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FILED  
MAR 15 2019  
By D. WAGNER

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DIABLO COMMUNITY SERVICES DISTRICT

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF CONTRA COSTA

11 ROBERT TIERNAN; *et al.*,  
12 Plaintiffs,

13 v.

14 DIABLO COMMUNITY SERVICES  
DISTRICT; *et al.*,

15 Defendants.

Case No. MSC 17-02529

**DEFENDANT DIABLO COMMUNITY  
SERVICE DISTRICT'S ANSWER TO  
SECOND AMENDED VERIFIED  
COMPLAINT**

JFAP: Honorable Charles S. Treat  
Dept. 12

Action Filed: December 21, 2017  
Trial Date: None

19 Defendant Diablo Community Services District ("DCSD") hereby answers the Second  
20 Amended Verified Complaint ("SAC") filed herein by Plaintiffs Robert Tiernan, *et al.*, as  
21 follows<sup>1</sup>:

22 **PRELIMINARY ALLEGATIONS**

23 1. Responding to Paragraphs 1-21 of the SAC, DCSD lacks knowledge or  
24 information sufficient to admit or deny the allegations contained therein and on that basis denies  
25 each and every allegation contained therein.

26  
27 <sup>1</sup> CCP Section 446(a) exempts public agencies and their officers from the answer verification requirement.  
28 (Witkin, CAL. PROCEDURE, v. 4, Pleading, Section 467 ["If 'the state, any county thereof, city, school  
district, district, public agency, or public corporation,' or an officer in his or her official capacity is the  
defendant, the answer need not be verified."])

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ATTORNEYS AT LAW  
OAKLAND



**GENERAL ALLEGATIONS**

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2           8.       On information and belief, DCSD admits the allegations in the first three sentences  
3 of Paragraph 28 and admits that signs marked “Private” have been in place at certain motor  
4 vehicle entrances to certain roads in Diablo for many decades. DCSD lacks sufficient  
5 information on which to admit or deny the remaining allegations in Paragraph 28 and, on that  
6 basis, denies them.

7           9.       Responding to Paragraph 29 of the SAC, DCSD admits that its creation as a  
8 California Special District was initiated by the Petition and formally approved by the Formation  
9 Resolution. DCSD further admits on information and belief that the primary purpose of the  
10 creation of DCSD was to allow for funds to be raised by taxes to address the issues identified in  
11 the Petition. Further responding to Paragraph 29 of the SAC, DCSD affirmatively alleges that its  
12 powers are expressly limited to those services authorized by the CSD Law, as requested by the  
13 Petition and approved in the Formation Resolution. DCSD further admits that the authorized  
14 powers so granted by the Formation Resolution include the “opening, closing, widening,  
15 extending, straightening, surfacing and resurfacing, in whole or in part, of any street or road  
16 which is subject to a right-of-way by the public, but which has not been accepted into the county  
17 road system in such District, and the implementation of these safety measures deemed necessary  
18 to safeguard life and property.” Except as expressly admitted herein, the allegations of Paragraph  
19 29 of the SAC are denied.

20           10.      Responding to Paragraph 30 of the SAC, DCSD admits that it has enacted various  
21 ordinances since its inception and that it most recently adopted/codified those ordinances into an  
22 Ordinance Code on July 13, 1993, which was subsequently amended in 2002. DCSD further  
23 responds that the provisions of the Ordinance Code speak for themselves. Except as so expressly  
24 admitted and affirmatively alleged, DCSD denies each and every other allegation contained in  
25 Paragraph 30 of the SAC.

26           11.      Responding to Paragraphs 31-32 of the SAC, DCSD asserts that the Ordinance  
27 Code speaks for itself and, therefore, no further response to those paragraphs is required.  
28

1           12.     Responding to Paragraph 33 of the SAC, DCSD admits that there are three motor  
2 vehicle entrances into Diablo from Diablo Road – Calle Arroyo, Alameda Diablo and Avenida  
3 Nueva . DCSD further admits that each such motor vehicle entrance from Diablo Road has  
4 signage indicating that the roads are private and that the “right to pass is by permission of the  
5 Diablo community services District, Section 1008 Civil Code.” DCSD further responds on  
6 information and belief that such signs have been in place since 1972. Except as herein expressly  
7 admitted, DCSD lacks sufficient information to admit or deny the remaining allegations in  
8 Paragraph 33 and, on that basis, denies them.

9           13.     Responding to Paragraph 34 of the SAC, DCSD admits that it has operated  
10 continuously since 1969 and continues to have the authority granted to it by its Formation  
11 Resolution, as authorized by the CSD Law. DCSD admits on information and belief that, for  
12 much of its history, Diablo was located in a rural area with little or no development around it.  
13 DCSD further admits that some bicyclists have in recent years used Diablo streets, apparently  
14 with the goal of avoiding safety hazards on Diablo Road. Except as expressly admitted herein,  
15 DCSD denies the allegations of Paragraph 34 and expressly denies that any action or inaction by  
16 DCSD has affected the security of Diablo or the quiet enjoyment of Diablo residents’ properties

17           14.     Responding to Paragraph 35 of the SAC, DCSD admits that Calle Arroyo runs  
18 parallel to the 16<sup>th</sup>, 17<sup>th</sup> and 18<sup>th</sup> fairways of the Diablo Country Club, that Calle Arroyo is used  
19 by golf carts and Diablo Country Club’s maintenance vehicles, and that approximately 26 homes  
20 are located on Calle Arroyo. Except as expressly admitted, DCSD lacks knowledge or  
21 information sufficient to admit or deny the allegations contained in Paragraph 35 and on that basis  
22 denies each and every allegation contained therein. Further responding to Paragraph 35 of the  
23 SAC, DCSD affirmatively alleges that, based on 24 road-width measurements taken along the  
24 entire course of Calle Arroyo, Calle Arroyo’s width fluctuates between a low of 12 feet and 5  
25 inches to a high of 35 feet, with an average width of 19 feet and 3 inches.

26           15.     Responding to Paragraph 36 of the SAC, DCSD admits that private homeowners  
27 on Calle Arroyo are personally responsible for maintaining all trees and vegetation on their  
28 properties. Further responding to Paragraph 36 of the SAC, DCSD affirmatively alleges that it

1 regularly informs Diablo residents of their responsibility to maintain and trim vegetation on their  
2 properties, especially vegetation that encroaches into the Diablo roadways DCSD maintains, and  
3 warns them that, for any such vegetation that is not trimmed, DCSD reserves the right to hire a  
4 third party contractor to do so. Except as so expressly admitted and affirmatively alleged, DCSD  
5 lacks knowledge or information sufficient to admit or deny the allegations contained in Paragraph  
6 36 and on that basis denies each and every allegation contained therein.

7 16. Responding to Paragraph 37 of the SAC, DCSD lacks knowledge or information  
8 sufficient to admit or deny the allegations contained therein and on that basis denies each and  
9 every allegation contained in therein. Further responding to Paragraph 37, DCSD affirmatively  
10 alleges that, based on 24 road-width measurements taken along the entire course of Calle Arroyo,  
11 Calle Arroyo's width fluctuates between a low of 12 feet and 5 inches to a high of 35 feet, with an  
12 average width of 19 feet and 3 inches.

13 17. Responding to Paragraph 38 of the SAC, DCSD denies each and every allegation  
14 contained therein. Further responding to Paragraph 38 of the SAC, DCSD responds that the  
15 Court in this action has ruled that DCSD has no authority to exclude any person or group of  
16 persons from using Calle Arroyo.

17 18. Responding to Paragraph 39 of the SAC, DCSD admits that there is a pathway  
18 between 2328 Alameda Diablo Road and 2354 Alameda Diablo Road, which connects Alameda  
19 Diablo Road with Mt. Diablo Scenic Blvd. Except as expressly admitted herein, the allegations  
20 of Paragraph 39 are denied.

21 **FIRST CAUSE OF ACTION**

22 **Quiet Title**

23 **(Against All Defendants)**

24 19. Responding to Paragraphs 40-41 of the SAC, DCSD asserts that the allegations  
25 therein are moot, given the Court's prior ruling on the First Cause of Action.

26 **SECOND CAUSE OF ACTION**

27 **Declaratory Relief**

28 **(Against All Defendants)**

20. Responding to Paragraphs 42-45 of the SAC, DCSD asserts that the allegations  
therein are moot, given that Plaintiffs have dismissed the Second Cause of Action.

**[NEW] THIRD CAUSE OF ACTION**  
**Declaratory Relief**  
**(Against Defendant DCSD)**

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3           21.     Responding to Paragraph 46 of the SAC, DCSD re-alleges and incorporates all  
4 previous denials, admissions and affirmative allegations as if fully set forth herein.

5           22.     Responding to Paragraph 47 of the SAC, DCSD admits that it does not own any  
6 real property along or within Calle Arroyo, and that it is authorized to provide police protection  
7 services within the DCSD’s boundaries, including portions of Calle Arroyo, in a manner  
8 consistent with the powers available under the CSD Law and per the Formation Resolution.  
9 DCSD further admits that an actual controversy exists between and among Plaintiffs, DCSD,  
10 certain non-party Diablo residents and other non-parties with respect to DCSD’s authority to  
11 “close” the alleged illegal cut-through. DCSD admits on information and belief that Plaintiffs  
12 contend that the cut-through between Alameda Diablo Road and Mt. Diablo Scenic Blvd.  
13 “violates the provisions of the Ordinance Code” and that Plaintiffs contend that “DCSD has the  
14 ability to close the cut-through, based on the authority granted to it in the Ordinance Code and its  
15 founding documents.” DCSD further asserts that certain non-party Diablo residents and other  
16 non-parties have expressed on multiple occasions their contention that DCSD does not have any  
17 authority to close the cut-through and that some such non-parties have stated that they will take  
18 legal action against DCSD if it acts to close the cut-through. DCSD contends that it is uncertain,  
19 particularly in light of the Court’s rulings in this action to date with respect to the legitimacy of  
20 and authority to act under certain provisions of the Ordinance Code, whether the cited provisions  
21 of the Ordinance Code provide a sufficient legal basis for DCSD to close the cut-through or  
22 require private property owners to close the cut-through, or if such action by DCSD would exceed  
23 its authority under the CSD Law and its Formation Resolution. Except as expressly admitted  
24 herein, DCSD denies each and every allegation contained in Paragraph 47.

25           23.     Responding to Paragraph 48 of the SAC, DCSD admits that Plaintiffs seek the  
26 judicial declaration described therein.



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**FIFTH AFFIRMATIVE DEFENSE**  
**(Failure To Comply With Tort Claims Act)**

Plaintiffs' claims are barred to the extent that Plaintiffs were required to comply with the requirements of the California Tort Claims Act (CA Government Code § 810 *et seq.*).

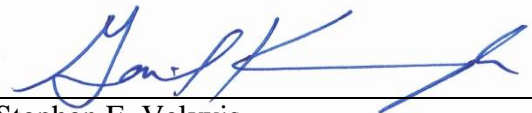
**PRAYER FOR RELIEF**

WHEREFORE, DCSD pray as follows:

1. For a declaration of whether DCSD has the authority under the CSD Law (Government Code §§ 61000 *et seq.*), its Formation Resolution and the Ordinance Code to close, or to require the subject private property owners to close, the cut-through described in the SAC;
2. For Costs and Attorneys' fees to be awarded to DCSD to the extent permitted by law; and
3. Such other and further relief as the Court may deem appropriate.

Dated: March 15, 2019

BURKE, WILLIAMS & SORENSEN, LLP

By:   
 Stephen E. Velyvis  
 Gail E. Kavanagh  
 Attorneys for Defendant  
 DIABLO COMMUNITY SERVICES  
 DISTRICT

OAK #4841-1181-3258 v2



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**PROOF OF SERVICE**

I, Ramonette G. Mendoza, declare:

I am a citizen of the United States and employed in San Francisco County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 101 Howard St., Suite 400, San Francisco, California 94105. On March 15, 2019, I served a copy of the within document(s):

**DEFENDANT DIABLO COMMUNITY SERVICE DISTRICT’S ANSWER TO SECOND AMENDED VERIFIED COMPLAINT**

- by transmitting via electronic mail the document(s) listed above to the email address(es) set forth below on this date before 5:00 p.m.
- by placing the document listed above in a sealed envelope with postage thereon fully prepaid, the United States mail at San Francisco, California addressed as set forth below.
- by placing the document(s) listed above in a sealed FedEx envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a FedEx agent for delivery.
- by causing to be personally delivered, the documents listed above to the person at the address set forth below.

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CLANCY, Co-Trustees of the  
Gerard S. Clancy and Donna M.  
Clancy AB Living Trust dated  
January 13, 2003

16 I am readily familiar with the firm's practice of collection and processing correspondence  
17 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same  
18 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on  
19 motion of the party served, service is presumed invalid if postal cancellation date or postage  
20 meter date is more than one day after date of deposit for mailing in affidavit.

21 I declare under penalty of perjury under the laws of the State of California that the above  
22 is true and correct.

23 Executed on March 15, 2019, at San Francisco, California.

24  
25   
26 Ramonette G. Mendoza