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8 **SUPERIOR COURT OF CALIFORNIA-COUNTY OF CONTRA COSTA**

10	ROBERT TIERNAN, et al,)	Case No. C17-02529
11	Plaintiffs,)	
12	v.	)	SEIBERT’S REPLY MEMORANDUM
13	DIABLO COMMUNITY SERVICES	)	OF POINTS AND AUTHORITIES IN
14	DISTRICT, et al.,	)	SUPPORT OF MOTION TO SET
15		)	ASIDE STIPULATED JUDGMENT
16		)	BETWEEN INTERVENORS AND U.S.
17		)	BANK
18		)	Date: May 31, 2024
19		)	Time: 9:00 AM
20		)	Dept.: 18
21		)	Judge: Hon. Danielle Douglas

22 Moving party Hal Seibert makes this Reply to Interventors’ Memorandum of Points and
23 Authorities In Opposition to the validity of the Stipulated Judgment. (See Interventors’
24 Memorandum of Points and Authorities In Opposition, Section E, at pgs 16-17) Seibert
25 Replies on the grounds that the Stipulated Judgment fails to set forth the rights of the parties,
26 and is thus void on its face and must be corrected. This Reply will argue:

27 **I. The Court Has the Power to Amend or Set Aside a Void Judgment**

28 **II. The Stipulated Judgment for Declaratory Relief is Void**

III. The Judgment Must Be Set Aside

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I
This Court Has the Power to Amend A Void Judgment

Under CCP §663, a court has the power to correct its judgment when it contains an incorrect or erroneous legal basis for the decision, or is not consistent with or supported by the facts. Also, the court may correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may set aside any void judgment or order. (CCP §473(d))

II
**The Stipulated Judgment for Declaratory Relief Is Void
As It Fails To Set Forth The Rights Of The Parties
Per The Stipulated Facts**

In a declaratory judgment a party may ask for a declaration of rights or duties, either alone or with other relief; and the court may make a binding declaration of these rights or duties. (CCP §1060)

A declaratory judgment is intended to constitute a judicial resolution of disputes between the parties. (CCP §1060) As with any judgment, a declaratory judgment "should not rest upon probabilities, conjecture or vague inferences" (Roadside Rest, Inc. v Lankershim Estate (1946) 76 Cal.App.2d 525, 535), but should be in conformity with the evidence and on the merits. (Phelps v Loop (1942) 53 Cal.App.2d 541) The declaratory judgment "must decree, not suggest, what the parties may or may not do." (Selby Realty Co. v City of San Buenaventura (1973) 10 Cal3d 110, 117; Monahan v Department of Water & Power (1941) 48 Cal.App.2d 746, 751)

In the instant case, the purported Stipulated Judgment for declaratory relief does not set forth the rights or duties of the parties in relation to the easement. The Judgment is set forth as the last 2 pages of a 8 page Stipulation/Judgment between Intervenor and US Bank. It was signed by the Court on 11/1/23 and filed 11/03/23. Most of that document on which the Judgment is based sets forth stipulations of certain facts. The actual Judgment, on page 6 of

1 the Stipulation numerates 7 items. Item 2 states: “2. Judgment will be entered in favor of
2 Intervenor on the FAXC and against Defendant on the cause of action for declaratory relief.”

3 Normally “FAXC” would mean “First Amended Cross Complaint” However,
4 Intervenor refer to their First Amended Complaint in Intervention, as the FAXC. (See
5 Stipulation for Judgment ¶ 2, pg. 2/12-17) The First Amended Complaint in Intervention was
6 filed 11/20/20. Assuming this is the complaint referred to by the Judgment, one must look at
7 the Second Cause of Action for Declaratory Relief. (Further references to FAXC refer to the
8 First Amended Complaint in Intervention)

9 The cause of action for declaratory relief in the FAXC concerning the easement
10 (sometimes referred to as the “cut through,”) is contained on pages 8-9 and sets forth 2
11 alternate requests.

12 On page 9, ¶ 37 Intervenor request that the recorded dedicated easement be declared
13 expired pursuant to CCP §771.010.

14 Knowing that CCP §771.010 would not apply, pg 8, in ¶ 39, Intervenor request that
15 they and members of the public retain the right to use the easement, but limited to pedestrian
16 and equestrian use, and prohibiting use by motor vehicles, golf carts and bicycles.”

17 In summary, the Second Cause of Action requests the court to find either (1) the
18 dedicated easement has expired, or (2) the dedicated easement has not expired, and is valid as
19 stated in the language of the dedicated easement.

20 However the Court’s judgment does not set forth any specific rights and duties of the
21 parties with respect to the easement. It simply states that judgment will be entered in favor of
22 Intervenor and against Defendants on the cause of action for declaratory relief. It cannot be
23 determined if the judgment declares the easement expired, or is valid with limited use. The
24 judgment does not declare the rights and duties of the parties in regard to the dedicated
25 easement as required by CCP §1060. One cannot read the Judgment and discern the rights and
26 duties of the parties regarding the subject easement.
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1 A judgment is void on its face when the invalidity is apparent on inspection of the
2 judgment roll. (Manson, Iver & York v Black (2009) 176 Cal.App.4th 36, 43).

3 A declaratory judgment must decree, not suggest, what the parties may or may not do.
4 (Fairchild v. Bank of America Nat'l Trust & Sav. Asso. (1961), 192 Cal.App 2d 252;
5 Monahan v. Department of Water & Power (1941) 48 Cal.App.2d 746)

6 Disposition of a count for declaratory relief ordinarily requires an express declaration of
7 the rights of the parties. (Anderson v. Stansbury (1952), 38 Cal. 2d 707) In an action for
8 declaratory relief, the proper function of court is to make full and complete declaration,
9 disposing of all questions of rights, status or other legal relations encountered in construing the
10 instrument before it. (Petersen v. Ridenour (1955), 135 Cal.App.2d 720) It is duty of court
11 hearing action for declaratory relief to make a complete determination of the controversy.
12 (County of Los Angeles v. State Dep't of Public Health (1958) 158 Cal. App. 2d 425)

15 **III** 16 **The Judgment Should Set Aside**

17 To honor the stipulation of the parties to grant a judgment as to the Second Cause of
18 Action regarding the easement, the Court should decide which alternative request is being
19 determined and granted.

20 The request to find the Easement has expired cannot be sustained by the stipulated facts.
21 Alternative (1) of the Second Cause of Action requests the court to find the recorded dedicated
22 easement has expired pursuant to CCP §771.010. That code section states that if property is
23 dedicated for public improvement, it is presumed not accepted if all 4 stated criteria in the
24 section are not meet.

25 First the code section refers to a dedication for “public improvement.” This dedication
26 was not for any public improvement, but merely for passage. Second, CCP §711.010 requires
27 that “ (c) The real property was not used for the purpose for which the dedication was
28 proposed within 25 years after the map was filed.”

1 By their stipulation, the parties agreed that thousands of people have used the easement
2 “cut through” within that time period (See FAXC ¶ 34, and Stipulation for Judgment ¶ 9) Thus
3 per the stipulation of the parties, CCP §711.010 does not apply, and the easement has not
4 expired.

5 This leaves only the second alternative as the basis for a judgment in declaratory relief,
6 to-wit: the recorded easement is valid. Because of the judgment’s failure to address the
7 status of the easement as requested by the parties, the stipulated judgment is ineffective,
8 invalid, null and void and should be set aside as to any finding on the validity of the dedicated
9 easement at issue.
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11
12 Dated: May 22, 2024

Hal F. Seibert
Hal F. Seibert
In propria Persona

1 **Re: Hammond v. US Bank, et al Case No. C23-02578**

2 **PROOF OF SERVICE (CCP §§ 1013a, 2015.5)**

3 I, the undersigned, declare: I am a resident of the United States, and employed in the
4 County of Contra Costa. I am over the age of eighteen years.
5 My business address is 1355 Willow Way, Ste 275, Concord, California.
6 On the date set forth below, I served:

6 **Seibert's Reply Memo in Support of Motion to Set Aside Judgment**

7 on the following parties by sending true copies of said documents, via electronic service to the
8 email addresses on file in this matter, through Rapid Legal an electronic filing service
9 provider (EFSP) as authorized per local rule 2.87 and CCP §1010.6.

10 McCARTHY & HOLTHUS, LLP

11 Crystal R. Davieau, Esq. (SBN: 291176)

12 2763 Camino Del Rio S, Suite 100, San Diego, CA 92108

13 Email: cdavieau@McCarthyHolthus.com

14 *Attorneys for Defendant, U.S. Bank National Association, as Trustee for Master Adjustable Rate Mortgages Trust*
15 *2007-2 Mortgage Pass-Through Certificates, Series 2007-2*

16 Kevin R. Brodehl, Esq.

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20 *Attorneys for Plaintiff, David Hammond*

21 Dominic V. Signorotti, Esq.

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23 1981 N. Broadway, Ste. 255, Walnut Creek, CA 94596

24 E-mail: dominic@mckennabrink.com;

25 *Attorneys for Defendant, Bart Wooten*

26 I declare under penalty of perjury, under the laws of the State of California, that the foregoing
27 is true and correct.

28 Dated: May 22, 2024

Hal F. Seibert
Hal F. Seibert