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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF ARIZONA**

7 AREK FRESSADI, FRESSADI DOES
8 1-3
9 Plaintiffs,
10 v.

Case No. 4:12-CV-00876- FRZ

11 JAY POWELL, ESQ. *et ux*, d/b/a THE
12 POWELL LAW FIRM, PLLC, BMO
13 FINANCIAL GROUP d/b/a BMO HARRIS
14 BANK N.A., THE CAVANAGH LAW
15 FIRM, EARL CURLEY & LAGUARDE,
16 P.C., THE BCA COMPANIES, L.L.C.,
17 JENNINGS, HAUG & CUNNINGHAM,
18 L.L.P., BMO DOES I-X, LEE W. and
19 BARBARA HATTON, husband and wife,
20 MARICOPA COUNTY, ARIZONA,
21 TYLER THOMPSON *et ux*, TASER
22 INTERNATIONAL, INC., MCSO DOES
23 XI-XX, JOHN REA, *et ux*, CHARLIE 2
24 LLC, MACK, WATSON, & STRATMAN,
25 PLLC, TOWN OF CAVE CREEK,
26 DICKINSON WRIGHT / MARISCAL
27 WEEKS, ARIZONA RISK RETENTION
28 POOL (“AMRRP”), MOYES SELLERS &
SIMS, LTD., LASOTA & PETERS, PLC,
SIMS MURRAY LTD., VINCENT
FRANCIA, *et ux*, USAMA ABUJBARAH,
et ux, IAN CORDWELL, *et ux*, GEORGE
ROSS, *et ux*, WAYNE ANDERSON *et*
ux, ADAM WHITE, *et ux*, RICHARD
PELLO, *et ux*, FREDERICK R.
MUELLER, *et ux*, BRIAN SIROWER, *et*
ux, CAVE CREEK DOES XXI-XXX,
LINDA BENTLEY, DONALD R.

**VERIFIED FIRST AMENDED
COMPLAINT**

JURY DEMAND

(Assigned to the
Honorable Frank R. Zapata)

1 SORCHYCH *et ux*, CONESTOGA
2 MERCHANTS, INC. d/b/a Sonoran News,
3 KEITH and KAY VERTES, husband and
4 wife a/k/a/ VERTES FAMILY TRUST,
5 QUARLES & BRADY STREICH LANG
6 LLP, ISRAEL & GERRITY, PLLC,
7 MICHAEL T. GOLEC, REAL ESTATE
8 EQUITY LENDING, INC. (“REEL”),
9 BURCH & CRACCHIOLO, P.A.,
10 TURLEY, CHILDERS HUMBLE &
11 TORRENS, P.C., SALVATORE and
12 SUSAN DEVINCENZO, husband and
13 wife, RIGHI LAW GROUP, P.L.L.C.,
14 EILEEN WILLETT, *et ux*, MICHELE O.
15 SCOTT, *et ux*, MARK D & RHONDA F.
16 MURPHY, husband & wife, TAMARA A.
17 PRICE TRUST, ABC Entities XXXI-L,
18 Defendants.

14 CHARLIE 2 LLC,
15 Counter Claimant
16 v.
17 AREK FRESSADI, SCENIC VISTAS
18 LLC, BEAR LANDE LLC,
19 Counter Defendants

20 For causes stated, Plaintiffs bring this civil action and allege as follows:

21
22 **I. INTRODUCTION**

23 1. This action arises under the First, Fourth, Fifth and Fourteenth Amendments to
24 the United States Constitution; under 42 U.S.C. §§1983, 1988, 14142, and 18 U.S.C. §§1961-
25 1968 (reserved); under Article 2, Sections 1, 3, 4, 6, 8, 13, 17, 19 of Arizona’s Constitution;
26 Arizona Revised Statutes §§ 9-462 *et seq.*, 9-463 *et seq.*, 9-500.13, 10-1501, 12-511, 12-523, 12-
27 526, 12-1101 *et seq.*, 12-1566, 13-1001, 13-1003, 13-1004, 13-1802, 13-2310, 13-2311, 13-2314, 13-
28

1 2314.04, 29-652, 33-701, 33-721, 33-722, 33-725, 33-801(9), 33-814(g); under common law for
2 negligence, product liability, fraudulent inducement, and false light.

3 2. Fressadi sought to develop an artistic enclave of adobe homes at the base of
4 Black Mountain on adjoining parcels of land (211-10-003, 211-10-010) in Cave Creek, AZ,
5 but the junta who controlled local politics considered Fressadi a threat and conspired to
6 concoct a fraudulent scheme to control Fressadi's property by converting lot splits into
7 unlawful subdivisions, inducing Fressadi to expend substantial sums on infrastructure
8 with a promise of reimbursement then issue void permits knowing the Town could rely
9 on immunity and correct mistakes of law with impunity to harm Fressadi's business, take
10 his property and in concert with the Town paper, paint him in a false light.

11 3. Fressadi is entitled to equal protection, due process and for the Town to comply
12 with Federal and State law, and its own Building Codes, and Ordinances.

13 4. Fressadi sustained reasonably foreseeable injuries per A.R.S. § 13-2314.04(A)
14 causing a complete wipe out of his investment backed expectations; a government-
15 authorized physical occupation and invasion of his private property in violation of the
16 Fifth and Fourteenth Amendment pursuant to 42 U.S.C. § 1983 and Article 2, Section 17
17 of Arizona's Constitution for which Fressadi seeks compensatory and punitive damages,
18 declaratory and injunctive relief.

19 6. Due to these injuries, Fressadi retained Jay Powell, Esq. to file a Chapter 11
20 reorganization Petition in United States Bankruptcy Court, District of Arizona, Tucson.

21 7. Powell procrastinated in filing the petition, failed to appropriately respond to a
22 motion for stay relief and file documents resulting in parties obtaining adverse judgments
23 causing further injury to Fressadi's business and property.

24 8. Based on adverse judgments obtained in violation of A.R.S. §§ 13-1004 and 13-
25 2311, BMO agents pursuant to ARS § 13-2308(A)(4), induced MCSO Deputy Thompson
26

1 to arrest Fressadi for trespassing. Under color of law, Fressadi was shot with a Taser
2 causing injury, and imprisoned on the evening of November 28, 2011 in violation of the
3 Fourth, Fifth, and Fourteenth Amendments per 42 U.S.C. § 1983. A Notice of claim was
4 filed timely as was this lawsuit. Exhibit A.

5 9. In furtherance of the fraudulent schemes as perpetrated by criminal syndicates, or as
6 a consequence thereof, BMO converted and sold lots 211-10-010A, 211-10-003A, 211-10-
7 003B, and 211-10-003D and REEL converted and sold lot 211-10-003C in violation of A.R.S.
8 §§ 9-463.03, 13-1003, 13-1004, 13-1802, 13-2310, 13-2311, 13-2314.04, and 33-801(9).
9

10 10. Officers of the Court facilitated criminal conduct and violated Plaintiff's
11 constitutional rights per 42 U.S.C. § 1983 and A.R.S. §§ 13-1004 and 13-2311.

12 11. Fressadi reserves the right to amend and to supplement this complaint.

13 **II. JURISDICTION AND VENUE**

14 12. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
15 §§1331, 1332, 1343, & 1367. Venue is proper pursuant to 28 U.S.C. § 1391.
16

17 13. The causes of action alleged herein arise from factual allegations occurring in
18 the District of Arizona. The amount in controversy exceeds \$75,000.00, and declaratory
19 and injunctive relief is sought per 28 U.S.C. §§ 2201 and 2202.
20

21 **III. PARTIES**

22 14. Plaintiff AREK FRESSADI, a single man is a natural born citizen of the
23 United States and resident of Arizona.

24 15. Defendant JAY POWELL, ESQ. *et ux*, are citizens and residents of Arizona
25 doing business as THE POWELL LAW FIRM, PLLC, an Arizona Professional Limited
26 Liability Company. The actions by Jay Powell alleged herein were made on behalf of his
27 marital community.
28

1 16. BMO FINANCIAL GROUP (“BMO”) d/b/a BMO HARRIS BANK N.A., is a
2 Canadian Bank that acquired Marshall & Ilsley Corporation (M&I) on July 5, 2011 for
3 the US Department of the Treasury’s Capital Purchase Program’s preferred shares for
4 \$1.7 Billion and merged M&I with Harris Bank on October 8, 2012 to form BMO Harris
5 Bank N.A., based in Chicago.

6 17. JENNINGS, HAUG & CUNNINGHAM, L.L.P., is an Arizona legal limited
7 partnership that represented BMO.

8 18. THE CAVANAGH LAW FIRM is an Arizona Professional Association that
9 represented BMO.

10 19. EARL CURLEY & LAGUARDE, P.C., is an Arizona Professional
11 Corporation that represented BMO.

12 20. THE BCA COMPANIES, L.L.C is an Arizona Limited Liability Company
13 that provides services for BMO.

14 21. LEE W. & BARBARA HATTON, husband and wife are citizens and residents
15 of the State of Arizona and at all times material to the allegations in this Complaint, were
16 tenants in the house at 37934 N. Schoolhouse Rd., Cave Creek, AZ. The actions of Lee
17 and Barbara Hatton alleged herein were made on behalf of their marital community for
18 their own personal interests and BMO Harris Bank.

19 22. BMO DOES I-X are agents, contractors, and employees of BMO.

20 21. MARICOPA COUNTY is a political subdivision of the State of Arizona.

21 23. TYLER THOMPSON *et ux*, are citizens and residents of the State of Arizona,
22 and at all times material to the allegations in this Complaint, acted in his capacity as
23 Deputy for Maricopa County Sherriff’s Office within the scope of his employment for his
24 personal interests on behalf of his marital community.

25 24. MARICOPA DOES XI-XX are agents, contractors, and employees of

1 Maricopa County.

2 25. TASER INTERNATIONAL, INC. is an Arizona Corporation.

3 25. CHARLIE 2 LLC, is a Virginia Limited Liability Company.

4 27. MACK, WATSON & STRATMAN P.L.C. is a Professional Law Corporation
5 based in Arizona providing services for Charlie 2 LLC.

6 28. TOWN OF CAVE CREEK is an Arizona Municipal Corporation.

7 29. DICKINSON WRIGHT / MARISCAL WEEKS, is a professional association
8 representing the Town of Cave Creek.

9 30. ARIZONA MUNICIPAL RISK RETENTION POOL, "AMRRP," is a not-for-
10 profit corporation, owned and operated by its Members to include Cave Creek.

11 31. MOYES SELLERS & SIMS, LTD., is a legal limited partnership retained by
12 AMRRP to provide legal services to the Town of Cave Creek.

13 32. LASOTA & PETERS, PLC is a Professional Law Corporation retained by
14 AMRRP to provide legal services to the Town of Cave Creek.

15 33. SIMS MURRAY LTD, PLC is a legal limited partnership retained by Arizona
16 AMRRP to provide legal services to the Town of Cave Creek.

17 34. VINCENT FRANCIA, *et ux* are citizens and residents of the State of Arizona
18 and at all times material to the allegations in this Complaint, Francia acted in his capacity
19 as Mayor of the Town of Cave Creek for his personal interests within the scope of his
20 office on behalf of the marital community.

21 35. USAMA ABUJBARAH, *et ux*, are citizens and residents of the State of
22 Arizona and at all times material to the allegations in this Complaint, Abujbarah acted in
23 his capacity as Town Manager of Cave Creek within the scope of his employment for his
24 personal interest on behalf of the marital community.

25 36. WAYNE ANDERSON *et ux*, are citizens and residents of the State of Arizona
26
27
28

1 and at all times material to the allegations in this Complaint, Anderson acted in his
2 capacity as Town Engineer of Cave Creek for his personal interests and within the scope
3 of his employment on behalf of the marital community.

4 37. IAN CORDWELL, *et ux* are citizens and residents of the State of Arizona and
5 at all times material to the allegations in this Complaint, Cordwell acted in his capacity as
6 Director of Planning and Zoning Administrator of the Town of Cave Creek within the
7 scope of his employment for his personal interests on behalf of the marital community.
8

9 38. GEORGE ROSS, *et ux* are citizens and residents of the State of Arizona and at
10 all times material to the allegations in this Complaint, Ross acted in his capacity as Vice /
11 Acting Chairman of the Board of Adjustment of the Town of Cave Creek within the
12 scope of his employment for his personal interests on behalf of the marital community.

13 39. FREDERICK R. MUELLER, *et ux* are citizens and residents of the State of
14 Arizona and at all times material to the allegations in this Complaint, Mueller acted in his
15 capacity as Chairman of the Board of Adjustment of the Town of Cave Creek within the
16 scope of his employment for his personal interests on behalf of the marital community.
17

18 40. ADAM WHITE, *et ux*, are citizens and residents of the State of Arizona and at
19 all times material to the allegations in this Complaint, White acted in his capacity as a
20 Member of the Board of Adjustment of the Town of Cave Creek within the scope of his
21 employment for his personal interests on behalf of the marital community.

22 41. RICHARD PELLO, *et ux*, are citizens and residents of the State of Arizona
23 and at all times material to the allegations in this Complaint, Pello acted in his capacity as
24 a Member of the Board of Adjustment of the Town of Cave Creek within the scope of his
25 employment for his personal interests on behalf of the marital community.
26

27 42. BRIAN SIROWER, *et ux*, are citizens and residents of the State of Arizona
28 and at all times material to the allegations in this Complaint, Sirower acted in his capacity

1 as a Member of the Board of Adjustment of the Town of Cave Creek within the scope of
2 his employment for his personal interests on behalf of the marital community.

3 43. CAVE CREEK DOES XXI-XXX are state actors, agents, contractors, and
4 employees of the Town of Cave Creek.

5 44. DONALD R. SORCHYCH *et ux* are citizens and residents of Arizona and at
6 all times material to the allegations in this Complaint, was an officer and an owner of
7 Conestoga Merchants, Inc. d/b/a the Sonoran News and acted within the scope of his
8 employment for his personal interests on behalf of the marital community.
9

10 45. LINDA BENTLEY, a single woman is a citizen and resident of Arizona and at
11 all times material to the allegations in this Complaint, acted in her capacity as an
12 employee and/or contractor of the Conestoga Merchants, Inc. d/b/a the Sonoran News
13 within the scope of her employment for her personal interests.

14 46. CONESTOGA MERCHANTS, INC. d/b/a Sonoran News, an Arizona
15 Corporation upon information and belief is owned by Sorchych *et ux*.
16

17 47. MICHAEL T. GOLEC upon information and belief is unmarried and a citizen
18 and resident of the State of Arizona. He was a shareholder / member / manager of the
19 defunct GV Group LLC, MG Dwellings Inc., MG Residential, Inc. and acted within the
20 scope of his employment for his personal interests.

21 48. ISRAEL & GERRITY, PLLC is a Professional Limited Liability Company
22 providing legal services to GV Group LLC, MG Dwellings Inc., MG Residential, Inc.,
23 Building Group Inc., Michael T. Golec and Keith and Kay Vertes.
24

25 49. KEITH and KAY VERTES, husband and wife a/k/a VERTES FAMILY
26 TRUST upon information and belief are citizens and residents of Arizona at all times
27 material to the allegations in this Complaint, Vertes was a shareholder / member /
28 manager of defunct companies GV Group LLC and Building Group Inc., and acted

1 within the scope of his employment for the benefit of the marital community.

2 50. REAL ESTATE EQUITY LENDING, INC. (“REEL”) is an Arizona
3 corporation.

4 51. QUARLES & BRADY STREICH LANG LLP is a Legal Limited Partnership
5 providing legal services to Michael T. Golec, Keith and Kay Vertes and the now defunct
6 GV Group LLC, MG Dwellings Inc., MG Residential, Inc., and Building Group Inc.

7 52. BURCH & CRACCHIOLO, P.A., is a Professional Association providing
8 legal services to BMO Harris Bank and REEL.

9 53. SALVATORE and SUSAN DEVINCENZO, husband and wife are citizens
10 and residents of New York claiming title to lot 211-10-010C in Cave Creek, Arizona.

11 54. RIGHI LAW GROUP, P.L.L.C. is an Arizona Professional Limited Liability
12 Company providing legal services to the DeVincenzos.

13 55. TURLEY SWAN CHILDERS & TORRENS, P.C. is an Arizona Professional
14 Corporation providing legal services to REEL.

15 56. MICHELE O. SCOTT, *et ux* are citizens and residents of Arizona with a claim
16 of title to lots 211-10-003A & D in Cave Creek, Arizona.

17 57. MARK D & RHONDA F. MURPHY, husband & wife, are citizens and
18 residents of Arizona with a claim of title to lot 211-10-003B, Cave Creek, AZ.

19 58. TAMARA A. PRICE TRUST, is a New Mexico Trust with a claim of title to
20 211-10-003C in Cave Creek, AZ.

21 59. ABC Entities XXXI-L are parties who assisted the Defendants in controlling
22 and converting Plaintiff’s property.

23 60. EILEEN WILLETT, *et ux* are citizens and residents of the State of Arizona
24 and at all times material to the allegations in this Complaint, Willett acted in her capacity
25 as a Judge for Maricopa County Superior Court within the scope of her employment for
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27
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1 her personal interests on behalf of the marital community.

2 61. JOHN REA, *et ux* are citizens and residents of the State of Arizona and at all
3 times material to the allegations in this Complaint, Rea acted in his capacity as a Judge
4 for Maricopa County Superior Court within the scope of his employment for his personal
5 interests on behalf of the marital community.

6
7 **IV. FACTS COMMON TO ALL CLAIMS¹**

8 62. Since Fressadi had never split or subdivided land in Arizona, he inquired with
9 the Town of Cave Creek regarding entitlements to develop an adobe enclave at the base
10 of Black Mountain on two adjoining parcels of land zoned R1-18 (18,000 sq. ft. lots).
11 Parcel #211-10-010 was 4.2 acres and parcel #211-10-003 was 1.5 acres.

12
13 63. Because the sellers sold the property twice, Arek Construction LLC sought
14 specific performance in CV2000-011913 and assigned the acquisition of parcel #211-10-
15 010 (4.2 acres), Maricopa County Recorded Document (“MCRD”) # 2001-0913214 to
16 Fressadi and parcel #211-10-003 (1.5 acres), MCRD #2001-0913216 to the Cybernetics
17 Group Ltd (“Cybernetics”).

18
19 ¹ Per *Williamson* and *San Remo*, Index of Record (IR) footnotes pertain to CV2006-
20 014822 filings, which was appealed and a ruling is attached as Exhibit B and incorporated by
21 reference herein. Index of Record for CV2006-014822 is included in Exhibit B. The Opening
22 Brief in CA-CV12-0601 is attached as Exhibit C and incorporated by reference herein. Plaintiff
23 sought remedy for zoning violations in CV2009-050924 which was dismissed with prejudice,
24 affirmed on appeal CV11-0051 and denied review by the Arizona Supreme Court, CV12-0212.

25 Compensation for Takings in CV2009-050821 was denied and is now on appeal in CA-
26 CV12-0238. Exhibit C, Appendix 1 Opening Brief & Appendix 2 Reply Brief.

27 Cave Creek’s Subdivision Ordinance, effective at time of injury is Appendix #1 of the
28 Reply Brief in CA-CV12-0238.

Cave Creek’s Zoning Ordinance, effective at time of injury is Appendix #2 of the Reply
Brief in CA-CV12-0238.

ARS §§9-462.02, 9-462.05 are Appendix #3 of the Reply Brief in CA-CV12-0238.

ARS §9-463 *et seq.* are Appendix #4 of the Reply Brief in CA-CV12-0238.

The Opening and Reply Briefs in CA-CV12-0435 were incorporated as Appendix 3 & 4
of the Opening Brief in CA-CV12-0601.

1 64. As a courtesy to the losing buyer/developer, Fressadi corrected false statements
2 made by Don Sorchych, the publisher of The Sonoran News, at a Town Council meeting
3 in May 2001 regarding the losing developer's Southwest Sands project.

4 65. Sorchych has manipulated local politics for many years.² Exhibit D.

5 66. Shortly thereafter, the Town's Zoning Administrator under color of law told
6 Fressadi to down-zone the parcels through a series lot splits to eight (8) lots in lieu of a
7 13+ unit subdivision as the most efficient way to develop the two parcels.
8

9 67. Pursuant to the Town's recommendation, Fressadi applied to split parcel 211-
10 10-010 into three lots. Exhibit E.

11 68. But Cave Creek required the creation of a fourth lot to widen Schoolhouse Rd.,
12 the dead end right of way, fronting parcel 211-10-010 and parcel 211-10-003 in violation
13 of A.R.S. §§ 9-500.12(E) and 9-500.13 to approve Fressadi's lot split.
14

15 ² Who's Afraid of the Big Bad Wolf Man?

16 Cave Creek rabble-rouser-cum-newspaper-publisher Don Sorchych has the town running scared
17 By Amy Silverman, *Phoenix New Times* Feb 15,2001:

18 "But Sorchych's attacks are not necessarily related to growth. He makes it mean, and
19 he makes it personal: A former town councilwoman with a drug problem is "Ellen the
20 Felon." A development attorney with a friend in the hallucinogenic business is Noel "Peyote"
21 Hebets. When a disabled woman fought the town to allow her to build a wheelchair ramp
22 from her property down to Cave Creek, as her neighbors had, Sorchych went after Easter
23 Seals.

24 Sorchych has had a remarkable success rate -- if not in stopping growth, then in
25 eliminating his enemies. 'Ellen the Felon' Sands, as well as almost every councilmember he's
26 taken out after in six yeas, is gone from office. So are two mayors, countless town staffers
27 and members of the planning and zoning commission and other boards --many have quit in
28 disgust with the *Sonoran News*, replaced, by and large, with people Sorchych has
celebrated."

 Sorchych spear headed Cave Creek's anti-solicitation city ordinance aimed at
Hispanic day laborers (the precursor to SB1070). See *Lopez v. Cave Creek*, 559 F. Supp. 2d
1030 (D. Ariz. 2008). When Sheriff Joe Arpaio began racial profiling Hispanics, and
considering anyone of Hispanic descent to be an illegal alien, Sorchych became a fan of
Arpaio, recently proclaiming him to be the best Sheriff in the Country. *Sonoran News*,
October 17, 2012 "My View," attached as part of Exhibit D.

 Attorney Hebets was so incensed with the antics of Sorchych, he filed complaints
with the FBI attached and incorporated herein as part of Exhibit D.

1 69. Under color of law, Cave Creek’s Zoning Administrator approved the split of
2 parcel 211-10-010 on December 31, 2001. Unbeknownst to Fressadi, Arvel Jones, the
3 land surveyor recorded the split on March 13, 2002. (MCRD#2002-0256784. The
4 Zoning Administrator gave Fressadi the original Mylar and Fressadi recorded the split
5 on April 16, 2003 (MCRD # 2003-0481222), but the Town executed a new survey with
6 the fourth lot clearly identified as “parcel A,” on April 17, 2003 which CBR Consultants
7 recorded (MCRD #2003-0488178). The County Assessor’s office classified MCRD
8 #2003-0488178 as an undefined subdivision and issued parcel numbers to lots 211-10-
9 010 A, B, C & D. Exhibit F.

11 70. MCRD # 2003-0488178 is not a “recorded plat” of a “final plat” per A.R.S.
12 §9-463(6), but created four lots in violation of the Town’s subdivision ordinance.

13 71. The Town verbally agreed to a repayment / development agreement, and
14 faxed Fressadi a sample development agreement on March 8, 2002 to extend and fix a
15 sub-standard sewer line to serve the series of lot splits. Exhibit G.

16 72. As a condition to obtain reimbursement and permits, Cave Creek required
17 easements for sewer maintenance and access. (MCRD# 2002-0576103, 2002-0576104,
18 2002-0576105, 2002-0681164, 2003-0488178). Exhibit H.

19 73. In March 2002, Cave Creek issued permits to grade driveways. Exhibit I.

20 74. Based on the Town’s series of lot splits solution, Fressadi made arrangements
21 to provide water, gas, telephone and electricity to the subject parcels. Exhibit J.

22 75. On or about June, 2002, the Sonoran News began publishing disparaging
23 articles written by Linda Bentley that painted Fressadi in a false light. Exhibit K.

24 76. Based on the Town’s promise to enter into a sewer reimbursement agreement,
25 Fressadi submitted the sewer engineering plans to Maricopa County Department of
26 Environmental Services on June 10, 2002. Exhibit L.
27
28

1 77. On August 5, 2002, Cybernetics applied to split parcel 211-10-010 into two
2 lots in conformance with the Town's series of lot splits solution. The Town spun their
3 series of lot splits recommendation into a reason to deny the application. Exhibit M.

4 78. Although the Town Manager claimed Cybernetics lot split had to be denied
5 above, the Town continued to exchange Development / Reimbursement Agreements for
6 sewer with Fressadi, (Exhibit R), but an agreement was never consummated.

7 79. The Sonoran News published another article written by Bentley that cast
8 Fressadi in a false light. See Exhibit K, *supra*.

9 80. The Town issued sewer permits for lots 211-10-010 A, B & C (#02-256, 02-260,
10 02-263) and right of way permit # 02-031 on or about October, 2002.³ Exhibit L, *supra*.

11 81. Keith Vertes acquired parcel 211-10-003 if the Town would grant him lot
12 splits. MCRD #2003-0317665. Vertes applied to split parcel 211-10-003 on April 21,
13 2003.⁴ The Town required the lots to connect to Fressadi's sewer and a fourth lot to
14 widen the Schoolhouse right-of-way to approve the split. Exhibit N.

15 82. Insinuating that Vertes and Fressadi were acting in concert, the Town denied
16 Vertes' lot split (Exhibit O) which the Sonoran News cast in a false light Exhibit K.

17 83. Fressadi completed approximately 1,000 feet of oversize⁵ 8" sewer line in hard
18 dig conditions, encased in concrete to prevent scouring through washes pursuant to
19 County *subdivision* requirements on July 17, 2003.⁶ Exhibit P.

20 84. Without Vertes dedicating "parcel A," (a/k/a lot 211-10-003D), the division of
21 parcel 211-10-003 was approved by the Zoning Administrator on September 16th and
22 executed by the Mayor on September 18, 2003, MCRD #2003-1312578. Exhibit Q.⁷

23
24
25
26 ³ IR 127

27 ⁴ IR 168,169, SSOF, Exh. C.

28 ⁵ An 8" sewer line could serve over 100 homes.

⁶ IR 168,169, SSOF, Exh. C

⁷ Cave Creek gave Fressadi the original via subpoena in CV2006-014822, TCC00354.

1 85. Given the Town's requirement to extend Fressadi's sewer to serve Vertes'
2 lots, a Covenant⁸ was executed to conform with Cave Creek authorizations and
3 approvals as a simple Homeowner's Association that would run with the lots to share
4 reciprocal access and utilities, and to maintain and improve⁹ common areas including
5 related utilities (i.e. sewer)¹⁰ with lien rights for non-payment.¹¹ Exhibit S.

6 86. Warranting and representing that GV Group LLC owned lots 211-10-003 A, B,
7 & C, Vertes executed the Covenant on October 16, 2003¹² (MCRD # 2003-1472588),¹³
8 but GV Group LLC did not exist and Lot 211-10-003A was sold the day before the
9 covenant was executed, MCRD # 20031438387,¹⁴ with a loan from M&I Bank (BMO),
10 MCRD #20031438388.
11

12 87. The Covenant was recorded on October 22, 2003,¹⁵ and lot 211-10-010C was
13 sold subject to the covenant to the DeVincenzos, MCRD # 2003-1472590.

14 88. Golec admitted that lot 211-10-003A was sold prior to the execution of the
15

16 ⁸ IR 90, Exhibit 3,5

17 ⁹ Three easement driveways would allow up to 9 houses in compliance with 5.1(C)(8), of the
18 Zoning Ordinance. See Section 5.1 in general. The easement driveways could be assembled but
19 each easement required access to the Right of Way (ROW) in order to comply.

20 ¹⁰ Appellant incorporates by reference herein, the Opening Brief and Reply Brief in CV12-0238
21 as Appendix 1 & 2.

22 ¹¹ Pursuant to Article 5 of the Covenant: "Each of the Lot Owners shall contribute such Owner's
23 share of the maintenance costs within ten (10) days written notice from any other Owner. If any
24 Owner shall fail to pay such Owner's share within 30 days after billing, such amount shall
25 become a lien against said owner's property and shall bear interest from the due date at the rate
26 of twelve percent (12%) per annum.

27 ¹² IR 168,169, SSOF Exhibit A. MCRD #2003-1472588. See IR 77-80, Exh. 3 for a map of the
28 properties and easements as understood by Fressadi until Kremer disclosed that the 003 easement
is land locked. See MCRD #2003-1312578.

¹³ IR 168,169, SSOF Exhibit B. Keith Vertes, ("Vertes") signed the agreement as Manager of
GV Group LLC which did not exist. The true owners of the 003 lots were Building Group Inc.,
Michael Golec and MG Residential via Warranty Deed on September 19, 2003, MCRD #
20031320770, after the Town approved the 003 lot splits. Exhibit C, MCRD 2003-1312578.
Vertes was fined for misrepresentation and his license suspended by Arizona's Department of
Real Estate. IR 168, 169 SSOF Exhibit L.

¹⁴ IR 208-216, Exh. D

¹⁵ IR 208-216, Amended Motion for New Trial, Exh. B.

1 covenant¹⁶¹⁷ on or about October 30, 2003.

2 89. The requirement of fourth lots to approve the split of parcels 211-10-003 and
3 211-10-010 by the Town of Cave Creek blocked legal and physical access to the other
4 lots in violation of Section 5.1(C) of the Town’s Zoning Ordinance.

5 90. Town Zoning¹⁸ and Subdivision¹⁹ Ordinances require legal and physical access
6 to a right-of-way in order to split a property and to obtain building permits.²⁰

7
8 91. Unbeknownst to Appellant at the time, by requiring a fourth lot to widen a
9 dead end right-of-way in violation of A.R.S. §§ 9-500.13 and 9-500.12(E), Cave Creek
10 did not comply with A.R.S. § 9-463 *et seq.*²¹ nor the Town’s subdivision ordinance when
11 it approved the division of parcels 211-10-003 and 211-10-010.

12 92. Section 1.1 of the Town’s Subdivision Ordinance defines the applicability
13 and enforcement of subdivision regulation within the town’s corporate limits.²²

14 93. Section 6.3 (A) of the Subdivision Ordinance states that: “All lot splits shall
15 ...comply with the Town’s Subdivision Ordinance. Failure to comply with this Ordinance
16 shall render the property unsuitable for building and not entitled to a building permit.”²³

17
18 94. Pursuant to Section 1.4(A) of the Town’s Zoning Ordinance:²⁴ “any permit

19 ¹⁶ IR 168, 169, SSOF Exh. C. IR 147, hand marked as Exh. D. On October 30, 2003, Golec
20 admitted selling Lot A to Kremer **prior** to the execution of the DEMA. Golec later admitted in
21 his deposition that they never intended reciprocity. IR 90 Exh. 4.

22 ¹⁷ IR 109, pg. 13, lls. 1-3, which Appellant denied IR 112, pg.2, ll 10. see IR 176, Motion for Reconsideration,
23 Exh. A, pg. 4, 9 of purchase contract: “CONTRACT IS CONTINGENT ON SELLER RECORDING
24 CC&R’S PRIOR TO CLOSE OF ESCROW & RECORDING OF DRIVEWAY MAINTENANCE
25 AGREEMENT – AS PER REVISED DRAFT DATED 8-24-03.”

26 ¹⁸ Exhibit C, Appendix 2, Appendix 2

27 ¹⁹ Exhibit C, Appendix 2, Appendix 1

28 ²⁰ Exhibit C, Appendix 2, Appendix 1, Section 6.1(A)(7), Appendix 2, Section 5.1.

²¹ Appendix 2, Appendix 3.

²² Appendix 2, Appendix 1.

²³ Cave Creek’s Building permit process is public record and can be found on Cave Creek’s
website, <http://www.cavecreek.org/index.aspx>, then Departments/ Building Safety/ Town Code
Chapter 151- Building Regulations.

²⁴ Appendix 2, Appendix 2. Section 1.4(A) of the Town of Cave Creek’s Zoning Ordinance:

1 issued in conflict with the terms or provisions of this Ordinance **shall be void.**”

2 [emphasis added]. Section 1.1(B), of the Town’s **Zoning** Ordinance²⁵ incorporates all
3 Town codes and ordinances to include the Town’s Subdivision Ordinance.

4 95. Cave Creek adopted the Continuing Violations Doctrine²⁶ as part of Section
5 1.7 of the Zoning Ordinance:²⁷ (A) “any person²⁸ who violates any provision of this
6 Ordinance...shall be guilty of a Class One misdemeanor; and each and every day of
7 continued violation shall be a separate offense, punishable as described; (B) It shall be
8 unlawful for any person to erect, construct ... any building or land or cause or permit the
9 same to be done in violation of this Ordinance...”

11 96. The requirement to widen the right of way creating lots 211-10-003D and
12 211-10-010D violated and continue to violates Sections 1.1(A)(B), 6.1(A)(4),(7), and
13 6.3(A) of the subdivision ordinance and Section 5.1 of the Zoning ordinance.

14 97. As a consequence, the lots 211-10-010 A,B,C, & D and 211-10-003 A,B, C,
15 & D were and continue to be unsuitable for building and not entitled to permits.

17 98. As a consequence, the easements and permits to construct driveways and
18 sewer for lots 211-10-010A, B, & C (the covenant improvements) are void.

19 99. As a consequence, the permits to construct homes on lots 211-10-003 A, B, &
20 C based on access and utilities from covenant improvements are void.

21 100. Pursuant to the Town’s Building Code: R105.3 “If the application or the
22

23 “This Ordinance shall govern the development and or the use of land and structures within the
24 corporate limits of the Town of Cave Creek. All departments, officials and employees charged
25 with the duty or authority to issue permits or licenses shall refuse to issue permits or licenses for
26 uses or purposes where the same would conflict with any applicable provision of this ordinance.
27 Any permit issued in conflict with the terms or provisions of this Ordinance shall be void.”

28 ²⁵ Appendix 2, Appendix 2.

²⁶ Fressadi incorporates by reference herein, his Opening and Reply Brief in CA CV 12-0238.

²⁷ Motion to Transfer, July 10, 2012, CV12-0212, Exh. C. Zoning Ordinance is public record.
<http://www.cavecreek.org/index.aspx?NID=62>, or Appendix 2, Appendix 2

²⁸ To include the corporate person of the Town of Cave Creek, and/or its state actors.

1 construction documents do not conform to the requirements of pertinent laws, ***the***
2 ***building official shall reject such application...***” [Emphasis added]

3 101. Cave Creek issued permit #03-475 for lot #211-10-003A and permit #03-
4 498 for lot #211-10-003C on November 25, 2003 and issued permit #05-095 on March
5 2, 2005 to Building Group as “Owner-Builder” to extend Fressadi’s sewer to lots 211-
6 10-003A, B, & C. Exhibit T.

7 102. The Town approved all three sewer permits *supra* with the same plan and
8 engineering to trespass outside the easement onto Fressadi’s property. Exhibit U

9 103. Building Group completed the sewer extension to Lot 003B on March 2,
10 2005; Lot 003C was completed on June 1, 2005, and Lot 003A on October 4, 2005.

11 104. Building Group did not comply with, nor was entitled to Owner-Builder
12 exemption pursuant to A.R.S. § 32-1121, nor did it own lot 211-10-003A at the time the
13 permit was issued.

14 105. Building Group was not licensed by the Arizona Registrar of Contractors to
15 install sewer lines, nor did Building Group hire a licensed sewer contractor.

16 106. An unlawful entitlement is of no force and effect.²⁹

17 107. Since lots 211-10-010 A, B, & C are unsuitable for building, there was no
18 need for Fressadi to grant easements to obtain sewer permits.

19 108. As such, the construction documents for improvements to serve or be built on
20 lots 211-10-010 A, B, & C and 211-10-003 A, B, & C do not conform to the requirements
21 of pertinent laws, and therefore the application was to be rejected per R105.3, *supra*.

22 109. Cave Creek concealed the conversion of splitting parcels 211-10-003 and
23 211-10-010 into unlawful subdivisions, such that the lots were unsuitable for building and
24 not entitled to permits but collected impact and building permit fees and converted the
25

26
27
28 ²⁹ See Opening Brief in CV12-0238, attached as Appendix 1 of Exhibit C.

1 sewer and easements to the Town.

2 110. Pursuant to Section 1.7(A) of the Zoning Ordinance, the Town of Cave
3 Creek, a corporate person, and /or its state actors have violated and continue to violate
4 provisions of the Zoning Ordinance by issuing permits to lots unsuitable for building.

5 111. By concealing the unlawful subdivision status of the lots, the Town created a
6 government-authorized physical occupation and invasion of private property in violation
7 of the Fifth Amendment, Article 2, Section 17 of Arizona’s Constitution and A.R.S. §§
8 13-2310, 13-2311 and 13-1802.

9
10 112. Cave Creek declared in line 1, page 4 of its reply to Motion for Summary
11 Judgment in CV2009-050821 that it could correct a mistake of law per *Thomas and*
12 *King, Inc. v. City of Phoenix*, 92 P. 3d 429 - Ariz: Court of Appeals, 1st Div., Dept. B 2,
13 2004, relying upon “*Valencia Energy v. Ariz. Dep’t of Revenue*, 191 Ariz. 565, 576, ¶ 35,
14 959 P.2d 1256, 1267 (1998). Exhibit V.

15 113. Unbeknownst to Appellant at the time, it is unlawful to sell any part of a
16 subdivision that does not comply with state subdivision enabling statutes (A.R.S. § 9-
17 463.03), or the Town’s Subdivision Ordinance³⁰ (Section 1.1(A)).

18
19 114. Fressadi entered escrow to sell lot 211-10-003A to Lyn James on or about
20 November, 2003 and Lyn James applied for a lot split. Exhibit W.

21 115. On December 19, 2003 Jeff Low, Assistant Town Engineer sent an inter-
22 office Memorandum to Larry Sahr, Senior Planner for the Town of Cave Creek in re:
23 L03-28 Lyn James: “The Engineering Department requests a formal submittal for the
24 25-Foot Dedication of School House Road (**Currently parcel 211-10-010D**). [emphasis
25 added]. We will not approve the lot split until the additional right-of-way is dedicated to
26 the Town to provide adequate access to the subject parcels.” Exhibit X.

27
28 ³⁰ I.R. 305, Exh. B, I.R. 308, Exh. B

1 116. Fressadi borrowed \$245,000 from M&I Bank and the Bank recorded a Deed
2 of Trust on lot 211-10-010A on January 12, 2004. MCRD #2004-0030880.

3 117. The Town enacted Sewer Reimbursement Ordinance (Section 50.016) in
4 December 2003, but did not enter a reimbursement agreement with Fressadi.³¹

5 118. Fressadi invoiced the Town for the sewer on February 21, 2004,³² which was
6 never paid and currently totals \$403,509.58. Exhibit Y.

7 119. In response, Cave Creek's Zoning Administrator Ian Cordwell wrote Fressadi
8 a letter indicating that Fressadi was under criminal investigation for an illegal subdivision,
9 "red-tagged" all permits, and placed a stop "on the further division of the remaining
10 parcels created by the original lot splits." Exhibit Z.

11 120. Pursuant to Section 2.3(B), the Zoning Administrator acts under the direction
12 of the Town Manager and pursuant to Section 2.3(D), the Zoning Administrator may not
13 make any changes in the terms of the Zoning Ordinance.
14

15 121. The Sonoran News immediately published an article by Linda Bentley that
16 Fressadi was under criminal investigation. Exhibit K.
17

18 122. The Town's Marshal suggested that Fressadi reassemble³³ lots 211-10-
19 010A,B, & D in order to resolve the criminal investigation.

20 123. As such, escrow for the sale of lot 211-10-010A was cancelled. Exhibit W.

21 124. Lots 211-10-010 A, B, & D were combined into parcel 211-010E on May 18,
22 2004. MCRD #2004-0553551.

23 125. Although Cave Creek classified Fressadi's property as a subdivision in its
24 correspondence (Exhibit AA), it declared in its Motion for summary judgment in
25 CV2009-050821 that: "the Town is not aware of any case or controversy regarding the
26

27 ³¹ IR 208-216, Affidavit Exh. G. Appendix 1. Section 50.016 was repealed in January 2010.

28 ³² IR 208-216, Exh. H

³³ IR 20, paragraph 19.

1 classification of Plaintiff's property." Lines 2,3 page 17, Exhibit AB.

2 126. Parcels 211-10-003 and 211-10-010 were zoned R1-18 (18,000 square foot
3 lots) and comprised a total of 5.7 acres for a potential of 13.8 lots.

4 127. Fressadi could have built and sold an enclave of thirteen (13) handcrafted
5 adobe homes as originally intended, in 2006 when comparable improved view lots were
6 worth \$500,000+ with a reasonable builder's profit of \$250,000 per house for a total
7 profit of \$9.725 Million.

8 128. Pursuant to A.R.S. § 9-463.03 and Section 1.1(A)(2) of the Town of Cave
9 Creek's Subdivision Ordinance, it is unlawful to lease, sell or improve lots created
10 through unlawful subdivision causing a complete wipeout of Fressadi's investment
11 backed economic expectations.

12 129. Cave Creek and / or its State actors created unlawful subdivisions and issued
13 void permits with the intent to correct mistakes of law pursuant to *Valencia* as quoted in
14 *Thomas and King* to cause harm to Plaintiff.

15 130. Cave Creek and / or its State actors intentionally relied upon the grant of
16 immunity by the State pursuant to A.R.S. § 12-820 *et seq.* with impunity and an evil
17 mind as part of the Town's fraudulent scheme to control and convert Fressadi's property
18 in violation of A.R.S. §§ 13-1802 and 13-2310.

19 131. Pursuant to Article 2, Section 3 & 9 of Arizona's Constitution, the State
20 never intended to protect Municipalities, its agents, officials and/or employees from
21 prosecution of criminal conduct via Article 2, Section 13 of Arizona's Constitution.

22 132. Cave Creek recorded the gift of lot 211-10-003D to the Town of Cave Creek,
23 MCRD #2005-0766547 but Lot 211-10-003D was sold in 2010, MCRD #2010-0067254
24 and again in 2012, MCRD #2012-0407247.

25 133. M&I Bank loaned Michael Golec \$600,000 to construct a spec house on lot
26
27
28

1 #211-10-003B on or about June, 2005, MCRD #2005-0929695.

2 134. Cave Creek issued permit #04-269 on June 20, 2005 to construct the spec
3 house on lot 211-10-003B³⁴ and permit #04-655 to construct GV Group's spec house on
4 lot 211-10-003C on August 17, 2005.³⁵ Both permits were issued with access and utilities
5 from Fressadi's property via the Covenant per the approved plans. Exhibit AC.

6 135. The Covenant was rescinded as to the 003 lots on October 27, 2005 due to
7 GV Group misrepresentation,³⁶ and the Town was put on notice.³⁷ Exhibit AD

8 136. Fressadi filed CV2006-014822 in Maricopa County Superior Court which
9 was amended with leave of the court on October 17, 2006.³⁸

10 137. On December 13, 2006, Cave Creek issued an owner-builder permit #06-225
11 to construct a single family residence on lot 211-10-003A in violation of Section 5.1(C)
12 and Section 5.11 of the Zoning Ordinance. Exhibit AE.

13 138. With the Covenant rescinded, access to the southern driveway was restricted,
14 but the 003 lot owners continued to trespass on Fressadi's property.

15 139. On or about July, 2007 GV Group built an elevated driveway in violation of
16 Section 5.11(G)(2) and 5.1(C) of the Zoning Ordinance.

17 140. Based on their answer in CV2006-014822 Quarles and Brady and GV Group

18
19
20 ³⁴ IR 168,169, Exh. D

21 ³⁵ IR 168,169, Exh. E, but these permits are void as the exaction of lot D's to both parcels 211-
22 10-003 and 211-10-010 created illegal subdivisions.

23 ³⁶ IR 68, Exh. 10

24 ³⁷ IR 168,169 SSOF, Exh. F, IR 147, Exh. G. "Although there was an intent to form a reciprocal
25 driveway agreement, Vertes signed the agreement on behalf of an LLC that did not exist at the
26 time of his signature, and he executed the agreement for all three lots of 211-10-003 even though
27 he had already sold 211-10-003A to Kremer. Given that Keith is an experienced real estate
28 broker and general contractor, it would seem that he intentionally signed the agreement out of
sequence in order to induce Kremer into buying the lot, but in doing so, I did not receive my
benefit of the bargain for a reciprocal driveway agreement. There are other complications but I
won't bore you with these details. I just want to be sure the town is not complicit in this matter."
Although the Town indicated that they'd get back to Fressadi in a week, they never responded.

³⁸ IR 18.

1 knew that splitting a parcel of land into four lots was unlawful. "...Cave Creek forced
2 Fressadi to combine his three lots [lots 010 A, B, & D] into one due to improper lot
3 splitting practices..."³⁹ paragraph 19, pg.4. Exhibit AF.

4 141. REEL acquired lot 003C on May 28, 2008 (MCRD #20080469193),⁴⁰ and
5 formed a Joint Venture with GV Group on May 29, 2008.⁴¹ Exhibit AG

6 142. Although Quarles and Brady and GV Group claimed that the construction and
7 sale of their homes was "irrelevant" and "wholly unrelated" to any claim or defense,⁴²
8 (Exhibit AH), on July 2, 2008, Quarles and Brady filed GV Group's second supplemental
9 26.1 disclosure statement claiming \$4.3 Million in construction and spec house sale
10 damages⁴³ (Exhibit AI) but failed to disclose the unlawful subdivision status of their lots
11 and that lot 211-10-003D blocked access and reciprocity to the 003 easement.
12

13 143. Permit #04-655 for the spec house on lot 211-10-003C was transferred to
14 REEL on July 8, 2008.⁴⁴ (Exhibit AJ)

15 144. Fressadi's Motion to Strike⁴⁵ Defendants' Second Supplemental Disclosure
16 Statement and Damages Summary on July 8, 2008 was granted.⁴⁶ (Exhibit AK)

17 145. Fressadi filed CV2009-050821 in February 2009 regarding subdivision and
18 sewer issues⁴⁷ and CV2009-050924 regarding zoning and building code violations against
19 the Town of Cave Creek and the owners of lots 211-10-003 A, B, & C.
20

21
22

³⁹ IR20, paragraph 19.

23 ⁴⁰ IR 168,169, SSOF, Exh. G, IR 147, Exh. E.

24 ⁴¹ IR 168, 169 SSOF, Exh. G.

25 ⁴² IR45.

26 ⁴³ IR 45, 57

27 ⁴⁴ IR 168, 169, SSOF, Exh. H, IR 147, Exh. F

28 ⁴⁵ IR 45

⁴⁶ IR 69

⁴⁷ As argued in Fressadi's Opening and Reply Brief's CA-CV 12-0238, attached and
incorporated by reference herein, Fressadi only discovered the criminal conduct around January
2012.

1 146. Neither the 003 lot owners, lenders (i.e. the constructive owners) nor the
2 Town has paid Fressadi for the substantial cost of installing 1000' feet of sewer pipe in
3 solid bedrock, or for the use of his property. Exhibit Y.

4 147. Moyes Sellers & Sims Ltd., AMRRP and Cave Creek repeatedly declare in
5 their Answer on March 12, 2009, that “any one property that is subdivided into four or
6 more lots is defined as a subdivision under the Town’s Subdivision Ordinance,” (Exhibit
7 AL) but failed to disclose damaging and unfavorable information in CV2009-050821 or
8 CV2009-050924 that:
9

10 a. The Town had converted Fressadi’s lot split into a subdivision rendering the lots
11 unsuitable for building, causing the issue of permits to be void resulting in the Covenant
12 sewer and driveways improvements on Fressadi’s lots to be ultra vires;

13 b. Due to the unlawful subdivision of parcel 211-10-003, the improvements on lots
14 211-10-003 A, B, C & D were constructed on void permits and on reliance of ultra vires
15 improvements originating from Fressadi’s property, rendering the improvements on lots
16 211-10-003 A, B, C & D ultra vires as well.
17

18 148. CV2006-014822 was amended⁴⁸ on August 26, 2009 to include REEL and
19 DeVincenzo who had taken title “*subject to*” the Covenant and for declaratory relief and
20 rescission since Golec admitted to never intending reciprocity.

21 149. M&I Bank modified its Deed of Trust on lot 211-10-003B because the Deed
22 “erroneously” secured \$600,000 when the correct amount of debt was \$0 and acquired lot
23 211-10-003B subject to the Covenant on October 14, 2009. MCRD #2009-1004741.
24

25 150. REEL filed applications for a variance for excessive lot disturbance on lot
26 211-10-003C in 2009. Exhibit AM.

27 151. Neither REEL, nor Cave Creek nor their counsel disclosed the permitted
28

⁴⁸ IR 77-80, Exh.4.

1 grading and drainage plans for lot 211-10-003C (Exhibit AC) indicating that the square
2 footage of the lot is 19,950 square feet; that the house disturbance is 11,385 square feet;
3 that the driveway disturbance is 5,104 square feet, and that 1,417 square feet is to be
4 revegetated for a total lot disturbance of 15,072 square feet or 75% of the total lot area.

5 152. REEL admitted that the existing lot disturbance was 92% at the Board of
6 Adjustment Hearing held October 6, 2009.

7 153. Pursuant to Table 12, Section 5.11 of the Town's Zoning Ordinance
8 applicable at the time, permissible lot disturbance is only 25%.

9 154. Sheet C-2 (Exhibit AQ) evidences access from Fressadi's property, but the
10 Covenant which was rescinded on October 27, 2005 and is unenforceable based upon
11 the unlawful division of parcels 211-10-003 and 211-10-010.⁴⁹

12 155. In violation of A.R.S. § 9-462.06(D) and Section 2.3 (E)(1) of the Zoning
13 Ordinance, the Zoning Administrator failed to transmit the "lot split survey," MCRD
14 #2003-1312578 and the permitted grading and drainage plans for lot 211-10-003C
15 (Exhibit AQ) to the Board of Adjustment evidencing that:

- 16 a. Lot 211-10-003C was a lot in an unlawful subdivision;
17 b. Lot 211-10-003C was unsuitable for building and not entitled to permits;
18 c. Lot 211-10-003C had no legal access;
19 d. The Town of Cave Creek had issued permits in violation of Section 6.3 of the
20 Subdivision Ordinance and Sections 5.1, 1.5, and 1.7 of the Zoning Ordinance;
21 e. The Town of Cave Creek had approved the excessive lot disturbance in
22 violation of Section 5.11 of its Zoning Ordinance.

23 156. Neither the Town of Cave Creek nor REEL nor their attorneys disclosed in
24 any proceeding before any public agency that lot 211-10-003C was created as part of an
25

26
27
28 ⁴⁹ IR 168,169, SSOF, Exh. E

1 unlawful subdivision without legal access.⁵⁰

2 157. On January 7, 2010 Building Group Inc. and Mike Golic [sic] d/b/a MG
3 Residential sold Lot 211-10-003D to Jocelyn L. Kremer (MCRD #20100067254).⁵¹

4 158. None of the Defendants nor any of their counsel ever disclosed the unlawful
5 subdivision status of the 003 lots and that 211-10-003 A, B, & C were landlocked due to
6 the ongoing existence of lot 211-10-003D in any legal proceeding before a public agency
7 in violation of Ariz. R. Civ. P. Rule 37(d) and A.R.S. 13 § 13-2311.
8

9 159. According to the terms of the Zoning Ordinance, any permit issued in
10 conflict with the terms or provisions of this Ordinance shall be void. Section 1.4(A).

11 160. On January 12, 2010, Cave Creek's Board of Adjustment granted REEL's
12 variance in violation of A.R.S. §9-462.05, A.R.S. §9-462.06(H)(1), and Sections 1.7 and
13 2.2B of the Zoning Ordinance.

14 161. Fressadi stopped making payments to BMO in January 2010 and emailed the
15 Bank in February 2010 to suggest resolution based on Rotary International's Four Way
16 Test: (1) Is it the TRUTH? (2) Is it FAIR to all concerned? (3) Will it build GOODWILL
17 and BETTER FRIENDSHIPS? (4) Will it be BENEFICIAL to all concerned?
18

19 162. Willett facilitated an offense in violation of A.R.S. § 13-1004 by denying
20 Fressadi's Motion to add parties on March 15, 2010⁵² and his Motion to consolidate
21 CV2009-050821, CV2010-004383, CV2009-050924, and LC2010-000109-001DT into
22 CV2006-014822 on April 9, 2010.⁵³

23 163. In bad faith, BMO feigned settlement to "run out the clock," and filed a
24

25 ⁵⁰ Vertes never signed MCRD #2003-1312578, Exhibit Q. Cave Creek recorded that lot 211-10-
26 003D (Parcel A on MCRD #2003-1312578) was gifted to the Town, MCRD #2005-0766547, but
lot 211-10-003D is still in existence blocking access to lots 211-10-003A, B, & C.

27 ⁵¹ IR 250, Exh. B

28 ⁵² IR 119.

⁵³ IR 127

1 complaint for judicial foreclosure on April 30, 2010.

2 164. A revocation of the covenant was recorded on August 18, 2010, MCRD
3 #2010-0708186.⁵⁴

4 165. Cave Creek failed to regulate land in conformance with the requirements set
5 forth in A.R.S. § 9-463 *et seq.*, and the Town's Subdivision and Zoning Ordinances:

6 a. According to the subdivision of parcel 211-10-003 approved by the Town, the
7 legal and physical access to lots 211-10-003A, B & C is via an easement on the northern
8 edge of lots 211-10-003 A & B, but the easement is landlocked. Exhibit Q.

9 b. Although parcel 211-10-003 was unlawfully subdivided, Cave Creek issued
10 building permits for the construction of homes on lots 211-10-003 A, B, & C.

11 c. The permits relied on access and sewer from Fressadi's property in violation of
12 Section 6.3 of the Town's Subdivision Ordinance and Section 5.1 of the Zoning Ordinance.

13 166. By concealing the unlawful subdivision status of the lots, the Town created
14 a government-authorized physical occupation and invasion of Fressadi's property in
15 violation of the Fifth and Fourteenth Amendment per 42 U.S.C. § 1983, Article 2,
16 Section 17 of Arizona's Constitution and A.R.S. §§ 13-2310, 13-2311 and 13-1802.

17 167. A.R.S. §9-463.02(A) defines subdivision as four or more lots the boundaries of
18 which are fixed by a recorded plat. A.R.S. §9-463(6) defines "plat" as a map of a subdivision,
19 (a) "Preliminary plat" means a preliminary map, including supporting data, indicating a
20 proposed subdivision design prepared in accordance with the provisions of this article and
21 those of any local applicable ordinance. (b) "Final plat" means a map of all or part of a
22 subdivision essentially conforming to an approved preliminary plat, prepared in
23 accordance with the provision of this article, those of any local applicable ordinance and
24 other state statute. (c) "Recorded plat" means a final plat bearing all of the certificates of
25

26
27
28 ⁵⁴ IR 286, all covenant recordings were incorporated into MCRD #2012-0377104.

1 approval required by this article, any local applicable ordinances and other state statutes.

2 168. MCRD # 2003-0481222 is not a “recorded plat” of a “final plat” that was
3 vetted through the Town’s subdivision ordinance per A.R.S. §9-463(6).

4 169. A.R.S. § 33-801(9) defines “trust property” as “any legal, equitable, leasehold
5 or other interest in real property which is capable of being transferred.”

6 170. According to Black Law Dictionary, 2nd Edition, Transfer is defined as: “The
7 passing of a thing or of property from one person to another; alienation; conveyance. 2 Bl.
8 Comm. 294. Transfer is an act of the parties, or of the law, by which the title to property
9 is conveyed from one living person to another. Civ. Code Cal. § 1039. And see *Pearre v.*
10 *Hawkins*, 02 Tex. 437; *Innerarity v. Minis*, 1 Ala. 009; *Sands v. Hill*, 55 N. Y. 18; *Pirie v.*
11 *Chicago Title & Trust Co.*, 182 U. S. 43S, 21 Sup. Ct. 906, 45 L. Ed. 1171.

12 171. According to A.R.S. § 9-463.03, it is unlawful to sell or lease (i.e. transfer) a
13 lot that is not in full compliance with the statute.
14

15 172. A Promissory Note secured by a Deed of Trust is a contract and valid state
16 statutes are part of any contract affected by the statute. See *Havasu Heights II*, 167 Ariz,
17 at 389, 807 P.2d at 1125 (laws of the state are a part of every contract).

18 173. A.R.S. § 9-463.03 and A.R.S. § 33-801(9) are part of every promissory Note
19 secured by a Deed of Trust in Arizona.
20

21 174. Pursuant to A.R.S. § 9-463.03, a lot in an unlawful subdivision cannot be sold
22 or leased, i.e. transferred.

23 175. BMO failed to disclose that Lot 211-10-010A was created by the unlawful
24 subdivision of parcel 211-10-010 and incapable of being leased or sold, i.e. transferred.
25

26 176. Cave Creek obstructed discovery in CV2009-050821 by failing to locate the
27 sewer extension that served lots 211-10-003 A, B, & C originating on Plaintiff’s property,
28 forcing Fressadi to find it.

1 177. Upon discovering the sewer extension serving the 003 lots was trespassing
2 and defective, Fressadi removed it and capped it in August 2010.

3 178. Real Estate Equity Lending, Inc., (“REEL”) moved for summary judgment⁵⁵
4 on September 2, 2010 in CV2009-014822 based on the election of remedies doctrine.

5 179. REEL and its counsel failed to disclose that 211-10-003C was part of an
6 unlawful subdivision and landlocked in violation of Rule 37(d) and A.R.S. § 13-2311.

7 180. REEL and its counsel submitted false writings to the Court that the issuance
8 of permits dependant upon the Covenant for access and utilities was “immaterial” in
9 violation of Rule 37(d) and A.R.S. § 13-2311.

10 181. A Notice of Settlement⁵⁶ was filed on September 3, 2010 that the covenant
11 was void as of October 30, 2003. REEL objected,⁵⁷ as they obtained entitlements and
12 utilities from the covenant.⁵⁸

13 182. The Town of Cave Creek, REEL, Golec, Kremer, BMO and their counsel of
14 record requested a Temporary Restraining Order to reconnect the sewer in CV2006-
15 050821 but failed to disclose that the 211-10-003 lots were unlawful and that the permits
16 for the sewer extension were void in violation of Rule 37(d) and A.R.S. §13-2311.

17 183. By failing to disclose the true unlawful status of the lots and the void status of
18 the permits, the Defendants supra were granted a TRO in CV2009-050821 on October
19 15, 2010.

20 184. Fressadi removed a non-structural stack of rocks on the edge of his property
21 to allow the Town to install the sewer extension.

22 185. BMO through its agent BCA Companies LLC and its counsel, Earl Curley

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26 ⁵⁵ IR 145. The trial court granted summary judgment to REEL which was reversed and remanded
by the Court of Appeals on November 23, 2012. CA-CV-11-0728.

27 ⁵⁶ IR 146

28 ⁵⁷ IR 148

⁵⁸ IR 147, IR 40.

1 & LaGuarde, P.C. requested a variance for lot 211-10-003B in October, 2010 based
2 upon REEL's variance. Exhibit AN.

3 186. In violation of A.R.S. § 13-2311, Earl Curley & LaGuarde, P.C. and BMO
4 submitted false writings and failed to disclose the unlawful subdivision status of their
5 lot; that the Covenant was rescinded for misrepresentation four months after Cave Creek
6 issued a building permit to construct a single family residence on lot 211-10-003B based
7 on the Covenant; that lot 211-10-003B was landlocked and not entitled to a zoning
8 clearance pursuant to Section 5.1(C) of the Zoning Ordinance; that pursuant to Section
9 1.4(A), the permit issued was in conflict with the terms or provisions of the Ordinance
10 and void; that pursuant to Section 1.7 of the Zoning Ordinance, it was unlawful to
11 permit or erect a structure on lot 211-10-003B in violation of the Ordinance, and that
12 any person who violates any provision of this Ordinance shall be guilty of a Class One
13 misdemeanor and each day of continued violations shall be a separate offense.⁵⁹

14
15 187. Fressadi hired Jay Powell, Esq. in October 2010 to file a Petition in
16 Bankruptcy under Chapter 11 reorganization and paid him a retainer of ~\$5,147.00.
17

18 188. REEL through their counsel filed CV2010-029559 on October 25, 2010
19 claiming that Fressadi's recording of a revocation of the Covenant, MCRD #2010-
20 0708186 interfered with their sale of lot 211-10-003C, but failed to disclose that it was
21 unlawful to sell lot 211-10-003C per A.R.S. § 9-463.03 in violation of Rule 37(d) and
22 A.R.S. § 13-2311.

23 189. BMO moved for summary judgment in CV2010-013401 on October 27,
24 2010.

25 190. Powell agreed to file the Petition upon Fressadi's completion of the required
26 credit counseling course, which Fressadi completed on November 9, 2010.
27

28

⁵⁹ IR 159.

1 191. Powell required Fressadi draw down his cash to \$75.00. but failed to file the
2 Petition.

3 192. In violation of A.R.S. §9-462.05, A.R.S. §9-462.06(H)(1), and Sections 1.7
4 and 2.2B of the Zoning Ordinance, Cave Creek's Board of Adjustment granted a
5 variance for lot 211-10-003B to BMO / BCA on November 16, 2010.

6 193. At the pre-trial conference in CV2009-050924 which Golec and Fressadi
7 failed to attend on November 16, 2010, in violation of Rule 37(d) and A.R.S. § 13-2311,
8 counsel for REEL, Kremer, and Cave Creek concealed the unlawful subdivision status
9 of the lots which rendered all improvements on the subject properties ultra vires in order
10 to obtain a judgment of dismissal with prejudice.⁶⁰

11 194. DeVincenzo submitted false writings to Superior Court in order to join⁶¹
12 REEL's motion for summary judgment during oral argument on November 17, 2010.
13

14 195. On November 17, 2010, Fressadi recorded a status update on the Covenant,
15 MCRD # 2010-10044770.⁶²
16

17 196. Relying upon the Covenant, Cave Creek connected lots 211-10-003 A, B, &
18 C to Fressadi's sewer in November 2010.

19 197. On December 7, 2010,⁶³ Willett ruled that the Covenant did not exist and
20 Nunc Pro Tunc on December 20, 2010⁶⁴ that the covenant was rescinded on October 27,
21 2005 in CV2006-014822.

22 198. On December 26, 2010, Fressadi sent the Board of Adjustment a letter
23 opposing the variances to lots 211-10-003 B & C. Exhibit AO.⁶⁵
24

25 ⁶⁰ The Court of Appeals affirmed the decision in CA-CV11-0051. The State Supreme Court
denied review in CV12-0212.

26 ⁶¹ Transcript of proceedings by Karen Bolton, #50186. 11.15.2011, Pg. 4, lls 11-14

27 ⁶² IR 286, all covenant recordings were incorporated into MCRD #2012-0377104.

28 ⁶³ IR 161

⁶⁴ IR 166

⁶⁵ For sake of brevity, the Exhibits are not attached.

1 199. Thinking his Petition in Bankruptcy had been filed, Fressadi missed the
2 January 10th pre-trial conference in CV2006-014822. As a sanction for missing the pre-
3 trial conference, Willett struck Plaintiff's second amended complaint and answer to GV
4 Group's Counterclaim,⁶⁶ and awarded all of the Defendants all of their counterclaims,
5 attorney fees and costs.

6 200. Under color of law, Cave Creek converted a stack of rocks on Fressadi's land
7 into a retaining wall "system" owned by Kremer, M&I Bank, and REEL and issued a
8 summons on December 22, 2010 for CR2010-0109 that Fressadi recklessly defaced and
9 damaged the property of another in violation of A.R.S. § 13-1602(A)(1).

10 201. The complaint was transferred to Maricopa County Justice Court and
11 dismissed on August 11, 2011, JC2011-065147.

12 202. On December 30, 2010 REEL sold lot 211-10-003C to the Tamara A Price
13 Trust, MCRD #2010-1136050 as corrected on May 24, 2011, MCRD #2011-0436690.

14 203. By failing to disclose the unlawful subdivision status of lot 211-10-010A and
15 the 003 lots in violation of Ariz. R. Civ. P., Rule 37(d) and A.R.S. § 13-2311, BMO
16 obtained summary judgment for judicial foreclosure on January 7, 2011.

17 204. Powell finally filed Fressadi's Chapter 11 Petition on January 18, 2011 and
18 Fressadi became Debtor in Possession. No. 4:11-bk-01161-EWH.

19 205. The status of the Covenant was updated and recorded on February 3, 2011.⁶⁷
20 MCRD #2011-0102034.

21 206. BMO filed a Motion for relief from automatic stay in Fressadi's Bankruptcy
22 on February 10, 2011, but failed to disclose the unlawful subdivision status of lots 211-
23

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27 ⁶⁶ CV2006-014822 was split into three appellate cases: CA CV11-0728, CA CV12-0435, and
28 CA CV12-0601. The appellate decision in CA CV11-0728 determined that the trial court erred in
striking Plaintiff's second amended complaint and answer, and reversed and remanded.

⁶⁷ IR 286, all covenant recordings were incorporated into MCRD #2012-0377104.

1 10-003 A, B, C & D and 211-10-010 A, B, C & D.

2 207. Although Fressadi had over \$1 Million invested in his project (Exhibit AP),
3 BMO appraised lots 211-10-010 A, B & D to be worth only \$185,000 (Exhibit AQ).⁶⁸

4 208. Powell claimed he could “cram down” BMO’s loan through Chapter 11.
5 Exhibit AR.

6 209. Powell failed to file a rule 2014 disclosing his conflicting relationships with
7 counsel for adverse parties, failed to properly respond to BMO’s relief from stay,
8 (Exhibit AS) failed to file financial reports and abandoned Fressadi.
9

10 210. On April 3, 2011, Fressadi sent Powell a letter which was revised and
11 submitted to the State Bar on May 1, 2011. Exhibit AT.

12 211. Bankruptcy Court granted M&I (BMO) Bank relief from stay.

13 212. Between January and May 2011, REEL built a retaining wall on the edge of
14 Fressadi’s property damaging Fressadi’s property.

15 213. Fressadi conveyed parcels 211-10-010F & G to Scenic Vistas LLC on April
16 19, 2011 pursuant to 11 USC § 1107, MCRD #2011-0332194, MCRD #2011-0332195.
17

18 214. BMO moved to convert Fressadi’s Chapter 11 to a Chapter 7 liquidation on
19 April 28, 2011 and a Motion to Accelerate on May 3, 2001 containing false statements
20 that the Bank was entitled to rent, and that Fressadi had destroyed access to the property
21 but continued to conceal the unlawful subdivision status of lot 211-10-010A.

22 215. In fact, REEL was building retaining walls and requested access to Fressadi’s
23 property to construct the wall. Exhibit AU.

24 216. Linda Bentley wrote an article entitled “Arek Fressadi facing criminal
25

26
27 ⁶⁸ BMO appraised the house on 211-10-010A to be worth \$65,000, thus leaving a land value of
28 the appraisal of lot 211-10-010A was \$131,999.99 (\$65,000 for the house and \$33,333 an acre
for 2.01 acres).

1 damage charge” which was published on the front page of the Sonoran News on May 11,
2 2011 and remains published on the internet. Bentley claimed that because Fressadi was
3 unable to extort money, he damaged the driveway. Exhibit K, *supra*.

4 217. BMO submitted an Order of Judgment in CV2010-013401 which Judge John
5 Rea executed and the Court filed on May 31, 2011. Exhibit AV.

6 218. The Order decreed that the Property shall be sold at public auction according
7 to law (the “Sale”), and M&I [BMO] may be the purchaser at the Sale.

8 219. Pursuant to A.R.S. § 9-463.03, it is unlawful to sell lot 211-10-010A.

9 220. As such, the execution of the Order facilitated an unlawful act, an “offense”
10 pursuant to A.R.S. § 13-1004, and was unenforceable.

11 221. Maricopa County Superior Court issued an Order of Sale on June 10, 2011.

12 222. A Sheriff’s Notice of Sale of Real Property on Special Execution and Order of
13 Sale was issued on September 22, 2011.

14 223. The Sheriff sold lot 211-10-010A to BMO in the amount of \$358,319.30 in
15 violation of A.R.S. § 9-463.03 on October 20, 2011. (MCRD #2011-0892620).

16 224. On November 1, 2011, Fressadi sent an email to Lee Hatton to vacate the
17 premises on lot 211-10-010A pursuant to the terms in the lease. Exhibit AW

18 225. On the evening of November 28, 2011, Fressadi traveled to Cave Creek to
19 stay in his trailer for a court appearance in CV2009-050821 the next morning.

20 226. Upon information and belief, agents of BMO including Lee and Barbara
21 Hatton requested that MCSO arrest Fressadi for trespassing.

22 227. Rather than engage in a calm conversation, Deputy Thompson parked his
23 patrol car on another lot, advanced on foot to Fressadi’s truck and aimed his semi-
24 automatic pistol at the door of Fressadi’s construction trailer.

25 228. When Fressadi opened the trailer door armed only with a small flashlight to
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1 pierce the pitch black night, Thompson holstered his pistol, started screaming to provoke
2 an incident then assaulted Fressadi knocking the flashlight out of Fressadi's hand, shot
3 Fressadi with a Taser, handcuffed him, locked Fressadi in a patrol car while Thompson
4 searched Fressadi's truck and trailer, then incarcerated Fressadi in an MCSO jail.

5 229. Thompson admitted to being a Iraq Veteran who sustained injuries affecting
6 his memory and mental reasoning capability.

7 230. Maricopa County Attorney's Office acknowledged Fressadi's ownership of
8 the property. JC2012-065297 was dismissed in the interests of justice on April 18, 2012.

9 231. Fressadi is 62 and was a world class distance runner in 10Ks, marathons and a
10 founder of triathlons. While residing on Guam in the 90's, Fressadi played water polo with
11 Navy SEALS, FBI agents, and the Attorney General.

12 232. After being Tasered by Thompson, Fressadi experienced atrial fibrillation,
13 and lost vision. Fressadi has hereditary glaucoma, and now suffers from erratic high
14 blood pressure adversely affecting his longevity and quality of life.

15 233. On December 16, 2011, BMO sold lot 211-10-003B to Mark D and Rhonda
16 F. Murphy, MCRD# 2011-1038241.

17 234. Fressadi learned of the ongoing existence of lot 211-10-003D in January,
18 2012 as it was sold in Kremer's bankruptcy.⁶⁹

19 235. Accordingly, Fressadi recorded MCRD #2012- 0377104.⁷⁰

20 236. On April 19, 2012 Fressadi tendered \$5.00 and a Quit Claim Deed in
21 conformance with A.R.S. §12-1103(B) to BMO for parcel 211-10-010A.

22 237. On April 19, 2012 Fressadi tendered \$5.00 and a Quit Claim Deed in
23 conformance with A.R.S. §12-1103(B) to the DeVincenzos for parcel 211-10-010C.

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28 ⁶⁹ IR 250, Exh. B

⁷⁰ IR 292

1 238. On April 27, 2012, Fressadi tendered \$5.00 and a Quit Claim Deed⁷¹ to
2 Vertes to quiet title to parcel 211-10-003 pursuant to A.R.S. §12-1103(B) because the
3 sale of parcel 211-10-003 was conditional upon Vertes obtaining a lot split but the Town
4 divided parcel 211-10-003 into an unlawful subdivision.

5 239. On May 4, 2012, Judge Eileen Willett awarded GV Group approx. \$2.6
6 Million in damages in CV2006-014822 in violation of A.R.S. § 13-1004.

7 240. On May 14, 2012 BMO Harris Bank sold lots 211-10-003A and 211-10-
8 003D to Michele O. Scott, MCRD# 2012-0407247.

9 241. On July 10, 2012, BMO sold to Charlie 2 LLC a parcel of land with a legal
10 description of lot 211-10-010A for \$120,000 with an Affidavit of Value for parcel 211-
11 10-010G, MCRD #2012-0620607.

12 242. On September 25, 2012, Fressadi sent \$5.00 to Charlie 2 LLC quit claim and
13 quiet title to parcel 211-10-010A pursuant to A.R.S. §12-1103(B) and paid the property
14 taxes on 211-10-010 A, B & D now lots 211-10-010 F & G on October 22, 2012.

15 243. Although the Court of Appeals reversed and remanded rulings in CV2006-014822
16 on November 23, 2012, Exhibit B, Israel & Gerrity requested that Superior Court issue a
17 warrant to arrest Fressadi for failing to attend a debtor's exam. Exhibit AX.

18
19
20 **FIRST CLAIM FOR RELIEF - DECLARATORY JUDGMENT**

21 244. Plaintiff incorporates the foregoing facts as if fully set forth herein.

22 245. Fressadi makes this claim for declaratory relief is pursuant to 28 USC § 2201
23 and A.R.S. § 12-1831 *et seq.*

24 246. An actual, justiciable controversy, ripe for declaratory relief exists amongst
25 the parties regarding the sovereignty of the Town of Cave Creek and its obligation to
26 comply with Federal and State laws regarding property rights, entitlements, and the
27

28

⁷¹ IR 267, 268, Exh. B

1 zoning and subdivision of land within its municipal borders.

2 247. An actual, justiciable controversy, ripe for declaratory relief exists amongst
3 the parties regarding the sovereignty of Maricopa County and its obligation to comply
4 with Federal and State laws.

5 248. An actual, justiciable controversy, ripe for declaratory relief exists amongst
6 the parties regarding whether a lot in an unlawful subdivision can be sold as “trust
7 property” in accordance with A.R.S. § 33-801(9).
8

9 249. An actual, justiciable controversy, ripe for declaratory relief exists amongst
10 the parties regarding whether Maricopa County Superior Court can order the Maricopa
11 County Sheriff to sell a lot in an unlawful subdivision in violation of A.R.S. § 9-463.03.

12 250. An actual, justiciable controversy, ripe for declaratory relief exists amongst
13 the parties regarding whether Maricopa County facilitated an offense in violation of
14 A.R.S. § 13-1004 by ordering the sale and selling a lot in an unlawful subdivision in
15 violation of A.R.S. § 9-463.03.
16

17 251. An actual, justiciable controversy, ripe for declaratory relief exists amongst
18 the parties regarding whether BMO can sell a lot in an unlawful subdivision in violation
19 of A.R.S. § 9-463.03, and upon information and belief, BMO has no effective program to
20 prevent and detect violations of the law pursuant to A.R.S. § 13-822.

21 252. An actual, justiciable controversy, ripe for declaratory relief exists amongst
22 the parties regarding the Town of Cave Creek’s compliance with A.R.S. §§ 9-500.13 and
23 9-500.12(E), to require the creation of a fourth lot to be dedicated to the Town to widen a
24 right of way as a condition for approving the split of parcels 211-10-010 and 211-10-003.
25

26 253. An actual, justiciable controversy, ripe for declaratory relief exists amongst
27 the parties regarding whether the Zoning Administrator for the Town of Cave Creek
28 violated A.R.S. § 9-463 *et seq.*, Section 1.1(A)(4) of the Town’s Subdivision Ordinance

1 and Section 2.3(D) of Zoning Ordinance to approve the division of parcel 211-10-010,
2 MCRD # 2003-0488178.

3 254. An actual, justiciable controversy, ripe for declaratory relief exists amongst
4 the parties regarding whether the Zoning Administrator for the Town of Cave Creek
5 violated A.R.S. § 9-463 *et seq.*, Section 1.1(A)(4) of the Town's Subdivision Ordinance
6 and Section 2.3(D) of Zoning Ordinance to approve the division of parcel 211-10-003,
7 MCRD # 2003-1312578.

8 255. An actual and justiciable controversy, ripe for declaratory relief exists
9 amongst the parties regarding the status of permits issued to lots unsuitable for building
10 pursuant to Section 6.3 of the Town's Subdivision Ordinance and Section 1.4 of the
11 Town's Zoning Ordinance.

12 256. An actual and justiciable controversy, ripe for declaratory relief exists
13 amongst the parties regarding the status of improvements constructed on permits issued
14 to lots 211-10-010 A, B, & C and lots 211-10-003 A, B, & C.

15 257. An actual and justiciable controversy, ripe for declaratory relief exists
16 amongst the parties regarding the amount of fines to be levied against the Town of Cave
17 Creek and its agents, officials and employees for Zoning Ordinance violations pursuant to
18 Section 1.7 of the Zoning Ordinance and upon information and belief, the Town of Cave
19 Creek has no effective program to prevent and detect violations of the law pursuant to
20 A.R.S. § 13-822.

21 258. Fressadi is informed, believes and on that basis alleges, that Defendants
22 dispute the contentions in the preceding paragraphs of this Complaint and contend to the
23 contrary.

24 259. More specifically, Fressadi is informed, believes and on that basis alleges,
25 that Defendants dispute the contention of this Complaint because Defendants Cave Creek
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1 and its state actors have failed to comply with state statutes and its own ordinances or
2 remedy mistakes of law even though they admit that they have the capacity to do so.

3 260. More specifically, Fressadi is informed, believes and on that basis alleges,
4 that Defendants dispute the contention of this Complaint because Defendants Maricopa
5 County and its state actors have failed to remedy mistakes of law even though they have
6 the capacity to do so.

7
8 261. By reason of the foregoing, there is an actual, justiciable controversy among
9 the parties that the Court is vested with the power to declare and adjudicate the rights and
10 legal relationships in this action with reference to the issues raised by this Complaint.

11 262. Fressadi desires a judicial determination that Cave Creek failed to comply
12 with Federal law as codified in A.R.S. §§ 9-500.13 and 9-500.12(E) causing the division
13 of parcels 211-10-003 and 211-10-010 to violate Section 1.1 of the Town's Subdivision
14 Ordinance and A.R.S. § 9-463 *et seq.*; that as a result, lots 211-10-010 A, B, C & D and
15 lots 211-10-003 A, B, C, & D are unlawful to sell, lease, or transfer; that Maricopa
16 County Superior Court and Sheriff's Office violated A.R.S. § 9-463.03; that pursuant to
17 Section 1.1(B)(2) and 6.3 of the Town's Subdivision Ordinance, lots 211-10-010 A, B, C
18 & D and lots 211-10-003 A, B, C, & D are not suitable for building and not entitled to
19 building permits; that the failure of the Town of Cave Creek and / or its agents, officials,
20 and employees to comply with Federal law, state statutes and the Town's Subdivision and
21 Zoning Ordinances was wanton and malicious per A.R.S. § 13-823.

22
23 263. A judicial determination is necessary and appropriate at this time in order that
24 the parties may ascertain their respective rights and duties and may conduct themselves
25 accordingly now and in the future.

26
27 WHEREFORE, Fressadi requests judgment against Defendants as follows:

28 a. A declaratory judgment that Town of Cave Creek is not a sovereign entity

1 and must strictly comply with the US Constitution, the Constitution of the
2 State of Arizona, Arizona Revised Statutes and the Town's Zoning and
3 Subdivision Ordinances within its municipal boundaries as mandated by
A.R.S. §§ 9-462 *et seq.* and 9-463 *et seq.*;

- 4 b. A declaratory judgment that the Town of Cave Creek violated Federal law
5 as codified in A.R.S. §§ 9-500.13 and 9-500.12(E) by requiring the creation
6 of a fourth lot to approve the division of parcel 211-10-010 on December
31, 2001;
- 7 c. A declaratory judgment that the Town of Cave Creek violated A.R.S. § 9-
8 463 *et seq.* and Section 1.1(A)(1) & 1.1(A)(2) of the Town's Subdivision
9 Ordinance by approving the division of parcel 211-10-010 on December
31, 2001 (MCRD #2003-048122) creating lots 211-10-010A, B, C & D:
- 10 d. A declaratory judgment that the Town of Cave Creek failed to comply with
11 Federal law as codified in A.R.S. §§ 9-500.13 and 9-500.12(E) by requiring
12 the creation of a fourth lot to be gifted (exacted) to the Town in order to
approve the split of parcel 211-10-003 on September 18, 2003;
- 13 e. A declaratory judgment that the division of parcel 211-10-003 into lots
14 211-10-003A, B, C & D and grants of easement thereof on September 18,
15 2003 (MCRD #2003-1312578) was an unlawful violation of A.R.S. § 9-463
16 *et seq.* and Section 1.1(A)(1) & (2) of the Town's Subdivision Ordinance;
- 17 f. A declaratory judgment that the Town of Cave Creek has adopted the
18 Continuing Violations Doctrine through Section 1.7(A) of the Town's
Zoning Ordinance;
- 19 g. A declaratory judgment that Maricopa County and the State of Arizona has
20 adopted the Continuing Violation Doctrine through case law in *Valencia*
and *Thomas and King*, *supra*;⁷²
- 21 h. A declaratory judgment that the Town of Cave Creek, and/or the Mayor of
22 Cave Creek, and/or the Zoning Administrator failed to enforce and comply
23 with A.R.S. § 9-463 *et seq.*, and the Town's Subdivision Ordinance in
24 violation of Section 1.1(B)(1) of the Ordinance and the Town of Cave
25 Creek and the Zoning Administrator failed to enforce and comply with the
26 Town's Zoning Ordinance in violation of Section 2.3, 1.7 and A.R.S. § 9-
462 *et seq.*;

27 ⁷² *Thomas and King, Inc. v. City of Phoenix*, 92 P. 3d 429 - Ariz: Court of Appeals, 1st Div.,
28 Dept. B 2, 2004, relying upon "*Valencia Energy v. Ariz. Dep't of Revenue*, 191 Ariz. 565, 576, ¶
35, 959 P.2d 1256, 1267 (1998).

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- i. A declaratory judgment that any sale or transfer of lots 211-10-010 A, B, C & D and / or lots 211-10-003 A, B, C & D are unlawful pursuant to A.R.S. § 9-463.03 and void as against public policy;
- j. A declaratory judgment that the grant of easements in MCRD #2002-0576103 for lot 211-10-010A, MCRD #2002-0576104 for lot 211-10-010B, MCRD #2002-0576105 for lot 211-10-010C, and MCRD #2003-1472588 for lots 211-10-010 A, B & C and 211-10-003 A, B & C are rights arising from the unlawful subdivision of parcels 211-10-010 and 211-10-003 and therefore unenforceable and void as against public policy.
- k. A declaratory judgment that the division of parcel 211-10-010 into lots 211-10-010A, B, C, & D and the division of parcel 211-10-003 into lots 211-10-003A, B, C, & D did not comply with Section 1.1 of the Town’s Subdivision Ordinance and A.R.S. § 9-463 *et seq.* rendering said lots to be unsuitable for building and not entitled to building permits pursuant to Section 6.3(A) of the Town’s Subdivision Ordinance.
- l. A declaratory judgment that pursuant to Section 1.1(B) of the Subdivision Ordinance, the Town of Cave Creek through its Zoning Administrator failed to enforce the Subdivision Ordinance and officials and employees of the Town of Cave Creek issued permits, recorded documents, conducted inspections and performed other duties and administrative actions that were not in conformance with Sections 1.1 and 6.3 of the Town’s Subdivision Ordinance;
- m. A declaratory judgment that the Town of Cave Creek through its Town officials and employees charged with the duty or authority to issue permits violated Section 1.4(A) of the Zoning Ordinance rendering the following permits void: driveway permits #02-257, #02-258, issued on March 12, 2002; sewer permits #02-256, #02-260, #02-263, issued on October 30, 2002, #2002-031 issued on July 10, 2002, #03-475, #03-498 issued on November 25, 2003, #05-095 issued on March 2, 2005, and building permits #04-269 for lot #211-10-003B issued on June 20, 2005, #04-655 for lot #211-10-003C issued on August 17, 2005, and #06-225 for lot #211-10-003A issued on December 13, 2006;
- n. A declaratory judgment that the Town of Cave Creek as a corporate person, Town Engineer Wayne Anderson and Zoning Administrator Ian Cordwell violated Section 1.7(A) of the Zoning Ordinance by issuing permits as noted in item (k&m) above to lots that are not suitable for building and not entitled to permits pursuant to Sections 1.1(A)(4), 1.1(B) and 6.3 of the Subdivision Ordinance and pursuant to Section 1.7(A) of the Zoning Ordinance in force at the time the permits were issued, and are guilty of

1 Class One misdemeanors punishable in conformance with A.R.S. § 13-803.
2 The Town of Cave Creek shall be fined Twenty Thousand Dollars
3 (\$20,000) per separate offense (per day, per permit from date of issue) and
4 Wayne Anderson and Ian Cordwell shall each be fined Two Thousand Five
5 Hundred Dollars (\$2,500) per separate offense by (per day, per permit from
6 date of issue) to be paid to Fressadi and other persons to be determined at
7 trial who suffered an economic loss caused by the conduct of the Town and
8 Ian Cordwell pursuant to A.R.S. § 13-804(A) in keeping with Cave Creek's
9 adoption of the Continuing Violation Doctrine in Section 1.7A of the
10 Zoning Ordinance and the adoption of the Continuing Violation Doctrine
11 by the State of Arizona inherit in *Valencia* and *Thomas and King*, supra;

- 12 o. A declaratory judgment that pursuant to Section 1.7(B) of the Zoning
13 Ordinance, repairs and improvements constructed on the void permits
14 above are unlawful and ultra vires;
- 15 p. A declaratory judgment pursuant to Section 1.7(C) of the Zoning
16 Ordinance, requiring the Town of Cave Creek through its Zoning
17 Administrator to order the discontinued use of any unlawful improvements
18 constructed on reliance of void permits on lots 211-10-003A, B,C & D and
19 lots 211-10-010A, B, C & D, and that the structures on lots 211-10-003 A,
20 B, & C must be vacated;
- 21 q. A declaratory judgment that pursuant to Section 1.7(A) of the Zoning
22 Ordinance in force at the time, the Town of Cave Creek as a corporate
23 person through its municipal counsel, Mariscal Weeks, McIntyre &
24 Friedlander, P.A., its Zoning Administrator Ian Cordwell violated Section
25 2.3(D) and 2.3(E) of the Zoning Ordinance by: a) failing to submit all
26 records related to the variance appeal to the Board of Adjustment most
27 notably the permitted plans and unlawful subdivision surveys of parcels
28 211-10-010 and 211-10-003; b) failed to disclose that the Town created the
hardship of excessive lot disturbance by issuing permits in violation of
Sections 5.1 and 5.11 and its Zoning Ordinance and further, created lots
that are not suitable for building and not entitled to permits. Accordingly,
the Town of Cave Creek and Mariscal Weeks McIntyre & Friedlander, P.A.
are guilty of Class One misdemeanors punishable in conformance with
A.R.S. § 13-803 as a fine in the amount of Twenty Thousand Dollars
(\$20,000) per person, per separate offense (per day, per variance) and Ian
Cordwell is guilty of Class One misdemeanors punishable in conformance
with A.R.S. § 13-803 as a fine in the amount of Two Thousand Five
Hundred (\$2,500) per separate offense (per day, per variance) to be paid to
Fressadi and those persons who suffered an economic loss to be determined
at trial caused by the conduct of the Defendants so named above pursuant

1 to A.R.S. § 13-804(A) in keeping with Cave Creek’s adoption of the
2 Continuing Violation Doctrine inherit in Section 1.7A of the Zoning
3 Ordinance at the time the lots were unlawfully divided, the permits were
4 issued and the variance granted, and the adoption of the Continuing
5 Violation Doctrine by the State of Arizona inherit in *Valencia* and *Thomas*
6 *and King*, supra.

7 r. A declaratory judgment that pursuant to Section 1.7(A) of the Zoning
8 Ordinance in force at the time, that the Town of Cave Creek and Board of
9 Adjustment members George Ross, Frederick Mueller, Adam White, Brian
10 Sirower, and Richard Pello violated Sections 2.2(B)(2) and 2.2(B)(3) of the
11 Zoning Ordinance by issuing variances for excessive lot disturbance when
12 it was the Town that had created the hardship of excessive lot disturbance
13 and blocked access by issuing permits in violation of Sections 5.1 and 5.11
14 and its Zoning Ordinance and further, created lots that are not suitable for
15 building and not entitled to permits. Accordingly the Town of Cave Creek
16 and each of the parties above are guilty of Class One misdemeanors
17 punishable in conformance with A.R.S. § 13-803 as fines in the amount of
18 Twenty Thousand Dollars (\$20,000) per separate offense (per day, per
19 variance) against the Town of Cave Creek, and Two Thousand Five
20 Hundred Dollars (\$2,500) per separate offense (per day, per variance) by
21 the Board of Adjustment members so named above to be paid to Fressadi
22 those persons who suffered an economic loss caused by the conduct of the
23 Defendants so named above pursuant to A.R.S. § 13-804(A) in keeping
24 with Cave Creek’s adoption of the Continuing Violation Doctrine inherit in
25 Section 1.7A of the Zoning Ordinance at the time the lots were unlawfully
26 divided, the permits were issued and the variance granted, and the adoption
27 of the Continuing Violation Doctrine by the State of Arizona inherit in
28 *Valencia* and *Thomas and King*, supra.

s. A permanent injunction enjoining all state agencies and all rulings in all
state, Federal and Bankruptcy courts not in conformance with these
declarations;

t. For damages and/or restitution in an amount to be proven at trial;

u. For costs and interest on the foregoing sums as allowed by law; and

v. For such other and further relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF– QUIET TITLE

264. Fressadi incorporates the foregoing allegations as if fully set forth herein.

1 265. Without waiving any other claim or allegation herein, and in the alternative,
2 or in conjunction with other claims, pursuant to A.R.S. § 12-1101 *et seq.*, Fressadi
3 declares under penalty of perjury that Fressadi is the owner of parcel 211-10-010 and all
4 of the improvements on, under, or attached thereon and Fressadi Does 1-3 are the owners
5 of parcel 211-10-003 and all of the improvements on, under, or attached thereon.

6 266. Given that the division of parcel 211-10-010 on December 31, 2001 was in
7 violation of A.R.S. § 9-463 *et seq.*, and the Town's Subdivision Ordinance, pursuant to
8 A.R.S. § 9-463.03, Fressadi remains the owner of parcel 211-10-010.

9 267. Fressadi is credibly informed that Susan and Salvatore and DeVincenzo, wife
10 and husband make a claim of title adverse to Fressadi for the unlawful lot 211-10-010C
11 pursuant to a Warranty Deed MCRD # 2003-1472590.

12 279. Fressadi is credibly informed that Charlie 2 LLC makes a claim of title
13 adverse to Fressadi for the unlawful lot 211-10-010A pursuant to a Special Warranty
14 Deed MCRD #2012-0620607.

15 268. As Vertes declared to the Town Council in his application for lot split, the
16 sale of parcel 211-10-003 was contingent upon Vertes obtaining a lot split.

17 269. Cybernetics Quit Claimed parcel 211-10-003 to Vertes contingent upon
18 Vertes obtaining a lot split. Vertes did not obtain a lot split. The Town of Cave Creek and
19 Vertes converted the lot split application into an unlawful subdivision as adjudicated and
20 declared in Count One above, and therefore the terms of sale were not met.

21 270. The successors and assigns to the Cybernetics Group Ltd., (i.e. Fressadi Does
22 1-3) remain the owner of parcel 211-10-003 and all of the improvements thereon.

23 271. The successors and assigns to Cybernetics Group Ltd., are credibly informed
24 that Michelle O. Scott, *et ux* makes a claim of title adverse to Fressadi Does 1-3 for the
25 unlawful lots 211-10-003A & D pursuant to a Special Warranty Deed MCRD# 2012-
26
27
28

1 0407247.

2 272. The successors and assigns to Cybernetics Group Ltd., are credibly informed
3 that Mark D and Rhonda F. Murphy make a claim of title adverse to Fressadi Does 1-3
4 for the unlawful lot 211-10-003B pursuant to a Special Warranty Deed MCRD# 2012-
5 1038241.

6 273. The successors and assigns to Cybernetics Group Ltd., are credibly informed
7 that the Tamara A. Price Trust makes a claim of title adverse to Fressadi Does 1-3 for the
8 unlawful lot 211-10-003C pursuant to a Special Warranty Deed #2010-1136050 as
9 corrected on May 24, 2011, MCRD #2011-0436690.

10 **WHEREFORE**, on his Second Claim for Relief, Plaintiff prays for judgment that:
11

- 12 a. Pursuant to A.R.S. § 13-804(A), Fressadi requests that a portion of the
13 Class One Misdemeanor fines declared against the Town of Cave Creek in
14 Count One for the unlawful subdivision of parcel 211-10-010 and issuance
15 of permits thereon be allocated as restitution in an amount to be determined
16 at trial to Susan and Salvatore DeVincenzo for the unlawful purchase of lot
17 211-10-010C and that possession of the property be returned to Fressadi;
- 18 b. Pursuant to A.R.S. § 13-804(A), Fressadi requests that a portion of the
19 Class One Misdemeanor fines declared against the Town of Cave Creek in
20 Count One for the unlawful subdivision of parcel 211-10-010 and issuance
21 of permits thereon be allocated to Charlie 2 LLC as restitution less rent,
22 waste and/ or damages from October 20, 2011 to present in an amount to be
23 determined at trial for their unlawful purchase of lot 211-10-010A and that
24 the property be vacated and returned to Fressadi;
- 25 c. Pursuant to A.R.S. § 13-804(A), Fressadi requests that a portion of the
26 Class One Misdemeanor fines declared against the Town of Cave Creek in
27 Count One for the unlawful subdivision of parcel 211-10-003 and issuance
28 of permits thereon be allocated to Michelle O. Scott, *et ux* as restitution in
an amount to be determined at trial for their unlawful purchase of lots 211-
10-003A & D and that the property be vacated and returned to Fressadi
Does 1-3;
- d. Pursuant to A.R.S. § 13-804(A), Fressadi requests that a portion of the
Class One Misdemeanor fines declared against the Town of Cave Creek in

1 Count One for the unlawful subdivision of parcel 211-10-003 and issuance
2 of permits thereon be allocated to Mark D and Rhonda F. Murphy as
3 restitution in an amount to be determined at trial for their unlawful purchase
4 of lot 211-10-003B and that the property be vacated and returned to
Fressadi Does 1-3;

- 5 e. Pursuant to A.R.S. § 13-804(A), Fressadi requests that a portion of the
6 Class One Misdemeanor fines declared against the Town of Cave Creek in
7 Count One for the unlawful subdivision of parcel 211-10-003 and issuance
8 of permits thereon be allocated to the Tamara A. Price Trust as restitution
9 in an amount to be determined at trial for their unlawful purchase of lot
211-10-003C and that the property be vacated and returned to Fressadi
Does 1-3;
- 10 f. In consideration for restitution to be paid from the fines received from the
11 Town of Cave Creek and/or its state actors as outlined above in an amount
12 determined by the Court to be fair and equitable, that Defendants Susan and
13 Salvatore DeVincenzo, Charlie 2 LLC, Michelle O. Scott, *et ux*, Mark D
14 and Rhonda F. Murphy and the Tamara A. Price Trust be barred and
15 forever estopped from having or claiming any right or title to parcels 211-
16 10-010 and/or 211-10-003 or any portion or improvement thereon adverse
17 to Plaintiff or the successors and assigns of the Cybernetics Group Ltd.;
- 18 g. That in consideration of judicial declarations determined in Count One
19 herein, that the Town of Cave Creek be barred and forever estopped from
20 having or claiming any right or title to any easement or chattel on parcels
21 211-10-010 and 211-10-003.
- 22 h. For judgment in the amount of \$1,250.00 per month rent from October 20,
23 2011 from Defendants Lee and Barbara Hatton, BMO and Charlie 2 LLC
24 and for an Order that Fressadi be returned to occupancy of all premises,
chattel and improvements situated on parcel 211-10-010.
- 25 i. For attorneys' fees and costs incurred herein pursuant to A.R.S. § 12-
26 1103(B); and
- 27 i. For such other and further relief as the Court deems just and proper.

28
THIRD CLAIM FOR RELIEF - DUE PROCESS / EQUAL PROTECTION
(42 U.S.C. § 1983, Article 2, Section 13, 17 AZ. Constitution)

274. Plaintiff incorporates the foregoing facts as if fully set forth herein.

1 275. The actions taken by Defendants the Town of Cave Creek, Mayor Vincent
2 Francia, Town Council Mariscal Weeks, Town Manager Usama Abujbarah, Zoning
3 Administrator Ian Cordwell, Town Engineer Wayne Anderson, Board of Adjustment
4 Chairman Frederick Mueller, former Vice-Chairman George Ross, and members Adam
5 White, Richard Pello, Brian Sirower, and Cave Creek Does XXI-XXX (collectively, the
6 “Cave Creek Defendants”) were actions taken under color of law.

7
8 276. The actions taken by Judge Eileen Willett and Judge John Rea were taken
9 under color of law.

10 277. Without waiving any other claim or allegation herein, and in the alternative,
11 or in conjunction with other claims, Plaintiff brings this action pursuant to 42 U.S.C. §
12 1983, and Article 2, Section 17 AZ. Constitution.

13 278. By recommending a series of lot splits under color of law, then converting lot
14 splits into an unlawful subdivisions, the Cave Creek Defendants affected a wipe out of
15 Plaintiff’s investment-backed economic expectations.

16 279. The Cave Creek Defendants under color of law and selective enforcement of
17 Federal law, State statutes, and Town Building Codes, and Subdivision and Zoning
18 Ordinances in violation of Fressadi’s Bundle of Rights as protected by the Fifth and
19 Fourteenth Amendment; then physically invaded, occupied and converted Plaintiff’s
20 property to the Town of Cave Creek, and to adjoining property owners of lots 211-10-
21 003A, B, C, & D.

22
23 280. By issuing permits based upon exactions of easements in violation of its
24 ordinances, the Cave Creek Defendants took Plaintiff’s property for public purpose
25 without compensating Plaintiff.

26
27 281. The actions described hereinabove by the Cave Creek Defendants deprived
28 Fressadi of substantive due process and equal protection as protected by the Constitution

1 of the United States and the State of Arizona in that Fressadi was deprived of property (to
2 include his bundle of rights) and money paid for permits, improvements and easements
3 without due process. Further, Fressadi was deprived of his procedural due process rights,
4 as protected by the Constitutions of the United States and Arizona, in that Fressadi was
5 entitled to payment for property prior to it being taken.

6 282. As a direct and proximate result of the Defendant Cave Creek's actions,
7 Fressadi has been damaged in an amount to be proven at trial.

8 283. The Cave Creek Defendants have not secured for every person within its
9 jurisdiction freedom from intentional and arbitrary discrimination occasioned both by the
10 express use of its power, the terms of its laws and improper execution through its duly
11 constituted agents.

12 284. The actions of the Cave Creek Defendants were a gross abuse of
13 governmental authority.

14 285. The Cave Creek Defendants have singled out Plaintiff for disparate treatment,
15 without justification.

16 286. The actions of the Cave Creek Defendants herein represent a selective
17 application of the law.

18 287. The actions of the Cave Creek Defendants were done in bad faith with intent
19 to delay, frustrate, and cause Plaintiff to expend excessive amounts of time, energy and
20 money to keep Plaintiff from pursuing his objectives to injure Plaintiff.

21 288. Cave Creek Defendants selectively enforced A.R.S. § 9-462 *et seq.*, A.R.S. §
22 9-463 *et seq.*, Town and Building Codes, and Subdivision and Zoning Ordinances with
23 the specific, malicious intent to damage Plaintiff, his property and his business.

24 289. The rulings of Judge Eileen Willett in CV2006-014822 violated Fressadi's
25 right to due process as protected by the Fifth and Fourteenth Amendment by facilitating
26
27
28

1 an offense in violation of A.R.S. § 13-1004.

2 290. The rulings of Judge John Rea in CV2010-013401 violated Fressadi's right to
3 due process as protected by the Fifth and Fourteenth Amendment by facilitating an
4 offense in violation of A.R.S. § 13-1004.

5 **WHEREFORE**, on his Third Claim for Relief, Plaintiff prays for judgment
6 against:

- 7
- 8 a. The Town of Cave Creek, its agents, employees and officials for the direct,
9 proximate, and consequential damages to be proven at trial, for actual,
10 special, compensatory and punitive damages, attorney's fees and costs
11 (pursuant to 42 USC §1988), expenses, and interest, and for such other
12 relief as this Court deems just, fair, and appropriate.
- 13 b. Defendant Eileen Willett for the direct, proximate, and consequential
14 damages to be proven at trial, for actual, special, compensatory and
15 punitive damages, attorney's fees and costs (pursuant to 42 USC §1988),
16 expenses, and interest, and for such other relief as this Court deems just,
17 fair, and appropriate.
- 18 c. Defendant John Rea for the direct, proximate, and consequential damages
19 to be proven at trial, for actual, special, compensatory and punitive
20 damages, attorney's fees and costs (pursuant to 42 USC §1988), expenses,
21 and interest, and for such other relief as this Court deems just, fair, and
22 appropriate.
- 23 d. For such other and further relief as this Court deems just and proper.

21 **FOURTH CLAIM FOR RELIEF – A.R.S. § 13-2314.04**
22 (18 U.S.C. § 1962(c), reserved)

23 291. Plaintiff incorporates the foregoing facts as if fully set forth herein.

24 292. Without waiving any other claim or allegation herein, and in the alternative, or
25 in conjunction with other claims, Fressadi alleges that he sustained reasonably foreseeable
26 injury to his person, business *and* property by a pattern of unlawful activity pursuant to
27 A.R.S. § 13-2314.04 by the Defendants named in this claim.
28

1 293. Defendants named herein conspired, facilitated, and concealed⁷³ a series of
2 fraudulent schemes in violation of A.R.S. §§ 13-1003, 13-1004, 13-2310, 13-2311 (a
3 pattern of unlawful activity) to control and convert Plaintiff's property, the value of
4 which exceeds \$100,000, in violation of A.R.S. § 13-1802.

5 294. Defendants committed multiple inter-related acts of unlawful activity as
6 defined in A.R.S. § 13-2301(C)(7), (D)(1), (D)(2), (D)(4)(b)(v, xx) from 2001 to present.

7 As to the Town of Cave Creek:

8 (a) Evidence in Exhibit D suggests that Defendants Mariscal Weeks, Mayor
9 Vincent Francia, Town Manager Usama Abujbarah, Zoning Administrator Ian Cordwell,
10 Town Engineer Wayne Anderson, Board of Adjustment members Frederick Mueller,
11 George Ross, Adam White, Richard Pello, Brian Sirower, and Cave Creek Does XXI-
12 XXX align with Defendant Sorchych or act in alignment with Defendant Don Sorchych
13 to avoid vilification in the Sonoran News, published by Defendant Conestoga Merchants.
14

15 (b) The Town Officials, agents and employees identified above engaged in a pattern
16 of unlawful activities, per A.R.S. § 13-2301(C)(7) to benefit their hegemony pursuant to
17 A.R.S. § 13-2310(A), to control property pursuant to A.R.S. § 13-2301(D)(1) by selectively
18 enforcing state statutes, the zoning ordinance, building codes, and the subdivision ordinance
19 as an association-in-fact enterprise pursuant to A.R.S. § 13-2301(D)(2).
20

21 (c) The pattern is ongoing and continuous involving other parties as evident by the
22 string of lawsuits in Maricopa County Superior Court, the Court of Appeals for the State
23 of Arizona, most notably as an example, *Pingitore v. Town of Cave Creek*, 981 P. 2d 129
24 - Ariz: Court of Appeals, 1st Div., Dept. C 1998, and Federal District Court, most notably
25 *Langan v. Town of Cave Creek*, Dist. Court, D. Arizona 2007 incorporated by reference
26

27 ⁷³ As argued in Fressadi's Opening and Reply Brief's CA-CV 12-0238, attached and
28 incorporated by reference herein, Fressadi only discovered the criminal conduct around January
2012.

1 herein and attached as Exhibit AY.

2 (d) Under color of law, Defendant Town of Cave Creek, verbally recommended a
3 series of lots splits then converted Fressadi's application to split parcel 211-10-010 into
4 three lots into an unlawful subdivision by requiring a fourth lot in violation of A.R.S. § 9-
5 500(12)(E) on December 31, 2001. As a result, Plaintiff's property was unsuitable for
6 building pursuant to Section 6.3 of the Town's Subdivision Ordinance and unlawful to
7 sell pursuant to A.R.S. § 9-463.03, and Section 1.1(A)(2) of the Subdivision Ordinance.
8

9 (e) In furtherance of the criminal syndicate's fraudulent scheme to control and
10 convert the property of another in violation of A.R.S. § 13-1802, the Town of Cave Creek
11 required Fressadi to grant easements to permit the repair and extension of sewer with the
12 inducement of a reimbursement agreement in 2002.

13 (f) Cave Creek then issued permits for Fressadi to construct improvements in
14 violation of its zoning and subdivision ordinance giving Fressadi the false sense of
15 entitlement as part of the syndicate's fraudulent scheme knowing they could rely on
16 immunity with impunity per A.R.S. § 12-821 *et seq.*⁷⁴ and could correct mistakes of law
17 via *Valencia* and *Thomas and King*, *supra*.
18

19 (g) In furtherance of the syndicate's fraudulent scheme and in violation of the
20 Town's Subdivision Ordinance, Abujbarah converted the Town's series of lot splits
21 creating eight lots recommendation into Fressadi's *intent* as a reason to deny Cybernetics
22 a lot split in August, 2002.

23 (h) When Cybernetics attempted to mitigate its loss, sell, and get out of town, Vice
24 Mayor Ralph Mozilo, brother of the infamous Angelo Mozilo of Countrywide Mortgage
25 fame wondered in public whether Fressadi and Vertes were "scamming" the Town to
26

27 _____
28 ⁷⁴ The State Legislature did not intend, nor will the Federal Government allow Arizona to indemnify and hold municipalities harmless for criminal conduct.

1 circumvent the subdivision ordinance when it was the Town that had violated state law
2 and its own ordinances in unlawfully subdividing parcel 211-10-010 and setting up to do
3 violate the same laws and ordinances in dividing parcel 211-10-003.

4 (i) Without Vertes dedicating the roadway lot, Francia and Cordwell approved the
5 division of parcel 211-10-003 into four lots in September 2003. Exhibit Q.

6 (j) The Town of Cave Creek obtained substantial impact fees and permit fees plus
7 the repair and extension of infrastructure, a benefit in excess of \$100,000, through the
8 issuance of void permits from 2002 to 2008 to extend and repair sewer and construct
9 homes, driveways and other improvements on the unlawful lots 211-10-010A, B, C, & D
10 and 211-10-003 A, B, C, & D in violation of the Town's Building Codes and Subdivision
11 and Zoning Ordinances as part of or in furtherance of their fraudulent scheme.

12 (k) The Town of Cave Creek placed Fressadi under criminal investigation for illegal
13 subdivision in 2004, and stopped all further lot splitting but concealed the fraudulent
14 scheme's unlawful subdivision of parcels 211-10-003 and 211-10-010 caused by the
15 requirement of a fourth lot in violation of Federal law as codified in A.R.S. § 9-500.12(E).

16 (l) In furtherance of its fraudulent scheme, Cave Creek issued building permits to
17 lots 211-10-003 B & C based upon excessive lot disturbance and with access and utilities
18 from Fressadi's property in violation of its Zoning Ordinance in 2005.

19 (m) In furtherance of the syndicate's fraudulent scheme, Cave Creek transferred
20 void building permits on lot 211-10-003C to Defendant REEL on July 8, 2008.

21 (n) In furtherance of or to conceal the syndicate's fraudulent schemes, the Town of
22 Cave Creek suggested to REEL that they apply for a variance in which Ian Cordwell
23 pursuant to the syndicate's scheme to defraud or deceive knowingly failed to transmit all
24 records in violation of A.R.S. §§ 9-462 *et seq.*, 13-2311, and Section 2.3 of the Town's
25 Zoning Ordinance. Cordwell failed to transmit the permitted plans evidencing the Town's
26
27
28

1 wrongdoing by issuing permits with excessive lot disturbance and unlawful access.

2 (o) Defendant Board of Adjustment members violated A.R.S. § 9-462 *et seq.* and
3 Section 2.2(B) of the Town's Zoning Ordinance by granting a variance to facilitate the
4 syndicate's fraudulent scheme in violation of A.R.S. § 13-1004.

5 (p) Pursuant to the syndicate's fraudulent scheme in violation of A.R.S. § 13-1802,
6 Mariscal Weeks, and Moyes Sellers & Sims Ltd., LaSota & Peters, PLC, and Sims
7 Murray Ltd., on behalf of the Town of Cave Creek and AMRRP knowingly submitted
8 false writings and concealed the void permit status for all improvements on lots created
9 by the unlawful subdivision of parcels 211-10-003 and 211-10-010 to Maricopa County
10 Superior Court, a public agency as defined by Section 38-502(6), in violation of A.R.S. §
11 13-2311 to obtain favorable judgment in CV2009-050924, CV2009-050821, and
12 LC2010-000109-001DT.
13

14 (q) Cave Creek through Cave Creek Does XXI-XXX in concert with Defendants
15 REEL and BMO Harris Bank knowingly submitted false writings or concealed the
16 control and conversion of Fressadi's stacked rocks in violation of A.R.S. §§ 13-1802, 13-
17 2310, and 13-2311 in order to file a fictitious criminal complaint in 2010.
18

19 (r) As part of or to further the syndicate's fraudulent scheme and pattern of
20 unlawful activity to harm the business and property of Fressadi pursuant to A.R.S. § 13-
21 2314.04(A), Defendant Linda Bentley wrote numerous articles which Defendants Don
22 Sorchych and Conestoga Merchants published in the Sonoran News and on the Internet to
23 cast Fressadi and his family in a false light.
24

25 296. As to Defendants Keith and Kay Vertes, a/k/a Vertes Family Trust, Michael
26 T. Golec, Quarles & Brady Streich Lang LLP, Israel & Gerrity, PLLC, Susan and
27 Salvatore DeVincenzo, Righi Law Group, P.L.L.C., REEL, Burch & Cracchiolo, P.A.,
28 Turley, Childers, Humble & Torrens, P.C., Eileen Willet, BMO Financial Group d/b/a

1 BMO Harris Bank, N.A., Jennings Haug & Cunningham, L.L.P., The Cavanagh Law
2 Firm, John Rea, Earl Curley & LaGuarde, P.C., The BCA Companies, L.L.C., Lee W.
3 and Barbara Hatton, BMO Does I-X, Maricopa County, and Tyler Thompson, Charlie 2
4 LLC, Mack Drucker, & Watson, PLLC: Defendants committed multiple inter-related acts
5 of unlawful activity as defined in A.R.S. § 13-2301(C)(7), (D)(1), (D)(2), (D)(4)(b)(v,
6 xvii, xx) from 2003 to present:

7 (a) Keith Vertes never dedicated “parcel A” a/k/a 211-10-003D as part of the
8 division of parcel 211-10-003 recorded on September 18, 2003, MCRD #2003-1312578.

9 (b) In violation of A.R.S. § 9-463.03, Building Group Inc. and Michael Golec sold
10 Lot 211-10-003A on October 15, 2003, MCRD # 20031438387.⁷⁵

11 (c) Lot 211-10-003A was acquired with a loan from M&I Bank (BMO), MCRD
12 #20031438388.

13 (d) On October 16, 2003, in violation of A.R.S. §§ 13-2301(D)(4)(b)(v, xvii, xx),
14 13-1802, and 13-2310, Vertes executed a Reciprocal Easement Agreement (a/k/a “DMA”
15 or “Covenant”) warranting and representing that GV Group LLC, a company that did not
16 exist, owned lots 211-10-003 A, B, & C, MCRD#2003-1472588.

17 (e) Vertes fraudulently entered into a Covenant agreement with Fressadi for access
18 and utilities knowing that the split of his property was unlawful and/or that there was no
19 reciprocity or mutuality of easement causing the Covenant to be illusory to control and
20 convert Plaintiff’s property which exceeded \$100,000 in value.

21 (f) REEL, Susan and Salvatore DeVincenzo joined the fraudulent scheme of Golec
22 and Vertes to control and convert Fressadi’s property which exceeded \$100,000 in value.

23 (g) Although the Covenant was rescinded on October 27,2005 due to
24 misrepresentations by Golec and Vertes, lots 211-10-003A, B, & C continued to use

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⁷⁵ IR 208-216, Exh. D

1 Fressadi's property for building permits access and utilities in violation of A.R.S. §§ 13-
2 2301(D)(4)(b)(v, xvii, xx), 13-1802, and 13-2310.

3 (h) In 2004, M&I (BMO) Bank loaned Fressadi \$245,000.

4 (i) In 2006, BMO loaned \$600,000 to construct a home on lot 211-10-003B and in
5 2007, loaned \$1.25 Million to construct a home on lot 211-10-003A.

6 (j) In 2007, REEL loaned Golec and Vertes \$965,000 to build a spec house on lot
7 211-10-003C then entered a JV agreement with GV Group in May, 2008.

8 (k) On July 8, 2008, in violation of A.R.S. §§ 13-2301(D)(4)(b)(v, xvii, xx), 13-
9 1802, and 13-2310, Cave Creek transferred the permits for lot 211-10-003C to REEL.
10 The permits relied upon sewer and access from Fressadi's property.

11 (l) In violation of A.R.S. § 13-2311, neither Golec, Vertes, nor their counsel
12 Quarles and Brady disclosed the ongoing existence of lot 211-10-003D; that it blocked
13 access to the 003 easement, or that the division of parcel 211-10-003 was unlawful.

14 (m) In violation of A.R.S. §§ 13-1003, 13-1004, 13-1802, 13-2301(C)(7), (D)(1),
15 (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, 13-2311, REEL filed for a variance for lot 211-
16 10-003C but concealed from the Board of Adjustment that lot 211-10-003C was part of
17 an unlawful subdivision, landlocked, and unsuitable for building.

18 (n) In violation of A.R.S. §§ 13-1003, 13-1004, 13-1802, 13-2301(C)(7), (D)(1),
19 (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, 13-2311, Turley, Childers, Humble & Torrens, P.C.
20 and REEL concealed from Maricopa County Superior Court in CV2006-014822, CV2010-
21 029559 and from Bankruptcy Court in 4:11-bk-01161-EWH that lot 211-10-003C was part
22 of an unlawful subdivision rendering their lot unsuitable for building, their permits void, the
23 Covenant unenforceable, and the property unlawful to sell pursuant to A.R.S. § 9-463.03.

24 (o) In violation of A.R.S. §§ 13-1003, 13-1004, 13-1802, 13-2301(C)(7), (D)(1),
25 (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, 13-2311, Burch & Cracchiolo, P.A., on behalf of
26

1 REEL concealed from Maricopa County Superior Court in LC2010-000109-001DT that
2 lot 211-10-003C was part of an unlawful subdivision rendering their lot unsuitable for
3 building, their permit void, and the Covenant unenforceable.

4 (p) In 2009, in consideration for claiming the amount of their promissory note was
5 “erroneous,” M&I/BMO accepted a deed on lot 211-10-003B. The permit for the spec
6 house on Lot 211-10-003B was based on access and utilities from Fressadi’s property via
7 the rescinded Covenant.
8

9 (q) None of the owners of lots 211-10-003 A, B, & C, nor the Town of Cave Creek
10 had compensated Fressadi for utilities or access.

11 (r) As a result, Fressadi stopped making payments to BMO.

12 (s) In violation of A.R.S. §§ 13-1003, 13-1004, 13-1802, 13-2301(C)(7), (D)(1),
13 (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, 13-2311, Earl Curley & LaGuarde, P.C., and The
14 BCA Companies, L.L.C., on behalf of BMO filed for a variance for lot 211-10-003B but
15 concealed from the Board of Adjustment that: a) their permit was based on the Covenant
16 which had been rescinded on October 27, 2005; b) lot 211-10-003B violated Section 6.3
17 of the Subdivision Ordinance rendering the lot unsuitable for building. their permit void,
18 and the Covenant unenforceable.
19

20 (t) In violation of A.R.S. §§ 13-1003, 13-1004, 13-1802, 13-2301(C)(7), (D)(1),
21 (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, 13-2311, Jennings Haug & Cunningham, L.L.P.
22 filed CV2010-013401 on behalf of BMO to judicially foreclose on Fressadi’s lot 211-10-
23 010A which included driveways, sewer and utilities that BMO used but had not paid for.

24 (u) As part of their fraudulent scheme, Jennings Haug & Cunningham, L.L.P. and
25 BMO concealed from the court in violation of A.R.S. § 13-2311 that lot 211-10-010A
26 was part of an unlawful subdivision and incapable of transfer pursuant to A.R.S. § 9-
27 463.03 to obtain judgments in CV2010-013401 and 4:11-bk-01161-EWH.
28

1 (v) As part of their fraudulent scheme, the Cavanagh Firm and BMO submitted
2 false writings to the court in violation of A.R.S. § 13-2311 to obtain an order of sale of
3 lot 211-10-010A in violation of A.R.S. § 9-463.03.

4 (w) In violation of A.R.S. §§ 9-463.03, 13-1003, 13-1004, 13-1802, 13-2301(C)(7),
5 (D)(1), (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, and 13-2311, Maricopa County Sheriff's
6 Office sold lot 211-10-010A to BMO.

7 (x) In violation of A.R.S. §§ 9-463.03, 13-1003, 13-1004, 13-1802, 13-2301(C)(7),
8 (D)(1), (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, and 13-2311 BMO leased the premises at
9 37934 Schoolhouse Rd., Cave Creek, AZ to Lee and Barbara Hatton.

10 (y) Upon information and belief, agents or employees of BMO instructed the Hattons
11 to contact MCSO and have Fressadi arrested in violation of A.R.S. §§ 13-1003, 13-1004, 13-
12 1802, 13-2301(C)(7), (D)(1), (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, 13-2311, the Fourth,
13 Fifth, and Fourteenth Amendment pursuant to 42 USC §1983 resulting in false arrest,
14 detention, excessive use of force under color of law to cause injury to Fressadi in
15 violation of A.R.S. § 13-2314.04.

16 (z) In violation of A.R.S. §§ 13-1003, 13-1004, 13-1802, 13-2301(C)(7), (D)(1),
17 (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, 13-2311, BMO and Burch & Cracchiolo, P.A., filed
18 CV2011-014289 but concealed from the Court that lot 211-10-010A was part of an unlawful
19 subdivision, unsuitable for building and incapable of transfer pursuant to A.R.S. § 9-463.03.

20 (aa) In violation of A.R.S. §§ 9-463.03, 13-1003, 13-1004, 13-1802, 13-2301(C)(7),
21 (D)(1), (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, and 13-2311 BMO unlawfully sold lot 211-
22 10-010A to Charlie 2 LLC; lot 211-10-003A & D to Michelle O. Scott, *et ux*; lot 211-10-
23 003B to Mark D and Rhonda F. Murphy.

24 (ab) In violation of A.R.S. §§ 9-463.03, 13-1003, 13-1004, 13-1802, 13-2301(C)(7),
25 (D)(1), (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, and 13-2311 REEL sold lot 211-10-003C to
26
27
28

1 the Tamara A. Price Trust.

2 (ac) In violation of A.R.S. §§ 9-463.03, 13-1003, 13-1004, 13-1802, 13-2301(C)(7),
3 (D)(1), (D)(2), (D)(4)(b)(v, xvii, xx), 13-2310, and 13-2311, Charlie 2 and Mack Drucker, &
4 Watson, PLLC submitted false writings and concealed damaging information to a public
5 agency to claim title to lot 211-10-010A knowing that lot 211-10-010 was unlawful to
6 sell and part of an unlawful subdivision in violation of A.R.S. § 9-463 *et seq.*

7
8 297. The culmination of these inter-related fraudulent schemes and unlawful
9 activities caused a reasonably foreseeable injury to his person, business and property and
10 a complete wipe out of Fressadi's investment backed expectations.

11 298. These fraudulent schemes were facilitated by Eileen Willett and John Rea in
12 violation of A.R.S. § 13-1004.

13 **WHEREFORE**, Plaintiff requests that this Court enter judgment against the
14 above Defendants for the direct, proximate, and consequential damages to be proven at
15 trial pursuant to A.R.S. § 13-2314.04, for actual, special, compensatory and punitive
16 damages, attorney's fees and costs, expenses, and interest, and for such other relief as this
17 Court deems just, fair, and appropriate

18
19 **FIFTH CLAIM FOR RELIEF - VIOLATION OF CIVIL RIGHTS PURSUANT**
20 **TO TITLE 42 U.S.C. §1983**

21 **(False Arrest, Imprisonment; Failure to Implement Appropriate Policies,**
22 **Customs and Practices; Negligent supervision; Excessive Force)**

23 299. Plaintiff incorporates the foregoing facts as if fully set forth herein.

24 300. This Count is against Defendants TYLER THOMPSON *et ux*, MCSO DOES
25 XI-XX, MARICOPA COUNTY, ARIZONA, (the "MCSO Defendants").

26 301. In committing the acts complained of herein, the MCSO Defendants acted
27 under color of state law to deprive Plaintiff of constitutionally protected rights under the
28 Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States

1 including, but not limited to: a) the right to be secure in his person, property, papers and
2 effects against unreasonable searches and seizures; b) nor be deprived of life, liberty or
3 property, without due process of law; c) nor property be taken for public use without just
4 compensation d) to be free from excessive use of force by persons acting under color of
5 law; e) that no State shall make or enforce any law which shall abridge the privilege or
6 immunities of citizens of the United States; f) the right to just compensation for taking of
7 property, and (g) equal protection.
8

9 302. As a direct and proximate result of the violation of their constitutional rights
10 by the MCSO Defendants, Plaintiffs suffered general and special damages as alleged in
11 this Complaint and are entitled to relief under 42 U.S.C §1983.

12 303. The conduct of the MCSO Defendants was willful, malicious, oppressive
13 and/or reckless, and was of such a nature that punitive damages should be imposed in an
14 amount commensurate with the wrongful acts alleged herein.

15 304. The MCSO Defendants implicitly or explicitly adopted and implemented
16 careless and reckless policies, customs, or practices, to include inadequate hiring
17 procedures, inadequate training and supervision, callous and deliberate indifference to the
18 safety of others, to obeying the law, to a person's right to be free from excessive force
19 and unreasonable seizures under the Fourth, Fifth, and Fourteenth Amendments to the
20 Constitution of the United States.
21

22 305. Defendant Maricopa County Sherriff's Office ("MCSO") has adopted
23 policies, procedures, practices or customs within MCSO to use of excessive force when
24 other more reasonable and less drastic methods are available.
25

26 306. Although on notice of Plaintiff's justiciable controversy with the Town of
27 Cave Creek for years, the MCSO Defendants under color of law violated A.R.S. § 9-
28 463.03.

1 and ordinances, zoning statutes and ordinances, building and town codes. Cave Creek
2 Defendants breached their duty to Plaintiff by violating state subdivision statutes and
3 ordinances, zoning statutes and ordinances, building and town codes.

4 313. As a result of Cave Creek Defendants' negligence per se, Plaintiff has
5 suffered injury, harm and damages to be proven at trial.

6 314. MCSO Defendants owed Plaintiff a duty to comply with state subdivision
7 statutes, the Arizona and United States Constitution. MCSO Defendants breached their
8 duty to Plaintiff causing harm and damage to Plaintiff.

9 315. As a result of MCSO Defendants' negligence per se, Plaintiff has suffered
10 injury, harm and damages to be proven at trial.

11 316. Attorney Jay Powell a/k/a Powell Law Firm owed Plaintiff a duty to represent
12 Plaintiff's interest to the best of his ability in conformance with the Rules of Professional
13 Conduct, Bankruptcy Rules and the Rules of Federal Procedure. Powell breached his duty
14 causing harm and damage to Plaintiff.

15 317. As a result of Powell's negligence, Plaintiff has suffered injury, harm and
16 damages to be proven at trial.

17 **WHEREFORE**, on his Sixth Claim for Relief, Plaintiff prays for judgment
18 against Powell, Cave Creek Defendants and MCSO Defendants for injunctive relief and
19 actual, special, compensatory and punitive damages, attorney's fees, costs, expenses, and
20 interest in an amount deemed at time of trial to be just, fair, and appropriate.
21

22
23 **SEVENTH CLAIM FOR RELIEF – PRODUCT LIABILITY**

24 318. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

25 319. Taser International, Inc. ("Taser") designs and sells a product to be used by
26 law enforcement agencies such as MCSO.

27 320. Taser's product contains defective conditions because the design of the
28

1 product is not safe for its intended use on all persons.

2 321. This design defect made the product unreasonably dangerous.

3 322. Upon information and belief, the product used by MCSO Defendants to
4 injure Plaintiff as designed and assembled by Taser remained unchanged and was in the
5 same condition at the time of injury hereafter alleged.

6 323. Taser built a product with a defective design. Taser owed Plaintiff a duty that
7 Taser's product was designed in such a way that made the product safe for its intended
8 purpose.

9 324. Taser knew or should have known when designing, manufacturing, and
10 selling their product that it was defective, creating unreasonable risk of injury to Plaintiff.

11 325. Placing a defective product into the stream of commerce created a clear and
12 immediate risk of serious injury.

13 326. Taser's product exposed Plaintiff to an unreasonable risk of harm.

14 327. At all times, Taser had control over placing the defective product into the
15 stream of commerce to be used by MCSO Defendants.

16 328. As a direct and proximate cause of MCSO Defendant's use of Taser's
17 defectively designed, unsafe product to batter Plaintiff, Plaintiff sustained permanent
18 injury.

19 329. Upon information and belief, MCSO is aware that Tasers are not safe for use
20 on all persons.

21 **WHEREFORE**, Plaintiff prays for judgment against Taser and MCSO for actual,
22 special, compensatory and punitive damages in an amount deemed at time of trial to be
23 just and fair, plus attorney's fees, costs, expenses, interest and any other relief this court
24 deems appropriate.

25 **EIGHTH CLAIM FOR RELIEF - FRAUDULENT INDUCEMENT-**

1 330. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

2 331. As an inducement and throughout the course of development, Cave Creek
3 Defendants misrepresented material information regarding Subdivision Procedures,
4 Town's Ordinances, and Development Agreements procedures.

5 332. Cave Creek Defendants knew their representations were false when they were
6 made, and made these representations with an intent to deceive.

7 333. Plaintiff reasonably relied upon these representations to his detriment.

8 334. As a result of Cave Creek Defendants' misrepresentations, Plaintiff was
9 induced to split his land and install infrastructure at a cost exceeding \$1,000,000 and
10 spend twelve years attempting to mitigate damages, causing a complete wipe out of
11 investment backed expectations pursuant to 42 U.S.C. § 1983, in violation of Article 2,
12 Section 17 of Arizona's Constitution.

13 335. Due to Cave Creek Defendants' fraudulent inducements, negligence, and
14 criminal conduct, Plaintiff stopped making payments to BMO and BMO filed a
15 complaint for judicial foreclosure of lot 211-10-010A.

16 336. Plaintiff sought bankruptcy reorganization protection and retained the
17 services of the Powell Law Firm, PLLC, Jay Powell, Esq. based on Powell's inducement
18 that Plaintiff could "cram down" the Promissory Note and reinstate the loan to BMO.

19 337. Powell's inducement was fraudulent.

20 338. As a result of these misrepresentations, Plaintiff has been damaged in an
21 amount to be proven at trial.

22
23
24
25 **WHEREFORE**, on his Eighth Claim for Relief, Plaintiff prays for judgment
26 against Cave Creek Defendants and Jay Powell / Powell Law Firm, for actual and
27 consequential damages to be proven at trial, for special, compensatory and punitive
28 damages, attorney's fees, costs, expenses, and interest, and for such other relief as this

1 Court deems just, fair, and appropriate.

2 **NINTH CLAIM FOR RELIEF - False Light**

3 339. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

4 340. Upon information and belief, Cave Creek Defendants in concert with Don
5 Sorchych and Conestoga Merchants, Inc. intentionally publishes articles on persons in a
6 false light who are in disfavor with the junta who controls local politics.
7

8 341. In addition to the Tort of False Light, Plaintiff brings this action pursuant to
9 42 USC § 1983, and A.R.S. § 13-2314.04 in that part of the purpose of publishing articles
10 to portray Plaintiff in a false light was to damage his business and deprive Plaintiff of his
11 property and constitutional rights as protected by the Fifth and Fourteenth Amendment.

12 342. From 2002 until the present, Linda Bentley has written and Donald R.
13 Sorchych and Conestoga Merchants have published numerous disparaging articles on
14 Fressadi in the Sonoran News. Exhibit K.

15 343. The publishing of articles in the Sonoran News placing Fressadi in a false
16 light was intended to damage Plaintiff's reputation, career and standing in the
17 community. The Cave Creek Defendants in concert with Bentley, Sorchych, and
18 Conestoga Merchants appropriated or exploited Plaintiff's personality, publicizing
19 Plaintiff's private affairs with which the public has no legitimate concern.
20

21 344. Cave Creek Defendants in concert with Sorchych, Bentley and the Sonoran
22 News has caused the wrongful intrusion into Plaintiff's and Plaintiff's family's private
23 activities, in such manner as to outrage or cause mental suffering, shame, or humiliation
24 to a person of ordinary sensibilities.
25

26 345. Cave Creek Defendants in concert with Bentley, Sorchych, and the Sonoran
27 News published articles to injure Plaintiff in his business and profession.

28 346. These articles have been publicized and communicated to third persons and

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the general public via the Internet by the above defendants with express, reckless, and wanton disregard of the plaintiff's right to privacy.

347. That said publicity has unreasonably placed the plaintiff in a false light in the public eye.

348. That by reasons of invasion of privacy, libel and placing Plaintiff in a false light, and as a proximate result thereof, Plaintiff and his family were damaged in an amount to be determined at trial.

WHEREFORE, on his Ninth Claim for Relief, Plaintiff prays for judgment against Cave Creek Defendants, Bentley, Sorchych and Conestoga Merchants, for the direct, proximate, and consequential damages, for actual, special, compensatory and punitive damages, attorney's fees and costs (pursuant to 42 USC §1988), expenses, and interest, and for such other relief as this Court deems just, fair, and appropriate.

DATED January 8, 2013.



/s/ Arek Fressadi
Arek Fressadi, *pro se*
Plaintiff, Counter-Defendant

VERIFICATION

Pursuant to A.R.S. 13-2314.04(P), I, Arek Fressadi, Plaintiff *pro se* in the above-captioned action, hereby certify that I have carefully read the pleading, motion or other paper and, based on a reasonable inquiry, believes all of the following:

- 1. It is well grounded in fact.
- 2. It is warranted by existing law or there is a good faith argument for the extension, modification or reversal of existing law.
- 3. It is not made for any bad faith, vexatious, wanton, improper or oppressive

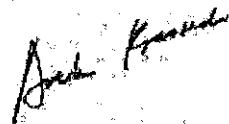
1 reason, including to harass, to cause unnecessary delay, to impose a needless increase in
2 the cost of litigation or to force an unjust settlement through the serious character of the
3 averment.

4 Further I declare that the allegations therein are true in substance and in fact,
5 except the allegations stated upon information and belief, and as to such allegations, I
6 believe them to be true.

7 I declare under penalty of perjury that the foregoing is true and correct.

8
9 **EXECUTED** this 8th day of January, 2013.

10
11 

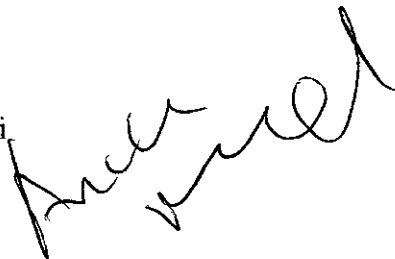
12 
13 Arek Fressadi
14 /s/Arek Fressadi

15 **CERTIFICATION OF SERVICE**

16 I hereby certify that on January 8, 2013, I hand delivered two copies of the
17 Verified First Amended Complaint with Exhibits to the Clerk of the Court as the Court
18 has not yet ruled on Plaintiff's motion to file documents via PACER, and mailed a CD of
the attached document to:

19 Dax R. Watson
20 Mack Watson & Stratman, P.L.C. f/k/a Mack Drucker & Watson, P.L.C.
21 3200 North Central Avenue, Suite 1200
22 Phoenix, AZ 85012

23
24 /s/Arek Fressadi

25 
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27
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