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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

JEANYNE JAMES and ROBIN COLBERT, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

PACIFICORP, an Oregon corporation; and PACIFIC POWER, an Oregon registered electric utility and assumed business name of PACIFICORP,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT

NOT SUBJECT TO MANDATORY ARBITRATION

Fee Authority: ORS 21.135(1), 2(a)

JURY TRIAL DEMANDED

INTRODUCTION

1.

Plaintiffs Jeanyne James and Robin Colbert, individually and on behalf of a class of similarly situated people, allege the following against PacifiCorp and Pacific Power (hereafter “Defendants” or collectively “Pacific Power”), based, where applicable, on personal knowledge, information and belief, and the investigation and research of counsel. Pursuant to Oregon Rules of Civil Procedure (“ORCP”) 32 J, Plaintiffs presently seek only equitable relief. Pursuant to ORCP 32 H, Plaintiffs have provided notice and demand to Defendants for damages, and should Defendants not meet that demand, Plaintiffs intend to amend their answer to seek damages after the expiration of the 30 day period specified.

NATURE OF THE ACTION

2.

On September 5, 2020, the National Weather Service warned that Oregon and southwest Washington were about to experience a historic wind event, where strong east winds would develop on September 7, Labor Day, and peak in the evening. The weather warning indicated that there would be wind speeds over 75 mph. As predicted, the east winds came in full force on Labor Day and hot, dry winds, along with extremely critical fire conditions, caused power lines to topple and ignite trees, brush, and grass in communities across Oregon. The fires grew rapidly and destroyed homes, businesses, schools, and entire communities in the Clackamas, Santiam, McKenzie, and Umpqua River canyons, along with other parts of Oregon.

3.

Despite being warned of extremely critical fire conditions, Defendants left their powerlines energized. Defendants' energized powerlines ignited massive, deadly and destructive fires that raced down the canyons, igniting and destroying homes, businesses and schools. These fires burned over hundreds of thousands of acres, destroyed thousands of structures, killed people and upended countless lives.

4.

As a result of the fires, thousands of Oregonians have nowhere to call home, with many forced to live in shelters, campgrounds, and cars, all while attempting to manage the risks of the ongoing Covid-19 pandemic.

5.

Forest fires have always been part of Oregon's landscape. Fires play an important role in naturally maintaining and regenerating the health and diversity of forests and other landscapes in Oregon. Indeed, many plant species in Oregon, such as the lodgepole pine, rely on fire to propagate. Although the fires in Oregon are typically modest in size and intensity, stand-replacing fires are not uncommon. Fires such as the Tillamook fires in Oregon's coastal

1 rainforest, the Yacolt Burn, and the Eagle Creek fire of 2017 in the Columbia River Gorge killed
2 trees and reshaped the landscape for a generation.

3 6.

4 Two things set the Labor Day Weekend fires apart from other wildfires in Oregon's
5 history. First is the tragic fact that so many people lost their homes, their schools, their
6 businesses, and their communities. Some have lost their lives. Second, many of these losses
7 were entirely preventable had Defendants de-energized their powerlines. Fires that sprung up in
8 the Santiam Canyon and destroyed many homes and communities, for example, were whipped to
9 their overwhelming size by a series of ignitions caused by Defendants' powerlines.

10 7.

11 As the Northwest Incident Management Team concluded on September 9, 2020, the fires
12 that destroyed the homes of Plaintiffs and class members were not caused by a wildland forest
13 fire; rather these fires were caused by a series of downed power lines. The Management Team
14 explained "Originally listed at 469 acres, the fire has grown overnight to over 131,000 acres
15 driven by high winds and extremely dry fuels. Originally named the Beachie Creek fire, it has
16 been renamed the Santiam Fire acknowledging that the Beachie Creek fire *no longer was the*
17 *main cause of rapid fire growth* and was instead fed by *a series of small fires largely caused by*
18 *downed power lines and other ignition sources throughout the area.*"

19 8.

20 Defendants had a duty to properly maintain and operate their electrical infrastructure and
21 equipment (collectively, "powerlines") to ensure it would not become a source of fires—
22 including de-energizing their powerlines to prevent fires and to allow first responders to travel
23 the roads to put out fires in communities burning from fire ignited by those same powerlines.
24 Defendants' duty also included adequately designing, constructing, monitoring, operating,
25 repairing, and maintaining powerlines, poles, transformers, and other equipment. The duty
26 further included maintaining the land and vegetation around powerline infrastructure to ensure

1 that vegetation, objects, and structures would not come into contact with electrical lines and
2 equipment. Despite knowing that their electrical infrastructure was inadequate, aging, and/or
3 vulnerable to foreseeable and known weather and environmental conditions, Defendants failed to
4 fulfill these duties.

5 9.

6 Defendants also failed to take even simple preventive measures—such as de-energizing
7 their powerlines—in the face of weather conditions they knew would create an extreme risk that
8 their powerlines would cause fires. The practice of de-energizing powerlines in times of high
9 fire risk is commonplace in parts of the West accustomed to wildfires. Other Oregon utilities did
10 take such simple measures and did de-energize their powerlines during this time period, but
11 PacifiCorp and Pacific Power chose not to, leaving their powerlines energized, and ultimately
12 causing some of the most deadly and destructive fires in Oregon history.

13 10.

14 The catastrophic losses could have been prevented; these community-destroying fires
15 were not inevitable. Defendants could have shut off the power, invested in their infrastructure to
16 minimize the risk of fire, and taken other reasonable steps to operate their systems to eliminate
17 the risk of fire altogether.

18 11.

19 As a result, PacifiCorp and Pacific Power have caused Plaintiffs, the class members, and
20 their communities to suffer devastating property damage and economic losses that will scar
21 families and communities for generations.

22 **PARTIES**

23 12.

24 Defendant PacifiCorp is an Oregon corporation doing business as a public utility in
25 Oregon.

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13.

PacifiCorp’s primary place of business is in Multnomah County, Oregon at 825 NE Multnomah Street, Suite 2000, Portland, Oregon 97232.

14.

Defendant Pacific Power is a registered electric utility doing business in Oregon with its primary place of business in Multnomah County, Oregon at 825 NE Multnomah Street, Suite 2000, Portland, Oregon 97232.

15.

Pacific Power is an assumed business name of PacifiCorp. Pacific Power is wholly owned by PacifiCorp.

16.

Defendants conduct regular, sustained business in Oregon and Multnomah County.

17.

Defendants own and/or operate powerlines and other infrastructure and equipment in Oregon to transmit, supply, and provide electricity to private and public consumers.

JURISDICTION AND VENUE

18.

This Court has jurisdiction over the parties and this case. Plaintiffs are citizens and residents of Oregon. Defendants are Oregon corporations, and engage in regular, sustained business in Multnomah County and maintain their principal places of business in Multnomah County. Defendants have as their principal places of business 825 NE Multnomah Street, Suite 2000, Portland, Oregon 97232. All claims alleged herein are based on Oregon law.

19.

Defendants conduct regular, sustained business activity in Multnomah County, Oregon. Defendants maintain offices, including their principal place of business, for the transaction of business in Multnomah County, Oregon. Therefore, venue is proper in Multnomah County,

1 Oregon. ORS 14.080(2).

2 20.

3 Venue is proper in this Court. Substantial acts in furtherance of the alleged improper
4 conduct occurred within, and had and continue to have a profound effect in, Multnomah County,
5 where the Defendants are located and made the relevant decisions.

6 21.

7 Plaintiff Jeanyne James, who lives in and owns real property in Linn County, and
8 Plaintiff Robin Colbert, who lives in and owns personal property in Linn County, bring this
9 action pursuant to ORCP 32, individually and on behalf of those similarly situated Oregon
10 citizens, in order to protect and seek redress for themselves, their families, and their
11 communities. Plaintiffs James and Colbert were and remain citizens and residents of the State of
12 Oregon.

13 **FACTUAL ALLEGATIONS**

14 **A. Defendants had a duty to safely design, build, maintain, and operate their electrical**
15 **systems and infrastructure**

16 22.

17 Defendants supply electricity throughout Oregon. They own, build, operate, and
18 maintain overhead electrical lines and other equipment to transmit power to residents,
19 businesses, schools, and industries in Oregon. Defendants own, maintain, and operate equipment
20 throughout Oregon, including in and around the ignition points of the fires that started in the
21 communities of Gates, Mills City, and Lyons.

22 23.

23 Electrical infrastructure carries inherent dangers, as Defendants know. The inherent and
24 heightened danger associated with the transmission and distribution of electricity requires
25 Defendants to exercise an increased level of care to protect the public and the communities
26 through which their powerlines run.

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24.

Oregon law recognizes these dangers, and mandates that Defendants, as public utilities, must “furnish adequate and safe service, equipment and facilities.” ORS § 757.020.

25.

Oregon lawmakers have recognized that the state’s electrical infrastructure poses real and significant wildfire threats. As Governor Kate Brown’s Wildfire Counsel explained in its Recommendations on Utility Preparedness, “As the frequency, intensity and duration of wildfires has increased in the West, there is a need to have electrical companies take measures to reduce the risk of these events. For example, powerline fires are on average 10 times larger than fires from other causes...”¹ In California, of the top 20 most destructive wildfires in state history, eight were powerline fires and six occurred between 2015 and 2017.

26.

The Governor’s report also said, “Due to the often remote location, powerline fires have the potential to be larger than fires from other causes. Suppression of these fires during extreme weather conditions has become less effective. Reducing the risk of transmission-caused wildfire will have a direct and positive benefit to Oregon’s effort to reduce human-caused wildfires.” The report stated that “...Oregon must ensure its electrical utilities implement best-practice risk mitigation strategies to reduce human-caused ignitions.”

27.

Defendants’ own documents identified similar risks. In a May 21, 2020 report, Defendants said, “[u]tilizing fire threat modeling concepts, areas were identified in Oregon where there is an elevated risk of utility-associated wildfires to *occur* and *spread rapidly*, and where communities face an elevated risk of damage or harm from wildfires.”

¹[https://www.oregon.gov/gov/policy/Documents/Utility%20Preparedness%20for%20Wildfires%2009232019%20\(3\).pdf](https://www.oregon.gov/gov/policy/Documents/Utility%20Preparedness%20for%20Wildfires%2009232019%20(3).pdf)

1 28.

2 Defendants identified 17% of their overhead powerlines in Oregon as “Fire High
3 Consequence Area.” Defendants did not identify powerlines that started fires in Oregon on
4 Labor Day and in the days after as “Fire High Consequence Areas.” Defendants said in the May
5 21, 2020 report that they used “Fire High Consequence Areas” to prioritize wildfire mitigation
6 initiatives, such as increased inspections, system hardening, and modified operating practices.
7 The severe destruction in and near the Santiam Canyon and other areas of Oregon, shows—
8 contrary to Defendants’ conclusions—that these areas were “Fire High Consequence Areas” and
9 should have been identified and treated as such.

10 29.

11 In addition to being aware of the risks, Defendants were also aware of actions that could
12 be taken to mitigate the risk of wildfire from powerlines. In the May 21, 2020 report,
13 Defendants identified “established strategies for wildfire risk mitigation,” including “Be
14 situationally aware of environmental risks,” “Monitor fire weather conditions,” and “Implement
15 various operational strategies during fire risk periods.” Defendants also knew that they could
16 replace fuse locations with non-expulsion equipment, sometimes called fire safe fuses, further
17 reducing the risk that its powerlines would cause fires.

18 30.

19 Critically, Defendants knew that shutting off powerlines is an effective action powerline
20 owners and operators can take to reduce fire risk during periods of elevated fire danger.
21 Defendants were aware that California utilities have long used outages to reduce or eliminate the
22 risk that fires would be started by powerlines. Other utilities in the state de-energized their
23 powerlines during this time period.

1 **B. Defendants Knew of the Elevated Fire Risk Present in Oregon During Labor Day**
2 **Weekend**

3 31.

4 According to the National Interagency Fire Center and U.S. Drought Monitor, wildfire
5 potential in Oregon in 2020 was above normal, due in part to extreme drought conditions on both
6 sides of the Cascade Mountains.

7 32.

8 Beginning no later than September 5, 2020, the National Weather Service began warning
9 of fire weather conditions along the West Coast, in proximity to the Cascade Mountains.

10 33.

11 By September 6, 2020, the National Weather Service warned of extremely critical fire
12 weather on Labor Day for parts of Northwest Oregon from the Cascades to the Coast Mountains,
13 and critical fire weather for other parts of the state. The National Weather Service warned,
14 “[e]asterly winds gusting to 50+ mph and RH [relative humidity] dropping below 20% will
15 foster very favorable wildfire-spread conditions given very dry fuels between the Coastal
16 Ranges/Cascades.”

17 34.

18 On September 7, 2020, Labor Day, at 8:58 a.m. (Pacific), the National Weather Service
19 issued another warning, beginning with “...EXTREMELY CRITICAL FIRE WEATHER AREA
20 FOR PORTIONS OF NORTHWESTERN OREGON...” The warning included winds speeds
21 of up to 75 mph, 15-25% relative humidity, and very dry fuels. The warning explained that the
22 combination of wind, humidity, very dry fuels, and high Energy Release Conditions “will create
23 a volatile environment supportive of rapidly spreading fires exhibiting extreme behavior.”

24 35.

25 During this time period, Defendants were monitoring the increasingly dire fire weather
26 forecasts, including information from the National Weather Service, and even posted about the

1 forecast on social media. On the morning of Labor Day, Pacific Power posted to Facebook about
2 high winds forecast for later that day, along with a “Red Flag Warning.” One commenter on
3 Pacific Power’s Facebook page posted, “I am writing to raise awareness of a way Pacific Power
4 can prevent fires. We get several power pole fires whenever we get a wind event....”

5 36.

6 Pacific Power’s Twitter feed, under the username @Pacific Power_OR, included a
7 warning on Labor Day: “High winds are forecast for later today in many parts of our area.” In
8 the same tweet, Pacific Power re-tweeted the National Weather Service Portland’s tweet that the
9 area was “on track for an eventful 24-48 hours of weather, starting this afternoon.”

10 37.

11 Also on Labor Day, Pacific Power tweeted that its “crews are responding to multiple
12 scattered outages,” and warned people to “Please stay away from any downed power lines.
13 Always assume a downed line is energized.” Pacific Power also noted “the severe windstorm”
14 and “extremely high winds” in tweets that day.

15 38.

16 The next day, September 8, 2020, Pacific Power issued a press release blaming the
17 “devastating wind storm” for causing power outages throughout Oregon, while also saying “low
18 humidity and long term drought conditions set off fires throughout Oregon.” Pacific Power said
19 nothing in the press release about its powerlines starting fires. Pacific Power did say, however,
20 “But we also realize that there is more at stake here than power lines. People are losing their
21 homes and businesses and we urge everyone to be safe and follow guidelines from local
22 authorities and be ready to evacuate when ordered to do so.”

23 39.

24 Defendants knew of the elevated risk that downed powerlines, falling trees and limbs,
25 failing power poles, and other electrical equipment could start fires. Defendants knew that
26 deferred and/or inadequate maintenance, deferred and/or inadequate thinning, and deferred

1 and/or inadequate fuel reduction near and along powerlines increased the risk that powerlines
2 would start fires. Defendants knew that high winds, high fuel loads, high temperatures, low
3 relative humidity, low fuel moisture, high Energy Release Conditions, and topography increased
4 the danger of fires, and that all of these conditions were present in the Santiam Canyon and other
5 parts of Oregon on Labor Day.

6 40.

7 Defendants also knew that any fire that was sparked would be almost impossible to
8 contain, due to high winds, dry conditions, high fuel loads, topography, high Energy Release
9 Conditions, limited escape routes, limited access for firefighters and emergency personnel, and
10 limited firefighting resources available due to fires in other states.

11 41.

12 While Defendants sent warnings and alerts to their customers in Oregon about the risk of
13 powerlines brought down by winds, Defendants ignored the implications of their own warnings.

14 42.

15 Defendants failed to use reasonable care in leaving powerlines energized despite the
16 National Weather Service's warnings that fire danger in Oregon on Labor Day would be at
17 "critical" and "extremely critical" levels, low humidity, long term drought, and other information
18 about the relationship between powerlines and the elevated risk of fire known to Defendants.

19 43.

20 Other owners and operators of powerlines in Oregon shut off powerlines in parts of
21 Oregon on Labor Day weekend because of the fire danger. These other owners and operators
22 made public announcements in Oregon well in advance of the shut offs, including in major
23 media outlets, alerting everyone (including Defendants) that because of the elevated risk of
24 wildfire, electricity would be temporarily shut off.

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44.

Despite elevated fire danger on Labor Day 2020 in Oregon, Defendants did not shut off powerlines that they owned and operated in areas of Oregon that were at elevated risk of wildfire.

C. Fire and Plaintiffs’ Losses

45.

The fire risk conditions that existed in other parts of the State during Labor Day weekend were present in force in the Santiam Canyon area.

46.

James Ramseyer, member services director and spokesman for Consumers Power, Inc., an electric co-op in the Santiam Canyon area, in reference to the conditions on Labor Day, told the Salem Statesman Journal on September 24, 2020, “All indications to us, in our service territory, was that those areas were at very high risk.” And, “We were at the highest level of danger we could be.”

47.

Other electricity providers in the region also shut off powerlines to protect against fires. Joe Harwood, spokesman for Eugene Water & Electric Board, told The Register Guard on September 9, 2020, that turning off the power on Labor Day was a preemptive decision to mitigate the risk of wildland fires. Mr. Harwood added, “I know people weren’t happy, but the idea was not to be the cause of a fire.”

48.

In contrast, Defendants, who, like Consumers Power, Inc., have powerlines in the Santiam Canyon and nearby areas, told the Salem Statesman Journal September 24, 2020, “communities in Santiam Canyon are not in its designated Public Safety Power Shutoff area.” And, “Pacific Power did not perform a Public Safety Power Shutoff prior to the historic

1 windstorm. However, we did de-energize lines at the request of local emergency agencies to
2 allow firefighters to do their jobs safely.”

3 49.

4 At the same time that it failed to take actions with regard to its powerlines to mitigate the
5 risk of wildfire, Defendants told the Salem Statesman Journal on September 24, 2020, “Our
6 hearts go out to our communities and we will continue to provide support throughout the
7 recovery process and beyond.”

8 50.

9 Brian Gales, the commander of Northwest Incident Management Team 13, a fire team
10 stationed at the Old Gates School in Gates, Oregon, said at a news conference that at
11 approximately 9:45 p.m. on Labor Day, powerlines came down in the fire incident command
12 post, causing rapid fire growth. Firefighters and others saw downed powerlines start fires,
13 including in Gates, Oregon. Below are pictures of the fire which burned down the Incident
14 Command Post at the Old Gates School:

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51.

Fires caused by Defendants’ powerlines sent smoke, embers, ash, odors, gases, and airborne particles throughout Oregon, causing very unhealthy and hazardous air quality. The smoke, embers, ash, odors, gases, and airborne particles came into contact with, were deposited on, damaged, destroyed, or otherwise trespassed on Plaintiffs’ real and personal property.

52.

The photograph below, posted by Zach Urness (@ZachORoutdoors) on Twitter on September 22, 2020, shows a downed powerline in Gates, Oregon at the fire incident command post.

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53.

The photographs below by Zach Urness / Statesman Journal, published in the Salem Statesman Journal on September 24, 2020, also show downed lines in Gates, OR and damage caused by the fires in and around Santiam Canyon.



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54.

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Plaintiffs Jeanyne James and Robin Colbert lived together at a house located on Rowena Avenue in Lyons, Oregon. Ms. James was the owner of the property and lived at the home for 17 years. Ms. Colbert lived in the home for the past four years and owned personal property in and around the home.

16

55.

17

Ms. James' and Ms. Colbert's property included a house and a 3-car garage. One bay of the garage was filled with collectibles, and the other two bays were filled with tools, used for maintaining rental properties in Portland.

20

56.

21

As a result of the fire that destroyed their home, Ms. James and Ms. Colbert lost almost everything on their property, including their home, the garage and all its contents, four cars, and their personal belongings.

24

57.

25

Numerous precious and irreplaceable items were lost, including the cherished possessions of Ms. James' deceased daughter. The only things that survived the fire are scraps of metal that

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1 did not burn. The photographs below, of their property after the fire, were taken by Ms. James
2 and Ms. Colbert.



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1 **CLASS ACTION ALLEGATIONS**

2 58.

3 Plaintiffs bring this action as a representative party pursuant to ORCP 32, and on behalf
4 of a class initially defined as:

5 All citizens of Oregon who suffered damages from fires caused
6 by PacifiCorp or Pacific Power in Oregon beginning on
7 September 7, 2020 or later.

8 59.

9 Excluded from the class are Defendants, any entity in which Defendants have a
10 controlling interest or that has a controlling interest in (or is under common control with)
11 Defendants, and Defendants' legal representatives, assignees, and successors. Also excluded are
12 the judge to whom this case is assigned and any member of the judge's immediate family.

13 60.

14 The class is so numerous, consisting of more than 100 members, that joinder of all
15 members is impracticable.

16 61.

17 There are numerous questions of fact and law common to Plaintiffs and class members.
18 Common questions include, but are not limited to, the following:

- 19 a. Whether powerlines owned or operated by Defendants caused fires on and after
20 Labor Day 2020 in Oregon;
- 21 b. Whether fires caused by Defendants damaged or destroyed homes, businesses,
22 personal property, public buildings, and other public property;
- 23 c. Whether Defendants' decision to not shut off powerlines was negligent;
- 24 d. Whether Defendants' decision to not shut off powerlines caused a private and/or
25 public nuisance;
- 26 e. Whether Defendants' decision to not shut off powerlines caused a trespass;

1 f. Whether Defendants considered the elevated risk of fire on Labor Day, in
2 deciding to not shut off powerlines;

3 g. Whether Defendants were negligent in failing to use reasonable care in
4 maintaining powerlines, thinning, and reducing fuels in and around powerlines; and

5 h. Whether Plaintiffs and class members are entitled to injunctive relief, an
6 accounting, or other equitable relief, and, if so, the methodology of determining such relief.

7 62.

8 Defendants engaged in a common course of conduct toward Plaintiffs and members of
9 the class. The common issues of fact and law arising from this conduct that affect Plaintiffs and
10 members of the class predominate over any individual issues. Adjudication of these common
11 issues in a single action has important and desirable advantages of judicial economy.

12 63.

13 Plaintiffs' claims are typical of the claims of all class members. Plaintiffs' claims and the
14 claims of the class arise out of the same common course of conduct by Defendants and are based
15 on the same legal, equitable, and remedial theories.

16 64.

17 Plaintiffs fairly and adequately protect the interests of the class. Plaintiffs' claims are
18 typical of the claims of all class members. Plaintiffs have retained competent and capable
19 attorneys with experience in complex and class action litigation. Plaintiffs and their counsel are
20 committed to prosecuting this action vigorously on behalf of the class and have the financial
21 resources to do so. Neither Plaintiffs nor their counsel have interests that are contrary to or that
22 conflict with those of the proposed class.

23 65.

24 A class action is the superior method for the fair and efficient adjudication of this
25 controversy. Common questions of law and fact predominate over any individual questions.
26 Class treatment is superior to multiple individual suits or piecemeal litigation because it

1 conserves judicial resources, promotes consistency and efficiency of adjudication, provides a
2 forum for small claimants, and deters illegal activities. Individual members of the class will
3 have little to no interest in controlling the litigation due to the high costs of individual actions
4 and the expense and difficulty of litigating against sophisticated parties, such as Defendants.
5 There will be no significant difficulty in the management of this case as a class action.

6 66.

7 This Court is experienced in managing class action litigation and is a desirable forum
8 because Defendants conduct significant business in this county and in Oregon.

9 67.

10 Plaintiffs reserve their right to amend the complaint to allege claims for damages and
11 other equitable relief. Plaintiffs and the class have suffered damages and are continuing to suffer
12 damages. On September 30, 2020, pursuant to ORCP 32 H, Plaintiffs, through counsel, sent
13 Defendants a notice and demand required to commence a class action for damages. Plaintiffs
14 intend to amend the complaint to allege claims for damages as provided pursuant to ORCP 32 H.
15 Plaintiffs are not seeking to recover for personal injury on behalf of themselves or the class.

16 68.

17 Plaintiffs reserve their right to amend the complaint to allege claims for punitive
18 damages.

19 **CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

21 **(Common Law Negligence)**

22 69.

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

24 70.

25 Defendants committed wrongful acts or omissions in one or more of the following ways:
26

1 a. Defendants failed to reasonably inspect their powerlines and poles for hazardous
2 conditions.

3 b. Defendants failed to reasonably design, construct, and maintain powerlines in a
4 manner that would avoid igniting and spreading fire during critical and extremely critical fire
5 conditions.

6 c. Defendants failed to reasonably clear vegetation around powerlines and poles to
7 mitigate the risk of fire.

8 d. Defendants failed to reasonably deenergize powerlines during critical and
9 extremely critical fire conditions, when Defendants knew or in the exercise of reasonable care
10 should have known that the then-present fire conditions would cause energized lines to fall or
11 otherwise contact vegetation, structures, and objects.

12 e. Defendants failed to reasonably deenergize powerlines during the then-present
13 critical and extremely critical fire conditions even after Defendants had knowledge that some
14 powerlines had fallen or otherwise come into contact with vegetation, structures, and objects.

15 f. Defendants failed to reasonably deenergize powerlines even after fires had been
16 ignited by their powerlines.

17 g. Defendants failed to reasonably implement policies and procedures, and use
18 equipment, to avoid igniting or spreading fire.

19 h. Defendants failed to reasonably adjust their operations despite warnings about
20 weather conditions that could cause rapid and dangerous fire growth and spread on and after
21 Labor Day.

22 71.

23 As a result of Defendants' negligence, Plaintiffs suffered harm to their real and personal
24 property.

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72.

Defendants’ negligence caused or was a substantial factor in causing foreseeable harm to Plaintiffs’ real and personal property and other economic losses in an amount to be proven at trial.

SECOND CAUSE OF ACTION
(Private Nuisance)

73.

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

74.

Plaintiff James owns the land that was burned by the fire that damaged and destroyed her and Plaintiff Colbert’s home and personal property.

75.

Defendants kept powerlines energized during critical and extremely critical fire conditions when Defendants knew or in the exercise of reasonable care should have known that the then-present conditions could cause energized powerlines to fall or come into contact with vegetation, objects, or structures and cause fire. Keeping powerlines energized under then-present conditions constituted an objectionable condition.

76.

Defendants realized or should have realized that the objectionable condition posed an unreasonable risk of fire that could spread and cause harm to Plaintiffs’ real and personal property.

77.

Defendants could have deenergized their powerlines during the critical and extremely critical fire conditions, at little to no cost to Defendants, and thereby fully eliminate the risk of fire caused by powerlines.

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78.

Defendants failed to exercise reasonable care to eliminate the risk when Defendants chose not to deenergize their powerlines.

79.

Defendants' energized powerlines during the then-present critical and extremely critical fire conditions caused fires that damaged or destroyed Plaintiffs' real and personal property and caused other economic losses in an amount to be proven at trial.

THIRD CAUSE OF ACTION
(Public Nuisance)

80.

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

81.

The fire that damaged and destroyed Plaintiffs' real and personal property was caused by powerlines constructed, owned, maintained, or operated by Defendants.

82.

Defendants' failure to reasonably construct, operate, repair, or maintain their powerlines created an unreasonable risk of harm that their powerlines would start fires during critical and extremely critical fire conditions and then spread onto Plaintiffs' real and personal property.

83.

Plaintiffs did not consent to flames, fires, smoke, embers, ash, odors, gases, and airborne particles entering upon their real and personal property.

84.

Defendants' negligence or recklessness created a nuisance which substantially and unreasonably interfered with Plaintiffs' use and enjoyment of their real and personal property.

Such substantial and unreasonable interference includes, but is not limited to:

- a. Total destruction of Plaintiffs' real and personal property.

- 1 b. Damage to Plaintiffs' real and personal property.
- 2 c. Loss of use and ability to enjoy Plaintiffs' real and personal property.
- 3 c. Diminution in the value of Plaintiffs' real and personal property.
- 4 d. Annoyance and inconvenience.

5 85.

6 Plaintiffs suffered a special injury from this public nuisance when their homes were
7 destroyed and their property was damaged by fires caused by Defendants.

8 86.

9 Defendants' substantial and unreasonable interference with Plaintiffs' use and enjoyment
10 of their property constitutes a nuisance for which Defendants are liable to Plaintiffs for all
11 damages arising from such loss of use and enjoyment, including compensatory relief, in an
12 amount to be proven at trial.

13 87.

14 Whatever social utility Defendants' operation may provide is outweighed by the harm
15 Defendants' operations have imposed on Plaintiffs.

16 **FOURTH CAUSE OF ACTION**

17 **(Trespass)**

18 88.

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

20 89.

21 Defendants were negligent, reckless, or acted intentionally in causing or allowing flames,
22 fires, smoke, embers, ash, odors, gases, and airborne particles to intrude on, come into contact
23 with, be deposited on, damage, destroy, or otherwise trespass on Plaintiffs' real and personal
24 property.

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90.

The intrusion, coming into contact with, depositing on, damaging, destroying, or trespassing on Plaintiffs’ real and personal property was not authorized.

91.

Plaintiffs’ real and personal property was in Plaintiffs’ exclusive possession.

92.

Defendants knew that a trespass would result from Defendants’ actions. Defendants’ actions setting in motion the unauthorized entry and trespass were done knowing that a trespass would result. A trespass occurred as a result of those actions.

FIFTH CAUSE OF ACTION
(Accounting/Injunction)

93.

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

94.

Plaintiffs seek an order enjoining Defendants from leaving powerlines energized in areas of Oregon experiencing extremely critical fire conditions.

95.

Plaintiffs seek an order requiring an accounting with respect to the amount of damages for Plaintiffs’ first, second, third, and fourth causes of action.

JURY DEMAND

96.

Plaintiffs hereby demand a trial by jury.

97.

Plaintiffs are entitled to recover prejudgment interest as authorized by ORS 82.010(1)(a).

1 98.

2 Plaintiffs reserve the right to amend this complaint to add a claim for punitive damages as
3 required by ORS 31.725.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs seek judgment against Defendants and the following relief:

6 A. An order certifying the matter as a class action pursuant to ORCP 32, naming
7 Plaintiffs as the class representative, and naming Plaintiffs' counsel as class counsel;

8 B. Injunctive relief;

9 C. An order requiring an accounting with respect to the amount of damages for
10 Plaintiffs' first, second, third, and fourth causes of action;

11 D. An order enjoining Defendants from leaving powerlines energized in areas of
12 Oregon experiencing extremely critical fire conditions;

13 E. An award of reasonable attorney fees, costs, disbursements, and expert witness
14 fees; and

15 F. Such other relief that the Court finds appropriate.

16
17 Dated this 30th day of September, 2020.

18 STOLL STOLL BERNE LOKTING
19 & SHLACHTER P.C.

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