

SEP 22 2020

AFTER 4:00 P.M.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA

FIRE INSURANCE EXCHANGE;
FOREMOST INSURANCE COMPANY
GRAND RAPIDS, MICHIGAN; MID-
CENTURY INSURANCE COMPANY;
NEIGHBORHOOD SPIRIT PROPERTY
& CASUALTY COMPANY; TRUCK
INSURANCE EXCHANGE;
CALIFORNIA AUTOMOBILE
INSURANCE COMPANY;
CALIFORNIA CASUALTY
INDEMNITY EXCHANGE;
CALIFORNIA FAIR PLAN
ASSOCIATION; INTERINSURANCE
EXCHANGE OF THE AUTOMOBILE
CLUB; NATIONWIDE AGRIBUSINESS
INSURANCE - NAIC; NATIONWIDE
INSURANCE COMPANY OF
AMERICA; NATIONWIDE MUTUAL
INSURANCE COMPANY;
CRESTBROOK INSURANCE
COMPANY; INTEGON NATIONAL
INSURANCE COMPANY; and
NATIONAL GENERAL PREMIER
INSURANCE COMPANY,

Plaintiffs,

vs.

SOUTHERN CALIFORNIA EDISON
COMPANY; and DOES 1 to 50,
Inclusive,

Defendants.

Case No.

Unlimited Division

COMPLAINT FOR DAMAGES

Negligence
Inverse Condemnation

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1 Subrogation Plaintiffs, FIRE INSURANCE EXCHANGE; FOREMOST
2 INSURANCE COMPANY GRAND RAPIDS, MICHIGAN; MID-CENTURY
3 INSURANCE COMPANY; NEIGHBORHOOD SPIRIT PROPERTY & CASUALTY
4 COMPANY; TRUCK INSURANCE EXCHANGE; CALIFORNIA AUTOMOBILE
5 INSURANCE COMPANY; CALIFORNIA CASUALTY INDEMNITY EXCHANGE;
6 CALIFORNIA FAIR PLAN ASSOCIATION; INTERINSURANCE EXCHANGE OF
7 THE AUTOMOBILE CLUB; NATIONWIDE AGRIBUSINESS INSURANCE – NAIC;
8 NATIONWIDE INSURANCE COMPANY OF AMERICA; NATIONWIDE MUTUAL
9 INSURANCE COMPANY; CRESTBROOK INSURANCE COMPANY; INTEGON
10 NATIONAL INSURANCE COMPANY; and NATIONAL GENERAL PREMIER
11 INSURANCE COMPANY, (hereinafter collectively referred to as “Subrogation
12 Plaintiffs”) by and through undersigned counsel, allege as follows:

13 **INTRODUCTION**

14 1. This case arises from the Easy Fire, which began on October 30, 2019 at
15 approximately 6:09 a.m. in the area of 200 West Los Angeles Avenue, Simi Valley,
16 California. The Easy Fire burned approximately 1,900 acres, destroyed multiple
17 residences, avocado orchards, commercial nurseries, and businesses, and resulted in the
18 evacuation of thousands of residents and closed numerous local schools.

19 2. Subrogation Plaintiffs are insurers which have paid for damages caused to
20 their policyholders (“Insureds”) stemming from damages incurred to the Insureds’ real
21 and/or personal property and other related damages, caused by the Easy Fire. This action
22 seeks recovery of amounts paid, or to be paid by Subrogation Plaintiffs, to or on behalf of
23 their Insureds, as a result of the Easy Fire.

24 3. On October 30, 2019, SCE filed an Electrical Safety Incident Report with
25 the California Public Utilities Commission (“CPUC”), which stated, “Preliminary
26 information reflects a brush fire known as the Easy Fire was reported at approximately
27 6:09 a.m. Our information reflects there was circuit activity on the Moorpark-Royal 66kV
28 circuit close in time to the report of the fire. The investigation is ongoing.”

1 4. Subrogation Plaintiffs are informed and believe that video security cameras
2 from nearby businesses located on Easy Street in Simi Valley captured a flash consistent
3 with arcing of overhead electrical equipment at approximately 6:09 a.m., and also
4 captured the start of the Easy Fire directly below the location of the flash. Subrogation
5 Plaintiffs are informed and believe that the flash captured by this video was in fact arcing
6 off conductors on SCE's Moorpark-Royal 66kV circuit and that this arcing event
7 deposited molten metal and sparks into a receptive fuel bed below SCE's conductors,
8 thereby causing the Easy Fire. Subrogation Plaintiffs are further informed and believe that
9 the "circuit activity" reported by SCE on its Moorpark-Royal 66kV circuit was in fact a
10 phase-to-phase fault created when SCE's overhead conductors made contact during Santa
11 Ana wind conditions and arced.

12 5. As set forth in more detail below, the Easy Fire was caused by SCE's
13 negligence in (1) failing to maintain its overhead electrical facilities in a safe manner; (2)
14 failing to identify, inspect, repair and/or replace suspension insulator(s) which were at risk
15 of failing; (3) failing to identify, inspect, repair and/or replace supporting equipment,
16 including but not limited to hooks, which were at risk of failing; (4) failing to identify,
17 inspect, repair and/or replace its conductors which were at risk of line slap during Santa
18 Ana wind conditions; (5) failing to abate and remove vegetation around its utility pole(s)
19 and electrical equipment; (6) failing to identify, inspect, repair and/or replace its utility
20 poles which were overloaded with communications equipment from shared usage by
21 telecommunications and cable TV providers who were joint owners or renters of SCE's
22 utility poles; and/or (7) failing to shut down the electrical grid in Simi Valley to prevent
23 catastrophic wildfires during the Red Flag Warning that preceded the Easy Fire.

24 6. SCE had a duty to properly construct and maintain its electrical
25 infrastructure and surrounding vegetation. SCE violated these duties by knowingly
26 operating aging and improperly maintained infrastructure. In fact, according to the
27 Ventura County Fire Protection District and CAL FIRE, SCE's violations caused both the
28 Thomas Fire in 2017 and the Woolsey Fire in 2018.

1 7. Had SCE acted responsibly, the Easy Fire could have been prevented.

2 **JURISDICTIONAL ALLEGATIONS**

3 8. This Court has subject matter jurisdiction over this matter pursuant to
4 California Code of Civil Procedure Section 395(a) because, at all times relevant,
5 Defendants have conducted significant business in the County of Ventura, State of
6 California, so as to render the exercise of jurisdiction over Defendants by California courts
7 consistent with the traditional notions of fair play and substantial justice. The amount in
8 controversy exceeds the jurisdictional minimum of this Court.

9 9. Venue is proper in this County pursuant to California Code of Civil
10 Procedure Section 395.5 because, at all times relevant herein, the Defendants wrongful
11 conduct which caused the Easy Fire occurred in Ventura County and damaged the
12 Subrogation Plaintiffs' Insureds property, business and livelihood in the County of
13 Ventura.

14 **SUBROGATION PLAINTIFFS**

15 10. Subrogation Plaintiffs are insurers authorized to and doing business in the
16 State of California. As a component of that business, Subrogation Plaintiffs issued
17 insurance policies providing coverage against loss due to damage caused by fire, water
18 and other casualties.

19 11. Subrogation Plaintiffs issued an insurance policy to their respective insureds
20 (collectively, the "Insureds") – which covered the Insureds for damages to their respective
21 real property, business, contents, and business personal property, and other damages (the
22 "Premises") as defined in the respective policies.

23 12. The Insureds of Subrogation Plaintiffs owned property that suffered
24 damages by the Easy Fire. As a result of the Easy Fire, Subrogation Plaintiffs have paid
25 and/or will pay money to their respective Insureds under their policies of insurance for
26 losses caused by the Easy Fire. Such payments include, but are not limited to repair of
27 real and personal property, replacement of real and personal property, additional living
28 expenses, loss of use and business interruption. The money was paid to their Insureds

1 pursuant to various homeowners, automobile, business/commercial and property insurance
2 policies. This action seeks recovery of amounts paid, and to be paid, by Subrogation
3 Plaintiffs to their Insureds. Subrogation Plaintiffs who are obligated to make payment or
4 have made payments to their Insureds are equitably subrogated to the rights of their
5 Insureds, "stand in the shoes," and are entitled to bring this claim for payments made or to
6 be made. Subrogation Plaintiffs investigated, adjusted and paid, and may in the future
7 pay, said damage, injury and loss, consistent with its policies of insurance and its
8 obligations under law, and said payments were not voluntary. Subrogation Plaintiffs'
9 damages are in a liquidated sum; the amount paid to their Insureds. Subrogation
10 Plaintiffs' Insureds have an existing, assignable cause of action against Defendants, which
11 the Insureds could have asserted for their own benefit had they not been compensated for
12 their losses by Subrogation Plaintiffs. As such, Subrogation Plaintiffs have suffered
13 damages caused by an act or omission of Defendants, and Subrogation Plaintiffs have
14 equitable and/or legal rights against Defendants herein, to the extent of payment made.

15 DEFENDANTS

16 13. Subrogation Plaintiffs, upon information and belief, allege that Defendant
17 SOUTHERN CALIFORNIA EDISON COMPANY ("SCE" or "Defendant") is and was at
18 all relevant times herein mentioned, a privately-owned public utility organized and
19 existing under the laws of the State of California in the business of providing electricity to
20 the real property owned by Subrogation Plaintiffs' Insureds, and located in Ventura
21 County, California.

22 14. SCE, based in Los Angeles County, is one of the nation's largest electric
23 utilities, serving a 50,000 square-mile area within Central, Coastal, and Southern
24 California. It is wholly-owned by Edison International, which has a market cap of over
25 \$20.5 billion. SCE's assets total approximately \$53 billion.

26 15. SCE is both an "Electrical Corporation" and a "Public Utility" pursuant to,
27 respectively, §§218(a) and 216(a) of the California Public Utilities Code. SCE is in the
28 business of providing electricity to more than 14 million residents, including Subrogation

1 Plaintiffs' Insureds, in a 50,000 square-mile area of Central, Coastal and Southern
2 California cities, including, Ventura County through a network of electrical transmission
3 and distribution lines.

4 16. At all times mentioned herein, SCE was the supplier of electricity to
5 members of the public in Ventura County, and elsewhere in Southern California. As part
6 of supplying electricity to members of the public, SCE installed, constructed, built,
7 maintained, and operated overhead power lines, together with supporting utility poles and
8 transformers, for the purpose of conducting electricity for delivery to members of the
9 general public. Furthermore, on information and belief, SCE is responsible for
10 maintaining vegetation near, around, and in proximity to their electrical equipment in
11 compliance with State and Federal regulations, specifically including, but not limited to
12 Public Resource Code § 4292, CPUC General Order 95, and CPUC General Order 165.

13 17. SCE is a privately owned public utility, which enjoys a state-protected
14 monopoly or quasi-monopoly, derived from its exclusive franchise provided by the State
15 of California and is more akin to a governmental entity than a purely private entity, and
16 runs its utility affairs like a governmental entity. SCE's monopoly is guaranteed and
17 safeguarded by the California Public Utilities Commission, which possesses the power to
18 refuse to issue certificates of public convenience and necessity to permit potential
19 competition to enter the market. The policy justifications underlying inverse
20 condemnation liability are that individual property owners should not have to contribute
21 disproportionately to the risks from public improvements made to benefit the community
22 as a whole. Under the rules and regulations set forth by the California Public Utilities
23 Commission, amounts that SCE must pay in inverse condemnation can be included in
24 their rates and spread among the entire group of rate payers so long as they are otherwise
25 acting as a reasonable and prudent manager of their electric distribution systems.

26 18. SCE has at least \$1 billion in wildfire insurance.
27
28

DOE DEFENDANTS

19. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants DOES 1 through 100, inclusive, are unknown to Subrogation Plaintiffs who sue said Defendants by such fictitious names pursuant to Code of Civil Procedure Section 474. Subrogation Plaintiffs further allege that each of said fictitious Defendants are in some manner responsible for the acts and occurrences hereinafter set forth. Subrogation Plaintiffs will amend this Complaint to show their true names and capacities when the same are ascertained, as well as the manner in which each fictitious Defendant is responsible.

FACTUAL ALLEGATIONS RELEVANT TO ALL CLAIMS

20. Subrogation Plaintiffs incorporate by reference each and every allegation contained above, as though fully set forth herein.

21. On or about October 30, 2019, SCE's power lines and/or equipment failed in the area of 200 West Los Angeles Ave., Simi Valley, California, and sparked, thereby causing a large fire, commonly referred to as the Easy Fire, resulting in damage to the real and personal property of Subrogation Plaintiffs' Insureds (the "Fire"), among other damages.

22. Upon information and belief, Subrogation Plaintiffs believe that video security cameras from a nearby business captured a flash consistent with arcing of overhead electrical equipment at approximately 6:09 a.m. on October 30, 2019, and also captured the start of the Easy Fire.

23. Upon information and belief, the Fire originated when SCE's conductors and/or equipment failed and arced and/or exploded thereby causing sparks to hit the ground and causing a ground fire that spread throughout the area causing property damage, including damage to the Premises.

24. Upon information and belief, Defendant SCE owned, maintained, operated, inspected, installed, energized and/or monitored the utility lines and/or distribution equipment that failed.

1 25. As part of their business, SCE designs, engineers, constructs, operates,
2 inspects, uses and maintains electrical power lines and is required to comply with any and
3 all applicable state, county, city, statutory, regulatory, administrative and common law,
4 and all other applicable laws, regulations, orders and standards.

5 26. As a result of the Fire, Subrogation Plaintiffs' Insureds filed claims for
6 losses under their Policies.

7 27. The Policies insured the Insureds and their respective Premises from loss
8 due to fire, water and other catastrophes to their real and personal property and other
9 resulting damages specifically defined in the Policies.

10 28. The Policies provided, in pertinent part, that in the event of an insured loss,
11 Subrogation Plaintiffs would be subrogated to any rights that the Insureds might have
12 against a third party who is responsible for that loss to the extent of its payments. In
13 addition to contractual subrogation rights, Subrogation Plaintiffs have rights pursuant to
14 equitable subrogation.

15 29. As a result of the Fire, and providing coverage under the Policies,
16 Subrogation Plaintiffs incurred money damages when they compensated or reimbursed,
17 and as they are continuing to compensate or reimburse, their Insureds in amounts to be
18 proven at trial.

19 30. Subrogation Plaintiffs suffered losses for which Defendants, and each of
20 them, are liable.

21 31. In addition to the amounts paid out under the Policies, Subrogation Plaintiffs
22 seek recovery of prejudgment interest on the liquidated damages to the extent allowed
23 pursuant to California law, including California Civil Code §§ 3287 and 3288.

24 **GENERAL ALLEGATIONS**

25 32. Subrogation Plaintiffs incorporate by reference each and every allegation
26 contained above, as though fully set forth herein.

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**SCE Had A Non-Delegable, Non-Transferable Duty To Safely Maintain Its
Electrical Infrastructure**

33. At all times prior to October 30, 2019, SCE had a non-delegable, non-transferable duty to properly construct, inspect, maintain, repair, manage and/or operate its electrical power lines, utility poles and appurtenant equipment and to keep vegetation properly maintained as to prevent the foreseeable risk of fire.

34. In the construction, inspection, repair, maintenance, ownership, and/or operation of its power lines, utility poles and other electrical equipment, SCE had an obligation to comply with a number of statutes, regulations, orders and standards, as detailed below.

35. SCE is required to comply with a number of design standards for its electrical equipment, as stated in CPUC General Order 95. In extreme fire areas, SCE must also ensure that its power lines and utility poles can withstand winds of up to 92 miles per hour. Further, SCE must follow several standards of vegetation management to protect the public from fire. Pursuant to Public Resources Code § 4292, SCE is required to “maintain around adjacent to any pole or tower which supports a switch, fuse, transformer, lighting arrester, line junction, or dead end or corner pole, a firebreak which consists of clearing not less than 10 feet in each direction from the outer circumference of such pole or tower.”

36. Further, pursuant to CPUC General Order 165, SCE is also required to inspect its distribution facilities to maintain a safe and reliable electric system. Specifically, SCE must conduct “patrol” inspections of all of its overhead facilities annually in Extreme or High Fire areas, which includes Ventura County.¹ SCE is also required to inspect wooden utility poles once the poles have been in service for 15 years, with intrusive inspections of the poles themselves within ten years.²

¹ PUC GO 165, Table 1, https://www.cpuc.ca.gov/gos/GO165/GO_165_table.html

² A Brief Introduction To Utility Poles, PUC, at p. 10, https://www.cpuc.ca.gov/uploadedFiles/CPUC_Public_Website/Content/About_Us/Organization/Divisions/Policy_and_Planning/PPD_Work/PPDUtilityPole.pdf

1 37. SCE knew or should have known that such standards and regulations were
2 minimum standards and that SCE has a duty to identify and manage the growth of
3 vegetation near its utility poles and power lines that posed a foreseeable risk of igniting
4 and starting a fire in the event of an electrical equipment failure.

5 **SCE's Overloaded Utility Poles**

6 38. SCE knew about the significant risk of wildfires caused by its aging and
7 over-loaded utility poles years before the Easy Fire began:

8 **(a) The 2007 Fire Siege in Southern California:** In October 2007, strong
9 Santa Ana winds swept across Southern California and caused dozens of
10 wildfires. Several of the worst wildfires were reportedly caused by downed
11 power lines. One of these fires was the Malibu Canyon Fire, which started
12 on October 21, 2007 at approximately 4:30 a.m. A subsequent investigation
13 by the PUC's Safety and Enforcement Division ("SED") determined that the
14 fire was caused when three wooden utility poles broke and fell to the ground
15 as a result of strong Santa Ana winds in Malibu Canyon, Los Angeles
16 County. The resulting fire burned 3,846 acres, destroyed 14 structures and
17 36 vehicles and caused damaged to 19 other structures. Those utility poles
18 and overhead supply and communications facilities were owned and
19 operated by SCE, Verizon Wireless, AT&T Mobility, LLC, Spring
20 Communications Company, LP, and NextG Networks of California. The
21 SED investigated the incident and found SCE and the communications
22 companies which owned the three poles in violation of PUC General Order
23 95 ("GO 95"). Specifically, SED found that the wind at the time of the fire
24 was approximately 50 miles per hour. According to GO 95, Rule 44, the
25 type of poles involved were required to be designed and constructed with a
26 safety factor of 4.0, and able to withstand winds up to 92.4 miles per hour.
27 The SED found SCE and the other owners and operators of the poles and
28 attached facilities to be in violation of Rules 12, 31, 43 and 44 in GO 95 for

1 failing to properly inspect and maintain their poles and facilities to prevent
2 the safety factors from falling below the minimum requirements. SCE
3 agreed to a settlement with the PUC and a \$37 million fine and agreed to
4 conduct a safety audit and remediation of its utility poles in the Malibu area.

5 **(b) The 2011 Windstorm:** On November 30, 2011 and December 1, 2011,
6 Santa Ana winds swept through SCE's territory, knocking down utility
7 facilities, uprooting trees, and causing prolonged power outages. Two-
8 hundred forty-eight (248) wood utility poles and 1,064 overhead electrical
9 lines were affected. A total of 440,168 customers lost power during this
10 wind event. SED performed an investigation and concluded that SCE and
11 communication providers who jointly owned utility poles violated GO 95
12 because at least 21 poles and 17 guy wires were overloaded in violation of
13 the safety factor requirements codified in GO 95, Rule 44.1.

14 **(c) SCE Pole Loading Study:** As part of SCE's 2012 General Rate
15 Case, the PUC ordered SCE to conduct a statistically-valid sampling of
16 SCE-owned and jointly-owned utility poles to determine whether the
17 pole loading complied with current legal standards. SCE's study,
18 released on May 31, 2013, found that 22.3% of the 5,006 poles tested
19 failed to meet current design standards. In November 2013, the SED sent
20 a letter to the PUC Commissioners discussing SCE's study and
21 recommended the following changes in policy:

- 22 1) SCE should conduct a wind analysis in its service territory,
23 incorporating actual wind standards into its internal pole
24 loading standards;
- 25 2) SCE should conduct a pole loading analysis of every pole
26 carrying SCE facilities, employing a risk management
27 approach, considering, at a minimum, fire risk, the presence of
28

communications facilities and the number of overloaded poles in the area; and

- 3) SCE should commence pole mitigation measures as soon as possible, and not wait for the pole loading analysis to be completed.

(d) SCE's Pole Loading Program: In its 2015 General Rate Case, SCE proposed a pole Loading Program ("PLP") to identify and remediate overloaded poles and prevent poles on the 1.4 million utility poles its service territory from becoming overloaded in the future. SCE claims it started its PLP in 2014, but will not complete its assessment in high fire areas until 2017 and will not complete pole remediation of overloaded poles until 2025. SCE claims that under the PLP, a pole will be replaced between 72 hours and 59 months depending upon the safety factor and its location relative to high fire areas. In its 2015 General Rate Case, SCE forecast it would perform assessment of 205,754 poles in 2015. However, SCE only actually performed assessments of 142,382 poles in 2015, or 63,372 (30%) fewer than SCE claimed it would conduct, and as a result, SCE repaired 14,310 fewer overloaded poles than it forecast in 2015. However, SCE's PLP has experienced substantial delays due to problems with the software program it used to calculate the pole loading safety factors for its poles. In its 2015 General Rate Case, SCE estimated that 22% of its utility poles were overloaded. However, in its 2018 General Rate Case, SCE disclosed that it modified its software used to calculate pole loading safety factors and that these revisions reduced the percentage of poles needing remediation to just 9%. Additionally, SCE disclosed in its 2018 General Rate Case that it had failed to meet its 2015 projections to assess and repair overloaded poles. Specifically, SCE admitted that it had only conducted 142,519 out of the projected 205,000 pole assessments in 2015. As a result, SCE announced in

1 its 2018 General Rate Case that it was changing the duration of its PLP from
2 7 years to 10 years to allow for fewer pole assessments each year.

3 Additionally, SCE disclosed in the 2018 General Rate Case that out of the
4 142,519 poles it assessed in 2015, it only constructed repairs on 569 under
5 the PLP. SCE claims "repairs may be completed one or two years after the
6 assessment, depending on whether the pole is in a high fire or non-fire
7 area."³

8 **Foreseeable And Expected Santa Ana Winds and Red Flag Fire Warning**

9 39. At all times mentioned herein. Defendants were aware that the State of
10 California had been in a multi-year period of drought. Defendants were also aware that
11 Ventura County frequently experiences "Santa Ana" wind conditions, which are highly
12 conducive to the rapid spread of wildfires and extreme fire behavior. The Santa Ana winds
13 are not abnormal or unforeseeable, and everyone who lives and works in Southern
14 California is familiar with this type of extreme wind event.

15 40. On January 17, 2014, the Governor issued an Executive Order proclaiming a
16 State of Emergency throughout the State of California due to severe drought conditions
17 which had existed for four years. On November 13, 2015, the Governor issued Executive
18 Order B-36-15, which proclaimed "[t]hat conditions of extreme peril to the safety of
19 persons and property continue to exist in California due to water shortage, drought
20 conditions and wildfires..."⁴ Although the Governor issued an Executive Order in April
21 2017 ending the Drought State of Emergency in all counties except Fresno, Kings, Tulare
22 and Tuolumne, the declaration directed state agencies "to continue response activities that
23 may be needed to manage the lingering drought impacts to people and wildlife."⁵

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27 ³ 2018 General Rate Case, SCE, Transmission & Distribution Volume 9, Poles. 9/1/16.

28 ⁴ Exec. Order B-36-15, Office of Gov. Edmund Brown, Jr. (Nov. 13, 2015).

⁵ Exec. Order B-040-17 at 3, Office of Gov. Edmund Brown, Jr. (April 7, 2017).

1 41. According to records maintained by Cal Fire, electrical equipment was one
2 of the leading causes of wildfires in California during 2014.⁶ Thus, SCE knew of the
3 foreseeable danger of wildfire when its power lines came into contact with vegetation.

4 42. In May of 2016, the CPUC designated Ventura County as an “Extreme” and
5 “Very High” fire threat.

6 43. SCE was put on notice by the publication of this Fire Map in May 2016, and
7 therefore knew well in advance of the Easy Fire of the elevated fire risk in Ventura
8 County for “ignition and rapid spread of power line fires due to strong winds, abundant
9 dry vegetation, and/or other environmental conditions.”

10 44. On November 8, 2017, the CPUC published its “Proposed Decision Of
11 Commissioner Picker”, which adopted the “Decision Adopting Regulations To Enhance
12 Fire Safety In The High Fire-Threat District”. This Decision adopted new regulations by
13 the CPUC to enhance fire safety of overhead electrical power lines and communications
14 lines located in high fire-threat areas following the devastating Northern California fires.

15 45. On October 29, 2019, the National Weather Service issued a “Red Flag
16 Warning” for Ventura County for the period between 11:00 p.m. on October 29, 2019
17 through 6:00 p.m. on October 31, 2019, which predicted wind gusts of 50-70 MPH and
18 humidity as low as 1-5%, and warned that any fire ignition could have a rapid rate of
19 spread and potential for extreme fire behavior.

20 46. On October 30, 2019, SCE instituted a Public Safety Power Shutoff to
21 approximately 82,000 customers in Southern California, including portions of Simi
22 Valley. However, despite the Red Flag Warning, SCE chose not to de-energize its
23 Moorpark-Royal 66kV circuit.

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28 ⁶ Historical Wildfire Activity Statistics (Redbooks), Cal Fire, available at
https://www.fire.ca.gov/media/10062/2014_redbook_complete.pdf

FIRST CAUSE OF ACTION

(Negligence against all Defendants)

47. Subrogation Plaintiffs reallege and incorporate by reference each and every allegation contained above as though set forth fully herein.

48. Defendants, and each of them, have a non-delegable, non-transferable duty to apply a level of care commensurate with and proportionate to the danger of designing, constructing, operating and maintaining electrical infrastructure, in addition to performing vegetation clearance around such facilities and to remediate overloaded utility poles.

49. Defendants, and each of them, have a non-transferable, non-delegable duty of vigilant oversight in the construction, maintenance, use, operation, repair and inspection of their electrical infrastructure that are appropriate to the geographical and weather conditions affecting such equipment.

50. Defendants and each of them, have special knowledge and expertise far above that of a layperson regarding their requirements to design, engineer, construct, use, operate, maintain and inspect these electrical facilities, including removal of vegetation and remediating overloaded utility poles such that their electrical equipment will not cause wildfires like the Easy Fire.

51. Defendants, and each of them, have negligently breached those duties by, among other things:

- a) Failing to conduct reasonably prompt, proper and frequent inspections of their overhead electric and communications facilities;
- b) Failing to design, construct, monitor, operate and maintain their overhead electric and communications facilities to withstand foreseeable Santa Ana wind events and avoid igniting and/or spreading wildfires;
- c) Failing to clear vegetation within a 10 foot radius around the perimeter of all utility poles and towers which supports a switch, fuse, transformer, lighting arrester, line junction, or dead end or corner pole as required by Public Resource Code § 4292;

- d) Failure to perform inspections of all overhead electric facilities as required by PUC General Order 165;
- e) Failing to de-energize overhead electric facilities during foreseeable and expected Red Flag Warnings in fire-prone areas; and/or
- f) Failing to properly investigate, screen, train and supervise employees and agents responsible for maintenance and inspection of the overhead electric and communications facilities and vegetation removal around such facilities;
- g) Allowing fire to ignite or spread to the property of another in violation of California Health & Safety Code § 13007.

52. The Easy Fire was the direct, legal and proximate result of Defendants' negligence.

53. As a direct, proximate, and legal result of said negligence, Subrogation Plaintiffs' Insureds suffered damages as alleged herein.

54. At all times mentioned herein, Defendants, and each of them, failed to properly inspect and maintain electrical infrastructure and equipment which they knew, given the then existing Santa Ana wind and Red Flag Warning conditions, posed a risk of harm to the Subrogation Plaintiffs, and to their real and personal property. Defendants, and each of them, were aware of the risk of its electrical equipment igniting ground vegetation near and around its utility poles and towers and that a fire would likely result and spread rapidly. Defendants also knew that, given the then existing weather conditions, said fire was likely to pose a risk of catastrophic property damage, economic loss, personal injury, and/or death to the general public, including Subrogation Plaintiffs' Insureds.

55. The property damage and economic losses caused by the Easy Fire is the result of the ongoing custom and practice of SCE of consciously disregarding the safety of the public and not following statutes, regulations, standards, and rules regarding the safe operation, use and maintenance of their overhead electric facilities.

1 56. On information and belief, these Defendants, and each of them, failed to
2 properly inspect and maintain their electric facilities in order to cut costs, with the full
3 knowledge that any incident was likely to result in a wildfire that would burn and destroy
4 real and personal property, displace homeowners from their homes and disrupt businesses
5 in the Fire Area.

6 57. The actions of Defendants, and each of them, did in fact result in damages to
7 the Subrogation Plaintiffs. Defendants, and each of them, failed to maintain their
8 Moorpark-Royal 66kV circuit in a safe manner, and/or failed to properly remove
9 vegetation around their overhead electric facilities are required by statute, and/or failed to
10 remediate overloaded utility poles which were at risk of collapse in Santa Ana winds.

11 58. The negligence of Defendants, and each of them, was a substantial factor in
12 causing the Subrogation Plaintiffs' damages.

13 59. Defendants' failure to comply with their duties of care proximately caused
14 damage to Subrogation Plaintiffs.

15 60. As a further direct and proximate result of Defendants' negligence,
16 Subrogation Plaintiffs' Insureds suffered damages including, but not limited to real
17 property damage, loss of personal property, economic loss, loss of quiet use and
18 enjoyment of their property, and costs to evacuate and relocate.

19 61. Defendants, and each of them, were and are in a special relationship to
20 Subrogation Plaintiffs' Insureds. As a supplier of electrical power to the Subrogation
21 Plaintiffs' Insureds, SCE's operation of its electrical equipment was intended to and did
22 directly affect the Subrogation Plaintiffs' Insureds. SCE is the sole electric public utility
23 which provides electric power to the Subrogation Plaintiffs' Insureds in Ventura County.
24 As a result, it was foreseeable that a massive wildfire would destroy personal and real
25 property, force residents in the fire area to evacuate, and prevent customers of businesses
26 located within the fire area from patronizing those businesses.

1 69. On August 15, 2019, the Supreme Court of California published its holding
2 for the *City of Oroville v. Superior Court* (7 Cal. 5th 1091). In that case, the Court
3 articulated that a court assessing inverse condemnation liability must find more than just a
4 causal connection between the public improvement and the damage to private property. In
5 the Easy Fire, SCE's Electrical System substantially caused Subrogation Plaintiffs'
6 damages and was more than a causal connection.

7 70. SCE owned and substantially participated in the design, planning, approval,
8 construction and operation of the Electrical System and public improvements for the
9 supplying of electricity. SCE exercised control and dominion over the said Electrical
10 System and public improvements as a public project and public benefit.

11 71. In *City of Oroville*, the Court requires a reviewing court to consider whether
12 the inherent dangers of the public improvement as deliberately designed, constructed, or
13 maintained materialized and were the cause of the property damage.

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

20 73. SCE deliberately designed its Electrical System to transport electricity from
21 its substations to the public directly into their homes. The circuitry and conductors were
22 electrically a single and unified circuit that transmitted electricity. This includes SCE's
23 design of its electrical circuitry with system protection devices, including but not limited
24 to fuses, breakers and reclosers ("System Protection") to trip and stop the flow of
25 electricity should an electrical overcurrent event occur. The inherent danger in Electricity
26 and SCE's design of its Electrical System materialized in an arcing event that caused the
27 Easy Fire, which damaged Subrogation Plaintiff's Insureds' Property. The circuitry and
28 equipment that failed was owned and controlled by SCE, and SCE specifically would not

1 allow the homeowners or members of the public to touch, work upon, alter or maintain
2 any such Electrical System.

3 74. SCE deliberately constructed its Electrical System to transport electricity
4 through its powerlines to provide power to the public. The inherent danger in SCE's
5 construction and maintenance of its Electrical System materialized in an arcing/electrical
6 event that caused the Easy Fire, which damaged Subrogation Plaintiffs' Insureds'
7 Property. SCE would not allow homeowners to inspect the structural integrity of its
8 equipment, including support hooks and insulators. SCE advised homeowners to keep
9 away from electrical equipment and circuitry owned and operated by SCE. Specifically,
10 SCE performed inspection and maintenance, near and upon the Electrical System near the
11 Easy Fire point of origin in the past and exercised dominion and control over its Electrical
12 System.

13 75. The Court in the *City of Oroville* articulates that "useful public
14 improvements must eventually be maintained and not merely designed and built. So the
15 inherent risk aspect of the inverse condemnation inquiry is not limited to deliberate design
16 or construct of public improvement. It also encompasses risks from maintenance or
17 continued upkeep of the public work." (7 Cal. 5th 1091 at 1106). SCE has a responsibility
18 to maintain and continuously upkeep its Electrical System to ensure safe delivery of
19 electricity to the public.

20 76. SCE designed and constructed its Electrical System to provide electricity to
21 the public directly into their homes. Electricity is a dangerous instrumentality and SCE
22 has a non-delegable duty to perform inspection and maintenance on its Electrical System.
23 The inherent danger in SCE failing to maintain, repair and/or replace the structural
24 integrity of its Electrical System, including support hooks and insulators, materialized in
25 an arcing/electrical event that caused the Easy Fire, which damaged Plaintiffs' Insureds'
26 Property.

27 77. SCE has a non-delegable duty to maintain and upkeep its Electrical System,
28 including the System Protection so that should an electrical overcurrent event occur, its

1 powerlines de-energize. The inherent danger in SCE failing to maintain and upkeep its
2 Electrical System, including the System Protection, materialized in an arcing event, which
3 ignited the Easy Fire that damaged Plaintiffs' Insureds' Property.

4 78. SCE has a non-delegable duty to maintain and upkeep its Electrical System ,
5 which includes vegetation management around its Electrical System. The inherent danger
6 in SCE failing to maintain and continuously upkeep the surrounding vegetation around its
7 EDS materialized in an arcing event, which ignited ground vegetation, starting the Easy
8 Fire that damaged Plaintiffs' Insureds' Property.

9 79. SCE's Electrical System, as deliberately designed, constructed and
10 maintained presented an inherent risk and danger of fire to private property. In acting in
11 furtherance of the public objective of supplying electricity, SCE took and did take on or
12 about October 30, 2019, a known risk that private property would be damaged and
13 destroyed by fire.

14 80. The injury to Plaintiffs' Insureds' Property was the inescapable and
15 unavoidable consequence of SCE's Electrical System as deliberately designed,
16 constructed and maintained. This damage was the necessary and probable result of SCE's
17 public improvement of supplying electricity.

18 81. SCE has special knowledge and expertise above that of a layperson that is
19 required to perform safe structural integrity inspections and maintenance, vegetation
20 management, and other safety inspections at, near and around its Electrical System.
21 Specifically, SCE performed inspection and maintenance, near and upon the Electrical
22 System near the Easy Fire point of origin in the past and exercised dominion and control
23 over its Electrical System.

24 82. The policy justifications underlying inverse condemnation liability are that
25 individual property owners should not have to contribute disproportionately to the risks
26 from public improvements made to benefit the community as a whole. Under the rules
27 and regulations set forth by the California Public Utilities Commission, amounts that
28 Defendants must pay in inverse condemnation can be included in their rates and spread

1 among the entire group of rate payers so long as they are otherwise acting as a reasonable
2 and prudent manager of their electric distribution systems.

3 83. The conduct as described herein was a substantial factor in causing damage
4 to a property interest protected by the Fifth Amendment of the U.S. Constitution and
5 Article I, § 19, of the California Constitution and permanently deprived Plaintiff's
6 Insureds of the use and enjoyment of their property. As a direct result of the "taking" of
7 the property, Subrogation Plaintiffs paid their Insureds in excess of the jurisdictional
8 minimum of this Court. Pursuant to California Code of Civil Procedure section 1036,
9 Subrogation Plaintiffs are entitled to recover all litigation costs, expense and interest with
10 regard to the compensation of damage to Insured Property, including attorney's fees,
11 expert fees, consulting fees and litigation costs.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Subrogation Plaintiffs FIRE INSURANCE EXCHANGE;
14 FOREMOST INSURANCE COMPANY GRAND RAPIDS, MICHIGAN; MID-
15 CENTURY INSURANCE COMPANY; NEIGHBORHOOD SPIRIT PROPERTY &
16 CASUALTY COMPANY; TRUCK INSURANCE EXCHANGE; CALIFORNIA
17 AUTOMOBILE INSURANCE COMPANY; CALIFORNIA CASUALTY INDEMNITY
18 EXCHANGE; CALIFORNIA FAIR PLAN ASSOCIATION; INTERINSURANCE
19 EXCHANGE OF THE AUTOMOBILE CLUB; NATIONWIDE AGRIBUSINESS
20 INSURANCE – NAIC; NATIONWIDE INSURANCE COMPANY OF AMERICA;
21 NATIONWIDE MUTUAL INSURANCE COMPANY; CRESTBROOK INSURANCE
22 COMPANY; INTEGON NATIONAL INSURANCE COMPANY; and NATIONAL
23 GENERAL PREMIER INSURANCE COMPANY, pray for judgment against Defendants,
24 and each of them, as follows:

- 25 1. For all applicable remedies under California common law negligence;
26 2. For an amount which will compensate Subrogation Plaintiffs for all the
27 detriment proximately caused by Defendants herein, to be proven at trial;
28


1 3. For Subrogation Plaintiffs' costs and attorneys' fees permitted by law and
2 statute;

3 4. For prejudgment interest as permitted by law, including but not limited to,
4 California Civil Code §§ 3287 and 3288; and

5 5. For such other relief as this Court deems just and fair.

6 DATED: September 22, 2020

BERGER KAHN, A Law Corporation

7
8 By: 
9 CRAIG S. SIMON
10 Attorneys for Subrogation Plaintiffs
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