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3 **UNITED STATES DISTRICT COURT**
4 **EASTERN DISTRICT OF CALIFORNIA**
5

6 **FOX HOLLOW OF TURLOCK**
7 **OWNER'S ASSOCIATION, a California**
8 **Nonprofit Mutual Benefit Corporation, et**
9 **al.,**

10 **Plaintiffs**

11 **v.**

12 **MAUCTRST, LLC, et al.,**

13 **Defendants**

CASE NO. 1:03-CV-5439 AWI SAB

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

14 **I. Procedural History**

- 15 1. The plaintiffs in this case are Fox Hollow of Turlock Owners' Association ("Fox Hollow
16 HOA") and California Equity Management Group, Inc. ("CEMG").
- 17 2. The defendants in this case are Richard Sinclair, Brandon Sinclair, Lairtrust, LLC
18 ("Lairtrust"), Capstone, LLC ("Capstone"), Mautrst, LLC ("Mautrst"), Gregory
19 Mauchley and Stanley M. Flake (both personally and as trustee of the Julie Insurance
20 Trust, the F. Hanse Trust, and the Capstone Trust, collectively "Flake Defendants").
- 21 3. This case is related to a state court case filed on April 24, 2003 in Stanislaus County
22 Superior Court, Case No. 332233 ("State Court Action"). Parts of the present case were
23 stayed pending final resolution of the State Court Action. The parties filed a notice of
24 settlement on July 16, 2007. Doc. 303. However, in the State Court Action, it was
25 determined that the settlement was unenforceable. The case was resolved in a bench trial.
26 The ruling by the Superior Court was affirmed by the Fifth District Court of Appeal and
27 the petition for review was denied by the California Supreme Court in 2013.
- 28 4. The operative complaint in this case is the Consolidated Amended and Supplemental
Complaint ("CAC"), Doc. 410.

- 1 5. Defendants Richard Sinclair, Brandon Sinclair, Mauchley, Mautrst, Capstone, and
2 Lairtrust also filed counterclaims against Plaintiffs. Docs. 80, 425, and 471. These
3 counterclaims were dismissed with prejudice Doc. 1014.
- 4 6. The Flake Defendants reached a settlement with Plaintiffs. Doc. 1179. The claims against
5 them were dismissed. Doc. 1187.
- 6 7. Defendants Mauchley and Mautrst also reached a settlement with Plaintiffs. Doc. 1009.
7 The claims against Defendant Mauchley were dismissed. Doc. 1195. By stipulation of the
8 relevant parties, Mautrst's answer was stricken and default was entered against Mautrst
9 with the damages to be determined as part of the prove up hearing. Doc. 1017.
- 10 8. Defendants have failed to obey a variety of court orders in this case. They have been
11 sanctioned multiple times. See Docs. 613, 891, and 1014. Additionally, they have been
12 warned about their noncompliance without sanctions being imposed. See Docs. 727 and
13 860. In the end, Defendants Richard Sinclair, Brandon Sinclair, Lairtrust, and Capstone
14 were specifically warned that the court would enter default against them if they did not
15 comply with court order. Doc. 1014, 19:27-20:3. On September 26, 2014, as a sanction for
16 repeated violations, their answers were stricken and default was entered. Doc. 1070.
- 17 9. The defendants in this case who had default entered against them are Richard Sinclair,
18 Brandon Sinclair, Lairtrust, Capstone, and Mautrst (collectively "Defaulted Defendants").
- 19 10. Defendants Richard Sinclair and Brandon Sinclair appealed the order. Docs. 1072 and
20 1073. Their appeals were dismissed for lack of jurisdiction as the entry of default was not
21 an appealable order. Doc. 1080.
- 22 11. On November 28, 2014, Defendant Richard Sinclair filed for bankruptcy. Doc. 1078. All
23 proceedings against Defendant Richard Sinclair were stayed. Doc. 1079. The bankruptcy
24 court modified the automatic stay to permit Plaintiffs to proceed in their case against
25 Richard Sinclair. On May 11, 2015, the stay in this case was lifted. Doc. 1092.
- 26 12. Meanwhile, Defendant Richard Sinclair made a motion for a new trial. Doc. 1083. The
27 motion was treated as a request for reconsideration and denied. Doc 1184.
- 28 13. On October 16, 2015, the court ordered the parties to confer regarding a status conference

1 hearing date at which time the prospect of a prove up hearing could be discussed. Doc.
2 1189.

3 14. Defendant Richard Sinclair asked that the hearing be set after December 31, 2015 due to
4 medical issues. Doc. 1190.

5 15. The status conference was set for January 11, 2016 and Defendants Richard Sinclair and
6 Brandon Sinclair were ordered to personally appear. Doc. 1194.

7 16. The bankruptcy court held a hearing on December 17, 2015 regarding Defendant Richard
8 Sinclair's legal competency. Judge Ronald Sargis concluded that Defendant Richard
9 Sinclair was legally competent to proceed as a party in his bankruptcy case. Doc. 1196-1.

10 17. On January 11, 2016, Defendants Richard Sinclair and Brandon Sinclair failed to appear at
11 the hearing. The court set a briefing schedule for default judgment and set the prove up
12 hearing for May 10, 2016. Doc. 1199.

13 18. Plaintiffs made a formal motion for default judgment. Doc. 1203. On April 14, 2016,
14 Defendant Richard Sinclair filed a timely opposition and declaration. Doc. 1208.
15 Defendant Richard Sinclair also submitted 108 exhibits in support of his opposition on
16 May 3, 2016, well after the opposition deadline.

17 19. On May 5, 2016, Defendant Richard Sinclair filed an ex parte motion to continue the prove
18 up hearing; he asserted that due to his medical issues, he was not allowed to drive until the
19 end of May. Doc. 1217. The request was denied and the court directed Defendant Richard
20 Sinclair to find alternate means of transportation to make it to the hearing. Doc. 1219.

21 20. The default judgment prove up hearing was held pursuant to Fed. Rule Civ. Proc. 55(b)(2)
22 on May 10, 2016.

23 21. None of the Defaulted Defendants took part in the hearing. The morning of the hearing,
24 Defendant Richard Sinclair asked to appear telephonically but his request was denied. Doc.
25 1237, Transcript, 1:13-25.

26 22. At the hearing, Defendant Richard Sinclair's declaration and exhibits were stricken as a
27 sanction for his failure to appear and failure to comply with court orders requiring his
28 appearance at hearings. Doc. 1237, Transcript, 10:6-14.

1 23. Andrew Katakis, Sherri Lucy, and Casey Johnson testified. All of Plaintiffs' proffered
2 exhibits, 1 through 50, were admitted. At the conclusion of the prove up hearing, the court
3 invited Plaintiffs to submit proposed findings of fact and conclusions of law ("proposed
4 FOFCOL").

5 24. Plaintiffs filed proposed FOFCOL and a supplemental brief. Docs. 1226 and 1227.
6 Defendant Richard Sinclair filed an opposition. Doc. 1228.

7 25. Defendant Richard Sinclair also filed a motion for reconsideration of the court's decision
8 to strike his exhibits from the record. Doc. 1222.

9
10 **II. Facts As Alleged in the Consolidated Amended and Supplemental Complaint ("CAC"),**
11 **Doc. 410**

12 **Nature Of The Action**

13 26. This action arises out of the defendants' fraudulent real estate scheme of creating the false
14 appearance of a homeowners association and individually saleable lots at a thirty-five (35)
15 unit town home complex located in Turlock, California, and known as Fox Hollow of
16 Turlock ("Fox Hollow"), in order to obtain loans secured by portions of Fox Hollow and to
17 enrich themselves at the expense of the lenders, the successors to the lenders and the
18 homeowners association by skimming off loan proceeds, dues collected in the name of the
19 homeowners association, and rental income and tenant deposits, all while concealing their
20 scheme and attempting to shield themselves from individual liability by creating shell
21 companies and churning record title to the property (the "Fox Hollow Scheme").

22 27. Among other things, various defendants as more specifically alleged below: (1)
23 represented to the City of Turlock in 1994 that Fox Hollow had a homeowners association
24 with funds for common area lighting when no homeowners association existed; (2)
25 conveyed title to individual lots at Fox Hollow between themselves in 1997 without either
26 forming a homeowners association or conveying title to the common area at Fox Hollow to
27 the homeowners association as they were required to do by the City of Turlock as a
28 condition to the subdivision that had created such lots; (3) falsely represented to a lender in

1 1997 as part of obtaining five (5) loans totaling almost \$1.5 million secured by lots at Fox
2 Hollow that Fox Hollow had a homeowners association even though no homeowners
3 association existed; (4) obtained a further subdivision of Fox Hollow in 1998 without
4 either forming a homeowners association or conveying title to the common area at Fox
5 Hollow to the homeowners association, and without performing work required to make the
6 lots individually saleable such as constructing firewalls between lots and relocating
7 underground utilities to individual lots, all as they were required to do by the City of
8 Turlock as a condition to the subdivision that created such lots; (5) falsely represented to
9 several lenders in 1998 as part of obtaining fifteen (15) loans totaling more than \$1.8
10 million secured by lots at Fox Hollow that Fox Hollow had a homeowners association even
11 though no homeowners association existed, and fraudulently concealed from those lenders
12 that the lots were not individually saleable and that appraisals upon which the loans were
13 based were subject to the completion of work such as firewalls and utility relocations that
14 defendants had not done; (6) fraudulently concealed from the lenders in 1997 and in 1998
15 that the collateral for some of the loans did not include the one car garages that
16 corresponded to the units included as collateral; (7) created a shell company called
17 Mautrst LLC and transferred record title to the lots at Fox Hollow to that shell company
18 only seven (7) days after the fifteen (15) loans in 1998 closed, and then less than one (1)
19 year later and after defaulting on all those loans, put the shell company in bankruptcy to
20 delay the foreclosures; (8) created documents and instruments purporting to give Capstone
21 Trust secured rights to Fox Hollow as a front for defendants to skim further money off Fox
22 Hollow; (9) exploited the fact defendants had not performed the work to make the lots
23 individually saleable to try to force the lenders to sell the loans to defendants at a
24 substantial discount off the amount due, after Fox Hollow was abandoned by the
25 bankruptcy trustee as severely over encumbered; (10) concealed from the lenders that the
26 collateral for some of the loans did not include the one car garages corresponding to the
27 units securing the loans and then exploited the error to prevent the units from being
28 separately saleable; (11) manufactured homeowners association records and purported to

1 act during the second one-half of 2000 on behalf of the homeowners association (even
2 though they had not formed the homeowners association nor conveyed the common area to
3 the homeowners association); (12) demanded in the name of the homeowners association
4 that the lenders who were completing the foreclosures on their loans pay homeowners
5 association assessments of \$300 per month per lot or face delinquency notices, liens and
6 foreclosures; (13) formed Plaintiff Fox Hollow HOA, on December 6, 2000, and thereby
7 imposed upon it the unfunded obligations, liabilities and expenses to complete the
8 requirements of the City of Turlock and to repair and maintain the common area and
9 buildings on the property that defendants had neglected; (14) initiated at least six (6)
10 lawsuits in state court to further delay the remaining foreclosures, all of which they lost;
11 (15) initiated a seventh (7th) lawsuit in state court to further delay the foreclosures on four
12 (4) of the other lots, and then settled that suit by using a fraudulent double escrow to
13 purchase two (2) of the lots from the lender in the first escrow while skimming off loan
14 proceeds in the second escrow on each lot; (16) rented units at Fox Hollow and collected
15 deposits and rents on those units even though they did not own the units; (17) refused to
16 turn over first month's rent and tenant deposits upon demand; and (18) throughout the
17 entire time, neither assessed to themselves nor otherwise paid for the costs and expenses of
18 keeping up, repairing and maintaining Fox Hollow.

19 28. As a result of the fraudulent scheme, among other things, the lenders lost millions of
20 dollars including on claims assigned to Plaintiff CEMG, and Plaintiff Fox Hollow HOA as
21 the homeowners association by virtue of its obligations under the CC&Rs for the property,
22 and Plaintiff CEMG as the successor to the lenders, were required to and did spend more
23 than \$1.3 million to perform the work required by the City of Turlock to make the lots
24 individually saleable and to otherwise remedy the waste and neglect of Fox Hollow
25 committed by defendants.

26 **Parties**

27 29. Plaintiff Fox Hollow of Turlock Owners' Association ("Fox Hollow HOA") is, and at all
28 times herein mentioned since on or about December 6, 2000 was, a non-profit mutual

1 benefit corporation organized and existing under the laws of the State of California, with
2 its principal office located in Stanislaus County, California.

3 30. Plaintiff California Equity Management Group, Inc. (“CEMG”) is, and at all times herein
4 mentioned was, a corporation organized and existing under the laws of the State of
5 California, with its principal office located in Stanislaus County, California.

6 31. Defendant Mautrst, LLC (“Mautrst”) is and at all times mentioned herein since on or
7 about April 28, 1998, was a limited liability company, conducting business in Stanislaus
8 County, California, and owned and controlled by Defendants Mauchley and Richard
9 Sinclair.

10 32. Defendant Gregory Mauchley (“Mauchley”) is an individual who, at all times in this action
11 was commenced resided in Stanislaus County, California.

12 33. Defendant Richard C. Sinclair (“Richard Sinclair”) is an individual who, at all times
13 mentioned herein, resided in Stanislaus County, California. Defendant Richard Sinclair and
14 his spouse, Deborah A. Sinclair, will be referred to from time-to-time herein as the
15 “Sinclairs.”

16 34. Defendant Stanley M. Flake (“Flake”), at all times alleged herein, resided in Tuolumne
17 County, California, and was trustee of the Julie Insurance Trust, trustee of the F. Hanse
18 Trust, and trustee of the Capstone Trust.

19 35. Defendant Brandon Sinclair is an individual who, at all times mentioned herein, resided in
20 Stanislaus County, California.

21 36. Defendant Lairtrust, LLC (“Lairtrust”) is and at all times mentioned herein since on or
22 about May 26, 2000, was a limited liability company, conducting business in Stanislaus
23 County, California, and owned and controlled by the Sinclairs.

24 37. Defendant Capstone, LLC (“Capstone, LLC”) is and at all times mentioned herein since on
25 or about December 3, 2001, was a limited liability company, conducting business in
26 Stanislaus County, California, and owned and controlled by Defendants Richard Sinclair
27 and Brandon Sinclair.

28 38. Defendant Mautrst is, and at all times mentioned herein was, the alter ego of Defendants

1 Mauchley and Richard Sinclair, in that there exists, and at all times herein mentioned, has
2 existed, a unity of interest and ownership between such Defendants such that any
3 separateness has ceased to exist, in that among other things Defendants Mauchley and
4 Richard Sinclair used assets of Defendant Mautrst for their personal uses, caused assets of
5 Defendant Mautrst to be transferred to both or one of them without adequate
6 consideration, treated assets of Mautrst as owned by them individually, withdrew funds
7 from Defendant Mautrst's bank accounts for their personal use, and inadequately
8 capitalized Mautrst for the activities it conducted. Adherence to the fiction of separate
9 existence of Mautrst as an entity distinct from Defendants Richard Sinclair and Mauchley
10 would permit an abuse of the limited liability privilege and would sanction a fraud and
11 promote injustice in that among other things Defendants Mauchley and Richard Sinclair,
12 and each of them, carried on their investment and real estate business in the limited
13 liability company's name exactly as they had conducted it previous to formation,
14 exercising complete control and dominance of such business to such an extent that any
15 individuality or separateness of Defendant Mautrst and Defendants Mauchley and Richard
16 Sinclair does not, and at all times herein mentioned did not, exist.

17 39. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
18 herein, each and every Defendant was the agent and employee of each and every other
19 Defendant and, in doing the acts herein alleged, was acting within the actual and apparent
20 course and scope of such agency and employment and with the permission and consent of
21 each other Defendant, and each Defendant ratified the conduct of each other Defendant and
22 is estopped by reason of his, her and its conduct and statements from denying such agency
23 and employment and that he, she or it acted within such course and scope of agency and
24 employment.

25 **Jurisdiction and Venue**

26 40. This court's jurisdiction is based on 28 U.S.C. § 1331; 15 U.S.C. § 1964(a); and applicable
27 principles of supplemental jurisdiction under 28 U.S.C. § 1367(a).

28 41. Venue is proper in this judicial district and division pursuant to 28 U.S.C. §§ 1391(b); 18

1 U.S.C. § 1965; and Local Rule 3-120(d).

2 **Background Facts For Claims**

3 **The Fox Hollow Property**

4 42. The real property about which the present action relates (the “Fox Hollow Property”) is:
5 commonly known as 152 20th Century Boulevard, Turlock, California; located in the City
6 of Turlock, County of Stanislaus, State of California; and more particularly described as:
7 The East Half Of That Portion Of Land As Follows:

8 Beginning At The Northeast Corner Of Section 15, Township 5 South, Range 10
9 East, Mount Diablo Base And Meridian, According To United States Government
10 Township Plats Running Thence West On The Section Line Between Section 10
11 And 15, 1,059.3 Feet; Thence South 0 Degrees 45 Minutes East 472.5 Feet As
12 Place Of Beginning; Thence Same Course 472.5 Feet; Thence South 89 Degrees 30
13 Minutes East 368.76 Feet; Thence North 0 Degrees 45 Minutes West 472.5 Feet;
14 Thence North 89 Degrees 30 Minutes West 368.76 Feet To Place Of Beginning.
15 Excepting Therefrom The West 15 Feet.

16 43. The Fox Hollow Property consists of approximately 1.76 acres, and is rectangular in shape,
17 with approximately 170 feet fronting on 20th Century Boulevard, and a depth of
18 approximately 442 feet.

19 44. On or about March 6, 1996, Defendant Flake as executive trustee of the Julie Insurance
20 Trust, filed in Book 37 of Maps, Page 38, Stanislaus County Records, a final subdivision
21 map for the Fox Hollow Property, and thereby subdivided the Fox Hollow Property into
22 Lots 1, 11, 18 and 19, and a designated remainder (“Fox Hollow Subdivision Map # 1”).
23 Such lots as created by the filing of the Fox Hollow Subdivision Map #1 shall be referred
24 to herein by their lot number (e.g., “Lot 1”).

25 45. Fox Hollow Subdivision Map # 1 as filed in the Official Records of Stanislaus County,
26 California on March 6, 1996, depicted Lot 18A contiguous to Lot 19 and adjacent to Lot
27 18.

28 46. On or about July 21, 1998, Defendant Mauchley filed in Book 38 of Maps, Page 19,
Stanislaus County Records, a final subdivision map for the Fox Hollow Property, and
thereby further subdivided the designated remainder of the Fox Hollow Property into Lots
2 through 10, Lots 12 through 17, and a common area (“Fox Hollow Subdivision Map #

2"). Such lots as created by the filing of the Fox Hollow Subdivision Map #2 shall be referred to herein by their lot number (e.g., "Lot 2").

47. Fox Hollow Subdivision Map # 2 as filed in the Official Records of Stanislaus County, California on July 21, 1998, depicted Lot 2A as contiguous to Lot 12 and across the common area from Lot 2, depicted Lot 6A as contiguous to Lot 15 and across the common area from Lot 6, depicted Lot 7A as contiguous to Lot 16 and across the common area from Lot 7, depicted Lot 8A as contiguous to Lots 16 and 7A and across the common area from Lot 8, depicted Lot 9A as contiguous to Lot 18 and across the common area from Lot 9, and depicted Lot 10A as contiguous to Lot 17 and across the common area from Lot 10.

Initial Purchase, Encumbrance, And Development Of Fox Hollow Property As An Apartment Complex

48. The Sinclairs purchased the Fox Hollow Property in November 1988 after obtaining approval from the City of Turlock to construct a 35-unit townhouse apartment complex, and obtained a construction loan in the face amount of \$1,492,500 from Stockton Savings & Loan Association ("Stockton S&L"), secured by a first deed of trust against the Fox Hollow Property, that was recorded on November 7, 1988 (the "Stockton Construction Loan").

49. Construction of the apartment complex on the Fox Hollow Property started in 1989 and was completed in late 1990 or early 1991. The apartment complex consisted of two rows of buildings along the east and west sides of the property facing each other, with a swimming pool at the south end, and access to 20th Century Boulevard at the northern boundary.

50. The buildings included three (3) detached single-family dwellings with one-car garage, nine (9) duplexes with attached one-car garages, and seven (7) duplexes with detached one-car garages.

51. The Sinclairs stopped making payments on the Stockton Construction Loan in July 1992, and Stockton S&L recorded a Notice of Default on August 11, 1993, asserting a default in the amount of \$172,525.92.

1 **Entitlements Obtained From The City Of Turlock To Subdivide And Convert The Fox**
2 **Hollow Property Into A Twenty (20) Lot Planned Unit Development With Homeowner's**
3 **Association**

4 52. On or about the summer of 1992, Defendant Richard Sinclair made a preliminary proposal
5 to the Community Development Department of the City of Turlock (the "Turlock
6 Development Department") to subdivide the Fox Hollow Property and convert the property
7 to a planned unit development.

8 53. On or about August 10, 2002, the Turlock Building Department responded to the
9 preliminary proposal in writing, by letter sent to Richard Sinclair, in which the Turlock
10 Building Department advised Defendant Sinclair that: The creation of a multi-lot
11 subdivision from the existing apartment complex would require a formal submittal of
12 applications for rezone, a planned development permit, a tentative subdivision map, and a
13 conditional use permit; Mr. Sinclair's proposal to promote ownership of individual lots
14 with multi-unit structures tended to promote a pattern of absentee owners sharing little
15 beyond their investment; the City would require a complete building code analysis report
16 of existing building construction and proposed property lines and would require
17 construction modifications so that units were structurally and architecturally independent
18 of each other prior to the recording of a final subdivision map; and under the
19 circumstances, staff did not support the proposal as presented because of concerns about
20 the proposal creating major challenges for a successful residential development.

21 54. On or about September 17, 1992, Defendant Richard Sinclair confirmed in writing in a
22 letter sent to the Director of the Turlock Development Department that he agreed to
23 implement the conditions for approval of the project into CC&Rs for the property "to
24 protect the general public's welfare and safety in perpetuity," and that he had proceeded to
25 have the CC&Rs and homeowners documents redrafted accordingly.

26 55. On or about February 2, 1993, Defendant Richard Sinclair as "Applicant" and "Owner"
27 applied to the City of Turlock for a conditional use permit, planned unit development,
28 rezoning and vesting tentative map, to subdivide the Fox Hollow Property into nineteen

1 (19) lots, and a common area, and to convert the apartment complex to a planned unit
2 development with a homeowners association owning and being responsible for the
3 maintenance of the common area and certain aspects of the individual lots (the "Project").

4 56. As part of the application for approval of the Project, Defendant Richard Sinclair
5 represented through his engineer on the Vesting Tentative Map of Fox Hollow submitted
6 to the City of Turlock on or about February 5, 1993, that the garages that were detached
7 from the dwelling units are denoted as Lots with a number followed with the capital letter
8 "A" and that the relationship between those "A" lots and the dwelling units was that a
9 garage lot corresponded to the dwelling unit with the same numeric lot number, as for
10 example as stated on the Vesting Tentative Map "GARAGE LOT 6A CORRESPONDS
11 TO DWELLING UNIT LOT 6."

12 57. On or about March 4, [1993], the Turlock Community Development Department issued a
13 letter to Defendant Richard Sinclair confirming that a complete building code analysis of
14 the existing building construction would be required, that any modifications to the existing
15 structures that were required to meet current standards for subdivided lots would need to
16 be accomplished prior to recording the final subdivision map, that the existing landscaping
17 must be repaired prior to recording of a final map, and that appropriate CC&Rs needed to
18 be recorded to ensure the continued maintenance of the development.

19 58. The Project was approved by the Turlock City Planning Commission on or about April 1,
20 1993, and by the Turlock City Council on or about May 25, 1993, subject to various
21 conditions, including among others:

22 * * *

23 4. Prior to recordation of a final map(s) the applicant shall:

24 a) Provide the City of Turlock a complete building codes analysis of the existing
buildings and facilities; and

25 b) All modifications necessary to insure compliance with the Turlock Municipal
26 Code and the Uniform Building Code shall be completed. [Building Department]

27 * * *

28 11. Upon any subdivision of the site, a homeowners association shall be formed
and responsible for the maintenance of all common areas, roadway, parking,

fencing and landscaping in accordance with Exhibit C. [Planning Department]

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59. Defendant Richard Sinclair applied to and obtained approval of the Project from the City of Turlock on the basis that the Project involved thirty-five (35) town homes with one car garages on 1.76 acres and was “creating [a] 20 lot subdivision consisting of 3 detached single family dwellings, 7 detached duplexes, 9 duplexes attached by garages, and 1 lot for common area, pool, driveways, [and] parking.”

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60. A structural building code compliance analysis for the Fox Hollow Property as required under Condition 4 a) was performed by an architect retained by Defendant Richard Sinclair and submitted to and approved by the City of Turlock in or about December 1993. The structural work specified in the analysis to meet current standards for individually owned lots included installing twenty-seven (27) firewalls for the garages, three (3) fire walls in the units, eliminating six (6) roof overhangs, removing seven (7) windows, and adding two (2) roof vents.

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61. In January 1994, Defendant Richard Sinclair submitted an application to the Turlock Community Development Department, for a modification to Condition 4 b) to the conditions of approval for the Project so that the work required to bring the existing buildings into compliance with current standards be deferred until sometime after the recording of a final map for the Project (the “Modification Application”).

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62. Defendant Richard Sinclair was advised in a letter sent on or about February 7, 1994, from the Turlock Community Development Department, that after further discussion involving the City Engineer, City Attorney’s Office, and the building official and the senior planner of the Community Development Services, they were unable to develop an option that would ensure no City involvement in completion of the project in the event the property owners failed to fulfill their obligations in the matter after recording the final map, and accordingly, the options available were to: Complete the original conditions of the vesting map, file multiple final maps and completing the conditions covering the portion of the property subject to each final map, or re-subdividing the property as a condominium project.

1 63. On or about February 17, 1994, the Turlock Planning Commission denied the Modification
2 Application and thereby continued to require that all modifications to meet current
3 standards for individually owned lots be completed prior to recording the final map.

4 64. Thereafter, on or about April 29, 1994, Defendant Richard Sinclair notified the Planning
5 Department of the City of Turlock in writing that he would be completing multiple maps
6 for the subdivision and that: "There are sufficient funds within the Homeowner's
7 Association to replace and maintain said [common area] lighting." Said statement was
8 false when made in that no homeowners association had been created nor were there funds
9 within a homeowner association to replace and maintain lighting or otherwise maintain the
10 common area.

11 65. On or about June 8, 1994, Defendant Richard Sinclair filed a Voluntary Petition under
12 Chapter 11 of the Bankruptcy Code on behalf of himself and his spouse, with the United
13 States Bankruptcy Court, Eastern District of California, Case No. 94-92271-A-11 (the
14 "Sinclair Bankruptcy Case").

15 **Defendants Lose Fox Hollow Property In Late 1994 Through Foreclosure And Then**
16 **Reacquire Fox Hollow Property In October 1995**

17 66. The Sinclairs lost the Fox Hollow Property to Stockton S&L through a non- judicial
18 foreclosure on the Stockton Construction Loan on or about December 13, 1994.

19 67. On or about the summer of 1995, Defendant Richard Sinclair contacted Defendant Flake
20 and Defendant Mauchley; and discussed with each of them reacquiring the Fox Hollow
21 Property from the lender, and continuing to pursue the Project.

22 68. Pursuant to such discussions, Defendant Richard Sinclair formed a trust for Defendant
23 Mauchley in August 1995 called "Mauctrst", and Defendant Stanley Flake, as Trustee of
24 The Julie Insurance Trust, purchased the Fox Hollow Property from the lender (which had
25 been renamed Stockton Federal Bank) on or about October 31, 1995, for approximately
26 \$1.27 million that Defendant Flake, as trustee of the F. Hanse Trust, had advanced for the
27 purchase.

28 **Fox Hollow CC&Rs Recorded In September 1996**

1 69. On or about September 16, 1996, Defendant Flake, as trustee of the Julie Insurance Trust,
2 executed as the declarant, and Defendant Sinclair caused to be recorded as Document No.
3 96-0078121-00 in the Official Records of Stanislaus County, California, a Declaration of
4 Covenants, Conditions and Restrictions for the Fox Hollow Property (the “Fox Hollow
5 CC&Rs”).

6 70. Article I, Section 16 of the Fox Hollow CC&Rs, defines “Association” as the “Fox Hollow
7 of Turlock Owners’ Association, a non-profit mutual benefit corporation, membership in
8 which shall be limited to owners (as hereinafter defined) and in which all owners have a
9 membership interest.”

10 71. Article I, Section 11 of the Fox Hollow CC&Rs, defines “Owner” and “Owners” as “the
11 record owner or owners, whether one or more persons or entities, of a fee simple title to a
12 lot. . . .”

13 72. Article I, Section 11, defines “Lots” as “Those certain parcels of land, together with the
14 single family residential improvements attached thereto, described on the map of Fox
15 Hollow subdivision, as Lots 1-19, County of Stanislaus, State of California.”

16 73. Defendant Flake, as trustee of the Julie Insurance Trust, declared in Article II, Section 1,
17 that the Fox Hollow Property was subject to the Fox Hollow CC&Rs.

18 74. Pursuant to the Fox Hollow CC&Rs: Defendant Flake, as trustee of the Julie Insurance
19 Trust, was required to convey to the Association fee title to the common area for the Fox
20 Hollow Property free and clear of all liens and encumbrances “prior to the conveyance of
21 title to the first lot” and to appoint the initial Board of the Association consisting of three
22 (3) Directors (Art.III, §§ 3 & 6); the Association was charged with the duty to repair and
23 maintain the common area and certain aspects of the Lots (Art. IV § 1); and the Board of
24 the Association was mandated to “establish regular monthly assessments for operations
25 and maintenance of the Project . . . payable in monthly installments on the first day of each
26 month commencing on the first day of the first month following conveyance of the first
27 Lot.” (Art. V, § 2).

28 75. Article V, Section 1 of the Fox Hollow CC&Rs provides in part that: “Declarant hereby

1 covenants and agrees for each Lot owned by it within the Project, and each Owner of any
2 Lot by acceptance of a deed is deemed to covenant and agree, to pay to the Association the
3 dues levied pursuant to this Article.”

4 76. Defendants reaffirmed in the Fox Hollow CC&Rs that the “A” lots were not separate from
5 their corresponding dwelling units in that among other things: (a) Article V provides that
6 the monthly assessments for operations and reserves shall be charged to the residential
7 units on the Lots; and (b) the easements for ingress and egress over the common area under
8 Article VI are “for the benefit of the Lots and Lot Owners.”

9 **Defendants’ Five (5) Loan Fraudulent Financing Scheme In February 1997**

10 77. On or about early 1997, Defendants Richard Sinclair, Mauchley and Flake carried out
11 fraudulent record title churning and financing transactions involving Fox Hollow, by
12 creating the false appearance of a planned unit development with a homeowners
13 association and the false appearance of an arms length transaction between Defendants
14 Flake and Mauchley in order to borrow more than \$1.4 million against the Fox Hollow
15 Property.

16 78. Defendant Richard Sinclair established the price for the conveyance of Lots 1, 11, 18 and
17 19, and the remainder of the Fox Hollow Property, from Defendant Flake, as trustee of the
18 Julie Insurance Trust, to Defendant Mauchley at \$1.9 million.

19 79. As part of the scheme, Defendant Flake, as trustee of the Julie Insurance Trust, conveyed
20 record title to Lots 1, 11, 18, 19, and the balance of the Fox Hollow Property, to Defendant
21 Mauchley, by five separate deeds accepted by Defendant Mauchley, and recorded in the
22 Official Records of Stanislaus County, California on February 26, 1997.

23 80. Also, as part of the scheme, Defendant Richard Sinclair assisted Defendant Mauchley in
24 obtaining loans on Lots 1, 11, 18 and 19, each in the amount of \$119,000, and an
25 additional loan in the amount of \$1 million against the balance of the Fox Hollow
26 Property, from GMAC Mortgage Corporation (“GMAC”), secured by first deeds of trust in
27 favor GMAC, also recorded in the Official Records of Stanislaus County, California, on
28 February 26, 1997.

1 81. Also, as part of the scheme, the \$1.9 million price for Fox Hollow was paid to Defendant
2 Flake from the proceeds on the five (5) loans from GMAC and by a Deed of Trust in favor
3 of Defendant Flake, as trustee of the Capstone Trust, against the Fox Hollow Property,
4 executed on or about February 21, 1997, by Defendant Mauchley, and recorded on or
5 about March 3, 1997, that purportedly secured an obligation in the amount of \$444,888,
6 and provided that Defendant Flake, as trustee of the Capstone Trust will provide lot
7 releases for the fifteen (15) lots being created (the lots other than Lots 1, 11, 18 and 19) for
8 the payment of \$37,037 per lot, and lot releases on Lots 1, 11, 18 and 19 for the payment
9 of \$16,447.33 per lot.

10 82. Defendant Mauchley represented and promised in the "Planned Unit Development Rider"
11 included in the deeds of trust in favor of GMAC that were recorded against Lots 1, 11, 18
12 and 19, on or about February 26, 1997, that:

13 The Property includes, but is not limited to, a parcel of land improved with a
14 dwelling, together with other such parcels and certain common areas and facilities,
as described in covenants, conditions and restrictions of record (the "Declaration").

15 The Property is a part of a planned unit development known as Fox Hollow . . .
16 [and] the Property also includes Borrower's interest in the homeowners association
17 or equivalent entity owning or managing the common area and facilities of the
18 PUD (the "Owners Association"), and the uses, benefits and proceeds of
19 Borrower's interest. PUD COVENANTS. In addition to the covenants, and
20 agreements made in the security instrument, Borrower and Lender further covenant
21 and agree as follows: [¶] A. PUD Obligations. Borrower shall perform all of
Borrower's obligations under the PUD's constituent documents. The "Constituent
Documents" are the: (i) Declaration; (ii) articles of incorporation, trust instrument
or equivalent document which creates the Owners Association; and (iii) any by
laws or other rules or regulations of the Homeowners Association. Borrower shall
promptly pay, when due, all dues and assessments imposed pursuant to the
Constituent Documents.

22 83. Said representations and promises in the Planned Unit Development Riders were false
23 when made. The true facts known by Defendants Richard Sinclair, Mauchley and Flake,
24 and concealed by them from GMAC, were that: there was no homeowners association or
25 equivalent entity to own or manage the common area and facilities of the PUD; title to the
26 common area had not been transferred to a homeowners association; and Defendants
27 Richard Sinclair, Mauchley and Flake, and each of them, had no intention at that time to
28 form a homeowners association, to transfer title to the common area to a homeowners

1 association, or to charge and collect dues and assessment to maintain the common area and
2 lots, all as required of them in the Fox Hollow CC&Rs and by the conditions of approval
3 by the City of Turlock for the Project.

4 84. Defendants Richard Sinclair, Mauchley and Flake, and each of them, also concealed from
5 GMAC that the corresponding one car garage for Lot 18 was on Lot 18A, that the
6 corresponding one car garage for Lot 18 was not included in the legal description under the
7 deed of trust for the loan on lot 18, that the corresponding one car garage for Lot 18 was
8 left as additional collateral for Defendant Flake to receive the balance of the sales price
9 from the creation of the other fifteen(15) lots, and that the corresponding one car garage for
10 Lot 18 was left out as part of the deal between Defendants Richard Sinclair, Mauchley and
11 Flake.

12 85. GMAC made said loans in reliance upon said representations and promises, and had it
13 known the true facts and concealed facts, it would not have completed said loans without
14 compliance with the Fox Hollow CC&Rs and City of Turlock conditions for the Project,
15 and without including the corresponding one car garage on Lot 18A in the legal description
16 in the deed of trust for the loan on Lot 18.

17 **Defendants' Fifteen (15) Loan Fraudulent financing Scheme In July 1998**

18 86. Defendants Richard Sinclair, Mauchley and Flake, continued the fraudulent record title
19 churning and financing scheme for Fox Hollow in 1998.

20 87. As part of the scheme, Defendant Richard Sinclair, in the name of Defendant Mauchley,
21 filed applications for loans against each of the fifteen (15) remaining lots at Fox Hollow
22 and continued to process Fox Hollow Subdivision Map # 2, for purpose of obtaining said
23 loans.

24 88. Each of said loans was conditioned on the filing of Fox Hollow Subdivision Map # 2 to
25 create the lots, and each of said loans was based on each of the lots being individually
26 saleable.

27 89. As part of said scheme, by early 1998, Defendants Richard Sinclair, Mauchley and Flake
28 planned to transfer record title to the lots at Fox Hollow to an entity to be called Mauctrst

1 LLC immediately after such loans funded. Pursuant to such plan: Defendant Mauchley
2 executed an “Option & Operating Agreement For Real Property And Contracts” on or
3 about January 1, 1998, individually, as “Mauctrst” and as member manager of Mauctrst
4 LLC, that provided among other things that Defendant Richard Sinclair would be paid a
5 monthly fee of \$10,000 for overseeing the management and control of various properties
6 including Fox Hollow; Defendant Richard Sinclair executed and caused to be filed with the
7 California Secretary of State “Articles of Organization” for Mauctrst LLC on or about
8 April 28, 1998; Defendant Richard Sinclair prepared, Defendant Mauchley executed,
9 Defendant Mauctrst accepted and Defendant Richard Sinclair caused to be recorded in the
10 Official Records of Stanislaus County, California, a grant deed conveying record title to
11 Lots 1 through 19 to Mauctrst on or about July 29, 1998 (only seven (7) days after the July
12 1998 loans closed); and Defendant Richard Sinclair prepared and Defendants Mauctrst and
13 Mauchley executed a deed of trust from Mauctrst LLC dated July 23, 1998 and recorded
14 on December 3, 1998 against Lots 1 through 19, that purportedly secured an obligation in
15 the amount of \$271,000, and provided that Defendant Flake, as trustee of the Capstone
16 Trust would provide lot releases for lots 8, 10, 16 upon the payment of \$7,742.85 per lot,
17 and for Lots 1-7 , 9, 11-15, and 17-19 upon the payment of \$15,485.70 per lot (the “July
18 1998 Flake Lot Release Trust Deed”).

19 90. As part of said scheme, Defendant Mauchley, on or about July 9, 1998, executed loan
20 applications for each of such loans, describing the property by unit number or numbers,
21 and representing that the property had been acquired in 1995.

22 91. On or about July 22, 1998, Defendant Mauchley, after he had recorded Fox Hollow
23 Subdivision Map # 2, creating fifteen (15) more lots with duplexes or single family
24 townhouses, closed the fifteen (15) new loans secured by a first deed of trust against the
25 each lot. The total amount of these loans was more than \$1.8 million.

26 92. Each town home at Fox Hollow was assigned a unit number by the U.S. Post Office with
27 the even numbered units generally were located along the east side of the property, and the
28 odd numbered units were generally located along the west side of the property. The

1 following table correlates lot number, unit number, lender and loan amount for the
 2 February 1997 and July 1998 loans at Fox Hollow [the banks and finance companies that
 3 loaned money to Defendant Mauchley in 1997 and 1998 are not parties in this case and are
 4 collectively referred to as “Lenders”]:

| 5 Lot No. | Unit No. | Lender Abbreviation | Loan Amount |
|-----------|-----------|---|-------------|
| 6 1 | 133 & 135 | GMAC | \$119,000 |
| 7 2 | 129 & 131 | Oceanmark / Bank One | \$130,000 |
| 8 3 | 125 & 127 | Granite Bay / Allied American Funding / Conti | \$130,000 |
| 9 4 | 121 & 123 | Alternative / Bank One | \$135,000 |
| 10 5 | 117 & 119 | Oceanmark / Bank One | \$130,000 |
| 11 6 | 113 & 115 | Alternative / HFC | \$135,000 |
| 12 7 | 109 & 111 | Granite Bay / Allied American Funding / Conti | \$130,000 |
| 13 8 | 107 | Oakmont / HFC | \$74,000 |
| 14 9 | 101 & 103 | Granite Bay / Allied American Funding / Conti | \$130,000 |
| 15 10 | 105 | Oakmont / HFC | \$74,000 |
| 16 11 | 130 & 132 | GMAC | \$119,000 |
| 17 12 | 126 & 128 | Alternative / Norwest Bank | \$135,000 |
| 18 13 | 122 & 124 | Oceanmark / Ocwen | \$130,000 |
| 19 14 | 118 & 120 | Granite Bay / Allied American Funding / Conti | \$130,000 |
| 20 15 | 114 & 116 | Oceanmark / Bank One | \$130,000 |
| 21 16 | 108 | Oakmont / HFC | \$74,000 |
| 22 17 | 110 & 112 | Alternative / Chase | \$135,000 |
| 23 18 | 100 & 102 | GMAC | \$119,000 |
| 24 19 | 104 & 106 | GMAC | \$119,000 |
| 25 | | Total | \$2,278,000 |

26
 27
 28 93. A portion of the proceeds on the July 1998 loans was used to pay off the \$1 million loan

1 from GMAC, and to pay Defendant Flake the amount remaining due on the deed of trust
2 he received at the time of the sale of the Fox Hollow Property to Defendant Mauchley in
3 February 1997, as well as other advances he made, in the amount of approximately
4 \$575,000.

5 94. Defendant Mauchley represented and promised in the “Planned Unit Development Rider”
6 included in the deeds of trust securing the loans on Lots 3, 4, 6, 7, 8, 9, 10, 12, 14, 16
7 and 17, and that were recorded on or about July 22, 1998, that:

8 The Property includes, but is not limited to, a parcel of land improved with a
9 dwelling, together with other such parcels and certain common areas and facilities,
as described in covenants, conditions and restrictions of record (the “Declaration”).

10 The Property is a part of a planned unit development known as Fox Hollow . . .
11 [and] the Property also includes borrower’s interest in the homeowners association
or equivalent entity owning or managing the common area and facilities of the
12 PUD (the “Owners Association”), and the uses, benefits and proceeds of
Borrower’s interest.

13 PUD COVENANTS. In addition to the covenants, and agreements made in the
14 security instrument, Borrower and Lender further covenant and agree as follows:
15 [¶] A. PUD Obligations. Borrower shall perform all of Borrower’s obligations
under the PUD’s constituent documents. The “Constituent Documents” are the: (i)
16 Declaration; (ii) articles of incorporation, trust instrument or equivalent document
which creates the Owners Association; and (iii) any by laws or other rules or
17 regulations of the Owners Association. Borrower shall promptly pay, when due, all
dues and assessments imposed pursuant to the Constituent Documents.

18 95. Said representations and promises in the Planned Unit Development Riders were false
19 when made. The true facts known by Defendants Richard Sinclair, Mauchley and Flake,
20 and concealed by them from each of such lenders, were: there was no homeowners
21 association or equivalent entity to own or manage the common area and facilities of the
PUD; title to the common area had not been transferred to a homeowners association; and
22 Defendants Richard Sinclair, Mauchley and Flake, and each of them, had no intention at
23 that time to form a homeowners association, to transfer title to the common area to a
24 homeowners association, or to charge and collect dues and assessment to maintain the
25 common area and lots, all as required of them in the Fox Hollow CC&Rs and by the
26 conditions of approval by the City of Turlock for the Project.

27 96. Defendants Richard Sinclair, Mauchley and Flake, and each of them, concealed from each
28

1 of the lenders that the corresponding one car garages for Lots 2, 6, 7, 8, 9 and 10, were on
2 Lots 2A, 6A, 7A, 8A, 9A and 10A; that the corresponding one car garages for Lots 2, 6, 7,
3 8, 9 and 10, were not included in the legal description in the deed of trust for the loan on
4 each such lot; and that the corresponding one car garages for Lots 2, 6, 7, 8, 9 and 10, were
5 left as additional collateral for Defendant Flake and were left out as part of the deal
6 between Defendants Richard Sinclair, Mauchley and Flake in 1997.

7 97. Defendants Richard Sinclair, Mauchley, Flake and Mauctrst, and each of them, concealed
8 from the lenders on such loans that they had not, despite being required to do so in the
9 Turlock City conditions for approval of the Project, made the modifications to the
10 structures as required in the building code analysis and had not relocated utilities so that
11 each lot was individually served by electricity, telephone, gas and cable television, and
12 thereby prevented such lots from being individually saleable even though each lot was
13 provided as collateral for one of the loans and the value of the lot as collateral was based
14 upon the lot being individually saleable.

15 98. As part of said July 1998 loans, Granite Bay Funding, closed the loans to Defendant
16 Mauchley secured by first deeds of trust against lots 3, 7, 9 and 14, each securing a loan in
17 the amount of \$130,000, and then for value received completed the sale, transfer and
18 assignment of such loans to CEMG's processor, Allied American Funding, on or about
19 August 1998, who that in turn, sold, transferred and assigned said loans to CEMG's
20 predecessor, Conti Mortgage Corporation on or about August 1998. Granite Bay Funding,
21 Allied American Funding, and Conti Mortgage Corporation shall be collectively referred
22 to hereinafter as "Conti" and Lots 3, 7, 9 and 14 shall be referred to collectively as the
23 "Conti Lots."

24 99. Each of said lenders (including without limitation Conti) made said loans and purchased
25 said loans in reliance upon said representations and promises, and had they known the true
26 facts and concealed facts, they each would not have made and purchased said loans as
27 alleged herein without compliance with the Fox Hollow CC&Rs and City of Turlock
28 conditions, and without including the corresponding one car garages on Lots 2A, 6A, 7A,

1 8A, 9A and 10A, in the legal description in the deed of trust for the loan on Lots 2, 6, 7, 8,
2 9 and 10.

3 100. Defendant Flake in his various capacities, advanced approximately \$1.27 million to
4 purchase the Fox Hollow Property in October 1995, and as a result of the February 1997
5 financing scheme, received approximately \$1.4 million in cash in February 1997, and as a
6 result of the July 1998 financing scheme received approximately \$545,000 in cash in July
7 1998 and the July 1998 Flake Lot Release Trust Deed.

8 **Defendants Use Their Refusal And Failure To Complete The Requirements To Subdivide**
9 **The Fox Hollow Property To Try To Force The Lenders To Sell The Loans To Defendants**
10 **At A Substantial Discount**

11 101. On or about July 1, 1999, and after Defendant Mauchley had gone into default on
12 each of the loans obtained as part of the financing scheme in February 1997 and July 1998,
13 Defendant Richard Sinclair, in the name of Mautrst, filed a Voluntary Petition under
14 Chapter 11 of the Bankruptcy Code, with the United States Bankruptcy Court, Eastern
15 District of California, Case No. 99-28903-C-11 (the “Mautrst Bankruptcy Case”).

16 102. Defendants continued to conceal their failure to comply with the requirements of
17 the City of Turlock for the subdivision and conversion to a planned unit development for
18 the Fox Hollow Property until at least on or about November 18, 1999, when they started
19 disclosing some of the information in an effort to try to renegotiate or purchase at a
20 substantial discount the loans on the Lots at Fox Hollow Property.

21 103. The first of such disclosure was made by Defendants Mautrst, Richard Sinclair,
22 and Mauchley, on or about November 18, 1999, in a First Amended Disclosure Statement
23 filed in the Mautrst Bankruptcy Case, in which they admitted:

24 At the time that the 19 loans were put into place on Fox Hollow . . . 19 appraisals
25 were obtained valuing the 16 duplexes at \$185,000 each with the other 3 single
26 family residences valued at \$93,500 each. One of the duplex appraisals is attached
27 as Exhibit “F” and incorporated herein by reference. The total appraised value at
the time was \$3,240,500, subject to final completion of the subdivision firewalls
and underground relocation of utilities to accommodate individual ownership in
this planned united development.

28 104. Defendants Mautrst, Richard Sinclair and Mauchley made the same admission in

1 their Second Amended Disclosure Statement filed in the Mautrst Bankruptcy Case on
2 December 17, 1999.

3 105. Prior to the time the loans closed, Defendants Richard Sinclair, Mauchley and
4 Flake believed that the value of Fox Hollow would be enhanced upon completion of the
5 requirements of the City of Turlock so that the lots would be individually saleable.
6 Moreover, Defendant Richard Sinclair was aware that completion of such requirements
7 was material in that he was aware during the Sinclair Bankruptcy Case, that the appraised
8 value for Fox Hollow as an apartment complex was approximately \$1.7 million dollars
9 while he placed the value of Fox Hollow with individually saleable lots at approximately
10 \$3 million.

11 106. The schedules filed by Defendants Richard Sinclair, Mauchley and Mautrst in the
12 Mautrst Bankruptcy Case on or about September 7, 1999 and amended schedules filed on
13 or about December 8, 1999, also disclosed that Mautrst had paid Defendant Richard
14 Sinclair over the period of twelve (12) months proceeding the filing of the Bankruptcy
15 Case, approximately \$160,000.

16 107. Defendants Mautrst, Richard Sinclair and Mauchley also admitted in such
17 schedules and amended schedules filed in the Mautrst Bankruptcy Case, that Conti
18 Mortgage Corporation was the successor to and held an undisputed security interest on the
19 July 1998 loans against Lots 3, 7, 9 and 14.

20 108. On or about December 9, 1999, the trustee in the Mautrst Bankruptcy Case filed a
21 motion for authority to abandon various real property, including the Fox Hollow Property,
22 on the ground that such property was substantially over-encumbered.

23 109. On or about January 14, 2000, the Bankruptcy Court approved the abandonment by
24 the bankruptcy trustee of the Fox Hollow Property back to Mautrst.

25 110. On or about January 25, 2000, Defendant Richard Sinclair, on behalf of
26 Defendants, disclosed in writing in letters mailed to representatives of the lenders holding
27 the July 1998 deeds of trusts on Lots 2, 3, 4, 5, 7, 9, 13, 14 and 15, in an effort to purchase
28 their loans for \$80,000 (when the amount then due exceeded \$130,000):

1 Currently, this property cannot be sold as a duplex or single family residence. The
2 subdivision has not been completed. Underground electrical work, relocation of
3 utilities and individual meters are among the requirements still to be completed for
4 the City of Turlock. . . .

5 * * *

6 Only someone who controls all properties can complete these requirements. I have
7 a client who is willing to do this and would complete the purchase quickly.

8 111. On or about October 12, 2000, Defendant Richard Sinclair, purportedly on behalf
9 of the homeowners association for the Fox Hollow Property, sent a fax to the escrow
10 holder handling escrow for the sale of lots 2, 4 and 15 at Fox Hollow, stating:

11 Please allow this letter to serve as notice to Chicago Title and PMZ that title to the
12 lots cannot be transferred at the present time. A few of the reasons are as follows:

13 (1) The subdivision requirements to sell lots has not been completed. The City of
14 Turlock has a number of requirements including, but not limited to, the movement
15 of the electrical and other utility lines to each individual lot. You will have to
16 obtain permission from the other lot owners to re-route those utility lines and from
17 the Homeowners Association and receive approval from the City of Turlock for the
18 balance of the subdivision improvements and requirements prior to offering the
19 property for sale or transferring title.

20 (2) Additionally, firewalls between lots in the garages and on the back of each
21 duplex must be installed. New permits will have to be obtained and go through the
22 permit application process with respect to each unit.

23 (3) Each lot has additional individual requirements for corrections and
24 improvements before those lots can be offered for sale.

25 * * *

26 (5) The deeds of trust may not have included security on some or all of the garages,
27 particularly the detached ones. Therefore, title to those garages may remain in the
28 name of the former owner. Restrictions regarding sale and use without garages
should be explored both with the City of Turlock and with the recorded CC&Rs
and Homeowners Association documents.

112. While Defendants, as alleged above, began disclosing their failure to meet certain
of the requirements of the City of Turlock to subdivide the Fox Hollow Property and
convert it into a planned unit development, they continued to conceal their failure to
comply with other requirements until at least late 2000 including the requirements to: (a)
Form the homeowners association; (b) convey the common area to the homeowners
association; (c) appoint a board of directors for the homeowners association; and (d)
commence the assessment of monthly dues sufficient to fund the operation and

1 maintenance of the Fox Hollow Property in accordance with the Fox Hollow CC&Rs.

2 **Defendants Fraudulent HOA Dues And Assessments Billing Scheme In 2000 and Early 2001**

3 113. The lenders (or their successors) who had made the loans as hereinabove alleged in
4 February 1997 and July 1998 began completing the foreclosures on those loans in June
5 2000 after the Fox Hollow Property was abandoned by the Mautrst Bankruptcy trustee
6 back to Mautrst.

7 114. The foreclosures were completed with the recording of trustee's deeds upon sale on
8 Lot 7 on May 22, 2000, on Lot 4 on July 31, 2000, on Lots 1, 11, 18 and 19 on September
9 29, 2000, on Lots 5 and 15 on October 5, 2000, on Lot 2 on October 23, 2000, on Lot 17
10 on October 31, 2000, on Lot 12 on February 9, 2001, on Lot 13 on April 2, 2001, on Lot
11 16 on January 8, 2002, on Lot 10 on January 14, 2002, on Lots 6 and 8 on January 17,
12 2002, on Lot 3 on May 22, 2003, on Lot 9 on May 30, 2003, and on Lot 14 on June 25,
13 2003. Mautrst was the record title holder of each of Lots 1 through 19 from July 29, 1998,
14 and until the date the trustees deed upon sale for the lot was recorded, as alleged herein.

15 115. As a part of the ongoing misuse of the homeowners association and their efforts to
16 defraud the lenders, Defendants Richard Sinclair, Mauchley and Brandon Sinclair,
17 purportedly as the Board of Directors of Fox Hollow HOA (even though the articles of
18 incorporation for Fox Hollow HOA had not been filed with the California Secretary of
19 State), started on or about August 1, 2000, to send through the U.S. mail written dues
20 statements to the various lenders on the Lots at Fox Hollow, demanding payment of \$300
21 per month per lot, including without limitation, as follows: On Lot 1 to GMAC from
22 September 21, 2000 through December 31, 2000; on Lot 2 to Bank One from October 1,
23 2000 through January 31, 2001; on Lot 4 to Bank One from August 1, 2000 through
24 January 31, 2001; on Lot 5 to Bank One from October 1, 2000 through January 31, 2001;
25 on Lot 7 to Conti Mortgage from August 1, 2000 through January 31, 2001; on Lot 11 to
26 GMAC from September 21, 2000 through December 31, 2000; on Lot 15 to Bank One
27 from October 1, 2000 through January 31, 2001; on Lot 18 to GMAC from September 21,
28 2000 through December 31, 2000; and on Lot 19 to GMAC from September 21, 2000

1 through December 31, 2000.

2 116. On or about November 2000, Defendant Richard Sinclair, purportedly on behalf of
3 the homeowners association, sent a letter to an attorney for Bank One National
4 Association, as trustee, formerly FKA First National Bank of Chicago as trustee (“Bank
5 One”), demanding payment of dues for October and November on Lots 2, 4, 5 and 15, and
6 stating in the “PS” “A number of people have inquired about purchasing the duplexes that
7 your clients owns. Please advise us of the price as-is, where-is, so we may pass along the
8 information.” (D348.)

9 117. Defendants Richard Sinclair, Mauchley and Brandon Sinclair, on or about
10 December 2000, pursued foreclosures on various lots for failure to pay assessments, and
11 recorded on December 19, 2000, and caused to be sent through the U.S. mail notices of
12 delinquent assessment in the name of Fox Hollow HOA, for lots 1, 2, 4, 5, 11, 15, 18 and
13 19.

14 118. Thereafter, on or about January 22, 2001, Defendants Richard Sinclair, Mauchley
15 and Brandon Sinclair recorded and caused to be sent through the U.S. mail notices of
16 delinquent assessment in the name of Fox Hollow HOA, for lots 2, 4, 5, 7 and 15.

17 119. Defendants Richard Sinclair, Mauchley and Brandon Sinclair, represented in each
18 such dues statement, letter and notice of delinquent assessment that there was a
19 homeowners association, that Brandon Sinclair was president of the homeowners
20 association, and that dues of \$300 per lot per month were due and owing to the
21 homeowners association starting August 1, 2000.

22 120. Said representations were false when made. The true facts known by Defendants
23 Richard Sinclair, Mauchley, and Brandon Sinclair, and concealed by them from each of
24 such lenders were that: (1) Defendants had failed and refused to form Fox Hollow HOA as
25 a non-profit mutual benefit corporation until on or about December 6, 2000; (2)
26 Defendants had failed and refused to collect any dues and assessments from themselves;
27 and (3) Defendants intended to and did use payments of association dues and assessments
28 to finance lawsuits they had initiated against various lenders seeking to enjoin and delay

1 the foreclosures on their loans.

2 121. Each of said lenders, including without limitation GMAC, made dues payments to
3 said Defendants in reliance upon said representations, and had they known the true facts
4 and concealed facts, they each would not have made such payments.

5 **The Foreclosure Delay Litigation**

6 122. Defendant Richard Sinclair prepared and filled in the names of Defendants
7 Mautrst and Mauchley, as plaintiffs therein, seven (7) lawsuits over the period March 22,
8 2000 and July 21, 2000, in the Stanislaus County Superior Court (Case Nos. 253769,
9 254996, 269907, 269969, 270025, 271066 and 271115), against various lenders on Lots at
10 Fox Hollow, seeking to enjoin the foreclosures (the “Foreclosure Delay Cases”).

11 123. Although Defendants Richard Sinclair, Mautrst and Mauchley succeeded in using
12 Foreclosure Delay Cases to delay the foreclosures on the various lots without making any
13 further payments on any of the loans, said Defendants lost six (6) of the lawsuits and
14 settled the remaining case against GMAC involving Lots 1,11, 18 and 19 as more
15 specifically alleged below.

16 **Bank One Obtains A Receiver In Early 2001 For The Fox Hollow HOA**

17 124. On January 30, 2001, Bank One (who had already foreclosed on Lots 5, 5 and 15),
18 filed suit against Fox Hollow HOA, Stanislaus County Superior Court Case No. 287128,
19 seeking a property inspection and appointment of a receiver for the Fox Hollow HOA. By
20 order of the court, Michael McGranahan was appointed as inspector and was required to
21 report back on February 22, 2001.

22 125. Mr. McGranahan received his order of appointment to conduct the inspection of the
23 Fox Hollow HOA and Fox Hollow Property on or about February 9, 2001, and sent a letter
24 to Defendant Richard Sinclair via telecopier enclosing the order and demanding he turn
25 over the records of the Fox Hollow HOA. On or about February 12, 2001, Brandon
26 Sinclair delivered to Mr. McGranahan’s office certain files and financial records for Fox
27 Hollow HOA.

28 126. On or about February 13, 2001, Mr. McGranahan sent a second letter to Defendant

1 Richard Sinclair requesting documents and information that had not been delivered in
2 accordance with the previous written request and court order. Despite Mr. McGranahan's
3 request, Defendant Richard Sinclair did not provide any additional documents, and in
4 particular, Defendant Richard Sinclair did not provide any bank statements or cancelled
5 checks.

6 127. Defendant Richard Sinclair responded by fax sent to Mr. McGranahan on or about
7 February 14, 2001 asserting in part: "The lots were created but no party ever decided to
8 complete the task that would prepare the subdivision for sale of individual lots and the
9 property was and continues to be operated as an apartment complex. The property changed
10 hands many times being kept as an apartment complex in bulk."

11 128. Mr. McGranahan submitted his report of inspection to the court on February 22,
12 2001, explaining that when he inspected the property on or about February 2, 2001, the
13 property was "in very poor condition, littered with garbage, old discarded furniture,
14 disabled vehicles and shopping carts."

15 129. Mr. McGranahan also reported that according to a summary provided to him by
16 Defendant Richard Sinclair, Defendant Mauchley had paid dues on the lots at Fox Hollow
17 from August 2000 through February 2001, in the amount of \$23,000, but: "These alleged
18 payments are not supported by any receipts, cancelled checks or bank records."

19 130. Mr. McGranahan further explained that according to the information provided by
20 Defendant Richard Sinclair, the Fox Hollow HOA paid Defendant Richard Sinclair
21 attorney's fees in the amount of \$15,266.99, paid management fees of \$5,020 (including
22 \$350 to Brandon Sinclair), and paid \$2,920 for insurance in which the Association was not
23 even named as an insured. There was no accounting for the balance of \$3,513.95.

24 131. The court, on March 22, 2001, appointed Mr. McGranahan to serve as a receiver
25 and he did so until he was relieved by Order of the court filed April 12, 2002.

26 132. Mr. Rubenstein replaced Mr. McGranahan as a receiver for Fox Hollow HOA until
27 he was released in October 2002 and the case was dismissed without prejudice on
28 November 26, 2002.

1 133. The cost and expenses to the Fox Hollow HOA for the receivership proceeding
2 included \$22,609.95 for receiver's fees and \$5,655.33 for the receivers' attorney's fees.

3 **Defendants' Fraudulent Financing Scheme Continues In 2001 With Two (2) More Loans On**
4 **Lots At Fox Hollow And With Rent And Tenant Deposit Skimming On Lots That They Had**
5 **Lost Through Foreclosure By Lenders**

6 134. On or about May 2001, Defendants Mauchley and Flake, as trustee of the Capstone
7 Trust, entered into a settlement agreement with GMAC, of the lawsuit commenced by
8 Mauchley and Mautrst, Stanislaus County Superior Court Case No. 269907, in which
9 Defendant Mauchley agreed to drop said lawsuit, and Defendant Flake, as a purported
10 junior lien holder on Lots 1, 11, 18 and 19, agreed to purchase said lots for \$114,750 each
11 (\$459,000 total) in cash, with possession of said lots "delivered to Capstone at close of
12 escrow."

13 135. Defendants Richard Sinclair, Mauchley and Flake concealed from GMAC during
14 the negotiations of said agreement, at the time said agreement was executed by the parties,
15 and thereafter through at least July 2002, that they had agreed among themselves to use
16 Capstone Trust as a straw buyer who would immediately upon purchase of a lot from
17 GMAC, transfer title to such lot to Defendant Richard Sinclair in a second escrow as part
18 of Defendant Richard Sinclair obtaining a loan against such lot in an amount substantially
19 in excess of the amount paid to GMAC, and Defendants Richard Sinclair and Flake would
20 split among themselves the net loan proceeds in excess of closing costs and the amount
21 paid to GMAC.

22 136. Pursuant to such fraudulent scheme, Defendant Flake, as trustee of the Capstone
23 Trust, closed escrow on the purchase of Lot 19 from GMAC on or about August 1, 2001,
24 and then immediately conveyed title to said lot to Defendant Richard Sinclair by Grant
25 Deed recorded on or about August 2, 2001, who simultaneously obtained a loan from Long
26 Beach Mortgage Company, in the amount of \$152,000, secured by a first deed of trust
27 against Lot 19 that was also recorded on or about August 2, 2001, with the proceeds from
28 such loan used to pay GMAC the purchase price of \$114,750 and the closing costs, and the

1 balance of the net loan proceeds in the amount of approximately \$31,420 distributed to
2 Defendants Richard Sinclair and Flake.

3 137. Also, pursuant to such fraudulent scheme, Defendant Flake, as trustee of the
4 Capstone Trust, closed escrow on the purchase of Lot 1 from GMAC on or about
5 December 10, 2001, and then immediately conveyed title to said lot to Defendant Brandon
6 Sinclair by Grant Deed recorded on or about December 10, 2001, who simultaneously
7 obtained a loan from Decision One Mortgage Company, in the amount of \$142,500,
8 secured by a first deed of trust against Lot 1 that was also recorded on or about December
9 10, 2001, with the proceeds from such loan used to pay GMAC the purchase price of
10 \$114,750 and the closing costs, and the balance of the net loan proceeds of approximately
11 \$18,452.14 distributed to Defendants Richard Sinclair and Flake.

12 138. Pursuant to the Fox Hollow Scheme, Defendant Richard Sinclair conveyed title to
13 Lot 19 to Lairtrust by Grant Deed recorded on or about February 4, 2002, and Defendant
14 Brandon Sinclair conveyed title by Grant Deed to Lot 1 to Capstone LLC, also recorded on
15 or about February 4, 2002.

16 139. Had Defendants Richard Sinclair and Flake disclosed the true facts to GMAC,
17 Long Beach Mortgage Company, and Decision One Mortgage Company, GMAC would
18 not have completed the sales of Lots 1 and 19, and Long Beach Mortgage Company and
19 Decision One Mortgage Company would not have closed said loans.

20 140. While the purchase of said lots was pending, Defendant Richard Sinclair, by
21 facsimile, sent to GMAC, on or about June 27, 2002, asked for access to the units for
22 purposes of inspection. Unknown to GMAC, and despite said statement as well as the term
23 in the settlement agreement that possession shall transfer upon close of escrow, Defendants
24 Richard Sinclair, Brandon Sinclair and Mautrst had continued to rent out and collect rents
25 on units on Lots 1, 11, 18 and 19, following completion of the foreclosure of the same on
26 September 29, 2000. Defendants Brandon Sinclair, Richard Sinclair and Lairtrust collected
27 rents on said lots during times they did not own said lots, through August 1, 2001, as to Lot
28 19, December 10, 2001 as to Lot 1, and June 25, 2002, as to Lots 11 and 18, in an amount

1 according to proof at trial, all while failing to pay homeowner association dues and failing
2 to maintain said property.

3 141. Defendants Richard Sinclair for Lairtrust and Capstone LLC also entered in to
4 written leases on units 104, 133 and 135 with tenants and then refused the demands for
5 return of first month's rent and security deposits in the amounts of \$1,825, \$1,850 and
6 \$1,895 respectively which such rights of the tenants have been assigned to Plaintiff
7 CEMG.

8 142. Despite losing title to Lot 7 through foreclosure on June 6, 2000, Defendants
9 Richard Sinclair and Mauctrst continued to lease out and collect rents on units on said lot
10 in an amount according to proof at trial, until on or about February 2003, all while failing
11 to pay homeowner association dues and failing to maintain said property.

12 143. With respect to Lot 19, Defendant Flake, as trustee of the Capstone Trust was the
13 record title holder on August 1 and 2, 2001, Defendant Richard Sinclair was record title
14 holder from August 2, 2001 to February 4, 2002, and Defendant Lairtrust LLC was record
15 title holder from February 4, 2002 to March 14, 2004, each having accepted the deed of
16 conveyance in which he or it became record title holder.

17 144. With respect Lot 1, Defendant Flake, as trustee of the Capstone Trust, was the
18 record title holder on December 10, 2001, Defendant Brandon Sinclair was the record title
19 holder from December 10, 2001 to February 4, 2002, and Defendant Capstone LLC was
20 record title holder from February 4, 2002 through March 14, 2004, each having accepted
21 the deed of conveyance in which he or it became record title holder.

22 **CEMG Acquires The Lots And Loans At Fox Hollow Property**

23 145. Plaintiff CEMG obtained fee simple title to Lots 2, 4, 5, 13 and 15 by a deed
24 executed by Bank One, which deed was recorded on May 17, 2002, in the official records
25 of Stanislaus County, California (the "Bank One Lots"). Plaintiff CEMG has continued up
26 to the present time to own and control of the Bank One Lots, and all improvements located
27 thereon.

28 146. Plaintiff CEMG obtained fee simple title to Lots 11 and 18, by a deed executed by

1 GMAC, which deed was recorded June 25, 2002, in the Official Records, Recorder of
2 Stanislaus County, California (the “GMAC Lots”). Plaintiff CEMG has continued up to the
3 present time to own and control the GMAC Lots, and all improvements located thereon.

4 147. Plaintiff CEMG obtained fee simple title to Lots 12, and 17, by deeds dated July
5 31, 2001, and recorded August 30, 2002, in the official records of Stanislaus County,
6 California (the “Absher-Avanta Lots”). Plaintiff CEMG has continued up to the present
7 time to own and control of the Absher-Avanta Lots, and all improvements located thereon.

8 148. On September 13, 2002, CEMG entered into a written agreement with Conti
9 Mortgage Corporation by Fairbanks Capital, its attorney-in-fact (“Conti Mortgage”), to
10 purchase the promissory notes and deeds of trusts for the loans recorded against Lots 3, 7,
11 9 and 14, on July 22, 1998, and all legal and equitable claims, known or unknown,
12 thereunder. CEMG and Conti Mortgage entered into an amendment of such agreement on
13 or about October 29, 2002, to include the sale of Lot 7 to CEMG.

14 149. CEMG completed the purchase of the loans on Lots 3 and 7, and the purchase of
15 Lot 7 from Conti Mortgage on or about January 14, 2003. Plaintiff CEMG has continued
16 up to the present time to own and control Lot 7, and all improvements located thereon.

17 150. CEMG completed the purchase of the loans on Lots 9 and 14 from Conti Mortgage,
18 on or about May 27, 2003.

19 151. Plaintiff CEMG completed the foreclosures and trustees deeds upon sale were
20 recorded on Lot 3 on May 21, 2003, on Lot 9 on May 30, 2003 and on Lot 14 on June 25,
21 2003. CEMG has continued up to the present time to own and control of Lots 3, 9, 14 and
22 all improvements located thereon.

23 152. As part of the purchase of the notes and deeds of trust on Lots 3, 7, 9 and 14, and
24 the purchase of Lot 7, Conti Mortgage also transferred, sold and assigned to and Plaintiff
25 CEMG accepted from Conti Mortgage all legal and equitable claims, known or unknown,
26 under the subject notes and deeds and trust.

27 153. Plaintiff CEMG obtained fee simple title to Lots 6, 8, 10 and 16, by a deed
28 executed by Merle Alldrin, Rachel Alldrin, Gary Alldrin, and Lisa Alldrin (the “Alldrin

1 Lots”), which deed was recorded August 1, 2003, in the Official Records, Recorder of
2 Stanislaus County, California. Plaintiff CEMG has continued up to the present time to own
3 and control of the Alldrin Lots, and all improvements located thereon.

4 **Plaintiffs Rehabilitate Fox Hollow Property**

5 154. On or about September 30, 2002, Mr. Rubenstein, as receiver for the Fox Hollow
6 HOA, provided notice of a meeting of the owners and of the board of directors of the Fox
7 Hollow HOA for October 15, 2002.

8 155. At the meeting of owners for the Fox Hollow HOA on October 15, 2002, the
9 owners elected Andrew Katakis, Gary Alldrin and Dave B. Konecny, as directors for the
10 Fox Hollow HOA.

11 156. On January 10, 2003, the Fox Hollow HOA Board held a noticed meeting. The
12 Board decided to hire professionals to assist with the problems facing Fox Hollow,
13 including among others, a construction consultant - Todd Smith & Association - to assist in
14 matters related to project renovation and code compliance.

15 157. Mr. Smith conducted an extensive inspection of the property and contacted the City
16 of Turlock and various contractors to assess what needed to be done and the costs to do the
17 work.

18 158. On July 21, 2003, the Fox Hollow HOA provided notice to the owners of a meeting
19 on July 31, 2003. The agenda for the July 31, 2003 meeting included notice that there
20 would need to be a special assessment and noted: “The project encompasses significant
21 deferred maintenance issues, pending code compliance issues with the City of Turlock
22 building department, health and safety issues and overall project beautification.”

23 159. On July 31, 2003, the Fox Hollow HOA Board of Directors held its meeting and
24 decided to move forward with the renovation and improvements to the common area and
25 completing the requirements of the City of Turlock for the Project, and approved a special
26 assessment of approximately \$9,500 against each of the lots to fund the project.

27 160. Over the period of mid 2003 through 2004, extensive work at substantial expense
28 was performed on the Fox Hollow Property. This work included completing the

1 requirements of the City of Turlock for separate ownership of the lots, and also a complete
2 renovation of the exteriors and interiors of many of the units that were no longer habitable.

3 161. The outside work included among other work, installing twenty-four (24) fire walls
4 in garages and six (6) fire walls in units, and cutting twelve (12) roof overhangs. Separate
5 underground utilities including electricity, gas, cable, television and telephone, were also
6 run to fifteen (15) of the units. This work was required under the original City of Turlock
7 approval to be completed prior to recordation of the final subdivision map.

8 162. The total cost to the Fox hollow HOA for such work was more than \$300,000.

9 163. Plaintiff CEMG expended a total of more than \$1 million on the rehabilitation that
10 included paying dues and special assessments to Fox Hollow for the work, as well as
11 additional work on the units.

12 **Defendants Continue To Falsely Assert Ownership In And A Right Of Possession To Garage**
13 **Lots And Common Area**

14 164. Defendants have continued and threaten to continue their misconduct as alleged
15 herein.

16 165. Defendants, from and after the commencement of this action up to the present time
17 have failed and refused to convey record clear title to the "A" Lot to Plaintiff CEMG,
18 despite demand having been made and accordingly, Plaintiff CEMG has been prevented
19 from obtaining approval of the subdivision through the California Department of Real
20 Estate, and from receiving profits form selling the individual single-family residences and
21 duplexes during on or about 2005 and 2006 at a time when market values were
22 substantially higher than they are currently.

23 166. On or about June 26, 2007, Defendant Richard Sinclair caused to be recorded a
24 quitclaim deed purportedly transferring title to Lots 2A, 6A, 7A, 8A, 9A, 10A, and 18A,
25 from Defendant Mauchley to Defendant Lairtrust, as Instrument No. 2007-0084538-00,
26 Official Records of Stanislaus County, California.

27 167. On or about April 17, 2008, Defendant Richard Sinclair as "Member/Manager for
28 Mautrst LLC", served by U.S. Mail on Plaintiffs and on the tenants at the Fox Hollow

1 Property of unit number 131 and garage lot 2A, unit number 113 and garage lot 6A, unit
2 number 109 and garage lot 7A, unit number 111 and garage lot 7A, unit number 107 and
3 garage lot 8A, unit number 101 and garage lot 9A, unit number 103 garage lot 9A, unit
4 number 105 and garage lot 10A, unit number 100 and garage lot 18A, and unit number 102
5 and garage lot 18A, a “Notice of Termination of Tenancy/Occupancy And Use Of
6 Premises” demanding on behalf of the owner, Defendants Mautrst and Mauchley, or their
7 predecessor Stanley Flake, Trustee, that such tenants and Plaintiffs remove themselves
8 from and deliver up possession, occupancy and use of the reference garage lot, as for
9 example “Garage Lot Unit 2A Located at 152 20th Century Blvd., Turlock, California
10 95380”, on or before May 19, 2008, and stating that the notice is given “to terminate your
11 tenancy, occupancy and use of the premises of the above described property.”

12 168. Thereafter, on or about May 22, 2008, Defendant Richard Sinclair, again on behalf
13 of Defendants Mauchley and Mautrst, or their predecessor-in-interest, Stanley Flake,
14 Trustee, wrote to CEMG and demanded that CEMG and its tenants vacate the garages on
15 lots 2A, 6A, 7A, 8A, 9A, 10A and 18A, and if they failed to do so by 5:00 p.m. on May 28,
16 2008, unlawful detainer action would follow.

17 169. On or about July 2, 2008, Defendant Richard Sinclair commenced unlawful
18 detainer actions in the names of Mautrst and Lairtrust, in the Superior Court of California,
19 County of Stanislaus, Case Nos. 628615 and 62852, against CEMG and its tenants for lots
20 9A and 2A respectively, in which Defendants Mautrst and Lairtrust asserted they are the
21 owners of such garage lots, and sought to evict CEMG and its tenants from such garage
22 lots.

23 170. On or about August 22, 2008, pursuant to motion by CEMG in such actions, such
24 actions were stayed pending the outcome of this action.

25 171. On or about April 17, 2008, Defendant Richard Sinclair as “Member/Manager for
26 Mautrst LLC”, also served by U.S. Mail on the tenants of each of the thirty-five (35) units
27 at Fox Hollow and on Plaintiffs, a “Notice of Termination of Tenancy/Occupancy And Use
28 Of Premises” for the “Driveway and Common Area Located at 152 20th Century Blvd.,

1 Turlock, California 95380,” demanding on behalf of the owner, Defendants Mautrst and
2 Mauchley, or their predecessor Defendant Stanley Flake, Trustee, that such tenants and
3 Plaintiffs remove themselves from and deliver up possession, occupancy and use of the
4 premises described above, on or before May 19, 2008, and stating that the notice is given
5 “to terminate your tenancy, occupancy and use of the premises of the above described
6 property.”

7 **Count One Fraud**

8 172. The Plaintiffs asserting this count are Fox Hollow HOA and CEMG, and this count
9 is being asserted against Defendants Mautrst, Richard Sinclair, Brandon Sinclair,
10 Mauchley, Flake, Lairtrust and Capstone LLC (“Defendants”). For purposes of this count,
11 and this count only, “Plaintiffs” and “Defendants” shall be limited to those parties.

12 173. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1
13 through 146 as if fully set forth herein.

14 174. As set forth above, Plaintiff CEMG is the assignee of all claims of Conti arising out
15 of or related to the July 1998 loans on Lots 3, 7, 9 and 14.

16 175. The Defendants, and each of them, knew that said representations and promises
17 were false at the time they were made, and Defendants, and each of them, concealed said
18 facts and made the representations and promises with the intent to induce said lenders to
19 make said loans and dues payments, and with the intent to defraud and deceive said
20 lenders, including without limitation, Conti.

21 176. Defendants Richard Sinclair, Mauchley and Flake, commencing on or about 1995,
22 and continuing until at least 2003 and according to proof at trial, knowingly agreed,
23 colluded and conspired with each other and among themselves to fraudulently create the
24 false appearance of a homeowners association and individually saleable lots at Fox Hollow
25 in order to obtain loans secured by portions of Fox Hollow and to enrich themselves at the
26 expense of the lenders, the successors to the lenders and the homeowners association, by
27 skimming off loan proceeds, dues collected in the name of the homeowners association,
28 and rental income and tenant deposits, all while concealing their scheme and attempting to

1 shield themselves from individual liability by creating shell companies and churning
2 record title to the property (the “Fox Hollow Scheme”).

3 177. Defendant Mautrst joined in, agreed to and become a part of Fox Hollow Scheme
4 by on or about April 1998; Defendant Lairtrust joined in, agreed to and become a part of
5 Fox Hollow Scheme on or about May 2000; Defendant Brandon Sinclair joined, agreed to
6 on and become a part of Fox Hollow Scheme by in or about June 2000; and Defendant
7 Capstone LLC joined in, agreed to and become a part of Fox Hollow Scheme by on or
8 about December 2001.

9 178. Defendants agreed to, participated in, aided and abetted, and committed acts in
10 furtherance of and in pursuance to the Fox Hollow Scheme from on or about 1995 and to
11 the present, in that, among other things: Defendant Flake, as trustee of the Julie Insurance
12 Trust, purchased the Fox Hollow Property from Stockton Savings Bank on or about
13 October 31, 1995, with Defendant Flake, as trustee of the F. Hanse Trust providing the funds
14 for the purchase; Defendant Richard Sinclair contacted the architect for the Project on or
15 about November 1995, to let him know Defendant Flake would be paying the bills;
16 Defendant Flake met with the architect for the Project and thereafter, on or about
17 November 18, 1995, started paying the architect for his prior work on the Project;
18 Defendant Flake continued to pay for architectural services with respect to the Fox Hollow
19 Subdivision including, without limitation, on December 15, 1995; Defendant Richard
20 Sinclair assisted Defendant Flake with respect to the subdivision; Defendant Flake, as
21 trustee of the Julie Insurance Trust, signed the final map for Fox Hollow Lots 1, 11, 18 and
22 19 on or about November 10, 1995; Defendant Sinclair filed an unlawful detainer
23 proceeding on January 18, 1996, in the Stanislaus County Municipal Court, Case No.
24 74645, on behalf of himself and Defendant Flake, as “Owner”, on unit 103 at Fox Hollow;
25 Defendant Richard Sinclair communicated with the City of Turlock and worked with the
26 civil engineer and architect for the Project to complete the final map for Fox Hollow Lots
27 1, 11, 18 and 19 and caused Fox Hollow Subdivision Map #1 to be recorded, on or about
28 March 6, 1996; Defendant Richard Sinclair revised and Defendant Flake as trustee of the

1 Julie Insurance Trust, signed the Fox Hollow CC&Rs in September 1996; Defendant
2 Richard Sinclair caused the Fox Hollow CC&Rs to be recorded, on or about September 16,
3 1996 and returned to “Mauctrst”; Defendant Sinclair filed an unlawful detainer proceeding
4 on November 8, 1996, in the Stanislaus County Municipal Court, Case No. 81879, on
5 behalf of himself and Defendant Flake, as “Owner”, on unit 109 at Fox Hollow; Defendant
6 Richard Sinclair assisted Defendant Mauchley in obtaining financing from GMAC in or
7 about February 1997 for the Project as more specifically alleged herein; Defendant Flake
8 in or about February 1997 requested and received an extension of time from the City of
9 Turlock for one year to complete various improvements on the Fox Hollow Property with
10 respect to the subdivision; Defendant Richard Sinclair facilitated the transfer of title of the
11 Fox Hollow Property from Defendant Flake, as trustee of the Julie Insurance Trust, to
12 Defendant Mauchley on February 26, 1997 as more specifically alleged herein; Defendant
13 Richard Sinclair communicated with the City of Turlock and worked with the civil
14 engineer and architect for the Project to complete a final map for the remaining Fox
15 Hollow lots; Defendant Mauchley signed Fox Hollow Subdivision Map # 2 on or about
16 February 27, 1998; Defendant Richard Sinclair signed and filed limited liability company
17 articles of organization in the name of Mauctrst LLC with the California Secretary of State
18 on or about April 28, 1998; Defendant Richard Sinclair assisted Mr. Mauchley over the
19 period from on or about February 1998 to on or about July 1998 in obtaining fifteen (15)
20 loans from several lenders against lots at the Fox Hollow Property as more specifically
21 alleged herein; Defendant Sinclair sent a facsimile to the City of Turlock on February 20,
22 1998, forwarding an assignment from Defendant Flake to Defendant Mauchley; Defendant
23 Sinclair sent a letter via facsimile to Mr. Sessions of GMAC Mortgage in Hawaii, on or
24 about May 5, 1998, providing financial information concerning Mr. Mauchley; Defendant
25 Richard Sinclair caused Fox Hollow Subdivision Map # 2 to be filed in the Official
26 Records of Stanislaus County, California, on July 21, 1998; Mr. Mauchley signed the loan
27 documents for the July 1998 loans on or about July 9, 1998, including without limitation,
28 the loan applications, promissory notes and deeds of trust that were recorded in the Official

1 Records of Stanislaus County, on July 22, 1998; Defendant Richard Sinclair prepared and
2 Mr. Mauchley signed a deed conveying title to the Fox Hollow Lots 1 through 19 to
3 Mautrst that was recorded in the Official Records of Stanislaus County, California, on or
4 about July 29, 1998; Defendant Sinclair prepared, filed and prosecuted unlawful detainer
5 actions on behalf of himself and Mr. Mauchley as “Owner” in the Stanislaus County
6 Superior Court, on unit 121 at Fox Hollow on or about October 5, 1998 (Case No.
7 182407), on unit 119 at Fox Hollow on February 1, 1999 (Case No. 1851990), on unit 127
8 at Fox Hollow on February 1, 1999 (Case No. 185201), on unit 121 at Fox Hollow on
9 March 25, 1999 (Case No. 186532), on unit 127 at Fox Hollow on June 4, 1999 (Case No.
10 228301), on unit 105 at Fox Hollow on June 16, 1999 (Case No. 228676), on unit 131 at
11 Fox Hollow on February 14, 2000 (Case No. 252225), on unit 125 at Fox Hollow on
12 March 17, 2000 (Case No. 253689), on unit 117 at Fox Hollow on October 1, 2000 (Case
13 No. 274533), on unit 116 at Fox Hollow on October 18, 2000 (Case No. 274549), and on
14 unit 127 at Fox Hollow on March 6, 2001 (Case No. 288094); in September 1999 and
15 again in December 1999, Defendant Richard Sinclair filed schedules in the Mautrst
16 Bankruptcy Case on behalf of Mautrst and Mr. Mauchley, stating under penalty of perjury
17 that Mautrst was owned fifty percent (50%) by Defendant Mauchley and fifty percent
18 (50%) by his spouse, when Mr. Mauchley denies his spouse had any ownership interest in
19 Mautrst; Defendant Richard Sinclair in the name of Mautrst and Mauchley, filed at least
20 six (6) lawsuits in the Stanislaus Superior Court between March 22, 2000 and July 21,
21 2000 (Case Nos. 253769, 254996, 269907, 270025, 271066 and 271115) and obtained
22 preliminary relief delaying foreclosures on various lots at the Fox Hollow Property, and
23 then lost all those case; in one of those cases (Case No. 254996), Defendant Richard
24 Sinclair in the name of Mautrst and Mauchley, obtained a preliminary injunction
25 enjoining the foreclosure on lots 9 and 14, and also claimed the preliminary injunction
26 pertained to lots 3 and 7, that was conditioned upon them making the required monthly
27 payments on the promissory notes as they come due, and then failed and refused to make a
28 single payment and enjoyed the benefit of the injunction until 2003; Defendant Richard

1 Sinclair prepared and filed with the California Secretary of State articles of organization
2 for Defendant Lairtrust, on or about May 26, 2000; Defendant Richard Sinclair prepared
3 documents that purported to be minutes of Fox Hollow homeowner's association board
4 meetings over the period June through December 2000, that stated Mr. Mauchley was in
5 attendance, when Mr. Mauchley denied attending any board meetings; Defendant Richard
6 Sinclair and Defendant Brandon Sinclair signed a letter dated August 1, 2000 in which the
7 Fox Hollow HOA purportedly waived any conflict of interest arising by reason of
8 Defendant Richard Sinclair's representation of the homeowner's association while also
9 representing Brandon Sinclair and Mr. Mauchley in other matters, including matters
10 against lenders who were foreclosing on and owned lots at the Fox Hollow Property;
11 Defendant Richard Sinclair and Brandon Sinclair signed and mailed out dues statements,
12 letters and notices of delinquent assessments to lenders over the period August 1, 2000,
13 through January 31, 2001, in the name of Fox Hollow HOA, asserting dues of \$300 per
14 month per lot were due and payable to the homeowners association; on or about May 2001,
15 Defendant Richard Sinclair negotiated and Defendants Mauchley and Flake signed a
16 settlement agreement with GMAC under which Defendant Flake as Trustee of the
17 Capstone Trust, would purchase lots 1, 11, 18 and 19, and then Defendants Richard
18 Sinclair, Brandon Sinclair and Flake set up secret double escrows and concealed material
19 facts from GMAC and the lenders as herein alleged; Defendant Brandon Sinclair signed
20 and Defendant Richard Sinclair caused articles of organization for Defendant Capstone
21 LLC to be prepared and filed with the California Secretary of State on or about December
22 3, 2001; Defendants Richard Sinclair transferred title to Lot 19 to Lairtrust on or about
23 February 4, 2002; Defendants Brandon Sinclair transferred title to Lot 1 to Capstone LLC
24 on or about February 4, 2002; Defendant Richard Sinclair prepared, Defendant Mauchley
25 executed and Defendant Richard Sinclair caused to be recorded in 2007, a deed conveying
26 record title to the "A" lots to Defendant Lairtrust; Defendant Richard Sinclair, on behalf of
27 Defendants Mauchley, Mautrst and Flake sent Notices of Termination of
28 Tenancy/Occupancy And Use Of Premises to Plaintiffs and the tenants at Fox Hollow in

1 April 2008, purportedly to evict them from the common area and the “A’ Lots at Fox
2 Hollow; and Defendant Richard Sinclair filed in the names of Mautrst and Lairtrust
3 unlawful detainer actions in state court in July 2008 to evict CEMG and its tenants from
4 the garages on Lots 2A and 9A.

5 179. Defendants, and each of them, attempted to and intended to perfect and carry out
6 the Fox Hollow Scheme so that they could continue the scheme described above, or
7 abandon the same at any time, and all loss would fall on Bank One, GMAC, Conti,
8 Absher-Avanta, HFC Beneficial, Plaintiffs and other lenders and members of the public
9 who might be induced to make loans on, invest in or purchase lots and units at Fox
10 Hollow, while Defendants retained their profits from such scheme.

11 180. As a proximate result of the fraudulent conduct of Defendants as hereinabove
12 alleged, Conti Mortgage completed a foreclosure on and Lot 7 on or about June 6, 2000 for
13 a credit bid of only \$85,000 when \$144,595.85 was due and owing on the loan at the time,
14 and was thereby damaged in the amount of approximately \$50,000 and according to proof
15 at trial, and sold Lot 7 and the loans on Lots 3, 7, 9 and 14 to Plaintiff CEMG for a loss of
16 more than \$500,000 and according to proof at trial.

17 181. Further, Plaintiff CEMG as a proximate result of such fraudulent conduct, in
18 addition to the claims assigned to it by Conti, was required to and did incur expenses in
19 correcting and remedying the failure to complete the requirements for the subdivision map
20 and otherwise rehabilitate Lots 3, 7, 9 and 14 in an amount in excess of \$280,000 and
21 according to proof at trial, and otherwise incurred expenses and lost profits relating the
22 individual lots at Fox Hollow.

23 182. Further, Plaintiff Fox Hollow HOA as a proximate result of such fraudulent
24 conduct, was required to and did: incur and pay receivers fees and receivers attorneys fees
25 in the amount of \$28,265.28, incur and pay expenses in correcting and remedying the
26 failure to complete the requirements for the subdivision map and otherwise rehabilitate the
27 common area in an amount in excess of \$300,000 and according to proof at trial and was
28 deprived of homeowners dues collected and retained by defendants in an amount according

1 to proof at trial.

2 183. In doing the things alleged herein, Defendants, and each of them, acted willfully
3 and with the intent to cause injury to Bank One, GMAC, Conti, Absher-Avanta, HFC-
4 Beneficial, Plaintiff CEMG as assignee of the claims of Conti, and Plaintiffs individually,
5 and in conscious disregard of the rights of Bank One, GMAC, Conti, Absher-Avanta,
6 HFC-Beneficial, Plaintiff CEMG as assignee of the claims of Conti, and Plaintiffs
7 individually, thereby warranting an assessment of punitive damages in an amount
8 appropriate to punish Defendants, and each of them, and to deter others from engaging in
9 similar misconduct.

10 **Count Two RICO**

11 184. The Plaintiffs asserting this count are Fox Hollow HOA and CEMG, and this count
12 is being asserted against Defendants Mautrst, Richard Sinclair, Brandon Sinclair,
13 Mauchley, Flake, Lairtrust and Capstone LLC (“RICO Defendants”). For purposes of this
14 count, and this count only, “Plaintiffs” and “Defendants” shall be limited to those parties.

15 185. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1
16 through 157 as if fully set forth herein.

17 186. As set forth above, CEMG is the assignee of all claims of Conti arising out of or
18 related to the loans on the Conti Lots.

19 187. At all relevant times, Defendants Mauchley, Richard Sinclair, Flake, Brandon
20 Sinclair were “persons” within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1962(c).

21 188. At all relevant times herein from and after April 28, 1998, Defendant Mautrst was
22 a “person” within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c).

23 189. At all relevant times from and after December 6, 2000, Fox Hollow HOA was the
24 “person” within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c), and an
25 “enterprise” within the meaning of RICO, 18 U.S.C. § 1961(4).

26 190. At all relevant times from and after May 26, 2000, Defendant Lairtrust was a
27 “person” within the meaning of RICO, 18 U.S.C. §§ 1961(3) and 1964(c).

28 191. At all times relevant herein from at least on and after December 3, 2001, Defendant

1 Capstone LLC was a “person” within the meaning of RICO, 18 U.S.C. §§ 1961(3) and
2 1964(c).

3 192. At all times relevant herein from and after on or about 1995, Defendants Richard
4 Sinclair, Mauchley and Flake formed an association-in-fact to own and operate Fox
5 Hollow and divide among themselves money and benefits derived therefrom. This
6 association-in-fact was an “enterprise” within the meaning of RICO, 18 U.S.C. § 1961(4).

7 193. At all times relevant herein from and after April 1998, Defendant Mautrst joined
8 said association-in-fact. This association-in-fact was an “enterprise” within the meaning of
9 RICO, 18 U.S.C. § 1961(4).

10 194. At all times relevant herein from and after May 2000, Defendant Lairtrust joined
11 said association-in-fact. This association-in-fact was an “enterprise” within the meaning of
12 RICO, 18 U.S.C. § 1961(4).

13 195. At all times relevant herein from and after June 2000, Defendant Brandon Sinclair
14 joined said association-in-fact. This association-in-fact was an “enterprise” within the
15 meaning of RICO, 18 U.S.C. § 1961(4).

16 196. At all times relevant herein from and after December 2001, Defendant Capstone
17 LLC joined said association-in-fact. This association-in-fact was an “enterprise” within the
18 meaning of RICO, 18 U.S.C. § 1961(4).

19 197. At all relevant times, said enterprises were engaged in, and their activities affected,
20 interstate and foreign commerce, within the meaning of RICO, 18 U.S.C. § 1962(c).

21 198. The RICO Defendants, for purposes of executing such scheme and artifice to
22 defraud and for obtaining money, loans and property by means of a false or fraudulent
23 pretense, representation and promise, and attempting to do so, transmitted and caused to be
24 transmitted by means of wire communications in interstate or foreign commerce writings
25 and signals (“Wiring”), and also deposited, caused to be deposited and authorized the
26 following materials and things to be placed in any post office or authorized depository, or
27 deposited or caused to be deposited the following matters or things to be sent or delivered
28 by private or commercial interstate carrier (“Mailing”): Wiring and/or Mailing loan

1 applications and other loan documents for the February 1997 loans; Wiring and/or Mailing
2 demands for payments into the escrows relating to the February 1997 loans; causing the
3 funds from the lender to be Wired or Mailed into and disbursed from the five (5) escrows
4 for the February 1997 loans; Wiring and/or Mailing the loan applications and other loan
5 documents for the July 1998 loans; Wiring and/or Mailing demands for payments into the
6 escrows relating to the July 1998 loans; causing the funds to be Wired and/or Mailed into
7 and disbursed from the fifteen (15) escrows for each of the July 1998 loans; Mailing dues
8 statements to the lenders over the period of August through December 2000 as hereinabove
9 alleged; Mailing the notices of delinquent assessment to the lenders on or about December
10 19, 2000 and on or about January 22, 2001, as hereinabove alleged; Wiring and/or Mailing
11 the settlement agreement with GMAC as herein alleged; Wiring and/or Mailing the loan
12 application and other loan documents relating to the loan on Lot 19 that closed on or about
13 August 2, 2001, and on Lot 1 that closed on or about December 10, 2001; Wiring and/or
14 Mailing demands for payments into the escrows relating to the loan on Lot 19 that closed
15 on or about August 2, 2001, and on Lot 1 that closed on or about December 10, 2001;
16 causing the funds to be to be Wired or Mailed into and disbursed from the escrow for the
17 loan on Lot 19 on or about August 2, 2001 and for the loan on Lot 1, on or about
18 December 10, 2001.

19 199. At all times relevant herein, RICO Defendants conducted or participated, directly
20 or indirectly, in the conduct of the enterprise's affairs through a "pattern of racketeering
21 activity" within the meaning of RICO, 18 U.S.C. § 1961(5), in violation of RICO, 18
22 U.S.C. § 1962(c).

23 200. Specifically, at all relevant times, RICO Defendants engaged in "racketeering
24 activity" within the meaning of RICO, 18 U.S.C. § 1961(1), by engaging in the acts set
25 forth above. The acts set forth above constitute a violation of one or more of the following
26 statutes: 18 U.S.C. § 1341 (mail fraud); and 18 U.S.C. § 1343 (wire fraud). RICO
27 Defendants each committed and/or aided and abetted the commission of two or more of
28 these acts of racketeering activity.

1 201. The acts of racketeering activity referred to in the previous paragraph constitute a
2 “pattern of racketeering activity”, within the meaning of 18 U.S.C. § 1961(5). The acts
3 alleged were related to each other by virtue of common participants, common victims and
4 a common method of commission, and the common purpose and common result of
5 defrauding the lenders and Fox Hollow HOA and enriching the Defendants at the expense
6 of the lenders and Fox Hollow HOA while concealing Defendants fraudulent activity.

7 202. At all relevant times, the RICO Defendants each were associated with the
8 enterprise and agreed and conspired to violate 18 U.S.C. § 1962(c), in that they agreed to
9 conduct and participate, directly and indirectly, in the conduct of affairs of the enterprise
10 through a pattern of racketeering activity, as alleged herein, in violation of 18 U.S.C. §
11 1962(d).

12 203. The RICO Defendants committed and caused to be committed a series of overt acts
13 in furtherance of such conspiracy and to affect the objects thereof, including but not
14 limited to the acts set forth above.

15 204. As a result of RICO Defendants’ violations of 18 U.S.C. §§ 1962(c) and (d) and
16 each of them, the Fox Hollow HOA incurred expenses and has been damaged as herein
17 alleged in an amount according to proof at trial, including, but not limited to, receivers fees
18 and receivers attorneys fees, expenses in correcting and remedying the failure to complete
19 the requirements for the subdivision map and otherwise rehabilitating the property, and for
20 homeowners dues collected and retained by defendants.

21 205. As a result of RICO Defendants’ violations of 18 U.S.C. §§ 1962(c) and (d) and
22 each of them, Plaintiff CEMG has incurred expenses and been damaged as alleged herein,
23 and according to proof at trial, including, but not limited to, losses suffered by Conti on the
24 foreclosure on Lot 7 and on the sale of loans on Lots 3, 7, 9 and 14 to CEMG, the costs
25 and expenses incurred in correcting and remedying the failure to complete the
26 requirements for the subdivision map and otherwise rehabilitate Lots 3, 7, 9 and 14, loans
27 made to Fox Hollow HOA to cover a portion of the fees and expenses incurred by it as a
28 result of the conduct of Defendants as alleged herein, expenses incurred and profits lost

1 relating the individual lots at Fox Hollow, and the payments of deposits to tenants that
2 Defendants wrongfully withheld.

3 206. Pursuant to RICO, 18 U.S.C. § 1964(c), Fox Hollow HOA and CEMG are entitled
4 to recover three-fold their damages plus costs and attorneys' fees from the RICO
5 Defendants.

6 **Count Three Unjust Enrichment**

7 207. The Plaintiffs asserting this count are Fox Hollow HOA and CEMG, and this count
8 is being asserted against Defendants Mautrst, Richard Sinclair, Brandon Sinclair,
9 Mauchley, Flake, Lairtrust and Capstone LLC. For purposes of this count, and this count
10 only, "Plaintiffs" and "Defendants" shall be limited to those parties.

11 208. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1
12 through 157 as if fully set forth herein.

13 209. As a result of the conduct of Defendants, they have been unjustly enriched at the
14 expense of Plaintiffs and the law thereby implies a contract by which Defendants must pay
15 to Plaintiffs the amount by which, in equity and good conscience, the Defendants have
16 been unjustly enriched at the expense of Plaintiffs.

17 **Count Four Accounting**

18 210. The Plaintiffs asserting this count are Fox Hollow HOA and CEMG, and this count
19 is being asserted against Defendants Mautrst, Richard Sinclair, Brandon Sinclair,
20 Mauchley, Flake, Lairtrust and Capstone LLC. For purposes of this count, and this count
21 only, "Plaintiffs" and "Defendants" shall be limited to those parties.

22 211. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1
23 through 157 as if fully set forth herein.

24 212. Defendants, as alleged herein, collect dues and assessments on behalf of the
25 homeowners association, paid themselves funds rightfully belonging to the homeowners
26 association, and collected rents and deposits from tenant of units at Fox Hollow at times
27 when such Defendants did own the units.

28 213. The amount of money due from Defendants to Plaintiffs is unknown to Plaintiffs

1 and cannot be ascertained without an accounting of such dues, assessments, payments,
2 rents and deposits.

3 **Count Five Constructive Trust Re: Garage Lots**

4 214. The Plaintiff asserting this count is CEMG, and this count is being asserted against
5 Defendants Richard Sinclair, Mautrst, Mauchley, Lairtrust and Flake, Trustee. For
6 purposes of this count, and this count only, "Plaintiff" and "Defendants" shall be limited to
7 those parties.

8 215. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1
9 through 157 as if fully set forth herein.

10 216. The lenders who made the February 1997 loans and July 1998 loans commissioned
11 appraisals of the unit or units identified in each loan application, and received appraisals
12 listing each unit as having a one car garage.

13 217. On or September 15, 1998, Defendant Mautrst filed with the California
14 Department of Real Estate a Notice of Intention (Common Interest) on Fox Hollow of
15 Turlock ("Notice"). The Notice, at page 3, Section 2.L, provides that the improvements at
16 Fox Hollow of Turlock will contain one "1 car garage for each residential unit, and
17 common area parking spaces."

18 218. The legal description in the deeds of trust executed by Defendant Mauchley for the
19 February 1997 and July 1998 loans were prepared, at least in part, by employees of the title
20 company retained in connection with each particular transaction and were ambiguous in
21 that they included the unit number or numbers as a description of the property and also
22 included a lot number for Lots 2, 6, 7, 8, 9, 10 and 18 without including the "A" lot for the
23 corresponding one garage for the unit or units described in the deed of trust.

24 219. Defendant Mauchley, by virtue of applying for such loans based upon unit numbers
25 and under the circumstances as alleged herein, agreed either expressly or impliedly to
26 include as collateral for and is estopped from denying that the collateral for such loans did
27 not include, the corresponding one-car garage for each unit.

28 220. The failure to include the corresponding "A" lot in the legal descriptions in said

1 deeds of trust and therefore in the trustee's deeds upon the foreclosures under said deeds of
2 trust was the result of the mutual mistake of the parties, the unilateral mistake of the lender
3 that was known or should have been know by Defendants and/or the fraud of Defendants.

4 221. By virtue of the agreement to include the corresponding garage for each unit as
5 collateral and/or the mistake and/or fraud as herein alleged, Defendants hold such "A" lots
6 as constructive trustee for Plaintiff's benefit.

7 **Count Six Declaratory And Injunctive Relief Re: Garage Lots**

8 222. The Plaintiff asserting this count is CEMG, and this count is being asserted against
9 Defendants Richard Sinclair, Mauctrst, Mauchley, Lairtrust and Flake, Trustee. For
10 purposes of this count, and this count only, "Plaintiff" and "Defendants" shall be limited to
11 those parties.

12 223. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1
13 through 157 as if fully set forth herein.

14 224. An actual controversy has arisen and now exists between Plaintiff and Defendants
15 in that Plaintiff contends that Plaintiff CEMG is entitled to and Defendants are estopped
16 from claiming ownership in and the right of possession to the "A" Lots, whereas
17 Defendants contend that they own and have a right of possession to the "A" Lots to the
18 exclusion of Plaintiff CEMG and its tenant at Fox Hollow.

19 225. Plaintiffs request a declaratory judgment, declaring the rights and obligations of the
20 parties with respect to the "A" Lots at Fox Hollow, and declaring that Plaintiff CEMG is
21 entitled to ownership in and the right of possession to the "A" Lots to the exclusion of
22 Defendants and each of them.

23 226. A judicial declaration is necessary and appropriate at this time under the
24 circumstances such that the parties herein will know their rights in and to the "A" Lots and
25 in order to avoid a multiplicity of actions and the disruption of the peaceable use and
26 enjoyment of the "A" Lots by Plaintiff CEMG and it tenants at the Fox Hollow Property.

27 227. Defendants have and threaten to continue to claim ownership in the "A" Lots at the
28 Fox Hollow Property and to harass the tenants thereon, and accordingly, an injunction

1 should issue enjoining and restraining Defendants and each of them from asserting,
2 claiming or communicating to tenants at the Fox Hollow Property that they, or any of
3 them, hold or claim any ownership in and to such any such "A" Lots, or otherwise to
4 interfere with the use and enjoyment of such "A" Lots by Plaintiffs and any tenants at Fox
5 Hollow.

6 **Count Seven Fox Hollow HOA Claim For Delinquent Assessments, Late Charges, And**
7 **Interest**

8 228. The Plaintiff asserting this count is Fox Hollow HOA, and this count is being
9 asserted against Defendants Mautrst, Richard Sinclair, Mauchley, Stanley Flake as
10 Trustee of the Capstone Trust, Brandon Sinclair, Lairtrust and Capstone LLC. For
11 purposes of this count, and this count only, "Plaintiff" and "Defendants" shall be limited to
12 those parties.

13 229. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1
14 through 146 as if fully set forth herein.

15 230. At the times herein mentioned from and after September 6, 1996 and through
16 February 2004, the Fox Hollow CC&Rs were in effect in accordance with their terms.

17 231. The covenants, conditions and restrictions contained in the Fox Hollow CC&Rs
18 constitute equitable servitudes under Civil Code section 1354 that inure to the benefit of,
19 and are binding on, all owners of lots within the development and the association,
20 including Plaintiff and Defendants.

21 232. In or about August 2000, Defendants Richard Sinclair, Mauchley and Brandon
22 Sinclair purportedly as the board for the homeowners association: (1) levied a regular
23 monthly assessment in the amount of \$300 on each lot of the Fox Hollow Property for the
24 purpose of "paying the joint bills of the Homeowners Association and to begin to gather
25 and prepare to comply with all the requirements so that the property could be operated"
26 and adopted the Fox Hollow of Turlock Owners' Association Delinquent Assessment
27 Collection Policy, that provided that assessments were due and payable on the first day of
28 each month of each year and become delinquent if not paid on or before the 15th day of

1 each month, that if a regular or special assessment becomes delinquent, a late charge equal
2 to the greater of \$10.00 or ten percent (10%) of the delinquent amount shall be charged,
3 and interest at a rate of twelve percent (12%) per annum shall be assessed against all
4 delinquent assessments, late charges and reasonable costs of collection commencing thirty
5 (30) days after the due date of the delinquent assessment.

6 233. Mr. McGranahan, as receiver for the Fox Hollow HOA, on or about August 15,
7 2001, approved the Fox Hollow HOA Delinquent Assessment Collection Policy that
8 provided that all assessments were due and payable on the first day of each month of each
9 year and become delinquent if not paid on or before the thirtieth (30th) day of each month
10 of each year, a late charge equal to the greater of \$10.00 or ten percent (10%) of the
11 delinquent amount shall be charged, and that interest at a rate of twelve percent (12%) per
12 annum shall be assessed against all delinquent assessments, late charges and reasonable
13 costs of collection commencing thirty (30) days after the due date of the delinquent
14 assessment.

15 234. Pursuant to Article V, Section 1 of the Fox Hollow CC&Rs each assessment,
16 together with interest, attorneys fees and costs of collection, shall also be a separate,
17 distinct and personal obligation (debt) of the Owner of a Lot at the time when the
18 assessment is levied.

19 235. Pursuant to Article V, Section 1, the declarant and each Owner vested in the
20 Association the right to bring all actions for the collection of assessments.

21 236. Pursuant to Article IV, Subsection 2.5, the Board is empowered and obligated to
22 enforce the provisions of the Fox Hollow CC&Rs as well as the Bylaws and Rules for the
23 Association.

24 237. The Defendants named in this claim failed and refused to pay regular and special
25 assessment to Fox Hollow HOA and owe the following amounts for assessments and late
26 charges for their respective property interests set forth below, plus interest on such
27 amounts at a rate of twelve (12) % per annum from thirty (30) days after each assessment
28 and late charge was due, and until paid: Defendants Mauctrst, Richard Sinclair and

1 Mauchley in the amount of \$49,305.14 on Lots 1 through 19 prior to the foreclosures by
2 the lenders; Defendants Brandon Sinclair and Capstone LLC in the amount of at least
3 \$15,730 on Lot 1; and Defendants Richard Sinclair and Lairtrust LLC in the amount of at
4 least \$16,930 on Lot 19.

5 **Count Eight Specific Performance Re: Common Area**

6 238. The Plaintiff asserting this count is the Fox Hollow HOA, and this count is being
7 asserted against Defendants Richard Sinclair, Mauchley, Mauctrst and Flake, Trustee. For
8 purposes of this count, and this count only, "Plaintiff" and "Defendants" shall be limited to
9 those parties.

10 239. Plaintiff repeats and realleges each of the allegations contained in paragraphs 1
11 through 146 as if fully set forth herein.

12 240. The consideration of the mutual benefits and burdens for the declarant and Owners
13 set forth in the Fox Hollow CC&Rs was fair and reasonable at the time the Fox Hollow
14 CC&Rs were recorded and at the times Defendants recorded the subdivision maps,
15 conveyed and accepted title to various Lots at Fox Hollow and obtained the loans secured
16 by Lots at the Fox Hollow Property, all as alleged hereinabove.

17 241. Plaintiff has performed all of the conditions, covenants and promises required of it
18 on its part to be performed in accordance with the Fox Hollow CC&Rs for Defendants and
19 each of them to be obligated to convey title to the common area for the Fox Hollow
20 Property to the Fox Hollow HOA, except as excused by Defendants' failure to satisfy
21 conditions precedent and prior breaches waived by Defendants, and for which Defendants
22 are estopped from asserting.

23 242. On or about March 20, 2003, Fox Hollow HOA made written demand on
24 Defendants to execute and deliver to the Fox Hollow HOA in recordable form, a deed
25 conveying title to the common area of the Fox Hollow Property that was described by the
26 legal description for the Fox Hollow Property, excepting out the Lots shown on Fox
27 Hollow Subdivision Map # 1 and Fox Hollow Subdivision Map # 2 (the "Fox Hollow
28 Common Area").

1 243. Defendants, and each of them, at all times alleged herein were obligated to convey
2 title to the Fox Hollow Common Area to the Fox Hollow HOA under the Fox Hollow
3 CC&Rs as hereinabove alleged, but have failed and refused to do so and thereby breached
4 the Fox Hollow CC&Rs.

5 Count Nine Declaratory And Injunctive Relief Re: Common Area

6 244. The Plaintiffs asserting this count are Fox Hollow HOA and CEMG, and this count
7 is being asserted against Defendants Richard Sinclair, Mauchley, Mautrst, and Flake,
8 Trustee. For purposes of this count, and this count only, "Plaintiffs" and "Defendants"
9 shall be limited to those parties.

10 245. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1
11 through 146 and 215 through 218 as if fully set forth herein.

12 246. Defendant Flake, as trustee of the Julie Insurance Trust, despite being obligated to
13 do so, failed and refused to form a homeowners association for the Fox Hollow Property
14 and to convey title to the common area for the Fox Hollow Property to the Fox Hollow
15 HOA at any time from and after filing Fox Hollow Subdivision Map # 1 in March 1996
16 and conveying title of Lots 1, 11, 18 and 19 to Defendant Mauchley on or about February
17 26, 1997, and up to the present time.

18 247. An actual controversy has arisen and now exists between Plaintiffs and Defendants
19 in that Plaintiffs contend that Plaintiff Fox Hollow HOA is entitled to ownership in and the
20 right of possession to the Fox Hollow Common Area, whereas Defendants contend that
21 they own and have a right of possession to the Fox Hollow Common Area to the exclusion
22 of Plaintiffs and the tenants of CEMG at the Fox Hollow Property.

23 248. Plaintiffs request a declaratory judgment, declaring the rights and obligations of the
24 parties with respect to the Fox Hollow Common Area, and declaring that Plaintiff Fox
25 Hollow HOA is entitled to ownership in and the right of possession to the Fox Hollow
26 Common Area and that Defendants and each of them have no ownership of or right to
27 exclude Plaintiffs and the tenants of CEMG at the Fox Hollow Property from the Fox
28 Hollow Common Area.

1 249. A judicial declaration is necessary and appropriate at this time under the
2 circumstances such that the parties herein will know their rights in and to the Fox Hollow
3 Common Area and in order to avoid a multiplicity of actions and the disruption of the
4 peaceable use and enjoyment of the Fox Hollow Common Area by Plaintiffs and the
5 tenants of CEMG at the Fox Hollow Property.

6 250. Defendants have and threaten to continue to claim ownership in the Fox Hollow
7 Common Area and to harass the tenants of CEMG at the Fox Hollow Property, and
8 accordingly, an injunction should issue enjoining and restraining Defendants and each of
9 them from asserting, claiming or communicating to tenants at the Fox Hollow Property
10 that they, or any of them, hold or claim any ownership in and to the Fox Hollow Common
11 Area, or otherwise from interfering with the use and enjoyment of the Fox Hollow
12 Common Area by Plaintiffs and any tenants at the Fox Hollow Property.

13 14 **III. Findings of Fact from the Prove Up Hearing**

15 251. On September 13, 2002, Plaintiff CEMG purchased Lots 3, 7, 9, and 14 from Conti
16 for \$61,250 each. Ex. 11, pages 3 and 4. The price of Lots 9 and 14 were reduced to
17 \$52,500 in light of legal challenges raised by Defendants. Doc. 1237, Transcript, 31:32-
18 33:5. Ex. 11, Addendum.

19 252. The amount owing on the loans at the time Conti sold them was \$193,678.11 for
20 Lot 3, \$144,595.85 for Lot 7, \$199,995.14 for Lot 9, and \$199,370.55 for Lot 14. Exs. 13,
21 14, and 15; Doc. 1237, Transcript, 34:17-36:6. Conti suffered a total loss of \$510,139.65
22 due to selling the loans for less than the outstanding loan balance. Ex. 16; Doc. 1237,
23 Transcript, 36:18-37:14.

24 253. In order for the subdivision of Fox Hollow to be approved by the City of Turlock,
25 improvements had to be made, including “installing twenty-seven (27) firewalls for the
26 garages, three (3) fire walls in the units, eliminating six (6) roof overhangs, removing
27 seven (7) windows, and adding two (2) roof vents.” Doc. 410, CAC, ¶¶ 35-38. Plaintiffs
28 hired architect Vernon Fergel to determine what needed to be done on Fox Hollow to

1 permit subdivision. Doc. 1237, Transcript, 48:11-21. The building code analysis by Fergel
2 recommended installing firewalls for garages, installing firewalls for certain units,
3 eliminating certain roof overhangs, and checking or adding smoke detectors. Ex. 18.

4 254. The physical condition of the Fox Hollow project, both structures and grounds, in
5 late 2002 was poor. Ex. 17; Doc. 1237, Transcript, 38:1-46:19. In rehabilitating its Lots,
6 Plaintiff CEMG, substantially replaced the interior of the buildings, leaving only the
7 foundations, studs, and sheetrock. Doc. 1237, Transcript, 50:17-23.

8 255. The total cost of rehabilitating was \$75,068.08 for Lot 3, \$69,348.75 for Lot 7, \$78,
9 781.16 for Lot 9, and \$68,955.14 for Lot 14 for a total of \$292,153.13. Ex. 20; Doc. 1237,
10 Transcript, 53:16-54:5.

11 256. Plaintiff Fox Hollow HOA rehabilitated the common areas. Doc. 1237, Transcript,
12 49:12-50:6. Plaintiff Fox Hollow HOA spent a total of \$350,110.95 in 2003 and 2004 on
13 these projects. Doc. 1237, Transcript, 80:4-82:7; Exs. 24-25.

14 257. Plaintiff CEMG planned to sell the Lots after remodeling them. Doc. 1237,
15 Transcript, 58:1-3. However, California's Department of Real Estate would not give the
16 necessary approval because "one of the issues had to do with the common ownership of the
17 - - the road. And there was some garage lots that were retained by Mr. Sinclair's group, so
18 he basically held those captive. Therefore, not allowing us to finalize the DRE white
19 report." Doc. 1237, Transcript, 58:6-20; See Ex. 36. The dispute over ownership of the
20 common areas and the garage lots prevented the Lots from being sold to the general public.

21 258. Katakis estimates that had the issues with ownership of the garage lots and the
22 common areas not arisen, Plaintiff CEMG would have been able to get approval from the
23 Department of Real Estate within weeks and been able to sell the units on the Lots from
24 "very late 2004, all the way into mid 2005." Doc. 1237, Transcript, 61:17-25. Katakis
25 states that the real estate market for condominium units in the Turlock area was very
26 favorable to sellers in late 2004, early 2005. Doc. 1237, Transcript, 62:10-19.

27 259. Plaintiff CEMG had a real estate appraisal of their Fox Hollow Lots done in 2004.
28 The report of December 12, 2004 by W.G. Bartha & Associates estimated that the Lots

1 would sell for a total of \$6,350,000. Ex. 37. Katakis estimated that in that time frame, each
2 duplex was worth \$410,000 and each single family unit was worth \$205,000 for a total of
3 \$6,355,000. Doc. 1237, Transcript, 66:8-19; Ex. 38, page 2. In contrast, Katakis estimated
4 that as of May 28, 2015, each duplex was worth \$253,746.91 and each single family unit
5 was worth \$141,751.25 for a total of \$3,977,710.47. Doc. 1237, Transcript, 66:20-67:5;
6 Ex. 38, page 1. After taking into the cost of marketing and actual sales, Katakis estimates
7 that Plaintiff CEMG lost \$2,353,516.63 in not being able to sell the Lots in 2004-2005.
8 Doc. 1237, Transcript, 67:19-25. Delay in the sale of the Lots cost Plaintiff CEMG
9 \$2,353,516.63.

10 260. Lawrence Rubenstein and Michael McGranahan were appointed Receivers for
11 Plaintiff Fox Hollow HOA from March 2001 to October 2002. Doc. 410, CAC, ¶¶ 106-
12 107. They, and their attorneys, charged Plaintiff Fox Hollow HOA a total of \$28,277.28
13 for their services. Doc. 1237, Transcript, 25:24-26:2; Exs. 4, 5, 6, and 8.

14 261. Plaintiff Fox Hollow HOA, before its incorporation, paid Defendant Richard
15 Sinclair \$15,266.99 in attorney's fees between August 2000 and January 2001. Ex.7,
16 McGranahan Report, page 4, Exs. A and C. During this time Lender GMAC paid \$5,200
17 to this entity. Doc. 1237, Transcript, 28:5-19.

18 262. Plaintiffs reached a settlement with Defendant Mauchley. Doc. 1237, Transcript,
19 68:21-22. To settle the CAC part of their dispute, Defendant Mauchley agreed to transfer
20 to Plaintiffs three pieces of property worth a total of \$460,000 and a \$50,000 promissory
21 note. Ex. 42. Katakis stated that the promissory note is worthless as it was discharged in
22 bankruptcy. Doc. 1237, Transcript, 70:19-25. The total amount set aside to settle the
23 claims contained in the CAC is \$460,000.

24 263. Plaintiffs reached a settlement with Flake Defendants. Doc. 1179. To settle the
25 CAC part of their dispute these Defendants agreed to pay Plaintiffs \$2,625,000 (70% of the
26 total settlement amount of \$3,750,000). Doc. 1237, Transcript, 72:8-10. Katakis stated that
27 a part of that amount was spent on attorney's fees, leaving \$2,297,793 to settle the
28 substantive claims contained in the CAC. Doc. 1237, Transcript, 72:11-73:5; Ex. 44.

1
2 **IV. Motion for Reconsideration**

3 264. Defendant Richard Sinclair sought to file 108 Exhibits in support of his opposition
4 to the motion for default judgment. However, they were submitted late, on May 3, 2016,
5 one week before the prove up hearing. Defendant Richard Sinclair also filed an ex parte
6 motion to postpone the hearing for 90 as his license had been suspended until the end of
7 May. Doc. 1217. The motion was denied and Defendant Richard Sinclair was directed to
8 find alternative transportation. Doc. 1219. On the morning of the hearing, Defendant
9 Richard Sinclair called the court seeking to participate telephonically; his request was
10 denied. The lateness of the filing, together with Defendant Richard Sinclair's absence at
11 the hearing, resulted in the striking of his declaration and exhibits. Doc. 1220

12 265. Defendant Richard Sinclair filed a motion for reconsideration, asserting that there
13 were "new or different facts and circumstances." Doc. 1222, Motion for Reconsideration,
14 1:23-25. The substance of the briefing does not follow through on that assertion. Instead
15 of presenting new facts explaining why his submissions were late and why he failed to
16 attend the hearing, Defendant Richard Sinclair continues to focus his argument on why this
17 court must honor the earlier settlement agreement the state courts have found
18 unenforceable, how Andrew Katakis has orchestrated a criminal conspiracy against him,
19 and how Plaintiffs' counsel must be disqualified. See Doc. 1223. These arguments have
20 been consistently rejected by this court for years. See, e.g. Doc. 642 (denying motion to
21 disqualify Plaintiffs' counsel), Doc. 860 (denying motion to disqualify Plaintiffs' counsel),
22 Doc. 1184 (refusing to reinstate settlement agreement that the California courts have
23 determined unenforceable and refusing to find that Plaintiffs perpetrated fraud on the
24 courts in the State Court Action). Without any concrete, detailed explanations for why he
25 did not file his exhibits in a timely manner and failed to show up at the prove up hearing,
26 Defendant Richard Sinclair's motion for reconsideration is denied.

27 ///

1 **V. Conclusions of Law**

2 266. This court has jurisdiction over this action based on 28 U.S.C. § 1331 federal
3 question jurisdiction and 28 U.S.C. § 1367(a) supplemental jurisdiction.

4 267. Factors which may be considered by courts in exercising discretion as to the entry
5 of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits
6 of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money
7 at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether
8 the default was due to excusable neglect, and (7) the strong policy underlying the Federal
9 Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470,
10 1471–72 (9th Cir. 1986).

11 268. “Upon the entry of default, well-pleaded factual allegations regarding liability are
12 taken as true, but allegations regarding the amount of damages must be proven. Pope v.
13 United States, 323 U.S. 1, 65 S. Ct. 16, 22, 89 L. Ed. 3, 102 Ct. Cl. 846 (1944); see also
14 Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977); Domanus v.
15 Lewicki, 742 F.3d 290, 303 (7th Cir. 2014) (“Any allegations in the complaint relating to
16 liability are considered true, but allegations going to damages are not”). In addition,
17 ‘necessary facts not contained in the pleadings, and claims which are legally insufficient,
18 are not established by default.’ Cripps v. Life Ins. Co. of North Am., 980 F.2d 1261, 1267
19 (9th Cir. 1992) (citing Danning v. Lavine, 572 F.2d 1386, 1388 (9th Cir. 1978)).”
20 Anderson v. Riverwalk Holdings, Ltd., 2016 U.S. Dist. LEXIS 174477, *2-3 (E.D. Cal.
21 Dec. 15, 2016).

22 269. Plaintiffs have stated that “Both Mr. Sinclair and Brandon Sinclair are adults and
23 neither is subject to any legal determination of incompetence. . . .Neither Mr. Sinclair nor
24 Brandon Sinclair is subject to the Servicemen Civil Relief Act.” Doc. 1205, Durbin
25 Declaration, 2:17-21.

26
27 **A. Sufficiency Of The Claims**

28 270. In the CAC, Plaintiffs have raised claims of fraud; civil RICO; unjust enrichment;

1 accounting; and breach of the Fox Hollow Covenants, Conditions, and Restrictions
2 (“CC&Rs”). For damages, Plaintiffs seek money, constructive trust, specific performance,
3 declaratory relief, and injunctive relief. See Doc. 410, CAC, ¶¶ 147-225.

4 271. In the motion for default judgment (Doc. 1203) and proposed FOFCOL (Doc.
5 1226-1), Plaintiffs only address some of the counts included in the CAC. The court finds
6 that Plaintiffs intended them to be support for the actual causes of action prosecuted.

7 272. First, Plaintiffs do not treat the fraud claim as an independent cause of action. In
8 fact, rather than discuss fraud as a claim under California law, Plaintiffs instead discuss the
9 fraud allegations in the context of mail and wire fraud which constitute predicate acts
10 under RICO. See Doc. 1203, Motion, 19:5-26:19. Plaintiffs do not seek any damages from
11 fraud independent of RICO. See Doc. 1226-1, Proposed FOFCOL. Consequently, the
12 court need not rule on the sufficiency of the fraud cause of action.

13 273. Similarly, in later filings, Plaintiffs have not treated their accounting claim as a
14 separate cause of action. California courts have recognized that rather than being a truly
15 independent claim “the nature of a cause of action in accounting is unique in that it is a
16 means of discovery.” Teselle v. McLoughlin, 173 Cal. App. 4th 156, 180 (Cal. App. 3d
17 Dist. 2009). Consequently, the court need not rule on the sufficiency of the accounting
18 cause of action.

20 1. RICO

21 274. “[P]leading requirements should be enforced strictly when default judgments are
22 sought under RICO. Not only is the monetary penalty for failure to answer greatly
23 enhanced by the provisions for treble damages, but a defendant’s reputation may be
24 stigmatized.” Alan Neuman Productions, Inc. v. Albright, 862 F.2d 1388, 1393 (9th Cir.
25 1988), citations omitted. In light of this admonition, Plaintiffs’ RICO claim is read
26 narrowly to focus on the more specific factual assertions.

27 275. Plaintiffs summarize the nature of the RICO claim as Defendants “knowingly
28 agreed, colluded and conspired with each other and among themselves to fraudulently

1 create the false appearance of a homeowners association and individually saleable lots at
2 Fox Hollow in order to obtain loans secured by portions of Fox Hollow and to enrich
3 themselves at the expense of the lenders, the successors to the lenders and the homeowners
4 association, by skimming off loan proceeds, dues collected in the name of the homeowners
5 association, and rental income and tenant deposits, all while concealing their scheme and
6 attempting to shield themselves from individual liability by creating shell companies and
7 churning record title to the property.” Doc. 410, CAC, ¶ 151. The specific actions
8 Plaintiffs cite as constituting the heart of the RICO claim are set out in detail in Paragraph
9 153. Doc. 410, CAC, ¶ 153.

10 276. One part of the scheme was obtaining mortgages for the various Fox Hollow lots in
11 1997-98 while making misrepresentations and withholding material information from the
12 lenders. To borrow the money, Defendants created the false appearance of an arms length
13 transaction between Defendants Flake and Mauchley. Doc. 410, CAC, ¶ 52. The Fox
14 Hollow CC&Rs were executed and recorded on September 16, 1996 by Defendants Flake
15 and Richard Sinclair. Doc. 410, CAC, ¶ 44. It spelled out the operation and rules of the
16 Fox Hollow HOA. Doc. 410, CAC, ¶¶ 45-50. In particular, it required transfer to the HOA
17 of “fee title to the common area for the Fox Hollow Property free and clear of all liens and
18 encumbrances ‘prior to the conveyance of title to the first lot.’” Doc. 410, CAC, ¶ 49. The
19 deeds of trust for these mortgages also included a Planned Unit Development Rider which
20 specified that the loan also included an interest in the HOA and that Defendant Mauchley
21 as the borrower promised to abide by the articles of incorporation of the HOA. Doc. 410,
22 CAC, ¶¶ 57 and 69. The mortgages were conditioned upon the Lots being individually
23 saleable. Doc. 410, CAC, ¶ 63. However, Defendants did not incorporate the Fox Hollow
24 HOA until December 6, 2000. Doc. 410, CAC, ¶ 95. There is still a cloud over the title of
25 the common areas as Defendants refused to transfer them to Fox Hollow HOA. At the
26 time Defendant Mauchley obtained the loans “there was no homeowners association or
27 equivalent entity to own or manage the common area and facilities of the PUD; title to the
28 common area had not been transferred to a homeowners association; and Defendants

1 Richard Sinclair, Mauchley and Flake, and each of them, had no intention at that time to
2 form a homeowners association, to transfer title to the common area, or to charge and
3 collect dues and assessment to maintain the common area and lots, all as required of them
4 in the Fox Hollow CC&Rs and by the conditions of approval by the City of Turlock for the
5 Project.” Doc. 410, CAC, ¶¶ 58 and 70. Plaintiffs allege that Defendants concealed these
6 facts from the Lenders. Doc. 410, CAC, ¶ 58. In obtaining the loans, Defendants used
7 mails and/or interstate phone calls or electronic communications. Doc. 410, CAC, ¶ 173.
8 Properties on a Fox Hollow development that did not have an HOA and have been
9 subdivided to be individually saleable are worth less than properties in a project that have
10 those tasks completed. Defendants were aware that whether a Lot was individually
11 saleable was an important distinction in determining the worth of the Properties. In 2000,
12 Defendants sent the Lenders letters through the mail that revealed these problems in a bid
13 to buy back the deeds of trust from the Lenders for less than the amount outstanding on the
14 loans. Doc. 410, CAC, ¶¶ 77 and 85. By misrepresenting the state of the Fox Hollow
15 development when initially obtaining the mortgages, Defendants defrauded the Lenders. A
16 related matter is ownership of the garages associated with the Lots. In obtaining the
17 mortgages, Defendants “concealed from each of the lenders that the corresponding one car
18 garages” for Lots 2, 6, 7, 8, 9, 10, and 18 were “not included in the legal description in the
19 deed of trust for the loan.” Doc. 410, CAC, ¶¶ 59 and 71. Again, this would act to
20 decrease the value of the Lots. Defendants continue to use the state of subdivision and
21 question over title to the garages to frustrate Plaintiff CEMG’s attempts to sell the Lots it
22 owns.

23 277. Another part of the scheme involved misusing the name of Fox Hollow HOA to
24 fraudulently obtain money from the Lenders. The Lenders (and their successors)
25 foreclosed on the various Fox Hollow Lots in 2000-2003. Doc. 410, CAC, ¶ 89. Yet
26 starting on August 1, 2000 (before the HOA’s incorporation), Defendants Richard Sinclair,
27 Mauchley, and Brandon Sinclair represented themselves as the Board of Directors of the
28 Fox Hollow HOA and through the mail demanded monthly dues of \$300 upon the Lenders

1 who successfully foreclosed. Doc. 410, CAC, ¶ 90. GMAC paid the amounts Defendants,
2 representing themselves as Fox Hollow HOA, demanded. Doc. 410, CAC, ¶ 96.

3 278. “Any person injured in his business or property by reason of a violation of section
4 1962 of this chapter [18 U.S.C. § 1962] may sue therefor in any appropriate United States
5 district court and shall recover threefold the damages he sustains and the cost of the suit,
6 including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). Plaintiffs assert that
7 Defendants’ actions violated 18 U.S.C. § 1962(c) and (d). Doc. 410, CAC, ¶ 180. Under
8 federal RICO law, “(c) It shall be unlawful for any person employed by or associated with
9 any enterprise engaged in, or the activities of which affect, interstate or foreign commerce,
10 to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs
11 through a pattern of racketeering activity or collection of unlawful debt. (d) It shall be
12 unlawful for any person to conspire to violate any of the provisions of subsection (a), (b),
13 or (c) of this section.” 18 U.S.C. § 1962(c) and (d). “To state a claim under § 1962(c), a
14 plaintiff must allege ‘(1) conduct (2) of an enterprise (3) through a pattern (4) of
15 racketeering activity.’” Odom v. Microsoft Corp., 486 F.3d 541, 547 (9th Cir. 2007),
16 citations omitted.

17 279. An “‘enterprise’ includes any individual, partnership, corporation, association, or
18 other legal entity, and any union or group of individuals associated in fact although not a
19 legal entity.” 18 U.S.C. § 1961(4). “[A]n association-in-fact enterprise must have at least
20 three structural features: a purpose, relationships among those associated with the
21 enterprise, and longevity sufficient to permit these associates to pursue the enterprise’s
22 purpose.” Boyle v. United States, 556 U.S. 938, 946 (2009). “[B]are assertions of a pattern
23 of racketeering activity do not establish an enterprise.” Doan v. Singh, 617 Fed. Appx.
24 684, 686 (9th Cir. 2015). Plaintiffs’ factual allegations in the CAC adequately describe
25 conduct of an enterprise consisting of “an association-in-fact to own and operate Fox
26 Hollow and divide among themselves money and benefits derived therefrom” with
27 activities connecting Defendants with the enterprise taking place between 1995 and 2001.
28 Doc. 410, CAC, ¶ 167. Each of the Defendants participated and took action on behalf of

1 the association-in-fact.

2 280. A “‘pattern of racketeering activity’ requires at least two acts of racketeering
3 activity, one of which occurred after the effective date of this chapter and the last of which
4 occurred within ten years (excluding any period of imprisonment) after the commission of
5 a prior act of racketeering activity.” 18 U.S.C. § 1961(5). “RICO defines as racketeering
6 activity only acts that are ‘indictable’ (or, what amounts to the same thing, ‘chargeable’ or
7 ‘punishable’) under one of the statutes identified in §1961(1).” RJR Nabisco, Inc. v.
8 European Cmty., 136 S. Ct. 2090, 2102 (2016). Section 1961(1) includes “any act which
9 is indictable under any of the following provisions of title 18, United States Code: ...
10 section 1341 (relating to mail fraud), section 1343 (relating to wire fraud).” 18 U.S.C. §
11 1961(1)(B). Plaintiffs allege multiple acts of mail and wire fraud undertaken by the
12 association-in-fact between 1997 and 2001. Doc. 410, CAC, ¶ 173. Mail fraud is defined
13 as “Whoever, having devised or intending to devise any scheme or artifice to defraud, or
14 for obtaining money or property by means of false or fraudulent pretenses, representations,
15 or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or
16 furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or
17 other article, or anything represented to be or intimated or held out to be such counterfeit
18 or spurious article, for the purpose of executing such scheme or artifice or attempting so to
19 do, places in any post office or authorized depository for mail matter, any matter or thing
20 whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited
21 any matter or thing whatever to be sent or delivered by any private or commercial
22 interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly
23 causes to be delivered by mail or such carrier according to the direction thereon, or at the
24 place at which it is directed to be delivered by the person to whom it is addressed, any such
25 matter or thing, shall be fined under this title or imprisoned not more than 20 years, or
26 both.” 18 U.S.C. § 1341. Wire fraud is defined as “Whoever, having devised or intending
27 to devise any scheme or artifice to defraud, or for obtaining money or property by means
28 of false or fraudulent pretenses, representations, or promises, transmits or causes to be

1 transmitted by means of wire, radio, or television communication in interstate or foreign
2 commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing
3 such scheme or artifice, shall be fined under this title or imprisoned not more than 20
4 years, or both.” 18 U.S.C. § 1343. “Sections 1341 and 1343 reach any scheme to deprive
5 another of money or property by means of false or fraudulent pretenses, representations, or
6 promises.” Carpenter v. United States, 484 U.S. 19, 27 (1987). “[C]auses to be delivered”
7 and “causes to be transmitted” is interpreted broadly. United States v. Garner, 663 F.2d
8 834, 838 (9th Cir. 1981), citing United States v. Maze, 414 U.S. 395, 399 (1974) (“the
9 government may prove the use of the mails for the purpose of executing a scheme to
10 defraud by showing that a defendant acted knowing that the use of the mails would follow
11 in the ordinary course of business, or that, even when not intended, such use was
12 reasonably foreseeable. In addition, the mailings need not be an essential part of the
13 contemplated scheme, they need only be made for the purpose of executing the scheme”).
14 Plaintiffs have alleged multiple acts of mail and/or wire fraud in connection with their
15 scheme. Each of the Defendants intended to participate in the scheme to defraud the
16 Lenders.

17 281. These activities affected interstate commerce. “A minimal effect on interstate
18 commerce satisfies this jurisdictional element.” United States v. Bagnariol, 665 F.2d 877,
19 892-93 (9th Cir. 1981) (noting that “interstate telephone calls” could suffice). Plaintiffs
20 specifically alleged that Defendant Richard Sinclair sent a letter via facsimile to Mr.
21 Sessions of GMAC Mortgage in Hawaii on May 5, 1998 providing financial information
22 on Defendant Mauchley in support of the mortgage application. Doc. 410, CAC, ¶ 153.

23 282. Plaintiffs have stated RICO claims against all the Defaulted Defendants.
24

25 **2. Unjust Enrichment**

26 283. “The elements of unjust enrichment are ‘receipt of a benefit and unjust retention of
27 the benefit at the expense of another.’ This equitable test does not turn merely on the
28 transfer of money or other benefits from one party to another — it requires injustice.”

1 Berger v. Home Depot USA, Inc., 741 F.3d 1061, 1070 (9th Cir. 2014), citing Lectrodryer
2 v. SeoulBank, 77 Cal. App. 4th 723, 726 (Cal. App. 2d Dist. 2000) and Doe I v. Wal-Mart
3 Stores, Inc., 572 F.3d 677, 684 (9th Cir. 2009). In the CAC, Plaintiffs refer to the general
4 facts alleged and do not specifically state what constitutes unjust enrichment. See Doc.
5 410, CAC, ¶¶ 182-184. Plaintiffs do not explain what allegations fit an unjust enrichment
6 claim in their motion for default judgment. See Doc. 1203. In their later briefing, Plaintiffs
7 suggest that their unjust enrichment cause of action is based on the failure to return
8 security deposits to tenants in 2002; Plaintiffs noted that the tenants had assigned their
9 rights to Plaintiff CEMG. See Doc. 1226-1, Proposed FOFCOL, ¶¶ 176-183, citing Doc.
10 410, CAC, ¶¶ 1, 89, 111, 112, 115, 116, 118, 119, 121, and 151. The most pertinent
11 allegations in the CAC state that Defendants “entered in to written leases on units 104, 133
12 and 135 with tenants and then refused the demands for return of first month’s rent and
13 security deposits in the amounts of \$1,825, \$1,850 and \$1,895 respectively which such
14 rights of the tenants have been assigned to Plaintiff CEMG.” Doc. 410, CAC, ¶ 116.
15 Plaintiff alleges that Defendants did not actually hold title to these properties at the time
16 they rented them out. Doc. 410, CAC, ¶ 115. If Defendants did not have actual authority
17 to lease out the property, the lease agreements were voidable. See Lafontaine v.
18 Grobstein, 2016 Bankr. LEXIS 2218, *11 n.8 (B.A.P. 9th Cir. June 7, 2016). As Plaintiffs
19 appear to be seeking to enforce the terms of the lease, namely the return of the security
20 deposit, these allegations fail to state a claim for unjust enrichment as it appears there was
21 an agreement which defined the rights of the parties.

22 284. However, “unjust enrichment is an action in quasi-contract, which does not lie
23 when an enforceable, binding agreement exists defining the rights of the parties.” Paracor
24 Fin., Inc. v. GE Capital Corp., 96 F.3d 1151, 1167 (9th Cir. 1996). In the rental context, a
25 lease agreement provides for damages based on breach of contract. See Western Gen. Ins.
26 Co. v. Encino Exec. Plaza, Ltd., 2005 Cal. App. Unpub. LEXIS 3895, *20-21 (Cal. App.
27 2d Dist. Apr. 29, 2005) (“Landlord fails to explain whether equitable relief is available in
28 this situation. If Tenant had withheld payment of the increased operating costs, Landlord

1 might have been limited to seeking standard contract damages as opposed to equitable
2 relief”). Based upon CAC’s factual allegations that the renters and the Defendants had a
3 written lease agreement, no unjust enrichment claim has been stated.
4

5 **3. Constructive Trust**

6 285. Plaintiff CEMG owns Lots 2, 6, 7, 8, 9, 10, and 18 (on which stand the main
7 residential structures) while there is controversy over who owns the associated garages.
8 Doc. 410, CAC, ¶¶ 120, 121, 123, 124, 125, 126, and 128. Plaintiffs assert in counts five
9 and six that Defendants hold these garages in a constructive trust for CEMG’s benefit and
10 seek declaratory and injunctive relief to have ownership over the garages formally
11 transferred. Doc. 410, CAC, ¶¶ 189-202. Federal and California courts have determined
12 that “a constructive trust is an equitable remedy, not a cause of action.” Rasmussen v.
13 Dublin Rarities, 2015 U.S. Dist. LEXIS 24260, *36 (N.D. Cal. Jan. 22, 2015); Lawson v.
14 CitiCorp Trust Bank, FSB, 2011 U.S. Dist. LEXIS 86780 (E.D. Cal. Aug. 5, 2011); PCO,
15 Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP, 150 Cal. App. 4th
16 384, 398 (Cal. App. 2d Dist. 2007). The same is true of the request for declaratory and
17 injunctive relief. Plaintiffs have not stated a cause of action for these two counts. The
18 remedy requested is addressed below.
19

20 **4. Fox Hollow CC&Rs**

21 286. Under California law, CC&Rs “shall be enforceable equitable servitudes, unless
22 unreasonable, and shall inure to the benefit of and bind all owners of separate interests in
23 the development. Unless the declaration states otherwise, these servitudes may be enforced
24 by any owner of a separate interest or by the association, or by both.” Cal Civ. Code §
25 5975(a), formerly codified as Cal. Civ. Code § 1354(a) (repealed 2014).

26 287. “[T]he association shall levy regular and special assessments sufficient to perform
27 its obligations under the governing documents and this act.” Cal. Civ. Code § 5600(a),
28 formerly codified as Cal. Civ. Code § 1366(a) (repealed 2014). The Fox Hollow CC&Rs

1 set out that the HOA would “establish regular monthly assessments for operations and
2 maintenance of the Project...payable in monthly installments on the first day of each
3 month.” Doc. 410, CAC, ¶ 49. Plaintiffs allege that Defendants failed to pay the
4 assessments of the Fox Hollow HOA. Doc. 410, CAC, ¶ 212.

5 288. The Fox Hollow CC&Rs also required Defendant Flake, as trustee of the Julie
6 Insurance Trust, “to convey to the [HOA] fee title to the common area for the Fox Hollow
7 Property free and clear of all liens and encumbrances ‘prior to the conveyance of title to
8 the first lot.’” Doc. 410, CAC, ¶ 49. On March 20, 2003, Plaintiff Fox Hollow HOA
9 demanded that Defendants deliver a deed transferring title over the common area to the
10 HOA. Doc. 410, CAC, ¶ 217. Defendants have refused to do so. Doc. 410, CAC, ¶ 218.

11 289. Plaintiff Fox Hollow HOA has stated a cause of action based on breach of the Fox
12 Hollow CC&Rs.

13
14 **B. Eitel Factors**

15 290. Factors which may be considered by courts in exercising discretion as to the entry
16 of a default judgment include: (1) the possibility of prejudice to the plaintiff, (2) the merits
17 of plaintiff’s substantive claim, (3) the sufficiency of the complaint, (4) the sum of money
18 at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether
19 the default was due to excusable neglect, and (7) the strong policy underlying the Federal
20 Rules of Civil Procedure favoring decisions on the merits. Eitel v. McCool, 782 F.2d 1470,
21 1471–72 (9th Cir. 1986).

22 291. Regarding the first and sixth factors, default was entered because Defendants
23 Richard Sinclair, Brandon Sinclair, Lairtrust, and Capstones consistently violated court
24 orders and repeatedly refused to fulfill their responsibilities to participate in discovery.
25 Doc. 1070. Defendant Richard Sinclair declared that due to his lack of assets, monetary
26 sanctions could not induce him to obey court orders. Doc. 982. This case was first filed in
27 federal court in 2003. A plaintiff suffers prejudice if they “would be denied the right to
28 judicial resolution of the claims presented, and would be without other recourse for

1 recovery.” Warner Bros. Home Entm’t v. Jimenez, 2013 U.S. Dist. LEXIS 97139, *9 (C.D.
2 Cal. July 8, 2013), quoting Electra Entm’t Grp. Inc. v. Crawford, 226 F.R.D. 388, 392
3 (C.D.Cal.2005). Plaintiffs in this case would suffer prejudice if default judgment is not
4 entered. As default was ordered by the court at the end of a series of sanctions, there was
5 no excusable neglect by Plaintiffs.

6 292. The second and third factors are related and often analyzed together. See DR JKL
7 Ltd. v. HPC IT Educ. Ctr., 749 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010). The discussion
8 above has established that Plaintiffs have sufficiently stated causes of action against the
9 Defaulted Defendants. In examining the merits of the claim, defendants may present
10 evidence but must do so in opposition to the motion for default judgment to be deemed
11 timely. See NewGen, LLC v. Safe Cig, LLC, 840 F.3d 606, 616 n.7 (9th Cir. 2016). In
12 this case, Defendant Richard Sinclair’s submissions were untimely submitted and stricken
13 from the record for his failure to appear at the hearing. Doc. 1220. The evidence submitted
14 by Plaintiffs supports the merits of their substantive claims. Defendant Richard Sinclair
15 has raised the concern that Defendant Brandon Sinclair was a minor during at least part of
16 the time period over which the events of this case took place. Defendant Brandon
17 Sinclair’s birth date is July 16, 1978. Exhibit 49, Response to Interrogatories Signed by
18 Richard Sinclair, page 3. He turned 18 in 1996, before the main part of the RICO
19 violations occurred. Defendant Brandon Sinclair personally took part in the RICO scheme
20 in 2000. Further, the overall case law on the actions of minors suggests that as long as
21 Defendant Brandon Sinclair took active part in the RICO violations, he can be found
22 financially liable. In a criminal RICO case, the Ninth Circuit stated that “Nothing in the
23 [Juvenile Delinquency Act] or in any other statute suggests that Congress intended to
24 create a loophole resulting in no rehabilitation or punishment whatsoever for persons who
25 indisputably committed a serious continuing crime, merely because the crime happened to
26 span the defendant’s eighteenth birthday.... we adopt the prevailing view that, for
27 prosecution of a defendant indicted at age 18, 19, or 20, pre-majority acts may be admitted
28 as substantive proof of a continuing crime such as the substantive RICO count here.”

1 United States v. Camez, 839 F.3d 871, 875-76 (9th Cir. 2016). Looking at related non-
2 RICO law, invites the same conclusion. In one fraud case, parents passed funds through
3 their minor children’s account to try to hide the monies during a bankruptcy; the district
4 court found both the parents and the children jointly and severally liable for repaying the
5 bankruptcy estate. Boyer v. Belavilas, 474 F.3d 375, 377 (7th Cir. 2007). The Seventh
6 Circuit modified the judgment, finding the minor persons not personally liable on the basis
7 that “§ 17(c) of the [Uniform Transfers to Minors Act] addresses the problem of lifetime
8 liability arising from events a minor cannot control: ‘A minor is not personally liable for an
9 obligation arising from ownership of custodial property or for a tort committed during the
10 custodianship unless the minor is personally at fault.’ The children’s obligation to return
11 the fraudulent conveyance is one ‘arising from ownership of custodial property’. Unless a
12 minor is ‘at fault’--and the bankruptcy judge held that neither Angelo nor Nickolas bears
13 any fault--all obligations that relate to the UTMA account must be satisfied either from the
14 custodial assets under § 17(a) or by the custodian.” Boyer v. Belavilas, 474 F.3d 375, 378-
15 39 (7th Cir. 2007). In litigation, costs may be taxed against a minor. Petri v. Kestrel Oil &
16 Gas Proprs., L.P., 2013 U.S. Dist. LEXIS 8695, *20 (S.D. Tex. Jan. 17, 2013). The fact
17 that Brandon Sinclair was a minor until 1996 would not affect this judgment.

18 293. For the fourth factor, “Default judgment is disfavored when a large amount of
19 money is involved or is unreasonable in light of the defendant’s actions.” Joe Hand
20 Promotions, Inc. v. Burleson, 2011 U.S. Dist. LEXIS 119191, *9 (E.D. Cal. Oct. 14,
21 2011). This is a RICO case in which the Defendants are alleged to have undertaken a
22 coordinated scheme of defrauding Lenders and owners of the Lots over multiple years.
23 However, Plaintiffs request over \$10 million in damages and “a large amount of money
24 weighs against default judgment.” Chong’s Produce, Inc. v. Pushpak Rests., Inc., 2017
25 U.S. Dist. LEXIS 36498, *9 (N.D. Cal. Feb. 27, 2017). This factor weighs against default
26 judgment. However, courts have the authority to reduce the award for default judgment.
27 See Hanover Ins. Co. v. Realty Bancorp Equities, LLC, 2016 U.S. Dist. LEXIS 140831, *9
28 (C.D. Cal. Oct. 7, 2016); Joe Hand Promotions, Inc. v. Be, 2011 U.S. Dist. LEXIS 124057,

1 *7 (N.D. Cal. Oct. 26, 2011) (“Where a plaintiff’s request for damages is excessive, the
2 court may mitigate the impact of this factor by reducing the amount awarded”).

3 294. The fifth factor is the possibility of dispute concerning material facts. “Because all
4 allegations in a well-pleaded complaint are taken as true after the court clerk enters default
5 judgment, there is no likelihood that any genuine issue of material fact exists.” Elektra
6 Entm’t Group, Inc. v. Crawford, 226 F.R.D. 388, 393 (C.D. Cal. 2005). This conclusion is
7 further reinforced by the fact that Defaulted Defendants have “submitted nothing to
8 contradict the well-pled allegations.” Joe Hand Promotions, Inc. v. Burleson, 2011 U.S.
9 Dist. LEXIS 119191, *10-11 (E.D. Cal. Oct. 14, 2011).

10 295. The seventh factor is the strong policy that favors decisions on the merits. The
11 factor is not dispositive but must be considered alongside the other factors. Maxum Indem.
12 Co. v. Court Servs., 2012 U.S. Dist. LEXIS 79956, *12 (E.D. Cal. June 8, 2012).

13 296. On balance, the factors weigh in favor of granting the motion for default judgment.
14 Striking answers to the CAC was a litigation sanction arrived at after a years-long process
15 whereby the court has unsuccessfully tried to make Defendants Richard Sinclair, Brandon
16 Sinclair, Lairtrust, and Capstone comply with court orders. Defendant Richard Sinclair
17 especially has taken multiple opportunities to frustrate the process of this case, preventing
18 it from reaching a conclusion. At this point, default judgment appears to be the only way to
19 resolve this case.

21 C. Money Damages

22 1. RICO

23 297. “Any person injured in his business or property by reason of a violation of section
24 1962 of this chapter [18 U.S.C. § 1962] may sue therefor in any appropriate United States
25 district court and shall recover threefold the damages he sustains and the cost of the suit,
26 including a reasonable attorney’s fee.” 18 U.S.C. § 1964(c). The trebling of civil RICO
27 damages is mandatory. See Allstate Ins. Co. v. Nassiri, 2013 U.S. Dist. LEXIS 98348, *5-6
28 (D. Nev. July 15, 2013) (“Having reviewed 18 U.S.C. § 1964(c), the court finds that it is

1 required to treble damages”); Beneficial Standard Life Ins. Co. v. Madariaga, 851 F.2d
2 271, 277 (9th Cir. 1988) (“the treble damages mandated by RICO”). Section 1964(c)
3 “requires the plaintiff to establish proximate cause in order to show injury ‘by reason of’ a
4 RICO violation.” Bridge v. Phoenix Bond & Indem. Co., 553 U.S. 639, 654 (2008). Civil
5 RICO allows for joint and several liability. See Beneficial Standard Life Ins. Co. v.
6 Madariaga, 851 F.2d 271, 272 (9th Cir. 1988) (noting that the district court issued a
7 judgment finding defendants joint and severally liable); Fleischhauer v. Feltner, 879 F.2d
8 1290, 1301 (6th Cir. 1989) (“the nature of the RICO offense mandates joint and several
9 liability”).

10 298. As part of the purchase of Lots 3, 7, 9, and 14, Plaintiff CEMG acquired from
11 Conti an assignment of all associated legal and equitable claims. Doc. 1237, Transcript,
12 33:6-16; Ex. 11, pages 3 and 4. “[F]ederal courts have consistently held that parties may
13 assign RICO claims.” HIF Bio, Inc. v. Yung Shin Pharms. Indus. Co., 2006 U.S. Dist.
14 LEXIS 97002, *14 (C.D. Cal. June 9, 2006), citing Lerman v. Joyce Int’l, 10 F.3d 106,
15 112-13 (3rd Cir. 1993) and In re National Mortg. Equity Corp. Mortg. Pool Certificates
16 Sec. Litigation, 636 F. Supp. 1138, 1156 (C.D. Cal. 1986). For these Lots, Plaintiff CEMG
17 (standing in the shoes of Conti) is the proper party to seek RICO damages. Granite Bay
18 Funding was the original lender on the mortgages secured by first deeds of trust for Lots 3,
19 7, 9, and 14 in July 1998; Conti acquired those loans from Granite Bay Funding in August
20 1998. Doc. 410, CAC, ¶ 73. Granite Bay kept the loans for only a month. There is no
21 indication that Granite Bay suffered any financial repercussions due to Defendants’ fraud.
22 Defendants concealed the failure to complete the subdivision through November 18, 1999.
23 Doc. 410, CAC, ¶¶ 77 and 85. When Conti sold Lots 3, 7, 9, and 14 to Plaintiff CEMG in
24 2002, Defendants had already defaulted on the mortgages. Conti sold the loans to Plaintiff
25 CEMG for less than the amount owed. Conti suffered a financial loss of \$510,139.65 due
26 to Defendants’ actions. Ex. 16. The trebled amount is \$1,530,418.95.

27 299. Plaintiff CEMG claims \$292,153.13 in “compliance/rehab costs” for Lots 3, 7, 9,
28 and 14. Ex. 20. Defendant Richard Sinclair objected to this category of damages as much

1 of the money was spent “to spruce up a 20+ year old building.” Doc. 1208, Opposition to
2 Motion for Default Judgment, pages 89-90. At the prove up hearing, Katakis testified that
3 the rehabilitation of those Lots was extensive: “We replaced almost everything inside.
4 When I say everything, I mean everything, from Sheetrock to all flooring, to electrical, all
5 outlets, all cabinetry, all hard surfaces, tile work, all plumbing, all light fixtures, just go on
6 and on. The only things that weren’t replaced for the most part were the foundations and
7 studs and Sheetrock. Everything else had to be replaced.” Doc. 1237, Transcript, 50:17-23.
8 The report by the architect Fergel, who evaluated what was required for the “Proposed
9 Planned Development (P.D.) zoning to convert existing apartments to duplexes and single
10 units” did not call for redoing the interiors; instead, the report recommended installing
11 firewalls for garages, installing firewalls for certain units, eliminating certain roof
12 overhangs, and checking or adding smoke detectors. Ex. 18. Plaintiffs stated that the rehab
13 “included completing the requirements of the City of Turlock for separate ownership of the
14 lots, **and also** a complete renovation of the exteriors and interiors of many of the units that
15 were no longer habitable.” Doc. 401, CAC, ¶ 135, emphasis added. Thus the total figure
16 Plaintiff CEMG requests includes monies expended to make corrections necessary to
17 subdivide Fox Hollow as well as funds spent on other improvements. The evidence
18 presented does not allow for clarifying which expenditures are which. Failing to keep up
19 with general repairs on the individual Lots is not part of Plaintiffs’ RICO claim. See Doc.
20 410, CAC, ¶ 153. Plaintiff CEMG has not provided sufficient evidence to determine how
21 much it spent to complete the changes required to gain approval for subdivision. This
22 request for damages is denied.

23 300. Plaintiff CEMG has owned 17 of the 19 Fox Hollow Lots (all but Lots 1 and 19)
24 since 2003. Doc. 410, CAC, ¶¶ 120-128. Plaintiff CEMG was prevented from selling the
25 Lots to individual buyers due to Defendants’ failure to transfer certain garage spaces to
26 Plaintiff CEMG and the common areas to Plaintiff Fox Hollow HOA. As a consequence,
27 Plaintiff CEMG could not sell their Lots in late 2004, early 2005 when real estate prices
28 were high. Plaintiff CEMG has suffered a loss of \$2,353,516.63 due to the delay. Doc.

1 1237, Transcript, 67:19-25. The trebled amount is \$7,060,549.89.

2 301. Plaintiff Fox Hollow HOA spent \$350,110.95 in 2003 and 2004 rehabilitating Fox
3 Hollow. Doc. 1237, Transcript, 80:4-82:7; Exs. 24-25. But as with Plaintiff CEMG,
4 Plaintiff Fox Hollow HOA has not explained how much of the expense was to make
5 changes required to gain approval for subdivision and how much was general
6 improvement. There is insufficient evidence to determine how much was spent to make
7 the necessary changes. This request for damages is denied.

8 302. Plaintiff Fox Hollow HOA paid Rubenstein, McGranahan, and their attorneys a
9 total of \$28,277.28 for their services which lasted from March 2001 to October 2002. Doc.
10 1237, Transcript, 25:24-26:2; Exs. 4, 5, 6, and 8. Plaintiffs seek to recover sum but have
11 not established how this is a result of Defendants' RICO violations. The receivers took
12 control of the HOA and managed its operations. Plaintiffs have not provided evidence as
13 to how Defendants' fraudulent actions necessitated these fees. This request for damages is
14 denied.

15 303. Before Plaintiff Fox Hollow HOA was formally incorporated, it paid Defendant
16 Richard Sinclair \$15,266.99 in attorney's fees between August 2000 and January 2001.
17 Ex.7, McGranahan Report, page 4, Exs. A and C. Plaintiff Fox Hollow HOA seeks to
18 recover \$5,200 of this amount. Doc. 1226-1, Proposed FOFCOL, 41:16-24 and 64:25-65:2.
19 Fraudulently demanding dues on behalf of a nonexistent HOA was part of Defendants'
20 RICO scheme. Lender GMAC paid \$5,200 in response to those demands. Ex. 9. In this
21 circumstance, GMAC is the proper party to seek relief rather than Plaintiff Fox Hollow
22 HOA. "To determine whether an injury is 'too remote' to allow recovery under RICO and
23 the antitrust laws, the Court applies the following three-factor 'remoteness' test: (1)
24 whether there are more direct victims of the alleged wrongful conduct who can be counted
25 on to vindicate the law as private attorneys general; (2) whether it will be difficult to
26 ascertain the amount of the plaintiff's damages attributable to defendant's wrongful
27 conduct; and (3) whether the courts will have to adopt complicated rules apportioning
28 damages to obviate the risk of multiple recoveries." Oregon Laborers-Employers Health &

1 Welfare Trust Fund v. Philip Morris, Inc., 185 F.3d 957, 963 (9th Cir. 1999), citing
2 Holmes v. Securities Investor Protection Corporation, 503 U.S. 258, 269-70 (1992).

3 GMAC is the direct victim; there was no obligation for GMAC to pay as the HOA did not
4 yet exist. This request for damages is denied.

5 6 **2. Fox Hollow CC&Rs**

7 304. Plaintiffs have presented the testimony of Casey Johnson, a certified public
8 accountant who has reviewed the dues, late charges, special assessments, and finance
9 charges of the Fox Hollow HOA. Doc. 1237, Transcript, 85:15-21.

10 305. Johnson specified that he was testifying to the total amount of HOA dues and
11 charges that Defendants failed to pay, from August 1, 2000 onward. Doc. 1237, Transcript,
12 86:11-14. As part of their RICO claim, Plaintiffs have specifically asserted that the
13 demand for HOA dues “over the period of August through December 2000” was
14 fraudulent. Doc. 410, CAC, ¶ 173. That is because “Defendants had failed and refused to
15 form Fox Hollow HOA as a non-profit mutual benefit corporation until on or about
16 December 6, 2000.” Doc. 410, CAC, ¶ 95. Plaintiffs have consistently asserted that Fox
17 Hollow HOA did not form until that time. See Doc. 1227, Supplemental Briefing (“When
18 Fox Hollow HOA was created in December 2000...”). The theory of the RICO violation
19 is that the non-existence of Fox Hollow HOA before incorporation is what made the
20 demands for HOA dues fraudulent. Thus, Plaintiffs’ request for HOA dues or late fees
21 from Defendants based on the time before the Fox Hollow HOA formed is disallowed.

22 306. Johnson presented Exhibit 47, which contains two alternate summaries of total
23 charges due using simple or compound interest. Johnson also presented Exhibit 48 which
24 laid out who owned the Lots at any given time. Johnson’s testimony and the exhibits
25 provide evidence to support a modified award of monetary damages.

26 307. Johnson concludes, using simple interest, that Capstone owes \$40,384.26 due to
27 ownership of Lot 1 and Lairtrust owes \$40,384.20 due to ownership of Lot 19. Doc. 1237,
28 Transcript, 93:4-9 and 15-18. Exhibit 48 shows that Johnson’s conclusion was based upon

1 ownership in the February 4, 2002 to March 15, 2004 period. Ex. 48, pages 1 and 19.

2 These amounts do not include any HOA dues from 2000.

3 308. Johnson concludes that Mautrst owes \$142,318.06 due to ownership of Lots 1, 2,
4 3, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, and 19. Doc. 1237, Transcript, 93:10-14.
5 However, some of that is based on HOA dues from August-December 2000. Examining
6 Exhibits 47 and 48 reveals that the amounts owed for Lots 1, 2, 5, 11, 15, 17, 18, and 19
7 are completely based on HOA dues assessed in 2000. These amounts are not recoverable.
8 The exhibits also show that the amounts owed for Lots 3, 6, 8, 9, 10, 12, 13, 14, and 16 are
9 partially based on HOA dues assessed in 2000. The figures provided by Johnson must be
10 modified. Defendants levied a \$300 monthly assessment on the first of the month with a
11 10% penalty for failure to pay by the end of the month. Defendants started levying on
12 August 1, 2000 and Fox Hollow HOA was not formed until December 6, 2000. Thus, the
13 levies for August, September, October, November, and December were invalid, for a total
14 of $(\$300 + \$30) \times 5 = \$1,650$. The amount owed Johnson set out for Lots 3, 6, 8, 9, 10, 12,
15 13, 14, and 16 must be reduced by \$1,650 each. Johnson's analysis also calculated finance
16 charges for nonpayment at a rate of 12% annual interest. His summary broke the finance
17 charges out into three periods running (1) August 1, 2000 to March 1, 2011, (2) March 1,
18 2011 to November 24, 2014, and (3) November 24, 2014 to May 10, 2016. Ex. 47. This
19 information does not allow the finance charges for the HOA dues from 2000 to be stripped
20 out. Similarly, the figures provided in Johnson's full report does not set out the
21 information in a manner which would allow that sum to be readily calculated. See Ex. 46.
22 Consequently, no finance charges are awarded. Damages for unpaid HOA assessments
23 are set at \$7,590 for Lot 3, \$3,960 for Lot 6, \$1,320 for Lot 8, \$8, 550 for Lot 9, \$1,320 for
24 Lot 10, \$660 for Lot 12, \$960 for Lot 13, \$8,580 for Lot 14, and \$1,155 for Lot 16, which
25 totals \$34,095.

26
27 **D. Declaratory Relief**

28 **1. Constructive Trust**

1 309. Plaintiffs request that the garages associated with Lots 2, 6, 7, 8, 9, 10, and 18 be
2 transferred to CEMG. Doc. 410, CAC, ¶ 193. As part of the RICO claim, Plaintiffs have
3 asserted that Defendants committed fraud by misleading the Lenders who thought the
4 garages were part of the Lots that they provided mortgage loans for; instead the garages
5 “were not included in the legal description in the deed of trust for the loan on each such
6 lot...and were left out as part of the deal between Defendants Richard Sinclair, Mauchley
7 and Flake in 1997.” Doc. 410, CAC, ¶¶ 59 and 71. In 2008, Defendant Richard Sinclair,
8 on behalf of Defendants Mauchley and Mauctrst, demanded that Plaintiff CEMG and the
9 tenants of Lots 2, 6, 7, 8, 9, 10, and 18 vacate the garages. Doc. 410, CAC, ¶¶ 142 and 143;
10 Ex. 41. In 2007, Defendant Mauchley quitclaimed his interest in the garages in favor of
11 Defendant Lairtrust. Doc. 410, CAC, ¶ 141.

12 310. The structure and organization of the Fox Hollow project leads to the natural
13 assumption that the garages, even though physically separated from the corresponding
14 residences, are automatically part of the associated Lots. For example, the Fox Hollow
15 CC&Rs only provided access easements over the common areas “for the benefit of Lots
16 and Lot Owners” with “Lots” defined as “Lots 1-19.” Doc. 410, CAC, ¶¶ 47 and 51. If the
17 garage units were to be treated as independent units, their owners would have no easement
18 to access them under the Fox Hollow CC&Rs.

19 311. “One who gains a thing by fraud, accident, mistake, undue influence, the violation
20 of a trust, or other wrongful act, is, unless he or she has some other and better right thereto,
21 an involuntary trustee of the thing gained, for the benefit of the person who would
22 otherwise have had it.” Cal. Civ. Code § 2224. “To properly allege the remedy of the
23 imposition of a constructive trust, a pleading requires: (1) facts constituting the underlying
24 cause of action, and (2) specific identifiable property to which the defendant has title.”
25 Jaffee v. Carryl, 2016 U.S. Dist. LEXIS 83224, *9 (C.D. Cal. June 27, 2016), citing
26 Michaelian v. State Comp. Ins. Fund, 50 Cal. App. 4th 1093, 1114 (Cal. App. 5th Dist.
27 1996). “A plaintiff seeking imposition of a constructive trust must show: (1) the existence
28 of a res (property or some interest in property); (2) the right to that res; and (3) the

1 wrongful acquisition or detention of the res by another party who is not entitled to it.”

2 Mattel, Inc. v. MGA Entm’t, Inc., 616 F.3d 904, 909 (9th Cir. 2010), citing Communist
3 Party v. 522 Valencia, Inc., 41 Cal. Rptr. 2d 618, 623 (Cal. App. 1st Dist. 1995).

4 “Constructive trusts are creatures of equity. In dealing with them, equity will disregard
5 mere form, and will ascertain and act on the substance of things, regarding that as done
6 which should have been done. The determination of whether a particular transaction is
7 unconscionable is not governed by hard and fast rules, but is committed largely to the
8 enlightened conscience of the individual judge, subject to the revisionary action of
9 appellate tribunals.” United States v. Pegg, 782 F.2d 1498, 1501 (9th Cir. 1986), quoting
10 60 Cal. Jur. 3d Trusts § 287 (1980).

11 312. Plaintiffs have identified the real property at issue. The garages were meant to
12 have been attached to the deeds of trust securing Lots 2, 6, 7, 8, 9, 10, and 18. Defendants
13 have retained an interest in the garages through misrepresentation. A constructive trust is
14 properly imposed on the garages for the benefit of Plaintiff CEMG.

15 16 **2. Fox Hollow CC&Rs**

17 313. Plaintiffs also request that the common areas be transferred to the Fox Hollow
18 HOA. The CAC alleges that Defendants violated the Fox Hollow CC&R by refusing to
19 turn over the common areas. Doc. 410, CAC, ¶¶ 217 and 218.

20 314. In response, Defendant Richard Sinclair claims that the common areas were
21 “already deeded to Plaintiffs.” Doc. 1208, Opposition to Motion for Default Judgment,
22 page 93. However, Plaintiffs have asserted that Defendants continue to claim ownership
23 over those areas. In 2008, Defendant Richard Sinclair, on behalf of Defendant Mauctrst,
24 demanded that Plaintiffs and Fox Hollow tenants stop using the common areas including
25 the driveway. Doc. 410, CAC, ¶ 146; Ex. 40. At the prove up hearing, Katakis specifically
26 testified that Defendant Richard Sinclair had attempted to interfere with Plaintiffs’ and
27 their tenants’ use of the common area. Doc. 1237, Transcript, 59:12-23.

28 315. Declaratory relief is needed to affirm that the common areas of the Fox Hollow

1 project properly belong to the HOA per the Fox Hollow CC&R.
2

3 **VI. Order**

4 316. Default judgment is granted in favor of Plaintiffs CEMG and Fox Hollow HOA
5 against the Defaulted Defendants for civil RICO and in favor of Plaintiff Fox Hollow HOA
6 against the Defaulted Defendants for breach of the Fox Hollow CC&Rs.

7 317. Defaulted Defendants' RICO violations caused Conti \$510,139.65 in damages and
8 Plaintiff CEMG of \$2,353,516.63 in damages. Conti has assigned its rights to Plaintiff
9 CEMG. Treble damages apply. Plaintiff CEMG would be awarded \$8,590,968.84 against
10 the Defaulted Defendants, jointly and severally.

11 318. The settlement with Defendant Mauchley and the Flake Defendants has yielded
12 \$460,000 and \$2,297,793 respectively in funds available to satisfy this judgment. The total
13 sum of \$2,757,793 shall be used to offset the RICO award. Thus, the amount awarded to
14 Plaintiff CEMG against the Defaulted Defendants is reduced to \$5,833,175.84.

15 319. Defendants Capstone, Lairtrust, and Mautrst violated the Fox Hollow CC&Rs by
16 failing to pay HOA dues. Plaintiff Fox Hollow HOA is awarded \$40,384.26 against
17 Capstone, \$40,384.20 against Lairtrust, and \$34,095 against Mautrst.

18 320. Defaulted Defendants' fraudulent conduct resulted in a cloud over the title of
19 certain garage lots. Plaintiff CEMG is entitled to and owns and holds the right to
20 possession of Lots 2A, 6A, 7A, 8A, 9A, 10A and 18A of the Fox Hollow property
21 according to Fox Hollow, a subdivision, recorded in the Official Records of Stanislaus
22 County, California, on March 6, 1996, in Book 37 of Maps, Page 37, and Fox Hollow No.
23 2, a subdivision, recorded in the Official Records of Stanislaus County, California, on July
24 21, 1998, in Book 38 of Maps, Page 19 (the "detached garage lots") as of the
25 commencement of the action in April 2003, and such Defaulted Defendants and each of
26 them have no ownership of or right to exclude Plaintiffs or any of the tenants at Fox
27 Hollow from any such detached garage lots. Defendants Richard Sinclair, Mautrst, and
28 Lairtrust, and each of them, and their agents, servants, and employees, and all other

1 persons acting under, in concert with or for them, are permanently enjoined from asserting,
2 claiming or communicating to tenants at the Fox Hollow property (located at 152 20th
3 Century Boulevard, Turlock, Stanislaus County, California) that they or any of them hold
4 or claim any ownership or right to possession for the detached garage lots or otherwise
5 from interfering with the use and enjoyment of any of the detached garage lots by Plaintiffs
6 and the tenants at the Fox Hollow property.

7 321. Defaulted Defendants' fraudulent conduct resulted in a cloud over the title of the
8 common areas. Plaintiff Fox Hollow HOA is entitled to ownership in and the right to
9 possession of the Common Area and Access Easement and Public Utility Easement
10 depicted on Fox Hollow No. 2 subdivision map filed of record in Stanislaus County,
11 California, on July 21, 1998, in Book 38, Page 19 (the "Fox Hollow Common Area") as of
12 the commencement of the action in April 2003, and such Defaulted Defendants and each of
13 them have no ownership of or right to exclude Plaintiffs or any of the tenants at Fox
14 Hollow from the Fox Hollow Common Area. Defendants Richard Sinclair and Mautcrst,
15 and each of them, and their agents, servants, and employees, and all other persons acting
16 under, in concert with or for them, are permanently enjoined from asserting, claiming or
17 communicating to tenants at Fox Hollow that they or any of them hold or claim any
18 ownership or right to possession for the Fox Hollow Common Area or otherwise from
19 interfering with the use and enjoyment of the Fox Hollow Common Area by Plaintiffs and
20 the tenants at the Fox Hollow property.

21 322. Plaintiffs may file a motion for attorney's fees and cost bill in accord with Local
22 Rules 292 and 293.

23 323. The remainder of this action is dismissed in its entirety with prejudice.

24 IT IS SO ORDERED.

25 Dated: March 31, 2017

26 
27 SENIOR DISTRICT JUDGE
28