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Attorneys for Plaintiffs

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

NOVA BURNES;

Plaintiffs,

vs.

HAWAIIAN ELECTRIC COMPANY, INC. dba
HAWAIIAN ELECTRIC; MAUI ELECTRIC
COMPANY, LIMITED dba MECO; COUNTY
OF HAWAII, and DOE DEFENDANTS 1-10,

Defendants.

Civil No. _____
(Maui)
(Other Non-Vehicle Tort)

**CLASS ACTION COMPLAINT;
DEMAND FOR JURY TRIAL;
SUMMONS**

CLASS ACTION COMPLAINT

Plaintiffs NOVA BURNES, on behalf of themselves and others similar situated, allege that:

I.

JURISDICTION AND VENUE

- 1) This Court has jurisdiction over the above Defendants under Hawaii Revised Statutes § 634-35, because the causes of action arise as the result of Defendants’ business transactions within this state, Defendants’ commission of alleged tortious acts and injuries within this state, and the Defendants’ and Plaintiffs’ use and possession of real property within this state. Defendants are subject to the jurisdiction of this Court because they reside and conduct business in this Circuit.
- 2) This Court has subject matter jurisdiction over this action under Hawai`i Revised Statute § 603-21.5.
- 3) Venue is proper before this Court under Hawai`i Revised Statute § 603-36.

II.

PARTIES

- 4) Plaintiffs are residents of Maui County, State of Hawai`i.
- 5) Plaintiff Nova Burnes was at all times relevant a resident of Maui County, State of Hawai`i.
- 6) Defendant Hawaiian Electric Company, Inc. dba Hawaiian Electric (“Hawaiian Electric”) is a Hawai`i domestic corporation with its principal place of business in the State of Hawaii, registered on or about October 13, 1891, and doing business in Maui County, State of Hawai`i.

- 7) Defendant Maui Electric Company, Inc. dba MECO (“MECO”) is a Hawai`i domestic for profit corporation registered on or about April 28, 1921, with its principal place of business in Maui County, State of Hawai`i.
- 8) Defendant MAUI COUNTY is, and was at all times relevant herein, a municipality organized and existing under the laws of the State of Hawaii and United States of America.
- 9) Plaintiffs have reviewed records that were made available to them in order to ascertain the true and full names and identities of all defendants in this action, but no further knowledge or information regarding the parties responsible is available at this time and Plaintiffs are unable to ascertain the identity of the defendants in this action designated as DOE DEFENDANTS 110 (“Doe Defendants”).
- 10) Doe Defendants are sued herein under fictitious names for the reason that their true names and identities are unknown to Plaintiffs except that they may be connected in some manner with Defendants and may be agents, attorneys, servants, employees, employers, representatives, co-venturers, co-conspirators, associates, or independent contractors of Defendants and/or were in some manner jointly and severally responsible for the injuries or damages to Plaintiffs and their true names, identities, capacities, activities and responsibilities are presently unknown to Plaintiffs or their attorneys.

IV.

CLASS ALLEGATION

- 11) A class action is alleged pursuant to Hawaii Rule of Civil Procedure 23.
- 12) Plaintiffs NOVA BURNES and WOODLEY WEST seek to represent a class of persons that includes: All residents of Maui County, State of Hawaii, who suffered property or economic injuries due to wildfires that occurred on or about August 8 - 10, 2023, within Maui County.

V.

FACTUAL ALLEGATIONS

- 13) Defendants Hawaiian Electric and MECO operate electric power plants and supply electricity through electrical lines owned and/or operated by Defendants Hawaiian Electric and MECO throughout Maui County, including Lahaina and Kula.
- 14) Defendants Hawaiian Electric and MECO facilities generate electricity sold to residents of Maui, including the Plaintiffs herein, which is delivered by overhead electrical lines that present a known fire risk during severe weather.
- 15) Hawaiian Electric and MECO are interrelated and regulated private monopolies providing commercial electric utility services on the Island of Maui.
- 16) Defendants Hawaiian Electric and MECO's activities are governed by a set of rules and rate schedules set forth by the Public Utilities Commission (PUC) of the State of Hawai'i.
- 17) PUC General Order 7 § 8.2.a mandates that "[e]ach utility shall exercise reasonable care to reduce the hazards to which its employees, its customers, and the general public may be subjected."
- 18) The Defendants knew or should have known, and in fact were repeatedly warned, of the high risk of fire on Maui years before the August 2023 fires under similar conditions and yet failed to design, construct, monitor, inspect, and maintain their electrical facilities in a manner that would avoid igniting or spreading fire.
- 19) On or about July 31, 2023, Hurricane Dora developed from an area of disturbed weather southwest of Mexico.
- 20) Hurricane Dora continued to progress in the Pacific traveling toward the Hawaiian Islands, including Maui.

- 21) On or about August 8, 2023, heavy wind gusts buffeted the island of Maui, including Lahaina and Kula.
- 22) As Dora approached the Island of Maui, Defendants knew the threat of fire to Lahaina and Kula was extremely serious given the predicted high winds and propensity and risk of fire due to power lines and/or poles being knocked down by high winds that could rapidly cause and spread fire, particularly given the severe drought conditions in and around Maui and particularly in Lahaina and Kula.
- 23) Despite these known and recognized risks, Defendants remained in operation and continued to supply power without warning the residents of Lahaina and Kula that it was reasonably foreseeable that falling trees and branches would break electrical lines and cause wildfires that would place the Class in extreme risk of harm to their lives, homes and businesses.
- 24) The spread of highly flammable, nonnative grasses had long been a concern. Nonnative grasses had been spreading throughout Hawaii, raising the risk of catastrophic wildfire – all known to the Defendants.
- 25) Meteorologists also issued warnings about the dangerous weather conditions in place on Tuesday. With high pressure to the northeast and low pressure from Hurricane Dora far to the southwest, Maui’s westside and up-country were arguably in the worst possible situation once a fire ignited as strong mauka winds could cause fire to sweep down the mountains leaving little room for people to flee.
- 26) The potential for high fire danger was also well anticipated by the National Weather Service. Four days before multiple wildfires broke out Tuesday, the weather service in Honolulu warned of “high fire danger”; two days before the fire, the agency published

an animation showing how damaging winds and fire weather were expected Monday through Wednesday.

- 27) On August 8, 2023, as Dora's winds began buffeting Maui, on information and belief, wind-blown trees and branches predictably broke Defendants' electric lines, causing fires to start and spread throughout Lahaina and Kula destroying homes, businesses and leaving a wake of death, devastation, and destruction in the affected areas.
- 28) Bulletins posted on Maui County's Facebook page indicate that the first report of a brush fire in Lahaina came in at 6:37 a.m. However, by around 10 a.m., Maui County said it had declared the Lahaina brush fire "100% contained." This provided a false sense of safety and security to Maui residents, including Plaintiffs and Class members.
- 29) The Lahaina fire then flared up in the afternoon. Maui County said around 3:30 p.m. that the fire forced the closure of the Lahaina Bypass, a major road near the intermediate school also known as Highway 3000.
- 30) Unfortunately, neither the state nor the County activated sirens.
- 31) As a consequence of Defendants' failures, Maui residents have suffered serious harm including substantial personal injuries and loss of life as well as the destruction of homes, and businesses.

FIRST CLAIM FOR RELIEF
(Negligence -All Defendants)

- 32) Defendants Hawaiian Electric and MECO bore a duty and obligation to conduct operations in a safe manner and to avoid exposing the residents of Maui to the substantial harms caused by wildfires on and after August 8, 2023.

- 33) Defendants Hawaiian Electric and MECO had a duty to exercise reasonable care to reduce hazards to its customers and the general public while providing service on a fair and nondiscriminatory basis.
- 34) Despite the foreseeable risks presented by Hurricanes Dora, Defendants Hawaiian Electric and MECO continued to supply electricity and power without warning to the residents of the severe risk of death or destruction by fire posed by the Defendants' ongoing operations, particularly given the drought conditions plaguing Maui at the time.
- 35) Defendant County of Maui had a duty to warn all of its residents of the danger posed by the strong winds and potential fire, and to warn all residents with sufficient time to save their lives, homes, property and possessions; Defendant Maui County breached their duties by failing to properly design, inspect, maintain, and warn residents in order to avoid the risks of wildfires posed by the approach of Hurricane Dora, which included timely activating the County's emergency warning system to notify all residents of the danger posed by fire.
- 36) Plaintiffs contend that Defendants Hawaiian Electric and MECO's ongoing operations and the failure to warn residents was negligent in the face of the approaching hurricane Dora.
- 37) Plaintiffs and the residents of Maui are within the class of persons intended to be protected by the safety requirements of the PUC that were breached by Defendants Hawaiian Electric and MECO.
- 38) Defendants Hawaiian Electric and MECO's negligence was a substantial factor and proximate cause of the fire that destroyed parts of Lahaina and Kula on August 8-9, 2023, resulting in personal injuries to Maui residents, and loss of their personal and real property, including the named Plaintiffs and class representatives herein, of Lahaina Hawaii.

- 39) Because of the negligence of Defendants Hawaiian Electric and MECO, Plaintiffs have incurred expenses and other damages as a result in an amount to be proven at trial.
- 40) The conduct of Defendants Hawaiian Electric and MECO was also undertaken with reckless and/or callous disregard for the foreseeable consequences to Plaintiffs, and or rose to the level of gross negligence. For example, despite knowledge of the hazards posed by their ongoing operations and the approach of Hurricane Dora, Defendants Hawaiian Electric and MECO failed to take steps to prevent the spread of fire that devastated parts of Lahaina and Kula, nor did it provide any adequate and timely warning to those residents despite the tremendous risk of loss of life and destruction of property, and given the extreme drought conditions.
- 41) The conduct of Defendants Hawaiian Electric and MECO therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.
- 42) As a proximate and legal result of the negligence of Defendants Hawaiian Electric and MECO, Class members have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

SECOND CLAIM FOR RELIEF

(Strict Liability Defendants Hawaiian Electric and MECO)

- 43) Plaintiffs repeat and incorporate the above paragraphs herein.
- 44) Operation of Defendants Hawaiian Electric and MECO's high powered electric transmission lines and services is an abnormally dangerous activity because Defendants Hawaiian Electric and MECO have not, and cannot, eliminate the risk fire into the community, particularly in the presence of high winds in hurricane conditions and given the extreme drought conditions that were plaguing Maui.

- 45) Defendants Hawaiian Electric and MECO operations caused and/or was a substantial factor in causing the fire which devastated parts of Lahaina and Kula on August 8-9, 2023, and posed a material impact to the health of the residents, an increase in health and safety risks for residents, and a reduction in the value and beneficial use and enjoyment of residents' homes and businesses located therein.
- 46) Defendants Hawaiian Electric and MECO are therefore strictly liable for all damages that arise from the operation of Defendants' business.
- 47) Defendants Hawaiian Electric and MECO's conduct has been undertaken with reckless disregard for the foreseeable consequences to the community. For example, despite knowledge of the hazards posed by its operation and approach of Hurricane Dora, Defendants Hawaiian Electric and MECO failed to take steps to prevent the prevent the risk of fire that devastated the community, nor did they provide any adequate and timely warning to residents despite the known dry and flammable conditions threatening Lahaina and Kula.
- 48) Defendants Hawaiian Electric and MECO reckless conduct justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.
- 49) Because of Defendants Hawaiian Electric and MECO abnormally dangerous activities, it has been necessary for the Class to incur expenses and other special damages in an amount to be proven at trial.
- 50) As a proximate and legal result of Defendants Hawaiian Electric and MECO conduct, Class members have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

THIRD CLAIM FOR RELIEF

(Trespass - Defendants Hawaiian Electric and MECO)

- 51) Plaintiffs repeat and incorporate the above paragraphs herein.
- 52) Defendants Hawaiian Electric and MECO abnormally dangerous operation, as well as its negligent and reckless conduct, has caused and/or was a substantial factor in causing the spread of fire and destruction of Lahaina, Kula, and surrounding community, including the property, homes and businesses of Plaintiffs.
- 53) Defendants Hawaiian Electric and MECO conduct has caused injury both to the land and health of Plaintiffs.
- 54) Specifically, Defendants Hawaiian Electric and MECO's operation has caused and/or was a substantial factor in causing the fire which devastated parts of Lahaina and Kula on August 8-9, 2023, and posed a material impact to the health of the residents, an increase in health and safety risks for residents, and a reduction in the value and beneficial use and enjoyment of residents' homes and businesses located therein.
- 55) Defendants Hawaiian Electric and MECO are therefore liable for the trespass due to the fire which destroyed the property of Plaintiffs.
- 56) Because of Defendants Hawaiian Electric and MECO's abnormally dangerous activities, it has been necessary for the Class to incur expenses and other special damages in an amount to be proven at trial.
- 57) Further, Defendants Hawaiian Electric and MECO's conduct has been undertaken with reckless disregard for the foreseeable consequences to the community. Indeed, despite knowledge of the hazards posed by its operation and approach of Hurricane Dora, Defendants Hawaiian Electric and MECO failed to take steps to prevent the prevent the risk of fire that devastated the community, nor did they provide any adequate and timely warning to residents despite the known dry and flammable conditions threatening Lahaina and Kula.

- 58) Defendants Hawaiian Electric and MECO's reckless conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.
- 59) As a proximate and legal result of Defendants Hawaiian Electric and MECO's conduct, Class members have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

FOURTH CLAIM FOR RELIEF

(Nuisance - Defendants Hawaiian Electric and MECO)

- 60) Plaintiffs repeat and incorporate the above paragraphs herein.
- 61) Defendants Hawaiian Electric and MECO's operations, as well as its negligent and reckless conduct, has caused and/or was a substantial factor in causing the spread of fire and destruction of parts of Lahaina, Kula, and surrounding community, including the property, homes and businesses of Plaintiffs.
- 62) Defendants Hawaiian Electric and MECO's failure to warn and failure to prevent the subject fire resulted in harm, inconvenience, and damage to the Class, which has unlawfully annoyed and disturbed the Class's free use, possession, and enjoyment of their property.
- 63) Defendants Hawaiian Electric and MECO's operation constitutes a nuisance to Plaintiffs.
- 64) Defendants Hawaiian Electric and MECO are therefore liable for the damages that are the legal and proximate result of the nuisance created by its operation, including the destruction of the Plaintiffs' homes and/or businesses.
- 65) Because of the destruction of Plaintiffs' property by fire, it has been necessary for the Plaintiffs to incur expenses and other damages in an amount to be proven at trial.
- 66) Further, Defendants Hawaiian Electric and MECO's conduct has been undertaken with reckless disregard for the foreseeable consequences to the community. Indeed, despite

knowledge of the hazards posed by its operation and approach of Hurricane Dora, Defendants Hawaiian Electric and MECO failed to take steps to prevent the risk of fire that devastated the community, and they failed to provide any adequate and timely warning to residents.

- 67) Defendants Hawaiian Electric and MECO's reckless conduct therefore justifies an award of exemplary or punitive damages in an amount to be proven at the trial of this matter.
- 68) As a proximate and legal result of Defendants Hawaiian Electric and MECO's conduct, Plaintiffs have been compelled to resort to litigation and therefore request an award of all consequential damages, including, but not limited to, attorneys' fees and costs incurred in such litigation, in amounts to be proven at time of trial.

FIFTH CLAIM FOR RELIEF

(Premise Liability claims –All Defendants)

- 69) Plaintiffs repeat and incorporate the above paragraphs herein.
- 70) Defendants owed a duty to remedy or warn of dangerous conditions on their land under their ownership and/or control with respect to all foreseeable users of said property and/or of persons who could be harmed as a result of activities undertaken on Defendants' property.
- 71) Defendants breached their duty of care to remedy and/or to warn of hazardous and/or dangerous conditions on their property and/or under their control, including failing to remedy or warn of the dangers of fire posed by the electrical lines owned and/or operated by the Defendants.
- 72) As a direct and proximate result of Defendants' actions, Plaintiffs suffered property loss in such amounts as shall be shown at the time of trial.

WHEREFORE, Plaintiffs pray for judgment against Defendants Hawaiian Electric, MECO, and the County of Maui and in favor of the Plaintiffs as follows:

1. General and special damages in an amount to be proven at trial for all economic and property damages suffered by the Class;
2. Diminution in value to Plaintiffs' real property due to the fire caused by Defendants Hawaiian Electric and MECO's operations;
3. Punitive damages for Defendants' wanton, reckless, and grossly negligent conduct;
4. Reasonable attorney's fees;
5. Any prejudgment interest provided by statute;
6. Available equitable relief including unjust enrichment, disgorgement, or other available equitable remedies;
7. For such other and further relief as the Court may deem just and proper.

DATED: Honolulu, Hawai'i, this 12th day of August, 2023.

 /S/ Richard E. Wilson
TERRANCE M. REVERE
KYLE SMITH
RICHARD E. WILSON

Attorneys for Plaintiffs

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IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

NOVA BURNES;

Plaintiffs,

vs.

HAWAIIAN ELECTRIC COMPANY, INC. dba
HAWAIIAN ELECTRIC; MAUI ELECTRIC
COMPANY, LIMITED dba MECO; COUNTY
OF HAWAII, and DOE DEFENDANTS 1-10,

Defendants.

Civil No. _____
(Maui)
(Other Non-Vehicle Tort)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiffs on behalf of themselves and all others similarly situated, pursuant to Rule 38 of the Hawaii Rules of Civil Procedure, by and through their undersigned counsel, hereby demands trial by jury on all issues triable herein.

DATED: Honolulu, Hawai'i, this 12th day of August, 2023.

/S/ Richard E. Wilson

TERRANCE M. REVERE
KYLE SMITH
RICHARD E. WILSON

Attorneys for Plaintiffs

STATE OF HAWAI'I CIRCUIT COURT OF THE FIRST CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
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PLAINTIFF Nova Burnes	VS.	DEFENDANT(S) HAWAIIAN ELECTRIC COMPANY, INC. dba HAWAIIAN ELECTRIC; MAUI ELECTRIC COMPANY, LIMITED dba MECO; COUNTY OF HAWAII, and DOE DEFENDANTS 1-10
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TO THE ABOVE-NAMED DEFENDANT(S)

You are hereby summoned and required to file with the court and serve upon the above-named attorneys, TERRANCE M. REVERE, and PAUL V.K. SMITH

plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.


THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.

A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.

The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: <http://www.courts.state.hi.us>

Effective Date of 28-Oct-2019
Signed by: /s/ Patsy Nakamoto
Clerk, 1st Circuit, State of Hawai'i



 In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on OAHU- Phone No. 808-539-4400, TTY 808-539-4853, FAX 539-4402, at least ten (10) working days prior to your hearing or appointment date.