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SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

STEPHEN HAMMOND; WENDY
BIRNBAUM; KENNETH MILLER;
MILLER BUILDING ENTERPRISES, INC.;
MILLER CONSTRUCTION COMPANY,
INC.; MILMOR LUMBER
MANUFACTURING, INC.; MICHAEL
NYKREIM; and KIRKLAND BUILDERS
GROUP, LLC; individually and on behalf of
the class of all persons and entities similarly
situated,

Plaintiffs,

vs.

KING COUNTY; KING CONSERVATION
DISTRICT; PIERCE COUNTY; and PIERCE
CONSERVATION DISTRICT,

Defendants.

No. _____

COMPLAINT

Plaintiffs allege as follows:

1. This is a class action challenging the validity of special assessments imposed and collected by Defendants King and Pierce Counties in 2010 for the benefit of Defendant Conservation Districts under the aegis of RCW 89.08.400. Special assessments are a specific type of financial charge based upon article VII, section 9 of the Washington Constitution. To

1 be valid, a special assessment must support a local improvement that is appurtenant to specific
2 property and bring a benefit to that property substantially more intense than is conferred on
3 other property in the jurisdiction. The benefit to the land must be actual, physical and material,
4 not merely speculative or conjectural. Moreover, all monies collected pursuant to RCW
5 89.08.400 must be transferred to and used by the conservation district for which the assessment
6 was imposed.

7 2. The purported assessments challenged in this case (hereinafter referred to
8 collectively as the “conservation district charges”) fail to meet these criteria. Accordingly, the
9 Court should declare them invalid, and award the Plaintiff class damages in the amount of all
10 monies collected pursuant to the charges in 2010.

11 PARTIES

12 3. Plaintiff Stephen Hammond is a resident of King County, owns real property in
13 King County and the King Conservation District, and is subject to the King County
14 conservation district charge.

15 4. Plaintiff Wendy Birnbaum is a resident of Pierce County, owns real property in
16 the County and the Pierce Conservation District, and is subject to the Pierce County
17 conservation district charge.

18 5. Plaintiff Kenneth Miller is a resident of Pierce County, owns real property in the
19 County and the Pierce Conservation District, and is subject to the Pierce County conservation
20 district charge.

21 6. Plaintiff Miller Building Enterprises, Inc. is a corporation organized under the
22 laws of the State of Washington residing in Pierce County. Miller Building Enterprises owns
23

1 real property in Pierce County and the Pierce Conservation District, and is subject to the Pierce
2 County conservation district charge.

3 7. Plaintiff Miller Construction Company, Inc. is a corporation organized under the
4 laws of the State of Washington residing in Pierce County. Miller Construction Company
5 owns real property in Pierce County and the Pierce Conservation District, and is subject to the
6 Pierce County conservation district charge.

7 8. Plaintiff Milmor Lumber Manufacturing, Inc. is a corporation organized under
8 the laws of the State of Washington residing in Pierce County. Milmor Lumber Manufacturing
9 owns real property in Pierce County and the Pierce Conservation District, and is subject to the
10 Pierce County conservation district charge.

11 9. Plaintiff Michael Nykreim is a resident of King County, owns real property in
12 King County and the King Conservation District, and is subject to the King County
13 conservation district charge.

14 10. Plaintiff Kirkland Builders Group, LLC, is a limited liability company organized
15 under the laws of the State of Washington residing in King County. Kirkland Builders Group
16 owns real property in King County and the King Conservation District, and is subject to the
17 King County conservation district charge.

18 11. Defendant King County is a political subdivision of the State of Washington.

19 12. Defendant King Conservation District is a governmental subdivision of the State
20 of Washington organized under chapter 89.08 RCW. The District encompasses all of King
21 County outside the cities of Enumclaw, Federal Way, Milton, Pacific, and Skykomish.

22 13. Defendant Pierce County is a political subdivision of the State of Washington.
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1 24. The annual assessment rate under RCW 89.08.400 must be stated as either (1) a
2 uniform annual per acre amount, or (2) an annual flat rate per parcel plus a uniform annual rate
3 per acre amount, for each classification of land. The maximum annual per acre special
4 assessment rate cannot exceed ten cents per acre. The maximum annual per parcel rate cannot
5 exceed five dollars, except that in counties with a population of over one million five hundred
6 thousand persons (such as King County), the maximum annual per parcel rate cannot exceed
7 ten dollars.

8 25. The assessment must be collected and accounted for as a separate item on a
9 property owner's property tax statement. All proceeds from the assessment, minus certain
10 administrative expenses, must be transferred to and used by the conservation district. The
11 amount of any unpaid assessment constitutes a lien against the property subject to the
12 assessment.

13 **The King Conservation District & its "Special Assessment"**

14 26. The King Conservation District purports to promote conservation of natural
15 resources through demonstration projects, educational events, technical assistance, and
16 providing or pointing the way to funds that may be available for projects across King County.
17 All landowners within the District are entitled to free information and technical assistance from
18 the District if they so choose.

19 27. In 1993, King County authorized a purported special assessment of \$1.25 per
20 parcel for the benefit of the King Conservation District under the aegis of RCW 89.08.400.
21 The charge applied to all property within the District not classified as forest land.

22 28. King County re-authorized and increased the amount of the purported
23 assessment several times over the ensuing years. Beginning not later than 1997 and continuing

1 to today, the County has required that some of the proceeds from the charge ultimately be
2 diverted to various activities, programs, and/or entities, rather than leaving the use of the
3 money to the discretion of the King Conservation District.

4 29. In 2006, King County authorized a purported assessment of \$9.98 per parcel on
5 all parcels within the District (except those classified as forest land, or owned by the federal
6 government or a federally recognized tribe within the historical boundaries of its reservation) to
7 be imposed annually from 2007 through 2009. In addition to the flat \$9.98 per parcel charge,
8 King County authorized an additional zero cents per parcel for parcels smaller than one acre, an
9 additional one cent per parcel for parcels between one and five acres, and an additional two
10 cents per parcel for parcels larger than five acres.

11 30. In two ordinances enacted in late 2009 and early 2010, King County re-
12 authorized the purported assessment for the years 2010 through 2012.

13 31. The ordinances and enactments that underlie or are related to King County's
14 purported conservation special assessment include, but are not limited to, King County Ord.
15 Nos. 10981, 12095, 12959, 13942, 14016, 15332, 15660, 15661, 16703, and 16743, and King
16 County Mot. No. 11077.

17 **The Pierce Conservation District & its "Special Assessment"**

18 32. The Pierce Conservation District purports to promote the conservation of
19 renewable natural resources in Pierce County through technical assistance, educational
20 programs and materials, volunteer projects, and other cooperative efforts. Its programs are
21 available to all landowners in the District.

22 33. In 2003, Pierce County authorized a purported special assessment of \$5.00 per
23 parcel for the benefit of the Pierce Conservation District under the aegis of RCW 89.08.400.

1 The charge applied to all property within the District not classified as forest land, timber land
2 or tax exempt land, or consisting only of mineral rights or buildings.

3 34. Pierce County requires that some of the proceeds from the charge ultimately be
4 diverted to various activities, programs and/or entities, rather than leaving the use of the money
5 to the discretion of the Pierce Conservation District.

6 35. In 2006, Pierce County re-authorized the purported assessment for the years
7 2007 through 2009.

8 36. Pierce County has since extended the purported assessment through 2010 and
9 2011.

10 37. The ordinances and enactments that underlie or are related to Pierce County's
11 purported conservation special assessment include, but are not limited to, Pierce County Ord.
12 Nos. 2003-97s2, 2006-106s, 2009-101s, and 2010-104s.

13 CLASS ACTION ALLEGATIONS

14 38. Plaintiffs are individuals and entities that have paid the conservation district
15 charges imposed by King County and/or Pierce County described above.

16 39. There are hundreds of thousands of potential plaintiffs with rights to make the
17 same challenge as these Plaintiffs, the joinder of all whom is impractical as individual
18 plaintiffs.

19 40. The legality of the conservation district charges and their use are common
20 questions of law to each class member, the claims of the Plaintiffs herein are typical of the class
21 as defined, and the representative Plaintiffs will fairly and adequately protect the interests of
22 the class. The prosecution of separate actions by each individual class member would create a
23 risk of inconsistent or varying adjudications which would establish incompatible standards of

1 conduct for Defendants. Moreover, Defendants have acted or refused to act on grounds
2 generally applicable to each member of the designated class owning property within their
3 respective jurisdictions, thereby making appropriate final injunctive or declaratory relief with
4 respect to the class as a whole.

5 41. The class action is superior to other available methods for the fair and efficient
6 adjudication of the controversy because the interest of the individual members of the class in
7 individually controlling the prosecution is slight, other litigation concerning the controversy has
8 not been commenced, it is desirable to concentrate the litigation of the common legal issues in
9 one forum, and difficulties likely to be encountered in the management of the class action are
10 not substantial.

11
12 **FIRST CAUSE OF ACTION:
ILLEGAL SPECIAL ASSESSMENT AND PROPERTY TAX**

13 42. Plaintiffs incorporate by reference each and every allegation contained in
14 paragraphs 1 through 41 inclusive as though set forth in full here.

15 43. Under Washington law, a valid special assessment must support a local
16 improvement that is appurtenant to specific property and bring a benefit to that property
17 substantially more intense than is conferred on other property in the jurisdiction. The benefit to
18 the land must be actual, physical and material, not merely speculative or conjectural. A valid
19 property tax must be uniform on the same class of property within the jurisdiction levying the
20 tax, and must be enacted in pursuance of law that states distinctly the object of the tax.

21 44. The conservation district charges imposed by King County and Pierce County,
22 described above, fail to meet these criteria. Rather than supporting or conferring intensive,
23 localized benefits, the conservation district charges support generalized governmental activities

1 and services across King and Pierce Counties, and do not necessarily bear any correlation to the
2 benefits actually conferred on any particular parcel. Moreover, the charges are not uniform
3 within the jurisdictions of King and Pierce Counties, nor have they been enacted in pursuance
4 of law that distinctly states their objects. This renders the conservation district charges invalid
5 in their entirety, regardless of any general or other benefit that they might provide to any
6 particular parcel.

7
8 **SECOND CAUSE OF ACTION:
VIOLATION OF RCW 89.08.400(4)**

9 45. Plaintiffs incorporate by reference each and every allegation contained in
10 paragraphs 1 through 44 inclusive as though set forth in full here.

11 46. Under RCW 89.08.400(4), all proceeds from a conservation district assessment,
12 minus certain administrative expenses, must be transferred to and used by the conservation
13 district.

14 47. Portions of the conservation district charges fail to meet this requirement.
15 Instead, Defendant Counties have required that some of the proceeds from the charges
16 ultimately be diverted to various activities, programs, and/or entities, rather than leaving the use
17 of the money to the discretion of Defendant Conservation Districts.

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19 **THIRD CAUSE OF ACTION
VIOLATION OF RCW 89.08.400(3)**

20 48. Plaintiffs incorporate by reference each and every allegation contained in
21 paragraphs 1 through 47 inclusive as though set forth in full here.

1 **FIFTH CAUSE OF ACTION:**
2 **DECLARATORY RELIEF**

3 56. Plaintiffs incorporate by reference each and every allegation contained in
4 paragraphs 1 through 54 inclusive as though set forth in full here.

5 57. Defendants have required Plaintiffs to pay an illegal charge in order to avoid
6 having liens placed on their properties pursuant to RCW 89.08.400(4). This Court should
7 accordingly declare the conservation district charges imposed and collected in 2010, and their
8 underlying or related ordinances, enactments, and agreements, illegal.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs now respectfully request the Court to award the following relief:

11 A. An order certifying this case as a class action, including as class members all
12 persons and entities that paid conservation district charges in 2010;

13 B. A judgment declaring the conservation district charges imposed and collected in
14 2010, and their underlying or related ordinances, enactments, and agreements, illegal;

15 C. A judgment awarding the Plaintiff class damages in the amount of all monies
16 collected by Defendants in 2010 pursuant to the conservation district charges and their underlying
17 or related ordinances, enactments, and agreements;

18 D. An award of pre-judgment interest, costs, and attorney's fees; and

19 E. Such other and further relief as the Court deems just and equitable.

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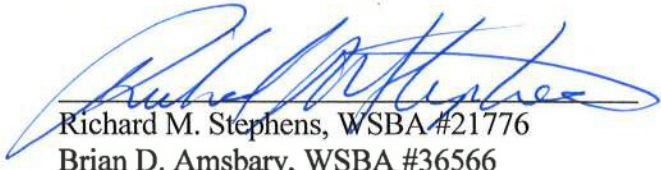
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RESPECTFULLY SUBMITTED this 30th day of June, 2011.

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