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

THE CITY OF SEATTLE, a Washington
municipal corporation,

Plaintiff,

vs.

KOSTAS A. and LINDA C. KYRIMIS, a
marital community; NANCY A. DESPAIN, an
individual; WENDY S. SWEIGART, an
individual; LEROY and JOYCE BERNARD, a
marital community; CHARLES E. and
SHIRLEY J. KING, a marital community;
BRUCE GROSS, an individual; and JANE
AND JOHN DOES 1-5, as individuals and
marital communities.

Defendants.

No. 16-2-22576-4 SEA

FIRST AMENDED COMPLAINT FOR
DAMAGES AND ENFORCEMENT
PENALTIES

Plaintiff The City of Seattle (“City”) alleges as follows:

PARTIES

1. The City is a Washington municipal corporation of the first class organized and existing under the laws of the State of Washington and doing business in Seattle, King County, Washington.

1 Department of Parks and Recreation (“Parks”) property, and City right-of-way to the east of
2 parcels 132403-9099 and 132403-9074 under the jurisdiction of Seattle Department of
3 Transportation (the “Parcels”).

4 12. In early 2016 the City learned that trees had been cut down on the Parcels sometime
5 in 2015 or early 2016.

6 13. The City did not give permission for any cutting that occurred on the Parcels.

7 14. The City’s investigation of the matter, along with subsequent discovery in this
8 litigation, have revealed that the Kyrimises, Ms. Despain, Ms. Sweigart, the Bernards, the Kings,
9 and Mr. Gross (collectively, “the defendant homeowners”), and Jane and John Does 1 – 5, all acted
10 in concert to cut trees on the Parcels within Area “C” on the attached **Exhibit 1**. Specifically, the
11 defendant homeowners agreed and coordinated with one another to hire and pay Jane and John
12 Does 1 – 5 to cut the subject trees. Each homeowner contributed a proportionate share of the
13 cutters’ fees. The defendant homeowners did this with the common purpose and plan of improving
14 the views from their homes.

15 15. The defendant homeowners each own homes, as identified in paragraphs (2)
16 through (6), above, located within the vicinity of the subject tree cutting in Exhibit 1 Area “C.”
17 That cutting substantially improved the views from each of those homes by removing trees that
18 had obstructed or partially obstructed their views.

19 16. The defendant homeowners authorized and/or directed Jane and John Does 1 – 5 to
20 enter Exhibit 1 Area “C” and cut trees. Accordingly, Jane and John Does 1 – 5 were the agents of
21 the defendant homeowners for purposes of the cutting.

1 17. Using the Trunk Formula Method, a commonly accepted method for valuing trees that
2 are larger and/or older than those usually purchased at tree farms and nurseries, the value of the trees
3 cut down in Exhibit 1 Area “C” was \$120,920.

4 18. Seventy two trees over 6 inches in caliper were cut down on the Parcels in Area C.

5 19. The Parcels are located in an environmentally critical area that contains steep slopes
6 and landslide-prone areas.

7 20. None of Defendants sought permission from any City department to cut trees on the
8 Parcels.

9 21. The cutting of trees increased the likelihood of landslides on the Parcels, and thereby
10 damaged the land itself.

11 **FIRST CAUSE OF ACTION: TIMBER TRESPASS (RCW 64.12.030)**

12 22. The City incorporates all of the allegations in paragraphs 1-21.

13 23. Defendants Jane and John Doe 1-5 cut down and otherwise damaged trees on the
14 City’s property without lawful authority.

15 24. Defendants Kyrimis, Despain, Sweigart, Bernard, King, and Gross acted in concert to
16 authorize and/or direct Jane and John Doe 1-5’s actions on the City’s property, and are therefore
17 responsible for those actions.

18 25. Defendants Kyrimis, Despain, Sweigart, Bernard, King, and Gross lacked probable
19 cause to believe that the Parcels were their property.

20 26. Defendants Jane and John Does 1-5 lacked probable cause to believe that the Parcels
21 belonged to Kyrimis, Despain, Sweigart, Bernard, King, or Gross.

22 27. The cutting was not casual or involuntary.

1 28. Defendants are liable for treble the City's damages of \$120,920, for a total of
2 \$362,760.

3 **SECOND CAUSE OF ACTION: DAMAGE TO LAND (RCW 4.24.630)**

4 29. The City incorporates all of the allegations in paragraphs 1-27.

5 30. Defendants damaged the Parcels because in removing the trees they made landslides
6 on the Parcels more likely.

7 31. Defendants knew or should have known they were not authorized to cut the trees.

8 32. In addition to the value of the trees, the City is also entitled to (1) damages to the land
9 resulting from the cutting, (2) restoration costs for repairing the damage to the land, and (3) reasonable
10 costs including investigation costs, attorney's fees and other litigation-related costs.

11 **THIRD CAUSE OF ACTION: TRESPASS**

12 33. The City incorporates all of the allegations in paragraphs 1-27.

13 34. Defendants trespassed upon the City's Parcels and caused damage to the City's trees
14 and land.

15 **FOURTH CAUSE OF ACTION: NEGLIGENCE**

16 35. The City incorporates all of the allegations in paragraphs 1-27.

17 36. Defendants knew or should have known they lacked permission to cut down trees in
18 a greenbelt they did not own.

19 **FIFTH CAUSE OF ACTION: VIOLATIONS OF THE ENVIRONMENTALLY**
20 **CRITICAL AREAS CODE**

21 37. The City incorporates all of the allegations in paragraphs 1-27.

22 38. Defendants cut trees in an environmentally critical steep slope and landslide-prone
23 area in violation of SMC 25.09.040, 25.09.080, 25.09.320 and other provisions of the Seattle

1 Environmentally Critical Area Ordinance (ECA Code), codified in Seattle Municipal Code (SMC)
2 Chapter 25.09.

3 39. Defendants violated the ECA code by clearing and cutting 72 trees greater than six
4 inches in caliper and vegetation in environmentally critical areas without a permit or authorization
5 to do so.

6 40. Pursuant to SMC 25.09.460, Defendants are subject to a cumulative civil penalty
7 in the amount of \$500 per day for each violation from the date the violation occurs until the date
8 of compliance; and a \$5,000 civil penalty for each tree cut over six inches in caliper. Given the
9 significant damage, Defendants are subject to the additional penalty civil penalty of the economic
10 benefit derived by the violation.

11 **SIXTH CAUSE OF ACTION: UNAUTHORIZED USE OF PARK PROPERTY**

12 41. The City incorporates all of the allegations contained in paragraphs 1-27.

13 42. The Seattle Parks Code is codified in SMC Chapter 18.30. Unauthorized use of
14 park property is a violation of the Parks Code.

15 43. Defendants violated the Parks code by making unauthorized use of park
16 property by clearing and cutting trees and vegetation on Parcels 132403-9099 and 132403-9074
17 without a permit or authorization from Parks.

18 44. Parks has determined that the unauthorized use creates substantial risk of injury to
19 persons and to parks property and therefore the Superintendent of Parks is authorized to abate the
20 unauthorized use and restore the affected park property pursuant to SMC 18.30.055.

21 **SEVENTH CAUSE OF ACTION: TREE AND VEGETATION MANAGEMENT IN**
22 **PUBLIC PLACES**

23 45. The City incorporates all the allegations contained in paragraph 1-27 above.

1 46. SMC 15.04.010.A provides that it is unlawful for anyone to make “use” of any
2 public place without first securing a permit under SMC Title 15.

3 47. SMC 15.43.020 provides that no person shall destroy, kill, injure, mutilate, or
4 deface a street tree or vegetation in a public place by any means.

5 48. The Defendants violated SMC 15.04.010.A and 15.43.020 by cutting trees and
6 vegetation in the SDOT right of way located east of the Parcels without a permit from SDOT to
7 do so.

8 49. Defendants are subject to a cumulative penalty of up to \$500 per day for each
9 violation from the date the violation occurs or begins until compliance is achieved. Defendants are
10 also liable to the City for enforcement costs, including but not limited to staff time, administrative
11 expenses and fees, and costs and attorneys’ fees pursuant to SMC 15.90.018.A.

12 50. In addition to the cumulative penalties, Defendants are subject to a civil penalty in
13 an amount equal to the appraised value of each affected tree in accordance with the most current
14 edition of the Council of Tree and Landscape Appraisers “Guide for Plant Appraisal” for their acts
15 which destroyed, killed, injured, or mutilated the street tree pursuant to SMC 15.90.018.B.

16 **PRAYER FOR RELIEF**

17
18 WHEREFORE, Plaintiff prays for the following relief,

- 19 1. A principal judgment against Defendants, jointly and severally, including treble
20 damages of \$362,760 on the City’s timber trespass claim or in such other amount as
21 may be proven at trial; penalties in the amount of \$360,000 for cutting down 72 trees
22 over six inches in caliper and an additional \$500 for each tree cut pursuant to SMC
23 25.09.460.A; land restoration costs, the amount of the economic benefit that the

1 Defendants derived from the violation pursuant to SMC 25.09.460.B; and other
2 legal or equitable relief to abate any condition that constitutes a violation of the
3 ECA Chapter 25.09 as described in SMC 25.09.480;

4 2. Enforcement costs, including but not limited to administrative expenses and fees;
5 the cost of any land surveys related to enforcement; the costs of any abatement and
6 restoration of park property after abatement; recording fees; and litigation costs and
7 statutory attorneys' fees pursuant to SMC 18.30.050; plus reasonable attorneys' fees
8 pursuant, investigative costs and other litigation-related costs pursuant to RCW
9 4.24.630;

10 3. Civil penalties, enforcements costs and the value of each affected tree, and the cost
11 of restoration in accordance with SMC 15.90.018.B. for trees damages in the right-
12 of-way. The City shall be awarded treble the penalty if the violation of SMC Title
13 15 is found to be willful or malicious.

14 4. Enforcement costs, including but not limited to staff time, administrative expenses
15 and fees, and costs and attorneys' fees pursuant to 15.90.018.

16 5. For pre-judgment interest from the date of this complaint pursuant to RCW 4.56.110
17 and otherwise;

18 6. For statutory attorney's fees and legal costs incurred in connection with this matter
19 pursuant to RCW 4.84.010, 4.84.080 and otherwise;

20 7. For post-judgment interest on the judgment, at a rate to be determined at the time
21 of entry, until the judgment is satisfied in full pursuant to RCW 4.56.110; and

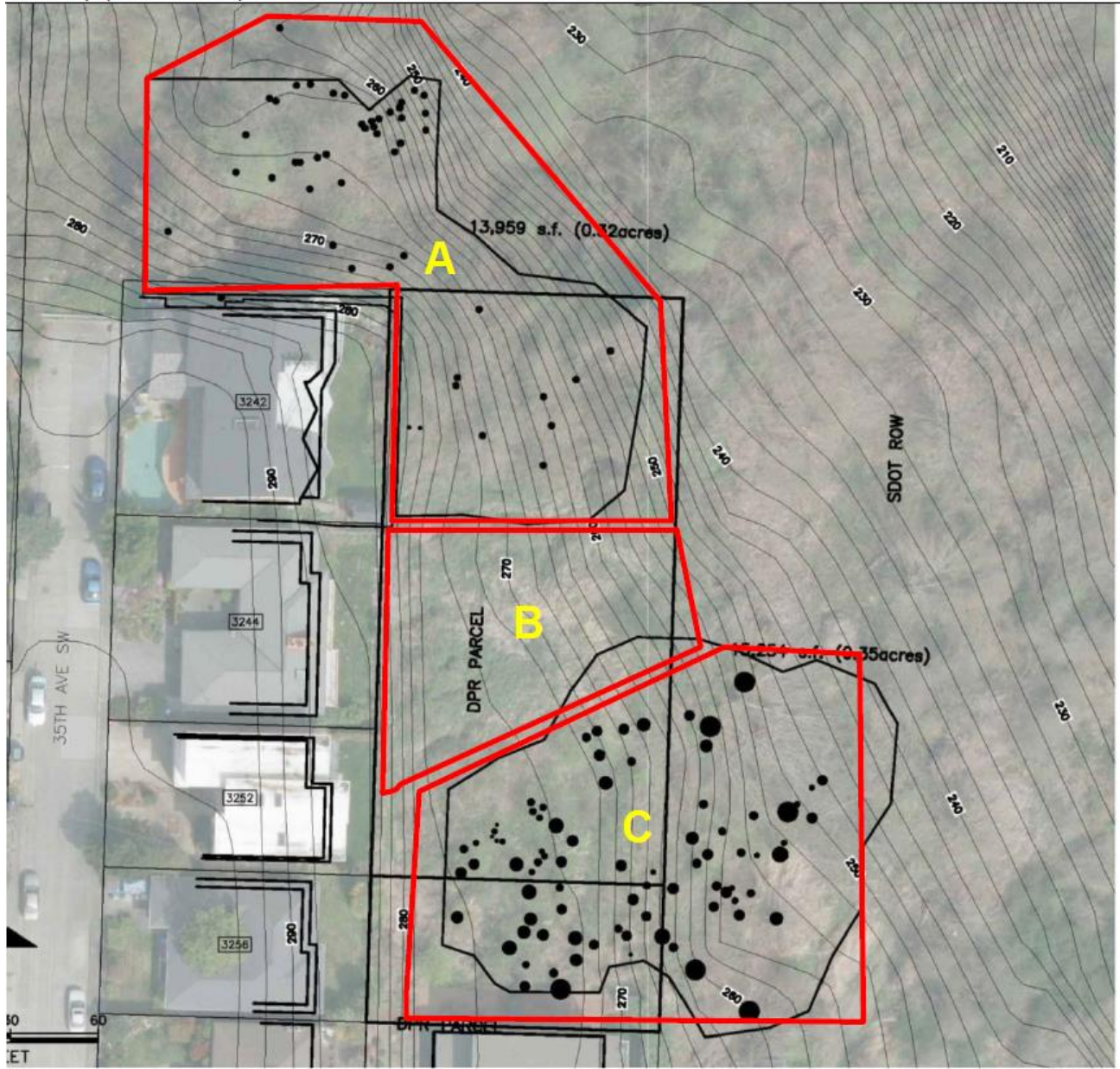
22 8. For such other and additional relief as the Court may deem just and equitable.
23

1 DATED this 19th day of April, 2017.

2 PETER S. HOLMES
3 Seattle City Attorney

4 By: s/ Joseph Groshong
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EXHIBIT 1



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

SEATTLE CITY OF

vs.

KYRIMIS

Case No.: 16-2-22576-4 SEA

CERTIFICATE OF E-SERVICE

(AFSR)

I, Joseph Groshong, certify that I initiated electronic service of the following document(s) on the parties listed below who have consented to accept electronic service via the King County eFiling Application. Service was initiated on April 19, 2017 at 10:58:12 AM.

Document(s):

1. AMENDED COMPLAINT

Parties:

1. Joseph Groshong, Attorney for Petitioner/Plaintiff
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2. Heather Jensen, Attorney for Respondent/Defendant
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3. William Simmons, Attorney for Respondent/Defendant
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Executed this 19th day of April, 2017.

s/ Joseph Groshong
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