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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

PAUL ANDERSON and MARK WEBSTER, individuals; LARRY LEE BENSON, an individual; ANTHONY BOHORFOUSH and CYNTHIA BOHORFOUSH, husband and wife, and the marital community thereof; ROBERT BUSSMAN and JENNIFER FARLEY, husband and wife, and the marital community thereof; JERRY CHINN and KATHLEEN STONE, husband and wife, and the marital community thereof; JAMES CISSELL and LINDA JOHNSON, husband and wife, and the martial community thereof; RANDY COMSTOCK and KAREN METRO, husband and wife, and the marital community thereof; STEVAN DAGG and MARY BETH DAGG, husband and wife, and the marital community thereof; KATHERINE DEE and SHIREEN KHAN, individuals; EDWARD DOUGLAS and KAY DOUGLAS, husband and wife, and the marital community thereof; R. ALAN HARDWICK and BARBARA L. BOLLERO, husband and wife, and the marital community thereof; DAVID WILLIAM HIGGINS and SUSAN JACOBS-HIGGINS, husband and wife, and the marital community thereof; HARRIET HUSBANDS, an individual; KRISTI ANN JONES, an individual; HELEN KARL, an individual; LESLIE LOEB and VICKI PARDEE, individuals; MARTIN LYONS and MERRILL LYONS, husband and wife, and the marital community thereof; CHARLES MARSHALL

No.

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

1 and SARAH K. BARNETT, husband and wife,  
2 and the marital community thereof; JUDI  
3 O'HURLEY, an individual; MARK S. OSKIN,  
4 an individual; LILA RICHARDS, an  
5 individual; JOHN ROBERTS and BARBARA  
6 NEWELL, husband and wife, and the marital  
7 community thereof; STEVEN SCHWARTZ  
8 and PAMELA SCHWARTZ, husband and  
9 wife, and the marital community thereof;  
10 JOSEPH SEEFELDT, an individual; RICK  
11 TAMAELA, an individual; MICHAEL J.  
12 WAYTE and JACQUELINE BAKER,  
13 husband and wife, and the marital community  
14 thereof; MICHAEL WINTER and RUTHI  
15 WINTER, husband and wife, and the marital  
16 community thereof; RICHARD ZAHNISER  
17 and CHERYL ZAHNISER, husband and wife,  
18 and the marital community thereof,

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vs.

CITY OF SEATTLE, a Washington municipal  
corporation; PETER C. SALADINO and  
JANE DOE SALADINO, husband and wife,  
and the marital community thereof,

Defendants.

The Plaintiffs, through their attorney of record, allege as follows:

### I. PARTIES, JURISDICTION AND VENUE

1.1 Plaintiffs Paul Anderson and Mark Webster are the owners of the residential property located at 6509 Beach Drive SW, Seattle, Washington, 98136.

1.2 Plaintiff Larry Lee Benson is the owner of the residential property located at 6322 Beach Drive SW, Seattle, Washington, 98136.

1           1.3     Plaintiffs Anthony Bohorfoush and Cynthia Bohorfoush are the owners of the  
2 residential property located at 6021 Beach Drive SW, Seattle, Washington, 98136.

3           1.4     Plaintiff Jennifer Farley is the owner of the residential property located at  
4 6024 Atlas Place SW, Seattle, Washington, 98136 where she resides with Plaintiff Robert  
5 Bussman.

6           1.5     Plaintiff Jerry Chinn is the owner of the residential property located at 5933  
7 Atlas Place SW, Seattle, Washington, 98136 where he resides with Plaintiff Kathleen Stone.

8           1.6     Plaintiffs James Cissell and Linda Johnson are the owners of the residential  
9 property located at 6033 Beach Drive SW, Seattle, Washington, 98136.

10          1.7     Plaintiffs Randy Comstock and Karen Metro are the owners of the residential  
11 property located at 6037 Atlas Place SW, Seattle, Washington, 98136.

12          1.8     Plaintiffs Stevan Dagg and Mary Beth Dagg are the owners of the residential  
13 property located at 6019 Atlas Place SW, Seattle, Washington, 98136.

14          1.9     Plaintiffs Katherine Dee and Shireen Khan are the owners of the residential  
15 property located at 6321 Beach Drive SW, Seattle, Washington, 98136.

16          1.10    Plaintiff Edward L. Douglas, Jr. is the owner of the residential property  
17 located at 6363 Beach Drive SW, Seattle, Washington, 98136 where he resides with Plaintiff  
18 Kay Douglas.

19          1.11    Plaintiffs R. Alan Hardwick and Barbara L. Bollero are the owners of the  
20 residential property located at 6312 Atlas Place SW, Seattle, Washington, 98136.

21          1.12    Plaintiff Susan Jacobs-Higgins is the owner of the residential property located  
22 at 5949 Beach Drive SW, Seattle, Washington, 98136 where she resides with Plaintiff David  
23 William Higgins.

24          1.13    Plaintiff Harriet Husbands is the owner of the residential property located at  
25 6321 Atlas Place SW, Seattle, Washington, 98136.

26

1 1.14 Plaintiff Kristi Ann Jones is the owner of the residential property located at  
2 6365 Beach Drive SW, Seattle, Washington, 98136.

3 1.15 Plaintiff Helen Karl is the owner of the residential property located at 6041  
4 Beach Drive SW, Seattle, Washington, 98136.

5 1.16 Plaintiffs Leslie Loeb and Vicki Pardee are the owners of the residential  
6 property located at 6330 Atlas Place SW, Seattle, Washington, 98136.

7 1.17 Plaintiffs Martin Lyons and Merrill Lyons are the owners of the residential  
8 property located at 6053 Atlas Place SW, Seattle, Washington, 98136.

9 1.18 Plaintiffs Charles Marshall and Sarah K. Barnett are the owners of the  
10 residential property located at 5919 Beach Drive SW, Seattle, Washington, 98136.

11 1.19 Plaintiff Judi O'Hurley (Vogt) is the owner of the residential property located  
12 at 6049 Atlas Place SW, Seattle, Washington, 98136.

13 1.20 Plaintiff Mark S. Oskin is the owner of the residential property located at 6309  
14 Beach Drive SW, Seattle, Washington, 98136.

15 1.21 Plaintiff Steven J. Richards is the owner of the residential property located at  
16 6044 Atlas Place SW, Seattle, Washington, 98136 where he resides with Lila Richards.

17 1.22 Plaintiffs John Roberts and Barbara Newell are the owners of the residential  
18 property located at 6319 Beach Drive SW, Seattle, Washington, 98136.

19 1.23 Plaintiffs Steven Schwartz and Pamela Schwartz are the owners of the  
20 residential property located at 5953 Beach Drive SW, Seattle, Washington, 98136.

21 1.24 Plaintiff Joseph Seefeldt is the owner of the residential property located at  
22 5926 Beach Drive SW, Seattle, Washington, 98136.

23 1.25 Plaintiff Rick Tamaela is the owner of the residential property located at 5960  
24 Beach Drive SW, Seattle, Washington, 98136.

25 1.26 Plaintiffs Michael J. Wayte and Jacqueline Baker are the owners of the  
26 residential property located at 5948 Beach Drive SW, Seattle, Washington, 98136.

1 1.27 Plaintiffs Michael Winter and Ruthi Winter are the owners of the residential  
2 property located at 6031 Beach Drive SW, Seattle, Washington, 98136.

3 1.28 Plaintiffs Richard Zahniser and Cheryl Zahniser are the owners of the  
4 residential property located at 5915 Beach Drive SW, Seattle, Washington, 98136.

5 1.29 Defendant, City of Seattle, is a municipal corporation located in King County,  
6 State of Washington.

7 1.30 Defendants Peter C. Saladino is the owner of the residential property located  
8 at 6067 Atlas Place Southwest, Seattle, Washington, 98136, King County Assessor File  
9 Number 7935000600.

10 1.31 Defendant City of Seattle is the owner of the unopened right-of-way named  
11 Gordon Place that is at issue in this litigation.

12 1.32 This Court has personal jurisdiction over the Defendants because they own  
13 property in and are physically located in King County, Washington.

14 1.33 Venue is proper because King County is the location of the parties, the subject  
15 properties and the events giving rise to this lawsuit.

16 **II. SUBJECT MATTER JURISDICTION**

17 2.1 Pursuant to RCW 4.96.020, Plaintiffs filed their claims for tort damages with  
18 the City of Seattle on February 8, 2011. Sixty days have elapsed since filing the claims.  
19 Therefore, Plaintiffs are entitled to bring this action against the municipality and this Court  
20 has jurisdiction over the subject matter of the claims.

21 **III. STATEMENT OF FACTS**

22 3.1 Atlas Drive SW is located, generally, to the east and upslope from Beach  
23 Drive SW in West Seattle. The subject residential properties with Beach Drive SW  
24 addresses lie, generally, to the west and downslope of Beach Drive SW.  
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1           3.2     The residential properties of Plaintiffs Lyons and O’Hurley extend from Atlas  
2 Drive SW on the east, downslope to Beach Drive SW on the west, and are bisected by an  
3 unopened and unimproved right-of-way that runs north to south in that area. The right-of-  
4 way, known as Gordon Place, is approximately 40 feet in width and is owned by the City.

5           3.3     The residential property of Defendants Saladino is immediately south of the  
6 Lyons property and occupies a triangle of land at the intersection of Atlas Drive SW and  
7 Beach Drive SW. As with the Lyons and O’Hurley properties, it slopes down from Atlas  
8 Drive SW to Beach Drive SW and is bisected by the City’s Gordon Place right-of-way.  
9 Defendant Saladino developed the property with a residence beginning with geotechnical  
10 engineering investigations in 2000. Plans for development were submitted to the City for  
11 approval in 2002. These plans do not depict the fill wedge eight feet thick that was actually  
12 placed on the slope during construction. The residence was completed by Defendants  
13 Saladino in 2007-08.

14           3.4     The City initially opened Beach Drive SW some time prior to 1933. Its work  
15 in widening that road undercut the toe of the slope extending down from Atlas Place SW. In  
16 the winter of 1933-34, a large landslide occurred above Beach Drive SW as a result of that  
17 undercutting.

18           3.5     Another large landslide occurred above Beach Drive SW in 1998.  
19 Investigation by multiple engineering firms retained by the City revealed that the main scarp  
20 was the same as in the 1933-34 landslide. The engineers described the landslide as a deep-  
21 seated block above Beach Drive with the toe of the block at approximately roadway level.

22           3.6     Another large landslide occurred above Beach Drive SW in December 2007  
23 during construction of the Saladino residence. Saturation of the fill soil mass caused the  
24 sliding of accumulated debris on Beach Drive SW and the development of a scarp just west  
25 of the new house that dropped as much as six feet. The affected land included the unopened  
26 City right of way known as Gordon Place, private property belonging to Defendant Saladino,

1 and Beach Drive SW. The City admitted that it had the responsibility for repairing and  
2 stabilizing Gordon Place. At the same time, the City issued a number of Notices of Violation  
3 and Citations against the Saladinos, eventually filing a lawsuit in Municipal Court against  
4 them on May 21, 2009, under Cause No. 09-031. That matter was filed 2 years and 5 months  
5 after the 2007 landslide and has not yet resolved.

6 3.7 Another landslide occurred on January 12, 2009. A scarp over 300 feet long  
7 developed west of the properties at 6049, 6053 and 6067 Atlas Place SW. The vertical drop  
8 of the scarp ranged from three to eight vertical feet. Minor scarps in the right-of-way  
9 descended two to six feet.

10 3.8 The slide mass in the January 2009 slide initially accumulated on the shoulder  
11 of Beach Drive SW. It continued west into the northbound lanes of Beach Drive SW in the  
12 following days and impacted as much as 210 feet of the roadway. The roadway was closed  
13 for a period of time as a result of the slide mass intrusion.

14 3.9 Engineers retained by the City following the January 2009 slide classified the  
15 slide as a multiple rotational slide and opined that it was a re-activation of the deep-seated  
16 landslides of former years. The causes of the slide included improper placement of fill on the  
17 slope, historically marginal stability, and uncontrolled surface water drainage. The engineers  
18 made a variety of recommendations, including that deep borings should be performed to  
19 inform temporary repairs prior to a permanent remediation. Permanent repair options were  
20 set out, including a rock buttress, a retaining wall along Beach Drive SW and multiple  
21 retaining walls stepping up the slope. The City did not perform any of the permanent repair  
22 options.

23 3.10 In January 2011, heavy rains caused further sloughing on the hillside. Beach  
24 Drive SW was again closed because of mud and water seeping from the hillside. Several  
25 motor vehicle accidents resulted from the accumulated material and ice on the roadway.  
26

1           3.11 Pursuant to Section 22.150.010 of the Seattle Municipal Code (SMC), the City  
2 has adopted portions of the International Residential Code as the Seattle Residential Code  
3 (SRC). On January 12, 2011, the City issued Hazard Correction Orders (“Orders”) to  
4 Plaintiffs O’Hurley (File No. 1024699) and Lyons (File No. 1024700), alleging that their  
5 premises were unsafe due to a landslide adversely affecting the stability of the hillside and  
6 structures. The Orders required Plaintiffs O’Hurley and Lyons to provide a geotechnical  
7 engineers’ evaluation and recommendation for repairs and stabilization of the entire hillside  
8 to the City Department of Planning and Development (DPD), and to submit a complete  
9 application to DPD for stabilizing the hillside and any repairs to the structures, obtain  
10 permits, and comply with the City’s special inspections program.

11           3.12 The Orders did not state that pursuant to R103.10.1, there was an  
12 administrative review process available. Also, the Orders gave no notice that pursuant to  
13 R102.2 in lieu of correction, the Plaintiffs could provide an engineer’s report stating that  
14 building, structure or premises are safe. Finally, the Orders cited to a section of the code that  
15 does not exist.

16           3.13 Each of Plaintiffs’ residential properties has been adversely affected by the  
17 ongoing instability of the slope between Atlas Place SW and Beach Drive SW.

18           3.14 Atlas Place SW and Beach Drive SW are City streets. Upon information and  
19 belief, Atlas Place SW does not have adequate surface water drainage facilities. Due to the  
20 lack of adequate drainage, surface water that is collected and concentrated along the roadway  
21 flows without adequate control onto the steep slope between Atlas Place SW and Beach  
22 Drive, further destabilizing the slope. Surface water also overflows the drains and curbs and  
23 flows onto the properties of Plaintiffs west of Beach Drive SW. In addition, the lack of  
24 surface water drainage has deteriorated the asphalt and allows water to infiltrate into the  
25 subgrade, causing subsidence and separation of the roadway, curbs and sidewalks in the area.  
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1           4.9     The foregoing breach of duty by the Defendants directly and proximately  
2 caused damage to the Plaintiffs' properties, as is described in this Complaint.

3           4.10    Defendants are liable to the Plaintiffs for damages in an amount that will be  
4 established at trial.

5     **C.     Lateral Support – As to All Defendants**

6           4.11    The allegations set forth in Section III of this Complaint are incorporated  
7 herein as though fully set forth.

8           4.12    Defendants have a constitutional and common law duty to the Plaintiffs to  
9 maintain the lateral support for Plaintiffs' real properties naturally provided by Defendants'  
10 real properties.

11          4.13    Defendants' actions in modifying and failing to remediate known slide  
12 conditions on the steep slope between Atlas Place SW and Beach Drive SW breached their  
13 duty to provide lateral support to some of the Plaintiffs' properties.

14          4.14    Defendants' breaches of duty caused damage to Plaintiffs in an amount that  
15 will be established at trial.

16     **D.     Nuisance and Continuing Nuisance – As to All Defendants**

17          4.15    The allegations set forth in Section III of this Complaint are incorporated  
18 herein as though fully set forth.

19          4.16    Through their actions Defendants have created or perpetuated a nuisance that  
20 has damaged the Plaintiffs' properties and unreasonably interfered with Plaintiffs' use and  
21 enjoyment of their properties, as described in this Complaint.

22          4.17    To the extent that this nuisance is deemed public in nature, it has been  
23 damaging the Plaintiffs in a manner different from, and to a degree greater than, the public at  
24 large.

25          4.18    Defendants are liable for the Plaintiffs' damages from this nuisance, both past  
26 and continuing.

1           4.19 Defendants are also subject to an order by the Court requiring that the  
2 nuisance be permanently abated.

3 **E. Trespass and Continuing Trespass – As to All Defendants**

4           4.20 The allegations set forth in Section III of this Complaint are incorporated  
5 herein as though fully set forth.

6           4.21 Defendants have caused or perpetuated a trespass by allowing mud, debris and  
7 water to invade and damage the Plaintiffs' properties.

8           4.22 Defendants are liable for the Plaintiffs' damages, both past and continuing,  
9 caused by this trespass in an amount that will be established at trial.

10          4.23 Defendants are also subject to an order by the Court enjoining their continuing  
11 trespass.

12 **F. Strict Liability: Artificial Diversion of Surface Waters – As to Defendant City of  
13 Seattle**

14          4.24 The allegations set forth in Section III of this Complaint are incorporated  
15 herein as though fully set forth.

16          4.25 The City gathers, collects, and concentrates surface water runoff from its  
17 streets and diverts that runoff to the storm water drainage systems for Atlas Place SW and  
18 Beach Drive SW.

19          4.26 The City has long known that its storm water drainage systems are  
20 overwhelmed by the diverted run off.

21          4.27 The overflows from the City's storm water drainage systems flow onto the  
22 steep slope between Atlas Place SW and Beach Drive SW, further destabilizing the area.  
23 The overflows also flow from the City's storm water drainage systems onto the properties of  
24 Plaintiffs, causing damage.

25          4.28 The overflows also infiltrate into the subgrade supporting the City's streets,  
26 curbs and sidewalks, causing subsidence and separation.

1           4.29    The City is strictly liable for the damages sustained by Plaintiffs resulting  
2 from this diversion, in an amount that will be established at trial.

3   **G.    Strict Liability: Collection, Concentration and Channeling of Surface Waters –**  
4   **As to Defendant City of Seattle**

5           4.30    The allegations set forth in Section III of this Complaint are incorporated  
6 herein as though fully set forth.

7           4.31    The City’s streets and storm water drainage systems act to collect,  
8 concentrate, channel and cast surface water toward and onto the Plaintiffs’ properties in a  
9 volume greater than, and in a manner different from, the natural flow regime.

10          4.32    The City has long known that its streets and storm water drainage systems act  
11 to collect, concentrate, channel and cast surface water onto the steep slope between Atlas  
12 Place SW and Beach Drive SW, further destabilizing the area.

13          4.33    The City’s actions with regard to its storm waters also causes the destruction  
14 of the subgrade supporting the City’s streets, curbs and sidewalks, causing subsidence and  
15 separation.

16          4.34    The City is strictly liable or was negligent, or both, and is responsible for the  
17 Plaintiffs’ damages resulting from this collection, concentration, channeling, and casting of  
18 surface water in an amount to be proven at trial.

19   **H.    Strict Liability: Failure to Provide a Proper Outflow for Channeled Surface**  
20   **Waters – As to Defendant City of Seattle**

21          4.35    The allegations set forth in Section III of this Complaint are incorporated  
22 herein as though fully set forth.

23          4.36    The City had a duty to provide a proper outflow for that surface water runoff  
24 it collects, gathers, concentrates, channels and diverts to the storm water drainage systems for  
25 Atlas Place SW and Beach Drive SW. The City, instead, allowed the surface water run off to  
26 overwhelm the drainage systems and invade Plaintiffs’ properties.

1           4.37 This has caused the destruction, destabilization, subsidence and diminution in  
2 value of Plaintiffs' properties.

3           4.38 Defendant is strictly liable or was negligent, or both, and is responsible for the  
4 Plaintiffs' damages resulting from the lack of a proper outflow.

5 **I. Injunction against Continuing Trespass and Continuing Nuisance – As to All**  
6 **Defendants**

7           4.39 The allegations set forth in Section III of this Complaint are incorporated  
8 herein as though fully set forth.

9           4.40 As owners of residential properties, Plaintiffs have a clear legal or equitable  
10 right to full use of their properties.

11           4.41 Plaintiffs have experienced an invasion of that right, and have a well-  
12 grounded fear that their rights will continue to be invaded by the acts or omissions of  
13 Defendants.

14           4.42 The acts and omissions of Defendants herein complained of have caused  
15 actual and substantial injury to the Plaintiffs' properties. These damages are immediate,  
16 concrete, and specific. Should Defendants' acts and omissions continue Plaintiffs will  
17 experience additional and increasing substantial damage to their properties, or a substantial  
18 risk thereof.

19           4.43 The uniqueness of Plaintiffs' properties makes damages an inadequate  
20 compensation for their losses. Any remedy at law would also not be sufficient because the  
21 injury is of a continuing nature.

22           4.44 Plaintiffs request that the Court order Defendants to repair their properties to a  
23 stable condition, and take steps to preserve their properties from future instability.

24 **J. Violation of Plaintiffs O'Hurley and Lyons' Procedural Due Process Rights -- As**  
25 **to Defendant City of Seattle**

26           4.45 The allegations set forth in Section III of this Complaint are incorporated  
herein as though fully set forth.



1 B. All reasonable attorneys' fees, expert witness fees, and other costs to which  
2 they may be entitled under RCW 8.25.075 or other provisions of law;

3 C. An Order enjoining Defendants from perpetuating the continuing trespass and  
4 abating the continuing nuisance;

5 D. An Order enjoining the Defendant from enforcing the Hazard Corrections  
6 Orders against Plaintiffs O'Hurley and Lyons;

7 E. An Order requiring Defendants to stabilize their properties by undertaking any  
8 repairs and restoration necessary; and

9 F. Such other and further relief that the Court deems just and equitable.

10 DATED this 19th day of May, 2011.

11 TERRELL MARSHALL DAUDT & WILLIE PLLC

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