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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN MATEO**

10

11 DARRYL GAY, SR., Individually and as
Successor in Interest to THE ESTATE OF
12 KAHLIL GAY, and TUNISIA PEDEN,
Individually,

13 Plaintiffs,

14 v.

15 ARE-819/863 MITTEN ROAD, LLC, a
16 Limited Liability Company, GACHINA
LANDSCAPE MANAGEMENT, INC., a
17 Corporation, THE DAVEY TREE EXPERT
COMPANY, a Corporation, ROCKRIDGE
18 BUILDERS & DESIGNERS, a Business
Entity Form Unknown, ARBORWELL, INC.,
19 a Corporation, REED ASSOCIATES
LANDSCAPE ARCHITECTURE
20 CORPORATION, a Corporation, and DOES 1
through 100, inclusive,

21 Defendants.
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24 COMES NOW Plaintiffs DARRYL GAY, SR., Individually and as Successor in Interest to
25 THE ESTATE OF KAHLIL GAY, and TUNISIA PEDEN, Individually ("Plaintiffs"), for causes of
26 action against Defendants ARE-819/863 MITTEN ROAD, LLC, a Limited Liability Company,
27 GACHINA LANDSCAPE MANAGEMENT, INC., a Corporation, THE DAVEY TREE EXPERT
28 COMPANY, a Corporation, ROCKRIDGE BUILDERS & DESIGNERS, a Business Entity Form

Electronically
FILED
by Superior Court of California, County of San Mateo
ON **3/29/2021**
By /s/ Marcela Enriquez
Deputy Clerk

Case No. 21-CIV-01684

**PLAINTIFFS' COMPLAINT FOR
WRONGFUL DEATH DAMAGES**

1. NEGLIGENCE

2. PREMISES LIABILITY

DEMAND FOR JURY TRIAL

1 Unknown, ARBORWELL, INC., a Corporation, REED ASSOCIATES LANDSCAPE
2 ARCHITECTURE CORPORATION, a Corporation, and DOES 1 through 100, inclusive,
3 ("Defendants") complain and allege as follows:

4 **GENERAL ALLEGATIONS**

5 1. This wrongful death case stems from a heartbreaking tragedy that could have, and
6 should have, been avoided. On Friday, February 26, 2021, 23-year-old Kahlil Gay ("Kahlil" or
7 "Decedent"), tragically died when a decaying and diseased
8 poorly maintained large Brazilian Peppertree ("Subject
9 Tree") fell on him while he was walking on the property
10 located at 863 Mitten Road, Burlingame, California 94010
11 ("Subject Property"). He leaves behind his mother and
12 father, brothers and countless other family members and
13 friends whose lives he touched so deeply during his 23
14 precious years on earth.



Photo of Kahlil Gay

15 On the date of the incident, Kahlil was enjoying his
16 fourth day of work at Color Genomics, his first job after
17 receiving his degree in Physics, where he was helping
18 provide COVID-19 testing to patients and test sites. Minutes before the incident, Kahlil and a
19 coworker exited the building at 863 Mitten Road to head to the main office for a meeting. As Kahlil
20 was walking to his meeting, the roots of the Subject Tree suddenly snapped from underground, and
21 the Subject Tree violently collapsed onto Kahlil's body before he had a chance to escape the peril.
22 Kahlil's coworker immediately turned around when she heard the sound of the tree cracking and
23 popping, but she could not see Kahlil. She screamed his name, then saw Kahlil's clothing beneath the
24 branches of the fallen tree, and ran toward him. He was stuck under a large branch. She immediately
25 tried to lift the tree and yelled for help, but the tree was too heavy to lift, even with the assistance of
26 two other coworkers.

27 The police arrived within minutes. But it was already too late. He was unresponsive and
28 pinned under a large branch of the Subject Tree. The upper portion of his torso was folded down onto

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his legs. Kahlil Gay, the bright and promising young physics researcher, was tragically pronounced deceased at the scene.

Upon information and belief, the Subject Tree was prone to failure and in a dangerous condition at the time of the incident due to several factors:

- The Subject Tree was planted on bay fill, which is soil that is too shallow and did not allow the roots of the Subject Tree to grow deep enough into the ground. A tree of this size (approximately 30' tall with a 30' canopy spread) requires a significant amount of room underground to grow its roots. In short, this type of tree should not have been planted in this type of soil.
- The Subject Tree was also planted too close in proximity to the tree next to it. The Subject Tree was planted approximately 11' away from the Brazilian Peppertree alongside it. The Subject Tree's canopy could therefore not grow evenly because the canopy of the tree next to it was interfering with the airspace. This meant that the Subject Tree's canopy was lopsided and asymmetrical, making the Subject Tree more prone to tip over and fail.



Post-Incident Photo of Subject Tree

1 6. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
2 herein Defendant THE DAVEY TREE EXPERT COMPANY was a Corporation located in the State
3 of Ohio, which was retained by Defendant GACHINA LANDSCAPE MANAGEMENT, INC. to
4 perform certain tasks related to designated trees, including the Subject Tree.

5 7. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
6 herein Defendant ROCKRIDGE BUILDERS & DESIGNERS was a Business Entity located in the
7 State of California, which provided landscape renovation services on the Subject Property and to the
8 Subject Tree.

9 8. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
10 herein Defendant ARBORWELL, INC. was a Corporation located in the County of Alameda, which
11 provided tree related services on the Subject Property and to the Subject Tree.

12 9. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
13 herein Defendant REED ASSOCIATES LANDSCAPE ARCHITECTURE CORPORATION was a
14 Corporation located in the County of Santa Clara, which provided landscape architecture and design
15 services on the Subject Property and to the Subject Tree.

16 10. The true names and capacities, whether individual, plural, corporate, partnership,
17 associate, or otherwise, of DOES 1 through 100, inclusive, are unknown to Plaintiffs who therefore
18 sue said defendants by such fictitious names. The full extent of the facts linking such fictitiously sued
19 defendants is unknown to Plaintiffs. Plaintiffs are informed and believe, and thereupon allege, that
20 each of the defendants designated herein as a DOE was, and is, negligent, or in some other actionable
21 manner, responsible for the events and happenings hereinafter referred to, and thereby negligently, or
22 in some other actionable manner, legally and proximately caused the hereinafter described injuries and
23 damages to Plaintiffs. Plaintiffs will hereafter seek leave of the Court to amend this Complaint to
24 show the defendants' true names and capacities after the same have been ascertained.

25 11. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned
26 herein, Defendants ARE-819/863 MITTEN ROAD, LLC, GACHINA LANDSCAPE
27 MANAGEMENT, INC., THE DAVEY TREE EXPERT COMPANY, ROCKRIDGE BUILDERS &
28 DESIGNERS, ARBORWELL, INC., REED ASSOCIATES LANDSCAPE ARCHITECTURE

1 CORPORATION, and DOES 1 through 100, inclusive, were agents, servants, employees, successors
2 in interest, and/or joint venturers of their co-defendants, and were, as such, acting within the course,
3 scope, and authority of said agency, employment, and/or venture, and that each and every Defendant,
4 as aforesaid, when acting as a principal, was negligent in the selection and hiring of each and every
5 other Defendant as an agent, servant, employee, successor in interest, and/or joint venturer.

6 **FIRST CAUSE OF ACTION**

7 **(Negligence Against All Defendants and DOES 1 through 100, Inclusive)**

8 12. Plaintiffs re-allege and incorporate herein by reference each and every allegation and
9 statement contained in the prior paragraphs.

10 13. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
11 herein, Defendants ARE-819/863 MITTEN ROAD, LLC, GACHINA LANDSCAPE
12 MANAGEMENT, INC., THE DAVEY TREE EXPERT COMPANY, ROCKRIDGE BUILDERS &
13 DESIGNERS, ARBORWELL, INC., REED ASSOCIATES LANDSCAPE ARCHITECTURE
14 CORPORATION, and DOES 1 through 100, inclusive, owed a duty of care to all reasonably
15 foreseeable people, including Decedent Kahlil Gay and to Plaintiffs, to ensure that the construction,
16 maintenance, inspection, placement, supervision, repairs, design, modifications, risk assessment, and
17 other work performed by said Defendants at the Subject Property, including, but not limited to, the
18 Subject Tree, was done in a workmanlike and standard of care manner and in a reasonably safe
19 condition so as not to expose persons, such as Decedent to an unreasonable risk of injury or death, as
20 well as to remain in compliance with all applicable statutes, ordinances, regulations, and industry
21 standards.

22 14. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
23 herein, said Defendants breached their duty of care when they carelessly and negligently (1) failed to
24 properly inspect, or to inspect at all, trees, including, but not limited to, the Subject Tree, that posed a
25 risk of injury or death to persons such as Decedent, (2) failed to properly perform risk assessments to
26 detect hazardous trees and target areas to prevent the risk of harm from hazardous trees, including but
27 not limited to, the Subject Tree, to persons such as Decedent, (3) failed to provide personnel qualified
28 and competent to assess, evaluate, and/or maintain or remove, hazardous trees, including but not

1 limited to the Subject Tree, and (4) failed to properly maintain, or to maintain at all, trees, including
2 but not limited to the Subject Tree.

3 15. Plaintiffs are further informed and believe, and thereon allege, that said Defendants’
4 acts and/or omissions and other wrongful conduct directly, legally, and proximately caused, and were
5 a substantial factor in causing the death of Kahlil Gay and the resulting damages to Plaintiffs.

6 16. As a direct and proximate result of the negligence, carelessness, recklessness, and
7 violations of the law of said Defendants, Plaintiffs were compelled to and did employ the services of
8 medical personnel, and Plaintiffs were compelled to and did incur other incidental expenses,
9 including, but not limited to, medical, funeral, and/or burial expenses related to the necessary care and
10 treatment of Decedent.

11 17. As a direct and proximate result of the negligence, carelessness, recklessness, and
12 violations of the law said Defendants, Plaintiffs claim past and future general damages resulting from
13 the loss of love, affection, society, service, comfort, support, right of support, expectations of future
14 support and counseling, companionship, solace, and mental support, as well as other benefits and
15 assistance of the Decedent in a sum in excess of the jurisdictional limits of this Court, which will be
16 stated according to proof at the time of trial, pursuant to Section 425.10 of the California *Code of Civil*
17 *Procedure*.

18 18. Plaintiffs have also incurred and will incur property, medical, funeral and burial
19 expenses in an amount to be stated according to proof, pursuant to Section 425.10 of the California
20 Code of Civil Procedure.

21 **SECOND CAUSE OF ACTION**

22 **(Premises Liability Against All Defendants and DOES 1 through 100, Inclusive)**

23 19. Plaintiffs re-allege and incorporate herein by reference each and every allegation and
24 statement contained in the prior paragraphs.

25 20. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
26 herein, Defendants ARE-819/863 MITTEN ROAD, LLC, GACHINA LANDSCAPE
27 MANAGEMENT, INC., THE DAVEY TREE EXPERT COMPANY, ROCKRIDGE BUILDERS &
28 DESIGNERS, ARBORWELL, INC., REED ASSOCIATES LANDSCAPE ARCHITECTURE

1 CORPORATION, and DOES 1 through 100, inclusive, owned, leased, occupied and/or controlled the
2 Subject Property at the time of the incident.

3 21. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
4 herein, said Defendants were negligent in the use and maintenance of the Subject Property, including
5 but not limited to the Subject Tree, by failing to use reasonable care to keep the property in a
6 reasonably safe condition by, among other things, (1) failing to use reasonable care to discover unsafe
7 conditions, including, but not limited to, the danger posed by the Subject Tree, or to repair, remove,
8 inspect, maintain, or take other reasonable action to minimize or eliminate unsafe and hazardous
9 conditions at the Subject Property such as that presented by the Subject Tree, (2) failing to give
10 adequate warning, or any warning at all, of dangers at the Subject Property, including, but not limited
11 to, the danger posed by hazardous trees such as the Subject Tree, (3) despite obvious signs of disease,
12 decay, and poor overall health of the Subject Tree, failing to take reasonable actions to prevent injury
13 or death to persons on the Subject Property, including Decedent, (4) failing to properly supervise,
14 educate, train, monitor, control, qualify, and/or test employees, contractors, agents, and other
15 personnel in, among other things, the safe operation and maintenance of the Subject Property for its
16 intended purposes, (5) failure to either inspect the Subject Property and the trees on the Subject
17 Property, including, but not limited to, the Subject Tree, or to require, after notice, that dangerous and
18 hazardous trees, including, but not limited to, the Subject Tree, be removed or otherwise made safe,
19 (6) failing to properly plan, modify, alter, construct, repair, monitor, improve, change, manage, design,
20 control, maintain, inspect, and/or service the Subject Tree despite obvious signs of disease, decay, and
21 poor overall health, and (7) failing to have in place a reasonable inspection system, which would have
22 revealed the dangerous condition, and/or failing to use reasonable care in maintaining and operating
23 the system.


24 22. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
25 herein, the foregoing conditions at the Subject Property created an unreasonable risk of harm to
26 persons such as Decedent, that said Defendants knew, or through the exercise of reasonable care,
27 should have known of said conditions and the risk created thereby, and yet failed to repair or protect
28 against harm from said conditions, or give adequate warning thereof.

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2. For special damages (also known as economic damages), including but not limited to, past and future financial support, loss of gifts and benefits, funeral and burial expenses, and reasonable value of household services, in excess of the jurisdictional minimum, according to proof against all Defendants;
3. For hospital, medical, professional and incidental expenses suffered by Plaintiffs, according to proof against all Defendants;
4. For prejudgment interest, according to proof;
5. For pre-trial interest, according to proof; and
6. For such other and further relief as this Court may deem just and proper against all Defendants.

DATED: March 30, 2021

PANISH SHEA & BOYLE LLP

By: 

Robert S. Glassman
Jonathan H. Davidi
Attorneys for Plaintiffs

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury as to all causes of action.

DATED: March 30, 2021

PANISH SHEA & BOYLE LLP



By: _____

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