

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RICHARD SINCLAIR, et al.

1:03-cv-05439-OWW-DLB

Plaintiffs,

MEMORANDUM DECISION REGARDING
DEFENDANTS' MOTION TO DISMISS
(Doc. 422)

v.

FOX HOLLOW OF TURLOCK OWNERS
ASSOCIATION, et al.

Defendants.

I. INTRODUCTION.

This case is a consolidation of three actions: An action commenced by Plaintiff Fox Hollow of Turlock Homeowners' Association ("Fox Hollow") against Richard Sinclair, Brandon Sinclair, Gregory Mauchley, Lairtrust, LLC, Capstone, LLC, Mauctrst, LLC, and Stanley Flake as Trustee of Capstone Trust, Case No. CV-F-03-5439 OWW/DLB ("Fox Hollow Action"); an action commenced by California Equity Management Group, Inc. ("CEMG") against Mauctrst LLC, Gregory Mauchley, Diana Mauchley, Lairtrust LLC, Richard Sinclair, Deborah Sinclair, Sinclair Enterprises, Inc., Capstone, LLC, Brandon Sinclair, Stanley Flake, and Stanley Flake as Trustee of the F. Hanse Trust and of the Julie Insurance Trust Case No. CVF- 03-5774 OWW/DLB ("CEMG Action"); and an action commenced by Lairtrust LLC, Mauctrst LLC, and Capstone LLC against

1 Fox Hollow, Andrew Katakis, and California Equity Management Group,
2 Inc. in the Stanislaus County Superior Court, Case No. 322675
3 ("Lairtrust Action"), removed to this Court and consolidated with
4 the Fox Hollow and CEMG Actions by Order filed on October 6, 2003
5 ("Consolidated Federal Actions").

6 Fox Hollow filed its original complaint in this action on
7 April 4, 2003. Fox Hollow filed a first amended complaint ("Fox
8 Hollow's FAC") on July 15, 2003. On June 5, 2003, CEMG filed its
9 initial complaint in this action. CEMG filed a third amended
10 complaint ("CEMG TAC") on June 22, 2007. (Doc. 300).

11 On July 21, 2010, Fox Hollow and CEMG were granted leave to
12 file a consolidated amended complaint. (Doc. 409). Fox Hollow and
13 CEMG ("Plaintiffs") filed the operative consolidated complaint
14 ("Consolidated Complaint") on July 21, 2010. (Doc. 410).

15 Defendants Capstone LLC ("Capstone"), Lairtrust LLC
16 ("Lairtrust"), and Mautrst LLC ("Mautrst") (collectively,
17 "Defendants") filed a motion to dismiss the Consolidated Complaint
18 on August 10, 2010. (Doc. 422). Plaintiffs filed opposition to
19 the motion to dismiss on October 8, 2010. (Doc. 437). Defendants
20 filed a reply to Plaintiffs' opposition on October 18, 2010. (Doc.
21 439). On November 8, 2010, the court conducted a hearing on
22 Defendants motion to dismiss.¹

23 ///

24 ///

26 ¹ The November 8 hearing also encompassed Plaintiffs' motion to dismiss the
27 cross-complaint filed by Defendants Gregory Mauchly, Brandon Sinclair, and
28 Richard Sinclair and Plaintiffs' alternative motion for more definite statement.
(Docs. 431, 432, 434, 435). Plaintiffs' motions will be resolved in a separate
memorandum decision.

1 **II. FACTUAL BACKGROUND.**

2 This action arises out of an alleged fraudulent scheme
3 concerning a thirty-five unit town home complex in Turlock,
4 California, known as Fox Hollow of Turlock ("the Property").
5 Plaintiff Fox Hollow is the home owners' association ("HOA") for
6 the Property. Plaintiff CEMG is the record owner of lots contained
7 within the Property, the successor in interest to lenders who
8 extended loans secured by lots within the Property, and the
9 assignee of the rights of certain tenants who entered into leases
10 for units contained in the Property. Mautrst, Lairtrust, and
11 Capstone are limited liability companies that were allegedly used
12 to convert HOA funds, effect property transfers, obtain loans,
13 prosecute dilatory lawsuits, and to carry out other parts of the
14 alleged schemes that form the basis for the Racketeer Influenced
15 and Corrupt Organizations Act ("RICO")² claims advanced in the
16 Consolidated Complaint.

17 **Fox Hollow's FAC**

18 Fox Hollow filed its FAC on July 15, 2003. (Motion to Dismiss,
19 Ex. A). Fox Hollow's FAC named Richard Sinclair, Brandon Sinclair,
20 Gregory Mauchley, Mautrst LLC, Capstone Trust, Stanley Flake,
21 Lairtrust LLC, Capstone LLC, and Does 1 through 10 as Defendants.
22 Fox Hollow's FAC contained the general allegation that:

23 at all times material hereto, each defendant named in
24 this complaint was the agent, employee, or servant of the
25 other defendants, and was at all times material hereto
26 acting within the course and scope of said agency,
27 employment, or servitude with the permission and consent
28 of the other defendants

28 ² 18 U.S.C. § 1961 *et seq.*

1 (Fox Hollow's FAC at 3).³

2 According to Fox Hollow's FAC, in 1993, Defendant Richard
3 Sinclair represented to the Turlock City Counsel that he was the
4 owner of the Property and applied to convert the Property from an
5 apartment complex into a subdivision comprised of air and space
6 condominiums. (Fox Hollow FAC at 4). The City of Turlock approved
7 the proposed subdivision, subject to requirements imposed by the
8 City's Department of Building and Safety. (Fox Hollow FAC at 4).
9 Richard Sinclair failed to obtain the permits necessary to effect
10 the proposed subdivision. (Fox Hollow FAC at 4).

11 Gregory Mauchley and Mauctrst, LLC acquired the Property in
12 1998 as a multifamily housing project. (Fox Hollow FAC at 4).
13 Neither Mauchley, Mauctrst, nor any other owner of the property had
14 obtained the permits necessary to effect the proposed subdivision
15 at the time Fox Hollow filed the FAC. (Fox Hollow FAC at 4).
16 Although the proposed subdivision was never completed, Gregory
17 Mauchley, Mauctrst LLC, Richard Sinclair, and other Defendants
18 conspired to borrow funds secured by individual lots within the
19 Property from lenders such as GMAC Mortgage, Bank One, Advanta
20 Mortgage, ContiMortgage, and HFC. (Fox Hollow FAC at 5).
21 Mauchley, Mauctrst LLC, and other Defendants collectively obtained
22 nineteen separate loans secured by nineteen individual lots
23 containing multiple units. (Fox Hollow FAC at 5). Gregory
24 Mauchley and Mauctrst encountered difficulty in making payments on
25 loans secured by the Property, and in or about August 2000,

26
27 ³ Although this broad, conclusory allegation of agency is insufficient under
28 contemporary pleading standards, Fox Hollow's FAC pre-dated recent refinements
to the Supreme Court's pleading jurisprudence.

1 financial instructions began to initiate foreclosures on the real
2 property collateral. (Fox Hollow FAC at 5).

3 After an unsuccessful attempt at reorganization pursuant to
4 Chapter 11 of the U.S. Bankruptcy Code in the year 2000, Mautrst
5 sought to transfer the Property to Gregory Mauchley. (Fox Hollow
6 FAC at 5). Additionally, Richard Sinclair, as attorney for
7 Mautrst LLC and Gregory Mauchley, filed numerous lawsuits against
8 lenders in order to delay or reverse foreclosure sales in June,
9 July, and August of 2000. (Fox Hollow FAC at 5-6).

10 In or about July 2000, purporting to act as the Board of
11 Directors for the Fox Hollow HOA, Richard Sinclair, Brandon
12 Sinclair, and Gregory Mauchley entered into a contract appointing
13 Richard Sinclair as the attorney for the HOA. (Fox Hollow FAC at
14 6). In fact, the HOA was not established until December 6, 2000,
15 the date on which Articles of Incorporation were filed with the
16 California Secretary of State. (Fox Hollow FAC at 8). Further, no
17 common area was ever deeded to the HOA as required by the
18 Declaration of Covenants, Conditions, and Restrictions ("CC&R's")
19 applicable to the Property; instead, the common area was deeded
20 from Stanley Flake to Gregory Mauchley and then to Mautrst LLC.
21 (Fox Hollow FAC at 6).

22 Although the HOA was not established until December 2000, in
23 October of 2000, Richard Sinclair began attempting to collect HOA
24 dues of \$300.00 per month per parcel. (Fox Hollow FAC at 6).
25 Richard Sinclair used monies received as HOA dues to fund Mauchley
26 and Mautrst's foreclosure litigation, to pay himself legal fees,
27 to pay management fees to himself and to his son Brandon Sinclair,
28 and to purchase insurance for Mautrst. (Fox Hollow FAC at 7).

1 Richard Sinclair did not use the HOA dues collected for the
2 maintenance and care of the Property. (FAC at 7). Richard Sinclair
3 did not attempt to collect any monthly dues for units owned by
4 Mauchley or Mautrst. (Fox Hollow FAC at 7).

5 On February 1, 2001, Bank One National Association, an owner
6 of units at the Property through foreclosure, sued the Fox Hollow
7 HOA alleging, *inter alia*, failure to maintain the Property and
8 breach of fiduciary duty. (Fox Hollow FAC at 8). The Fox Hollow
9 HOA was subsequently placed in receivership from March 2001 through
10 October 2002. (Fox Hollow FAC at 9). Neither Mauchley, Mautrst,
11 nor Richard Sinclair paid HOA dues for the units they owned despite
12 the receiver's collection attempts. (Fox Hollow FAC at 9). On
13 October 1, 2002, the Fox Hollow HOA held an election and elected
14 new members of the Board of Directors. (Fox Hollow FAC at 9).

15 Fox Hollow's FAC asserted a RICO claim against Richard
16 Sinclair and "Does 1 through 10." (Fox Hollow FAC at 9).
17 Specifically, the FAC averred that Richard Sinclair operated the
18 Fox Hollow HOA as an enterprise engaged in a pattern of extortion
19 and mail fraud, and breach of his fiduciary position to obtain
20 secret profits. (Fox Hollow FAC at 9-11). The gravamen of the
21 RICO claim asserted in Fox Hollow's FAC was that the HOA collected
22 dues to which it was not entitled and used monies collected as dues
23 for improper purposes such as paying Richard Sinclair legal fees
24 and diverting funds to Brandon Sinclair, Gregory Mauchley, and
25 Mautrst. (Fox Hollow FAC at 9-11). Fox Hollow's FAC also
26 asserted a conspiracy cause of action that alleged that "all
27 defendants" conspired to use fraudulently use the HOA for their
28 collective benefit. (Fox Hollow FAC at 17).

1 Fox Hollow's FAC asserted a claim for unjust enrichment
2 against Richard Sinclair, Brandon Sinclair, Mautrst LLC, and "Does
3 1 through 10" arising out of Defendants' failure to pay dues and
4 conversion of monies paid by others as dues. (Fox Hollow's FAC at
5 16-18).

6 **CEMG's TAC**

7 CEMG filed its TAC on June 22, 2007.⁴ CEMG's TAC named
8 Mautrst LLC, Gregory Mauchley, Capstone LLC, Stanley M. Flake,
9 Brandon Sinclair, Lairtrust LLC, and Richard Sinclair, among
10 others, as Defendants. (CEMG TAC at 1). CEMG's TAC asserted that,
11 at all times relevant, Mautrst was the alter ego of Gergory
12 Mauchley, Capstone LLC was the alter ego of Brandon Sinclair, and
13 that Lairtrust was the alter ego of Richard Sinclair. (CEMG TAC at
14 4-5).

15 CEMG's TAC alleged that Defendants were the owners and
16 original developers of the Fox Hollow Property. (CEMG TAC at 8).
17 Beginning in or about July 1998, Defendants sought to refinance
18 certain loan obligations secured by deeds of trust on each lot.
19 (CEMG TAC at 10). After first seeking refinancing from a single
20 lender, Defendants decided to refinance individual lots with
21 several different lenders. (CEMG TAC at 10). Each loan was
22 secured by a deed of trust in first position on the lot or lots
23 described therein. (CEMG TAC at 11). Some of the deeds of trust
24 executed and delivered to lenders did not include descriptions of
25 garage spaces that were part of the lots. (CEMG TAC at 12-13). From
26 1999 through 2001, Defendants defaulted in their obligations under

27
28 ⁴ Neither Defendants' motion to dismiss the TAC (Docs. 317, 318), nor Defendants'
motion to dismiss the Consolidated Complaint contend that the TAC was untimely.

1 the promissory notes and deeds of trust, and the respective
2 financial institutions initiated foreclosure proceedings against
3 Defendants. (CEMG TAC at 12).

4 CEMG's TAC asserts causes of action for slander of title and
5 abuse of process against Defendants. The slander of title claim is
6 based on a letter Defendants allegedly sent to Chicago Title
7 Company on October 12, 2000, which indicated that title to certain
8 lots could not be transferred. (CEMG TAC at 23). The abuse of
9 process cause of action is based on allegations that Richard
10 Sinclair, Gregory Mauchley, Mautrst, Lairtrust, and Capstone,
11 among others, filed various lawsuits in order to obtain unfair
12 advantages and to prevent foreclosures and transfers of certain
13 lots within the Property. (CEMG FAC at 25-27). CEMG's TAC also
14 alleges that Defendants falsely represented to tenants of certain
15 lots that Defendants were the owners of such lots in order to
16 collect rents and security deposits that were in fact owed to
17 CEMG's predecessors in interest. (CEMG TAC at 19- 21).

18 CEMG's TAC alleges two causes of action for fraud against all
19 Defendants. CEMG's first fraud claim is based on Defendants'
20 alleged false representations to lenders regarding the inclusion of
21 garage spaces in the legal description of certain lots. (CEMG TAC
22 at 16). CEMG's second fraud claim is based on Defendants alleged
23 loan financing scheme, whereby Defendants conspired to defraud
24 lenders, *inter alia*, by (1) subdividing the Property and
25 transferring title among themselves in order to avoid liability on
26 loans and other debts relating to the lots; (2) filing legal
27 proceedings in order to avoid loans and debts; (3) failing to
28 comply with conditions imposed by the City of Turlock required to

1 effect proper subdivision of the Property; (4) failing to properly
2 form the HOA; (5) refusing to convey ownership and rights in
3 certain garages; (6) collecting rents and deposits for properties
4 not owned by Defendants; and (7) misappropriating funds from the
5 HOA. (CEMG TAC at 28-29).

6 CEMG's TAC asserts a RICO claim against all Defendants.
7 CEMG's TAC specifically alleges that Richard Sinclair, Brandon
8 Sinclair, and Gregory Mauchley, through the enterprise of the Fox
9 Hollow HOA, made fraudulent demands for dues to lenders and
10 tenants. (CEMG TAC at 30).

11 **The Consolidated Complaint**

12 The Consolidated Complaint contains a detailed history of the
13 Fox Hollow Property. According to the Consolidated Complaint,
14 Defendants Richard Sinclair and his spouse originally purchased the
15 Property in 1988 after obtaining approval from the City of Turlock
16 to construct an apartment complex. (CC at 7). After the Sinclairs
17 lost the property to foreclosure, Richard Sinclair contacted
18 Defendants Flake and Mauchley and discussed a plan to reacquire the
19 Property from the lender. (CC at 10-11). Pursuant to such
20 discussions, Richard Sinclair formed a trust for Mauchley in 1995
21 named "Mauctrst," and Defendant Flake, as Trustee of the Julie
22 Insurance Trust, purchased the Property from the lender on or about
23 October 31, 1995 for 1.27 million dollars. (CC at 11).

24 In 1997 Richard Sinclair, Mauchley, and Flake engaged in a
25 title churning and loan financing scheme by creating the false
26 appearance of a planned unit development with a homeowners
27 association and the false appearance of arms length transactions in
28 order to borrow more than \$1.4 million against the Fox Hollow

1 Property. (CC at 12). As part of the scheme, Defendant Richard
2 Sinclair assisted Defendant Mauchley in obtaining loans on Lots 1,
3 11, 18 and 19, each in the amount of \$119,000, and an additional
4 loan in the amount of \$1 million against the balance of the Fox
5 Hollow Property, from GMAC Mortgage Corporation ("GMAC"), secured
6 by first deeds of trust in favor of GMAC. (CC at 13). Also, as
7 part of the scheme, the \$1.9 million price for Fox Hollow was paid
8 to Defendant Flake from the proceeds on the loans from GMAC and by
9 a Deed of Trust in favor of Defendant Flake, as trustee of the
10 Capstone Trust, against the Fox Hollow Property. (CC at 13).
11 Defendant Mauchley falsely represented and promised in the "Planned
12 Unit Development Rider" included in the deeds of trust in favor of
13 GMAC that were recorded against Lots 1, 11, 18 and 19, that there
14 was an existing home owners association responsible for managing
15 common areas at the property. (CC at 13). Defendants Richard
16 Sinclair, Mauchley and Flake also concealed from GMAC that the
17 corresponding one car garage for Lot 18 was on Lot 18A, that the
18 corresponding one car garage for Lot 18 was not included in the
19 legal description under the deed of trust for the loan on lot 18,
20 that the corresponding one car garage for Lot 18 was left as
21 additional collateral for Defendant Flake to receive the balance of
22 the sales price from the creation of the other fifteen(15) lots,
23 and that the corresponding one car garage for Lot 18 was left out
24 as part of the deal between Defendants Richard Sinclair, Mauchley
25 and Flake. (CC at 14).

26 Defendants Richard Sinclair, Mauchley, and Flake continued the
27 fraudulent record title churning and financing scheme at the
28 Property in 1998. (CC at 14). As part of the scheme, Defendant

1 Richard Sinclair, in the name of Defendant Mauchley, filed
2 applications for loans against each of the fifteen remaining lots
3 at the Property; each of these loans was based on each of the lots
4 being individually saleable. (CC at 15). Defendants Richard
5 Sinclair, Mauchley, and Flake concealed from each of the lenders
6 that the corresponding one car garages for certain lots were not
7 included in the legal description in the deed of trust for the loan
8 on each such lot, and that the corresponding one car garages were
9 left as additional collateral for Defendant Flake and were left out
10 as part of the deal between Defendants Richard Sinclair, Mauchley,
11 and Flake in 1997. (CC at 18).

12 By July 1999, several of the loans Defendants obtained through
13 the loan financing scheme had gone into default. (CC at 19).
14 Defendants Richard Sinclair, Mauchly, and Mauctrst attempted to
15 renegotiate or purchase the loans at substantially discounted rates
16 by revealing to the lenders that the lots were not individually
17 saleable due to the fact that the Property had not been properly
18 subdivided. (CC at 19-20). In October 2000, Richard Sinclair,
19 purportedly on behalf of the Fox Hollow HOA, sent a letter to
20 Chicago Title Company, among others, indicating that certain lots
21 could not be transferred because certain prerequisites to
22 subdivision of the property had not been effected. (CC at 21-22).

23 In June of 2000, lenders began completing foreclosures. (CC at
24 22). In response, Richard Sinclair prepared and filed in the name
25 of Mauctrst and Mauchley meritless lawsuits in an attempt to delay
26 the foreclosures. (CC at 24). Beginning in August of 2000,
27 Defendants Richard Sinclair, Mauchly, and Brandon Sinclair,
28 purporting to act on behalf of the Fox Hollow HOA, began demanding

1 HOA dues from various lenders that had foreclosed on lots within
2 the Property. (CC at 23). By December 2002, Richard Sinclair,
3 Mauchley, and Brandon Sinclair had begun pursuing their own
4 foreclosures in the name of the Fox Hollow HOA on various lots for
5 failure to pay assessments. (CC at 23).

6 On or about May 2001, Defendants Mauchley and Flake, as
7 trustee of the Capstone Trust, entered into a settlement agreement
8 with GMAC of a lawsuit commenced by Mauchley and Mauctrst. (CC at
9 26). Pursuant to the settlement, Mauchley agreed to drop the
10 lawsuit, and Defendant Flake, as a purported junior lien holder on
11 Lots 1, 11, 18 and 19, agreed to purchase said lots, with
12 possession of said lots "delivered to Capstone at close of escrow."
13 (CC at 26). Defendants Richard Sinclair, Mauchley and Flake
14 concealed from GMAC during the negotiations that they had agreed
15 among themselves to use Capstone Trust as a straw buyer who would
16 immediately upon purchase of a lot from GMAC, transfer title to
17 such lot to Defendant Richard Sinclair in a second escrow as part
18 of Defendant Richard Sinclair obtaining a loan against such lot in
19 an amount substantially in excess of the amount paid to GMAC. (CC
20 at 26). Defendants Richard Sinclair and Flake split among
21 themselves the net loan proceeds in excess of closing costs and the
22 amount paid to GMAC. (CC at 26).

23 From 2000 to 2002, Defendants Brandon Sinclair, Richard
24 Sinclair, and Lairtrust collected rents on lots they did not own,
25 entered into leases for units they did not own, and refused to
26 return rents and security deposits to tenants. (CC at 28).

27 Defendants continued to assert interests in lots contained
28 within the Property in 2007 and 2008. On or about June 26, 2007,

1 Defendant Richard Sinclair caused a quitclaim deed to be recorded
2 purportedly transferring title to certain lots containing garage
3 spaces from Defendant Mauchley to Defendant Lairtrust. (CC at 31).
4 In 2008, Richard Sinclair commenced multiple unlawful detainer
5 actions in the names of Mauctrst and Lairtrust against CEMG and its
6 tenants, asserting ownership of garage lots and seeking to evict
7 CEMG and its tenants from such garage lots. (CC at 32-33).

8 The Consolidated Complaint alleges, among other causes of
9 action, a RICO claim and an unjust enrichment claim against
10 Mauctrst, Richard Sinclair, Brandon Sinclair, Mauchley, Flake,
11 Lairtrust, and Capstone based on the conduct described in the
12 complaint. (CC at 39, 42).

13 **IV. DISCUSSION.**

14 Defendants contend that the RICO and unjust enrichment claims
15 advanced in the Consolidated Complaint are time-barred because they
16 do not relate back to Plaintiffs' respective complaints filed
17 within the limitations period. Rule 15(c)(1)(B) of the Federal
18 Rules of Civil Procedure provides in part:

19 An amendment to a pleading relates back to the date of the
20 original pleading when . . . the amendment asserts a claim
21 or defense that arose out of the conduct, transaction, or
22 occurrence set out--or attempted to be set out--in the
23 original pleading

24 Claims arise out of the same conduct, transaction, or occurrence if
25 they "share a common core of operative facts" such that the
26 plaintiff will rely on the same evidence to prove each claim.
27 *Williams v. Boeing Co.*, 517 F.3d 1120, 1133 (9th Cir. 2008) (citing
28 *Martell v. Trilogy Ltd.*, 872 F.2d 322, 325-26 (9th Cir. 1989) and
Percy v. S.F. Gen. Hosp., 841 F.2d 975, 978 (9th Cir. 1988)).

1 Where an amendment seeks to assert a new legal theory of recovery
2 based on the same facts alleged in the original pleading, the
3 relation back doctrine applies. See *id.* As the Second Circuit
4 Court of Appeals explained:

5 Where an initial complaint alleges a basic scheme of
6 defrauding investors by misrepresenting earnings and
7 profitability, an allegation of accounts receivable
8 manipulation in an amended complaint will relate back
9 because it is a natural offshoot of that scheme. And
10 where an initial complaint alleges inadequate internal
11 controls leading to overstatement of accounts receivable,
12 a defendant is on notice of a claim in an amended
13 complaint that it improperly recognized revenues and
14 failed to establish sufficient reserves for doubtful
15 accounts in violation of GAAP and industry standards. In
16 contrast, even where an amended complaint tracks the
17 legal theory of the first complaint, claims that are
18 based on an entirely distinct set of factual allegations
19 will not relate back .

20 *Slayton v. Am. Express Co.*, 460 F.3d 215, 228 (2nd Cir. 2006).

21 **A. RICO Claim Against Moving Defendants**

22 **1. Fox Hollow's Claim**

23 Defendants argue that the RICO claim set forth in the
24 Consolidated Complaint does not relate back to Fox Hollow's FAC
25 because:

26 new factual allegations [contained in the Consolidated
27 Complaint] by their sheer number and detail are so vastly
28 different from the original allegations of [Fox Hollow's
FAC] that it cannot be said that the Consolidated
Complaint's RICO cause of action is based on the same
operative facts]

(Defs. Reply at 5). Defendants cite *Friedman v. 24 Hour Fitness
USA, Inc.*, 580 F. Supp. 2d 985, 996-997 (C.D. Cal. 2008) for the
proposition that "the combination of the significant increase and
detail of factual allegations in the Consolidated complaint...and
the escalation of Defendants' potential liability are proper
reasons for not applying the relation back doctrine to this case."

1 (Reply at 5). *Friedman* is distinguishable.

2 First, in *Friedman*, the plaintiffs had not alleged a RICO
3 claim in the pleading they sought to relate their amended complaint
4 back to. The absence of a RICO claim in the pleading the
5 plaintiffs sought to relate their claim back to was critical to the
6 holding in *Friedman*:

7 the fact that RICO and EFTA claims are different in
8 character from the common law fraud and breach of
9 contract claims that were at the core of three previous
10 iterations of the complaint weighs against permitting
11 relation back. The addition of RICO and EFTA to this
12 action escalates Defendant's potential liability: Treble
13 damages and civil forfeiture are available under RICO,
and the EFTA authorizes potentially significant damages
for class actions. See 15 U.S.C. § 1693m(a)(2)(B).
Plaintiffs have filed three amended complaints. They had
numerous opportunities to provide meaningful notice of
their RICO and EFTA theories to Defendant. They failed to
do so.

14 *Id.* at 997. Here, Fox Hollow's FAC alleged a RICO claim. (Fox
15 Hollow FAC at 9). According to Fox Hollow's FAC, the Fox Hollow HOA
16 was the "enterprise" through which Richard Sinclair and doe
17 defendants obtained "secret profits" by collecting money
18 purportedly for the paying of dues to the HOA. (Fox Hollow's FAC
19 at ¶43-44).

20 Second, the RICO claim in *Friedman* was predicated on factual
21 allegations not contained in the original complaint. *Id.* Here,
22 the transactions underlying the Consolidated Complaint's RICO claim
23 were alleged in Fox Hollow's FAC, albeit with less specificity than
24 that provided in the Consolidated Complaint. *Inter alia*, Fox
25 Hollow's FAC alleged that (1) Richard Sinclair diverted monies paid
26 as dues to the HOA to himself as management fees for the HOA, (2)
27 Richard Sinclair diverted monies paid as dues to the HOA to his son
28 by purchasing insurance policies for the benefit of Mauctrst LLC

1 with HOA funds; (3) Mautrst LLC and Richard Sinclair conspired to
2 borrow funds secured by individual lots from GMAC, Bank One,
3 Advanta Mortgage, ContiMortgage, and HFC; (4) Mautrst LLC,
4 Capstone Trust, Capstone LLC, and Lairtrust LLC failed to pay HOA
5 fees; and (5) Richard Sinclair and Mautrst filed numerous dilatory
6 lawsuits to prevent foreclosures and to obtain windfall profits.
7 (Id. at ¶18; ¶45-49). The claims all related to the same nucleus
8 of operative facts related to the Fox Hollow Property. Fox Hollow's
9 FAC also contained the general allegation that:

10 at all times material hereto, each defendant named in
11 this complaint was the agent, employee, or servant of the
12 other defendants, and was at all times material hereto
13 acting within the course and scope of said agency,
14 employment, or servitude with the permission and consent
15 of the other defendants

(Fox Hollow's FAC at 3).⁵

a. Fox Hollow's Allegations Against Mautrst

16 Fox Hollow's FAC contains sufficient factual allegations
17 against Mautrst to permit the RICO claim alleged in the
18 Consolidated Complaint to relate back to Fox Hollow's FAC.
19 According to Fox Hollow's FAC, Mautrst conspired to obtain loans
20 from various banks under false pretenses, conspired to divert Fox
21 Hollow HOA fees, and conspired to file dilatory lawsuits in order
22 to delay foreclosures. Although the Consolidated Complaint pleads
23 additional details regarding Mautrst's role in the RICO
24 enterprise, the additional details refer to the same transactions
25 and the same overall scheme alleged in Fox Hollow's FAC. Because
26 the RICO allegations against Mautrst set forth in the Consolidated

27 ⁵ Although this broad, conclusory allegation of agency is insufficient under
28 contemporary pleading standards, Fox Hollow's FAC pre-dated recent refinements
to the Supreme Court's pleading jurisprudence.

1 Complaint are "natural offshoots" of the allegations made against
2 Mautrst in Fox Hollow's FAC, and because Fox Hollow's FAC alleged
3 an agency relationship between Richard Sinclair and Mautrst, Fox
4 Hollow's FAC put Mautrst on notice of its potential liability
5 under RICO. See *Slayton*, 460 F.3d at 228 (applying relation back
6 doctrine where amended complaint's allegations "amplified, or
7 stated in a slightly different way," claim alleged in original
8 complaint). The motion to dismiss Fox Hollow's RICO claim against
9 Mautrst is DENIED.

10 **b. Capstone and Lairtrust**

11 The only specific factual allegations against Capstone and
12 Lairtrust included in Fox Hollow's FAC concerned the entities'
13 failure to pay HOA dues. However, Fox Hollow's FAC alleged a broad
14 loan financing scheme between Mautrst and Richard Sinclair, and
15 the Consolidated Complaint alleges that Capstone and Lairtrust were
16 entities Richard Sinclair and others used to effect the loan
17 scheme. Fox Hollow's FAC also alleged that Richard Sinclair and
18 others filed dilatory lawsuits in furtherance of the RICO
19 enterprise, and the Consolidated Complaint alleges that Richard
20 Sinclair filed such lawsuits through Lairtrust and Capstone.
21 Conduct alleged in Fox Hollow's FAC is the basis for the
22 Consolidated Complaint's RICO claim against Lairtrust and Capstone.
23 The Consolidated Complaint relates back to Fox Hollow's FAC.

24 **2. CEMG's RICO Claims**

25 On June 22, 2007, CEMG filed a third amended complaint (TAC).
26 (Doc. 300).⁶ CEMG's TAC alleged that, at all times relevant,

27 ⁶ Neither Defendants' motion to dismiss the TAC (Docs. 317, 318) nor the motion
28 to dismiss the Consolidated Complaint allege that the TAC was untimely.

1 Capstone LLC was the alter ego of Brandon Sinclair, Lairtrust was
2 the alter ego of Richard and Deborah Sinclair, and Mauctrst LLC was
3 the alter ego of Gregory Mauchley and Diana Mauchley. (TAC at 4-
4 5). *Inter alia*, CEMG's TAC alleged that the Defendants entered
5 into a conspiracy to improperly subdivide the Fox Hollow property,
6 obtain loans on the lots while transferring title to the lots as
7 part of a scheme to avoid liability on the loans and other debts
8 related to the lots, file legal proceedings to avoid loans and
9 debts, and misappropriate funds from the HOA, (CEMG TAC at 29-30);
10 these same allegations form the basis of the Moving Defendant's
11 RICO liability as stated in the Consolidated Complaint.

12 The RICO claim alleged in the Consolidated Complaint is based
13 on the same operative facts set forth in the TAC. Although the
14 Consolidated Complaint adds new details, the allegations against
15 Moving Defendants arise out of the same conduct and transactions
16 set forth in the TAC. Moving Defendants' argument that CEMG waived
17 its RICO claim against them by specifically identifying only
18 Richard Sinclair, Brandon Sinclair, and Gregory Mauchley in the
19 TAC's RICO cause of action is not supported by any legal authority
20 provided by Defendants. Advancement of a new legal theory based on
21 facts pled in an earlier complaint is permissible under Rule 15.
22 *See Martell v. Trilogy Ltd.*, 872 F.2d 322, 325-26 (9th Cir. 1989)
23 (finding that amended complaint related back where amended
24 complaint added new theory of recovery based on facts alleged in
25 original complaint). The Consolidated Complaint's RICO claim
26 relates back to CEMG's TAC.

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1 **B. Fox Hollow's Unjust Enrichment Claim**

2 Defendants contend that because Fox Hollow's FAC did not
3 assert an unjust enrichment cause of action against them, Fox
4 Hollow's claim is time-barred. Defendants contention lacks merit.
5 Fox Hollow's unjust enrichment claim is a legal theory that clearly
6 arises out of the same conduct alleged in Fox Hollow's FAC:
7 Defendants' failure to pay dues owed to the HOA and
8 misappropriation of HOA dues. Defendants motion to dismiss the
9 Consolidated Complaint's unjust enrichment cause of action is
10 DENIED.

11 **ORDER**

12 For the reasons stated, IT IS ORDERED:

- 13 1) Defendants' motion to dismiss is DENIED in its entirety;
14 2) Plaintiffs shall lodge a formal order consistent with this
15 decision within five (5) days following electronic service of
16 this decision by the clerk.
17

18 IT IS SO ORDERED.

19 **Dated: December 20, 2010**

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE