

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

VIRGILIO ORCILLA et al.,

Plaintiffs and Appellants,

v.

BIG SUR, INC., et al.,

Defendants and Respondents.

H040021

(Santa Clara County

Super. Ct. No. 112CV225295)

ORDER MODIFYING OPINION

NO CHANGE IN JUDGMENT

BY THE COURT:

It is ordered that the opinion filed herein on February 11, 2016, be modified in the following particulars:

On page 6, the second full paragraph, insert the following as a footnote after the last sentence in the paragraph (“The Orcillas timely appealed.”):

While this matter was pending, the parties notified us that the case had been settled and the Orcillas requested dismissal of the appeal. “After the record on appeal is filed, dismissal of the action based on abandonment or stipulation of the parties is discretionary, rather than mandatory.” (*City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1121, fn. 5; Cal. Rules of Court, rule 8.244.) We concluded that the matter is important and of continuing public interest, warranting our review. (*Burch v. George* (1994) 7 Cal.4th 246, 253, fn. 4.) Accordingly, we denied the request for dismissal. In deciding the appeal on the merits, we follow established precedent in retaining jurisdiction to resolve the issues presented in the case.

There is no change in judgment.

Dated: \_\_\_\_\_

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Premo, J.

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Rushing, P.J.

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Elia, J.