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18 In Pro Per Third Party Objector

19 **SUPERIOR COURT OF CALIFORNIA**

20 **COUNTY OF CONTRA COSTA**

21 ROBERT TIERNAN, et al.,

22 Plaintiffs,

23 v.

24 DIABLO COMMUNITY SERVICES
25 DISTRICT, et al.,

26 Defendants.

Case No. MSC17-02529

**DECLARATION OF BRIAN KELLY IN
SUPPORT OF THIRD PARTIES DAVID
HAMMOND AND HAL SEIBERT'S
MOTION TO SET ASIDE
STIPULATED JUDGMENT BETWEEN
INTERVENORS AND U.S. BANK**

Date: 05/17/24
Time: 9:00am
Dept.: 18

27 AND RELATED CROSS-ACTION AND
28 ACTION IN INTERVENTION

1 I, Brian Kelly, declare as follows:

2 1. I am currently a resident of the City of Danville, County of Contra Costa. I make
3 this Declaration based on my own personal knowledge, and if called as a witness, could and would
4 testify to the same.

5 2. I am familiar with a gravel trail approximately 100 to 125 feet in length connecting
6 Alameda Diablo and Mount Diablo Scenic Boulevard (leading to Mount Diablo State Park's
7 "South Gate" entrance ("the Easement")), which is at the southerly end of the property located at
8 2354 Alameda Diablo, Diablo, California.

9 3. I was a bicycle racer for the 15 years between 1974 and 1989 and during the mid-
10 70s, I used the Easement as well as the dangerous S curves along Diablo Road. By the late 1970s
11 and 1980s, as more development created more traffic along Diablo Road, my group of riders
12 transitioned to using the Easement almost exclusively when climbing Mount Diablo.

13 4. During the mid-1970s I also worked with a Physical Exercise instructor at The
14 Athenian School named Rob Flinn preparing students for a weeklong exercise ride. This was when
15 I first learned about this school and we trained with Athenian Students in and around Diablo using
16 the Easement. I also worked at Cal Pedaler in the early 1980s and we sponsored Thursday night
17 rides up Mount Diablo weekly and had 20-40 riders regularly and always used the Easement. I
18 also raced with the Valley Spokesman (founded in 1971) and was their club President for one year
19 and in our club rides up Mount Diablo we used the Easement.

20 5. The Easement itself in the 1970s was originally just a worn, matted down dirt path
21 and was just always there. In the 1980s fencing started to appear and the house was built on the
22 property, just North of the Easement itself. In these years (1980s and 1990s) we called this the
23 hole in the wall because fencing from two properties came close together leaving a narrow gap.
24 In the early 1990s an owner of the house on the property started hassling us riders suggesting this
25 was private property and we were not allowed to pass. This lasted a few months and then stopped.
26 Maybe six years ago the local biking community worked with the owner of the property to install
27 gravel on the Easement to improve safety and rideability.

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