

<p>DISTRICT COURT, COUNTY OF BOULDER STATE OF COLORADO</p> <p>Boulder County Combined Court 1777 6th Street Boulder, CO 80302 303-441-3750</p>	<p>2023 JUN -8 A 11: 0</p> <p>▲ COURT USE ONLY ▲</p>
<p>Plaintiffs: STEVE SELLERS, JILL SELLERS, ZACH PARRIS, HANNAH PARRIS, individually and as GUARDIAN AD LITEM FOR ZELMA PARRIS, BRIAN WILKERSON, MARGARET WILKERSON, KATIE WILKERSON, individually and as GUARDIAN AD LITEM for CONNOR WILKERSON, and GUARDIAN AD LITEM for ANNA WILKERSON, STEPHEN W. ROCH, LORIE ROCH, STEPHEN T.F. ROCH, CHRISTIAN ROCH, LINCOLN ROCH, MOHAMMAD RUSTA, MARIA RUSTA, ELAYNE OLIGSCHLAEGER, DAVID FARMER, KAREN HANSEN, as an individual, and as successor in interest to BARBARA J. FARMER (deceased), RICHARD KROLL, SUSAN KROLL, DAVID YAMAMOTO, and JEAN WRIGHT YAMAMOTO.</p> <p>v.</p> <p>Defendants: XCEL ENERGY INC. AND PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY and DOES 1-200, whose true names are unknown</p>	
<p>Attorneys for Plaintiffs:</p> <p>Michael Yancey III (Attorney Reg. # 58563) Resolve Law Group 1919 14th Street, Ste. 700 Boulder, CO 80302 Tel: 480.573.9272 x113 E: myancey@consumerattorneys.com Counsel of record</p> <p>Pro Hac Vice admission to be sought for:</p>	<p>Case Number: 23CV67</p> <p>Division:</p>

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COMPLAINT AND JURY DEMAND

The Plaintiffs, by and through their attorneys, Michael Yancey III, Resolve Law Group, Benjamin D. Petiprin, Spreter & Petiprin, APC., Geoff J. Spreter, Spreter & Petiprin APC., Joshua B. Swigart, Swigart Law Group, APC., Jayson B. Swigart, Swigart Law Group, APC., and Scott Maynor, The Maynor Law Firm., allege the following against Defendants Xcel Energy Inc. and Public Service Company of Colorado d/b/a Xcel Energy:

INTRODUCTION

1. Plaintiffs, Steve Sellers, Jill Sellers, Zach Parris, Hannah Parris, Individually and as Guardian Ad Litem for Zelma Parris, Brian Wilkerson, Margaret Wilkerson, Katie Wilkerson, Individually and as Guardian Ad Litem for Connor Wilkerson, and as Guardian Ad Litem for Anna Wilkerson, Stephen W. Roch, Lorie Roch, Stephen T.F. Roch, Christian Roch, Lincoln Roch, Mohammad Rusta, Maria Rusta, Elayne Oligschlaeger, David Farmer, Karen Hansen, as an individual, and as successor in interest to Barbara J. Farmer (deceased), Richard Kroll, Susan Kroll, David Yamamoto, and Jean Wright Yamamoto (collectively "Plaintiffs"), victims of the Marshall Fires allege the following, based, where applicable, on personal knowledge, information and belief, and on the investigation and research of counsel, against Defendants Xcel Energy Inc. and Public Service Company of Colorado d/b/a Xcel Energy (collectively referred to hereinafter as the "Xcel Energy Defendants"), and DOES 1-200 (referred to hereinafter as the "Doe Defendants," and together with the Xcel Energy Defendants, "Defendants"). Defendants' powerlines and energy utility equipment were a substantial factor in the cause, origin, and continuation of the deadly Marshall Fire

2. Near the intersection of CO 93 & CO 107, witnesses observed fire igniting in the vicinity of a powerline. The witness reports suggest sparks ignited a ground fire (which later became known as the "Marshall Fire") in the Eldorado Springs neighborhood of Boulder, Colorado. Defendant Public Service Company of Colorado d/b/a Xcel Energy or Xcel Energy Inc. (hereinafter referred to as "Defendants" or "Xcel.") owned and operated the powerlines in the Eldorado Springs-Marshall Mesa neighborhood alongside the side of Foothills Highway (near intersection of CO 93 & CO 107).

3. The Marshall Fire torched and terrorized the towns of Boulder, Broomfield, Superior, Lafayette and Louisville, Colorado. Strong winds carried sparks from an Xcel powerline that started a ground fire in the Eldorado Springs-Marshall Mesa neighborhood. The resulting fire burned across 6,000 acres of land and destroyed 1,091 structures, including 1,084 homes. 30,000 residents were

evacuated, dozens were injured, and at least one man lost his life while fleeing from the Marshall Fire.

4. Plaintiffs are among those terrorized and damaged by the Marshall Fire. Plaintiffs' injuries include, but are not limited to: property damages, including damage to real or personal property or damage from smoke, soot, and ash; loss of natural resources; evacuation expenses; economic damages, such as losses from impacts on business like activities, past and future loss of income, or lost wages; costs associated with response and recovery, including debris removal, emergency response, or fire suppression costs; damages based on soil erosion, and loss of soil stability and productivity; damages related to water contamination, including water quality preservation and correction expenses; loss of water storage; loss of aesthetic value; and other significant injuries, damages, and losses directly related to and caused by the Marshall Fire.

5. As a result of Defendants' unlawful conduct, Plaintiffs have suffered significant property damages, along with emotional, physical, and financial damages, among other things, for which Plaintiffs are entitled to just compensation. Each Plaintiff individually seeks just compensation and damages as more particularly described below.

PARTIES

6. Each of the Plaintiffs are individuals, representatives, and/or legal entities who were, at all times relevant to this pleading: homeowners who owned, renters who occupied, business owners, and other individuals, representatives, and entities who were citizens, residents, occupants, and/or had a real property and/or maintained a personal property interest located in Colorado.

7. Plaintiffs have elected to join their individual lawsuits in a single action under rules of permissive joinder as set forth in Colorado Rule of Civil Procedure 20(A). Plaintiffs do not seek certification or relief on any class-wide, collective, or other group basis, but instead seek the damages and other remedies identified herein on an individual basis according to proof at trial or through alternative dispute resolution efforts.

8. Plaintiffs STEVE SELLERS and JILL SELLERS were residents of Boulder County who owned property located at 213 Mohawk Circle, Superior, CO 80027. Plaintiffs' real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort,

inconvenience, and emotional distress as a result of the fire.

9. Plaintiffs ZACH PARRIS, HANNAH PARRIS, individually and as GUARDIAN AD LITEM for ZELMA PARRIS were residents of Boulder County who owned property located at 751 W. Dahlia Street, Louisville, CO, 80026. Plaintiffs' real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

10. Plaintiffs BRIAN WILKERSON, MARGARET WILKERSON, KATIE WILKERSON, individually and as GUARDIAN AD LITEM for CONNOR WILKERSON, and GUARDIAN AD LITEM for ANNA WILKERSON were resident of Boulder County who owns property located at 954 Saint Andrews Lane, Louisville, CO 80027. Plaintiffs' real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

11. Plaintiffs STEPHEN W. ROCH, LORIE ROCH, STEPHEN T.F. ROCH, CHRISTIAN ROCH, and LINCOLN ROCH were residents of Boulder County who owns property located at 750 St. Andrews Lane, Louisville, CO 80027. Plaintiffs' real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

12. Plaintiffs MOHAMMAD RUSTA, and MARIA RUSTA were residents of Boulder County who owns property located at 2360 Andrew Dr., Superior, CO 80027. Plaintiffs' real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

13. Plaintiff ELAYNE OLIGSCHLAEGER was a resident of Boulder County who owns property located at 1021 Turnberry Circle, Louisville, CO 80027. Plaintiff's real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

14. Plaintiff DAVID FARMER was a resident of Boulder County who owns property located at 7366 Empire Drive, Boulder, CO 80303. Plaintiff's real and personal property was destroyed as a result of the Marshall Fire, and they

experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

15. Plaintiff KAREN HANSEN, as an individual, and as successor in interest to BARBARA J. FARMER (deceased) was a resident of Boulder County who owns property located at 996 Paragon Dr., Boulder, CO 80303. Plaintiff's real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

16. Plaintiffs RICHARD KROLL, and SUSAN KROLL were residents of Boulder County who owns property located at 901 St. Andrews Lane, Superior, CO 80027. Plaintiffs' real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

17. Plaintiffs DAVID YAMAMOTO and JEAN WRIGHT YAMAMOTO were residents of Boulder County who owned property located at 1002 Eldorado Dr. Superior, CO 80027. Plaintiffs' real and personal property was destroyed as a result of the Marshall Fire, and they experienced, among other things, annoyance, discomfort, inconvenience, and emotional distress as a result of the fire.

18. Defendants Xcel Energy Inc. is the parent company of Public Service Company of Colorado and which is registered under the trade name Xcel Energy and file under §7-71-103 and §7-71-107 of the Colorado revised Statutes (C.R.S.), is a Colorado 'for-profit' Corporation that at all times has conducted business and/or employed labor throughout the state of Colorado. Defendant Xcel Energy committed the tortious wrongdoings, as alleged and described more fully herein, within Boulder County and Broomfield County Colorado.

19. The true names and capacities of Defendants Does 1-through-200 inclusive are currently unknown to Plaintiffs who, therefore, sue these defendants under these fictitious names, pursuant to Colorado Rule of Civil Procedure 10(a). These Defendants are each directly and/or vicariously responsible, in some manner, for the harms alleged herein. If/when Plaintiffs learn these Defendants' true names and capacities, Plaintiffs will seek leave to amend this pleading accordingly. "Defendants" refers collectively to Pacific Power and Does 1 through 200 inclusive.

JURISDICTION AND VENUE

20. At all relevant times, Plaintiffs resided or owned real property and/or personal property in Broomfield County or Boulder County, Colorado. Plaintiffs' claims arise from events or occurrences within Broomfield County or Boulder County Colorado, and the damages, losses, and injuries Plaintiffs suffered occurred in Broomfield County or Boulder County, Colorado. Plaintiffs' injuries include, but are not limited to: loss of natural resources, open space, and property damages, including damage to real or personal property or damage from smoke, soot, and ash; evacuation expenses; economic damages, such as losses from impacts on business like activities or lost wages; costs associated with response and recovery, including debris removal, emergency response, or other costs; damages based on soil erosion, and loss of soil stability and productivity; damages related to water contamination, including water quality preservation and correction expenses; loss of water storage; loss of aesthetic value; and other significant injuries, damages, and/or losses directly related to and caused by the Marshall Fire.

21. This Court has personal jurisdiction over this action pursuant to Colorado Revised Statute Section 13-1-124. (C.R.S. §13-1-124.) Under Section 13-1-124, each Defendant is subject to personal jurisdiction in Colorado because Defendants transact business, have committed, and continue to commit tortious wrongdoings, and each Defendant has caused substantial injury to Plaintiffs in the state of Colorado.

22. This Court has personal jurisdiction over Defendants because, among other things, Defendants Public Service Company of Colorado d/b/a Xcel Energy and Xcel Energy Inc. operate in Colorado and regularly conduct business in Colorado.

23. This Court has jurisdiction over the action as a court of general jurisdiction, pursuant to Colo. Const. Art. VI, § 9.

24. Venue is proper in this Court pursuant to Colo. Rule of Civ. Proc. No. 98(a). The injuries to Plaintiffs and Plaintiffs' real property and/or personal property occurred in Boulder and/or Broomfield County, Colorado, and Defendants' liability arose in Boulder and/or Broomfield County, Colorado. Plaintiffs' injuries include, but are not limited to: loss of natural resources, open space, and property damages, including damage to real or personal property or

damage from smoke, soot, and ash; evacuation expenses; economic damages, such as losses from impacts on business like activities or lost wages; costs associated with response and recovery including debris removal, emergency response, and/or other costs; damages based on soil erosion, or loss of soil stability and productivity; damages related to water contamination, including water quality preservation and correction expenses; loss of water storage; loss of aesthetic value; and other significant injuries, damages, and losses directly related to and caused by the Marshall Fire.

25. Accordingly, this action is properly before the Court pursuant to Colorado Revised Statute Section 13-1-124 and Rule of Civil Procedure No. 98.

STATEMENT OF FACTS

26. On the morning of December 30th, 2021, a witness videotaped sparks flying out of a malfunctioning powerline near the Shell gas station on 1805 South Foothills Highway in the Eldorado Springs neighborhood of Boulder, Colorado. The sparks from the powerline ignited a ground fire that came to be known as the "Marshall Fire."

27. Defendant Xcel at all times owned and operated the powerlines and utility equipment adjacent to Highway 93 near Marshall Road in Boulder, Colorado.

28. When asked about the cause of the Marshall Fire, Xcel spokesperson, Michelle Aguayo acknowledged that wires could have touched and arced. Arcing is the electrical breakdown of a gas, which often occurs when an electric current is exposed to air between two conductors, causing a prolonged surge of electricity and heat that can reach temperatures of up to 35,000 degrees Fahrenheit. In the past, arcing events in Xcel equipment caused fires. For example, in March of 2018, arcing events caused Xcel power poles to catch fire on twelve separate occasions in the same night.

29. Similarly, Xcel Energy has a documented history of causing fires in Colorado. In October of 2003, strong winds caused a tree to fall into a utility pole that Xcel owned and operated. That fire came to be known as the "Overland Fire" and it destroyed twelve homes in Boulder. After initially refusing to turn over records to the Public Utilities Commission, Xcel eventually confirmed that it owned the equipment that started the Overland Fire.

30. Then, in October of 2007, Xcel equipment started the deadly Cabin Creek Fire that killed five employees and injured three other people. Xcel later entered into a settlement with the Occupational Safety and Hazard Administration ("OSHA") for workplace safety violations that included but were not limited to the lack of a rescue plan for the five deceased employees who became trapped in the power plant without access to a fire extinguisher.

31. On December 30, 2021, sparks from an Xcel powerline caused the most destructive wildfire in Colorado history to spread. The Marshall Fire destroyed more than 1,000 commercial and residential structures, forced at least 30,000 residents to evacuate, and killed a man. The Boulder Office of Disaster Management issued a Joint Damage Assessment that estimated the damage to the City of Louisville as approximately \$229,199,184, the damage to the Town of Superior as \$152,757,462, and the damage to unincorporated areas of Boulder County as \$131,255,944. The total countywide value of actual damage is estimated to be approximately \$513,212,589. The Marshall Fire also caused damage to Broomfield County in an amount of damage to be proven at trial.

32. By and through the conduct described herein, Defendants have committed several actionable offenses against Plaintiffs, including, but not limited to, negligence and nuisance. Because of Xcel's corporate policy of putting profits over public safety, Plaintiffs and others like them have had their homes, businesses, ranches, and farms damaged or destroyed, lost income, money, and business, suffered significant expenses and emotional trauma, and will spend years trying to rebuild their lives and livelihoods.

FIRST CAUSE OF ACTION
Inverse Condemnation
(Against All Defendants)

33. Plaintiffs hereby reallege and incorporate by reference each and every allegation contained herein as though fully set forth and brought in this cause of action.

34. Plaintiffs bring this cause of action for Inverse Condemnation against Defendants.

35. Xcel's operation and maintenance of electrical transmission and distribution lines and supporting equipment ("Electrical Systems"), which were a substantial cause of Plaintiffs' damages, are a public improvement for a public use.

36. Article II, § 15 of the Colorado Constitution states:

Private property shall not be taken or damaged, for public or private use, without just compensation. Such compensation shall be ascertained by a board of commissioners, of not less than three freeholders, or by a jury, when required by the owner of the property, in such manner as may be prescribed by law, and until the same shall be paid to the owner, or into court for the owner, the property shall not be needlessly disturbed, or the proprietary rights of the owner therein divested; and whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

37. Xcel's design, development, construction, installation, control, management, maintenance, inspection, ownership, and operation of its Electrical Systems constitutes a public improvement for a public use.

38. On or about December 30, 2021, Xcel's Electrical Systems were a substantial factor in causing and contributing to the spread of the Marshall Fire, which directly, substantially, and legally resulted in the taking of Plaintiffs' private property and deprived them of the use and enjoyment of their property.

39. Xcel owned and substantially participated in the design, planning, approval, construction, and operation of the Electrical Systems and public improvements for the supplying of electricity. Xcel exercised control and dominion over the said Electrical Systems and public improvements as a public project and public benefit.

40. Electricity is a dangerous instrumentality that poses an inherent risk that requires the exercise of increased care and precaution commensurate with and proportionate to that increased danger, so as to make the transport of electricity through the Electrical Systems safe under all circumstances and exigencies posed by the surrounding weather and vegetation to ensure maximum safety under all local conditions in the service area, including the risk of fire.

41. Xcel deliberately designed its Electrical Systems to transport electricity from its powerplant to substations through high-voltage transmission lines for the purpose of providing electricity to the public. This includes Xcel's design of its Electrical Systems with system protection devices, including but not

limited to fuses, breakers, and reclosers (“System Protection”) to trip and stop the flow of electricity should an electrical overcurrent event occur. The inherent danger in Electricity and Xcel's design of its Electrical Systems materialized in an arcing event that was a substantial factor in causing and contributing to the spread of the Marshall Fire, which damaged Plaintiffs' properties. Xcel deliberately constructed its Electrical Systems to transport electricity from its powerplant to substations through high-voltage transmission lines for the purpose of providing electricity to the public. This includes Xcel's construction of its Electrical Systems with System Protection to trip and stop the flow of electricity should an electrical overcurrent event occur. The inherent danger in Xcel's construction of its Electrical Systems materialized in an arcing/electrical event that caused the Marshall Fire, which damaged Plaintiffs' property.

42. Xcel designed and constructed its Electrical Systems to transport electricity from its powerplant to substations through high-voltage transmission lines for the purpose of providing electricity to the public. Electricity is a dangerous instrumentality and Xcel has a non-delegable duty to perform inspection and maintenance on its Electrical Systems. The inherent danger in Xcel failing to maintain, repair, and/or replace the structural integrity of its Electrical Systems, including the transmission towers, materialized in an arcing/electrical event that caused the Marshall Fire, which damaged Plaintiffs' property.

43. Xcel has the special knowledge and expertise, above that of a layperson, that is required to perform safe structural integrity inspections and maintenance, and other safety inspections at, near, and around its Electrical Systems. Specifically, Xcel performed inspection and maintenance, near and upon the Electrical Systems near the general area of origin of the Marshall Fire in the past and exercised dominion and control over its Electrical Systems.

44. The conduct as described herein was a substantial factor in causing damage to a property interest protected by Article II, § 15 of the Colorado Constitution and permanently deprived Plaintiffs of the use and enjoyment of their property. As a direct result of the taking of their property, Plaintiffs sustained damages in excess of the jurisdictional minimum of this Court.

SECOND CAUSE OF ACTION

Negligence

(Against All Defendants)

45. Plaintiffs reallege and incorporate by reference herein each and every

allegation contained herein as though fully set forth and brought in this cause of action.

46. Defendants owed Plaintiffs duties of reasonable care in their operations of their property and interactions with Plaintiffs and to refrain from creating an unreasonable risk of harm to Plaintiffs' persons and the surrounding properties in the area.

47. Defendants breached these duties by way of their wrongful conduct against Plaintiffs as alleged and described in detail herein. Defendant Xcel was negligent in its operation of its power lines and equipment in that Defendant unreasonably failed to maintain, monitor, and/or supervise its property in a manner so as to prevent an arcing event from causing a fire. Defendant as also negligent in failing to immediately contact law enforcement and fire prevention authorities and in allowing the powerline to continue creating sparks until a passerby called the authorities.

48. Plaintiffs were not comparatively negligent.

49. As a direct and proximate result of the unlawful conduct of Defendants, and each of them, Plaintiffs have suffered special damages, including, but not limited to: damage to real and/or personal property; evacuation expenses, alternative living expenses, and other out-of-pocket expenses; economic damages, such as losses from impacts on business like activities, lost wages, and past and future loss of income; costs associated with response and recovery including debris removal, fire suppression, or other costs; damages based on soil erosion, and loss of soil stability and productivity; damages related to water contamination including water quality preservation and correction expenses; loss of water storage; loss of aesthetic value; and other significant injuries, damages, and losses directly related to and caused by the Marshall Fire.

50. Plaintiffs have also suffered general damages including, but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages to be proven at time of trial.

51. Defendants' negligence, as alleged and described in detail herein, was substantial factor in the cause, origin, and continuation of the Marshall Fire and was a substantial factor in causing Plaintiffs' harm.

52. As a direct and proximate result of Defendants' negligence, Plaintiffs

will be prevented or hindered from engaging in certain social and recreational activities normal to their lifestyle prior to this incident and will otherwise be prevented from participating in and enjoying the benefits of a full and complete life.

THIRD CAUSE OF ACTION
Premise Liability
(Against All Defendants)

53. Plaintiffs reallege and incorporate by reference herein each and every allegation contained herein as though fully set forth and brought in this cause of action.

54. Defendants were the owners of real property and/or of an easement on/or upon real property in Colorado, at the point of origin of the Marshall Fire and/or were the owners of the electrical infrastructure upon said real property, easement and/or right of way.

55. Defendants, and each of them, failed to properly inspect the real property and/or easement and allowed an unreasonably dangerous condition to exist on said property by failing to properly inspect, maintain, and repair the powerlines and equipment and failing to properly cut, trim, and/or prune vegetation near their lines.

56. Moreover, Defendants had actual knowledge and/or should have known of the risks of harm associated with power utility equipment causing fires. Defendants own power utility equipment caused and contributed to multiple fires in Colorado in the past two decades. Defendants therefore knew of the particular dangers associated with fires and failed to use reasonable care to guard against or warn citizens about the risks of harm.

57. As a direct, proximate, and legal result of wrongful acts and/or omissions of Defendants, Plaintiffs suffered, and continue to suffer the injuries and damages as alleged herein. Plaintiffs' injuries include, but are not limited to: damage to real and/or personal property; evacuation expenses, alternative living expenses, and other out-of-pocket expenses; economic damages, such as losses from impacts on business like activities, lost wages, and past and future loss of income; costs associated with response and recovery including debris removal, fire suppression, or other costs; damages based on soil erosion, and loss of soil stability and productivity; damages related to water contamination including water quality

preservation and correction expenses; loss of water storage; loss of aesthetic value; and other significant injuries, damages, and losses directly related to and caused by the Marshall Fire.

58. As a further direct and legal result of the wrongful acts and/or omissions of Defendants, Plaintiffs seek the recovery of exemplary damages against Defendants as set forth above.

FOURTH CAUSE OF ACTION

Trespass

(Against All Defendants)

59. Plaintiffs reallege and incorporate by reference herein each and every allegation contained herein as though fully set forth and brought in this cause of action.

60. At all relevant times, Plaintiffs were owners and in were lawful possession of real property or personal property located in Colorado.

61. Defendant Xcel Energy Inc., by and through individual agents, employees, and affiliates thereto, intentionally took actions which were a substantial factor in the cause, origin, and continuation of the Marshall Fire. Defendants' willful and deliberate mistreatment of its power utility equipment set in motion a chain of events which, in the usual and natural course of events, was likely to invade the properties of others and did in fact invade the properties of others.

62. Plaintiffs did not in any way consent to Defendant's actions that caused the chain of events resulting in unlawful entry onto Plaintiffs' real properties.

63. Defendants actually and proximately caused the Marshall Fire to enter the surrounding properties, including Plaintiffs' real property or personal property. The fire entered Plaintiffs' properties and caused substantial physical damage thereto. Defendants' conduct was a substantial factor in causing each Plaintiffs' harm and was a substantial factor in the cause, origin, and exacerbation of the Marshall Fire.

64. As a direct and proximate result of the unlawful conduct of Defendants, and each of them, Plaintiffs suffered special damages, including, but

not limited to: damage to real and/or personal property; evacuation expenses, alternative living expenses, and other out-of-pocket expenses; economic damages, such as losses from impacts on business like activities, lost wages, and past and future loss of income; costs associated with response and recovery including debris removal, fire suppression, or other costs; damages based on soil erosion, and loss of soil stability and productivity; damages related to water contamination including water quality preservation and correction expenses; loss of water storage; loss of aesthetic value; and other significant injuries, damages, and losses directly related to and caused by the Marshall Fire.

65. Plaintiffs also suffered general damages including, but not limited to: shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages to be proven at time of trial.

66. Defendants, and each of them, committed the acts herein alleged maliciously, fraudulently, and oppressively in conscious disregard for Plaintiffs' rights. Such acts were committed by and/or ratified by, and/or were committed with knowledge of agents' lack of fitness in the workplace but were allowed to proceed by Defendants, and/or their officers, directors, and/or managing agents, and each of them. Plaintiffs are therefore entitled to recover exemplary damages from Defendants in an amount according to proof at trial.

67. As a result of Defendants' conduct, each of them, Plaintiffs were forced to retain an attorney in order to protect their rights. Accordingly, Plaintiffs therefore seek the reasonable attorneys' fees and costs incurred in this litigation in an amount according to proof.

FIFTH CAUSE OF ACTION

Public Nuisance (Against All Defendants)

68. Plaintiffs hereby reallege and incorporate by reference each and every allegation contained above as though the same were set forth herein in full.

69. Plaintiffs own and/or occupy property at or near the site of the fire which is the subject of this action. Plaintiffs have a right to own, enjoy, and/or to use their property without interference by Defendants, and each of them.

70. Defendants, and each of them, owed a duty to the public, including these Plaintiffs, to conduct their business, in particular the maintenance of the

power lines and adjacent vegetation in Boulder, specifically including the power lines near Marshall Road alongside Highway 93, in a manner that did not damage the public welfare and safety.

71. By acting or failing to act as alleged herein, Defendants, and each of them, created a condition which was harmful to the health of the public, including these Plaintiffs and which interfered with the comfortable enjoyment of Plaintiffs' property. Plaintiffs did not consent, expressly or impliedly to the conduct of Defendants and each of them.

72. The dangerous condition which was created by and/or allowed to exist by the Defendants, and each of them, affected a substantial number of people within the general public, including these Plaintiffs. As a result of Defendants' conduct, Plaintiffs suffered a type of harm that is different from the type of harm suffered by the general public. Specifically, Plaintiffs have lost the use and enjoyment of their land, including, but not limited to, a legitimate and rational fear that the area is still dangerous, diminution in the fair market value of their property, impairment of the salability of their property, exposure to an array of toxic substances on their land, a lingering smell of smoke, and/or constant soot, ash, and dust in the air.

73. As a further legal result of the conduct of Defendants, and each of them, Plaintiffs have suffered, and will continue to suffer, discomfort, anxiety, fear, worries, and stress attendant to the interference with Plaintiffs' use and enjoyment of their property, as alleged herein.

74. A reasonable ordinary person would be reasonably annoyed or disturbed by the condition created by Defendants, and each of them, and the resulting fire.

75. The conduct of Defendants, and each of them, is unreasonable and the seriousness of harm to the public, including these Plaintiffs, outweighs the social utility of Defendants' conduct.

76. Defendants' conduct resulting in this fire is not an isolated incident, but is ongoing and repeated course of conduct, and Defendants' conduct and failures have resulted in other fires and damage to the public and thus constitute a continuing nuisance.

77. Defendants' unreasonable conduct is a direct, proximate, and legal

cause of the condition and the damage to the public, including Plaintiffs.

78. Defendants, and each of them, have failed and refuse to conduct proper inspections and to properly trim, prune and/or cut vegetation in order to render their lines safe for operation and Defendants' failure to do so exposes every member of the public to a danger of personal injury, death, and/or loss of property.

79. The aforementioned conduct of Defendants, and each of them, constitutes a nuisance within the meaning of section 16-13-305 of the Colorado Revised Statutes, including, but not limited, to subsection (e), in that the toxic byproducts of the fire constituted unlawful pollution and contamination of the surface and subsurface waters in this state, as well as the air and/or other substances and materials intended for human consumption. (See e.g., C.R.S. §16-13-305.)

80. Moreover, the aforementioned conduct of Defendants also is injurious and/or offensive to the senses of Plaintiffs and/or unreasonably interferes with their comfortable enjoyment of their properties and/or unlawfully obstructs the free use, in the customary manner, of Plaintiffs' properties, including, but not limited to, all residential, business, and/or other uses.

SIXTH CAUSE OF ACTION
Private Nuisance
(Against All Defendants)

81. Plaintiffs hereby reallege and incorporate by reference each and every allegation contained above as though the same were set forth herein in full.

82. Plaintiffs own and/or occupy property at or near the site of the Marshall Fire. At all relevant times herein, Plaintiffs had a right to occupy, enjoy, and/or use their property without interference by Defendants.

83. Defendants' actions, conduct, omissions, negligence, trespass, and/or failure to act resulted in a fire hazard and a foreseeable obstruction to the free use of Plaintiffs property, invaded the right to use Plaintiffs' property and interfered with the enjoyment of Plaintiffs' property causing Plaintiffs unreasonable harm and substantial actual damages constituting a nuisance.

84. As a direct and proximate result of the conduct of Defendants, Plaintiffs sustained loss and damage, including but not limited to damage to

property, discomfort, annoyance and/or emotional distress, the amount of which will be proven at trial.

85. As a further direct and proximate result of the conduct of Defendants, Plaintiffs seek the reasonable cost of repair or restoration of the property to its original condition and/or loss-of-use damages to the extent allowable under Colorado law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment jointly and/or severally against Defendants, and each of them:

Claims for Relief:

Each Plaintiff seeks judgment against all Defendants, jointly and severally for each of the causes of action alleged against them, for the following remedies:

- a. Special and compensatory damages determined on an individual basis according to proof, including:
 - i. Loss of the value, use, benefit, goodwill, and enjoyment of Plaintiffs' real and/or personal property;
 - ii. Loss of wages, earning capacity, goodwill, and/or business profits or proceeds and/or any related displacement expenses;
 - iii. Evacuation expenses and alternate living expenses;
 - iv. Erosion damage to real property; and/or
 - v. Past and future medical expenses and incidental expenses.
- b. Non-economic damages for physical injury, mental suffering, emotional distress, fear, annoyance, disturbance, inconvenience, mental anguish, and loss of quiet enjoyment of property;
- c. Attorneys' fees, expert fees, consultant fees, and litigation costs and expense, as allowed by law;
- d. Prejudgment interest as authorized by Colo. Rev. Stat. § 13-21-101;

- e. Plaintiffs reserve the right to amend this Complaint to add a claim for punitive damages as required by Colo. Rev. Stat. § 13-21-102; and
- f. Any and all other and further such relief as the Court shall deem proper, all according to proof.

JURY TRIAL REQUESTED

Plaintiffs hereby request a trial by jury.

Date: June 7, 2023

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