Vincent Raboteau            
Vincent Raboteau

*Counsel for Subrogation Plaintiffs*  
AMGUARD INSURANCE COMPANY; CONCERT  
SPECIALTY INSURANCE COMPANY; GENERAL  
CASUALTY COMPANY OF WISCONSIN; THE  
CINCINNATI INSURANCE COMPANY;  
UNIVERSAL PROPERTY & CASUALTY  
INSURANCE COMPANY; CERTAIN INTERESTED  
UNDERWRITERS AT LLOYD'S SUBSCRIBING TO  
POLICY PG2203220; CERTAIN INTERESTED  
UNDERWRITERS AT LLOYD'S SUBSCRIBING TO  
POLICY PG2203891; STATE FARM FIRE AND  
CASUALTY COMPANY; STATE FARM MUTUAL  
AUTOMOBILE INSURANCE COMPANY;  
HARLEYSVILLE INSURANCE COMPANY OF  
NEW YORK

**COX WOOTTON LERNER**

By:           /s/Normand R. Lezy            
Normand R. Lezy

*Counsel for Subrogation Plaintiffs*

AMERICAN BANKERS INSURANCE COMPANY;  
STANDARD GUARANTY INSURANCE  
COMPANY; INTERINSURANCE EXCHANGE OF  
THE AUTOMOBILE CLUB; 21ST CENTURY  
CENTENNIAL INSURANCE COMPANY;  
FARMERS INSURANCE EXCHANGE; FARMERS  
PROPERTY AND CASUALTY INSURANCE  
COMPANY; FIRE INSURANCE EXCHANGE;  
FOREMOST INSURANCE COMPANY GRAND  
RAPIDS, MICHIGAN; MID-CENTURY  
INSURANCE COMPANY; FIRST FIRE &  
CASUALTY INSURANCE OF HAWAII, INC.;  
FIRST INDEMNITY INSURANCE OF HAWAII,  
INC.; FIRST INSURANCE COMPANY OF HAWAII,  
LTD.; FIRST SECURITY INSURANCE OF  
HAWAII, INC.; PENN-STAR INSURANCE  
COMPANY; UNITED NATIONAL INSURANCE  
COMPANY; ZEPHYR INSURANCE COMPANY,  
INC.; HAWAIIAN INSURANCE AND GUARANTY  
COMPANY, LTD.; ISLAND INSURANCE  
COMPANY, LTD.; TRADEWIND INSURANCE  
COMPANY, LTD.; ISLAND PREMIER  
INSURANCE COMPANY, LTD.; CRESTBROOK  
INSURANCE COMPANY; NATIONAL CASUALTY  
COMPANY; NATIONWIDE GENERAL  
INSURANCE COMPANY; NATIONWIDE  
MUTUAL INSURANCE COMPANY;  
SCOTTSDALE INSURANCE COMPANY;  
INSURANCE COMPANY; NAUTILUS  
INSURANCE COMPANY; GREAT DIVIDE  
INSURANCE COMPANY; PRIVILEGE  
UNDERWRITERS RECIPROCAL EXCHANGE;  
USAA CASUALTY INSURANCE COMPANY;  
USAA GENERAL INDEMNITY COMPANY;  
GARRISON PROPERTY AND CASUALTY  
INSURANCE COMPANY; WESTPORT  
INSURANCE CORPORATION; AXIS SURPLUS  
INSURANCE COMPANY; AMERICAN  
HALLMARK INSURANCE COMPANY OF TEXAS;  
STATE NATIONAL INSURANCE COMPANY;  
SWISS RE INTERNATIONAL SE (AUSTRALIA  
BRANCH); SWISS RE INTERNATIONAL SE  
(FRANCE BRANCH); SWISS RE CORPORATE  
SOLUTIONS ELITE INSURANCE CORPORATION;  
UNITED SERVICES AUTOMOBILE  
ASSOCIATION; USAA CASUALTY INSURANCE  
COMPANY; USAA GENERAL INDEMNITY  
COMPANY; GARRISON PROPERTY AND  
CASUALTY INSURANCE COMPANY;  
ADVENTIST RISK MANAGEMENT, INC.;  
GENCON INSURANCE COMPANY OF  
VERMONT; DB INSURANCE CO., LTD.; SWISS

RE CORPORATE SOLUTIONS CAPACITY  
INSURANCE CORPORATION; SWISS RE  
CORPORATE SOLUTIONS AMERICA  
INSURANCE CORPORATION



**OGAWA, LAU, NAKAMURA & JEW**

By:           /s/Michael F. O'Connor            
Michael F. O'Connor

and

Mark S. Anderson  
**COZEN O'CONNOR**

*Counsel for Subrogation Plaintiffs*

TOKIO MARINE AMERICA INSURANCE COMPANY; XL INSURANCE AMERICA, INC.; EVANSTON INSURANCE COMPANY; MARKEL AMERICAN INSURANCE COMPANY; MARKEL INSURANCE COMPANY, AS A SUBROGEE AND AS ASSIGNEE OF MARKEL BERMUDA LIMITED; CRESTMONT INSURANCE COMPANY; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON SUBSCRIBING TO POLICY NUMBER B0509PN2251799; CERTAIN UNDERWRITERS AT LLOYD'S OF LONDON AND INSURERS SUBSCRIBING TO POLICY NUMBER B0509PN2251784; GREAT AMERICAN ASSURANCE COMPANY; GREAT AMERICAN ALLIANCE INSURANCE COMPANY; GREAT AMERICAN E&S INSURANCE COMPANY; GREAT AMERICAN INSURANCE COMPANY; NATIONAL INTERSTATE INSURANCE COMPANY; NATIONAL INTERSTATE INSURANCE COMPANY OF HAWAII; IRONSHORE SPECIALTY INSURANCE COMPANY; LIBERTY INSURANCE CORPORATION; LIBERTY MUTUAL FIRE INSURANCE COMPANY; LIBERTY MUTUAL INSURANCE COMPANY; LIBERTY MUTUAL PERSONAL INSURANCE COMPANY; SAFECO INSURANCE COMPANY OF AMERICA; SAFECO INSURANCE COMPANY OF ILLINOIS; AMERICAN FAMILY CONNECT PROPERTY AND CASUALTY INSURANCE COMPANY; AMERICAN FAMILY MUTUAL INSURANCE COMPANY, S.I.; HOMESITE INSURANCE COMPANY; HOMESITE INSURANCE COMPANY OF CALIFORNIA; HOMESITE INSURANCE COMPANY OF THE MIDWEST; ACE AMERICAN INSURANCE COMPANY; BANKERS STANDARD INSURANCE COMPANY; CHUBB CUSTOM INSURANCE COMPANY; FEDERAL INSURANCE COMPANY; GREAT NORTHERN INSURANCE COMPANY; ILLINOIS UNION INSURANCE COMPANY; INDEMNITY INSURANCE COMPANY OF NORTH AMERICA; INSURANCE

COMPANY OF NORTH AMERICA; VIGILANT INSURANCE COMPANY; WESTCHESTER SURPLUS LINES INSURANCE COMPANY; ERIE INSURANCE COMPANY; ERIE INSURANCE EXCHANGE; GCUBE INSURANCE SERVICES, INC.; HCC INSURANCE HOLDINGS, INC.; GOLDEN BEAR INSURANCE COMPANY; MITSUI SUMITOMO INSURANCE COMPANY OF AMERICA; MITSUI SUMITOMO INSURANCE USA INC.; NATIONAL LIABILITY AND FIRE INSURANCE COMPANY; PHARMACISTS MUTUAL INSURANCE COMPANY; STILLWATER INSURANCE COMPANY; STILLWATER PROPERTY AND CASUALTY INSURANCE COMPANY; AMERICAN GUARANTEE AND LIABILITY INSURANCE COMPANY; STEADFAST INSURANCE COMPANY; ZURICH AMERICAN INSURANCE COMPANY; AGCS MARINE INSURANCE COMPANY; ALLIANZ GLOBAL RISKS US INSURANCE COMPANY; AMERICAN AUTOMOBILE INSURANCE COMPANY; FIREMAN'S FUND INSURANCE COMPANY



**OGAWA, LAU, NAKAMURA & JEW**

By:           /s/Michael F. O'Connor          

Michael F. O'Connor

*Counsel for Subrogation Plaintiffs*

TOKIO MARINE SPECIALTY INSURANCE  
COMPANY, PHILADELPHIA INDEMNITY  
INSURANCE COMPANY, NORTHFIELD  
INSURANCE COMPANY, STARR SURPLUS  
LINES INSURANCE COMPANY, TRAVELERS  
EXCESS AND SURPLUS LINES COMPANY, THE  
TRAVELERS INDEMNITY COMPANY OF  
CONNECTICUT, THE STANDARD FIRE  
INSURANCE COMPANY, THE TRAVELERS  
HOME AND MARINE INSURANCE COMPANY,  
THE TRAVELERS INDEMNITY COMPANY OF  
AMERICA, TRAVELERS PROPERTY CASUALTY  
COMPANY OF AMERICA, THE TRAVELERS  
INDEMNITY COMPANY, HARTFORD FIRE  
INSURANCE COMPANY, HARTFORD  
UNDERWRITERS INSURANCE COMPANY, AND  
SENTINEL INSURANCE COMPANY, LTD.

**EXHIBIT 6**

## Lahaina Subrogation: Cherokee has closed multiple claim sale transactions

Bradley Max, Esq. <bmax@cherokeemarkets.com>

Mon 7/15/2024 5:59 AM

To: Frank Pitre <FPitre@cpmlegal.com>

You don't often get email from bmax@cherokeemarkets.com. [Learn why this is important](#)

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.



### Subrogation Claim Liquidity:

**Lahaina Wildfire / Hawaiian Electric: 22% - 25% (Subject to claim status)**

**One of the recent transactions arranged by Cherokee:**

The logo for Hawaiian Electric, featuring a stylized blue and white geometric pattern to the left of the text "Hawaiian Electric".

\$57,130,074

Sale of subrogation claims related to damages caused by the Lahaina Fire that occurred in Maui in August 2023.

Seller is a significant P&C insurer.

Buyer is a litigation finance investment firm.

Cherokee acted as Arranger of this transaction

November 2023

### OTHER CASES:

**- Francis Scott Key Bridge: 5% - 10% (Subject to claim status)**

**- Winter Storm Uri / Brazos / ERCOT: (Call for estimate)**

**Cherokee is a specialized investment banking firm and a direct purchaser of subrogation or otherwise illiquid claims. The sale of claims not only provides liquidity, but also eliminates the risk of: recovery amount, timing and excessive administrative costs. We can maintain originally retained counsel in most circumstances. Pricing and terms are dependent upon asset type, deal structure, size, status and nature of the claim asserted. This letter is an indication of Cherokee's interest in purchasing claims. The terms are subject to market conditions and may move higher or lower without prior notice. However, the terms may be fixed upon the execution of a binding term sheet arranged or prepared by Cherokee. We would be happy to consider reasonable counter proposals.**

**If you would like to learn more, please contact:**

**Cherokee Trading, LLC**

**Contact: Bradley Max, Esq.**

**Title: Director**

**Direct Dial: (212) 259-4318**

**Mobile: (646) 469-4874**

**Email: [Bmax@cherokeecq.com](mailto:Bmax@cherokeecq.com)**

**Website: <https://cherokeecq.com/>**



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**Our mailing address is:**  
1384 Broadway, Suite 906, New York, NY 10018



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# **EXHIBIT 7**



# Post



**Vladimir Jelisavcic**

@VladimirVjel



Cherokee acted as deal arranger for the first Lahaina fire subrogation claim to trade. This bespoke transaction was negotiated between two firms with which we have had long-standing relationships. We thank our clients for their confidence and support.



**Hawaiian  
Electric**

\$57,130,074

Sale of subrogation claims related to damages caused by the Lahaina Fire that occurred in Maui in August 2023.

Seller is a significant P&C insurer.

Buyer is a litigation finance investment firm.

Cherokee acted as  
Arranger of this transaction

November 2023

8:42 AM - Jul 12, 2024 - **221** Views

**5** Likes **1** Bookmark



**EXHIBIT 8**



**Vladimir Jelisavcic** ✓

@VladimirVjel

Cherokee acted as deal arranger for the second Lahaina fire subrogation claim to trade. This highly-structured transaction was negotiated between two firms with which we have multi-year relationships. We thank our clients for their confidence and support. [#MauiFire](#)  
[#LahainaFire](#)



**Hawaiian  
Electric**

**\$19,613,560**

**Sale of subrogation claims related to damages  
caused by the Lahaina Fire that occurred in  
Maui in August 2023.**

**Seller is a P&C insurer.**

**Buyer is a litigation finance investment firm.**

**Cherokee acted as  
Arranger of this transaction**

**May 2024**

**EXHIBIT 9**

1 **DIEMER & WEI, LLP**  
Kathryn S. Diemer (#133977)  
2 Alexander J. Lewicki (#323639)  
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4 Telephone: 408-971-6270  
Facsimile: 408-971-6271  
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6 **WILLKIE FARR & GALLAGHER LLP**  
7 Matthew A. Feldman (*pro hac vice*)  
Joseph G. Minias (*pro hac vice*)  
8 Benjamin P. McCallen (*pro hac vice*)  
Daniel I. Forman (*pro hac vice*)  
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12 [jminias@willkie.com](mailto:jminias@willkie.com)  
13 [bmccallen@willkie.com](mailto:bmccallen@willkie.com)  
[dforman@willkie.com](mailto:dforman@willkie.com)

14 *Counsel for Ad Hoc Group of Subrogation Claim Holders*

15 **UNITED STATES BANKRUPTCY COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 **In re:**

19 **PG&E CORPORATION,**

20 **-and-**

21 **PACIFIC GAS AND ELECTRIC**  
22 **COMPANY,**

23 **Debtors.**

- 24  Affects PG&E Corporation  
25  Affects Pacific Gas and Electric Company  
26  Affects both Debtors

27 *\* All papers shall be filed in the lead case,*  
28 *No. 19-30088 (DM)*

Case No. 19-30088 (DM)  
Chapter 11

(Lead Case)  
(Jointly Administered)

**SIXTH AMENDED VERIFIED  
STATEMENT OF THE AD HOC GROUP  
OF SUBROGATION CLAIM HOLDERS  
PURSUANT TO BANKRUPTCY RULE  
2019**

1 Pursuant to Rule 2019 of the Federal Rules of Bankruptcy Procedure (“**Bankruptcy Rules**”),  
2 the ad hoc group of subrogation claim holders (“**Ad Hoc Subrogation Group**”), who hold liquidated  
3 and unliquidated insurance subrogation claims<sup>1</sup> against PG&E Corporation and Pacific Gas and  
4 Electric Company (“**Debtors**”), relating to certain California wildfires (“**Wildfires**”) (and other  
5 claims as detailed below), by and through its undersigned counsel, and due to changes in group  
6 membership or holdings, hereby submit this sixth amended verified statement (“**Sixth Amended**  
7 **Verified Statement**”), and in support thereof, state as follows:

8 1. On or around January 23, 2019, the Ad Hoc Subrogation Group engaged Willkie Farr  
9 & Gallagher LLP (“**Willkie**”) to represent it in connection with the Debtors’ restructuring. On March  
10 20, 2019, the Ad Hoc Subrogation Group filed the *Verified Statement of the Ad Hoc Group of*  
11 *Subrogation Claim Holders Pursuant to Bankruptcy Rule 2019* [Dkt. No. 971] (“**Original Verified**  
12 **Statement**”). On April 17, 2019, the Ad Hoc Subrogation Group filed the *First Amended Verified*  
13 *Statement of the Ad Hoc Group of Subrogation Claim Holders Pursuant to Bankruptcy Rule 2019*  
14 [Dkt. No. 1482] (“**First Amended Verified Statement**”), which amended and replaced the Original  
15 Verified Statement. On July 3, 2019, the Ad Hoc Subrogation Group filed the *Second Amended*  
16 *Verified Statement of the Ad Hoc Group of Subrogation Claim Holders Pursuant to Bankruptcy Rule*  
17 *2019* [Dkt. No. 2862] (“**Second Amended Verified Statement**”), which amended and replaced the  
18 First Amended Verified Statement. On July 17, 2019, the Ad Hoc Subrogation Group filed the *Third*  
19 *Amended Verified Statement of the Ad Hoc Group of Subrogation Claim Holders Pursuant to*  
20 *Bankruptcy Rule 2019* [Dkt. No. 3020] (“**Third Amended Verified Statement**”), which amended  
21

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22 <sup>1</sup> The term “Subrogation Claims” refers broadly to any claims arising from or related to payments made by an  
23 insurer to or on behalf of parties insured under policies issued by such insurer who have or had claims against the Debtors  
24 or a Debtor relating to the insured loss on account of which such insurer payments were made (hereinafter, “**Tort**  
25 **Victims**”). The use of the shorthand descriptive term “subrogation” herein is not intended to modify or limit the  
26 substantive rights of the holder of these claims or the bases for the claimant’s right to assert claims originating with  
27 insured Tort Victims. These “subrogation” claims include, but are not limited to, claims that arise from subrogation  
28 (whether such subrogation is contractual, equitable or statutory), assignment (whether such assignment is contractual,  
equitable or statutory), or otherwise in connection with payments made or to be made by the applicable insurer to insured  
Tort Victims, and whether arising as a matter of State or federal law, including, without limitation, Section 509 of the  
Bankruptcy Code. The holder of these claims reserves its rights to assert any and all claims arising from, as a result of,  
or in connection with payments made or to be made by the claimant (or, where the claimant is the direct or indirect  
assignee of claims of an insurer, the applicable insurer (the “**Assignor Insurer**”)) to or on behalf of each tort victim  
insured by the claimant or by the Assignor Insurer, and to assert all such claims both cumulatively and in the alternative.



1 and replaced the Second Amended Verified Statement. On October 16, 2019, the Ad Hoc  
2 Subrogation Group filed the *Fourth Amended Verified Statement of the Ad Hoc Group of Subrogation*  
3 *Claim Holders Pursuant to Bankruptcy Rule 2019* [Dkt. No. 4228] (“**Fourth Amended Verified**  
4 **Statement**”), which amended and replaced the Third Amended Verified Statement. On October 18,  
5 2019, the Ad Hoc Subrogation Group filed the *Fifth Amended Verified Statement of the Ad Hoc*  
6 *Group of Subrogation Claim Holders Pursuant to Bankruptcy Rule 2019* [Dkt. No. 4302] (“**Fifth**  
7 **Amended Verified Statement**”), which amended and replaced the Fourth Amended Verified  
8 Statement. This Sixth Amended Verified Statement amends and replaces the Fifth Amended Verified  
9 Statement.

10 2. As of the date of this Sixth Amended Verified Statement, Willkie represents only the  
11 Ad Hoc Subrogation Group. Willkie does not represent or purport to represent any other entities in  
12 connection with the Debtors’ chapter 11 cases. Each member of the Ad Hoc Subrogation Group is  
13 aware of, and has consented to, Willkie’s “group representation” of the Ad Hoc Subrogation Group.  
14 No member of the Ad Hoc Subrogation Group represents or purports to represent any other entities  
15 in connection with these chapter 11 cases.

16 3. Attached hereto as **Exhibit A** is a list of the names and addresses of each member of  
17 the Ad Hoc Subrogation Group, as well as the amount of each member’s disclosable economic  
18 interests (as relayed to Willkie by each member). The information contained in Exhibit A is based  
19 upon information provided by such members to Willkie and is subject to change.

20 4. The members of the Ad Hoc Subrogation Group either hold disclosable economic  
21 interests, or act as investment advisors or managers to funds and/or accounts or their respective  
22 subsidiaries that hold disclosable economic interests relating to the Debtors. In accordance with  
23 Bankruptcy Rule 2019 and based upon the most recent information provided to Willkie by each  
24 member of the Ad Hoc Subrogation Group, attached hereto as **Exhibit A** is a list of the names,  
25 addresses and nature and amount of each disclosable economic interest of each present member of  
26 the Ad Hoc Subrogation Group.

27 5. The information set forth in Exhibit A is intended only to comply with Bankruptcy  
28

1 Rule 2019 and is not intended for any other purpose.<sup>2</sup> Willkie does not make any representation  
2 regarding the validity, amount, allowance, or priority of such economic interests and reserves all  
3 rights with respect thereto.

4 6. Nothing contained in this Sixth Amended Verified Statement (or Exhibit A) should be  
5 construed as a limitation upon, or waiver of, any rights of any member of the Ad Hoc Subrogation  
6 Group to assert, file and/or amend their claims in accordance with applicable law and any orders  
7 entered in these chapter 11 cases.

8 7. Willkie reserves the right to amend and/or supplement this Sixth Amended Verified  
9 Statement in accordance with the requirements set forth in Bankruptcy Rule 2019.

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<sup>2</sup> For the avoidance of doubt, no implication should be drawn to the extent amounts set forth on Exhibit A are  
27 inconsistent with the amounts set forth in the proof of claims filed by individual members of the Ad Hoc Subrogation  
28 Group.

1 Dated: February 26, 2020

2 **WILLKIE FARR & GALLAGHER LLP**

3 /s/ Matthew A. Feldman  
4 Matthew A. Feldman (*pro hac vice*)  
5 Joseph G. Minias (*pro hac vice*)  
6 Benjamin P. McCallen (*pro hac vice*)  
7 Daniel I. Forman (*pro hac vice*)  
8 787 Seventh Avenue  
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12 Email: mfeldman@willkie.com  
13 jminias@willkie.com  
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15 dforman@willkie.com

16 **DIEMER & WEI, LLP**  
17 Kathryn S. Diemer (#133977)  
18 Alexander J. Lewicki (#323639)  
19 100 West San Fernando Street, Suite 555  
20 San Jose, CA 95113  
21 Telephone: 408-971-6270  
22 Facsimile: 408-971-6271  
23 Email: kdiemer@diemerwei.com

24 *Counsel to Ad Hoc Group of Subrogation Claim Holders*

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
AIG Europe Limited	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$112,404.50	
Allstate Insurance Company and certain affiliates	2775 Sanders Road, Suite A2E Northbrook, IL 60062	\$864,721,862.55	\$6,000,000.00 in Senior Notes <sup>2</sup>
Alternative Insurance Corporation	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$235,035.80	
American National Property & Casualty Company DBA ANPAC	1949 E. Sunshine Springfield, MO 65899	\$4,982,189.43	
American Guarantee and Liability Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	TBD <sup>3</sup>	

<sup>1</sup> Amounts listed herein are on account of claims paid to underlying insured parties affected by various California wildfires. Every member of the Ad Hoc Subrogation Group holds additional claims against the Debtors based on undisclosed internal reserves and future unknown amounts that have neither been paid or reserved for.

<sup>2</sup> “Senior Notes” shall have the meaning ascribed to it in the *Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief* [Dkt. No. 263].

<sup>3</sup> Where a party’s only wildfire related subrogation claims is listed as “TBD”, such party’s claims are based on undisclosed internal reserve amounts.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Certain affiliates of American International Group, Inc. (“AIG”) <sup>4</sup>	175 Water Street New York, NY 10038	\$333,299,328.37	
American Modern Insurance Group	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$198,558.45	
American National Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$15,680.88	
Amica Mutual Insurance Company	100 Amica Way Lincoln, RI 02865	\$35,014,454.00	
AmTrust North America	P.O. Box 650872 Dallas, TX 75265	\$10,041,883.62	
AmTrust Syndicate 1206	1 Great Tower Street London EC3R 5AA	\$5,910,000.00	
Arch Specialty Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$11,240.45	
American Reliable Insurance Company	P.O. Box 6099 Scottsdale, AZ 85261	\$11,075,372.63	

<sup>4</sup> Members of the Ad Hoc Subrogation Group include: AIG Europe Limited; AIG Property Casualty Company; AIG Specialty Insurance Company; American Home Assurance Company; Granite State Insurance Company; The Insurance Company of the State of Pennsylvania; Lexington Insurance Company; National Union Fire Insurance Company of Pittsburgh, Pa.; and New Hampshire Insurance Company.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
ArgoGlobal London	c/o Peninsula Insurance Bureau 2832 Lent Road Apopka, FL 32712	\$2,317,000.42	
ASI Select Insurance Corp.	1 ASI Way N St. Petersburg, FL 33702	\$14,167,681.01	
Aspen Insurance	155 Federal Street, Suite 602 Boston, MA 02110	\$5,744,634.75	
Aspen Specialty Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$1,601,164.38	
“Assurant” Group of Carriers <sup>5</sup>	260 Interstate North Circle SE Atlanta, GA 30339	\$8,550,064.48	
Attestor Capital LLP	7 Seymour Street, Fourth Floor London, XO W1H 7JW	\$834,742,084.00 <sup>6</sup>	7,488,514 shares of PG&E Corporation Common Stock \$20,500,000.00 in Senior Notes

<sup>5</sup> Members of the Ad Hoc Subrogation Group include: American Bankers Insurance Company; American Bankers Insurance Company of Florida; American Security Insurance Company; Standard Guaranty Insurance Company; Voyager Indemnity Insurance Company.

<sup>6</sup> Includes indirect exposure to subrogation claims, which provide economic interest to the subrogation claims arising from payments made (or to be made) by insurers to underlying insured parties affected by various California wildfires.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
The Baupost Group, L.L.C. <sup>7</sup>	10 St. James Avenue Suite 1700 Boston, Massachusetts 02116	\$6,779,029,346.01 <sup>8 9 10</sup>	16,062,643 shares of PG&E Corporation Common Stock \$850,000.00 in other unsecured wildfire-related claims \$33,691,700.00 in other rights <sup>11</sup>
Berkley National Insurance Company	222 South 9th Street, Suite 2700 Minneapolis, MN 55402	\$5,074,959.96	
Berkley Regional Insurance Company	222 South 9th Street, Suite 2700 Minneapolis, MN 55402	\$99,226.51	
Berkshire Hathaway Guard Ins.	P.O. Box 1368 Wilkes Barre, PA 18703	\$5,298,837.50	

<sup>7</sup> Disclosed information reflects funds and investment vehicles controlled by The Baupost Group, L.L.C. and includes indirect exposure by such funds and investment vehicles to subrogation claims that are subject to purchase arrangements of another entity.

<sup>8</sup> The amounts reflected herein are based on information received from the insurers who were the original holders of these claims and who have made or will make payments to their respective insured policyholders that give rise to, or are otherwise related to, these claims. The Baupost Group L.L.C. has not independently verified such information which remains subject to change based on information subsequently received. The Baupost Group L.L.C. expressly reserves the right to amend or modify the information set forth in this Bankruptcy Rule 2019 Statement, whether based on information that is subsequently received, or for any other reason.

<sup>9</sup> \$3,461,051,575.95 of the claims included in the above amount are subject to a potential right of payment to a contractual counterparty, the value of which depends on the value of such claims.

<sup>10</sup> A contractual counterparty from whom claims were acquired has a right to a certain specified type of recovery that might be received with respect to the acquired claims to the extent, if any, that such specified type of recovery is received. Further, a contractual counterparty to which claims were transferred is obligated to pay over a certain specified type of recovery that might be received with respect to the claims transferred to such contractual counterparty to the extent, if any, that such specified type of recovery is received by such counterparty.

<sup>11</sup> Represents membership interest in a Delaware limited liability company that holds contractual rights arising out of an indirect economic exposure to subrogation rights.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Berkshire Hathaway Specialty Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$722,900.00	
Brit Global Specialty	The Leadenhall Building 122 Leadenhall Street London EC3V 4AB	\$25,864,880.25	
California Casualty Indemnity Exchange	1875 S. Grant Street, Ste. 800 P.O. Box M San Mateo, CA 94402	\$44,534,274.67	
California Fair Plan Association	3425 Wilshire Boulevard, Suite 1200 Los Angeles CA 90010	\$40,668,908.36	
California Insurance Guarantee Association	101 North Brand Boulevard, 6th Floor Glendale, CA 91203  P.O. Box 29066 Glendale, CA 91209	\$69,984,665.00	
California Mutual Insurance Company	650 San Benito Street Ste. 250 Hollister, CA 95023	\$4,068,507.04	
Canopus Managing Agents Limited		\$3,025,614.84	
Century National	P.O. Box 628 Cypress, CA 90630	\$1,680,196.11	



**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Certain Underwriters at Lloyds (Novae)		\$6,457,579.00	
Certain Underwriters at Lloyds (Atrium)		\$14,243,608.00	
Certain Underwriters at Lloyd's, London-Brit Synd. 2987 & 2988		\$90,847.00	
Chubb Group <sup>12</sup>	436 Walnut Street, 4th Floor Philadelphia, PA 19106	\$34,754,998.00	\$1,025,000.00 in Senior Notes Insurance policies: unliquidated and contingent <sup>13</sup>
Church Mutual Insurance	PO Box 342 Merrill, WI 54452	\$18,440,546.12	
CNA Insurance Company <sup>14</sup>	801 West Warrenville Road, Ste 700 Lisle, IL 60532	\$56,468,447.83	
Continental Casualty Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$350,000.00	

<sup>12</sup> Members of the Ad Hoc Subrogation Group include: Bankers Standard Insurance Company; Chubb Custom Insurance Company; Chubb Insurance Company of New Jersey; Chubb National Insurance Company; Federal Insurance Company; Great Northern Insurance Company; Illinois Union Insurance Company; Indemnity Insurance Company of North America; Pacific Indemnity Company; Vigilant Insurance Company; Westchester Fire Insurance Company (Apa); and ACE American Insurance Company (collectively, the "**Chubb Group**").

<sup>13</sup> Certain Chubb entities are party to various insurance policies and agreements with PG&E and its affiliates.

<sup>14</sup> Members of the Ad Hoc Subrogation Group include: American Casualty Company; Continental Casualty Company; Continental Insurance Company; National Fire Insurance Company of Hartford; Transportation Insurance Company; Valley Forge Insurance Company

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Crestmont Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$1,000,000.00	
Crusader Insurance Company	26050 Mureau Road Calabasas, CA 91302-3171	\$423,717.00	
The Dentists Insurance Company	1201 K Street Sacramento, CA 95814	\$6,701,480.86	
Employers Mutual Casualty Company	717 Mulberry Des Moines, IA 50306  P.O. Box 712 Des Moines, IA 50306	\$511,797.91	
Endurance American Specialty Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$150,000.00	
Endurance Specialty Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$16,860.68	
Essentia Ins. Co.	141 Rivers Edge Dr. Ste 200 Traverse City, MI 49684	\$12,170,743.45	
Everest Indemnity Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$363,185.10	

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Everest National Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$3,000,000.00	
Fairfax Co / Riverstone; MS Amlin	No. 2 Minster Ct. Mincing Ln., London, UK  122 Leadenhall St London, UK	\$1,106,637.33	
Certain affiliates of Farmers Insurance Exchange	6301 Owensmouth Woodland Hills, CA 91367	\$53,014,504.14	
Federated Insurance	P.O. Box 486 Owatonna, MN 55060	\$1,758,448.24	
First Specialty Insurance Corporation	1200 Main Street Kansas City, MO 64105	\$19,821,944.34	
GCube Insurance Services, Inc.	100 Bayview Circle, Ste. 505 Newport Beach, CA 92660	\$3,459,010.39	
General Security Indemnity Company of Arizona	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$6,849,746.71	
Generali U.S. Branch	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$22,480.90	
Grange Insurance Association	200 Cedar St. Seattle, WA 98121	\$42,263,476.67	

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Great American Insurance Company and certain affiliates <sup>15</sup>	Great American Insurance Group P.O. Box 5425 Cincinnati, OH 45201-5425	\$104,145,756.96	
Great Lakes Reinsurance (UK) SE		\$726,937.00	
Government Employees Insurance Company and certain affiliates	5260 Western Avenue Chevy Chase, MD 20815	\$11,276,719.68	
GuideOne Insurance	PO Box 14543 Des Moines, IA 50306-3543	\$6,430,911.42	
The Hanover Insurance Group	440 Lincoln Street Worcester, MA 01653	\$19,196,114.00	
Hartford Accident & Indemnity Company and certain affiliates <sup>16</sup>	1 Hartford Plaza, Hartford, CT 06155	\$368,179,659.27	
HDI Global SE	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$12,000,000.00	
Horace Mann Insurance Company	3701 Regent BLVD, Suite 300 Irving, TX 15063	\$137,741,142.99	

<sup>15</sup> Members of the Ad Hoc Subrogation Group include: Great American Spirit Insurance Company; Great American Assurance Company; Great American Alliance Insurance Company; Great American Insurance Company; Great American Insurance Company of New York; and Great American E&S Insurance Company.

<sup>16</sup> Members of the Ad Hoc Subrogation Group include: Hartford Casualty Insurance Company; Hartford Fire Insurance Company; Hartford Underwriters Insurance Company; Property & Casualty Ins. Company of Hartford; Sentinel Insurance Company Ltd.; Trumbull Insurance Company; and Twin City Fire Insurance Company.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
International Insurance Company of Hannover SE	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$44,961.80	
Ironshore Insurance Ltd.	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$713,186.34	
Ironshore Specialty Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$22,480.90	
KBIC Insurance Company	55 Challenger Road, Suite 302 Ridgefield Park, NJ 07660	\$1,304,991.34	
Kemper Auto   Alliance United	8260 LBJ Freeway, Suite 400 Dallas, Texas 75243	\$26,348,619.34	
Landmark American Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$213,186.34	
Certain Affiliates of Liberty Mutual Insurance Company (“ <u>Liberty</u> ”)	175 Berkeley Street Boston, MA 02117	\$764,108,588.56	\$122,860,717.00 in surety bonds, unliquidated and contingent <sup>17</sup> Insurance policies: unliquidated and contingent <sup>18</sup>

<sup>17</sup> Liberty continues to write new bonds in the ordinary course of business post-petition.

<sup>18</sup> Liberty is party to various surety bonds, insurance policies and related agreements with PG&E and its affiliates.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Certain Underwriters of Lloyd's of London, UK Subscribing to Certain Policies <sup>19</sup>	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$21,325,851.00	
Certain Underwriters at Lloyd's London Subscribing to Policy No. HTB-002381-002 c/o Raphael and Associates	301 Route 17 North, Suite 401 Rutherford, NJ 07070	\$7,498,230.85	
Certain Underwriters at Lloyd's London Subscribing to Policy No. SS0001818/0196 c/o Raphael and Associates	301 Route 17 North, Suite 401 Rutherford, NJ 07070	\$1,106,637.33	
Lloyds of London Novae 2007 Syndicate	777 Main St. Fort Worth, TX 76102	\$903,745.13	
Mapfre USA	11 Gore Road Webster, MA 01570	\$9,835,094.66	
Markel Service, Incorporated <sup>20</sup>	4521 Highwoods Parkway Glen Allen, VA 23060	\$26,706,285.00	

<sup>19</sup> Members of the Ad Hoc Subrogation Group include underwriters to policy numbers: 10492-04, 10942-01, 16463W18, B0507L16360-521, B1230AP56189A17, B1230AP01428A18-16247, B128415509W18, B1353DG1700356000, B57635DAA, H3X000266, H3X000540, H3X000606, H3X000642, H3X000697, H3X000826, H3X000910, LSI100402-05, LSI100966-04, LSI103618-01, N17NA10020, P17A1770A001, PG1700158, PIV105114, PIV105143, PIV105626, PIV105719, PIV106514, PIV106864, PIV110301, PIV119634, PLNMBLV00001318, PN1600673AGA, PN1700079, PN1700089, PN1700157, PN1700364, PRPNA1701511, PSLPL106107, PTNAM1701507, PTNAM1701688, PTNAM1802877, PTNAM1802878, PTNAM1802879, PTNAM1802896, W1D52B160101, and W1DC80180201.

<sup>20</sup> On behalf of its affiliated insurers, Evanston Insurance Company, Markel American Insurance Company, and Markel Insurance Company.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Maxum Indemnity Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$106,593.17	
Maxum Specialty Insurance Group	3655 North Point Parkway Suite 600 Alpharetta, GA 30005	\$182,487.62	
Mercury Insurance and certain affiliates	555 W. Imperial Highway Brea, CA 92821	\$63,489,833.00	
Metropolitan Direct Property & Casualty	500 MetLife Way Freeport, IL 61032	\$732,674.45	
National Fire & Marine Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	TBD	
Nationwide Mutual Insurance Company and certain affiliates	One Nationwide Plaza, Columbus, Ohio 43215	\$9,928,797.02	
Nautilus Insurance Company	600 Las Colinas Blvd., Ste. 1400 Irving, TX 75039	\$676,101.56	
Nonprofits Insurance Alliance	P.O. Box 8507 Santa Cruz, CA 95061-8507	\$12,761,206.94	
OneBeacon / Atlantic Specialty Ins. Co.	188 Inverness Dr. West, Ste. 600 Englewood, CO 80112	\$481,548.24	

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Oregon Mutual Insurance Company	PO Box 808 McMinnville, Oregon 97128	\$4,475,131.85	\$140.88 derivative interest in Pacific Gas and Electric Company Preferred Stock
Pacific Specialty Insurance Co.	2200 Geng Road Palo Alto, CA 94303	\$45,259,283.34	
Pharmacists Mutual Insurance Company	P.O. Box 360, Algona, Iowa 50511	\$1,204,001.44	
Philadelphia Indemnity Insurance Company	One Bala Plaza, Suite 100 Bala Cynwyd, PA 19004	\$22,785,967.27	
The Princeton Excess and Surplus Lines Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$290,848.35	
The Progressive Corporation	6300 Wilson Mills Road Mayfield Village, OH 44143	\$11,852,398.08	63,500 shares of PG&E Corporation Common Stock
PURE Insurance	44 S. Broadway, Suite 301 White Plains, NY 10601	\$10,545,017.55	
QBE Americas, Inc.	One QBE Way Sun Prairie, WI 53596	\$80,403,727.00	
Rite Aid Corporation and Thrifty Payless, Inc.	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$2,750,000.00	
RSA Insurance Co PLC	20 Fenchurch St. London EC3M 3AV	£6,481,751.56	
RSUI Group, Inc.	945 East Paces Ferry Road, Suite 1800 Atlanta, GA 30326	\$60,715.56	



**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
RSUI Indemnity Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	TBD	
Selective Insurance Company of America; Mesa Underwriters Specialty Insurance Company	40 Wantage Ave. Branchville, NJ 07826	\$1,188,619.06	
Sentry Select Insurance Company	P.O. Box #8043 Stevens Point, WI 54481	TBD	
Star Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$15,419.67	
Starr Surplus Lines Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$745,392.18	
Starr Technical Risks	5151 San Felipe Suite #200 Houston, TX 77056	\$551,747.66	
State Farm Mutual Automobile Insurance Company and certain affiliates	One State Farm Plaza Bloomington, IL 61710	\$2,514,705,805.00	\$86,000,000.00 in Senior Notes \$5,000,000.00 in Non-Wildfire Subrogation Claims \$530,000.00 in Contractual Obligations under Prepetition Settlement Agreement
Stillwater Insurance Group	12500 I St., Ste. 100 Omaha, NE 68137	\$10,465,827.32	

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Strategic Value Partners, LLC acting strictly as agent on behalf of its managed funds and accounts	100 West Putnam Ave Greenwich, CT 06830	\$132,030,617.58	\$118,250,000.00 in Senior Notes \$15,000,000.00 in Revolving Credit Facility principal <sup>21</sup>
Sutter Insurance Company	1301 Redwood Way, Suite 200 Petaluma, CA 94954	\$838,200.00	
Tokio Marine American Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$14,224.00	
TOPA Insurance Co.	24025 Park Sorrento, Suite 300 Calabasas, CA 91302	\$621,000.00	
Sixth Street Partners, LLC <sup>22</sup>	2100 McKinney Ave., Suite 1500 Dallas, TX 75201	\$851,789,253.59 <sup>23</sup>	1,000,000 shares of PG&E Corporation Common Stock \$152,124,000.00 in Senior Notes \$9,884,083.91 in Revolving Credit Facility principal

<sup>21</sup> “Revolving Credit Facility” shall have the meaning ascribed to it in the *Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief* [Dkt. No. 263].

<sup>22</sup> Disclosed information reflects funds and investment vehicles controlled by affiliates of Sixth Street Partners LLC (formerly known as TPG Sixth Street Partners, LLC).

<sup>23</sup> The amounts reflected herein are based on information received from the insurers who hold legal title to and issued the policies relating to these claims, and who have made or will make payments to their respective insured policyholders that give rise to, or are otherwise related to, these claims. Sixth Street Partners, LLC has not independently verified such information which remains subject to change based on information subsequently received. Sixth Street Partners, LLC expressly reserves the right to amend or modify the information set forth in this Bankruptcy Rule 2019 Statement, whether based on information that is subsequently received, or for any other reason. In addition, a party from whom certain claims were acquired has a right to a certain specified type of recovery that might be received with respect to the acquired claims to the extent, if any, that such specified type of recovery is received, and an affiliate of Sixth Street Partners, LLC is obligated to pay over such recovery to the extent, if any, it is received.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
The Travelers Indemnity Company and certain of its property casualty insurance affiliates <sup>24</sup>	1 Tower Square, 0000-08MS Hartford, CT 06183	\$831,269,291.00	\$41,859,070.47 in Senior Notes  \$3,820,435.66 in non-Wildfire Subrogation Claims
TWE Insurance Company Pte. Ltd.	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$3,641,450.00	
Certain affiliates of United Services Automobile Association <sup>25</sup>	9800 Fredericksburg San Antonio, TX 78288	\$532,829,646.00	\$20,000,000.00 in Senior Notes \$38,000 in other claims
United Specialty Insurance Company	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$1,518,656.34	
United States Liability Insurance Company	1190 Devon Park Drive Wayne, PA 19087	\$540,362.12	
Tudor Insurance Company and certain affiliates <sup>26</sup>	300 Kimball Drive, Suite 500 Parsippany NJ 07054	\$4,027,917.23	

<sup>24</sup> Members of the Ad Hoc Subrogation Group include: Travelers Casualty Insurance Company of America; Travelers Indemnity Company of Connecticut; Travelers Property Casualty Company of America; The Travelers Indemnity Company of America; St Paul Fire and Marine, The Travelers Indemnity Company; Travelers Commercial Insurance Company; The Standard Fire Insurance Company; The Travelers Home and Marine Insurance Company; Travelers Property Casualty Insurance Company; Fidelity and Guaranty Insurance Underwriters Inc.; The Northfield Insurance Company; Northland Insurance; Constitution State Services, LLC.

<sup>25</sup> Members of the Ad Hoc Subrogation Group include: United Services Automobile Association; USAA Casualty Insurance Company; USAA General Indemnity Company; Garrison Property and Casualty Company, and affiliates companies.

<sup>26</sup> Members of the Ad Hoc Subrogation Group include: Western World Insurance Company.

**Exhibit A**

<b>NAME</b>	<b>ADDRESS</b>	<b>WILDFIRE RELATED SUBROGATION CLAIMS<sup>1</sup></b>	<b>OTHER DISCLOSABLE ECONOMIC INTERESTS</b>
Wawanesa General Insurance Co.	9050 Friars Rd. San Diego, CA 92108	\$1,926,522.57	
Western World Insurance Company	300 Kimball Drive, Suite 500 Parsippany NJ 07054	\$540,262.06	
XL America Insurance, Inc.	c/o Denenberg Tuffley, PLLC 28411 Northwestern Hwy, Suite 600 Southfield, MI 48034	\$13,084,303.38	
Zenith Insurance Company	P.O. Box 619083 Roseville, CA 95661-9083	\$3,987,318.25	
Zurich American Insurance Company	1299 Zurich Way Schaumburg, IL 60196	\$66,012,437.33	

# **EXHIBIT 10**

Electronically Filed  
SECOND CIRCUIT  
2CSP-23-000057  
17-APR-2024  
02:40 PM  
Dkt. 470 ORD

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI`I

In the Matter of Circuit Court  
Maui Fire Cases

) 2CSP-23-57 (2) ;  
)  
)  
) ORDER APPOINTING  
) SPECIAL SETTLEMENT  
) MASTER AND CO-  
) ADMINISTRATOR  
)  
) JUDGE: Peter T. Cahill

**ORDER APPOINTING SPECIAL SETTLEMENT MASTER AND CO-ADMINISTRATOR**

The Court has determined that the number of cases that have been filed and that are likely to be filed that involve the "Maui Fires" of August 2023 warranted designation as complex pursuant to HRCC Rule 12 (c) (1). The lawsuits raise many legal and factual issues. The determination of those many issues is part of the adversary process.

In that regard, the Court acknowledges the responsibility of all counsel to zealously represent their clients. The Court appreciates the efforts of counsel to reach a consensus discussing and creating mechanisms to manage these cases.

The creation of a special proceeding to manage the many cases is, to the knowledge of the Court, the first of its kind

in this State. So too is the use of *Case Anywhere*® to assist and simplify document filing and exchange.

The Court has a responsibility to foster and create a mechanism that allows the parties to engage in a settlement process that is fair, efficient, and timely. At the same time, it is also the duty of the Court to afford any party his, her, or its day in Court.

The Court finds that by the very nature and magnitude of the catastrophic events of August 2023 in Lahaina and Upcountry Maui the appointment of a special settlement master is appropriate pursuant to HRCC Rule 12(c).

IT IS THEREFORE ORDERED:

1. The Hon. Louis M. Meisinger, Ret., is appointed as special settlement master.

2. As the Court appointed special settlement master, Judge Meisinger is authorized and given the discretion to create, coordinate, manage, conduct, and order alternative dispute resolution of all designated "Maui Fire Cases."

3. Because mediators based in Hawai'i would assist with "local" knowledge and experience, the Court also appoints Dispute, Prevention, and Resolution and its principle Keith Hunter as co-administrator of all mediation efforts.

4. Both Judge Meisinger as the court appointed settlement master and Keith Hunter as co-special administrator are

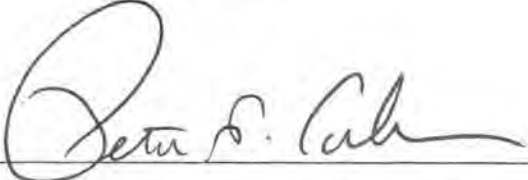
authorized to retain and consult with other mediators and ADR specialists to assist as they determines need requires. This authority extends to professionals—including retired judges and attorneys—that have experience and knowledge in handling and resolving mass fire cases.

5. Judge Meisinger and Mr. Hunter are authorized to determine fees to be charged and the manner and method of payment. Fees shall be billed to and paid directly by counsel of record. Counsel may seek reimbursement of such fees from clients or other responsible persons or entities. The Court shall enforce payment through appropriate means if requested.

6. Although the Court shall not be involved in settlement discussion of individual cases, the Court retains the authority and discretion to request recommendations from Judge Meisinger and Mr. Hunter insofar as it would assist in managing the litigation aspects of the cases. Both Judge Meisinger and Mr. Hunter are also encouraged to provide their own recommendations and thoughts to the Court confidentially.

7. This order may be modified at any time by the Court.

DATED: Wailuku, Maui, Hawai'i, APR 17 2024 .



Judge of the above-entitled Court





# **EXHIBIT 11**

Electronically Filed  
SECOND CIRCUIT  
2CSP-23-000057  
09-MAY-2024  
10:38 AM  
Dkt. 796 ORD

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

In the Matter of Circuit Court  
Maui Fire Cases

) 2CSP-23-57(2);  
)  
) ORDER APPOINTING CO-  
) SPECIAL SETTLEMENT  
) MASTER  
)  
) JUDGE: Peter T. Cahill

**ORDER APPOINTING CO-SPECIAL SETTLEMENT MASTER**

The Court has determined that the number of cases that have been filed and that are likely to be filed that involve the "Maui Fires" of August 2023 warrants the appointment of a co-special settlement master to assist the Honorable Louis M. Meisinger (Ret.) and Keith Hunter in the mediation process.

IT IS THEREFORE ORDERED:

1. The Hon. Daniel Buckley, Ret., is appointed as co-special settlement master.
2. This order may be modified at any time by the Court.

DATED: Wailuku, Maui, Hawai'i, MAY - 9 2024 .

*Peter T. Cahill*

Judge of the above-entitled Court



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing document is being electronically served upon **all parties**.

DATED: Wailuku, Maui, Hawai'i,                     MAY 09 2024                    



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Clerk of the Above-Entitled Court