

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

SHANE BLAKELEY, an individual, et al.,

Plaintiffs,

v.

AVISTA CORPORATION, a Washington
corporation, et al.

Defendants.

CASE. NO. 22-2-01089-32

(LEAD CASE NO. 22-2-00968-32)

SECOND AMENDED COMPLAINT

JUDGE ANNETTE S. PLESE

Consolidated Cases:

*Kevin Van Dyke, et al., v. Avista
Corporation, et al.*

Case No. 22-2-01089-32

*Cities Insurance Association of Washington,
et al., v. Avista Corporation, et al.*

Case No. 22-2-01003-32

*Hartford Casualty Insurance Co., et al., v.
Avista Corporation, et al.*

Case No. 22-2-01073-32

*Coast National Insurance Company, et al., v.
Avista Corporation, et al.*

Case No. 22-2-01942-32

*Berkley National Insurance Co., et al., v.
Avista Corporation, et al.*

Case No. 22-2-01537- 32

*Markham Campbell, et al., v. Avista
Corporation, et al.*

Case No. 22-2-02262-32

I. INTRODUCTION

1.1. On Labor Day 2020, a powerful windstorm hit Eastern Washington. East winds encountered a region tinder-dry after summer. Forecasters warned that the combination of

1 those conditions—strong east winds, dry fuels—meant critical fire conditions in the
2 Northwest. Any fire that started would be uncontrollable.

3 1.2. Despite those warnings, and contrary to industry best practices, Defendant Avista
4 Utilities took no steps to de-energize its power infrastructure to prevent that equipment from
5 starting a fire. It did this knowing that its equipment had sparked destructive fires in the past,
6 knowing that recent utility-sparked fires had destroyed whole communities in the West, and
7 knowing that other utilities in the Northwest were planning to—and did—de-energize their
8 lines during the same Labor Day windstorm.

9 1.3. Tragically, the inevitable happened. When the east winds arrived, they toppled
10 part of a diseased Ponderosa pine next to an Avista distribution line. A limb from that tree
11 struck Avista’s energized line, showering sparks on the brittle brush and grass below. The
12 resulting Babb Road fire rapidly spread to the southwest across the Palouse, overtaking and
13 largely destroying the towns of Malden and Pine City. The fire eventually burned over 200
14 homes, businesses, or other structures, and it forever changed the lives of scores of Spokane
15 and Whitman County residents.

16 1.4. Plaintiffs were among the victims of Avista’s Babb Road fire. They bring this
17 action on behalf of themselves to recover from Avista the damages it caused and to hold
18 Avista accountable by seeking appropriate injunctive relief.

19 II. PARTIES AND JURISDICTION

20 1.5. Plaintiffs Heather and Kevin Van Dyke own property and reside in Malden,
21 Washington.

22 1.6. Plaintiff Gary Dean Cannon owns property and resides in Malden, Washington.

23 1.7. Plaintiffs John and Gisela Merriman own property in Malden, Washington and
24 reside in Ione, Washington.

25 1.8. Plaintiff Roy Merriman resides in Ione, Washington.

26 1.9. Plaintiff Phyllis Wendt owns property and resides in Malden, Washington.

1.10. Plaintiff Rebecca Hulseley resides in Malden, Washington.

1.11. Plaintiff Diana Totten owns property and resides in Malden, Washington.

1.12. Plaintiffs Bobby Bilderback and JaColby Rivers own property and reside in Malden, Washington.

1.13. Plaintiff Marie Felton owns property in Malden, Washington.

1.14. Plaintiffs Scott, Susan, and Alyssa Shauf, and minor child B.S., own property and reside in Malden, Washington. In accordance with the Court's prior orders, Plaintiffs Scott and Susan Shauf do not bring claims against Defendant CNUC, but Plaintiffs Alyssa Shauf and minor child B.S. do.

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

1.16. CN Utility Consulting, Inc. ("CNUC") was and is a corporation duly organized under the laws of Iowa with its principal place of business in Des Moines, Iowa doing business in Spokane and Whitman County, Washington. Upon information and belief, at all relevant times, CNUC contracted with Avista to providing consulting services and maintain the power distribution lines which are the subject of this litigation.

1.17. Does 1-10 are individuals and/or entities that share fault with Avista and CNUC, for Plaintiffs' damages sustained in this matter. Some or all of the Doe defendants may be residents of or conduct business in the State of Washington and/or Spokane County. The true identities of Does 1-10, whether individuals or entities, remain unknown to Plaintiffs. Plaintiffs may amend or seek to amend this Amended Complaint to allege the true names, capacities, and responsibilities of these Doe Defendants once ascertained, and to add additional facts and/or legal theories.

1.18. This Court has jurisdiction under Wash. const. art. IV, § 6, and venue is proper in Spokane County under RCW 4.12.020 and RCW 4.12.025 because some part of the negligent action arose in Spokane County, and because Defendants reside and/or do business in Spokane County.

III. FACTUAL ALLEGATIONS

1.19. On Labor Day 2020, a forecasted high-wind event swept over Eastern Washington. That wind caused a diseased tree branch to fall on an energized Avista power line, throwing sparks on dry brush below. The resulting conflagration swept over and largely destroyed the towns of Malden and Pine City, incinerated Plaintiffs' homes, their vehicles, their personal property, and dramatically upended the lives of Plaintiffs. Avista's Equipment Caused the Babb Road Fire.

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

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

1.22. On information and belief, Avista contracted with CNUC to provide consulting services and maintain the power distribution lines which are the subject of this litigation.

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



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

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

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

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

1 1.27. Defendants breached that duty by failing to sufficiently inspect or trim the
2 Ponderosa pine that fell on its distribution line, sparking the Babb Road fire.

3 1.28. According to DNR's forest pathologist, Defendants should have known the risk
4 that the tree posed to its equipment: "because of the unusual configuration of the tree, and its
5 proximity to the powerline, a closer inspection was warranted." That close inspection would
6 have revealed the potential for the failure of the branch that did eventually fall, starting the
7 Babb Road fire.

8 1.29. From its point of origin, in the upper right corner of this map below prepared by
9 the *Seattle Times*, the fire quickly spread to the southwest, causing damage to property in
10 Spokane and Whitman Counties and overtaking the towns of Malden and Pine City:²

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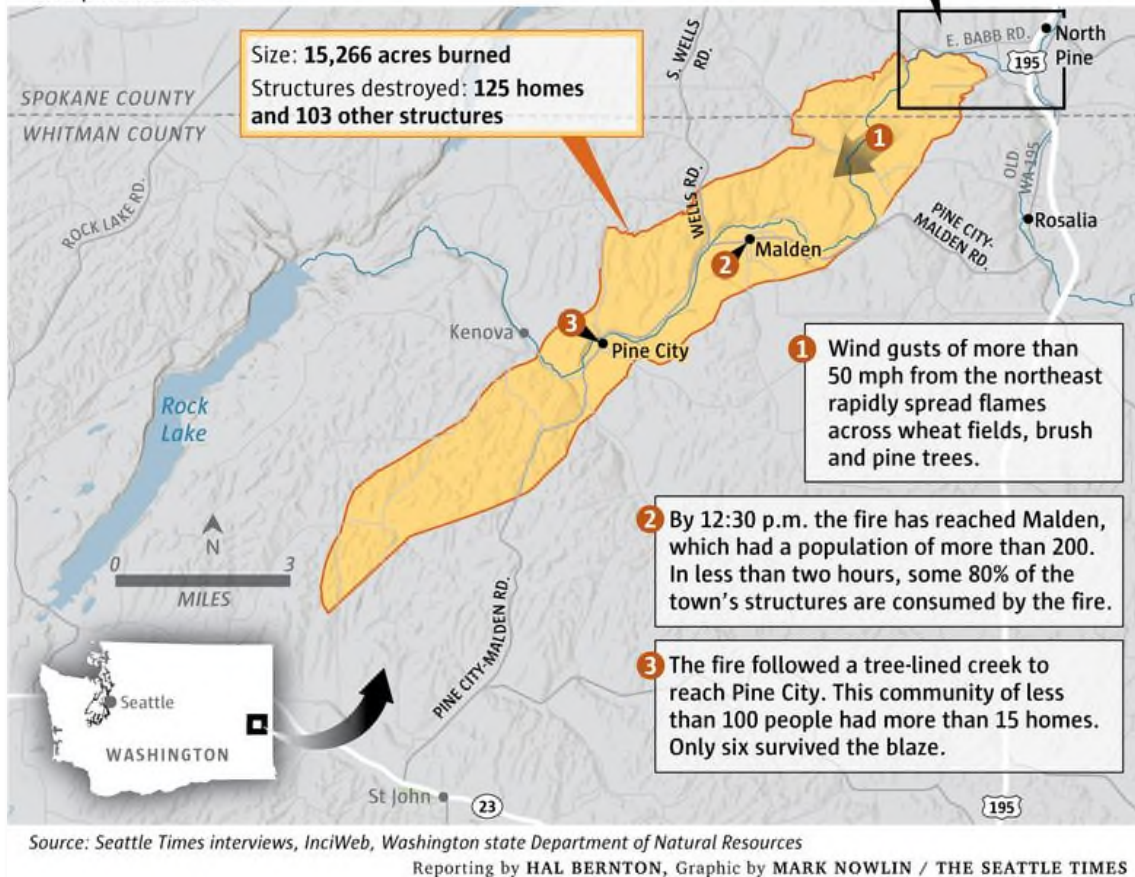
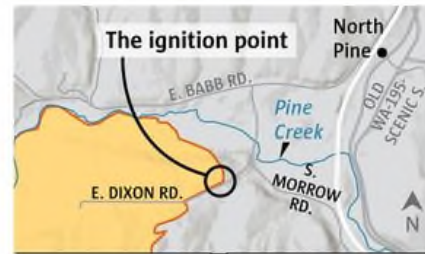
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² <https://www.seattletimes.com/seattle-news/the-day-a-wildfire-took-malden/>

Fire that destroyed Malden was sparked by branch hitting power lines

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



A. The Babb Road Fire's Destructive Path

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

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

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

3 1.32. Defendants knew or should have known that high winds from the east would
4 cause trees or tree branches to contact Avista’s distribution and transmission lines. And
5 Defendants knew or should have known that contact from a tree on Avista’s utility equipment
6 was likely to ignite a wildfire that would result in widespread property damage downwind.

7 1.33. For many, the fire arrived at the same time as warnings to evacuate. There was
8 only time to grab a couple items and go. As Whitman County Sheriff Brett Myers said, “When
9 we got information that fire started, there were 40 or 50 mph winds.... By the time we had law
10 enforcement in town to evacuate, the fire was at city limits, and within 20 minutes, it was
11 consuming homes.”⁴

12 1.34. The fire affected the whole community in Malden. City hall, the fire station and,
13 as shown in this *Spokesman-Review* photo, the post office, all burned:



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

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

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

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

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

B. Plaintiffs Suffered Injury to Their Property.

Heather and Kevin Van Dyke

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

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

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

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

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



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

Gary “Dean” Cannon

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

1.43. The day of the fire, he was at home with his partner Laura Rankin when they saw smoke. They had just minutes to gather what they could and flee. Cannon had never seen

1 anything like the wall of flames that rushed toward the town with the roar and rumble of a
2 train.

3 1.44. The fire destroyed Cannon's commercial property on Main Street, turning to
4 rubble the brick building that was one of the largest in Malden. Along with the building, the
5 fire destroyed numerous cars, outbuildings, and equipment Mr. Cannon kept at the property.

6 1.45. The fire also damaged his property at another property where he lived owned by
7 Ms. Rankin. The fire destroyed his truck and irreplaceable furniture he had inherited from his
8 great grandfather.

9 1.46. Mr. Cannon did not lose only material things, however. He lost his sense of
10 safety and security, leading to anxiety, stress, and depression. Two of their cats died in the fire
11 and two more were burned so badly they spent weeks with the veterinarian.

12 **John, Gisela and Roy Merriman**

13 1.47. John Merriman and his wife, Gisela, had recently sold their home in Malden and
14 had placed all their personal belongings and furniture into four storage buildings on property
15 they owned in Malden, Washington.

16 1.48. The Merrimans had just bought another home in Elmer City, Washington when
17 the fire tore through the town of Malden. They lost the storage buildings and everything in
18 them, including, but not limited to, their late son's ashes, which they had not yet had the
19 opportunity to spread, treasured personal items, thousands of irreplaceable photos, and many
20 family heirlooms.

21 1.49. Before the fire, Mr. Merriman, his wife, and their youngest son, Roy Merriman,
22 who lives with them, had taken their camping gear out of storage and were recreating in
23 Cusick, Washington for the summer. They thought their belongings would be safe in Malden
24 for the time being, so they did not rush to move them into their new home. They could not
25 have been more wrong. They were devastated when they heard about the fire that destroyed
26 the town and all their treasured belongings.

1.50. Mr. Merriman, Mrs. Merriman, and Roy Merriman each experienced emotional distress and anxiety from the fire and its destruction.

Phyllis Wendt and Rebecca Hulsey

1.51. Phyllis Wendt's entire home and all her belongings except what she was able to quickly grab, which was her medication, iPad, and two outfits, was lost in the fire. Her daughter Rebecca Hulsey, who lives with her, lost all her personal possessions as well.

1.52. On the day of the fire, Ms. Hulsey was just returning to Malden from western Washington. She saw the smoke from I-90. As she got closer to the town, she realized the fire was a major threat. She arrived home to help her mother just as the alerts were going out. They quickly packed up what they could before a neighbor urged them to evacuate as the fire had just crossed Pine City-Malden road. Ms. Wendt, Ms. Hulsey and their cat evacuated to Rosalia for the night. The next day when they were allowed back, they learned their home was gone.

1.53. They relocated to Colfax, Washington for approximately 15 months until they were able to buy a prefabricated home for the Malden property.

1.54. Ms. Wendt and Ms. Hulsey have been devastated by the fire and the subsequent displacement.

Diana Totten

1.55. Diana Totten's two-story Malden home was filled with hand-carved furniture from the 1800's and early 1900's that she treasured. She also lost thousands of plants that she was growing with plans to start selling online. When Avista's Babb Road fire arrived, it destroyed the home and everything in it. Ms. Totten also lost several vehicles that were on the property at the time of the fire.

1.56. On the day of the fire, she first saw smoke in the distance. Then, her neighbor ran over and told her they had to evacuate. She had only enough time to grab her pets. By the time she was driving away, it appeared the whole town was consumed by fire and smoke.

1 1.57. Like so many of her neighbors, she was displaced after the fire, but has since
2 been able to return to Malden in a new home built for her by volunteers. She's been
3 traumatized by the fire and the subsequent displacement.

4 1.58. Ms. Totten also suffered personal injuries after the fire—a lung infection caused
5 by smoke inhalation that required a visit to the emergency room and a course of antibiotics.

6 **Bobby Bilderback, JaColby Rivers, and Marie Felton**

7 1.59. Bobby Bilderback and his mother, Marie Felton, co-owned a beautiful home on a
8 special piece of property in Malden. Mr. Bilderback had remodeled, by himself, one of the
9 original houses in Malden, updating this nearly 150-year-old building with a beautiful kitchen,
10 Italian tiled bathroom, heated floors, and high efficiency windows. There, Mr. Bilderback and
11 his husband, JaColby Rivers, had built their lives together with their two dogs. Not only did
12 they share a lovely house, they had a large yard, a workshop, numerous cars and motorcycles,
13 and a life that felt secure.

14 1.60. All that changed on Labor Day 2020. That morning, Mr. Rivers left for work as
15 usual, having no idea that he would never be able to come back to his home. Bobby was at
16 their home when the fire started. When Mr. Bilderback received warning that a fire was racing
17 towards their house, he called Mr. Rivers, told him that he was going to do everything he
18 could do save their home, threw on his leather coat and motorcycle helmet, grabbed a hose,
19 and began wetting everything down as fast as he could. Sadly, Mr. Bilderback was no match
20 for the speed and heat of Avista's fire. Large cinders were falling around him. The air was
21 thick with choking smoke and the heat was overwhelming. Within minutes, the fire engulfed
22 their property, burning so hot it melted the aluminum in their buildings and cars, leaving
23 rivulets of molten metal across their property.

24 1.61. Mr. Bilderback tried hard to protect their house, but in the end, he had to flee. He
25 wrapped a cloth around his mouth in an attempt to keep the smoke from overwhelming him,
26 found one of his neighbors, and together they descended the hill to the river nearby. There, in

1 the water, they sheltered while the fire ran over them. For Mr. Bilderback, his ordeal was over
2 in fifteen terrifying minutes. But, after receiving Mr. Bilderback's call, Mr. Rivers went hours
3 without knowing whether their home still stood or if Mr. Bilderback had survived.

4 1.62. This photo shows their home ablaze:



16 1.63. In a few minutes, Avista's fire destroyed Mr. Bilderback and Mr. Rivers's lives.
17 Nearly everything they had was gone. Both of their dogs were killed. They were suddenly
18 homeless, largely without possessions, and traumatized for life. All that was left were
19 memories; everything else was ashes.

20 1.64. Mr. Bilderback and Mr. Rivers experienced emotional distress and anxiety from
21 the fire and its destruction. In his efforts to save his home and possessions and then flee the
22 raging fire, Mr. Bilderback also suffered bodily injury.

23 **Scott, Susan, and Alyssa Shauf, and Minor Child, B.S.**

24 1.65. The Shauf family has lived in Malden since September 2001.

25 1.66. On Labor Day 2020, Scott Shauf was working underneath the family's travel
26 trailer, replacing insulation panels. His wife, Susan, came outside to say a friend had alerted her

1 to a fire moving toward Malden. Mr. Shauf could see smoke in the distance but it appeared far
2 away. After the friend called again, he drove to Rosalia, Washington to try to get a better look.
3 From Rosalia he could see the smoke was nearby, but he still could not see the fire. After he
4 returned home, Ms. Shauf's friend called again and urged the Shaufs to evacuate. Mr. Shauf
5 looked outside and saw an ominous orange glow in the sky, and he and Ms. Shauf decided to
6 evacuate.

7 1.67. The Shaufs grabbed their children, Alyssa Shauf and B.S., their four dogs, and a
8 change of clothes. While Ms. Shauf was loading up her car, Mr. Shauf decided to bring the
9 travel trailer, reasoning that if the fire were to destroy the family's home they might need to live
10 in the trailer. Unfortunately, he did not have a trailer hitch that fit his truck, so he abandoned the
11 trailer and helped Ms. Shauf get her car loaded. Ms. Shauf, Alyssa Shauf, and B.S. evacuated in
12 Ms. Shauf's car, and Ms. Shauf went inside to grab some paperwork and firearms from his safe.
13 By the time he returned outside, he could hardly see out to the intersection nearest the house.
14 Police were driving by, giving evacuation orders over a bullhorn, but Mr. Shauf could barely
15 hear them over the howling wind. Embers were falling around him everywhere as he raced to
16 his SUV, leaving his home of nearly 20 years for the final time.

17 1.68. After reaching Colfax, Washington, Mr. Shauf spoke to a friend in Rosalia who
18 invited the Shaufs to take refuge at their home. After the family arrived there, Mr. Shauf drove
19 back to Malden to see if there was anything he could do to help, but he returned to find that
20 there was nothing left. The Shaufs' home had been destroyed. Ms. Shauf saw their several
21 additional vehicles engulfed in flames – including a 1968 Dodge Charger that he had owned for
22 many years – and saw that his workshop had collapsed. All that remained was the travel trailer
23 which, miraculously, had somehow been spared by the fire.

24 1.69. Nearly all of the family's possessions were also destroyed in the fire, including
25 Mr. Shauf's motorcycle and dirt bike, Alyssa Shauf's wardrobe, laptop, game system, and
26 clarinet, and Ms. Shauf's entire inventory of fragrance products for her at-home direct sales job.

1 To add insult to injury, some of the destroyed items were irreplaceable and held priceless
2 sentimental value. For example, Ms. Shauf lost the ashes of both of her deceased parents, as
3 well as several family heirlooms passed down from her great-grandparents, and Alyssa Shauf
4 and B.S. lost several family heirlooms that belonged to their great-grandmother. The Shaufs
5 were able to purchase a new prefabricated home for their property, and moved in just after
6 Thanksgiving 2020, having lived in their travel trailer for approximately two months.

7 1.70.

8 In addition to the sudden and devastating loss of their home and almost all of their belongings,
9 the Shaufs have endured lasting emotional impacts. The sight or smell of smoke, or the
10 knowledge that wildfires are burning anywhere remotely nearby, causes them anxiety and fear.
11 Mr. Shauf joined the volunteer fire department in an effort to be better prepared and more able
12 to help in the event of another fire. Alyssa Shauf and B.S. lost the house they grew up in, and
13 the entire family lost the ability to enjoy the summer camping trips they had frequently taken in
14 the years before the fire. They now strictly schedule camping trips before June and after
15 September because none of them feel safe leaving the house unattended during the summer,
16 worried about the possibility that they may need to suddenly pack up and evacuate again. Alyssa
17 Shauf finds it difficult to spend time alone during the summer or early fall due to her fear of a
18 similar disaster striking again.

19 **C. Defendants Did Not Adequately Prepare for Known Risk of Wildfire.**

20 1.71. Despite the well-known risk of catastrophic, utility-caused wildfires, Avista had
21 no plan to consider de-energizing its equipment before the Labor Day 2020 windstorm. By
22 contrast, other utilities in the area did preemptively de-energize their lines to prevent precisely
23 the tragedy that unfolded across southern Spokane County and into Whitman County.

24 1.72. Avista has known for at least a decade about the risk of catastrophic, utility-
25 caused wildfires, but it did not adequately plan for them. As David Howell, Avista's Director
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1 of Electrical Operations, told an interviewer last May, “We saw this happening in California
2 about 10 years ago.”⁷

3 1.73. Utility operations plans to de-energize power equipment during extreme fire
4 conditions are standard on the West Coast. “In Oregon and California, all the investor-owned
5 utilities regulated by state utility commissions have developed such plans[.]”⁸ As of 2020,
6 Avista had not.

7 1.74. According to its May 2020 “Wildfire Resiliency Plan,” Avista had no plans to
8 preemptively shut off the power: “at this time Avista does not plan to pre-emptively shutoff
9 power to mitigate the risk of wildfire.” But that same plan concedes such that such “Public
10 Safety Power Shutoffs” are standard practice: “major utilities in California pre-emptively
11 shutoff power to prevent spark-ignitions from overhead powerlines.”

12 1.75. In a presentation last year from Dave James, Avista’s Transmission Asset
13 Manager, Mr. James discussed the known risk from wildfire and how that risk had become
14 “more than theoretical” after the 2018 Camp Fire in California.⁹ Mr. James explained in that
15 presentation that things like “Tree Outage,” Spark Ignition,” and “Fire” are “certain” to occur:
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25 ⁷ KREM Interview, 1:24 <https://www.youtube.com/watch?v=efbkNbIS3NU>

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

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

The two sides of the Risk Coin

Certain

Probability

Tree Outage
Spark Ignition
Fire



Variable

Impact

Financial
Brand
Safety

Risk = Probability X Impact

1.76. Avista is no stranger to its own equipment sparking destructive wildfires. Its predecessor organization was part of the cause of the 1991 “Firestorm” in Spokane that destroyed more than 110 homes.¹⁰ More recently, in 2019, the Washington DNR also faulted Avista for starting the Boyds fire, which burned at least three homes and several outbuildings. As with the Babb Road fire, the Boyds fire began when a ponderosa pine fell on an energized Avista power line. There, as here, the state alleged the tree was visibly defective and should have been removed.

1.77. Not only did Avista fail to preemptively de-energize its lines, it – along with Defendant CNUC– failed to maintain the area near their lines to prevent trees and other vegetation from igniting fires.

1.78. Leading up to Labor Day 2020, Defendants knew or should have known that any ignition from its equipment would lead to a devastating fire. The day before the fire began, the National Weather Service issued a Red Flag warning for much of Eastern Washington,

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

1 including the Babb Fire area. A Red Flag warning indicates conditions for the rapid spread of
2 any new fire:

3 PRECAUTIONARY/PREPAREDNESS ACTIONS...

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

8 1.79. On September 6, the day before the fire began, The *Spokesman-Review* reported
9 on the potential for high winds, “prompting fire concerns for the end of the Labor Day
10 weekend.”¹¹ The same day, the National Weather Service’s Spokane office warned of the
11 “Calm Before the Storm” and coming “fire concern” on Labor Day:

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



NWS Spokane
@NWSSpokane

...

The "Calm Before the Storm" at our office. [#sunset](#)

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



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

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

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

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

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

1.82. Shockingly, even after its equipment caused catastrophic damage in 2020, Avista continues to refuse to consider public safety de-energization during hot, dry, windy conditions. Dave James, who managed Avista's wildfire program, told the Utilities and

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

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

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

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

1 Transportation Commission in May 2021, that a “public safety power shut-off is not in our
2 tool kit.”¹⁶

3 IV. CAUSES OF ACTION

4 FIRST CAUSE OF ACTION 5 (Negligence)

6 A. Negligence of Defendant Avista

7
8 1.83. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

9 1.84. Avista had duties and responsibilities pursuant to accepted industry standards,
10 Avista’s own standards, National Electric Safety Code standards, the requirements of the
11 American National Standards Institute's utility vegetation management standards, and other
12 state standards. Avista’s duties included, but were not limited to:

- 13 a. Operating and maintaining its power line infrastructure in a safe and reasonable
14 manner;
- 15 b. Reasonably inspecting its power line infrastructure for hazardous conditions;
- 16 c. Exercising the care required of an electric utility company in adequately clearing
17 vegetation around its power line infrastructure to mitigate the risk of fire,
18 including the Ponderosa tree in question;
- 19 d. Reasonably de-energizing power lines during critical and extremely critical fire
20 conditions, when Avista knew or in the exercise of reasonable care should have
21 known that the then-present fire conditions would cause energized lines to fall or
22 otherwise contact vegetation, structures, and objects;
- 23 e. Reasonably de-energizing power lines even after fires had been ignited by their
24 power line infrastructure or other utilities’ power line infrastructure.

25
26 ¹⁶ Hal Bernton, Seattle Times, *Two Washington electric utilities opt out of power shut-offs to prevent wildfires in 2021* (Jun. 1, 2021), <https://www.seattletimes.com/seattle-news/northwest/avista-pse-opt-out-of-public-safety-power-cutoffs-for-2021-fire-season/>

- 1 f. Reasonably implementing policies and procedures, and using equipment, to
2 avoid igniting or spreading fire; and
3 g. Reasonably adjusting its operations to heed warnings about weather conditions
4 that could cause rapid and dangerous fire growth and spread on and after Labor
5 Day.

6 1.85. Avista, through its own actions or inactions or those of its agents or employees,
7 breached its duties as alleged in this Complaint.

8 1.86. As a direct and proximate result of Avista's breach of its duties as alleged in this
9 Complaint, Plaintiffs have suffered harm to their property.

10 1.87. Avista's negligence caused or was a substantial factor in causing foreseeable
11 harm to Plaintiffs' property and other economic losses as well as non-economic losses
12 including stress, depression, and anxiety, among other general damages.

13
14 **B. Negligence of Defendant CNUC**

15 1.88. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

16 1.89. CNUC had duties and responsibilities pursuant to accepted industry standards,
17 CNUC's own standards, National Electric Safety Code standards, the requirements of the
18 American National Standards Institute's utility vegetation management standards, and other
19 state standards. CNUC's duties included, but were not limited to:

- 20 a. Performing proper vegetation management and/or vegetation management
21 consulting services;
22 b. Duty of oversight in performance of its business activities;
23 c. Reasonably inspecting Avista's power line infrastructure for hazardous
24 conditions;
25
26

- 1 d. Exercising the care required of an electric utility consulting company in
2 adequately clearing vegetation around power line infrastructure to mitigate the
3 risk of fire, including the Ponderosa tree in question;
4 e. Employ, train, and/or supervise agents and/or employees to ensure proper
5 knowledge, training, and/or experience in conducting its business activities;
6 f. Reasonably implementing policies and procedures, and using equipment, to
7 avoid igniting or spreading fire; and
8 g. Reasonably adjusting its operations to heed warnings about weather conditions
9 that could cause rapid and dangerous fire growth and spread on and after Labor
10 Day.

11 1.90. CNUC, through its own actions or inactions or those of its agents or employees,
12 breached its duties as alleged in this Complaint.

13 1.91. As a direct and proximate result of CNUC's breach of its duties as alleged in this
14 Complaint, Plaintiffs have suffered harm to their property.

15 1.92. CNUC's negligence caused or was a substantial factor in causing foreseeable
16 harm to Plaintiffs' property and other economic losses as well as non-economic losses
17 including stress, depression, and anxiety, among other general damages.

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

20 1.93. Plaintiffs restate and incorporate the allegations above as if fully stated herein.

21 1.94. As an electrical utility, Avista owed a duty to the Plaintiffs and the proposed
22 class to operate its equipment in a safe manner. Avista's breach of these duties interfered with
23 Plaintiffs' possessory interest in their real property harmed by the Babb Road fire, including
24 the right to quiet use and enjoyment of their property.

25 1.95. Avista kept its power lines energized during critical and extremely critical fire
26 conditions when Avista knew or in the exercise of reasonable care should have known that the

1 then-present conditions could cause energized power lines to fall or come into contact with
2 vegetation, objects, or structures and cause fire, or otherwise cause power line infrastructure to
3 spark, arc, or emit burning materials or electricity. Keeping power lines energized under then-
4 present conditions constituted a hazardous condition.

5 1.96. Avista realized or should have realized that the hazardous condition posed an
6 unreasonable risk of fire that could spread and cause harm to Plaintiffs' property.

7 1.97. Avista could have de-energized their power lines during the critical and
8 extremely critical fire conditions, at little to no cost to Avista, thereby fully eliminating the
9 risk of fire caused by power line infrastructure.

10 1.98. Avista failed to exercise reasonable care to eliminate the risk when Defendants
11 chose not to de-energize their power lines.

12 1.99. Avista failed to exercise reasonable care to eliminate the risk of wildfire when it
13 did not identify or remove the hazard Ponderosa pine tree that fell on its distribution line.

14 1.100. Avista's energized power lines during the then-present critical and
15 extremely critical fire conditions caused fires that substantially and unreasonably interfered
16 with the use and enjoyment of Plaintiffs' and class members' property, have caused permanent
17 injury to that property, and caused other economic losses in an amount to be proven at trial.
18 Such substantial and unreasonable interference includes, but is not limited to:

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

24 1.101. Avista's breach of its duties to Plaintiffs created a condition that was
25 injurious to and endangered the health and safety of others, and was an obstruction to the free
26 use of property, so as to essentially interfere with the comfortable enjoyment of the life and

1 property of Plaintiffs. That condition injuriously affected Plaintiffs' properties and lessened
2 the personal enjoyment of that property.

3 1.102. Avista's conduct directly and proximately caused foreseeable harm to
4 Plaintiffs' property and other economic losses as well as non-economic losses including stress,
5 depression, and anxiety, among other general damages.

6 **THIRD CAUSE OF ACTION**
7 **(Trespass)**

8 1.103. Plaintiffs restate and incorporate the allegations above as if fully stated
9 herein.

10 1.104. Avista intentionally and wrongfully caused or allowed fire, flames,
11 smoke, embers, ash, odors, gases, and/or airborne particles to come into contact with, enter,
12 damage, destroy, or otherwise trespass on Plaintiffs' property. This intrusion on Plaintiffs'
13 property was unauthorized and not consented to by Plaintiffs.

14 1.105. Plaintiffs' property was in their exclusive possession.

15 1.106. Avista knew of the extreme fire danger that high-wind conditions posed
16 and knew or should have known that there existed critical and extremely critical fire
17 conditions leading up to Labor Day 2020. Despite Avista's knowledge of the risk of extreme
18 fire danger in high-wind conditions, Avista had no plan in place to shut off power and chose
19 not to de-energize their power lines during the then-present high-wind conditions. Instead,
20 Avista kept its power lines energized during the critical and extremely critical fire conditions.

21 1.107. Avista knew that the then-present conditions were certain or substantially
22 certain to cause the unauthorized entry and trespass onto Plaintiffs' property and disturb
23 Plaintiffs' possessory interest. A trespass occurred as a result of Avista's actions.

24 1.108. As a direct and proximate result of Avista's conduct, Avista interfered
25 with Plaintiffs' possessory interest in and caused damage to their and other economic losses as
26 well as non-economic losses including stress, depression, and anxiety, among other general
damages.

1 1.109. For Plaintiffs and class members who suffered damage to trees, timber, or
2 shrubs on their property, Avista's wildfire caused the injury of those trees, timber, or shrubs
3 under RCW 64.12.030. Plaintiffs owned the premises on which such trees, timber, or shrub
4 were injured by the commission of Avista's acts; namely, the cause of a fire. Plaintiffs are
5 entitled to treble damages for that injury to trees, timber, or shrubs as well as reimbursement
6 of fees and costs under RCW 64.12.030.

7 **V. PRAYER FOR RELIEF**

8 Plaintiffs seek judgment against Defendants and the following relief:

- 9 1. Damages for economic and non-economic losses in amounts to be determined at
10 trial;
11 2. Where applicable, treble damages for injury to trees, timber, or shrubs as well as
12 reimbursement of fees and costs under RCW 64.12.030);
13 3. Pre- and post-judgment interest;
14 4. Injunctive relief;
15 5. An order requiring an accounting with respect to the amount of damages;
16 6. An order requiring Defendant to develop procedures for proactive de-
17 energization of their distribution and transmission lines during critical fire
18 conditions, and such other mitigation measures as may be appropriate;
19 7. An award of reasonable attorney fees, costs, investigation costs, disbursements,
20 and expert witness fees pursuant to CR 23, RCW 8.24.030, RCW 64.12.030, and
21 the Court's inherent and equitable power to award attorney fees; and
22 8. Such other relief that the Court finds appropriate.

23 RESPECTFULLY SUBMITTED this 7th day of March, 2025.
24
25
26

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2
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