

1 Kevin R. Brodehl (SBN 197657)
2 Zachary B. Young (SBN 288553)
3 Daniel J. Zarchy (SBN 306883)
4 **PATTON SULLIVAN BRODEHL LLP**
5 12647 Alcosta Boulevard, Suite 430
6 San Ramon, California 94583
7 925-600-1800 Phone
8 925-600-1802 Fax
9 kbrodehl@psblegal.com
10 zyoung@psblegal.com
11 dzarchy@psblegal.com

12 Attorneys for Third Party Objector
13 David Hammond

14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTRY OF CONTRA COSTA**

16 ROBERT TIERNAN, et al,

17 Plaintiffs,

18 v.

19 DIABLO COMMUNITY SERVICES
20 DISTRICT, et al.,

Case No. MSC17-02529

**RESPONSES TO OBJECTIONS BY
INTERVENORS TO THIRD PARTY
DAVID HAMMOND'S EVIDENCE IN
SUPPORT OF MOTION TO SET ASIDE
STIPULATED JUDGMENT BETWEEN
INTERVENORS AND U.S. BANK**

Date: May 31, 2024
Time: 9:00 a.m.
Dept.: 18
Judge: Hon. Danielle Douglas

21 **AND RELATED CROSS-ACTION AND
22 ACTION IN INTERVENTION**

1 Third Party Objector David Hammond submits the following responses to objections to
 2 the evidence made by Intervenors in Opposition to Motion to Set Aside Stipulated Judgment:

3 **RESPONSES TO INTERVENORS’ OBJECTIONS TO EVIDENCE**

<i>Material Objected to:</i>	<i>Grounds for Objection:</i>	<i>Response to Objection:</i>	<i>Ruling on Objection:</i>
David Hammond Declaration			
8 1. ¶ 5, “Based on my personal observation and measurements, the end of the Easement (on the Scenic side) sits well within this State right of way. Based on my research of public records, the State has vigorously defended its rights to this 60-foot Scenic right-of-way in this Court. (See <i>Siders v. State of California</i> , Case No. MS282534, filed February 11, 1986.)”	9 Improper opinion, lacks foundation and speculation. (Cal. Evid. Code §§ 350, 403, 405, 702, 801.)	10 The evidence in this paragraph is admissible for several reasons. The information as to where the Easement intersects the State right of way is based on David Hammond’s personal observations and measurements, and therefore does not lack foundation. Nothing about the statement is speculative, and it is presented as a percipient opinion, not an expert opinion. The statement about the State defending the right-of-way is also based on Hammond’s personal review of public records, including the <i>Siders v. State of California</i> lawsuit. As a result, this also has a proper foundation and is presented as percipient, not expert, opinion.	11 Sustained: _____ 12 Overruled: _____
22 2. Ex. C, Strava doc	23 Hearsay, improper opinion, lacks foundation and speculation. (Cal. Evid. Code §§ 350, 403, 405, 702, 801, 1200.)	24 The Strava document is admissible. It is not hearsay because it is not an out-of-court statement. Rather, David Hammond testified that he personally used his Strava app to create this graphic based on a geographic area that he selected. While Hammond does not have personal knowledge to	25 Sustained: _____ 26 Overruled: _____

Material Objected to:	Grounds for Objection:	Response to Objection:	Ruling on Objection:
		support the veracity of the underlying data that Strava used to create the exhibit heat map, he has personal foundation of how he generated this image. Nothing in his statement contains speculation or an improper opinion.	
<p>3. ¶ 10, “Two separate manual and video counts of Easement users in 2015 and 2019 performed by Danville resident Al Kalin, on which I performed data analysis and process review, estimated 60,000 annual user visits crossing the Easement, reflecting that it is the safest way to avoid vehicles and congestion when getting to the South Gate of the State Park.”</p>	<p>Improper opinion, lacks foundation and speculation. (Cal. Evid. Code §§ 350, 403, 405, 702, 801.)</p>	<p>The evidence in this paragraph is admissible because David Hammond is presenting analysis that he personally performed regarding the public’s observable use of the Easement, and his analysis that is informed by his personal knowledge and experience. Hammond has foundation for the analysis that he performed, which does not contain improper opinion or speculation.</p>	<p>Sustained: _____ Overruled: _____</p>
<p>4. ¶ 11 in its entirety.</p>	<p>Improper opinion, lacks foundation and speculation. (Cal. Evid. Code §§ 350, 403, 405, 702, 801.)</p>	<p>The evidence in this paragraph is admissible for several reasons. It does not lack foundation and is not speculation because David Hammond’s declaration lays out the foundation for his knowledge of the events of this case, as he followed it closely. This paragraph includes his personal perspective as to the events leading up to entry of the Stipulated Judgment. It is not</p>	<p>Sustained: _____ Overruled: _____</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Material Objected to:	Grounds for Objection:	Response to Objection:	Ruling on Objection:
		an improper opinion because Hammond is speaking from his personal experience and perspective, and not providing improper opinion or speculating about any matter.	
<p>5. ¶ 17, “According to public records I have reviewed, the very location of the Easement was an original roadway from 1916, and recorded on Contra Costa County Planning Maps though the 1950s. Based on my research and review of the historical records, this diagonal property line between the Burdened Property and the Wooten vacant lot was the centerline of the original Mount Diablo Scenic Blvd. – a 60-foot wide roadway easement, with 30 feet on both parcels. In 1931, Scenic was rerouted to its current location and the original roadway at the location of the Easement was closed to automobile traffic but left as a right of way for non-auto users.”</p>	<p>Improper opinion, lacks foundation and speculation. (Cal. Evid. Code §§ 350, 403, 405, 702, 801.)</p>	<p>This paragraph is admissible because it is based on David Hammond’s personal research and review of historical records, and he provides documents sufficient to substantiate his conclusions in his Declaration (Exhibit D). As a result, Hammond has adequately laid foundation, his opinion is not improper, and does not contain speculation.</p>	<p>Sustained: _____ Overruled: _____</p>

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

<i>Material Objected to:</i>	<i>Grounds for Objection:</i>	<i>Response to Objection:</i>	<i>Ruling on Objection:</i>
6. ¶18, “However, based on my research and review of the historical records, Diablo streets in general have always had free public access since Diablo was created as a subdivision in 1916, and the public has always used Diablo roads to access the South Gate entrance of Mount Diablo State Park.”	Improper opinion, lacks foundation and speculation. (Cal. Evid. Code §§ 350, 403, 405, 702, 801.)	This paragraph is admissible because it is based on David Hammond’s personal research and review of historical records, and he provides documents sufficient to substantiate his conclusions in his Declaration (Exhibits E and F). As a result, Hammond has adequately laid foundation, his opinion is not improper, and does not contain speculation.	Sustained: _____ Overruled: _____

Dated: May 23, 2024

PATTON SULLIVAN BRODEHL LLP

By: 

DANIEL J. ZARCHY

Attorneys for Third-Party David Hammond

1 **Robert Tiernan, et al v. Diablo Community Services District; et al.**

2 Contra Costa County Superior Court No. MSC17-02529

3 **PROOF OF SERVICE**

4 I, Jennifer Ann Harvey, declare:

5 I am over 18 years of age and not a party to this action. My business address is Patton
6 Sullivan Brodehl LLP, 12647 Alcosta Blvd., Suite 430, San Ramon, California 94583. On the
7 date set forth below, I served the within:

8 **RESPONSES TO OBJECTIONS BY INTERVENORS TO THIRD-PARTY DAVID
9 HAMMOND'S EVIDENCE IN SUPPORT OF MOTION TO SET ASIDE STIPULATED
10 JUDGMENT BETWEEN INTERVENORS AND U.S. BANK**

11 on the parties in this action as listed below:

12 Dominic V. Signorotti, Esq.
13 McKenna, Brink, Signorotti LLP
14 1350 Treat Blvd, Ste 105
15 Walnut Creek, CA 94597

*Attorneys for Intervenors
Jeff Mini, Christine
Mini, et al.*

16 Email: dominic@mckennabrink.com
17 service@mckennabrink.com

Accepting Service on behalf of Bart Wooten

18 Melissa Robbins Coutss, Esq.
19 Crystal R. Davieau, Esq.
20 McCarthy & Holthus, LLP
21 2763 Camino Del Rio S, Suite 100
22 San Diego, CA 92108
23 Tel.: (619) 685-4800
24 E-mail: cdavieau@mccarthyholthus.com
25 cdouangchanh@mccarthyholthus.com

*Defendant
U.S. Bank National Association, as Trustee
for Master Adjustable Rate Mortgages Trust
2007-2 Mortgage Pass-Through Certificates,
Series 2007-2*

26 [X] (By Email) Based on a court order or an agreement of the parties to accept service by
27 electronic transmission, I caused the documents to be sent to the persons at the electronic
28 notification addresses listed above.

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on May 23, 2024 at San Ramon, California.



JENNIFER ANN HARVEY