

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

Donnie “Roxx” McIntire

Plaintiff,

v.

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; and
DOES 1–200, inclusive,

Defendants.

Civil Case No.

(Other Non-Vehicle Tort)

**COMPLAINT for Negligence, Trespass, and
Nuisance**

**Jury Trial Requested: Damages Exceed
\$150,000**

INTRODUCTION

1. Beginning on or about August 8, 2023, residents and property owners in Maui County, Hawaii were devastated by a severe wildfire known as the “Lahaina Fire.” The Lahaina Fire was started when electrical infrastructure owned, operated and maintained by Hawaiian Electric Industries, Inc. (“HEI”), Hawaiian Electric Company, Inc. (“HECO”), Maui Electric Company, Limited (“MECO”), and Hawaii Electric Light Company, Inc. (“HELCO”) came into contact with vegetation inspected and maintained by the Defendants. At present, the fire is still burning and causing extensive damage and injuries throughout the island. At this time, it has been confirmed that over 100 people have died, with hundreds to thousands having suffered injuries, and more than 2,500 homes and business destroyed. These numbers are expected to dramatically increase.

2. The Plaintiff in this case is a victim of the Lahaina fire who individually seeks just compensation and damages. Specifically, Plaintiff in this action seeks 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.

JURISDICTION AND VENUE

3. The Plaintiff is now and at all times relevant herein a resident, domiciliary and property owner who resided in Maui County. All of Plaintiff's 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 principal place of business in Hawaii.

5. At all times mentioned herein, HEI, HECO, MECO, HELCO, and Does 1-100, 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. Upon information and belief, the Defendants herein, and each of them, were agents and/or employees each of the other and in acting and/or failing to act as alleged herein, the Defendants, and each of them, were acting in the course and scope of said agency and/or employment relationship.

7. This Court has subject matter jurisdiction over this civil action under Hawai'i Revised Statutes section 603-21.5.

8. 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. Plaintiff alleges that Defendants' acts and omissions within this state caused Plaintiff to suffer injury within this state.

9. 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.

10. At all times relevant to this action, Plaintiff and Defendants have been citizens of Hawai'i.

THE PLAINTIFF

11. The Plaintiff is an individual who suffered varying types of injuries, damages, losses, and/or harm as a result of the Lahaina Fire.

12. At all times relevant hereto, Plaintiff Donnie "Roxx" McIntire resided at the property located at 991 Front Street, Lahaina, Hawaii 98761, and suffered injuries and damages in this venue. Mr. Roxx lost his home and all of his personal belongings as a result of the Lahaina Fire. Mr. Roxx also suffered painful burns to his skin and lungs while attempting to flee from the subject fire that he received no warning of.

THE DEFENDANTS

13. Hawaiian Electric Industries, Inc. ("HEI") is a publicly traded public utility company that owns, controls, operates, and/or manages one or more energy plant and equipment that is directly or indirectly for public use for the production, conveyance, transmission, delivery, or furnishing of light and power in the State of Hawaii pursuant to, respectively, Sections 269-1

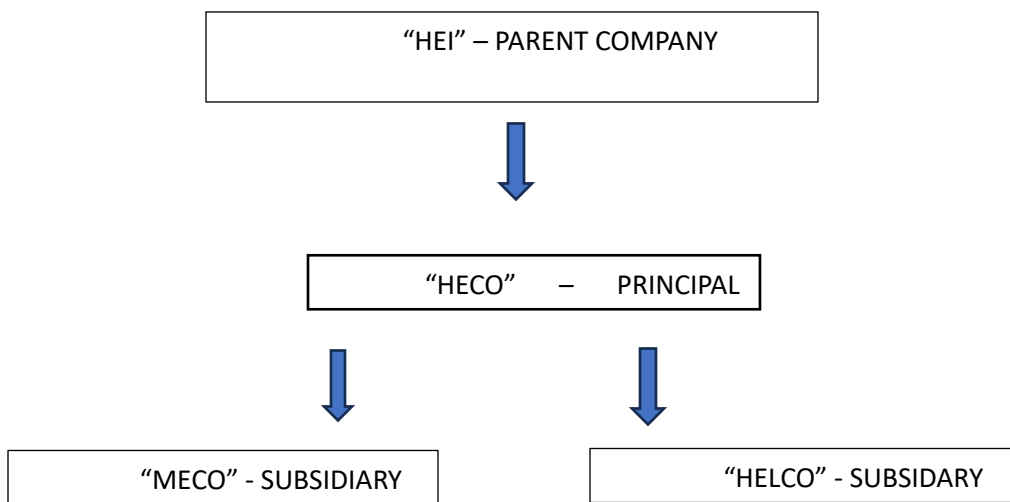
of the Hawaii Public Utilities Commission. HEI is in the business of providing electricity to the residents of Maui, including but not limited to those residing in the community of Lahaina and, more particularly, to Plaintiff's residences and/or properties through a network of electrical transmission and distribution lines. It is the largest supplier of electricity in the state of Hawaii. It does regular, sustained business throughout Hawaii, including in Maui County. Its principal place of business is in Honolulu at 1001 Bishop Street, Suite 2900, Honolulu, HI 96813.

14. Defendant Hawaiian Electric Company, Inc. ("HECO") is the Principle Subsidiary of Defendant HEI. Defendant HECO is a public utility company headquartered in Honolulu, Hawaii that owns, controls, operates, and/or manages one or more energy plant and equipment that is directly or indirectly for public use for the production, conveyance, transmission, delivery, or furnishing of light and power in the State of Hawaii pursuant to, respectively, Sections 269-1 of the Hawaii Public Utilities Commission. Defendant HECO is the parent company of Defendants Maui Electric Company ("MECO") and Hawaii Electric Light Company, Inc. ("HELCO"). It does regular, sustained business throughout Hawaii, including in Maui County. Its principal place of business is in Honolulu at 820 Ward Avenue, Honolulu, HI 96814.

15. Defendant Maui Electric Company, Limited ("MECO") is a subsidiary of Defendant HECO. Defendant MECO is a public utility company headquartered in Maui, Hawaii that owns, controls, operates, and/or manages one or more energy plant and equipment that is directly or indirectly for public use for the production, conveyance, transmission, delivery, or furnishing of light and power in the State of Hawaii pursuant to, respectively, Sections 269-1 of the Hawaii Public Utilities Commission. Its principal place of business is in Maui County at 210 Kamehameha Avenue, Kahului, HI 96732.

16. Defendant Hawai'i Electric Light Company, Inc. ("HELCO") is a subsidiary of Defendant HECO. Defendant HELCO is a public utility company headquartered in Honolulu, Hawaii that owns, controls, operates, and/or manages one or more energy plant and equipment that

is directly or indirectly for public use for the production, conveyance, transmission, delivery, or furnishing of light and power in the State of Hawaii pursuant to, respectively, Sections 269-1 of the Hawaii Public Utilities Commission. It does regular, sustained business throughout Hawaii, including in Maui County. Its principal place of business is in 54 Halekauila St., Hilo, HI, 96720.



17. HEI, through HECO and its subsidiaries, serve about 95% of the population in the State of Hawaii with public utility services and services relating to the generation of energy, transmission of electricity, generation of electricity, and distribution of energy. Collectively, these Defendants own about 3,000 miles of electrical transmission and distribution lines in the State of Hawaii. More than 40% of these lines are underground. Further, Defendant HECO is the sole owner of 50,000 utility poles.

18. "Defendants" refers collectively to Hawaiian Electric Industries, Inc., Hawaiian Electric Company, Inc, Hawai'i Electric Light Company, Inc., and Maui Electric Company, Limited. Defendants supply electricity in Hawaii. They own, design, construct, operate, maintain, and repair powerlines and other equipment to transmit electricity to residents, businesses, schools, and industries in Hawaii, including in and around the ignition point for the Lahaina Fire.

19. Plaintiff alleges on information and belief that HEI, HECO, MECO, and HELCO are jointly and severally liable for each other's negligence, conduct and wrongdoing as alleged herein, in that:

- a. HEI is the sole holder of HECO common stock;
- b. HECO, MECO, and HELCO operate as a single business enterprise operating out of the same building located at 1099 Alakea Street, Suite 2200, Honolulu, Hawaii 96813 for the purpose of effectuating and carrying out HEI's business and operations and/or for the benefit of HEI;
- c. Defendants do not operate as completely separate entities, but rather, integrate their resources to achieve a common business purpose;
- d. HECO, MECO, and HELCO are organized and controlled, and their decisions, affairs, and business so conducted as to make them a mere instrumentality, agents, conduits, or adjuncts of HEI;
- e. HECO, MECO, and HELCO's income contribution results from function integration, centralization of management and economies of scale with HEI;
- f. Defendants' officers and management are intertwined and do not act completely independent of one another;
- g. Defendants' officers and managers act in the interest of HEI as a single enterprise;
- h. HEI has control and authority to choose and appoint HECO, MECO, and HELCO board members and well as to officers and managers;
- i. Defendants do not compete with one another but have been structured and organized and integrated as a single enterprise where various components operate in concert with one another;
- j. HEI maintains unified administrative control over HECO, MECO, and HELCO;
- k. Defendants share the same insurance carriers and provide uniform or similar employee benefit plans;
- l. Defendants have unified personnel policies and practices;
- m. HEI's written guidelines, policies, and procedures control HECO, MECO, and HELO, and their employees, policies and practices.

20. The true names of Does 1 through 100, whether individual, corporate, associate, or otherwise, are unknown to Plaintiff who, under Hawaii Rules of Civil Procedure, Rule 17, sue these defendants under fictitious names. Each of the fictitiously named Defendants is responsible in some manner for the conduct alleged herein, including, without limitations, by way of conspiracy, aiding, abetting, furnishing the means and/or acting in capacities that create agency, respondent superior, and predecessor-or successor-in-interest relationships with the Defendants. The DOE Defendants are private individuals, associations, partnerships, corporations, or otherwise that actively assisted and participated in the negligent and wrongful conduct alleged herein in ways that are currently unknown to Plaintiff. Plaintiff makes all allegations contained in this Complaint against all Defendants, including DOES 1 through 100.

BACKGROUND

21. Prior to August 8, 2023, Defendants, and each of them, had a duty to properly maintain and repair the electric transmission lines, and other equipment, including utility poles, associated with their duty to transmit electricity, and to keep vegetation properly trimmed and maintained so as to prevent contact with overhead power lines and other electrical equipment. In the construction, repair, maintenance, inspection, and operation of such equipment, utility poles, and power lines, the Defendants, and each of them, had an obligation to comply with statutes, regulations, and standards, specifically including, but not limited to HRS 269-6, HRS 269-27.6, HRS 269-92, Chapter 6-73, Hawaii Administrative Rules, “Installation, Operation, and Maintenance of Overhead and Underground Electrical Supply and Communication Lines” (adopted 2007), Chapter 104-15 of the Revised Laws of Hawaii, Hawaii State Public Utilities Commission, General Order No. 6 and 7, National Electrical Code, NFPA No. 70 (2008), National Electrical Safety Code, American Standard Code for Electricity Meters, ASA C-12, American

Standard Requirements, Terminology and Test Code for Instrument Transformers, ASA C57.13. In addition, the Defendants, and each of them, were specifically aware that such standards and regulations were minimum standards and that Defendants, and each of them, had a duty to make their lines safer under all the exigencies created by the surrounding circumstances and conditions, including, installing or relocating overhead power lines underground, ensuring utility poles could withstand high wind speeds without breaking, deenergizing powerlines during dangerous conditions, ensuring the public received timely warning of wildfires through its adopted policies and procedures, and those failures to do so constituted negligence and would expose members of the general public to a serious risk of injury or death.

22. It is uncontested that overhead power lines are more vulnerable to adverse weather conditions and objects contacting lines and require more frequent repair. At all times relevant, Defendants knew that dangerous weather conditions were imminent and that the likelihood of overhead transmission lines contacting surrounding vegetation was great. Despite this knowledge, Defendants failed to timely deenergize their electrical lines. These and other failures identified herein caused and/or contributed to the ignition and spread of the Lahaina Fire and the failure to warn the public of same.

23. Moreover, utility poles made of wood in Maui County are far more prone to suffer from advanced wood decay, which significantly reduces the utility poles stability and strength. Upon information and belief, at all times leading up to the subject fire, many of the Defendants' utility poles in Maui County and the Lahaina community were severely deteriorated and damaged by advanced wood decay. Upon information and belief, advanced wood decay caused and/or contributed to the failure of the utility poles and the ignition and spread of the Lahaina Fire and

the failure to warn the public of same. Defendants knew or should have known that the above ground transmission lines in the Lahaina community posed a significant fire hazard.

24. Further, in or around 2018, in the wake of Hurricane Lane, several underground transmission lines in Lahaina were temporarily relocated and placed overhead. Upon information and belief, the temporary overhead lines in Lahaina were never placed back underground. Plaintiff alleges that underground transmission lines would have prevented the Lahaina Fire and the injuries and damages suffered by the Plaintiff, herein.

25. At all times mentioned herein, Defendants, and each of them, were aware that the State of Hawaii, and the Island of Maui, had been in a state of drought leading up to the Lahaina Fire. Defendants, and each of them, were aware that the drought conditions had existed and were aware that fire danger was at a dangerously high level. Defendants, and each of them, knew that if the power lines or other equipment came into contact with, or caused electricity to come into contact with vegetation it was probable that fire would result and that, given the drought conditions, vegetation, high winds, and decayed utility poles, a resulting fire would likely result in the loss of life, significant damage to real and personal property and damage to member of the general public, including this Plaintiff.

26. On August 8, 2023, the strong dry winds from Hurricane Dora came as expected after months of drought. The winds predictably led to trees crashing into Defendants' powerlines, which predictably toppled igniting surrounding vegetation in communities across Maui, including Lahaina. Over 30 utility poles, some of which were energized, fell onto trees and roads, complicating evacuations.

27. Predictably, the resulting wildfire turned deadly as it spread throughout Lahaina and to other areas of Maui. It burned over 11,000 acres and catastrophically impacted the local communities to which it spread. The historic town, Lahaina, has been destroyed. At least 80 people lost their lives in the fire, and the number is expected to rise as crews search scorched

areas for survivors and those who lost their lives. Residents, including the Plaintiff, are reported to have suffered significant personal injuries, including, but not limited to, burns and severe smoke inhalation. Over 2,000 structures have been damaged or destroyed. Plaintiff's priceless possessions were incinerated, and Plaintiff's beloved pets and other animals suffered horrific deaths. For some, everything they had spent a lifetime earnings, gathering, saving, and cherishing was lost. The community has suffered significant environmental and historical loss and impact, including smoke and ash resulting in air quality pollution and damage to significant monumental trees, plants, and historical buildings. The fire devastated Lahaina, one of Hawaii's most historic cities and onetime capital of the former Hawaiian kingdom, which is now covered in ash and smoke. Lahaina was home to a 150- year-old Lahaina banyan tree, which has long mesmerized locals and tourists alike. Standing at 60 feet high and a quarter of a mile in circumference, it is believed among conservation experts to be the largest tree of its kind in the United States — and has now been scorched by the fires. And all because Defendants refused to deenergize their powerlines, maintain vegetation and their infrastructure.

28. Defendants, and each of them, were negligent in that they failed to properly install, maintain, repair, and inspect the subject lines, utility poles, equipment, warning system, and adjacent vegetation and negligently failed to place transmission lines underground, and/or properly trim, prune, remove, and/or otherwise maintain vegetation near their electrical equipment so as to secure safety to the public in general, specifically including Plaintiff. As a direct, proximate, and legal result of the negligence of the Defendants, and each of them, Plaintiff suffered the injuries and damages alleged herein.

29. Further, upon information and belief, the Defendants failed to provide adequate warning to the public about the wildfire and denied the residents, occupants, and/or tourists valuable time to safely escape the deadly fire's path.

30. Upon information and belief, beginning on or about August 8, 2023, as a direct result of the negligence of the Defendants, and each of them, energized overhead power lines

and/or other electrical equipment came in contact with vegetation and caused the ignition and/or spread of the Lahaina Fire, which injured and burned property owned or occupied by this Plaintiff.

31. Plaintiff now sues Defendants to recover damages for some of what was lost. Plaintiff makes the allegations in this Complaint based on personal knowledge; information and belief; and the investigation and research of counsel.

GENERAL ALLEGATIONS

32. Defendants are, and were, aware of the danger from fires in Maui County during the summer months when environmental conditions are favorable for extensive conflagration and high temperatures, absence of moisture, and the prevalence of wind, which renders the extinguishment of a burning fire difficult.

33. Utility poles, wires and other equipment carrying electricity are dangerous instrumentalities and a hazardous and dangerous activity requiring the exercise of increased care commensurate with and proportionate to that increased danger so as to make the transport of electricity through wires safe under all circumstances and exigencies offered by the surrounding environment, including the risk of fire.

34. Defendants failed in their duty to exercise care commensurate with and proportionate to the combined danger of an area susceptible to wildfire and dangerous activity of wires carrying electricity, thereby being a substantial factor in the cause of the fires, as more fully set forth below.

35. The conditions and circumstances existing at the time of the ignition in known fire origin areas, including the extended drought, high winds, high temperatures, low humidity, and tinder-like dryness of vegetation, were reasonably foreseeable, if not expect, by a reasonable and prudent person and were reasonably foreseeable by and to be expect by, Defendants, especially with their special knowledge and expertise.

36. Further, Defendants designed their powerlines to transport electricity to its substations and from the substations to the public directly into their homes. The powerlines' circuitry and conductors were electrically a single and unified circuit that transmitted electricity.

37. Defendants designed, constructed, used, and maintained their utility infrastructure's system protection devices (which are used to respond to an overcurrent event) in a manner that would keep their powerlines energized for too long after a transmission line failure, allowing a fire to ignite. Defendants could have designed the system protection devices to shut off faster but failed to do so because tripping the circuit costs time and money. Defendants' decision was a cost-saving one that allowed older, slower equipment to remain in place.

38. Defendants designed their powerlines to be uninsulated, bare, and/or uncovered conduit carrying high voltage electricity that posed an increased risk of igniting should they come into contact with vegetation or other electrical equipment. Defendants could have designed their powerlines to be insulated and covered, and therefore less likely to ignite vegetation, but failed to do so.

39. Defendants constructed their powerlines such that they traveled above ground using wooden poles, more likely than not suffering from advanced wood decay, and left dry, overgrown vegetation below them. Defendants could have constructed their powerlines to travel underground, a request residents and energy experts have made many times, but Defendants ignored. Defendants also could have removed nearby vegetation entirely but failed to do so.

40. Defendants designed and constructed their powerlines so that they would reenergize to soon after being deenergized. Defendants could have designed and constructed their power lines with reclosers that operated more safely but failed to do so.

41. Defendants had a responsibility to maintain and continuously upkeep their utility infrastructure, including their powerlines, and to implement vegetation management programs and protocols to ensure the safe delivery of electricity to the public. They failed to do so and allowed their infrastructure to age and deteriorate.

42. Defendants knew that deenergizing powerlines is an effective way to prevent wildfires during periods of elevated fire danger, including during high wind events. Electric

utilities have long used intentional temporary outages to prevent fires. In California, Oregon, Nevada and other states, downed power lines, sparks from transmission hubs, and other electrical-grid failures have started or spread some of the deadliest and most destructive blazes in U.S. history. That has prompted these states proactively to shut down power to communities when red-flag conditions arise. Defendants recognized that a power shut-off plan could be effective, especially after it reviewed what happened with California's 2018 Camp Fire, which killed 85 people. Last year, Defendants pointed to California's Public Power Shutoff Plan as a successful way to prevent wildfires when additional robust techniques are not yet in place.

43. Yet, when fire potential in and near Maui County was well above normal levels on August 6, and August 7, 2023, due in part to extreme drought conditions, dry brush, and high winds caused by Hurricane Dora passing on the South, Defendants kept their power lines active.

44. Starting on Sunday, August 6, 2023, the National Weather Service (the "Service") began issuing warnings about dangerous weather conditions and high winds for fires in Hawaii. The Service issued high wind warnings beginning on Monday, August 7, 2023, through late Tuesday night August 8, 2023. The Service advised winds of 25 to 45 miles per hour with localized gusts of more than 60 mph were expected for Maui, Molokai, Lanai, Oahu, Hawaii island and portions of Kauai. The Service and media warned that damaging winds could blow down trees and power lines. The Service issued a fire watch for the leeward portions across the state starting this morning through late Tuesday night due to the high winds and humidity being 40 to 45 percent during the afternoons and evening. The Service advised any fires that develop will likely spread rapidly.

45. On Monday, August 7, 2023, at 4:42 a.m., the Service issued a "Red Flag Warning" that continued until August 10 at 6:00 a.m. and predicted extreme winds and fire dangers. On August 8, 2023, the Governor of Hawaii issued a proclamation relating to wildfires. The Governor stated that very dry conditions and strong and potentially damaging easterly winds caused by the passage of Hurricane Dora to the south of the State are contributing to the wildfire danger. The Governor directed the Director of Hawai'i Emergency Management and the Administrator of Emergency Management to take appropriate actions to direct or control, as may

be necessary for emergency management, including issuing alerts, warning, notifications and activations, issue warnings and signals for alerts and any type or warning device, system, or method to be used in connection therewith, shut off water mains, gas mains, electric power connections, or suspension of other services, and issue mandatory evacuations.

46. Maui Fire officials warned in an alert issued August 8, 2023, that “erratic wind, challenging terrain, steep slopes and dropping humidity, the direction and the location of the fire conditions make it difficult to predict path and speed of a wildfire.”

47. Before August 8, 2023, Defendants knew that there was an extreme fire risk in and near Maui County. They also knew that wildfires are on average ten times larger than other types of fires. Despite this, Defendants left their powerlines energized when the winds hit exactly as predicted. Defendants failed to deenergize their powerlines despite the National Weather Service’s warnings, and despite all the other information Defendants knew about the elevated risk of fire on that day.

48. Defendants’ failure to deenergize their lines on August 8, 2023, was even more egregious in light of their prior acknowledgement and the condition of their utility infrastructure. Defendants knew that (a) their utility infrastructure was intended, designed, and constructed to pass electricity through wooden poles and exposed powerlines in vegetated areas; (b) their aging utility infrastructure was intended, designed, and constructed with poorly designed system protection devices that reboot too quickly; (c) they had a history of improperly maintaining the line tension in their powerlines; (d) they failed to properly, safely, and prudently maintain the vegetation and land surrounding their electrical infrastructure and equipment and (e) they knew the surrounding vegetation was dry due to the severe drought.

49. When the high winds, with gusts reaching up to 60 miles per hour, came as predicted, the natural and ordinary consequences of Defendants’ choices led to their utility poles failing and powerlines falling and starting a brush fire on August 8, 2023, at 6:37 a.m. in the area of Lahainaluna Road. Given the predicted conditions (including wind speed and direction, topography, and the manner in which wildfires spread), the inevitable consequence of the ignited fires was the creation of a wildfire that spread to Plaintiff’s homes, properties and throughout

Maui County completely destroying Lahaina.

50. The Lahaina Fire occurred because Defendants: (a) failed to deenergize their powerlines on August 8, 2023; (b) intended, designed and constructed their utility infrastructure to pass electricity through exposed powerlines in dry, vegetated areas; (c) failed to prudently inspect, maintain, and operate the electrical equipment in their utility infrastructure; (d) failed to maintain the appropriate clearance area between its electrical equipment and surrounding vegetation; and (e) failed to properly inspect, maintain, replace, and/or relocate damaged/decayed wooden utility poles

51. The conditions and circumstances surrounding the ignition of the Lahaina Fire—including the nature and condition of Defendants’ electrical infrastructure, low humidity, strong winds, and tinder-like dry vegetation—were forecasted and foreseeable by any reasonably prudent person. Such conditions and circumstances were therefore foreseeable to Defendants, who have special knowledge and expertise as electrical services providers.

52. The inevitable consequence of the fire that Defendants’ intentional decisions caused over 100 deaths, and many people who were in the area that the fire impacted suffered serious, ongoing personal injuries. Maui County Mayor Richard T. Bissen Jr. said the death toll so far reflects only those who were found outside of buildings. A number of people were believed to have died in their vehicles attempting to flee from flames at their doorstep without warning.

53. The health impacts of wildfire smoke are on the same order of magnitude, or possibly even greater, than firefighting costs and property damage. This is in part because one of the main components of wildfire smoke are so-called PM2.5 particles, which are up to 10 times more harmful to humans than particles released from other sources, such as car exhaust. PM2.5 particles can pass through the nose and lungs, bypassing the body’s defense mechanisms, and enter the bloodstream. From there they can harm the heart, lungs, and other vital organs, increasing the risk of stroke, heart attacks, and respiratory problems. People with certain preexisting conditions are particularly vulnerable.

54. Another inevitable consequence of the fire that Defendants’ intentional decisions caused was significant property and environmental harm. Article XI, section 9 of the Hawai’i State

Constitution, states: Each person has the right to a clean and healthful environment, as defined by laws relating to environmental quality, including control of pollution and conservation, protection and enhancement of natural resources. Flames, smoke, embers, ash, odors, gases, and airborne particles came into contact with, were deposited on, damaged, destroyed, and/or otherwise trespassed on Plaintiff's real and personal property, causing very hazardous and unhealthy conditions, and interfering with Plaintiff's right to enjoy their properties and the environment. This interference is ongoing, as Plaintiff face an ongoing risk of harm to themselves and their property from flooding, debris flows, diminished drinking water quality, decreased soil productivity, and increased noxious weed spread – all caused by the Lahaina Fire.

55. This action seeks damages for each Plaintiff named in this case, according to their individual proof, and not as a part of a class action for any and all harm they suffered as a result of the fires.

56. The Lahaina Fire caused Plaintiff to suffer substantial harm to their persons, interests, and property including, but not limited to, interference with their personal rights and interests in their use and quiet enjoyment of their real and personal properties; interference with their normal and usual activities; wrongful death; personal injuries including irritation of the eyes and respiratory tract, coughing, phlegm, wheezing, difficulty breathing, fear for their lives and personal safety, mental suffering, emotional distress, stress, anxiety, annoyance and inconvenience; medical bills; increased risks of emergency room visits, hospital admissions, and premature death; damage to and destruction of real property; damage to and loss of structures, personal property, and cherished possessions; out-of-pocket expenses directly and proximately incurred as a result of the fire; additional living expenses; evacuation expenses; uncompensated time engaged in recovery efforts; lost wages; loss of earning capacity; and loss of business income and goodwill, and various types of emotional distress, annoyance, inconvenience, disturbance, and mental anguish.

57. Upon information and belief, Plaintiff herein allege that HEI, HECO, MECO, HELCO and Does 1-100 knew of the dangerous conditions of the property that eventually resulted in the Lahaina Fire, but recklessly and with carless and conscious disregard to human life and safety decided to ignore the fire risks. To make sure that the necessary precautions are taken in the future, this action seeks punitive and exemplary damages against Defendants.

COUNT ONE – NEGLIGENCE

(Against all Defendants)

58. Plaintiff incorporates by reference the allegations set forth above as though fully set forth at length here.

59. Defendants and Does 1-100 have a non-delegable duty to apply a level of care commensurate with and propionate to the danger of designing, engineering, constructing, operating, inspecting, and maintaining electrical transmission and distributions system, including relocation and vegetation clearance, and public warning systems and procedures.

60. Defendants HEI, HECO, MECO, HELCO, and DOES 1-100, have a non-delegable duty of vigilant oversight in the maintenance, use, operation, repair, and inspection appropriate to the changing conditions and circumstances of their electrical transmission and distribution systems.

61. Prior to the subject fire, Defendant HECO, MECO, and/or HELCO hired, retained, contracted, allowed, and/or otherwise collaborated with the DOE Defendants and/or other parties to perform work along and maintain the network of distribution lines, utility poles, infrastructure, and vegetation. The work for which DOE Defendants were hired involved a risk of fire that was peculiar to the nature of the agency relationship. A reasonable property/easement owner and/or lessee in the position of Defendants HEI, HECO, MECO, and/or HELCO knew, or should have recognized, the necessity of taking special precautions to protect adjoining property owners against

the risk of harm create by work performed, wort to be performed, and/or work otherwise not performed.

62. Defendants, and each of them, knew or should have known that the activities of the DOE Defendants, and/or other parties, involved a risk that was peculiar to the operation of Defendants' business that was foreseeable and arose from the nature and/or location of the work. Notwithstanding this, Defendants, and each of them, failed to take reasonable precautions to protect adjoining property owners against the foreseeable risk of harm created by their activities.

63. Defendants, and each of them, have special knowledge and expertise far above that of a layperson that they were required to apply to the design, engineering, construction, use, operation, inspection, repair, and maintenance of electrical lines, utility poles, infrastructure, equipment, and vegetation in order to assure safety under all the local conditions, including severe drought, in their service area, including but not limited to, those conditions identified herein.

64. The occurrence referred to above was caused by the negligence, carelessness and/or negligent omissions of Defendants, its agents, servants, and/or employees acting within the scope and course of their employment in

- a. Failing to take proper steps to protect plaintiff's premises from an electrical fire or the hazards of electricity;
- b. Failing to properly and safely supply electricity to the premises;
- c. Failing to design, construct, monitor, and maintain high voltage transmission and distribution lines in a manner that avoids igniting fire during long, dry seasons by allowing those lines to withstand foreseeable conditions and avoid igniting fires;
- d. Failing to design, construct, monitor, and maintain high voltage transmission and distribution lines and equipment to withstand foreseeable conditions to avoid igniting fires;
- e. Failing to conduct reasonably prompt, proper, and frequent inspections of the electrical transmission lines, wires, utility poles and associated equipment;

- f. Failing to properly inspect, maintain, repair, and service the high voltage transmission and distribution lines and equipment servicing plaintiff's premises;
- g. Failing to detect and prevent electrical shorts and other malfunctions in the electrical equipment supplying electricity to plaintiff's premises;
- h. Failing to properly inspect, maintain, repair, and service the utility poles supporting the electrical lines;
- i. Failing to inspect vegetation within proximity to energized transmission and distribution lines;
- j. Failing to detect and prevent advanced wood decay in the utility poles;
- k. Failing to comply with all applicable codes, regulations and industry standards and servicing, maintaining, inspecting, and repairing the electrical equipment servicing plaintiff's premises;
- l. Failing to properly instruct, train, and monitor its agents, employees, workers, and/or servants;
- m. Failing to install transmission and distribution lines underground in areas more exposed to fire hazards;
- n. Failing to timely deenergize the overhead transmission lines under the conditions and circumstances;
- o. Failing to de-energize the overhead transmission lines after the fire's ignition;
- p. Failing to install equipment necessary, and/or inspect and repair the equipment installed, to prevent electrical transmission and distribution lines from improper sagging, operating, or making contact with other metal wires placed on its poles and igniting fires;
- q. Failing to protect plaintiff's premises from the hazards of fire caused by the conduct set forth above; and/or
- r. Otherwise failing to use due care under the circumstances.

65. The fire alleged herein was a direct, legal, and proximate result of the negligence of Defendants HEI, MECO, HECO, and HELCO, and Does 1 to 100, and each of them.

66. Defendants, and each of them, further breached their duties owed to Plaintiff in that said Defendants:

- a. Failed to comply with the applicable statutes, regulations and standards;
- b. Failed to timely and properly maintain and inspect the subject line, utility pole, and adjacent vegetation;
- c. Failed to properly cut, trim, prune, and/or otherwise keep vegetation from contact with its line; and/or
- d. Failed to make the overhead lines safe under all the exigencies created by the surrounding circumstances and conditions.

67. Defendants, and each of them, negligently installed, constructed, maintained, operated, inspected, and/or repaired the lines and utility poles and as a direct, proximate, and legal result the line caused the fire and Plaintiff's damages as alleged herein.

68. Defendants, and each of them, failed to properly inspect and maintain the subject line and equipment which they knew, given the drought conditions, vegetation, high winds, and decayed utility poles, posed a risk of serious injury, damage or death to others, including Plaintiff. Defendants, and each of them, were aware that if the subject line and/or subject equipment came in contact with vegetation that a fire would likely result. Defendants, and each of them, also knew that, given the existing drought conditions, said fire was likely to pose a risk of serious injury, damage, and/or death to the general public, including Plaintiff.

69. Defendant, and each of them, in order to cut costs, failed to properly inspect and maintain the subject line, utility poles, and/or the subject equipment with full knowledge that any incident was likely to result in a fire that would burn and/or kill people, damage property, and/or cause harm to the general public, including Plaintiff.

70. The negligence of Defendants was a substantial factor in causing Plaintiff's damages.

71. By reason of the above-mentioned negligence, carelessness and negligent acts or omissions on the part of Defendants, and each of them, the occurrence referred to above took place

and resulted in injuries and damage and destruction to the property of Plaintiff previously set forth, without any negligence of plaintiff so contributing.

COUNT TWO - BREACH OF WARRANTY
(Against all Defendants)

72. Plaintiff incorporates by reference the allegations set forth above as though fully set forth at length here.

73. At all relevant times, Defendants HEI, HECO, MECO, and HELCO were sellers and merchants of electricity and sold, distributed and/or otherwise supplied electricity and electrical services to Plaintiff.

74. Defendants HEI, HECO, MECO, and HELCO, expressly and/or impliedly promised, covenanted, and warranted that it would supply, distribute, sell, transmit and deliver electricity in a safe, proper, and workmanlike manner, and that it would service, maintain, inspect, and repair the equipment servicing Plaintiff premises in a good, proper, and workmanlike manner.

75. By reason of defendant's breaches of the above-mentioned warranties, the occurrence referred to above took place and resulted in Plaintiff's injuries and the damage and destruction to the property of Plaintiff previously set forth.

COUNT THREE - INVERSE CONDEMNATION
(Against all Defendants)

76. Plaintiff incorporates by reference the allegations set forth above as though fully set forth at length here.

77. On or about August 8, 2023, Plaintiff was an owner of real property and/or personal property located within Maui County.

78. Prior to and on August 8, 2023, Defendants installed, owned, operated, used, controlled, and/or maintained power lines, and electrical equipment in Maui County.

79. On or about August 8, 2023, as a direct, necessary, and legal result of Defendants' installation, ownership, operation, use, control, and/or maintenance for the public use of the power lines and electrical equipment, Defendant's electrical lines, utility poles, and/or equipment came in contact with vegetation and caused a wildfire which burned thousands of acres, including property owned or occupied by the Plaintiff. The fire damaged and/or destroyed Plaintiff's real and/or personal property.

80. The above-described damage to Plaintiff's property was proximately and substantially caused by the actions of Defendants, and each of them in that Defendants' installation, ownership, operation, use, control, and/or maintenance for a public use of the power lines and equipment was negligent and caused the subject fire.

81. Plaintiff has not received adequate compensation for the damage to and/or destruction of their property, thus constituting a taking or damaging of Plaintiff property by the Defendants, and each of them, without just compensation.

82. As a direct and legal result of the above-described damages to Plaintiff's property including loss of use, interference with access, enjoyment and marketability, and injury to personal property, Plaintiff have been damaged in an amount according to proof at trial.

83. Plaintiff have incurred and will continue to incur attorney's, appraisal, and engineering fees and costs because of Defendant's conduct, in amount that cannot yet be ascertained, but which are recoverable in this action.

COUNT FOUR- TRESPASS
(Against all Defendants)

84. Plaintiff incorporates by reference the allegations set forth above as though fully set forth at length here.

85. At all times relevant herein, Plaintiff was the owner and lawful occupiers of property damaged by the Lahaina Fire.

86. Defendants negligently allowed the Lahaina Fire to ignite and/or spread out of control, causing injury to Plaintiff. The spread of a negligently caused fire to the land of another constitutes a trespass.

87. Plaintiff did not grant permission for Defendants to cause the Lahaina Fire to enter their properties.

88. As a direct, proximate, and substantial cause of the trespass, Plaintiff has suffered and will continue to suffer damages, including but not limited to damage to property, discomfort, annoyance, and emotional distress in an amount to be proved at the time of trial.

89. As a further direct and proximate result of the conduct of Defendants, Plaintiff has hired and retained counsel to recover compensation for loss and damage and are entitled to recover all attorney's fees, expert fees, consultant fees, and litigation costs and expense.

90. Defendants' conduct was willful and wanton, and with a conscious contempt and disdain for the disastrous consequences that Defendants knew could occur as a result of their dangerous conduct. Accordingly, Defendants acted with malice towards Plaintiff, which is an appropriate predicate fact for an award of exemplary/punitive damages in a sum according to proof.

COUNT FIVE - NUISANCE
(Against all Defendants)

91. Plaintiff incorporates by reference the allegations set forth above as though fully set forth at length here.

92. Defendants' actions, conduct, omissions, negligence, trespass and failure to act resulted in a fire hazard and a foreseeable obstruction to the free use of Plaintiff's property, invaded

the right to use the Plaintiff's property, and interfered with the enjoyment of Plaintiff's property, causing the Plaintiff unreasonable harm and substantial actual damages constituting a nuisance.

93. Defendants' negligent, reckless, intentional and/or abnormally dangerous actions and inactions created conditions and/or permitted conditions to exist that (a) were harmful to health; (b) offensive to the senses; (c) an obstruction to the free use of property, so as to substantially interfere with the comfortable enjoyment of life and property; (d) unlawfully obstructed the free passage or use, in the customary manner, of public streets and highways; and (e) interfered with Plaintiff right to a clean and healthy environment.

94. These conditions, including flames, smoke, embers, ash, odors, gases, and airborne particles, interfered with Plaintiff's right to quiet enjoyment of their properties and right to a clean and healthy environment in a way unique to each Plaintiff.

95. These conditions also affected a substantial number of people at the same time. At no time did Plaintiff consent to Defendants' actions and inactions in creating these conditions.

96. An ordinary person would be reasonably annoyed and disturbed by Defendants' actions and inactions in creating these conditions.

97. Defendants realized or should have realized that the objectionable condition posed an unreasonable risk of fire that could spread and cause harm to Plaintiff's persons, interests, property, and environment.

98. Defendants could have fully eliminated the risk of fire, at little or no cost, by deenergizing their powerlines during extremely dangerous conditions, and their failure to do so was negligent, reckless, abnormally dangerous, and/or intentional.

99. Defendants' actions and inactions in creating these conditions were a substantial factor in causing Plaintiff to suffer foreseeable harm to their persons, interests, and property. Such harms were unique to Plaintiff and different from damages suffered by other Plaintiff.

100. Plaintiff suffered a special injury distinct from the general public because the Lahaina Fire injured them personally, and damaged and destroyed their real and personal property.

101. Whatever social Defendants' behavior may provide is outweighed by the harm their operations have imposed on Plaintiff.

102. Defendants acted with a conscious indifference to the probable and foreseeable consequences of their acts and omissions. In particular, following the devastating 2018 Camp Fire in California, Defendants publicly acknowledged that deenergizing powerlines in windy conditions was necessary to prevent devastating wildfires. Despite this knowledge, and despite their knowledge that Maui would be beset by windy conditions on or immediately before August 8, 2023, Defendants chose not to de-energize their powerlines. Defendant's conscious indifference to the risk of wildfire on August 8, manifesting as, among other things, a decision not to de-energize their lines, amounts to arson under Hawai'i Revised Statute section 708-8254. Defendant's conscious indifference to the risk of wildfire on August 8, manifesting as, among other things, a decision not to de-energize their lines, was a substantial factor in causing the Lahaina Fire and Plaintiff's resulting damages therefrom.

103. Plaintiff seeks damages to be determined, on an individual basis, according to proof at trial, including, but not limited to real property, personal property, loss of income, and emotional distress damages associated with the burning of Plaintiff's home.

PRAYER FOR RELIEF

Plaintiff seeks:

- (a) Economic damages on an individual basis in an amount that will be proven at trial;
- (b) Noneconomic damages (sought only by Plaintiffs who are natural persons) in an amount to be proven at trial and pursuant to HRS 663-10.9(2);
- (c) Punitive damages on all causes of action where such damages are permissible by law in an amount to be proven at trial;

- (d) Attorneys' fees, expert fees, consultant fees, and litigation costs and expenses, to the extent permitted, and/or pursuant to the Court's inherent and equitable power to award attorney fees;
- (e) Pre-judgment interest to the extent permitted under HRS 636-16; and/or,
- (f) Other relief as the Court shall deem proper, all according to proof.

JURY TRIAL REQUEST

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

Dated: August 17, 2023

Respectfully submitted,

/s/Bora S. Kayan

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