No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_ Nadejda L Rozanova, Denis Klimov

PETTITIONERS and APPELANTS

vs.

RESPONDENT: Rafael S Uribe

APPENDIX FOR

PETITION FOR WRIT OF CERTIORARI TO THE CALIFORNIA

COURT OF APPEAL, SIXTH APPELLATE DISTRICT

Petitioners in Propria Persona

Nadejda L. Rozanova; Denis V. Klimov

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APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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Appendix A

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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

NADEJDA L. ROZANOVA et al.,	No. H044161
Plaintiffs, Cross-Defendants and Appellants,	(Monterey County
v. RAFAEL S. URIBE,	Super. Ct.
Defendant, Cross-Complainant and Respondent.	No. M122297)

This is a dispute between neighbors in Royal Oaks (Monterey County) concerning a 63-square-foot triangular portion of a larger paved parking area (the parking area). The triangular area in dispute (disputed region) is located on 1540 Kari Lane (Property A), owned by respondent Rafael S. Uribe (Uribe). Nadedjda L. Rozanova (Rozanova) and Denis Klimov (Klimov) reside to the east of Property A at 1548 Kari Lane (Property B). Rozanova and Klimov (collectively, appellants) assert legal rights to use the disputed region of the parking area. (The parking area itself, save the disputed region, is located on appellants' property, Property B.)

Appellants alleged claims for prescriptive easement, equitable easement, easement by estoppel (or an irrevocable license), agreed boundary, and declaratory relief. Uribe cross-complained against appellants, alleging a trespass claim and seeking injunctive -2 -

relief. The case proceeded to a court trial. On September 8, 2016, judgment was entered in favor of Uribe against appellants.

Appellants assert a number of claims of error. We reject appellants' arguments that the court erred in any respect by finding in favor of Uribe (1) on the claims asserted against him by appellants, and (2) on his claims against appellants. Because, as the parties point out, there is an ambiguity under which the judgment may be construed as precluding appellants from accessing their property (Property B), we will remand the case to the trial court with directions that it modify the judgment to address the ambiguity.

I. PROCEDURAL BACKGROUND

On March 14, 2013, Rosanova filed a complaint captioned "claim to adjust legal status on 63 sq. ft. of parking lot" (capitalization omitted), naming her neighbor, Uribe, as defendant.

On May 7, 2013, Uribe filed a cross-complaint against Rozanova and Klimov. Uribe alleged, inter alia, that Klimov had purchased Property B as his separate property on July 30, 2009. On or about July 6, 2012, Klimov transferred the property to himself and his spouse, Rozanova, in joint tenancy. Uribe alleged that prior to Klimov's purchase of Property B, Uribe met with appellants and advised them that a fenced triangular section (i.e., the disputed region) of the parking area adjacent to the driveway of Property B, was not located on Property B, even though the disputed region "contained a fence, retaining wall and a concrete extension of the driveway serving [Property B]." Uribe alleged in the cross-complaint that in May 2012, he demanded that appellants cease using the disputed region, remove the improvements, and restore the retaining wall area to its preconstruction condition, but appellants refused to do so. Uribe alleged a claim for

damages based upon trespass and a request for injunctive relief prohibiting further trespasses and permitting Uribe to access Property B to restore the disputed region to its original condition. -3-On January 9, 2015, a first amended complaint (Complaint) was filed in which both Rozanova and Klimov were named as plaintiffs. In the amended pleading, appellants named Uribe, as well as seven lending and other institutions, as defendants.1 Appellants alleged that before their purchase, they believed the disputed region was located on Property B because there was a fence that bordered it from the neighbor's property. After Klimov signed the purchase agreement, Uribe "stated that he 'owned' the improvements but would allow [appellants] to use the improved parking area [including the disputed region] to park their cars." Appellants alleged that after a dispute with Uribe concerning his "code violations," he prohibited appellants' further use of the disputed region of the parking area.

Footnote 1 The additional named defendants were CapitalSource, CF, LLC; Signature Group Holdings, Inc.; HSBC Bank USA, National Association (HSBC); ACE Securities Corp. Home Equity Loan Trust, Series 2005-HEI (ACE); Mortgage Electronic Registration Systems Inc. (MERS); Ocwen Loan Servicing, LLC (Ocwen); and Green Tree Servicing LLC. Defaults were taken against the institutional defendants; defaults as to four such defendants were later set aside, and disclaimers of interest were filed by HSBC, ACE, MERS, and Ocwen.

Footnote 2 Appellants also sought declaratory relief adjudicating that Uribe's claim for trespass was barred by the statute of limitations, Code of Civil Procedure section 338, subdivision (b). (Further unspecified statutory references are to the Code of Civil

Procedure.) Such a "claim" was a matter properly considered by the court as an affirmative defense to Uribe's cross-complaint.

Appellants alleged five causes of action in their Complaint: (1) declaratory relief; (2) equitable easement; (3) easement by estoppel (or irrevocable license); (4) prescriptive easement; and (5) claim under "[t]he agreed-boundary doctrine." In the first cause of action, appellants alleged that they and their predecessors for a continuous period since at least 1997 had "used, maintained, occupied, and claimed ownership of all or part of the property connected to the parking [area]. . . . And if the property is not part and parcel of [Property B, appellants] claim [an] exclusive, appurtenant easement to [the disputed region of the parking area]."2 In the second cause of action, appellants alleged that they -4-should be adjudicated as having an equitable easement in the disputed region of the parking area under the " 'relative hardship' doctrine." Appellants alleged in the third cause of action that they had an easement in the disputed region by estoppel, based upon Uribe's conduct, including his building a "permanent fence which left [the] triangular area on [appellants'] side . . . [a]nd . . . corroborat[ing] his implied consent by verbal consent." They alleged further that under principles of estoppel, Uribe should not be permitted to revoke the license he granted to appellants to use the disputed region. In the fourth cause of action, appellants alleged that they had a prescriptive easement in the disputed region by virtue of the five years of continuous adverse use of it. And appellants alleged in the fifth cause of action that they held an interest in the disputed region under the agreed boundary doctrine.

The case proceeded to a two-day court trial in March 2016. On March 30, 2016, the court issued its tentative decision, finding in favor of Uribe on all causes of action of the

Complaint. The court found in favor of Uribe on the cross-complaint, determining that appellants had trespassed on his land after he had withdrawn his permission for appellants' use of the disputed region. The court awarded Uribe nominal damages of $1.00 and granted injunctive relief directing appellants to withdraw from the disputed region. On August 11, 2016, the court filed its statement of decision. Judgment was filed in favor of Uribe against appellants on September 8, 2016. Appellants filed a timely notice of appeal from the judgment.

After entry of judgment, appellants filed a motion to vacate judgment (discussed, post). Uribe opposed the motion. After hearing argument, the court denied the motion to vacate, based upon its factual findings made after the trial. A formal order denying the motion to vacate judgment was filed October 21, 2016. Appellants filed a timely notice of appeal from this postjudgment order. (See Ryan v. Rosenfeld (2017) 3 Cal.5th 124, 127, 134-135 (Ryan) [order denying motion to vacate judgment is appealable].)-5-

II DISCUSSION

A. Applicable Law

As we will discuss, the primary claims asserted by appellants were ones seeking findings by the court that they held an interest in the disputed region of the parking area allowing them to occupy and use it by virtue of (1) an easement by prescription (2) an equitable easement; and (3) an easement by estoppel (or irrevocable license). We will briefly describe these claims and the standards of review applicable to our review of the judgment.

1. Easement by Prescription

An easement by prescription of a roadway or right-of-way is founded upon the same principles as a claim of title to property by adverse possession. (Taormino v. Denny (1970) 1 Cal.3d 679, 686.) The elements of a prescriptive easement claim are nearly identical to those required for adverse possession, namely, "open and notorious use or possession that is continuous and uninterrupted, hostile to the true owner, and under a claim of right. [Citation.]" (Ibid.) The adverse use must be for a continuous period of not less than five years. (Civ. Code, § 1007.) The claimant bears the burden of proving each element. (Barlow v. Fink (1915) 171 Cal.165, 170.) Unlike adverse possession, if taxes are not separately assessed to the area of property affected by the easement, the claimant need not show payment of taxes to establish a prescriptive easement. (Gilardi v. Hallam (1981) 30 Cal.3d 317, 322.)

2. Equitable Easement

A court in equity is empowered, under appropriate circumstances, to create an equitable easement. (Tashakori v. Lakis (2011) 196 Cal.App.4th 1003, 1006 (Tashakori).) The creation of an equitable easement generally occurs when the plaintiff landowner seeks to enjoin the defendant from using an encroaching structure and to require him or her to remove the structure (id. at p. 1009), and the court refuses to issue the injunction, " 'the net effect [of which] is a judicially created easement by a sort of -6-non-statutory eminent domain.' [Citations.]" (Hirshfield v. Schwartz (2001) 91 Cal.App.4th 749, 764 (Hirshfield).) But this is not always the case. "[T]he courts are not limited to judicial passivity as in merely refusing to enjoin an encroachment. Instead, in a proper case, the courts may exercise their equity powers to affirmatively fashion an interest in the owner's land which will protect the encroacher's use." (Id. at p. 765.)

There are three factors that a court of equity considers—often referred to as "[t]he 'relative hardship' test" (Tashakori, supra, 196 Cal.App.4th at p. 1009)—in determining whether to permit an encroacher's use of the land in question, whether the court does so by denying injunctive relief for trespass caused by an encroacher or by affirmatively establishing the encroacher's equitable easement rights. The Hirshfield court, reciting these factors in the more usual context of a landowner seeking injunctive relief, stated them as follows: "First, the defendant must be innocent. That is, his or her encroachment must not be willful or negligent. The court should consider the parties' conduct to determine who is responsible for the dispute. Second, unless the rights of the public would be harmed, the court should grant the injunction if the plaintiff 'will suffer irreparable injury . . . regardless of the injury to defendant.' Third, the hardship to the defendant from granting the injunction 'must be greatly disproportionate to the hardship caused plaintiff by the continuance of the encroachment and this fact must clearly appear in the evidence and must be proved by the defendant. . . .' [Citation.]" (Hirshfield, supra, 91 Cal.App.4th at p. 759, original italics.)

3. Easement by Estoppel (Irrevocable License)

An easement may be created by estoppel. (See Elliott v. McCombs (1941) 17 Cal.2d 23, 41.) "The decisions that have created an easement based on estoppel involve varying circumstances, but they all involve reliance by the owner of the dominant tenement on the representations and conduct of the owner of the servient tenement of such a character that equity establishes an easement in order to prevent an injustice." (6 Miller & Starr, Cal. Real Estate (4th ed. 2017) § 15:45, p. 15-170, fn. omitted.) One -7- example

is where the court creates an irrevocable license to a particular use of property. (Id., § 15:45, p. 15-171.)

Where "a licensee has entered under a parol license and has expended money, or its equivalent in labor, in the execution of the license, the license becomes irrevocable, the licensee will have a right of entry upon the lands of the licensor for the purpose of maintaining his [or her] structures, or, in general, his [or her] rights under his [or her] license, and the license will continue for so long a time as the nature of it calls for." (Stoner v. Zucker (1906) 148 Cal. 516, 520 (Stoner); see, e.g., Hammond v. Mustard (1967) 257 Cal.App.2d 384, 388-389 (Hammond) [irrevocable license created where licensors agreed that licensees could use and improve road to access their property, and licensees, in reliance thereon and with licensors' acquiescence, expended money, labor, and materials to improve the road].) This principle is grounded upon "the doctrine of equitable estoppel; the license, similar to the essentials of an easement, is declared to be irrevocable to prevent the licensor from perpetrating a fraud upon the licensee. [Citations.]" (Cooke v. Ramponi (1952) 38 Cal.2d 282, 286.)

B. Standards of Review

It is a question of fact whether the claimant has established the elements of a claim for prescriptive easement, "and the findings of the court will not be disturbed where there is substantial evidence to support them." (Warsaw v. Chicago Metallic Ceilings, Inc. (1984) 35 Cal.3d 564, 570 (Warsaw).) Likewise, a trial court's determination of whether the facts support a finding that a license for use of land is irrevocable is reviewed for substantial evidence. (Hammond, supra, 257 Cal.App.2d at pp. 387-388.) And because the existence of estoppel is generally a factual inquiry, a judgment addressing the

presence or absence of estoppel is reviewed for substantial evidence. (Feduniak v. California Coastal Com. (2007) 148 Cal.App.4th 1346, 1360 (Feduniak).)

"In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it -8-the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment. [Citation.]" (Estate of Young (2008) 160 Cal.App.4th 62, 76.) We give deference to the trial court's factual findings "because those courts generally are in a better position to evaluate and weigh the evidence. [Citation.]" (Haworth v. Superior Court (2010) 50 Cal.4th 372, 385.) And in asserting a sufficiency-of-the-evidence challenge, the appellant is required to provide a summary of all of the evidence, not merely his or her own evidence, with citations to the record. (Foreman & Clark Corp. v. Fallon (1971) 3 Cal.3d 875, 881.)

We evaluate whether the trial court, employing its equitable powers, abused its discretion in granting or denying an equitable easement. (Hinrichs v. Melton (2017) 11 Cal.App.5th 516, 522, 523 (Hinrichs); Tashakori, supra, 196 Cal.App.4th at pp. 1006, 1014.) Our high court has indicated that this abuse of discretion standard is founded on principles of deference to the trial court, such as "whether or not the trial court exceeded the bounds of reason, all of the circumstances before it being considered" (In re Marriage of Connolly (1979) 23 Cal.3d 590, 598); and that the appellate courts should disturb discretionary trial court rulings only upon a showing of " ' "a clear case of abuse" ' " and " ' "a miscarriage of justice." ' " (Blank v. Kirwan (1985) 39 Cal.3d 311, 331.)-9-

C. Relevant Evidence Presented at Trial3

3 Our review is significantly impeded by the parties' failure to preserve an intelligible record below. Appellants presented a significant amount of evidence—through testimony, and the utilization of two hand-drawn diagrams introduced through the examination of Klimov—describing the topography, condition, physical features and location of Property B and the parking area (including the disputed region). Unfortunately, the charts contain no labeling of the features discussed in testimony, and the questions of counsel and the witnesses' answers repeatedly take the form of such nondescriptive words as "here" and "this" with unidentified indications to the diagrams. The testimony and exhibits are therefore not helpful to this reviewing court in attempting to ascertain the topography, features, and location of the properties and, specifically, the parking area and the disputed region thereof, at issue in this litigation. (See Rylaarsdam, Making and Designating a Record on Appeal (June 1996) Cont.Ed.Bar, 18 Civil Litigation Reporter 219, 221[emphasizing importance of making proper appellate record by avoiding "testimony that lacks specificity as to distances, locations, quantities, or persons referred to"; citing example of witness referring to a diagram and marking it with a pointer in stating "he was 'here' at the relevant time"].)

1. Appellants' Evidence

a. Hugo Mar Testimony

Hugo Mar purchased Property B in December 1995. Mar testified that he and his family lived there until 2001. After they moved out, he retained ownership of the property for approximately six months, after which he sold it to David Anaya. On cross-examination, Mar acknowledged that he signed a "Witness [S]tatement" under penalty of perjury in

early 2016. In that statement, which was admitted into evidence, Mar declared that "[i]n 1999[,] we moved out of the house and were renting it out for several years, before selling it in 2004."

In 1997, the Mars' small daughter was tragically killed in an incident on the property. Mrs. Mar had parked their van on the sloped driveway near the edge of the parking area, and while she was unloading her three other children, the van rolled down the slope, ejecting their young daughter. As a result of the incident, Mar constructed a concrete "bump" on the sloped driveway to prevent parked cars from rolling downhill. -10- Mar testified that while they lived at Property B, he and his wife may have used the parking area to park their two cars.4

4 Mar offered apparently contradictory testimony concerning his use of the parking area and the disputed region thereof while he and his family resided on Property B. He initially testified on redirect examination by appellants' counsel, in response to the question of whether he "as a regular matter, use[d] this space as a parking area" as follows: "Not at all." Mar later on redirect examination, asked by appellants' counsel, "[W]hen you lived there, did you and your wife use this area for parking," responded: "Yes. Two vehicles, hers and mine." Given the lack of clarity of the appellate record (see fn. 3, ante)—including numerous instances in which the examination of Mar (as well as other witnesses) involved questions posed by referring the witness to "here," "this area," "that area" "this corner," "this side," "this line," "this space," without any description for the reader to make sense of the question and answer—it is not possible to determine definitively whether Mar testified that he used the disputed region of the parking area while he lived at Property B.

b. Denis Klimov Testimony

Klimov described Property B, including the parking area, in his testimony. Kari Lane is an east-west uphill road that terminates at the west side at a "circle" near the property line between Property A and Property B. The driveway travels uphill in a northerly direction from the circle to the garage for Property B. "The driveway is very steep," but the paved parking area to the left of the driveway "is flat." The triangular disputed region is in the "left far corner" (i.e., generally, the northwest corner) of the parking area. The disputed region was "fenced off by [a] heavy duty cattle fence on two sides." There is also a wooden retaining wall that surrounds some portion of the parking area "like a 'V' from the driveway" about 36 feet in length. The parking area, as Klimov observed it at the time he bought Property B in 2009, had enough space to "comfortably park three cars." Property A is to the west of the parking area; there are a number of trees between the parking area and the house on Property A. -11- Appellants had been looking for a residence in a rural area in 2008 and 2009 and looked at several foreclosures. Klimov signed an offer to purchase Property B on June 17, 2009. The seller (a bank) accepted the offer on or about June 29, 2009.

On the evening of June 29, 2009, Klimov met with his realtor, David Yearley, on the site. At that time, Uribe approached them, stating he was a neighbor and he wanted to show them something. Uribe pointed out the disputed region that was fenced on two sides with a cattle fence, and he stated that the disputed region "belong[ed] to him." Uribe told Klimov and Yearley he had previously had a survey performed. Uribe stated the fence he had built around the disputed region deviated from the property line, but that the disputed area was "still his property." Klimov testified that Uribe "said that he didn't

need to use [the disputed region] and that was the reason why he fenced it off, . . . leaving it available for the parking of the house [on Property B]." During the meeting, Yearley asked Uribe if Klimov could use the parking area, and he responded that it would not be a problem because it was far from his house.

Klimov testified that in 2011, he had placed a large metal storage container in approximately the middle of the parking area. The container is approximately 15 feet long by seven feet wide by eight feet tall. It essentially "occupies the middle space" of the three parking spaces in the parking area. The container is used to store his engineering equipment and Rozanova's scientific research. Klimov believed that, because of high fire danger in the area, it was preferable to store the equipment and papers in a metal storage container rather than in the house. The items had previously been stored along the side of the house and in the garage.

Klimov also testified there is a garage on Property B that is approximately 16 feet in width, which he described as a one-car garage. He acknowledged that the 2009 Multiple Listing Service (MLS) property description noted that Property B had a two-car garage. But Klimov testified that the statement was inaccurate. Because there is a water heater and a furnace located inside the garage, it cannot accommodate two cars. -12- Klimov acknowledged that there was an area in front of the garage. But he testified that appellants "don't park there," and he asserted that "[t]his space is not suitable for parking."5

5 Klimov refused to answer multiple questions during cross-examination as to whether there was an area sufficient in front of the garage to accommodate one or more parked cars, stating he felt the questions were "misleading."

In 2010, Klimov contacted the Code Enforcement Department of Monterey County (Code Enforcement) two or three times to report dust and erosion problems with Property A that were affecting Property B. He testified that he contacted the Society for the Prevention of Cruelty to Animals (SPCA) five or six times in 2010 and 2011 concerning problems he had with animals on Property A.

In June 2012, Uribe and a helper attempted to install a fence across the parking area that would have prevented appellants' use of the disputed region. Klimov called the Monterey County Sheriff's Office. Two deputies responded, and Uribe and his helper suspended the operation. At trial, the parties stipulated that Uribe had rescinded his permission for appellants' use of the disputed region "because they [had] reported him on numerous occasions to the SPCA and Code Enforcement personnel from 2010 through 2012."

Appellants have lived on Property B since its purchase in 2009 and have used the parking area, including the disputed region, continuously from 2009 through March 2016. Klimov testified that if they were to lose the use of the disputed region, they would lose one parking space, as well as a U-turn area that is essential because of the curved and hilly nature of their driveway. Property B, according to Klimov, "would be less safe, [would have] less parking space[s], [and there would be] less ability to maneuver the cars in the area." -13 -

c. Nadejda Rosanova Testimony

Rosanova testified that at the time of trial, her family had three vehicles requiring parking on Property B. She and her husband planned to buy a car for their teenage daughter, which would then bring the number of vehicles on the property to four.

2. Uribe's Evidence (Rafael Uribe Testimony)

Uribe is the owner of Property A that borders Property B owned by appellants. He purchased Property A in 2004.6

6 Although Uribe did not directly testify to this fact, the court made this factual finding, presumably based upon the grant deed exhibit to the cross-complaint showing that Property A was transferred to Uribe in October 2004.

In June 2009, Uribe was outside watering his trees when he saw a realtor and Klimov. The realtor asked Uribe "about the fence and that triangle, and [Uribe] told him that that is part of [Uribe's] property." The realtor patted Uribe on the back and asked if he would "let them [the Property B owners, presumably,] use it," and Uribe responded that they could use it for parking. He did not tell the realtor the specific length of time he would permit the Property B owners to use the disputed region. Uribe did not say anything directly to Klimov, but he was close enough to hear the discussion between Uribe and the realtor.

Uribe testified that SPCA representatives, Code Enforcement officers, and sheriff deputies came out to his property on a number of occasions as a result of contacts from Klimov. Uribe was never arrested or fined for any reported actions. The only modification he made to his property as a result of the contacts was the replacement of a railing on his deck. After appellants began reporting him to law enforcement, Uribe terminated the permission he had previously given them to use the disputed region of the parking area. At that time, Uribe gave appellants 72 hours to remove any of their property located on the disputed region because Uribe planned to build a fence across the triangle. Klimov then called the Sheriff's Department. When a deputy sheriff came

to -14- the site, Uribe told the deputy that he was revoking appellants' license to use the disputed region because of their reports concerning Uribe's use of his property.

Uribe testified that he had plans to use the disputed region to store alfalfa and other grains for his animals. He explained that although his property consisted of 3.5 acres, only one acre was usable, and that it would be more convenient for him to store the alfalfa and grain in the disputed region.

Uribe testified that he did not have any agreement with appellants regarding the disputed region that the boundary line was any place other than he contended in the lawsuit.

D. Claim of Equitable Easement

In its tentative decision, the court below rejected appellants' claim (second cause of action) for an equitable easement concerning the disputed region of the parking area. The court concluded: "[Appellants] will not suffer any significant hardship, irremediable injury, or irreparable injury if the triangular area (one parking space) is not available to them for their parking."

The evidence presented at trial, through the testimony of Klimov, was that the parking area itself could accommodate three cars comfortably. Appellants, in 2011, chose to eliminate one of those spaces by placing a large metal container in the middle of the parking area. As the court noted, [t]here was no explanation [presented by appellants at trial] why the storage container could not be placed somewhere else on [appellants'] property."

There was also evidence that appellants' garage, while wide enough to be considered a two-car garage, could only accommodate one car because of the placement of a water

heater and furnace inside the garage. But, as the court also noted, the evidence was unclear that the water heater "[took] up the space that would otherwise be used for a vehicle [and t]here was no explanation why the water heater [could not] be moved." -15- Further, the record showed that there was an area in front of the garage that was available for parking. Although Klimov acknowledged the area, he testified that appellants did not use it and that it was unsuitable, apparently because the area was sloped. The court below took this into consideration, concluding that there was in fact a parking space available in front of the garage, but that anyone parking a car there needed to use the parking brake.

There was further evidence that Uribe had a need for the disputed region for storage of alfalfa and grains for his animals. He testified that it would be convenient for him to use the region for this purpose.

Appellants contend that the court failed to consider that the denial of their request for an equitable easement would cause them irreparable injury. They assert, without citation to the record in violation of rule 8.204(a)(1)(C) of the California Rules of Court,7 that without their ability to use the disputed region, they would be required "to reconstruct the entire retaining wall and entire parking structure and change the hill terrain." We will disregard this and any other evidentiary assertion made by appellants without citation to the record. (Regents of University of California v. Sheily (2004) 122 Cal.App.4th 824, 826, fn. 1 (Sheily).) Appellants contend that costs associated with "reconstruction" of a retaining wall as part of reconfiguring the fence of the disputed region would be approximately $30,000. They assert further on appeal that the retaining wall at the area of the disputed region of the parking area prevents soil from sliding

down from their property to Property A. And they argue that the prospective removal of the water heater and furnace from the garage to create a second parking space and relocating the metal container by creating a flat space for it on their property to gain a space for parking in the parking area—implied by the court in its decision as being appropriate courses of action for appellants to take—would result in further cost.

7 All rule references are to the California Rules of Court.-16-

These factual contentions by appellants—those concerning (1) the consequences of their loss of use of the disputed region (i.e., the claims that the retaining wall will require complete reconstruction and the terrain of their property will require changing), (2) the retaining wall's erosion prevention qualities, and (3) the costs that appellants would incur as a result of the trial court's judgment—are not supported by the evidence adduced at trial, and we, as a reviewing court, may not consider them. "Facts, events, documents or other matters urged by a party which are not admitted into evidence cannot be included in the record on appeal. They are outside the scope of review." (USLIFE Savings & Loan Assn. v. National Surety Corp (1981) 115 Cal.App.3d 336, 343.)8

8 Appellants' opening brief is replete with references to the record concerning purported facts, reports, and other evidentiary material that were not offered or admitted at trial. Appellants refer, inter alia, to Klimov's declaration, Rosanova's declaration, law enforcement incident reports, an unsworn witness statement, reports from Monterey County, and construction estimates. Since none of these materials were admitted at trial below, they "cannot be considered on appeal [citation] . . . [and we will] disregard

statements in the briefs that are based on such improper matter. [Citations.]" (Truong v. Nguyen (2007) 156 Cal.App.4th 865, 882.)

Finally, we have considered Hinrichs, supra, 11 Cal.App.5th 516, cited by appellants after briefing in this appeal was concluded. In Hinrichs, the appellate court held that the trial court had not abused its discretion in finding an equitable easement where, absent such equitable relief, the plaintiff would suffer irreparable harm that would be greatly disproportionate because his parcel would be landlocked. (Id. at pp. 523-524.) Hinrichs is plainly distinguishable.

Based upon the record before us, the court below in rejecting appellants' equitable easement claim could have properly concluded that the hardship to appellants from the denial of their claim was not " 'greatly disproportionate to the hardship caused [Uribe] by the continuance of the encroachment' " (Hirshfield, supra, 91 Cal.App.4th at p. 759, original italics) and by appellants' continued use of the disputed region. The court did - 17- not abuse its discretion in denying appellants' equitable easement claim. (Hinrichs, supra, 11 Cal.App.5th at pp. 522, 523.)

E. Prescriptive Easement Claim

The court below found that appellants had failed to meet their burden of proving the necessary elements for a claim of prescriptive easement (fourth cause of action). Specifically, the court concluded that appellants had not shown five continuous years of use of the disputed region of the parking area, or that any possession was hostile and adverse and under a claim of right to a prescriptive easement. It found that appellants' right to use the disputed region "was permissive until Uribe withdrew permission in

2012." The court also concluded that appellants had failed to provide a legal description of the claimed prescriptive easement. (See § 761.020, subd. (a).)

There was substantial evidence supporting the trial court's findings. The undisputed evidence was that when Klimov purchased Property B in mid-2009, Uribe, while asserting his ownership rights, gave Klimov (through his real estate agent in Klimov's presence) permission to use the disputed region of the parking area. A prescriptive easement cannot be established where the landowner gives his or her consent (i.e., provides a license) to claimant's use of the property. (Richmond Ramblers Motorcycle Club v. Western Title Guaranty Co. (1975) 47 Cal.App.3d 747, 754 [prescriptive rights "will not be acquired through its use by license of the owner, or by his permission, express or implied"].) Uribe revoked that license to use the disputed region in or about June 2012. (See Bomberger v. McKelvey (1950) 35 Cal.2d 607, 618 ["mere license to enter or use premises may be revoked at any time by the licensor"].) Although that event transformed appellants' ongoing use of the disputed region from a permissive one to a use that was open, notorious and hostile, this period of adverse use was tolled when Rosanova filed her complaint on March 14, 2013. (See Yorba v. Anaheim Union Water Co. (1953) 41 Cal.2d 265, 270 [initiation of lawsuit interrupts running of the prescriptive period].)-18- Furthermore, any claim by appellants that their predecessor, Mar, created a prescriptive easement by his alleged use of the disputed region lacks evidentiary support. Although Hugo Mar testified that he and his wife used the parking area to park their two cars while they lived at Property B, the evidence was, at best, ambiguous that they used the disputed region of the parking area (or, if they did, that the use was open, notorious and hostile to the rights of Property A's owner). (See fn. 4, ante.) Moreover,

even if there were evidence of Mar's adverse use of the disputed region, such assumed use could not have extended for a period of five years. Although Mar testified that he purchased Property B in December 1995 and lived there with his family until 2001, there was contrary evidence (i.e., his sworn "Witness [S]tatement") that the Mars moved out of the house in 1999 and Mar rented it before selling the property in 2004. The court below found that the Mar family had moved out of Property B in 1999, and that "there was no evidence of any use by anyone after [Property B] was rented from 1999 through the Mars' sale in 2004. Therefore, there is no proof of adverse use by anyone continuously for five (5) years." These findings were supported by substantial evidence. (Warsaw, supra, 35 Cal.3d at p. 570.)

F. Easement By Estoppel (Irrevocable License)

The court below concluded that appellants had failed to establish a claim of an easement in the disputed region based upon estoppel (third cause of action). The court found that, although Uribe offered to permit Klimov to use the disputed region, this "promise was no more than an oral license" which could be, and was, revoked by Uribe. In so concluding, the court implicitly rejected any claim that appellants had an irrevocable license to use the disputed region.

The evidence was undisputed that prior to close of escrow, Uribe told Klimov that he could use the disputed region. But Uribe did not describe the length of time that he would allow Klimov to use the disputed region. And—as the court correctly found—"[t]here was nothing stated by Uribe regarding granting an easement to Klimov nor [was] -19-

anything stated granting Klimov any other property right which he could transfer to a subsequent purchaser . . . of [Property B]." Indeed, there was no evidence Uribe had any discussion with appellants concerning the disputed region following the prepurchase conversation between Uribe and Klimov and his realtor, aside from Uribe's revocation of permission to use the disputed region in or about June 2012.

Further, the trial court properly rejected appellants' position that they had an irrevocable license to use the disputed region. Although a license may become irrevocable where the "licensee has entered [the property in dispute] under a parol license and has expended money, or its equivalent in labor, in execution of the license" (Stoner, supra, 148 Cal. at p. 520), there is no evidence this occurred here. There was no testimony that appellants expended money or its equivalent on the disputed region, such as making significant improvements to it. The mere fact that Klimov went forward with purchasing Property B after Uribe said he would allow him to use the disputed region for an unspecified period of time, absent further evidence, did not render the license irrevocable.

The cases cited by appellants in which courts found the existence of an irrevocable license are not controlling here. For example, in Richardson v. Franc (2015) 233 Cal.App.4th 744 (Richardson), a dispute arose concerning a 150-foot long, 30-foot wide roadway on the defendants' property. (Id. at pp. 747-748.) The plaintiffs' access to the road "was authorized by an easement for 'access and public utility purposes.' " (Id. at p. 748.) After the plaintiffs and their predecessors had over the course of 20 years installed and maintained landscaping, irrigation, and lighting for the roadway easement, the defendants demanded that the plaintiffs remove all improvements, asserting that their

installation and maintenance exceeded the scope of the easement. (Ibid.) The demand occurred approximately six years after the defendants had purchased the property; during that six-year period, the defendants, who were aware of the improvements to the roadway easement and the fact that the plaintiffs had regularly employed landscapers to tend to -20 -them, raised no objection to the improvements. (Id. at p. 750.) The trial court granted an irrevocable license in favor of the plaintiffs and their successors in interest to maintain and improve landscaping, irrigation and lighting within the roadway easement. (Ibid.) It found, inter alia, that "[b]oth law and equity dictate[d] the result" because the plaintiffs and their predecessors had incurred "substantial expenditures in the easement area for landscaping, maintenance, care, and physical labor" and because, over the course of 20 years, neither the defendants nor their predecessors had objected. (Id. at p. 753, fn. omitted.) The appellate court affirmed, concluding that there was ample evidence supporting the grant of an irrevocable license, which evidence included the defendants' and their predecessors' knowledge of and acquiescence in the maintenance of the improvements to the roadway easement for 20 years, and the plaintiffs' substantial expenditures in maintaining the improvements. (Id. at pp. 755-756.)

Richardson, supra, 233 Cal.App.4th 744 is plainly distinguishable. Here, unlike in Richardson, there was no showing that appellants incurred significant expenditures in improving and/or maintaining the disputed region of the parking area (and thus, obviously, there was no showing of Uribe's acquiescence in such activity).9 At most, there was evidence of Uribe's acquiescence—pursuant to his original statement granting

permission in June 2009—to appellants' use of the disputed region for approximately three years.

9 We note that appellants make the assertion (without citation to the record) that "they invested considerable sums of money in this property. Also[,] they invested time and money by improving the property—planting trees and flowers, making vegetables [sic] beds and plant's walls [sic], making watering systems, etc." It is unclear whether appellants refer to improving Property B, generally, or to improving the parking area and/or the disputed region. In any event, this factual assertion is not supported by the requisite citation to the record (see rule 8.204(a)(1)(C)), and we will not consider it. (Sheily, supra, 122 Cal.App.4th at p. 826, fn. 1.)-21- Substantial evidence supported the conclusions of the court below that the facts did not warrant either a finding of easement by estoppel or that the judicial grant of an irrevocable license was appropriate. (Richardson, supra, 233 Cal.App.4th at p. 751 [review of court's finding regarding revocability of license governed by substantial evidence standard]; Feduniak, supra, 148 Cal.App.4th at p. 1360 [court's finding concerning claimed estoppel reviewed for substantial evidence].)

G. Agreed Boundary

The court below also rejected appellants' claim that they had rights in the disputed region under a theory of agreed boundary (fifth cause of action). There was no evidence presented to support appellants' theory. They presented no testimony that there was an agreement between Uribe and them that the boundary between their respective properties was the location of the fence constructed on the disputed region. To the contrary, Uribe identified the boundary line of the two properties in 2009 before Klimov

completed his purchase of Property B, stating clearly that the disputed region was located on Property A.

Appellants' reliance on Roman v. Ries (1968) 259 Cal.App.2d 65 (Roman) in support of their claim that there was an agreed boundary is misplaced. In Roman, the court held that all of the requirements of an agreed boundary had been satisfied because "[t]here was an uncertainty as to the true boundary line, an express or implied agreement fixing the line, and the acceptance and acquiescence in the line so fixed, under such circumstances that substantial loss would be caused by a change of its position." (Id. at p. 68.) Here there was no such uncertainty regarding the boundary line. Uribe stated in June 2009 that the disputed region was located on his property, and appellants never advised him thereafter that they disagreed with his statement concerning the boundary of the parties' respective properties. And there was no express or implied agreement fixing the boundary line such that the disputed region was part of Property B. There was no more than Uribe's oral license permitting appellants' use of the disputed region.-22- As the court below held, "if there [were] any agreed boundary, it was along the line as Uribe stated to Klimov . . . . [Alternatively,] there was no agreed boundary between [appellants] and Uribe." The trial court's alternative conclusions were supported by substantial evidence.

H. Appellants' Other Claims

Appellants also alleged a claim for declaratory relief (first cause of action), asserting that a judicial determination was needed to address the "uncertainty over the issue [of] whether or not [Uribe has] an enforceable interest in [the disputed region]." The court denied that claim. It concluded that the judicial remedy of declaratory relief, which was

in reality a claim to quiet title to an easement in favor of appellants over the disputed region on Property A, could not be granted because appellants had failed to provide a legal description of the disputed region at issue. (See § 761.020, subd. (a).)

That decision was proper. A plaintiff asserting a claim for quiet title to real property must include in his or her verified complaint a description of the property at issue, which "shall include both its legal description and its street address or common designation, if any." (§ 761.020, subd. (a), italics added.) This requirement was not satisfied by appellants, as they did not include a legal description of the disputed region that was the subject of their quiet title request. Further, declaratory relief concerning appellants' asserted rights in the disputed region was superfluous, since the court decided against appellants under their various theories of equitable easement, easement by estoppel (irrevocable license), prescriptive easement, and agreed boundary. The court's refusal to grant declaratory relief did not constitute an abuse of discretion. (Kessloff v. Pearson (1951) 37 Cal.2d 609, 613 [refusal of declaratory relief appropriate "where a declaration of rights and obligations would be unnecessary or improper at the time under all the circumstances"].)-23- Appellants also assert on appeal that they held an implied easement with respect to the disputed region. The court below rejected this claim because, inter alia, appellants had failed to plead it.

A review of the Complaint confirms the correctness of the trial court's finding that appellants did not plead a claim based upon an implied easement. Further, appellants, through their trial counsel, did not advise the court in their trial brief that they were asserting an implied easement claim. Rather, their trial brief consisted of a discussion of their pleaded claims based upon equitable easement, prescriptive easement, easement

under an estoppel theory, and agreed boundary. Nor does the record disclose that a claim of implied easement was raised at any time by appellants prior to the filing of the court's tentative decision. Indeed, appellants' counsel in his closing after the conclusion of the trial made no mention of such a claim.

"Under the long established rule, a party is not entitled to recovery upon a cause of action not pleaded, even if disclosed by the evidence. [Citations.]" (Tri-Delta Engineering, Inc. v. Insurance Co. of North America (1978) 80 Cal.App.3d 752, 760.) The court did not err in rejecting appellants' unpleaded claim of implied easement.

I. Uribe's Claim for Trespass

It was undisputed that the disputed region was located on Uribe's property and that he revoked his consent for appellants' use of it in or about June 2012.10 It was also undisputed that appellants continued to use the disputed region after Uribe revoked his consent. Uribe established the elements of his claim of trespass.

10 Klimov testified that Uribe revoked his consent in June 2012. Uribe agreed in his testimony that he revoked his consent, but he did not specify when he did so. Appellants alleged in their Complaint that in June 2012, Uribe attempted to destroy the fence "and to take this triangular area by force." In his cross-complaint, Uribe alleged that he withdrew his consent to appellants' use of the disputed area in May 2012. Any one-month discrepancy as to the date of Uribe's uncontroverted withdrawal of his consent to appellants' use of the disputed area is immaterial to the issues in this appeal.-24-

But appellants contend that this claim was barred by the applicable statute of limitations, section 338, subdivision (b), requiring commencement of the action for trespass within three years. The contention has no merit. The trespass by appellants

commenced in or about June 2012, and Uribe filed his cross-complaint in May 2013. The claim was not time-barred.

J. Premature Entry of Judgment

Appellants present a procedural challenge concerning the entry of the judgment in this case. They argue that the court below erred by signing the proposed judgment submitted by Uribe's counsel less than 10 days after it was served, thereby depriving appellants of the opportunity to submit objections to the proposed judgment. Appellants are correct that the court signed the proposed judgment less than 10 days after it was served on them. Uribe served a copy of a proposed judgment by mail upon them on September 6, 2016, and the court signed and filed the judgment two days later, on September 8, 2016. The California Rules of Court provide that "[a]ny party may, within 10 days after service of the proposed judgment, serve and file objections thereto." (Rule 3.1590(j).) The rule does not specify, however, what relief, if any, may be appropriate if the proposed judgment is signed less than 10 days after being submitted.

Appellants cite In re Marriage of Steiner & Hosseini (2004) 117 Cal.App.4th 519 (Marriage of Steiner) in support of their position that the early entry of judgment compels reversal. There, the trial court signed the proposed judgment two days after its submission by the respondent; consequently, the appellant did not have adequate time to object to it. (Id. at p. 523.) The appellate court observed that the signing of the judgment was premature and was not in compliance with former rule 232(e)—the predecessor to rule 3.1590—which provided: " 'Any party affected by the judgment may, within 10 days after service of the proposed judgment, serve and file objections thereto. The court shall, within 10 days after expiration of the time for filing objections to the proposed -25-

judgment . . . sign and file its judgment.' " (Marriage of Steiner, supra, at p. 524, quoting former rule 232(e), emphasis in original.) The appellate court, after framing the issue as whether "that mistake was prejudicial" (Marriage of Steiner, supra, at p. 524), concluded that the appellant, having failed to identify any substantial right to which she was deprived, was not prejudiced and the error was harmless. (Id. at pp. 524-525.)

Unlike its predecessor, however, current rule 3.1590(j) does not contain the same language that "[t]he court shall, within 10 days after expiration of the time for filing objections to the proposed judgment . . . sign and file its judgment." (Former rule 232(e), italics added.) But by giving any party 10 days to serve objections to a proposed judgment, rule 3.1590(j) seemingly requires that the court wait 10 days to sign the proposed judgment, even without the specific language of former rule 232(e).

But even were we to apply Marriage of Steiner, we would conclude there was no prejudicial error. Appellants contend they were prejudiced by the premature entry of judgment because they were not given "time to point out the ambiguities and omission [sic] in the Proposed Judgment." In support of this assertion, they reference the claimed deficiencies they identified in their motion to vacate judgment, filed six days after the judgment was filed. As we discuss, post, the court did not err in denying the motion to vacate judgment; therefore, any error in signing the proposed judgment prematurely was harmless. (See Marriage of Steiner, supra, 117 Cal.App.4th at pp. 524-525.)

K. Motion to Vacate Judgment

On September 14, 2016, appellants filed a motion to vacate judgment, citing section 663, subdivision (1).11 The motion was based upon two general grounds. First,

11 "A judgment or decree, when based upon a decision by the court, or the special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgment: [] 1. Incorrect or erroneous legal basis for the decision, not -26- consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected. . . ." (§ 663.)appellants challenged the substance of the judgment, contending that the court reached "an incorrect legal conclusion and render[ed] an erroneous judgment on the facts found by it to exist." They argued that the evidence supported their claims, and they presented a lengthy challenge to the substance of the findings contained in the court's statement of decision. Second, appellants challenged the judgment because the proposed judgment was signed by the court less than 10 days after it was served on the parties, a contention we have addressed, ante.

A motion to vacate judgment under section 663, subdivision (1), "may only be brought when 'the trial judge draws an incorrect legal conclusion or renders an erroneous judgment upon the facts found by it to exist.' [Citation.]" (Payne v. Rader (2008) 167 Cal.App.4th 1569, 1574 (Payne), original italics, disapproved of on other grounds in Ryan, supra, 3 Cal.5th at p. 135, fn. 3.) The motion " 'is a remedy to be used when a trial court draws incorrect conclusions of law or renders an erroneous judgment on the basis of uncontroverted evidence.' [Citation.]" (Plaza Hollister Ltd. Partnership v. County of San Benito (1999) 72 Cal.App.4th 1, 14.)

For the reasons we have discussed above, the trial court neither drew any incorrect legal conclusions nor rendered an erroneous judgment upon the facts found by it to exist. (Payne, supra, 167 Cal.App.4th at p. 1574.) And the court was given ample opportunity to consider appellants' objections to both the statement of decision and the judgment, as delineated in appellants' motion to vacate judgment. We have reviewed that statement of decision and judgment and find no ground for reversal based upon appellants' objections as stated in their motion to vacate judgment and in their appellate briefs. (See In re Marriage of Schmir (2005) 134 Cal.App.4th 43, 50, fn. omitted [court in statement of decision only required to " 'state the grounds upon which the judgment rests, without -27- necessarily specifying the particular evidence considered by the trial court in reaching its decision' "].)

L. Ambiguity in the Judgment

The judgment, at paragraph 1, provides that appellants "are permanently enjoined and prohibited from entering into, on, or under the confines of Cross-complainant Uribe's real property as described in attached Exhibit 'A' . . ." The exhibit referenced in the judgment is the grant deed under which Uribe took title to Property A. Included in the legal description attached to the grant deed is "Parcel II," under which Uribe was granted a 1/14 interest in a 60-foot wide private road. Appellants also have a 1/14 interest in that private road. As pointed out by the parties on appeal, the judgment therefore contains an ambiguity in that the injunction may have the unintended effect of precluding appellants from accessing their property (Property B). The parties agree that this would be an improper construction of the judgment. Therefore, since the trial court in paragraph 3 reserved jurisdiction, we will reverse the judgment and remand the case

to the trial court for the limited purpose of modifying the judgment to clarify that appellants shall be permitted to access their property through use of the 60-foot wide private road.

III. DISPOSITION

The judgment of September 8, 2016, and the order denying appellants' motion to vacate judgment are reversed. The matter is remanded to the trial court to modify the judgment to clarify that appellants shall be permitted to access their property through use of the 60-foot wide private road. Uribe shall be entitled to his costs on appeal.

BAMATTRE-MANOUKIAN, P.

WE CONCUR:

GREENWOOD, M.,

GROVER, A.

Appendix B.

Court of Appeal Sixth Appellate District Susan S Miller Clerk/Executive Officer
Electronically FILED on 11/6/2018 by L. Brooks Deputy Clerk

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

NADEJDA ROZANOVA et al.,

Plaintiffs, Cross-defendants and Appellants, v.

RAFAEL S. URIBE,

Defendant, Cross-complainant and Respondent.

H044161

Monterey County Super. Ct. No. M122297

BY THE COURT*:

Appellants' petition for rehearing is denied.

Date: __11/06/2018_____ S/Mary Greenwood_____ _____ P.J.

*Before Greenwood, M.., Bamattre-Manoukian, P., and Grover, A.

Appendix C

SUPREME COURT

FILED JAN 2 2019

Jorge Navarrete Clerk

Deputy

Court of Appeal, Sixth Appellate District - No. H044161

S252459

IN THE SUPREME COURT OF CALIFORNIA

En Banc

NADEJDA L. ROZANOVA et al., Plaintiffs, Cross-defendants and Appellants,

RAFAEL S. URIBE, Defendant, Cross-complainant and Respondent.

The petition for review is denied.

The request for an order directing publication of the opinion is denied

CANTIL-SAKAUYE

Chief Justice

Appendix D

ROY C.GUNTER III SBN 066055 LAW OFFICES of ROY C.GUNTER III 580CALLE PRINCIPAL, SUITE 2 CA 93940-2818
Telephone: (8310648-8822
Fax: (83 1) 648-8844
Attorney for Defendant/ Cross Complainant Rafael S Uribe

FILED 09/08/2016

TERESA A. RISI

CLERK OF THE SUPERIOR

COURT DEPUTY S/Maria

Inofuentes

SUPERIOR COURT OF STATE OF CALIFORNIA COUNTY OF MONTEREY

Nadejda L Rozanova, Denis Klimov, Plaintiffs Vs. Rafael S.Uribe, Capital sourceCF, LLC; Signature group Holdings,Inc;ACE Securities Corp. Home equity Loan Trust, Series 2005-HEl; Mortgage Electronic Registration Systems Inc; Ocwen Loan Servicing, Green Tree LLC.9and all persons unknown, claiming any legal or equitable right, title, estate, lien. Or interest in the property, described in the complaint adverse to Plaintiffs' title or any cloud on Plaintiffs' title thereto), Defendants. RAFAEL S. URIBE, Cross-Complainant, vs NADEJDA L. ROZANOVA AKA NADEJDA ROZANOVA AKA NADEJDA L KLIMOV;DENIS KLIMOV AKA DENIS V. KLIMOV V. AND ROES 1 100, INCLUSIVE,	Case No. M 122297 JUDGMENT TRIAL DATES: 3/08/16&3/15/16

The above-entitled case came on for Trial on Tuesday, March 8, 201 6, and continued on Tuesday, March 15, 20 16. Plaintiffs/Cross-Defendants Nadejda I ,.

Rozanova and Denis Klimov appeared, represented by Attorney Ed Frey; and Defendant' Cross-Complainant Rafael S. Uribe appeared, represented by Attorney Roy C. Gunter 111. After consideration of the evidence presented by all parties, argument of legal counsel, and good cause appearing therefore, JUDGMENT IS ENTERED in favor of Defendant/Cross-Complainant Rafael S. Uribe and against Plaintiffs/Cross-Defendants Nadejda L. Rozanova and Denis Klimov, jointly and severally, as follows:

1. Plaintifls/Cross-Defendants Nadejda L.Rozanova and Denis Klimov are permanently enjoined and prohibited from entering into, on or under the confines of Cross-Complainant Uribc's real property as described in attached Exhibit "A" and shall immediately remove any of their personal property from said real property;

2. Cross-Complainant Uribe's contractors and employees may forthwith enter onto andnear Cross-Defendants Rozanova's and Klirnov's driveway in order to remove any fence, retaining wail and concrete encroaching on Cross-Complainant Uribe's real property described in attached Exhibit "A" for the purpose of restoring Cross-Complainant Uribe's real property to its condition prior to the aforesaid encroachments;

3. This Court reserves jurisdiction regarding all Future disputes between the parties regarding trespasses by Plaintiffs Cross-Defendants Rozanova and Klirnov unto Defendant/Cross- Complainant Uribe's real property and to issue such further Orders as may be necessary to enforce this Judgment; and

4. Defendant Cross-Complainant Uribe is awarded his costs against Plaintiffs Cross-Defendants Rozanova and Klimov.

Dated September 8,2016. S/ JUDGE Lydia M. Villarreal

Appendix E

ROY C.GUNTER III SBN 066055 LAW OFFICES of ROY C.GUNTER III 580CALLE PRINCIPAL, SUITE 2 CA 93940-2818 Telephone: (8310648-8822 Fax: (83 1) 648-8844 Attorney for Defendant/ Cross Complainant Rafael S Uribe	FILED 10/21/2016 TERESA A. RISI CLERK OF THE SUPERIOR COURT DEPUTY S/Lisa Dailia

SUPERIOR COURT OF STATE OF CALIFORNIA COUNTY OF MONTEREY

Nadejda L Rozanova, Denis Klimov, Plaintiffs Vs. Rafael S.Uribe, Capital sourceCF, LLC; Signature group Holdings,Inc;ACE Securities Corp. Home equity Loan Trust, Series 2005-HEl; Mortgage Electronic Registration Systems Inc; Ocwen Loan Servicing, Green Tree LLC.9and all persons unknown, claiming any legal or equitable right, title, estate, lien. Or interest in the property, described in the complaint adverse to Plaintiffs' title or any cloud on Plaintiffs' title thereto), Defendants. RAFAEL S. URIBE, Cross-Complainant, vs NADEJDA L. ROZANOVA AKA NADEJDA ROZANOVA AKA NADEJDA L KLIMOV;DENIS KLIMOV AKA DENIS V. KLIMOV V. AND ROES 1 100, INCLUSIVE,	Case No. M 122297 ORDER RE:MOTION TO VACATE JUDGMENT PURSUANT CA CIV PRO 663.1 10/17/16 9:00am Dep.15 1200 Aguajito R Monterey TRIAL DATES: 3/08/16&3/15/16

Plaintiff/Cross Defendant Nadejda L. Rozanova's and Denis Klimov's Motion to Vacate Judgment Pursuant CA Civ Pro 663 1 came on regularly for hearing at 9 a.m. on October 17, 2016, before the Honorable Lydia M. Villarreal, Judge of the Superior Court.

Plaintiffs/Cross Defendants Nadejda L. Rozanova and Denis Klimov appeared in proper person. Defendant /Cross Complainant Rafael S. Uribe appeared represented by Attorney Roy C Gunter III. After consideration of the moving and opposing papers, argument of the parties, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion is denied, based upon the fact that Plaintiffs/Cross Defendants failed to produce the relevant evidence at Trial in order to support their Motion.

S/Lidya M. Villareal

Dated Oct 21, 2016

JUDGE OF THE SUPERIOR COURT
Lidya M. Villareal

Appendix F

ROY C.GUNTER III SBN 066055 LAW OFFICES of ROY C.GUNTER III 580CALLE PRINCIPAL, SUITE 2 CA 93940-2818 Telephone: (8310648-8822 Fax: (83 1) 648-8844 Attorney for Defendant/ Cross Complainant Rafael S Uribe	FILED 10/21/2016 TERESA A. RISI CLERK OF THE SUPERIOR COURT DEPUTY S/Lisa Dailia

SUPERIOR COURT OF STATE OF CALIFORNIA COUNTY OF MONTEREY

Nadejda L Rozanova, Denis Klimov, Plaintiffs Vs. Rafael S.Uribe, Capital sourceCF, LLC; Signature group Holdings,Inc;ACE Securities Corp. Home equity Loan Trust, Series 2005-HEl; Mortgage Electronic Registration Systems Inc; Ocwen Loan Servicing, Green Tree LLC.9and all persons unknown, claiming any legal or equitable right, title, estate, lien. Or interest in the property, described in the complaint adverse to Plaintiffs' title or any cloud on Plaintiffs' title thereto), Defendants.	Case No. M 122297 ORDER RE:MOTION TO VACATE JUDGMENT PURSUANT CA CIV PRO 663.1 10/17/16 9:00am Dep.15 1200 Aguajito R Monterey TRIAL DATES: 3/08/16&3/15/16

RAFAEL S. URIBE, Cross-Complainant, vs NADEJDA L. ROZANOVA AKA NADEJDA ROZANOVA AKA NADEJDA L KLIMOV;DENIS KLIMOV AKA DENIS V. KLIMOV V. AND ROES 1 100, INCLUSIVE,	

Plaintiff/Cross Defendant Nadejda L. Rozanova's and Denis Klimov's Motion to Vacate Judgment Pursuant CA Civ Pro 663 1 came on regularly for hearing at 9 a.m. on October 17, 2016, before the Honorable Lydia M. Villarreal, Judge of the Superior Court. Plaintiffs/Cross Defendants Nadejda L. Rozanova and Denis Klimov appeared in proper person. Defendant /Cross Complainant Rafael S. Uribe appeared represented by Attorney Roy C Gunter III. After consideration of the moving and opposing papers, argument of the parties, and good cause appearing therefore,

IT IS HEREBY ORDERED that the Motion is denied.

S/Lidya M. Villareal

Dated Oct 21, 2016 _____

JUDGE OF THE SUPERIOR COURT

Lidya M. Villareal