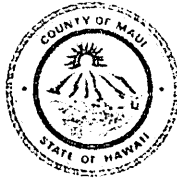


RICHARD T. BISSEN, JR.
Mayor

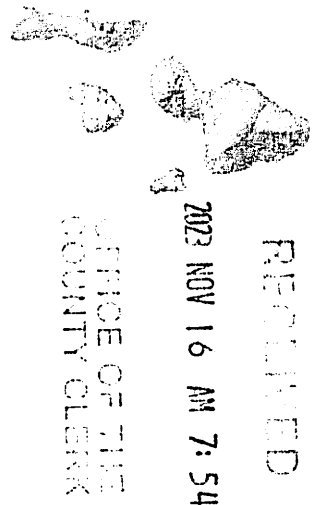
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Corporation Counsel

MIMI DESJARDINS
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DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
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November 15, 2023

Via email only at county.clerk@mauicounty.us

Honorable Alice L. Lee, Chair
and Members of the Council
County of Maui
Wailuku, Hawaii 96793

SUBJECT: INDEMNIFICATION AND REPRESENTATION OF HERMAN
ANDAYA IN AMIR HOSSEIN SHEIKHAN, ETC., ET AL. V.
HAWAIIAN ELECTRIC INDUSTRIES, ETC. ET AL., CIVIL
NO. 2CCV-23-0000260

Dear Chair Lee and Council Members:

Please find attached two proposed resolutions entitled:

- (1) "INDEMNIFYING HERMAN ANDAYA IN AMIR HOSSEIN SHEIKHAN, ETC., ET AL. V. HAWAIIAN ELECTRIC INDUSTRIES, ETC. ET AL., CIVIL NO. 2CCV-23-0000260";
- (2) "AUTHORIZING THE EMPLOYMENT OF SPECIAL COUNSEL RONALD T. OGOMORI, ATTORNEY AT LAW, A LAW CORPORATION, TO REPRESENT HERMAN ANDAYA IN AMIR HOSSEIN SHEIKHAN, ETC., ET AL. V. HAWAIIAN ELECTRIC INDUSTRIES, ETC. ET AL., CIVIL NO. 2CCV-23-0000260."

The purpose of the proposed resolutions is to recommend indemnification for Herman Andaya who has been named in his individual capacity as a Defendant in AMIR HOSSEIN SHEIKHAN, ETC., ET AL. V. HAWAIIAN ELECTRIC INDUSTRIES, ETC. ET AL., CIVIL NO. 2CCV-23-0000260, and if indemnified, to hire special counsel to represent because of the complexity of the litigation. Also attached is a copy of the complaint.

May I request that the proposed resolutions be scheduled for discussion and action or referral to the appropriate standing committee as soon as possible as time is of the essence.

Honorable Alice L. Lee, Chair
and Members of the Council
November 15, 2023
Page 2

It is anticipated that an executive session may be necessary to discuss questions and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and/or the Committee.

Should you have any questions or concerns, please do not hesitate to contact us. Thank you for your anticipated assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Victoria J. Takayesu', with a stylized, flowing script.

Victoria J. Takayesu
Corporation Counsel
Lit 7990

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Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT
STATE OF HAWAII

AMIR HOSSEIN SHEIKHAN, individually,
and as Next Friend for N.S., a Minor; and
TINA SIKYING LEUNG, individually,

Plaintiffs,

v.

Case No. 2CCV-23-0000260
(Other Non-Vehicle Tort – Maui Fire)

SECOND AMENDED COMPLAINT

- 1) **Negligence –Utility Defendants**
- 2) **Negligence –Telecom Defendants**
- 3) **Negligence –Landowner Defendants**

HAWAIIAN ELECTRIC INDUSTRIES, INC., a Hawaii corporation; HAWAIIAN ELECTRIC COMPANY, INC., a Hawaii corporation; HAWAII ELECTRIC LIGHT COMPANY, INC., a Hawaii Corporation; MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation; CHARTER COMMUNICATIONS, INC. a Delaware Corporation; TIME WARNER CABLE INFORMATION SERVICES, LLC (HAWAII) dba OCEANIC TIME WARNER; CINCINNATI BELL, INC., an Ohio Corporation; HAWAIIAN TELECOM, INC., a Hawaii Corporation; ELLIOTT KAWAIHO'OLANA MILLS, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop; CRYSTAL KAUILANI ROSE, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop; JENNIFER NOELANI GOODYEAR-KA'OPUA, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop; MICHELLE KA'UHANE, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop; and ROBERT K.W.H. NOBRIGA, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop; HOPE BUILDERS, LLC; WAINEE LAND & HOMES, LLC; COUNTY OF MAUI; STATE OF HAWAII; HERMAN ANDAYA, individually; and DOES 1-200, inclusive,

Defendants.

- 4) Negligence – County of Maui
- 5) Negligence – State of Hawai'i
- 6) Negligence – Herman Andaya
- 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 Defendant

Jury Trial Requested: Damages Exceed \$150,000

Circuit Judge: Hon. Peter T Cahill

Division: 2

Trial Date: None set.

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 Lāhainā Fire, Olinda Fire, and Kula Fire (collectively the “Maui Fires”) tore across the island. Based on current estimates, the fires burned over 3,00 acres, destroyed 2,000 homes and 800 businesses, and killing 115 people. The full extent of the disaster is still unknown.

2. Plaintiffs in this case are victims of the Lahaina fire who individually seek just compensation and damages. Specifically, Plaintiffs in this action seek damages for, inter alia, personal injury; damage to and loss of use of real and personal property; pain and suffering; injury to livestock and pets; loss of income; consequential and incidental damages; and/or for emotional suffering, fear, and anxiety, inconvenience, and other harm cause by the wrongful conduct of the Defendants, inclusive.

II.

PARTIES

3. The Plaintiffs are now and at all times relevant herein a resident, domiciliary and property owner who resided in Maui County. All of Plaintiffs' claims arise from events or occurrences related to the Lahaina Fires within which resulted in the damages, losses, and injuries as hereinafter alleged.

4. At all times herein mentioned, Defendants HEI, HECO, MECO, and HELCO are corporations authorized to do business, and doing business in the State of Hawaii, with their principle place of business in Hawaii.

5. At all times mentioned herein, HEI, HECO, MECO, HELCO (collectively, "Utility Defendants"), and each of them, were suppliers of electricity to members of the public. As part of supplying electricity to members of the public, HEI, HECO, MECO, HELCO, purchased, installed, constructed, built, maintained, inspected, and operated overhead power lines, together with supporting poles and appurtenances, for the purpose of conducting electricity for delivery to

members of the general public. Furthermore, on information and belief, HEI, HECO, MECO, and HELCO are responsible for maintaining utility poles and vegetation near, around, and in proximity to their electrical equipment in compliance with State regulations.

6. Defendant CHARTER COMMUNICATIONS, INC. (“CHARTER”) is, and at all times relevant 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 (Hawai‘i), a Delaware limited liability company (“TIME WARNER”), which does business as OCEANIC TIME WARNER. To conduct its business, Charter designs, constructs, maintains, and inspects telecom infrastructure, including hardware and equipment affixed to structures and fixtures.

7. 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, and related entities. 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.

8. Defendants CHARTER and CINCINNATI BELL (collectively, “Telecom Defendants”) are, and at all times relevant were, telecommunications companies subject to regulation by the Hawaii Public Utilities Commission and bound by all laws and regulations applicable to public utilities operating in the State of Hawai‘i and the County of Maui.

9. Defendants ELLIOTT KAWAIHO‘OLANA MILLS, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop; CRYSTAL KAUILANI ROSE, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop; JENNIFER NOELANI GOODYEAR-KA‘OPUA, in the

capacity of a trustee of the Estate of Bernice Pauahi Bishop; MICHELLE KA‘UHANĒ, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop; and ROBERT K.W.H. NOBRIGA, in the capacity of a trustee of the Estate of Bernice Pauahi Bishop are, and at all relevant times were, the trustees of the Estate of Bernice Pauahi Bishop ("THE BISHOP ESTATE").¹ THE BISHOP ESTATE is, and at all times relevant was, 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 Lāhainā Fire. The Bishop estate holds interests in or title to, manages, controls, rents, or 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, including 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.

10. Defendant HOPE BUILDERS, LLC ("HOPE BUILDERS") is, and at all times relevant was, a private landowner in the State of Hawai‘i. Hope Builders owns, controls, manages, and oversees the maintenance of property at or near the area of origin and spread of the Lāhainā Fire.

11. Defendant WAINĒ LAND & HOMES, LLC ("WAINĒ") is, and at all times relevant was, a private landowner in the State of Hawai‘i. Hope Builders owns, controls, manages, and oversees the maintenance of property at or near the area of origin and spread of the Lāhainā Fire.

12. These holders of interest in real property, and others unknown to Plaintiffs, (collectively, "Landowner Defendants") are, at all times relevant were, subject to all laws and regulations applicable to private persons owning, managing, and controlling in the State of Hawai‘i

¹ All allegations against THE BISHOP ESTATE are allegations against the Defendants Trustees of THE BISHOP ESTATE as the individuals with capacity to be sued for the conduct of THE BISHOP ESTATE.

and the County of Maui.

13. 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. Further, the County is responsible for the design, construction, and management of emergency alert systems – including their physical components and infrastructure – and, accordingly, had a duty to exercise reasonable care with respect to those systems, their creation, their maintenance, and their operation.

14. Defendant STATE OF HAWAII (the “STATE”) is, and at all times relevant was, a sovereign state of the United States of America. 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, the State is responsible for the design, construction, and management of emergency alert systems – including their physical components and infrastructure – and, accordingly, had a duty to exercise reasonable care with respect to those systems, their creation, their maintenance, and their operation.

15. Defendant HERMAN ANDAYA (“ANDAYA”) is, and at all times relevant was, a natural person and resident of the County of Maui in the State of Hawai‘i. From December 2017 to August 17, 2023, Andaya served as the Administrator of the County of Maui’s Emergency Management Agency (“MEMA”). In that role, Andaya was responsible for and oversaw public safety and risk management practices on behalf of the County. During his tenure, Andaya learned of specific risks facing residents of the County, including the risk of wildfire and issues concerning wildfire response. Accordingly, Andaya had a duty to use that knowledge and his position in order

to ensure the safety of the citizens of Maui. As alleged herein, Andaya consciously disregarded the risks facing residents of Maui, including the risk associated with the ignition and spread of a wildfire in reckless disregard toward Plaintiffs' safety.

16. 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.

17. 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

18. This Court has subject matter jurisdiction over this civil action under Hawai'i

Revised Statutes section 603-21.5.

19. 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 Hawai'i, are organized under the laws of Hawai'i, and/or maintain their principal place of business in Hawai'i, transact business in Hawai'i, perform work in Hawai'i, provide services in Hawai'i, caused tortious injury in Hawai'i, derive substantial revenue from services used or consumed in Hawai'i, and/or have interests in, use, or possess real property in Hawai'i. Plaintiffs allege that Defendants' acts and omissions within this state caused Plaintiffs to suffer injury within this state.

20. Venue in this Court is proper under Hawai'i Revised Statutes section 603-36(5), because Plaintiff claims for relief arose in the County of Maui.

IV.

THE PLAINTIFFS

21. The Plaintiffs are a family of three who suffered varying types of injuries, damages, losses, and/or harm as a result of the Lahaina Fire. Amir Hossein Sheikhan and Tiny Sikying Leung are the parents of 36-month-old, N.S, A Minor. Mr. Sheikhan will seek appointment by the Court to be the next of friend and/or guardian ad litem of N.S, A Minor.

22. At all times relevant hereto, Plaintiffs owned and resided at the property located at 1161 Loahilahi Place, Lahaina, HI 96761. Plaintiffs lost their home and all of their personal belongings as a result of the Lahaina Fire. Plaintiffs have been displaced from their home, resulting in the total loss of use and enjoyment of the home.

V.

GENERAL FACTUAL ALLEGATIONS

I. 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.² Indeed, over the past decade Hawai'i has seen an average of over 1,000 ignitions 20,000 acres burned per year.³ Across Hawai'i, some substantial fires included: 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).

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, 14 were in Kihei-Mākena, and 12 were in Wailuku-Kahului.⁴

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), Mā'alaea Fire (2010), and Kahana Ridge Fire (2019).

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

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, 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

² <https://pacificfireexchange.org/region/hawaii/>

³ *Id.*

⁴ <https://www.mauicounty.gov/DocumentCenter/View/125977/2020-Maui-County-Hazard-Mitigation-Plan-Final?bidId=> (at p. 485).

risk, public safety, property management, and emergency management.

29. And in both 2018 and 2022, fields of dry grass near Lāhainā ignited, causing substantial and widely known fires. Coupled with the regular high winds and dry conditions, these fires also served as 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 against 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 corresponded to 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.⁵

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

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

⁵ <https://www.mauicounty.gov/DocumentCenter/View/124390/Maui-County-Climate-Change-Litigation-Complaint>, at ¶¶ 173-174, 196.

that burned 9,200 acres and another in October 2019 that burned 4,100 acres.⁶ Similarly, West Maui was categorized as having a “highly likely” probability—or more than a 90% chance—of wildfires each year on average.⁷

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 “Report”).

36. The 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.” 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.”⁸

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.”⁹ 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.”¹⁰

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

⁶ <https://www.mauicounty.gov/DocumentCenter/View/124390/Maui-County-Climate-Change-Litigation-Complaint>, at ¶¶ 173-174, 196 (accessed August 17, 2023).

⁷ *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)

⁸ *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)

⁹ <https://pacificfireexchange.org/resource/slide-presentation-overview-of-wildfire-in-hawaii/> (2023) (accessed August 16, 2023)

¹⁰ *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)

“moderate drought,” and over 20% was classified as “severe drought” by August 2023.¹¹

39. But even as drought conditions improve, the risk of wildfire does not disappear. After wet winters, vegetation—particularly grasses and —grow substantially. When the seasons change and those same grasses dry, they become a bulk supply of readily ignitable fuel.¹²

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. 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 Report urged responsible parties to “routinely inspect power transmission lines and rights of way” while tasking the County *and* the utilities with corrective action.¹³

41. 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 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

¹¹ U.S. Drought Monitor, Maui County, HI, https://droughtmonitor.unl.edu/CurrentMap/StateDroughtMonitor.aspx?fips_15009. (accessed August 16, 2023)

¹² *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)

¹³ See, Note 7, *supra*, at 12.

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 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 Lāhainā, 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 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, it’s 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.

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,

48. Each of the Defendants 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, so that they did 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 Hawaii, including the Hawaii Revised Statutes and Hawai'i Administrative Rules, as well as the Maui County Code and State Fire Code.

53. Yet, each and every Defendant 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 Lāhainā Fire

54. In the early morning of August 8, 2023, sensors monitoring the Utility Defendants' electrical grid observed two significant faults in the town of Lāhainā.¹⁴ Overnight and into the early morning of the 8th, sensors recorded approximately 34 faults on the Utility Defendants' facilities in Lāhainā. These faults coincided with consistent and strong wind conditions.

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

56. 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 –

¹⁴ A "fault" is an abnormality in or disruption of the flow of electricity through an electrical circuit.

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.

57. 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 describe live-stream what he was able to see from his home near Lahainaluna Road.

58. The video, posted to social media and shared on various news outlets, shows the Utility Defendants’ overhead distribution lines falling to the ground under strong winds and igniting brush along the roadway.¹⁵ 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.”



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

60. 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,

¹⁵ 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)

2023. First responders initially reported that this blaze was completely contained.

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

62. Public and private land near the area of origin, which were not properly managed in order to prevent the ignition or spread of wildfire, facilitated the rapid spread and devastating nature of the Lāhainā Fire.

63. By 3:50 p.m., the Lāhainā Fire had crossed the bypass and residences in Lāhainā 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 Lāhainā, including historic Front Street, were essentially gridlocked.

64. The fire raged for hours. It consumed hundreds of homes and businesses and, in the process, claimed dozens of lives.

65. By the early evening of August 8, 2023, individuals desperate to escape the oncoming conflagration were jumping into the sea.

66. The Lāhainā Fire was devastating. Current estimates are that over 2,100 acres were burned, 2,200 structures – nearly 90% of which were homes, and killed at least 115 people. The rescue and recovery efforts are ongoing, and the full scale of the disaster is still unknown.

ii. The Upcountry Fires – the Olinda and Kula Fires

67. 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.

68. 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. To date, the Olinda Fire remains active.

69. 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. To date, the Kula Fire remains active and has burned over 200 acres.

iii. The Maui Fires Resulted in the Proliferation of Environmental Pollution

70. The Lāhainā Fire, Olinda Fire, and Kula Fire each resulted in the creation and proliferation of environmental pollution across the State of Hawai‘i, including in areas near the ignition and spread of the fires and the locations of Plaintiffs’ properties.

71. The environmental pollution created by the Maui Fires, which Plaintiffs allege were caused or contributed to by the wrongful conduct of Defendants, lead to the contamination of air, water, and soils on property in which Plaintiffs held an interest as well as the contamination of public areas such that it constituted a nuisance. The air pollution created by 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 Plaintiffs’ properties.

72. Further, the water pollution created by the Maui Fires included the proliferation 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.

II. Defendant-Specific Allegations

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

73. 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.

74. The Utility Defendants – HEI, HECO, HELC, 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.

75. 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.

76. 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.

77. HEI was formed in 1983 and, today, is a publicly traded holding company. HEI and its board oversees 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 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.

78. 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 designed, constructed, inspected, maintained, operated, and managed by the Utility Defendants. Some of these electrical facilities run underground, out of the reach of most weather and environment. 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.

79. Even though they act as one entity, the Utility Defendants' grid is a patchwork of equipment designed and build 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.

80. 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 or 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.

81. As the Utility Defendants acknowledge, “[o]verhead lines are more vulnerable to adverse weather conditions and objects contacting lines[.]”¹⁶ Indeed, one of the Report's recommendations emphasizes that ignitions “caused by human action and should be preventable,” and that “[a]boveground power lines that fail, short, or are low hanging can cause fire ignition

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

(sparks) that could start a wildfire, particularly in windy or stormy conditions.”¹⁷

82. 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.”¹⁸

83. 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.”¹⁹

84. 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 Were Negligent by Not Proactively De-energizing their Facilities

85. 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.

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

¹⁷ See Note 5, *supra*, at 12.

¹⁸ 2022 EPRM, Hawaiian Electric at 26; https://www.hawaiianelectric.com/documents/about_us/our_vision_and_commitment/resilience/20220630_resilience_EPRM_application.pdf (accessed August 15, 2023)

¹⁹ *Id.* at 50.

infrastructure.²⁰

87. 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 foreseeable create a risk of harm to the public.

88. Indeed, major electrical utilities in fire-prone areas began using proactive de-energization to reduce the risk of, and hopefully prevent, the ignition of a wildfire by their electrical facilities 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, SD&G applied for and, in 2012 received, authority to implement a proactive de-energization program for its electrical facilities in certain circumstances.

89. 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.

90. 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.

91. By the Utility Defendants’ own admission, they reviewed the wildfire mitigation plans of SD&GE and PG&E—both of which implemented proactive de-energization programs—“to identify best practices that would be appropriate for Hawai‘i’s environment and weather

²⁰ <https://prepareforpowerdown.com/> (accessed August 16, 2023)

conditions.”²¹

92. 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.

93. 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.

94. Despite knowing the risks associated with operating electrical facilities under high winds and in drought conditions, the Utility Defendants chose not to 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.

95. 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

96. 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.

97. Indeed, the Utility Defendants knew that their electrical facilities were not updated to the extent necessary. However, any shortcomings in the Utility Defendants’ facilities appear to be directly related to their failure to properly prioritize funding upgrades.

98. In 2019, the Utility Defendants admitted to the HPUC that they had a substantial

²¹ See Note 13, *supra*, at 52.

need to replace wooden poles in their grid and warned of a “serious public hazard” if those poles failed.²²

99. 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 wind. These aging poles, which made up over a third of the Utility Defendants’ system, were rated for 56 miles per hour.

100. 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 for one reason: money.

101. In their 2022 EPRM, the Utility Defendants sought a rate increase from the Hawaiian Public Utilities Commission. Part of the Utility Defendants’ explanation for their request was to obtain additional funding for system hardening.²³ 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.

102. 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.

²² <https://abcnews.go.com/Business/wireStory/bare-electrical-wire-poles-replacement-maui-match-strong-102584387>

²³ https://www.hawaiianelectric.com/documents/about_us/our_vision_and_commitment/resilience/20220630_resilience_EPRM_application.pdf at 1-2, 43.

103. 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 retired executive, collectively received over \$13,000,000.00 in total compensation between from 2021 to 2022.²⁴

2022 SUMMARY COMPENSATION TABLE

NAME AND 2022 PRINCIPAL POSITIONS	YEAR	SALARY (\$) ¹	BONUS (\$) ²	STOCK AWARDS (\$) ³	NONEQUITY INCENTIVE PLAN COMPENSATION (\$) ⁴	CHANGE IN PENSION VALUE AND NONQUALIFIED DEFERRED COMPENSATION EARNINGS (\$) ⁵	ALL OTHER COMPENSATION (\$) ⁶	TOTAL WITHOUT CHANGE IN PENSION VALUE (\$) ⁷	TOTAL (\$)
Scott W. H. Seu 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
Paul K. Ito HEI Executive Vice President, CFO & Treasurer*	2022	313,425	108,750	244,373	140,054	—	9,150	815,752	815,752
Kurt K. Murao 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
Shelee M. T. Kimura Hawaiian Electric President & CEO	2022	450,000	—	814,267	249,909	—	—	1,514,176	1,514,176
Ann C. Teranishi 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
Gregory C. Hazelton 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

104. 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.²⁵

105. Plaintiffs are informed, and thereon allege, that despite paying millions of dollars to executives and millions more in dividends, the Utility Defendants took action that did not

²⁴ https://s2.q4cdn.com/268623243/files/doc_financials/2022/ar/HEI-2023-Notice-of-Annual-Meeting-Proxy-Statement.pdf at 51.

²⁵ *Id.* at 5.

adequately or appropriate 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.

106. 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.

107. 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 that their conduct did not create a risk of harm to third parties.

108. 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.

109. 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.

110. General Order No. 6 sets forth the standards for the design and construction of overhead lines. 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. § 6-63-11, sets forth standards for the installation, operation, and maintenance of overhead electrical supply and communication lines according to the National Electric Safety Code.

111. 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 General Orders Nos. 6 or 7 or the standards established by H.A.R. § 6-63-11, among other laws

and regulations.

112. 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.

113. 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.

114. 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.

115. The Telecom Defendants provide communications service 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 General Orders 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.

116. 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.

117. 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.

118. 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. And regardless of whether their telecom facilities are independently owned or part of a joint agreement with a third party, the Telecom Defendants had duty to ensure that those facilities to not pose a risk of harm to third parties, including by causing or contributing to the ignition and spread of a wildfire.

119. 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.

120. The Telecom 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 that their conduct did not create a risk of harm to third parties.

121. 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.

122. 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.

123. 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; (ii) adopt and maintain service reliability procedures and standards; (iii) adopt and maintain a suitable safety program pursuant to H.A.R § 6-80-87, and including subdivisions (4), (7), (9), and (12).

124. Further, and pursuant to H.A.R. § 6-63-11, the Telecom Defendants were required to comply with the standards set forth in the National Electric Safety Code.

125. Yes, 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. 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 a foreseeable risk of energization and fire ignition as a result of contact with any third-party equipment or property.

126. 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.

127. 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.

128. 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.

129. 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.

130. 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.

131. 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.

132. 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

133. 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.

134. 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 property. The presence of these grasses posed a risk of harm by present the opportunity for causing a sparking event or by serving as ready fuel for a wildfire ignition.

135. 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. Accordingly, the Landowner 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.

136. 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.”

137. Plaintiffs are informed, and thereon alleged, 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.

138. 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.

139. 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.

140. 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.

141. Plaintiffs are informed, and thereon allege, that the Landowner Defendants' failures with respect to the management of their properties violated HRS § 132-8.

142. 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 and Were Negligent in their Response to the Maui Fires

i. The Public Entity Defendants Negligently Maintained their Property

143. 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.

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

145. Accordingly, the Public Entity Defendants were responsible for ensuring that their property and land did not pose a risk of igniting or facilitating the spread of a wildfire. Accordingly, the Landowner 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.

146. Plaintiffs are informed, and thereon alleged, 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. As a result, vegetation accumulated on the Public Entity Defendants' property and, at the time of the Maui Fires, was in a readily ignitable state.

147. 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.

148. Had the Public Entity 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.

149. 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 Public Entity Defendants Negligently Prepare for and Responded to the Maui Fires

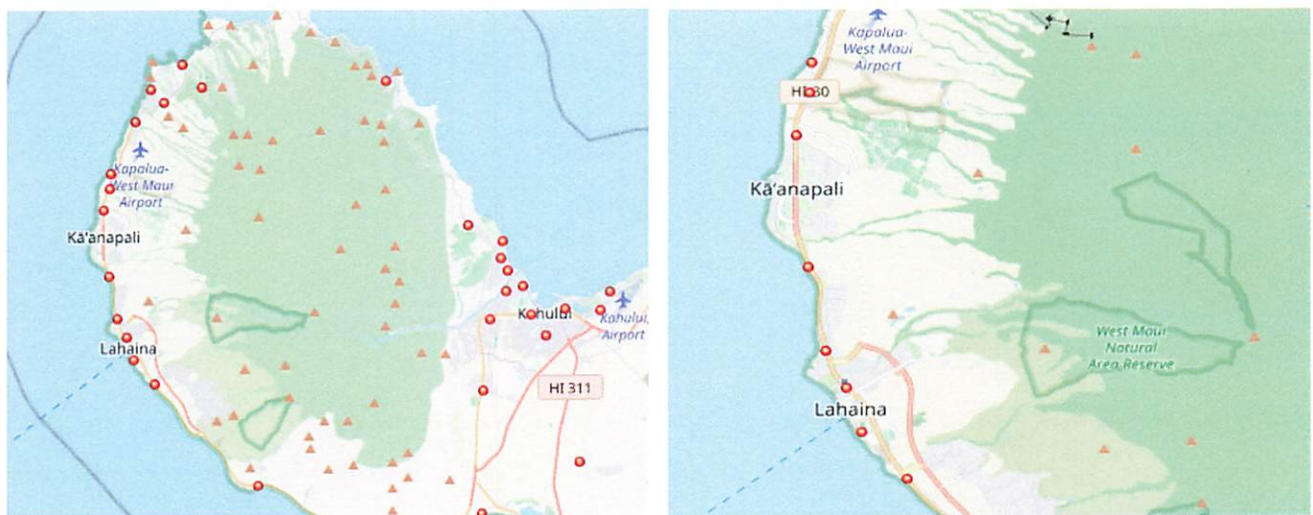
150. In addition to their alleged contributions to the ignition and spread of the Maui Fires, the Public Entity Defendants contributed to the extent of the destruction by, among other things: (1) failing to operate and maintain a warning system reasonably calculated to alert the public of the impending danger; (2) failing to follow operational procedures, to the extent they existed, that ensured warning channel could reasonably be expected to function under the circumstances; (3) misleading the public about the true nature and purpose of its warning systems; (4) conducting operations in a manner that caused or contributed to a particularized and foreseeable

risk of harm to Plaintiffs in light of known risks.

151. Plaintiffs are informed, and thereon allege, that at the time of the Maui Fires the County and State had operating procedures in place which required the issuing of warnings through channels reasonably calculated to inform the public of impending dangers, including by sounding alarms in response to a wildfire.

152. With the Maui Fires bearing down on the island, every second mattered. But when it mattered most, The County failed to follow operating procedures that required warning the public, including by failing to activate warning sirens.

153. For years, the County operated part of a statewide “All-Hazard” outdoor warning system (“All-Hazard System” or “AHS”), which is the “the largest single integrated public safety outdoor siren warning system in the world.”²⁶ 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.



154. 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

²⁶ <https://www.mauisirens.com/> (accessed August 17, 2023)

procedures in place.

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

156. 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.”

157. Clearly, AHS is not simply to instruct members of the public from one place to another, but to seek information through specific channels such as radio and television. Yet, in 2019, 2020, and 2021, 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.”²⁷

158. 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.”

iii The Public Entity Defendants were Negligent by Keeping Alarms Silent

159. 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.

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

161. 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 Hawaii

²⁷ <https://www.nbcnews.com/news/us-news/maui-emergency-management-director-sirens-Lāhainā-fire-rcna100464> (accessed August 17, 2023)

Emergency Management Agency: “Nobody at the state and nobody at the county attempted to activate those sirens based on our records[.]”²⁸

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

iv. The Public Entity Defendants Negligently Operated their Warning Systems

163. Before the Maui Fires, the Public Entity Defendants each assumed the responsibility of notifying the public in the event of disaster such as a wildfire through warning systems, including AHS. Plaintiffs are informed, and thereon allege, that

164. To alert the public, the Public Entity Defendants chose certain tools and technologies, including AHS, which is “just one part” of the larger Hawaii Statewide Alert and Warning System” (“SAWS”).²⁹

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

166. Plaintiffs are informed, and thereon allege, that the operating procedures of the respective Public Entity Defendants in place at the time of the Maui Fires required them, expressly or impliedly, to issue warnings to the public.

167. By failing to follow such operation procedures, to the extent they existed, the Public Entity Defendants implicitly admit that the systems in place before the Maui Fires were not up to the task.

168. Instead, The Public Entity Defendants relied on notifications broadcast on

²⁸ <https://www.cnn.com/2023/08/12/us/hawaii-emergency-warning-system-maui-wildfires/index.html> (accessed August 17, 2023)

²⁹ See Note 20, *supra*.

televisions, radio stations, and to mobile phones.³⁰ But all of these notification methods relied on external service to relay and receive a message.

169. Televisions rely on cable or internet service. Cell phones rely on internet or cellular service. These external services depend on external hardware, often located outdoors, that is easily susceptible to wildfire.³¹ Therefore, the very systems on which The Public Entity Defendants relied to convey their emergency messages were susceptible to interference and destruction. As a result, notifications intended for unsuspecting citizens never reached their targets.

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

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

172. Plaintiffs are informed, and thereon allege, that to the extent any operating procedures existed which concerned or related to the Public Entity Defendants' conduct pre-dating or concurrent with the Maui Fires the Public Entity Defendants failed to follow such operating procedures and that the actions taken by the Public Entity Defendants were not made for the purpose of effectuating any policy goals. Accordingly, the Public Entity Defendants are not entitled to immunity for any negligence that precedes any emergency conditions or as a result of any discretionary decision.

v. The County Negligently Failed to Identify Potential Ignition Sources as Required by its own Municipal Code

173. 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

³⁰ See Note 22, *supra*.

³¹ <https://www.cnn.com/2023/08/09/tech/cell-service-outages-maui-fires/index.html>
(accessed August 17, 2023)

of documentation and code enforcement. At all times relevant, the County had a non-delegable duty to abide by all provisions of the Maui County Code and carry out all requirements, whether express or implied, set forth by the terms of the Code, including any and all regulations promulgated pursuant to or standards adopted by the Code.

174. Maui County Fire Code section 1103.2.4 provides that: “Cut 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.”

175. Plaintiffs are informed, and thereon allege, that the terms of section 1103.2.4 create a mandatory duty for the County to affirmatively and routinely: (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 fire 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.

176. Plaintiffs are informed, and thereon allege, that the County’s action and inaction concerning the inspection and identification of property at or near the areas in which the Maui Fires ignited and spread violated the duties of section 1103.2.4, whether express or implied, as well as any operating procedures in place at the time of the ignition of the Maui Fires.

177. Plaintiffs are also informed, and thereon allege, that the County failed to comply with procedures set forth in inspection program in a way that would identify potential risks on properties it inspected for, among other reasons: (1) failed to properly hire, train, oversee, and retain individuals who were prepared to identify vegetation that could pose a risk of contributing to the ignition and spread of a wildfire; (2) failed to properly document, report, track, or record the conditions of properties that it knew, or reasonably should have known, contained a quantity or density of vegetation that could pose a risk of contributing to the ignition and spread of a wildfire; and (3) failed to properly inspect and identify potential hazards presented by the conditions of

properties within its jurisdiction.

178. As a direct and proximate result of the County's negligence, including but not limited to its management of its own property to ensure that vegetation on that property did not cause or contribute to the ignition or spread of a wildfire and express and implicit violations of section 1103.2.4, the Maui Fires ignited and spread.

179. As a direct and proximate result of the County's negligence, including but not limited to its construction of certain alert systems and its decision to not activate those alarms, Plaintiffs suffered the damages herein alleged.

E. Defendant Herman Andaya Recklessly and Negligently Disregarded Known and Obvious Risks Associated with Wildfire Response

180. In addition to the general allegations set forth above concerning the County's warning systems and warnings issued during the Maui Fires, Plaintiffs incorporate Paragraphs 148-168) make the following allegations specifically against Defendant Herman Andaya and in support of both the Causes of Action brought against Defendant Herman Andaya and the damages set forth in the Prayer for Relief contained herein.

181. From December 2017 to August 17, 2023, Andaya served as Administrator of the County of Maui's Emergency Management Agency ("MEMA"). In that role, Andaya was responsible for and oversaw public safety and risk management practices on behalf of the County and, in turn, owed the public at large and Plaintiffs a duty of care to act reasonably under the circumstances and in light of the facts and information known to him.

182. During his tenure, Andaya learned of specific risks facing residents of the County, including the risk of wildfire and issues concerning wildfire response. These risks included issues posed by improper warnings, ingress and egress restrictions, and others. In 2018, while Andaya was serving as Administrator, he learned of, witnessed, experienced, and otherwise had personal or constructive knowledge of facts and conditions related to Hurricane Lane and resulting catastrophic wildfire. Andaya had both the means and information to develop, implement, and oversee a series of policies, practices, and procedures that applied lessons learned from Hurricane

Lane and other catastrophic wildfires – including the proper warning of citizens at or near an area within or threatened by the wildfire.

183. Plaintiffs are informed, and thereon allege, that Andaya consciously disregarded the facts and circumstances of which he was aware before and at the time of the ignition and spread of the Maui Fires. As a result, Andaya made choices concerning the management of an emergency response, including: (i) failing to issue warning alarms reasonably calculated to reach the individuals at or near the ignition and spread of wildfire despite having knowledge of those risks and the potential consequences of delayed response or evacuation; (ii) failing to sound alarms which could warn individuals at risk of harm from the Maui Fires despite having knowledge of those risks and the potential consequences of delayed response or evacuation; (iii) failing to coordinate or implement an adequate emergency management response plan in the event of a catastrophic wildfire despite having knowledge of the risks and the potential consequences of inadequate emergency response.

184. In breaching his duties to Plaintiffs, including those detailed above, Andaya knew or should have known that his conduct could create a risk of harm to the public and to Plaintiffs. As a result, Andaya's conduct in the emergency management of the Maui Fires, and the ensuing disaster that followed, was reckless and grossly negligent.

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

VI.

FIRST CAUSE OF ACTION

NEGLIGENCE

(Against Utility Defendants)

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

187. 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.

188. 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.

189. 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.

190. 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.

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

192. Despite knowing and publicly acknowledging these risks, the Utility Defendants failed to implement a vegetation management program that did not include the removal of trees outside the right of way of electrical facilities.

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

194. 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.

195. 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.

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

197. 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.

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

- a. failing to comply with the applicable statutory, regulatory, and/or professional standards of care, including the laws of the State of Hawai'i and the rules, regulations, and orders of the 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 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 electrical facilities;
- j. failing to make their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware safe under all the exigencies created by surrounding circumstances and conditions;
- k. failing to conduct adequate, reasonably prompt, proper, effective, and/or frequent inspections of their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware;
- l. failing to design, construct, monitor, and/or maintain their electrical facilities, including all overhead electrical distribution circuits and all of their component parts

- and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware in a manner reasonably calculated to prevent ignition of a fire;
- m. failing to install the equipment necessary and/or to inspect and repair the equipment installed, to prevent their electrical facilities, including all overhead electrical distribution circuits and all of their component parts and products, such as conductors, jumpers, reclosers, fuses, or connecting hardware from improperly sagging, operating, and/or contacting other metal wires placed on its poles and igniting fires;
 - n. failing to keep all electrical facilities, regardless of age, voltage, style, material, or construction, in a safe condition at all times in order to prevent a fire ignition;
 - o. failing to properly train or supervise their agents, contractors, or employees responsible for maintenance and inspection of their electrical facilities and/or vegetation near those facilities;
 - p. failing to assess, budget, allocate, reserve, or distribute funds reasonably necessary to ensure their electrical facilities would not, because of a deficiency in the manner in which they were designed, constructed, inspected, maintained, managed, or overseen, pose a risk of fire ignition;
 - q. 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.

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

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

201. Further, at all times relevant, General Order No.7 required the Utility Defendants

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

202. 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 General Orders No. 6 or No. 7.

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

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

205. 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.

206. 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.

207. 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.

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

209. 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

(Against Telecom Defendants)

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

211. 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.

212. 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.

213. 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.

214. At all times relevant, the Telecom 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 a telecom facility, could damage facilities and cause an ignition during weather events such as a "red flag" warning event.

215. 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.

216. 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.

217. 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.

218. 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.

219. 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.

220. 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.

221. 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.

222. 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 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 electrical facilities, including all telecom facilities, 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 contacting 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.

223. 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 Nos. 6 and H.A.R. § 6-80-87.

224. These regulations required the Telecom Defendants to meet the standards for overhead telecommunications facilities set forth in General Order No. 6 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.

225. 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 General Order No. 6 and H.A.R. § 6-80-87.

226. Plaintiffs are among the class of persons who General Order No. 6 and H.A.R. § 6-80-87 seek to protect, and the harms Plaintiffs suffered are among the class of harms against which those same laws seek to protect.

227. As a direct and proximate result of the Telecom Defendants' violations of General Order No. 6 and H.A.R. § 6-80-87, the Maui Fires ignited and spread, causing the damages herein alleged.

228. 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.

229. 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.

230. 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.

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

232. 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.

THIRD CAUSE OF ACTION

NEGLIGENCE

(Against Landowner Defendants)

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

234. 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.

235. 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 or the appropriate distribution and management of water on their properties.

236. 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.

237. 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.

238. 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.

239. Further, once the Maui Fires ignited 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.

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

241. 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.

FOURTH CAUSE OF ACTION

NEGLIGENCE

(Against the County)

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

herein.

243. At all times relevant, the County had a duty to act in a manner reasonably calculated to protect the public, including Plaintiffs, from hazards presented by an impending hazard, including wildfire. The County's duties included abiding by operating procedures concerning the construction and implementation of warnings systems which could be expected to alert members of the public to the potential dangers posed by an impending hazard such as a wildfire as well as properly managing all property under their control, including through the use of proper vegetation management practices, in accordance with operating procedures and applicable statutes and regulations.

244. The County breached its duties to the public and Plaintiffs including, among other action and inaction, by:

- n. failing to follow operating procedures concerning the issuance of warnings reasonably calculated to communicate the harm presented by a wildfire to members of the public, including by failing to activate its "All-Hazards" warning system at or near the time of the ignition and spread of the Maui Fires in affected areas;
- o. failing to construct, inspect, and maintain a warning system in accordance with operating procedures, statutes, and regulations which was reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public;
- p. failing to follow operational policies, practices, or procedures reasonably calculated required to communicate the potential harm presented by a wildfire ignition to members of the public;
- q. failing to issue communications and warnings which were reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public in the event that members of the public did not have electrical service, cellular service, or internet service in accordance with operating policies;

- r. 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.

245. Plaintiffs are informed, and thereon allege, 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 fire 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.

246. Plaintiffs are informed, and thereon allege, that the County breached its express or implied duties under section 1103.2.4 by failing to identify vegetation which posed a hazard on its property or the property of others.

247. Plaintiffs are among the class of persons section 1103.2.4 of the Maui County 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 Maui County Fire Code seeks to prevent.

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

249. 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.

FIFTH CAUSE OF ACTION

NEGLIGENCE

(Against the State)

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

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

252. The State breached its duties to the public and Plaintiffs including, among other action and inaction, by:

- a. failing to follow operating procedures concerning the issuance of warnings reasonably calculated to communicate the harm presented by a wildfire to members of the public, including by failing to activate its "All-Hazards" warning system at or near the time of the ignition and spread of the Maui Fires in affected areas;
- b. failing to construct, inspect, and maintain a warning system in accordance with operating procedures, statutes, and regulations which was reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public;
- c. failing to follow operational policies, practices, or procedures reasonably calculated required to communicate the potential harm presented by a wildfire ignition to members of the public;
- d. failing to issue communications and warnings which were reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public in the event that members of the public did not have electrical service, cellular service, or internet service in accordance with operating policies;
- e. failing to exercise reasonable care in the ownership, management, and care of their property, easements, fixtures, and appurtenances such that they created an unreasonable risk of harm to Plaintiffs, including through their failure to implement

policies, practices, or procedures concerning vegetation management to mitigate against or prevent the spread of fire on or near their property.

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

254. 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.

SIXTH CAUSE OF ACTION

NEGLIGENCE

(Against Herman Andaya)

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

256. At all times relevant, Defendant Herman Andaya was an employee, officer, or managing agent of the County of Maui's Emergency Management Agency.

257. Accordingly, Andaya owed the public at large, including Plaintiffs, a duty of reasonable care in the exercise of his office and when responding to concerns, issues, or emergencies created by or arising from a natural disaster, including a wildfire.

258. In his role, Andaya learned specific facts concerning the risks of improper or inadequate emergency management, including risks to members of the public posed by inadequate evacuation warnings. Further, Andaya was aware of the risks created by prior fires in Maui and had actual or constructive knowledge of the circumstances which could reasonably be expected to occur and require emergency management in the event of a wildfire, including the issuance of warnings to members of the public.

259. Andaya breached his duty to the public and Plaintiffs including, among other action and inaction, by:

- s. failing abide by operating procedures which required the issuance of warnings reasonably calculated to communicate the harm presented by a wildfire to members

of the public, including by failing to activate its “All-Hazards” warning system at or near the time of the ignition and spread of the Maui Fires in affected areas;

- t. failing to abide by operational policies, practices, or procedures reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public;
- u. failing to issue communications and warnings which were reasonably calculated to communicate the potential harm presented by a wildfire ignition to members of the public in the event that members of the public did not have electrical service, cellular service, or internet service in accordance with operational policies;

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

261. Accordingly, Plaintiffs seek all damages recoverable under the laws of the State of Hawai‘i against Defendant Herman Andaya 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

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

263. 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.

264. 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.

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

266. 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.

267. 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.

268. 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

(Against Utility, Landowner, Telecom, State, County Defendants)

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

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

271. 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.

272. 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.

273. 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.

274. To the extent the condition or conditions on Defendants' 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.

275. 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.

276. 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.

277. 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.

278. 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.

279. As a direct and proximate result of Defendants' 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 Defendants as set forth in the Prayer for Relief contained herein, and in an amount

according to proof at trial.

281. Further 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

(Against Utility, Landowner, Telecom, State, County Defendants)

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

283. 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.

284. 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 action or inaction, 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.

285. 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.

286. 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.

287. 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.

288. The damaging effects of Defendants' conducts and the resulting wildfire are ongoing and affect the public at large. Because of the fire's location, temperature, and duration, extensive areas of hydrophobic soils developed within the fire's perimeter. This 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.

289. Plaintiffs are informed, and thereon alleged, that the conduct of the Defendants, as alleged herein, constituted a violation of Chapter 20.04.010 of the Maui County Code.

290. Plaintiffs are among the class of persons that Chapter 20.08.10 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.

291. As a direct and proximate result of Defendants' violations of Chapter 20.08.10, Plaintiffs suffered and continued to suffer, the damages alleged herein.

292. 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.

293. 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.

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

295. 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.

296. 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.

297. 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.

298. 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.

299. 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.

300. 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 and the Telecom Defendants to stop their continued violations of HPUC General Order No. 6.

301. For these reasons, Plaintiffs also seek a permanent injunction ordering the Telecom Defendants to stop their continued violations of HPUC General Order No. 6 and H.A.R. § 6-80-87.

302. 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.

303. 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

(Against Utility, Landowner, Telecom, State, County Defendants)

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

305. 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.

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

307. 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.

308. 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 and the Telecom Defendants to stop their continued violations of HPUC General Order No. 6.

309. For these reasons, Plaintiffs also seek a permanent injunction ordering the Telecom Defendants to stop their continued violations of HPUC General Order No. 6 and H.A.R. § 6-80-87.

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

ELEVENTH CAUSE OF ACTION

TRESPASS

(Against Utility, Landowner, Telecom, State, County Defendants)

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

312. 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.

313. 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.

314. 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.

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

316. 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

(Against The County)

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

318. 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.

319. 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.

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

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

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

323. 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

(Against The State)

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

325. 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.

326. 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.

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

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

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

330. 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.

331. 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.

332. 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.

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

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

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

336. 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.

COUNT FOURTEENTH

INVERSE CONDEMNATION

(Against The Utility Defendants)

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

338. 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.

339. 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.

340. 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.

341. 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.

342. 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.

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

344. 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.

345. 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.

346. 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.

VII.

PRAYER FOR RELIEF

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

- (a) Repair, depreciation, or replacement of damaged, destroyed or lost personal or real property;
- (b) Loss of the use or benefit of damaged, destroyed, or lost personal or real property;
- (c) Past and future medical expenses and any other expenses according to proof;
- (d) General damages for fear, worry, annoyance, disturbance, inconvenience, mental anguish, emotional distress, loss of quiet enjoyment of property, personal injury, and pain and suffering;
- (e) All costs of suit, including reasonable attorneys' fees, appraisal fees, engineering fees, expert fees, and all other costs or fees arising from the prosecution of this action, including all those recoverable under H.R.S. § 507-14.5 and any other provision of the Hawai'i Revised Statutes;
- (f) Lost wages, earning capacity, or business profits, use, goodwill, or proceeds or any related displacement costs;
- (g) Prejudgment and post-judgment interest in the maximum amount permitted by law;
- (h) For any and all other such further relief as this Court deems just and proper.

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.

VIII.

JURY TRIAL REQUEST

Plaintiffs request a jury trial on all causes of action for which a jury trial is available under the law.

DATED: October 13, 2023

PANISH SHEA BOYLE RAVIPUDI LLP

By: /s/Jesse Creed

JESSE CREED

Attorney for Plaintiffs