

District Court, Boulder County, Colorado
Court Address: 1777 6th Street, Boulder, Colorado 80302

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PLAINTIFFS: PATRICK BUTLER, PATRICIA BUTLER, BRAD KORCH, ANGELA KORCH, A.K., I.K., LUCIO MIGUEL CEBRIAN, KATHRYN ANNE RUSSELL, M.C., N.C., SCOTT SILVERMAN, ALISA KOENIGSBERG, BRANDON CASSAGNOL, CHERYL RIESEL, JARED RIESEL, J.R., JACK SELDEN, SUSAN KUCA, JAMES KUCA, AUGUST KUCA, A.K., JUDITH ANN MISSEY, ROGER H. MISSEY, MISSEY LIVING TRUST, JIANLIANG XIAO, HAN YAN, S.X., W.X., CAITLIN HAWKSLEY, JOEL HAWKSLEY, LORI WALKER, GREGORY WALKER, GRAYSON WALKER, DASHIEL WALKER, JAMES COVINO, KATIE COVINO, L.C., S.C., REINA ARAI POMEROY, DAVID POMEROY, C.Y.P., C.H.P., LORI BRAGDON, BRUCE BRAGDON, LAURA NASIATKA, DAVID NASIATKA, PATRICK NASIATKA, KATHERINE NASIATKA, MATTHEW SANCHEZ, MELISSA SANCHEZ, H.G.S., H.S.S., REBECCA KARCH, KEVIN KARCH, EVAN CULLENS, CHIHOKO CULLENS, E.C., C.C., PHILIP ROSENBERG-WATT, KELLY WATT, CHRISTOPHER GORMAN, LINDSEY SHAW, JEFFREY SHAW, H.S., NOLA CHOW, W.C., MCCLAIN BUGGLE, L.B, B.B, LISA CLARK, JULIAN CLARK, JORDAN ROTHBAUER, and TREY BIERNAT.

v.

DEFENDANTS: XCEL ENERGY, INC., PUBLIC SERVICE COMPANY OF COLORADO d/b/a XCEL ENERGY, XCEL ENERGY SERVICES, INC., and DOES 1-10 whose true names are unknown.

Attorneys for Plaintiffs:

Eric Matteson, Colorado State Bar No. 46781
KELLER ROHRBACK L.L.P.
3101 N Central Ave # 1400
Phoenix, AZ 85012
Telephone: (602) 248-0088
Facsimile: (602) 248-2822
ematteson@kellerrohrback.com

Case Number:

Division:

Courtroom:

Lynn Sarko (*Pro Hac Vice Forthcoming*)
 Gretchen Freeman Cappio (*Pro Hac Vice*)
 Daniel Mensher (*Pro Hac Vice*)
 Natida Sribhibhadh (*Pro Hac Vice*)
 Sydney Read (*Pro Hac Vice*)
 KELLER ROHRBACK L.L.P.
 1201 Third Avenue, Suite 3200
 Seattle, WA 98101
 Telephone: (206) 623-1900
 Facsimile: (206) 623-3384
 lsarko@kellerrohrback.com
 gcappio@kellerrohrback.com
 dmensher@kellerrohrback.com
 natidas@kellerrohrback.com
 sread@KellerRohrback.com

Alison Chase (*Pro Hac Vice Forthcoming*)
 Matthew Preusch (*Pro Hac Vice*)
 KELLER ROHRBACK L.L.P.
 801 Garden Street, Suite 301
 Santa Barbara, CA 93101
 Telephone: (805) 456-1496
 Facsimile: (503) 228-6551
 achase@kellerrohrback.com
 mpreusch@kellerrohrback.com

COMPLAINT

Plaintiffs Patrick Butler, Patricia Butler, Brad Korch, Angela Korch, A.K., I.K., Lucio Cebrian, Kathryn Anne Russell, M.C., N.C., Scott Silverman, Alisa Koenigsberg, Brandon Cassagnol, Cheryl Riesel, Jared Riesel, J.R., Jack Selden, Susan Kuca, James Kuca, August Kuca, A.K., Judith Ann Missey, Roger H. Missey, Missey Living Trust, Jianliang Xiao, Han Yan, S.X., W.X., Caitlin Hawksley, Joel Hawksley, Lori Walker, Gregory Walker, Grayson Walker, Dashiel Walker, James Covino, Katie Covino, L.C., S.C., Reina Arai Pomeroy, David Pomeroy, C.Y.P., C.H.P., Lori Bragdon, Bruce Bragdon, Laura Nasiatka, David Nasiatka, Patrick Nasiatka, Katherine Nasiatka, Matthew Sanchez, Melissa Sanchez, H.G.S., H.S.S., Rebecca Karch, Kevin Karch, Evan Cullens, Chihoko Cullens, E.C., C.C., Philip Rosenberg-Watt, Kelly Watt, Christopher Gorman, Lindsey Shaw, Jeffrey Shaw, H.S., Nola Chow, W.C., McClain Buggle, L.B, B.B, Lisa Clark, Julian Clark, Jordan Rothbauer, Trey Biernat, (collectively, Plaintiffs) hereby bring this Complaint and Jury Demand against Defendants Xcel Energy, Inc., Public Service Company of Colorado d/b/a Xcel Energy, and Xcel Energy Services, Inc. (collectively “Xcel”) seeking recovery of damages Plaintiffs sustained as a result of the Marshall Fire.

Plaintiffs allege the following against Xcel:

I. INTRODUCTION

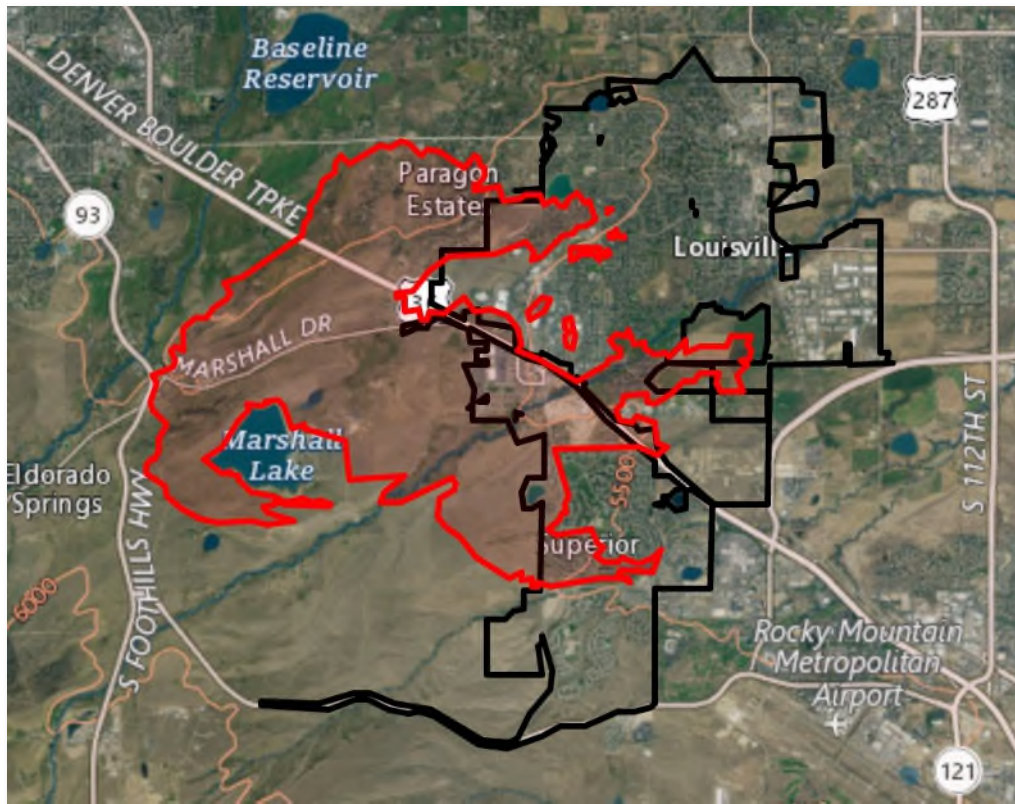
1. On December 30, 2021, the Marshall Fire, the most destructive wildfire the State of Colorado has ever seen, began its deadly rampage through Boulder County. Words cannot adequately describe the devastation that followed. Within minutes, entire neighborhoods were incinerated. The Boulder County community—and the lives of thousands of Boulder County residents—were forever changed.



Source: Jeremy Sparig, Special to The Colorado Sun, available at <https://coloradosun.com/2023/06/08/marshall-fire-investigation-results-colorado/>.

2. The Marshall Fire left behind a swath of destruction, causing billions of dollars in damages and the loss of life. Over 6,000 acres of land were burned; more than 1,200 homes and dozens of commercial structures were damaged or destroyed.¹ Tragically, two people lost their lives and thousands more were evacuated and/or displaced.

¹ Michael Dougherty and Curtis Johnson, *Marshall Fire Investigative Summary and Review* (June 8, 2003), <https://assets.bouldercounty.gov/wp-content/uploads/2023/06/marshall-fire-investigative-summary.pdf> [hereinafter BCSO Report].



Source: National Interagency Fire Center / By Kevin Hamm, The Denver Post, available at: <https://www.denverpost.com/2021/12/31/marshall-fire-map-perimeter-boulder-county-wildfire/>

3. Residents had little to no warning to escape the fire. Fear turned to panic as affected residents had little time to evacuate. Some residents escaped with little to nothing.² Many lost everything they owned. The fire moved so fast that over a thousand pets could not be rescued in time by their owners.³ The Marshall Fire left a painful scar on Boulder County

² David Mullen and Seth Klamann, *Timeline: As the Marshall Fire Raced, Residents Fled their Homes and Community*, Denver Gazette (Jan. 13, 2022), https://denvergazette.com/news/wildfires/timeline-as-the-marshall-fire-raced-residents-fled-their-homes-and-community/article_1ad71254-6b2b-11ec-93e6-1f984ee25781.html.

³ Cole Sullivan, *Study finds more than a thousand pets died in the Marshall Fire*, 9 News (Dec. 30, 2022, 10:47pm MST), <https://www.9news.com/article/news/local/wildfire/marshall-fire/pets-died-marshall-fire/73-42642c5f-40ee-4349-bd8c-488bba1a4294>.

communities and families that suffered losses, devastating the towns of Superior and Louisville in particular. As one resident describes it, “Twenty-five years of our lives, just gone.”⁴

4. The Boulder County Sheriff’s Office led a multi-agency, 18-month intensive investigation into the origins and causes of the Marshall Fire. A summary report of that investigation was made available to the public on June 8, 2023 (“BCSO Report”).

5. The BCSO’s work was substantially delayed by Xcel, which repeatedly sought to obstruct the investigation. Boulder County Sheriff Curtis Johnson and District Attorney Michael Dougherty expressed concern that Xcel “worked to delay the investigation and attempted to block investigators from interviewing key employees.”⁵ Sheriff Johnson reported that Xcel was neither “forthcoming” nor “expedient” in providing information⁶ — reportedly stalling over a year in providing certain information and seeking to block disclosure of text messages showing that the company purposefully delayed the investigation.⁷ “Multiple sources close to the investigation say that was not Xcel’s only maneuver in attempting to delay the investigation. According to sources, Xcel blocked the interviews with employees and made statements that did not tell the full story.”⁸

6. The BCSO investigation concluded that two separate ignitions merged into a single fire. The first ignition occurred on residential property at 5325 Eldorado Springs Drive and did not involve electrical components. The second ignition (“the Xcel Ignition”) occurred just south of the Marshall Mesa trailhead, which is located southeast of the intersection of Highway 93 and Eldorado Springs Drive.

⁴ Robert Sanchez, *How Do You Rebuild Your Life After Losing Everything in the Marshall Fire?*, 5280 Denver’s Mile High Magazine (July 2022), <https://www.5280.com/how-do-you-rebuild-your-life-after-losing-everything-in-the-marshall-fire/>.

⁵ Tony Kovaleski and Joe Vaccarelli, *Top officials criticize Xcel for delaying Marshall Fire investigation*, Denver 7 (July 28, 2023, 11:18pm), <https://www.denver7.com/news/investigations/top-officials-criticize-xcel-for-delaying-marshall-fire-investigation>.

⁶ *Id.*

⁷ *Id.*; see also Amber Carlson, *Xcel Energy’s slow response delayed Marshall fire investigation*, Boulder sheriff says, Denver Post (Aug. 7, 2023, 10:12am), <https://www.denverpost.com/2023/08/07/xcel-energy-delays-marshall-fire-investigation/>.

⁸ Kovaleski and Vaccarelli, *supra* note 5.



7. BCSO investigators and experts ultimately concluded “that the most probable cause of the [Xcel Ignition] was hot particles discharged from Xcel Energy powerlines.”⁹

8. Independent engineering company Jensen Hughes was retained by the District Attorney’s office to investigate the origin and cause of the Xcel Ignition as well. Jensen Hughes documented its findings in an April 7, 2023 report, later released to the public (“Jensen Hughes Report”). That report similarly concluded that the cause of the Marshall Mesa trailhead area fire was hot particles from Xcel powerlines.

9. Jensen Hughes’s investigators also determined that Xcel could have prevented this ignition: “Xcel could have increased the sensitivity of recloser 101-507 by setting the recloser to operate one time instead of 10, and set it to lockout in the event of a fault. Xcel could have also set the trip level lower to increase the recloser sensitivity to faults. The setting

⁹ BCSO Report, *supra* note 1.

revisions could have been changed during certain weather and fire hazard conditions. This temporary setting revision would have reduced the probability of ignition of the fire.”¹⁰

10. It would not have been the first time Xcel lines started a fire. In 2003, during a windstorm in a period of extreme dryness, an Xcel line sparked a wildfire, known as the Overland Fire, which burned at least eighteen houses and 3,500 acres in Boulder County.¹¹ Then, in 2007, five died in the Cabin Creek Fire that Xcel’s equipment started. Then, in 2020, Xcel reported that its power and transmission lines sparked 647 fires in the areas of Colorado at high risk for wildfire.¹² And yet, when it learned of extreme wind and dry conditions, Xcel left its systems unaltered at full power, sparking the most devastating fire in Colorado history.

11. Plaintiffs bring this action to hold Xcel accountable for the damages and harm caused by the company’s misconduct and the resulting Marshall Fire.

II. JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to CRS § 13-1-124(1)(a)-(c) because Defendants transact business within this state, committed tortious acts within this state, and own, use, or possess real property in this state.

13. Venue is proper in this county pursuant to Colo. R. Civ. P. 398(a) & (c)(5) because this action affects real property located in this county and this county is the place where the tort was committed.

III. PARTIES

14. Plaintiff Patrick Butler is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Patrick Butler was a resident of Boulder County, living at 768 Club Circle, Louisville, CO 80027.

15. Plaintiff Patricia Butler is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Patricia Butler was a resident of Boulder County, living at 768 Club Circle, Louisville, CO 80027.

¹⁰ Paul Way and Andrew Paris, *Marshall Mesa Trailhead Fire Investigation Report*, Jensen Hughes (Apr. 7, 2023), <https://assets.bouldercounty.gov/wp-content/uploads/2023/06/jensen-hughes-report.pdf> [hereinafter Jensen Hughes Report].

¹¹ KUSA-TV, *Xcel, Jamestown residents settle lawsuit over wildfire*, 9 News (Sept. 11, 2005, 8:50am MDT), <https://www.9news.com/article/news/local/xcel-jamestown-residents-settle-lawsuit-over-wildfire/73-344694037>.

¹² Christopher Osher, *Xcel Energy was spending \$597 million to mitigate fire risks prior to historic Marshall fire*, The Gazette (Jan. 2, 2022 updated Feb. 9, 2022), https://gazette.com/news/xcel-energy-was-spending-597-million-to-mitigate-fire-risks-prior-to-historic-marshall-fire/article_3a8a8d86-6b69-11ec-b65c-33b265b2f57f.html.

16. Plaintiff Brad Korch is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Brad Korch was a resident of Boulder County, residing at 751 Saint Andrews Lane, Louisville, Colorado 80027.

17. Plaintiff Angela Korch is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Angela Korch was a resident of Boulder County, residing at 751 Saint Andrews Lane, Louisville, Colorado 80027.

18. Plaintiff A.K is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, A.K. was a resident of Boulder County, residing at 751 Saint Andrews Lane, Louisville, Colorado 80027.

19. Plaintiff I.K. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, I.K. was a resident of Boulder County, residing at 751 Saint Andrews Lane, Louisville, Colorado 80027.

20. Plaintiff Lucio “Miguel” Cebrian is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Miguel Cebrian was a resident of Boulder County, residing at 833 W. Mulberry Street, Louisville, Colorado 80027.

21. Plaintiff Kathryn Anne Russell is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Kathryn Russell was a resident of Boulder County, residing at 833 W. Mulberry Street, Louisville, Colorado 80027.

22. Plaintiff M.C. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, M.C. was a resident of Boulder County, residing at 833 W. Mulberry Street, Louisville, Colorado 80027.

23. Plaintiff N.C. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, N.C. was a resident of Boulder County, residing at 833 W. Mulberry Street, Louisville, Colorado 80027.

24. Plaintiff Scott Silverman is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Scott Silverman was a resident of Boulder County, living at 481 Muirfield Court, Louisville, CO 80027.

25. Plaintiff Alisa Koenigsberg is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Alisa Koenigsberg was a resident of Boulder County, residing at 772 Club Circle, Louisville, Colorado 80027.

26. Plaintiff Brandon Cassagnol is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Brandon Cassagnol was a resident of Boulder County, residing at 772 Club Circle, Louisville, Colorado 80027.

27. Plaintiff Cheryl Riesel is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Cheryl Riesel was a resident of Boulder County, residing at 1000 Arapahoe Circle, Louisville, CO 80027.

28. Plaintiff Jared Riesel is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Jared Riesel was a resident of Boulder County, residing at 1000 Arapahoe Circle, Louisville, CO 80027.

29. Plaintiff J.R. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, J.R. was a resident of Boulder County, residing at 1000 Arapahoe Circle, Louisville, CO 80027.

30. Plaintiff Jack Selden is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Jack Selden was a resident of Boulder County, residing at 398 West Street, Louisville, Colorado 80027.

31. Plaintiff Susan Kuca is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Susan Kuca was a resident of Boulder County, residing at 919 Eldorado Lane, Louisville, Colorado 80027.

32. Plaintiff James Kuca is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, James Kuca was a resident of Boulder County, residing at 919 Eldorado Lane, Louisville, Colorado 80027.

33. Plaintiff August Kuca is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, August Kuca was a resident of Boulder County, residing at 919 Eldorado Lane, Louisville, Colorado 80027.

34. Plaintiff A.K. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, A.K. was a resident of Boulder County, residing at 919 Eldorado Lane, Louisville, Colorado 80027.

35. Plaintiff Judith Ann Missey is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Judith Missey was a resident of Boulder County, residing at 770 Club Circle, Louisville, CO 80027.

36. Plaintiff Roger H. Missey is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Roger Missey was a resident of Boulder County, residing at 770 Club Circle, Louisville, CO 80027.

37. Plaintiff Missey Living Trust is a revocable living trust created in March 2001. Judith Ann Missey and Roger H. Missey are the trustees of the Missey Living Trust.

38. Plaintiff Jianliang Xiao is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Jianliang Xiao was a resident of Boulder County, residing at 461 Muirfield Circle, Louisville, Colorado 80027.

39. Plaintiff Han Yan is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Han Yan was a resident of Boulder County, residing at 461 Muirfield Circle, Louisville, Colorado 80027.

40. Plaintiff S.X. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, S.X. was a resident of Boulder County, residing at 461 Muirfield Circle, Louisville, Colorado 80027.

41. Plaintiff W.X. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, W.X. was a resident of Boulder County, residing at 461 Muirfield Circle, Louisville, Colorado 80027.

42. Plaintiff Caitlin Hawksley is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Caitlin Hawksley was a resident of Boulder County, residing at 1008 Honeysuckle Lane, Louisville, CO 80027.

43. Plaintiff Joel Hawksley is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Joel Hawksley was a resident of Boulder County, residing at 1008 Honeysuckle Lane, Louisville, CO 80027.

44. Plaintiff Lori Walker is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Lori Walker was a resident of Boulder County, residing at 1011 Turnberry Circle, Louisville, Colorado 80027.

45. Plaintiff Gregory Walker is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Gregory Walker was a resident of Boulder County, residing at 1011 Turnberry Circle, Louisville, Colorado 80027.

46. Plaintiff Grayson Walker is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Grayson Walker was a resident of Boulder County, residing at 1011 Turnberry Circle, Louisville, Colorado 80027.

47. Plaintiff Dashiel Walker is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Dashiel Walker was a resident of Boulder County, residing at 1011 Turnberry Circle, Louisville, Colorado 80027.

48. Plaintiff James Covino is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, James Covino was a resident of Boulder County, residing at 1120 Hillside Lane, Louisville, Colorado 80027.

49. Plaintiff Katie Covino is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Katie Covino was a resident of Boulder County, residing at 1120 Hillside Lane, Louisville, Colorado 80027.

50. Plaintiff L.C. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, L.C. was a resident of Boulder County, residing at 1120 Hillside Lane, Louisville, Colorado 80027.

51. Plaintiff S.C. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, S.C. was a resident of Boulder County, residing at 1120 Hillside Lane, Louisville, Colorado 80027.

52. Plaintiff Reina Arai Pomeroy is a natural person and citizen of the State of Colorado. At the time of the Marshall Fire, Reina Arai Pomeroy was a resident of Boulder County, residing at 112 Vista Lane, Louisville, Colorado 80027.

53. Plaintiff David Pomeroy is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, David Pomeroy was a resident of Boulder County, residing at 112 Vista Lane, Louisville, Colorado 80027.

54. Plaintiff C.Y.P. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, C.Y.P. was a resident of Boulder County, residing at 112 Vista Lane, Louisville, Colorado 80027.

55. Plaintiff C.H.P. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, C.H.P. was a resident of Boulder County, residing at 112 Vista Lane, Louisville, Colorado 80027.

56. Plaintiff Lori Bragdon is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Lori Bragdon was a resident of Boulder County, residing at 886 Larkspur Court, Louisville, CO 80027.

57. Plaintiff Bruce Bragdon is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Bruce Bragdon was a resident of Boulder County, residing at 886 Larkspur Court, Louisville, CO 80027.

58. Plaintiff Laura Nasiatka is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Laura Nasiatka was a resident of Boulder County, residing at 948 Larkspur Lane, Louisville, CO 80027.

59. Plaintiff David Nasiatka is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, David Nasiatka was a resident of Boulder County, residing at 948 Larkspur Lane, Louisville, CO 80027.

60. Plaintiff Patrick Nasiatka is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Patrick Nasiatka was a resident of Boulder County, residing at 948 Larkspur Lane, Louisville, CO 80027.

61. Plaintiff Katherine Nasiatka is a natural person and a citizen of the State of Oregon. At the time of the Marshall Fire, Katherine Nasiatka was a resident of Larimer County, residing at 2718 Alan Street, Fort Collins, CO 80524.

62. Plaintiff Matthew (“Matt”) Sanchez is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Matt Sanchez was a resident of Boulder County, residing at 926 Sunflower Street, Louisville, CO 80027.

63. Plaintiff Melissa (“Missy”) Sanchez is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Missy Sanchez was a resident of Boulder County, residing at 926 Sunflower Street, Louisville, CO 80027.

64. Plaintiff H.G.S. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, H.G.S. was a resident of Boulder County, residing at 926 Sunflower Street, Louisville, CO 80027.

65. Plaintiff H.S.S. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, H.S.S. was a resident of Boulder County, residing at 926 Sunflower Street, Louisville, CO 80027.

66. Plaintiff Rebecca Karch is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Rebecca Karch was a resident of Boulder County, residing at 894 Larkspur Court, Louisville, Colorado 80027.

67. Plaintiff Kevin Karch is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Kevin Karch was a resident of Boulder County, residing at 894 Larkspur Court, Louisville, Colorado 80027.

68. Plaintiff Evan Cullens is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Evan Cullens was a resident of Boulder County, residing at 320 Cherokee Ave., Superior, Colorado 80027.

69. Plaintiff Chihoko Cullens is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Chihoko Cullens was a resident of Boulder County, residing at 320 Cherokee Ave., Superior, Colorado 80027.

70. Plaintiff E.C. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, E.C. was a resident of Boulder County, residing at 320 Cherokee Ave., Superior, Colorado 80027.

71. Plaintiff C.C. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, C.C. was a resident of Boulder County, residing at 320 Cherokee Ave., Superior, Colorado 80027.

72. Plaintiff Philip (“Phil”) Rosenberg-Watt is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Philip Rosenberg-Watt was a resident of Boulder County, residing at 103 1st Avenue, Superior, Colorado 80027.

73. Plaintiff Kelly Watt is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Kelly Watt was a resident of Boulder County, residing at 103 1st Avenue, Superior, Colorado 80027.

74. Plaintiff Christopher Gorman is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Christopher Gorman was a resident of Boulder County, residing at 966 Saint Andrews Lane, Louisville, Colorado 80027.

75. Plaintiff Lindsey Shaw is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Lindsey Shaw was a resident of Boulder County, residing at 820 West Mulberry Street, Louisville, CO 80027.

76. Plaintiff Jeffrey Shaw is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Jeffrey Shaw was a resident of Boulder County, residing at 820 West Mulberry Street, Louisville, CO 80027.

77. Plaintiff H.S. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, H.S. was a resident of Boulder County, residing at 820 West Mulberry Street, Louisville, CO 80027.

78. Plaintiff Nola Chow is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Nola Chow was a resident of Boulder County, residing at 895 Larkspur Court, Louisville, Colorado 80027.

79. Plaintiff W.C. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, W.C. was a resident of Boulder County, residing at 895 Larkspur Court, Louisville, Colorado 80027.

80. Plaintiff McClain Buggle is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, McClain Buggle was a resident of Boulder County, residing at 1161 W. Enclave Circle, Louisville, CO 80027.

81. Plaintiff L.B. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, L.B. was a resident of Boulder County, residing at 1161 W. Enclave Circle, Louisville, CO 80027.

82. Plaintiff B.B. is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, B.B. was a resident of Boulder County, residing at 1161 W. Enclave Circle, Louisville, CO 80027.

83. Plaintiff Lisa Clark is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Lisa Clark was a resident of Boulder County, residing at 941 Larkspur Lane, Louisville, Colorado 80027.

84. Plaintiff Julian Clark is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Julian Clark was a resident of Boulder County, residing at 941 Larkspur Lane, Louisville, Colorado 80027.

85. Plaintiff Jordan Rothbauer is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Jordan Rothbauer was a resident of Boulder County, residing at 941 Larkspur Lane, Louisville, Colorado 80027.

86. Plaintiff Trey Biernat is a natural person and a citizen of the State of Colorado. At the time of the Marshall Fire, Trey Biernat was a resident of Boulder County, residing at 941 Larkspur Lane, Louisville, Colorado 80027.

87. Defendant Xcel Energy, Inc. (“Xcel Energy”) is a major electric and natural gas delivery company operating in eight states, including Colorado.¹³ Xcel Energy is a Minnesota corporation with its principal place of business at 414 Nicollet Mall, Minneapolis, Minnesota.

88. Defendant Xcel Energy Services, Inc. (“XES”) is a subsidiary of Xcel Energy. XES is a Delaware corporation with its principal place of business at 414 Nicollet Mall, 401-9, Minneapolis, MN 55401, a business office at 1123 West 3rd Avenue, Denver, CO 80223, a business office at 1800 Larimer Street, Denver, CO 80202, and a registered agent at 1900 W Littleton Blvd, Littleton, CO 80120. XES provides an array of support services, including wildfire mitigation planning, to Public Service Company of Colorado and other utility operating company subsidiaries of Xcel Energy on a coordinated basis.

89. Defendant Public Service Company of Colorado (“PSCo”) is a subsidiary of Xcel Energy. PSCo is a Colorado corporation with its principal place of business at 1800 Larimer Street, Suite 1100, Denver, Colorado. (Defendants Xcel Energy, XES, and PSCo are herein collectively referred to as “Xcel.”)

90. Defendants Does 1-10 are persons, officers, employees, agents, servants, corporations, or associates of Xcel Energy and PSCo whose true identities are currently unknown to Plaintiffs. On information and belief, Does 1-10 may be responsible, in whole or in part, for Plaintiffs’ damages and the tortious conduct alleged herein.

IV. FACTUAL ALLEGATIONS

A. Xcel was aware of the risk of catastrophic fires, particularly in the Front Range.

91. Xcel Energy is “a major U.S. regulated electric and natural gas delivery company,” operating the fourth largest transmission system in the United States. Xcel serves 3.8 million electricity customers in Colorado, New Mexico, Texas, Michigan, Wisconsin, Minnesota, and the Dakotas.¹⁴ Xcel Energy also serves 2.1 million natural gas customers, among other operations in the energy field.

92. Xcel owns, builds, operates, and maintains power lines and other electrical equipment and infrastructure to transmit and sell electricity in Colorado, including in and around the Xcel Ignition Point of the Marshall Fire.

¹³ Xcel Energy Annual Report (Form 10-K) for the fiscal year ended December 31, 2022, available at <https://www.sec.gov/Archives/edgar/data/72903/000007290323000007/xcel-20221231.htm>.

¹⁴ *Id.* at 4; see also *About Us, Corporate Governance*, Xcel Energy <https://co.my.xcelenergy.com/s/about/corporate-governance> (last visited Nov. 8, 2023).

93. Xcel trades on the NASDAQ stock exchange as XEL. As of December 2022, Xcel's assets exceeded \$61 billion.¹⁵

94. Electrical power infrastructure includes transmission lines, which transport electricity at high voltages across long distances, and distribution lines, which deliver electricity to neighborhoods and communities over a shorter distance. Xcel has more than 100,000 miles of electrical transmission lines and 200,000 miles of distribution lines.¹⁶

95. Xcel Energy, which does business in Colorado through its subsidiary PSCo, has 4,615 miles of transmission lines in Colorado, and a service area of more than 8,200 square miles.¹⁷

96. The State of Colorado has vested Xcel with the power of eminent domain pursuant to C.R.S.A. § 38-5-105, allowing it to take private property for public use as part of its operations as a public utility company.

97. Xcel assures its customers that its transmission lines are safe. On its website, Xcel states, "Every effort is made to ensure safety in construction, operation and maintenance of transmission lines. Lines and line infrastructure are designed to withstand extreme weather conditions. Protective devices at line terminals stop the electricity flow under any abnormal operating circumstances. Utility practices meet or exceed standards set by national electric safety codes as well as those adopted by local governments."¹⁸

98. Transmitting and distributing electricity carry inherent danger. Electrical infrastructure also poses significant dangers, particularly the threat of wildfire. Large, utility-caused fires are an increasingly common event in the American West. The 2017 Thomas Fire and the 2018 Camp Fire in California, and the 2020 Labor Day Fires in Oregon were all deadly, devastating, and caused by power lines.

99. Before the Marshall Fire, Xcel was well aware of the year-round wildfire risk created by its activities. In 2019, Xcel submitted its Wildfire Mitigation Plan to Colorado regulators. In the program overview on its website, Xcel acknowledges the significant risk of wildfires:¹⁹

¹⁵ Xcel Energy Annual Report (Form 10-K) *supra* note 13 at 5.

¹⁶ *Id.*

¹⁷ *About Transmission*, Xcel Energy (Jan. 24, 2019), https://www.transmission.xcelenergy.com/staticfiles/microsites/Transmission/Files/PDF/Resources/xcel_transmissionfactsheet.pdf.

¹⁸ *Transmission FAQ*, Xcel Energy, <https://www.transmission.xcelenergy.com/About/FAQ> (last visited Nov. 8, 2023).

¹⁹ *Wildfire Mitigation Program*, Xcel Energy, https://www.xcelenergy.com/company/rates_and_regulations/filings/wildfire_mitigation_program (last visited Nov. 8, 2023); *Program Overview*, Xcel Energy, <https://www.xcelenergywildfiremitigation.com/program-overview/> (last visited Nov. 8, 2023).

Wildfire Mitigation Program

At Xcel Energy, we recognize that wildfires pose a significant year-round threat to our customers, communities and our state as a whole – and we’re proactively implementing programs to improve safety and minimize ignition risks associated with operating our system.

As part of our commitment to safety, our comprehensive Wildfire Mitigation Program was designed to help protect lives, homes and property in Colorado. Our portfolio of programs ensures we continue to construct, maintain and operate the electric grid in a manner that reduces wildfire risk. To learn more about these programs, visit [XcelEnergyWildfireMitigation.com](https://xcelenergywildfiremitigation.com) (external link).

100. Leading up to the Marshall Fire, XES employees direct Defendants’ wildfire mitigation work from XES offices in Denver. For example, in July 2020, Sandra Johnson, testified on behalf of Defendants as their Wildfire Mitigation Project Director. Johnson’s business office is in Denver. She testified that as Wildfire Mitigation Project Director, she was responsible for “all aspects of Public Service’s Wildfire Mitigation Program and Wildfire Mitigation Plan (“WMP” or “Plan”) development, capital and expense management, and execution.” Similarly, Denver-based Steven Rohlwing, Manager of Asset Risk Management at XES, is responsible for PSCo’s evaluation of wildfire risk and its wildfire risk modeling for its WMP.

101. In that 2020 WMP, PSCo explained that “recent increases in the occurrence of severe weather events has impacted both the frequency and intensity of wildfires in Colorado,” which has “changed the risk profiles that wildfires present to utilities,” noting devastating utility-caused wildfires in California.

102. The WMP explains that Xcel designated certain areas as “Wildfire Risk Zone” (“WRZ”) based on data from the Colorado State Forest Service’s Colorado Wildfire Risk Assessment Plan (“CO-WRAP”), and it said the company was focusing “virtually all” of its Wildfire Mitigation Program efforts in the WRZ.

103. PSCo filed a verified application for approval of its proposed WMP and Wildfire Protection Rider (“the Rider”) with the Public Utilities Commission (“PUC”) of Colorado. Through the Rider, Defendants sought to recover costs related to wildfire mitigation, charging customers through the end of 2025 based on the amount of electricity used.²⁰

104. In the application process, several Colorado-based XES and PSCo executives, including Johnson and Rohlwing, testified to the PUC. In addition, Brooke Trammell, a Denver-based Regional Vice President of Rates and Regulatory Affairs at XES, testified that one of the

²⁰ Lucy Haggard, *Xcel Energy looks to avoid Colorado wildfires — and PG&E’s fate — and wants customers to pay for it*, The Colorado Sun (Jan. 20, 2021, 3:43am MST), <https://coloradosun.com/2021/01/20/xcel-energy-wildfire-protection-rider-pge/>.

factors that weighed in favor of approving the WMP was the “potential for catastrophic risk, including loss of life, serious property damage, and environmental harm associated with wildfire.”

105. Trammell continued: “... one only needs to look to the recent tragedies in California to understand the severity in risk... increased risk of wildfires is present in [PSCo’s] service territory and there is increased risk that potential fires could lead to catastrophic levels of damage.”²¹

106. Xcel knew that wildfires could cause catastrophic levels of damage—and that these risks were increasing. Like Trammell, Rohlwing noted that the risk of wildfires in developed areas where population density is higher include “direct impacts to human safety, fire damage to building structures and personal property[.]”²²

107. Xcel knew that risk was specific to the Front Range: “[s]ome of the direct and immediate impacts [of wildfires in PSCo’s Front Range service area] may include loss of human life, loss of wildlife and protected species, property damage, loss of habitat, and the potential for significant infrastructure damage, such as reservoirs and watershed areas, pipelines, electric lines, and other facilities.”²³

108. But that’s not all. Rohlwing explained that “the full social and economic costs of a wildfire are extensive and generally more difficult to estimate than the direct costs incurred during the suppression of a wildfire as they can have long-lasting impacts on a given area or region.”²⁴

109. Xcel knew that in its service area, Boulder County was a particularly high risk of catastrophic damage related to wildfires. When asked which counties in Colorado have the highest percentage of housing units in high risk wildfire areas, Rohlwing identified Boulder County: “The counties in Colorado within the top five in terms of either the largest number or highest concentration of housing units in the ‘high to extreme’ wildfire risk category are **Jefferson, Larimer, Boulder, El Paso, Summit, Gilpin, Clear Creek**, San Miguel, Hinsdale,

²¹ Direct Testimony and Attachments of Brooke A. Trammell, *In the Matter of the Application of Public Service Company of Colorado for Approval of Wildfire Mitigation Plan and Wildfire Protection Rider*, Proceeding No. 20A-XXXXE (PUC Colorado, July 17, 2020), Hearing Exhibit 101, 49:6-14, [https://www.xcelenergy.com/staticfiles/xcelresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing Exhibit 101- Direct Testimony-Trammell.pdf](https://www.xcelenergy.com/staticfiles/xcelresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing%20Exhibit%20101-Direct%20Testimony-Trammell.pdf).

²² Direct Testimony and Attachments of Steven D. Rohlwing, *In the Matter of the Application of Public Service Company of Colorado for Approval of Wildfire Mitigation Plan and Wildfire Protection Rider*, Proceeding No. 20A-XXXXE (PUC Colorado, July 17, 2020), Hearing Exhibit 104, 9:18-20, [https://www.xcelenergy.com/staticfiles/xcelresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing Exhibit 104- Direct Testimony Rohlwing.pdf](https://www.xcelenergy.com/staticfiles/xcelresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing%20Exhibit%20104-Direct%20Testimony-Rohlwing.pdf).

²³ *Id.* 10:5-8.

²⁴ *Id.* 10:13-16.

and San Juan Counties. Seven [sic] of these counties (in bold above) compromise areas within Public Service's service territory, and are either fully or partially located within the [WRZ]... representing a significant proportion of electric distribution and transmission assets serving these areas."²⁵

110. Despite Xcel's knowledge of the catastrophic levels of damage for which Boulder County was at high to extreme risk, Xcel in 2021 did not even spend all the money it had budgeted for wildfire mitigation in Boulder County.²⁶

Table 6 – 2021 Actual and Budgeted Investment by County

2021 Actual Investment Compared to Budget by County (\$ Million)			
County	Actuals	Budget	Variance \$
Adams	\$0.144	\$0.000	\$0.144
Alamosa	\$20.771	\$16.220	\$4.551
Arapahoe	\$2.036	\$0.250	\$1.786
Boulder	\$11.136	\$15.330	(\$4.194)
Broomfield	\$0.002	\$0.000	\$0.002
Chaffee	\$0.826	\$1.890	(\$1.064)

111. Statewide, PSCo spent over \$20 million less on wildfire mitigation work than it had budgeted in 2021 on distribution lines.²⁷

Table 4 – 2021 Actual and Budgeted Investment

2021 Actual Compared to Budget Investment (\$ million)								
Business Unit	Actuals		Budget		Variance \$		Variance %	
	O&M	Capital Expenditures	O&M	Capital Expenditures	O&M	Capital Expenditures	O&M	Capital Expenditures
Distribution	\$4.424	\$67.354	\$6.606	\$87.539	(\$2.182)	(\$20.185)	33%	23%
Transmission	\$0.964	\$34.571	\$0.919	\$28.900	\$0.045	\$5.671	5%	20%
Total	\$5.388	\$101.925	\$7.525	\$116.439	\$0.123	(\$14.339)	28%	12%

²⁵ *Id.* 18:3-10

²⁶ *Wildfire Mitigation Plan 2021 Annual Report*, Xcel Energy (May 20, 2022), <https://www.xcelenergy.com/staticfiles/xcelresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/2021%20Wildfire%20Annual%20Report.pdf>.

²⁷ *Id.*

112. The risk associated with electrical infrastructure is recognized nationally. The Institute of Electrical and Electronics Engineers (“IEEE”) publishes the National Electrical Safety Code (“NESC”), which Colorado has adopted.²⁸ The NESC covers work rules for the construction, maintenance, and operation of electric supply lines and equipment, as well as basic provisions for safeguarding people from hazards related to the installation, operation, or maintenance of electric supply lines station equipment.²⁹

113. The NESC outlines the proper procedure for maintaining and operating safe electric supply lines and equipment, which Xcel failed to do. Xcel’s failure to properly maintain and operate safe electric supply lines and equipment led to the ignition of the Marshall Fire.

B. Xcel had notice of the high wind event and fire danger in December 2021.

114. Strong winds are commonplace in Colorado, especially on the Front Range in winter. As the National Weather Service explains, “The two main causes of high winds in Colorado during the cold season are the air pressure difference between strong low pressure and cold high-pressure systems, and Chinook winds developing across the Front Range and other mountain ranges.”³⁰ The National Weather Service also notes that “The areas around Boulder...are especially prone to the extreme wind episodes.”³¹

115. Mountain waves, which cause persistent and extremely high winds, are a common phenomenon in Boulder County. Mountain waves are “stationary or standing atmospheric waves which form above or on the lee of mountain barriers.”³² Strong westerly winds accelerate down the mountain to the foothills, until they suddenly weaken in what is known as the jump region. Winds are strongest where the terrain transitions, or where foothills meet the plains, as they do in Boulder County.³³

²⁸ Department of Regulatory Agencies, Public Utilities Commission, Rules Regulating Electric Utilities, 4 CCR 723-3, https://drive.google.com/file/d/0B8qvU2knU8BkcEJneE93YkNRQmM/view?resourcekey=0-XGWvr_3zVqbuKs9g1SpG1Q (last visited Nov. 8, 2023).

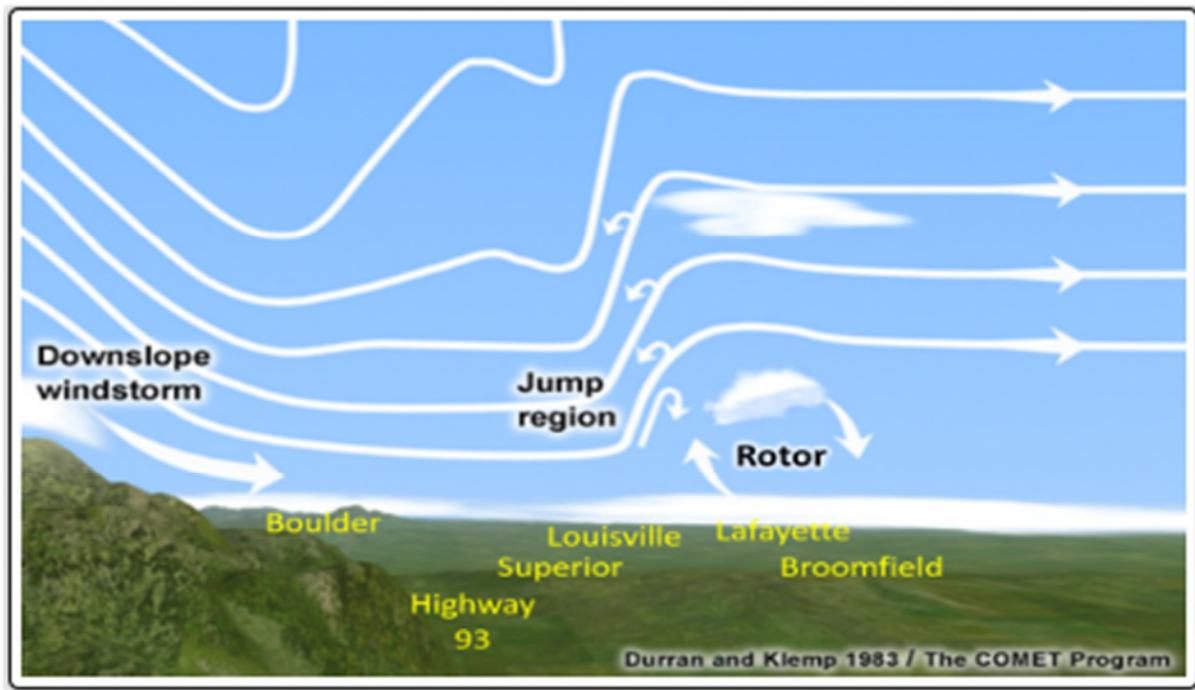
²⁹ *C2-2012 – National Electric Safety Code(R) (NESC(R))*, IEEE Xplore (Aug. 1, 2011), <https://ieeexplore.ieee.org/document/5967877>.

³⁰ *High Wind Safety, Denver/Boulder, CO*, Nat’l Weather Serv., <https://www.weather.gov/bou/highwind#:~:text=The%20two%20main%20causes%20of,Range%20and%20other%20mountain%20ranges> (last visited Nov. 8, 2023).

³¹ *Id.*

³² Alberta Viera, *Mountain Wave Activity Over the Southern Rockies*, Albuquerque Center Weather Service Unit (Apr. 2005), <https://www.weather.gov/media/abq/LocalStudies/MountainWavesUpdate.pdf>.

³³ *Marshall Fire and High Wind on December 30 2021*, Nat’l Weather Serv., <https://www.weather.gov/bou/MarshallFire20211230> (last visited Nov. 8, 2023).



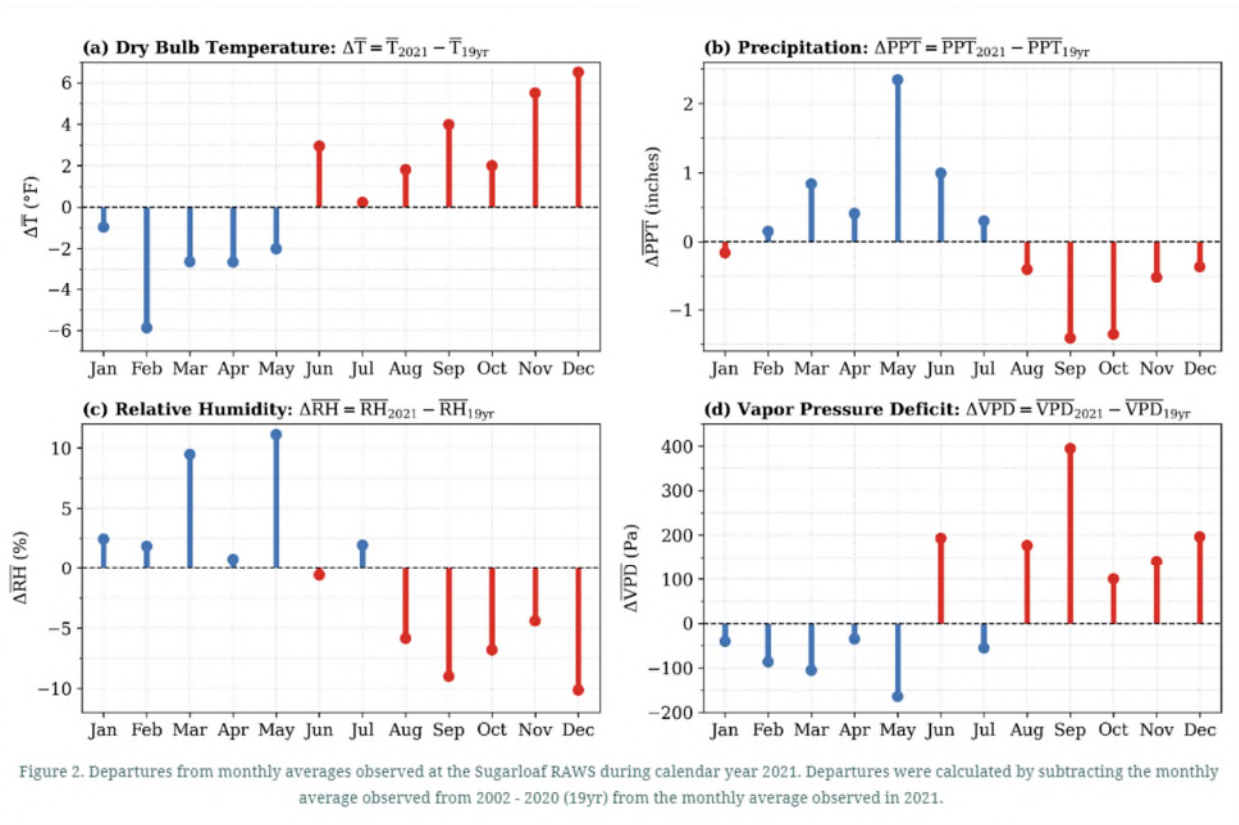
116. On December 30, 2021, a mountain wave developed in Boulder County. This caused sustained high winds of 50 to 60 miles per hour with gusts of 80 to 100 miles per hour along Highway 93, Superior, and Louisville.³⁴ While extreme, this was not anomalous – winds exceed 80 miles per hour most years in Boulder.³⁵ The wind accelerated through Superior and Louisville before weakening in the jump region before Broomfield and Lafayette.

117. These winds presented clear fire danger, especially when combined with the fuel-rich environment that resulted from 2021’s climate and weather conditions. The first five months of 2021 were cooler and wetter than average, while the second half of the year was significantly hotter and drier than average.³⁶

³⁴ *Id.*

³⁵ *Boulder Wind Info*, NOAA Physical Sciences Laboratory, <https://psl.noaa.gov/boulder/wind.html> (last visited Nov. 8, 2023); *see also*, BCSO Report, *supra* note 1.

³⁶ *Marshall Fire, Facilitated Learning Analysis*, <https://storymaps.arcgis.com/stories/83af63bd549b4b8ea7d42661531de512> (last visited Nov. 8, 2023).



118. The cooler, wetter growing season had led to abundant vegetation and substantial grass growth in the first half of the year. But when the temperature rose and the humidity dropped in the second half of the year, that abundant vegetation dried out.

119. Wildland grasses that are susceptible to ignition posed a particular threat on Marshall Mesa. Flanked by Highway 93 to the west and the towns of Superior and Louisville to the east, Marshall Mesa is a popular recreational land that “preserves a rare remnant of dry tall-grass prairie.”³⁷ The vegetation in the area was a mix of two ecosystems, Western Great Plains Foothills and Piedmont Grassland and Southern Rocky Mountain Ponderosa Pine Woodland and Savanna.³⁸

120. The vapor pressure deficit, which measures the difference between the potential moisture-holding capacity of the air and the amount of moisture in the air, indicated that the moisture was depleted from vegetation at the end of 2021, and it had been for months. In other words, in December 2021, “wildland grasses were tall, dry, and susceptible to ignition.”³⁹

³⁷ *Marshall Mesa Loop*, Visit Boulder, <https://www.bouldercoloradousa.com/listings/marshall-mesa-loop/2525/> (last visited Nov. 8, 2023).

³⁸ Jensen Hughes Report, *supra* note 10.

³⁹ BCSO Report, *supra* note 1.

121. Furthermore, the Colorado State Forest Service – whose data Defendants used to determine their own WRZ⁴⁰ – has a Wildfire Risk Public Viewer, and the United States Forest Service has a Wildfire Risk to Communities portal. Both calculate risk of wildfire, and prior to the Marshall Fire, both identified the area of the Marshall Fire as being high or highest risk.

122. Marshall Mesa was a high or highest fire risk area of wildland grasses “susceptible to ignition” and easterly winds, with the towns of Louisville and Superior on its western edge.

123. Around 3 a.m. on December 30, the National Weather Service in Boulder extended a warning of high wind that had been in effect in mountain locations to the Denver metro area, and it discussed the danger of the rapid spread of a possible fire. Boulder County also issued a high wind warning, warned against burning, and cautioned that power lines would be blown over.⁴¹



124. Monitoring the weather is part of Xcel’s Wildfire Mitigation Plan. Xcel’s WMP explains: “Company meteorologists monitor and compile relevant weather information

⁴⁰ 2020 Wildfire Mitigation Plan at 6, Xcel Energy, https://www.xcelenergywildfiremitigation.com/wp-content/uploads/2021/05/PSCo_2020-Wildfire-Mitigation-Plan_Rev-1-.pdf (last visited Nov. 8, 2023) [hereinafter 2020 WMP].

⁴¹ @BldrCOSheriff, X (formerly Twitter) (Dec. 30, 2021, 6:03am), <https://twitter.com/BldrCOSheriff/status/1476554585116270595>.

such as Red Flag Warning days and High Fire Risk information gathered from various public sources, such as the National Weather Service. The information is gathered for the entire state of Colorado but is displayed to highlight the Company's service territory. The Company also uses Indji Watch, which is a tool that provides information on environmental threats like active fires that the Company monitors for proximity to Company assets. That information is used to adjust operations protocols and field crew work practices to ensure employee safety."

125. Defendants knew that simply monitoring and compiling weather information from public sources might not be enough. As Sandra Johnson, Xcel Energy Services Inc.'s Wildfire Mitigation Project Director, testified to the PUC in July 2020, "The Wildfire Mitigation Team will continue to evaluate the addition of situational awareness tools, such as incorporating a select few optimally-placed [sic] weather stations to provide current, location-specific weather data."⁴²

126. In July 2020, then, Defendants were still only "evaluating" whether to incorporate a "select few" weather stations in their service area in Colorado spanning more than 8,200 square miles. By comparison, as of January 7, 2020, San Diego Gas & Electric, which has a service area of 4,100 square miles, had 191 weather stations, 100 of which provided weather observations every 30 seconds.

127. Thus, on December 30, 2021, on information and belief, Defendants had no weather stations in Boulder. Instead, Defendants only had the forecast to rely on.

128. The forecast proved true – but Defendants appear to have not heeded the forecast or taken appropriate measures to mitigate the risk. The warned-of extreme winds and fire danger manifested in three fires in the Boulder area, putting Xcel on further notice of the risk of fire. By the time reports of what would become the Marshall Fire came in, two small fires had already ignited and been contained that day in north Boulder. While crews were able to control the other fires, the third fire—the Marshall Fire—spread rapidly.⁴³ Subsequent investigation identified a key area of origin for what became the Marshall Fire: just south of the Marshall Mesa trailhead, near and downwind from an Xcel Energy pole, at the Xcel Ignition site.⁴⁴

⁴² Direct Testimony and Attachments of Sandra L. Johnson, *In the Matter of the Application of Public Service Company of Colorado for Approval of Wildfire Mitigation Plan and Wildfire Protection Rider*, Proceeding No. 20A-XXXXE (PUC Colorado, July 17, 2020), Hearing Exhibit 102, 34:5-8, [https://www.xcelenergy.com/staticfiles/xcelresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing Exhibit 102- Direct Testimony Johnson.pdf](https://www.xcelenergy.com/staticfiles/xcelresponsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Protection/Hearing%20Exhibit%20102-Direct%20Testimony%20Johnson.pdf).

⁴³ Ben Markus, *Boulder County firefighters lost crucial early minutes because they couldn't find the start of the Marshall fire*, CPR News (Jan. 5, 2022, 4:47pm), <https://www.cpr.org/2022/01/05/boulder-county-marshall-fire-timeline/>.

⁴⁴ Jensen Hughes Report, *supra* note 10.

C. Xcel failed to respond to the high wind warnings.

129. Xcel Energy is aware that wildfires pose a significant year-round threat to its customers and communities.⁴⁵ Xcel Energy is also aware that—as climate conditions have changed throughout the west—the overall risk, frequency, and severity of wildfires has increased, requiring investments in the power grid to minimize the risk of equipment-caused wildfires.⁴⁶

130. Xcel’s electrical distribution circuit in the Marshall Mesa trailhead area had two devices that were intended to serve as protection: a circuit breaker and associated relay and a recloser.⁴⁷

131. The first device, a circuit breaker, was associated with what is known as an ABB type MMCO Microprocessor Time Overcurrent Relay, which monitors the line’s electrical conditions. It is designed to sense both high current faults and excessive current demand.⁴⁸

132. The second device, a recloser, is essentially a high-voltage circuit breaker designed to handle faults.⁴⁹ When it detects a fault, a recloser shuts off power and then attempts to restore power almost immediately. If it detects a fault again, it shuts off power again before once again trying restoring power, repeating the attempts for a set number of times before it determines the fault is permanent and it keeps power off. Reclosers are helpful when the fault is temporary, like a tree branch or animal hitting a powerline, for example.

133. Engineers adjust a recloser’s sensitivity by setting the number of times it will operate, setting the trip level it will consider a fault, and setting the number of attempts before its lockout stage.⁵⁰ These settings are sometimes referred to as “one shot,” “two shot,” and so on, depending on the number of attempts before lockout. To keep people and structures safe, engineers at power companies should change these settings to account for certain weather and hazard conditions. Reclosers should be coordinated with the station’s circuit breaker so that any faults downstream from the recloser are sensed and cleared by the recloser first.

134. For at least 30 years, utilities have also known that reclosers re-energizing lines in fault conditions can start fires. If, for example, a power line breaks and falls into a tree or bush, a recloser’s attempts to resume the flow of electricity may ignite a fire. Xcel knew or

⁴⁵ *Wildfire Mitigation Program, Information Sheet, Colorado*, Xcel Energy (2023), https://www.xcelenergywildfiremitigation.com/wp-content/uploads/2023/04/Xcel_Energy_-_Wildfire_Mitigation_Program_Information_Sheet.pdf.

⁴⁶ *Id.*

⁴⁷ *Reclosers Technical Data, What is a recloser?*, Eaton (July 2017), <https://www.eaton.com/content/dam/eaton/products/medium-voltage-power-distribution-control-systems/reclosers/recloser-definition-information-td280027en.pdf>.

⁴⁸ Jensen Hughes Report, *supra* note 10.

⁴⁹ *Id.*

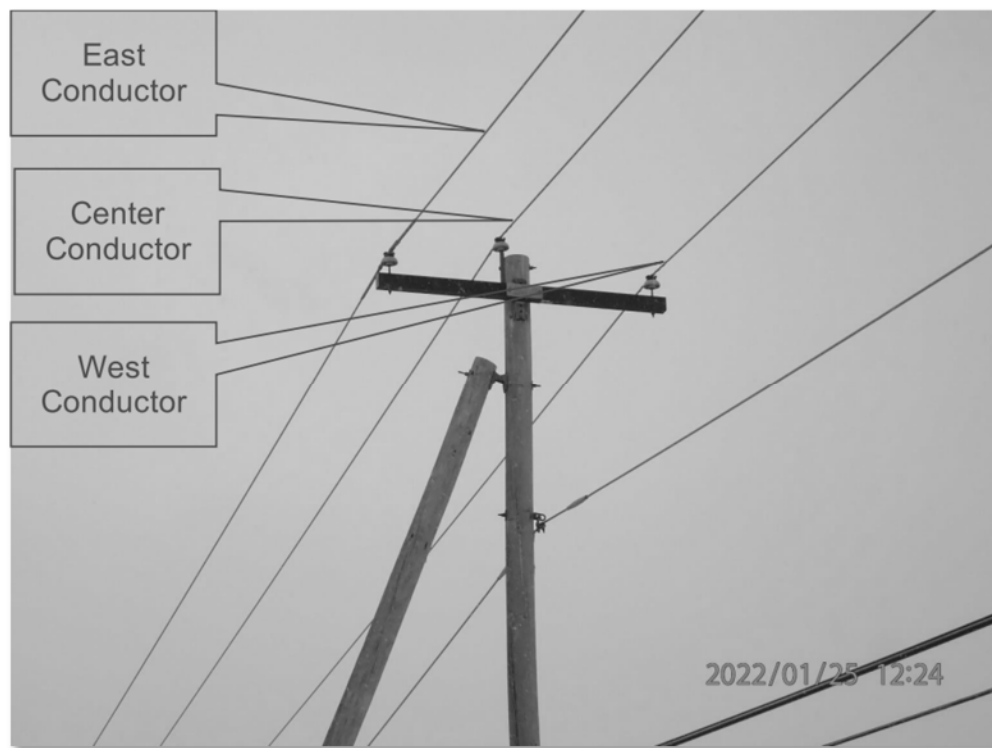
⁵⁰ *Id.*

should have known to adjust its reclosers during extreme wind events and dry conditions but, upon information and belief, did not do so in the circumstances of the Marshall Fire.

135. Or, as Xcel put it in its WMP, “...automatic reclosing can sometimes introduce a risk of ignition.”⁵¹

136. There are ways to mitigate this risk of ignition, though. As Xcel explained, “Public Service has been exploring modifying automatic recloser settings when conditions warrant, such as during fire season. One modification is to set the recloser such that it does not close the line back in automatically. This is sometimes referred to as ‘lock-out.’ By setting a recloser to lock-out, it can reduce the risk of ignition.”⁵²

137. The structures commonly referred to as powerlines include conductors, crossarms, poles, and insulators. Xcel’s powerline near the Marshall Mesa trailhead has an east, a center, and a west conductor, all of which are supported by porcelain pin-type insulators and mounted on the cross arm. The conductors were lashed to the insulators with aluminum lashing wire.



⁵¹ 2020 WMP, *supra* note 40 at 68.

⁵² *Id.*

138. Photographs and video from the day of the Marshall Fire show the east conductor disconnected from its insulator, bouncing and moving dramatically. A trail camera also captured the east conductor unattached from its insulator, resting against the support brace.⁵³

139. The lashings from the east conductor that connected it to the insulator was eventually found on the ground under the distribution line. It showed evidence of electrical arcing, which occurs when electricity jumps between connections, causing extremely hot and intense flashes of electricity.

140. The Jensen Hughes Report found, *inter alia*:

A. The east phase of Xcel’s circuit 1161 came loose from its insulator and its lashing wire contacted the center phase, which produced hot aluminum particles that ignited the Xcel Fire.

B. “Photographs and video of the eastern conductor show that it was bouncing and moving in a dramatic way.”

C. Xcel’s own conclusions about the fire presented on October 11, 2022 were incorrect since Xcel apparently ignored arcing evidence and the repeated operation of circuit breaker 1161.

D. Xcel could have increased the sensitivity of its recloser by setting it to operate one time instead of ten, and by setting it to lockout in the event of a fault. Xcel also could have increased the sensitivity of the recloser to faults by setting the trip level lower. These setting revisions could be temporary and could have been changed during certain weather and fire hazard conditions, which would have reduced the probability of igniting a fire.

141. The Jensen Hughes Report concluded that Xcel engineers had not set the recloser’s sensitivity settings appropriately such that the collision of conductors likely caused hot particles from the wire—including essentially a super-hot chunk of aluminum wire itself—to fly off of the conductor in an arcing event. Those particles then fell to the abnormally dry grassland below, where winds were gusting over 100 miles per hour.

142. One of the tools that utility companies, including Xcel Energy, utilize to mitigate wildfire risks during dangerous conditions is a public safety power shutoff (“PSPS”). This involves preemptively shutting off power, which ensures that equipment cannot start a fire. Utility operators’ plans to de-energize power equipment during extreme fire conditions are standard industry practice.

143. The practice of de-energizing power lines in times of high fire risk is commonplace in regions accustomed to wildfires. Xcel chose not to de-energize its power lines on the date of the Marshall Fire.

⁵³ BCSO Report, *supra* note 1, Exhibit 4.

144. As a multistate, multibillion-dollar power company, Xcel Energy has long been aware of the effectiveness of de-energizing power lines as a tool to guard against wildfire. It knew what factors should lead to a decision to shut off power or adjust the circuit or recloser settings. It knew the deadly and destructive consequences of leaving power lines energized during summer windstorms.

145. Xcel was aware of the weather and high wind warnings ahead of December 30, 2021. It knew that it was critical to manage and safely operate power lines in the face of fire risk that could emerge anywhere in Colorado, particularly in the right conditions. Despite knowledge of these weather warnings, Xcel chose not to shut down the power or adjust the circuit or recloser settings.

D. Plaintiffs Suffered Injury to Their Property

1. The Butler Family

146. Patrick and Patricia Butler bought their home on Club Circle in the Club Homes neighborhood of Louisville in 2016. Since buying the home they had significantly invested in it, including a complete remodel of the main floor and renovation of the basement.

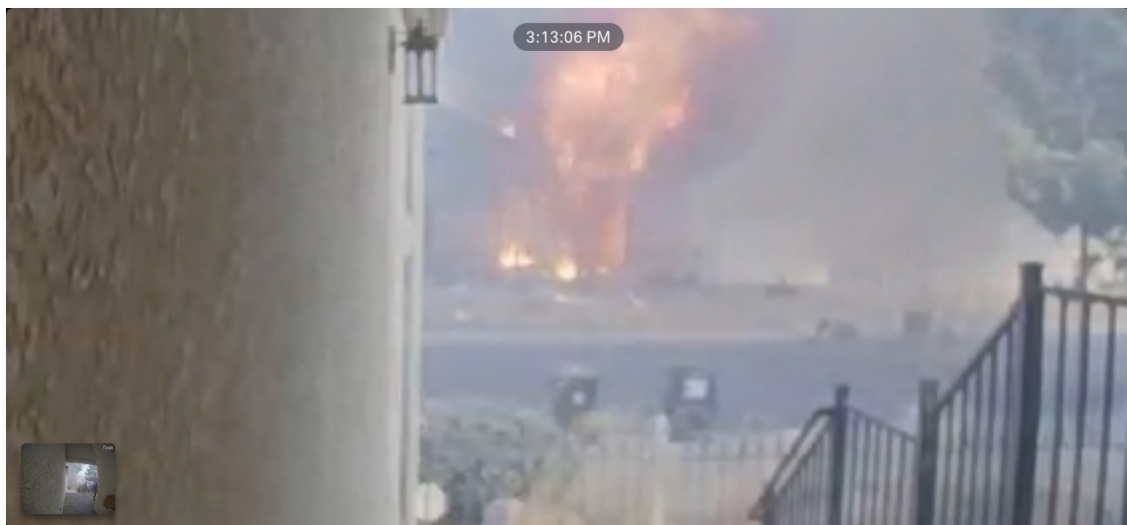
147. Then, in 2021, the Marshall Fire totally destroyed the Butlers' home, as shown in this image below taken after the fire:



148. In addition, the fire destroyed all their landscaping and other property features: trees, bushes, plants, flowers, fencing, a patio, and so on. It also destroyed all their personal property, including priceless family mementos like childhood photos and video tapes, quilts made by Patricia's grandmother, even a Harley Davidson motorcycle. Virtually nothing was left.

149. On the day of the fire, Patrick left work early and stopped to get flowers for Patricia. He noticed the sky was gray and it smelled like campfire. When he got home, they turned on the news and saw reports of a fire in Superior. Shortly after that, a friend arrived at their home and said she had received a phone alert to evacuate. The news began reporting a fire at the nearby Coal Creek Golf Course. The Butlers gathered a bag for overnight, their son's dog, and left.

150. As they were leaving, they saw that a median at the end of their street was catching fire. Once evacuated, the couple was able to watch in real time, through a neighbor's Ring camera, as their home and all their possessions burned:



151. After the fire, the couple spent approximately five weeks living in hotels or with friends until they were able to find a rental home.

152. In addition to the hundreds of hours spent working on rebuilding their lives, the couple has had to worry about whether the loss will impact their plans to retire. Patricia has sought help from a therapist to process the fire and its aftermath.

153. The couple is hopeful that, after a lengthy rebuilding process, they will be able to return to the Club Circle property in November 2023.

2. The Korch Family

154. Brad and Angela Korch bought their home in the Coal Creek Ranch neighborhood of Louisville in 2010. They lived there with their two children, A.K. and I.K., at the time of the Marshall Fire.

155. In the decade they lived in the home, they upgraded the roof, cooling system, deck, paint, windows, and other features of the house. The Marshall Fire destroyed all the work the family had put into the home, as shown in this photo:



156. More than destroying their home and nearly all their personal property, the Marshall Fire has completely changed their lives. It has strained their marriage and personal relationships, caused stress, sleepless nights, and more. Their young children have been deeply impacted, with I.K. requiring therapy for depression after the fire.

157. Ultimately, the family decided the trauma of returning to their burned neighborhood would be too much, so they sold the property and have moved to nearby Superior.

3. The Cebrian/Russell Family

158. Miguel Cebrian and Kathryn Russell and their two children, M.C. and N.C., moved into their home in the Centennial Heights neighborhood of Louisville in 2010. Before the Marshall Fire, the family had finished and remodeled the basement and remodeled the master bed and bathroom in the five-bedroom house.

159. The Marshall fire totally destroyed the family home where they had lived for more than a decade and hoped to continue to raise their two children, born in 2006 and 2008. This photo shows the destruction:



160. The fire likewise destroyed all the features outside the home, including mature deciduous and evergreen trees, ornamental bushes, fencing, and the children's play area. Essentially all their personal property turned to ash and cinders. The fire was so hot it melted porcelain tile.

161. As the fire approached the neighborhood, Miguel and Kathryn were not home but their children were. They frantically called the children and told them to run to a nearby recreation center, where they thought they'd be safe. The parents raced home with just enough time to pick up a handful of important papers before picking up their children at the rec center and evacuating. After spending the night with a friend, they learned their home had been lost.

162. Like others, the family has spent countless hours dealing with displacement, loss, and rebuilding. The trauma from the fire has caused the family lasting sadness, anxiety, and sleeplessness. The loss of their home and all their property caused a sense of identity loss, marital stress, and for their daughter N.C., withdrawal, and difficulty in her social structure. Miguel has been prescribed anti-anxiety medication.

163. The family still owns the property, and they have been living in Superior while they rebuild.

4. Scott Silverman

164. Scott Silverman bought his five-bedroom home in the Coal Creek Ranch neighborhood of Louisville in 2013. Since then, and before the Marshall Fire, he had remodeled the kitchen and all the bathrooms and invested tens of thousands of dollars in projects throughout the home and in landscaping and irrigation.

165. The Marshall Fire completely destroyed his home and all he had invested in it as well as personal property, mature trees, and other vegetation around the home, as shown in this picture after the fire:



166. In addition to his economic losses, Scott has been traumatized by the Marshall Fire, experiencing increased stress and anxiety for him and his family and loss of sleep. The evacuation was the scariest experience ever in the lives of the family. The family's two elderly cats evacuated with them but after moving from hotels to friends' houses to rental property and then back to a hotel, both cats died months after the fire.

167. In part because of that trauma, Scott Silverman's family decided they no longer wanted to live in the footprint of the Marshall Fire. He sold his property in January 2023 and his family has relocated to Broomfield.

5. The Koenigsberg/Cassagnol Family

168. Alisa Koenigsberg and Brandon Cassagnol moved into their home in the Club Homes neighborhood of Louisville in November 2020, a little over a year before the Marshall Fire. In that time, they made substantial improvements to the four-bedroom home, including a complete renovation of the first floor.

169. In December 2021, the then-newlyweds were nearly done with another major project, finishing the unfinished basement to add a bedroom, bathroom, rec room, and gym. Then the Marshall Fire erupted and erased all that, gutting the home and property, as shown in this picture taken after the fire:



170. The fire likewise destroyed nearly all of their personal property and the landscaping around the home save for one large pine tree that survived despite heat damage.

171. The morning of the fire, the couple remembers the winds being so strong they were pushing their car on the road. Later, at home, Brandon was talking on the phone to his mother, who suddenly shouted “There’s a fire!” Soon after, smoke began to fill the sky at their home. They gathered a few items and fled through thick smoke and traffic.

172. On top of the displacement, erasure of their material lives, and damage to financial stability, the fire has caused the couple ongoing anxiety, sleeplessness, depression, and nightmares. Both have sought therapy, which is expensive but necessary. Worse still, Alisa has experienced two miscarriages since the fire, and she has been diagnosed with an autoimmune disease that often lies dormant in the body but can be activated by high levels of stress. They are still in the process of rebuilding now.

6. The Riesel Family

173. Cheryl and Jared Riesel and their minor daughter, J.R., moved into their home in the Centennial 8 neighborhood of Louisville in June of 2021, just months before the Marshall Fire. After moving in, but before the fire, the family spent tens of thousands of dollars on improvements: new carpet, light fixtures, paint, and so on.

174. On the day of the fire, the family was traveling home from Glenwood Springs when they saw a wall of smoke. As they got closer to Superior and Louisville, they were driving through thick smoke and flaming ash. They did not know what was happening, but they could tell they and their community were in grave danger. They were able to reach their house where they frantically scrambled through smoke-filled rooms to gather what they could as J.R., terrified, cried. They fled only to encounter traffic. At a standstill, the couple thought they might have to run for their lives or die there in their car. Eventually, they were able to make it to a friend’s house in Gunbarrel, where they turned on the television to learn that their neighborhood had been destroyed.

175. The Marshall Fire destroyed the home the family had so recently worked to buy and improve, as shown in this photo:



176. The fire likewise destroyed numerous mature trees and other landscaping, as well as nearly all their personal property inside the home and its garage. That included priceless family heirlooms and mementos.

177. More than just destroying their property, though, the Marshall Fire destroyed their sense of safety. It has changed nearly every aspect of the family's life. They crammed into a hotel room for months. Nobody could sleep. Days and nights were filled with trying to rebuild. Perhaps worst of all, their daughter J.R. was utterly changed from a loving, sensitive child to a grief-stricken, panicked, and deeply traumatized one. She has been regularly attending therapy to deal with the trauma. While trying to care for their traumatized child, Cheryl and Jared contend with trauma of their own: nightmares, anxiety, migraines, and more.

178. The Riesels are fortunate, however, in that they have been able to move back into their rebuilt home.

7. Jack Selden

179. Jack Selden was living with his mother, Stacey Gurr, a plaintiff in *Abrams, et al. v. Xcel Energy, Inc. et al.*, No. 2023CV30664, at the time of the Marshall Fire. Jack and Stacey were at home when they got notice that they had to evacuate. They gathered some belongings and went to Jack's dad's house nearby, which then also had to be evacuated. While at his dad's house, Jack spent about forty minutes trying to get his cat into a carrier, but the cat was scared and hiding and Jack was forced to leave him there. It was a stressful experience and Jack spent four days wondering if his cat had survived, which it fortunately did.

180. After spending several days in a hotel, Jack was able to return home. Thankfully, the house structure was spared by the Marshall Fire. There was ash inside the garage and sunroom. It was months later that they learned that the house should be tested for contaminants. The results revealed that they had been living in the home at an unhealthy level of char for months and the house had to be remediated. Stacey and Jack had to dispose of their mattresses, some chairs, and some other smaller items that were unsalvageable. Jack and Stacey spent weeks washing every item of clothing, linen, towel – basically every fabric item in their house – as well as washing walls, ceilings, and furniture.

181. Due to the Marshall Fire, Jack's living situation was abruptly altered. His mother's domestic partner and his two teenage daughters lost their home in the Marshall Fire and were forced to move in with Stacey and Jack. This was stressful for Jack as he had to relocate his room and belongings and as a result spent more time at his dad's house. The two households continue to live together, after having to make physical adjustments to the house to accommodate the changes.

8. The Kuca Family

182. Susan and James Kuca and their two children, August and minor A.K., moved into their home in the Cornerstone neighborhood of Louisville in 2005. They invested significantly in the 4-bedroom home: new flooring, roof, and windows, and a remodel of a bathroom and the kitchen.

183. Not long before the Marshall Fire, the Kucas also re-landscaped their yard, adding numerous shrubs, bushes, and trees.

184. The Marshall Fire completely destroyed the family home and all they had worked to build in and around it, as shown in this picture:



185. On the day of the fire, the family had a panicked evacuation as smoke filled the sky and hot ash fell around them. The children were home at the time when A.K. saw a cloud of smoke and called James, who rushed home. They had no time to collect their possessions. Once the family left, in two separate cars, they encountered immediate traffic jams. They feared they would burn to death, but they were able to navigate around the traffic to safety in Thornton. From there the family watched, helplessly, as their community burned.

186. In addition to the real property lost, the fire erased all their personal property, including irreplaceable items like their children's art projects, baby pictures, karate certificates, wedding rings and dresses, and so on.

187. The trauma from the fire, and the ongoing task of rebuilding, heavily weighs on the Kucas. They have lost the sense of community they had from hosting friends and family at their house, and they all experience stress and anxiety from the fire. Quite simply, the Marshall Fire changed almost everything in their lives.

188. For example, Susan has difficulty with focus, concentration, and memory, and is no longer able to enjoy the things—like yoga or camping—that she enjoyed before the fire.

Her days are consumed with worry and rebuilding. August experiences anxiety whenever there is harsh weather or smoke, and he experienced depression and weight loss after the fire. His relationship with his brother has been strained by the displacement and relocation to a cramped apartment. A.K. had difficulty sleeping after the fire and now needs melatonin to help him sleep.

189. The family is still rebuilding and hopes to return to Cornerstone soon.

9. The Missey Family

190. Judith and Roger Missey moved into their home in the Clubhomes at Coal Creek neighborhood of Louisville in 1998. At the time of the Marshall Fire, the property was owned by the Missey Living Trust. In the time they had lived in the home, the Misseys significantly upgraded it, including new flooring, new decks, new kitchen appliances, and more.

191. The Marshall Fire destroyed the Missey property, as shown in this photo:



192. The fire also destroyed mature vegetation and landscaping around the house, as well as all the personal property inside and the couple's minivan.

193. On the day of the fire, the couple received a reverse 911 evacuation alert. They got into one of their cars to leave, with no time to collect any belongings. Once they had reached

safety, their friend sent them pictures of their house burning. The fire took everything except the clothes they were wearing and the car in which they fled.

194. Following the shock of that evacuation, the Marshall Fire has dramatically changed the couple's social and emotional lives. Sleep patterns have changed, Roger has stopped most social activities, and the day-to-day stress of trying to rebuild is overwhelming.

195. The Misseys are still dislocated, living in Denver, but they are rebuilding now and hope to someday return to their Louisville property.

10. The Xiao/Han Family

196. Jianliang Xiao and Han Yan, and their two children, S.X. and W.X., moved into their home in the Coal Creek Ranch neighborhood of Louisville in October 2011. Hoping to raise their children in this home, Jianliang and Han extensively renovated the home after moving in and before the Marshall Fire. Some of their improvements included a kitchen renovation, multiple appliance and radon mitigation system upgrades, remodeling of multiple bathrooms, the laundry room, kitchen, and fireplace, replacements of the second floor and basement carpet, sump pump, furnace, water heater, roof and gutter, and basement windows, and the addition of a house-wide humidifier. Their home was a haven that held precious memories of their family time together.

197. The Xiaos were eating lunch when they learned they had to evacuate. They saw smoke everywhere. They only had enough time to pack a small suitcase with very few essential items. Thinking that this evacuation was just a safety measure and they would be back momentarily, they only drove one of their two cars to safety. They had no idea that everything would burn down.

198. The Marshall Fire destroyed the Xiao family's home, including their idyllic landscaping, which consisted of a large wooden deck, two stone patios, extensive stone and brick pathways, stone benches, a wood pergola, multiple wood beds, and lush foliage. This photo shows what remained of their home as of January 2022:



199. The Xiao family suddenly found themselves displaced. They stayed with a friend the first night, and moved into a hotel the second night.

200. The Marshall Fire turned the Xiao family's lives upside down. They spent a significant amount of time dealing with the loss of their home and all their personal belongings, debris removal, and their rebuild. This forced a shift in the focus of their lives – instead of enjoying life like they did before the fire, they were forced to deal with the aftermath of the destruction.

201. The Xiao family was not spared from the trauma that has affected many of the Marshall Fire victims. Jianliang and Han often burst into tears when reminiscing about their lives, their kids, and their memories in their destroyed house before the Marshall Fire. Han's sleep was disrupted, and she could not fall asleep for hours on end. Jianliang felt depressed and extremely stressed, which often manifested itself as headaches. The emotional strain resulted in increased tensions between Han and Jianliang.

202. Unfortunately, their children too were left traumatized by the fire. W.X. spent the days immediately after the fire asking for his favorite stuffed giraffe that he would hug every night for comfort. After learning that wind played a part in the fire burning everything down, W.X. now associates wind with the destruction of his home.

203. The Xiaos still own the property in Louisville, but due to their trauma from this experience, they have not moved back and have sought stable housing for their family in Boulder.

11. The Hawksley Family

204. Caitlin and Joel Hawksley purchased and moved into their home in the Centennial Eight neighborhood of Louisville in June of 2020, only about a year and half prior to the Marshall Fire. In that short amount of time, they had invested time and money into home improvements, including complete renovations of their basement and primary bath.

205. The Marshall Fire completely destroyed their home and their surrounding landscaping, including five trees, multiple retaining walls, bushes, heirloom roses, ornamental grasses, and raspberry bushes. All of their personal belongings were lost in the fire.



206. The Hawksleys experienced a total upheaval of their lives as a result of the Marshall Fire. Forced to find housing elsewhere, the Hawksleys had to live outside their community and spend hours every week commuting back to Louisville. Caitlin Hawksley, who operated her own business out of her home at the time of the fire, lost freelance client contracts because she was not able to dedicate her time and energy to her work.

207. The fire weighs heavily on the Hawksleys, and both Caitlin and Joel have experienced significant mental health struggles since. Joel was prescribed medication for related anxiety, and both Joel and Caitlin are still in therapy for help with the immense stress, anxiety, and difficulty sleeping that they had been experiencing since the fire.

208. The Hawksleys remain displaced as they rebuild their home and continue to grapple with the lasting consequences the Marshall Fire has left on their lives.

12. The Walker Family

209. The Walker family purchased and moved into what they hoped would be their forever home in the Coal Creek Ranch South neighborhood of Louisville in 2007. Before the Marshall Fire, they made several improvements to the family home including remodeling the kitchen and a bathroom, upgrading the roof and HVAC system, and redoing their back deck. They also had professional landscaping done in both their front and back yards, which included very large mature trees, a fountain, a patio pond, large boulders and moss rock, and gorgeous lighting.

210. When the Walker family learned that they needed to evacuate due to the Marshall Fire, they packed an overnight bag, grabbed a few personal items and their pets, and loaded up their two cars, thinking this would only be temporary. About twenty minutes later, the family was in a parking lot in Broomfield when they learned from a neighbor that their family home was fully engulfed in flames, and all they had left was what few belongings that were in their two cars.

211. The below photograph shows the Walkers' beautiful family home before and after it was destroyed by the Marshall Fire:





212. The fire also destroyed the family's personal property, including irreplaceable memories like analogue photographs that captured the beginnings of Grayson and Dashiel's childhoods, and mementos belonging to Gregory's parents, who had both passed. Both Lori and Gregory are professional musicians and were devastated to learn that they had lost everything, including their instruments, sheet music, and teaching notes. Gregory also lost historically significant archives of his father, who was a Pulitzer prize-winning composer, and his mother, a renowned musicologist. The photograph below shows what remains of their grand piano:



213. The Walkers had to move four times in the first few weeks after the fire. Forced to become renters again in their sixties was not something Lori and Gregory Walker ever anticipated.

214. The fire has impacted the family in innumerable ways and has reverberated through almost every aspect of their lives. Lori and Gregory have spent a significant amount of time inventorying their family's lost personal property, dealing with clean up and the arduous rebuilding process, and processing the weight of their losses.

215. The loss of their childhood home was traumatic for both Grayson and Dashiell, who lost all their possessions in the fire, including childhood photographs and musical instruments. Grayson struggled with nightmares and insomnia in the months following the fire, leaving him chronically stressed and fatigued. Dashiell felt drained after having to dedicate so much time and energy to dealing with his losses, all in the middle of his college years.

216. The Walker family has been displaced, both emotionally and physically. They are still in the process of rebuilding and hope to return to their Coal Creek Ranch South neighborhood.

13. The Covino Family

217. Katie and James Covino and their two minor children, L.C. and S.C., moved into their home in the Centennial Heights West neighborhood of Louisville in 2018. Before the

Marshall Fire, they made several improvements to the family home including garden boxes, new heating and cooling systems, new roof, new toilets, and renovated ceilings.

218. The Marshall Fire destroyed their family home, as shown in this photo:



219. The fire also destroyed nearly all the family's personal property, including irreplaceable heirlooms like Katie's wedding dress and her grandfather's wooden chest from WWI. Tragically, their family cat, Noodle, died in the fire. They were unable to find Noodle in the rush to evacuate to safety, something that haunts them still. James was forced to stop searching for the family cat and promptly evacuate when the intense heat from outside shattered a window in their living room.



220. The fire has impacted the family in innumerable ways. They have had to move four times since the fire. S.C.'s daycare was temporarily closed for smoke damage, they have been displaced to a new community, and the daily routine of pickups and drop-offs now takes over an hour and a half. While being displaced, they lost their guest room and were unable to host visitors like their aging parents, so they have missed out on priceless family time together. On top of that, managing their recovery and rebuilding feels like another part-time job.

221. Both children have been deeply affected. For example, S.C., age three, asks, "where is my dolly?" answering to herself "maybe it burned in the fire." She shakes and cries when it is windy. Her older sister, L.C., is mourning the loss of her former life—from art projects lost to having to move away from her neighborhood friends. Her anxiety has manifested in many ways: nightmares, sleeplessness, tantrums, and worse. She is seeing a therapist to help her manage the trauma caused by the fire.

222. While trying to hold things together for their children, Katie and James are of course dealing with their own trauma. They have experienced anxiety, depression, exhaustion, sleeplessness, nightmares, and a general sense of being overwhelmed. Wind, alarms, and the smell of smoke are all triggers.

223. The family is still in the process of rebuilding and hopes to return to their Centennial Heights West neighborhood.

14. The Pomeroy Family

224. Reina and David Pomeroy and their two minor sons, C.Y.P. and C.H.P., moved into their home in the Centennial Heights neighborhood of Louisville in August 2021. Four months later, the Marshall Fire completely destroyed their new five-bedroom family home, as shown in this photo:



225. In the short time the family lived in the home they made substantial improvements, from a new furnace to new flooring and paint. The fire erased their home, those improvements, their personal property, and the vegetation around the home, including mature ash and aspen trees.

226. The day of the fire, they noticed wildfire smoke at lunch time, and David drove to Davidson Mesa to get a view to the west. There, he felt hurricane-force winds and could see the fire, now massive, moving toward their neighborhood. Surrounded by blowing smoke and ash, the family rushed to pack what it could and fled to a relative's house in Denver. As they left their home, it seemed all of Superior and Louisville were on fire.

227. The family feels like they have lost the last two years of their lives, which have been preoccupied by recovering from the fire. They experience stress, anxiety, and sleeplessness. Reina was in the middle of the IVF process when they were forced to evacuate—that process had to be paused. She’s since been diagnosed with PTSD and Severe Generalized Anxiety Disorder. Also since the fire, one of their children has been diagnosed with an adjustment disorder and has had trouble sleeping, including nightmares. Their other child has become fearful of fires.

228. The family is still displaced but they are hopeful that they will be able to return to their property by the end of the year.

15. The Bragdon Family

229. Lori and Bruce Bragdon own their home in the Cornerstone neighborhood of Louisville, which they purchased in 1991. After moving in but before the Marshall Fire occurred, they had finished their basement, added two back decks, and had remodeled their kitchen. Their home was their sanctuary.

230. On the day of the Marshall Fire, the Bragdons saw large amounts of smoke coming into their neighborhood and flames in the distance. They were forced to evacuate, grabbing what they could in the little time they had – a few personal items, their computer, and both of their cars – nothing more. After they evacuated, they learned that the Marshall Fire decimated their beloved home and all of their personal belongings.



231. The Bragdons spent twenty-one months rebuilding their home from scratch. Like others, their lives have been significantly impacted by the sleepless nights and

insurmountable stress they have shouldered since the Marshall Fire destroyed their home.

16. The Nasiatka Family

232. Laura and David Nasiatka purchased their home in Louisville, Colorado in 1991 where they lived with their son Patrick and daughter Katherine (“Katie”) until it was destroyed by the Marshall Fire. Their home held a plethora of family memories, including photographs, memorabilia, important documents, and items belonging to Laura’s father, who had only recently passed away. The Nasiatkas had remodeled multiple rooms in their home and enlarged both their front and back porch, so they could enjoy their beautiful garden and yard, which was home to a 30-year-old ash tree, a 25-year-old maple tree, and a 15-year-old honey locust tree.

233. On the morning of December 30, 2021, Laura Nasiatka was shopping at Costco picking up food for New Year’s Eve dinner. Her husband David was at work, and Patrick was at home recovering from illness. At Costco, Laura could hear the wind blowing on the roof. When she got outside, she saw smoke everywhere. That afternoon, a friend called her and told her to get out as soon as possible. With little to no warning to evacuate, Laura and Patrick were forced to flee with very few of their possessions in an attempt to outrun the fire. They were on the phone with Katie, who was in Fort Collins for work and could only helplessly listen to the panic and chaos as her mother and brother fled their neighborhood, which had already caught fire. The below photograph, taken by Patrick, fairly and accurately depicts the harrowing scene in their neighborhood as they evacuated:



234. The Nasiatkas were devastated to learn that they had lost their home, their car, and all of their possessions. They returned to the property a few weeks later and found their beautiful home reduced to rubble and ashes, as seen in the photograph below:



235. The Nasiatkas lost everything they owned. In addition to losing all her personal belongings, Laura Nasiatka lost the remainder of her late father's items that she had kept in his memory. Patrick and Katie lost all their childhood photos, sports memorabilia, artwork created over a lifetime, keepsakes of their childhood memories, and family heirlooms such as Christmas decorations and their father's vinyl records. Nothing survived the fire.

236. Since fleeing the fire, the Nasiatkas have been displaced and life has felt like a living hell. Laura and Patrick spent their first two nights at a relative's home, where David joined them later that day. The Nasiatkas later relocated to a hotel, and finally moved into a rental home in Erie, Colorado.

237. The Nasiatkas have suffered significant stress, grief, and sleepless nights as a result of this traumatic experience. Laura Nasiatka – who was also supporting her widowed mother in Castle Rock before the fire – often found herself awake and roaming her rental house in the middle of the night, plagued by feelings of helplessness.

238. The Nasiatka family continues to struggle with the emotional consequences of having lost everything in the fire, the inability to support their relatives as they once did, and the stress of having to rebuild from scratch.

17. The Sanchez Family

239. Matt and Missy Sanchez bought their home in Louisville, Colorado on December 30, 2010, and they lived there until the Marshall Fire destroyed it exactly eleven years later. It was the only home their children, H.G.S. and H.S.S., had ever known.

240. Over the course of the eleven years in their four-bedroom home, the Sanchezes had added hardy siding, hardwood floors throughout, a flagstone patio and a deck in the backyard, a front porch, a new air conditioner and furnace, a shed, new windows and window coverings, new front and patio doors, and new exterior paint.

241. Matt and Missy curated their home – everything in it had a story. Most everything was vintage, rare, and valuable. They carefully selected their belongings, which were unique, often custom, and irreplaceable. Their home was full of thoughtfully collected and prominently displayed designer chairs, dining furniture, and kitchenware.

242. On December 30, 2021, the Sanchez family was in South Carolina for Missy's mother's funeral when they received news of the Marshall Fire. They had no opportunity to save anything. They returned to Colorado in early January to find their home and everything in it completely destroyed. Their friend captured photographs of where their home had been and their neighborhood the day after the fire.





243. The fire destroyed everything Matt and Missy had so thoughtfully included in their carefully curated home. Matt is a fishing guide and has worked in the outdoor industry since high school, and he had collected irreplaceable and custom fishing, hunting and outdoor gear, all of which the fire took. Missy is an artist, and the fire destroyed not only over 700 works for her own art, but also all of the art she had collected throughout her life from artists around the world. Missy's artistic eye extended to furniture, interior design, and fashion, as well, and she had collected very special pieces of furniture and clothing from couture designers, many of which were irreplaceable vintage pieces. The Sanchezes lost all of their family heirlooms, too, including treasures like Missy's parents' records and record player, a turn-of-the-century typewriter, Missy's mother's jewelry, watches, and coins, and Missy's father's camera. In addition to Missy's childhood photos, the fire destroyed the external drives containing the Sanchezes' immediate family photos, too. These are things that can never be replaced. Beyond the financial value of their possessions, the Sanchezes' home was steeped in sentimental value. The Sanchezes had poured thought and effort into curating their life and their home, and they don't have – and likely will never again have – the time and energy to attempt to recreate what the fire destroyed. Matt and Missy had loved their home and everything in it, and the fire burned it all.

244. The Sanchez family's lives will never be the same. They think of time now as "before the fire," and "after the fire." Matt and Missy have experienced extreme stress, anxiety,

fear of instability, uncontrolled emotions, and indescribable grief. Their kids have had extreme anxiety; they are fearful, they will not let the family go on a trip without their dogs for fear of another fire, and they have increased attachment to belongings, tending to hoard belongings they are scared to lose again and demonstrating extreme attachment to the few items they had before the fire, including headbands, shirts, socks, and stuffed animals.

245. The entire family has also suffered from traumatic nightmares since the fire. Matt had intense insomnia, sleeping a maximum of only a few hours per night, negatively impacting his health and job performance. Missy also suffered difficulty with sleep, and she had migraines that increased in frequency, duration, and intensity.

246. The Sanchezes also lost business income, as Missy's business was housed in their home.

247. The aftermath of the fire put extreme stress on their relationships, including their marital relationship, and the grief and sadness isolated them from their friends.

248. After the fire, the Sanchez family decided not to rebuild. They sold the lot in August 2023.

18. The Karch Family

249. Rebecca and Kevin Karch purchased and moved into their home in the Cornerstone neighborhood of Louisville in 1995. In the twenty-seven years prior to the Marshall Fire, the Karches made many renovations to their home, including finishing the basement to include a recreation room and bedroom with a full bath, an expansion of the outdoor deck, a kitchen remodel, installation of hardwood floors on the main level, and a master bath remodel. At the time of the fire, also living with the Karches were their two sons and the family's two pet cats.

250. On the day of the Marshall Fire, the Karches decided that it was no longer safe to remain in their family home. They evacuated as quickly as they could, and as they left their cul-de-sac, they saw that the field across the street was already engulfed in flames, and homes down the street were already ablaze. Like many others, though they tried to leave the area quickly, they ran into traffic caused by the thousands of others who were trying to evacuate at the same time. Having to sit in their car in a large traffic jam, knowing that a raging fire was just blocks behind them, was incredibly frightening to the Karches.

251. Fortunately, the Karches were able to physically escape the Marshall Fire. But sadly, their home was less fortunate. The entire home, and all the memories and belongings in it, was incinerated. The below photograph fairly and accurately portrays their house after the fire:



252. With no home to return to, the Karches suddenly found themselves displaced. They lived in a hotel room for over two weeks with their two cats. Desperate for stable housing, they rented a townhome in Longmont before relocating to Lafayette.

253. The Marshall Fire devastated more than their worldly possessions and home – it caused the Karch family significant anguish. The stress of having to rebuild, working with

contractors, and continued displacement has been jarring – so jarring, in fact, that Rebecca Karch has gone to therapy to deal with the traumatic events and aftermath. The Karches never thought they would find themselves in a situation like this, and they had many sleepless nights as a result.

254. The Karch family cats also experienced great stress from having to move suddenly and being thrust into new surroundings for two years following the fire. As a result, they now require anti-anxiety treatment for felines.

255. After a long twenty-two months, the Karches completed their rebuild and were lucky enough to move back onto their property in October 2023.

19. The Cullens Family

256. Chihoko and Evan Cullens and their two minor children, E.C. and C.C., moved into their home in the Sagamore neighborhood of Superior in June of 2021, just six months before the Marshall Fire.

257. That fire destroyed their family home, as shown in this photo, and nearly all their personal property:



258. When the fire arrived, Evan was away at an appointment while Chihoko was home with their three children. She had no warning, and she rushed to load their children in their car as Evan tried but was unable to get to their neighborhood. By the time the children were

loaded, the smoke was so thick she could not see the car in the driveway. Everyone was inhaling smoke and coughing while she followed a set of car tail lights she could see through the smoke out of their neighborhood to safety. It was the scariest moment of her life, and both Evan and Chihoko still often think about how close they came to losing their family.

259. The fire and its aftermath have traumatized the family in many ways. They experience stress, depression, sleep issues, and strain on their relationships. Their children frequently talk about the fire and what they lost at school.

260. The family has had to move several times, but they are rebuilding and home to return to the Sagamore neighborhood.

20. The Rosenberg-Watt/Watt Family

261. Philip and Kelly bought their home in Superior on June 8, 2015, and they lived there until the Marshall Fire destroyed it on December 30, 2021.

262. After buying their home, the Watts made several improvements, including finishing the basement with a complete kitchen, bedroom, and full bathroom; adding a concrete floor to extend storage into a full-height crawlspace; running Cat 6 ethernet cable throughout the home; and upgrading the garage electrical to accommodate two electric vehicle chargers. They also took care of the mature oak tree, five-year-old linden tree, rose bushes, shrubs, and decorative grasses in their yard.

263. The day of the fire, Phil had to fight through thick, black smoke to retrieve their child from daycare and drive home to hurriedly pack critical items into the back of their vehicles while Kelly struggled to get home through the smoke and traffic. Kelly then left with their child while Phil stayed, trying to save what little of their belongings he could and load them into the back of his car. He had to use an alternate road to leave the already burning neighborhood, but he returned to the neighborhood shortly after leaving so that he could save his neighbor's two dogs. He kicked down a door to do so, and he left with the dogs as soon as he could. The family then drove to a family member's house in Sedalia. They stayed with friends until they were able to find a rental in their area one month later.

264. In addition to losing their home and belongings, the Watt family lost heirlooms with great emotional and sentimental value, including antiques, photo albums, a rocking chair, a bed, a dining room table, and antique chairs. These items had been passed down in the family for generations, many of them for over 100 years, before the Marshall Fire destroyed them. The photos below show the destruction of the Watts' home.



265. The Marshall Fire has greatly affected the Watts' mental health, work, and relationships. It displaced them from their home, neighborhood, and support network, they have

suffered depression and anxiety requiring mental health counseling, and they were unable to sleep well for months. They frequently relive escaping from the fire. Both Phil and Kelly's work performances have suffered as a result of challenges dealing with the aftermath of the fire. They also have struggled with childcare after their childcare provider's home was destroyed, as were the homes of their neighbors who would watch their child. The fire added a tremendous strain on the Watts' family relationships, marriage, and interpersonal relationships with friends and coworkers.

21. Christopher Gorman

266. In 2015, Christopher Gorman moved into a rental unit in the Coal Creek Ranch neighborhood in Louisville. He had rented the same unit ever since he moved in, and over the nearly seven years that he lived there, he had turned it into his own oasis. He kept all his cherished possessions, including his computer, gaming consoles, and anime collectibles, all inside his home.

267. On the morning of the Marshall Fire, Christopher was out running errands when he got a call telling him his neighborhood was being evacuated. Unable to return home, he went to his girlfriend's house with nothing but the clothes on his back and turned on the news. What he saw terrified him: behind the reporter, he saw a fire in the background that was uncomfortably close to his house. Then, he saw a wall of fire and black smoke north of Avista Adventist Hospital, and he knew his home had been destroyed.

268. The below photographs fairly and accurately show what was left of Christopher Gorman's rental unit and belongings after the Marshall Fire:





269. Christopher felt numb. The Marshall Fire destroyed the entire house. When he returned to the property, everything he owned had been reduced to ash – his computer, camera, video games and irreplaceable gaming memorabilia, and souvenirs collected over his lifetime, like the one shown below that Christopher found in the rubble:



270. In addition to losing every possession he owned, Christopher Gorman has struggled mentally and emotionally following the Marshall Fire's devastation. Immediately following the fire, he felt broken. He has struggled with sleeping throughout the night, experiences flashbacks, and constantly feels exhausted and depressed. He increased the

frequency of visits with his therapist and was prescribed antidepressants about a month after the Marshall Fire. Unfortunately, Christopher still experiences these struggles as he tries to rebuild his life.

271. Christopher Gorman was evacuated for forty-five days before moving into public housing. He is unable to move back into the place he called home for almost seven years. He remains displaced, and now must start over again from scratch.

22. The Shaw Family

272. Lindsey and Jeffrey Shaw own their home in the Centennial neighborhood of Louisville, which they purchased in 2017. After moving in but before the Marshall Fire occurred, they had made several improvements, including repainting and renovating several rooms, replacing the roof, adding solar panels, and redoing the landscaping.

273. The Shaws were at home on the day of the Marshall Fire. An emergency vehicle drove past their house, and told them to evacuate. A short while later, a neighbor told them their front lawn was on fire. The Shaws quickly packed up what little they could, and both Lindsey and Jeffrey drove their two cars in search of safety. H.S. was crying and screaming in the car as they drove away from their house. Luckily, the Shaw family was able to escape and ended up in a hotel in Fort Collins.

274. The Marshall Fire destroyed the Shaw family home. They lost everything, including analog photographs, priceless family memorabilia and sentimental Christmas ornaments, a lifetime worth of work, H.S.'s growth chart, artwork, and irreplaceable family heirlooms, such as Lindsey's great grandmother's wedding dress. The below photograph fairly and accurately shows what was left of their home after the fire:





275. In addition to losing their home, the Shaws also lost their sense of security. H.S. was stressed and scared for months, leading to sleepless nights and therapy. Lindsey had trouble sleeping and has flashbacks and increased anxiety on windy days. Jeffrey also experienced trouble sleeping and still cannot stand the smell of smoke. Jeffrey was forced to reduce his workload to deal with the aftermath of the fire, which in turn affected his performance rating and subsequent salary.

276. In short, the Marshall Fire has left the Shaw family feeling stressed, frustrated, and anxious. Like many others, the Shaws remain displaced as they rebuild their home.

23. The Chow Family

277. Nola Chow and her minor daughter, W.C., moved into their home in the Cornerstone neighborhood of Louisville in 2020. In the short amount of time after moving in and before the Marshall Fire, Nola spent a significant amount of time and effort into personalizing their home – she built an additional bathroom, upgraded the toilets, installed all new kitchen appliances, added irrigation lines, and planted various fruit trees to complement the beautiful evergreens and rock landscaping already in their yard. The below photograph fairly and accurately shows the Chow family's house before the fire:



278. Nola Chow is a single mother who has full responsibility for her daughter, W.C., who was born at the beginning of the COVID-19 pandemic. Nola and W.C. were in California for the holidays visiting family when they learned that the Marshall Fire burned their house down. The below photograph fairly and accurately shows what was left of their house after the fire:



279. With no home to return to, the Chows extended their stay and were forced to stay in a hotel when they returned to Colorado on January 4, 2022.

280. The loss of her home left Nola Chow feeling significantly stressed and overwhelmed. It was more than just a home to her and W.C. – it was a sign of their lives taking a turn for the better. All that is now gone. Nola was a self-employed real estate agent and operated eighty percent of her business out of her home office at the time of the Marshall Fire. Because Nola was displaced and forcibly spent all her time dealing with the aftermath of the fire – including cleanup, finding housing, rebuild considerations, and caring for her distressed daughter – she was unable to dedicate time to fostering her business. As a result, she lost both return and potential clients, and new business.

281. The enormous amount of stress caused by the Marshall Fire brought about a depression that affected her personal and work life, and exacerbated existing medical conditions that were under control well before the fire.

282. Nola Chow and W.C. remain displaced and have not been able to rebuild their home yet.

24. The Buggle Family

283. McClain Buggle purchased his home in the Cornerstone neighborhood of Louisville in 2013, where he lived with his minor two children, L.B. and B.B. Since then, and before the Marshall Fire, McClain Buggle put a significant amount of time and energy into upgrading his family's home. This included updating the roof, kitchen, laundry room, and landscaping. In addition to adding another bedroom and bathroom, he expanded the deck and added two patios so that his children would have ample space for activities as they grew up.

284. The Marshall Fire completely destroyed the Buggles' home, and everything in and around it, including twelve large evergreen trees, their beautiful garden, and sentimental items that can never be replaced. On the day of the fire, L.B. and B.B. were forced to evacuate twice: first to their mother's home in Superior, and a second time from Superior to a hotel in Thornton.

285. Like others, McClain Buggle and his children were forced to find temporary housing after escaping the fire. They moved into a hotel rental for the first month after the Marshall Fire in January 2022, and then into an apartment, where they lived until October 2023. The Buggles are fortunate, in that they were finally able to move back into their rebuilt home.

286. In addition to economic losses, the Buggles also suffered emotional trauma not only from having to evacuate, but from having to deal with the aftermath of the fire. McClain Buggle spent a significant amount of his time dealing with the rebuild of his family's home and accounting for all of his lost possessions. As a result, he endured significant stress and many sleepless nights, which led to decreased productivity at work and less time that he was able to spend with his children.

25. The Clark/Rothbauer/Biernat Family

287. Lisa Clark owned her house in the Cornerstone neighborhood of Louisville that she moved into in June 2008 with her sons, Jordan Rothbauer and Trey Biernat. In 2012, Julian moved in, and Lisa and Julian were married in 2016. Over the many years, the Clarks upgraded their home several times with renovations such as replacing siding, all windows, kitchen cabinets, and the roof, adding a large front deck, decorative metal banisters, and hardwood floors, and repainting the entire interior. Lisa Clark, who loves gardening, worked hard to create an outdoor oasis for her family. In addition to lush foliage, a water fountain, multiple bird baths and feeders, a variety of garden decorations, and a large pergola, their garden was home to multiple mature trees, including a snow crabapple, crabapple, scotch pine, and elderberry tree.

288. On the day of the Marshall Fire, Julian Clark, who is a first responder, was helping to evacuate neighborhoods. Lisa was at work assisting with evacuating patients at Avista Hospital. Jordan and Trey were both at home when a neighbor frantically yelled that the houses up the street were on fire, and that they needed to evacuate immediately. Jordan got in his car and drove to a friend's house. Trey had a friend over at the time, and so they left in her car, leaving his own behind. Seeing that their neighbors' homes were already on fire, Jordan and Trey were unable to grab any personal belongings and left only with the clothes on their backs.

289. When Julian returned to the police department, he saw his neighborhood burning. He was devastated when he realized he would have to break the news to Lisa that they were going to lose their house. After ensuring that Jordan and Trey had evacuated and made it to safety for the evening, Julian returned to his command post to resume helping his city.

290. The below photographs fairly and accurately show the Clarks' home before and after the Marshall Fire:



291. Everything the Clarks owned was destroyed. All of their personal belongings, two motorcycles, irreplaceable family heirlooms, treasured possessions, and family memories were gone. Two other vehicles also sustained extensive damage. In addition to losing all his personal belongings, Jordan, who has his own business building and painting Warhammer models and selling them for a commission, lost everything he was working on, the tools of his trade, and commissions from those projects. Trey, who is a pilot, lost his flight gear, logbook, and headset, in addition to everything he owned. The Clarks were devastated.

292. The smoke from the Marshall Fire impacted the Clark family's health in numerous ways. Julian Clark inhaled so many tiny particles while trying to save others from the Marshall Fire that he had to increase the dosage and frequency of his prescribed steroids and anti-inflammatory inhalers. Lisa Clark, too, required an inhaler for breathing trouble after the fire.

293. Lisa, Julian, Jordan, and Trey have all struggled emotionally in dealing with the aftermath of the fire. In addition to the stress of losing everything and being displaced, Lisa and Julian Clark have endured sleepless nights and tension in their relationship. Julian still experiences triggers which bring him back to the day of the fire. Feeling the weight of their losses on their shoulders, the Clarks simply do not enjoy life the way they once did before the fire.

294. Although the Clark family rebuilt their home and recently moved back onto their property, it does not feel the same. Their home as they knew and loved it before the Marshall Fire is gone.

E. Xcel delayed and tampered with the Marshall Fire investigation.

295. It took months of dogged research, but we now know that just minutes after the fire started, an Xcel lineman texted his supervisor to say, "I think our lines may have started this fire east of El Dorado."⁵⁴ If only Xcel had been this candid and forthcoming all along.

296. Knowing that Boulder County's residents would be wondering what sparked the fire and in response to early reports that a downed powerline caused the fire, on December 31, 2021, Boulder County's Office of Emergency Management published the following Tweet: "Update on Cause of Fire: Initial reports were of downed powerlines. @XcelEnergyCO has been a very responsive and invaluable partner & after inspection found no downed powerlines in the ignition area." The information Xcel provided Boulder County for this Tweet later became the subject of further investigation.

297. The same day, Xcel issued a "do not repair" order to preserve the system for investigation. But it appears that Xcel didn't follow its own order to preserve the powerlines at issue.

298. Unbeknownst to investigators and despite the "do not repair" order, it appears that Xcel reattached the east conductor to its insulator and crossarm on January 2, 2022. In so

⁵⁴ Kovaleski and Vaccarelli, *supra* note 5.

doing, Xcel could have destroyed or interfered with the discovery of direct evidence of the detached line and thereby the fire-cause investigation.

299. Xcel's actions run afoul of the national guidelines set forth in the National Fire Protection Association 921 Guide for Fire and Explosion Investigations ("NFPA 921"), which provide that "every attempt should be made to protect and preserve the fire scene because evidence could easily be destroyed or lost in an improperly preserved fire scene."⁵⁵ NFPA 921 also sets forth numerous ways in which evidence can and should be preserved at the scene.⁵⁶

300. Further, Xcel argued that the term in the Tweet, "downed powerline," is a technical term referring to a powerline that contacts the ground. Xcel argued that the information in the Tweet was correct because, while the Tweet referred to a downed powerline, the line involved in the Marshall Fire, which is detached from its pole but remains suspended in the air, is technically called a "floater."

301. But in its Wildfire Mitigation Plan 2022 Annual Report, Defendants stated, "The Company also uses the term 'Wires-Down' for a broad scope of events; not just when a wire is physically touching the ground. The events captured also include instances where a wire is displaced from its normal location, whether or not the wire contacts the ground."⁵⁷

302. After the Boulder County Sheriff's Office released a report finding Xcel powerlines discharged hot particles that caused the fire that started near Marshall Mesa trailhead, Xcel released a statement that "We strongly disagree with any suggestion that Xcel Energy's power lines caused the second ignition." But an investigative report found the opposite: that Xcel ignored the arcing evidence and the repeated operation of the circuit breaker.

303. Ultimately, the Boulder County Sheriff and District Attorney both say Xcel worked to delay the investigation and block investigators.

V. CLAIMS

COUNT ONE — INVERSE CONDEMNATION

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

305. During the relevant time, Plaintiffs were the owners of property or persons claiming an interest in property damaged by Marshall Fire.

306. The Colorado Constitution, Article II, § 15, provides in part: "Private property shall not be taken or damaged, for public or private use, without just compensation," and,

⁵⁵ NFPA 921 17.3.1 (2021).

⁵⁶ See generally NFPA 921 17.3.

⁵⁷ *Wildfire Mitigation Plan 2022 Annual Report* at 20, Xcel Energy (May 31, 2023), https://www.xcelenergy.com/staticfiles/xcel-responsive/Company/Rates%20&%20Regulations/Regulatory%20Filings/Wildfire%20Mitigation%20Plan%202022%20Annual%20Report_FINAL_05-31-23.pdf.

“whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.”

307. The state grants Xcel the power to condemn by eminent domain pursuant to Colo. Rev. Stat. §38-5-105.

308. Xcel owned, operated, controlled, managed, and/or maintained power line infrastructure in Boulder County, Colorado, for the purpose of providing electricity to the public pursuant to Colo. Rev. Stat. §40-1-103. Providing electricity to the public using power line infrastructure is a public improvement intended to benefit the community as a whole, and it therefore serves a public purpose.

309. Pursuant to this public purpose, Xcel perpetrated a taking of or damage to Plaintiffs’ private property. Xcel’s failure to adequately maintain and prepare its circuits in the face of a known, foreseeable high-wind event, and failure to de-energize its power lines during the high-wind event caused the Marshall Fire, which burned property owned and/or occupied by Plaintiffs on or around December 30, 2021.

310. Given the risk of a catastrophic fire at the time Xcel started the Marshall Fire, Xcel’s taking had the natural consequence of the taking of Plaintiffs’ property.

311. Xcel’s actions constitute a taking by inverse condemnation of Plaintiffs’ private property, without adequate or just compensation or the institution of formal eminent domain or condemnation proceedings.

312. The damage to Plaintiffs is disproportionate to the risks from the public improvements made to benefit the community as a whole. Justice, fairness, and the Colorado Constitution require that Plaintiffs be compensated for their injuries and the taking by Xcel rather than allowing the injuries and taking to remain disproportionately or exclusively concentrated on Plaintiffs.

313. Plaintiffs suffered property losses and other economic losses as well as non-economic losses including stress, depression, and anxiety, among other general damages, resulting from Xcel’s inverse condemnation.

COUNT TWO — NEGLIGENCE

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

315. Plaintiffs suffered injuries, losses, or damages as described in this Complaint.

316. Xcel was negligent. Specifically, Xcel had duties and responsibilities pursuant to accepted industry standards, Xcel’s own standards, National Electric Safety Code standards, the requirements of the American National Standards Institute’s utility vegetation management standards, and other state standards. Xcel’s duties included, but were not limited to:

A. Apply a level of care corresponding with and proportionate to the danger of designing, engineering, constructing, operating, and maintaining electrical transmission and distribution systems;

B. Operating and maintaining its power line infrastructure in a safe and reasonable manner;

C. Reasonably inspecting its power line infrastructure for hazardous conditions;

D. Exercising the care required of an electric utility company to design, construct, monitor, and maintain high voltage transmission and distribution lines in a manner that would avoid igniting and/or spreading fire during foreseeable and expected dry seasons;

E. Exercising the care required of an electric utility company to design, construct, operate, and maintain high voltage transmission and distribution lines and equipment to withstand foreseeable conditions and avoid igniting and/or spreading fires;

F. Reasonably inspecting, maintaining, and monitoring of high voltage transmission and distribution lines in known fire-prone areas to avoid igniting and/or spreading fires;

G. Reasonably de-energizing power lines during critical and extremely critical fire conditions, when Xcel knew or in the exercise of reasonable care should have known that the then-present fire conditions would cause energized lines to fall or otherwise contact vegetation, structures, and objects;

H. Reasonably de-energizing power lines even after fires had been ignited by their power line infrastructure or other utilities' power line infrastructure;

I. Reasonably implementing policies and procedures, and using equipment, to avoid igniting or spreading fire; and

J. Reasonably adjusting its operations to heed warnings about weather conditions that could cause rapid and dangerous fire growth and spread on or around December 30, 2021.

317. Xcel, through its own actions or inactions or those of its agents or employees, breached its duties as alleged in this Complaint.

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

COUNT THREE — TRESPASS TO LAND

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

320. Xcel intentionally and wrongfully entered upon Plaintiffs' properties by causing or allowing fire, flames, smoke, embers, ash, odors, gases, and/or airborne particles to physically come into contact with, enter, damage, destroy, or otherwise trespass on Plaintiffs' property. This intrusion on Plaintiffs' property was unauthorized and not consented to by Plaintiffs, and it caused physical damage to Plaintiffs' properties.

321. Plaintiffs were the owner or had lawful possession of the damaged properties described above.

322. Xcel's action were intentional because Xcel purposefully operated its utility equipment in a dangerous way that in the natural course of events resulted in the entry onto Plaintiffs' properties. Xcel knew of the extreme fire danger that high-wind conditions posed and knew or should have known that there existed critical and extremely critical fire conditions leading up to December 30, 2021. Despite Xcel's knowledge of the risk of extreme fire danger in high-wind conditions, Xcel had no plan in place to shut off power and chose not to de-energize their power lines during the then-present high-wind conditions. Instead, Xcel kept its power lines energized during the critical and extremely critical fire conditions.

323. Xcel knew that the then-present conditions were certain or substantially certain to cause the unauthorized entry and trespass onto Plaintiffs' property and disturb Plaintiffs' possessory interest.

324. As a direct and proximate result of Xcel's conduct, Xcel interfered with Plaintiffs' possessory interests and caused damage to Plaintiffs, including property damage, loss of cherished possessions, economic losses, business losses, emotional distress, annoyance, disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs related to evacuation and/or relocation.

325. Plaintiffs have also suffered general damages including, but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages to be proven at time of trial.

COUNT FOUR — PRIVATE NUISANCE

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

327. Plaintiffs have a possessory interest, including the right to quiet use and enjoyment, in the real property harmed by the fire Xcel caused.

328. Xcel kept powerlines energized and did not adjust the settings for protective equipment during extremely windy and dry conditions, when Xcel knew or in the exercise of reasonable care should have known that the conditions could cause energized powerlines to fall

or come into contact with structures, objects, or vegetation and cause sparking, arcing, or emission of burning materials or electricity.

329. Proper inspection and maintenance of infrastructure and equipment, shutting down power, or increasing the sensitivity of protective equipment could have prevented or avoided the harm to Plaintiffs' property. Failure to do so created an unreasonable risk of harm that Xcel's infrastructure and equipment would ignite a fire.

330. Xcel's failure to do so was a failure to exercise reasonable care. Xcel's behavior was negligent and/or intentional.

331. Xcel's conduct unreasonably interfered with the use and enjoyment of Plaintiff's property. Such substantial and unreasonable interference includes, but is not limited to:

- A. Total destruction of Plaintiffs' real and personal property.
- B. Damage to Plaintiffs' real and personal property.
- C. Diminution in the value of Plaintiffs' real and personal property.
- D. Loss of use and ability to enjoy Plaintiffs' real and personal property.
- E. Annoyance and inconvenience.
- F. Loss of wages, earning capacity, and/or business profits or proceeds and/or any related displacement expenses; and
- G. Other noneconomic damages.

332. Xcel's interference was so substantial that it would have been, and was, offensive or caused inconvenience or annoyance to a reasonable person in the community.

333. Xcel's interference was negligent and/or intentional.

334. Xcel's interference with the use and enjoyment of Plaintiffs' property constitutes a private nuisance for which Xcel is liable to Plaintiffs for all resulting damages.

335. As a direct and proximate result of Xcel's conduct, Xcel interfered with Plaintiffs' possessory interests and caused damage to Plaintiffs, including property damage, loss of cherished possessions, economic losses, business losses, emotional distress, annoyance, disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs related to evacuation and/or relocation.

336. Plaintiffs have also suffered general damages including, but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages to be proven at time of trial.

COUNT FIVE — PUBLIC NUISANCE

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

338. Plaintiffs have a possessory interest, including the right to quiet use and enjoyment, in the real property harmed by the fire Xcel caused.

339. Xcel kept powerlines energized and did not adjust the settings for protective equipment during extremely windy and dry conditions, when Xcel knew or in the exercise of reasonable care should have known that the conditions could cause energized powerlines to fall or come into contact with structures, objects, or vegetation and cause sparking, arcing, or emission of burning materials or electricity.

340. Proper inspection and maintenance of infrastructure and equipment, shutting down power, or increasing the sensitivity of protective equipment could have prevented or avoided the harm to Plaintiffs' property. Failure to do so created an unreasonable risk of harm that Xcel's infrastructure and equipment would ignite a fire.

341. Xcel's failure to do so was a failure to exercise reasonable care. Xcel's behavior was negligent and/or intentional.

342. Xcel's conduct unreasonably interfered with the use and enjoyment of Plaintiff's property. Such substantial and unreasonable interference includes, but is not limited to:

- A. Total destruction of Plaintiffs' real and personal property.
- B. Damage to Plaintiffs' real and personal property.
- C. Diminution in the value of Plaintiffs' real and personal property.
- D. Loss of use and ability to enjoy Plaintiffs' real and personal property.
- E. Annoyance and inconvenience.
- F. Loss of wages, earning capacity, and/or business profits or proceeds and/or any related displacement expenses; and
- G. Other noneconomic damages.

343. Xcel's interference was so substantial that it would have been, and was, offensive or caused inconvenience or annoyance to a reasonable person in the community.

344. Xcel's interference was negligent and/or intentional.

345. Xcel's interference with the use and enjoyment of Plaintiffs' property constitutes a public nuisance for which Xcel is liable to Plaintiffs for all resulting damages.

346. As a direct and proximate result of Xcel's conduct, Xcel interfered with Plaintiffs' possessory interests and caused damage to Plaintiffs, including property damage, loss of cherished possessions, economic losses, business losses, emotional distress, annoyance, disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs related to evacuation and/or relocation.

347. Plaintiffs have also suffered general damages including, but not limited to, shock, embarrassment, physical distress and injury, humiliation, emotional distress, stress, and other damages to be proven at time of trial.

COUNT SIX — WILLFUL AND WONTON CONDUCT

348. Plaintiffs restate and incorporate the allegations above as if fully stated herein. Defendant has been designing, engineering, constructing, operating, and maintaining electrical distribution and transmission systems in Colorado for over a century. It has specialized knowledge and expertise in electrical distribution and transmission systems. It also has experience with its equipment and infrastructure starting wildfires.

349. Despite its expertise and knowledge, and despite warnings of extremely high wind and dry conditions and other fire ignitions that day, Xcel did not shut down power or adjust the sensitivity of its protective equipment including a recloser and circuit breaker. In doing so, Xcel consciously disregarded a substantial and unjustifiable risk that its equipment would cause a destructive wildfire that could endanger thousands of people and their homes.

350. As a direct and proximate result of Xcel's conduct, Xcel interfered with Plaintiffs' possessory interests and caused damage to Plaintiffs, including property damage, loss of cherished possessions, economic losses, business losses, emotional distress, annoyance, disturbance, inconvenience, mental anguish, loss of quiet enjoyment of their property, and costs related to evacuation and/or relocation.

COUNT SEVEN — NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

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

352. Xcel was negligent as described above.

353. Xcel's negligence created an unreasonable risk of physical harm and caused certain Plaintiffs to fear for their own safety. Many residents were directly in the path of deadly fire and were forced to abandon their homes and belongings. They had to flee in the midst of fire, smoke, and debris, while the fire blocked some ways out of their neighborhoods. The fire and the evacuation both posed risks of physical harm.

354. Plaintiffs' fear had physical consequences and/or resulted in long-continued emotional disturbances. Plaintiffs have experienced continued effects of Defendants' negligence, including but not limited to fear, anxiety, post-traumatic stress disorder, depression, and a diminished capacity to enjoy their day-to-day life.

355. Certain plaintiffs were in the "zone of danger," or personally in the Marshall Fire area.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment in their favor and against Defendants as follows:

- A. An award of damages, including nominal and compensatory damages, as allowed by law and in an amount to be determined;
- B. Plaintiffs may in the future seek exemplary damages by amendment to this Complaint;
- C. An award of attorneys' fees, costs and litigation expenses;
- D. An award of prejudgment interest on all amounts awarded;
- E. An Order for injunctive and declaratory relief; and
- F. Such other and further relief as this Court may deem just and proper.

VII. JURY TRIAL

Plaintiffs demand a trial by jury for all issues so triable.

Dated this 10th day of November, 2023.

Respectfully submitted,

KELLER ROHRBACK L.L.P.

s/ Eric Matteson

Eric Matteson, Colorado State Bar No. 46781

Lynn Sarko (*Pro Hac Vice Forthcoming*)

Gretchen Freeman Cappio (*Pro Hac Vice*)

Daniel Mensher (*Pro Hac Vice*)

Alison Chase (*Pro Hac Vice Forthcoming*)

Matthew Preusch (*Pro Hac Vice*)

Natida Sribhibhadh (*Pro Hac Vice*)
Sydney Read (*Pro Hac Vice*)

Attorneys for Plaintiffs