

M. Morgan
FILED

SEP 12 2017

Superior Court of the
State of California
County of Nevada

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10 FRIENDS OF BANNER MOUNTAIN

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF NEVADA

13 FRIENDS OF BANNER MOUNTAIN,

14 *Plaintiff*

15 v.

16 JONATHAN M. DAVIS, an individual;
17 JACY C. DAVIS, an individual; and DOES
18 1-20, inclusive

19 *Defendants*

Case No. **CU17-082504**

VERIFIED COMPLAINT FOR QUIET
TITLE, DECLARATORY RELIEF AND
PERMANENT INJUNCTION
[C.C.P. §§ 761.020, 1060]

20 Plaintiff FRIENDS OF BANNER MOUNTAIN, alleges as follows:

21 **FIRST CAUSE OF ACTION**

22 **(Quiet Title/Interference with Easement)**

23 1. Plaintiff FRIENDS OF BANNER MOUNTAIN is a California corporation and
24 has its principal office in the County of Nevada in the State of California.

25 2. Plaintiff brings this suit on behalf of its members, and on behalf of the general
26 public from whom they are drawn. The membership asserts the nonexclusive rights and
27 interests acquired by the general public in the Nevada County trails described below prior to the
28 effective date of Civil Code section 1009 in March 1972.

1 3. Defendants JONATHAN M. DAVIS and JACY C. DAVIS (“Defendants”) are
2 the owners of real property (“Davis Property”) located at 14623 Gracie Road, Nevada City,
3 California, 95959 situated in Nevada County, California, APN: 37-280-51-000, as described in
4 Exhibit “A” attached, which Exhibit is incorporated herein by this reference.

5 4. Plaintiff is ignorant of the true names and capacities of Defendants sued herein as
6 DOES 1 – 20, and therefore sues these Defendants by such fictitious names. Plaintiff will
7 amend this complaint to allege their true names and capacities when ascertained. Plaintiff is
8 informed and believes and thereon alleges that each of the fictitiously named Defendants claims
9 some right, title, estate, lien, or interest in the above-described property that is averse to the
10 public’s rights and interests asserted by Plaintiffs, or that is or may be a cloud on said rights and
11 interests.

12 5. Plaintiff brings this action to quiet the title of the public to its rights against the
13 Defendants, and in the Defendants’ property, to wit: The Cascade Canal Trail is a water-
14 carrying ditch, flowing in approximately a southwesterly direction, that traverses the southern
15 portion of the Davis Property, together with a berm trail, approximately five to eight feet wide,
16 that parallels the ditch on its westerly side. Plaintiffs are informed and believe that NEVADA
17 IRRIGATION DISTRICT (NID) owns an easement for the Cascade Canal Ditch and Trail
18 across the Davis Property, which includes certain rights of access for maintenance and other
19 purposes, and which as noted above are not at issue here. Plaintiff is informed and believes that
20 the Cascade Canal Ditch was constructed as part of a network of ditches and canals, some
21 originating during the heyday of mining activities in Nevada County during the latter part of the
22 nineteenth century, that carries water to agricultural and residential users in unincorporated
23 areas of the County. Trails along the ditch berms have formed an integral part of the network
24 since its construction, and were used from the outset by NID and its predecessors for
25 maintenance of the network, and by the general public for passage from one area of the county
26 to another.

27 6. Simultaneously with these uses, a third use of the trails gradually evolved: for
28 recreational use by the public. A wide and diverse range of the public has walked, run, ridden

1 bicycles along these ditch trails, has used them to fish in the ditches themselves, and has used
2 them as an alternative to other public rights of way for varied purposes. Said uses by the public
3 have specifically included the approximately eight-foot wide trail traversing the Davis Property
4 alongside the Cascade Canal Ditch, and have occurred substantially, continuously, openly and
5 under claim of public right for the period between at least 1960 (or earlier) and 1971.

6 7. In doing so, the public acquired by prescriptive use pursuant to section 1007 of
7 the Civil Code, and continues to enjoy thereafter pursuant to said section, a non-exclusive
8 easement to use the trail alongside the Cascade Canal Ditch (and specifically the portion thereof
9 that transverses the Davis Property) for public and recreational purposes, including walking,
10 running, fishing, and riding bicycles. Since at least 1960, members of the general public have
11 used the property as they would have used public land, under the good-faith belief that the
12 public had a right to such use. Plaintiff is informed and believes that said use was done with the
13 full knowledge of NID and the predecessors in interest to the Davis Defendants, without asking
14 or receiving permission from anyone, and (until very recently, as alleged below) without
15 objections being made by anyone.

16 Wherefore, Plaintiff prays for judgment as hereinafter set forth.

17 **SECOND CAUSE OF ACTION**

18 **(Declaratory Relief)**

19 8. Plaintiff refers to and incorporates herein paragraphs 1 through 7 of the above
20 allegations.

21 9. An actual controversy has arisen and now exists between Plaintiff and the Davis
22 Defendants concerning their respective rights and duties in that Plaintiff contends the public is
23 the owner of the non-exclusive trail easement referenced above traversing the Davis
24 Defendants' Property, and the Davis Defendants deny that the public is the owner of any
25 easement across the Davis Property.

26 10. A judicial declaration is necessary and appropriate at this time in order that
27 Plaintiff and its members may ascertain their rights and duties as members of the public,
28 because the Davis Defendants have erected two barricades/gates across the trail that interfere

1 with the public's use of their easement.

2 Wherefore, Plaintiff prays for judgment as hereinafter set forth.

3 **THIRD CAUSE OF ACTION**

4 **(Injunctive Relief)**

5 11. Plaintiff refers to and incorporates herein paragraphs 1 through 10 of the above
6 allegations.

7 12. Beginning earlier this year and continuing to the present time, the Davis
8 Defendants unreasonably obstructed the public's easement by erecting two gates across the trail
9 that hinder the public's access to their easement.

10 13. On or about approximately May 1, 2017, demand was made upon the Davis
11 Defendants to remove the obstruction, but they have failed and refused to do so.

12 14. Unless and until enjoined and restrained by order of this court, the Davis
13 Defendants' obstruction of the public's right to use its easement will cause great and irreparable
14 injury to the public in that the public, including the individual plaintiff herein, will be hindered
15 or prevented in their continuous public and recreational use of the trail along the Cascade Canal
16 Ditch.

17 15. The Davis Defendants can acquire no prescriptive rights against the public's use
18 by reason of civil Code section 1007, and so cannot claim any vested right or interest in their
19 obstruction, or injury flowing from being required to remove it. Moreover, by accepting the
20 prior dedication to public use of the trail that was made by their predecessors in interest, the
21 Davis Defendants would enjoy the protections against liability for use by the public which are
22 afforded by Civil Code sections 846 and 846.1.

23 16. Neither Plaintiff nor the public at large has any adequate remedy at law for the
24 injuries being suffered as a result of Defendants' obstruction of the public's easement, in that
25 Plaintiff's members or other members of the public would be forced to institute a multiplicity of
26 suits every time the Davis or other Defendants decided to block Plaintiff's members' and/or the
27 public's use of their non-exclusive easement.

28 Wherefore, Plaintiff prays as follows:

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1 ON THE FIRST CAUSE OF ACTION:

2 1. For a judgment that the public is the owner of a non-exclusive easement, for
3 public and recreational purposes, over the trail alongside the Cascade Canal Ditch Trail across
4 the Defendants' property, and that no Defendant has any interest adverse to the public's interest.

5 ON THE SECOND CAUSE OF ACTION:

6 2. For a declaration that the public is the owner of a non-exclusive easement, for
7 public and recreational purposes, over the trail alongside the Cascade Canal Ditch Trail,
8 traversing the Davis Property in the location as specified above, and that pursuant to Civil Code
9 section 1007, no title or interest adverse to said easement may be gained by attempting to block
10 or otherwise obstruct its use;

11 ON THE THIRD CAUSE OF ACTION:

12 3. For a permanent injunction, enjoining the Davis Defendants, and their agents,
13 servants and employees, and all persons acting under, in concert with, or for them, from
14 interfering with or obstructing, or from assisting or enabling others' interference with and
15 obstruction of, the public's use of the said easement, and mandating them to dismantle and
16 remove the gates blocking the easement; and

17 FOR ALL CAUSES OF ACTION:

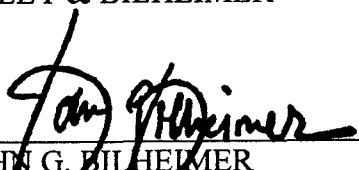
18 4. For costs of suit herein incurred;

19 5. For attorneys' fees pursuant to section 1021.5 of the California Code of Civil
20 Procedure; and

21 6. For such other relief as the court may deem fitting and just.

22
23 Dated: September 11, 2017

HALEY & BILHEIMER

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25 
26 _____
JOHN G. BILHEIMER
Attorneys for Plaintiff
27 FRIENDS OF THE TRAILS OF
28 NEVADA COUNTY

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VERIFICATION

I, Susan Luhman, am the Secretary of Friends of Banner Mountain, the plaintiff in the above-captioned matter. I am familiar with the contents of the foregoing Complaint. The information supplied therein is based on my own personal knowledge and/or has been supplied by my attorneys or other agents and/or compiled from available documents and is therefore provided as required by law. The information contained in the foregoing document is true, except as to the matters which are based on information and belief and, as to those matters, I am informed and believe that they are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that I have executed this verification this 11th day of September 2017, at Nevada City, California.

Susan Luhman
SUSAN LUHMAN

Exhibit A

APN: 37-280-51

PARCEL 1, AS SHOWN ON PARCEL MAP 80-16 RECORDED AUGUST 20, 1981, IN
BOOK 15 OF PARCEL MAPS, AT 106, IN THE OFFICE OF THE NEVADA COUNTY
RECORDER, STATE OF CALIFORNIA