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6 NEIL STRAGALIS, ELYSA STEIN AND MARY COULTON

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

06/23/2023

Clerk of the Court

BY: GINA GONZALES

Deputy Clerk

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

9 **UNLIMITED JURISDICTION**

10 ELIZABETH QUINN, as an individual and
11 a trustee of the Ayres Quinn Family Living
12 Trust; CAROLINE AYRES, as an individual
13 and a trustee of the Ayres Quinn Family
14 Living Trust; GREG GRUSZYNSKI, an
individual; and DERRLYN TOM, an
individual;

15 Cross-Plaintiffs,

16 v.

17 MARY R. COULTON, an individual; ELYSA
18 STEIN, an individual; NEIL STRAGHALIS,
19 an individual; and DOES 1 through 50,
inclusive,

20 Defendants

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22 NEIL STRAGHALIS, an individual, ELYSA
23 STEIN, an individual, and MARY
24 COULTON, as an individual and a trustee of
the Mary R. Coulton Living Trust,

25 Cross-Plaintiffs,

26 v.
27

28 ELIZABETH QUINN, as an individual and a

Case No. CGC-23-606844

CROSS-COMPLAINT FOR:

- **NUISANCE**
- **NEGLIGENCE**
- **TRESPASS**

Jury Trial Demanded

trustee of the Ayres Quinn Family Living Trust; CAROLINE AYRES, as an individual and a trustee of the Ayres Quinn Family Living Trust; GREG GRUSZYNSKI, an individual; and DERRLYN TOM, an individual; and DOES 1 through 50, inclusive,

Cross-Defendants.

Cross-Plaintiffs, and each of them, complain of Cross-Defendants, and each of them, and allege as follows on information and belief:

Cross-Plaintiffs in this case are NEIL STRAGHALIS, an individual, ELYSA STEIN, an individual, and MARY COULTON, as an individual and a trustee of the Mary R. Coulton Living Trust, who are collectively hereinafter referred to as the “Downhill Owners.” The Downhill Owners hereby allege, each as to himself or herself:

1. The Downhill Owners reside in the City and County of San Francisco, State of California. They are neighbors on Cesar Chavez Street, and their properties (“Downhill Properties”) are located on the downslope side of a common hillside.

2. The Uphill Owners reside in the City and County of San Francisco, State of California. They are neighbors on 26th Street, and their properties (“Uphill Properties”) are located on the upslope side of a common hillside.

3. At all relevant times alleged herein, Cross-Defendants the Uphill Owners have resided in the City and County of San Francisco, State of California.

4. The true names and capacities of Does 1 through 50 are unknown to Cross-Plaintiffs, who sue these defendants by these fictitious names. Each Doe defendant contributed to Cross-Plaintiffs' damages. Cross-Plaintiffs will amend this Complaint to show the Doe defendants' true names and capacities when ascertained.

5. Each of the Downhill Owners owns his or her own Downhill Property as of the time of the filing of this Complaint. Their Properties on Cesar Chavez Street are identified as follows:

Mary R. Coulton	3766-3768 Cesar Chavez Street, San Francisco, CA 94110
Elysa Stein and Neil Straghalis	3770 Cesar Chavez Street, San Francisco, California 94110

6. The Uphill Owners each own or reside in a home that is upslope of the Downhill Properties. The Uphill Properties are located on 26th Street in the City of San Francisco, as follows:

Quinn and Ayres	3737-3739 26th Street, San Francisco, California 94110
Gruszynski and Tom	3735 26th Street, San Francisco, California 94110

7. Each Downhill Owner alleges as to his or her own Downhill Property that on or about December 31, 2022, his or her Downhill Property was severely damaged by a slope and wall failure caused by the failure of each of the Uphill Owners to properly maintain his or her own property, specifically including the Uphill Owners' failure to reasonably maintain their backyards and failure to properly assure and maintain reasonable, proper and required drainage of their homes and backyards. The damage to the Downhill Owners' Properties is continuing and progressive.

8. As a result of the foregoing, each of the Downhill Owners alleges as to himself or herself that he or she has suffered damages including but not limited to:

- reduced value of the Property;
- expense to repair and restore the Property;
- reduced safety and marketability of the Property;
- out of pocket costs to attempt to mitigate the damage and repair improvements on the Property;
- costs of stabilizing the Property; and,
- costs for engineers and geologists to analyze the danger and repair and restore the Property.

9. The Downhill Owners' damages exceed the minimum jurisdictional amount for this Court.

FIRST CAUSE OF ACTION

NUISANCE

(Against All Cross-Defendants)

10. Cross-Plaintiffs incorporate Paragraphs 1 through 9.

11. The Cross-Defendant Uphill Owners' failure to reasonably maintain their backyards and failure to properly assure and maintain reasonable, proper and required drainage of their homes and backyards caused subsidence and landsliding on the Uphill Owners' Properties starting on or about December 31, 2022. By operation of law, these Cross-Defendants are legally responsible for damages proximately caused by the subsidence and landsliding, including the damages suffered by the Downhill Owners. These Cross-Defendants' liability originates in Civ. Code sections 3479-3503; see *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, and *Vedder v. County of Imperial* (1974) 36 Cal.App.3d 654.

12. Cross-Defendants are legally responsible for a condition that posed an unreasonable hazard to the Downhill Owners' Properties and for the subsidence and slope failure that has damaged the Downhill Owners' Properties.

13. The subsidence and the threat of future subsidence and slope failure obstructs the Downhill Owners' free use of, and interferes with their enjoyment of, their Properties.

14. The physical damage to the Downhill Owners' Properties, the loss of use and value of their Properties, the damage to or destruction of the safety and marketability of the Properties, and the continuing danger to the Properties have caused the Downhill Owners to suffer emotional distress, including annoyance, inconvenience, and discomfort. The Downhill Owners have suffered with justifiable fear and anxiety about the dangerous condition of their Properties. As a proximate result of the Cross-Defendants' actions and inactions, the Downhill Owners have been caused, and continue to be caused, to suffer damages from emotional distress in an amount to be proven at trial.

1 15. The Downhill Owners' damages from the nuisance exceed the minimum
2 jurisdiction of this Court.

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4 SECOND CAUSE OF ACTION

5 NEGLIGENCE

6 (Against All Cross-Defendants)

7 16. Cross-Plaintiffs incorporate Paragraphs 1 through 15.

8 17. Each Downhill Owner alleges that each Uphill Owner had a duty to properly
9 maintain his or her own property.

10 18. Each Downhill Owner alleges that each Uphill Owner knew or should have
11 known that his or her failure to maintain his or her respective property, including but not
12 limited to reasonably maintaining their backyards and failure to properly assure and
13 maintain reasonable, proper and required drainage of their homes and backyards could cause
14 subsidence and slope failure that would affect the Downhill Owners' Properties and each of
15 them.

16 19. Each Downhill Owner alleges that each Uphill Owner negligently failed to
17 maintain his or her property near the Downhill Owners' Properties and, as a proximate and
18 foreseeable result, each Uphill Owner contributed to the subsidence and slope failure that has
19 damaged or destroyed the Downhill Owners' Property.

20 20. Each Downhill Owner alleges as to his or her Property, that physical damage to
21 said Property, the loss of use and value of said Property, the damage to or destruction of the
22 safety and marketability of said Property, and the continuing danger to said Property has
23 caused said Downhill Owner to suffer emotional distress, including annoyance, inconvenience,
24 and discomfort. As a proximate result of each of the Uphill Owners' actions and inactions,
25 each complaining Downhill Owner has been caused, and continues to be caused, to suffer
26 damages from emotional distress in an amount to be proven at trial.

27 21. Each Downhill Owner alleges as to himself or herself that damages from the
28 above alleged negligence exceed the minimum jurisdiction of this Court.

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THIRD CAUSE OF ACTION

TRESPASS

(Against All Cross-Defendants)

22. Cross-Plaintiffs incorporate Paragraphs 1 through 21.

23. The above-described incursion onto the Downhill Owners' Properties and damage resulting therefrom was made by each of the Cross-Defendant Uphill Owners without Cross-Plaintiff Downhill Owners' consent and constitutes a trespass upon the Downhill Properties.

24. As a proximate and actual result of the Uphill Owners' trespass, Cross-Plaintiffs have been caused and continue to be caused, to suffer economic losses and general damages in an amount to be proven at trial that exceeds the minimum jurisdiction of this Court.

WHEREFORE, Cross-Plaintiffs pray judgment against each Uphill Owner Cross-Defendant, with reference to each Downhill Owner's own Property, as follows:

On the First Cause of Action for Nuisance:

- Damages according to proof for:
 - Physical damage to the improvements at the Property;
 - Loss of use of the Property;
 - Loss of value of the Property;
 - The cost to stabilize and repair the Property;
 - Damage to or destruction of the safety and marketability of the Property;
 - Emotional distress; and
 - All other compensatory damages;
- Pre-judgment and post-judgment interest as allowed by law;
- Costs as against each defendant; and
- Such other relief as the Court deems just.

1 On the Second Cause of Action for Negligence:

- 2 • Damages according to proof for:
- 3 - Physical damage to the improvements at the Property;
- 4 - Loss of use of the Property;
- 5 - Loss of value of the Property;
- 6 - The cost to stabilize the Property;
- 7 - Damage to or destruction of the safety and marketability of the
- 8 Property;
- 9 - Emotional distress; and
- 10 - All other compensatory damages;
- 11 • Pre-judgment and post-judgment interest as allowed by law;
- 12 • Costs as against each defendant; and
- 13 • Such other relief as the Court deems just.

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15 On the Third Cause of Action for Trespass:

- 16 • Damages according to proof for:
- 17 - Physical damage to the improvements at the Property;
- 18 - Loss of use of the Property;
- 19 - Loss of value of the Property;
- 20 - The cost to stabilize the Property;
- 21 - Damage to or destruction of the safety and marketability of the
- 22 Property;
- 23 - Emotional distress; and
- 24 - All other compensatory damages;
- 25 • Pre-judgment and post-judgment interest as allowed by law;
- 26 • Costs as against each defendant; and
- 27 • Such other relief as the Court deems just.

1 DATED: June 22, 2023

ROUDA LAW FIRM, P.C.

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4 By: 

David Rouda, Esq.

Attorneys for Cross-Plaintiffs

5 NEIL STRAGHALIS, an individual, ELYSA
6 STEIN, an individual, and MARY COULTON,
7 as an individual and a trustee of the Mary R.
8 Coulton Living Trust

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PROOF OF SERVICE

I declare:

I am over the age of 18 years, and not a party to this action. My business address is 285 12th Avenue, First Floor, San Francisco, CA 94118, which is located in the county where the delivery described below took place.

COMPLAINT FOR DAMAGES (Nuisance, Negligence, Trespass)

I am readily familiar with the business practice at my place of business for processing of documents by e-filing. On the date stated below, following ordinary business practices, I hired Swift Attorney Service to e-file a copy of the above-entitled documents at:

Clerk of the San Francisco Superior Court Unlimited Jurisdiction 400 McAllister St. San Francisco, CA 94102	
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the date set forth below in San Francisco, California.

DATED June 22, 2023



DAVID ROUDA

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