Electronically Filed Superior Court of CA County of Contra Costa 2/9/2024 3:44 PM By: T. Jacobsen-Rios, Deputy

Kevin R. Brodehl (SBN 197657)
Zachary B. Young (SBN 288553)
Daniel J. Zarchy (SBN 306883)
PATTON SULLIVAN BRODEHL LLP
12647 Alcosta Boulevard, Suite 430
San Ramon, California 94583
925-600-1800 Phone
925-600-1802 Fax
kbrodehl@psblegal.com
zyoung@psblegal.com
dzarchy@psblegal.com

Attorneys for Third Party Objector
David Hammond

Hal F. Seibert (SBN 45925)
1355 Willow Way, Ste. 275
Concord, California 94520
925-602-2600 Phone

In Pro Per Third Party Objector

SUPERIOR COURT OF CALIFORNIA

COUNTRY OF CONTRA COSTA

ROBERT TIERNAN, et al, Plaintiffs, v. DIABLO COMMUNITY SERVICES DISTRICT, et al., AND RELATED CROSS-ACTION AND ACTION IN INTERVENTION	Case No. MSC17-02529 **THIRD PARTIES DAVID HAMMOND AND HAL SEIBERT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO SET ASIDE STIPULATED JUDGMENT BETWEEN INTERVENORS AND U.S. BANK** Date: 05/17/24 Time: 9:00am Dept.: 18 Judge: Hon. Danielle Douglas

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I. INTRODUCTION

Moving parties David Hammond and Hal Seibert are Plaintiffs in related case *Hammond et al. v. U.S. Bank et al.*, Case No. MSC23-02578 ("2023 Action"), which seeks to confirm the existence of an expressly dedicated public trail easement, 25 feet wide (with a gravel path 10 feet wide) and 100-125 feet long ("the Easement"), providing safe passage for public "riding and hiking" between Alameda Diablo and Mt. Diablo Scenic Boulevard ("Scenic") leading to Mt. Diablo State Park's South Gate entrance. The Easement encumbers a sliver at the southern edge of the 3+ acre property at 2354 Alameda Diablo, Diablo (the "Burdened Property'), once owned by Omid Bahrami, and later briefly owned (via foreclosure) by U.S. Bank. The Easement was *accepted and used by the public for decades*, enjoyed by tens of thousands of members of the public – including both Diablo and non-Diablo residents alike – on an annual basis.

Use of the Easement was completely obstructed by a new iron fence on September 28, 2023 by U.S. Bank and a small group of anti-Easement homeowners ("Intervenors"). After erecting that fence, U.S. Bank and Intervenors – and those parties *alone* – agreed to "declaratory relief" whereby the *public*'s Easement would be extinguished and permanently blocked by the already-erected iron fence, which would be an obligation recorded on title "running with the land." U.S. Bank and Intervenors then packaged their agreement into a Stipulated Judgment signed by this Court on November 1, 2023. The Stipulated Judgment was entered without any notice to the general public or to the public's very well-known Easement advocates, and with *no party in the case purporting to represent the public's interest in the long-standing Easement*. This motion seeks to set aside that Stipulated Judgment under well-established authorities.

This motion presents a simple issue: can a stipulated judgment between two parties in an action effectively extinguish substantial rights owned by *nonparties* to the action? Consistent with common sense, equity, and fundamental notions of notice and due process, the law is resoundingly clear: the answer is no. Stipulated judgments are limited in effect and ripe for abuse, and courts routinely set them aside when they injure the rights of *nonparties*. The cases show that courts rely on various grounds to do so – primarily the "indispensable party" doctrine, but also on grounds of notice and due process, and the court's inherent equitable authority.

Some of these cases characterize the vacated judgment as "void," while others do not, but that characterization is not controlling. The key question is whether a nonparty, who is undisputedly *not bound* by the judgment, is nonetheless *injured by it*. Aside from the Stipulated Judgment's injurious effect on the nonparty public's Easement rights, it is also in substance a void decree for quiet title, and also void due to the lack of any justiciable controversy between U.S. Bank and the Intervenors – parties both clearly adverse to (i.e., burdened by and aggrieved by) the Easement.

Accordingly, the motion should be granted on any of the multiple bases discussed below.

II. BACKGROUND

A. The trail Easement owned by the public

On September 19, 1979, Subdivision Map MS 263-78 was recorded in the Official Records of Contra Costa County. (RJN, Exh. A.) The Map created the Burdened Parcel, and expressly dedicated the Easement "for public use for riding and hiking" to the State Department of Parks and Recreation. The Easement occupies only a tiny sliver on the southern edge of the Burdened Parcel, and is not visible from the residence thereon.

In an unbroken line of published opinions, the expressly dedicated Easement could be, *and was*, impliedly accepted by the public through use. (*McKinney v. Ruderman* (1962) 203 Cal.App.2d 109, 115, *Biagini v. Beckham* (2008) 163 Cal.App.4th 1000, 1009-1010; *Mikkelsen v. Hansen* (2019) 31 Cal.App.5th 170, 175-176 [easement expressly dedicated to a public agency may be *impliedly accepted* and perfected by public use].) The numerous Declarations submitted previously in this action, and 50 additional Declarations submitted with this motion, leave no doubt that sufficient public use occurred. Diablo and non-Diablo residents alike have regularly used the Easement for decades. Such use "constitutes an acceptance of the offer so made, without any formal action in relation thereto by governmental authority and … *the dedication forthwith becomes effectual and irrevocable*." (*Biagini*, 163 Cal.App.4th at 1009, emphasis added.) The Easement appears on title as an encumbrance on the Burdened Property. (Declaration of David Hammond, ¶4 and Exh. A ["Irrevocable Offer of Dedication"].)

U.S. Bank and the Intervenors have never seriously contested the prima facie evidence supporting the Easement's existence. They have only attempted to twist and misconstrue the

Easement as depending a bogus "implied dedication" theory, which this Court has flatly rejected in its prior rulings, and which is plainly inapplicable given the Easement's *express* dedication by recorded Map. They have also argued about the *scope* of the Easement (i.e., whether its designation of "riding" includes bicycle riding), but that is a factual determination for later.

The public's interest in the Easement is tangible and enforceable by any member of the public. (*Marks v. Whitney* (1971) 6 Cal.3d 251, 261-263 [members of the public have standing to assert public easement rights]; *Water for Citizens of Weed Cal. v. Churchwell White LLP* (2023) 88 Cal.App.5th 270, 284 ["Members of the public, even though they do not have an individual interest in lands held in trust for the public, have long had standing to bring an action on behalf of the public to enforce a public land trust or easement or to defend a quiet title action on behalf of the public by asserting a public right to use private property."].)

B. Prior contested proceedings in this action involving the public's Easement

The initial claims in this action asserted by Plaintiff Robert Tiernan were reduced to judgment and did not involve the Easement. However, a Cross Complaint filed on April 25, 2019 by Winston Cervantes (a member of the public and Diablo resident who used and supported the Easement), as amended on October 2, 2019, sought to confirm the existence of the Easement. Intervenors filed a Complaint in Intervention on August 6, 2020, as amended on November 20, 2020. (RJN, Exh. B.) As relevant here, the Intervenors' Amended Complaint alleged claims for Quiet Title and Declaratory Relief against the Easement.

On January 7, 2021 this Court filed an Order sustaining, *without* leave to amend, Cervantes' Demurrer to the Intervenors' Quiet Title claim, which sought a *recorded judgment* that there was no public Easement on the Burdened Parcel (then owned by Bahrami). (RJN, Exh. C.) The Court concluded the Intervenors lacked standing to obtain such a *recorded judgment affecting title* because they did not own the Burdened Parcel and also did not claim any rights to use the Easement. With the Quiet Title claim dismissed with prejudice, Intervenors amended their Declaratory Relief claim to its final form, seeking an alternative judicial decree as to whether: (a) the Easement dedication "expired" before it was accepted by the public, or (b) if the Easement existed, whether it was limited to only "pedestrian and equestrian use[.]" (RJN,

Exh. C, p. 8-10.) The Declaratory Relief claim specifically alleged an "actual controversy" *only against Cervantes* based on his assertion of the public's rights to the Easement. (*Id.* at ¶36.)

This Court expressed grave concerns regarding whether the public's interest in the Easement was adequately represented by – at that time – Cervantes alone, and ordered the parties to address that issue in its Order filed March 11, 2021. (RJN, Exh. D.) The Intervenors' "Statement of Position" filed April 7, 2021 expressly admitted the obvious – that "members of the general public may have an interest in the outcome of this litigation. This would presumably include members of the general public who use the [Easement]." (RJN, Exh. E, p. 2.)

The Intervenors moved for summary judgment against Cervantes' Easement claims. This Court issued a tentative ruling denying the motion, adopted in an Order filed February 24, 2022. (RJN, Exhs. F, G.) The Court expressly found *triable issues of material* fact concerning the public's post-1979 implied acceptance of the express easement dedication, which acceptance would make the Easement irrevocable. (RJN, Exh. F, p. 10-12.) The Order cited law holding that an express dedication can be impliedly accepted "when a use has been made of the property by the public for such a length of time as will evidence an intention to accept the dedication." (RJN, Exh. F, p. 10, citing *Mikkelson*, 31 Cal.App.5th at 176.) The Order also noted Cervantes' submission of "multiple declarations of percipient witnesses with knowledge of the use of the [Easement] by the declarants and other members of the public from at the least the mid-1970s for various uses, including hiking, equestrian purposes, and bicycling." (*Id.*, p. 11-12.)

However, after that ruling Cervantes moved away, leaving no party in the case advocating *for* the Easement, and Cervantes and the Intervenors dismissed all of their claims against each other without prejudice. (RJN, Exhs. H, I.) ***Intervenors never named as a party any other person who advocated for the public's interests in the Easement***, despite being aware of (and even deposing) many individuals, including Hammond, who had filed declarations showing their use and support of the Easement. The case fell into a period of inaction due to Cervantes' departure and also Bahrami's loss of the Burdened Property to foreclosure by U.S. Bank – a temporary foreclosure owner with no long-term interest in the Property, the neighborhood, or the Easement, as its conduct shows. As such, the *only parties remaining in the*

case were the *anti-Easement* group of Intervenors and the owner of the parcel *burdened by the Easement*, U.S. Bank. At the Court's March 8, 2023 Case Management Conference (the same date the Intervenors dismissed their claims against Cervantes), Cervantes' attorney Mark Epstein appeared and informed the Court that Easement supporters other than Cervantes were interested in protecting the Easement, and would wait until the shifting property ownership issues were resolved before deciding on how to proceed. (Hammond Decl., ¶¶8-10; RJN, Exh. J.)

On July 26, 2023 the Court filed a Stipulated Judgment between Intervenors and Wooten, the owner of the property adjacent to the Burdened Parcel, which required a fence on only Wooten's property. (RJN, Exh. K.) The Easement is not located on any portion of Wooten's parcel, although Easement users may have stepped onto the portion of Wooten's Property burdened by a State-owned 60-foot right of way over Scenic in order to complete their passage to the paved portion of Scenic. (RJN, Exhs. L, M, N; Hammond Decl. ¶5.)

C. The "backdoor" Stipulated Judgment between U.S. Bank and Intervenors

Knowing they could not prevail on the merits of their contentions against the Easement, and sensing an opportunity to take advantage of the fact that with Cervantes gone, there was no party left in the case advocating *for* the Easement, U.S. Bank and Intervenors embarked on their "backdoor" effort to extinguish the Easement without opposition through a stipulated judgment.

On September 28, 2023, a new iron fence was constructed not only on Wooten's property (as allowed by the July 26, 2023 Stipulated Judgment), but also on the Burdened Property, completely blocking the public's use of the Easement and forcing the use of dangerous alternate routes. Less than two weeks later, Hammond and Seibert filed the 2023 Action. A Notice of Related Case was filed on November 3, 2023.

Over a month *after* the iron fence was erected on the Burdened Parcel, U.S. Bank and the Intervenors – without any notice or due process to the public, and without joining any Easement advocate as a party – got the Court to sign a second "Stipulated Judgment" reflecting the agreement between U.S. Bank and Intervenors to extinguish the Easement. (RJN, Exh. O.) That Stipulated Judgment, filed November 3, 2023, *acknowledged that the Easement was being used by "tens of thousands of members of the general public, on an annual basis"* to access Mt.

Diablo. (RJN, Exh. O, at p. 3, emphasis added.) Yet, the Stipulated Judgment stated that judgment would be entered on the Intervenors' claim for Declaratory Relief, without specifying which of that claim's alternate theories (which had already been determined by this Court to involve triable issues of fact) was supposedly being adopted. Further, the Judgment requires "a barrier … to prevent members of the public from travelling over any portion of the Property," which must be a *permanent recorded obligation running with the land* – relief quintessentially "quiet title" in nature and effect (i.e., binding "against the world"), even though Intervenors' claim for Quiet Title had already been dismissed by the Court with prejudice.

After effectively extinguishing the Easement burdening the Burdened Property, U.S. Bank promptly sold the property, passing the hot potato to someone else. (RJN, Exh. P.)

III. ARGUMENT

A. The Stipulated Judgment should be set aside because it injures the rights of nonparties by, in effect, extinguishing the public's long-standing Easement.

It is well-established that a trial court properly vacates a judgment that purports to divest a *nonparty* of claimed property interests without their consent. (Restatement [2d] of Judgments, §76, Persons Not Bound by the Judgment.) As set forth in the Restatement:

> So far as such a third person is concerned, a judgment between others has no greater effect than a contract or conveyance between others. Ordinarily, therefore, he can simply ignore it in connection with the assertion of his own rights. And, since the judgment has no legal effect on him, he has no standing to question whether it might have other legal effects. … However, in various circumstances the fact that a judgment exists may jeopardize the interest of one who is not bound by it. ***The plainest case is a judgment between others that determines interests in property in which the non-party claims an interest.*** … If there is a substantial prospect that the judgment will be an adverse muniment of right or that it will be a vehicle for harmful change in the status quo, ***the judgment ceases to be a matter of indifference to the non-party and he may be given relief protecting him from those consequences.***

(*Ibid.*, emphases added; see also Reporter's Note to Restatement §76 [legal protection is granted to nonparties against a judgment where the judgment has the consequence of "destruction, removal, or transfer of property in which the applicant for relief claims an interest"].)

Nonparties whose rights are impaired by a judgment may attack it through a separate action or by motion to set aside in the case in which the judgment was entered. (*People ex rel.*

Reisig v. Broderick Boys (2007) 149 Cal.App.4th 1506, 1516-1518; see also *Baker v. Baker* (1933) 217 Cal. 216, 217 ["The remedies are distinct and cumulative."].) A nonparty's motion to set aside a judgment effectively conveys party status, including standing to appeal if the motion is denied. (*Broderick Boys*, 149 Cal.App.4th at 1516-1518.)

The serious due process concern expressed in the Restatement underlies numerous California cases supporting the relief requested here, particularly in the context of "stipulated" judgments. Stipulated judgments are limited in effect and recognized to be ripe for abuse. In contrast to a judgment following the actual litigation and adjudication on the merits of contested claims, a stipulated judgment is a contract and interpreted accordingly. (*Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1252.) "It goes without saying that a contract *cannot bind a nonparty*." (*EEOC v. Waffle House, Inc.* (2002) 534 U.S. 279, 294, emphasis added.) Stipulated judgments "do not and cannot bar" suits by nonparties. (*Summit Media LLC v. City of Los Angeles* (2012) 211 Cal.App.4th 921, 930-931.) "Nonparties cannot be deprived of" rights "simply because the parties to a settlement put those terms into a stipulated judgment." (*Id.* at 932.)

The California Supreme Court has expressed serious concern regarding the inherent threat of abuse with stipulated judgments, especially when important public interests are involved. "While it is entirely proper for the court to accept stipulations of counsel that appear to have been made advisedly, and after due consideration of the facts, the court cannot surrender its duty to see that the judgment to be entered is a just one, nor is the court to act as a mere puppet in the matter." (*Cal. State Auto. Assn. v. Superior Court* (1990) 50 Cal.3d 658, 664.) Stipulated judgments that injure the rights of *nonparties* will be set aside. (See, e.g., *Thomson v. Talbert Drainage Dist.* (1959) 168 Cal.App.2d 687; *Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1; *People v. Hy-Lond Enterprises, Inc.* (1979) 93 Cal.App.3d 734; *Villarruel v. Arreola* (1977) 66 Cal.App.3d 309; and *Babbitt v. Babbitt* (1955) 44 Cal.2d 289.)

Here, it is quite clear under the law that the Stipulated Judgment between U.S. Bank and the Intervenors has no legally binding effect on the public's rights to the Easement. Normally, as noted in the Restatement section quoted above, members of the public using and benefitted by the Easement could simply ignore the Stipulated Judgment and carry on with their use of the

Easement. (Restatement [2d] of Judgments, §76.) But here, that is not possible because under the guise of the Stipulated Judgment, use of the Easement has been completely blocked by a new iron fence imposed as a requirement "running with the land" on the Burdened Property – a situation the Restatement describes as an "adverse muniment of right" entitling the nonparty to relief. As illustrated by the voluminous case law directly on point discussed below, this is the precise situation justifying the setting aside of a judgment on the motion of the injured nonparty.

B. Judgments injuring the rights of nonparties are routinely set aside based on the "indispensable party" doctrine.

The largest body of case law directly on point here addresses the results of a plaintiff's failure to join indispensable parties. "Where the plaintiff seeks some type of affirmative relief which, if granted, would injure or affect the interest of a third person not joined, that third person is an indispensable party." (*Sierra Club, Inc. v. Cal. Coastal Com.* (1979) 95 Cal.App.3d 495, 501.) "The objection that an indispensable party has been omitted may be raised at any time by the trial or appellate court of its own motion if the parties fail to make the objection. The requirement that indispensable parties be before the court is mandatory." (*Hartman Ranch Co. v. Associated Oil Co.* (1937) 10 Cal.2d 232, 265.) "An indispensable party is *not bound by a judgment in an action in which he was not joined*." (*Greif v. Dullea* (1944) 66 Cal.App.2d 986, 995, emph. added.) Any "attempt to adjudicate their rights without joinder is futile" and such a judgment should be set aside upon the injured nonparty's motion. (*Thomson*, 168 Cal.App.2d at 689 [affirming trial court's granting of injured nonparty's motion to set aside judgment].)

Here, as the owner of the Easement, the public (or members of the public supporting the public's interest) is plainly an indispensable party to the Intervenors' claims seeking to *extinguish the Easement*. (Code Civ. Proc. §389; *Ranch at the Falls LLC v. O'Neal* (2019) 38 Cal.App.5th 155, 172-180 [homeowners benefitted by easements were indispensable parties in claims impacting the easement]; see also *Marks*, 6 Cal.3d at 261-263 [members of the public have standing to assert public easement rights].) It was the *Intervenors*' duty to join indispensable parties to enable this Court to render a fair adjudication of their claims seeking to extinguish the Easement. (Code Civ. Proc. §389(a); *Ruttenberg v. Ruttenberg* (1997) 53

Cal.App.4th 801, 808 [indispensable party must not only be named, but also properly served with summons and complaint].) After the claims by and against Cervantes were dismissed without adjudication, Intervenors were keenly aware of the identities of over a dozen vocal Easement supporters (including Hammond), all of whom had filed declarations in support of Cervantes' successful opposition to the Intervenors' Motion for Summary Judgment. Yet, Intervenors chose to join *nobody* in a devious attempt to extinguish the Easement without any opposition or due process to the public. While Intervenors have attempted to blame Easement-supporting members of the public (including Hammond and Seibert) for "failing" to intervene in this case, the law holds otherwise. The absent indispensable party's knowledge of the action potentially affecting its rights does not make it a party, and does not create an obligation to intervene. (*Inland Counties Reg. Ctr., Inc. v. Office of Admin. Hearings* (1987) 193 Cal.App.3d 700, 706; see also Cal. Prac. Guide: Civ. Pro Before Trial, §2:464 [intervention "is never mandatory"]; Cal. Judges Benchbook: Civ. Proc. Before Trial, §10.57 ["An absent person who has knowledge of the action is not required to intervene in the action"].) By failing to join any pro-Easement member of the public after Cervantes' departure, Intervenors assumed the risk that any judgment they obtained would be appropriately challenged and set aside. (*Sierra Club*, 95 Cal.App.3d at 501-502 [un-joined indispensable parties are not bound by any judgment entered and are free to attack the judgment]; 48 Cal.Jur.3d, Parties, §4 [same].)

While the *public is plainly not bound* by the Stipulated Judgment, the Stipulated Judgment *purports to bind the public* by its decree requiring an Easement-blocking fence as a recorded obligation running with the land. As addressed by the Restatement above and the cases discussed below, this is the exact type of situation justifying the setting aside of a judgment.

The *Thomson* opinion is squarely on point. In *Thomson*, the defendant (a drainage special district) and the plaintiff (*one* of many landowners within the district) entered into a stipulated judgment permanently enjoining and restraining the district from permitting the use of some of its drainage lines. (*Thomson*, 168 Cal.App.2d at 688.) Upon learning of the stipulated judgment, a group of nonparty additional landowners within the district – who had contractual rights to use the district's drainage lines for their wastewater disposal – filed a motion to vacate

the judgment "based on the sole ground that certain allegedly indispensable parties were not joined and that the judgment is therefore void." (*Ibid.*) The trial court granted the motion and the Court of Appeal affirmed, holding the moving parties were indispensable parties and "the procedure of moving to vacate the judgment was the proper method to seek their rights." (*Id.* at 689.) The court held it was clear that the stipulated judgment "had the immediate and inevitable effect of terminating" the nonparties' valuable contractual rights to use the district's drainage lines. (*Id.* at 690.) "That the rights of movants under said agreement are valuable and that the loss thereof would work serious hardship and possibly great damage to movants is likewise clear." (*Ibid.*) The court concluded that the nonparties were "inevitably affected by any decree the court may grant pursuant to the complaint and are indispensable parties, and the order of the trial court vacating the judgment was correct." (*Ibid.*) Here, the public's rights in the Easement are rooted not in contract rights but in *real property rights*, which are afforded even stronger protection under California law. (*Felsenthal v. Warring* (1919) 40 Cal.App. 119, 129.)

The principles underlying the *Thomson* opinion have been followed without variation in myriad cases, confirming that a judgment injuring the rights of un-joined indispensable parties cannot stand and should be set aside when first challenged, whether in the trial court (as in *Thomson*) or on appeal. Some opinions characterize the defective judgment as "void" while others do not, but that is not the point. Any judgment purporting to impair a nonparty's substantial rights is invalid and must to that extent be set aside. (See, e.g., *Hartman Ranch*, 10 Cal.2d at 262-265 [reversing portion of judgment injuring valuable lease rights of un-joined indispensable party]; *Ranch at the Falls LLC*, 38 Cal.App.5th at 172-180 [reversing judgment that injured indispensable nonparties' interests in easements following trial court's improper denial of indispensable nonparty's motion to vacate the judgment; "because the third party movants were, as they contended, necessary parties to plaintiff's quiet title action, the judgment against [them] cannot stand"]; *Welch v. Bodeman* (1986) 176 Cal.App.3d 833, 840 [reversing judgment where plaintiff failed to join indispensable party whose rights were affected; noting "a judgment should not be so drafted as to purportedly and vainly grant relief against persons who are not parties to the litigation before the court; as to them the court is without jurisdiction"],

quoting *Jollie v. Superior Court* (1951) 38 Cal.2d 52, 59; *Ursino v. Superior Court* (1974) 39 Cal.App.3d 611, 616-617 [following *Thomson*; holding trial court erred in denying nonparties' motion to set aside judgment, and issuing writ of mandamus "to compel the mandatory act of setting it aside[;]" judgment was rendered "void" by failure to join indispensable parties whose rights were at stake; also noting the "constitutional guarantee of due process"]; *Irwin v. City of Manhattan Beach* (1964) 227 Cal.App.2d 634, 636-639 [following *Thomson*; holding judgment was "void" and stating "The court is without authority to render a judgment which would materially affect the rights of absent, known, indispensable parties"]; and *Orange County Water Dist. v. City of Riverside* (1959) 173 Cal.App.2d 137, 218-219 [following *Thomson*; reversing judgment where indispensable parties were not joined and judgment improperly affected their rights; ordering entry of new judgment between the parties whereby all portions directly or indirectly affecting the indispensable parties "must be stricken out"].)

The court's broad authority to enter "declaratory relief" (even if there was a justiciable controversy here, which there was not, as addressed in section E below) is not a vehicle to avoid the indispensable party doctrine. The indispensable party rule "is not relaxed in actions brought to obtain declaratory relief." (*Lloyd v. Los Angeles County* (1940) 41 Cal.App.2d 808, 812.) Such relief, while broad, does not extend to judgments injuring the rights of nonparties. In an action for declaratory relief, "the court is authorized to determine and declare *only the issues between the parties to the action*." (*Case v. City of Los Angeles* (1956) 142 Cal.App.2d 66, 70.)

Some opinions clarify that even in the absence of an indispensable party, the court still retains subject matter jurisdiction "as to the parties before it" to render a potentially valid judgment. (*Sierra Club*, 95 Cal.App.3d at 500.) But here, there are literally *no* severable aspects of the Stipulated Judgment that do not impermissibly have the effect of extinguishing the public's Easement. The Stipulated Judgment was specifically designed to extinguish the public's Easement rights. The court confronted this same predicament in *Hartman Ranch*, in which the court held: "It cannot be said that the adjudication … will be binding only as between" the parties to the case, because the "adjudication *necessarily* affects [nonparties'] valuable rights." (*Hartman Ranch*, 10 Cal.2d at 263.) If U.S. Bank and Intervenors seriously believe there are any

"severable" portions of their Stipulated Judgment that could possibly remain intact without injuring the public's Easement rights, they should explain so in their oppositions to this motion.

C. Judgments injuring the rights of nonparties are routinely set aside for lack of notice and due process to the injured party.

Judgments injuring the rights of nonparties are also set aside on the ground that they are void due to lack of notice. (*Broderick Boys*, 149 Cal.App.4th at 1519-1528 ["For lack of adequate notice, the default judgment issuing the permanent injunction against the Broderick Boys is void."]; *Villarruel*, 66 Cal.App.3d at 317 [setting aside stipulated judgment entered "without notice" to injured party] *Ursino*, 39 Cal.App.3d at 617 [failure to provide notice and join indispensable party rendered judgment "void" and provided grounds for setting it aside; stating: "It is elementary that the constitutional guarantee of due process requires that proper notice be given to a party. … This requirement is not satisfied by actual knowledge without notification conforming to the statutory requirements"]; see also Cal. Const. Art. 1, §7 ["A person may not be deprived of … property without due process of law"].)

Here, to provide adequate notice and due process, Intervenors needed to name and serve the summons and complaint on the public – either through an "All Persons Interested in the Easement" designation combined with service by publication, or by naming any of the known dozen-plus individual Easement proponents who had previously submitted declarations in this case. (*Ruttenberg*, 53 Cal.App.4th at 808; *Ursino*, 39 Cal.App.3d at 617.) Beyond failing to join indispensable parties, the Stipulated Judgment was also submitted to the Court without motion, and without notice to anyone other than the two parties who agreed to it.

D. Judgments injuring the rights of nonparties are routinely set aside based on the Court's inherent equitable authority.

Courts also exercise their inherent equitable authority to relieve a nonparty injured by a judgment. "[A]ll courts are said to have an inherent power to correct their records so as to make them speak the truth," and to set aside judgments obtained "under circumstances of unfairness and injustice." (*Olivera v. Grace* (1942) 19 Cal.2d 570, 574-575.) "Equity's jurisdiction to interfere with final judgments is based upon the absence of a fair, adversary trial in the original

action." (*Id.* at 575.) While most cases featuring the Court's exercise of its equitable authority feature *parties* who were deprived of procedural fairness or safeguards, some address injured *nonparties*. Similar to cases featuring the indispensable party doctrine, those cases generally hold that the moving party must simply show that it was a nonparty whose rights were injured by the judgment. (*Luckenbach v. Laer* (1923) 190 Cal. 395, 398 [motion to vacate judgment may be brought by "one whose rights or interests are injuriously affected … in an action to which he is not a party"]; *Henry M. Lee Law Corp. v. Superior Court* (2012) 204 Cal.App.4th 1375, 1382 ["A nonparty whose rights or interests are injuriously affected by a judgment or an appealable order may file a nonstatutory motion to vacate the judgment or order"].)

Some cases featuring injured nonparties characterize the judgments as tainted by "fraud against the interests" of the injured nonparty. For instance, in *Villarruel*, the Court of Appeal affirmed the trial court's order vacating a stipulated judgment between plaintiffs and *one* of two insurers with clear interests in the action, where the second insurer was not joined. Plaintiffs used the judgment as leverage to pursue the second insurer for related claims. (*Villarruel*, 66 Cal.App.3d at 317.) The court held that the interests of the second insurer, "although a stranger to the action, were substantially and intentionally affected by the judgment." (*Ibid.*) The court noted that "a judgment obtained in fraud of the interests of a third person is not binding upon him" and can be set aside on grounds of extrinsic fraud or mistake. (*Id.* at 317-318.) The court confirmed: "It is settled law that in such a context an adversely affected party, although a stranger to the action, will have standing according to principles of equity to proceed to have the judgment so obtained set aside." (*Ibid.*; see also *Babbitt*, 44 Cal.2d at 293 [setting aside stipulated judgment "obtained in fraud of the interests of a third person"]; Restatement [1st] of Judgments, §91 ["A judgment is in fraud of a third person when the parties to the action collude in the obtaining of a judgment for the purpose of preventing the third person from having rights in the subject matter to which, aside from such judgment and such collusion, he would have."].)

Here, the Intervenors knew very well that the public owned the Easement, and knew specific members of the public (including Hammond) who used and advocated for the Easement, and who had previously submitted declarations making a strong prima facie showing of the

Easement's validity. However, instead of naming and serving their complaint and summons on any of the obvious indispensable owners and users of the Easement, they colluded with U.S. Bank to sneak through a Stipulated Judgment that had the plain effect of quieting title against and permanently extinguishing the Easement. The Stipulated Judgment here was essentially a contractual agreement among "anti-Easement" allies (U.S. Bank – the owner of the parcel *burdened* by the Easement; and Intervenors – a group *opposed* to and claiming to be *aggrieved by* the Easement) mis-presented to the Court as some sort of settlement of "controverted" claims. Excluded from the process entirely was anyone representing the interests of the parties *benefitted* by the Easement – i.e., members of the public who actually use and support the Easement. These facts clearly meet the standards for vacating the Stipulated Judgment on equitable grounds.

E. The Stipulated Judgment is, in substance, a void quiet title decree, and also void due to the lack of any justiciable controversy between the parties to it.

Judgments are interpreted according to their *substance*, not form. (*Machado v. Myers* (2019) 39 Cal.App.5th 779, 789.) A declaratory relief claim will be construed otherwise based on its "essence" and "legal effect." (*North Star Reins. Corp. v. Superior Court* (1992) 10 Cal.App.4th 1815, 1826.) *Quiet title* is the appropriate claim "to establish an interest in real property as against all existing adverse claims or clouds on title." (*Paterra v. Hansen* (2021) 64 Cal.App.5th 507, 532; *Robin v. Crowell* (2020) 55 Cal.App.5th 727, 740.) While ostensibly based on Intervenors' claim for Declaratory Relief, the Stipulated Judgment makes no declaration whatsoever about the issues pleaded in the alternative (whether the express Easement dedication "expired" or, if valid, its scope). With no foundation, and under the guise of "declaratory relief," it requires an Easement-blocking fence as an obligation "running with" and burdening the land, effectively extinguishing the Easement and removing (or at least clouding) it from title.

Quiet title claims have very specific procedural requirements for good reason – i.e., to avoid judgments that impact property interests of parties who are not joined in the action. Where the relief sought is effectively quiet title involving an easement, as here, the plaintiff must name as defendants *all persons having an adverse claim to the property*, either known to plaintiff or disclosed by the record, and such persons are indispensable parties. (Code Civ. Proc. §§762.010,

762.060(b); 389(a); *Ranch at the Falls LLC*, 38 Cal.App.5th at 172 [vacating judgment; holding property owners benefitted by easement "should have been joined as parties, as required under the quiet title statutes"].) Intervenors failed to join any party actually *benefitted by and owning the Easement* – members of the public using and advocating for the Easement, whose identities were known. By statute, quiet title judgments do not affect a nonparty's claims to the property involved. (Code Civ. Proc. §764.045.) But here, the Stipulated Judgment – if left standing – *would* have a very real, and fatal, effect on the public's Easement rights. Under those circumstances, the Stipulated Judgment is void. (*Paterra*, 64 Cal.App.5th at 529-540 [reversing trial court's denial of motion to vacate judgment granting quiet title relief; holding judgment was "void" due to plaintiff's failure to serve interested parties with amended complaint and lack of evidentiary hearing regarding the interests of the excluded party in the easement at issue].)

Separately, there was no "actual controversy" between the parties. An actual controversy means a probable future controversy relating to the legal rights and duties of the parties. (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582.) The allegations of Intervenors' claim for Declaratory Relief focused only on Cervantes. U.S. Bank and Intervenors were transparently and obviously aligned: they were *burdened by* (U.S. Bank) and *aggrieved by* (Intervenors) the Easement. Without a justiciable controversy, the court lacked subject matter jurisdiction, and the Stipulated Judgment is also void on that ground. (*Housing Group v. United Nat. Ins. Co.* (2001) 90 Cal.App.4th 1106, 1111-1115; *Gillette v. Gillette* (1932) 122 Cal.App. 640, 642; *Deming v. Communist Party of U.S.* (1944) 64 Cal.App.2d 35, 39-40.)

IV. CONCLUSION

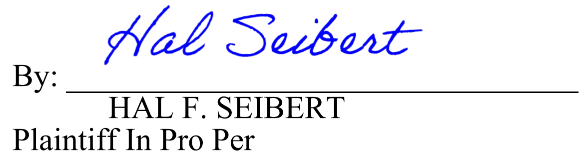
For all of the foregoing reasons, moving parties request that the Court set aside the Stipulated Judgment between Intervenors and U.S. Bank filed November 3, 2023.

Dated: February 9, 2023

PATTON SULLIVAN BRODEHL LLP

By:
KEVIN R. BRODEHL
Attorneys for Plaintiff David Hammond

Dated: February 9, 2023

By: 
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