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By Contra Costa County
Department of Conservation and Development

VIEW CLAIM

Kensington View Ordinance
Tree Obstruction of Views
Chapter 816.2

View Claimants: Marcelina Cravat and Curtis Overway
Address of View Claimant: 238 Lake Drive, Kensington

Trees Owners: Leslie Jacoby and Leslie Nicholaieff
Address of Trees Owners: 187 Purdue Avenue, Kensington

This View Claim is made on Oct 28, 2025, by Marcelina Cravat and Curtis Overway, View Claimants ("Claimants"), pursuant to Chapter 816.2 of the Contra Costa County Ordinance.

Background Facts

Claimants acquired their home at 238 Lake Drive ("Property") in 2006. Claimants have occupied the Property continuously since then. From their living room and adjacent deck, Claimants initially enjoyed unobstructed, panoramic, western/northwestern views of the surface waters of San Francisco Bay, Angel Island and Mount Tamalpais (hereinafter, the "View").

In 2011, Leslie Jacoby and Leslie Nicholaieff ("Trees Owners") acquired 187 Purdue Avenue which is downslope to the northwest of Claimant's home. Within less than a year after buying their house, Trees Owners planted two coast live oak trees (Quercus agrifolia) in their back yard. Claimants immediately recognized the species of these trees and asked Trees Owners not to keep them in their yard because they inevitably would grow to obstruct their western/northwestern views. Their first of many such requests was communicated to Trees Owners commencing in 2011. Trees Owners responded by promising that the coast live oaks would be pruned so as not to block the Lake Drive views.

In addition to the two coast live oaks trees, there also is a holly oak tree (Quercus illex) in Trees Owners' front yard which has grown taller than the roofline of Trees Claimants' house, thereby also obstructing Claimants' View.

Photographs of the subject trees and Views are attached hereto as Exhibit A.

Claimants and their next-door neighbor, Hazel Hung (236 Lake Drive), hereinafter referred to as Co-Claimant[1], exchanged written correspondence with Trees Owners for many years by which they attempted to obtain Trees Owners' cooperation in reducing the height of their obstructing trees, without success. They also met personally with Trees Owners to discuss the matter, including inviting Trees Owners to personally see the extent of the view obstructions from their respective homes.

In addition to said direct communications, the parties' respective attorneys, James Cook for Trees Owners and Leslie A. Levy for Claimants, communicated by phone and in writing between 2015 and 2025, attempting to help the parties reach a resolution of their differences.

Copies of the pertinent correspondence among Claimants, Trees Owners and their attorneys are attached hereto, collectively, as Exhibit B. This correspondence confirms that Trees Owners have been unreasonable and intractable with respect to the fact that their trees obstruct Claimants' Views, essentially taking the position that the View Ordinance is inapplicable to them.

Claimants recently retained the services of certified arborist, Michael Baefsky, who inspected the subject trees from the living room, deck and back yard of Claimants' home and from Purdue Avenue in front of Trees Owners' house on July 24th, 2025[2] A copy of the arborist report, including his photographs, is attached hereto as Exhibit C.

It should be noted that the arborist concluded that, at least for the smaller of the coast live oak and the holly oak tree, reduction pruning and treatment with a growth regulator could restore views above those trees. On the other hand, he concluded that the larger coast live oak tree should be removed and replaced with a different species that will not block the View. These recommendations highlight the fact that if Trees Owners had carefully pruned and treated their trees while they were young, the View would not have been blocked. Instead, they obstinately refrained from doing the kind of pruning and treating that would have obviated this situation. By their own conduct and failures to act, they created the View obstruction, all the while knowing that Claimants' View would be compromised in the face of the View Ordinance.

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[1] 10 years ago, Hazel Hung pursued a separate View Claim against Trees Owners because a pittosporum tree in Trees Owners' back yard began to block her western views in 2010. The facts regarding her prior View Claim are set forth in her current View Claim regarding the two coast live oaks. That View Claim is submitted simultaneously with this View Claim.

[2] Trees Owners refused to allow Mr. Baefsky access to their property to enable him to inspect the trees up close which he stated was necessary for him to provide sufficient information about the trees. Their refusal was despite the fact that Claimants' attorney informed their attorney that the new View Ordinance requires that an arborist's report be submitted with a view claim.

We declare under the laws of the State of California that the statements made in this View Claim are true and correct and if we are called as witnesses to testify thereto, we are competent to do so.

October 28, 2025

Marcelina Cravat

Curtis Overway

EXHIBIT A

CRAVAT/OVERWAY VIEW CLAIM

Photographs

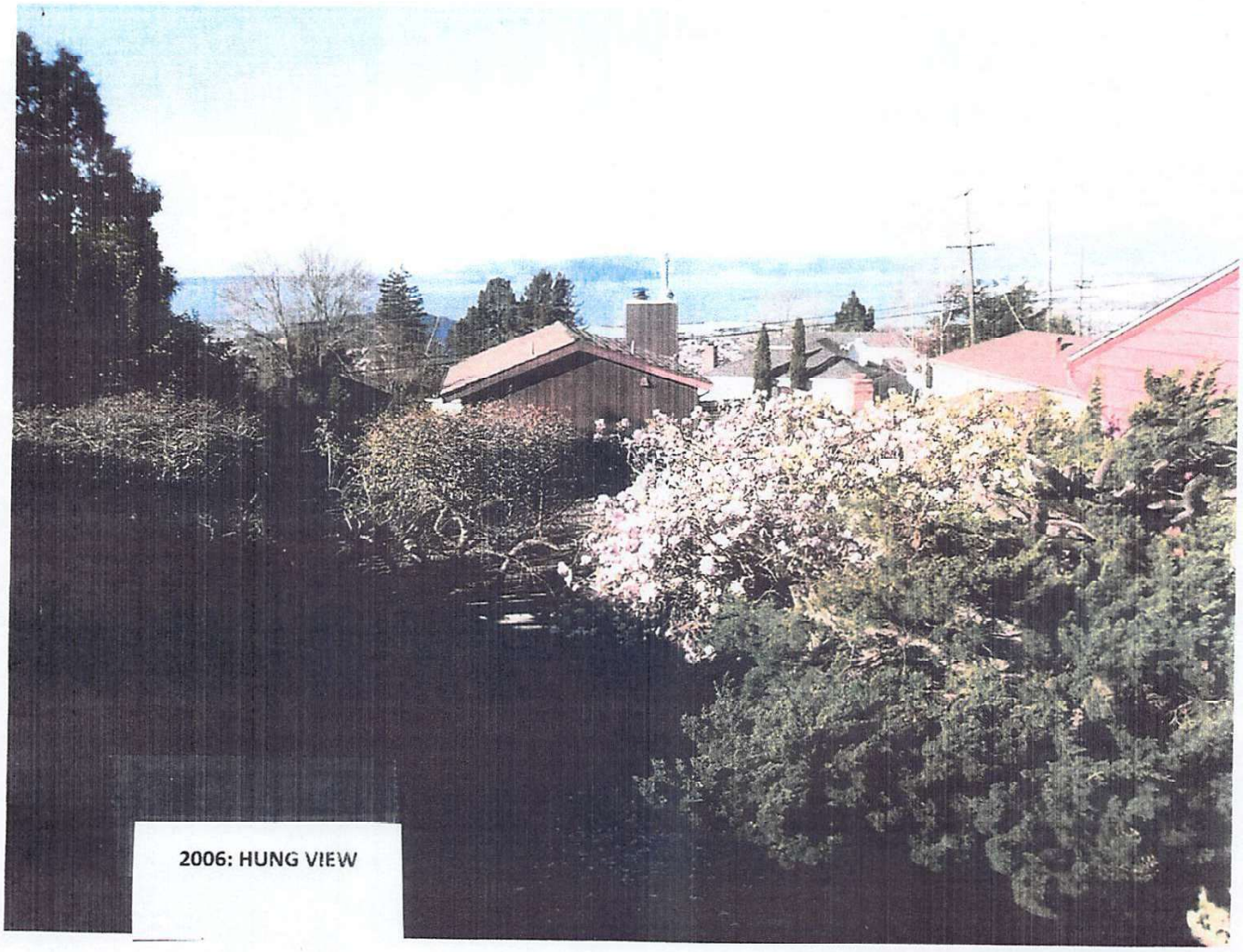
Cravat property 238 Lake Drive: Looking west: Obscuring Mount Tamalpais, Albany Hill, Richmond and Albany flatlands, surface of the Bay.

Cravat property 238 Lake Drive: Looking northwest: Obscuring Marin Headlands, El Cerrito and Albany flatlands, surface of the Bay.

Cravat property 238 Lake Drive: Looking northwest: Obscuring Mount Tamalpais, Richmond and El Cerrito flatlands, surface of the Bay.

Cravat property 238 Lake Drive: Looking northwest: Obscuring Mount Tamalpais, Richmond and El Cerrito flatlands, surface of the Bay.

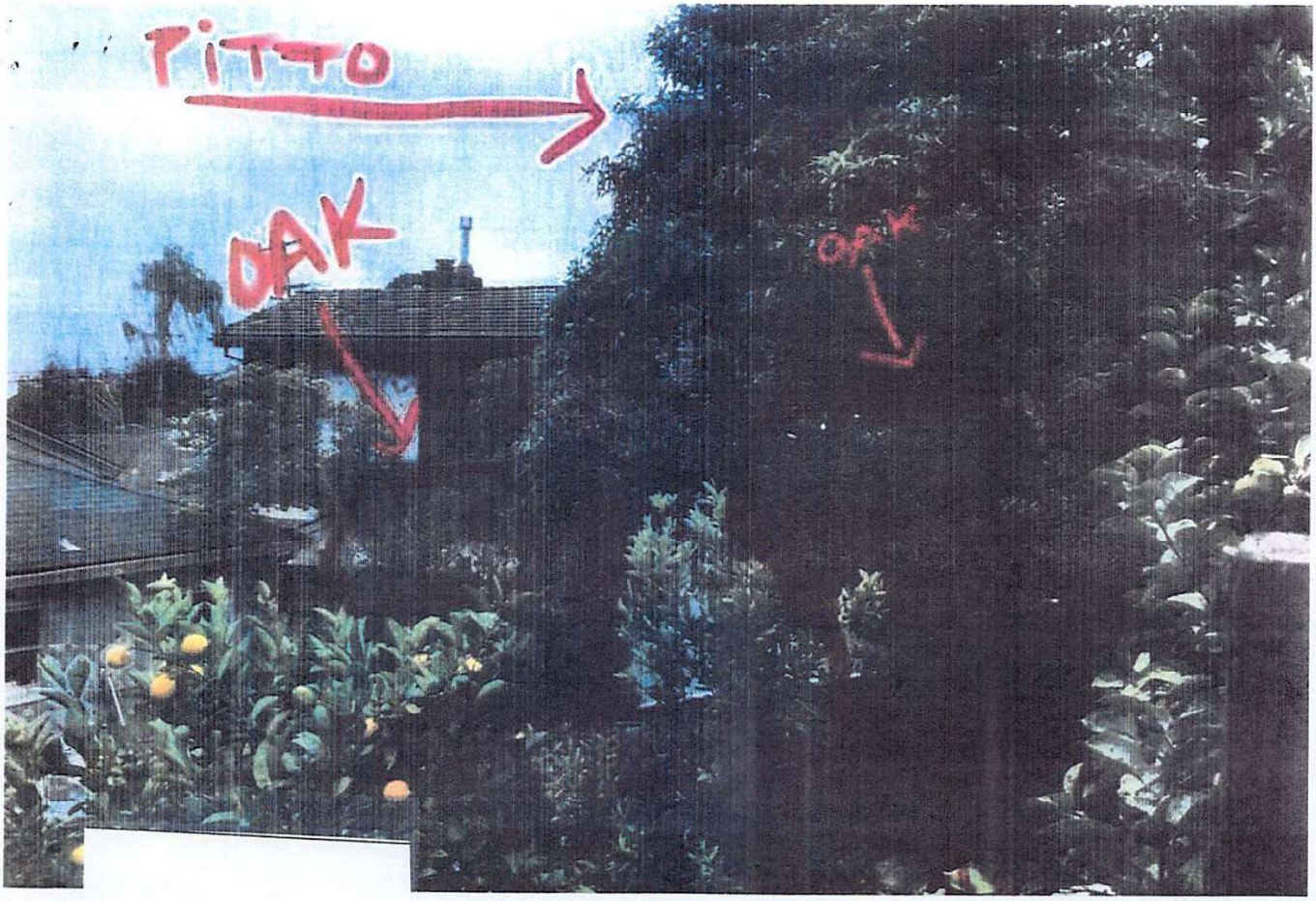
AERIAL: THREE HOMES


2006: HUNG VIEW

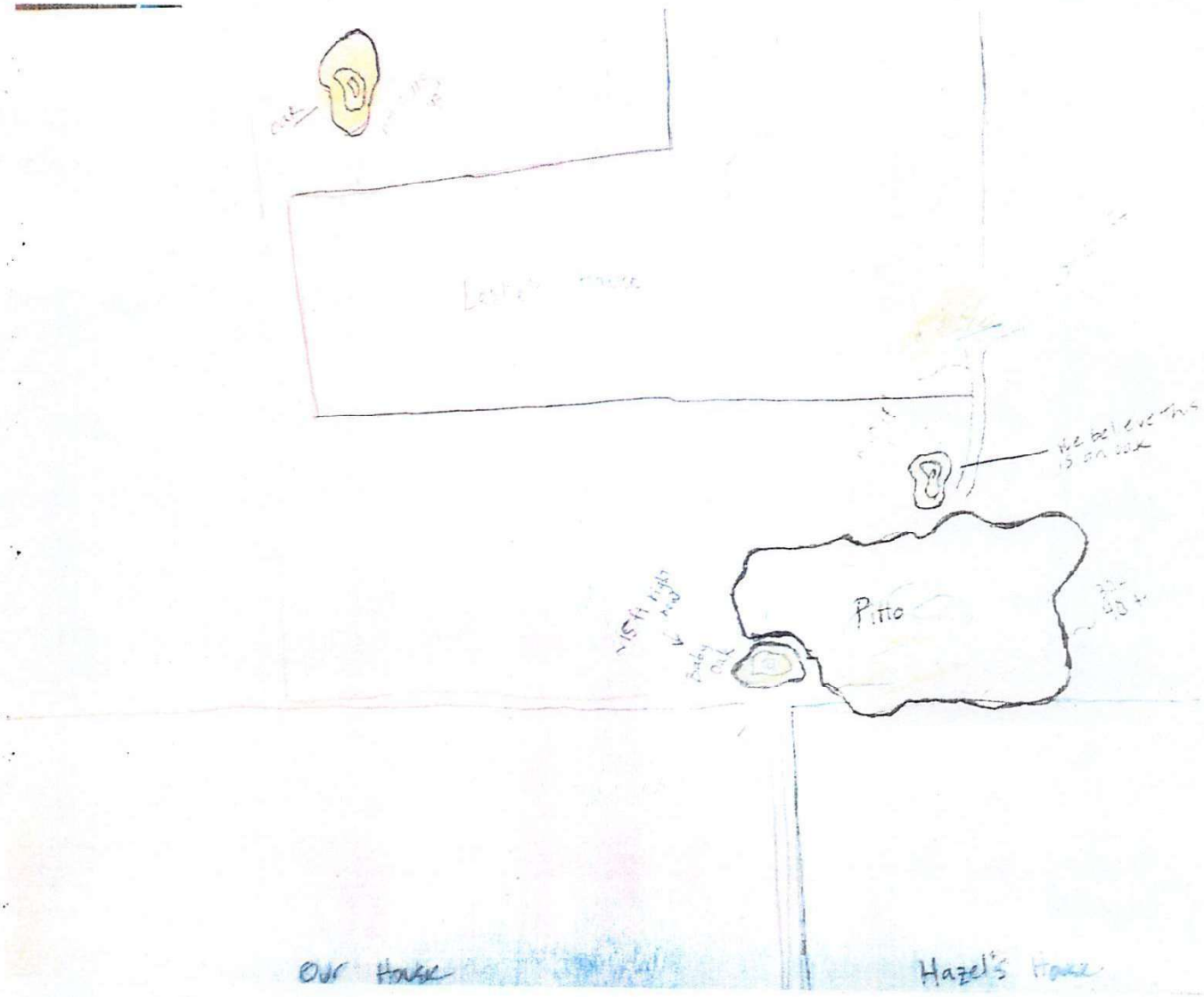
2011: CRAVAT/OVERWAY VIEW

2011: CRAVAT/OVERWAY
VIEW

2015: CRAVAT PHOTO

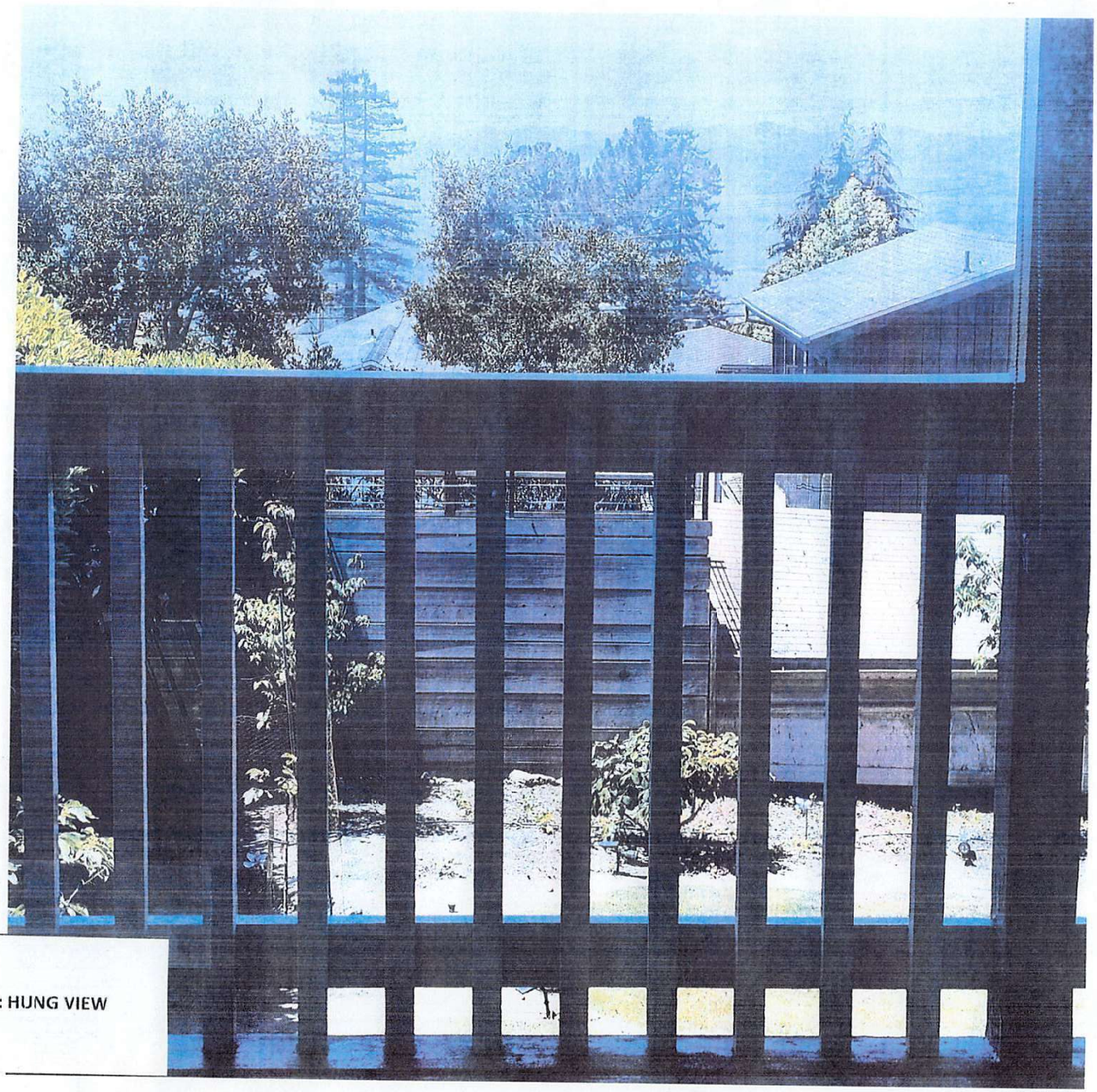


2015: CRAVAT PHOTO



2015: CRAVAT DRAWING

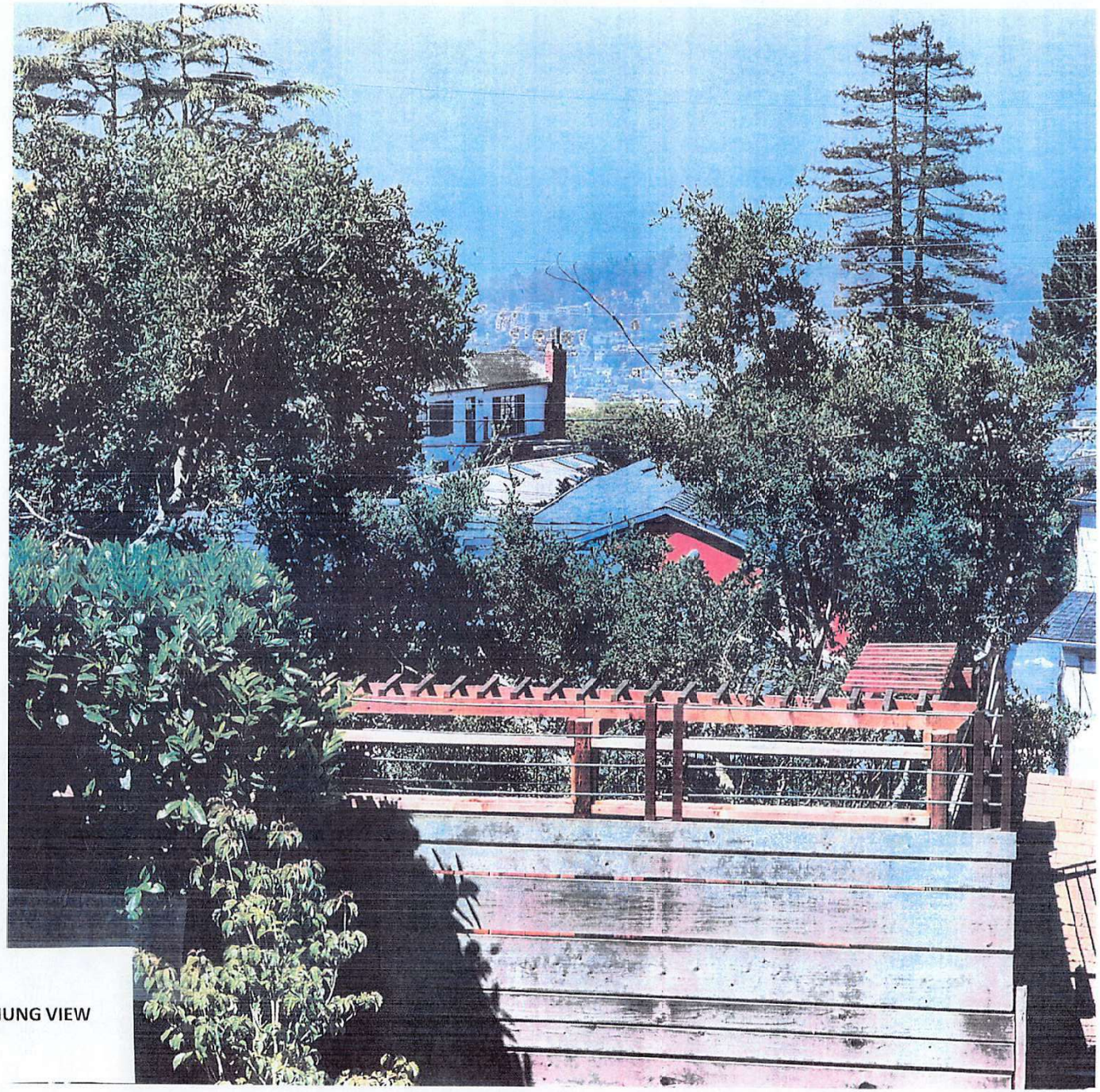
2025: HUNG VIEW



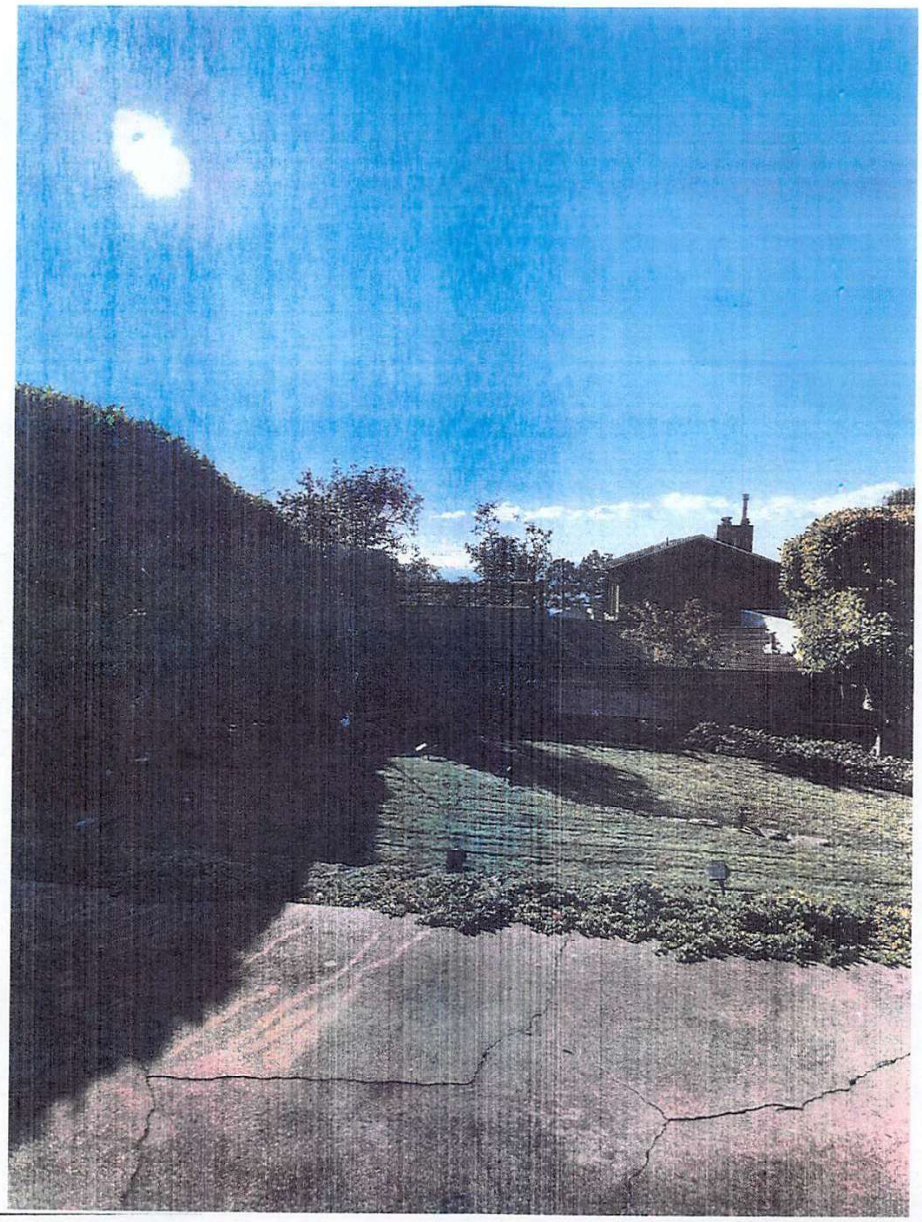
2025: HUNG VIEW

2025: HUNG VIEW

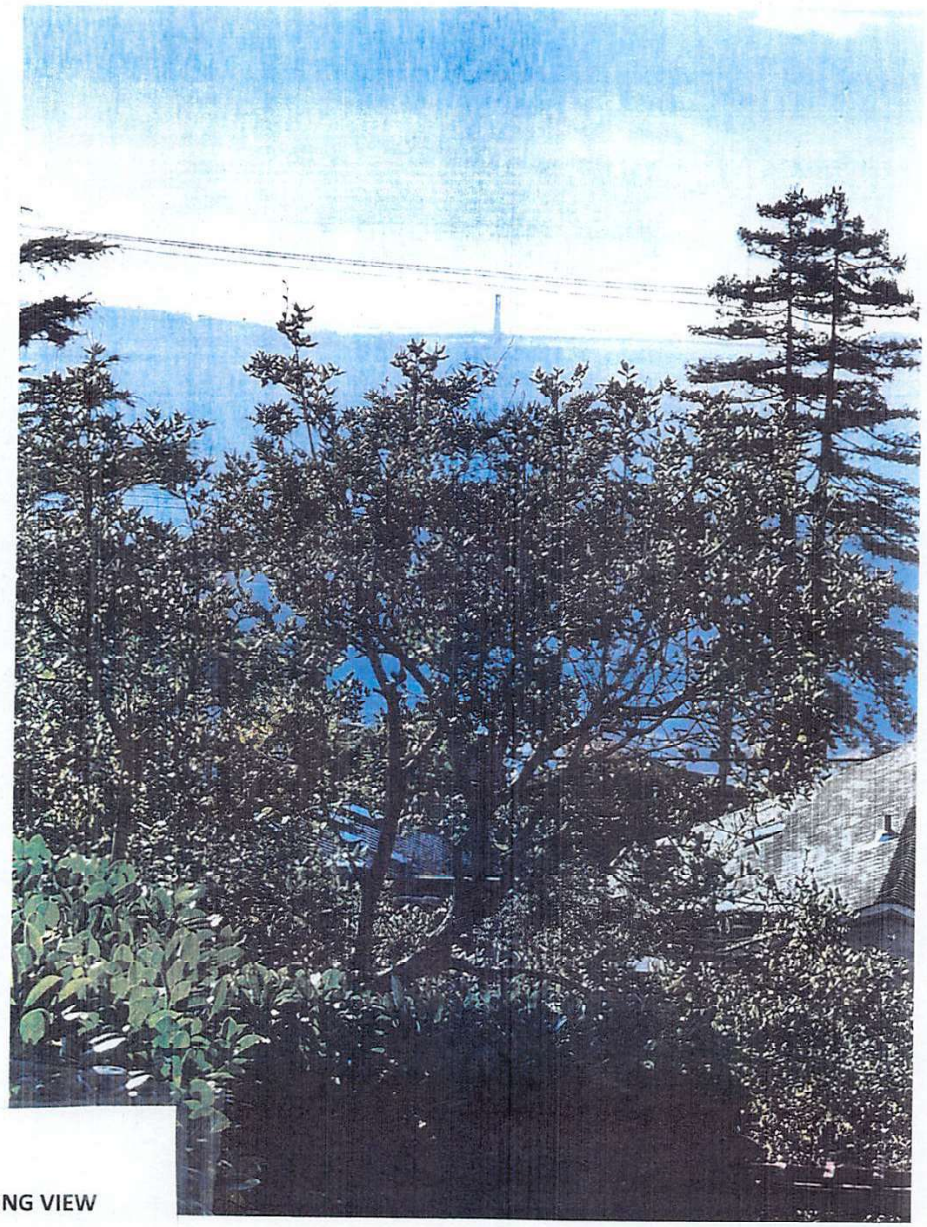
2025: HUNG VIEW



2025: HUNG VIEW



2025: HUNG VIEW

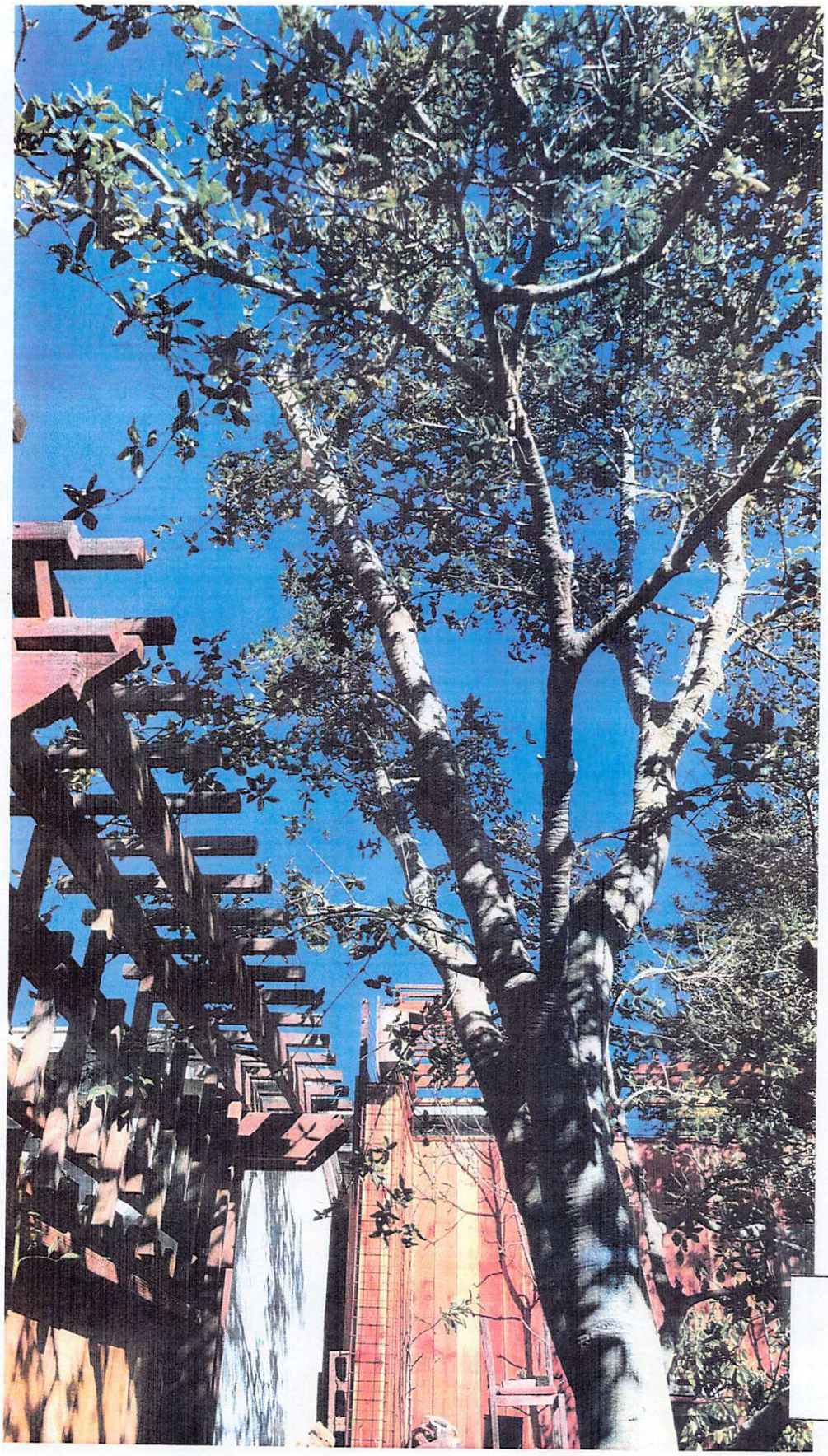


2025: HUNG VIEW

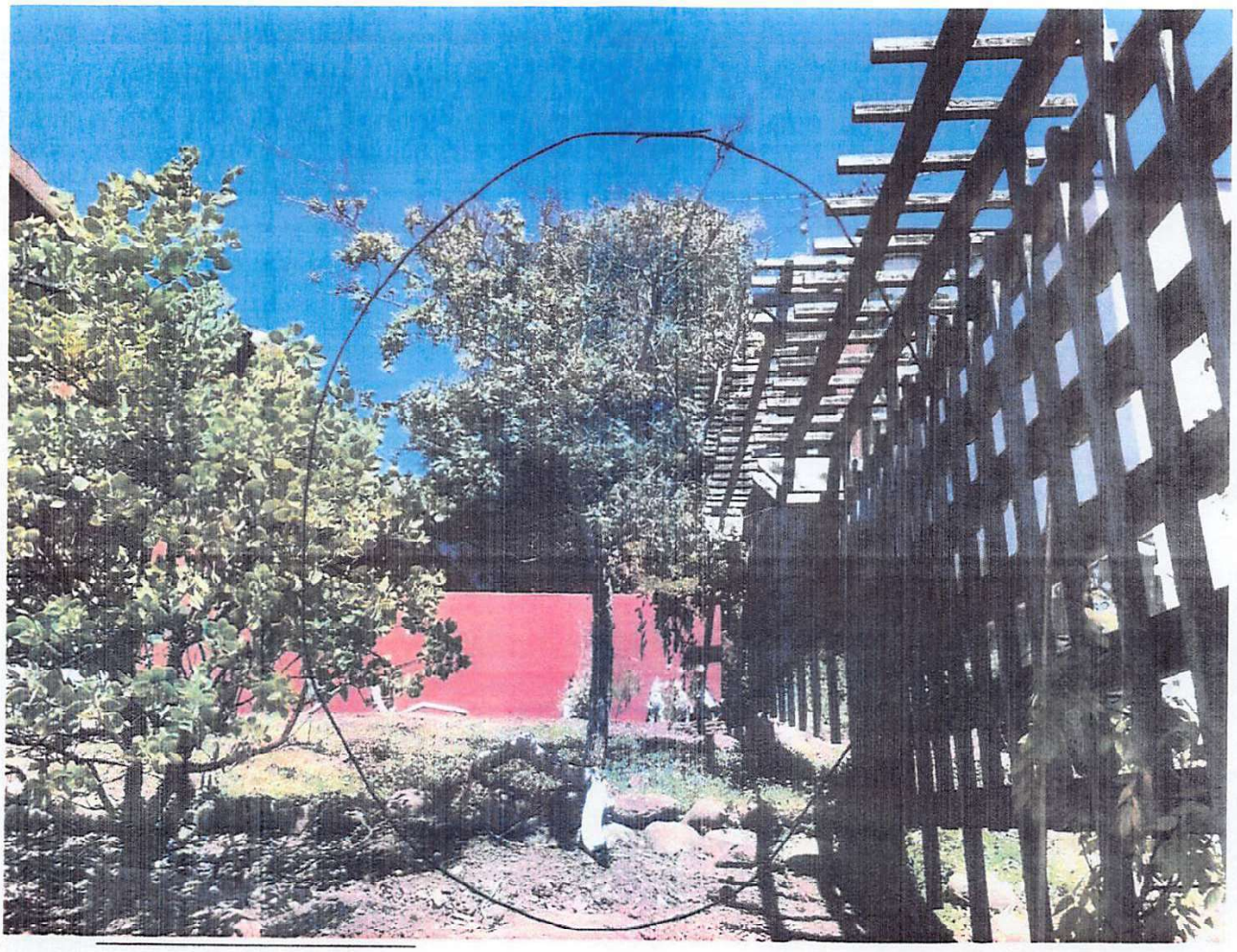
2025: HUNG VIEW

2025: CRAVAT/OVERWAY VIEW

2025: CRAVAT/OVERWAY VIEW



2025: 187 PURDUE TREES



2025: 187 PURDUE TREES

2025: 187 PURDUE TREES

2025: 187 PURDUE TREES

EXHIBIT B

CRAVAT/OVERWAY VIEW CLAIM

Correspondence

From: Lesliejacoby@aol.com
Date: November 24, 2011 4:46:29 PM PST
To: marcy@angelazulthemovie.com
Subject: Re: trees

Hi Marcy,

First, I made no promise of the kind you describe, for even my realtor offered to give me an oak upon purchase knowing I had always intended to plant a native oak tree on the property (to replace the tree I always intended to remove).

Second, please do not think this is your property whereby you can tell Jose where to plant trees or otherwise. Quite frankly, I took

great offense to you telling him to plant the Red Bud behind the Mock Orange (it will not be moved to that site). I find it moderately odd that you are quick to tell me what to plant and you don't think that your big trees maybe impeding one of your neighbor's views. You stand looking over your fence telling me to have Jose chop the small plum offshoots.

I know this property was vacant for a long time, and before that it was poorly maintained as a rental unit. You are not the only neighbor who doesn't like some of the changes I am making - but I have a clear vision of what I am trying to do, and while I appreciate your input and feedback, I will continue to follow my design.

Third, I am working on this house with the hope that my daughter or son will choose to live here in the future, and both of them will appreciate a well-maintained beautifully trimmed oak tree.

Please feel free to contact the KMAC, and we will go from there. In the meantime, please do not stop by tomorrow.

Please let me enjoy my last hours of Thanksgiving.

Best wishes,
Leslie

In a message dated 11/24/2011 3:34:42 P.M. Pacific Standard Time, marcy@angelazulthemovie.com writes:

> Hi Leslie,
>
> I was really hoping we could resolve this peacefully so that we could be happy neighbors. I know you really love oaks. However, it is definitely not respecting our right to a view which is part of the reason why we bought the house. In short time, that will be completely obliterated. I realize that we have had several conversations about this, and you promised me when you introduced yourself that no decision would be made that would spoil our view, our light and impede the growth of the trees we've already planted. I hope you will stand by your promise. We are loving our view now and we want to keep it.
>
> I am hopeful that you will research other options so that we don't need to involve KMAC that supports the View Ordinance that exists here in Kensington. It is really better to come to an agreement amongst ourselves and avoid involving officials.
>
> I would be happy to pay to replace the oaks with tree or trees of your choice that will not block our view.
>
> One of the great appeals of this hilly neighborhood is the incredible views of the bay and our house value and the enjoyment of our home would be affected if we lost our view.
>
> Please will you reconsider?
>
> Standing by,
>
> Marcy

On Nov 24, 2011, at 2:31 PM, Lesliejacoby@aol.com wrote:

Hi Marcy,

I thank you for your input, and I do respect your wish for access to a view as evidenced by our numerous conversations and the actual removal of bamboo and Sierra cedar.

However, I will be planting the oaks tomorrow, and I would appreciate it if you would respect my right to own a piece of property and design a layout that considers the needs of the neighbors but satisfies my aesthetic and environmental concerns.

Please do not come by tomorrow, as I do not wish to discuss this matter any further.

Best wishes,
Leslie

In a message dated 11/24/2011 10:11:16 A.M. Pacific Standard Time, marcy@angelazulthemovie.com writes:

> Hi Leslie,
>
> I have been quite preoccupied thinking about the two oaks you are thinking of putting in. The more I analyze the situation by peering off our balcony and looking from our living room window, the more I realize that this is a disastrous plan for our view and our light, not only for our plants, but for our living room as well. I know oaks are slow growers and this may not become a problem for several years, but at one point it will be a big problem if not for us, then for our daughter who one day plans to own this house. Although oaks can be trimmed to stay more open, they cannot be topped without looking horrible, and those large branches will find their way up and over your roof for sure, and likely join to make a solid barrier of leaf growth. And as they get bigger they will become more and more difficult to control. They will also shade all of your garden as well. Nothing really grows under oaks even out on the grassy hills where they look so stately and grand. In a small backyard they will dominate

everything. I also know you want to hang lights on them, which sounds really pretty, but it will be several years before they will be at that point. Is there not something else you can put in those spots that will give you that result very soon, and not grow too high so that our view will not be affected?

I know how wonderful one's favorite trees can make one feel. I've struggled with this as well as I have always had sun gardens and been able to choose my favorite trees. Now with a shade garden I've had to readapt and to my surprise I've learned to really love that as well.

I'd really like to ask that you reconsider planting either of the oaks, and research some other trees that will offer you the privacy, the branch structure and the beauty that you like so much in an oak. If you would like to have a look at our view from our window, you are more than welcome to see what I am trying so hard to protect.

Thanks Leslie. I will be around on Friday.

Marcy

ANGEL AZUL
a documentary

Marcy Cravat
Director/ Director of Photography

marcy@angelazulthemovie.com
angelazulthemovie.com
510.332.2143

=

ANGEL AZUL
a documentary

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Director/ Director of Photography

marcy@angelazulthemovie.com
angelazulthemovie.com
510.332.2143

LAW & MEDIATION OFFICE OF

LESLIE A. LEVY

December 23, 2011

Via certified and regular mail

Leslie Jacoby
187 Purdue Avenue
Kensington, CA 94708

Leslie Nicholaeff
PO Box 183
Los Altos, CA 94023

Leslie Nicholaeff
PO Box 479
Los Altos, CA 94023

Re: View Obstruction by your Trees

Dear Ms. Jacoby and Mr. Nicholaeff:

I represent Hazel Hung and Marcy Cravat, your neighbors who respectively reside at 236 and 238 Lake Drive in Kensington. The purpose of this letter is to comply with the provisions of section 816-2.802 of the Contra Costa County ordinance that addresses the matter of obstruction of views by trees. A copy of the entire ordinance is enclosed herewith for your easy reference.

Section 816-2.802 provides that a property owner ". . . who believes in good faith that the growth, maintenance, or location of trees situated on the property of another diminishes the beneficial use, economic value and enjoyment of views naturally accruing to the claimant's property shall notify the tree owner in writing of such concerns." As you, Ms. Jacoby, are aware from numerous conversations that you have had with Marcy Cravat, she has been extremely concerned about the inevitable fact that her view to the west will be obstructed by the California Live Oak trees that you recently planted on your property when those Oaks grow larger and taller. Marcy Cravat's next-door neighbor, Hazel Hung, shares that concern because her view of the Bay will also be destroyed when your Oak trees mature.

1718 SOLANO AVENUE ■ BERKELEY, CA 94707
TELEPHONE 510-222-2200 ■ FACSIMILE 510-223-0200
LAL@LEVYLAW.BIZ ■ WWW.LEVYLAW.BIZ

Both of my clients have had unobstructed views of San Francisco Bay, the City, the Golden Gate Bridge and Mount Tamalpais from their living rooms since they acquired their properties. Such views significantly enhance the value of my clients' properties. Naturally, they wish to preserve their valuable views as well as the natural light that brightens their homes.

Ms. Cravat took steps to prevent future view obstruction by entering into an agreement with your predecessor in interest, Leyla Zabih, that she (Marcy Cravat) would purchase and plant two trees in your yard that would grow to an appropriate height (i.e., not exceeding the height of your roof line) and would provide privacy for you. In accordance with that agreement, my client purchased and planted a Forest Pansy and a Dogwood tree on your property and made sure that they were irrigated from a water source from her property until such time as you took over as the new owner from Ms. Zabih.

In response to Marcy Cravat's many statements to you that she did not wish to have trees interfere with her view, you reassured her on at least five occasions by saying words to the effect that you would not plant anything that would affect anyone's views and that all of you could work together so that everyone would be happy.

Notwithstanding your assurances regarding the trees, you planted a Live Oak tree in your backyard and another one in your front yard, thereby deliberately violating not only your own promises, but also the applicable view ordinance.

Please refer to Section 816-2.206(4) of the County ordinance which provides that "The objectives of, and the justification for, this chapter are to: . . . Discourage the maintenance of trees that provide excessive shade and unduly diminish desirable views." No doubt you know that California Live Oak trees typically grow to 40 feet in height, with a 60 foot wide canopy. Moreover, there are very few, if any, plants that can survive under the canopy of a Live Oak, resulting in a situation whereby the ground below such trees must remain bare of plant life.

In addition to the existence of Oak trees on your property, there is Pittosporum growing in your backyard which was recently trimmed at Hazel Hung 's expense because it had grown higher than your roof line. My clients hereby request that the current height of the Pittosporum be maintained. Ms. Hung is prepared to continue to cover the cost of trimming the Pittosporum in your yard approximately every two years.

Demand is hereby made that you immediately remove the Live Oak trees that you recently planted in your yard and replace them with trees or shrubs that will not exceed the height of your roof line as seen from my clients' properties.

Please direct all further communications regarding these matters to my office.

Very truly yours,

Leslie A. Levy

Enclosure

LAL:rrk

cc: Clients
John M. Gioia, Contra Costa County Supervisor

January 9, 2010 [2012]

Via Certified Mail

Leslie A. Levy
1718 Solano Avenue
Berkeley, California 94707

Re: Native Oak Trees

Dear Ms. Levy:

We are in receipt of your letter dated December 23, 2011 in which you allege, on behalf of your clients Hazel Hung and Marcy Cravat, that we have violated the Contra Costa County ordinance pertaining to view obstruction by trees. Your letter contains a plethora of misstatements and self-serving assertions regarding the conversations between your clients and Ms. Jacoby; however, we will not bother to address those here because your clients *do not* have any valid legal claims.

As is stated in Section 816-2.204 of the Ordinance, "[the] purpose of this chapter is to provide a method for private property owners to gain restoration of views and sunlight *lost* due to tree growth by another private property owner . . . . It is not intended by this chapter to create any greater right to a view or access to sunlight than existed at the time any claimant purchased his property" (Emphasis added). In its present state, there are no trees on our property that cause your clients to lose any views and sunlight they previously had. Indeed, after purchasing our home and taking occupancy, we removed trees from the property, resulting in enhanced, open views for your clients that they previously did not have. We even received a note from Mrs. Hung thanking us for "taking down the tree, and 'opening the sky' for [her]." We have attached for your information a copy of Mrs. Hung's note. Your clients have no claim under the applicable Ordinance, because they have gained views and sunlight, not lost any.

Your client Mrs. Hung's offer "to continue to cover the cost of trimming the Pittosporum in [our] yard approximately every two years," is expressly rejected. Please also advise Mrs. Cravat and Mrs. Hung that they *do not* have permission to enter our property or touch anything on our property. Any violation of this directive shall be viewed as a trespass, and we will avail ourselves of all available legal remedies in such event.

Sincerely,

Leslie S. Jacoby

Leslie S. Nicholaeff

Cc: John M. Gioia, Contra Costa County Supervisor

June 27, 2013

Leslie,

We did not trespass onto your property. All work was executed from our property.

If you find that the fence is on your property, we will remove it in its entirety and rebuild it on our own property the way we want it.

If you find that the fence is on our property, we will leave it as is.

If you find that the fence is on the true shared property line, we will leave it as is as you did not contribute to its design, the purchase of its materials nor its construction. As you may recall you were offered that chance but claimed that you "could not afford it." We were sympathetic at the time and covered your cost as a neighborly gesture.

We are no longer feeling sympathetic toward you. You blatantly lied to us when you promised on several occasions quite emphatically that you would consider our coveted view and our necessary light when choosing your trees to plant in your backyard. You further lied when you denied making those promises despite the several conversations we'd had about this where you reassured us that we would "work together, everyone would be happy," and you would "protect our views." You went back on your word however, and planted 3 California Oaks in parts of your very small yard that will affect the views and light of 3 neighbors once they reach partial maturity. When you were asked how you could do this, we were all told that it was "part of your vision." You walked away and refused to discuss it any further.

We also purchased 3 specimen trees for you at a value of approximately $600, we removed the bamboo you wanted removed at our cost and as a neighborly gesture, and you refused Hazel's generous offer to keep your pittosporum trimmed at her cost so as to maintain our precious views which we paid for when we purchased our homes. We might remind you that there is a view ordinance in Kensington and when your trees reach a height that blocks our views, you will be required to either keep them trimmed always below that line at your cost, or remove them. Hazel and I have been assured of this from our lawyer.

We've heard from both of your neighbors that you have been very unfair and unlawful in your dealings with them regarding their fences. We've been told that you even removed your shared fence without any warning or permission and pushed your property line over a couple of feet at will. My daughter heard shouting and swearing one afternoon between you and your next door neighbor to your right regarding this bold and selfish act, and the neighbor to your left apologized to me for the shouting and swearing he thought we might have overheard when confronting you about building a fence without his permission despite his many attempts to cooperate in sharing decisions related to it. It appears that there is not a single neighbor you have not violated.

I am sure that it can be safely said, you are a liar, you are horribly selfish, and you have no intention of working with anyone. From your actions we can assume that you are not to be trusted which explains your unpopularity and our loss of sympathy.

We will be planting a vine on the trellis which will cover the bars you seem to dislike. They will become invisible when the vine reaches partial maturity.

Marcy Cravat
Curt Overway

-----Original Message-----
From: Hazel Hung <hazymay@mindspring.com>
To: leslie <lesliejacoby@aol.com>
Sent: Fri, Jan 9, 2015 6:33 pm
Subject: Greetings

Dear Leslie,

Hope this finds you healthy and well.

I'm writing to see if you would let me top your pittosporum. When you visited me on June 27, 2013, you mentioned that you paid a Columbia-Avenue neighbor $500 to top and trim her trees to improve your view. I hope that you would do the same for me.

I'll be paying for it and using the arborist who has worked for me for years.

Happy New Year to you and your family!

Hazel

From: Leslie Jacoby <lesliejacoby@aol.com>

Subject: Re: Greetings

Date: January 10, 2015 9:20:15 PM PST

To: hazymay@mindspring.com

Hi Hazel,

It's very nice to hear from you - and I wish you a happy new year as well.

I plan to *thin the pittosporum*, which is what I told you in June. *I will not (never) "top it off" as has been done in the past*, which is what I said to you in June as well. I told you at that time the tree is leaning too far forward as a result of this "hacking" of the top of the tree, and I do not plan to continue trimming the tree in the same fashion as in the past.

I'm sorry you misunderstood me, but I know I said I would be thinning it (which I did a bit this summer).

I will not use your arborist because I cannot trust that he will keep my wishes in mind.

I will not accept any money from you as I will be responsible for my plants on my property. Thank you for the offer.

Further, I did not give $500 to another neighbor ... it was another amount.

Best wishes,
Leslie Jacoby

-----Original Message-----
From: Hazel Hung <hazymay@mindspring.com>
To: leslie <lesliejacoby@aol.com>
Sent: Tue, Sep 8, 2015 9:42 am
Subject: View

Hi Leslie,

Hope you are doing well.

I'm writing to see if you will let me
top your pittosporum because it's blocking my view. If you don't want to use my tree trimmers I'd be happy to pay for your workers. You are also welcomed to drop by to see how my view has been impacted.

Please let me know your
decision by Sept. 15. I'm prepared to file a petition with the county after that.

Regards,

From: Leslie Jacoby <lesliejacoby@aol.com>

Subject: Re: View

Date: September 9, 2015 1:26:11 PM PDT

To: hazymay@mindspring.com

Hazel,

It's so unfortunate to read your "threatening" email - and my first response to you: *Go ahead and file a petition.* Marcy and you have always been aggressive and mercurial neighbors - nice when you think you will get your way, and threatening when you will not.

And once again, I remind you both: I took out all the bamboo, the gargantuan Cedar, and allowed Marcy to put drainage pipes on the side of my property (which leaked earlier this year). What have either of you done for my family or me that expresses a single neighborly kindness.

Second, I will say it again. I will never *top off"* the pittosporum - I will *"thin it" (and I did thin it last year and you didn't even take note).* I will be topping the bush lower down in the yard by my side gate. I will be doing this in a few months.

Third, a priority for my family and me is the completion of the backyard fence, so I will be doing that work in the next month.

I don't think I will visit you - quite frankly, I find both Marcy and you the most unpleasant neighbors I have ever had.

Leslie

Gmail

Leslie Levy <lal@levylaw.biz>

RE: Hung v. Jacoby -- Site Visits

1 message

Jesse Clifford Adams <jessethelawyer@earthlink.net> Thu, Jan 14, 2016 at 11:20 AM
To: Leslie Levy <lal@levylaw.biz>
Cc: jessethelawyer@earthlink.net

Thank you for your email of this morning.

My clients are also amenable to inspection that allows for you and Ms. Hung to see views and configurations from my clients' property. At this juncture I have some understanding that some of the foliage in question does in fact serve a "privacy purpose", blocking views in to my clients' home from otherwise openly exposed windows. I expect to know more facts with certainty by early next week.

I think setting a mutual site inspection will be advantageous to all interested parties. We can discuss further at an appropriate time.

Be well, Jesse

Jesse Clifford Adams, Esq.

LAW OFFICE OF JESSE CLIFFORD ADAMS

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From: Leslie Levy [mailto:lal@levylaw.biz]
Sent: Thursday, January 14, 2016 11:01 AM
To: Jesse Clifford Adams
Subject: Hung v. Jacoby

Thank you for your prior email, Mr. Adams. I confirm that the extension is till February 2, 2016.

Please be advised that my client reports that one of your client's oak trees already has grown past Ms. Jacoby's roof line and another is catching up quickly.

Ms. Hung's offer to allow you to see her view as she sees it from her home stands, but I ask that any arrangements to see it from her property be made through my office.

Best,

Leslie Levy

Leslie A. Levy

Gmail

Leslie Levy <lal@levylaw.biz>

hung v. levy -- Site Visit

1 message

Jesse Clifford Adams <jessethelawyer@earthlink.net> Mon, Jan 25, 2016 at 3:02 PM
To: lal@levylaw.biz
Cc: jessethelawyer@earthlink.net

Hi-

Thank you for your call-back this afternoon.

I spoke with Les Nicholaeff who would like to participate. I think it will be very helpful to all if he can see the view from the west side of your client's property.

We are available during the afternoon this coming Thursday, after 2:00 p.m. Mr. Nicholaeff has no availability on Friday.

Please let me know what works for you and/or Ms. Hung. Thank you, Jesse

Jesse Clifford Adams, Esq.

LAW OFFICE OF JESSE CLIFFORD ADAMS

1244 E. 33rd Street

Oakland, California 94610-4029

P: (510) 846-1013

F: (510) 500-3612

jessethelawyer@earthlink.net

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From: Leslie Levy <lal@levylaw.biz>
Date: Thu, Mar 28, 2024 at 1:56 PM
Subject: View Obstruction from 187 Purdue trees
To: James Cook Esq. <james.cook@johnburrislaw.com>

Hello, James:

As I informed you in our recent telephone conference, two of your clients' trees (they are both oak trees) are blocking Hazel Hung's views. I attach a copy of a Google Maps aerial photo showing their locations, circled.

Also attached are four photos taken on March 18, 2024 from my client's balcony.

The trees were planted in approximately 2011 and are about 16-17 feet tall. The tree to the south which is located closest to the backyard fence is in good health, but the other one is in poorer health.

Pruning by a certified arborist by which the height will be reduced by about 4 feet, as long as it is done properly, will keep the trees from obstructing again for approximately 2 years.

By this email I am asking you to convey Ms. Hung's view claim to have the trees pruned as described.

Of course, Ms. Hung is willing to have you and/or your clients confirm the view obstructions by going to her house to see the obstructions from the vantage points of her living room and balcony. An appointment to do so can be made through my office by email if your clients wish to accept this invitation.

Please give us a response to this request and invitation by no later than April 6, 2024.

Thank you for your attention to this matter,

Leslie

From: James Cook <james.cook@johnburrislaw.com>
Date: Tue, Apr 16, 2024 at 3:27 PM
Subject: MEDIATION: Hung v. Leslie Jacoby et al., MSC15-01985
To: Leslie Levy <lal@levylaw.biz>, James Cook <james.cook@johnburrislaw.com>

HI there. I understand the issue with having Ms. Shikina as a mediator. Would Ms. Hung be open to mediation with another mediator?

I think my clients are willing to trim the trees. But I will follow up on the demand. Thanks again.

On Tue, Apr 16, 2024 at 12:00 PM Leslie Levy <lal@levylaw.biz> wrote:

Hello, James

Please know that my client and I oppose retaining Alice Shikina to act as the mediator in this matter because of your conflict of interest and her lack of attorney credentials.

I have found in my practice that attorneys who have practiced in the field of real property law (which covers a lot of territory as you are aware) are best suited to act as mediators because they can describe in great detail during the mediation, from their own experience, what is involved in litigation in all its messiness, as a means of convincing parties to settle instead of proceeding to court. Such attorneys are even better-suited for this role than retired judges in my opinion (judges aren't always up-to-date on prevailing attorneys fees and costs).

Anyway, we need a response to the demand that your clients reduce the crown of their oak trees in order to clear Ms. Hung's view. If they are unable to express any reasonable alternative to this demand and insist on mediating, then please let us know right away.

Leslie

From: James Cook <james.cook@johnburrislaw.com>
Date: Wed, Apr 24, 2024 at 4:13 AM
Subject: MEET AND CONFER: Hung v. Leslie Jacoby et al., MSC15-01985
To: James Cook <james.cook@johnburrislaw.com>, Leslie <lal@levylaw.biz>

Good morning Leslie:

Please see the response to Ms. Hung's demand below. 415-350-3393

---------- Forwarded message ---------

From: Dr. Leslie Jacoby <dr.lesliejacoby@gmail.com>
Date: Tue, Apr 23, 2024 at 8:42 PM
Subject: Blurb for Lesley Levy
To: James Cook <james.cook@johnburrislaw.com>
Cc: Les Nicholaeff <lsnicholaeff@gmail.com>, Leslie Jacoby <Dr.LeslieJacoby@gmail.com>

Leslie Jacoby and Leslie Nicholaeff, will not cut the tops off of any of their trees by May 1, 2024. As they have done over the past five years, they will continue to trim and thin out the trees during the best time frame for oak trees, that being between October and March, to ensure the health of the trees. As the trees mature, my clients will continue to work to ensure that their trees give them the privacy they deserve while maintaining their property. They are willing to consider limiting the height of the tree by a foot but only as it ensures the integrity, health and shape of the trees.--

Leslie Jacoby, M.F.A., Ph.D.

Comparative Literature and Medieval Studies

Dr.LeslieJacoby@gmail.com--

Thanks,
James Cook Esq.
Attorney at Law

From: James Cook <james.cook@johnburrislaw.com>
Date: Wed, May 8, 2024 at 6:19 PM
Subject: INTENT TO TRIM TREES: Hung v. Leslie Jacoby et al., MSC15-01985
To: James Cook <james.cook@johnburrislaw.com>, Leslie <lal@levylaw.biz>

I am forwarding this at the request of Leslie Jacoby.

---------- Forwarded message ---------
From: **Dr. Leslie Jacoby** <dr.lesliejacoby@gmail.com>
Date: Wed, May 8, 2024 at 8:44 AM
Subject: Jacoby/Nicholaeff v Hung/Levy (email dated April 26, 2024)
To: James Cook <james.cook@johnburrislaw.com>
Cc: Les Nicholaeff <lsnicholaeff@gmail.com>

Hi James,

Here is our response to Hung/Levy email dated April 26, 2024:

1. We will trim our oak trees in October at end of their dormant period; and,
2. We will put in a new fence on our property in September.

Best regards,

Leslie & Les--

Leslie Jacoby, M.F.A., Ph.D.

Comparative Literature and Medieval Studies

Dr.LeslieJacoby@gmail.com--

Thanks,
James Cook Esq.
Attorney at Law

From: Leslie Levy <lal@levylaw.biz>
Date: Fri, May 10, 2024 at 6:01 PM
Subject: Hung v. Jacoby and Nicholaieff
To: James Cook Esq. <james.cook@johnburrislaw.com>

Hello, James:

Ms. Hung's response to your clients' message is not acceptable for several reasons, most notably, that it is unreasonable insofar as it calls for action on the part of your clients that is way too far into the future.

Also, the action that they say that they will take with respect to their trees is totally vague, with no mention at all of the aim of clearing my client's view.

Regarding the trees, there is no particular season during which trees have to be pruned, trimmed, topped or otherwise altered, according to arborists with whom I have consulted. The so-called dormant stage as being the only time that the oaks can be altered is a red herring. This is a made-up excuse that your clients are giving solely in order to delay action.

The removal of the fence from Ms. Hung's land and its replacement with a fence that does not encroach obviously can be accomplished within less than ten days. Again, your clients are stalling, despite Ms. Hung having demanded the fence replacement

again and again for many years. I submit that a Judge will view your clients' deliberate act of committing this continuing trespass following the execution of the parties' settlement agreement as wilful and malicious, justifying an award to my client of her attorneys' fees and costs if she is compelled to file the motion to enforce the settlement agreement. Indeed, the additional fact that my client paid $12,000 for the existing fence fully supports the granting of such relief.

Given your clients' egregious conduct, Ms. Hung requires that the tree and fence work be completed within twenty days, **by no later than May 30, 2024.**

Furthermore, Ms. Hung demands that the following procedures be implemented:

In order to ensure that the new fence is installed on the property line, we must be given at least 48 hours' advance notice of the date that this work will be commenced, the name and contact information of the workers who are going to do the work and an opportunity for my client and/or me to instruct the worker in person, before he begins, in order to show him exactly where to install the new fence in accordance with the survey that Ms. Hung commissioned.

As to the tree work, we demand that we be given at least 48 hours' advance notice of the date that this work will be commenced, the name and contact information of the workers who are going to do the work and an opportunity for my client and/or me to instruct the workers how much to reduce the height of the trees, based upon in- person viewing of my client's view from her home by all concerned persons. Your clients are invited to look at the view obstructions from my client's home while the work is being done to confirm that the obstructions will be eliminated.

If this proposal is not accepted by your clients in writing by the close of business on T**uesday, May 14, 2024**, the motion to enforce will be filed.

Have a nice weekend, James.

Leslie

From: Leslie Levy <lal@levylaw.biz>
Date: Thu, Jun 13, 2024 at 4:05 PM
Subject: Hung v. Nicholaeff and Jacoby
To: James Cook Esq. <james.cook@johnburrislaw.com>

Hello, James:

Please read the attached letter and convey it to your clients.

Leslie

LAW & MEDIATION OFFICE OF

LESLIE A. LEVY

June 13, 2024

via electronic mail only

James Cook

james.cook@johnburrislaw.com

Re: Hung v. Nicholaeff and Jacoby

Dear James:

Hazel Hung's response to your clients' most recent counter offer is in this letter. Your clients offered to do the following:

1. **In October 2024, Jacoby/Nicholaeff will trim the oak trees based upon Jacoby/Nicholaeff personal arborist's expertise, which will be at the end of the California Live Oak dormant period;**

This part of the proposal is unacceptable for two reasons: the reference to merely trimming the trees is evasive and vague insofar as your clients' contractual obligation is to **reduce the crown** of the trees so that they no longer block my client's view. This kind of alteration typically is called "topping," not trimming. Your clients must do whatever is necessary to lower the height of their trees and keep them lowered to that point in the future.

Also, as I informed you, there is no time frame which limits the ability of an arborist to alter oak trees as Ms. Hung is demanding, according to our arborist. Waiting four months to do this tree work is simply an unreasonable attempt to delay resolution of Ms. Hung's view claim, made in obvious bad faith.

2. **Jacoby/Nicholaeff will perform all work on oak trees in accordance with maintaining the health and well-being of each tree simultaneously protecting Jacoby/Nicholaeff privacy from Hung, Cravat, Bodell, and Jiri/Hing Lee;**

1718 SOLANO AVENUE ■ BERKELEY, CA 94707
TELEPHONE 510-222-2200 ■ FACSIMILE 510-223-0200
LAL@LEVYLAW.BIZ ■ WWW.LEVYLAW.BIZ

The Settlement Agreement to which your clients agreed says absolutely nothing about protecting your clients' privacy. The issue of privacy was discussed during the mediation and the fact that it was not a condition of the settlement is evidence that privacy was not an issue by the time the parties agreed to the resolution. If your clients wanted that to be a condition, they should have had it included in the Settlement Agreement. And, most certainly, there never was any discussion of your clients' privacy being protected vis-à-vis any neighbors other than Ms. Hung.

This portion of the proposal is a totally unjustified attempt to interject a new condition into the Settlement Agreement to which the parties never agreed.

By the same token, the parties" Settlement Agreement makes no mention of maintaining the health and well-being of the subject trees. If your clients had performed the terms of the Settlement years ago when the oak trees had started to block Ms. Hung's view and she had demanded that they reduce the crowns of these trees, it would have been much less harmful to the trees because they were younger and stronger at the time. By waiting to perform the terms of the Settlement Agreement, your clients have been the sole cause of any purported fragility of their trees. The preservation of the "health and well-being" of their trees is their problem, not my client's.

3. **In September 2024, Jacoby/Nicholaeff will put in a new fence on their property based on the Moran Engineering Boundary & Topographical Map (July 22, 2023), which surveyed 187 Purdue, marked 187 Purdue, and recorded the boundaries at Contra Costa County.**

This proposal is an outrageously bad faith delay tactic. There is no reason that the replacement of the fence cannot take place immediately. Your clients are deliberately and blatantly provoking Ms. Hung by refusing to act promptly on this aspect of the Settlement.

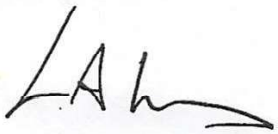
Moreover, their reference to a survey that we have not seen is ludicrous. We demand that they produce this survey so that we can confirm exactly where the new fence will be installed. Ms. Hung also insists that she be notified at least 48 hours in advance when the fence contractor will do the work so that she can monitor its placement on the ground to ensure that the fence is at its original location.

All of the above-mentioned actions of your clients form solid bases for my client to obtain an award of the attorney's fees and costs that she has incurred and will incur having me deal with their obstinance and malice. If Ms. Hung is compelled to make a motion in court to enforce the Settlement Agreement, this conduct will be submitted in support of her

claim for sanctions. The longer your clients wait to fulfill their obligations, the more likely it will be that they will have to pay dearly.

I urge you to pressure your clients to behave appropriately.

Very truly yours,



Leslie A. Levy

LAL:jw

CC: Client

From: Leslie Levy <lal@levylaw.biz>
Date: Thu, Nov 7, 2024 at 12:49 PM
Subject: Leslies on Purdue
To: James Cook Esq. <james.cook@johnburrislaw.com>

Hello, James:

I hope that you are doing well.

Do you still represent the Leslies in connection with the tree and fence matter? I need to know because I want to give them one more chance to abide by the Settlement Agreement before I make a motion to enforce it in court.

Thank you,

Leslie

From: James Cook <james.cook@johnburrislaw.com>
Date: Thu, Nov 7, 2024 at 1:02 PM
Subject: MEET AND CONFER: Hung v. Leslie Jacoby et al., C15-01985
To: Leslie Levy <lal@levylaw.biz>, James Cook <james.cook@johnburrislaw.com>

Hi there Leslie:

As I understand it, they are in compliance with the agreement.

1. Recently the trees have been trimmed.
2. Also, the fence was repaired/moved.

I will send a list of what has been done in compliance with the agreement. Their position is that they will not do anything further this season. I will send a follow up email shortly.

From: James Cook <james.cook@johnburrislaw.com>
Date: Mon, Nov 11, 2024 at 10:03 AM
Subject: Fwd: MEET AND CONFER: Hung v. Leslie Jacoby et al., C15-01985
To: James Cook <james.cook@johnburrislaw.com>, Leslie <lal@levylaw.biz>

Please see the response below. I asked her to put it in her own words.

---------- Forwarded message ---------
From: Dr. Leslie Jacoby <dr.lesliejacoby@gmail.com>
Date: Sun, Nov 10, 2024 at 7:35 PM
Subject: Re: MEET AND CONFER: Hung v. Leslie Jacoby et al., C15-01985
To: James Cook <james.cook@johnburrislaw.com>

Response to "Meet & Confer" Emails, Hung v. Leslie Jacoby et al., C15-01985

Dear James,

Below is our (Jacoby and Nicholaeff) response to Levy's recent email entitled, "Meet & Confer" Emails, Hung v. Leslie Jacoby et al., C15-01985" dated November 7, 2024.

Jacoby and Nicholaeff restate the following:

1. Jacoby and Nicholaeff fully, and in good faith, complied with the Settlement Agreement within a couple of weeks of signing; that is, Jacoby and Nicholaeff complied fully with the Settlement Agreement in 2016. Jacoby and Nicholaeff are NOT responsible for any changes to the existing fence, as it complied fully with the terms of the 2016 Settlement Agreement at the time of signing. Jacoby and Nicholaeff have proof of the above statements.

2. Jacoby and Nicholaeff have done nothing since 2016 to violate that said 2016 Settlement Agreement thereafter. In fact, Jacoby and Nicholaeff have taken extraordinary steps to maintain and protect the California Native landscaping in the Jacoby and Nicholaeff property. Jacoby and Nicholaeff have proof of these statements.

3. Rather, Hung has made disingenuous, misleading, deceptive, and deceitful statements about purported violations or otherwise of the 2016 Settlement Agreement. Additionally, in March 2024 and on October 5, 2024, Hung bypassed attorney communications by contacting Nicholaeff directly. In the latter contact, Hung texted Nicholaeff while the Jacoby and Nicholaeff new fence was being installed on Jacoby and Nicholaeff property. Jacoby and Nicholaeff have proof of these statements.

4. Rather, Levy continues to make disingenuous, unacceptable, and defamatory statements about Jacoby, which have crossed the line into slander, including questioning whether you, James Cook, remain our attorney of record. Jacoby and Nicholaeff have proof of these statements in the full series of emails written by Levy in 2024.

Finally, Jacoby and Nicholaeff repeat the following regarding their legal responsibility to their property:

1. By the close of October 2024, Jacoby and Nicholaeff trimmed the oak trees based upon Jacoby and Nicholaeff's personal arborist's expertise – 35% - 40% of each tree was trimmed, including large major branches;

2. Jacoby and Nicholaeff performed all work on oak trees in accordance with maintaining the health and well-being of each tree simultaneously protecting Jacoby and Nicholaeff's privacy from Hung, Cravat, Bodell, and Jiri/Hing Lee;

3. Jacoby and Nicholaeff performed all work on oak trees by removing all branches and limbs that overhung into the properties of Hung, Cravat, Bodell, and Jiri/Hing Lee; and,

4. In September 2024, Jacoby and Nicholaeff removed all espalier plants and climbing vines that had grown on the existing fences on Hung/Cravat properties. Thereafter, Jacoby and Nicholaeff installed a new fence on their property based on the Moran Engineering Boundary & Topographical Map (July 22, 2023), which surveyed 187 Purdue, marked 187 Purdue, and recorded the legal boundaries at Contra Costa County. There now exists an approximate 6 inches between the two fences. Moving forward, it is expected that neither Hung nor Cravat will ever allow any of their plants to cross over into our property.

Best regards,

Leslie & Les

Gmail Leslie Levy <lal@levylaw.biz>

Hung v. Leslies

1 message

Leslie Levy <lal@levylaw.biz> Wed, Jun 18, 2025 at 4:15 PM
To: "James Cook Esq." <james.cook@johnburrislaw.com>
Bcc: Hazel <hazymay@mindspring.com>, Michael Baefsky <treesbugsdirt@gmail.com>

Hello, James.

In response to your clients' refusal to allow our consulting arborist to inspect their two oak trees up close while standing on their land, I have the following comments:

The refusal to allow access to your clients' trees is in the utmost bad faith in view of the Kensington View Ordinance which strongly encourages the parties to cooperate with each other in an attempt to resolve their differences. Naturally, mutually allowing access to the parties' respective properties is a crucial step in the reconciliation process.

The new Ordinance requires that an arborist's report must accompany a view claim. Our arborist has explained that he cannot do a complete report without being able to examine the trees up close. Therefore, your clients are not merely trying to ignore and avoid Ms. Hung's view claim and the related process, but they are actively impeding her ability to comply with this requirement of the Ordinance.

Of course, I will make a note of your clients' refusal to cooperate when we go before the County-appointed Arbitration Panel.

I recommend that your clients change their minds about permitting access to their land. However, if your clients remain adamant that no one from our side may enter their property to inspect the trees, we ask that your clients provide us with three measurements of each of the two oak trees: the circumference of each trunk, measured at a height of 54 inches from the base of each trunk; the height of the lowest branch of each tree, measured from the base of each trunk and the height of each tree.

Please respond to this email as soon as possible.

Thank you,

EXHIBIT C

CRAVAT/OVERWAY VIEW CLAIM

Arborist Report of Michael Baefsky

T R E E S , B U G S , D I R T
L A N D S C A P E C O N S U L T I N G

August 6, 2025

Marcy Cravatt & Curt Overway
238 Lake Drive
Kensington CA

Subject: Arborist Report - View Obstruction and Restoration of Views

SUMMARY
Marcy Cravat & Curt Overway (Client) have views from their property that are blocked by two coast live oak (*Quercus agrifolia*) trees and one holly oak (*Quercus illex*) tree on Leslie Jacoby & Leslie Nicholaeff's (Tree Owner) property. Benefits of these trees are screening, shade, air purification, C02 sequestration, wildlife habitat, and beauty. Burdens of these trees are blocking views, fire hazards, and pruning due to large trees in small spaces. To restore views I recommend pruning & applying a growth regulator to the holly oak & one coast live oak (#1), removing & replacing the other coast live oak (#2). Adverse impacts of pruning would be slower growth and reduced benefits. Adverse impacts of removing and replanting would be loss of benefits until the new tree developed. Structural impacts from pruning would be a smaller structure. Biological impacts of pruning would be reduced vigor and slower growth.

INTRODUCTION
BACKGROUND
My Client wants to recover views from their property that are blocked by three trees that are not protected in unincorporated Contra Costa County. Two trees are coast live oak, which is one of the main indigenous species from the area of the site, and grows up to 70 feet in height, 30-70 feet wide. One holly oak tree is a Mediterranean native species that can grow to 69 feet in height, 40-70 feet wide.

ASSIGNMENT
Meet with Client and Leslie Levy (Client Attorney) on site, collect observations about trees in question, develop an understanding of views obstructed, analyze options for restoring obstructed views, evaluate impacts on trees from view restoration, evaluate tree health, structure & form, provide oral and written reports. Client Attorney reviewed report and provided suggestions to improve clarity, brevity & accuracy.

LIMITS OF ASSIGNMENT
- Data was collected from Client's property because Tree Owner would not allow access
- Historical images from Client's property were not provided or analyzed
- Estimates of view obstruction & property lines were provided by Client
- Observations (except for view obstruction estimates), analyses and recommendations are my own

LOCATION
- Views From - 238 Lake Dr., Kensington (Client)
- Trees - 187 Purdue Ave., Kensington (Tree Owner)

OBSERVATIONS

SITE

Client's property slopes down from Lake Drive with two deck/terraces that face San Francisco Bay. Their backyard is narrow and fenced above 187-189 Purdue Ave. A wooden fence is downslope in between Client, 236 Lake Dr. & Tree Owner properties. The holly oak is growing in a tight space next to 187 Purdue Ave. & a fence between 187-189 Purdue Ave. A plum (*Prunus spp*.) is between 189 & Client's backyard, & there is a large declining eastern redbud (*Cercis canadensis*) growing in a corner of Client's yard, and a small declining valley oak (*Quercus lobata*) growing in the Tree Owner's frontyard.

Tree Owner's property has a narrow planting bed above their house, next to a wooden side fence and trellis with one coast live oak (#1) located above a rock wall and two pots. Below #236 Lake Dr. is another narrow terraced planting bed with a rock retaining wall below, and another coast live oak tree (#2) growing close to a wooden fence and wooden trellis, along with a few pots and an evergreen shrub.

METHODS

On July 24, 2025 between 11:20 am -12:40 pm I met with Client, Client Attorney and Tree Owner, examined trees and views from two decks attached to the Client's house, estimated trunk diameter of the holly oak and used my other estimates[1] including evaluations of health, structure and form and digitally imaged the site & trees. Written draft report was submitted & reviewed by Client, then finalize.

Data that I collected included:

- Trunk diameter estimated at approximately 54 inches above grade
- Tree **health**[2]**;**leaf & twig size, color, density & distribution, discoloration, accessible rooting zone, wounds
- **Structure;** rooting zone, visible buttress roots at root crown, trunk & branch taper, branch distribution
- **Form;** balance, beauty, fulfillment of genetic potential

References:

- Contra Costa County Tree Protection & Preservation Ordinance, Article 816-6.2 through 6.1028,
- Contra Costa County Tree Obstruction of Views Combining District, Ordinance No. 2024-21
- Google Maps™
- Pruning third edition, Best Management Practices, Lilly, et.al, International Society of Arboriculture, 2019
- Tree, Shrub, and Other Woody Plant Management - Standard Practices (Pruning), A300 (Part1), American National Standard Institute, Tree Care Industry Association, Inc., 2017

[1] from evaluating the coast live oak on ladder 236 Lake Drive

[2] 0-5; 0=dead, 1=very poor, 2=poor,, 3=fair, 4=good, 5=excellent

DATA

Holly oak; trunk diameter approximately 4 inches at 54 inches above grade

fair health, poor structure, poor form are my qualitative ratings of tree condition[3]

- rooting zone limited (H,S) by fence, houses, other plants, paving, pots
- root crown region not viewed due to Tree Owner not granting permission
- trunk upright, minimal taper (S)
- scaffold branches well tapered (S)
- smaller branches thinned in top 20% of crown (H,S,F)
- twigs intermediate vigor (H)
- foliage normal color, small size, thin in upper crown, dense in lower crown (H,S,F)

#1 coast live oak; trunk diameters approximately 4,5,7,3 & 4 inches at 54 inches above grade

good health, poor structure, good form

- rooting zone limited (H,S) by retaining wall, fence, house
- root crown region buried (H,S)
- trunks codominant with included (weakly connected) bark, black vertical crack on one trunk (H,S,F)
- scaffold branches well tapered (S)
- smaller branches lower & interior pruned out (H,S,F)
- twigs good vigor (H)
- foliage good color, size & density (H)

#2 coast live oak trunk diameter approximately 12 inches

fair health, good structure, good form

- rooting zone limited (H,S) by retaining wall, fence, house
- root crown region buried (H,S)
- trunk leaning, no taper(S)
- scaffold branches codominant with included bark, one scaffold pruned, exposing bark, one bark wound may be sunscald because of excessive pruning (H,S)
- smaller branches lower & interior pruned out (H,S,F)
- twigs normal vigor (H)
- foliage normal color, size & density (H)

[3] (S) = tree structural related, (H) = tree health related, (F) = tree form related

ANALYSIS

BENEFITS

Screen from neighbors, shade, air purification, carbon dioxide sequestration, wildlife habitat, and beauty

BURDENS

Block views of skyline, San Francisco Bay, Albany, Richmond bridge, Mt. Tamalpais, pose fire hazards & require pruning to maintain in restricted spaces where they are planted. These trees are large evergreen species and the spaces they are growing in are very restricted in terms of structures.

RESTORING VIEWS

Holly oak & coast live oak #1 - Pruning and treating with a growth regulator can restore my Client's views
Coast live oak #2 - Removing & replacing can restore my Client's views

ADVERSE IMPACTS of restoring views

- Pruning the holly oak will slow its growth & reduce benefits, except screening 187-189 Purdue Ave.
- Removing + replacing the coast live oak will eliminate benefits till newly planted tree is big enough

STRUCTURAL IMPACTS

- Pruning and treating the coast live oak with a growth regulator will reduce the size of the tree
- Removing + replacing the holly oak will eliminate its structure

BIOLOGICAL IMPACTS

- Pruning the holly oak will reduce its health, and slow its growth, the growth regulator will reduce its twig and branch growth and increase its leaf growth
- Removing + replacing the coast live oak will delay the full benefits until the new tree is big enough

CONCLUSIONS

holly oak & coast live oak #1 - **reduction** pruning & treatment with a growth regulator can restore views obstructed by these trees

coast live oak #2- **removal & replacement** can restore views obstructed by this tree

RECOMMENDATIONS

HOLLY OAK & COAST LIVE OAK #1 - PRUNING & GROWTH REGULATOR APPLICATION

Crown reduction pruning can restore my Client's views and preserve a similar form using a natural pruning system that conserves this tree's rounded crown pattern, Pruning cuts can be made of select branches growing into views and should be **thinning, reduction** and **removal cuts**. This work should be carried out mid-summer each year as needed, and should be carried out only in the upper portions of their crowns.

Treat every 3 years (or as needed, as determined by CA state licensed pest control advisor) or with growth regulator containing paclobutrazol[4] while soil is still moist, fall-winter

Holly oak pruning guidelines:

- target height for restoring views is (approximately) the roof gutter or windows at 189 Purdue Avenue
- approximately 20% of the crown would be removed in the first year
- diameters of up to four branches (that I recommend reducing) range from approximately 2.5-4"
- diameters of up to twelve branches that are less than or equal to 1" in diameter can also be removed back to their points of origin or reduced back to branches at least 1/3 of their diameters
- annually inspect to determine need for pruning and/or additional care to encourage replacement tree's establishment

Coast live oak #1 pruning guidelines:

- target height for restoring views is (approximately) the lower roof peak on Tree Owner property
- approximately 25% of the crown would be removed in the first year
- diameters of up to six branches that I recommend reducing range from approximately 1-2.5"
- annual inspection recommended to determine need for pruning

COAST LIVE OAK #2 - REMOVAL + REPLACEMENT

Replacement of this tree with a smaller (ultimate size) specimen that would not grow into my Client's views, would be a CA native that provides shade, air purification, carbon dioxide sequestration, wildlife habitat, and beauty, and are currently available[5] include;

- holly cherry (*Prunus illicifolia ssp. illicifolia*) - available in 36" box
- toyon (*Heteromeles arbutifolia*) - available in 30 gallon container
- blue elderberry (*Sambucus mexicana*) - available in 24" box

---

[4] such as Cambistat™ in a soil injection or basal drench application

[5] Devil Mountain Nursery availability week of July 28, 2025

APPENDIX A - GLOSSARY

dripline - region underneath tree canopy

form - genetically determined appearance that includes spread, height & configuration

health - tree growth as expressed by foliage, twigs, branches & trunks including resistance to pests branch

reduction - decreasing branch length or plant height and/or spread

reduction cut - a pruning cut that removes the larger of two or more branches or stems, or one or more codominant stem to a live lateral at least (usually) 33% the diameter of the stem or branch being removed

removal cut - removes the smaller of two branches at a union without cutting tint the branch bark ridge or branch collar or leaving a stub

root crown – region where trunk and root system meet, also called `buttress' or `butt'

rooting zone – area where roots are likely to survive, beginning at the trunk and extending up to three times the radius of a tree's dripline region

scaffold – large, structural branch

structure - physical and mechanical qualities of tree

thinning - selective pruning to reduce density of branches and foliage

topping - reduction of tree size by heading large, live branches and leaders without regard to long term tree health or structural integrity

trunk circumference – measurement of trunk, distance around

trunk diameter - trunk circumference divided by 3.14

APPENDIX B - TREE & RESIDENCE LOCATIONS

APPENDIX C - CERTIFICATE OF PERFORMANCE

I, Michael Baefsky certify:

- That I have evaluated the subject trees, and stated my findings accurately. The extent of the evaluation is stated in the attached report;
- That I have no current or prospective interest in the vegetation or the property that is the subject of this report and have no personal interest or bias with respect to the parties involved;
- That the analysis, opinions, and conclusions stated herein are my own;
- That my analysis, opinions, and conclusions were developed and this report has been prepared according to commonly accepted professional practices;
- That no one provided significant professional assistance to the consultant, except as indicated within the report;
- That my compensation is not contingent upon the reporting of a predetermined conclusion that favors the cause of the client or any other party.

I certify that I am Registered Consulting Arborist & Tree and Landscape Assessor #456, a member of the American Society of Consulting Arborists, and am Certified Arborist & Qualified Tree Risk Assessor #WE0222A, Agricultural Pest Control Advisor #074617, Qualified Applicator #99864, Licensed Landscape Contractor (inactive) #931410, and have been involved in the practice of Arboriculture, Integrated Pest Management, Plant Health Care and Ecological Soils Management, and the study of soils and horticulture for over thirty five years.

APPENDIX D - DIGITAL IMAGES

coast live oak #1 viewed from Client lower deck

coast live oak #2 viewed from Client lower deck

coast live oak #2 on Tree Owner's property
view from 236 Lake Drive back fence

eastern redbud (Client) coast live oak #2 (Tree Owner)

view from Client lower deck

189 Purdue Ave. holly oak 187 Purdue Ave (Tree Owner)
view from Client upper deck

holly oak viewed from frontyard 187 Purdue Ave.

holly oak - reduction cuts to restore view in year one

coast live oak #1 approximate location of cuts recommended for year one
view from 236 Lake Dr.

holly oak & coast live oak #2
approximate view obstruction heights

coast live oak #1
approximate view obstruction location viewed from 236 Lake Dr.

expense so that it would clear her View. Accordingly, Claimant's gardener topped the pittosporum in 2010 before Trees Owners acquired 187 Purdue.

Unfortunately for Claimant, the pittosporum grew vigorously, becoming very tall and wide after the 2010 height reduction. Trees Owners either ignored or refused Claimant's numerous requests that they permit her to reduce its height or reduce it themselves. Trees Owners also refused to participate in arbitration as Claimant had requested. Therefore, Claimant was compelled to file an action in Superior Court against Trees Owners which she did on October 30, 2015. Co-Claimants were not involved in this lawsuit. A copy of Claimant's Verified Complaint is attached hereto as Exhibit A. Claimant had asked Trees Owners to submit this matter to an arbitration instead of to the court, but Trees Owners refused to do so. However, Claimant and Trees Owners participated in mediation while the lawsuit was pending, resulting in a Settlement Agreement.

It is important to note that in the lawsuit, Claimant sought not only to have the pittosporum topped, but also asked the Court to order that the two, young oak trees which are the subject of this View Claim be pruned to keep them from growing to obstruct her View. After engaging in intense litigation for a year, the parties finally entered into a Settlement Agreement in November of 2016 whereby Trees Owners removed the pittosporum entirely. However, they adamantly refused to agree to do anything to the oak trees as part of the settlement.[2]

Claimant and Co-Claimants first approached Trees Owners regarding their trees in 2011. They exchanged email correspondence with Trees Owners for many years, before and after the litigation, in which they attempted to obtain Trees Owners' cooperation in reducing the height of the obstructing trees, without success. They also met personally with Trees Owners to discuss the matter, including inviting Trees Owners to personally see the extent of the view obstructions from their respective homes.

In addition to said direct communications, the parties' respective attorneys, James Cook for Trees Owners and Leslie A. Levy for Claimants, communicated by phone and in writing between 2015 and 2025, attempting to help the parties reach a resolution of their differences.

Copies of the pertinent correspondence among Claimants, Trees Owners and their attorneys are attached hereto, collectively, as Exhibit D. This correspondence confirms that Trees Owners have been unreasonable and intractable with respect to the

---

[2] Trees Owners had planted one of the two oak trees very close to the base of the pittosporum such that the huge pittosporum dwarfed the oak, almost completely hiding it from view. Claimant's designated expert in the lawsuit, certified arborist Dennis Yniguez, wrote a report about the pittosporum and the oak trees. A copy of his report is attached hereto as Exhibit B. Ms. Cravat photographed the partially hidden oak tree. Copies of these photographs are part of a group of photographs that are attached hereto, collectively, as Exhibit C.

fact that their trees obstruct Claimants' Views, essentially taking the position that the View Ordinance is inapplicable to them.

Claimants recently retained the services of certified arborist, Michael Baefsky, who inspected the subject trees from the living room, deck and back yard of Claimant's home and from Purdue Avenue in front of Trees Owners' house on May 21st and July 24th, 2025.[3] A copy of this arborist's report, including his photographs, is attached hereto as Exhibit E.

It should be noted that the arborist concluded that, at least for the smaller of the coast live oak trees, reduction pruning and treatment with a growth regulator could restore views above that tree. On the other hand, he concluded that the larger coast live oak tree should be removed and replaced with a different species that will not block the View. These recommendations highlight the fact that if Trees Owners had carefully pruned and treated their trees while they were young, the View would not have been blocked. Instead, they obstinately refrained from doing the kind of pruning and treating that would have obviated this situation. By their own conduct and failures to act, they created the View obstruction, all the while knowing that Claimant's View would be compromised in the face of the View Ordinance.

I declare under the laws of the State of California that the statements made in this View Claim are true and correct and if I am called as a witness to testify thereto, I am competent to do so.

October 24, 2025 _____

Hazel Hung

[3] Trees Owners refused to allow Mr. Baefsky access to their property to enable him to inspect the trees up close which he stated was necessary for him to provide sufficient information about the trees. Their refusal was despite the fact that Claimant's attorney informed their attorney that the new View Ordinance requires that an arborist's report be submitted with a view claim. Mr. Baefsky wrote a separate report for Co-Claimants, submitted with their View Claim.

EXHIBIT A

HAZEL HUNG VIEW CLAIM

Verified Complaint

Leslie A. Levy SBN 77184
LAW & MEDIATION OFFICE OF LESLIE A. LEVY
1718 Solano Avenue
Berkeley, CA 94707
Tel: 510.222.2200
Fax: 510.223.0200
Email: lal@levylaw.biz

Attorney for Plaintiff

FILED
OCT 30 2015
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA
By _____, Deputy Clerk
M. Merino

SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

09

SUMMONS ISSUED

HAZEL HUNG

PLAINTIFF,

V.

LESLIE S. JACOBY, LESLIE F. NICHOLAEFF AND DOES 1-50, INCLUSIVE,

DEFENDANTS

Case No. C15-01985

UNLIMITED CIVIL JURISDICTION

VERIFIED COMPLAINT FOR ABATEMENT OF NUISANCE; DAMAGES; PUNITIVE DAMAGES; PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF

BY FAX

Plaintiff Hazel Hung alleges as follows:

FIRST CAUSE OF ACTION

Abatement of Nuisance;

Damages;

Punitive Damages;

Preliminary and Permanent Injunction

1. Hazel Hung (hereinafter referred to as "Plaintiff") is an individual who at all times mentioned herein was and still is a resident of Kensington, Contra Costa County, California, residing in her personal, single-family residence located at 236 Lake Drive.

2. Defendant Leslie S. Jacoby is an individual who at all times mentioned herein was and still is a resident of Kensington, Contra Costa County, California, residing in her personal, single-family residence located at 187 Purdue Avenue. [hereinafter "Purdue Property"]

3. Defendant Leslie S.Nicholaeff is an individual who is a co-owner with Defendant Leslie S. Jacoby of the Purdue Property.

4. Plaintiff is informed and believes and based upon such information and belief alleges that at all times mentioned herein, each of the Defendants named herein was acting as the agent, employee and/or trustee of the remaining Defendants and each of them and was acting within the purpose and scope of such agency, employment and/or trusteeship in performing the acts alleged herein.

5. The true names of Defendants named herein as DOES 1 through 50, inclusive, are unknown to Plaintiff and Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when they are ascertained.

6. Plaintiff's and Defendants' property share a common boundary at the rear of each of their properties, that is, Plaintiff's and Defendants' backyards are adjacent to each other.

7. Plaintiff moved into her home in 1985 and has been residing there continuously ever since. When Plaintiff moved in, she had an unobstructed view from her living room of the surface of San Francisco Bay, the City of San Francisco, Mount Tamalpais, the Golden Gate Bridge and environs thereof [hereinafter referred to as the "View."] Plaintiff's View remained clear and unobstructed continuously since 1985 until Defendants interfered with and diminished her valuable View as alleged herein.

8. Leslie S. Jacoby and Leslie S. Nicholaeff [hereinafter "Defendants"] purchased the Purdue Property on or about July 19, 2011.

9. Soon after purchasing their property, Defendants planted several California Live Oak trees in their Purdue Property yard, two of which are located within Plaintiff's

line of sight of her View. Plaintiff is informed and believes and based upon such information and belief alleges that two of these Live Oak trees will grow to at least 40 feet in height and 60 feet in width; that is, will grow in such a manner that they will obstruct Plaintiff's prized View from her home. By letter dated December 23, 2011, Plaintiff's attorney notified Defendants that they should remove the California Live Oak trees because they inevitably will obstruct Plaintiff's View. Defendants ignored that request.

10. In addition, Defendants' predecessors in interest and Defendants themselves have been maintaining a certain Pittosporum tree on the Purdue Property. Said Pittosporum tree first grew to a height that obstructed Plaintiff's View in 2010. When the Pittosporum tree began to obscure Plaintiff's view in 2010, Plaintiff requested of Defendants' predecessors in interest that they allow it to be topped at Plaintiff's expense for the express purpose of restoring Plaintiff's View to its prior, unobstructed state. Defendants' predecessor in interest complied with Plaintiff's said request without objection and Plaintiff topped the Pittosporum tree.

11. In 2014, Defendants' Pittosporum tree again grew to obscure Plaintiff's valuable View, blocking portions of the surface of the Bay, the San Francisco Skyline and the Golden Gate Bridge. The existence of an unobstructed View from Plaintiff's property is an amenity of her property that Plaintiff cherishes for personal reasons and prizes because it provides a significant, financial enhancement of the market value of her property. By the same token, the impairment of Plaintiff's View by virtue of Defendants' Pittosporum tree constitutes a continuing, private nuisance as defined by §§ 3479-3481 of the California Civil Code insofar as it interferes with Plaintiff's comfortable and full enjoyment of her life and property, is offensive to her senses and is an obstruction of the free use of Plaintiff's property.

12. On or about January 9, 2015 and subsequently on or about September 8, 2015, Plaintiff requested in writing of Defendant Leslie S. Jacoby that she allow topping off of her Pittosporum tree at Plaintiff's expense because it was blocking her View.

Defendant Leslie S. Jacoby responded in writing on September 9, 2015 that she would not allow the Pittosporum to be topped off. Thus, Defendants and each of them have threatened to and will, unless restrained by this Court, continue to maintain the nuisance and continue the act complained of which will be without the consent, against the will and in violation of the rights of Plaintiff, as Plaintiff is legally entitled to her View pursuant to the terms of the Contra Costa County Ordinance Code.

13. The County of Contra Costa has the exclusive jurisdiction to regulate obstruction of particular views by trees in the City of Kensington where the two properties which are the subject of this action are located. The County Ordinance is entitled "TREE OBSTRUCTION OF VIEWS" and commences with Article 816-2.2 of the Contra Costa County Ordinance Code. Plaintiff's View is within the category of protected views within the meaning of said Ordinance.

14. On September 25, 2015, in writing, Plaintiff asked Defendant Leslie Jacoby to agree to submit their dispute over the View obstruction to binding arbitration pursuant to §816-2.804 of the Contra Cost the County Ordinance Code. Defendant Jacoby responded in writing that she refuses to engage in binding arbitration as Plaintiff requested. Accordingly, Plaintiff has exhausted her administrative remedies and brings this action for relief from this Court which now has jurisdiction over this matter.

15. Unless Defendants and each of them are prohibited from obstructing Plaintiff's View by order of this Court, it will be necessary for Plaintiff to commence many successive actions against Defendants and each of them to secure compensation for damages sustained, thus requiring a multiplicity of suits, and Plaintiff will be deprived daily of the joy, comfort and positive sensory stimulation that she derives from the unobstructed View from her home that she has enjoyed historically.

16. Unless Defendants and each of them are enjoined from continuing their course of conduct, Plaintiff will suffer irreparable injury in that the usefulness and economic value of Plaintiff's property will be substantially diminished and Plaintiff will be deprived of the comfortable enjoyment of her property.

17. Defendants' refusal to remove or to allow the removal of the obstruction of Plaintiff's View by having their Pittosporum topped is based on unreasonable and injurious motivations on their part.

18. In maintaining the nuisance, Defendants and each of them are acting with full knowledge of the negative consequences and damage being caused to Plaintiff and Defendants' conduct is willful, oppressive, malicious and done in conscious disregard of Plaintiff's rights, thereby warranting an award of punitive damages to Plaintiff.

19. As a direct and proximate result of the conduct of Defendants and each of them, Plaintiff has been damaged by diminution in value of her property in an amount as yet unascertained that is in excess of the jurisdictional limits of this court, to be subject to proof at the time of trial.

20. Plaintiff has no plain, speedy or adequate remedy at law and injunctive relief is expressly authorized by §526 and §731 of the Code of Civil Procedure.

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. For a preliminary and a permanent injunction enjoining Defendants and each of them and their agents, servants, employees and all persons acting under, in concert with or for them from maintaining on their Purdue Property their Pittosporum tree and any and all other trees in such a manner as to obstruct Plaintiff's View from her home that she has had continuously since 1985; and

2. For general damages according to proof; and

3. For punitive damages; and

4. For costs of suit incurred herein; and

5. For such other and further relief as the Court may be deem proper.

October 28, 2015

Leslie A. Levy, Attorney for Plaintiff

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18. In maintaining the nuisance, Defendants and each of them are acting with full knowledge of the negative consequences and damage being caused to Plaintiff and Defendants' conduct is willful, oppressive, malicious and done in conscious disregard of Plaintiff's rights, thereby warranting an award of punitive damages to Plaintiff.

19. As a direct and proximate result of the conduct of Defendants and each of them, Plaintiff has been damaged by diminution in value of her property in an amount as yet unascertained that is in excess of the jurisdictional limits of this court, to be subject to proof at the time of trial.

20. Plaintiff has no plain, speedy or adequate remedy at law and injunctive relief is expressly authorized by §526 and §731 of the Code of Civil Procedure.

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. For a preliminary and a permanent injunction enjoining Defendants and each of them and their agents, servants, employees and all persons acting under, in concert with or for them from maintaining on their Purdue Property their Pittosporum tree and any and all other trees in such a manner as to obstruct Plaintiff's View from her home that she has had continuously since 1985; and
2. For general damages according to proof; and
3. For punitive damages; and
4. For costs of suit incurred herein; and
5. For such other and further relief as the Court may be deem proper.

October 28, 2015

Leslie A. Levy, Attorney for Plaintiff

VERIFICATION

I, Hazel Hung, am the Plaintiff in the above-entitled action. I have read the foregoing Verified Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

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

October 28, 2015.

Hazel Hung

EXHIBIT B

HAZEL HUNG VIEW CLAIM

Arborist Report of Dennis Yniguez

Dennis Ynigue2
Registered Consulting Arborist
Board Certified Master Arborist
Dennis@TreeDecisions.com

TREE DECISIONS

1428 Spruce Street
Berkeley CA 94709
510 649 9291 Tel
510 649 9291 Cell

EDUCATION AND PROFESSIONAL LICENSES

UNIVERSITY OF CALIFORNIA AT BERKELEY

Doctor of Jurisprudence, Boalt Hall School of Law, June 1981
Master of Social Welfare, School of Social Welfare, June 1981
Bachelor of Arts, School of Psychology and School of Social Welfare, March 1976

ASCA Registered Consulting Arborist #362
Board Certified Master Arborist #WE-1308
ISA Tree Risk Assessment Qualified

California Attorney at Law #108156
California State Contractor #679621

PROFESSIONAL EXPERIENCE

Since 1981, tree care services have consisted of esthetic and functional pruning, tree planting, rejuvenation of neglected trees, crown cabling, soil improvement, and tree removal. In 1984 I became one of the first Certified Arborists in the western United States, in 1995 became a Registered Consulting Arborist, and in 2015 became a Board Certified Master Arborist. I maintain active membership in the State Bar of California, the American Society of Consulting Arborists, and the International Society of Arboriculture.

My consulting practice consists of tree health and risk assessment, forensic examinations, evaluation of tree-related casualty claims, tree appraisal, consultation for land development, resolution of tree-related disputes, and appearances at hearings, mediations, arbitrations, and trials. I've completed courses in Alternative Dispute Resolution, Arbitration, and Conflict Management with the University of California at Berkeley and the Center for Mediation in Law.

I've taught arboricultural pruning at Merritt College, as well as *Forensic Arboriculture* and *The Role of the Consultant in Dispute Resolution* for fifteen years at the national ASCA Consulting Academy, and lecture on arboricultural topics at local, regional, and national conferences. Lectures cover such topics as *The Measure of Damages for Injury to or Destruction of Trees*, *The Duties of Care of Property Owners and Arborists*, *Legal Issues in Urban Forestry*, and *Illusions and Consequences in Tree Risk Assessment*. I've also served as a board member and technical advisor to the California Urban Forests Council, as a docent at the Regional Parks Botanic Garden, and am a past president of the American Society of Consulting Arborists.

Research and professional development are supported by frequent participation in arboricultural and legal seminars, an extensive personal library, and easy access to the Law and Biological Sciences libraries of the University of California at Berkeley.

Dennis Yniguez
Registered Consulting Arborist
Board Certified Master Arborist
Dennis@TreeDecisions.com

TREE DECISIONS

1428 Spruce Street
Berkeley, CA 94709
TEL 510-649-9291
CELL 510-682-6411

Relevant Measurements taken in the Hung v Jacoby case

Measurements were taken from the Jacoby backyard property on November 6, 2016:

The top of the uphill coast live oak *(Quercus agrifolia)* is 12-13 feet above grade – Photo AB065820.

The top of the pittosporum *(Pittosporum undulatum)* is about 19-20 feet above grade [extrapolated using the height stick in the photo] - Photo AB065817.

The lower coast live oak *(Quercus agrifolia)* is about 10 feet 9 inches above grade - Photo AB065859.

The boxleaf azara *(Azara microphylla)* is about 16 feet above grade - Photo AB065868.

***

On October 3, November 6, and November 27, 2016, view photos were taken by placing a Nikon D800 SLR camera on a tripod at two locations on the Hung deck. Lens descriptions and camera settings are included in the metadata that is embedded in each of the digital photo images.

Location #1 (southernmost):

The height of the front of the camera lens on the tripod = 5 feet.

The front of the camera lens is 21 inches in from the western deck wall and 7 feet in from the southern deck wall.

Location #2 (northernmost):

The height of the front of the camera lens on the tripod = 5 feet.

The front of the camera lens is 21 inches in from the western deck wall and 15 feet in from the southern deck wall.

***

Gmail Leslie Levy <lal@levylaw.biz>

Pruning language for Hung v Jacoby case

2 messages

dennis@treedecisions.com <dennis@treedecisions.com> Mon, Nov 7, 2016 at 3:38 PM
Reply-To: dennis@treedecisions.com
To: Leslie Levy <lal@levylaw.biz>
Cc: Dennis Yniguez <dennis@treedecisions.com>

Hi Leslie,

Here's a proposed paragraph in reference to the Jacoby oaks:

Both coast live oaks appear to be vigorous and in good health. I recommend that they be pruned for directional growth when they are still young to encourage a strong and aesthetic structure. If the trees are going to obtain a good form, small branches can be pruned now to encourage lateral growth. This will minimize the size of pruning cuts, prevent the need for larger pruning cuts later, and assist the oaks to achieve a shape that allows for views while maintaining a healthy and attractive form.

Please let me know if you need more.

Best regards,

Dennis Yniguez
TREE DECISIONS
1428 Spruce Street, Berkeley, California 94709
TEL 510.649.9291; CELL 510.682.6411
dennis@treedecisions.com

Leslie Levy <lal@levylaw.biz> Mon, Nov 7, 2016 at 4:27 PM
To: dennis@treedecisions.com
Bcc: Hazel <hazymay@mindspring.com>

Thanks, Dennis.

Leslie A. Levy
Law & Mediation Office of Leslie A. Levy
1718 Solano Avenue
Berkeley, CA 94707
Telephone: 510: 222-2200
Fax: 510: 223-0200
E-Mail: lal@levylaw.biz

EXHIBIT C

HAZEL HUNG VIEW CLAIM

Photographs

Hung property 236 Lake Drive: Looking west: Obscuring Golden Gate Bridge, Albany Hill, Richmond and Albany flatlands, surface of the Bay.

Hung property 236 Lake Drive: Looking west: Obscuring Golden Gate Bridge, Albany Hill, Albany flatland, surface of the Bay.

AERIAL: THREE HOMES

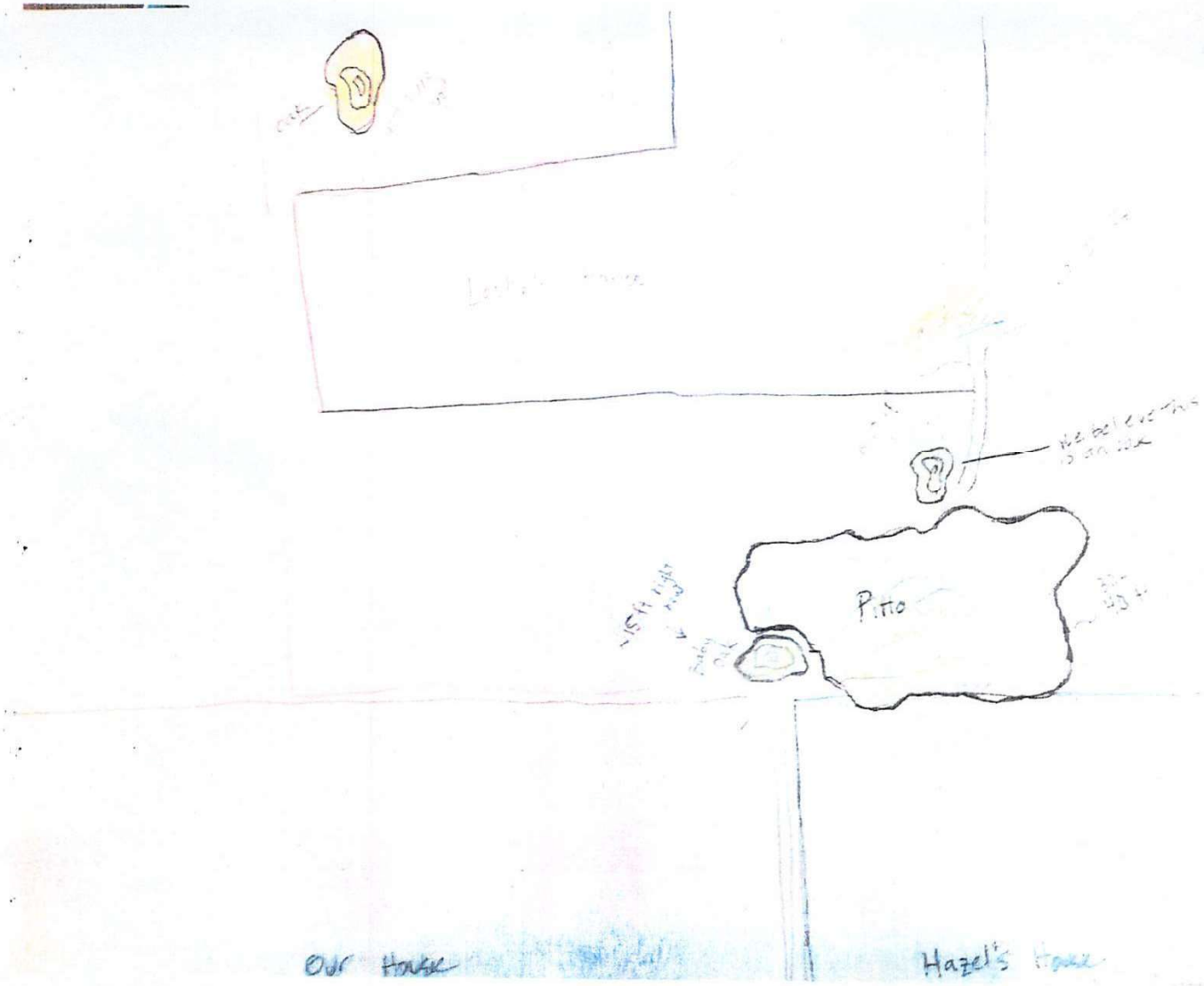
2006: HUNG VIEW

2011: CRAVAT/OVERWAY VIEW

2011: CRAVAT/OVERWAY
VIEW

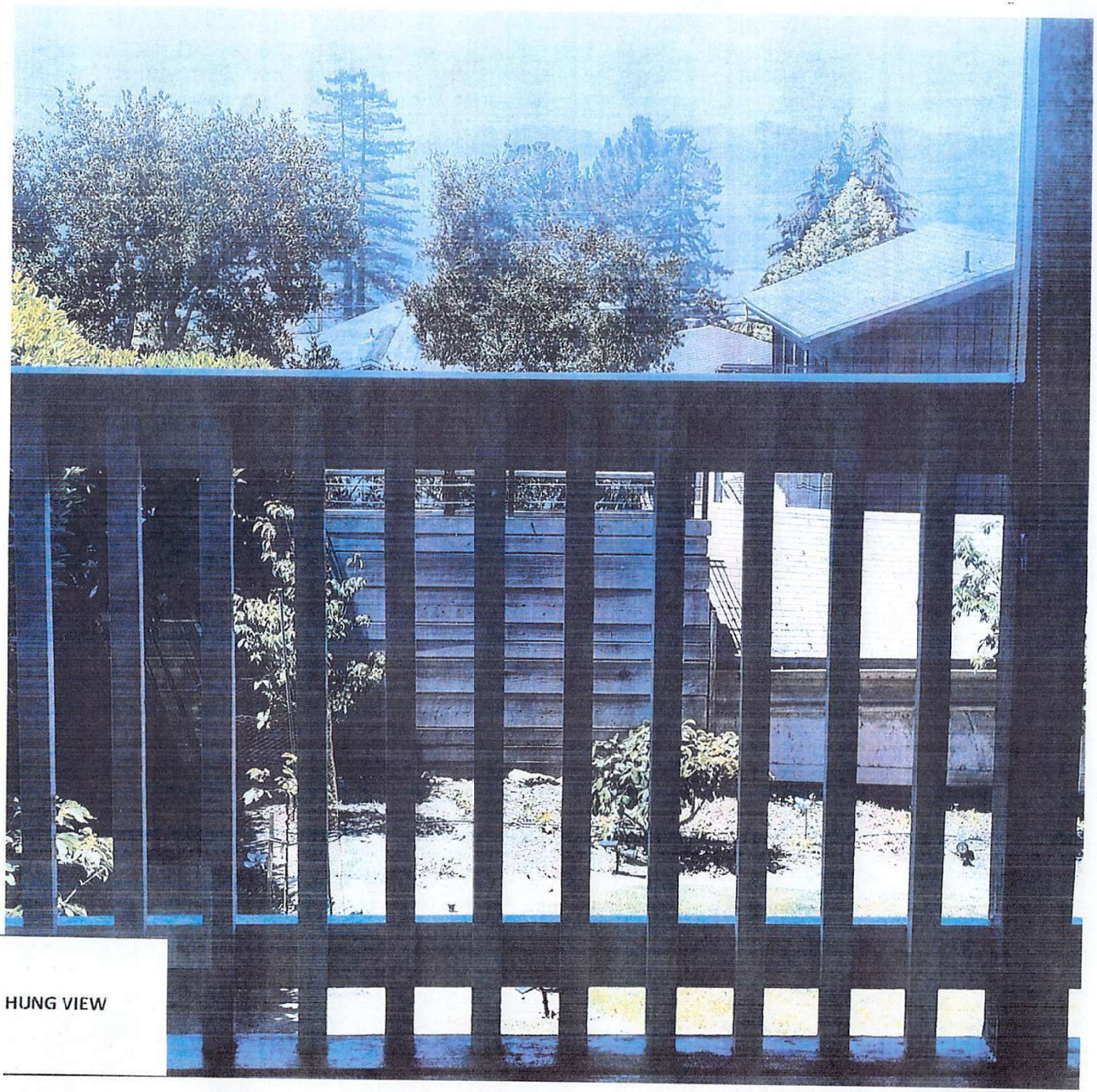
2015: CRAVAT PHOTO

2015: CRAVAT PHOTO



2015: CRAVAT DRAWING

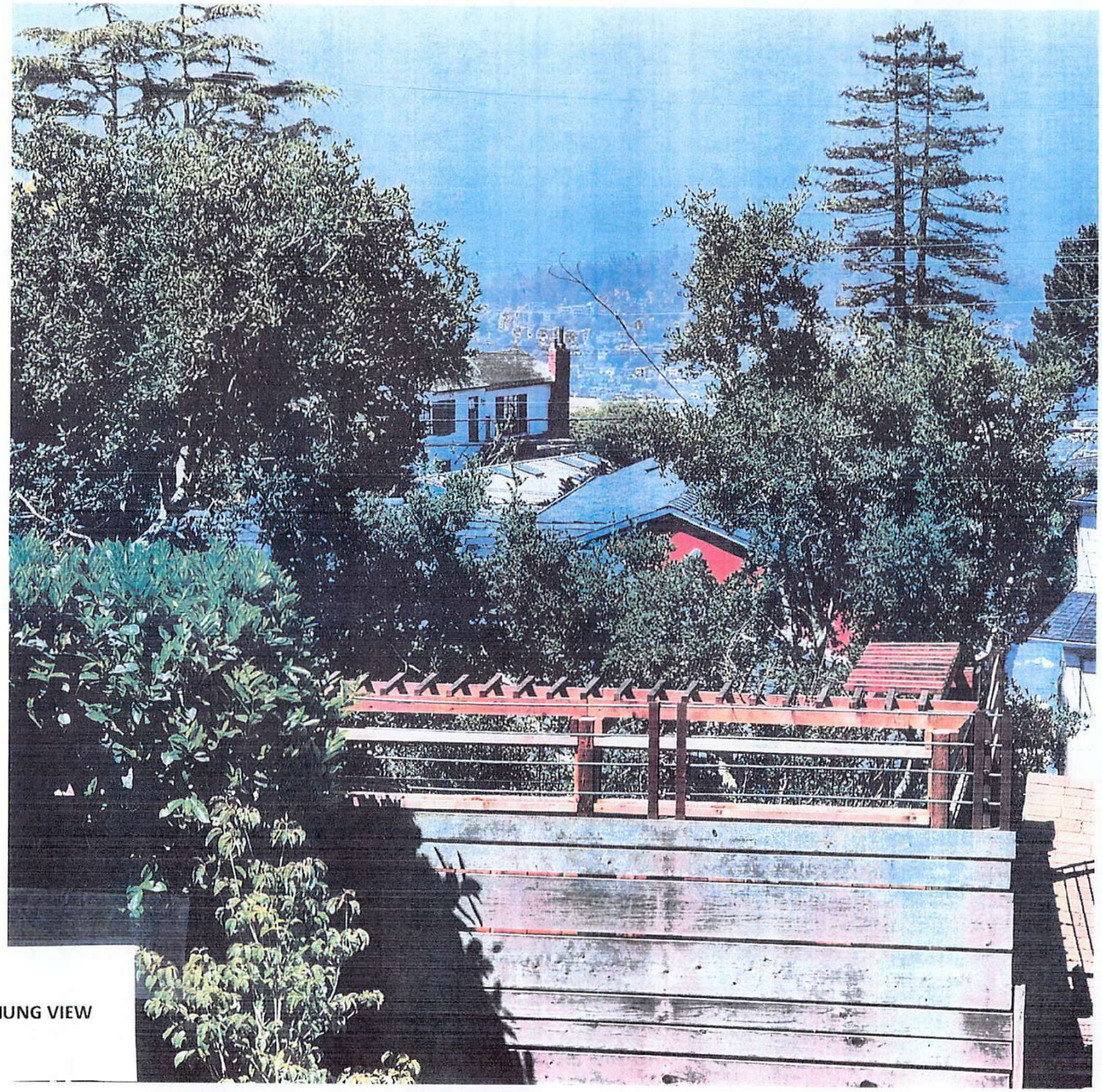
2025: HUNG VIEW



2025: HUNG VIEW

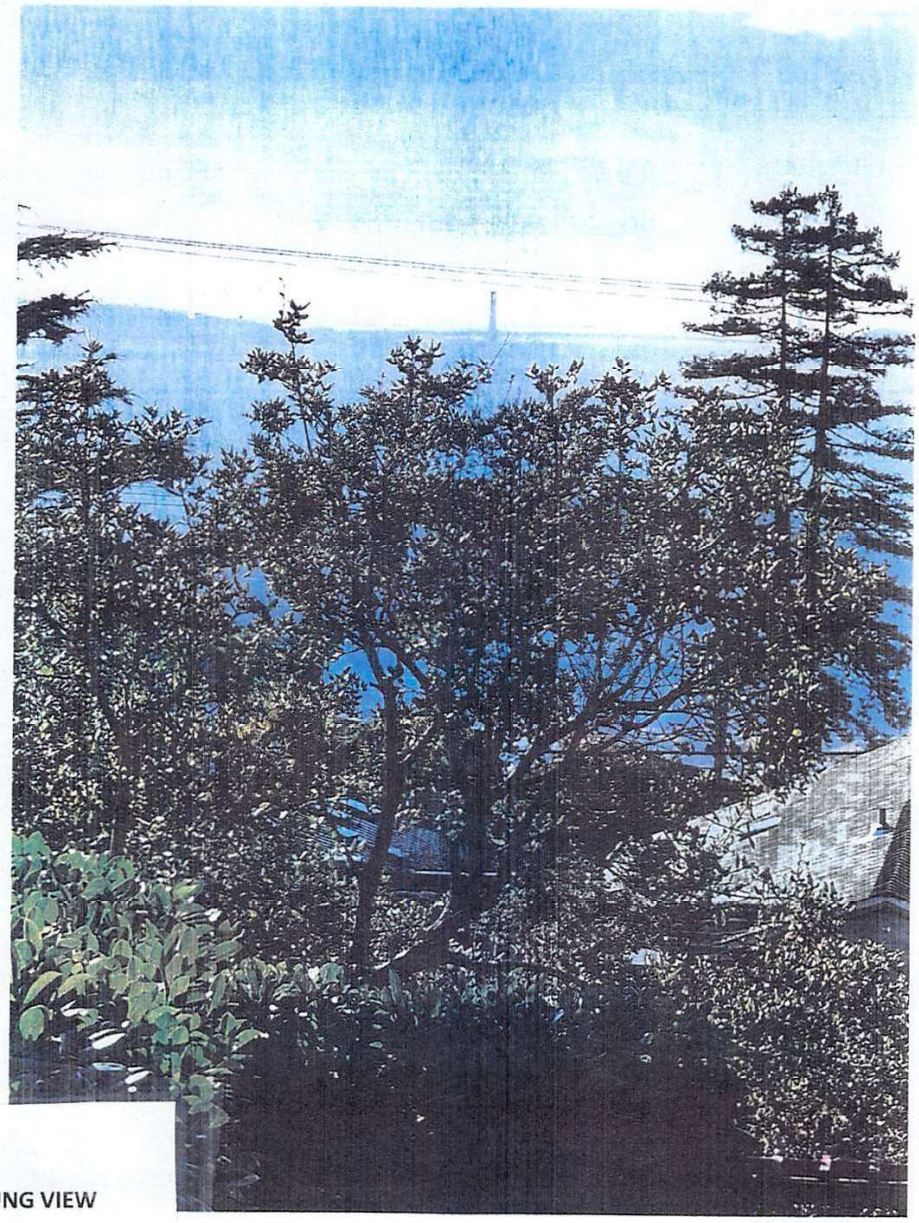
2025: HUNG VIEW

2025: HUNG VIEW



2025: HUNG VIEW

2025: HUNG VIEW

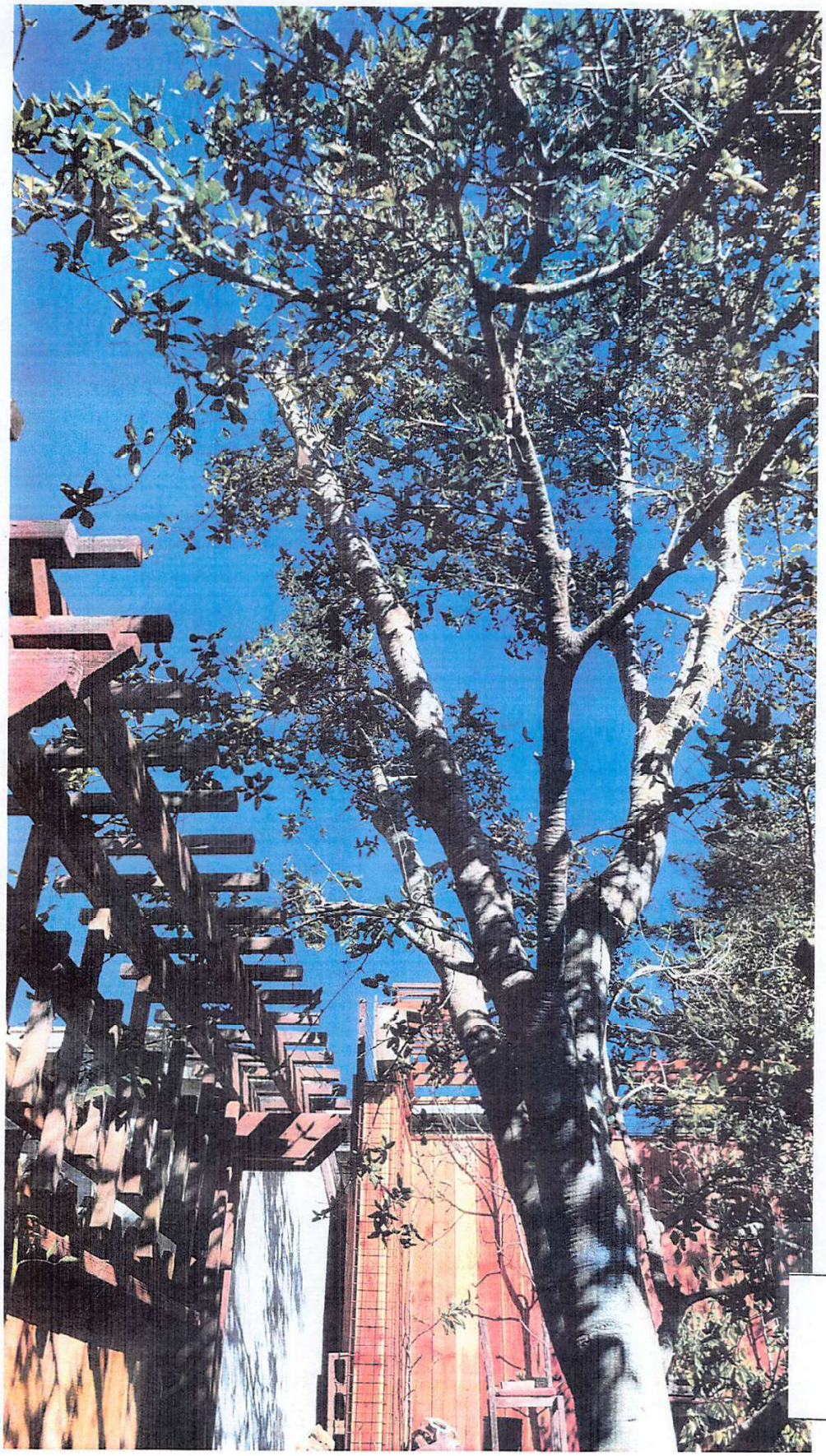


2025: HUNG VIEW

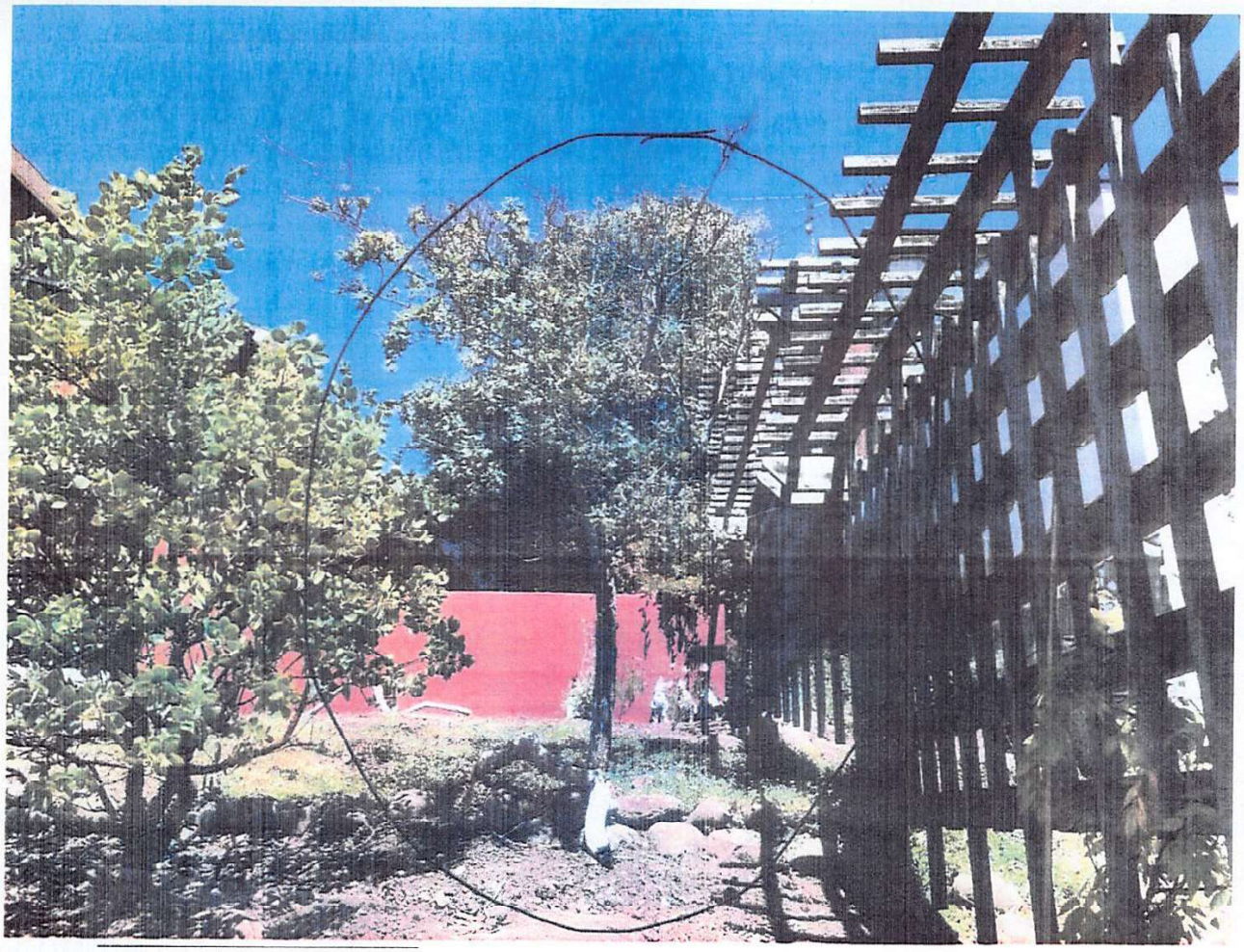
2025: HUNG VIEW

2025: CRAVAT/OVERWAY VIEW

2025: CRAVAT/OVERWAY VIEW



2025: 187 PURDUE TREES



2025: 187 PURDUE TREES

2025: 187 PURDUE TREES

2025: 187 PURDUE TREES

EXHIBIT D

HAZEL HUNG VIEW CLAIM

Correspondence

From: Lesliejacoby@aol.com
Date: November 24, 2011 4:46:29 PM PST
To: marcy@angelazulthemovie.com
Subject: Re: trees

Hi Marcy,

First, I made no promise of the kind you describe, for even my realtor offered to give me an oak upon purchase knowing I had always intended to plant a native oak tree on the property (to replace the tree I always intended to remove).

Second, please do not think this is your property whereby you can tell Jose where to plant trees or otherwise. Quite frankly, I took

great offense to you telling him to plant the Red Bud behind the Mock Orange (it will not be moved to that site). I find it moderately odd that you are quick to tell me what to plant and you don't think that your big trees maybe impeding one of your neighbor's views. You stand looking over your fence telling me to have Jose chop the small plum offshoots.

I know this property was vacant for a long time, and before that it was poorly maintained as a rental unit. You are not the only neighbor who doesn't like some of the changes I am making - but I have a clear vision of what I am trying to do, and while I appreciate your input and feedback, I will continue to follow my design.

Third, I am working on this house with the hope that my daughter or son will choose to live here in the future, and both of them will appreciate a well-maintained beautifully trimmed oak tree.

Please feel free to contact the KMAC, and we will go from there. In the meantime, please do not stop by tomorrow.

Please let me enjoy my last hours of Thanksgiving.

Best wishes,
Leslie

In a message dated 11/24/2011 3:34:42 P.M. Pacific Standard Time, marcy@angelazulthemovie.com writes:

> Hi Leslie,
>
> I was really hoping we could resolve this peacefully so that we could be happy neighbors. I know you really love oaks. However, it is definitely not respecting our right to a view which is part of the reason why we bought the house. In short time, that will be completely obliterated. I realize that we have had several conversations about this, and you promised me when you introduced yourself that no decision would be made that would spoil our view, our light and impede the growth of the trees we've already planted. I hope you will stand by your promise. We are loving our view now and we want to keep it.
>
> I am hopeful that you will research other options so that we don't need to involve KMAC that supports the View Ordinance that exists here in Kensington. It is really better to come to an agreement amongst ourselves and avoid involving officials.
>
> I would be happy to pay to replace the oaks with tree or trees of your choice that will not block our view.
>
> One of the great appeals of this hilly neighborhood is the incredible views of the bay and our house value and the enjoyment of our home would be affected if we lost our view.
>
> Please will you reconsider?
>
> Standing by,
>
> Marcy

On Nov 24, 2011, at 2.31 PM, Lesliejacoby@aol.com wrote:

> Hi Marcy,
>
> I thank you for your input, and I do respect your wish for access to a view as evidenced by our numerous conversations and the actual removal of bamboo and Sierra cedar.
>
> However, I will be planting the oaks tomorrow, and I would appreciate it if you would respect my right to own a piece of property and design a layout that considers the needs of the neighbors but satisfies my aesthetic and environmental concerns.
>
> Please do not come by tomorrow, as I do not wish to discuss this matter any further.
>
> Best wishes,
> Leslie
>
> In a message dated 11/24/2011 10:11:16 A.M. Pacific Standard Time, marcy@angelazulthemovie.com writes:
>
> > Hi Leslie,
> >
> > I have been quite preoccupied thinking about the two oaks you are thinking of putting in. The more I analyze the situation by peering off our balcony and looking from our living room window, the more I realize that this is a disastrous plan for our view and our light, not only for our plants, but for our living room as well. I know oaks are slow growers and this may not become a problem for several years, but at one point it will be a big problem if not for us, then for our daughter who one day plans to own this house. Although oaks can be trimmed to stay more open, they cannot be topped without looking horrible, and those large branches will find their way up and over your roof for sure, and likely join to make a solid barrier of leaf growth. And as they get bigger they will become more and more difficult to control. They will also shade all of your garden as well. Nothing really grows under oaks even out on the grassy hills where they look so stately and grand. In a small backyard they will dominate

everything. I also know you want to hang lights on them, which sounds really pretty, but it will be several years before they will be at that point. Is there not something else you can put in those spots that will give you that result very soon, and not grow too high so that our view will not be affected?

I know how wonderful one's favorite trees can make one feel. I've struggled with this as well as I have always had sun gardens and been able to choose my favorite trees. Now with a shade garden I've had to readapt and to my surprise I've learned to really love that as well.

I'd really like to ask that you reconsider planting either of the oaks, and research some other trees that will offer you the privacy, the branch structure and the beauty that you like so much in an oak. If you would like to have a look at our view from our window, you are more than welcome to see what I am trying so hard to protect.

Thanks Leslie. I will be around on Friday.

Marcy

ANGEL AZUL
a documentary

Marcy Cravat
Director/ Director of Photography

marcy@angelazulthemovie.com
angelazulthemovie.com
510.332.2143

=

ANGEL AZUL
a documentary

Marcy Cravat
Director/ Director of Photography

marcy@angelazulthemovie.com
angelazulthemovie.com
510.332.2143

LAW & MEDIATION OFFICE OF

LESLIE A. LEVY

December 23, 2011

Via certified and regular mail

Leslie Jacoby
187 Purdue Avenue
Kensington, CA 94708

Leslie Nicholaeff
PO Box 183
Los Altos, CA 94023

Leslie Nicholaeff
PO Box 479
Los Altos, CA 94023

Re: View Obstruction by your Trees

Dear Ms. Jacoby and Mr. Nicholaeff:

I represent Hazel Hung and Marcy Cravat, your neighbors who respectively reside at 236 and 238 Lake Drive in Kensington. The purpose of this letter is to comply with the provisions of section 816-2.802 of the Contra Costa County ordinance that addresses the matter of obstruction of views by trees. A copy of the entire ordinance is enclosed herewith for your easy reference.

Section 816-2.802 provides that a property owner ". . . who believes in good faith that the growth, maintenance, or location of trees situated on the property of another diminishes the beneficial use, economic value and enjoyment of views naturally accruing to the claimant's property shall notify the tree owner in writing of such concerns." As you, Ms. Jacoby, are aware from numerous conversations that you have had with Marcy Cravat, she has been extremely concerned about the inevitable fact that her view to the west will be obstructed by the California Live Oak trees that you recently planted on your property when those Oaks grow larger and taller. Marcy Cravat's next-door neighbor, Hazel Hung, shares that concern because her view of the Bay will also be destroyed when your Oak trees mature.

1718 SOLANO AVENUE ■ BERKELEY, CA 94707
TELEPHONE 510-222-2200 ■ FACSIMILE 510-223-0200
LAL@LEVYLAW.BIZ ■ WWW.LEVYLAW.BIZ

Both of my clients have had unobstructed views of San Francisco Bay, the City, the Golden Gate Bridge and Mount Tamalpais from their living rooms since they acquired their properties. Such views significantly enhance the value of my clients' properties. Naturally, they wish to preserve their valuable views as well as the natural light that brightens their homes.

Ms. Cravat took steps to prevent future view obstruction by entering into an agreement with your predecessor in interest, Leyla Zabih, that she (Marcy Cravat) would purchase and plant two trees in your yard that would grow to an appropriate height (i.e., not exceeding the height of your roof line) and would provide privacy for you. In accordance with that agreement, my client purchased and planted a Forest Pansy and a Dogwood tree on your property and made sure that they were irrigated from a water source from her property until such time as you took over as the new owner from Ms. Zabih.

In response to Marcy Cravat's many statements to you that she did not wish to have trees interfere with her view, you reassured her on at least five occasions by saying words to the effect that you would not plant anything that would affect anyone's views and that all of you could work together so that everyone would be happy.

Notwithstanding your assurances regarding the trees, you planted a Live Oak tree in your backyard and another one in your front yard, thereby deliberately violating not only your own promises, but also the applicable view ordinance.

Please refer to Section 816-2.206(4) of the County ordinance which provides that "The objectives of, and the justification for, this chapter are to: . . . Discourage the maintenance of trees that provide excessive shade and unduly diminish desirable views." No doubt you know that California Live Oak trees typically grow to 40 feet in height, with a 60 foot wide canopy. Moreover, there are very few, if any, plants that can survive under the canopy of a Live Oak, resulting in a situation whereby the ground below such trees must remain bare of plant life.

In addition to the existence of Oak trees on your property, there is Pittosporum growing in your backyard which was recently trimmed at Hazel Hung 's expense because it had grown higher than your roof line. My clients hereby request that the current height of the Pittosporum be maintained. Ms. Hung is prepared to continue to cover the cost of trimming the Pittosporum in your yard approximately every two years.

Demand is hereby made that you immediately remove the Live Oak trees that you recently planted in your yard and replace them with trees or shrubs that will not exceed the height of your roof line as seen from my clients' properties.

Please direct all further communications regarding these matters to my office.

Very truly yours,

Leslie A. Levy

Enclosure

LAL:rrk

cc: Clients
John M. Gioia, Contra Costa County Supervisor

January 9, 2010 [2012]

Via Certified Mail

Leslie A. Levy
1718 Solano Avenue
Berkeley, California 94707

Re: Native Oak Trees

Dear Ms. Levy:

We are in receipt of your letter dated December 23, 2011 in which you allege, on behalf of your clients Hazel Hung and Marcy Cravat, that we have violated the Contra Costa County ordinance pertaining to view obstruction by trees. Your letter contains a plethora of misstatements and self-serving assertions regarding the conversations between your clients and Ms. Jacoby; however, we will not bother to address those here because your clients ***do not*** have any valid legal claims.

As is stated in Section 816-2.204 of the Ordinance, "[the] purpose of this chapter is to provide a method for private property owners to gain restoration of views and sunlight ***lost*** due to tree growth by another private property owner . . . . It is not intended by this chapter to create any greater right to a view or access to sunlight than existed at the time any claimant purchased his property" (Emphasis added). In its present state, there are no trees on our property that cause your clients to lose any views and sunlight they previously had. Indeed, after purchasing our home and taking occupancy, we removed trees from the property, resulting in enhanced, open views for your clients that they previously did not have. We even received a note from Mrs. Hung thanking us for "taking down the tree, and 'opening the sky' for [her]." We have attached for your information a copy of Mrs. Hung's note. Your clients have no claim under the applicable Ordinance, because they have gained views and sunlight, not lost any.

Your client Mrs. Hung's offer "to continue to cover the cost of trimming the Pittosporum in [our] yard approximately every two years," is expressly rejected. Please also advise Mrs. Cravat and Mrs. Hung that they ***do not*** have permission to enter our property or touch anything on our property. Any violation of this directive shall be viewed as a trespass, and we will avail ourselves of all available legal remedies in such event.

Sincerely,

Leslie S. Jacoby

Leslie S. Nicholaeff

Cc: John M. Gioia, Contra Costa County Supervisor

June 27, 2013

Leslie,

We did not trespass onto your property. All work was executed from our property.

If you find that the fence is on your property, we will remove it in its entirety and rebuild it on our own property the way we want it.

If you find that the fence is on our property, we will leave it as is.

If you find that the fence is on the true shared property line, we will leave it as is as you did not contribute to its design, the purchase of its materials nor its construction. As you may recall you were offered that chance but claimed that you "could not afford it." We were sympathetic at the time and covered your cost as a neighborly gesture.

We are no longer feeling sympathetic toward you. You blatantly lied to us when you promised on several occasions quite emphatically that you would consider our coveted view and our necessary light when choosing your trees to plant in your backyard. You further lied when you denied making those promises despite the several conversations we'd had about this where you reassured us that we would "work together, everyone would be happy," and you would "protect our views." You went back on your word however, and planted 3 California Oaks in parts of your very small yard that will affect the views and light of 3 neighbors once they reach partial maturity. When you were asked how you could do this, we were all told that it was "part of your vision." You walked away and refused to discuss it any further.

We also purchased 3 specimen trees for you at a value of approximately $600, we removed the bamboo you wanted removed at our cost and as a neighborly gesture, and you refused Hazel's generous offer to keep your pittosporum trimmed at her cost so as to maintain our precious views which we paid for when we purchased our homes. We might remind you that there is a view ordinance in Kensington and when your trees reach a height that blocks our views, you will be required to either keep them trimmed always below that line at your cost, or remove them. Hazel and I have been assured of this from our lawyer.

We've heard from both of your neighbors that you have been very unfair and unlawful in your dealings with them regarding their fences. We've been told that you even removed your shared fence without any warning or permission and pushed your property line over a couple of feet at will. My daughter heard shouting and swearing one afternoon between you and your next door neighbor to your right regarding this bold and selfish act, and the neighbor to your left apologized to me for the shouting and swearing he thought we might have overheard when confronting you about building a fence without his permission despite his many attempts to cooperate in sharing decisions related to it. It appears that there is not a single neighbor you have not violated.

I am sure that it can be safely said, you are a liar, you are horribly selfish, and you have no intention of working with anyone. From your actions we can assume that you are not to be trusted which explains your unpopularity and our loss of sympathy.

We will be planting a vine on the trellis which will cover the bars you seem to dislike. They will become invisible when the vine reaches partial maturity.

Marcy Cravat
Curt Overway

-----Original Message-----
From: Hazel Hung <hazymay@mindspring.com>
To: leslie <lesliejacoby@aol.com>
Sent: Fri, Jan 9, 2015 6:33 pm
Subject: Greetings

Dear Leslie,

Hope this finds you healthy and well.

I'm writing to see if you would let me top your pittosporum. When you visited me on June 27, 2013, you mentioned that you paid a Columbia-Avenue neighbor $500 to top and trim her trees to improve your view. I hope that you would do the same for me.

I'll be paying for it and using the arborist who has worked for me for years.

Happy New Year to you and your family!

Hazel

From: Leslie Jacoby <lesliejacoby@aol.com>

Subject: Re: Greetings

Date: January 10, 2015 9:20:15 PM PST

To: hazymay@mindspring.com

Hi Hazel,

It's very nice to hear from you - and I wish you a happy new year as well.

I plan to *thin the pittosporum*, which is what I told you in June. *I will not (never) "top it off" as has been done in the past*, which is what I said to you in June as well. I told you at that time the tree is leaning too far forward as a result of this "hacking" of the top of the tree, and I do not plan to continue trimming the tree in the same fashion as in the past.

I'm sorry you misunderstood me, but I know I said I would be thinning it (which I did a bit this summer).

I will not use your arborist because I cannot trust that he will keep my wishes in mind.

I will not accept any money from you as I will be responsible for my plants on my property. Thank you for the offer.

Further, I did not give $500 to another neighbor ... it was another amount.

Best wishes,
Leslie Jacoby

-----Original Message-----
From: Hazel Hung <hazymay@mindspring.com>
To: leslie <lesliejacoby@aol.com>
Sent: Tue, Sep 8, 2015 9:42 am
Subject: View

Hi Leslie,

Hope you are doing well.

I'm writing to see if you will let me
top your pittosporum because it's blocking my view. If you don't want to use my tree trimmers I'd be happy to pay for your workers. You are also welcomed to drop by to see how my view has been impacted.

Please let me know your
decision by Sept. 15. I'm prepared to file a petition with the county after that.

Regards,

From: Leslie Jacoby <lesliejacoby@aol.com>

Subject: Re: View

Date: September 9, 2015 1:26:11 PM PDT

To: hazymay@mindspring.com

Hazel,

It's so unfortunate to read your "threatening" email - and my first response to you: *Go ahead and file a petition.* Marcy and you have always been aggressive and mercurial neighbors - nice when you think you will get your way, and threatening when you will not.

And once again, I remind you both: I took out all the bamboo, the gargantuan Cedar, and allowed Marcy to put drainage pipes on the side of my property (which leaked earlier this year). What have either of you done for my family or me that expresses a single neighborly kindness.

Second, I will say it again: I will never *top off"* the pittosporum - I will *"thin it" (and I did thin it last year and you didn't even take note).* I will be topping the bush lower down in the yard by my side gate. I will be doing this in a few months.

Third, a priority for my family and me is the completion of the backyard fence, so I will be doing that work in the next month.

I don't think I will visit you - quite frankly, I find both Marcy and you the most unpleasant neighbors I have ever had.

Leslie

Gmail

Leslie Levy <lal@levylaw.biz>

RE: Hung v. Jacoby -- Site Visits

1 message

Jesse Clifford Adams <jessethelawyer@earthlink.net> Thu, Jan 14, 2016 at 11:20 AM
To: Leslie Levy <lal@levylaw.biz>
Cc: jessethelawyer@earthlink.net

Thank you for your email of this morning.

My clients are also amenable to inspection that allows for you and Ms. Hung to see views and configurations from my clients' property. At this juncture I have some understanding that some of the foliage in question does in fact serve a "privacy purpose", blocking views in to my clients' home from otherwise openly exposed windows. I expect to know more facts with certainty by early next week.

I think setting a mutual site inspection will be advantageous to all interested parties. We can discuss further at an appropriate time.

Be well, Jesse

Jesse Clifford Adams, Esq.

LAW OFFICE OF JESSE CLIFFORD ADAMS

1244 E. 33rd Street

Oakland, California 94610-4029

P: (510) 846-1013

F: (510) 500-3612

jessethelawyer@earthlink.net

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From: Leslie Levy [mailto:lal@levylaw.biz]
Sent: Thursday, January 14, 2016 11:01 AM
To: Jesse Clifford Adams
Subject: Hung v. Jacoby

Thank you for your prior email, Mr. Adams. I confirm that the extension is till February 2, 2016.

Please be advised that my client reports that one of your client's oak trees already has grown past Ms. Jacoby's roof line and another is catching up quickly.

Ms. Hung's offer to allow you to see her view as she sees it from her home stands, but I ask that any arrangements to see it from her property be made through my office.

Best,

Leslie Levy

Leslie A. Levy

Gmail

Leslie Levy <lal@levylaw.biz>

hung v. levy -- Site Visit

1 message

Jesse Clifford Adams <jessethelawyer@earthlink.net> Mon, Jan 25, 2016 at 3:02 PM
To: lal@levylaw.biz
Cc: jessethelawyer@earthlink.net

Hi-

Thank you for your call-back this afternoon.

I spoke with Les Nicholaeff who would like to participate. I think it will be very helpful to all if he can see the view from the west side of your client's property.

We are available during the afternoon this coming Thursday, after 2:00 p.m. Mr. Nicholaeff has no availability on Friday.

Please let me know what works for you and/or Ms. Hung. Thank you, Jesse

Jesse Clifford Adams, Esq.

LAW OFFICE OF JESSE CLIFFORD ADAMS

1244 E. 33rd Street

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From: Leslie Levy <lal@levylaw.biz>
Date: Thu, Mar 28, 2024 at 1:56 PM
Subject: View Obstruction from 187 Purdue trees
To: James Cook Esq. <james.cook@johnburrislaw.com>

Hello, James:

As I informed you in our recent telephone conference, two of your clients' trees (they are both oak trees) are blocking Hazel Hung's views. I attach a copy of a Google Maps aerial photo showing their locations, circled.

Also attached are four photos taken on March 18, 2024 from my client's balcony.

The trees were planted in approximately 2011 and are about 16-17 feet tall. The tree to the south which is located closest to the backyard fence is in good health, but the other one is in poorer health.

Pruning by a certified arborist by which the height will be reduced by about 4 feet, as long as it is done properly, will keep the trees from obstructing again for approximately 2 years.

By this email I am asking you to convey Ms. Hung's view claim to have the trees pruned as described.

Of course, Ms. Hung is willing to have you and/or your clients confirm the view obstructions by going to her house to see the obstructions from the vantage points of her living room and balcony. An appointment to do so can be made through my office by email if your clients wish to accept this invitation.

Please give us a response to this request and invitation by no later than April 6, 2024.

Thank you for your attention to this matter,

Leslie

From: James Cook <james.cook@johnburrislaw.com>
Date: Tue, Apr 16, 2024 at 3:27 PM
Subject: MEDIATION: Hung v. Leslie Jacoby et al., MSC15-01985
To: Leslie Levy <lal@levylaw.biz>, James Cook <james.cook@johnburrislaw.com>

HI there. I understand the issue with having Ms. Shikina as a mediator. Would Ms. Hung be open to mediation with another mediator?

I think my clients are willing to trim the trees. But I will follow up on the demand. Thanks again.

On Tue, Apr 16, 2024 at 12:00 PM Leslie Levy <lal@levylaw.biz> wrote:

Hello, James

Please know that my client and I oppose retaining Alice Shikina to act as the mediator in this matter because of your conflict of interest and her lack of attorney credentials.

I have found in my practice that attorneys who have practiced in the field of real property law (which covers a lot of territory as you are aware) are best suited to act as mediators because they can describe in great detail during the mediation, from their own experience, what is involved in litigation in all its messiness, as a means of convincing parties to settle instead of proceeding to court. Such attorneys are even better-suited for this role than retired judges in my opinion (judges aren't always up-to-date on prevailing attorneys fees and costs).

Anyway, we need a response to the demand that your clients reduce the crown of their oak trees in order to clear Ms. Hung's view. If they are unable to express any reasonable alternative to this demand and insist on mediating, then please let us know right away.

Leslie

From: James Cook <james.cook@johnburrislaw.com>
Date: Wed, Apr 24, 2024 at 4:13 AM
Subject: MEET AND CONFER: Hung v. Leslie Jacoby et al., MSC15-01985
To: James Cook <james.cook@johnburrislaw.com>, Leslie <lal@levylaw.biz>

Good morning Leslie:

Please see the response to Ms. Hung's demand below. 415-350-3393

---------- Forwarded message ---------

From: Dr. Leslie Jacoby <dr.lesliejacoby@gmail.com>
Date: Tue, Apr 23, 2024 at 8:42 PM
Subject: Blurb for Lesley Levy
To: James Cook <james.cook@johnburrislaw.com>
Cc: Les Nicholaeff <lsnicholaeff@gmail.com>**, Leslie Jacoby** <Dr.LeslieJacoby@gmail.com>

Leslie Jacoby and Leslie Nicholaeff, will not cut the tops off of any of their trees by May 1, 2024. As they have done over the past five years, they will continue to trim and thin out the trees during the best time frame for oak trees, that being between October and March, to ensure the health of the trees. As the trees mature, my clients will continue to work to ensure that their trees give them the privacy they deserve while maintaining their property. They are willing to consider limiting the height of the tree by a foot but only as it ensures the integrity, health and shape of the trees.--

Leslie Jacoby, M.F.A., Ph.D.

Comparative Literature and Medieval Studies

Dr.LeslieJacoby@gmail.com--

Thanks,
James Cook Esq.
Attorney at Law

From: James Cook <james.cook@johnburrislaw.com>
Date: Wed, May 8, 2024 at 6:19 PM
Subject: INTENT TO TRIM TREES: Hung v. Leslie Jacoby et al., MSC15-01985
To: James Cook <james.cook@johnburrislaw.com>**, Leslie** <lal@levylaw.biz>

I am forwarding this at the request of Leslie Jacoby.

---------- Forwarded message ---------
From: **Dr. Leslie Jacoby** <dr.lesliejacoby@gmail.com>
Date: Wed, May 8, 2024 at 8:44 AM
Subject: Jacoby/Nicholaeff v Hung/Levy (email dated April 26, 2024)
To: James Cook <james.cook@johnburrislaw.com>
Cc: Les Nicholaeff <lsnicholaeff@gmail.com>

Hi James,

Here is our response to Hung/Levy email dated April 26, 2024:

1. We will trim our oak trees in October at end of their dormant period; and,
2. We will put in a new fence on our property in September.

Best regards,

Leslie & Les--

Leslie Jacoby, M.F.A., Ph.D.

Comparative Literature and Medieval Studies

Dr.LeslieJacoby@gmail.com--

Thanks,
James Cook Esq.
Attorney at Law

From: Leslie Levy <lal@levylaw.biz>
Date: Fri, May 10, 2024 at 6:01 PM
Subject: Hung v. Jacoby and Nicholaieff
To: James Cook Esq. <james.cook@johnburrislaw.com>

Hello, James:

Ms. Hung's response to your clients' message is not acceptable for several reasons, most notably, that it is unreasonable insofar as it calls for action on the part of your clients that is way too far into the future.

Also, the action that they say that they will take with respect to their trees is totally vague, with no mention at all of the aim of clearing my client's view.

Regarding the trees, there is no particular season during which trees have to be pruned, trimmed, topped or otherwise altered, according to arborists with whom I have consulted. The so-called dormant stage as being the only time that the oaks can be altered is a red herring. This is a made-up excuse that your clients are giving solely in order to delay action.

The removal of the fence from Ms. Hung's land and its replacement with a fence that does not encroach obviously can be accomplished within less than ten days. Again, your clients are stalling, despite Ms. Hung having demanded the fence replacement

again and again for many years. I submit that a Judge will view your clients' deliberate act of committing this continuing trespass following the execution of the parties' settlement agreement as wilful and malicious, justifying an award to my client of her attorneys' fees and costs if she is compelled to file the motion to enforce the settlement agreement. Indeed, the additional fact that my client paid $12,000 for the existing fence fully supports the granting of such relief.

Given your clients' egregious conduct, Ms. Hung requires that the tree and fence work be completed within twenty days, **by no later than May 30, 2024.**

Furthermore, Ms. Hung demands that the following procedures be implemented:

In order to ensure that the new fence is installed on the property line, we must be given at least 48 hours' advance notice of the date that this work will be commenced, the name and contact information of the workers who are going to do the work and an opportunity for my client and/or me to instruct the worker in person, before he begins, in order to show him exactly where to install the new fence in accordance with the survey that Ms. Hung commissioned.

As to the tree work, we demand that we be given at least 48 hours' advance notice of the date that this work will be commenced, the name and contact information of the workers who are going to do the work and an opportunity for my client and/or me to instruct the workers how much to reduce the height of the trees, based upon in- person viewing of my client's view from her home by all concerned persons. Your clients are invited to look at the view obstructions from my client's home while the work is being done to confirm that the obstructions will be eliminated.

If this proposal is not accepted by your clients in writing by the close of business on **Tuesday, May 14, 2024**, the motion to enforce will be filed.

Have a nice weekend, James.

Leslie

From: Leslie Levy <lal@levylaw.biz>
Date: Thu, Jun 13, 2024 at 4:05 PM
Subject: Hung v. Nicholaeff and Jacoby
To: James Cook Esq. <james.cook@johnburrislaw.com>

Hello, James:

Please read the attached letter and convey it to your clients.

Leslie

LAW & MEDIATION OFFICE OF

LESLIE A. LEVY

June 13, 2024

via electronic mail only

James Cook

james.cook@johnburrislaw.com

Re: Hung v. Nicholaeff and Jacoby

Dear James:

Hazel Hung's response to your clients' most recent counter offer is in this letter. Your clients offered to do the following:

1. **In October 2024, Jacoby/Nicholaeff will trim the oak trees based upon Jacoby/Nicholaeff personal arborist's expertise, which will be at the end of the California Live Oak dormant period;**

This part of the proposal is unacceptable for two reasons: the reference to merely trimming the trees is evasive and vague insofar as your clients' contractual obligation is to **reduce the crown** of the trees so that they no longer block my client's view. This kind of alteration typically is called "topping," not trimming. Your clients must do whatever is necessary to lower the height of their trees and keep them lowered to that point in the future.

Also, as I informed you, there is no time frame which limits the ability of an arborist to alter oak trees as Ms. Hung is demanding, according to our arborist. Waiting four months to do this tree work is simply an unreasonable attempt to delay resolution of Ms. Hung's view claim, made in obvious bad faith.

2. **Jacoby/Nicholaeff will perform all work on oak trees in accordance with maintaining the health and well-being of each tree simultaneously protecting Jacoby/Nicholaeff privacy from Hung, Cravat, Bodell, and Jiri/Hing Lee;**

1718 SOLANO AVENUE ■ BERKELEY, CA 94707
TELEPHONE 510-222-2200 ■ FACSIMILE 510-223-0200
LAL@LEVYLAW.BIZ ■ WWW.LEVYLAW.BIZ

The Settlement Agreement to which your clients agreed says absolutely nothing about protecting your clients' privacy. The issue of privacy was discussed during the mediation and the fact that it was not a condition of the settlement is evidence that privacy was not an issue by the time the parties agreed to the resolution. If your clients wanted that to be a condition, they should have had it included in the Settlement Agreement. And, most certainly, there never was any discussion of your clients' privacy being protected vis-à-vis any neighbors other than Ms. Hung.

This portion of the proposal is a totally unjustified attempt to interject a new condition into the Settlement Agreement to which the parties never agreed.

By the same token, the parties" Settlement Agreement makes no mention of maintaining the health and well-being of the subject trees. If your clients had performed the terms of the Settlement years ago when the oak trees had started to block Ms. Hung's view and she had demanded that they reduce the crowns of these trees, it would have been much less harmful to the trees because they were younger and stronger at the time. By waiting to perform the terms of the Settlement Agreement, your clients have been the sole cause of any purported fragility of their trees. The preservation of the "health and well-being" of their trees is their problem, not my client's.

3. **In September 2024, Jacoby/Nicholaeff will put in a new fence on their property based on the Moran Engineering Boundary & Topographical Map (July 22, 2023), which surveyed 187 Purdue, marked 187 Purdue, and recorded the boundaries at Contra Costa County.**

This proposal is an outrageously bad faith delay tactic. There is no reason that the replacement of the fence cannot take place immediately. Your clients are deliberately and blatantly provoking Ms. Hung by refusing to act promptly on this aspect of the Settlement.

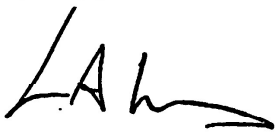
Moreover, their reference to a survey that we have not seen is ludicrous. We demand that they produce this survey so that we can confirm exactly where the new fence will be installed. Ms. Hung also insists that she be notified at least 48 hours in advance when the fence contractor will do the work so that she can monitor its placement on the ground to ensure that the fence is at its original location.

All of the above-mentioned actions of your clients form solid bases for my client to obtain an award of the attorney's fees and costs that she has incurred and will incur having me deal with their obstinance and malice. If Ms. Hung is compelled to make a motion in court to enforce the Settlement Agreement, this conduct will be submitted in support of her

claim for sanctions. The longer your clients wait to fulfill their obligations, the more likely it will be that they will have to pay dearly.

I urge you to pressure your clients to behave appropriately.

Very truly yours,



Leslie A. Levy

LAL:jw

CC: Client

From: Leslie Levy <lal@levylaw.biz>
Date: Thu, Nov 7, 2024 at 12:49 PM
Subject: Leslies on Purdue
To: James Cook Esq. <james.cook@johnburrislaw.com>

Hello, James:

I hope that you are doing well.

Do you still represent the Leslies in connection with the tree and fence matter? I need to know because I want to give them one more chance to abide by the Settlement Agreement before I make a motion to enforce it in court.

Thank you,

Leslie

From: James Cook <james.cook@johnburrislaw.com>
Date: Thu, Nov 7, 2024 at 1:02 PM
Subject: MEET AND CONFER: Hung v. Leslie Jacoby et al., C15-01985
To: Leslie Levy <lal@levylaw.biz>, James Cook <james.cook@johnburrislaw.com>

Hi there Leslie:

As I understand it, they are in compliance with the agreement.

1. Recently the trees have been trimmed.
2. Also, the fence was repaired/moved.

I will send a list of what has been done in compliance with the agreement. Their position is that they will not do anything further this season. I will send a follow up email shortly.

From: James Cook <james.cook@johnburrislaw.com>
Date: Mon, Nov 11, 2024 at 10:03 AM
Subject: Fwd: MEET AND CONFER: Hung v. Leslie Jacoby et al., C15-01985
To: James Cook <james.cook@johnburrislaw.com>, Leslie <lal@levylaw.biz>

Please see the response below. I asked her to put it in her own words.

---------- Forwarded message ---------
From: Dr. Leslie Jacoby <dr.lesliejacoby@gmail.com>
Date: Sun, Nov 10, 2024 at 7:35 PM
Subject: Re: MEET AND CONFER: Hung v. Leslie Jacoby et al., C15-01985
To: James Cook <james.cook@johnburrislaw.com>

Response to "Meet & Confer" Emails, Hung v. Leslie Jacoby et al., C15-01985

Dear James,

Below is our (Jacoby and Nicholaeff) response to Levy's recent email entitled, "Meet & Confer" Emails, Hung v. Leslie Jacoby et al., C15-01985" dated November 7, 2024.

Jacoby and Nicholaeff restate the following:

1. Jacoby and Nicholaeff fully, and in good faith, complied with the Settlement Agreement within a couple of weeks of signing; that is, Jacoby and Nicholaeff complied fully with the Settlement Agreement in 2016. Jacoby and Nicholaeff are NOT responsible for any changes to the existing fence, as it complied fully with the terms of the 2016 Settlement Agreement at the time of signing. Jacoby and Nicholaeff have proof of the above statements.

2. Jacoby and Nicholaeff have done nothing since 2016 to violate that said 2016 Settlement Agreement thereafter. In fact, Jacoby and Nicholaeff have taken extraordinary steps to maintain and protect the California Native landscaping in the Jacoby and Nicholaeff property. Jacoby and Nicholaeff have proof of these statements.

3. Rather, Hung has made disingenuous, misleading, deceptive, and deceitful statements about purported violations or otherwise of the 2016 Settlement Agreement. Additionally, in March 2024 and on October 5, 2024, Hung bypassed attorney communications by contacting Nicholaeff directly. In the latter contact, Hung texted Nicholaeff while the Jacoby and Nicholaeff new fence was being installed on Jacoby and Nicholaeff property. Jacoby and Nicholaeff have proof of these statements.

4. Rather, Levy continues to make disingenuous, unacceptable, and defamatory statements about Jacoby, which have crossed the line into slander, including questioning whether you, James Cook, remain our attorney of record. Jacoby and Nicholaeff have proof of these statements in the full series of emails written by Levy in 2024.

Finally, Jacoby and Nicholaeff repeat the following regarding their legal responsibility to their property:

1. By the close of October 2024, Jacoby and Nicholaeff trimmed the oak trees based upon Jacoby and Nicholaeff's personal arborist's expertise – 35% - 40% of each tree was trimmed, including large major branches;

2. Jacoby and Nicholaeff performed all work on oak trees in accordance with maintaining the health and well-being of each tree simultaneously protecting Jacoby and Nicholaeff's privacy from Hung, Cravat, Bodell, and Jiri/Hing Lee;

3. Jacoby and Nicholaeff performed all work on oak trees by removing all branches and limbs that overhung into the properties of Hung, Cravat, Bodell, and Jiri/Hing Lee; and,

4. In September 2024, Jacoby and Nicholaeff removed all espalier plants and climbing vines that had grown on the existing fences on Hung/Cravat properties. Thereafter, Jacoby and Nicholaeff installed a new fence on their property based on the Moran Engineering Boundary & Topographical Map (July 22, 2023), which surveyed 187 Purdue, marked 187 Purdue, and recorded the legal boundaries at Contra Costa County. There now exists an approximate 6 inches between the two fences. Moving forward, it is expected that neither Hung nor Cravat will ever allow any of their plants to cross over into our property.

Best regards,

Leslie & Les

Gmail Leslie Levy <lal@levylaw.biz>

Hung v. Leslies

1 message

Leslie Levy <lal@levylaw.biz> Wed, Jun 18, 2025 at 4:15 PM
To: "James Cook Esq." <james.cook@johnburrislaw.com>
Bcc: Hazel <hazymay@mindspring.com>, Michael Baefsky <treesbugsdirt@gmail.com>

Hello, James.

In response to your clients' refusal to allow our consulting arborist to inspect their two oak trees up close while standing on their land, I have the following comments:

The refusal to allow access to your clients' trees is in the utmost bad faith in view of the Kensington View Ordinance which strongly encourages the parties to cooperate with each other in an attempt to resolve their differences. Naturally, mutually allowing access to the parties' respective properties is a crucial step in the reconciliation process.

The new Ordinance requires that an arborist's report must accompany a view claim. Our arborist has explained that he cannot do a complete report without being able to examine the trees up close. Therefore, your clients are not merely trying to ignore and avoid Ms. Hung's view claim and the related process, but they are actively impeding her ability to comply with this requirement of the Ordinance.

Of course, I will make a note of your clients' refusal to cooperate when we go before the County-appointed Arbitration Panel.

I recommend that your clients change their minds about permitting access to their land. However, if your clients remain adamant that no one from our side may enter their property to inspect the trees, we ask that your clients provide us with three measurements of each of the two oak trees: the circumference of each trunk, measured at a height of 54 inches from the base of each trunk; the height of the lowest branch of each tree, measured from the base of each trunk and the height of each tree.

Please respond to this email as soon as possible.

Thank you,

EXHIBIT E

HAZEL HUNG VIEW CLAIM

Arborist Report of Michael Baefsky

T R E E S , B U G S , D I R T
L A N D S C A P E C O N S U L T I N G

August 6, 2025

Hazel Hung
236 Lake Drive
Kensington CA

Subject: Arborist Report - View Obstruction and Restoration of Views

SUMMARY
Hazel Hung (Client) has views from her property that are blocked by two coast live oak (*Quercus agrifolia*) trees on Leslie Jacoby & Leslie Nicholaeff's (Tree Owner) property. Benefits of these trees are shade, air purification, C02 sequestration, wildlife habitat, and beauty. Burdens of these trees are blocking views, fire hazards, and pruning due to large tree in small space. To restore views I recommend pruning and applying a growth regulator to tree #1, removing and replacing tree #2. Topping of either tree would destroy their benefits and structures, slow their growth, and reduce their health and longevity. Adverse impacts of pruning (#1) would be slower growth and reduced amounts of other benefits. Adverse impacts of removal (#2) would be loss of benefits. Structural impacts of pruning (#1) would be a smaller structure. Biological impacts of pruning would be reduced vigor and slower growth.

INTRODUCTION
BACKGROUND
My Client wants to recover views from her property that are blocked by trees that are not protected in Contra Costa County. The tree species is Coast live oak, which is one of the main indigenous trees that has lived in the area historically. It can grow up to 70 feet in height, 30-70 feet wide.

ASSIGNMENT
Meet with Client and Leslie Levy (Client Attorney) on site, collect historical observations about neighbor's trees in question, develop an understanding of views obstructed, analyze options for restoring Client's obstructed views, and evaluate impacts on trees from view restoration options, evaluate tree health, structure and form, provide oral and written reports. Client Attorney reviewed report and provided suggestions to improve clarity, brevity & accuracy.

LIMITS OF ASSIGNMENT
- Data was collected from Client's property because Tree Owner would not allow access
- Historical images from Client's property were not provided or analyzed
- Estimates of view obstruction were provided by Client
- Observations (except for estimates of view obstruction), analyses and recommendations, are my own

LOCATION
- *VIEWS* From - 236 Lake Dr., Kensington (Client)
- *TREES* At - 187 Purdue Ave., Kensington (Tree Owner)

OBSERVATIONS

SITE

Client's property slopes down from Lake Drive with a deck in the backyard that faces San Francisco Bay. The backyard has paved walkways, an irrigated lawn, an English laurel (*Prunus laurocerasus*) hedge on one side of the yard, two young cherry trees (*Prunus spp.*), a camellia (*Camellia japonica*) and a dogwood (*Cornus spp.*). A tulip magnolia (*Magnolia x soulangeana*) tree and large Hollywood juniper (*Juniperus chinensis `Torulosa'*) shrub are on the other side of the backyard. A tall fence (neighbor fence) is located downslope in between Client and Tree Owner properties, with a mostly dead pear (*Pyrus communis*) growing through a wooden trellis.

Tree Owner's property has a narrow planting bed above their house, next to a wooden side fence and trellis with one coast live oak (#1) located above a rock wall and two pots. Directly below the fence between my Client & Tree Owner is a narrow planting bed and rock retaining wall with a coast live oak tree (#2) growing close to the fence and wooden trellis, along with a few pots and an evergreen shrub.

METHODS

On May 21,2025 between 11 AM - 12:30 I met with Client and Client Attorney who pointed out where views had existed historically. We looked at views and the two trees obstructing them from the living room, deck, and patio. I evaluated the view losses but was unable to assess tree trunk size, health, structure or form because the Tree Owner would not give permission to carry out this work.

On July 24, 2025 between 10:30-11:20 I met again with Client and Client Attorney, examined the Tree Owner backyard from a 10 foot ladder that I propped up against my Client's back fence. I estimated trunk diameters, assessed health, structure and form of each tree, and digitally imaged the site & trees. Then I provided an oral report and answered questions that Client and Client Attorney had about the trees and about managing the view obstruction issues. Later I met with the Tree Owner in their frontyard and discussed landscape and tree issues.

Data that I collected included:

- Trunk diameters estimated at approximately 54 inches above grade
- Tree **health**[1];leaf & twig size, color, density & distribution, discoloration, accessible rooting zone, wounds
- **Structure;** rooting zone, visible buttress roots at root crown, trunk & branch taper, branch distribution
- **Form;** balance, beauty, fulfillment of genetic potential

References:

- Contra Costa County Tree Protection & Preservation Ordinance, Article 816-6.2 through 6.1028,
- Contra Costa County Tree Obstruction of Views Combining District, Ordinance No. 2024-21
- Google Maps™
- Pruning third edition, Best Management Practices, Smiley et al, Intl. Society of Arboriculture, 2019
- Tree, Shrub, and Other Woody Plant Management - Standard Practices (Pruning), A300, 2017

[1] Rating Scale; 0=dead, 1=very poor, 2=poor,, 3=fair, 4=good, 5=excellent

DATA
Tree #1; trunk diameters approximately 4,5,7,3 & 4 inches at 54 inches above grade
good health, poor structure, good form
- rooting zone limited (H,S) by retaining wall, fence, house
- root crown region buried (H,S)
- trunks codominant with included (weakly connected) bark, black vertical crack on one trunk (H,S,F[2])
- scaffold branches well tapered (S)
- smaller branches lower & interior pruned out (H,S,F)
- twigs good vigor (H)
- foliage good color, size & density (H)

Tree #2 trunk diameter approximately 12 inches
fair health, good structure, good form
- rooting zone limited (H,S) by retaining wall, fence, house
- root crown region buried (H,S)
- trunk leaning, no taper(S)
- scaffold branches codominant with included bark, one scaffold pruned, exposing bark, one bark wound may be sunscald because of excessive pruning (H,S)
- smaller branches lower & interior pruned out (H,S,F)
- twigs normal vigor (H)
- foliage normal color, size & density (H)

TREE LOCATION MAP

[2] (S) = tree structural related, (H) = tree health related, (F) = tree form related

DIGITAL IMAGE OF TREE LOCATIONS - View from backyard & deck of 236 Lake Dr.

English laurel hedge coast live oak #2 coast live oak #1

approximate line showing areas of views blocked

tree #1 - Clients views blocked above this approximate line

ANALYSIS

BENEFITS

These trees are providing shade, air purification, carbon dioxide sequestration, wildlife habitat, and visual focal points of beauty in the Tree Owner backyard.

BURDENS

The trees are blocking my Client's views of the skyline, San Francisco Bay, Golden Gate Bridge, Treasure Island, Albany Hill, and Albany, posing fire hazards, & requiring pruning to maintain because they are large species growing in small spaces that are restricted by structures.

RESTORING VIEWS

Pruning #1 and removing + replacing #2 will restore the views claimed by my Client.
Treating #1 with a growth regulator will reduce the need for annual pruning
Topping will reduce tree health, degrade its structure, and denigrate its form

ADVERSE IMPACTS of restoring views

- Pruning #1 will slow growth and all benefits listed above, except visual points of beauty
- Removal + replacing #2 will eliminate benefits until the newly planted tree provides those benefits
- Topping #2 will reduce all benefits listed above including visual points of beauty

STRUCTURAL IMPACTS

- Pruning #1 will reduce the size of the tree
- Treating #1 with a growth regulator will stunt tree's twig and branch growth & maintain a small size tree
- Removal + replacement of #2 will eliminate its structure
- Topping #2 will reduce structural quality and value, and will weaken the tree

BIOLOGICAL IMPACTS

- Pruning #1 will reduce tree health and slow growth
- Treating #1 with a growth regulator will reduce twig and branch growth and increase leaf growth
- Removal + replacement #2 will delay the full benefits that the established tree has in place
- Topping #2 will open tree to disease infection, insect and mite damage, and generally reduce its health, slowing its growth, promoting sunscald and branch dieback, which will cause it to decline & shorten its life

CONCLUSIONS

#1 tree - **reduction** pruning & treatment with a growth regulator can restore views above this tree

#2 tree - **removal & replacement** can restore views in the area blocked by this tree's crown

#2 tree - **topping** this tree could restore the view, but it would not survive without being significantly reduced in health, having its structure damaged, form destroyed, and life shortened

RECOMMENDATIONS

TREE #1 - PRUNING & GROWTH REGULATOR APPLICATION

Crown reduction pruning can restore my Client's views. Using a natural pruning system that conserves this coast live oak tree's rounded crown pattern, Pruning cuts can be made that select branches growing into the desired views and should be **thinning, reduction** and **removal cuts**. This work should be carried out mid-summer each year as needed.

- pruning carried out in the upper portion of the crown
- the lower roof peak of the Tree Owner should be the target height
- approximately 25% of the crown would be removed in the first year
- diameters of up to six branches that I recommend reducing range from approximately 1-2.5"
- annual inspection recommended to determine need for pruning
- treatment every 3 years or as needed with growth regulator containing paclobutrazol such as CambistatTM in a soil injection or basal drench application, while soil is still moist, fall-winter

tree #1 approximate locations for reduction cuts

TREE #2 - REMOVAL + REPLACEMENT

Replacement of this tree with a smaller (ultimate size) specimen is desirable. Options of trees that would still need pruning to maintain views, but have round easily shaped tops include the following CA natives that provide shade, air purification, carbon dioxide sequestration, wildlife habitat, and beauty, and are currently available[3] include;

• holly leaf cherry (*Prunus illicifolia ssp. illicifolia*), indigenous to coastal CA chaparral and desert area
Evergreen shrub or small tree to 30 feet high X 10-25 feet wide, low water use

• toyon (*Heteromeles arbutifolia*), indigenous to area of site
Evergreen shrub or small tree 25 feet high x 8-15 feet wide, low water use

• blue elderberry (*Sambucus mexicana*) - indigenous to area of site
Deciduous shrub or small tree to 20 feet high x 10-20 feet wide, medium water use

[3] Devil Mountain Nursery availability week of July 28, 2025

APPENDIX A - GLOSSARY

dripline - region underneath tree canopy

form - genetically determined appearance that includes spread, height & configuration

health - tree growth as expressed by foliage, twigs, branches & trunks including resistance to pests branch

reduction - decreasing branch length or plant height and/or spread

reduction cut - a pruning cut that removes the larger of two or more branches or stems, or one or more codominant stem to a live lateral at least (usually) 33% the diameter of the stem or branch being removed

removal cut - removes the smaller of two branches at a union without cutting tint the branch bark ridge or branch collar or leaving a stub

root crown – region where trunk and root system meet, also called `buttress' or `butt'

rooting zone – area where roots are likely to survive, beginning at the trunk and extending up to three times the radius of a tree's dripline region

scaffold – large, structural branch

structure - physical and mechanical qualities of tree

thinning - selective pruning to reduce density of branches and foliage

topping - reduction of tree size by heading large, live branches and leaders without regard to long term tree health or structural integrity

trunk circumference – measurement of trunk, distance around

trunk diameter - trunk circumference divided by 3.14

APPENDIX B - CERTIFICATE OF PERFORMANCE

I, Michael Baefsky certify:

- That I have evaluated the subject trees, and stated my findings accurately. The extent of the evaluation is stated in the attached report;
- That I have no current or prospective interest in the vegetation or the property that is the subject of this report and have no personal interest or bias with respect to the parties involved;
- That the analysis, opinions, and conclusions stated herein are my own;
- That my analysis, opinions, and conclusions were developed and this report has been prepared according to commonly accepted professional practices;
- That no one provided significant professional assistance to the consultant, except as indicated within the report;
- That my compensation is not contingent upon the reporting of a predetermined conclusion that favors the cause of the client or any other party.

I certify that I am Registered Consulting Arborist & Tree and Landscape Assessor #456, a member of the American Society of Consulting Arborists, and am Certified Arborist & Qualified Tree Risk Assessor #WE0222A, Agricultural Pest Control Advisor #074617, Qualified Applicator #99864, Licensed Landscape Contractor (inactive) #931410, and have been involved in the practice of Arboriculture, Integrated Pest Management, Plant Health Care and Ecological Soils Management, and the study of soils and horticulture for over thirty five years.

Michael Baefsky