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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

CONFIDENTIAL,

Plaintiff,

vs.

CITY OF SEATTLE, a Washington Municipal Corporation,

Defendant.

NO.

COMPLAINT FOR DAMAGES

COMES NOW PLAINTIFF, by and through his attorneys, and for cause of action against Defendant, states, alleges, and avers as follows:

**I. PARTIES, JURISDICTION & VENUE**

1.1 The plaintiff, <Plaintiff>, is a single man residing in Seattle, King County, Washington.

1.2 Defendant City of Seattle (hereinafter “the City”) is a municipal corporation located in King County, Washington.

1           1.3     The injuries giving rise to the damages alleged in this complaint occurred in  
2 King County, Washington. Venue and jurisdiction are proper in King County Superior Court  
3 in Seattle, Washington.  
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6                                   **II.     SERVICE OF CLAIM FOR DAMAGES**

7           2.1     Pursuant to RCW 4.96.020, the plaintiff properly served a completed and  
8 signed valid Claim for Damages on the City on or about March 19, 2010.

9           2.2     As of the date of the filing of this complaint, the City has not responded to the  
10 plaintiff's claim against it.

11           2.3     More than sixty (60) days have elapsed since the date of service of the  
12 plaintiff's Claim for Damages on the City, and therefore the plaintiff's Complaint is properly  
13 before the above-entitled court.  
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16                                   **III.     FACTS**

17           3.1     The City owns, designs, and maintains streets within the City of Seattle.

18           3.2     The Burke-Gilman Trail is a popular recreational trail for walkers, runners,  
19 cyclists, skaters and commuters, and is jointly maintained by Seattle Department of  
20 Transportation and Seattle Parks and Recreation.  
21

22           3.3     The Burke-Gilman Trail has an unfinished portion between the intersection of  
23 NW 45th Street and 11th Ave NW and the intersection of 32nd Ave NW and NW 54th  
24 Street.  
25

26           3.4     The unfinished portion is commonly referred to as the "missing link" or the  
"unfinished portion of the Burke-Gilman Bicycle Trail."

1           3.5     The “unfinished portion of the Burke-Gilman Bicycle Trail” is regularly used  
2 by many bicyclists, a fact well known to the City since at least the year 2005 if not earlier.

3           3.6     Part of the “unfinished portion of the Burke-Gilman Bicycle Trail” includes  
4 Shilshole Avenue N.W.

5           3.7     Shilshole Avenue N.W. passes under the Ballard Bridge.

6           3.8     Railroad tracks cross Shilshole Avenue N.W. under the Ballard Bridge. The  
7 approximate street address is 4501 Shilshole Avenue N.W.

8           3.9     The railroad tracks cross Shilshole Avenue N.W. at an acute angle, which is  
9 an angle less than 90 degrees.

10          3.10    Railroad tracks that cross streets at an acute angle are hazardous to bicyclists.  
11 This fact has been known by the City since the year 2005 if not earlier.

12          3.11    The City has known since 2005 if not earlier that the railroad crossing at  
13 Shilshole Avenue N.W. is not reasonably safe for ordinary travel by bicyclists.

14          3.12    The City has also known that hundreds of bicycle crashes have occurred at  
15 Shilshole Avenue N.W. under the Ballard Bridge since 1999 as a result of bicyclists  
16 attempting to ride across the railroad tracks.

17          3.13    The City has received numerous claims for damages by bicyclists who have  
18 crashed and been injured while attempting to ride across the railroad tracks.

19          3.14    A story appeared in the Ballard News on June 27, 2001, entitled “Bicyclists  
20 Beware: This isn’t the Groove You Want to Be In,” describing bicycle crashes caused by the  
21 acute angle of the railroad tracks under the Ballard Bridge.

22          3.15    Architect Dan Dierks wrote Peter Lagerway, City of Seattle Department of  
23 Transportation, on July 11, 2001, complaining that he had witnessed “numerous bicycle  
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1 accidents resulting in injuries” on the railroad tracks and that he had seen 100 accidents  
2 caused by the tracks.

3 3.16 In 2004, arbitration awards were entered against the City in the case of Justice  
4 et al. v. Ballard Terminal Railroad and City of Seattle, King County Cause No. 03-2-27338-  
5 4, in favor of four bicyclists who crashed as a result of riding their bicycles across the  
6 railroad tracks under the Ballard Bridge.  
7

8 3.17 The City was aware that the arbitrator’s awards were based on the factual  
9 finding that the railroad crossing was not reasonably safe for ordinary travel by bicyclists.  
10

11 3.18 In connection with the arbitration, Craig Keister, former owner of Mandrakes  
12 Antiques & Great Things located at 4501 Shilshole Avenue NW near the Ballard Bridge  
13 overpass, testified that he had aided more than 100 persons who had crashed their bikes on  
14 the railroad tracks under the Ballard Bridge.

15 3.19 Seattle Fire Department injury response records show numerous occasions on  
16 which Seattle Fire Department medics aided bicyclists injured in crashes on the railroad  
17 tracks under the Ballard Bridge.  
18

19 3.20 On February 8, 2010, a complaint (referred to as the “Stabler Complaint”) was  
20 filed against the City alleging that Russell Stabler, Lisa Atkinson, Clare Breidenich, Zoe  
21 Edelstein and Virginia Grant were injured as a result of five separate bicycle crashes caused  
22 by the hazardous acute angle of the railroad tracks at Shilshole Avenue N.W. at or near the  
23 Ballard Bridge.  
24

25 3.21 The following plaintiffs have alleged injury as a result of crashing their  
26 bicycles due to the hazardous acute angle of the railroad tracks at Shilshole Avenue N.W. at  
or near the Ballard Bridge: (1) Zoe Edelstein was injured on October 31, 2008; (2) Virginia

1 Grant was injured on May 29, 2009; (3) Clare Breidenich was injured on June 10, 2009; (4)  
2 Lisa Atkinson was injured on July 8, 2009; and (5) Russell Stabler was injured on October  
3 10, 2009.

4 3.22 The Stabler Complaint alleged that all five crashes occurred because the City  
5 failed to maintain the railroad crossing at Shilshole Avenue N.W. under the Ballard Bridge in  
6 a condition that was reasonably safe for ordinary bicycle use.  
7

8 3.23 In April, 2009, as part of the public hearings on the City's proposal to finish  
9 the Burke-Gilman Bicycle Trail, (entitled "In the Matter of the Appeal of the Ballard  
10 Business Owners", Hearing Examiner File No. W-08-007) a representative of the City, Mr.  
11 Mark Mazzola, Senior Environmental Analyst, testified that the railroad crossing under the  
12 Ballard Bridge was "unsafe" for bicyclists and that "part of the purpose of this project is to  
13 provide a safe crossing of the railroad at 90 degrees."  
14

15 3.24 Mr. Mazzola testified that the problem with the railroad track crossing is that  
16 the roadway and bicycle route cross the tracks at an acute angle.  
17

18 3.25 City attorney, Judith Barbour, adopted the testimony of Mr. Mazzola that the  
19 railroad crossing is unsafe as the City's position in the Director's Post Hearing Brief.

20 3.26 In August, 2009, the City attempted to mitigate the unsafe condition of the  
21 railroad crossing on Shilshole Avenue N.W. by changing the signage and the street markings  
22 for bicyclists.  
23

24 3.27 The City's attempt to mitigate the unsafe condition of the railroad tracks by  
25 installing signs did not correct the acute angle of the railroad crossing, and did not make the  
26 crossing reasonably safe for ordinary travel by bicyclists.

1           3.28    The City continued to maintain the bicycle lane that it installed on Shilshole  
2 Avenue N.W. which crossed the railroad tracks under the Ballard Bridge at an acute and  
3 unsafe angle for those bicyclists using this lane.

4           3.29    A bicycle lane, as defined by Seattle Municipal Code 11.14.060, is a portion  
5 of the roadway which has been designated by traffic-control devices for preferential or  
6 exclusive use by bicycles.

7           3.30    By installing and maintaining the bicycle lane on Shilshole Avenue N.W., the  
8 City directed bicyclists to use the bicycle lane and thereby directed bicyclists to cross the  
9 railroad tracks under the Ballard Bridge.

10          3.31    On or about <date>, the plaintiff was lawfully riding his bicycle on the Burke-  
11 Gilman Trail.

12          3.32    The plaintiff was riding his bicycle on Shilshole Avenue N.W. in the marked  
13 bicycle lane.

14          3.33    As the plaintiff passed under the Ballard Bridge, the front wheel of his bicycle  
15 became lodged in one of the railroad tracks, and caused the plaintiff to catapult off his bike  
16 and land on the ground with extreme force.

17          3.34    As a result of the crash, the plaintiff suffered severe bodily injuries including a  
18 severe right ankle/tibia fracture and also incurred damages.

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23 **IV.    FACTS REGARDING BALLARD TERMINAL RAILWAY COMPANY, LLC**

24          4.1    The City has previously alleged that Ballard Terminal Railway Company,  
25 LLC, was at fault for injuries suffered by bicyclists attempting to cross the railroad tracks at  
26

1 Shilshole Avenue N.W. under the Ballard Bridge. *See Stabler et al. v. City of Seattle et al.*,  
2 King County Superior Court Cause No. 10-2-06535-1 SEA.

3 4.2 In Stabler, the City alleged as an affirmative defense that Ballard Terminal  
4 Railway Company, LLC, was an at fault party.

5 4.3 In Stabler, the plaintiffs' motion for partial summary judgment to dismiss the  
6 City's affirmative defense alleging fault against Ballard Terminal Railway Company, LLC  
7 was granted by Judge William Downing.

8 4.4 Ballard Terminal Railway Company, LLC, had no legal or contractual duty to  
9 maintain the bicycle lane at Shilshole Avenue N.W. in a reasonably safe condition for the  
10 ordinary travel of bicyclists, including the plaintiff.

11 4.5 Ballard Terminal Railway Company, LLC, shares no fault for the injuries and  
12 damages alleged by the plaintiff in this lawsuit.

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16 **V. CAUSE OF ACTION - NEGLIGENCE**

17 5.1 Plaintiff re-alleges the allegations set forth in paragraphs 1.1 through 4.5, and  
18 hereby incorporates them as though fully set forth herein.

19 5.2 As a municipality, the City has a duty of care to all travelers including  
20 bicyclists to maintain its roadways and bicycle lanes in conditions that are reasonably safe for  
21 ordinary bicycle travel.

22 5.3 The City's duty to maintain its roadways and bicycle lanes in a reasonably  
23 safe condition includes the duty to eliminate or correct any inherently dangerous or unsafe  
24 condition.  
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1           5.4     The City breached its duty of care to the plaintiff by failing to maintain the  
2 bicycle path on Shilshole Avenue N.W. in a condition that was reasonably safe for ordinary  
3 bicycle travel.

4           5.5     As a result of the City's negligence, the plaintiff was injured, suffered, and  
5 continues to suffer, physical disability and pain, emotional trauma, medical expenses, loss of  
6 earnings and earning capacity and other damages.

7           5.6     There are no other entities which caused or contributed to the plaintiff's  
8 injuries or damages.  
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11           **VI.     NO COMPARATIVE FAULT/CONTRIBUTORY NEGLIGENCE**

12           The injuries and damages suffered by the plaintiff were not caused by any fault,  
13 carelessness, or negligence on his part, but were caused solely and proximately by the  
14 tortious acts and omissions of the City.  
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17                           **VII.     PRAYER FOR RELIEF**

18           WHEREFORE, the plaintiff prays for judgment against the City of Seattle as follows:  
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- 20           A. For a judgment of liability in his favor and against the City of Seattle;
- 21           B. For all damages sustained by the plaintiff in an amount proven at trial, including  
22           past and future economic damages, including medical expenses and lost income,  
23           pain and suffering, both mental and physical, past and future permanent partial  
24           disability and disfigurement, loss of enjoyment of life, damages to property, past  
25           and future special damages and exemplary damages;  
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- 1 C. Interest calculated at the maximum amount allowable by law, including pre- and  
2 post-judgment interest;  
3 D. A reasonable attorney's fee as allowed by law;  
4 E. Costs and disbursements pursuant to statute; and  
5 F. Other and further relief as this Court may deem just and equitable.  
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8 Dated this 31<sup>st</sup> day of May, 2011.  
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10 **DAVIS LAW GROUP, P.S.**

11 

12 /s/ \_\_\_\_\_

13 By: Christopher M. Davis, WSBA No. 23234

14 By: Gregory Colburn, WSBA No. 41236

15 Attorneys for Plaintiff

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