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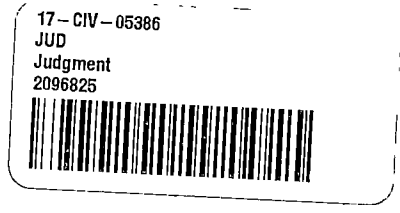
**FILED**  
**SAN MATEO COUNTY**  
OCT 24 2019  
Clerk of the Superior Court  
By [Signature]  
**DEPUTY CLERK**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

SYED HUSAIN, a California resident,  
Plaintiff,  
v.  
CALIFORNIA PACIFIC BANK, a California  
corporation,  
Defendant.

Case No. 17Civ05386  
*hup*  
**PROPOSED JUDGMENT**  
Trial Date: July 8, 2109  
Dept.: 4  
Honorable Nancy L. Fineman

AND RELATED CROSS-ACTION.



The parties waived jury on all issues which could have been tried to a jury, and the case was tried to the Court on July 10, 11 and 12, 2019. Mark D. Hudak of the Law Offices of Mark D. Hudak represented Plaintiff and Cross-Defendant Syed Husain. Matthew W. Powell and Adriana Cervantes of Wilke, Fleury, Hoffelt, Gould & Birney, LLP represented Defendant and Cross-Complainant California Pacific Bank.

The Court, having heard and considered all of the evidence and testimony submitted by the parties, having assessed the credibility of the witnesses, having personally viewed (at the joint request of the parties) the properties that are the subject of the captioned litigation, and having already filed its Statement of Decision on October 22, 2019, HEREBY ENTERS JUDGMENT in favor of Defendant and Cross-Complainant California Pacific Bank ("Bank").

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The Court’s determination of the facts and issues supporting this Judgment is set forth in the Statement of Decision (a true and correct copy of which is attached hereto as Exhibit “A”), and the Court hereby incorporates the contents of that document as though fully set forth herein. The Court also incorporates by reference the following additional documents as though fully set forth herein:


1. The legal description of the prescriptive easement, prepared in conformity with the Court’s Statement of Decision, by Eric S. Cantrell, P.L.S., a licensed surveyor. A true and correct copy of this document is attached hereto as Exhibit “B.”

2. The survey map of the prescriptive easement prepared by Eric S. Cantrell, P.L.S., a licensed surveyor. A true and correct copy of this document is attached hereto as Exhibit “C.”

3. The unsigned Prescriptive Easement Deed (without exhibits) prepared by the Bank. A true and correct copy of this document is attached hereto as Exhibit “D.”

This Judgment and the attached exhibits are the complete expression of the Judgment entered by the Court. The Bank will file and serve its Memorandum of Costs when this Judgment is signed by the Court and this Judgment may be modified to incorporate the amount of costs awarded to the Bank. This Judgment is final in all other respects.

Date: October 23, 2019

  
Honorable Nancy L. Fineman  
Judge of the Superior Court

# **EXHIBIT A**

OCT 22 2019

Clerk of the Superior Court  
By BROOKE N. JIMENEZ  
DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN MATEO

SYED HUSAIN, a California resident,

Plaintiff,

v.

CALIFORNIA PACIFIC BANK, a California  
corporation,

Defendant.

Case No. 17Civ05386

**STATEMENT OF DECISION**

Trial Date: July 10, 2019

Dept.: 4

Honorable Nancy L. Fineman

AND RELATED CROSS-ACTION.

1 **STATEMENT OF DECISION**

2 The following constitutes the Court’s Statement of Decision (“Decision”) pursuant to Code  
3 of Civil Procedure § 632 and California Rule of Court, Rule 3.1590 et seq. The Clerk is instructed  
4 to immediately mail to all counsel a copy of the Decision.

5 The trial court in issuing a Statement of Decision “is required only to state the ultimate rather  
6 than the evidentiary facts. The statement of decision need do no more than state the grounds upon  
7 which the judgment rests, without necessarily specifying the particular evidence considered by the  
8 trial court in reaching its decision.” *In re Marriage of Williamson* (2014) 226 Cal.App.4<sup>th</sup> 1303,  
9 1318-19 (citations and internal quotations omitted); see also *Richardson v. Franc* (2015) 233  
10 Cal.App.4<sup>th</sup> 744, 753, n.2 (trial court was not required to make “specific factual findings” on every  
11 evidentiary point; rather the Statement of Decision need only state grounds for the judgment, without  
12 necessarily specifying the particular evidence considered by the trial court in reaching its decision).

13 This Statement of Decision follows the court trial, the Court’s Tentative Decision issued on  
14 July 24, 2019, the Proposed Statement of Decision, plaintiff/cross-defendant Syed Husain’s  
15 (“Husain”)’s Response to Proposed Statement of Decision filed September 17, 2019,  
16 defendant/cross-complainant California Pacific Bank’s (“Bank”) Reply to Husain’s Response to  
17 Proposed Statement of Decision filed October 18, 2019, and Husain’s Proposed Modifications to  
18 Statement of Decision.

19 **I. INTRODUCTION**

20 This case involves a property dispute between Husain and the Bank. The critical issue is  
21 whether the Bank has a prescriptive easement or some other right to use portions of property now  
22 owned by Husain. These areas are: (1) a driveway; (2) four parking spaces which were identified in  
23 a variance granted in January of 1964 by the City of Burlingame (“Burlingame”); (3) four other  
24 parking spaces; (4) a garbage area; and (5) a garden.

25 **II. PROCEDURAL BACKGROUND**

26 **A. Operative Pleadings**

27 The case was tried on Husain’s complaint filed November 22, 2017 and the Bank’s cross-  
28 complaint filed January 5, 2018. At the conclusion of the trial, the Court permitted the Bank to

1 amend the pleadings to conform to proof, without introducing new evidence. (Code of Civil  
2 Procedure §469; 5 Witkin *Cal. Proc.* Plead § 1206.)

3 **B. Trial**

4 The parties waived jury on all issues which could have been tried by a jury and the case was  
5 tried to the Court on July 10, 11, and 12, 2019. Mark D. Hudak of the Law Offices of Mark D.  
6 Hudak represented Husain, and Matthew W. Powell and Adriana C. Cervantes of Wilke, Fleury,  
7 Hoffelt, Gould & Birney, LLP represented the Bank. Husain testified on his own behalf, and Alan  
8 Chi (“Chi”), Bank official, and Janet Husary, (“Husary”), apartment manager and daughter of the  
9 former owner of the properties, testified on behalf of the Bank.

10 **C. Husain’s Objections to the Proposed Statement of Decision**

11 Husain raised objections to the Court’s Proposed Statement of Decision and suggested  
12 modifications, and the Bank responded on October 18, 2019.

13 After review of Husain’s and the Bank’s comments regarding the Proposed Statement of  
14 Decision, the Court has deleted the finding that the Bank has an easement by implication.

15 **III. FACTUAL BACKGROUND**

16 The findings of fact in this Decision are based upon all the evidence both oral and  
17 documentary, including the credibility of the witnesses and the Court’s view (at the joint request of  
18 the parties) of the subject properties. The Court has not identified all the facts supporting this  
19 Decision, but the ones the Court finds the most material.

20 In the 1960s, Robert and Edith Carpenter (“Carpenter”) owned both 789 El Camino Real,  
21 Burlingame (“El Camino property”), which contained an apartment building, and 1507- 1509  
22 Willow Ave., Burlingame (“Willow property”), which contained a duplex. Carpenter wanted to  
23 build an addition to the apartment building and received a variance from Burlingame in January of  
24 1964 that allowed four off-site parking spaces for the El Camino property to be located on the  
25 Willow property. Exs. 3, 4, 5. Pursuant to the Burlingame Code, after three (3) years, if the  
26 apartment building was not expanded, the variance was void. Bank’s RJN Ex. C (Burlingame  
27 Ordinance 25.16.130). Carpenter never expanded the apartment building. Ex. 6. Everyone seems  
28 to have forgotten about this variance until about 2016. Ex. 5.

1 At some time before 2011, the tenants of the apartment building of the El Camino property  
2 used the driveway, garbage area, the four parking spaces given by the variance, four additional  
3 parking spaces, and a garden located on the Willow property. Husary at 257:20-22, 265:22-266:3,  
4 267:25-268:4, 281:24-282:2. The only way that vehicles can enter and exit the apartment's  
5 underground garage is to traverse the driveway. See e.g. Exs. 5, 7, F, G, H; Husary at 242:19-243:7.  
6 The sprinkler system for the Willow garden is, and has been for a period prior to 2011, located in  
7 the garage of the El Camino property. Husary at 281:19-282:6, 283:21-284:23.

8 In 2010, the then owner of the two properties, Hanan Shiheiber ("Shiheiber"), whose  
9 daughter Husary testified at trial, defaulted on two different mortgages. On May 10, 2011, JP  
10 Morgan, the lienholder, obtained the Willow property through a trustee's sale. Bank's RJN Ex. F;  
11 Husain's RJN Exs. 2, 11; Chi at 87:3-24. On June 16, 2011, the Bank, the junior lienholder on the  
12 El Camino property, obtained the El Camino property through a trustee's sale. Bank's RJN Ex. G;  
13 Husain's RJN Exs. 1, 9; Chi at 86:21-87:1; 188:5-191:4. Accordingly, as of the summer of 2011,  
14 for the first time in over 50 years, the two properties were not under common ownership. None of  
15 the deeds transferring ownership during that approximately 50 year period refer to any easements  
16 being transferred. Husain's RJN Exs. 1, 2.

17 It is undisputed that the Bank never gave any formal, *i.e.*, written or oral notice to the owner  
18 of the Willow property, that it claimed an interest in the property until 2017. Exs. Q, Y; Chi at  
19 164:19-168:17, 175:3-176:3, 197:10-198:10, 213:7-18. A July 31, 2017 letter, which the Bank  
20 requested be disclosed to any prospective buyer about its claimed easement, was sent to Coldwell  
21 Banker. Ex. HH; Chi at 130:24-134:13, 213:7-22. The letter was not received by Husain until after  
22 he purchased the Willow property. Husain at 292:25-293:13.

23 The evidence shows that the Bank and its tenants continually used the driveway, garbage  
24 area, all 8 parking spaces, and the garden from the time it obtained the property until the present.  
25 Tenants and their guests, vendors, and Bank employees used the driveway and parking spaces on a  
26 regular basis starting in 2011 and continuing to the present. Similarly, with the garden, the Bank  
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1 paid for a gardener to take care of the landscaping and maintain the garden,<sup>1</sup> used the controls for  
2 the sprinkler system, which were located in the garage of the El Camino property, and paid for the  
3 water, and the tenants of El Camino used the garden. The Bank spent over \$40,000 for landscaping  
4 and maintenance. Exs. F, G, H, K, L, M, M1, N, O, P, S, T, U, V, W, X; Chi at 119-163; Husary at  
5 241-274.

6 On July 31, 2017, Husain closed escrow on the Willow property. Ex.1; Chi at 88:2-8. In  
7 the Real Estate Visual Inspection Disclosure, Ex. A, Husain was notified about the Burlingame  
8 parking variance and that the El Camino owner claimed a prescriptive easement on the Willow  
9 property. Husain at 63:16-67:6. Husain was also notified that the Bank claimed a prescriptive  
10 easement on the Willow property in a Hold Harmless Agreement, Ex. B, and an Indemnification  
11 and Hold Harmless Agreement, Ex. C, that he executed in connection with closing escrow on the  
12 Willow property. Husain at 67:7-80:8, 82:2-7. Husain purchased the property with this knowledge  
13 and shortly thereafter engaged an attorney to investigate and file suit to quiet title to those portions  
14 of the Willow property used by the Bank and its tenants. Husain at 33:18-26.

#### 15 **IV. STANDARD OF PROOF**

16 The parties agree that the Bank must prove a prescriptive easement by clear and convincing  
17 evidence. See *Applegate v. Ota* (1983) 146 Cal.App.3rd 702, 708; *Connolly v. Traube* (2012) 204  
18 Cal.App.4th 1154, 1162. All other burdens are by the preponderance of the evidence. Evid. Code §  
19 115; *Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 145.

20 The parties agree that this Court is sitting as a Court of equity in deciding this matter. As  
21 such, the Court may exercise its discretion to resolve the matter as long as its decision “falls within  
22 the permissible range of options set by the legal criteria.” *Hirshfield v. Schwartz* (2001) 91  
23 Cal.App.4th 749, 771 (citations omitted).

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28 <sup>1</sup> Husain testified he also paid for gardening. Husain at 47:12-48:5, 57:15-58:26.



1 **V. ANALYSIS**

2 **A. Quiet Title**

3 The elements of an action to quiet title to a prescriptive easement are as follows: (a) a  
4 description of the real property that includes both its legal description and its street address or  
5 common designation, if any; (b) proof of the facts constituting the prescriptive easement sufficient  
6 to establish the party's interest in the property; (c) the adverse claims to the title of the party against  
7 which a determination is sought; (d) the date as of which the determination is sought; and (e) the  
8 determination of the party's title against the adverse claims. See Code of Civil Procedure §761.020;  
9 see also *id.* §322-325; *Applegate, supra*, 146 Cal.App.3rd at 708.

10 For the reasons set forth herein, the Court quiets title in favor of the Bank having an easement  
11 over the driveway, garbage area, 8 parking spaces, and the garden. Consistent with their use during  
12 the prescriptive period, the Bank, the tenants, their guests, and vendors shall have the right to park  
13 vehicles in the 8 parking spaces as well as use the driveway for ingress and egress to and from the  
14 parking for the El Camino property and the garbage area. The Bank, the tenants, and their guests  
15 are also permitted to use the garden area in a manner consistent with their use of that area during  
16 the prescriptive period. Husain shall not interfere with the rights afforded the Bank and the tenants  
17 by reason of the prescriptive easement. The Bank shall not interfere with Husain's use of the Willow  
18 property. The Bank shall submit a legal description and survey illustration of the property lines and  
19 easement granted which, upon approval of the Court, shall be incorporated into the Judgment.

20 **B. Injunction**

21 For the reasons set forth herein, the Court denies Husain's request for an injunction ordering  
22 the Bank to remove all pavement, parking improvements, furniture, and personal property from the  
23 Willow property. Preliminarily, the Court finds that the Bank has an easement over the driveway,  
24 garbage area, 8 parking spaces, and garden. The Court further finds that JP Morgan placed Husain  
25 on notice of the Bank's claim that it had a prescriptive easement over the Willow property. Husain  
26 purchased the Willow property taking the risk that it was subject to the Bank's prescriptive  
27 easement.

28

1           **C.     Declaratory Relief**

2           Both parties seek declaratory relief, but as the Court stated at trial, these issues are moot  
3 since the declaratory relief requests are subsumed within the other causes of action. The parties did  
4 not argue otherwise. Where a substantive cause of action has been alleged, a declaratory relief  
5 action, should not be used for determination of identical issues subsumed within the first. *Hood v.*  
6 *Superior Court* (1995) 33 Cal.App.4th 319, 324.

7           **D.     Affirmative Defenses**

8           Both the Bank to the complaint and Husain to the cross-complaint assert several affirmative  
9 defenses. Neither party argued any of their affirmative defenses in their trial brief or closing  
10 argument. Therefore, the Court will not address any of the affirmative defenses.

11          **E.     Easements**

12          An easement, as applicable to this case, is the right of one to use the property of another. In  
13 this case, it would be the Bank as the owner of El Camino and its tenants having the right to use  
14 portions of the Willow property. An easement can be express, implied, by necessity, or prescriptive.

15               **1.     Express Easement**

16          Here, it is undisputed that there is no express easement. In other words, no easement was  
17 transferred by any written document when there was a property transfer.

18               **2.     Prescriptive Easement**

19          Whether a prescriptive easement exists is a question of fact to be decided “after an  
20 examination of all the surrounding circumstances, including the relation of the parties, their conduct,  
21 the relative location of the properties, and other factors.” 6 Miller & Starr, *California Real Estate*  
22 § 15:32 (4th ed. 2019) (“Miller & Starr”). The elements of proof for a prescriptive easement are  
23 using the property in an open, notorious, and clearly visible manner to the owner of the burdened  
24 land and hostile and adverse to the owner for at least five years. 6 Miller & Starr § 15.29. Code of  
25 Civil Procedure §§ 318, 321; *Lawrence v. Malouf* (1967) 256 Cal.App.2d 600, 603; see also *Warsaw*  
26 *v. Chicago Metallic Ceilings, Inc.* (1984) 35 Cal.App.3rd 564, 570. There can be no prescriptive  
27 easement when the properties are under common ownership. *Woo v. Martz* (1952) 119 Cal.App.2d  
28 559, 563. “The possession of the tenant is the possession of the landlord so that the tenant’s

1 possession is sufficient to establish a prescriptive title in favor of the landlord.” Miller & Starr at §  
2 15:35. There must be notice to the subservient owner, the type of notice is what is in dispute in this  
3 case.

4 The fact that a user claims a right to use the property adversely to the rights of the  
5 owner of the servient tenement must be communicated to the property owner, or the  
6 use of a claimed easement must be so obviously exercised as to constitute implied  
7 notice of the adverse claim. The owner must have notice that unless some action is  
8 taken to prevent the use it may ripen into a prescriptive easement. The notice may  
9 be *actual*, as when the use is seen by the owner of the servient tenement, or  
10 *constructive*, as when the use of the property is open and notorious, or *imputed*, as  
11 when the agent of the owner of the servient tenement has knowledge of the use. In  
12 certain cases, the doctrine of equitable estoppel may apply as a defense against the  
13 party seeking a prescriptive easement.

14 Miller & Starr §15:35 (emphasis in original).

15 Husain claims that once permission has been granted to use a property, that permission  
16 continues until notice is given that the use is now adverse. Therefore, according to Husain, the Bank  
17 needed to give express notice, *i.e.*, written or oral notice, to the owner of the Willow property that  
18 it and its tenants were using the Willow property without permission. As conceded by the Bank, it  
19 did not give express notice more than five years ago. Ex. HH; Chi at 130:24-134:13, 197:10-198:10.  
20 Husain relies primarily on *Madden v. Alpha Hardware and Supply Co.* (1954) 128 Cal.App.2d 72,  
21 75; *Southern Pacific Co. v. City and County of San Francisco* (1964) 62 Cal.2d 50, 56; *Brandon v.*  
22 *Umpqua Lumber & Timber Co.* (1914) 26 Cal.App. 96, 98.

23 On the other hand, the Bank claims that once there was not a common ownership of the two  
24 properties, the Bank’s adverse and hostile use of the property is sufficient to provide notice and the  
25 prescriptive easement period begins to run. If the Bank is correct, then it used the Willow property  
26 for five years (2011-2016) and the five year requirement is met. The Bank primarily relies on  
27 *Applegate v. Ota* (1983) 146 Cal.App.3d 702; *Woo v. Matz* (1992) 110 Cal.App.2d 559 and  
28 *Richardson v. Franc* (2015) 233 Cal.App.4th 744.

None of the cases are exactly on point although all the cases and the parties’ argument are  
helpful to the analysis.

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**(a) Husain’s Cases**

In *Madden*, a property owner, Johnson, gave another property owner, Hawkins, permission to operate a gas station on his property. Hawkins and his successors continued to operate the gas station until plaintiff, a successor to Johnson, filed suit. Neither the plaintiff nor the owner between Johnson and plaintiff, asked about ownership claims and they thought that the gas station’s operation was by permission. The Court of Appeal affirmed a judgment in favor of plaintiff based, *inter alia*, that once there is use by permission, the permissive use continues until there has been a disclaimer by the user of the property of an assertion of an adverse title with notice to the actual owner. Husain cites *Southern Pacific* and *Brandon* for the same proposition. Husain characterizes *Southern Pacific* as requiring the user to “renounce”; *Brandon* requiring the user to “repudiate” and bring the repudiation to the attention of the owner; and *Madden* to require the user to expressly “disclaim” the permission. As the Bank points out, there was never any common ownership of the two properties in the cases cited by Husain.

**(b) The Bank’s Cases**

The Bank relies on *Woo* for the proposition that there is no “permissive use” while two adjoining pieces of property are under common ownership. In *Woo*, the Court of Appeal held that a neighbor established adverse and hostile use of a ditch against a landowner during the term of a lease, even though the ditch had been used by the neighbor with the tenant’s express consent; the tenant’s consent could not provide permission, only the landlord could. *Woo*, 110 Cal.App.2d at 560, 562. The case does not address the issue of what happens after the common ownership.

The Bank cites *Applegate* for the proposition that once the person claiming the prescriptive easement shows continuous use over a long period of time, the burden of proof shifts to the owner to show that the use is permissive rather than hostile. *Applegate*, 146 Cal.App.3rd at 709.

The Bank cites *Richardson* for the proposition that the conveyance of a property burdened with a license revokes the license. *Richardson*, 233 Cal.App.4th at 751, quoting Miller & Starr at § 15.2. In *Richardson*, the defendants had an easement in their neighbors’, plaintiffs’, land to access their property. Defendants, as had their predecessors, spent a great deal of money in landscaping and creating an irrigation system on the easement and keeping it maintained. After plaintiffs

1 purchased the property, they allowed the use to continue for six years and then cut the irrigation  
2 lines. The Court of Appeal affirmed the trial court's grant of an irrevocable license based upon  
3 equitable grounds. *Id* at 748.

4 (c) Analysis

5 The Court finds based upon the clear and convincing evidence in this case that the Bank has  
6 a prescriptive easement over the driveway, the 8 parking spaces, the garbage area and the garden.

7 Based upon the law and equity and after weighing all the evidence presented, the Court finds  
8 that the Bank did not have to provide actual notice, but that constructive notice based upon its use  
9 of the property put the owner of the Willow property, JP Morgan, on notice for the 5 year period  
10 from 2011-2016, was sufficient. The Court bases this conclusion on the following analysis.

11 The case law supports this interpretation. Husain relies on *Madden*, 128 Cal.App.2d 72, 75  
12 for the proposition that actual notice must be provided. But *Madden* never uses the terminology  
13 actual notice, but only says notice. The portion of *Madden* relied upon by Hussain cites *Oglesby v.*  
14 *Hollister* (1888) 76 Cal. 136, a cotenant case. *Madden*, 128 Cal.App.2d at 75. *Oglesby* states that  
15 the cotenants' adverse use can be inferred by hostile acts: "Where a possession commences with  
16 the consent of the owner, which is the presumption when one tenant in common is in sole possession,  
17 there can be no disseisin or adverse possession until there has been a disclaimer by the assertion of  
18 an adverse title, and notice thereof to the owner, either direct or to be **inferred** from notorious acts."  
19 *Oglesby*, 76 Cal. at 141 (emphasis added). Further, the *Oglesby* court puts the burden on the  
20 subservient co-tenant to be attentive to his/her rights. *Id.* at 142 ("if possession has been  
21 accompanied by acts indicating an adverse claim of title of so notorious a character as to satisfy a  
22 jury that a person, ordinarily attentive to his interests, in the position of the co-tenant, would have  
23 notice of the adverse claim, a finding of adverse possession will be sustained. While the exclusive  
24 and uninterrupted possession and reception of the profits for a long period may not be sufficient  
25 evidence of adverse holding, it is some evidence, because it accords with ordinary experience that  
26 men do not sleep on their rights, and property owners usually manifest some regard for their property  
27 rights."). The Supreme Court concluded that: "Taking the evidence as a whole, we cannot say that  
28 the court below was not justified in deciding that the acts and conduct of Oglesby and his successors

1 with respect to the property were of so open and notorious a character as that their co-tenants should  
2 be held to have had notice that he and his successors were in possession, claiming the entire title.”  
3 *Id.* at 143. If a cotenant can obtain a prescriptive easement without providing actual notice, it follows  
4 that a new owner of the property may likewise use imputed notice, through adverse and hostile use,  
5 to establish a prescriptive easement. The obligation to act or refrain from acting, as stated by the  
6 Supreme Court in *Oglesby*, was on JP Morgan to have taken action within the five year period when  
7 it was on constructive notice of use adverse and hostile to its ownership of the property.

8 Further, Miller & Starr agree with this conclusion. Constructive knowledge is sufficient to  
9 create a prescriptive easement by mistake or when a use commenced with permission and then  
10 changed to adversity. Miller & Starr at § 15:35. If a person who uses property by mistake or with  
11 use that starts with permission may obtain a prescriptive easement, it follows that the burden to stop  
12 an adverse use is on the owner of the servient estate even if the property was once under common  
13 ownership. Once a new owner obtains the property, that owner must decide whether it will allow  
14 someone new to use its property. There is no justification in law or equity to carve out an exception  
15 to the general rule to require actual and not constructive notice for property that was once under  
16 common ownership.

17 **(i) Driveway**

18 The Court finds that the Bank has the right to use the driveway. The evidence demonstrated  
19 that there is no way for the tenants of the El Camino apartments to enter and exit the property’s  
20 garage without the use of the driveway. *See e.g.* Exs. 5, 7, F, G, H; Husain at 41:10-44:1; Chi at  
21 113:21-114:8; Husary at 242:19-243:7. The evidence also demonstrated that the tenants of the El  
22 Camino apartments have used the driveway to enter and exit the garage for the period 2011-2016  
23 (and continuing to the present day) and that such use is substantial and constant. Chi at 114:9-  
24 118:16; Husary at 236:2-241:16. Further, the evidence shows that the tenants were using the  
25 driveway before the Bank purchased the property. The Court finds by clear and convincing evidence  
26 that this use was hostile and adverse to JP Morgan’s ownership rights in the Willow property and  
27 that JP Morgan was put on notice of this use. No matter the legal label for this use, whether it be an  
28 easement by necessity, implication, or prescriptive easement, the Court finds that it would be

1 inequitable to stop the Bank and its tenants and vendors to stop using the driveway. Husain argues  
2 that the Court must delineate the exact scope of the use of the driveway. Based upon the Court's  
3 visit to the site, the testimony and exhibits, the Court finds that the entire driveway, as it now exists,  
4 is part of the easement. The driveway is narrow and the testimony showed that large vehicles,  
5 including garbage trucks use the driveway. Exs. 7, F, G, H; Husary at 237:21-238:15. Therefore,  
6 the entire driveway is necessary. Husain did not provide any evidence to the contrary.

7 **(ii) The Parking Spaces**

8 The Court finds that, by operation of law, the Burlingame variance for the four parking  
9 spaces was void in 1967, three years after it was granted. Therefore, the Court considers the facts  
10 for all 8 parking spaces. The undisputed evidence demonstrated that the Bank, its tenants, vendors,  
11 and guests used the parking spaces on a daily basis for the entire 5 year period of 2011-2016. Exs.  
12 5, 7, K, L, M, N, O; Chi at 119:3-130:4, 134:14-135:7, 138:9-26, 170:14-18; Husary at 241:17-  
13 253:18. The Court finds by clear and convincing evidence that this use was hostile and adverse to  
14 the ownership rights of JP Morgan, the Willow property owner, and that JP Morgan was put on  
15 notice of this use. Husain did not introduce any evidence or make any argument about how he used  
16 the spaces or wanted to use the spaces.

17 **(iii) Garbage Area**

18 The Court finds that the Bank's tenants used the garbage area on a daily basis for trash and  
19 recycling and that the garbage trucks came onto the Willow property to collect the tenant's trash  
20 and recyclables two times a week for the entire 5 year period. Exs. 7, O, P; Chi at 139:1-142:3;  
21 Husary at 255:17-258:11. The Court finds by clear and convincing evidence that this use was hostile  
22 and adverse to the ownership rights of the JP Morgan and it was put on notice of this use.

23 **(iv) Garden**

24 At trial, there was no dispute over the boundaries of the garden, or evidence or arguments  
25 by Husain regarding his use of the garden. At trial, Husain only attempted to minimize the tenant's  
26 use of the garden, but Husary, who has been managing the El Camino property since 2011, testified  
27 that she and her children used the garden regularly as did the other tenants. Ex. X; Husary at 267:3-  
28 17, 269:12-270:8. Among the recreational uses being made of the garden are relaxing, barbecuing,

1 picnicking, playing and other leisure activities. The Tenants also enjoy the roses, fruit trees and  
2 other plants in the garden. Transcript 261:16-272:7.

3 Further, the Bank paid for extensive landscaping, gardening service, and water for the  
4 garden. Ex. D; Chi at 144:10-23, 147:8-148:1, 151:22-163:13, 215:3-216:12; Husary at 263:15-21,  
5 266:4-10, 271:5-274:25. Significantly, the controls for the irrigation system were in the  
6 underground garage of the apartment. Chi at 152:18-153:2; Husary at 265:22-266:3, 267:25-268:4.  
7 JP Morgan did not have the means to use the sprinklers to water its own property. The Court finds  
8 by clear and convincing evidence that this use was hostile and adverse to the ownership rights of JP  
9 Morgan and that JP Morgan was put on notice of this use.

10 **(v) Conclusion**

11 The Court concludes based on both law and equity and the totality of the evidence by clear  
12 and convincing evidence, that any property owners attentive to their affairs would have noticed the  
13 adverse uses of their property on a daily basis for five years by the Bank and its tenants. Chi testified  
14 that JP Morgan never questioned the Bank's or its tenants' uses of the property at any time during  
15 the five (5) year period from 2011-2016. Chi at 103:24-107:1, 127:24-130:4, 140:16-25. Therefore,  
16 the Court finds that the Bank has a non-exclusive prescriptive easement over all the identified areas.

17 While it may seem unfair for Husain to be subjected to an easement which was obtained  
18 before he purchased the property, JP Morgan put him on notice, including obtaining a hold harmless  
19 agreement, and therefore he was on notice of the claim. Exs. A, B, C: Husain at 63:16-80:8. Husain  
20 also testified that he knew that he was taking a risk in purchasing the property that it was subject to  
21 an easement. Husain at 82:2-83:12.

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**3. Easement by Implication**

Since the Bank does not seek an easement by implication and Husain objects to the form of the Court's analysis of the easement by implication in the Proposed Statement of Decision, the Court will not analyze whether the Bank has an easement by implication.

**IT IS SO ORDERED.**

Dated: October 22, 2019



NANCY L. FINEMAN  
Judge of the Superior Court of California  
San Mateo County

# **EXHIBIT B**

# EXHIBIT B

## EASEMENT AREA AT 1507 WILLOW AVENUE

APN: 028-141-270

### EASEMENT AREA LEGAL DESCRIPTION

A PORTION OF LOTS 21, 23 AND 24 OF BLOCK 1 OF THE BURLINGAME PARK SUBDIVISION NO. 4 AS RECORDED IN BOOK D, PAGE 43 OF SAN MATEO COUNTY RECORDS, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHERLY MOST CORNER OF SAID LOT 21, ALSO BEING ON THE SOUTHEASTERLY RIGHT-OF-WAY LINE OF WILLOW AVENUE;

THENCE SOUTH 51°11'21" EAST A DISTANCE OF 190.58 FEET ALONG THE NORTHEASTERLY LINE OF SAID LOT 21 AND CONTINUING THROUGH LOT 23 AND A PORTION OF LOT 24;

THENCE SOUTH 35°48'35" WEST A DISTANCE OF 101.36 FEET TO THE SOUTHWESTERLY LINE OF SAID LOT 24;

THENCE NORTH 50°23'46" WEST A DISTANCE OF 75.25 FEET ALONG THE SOUTHWESTERLY LINES OF SAID LOTS 24 AND 23 TO THE WESTERLY MOST CORNER OF SAID LOT 23;

THENCE NORTH 35°50'17" EAST A DISTANCE OF 50.00 FEET ALONG THE NORTHWESTERLY LINE OF SAID LOT 23 TO THE SOUTHERLY MOST CORNER OF SAID LOT 21;

THENCE NORTH 50°41'58" WEST A DISTANCE OF 10.26 FEET ALONG THE SOUTHWESTERLY LINE OF SAID LOT 21;

THENCE DEPARTING SAID SOUTHWESTERLY LINE, NORTH 35°55'46" EAST A DISTANCE OF 26.71 FEET;

THENCE NORTH 51°23'59" WEST A DISTANCE OF 20.41 FEET;

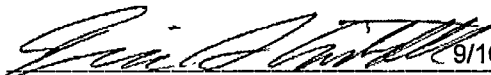
THENCE NORTH 39°27'18" EAST A DISTANCE OF 19.98 FEET;

THENCE NORTH 50°39'15" WEST A DISTANCE OF 87.20 FEET TO THE SAID SOUTHEASTERLY RIGHT-OF-WAY OF WILLOW AVENUE AND TO A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 230.00 FEET AND A RADIAL BEARING OF SOUTH 32°09'00" EAST;

THENCE NORTHEASTERLY ALONG SAID CURVE AN ARC DISTANCE OF 2.92 FEET TO THE NORTHEASTERLY LINE OF SAID LOT 21 AND THE POINT OF BEGINNING.

SAID EASEMENT CONTAINS 8,820 SQUARE FEET, PLUS OR MINUS.

PREPARED BY ME OR UNDER MY DIRECTION,

  
 ERIC S. CANTRELL, P.L.S. #7163      DATE 9/16/2019



JOB NUMBER: 410509	
SCALE: N/A	
DRAWN BY: KFQ	
APPROVED BY: ESC	
DATE	REVISION HISTORY
09/08/19	PROPOSED EASEMENT
09/12/19	CLIENT COMMENTS

COORDINATED BY:



## AEI Consultants

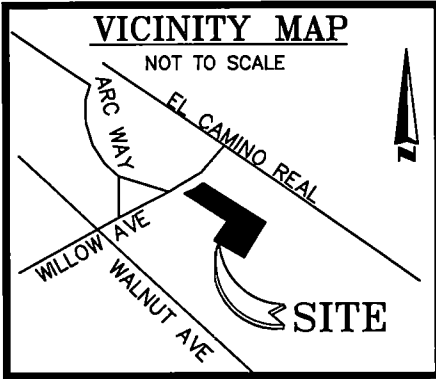
TELEPHONE: 925.746.6000  
 EMAIL: SURVEYS@AEICONSULTANTS.COM

# **EXHIBIT C**

# EXHIBIT C

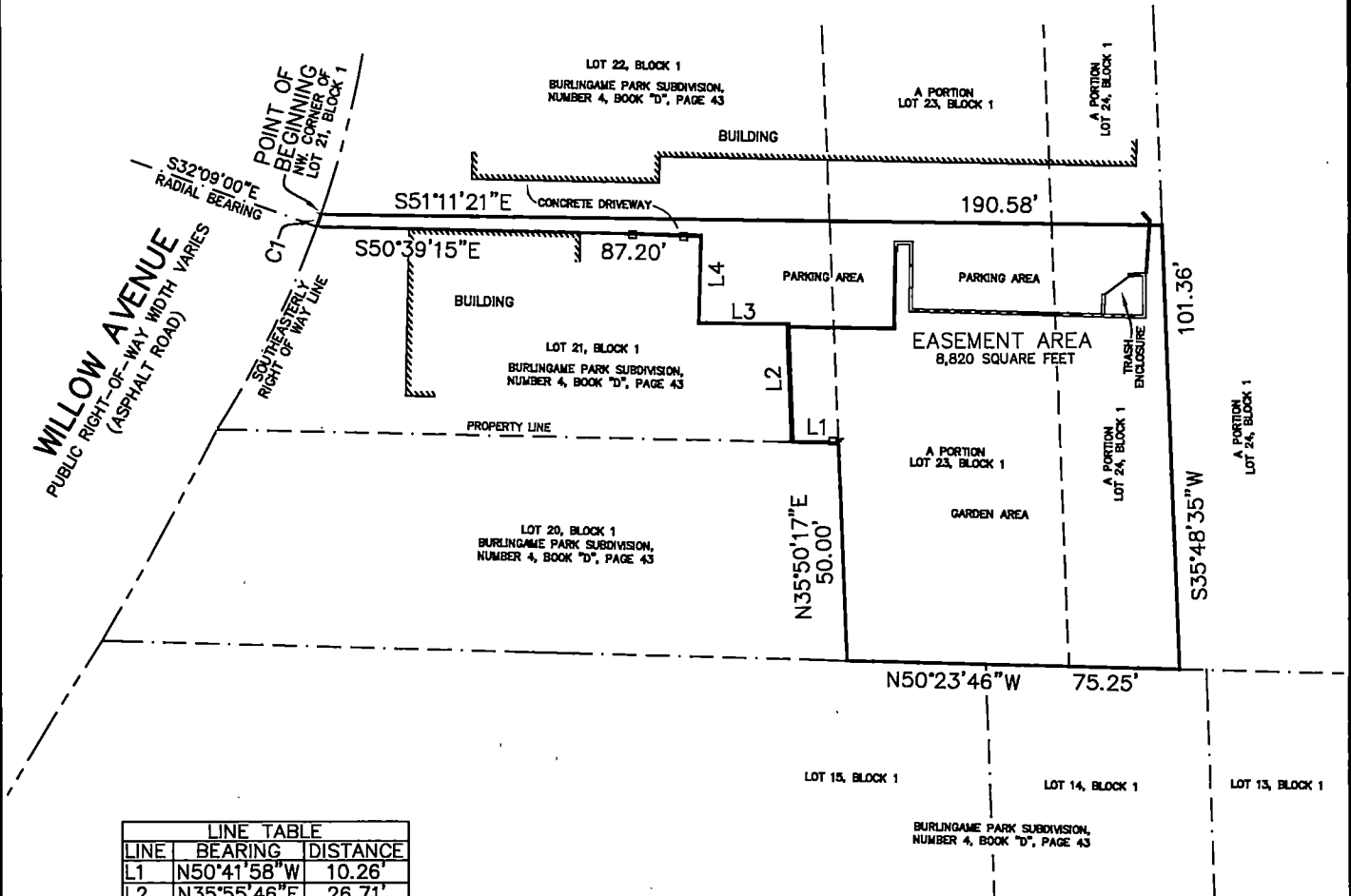
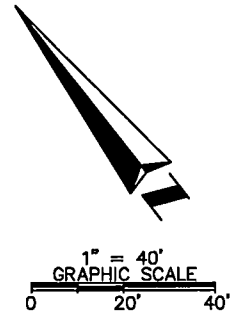
## EASEMENT AREA AT 1507 WILLOW AVENUE

APN: 028-141-270



### LEGEND

- — — — — CENTERLINE
- — — — — RIGHT OF WAY
- — — — — EASEMENT AREA
- — — — — PROPERTY LINE
- — — — — ADJOINING PROPERTY LINE



LINE TABLE		
LINE	BEARING	DISTANCE
L1	N50°41'58"W	10.26'
L2	N35°55'46"E	26.71'
L3	N51°23'59"W	20.41'
L4	N39°27'18"E	19.98'

CURVE TABLE					
CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	230.00'	2.92'	2.92'	N57°29'12"E	0°43'34"

JOB NUMBER: 410509	
SCALE: 1" = 40'	
DRAWN BY: KFK	
APPROVED BY: ESC	
DATE	REVISION HISTORY
09/06/19	PROPOSED EASEMENT
09/12/19	CLIENT COMMENTS

COORDINATED BY:



## AEI Consultants

TELEPHONE: 925.746.6000  
EMAIL: SURVEYS@AEICONSULTANTS.COM



*Eric S. Cantrell*  
ERIC S. CANTRELL, CA PLS NO. 7163  
FOR THE FIRM OF AEI CONSULTANTS 9/16/2019

# **EXHIBIT D**

**Recording requested by**  
Adriana C. Cervantes  
**and when recorded, mail to:**  
Adriana C. Cervantes  
400 Capitol Mall  
Twenty-Second Floor  
Sacramento, CA 95814

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**PRESCRIPTIVE EASEMENT DEED**

Transfer tax-0- No Consideration No Transfer

This Deed is recorded to provide notice of a judgment quieting title to a prescriptive easement located at 1507 Willow Avenue, Burlingame, San Mateo County, California (“the servient tenement”—APN 028-141-270), which easement consists of an area used for parking, a driveway for ingress and egress, a garbage area and a garden. The judgment was entered on or about \_\_\_\_ in San Mateo County Superior Court Case No. 17Civ05386, entitled *Husain v. California Pacific Bank*. In that judgment, title was quieted to a prescriptive easement in favor of California Pacific Bank and against Syed Husain as the current owner of the servient tenement. California Pacific Bank is the current owner of 789 El Camino Real, Burlingame, San Mateo County, California (“the dominant tenement” — APN 028-141-280). A survey map of the easement is attached as Exhibit A, and made a part hereof. The legal description of the easement is attached hereto as Exhibit B and made a part hereof. A true and correct copy of the judgment is attached hereto as Exhibit C and made a part hereof. This deed and the attached documents are recorded in the San Mateo County Recorder’s Office pursuant to the Court’s judgment.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Adriana C. Cervantes  
Attorney for California Pacific Bank