

**BEFORE THE WASHINGTON
UTILITIES & TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION,

Complainant,

v.

AVISTA CORPORATION D/B/A/ AVISTA UTILITIES

Respondent.

DOCKETS UE-220053, UG-220054, and UE-210854 (Consolidated)

**CROSS EXAMINATION EXHIBIT OF ROBERT E. BRANDKAMP
ON BEHALF OF THE
WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL
PUBLIC COUNSEL UNIT**

EXHIBIT REB-__CX

Avista's Confidential Response to Public Counsel's Data Request No. 346C on Insurance
Expense with Attachments A, B, and C

September 14, 2022

**Shaded Information is Designated as Confidential Per Protective Order
In Dockets UE-220053, UG-220054, and UE-210854 (Consolidated)**

AVISTA CORP.
RESPONSE TO REQUEST FOR INFORMATION

JURISDICTION:	WASHINGTON	DATE PREPARED:	09/07/2022
CASE NO.:	UE-220053 & UG-220054	WITNESS:	Bob Brandkamp
REQUESTER:	Public Counsel	RESPONDER:	Bob Brandkamp
TYPE:	Data Request	DEPT:	Risk Management
REQUEST NO.:	PC – 346	TELEPHONE:	(509) 495-4924
		EMAIL:	bob.brandkamp@avistacorp.com

SUBJECT: Insurance Expense

REQUEST:

Refer to Rebuttal Testimony of Robert E. Brandkamp, Exh-1CT at 4:16-21.

- a. Identify that date when each class action lawsuit was received and provide a copy of the lawsuit documentation received.
- b. On page 4 of Coppola, Exhibit SC-7C, the Company identified 5 complaints received from the 2020 Labor Day fires. Please:
 - i. Explain if the class action lawsuits discussed in your testimony are the same or in addition to the 5 complaints. If in addition, explain what the complaints entail.
 - ii. Provide the date that the 5 complaints and class action lawsuits were communicated to the insurance carriers.
 - iii. Provide any adjustment in liability premiums received from the insurance carriers for, 2021, 2022 and 2023 as a result of the complaints, and lawsuits, and state whether those additional premiums were included in the updates amounts provided in response to Public Counsel Data request No 103c and included in Exhibit SC-6C.

RESPONSE:

Please see Avista's **CONFIDENTIAL** response to data request PC-DR-346C. Please note that Avista's response to PC-DR-346C is **Confidential per Protective Order in UTC Dockets UE-220053 and UG-220054**.

- a. Blakely et al v. Avista Corp. Although this is not technically a class action lawsuit, it involves 44 individual plaintiffs and is similar to a class action in that it involves a large number of plaintiffs. Filed 3/30/22, amended 5/6/22. See See PC-DR-346 - Attachment A - Blakely et al 3 30 22 and PC-DR-346 - Attachment B - Blakely et al amended 5/6/22)

Van Dyke et al v. Avista Corp (class action). Filed a class action on behalf of themselves and similarly situation individuals on 4/8/2022 alleging negligence, private nuisance, trespass, timber trespass and inverse condemnation. PC-DR-346 - Attachment C -Van Dyke et al 4/8/22.

- b. SC-7C of Coppola testimony refers to in part PC-DR-265C which lists the major fires associated with the 2020 Labor Day fire event that Avista opened claims on with our insurance companies in anticipation that complaints for damages might eventually be received related to any one of these individual Labor Day 2020 fires (Babb Rd, Christensen Rd, Inchelium, Colfax and Sunnyside

Complex). PC-DR-265C is not a listing of complaints received related to these fires, as the question asked about causes of fires related to the claims we opened with our insurer, and if these involved Company electric wires or equipment. Therefore, the response to PC-DR-265 has been misinterpreted and PC-DR-365 cannot be answered as asked. Brandkamp's rebuttal testimony to class action complaints (or complaints similar in nature) is additional information relative to the misinterpretation that five complaints had previously been received. In fact, the number of complaints we have received to date related to the Labor Day 2020 fires is nine. The six pending complaints related to the Babb Rd fire were not received until after 103C was prepared, and therefore present a risk that 2023 and 2024 pro forma estimates related to potential additional premium to be charged by the insurers is understated.

The total complaints received to date are comprised of one dismissed small claims action, two claims submitted directly to Avista claims and subsequently declined, and six complaints currently in litigation. A summary of these claims are listed below:

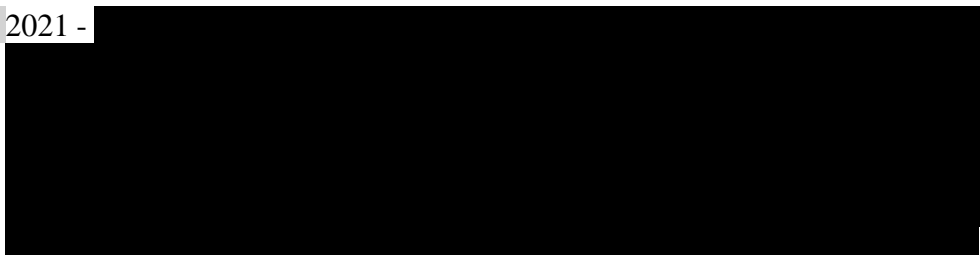
The below is a list of complaints/demands received in regard to each of the Labor Day 2020 fires:

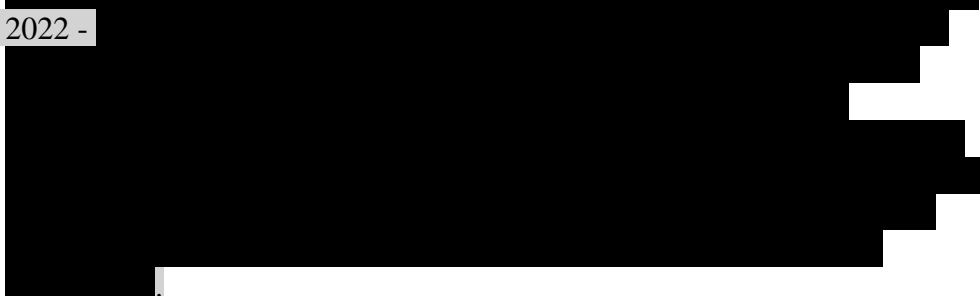
a. Babb Rd (Malden)


- i. Colley Small Claims Action - Date filed with Avista 10/15/2020. Dismissed in small claims court 11/8/2021. This complaint was not initially communicated to the insurance companies due to its small size (\$5,000) being well under our self-insured retention of \$2,000,000.
- ii. Blakely et al v. Avista Corp (Individual plaintiffs (44))- filed 3/30/2022 alleging a claim of negligence. On 5/6/22, plaintiffs filed a First Amended Complaint adding 15 additional plaintiffs and added a claim for inverse condemnation. See PC-DR-346 - Attachment A - Blakely et al 3 30 22 and PC-DR-346 Attachment B - Blakeley et al amended 5/6/22). Insurance companies notified of this complaint in 6/20/2022 update by outside counsel.
- iii. Hartford Casualty Ins. Co et al v. Avista Corp (Hartford and eight other insurance companies - subrogation claims) - filed 4/5/22. On 5/11/2022 plaintiffs filed a First Amended Complaint adding a claim on inverse condemnation. Insurance companies notified of this complaint in 6/20/2022 update by outside counsel.
- iv. Cities Insurance Association v. Avista Corp (Cities and thirteen other insurance carriers - subrogation claims). On 5/12/22, Plaintiffs filed a First Amended Complaint, adding four additional insurance carrier plaintiffs and a claim on inverse condemnation. Insurance companies notified of this complaint in 6/20/2022 update by outside counsel.
- v. Van Dyke et al. v. Avista Corp - Plaintiffs Van Dyke and Cannon, filed a class action on behalf of themselves and similarly situation individuals on 4/8/2022 alleging negligence, private nuisance, trespass, timber trespass and inverse condemnation. Insurance companies notified of this complaint in 6/20/2022 update by outside counsel.
- vi. Berkley National Insurance Co. v. Avista Corp (subrogation) filed 5/13/22 alleging claims of negligence and inverse condemnation. Insurance companies notified of this complaint in 6/20/2022 update by outside counsel.
- vii. Coast National Insurance Co. v. Avista (Coast and 10 other insurance carriers - subrogation) filed 6/15/22 alleging claims of negligence and inverse condemnation. Insurance companies notified of this complaint in 6/20/2022 update by outside counsel.

b. Colfax

- i. Hartford Insurance Company (subrogation claim to Avista). Avista advised insurers that claim was being handled internally due to small size of claim. Claim denied March, 2022. No follow up lawsuits anticipated.
 - ii. Attorney Bryan Campbell (subrogation claim to Avista) - Submitted 2/24/22. Avista advised insurer that claim was being handled internally due to small size of claim. Claim denied March, 2022. No follow up lawsuits anticipated.
- c. Additional wildfire premium charged by AEGIS for 2021 and 2022, as well as forecasted additional premium charges for 2023 and 2024 are discussed below:
- i. AEGIS

1. 2021 - 

2. 2022 - 

3. 2023 - 

4. 2024 - See response to 346(c)iii above.

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**ATTACHMENT A TO AVISTA'S RESPONSE TO PUBLIC COUNSEL'S
DATA REQUEST NO. 346C**

COPY

Original Filed

MAR 30 2022

TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SHANE BLAKELEY, an individual, MARK MILLER BUTLER, an individual, LORIN TRAVIS CARLON, an individual, NICOLE MORGAN, an individual, CARLON CONTRACTING LLC, a Washington limited liability company, TODD DECKARD, an individual and d/b/a DECKARD'S SERVICE, a Washington business entity, LAURA L. DICKINSON, an individual, RICKY DALE ANDERSON, an individual, FAITH-MARIE FOWLER, an individual, DARYLE LYNN GLASSON, an individual, ALYSHA HANNEMAN, an individual, ANDREA CICILIA HARP, an individual, HARLEY DEAN HARP, an individual, KARLEY RAE HARP, an individual, TOP KNOTCH CUSTODIANS, INC., a Washington corporation, BRADLEY HARRISON, an individual, ROXANNE LITTLEWOLF HARTMAN, an individual, RICKEY ALLEN HARTMAN, an individual, ROYLE HEHR, an individual, LESLIE HEHR, an individual, CHARITY HOLLINGSHEAD, an individual, JOSHUA CONIBER, an individual, JAMES GORDON JACOBS, an individual, JAMES RALPH LANE, an individual, RICHARD LEAS, an individual, TERESA LEAS, an individual, AUSTIN B. CONIBER, an individual, SONIA LEAS, an individual, HEIDI LINDGREN, an individual, GREG MITZINBERG, an individual, SHIRLEY MITZINBERG, an individual, RHONDA RUFF, an individual, MICHAEL L. CANEDY, an individual, THOMAS LEE SCHMIDT, an individual, HANNAH SMITH, an individual, ALEX STRUB,

NO. **22200968-32**

COMPLAINT FOR DAMAGES

1 an individual, SHAWN THORNTON, an individual,
2 SHANNON THORNTON, an individual, WAVERY
3 WARWICK, an individual, RICHARD WARWICK,
4 an individual, ANITA WENDT, an individual,
5 JAMES WENDT, an individual, KARENA
6 WILCOX, an individual,

7 Plaintiffs,

8 v.

9 AVISTA CORPORATION, a Washington
10 corporation; DOES 1-10,

11 Defendants.

12 Come now Plaintiffs by and through their counsel of record and complaining against
13 Defendants, state as follows:

14 **INTRODUCTION**

15 1. The subject matter forming the basis of this Complaint is a wildfire on September
16 7, 2020 that began in Spokane County and spread to devastate the towns of Malden and Pine
17 City. This fire became known as the Babb Road Fire (referred to below as “the Fire”). More
18 than a year later, many of these families are still without adequate shelter.

19 **I. PARTIES**

20 2. Plaintiffs are individuals and/or business entities, residents, and property owners
21 who seek justice for the loss of their homes, property, and all or most of their belongings in the
22 catastrophic Fire.

23 3. At all relevant times, Defendant Avista Corporation (“Avista”) was and is a
24 public utility corporation operating and duly organized under the laws of the State of Washington
25 with its principal place of business in Spokane, Washington. Avista operates throughout
26 Spokane County and eastern Washington.

II. JURISDICTION AND VENUE

1
2 4. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set
3 forth herein.

4 5. The Plaintiffs are individuals, residents, citizens, businesses, and domiciled
5 persons who, at all relevant times, resided in the state of Washington.

6 6. Jurisdiction is proper pursuant to Revised Code of Washington (“RCW”)
7 2.08.010.

8 7. Venue is proper in this Court pursuant to RCW 4.12.010 and RCW 4.12.020
9 because the Defendant resides in Spokane County, and the negligent acts leading to the subject
10 matter of this action occurred in Spokane County.

11
12 **II. FACTS**

13 8. Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

14 9. On or about September 7, 2020, a diseased and defective Ponderosa Pine tree
15 (referred to herein as the “defective tree”) broke and contacted Avista power lines, thereby
16 igniting the Fire. The Fire ultimately spread and caused substantial damage to Plaintiffs.

17 10. The cause of the Fire has been determined by Washington State Department of
18 Natural Resources (“DNR”) investigators. The DNR investigation concluded—and Defendant
19 Avista admits—the Fire was caused by contact between a Ponderosa pine tree and one or more
20 Avista power lines. That tree and Avista’s adjacent power lines are both shown in the photo
21 below re-printed from the DNR’s Babb Fire Wildland Investigation Report.

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12 11. DNR investigators concluded this Ponderosa pine tree had significant growth
13 defects and also carried disease leaving it more susceptible to failure.

14 12. DNR investigators concluded the defective tree had already failed and broken at
15 least once within a few years prior to the Fire. The defective tree should have been removed or
16 trimmed by Avista prior to the Fire while Avista fulfilled its obligation to better manage hazard
17 trees following earlier power line-caused fires, including the disastrous Firestorm of 1991.

18 13. DNR investigators concluded winds in the area were only approximately 18 miles
19 per hour with gusts up to 34 miles per hour when the defective tree failed, broke again, and fell
20 onto Avista power lines, quickly igniting the dry brush below.

21 14. Despite visible and grossly abnormal architecture and disease on the defective
22 tree, Avista allowed the defective tree to grow for many years toward and alongside its power
23 lines.

24 15. Avista should have been aware of the hazard presented by the defective tree and
25 taken measures to remove it as a hazard to its power lines.
26

1 16. DNR investigators measured more than 30 years of abnormal growth, leaving the
2 tree more prone to snapping, such that by the time it broke and caused the Fire, the defective
3 branch was more than 54 feet in length. At that size, that defective branch could easily strike
4 the Avista power lines which DNR investigators measured to be less than 30 feet from the trunk
5 of the defective tree.

6 17. In addition to abnormally long and heavy defective branches, DNR scientists
7 found other obvious visible problems with the defective tree including a disease known as
8 Western Gall Rust.

9 18. The DNR's investigating tree scientist concluded another defective branch from
10 the same defective tree had previously failed. DNR investigators found evidence of clean-up
11 operations from that prior failure including sharply cut branch ends.

12 19. Avista is aware that the wires carrying electricity are a dangerous instrumentality
13 and a hazardous and dangerous activity requiring the exercise of increased care commensurate
14 with and proportionate to that increased danger so as to make the transport of electricity through
15 wires safe under all circumstances and exigencies offered by the surrounding environment,
16 including the risk of fire.

17 20. The damages suffered by Plaintiffs include, but are not limited to, the following:
18 physical and mental pain and suffering; damage to, or destruction of, real and personal property,
19 residences and outbuildings; structures, fixtures, fencing, roads, water and irrigation systems;
20 damage to, or loss of, cherished possessions including animals; out-of-pocket expenses;
21 alternative living expenses; evacuation expenses; personal injuries; lost wages; loss of earning
22 capacity; loss of business income, opportunity and/or goodwill; trees, including fruit and
23 ornamental; brush; vegetation; watershed; and various types of emotional distress, annoyance,
24 inconvenience, disturbance, mental anguish, annoyance, discomfort and loss of quiet enjoyment
25 of property. The damages caused by Avista are extensive and ongoing.

1 21. The true names of DOES 1-10, whether individual, corporate, associate, agency
2 or otherwise, are unknown to Plaintiffs who sue these Defendants under fictitious names. Each
3 of the fictitiously named Defendants and Defendants are responsible in some manner for the
4 conduct alleged herein, including, without limitation, by way of conspiracy, aiding, operating,
5 abetting, acting with actual or ostensible authority, furnishing the means and/or acting in
6 capacities that create agency, *respondeat superior*, and/or predecessor or successor-in-interest
7 relationships with the Defendant. The DOE Defendants are private individuals, associations,
8 partnerships, corporations, subcontractors, entities, businesses, utilities, tree trimmers,
9 vegetation professionals and managers, or otherwise that actively assisted and participated in the
10 negligent and wrongful conduct alleged herein in ways that are currently unknown to Plaintiffs.
11 Some or all of the DOE Defendants may be residents or conduct business in the State of
12 Washington. Plaintiffs may amend or seek to amend this Complaint to allege the true names,
13 capacities and responsibility of these DOE Defendants once they are ascertained, and to add
14 additional facts and/or legal theories.

15 22. DOES 1-10 are and/or were employees, operators, cooperatives and or agents of
16 Avista, and were acting within the course and scope of their employment, duties and/or
17 relationship with Avista when they committed the acts and omissions set forth herein.

18 **FIRST CAUSE OF ACTION: NEGLIGENCE**

19 23. Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

20 24. Defendant Avista has a non-delegable duty to apply a high level of care in
21 designing, engineering, constructing, maintaining, monitoring and operating electrical
22 transmission and distribution systems commensurate with and proportionate to the danger posed
23 by such systems.

24 25. Avista also has a non-delegable duty of oversight in the maintenance, use,
25 operation, repair, and inspection appropriate to the changing conditions and circumstances of its
26 electrical transmission and distribution systems.

1 26. Prior to the ignition of the Fire, Avista knew or should have known that its
2 electrical transmission and distribution system involved a foreseeable risk for fire that was
3 particular to the operation of its business and arose either from the nature and/or location of its
4 electrical transmission and distribution system. Avista was aware of dry conditions throughout
5 Spokane County and eastern Washington and was on notice of the fire risks throughout the
6 community after several years of extreme fires in the northwest. Notwithstanding the above,
7 Avista failed to take reasonable precautions to protect the Plaintiffs from the foreseeable risk of
8 harm created by trees near its electrical transmission and distribution system. A reasonable
9 person in Avista's position would have recognized the necessity of taking special precautions to
10 protect Plaintiffs against the risk of harm created by its electrical transmission and distribution
11 system.

12 27. Avista has special knowledge and expertise far above that of a layperson that it
13 was required to apply to design, engineer, construct, use, operate, inspect, repair, and maintain
14 its electrical transmission and distribution system lines to assure safety under all the local
15 conditions in its service areas, including but not limited to those conditions identified herein.
16 Furthermore, Avista has special knowledge and expertise above that of a layperson which it is
17 required to apply to their obligation to inspect, mark, notify, trim, and remove vegetation to
18 assure line safety under all local conditions including but not limited to those conditions
19 identified herein.

20 28. Avista breached its duties by among other things:

- 21 a. Failing to conduct reasonable prompt, proper and frequent inspections of
22 the electrical transmission and distribution lines, associated equipment
23 and vegetation that could present a danger of falling on electrical
24 transmission and distribution lines;
- 25 b. Failing to design, construct, monitor, operate and maintain high voltage
26 transmission and distribution lines in a manner that avoids igniting fires;

- 1 c. Failing to inspect, repair, operate and/or maintain equipment and areas
2 necessary to prevent its electrical transmission and distribution lines from
3 igniting fires;
- 4 d. Failing to ensure trees in the area were safe and would not fall onto
5 Avista's lines or equipment;
- 6 e. Failing to conduct reasonably prompt, proper, and frequent maintenance
7 and inspections of the Electrical Distribution System ("EDS");
- 8 f. Failing to design, construct, monitor, operate and maintain the EDS in a
9 manner that avoids igniting fire during long, dry seasons by allowing the
10 EDS to withstand foreseeable conditions to avoid igniting fires;
- 11 g. Failing to design, construct, monitor, operate and maintain the EDS in fire
12 prone areas to avoid igniting fires and spreading fires;
- 13 h. Failing to install the equipment necessary, and/or to inspect, maintain and
14 repair the equipment installed to prevent the EDS from breaking and
15 falling to the ground and igniting fires;
- 16 i. Failing to implement, maintain and operate proper protective devices on
17 the system so as to avoid igniting fires and spreading fires;
- 18 j. Failing to implement proper wildfire mitigation and elimination programs
19 and activities, including, but not limited to, the use of weather stations,
20 insulated wiring, high-definition cameras and other widely used and
21 operated programs;
- 22 k. Failing to keep the EDS in a safe condition at all times;
- 23 l. Failing to preemptively de-energize power lines in a timely and proper
24 manner so as to avoid igniting fires and spreading fires;
- 25 m. Failing to implement a Public Safety Power Shutoff Program ("PSPS") in
26 time to avoid igniting fires and spreading fires;

- 1 n. Failing to maintain and keep proper records related to maintenance, repair
2 and operations of the transmission and distribution lines, including failing
3 to maintain proper vegetation management work and data bases related to
4 the vegetation surrounding the EDS;
- 5 o. Failing to properly maintain its right of way and all areas surrounding its
6 right of way;
- 7 p. Failing to adhere to utility line maintenance standards set forth in the
8 National Electric Safety Code and other national standards involving
9 vegetation management such as ANSI 300 Parts 1 and 9; and
- 10 q. Failing to implement and conduct adequate vegetation management,
11 including but not limited to inspection, trimming, and or maintenance of
12 all trees and vegetation in and around its electrical equipment.
- 13 r. Failing to operate reasonable vegetation management and hazardous tree
14 identification, mitigation and removal, including failing to improve their
15 vegetation management programs and implement appropriate training and
16 programs to assure they delivered safe electricity and not cause damages
17 to the plaintiffs by letting the defective tree contact the powerlines.

18 29. The location of the defective tree was not only in an open and visible area, but it
19 was also easily accessible to cut, trim, or otherwise safeguard against the foreseeable risk of
20 falling onto energized power lines. Thus, the difficulty of protecting against the risk of such
21 harm was minimal.

22 30. Avista's negligence was a substantial factor causing Plaintiffs' damages.

23 31. Avista's failure to comply with its duty of care proximately caused damage to
24 Plaintiffs.

25 32. As a further direct and proximate result of Avista's negligence, Plaintiffs incurred
26 damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendant Avista Corporation as follows:

33. For damages to property in an amount to be proven at the time of trial;

34. For an award of damages as compensation for Plaintiffs' emotional distress, in an amount to be proven at the time of trial;

35. For Plaintiffs' costs and expenses incurred herein;

36. For reasonable attorneys' fees to the extent allowed by law;

37. For pre-and post-judgment interest as allowed by law from the date of the incident up until the time judgment is rendered herein; and

38. For such other and further relief as the Court deems just and equitable under the circumstances.

DATED this 30th day of March, 2022.

EYMANN ALLISON JONES P.S.

By: 
JOHN D. ALLISON, WSBA # 26299

-and-

CHRISTOPHER C. SIEGLOCK, *Pro Hac Vice Application Pending*
SIEGLOCK LAW, A.P.C.
1221 Camino Del Mar
Del Mar, CA 92014
Phone: 858-793-0380

SHAWN E. CAINE, *Pro Hac Vice Application Pending*
JESSICA KIRSHNER, *Pro Hac Vice Application Pending*
THE LAW OFFICES OF SHAWN E. CAINE, A.P.C.
1221 Camino Del Mar
Del Mar, CA 92014
Phone: 858-350-1660

Attorneys for Plaintiffs

ATTACHMENT B TO AVISTA'S RESPONSE TO PUBLIC COUNSEL'S

DATA REQUEST NO. 346C

FILED

5/6/2022

Timothy W Fitzgerald

Spokane County Clerk

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

SHANE BLAKELEY, an individual, MARK MILLER BUTLER, an individual, LORIN TRAVIS CARLON, an individual, NICOLE MORGAN, an individual, CARLON CONTRACTING LLC, a Washington limited liability company, TODD DECKARD, an individual and d/b/a DECKARD'S SERVICE, a Washington business entity, LAURA L. DICKINSON, an individual, RICKY DALE ANDERSON, an individual, FAITH-MARIE FOWLER, an individual, DARYLE LYNN GLASSON, an individual, ALYSHA HANNEMAN, an individual, ANDREA CICILIA HARP, an individual, HARLEY DEAN HARP, an individual, KARLEY RAE HARP, an individual, TOP KNOTCH CUSTODIANS, INC., a Washington corporation, BRADLEY HARRISON, an individual, ROXANNE LITTLEWOLF HARTMAN, an individual, RICKEY ALLEN HARTMAN, an individual, ROYLE HEHR, an individual, LESLIE HEHR, an individual, CHARITY HOLLINGSHEAD, an individual, JOSHUA CONIBER, an individual, JAMES GORDON JACOBS, an individual, JAMES RALPH LANE, an individual, RICHARD LEAS, an individual, TERESA LEAS, an individual, AUSTIN B. CONIBER, an individual, SONIA LEAS, an individual, HEIDI LINDGREN, an individual, GREG MITZINBERG, an individual, SHIRLEY MITZINBERG, an individual, RHONDA RUFF, an individual, MICHAEL L. CANEDY, an individual, THOMAS LEE SCHMIDT, an individual, HANNAH SMITH, an individual, ALEX STRUB,

CASE NO. 22200968-32

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

1 an individual, SHAWN THORNTON, an individual,
 2 SHANNON THORNTON, an individual, WAVERY
 3 WARWICK, an individual, RICHARD WARWICK,
 4 an individual, ANITA WENDT, an individual,
 5 JAMES WENDT, an individual, KARENA
 6 WILCOX, an individual, JEANNIE MARIE HARP,
 7 an individual, JACOB ROGER HARP, an
 8 individual, GEDENA JONES PARHAM, an
 9 individual, DENNIS PARHAM, an individual,
 10 CAROLE LINKINS, an individual, KELLY
 11 ADAMS, an individual, JOSH ADAMS, an
 12 individual, PAM MONTAGUE, an individual,
 13 LEROY HOOTEN, an individual, RITA
 14 GOSSARD-HOOTEN, an individual, CAROLYN
 15 BLIENSNER, an individual, JOHN BLIENSNER,
 16 an individual, JOE DAWSON, an individual,
 17 CINDY ALMER, an individual

Plaintiffs,

v.

13 AVISTA CORPORATION, a Washington
 14 corporation; and DOES 1-10,

Defendants.

16
 17 Come now Plaintiffs by and through their counsel of record and complaining against
 18 Defendant, state as follows:

INTRODUCTION

19
 20 1. This Complaint relates to a wildfire that started September 7, 2020, in Spokane
 21 County, and ultimately spread to the towns of Malden and Pine City. This fire is known as the
 22 Babb Road Fire (hereinafter “the Fire”). More than a year later, many families impacted by the
 23 Fire are still without adequate shelter.

24 ///

25 ///

26 ///

1 **I. PARTIES**

2 2. Plaintiffs are individuals and/or business entities, residents, and property owners
3 who seek justice for the loss of their homes, property, and all or most of their belongings in the
4 catastrophic Fire.

5 3. At all relevant times, Defendant Avista Corporation (“Avista”) was and is a
6 public utility corporation operating and duly organized under the laws of the State of Washington
7 with its principal place of business in Spokane, Washington. Avista operates throughout
8 Spokane County and eastern Washington.

9 **II. JURISDICTION AND VENUE**

10 4. Plaintiffs re-allege and incorporate all preceding paragraphs as though fully set
11 forth herein.

12 5. The Plaintiffs are individuals, residents, citizens, businesses, and domiciled
13 persons who, at all relevant times, resided in the state of Washington.

14 6. Jurisdiction is proper pursuant to Revised Code of Washington (“RCW”)
15 2.08.010.

16 7. Venue is proper in this Court pursuant to RCW 4.12.010 and RCW 4.12.020
17 because the Defendant resides in Spokane County, and the negligent acts leading to the subject
18 matter of this action occurred in Spokane County.

19 **II. FACTS**

20 8. Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

21 9. On or about September 7, 2020, a diseased and defective Ponderosa Pine tree
22 (hereinafter the “defective tree”) broke and contacted Avista power lines, ultimately igniting the
23 Fire. The Fire’s spread caused substantial damage to Plaintiffs.

24 10. A Washington State Department of Natural Resources (hereinafter “DNR”)
25 investigation concluded—and Defendant Avista admits—that the Fire was caused by contact
26 between the defective Ponderosa pine tree and one or more Avista power lines. That defective

1 tree and Avista's adjacent power lines are both depicted in the photo below re-printed from the
2 DNR's Babb Fire Wildland Investigation Report.



14 11. DNR investigators concluded this Ponderosa pine tree had significant growth
15 defects and also carried disease leaving it more susceptible to failure.

16 12. DNR investigators concluded the defective tree had already failed and broken at
17 least once within a few years prior to the Fire. The defective tree should have been removed or
18 trimmed by Avista in advance of the Fire, consistent with Avista's obligation to better manage
19 hazard trees following earlier power line-caused fires, including the disastrous Firestorm of
20 1991.

21 13. DNR investigators concluded winds in the area were only approximately 18 miles
22 per hour with gusts up to 34 miles per hour when the defective tree failed, fracturing a branch,
23 which fell onto Avista power lines, quickly igniting the dry brush below.

24 14. Despite visible and grossly abnormal architecture and disease on the defective
25 tree, Avista allowed the defective tree to grow for many years toward and alongside its power
26 lines.

1 15. Avista should have been aware of the hazard presented by the defective tree and
2 taken measures to remove it as a hazard to its power lines.

3 16. DNR investigators measured more than 30 years of abnormal growth, leaving the
4 tree more prone to snapping. At the time of the Fire, the defective branch was more than 54-feet
5 in length. At that size, the defective branch could easily strike the Avista power lines, which
6 DNR investigators measured to be less than 30 feet from the trunk of the defective tree.

7 17. In addition to abnormally long and heavy defective branches, DNR scientists
8 noted other obviously visible problems with the defective tree including a disease known as
9 Western Gall Rust.

10 18. The DNR's investigating tree scientist concluded another branch from the same
11 defective tree had previously failed. DNR investigators found evidence of clean-up operations
12 from that prior failure, including sharply cut branch ends.

13 19. Avista is aware that wires carrying electricity are a dangerous instrumentality,
14 and a hazardous and dangerous activity requiring the exercise of increased care commensurate
15 with, and proportionate to, that increased danger so as to make the transport of electricity through
16 wires safe under all circumstances and exigencies offered by the surrounding environment,
17 including the risk of fire.

18 20. The damages suffered by Plaintiffs include, but are not limited to, the following:
19 physical and mental pain and suffering; damage to, or destruction of, real and personal property,
20 residences and outbuildings; structures, fixtures, fencing, roads, water and irrigation systems,
21 damage to, or loss of, cherished possessions including animals; out-of-pocket expenses;
22 alternative living expenses; evacuation expenses; personal injuries; lost wages; loss of earning
23 capacity; loss of business income, opportunity and/or goodwill; trees, including fruit and
24 ornamental; brush; vegetation; watershed; and various types of emotional distress, annoyance,
25 inconvenience, disturbance, mental anguish, annoyance, discomfort and loss of quiet enjoyment
26 of property. The damages caused by Avista are extensive and ongoing.

1 21. The true names of DOES 1-10, whether individual, corporate, associate, agency
2 or otherwise, are unknown to Plaintiffs who sue these Defendants under fictitious names. Each
3 of the fictitiously named Defendants and Defendants are responsible in some manner for the
4 conduct alleged herein, including, without limitation, by way of conspiracy, aiding, operating,
5 abetting, acting with actual or ostensible authority, furnishing the means and/or acting in
6 capacities that create agency, *respondeat superior*, and/or predecessor or successor-in-interest
7 relationships with the Defendant. The DOE Defendants are private individuals, associations,
8 partnerships, corporations, subcontractors, entities, businesses, utilities, tree trimmers,
9 vegetation professionals and managers, or otherwise that actively assisted and participated in the
10 negligent and wrongful conduct alleged herein in ways that are currently unknown to Plaintiffs.
11 Some or all of the DOE Defendants may be residents or conduct business in the State of
12 Washington. Plaintiffs may amend or seek to amend this Complaint to allege the true names,
13 capacities, and responsibility of these DOE Defendants once they are ascertained, and to add
14 additional facts and/or legal theories.

15 22. DOES 1-10 are and/or were employees, operators, cooperatives and or agents of
16 Avista, and were acting within the course and scope of their employment, duties and/or
17 relationship with Avista when they committed the acts and omissions set forth herein.

18 **FIRST CAUSE OF ACTION: NEGLIGENCE**

19 23. Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

20 24. Defendant Avista has a non-delegable duty to apply a high level of care in
21 designing, engineering, constructing, maintaining, monitoring, and operating electrical
22 transmission and distribution systems commensurate with and proportionate to the danger posed
23 by such systems.

24 25. Avista also has a non-delegable duty of oversight in the maintenance, use,
25 operation, repair, and inspection appropriate to the changing conditions and circumstances of its
26 electrical transmission and distribution systems.

1 26. Prior to the ignition of the Fire, Avista knew or should have known that its
2 electrical transmission and distribution system involved a foreseeable risk of fire that was
3 particular to the operation of its business and arose either from the nature and/or location of its
4 electrical transmission and distribution system. Avista was aware of dry conditions throughout
5 Spokane County and eastern Washington, and was on notice of the fire risks throughout the
6 community after several years of extreme fires in the northwest. Nevertheless, Avista failed to
7 take reasonable precautions and exposed the Plaintiffs to the foreseeable risk of harm created by
8 trees near its electrical transmission and distribution system. A reasonable person in Avista's
9 position would have recognized the necessity of taking special precautions to protect Plaintiffs
10 against the risk of harm created by its electrical transmission and distribution system.

11 27. Avista has special knowledge and expertise far above that of a layperson that it
12 was required to apply to design, engineer, construct, use, operate, inspect, repair, and maintain
13 its electrical transmission and distribution system lines to assure safety under all the local
14 conditions in its service areas, including but not limited to those conditions identified herein.
15 Furthermore, Avista has special knowledge and expertise above that of a layperson which it is
16 required to apply to their obligation to inspect, mark, notify, trim, and remove vegetation to
17 assure line safety under all local conditions including but not limited to those conditions
18 identified herein.

19 28. Avista, through its actions and inaction regarding the maintenance and operation
20 of its electrical transmission and distribution system lines, breached its duties to Plaintiffs.

21 29. The location of the defective tree was not only in an open and visible area, but it
22 was also easily accessible to cut, trim, or otherwise safeguard against the foreseeable risk of
23 falling onto energized power lines. Thus, the difficulty of protecting against the risk of such
24 harm was minimal.

25 30. Avista's negligence was a substantial factor causing Plaintiffs' damages.

26 ///

1 31. Avista's failure to comply with its duty of care proximately caused damage to
2 Plaintiffs.

3 32. As a further direct and proximate result of Avista's negligence, Plaintiffs incurred
4 damages in an amount to be proven at trial.

5 **SECOND CAUSE OF ACTION: INVERSE CONDEMNATION**

6 33. Plaintiffs re-allege all preceding paragraphs as though fully set forth herein.

7 34. The Washington Constitution, Article I, Section 16, provides in part: "No private
8 property shall be taken or damaged for public or private use without just compensation having
9 been first made."

10 35. In the State of Washington, inverse condemnation requires a taking or damaging
11 of private property for public use, without just compensation, by a governmental entity that has
12 not instituted formal proceedings. *E.g.*, Fitzpatrick v. Okanogan County, 169 Wn.2d 598, 605-
13 606 (2010).

14 36. Plaintiffs are owners of property or persons claiming an interest in property
15 destroyed and/or damaged by the Fire.

16 37. Avista is an entity with the power of condemnation pursuant to RCW 80.32.060.
17 and must operate in the public interest. WAC 480-100-001.

18 38. Avista is a governmental entity for purposes of an inverse condemnation claim
19 because the State of Washington grants Avista the power to condemn by eminent domain.

20 39. Avista owned, operated, controlled, managed, and/or maintained EDS
21 infrastructure in Spokane and Whitman Counties including, without limitation, in and around
22 the Fire's area of origin and the towns of Malden and Pine City, Washington, for the purpose of
23 providing electricity to the public. Avista exercised control and dominion over said EDS and
24 public improvements as a public project and public benefit. The EDS owned, operated,
25 controlled, managed, and/or maintained by Avista constitutes a public improvement for public
26 use.

1 40. Avista's failure to maintain and inspect vegetation in close proximity to its EDS
2 and failure to de-energize its powerlines on or about September 7, 2020, caused the Babb Road
3 Fire, which burned, destroyed, and/or damaged properties owned and/or occupied by Plaintiffs.

4 41. Avista's actions constitute a taking of Plaintiffs' private property by inverse
5 condemnation, without adequate or just compensation, or the institution of formal eminent
6 domain or condemnation proceedings.

7 42. The damage to Plaintiffs is disproportionate to the risks from the public
8 improvements made to benefit the community as a whole. Justice, fairness, and the Washington
9 Constitution require that Plaintiffs be compensated for their injuries and the taking by Avista,
10 rather than allowing the injuries and taking to remain disproportionately or exclusively
11 concentrated on Plaintiffs.

12 43. As a result of Avista's taking by inverse condemnation as described herein,
13 Plaintiffs suffered property losses and other economic losses, as well as non-economic losses
14 including stress, anxiety, depression, emotional distress, and pain and suffering, among other
15 general damages.

16 44. Plaintiffs are entitled to their reasonable attorneys fees and costs pursuant to
17 RCW 8.24.030.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment against Defendant Avista Corporation and
20 DOES 1-10 as follows:


- 21 1. For damages to property in an amount to be proven at the time of trial;
22 2. For an award of damages as compensation for Plaintiffs' emotional distress, in
23 an amount to be proven at the time of trial;
24 3. For Plaintiffs' costs and expenses incurred herein;
25 4. For reasonable attorneys' fees to the extent allowed by law;
26

1 5. For pre-and post-judgment interest as allowed by law from the date of the incident
2 up until the time judgment is rendered herein; and

3 6. For such other and further relief as the Court deems just and equitable under the
4 circumstances.

5
6 DATED this 6th day of May, 2022.

7
8 **EYMANN ALLISON JONES P.S.**

9
10 
11 _____
12 JOHN D. ALLISON, WSBA #26299 -and-

13 CHRISTOPHER C. SIEGLOCK, *Pro Hac Vice*
14 **SIEGLOCK LAW, A.P.C.**
15 1221 Camino Del Mar
16 Del Mar, CA 92014
17 Phone: 858-793-0380
18 Fax: 866-664-0577

19 SHAWN E. CAINE, *Pro Hac Vice*
20 JESSICA KIRSHNER, *Pro Hac Vice*
21 **THE LAW OFFICES OF SHAWN E. CAINE, A.P.C.**
22 1221 Camino Del Mar
23 Del Mar, CA 92014
24 Phone: 858-350-1660

25 *Attorneys for Plaintiffs*
26

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the 6th day of May, 2022, I caused to be served a true and correct copy of the foregoing to the following in the manner described below:

<p>Scott C. Cifrese Paine Hamblen LLP 717 W Sprague Ave, Suite 1200 Spokane, WA 99201 <i>Counsel for Defendant</i></p>	<p><input type="checkbox"/> Hand Delivery <input type="checkbox"/> Via Messenger Delivery <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Electronic Mail Scott.cifrese@painehamblen.com; Amy.oien@painehamblen.com</p>
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Aiday Bergland, Legal Assistant

**ATTACHMENT C TO AVISTA'S RESPONSE TO PUBLIC COUNSEL'S
DATA REQUEST NO. 346C**

FILED
4/8/2022
Timothy W Fitzgerald
Spokane County Clerk

SUPERIOR COURT OF WASHINGTON IN AND FOR SPOKANE COUNTY

KEVIN and HEATHER VAN DYKE, and
GARY DEAN CANNON,

Plaintiffs,

v.

AVISTA CORPORATION,

Defendant.

No. 22-2-01089-32

COMPLAINT – CLASS ACTION

I. INTRODUCTION

1.1. On Labor Day 2020, a powerful windstorm hit Eastern Washington. East winds encountered a region tinder-dry after summer. Forecasters warned that the combination of those conditions—strong east winds, dry fuels—meant critical fire conditions in the Northwest. Any fire that started would be uncontrollable.

1.2. Despite those warnings, and contrary to industry best practices, Defendant Avista Utilities took no steps to de-energize its power infrastructure to prevent that equipment from starting a fire. It did this knowing that its equipment had sparked destructive fires in the past, knowing that recent utility-sparked fires had destroyed whole communities in the West, and knowing that other utilities in the Northwest were planning to—and did—de-energize their lines during the same Labor Day windstorm.

1 1.3. Tragically, the inevitable happened. When the east winds arrived, they toppled
2 part of a diseased Ponderosa pine next to an Avista distribution line. A limb from that tree
3 struck Avista's energized line, showering sparks on the brittle brush and grass below. The
4 resulting Babb Road fire rapidly spread to the southwest across the Palouse, overtaking and
5 largely destroying the towns of Malden and Pine City. The fire eventually burned over 200
6 homes, businesses, or other structures, and it forever changed the lives of scores of Spokane and
7 Whitman County residents.

8 1.4. Plaintiffs were among the victims of Avista's Babb Road fire. They bring this
9 action on behalf of themselves and others similarly situated under CR 23 to recover from Avista
10 the damages it caused and to hold Avista accountable by seeking appropriate injunctive relief.

11 **II. PARTIES AND JURISDICTION**

12 1.5. Plaintiffs Heather and Kevin Van Dyke own property and reside in Malden,
13 Washington.

14 1.6. Plaintiff Gary Dean Cannon owns property and resides in Malden, Washington.

15 1.7. Defendant Avista Utilities is a privately owned utility and corporation organized
16 under the laws of the state of Washington, with its principal place of business and headquarters
17 in Spokane County, Washington. Avista owned, operated, and maintained the power distribution
18 lines which are the subject of this litigation.

19 1.8. This Court has jurisdiction under Wash. const. art. IV, § 6, and venue is proper in
20 Spokane County under RCW 4.12.020 and RCW 4.12.025 because some part of the action arose
21 in Spokane County, and because Defendant resides in Spokane County.

22 **III. FACTUAL ALLEGATIONS**

23 1.9. On Labor Day 2020, a forecasted high-wind event swept over Eastern
24 Washington. That wind caused a diseased tree branch to fall on an energized Avista power line,
25 throwing sparks on dry brush below. The resulting conflagration swept over and largely
26 destroyed the towns of Malden and Pine City, incinerated Plaintiffs' homes, their vehicles, their

1 personal property, and dramatically upended the lives of Plaintiffs and the putative class they
2 seek to represent.

3 **A. Avista's Equipment Caused the Babb Road Fire.**

4 1.10. According to the Department of Natural Resources (DNR), the Babb Road fire
5 began on September 7, 2020, when a branch from a Ponderosa pine tree fell on an Avista power
6 distribution line, sparking flames in grass, brush, and timber.

7 1.11. Avista owned, operated, and maintained the power distribution lines which are
8 the subject of this litigation.

9 1.12. This image taking by a DNR investigator shows the tree and the Avista
10 distribution line, which fed a nearby pump station:



25 1.13. A branch from this tree showed markings and peeling of bark consistent with its
26 being pulled across a hard surface like a power line.

1 1.14. The tree also had evidence of insect damage and disease, as well as evidence of
2 prior branch failures. Despite this, after the fire Avista misleadingly told the public that it was
3 “an otherwise healthy tree and limb” that fell on its powerline.¹

4 1.15. Trees or tree limbs encountering power lines is a leading cause of wildfire, as
5 Avista knew or should have known. Avista had a duty to operate and maintain its electrical
6 equipment in a responsible manner. As part of that duty, Avista must inspect and maintain the
7 vegetation adjacent to the equipment to remove any vegetation that poses a wildfire hazard.

8 1.16. Avista breached that duty by failing to sufficiently inspect or trim the Ponderosa
9 pine that fell on its distribution line, sparking the Babb Road fire.

10 1.17. According to DNR’s forest pathologist, Avista should have known the risk that
11 the tree posed to its equipment: “because of the unusual configuration of the tree, and its
12 proximity to the powerline, a closer inspection was warranted.” That close inspection would
13 have revealed the potential for the failure of the branch that did eventually fall, starting the Babb
14 Road fire.

15 1.18. From its point of origin, in the upper right corner of this map below prepared by
16 the *Seattle Times*, the fire quickly spread to the southwest, causing damage to property in
17 Spokane and Whitman Counties and overtaking the towns of Malden and Pine City:²

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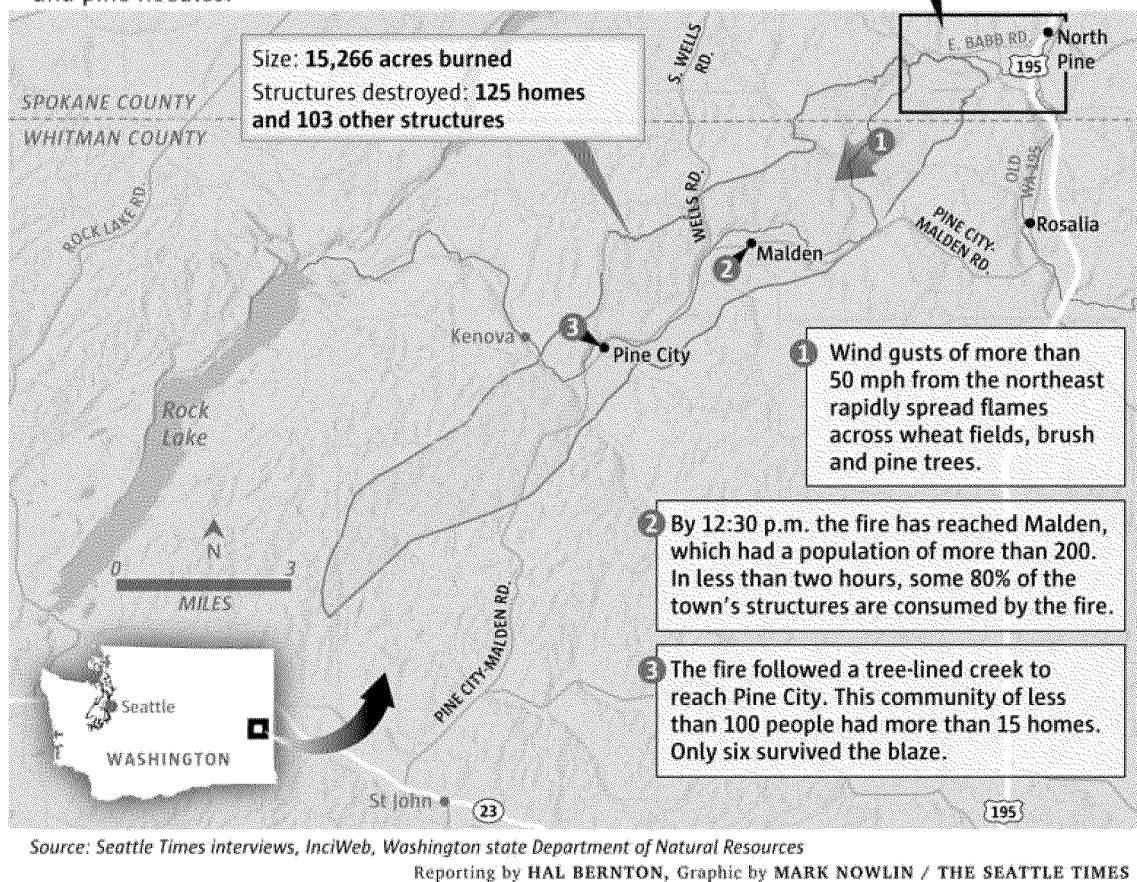
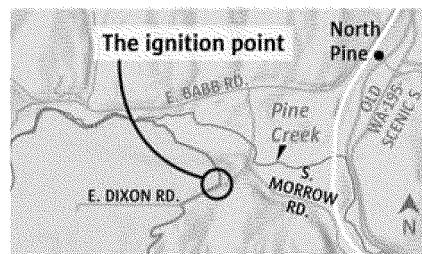
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25 _____
26 ¹ KREM Staff, KREM, *Avista says tree limb hitting powerline suspected as cause of Babb-Malden Fire* (Sep. 21,
2020), <https://www.krem.com/article/news/local/wildfire/avista-malden-fire-dnr-investigation/293-0aa60ced-3bfb-4f33-902a-2f7427628a01>

² <https://www.seattletimes.com/seattle-news/the-day-a-wildfire-took-malden/>

Fire that destroyed Malden was sparked by branch hitting power lines

Sometime before 12 p.m. on Sept. 7, 2020, a tree top topples onto Avista Utilities power lines. The lines rub together, smoke and give off sparks that ignite dry grass and pine needles.



B. The Babb Road Fire's Destructive Path

1.19. For people living in the path of the Avista's Babb Road fire, the first signs of trouble were darkening skies and smoke, then raining ash and embers, and finally a fast-moving wall of fire that forced them to flee for their lives.

1.20. Once the Babb Road fire started, its rapid spread was certain. As reported, "It's not a fire [firefighters] could fight. Due to the high winds, it was too dangerous for aircraft to

1 help out. Even if there were aircraft and 100 fire trucks, firefighters say, the fire would be
2 unstoppable.”³

3 1.21. Avista knew or should have known that high winds from the east would cause
4 trees or tree branches to contact its distribution and transmission lines. And Avista knew or
5 should have known that contact from a tree on its utility equipment was likely to ignite a
6 wildfire that would result in widespread property damage downwind.

7 1.22. For many, the fire arrived at the same time as warnings to evacuate. There was
8 only time to grab a couple items and go. As Whitman County Sheriff Brett Myers said, “When
9 we got information that fire started, there were 40 or 50 mph winds.... By the time we had law
10 enforcement in town to evacuate, the fire was at city limits, and within 20 minutes, it was
11 consuming homes.”⁴

12 1.23. The fire affected the whole community in Malden. City hall, the fire station and,
13 as shown in this *Spokesman-Review* photo, the post office, all burned:



25
26 ³ <https://www.inlander.com/spokane/how-a-fire-destroyed-the-town-of-malden-in-a-matter-of-hours/Content?oid=20284714>

⁴ <https://www.spokesman.com/stories/2020/sep/07/fire-rages-through-whitman-county-town-of-malden/>

1 1.24. Officials estimated 80% of all the homes and structures in Malden were
2 destroyed.⁵ As Mayor Dan Harwood said one year later, “Whether they lost a home or a shed,
3 everyone in Malden is affected . . . If there is a plume of smoke to the west of us, or especially
4 to the east, my phone lights up and folks say ‘Dan is it going to get us again’ and they’re
5 petrified.”

6 1.25. In all, the fire destroyed at least 121 homes, 8 commercial properties, and 94
7 other structures in an afternoon, in a matter of hours.

8 1.26. The fire destroyed the communities in its path in minutes. Its devastating impacts
9 may never fully heal. Residents who lost their homes are still living in RVs or other temporary
10 quarters as they try to rebuild their lives. As the *Seattle Times* reported, “for most residents, the
11 fire remains ever-present: in the vacant lots where homes used to be; in the claustrophobic,
12 overheated spaces of RVs that serve as temporary housing; and in the longing for photographs,
13 handwritten love poems and children’s drawings lost in the rubble.”⁶

14 C. Plaintiffs’ Suffered Injury to Their Property.

15 Heather and Kevin Van Dyke

16 1.27. In 2020, Kevin and Heather Van Dyke had finally paid off the mortgage on their
17 home and 2-acre property in Malden. They had even remodeled the inside of the house that
18 year, and Kevin planned to retire soon so they could enjoy it.

19 1.28. Then, on Labor Day 2020, their son sent Kevin a picture to warn him about a fire
20 headed their way. Realizing the danger, Kevin—a volunteer firefighter—ran to his son’s house
21 and tried to fight the fire, then ran to his mother’s house to try to save her home on the family’s
22 1,700-acre farm.

23 1.29. But little could be done to stop the fire. It wiped out the Van Dyke’s house,
24 garage and shop, two cars, two RVs and the timber on his property, as shown in part in this
25 image from when the fire was still smoldering:

26 ⁵ <https://www.facebook.com/whitmancountysheriff/photos/a.1652949868339629/2441022266199048>

⁶ <https://www.seattletimes.com/seattle-news/the-day-a-wildfire-took-malden/>



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17 1.30. The fire destroyed their property—irreplaceable things like children’s photos,
18 grandma’s recipes, the children’s Christmas tree decorations—but it has also caused long-
19 lasting emotional distress and anxiety for them both and displacement. They are having to
20 rebuild their life on a property that’s been transformed and devalued by Avista’s fire.

21 1.31. The Van Dyke family, known for their civic involvement in the community,
22 brings this case on behalf of themselves and their neighbors to recover all available damages
23 and hold Avista accountable for the damage it caused.

24 **Gary “Dean” Canon**

25 1.32. Gary “Dean” Cannon had lived in the Malden area for over thirty years when
26 Avista’s Babb Road fire swept through the town and upended his life.

1 1.33. The day of the fire, he was at home with his partner Laura Rankin when they saw
2 smoke. They had just minutes to gather what they could and flee. Cannon had never seen
3 anything like the wall of flames that rushed toward the town with the roar and rumble of a train.

4 1.34. The fire destroyed Cannon's commercial property on Main Street, turning to
5 rubble the brick building that was one of the largest in Malden. Along with the building, the fire
6 destroyed numerous cars, outbuildings, and equipment Mr. Cannon kept at the property.

7 1.35. The fire also damaged his property at another property where he lived owned by
8 Ms. Rankin. The fire destroyed his truck and irreplaceable furniture he had inherited from his
9 great grandfather.

10 1.36. Mr. Cannon did not lose only material things, however. He lost his sense of
11 safety and security, leading to anxiety, stress, and depression. Two of their cats died in the fire
12 and two more were burned so badly they spent weeks with the veterinarian.

13 **D. Avista Did Not Adequately Prepare for Known Risk of Wildfire.**

14 1.37. Despite the well-known risk of catastrophic, utility-caused wildfires, Avista had
15 no plan to consider de-energizing its equipment before the Labor Day 2020 windstorm. By
16 contrast, other utilities in the area did preemptively de-energize their lines to prevent precisely
17 the tragedy that unfolded across southern Spokane County and into Whitman County.

18 1.38. Avista has known for at least a decade about the risk of catastrophic, utility-
19 caused wildfires, but it did not adequately plan for them. As David Howell, Avista's Director of
20 Electrical Operations, told an interviewer last May, "We saw this happening in California about
21 10 years ago."⁷

22 1.39. Utility operations plans to de-energize power equipment during extreme fire
23 conditions are standard on the West Coast. "In Oregon and California, all the investor-owned
24
25
26

⁷ KREM Interview, 1:24 <https://www.youtube.com/watch?v=efbkNbIS3NU>

1 utilities regulated by state utility commissions have developed such plans[.]”⁸ As of 2020,
2 Avista had not.

3 1.40. According to its May 2020 “Wildfire Resiliency Plan,” Avista had no plans to
4 preemptively shut off the power: “at this time Avista does not plan to pre-emptively shutoff
5 power to mitigate the risk of wildfire.” But that same plan concedes such that such “Public
6 Safety Power Shutoffs” are standard practice: “major utilities in California pre-emptively
7 shutoff power to prevent spark-ignitions from overhead powerlines.”

8 1.41. In a presentation last year from Dave James, Avista’s Transmission Asset
9 Manager, Mr. James discussed the known risk from wildfire and how that risk had become
10 “more than theoretical” after the 2018 Camp Fire in California.⁹ Mr. James explained in that
11 presentation that things like “Tree Outage,” Spark Ignition,” and “Fire” are “certain” to occur:

The two sides of the Risk Coin

<p>Certain</p> <p><u>Probability</u></p> <p>Tree Outage</p> <p>Spark Ignition</p> <p>Fire</p>		<p>Variable</p> <p><u>Impact</u></p> <p>Financial</p> <p>Brand</p> <p>Safety</p>
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Risk = Probability X Impact

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22 1.42. Avista is no stranger to its own equipment sparking destructive wildfires. Its
23 predecessor organization was part of the cause of the 1991 “Firestorm” in Spokane that

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25 ⁸ Hal Bernton, Seattle Times, *Two Washington electric utilities opt out of power shut-offs to prevent wildfires in*
26 *2021* (Jun. 1, 2021), <https://www.seattletimes.com/seattle-news/northwest/avista-pse-opt-out-of-public-safety-power-cutoffs-for-2021-fire-season/>

⁹ Data-Driven Asset Risk Scores for Wildfire, <https://vimeo.com/487936797>

1 destroyed more than 110 homes.¹⁰ More recently, in 2019, the Washington DNR also faulted
2 Avista for starting the Boyds fire, which burned at least three homes and several outbuildings.
3 As with the Babb Road fire, the Boyds fire began when a ponderosa pine fell on an energized
4 Avista power line. There, as here, the state alleged the tree was visibly defective and should
5 have been removed.

6 1.43. Not only did Avista fail to preemptively de-energize its lines, it failed to maintain
7 the area near their lines to prevent trees and other vegetation from igniting fires.

8 1.44. Leading up to Labor Day 2020, Avista knew or should have known that any
9 ignition from its equipment would lead to a devastating fire. The day before the fire began, the
10 National Weather Service issued a Red Flag warning for much of Eastern Washington,
11 including the Babb Fire area. A Red Flag warning indicates conditions for the rapid spread of
12 any new fire:

13 PRECAUTIONARY/PREPAREDNESS ACTIONS...

14 A Red Flag Warning means that critical fire weather conditions
15 are either occurring now...or will shortly. A combination of
16 strong winds...low relative humidity...and warm temperatures can
contribute to extreme fire behavior.

17
18 1.45. On September 6, the day before the fire began, The *Spokesman-Review* reported
19 on the potential for high winds, “prompting fire concerns for the end of the Labor Day
20 weekend.”¹¹ The same day, the National Weather Service’s Spokane office warned of the “Calm
21 Before the Storm” and coming “fire concern” on Labor Day:

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23
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25 ¹⁰ <https://www.chronline.com/stories/when-utilities-spark-wildfires-in-washington-they-can-burn-down-your-house-and-get-away-with-it.281835>

26 ¹¹ Kip Hill, *Spokesman, Red flag fire warning issued for Spokane area on Monday*,
<https://www.spokesman.com/stories/2020/sep/06/red-flag-fire-warning-issued-for-spokane-area-on-m/>

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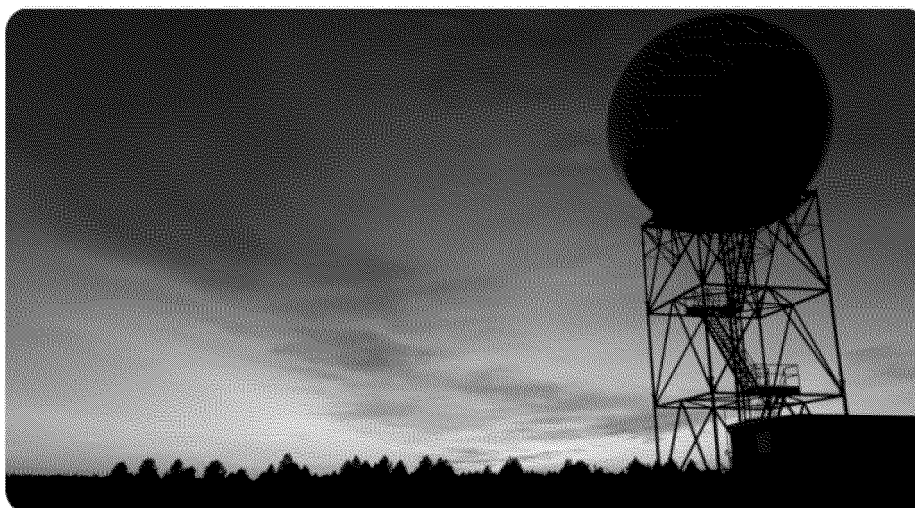


NWS Spokane
@NWSSpokane

...

The "Calm Before the Storm" at our office. #sunset

It is quiet weather to end the day, but come Labor Day look for strong winds, rough lakes, fire concerns & localized blowing dust. For the latest warnings, advisories & forecasts head to: weather.gov/spokane
#wawx #idwx



7:53 PM · Sep 6, 2020 · Twitter Web App

1.46. The same National Weather Service office had been raising the same concerns for days:

- September 4th at 2:14 PM PDT: Fire Weather Watch issued for Fire Weather Zone 673. Winds 15 to 25 mph with gusts to 40 mph and relative humidity as low as 16%.
- September 5th at 5:33 AM PDT: Fire Weather Watch continues for Fire Weather Zone 673. Winds 15 to 25 mph with gusts to 45 mph and relative humidity as low as 11%.

- 1 • September 5th at 3:08 PM PDT: Fire Weather Watch continues for Fire Weather
2 Zone 673. Winds 20 to 30 mph with gusts to 45 mph and relative humidity as
3 low as 14%.
- 4 • September 6th at 5:30 AM PDT: Red Flag Warning issued for Fire Weather Zone
5 673. Winds 20 to 30 mph with gusts to 50 mph and relative humidity as low as
6 12%.
- 7 • September 6th at 2:01 PM PDT: Red Flag Warning continues for Fire Weather
8 Zone 673. Winds 20 to 35 mph with gusts to 50 mph and relative humidity as
9 low as 12%.
- 10 • September 7th at 5:13 AM PDT: Red Flag Warning continues for Fire Weather
11 Zone 673. Winds 25 to 35 mph with gusts to 50 mph and relative humidity as
12 low as 10%.¹²

13 1.47. Avista did not heed these warnings and pre-emptively de-energize its power
14 equipment as other Northwest utilities did during the same wind event.¹³ It failed to do so even
15 after the same wind event had already knocked a tree onto power lines near Davenport, sparking
16 the Whitney Fire at roughly 10:30 a.m.¹⁴ And it failed to do so even though the conditions met
17 those that trigger preemptive power shutoffs for other power companies.¹⁵

18 1.48. Shockingly, even after its equipment caused catastrophic damage in 2020, Avista
19 continues to refuse to consider public safety de-energization during hot, dry, windy conditions.
20
21
22
23

24 ¹² <https://storymaps.arcgis.com/stories/ee667f75f722456c95e8a59802a28541>

25 ¹³ *See, e.g., KGW, PGE shuts off power near Mt. Hood due to wildfire danger,*
<https://www.kgw.com/article/news/local/wildfire/pge-may-shut-off-power-near-mt-hood-due-to-wildfire-danger/283-fb37c11a-129b-4e7a-a1fa-864d477e7cc8>

26 ¹⁴ <https://storymaps.arcgis.com/stories/ee667f75f722456c95e8a59802a28541>

¹⁵ https://www.bigcountrynewsconnection.com/local/how-power-lines-ignited-dozens-of-washington-state-fires-during-fierce-labor-day-winds/article_862efbf7-a5e9-5929-b6f4-98f4ca2b4ed8.html

1 Dave James, who managed Avista’s wildfire program, told the Utilities and Transportation
2 Commission in May 2021, that a “public safety power shut-off is not in our tool kit.”¹⁶

3 IV. CLASS ALLEGATIONS

4 1.49. Plaintiffs bring this on behalf of themselves and a putative class under CR 23
5 initially defined as:

6 All owners or residents, as of September 7, 2020, of any privately owned real
7 property that is wholly or partially within the boundary Babb Road fire, and
8 which property experienced at least low soil burn severity during that fire.

9 1.50. The proposed class is sufficiently numerous. According to DNR, the Babb Fire
10 destroyed at least 121 residences, 8 commercial buildings, and 94 other structures.

11 1.51. Plaintiffs’ claims, which arise from the same wildfire, are typical of the class.

12 1.52. Plaintiffs will adequately protect the interest of the class and have retained
13 counsel experience in class and fire litigation.

14 1.53. There are questions of fact and law common to the class, including:

15 1.53.1. Whether power line infrastructure owned, operated, controlled, or
16 managed by Avista caused the Babb Road fire;

17 1.53.2. Whether Avista’s decision to not shut off power lines was negligent;

18 1.53.3. Whether Avista’s decision to not shut off power lines caused a private
19 nuisance;

20 1.53.4. Whether Avista’s decision to not shut off power lines caused a trespass;

21 1.53.5. Whether Avista is liable under the doctrine of inverse condemnation;

22 1.53.6. Whether Avista was negligent in failing to use reasonable care in the
23 construction and maintenance of its power line equipment;

24 1.53.7. Whether Avista was negligent in failing to adopt and implement public
25 safety de-energization plan(s);

26 ¹⁶ Hal Bernton, Seattle Times, *Two Washington electric utilities opt out of power shut-offs to prevent wildfires in 2021* (Jun. 1, 2021), <https://www.seattletimes.com/seattle-news/northwest/avista-pse-opt-out-of-public-safety-power-cutoffs-for-2021-fire-season/>

1 1.53.8. Whether Avista was negligent in assessing, thinning, and removing fuels
2 in and around power lines, including the distribution line that started the Babb Road fire;

3 1.53.9. Whether Avista interfered with or continues to interfere with Plaintiffs'
4 enjoyment of their lives and property, and whether that interference was or is objectively
5 substantial and unreasonable;

6 1.53.10. Whether Avista has provided just compensation for having taken or
7 having damaged the property of Plaintiffs; and

8 1.53.11. Whether Plaintiffs and class members are entitled to injunctive relief,
9 an accounting, or other equitable relief, and, if so, the methodology for determining such relief.

10 1.54. These common issues predominate over any individualized issues in Plaintiffs'
11 claims and defenses, and a class action is superior to other available methods for the fair
12 adjudication of Plaintiffs' and class members' claims against Avista.

13 **V. CAUSES OF ACTION**
14 **FIRST CAUSE OF ACTION**
15 **(Negligence)**

16 1.55. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

17 1.56. Avista had duties and responsibilities pursuant to accepted industry standards,
18 Avista's own standards, National Electric Safety Code standards, the requirements of the
19 American National Standards Institute's utility vegetation management standards, and other state
standards. Avista's duties included, but were not limited to:

- 20 a. Operating and maintaining its power line infrastructure in a safe and reasonable
21 manner;
- 22 b. Reasonably inspecting its power line infrastructure for hazardous conditions;
- 23 c. Exercising the care required of an electric utility company in adequately clearing
24 vegetation around its power line infrastructure to mitigate the risk of fire,
25 including the Ponderosa tree in question;
- 26

- 1 d. Reasonably de-energizing power lines during critical and extremely critical fire
2 conditions, when Avista knew or in the exercise of reasonable care should have
3 known that the then-present fire conditions would cause energized lines to fall or
4 otherwise contact vegetation, structures, and objects;
- 5 e. Reasonably de-energizing power lines even after fires had been ignited by their
6 power line infrastructure or other utilities' power line infrastructure.
- 7 f. Reasonably implementing policies and procedures, and using equipment, to
8 avoid igniting or spreading fire; and
- 9 g. Reasonably adjusting its operations to heed warnings about weather conditions
10 that could cause rapid and dangerous fire growth and spread on and after Labor
11 Day.

12 1.57. Avista, through its own actions or inactions or those of its agents or employees,
13 breached its duties as alleged in this Complaint.

14 1.58. As a direct and proximate result of Avista's breach of its duties as alleged in this
15 Complaint, Plaintiffs have suffered harm to their property.

16 1.59. Avista's negligence caused or was a substantial factor in causing foreseeable
17 harm to Plaintiffs' property and other economic losses as well as non-economic losses including
18 stress, depression, and anxiety, among other general damages.

19 **SECOND CAUSE OF ACTION**
20 **(Private Nuisance)**

21 1.60. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

22 1.61. As an electrical utility, Avista owed a duty to the Plaintiffs and the proposed
23 class to operate its equipment in a safe manner. Avista's breach of these duties interfered with
24 Plaintiffs' possessory interest in their real property harmed by the Babb Road fire, including the
25 right to quiet use and enjoyment of their property.

1 1.62. Avista kept its power lines energized during critical and extremely critical fire
2 conditions when Avista knew or in the exercise of reasonable care should have known that the
3 then-present conditions could cause energized power lines to fall or come into contact with
4 vegetation, objects, or structures and cause fire, or otherwise cause power line infrastructure to
5 spark, arc, or emit burning materials or electricity. Keeping power lines energized under then-
6 present conditions constituted a hazardous condition.

7 1.63. Avista realized or should have realized that the hazardous condition posed an
8 unreasonable risk of fire that could spread and cause harm to Plaintiffs' property.

9 1.64. Avista could have de-energized their power lines during the critical and
10 extremely critical fire conditions, at little to no cost to Avista, thereby fully eliminating the risk
11 of fire caused by power line infrastructure.

12 1.65. Avista failed to exercise reasonable care to eliminate the risk when Defendants
13 chose not to de-energize their power lines.

14 1.66. Avista failed to exercise reasonable care to eliminate the risk of wildfire when it
15 did not identify or remove the hazard Ponderosa pine tree that fell on its distribution line.

16 1.67. Avista's energized power lines during the then-present critical and extremely
17 critical fire conditions caused fires that substantially and unreasonably interfered with the use
18 and enjoyment of Plaintiffs' and class members' property, have caused permanent injury to that
19 property, and caused other economic losses in an amount to be proven at trial. Such substantial
20 and unreasonable interference includes, but is not limited to:

- 21 a. Total destruction of Plaintiffs' property;
22 b. Damage to Plaintiffs' property;
23 c. Loss of use and ability to enjoy Plaintiffs' property;
24 d. Diminution in the value of Plaintiffs' property; and
25 e. Annoyance and inconvenience.

1 1.68. Avista's breach of its duties to Plaintiffs created a condition that was injurious to
2 and endangered the health and safety of others, and was an obstruction to the free use of
3 property, so as to essentially interfere with the comfortable enjoyment of the life and property of
4 Plaintiffs. That condition injuriously affected Plaintiffs' properties and lessened the personal
5 enjoyment of that property.

6 1.69. Avista's conduct directly and proximately caused foreseeable harm to Plaintiffs'
7 property and other economic losses as well as non-economic losses including stress, depression,
8 and anxiety, among other general damages.

9 **THIRD CAUSE OF ACTION**
10 **(Trespass)**

11 1.70. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

12 1.71. Avista intentionally and wrongfully caused or allowed fire, flames, smoke,
13 embers, ash, odors, gases, and/or airborne particles to come into contact with, enter, damage,
14 destroy, or otherwise trespass on Plaintiffs' property. This intrusion on Plaintiffs' property was
15 unauthorized and not consented to by Plaintiffs.

16 1.72. Plaintiffs' property was in their exclusive possession.

17 1.73. Avista knew of the extreme fire danger that high-wind conditions posed and
18 knew or should have known that there existed critical and extremely critical fire conditions
19 leading up to Labor Day 2020. Despite Avista's knowledge of the risk of extreme fire danger in
20 high-wind conditions, Avista had no plan in place to shut off power and chose not to de-
21 energize their power lines during the then-present high-wind conditions. Instead, Avista kept its
22 power lines energized during the critical and extremely critical fire conditions.

23 1.74. Avista knew that the then-present conditions were certain or substantially certain
24 to cause the unauthorized entry and trespass onto Plaintiffs' property and disturb Plaintiffs'
25 possessory interest. A trespass occurred as a result of Avista's actions.
26

1 1.75. As a direct and proximate result of Avista's conduct, Avista interfered with
2 Plaintiffs' possessory interest in and caused damage to their and other economic losses as well
3 as non-economic losses including stress, depression, and anxiety, among other general damages.

4 1.76. For Plaintiffs and class members who suffered damage to trees, timber, or shrubs
5 on their property, Avista's wildfire caused the injury of those trees, timber, or shrubs under
6 RCW 64.12.030. Plaintiffs and class members owned the premises on which such trees, timber,
7 or shrub were injured by the commission of Avista's acts; namely, the cause of a fire. Plaintiffs
8 and class members are entitled to treble damages for that injury to trees, timber, or shrubs as
9 well as reimbursement of fees and costs under RCW 64.12.030.

10 **FOURTH CAUSE OF ACTION**
(Inverse Condemnation)

11 1.77. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

12 1.78. The Washington Constitution, Article I, Section 16, provides in part: "No private
13 property shall be taken or damaged for public or private use without just compensation having
14 been first made."

15 1.79. Plaintiffs are owners of property or persons claiming an interest in property.

16 1.80. Because Avista is an entity with the power of condemnation pursuant to
17 RCW 80.32.060. Avista must operate in the public interest. WAC 480-100-001. Because the
18 state grants Avista the power to condemn by eminent domain, it is a governmental entity for the
19 purposes of an inverse condemnation claim.

20 1.81. Defendants owned, operated, controlled, managed, and/or maintained power line
21 infrastructure in Malden, Washington, for the purpose of providing electricity to the public.
22 Providing electricity to the public using power line infrastructure is a public improvement
23 intended to benefit the community as a whole.

24 1.82. Pursuant to this public use, Avista perpetrated a taking of or damage to Plaintiffs'
25 private property. Avista's failure to maintain and inspect vegetation in close proximity to its
26 power lines and failure to de-energize its power lines during the high-wind event caused the

1 Babb Road fire, which burned property owned and/or occupied by Plaintiffs on or around Labor
2 Day 2020.

3 1.83. Avista's actions constitutes a taking by inverse condemnation of Plaintiffs'
4 private property, without adequate or just compensation or the institution of formal eminent
5 domain or condemnation proceedings.

6 1.84. The damage to Plaintiffs is disproportionate to the risks from the public
7 improvements made to benefit the community as a whole. Justice, fairness, and the Washington
8 Constitution require that Plaintiffs be compensated for their injuries and the taking by Avista
9 rather than allowing the injuries and taking to remain disproportionately or exclusively
10 concentrated on Plaintiffs.

11 1.85. Plaintiffs suffered property losses and other economic losses as well as non-
12 economic losses including stress, depression, and anxiety, among other general damages,
13 resulting from Avista's inverse condemnation.

14 1.86. Plaintiffs are entitled to their reasonable attorney fees and costs pursuant to
15 RCW 8.24.030.

16 VI. PRAYER FOR RELIEF

17 Plaintiffs seek judgment against Defendant and the following relief:

- 18 1. An order certifying the matter as a class action pursuant to RC 23, naming
19 Plaintiffs as the class representative, and naming Plaintiffs' counsel as class
20 counsel;
- 21 2. Damages for economic and non-economic losses in amounts to be determined at
22 trial;
- 23 3. Where applicable, treble damages for injury to trees, timber, or shrubs as well as
24 reimbursement of fees and costs under RCW 64.12.030);
- 25 4. Pre- and post-judgment interest;
- 26 5. Injunctive relief;
6. An order requiring an accounting with respect to the amount of damages;
7. An order requiring Defendant to develop procedures for proactive de-
energization of their distribution and transmission lines during critical fire
conditions, and such other mitigation measures as may be appropriate;

- 1 **8.** An award of reasonable attorney fees, costs, investigation costs, disbursements,
2 and expert witness fees pursuant to CR 23, RCW 8.24.030, RCW 64.12.030, and
3 the Court’s inherent and equitable power to award attorney fees; and
- 4 **9.** Such other relief that the Court finds appropriate.

5 RESPECTFULLY SUBMITTED this 8th day of April, 2022.

6 KELLER ROHRBACK L.L.P.

7 By  _____

8 Daniel Mensher, WSBA #47719
9 Natida Sribhibhadh, WSBA #49695
10 *Attorneys for Plaintiffs Kevin and Heather
 Van Dyke and Gary Dean Cannon*

11 KELLER ROHRBACK L.L.P.

12 1201 Third Avenue, Suite 3200

13 Seattle, WA 98101

14 Telephone: (206) 623-1900

15 Facsimile: (206) 623-3384

16 Email: dmensher@kellerrohrback.com
 natidas@kellerrohrback.com

17 -AND-

18 Matthew J. Preusch

19 *Pending Pro Hac Vice Admission*

20 KELLER ROHRBACK L.L.P.

21 801 Garden Street, Suite 301

22 Santa Barbara, CA 93101

23 Telephone: (805) 456-1496

24 Facsimile: (503) 228-6551

25 Email: mpreusch@kellerrohrback.com