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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 Martins Beach 1, LLC and Martins Beach
13 2, LLC,

14 Plaintiffs,

15 v.

16 Effie Turnbull-Sanders, Dayna Bochco,
Mary Luevano, Wendy Mitchell, Mary K.
17 Shallenberger, Mark Vargas, Martha
McClure, Steve Kinsey, Carole Groom,
18 Erik Howell, Roberto Uranga, Gregory
Cox, John Laird, Janelle Beland, Thomas
19 Gibson, Betty T. Yee, Anne Baker, Cindy
Aronberg, Brian P. Kelly, Bruce April,
20 Belinda Faustinos, Trent Orr, Steve Kram,
Randy Pestor, Nidia Garcia-Erceg, Sarah
21 Glade Gurney, Maricela Morales, Olga
Diaz, each individually and in their official
22 capacity as the California Coastal
Commission; Lt. Gov. Gavin Newsom,
23 Betty T. Yee, Michael Cohen, each
individually and in their official capacities
24 as the State Lands Commission; Steve
Monowitz, individually and in his official
25 capacity as Director of the San Mateo
County Planning and Building Department,
26 County of San Mateo, and DOES 1 through
50, inclusive,

27 Defendants.
28

CASE NO. 16-5590

**COMPLAINT OF MARTINS BEACH 1,
LLC AND MARTINS BEACH 2, LLC**

JURY DEMANDED

1 Plaintiffs Martins Beach 1, LLC and Martins Beach 2, LLC hereby allege as follows:

2 **INTRODUCTION**

3 This case involves a concerted effort by state and local officials to single out, coerce, and
 4 harass one coastal property and its owner for refusing to cede its private property rights. For
 5 decades, Martins Beach was privately owned by a family that routinely chose whether, when, and
 6 how to allow the public to access its private property. And for decades, neither San Mateo
 7 County nor the California Coastal Commission (CCC) interfered in any way with the choices that
 8 the former owners of the property made on that score. That all changed, however, when the
 9 property changed hands in 2008. Almost immediately after Plaintiffs purchased the property, the
 10 County and the CCC made it their mission to try force the new owners to allow the public to
 11 access its private property—and on terms of the County’s and the CCC’s choosing. Since then,
 12 the County and the CCC have engaged in a persistent practice of singling out Plaintiffs alone for
 13 uniquely disfavored treatment, whether it be by demanding permits for actions that have never
 14 before required them, by refusing to grant permits for actions necessary to *preserve* the coastal
 15 property in question, by refusing to enforce trespass laws on the property, or by using the threat of
 16 condemnation to try to coerce the owners into surrendering their fundamental right to exclude the
 17 public from their private property. The campaign to strong-arm Plaintiffs only intensified with
 18 the adoption of SB 968, which targeted Plaintiffs for even greater disfavored treatment by
 19 granting the CCC an absolute power to impose a public right of way over Plaintiffs’ property.
 20 And no other similarly situated property owner has been subjected to anything close to the same
 21 treatment. This irrational treatment of Plaintiffs as a uniquely disfavored “class of one” cannot be
 22 reconciled with the Equal Protection Clause or the basic requirements of due process. Simply
 23 put, the Constitution does not allow the government to use its regulatory power to force one
 24 property owner alone to forfeit property rights that the Constitution guarantees.

25 **THE PARTIES**

26 1. Plaintiffs Martins Beach 1, LLC and Martins Beach 2, LLC (hereinafter collectively
 27 “Plaintiffs”) are the fee simple owners of real property located at 22325 Cabrillo Highway, more
 28

1 particularly described as APN 066-330-230 and 066-330-240 and commonly known as “Martins
2 Beach” (“Martins Beach” or the “Property”).

3 2. Plaintiffs are informed and believe, and based thereon allege, that the California Coastal
4 Commission (the “CCC”) is an independent, quasi-judicial state agency established by voter
5 initiative in 1972 (Proposition 20) and made permanent by the Legislature through the adoption
6 of the California Coastal Act of 1976. Plaintiffs are informed and believe, and based thereon
7 allege, that the Commission, in partnership with coastal cities and counties, plans and regulates
8 the use of land and water in the coastal zone. Plaintiffs are informed and believe, and based
9 thereon allege, that the implementation of the Coastal Act policies is accomplished primarily
10 through the preparation of local coastal programs (LCPs) that are required to be completed by
11 each of the cities and counties that are located in the coastal zone.

12 3. Plaintiffs are informed and believe, and based thereon allege, that Defendants
13 Effie Turnbull-Sanders, Dayna Bochco, Mary Luevano, Wendy Mitchell, Mary K. Shallenberger,
14 Mark Vargas, Martha McClure, Steve Kinsey, Carole Groom, Erik Howell, Roberto Uranga,
15 Gregory Cox, John Laird, Janelle Beland, Thomas Gibson, Betty T. Yee, Anne Baker, Cindy
16 Aronberg, Brian P. Kelly, Bruce April, Belinda Faustinos, Trent Orr, Steve Kram, Randy Pestor,
17 Nidia Garcia-Erceg, Sarah Glade Gurney, Maricela Morales, Olga Diaz, sued herein individually
18 and in their official capacities, are Commissioners of the CCC (Defendant CCC Commissioners
19 are collectively referred to herein as “CCC Defendants”). The CCC Defendants have the primary
20 responsibility for administering and implementing the provisions of the Coastal Act, and more
21 particularly, those matters within the CCC’s jurisdiction, including permit action, federal
22 consistency review, appeal, local coastal program, port master plan, public works plan, long range
23 development plan, categorical or other exclusions from coastal development permit requirements,
24 or any other quasi-judicial matter requiring CCC action, for which an application has been
25 submitted.

26 4. Plaintiffs are informed and believe, and based thereon allege, that the California State
27 Lands Commission (the “SLC”) is an independent, quasi-judicial state agency established under
28 the State Resources Agency. Plaintiffs are informed and believe, and based thereon allege, that

1 the SLC regulates, oversees and administers the State of California's tidelands and submerged
2 lands held subject to the public trust and has the power to review and/or comment on any
3 proposed local coastal programs affecting state lands. Plaintiffs are informed and believe, and
4 based thereon allege, that through the enactment of Cal. Public Resources Code § 6213.5, the
5 SLC is taking the actions set forth herein to acquire a right-of-way or easement for a public access
6 route across Plaintiffs' property.

7 5. Plaintiffs are informed and believe, and based thereon allege, that Defendants Lt. Gov.
8 Gavin Newsom, Betty T. Yee and Michael Cohen, sued herein individually and in their official
9 capacities, are Commissioners of the SLC (Defendants Lt. Gov. Gavin Newsom, Betty T. Yee,
10 and Michael Cohen are collectively referred to herein as "SLC Defendants"). The SLC
11 Defendants have primary responsibility of administering the regulations and legislation effecting
12 the tidelands and submerged lands held subject to the public trust, including protection of these
13 lands through determination and issuance of leases for use or development, resolution of
14 boundaries between public and private lands and promotion of public access to waterways and the
15 coastline. Plaintiffs are informed and believe, and based thereon allege, that the SLC Defendants
16 have primary responsibility for administering and carrying out the authority granted to the SLC
17 through the enactment of Cal. Public Resources Code § 6213.5 to acquire a right-of-way or
18 easement for a public access route across Plaintiff's property.

19 6. Plaintiffs are informed and believe, and based thereon allege, that Defendant County of
20 San Mateo (the "County") is, and at all relevant times was, a political subdivision of the State of
21 California duly organized and existing under the California Constitution and all applicable State
22 laws. Defendant County is, and at all relevant times, was, responsible for complying with all
23 applicable federal and state laws, as well as its own laws.

24 7. Plaintiffs are informed and believe, and based thereon allege, that Defendant Steve
25 Monowitz is the Director of the San Mateo County Planning and Building Department. Plaintiffs
26 are informed and believe, and based thereon allege, that San Mateo County Planning and
27 Building Department is an agency of the Defendant County, responsible for the performance of
28 services related to the physical environment for the unincorporated areas of the County as well as

1 specific Cities within the County through Joint Powers Agreements or by contract, including
 2 responsibility for, among other things: (1) the administration of the County subdivision and
 3 zoning regulations, including the evaluation and approval of the design of new development and
 4 enforcement of such codes and regulations; and (2) the preparation and updating of development
 5 regulations such as zoning and subdivision ordinances and the County General Plan, including the
 6 LCP. (Defendants Steve Monowitz and the County are referred to herein as “San Mateo County
 7 Defendants”).

8 8. The CCC Defendants, SLC Defendants, and San Mateo County Defendants are
 9 collectively referred to herein as “Defendants”.

10 JURISDICTION AND VENUE

11 9. Jurisdiction to hear Plaintiffs’ claims exists under 28 U.S.C. § 1331, under the Civil
 12 Rights Act, 42 U.S.C. § 1983, “its jurisdictional counterpart,” 28 U.S.C. § 1343(a)(3) and 28
 13 U.S.C. §§ 2201 *et seq.* This is an action for declaratory judgment and injunctive relief to redress
 14 the past deprivation and prevent the further deprivation by the Defendants, and all of them, acting
 15 under color of state law and ordinance of rights secured by the Constitution of the United States,
 16 namely, the Due Process Clause and the Equal Protection Clause of the U.S. Constitution.

17 10. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial
 18 part of the events or omissions giving rise to the claims raised in this lawsuit occurred in this
 19 judicial district and because the property that is subject of this action is situated in this district.

20 11. Assignment to the San Francisco Division of this District is proper pursuant to Local Rule
 21 3-2(c)-(d) because a substantial part of the events or omissions giving rise to the claims raised in
 22 this action occurred in San Mateo County.

23 FACTUAL BACKGROUND

24 The History and Historic Operation of the Property

25 12. Plaintiffs obtained fee simple title to the Property by two separate Grant Deeds which
 26 were recorded on July 22, 2008. Martins Beach is private property that borders the Pacific
 27 Ocean. At the time of Plaintiff’s purchase of the Property, there were approximately forty-eight
 28 (48) homes situated on the Property and accessed via a private road on the Property that leads

1 from the entrance on Highway 1 to the beach (hereinafter “Martins Beach Road”).

2 13. Plaintiff’s direct predecessors-in-interest, the Deeney family (the “Deeneys”), owned the
3 Property beginning in the early 1900s. The Deeneys used the Property for agricultural purposes.
4 The Deeneys also constructed a parking lot on the Property, opened a convenience store on the
5 beach, and operated a business of inviting members of the public to use and access the Property in
6 exchange for payment of a fee, which ranged and increased over the years from \$0.25 to \$10.00.
7 The Deeneys did not allow individuals to walk onto the Property, but rather only allowed
8 customers to drive down Martins Beach Road and park their vehicle in the designated parking
9 area upon payment of the fee. The invited public who chose to pay the fee were allowed to use
10 the parking area and the dry sand beach for recreational use and fishing.

11 14. The Deeney family first opened their business sometime in the 1920s, before the
12 enactment of the Coastal Act. Accordingly, the Deeney family did not apply for a Coastal
13 Development Permit to open their business. Further, the Deeney family did not apply for a
14 permit when they periodically increased the fee charged to the public to use and access the
15 property when the business was open, and were never told by Defendants, or any public official,
16 that a permit was required for such acts.

17 15. Beginning in or about the 1940s or 1950s, the Deeneys constructed and maintained on the
18 Property a locked gate, a fence, and “no trespassing” signs. The Deeney family did not apply
19 for a permit to maintain and operate the gate on their property, did not apply for a permit to
20 maintain “no trespassing” signs on their property, and were never told by Defendants, or any
21 public official that a permit was required for such acts.

22 16. The Deeneys locked the gate and closed the road leading to the beach any time they felt
23 like it, but it was routinely closed for private events, in the winter, and whenever an attendant was
24 unavailable to collect the fee. The Deeney family did not apply for a permit each time it closed
25 the road leading to the beach, and were never compelled by Defendants, or any public official, to
26 obtain a Coastal Development Permit to operate their business as they deemed fit.

27 17. To enforce their right to close their business and exclude visitors when they pleased, the
28 Deeney family patrolled the property, maintained a camera by the gate and two additional

1 cameras by the parking area, all of which were monitored from the store on the property. If
2 someone came down Martins Beach Road without paying, or without permission of the owner or
3 manager, the individual(s) would be confronted and told if they want to come in, they must go get
4 their car and pay the daily fee. If a patron refused to leave, the Deeney family would call the
5 Sheriff who would respond to the property and remove the trespassers. Plaintiffs are informed and
6 believe that in the time the Deeney family owned the Property, the Sheriff never refused to
7 remove an unwanted trespasser from the Property.

8 18. During the winter, the beach would routinely erode 10 to 15 feet from storms and rising
9 tides, making it unusable and unsafe and necessitating closing the Property to the invited public.
10 The Deeneys used heavy farming equipment to move approximately 1,000 yards of dirt each
11 winter in order to reconstruct the parking area. The Deeney family did not apply for a permit
12 each winter when it reconstructed the parking area, and were never told by Defendants, or any
13 public official that a permit was required. On information and belief, the Deeney family also
14 constructed a rock seawall without a Coastal Development Permit or objection from the CCC or
15 County.

16 19. By 2008, the Deeneys determined that the beach was not profitable and was in a serious
17 state of disrepair and put the Property on the market.

18 20. Plaintiffs are informed and believe, and on the basis allege, that the State of California
19 considered purchasing the Property when it was on the market but ultimately chose not to
20 purchase the Property.

21 **Plaintiffs Purchase the Property and the County and Coastal Commission Suddenly Target**
22 **Plaintiffs And Demand Public Access on Arbitrary Terms**

23 21. After Plaintiffs purchased the property, the San Mateo County Defendants and the CCC
24 Defendants began engaging in an intentional course of conduct to harass, coerce, and single out
25 Plaintiffs and frustrate their legitimate private property rights for purely personal and political
26 reasons. Such conduct is completely contrary to any laws and/or regulations, including the
27 California and United States Constitution, and well exceeds any legitimate police powers.

28 22. For instance, after purchasing the property, Plaintiffs planted a row of native cypress trees

1 on the property. Plaintiffs almost immediately received a letter from San Mateo County stating
2 that they must immediately remove the trees and obtain a permit before planting them again.
3 Plaintiffs immediately removed the trees and gave them to the neighboring property owner to the
4 North. The neighbor planted the cypress trees on its property. Plaintiffs are informed and
5 believe, and based thereon allege that unlike the County's treatment of Plaintiffs, San Mateo
6 County has not questioned, interfered with, or asked the neighboring property owner to remove
7 the trees, and has not required the neighbor to get a permit to maintain the trees on its property.

8 23. Further, after Plaintiffs purchased the Property, they continued the Deeney's practice of
9 charging a fee to people who wanted to use and access the beach by driving down Martins Beach
10 Road and parking a vehicle in the lot. Consistent with the Deeney's practice, Plaintiffs did not
11 allow individuals to walk onto the Property. Like the Deeneys, Plaintiffs closed the road leading
12 to the beach for private events, in the winter, and whenever an attendant was unavailable to
13 collect the fee. Consistent with the Deeney's practice, Plaintiffs did not apply for a permit to
14 open and close the gate, whenever they deemed it necessary to do so.

15 24. When Martins Beach Road was closed for the winter, Plaintiffs received correspondence
16 from the County entitled "Informational Warning Letter" stating that Planning Department staff
17 had observed that the gate of the driveway used to access the beach is closed and posted with a
18 "Beach Temporarily Closed" sign. The County demanded a schedule of operation and an
19 explanation of how the schedule related to the "historic patterns of public use" to evaluate
20 whether future beach closures would trigger the need for a Coastal Development Permit. On
21 information and belief, the County never sought such information from the Deeney family when
22 they engaged in the same kinds of routine, temporary closures of the Property to the public.

23 25. Plaintiffs advised the County that although Plaintiffs did not concede the County's right to
24 require Plaintiffs to maintain public access, Plaintiffs intended to voluntarily maintain the same
25 amount and type of access as its predecessors, the Deeneys.

26 26. Unsatisfied, the County issued another letter giving Plaintiff three options: (1) to
27 immediately allow public access on a year round basis with an entrance fee not to exceed two
28 dollars; (2) provide evidence documenting that the specific times, hours, terms and fees

1 associated with the public use are the same as those that were in place in 1973 when the Coastal
2 Development Permit requirements took effect; or (3) apply for a Coastal Development Permit
3 requesting authorization for any changes in the times and terms of public use that have taken
4 place since 1973 (35 years prior to Plaintiff's purchase of the Property). The County thus insisted
5 that maintaining the same public access terms that the Deeneys had maintained would not suffice.

6 27. Plaintiffs are informed and believe and thereon allege that they are being treated
7 differently than others who are similarly situated in that no other private Coastal Property owner
8 in California has been forced to obtain a Coastal Development Permit in order to limit or
9 eliminate permissive beach use and/or access, to close a private business, or to engage in the most
10 mundane acts of property ownership such as opening and closing a gate on its property.

11 28. On information and belief, the consistent policy and practice of the County and the
12 Commission has been to allow property owners to close private beaches and other businesses on
13 the coast –whether temporarily or permanently—without first obtaining government approval.
14 On information and belief, in no other instances have private property owners been harassed and
15 coerced into granting a right of public access to their private property against their will.

16 (a) Plaintiffs are informed and believe that the Red White and Blue Beach, once a
17 popular beach and campground north of Santa Cruz, closed its operations without obtaining a
18 Coastal Development Permit.

19 (b) Plaintiffs are further informed and believe that a popular beach in San Gregorio,
20 California was allowed to close its operations without obtaining a Coastal Development Permit.

21 (c) Plaintiffs are further informed and believe that the beach commonly known as
22 Sturgeon Beach, operates as they see fit. They open and close whenever they deem it necessary
23 to do so and on information and belief, have never been approached by the County Defendants or
24 the CCC Defendants to change their fees, to change their hours of operation, or to allow
25 permanent public access to their private property.

26 **Plaintiffs Sought to Exhaust Their Administrative Remedies By Requesting An**
27 **Administrative Hearing; San Mateo County and the Coastal Commission Refuse**

28 29. In hopes of putting an end to the County's and Coastal Commission's efforts to interfere

1 with their property rights, on June 16, 2009, Plaintiffs filed a lawsuit against the County of San
2 Mateo and the California Coastal Commission seeking a judicial declaration of their rights and
3 obligations with regard to the Property. (See San Mateo County Superior Court Case No.
4 CIV485116). Rather than allow the Court to resolve the issue, the County and the Coastal
5 Commission filed demurrers. The Court sustained the demurrers on the grounds that Plaintiff
6 could not seek a judicial determination until it had complied with the administrative process
7 provided by the California Coastal Act and received a final determination by either permit
8 application or administrative enforcement hearing.

9 30. Since then, Plaintiffs have consistently and repeatedly requested an administrative
10 enforcement hearing pursuant to the objective rules of the County and the Coastal Commission,
11 but the San Mateo County Defendants and the CCC Defendants have targeted Plaintiffs and
12 unfairly deprived them of administrative hearings before San Mateo County and/or the California
13 Coastal Commission, unless and until Plaintiffs agree to allow unfettered public access to their
14 private property. The San Mateo County Defendants and the CCC Defendants have intentionally
15 refused to pursue an enforcement action, or allow Plaintiffs to reach a hearing, knowing that
16 without doing so, Plaintiff cannot be afforded due process, cannot obtain a final determination on
17 the issue, and cannot affirmatively seek judicial relief.

18 **San Mateo County Superior Court Found There is No Right of Public Access on the**
19 **Property**

20 31. As On October 21, 2012, five men trespassed on the Property through the closed and
21 locked gate to surf at Martins Beach, were asked to leave, and refused. The property manager
22 contacted the San Mateo County Sherriff's Office to report the trespass. Patrol Officers from the
23 Sherriff's Office responded to the call, read the men their Miranda rights, fingerprinted,
24 photographed and issued arrest citations for trespassing. The arrest was widely reported in the
25 media and on social networking sites.

26 32. On October 29, 2012, an "unincorporated association" referred to as "Friends of Martins
27 Beach" filed a lawsuit against Plaintiffs in San Mateo County Superior Court, asserting seven
28 separate causes of action, alleging theories requiring Plaintiffs to allow public access and seeking

1 to establish the general public's right to use certain portions of the Property (*See* San Mateo
2 County Superior Court Case No. CIV517634 hereinafter referred to as the "Friends of Martins
3 Beach Lawsuit"). Plaintiffs cross-complained asserting two causes of action for declaratory and
4 injunctive relief.

5 33. The San Mateo County District Attorney's Office dismissed trespassing charges against
6 the five men because the "Friends of Martins Beach" lawsuit was pending in the Superior Court.
7 After the trespassing charges were dismissed, the incidents of trespass intensified and trespassers
8 began ignoring requests that they leave the Property and became confrontational with the property
9 manager. The property manager continued to contact the San Mateo County Sheriff's Office to
10 report trespassers and was repeatedly told that the patrol force would no longer issue citations or
11 respond to trespass calls on the Property due to the civil dispute. After the San Mateo County
12 Sheriff's Office stopped issuing citations, the incidents of trespass increased and became more
13 and more widely publicized in the media.

14 34. On October 24, 2013, the San Mateo County Superior Court, by oral ruling, granted
15 Summary Judgment in Case No. CIV517634 in favor of Plaintiffs and against Friends of Martins
16 Beach. In its written decision dated April 30, 2014, the Court expressly held "the private property
17 at issue is indisputably owned in fee simply by the Defendants [Plaintiffs herein] and that
18 [Friends of Martins Beach] has no cognizable legal theory which gives it the right to access
19 Defendants' private property." Friends of Martins Beach appealed the decision to the First
20 District Court of Appeal.

21 35. On April 27, 2016, the First District Court of Appeal issued its decision affirming in part,
22 and reversing in part the decision of the trial court. (*See Friends of Martin's Beach v. Martin's*
23 *Beach 1 LLC* (2016) 246 Cal. App. 4th 1312 [review denied and ordered not to be officially
24 published (July 20, 2016)].) The Court of Appeal reversed and remanded the case for trial of the
25 cause of action for express dedication asserted by Friends of Martins Beach. The remanded cause
26 of action is now pending in San Mateo County Superior Court. The Court of Appeal affirmed the
27 trial court's decision in favor of Martins Beach 1, LLC and Martins Beach 2, LLC on all other
28 causes of action.

1 **Incidents of Trespass Increased and the Sheriff and the County of San Mateo Refused to**
 2 **Enforce the Trespass Laws**

3 36. Subsequent to the Court's ruling in the Friends of Martins Beach case, Martins wrote a
 4 letter to the District Attorney's Office, the Office of San Mateo County Counsel, and the San
 5 Mateo County Sheriff's Office attaching a copy of the San Mateo County Superior Court
 6 Judgment in the Friends of Martins Beach case, where the Court expressly found that that there is
 7 no right of "public access or easement for the public to use or access the Property for any purpose
 8 whatsoever." Martins requested that trespass laws be immediately enforced as they had been for
 9 decades.

10 37. The County of San Mateo took the position that the right of others to access Martins
 11 Beach "remains unclear and unresolved". To this day, and despite repeated requests for
 12 enforcement, the Sheriff and the County continue to refuse to enforce the trespass laws on the
 13 Martins Beach property as they did for decades when the property was owned by the Deeney
 14 family.

15 38. The incidents of trespass on the Property have progressively increased in frequency since
 16 the Friends of Martins Beach Lawsuit was filed and decided. Trespassers have become
 17 increasingly threatening and aggressive, disregarding their own safety and the safety of the
 18 residents of the Property, and exposing the LLCs to potential liability.

19 39. After learning that the Sherriff's Office would not cite trespassers, Plaintiffs hired a
 20 private security guard from time to time to monitor the Property for trespassers. Many of the
 21 trespassers ignored the security guard and continued down the road to the beach. Plaintiffs are
 22 effectively prevented from exercising their constitutional right to exclude others from their
 23 private property.

24 **The Surfrider Foundation Lawsuit**

25 40. On March 12, 2013, the Surfrider Foundation ("Surfrider") filed a lawsuit against
 26 Plaintiffs in San Mateo County Superior Court alleging causes of action for: (1) Declaratory
 27 Relief seeking a declaration that Plaintiffs acts constituted a violation of the Coastal Act by
 28 conducting "development" in a "coastal zone" without a permit by closing the pre-existing gate

1 on the property, employing security guards, and painting a billboard on the property; (2)
2 Injunctive Relief to prevent Plaintiffs from “blocking access” to the coastal zone at the Property
3 without a CDP; and (3) Daily Fines for Violations of the Coastal Act (San Mateo County
4 Superior Court Case No. CIV520336). Plaintiffs cross-complained asserting two causes of action
5 for declaratory and injunctive relief.

6 41. On May 8, 2014, a bench trial commenced in the Surfrider litigation. On December 1,
7 2015, the Court entered Judgment in favor of Surfrider and against Plaintiffs finding that by
8 closing a pre-existing gate on the property, employing security guards, and painting a billboard on
9 the property, Plaintiffs engaged in “development” in violation of the Coastal Act. The court
10 issued injunctive relief requiring Plaintiffs to cease preventing the public from accessing and
11 using the water, beach and coast at the Property until resolution of its CDP application and to
12 unlock and open the gate across Martins Beach Road to the same extent that it was unlocked and
13 open at the time Plaintiffs purchased the Property. The Court ruled against Surfrider on its claim
14 for penalties finding that Plaintiffs acted in good faith.

15 42. The Surfrider case is currently on appeal.

16 **The Coastal Commission Improperly Asserted its Jurisdiction and Insisted Access Be**
17 **Provided as a Pre-Condition to Approving The Permit Application For the Revetment**

18 43. Under the California Coastal Act, once the CCC certified San Mateo’s Local Coastal
19 Program in 1981, the authority to permit coastal development was delegated from the
20 Commission to the County, except the Commission retained jurisdiction to permit “any
21 development proposed or undertaken on any tidelands, submerged tidelands, or on public trust
22 lands.” (Pub. Res. Code §30519(b).)

23 44. Sometime after Plaintiffs purchased the Property, some of the cabin residences were
24 facing the imminent threat of damage or destruction due to strong wave action, including Cabins
25 1, 2, and 3. Allen Cunha leases a residence from Martins Beach 1, LLC, known as Cabin 1. With
26 the permission of property owner, Martins Beach 1, LLC and on behalf of Mr. Cunha, a respected
27 consulting, civil, geotechnical, and costal engineering firm known as Haro, Kasunich &
28

1 Associates, designed a rip-rap revetment¹ to be installed immediately in front of an existing
2 seawall on the Property. The revetment and all work necessary to perform the project was to take
3 place in an area landward of the mean high tide line (“MHTL”), and therefore outside the permit
4 jurisdiction of the Coastal Commission.

5 45. Haro, Kasunich & Associates, Inc. submitted to the County an application for a Coastal
6 Development Permit to install the revetment. Despite survey evidence that the project was to take
7 place in an area landward of the MHTL, and therefore outside the jurisdiction of the CCC, the
8 County refused to process the application on the grounds that the project fell within the CCC’s,
9 not the County’s, jurisdiction. Specifically, Steve Monowitz, then Deputy Director of Planning
10 at the County, concluded “it is in the best interest of everyone involved to confirm that the CCC
11 concurs with this determination, so I suggest we wait to hear back from [the Commission] before
12 proceeding.”

13 46. The CCC eventually issued Boundary Determination 01-2012 which stated, in part, “the
14 existing and proposed seawalls...appear to be bisected by the Coastal Commission permit
15 jurisdiction boundary in the manner indicated on Exhibit 2.” The exhibit attached to BD 01-2012
16 graphically depicted the Commission’s permit jurisdiction extending well landward of the
17 existing seawall and reaching nearly to the threshold of the front door of Mr. Cunha’s residence.
18 The Boundary Determination was inconsistent with the standard methodology typically used by
19 the CCC to determine the location of the MHTL.

20 47. After the legal and technical errors in BD 01-2012 were pointed out, the Commission
21 agreed to revisit the conclusion of the boundary determination and requested additional
22 documents and information, all of which was provided.

23 48. In the meantime, as the threat to three residences worsened, and an application was
24 submitted to the County for an emergency permit to install temporary shore protection structure.
25 The County issued the Emergency Coastal Development Permit which stated “This approval does

26 _____
27 ¹ A flexible channel or bank lining or facing consisting of a well graded mixture of rock, broken
28 <http://www.fhwa.dot.gov/engineering/hydraulics/pubs/hec/hec11sl.pdf>.

1 not authorize any part of the described project that the California Coastal Commission determines
2 is within and under their permitting jurisdictional authority. Nor shall this approval be interpreted
3 to imply that the County disagrees with the Coastal Commission’s jurisdictional determination.
4 Nothing in this approval shall be interpreted to waive or prejudice the County’s rights under the
5 provisions of Chapter 4 of the San Mateo County Zoning Regulations as they apply to the
6 parcel’s non-conforming uses, structures and situations.”

7 49. The CCC then issued a new Boundary Determination—BD 01-2013—in which it declared
8 that it “is asserting jurisdiction over that portion of the existing seawall and proposed seawall
9 projects, as shown on Exhibit 2.” Exhibit 2 shows the Commission’s permit boundary in
10 basically the same place as the “illustrative” line drawn in BD 01-2012 except that it strays
11 further landward to again reach Mr. Cunha’s front door. The BD offers no explanation for the
12 determination other than the conclusory assertion that it is based on “information provided and
13 available in our office” and “on the existence of tidelands, submerged lands and public trust
14 lands.” The BD fails to mention the MHTL, or explain whether or how its depicted boundary
15 relates to the MHTL.

16 50. The CCC then issued Emergency Coastal Development Permit 2-13-007-G authorizing
17 temporary emergency development of a 960-foot long rock rip-rap revetment on the Property.
18 The CCC’s Emergency Coastal Development Permit explained that the County also issued an
19 Emergency Coastal Development Permit “for that portion of the temporary emergency
20 development that is located inland of the CCC’s retained jurisdiction area...” The Commission
21 explained that the “two ECDP’s together authorize the temporary emergency development at this
22 site.”

23 51. The CCC’s Emergency Coastal Development Permit states “the temporary emergency
24 development carried out under this ECDP is at the Permittees’ risk and is considered to be
25 temporary work done in an emergency situation to abate an emergency. If the Permittees wish to
26 have the temporary emergency development become a longer term development, a regular CDP
27 must be obtained. A regular CDP is subject to all the provisions of the California Coastal Act and
28 may be conditioned or denied accordingly.”

1 52. The revetment was constructed pursuant to the Emergency Coastal Development Permit.
2 Subsequently, Allen Cunha filed an application for a CDP to allow the rip-rap revetment that was
3 constructed pursuant to the Emergency Coastal Development Permit to temporarily remain in
4 place (for up to five more years). The CCC would not process the application unless and until
5 Plaintiffs were included as an applicant so as to maintain leverage over Plaintiffs. Plaintiffs
6 applied, as requested, and also requested that the emergency permit be extended while the
7 temporary permit application was pending.

8 53. The CCC has refused to grant or deny the request to extend the emergency permit while
9 the application for a temporary revetment is pending. The CCC has consistently and repeatedly
10 responded to multiple submissions from the Plaintiff by deeming the application “incomplete”
11 and requesting information that is either irrelevant or unavailable. Although the CCC refuses to
12 process the application for a temporary revetment, it repeatedly threatens fines since the
13 Emergency Permit has not been extended. The CCC has consistently taken the position that it is
14 the applicant’s burden to prove that the revetment will not interfere with public access.

15 54. Ultimately, Mr. Cunha and Martins Beach 1, LLC submitted a survey of the mean high
16 tide line (“MHTL”) to the State Lands Commission for a Boundary Determination. The survey
17 shows that the MHTL lies seaward of the temporary revetment project area. Subsequently, the
18 State Lands Commission (“SLC”) performed its own survey of the Property which closely
19 corresponds to the MHTL as depicted by Haro, Kasunich & Associates. Both surveys confirm
20 that no portion of the revetment project area is within the Commission’s permit jurisdiction.
21 Both surveys were sent to the CCC. The CCC has failed to respond and both the CCC and
22 County refuse to process the application for a Coastal Development Permit to allow the rip-rap
23 revetment to remain in place.

24 **The California Legislature Enacted a Law Requiring the State to Negotiate with the**
25 **Property Owner to Obtain Access or to Acquire a Right-of-Way or Easement**

26 55. To the extent there was any doubt that Plaintiffs were being singled out for uniquely
27 disfavored treatment, the Legislature adopted, and Governor Brown signed into law SB 968,
28 which singles out Plaintiffs and Plaintiffs’ property for a special permitting process that

1 specifically allows the public to ‘acquire a right-of-way or easement.

2 56. SB 968 was codified as Public Resources Code section 6213.5, and provides, in part:

3 (a)(1) The commission shall consult, and enter into any necessary negotiations,
4 with the owners of the property known as Martins Beach...to acquire a right-of-
5 way or easement...for the creation of a public access route to and along the
6 shoreline... at Martins Beach...

6 ...

7 (b) If the commission is unable to reach an agreement to acquire a right-of-
8 way or easement...by January 1, 2016, the commission may acquire a right-of-way
9 or easement, pursuant to Section 6210.9...

10 57. The obvious purpose of this legislation is to create yet one more piece of leverage, for
11 Defendants to use in trying to intimidate, harass, and coerce Plaintiffs into sacrificing their private
12 property rights.

13 58. Moreover, despite the express language of Public Resources Code section 6213.5, which
14 acknowledges that no ‘public access’ rights currently exist over Plaintiffs property, the CCC
15 Defendants continue to use their control over the permitting process as leverage in an attempt to
16 coerce Plaintiffs to cede their private property rights.

17 **FIRST CLAIM FOR RELIEF**

18 (Declaratory and Injunctive Relief Against the SLC Defendants
19 Prohibiting Enforcement of Public Resources Code §6213.5 Pursuant To The Equal
20 Protection Clause in the United States and California Constitution
21 42 U.S.C. §1983, U.S. Const., Fourteenth Amendment, Cal. Const., Art I, §7)

22 59. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 58 above, and
23 incorporate those allegations herein by this reference.

24 60. The First Claim for Relief is brought pursuant to the Equal Protection Clause of the
25 Fourteenth Amendment to the U.S. Constitution and pursuant to the Equal Protection Clause in
26 Article 1, Section 7 of the California Constitution. The First Claim for Relief is also brought
27 pursuant to 42 U.S.C. §1983 which states in pertinent part: “Every person who, under color of
28 any statute, ordinance, regulation, custom or usage of any state...subjects, or causes to be
subjected, any citizen of the United States or other person within the jurisdiction thereof to the

1 deprivation of any rights, privileges, or immunities securities by the Constitution and laws, shall
2 be liable to the party injured in an action at law, suit in equity, or other proper proceeding for
3 redress...”

4 61. Public Resources Code Section 6213.5 violates the Federal and State Equal Protection
5 Clauses and 42 U.S.C. §1983 in that on its face, the statute individually targets Plaintiffs, rather
6 than applying generally to all similarly situated property owners on the coast. The statute
7 therefore deprives Plaintiffs of their right to be treated the same as all other coastal property
8 owners in the State.

9 62. Plaintiffs are informed and believe, and on that basis allege, that unless the SLC
10 Defendants are restrained and enjoined by order of this court from enforcing § 6213.5, which is
11 unconstitutional as described above, Plaintiffs will suffer irreparable harm in that their
12 constitutional rights will be violated.

13 63. The threat of such irreparable and permanent damage justifies the issuance of an
14 injunction enjoining the SLC Defendants and their agents, attorneys, servants, employees, and
15 representatives, and all persons acting in concert or participating with them from enforcing or
16 instituting proceedings to enforce Public Resources Code section 6213.5 against Plaintiffs.

17 64. Plaintiffs have been forced to bring this Complaint and to pursue this action to vindicate
18 Plaintiffs rights and to prevent the SLC Defendants from continuing to engage in, or refuse to
19 rectify, unconstitutional and arbitrary and capricious conduct prescribed by section 1983.
20 Plaintiffs are, therefore, entitled to, and seek to recover, an award of attorneys’ fees and costs
21 pursuant to 42 U.S.C. §1983.

22 **SECOND CLAIM FOR RELIEF**

23 (Declaratory and Injunctive Relief Against the SLC Defendants
24 Prohibiting Enforcement of Public Resources Code § 6213.5
25 Cal. Const., Art IV, §16)

26 65. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 64 above, and
27 incorporate those allegations herein by this reference.

28 66. The Second Claim for Relief is brought pursuant to Article IV, section 16 of the
California Constitution which provides “[a] local or special statute is invalid in any case if a

1 general statute can be made applicable.”

2 67. Public Resources Code §6213.5 is unconstitutional and in direct conflict with Article IV,
3 section 16 of the California Constitution in that a generally applicable statute can be made
4 applicable. Specifically, Public Resources Code Section 6210.9, provides that if the “[State
5 Lands Commission] has public land, including school land, tide or submerged lands, and lands
6 subject to the public trust for commerce, navigation, and fisheries, to which there is no access
7 available, it may, in the name of the state, acquire by purchase, lease, gift, exchange, or, if all
8 negotiations fail, by condemnation, a right-of-way or easement across privately owned land or
9 other land that it deems necessary to provide access to such public land.”

10 68. Public Resources Code section 6213.5 therefore violates Article IV, section 16 of the
11 California Constitution in that Public Resources Code section 6213.5 applies only to Plaintiffs’
12 Property and is not a law of general applicability.

13 69. Plaintiffs therefore request that a declaratory judgment be entered decreeing that Public
14 Resources Code section 6213.5 is unconstitutional and void.

15 70. Plaintiffs are informed and believe, and on that basis allege, that unless the SLC
16 Defendants are restrained and enjoined by order of this court from enforcing § 6213.5, which is
17 unconstitutional as described above, Plaintiffs will suffer irreparable harm in that their
18 constitutional rights will be violated.

19 71. The threat of such irreparable and permanent damage justifies the issuance of an
20 injunction enjoining the SLC Defendants and their agents, attorneys, servants, employees, and
21 representatives, and all persons acting in concert or participating with them from enforcing or
22 instituting proceedings to enforce Public Resources Code section 6213.5 against Plaintiffs.

23 **THIRD CLAIM FOR RELIEF**

24 (Declaratory and Injunctive Relief Against the SLC Defendants
25 Prohibiting Enforcement of Public Resources Code § 6213.5
26 Unconstitutional Bill of Attainder - U.S. Const., Art I, §10)

27 72. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 71 above, and
28 incorporate those allegations herein by this reference.

73. The Third Claim for Relief is brought pursuant to Article 1, Section 10, of the

1 Constitution of the United States. Public Resources Code Section 6213.5 is a Bill of Attainder in
 2 violation of Article 1, Section 10, of the Constitution of the United States, in that a motivating
 3 factor for the legislative enactment is punitive and is a mere pretext for discriminatory conduct.

4 74. Plaintiffs therefore request that a declaratory judgment be entered decreeing that Public
 5 Resources Code section 6213.5 is a Bill of Attainder and is therefore unconstitutional and void.

6 **FOURTH CLAIM FOR RELIEF**

7 (Violation of Equal Protection Under the United States and California Constitutions
 8 Against The San Mateo County Defendants and the CCC Defendants
 42 U.S.C. §1983, U.S. Const., Fourteenth Amendment, Cal. Const., Art I, §7)

9 75. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 74 above, and
 10 incorporate those allegations herein by this reference.

11 76. The Fourth Claim for Relief is brought pursuant to the Equal Protection Clause of the
 12 Fourteenth Amendment to the U.S. Constitution and pursuant to Article 1, Section 7 of the
 13 California Constitution. The Equal Protection Clause in both the California and United States
 14 Constitution forbids the state from intentionally treating one person differently than other
 15 similarly situated people without a rational basis. The United States and California Constitutions
 16 require that laws bear equally in their burdens and benefits upon persons standing in the same
 17 category. The Fourth Claim for Relief is also brought pursuant to 42 U.S.C. §1983 in that the
 18 actions, omissions, and inactions of the San Mateo County Defendants and the CCC Defendants
 19 as alleged herein constitute deprivations of the privileges and immunities guaranteed to Plaintiffs
 20 by the United States Constitution and the laws of the United States in violation of 42
 21 U.S.C. §1983. Such acts, omissions, and inactions constitute a pattern of conduct under color of
 22 law within the meaning of section 1983.

23 77. By doing the things alleged herein, the San Mateo County Defendants and the CCC
 24 Defendants have deprived Plaintiffs of equal protection in violation of the United States
 25 Constitution. Plaintiffs are a “class of one” in that they have been intentionally treated
 26 differently from others similarly situated and there is no rational basis for the difference in
 27 treatment. Plaintiffs have been treated differently than the prior owner of the Property (the
 28 Deeney Family) and other similarly situated coastal property owners as alleged above, without

1 any rational basis for such disparate treatment.

2 78. While engaging in the conduct herein described, the San Mateo County Defendants and
3 the CCC Defendants acted at all times under color and authority of law. Among other things,
4 acting under the color of law, the San Mateo County Defendants and the CCC Defendants have
5 engaged in a course of conduct that singles out and treats Plaintiffs differently since they will not
6 cede a portion of their private property for a public access easement. Among other things the San
7 Mateo County Defendants and the CCC Defendants: (a) refuse to take action on any permit
8 application on the Property claiming Plaintiffs must first cure the existing “violation” on the
9 Property by providing public access; (b) refuse to grant Plaintiffs an administrative enforcement
10 hearing; (c) refuse to accept the standard methodology for determining the mean high tide line so
11 the California Coastal Commission may improperly retain jurisdiction over the application for the
12 temporary revetment; (d) refuse to extend the Emergency Permit or act on the CDP application
13 for the temporary revetment claiming that the application is “incomplete” and requesting
14 information that is either irrelevant or unavailable; (e) refuse to enforce trespass laws on the
15 Property; (f) threaten to impose fines and penalties on the owner for failing to comply with
16 demands to provide the public with access to Plaintiffs private property; and (g) demand public
17 access to the private Property be allowed on terms dictated by the CCC and the County.

18 79. Ms. Haage told Plaintiffs that the CCC “knows how to deal” with people like Plaintiffs,
19 that the CCC has all of the “leverage”, and that they would wrap Plaintiffs “in red tape”, and
20 would never allow Plaintiffs to reach a hearing, until Plaintiffs agree to provide access.

21 80. Armed with the unfair terms of Public Resources Code §6213.5, which guarantee public
22 access rights even if the parties fail to reach an agreement during negotiations, the San Mateo
23 County Defendants and the CCC Defendants have thus engaged in a concerted and targeted
24 campaign to coerce Plaintiffs into granting public access rights against their will and without just
25 compensation.

26 81. Plaintiffs are informed and believe and thereon allege that there is no similarly situated
27 property owner over whom the San Mateo County Defendants and the CCC Defendants have
28 similarly leveraged their permitting authority in order to coerce a property owner to give up its

1 constitutional property rights.

2 82. There is no rational basis for the San Mateo County Defendants and the CCC Defendants
3 to intentionally treat Plaintiffs differently than others similarly situated.

4 83. The appropriate remedy in this case is declaratory and injunctive relief, preventing the San
5 Mateo County Defendants and the CCC Defendants from violating Plaintiffs constitutional
6 rights.

7 84. Unless the San Mateo County Defendants and the CCC Defendants are enjoined from
8 committing the above-described violations of the Fourteenth Amendment, Plaintiffs will continue
9 to suffer great and irreparable harm.

10 85. Plaintiffs have been forced to bring this Complaint and to pursue this action to vindicate
11 Plaintiffs rights and to prevent the San Mateo County Defendants and the CCC Defendants from
12 continuing to engage in, or refuse to rectify, unconstitutional and arbitrary and capricious conduct
13 prescribed by section 1983. Plaintiffs are, therefore, entitled to, and seek to recover, an award of
14 attorneys' fees and costs pursuant to 42 U.S.C. §1983.

15 **FIFTH CLAIM FOR RELIEF**

16 (Violation of Substantive and Procedural Due Process
17 Against The San Mateo County Defendants and the CCC Defendants
18 42 U.S.C. §1983, U.S. Const., Fourteenth Amendment, Cal. Const., Art 1, §7

19 86. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 85 above, and
20 incorporate those allegations herein by this reference.

21 87. The Fifth Claim for Relief is brought pursuant to the Due Process Clause of the
22 Fourteenth Amendment to the United States Constitution and Article 1, Section 7 of the
23 California Constitution, both of which forbid the state from depriving a person of live, liberty, or
24 property without due process of law. The Fifth Claim for Relief is also brought pursuant to 42
25 U.S.C. §1983 in that the actions, omissions, and inactions of the San Mateo County Defendants
26 and the CCC Defendants as alleged herein constitute deprivations of the privileges and
27 immunities guaranteed to Plaintiffs by the United States Constitution and the laws of the United
28 States in violation of 42 U.S.C. §1983. Such acts, omissions, and inactions constitute a pattern
of conduct under color of law within the meaning of section 1983.

1 88. The San Mateo County Defendants and the CCC Defendants have engaged in the
2 aforementioned intentional course of conduct to frustrate Plaintiffs legitimate private property
3 rights for purely personal and political reasons. Such conduct is completely contrary to any laws
4 and/or regulations and well beyond legitimate delegated police powers. Accordingly, such
5 conduct is not rationally related to a legitimate governmental interest and violates Plaintiff
6 Substantive and Procedural Due Process Rights.

7 89. Acting under the color of state law, the San Mateo County Defendants and the CCC
8 Defendants have violated and abridged Plaintiffs' Substantive Due Process rights by illegally and
9 unfairly targeting Plaintiffs by, among other things failing to consistently apply the objective
10 statutory scheme in the Coastal Act to Plaintiffs in the same way that it is applied to all coastal
11 property owners. Threatening Plaintiffs with fines, penalties, and enforcement actions for alleged
12 violations of the Coastal Act unless and until Plaintiffs agree to cede their constitutional private
13 property rights. Through their conduct, as detailed above, the San Mateo County Defendants and
14 the CCC Defendants have arbitrarily and capriciously interfered with Plaintiffs private property
15 rights, caused a restriction of the right to exclusive use of Plaintiffs private property, and caused a
16 diminution in the value of the Property. The conduct of the San Mateo County Defendants and
17 the CCC Defendants is clearly arbitrary and unreasonable, having no substantial relation to the
18 public health, safety, morals, or general welfare.

19 90. Acting under the color of state law, the San Mateo County Defendants and the CCC
20 Defendants have violated and abridged Plaintiffs' Procedural Due Process rights by targeting
21 Plaintiffs and unfairly depriving them of administrative hearings before San Mateo County and/or
22 the California Coastal Commission. Among other things, the San Mateo County Defendants and
23 CCC Defendants continue to take the position that almost every conceivable action or movement
24 on the property requires a permit and that no permit will be processed, let alone granted, unless
25 and until Plaintiffs agree to allow unfettered public access to their private property. The San
26 Mateo County Defendants and the CCC Defendants are holding permits hostage and depriving
27 Plaintiffs of their due process rights unless and until Plaintiffs cede their private property
28 rights. Such conduct has caused an impairment of Plaintiffs private property rights, a restriction

1 on Plaintiffs right to use their property, and a diminution in Plaintiffs property value.

2 91. Unless the San Mateo County Defendants and the CCC Defendants County are enjoined
3 from committing the above-described violations of Plaintiffs due process rights, Plaintiffs will
4 continue to suffer great and irreparable harm.

5 92. Plaintiffs have been forced to bring this Complaint and to pursue this action to vindicate
6 Plaintiffs rights and to prevent the San Mateo County Defendants and the CCC Defendants from
7 continuing to engage in, or refuse to rectify, unconstitutional and arbitrary and capricious conduct
8 prescribed by section 1983. Plaintiffs are, therefore, entitled to, and seek to recover, an award of
9 attorneys' fees and costs pursuant to 42 U.S.C. §1983.

10 **SIXTH CLAIM FOR RELIEF**

11 (Temporary or Permanent Physical Taking of Property Rights Without Just Compensation
12 Against the San Mateo County Defendants and CCC Defendants
13 42 U.S.C. §1983, U.S. Const., Fifth Amendment, Cal. Const., Art I, §19.)

14 93. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 92 above, and
15 incorporate those allegations herein by this reference.

16 94. The Sixth Claim for Relief is brought pursuant to the 5th Amendment to the United States
17 Constitution which commands that private property shall not be taken for public use, without just
18 compensation and pursuant to 42 U.S.C. §1983.

19 95. The Sixth Claim for Relief is also brought pursuant to Article I, Section 19 of the
20 California Constitution which provides in pertinent part: "Private property may be taken or
21 damaged for public use only when just compensation, ascertained by a jury unless waived, has
22 first been paid to, or into court, for the owner..." The protection provided by the takings cause of
23 the California Constitution, is broader than, or at least coextensive with, that provided by the
24 takings clause of the Fifth Amendment to the United States Constitution.

25 96. The San Mateo County Defendants and CCC Defendants have created a physical taking of
26 Plaintiffs property by treating said property as if there were an easement for access and an
27 easement for use of the beach by the public. The San Mateo County Defendants and CCC
28 Defendants have temporarily taken Plaintiffs property without compensation as they have ordered
Plaintiffs to keep its private beach open to the public at all times and to maintain a public beach,

1 public right-of-way, and public parking on private property even though there is no public
 2 easement or permit condition so requiring and the San Mateo County Defendants and CCC
 3 Defendants do not otherwise have a legal right of access to Plaintiff's property. The San Mateo
 4 County Defendants and CCC Defendants have temporarily taken Plaintiffs property by failing
 5 and refusing to enforce Plaintiffs private property rights and trespass laws. The actions of the
 6 San Mateo County Defendants and CCC Defendants have eviscerated Plaintiff's right to exclude
 7 others from entering and using its property – one of the most fundamental of all property
 8 interests. The actions of the San Mateo County Defendants and CCC Defendants therefore
 9 constitute a physical taking in violation of State and Federal Constitutions.

10 97. Unless the San Mateo County Defendants and the CCC Defendants County are enjoined
 11 from committing the above-described violations of Plaintiffs constitutional rights, Plaintiffs will
 12 continue to suffer great and irreparable harm.

13 98. Plaintiffs have been forced to bring this Complaint and to pursue this action to vindicate
 14 Plaintiffs rights and to prevent the San Mateo County Defendants and the CCC Defendants from
 15 continuing to engage in, or refuse to rectify, unconstitutional and arbitrary and capricious conduct
 16 prescribed by section 1983. Plaintiffs are, therefore, entitled to, and seek to recover, an award of
 17 attorneys' fees and costs pursuant to 42 U.S.C. §1983.

SEVENTH CLAIM FOR RELIEF

(Temporary or Permanent Regulatory Taking of Property Rights Without Just Compensation
 Against the San Mateo County Defendants and CCC Defendants
 42 U.S.C. §1983, U.S. Const., Fifth Amendment, Cal. Const., Art I, §19)

19 99. Plaintiffs repeat and reallege the allegations of paragraphs 1 through 98 above, and
 20 incorporate those allegations herein by this reference.
 21

22 100. The Seventh Claim for Relief is brought pursuant to the 5th Amendment to the United
 23 States Constitution which commands that private property shall not be taken for public use,
 24 without just compensation and pursuant to 42 U.S.C. §1983.
 25

26 101. The Seventh Claim for Relief is also brought pursuant to Article I, Section 19 of the
 27 California Constitution which provides in pertinent part: "Private property may be taken or
 28 damaged for public use only when just compensation, ascertained by a jury unless waived, has

1 first been paid to, or into court, for the owner...” The protection provided by the takings cause of
2 the California Constitution, is broader than, or at least coextensive with, that provided by the
3 takings clause of the Fifth Amendment to the United States Constitution.

4 102. The San Mateo County Defendants and CCC Defendants have either temporarily or
5 permanently taken Plaintiffs property without compensation as they have ordered Plaintiffs to
6 keep their private property open to the public at all times and to maintain public access by way of
7 a private road and maintain public parking, even though there is no permit with any such
8 condition nor any easement nor any other basis for imposing the requirement and the San Mateo
9 County Defendants and CCC Defendants do not otherwise have any right of legal access to or use
10 of Plaintiff’s property. The San Mateo County Defendants and CCC Defendants have ordered
11 Plaintiff to run and operate a business of allowing public access to its private property on the
12 terms (including fee, hours of operation, and days of use) dictated by the San Mateo County
13 Defendants and CCC Defendants, thereby depriving Plaintiff of the opportunity to receive a fair
14 return on its investment and/or to recover its costs. The actions of the San Mateo County
15 Defendants and CCC Defendants therefore constitute a regulatory taking in violation of State and
16 Federal Constitutions.

17 103. If the San Mateo County Defendants and CCC Defendants are allowed to force Plaintiff to
18 keep Martins Beach open to the public, Plaintiffs will be permanently deprived of all rights to,
19 and attributes of ownership of its personal property in violation of the State and Federal
20 Constitutions.

21 104. Unless the San Mateo County Defendants and the CCC Defendants County are enjoined
22 from committing the above-described violations of Plaintiffs constitutional rights, Plaintiffs will
23 continue to suffer great and irreparable harm.

24 105. Plaintiffs have been forced to bring this Complaint and to pursue this action to vindicate
25 Plaintiffs rights and to prevent the San Mateo County Defendants and the CCC Defendants from
26 continuing to engage in, or refuse to rectify, unconstitutional and arbitrary and capricious conduct
27 prescribed by section 1983. Plaintiffs are, therefore, entitled to, and seek to recover, an award of
28 attorneys’ fees and costs pursuant to 42 U.S.C. §1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For a declaratory judgment decreeing that Public Resources Code Section 6213.5 is unconstitutional and void pursuant to Article IV, section 16 of the California Constitution;
2. For a declaratory judgment decreeing that Public Resources Code Section 6213.5 is unconstitutional and void pursuant to Article 1, section 10 of the United States Constitution;
3. For an injunction enjoining the SLC Defendants and their agents, attorneys, servants, employees, and representatives, and all persons acting in concert or participating with them from enforcing or instituting proceedings to enforce Public Resources Code section 6213.5 against Plaintiffs;
4. For a declaration that Defendants actions as alleged above are unconstitutional and illegal, and violate Plaintiffs constitutional rights to equal protection of the laws protected by both the United States and California Constitutions;
5. For an injunction enjoining Defendants and their agents, attorneys, servants, employees, and representatives, and all persons acting in concert or participating with them from requiring Plaintiffs to maintain public access to Martins Beach pursuant to the takings clause in the U.S. and California Constitutions;
6. For an injunction enjoining Defendants and their agents, attorneys, servants, employees, and representatives, and all persons acting in concert or participating with them from continuing to engage in the illegal and unreasonable conduct as alleged hereinabove;
7. For attorneys fees and costs of suit; and
8. For such other and further relief as it may deem just and proper.

Dated: September 30, 2016

HOPKINS & CARLEY
A Law Corporation

By: /s/ Dori L. Yob
Dori L. Yob
Attorneys for Plaintiff