

<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>DATE FILED: March 31, 2022 2:52 PM FILING ID: F9196A82C748B CASE NUMBER: 2022CV30195</p> <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<p>Plaintiffs: John and Jane Doe, a married couple, Eldorado Enterprises, Inc., Eldorado Liquor, Inc., individually and on behalf of all other persons similarly situated,</p> <p>v.</p> <p>Defendants: XCEL ENERGY INC. and PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY.</p>	
<p>Attorneys for Plaintiffs: James W. Avery (Atty Reg. #13037) Denver Injury Law LLC d/b/a Avery Law Firm 201 Columbine Ste. 150 #6888, Denver, CO 80206 Tel: (303) 840-2222 denverinjurylaw.co@gmail.com Counsel of record</p> <p><i>Pro Hac Vice admission to be sought for:</i> Shannon F. Nocon, SCHACK LAW GROUP 16870 W Bernardo Dr #400 San Diego, California 92127 Tel: (858) 485-6535 Email: shannonnocon@schacklawgroup.com</p>	<p>Case Number:</p> <p>Division:</p>
<p>CLASS ACTION COMPLAINT AND JURY DEMAND</p>	

The Plaintiffs, by and through their attorneys, James W. Avery, Denver Injury Law, LLC, and Shannon F. Nocon, Schack Law Group, allege the following against Defendants XCEL ENERGY INC. and PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY (collectively "Defendants"):

INTRODUCTION

1. Plaintiffs John and Jane Doe, a married couple, Eldorado Enterprises, Inc., Eldorado Liquor, Inc., individually and on behalf of all other persons similarly situated, (hereinafter "Plaintiffs") bring this action for damages against Defendants Public Service Company of Colorado d/b/a Xcel Energy and Xcel Energy Inc. (collectively "Defendants"), for nuisance and negligence, among other things, Plaintiffs suffered arising out of a fire that started near Marshall Road in Boulder, Colorado, on the morning of December 30, 2021. Defendants' powerlines and energy utility equipment were a substantial factor in the cause, origin, and continuation of the deadly Marshall Fire.

2. In the vicinity of 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. Plaintiffs are individuals who reside in Colorado or who own real property and/or personal property in the State of Colorado. Plaintiffs' injuries occurred in Colorado and 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, past and future loss of income, 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 other losses directly related to and caused by the Marshall Fire.

7. Defendant Xcel Energy Inc., is the parent company of Public Service Company of Colorado, and which is registered under the trade name Xcel Energy (all defendants collectively referred to as "Xcel Energy") and filed 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 in Boulder County and Broomfield County, Colorado.

JURISDICTION AND VENUE

8. 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.

9. 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.

10. 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.

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

12. 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.

13. 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

14. 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."

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

CLASS ALLEGATIONS

21. Pursuant to the Colorado Rules of Court and the Colorado Revised Statutes, and as further described below, Plaintiffs bring this class action lawsuit on behalf of themselves and members of the proposed Class (the "Class") defined as follows:

All persons in Colorado who experienced damage to real property or personal property or who suffered other financial losses caused by the Marshall Fire during the time period from December 30, 2021, to the present.

22. Excluded from the Class are: (1) the agents, affiliates, legal representatives, heirs, attorneys at law, attorneys in fact, or assigns of such persons or entities described herein; (2) any Judge(s) assigned to this case and any members of their immediate families; (3) any insurers claiming under rights of subrogation; and (5) government entities and/or agencies.

23. Pursuant to Colorado Rule of Civil Procedure 23, Plaintiffs bring this action individually, on behalf of the general public, and on behalf of all individuals similarly situated. Plaintiffs reserve the right to amend this Complaint for such Class.

24. This action has been brought and may be maintained as a class action pursuant to the provisions of Colorado Rule of Civil Procedure 23 because there is a well-defined community of interests in the litigation and the proposed class is easily identifiable. This action may also be properly maintained as a class action because the proposed class is ascertainable. As further set forth below, this class action meets the procedural prerequisites for the maintenance of a class action, including as set forth in Colorado Rule of Civil Procedure 23. (Colo. R. Civ. Proc. 23.)

25. **Numerosity:** The Class is so numerous that joinder of all members is impractical. The Marshall Fire is estimated to have caused more than \$500,000,000 in damage to tens of thousands of residents in Boulder, Broomfield, Superior, and Louisville, Colorado. While the precise number of Class members is presently unknown to Plaintiffs, this information is in the exclusive control of Defendants and can be ascertained through discovery.

26. **Common Questions of Fact and Law:** Common questions of law and fact exist as to all members of the Class and predominate over any individual questions. Some of the questions of law and fact common to Class members include, but are not limited to, the following:

- a. Whether Defendants engaged in the conduct alleged herein;
- b. Whether Defendants knew about the risks of harm associated with power utility equipment causing fires;
- c. Whether Defendants knew about the risks of an arcing event in the powerlines along the side of Highway 93 near Marshall Road;
- d. Whether Plaintiffs and the other Class members suffered economic losses in the Marshall Fire; and
- e. Whether Plaintiffs and the other Class members are entitled to equitable relief, including, but not limited to, restitution or injunctive relief;

27. **Typicality:** Plaintiffs' claims are typical of the claims of the members of the Class in that Plaintiffs (like members of the putative Class) were harmed by Defendants' negligence in Xcel equipment substantially causing and contributing to the cause, origin, and continuation of the deadly Marshall Fire. Plaintiffs and the Class members have been injured by the same wrongful and tortious acts that Defendants committed. Plaintiffs' claims arise from the same practices or course of conduct that give rise to the claims of all Class members. In addition, Plaintiffs' claims arose during the same time period as the claims of all Class members.

28. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the Class members. Plaintiffs, like members of the putative class, suffered similar losses to their property and/or financial interests as a direct result of Xcel's negligence in substantially causing the Marshall Fire. Plaintiffs are therefore familiar with the basic facts that form the basis of the Class members' claims. Plaintiffs are adequate representatives of the Class in that they do not have interests which are adverse to or conflict with those of the Class members that Plaintiffs seek to represent. Plaintiffs have retained counsel with substantial experience and success in the prosecution of complex class actions that arise from wildfires and other ecological disasters.

29. **Superiority:** A class action is superior to any other available method for the fair and efficient group-wide adjudication of this controversy since individual joinder of all Class members is impracticable. Furthermore, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, especially given that the damages or injuries suffered by each individual member of the Class may be relatively small. Even if the Class members could afford individualized litigation, the cost to the court system would be substantial and individual actions would also present the potential for inconsistent or contradictory judgments. By contrast, a class action presents fewer management difficulties and provides the benefits of single adjudication and comprehensive supervision by a single court and is manageable based on the use of common evidence and a core number of representations and/or omissions of material fact at issue.

FIRST CAUSE OF ACTION
Inverse Condemnation
(Against All Defendants)

30. 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.

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

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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)

42. 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.

43. 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.

44. 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.

45. Plaintiffs were not comparatively negligent.

46. 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.

47. 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.

48. 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.

49. 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
Premises Liability
(Against All Defendants)

50. 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.

51. 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.

52. 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.

53. 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.

54. 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.

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

FOURTH CAUSE OF ACTION

Trespass (Against All Defendants)

56. 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.

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

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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 punitive damages from Defendants in an amount according to proof at trial.

64. As a result of Defendants' conduct, and 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)

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

66. 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.

67. 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.

68. 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.

69. 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.

70. 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.

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

72. 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.

73. 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.

74. Defendants' unreasonable conduct is a direct, proximate, and legal cause of the condition and the damage to the public, including Plaintiffs.

75. 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.

76. 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.)

77. 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)

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

79. 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.

80. 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.

81. 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.

82. 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 against Defendants, and each of them, as follows, and seek the following relief:

- A. That the Court enter judgment against Defendants for each of the causes of action alleged against them;
- B. Loss of income and goodwill, loss of wages and/or earning capacity, and/or related expenses, including, but not limited to, alternative living expenses and losses associated with days of work missed by Plaintiffs as a result of the Subject Incident;
- C. For all medical expenses and costs;
- D. For all civil, statutory, and other penalties, as applicable;
- E. For all recoverable compensatory, consequential, treble, and/or statutory damages in the maximum amount permitted by law or other equitable monetary relief plus pre- and post-judgment interest thereon;
- F. For incidental damages according to proof;

- G. For general, special, and actual damages according to proof;
- H. For injury for mental and emotional distress and pain and suffering according to proof;
- I. For costs of suit incurred herein;
- J. Attorneys' fees, expert fees, consultant fees and litigation costs and expenses, as allowed under Colorado law;
- K. For all recoverable compensatory, consequential, actual, special, general, and statutory damages in the maximum amount permitted by law;
- L. For medical monitoring of future injuries from emotional trauma and smoke inhalation and toxic exposures;
- M. For costs and pre- and post-judgment interest on all sums collected;
- N. For such other and further legal/equitable relief as the Court deems just and proper.

JURY DEMAND

Plaintiffs individually demand trial by jury on each and every triable issue.

Date: March 31, 2022.

Respectfully submitted,

/s/ James W. Avery
James W. Avery, Esq. (Atty. Reg. # 13037)
DENVER INJURY LAW LLC
d/b/a Avery Law Firm
201 Columbine St., Ste. 150 #6888,
Denver, CO 80206
Tel: (303) 840-2222
denverinjurylaw.co@gmail.com
Counsel of record

Shannon F. Nocon, Esq.
SCHACK LAW GROUP
16870 W Bernardo Dr #400
San Diego, California 92127
Tel: (858) 485-6535