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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN MATEO**

14
15 **SURFRIDER FOUNDATION**, a Non-Profit
Organization;

16 Plaintiff,

17 v.

18 **MARTINS BEACH 1, LLC**, a California
19 Corporation; **MARTINS BEACH 2, LLC**, a
California Corporation; and DOES 1 through
20 20, inclusive,

21 Defendants.

ENDORSED FILED
SAN MATEO COUNTY

MAR 12 2013

Clerk of the Superior Court
By Rebecca Krill
DEPUTY CLERK

CIV 520336

Case No. _____

COMPLAINT FOR:

1. DECLARATORY RELIEF UNDER THE COASTAL ACT;
2. INJUNCTIVE RELIEF UNDER THE COASTAL ACT;
3. CIVIL FINES AND PENALTIES UNDER THE COASTAL ACT.

JURY TRIAL DEMANDED

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1 Plaintiff Surfrider Foundation, brings this action for statutory damages and penalties
2 under the citizens suit provision of the California Coastal Act of 1976 against Defendants
3 Martins Beach 1, LLC and Martins Beach 2, LLC (“Defendants”).

4 **I. INTRODUCTION**

5 1. Martin’s Beach consists of approximately 200 acres of land south of Half Moon
6 Bay in San Mateo County. In 2008, Defendants purchased 53 acres of property at Martin’s
7 Beach for approximately \$37.5 million. Prior to that sale and purchase, access to the beach via
8 Martin’s Beach Road off of Highway 1 had been allowed for decades. Visitors, including
9 families, surfers, fishermen, tourists and beach goers paid a small access fee, which was in turn
10 used to maintain the beach area. Among other places, the historic rights of public beach access
11 are noted in the San Mateo County Local Coastal Plan (shoreline access component) Tables 10.1,
12 10.3 and 10.6.

13 2. Upon purchase of the property, Defendants unilaterally and without permission
14 from San Mateo County or the California Coastal Commission, erected a locked gate across
15 Martin’s Beach Road, painted over billboards advertising public access, and took other measures,
16 and actions, including stationing armed guards at the property, to deny beach access to the public.
17 These actions have significantly harmed Plaintiffs and the public.

18 3. Defendants’ actions have been deliberately designed and calculated to close off a
19 large sandy beach previously open to the public for decades. Defendants’ actions were taken
20 with total disregard for the laws that protect California’s coastal areas and for the public’s use
21 and enjoyment of one of the most desirable and historic beaches in Northern California.
22 Moreover, Defendants know they were required to secure appropriate permits and approvals prior
23 to obstruction of public access or they are in violation of the Coastal Act. However, to this day,
24 and each day, Defendants continue to unlawfully block public beach access.

25 4. Accordingly, Plaintiff brings this lawsuit in order to require Defendants to remove
26 its illegal barriers blocking public access to Martin’s Beach.

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1 **II. PARTIES**

2 **A. Plaintiff**

3 5. Plaintiff Surfrider Foundation (“Surfrider” or “Plaintiff”) is a non profit
4 organization headquartered in Orange County California. Surfrider is registered to do business in
5 the State of California, entity number C1255311.

6 6. Surfrider is a grassroots, non-profit environmental organization dedicated to the
7 protection and enjoyment of the world’s oceans, waves and beaches for all people, through a
8 powerful activist network. Surfrider brings this lawsuit on its own behalf, on behalf of its San
9 Mateo Chapter, and on behalf of more than 250,000 supporters, activists, and members who live
10 in the United States.

11 7. Surfrider has over 80 local Chapters nationwide, including the volunteer-based
12 San Mateo Chapter. Surfrider has a particular interest in protecting public beach access rights at
13 Martin's Beach. Surfrider brings this action on its own institutional behalf and on behalf of its
14 members, board, and staff, some of whom regularly enjoy and will continue to enjoy the coastal
15 resources located at Martin's Beach, including but not limited to recreational resources in the near
16 shore waters, enjoyment of the sandy beach area through sunbathing, picnicking and beach
17 recreation such as surfing and fishing, observing and studying the native plants and animals
18 located at Martin's Beach.

19 8. The interests of Surfrider and its members, board, and staff in observing,
20 recreating, and otherwise enjoying the beach and coastal resources at Martin's Beach have been,
21 and will continue to be, harmed by Defendants’ actions to preclude public access to this area
22 without a permit. Surfrider, its members, board, and staff have worked to protect public beach
23 access interests and to protect the coastal environment, including through beach clean ups in San
24 Mateo County, and have expended significant organizational resources on advocacy and public
25 education efforts aimed at protecting these interests.

26 **B. Defendants**

27 9. Defendant Martins Beach 1, LLC is a company located and registered to do
28 business in the state of California, entity number 200812610295. Martin’s Beach 1, LLC is the
owner of the real property located at 22325 Carbrillo Highway, commonly known as Martin’s

1 Beach.

2 10. Defendant Martins Beach 2, LLC is a company located and registered to do
3 business in the state of California, entity number 200812610300. Martin's Beach 2, LLC is the
4 owner of the real property located at 22325 Carbrillo Highway, commonly known as Martin's
5 Beach.

6 **C. Other Defendants**

7 11. The true names and capacities, whether individual, corporate, associate or
8 otherwise of Defendants Does 1 through Does 20, inclusive, are unknown to Plaintiffs who
9 therefore sue said Defendants by such fictitious names pursuant to Code of Civil Procedure §
10 474. Plaintiffs further allege that each of said fictitious Doe Defendants is in some manner
11 responsible for the acts and occurrences hereinafter set forth. Plaintiffs will amend this
12 Complaint to show their true names and capacities when the same are ascertained, as well as the
13 manner in which each fictitious Defendant is responsible for the damages sustained by Plaintiffs.

14 **D. Agency**

15 12. At all relevant times, each Defendant was and is the agent of each of the
16 remaining Defendants, and in doing the acts alleged herein, was acting within the course and
17 scope of such agency. Each Defendant ratified and/or authorized the wrongful acts of each of the
18 Defendants.

19 13. Defendants, and each of them, pursued common enterprise and/or common course
20 of conduct to accomplish the wrongs complained of herein. The purpose and effect of the
21 conspiracy, common enterprise and/or common course of conduct complained of was, inter alia,
22 to perpetrate the wrongful scheme set forth herein upon the Foroudians to obtain financial profits.

23 **E. The Property**

24 14. The property purchased by Defendants in 2008 which is the subject of this
25 litigation is located at 22325 Carbrillo Highway, Half Moon Bay, California, 94019, commonly
26 known as Martin's Beach. It is APN No. 066-330-170. A more particular description of the
27 property is contained as Exhibit A.

28 15. The property has a unique history. It was owned by the Deeney family for more
than 100 years. The property contains approximately 45 cabins on long-term leases, running

1 through approximately 2021 that sit above the beach on a bluff which rises 180 feet above the
2 ocean. As reflected in the picture below, there is a single road from Highway 1 to access the
3 cabins and the beach. Due to fencing and natural geographic constraints, Martin's Beach Road is
4 the traditional and only beach access route. It is Defendants' illegal and unilateral blocking of
5 this road which blocks access to the beach and has been done without a California Coastal Act
6 permit and has dramatically changed the use and intensity of use of Martin's Beach.



17 Photo Courtesy of California Coastal Records Project. www.cacoast.org/6182.

18 **III. JURISDICTION AND VENUE**

19 16. The San Mateo County Superior Court has jurisdiction over this action pursuant
20 to California Constitution, Article VI, Section 10.

21 17. Plaintiff brings this lawsuit pursuant to Public Resources Code section 30803(a),
22 which provides that "any person may maintain an action for declaratory and equitable relief to
23 restrain any violation of this division." As described below, Plaintiff is a person under the
24 Coastal Act.

25 18. Venue is proper in this county as the events giving rise to the lawsuit occurred in
26 this county and the property which is the subject of the lawsuit is located in this county.

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1 **IV. FACTUAL BACKGROUND**

2 **A. The California Coastal Act**

3 19. The legislature adopted the California Coastal Act in 1976 to protect and enhance
4 California's natural and scenic coastal resources. The Coastal Act created the California Coastal
5 Commission ("the Commission"). The Coastal Act also created a planning process to ensure that
6 development of property in a "coastal zone" is consistent with and reflects the findings and
7 declarations made by the legislature as stated in Public Resources Code section 30001:

- 8 (a) That the California coastal zone is a distinct and valuable natural
9 resource of vital and enduring interest to all the people and exists as
10 a delicately balanced ecosystem.
- 11 (b) That the permanent protection of the state's natural and scenic
12 resources is a paramount concern to present and future residents of
13 the state and nation.
- 14 (c) That to promote the public safety, health and welfare, and to protect
15 public and private property, wildlife marine fisheries, and other ocean
16 resources, and the natural environment, it is necessary to protect the
17 ecological balance of the coastal zone and prevent its deterioration
and destruction.
- 18 (d) That existing developed uses, and future developments that are
carefully planned and developed consistent with the policies of [the
Coastal Act], are essential to the economic and social well-being of
the people of this state and especially to working persons employed
within the coastal zone.

18 Pub. Resources Code § 30001(a)-(d).

19 20. The Coastal Act "shall be liberally construed to accomplish its purposes and
20 objectives." Pub. Res. Code § 30009.

21 21. The "Coastal Zone" is that land specified on maps identified and set forth in
22 section 17 of Chapter 1330 of the Statutes of 1975-1976 Regular Session enacting Division 20 of
23 the Public Resources Code and subsequent amendments. In significant coastal estuarine, habitat,
24 and recreational areas it extends inland to the first major ridge line paralleling the sea of five
25 miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the
26 zone generally extends inland less than 1,000 yards. Pub. Resources Code § 30103(a).

27 22. The property at Martin's Beach which is the subject of these proceedings is
28 located within the Coastal Zone.

1 23. The Coastal Act requires that “any person . . . wishing to perform or undertake
2 **any development in the coastal zone . . . shall obtain a coastal development permit.”** Pub.
3 Resources Code § 30600(a) (emphasis added).

4 24. Under the Coastal Act, a “person” is “any person, firm, association, organization,
5 partnership, business, trust, corporation, limited liability company, company, district, county, city
6 and county, city, town, the state, and any of the agencies and political subdivisions of those
7 entities, and, to the extent permitted by federal law, the United States, or any of its agencies or
8 political subdivisions.” Pub. Resources Code §30111. Martin’s Beach 1 and 2 LLC are persons
9 under the California Coastal Act.

10 25. “Development” under the Coast Act is:

11 on land, in or under water, the placement or erection of any solid material or
12 structure; . . . change in the density or intensity of use of land . . . ; change in
13 the intensity of use of water, or of access thereto; construction,
14 reconstruction, demolition, or alteration of the size of any structure As
 used in this section, “structure” includes, but is not limited to, any building,
 road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical
 power transmission and distribution line.

15 Pub. Resources Code § 30106.

16 **B. Defendants Deliberately Undertook Actions to Eliminate Public Beach**
17 **Access, Including Erecting a Gate Across Martin’s Beach Road Without A**
18 **Coastal Development Permit**

19 26. In 2008, Defendants purchased the subject property from the prior owner.

20 27. Shortly after purchasing the property, Defendants erected fencing and a gate
21 across Martin’s Beach Road with a new sign stating “BEACH CLOSED KEEP OUT.”



1 28. Defendants development which restricts access to the beach includes, but is not
2 limited to, the above gate and sign, covering a sign indicating the beach was open for public
3 access, and stationing armed guards to intimidate persons from coming to the beach. Each of
4 these acts prevents the public from accessing Martin's Beach. Each of these acts also impacts the
5 intensity of use of the Beach. Defendants did not then have and do not currently possess any
6 permit allowing the for such obstructions.

7 29. The obstructions ban access to the beach and have prevented thousands
8 individuals from using the beach. Defendants' unlawful actions have caused dramatic adverse
9 changes in the intensity and density of use of the land and the water under the Coastal Act.

10 30. Defendants did not apply for or obtain a permit from the Coastal Commission
11 prior to erecting the fence or halting access to the beach, and have undertake no efforts to seek
12 such approvals since engaging in the unlawful conduct alleged herein. Put simply, Defendants'
13 barriers to access to Martin's Beach are willful and unlawful.

14 31. In February 2009, San Mateo County sent a letter to Defendants stating that any
15 change in the ability fo the public to access the beach required a Coastal Development Permit
16 under the Coastal Act and County Zoning Regulations. San Mateo County sent a subsequent
17 letter in April 2009 explaining that Defendants' conduct in erecting a gate, painting over a sign
18 and closing the beach required a Coastal Development Permit.

19 32. Defendants conduct is knowingly unlawful. Despite being informed in multiple
20 letters in 2009 by the County of San Mateo that the beach could not be closed without a Coastal
21 Act permit, Defendants have prevented public access and continue to do so.

22 33. In June 2009 Defendants here filed a lawsuit against San Mateo County and the
23 California Coastal Commission alleging various civil rights violations (San Mateo Superior
24 Court, Case NO. CIV 485116). The County and Coastal Commission filed demurrers to that
25 Complaint which were sustained and resulted in judgment dismissing the complaint in October
26 2009.

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1 **V. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Declaratory Relief Under the Coastal Act)**

4 34. Plaintiff realleges paragraphs 1 through 33 of this Complaint as though fully set
5 forth herein.

6 35. An actual controversy exists between Plaintiff and Defendants, including DOE
7 Defendants, in that Defendants have violated and are continuing to violate the Coastal Act.

8
9 36. Because a controversy exists among the parties, a declaration of the rights and
10 responsibilities of the parties with respect to compliance with the Coastal Act is necessary.
11 Plaintiff seeks a declaration from this Court that the Defendants' acts as alleged herein constitute
12 a violation of the Coastal Act by conducting "development" in a "coastal zone" without a permit.

13 WHEREFORE, Plaintiff prays for relief as set forth below.

14 **SECOND CAUSE OF ACTION**

15 **(Injunctive Relief Under the Coastal Act)**

16 37. Plaintiff realleges paragraphs 1 through 33 of this Complaint as though fully set
17 forth herein.

18 38. Plaintiff has no adequate remedy at law to reverse the consequences of
19 Defendants' unlawful acts as alleged herein. Civil fines alone will not allow for a return to the
20 original intensity and density of use of the land and water at Martin's Beach. Accordingly,
21 Plaintiff, and the public generally, will be irreparably harmed in that it will be deprived of the
22 aesthetic and actual use and enjoyment of the coastal zone at Martin's Beach.

23 39. Plaintiff is entitled to a temporary restraining order to prevent any further
24 development in the affected area while the present litigation is pending. Plaintiff is further
25 entitled to a permanent injunction preventing Defendants from blocking access to the coastal
26 zone at Martin's Beach without a Coastal Development Permit.

27 WHEREFORE Plaintiff prays for relief as set for below.

1 **THIRD CAUSE OF ACTION**

2 **(Daily Fines for Violations of the Coastal Act)**

3 40. Plaintiff realleges paragraphs 1 through 33 of this Complaint as though set forth
4 fully herein.

5 41. Pursuant to Public Resources Code § 30820(b), the California Coastal Act allows
6 for daily fines (in addition to statutory civil penalties) in an amount not to exceed \$15,000.00 per
7 day for each day a knowing and intentional violation persists.

8 42. Defendants are aware that they are required to have a permit in order to erect the
9 gate and block access to the beach. Defendants filed a lawsuit in San Mateo County (case
10 number CIV485116, dismissed at the pleadings stage) against the County and the Coastal
11 Commission after the County and Commission informed Defendants that their unilateral and
12 unpermitted blocking of beach access was in violation of the Coastal Act.

13 43. Upon information and belief, the violation is ongoing and has occurred each day
14 since at least October 2009 and likely since June 2008.

15 WHEREFORE Plaintiff prays for relief as set forth below.

16 **VI. PRAYER FOR RELIEF**

17 PLAINTIFF prays for relief as set forth below:

- 18 1. A declaration of the rights and responsibilities of the parties with respect to the
19 Coastal Act. Specifically, a declaration that the Defendants' actions as set forth in
20 the complaint are continuing violations of the Coastal Act.
- 21 2. A preliminary and permanent injunction to prevent Defendants from continuing
22 violations of the Coastal Act. Specifically an injunction requiring Defendants to
23 cease refusing to allow access to the beach without a permit from the Coastal
24 Commission.
- 25 3. A civil fine of \$15,000.00 per day for violation of the Coastal Act.
- 26 4. For costs and attorneys fees for Plaintiff for prosecuting this action pursuant to
27 Code of Civil Procedure § 1021.5 and/or any other applicable provision(s) of law.
- 28 5. For interests as allowed by law.

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6. For such further relief as the Court deems just and proper.


Dated: March 11, 2013

COTCHETT, PITRE & McCARTHY, LLP

By: 

NIALL P. McCARTHY
PETE N. McCLOSKEY
ERIC J. BUESCHER

MARK MASSARA


By: _____
MARK MASSARA
Attorneys for Plaintiff

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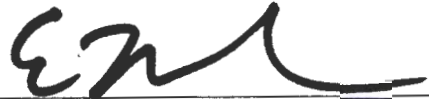
JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Dated: March 11, 2013

COTCHETT, PITRE & McCARTHY, LLP

By:



NIALL P. McCARTHY
PETE N. McCLOSKEY
ERIC J. BUESCHER

MARK MASSARA

By:



MARK MASSARA

Attorneys for Plaintiff

EXHIBIT A

PARCEL NO. 1:

Beginning at a point on the edge of the Coast or Ocean Bank, said point of beginning being the Southwest corner of the N.H. Martin tract of land and also being the Northwest corner of the lands of M. Gargan as described in that certain deed recorded on December 17, 1896 in Book 73 of Deeds at Page 480; thence from said point of beginning North 72° 30' East 11.13 chains along the Southerly line of said Martin tract to a point 15 feet Easterly from the fence that bounds the Westerly side of the public road that leads to Spanishtown or Half Moon Bay; thence along said road 15 feet Easterly from said fence as follows, to-wit:

North 25° East 4.74 chains;

North 32° East 1.53 chains;

North 44° 30' East 2.88 chains;

North 11° 30' East 0.47 chains;

North 30° West 7.42 chains;

North 8° East 3.44 chains;

North 10° 30' West 1.18 chains;

North 29° 30' West 2.74 chains;

North 13° 30' West 1.06 chains;

North 4° West 4.24 chains;

Thence South 88° 30' West 10.52 chains to fence; thence North 3° 15' West 6.27 chains along said fence to a station; thence North 69° West 2.75 chains to the Center of the Lobitos Creek; thence down said creek 11.84 chains to its mouth; thence along the high water mark of the ocean Southerly 27.75 chains; thence South 37° East 3.50 chains to the point of beginning., and being the same real property formerly owned by L.M. Benjamin and Mary Benjamin described in Book 42 of Deeds Page 588 as recorded on October 1, 1887.

Excepting therefrom any portion that lies within the lands conveyed to the State of California in the Deed recorded on March 25, 1942, in Book 1013 of Official Records at Page 185, San Mateo County Records.

Further excepting therefrom any portion that lies within the lands described in paragraph 3 of that certain Deed from Angelina Brazil Azevedo, et al, to Edward M. Deeney, et al, as recorded on May 14, 1954 in Book 2583 of Official Records at Page 243, San Mateo County Records.

Also Excepting therefrom any portion that may lie within Parcel "A" as said parcel is shown on that certain Map entitled "Parcel Map for the Merging of Lands Described In Deeds, et" being recorded on July 16, 1980 in Book 49 of Parcel Maps at Pages 94 to 95.

Also excepting therefrom any portion that may lie within the lands of Double K. Corporation (7822 P.R. 407) as said lands are shown on that certain Map entitled "Parcel Map for the Merging of lands described in Deeds, et" being recorded on July 16, 1980 in Volume 49 of Parcel Maps at Pages 94 to 95. As shown on the Plat, attached hereto and made a part hereof.

APN: 066-330-170 (Ptn.);

PARCEL NO. 2:

A portion of the 175.8-acre tract as described in that certain deed dated November 27, 1896 from Murty Gargan to Catherine Gargan recorded on December 17, 1896 in Book 73 of Deeds Page 480 being more particularly described as follows:

Beginning on the bank of the Pacific Ocean at the Northwest corner of the land now or formerly owned by Calvin Putnam; thence from said point of beginning along said ocean bank North 30°30' West 3.90 chains; thence North 45°30' West 5.62 chains; thence North 27°30' East 5 chains; thence North 21°30' West 1.89 chains; thence North 3° East 15.77 chains to the Southerly line of the lands of Benjamin, being a 53-acre tract as described in the Deed recorded on October 1, 1887 in Book 42 of Deeds at Page 588; thence along said Southerly line and projection thereof North 72°30' East 41.50 chains; thence North 53° East 16.34 chains; thence South 16°30' East 17.92 chains; thence South 22°30' East to Putnam's Corner; thence South 72°30' West 63.50 chains along the Northerly line of said lands of Putnam, said Northerly line also being the Northerly line of the lands described in that certain Deed from Perry Morrison to California Investment and Novelty Company as recorded on June 28, 1912 in Book 210 of Deeds at Page 425, to the point of beginning.

EXCEPTING THEREFROM all that portion Easterly of the Westerly line of the lands of the State of California as described in that Deed recorded on March 25, 1942, in Book 1013 of Official Records Page 185.

ALSO EXCEPTING THEREFROM any portion that may lie within the old County Road leading from Half Moon Bay to San Gregorio.

APN: 066-330-170 (Ptn.)