

1 RICHARD C. EYMANN
STEVEN L. JONES
2 Eymann Allison Hunter Jones P.S.
2208 West Second Avenue
3 Spokane, WA 99201-5417
(509) 747-0101

4 Attorneys for Plaintiffs
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8 **UNITED STATES DISTRICT COURT FOR THE**
9 **EASTERN DISTRICT OF WASHINGTON**

10 **IN RE MARSHALL COMPLEX FIRE**

11 JASON and LAURA JONGEWARD,
husband and wife; GORDON and
12 JEANNIE JONGWARD, husband and
wife and as Trustees of the Jongeward
13 Family Trust; RICHARD and
PATRICIA LINN, by Jennifer Linn,
14 Attorney in Fact; ERIC and LISA
KOOHNS, husband and wife;
15 CHARLES POTTER, a single man;
JOANN POTTER, a single woman;
16 SCOTT and MICHELLE SIMMONS,
husband and wife; RICK and CHRIS
17 HOSMER, husband and wife; JACK
GILLINGHAM, a single man; KEITH
18 and MARIANNE GESCHKE, husband
and wife; and RANDY and COLLEEN
19 GESCHKE, husband and wife,

20 Plaintiffs,

21 v.

22 BNSF RAILWAY COMPANY,
commonly known as THE
23 BURLINGTON NORTHERN SANTA
FE RAILWAY, a Delaware corporation
24 doing business in the State of
Washington,
25

26 Defendant.

No.

**COMPLAINT FOR
DAMAGES**

**DEMAND FOR JURY
TRIAL**

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2 Plaintiffs, by and through their undersigned attorneys, for their claims
3 against defendant, state and allege as follows:

4 **I. PARTIES**

5 1. At all times relevant hereto, plaintiffs Jason and Laura Jongeward,
6 husband and wife, are and were residents and had an interest in real and personal
7 property located in Spokane County, Washington.

9 2. At all times relevant hereto, plaintiffs Gordon and Jeannie
10 Jongeward, husband and wife, are and were residents of Brawley, California and
11 had an interest in real and personal property located in Spokane County,
12 Washington.

14 3. At all times relevant hereto, plaintiffs Richard and Patricia Linn,
15 husband and wife, are and were residents and had an interest in real and personal
16 property located in Spokane County, Washington. Plaintiff Jennifer Linn is the
17 natural daughter of Richard and Patricia Linn. Mr. and Mrs. Linn have executed
18 a Durable Power of Attorney which appoints Jennifer Linn as their attorney in
19 fact to act on their behalf for any property management and/or financial
20 decisions.
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1 4. At all times relevant hereto, plaintiffs Eric and Lisa Koohns,
2 husband and wife, are and were residents and had an interest in real and personal
3 property located in Spokane County, Washington.
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5 5. At all times relevant hereto, plaintiff Charles Potter, a single man, is
6 and was a resident and had an interest in real and personal property located in
7 Spokane County, Washington.
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9 6. At all times relevant hereto, plaintiff Joann Potter, a single woman,
10 was a resident and had an interest in real and personal property located in
11 Spokane County, Washington. Ms. Potter currently resides in Palm Springs,
12 California.
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14 7. At all times relevant hereto, plaintiffs Scott and Michelle Simmons,
15 husband and wife, are and were residents and had an interest in real and personal
16 property located in Spokane County, Washington.
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18 8. At all times relevant hereto, plaintiffs Rick and Chris Hosmer,
19 husband and wife, are and were residents and had an interest in real and personal
20 property located in Spokane County, Washington.
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22 9. At all times relevant hereto, plaintiff, Jack Gillingham, a single man,
23 is and was a resident and had an interest in real and personal property located in
24 Spokane County, Washington.
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1 10. At all times relevant hereto, plaintiffs Keith and Marianne Geschke,
2 husband and wife, are and were residents and had an interest in real and personal
3 property located in Spokane County, Washington.
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5 11. At all times relevant hereto, plaintiffs Randy and Colleen Geschke,
6 husband and wife, are and were residents and had an interest in real and personal
7 property located in Spokane County, Washington.
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9 12. Defendant BNSF Railway Company, commonly known as The
10 Burlington Northern Santa Fe Railway (hereafter "BNSF") is a Delaware
11 corporation doing business in the State of Washington and engages in business
12 operations in Spokane County and the Eastern District of Washington including,
13 but not limited to, the operation of a railroad, the construction of, use,
14 maintenance and ownership of railroad lines. Defendant BNSF acts through its
15 authorized agents and employees. The negligence and violations of regulations
16 and statutes by BNSF's agents and employees, as alleged herein, are imputed to
17 BNSF.
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21 **II. JURISDICTION AND VENUE**

22 13. This Court is vested with jurisdiction over the subject matter of this
23 lawsuit pursuant to 28 U.S.C. §§1332(a) and (c). This Court has supplemental
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1 jurisdiction over the state law claims. The amount in controversy exceeds
2 \$75,000.00.

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4 14. Venue is proper in the Eastern District of Washington.

5 **III. FACTUAL ALLEGATIONS**

6 15. On August 11, 2007, a typically hot, dry summer day in Eastern
7 Washington, several fires broke out along BNSF tracks just west of Spokane,
8 which together became known as the Marshall Complex Fire. A BNSF train
9 sparked these fires in the tinder dry conditions which existed beside the BNSF
10 tracks in a ten-mile stretch between Spokane and Cheney. The first fire began at
11 approximately 11:15 a.m. near Spokane and the last burned near Cheney. These
12 fires torched approximately 365 acres, destroying hundreds of healthy, mature
13 trees, a home and other personal property and improvements, including vehicles,
14 equipment, fences, driveways, power lines, landscaping and gardens. These fires
15 transformed a beautiful, pristine, green, living environment into an ugly
16 blackened and scarred landscape of standing, but decimated trees. Among many
17 other effects, the fires also caused increased noise, erosion, clouds of dust stirred
18 up by wind, loss of natural wind breaks, noxious weed growth and hotter
19 temperatures due to the lack of shade.
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1 16. The Washington State Department of Resources (“DNR”) both
2 fought and issued a report on the Marshall Complex Fire. This report, dated
3 October 18, 2007, notes that BNSF denied DNR’s request to inspect the train that
4 rolled through this area as the fires were igniting. Despite this fact, DNR
5 determined the BNSF train caused these fires due to carbon build-up. DNR was
6 able to obtain the BNSF “consist,” which denotes the makeup of the train in
7 question and revealed that one of the engines was an older style, primarily used
8 for switching in a rail yard. According to the report, this type of use results in
9 carbon build-up which creates the potential to cause fires when under power.
10 The DNR report also summarizes fires caused by trains in Spokane County since
11 1970. This summary notes that 36 of the 159 railroad fires in that time frame
12 were in the Cheney-Marshall area. Of those fires in the Cheney-Marshall area,
13 29 have occurred since 1991, with 17 in the time period from 1997 through 2007.
14 The cause in 8 of those 17 fires was attributed to carbon build-up. DNR also
15 noted that the railroad line from Spokane to Cheney is a steady climb, causing
16 “the engines to work harder, get hotter and eject carbon particles. This area also
17 has typically receptive fuels to fire starts — light grasses and pine needles.”
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24 17. As a direct and proximate result of BNSF’s actions, omissions,
25 negligence, strict liability, breach, trespass, creation of a nuisance and other
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1 tortious conduct, the plaintiffs herein were substantially damaged. The full
2 nature and extent of the damages suffered by plaintiffs is presently undetermined.
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4 Plaintiffs have suffered monetary losses, mental anguish and emotional distress,
5 and will suffer such losses in the future. In addition, plaintiffs have incurred
6 substantial expenses to date and will continue to incur expenses in the future.
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8 **IV. CLAIMS**

9 18. Plaintiffs hereby reallege and incorporate each and every allegation
10 as set forth in paragraphs 1-17 herein.
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12 19. BNSF wrongfully, negligently and recklessly caused the Marshall
13 Complex Fire.
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15 20. BNSF violated RCW 7.48.120 and RCW 7.48.150 including, but not
16 limited to, unlawfully doing an act, or omitting to perform a duty, which act or
17 omission annoyed, injured and endangered the comfort, repose, health or safety
18 of others, and which rendered plaintiffs insecure in their use of their property,
19 thereby creating an *actionable nuisance*.
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21 21. BNSF wrongfully, recklessly, negligently and/or as a result of extra
22 hazardous activity caused the Marshall Complex Fire to enter onto and damage
23 plaintiffs' property, thereby committing an *actionable trespass*.
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1 22. BNSF wrongfully, recklessly and negligently ignited and allowed
2 the fire, which originated on land it was occupying, to escape to other lands,
3 including the lands of plaintiffs in violation of state statutes including, but not
4 limited to, RCW 4.24.040.
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6 23. BNSF committed acts as alleged throughout this Complaint which
7 causes it to be liable to all plaintiffs under RCW 64.12.030, which provides for
8 treble damages.
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10 24. BNSF further committed acts as alleged throughout this Complaint
11 which causes it to be liable to plaintiffs under RCW 4.24.630, which provides for
12 treble damages, costs of restoration, attorneys' fees and costs.
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14 25. BNSF wrongfully injured and caused waste and damage to the
15 lands, trees, homes, other structures, fences and other personal property and
16 landscaping improvements of plaintiffs. BNSF either intentionally and/or
17 unreasonably allowed the fires it started to escape and trespass onto plaintiffs'
18 lands, while knowing it had no authority to so act in such an injurious and
19 reckless manner.
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22 **V. DAMAGES**

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24 26. As a direct and proximate result of BNSF's tortious conduct,
25 including negligence and strict liability, plaintiffs have incurred damages to their
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1 real and personal property and are entitled to compensation for these damages
2 including, but not limited to, loss of trees, destruction of a home, fences and other
3 personal property and landscaping improvements, loss of property value, damage
4 to the natural grasses and plants, other damages to natural soil nutrients,
5 structures including smoke and soot damage, erosion to land, loss of fertilizers,
6 loss of natural habitat for wildlife, invasion of rodents, destruction of ponds and
7 streams, inconvenience and substantial costs for labor associated with restoration
8 and removal of the burned trees. The damages for loss of trees and land
9 restoration have been established by plaintiffs' expert witness, an International
10 Society of Arboriculture certified arborist, at \$10,790,709, which does not
11 include additional damages as indicated above.

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16 27. As a direct and proximate result of BNSF's negligence and strict
17 liability, plaintiffs have incurred and will continue to incur substantial out-of-
18 pocket expenses and valuable personal labor in dealing with issues relating to
19 these fires and are entitled to compensation for these expenses and this time.

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21 28. Plaintiffs are entitled to their costs, including attorneys' fees, under
22 RCW 4.24.630 and any other applicable statutory remedy for which attorneys'
23 fees are recoverable including RCW 81.04.440.
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29. Plaintiffs are entitled to prejudgment interest on all out-of-pocket expenses directly and proximately caused by BNSF's negligence and strict liability.

30. Plaintiffs are entitled to costs and disbursements incurred herein.

VI. JURY DEMAND

31. A jury trial is requested.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray for the following relief:

1. For an award of damages against BNSF compensating plaintiffs for their real and personal property damages, costs of restoration and all consequential damages, in an amount to be proven at trial;

2. For an award of damages against BNSF compensating plaintiffs for any past and future related out-of-pocket expenses, in an amount to be proven at trial;

3. For an award of damages against BNSF compensating plaintiffs for their past and future mental anguish and emotional distress, in an amount to be proven at trial;

1 4. For an award of damages against BNSF compensating plaintiffs for
2 nuisance and/or trespass to the extent each is not recoverable under other theories
3 of liability, in an amount to be proven at trial;
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5 5. For an award of attorneys' fees against BNSF for the attorneys' fees
6 incurred by plaintiffs herein, in an amount to be proven at trial;
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8 6. For an award of prejudgment interest on all out-of-pocket expenses
9 directly and proximately caused by BNSF's negligence and strict liability, in an
10 amount to be proven at trial;
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12 7. For an award against BNSF compensating each plaintiff for their
13 litigation-related costs and disbursements incurred herein, in an amount to be
14 proven at trial;
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16 8. That upon the return of a verdict in favor of plaintiffs that includes a
17 finding that BNSF violated RCW 64.12.030, the Court *sua sponte* treble the
18 damages as set by the jury for any damage as appropriate under said statute;
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20 9. That upon the return of a verdict in favor of plaintiffs that includes a
21 finding that BNSF violated RCW 4.24.630, the Court *sua sponte* treble the
22 damages as set by the jury for any damage as appropriate under said statute; and
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24 10. For such other and further relief as the Court deems just and
25 equitable.
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1 DATED this 12th day of January, 2009.

2 EYMANN ALLISON HUNTER JONES P.S.

3
4 BY s/Richard C. Eymann
5 RICHARD C. EYMANN, WSBA #7470
6 STEVEN L. JONES, WSBA #4876
7 Attorneys for Plaintiffs
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