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IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAI'I

<p>JAN K. APO, INDIVIDUALLY; APO FAMILY LLC; and APO FAMILY TRUST;</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>HAWAIIAN ELECTRIC COMPANY, INC.;; HAWAII ELECTRIC LIGHT COMPANY, INC.;</p>	<p>CIVIL NO. _____ (PROPERTY DAMAGE/ PERSONAL INJURY)</p> <p>COMPLAINT; DEMAND FOR JURY TRIAL; SUMMONS</p>
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MAUI ELECTRIC COMPANY, LIMITED;
DOES 1-10; DOES PARTNERSHIPS 1-10;
DOE CORPORATIONS 1-10; DOE
GOVERNMENTAL AGENCIES 1-10; AND
DOE ASSOCIATIONS 1-10

Defendants.

COMPLAINT

1. Plaintiffs Jan K. Apo is a resident of the County of Maui, State of Hawaii at all relevant times herein. Plaintiff Apo Family LLC is a domestic Limited Liability Company registered to do business in the State of Hawaii. Plaintiff Apo Family Trust is an enforceable trust established in the County of Maui, State of Hawaii. Collectively, Plaintiffs own two residences located at 820 Kuhua Street, Lahaina, Maui County, Hawaii 96761 and 822 Kuhua Street, Lahaina, Maui County, Hawaii 96761.

2. Defendants Hawaiian Electric Company, Inc., Hawaii Electric Light Company, Inc., and Maui Electric Company (collectively "HECO") owned and operated equipment, including electrical transmission lines and distribution lines and the poles connecting them, to supply power to their customers, including Plaintiffs.

3. On August 7, 2023, wildfires began from HECO electrical facilities in the Upcountry area of Maui during forecast, predicted and known high winds.

4. On August 8, 2023, at approximately 6:37 a.m., a small brush fire began in the area of Lahainaluna Road and near the Lahainaluna Intermediate School and the road was closed between Kelaweia Street and Kuialua Street in Maui County, Hawai'i. Downed powerlines were reported in the same immediate area. Evacuations were ordered at 6:40 a.m., in the neighborhood around the Lahainaluna Intermediate School.

5. By 9:00 a.m., the small brush fire was declared "contained", but HECO had still not responded to the downed powerlines, so the road remained closed. The

forecast, predicted, and known high winds that had already caused wildfires on Maui the day before caused the temporarily “contained” grass fire to lose containment and spread.

6. During the afternoon of August 8, 2023, high winds caused energized downed power lines when power poles and equipment owed by the HECO Companies failed sparking a series of fires which spread quickly. The fire soon became uncontrollable, and this afternoon wildfire (referred to herein as “the wildfire in question”) spread west into the town of Lahaina, burning Plaintiffs’ historic family residences to the ground.

7. Defendants’ equipment supplied the ignition source of the wildfire that burned Plaintiffs’ residence to the ground.

A. THE PARTIES

8. Plaintiffs Jan Apo, Apo Family LLC, and Apo Family Trust are residents of Maui County, Hawai’i, and resided in the town of Lahaina.

9. Defendant Hawaiian Electric Company, Inc. (“HECO”) is a corporation incorporated in Hawai’i, maintains its principal place of business in Hawai’i, and may be served with process by and through its registered agent: Erin P. Kippen, 1001 Bishop Street, American Savings Bank Tower, Suite 1100, Honolulu, Hawai’i 96813.

10. Defendant Hawaii Electric Light Company, Inc. (“HELCO”) is a corporation incorporated in Hawai’i, maintains its principal place of business in Hawai’i, and may be

served with process by and through its registered agent: Erin P. Kippen, 1001 Bishop Street, American Savings Bank Tower, Suite 1100, Honolulu, Hawai'i 96813.

11. Defendant Maui Electric Company, Limited ("MECO") is a corporation incorporated in Hawai'i, maintains its principal place of business in Hawai'i, and may be served with process by and through its registered agent: Erin P. Kippen, 1001 Bishop Street, American Savings Bank Tower, Suite 1100, Honolulu, Hawai'i 96813.

12. Collectively, Defendants will be referred to herein as "the HECO Companies."

B. JURISDICTION

13. The amount in controversy exceeds the minimum jurisdictional limits of this Court.

14. Because Plaintiffs and Defendants are residents of the state of Hawai'i, jurisdiction is proper in the state courts of Hawai'i, and this Court has jurisdiction.

C. VENUE

15. Plaintiffs reside in Maui County, Hawai'i.

16. The HECO Companies own and operate utility equipment in Maui County, Hawai'i.

17. The utility equipment, owned and operated by the HECO Companies, alleged to have ignited the wildfire in question were located in Maui County, Hawai'i.

18. The property destroyed by the wildfire in question was located in Maui County, Hawai'i.

19. Venue is proper in this court located in Maui County, Hawai'i.

D. GENERAL ALLEGATIONS

20. Plaintiffs provide herein general allegations concerning *first*, the known hazard of wildfires, as learned by utility companies across the western United States and as learned by the HECO Companies here in Hawai'i; *second*, the weather conditions making wildfires more prevalent and more dangerous, and those same weather conditions precipitating the conditions gave rise to the wildfire in question; *third*, the equipment owned and operated by the HECO Companies that failed, providing the spark initiating the wildfire in question; *fourth*, despite weather conditions optimal for wildfire risk, the HECO Companies failed to utilize a Public Safety Power Shutoff ("PSPS") to minimize the risk of its electrical lines providing the spark needed to ignite a wildfire; *fifth*, the spread of the wildfire in question and the damage it caused to the residents of Maui County located in and near the town of Lahaina; and *sixth*, the Plaintiffs' damages specifically caused by the HECO Companies and the fire in question.

(1) THE KNOWN HAZARD OF WILDFIRES GENERALLY

21. For a fire to occur, fuel must be available during an ignition source. Without an ignition source, there can be no fire, and therefore, no uncontrollable fire - referred to as wildfires.

22. Wildfires are extraordinarily dangerous, an immediate hazard to both lives and property. As noted twenty-two years ago by a Hawai'i federal judge in *Makua v. Rumsfeld*, 163 F.Supp.2d 1202, 1209 (D. Hawai'i 2001), "[w]ildfires can easily overtake [individuals], trapping them and causing injury or death."

23. Nature has always provided the fuel needed for a fire, in the form of trees and grasses.

24. The invention of electricity has caused utility companies within the past century to transport high-voltage electricity across vast spaces via elevated transmission lines and distribution lines, connected by long poles embedded into the ground.

25. High-voltage electricity is an effectual ignition source if it is permitted in the immediate vicinity of available fuels sources like trees and grasses.

26. Like any equipment introduced by man, utility equipment exposed to the elements will age, degrade, and eventually fail without proper maintenance and replacement.

27. While lightning strikes and volcanic eruptions can ignite them, eighty-five percent of all wildfires are caused by human activity and equipment, according to the U.S. Forest Service.

28. In recent decades, the percentage of wildfires resulting from fires ignited by utility company equipment has continued to rise, as that equipment ages and degrades, and as trees are not pruned away from power lines.

29. For years, utility transmission lines and distribution lines, and other utility company equipment are known across the western United States to serve as able ignition sources for wildfires:

- a. In October of 2007, massive wildfires named the Rice Fire and the Witch Creek Fire destroyed large portions of San Diego, California after being ignited by equipment owned by San Diego Gas & Electric. The fires caused the evacuation of 500,000 people, including 200,000 inside the City of San Diego. These wildfires burned 9,472 acres, and destroyed 248 homes and structures in San Diego County, California
- b. In September of 2015, Pacific Gas & Electric (PG&E) equipment ignited the Butte Fire, burning 70,868 acres, destroying 863 homes, outbuildings, and structures, and killing two individuals in Amador County and Calaveras County, California.
- c. On October 8, 2017, PG&E equipment ignited twenty-one different fires north of San Francisco ("the North Bay fires"), collectively burning 245,000 acres, destroying 8,900 homes and structures, and killing 44 individuals in Northern California.
- d. On December 4, 2017, Southern California Edison equipment ignited the Thomas Fire, burning 281,893 acres, destroying 1,063 homes and structures, and killing one individual directly by fire and twenty-one

individuals indirectly through subsequent mudslides in Ventura County and Santa Barbara County, California.

- e. On November 8, 2018, PG&E equipment ignited the Camp Fire, burning 153,335 acres, destroying 18,804 homes and structures, and killing 85 individuals in Butte County, California.
- f. Also on November 8, 2018, Southern California Edison equipment ignited the Woolsey Fire, burning 96,949 acres, destroying 1,643 homes and structures, and killing three individuals in Los Angeles County and Ventura County, California.
- g. On October 23, 2019, PG&E equipment ignited the Kincade Fire, burning 77,758 acres, destroying 374 homes and structures in Sonoma County, California.
- h. On September 27, 2020, PG&E equipment ignited the Zogg Fire, burning 56,338 acres, destroying 204 homes and structures, and killing four individuals in Shasta County, California.
- i. On July 13, 2021, PG&E equipment ignited the Dixie Fire, burning 963,309 acres, destroying 1,329 homes and structures in Northern California, California.

- j. On December 21, 2021, Xcel Energy equipment ignited the Marshall Fire, burning 6,200 acres, destroying 1,084 homes and structures, and killing three individuals in Boulder County, Colorado.
- k. The hazard of utility equipment causing wildfires was known to the HECO Companies, who had reviewed safety measures developed by California utilities in response to these and other wildfires.

30. The hazard of wildfires is known to the inhabitants of Hawai'i as well, with the residents of Maui being persistently subjected to the same. Fire data collected in 2020 during the creation of the County of Maui's Hazard Mitigation Plan Update indicated that 80 wildfires directly impacted Maui County between 1999 and 2019. This results in approximately four fires every year occurring within the county overall. Moreover, the decade and a half between 2004 and 2019 saw a steady increase of the number of acres burned each year during Maui wildfires.

31. More recently, the Waiko Road Fire burned 9,000 acres in July of 2019. The Ma'alaea Fire burned 4,600 acres in October of 2019. During the 2019 season, more than 20,000 acres burned on Maui. The Hali'imaile Fire burned 4,300 acres in July of 2020, and in August of 2021, high winds from Hurricane Lane facilitated the burning of 1,835 acres, with a second fire the same day burning another 294 acres.

(2) THE WILDFIRE HAZARD IS GREATER ON MAUI BECAUSE OF WEATHER

32. A decade before the wildfire in question, a report by Hawaiian fire researchers warned that Hawai'i was at extremely high risk of burning. The report tied fires to winds from a passing hurricane. The report's lead author, Elizabeth Pickett, warned in 2014 that West Maui was particularly vulnerable to a high risk of wildfires.

33. Between 2018 and 2021, at least 75,107 acres of land in Hawai'i were lost to wildfires.

34. Maui County is particularly susceptible to the risk of wildfires because of its location and weather. Steadily warming temperatures increased the frequency and duration of droughts, which in turn increased wildfire occurrences. Indeed, by June 22, 2021, the U.S. Drought Monitor designated all of Maui as either in a "moderate drought" or "severe drought."

35. Wildfires occur more frequently in drier, leeward locations; on the island of Maui, they are more common in leeward areas of the county rather than windward areas. As such, West Maui has experienced more wildfires than any other community planning area on Maui over the last 20 years.

36. Wildfire risk due to high winds brought by hurricanes has intensified, as well. According to the National Oceanic and Atmospheric Administration's Storm Prediction Center, a normal hurricane season brings a range of four or five tropical cyclones. However, there has been a steady uptick in the number of cyclones passing through the Central Pacific over the last 40 years. These storms present with high winds,

which escalate the risk of wildfires. For example, five years before Hurricane Dora's winds fanned the flames of the wildfire in question, winds from Hurricane Lane fanned wildfires in 2018.

37. In sum, by 2020, the County of Maui's Hazard Mitigation Plan Update identified the wildfire hazard the island faced as follows:

Wildfire events will continue to be an ongoing occurrence in Maui County. The likelihood of wildfires increases during drought cycles and abnormally dry conditions. Dry, windy conditions with an accumulation of vegetative fuel can create conditions for a fire that spreads quickly. Wildfires could become more frequent in the future as drought conditions become more frequent and more intense with climate change.

38. In July of 2021, the County of Maui's Cost of Government Commission issued a Report on Wildfire Prevention and Cost Recovery on Maui, finding the number of fires "appears to be increasing, and that this increase poses an increased threat to citizens, properties, and sacred sites."

39. By October 27, 2021, Hawaiian Electric acknowledged on its Instagram page that "[f]ire prevention is everyone's business", "especially important considering recent forecasts of red flag warnings on our islands by the National Weather Service."

40. In 2021, the State of Hawai'i declared that it "is in a declared climate emergency." S. Con. Res. 44, 31st Leg., Reg. Sess. (2021), and the Hawai'i State Legislature warned that climate change has increased the average global air temperature by one degree Celsius, which "is already having a dramatic impact on the environment[,]" including "larger and stronger hurricanes, increased drought and

flooding, shifting rain patterns, more and larger wildfires..." *Matter of Hawai'i Electric Light Co., Inc.*, 152 Hawai'i 352, 359, 526 P.3d 329, 336 (2023) (Wilson, J., concurring).

41. In Hawai'i, more fires are typically seen during El Nino years, when conditions are typically warmer and drier. In 2023, the HECO Companies acknowledged this in press release issued in late-May, stating "The Central Pacific Hurricane Center is predicting a near-to-above-normal season due to El Nino conditions."

42. Hawaii Electric's most recent Handbook for Emergency Preparedness, published on May 23, 2023, acknowledged that "[t]he frequency and size of wildfires across Hawai'i has grown substantially in the last two decades," that "[f]ire risk is highest when it is hot, dry, and windy."

43. On June 1, 2023, "Hawaiian Electric Advise[d] Preparation as Hurricane Season Begins," and noted that the 2023 "forecast is for four to seven tropical cyclones for the region."

44. Four days prior to the wildfire in question, the National Weather Service warned, "Hurricane Dora tracking south of Hawaii - strong and gusty trade winds. Dry weather & high fire danger."

45. On August 8, 2023, the Office of the Governor issued an Emergency Proclamation for Hurricane Dora, Wildfires, stating that "Acting Governor Sylvia Luke, acting on behalf of Governor Josh Green, M.D., issued an emergency proclamation

relating to wildfires in Maui and Hawai'i Counties that are being fueled by Hurricane Dora, churning far south of the islands."

46. Likewise, by 9:02 a.m. on August 9, 2023, the National Weather Service reiterated its Red Flag warning concerning "high fire danger with rapid spread," noting that "Hurricane Dora is creating strong winds across the Islands which are creating dangerous fire conditions."

47. Hurricane Dora played a crucial role in how the wildfire in question started, being classified as a Category 4 storm. Located hundreds of miles south of the Hawaiian Islands, its powerful winds were instrumental in providing ignition sources by knocking down power poles and pushing trees into powerlines, causing other electrical equipment failures, and in fanning the flames on Maui, causing the wildfire to spread quickly. The hurricane's impact on wind speed, exceeding 60 miles per hour, led to destruction across West Maui. Beginning on May 7, 2023, at 6 a.m. and running continuously for 24 hours until the fire began at 6:37am on May 8, 2023, winds were gusting to 30 to 45 mph and sustained winds were often at least 30 mph in Kahului. The winds at elevation were even more extreme.

48. The National Weather Service noted in a tweet Sunday that significant differences in atmospheric pressure between the hurricane and the air north of Hawai'i formed a pressure gradient over the islands which, when combined with dry conditions, posed a serious threat of wildfires as well as damaging winds.

49. High pressure to the north pushed a dry air mass into the region, and humidity levels dropped. Hawai'i fell between two separate systems and "created a tight pressure gradient," explained Liam Tsamous, a meteorologist with the weather service. "The difference between those two pressures kicked up the wind,"

50. Early in the morning of August 8, 2023, Maui Fire Assistant Jeff Giese issued an alert 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."

51. All the areas where wildfire in question burned are in areas designated as "High Risk", including Lahaina.

(3) THE IGNITION SOURCE FOR THE WILDFIRE IN QUESTION WAS SUPPLIED BY HECO COMPANIES' EQUIPMENT FAILURES

52. Transmission lines are the backbone of the electric system, bringing electricity from generating stations to neighborhoods. Transmission lines on metal poles carried very high voltage in lines which pass immediately over the burn scar of the origin area of the 6:37 am grass fire. A HECO distribution station is located immediately uphill and upwind of the upward most extent of grass fire. The HECO distribution station is immediately adjacent to the top of the burn scar. HECO Distribution lines then transport electricity from neighborhood substations into individual homes and businesses. The distribution lines, largely uninsulated, are elevated through a grid that uses old wooden poles.

53. The HECO Companies installed many of its power poles and transmission and distribution lines in Maui County many decades ago. This equipment is exposed to harsh, saltwater elements, which cause such equipment to degrade.

54. The need to upgrade its equipment was known to the HECO Companies and their customers, causing Hawai'i's Public Utilities Commission ("PUC") to encourage the HECO Companies to modernize its electricity grid. Prior to attempting to modernize its grid equipment, the HECO Companies hired Ward Research Incorporated to conduct 23 in-depth one-on-one interviews among individual stakeholders and to assemble eleven focus groups conducted among 82 residential customers. In May of 2017, Ward reported to the HECO Companies that its "electric grid needs to be modernized" and "[t]he perception that the electric grid is old was based largely on the sight of old electric poles and 'messy' wires." And reported that "the grid needs to be updated to better withstand inclement weather."

55. Subsequently, the HECO Companies' first draft of its grid modernization strategy, issued on June 30, 2017, notes that over time, its transmission and distribution infrastructure "deteriorates or is weakened due to a number of factors, including normal wear and tear, mechanical stress, dielectric breakdown, weather, corrosion, rot, contamination, or animal/human damage," observing that "[t]his is easily visualized when considering aging wood pole infrastructure that may be rotted due to weathering or termite infestations" and that its "wooden pole infrastructure is comprised of both

new and aging poles that may need to be replaced or upgraded to ensure reliability and to protect technology investments.”

56. The HECO Companies’ final draft of its grid modernization strategy issued on August 29, 2017, concluded that “it is essential, however, that the aging infrastructure, much of it over four-decades old, continues to be appropriately replaced in coordination with modernizing the grid” and stated that “[c]hanges include replacing wood poles.”

57. Even though the HECO Companies initially proposed “a near-term grid modernization road map with an initial deployment phase beginning in 2018 and ending in 2023,” it did not do so prior to August 8, 2023, causing the ignition of the wildfire in question. This is because the modernization strategy actually employed did not initially include the replacement of poles, nor augmented vegetation management.

58. On June 21, 2018, the HECO Companies application to recoup the costs of Phase One of the Modernization Strategy failed to reference wildfire mitigation via power pole replacements, nor vegetative management.

59. In August of 2018, downslope high winds from Hurricane Lane spread a wildfire ignited by HECO Companies equipment over more than 2,000 acres in Maui, burning 21 residential structures, 27 vehicles and approximately 150 acres of active farmland. At that time, this was the largest fire in Maui’s history.

60. One such home destroyed by the wildfire during Hurricane Lane belonged to Mark and Michele Stelf. The fire destroying the Stelfs' home began after a power pole owned by the HECO Companies failed in high winds, allowing a live distribution line to hit the ground and ignite dried grasses, spreading into a wildfire.

61. Despite the wildfire its equipment started in August of 2018, neither the PUC's approval of Phase One of the Modernization Strategy on March 25, 2019, nor the ultimate submission of the Phase One plan on September 25, 2019, referenced wildfire mitigation via power pole replacements or vegetative management.

62. Likewise, the HECO Companies' September 30, 2019, application to recoup the costs of Phase Two of the Modernization Strategy did not reference wildfire mitigation via power pole replacements or vegetative management.

63. On the same week of November of 2019 that the Camp Fire killed eighty-six people in Butte County, California, the HECO Companies announced that they had "earlier this year evaluated the wildfire mitigation plans filed by the major utilities in California." The HECO Companies' new release dated November 5, 2019, promised it would eventually insulate its conductors and use smart switches and fuses to minimize sparks, it did not say when it would do so. Moreover, it did not promise to replace corroded power poles like the one igniting the fire on Maui a year before.

64. By November 22, 2019, the HECO Companies' Resilience Working Group met and identified wildlife hazards as a major vulnerability, hurricanes as a threat

scenario causing “[d]amage to distribution lines and poles due to wind, falling trees/branches, and flying debris,” and suggested grid mitigation strategies of “system hardening” with “[i]ncreased wind withstand ratings” achieved by either “[u]nderground cabling” or by “reinforcement above ground.”

65. Six months later on April 29, 2020, because “[t]he frequency and impacts of wildfires have increased recently,” the same Resilience Working Group identified wildfires as the type of severe event “determined to be of utmost importance to consider for achieving a resilient grid,” noting that “[w]ildfires were deemed most important regarding grid impacts on ... Maui” because “the risks to the grid from wildfires are most prevalent in Maui.”

66. Nonetheless, the HECO Companies’ March 21, 2021, Supplement to its Phase Two Grid Modernization Strategy contained no wildfire mitigation or grid hardening referenced in the plan.

67. By July of 2021, the County of Maui’s Report on Fire Prevention observed that “[a]bove ground power lines are vulnerable to wildfire and can even provide the ignition (sparks) that could start a wildfire, particularly in windy or stormy conditions,” and noted that “long-term solutions for reducing power line-related wildfire hazards” included “infrastructure upgrades.”

68. Three years prior to the wildfire in question, the County of Maui’s Hazard Mitigation Plan Update noted in August of 2020 that “wildfires are more common,” that

"[d]uring a time of extreme heat and high winds, the wildfire threat would significantly increase," that the West Maui community planning area "was vulnerable to wildfires," because "wildfires are a very real and dangerous threat in West Maui," and specifically identified the Lahaina area as a "high wildfire risk area."

69. A November 9, 2021, Hawai'i Electric Stakeholder Counsel Meeting identified "hardening critical poles [for] wildfire prevention" as "necessary means to improve resilience". Given the "[r]apid increase in [the] frequency of climate related natural disasters," and the "recent events" of "California wildfires," a new "urgency of resilience investment" required "an initial set of targeted, no-regrets, resilience enhancements to harden our system," including "Critical Pole Hardening," "Wildfire Mitigation" and "Hazard Tree Removal (O&M)."

70. Noting the need to "harden the company's... grids "so they are better able to withstand the effects of powerful storms," the HECO Companies' June 1, 2022, News Release entitled "Hurricane Season is Upon Us - Are Your Prepared?" proposed replacing "more than 400 poles on Maui, Lanai and Molokai to maintain strength and safety standards based on inspections and testing."

71. On June 30, 2022, the HECO Companies filed an application with the PUC for "approval for investments over a five-year period to adapt the Companies' transmission and distribution system to our state's changing climate and growing resilience threats through the implementation of high-value, no-regrets actions" to

achieve “wildfire prevention and mitigation.” Having “[c]onsider[ed] the devastating California wildfires of 2018 and the Companies’ own experiences in 2019”, noting that “[t]he risk of a utility system causing a wildfire ignition is significant.” Having “reviewed the San Diego Gas & Electric, Southern California Edison, and Pacific Gas & Electric mandated wildfire mitigation plans to identify best practices that would be appropriate for Hawaii’s environment and weather conditions,” the HECO Companies proposed “[p]roactive pole and hardware upgrades to prevent failures and address clearance issues with overhead conductors in wildfire risk areas.” Identifying “initial wildfire priority areas” on Maui including “West Maui (Lahaina to Kapalua)” to be “considered a starting point,” the HECO Companies proposed a resiliency program for Maui that included funds for Critical Pole Hardening as follows: \$ 1,083,200 (Engineering) \$ 2,909,953 (Materials) \$ 3,715,105 (Install) \$ 7,708,259 (Total); for Wildfire Prevention & Mitigation as follows: \$ 943,310 (Engineering) \$ 1,624,889 (Materials) \$ 3,674,977 (Install) \$ 6,243,176 (Total);and for Hazard Tree Removal as follows: \$ 11,159,895 (O&M) \$ 11,159,895 (Total).

72. Unfortunately for the residents of Lahaina, these proposed grid hardening expenditures were deferred by the HECO Companies, as by August 8, 2023 – the date of the wildfire in question – other than miniscule engineering expenditures, no funds had been spent on materials or installation for critical pole hardening during calendar years 2021, 2022 or 2023, no funds had been spent on materials or installation for wildfire

prevention and mitigation during calendar years 2021, 2022 or 2023, and no funds had been spent on hazard tree removal in 2021 and 2022. While an insufficient amount of \$60,318 was spent on tree removal in 2023, robust amounts planned \$2,655,089 in 2024, \$2,735,400 in 2025, \$2,813,158 in 2026, and \$2,895,929 in 2027, had not yet been spent by August 8, 2023, when the wildfire in question caused its devastation.

73. While Hawaii Electric deferred maintenance expenses, it kept on paying shareholder dividends four times per year. Ever since deadly utility-caused wildfires began in California in 2015, HECO paid dividends four times per year and increased those dividends:

Ex/EFF DATE	TYPE	CASH AMOUNT	DECLARATION DATE	RECORD DATE	PAYMENT DATE
08/17/2023	CASH	\$0.36	08/03/2023	08/18/2023	09/08/2023
05/18/2023	CASH	\$0.36	05/04/2023	05/19/2023	06/09/2023
02/22/2023	CASH	\$0.36	02/10/2023	02/23/2023	03/10/2023
11/21/2022	CASH	\$0.35	11/03/2022	11/22/2022	12/09/2022
08/17/2022	CASH	\$0.35	08/04/2022	08/18/2022	09/09/2022
05/19/2022	CASH	\$0.35	05/05/2022	05/20/2022	06/10/2022
02/23/2022	CASH	\$0.35	02/11/2022	02/24/2022	03/10/2022
11/22/2021	CASH	\$0.34	11/04/2021	11/23/2021	12/10/2021
08/18/2021	CASH	\$0.34	08/06/2021	08/19/2021	09/10/2021
05/19/2021	CASH	\$0.34	05/06/2021	05/20/2021	06/10/2021
02/24/2021	CASH	\$0.34	02/09/2021	02/25/2021	03/10/2021
11/19/2020	CASH	\$0.33	11/03/2020	11/20/2020	12/10/2020
08/20/2020	CASH	\$0.33	08/05/2020	08/21/2020	09/10/2020
05/21/2020	CASH	\$0.33	05/05/2020	05/22/2020	06/10/2020
02/25/2020	CASH	\$0.33	02/11/2020	02/26/2020	03/10/2020
11/21/2019	CASH	\$0.32	11/02/2019	11/22/2019	12/10/2019
08/21/2019	CASH	\$0.32	08/01/2019	08/22/2019	09/10/2019
05/22/2019	CASH	\$0.32	05/07/2019	05/23/2019	06/12/2019
02/25/2019	CASH	\$0.32	02/18/2019	02/26/2019	03/13/2019
11/20/2018	CASH	\$0.31	11/02/2018	11/21/2018	12/11/2018
08/20/2018	CASH	\$0.31	08/02/2018	08/21/2018	09/10/2018
05/22/2018	CASH	\$0.31	05/09/2018	05/23/2018	06/12/2018
02/21/2018	CASH	\$0.31	02/01/2018	02/22/2018	03/13/2018
11/21/2017	CASH	\$0.31	10/31/2017	11/22/2017	12/12/2017
08/21/2017	CASH	\$0.31	08/01/2017	08/23/2017	09/12/2017
05/22/2017	CASH	\$0.31	05/04/2017	05/24/2017	06/12/2017
02/22/2017	CASH	\$0.31	02/13/2017	02/24/2017	03/10/2017
11/18/2016	CASH	\$0.31	11/02/2016	11/22/2016	12/13/2016
08/22/2016	CASH	\$0.31	08/03/2016	08/24/2016	09/12/2016
05/26/2016	CASH	\$0.31	05/03/2016	05/31/2016	06/15/2016

<https://www.nasdaq.com/market-activity/stocks/he/dividend-history>

Four days before HECO started the Upcountry fires in Maui, it declared over \$40 million in dividends while deferring maintenance expenses on Maui. Every year since 2017 as wildfire risk increased, HECO every year increased its payments to shareholders.

74. Hawaii Electric's July, 2022 Climate Adaptation Transmission and Distribution Resilience Program observed that because "[e]xtreme weather hazards are projected to increase in frequency, intensity and duration due to climate change," it proposed specific projects to "[s]trengthen the most critical transmission lines to withstand extreme winds," "[r]emove especially hazardous trees so they don't fall onto lines in a severe event," and "[h]arden targeted utility poles" – "300 critical poles in Maui County" "[f]rom "2023 to 2027."

75. Hawaii Electric's most recent Handbook for Emergency Preparedness, published on May 23, 2023, acknowledged the hazard of "downed power lines," noting that "[w]hen lines from a utility pole fall to the ground or on a guardrail, assume they are energized and dangerous" because "[m]ost overhead power lines are not insulated." The Handbook notes that "[a] downed line touching a fence or guardrail can energize it for several thousand yards," that "[a] car touching a downed line will become energized," and that one should always assume that a downed line "is energized and dangerous."

76. Hawaii Electric's website page concerning "Downed Power Line Safety" warns that "[w]hen lines from a utility pole fall to the ground..., please remember: always assume downed power lines are energized and dangerous" and warns "[f]or your safety, assume fallen lines are live" because "[d]owned power lines can be energized and deadly."

77. Hawaii Electric's website page concerning "Clear Vegetation Near Power Lines" acknowledges that "Power lines can be a significant source of wildfires" and "can 'spark a fire'."

78. Hawaii Electric's website page concerning "Tree Trimming Safety" states that "[i]n windy weather, unattached tree limbs can be blown onto the power lines," and its webpage entitled "Resilience" therefore cites the need to "[e]nhance vegetation management to prevent trees from falling into lines in a storm."

79. On August 4, 2023, the National Weather Service warned of a "high fire danger," and CIRA tracked "the eye of Hurricane Dora" on August 7, 2023; the morning of August 8, 2023, brought the initiation of the wildfire in question.

80. The County of Maui's Facebook Page notes that while "winds in the area are a concern," "[a] brush fire was reported at 6:37 a.m. today in the area of Lahainaluna Road." An interview with witness Steven Campbell and his wife, both residents of Lahaina, revealed a contemporaneous conversation with Mark Stelf, a quarter of a mile from them, who described to them that this fire began from a downed power pole

adjacent to his home. The Campbells confirmed that “the power pole is what fell down and sparked up the fire the first time.”

81. Independent research by the undersigned counsel revealed a video of the start of this fire posted on Twitter at 6:37 a.m. on August 8, 2023 by KanekoaTheGreat at <https://twitter.com/KanekoaTheGreat/status/1691130055140024321>. This video is the film Mr. Shane Treu filmed with his phone, panning across three power lines on the ground. One could be seen dangling in charred, smoking, and burning grass. “That’s the power line that started it,” he said on the video.

82. Mr. Treu heard a pop, turned toward the sound he heard, and saw a line “arcing, laying on the ground and sparking.” The power line, landing in dry grass, was “like a fuse,” he said, seeing it “blacken the ground at the base of a power pole” and began to ignite nearby yards.” Treu posted additional video on Facebook showing the start of this fire, a video demonstrating that the HECO Companies equipment ignited the fire. <https://www.nytimes.com/2023/08/15/us/hawaii-maui-lahaina-fire.html>.

83. Both the 6:37 a.m. video posted on Twitter and the Treu video posted on Facebook show a fire started by the HECO Companies’ utility equipment.

84. The fire ignition described by Treu was precisely the location where the brush fire that would eventually engulf much of Lahaina was initially reported, at 6:37 a.m., a *New York Times* analysis of video and satellite imagery showed.

85. Patrick Corrigan and his girlfriend Courtney lived immediately adjacent to the ignition site of the fire that began around 6:35 in the morning on August 8, 2023. He looked out his back window and saw smoke and what looked like a grassfire immediately adjacent to a downed power line. After calling his girlfriend, Patrick saw a fire truck working the scene, attempting to put out the fire.

86. Moreover, the website entitled Maui Hawaii Fire Imagery located at https://storms.ngs.noaa.gov/storms/2023_hawaii/index.html#17.1/20.897184/-156.683051 reveals that the fire began at the west edge of a HECO Company substation located across Lahainaluna Road from the Lahainaluna Intermediate School and just to the south of the football field for Lahainaluna High School. The location of two downed power poles transecting the burn scar suggest that one of the HECO Companies' transmission or distribution lines was the ignition source for the fire beginning just west of its substation.

87. At the same location where Patrick Corrigan saw the two downed power poles near the ignition point for the fire, the HECO Companies have since immediately replaced those downed power poles with two new power poles, which the undersigned have documented via a videotaped interview of Patrick Corrigan on August 15, 2023.

88. The Maui Fire Department responded to this blaze caused by Hawaii Electric's line failure and declared this brush fire "100% contained shortly before 9 a.m. today."

89. Later, several witnesses thereafter describe multiple telephone poles failing and igniting fires when power lines hit the ground, as well as an ignition occurring when unpruned trees fell into a distribution line of Hawaii Electric. These ignitions resulted in fires that encompassed the area of the earlier fire, causing some to describe this as “an apparent flareup.” However, by 4:45 p.m., the County of Maui Facebook Page reported that “Multiple roads, including Honoapi’ilani Highway from Hokiokio Place to Lahaina Bypass, are closed due to downed power lines.”

90. Early Tuesday morning on August 8, 2023, well before fire overtook Lahaina, Hawaiian Electric tweeted photos of several downed power lines, noting that “[t]here are several spans of downed power lines in various areas that require repairs,” and later announced in a statement that crews were making repairs to “about 30 downed poles and multiple spans of power lines” in West Maui around the Lahaina area. Maui resident J.D. Hessemer described the situation as follows: “The winds were just getting out of control. Power lines were down everywhere.”

91. Without a preemptive decision to shut the power off, these downed power lines were live when the components failed causing them to fall to the ground, providing a potential ignition source for a wildfire.

92. On the morning of August 8, 2023, when the wildfire in question ignited, there were no lightning strikes; rather the power lines of the HECO Companies were the only ignition source in the area available to ignite a fire.

(4) THE HECO COMPANIES FAILED TO UTILIZE A PSPS TO MITIGATE THE RISK OF ITS EQUIPMENT IGNITING A WILDFIRE

93. For more than a decade, utilities in western states prone to wildfire have mitigated this risk by preemptively using power shutoffs during red flag conditions.

94. San Diego Gas & Electric began preemptively shutting off power during optimal wildfire conditions as a way to prevent wildfires like the ones its equipment caused in 2007. By 2013, it utilized the PSPS as a standard way to prevent wildfires. This decade-old strategy was not utilized by HECO.

95. PG&E first implemented the PSPS strategy in 2018 following the North Bay fires that killed 24 people in 2017 and the Camp Fire in Butte County that killed 85 in 2018. In September 2019, when dangerous fire conditions were forecast, PG&E cut off power to an estimated 738,000 Bay Area homes and businesses, though the utility has since optimized its PSPS strategy aimed at reducing the size of the shutoffs needed to mitigate wildfire risk.

96. In recent years, when similar forecasts of high winds and dry conditions have arisen in California, utility companies have frequently engaged in preemptive power shutoffs. Utility companies utilized power shutoffs to avoid wildfires during high winds in Oregon in 2020 and in New Mexico in 2022.

97. The PSPS is widely regarded as the most effective safety measure to prevent wildfires in red flag conditions. Indeed, Hawaiian Electric 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, documents show. In a filing to the state last year, it pointed to California's Public Power Shutoff Plan as a successful way to prevent wildfires when additional robust techniques are not yet in place. Hawaiian Electric cited it as a strategy that helps mitigate "wildfire risks until more robust preventive measures have been implemented in an area."

98. Despite weather conditions optimal for wildfire risk, and despite wildfire occurring on Maui on August 7, 2023, the HECO Companies failed to utilize a PSPS to minimize the risk of its electrical lines providing the spark needed to ignite a wildfire.

99. At 10:47 pm on August 7, 2023, a security camera at the Maui Bird Conservation Center captured the arc flash of a HECO powerline starting a fire in Makawao. This was the first fire on Maui and should have caused the PSPS shut off the grid in fire risk areas if it was not previously turned off for safety. At 10:47 pm sensors detected faults in the HECO grid. Bob Marshall of WhiskerLabs which has 78 grid sensors across Maui said, "This is strong confirmation- based on real data- that utility grid faults were likely the ignition source for multiple wildfires on Maui."

100. In Lahaina, WhiskerLabs sensors detected faults in the HECO grid at 2:44 and 3:30 am on August 8, 2023. After other fires had begun and after almost 24 hours of high winds, during dry red flag conditions HECO failed to de-energize its grid in Lahaina, an area known by HECO to be an extreme fire risk.

101. At 3:00 am when the WhiskerLabs sensors detected faults in HECO grid in Lahaina, La'i woke up and saw a bright flash coming from the power poles and Hawaiian Electric substation up the hill near Lahainaluna Road from her home. Again, HECO failed to respond to the faults and de-energize the grid in the area of the faults. There were 34 faults recorded by WhiskerLabs between 11:38 pm and 5:00 am. Marshall said, "there were dozens and dozens of faults on the grid and any one of those could have been the ignition source for a fire." The grid that was de-energized along Lahainaluna road was re-energized between 6:10 am and 6:39 am. This allowed the ignition of fires around 6:37 am after a fault history and electrical shorts that had not been properly cleared to restore power. HECO turned back on the power and caused fires with downed live electrical lines filmed by Treu. The power then shut off due to the new electric faults for the second time and fires were caused along Lahainaluna road. <https://www.washingtonpost.com/climate-environment/2023/08/15/maui-fires-power-line-cause/>

102. The HECO Companies did not have a program to preemptively shut down electrical lines during times of high fire risk — in contrast to many utilities in California and Oregon, where deadly fires have established a need for this safety protocol. Hawaiian Electric was aware that a power shut-off was an effective strategy, documents show, but had not adopted it as part of its fire mitigation plans. The company's records show that despite being aware that a power shutdown would have been an effective

preventive measure, the utility still needed to integrate this strategy into its fire mitigation protocols. Hawaiian Electric spokesman Darren Pai confirmed to the *San Francisco Chronicle* his company's failure to utilize the PSPS strategy before the wildfire in question.

(5) THE WILDFIRE IN QUESTION RACED TOWARD LAHAINA, CAUSING THE INCINERATION OF MORE THAN 3,000 STRUCTURES AND HOMES, KILLING HUNDREDS

103. The average area burned each year in wildfires, which tend to start in grasslands, has increased roughly 400 percent in the last century, according to the Hawaii Wildfire Management Organization.

104. When Hawai'i's last sugar cane plantation shut down on Maui in 2016, the last harvest at the 36,000-acre plantation allowed the relentless spread of extremely flammable non-native grasses on idled lands where cash crops once flourished. Recent declines in farming have left many areas unmanaged and overgrown, brimming with even more grasses and other flammable vegetation. Guinea grass, molasses grass and buffelgrass — which originated in Africa and were introduced to Hawai'i as livestock forage — now occupy nearly a quarter of Hawai'i's landmass. Fast growing when it rains and drought resistant when lands are parched, such grasses are fueling wildfires across Hawai'i.

105. Because they can quickly spread over abandoned farm and ranch lands, they can build up to such high amounts of biomass that fire weather conditions make West Maui even more vulnerable.

106. The spread of flammable grasses such as Guinea grass in areas of former farmland and forest have created large amounts of small, easily ignited materials that increase the risk and severity of fire. Maui is covered with such grasses, and they are flammable.

107. Maui County's 1,044-page hazard mitigation plan lists coastal West Maui as having a high wildfire risk. A map on Page 503 shows all of Lahaina's buildings as being in a wildfire risk area, and the document warns that "populations with limited access to information may not receive time-critical warning information to enable them to reach places of safety."

108. The fires ignited by the HECO Companies' equipment intensified in high winds, then migrated west towards Lahaina. The fire forced the closure of Lahaina Bypass, a major road also known as Route 3000 near the intermediate school. The message on Facebook said evacuations were occurring in that area. The blaze began burning homes in that upper area, then moved downhill, southwest toward the coast, following prevailing winds and toward the Kahoma neighborhood.

109. Unfortunately, residents inside their homes in Lahaina had no warning to leave. Hawai'i state officials say they have an outdoor siren warning system and that

sirens exist in Lahaina. But Hawai'i officials said Maui's sirens were not activated when the fires began. Authorities instead opted to try to send messages through phone alerts — warnings that did not reach many people because communications were already down. Indeed, power and cell service had become unavailable due to the fire.

110. Moreover, communities like Lahaina located on the island edge are often dependent upon single highways as an evacuation route. Lahaina is especially vulnerable because of few exit routes. Hemmed in by the ocean and Mauna Kahalawai, or the West Maui Mountains, there are only two routes out of town along the coast. And both were jammed — one way out was closed because 29 power poles were down and still energized, and the other route is so narrow, with only one lane only in most places.

111. As the fire approached, several people jumped out of their vehicles and into the harbor. As a result, the single exit pathway out of Lahaina was blocked, and many people burned to death in their vehicles. Indeed, one witness recalled encountering a line of burned vehicles, some with charred corpses inside. Of the 99 bodies recovered as of August 14, 2023, many of those killed died in their vehicles.

112. Many of those who did survive suffered catastrophic burn injuries, with Maui's hospitals overrun with burn patients.

113. Many people "ran into the water, they were jumping into the ocean, they were paddling out to sea," causing U.S. Coast Guard crews to rescue 17 people who jumped into the Lahaina Harbor to escape the flames.

114. The wildfire in question caused widespread devastation in Lahaina, a beach resort city of about 13,000 people on northwestern Maui, once a whaling center and the Hawaiian Kingdom's capital, now drawing two million tourists a year. The Federal Emergency Management Agency estimates that it will cost \$5.52 billion to rebuild in Maui County.

E. CAUSES OF ACTION

FIRST CAUSE OF ACTION

Inverse Condemnation

115. Plaintiffs are property owners or persons claiming an interest in their property.

116. The Hawai'i Constitution, Article I, Section 20 provides, "Private property shall not be taken or damaged for public use without just compensation."

117. Pursuant to HRS § 269-1, Defendants are a public utility.

118. Defendants designed, installed, owned, operated, used, controlled, managed, and/or maintained overhead electrical infrastructure in Hawai'i for the purpose of providing electricity to the public for public use. Thus, Defendants operate as a public utility.

119. HRS § 101-4 gives Defendants "[t]he right and power of eminent domain" as operators of a public utility. Thus, Defendants have the power of condemnation.

120. Defendants intentionally undertook the actions and inactions described

above, including failing to clear vegetation, failing to maintain its equipment, failing to use firesafe equipment during high-risk fire conditions, failing to plan to deenergize power lines during a High Wind Watch or Red Flag Warning, and failing to shut off the power during those conditions.

121. Defendants' negligent and reckless operation of its overhead electrical infrastructure necessarily caused the Lahaina Fire, which destroyed real and personal property belonging to Plaintiffs. Defendants also substantially interfered with the use, access, enjoyment, value, and marketability of Plaintiffs' property.

122. Thus, Defendants have taken private property from Plaintiffs without adequate or just compensation.

123. The damage to Plaintiffs was the necessary, certain, predictable, and/or inevitable result of Defendants' actions.

124. The damage to Plaintiffs outweighs the risk and harm from the improvements Defendants undertook to provide electricity to the public.

125. Justice, fairness, and the Hawai'i Constitution require that Defendants compensate Plaintiffs for the taking of their property and their injuries.

126. As a result of the foregoing, Plaintiffs suffered damages in an amount to be proven at trial.

127. As set forth above, Defendants' conduct was intentional, malicious, and in complete disregard to the rights of Plaintiffs subjecting Defendants to awards of

punitive damages.

SECOND CAUSE OF ACTION

Negligence

128. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

129. Defendants owed the public, Plaintiffs the following duties of care:

- a. To design, construct, inspect, repair, and maintain their power poles, power lines, transformers, reclosers, and other electrical equipment adequately;
- b. To maintain, operate, and inspect their power lines, overhead electrical infrastructure, and equipment properly to ensure they would not cause a fire;
- c. To conduct adequate vegetation management, such as clearing vegetation, trees, and tree limbs that could come into contact with their power lines and equipment;
- d. To deenergize their power lines during a Red Flag Warning to prevent fires;
- e. To deenergize their power lines during a High Wind Watch to prevent fires;
- f. To deenergize their power lines during high fire danger warnings;
- g. To deenergize their power lines after Defendants had knowledge

that some power lines had fallen or otherwise come into contact with vegetation, structures, and objects;

h. To deenergize their power lines after Defendants' overhead electrical infrastructure had ignited fires;

i. To implement reasonable policies, procedures, and equipment that would avoid igniting or spreading fire;

j. To adjust their operations despite warnings about fire weather conditions that could result in downed power lines and cause rapid and dangerous fire growth and spread on and after August 8, 2023; and

k. To prevent the downing of power lines, which blocked evacuation routes during the Lahaina Fire.

130. As set forth in the foregoing paragraphs, Defendants breached each and all of these duties.

131. Defendants' breaches were the proximate cause of injuries that Plaintiffs suffered.

132. Defendants' breaches of its duties actually caused injuries that Plaintiffs suffered.

133. As a result of the foregoing Plaintiffs suffered damages in an amount to be proven at trial.

134. As set forth above, Defendants' conduct was intentional, malicious, and in

complete disregard to the rights of Plaintiffs subjecting Defendants to awards of punitive damages.

THIRD CAUSE OF ACTION

Gross Negligence

135. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

136. By 2016 and 2017, Defendants were aware of the high risk of wildfire presented by its aging electricity grid on Maui. Defendants received over 1,000 pages of documents from a former high-level employee, describing needs for changes in the company to better serve the public in a safe and appropriate matter. Instead of implementing the changes needed, the HECO Companies forced this former high-level employee to maintain complete confidentiality and proceeded forward with a conscious and intentional disregard of the rights of its customers.

137. Defendants knew of the extreme fire danger that high winds posed to their overhead electrical infrastructure, particularly during Red Flag conditions. These risks included that winds could topple power poles and power lines, causing them to fall to the ground, ignite vegetation, and cause a wildfire that would spread rapidly.

138. Defendants' 2019 Press Release indicates its knowledge of the risks of wildfires associated with high winds.

139. Despite Defendants' knowledge of these extreme risks, Defendants chose

not to deenergize its power lines during the High Wind Watch and Red Flag Warning conditions for Maui before the Lahaina Fire started.

140. Defendants also chose not to deenergize its power lines after they knew some poles and lines had fallen and were in contact with the vegetation or the ground.

141. Defendants further failed to deenergize its power lines, even after the Lahaina Fire started.

142. Defendants acted with indifference to the probable consequences of its acts and omissions.

143. Despite possessing the knowledge of the risk of high winds and wildfires generally, a High Wind Watch, a Red Flag Warning, and specific warnings that high winds could blow down power poles and that fires would spread rapidly, Defendants did nothing.

144. Defendants' gross negligence proximately caused the injuries Plaintiffs suffered.

145. Defendants' gross negligence actually caused the injuries Plaintiffs suffered.

146. As a result of the foregoing, Plaintiffs suffered damages in an amount to be proven at trial.

147. As set forth above, Defendants' conduct was intentional, malicious, and in complete disregard to the rights of Plaintiffs subjecting Defendants to awards of

punitive damages.

FOURTH CAUSE OF ACTION

Public Nuisance

148. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

149. Plaintiffs have a possessory interest in their real property, including the right to quiet use and enjoyment of that property.

150. Defendants acted unreasonably, negligently, and recklessly in designing, constructing, inspecting, repairing, and maintaining its power poles, power lines, transformers, reclosers, and other electrical equipment inadequately.

151. Defendants acted unreasonably, negligently, and recklessly in maintaining, operating, and inspecting its power poles, power lines, overhead electrical infrastructure, and equipment to ensure they would not cause a fire.

152. Defendants acted unreasonably, negligently, and recklessly in failing to deenergize its power lines during a Red Flag Warning.

153. Defendants acted unreasonably, negligently, and recklessly in failing to deenergize its power lines during a High Wind Watch.

154. Defendants acted unreasonably, negligently, and recklessly in failing to deenergize its power lines once they knew that wind had knocked down power poles, putting the power lines in contact with vegetation.

155. Defendants acted unreasonably, negligently, and recklessly in failing to deenergize its power lines immediately after the Lahaina Fire started.

156. Defendants' unreasonable, negligent, and reckless acts resulted in an invasion of Plaintiffs' private use and enjoyment of their land.

157. The gravity of harm from Defendants' conduct outweighs any utility associated with keeping the power lines energized during a High Wind Watch, a Red Flag Warning, once Defendants' power poles failed, and once the Lahaina Fire started.

158. Defendants' 2019 Press Release reflects its knowledge that high winds posed a risk of safety to the public. In addition, Defendants reviewed and studied various Wildfire Mitigation Plans that included PSPS during the very kinds of conditions preceding and during the Lahaina Fire. Defendants also knew, or should have known, about the High Wind Watch and Red Flag Warning.

159. Defendants took an unreasonable risk in failing to deenergize its power lines.

160. Defendants' many failures resulted in serious harm to Plaintiffs depriving them of the quiet use and enjoyment of their property.

161. Defendants' conduct proximately caused the injuries that Plaintiffs suffered.

162. Defendants' conduct actually caused injuries that Plaintiffs suffered.

163. As a result of the foregoing, Plaintiffs suffered damages in an amount to

be proven at trial.

164. As set forth above, Defendants' conduct was intentional, malicious, and in complete disregard to the rights of Plaintiffs, subjecting Defendants to awards of punitive damages.

FIFTH CAUSE OF ACTION

Trespass

165. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

166. At all times relevant herein, Plaintiffs were the lawful occupier of property damaged by the Lahaina Fire.

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

168. Plaintiffs did not grant permission for Defendants to cause the Lahaina Fire to enter his property.

169. As a direct, proximate, and substantial cause of the trespass, Plaintiffs have 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.

170. As a further direct and proximate result of the conduct of Defendants, Plaintiffs have 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, as allowed under HI Rev Stat Section 663-1 (2013). The trespass was a violation of both the Hawai'i's trespass statutes and Hawai'i's common law trespass.

171. 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 Plaintiffs, which is an appropriate predicate fact for an award of exemplary/punitive damages in a sum according to proof.

ALL OTHER CLAIMS

- a) General and/or special damages determined on an individual basis according to proof, including damages for repair, depreciation and/or lost personal and/or real property;
- b) Loss of the use, rental income, benefit, goodwill, and enjoyment of Plaintiffs' real and or personal property;
- c) Loss of wages, earning capacity, goodwill, and/or business profits or proceeds and/or related displacement expenses;
- d) Evacuation expenses and alternate living expenses;
- e) Erosion damage to real property;

- f) Past and future medical expenses and incidental expenses;
- g) General damages for personal injury, emotional distress, fear, annoyance, disturbance, inconvenience, mental anguish, and loss of quiet enjoyment of property;
- h) Special damages in an amount according to proof;
- i) Attorneys' fees, expert fees, consultant fees, and litigation costs and expense, as allowed under HRS 507-14.5 and all other applicable law;
- j) Prejudgment interest from August 8, 2023;
- k) Emotional distress damages and non-economic damages;
- l) Punitive and exemplary damages against HECO in an amount sufficient to punish Defendants' past and ongoing conduct and deter similar conduct in the future, as allowed under HRS 269-16.1 and other applicable law; and
- m) Any and all other and further such relief as the court shall deem proper all according to proof.

PRAYER FOR RELIEF

Plaintiffs seek damages in an amount according to proof at the time of trial.

JURY TRIAL DEMAND

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

Respectfully,

/s/ Jan K. Apo

Jan K. Apo

Mark D. Reck

Naomi M. Kusachi

Jon Givens

Guy Watts

Mikal C. Watts

Attorneys for Plaintiffs

**STATE OF HAWAI'I
CIRCUIT COURT OF THE
SECOND CIRCUIT**

**SUMMONS
TO ANSWER CIVIL COMPLAINT**

CASE NUMBER

PLAINTIFF'S NAME & ADDRESS, TEL. NO.

PLAINTIFF
JAN K. APO, INDIVIDUALLY;
APO FAMILY LLC; and
APO FAMILY TRUST

APO, RECK & KUSACHI
JAN K. APO 2906
MARK D. RECK 9316
NAOMI M. KUSACHI 9982
24 N. Church Street, Suite 302
Wailuku, Hawaii 96793
(808) 244-6073
F: (808) 495-4441

DEFENDANT(S)
HAWAIIAN ELECTRIC COMPANY, INC.;
HAWAII ELECTRIC LIGHT COMPANY, INC.;
MAUI ELECTRIC COMPANY, LIMITED; DOES
1-10; DOES PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; DOE
GOVERNMENTAL AGENCIES 1-10; AND DOE
ASSOCIATIONS 1-10

TO THE ABOVE-NAMED DEFENDANT(S)

You are hereby summoned and required to filed with the court and serve upon
APO RECK & KUSACHI
24 N. Church Street, Suite 302
Wailuku, Hawaii 96793

_____,
plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within
20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default
will be taken against you for the relief demanded in the complaint.

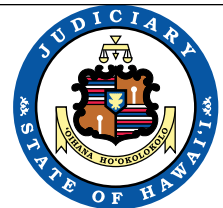
**THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON
PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED
COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.**

**A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT
JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.**

DATE ISSUED 8-16-2023

Effective Date of 03-Jul-2023
signed by: /s/M. Ferreira
Clerk, 2nd Circuit, State of Hawai'i

The original document is filed in the
Judiciary's electronic case management
system which is accessible via eCourt Koku
a: <http://www.courts.state.hi.us>



If you need an accommodation for a disability when participating in a court program, service, or activity, please contact the ADA Coordinator as soon as possible to allow the court time to provide an accommodation:
Call (808) 244-2855 FAX (808) 244-2932 OR Send an e-mail to: adarequest@courts.hawaii.gov. The court will try to provide, but cannot guarantee, your requested auxiliary aid, service or accommodation.