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11 In Pro Per Third Party Objector

12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF CONTRA COSTA**

14 ROBERT TIERNAN, et al.,

15 Plaintiffs,

16 v.

17 DIABLO COMMUNITY SERVICES
18 DISTRICT, et al.,

19 Defendants.

Case No. MSC17-02529

**DECLARATION OF DONALD
PALMER 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

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22 AND RELATED CROSS-ACTION AND
23 ACTION IN INTERVENTION
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1 I, Donald Palmer, declare as follows:

2 1. I am currently a resident of the City of Alamo, County of Contra Costa. I make this
3 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 am a retired surgeon that first used the Easement in 1988 or 1989. By then I had
10 purchased my second bike and I had my NORBA racing license. I used Mount Diablo for training
11 and often used the Easement on my rides from my home in Alamo. I still use the Easement
12 approximately once a month, which if I do this math spans around 34 years. That is until the metal
13 fence blocked the Easement last fall. I find this frustrating since I view the Easement as a public
14 right of way at the border between a residence and a vacant lot.

15 4. My story is important but my fellow Mount Diablo user's story is most important
16 and he died in 2023. I saw Rip Talavera many times on Mount Diablo and I believe he may
17 actually have the record in rides up the mountain, he used to suggest 5,000 visits. He is not here
18 to file a Declaration in this case but I include a copy of his Declaration signed in December 2021
19 in support of Winston Cervantes' Opposition to Motion for Summary Judgement. I pulled this
20 from the public case MSCC17-02529 (Cervantes Appendix of Evidence iso Oppsn.
21 Intervenors_MSJ. Exhibit #5).

22
23 I declare under penalty of perjury under the laws of the State of California that the
24 foregoing is true and correct. Executed on Feb 4, 2024 in ALAMO, California.

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EXHIBIT A

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9 WINSTON CERVANTES

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

ROBERT TIERNAN, et al.,

Plaintiff,

vs.

DIABLO COMMUNITY SERVICES
DISTRICT, et al,

Defendants.

Case No. MSCC17-02529

**DECLARATION OF RIP TALAVERA IN
SUPPORT OF WINSTON CERVANTES'
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

Date: February 4, 2022

Time: 9:00 a.m.

Dept.: 7

Judge: The Honorable Barry Baskin

JEFF MINI, CHRISTINE MINI, et al.,

Intervenors,

vs.

WINSTON CERVANTES, et al.,

Defendants.

Complaint-in-Intervention Filed: Aug. 6, 2020

Initial Action Filed: December 21, 2017

Trial Date: April 8, 2022

I, Rip Talavera. declare as follows:

1. I make the following statements based upon matters that I have personally observed or are otherwise within my personal knowledge, unless otherwise stated on information and belief.

If I am called as a witness. I can and will testify to the following matters under oath.

2. I have lived in Walnut Creek since the early 1970s and I am familiar with the

pathway connector (the “Connector”) that is at issue in this lawsuit. Over the years this Connector has been a dirt or grass trail, a narrow break between fences, and is currently a graveled path.


3. I first began to use the Connector as a runner in the mid-1970s when I used it to access trails leading to Dan Cook Canyon Fire Road as I climbed and trained on Mt. Diablo. I would park at St Timothy’s Episcopal Church or on a side street nearby (Fairway Drive or Clydsdale Drive) and run through Diablo to the Connector and up to the mountain trails. I followed this route once or twice a week for 10-15 years until my knees forced me to convert to mountain biking. I mostly used the Connector but sometimes would run up Diablo Lakes Lane to access Dan Cook Canyon Fire Road for variety and cross training.

4. In the early 1990s I began to mountain bike and I routinely climbed Mt Diablo a couple times per week using the Connector along the same basic routes as in my running days. On Saturdays I had a group of 10-20 friends join me and we all would park at St. Timothy’s Episcopal Church or along the same side streets and ride up through the Connector to Dan Cook and other Mt. Diablo trails. This began around 1992 and continued well into the 2000s. I still ride although less frequently.

5. I have personally used the connector over 1,000 times and have ridden it with many friends throughout the years. It is the safest route to access Mt Diablo roads and trails for road bikers, mountain bikers, or hikers.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing statements are true and correct.

I am signing this declaration at ALAMO, California on December 27, 2021.



(Signature of declarant)