

Litigation Due Diligence Analysis

Mirza v. 133 Promenade Walk HOA

By
JG
February 15, 2024

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1. SUMMARY

Client is the owner of the real property located at 133 Promenade North, Unit 307, Long Beach, CA 90802 (the “Property”), located within the 133 Promenade Walk Corporation (the “HOA”). On numerous occasions in 2023 and 2024, heavy rains in Southern California resulted in water intrusion into the Property, causing severe damage to Client’s master bedroom. Since then, the HOA has sent out multiple contractors/water intrusion specialists to the Property and the adjacent common areas to attempt to locate the source of the leak(s). These contractors/specialists performed limited and insufficient inspections and/or water tests and have, to date, been unable to conclusively determine the leak source(s). Client has suffered significant monetary damages and experienced severe emotional distress as a result of these leaks and the HOA’s dilatory/inadequate response to the same.

2. PARTIES/SIGNIFICANT FIGURES

Name of Party / Significant Figure	Significance to Underlying Matter/Dispute
Masooma Mirza ("Client")	Client/HOA Member
133 Promenade Walk Corporation ("HOA")	HOA
Mark Neamtu (“Neamtu”-former president), Guillermo Martinez (“Martinez”-former VP and current president), and Diane Loving (secretary)	Board Members
Tammara Mencias (“Mencias”)	Property Manager
Joel Salas (“Salas”)	HOA’s Handyman
7 Point Construction (“7 Point”)	HOA Vendor/General Contractor
A to Z Construction (“A to Z”)	HOA Vendor/General Contractor
PCW Construction (“PCW”)	HOA Vendor/General Contractor
California Consultants	HOA Vendor/Water Intrusion Specialist
John MacDowell (“MacDowell”)/Fiore, Racobs & Powers	HOA’s Counsel

The table above may be amended from time to time to reflect revisions to Client’s narrative and/or new information that may become available in the future.

3. STATEMENT OF FACTS / EVIDENTIARY SUPPORT

Date / NA	Fact	Evidence Supporting That Fact
October 2017	Client acquired the Property.	Power Point
November 13, 2022	The Board approved a reserve study and the 2023 annual budget.	Minute
December 31, 2022	The HOA conducted a reserve study, which found that the reserves were 110.2% funded. Some building components, such as the stucco, were found to have 0 years of remaining life.	Reserve Study
January 14, 2023	First water intrusion event at the Property. Water entered into Client's primary bedroom window wall. This room includes one main bathroom and closet and occupies 50% of the total unit space. Client immediately notified Mencias and the Board.	Power Point
January 15, 2023	Water was present in the exterior of the bedroom window at the Property and exterior walls/walkway on third and fourth floors. Water seeped out of the wall during rainfalls and for several days post rain.	Power Point
January 16, 2023	The leak spread to the bedroom ceiling and light fixture, wetting the wood flooring and rug. Client immediately reported this to the Board. Client moved out her furniture to mitigate the damage.	Power Point
January 17- January 25, 2023	ServPro visited the Property and conducted moisture and mold remediation, placing floor drying equipment in the bedroom at a cost of \$2,328.26.	Power Point; Estimate
January 25, 2023	A to Z prepared an estimate for repairs to Client's unit, including the installation of new walls and ceiling, baseboards, painting, and cleaning for \$7,650.	Estimate
January 27, 2023	The HOA sent out *** to conduct an air quality test at the Property.	Power Point
January 2023	The HOA reimbursed 50% of Client's energy bills (total \$156.11).	Power Point
February 3, 2023	Client and Mencias exchanged emails regarding the status of the inspection of Unit 408's balcony.	Email
February 5, 2023	Client emailed Mencias informing her of further water intrusion into her unit after that day's rain. Client noted that further rains were expected from Sunday-Tuesday, reiterating the emergency character of that situation.	Email
February 6, 2023	Client emailed Mencias noting that water was resting on and below the plastic placed on Unit 408's balcony. Client also noted that Servpro removed the drying equipment, as there was no point in continuing to dry the area after every rain until the HOA diagnosed the leak source.	Email
February 7, 2023	Client reached out to the City of Long Beach (the "City") and discussed the situation with Building & Safety as well as Code Enforcement. Both teams clearly stated that the situation should be reviewed by a structural engineer, to start, and permits pulled as	Power Point

	appropriate. Client informed the Board of her conversations. Neamtu was irate, stating that he did not have to bring in such expertise and did not want to expend the cost for permits (“do you want to increase everyone’s dues?”) Neamtu assured Client that he had a solid plan.	
February 7, 2023	Mencias emailed Client informing her that Salas’ water testing found water on a visible separation on the balcony located directly below the Property’s window and that they would continue to monitor the situation. Client was not notified in advance of that test.	Email
February 7, 2023	Client emailed the Board, reiterating the need that the HOA engage a structural engineer to assess the structural integrity of the building, per the City’s recommendation. Client emphasized the need to determine the amount lodged inside the structure and that she had heard loud bangs from her property (which sounded like wood splitting/bowing), which suggested that the structure was indeed compromised by excessive and repeated water. In response, Mencias informed Client that the HOA monitored Unit 408’s balcony after the water test and that a couple hours later, the wall outside the Property was wet. Mencias stated that Salas would put protective sealant on the balcony to prevent further leaks and that the Board expected to receive and review proposals that week.	Email
February 8, 2023	Client emailed Neamtu and Mencias to request a test of the crack near the gutter on the walkway below Unit 408’s balcony to rule that out as a secondary source of water.	Email
February 23, 2023	The Board selected 7 Point as the contractor to repair the damage to the Property. (7 Points worked 1-3 days a week and maintained a very limited scope of work. Neamtu limited the leak search area with 7 Point based on his own opinion of the leak based on a single non isolated “test” conducted by him in March after the leak spread.)	Power Point
February 2023	The HOA failed to reimburse Client’s energy bills (total \$148).	Power Point
March 2, 2023	The Board wrote to the membership informing it that it had decided to suspend the March-December 2023 reserve transfers to fund the increase in the insurance premium, attaching the insurance disclosure and revised budget (according to this letter, the HOA’s reserves were estimates to be 110.2% funded as of January 1, 2023).	Letter
March 6, 2023	7 Point did not show up as scheduled.	Power Point
March 10, 2023	Further water intrusion in the bedroom ceiling beam.	Power Point
March 17-March 19, 2023	Mencias failed to take the necessary action to protect the Property prior to the anticipated rain. Client attempted to do the mitigation herself. Client placed tape and heavy duty plastic on the flashing and extension joints on the building’s interior walkways.	Power Point

March 20, 2023	Client was diagnosed with stress induced shingles after Client attempted DYI remediation and spent several nights monitoring and bailing water from the leak during heavy rains to avoid further damage.	Power Point
March 24, 2023	7 Point commenced work on the 4 th floor walkway.	Power Point
March 2023	The HOA reimbursed 50% of Client's energy bills (total \$141.44).	Power Point
April 11, 2023	The HOA had *** conduct a water test on the 4 th floor. The test failed.	Power Point
April 21, 2023	Client emailed Mencias asking for a status update on the water leaks and the necessary testing and repairs resulting from same. Client noted that rain was forecasted for May 4 and that the HOA should take advantage of the warmer water to address the situation. Finally, Client noted that the workers had not been on site on the fourth floor since April 18, reiterating her request for the HOA's plan of action and timeline. In response, Mencias informed Client that Blue (7 Points) was at Unit 408 and found evidence of water on the open area on the third floor above the window. Mencias indicated that Blue would return on April 26 for further water testing.	Email
April 25, 2023	The HOA had *** conduct a water test at ***. The test failed.	Power Point
April 24, 2023	Client emailed the Board noting that she had not been informed of the foregoing water testing in advance. Moreover, Client stated that water had been entering and exiting the Property from the interior and exterior walls since January 14.	Email
April 26, 2023	Client emailed the Board asking about the schedule for testing of mold/moisture and drying of the structure, as well as a timeline to test and repair Unit 408's degraded balcony.	Email
April 27, 2023	Client emailed the Board requesting a timeline on the mold/moisture testing at the Property, as well as an interior repair schedule and placement of drying equipment on the Property.	Email
April 28, 2023	Client followed up with the Board on her below request.	Email
April 30, 2023	Client wrote to the Board as a follow-up to that day's meeting, where: (i) the HOA indicated that the leak had been resolved and no further water testing was expected; (ii) ServPro would thoroughly dry out the Property as needed (per Mencias); (iii) the HOA would hire another licensed contractor (not 7 Point) for interior repairs to the Property (per Neamtu); and (iii) the broken and stained stucco in the exterior of the unit would be repaired after all appropriate testing is complete.	Email
April 2023	The HOA reimbursed 50% of Client's energy bills (total \$158.51).	Power Point
May 1, 2023	Mencias (on behalf of the Board) wrote to Client informing her that the Board denied her reimbursement for medical bills.	Letter
May 3, 2023	The HOA had *** conduct a water test on Unit 408's balcony. The test failed.	Power Point

May 4, 2023	Heavy rains resulted in water intrusion in the exterior and interior of the Property. Client emailed the Board and Mencias, informing them of the incident and attaching photographs. Client requested that the HOA consult with a licensed structural engineer and/or a City building inspector and/or a water intrusion specialist to narrow in on the source of the leak. Client provided the HOA with the information of a licensed structural engineer referred by WS Construction. Finally, Client followed up on her request that the HOA address the fourth floor walkway. Later that day, Client proposed two additional water intrusion specialist for the Board to consider (Rain leak Specialists and Water Intrusion Specialists). In response, Neamtu stated he had contacted SoCalStructural for the balcony repairs and discussed various aspects of the building with them. Neamtu further stated that SoCalStructural would ensure compliance with the building code as it relates to the building's structural components. Additionally, Neamtu stated that Blue would remove the balcony's patio membrane and inspect the flooring for water damage. Finally, Neamtu stated he reached out to Water Intrusion Specialists to request a quote.	Power Point
May 6, 2023	Mencias emailed Client stating that 7 Point would be onsite on May 15 to commence the balcony repairs and that the Board engaged A to Z to perform the necessary repairs, but that A to Z wanted to conduct another scope of work inspection and create a schedule prior to initiating such repairs.	Email
May 8, 2023	Client emailed the Board following up on her foregoing email. Client once again asked that the Board consult with a licensed and experienced water intrusion specialist to determine the source of the leak, as there were multiple theories at that point in time. Client requested that the Board address the fourth floor walkway, as the leak had not yet been resolved. Client expressed her frustration as to the HOA's inactions, failure to provide status updates, and failure to address the issue in a timely manner, emphasizing that she would provide access to her unit to support any scheduled water testing, so long as the HOA informed her of the testing in advance so that she could coordinate his availability with her employer and prepare the space (by placing buckets, bowls and bins, as she had done previously) for additional water.	Power Point
May 11, 2023	Client emailed the Board and Mencias, informing them once again of the water damage resulting from the rains on May 3 and May 4, despite the repairs made to a select portion of the fourth floor walkway. Client noted that while the water tests conducted in March indicated the leak source to be somewhere on the fourth floor walkway, the HOA directed the contractor to address only a portion of the walkway. Further, Client noted that a recent water test on Unit 408's balcony resulted in water intrusion into her unit. Accordingly, Client requested that the HOA: (i) state whether it had engaged a licensed water intrusion specialist; (ii) provide a timeline for the resurfacing of the entire length of the fourth floor	Email

	walkway; and (iii) state whether it had considered inspecting the walkway portion and balconies on either side of Unit 408.	
May 12, 2023	In response, Mencias stated that Blue would start work on Unit 408's balcony on Monday and that the Board requested further investigation to be performed on the fourth floor to locate the source of the leak.	Email
May 14, 2023	Client followed up on her request that the HOA engage a licensed water intrusion specialist, as 7 Point had been unable to determine the source of the leak.	Email
May 15- May 16, 2023	7 Point commenced work on Unit 408's balcony.	Power Point
May 19, 2023	Client followed up with Mencias on her request that the HOA retain a water intrusion specialist, once again requesting a timeline. In response, Mencias stated that Blue would return on Tuesday to continue to investigate the leak, and that he planned to open a portion of the stucco near the bathroom of Unit 408. In reply, Client asked Mencias whether the HOA had contacted a water intrusion/building specialist. Client reiterated that leak only appears at the Property when it rains or when water test fails, concluding that the leak was an exterior leak.	Email
May 20, 2023	Neamtu and his wife Karen Hamilton dropped by the Property unannounced and harassed Client. Ms. Hamilton stated "[Client] should be grateful for all that [Neamtu] had done and stop complaining". Neamtu asked Client, "why don't you be the HOA president?". They did not share any developments.	Power Point
May 22, 2023	Mencias emailed Client informing her that Blue would return tomorrow and continue working on Unit 408's balcony. Mencias also advised Client that she had provided Client's number to PRC Restoration (a water intrusion specialist) to schedule an inspection at her unit.	Email
May 24, 2023	Client emailed Mencias, stating she had not been contacted by PRC Restoration. Client also noted that inspecting her unit exclusively would not be sufficient. Client provided her availability for an inspection. Later that day, Client was contacted by PRC Restoration. She advised Mencias that George would be onsite tomorrow to view the impacted wall inside her unit. Subsequently, PRC's representative came to the property and stated they could not assist. He did, however, provide a referral (Twin Home Experts). Client provided their information to Mencias. Shortly after, Client received a call from Ivan of SRC (another general contractor), who planned to assess the situation and prepare a proposal for a water test. Client informed Mencias that the HOA would visit the Property on May 26, asking that someone on behalf of the HOA show him around. Finally, Client reiterated her request that the HOA locate a skilled water intrusion specialist, as the situation was complex and went beyond basis plumbing.	Email

	In the evening, Client received a call from AG Construction, who was also not a water intrusion specialist. This contractor would nevertheless visit the property on May 31. She advised Mencias accordingly.	
May 25, 2023	Client spoke with Twin Home Experts, a water intrusion specialist. Client informed Mencias. Indeed, Twin Home Experts' representative stated that his goal would be to find and resolve the leak by June 8 (in other words, they would commit to the project) assuming the Board signs off this week.	Email
May 25, 2023	PCW visited the building.	Power Point
May 25, 2023	The HOA sent Rodrigo from PRC Restoration to assess the leak. Upon entering the impacted room, Rodrigo shared with Client that "this [leak detection]" is not what we do. We do what Servpro already did for you."	Client Email
May 26, 2023	PCW prepared a bid for leak detection.	Power Point
May 27, 2023	Client emailed Mencias and the Board advising that Twin Homes Expert would send their insurance information and 29 to the Board, asking the Board to prioritize that. Client emphasized that while the HOA had conducted water testing on the fourth floor walkway and adjacent balconies above the Property, no roof inspection had occurred. Again, Client asked the Board to notify her at least 24h prior to any water testing and inspections. In response, Mencias stated that Twin Home Expert's license was expired. Client acknowledged that and asked the Board to check for licenses and insurances of any selected vendors. In response, Neamtu asked if Client nevertheless wanted to move forward with Twin Home Experts.	Email
May 28, 2023	Client replied, stating that it was the Board's duty to select a vendor and oversee the work to the common area, and that she had shared information with hopes to move matters along. Client asked that the Board: (i) focus on finding a vendor who could locate the leak source and not restrict search efforts to a predetermined area; and (ii) consistently communicate work timeline and unit access requirements to her in a timely fashion.	Email
May 31, 2023	Client followed up with Mencias re her request for retention of a water intrusion specialist. Further, Client informed Mencias that AG Construction never showed up. In response, Mencias indicated that Luiz from AG Construction went to the roof first and that his proposal would be reviewed as soon as they are received. Assuming this roof testing occurred, it was not communicated to Client. Client was never informed of this test result. When Client asked the Board to provide additional information, Neamtu pushed back, claiming that a test on the roof was not necessary as the roof was resurfaced last year.	Email

	Later that day, Client informed the Board and Mencias to inform them of that day's recent developments. Specifically, Client notes that Luiz (AG Construction) visited the Property and conducted two water tests. During the first test, water poured on Unit 408's threshold, including the doorway windows to the right of the door. Water leaked almost immediately, revealing another leak along the ceiling/Unit 408's subfloor joint. The second test poured water on a portion of Unit 408's bedroom window, which began dripping outside her unit fairly quickly. Joel was present and witnessed the leak. Luiz shared suggestions on how to repair Unit 408 threshold and how to address the exterior surface areas. Subsequently, Israel Reyes (PSM Construction, who was currently working in Unit 310 and is not a water intrusion specialist) came by and noted the repairs made to the walkway were insufficient (i.e., the area was not sufficiently waterproofed). Both Luiz and Isreal recommended the use of high-quality water sealants to minimize the chance of future water intrusion (Client specified the materials). They both shared that since water travels, thorough testing would need to be done along the entire walkway and from the roof down. Additionally, Client stated that THE would be sending over their insurance and license later that day. Client requested that the Board/Ms. Mencias follow up with both vendors the following day. Ultimately, Client suggested that the Board select Twin Home Experts or AG Construction for leak detection and PSM Construction for the actual repairs.	
May 31, 2023	AG Construction (Luiz) visited the Property (not WIS certified). Luiz seemed to know what he was doing, came with moisture detective tools, and took a proactive approach.	Client Email
May 31, 2023	PCW conducted a visual investigation and water test of the façade adjacent to 307. Scope of work: water test, preparation of report, estimate for exterior repairs. Location: unit 307 (window), unit 308 (decks). Contract was approved and signed by Mencias on behalf of the Board.	Contract
May 31, 2023	Israel Reyes came to the property at Client's request at her neighbor's suggestion. Israel stated that he would not do leak detection, but would be interested in exterior/interior repairs once the leak was found.	Power Point
June 1, 2023	Mencias emailed Client advising her that the Board selected PCW as their water intrusion specialist and that she had made AG Construction aware of yesterday's findings. Further, Mencias stated that Edward and 7 Point had already tested the roof. In response, Client asked Mencias to provide a timeline for the leak detection by PCW. Client also noted that Edward shared with her that he thought the leak was a "pipe leak", which Client believe	Power Point

	was erroneous. Finally, Client asked for a status update on the exterior and exterior repairs, reiterating that 7 Point was not qualified for those repairs.	
June 1, 2023	Twin Home Experts prepared a bid for comprehensive leak detection at \$5,800.	Email
June 2, 2023	Client received a call from PCW informing her they would be onsite at 9 a.m.	Email
June 5, 2023	PCW (Edward and Carlos) inspected the Property. PCW claims to have conducted a water test on the roof that day. They claim they “flooded” the roof, but Client noticed the ladder was too short to reach the roof from Unit 4078’s balcony, and the hose was not long enough. Client never saw them on the roof. When they conducted a water test, no water came through the wall of Client’s unit. Estimate indicates: (i) installation of plastic and tape at 408 landing wall (above Unit 307); (ii) water test at the bottom of stucco wall and floor to wall metal flashing from left to right (applying water at 35 psi in intervals of 5 minutes per location); (iii) revealed water intrusion at unit 408’s door threshold and window (applied silicone); (iv) no moisture was observed after application of silicone; (v) found cracks around railing posts in 408’s balcony; (vi) no water intrusion observed during water test at 408’s 2nd floor stucco wall leading to the roof and balcony (observed stucco cracks at balcony door header, recommended sealing); (vii) did not observe leak during water test on roof above unit 408’s balcony.	Email; Estimate
June 6, 2023	Client emailed Mencias and the Board stating that PCW showed up with only a ladder and a hose. PCW found one new leak source into her unit (a crack located along Unit 408’s balcony railing). Water entered approximately two feet from the window interior, not far from the leak discovered by AG on the fourth floor. PCW was reluctant to test Unit 408’s window and the area exposed by 7 Point, where AG found water intrusion. PCW did not check the eaves inside the Property, did not have a moisture meter, and did not check the exterior exposed portion outside of the Property. PCW’s testing was limited to select portions of Unit 408. They did not test the entire walkway, adjacent balconies, and did not emulate a heavy rain-like scenario. Accordingly, Client implored the HOA to retain a water intrusion specialist to take a methodical and comprehensive approach to the leak, noting that AG Construction demonstrated skill, took moisture readings, and emulated heavy rain. Alternatively, Client urged the Board to consider Twin Homes Expert. Finally, Client noted that there were two additional water intrusion points (by AG Construction and PCW) that needed to be resolved, one that was temporarily fixed (near Unit 408’s threshold and door window panel, totaling three leak sources.	Email

June 9, 2023	Client received a call from Edward (PCW) informing Client that he will return to test an area “recently sealed” and is expected to be onsite on June 12, 2023 at 9:30 a.m. Client contacted the Board and Mencias to make arrangements for the inspection/testing, asking if the Board planned to go beyond spot testing. Client received a call from a general contractor referred by her insurance. This contractor will visit the Property on June 12, 2023 to assess the interior damage. They will not be doing invasive inspections for mold or air quality.	Client Email
June 12, 2023	PCW (Joel) tested Unit 408’s balcony down, including front door. PCW found that a major leak entry point is 408’s entryway window panels. Water was sprayed directly onto the window panels of the front door and streamed into the Property.	Client Email
June 13, 2023	PCW retested the 4th floor walkway floor, pony wall, 408s window wall, 408s balcony, 407s balcony. No water came into the Property (it could be because 408’s window was partially sealed). Client wants: (i) PCW to seal the entire frame of 408’s windows and 407’s entryway window panels; mold/air quality testing and remediation inside and outside the Property (ServPro); (ii) exterior repairs (seal/waterproof/paint the entire face of 408 from walkway and up, including the entryway and wall between 408 and 407 / 1-2 weeks); (iii) comprehensive water test in the exterior (1 day); (iv) begin interior and exterior repairs (above and beneath the window) to Property (1-2 weeks).	Client Email
June 14, 2023	The HOA had not communicated next steps to Client. Client’s goals at that time were: (i) mold testing/remediation to test interior (sheer wall) and exterior of the Property + report re same; (ii) comprehensive/flood water test of the 4th floor walkway and up to/including the roof be conducted by a certified leak detection company after exterior repairs are complete and prior to interior repairs; (iii) HOA must engage a dedicated team of contractors (not 7 Point) and communicate a timeline.	Client Email
June 15, 2023	The Firm emailed MacDowell re inquiries re foregoing points raised by Client.	Email
June 20, 2023	Client received an estimate for interior repairs prepared by Disaster Kleenup/Better Restorations (Farmers). The estimate identified necessary repairs to the master bedroom’s flooring, walls, and ceiling, painting, re-hanging shutters, and moving furniture at a cost of \$4,145.98. The estimate did not include professional cleaning and mold remediation.	Estimate

On or about June 22, 2023	The HOA had Servpro take moisture readings in the Bedroom's interior and exterior. Servpro detected high levels of moisture in both the interior and exterior of the Property. Accordingly, Servpro recommended that the Bedroom shear wall be removed to conduct water damage and mold remediation in the subject area.	Client Email
June 26, 2023	MacDowell responded to the Firm's June 16th email vaguely stating that "The HOA conducted water testing to determine the source of any moisture intrusion and has repaired the areas of concern" and that "it appears that all sources of moisture have been addressed and there are no leaks." Further, MacDowell indicated that the testing and repair work are mostly being performed by PCW, "a general contractor with experience in waterproofing". Finally, counsel indicated that he would provide Client (through counsel) with the results of further investigations and the HOA's plan to replace its common area elements.	Email
June 26, 2023	Servpro returned to the Property to remove the bedroom interior shear wall. Servpro observed that the insulation was wet and showed signs of excessive mold/moisture to the left of the window. Accordingly, Servpro placed a dehumidifier, air scrubber, and floor drying system in the bedroom.	Client Email
June 26- July 5, 2023,	Servpro returned to the Property on a daily basis to monitor their equipment and the bedroom moisture levels. Servpro again observed a significant amount of moisture in the Bedroom's window framing and flooring near the bedroom's window leading to the master bath. During this time, Client was required to be present to provide Servpro with access to the Property so that they could monitor as per their protocol. Each of Servpro's visits were anywhere from 30 minutes to four hours, disrupting Client's personal and professional commitments.	Client Email
July 14, 2023	The HOA notified the membership that California Consultants would be conducting water testing in the building from July 24 through July 28. The HOA further indicated this test would be "simulating rainfall and flooding scenarios at the top three levels, starting at the fourth floor and downward."	Notice
July 16, 2023	The board held a meeting. Client inquired whether Mencias could provide a more specific schedule for the foregoing water testing (i.e., indicating which units would be tested first so that the residents could better prepare their professional and personal commitments). In response, Neamtu falsely and aggressively stated that Client had selected the dates and times for the testing based on her availability. The Board also informed the membership that: (i) it had re-engaged PCW to resume the work abandoned by 7 Point in May 2023— i.e., resurface select balconies (beginning with Unit 408) and repair the exterior of the Property — without providing an	Client Email

	actual timeline/start date for PCW’s work; and (ii) California Consultants would determine the scope of the testing, as Neamtu had shown California Consultants the “areas of concern” (which were limited to the Property and Unit 408 only). At one point, Client inquired of the board as to the plans to paint or re-stucco the buildings (North and South) which have not been painted or re-stuccoed since they were built nearly 17 years ago, as confirmed by three reserve studies. In response, Neamtu stated that a committee would be needed for that project, sarcastically asking Client, “why don’t you set one up and chair it”. Another member promptly pointed out that the HOA already has a committee (the “Beautification Committee”) who can discuss and take the necessary action to initiate this long overdue project.	
July 19, 2023	A to Z visited the site in preparation of a revised bid for the interior repairs to the Property. A to Z took moisture readings at the Property’s interior and exterior wall, which read 90%, indicating the walls were wet.	Client Email
July 24- July 27, 2023	California Consultants conducted water testing at the building. That day, California Consultants sprayed pressurized water: (i) above the Bedroom window; (ii) on Unit 408’s walkway wall and balcony (including the exposed areas left by 7 Point); and (iii) on Unit 407’s walkway window, which is located directly above the Property’s guest room. On those occasions, water intruded into and through the Property’s interior and exterior walls, including onto the bedroom flooring. The intrusions from Unit 407’s Walkway window—which the HOA had, as of that date, refused to test — proved to be a major leak source and, as per two of California Consultant’s agents, were a “very unexpected” find. Additionally, California Consultants identified two new leak sources in the Property’s ceiling and Unit 408’s subfloor (which they were unable to recreate on subsequent days). California Consultants tested the interior of the Property’s guest room (which has had no known history of water intrusion) while failing to monitor the interior and exterior of the Bedroom during the test on Unit 407’s walkway window directly above the Property’s guest room. When Client inquired with California Consultant’s agent whether other units would be tested (as indicated in the July 14th notice), this individual stated that “[California Consultants] was performing spot testing and that those were the only spots they would test. One of California Consultant’s agent indicated to another resident that he was instructed to enter the Property only and to “not tell anyone or the HOA would be mad at [him]”. Further, this agent stated to Client that California Consultants was not instructed to	Client Email

	conduct specific leak detection, but only to test the “building envelope”. During their visits, California Consultants’ agents verbally confirmed that the “waterproofing” work performed by 7 Point was done incorrectly and not consistent with the direct weather exposure on the Walkway, which California Consultants found was decisively not waterproofed. Further, California Consultants shared with Client that the materials used by 7 Point and the unfinished nature of their work would no longer be covered by a manufacturer’s warranty and had already begun to show signs of wear.	
July 27- July 28, 2023	Client asked Mencias whether California Consultants was scheduled to test Unit 407’s balcony or any other areas on the Walkway, (e.g., Units 410 and 405). In response, Mencias stated that testing Unit 407’s balcony was “out of scope” and that California Consultants had concluded its water test.	Client Email
July 27, 2023	MacDowell emailed the Firm indicating that California Consultants’ turnaround for their inspection and testing report was ten days (in response to Client’s previous request for this report to Mencias) and that he would provide it to the Firm as soon as it became available.	Email
Shortly after	Servpro returned to the Property and noted that the bedroom eaves were still wet (despite California Consultants’ placement of two dehumidifiers in the bedroom). Servpro’s agent recommended that the HOA confirm that all leaks have been remedied with a final water test prior to drying and closing the Property.	Client Email
August 2- August 11, 2023	Servpro returned to the Property on four occasions. On each occasion, Servpro observed that the bedroom wall remained wet, causing Servpro’s agent and Client to suspect that the HOA (likely, Salas) conducted yet another water test to the building without informing Client or the membership.	Client Email
August 4, 2023	Client received a voice message from A to Z to schedule the repairs to the interior drywall at the bedroom for August 7, 2023. As of that time, A to Z had not submitted to the HOA an updated bid for the subject repairs.	Client Email
August 15, 2023	Servpro removed all drying equipment from the Bedroom.	Client Summary
August 18, 2023	Client purchased additional supplies (total \$127.82) in anticipation of the storm (Hurricane Hilary) and prepared the bedroom for water intrusion by laying layers of plastic and towels to protect the wood floors and arranging buckets and bins.	Client Summary

August 19, 2023	Salas installed plastic on the lath areas of Unit 408 and on Unit 407's Walkway window, presumably at the HOA's direction. That same day, in anticipation of sustained water intrusion, Client texted Salas requesting to use of the dehumidifier purchased by the HOA. Salas responded informing Client that the HOA no longer had a dehumidifier, as they had returned the unit purchased earlier in the year.	Client Email
August 20, 2023	The forecasted storm arrived in the Long Beach area. Client again observed water entering the Bedroom from the middle beam above the window and multiple points below the window. Once again, Client dried wet towels and monitored the incoming water. Client also installed a space heater and floor fan in the space in an attempt reduce moisture in the bedroom.	Client Email
August 21, 2023	Client woke up three times from 1-6 a.m. to monitor and empty buckets and bins filled with storm water. By the time the rain concluded that morning, Client had collected several gallons of rainwater inside the bedroom alone. Substantial water had also pooled outside the Property's bedroom window and continued to seep from the Property's common wall for several days after the storm.	Client Email
August 22, 2023	Servpro came to the Property to measure the moisture levels in the Bedroom. Servpro found elevated moisture levels in the wall and installed equipment to dry the space once again.	Client Email
August 23, 2023	Client briefly spoke with Mencias about the recent water intrusion and inquired into the status of California Consultants report, which MacDowell indicated would be provided to Client. Mencias implied that she did not have the subject report, but that it was supposedly complete. When Client inquired into any scheduled repair work, Mencias stated that the HOA had "no plans" to repair the damage or resolve the water intrusion matter. Client reminded Client that the rainy season in California is fast approaching and that it would be imperative that the HOA have a solid plan that went beyond caulk and plastic, which had previously failed.	Client Email
August 25, 2023	Servpro arrived to measure the moisture levels in the space and monitor their equipment. According to the representative the space remained 45% wet. The equipment remained in place. Servpro representative commented that in all the years of visiting properties this situation is a first. The representative had never seen a space deliberately exposed for this long of a duration and absolutely no effort by the HOA to resolve the leak source. The representative also commented on how "wrong the HOA is to force [Client] to live like this for so long."	Client Summary
August 28, 2023	Servpro returned to measure moisture levels in the space and monitor their equipment. After continuous running of the heavy-	Client Summary

	duty equipment, the space was within acceptable moisture levels (14% moisture remaining) and the equipment was removed. Again, the Servpro representative stated that in all their years of experience the team has not experienced such ongoing lack of effort by an HOA to resolve a water intrusion situation from reoccurring.	
August 30, 2023	As encouraged by multiple HOA Members, Client contacted Scott Litman Insurance Agency (current HOA insurer) and inquired into the status of a claim and repairs related to the Property. (Between January and June, Neamtu repeatedly stated to Client and in Board meetings that the HOA would cover the costs directly and not use insurance). Client was informed by the insurance agent that the HOA had filed a claim related to Unit 307 and Unit 408 on June 14, 2023. The representative was concerned to learn that Client had not been contacted by a claims adjuster and no repairs had been made to-date.	Client Summary
September 1, 2023	News reports and weather forecasts indicated rain for September 1, 2, and 3, 2023. Accordingly, Client again prepared the bedroom for incoming water.	Client Email
September 2, 2023	It rained in Long Beach as forecasted. Prior to the rain, the HOA failed to take any steps to protect the now known water intrusion sources, including without limitation, lath areas of Unit 408 and exterior front of Unit 407, other than instructing Salas to install plastic on the common areas after the rain occurred. Client came upon Salas around 10:30am as she was exiting the parking garage in route to an appointment. Salas stopped Client to discuss a water pressure issue CLIENT had reported to Ms. Mencias on September 1, 2023. In addition to discussing the water pressure issue, Client inquired of Salas, if he would be taking any steps to apply plastic to 407 and 408, as more rain was forecasted for Saturday night and Sunday. Salas did not confirm nor reject the idea, and Client proceeded to her appointment. At some point in the day, Salas did apply plastic to the lath areas of Unit 408 and the front facade of Unit 407. Client did not "direct" Salas in anyway and is not aware of whether Salas obtained authorization from a member of the Board or Mencias or whether he was empowered as the HOA handyman to apply discretion when faced with such appropriate inquiries. (HOA garage security video footage should be available for 9/2 showing the interaction between Client and Salas).	Client Email
September 4, 2024	Client emailed Mencias requesting that Servpro examine the bedroom wall for moisture and dry the space as needed. As would often occur, Client did not respond to Client's request. Subsequently, Client emailed Mencias requesting that the HOA leave the plastic installed by Salas in place and in attempt to	Client Email

	mitigate ongoing water intrusion. Once again, Mencias ignored Client's request.	
September 5, 2023	Client followed up with Scott Litman Insurance Agency and learned that the HOA's claim had been denied (contact Alanna Walsh), as the water intrusion incident occurred after the policy was purchased. Client was advised by the insurance agent to contact the prior HOA insurer, Roy Palacios Insurance Agency. That same day Client reached out to Roy Palacios Insurance Agency (contact "Monique") and offered her time and space for a walkthrough of the damages, as needed by an adjuster. The representative informed Client that while she could not share the details of the claim or decisions, the main reason any insurer would deny the HOA's claim would be if it was found that the HOA failed to maintain the property (i.e., HOA negligence). Client requested from Mencias that the HOA leave the plastic that was installed by Salas on September 2 (after the rain had occurred), in place and in attempt to mitigate ongoing water intrusion. While not a permanent solution, if installed correctly the plastic may temporarily deter some water before failing all together. Mencias did not respond to Client's request.	Client Summary
September 6, 2023	Mencias notified the Membership of a closed Executive Meeting to discuss a "legal matter," scheduled for September 8, 2023.	Client Summary
September 7, 2023	Servpro visited the Property and measured moisture levels in the impacted wall from the recent rains at 99% (wet). Servpro installed drying equipment, accordingly.	Client Summary
September 8, 2023	At least two individuals were observed outside of the Property taking measurements and discussing the impacted exterior wall. At no point did the vendor request access to the Property or access to the bedroom's interior.	Client Summary
September 11, 2023	Servpro returned to the Property to measure moisture level in the bedroom. Moisture readings showed the wall was approximately 14% wet, within the acceptable range. While Servpro's agent removed the equipment, they left the set-up as-is in the likely event they would be called back to once again dry out the space.	Client Email
September 12, 2023	MacDowell requested a two-week extension to respond to the ADR submitted on Client's behalf on August 14, 2023. The request was granted.	Client Summary
September 13, 2023	Servpro returned to the property to measure moisture level in the bedroom. Moisture readings showed the wall was approximately 14% wet - within the acceptable range. The agent removed the	Client Summary

	equipment leaving the set-up as-is in the likely event they would be called back to once again dry out the space.	
September 14, 2023	MacDowell requested Client's availability to provide the HOA insurance adjuster (representing the first property carrier) access to the Property on September 20 or 21. The Firm promptly shared her availability with counsel.	Client Summary
September 18, 2023	The Firm requested that the HOA confirm the planned visit of the HOA insurance adjuster and share the arrival time (based on Client's previously provided availability).	Client Summary
September 19, 2023	MacDowell informed the Firm that the claims adjuster and engineer visit would need to be postponed. Client again shared her availability for the week of September 25-29.	Client Summary
September 22, 2023	[PRIVILEGED] MacDowell responded to the ADR letter, communicating a "settlement offer to Ms. Mirza in exchange for a release of claims." The communication made no efforts to address the demands set forth in the ADR letter, namely, a) leak detection efforts, including a list of leak sources known to-date b) leak resolution plans and timeline c) plans and timelines for all exterior common property repairs - specifically the perimeter walls and walkway on the third and fourth floor of Units 307, 407, 408 and others as needed to prevent water intrusion d) plans and timelines for the complete build back and restoration of the Property.	Client Summary
September 24, 2023	the HOA convened for its annual meeting and elections. During the open forum portion of the meeting, multiple residents again inquired into the status of repairs to the outstanding damage in the South Building, including the damage to the Property and Units 407 and 408. In response, Neamtu once again claimed to have a plan to address the damage, but refused to share any specifics, other than stating, without any basis, that the timelines for any work to commence ranged from 2-3 months to one year. Various members requested that the HOA share California Consultants' report prepared after the water testing in July 2023. In response, Neamtu (now the board vice-president) erroneously stated that he could not provide the report due to "ongoing litigation and arbitration." Additionally, Neamtu indicated that the board had obtained two bids for repairs to the common area and the Property and was in the process of obtaining a third bid. These bids were never shared with Client upon request, presumably because they do not exist.	Client Email

September 26, 2023	MacDowell notified the Firm of their acceptance for ADR and further stated, “the Association is without insurance coverage for Ms. Mirza’s claims.” The HOA has not addressed key portions of the ADR request – i.e., assess structural integrity and detail a plan with timelines for leak repairs. The Firm served a further Demand for Records under Civil Code section 5200 on the HOA requesting that the HOA produce California Consultants report and other bids obtained after the first 5200 Demand.	Email; Demand for Records
September 27, 2023	Client provided unit access to the HOA insurance adjuster, Jonathan Crossley from Crawford & Co. and Adam Yala from YA Engineering. The adjuster and engineer examined the damage to the interior and exterior of the Property.	Client Summary
September 29, 2023	The HOA notified the membership that PCW would be commencing stucco repairs at the third and fourth level walls and deck coating on the Walkway from October 9 through October 27, 2023	Client Email
October 1, 2023	Water continued to intrude the Property (interior and exterior) during rain events and failed water tests.	Client Summary
October 5, 2023	Client contacted an agent with the City to ensure that the HOA had sought/PCW had obtained the necessary permits for the work scheduled to start the following Monday. In response, the City’s agent indicated that as of that date, neither the HOA nor PCW had applied for any permits.	Client Email
October 6, 2023	Client sent an email to Mencias asking her if the HOA had obtained permits for the forthcoming work. Mencias responded later that same afternoon stating permits had been obtained. Client later confirmed with the City that the permits were requested and obtained on the same day, October 6, 2023, and that the permits specified “no structural work.”	Client Summary
October 9, 2023	PCW commenced the repairs to the HOA’s common area. As of that time, PCW had: (i) removed all stucco in the affected common areas (including the facades of the Property, Unit 407, and Unit 408) , including the exterior bedroom wall; and (ii) applied lathing—including a water resistive paper membrane and wire mesh—to the exterior of the Property, Unit 407, and Unit 408.	Client Email
October 17, 2023	The HOA requested Client’s availability to provide access to her unit at 9:30am for PCW to prepare a bid for interior repairs. The HOA failed to share the bid despite multiple requests before and after the visit to the Property.	Client Summary

October 19, 2023	Client spoke with a structural and civil engineer that the HOA engaged to conduct inspections of the building's balconies and walkways. The engineer confirmed the need for the HOA conduct a confirmatory water test following PCW's repairs to the common area and prior to commencing the repairs to the interior of the Property.	Client Email
October 20, 2023	The HOA sent out PCW to inspect the Property and prepare a bid for the interior repairs. That day, PCW's agent informed Client that he observed dry rot and evidence of significant, long-term water damage on the building's third and fourth floors.	Client Email
October 23, 2023	Client was informed that PCW was expected to commence the application of stucco to affected common area walls the following week. As of that date, the HOA had failed to commit to conduct a further comprehensive, rainfall like water test prior to closing the walls. When inquired by the Firm, MacDowell indicated that water testing was anticipated (but not confirmed) for the week of November 6th.	Client Email
November 20, 2023	The Firm shared two contractor estimates from two licensed, local general contractors of Client's choosing, Christidis Construction and Home Renew 360, with MacDowell. The estimates were comparable and comprehensive and included repairs to the homeowner portion of the room as well as repairs to the HOA basic common elements within the interior of the unit (i.e., insulation, shear wall, drywall, baseboard). The Firm also requested a release for Client from all liability in connection with the interior repairs, in the event the HOA chose not to proceed with the full scope of interior repairs themselves.	Email
November 30-December 14, 2023	Client emailed Mencias inquiring as to when PCW would be returning to correct the exterior stucco obvious patch color above the Property's master bedroom window.	Client Summary
December 1, 2023	Client secured the appropriate Building & Safety permit (BRMD299837) for the planned interior repairs from the City. Client requested reimbursement from the HOA for the permit fee in the amount of \$385.38. Client was subsequently reimbursed.	Client Summary
December 6, 2023	Client and the HOA entered into the release agreement limited to the interior repairs only.	Client Summary
December 11-26, 2023	Home Renew 360 rebuilt the interior of the Property master bedroom as per plan and in conjunction with City inspections. Client provided regular progress updates to Mencias via email. On December 20, 2023 Mencias requested access to the construction site to "inspect" the repairs which Client provided on December 21, 2023. Mencias and Salas accessed the unit for approximately	Client Summary

	five minutes. The City inspector provided “finish” sign-off on December 26, 2023.	
January 22, 2024	During forecasted rains, Client observed water intrusion again in her master bedroom window, identical in pattern to that experienced on January 14, 2023. Client immediately informed Mencias and requested that the HOA carefully test the full span of the fourth-floor walkway and all units up to the roof with an appeal to “let the professionals detect the leak source wherever it may be and without any interference or presumption.” Client also requested that the HOA apply plastic on the fourth floor and up, to limit further water intrusion. Client went back to sleeping on the sofa. The Firm emailed MacDowell asking for (i) prompt approval of ServPro’s proposal to remediate any moisture/mold in Mthe Property (ii) a time-specific plan of action for leak detection to occur immediately, (iii) a plan of action for additional exterior and interior repairs by the end of January, (iv) the board engage a licensed structural engineer and moisture intrusion specialist (certainly, not PCW) immediately.	Client Summary
January 23, 2024	The HOA informed Client that they had engaged PCW to investigate the recent water intrusion event and requested access to the Property on January 26, 2024 from 8:00am – 5:00pm. Client informed the HOA that she had several previously scheduled commitments and would be able to provide access from 10:30am – 12:30pm on Friday January 26, 2024.	Client Summary
January 26, 2024	PCW did not request access to Client’s home until 11:00am. PCW conducted at least one water test on a limited portion of the fourth-floor walkway before leaving the Property. The test did not activate the rainwater leak in the bedroom window.	Client Summary
January 30, 2024	Client entered therapy with a licensed psychologist for her trauma, stress and anxiety associated with the situation. Client was informed of PCWs request to access her unit on January 31st from 9:00am to 5:00pm. Client requested that the names of the individuals accessing her unit be shared with her for her own safety and that PCW share a plan for how the vendor expected to spend 8 hours in her unit. The HOA reluctantly shared the names of the individuals entering Client’s unit but refused to share any details surrounding their objective and if the HOA or its vendor would mitigate water intrusion into the Property prior to the forecasted rains of Thursday, February 1, 2024.	Client Summary

January 31, 2023	PCW arrived at Client's unit after 10:00am to conduct various water tests. PCW chose to leave Client's unit at 12:30pm despite having ample time to conduct multiple other tests and observe the results of any tests. Shortly after 1:30pm, after PCW had left her home, Client took a brief break in her workday to prepare the master bedroom for incoming water intrusion anticipated from a storm forecasted on February 1, 2024. As Client began to set-up plastic, tarps, buckets, bins, towels, Client noticed water dripping from multiple points in her bedroom window. Client immediately contacted Mencias. Mencias contacted PCW who returned shortly after 2:30pm and immediately cut a large rectangular portion of stucco out of the walkway ceiling in front of the Property's bedroom window with no explanation. PCW left the Property just before 4:00pm.	Client Summary
February 1, 2024	Heavy rains arrived in Southern California with Long Beach bearing the brunt of heavy rain, 2.45 inches of rainwater. The HOA took no steps to mitigate water intrusion of the Property ahead of the heavy rains, no protective measures were taken by the HOA and no proactive offers to assist Client in anyway.	Client Summary
February 2, 2024	The HOA again demanded PCW be provided access to Client's home for the "full day" on Saturday, February 3, 2024 with 24h advance notice, which Client granted subject to conditions similar to the above.	Client Summary
February 3, 2024	PCW arrived on the fourth floor of the South building. Client spoke with Mr. Greg Beebout (CEO of PCW) and asked the question which the HOA seemed unwilling to ask and answer, (i) does PCW have a plan associated with the 8-hour ask of access to Client's unit? (ii) if any leak sources are identified would PCW take steps to tarp the areas, if possible, prior to the well forecasted 3-day storm set to begin on Saturday night. Mr. Beebout assured Client that the team would be mindful of her time and home, has a plan and would take steps to protect any detected leak source(s) prior to leaving the site. PCW then proceeded with their testing, commencing shortly after 9:00am. PCW failed to definitively identify leak source(s) into Client's unit and concluded their testing shortly after 3:00pm.	Client Summary
February 4-February 8, 2024	The Downtown Long Beach/Los Angeles area was impacted with historic rain. The most rain in a two-day span (February 4-5) in Los Angeles history in 68 years. More than 8 inches of water fell in the span of three days. As it rained outside, Client experienced rainfall inside her unit, collecting gallons of water in 20-gallon trash bins and multiple buckets. The HOA took no steps to mitigate the water intrusion of Client's unit, and no steps to assist Client in managing the incoming, contaminated flood water. As Client was repeatedly exposed to the contaminated flood water in	Client Summary

	her unit she became increasingly nauseated by the stench and sight.	
February 5, 2024	During heavy rainfall, Client was contacted by an Inspector with the City requesting access to her unit because of an anonymous report of possible code violations. Mr. Ezequiel Rincon Combination Building Inspector for the City immediately observed the exterior of Client's unit, including a large rectangular hole in the stucco created by PCW at the HOA's direction, and the ongoing flood water exiting Client's bedroom wall. He then entered the Property and observed the significant damage to the master bedroom. Mr. Rincon commented multiple times that there is "a lot of water" entering Client's unit through the bedroom window and already accumulated in the multiple bins. The Notice of Violation states: "Water damage repair without permit. Rainwater seems to be getting into the unit through Ceiling at west exterior wall of master bedroom. Drywall removed from ceiling, north and west walls." Client promptly sent the "Notice of Violation" (BADM302275) to Mencias.	Client Summary
February 8, 2024	The HOA retained Frank Atwood/EFI Global to investigate the water intrusion and conduct testing. MacDowell requested Client to provide access from 9-5 p.m. on 2/12. According to MacDowell, Atwood specializes in building envelope issues.	Email
February 12, 2024	Mr. Atwood and Mencias knocked on Client's door at 9:10am. Client asked Mr. Atwood what his plan for the day is. He shared that he would be taking moisture measurements. Client asked if he would be conducting any water tests and he shared that it's "highly unlikely." Client then asked if he would be taking moisture measurements for 8 hours and he said he didn't think he would need all day; and would probably be done in a few hours. Client asked that if he does conduct a water test to come prepared with buckets and towels, ready for water intrusion. He said he understood. Mr. Atwood was accompanied by zero ("0") associates other than Mencias, and later Salas. Mencias requested permission to enter the Property with Mr. Atwood. Client asked her for what purpose? - she said she would be "taking notes." Mr. Atwood asked Client about the leak and Client at first deferred to Mencias. She was struggling to share the facts, so Client answered Mr. Atwood's questions and explained how/where this leak was first identified in January 2023 and has remained active ever since. It was clear that Mr. Atwood was provided with no context of the leak or leak test areas and results. The owner of Unit 408, Nick Ferro, was also on site and spent time between his unit/408 and Client's unit monitoring Mr. Atwood's efforts. Nick invited Mencias to enter his unit/unit 408 with Mr. Atwood, and she chose to stay outside.	Client Email

	Mr. Atwood spent roughly 15 minutes in the Property before going upstairs to unit 408. Client left her front door unlocked and ajar and let Mr. Atwood know he could come/go as needed. He never re-entered the Property again. No water test was conducted. Total duration of the visit: 9:10am - 11:40am. Atwood did not take measurements in the bedroom header and did not use a ladder inside the Property. Atwood assessed points of Unit 408s balcony; and accessed unit 407s balcony from the walkway (using a ladder), as the owner was not home. He also accessed the roof. No efforts were observed to investigate any other points (i.e., units 410, 411, 405, 404, balconies), or other points on the walkway. Client interacted with Mr. Atwood briefly outside her unit to show him photos and video of the active leak and saturated exterior stucco. Mr. Atwood asked if Client would email or text him the photos and videos, Client showed him. Client had said "ok" but actually, given the HOA has engaged this vendor and to avoid any misperception that she "influenced" Mr. Atwood's efforts, she will defer to the HOA. Nick and Client did not in any way direct Mr. Atwood's limited efforts, again focused on 408 and 307.	
February 14, 2024	Servpro came by this morning to check their equipment (a dehumidifier) which has been running 24/7 since at least February 2, 2024 to dry out the more than 10+ inches of rain that came through the wall recently. The Property is still wet.	Client Email

This table may be amended from time to time as new information/evidence comes in. To the extent that such new information necessitates any significant revisions to Client's litigation strategy, where applicable, the Firm will work with Client to develop a new strategy.

4.

NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS

Document Name Article / Section No.	Text of the Selected Article/Sections No.
CC&Rs Article I, Section 35	"Maintain, Maintenance" (whether capitalized or not) shall mean "inspect, maintain, repair and replace" and "maintenance, repair and replacement," respectively; provided, however, that maintain" or "maintenance" shall not include inspection, repair and replace (ment) where the context or specific language of this Declaration provides another meaning.
CC&Rs Article III Section 2(a)	Each Residential Condominium Unit includes both the portion of the condominium building so described and the airspace so encompassed, all windows and doors of said Condominium Unit (including all locks, handles, latches, screens, weatherstripping, and exterior doors), the forced air heating unit, the air conditioning compressor, if any, the hot water heater, all utility laterals, lines, pipes and/or outlets when located within or exclusively serving said Condominium Unit {no matter where such are located}, all built-in appliances and fixtures, the chimney flue/vent and firebox portion of the fireplace in or servicing the Condominium Unit, if any, but the following are not a part of the Condominium Unit: bearing walls, columns, beams, floors, roofs, slabs, foundations, chimneys, fences, reservoirs, tanks, pumps, private on-site main sewer laterals and lines, common mailbox structures, irrigation equipment, fire escapes, fire sprinklers, including sprinkler heads which protrude into the airspace of the Condominium Unit, if any, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities located on Corporation Property, and other central services, pipes, ducts, flues, chutes, conduits, wires, exterior lighting, and other utility installations wherever located (except all utility installations and/or outlets thereof when located within or exclusively serving one Condominium Unit, including the internal and external telephone wiring designed to exclusively serve a Condominium Unit, and/or as set forth above), sound walls, retaining walls, perimeter walls, the private storm drain system for the Project, the elevator cabs and systems, common interior stairwells, recreational facilities (~, fitness club, lobby with kitchen) , subterranean garage, air supply and exhaust systems and sensors servicing the garage, garage lighting, sump pumps servicing the garage, if any, garage access gates and access control systems (~. telephones and access card readers) , common trash dumpsters and recycling bins designated for residential use, poles, Project monument signs, water features, and all landscaping located on the Corporation Property (excluding the Exclusive Use Corporation Property}.

CC&Rs Article VIII	Section 8. Residential Exclusive Use Corporation Property. Residential Exclusive Use Corporation Property shall mean and refer to that portion of the Corporation Property which is reserved for the exclusive use of the Owners of particular Residential Condominium Units. A Residential Exclusive Use Corporation Property constitutes an exclusive easement appurtenant to its assigned Condominium Unit, subject to the exclusive uses and purposes set forth herein. Each Residential Exclusive Use Corporation Property area and the Condominium Unit to which such area is appurtenant is identified in the Condominium Plan as follows: (a) Patios. The patio area bound by and contained within the exterior finished surfaces of the perimeter walls, doors and/or windows of the adjoining commercial and/or residential element, and the interior finished surfaces of the patio perimeter walls and/or fences and doors, identified in the Condominium Plan by the letter 11 P" and its respective Condominium Unit number, is hereby assigned to such Condominium Unit as shown on the Condominium Plan. (b) Balcony Area. The balcony area, if any, bound by and contained within the exterior finished surfaces of the perimeter walls, doors, and/or windows of the adjoining commercial and/or residential element, and the interior finished surfaces of the balcony perimeter walls, the balcony railings, walls, and doors, identified in the Condominium Plan by the letter 11 B11 and its respective Condominium Unit number is assigned to such Condominium Unit as shown on the Condominium Plan. ... Subject to the provisions herein, including the Article entitled "Repair and Maintenance," it shall be the obligation of each and every owner to keep his respective Residential Exclusive Use Corporation Property in a neat, clean, safe and attractive condition at all times, except for the structural integrity of the Residential Exclusive Use Corporation Property patio, balcony and parking spaces in the subterranean garage. The Corporation shall be responsible for painting and performing all routine maintenance of all structural components of the Residential Exclusive Use Corporation Property patio, balcony and parking spaces, including, but not limited to, resurfacing the balcony areas, and for making all structural repairs to the patios, balconies, and parking spaces; provided, however, if any maintenance or repairs are required due to the willful or negligent acts or omissions of any Owner, his family, lessees, tenants, guests, or invitees, the Corporation shall levy a Compliance Assessment against the Owner for such costs. The Owner is responsible for periodically inspecting, repairing and otherwise maintaining his/her Residential Exclusive Use Corporation Property storage area. Should landscaping be placed on a patio or balcony, the Owner must take adequate steps to capture water from such plants and to prevent any damage to the Project or unsightly conditions as determined by the Board in its sole discretion. The Board shall have the right to limit the weight of pots and other items placed on the patios and balconies, to restrict pots or other items from being placed on top of any fence or railing, and to prohibit or restrict the growth of potted plants grow on the exterior of a patio or balcony wall or all or portions of a condominium building or within the Project. Each Owner shall be responsible to pay for the repairs of any damage which may be caused (by, landscaping, including potted plants) by his or her activities or instructions or direction. No Owner shall make any improvements to his or her patio, balcony, storage area or other Residential Exclusive Use Corporation Property unless and until the Architectural Review Committee has approved plans of such improvements showing such detail as the Architectural Review Committee or its consultant deems appropriate. The Architectural Review Committee shall have the right to restrict or prohibit any items from being placed within a storage space, or on a patio or balcony which are within view of other Owners and/or which the Architectural Review Committee deems to be unattractive, unsafe, or inconsistent with any Rules and Regulations of the Corporation. Each Owner assumes all risks which may result from Improvements he or she makes to his or her Residential Exclusive Use Corporation Property or Condominium Unit and each Owner indemnifies and hold harmless the Corporation, the Architectural Review Committee, Declarant and
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	each other Owner from any claims, demands, liabilities, judgments, attorney's fees and other obligations which arise out of or are incurred in connection with the installation, existence or removal of such Improvements, or related to or arising out of such Owner's activities. As required by the City, the Exclusive Use Corporation Property storage areas are for the sole use of the residents of the Project and may not be assigned or sold to, or retained in the ownership of, any person not an Owner, and no Exclusive Use Corporation Property storage area may be rented or leased to a non-Owner except in connection with the rental or lease of a Condominium.
CC&Rs Article VI, Section 2(a)	(Powers and Duties of Corporation) (b) Acquire, manage, maintain, repair and replace all Corporation Property and Improvements located thereon, including all personal property, in a neat, clean, safe and attractive condition at all times, and to pay all utilities, gardening and other necessary services for the Corporation Property, all as more specifically set forth herein, including the Article entitled "Repair and Maintenance"; (c) Acquire, own, maintain and repair all portions of the Corporation Property in a neat, clean, safe, attractive, sanitary and orderly condition at all times consistent with this Declaration. Without limiting the generality of the foregoing, the Corporation shall be responsible for maintaining the private storm drain system, private on-site sewer main lines (excluding laterals which exclusively serve individual Condominiums) to the extent such sewer lines are not maintained by a public sewer agency or district, Condominium buildings, fire escapes, fire sprinklers in the Resident Condominium Units, including sprinkler heads which protrude into the airspace of the Residential Condominium Units, fire standpipes, fire alarm systems, fire extinguishers, and other fire prevention equipment and/or facilities located on Corporation Property (the Owners of the Retail Condominium Units are responsible for the maintenance of any fire sprinkler heads and/or other fire prevention or fire suppression devices installed within or servicing the Retail Condominium Units}, sound walls, retaining walls, perimeter walls, elevator cabs and systems, recreational facilities (£L.9...:, fitness club, lobby with kitchen), subterranean garage, air supply and exhaust systems and sensors servicing the garage, garage lighting, sump pumps servicing the garage, if any, garage access gates and access control systems (~, telephones and access card readers except those maintained by the Parking Condominium Unit Owner) , common trash dumpsters and recycling bins designated solely for residential use and Shopkeeper Space Use (The Owners of the Retail Condominium Units are responsible for the maintenance of all trash dumpsters within the Retail Exclusive Use Corporation Property trash areas) , Project monument signs, arbors and landscaping located on Corporation Property, excepting therefrom landscaping and improvements located in the Exclusive Use Corporation Property, and street trees along the public streets adjacent to the Project as depicted in an exhibit to this Declaration {~, see Exhibit 11A-I"), in a condition comparable to the condition initially approved by the City;
CC&Rs Article VI, Section 10	The Board, or any person authorized by the Board, shall have the right to enter, upon reasonable notice, any Condominium to effect necessary repairs which the Owner has failed to perform or which are necessary in connection with the repairs to the Corporation Property or an adjoining Condominium. Such entry shall be made with as little inconvenience to the Owner as is practicable, and in the event that any damage shall be proximately caused by or result from said entry, the Corporation shall repair the same at its expense.
CC&Rs Article IV, Section 7	No Owner shall permit or suffer anything to be done in the Project or kept upon such Owner's Condominium which will obstruct or unreasonably interfere with the rights of quiet enjoyment of the other occupants, or annoy them by unreasonable noises (~, inappropriate use of horns) or otherwise, nor will any Owner commit or permit any nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon . . .

CC&Rs Article X, Section 1	Repair and Maintenance by Corporation. Without limiting the generality herein, including the Article entitled 11 Powers and Duties of the Corporation, n and except as otherwise provided in this Declaration, the Corporation shall have the duty to maintain the Corporation Property in a neat, clean, quiet, safe, sanitary, attractive and orderly condition at all times, and shall be operated in a manner that is not detrimental to adjacent properties and occupants. Without limiting the generality, such maintenance shall include, but not be limited to, painting, maintaining, repairing, restoring, replaci~g, and landscaping (as the case may be) the following: {a) The exterior surfaces of all condominium buildings in the Project, including exterior walls and roofs, the doors (all repairs to exterior doors to the Condominium Units, including the structural maintenance thereof, shall be at the sole expense of the respective Owner unless otherwise agreed to by the Board), the public elevator cabs and system, subterranean garage (as noted above, the Owner of the Parking Condominium Unit shall pay the Parking Assessment Component of Regular Assessments as set forth in the DRE approved budget, subject to increases as noted herein and is responsible for the costs and expenses of the main entry gate) , air supply and exhaust systems and sensors servicing the garage, garage lighting, repeater system (i.e., wireless system designed to ensure sufficient signal strength for mobile phone performance) and security cameras in the garage, sump pumps servicing the garage, if any, garage access gates and access control systems (~, telephones, intercoms and access card readers except for those allocated to the Parking Condominium Unit Owner} , common trash dumpsters and recycling bins designated solely for residential use or Shopkeeper Space Use, the walls, fences, and/or railings enclosing the patios and balconies (i.e., the exterior portions of the walls, fences, and or railings, whether block, brick, wood, or wrought iron), the structural integrity of the Exclusive Use Corporation Property patios and balconies appurtenant to the Residential Condominium Units (applicable Owners of Residential Condominium Units shall be responsible for all routine maintenance, such as sweeping and cleaning, and changing lightbulbs in the patio and balcony areas; Retail Condominium Unit Owners shall be responsible for all maintenance, including, without limitation, routine and structural maintenance of the patios appurtenant to their Condominium Units); (c) Sound walls, retaining walls and Project perimeter fences and walls, including all gates, latches and locks associated therewith (latches, hinges, locks etc. associated with fences or walls associated with the patios shall be maintained by the applicable Owners unless otherwise provided by the Board) . Project perimeter fences and walls shall mean and refer to those certain walls and fences which were originally constructed by Declarant on the Corporation Property or other portion of the Project, which are designated by Declarant or the Board to constitute Project perimeter fences and walls and which will be maintained by the Corporation as provided herein; (f) All common amenities, mailbox structures servicing multiple Condominiums, Project signs and monumentation (excluding signs used in connection with the operation of businesses in the Retail Condominium Units and Parking Condominium Units) , the Public Access Walkway (see Exhibit 11 N" attached hereto) , and the Project entry gates (including, without limitation, the gates barring access to the Public Access Walkway) ; (o) Maintaining everything that the Corporation is obligated to maintain in a clean, sanitary and attractive condition reasonably consistent with the level of maintenance reflected in the most current budget of the Corporation, and in conformance with any Maintenance Guidelines. Unless specifically provided in any Maintenance Guidelines, or as required by the product manufacturers' maintenance guidelines/recommendations, or as commonly accepted maintenance practices may govern, the Board shall determine, in its sole discretion, the level and frequency of maintenance of the Corporation Property and Improvements thereon (each Owner shall maintain everything that the Owner is obligated to maintain in a clean, sanitary and attractive condition and in conformance with any Maintenance
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	Guidelines and Maintenance Recommendations and any product manufacturers' maintenance guidelines/recommendations, as well as commonly accepted maintenance practices)
CC&Rs Article X, Section 2	Section 2. Maintenance Manual. The Declarant may deliver to the Board a "Maintenance Manual 11 which sets forth the Declarant's and its consultants' recommended frequency of inspections and maintenance of various components of the Corporation Property. The Board shall, during its meetings, determine whether the recommended inspections and maintenance activities have been followed, and, if any such recommendations have not been followed, what corrective steps need to be taken to assure proper inspection and maintenance of the Corporation Property. The Board shall keep a record of such determinations in the Board's minutes. The Board shall, from time to time, make appropriate revisions to the Maintenance Manual. The Board shall review the Maintenance Manual for appropriate revisions at least on an annual basis after the Board has prepared the annual pro forma budget and reserve study required by the By-Laws. In addition to the requirements of any Maintenance Manual, the Board may have the Corporation Property inspected at least once every three (3) years to (a) determine whether the Corporation Property is being maintained adequately in accordance with applicable standards of maintenance, (b) identify the condition of the Corporation Property and any Improvements thereon, including the existence of any hazards or defects, and the need for performing additional maintenance, refurbishment, replacement or repair, and (c) recommend preventative actions which may be taken to reduce potential maintenance costs to be incurred in the future. The Board may employ such experts and consultants as are necessary to perform such inspection. The Board may have a report of the results of the inspection prepared. The report should include at least the following: (a) A description of the condition of the Corporation Property, including a list of items inspected and the status of maintenance, repair and need for replacement of all such items; (b) A description of all maintenance, repair and replacement planned for the ensuing fiscal year and included in the budget; (c) If any maintenance, repair or replacement is to be deferred, the reason for such deferral; (d) A summary of all reports of inspections performed by any expert or consultant employed by the Board to perform inspections (e) A report of the status of compliance with the maintenance, replacement and repair needs set forth in the inspection report for preceding years; and (f) Such other matters as the Board deems appropriate

CC&Rs Article X, Section 4	Repair and Maintenance by Owner. Except as otherwise in this Declaration [including, without limitation, in Section 1 above] regarding the Corporation's maintenance obligations affecting an Owner's Condominium, every Owner shall have the duty to maintain, repair and replace, at his sole cost and expense, all Improvements within such Owner's Condominium or which represent an integral part thereof (~, pipes, water pressure regulator, plumbing outlets and fixtures, furnaces, ducts [~, HVAC, dryer, stove, oven], electrical wiring and circuit breakers, and utility lines and outlets which provide service to only one Condominium, including the internal and external telephone wiring designed to exclusively serve a Condominium Unit), in a neat, clean, safe, sanitary, attractive and orderly condition at all times. Each Owner shall keep his respective Exclusive Use Corporation Property in a neat and clean condition in accordance with the Corporation Rules and Regulations. Without limiting the generality of the foregoing, and by way of example only, and except as may otherwise be provided in Section 1 above regarding the Corporation's maintenance obligations, every Owner shall: (a) Paint, maintain, repair, replace, restore, decorate, tile, finish, plaster, and/or landscape or cause to so maintained, repaired, replaced, restored, decorated, tiled, finished, plaster, and/or landscaped (as the case may be) the following: {1} The interior surfaces of the walls, ceilings, and floors of his Condominium Unit. However, no bearing walls, ceilings, floors or other structural or utility bearing portions of the buildings housing the Units shall be pierced or otherwise altered or repaired, without the prior written approval of the plans for the alteration or repair by the Architectural Review Committee 1 which may approve or disapprove Such in its sole and absolute discretion. Each Owner shall have the right to substitute new finished surfaces in place of those existing on the ceiling, floors, walls and doors of his or her Condominium Unit at the time of the original sale of said Condominium Unit from Declarant; however, without Architectural Review Committee approval, hard floor surfaces shall not be installed in areas in which the installation of the hard surface floor covering would increase the level of noise heard in any Condominium Unit, unless such hard surfaces replace hard surfaces previously installed by or approved by Declarant. Notwithstanding anything to the contrary herein or in the Rules and Regulations or guidelines of the Architectural Review Committee, the Board may establish certain sound attenuation measures applicable to flooring and the installation thereof (including by not limited to the applicable underlayment materials) . (2) The windows and the interior surfaces of doors enclosing the Condominium Unit, including the metal frames, hardware, lock, latches, hinges, weatherstripping, thresholds, tracks and exterior screens of glass doors and windows; (7) Routine maintenance {~, sweeping and cleaning) of any Exclusive Use Corporation Property appurtenant to the Condominium Unit (~, patio and/or balcony);
CC&Rs Article XIX, Section 1(b)	The result of every act or omission whereby any of the Protective Covenants contained in this Declaration or the provisions of the By-Laws are violated, in whole or in part, is hereby declared to be and constitutes a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by any Owner, by the City, or by the Corporation, or by its successors in interest.

CC&Rs Article XIX, Section 15	The Corporation and each Owner shall maintain everything he/she/it/they is/are obligated to maintain in a manner consistent with the provisions herein and in the Declaration and in conformance with any "Maintenance Recommendations/Schedules" (i.e., procedures, standards, and/or schedules for the maintenance and operation which may be provided to said Owner and/or the Corporation by Declarant, as such procedures, standards, and/or schedules may be updated and revised as appropriate), and commonly accepted maintenance standards. Unless otherwise provided in such Maintenance Recommendations/Schedules or, herein, each Owner and the Corporation, as applicable, shall determine the level and frequency of maintenance. The Board shall provide to Declarant, for a period of ten (10) years following the last close of escrow for a Lot in Phase 1, and within thirty (30) days after the Corporation's receipt of a written request therefor from the Declarant, the report noted in Article X, Section 2 of this Declaration (if such report is prepared} .
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Rules and Regulations Water Intrusion Policy	<u>Source of Water</u> Water intrusion may result from a roof leak, a leaking pipe in Common Property, or a leak in an angle stop, automatic icemaker, or other source within a Unit. Water intrusion may even result from an overflowing plumbing fixture. However, the source of the water, whether a Common Property pipe or a fixture within a Unit, does not generally determine responsibility for repair of water damage. The actual location of the damage, whether it is to Common Property or a Unit, generally determines who is responsible to contract for the repairs and to pay for them. <u>Damage to Common Property</u> The Association will be responsible to contract and pay for repairing damage to Common Property caused by water intrusion. Common Property generally includes: perimeter and bearing walls, including drywall, columns, beams, unfinished floors and floor slabs in the residential units, unfinished ceilings, roofs, and all gas, water and waste pipes, all sewers, all ducts, chutes, flues, conduits, wires and other utility installations (except the outlets thereof when located within the Units and telephone wiring exclusively serving a Unit). Common Property is more specifically defined in Article I, Sections 13 and 18 of the CC&Rs and in the recorded Condominium Plan. The Association's insurance policy covers water intrusion damage from covered causes, subject to a deductible. The Board of Directors has the sole discretion as to whether to submit a claim for Common Property damage to the insurer. Where damage is solely to Common Property, the Association will be responsible to satisfy the deductible. If an Owner's negligence caused the water intrusion, or made the damage worse (i.e., by failing to report an ongoing leak), the Association may seek to recover the cost of repairing Common Property from that Owner in the form of a Compliance Assessment, following notice and hearing, in accordance with the Governing Documents of the Association and the California Civil Code. Owners are also liable to the Association for damage caused by the improper installation or maintenance of any element the Owner is responsible to maintain. (CC&Rs at Article VII, Section 5 and Article X, Sections 4 and 6). The Association is not obligated to make an insurance claim before seeking to recover from an Owner any amount up to the amount of the deductible. If the damage to Common Property was caused by a third party (that is, neither the Association nor an Owner), the Association or its insurance company may seek to recover the cost of repairs from the third party. <u>Damage to Units</u> Owners are responsible to contract and pay for damage to their Units caused by water intrusion. Elements of the Units generally include floor coverings (i.e., carpet, wood or laminate flooring), wall coverings, cabinets and other fixtures. Units do not include bearing walls, or pipes or wiring, except for outlets within Units. The elements of the Retail and Residential Condominium Units are fully described in Article III, Sections 1 and 2 of the CC&Rs.
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	However, the Association's insurance policy provides coverage to repair portions of the Residential Units consisting of the fixtures, built-in and set-in appliances, cabinets and initial basic floor coverings, if the damage is from covered causes. (CC&Rs, Article XVI, Section 1(a)). Therefore, if there is insurance, the insurance policy may provide some funds to repair and replace fixtures within Units, subject to the deductible. If damage is not covered by insurance, and if the damage was caused by the Association's negligence, Owners may request the Association to reimburse them for the cost of repairing damage to Units. The Association will consider such requests on a case by case basis. Where damage to a Unit is covered by the Association's insurance, the Association's insurance company will adjust the claim for damages. Owners are expected to cooperate with the Association and the insurance company while the claim is investigated. Ordinarily, the insurance company will estimate the cost of repairing the damage, based on its investigation. The amount to be paid for repair and replacement of portions of the Unit covered by insurance will generally be based on the insurance company's estimate, but in any case the Board has the final authority to determine this amount. The insurance company will make payments directly to the Association, and Association will disburse funds as appropriate to Owners. (CC&Rs, Article XVI, Section 6). Owners are allowed to select their own contractors to repair and replace damaged elements in their Units. However, Owners must use licensed contractors for work requiring a license, and must obtain all required building permits from the City of Long Beach. If both Common Property and portions of the Unit are damaged, as is often the case, Owners are expected to cooperate with the Association in performing repairs. The Association will cooperate with Owners, but Owners must allow the Association and its contractors access to perform repairs. The Association has the right to enter Units on reasonable notice, or without notice if there is an emergency. (CC&Rs, Article VI, Sections 9 and 10). In repairing Unit elements, Owners may wish to consider using the same contractors that the Association uses for Common Property repairs. ... <u>Avoiding Water Intrusion and Reporting it When it Happens</u> Owners should immediately report any evidence of water intrusion or a water leak to Association management. If the water is noted during non-business hours, Owners should call management's 24 hour emergency number. Owners must cooperate with each other and the Association in allowing access to investigate water intrusion and leaks and taking appropriate action. If an Owner is notified that water is or may be coming from their Unit and fails to allow access and/or to take reasonable steps to mitigate damage, they may be responsible for damage to other Units or Common Property. If a Unit is vacant for a period of time, Owners should inspect periodically to assure that water leaks do not go undetected. Water intrusion that is allowed to continue will lead to additional damage. If water damage is not reported immediately, Owners may be responsible for damage caused to Common Property. <u>Emergency Dry Out, Mitigation, and Leak Repairs</u>
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	The Association is responsible to repair leaking Common Property pipes and other sources of water intrusion from Common Property. Owners are responsible to repair leaking pipes and fixtures in their Units. These might include angle stops and feeder lines at sinks, toilet wax rings, icemaker lines, shower pans, mixer valves, and any other element within the air space of the Unit. The Association will generally call an emergency restoration company to dry out areas affected by the water intrusion and will call a plumber or leak detection contractor to locate and correct the leak. The Association performs this emergency work to mitigate further damages, for the protection of the Association and all Owners. The Association may seek reimbursement from the Owner of the Unit which is restored or dried out, and from any Owner or third party whose negligence caused the damage.
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The table may or may not contain all the significant provisions of the document(s) at issue. It is simply a place to include one or more provisions of one or more operative agreement/document that we believe could play a role in some aspect of Client's case (e.g., binding arbitration, attorneys' fees, and choice of law provisions). The provisions contained in the table, therefore, should neither be viewed as an exhaustive list of key provisions/evidence, nor be used as a measure of what provisions of the operative documents might strengthen (or weaken) Client's case.

5.

ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

The Firm should follow up with Client regarding the following items/issues:

— None at this time.

This section of the LADD may be amended from time to time as new information becomes known.

6.

CIVIL CODE § 5200 DOCUMENT DEMAND

The HOA produced most documents in response to two Civil Code section 5200 demands.

7.

ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

The Firm needs to ask Client for the following documents:

- Proof of payment of therapy expenses.

This section of the LADD may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

8.

THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST

At this time, Client is unaware of any documents or information that can only be obtained from a third party. This, however, may change as new information comes to light, in which case the LADD may be amended to reflect such new information.

9.

POTENTIAL CAUSES OF ACTION & THE STRENGTHS/WEAKNESSES OF EACH

9.1.

Breach of CC&Rs / Breach of Equitable Servitudes / Violation of Civ. Code, § 5975

Elements—Breach of CC&Rs

- Restrictive covenants and recorded declarations are written agreements governed by contract principles. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC* (2012) 55 Cal.4th 223, 240.) Restrictive covenants and recorded declarations are of a contractual nature and are enforceable by statute unless unreasonable. (*Id.* at 237; and see Civ. Code, § 5975.) Because the Declaration of CC&Rs is a recorded declaration of restrictive covenants, it is enforceable provided it is not unreasonable. “[S]ettled principles of condominium law establish that an owners association, like its constituent members, must act in conformity with the terms of a recorded declaration. (See Civ. Code, § 5975, subd. (a); *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 268 [homeowner can sue association to compel enforcement of declaration's provisions];(Citations.)” (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC*, supra, 55 Cal.4th at p. 239.)
- Where enforcement is an issue in a breach of CC&R cause of action, it tends to arise in two ways: (i) HOA not enforcing rules at all; or (ii) HOA applying different rules to different homeowners and/or issuing fines that are not supported by existing CC&Rs (i.e., selective enforcement).
 - HOA Not Enforcing Rules.

- A homeowner can sue his or her HOA to compel enforcement of the CC&Rs. (*Lamden v. La Jolla Shores Clubdominium Homeowners Assn.*, *supra*, 21 Cal.4th at 268; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC*, *supra*, 55 Cal.4th 223, 239.)
- Selective Enforcement.
 - In an improper enforcement situation, there are a couple avenues of attack against the HOA. First is to examine the propriety of the rule itself. Use restrictions can be enforced unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs any benefit. (*Sui v. Price* (2011) 196 Cal.App.4th 933.)
 - The second avenue is to review the enforcement process used by the HOA. This enforcement must be “in good faith, not arbitrary or capricious, and by procedures which are fair and uniformly applied.” (*Liebler v. Point Loma Tennis Club* (1995) 40 Cal.App.4th 1600, 1610; *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361.) In other words, the HOA must enforce the CC&Rs in a uniform and fair manner, or else its enforcement will be deemed unlawful. (*Dolan-King v. Rancho Santa Fe Ass’n.* (2000) 81 Cal.App.4th 965, 975, citing former Civ. Code, § 1354; *Villas De Las Palmas Homeowners Ass’n. v. Terifaj* (2004) 33 Cal.4th 73, 84.)
 - When an HOA seeks to enforce the provisions of its CC&Rs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious. [Citations.]” (*Ironwood Owners Assn. IX v. Solomon* (1986) 178 Cal.App.3d 766, 772.) “The criteria for testing the reasonableness of an exercise of such a power by an owners’ association are (1) whether the reason for withholding approval is rationally related to the protection, preservation or proper operation of the property and the purposes of the Association as set forth in its governing instruments and (2) whether the power was exercised in a fair and nondiscriminatory manner. [Citations.]” (*Laguna Royale Owners Assn. v. Darger* (1981) 119 Cal.App.3d 670, 683–684.)
- One of the fundamental duties of an HOA is to maintain the common areas. (Civ. Code, § 4775.) In performing its duties, an association shall perform a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore or maintain. (Civ. Code, § 5500(a).)

Applicable Statute of Limitations—

- The statute of limitations to enforce a restriction, which includes CC&Rs, is five years. (Code Civ. Proc., § 336(b).) Consequently, an action for a violation of a restriction must be commenced within five years after the party enforcing the restriction discovers, or through the exercise of reasonable diligence, should have discovered, the violation. [*As used here, a “restriction” means a limitation*

on, or a provision affecting the use of, real property in a deed, Declaration, or other instrument in the form of a covenant, equitable servitude, condition subsequent, negative easement, or other form of restriction.] (Civ. Code, § 784.)

Remedies—

- While typically injunctive in nature, courts may fashion remedies to enjoin an ongoing breaches. (*Ritter & Ritter Inc. Pension and Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103.) Additionally, compensatory damages are available if plaintiff incurred monetary damages. (*Cutujian v. Benedict Hills Estates Assn.* (1996) 41 Cal.App.4th 1379, 1385; Civ. Code, §§ 3281, 3300.)
- As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Application—Application of the Law to Client’s Facts

- Article I, Section 18 of the CC&Rs defines the HOA’s “Corporation Property” (i.e., its common areas) to include, among other things, “the condominium buildings . . . together with all improvements”, including bearing walls and floors. In turn, Section 50 defines “Residential Exclusive Use Corporation Property” to include balconies.
- Additionally, both Article VI, Section 3(c) and Article X, Section 1(a) of the CC&Rs unequivocally provide for the HOA’s duty to maintain and repair all portions of the Corporation Property in a neat, clean, safe, attractive, sanitary and orderly condition.
- As illustrated by the foregoing provisions and under California law, the HOA has an absolute duty to adequately and timely inspect, maintain, and repair its common area elements, including without limitation: (i) all fourth-floor balconies (including their walls, flooring, and structural integrity); (ii) the walkway; (iii) the building’s exterior stucco, including, without limitation, the walls of the Property and Units 407, 408, 410, and 405; and (iv) the building’s roof.
- The HOA’s historical failure to comply with its contractual and statutory duties resulted in continued water intrusion into the Property, causing extensive water damage to the bedroom, its interior components (e.g., wood flooring and rug), and its exterior wall. The HOA continues to refuse to remedy these issues in a timely manner, which has exposed various units, including the Property, to significant damage.
- While the HOA has conducted limited and inadequate water testing and treated the walkway and Unit 408’s balcony, threshold, and windows and eventually repaired to the interior of the Property and its common area, further leaks in January and February 2024 revealed that the HOA’s testing and repairs were clearly insufficient. To date, the HOA has failed to engage a qualified moisture intrusion specialist to conduct a comprehensive, rainfall-like water test to all fourth floor units,

balcony, roof, and walkway to detect all suspected leak sources and ensure that all leaks have been fully remedied. Until the HOA does so, the Property and the entire building will remain exposed to further water damage.

- Client has been damaged as a result of the HOA's breaches of its CC&Rs, as she has been deprived of the use and enjoyment of a significant portion of the Property (including the bedroom and the office, where Client has been storing her furniture) for over a year. The Property and the HOA's common area remain unrepaired and exposed to further damage solely due the HOA's dilatory response to the water intrusion events, as well as failure to engage a qualified specialist to conclusively determine and remedy all water leak sources in the building.
- The Property value has been and will continue to be diminished in view of the repeated water intrusion events as set forth in this analysis as long as the HOA continues to drag its feet. Additionally, the HOA has, to date, failed to reimburse Client for her out-of-pocket costs incurred in connection with the water intrusion events, despite being responsible for doing so.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

- At this time, this cause of action is supported by the facts and the law.

9.2.

Implied Covenant of Good Faith and Fair Dealing

Elements—Breach of the Implied Covenant of Good Faith and Fair Dealing

- The elements of a claim for breach of the implied covenant of good faith and fair dealing are: (i) the existence of a contract; (ii) the plaintiff's performance of the contract or excuse for nonperformance; (iii) the conditions required for the defendant's performance occurred or were excused; (iv) the defendant unfairly interfered with the plaintiff's right to receive the benefits of the contract; and (v) the plaintiff was harmed. (See *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 349-350; *Racine & Laramie, Ltd. v. Dept. of Parks & Recreation* (1992) 11 Cal.App.4th 1026, 1031-1032.)
- Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement. (Rest.2d Contracts, § 205.) "The covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith. [Citations.]" (*Carma Developers (Cal.), Inc., v. Marathon Development California, Inc.* (1992) 2 Cal.4th 342, 372.) "All that is required for an implied covenant claim is the existence of a contractual or relationship between the parties. (*Smith v. City and County of San Francisco* (1990) 225 Cal.App.3d 38, 49.)
- The "implied covenant imposes upon each party the obligation to do everything that the contract presupposes they will do to accomplish its purpose." (*Schoolcraft v. Ross* (1978) 81 Cal.App.3d 75; accord *Fletcher v. Western National Life Ins. Co.* (1970) 10 Cal.App.3d 376, 401.) A "breach of the

implied covenant of good faith and fair dealing involves something beyond breach of the contractual duty itself.” (*Congleton v. National Union Fire Ins. Co.* (1987) 189 Cal.App.3d 51, 59.) Indeed, “breach of a specific provision of the contract is not . . . necessary’ to a claim for breach of the implied covenant of good faith and fair dealing.” (*Thrifty Payless, Inc. v. The Americana at Brand, LLC* (2013) 218 Cal.App.4th 1230, 1244.) An association’s duty of good faith extends to each member individually. (See *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642.) The essence of the good faith covenant is objectively reasonable conduct. (*Badie v. Bank of America* (1998) 67 Cal.App.4th 779.)

- The duty of a contracting party under the covenant of good faith and fair dealing is to act in a commercially reasonable manner. (*California Pines Property Owners Assn. v. Pedotti* (2012) 206 Cal.App.4th 384, 394-396; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779.)
- While *tortious* breach of the implied covenant is generally restricted to the insurance context, it is possible to establish such a breach *outside* the insurance context if: (i) the breach is accompanied by a common law tort (e.g., fraud, conversion, etc.); (ii) the means used to breach the contract (or its implied covenant) are tortious (e.g., involving deceit or coercion); or (iii) a party intentionally breaches the contract (or implied covenant) with the intent/knowledge that such a breach will cause severe and unmitigable harm to the other party in the form of mental anguish, personal hardship, or substantial consequential damages. (*Erlich v. Menezes* (1999) 21 Cal.4th 779.)

Remedies—

- General contractual remedies are available, including compensatory (money) damages. (Civ. Code, § 3300.)
- Tort damages are generally unavailable for real estate related matters other than leases and wrongful eviction claims that are classified as torts. (*Ginsburg v. Gamson* (2012) 205 Cal.App.4th 873.)
- As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

- Same as breach of contract. Four years for written contract (Code Civ. Proc., § 337), two years for oral contract (Code Civ. Proc., § 339), and six years for negotiable instrument (e.g., promissory note) (Comm. Code, § 3118).

Application—Application of the Law to Client’s Facts

- The HOA is liable to Client for breach of the implied covenant for the same reasons it is liable to her for its contractual breaches. Client had an obligation to report common area maintenance issues and damage resulting from those issues, which she promptly did. Client has attempted, in good faith, to

work with the HOA by being proactive and proposing multiple vendors and water intrusion specialists to the HOA, all in an effort to expedite the necessary testing and repairs. The HOA, however, has shown a continued lack of commitment to address the water intrusion events and the extensive damage resulting from these events, interfering with the benefits conferred upon Client under its governing documents.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

- At this time, this cause of action is supported by the facts and the law.

9.3. Breach of Other Governing Documents

Elements—Breach of Articles, Bylaws, Rules, Etc.

- Civil Code section 5975(a) makes the CC&Rs enforceable as an equitable servitude. Articles, bylaws, and rules (defined as governing document in Civ. Code, § 4150) are not in Davis-Stirling’s definition of equitable servitudes. Civil Code section 5975(b), however, authorizes enforcement of the other governing documents such as bylaws, articles, and rules by an association against a homeowner, and by a homeowner against the association (*but not by an owner against other owners*).

Remedies—

- While typically injunctive in nature, courts may fashion remedies to enjoin any ongoing breaches. (*Ritter & Ritter Inc. Pension and Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103.) Additionally, compensatory (money) damages are available if plaintiff incurred monetary damages. (*Cutujian v. Benedict Hills Estates Assn.* (1996) 41 Cal.App.4th 1379, 1385; Civ. Code, §§ 3281, 3300.)
- As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

- Unrecorded governing documents (e.g., architectural guidelines, rules, etc.) fall within the same five year statute of limitations that breach of the CC&Rs does. (*Pacific Hills Homeowners Ass’n v. Prun* (2008) 160 Cal. App. 4th 1557, 1563.)

Application—Application of the Law to Client’s Facts

- According to the HOA’s Water Intrusion Policy,

“[t]he Association will be responsible to contract and pay for repairing damage to Common Property caused by water intrusion. Common Property generally includes: perimeter and bearing walls, including drywall, columns, beams, unfinished floors and floor slabs in the residential units, unfinished ceilings, roofs . . . If damage is not covered by insurance, and if the damage was caused by the Association's negligence, Owners may request the Association to reimburse them for the cost of repairing damage to Units.

- For the same reasons above—namely, the HOA’s blatant disregard for its common area maintenance and repair duties, along with its unjustified delay to detect all water intrusion sources and repair its common areas and the interior of the Property—the HOA will be liable for breaching its Water Intrusion Policy which has, as explained above, resulted in damage to Client and the Property.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

- At this time, this cause of action is supported by the facts and the law.

9.4. Negligence

Elements—Negligence

- To prove a claim for negligence, plaintiff must establish: (i) duty; (ii) breach of duty; (iii) proximate cause; and (iv) damages. (*Peredia v. HR Mobile Services, Inc.* (2018) 25 Cal.App.5th 680, 687.)
- In simple terms, negligence is the commission of an unintentional a wrongful act where one fails to exercise the degree of care in a given situation that an otherwise reasonable person would exercise to prevent another from harm. (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753–54.)
- An HOA that fails or refuses to abide by its contractual maintenance obligations is liable to the homeowner for damages caused by such negligence. (See, e.g., *White v. Cox* (1971) 17 Cal.App.3d 824, 895.)
- The “enforcement” issue raised in the context of the “Breach of CC&Rs” cause of action above is also applicable in the context of a negligence claim.
- The “failure to maintain” issue discussed in the context of the “Breach of CC&Rs” cause of action above is also applicable in the context of a negligence claim.

Remedies—

- Compensatory damages are available for all harm proximately caused by a defendant’s wrongful acts. (Civ. Code, §§ 3281, 3333-3343.7.)

- Injunctive Relief is available. Courts can fashion equitable relief to remedy negligent conditions. (*Ritter & Ritter Inc. Pension and Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103.)
- Damages for emotional distress are only available in connection with bodily injury. (*Potter v. Firestone Tire & Rubber* (1993) 6 Cal.4th 965.) Such relief, when available, arises out of a claim for *negligent infliction of emotional distress*, which often involve “bystander situations”—e.g., witnessing injury to a family member. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064.) Emotional distress damages for negligence *without* injury (e.g., fear of illness such as cancer if exposed to toxic substances threatening cancer) available if defendant acted with malice, fraud, or oppression, and the fear is based on knowledge corroborated by reliable medical or scientific evidence. (*Potter v. Firestone Tire & Rubber*, *supra*, 6 Cal.4th at pp. 999-1000.)
- As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

- Two years for personal injuries. (Code Civ. Proc., § 335.1.)
- Three years for claims related to injury to property. (Code Civ. Proc., § 335.1.)

Application—Application of the Law to Client’s Facts

- The HOA owes a general duty of care to its members, including Client, as well as a duty to abide by its contractual maintenance obligations. By engaging in the foregoing actions and inactions, which include, without limitation: (i) failing to adequately and timely inspect, maintain, and repair its common area elements; (ii) failing to timely repair the resulting damage to the Property; (iii) unjustifiably deferring its response to the water intrusion events at issue; and (iv) failing to engage a qualified water intrusion specialist and a structural engineer to adequately and conclusively investigate and repair all leak sources and assess the structural integrity of the building (which is evidently compromised due to the repeated water intrusion into the stucco, as confirmed by multiple contractors), the HOA was at the very least, negligent, which has, as explained above, resulted in significant damage to Client and the Property.
- As detailed above, Client has, on multiple occasions, implored the board to take action and resolve the matter with skilled resources rather than expend time and monies on questionable destructive efforts with no fruitful outcome. Only after July 2023 did the HOA consider engaging purported “water intrusion specialists”, who failed to inspect all common area elements that need to be inspected due to Neamtu’s arbitrary instructions.
- Despite the foregoing, the HOA has failed to conduct further comprehensive testing of the units on the walkway (i.e., Units 410, 405, all balconies, and roof) to detect or rule out additional leak

sources. Further, the HOA failed to appropriately address, in a timely manner, the compromised window sheathing and degraded stucco of the Property, Units 408, 407, and likely neighboring units on the Walkway, instead opting instead to "caulk" over select areas—a cheap temporary fix for a significant issue. To date, the HOA continues to refuse to provide Client with any kind of plan and timeline to resolve the matter.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

- At this time, this cause of action is supported by the facts and the law.

9.5. Breach of Fiduciary Duty

Elements—Breach of Fiduciary Duty

- The elements of a claim for breach of fiduciary duty are: (i) the existence of a fiduciary relationship; (ii) its breach; and (iii) damage proximately caused by that breach. (*Tribeca Companies, LLC v. First American Title, Ins.* (2015) 239 Cal.App.4th 1088.)
- Associations owe a fiduciary duty to their members. (*Raven’s Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642.)
- Directors of an association are fiduciaries and are thus required to exercise due care and undivided loyalty for the interests of the association. (*Francis T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 513; *Mueller v. Macban* (1976) 62 Cal.App.3d 258, 274.)
- HOAs have an affirmative duty to enforce the restrictions in their governing documents. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.* (2008) 168 Cal.App.4th 1111.)
- Among its acts, directors may not make decisions for the association that benefit their own interests at the expense of the association and the entire membership. (*Raven’s Cove Townhomes, Inc. v. Kruppe Development Co.* (1981) 114 Cal.App.3d 783, 799.) This is typically referred to as “self-dealing.”
- The “enforcement” issues discussed in the context of the “Breach of CC&Rs” and “Negligence” causes of action above are also applicable to a breach of fiduciary duty claim.
- The “failure to maintain” issue discussed in the context of the “Breach of CC&Rs” and “Negligence” causes of action above is also applicable in the context of a breach of fiduciary duty claim.

Remedies—

- If the breach of fiduciary duty results in a breach of CC&Rs, then compensatory (money) damages and injunctive relief may be available.
- If the breach results in damage to property, available compensatory damages are the cost to remedy defects and for loss of use during the period of injury. (*Raven's Cove Townhomes Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783, 802.)
- Civil Code § 3333: “For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”
- Equitable remedies such as constructive trust, rescission, and restitution are available when the defendant has been unjustly enriched by the breach. (*Miester v. Mensinger* (2014) 230 Cal.App.4th 381.)
- Punitive damages may be available if the breach constitutes constructive fraud. (Civ. Code., § 3294; *Hobbs v. Bateman Eichler, Hill Richards Inc.* (1985) 164 Cal.App.3d 174.)
- As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

- A claim for breaching a fiduciary duty must be brought within four years of the breach. (Code Civ. Proc., § 343; *William L. Lyon & Assoc, Inc. v. Sup. Ct.* (2012) 204 Cal.App.4th 1294, 1312.) If the breach of fiduciary duty stems from the defendant’s fraud (even if pleaded as breach of fiduciary duty), which has a statute of limitations of only three years, the claim must be brought within three years. (Code Civ. Proc., § 338; *Professional Collection Consultants v. Lujan* (2018) 23 Cal.App.5th 685, 691.)

Application—Application of the Law to Client’s Facts

- The HOA, through its agents, has engaged in repeated breaches of fiduciary. In addition to their unjustified failure to abide by its obligations under its governing documents (which certainly constitutes a breach of fiduciary duty), the HOA’s agents have engaged in arbitrary, capricious, and unreasonable actions and self-serving conduct on numerous occasions, to the detriment of Client and the entire membership.
- As an HOA member, it is undisputed that the HOA owes Client a fiduciary duty, including an affirmative duty to comply with the restrictions in its governing documents, especially its inspection, maintenance, and repair duties. As detailed above, the HOA has breached its fiduciary duty to abide by the CC&Rs and Water Intrusion Policy by, among other things, historically postponing the

maintenance and repair to its common area elements, resulting in extensive water damage to its common areas and the Property that the HOA continues to fail to timely and thoroughly repair. Similarly, the HOA has and continues to refuse to conduct further water testing to adequately investigate and remedy all water leak sources, exposing the membership (including Client), the Property, and the South Building to further damage.

- Only in June 2023-July 2023 did the HOA send out general contractors to inspect the Property and common area elements at issue. The HOA has wasted its time and resources by engaging its handyman and numerous unqualified vendors (including without limitation, 7 Point, who would often work on an intermittent schedule) to investigate and address complex situation. Not surprisingly, these vendors were unable to conclusively determine all leak sources, as their investigation and repairs were rather limited in scope (which Neamtu unilaterally imposed).
- The vendors that the HOA subsequently selected (PCW and California Consultants) either failed to demonstrate the necessary skill and qualifications to address this complex water intrusion issue, or the HOA limited the scope of testing. To date and despite Client's repeated requests, the HOA has failed to communicate to Client its action plan to effectively repair all components that must be repaired (including the Property and its common area elements). Most (if not all) of Client's requests for a timeline for the repairs and testing were insufficiently unanswered or ignored by the HOA. This too constitutes a breach of fiduciary duty,
- In sum, the HOA's illogical conduct, unjustified delay, and improper handling of the water leak issue constitutes a breach of the board's duty of care and loyalty to Client for which the HOA will be responsible.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

- At this time, this cause of action is supported by the facts and the law.

9.6. Nuisance

Elements—Nuisance

- The elements for a private nuisance claim are: (i) plaintiff's interest in property; (ii) defendant's creation of the nuisance; (iii) unreasonable interference with plaintiff's use or enjoyment of property; (iv) causation; and (v) damages. (Civ. Code, §§ 3479, 3491; *San Diego Gas & Electric Co. v. Sup. Ct.* (1996) 13 Cal.4th 893, 937.)
- Simply put, a cause of action for private nuisance requires the plaintiff to prove that the defendant interfered with his or her use and enjoyment of the property. (*Adams v. MHC Colony Park, L.P.* (2014) 224 Cal.App.4th 601, 610; *Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302-303.)

- A person’s unreasonable, unwarrantable, or unlawful use of his or her own property in a way that interferes with the rights of others is a nuisance. (*Hutcherseon v. Alexander* (1968) 264 CA2d 126.)
- A nuisance occurs where the invasion of the property of another is intentional and unreasonable, or is unintentional but caused by negligent or reckless conduct, or is from an abnormally dangerous activity. An *intentional* nuisance requires proof of malice or actual knowledge that harm was substantially certain to follow from the activity. The conduct is not a nuisance if it is intentional but reasonable, or is accidental and not within one of the above definitions of a nuisance. Where negligence and nuisance causes of action rely on the same facts dealing with lack of due care, the nuisance claim is a negligence claim.
- If the interference is substantial *and* unreasonable (so much so that it would be offensive or inconvenient to the “normal” person), then almost any disturbance of the enjoyment of someone’s property could constitute a nuisance. (*Monks v. City of Rancho Palos Verdes* (2008) 167 Cal.App.4th 263, 302-303 citing *Koll-Irvine Center Property Owners Assn v. County of Orange* (1994) 24 Cal.App.4th 1036, 1041 [“an interference need not directly damage the land or prevent its use to constitute a nuisance; private plaintiffs have successfully maintained nuisance actions against airports for interferences caused by noise, smoke and vibrations from flights over their homes ... and against a sewage treatment plant for interference caused by noxious odors....”].)
- Nuisances are characterized as either permanent or continuing. The nature of the claim and available damages are different for either type of nuisance. The crucial distinction between a permanent and continuing nuisance is whether the nuisance is abatable—i.e., capable of being remedied at reasonable cost and by reasonable means. (See *Mangini v. Aerojet-General Corp.* (1996) 12 Cal.4th 1087, 1093; *McCoy v. Gustafson* (2009) 180 Cal.App.4th 56, 84.)
- The “failure to maintain” issue discussed in the context of the “Breach of CC&Rs,” “Negligence,” and “Breach of Fiduciary Duty” causes of action above is also applicable in the context of a nuisance claim.
- Article XIX, Section 1(b) of the CC&Rs specifically states that a violation of the CC&Rs gives rise to a separate nuisance claim.
- Nuisance v. Trespass. Nuisance is based on a property’s owner’s use of his or her own property in a way that adversely affects other property owners. Typical examples of a nuisance include things like excessive noise, vibration, odors, etc. Trespass refers to a physical invasion of property, either by persons entering the property, or a substance that is dumped, has drained onto, or under the property (e.g., drainage, toxic spills, etc.), or the encroachment of a physical object, such as a structure built over a property line.

Remedies—

- Remedies are different, depending upon whether the nuisance is *permanent* or *continuing*.

- For *permanent* nuisances, compensatory (money) damages are available. The usual measure of such damages is the diminution in fair market value of the affected property. (*Varjabedian v. City of Madera* (1977) 20 Cal.3d 285, 292 [jury decides fair market value before and after creation of nuisance].) A plaintiff may also recover the present value of losses or expenses he or she may, with reasonable certainty, incur in the future because of the nuisance. (*Id.* at 295.) A plaintiff must recover all past, present, and future damages in one suit. (*Kornoff v. Kingsburg Cotton Oil Co.* (1955) 45 Cal.2d 265, 271-272.)
- For *continuing* nuisances, the compensatory (money) damages are different. A plaintiff can only recover actual damages *through the date of the suit* (i.e., plaintiff cannot recover damages for diminution in value) because there is no certainty the nuisance will continue. The rationale for that is apparently that if the defendant is willing and able to abate the nuisance, it is unfair to award damages on the theory that the nuisance will continue. (*Gehr v. Baker Hughes Oil Field Operations Inc.* (2008) 165 Cal.App.4th 660, 668.) Which leads to the most common remedy for ongoing nuisances—abatement. A continuing nuisance is ongoing and can be abated at any time via injunction. (*Baker v. Burbank-Glendale-Pasadena Airport Auth.* (1985) 39 Cal.3d 862, 868-871.)
- Emotional distress damages are also a possibility. (See *Kornoff v. Kingsburg Cotton Oil Co.*, *supra*, 45 Cal.2d at 272; *Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 986, fn.10; *Smith v. County of Los Angeles* (1989) 214 Cal.App.3d 266, 287-288; *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 464 [damages recoverable in a successful nuisance action for injuries to real property include not only diminution in market value but also damages for annoyance, inconvenience, and discomfort].) Mental distress is an element of loss of enjoyment. (*Sturges v. Charles L. Harney Inc.* (1958) 165 Cal.App.2d 306, 323.)
- Punitive damages may be awarded where plaintiff proves by clear and convincing evidence that defendant was guilty of oppression, fraud, or malice. (Civ. Code, § 3294(a); *Hassoldt v. Patrick Media Group Inc.* (2000) 84 Cal.App.4th 153, 169-170.)
- Declaratory relief may be available in nuisance cases. (Code Civ. Proc., § 1060; *Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 984.)
- As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

- Three years for property damage resulting from a nuisance. (Code Civ. Proc., § 338(b); *Wilshire Westwood Assocs. v. Atlantic Richfield Co.* (1993) 20 Cal.App.4th 732, 743-745.)
- Two years for personal injuries resulting from a nuisance. (Code Civ. Proc., § 335.1.)

- Commencement of running of the statute can be an issue.
- For private *continuing* nuisances, each repetition of a continuing nuisance is considered a separate wrong that commences a new period in which to bring an action based on the new injury. (*Beck Development Co., v. Southern Pacific Transportation Co.* (1996), 44 Cal.App.4th 1160.)
- For a *permanent* nuisance (e.g., a building, fence, buried sewer, or structure located on the property of another), the three year statute of limitations begins to run when the nuisance first occurred.

Application—Application of the Law to Client’s Facts

- As explained above, the HOA’s actions/inactions and inexcusable neglect have and continue to unreasonably and significantly interfere with Client’s use and enjoyment of the Property. Any reasonable person in Client’s position would be annoyed at the HOA’s repeated failure to comply with its inspection, maintenance, and repair duties. Client has been deprived of her full use of the Property for over a year. Not only has the HOA’s misconduct deprived Client of the use and enjoyment of her Property for an excessive amount of time, but it has also affected Client’s health and caused severe emotional distress (stress, annoyance, and inconvenience) to Client. As a consequence of the severe stress caused by the water intrusion events, Client experienced, for the first time, a shingles outbreak and ongoing nerve pain.
- Additionally, the HOA’s repeated refusal to adequately communicate with Client and provide her with an estimated timeline for leak detection and repairs has and continues to limit Client’s ability to plan her personal and professional activities. Since January 2023 and continuing to date, Client’s personal and professional commitments have been significantly disrupted, as she is often required to take time off from work to be available for the HOA’s agents’ visits to the Property. Client has been forced to sleep, eat, and work in her living room and the Property has been in extreme disarray for an extended period of time. The foregoing too constitutes continuing nuisances created by the HOA.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

- At this time, this cause of action is supported by the facts and the law.

9.7. Trespass

Elements—Trespass

- “A trespass is an invasion of the interest in the exclusive possession of land, as by entry upon it.” (*Wilson v. Interlake Steel Co.* (1982) 32 Cal.3d 229, 233.) “The essence of the cause of action for trespass is an ‘unauthorized entry’ onto the land of another.” (*Cassinovs v. Union Oil Co.* (1993) 14

Cal.App.4th 1770, 1778) [trespass where wastewater was injected from defendant's property to plaintiff's, interfering with plaintiff's mineral estate].

- An action for trespass may technically be maintained only by one whose right to possession has been violated (see generally, Prosser, Law of Torts, (4th ed.) § 13, p. 69; *Uttendorffer v. Saegers* (1875) 50 Cal. 496, 497–498); however, an out-of-possession property owner may recover for an injury to the land by a trespasser which damages the ownership interest. (*Rogers v. Duhart* (1893) 97 Cal. 500, 504–505)[citations]” (*Smith v. Cap Concrete, Inc.* (1982) 133 Cal.App.3d 769, 774.) In other words, a plaintiff asserting a claim for trespass must have a possessory interest in the land at issue; mere ownership is not sufficient. (*Dieterich Int’l Truck Sales, Inc. v. J.S. & J. Servs. Inc.* (1992) 3 Cal.App.4th 1601, 1608–10.)
- Where possession is an issue, courts have held that “whether plaintiff’s relationship to the land amounts to possession within the meaning of the foregoing principles is a question of fact to be determined by the jury (*O’Banion v. Borba* (1948) 32 Cal.2d 145; *Walner v. City of Turlock* (1964) 230 Cal.App.2d 399; *Brumagim v. Bradshaw* (1870) 39 Cal. 24), unless it can be said as a matter of law that the evidence upon that issue is palpably insufficient to support a verdict for plaintiff. (*O’Keefe v. South End Rowing Club* (1966) 64 Cal.2d 729; [Citations]” (*Williams v. Goodwin* (1974) 41 Cal.App.3d 496, 509.)
- Like nuisances, trespasses can be characterized by either permanent or continuing. The principles governing the permanent or continuing nature of a trespass or nuisance are the same, and the cases discuss the two causes of action without distinction (although the distinction has implications for the statute of limitations and remedies available). (See *Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583.) The key to classifying a trespass as continuing or permanent is whether it is likely to be discontinued or abated at a later date. (*Id.* at 592.)

Remedies—

- As is the case with nuisances, the remedies for *prior* trespasses and an *ongoing* trespasses are different.
 - For a *prior* act of trespass, the measure of compensatory (money) damages includes the: (i) value of the property’s use during the time it was wrongfully occupied (not more than five years before filing suit); (ii) reasonable cost of repair or restoration of the property to its original condition; and (iii) costs of recovering possession. (Civ. Code, § 3334(a).) The value of a property’s use is the greater of its reasonable rental value or the benefits obtained by the person wrongfully occupying the land. (Civ. Code, § 3334(b); *Starrh & Starrh Cotton Growers v. Aera Energy LLC*, *supra*, 153 Cal.App.4th at 604.) The “reasonable” component means that a plaintiff will recover the lesser of the cost of repairing the damage and restoring the property to its original condition, or the diminution in the value of the property. (*Id.* at pp. 599-600.)

- Damages for “annoyance and discomfort that would naturally ensue” from a trespass on a plaintiff’s land are also recoverable, and are intended to compensate plaintiff for the loss of peaceful enjoyment of the property. (*Kornoff v. Kingsburg Cotton Oil Co.* (1955) 45 Cal.2d 265, 273.) These damages are generally related to distress “arising out of physical discomfort, irritation, or inconvenience caused by odors, pests, noise, and the like.” (*Kelly v. CB & I Constructors Inc.* (2009) 179 Cal.App.4th 442, 456.)
- A plaintiff may recover damages for emotional distress and mental anguish proximately caused by a trespass. (*Armitage v. Decker* (1990) 218 Cal.App.3d 887, 905; *Hensley v. San Diego Gas & Elec. Co.* (2017) 7 Cal.App.5th 1337, 1348-1352.) Emotional distress without physical injury is also compensable. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 986, fn.10.)
- With *continuing* trespasses, compensatory damages calculations are different because a plaintiff may only recover damages for *present and past injury to the property*. No award may be made for *future or prospective harm* because, as in the case of ongoing nuisances, a continuing trespass can be abated any time, ending the harm. (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 592.) Only the “reasonable” cost of repairing or restoring the property to its original condition is recoverable. (Civ. Code, § 3334(a); see *Mangini v. Aerojet-General Corp.* (1996) 12 Cal.4th 1087, 1103.)
- A trespass can be abated by an injunction in certain situations. In cases of encroachment, plaintiff may obtain a mandatory injunction ordering defendant to remove the encroachment. (*Posey v. Leavitt* (1991) 229 Cal.App.3d 1236, 1251[condominium owner extended deck into common area and was ordered to remove it].)
- For all forms of trespass, punitive damages may be awarded where plaintiff proves by clear and convincing evidence that defendant is guilty of oppression, fraud, or malice. (Civ. Code, § 3294(a); *Hassholdt v. Patrick Media Group Inc.* (2000) 84 Cal.App.4th 153, 169.)
- As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

- The limitations period for a trespass action is generally three years. (Code Civ. Proc., § 338(b).) When the claim accrues depends on whether the trespass is “permanent” or “continuing.”
- For *permanent trespass*, a claim accrues when the trespass occurs. Plaintiff must bring a single action for past, present, and future damages within three years (*Starrh & Starrh Cotton Growers v. Aera Energy LLC* (2007) 153 Cal.App.4th 583, 592.)

- For *continuing trespass*, a new cause of action accrues each day the trespass continues, and a plaintiff must bring periodic successive actions if the trespass continues without abatement. (*Baker v. Burbank-Glendale-Pasadena Airport Auth.* (1985) 39 Cal.3d 862, 869.)

Application—Application of the Law to Client’s Facts

- For the same reasons above and especially because the HOA failed to take the appropriate action to prevent water from entering the Property (which no doubt constitutes a trespass) on numerous occasions, resulting in damage to Client, the HOA will be liable for trespass.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

- At this time, this cause of action is supported by the facts and the law.

9.8. Declaratory Relief

Elements—Declaratory Relief

- The essential elements of a declaratory relief cause of action are: (i) an actual controversy between the parties’ contractual or property rights; (ii) involving continuing acts/omissions or future consequences; (iii) that have sufficiently ripened to permit judicial intervention and resolution; and (iv) that have not yet blossomed into an actual cause of action. (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366–69.)
- In an action for declaratory relief, an “actual controversy” is one that “admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts; the judgment must decree, not suggest, what the parties may or may not do.” (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110.)
- Code Civ. Proc., § 1060 explicitly permits declaratory relief claims to determine the rights and duties of an HOA/homeowner.
- The “enforcement” issues discussed in the context of the “Breach of CC&Rs,” “Negligence,” and “Breach of Fiduciary Duty” causes of action above are also applicable to a declaratory relief claim.
- The “failure to maintain” issue discussed in the context of the “Breach of CC&Rs,” “Negligence,” “Breach of Fiduciary Duty,” and “Nuisance” causes of action above is also applicable in the context of a claim for declaratory relief.

Remedies—

- The remedy for a declaratory relief cause of action is a judicial declaration specifying the rights and obligations of the parties. (Code Civ. Proc., § 1060.)
- As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

- The statute of limitations governing a request for declaratory relief is the one applicable to an ordinary legal or equitable action based on the same claim. (*Mangini v. Aerojet-General Corp.* (1991) 230 Cal.App.3d 1125, 1155.)

Application—Application of the Law to Client’s Facts

- An actual controversy certainly exists between Client and the HOA. Client maintains, among other things, that: (i) the HOA is responsible for all damage to the interior of the Property; (ii) the HOA must retain a qualified water intrusion specialist to conduct a comprehensive assessment and repair all leak sources prior to making further repairs to the common area walls and to the interior of the Property; (iii) the HOA must complete all necessary repairs to its common area and to the interior of the Property; and (iv) the HOA must conduct a post-repair mold inspection and testing at the Property, all at its own expense. On the other hand, the HOA appears to dispute the foregoing contentions.
- The actual controversy between Client and the HOA involves the HOA’s continuing misconduct that will have future consequences, and Client should not and cannot be forced to experience additional delays and incur additional expenses (including attorney’s fees and costs) in having to enforce her rights. The actual controversy is ripe for judicial intervention as the HOA’s misconduct is causing Client harm. While the other causes of action may address the harm to Client, the other causes of action do not request an affirmative determination from the court as set forth above. As a result, declaratory relief is necessary.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

- At this time, this cause of action is supported by the facts and the law.

9.9. Failure to Permit Inspection of Records

Elements—Failure to Permit Inspection of Records

- To prevail on a claim for failing to allow the plaintiff to inspect the HOA’s records, the plaintiff must prove that: (i) he or she is a member of the association; (ii) he or she made a written request to the HOA that it make its records available for inspection; (iii) he or she had a proper purpose for

requesting to inspect the records related to his or her interests as an HOA member; and (iv) the HOA either (a) refused to allow the inspection, (b) ignored the plaintiff's request, or (c) did not make all permitted and requested records available. (Civ. Code, § 5200 et seq.)

Remedies—

- If the plaintiff can prove that the HOA failed to allow him or her to inspect the records, the plaintiff can obtain injunctive relief ordering the HOA to allow the inspection. Additionally, if the HOA's refusal is deemed to have been unreasonable, the plaintiff may be entitled to a civil penalty of up to \$500 for each separate request that was denied, as well as all of his or her attorneys' fees and costs. (Civ. Code, § 5235(a).)
- Given the potentially low value of this claim, it likely needs to be brought in small claims court if it is the plaintiff's only cause of action. (Civ. Code, § 5235(b).)
- An HOA may recover its fees and costs if the court determines that the claim was frivolous, unreasonable, or without foundation. (Civ. Code, § 5235(c).)

Applicable Statute of Limitations—

- A claim for failing to allow the records to be inspected must be brought within three years. (Code Civ. Proc., § 338(a).)

Application—Application of the Law to Client's Facts

- As examined above, the HOA inexplicably refused to comply with Client's September 26, 2023 statutory Demand for Records and provide her with California Consultants' report (which the Firm and/or Client requested informally on at least four occasions) and various other bids and invoices that Neamtu claimed that existed on September 24, 2023 (at least two). The HOA eventually produced California Consultant's report in November 2023.
- The HOA's unexcused failure to fully comply with the September 26, 2023 Demand for Records may suggest that the HOA's withholding of certain bids (to the extent that they exist) was intentional, and thus unreasonable, entitling Client not only to the subject documents themselves, but statutory penalties for the HOA's deliberate refusal to comply with the statute. It is possible that Neamtu intentionally or negligently represented that those bids existed, as the HOA (through counsel) indicated that it was not in possession of any bids other than those already provided to the Firm in November 2023, which significantly weakens Client's claim.

Conclusion—Strengths/Pros and Weaknesses/Cons of this Potential Cause of Action

— At this time, this cause of action is weak.

10. STRATEGIC CONSIDERATIONS

10.1. Statute of Limitations

This section is *not* intended to address whether or not the statute of limitations has run on a particular cause of action that might have otherwise been relevant under the facts. Those specifics can be found in reference to each of the potential causes of action discussed above. This section of the LADD is intended only to highlight the earliest statute of limitations of a claim that remains available to Client.

If Client wants to file a lawsuit containing the applicable the causes of action discussed above, the action must be filed on or before **January 14, 2026** (the *earliest* of the applicable non-expired statutes of limitations deadlines given the desired causes of action).

10.2. Applicability of Davis-Stirling Act

The Davis-Stirling Act applies to the facts of this dispute.

10.3. Jurisdiction

10.3.1. Arbitration

Since there is no binding arbitration provision in the CC&Rs, any litigation related to the dispute must take place in the superior court of Los Angeles County because that is where Client's property is located.

10.3.2. Venue

Because the issues related to the current dispute involve Client's property, which is located in Los Angeles County, that is the appropriate venue for this case.

10.4. Standing

Based upon the information/evidence that Client has provided thus far, Client has standing to pursue every cause of action described above against each of the intended defendants (excluding DOES, of course).

10.5. Anti-SLAPP Analysis

Anti-SLAPP Overview—

- Strategic Lawsuits Against Public Participation (“SLAPP”) are lawsuits designed to hinder or prevent parties (typically the defendant) from engaging in constitutionally protected activities (e.g., petitioning or free speech). For example, development companies have used SLAPP suits to harass environmental groups standing in the way of large development/construction projects. These companies would file lawsuits against the environmentalists for the express purpose of tying up the smaller (and not as well-funded) environmental groups’ financial resources, effectively preventing them from having their “day in court.” In response, the Legislature passed the anti-SLAPP statute, which was codified in Code of Civil Procedure section 425.16. This statute allows the defending party to file a special motion to strike (called an anti-SLAPP motion) to have the court determine whether the lawsuit can proceed or should instead be thrown out as a meritless attack on the defendant’s acts made in furtherance of his or her right “to petition or free speech under the United States Constitution or the California Constitution in connection with a public issue.” (Code Civ. Proc., § 425.16(b)(1).)
- The granting of an anti-SLAPP motion can have *severe* consequences, not the least of which is the dismissal of the at-issue claim(s)—or even the entire complaint—depending on the circumstances. In addition, a defendant who prevails on an anti-SLAPP motion *must* be awarded his or her attorneys’ fees and costs, which, given the complexity of anti-SLAPP motions, is typically quite significant. (Code Civ. Proc., § 425.16(c)(1).)

Anti-SLAPP Statute’s Application in HOA-Related Cases—

- SLAPP suits can, and have, arisen in lawsuits by and against HOAs and HOA members. For example, a member might file a lawsuit against a director or committee member to pressure that person to change a critical vote regarding some issue or another. To prevent that type of abuse, and to discourage members from naming individual board members as defendants in litigation, courts have determined that the protections offered under the anti-SLAPP statute apply to various issues that arise in the HOA arena. (*Colyear v. Rolling Hills Community Assn. of Rancho Palos Verdes* (2017) 9 Cal.App.5th 119, 130-36 [tree trimming dispute between adjacent homeowners that involved covenants to all lots in the community satisfied the definition of “public interest”]; *Damon v. Ocean Hills Journalism Club* (2000) 85 Cal.App.4th 468, 476-77 [newsletter published to 3,000 residents of an HOA was a “public forum” even if access to the newsletter was selective and

limited]; *Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456; *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1409-10 [letters from attorney to management company and the HOA's board regarding nuisance caused by an HOA member].)

- Obviously, however, not all HOA-related disputes are covered by the anti-SLAPP statute. (*Talega Maintenance Corp. v. Standard Pac. Corp.* (2014) 225 Cal.App.4th 722, 732 [holding that HOA proceedings must have a strong connection to governmental proceedings to qualify as “official proceedings”]; but see *Lee v. Silveira* (2016) 6 Cal.App.5th 527, 540-46 [holding that HOAs “functioned similar to a quasi-governmental body” to constitute a “public forum”].)

Anti-SLAPP Test—

- The courts use a two-prong test to determine if a claim is protected under the anti-SLAPP statute. First, the defendant must prove that the at-issue claim arises from a constitutionally protected activity. (*Ruiz v. Harbor View Community Assn.*, *supra*, 134 Cal.App.4th at 1466; Code Civ. Proc., § 425.16(b)(1).) If the defendant satisfies his or her burden, the burden shifts to the plaintiff to show that there is a probability that he or she will prevail on the merits of the at-issue claim. (*Ibid.*; *Equilon Enterprises v. Consumer Cause Inc.* (2002) 29 Cal.4th 53, 67; Code Civ. Proc., § 425.16(b)(1).)
- With regard to the first prong, there are four categories that the anti-SLAPP statute is intended to protect:
 - Any statement (written or oral) or document generated in connection with (or as part of):
 - Any official proceedings authorized by law—e.g., legislative, executive, or judicial proceedings. (Code Civ. Proc., § 425.16(e)(1).)
 - Any issue under consideration or review by a legislative, executive, or judicial body. (Code Civ. Proc., § 425.16(e)(2).)
 - Any statement (written or oral) or document made in a place open to the public (or in a public forum) and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(3).)
 - Any other conduct made in furtherance of the exercise of a constitutional right of petition or free speech and made in connection with an issue of public interest. (Code Civ. Proc., § 425.16(e)(4).)

Application/Analysis/Conclusion—

- Based upon the applicable facts and claims, an anti-SLAPP motion is unlikely because none of the conduct complained of arises from constitutionally protected activities.

10.6.
Pre-Filing Requirements
(e.g., Notice or Mediation Requirements)

Civil Code section 5930 requires parties to attempt alternative dispute resolution prior to filing certain types of lawsuits. While that provision of the Davis-Stirling Act *does* apply in this matter, Client complied with the statute and will be in a position to file the requisite Certificate of Compliance.

10.7.
Attorneys' Fees and Costs

The prevailing party is entitled to attorneys' fees and costs under the Davis-Stirling Act. The prevailing party is also entitled to their attorneys' fees and costs under Article XIX, Section 9 of the CC&Rs.

If new information comes to light that affects Client's right to attorneys' fees and costs, Client will be notified.

11.
FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS

None at this time.

This section of the LADD might be amended from time to time to reflect new information, strategies, or concerns that arise during the course of the litigation.
