Litigation Due Diligence Analysis

Lane v. Parker

By

MBK

October 4, 2023

Table of Contents

[1. SUMMARY 8](#_Toc145044394)

[2. PARTIES/SIGNIFICANT FIGURES 8](#_Toc145044395)

[3. STATEMENT OF FACTS / EVIDENTIARY SUPPORT 11](#_Toc145044396)

[4. yn\_notable\_provisions\_govdocs\_table == "Yes" NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS###yn\_notable\_provisions\_agreement\_table == "Yes" NOTABLE PROVISIONS OF ONE OR MORE OPERATIVE AGREEMENTS###yn\_notable\_provisions\_govdocs\_table == "No" or yn\_notable\_provisions\_agreement\_table == "No"RESERVED### 13](#_Toc145044397)

[5. ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT 14](#_Toc145044398)

[6. CIVIL CODE § 5200 DOCUMENT DEMAND 15](#_Toc145044399)

[7. ADDITIONAL DOCUMENTS NEEDED FROM CLIENT 16](#_Toc145044400)

[8. THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST 17](#_Toc145044401)

[9. MUST NOT USE HOA’S PRIVILEGED DOCUMENTS 19](#_Toc145044402)

[9.1. Can Client Waive the Privilege? 19](#_Toc145044403)

[9.2. Does the CRPC Require the Firm to *Return* the Privileged Documents? 19](#_Toc145044404)

[9.3. Does Providing Privileged Documents to the Firm Constitute a Fiduciary Breach by Client? 20](#_Toc145044405)

[10. radio\_client\_plaintiff\_defendant == "Plaintiff/Petitioner" POTENTIAL CAUSES OF ACTION & THE STRENGTHS/WEAKNESSES OF EACH###radio\_client\_plaintiff\_defendant == "Defendant/Respondent" and yn\_cross\_claims == "Yes" POTENTIAL CROSS-CLAIMS & THE STRENGTHS/WEAKNESSES OF EACH### 21](#_Toc145044406)

[10.1. Breach of CC&Rs / Breach of Equitable Servitudes / Violation of Civ. Code, § 5975 21](#_Toc145044407)

[10.2. Breach of Contract 24](#_Toc145044408)

[10.3. Implied Covenant of Good Faith and Fair Dealing 26](#_Toc145044409)

[10.4. Breach of Other Governing Documents 28](#_Toc145044410)

[10.5. Negligence 29](#_Toc145044411)

[10.6. Breach of Fiduciary Duty 32](#_Toc145044412)

[10.7. Nuisance 38](#_Toc145044413)

[10.8. Trespass 44](#_Toc145044414)

[10.9. Interference with Prospective Business Advantage 47](#_Toc145044415)

[10.10. Interference with Contract 48](#_Toc145044416)

[10.11. Intentional Misrepresentation (Fraud) 50](#_Toc145044417)

[10.12. Negligent Misrepresentation 54](#_Toc145044418)

[10.13. Intentional Infliction of Emotional Distress (“IIED”) 55](#_Toc145044419)

[10.14. Violation of Open Meeting Act 57](#_Toc145044420)

[10.15. Declaratory Relief 59](#_Toc145044421)

[10.16. Violation of Election Laws (Civ. Code, § 5100 et seq.) 69](#_Toc145044422)

[10.17. Assault 73](#_Toc145044423)

[10.18. Battery 74](#_Toc145044424)

[10.19. Defamation 76](#_Toc145044425)

[10.20. Civil Stalking 79](#_Toc145044426)

[10.21. Violation of Statute (Dog Bite) 81](#_Toc145044427)

[10.22. False Imprisonment 82](#_Toc145044428)

[10.23. Invasion of Privacy 83](#_Toc145044429)

[10.24. Express Indemnity 85](#_Toc145044430)

[10.25. Equitable Indemnity 87](#_Toc145044431)

[10.26. Failure to Permit Inspection of Records 88](#_Toc145044432)

[10.27. Quiet Title 90](#_Toc145044433)

[10.28. Slander of Title 92](#_Toc145044434)

[10.29. Cancellation of Instrument 93](#_Toc145044435)

[10.30. Reformation of Instrument 94](#_Toc145044436)

[10.31. Partition 95](#_Toc145044437)

[10.32. Conversion 96](#_Toc145044438)

[10.33. Trespass to Chattels 98](#_Toc145044439)

[10.34. Open Book Account 100](#_Toc145044440)

[10.35. Money Had and Received 101](#_Toc145044441)

[10.36. Account Stated 102](#_Toc145044442)

[10.37. Goods and Services Rendered 103](#_Toc145044443)

[10.38. Unjust Enrichment 104](#_Toc145044444)

[10.39. Rescission 105](#_Toc145044445)

[10.40. Financial Elder Abuse (Welf. & Inst. Code, § 15610.30) 107](#_Toc145044446)

[10.41. Negligent Hiring 108](#_Toc145044447)

[10.42. Negligent Supervision 110](#_Toc145044448)

[10.43. Unfair Business Practices (Bus. & Prof. Code, § 17200 et seq.) 113](#_Toc145044449)

[10.44. Receipt of Stolen Property (Penal Code § 496) 116](#_Toc145044450)

[10.45. Misrepresentation in Connection with Sale of Security (Corp. Code, § 25401) 117](#_Toc145044451)

[10.46. Recovery Against Contractor’s Bond 119](#_Toc145044452)

[10.47. Breach of Independent Wholesale Representatives Act (Civ. Code, § 1738.10 et seq) 120](#_Toc145044453)

[10.48. Violation of California Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.) 123](#_Toc145044454)

[10.49. Malicious Prosecution 125](#_Toc145044455)

[10.50. Abuse of Process 127](#_Toc145044456)

[10.51. Insurance Bad Faith 129](#_Toc145044457)

[10.52. Medical Malpractice 131](#_Toc145044458)

[10.53. Legal Malpractice 133](#_Toc145044459)

[10.54. Fraudulent Transfer (Uniform Fraudulent Transfer Act—Civil Code, § 3439 et seq.) 136](#_Toc145044460)

[10.55. 139](#_Toc145044461)

[10.56. 140](#_Toc145044462)

[radio\_client\_plaintiff\_defendant == "Defendant/Respondent" 142](#_Toc145044463)

[11. POTENTIAL AFFIRMATIVE DEFENSES 142](#_Toc145044464)

[11.1. BJR (Lamden) 142](#_Toc145044465)

[11.2. Statute of Limitations 144](#_Toc145044466)

[11.3. Equitable Estoppel 149](#_Toc145044467)

[11.4. Unclean Hands 149](#_Toc145044468)

[11.5. Laches 150](#_Toc145044469)

[11.6. Negligence (Comparative Fault) 150](#_Toc145044470)

[11.7. Apportionment 151](#_Toc145044471)

[11.8. Negligence (Sudden Emergency) 151](#_Toc145044472)

[11.9. Assumption of Risk 152](#_Toc145044473)

[11.10. Contract (Force Majeure) 152](#_Toc145044474)

[11.11. Contract (Duress) 153](#_Toc145044475)

[11.12. Contract (Fraud) 153](#_Toc145044476)

[11.13. Contract (Frustration of Purpose) 154](#_Toc145044477)

[11.14. Contract (Lack of Consideration) 154](#_Toc145044478)

[11.15. Contract (Failure of Consideration) 155](#_Toc145044479)

[11.16. Contract (Illegality) 155](#_Toc145044480)

[11.17. Contract (Impossibility) 156](#_Toc145044481)

[11.18. Contract (Impracticability) 156](#_Toc145044482)

[11.19. Contract (Mistake of Law) 157](#_Toc145044483)

[11.20. Contract (Mistake of Fact) 157](#_Toc145044484)

[11.21. Contract (Novation) 158](#_Toc145044485)

[11.22. Contract (Statute of Frauds) 158](#_Toc145044486)

[11.23. Contract (Unconscionability) 159](#_Toc145044487)

[11.24. Contract (Undue Influence) 160](#_Toc145044488)

[11.25. Contract (Accord and Satisfaction) 160](#_Toc145044489)

[11.26. Waiver 161](#_Toc145044490)

[11.27. Failure to Mitigate 161](#_Toc145044491)

[11.28. Lack of Damages 162](#_Toc145044492)

[11.29. Failure to State a Claim 162](#_Toc145044493)

[11.30. No Causation 163](#_Toc145044494)

[11.31. Justification 163](#_Toc145044495)

[11.32. Ratification 164](#_Toc145044496)

[11.33. Litigation Privilege (Civ. Code, § 47) 164](#_Toc145044497)

[11.34. Consent 165](#_Toc145044498)

[11.35. Necessity 165](#_Toc145044499)

[11.36. Private Necessity 166](#_Toc145044500)

[11.37. Equitable Easement 166](#_Toc145044501)

[12. STRATEGIC CONSIDERATIONS 167](#_Toc145044502)

[12.1. Statute of Limitations 167](#_Toc145044503)

[12.2. Applicability of Davis-Stirling Act 168](#_Toc145044504)

[12.3. Jurisdiction 169](#_Toc145044505)

[12.3.1. Arbitration 169](#_Toc145044506)

[12.3.2. Venue 170](#_Toc145044507)

[12.4. Standing 171](#_Toc145044508)

[12.5. Anti-SLAPP Analysis 173](#_Toc145044509)

[12.6. Damage to Client’s Credit as an Element of Client’s Damages 182](#_Toc145044510)

[12.7. Pre-Filing Requirements (e.g., Notice or Mediation Requirements) 183](#_Toc145044511)

[12.8. Attorneys’ Fees and Costs 186](#_Toc145044512)

[13. FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS 189](#_Toc145044513)

# SUMMARY

Cum sociis natoque penatibus et magnis dis parturient. Ac feugiat sed lectus vestibulum mattis. Lacus vel facilisis volutpat est velit. Ligula ullamcorper malesuada proin libero nunc. Vestibulum mattis ullamcorper velit sed ullamcorper morbi tincidunt. Volutpat sed cras ornare arcu dui vivamus arcu felis. Massa placerat duis ultricies lacus sed. Ultricies mi eget mauris pharetra et ultrices. Quis imperdiet massa tincidunt nunc pulvinar sapien. Bibendum at varius vel pharetra vel turpis. Fermentum posuere urna nec tincidunt praesent semper feugiat nibh sed. Dui ut ornare lectus sit. Neque convallis a cras semper.Eget magna fermentum iaculis eu non diam phasellus vestibulum. Laoreet sit amet cursus sit amet dictum sit amet. Augue interdum velit euismod in pellentesque massa placerat. Ac ut consequat semper viverra nam libero justo laoreet sit. Donec massa sapien faucibus et molestie ac. Pharetra diam sit amet nisl suscipit adipiscing. Commodo odio aenean sed adipiscing. Semper viverra nam libero justo. Elit duis tristique sollicitudin nibh sit amet commodo. Vestibulum rhoncus est pellentesque elit.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# PARTIES/SIGNIFICANT FIGURES

|  |  |
| --- | --- |
| **Name of Party / Significant Figure** | **Significance to Underlying Matter/Dispute** |
| Lois Lane (“Client”)DELETE THIS NOTE: If we represent more than one individual/entity, then list all our Clients here—one on each line. Then, make sure to alter the defined “Client” to say: **“(collectively, ‘Client’”)**. The point is to keep “Client” *singular* no matter how many people/entities we represent. If there’s a need to refer to different Clients in the “Statement of Facts/Evidentiary Support” section below, you can put a shortcut (“\*\*\*”) after each individual Client, but still collectively define all of them as “Client.” | N/A |
| Peter Parker  | Wrongdoer |

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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# STATEMENT OF FACTS / EVIDENTIARY SUPPORT

|  |  |  |
| --- | --- | --- |
| **Date / NA** | **Fact** | **Evidence Supporting That Fact** |
| \* | This section should contain a comprehensive and objective statement of the relevant facts of the case, as well as any relevant dates. When possible, cite to evidence already in our possession that support the facts referenced. | \* |
| 4/19/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.Client closed escrow on the property. | Client Timeline |
| 6/10/19 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.Client notified HOA of sprinkler leak into Client’s unit. | Email from Client to Mgmt. Co. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE BY DRAGGING YOUR MOUSE OVER THE ROWS TO BE DELETED AND THEN PRESSING **BACKSPACE** and then pressing **DELETE ENTIRE ROW**. | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |
| \* | \*\* | \*\* |

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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS

|  |  |
| --- | --- |
| **Document Name****Article / Section No.** | **Text of the Selected Article/Sections No.****(if none, put “N/A”; delete rows that you didn’t use; maintain formatting)** |
| CC&RsArticle IX, Section 6.01 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA.  |
| Purchase AgreementSection 8.4 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE. IF YOU DON’T KNOW HOW TO DO THAT, ASK MBK.  |
| \* |  |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |
| \* | \*\* |

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.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

At this time, the Firm does not need Client to provide any additional information or clarification. This section of the LADD may, however, be amended from time to time as new information/questions arise.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

At this time, the Firm does not need Client to provide any additional documents. This section of the LADD, however, may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# 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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# CURRENT CAUSES OF ACTION ALLEGED IN THE COMPLAINT &THE STRENGTHS/WEAKNESSES OF EACH

## 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.)

— When enforcement is an issue in a negligence cause of action, it tends to arise in two ways: (i) an HOA is not enforcing rules at all; or (ii) an HOA is 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* (1999) 21 Cal.4th 249, 268; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC* (2012) 55 Cal.4th 223, 239.)

• Selective Enforcement.

→ In an improper enforcement situation, there 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).)

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

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *negligence*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

— \*\*\*

— \*\*\*

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

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## 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” issue raised in the context of the “Negligence” cause of action above is also applicable in the context of a breach of fiduciary duty claim.

— 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).)

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

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *breach of fiduciary duty*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

— \*\*\*

— \*\*\*

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

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

## 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 “Negligence” and “Breach of Fiduciary Duty” causes of action above is also applicable to a declaratory relief claim.

— When enforcement is an issue in a declaratory relief cause of action, it tends to arise in two ways: (i) an HOA is not enforcing rules at all; or (ii) an HOA is 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* (1999) 21 Cal.4th 249, 268; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC* (2012) 55 Cal.4th 223, 239.)

• Selective Enforcement.

→ In an improper enforcement situation, there 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).)

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

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *declaratory relief*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip).

— \*\*\*

— \*\*\*

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

— REPLACE THIS TEXT by drawing a conclusion about the *strengths* of this particular cause of action given the evidence at our disposal.

— REPLACE THIS TEXT by drawing a conclusion about the *weaknesses*, if any, of this particular cause of action given the evidence at our disposal. If there are none, say so—e.g., “At this time, this cause of action is supported by the facts and the law.”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# STRATEGIC CONSIDERATIONS

## 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 **April 3, 2025** (the *earliest* of the applicable non-expired statutes of limitations deadlines given the desired causes of action).

## Applicability of Davis-Stirling Act

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

## Jurisdiction

### Arbitration

### Venue

## Standing

Client may lack standing to bring cause of action for \*\*\*. [*State the reasons for lack of standing. If there is more than one cause of action at issue, adjust the language accordingly.*] The Firm will take a closer look at the standing issue and follow up with Client in the near future.

## Anti-SLAPP Analysis

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

Given the facts of this dispute, the Davis-Stirling Act does *not* require pre-lawsuit ADR.

## Attorneys’ Fees and Costs

The prevailing party is entitled to attorneys’ fees and costs under the Davis-Stirling Act.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

# FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS

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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_