

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

No. D-202-CV- D-202-CV-2022-04363

DENNIS R. PYLE, an individual; DERECK R. PYLE, an individual; DYLAN T. PYLE, an individual; SARAH D. PYLE, an individual; GABRIEL APODACA, an individual; BARBARA L. ARTHUR, an individual; PAULA BAIMBRIDGE, an individual; A.R. BALLARD, JR., an individual; SYDNEY BENSON, an individual; NATHAN GRUMBLES, an individual; LINDA J. BROWN, an individual; LEE N. ABNEY, an individual; DAVID COX, an individual; JESSE C. CUCCARO, an individual; NOELLE E. MONTOYA, an individual; RICKY DEVARA, an individual; TODD LEE GEORGE, an individual; T L. GEORGE, INC., a Texas foreign profit corporation; LEE A. HARGRAVE, an individual; JAMES B. SHINKLE, an individual; WENDI K. SHINKLE, an individual; CHANTAL HEATH, an individual; LEE A. HENRY, an individual; JENNA B. RADTKE, an individual; KELLIE JOHNSON, an individual; JIMMYE D. ("JD") KNIGHT-MARK, an individual; JACK M. RANKIN, an individual; YOLANDA RUBIO, an individual; MANUEL RUBIO, JR., an individual; ELISEO SANCHEZ, an individual; LAWRENCE KEITH SKELLEY, an individual; JAMES M. THOMPSON, an individual; BASON TYPHEN, an individual; CHARLES ("VANCE") WADE, an individual; AMY WADE, an individual; DANIEL ZAMORANO, an individual;

Plaintiffs,

v.

PNM RESOURCES INC., a New Mexico domestic profit corporation; PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico domestic profit corporation; TREES, INC., a Delaware foreign profit corporation; and TREES, LLC, a Delaware foreign limited liability company;

Defendants.

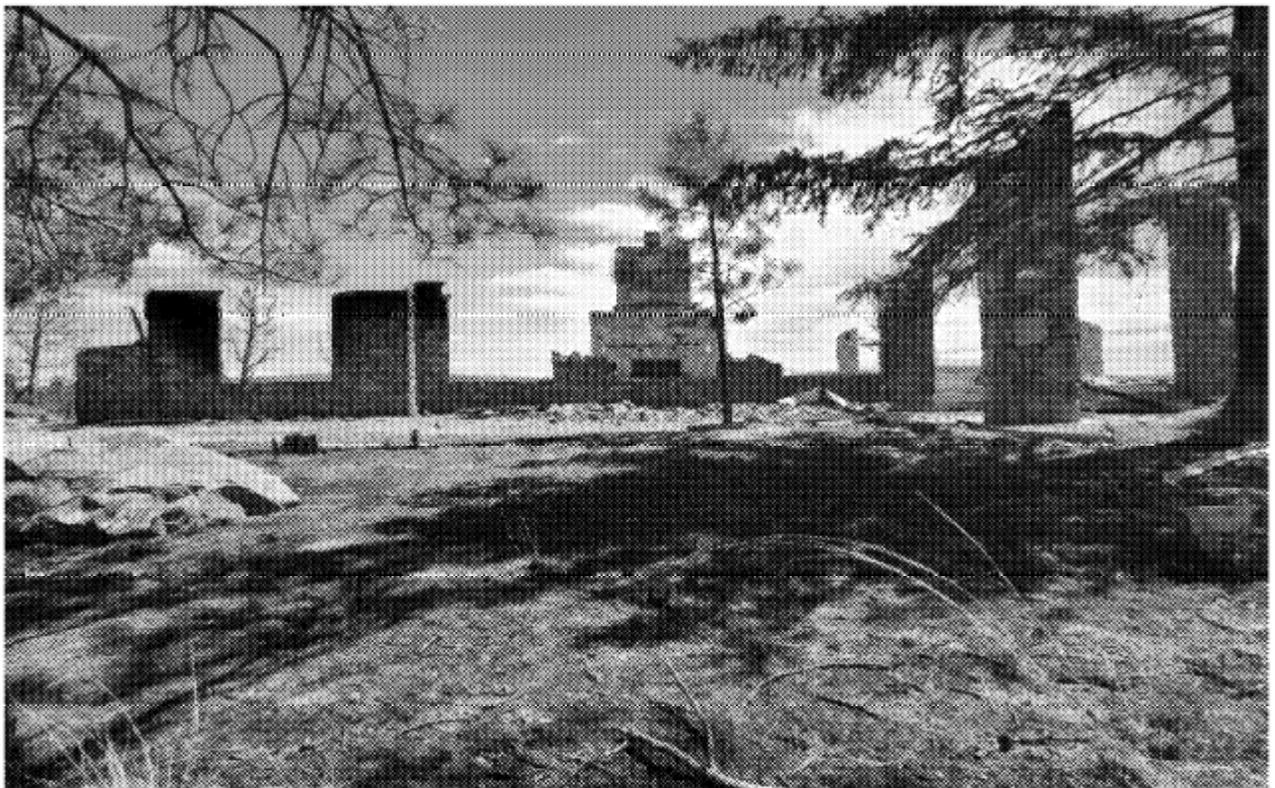
ORIGINAL COMPLAINT TO RECOVER DAMAGES

COME NOW the above-named Plaintiffs DENNIS R. PYLE, an individual; DERECK R. PYLE, an individual; DYLAN T. PYLE, an individual; SARAH D. PYLE, an individual; GABRIEL APODACA, an individual; BARBARA L. ARTHUR, an individual; PAULA BAIMBRIDGE, an individual; A.R. BALLARD, JR., an individual; SYDNEY BENSON, an individual; NATHAN GRUMBLES, an individual; LINDA J. BROWN, an individual; LEE N. ABNEY, an individual; DAVID COX, an individual; JESSE C. CUCCARO, an individual; NOELLE E. MONTOYA, an individual; RICKY DEVARA, an individual; TODD LEE GEORGE, an individual; T L GEORGE, INC., a Texas foreign profit corporation; LEE A. HARGRAVE, an individual; JAMES B. SHINKLE, an individual; WENDI K. SHINKLE, an individual; CHANTAL HEATH, an individual; LEE A. HENRY, an individual; JENNA B. RADTKE, an individual; KELLIE JOHNSON, an individual; JIMMYE D. ("JD") KNIGHT-MARK, an individual; JACK M. RANKIN, an individual; YOLANDA RUBIO, an individual; MANUEL RUBIO, JR., an individual; ELISEO SANCHEZ, an individual; LAWRENCE KEITH SKELLEY, an individual; JAMES M. THOMPSON, an individual; BASON TYPHEN, an individual;

CHARLES (“VANCE”) WADE, an individual; AMY WADE, an individual; DANIEL ZAMORANO, an individual, file this Original Complaint against Defendants PNM RESOURCES INC., PUBLIC SERVICE COMPANY OF NEW MEXICO, TREES, INC., AND TREES, LLC (“Defendants”) to recover extensive damages resulting from Defendants misconduct causing and exacerbating the McBride Fire. In support thereof, Plaintiffs would respectfully show the Court as follows:

I. PRELIMINARY STATEMENT

Plaintiffs’ claims flow from a devastating and tragic wildfire that began on April 12, 2022 now known as the McBride Fire. On that day, high winds foreseeably pushed over a tall pine tree that was in such close proximity to the PNM Defendants’ utility lines that it landed on and rested across those electric lines and caused an electrical fault that ignited dry vegetation and debris on the ground below. The winds then pushed that destructive fire across parts of Ruidoso and Lincoln County, New Mexico destroying property, including hundreds of homes and other structures, and tragically taking the life of two fleeing citizens. Defendants’ actions and inactions in or around the fire caused Plaintiffs’ damages. Plaintiffs suffered extensive damages to their property as a result of the McBride Fire caused by Defendants. Photos from the Ruidoso County website and Plaintiffs show just some of the devastation caused by the McBride Fire:



II. PARTIES

1. Plaintiffs, Dennis R. Pyle, Dereck R. Pyle, and Dylan T. Pyle, and Sarah D. Pyle, are individuals who are citizens of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

2. Plaintiff, Gabriel Apodaca, is an individual who is citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

3. Plaintiff, Barbara L. Arthur, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

4. Plaintiff, Paula Baimbridge, is an individual who is a citizen of Texas whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

5. Plaintiff, A.R. Ballard, Jr., is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

6. Plaintiffs, Sydney Benson and Nathan Grumbles, are individuals who are citizens of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

7. Plaintiffs, Linda J. Brown and Lee N. Abney, are individuals who are citizens of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

8. Plaintiff, David Cox, is an individual who is a citizen of New Mexico whose

property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

9. Plaintiffs, Jesse C. Cuccaro and Noelle E. Montoya, are individuals who are citizens of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

10. Plaintiff, Ricky Devara, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

11. Plaintiff, Todd Lee George, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

12. Plaintiff, T L George, Inc., is a Texas foreign profit corporation with its principal place of business and headquarters located at 906 SW 6th Street, Andrews, Texas, whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

13. Plaintiffs, Lee A. Hargrave, James B. Shinkle, and Wendi K. Shinkle, are individuals who are citizens of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

14. Plaintiff, Chantal Heath, is an individual who is a citizen of Texas whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

15. Plaintiff, Lee A. Henry, is an individual who is a citizen of Texas whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of

Defendants' conduct.

16. Plaintiff, Jenna B. Radtke, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

17. Plaintiff, Kellie Johnson, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

18. Plaintiff, Jimmie D. ("JD") Knight-Mark, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

19. Plaintiff, Jack M. Rankin, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

20. Plaintiffs, Yolanda Rubio and Manuel Rubio, Jr., are individuals who are citizens of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

21. Plaintiff, Eliseo Sanchez, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

22. Plaintiff, Lawrence Keith Skelley, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

23. Plaintiff, James M. Thompson, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

24. Plaintiff, Bason Typhen, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

25. Plaintiffs, Charles ("Vance") Wade and Amy Wade, are individuals who are citizens of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

26. Plaintiff, Daniel Zamorano, is an individual who is a citizen of New Mexico whose property near Ruidoso, New Mexico was damaged in the McBride Fire as a result of Defendants' conduct.

27. Defendant, PNM Resources Inc. ("PNMRI"), is a New Mexico corporation with its principal place of business and headquarters located at 414 Silver Avenue Southwest, Albuquerque, New Mexico. PNMRI may be served summons and a copy of this complaint through its registered agent: Corporation Service Company, 110 E. Broadway St., Hobbs, New Mexico 88240.

28. Defendant, Public Service Company of New Mexico ("PNM"), is a New Mexico corporation with its principal place of business at 414 Silver Avenue Southwest, Albuquerque, New Mexico. PNM may be served summons and a copy of this complaint through its registered agent: Corporation Service Company, 110 E. Broadway St., Hobbs, New Mexico 88240. PNM is a subsidiary of PNMRI.

29. Defendant, Trees, Inc., is a Delaware corporation with its principal place of business located at 708 Blair Mill Road, Willow Grove, Pennsylvania 19090, and corporate

headquarters located at 650 North Sam Houston Parkway East, Suite 401, Houston, Texas 77060. Trees, Inc. does business in New Mexico, maintains a registered agent for service of process in New Mexico, and derives substantial profit from its business activities in New Mexico. Trees, Inc. may be served summons and a copy of this complaint through its registered agent: C T Corporation System, 206 S. Coronado Ave., Espanola, New Mexico 87532-2792.

30. Defendant Trees, LLC is a Delaware limited liability company with its principal place of business located at 708 Blair Mill Road, Willow Grove, Pennsylvania 19090, and corporate headquarters located at 650 North Sam Houston Parkway East, Suite 401, Houston, Texas 77060. Trees, LLC does business in New Mexico, maintains a registered agent for service of process in New Mexico, and derives substantial profit from its business activities in New Mexico. Trees, LLC may be served summons and a copy of this complaint through its registered agent: C T Corporation System, 206 S. Coronado Ave., Espanola, New Mexico 87532.

III. VENUE AND JURISDICTION

31. Venue of this action is proper in Bernalillo County, New Mexico pursuant to NMSA § 38-3-1(A) because it is the county in which Defendants PNMRI and PNM reside. Further, Defendants do business and maintains offices in Bernalillo County.

32. This Court has personal jurisdiction over all Defendants. First, both PNMRI and PNM (collectively, the “PNM Defendants”) are citizens of New Mexico for jurisdictional purposes. Second, both Trees, Inc. and Trees, LLC (collectively, the “Trees Defendants”) engage in such foreseeable, intentional, continuous, and systematic contacts within New Mexico, so that they have sufficient minimum contacts, both in general and

with respect to this specific action, that they are at home in New Mexico and exercising jurisdiction over them does not violate their rights to due process or offend the traditional notions of fair play and substantial justice.

33. This Court has personal jurisdiction over the Plaintiffs as well since Plaintiffs are citizens of New Mexico or otherwise submitted themselves to the jurisdiction of this Court, and owned property located in New Mexico which was damaged by the actions and omissions of Defendants.

34. This Court has subject matter jurisdiction over this matter, as this suit arises from Defendants actions and omissions in the state of New Mexico, certain Plaintiffs and Defendants reside in and/or do business in Bernalillo County, and the damages sought herein by Plaintiffs against Defendants are within this Court's jurisdictional limits.

IV. FACTUAL BACKGROUND

35. The devastating McBride Fire originated on April 12, 2022 in Lincoln County, New Mexico and spread through Lincoln County. The McBride Fire was eventually substantially contained but not before destroying hundreds of homes and structures, killing two people, and sweeping across the land and property owned or occupied by Plaintiffs ("Plaintiffs' Tracts"). Plaintiffs owned vacation trailers and related personal property located at 530 Gavilan Canyon Road, Ruidoso, New Mexico, 88345. Plaintiffs' property on Plaintiffs' Tracts was completely destroyed by the McBride Fire.

36. On information and belief, the McBride Fire originated from high winds that caused a hazardously tall tree located on a steep incline adjacent to and in close proximity of PNM's electric utility lines to fall on top of those utility lines, creating a fault event which, in turn, created sparks which fell from the electrical equipment to the ground

igniting dry vegetation below. The origin of the McBride Fire is near the address 106 Warrior Drive, Ruidoso, Lincoln County, New Mexico, 88345, and the approximate coordinates of the origin location are 33.35110° North, 105.65217° West. The electric utility conductors, poles, other equipment, components, easements, and rights-of-way at issue are owned, operated, inspected and maintained by the PNM Defendants. The PNM Defendants contracted with the Trees Defendants to provide vegetation maintenance services in and around PNM's electric utility lines, easements, and right-of-way.

37. Defendants, and each of them, had a duty to properly maintain and repair the electric distribution lines, and other equipment associated with their duty to transmit electricity and to keep vegetation properly trimmed and maintained so as to prevent contact with power lines and other electrical equipment. This duty included a duty to maintain easements and the maintenance of adjoining vegetation such as to protect transmission lines from adjacent vegetation that posed a threat to such transmission lines. In the construction, repair, maintenance, and operation of such equipment and power lines the Defendants, and each of them, had an obligation to comply with statutes, regulations, and standards including, but not limited to, the National Electric Fire Safety Code as codified in New Mexico Administrative Code § 17.9.560.13. In addition, each of the Defendants, individually and jointly, were specifically aware that such standards and regulations were minimum standards and that Defendants, and each of them, had a duty to make their lines safe and maintain their lines (either directly or through agreements or other management arrangements to maintain lines) under all the exigencies created by the surrounding circumstances and conditions and that a failure to do so constituted negligence and would expose members of the general public to a serious risk of injury or

death, and to the destruction of their property by fire.

38. At all times mentioned herein, Defendants, and each of them, were aware that relevant parts of the State of New Mexico had been in a state of drought, that there is a historical propensity in New Mexico for wildfires to be caused by utility line contact with vegetation, and that fire danger was at an extraordinarily high level. Defendants, and each of them, knew that if the power lines or other equipment came into contact with, or caused electricity to come into contact with vegetation, it was probable that a fire would result and that, given the drought conditions, a resulting fire would likely result in the loss of life, significant damage to real and personal property or damage to members of the general public, including Plaintiffs.

39. Wires and other equipment carrying electricity are dangerous instrumentalities and a hazardous and dangerous activity requiring the exercise of increased care commensurate with and proportionate to that increased danger so as to make the transport of electricity through wires safe under all circumstances and exigencies offered by the surrounding environment, including the risk of fire. Defendants failed in their duty to exercise care commensurate with and proportionate to the combined danger of an area susceptible to wildfire and the dangerous activity of conductors carrying electricity, thereby being a substantial factor in the cause of the fires, as more fully set forth below. The conditions and circumstances existing at the time of the ignition in known fire origin areas, including the extended drought, high temperature, low humidity, and tinder-like dryness of vegetation, were reasonably foreseeable, if not expected, by a reasonable and prudent person and were reasonably foreseeable by and to be expected by,

Defendants, especially with their special knowledge and expertise.

40. Defendants, and each of them, were negligent in that they failed to properly maintain, repair, and inspect the subject overhead electric utility conductors, poles, other equipment, components, easements, and rights-of-way (collectively the “PNM Facilities”) and negligently failed to properly trim, prune, remove, or otherwise maintain vegetation near their electrical equipment and facilities to preserve and secure safety to the public in general, specifically including Plaintiffs. Moreover after Defendants were notified of dangerous conditions, their subsequent acts contributed to and exacerbated the size and spread of the fire. As a direct, proximate, and legal result of the negligence of the Defendants, and each of them, including ongoing negligence that aggravated original acts of negligence, Plaintiffs suffered the injuries and damages alleged herein, including the burning and destroying of their property.

V. CAUSES OF ACTION

A. Count One: Negligence and Negligence *Per Se*

41. Plaintiffs hereby incorporate the preceding paragraphs of the Complaint as if the same were fully set forth herein.

42. At the time of the McBride Fire, the PNM Facilities at the origin of the Fire were owned, operated, and maintained by the PNM Defendants. The PNM Defendants contracted their vegetation maintenance obligations regarding the PNM Facilities out to the Trees Defendants.

43. The PNM Defendants have a non-delegable duty to apply a level of care commensurate with and proportionate to the danger of designing, engineering, constructing, operating, and maintaining electrical transmission and distribution systems,

including vegetation maintenance and clearance. The PNM Defendants also have a non-delegable duty of vigilant oversight in the maintenance, use, operation, repair, and inspection appropriate to the changing conditions and circumstances of their electrical transmission and distribution systems.

44. Prior to the McBride Fire, the PNM Defendants hired, retained, contracted, allowed, or otherwise collaborated with the Trees Defendants to perform work along and maintain the network of transmission and distribution lines, infrastructure, and vegetation. The Trees Defendants were hired to mitigate a risk of fire, which was peculiar to the nature of that agency relationship. A reasonable property or easement owner or lessee in the position of the sophisticated corporate utility PNM knew, or should have recognized, the necessity of taking special precautions to protect adjoining property owners against the risk of harm created by work performed, work to be performed, or work otherwise not performed, including vegetation maintenance work.

45. Defendants, and each of them, knew or should have known that the activities of the Trees Defendants involved a risk that was peculiar to the operation of Defendants' business that was foreseeable and arose from the nature or location of the work. Notwithstanding this, Defendants, and each of them, failed to take reasonable precautions to protect property owners either near the PNM Facilities against the foreseeable risk of harm created by their activities.

46. Defendants, and each of them, have special knowledge and expertise far above that of a layperson that they were required to apply to the design, engineering, construction, use, operation, inspection, repair, and maintenance of PNM Facilities and nearby vegetation in order to ensure safety under all the local conditions in their service

area, including but not limited to, those conditions identified herein. More specifically, the PNM Defendants had a common law and regulatory duty to inspect, control, repair, operate, and maintain the PNM Facilities in a safe and reasonable fashion such that the foreseeable winds would not cause tall, nearby pine trees, rooted in shallow soils, on a steep slope, to come into contact with overhead electric utility conductors and cause a fire to break out. The Trees Defendants had a similar duty to maintain the hazardous vegetation near and under the PNM Facilities in a safe and reasonable fashion such that the foreseeable winds would not cause tall, nearby pine trees, rooted in shallow soils, on a steep slope, to come into contact overhead electric utility conductors and cause a fire to break out.

47. The actions and omissions of Defendants, both PNM and Trees, constitute negligence and negligence *per se* (as those terms are defined by law) which were a proximate cause of the McBride Fire and Plaintiffs' damages. Defendants breached their respective duties associated with inspection, reporting, repair, maintenance, operation, including activation or deactivation of lines, and installation of the PNM Facilities and related hazardous vegetation. Those breaches were a proximate cause of the McBride Fire and Plaintiffs' resulting damages.

48. The acts and omissions of the PNM Defendants and the Trees Defendants constituting negligence or negligence *per se* were various, including but not limited to:

- a. failing to properly inspect and report regarding the PNM Facilities and related hazardous vegetation;
- b. failing to properly repair, maintain, install, and operate the PNM Facilities and related hazardous vegetation;
- c. failing to properly protect the PNM Facilities from tall, nearby pine trees,

rooted in shallow soils, on a steep slope, coming into contact with PNM's overhead electric utility conductors;

- d. failing to construct, inspect, repair, maintain, secure, and protect the PNM Facilities from creating conditions which resulted in the Fire in question;
- e. failing to use the necessary skill, prudence, judgment, and diligence to timely inspect, identify, mark, notify, trim, or remove trees, brush, and vegetative undergrowth endangering the PNM Facilities as well as neighboring land and property;
- f. Failing to follow the National Electric Safety Code and industry standards for vegetative management;
- g. Failing to comply with the standards applicable to electric utilities in the State of New Mexico, including those set out at New Mexico Administrative Code§ 17.9.560.13, and National Electric Safety Code 214, amongst others; and,
- h. Failing to exercise reasonable care to protect PNM's customers and the general public from hazards to which they may be subjected as required by New Mexico Administrative Code§ 17.9.560.16.

49. *Res ipsa loquitur*. The character of the occurrence in question that caused the McBride Fire is such that it would not ordinarily occur in the absence of negligence, and particularly in light of the degree of care required of those engaged in the selection of materials, installation, control, inspection, maintenance, and operation of the PNM Facilities and related hazardous vegetation. The PNM Facilities in this instance were under the exclusive management and control of the PNM Defendants. Vegetative management of the PNM Facilities was contracted out to the Trees Defendants. Consequently, the facts of the occurrence in question warrant an inference of negligence on the part of PNM Defendants and the Trees Defendants, which is a proximate cause of the McBride Fire and Plaintiffs' resulting damages.

B. Count Two: Gross Negligence

50. Plaintiffs hereby incorporate the preceding paragraphs of the Complaint as if fully set forth herein.

51. The PNM Defendants and the Trees Defendants had a duty to apply a high level of care commensurate with and proportionate to the danger of maintaining line clearance, vegetation clearance, inspecting of trees, brush and undergrowth, and the trimming and removal of trees, limbs, branches, and vegetative undergrowth within and along the easements and rights-of-way at, near, or on PNM's power lines and Facilities, or that could foreseeably come into contact with PNM's overhead electric utility conductors and related Facilities and cause a fire to break out.

52. The PNM Defendants and Trees Defendants also owed a duty under the common law of New Mexico to apply a high level of care commensurate with and proportionate to the danger of power line related vegetation maintenance and to use its skill, prudence, judgment, and diligence to inspect, identify, mark, notify, trim, remove and deal with trees, brush, and vegetative undergrowth within and along the easements and rights-of-way at, near, or on PNM's power lines and Facilities, or that could foreseeably come into contact with PNM's overhead electric utility conductors and Facilities and cause a fire to break out.

53. Despite the known high risk of fire due to drought conditions, high winds, and high heat, both the PNM Defendants and the Trees Defendants, with conscious disregard for the safety and welfare of both the public and Plaintiffs' rights, failed to timely inspect, identify, mark, notify, trim, and remove trees, brush, limbs, and vegetative undergrowth, so as to prevent the known high risk of fire caused by tree contact with

power lines, and the fuel load of vegetative undergrowth.

54. Defendants' conduct, actions, and omissions constitute gross negligence. Defendants knew of the severe drought conditions in Lincoln County, New Mexico, and had actual knowledge that hazardous vegetation on or in close proximity to PNM's Facilities could foreseeably come into contact with PNM's overhead electric utility conductors or provide an ignition source and cause a catastrophic fire to break out.

55. The PNM Defendants and the Trees Defendants failed to inspect PNM's facilities, failed to conduct their vegetation management obligations so as to keep PNM's Facilities free of and protected from hazardous trees and vegetation, and failed to perform any or performed substandard vegetation maintenance and system maintenance pursuant to industry standards in order to protect the public's rights, safety, and welfare.

56. The PNM Defendants and the Trees Defendants consciously disregarded their risks regarding hazardous vegetation on or in close proximity to PNM's Facilities, leaving hazardous conditions impermissibly susceptible to causing a fire to break out. Defendants' actions and omissions, including without limitation actions following the initial breakout of the fire, when viewed objectively, involved an extreme degree of risk, but despite the actual, subjective awareness of the risk, Defendants proceeded with a conscious indifference to the rights, safety, and welfare of the Plaintiffs and others.

57. Defendants' gross negligence, as described above, proximately caused damage to Plaintiffs. As a direct and proximate cause of the grossly negligent conduct of Defendants, Plaintiffs sustained loss and damages, the exact amount of which will be proven at trial. Defendants should be subjected to exemplary damages because of their gross negligence.

C. Count Three: Trespass

58. Plaintiffs hereby incorporate the preceding paragraphs of the Complaint as if fully set forth herein.

59. At all relevant times herein, Plaintiffs were the owners, tenants, or lawful occupiers of property damaged by the McBride Fire.

60. Defendants, despite their awareness of the severe drought conditions in Lincoln and surrounding Counties, allowed dry vegetation to accumulate within PNM's easements and rights-of-way, and failed to timely inspect, identify, mark, notify, trim, and remove hazardous trees, brush, limbs, and vegetative undergrowth, so as to prevent the known high risk of fire caused by tree contact with power lines, and the fuel load of vegetative undergrowth and debris. Defendants permitted the McBride Fire to ignite and spread out of control, entering Plaintiffs' Tracts and causing damages to their property. Defendants' acts or omissions in allowing the McBride Fire to ignite and spread out of control onto Plaintiffs' Tracts constitute a physical, intentional, and voluntary entry of Plaintiffs' property.

61. Plaintiffs did not grant permission for Defendants to cause the McBride Fire to enter onto their property.

62. As a direct and substantial cause of the trespass, Plaintiffs have suffered and will continue to suffer damages.

D. Count Four: Private and Public Nuisance

63. Plaintiffs hereby incorporate the preceding paragraphs of the Complaint as if fully set forth herein.

64. Plaintiffs had property rights and privileges in respect to the use and

enjoyment of certain lands affected by Defendants' acts and omissions. As set forth above, Defendants failed in their duty to adequately maintain and protect PNM's Facilities from hazardous trees, brush, limbs, and vegetative undergrowth, so as to prevent the known high risk of fire caused by tree contact with power lines, and the fuel load of vegetative undergrowth and debris. Defendants' conduct that caused the nuisance was negligent, intentional, or abnormal and out of place given the circumstances and Defendants' actual knowledge of power line fire threats caused by hazardous trees and vegetation. As a proximate result of Defendants' conduct in creating the nuisance, Plaintiffs suffered property damage.

65. In addition, or in the alternative, Defendants' acts and omissions created a public nuisance in violation of the common law or NMSA § 30-8-1 defining a prohibited public nuisance. Defendants knowingly created, performed, or maintained PNM's Facilities at the origin of the McBride Fire in a manner that affects a number of citizens without lawful authority. Defendants' actions and omissions regarding PNM's Facilities and the McBride Fire that resulted, has been injurious to public health, safety, morals or welfare. Plaintiffs are private citizens that suffered special harm, including deprivation of their use of Plaintiffs' property as a result of Defendants' conduct. Defendants' conduct unreasonably interfered with the public's safe use and enjoyment of the public's property. As a proximate result of Defendants' conduct in creating the public nuisance, Plaintiffs suffered damages.

E. Count Five: Inverse Condemnation

66. Plaintiffs hereby incorporate the preceding paragraphs of the Complaint as if fully set forth herein.

67. On or about April 12, 2022, Plaintiffs were the owners of property located within Lincoln County.

68. Pursuant to NMSA § 42A-1-29, PNM's actions and omissions have inversely condemned Plaintiffs' property, taking or damaging it for a public use without payment of just compensation or appropriate condemnation proceedings. PNM has the power of eminent domain for its utility lines. PNM provides electricity as a public utility. PNM's decisions regarding its acts and omissions related to the provision of electric service are for a public use - the provision of reliable electricity to the public in New Mexico and Lincoln County.

69. PNM knew that vegetation maintenance was critical to control fire danger. PNM knew that trees and other vegetation growing in and near, and vegetative debris on, PNM's easements and rights-of-way could foreseeably come into contact with PNM's overhead electric utility conductors or provide a fire ignition source and cause a catastrophic fire to break out. Yet, at the origin of the McBride Fire, hazardous trees and vegetation were growing in or near PNM's easements and rights-of-way, and dry vegetative debris was located below PNM's electric conductors. Defendants made a calculated decision to control costs and cut corners, and therefore abatement of these fire risks did not occur, providing the cause at the origin of the McBride Fire. PNM took a calculated risk that loss of life and damage to private property may occur if it failed to act appropriately in regard to vegetation maintenance in and around its electric equipment. It bet that it could reduce its cost by ignoring some hazardous vegetation threatening its electric system, while still meeting its reliability obligation to the state of New Mexico.

system resulted in Plaintiffs' damage in this case. Plaintiffs have not received adequate compensation for the damage to or destruction of their property, thus constituting a taking or damaging of Plaintiffs' property by PNM without just compensation.

70. Because PNM's actions and omissions regarding vegetative maintenance in Lincoln County, New Mexico were for the furtherance of its electric reliability obligation to the state of New Mexico, and its customers, its acts and omissions were for a public use, and PNM owes Plaintiffs compensation for Plaintiffs' resulting damage and lost property.

VI. DAMAGES

71. Plaintiffs hereby incorporate the preceding paragraphs of the Complaint as if fully set forth herein.

72. As a direct and proximate result of the acts and omissions, including negligence, of Defendants, Plaintiffs have sustained damages to property in excess of the minimal jurisdictional limits of this Court. Those damages include, but are not limited to:

- a. The value of personal property destroyed by the McBride Fire;
- b. The replacement value of personal property with no readily obtainable market value destroyed by the McBride Fire;
- c. The cost to repair personal property damaged by the McBride Fire;
- d. The loss of use of personal property, including irreplaceable sentimental property, and real property as a result of the damage caused by the McBride Fire;
- e. Valuation damages for injury to improvements on real property, whether measured by market value, actual economic loss, or intrinsic value;
- f. All damages arising from the loss of use of real and personal property, including structures and fixtures, which damages include but are not limited to alternative living expenses, loss of profits, and lost rentals and rental

value;

- g. The reasonable and necessary cost to clean up and clear away burned property and vegetation ; and
- h. The reasonable and necessary cost to clean up and clear away structural debris, such as burned fencing, buildings, and other similar debris.

Plaintiffs hereby seek an award of any and all actual and compensatory damages allowed by law for those damages incurred in the past and those damages, that in reasonable probability will be incurred in the future. Plaintiffs also hereby seek an award of exemplary damages for Defendants gross negligence as pled herein.

73. Plaintiffs seek to recover prejudgment interest for property damage pursuant to NMSA § 56-8-4(B).

VII. JURY DEMAND

74. Plaintiffs hereby respectfully demand a trial by jury in this case.

VIII. PRAYER

75. Plaintiffs pray that Defendants be cited to answer and appear herein and upon the trial of this cause that Plaintiffs recover:

- a. judgment over and against Defendants for any and all actual or compensatory damages allowed by law;
- b. judgment over and against Defendants for exemplary damages allowed by law;
- c. taxable costs of court;
- d. pre-judgment interest and post-judgment interest at the maximum rates allowed by law; and,
- e. for such other and further relief, at law and in equity, to which Plaintiffs may show themselves justly entitled.

Dated this 5th day of August, 2022.

Respectfully submitted,

SINGLETON SCHREIBER, LLP

H. Vern Payne, SBN 2043
643 HWY 314 NW
Los Lunas, NM 87031
Phone: (916) 775-5894

By: /s/ H. Vern Payne
 H. Vern Payne

ATTORNEY FOR PLAINTIFFS