

PHAT BOY SUSHI INC., and MORGAN
OLSEN & OLSEN, LLP, on behalf of
themselves and all others similarly situated,

Plaintiff,

v.

FLORIDA POWER & LIGHT COMPANY,
and FLORIDA COMMUNICATIONS
CONCEPTS INC.,

Defendants.

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

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CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs, PHAT BOY SUSHI INC. and MORGAN OLSEN & OLSEN, LLP, on behalf of themselves and all others similarly situated, sue Defendants, FLORIDA POWER & LIGHT COMPANY (“FPL”) and FLORIDA COMMUNICATIONS CONCEPTS INC. (“FCC”) (collectively, “Defendants”) and alleges:

1. According to FPL:

At FPL, *safety comes first*. Pipeline owners such as FPL are responsible for the safety of their operations and are required to meet federal and state safety and environmental standards.

See <https://www.fpl.com/safety/pdf/pipeline-safety.pdf> (last accessed July 26, 2019) (emphasis added).

2. Despite this admitted duty of care, Defendants, through their own reckless and negligent conduct, caused a massive Water Main Break in the heart of Fort Lauderdale, which serves all or parts of Fort Lauderdale, Port Everglades, Oakland Park, Davie, Lauderdale-by-the-Sea, Sea Ranch Lakes, Tamarac and Wilton Manors — more than 200,000 people in all — depriving them of clean, potable water, forcing businesses to cease operations and causing extensive damages.

3. Plaintiffs bring this action on behalf of themselves and all others similarly situated to force Defendants to pay for the damages they caused through their wanton, reckless, and grossly negligent conduct.

PARTIES, JURISDICTION AND VENUE¹

4. This is a putative class action for damages in excess of \$15,000.00, exclusive of interest, costs and attorney's fees, and is within the exclusive plenary jurisdiction of the Circuit Courts.

5. Venue is proper in Broward County, Florida, pursuant to sections 47.011 and 47.051, Florida Statutes, as this is the place where the acts and omissions complained of herein took place, where the causes of action accrued, and the place where the affected properties, which are the subject of this action, are situated.

6. Plaintiff Phat Boy Sushi Inc. is a Florida corporation, is a citizen and resident of the State of Florida and maintains its principal place of business in Broward County, Florida.

7. Plaintiff Morgan Olsen & Olsen, LLP is a Florida Limited Liability Partnership, is a citizen and resident of the State of Florida and maintains its principal place of business in Broward County, Florida.

8. Defendant FPL is the third largest electric utility in the United States, serving over four million customer accounts and over ten million citizens. FPL is a citizen of the State of Florida and maintains its principal place of business in Juno Beach, Florida.

9. Defendant FCC is a Florida corporation that was incorporated in March 2019, is a citizen of the State of Florida, and maintains its principal place of business in Wellington, Florida.

¹ Because a vast array of different businesses located throughout Broward County have been significantly damaged due in direct part to Defendants' gross negligence and reckless conduct, Plaintiffs anticipate that they will be amending this complaint to include additional plaintiffs within the next few weeks.

10. This Court has jurisdiction over FPL because it is incorporated in Florida, conducts business in Broward County, and has sufficient minimum contacts with Florida.

11. This Court has jurisdiction over FCC because it is incorporated in Florida, conducts business in Broward County, and has sufficient minimum contacts with Florida.

12. All conditions precedent to the institution and maintenance of this action have been performed, excused, waived, or have otherwise occurred.

GENERAL ALLEGATIONS

13. On July 17, 2019, FCC, a contractor working for FPL, struck a water main near the Fort Lauderdale Executive Airport while working on a FPL construction project. The 42-inch water main moves raw water from Fort Lauderdale's well fields into one of its water treatment plants. FCC workers bored a 6-inch hole in the 42-inch pipe while drilling underground to repair electrical lines. The location of the water main break was in the 2500 block of Northwest 55th Court, just off the runways at Fort Lauderdale Executive Airport (the "Water Main Break").

14. Before the Water Main Break, on or about June 25, 2019, FCC used a service called Sunshine 811 to find out whether there were underground utilities it had to watch out for while doing work for FPL. The statewide utility service is authorized under Florida law and is the state's official resource for companies and individuals planning underground work.

15. Contractors contact Sunshine 811 to alert agencies about the work they plan to do and to find out whether there are pipes or underground facilities they need to avoid when digging. The service then alerts the utilities, which are supposed to inform the contractor whether they have lines in the area and mark them if they do.

16. Upon information and belief, FCC provided a location in the Sunshine 811 ticket that was different than the location where FCC was going to be performing its work. FCC further

did not disclose that it was going to be conducting any boring at the site. Nor did FCC obtain the required permits to do so before conducting its work for FPL.

17. FCC was issued a “Notice to Appear” citation for not having a permit for the work, violating city codes.

18. FPL engaged the services of FCC to perform excavation work that created a significant and foreseeable risk of interruption of service of virtually every form of utility that was placed underground in the area FCC was assigned to work.

19. FPL has extensive experience in underground work and is acutely aware of the risks associated with such work.

20. FCC was a small, insufficiently staffed contractor that failed to adequately prepare the work site, failed to investigate the work site, failed to correctly locate the area of work, failed to give notice of the actual location it would perform excavation and failed to correctly employ the most elementary safeguards.

21. FPL employs inspectors who are responsible for reviewing the staging of underground work by sub-contractors.

22. FPL failed to provide even superficial supervision of FCC, failing to recognize plain and self-evident risks with known consequences.

23. FCC was only formed in March of 2019, had no adequate track record to establish the most basic reliability or capability and lack the capital and resources to be responsible for its acts.

24. Without exercising even the most basic skill or care, FCC failed to learn the location of a water main which served the entire City of Fort Lauderdale, failed to avoid disturbing that water main and proceeded to break into that water main, depriving virtually the entire city of water service.

25. In Fort Lauderdale, safe potable water under pressure is essential to virtually every aspect to operating a business of service. For example, air conditioning in commercial and office buildings requires safe water under pressure to operate. In the month of July, given the typical temperatures and humidity, it would be impossible to operate any business.

26. Safe potable water under pressure is essential to operate sinks and toilets in office buildings, hotels and restaurants. It would be unsafe and intolerable to require employees, guests and/or invitees of any establishment to be deprived of such basic services. As a direct consequence of the extraordinary negligence of the defendants, virtually all office buildings, hotels, convention centers, restaurants, and every stripe of commercial enterprise was forced to cease operation.

27. Restaurants, such as representative plaintiff Phat Boy Sushi Inc., require safe potable water under pressure to prepare foods, for employees to maintain sanitation and for beverages to be prepared and served to guests. Ice machines that automatically produced ice became unsafe when users were ordered to boil water. Ice is also essential to operate a restaurant and bar. Unable to prepare food, maintain sanitation and serve beverages, restaurants were forced to cease operation until safe, potable water service was restored.

28. By reason of the foregoing, restaurants lost revenue and good will, while still bearing the costs of operation.

29. Similarly, Hotels likewise depend on safe potable water to operate chillers that provide air conditioning in guest rooms, corridors and public areas. Hotels likewise depend on safe potable water to prepare food, beverages, to provide toilet and sanitary services. Unable to prepare, food, beverages offer sanitary services and conveniences including air conditioning due to the extraordinary negligence of the defendants, hotels were forced to cease operations, evacuate their guests and lost revenue and good will.

30. Law firms, such as representative plaintiff Morgan Olsen & Olsen, LLP, occupy office buildings that require safe potable water under pressure to provide air conditioning and sinks and toilets and access to drinking water. Unable to provide these essential services due to the extraordinary negligence of the defendants, law firms were forced to curtail business or cease operations and lose revenue.

CLASS ALLEGATIONS

31. Plaintiffs bring this action as a class action under Florida law and propose the following Florida statewide Class:

All individuals and entities residing or owning property in Broward County who sustained economic losses or damages as a result of the July 17, 2019 Water Main Break.

32. Excluded from the Class are Defendants, their employees, agents and assigns, any members of the judiciary to whom this case is assigned, their respective court staff, and the parties' counsel in the litigation. Given the discrete geographic and temporal nature of the claims at issue in this lawsuit, members of the above-defined class can be informed of the pendency of this action by published, internet, and broadcast notice, and can be ascertained through self-identification.

33. Plaintiffs reserve the right to modify, amend and/or expand the definition of the proposed class before the Court determines whether certification is appropriate.

34. **Numerosity of the Class – Rule 1.220(a)(1)**. The exact size of the Class is currently unknown, but Plaintiffs believe there are at least thousands of Class members because besides Fort Lauderdale, the city's water utility affected by the Water Main Break serves all or parts of Port Everglades, Oakland Park, Davie, Lauderdale-by-the-Sea, Sea Ranch Lakes, Tamarac and Wilton Manors — more than 200,000 people in all. This allegation is likely to have

evidentiary support after a reasonable opportunity for further investigation or discovery. The alleged size of the Class makes joinder of all Class members impracticable.

35. **Commonality – Rule 1.220(a)(2)**. Plaintiffs' claims raise questions of law and fact that are common to the claims of each member of the class. Such questions include, but are not limited to, the following:

- a. Whether the Water Main Break occurred;
- b. Whether one or more of the Defendants caused the Water Main Break;
- c. Whether one or more of the Defendants' conduct was negligent;
- d. Whether the Defendants collectively and/or individually owed a duty to Plaintiffs and the proposed Class to conduct their operations in a manner so as to prevent occurrences such as the Water Main Break;
- e. Whether the Plaintiffs and the proposed Class Members were injured by the Defendants' acts or omissions;
- f. Whether the Plaintiffs and proposed Class Members have suffered economic damages due to the Water Main Break; and
- g. Whether one or more of the Defendants acted with actual malice or in a grossly negligent manner that evinces willfulness, wantonness, or recklessness.

36. **Typicality – Rule 1.220(a)(3)**. The claims asserted by Plaintiffs are typical of the claims of the Class members. Plaintiffs and the Class have suffered similar harm as a result of one or more of the Defendants' actions, one or more Defendants have engaged in a common course of conduct giving rise to the claims of Plaintiffs and all proposed Class Members, and these claims are based on the same legal theories and interests.

37. **Adequacy of Representation – Rule 1.220(a)(4)**. Plaintiffs are willing and prepared to serve the Court and the proposed Class in a representative capacity. Plaintiffs will fairly and adequately protect the interests of the Class and have no interests that are adverse to, or which materially and irreconcilably conflict with, the interests of the other members of the Class.

38. The self-interests of Plaintiffs are co-extensive with and not antagonistic to those of absent Class members. Plaintiffs will undertake to represent and protect the interests of absent Class members.

39. Plaintiffs have engaged the services of counsel indicated below who are experienced in complex class litigation matters, will adequately prosecute this action, and will assert and protect the rights of and otherwise represent Plaintiffs and the putative Class members.

40. **Rule 1.220(b)(3) – Predominance and Superiority**. This action is appropriate as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(3).

41. Common questions of law and fact (as set forth above) predominate over any individualized questions. Plaintiffs' and the Class's claims arise out of a single course of conduct by Defendants that caused the Water Main Break. This is a single-event, single-location mass disaster that affected a large number of businesses and individuals within a discrete, geographically-defined region of Broward County, and was caused by a chain of decisions made by the Defendants. Plaintiffs will present common proof with respect to Defendants' failure to take adequate safety precautions in the conduct of their business as alleged herein.

42. Pursuant to Rule 1.220(b)(3), a class action is superior to other available methods for the fair and efficient adjudication of this controversy because joinder of all Class Members is impracticable. The prosecution of separate actions by individual members of the Class would impose heavy burdens upon the courts and Defendants, and would create a risk of inconsistent or varying adjudications of the questions of law and fact common to the Class. A class action would achieve substantial economies of time, effort, and expense, and would assure uniformity of decision as to persons similarly situated without sacrificing procedural fairness.

43. **Rule 1.220(b)(1)**. The prosecution of separate actions by individual members of the Class on the claims and issues herein would create an immediate risk of inconsistent or

varying adjudications. These varying adjudications would be prejudicial to members of the Class and Defendants and would establish incompatible standards of conduct. Piecemeal adjudications would also, as a practical matter, be dispositive of the interests of those Class members not parties to such adjudications, and substantially impair or impede their ability to protect their interests, thereby making class certification of this action appropriate under Rule 1.220(b)(1)(A) and (B).

44. **Class Certification of Particular Issues under Rule 1.220(d)(4).** Certification of the Class with respect to common factual and legal issues concerning Defendants' outrageous, grossly negligent, willful, wanton, and reckless conduct is appropriate under Rule 1.220(d)(4).

COUNT I
NEGLIGENCE

Plaintiffs and the Class reallege and incorporate the allegations in paragraphs 1 through 44 as if fully set forth herein and further allege as follows:

45. At all material times, FPL had a nondelegable duty to ensure the safety of its operations. FPL attempted to delegate this duty to FCC.

46. Without exercising even the most basic skill or care, FCC, acting on behalf of and at the direction of FPL, failed to learn the location of a water main which served the entire City of Fort Lauderdale, failed to avoid disturbing that water main and proceeded to break into that water main, causing the Water Main Break and depriving virtually the entire city of water service.

47. As a direct and proximate result of Defendants' negligence in causing the Water Main Break, Plaintiffs and the Class have sustained damages as more fully described hereinabove.

48. Plaintiffs and the Class are entitled to a judgment that one or more Defendants are jointly and severally liable to Plaintiffs and the Class for damages suffered as a result of one or

more of the Defendants' negligence. Plaintiffs and the Class should be compensated for damages in an amount to be determined by the trier of fact.

COUNT II
GROSS NEGLIGENCE

Plaintiffs and the Class reallege and incorporate the allegations in paragraphs 1 through 44 as if fully set forth herein and further allege as follows:

49. At all material times, FPL had a nondelegable duty to ensure the safety of its operations. FPL attempted to delegate this duty to FCC.

50. Without exercising even the most basic skill or care, FCC, acting on behalf of and at the direction of FPL, failed to learn the location of a water main which served the entire City of Fort Lauderdale, failed to avoid disturbing that water main and proceeded to break into that water main, causing the Water Main Break and depriving virtually the entire city of water service.

51. As a direct and proximate result of Defendants' negligence in causing the Water Main Break, Plaintiffs and the Class have sustained damages as more fully described hereinabove.

52. Plaintiffs and the Class are entitled to a judgment that one or more Defendants are jointly and severally liable to Plaintiffs and the Class for damages suffered as a result of one or more of the Defendants' negligence. Plaintiffs and the Class should be compensated for damages in an amount to be determined by the trier of fact.

53. Defendants' conduct as described herein was so reckless and wanting in care that it constituted a conscious disregard and indifference to the life, safety, or rights of persons exposed to such conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, demand judgment against the Defendants as follows:

- (1) Declaring this action to be a proper class action pursuant to Rule 1.220 of the Florida Rules of Civil Procedure and certifying the Class sought herein, and declaring Plaintiffs and their counsel representatives of the Class;
- (2) Awarding damages sustained by Plaintiffs and the Class Members as a result of Defendants' misconduct (as specified hereinabove), together with appropriate prejudgment interest at the maximum rate allowable by law;
- (3) Awarding Plaintiffs and the Class Members costs and disbursements and reasonable allowances for the fees of Plaintiffs' and the Class Members' counsel and experts, and reimbursement of expenses;
- (4) Awarding such other and further relief the Court deems just, proper and equitable.

DEMAND FOR JURY TRIAL

Plaintiffs and the Class request a jury trial for any and all Counts for which a trial by jury is permitted.

Respectfully submitted this 26th day of July, 2019.

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