

**May 2022**

**To: Members of Timber Cove Homes Association**

**Re: Complaints about Unauthorized Activities on Claimed Pedestrian Easements**

The Association has recently received member complaints about unwelcome or unlawful activities involving claimed pedestrian easements in our subdivision. We have no direct firsthand knowledge of such incidents, and we are making no accusations. However, we believe some cautionary advice is warranted.

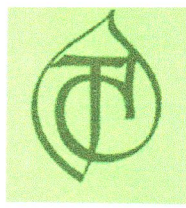
This month the TCHA Board issued a detailed and comprehensive memorandum to Association members about the recent trial regarding disputed pedestrian easement rights on one lot in Timber Cove Unit 2. As explained, the Court issued a ruling in Phase 1 of the trial, which we attached. The Court has now also issued the final judgment.

**Our memorandum identified important questions regarding the pedestrian easements which were NOT RESOLVED by the recent trial, which only determined the easement rights for the specific lot directly involved in that case. The Association will seek legal advice to assist us in clarifying the broader issues not resolved by the court and will advise our members accordingly.**

The recent complaints concern statements or visits by trails advocates to property owners impacted by pedestrian easements but not parties to the lawsuit, in which trails advocates asserted their rights to use, or construct, trails on those properties. Additionally, trail clearing activities, involving vegetation or tree removal or surface grading, may have been threatened or commenced. The property owners on the receiving end of these contacts complained that they found them intimidating and threatening to their private property rights and security.

**Please be advised of the following:**

- 1. Trail clearing activities on properties owned by others are not allowed.** Under the CCRs, only the Association, acting as a corporate body, not via individual property owners or advocacy groups, has the legal authority to construct and maintain easements in Unit 2, including, specifically, pedestrian easements. No other person or body has that legal authority. Nothing in the recent trial or the judge's ruling alters that in any way. Additionally, the CCRs specifically prohibit tree removal and landscape changes without first obtaining approval by the Association. The County also has regulations that prohibit tree removal without a permit and may also limit alterations of slope or ground cover in watershed areas, where changes could affect erosion or drinking water sources. That means "volunteer trail clearing activities" may violate both the CCRs and County law. We urge trails advocates to cease and desist from such activities, unless and until the Association and the County approve them.
- 2. Pedestrian easement claims that affect 60 lots in Timber Cove Unit 2 have not been fully and finally resolved. Some Association members who own lots with such easements may strongly object to third parties entering their private residential lots to use such easements. Others may be less concerned.**



Until we have more attorney guidance on this matter, we strongly urge trails enthusiasts not to attempt to use the pedestrian easements on any property whose owner does not consent. The owner's polite request to leave is evidence of lack of consent and should suffice.

Let's be sensible about this. Homeowners who object to people crossing their lots are not seeking controversy or confrontation, their concerns are not unreasonable, they are simply trying to protect their privacy and peace of mind, to live undisturbed on their own residential lots. Community members need to consider carefully whether it is truly necessary to force their claim of "entitlement" to walk across a neighbor's homesite against their will, at the expense of basic neighborhood values of mutual respect, harmony and kindness.

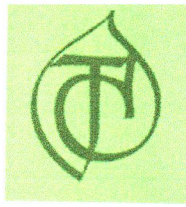
It seems obvious that walking across someone else's private residential property is not an urgent need or essential right that justifies a hostile confrontation. It undeniably constitutes an erosion of the privacy and security of a private property owner at their own home. Folks desiring a walk can easily get pleasant exercise and enjoy natural woodland and ocean vistas by walking along our interior roads or visiting nearby Stillwater Cove and Salt Point parks. Until legal rights to use the pedestrian easements are fully clarified, please use a bit of neighborly consideration and good sense and respect property owner requests to stay off their lots, at least for now.

**3. If you own a lot that shows a pedestrian easement on the Unit 2 map, you have a right to ask for personal identification and the Timber Cove Unit 2 address of anyone who attempts to enter your property whom you do not know and/or have not consented to enter.** Under the judgment of the Court only Timber Cove Unit 2 owners have any claim to use of these easements, so an identity check confirming Unit 2 residency is reasonable and prudent, and perhaps necessary to protect your property from non-resident intruders or potential wrongdoers.

**If trail users refuse to identify themselves, or enter your lot without your consent, do not attempt physically to interfere with them in any way, and avoid belligerent words or gestures.** Simply ask them clearly and politely to leave. Because the status of the easement rights has not yet been resolved, we do not know what legal rights property owners may have to compel trails users to leave their property. You may wish to ask your own attorney for advice.

The Association has no police power and cannot assist you directly to enforce your private property rights. Also, it is our understanding that the local Deputy Sheriff has no authority or obligation to enforce the CCRs, which are private, not public, obligations. However, in the unlikely event one or more intruders without consent goes so far as to threaten personal harm or property damage, or attempts to cut trees on your property, you may wish to contact the Deputy Sheriff.

**4. The Timber Cove Trails website, Timber Cove Foundation, or related social media sites are advocacy and opinion sites only. They have no legal authority regarding Timber Cove Unit 2.** They do not bind or control Timber Cove property owners. Statements made on those sites may be inaccurate, misleading or even defamatory. Anyone claiming that the content of those sites authorizes unconsented activities on the private property of others is mistaken. State and County law, the TCHA



CCRs, the Bylaws, and the holdings of relevant court rulings are controlling; the opinions of Trails organizations or advocates are not.

We again ask our members to show some forbearance, reasonableness and good will about these matters. We are committed to seeking fair and sound solutions with the assistance of legal counsel. There's no need to polarize the community. Any one-sided attempt to short-circuit careful resolution of these sensitive issues via confrontation and acrimony would be irresponsible and harmful. It simply isn't worth it.

**Attachments: Court's Ruling and Final Judgement**

1 THE HONORABLE RENÉ A. CHOUTEAU  
2 SUPERIOR COURT OF CALIFORNIA  
3 COUNTY OF SONOMA  
4 3035 Cleveland Avenue, Suite 200  
5 Santa Rosa, CA 95403  
6 Telephone: (707) 521-6725

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SONOMA

APR - 7 2022

BY

  
Deputy Clerk

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

9  
10 HANNAH MARIE CLAYBORN, et al.,

11 Plaintiff

12 v.

13 ANN VERNON, et al.,

14 Defendants.

Case No. SCV-263251

**RULING ON BIFURCATED COURT  
TRIAL, PHASE 1**

15  
16 This matter came on calendar for Bifurcated Court Trial, Phase 1 on March 29<sup>th</sup>, 30<sup>th</sup>,  
17 April 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup>, 2022. Appearing at the proceedings were Counsel Lewis Warren and  
18 Daniel Wilson on behalf of Plaintiffs and Counsel Peter Mallon on behalf of Defendants. The  
19 court makes it's Ruling as follows:

20 **Statement of Facts**

21  
22 On March 2, 1965 the Sonoma County Board of Supervisors approved the subdivision map  
23 for Timbe Cove Properties No. 2. The Map was recorded on March 5, 1965 in Book 103, pages  
24 11-25. Along with streets the map included several 20 foot pedestrian, equestrian and public  
25 utility easements. The map offered to dedicate all streets, pedestrian easements, equestrian  
26 easements, public utility easements, and anchor easements for public use. By resolution the Board  
27 accepted the offer of dedication for public use of streets and public utilities easements, but rejected  
28

1 the offer of pedestrian, equestrian and drainage easements.

2 All of the parties purchased lots within the subdivision. Each deed by which the Parties  
3 acquire their properties specifically refers to the Subdivision Map. Plaintiff Susan G, Moulton  
4 sold her parcel after this suit was filed. On August 16, 2013 Defendant Ann Vernon expanded her  
5 parcel through lot line adjustment to include a 2.2 acre portion of the property immediately to the  
6 north of her property.  
7

8 The pedestrian and equestrian easements are situated along property lines throughout the  
9 subdivision, extending 10 feet on either side of the property line. However, because of the lot line  
10 adjustment, the pedestrian and equestrian easement that originally ran along the northern boundary  
11 of the Vernon property, now ran through the center of the expanded parcel. As now situated, the  
12 easement ran between two residential structures that Ms. Vernon planned to construct.  
13

14 On October 7, 2014 Ms. Vernon Petitioned the County "to relocate the existing trail that  
15 now passes thru the middle of the properties...". On May 10, 2016 the Board of Supervisors  
16 adopted Resolution Number 16-0189, vacating the irrevocable offer to dedicate the pedestrian and  
17 equestrian easements located on the Vernon property. The Board excepted from the vacation all  
18 existing private and public easements other than the easements specifically vacated in its  
19 resolution.  
20

21 Throughout the pendency of the Vernon Petition, plaintiffs had opposed vacation of the  
22 offer of dedication. Their concern was that the Board's action might impair their right to use the  
23 easement across the Vernon parcel. On September 3, 2015, the County Counsel, Bruce Goldstein,  
24 wrote to Plaintiff John Howland, assuring him that the County's action would have no effect on  
25 any private trail easements on the property. Mr. Goldstein went on to state that the County did not  
26 have a position as to whether private easements existed on the property.  
27

28 From 2016 to 2018, the pedestrian and equestrian easements were a subject of dispute

1 among the property owners in the subdivision, often addressed at meetings of the Board of  
2 Directors of the homeowners association, ultimately the subject of a mediation between the parties.  
3 The mediation failed to resolve the controversy as to the relocation of the easement located on the  
4 Vernon property. On March 27, 2018, the Board of Directors took the position that private  
5 pedestrian and equestrian easements did not exist within the subdivision. The Plaintiffs then filed  
6 the instant lawsuit.

### 8 Statement of the Case

9 The First amended complaint alleges causes of action to quiet title to private easements,  
10 enforcement of private easements pursuant to *Civil Code Section 809*, to enjoin private nuisance  
11 and for compensatory and punitive damages. Defendants' Answer denies the allegations in the  
12 complaint and affirmatively alleges lack of standing, statute of limitations, laches, estoppel,  
13 unclean hands, failure to mitigate damage, and lack of proximate cause. At trial, the parties have  
14 stipulated to bifurcate the issues of existence of the private easements and the defense of laches.  
15

16 During the trial the Court conducted a site visit in the company of the parties and their  
17 attorneys. The Court walked the majority of the easements and made the following observations:  
18 Each of the 20 foot easements is delineated by a series of survey markers. Many of the easements  
19 traverse steep terrain, littered with fallen branches and trees. As a result the trail itself is extremely  
20 narrow, meanders around obstacles, and in some places almost completely disappears. While all  
21 of the easements are passable on foot, travel on horseback seems highly unlikely. The Court also  
22 observed that in some areas what are referred to by the parties as "courtesy trails", which deviate  
23 outside of the easement, are utilized to accommodate the privacy concerns of affected property  
24 owners or to avoid particularly challenging terrain.  
25

26 The Court heard testimony from two surveyors who were designated as expert witnesses.  
27 Howard Brunner, called by plaintiffs, testified that he had reviewed or participated in the creation  
28

1 of over 100 subdivision maps starting in 1965. Maps created at that time were far less detailed in  
2 notation, and easements created on maps were generally not designated as “public” or “private”.  
3 In his opinion the pedestrian and equestrian easements on the Timber Cove #2 Map were “private”  
4 as well as offered for dedication as “public”. Anthony Cabrera, called by defendants, testified that  
5 he had worked with subdivision maps since 1989. During that period notations on maps had  
6 become increasingly descriptive. If a private easement were to be created, it would be labeled as  
7 private on the map. However, he candidly admitted that he had no knowledge of the customs and  
8 practices for labeling maps in 1965. His opinion was that if the easement was offered for  
9 dedication it was public, and until accepted by the public entity no easement existed.  
10

11 Hanna Clayborn testified that she had first seen the trail on the Vernon property in 1989  
12 and had walked on it. The path was small and in forested stretches, difficult to find. She moved  
13 to Timber Cove in 2010. She participated on work parties to improve and maintain the trails, and  
14 was aware of newsletters which discussed the trails. She testified in detail about the controversy  
15 surrounding the trail across the Vernon parcel from 2014 to 2018, the acrimonious board meetings,  
16 and attempts to resolve the conflicting claims through informal mediation.  
17

18 Thomas Giacinto testified, corroborating Ms. Clayborn’s testimony regarding trail use, trail  
19 maintenance, the ongoing controversy regarding the Vernon easement, and efforts made to resolve  
20 that controversy prior to filing suit.  
21

22 Susan Moulton and Tim Mc Kusic also testified along the same lines. Ms. Moulton stated  
23 that she sold her property in 2021.

24 Ann Vernon testified that she purchased her first parcel in 2001 and looked at the  
25 Subdivision Map at that time but was unaware of the trails until they were mentioned at the annual  
26 meeting of the Board in 2004. She purchased the second parcel in 2008 and, by lot line  
27 adjustment, combined her existing parcel with a portion of the second parcel, resulting in the  
28

1 easement now running through the middle of her planned development of the property. She stated  
2 that she did not see a trail on her property when she purchased it in 2001. She hired Susan  
3 Ruschmier to achieve the lot line adjustment in 2011.

4 John Rea testified that he had proposed an alternate trail route during the proceedings  
5 before the Board of Supervisors.

6 Susan Ruschmeier, a licensed surveyor, testified that Ms. Vernon hired her to do the lot  
7 line adjustment, which required a new record of survey and new monuments. She was aware of  
8 the pedestrian equestrian easement on the property and observed a narrow trail within the  
9 easement. She described the trail as similar to a deer trail.

10 John Grey, a member of the Board of Directors testified that there are "No Trespassing"  
11 signs posted throughout the subdivision.

12 Robert Leightner testified that he did extensive research and worked with the Board of  
13 Directors to issue a memo as to the Board's position on the existence of private easements, which  
14 was sent to all property owners.

15 Leonard Gabrielson, the County Surveyor, during the vacation proceedings, testified to the  
16 protracted nature of the proceedings. He recognized that Ms. Vernon had filed a petition to  
17 relocate the easement and that several proposals had been presented to the Board. He was unable  
18 to say why the Board of Supervisors acted to vacate the offer to dedicate a public easement instead  
19 of relocating the easement, as requested by Ms. Vernon.  
20  
21  
22

### 23 Analysis.

#### 24 Burden of Proof.

25 Reference to a subdivision map in a grant deed creates an easement by implication. *Fristoe*  
26 *v. Drapeau* (1950) 35 Cal 5. Defendants argue that Plaintiffs who rely on such a reference must  
27 prove the existence of the easement by clear evidence, citing *Thorstrom v. Thorstrom* (2011) 196  
28



1 Cal App 4<sup>th</sup> 1406, 1420. Plaintiffs argue that *Thorstrom* did not involve reference to a subdivision  
2 map and therefore the higher burden of proof does not apply in this case. Without resolving this  
3 issue, the Court will apply the higher clear evidence standard.

4 Existence of Private Pedestrian and Equestrian Easements.

5 *Danielson v. Sykes* (1910) 157 Cal 686 is the seminal case on the subject at hand.  
6 *Danielson* holds that when a grant deed refers to a subdivision map, right of way easements shown  
7 on the map are, by implication, incorporated in the deed. The reference establishes a private right  
8 of passage that exists independently of whether the street is dedicated for public use. This doctrine  
9 has been applied and expanded to include recreational facilities in *Bradley v. Frazier Park* (110  
10 Cal App 2<sup>nd</sup> 436 and reaffirmed in *Tract Development v. Kepler* (1988) 199 Cal  
11 App 3<sup>rd</sup> 1374. *Tract* specifically holds that: “this rule applies regardless of whether the city or  
12 county has ever accepted the right-of-ways laid out in the map, and whether or not the right-of-  
13 ways have ever been opened or used as streets or highways.”  
14  
15

16 The intent of the developer of Timber Cove #2 to establish the private right to use the  
17 pedestrian and equestrian easements is clear. As Mr. Brunner testified in 1965 the custom and  
18 practice in the industry was not to label easements either public or private unless the use was to be  
19 limited to one or the other. Once the offer of dedication was rejected by the County on the face of  
20 the Map, the easement remained private only, unless later accepted by the County as a public  
21 easement. Proof of the developer’s intent is further established by the CC&Rs for the subdivision.  
22 In Section 8 the developer specifically reserves the pedestrian and equestrian easements in spite of  
23 the County’s rejection of the offer of dedication.  
24

25 Defendants offer the DRE Report as evidence that the developer did not intend to create  
26 private rights to the pedestrian and equestrian easements. However the language referred to  
27 specifies community facilities, parks, playgrounds, open spaces, and areas for general use.  
28

1 Easements are not included.

2 Effect of the Vacation Proceedings.

3 Defendants argue that the County's action to vacate the offer of dedication terminated any  
4 private rights to use the easement. This argument is refuted by the Resolution of the Board 16-  
5 0189, which specifically excepts all existing private easements from its action.

6 Defendants cite *Streets and Highway Code Section 8353* to support their argument that the  
7 Board's action terminated any private easement. But that section applies to vacation of rights of  
8 way that have been accepted for public use and does not apply to vacation of an offer of  
9 dedication. Defendants argue that *Government Code Section 66477.2* makes *Section 8353*  
10 applicable to vacation of an offer to dedicate, but that section merely establishes the procedure for  
11 vacation and does not incorporate the substantive provisions such as 8353.

12 Laches.

13 The elements necessary to prove laches are unreasonable delay in enforcing a right and  
14 prejudice to the affected party. *Johnson v. Little Rock Ranch* (2022) 73 Cal App 5<sup>th</sup> 576, 596.  
15 Defendants have proved neither. Plaintiffs used and maintained the easements, including the  
16 easement on Defendant's property before Ms. Vernon purchased it. The easements were shown on  
17 the Map incorporated in Ms. Vernon's deed. Plaintiffs have vigorously opposed Ms. Vernon's  
18 attempts to terminate their rights and have filed suit as soon as it became apparent that other  
19 avenues of resolving the dispute were futile.

20 Remedies

21 Although the Court has recognized the existence of the private easement, the appropriate  
22 remedy must be considered. Injunctive relief requires the Court to balance the hardships to the  
23 parties. The existing location of the easement lies directly between the two residences proposed  
24 for the property and in a developed garden area. The continued use of the easement in this  
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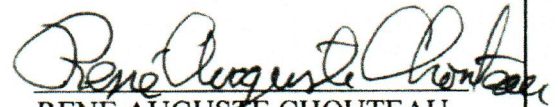
1 location creates a significant burden on Ms. Vernon's privacy. Moving the pedestrian trail will  
2 cause far less of a burden on the Plaintiff's. The court will condition any injunction it issues on  
3 location of the trail to an area outside of the existing easement and removed from the residences.  
4 Such an accommodation has precedence in other "courtesy trails" which deviate from the  
5 easement in other locations in the subdivision.

6  
7 **Other Rulings.**

- 8 1. The Court confirms its ruling Granting Judgement on the Pleadings as to Susan Moulton's  
9 claim under the Second Cause of Action.  
10 2. The Court denies Plaintiff's Motions in Limine #1 and #2.

11  
12 IT IS SO ORDERED.

13  
14 Dated: April 7, 2022.

15   
16 RENE AUGUSTE CHOUTEAU  
17 Superior Court Judge  
18  
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27  
28

PROOF OF SERVICE BY MAIL – SCV-263251

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 600 Administration Drive, Room 107-J, Santa Rosa, California, 95403; that I am not a party to this case; that I am over the age of 18 years; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of the foregoing attached papers in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

4/7/2022

Arlene Junior  
Court Executive Officer

by

  
Julie Wilcox, Deputy Clerk

ADDRESSEES

Peter Mallon  
Hassard Bonnington LLP  
275 Battery St Ste 1600  
San Francisco CA 94111  
(Via email: [pm@hassard.com](mailto:pm@hassard.com))

Lewis R Warren  
Daniel Wilson  
ABBAY WEITZENBERG WARREN & EMERY PC  
100 STONY POINT RD STE 200  
SANTA ROSA CA 95401  
(Via email: [lwarren@abbeylaw.com](mailto:lwarren@abbeylaw.com); [dwilson@abbeylaw.com](mailto:dwilson@abbeylaw.com) )

**Exhibit B – Judgment on First & Fourth Causes of Action**

*Clayborn et al. v. Vernon, et al.*  
*Settlement Agreement Exhibits*

ABBEY, WEITZENBERG, WARREN & EMERY, P.C.  
100 Stony Point Road, Suite 200, Santa Rosa, CA 95401  
Telephone: (707) 542-5050 Facsimile (707) 542-2589

1 LEWIS R. WARREN, ESQ. (SBN 115411)  
[lwarren@abbeylaw.com](mailto:lwarren@abbeylaw.com)  
2 DANIEL J. WILSON, ESQ. (SBN 299239)  
[Dwilson@abbeylaw.com](mailto:dwilson@abbeylaw.com)  
3 ABBEY, WEITZENBERG, WARREN & EMERY, P.C.  
100 Stony Point Road, Suite 200  
4 Santa Rosa, CA 95401  
Telephone: (707) 542-5050  
5 Facsimile: (707) 542-2589

ELECTRONICALLY FILED  
Superior Court of California  
County of Sonoma  
5/9/2022 11:01 AM  
Arlene D. Junior, Clerk of the Court  
By: Jennifer Ellis, Deputy Clerk

6 Attorneys for HANNAH MARIE  
CLAYBORN, JOHN CLAYTON  
7 HOWLAND, THOMAS A. GIACINTO,  
CLAUDIA A. GIACINTO, TIMOTHY  
8 McKUSICK; AND SUSAN G. MOULTON  
as their interests appear in the caption below.  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SONOMA

13 HANNAH MARIE CLAYBORN and JOHN )  
CLAYTON HOWLAND, Trustees of the John )  
14 Howland and Hannah Clayborn AB Living )  
Trust, dated November 30, 2015, THOMAS A. )  
15 GIACINTO, CLAUDIA A. GIACINTO, )  
themselves and as Trustees of the Thomas A. )  
16 Giacinto and Claudia A. Giacinto Living Trust, )  
dated October 19, 2010; TIMOTHY )  
17 McKUSICK; SUSAN G. MOULTON; )  
LORRIE URIBE )

Case No. SCV-263251

~~PROPOSED~~ JUDGMENT

Action Filed: October 2, 2018  
Trial Date: March 25, 2022

18 Plaintiff,

Dept. 17  
Hon. Rene Chouteau

19 v.

20 ANN VERNON, RUSSELL SMITH, JOHN )  
21 RAE, MERIN S. MCCABE, SCOTT BLACK, )  
AND DOES 1 through 500, inclusive, )  
22 )

23 Defendants.  
24

25 This matter came on for Bifurcated Court Trial, Phase 1, on March 29, 30, April 1, 5 and  
26 6, 2022, with the Honorable Rene Auguste Chouteau presiding. Plaintiffs Hannah Marie  
27 Clayborn, John Clayton Howland, Thomas A. Giacinto, Claudia A. Giacinto, Timothy McKusick  
28

1 and Susan G. Moulton (collectively, "Plaintiffs"<sup>1</sup>) were represented by Lewis R. Warren and  
2 Daniel J. Wilson of Abbey, Weitzenberg, Warren & Emery, P.C.; Defendants Anne Vernon and  
3 John Rea (collectively, "Defendants"<sup>2</sup>) were represented by Peter Mallon of Hassard Bonnington  
4 LLP.

5 Plaintiffs' Complaint included causes of action for: 1) Quiet Title to Easements; 2)  
6 Enforcement of Easements under Civil Code Section 809; 3) Injunction of Private Nuisance; 4)  
7 Declaratory Relief as the existence of the subject easements; and 5) Damages for Nuisance.  
8 Plaintiffs Thomas and Claudia Giacinto dismissed without prejudice their causes of action for  
9 Quiet Title, Enforcement of Easements, Injunction of Private Nuisance and Declaratory Relief  
10 because they had sold their property to third parties prior to trial. Plaintiff Susan Moulton had  
11 dismissed her causes of action for Quiet Title, Injunction of Private Nuisance and Declaratory  
12 Relief because she had sold her property prior to trial. Prior to the commencement of trial,  
13 Defendants brought a Motion for Judgment on the Pleadings seeking a dismissal of Susan  
14 Moulton's second cause of action for Enforcement of Easements. The Court granted defendants'  
15 motion at the end of Phase 1.

16 By Stipulation of the Parties and Order of the Court, the trial proceeded in two phases:  
17 Phase 1 to determine the existence of the subject easements; and Phase 2, if necessary, to  
18 adjudicate any claims for damages brought by Plaintiffs.

19 On April 7, 2022, the Court issued its ruling on Phase 1 making, among others, the  
20 following findings:

- 21 1) Under the seminal case of Danielson v Sykes (1910) 157 Cal. 686, and as reaffirmed in  
22 Tract Development Services v Kepler (1988) 199 Cal.App.3d 1374, based on the references  
23 in Plaintiffs' respective deeds to the Subdivision Map of Timber Cove Unit #2 (the  
24 "Subdivision Map"), those properties of Plaintiffs Hannah Clayborn, John Howland and  
25 Timothy McKusick located in Timber Cove Unit #2 are appurtenant to the pedestrian and  
26 equestrian easements referenced on the Subdivision Map and said Plaintiffs have private  
27

28 <sup>1</sup> Plaintiffs Lorrie Uribe and Kris Kilgore dismissed their respective claims prior to trial.

<sup>2</sup> Defendants Russell Smith, Scott Black and Merin S. McCabe entered into Stipulated Judgments prior to trial.

- 1 easements in accordance therewith;
- 2 2) Applying the higher clear evidence standard requested by Defendants, the intent of the
- 3 developer of Timber Cove Unit #2 was to establish private rights (to be held by the property
- 4 owners of Timber Cove Unit #2) to use the pedestrian and equestrian easements referenced
- 5 on the Subdivision Map, recorded in the Sonoma County Recorder's Office on March 5,
- 6 1965;
- 7 3) The evidence at trial did not establish Defendants' affirmative defense of Laches; and
- 8 4) The Resolution of the Board of Supervisors of the County of Sonoma, dated May 10, 2016,
- 9 to Approve the Petition (of Defendant Anne Vernon) to Vacate a Portion of the Irrevocable
- 10 Offer of Dedication of Timber Cove Pedestrian and Equestrian Easements did not
- 11 extinguish Plaintiffs' rights in the pedestrian and equestrian easements referenced above.

12 On April 12, 2022, the Parties entered into a settlement agreement disposing of Plaintiffs'

13 remaining causes of action (i.e., Enforcements of Easements under Civil Code Section 809;

14 Injunction of Private Nuisance and Damages for Nuisance) obviating the need to proceed with

15 trial of Phase 2 of the Bifurcated Court Trial

16 Based on the above referenced ruling and findings, the Parties' settlement of Plaintiffs'

17 Second, Third and Fifth Causes of Action in Plaintiffs' Complaint, the arguments of counsel and

18 the oral and documentary evidence before the Court, and good cause appearing therefor,

19 **IT IS HEREBY ORDERED AS FOLLOWS:**

- 20 1) Judgment shall be entered in favor of Plaintiffs Hannah Clayborn, John Howland and
- 21 Timothy McKusick on Plaintiffs' First Cause of Action (for Quiet Title to Easements) and
- 22 Fourth Cause of Action (for a declaration that the pedestrian and equestrian easements that
- 23 are the subject of the within action exist and are valid);
- 24 2) Defendants' affirmative defenses with respect to the foregoing causes of action are denied;
- 25 3) The Motion for Judgment on the Pleadings brought by defendants Anne Vernon and John
- 26 Rea seeking dismissal of plaintiff Susan Moulton's second cause of action (for enforcement
- 27 of easement under Civil Code §809) is granted; and

28

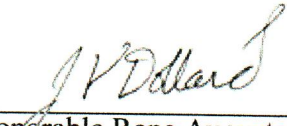


1 4) Costs of suit shall not be awarded because such costs are the subject of the Parties'  
2 settlement agreement as referenced above.

3 5/9/2022

4 Date: \_\_\_\_\_

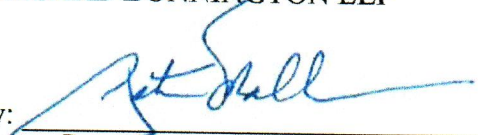
Jennifer V. Dollard for

  
Honorable Rene Auguste Chouteau  
Judge of the Superior Court

6 **APPROVED AS TO FORM:**

7 HASSARD BONNINGTON LLP

9 By: \_\_\_\_\_

  
Peter Mallon  
Attorney for Defendants

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ABBEY, WEITZENBERG, WARREN & EMERY, P.C.  
100 Stony Point Road, Suite 200, Santa Rosa, CA 95401  
Telephone: (707) 542-5050 Facsimile (707) 542-2589