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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 JOSE  
GUTIERREZ 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, Jose Gutierrez, 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 own Danville Bike, what is now mainly a mountain biking shop and I bought it in  
10 1985 after working there since 1980. I first became aware of and began to use the Easement in  
11 1980 on a road bike. Our shop sold mainly road bikes in those days and a common ride was to  
12 leave downtown Danville and ride up Mount Diablo Scenic Blvd. to either the Junction or the  
13 Summit of Mount Diablo. We always used the Easement instead of the dangerous Diablo Road  
14 narrow winding section. I also was friends with Jerry Gerrity, the San Ramon Running Team  
15 coach in those early 1980s and he would run his team up Mount Diablo using this same Easement.  
16 I knew Jerry because he was also a road biker and a riding partner.

17 4. In 1985 my shop began selling more and more mountain bikes. Now riders could  
18 move off paved roads to access dirt trails and fire roads. Mountain biking exploded and continues  
19 to be the most popular form of riding today. The easiest unpaved route up to Rock City and the  
20 Summit on Mount Diablo is up Dan Cook Canyon out of Diablo. Access to that canyon is from  
21 what many call the upper bridge loop trail (also called the Summit Trail) and this is a narrow "bike  
22 legal" single-track trail accessed from just around the 4 sharp climbing turns that form the arrow  
23 of Mount Diablo Scenic Blvd. This set of turns is a few hundred yards beyond the Easement. In  
24 my experience the Easement is the overwhelming preferred route for road and mountain bikers  
25 headed up to the Summit or headed to Dan Cook Canyon.

26 5. I have personally ridden across the Easement hundreds of times and ridden with  
27 hundreds of other riders across this same Easement. It is the safest route to access Mt Diablo roads

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1 and trails for road bikers, mountain bikers, or hikers. Fencing the Easement off since September  
2 28, 2023 has turned into a public safety nightmare and threatens a long-standing route to Mount  
3 Diablo roads and trails.

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5 I declare under penalty of perjury under the laws of the State of California that the  
6 foregoing is true and correct. Executed on Feb 3, 2024 in Danville, California.

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