

1 \$1425
2 Matthew L. Sharp
3 Nevada State Bar #4746
4 MATTHEW L. SHARP, LTD.
5 432 Ridge Street
6 Reno, NV 89501
7 Phone: (775) 324-1500
8 Fax: (775) 284-0675

9 Stephen H. Osborne
10 Nevada State Bar #4712
11 LAW OFFICE OF STEPHEN H. OSBORNE, LTD.
12 232 Court Street
13 Reno, NV 89501
14 Phone: (775) 789-4944
15 Fax: (775) 322-5484

16 Eva Segerblom
17 Nevada State Bar #10749
18 Ardea G. Canepa-Rotoli
19 Nevada State Bar #12345
20 MADDOX, SEGERBLOM and CANEPA, LLP
21 10403 Double R Blvd.
22 Reno, NV 89521
23 Phone: (775) 322-3666
24 Fax: (775) 322-6338

25 Attorneys for Plaintiffs

26
27 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
28 **IN AND FOR THE COUNTY OF WASHOE**

29 JAMES R. BLUEGERG, individually and as) Case No.
30 Trustee of Blueberg Family Trust; MARY D.)
31 BLUEBERG, individually and as Trustee of) Dept. No.
32 Blueberg Family Trust; CHARLES)
33 FALKENROTH, individually and as Trustee of)
34 Falkenroth Family Trust; JACQUELINE)
35 FALKENROTH, individually and as Trustee of)
36 Falkenroth Family Trust; JOHN H. HEALY,)
37 individually; MARY ANNE. HEALY,)
38 individually; MELVIN HOLLAND, JR.,)
individually; ROBIN LAWRENCE,)
individually; CAROLINE J. HOOTEN,)
individually and as Trustee of Caroline J.)
Hooten Trust; JAN GOLDRESS; individually)
and as Trustee of Jan Goldress Living Trust;)
MICHAEL LANGTON, individually;)
RICHARD R MASON, individually and as)
Trustee of Richard Mason Family Trust;)
SHARLENE F. MASON, individually and as)

COMPLAINT

1 Trustee of Richard Mason Family Trust;)
 2 Plaintiffs,)
 3 v.)
 4 NEVADA DIVISION OF FORESTRY, an)
 agency of the State of Nevada; UNIVERSITY)
 5 OF NEVADA-RENO; and DOES I)
 THROUGH 50;)
 6 Defendants.)
 7 _____)

8
 9 **JURISDICTION AND VENUE**

10 1. The Court has personal jurisdiction over the Defendants and the claims set forth herein
 11 pursuant to NRS 14.065 on the grounds that such jurisdiction is not inconsistent with the Nevada
 12 Constitution or the United States Constitution.

13 2. Venue is proper in this Court pursuant to NRS 13.010 *et seq.*, because among other
 14 reasons, Defendants engaged in a number of acts in Washoe County that caused damages to the
 15 Plaintiffs.

16 **PARTIES**

17 3. Plaintiffs James R. Blueberg and Mary D. Blueberg are citizens and residents of Washoe
 18 County, Nevada. At all relevant times, individually and as Trustees of the Blueberg Family Trust, they
 19 owned and resided in a residence located in Washoe County, Nevada during the relevant period.

20 4. Plaintiffs Charles Falkenroth and Jacqueline Falkenroth are citizens and residents of
 21 Washoe County, Nevada. At all relevant times, individually and as Trustees of the Falkenroth Family
 22 Trust, they owned and resided in a residence located in Washoe County, Nevada during the relevant
 23 period.

24 5. Plaintiffs John H. Healy and Mary Anne Healy are citizens and residents of Washoe
 25 County, Nevada. At all relevant times, they owned and resided in a residence located in Washoe
 26 County, Nevada during the relevant period.

27
 28

1 6. Plaintiff Melvin Holland, Jr. is a citizen and resident of Washoe County, Nevada. At all
2 relevant times, he owned and resided in a residence located in Washoe County, Nevada during the
3 relevant period.

4 7. Plaintiff Robin Lawrence is a citizen and resident of Washoe County, Nevada. At all
5 relevant times, she owned and resided in a residence located in Washoe County, Nevada during the
6 relevant period.

7 8. Plaintiff Caroline J. Hooten is a citizen and resident of Washoe County, Nevada. At all
8 relevant times, individually and as Trustee of the Caroline J. Hooten Trust, she owned and resided in a
9 residence located in Washoe County, Nevada during the relevant period.

10 9. Plaintiff Jan Goldress is a citizen and resident of Washoe County, Nevada. At all
11 relevant times, individually and as Trustee of the Jan Goldress Living Trust, she owned and resided in a
12 residence located in Washoe County, Nevada during the relevant period.

13 10. Plaintiff Michael Langton is a citizen and resident of Washoe County, Nevada. At all
14 relevant times, he owned property and resided in a residence located in Washoe County, Nevada during
15 the relevant period

16 11. Plaintiffs Richard R. Mason and Sharlene F. Mason are citizens and residents of Washoe
17 County, Nevada. At all relevant times, individually and as Trustees of the Richard Mason Family Trust,
18 they owned and resided in a residence located in Washoe County, Nevada during the relevant period.

19 12. Defendant Nevada Division of Forestry is an agency of the State of Nevada that is
20 operating in the State of Nevada.

21 13. Defendant University of Nevada-Reno is an agency of the State of Nevada and a land
22 grant institution operating in Washoe County, Nevada.

23 14. The true names of DOES 1 through 50, whether individual, corporate, associate or
24 otherwise, are unknown to Plaintiffs who, sue these Defendants under fictitious names. These DOES 1
25 through 50 engaged in conduct that was tortious as set forth herein. Defendants engaged in or caused
26 certain DOES 1 through 50 to engage in activities that were a cause of the fire. Each of the fictitiously
27 named Defendants is responsible in some manner for the conduct alleged herein, including, without
28

1 limitation, by way of conspiracy, aiding, abetting, furnishing the means and/or acting in capacities that
2 create agency, respondeat superior and/or predecessor or successor-in-interest relationships with the
3 Defendants. Further, Defendants acted as a single enterprise and an alter ego of each other in operating
4 their business. The DOE Defendants are private individuals, associations, partnerships, corporations or
5 otherwise that actively assisted and participated in the negligent and wrongful conduct alleged herein in
6 ways that are currently unknown to Plaintiffs. Some or all of the DOE Defendants may be residents of
7 the State of Nevada. Plaintiffs may amend or seek to amend this Complaint to allege the true names,
8 capacities and responsibility of these DOE Defendants once they are ascertained, and to add additional
9 facts and/or legal theories. Plaintiffs make all allegations contained in this Complaint against all
10 Defendants, including DOES 1 through 50.

11 STATEMENT OF FACTS

12 15. Defendant University of Nevada-Reno is the owner of forested property referred to as the
13 Whittell Forest and Wildlife Area.

14 16. The property is generally located in the Carson Range, approximately 20 miles south of
15 Reno, including the area commonly known as Little Valley.

16 17. Defendant Nevada Division of Forestry is responsible for overseeing controlled burns.

17 18. Defendants decided to conduct a controlled burn of the Whittell Forest and Wildlife Area
18 for the period of October 4, 2016 through October 7, 2016.

19 19. The controlled burn was undertaken for a public purpose, including preventing a wildfire,
20 fuel reduction, protecting the property owners in the Franktown Road area, creating defensive space,
21 studying the forest's condition before, during and after the burn, researching environmental effects to
22 vegetation, soil and impacts on species including insects.

23 20. Defendants knew the following:

- 24 • A controlled fire creates the risk of causing a wildfire.
- 25 • Northern Nevada, including the Whittell Forest and Wildlife Area, was in a drought.
- 26 • The weather forecasts called for excessive winds beginning the week of October 10, 2016,
27 including gusts that could exceed 80 miles per hour.
- 28 • The weather was not appropriate for conducting a safe controlled fire.

- Defendants could not assure that the controlled burn would be safe.
- A risk occurred that the controlled burn could cause a wildfire.

21. Defendants should not have gone forward with the controlled burn.

22. Defendants chose to proceed with the controlled burn with knowledge that the weather conditions created a risk of fire damage from the controlled burn to citizens residing in the Franktown Road area.

23. On October 14, 2016, wind gusts exceeded 80 miles per hour. A wildfire resulted that caused damage to Plaintiffs and other residents in the Franktown Road area. The wildfire is commonly referred to as the Little Valley Fire.

24. The Little Valley Fire was caused by the controlled fire started by Defendants.

25. Defendants breached their responsibilities including going forward with the controlled burn and not reasonably managing, supervising, and controlling the burn in light of the circumstances.

26. Plaintiffs' real property and/or personal property was damaged as a result of the Little Valley Fire.

FIRST CAUSE OF ACTION
(Inverse Condemnation)
(Against All Defendants)

27. Plaintiffs repeat and reallege each and every allegation made above, fully incorporating those allegations as though fully set forth herein.

28. At all times material herein, Defendants were and are a public agency and possess the power of eminent domain pursuant to Nevada Revised Statute 37.010.

29. At all times material herein, Defendants were acting for purposes of a public use.

30. As set forth herein, Defendants chose to conduct a prescribed burn and caused the Little Valley Fire.

31. The Little Valley fire invaded Plaintiffs' property and caused damages to Plaintiffs' property.

32. The invasion caused by the Defendants directly and specifically affected Plaintiffs' property rights, including a permanent physical invasion onto Plaintiffs' property.

33. The invasion by Defendants constitutes a taking without just compensation.

