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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA		
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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

AREK FRESSADI, FRESSADI DOES
1-3

Plaintiffs,

v.

JAY POWELL, ESQ. *et ux*, d/b/a THE
POWELL LAW FIRM, PLLC, BMO
FINANCIAL GROUP d/b/a BMO
HARRIS BANK N.A., BMO DOES I-X,
MARICOPA COUNTY, ARIZONA,
TYLER THOMPSON *et ux*, TASER
INTERNATIONAL, INC., MCSO DOES
XI-XX, CHARLIE 2 LLC, TOWN OF
CAVE CREEK, VINCENT FRANCIA, *et
ux*, USAMA ABUJBARAH, *et ux*,
WAYNE ANDERSON *et ux*, IAN
CORDWELL, *et ux*, CAVE CREEK DOES
XXI-XXX, LINDA BENTLEY, DONALD
R. SORCHYCH *et ux*, CONESTOGA
MERCHANTS, INC. d/b/a Sonoran News,
JOCELYN KREMER and THOMAS
VAN DYKE *et ux*; MICHAEL T. GOLEC,
REAL ESTATE EQUITY LENDING,
INC. ("REEL"), KEITH and KAY
VERTES, husband and wife a/k/a/
VERTES FAMILY TRUST, SUSAN and
SALVATORE and DEVINCENZO, wife
and husband, ABC Entities XXXI-L,
Defendants.

No. -CV-12-TUC-

CIV12 - 876 TUC FRZ

VERIFIED COMPLAINT

JURY DEMAND

For causes stated, Plaintiffs brings this civil action and alleges as follows:

I. INTRODUCTION

1. This action arises under the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution; under 42 U.S.C. §§1983, 1988, and 14142, and 18 U.S.C. §§1961-1968; under Article 2, Sections 1, 3, 4, 6, 8, 13, 17, 19 of Arizona's Constitution, Arizona Revised Statutes §§ 9-462 *et seq.*, 9-463 *et seq.*, 9-500.13, 10-1501, 12-511, 12-523, 12-526, 12-1101 *et seq.*, 12-1566, 13-1001, 13-1003, 13-1004, 13-1802, 13-2310, 13-2311, 13-2314, 13-2314.04, 29-652, 33-701, 33-721, 33-722, 33-725, 33-801(9), 33-814(g); under common law for negligence, product liability, false light (injurious falsehood), and intentional infliction of emotional distress.

2. Plaintiffs ("Fressadi") seeks damages, compensatory and punitive damages, declaratory and injunctive relief and reserves the right to amend and to supplement this complaint with exhibits.

3. Fressadi acquired two parcels of land in Cave Creek to build an artistic enclave of adobe homes at the base of Black Mountain. Under color of law the Town of Cave Creek recommended that Fressadi pursue a series of lot splits in lieu of platting a subdivision to develop the adjoining parcels. By requiring a dedication of a fourth lot to approve the lot splits, in violation of A. R. S. § 9-500.13, state subdivision enabling statutes, and the Town's Subdivision Ordinance, Cave Creek converted lot splits into unlawful subdivisions.

4. Cave Creek's misconduct was a conspiracy concocted as fraudulent scheme to control and convert Fressadi's property and damage his small building business through financial loss, wasting time and painting Fressadi in a false light in the local paper because Fressadi opposed the junta controlling local politics.

5. Other developers, investors, and lenders joined Cave Creek to control

and convert Fressadi's property causing Fressadi to hire Jay Powell, Esq. in October 2010 to file a Chapter 11 Bankruptcy Petition in Tucson. Powell procrastinated for three months, then failed to file necessary documents and responses allowing BMO to obtain relief from stay to proceed with a judicial foreclosure on an ultra vires lot in Cave Creek, AZ.

6. In violation of Ariz. R. Civ. P. Rule 37(d) and A.R.S. §§ 9-463.03, 13-1802, 13-2310, and 13-2311, 33-801(9), BMO Harris Bank concealed damaging information and submitted false writings to Bankruptcy and Maricopa County Superior Court to obtain a Sheriff's Deed on an ultra vires lot that was unlawful to sell or transfer pursuant to A.R.S. § 9-463.03.

7. As a consequence of Cave Creek converting Fressadi's property to an unlawful subdivision and concealment thereof by the Cave Creek and BMO Defendants, Deputy Tyler Thompson on behalf of BMO and Maricopa County Sheriff's Office under color of law, assaulted Fressadi and used excessive force by shooting Fressadi with a Taser on the evening of November 28, 2011. The shooting of Fressadi with a Taser caused permanent injury to Fressadi. MCSO falsely arrested and imprisoned Fressadi, in violation of the Fourth, Fifth, and Fourteenth Amendment pursuant to 42 U.S.C. § 1983.

II. JURISDICTION AND VENUE

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

9. The causes of action alleged herein arise from factual allegations occurring in this judicial district. The amount in controversy exceeds \$75,000.00, and declaratory and injunctive relief is sought per 28 U.S.C. §§ 2201 and 2202.

III. PARTIES

10. Plaintiff AREK FRESSADI is a natural born citizen of the United States and resident of Arizona.

11. Defendant JAY POWELL, ESQ. *et ux*, are citizens and residents of Arizona doing business as THE POWELL LAW FIRM, PLLC, an Arizona Professional Limited Liability Company.

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

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

14. MARICOPA COUNTY is a political subdivision of the State of Arizona.

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

16. TASER INTERNATIONAL, INC. is an Arizona Corporation.

17. MCSO DOES XI-XX are agents, contractors, and employees of Maricopa County Sherriff’s Office.

18. CHARLIE 2 LLC, is a Virginia Limited Liability Company claiming title to lot 211-10-010A.

19. TOWN OF CAVE CREEK is an Arizona Municipal Corporation.

20. VINCENT FRANCIA, *et ux* are citizens and residents of the State of Arizona and at all times material to the allegations in this Complaint, Francia acted in his capacity as Mayor of the Town of Cave Creek on behalf of the marital community.

21. USAMA ABUJBARAH, *et ux*, are citizens and residents of the State of Arizona and at all times material to the allegations in this Complaint, Abujbarah acted in his capacity as Town Manager of Cave Creek on behalf of the marital community.

22. WAYNE ANDERSON *et ux*, are citizens and residents of the State of Arizona and at all times material to the allegations in this Complaint, Anderson acted in his capacity as Town Engineer of Cave Creek on behalf of the marital community.

23. IAN CORDWELL, *et ux* are citizens and residents of the State of Arizona at all times material to the allegations in this Complaint, Cordwell acted in his capacity as Director of Planning and Zoning Administrator of the Town of Cave Creek on behalf of the marital community.

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

25. DONALD R. SORCHYCH *et ux* are citizens and residents of Arizona and at all times material to the allegations in this Complaint, acted as owner and publisher of the Sonoran News on behalf of the marital community.

26. LINDA BENTLEY, a single woman is a citizen and resident of Arizona and at all times material to the allegations in this Complaint, acted in her capacity as an employee and/or contractor of the Sonoran News.

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

28. JOCELYN KREMER, a single woman, upon information and belief is now a citizen and resident of Michigan.

29. THOMAS VAN DYKE *et ux* are the parents of Jocelyn Kremer and citizens and residents of the State of Arizona, and at all times material to the allegations in this Complaint were the constructive owners of lot 211-10-003C on behalf of Jocelyn Kremer and the Van Dyke marital community.

30. MICHAEL T. GOLEC upon information and belief is unmarried and a citizen and resident of the State of Arizona. He was a shareholder / member / manager of the defunct GV Group LLC, MG Dwellings Inc., MG Residential, Inc.

31. KEITH and KAY VERTES, husband and wife upon information and belief are citizens and residents of Arizona and transferred their assets into VERTES FAMILY TRUST to avoid judgments arising from misrepresentation. Vertes was a shareholder / member / manager of the defunct GV Group LLC and Building Group Inc. which was dissolved on July 19, 2011.

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

33. SALVATORE and SUSAN DEVINCENZO, (“DEV”) husband and wife are citizens and residents of New York holding clouded title to lot 211-10-010C in Cave Creek, Arizona.

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

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IV. FACTS RELEVANT TO ALL CLAIMS¹

35. On April 13, 2000, Fressadi entered escrow to acquire adjoining parcels #211-10-010 (4.2 acres) and #211-10-003 (1.5 acres) in Cave Creek, AZ., zoned R1-18 (18,000 sq. ft. lots). Since Fressadi had never split or subdivided land in Arizona, he inquired with the Town of Cave Creek regarding entitlements to develop an adobe enclave at the base of Black Mountain. When the sellers sold the property twice, Fressadi sued for specific performance, CV2000-011913. As a courtesy to the losing developer, Fressadi expressed expert opinions at Town Council meeting in May, 2001 and corrected false statements made by Don Sorchych, publisher of the Sonoran News who tends to control local politics.

36. Shortly thereafter, the Zoning Administrator under color of law advised Appellant to down zone the parcels through a series lot splits to eight (8) lots in lieu of a 13+ unit subdivision as the most cost effective, expedient solution.

37. Fressadi acquired parcel #211-10-010 (4.2 acres), Maricopa County Recorded Document (“MCRD”) # 2001-0913214 and the Cybernetics Group Ltd (“Cybernetics”) acquired #211-10-003 (1.5 acres). MCRD #2001-0913216.

38. Pursuant to the Town’s recommendation, Fressadi applied to split parcel 211-10-010 into three lots. As a condition of approving Fressadi’s lot split, Cave Creek required Fressadi to gift a strip of land to expand a dead end right of way.

39. Section 1.1(A)(4) of the Town’s Subdivision Ordinance states that: “No person or agent of a person shall subdivide any parcel of land into four (4) or more parcels, ... except in compliance with this Ordinance.” Section 1.1(B)(1) of the Town’s Subdivision Ordinance states that: “the Zoning Administrator for the

¹ Index of Record (IR) footnotes pertain to CV2009-014822 as appealed in CA-CV11-0728, CA-CV12-0435 and CA-CV12-0601 attached as Exhibits and incorporated by reference herein.

Town shall enforce this Ordinance.”

40. Section 6.3 of the Town’s Subdivision Ordinance states that: “All Lot Splits shall be approved by the Zoning Administrator and shall comply with this Ordinance. Failure to comply with this Ordinance shall render the property unsuitable for building and not entitled to a building permit.”

41. Under color of law, Cave Creek’s Zoning Administrator approved the split of parcel 211-10-010 into four lots: 211-10-010 A, B, C & D (MCRD # 2003-0481222²) on December 31, 2001. Unbeknownst to Fressadi at the time, the Town’s requirement to approve the lot split created an unlawful subdivision. part of the Town’s fraudulent scheme to control and convert Fressadi’s property in violation of A.R.S. §§ 13-1802 and 13-2310, relied upon using immunity with impunity. Cave Creek knew it could correct mistakes of law³ without liability, since the State granted municipalities immunity via A.R.S. § 12-820 *et seq.* in violation of Fressadi First Amendment Rights, and Article 2, Section 3, and 9 of Arizona’s Constitution. Fressadi challenges the Constitutionality of Article 2, Section 13 of Arizona’s Constitution, that the Legislature never intended to shield municipalities from prosecution of criminal conduct.

42. Unbeknownst to Fressadi at the time, in violation of A.R.S. § 13-1802, the Town violated Article 2, Section 3,4,& 17 of Arizona’s Constitution affecting a Taking of Fressadi’s land in violation of 42 U.S.C. § 1983 by requiring an a dedication of a fourth lot. Pursuant to A.R.S. § 9-463.03 and Section 1.4(A)(2) of Cave Creek’s Subdivision Ordinance, it is unlawful to sell or improve his lots

² MCRD # 2003-0481222 is a survey—it’s not “recorded plat” of a “final plat” per A.R.S. §9-463(6) that was vetted through the Town’s subdivision ordinance, nor did the Town have the nexus to exact a fourth lot per A.R.S. §9-500.12(E).

³ Cave Creek declared in CV2009-050821 that it could correct a mistake of law per *Thomas and King, Inc. v. City of Phoenix*, 92 P. 3d 429 - Ariz: Court of Appeals, 1st Div., 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). See Appendix 1, Opening Brief in CV12-0238 incorporated by reference herein.

causing a complete wipeout of his investment backed economic expectations. Had Fressadi developed an enclave of handcrafted adobe homes as originally intended, he could have built and sold thirteen (13) homes by 2006 when improved view lots were worth \$500-600,000 in Cave Creek and a reasonable builder's profit was \$250,000 per house for a total profit of \$9.725 Million.

43. The Town and Fressadi verbally agreed to enter into a repayment / development agreement to fix a sub-standard sewer line in the right of way and extend sewer onto the property in order to develop the series of lot splits. The Town sent Fressadi a sample development agreement on March 8, 2002.

44. On or about May, 2002, the Sonoran News blasted Fressadi for being a "Wildcat" subdivider. The Sonoran News published numerous disparaging articles that painted Fressadi and his family in a false light causing emotional distress.

45. In bad faith⁴ and part of Cave Creek's fraudulent scheme to control and convert Fressadi's property in violation of A.R.S. §§ 13-2310 and 13-1802, the Town exacted easements for sewer access (MCRD #2003-0488178) as a condition of permit and repayment causing a government-authorized physical occupation and invasion of private property in violation of Article 2, Section 17 of Arizona's Constitution and 42 U.S.C. § 1983.

46. Relying upon the Town's promise to enter into a sewer reimbursement agreement, Fressadi submitted engineering plans of the sewer to Maricopa County Department of Environmental Services at considerable cost and expense on June 10, 2002. The engineered sewer design included two laterals to #211-10-003 in keeping with the Town's series of lot splits recommendation.

47. On August 5, 2002, Cybernetics applied for a lot split in conformance

⁴ The County controls sanitation and prohibits lots less than an acre using septic tanks, thus the "series of lot splits" solution proposed by the Town required Plaintiff to provide sewer.

with the Town's series of lot splits solution. Cave Creek's Town Council denied the lot split. As a consequence, the Town's Building Official required the sewer plans to be revised to only serve lots 211-10-010 A, B & C,⁵ issuing permits for lots 211-10-010 A, B & C (# 02-256, 02-260, 02-263) and permit # 02-031 to install sewer in the Schoolhouse Rd. Right of Way on or about October, 2002.

48. Keith Vertes approached Cybernetics to acquire 211-10-003 if the Town would grant him lot splits. Vertes applied to split 211-10-003 into three lots on April 21, 2003.⁶ The Town required a dedication of a fourth lot to widen the right-of-way as condition to approve the split of parcel 211-10-003, and also required the lots to connect to Fressadi's sewer.⁷

49. Plaintiff completed approximately 1,000 feet of oversize⁸ 8" sewer line in hard dig conditions, encased in concrete to prevent scouring through washes pursuant to County and Cave Creek requirements on July 17, 2003.⁹

50. To mitigate damages, Cybernetics sold lot #211-10-003 as raw land to Keith Vertes, MCRD #2003-0317665.

51. The Town Council of Cave Creek approved the split of parcel 211-10-003 on July 21, 2003, which the Zoning Administrator approved on September 16th and the Mayor executed on September 18, 2003, MCRD #2003-1312578.

52. Cave Creek continued to exchange Development / Reimbursement Agreements with Fressadi through September, 2003. Given that the Town required the 003 lots connect to Fressadi's sewer but the Town had not entered into a Development Agreement to allow the extension, Fressadi and Vertes agreed to

⁵ IR 127

⁶ IR 168,169, SSOF, Exh. C.

⁷ *Id.*

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

⁹ IR 168,169, SSOF, Exh. C

structure a Covenant¹⁰ to run with the lots that would share utilities and reciprocal access as a simple Homeowner's Association. The Covenant was to maintain and improve¹¹ common areas including related utilities (i.e. sewer)¹² with lien rights for non-payment of covenant costs¹³ in conformance with Cave Creek ordinances, recommendations and authorizations. The Covenant was drafted over the summer with buyers interested in purchasing lots contingent on the Covenant.¹⁴

53. State Subdivision Statutes,¹⁵ Town Zoning¹⁶ and Subdivision¹⁷ Ordinances require lot splits to have legal and physical access to a right-of-way in order to be split and to obtain building permits.¹⁸

54. Unbeknownst to Appellant at the time, the approved "lot split" of parcels 211-10-003 violated Section 5.1(C) of the Town's Zoning Ordinance because Lot 211-10-003D **blocked** the 003 easement **access** to the right-of-way. As a consequence, lots 211-10-003 A, B, & C were landlocked.

55. On October 16, 2003,¹⁹ Vertes executed the reciprocal "*Declaration of*

¹⁰ IR 90, Exhibit 3,5

¹¹ Three easement driveways would allow up to 9 houses in compliance with 5.1(C)(8), of the Zoning Ordinance. See Section 5.1 in general. The easement driveways could be assembled but each easement required access to the Right of Way (ROW) in order to comply.

¹² Appellant incorporates by reference herein, the Opening Brief and Reply Brief in CV12-0238 as Appendix 1 & 2.

¹³ Pursuant to Article 5 of the Covenant: "Each of the Lot Owners shall contribute such Owner's share of the maintenance costs within ten (10) days written notice from any other Owner. If any Owner shall fail to pay such Owner's share within 30 days after billing, such amount shall become a lien against said owner's property and shall bear interest from the due date at the rate of twelve percent (12%) per annum.

¹⁴ IR 176, Motion for Reconsideration, Exh. A, pg. 4, pg. 9.

¹⁵ Appendix 2, Appendix 3

¹⁶ Appendix 2, Appendix 2

¹⁷ Appendix 2, Appendix 1

¹⁸ Appendix 2, Appendix 1, Section 6.1(A)(7), Appendix 2, Section 5.1.

¹⁹ IR 168,169, SSOF Exhibit A. MCRD #2003-1472588. See IR 77-80, Exh. 3 for a map of the properties and easements as understood by Fressadi until Kremer disclosed that the 003 easement is land locked. See MCRD #2003-1312578.

Easement and Maintenance Agreement” warranting and representing that GV Group LLC owned lots 211-10-003 A, B & C, but GV Group LLC did not exist.²⁰

56. In addition, Lot 211-10-003A was sold to Kremer the day before Vertes executed the covenant, MCRD # 20031438387,²¹ with a loan from M&I Bank (BMO), MCRD #20031438388.

57. The Covenant recorded on October 22, 2003 (MCRD #20031472588),²² and lot 211-10-010C was sold “*subject to*” the covenant. MCRD # 2003-1472590. On or about October 30, 2003, GV Group admitted that lot 211-10-003A had been sold prior to their execution of the covenant, claiming a “recording mistake.”²³²⁴

58. Unbeknownst to Appellant at the time, it is unlawful to sell any part of a subdivision that does not comply with state enabling statutes (A.R.S. §9-463.03), or the Town’s Subdivision Ordinance²⁵ Section 1.1(A)(2). The applicability and enforcement of subdivision regulation within the town’s corporate limits is defined in Section 1.1 (A) and (B) of the Subdivision Ordinance.²⁶ By exacting a fourth lot

²⁰ 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 has a history of misrepresentation . IR 168, 169 SSOF Exhibit L.

²¹ IR 208-216, Exh. D

²² IR 208-216, Amended Motion for New Trial, Exh. B.

²³ IR 168, 169, SSOF Exh. C. IR 147, hand marked as Exh. D. On October 30, 2003, Golec admitted selling Lot A to Kremer **prior** to the execution of the DEMA. Golec later admitted in his deposition that they never intended reciprocity. IR 90 Exh. 4.

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

²⁵ I.R. 305, Exh. B, I.R. 308, Exh. B

²⁶ Appendix 2, Appendix 1.

to split 211-10-003 and 211-10-010, Cave Creek created subdivisions that did not comply with A.R.S. § 9-463 *et seq.*²⁷ and the Town’s subdivision ordinance.

59. Section 6.3 (A) of the Subdivision Ordinance indicates that: “All lot splits ***shall*** ...comply with the Town’s Subdivision Ordinance. Failure to comply with this Ordinance ***shall*** render the property unsuitable for building and not entitled to a building permit.”²⁸ Section 1.1(B), of the Town’s ***Zoning*** Ordinance²⁹ incorporates all Town codes and ordinances to include subdivision. Pursuant to Section 1.4(A)³⁰: “any permit issued in conflict with the terms or provisions of this Ordinance shall be void.” Pursuant to Section 1.7 of the Zoning Ordinance:³¹ (A) “any person³² who violates any provision of this Ordinance...shall be guilty of a Class One misdemeanor; and each and every day of continued violation shall be a separate offense, punishable as described; (B) It shall be unlawful for any person to erect, construct ... any building or land or cause or permit the same to be done in violation of this Ordinance...”

60. The exactions of 211-10-003D and 211-10-010D violated Sections 1.1(A)(B), 6.1(A)(4),(7), and 6.3(A) of the subdivision ordinance and Section 5.1

²⁷ Appendix 2, Appendix 3.

²⁸ 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.

²⁹ Appendix 2, Appendix 2.

³⁰ Appendix 2, Appendix 2. Section 1.4(A) of the Town of Cave Creek’s Zoning Ordinance: “This Ordinance shall govern the development and or the use of land and structures within the corporate limits of the Town of Cave Creek. All departments, officials and employees charged with the duty or authority to issue permits or licenses shall refuse to issue permits or licenses for uses or purposes where the same would conflict with any applicable provision of this ordinance. Any permit issued in conflict with the terms or provisions of this Ordinance shall be void.”

³¹ 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

³² To include the corporate person of the Town of Cave Creek, or its employees.

of the zoning ordinance rendering the lots unsuitable for building and not entitled to permits. As such, the permits to construct driveways and sewer for lots 211-10-010A, B, & C (the covenant improvements) violated Section 1.4(A) of the Zoning Ordinance and are void. Nonetheless, Cave Creek collected fees for permits and converted the sewer and easements to the Town of Cave Creek.

61. Cave Creek issued an “Owner-Builder” permit to Vertes (Building Group) to extend Fressadi’s sewer to lot 211-10-003A on November 23, 2003. Building Group is not licensed to install sewer lines, is not entitled to Owner Builder exemption pursuant to ARS §32-1121, and did not own lot 211-10-003A at the time the permit was issued. The permitted engineering plans called for the sewer extension to trespass outside the easement onto Fressadi’s property. Cave Creek issued “Owner-Builder” permits to Vertes (Building Group) to extend Fressadi’s sewer to lots 211-10-003 B & C using the same engineering plans as for lot 003 A. Pursuant to the Town’s Building Code: R105.3 “The building official shall examine ... applications for permits and ... If the application or the construction documents do not conform to the requirements of pertinent laws, ***the building official shall reject such application...***” [Emphasis added]

62. Pursuant to the Town’s Building Code: R105.3 and Section 1.4(A) of the Town of Cave Creek’s Zoning Ordinance, the permits to extend the sewer from Fressadi’s property to lots #211-10-003 A, B, & C are to be rejected and considered void. The Town has imposed and collected permit fees, impact fees, connection and other charges on lots #211-10-003 A, B, &C and others for their connection to and use of Fressadi’s sewer line.

63. To maintain financial liquidity while awaiting reimbursement, Fressadi borrowed \$245,000 from M&I Bank. The loan was secured by a Deed of Trust on

lot 211-10-010A and was recorded on January 12, 2004. MCRD #2004-0030880. Unbeknownst to Fressadi at the time, Cave Creek's fraudulent scheme to control and convert the property of another in violation of A.R.S. §§ 13-1802 and 13-2310 defrauded financial institutions in violation of 18 U.S.C. § 1344.

64. The Town enacted Sewer Reimbursement Ordinance (Section 50.016) in December 2003, but did not enter a reimbursement agreement with Fressadi.³³ Cave Creek repealed Section 50.016 in January 2010.

65. As Caretaker of the Covenant, Fressadi invoiced the Town for the sewer repair and extension on February 21, 2004.³⁴ The amount now exceeds \$350,000.

66. The Town instructed Cordwell to write Fressadi a letter indicating that Fressadi was under criminal investigation for an illegal subdivision, and "red-tagged" all permits. Upon information and belief, the Town informed the Sonoran News who published an article on the front page that Fressadi was under criminal investigation on or about February 28, 2004.

67. The Town's Marshal told Fressadi to reassemble³⁵ the 010 lots. Lots 211-10-010 A, B, & D were combined into parcel 211-010E on May 18, 2004. MCRD #2004-0553551. GV Group gifted lot 211-10-003D to the Town of Cave Creek, MCRD #2005-0766547 but GV Group LLC did not own lot 211-10-003 D. Lot 211-10-003D was sold in 2010, MCRD #2010-0067254 and again in 2012.

68. M&I Bank loaned Michael Golec \$600,000 to construct a spec house on lot #211-10-003B on or about June, 2005, MCRD #2005-0929695.

³³ IR 208-216, Affidavit Exh. G. Appendix 1.

³⁴ IR 208-216, Exh. H

³⁵ IR 20, paragraph 19. Reassembling lots does not correct an unlawful subdivision.

69. Cave Creek issued permit #04-269 on June 20, 2005 to construct the spec house on lot 211-10-003B³⁶ and issued building permit #04-655 to construct GV Group's spec house on lot 211-10-003C on August 17, 2005.³⁷ Both permits were issued with access and utilities from Fressadi's property via the Covenant.

70. On August 26, 2005 Kremer disavowed the covenant.³⁸ Fressadi responded,³⁹ prompting a meeting on September 5, 2005. Golec kept minutes⁴⁰ which were distributed to all lot owners. Everyone agreed to ante up \$20,000 per lot for improvements and GV Group agreed to compensate Fressadi \$10,000 for encroaching on his property. Kremer reneged on October 4, 2005 and Fressadi rescinded the covenant as to the 003 lots on October 27, 2005,⁴¹ putting the Town on notice but Cave Creek went silent and took no action.⁴²

71. Since GV Group did not tender back any benefit of the covenant; nor pay any accruing burdens; but continued to serve their 003 lots with access and utilities from Fressadi's property causing *damage* his driveway, Fressadi filed

³⁶ IR 168,169, Exh. D

³⁷ IR 168,169, Exh. E, but these permits are void as the exaction of lot D's to both parcels 211-10-003 and 211-10-010 created illegal subdivisions.

³⁸ IR 147, Plaintiff's Response to Defendant REEL's Motion for Summary Judgment, Exh. A.

³⁹ IR 208-216, Exh. C, Motion to Consolidate CV2010-013401, Exh. N, MCRD # 2010-0708186, Exh. B.

⁴⁰ IR 68, Exh. 11. IR 176, Exh. D. See IR 208-216, Affidavit Exh. H. for full story.

⁴¹ IR 68, Exh. 10

⁴² IR 168,169 SSOE, Exh. F, IR 147, Exh. G. "Although there was an intent to form a reciprocal driveway agreement, Vertes signed the agreement on behalf of an LLC that did not exist at the time of his signature, and he executed the agreement for all three lots of 211-10-003 even though he had already sold 211-10-003A to Kremer. Given that Keith is an experienced real estate 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 me in a week, they never responded.

CV2006-014822 in Maricopa County Superior Court which was amended with leave of the court on October 17, 2006.⁴³

72. On December 13, 2006, Cave Creek issued permit #06-225 to Kremer to construct a single family residence on lot 211-10-003A using Covenant utilities and access from Fressadi's property. Kremer borrowed \$1.125 Million from M&I Bank (i.e. BMO), MCRD #2007-0852501.

73. GV Group answered CV2006-014822 alleging that "...Cave Creek forced Fressadi to combine his three lots [lots 010 A, B, & D] into one due to improper lot splitting practices..."⁴⁴ but failed to disclose the unlawful subdivision status of the 003 lots and that 211-10-003 A, B, & C were landlocked in violation of Ariz. R. Civ. P. Rule 37(d) and A.R.S. 13 § 13-2311. In response to Plaintiff's non-uniform interrogatories and a request for production of documents pursuant to Ariz. R. Civ. P., Rules 33, 34 on November 8, 2007,⁴⁵ Defendants claimed that the construction and sale of homes on their lots was "irrelevant" and "wholly unrelated" to any claim or defense.⁴⁶

74. On motions for summary judgment the trial court ruled on January 31, 2008 that "intent is an issue of fact under these circumstances;"⁴⁷ that the covenant was a contingency of the sale of lot 211-10-010C and rejected "the Defendants' argument that they mistakenly advised Plaintiff that they owned Parcel 003A at the

⁴³ IR 18.

⁴⁴ IR20, paragraph 19.

⁴⁵ IR 45

⁴⁶ IR45.

⁴⁷ IR 40, Minute Entry Ruling, January 31, 2008, filed February 8, 2008.

time of the execution of the DMA, or that it was an oversight⁴⁸ on their part.”⁴⁹

75. REEL acquired lot 003C on May 28, 2008 (MCRD #20080469193),⁵⁰ and formed a Joint Venture with GV Group on May 29, 2008.⁵¹ In violation of Rule 37(d) and A.R.S. § 13-2311, GV Group filed a second 26.1 supplemental disclosure statement claiming \$4.3 Million in damages on July 2, 2008⁵² without disclosing the unlawful subdivision status of their lots, the void status of their permits rendering their spec homes ultra vires or that lot 211-10-003D blocked reciprocity. Permit #04-655 for the spec house on lot 211-10-003C was transferred to REEL on July 8, 2008,⁵³ even though access and utilities for the permit came from the Covenant which was rescinded on October 27, 2005.⁵⁴ Fressadi’s moved to Strike⁵⁵ Defendants’ Second Supplemental Disclosure Statement and Damages Summary on July 8, 2008, which the Trial Court granted on March 16, 2009.⁵⁶

76. Because Golec and Vertes failed to disclose the unlawful subdivision status and blocked access of their lots in violation of Ariz. R. Civ. P. Rule 37(d) and A.R.S. § 13-2311, Fressadi filed CV2009-050821 in February 2009 to address sewer and subdivision issues⁵⁷ and CV2009-050924 to address building code and zoning violations with the Town of Cave Creek and the owners of the 003 lots. All

⁴⁸ IR 34, pg. 11, lls 5-14.

⁴⁹ IR 40, Minute Entry Ruling, January 31, 2008, filed February 8, 2008.

⁵⁰ IR 168,169, SSOF, Exh. G, IR 147, Exh. E.

⁵¹ IR 168, 169 SSOF, Exh. G.

⁵² IR 45, 57

⁵³ IR 168, 169, SSOF, Exh. H, IR 147, Exh. F

⁵⁴ IR 168,169, SSOF, Exh. E

⁵⁵ IR 45

⁵⁶ IR 69

⁵⁷ 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.

of the 003 lots were dependant upon access and utilities from Fressadi's property especially sewer and neither the 003 lot owners, their lenders (i.e. the constructive owners) or the Town had paid Fressadi for the substantial cost of installing 1000' feet of sewer pipe in solid bedrock, or the use of his property.

77. CV2006-014822 was amended⁵⁸ on August 26, 2009 to include REEL and DeVincenzo who had taken title "*subject to*" the Covenant and for declaratory relief and rescission since Golec admitted to never intending reciprocity.

78. On September 24, 2009, Kremer requested partial summary judgment that their lot was not hillside in CV2009-050924 which was granted since the Defendants failed to disclose damaging and unfavorable information in violation of Rule 37(d) and A.R.S. § 13-2311 that all the improvements on lots 211-10-003 A, B, & C were ultra vires; constructed on void permits due to the unlawful subdivision status of the split of parcel 211-10-003. Judge Robert Budoff admitted to being a friend of Mayor Francia but did not recuse himself. Scott Humble, Esq. counsel for REEL had previously clerked for Budoff. When Fressadi missed the pre-trial conference in CV2009-050924, the Defendants claimed Fressadi's claims were frivolous and the Court dismissed Fressadi's complaint with prejudice.

79. On October 14, 2009, M&I Bank modified its Deed of Trust on lot 211-10-003B because the Deed "erroneously" secured \$600,000 when the correct amount of debt was \$0 and acquired lot 211-10-003B. MCRD #2009-1004741.

80. In November, 2009 REEL requested a variance for excessive lot disturbance on lot 211-10-003C. REEL and Cave Creek claimed that the

⁵⁸ IR 77-80, Exh.4.

excessive lot disturbance was due to the rescission of the Covenant when the excessive lot disturbance was inherent in the permitted plans. In violation of Section 2.3 (E)(1) of the Zoning Ordinance, the building permits, and plans demonstrating the self-imposed hardships were not transmitted to the Board of Adjustment by the Zoning Administrator. M&I Bank requested a similar variance in October, 2010.⁵⁹ The variances were granted even though lot 211-10-003D blocks legal or physical access to lots 211-10-003 B & C. Unbeknownst to Appellant at the time, GV Group sold Lot 211-10-003D to Kremer in January, 2010 (MCRD #20100067254).⁶⁰ Neither Cave Creek, GV Group nor REEL ever disclosed the ongoing existence of lot 211-10-003D. Lot 003 D land locks lots 003 A, B, & C in violation of Sections 5.1 and 1.3 of the Zoning Ordinance.

81. Given the high cost of litigating multiple lawsuits, and the lack of infrastructure reimbursement inuring to the 003 lots constructively owned by BMO, Fressadi stopped making payments to BMO in January 2010 and emailed the Bank in February 2010 to suggest a settlement based on Rotary International's Four Way Test: (1) Is it the TRUTH? (2) Is it FAIR to all concerned? (3) Will it build GOODWILL and BETTER FRIENDSHIPS? (4) Will it be BENEFICIAL to all concerned?

82. BMO feigned settlement to "run out the clock," and filed a complaint for judicial foreclosure on April 30, 2010. Unbeknownst to Plaintiff at the time and in violation of Ariz. R. Civ. P Rule 37(d), and A.R.S. § 13-2311, BMO failed to disclose damaging and unfavorable information that Deed of Trust was illusory because the trust property consisted of Lot 211-10-010A, an improved lot in an

⁵⁹ IR 159.

⁶⁰ IR 250, Exh. B

unlawful subdivision. A.R.S. §9-463.02(A) defines subdivision as four or more lots the boundaries of which are fixed by a recorded plat. A.R.S. §9-463(6) defines “plat” as a map of a subdivision, (a) "Preliminary plat" means a preliminary map, including supporting data, indicating a proposed subdivision design prepared in accordance with the provisions of this article and those of any local applicable ordinance. (b) "Final plat" means a map of all or part of a subdivision essentially conforming to an approved preliminary plat, prepared in accordance with the provision of this article, those of any local applicable ordinance and other state statute. (c) "Recorded plat" means a final plat bearing all of the certificates of approval required by this article, any local applicable ordinances and other state statutes. MCRD # 2003-0481222 is not a “recorded plat” of a “final plat” that was vetted through the Town’s subdivision ordinance per A.R.S. §9-463(6). According to ARS § 9-463.03, it is unlawful to transfer a lot that is not in full compliance with the statute. Transferring a lot that does not comply with the state subdivision statutes violates public policy. A.R.S. § 33-801(9) defines “trust property” as “any legal, equitable, leasehold or other interest in real property ***which is capable of being transferred.***” A Promissory Note secured by a Deed of Trust is a contract and valid state statutes are part of any contract affected by the statute. See *Havasu Heights II*, 167 Ariz, at 389, 807 P.2d at 1125 (laws of the state are a part of every contract). A.R.S. § 33-801(9) is part of every Deed of Trust in Arizona. A lot in an unlawful subdivision cannot be transferred rendering a Deed on an unlawful lot unenforceable.

83. Fressadi retained Jay Powell, Esq. in October 2010 to file a Petition in Bankruptcy under Chapter 11 and cram-down the Promissory Note secured by a

Deed of Trust in judicial foreclosure. Powell required Fressadi draw down his cash to \$75.00 and would file the Petition upon Fressadi's completion of the required credit counseling course, which Fressadi completed on November 9, 2010.

84. Cave Creek obstructed discovery in CV2009-050821 and failed to locate the sewer extension and laterals originating on Plaintiff's property to serve lots 211-10-003 A, B, & C. Cave Creek issued permit #03-475 for lot #211-10-003A and permit #03-498 for lot #211-10-003C on November 25, 2003 and permit #05-095 on March 2, 2005 to Building Group/ MG residential as "owner" and to extend sewer laterals. Lot 003A was completed on October 4, 2005. Lot 003C was completed on June 1, 2005. Lot 003B was completed on March 2, 2005. All three laterals used the same plans and engineering. Under color of law, the Town Engineer approved the sewer lateral to trespass onto Fressadi's property and the Zoning Administrator granted zoning clearance even though the lots were part of an unlawful subdivision and not entitled to building permits pursuant to Section 6.3 of the Town's Subdivision Ordinance.

85. Lot #211-10-003A was sold to Jocelyn Kremer on October 15, 2003, MCRD #2003-1438387. Registrar of Contractor records indicate that Building Group was not licensed to install sewer, and MG Residential was not licensed at all. Building Group and MG Residential were building speculative houses to sell on lots #211-10-003 B & C and were not entitled to owner-builder exempt status. Pursuant to the Town's Building Code: R105.3 "The building official shall examine ... applications for permits and ... If the application or the construction documents do not conform to the requirements of pertinent laws, ***the building official shall reject such application...***" [Emphasis added]

86. Section 1.4(A) of the Town of Cave Creek's Zoning Ordinance: "This

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

87. Cave Creek has adopted the Continuing Violations Doctrine.⁶¹ Section 1.7 (A) operative at the time stated that: “Any person who violates any provision of this Ordinance, and any amendment thereto, shall be guilty of a Class One Misdemeanor punishable as provided in the Cave Creek Town Code and state law; and each day of continued violation shall be a separate violation.”

88. Pursuant to the Town’s Building Code: R105.3, and Sections 1.4(A) and 1.7(A), the permits to extend a sewer lateral to lots 211-10-003 A, B & C are to be rejected, considered void, and each day of violation is a separate violation.

89. In November 2010, the Town of Cave Creek replaced Building Group’s ultra vires extension with a new extension for lots 003 A, B, & C to connect to Fressadi’s sewer.

90. Fressadi removed a non-structural stack of rocks on the southern edge of his property in order to facilitate the Town installation of the sewer extension. Under color of law, Cave Creek claimed that Fressadi’s stack of rocks on his land was part of a retaining wall “system” owned by Jocelyn Kremer, M&I Marshall Ilsley Bank, and Real Estate Equity Lending, Inc., and filed a criminal complaint, CR2010-0109 on December 17, 2010 in Cave Creek’s Magistrate Court that Fressadi recklessly defaced and damaged the property of another in violation of

⁶¹ Fressadi incorporates by reference herein, his Opening and Reply Brief in CA CV 12-0238.

A.R.S. § 13-1602(A)(1).

91. Linda Bentley wrote an article about Fressadi's alleged crime which was published on the front page of the Sonoran News on May 11, 2011 and remains on the internet as of the date of filing this complaint. The complaint was transferred to Maricopa County Justice Court, JC2011-065147 and dismissed on August 11, 2011.

92. Fressadi filed a Motion to add parties on March 15, 2010⁶² and a Motion to consolidate CV2009-050821, CV2010-004383, CV2009-050924, and LC2010-000109-001DT into CV2006-014822 on April 9, 2010.⁶³ In violation of Arizona Rules of Civil Procedure, Rule 37(d), and in violation of A.R.S. § 13-2311, Defendants and Indispensible parties concealed and failed to disclose the unlawful subdivision status of the lots as a fundamental question of law and fact affecting all the above litigation.

93. A revocation of the covenant was recorded on August 18, 2010, MCRD #2010-0708186.⁶⁴ REEL filed CV2010-029559 on October 25, 2010 claiming that Fressadi's recording interfered with the sale of lot 211-10-003C. In violation of Rule 37(d) and A.R.S. § 13-2311, REEL failed to disclose that it was unlawful to sell lot 211-10-003C per A.R.S. § 9-463.03. The lawsuit was dismissed.

94. Real Estate Equity Lending, Inc., ("REEL") moved for summary judgment⁶⁵ on September 2, 2010 in CV2009-014822 based on the election of

⁶² IR 119.

⁶³ IR 127

⁶⁴ IR 286, all covenant recordings were incorporated into MCRD #2012-0377104.

⁶⁵ 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.

remedies doctrine, and A Notice of Settlement⁶⁶ was filed on September 3, 2010 that the covenant was void as of October 30, 2003. REEL objected,⁶⁷ as they obtained entitlements and utilities from the covenant.⁶⁸ In violation of Rule 37(d) and A.R.S. § 13-2311, DeVincenzo failed to disclose damaging and unfavorable information and instead, submitted false writings to Superior Court to join⁶⁹ REEL for summary judgment during oral argument on November 17, 2010. Fressadi recorded a status update on the Covenant, MCRD # 2010-10044770.⁷⁰

95. BMO moved for summary judgment in CV2010-013401 on October 27, 2010. Because BMO did not disclose the unlawful subdivision status of lot 211-10-010A in violation of Ariz. R. Civ. P., Rule 37(d) and A.R.S. § 13-2311, they obtained summary judgment for judicial foreclosure on January 7, 2011.

96. Powell's procrastination in filing Bankruptcy allowed the trial court to rule in CV2006-014822 that the Covenant did not exist on December 7, 2010⁷¹ and Nunc Pro Tunc on December 20, 2010⁷² that the covenant was rescinded on October 27, 2005. Fressadi missed the January 10th pre-trial conference in CV2006-014822 thinking his Petition in Bankruptcy had been filed staying the litigation. The trial court dismissed Plaintiff's complaint.

97. Powell finally filed the Chapter 11 Petition on January 18, 2011. BMO immediately filed a Motion for relief from Stay. Powell failed to file a rule 2014

⁶⁶ IR 146

⁶⁷ IR 148

⁶⁸ IR 147, IR 40.

⁶⁹ Transcript of proceedings by Karen Bolton, #50186. 11.15.2011, Pg. 4, lls 11-14

⁷⁰ IR 286, all covenant recordings were incorporated into MCRD #2012-0377104.

⁷¹ IR 161

⁷² IR 166

disclosing his conflicting relations with Defendants, failed to properly respond to BMO's relief from stay, failed to file financial reports and basically abandoned Fressadi. The Stay was lifted, and the Bankruptcy dismissed.

98. The status of the Covenant was updated on February 3, 2011.⁷³ MCRD #2011-0102034.

99. When the Stay was lifted in Bankruptcy, BMO submitted an Order of Judgment in CV2010-013401 which the Court filed on May 31, 2011. The Order relied upon false statements. Although BMO requested an assignment of rents as part of its Motion for Relief from Stay in Bankruptcy Court 4:11-bk-01161-EWH, BMO declared in drafting the Judgment Order that the property was abandoned in order to shorten the redemption period to 30 days. The subject property consisted of 2 acres with a single family house that had been occupied since 2001. The Bank drafted Order violated of A.R.S. §§ 9-463.03, 12-1282, 33-729(A) and 33-814(G).

100. BMO failed to disclose the unlawful subdivision status of lots 211-10-003 A, B, C & D and 211-10-010 A, B, C & D in violation of Ariz R. Civ. P. Rule 37(d) and A.R.S. § 13-2311 in CV2006-014822, CV2009-050924, CV2009-050821, and CV2010-013401. The unlawful subdivision status of the lots meant that BMO's Promissory Note secured by a Deed of Trust held collateral that was incapable of being transferred in accordance with A.R.S. § 33-801(9) and A.R.S. §§ 9-463.03, rendering the Deed unenforceable.

101. As a consequence of BMO's concealment of the true status of their collateral, in violation of A.R.S. §§ 13-2310, 13-1802, 13-2311, Superior Court

⁷³ IR 286, all covenant recordings were incorporated into MCRD #2012-0377104.

issued a Notice of Sale on June 10, 2011, and Maricopa County Sherriff Joe Arpaio in violation of A.R.S. §§ 9-463.03, unlawfully sold lot 211-10-010 A to BMO on October 20, 2011.

102. As was customary on the evening before a court appearance in Phoenix, Fressadi traveled from Tucson to Cave Creek to stay in his construction trailer to attend a hearing in CV2009-050821 on a Motion by the BMO to lift a lis pendens, on the evening of November 28, 2011,.

103. Upon information and belief, an agent of BMO requested MCSO arrest Fressadi for trespassing. Rather than having a calm conversation regarding the confusion and discrepancies surrounding the subject property, Deputy Tyler Thompson parked his patrol car a great distance away, advanced to Fressadi's truck parked in front of his trailer, and aimed his semi-automatic pistol at the door of Fressadi's construction trailer over the hood of Fressadi's truck. When Fressadi opened the door of the trailer and peered into the pitch black night with a small flashlight, Thompson holstered his weapon, and began screaming to provoke an incident as he assaulted Fressadi knocking Fressadi's flashlight out of his hand, then shot Fressadi with a Taser, handcuffed him, locked Fressadi in a patrol car, searched Fressadi's truck and trailer then took Fressadi to an MCSO jail.

104. Upon information and belief, Thompson is a Veteran who suffers brain damage affecting his memory and mental reasoning capability from injuries sustained while on tour in Iraq.

105. The Prosecuting Attorney for Maricopa County Attorney's Office acknowledged that Fressadi still owned the subject property and JC2012-065297

was dismissed in the interests of justice.

106. Fressadi is 62 and has been an athlete his entire life. He was a world class long distance runner in 10Ks, and marathons and a founder of triathlons. In the 90's, Fressadi played water polo with Navy SEALs, FBI agents, and the Attorney General on Guam. After being Tasered by Thompson, Fressadi experienced atrial fibrillation, and lost vision as Fressadi has hereditary glaucoma. He now suffers from erratic high blood pressure precluding his ability to run much less compete; diminishing his quality of life and longevity. As a direct and proximate result of the intentional and/or negligent acts of Cave Creek, BMO, and Thompson, acting under color of law on behalf of MCSO, Plaintiff sustained injury in an amount to be established at trial.

107. Fressadi was put on notice of the ongoing existence of lot 211-10-003D in January, 2012 as it was being sold in Kremer's bankruptcy.⁷⁴ The disclosure of the ongoing existence of lot 003D led to the discovery that Cave Creek had created unlawful subdivisions. Accordingly, Appellant recorded MCRD #2012- 0377104.⁷⁵

108. On April 27, 2012, Fressadi tendered \$5.00 and a Quit Claim Deed⁷⁶ to Vertes to quiet title to parcel 211-10-003 pursuant to A.R.S. §12-1103 (B), because the acquisition of parcel 211-10-003 was conditional upon Vertes obtaining a lawful split of three lots. In fact, the Town divided parcel 211-10-003 into an unlawful subdivision.

⁷⁴ IR 250, Exh. B

⁷⁵ IR 292

⁷⁶ IR 267, 268, Exh. B

FIRST CLAIM FOR RELIEF - DECLARATORY JUDGMENT

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

110. The Town of Cave Creek has no inherent sovereign power and must strictly comply with Arizona's Constitution and state enabling statutes concerning zoning and subdivision of land within its municipal borders.

111. By requiring a dedication (an exaction) of a fourth lot to approve a lot split in violation of A.R.S. § 9-500.15, Cave Creek converted a lawful application to lot split parcel 211-10-010 into an unlawful subdivision in violation of A.R.S. § 9-463 *et seq.* and Section 1.1(A)(1) & (2) of the Town's Subdivision Ordinance. In violation of Section 1.1(B)(1), the Zoning Administrator approved the division of parcel 211-10-010 into four lots on December 31, 2001.

112. Pursuant to Section 6.3(A) of the Town's Subdivision Ordinance, the division of parcel 211-10-010 into four lots: 211-10-010 A, B, C, & D, does not comply with the Town's Subdivision Ordinance rendering "the property unsuitable for building and not entitled to a building permit."

113. Pursuant to Section 1.1(B)(2) of the Subdivision Ordinance, officials and employees of the Town of Cave Creek were negligent or intentionally issued permits in violation of Section 6.3(A) of the Subdivision Ordinance.

114. Pursuant to Section 1.4(A) of the Town's Zoning Ordinance, Town Officials, and employees failed to follow provisions of the Town's Subdivision and Zoning Ordinances by issuing permits in conflict with the ordinances. As such, permits issued to lots 211-10-010 A, B, C & D are void.

115. Pursuant to Section 1.7(B) of the Zoning Ordinance, repairs and improvements constructed on the void permits *supra* are unlawful.

116. Pursuant to Section 1.7(A) of the Zoning Ordinance, the Town of

Cave Creek, its supervisors, officials and employees who oversee or issued permits in violation of the Zoning Ordinance causing improvements to be constructed in violation of the Ordinance are guilty of Class One misdemeanors punishable as provided in Cave Creek Town Code and state law in keeping with Cave Creek's Continuing Violation Doctrine as stated in Section 1.7(A).

WHEREFORE, on his First Claim for Relief, Plaintiff prays for judgment against Defendants as follows:

a. For a declaratory judgment that the Town of Cave Creek converted Plaintiff's split of parcel 211-10-010 into an unlawful subdivision of lots 211-10-010 A, B, C, & D in violation of A.R.S. § 9-463 *et seq.*, and Sections 1.1(A)(1),(2), & (4) and 1.1(B)(1) of the Subdivision Ordinance by requiring a dedication of an unlawful exaction in violation of A.R.S. § 9-500.15. As such the split of parcel 211-10-010 into lots 211-10-010 A, B, C, & D is void as against public policy.

b. For a declaratory judgment that the Town's conversion of Plaintiff's lot split into an unlawful subdivision rendered the property unsuitable for building and not entitled to building permits, pursuant to Section 6.3(A) of the Subdivision Ordinance.

c. For a declaratory judgment that officials and employees of the Town issued permits in violation of Section 1.1(B)(2) of the Subdivision Ordinance to lots 211-10-010 A, B, C, & D.

d. For a declaratory judgment that pursuant to Section 1.4(A) of the Town's Zoning Ordinance, permits to lots 211-10-010 A, B, C, & D are void.

e. For a declaratory judgment that pursuant to Section 1.7(B) of the Zoning Ordinance, the repairs and improvements constructed on lots 211-10-010 A, B, C

& D upon reliance of void permits are unlawful.

f. For a declaratory judgment that pursuant to Section 1.7(A) of the Zoning Ordinance, that the Town (as a corporate person), its supervisors, officials and employees who violated any provision of the Ordinance by issuing void permits causing unlawful improvements to be constructed are guilty of Class One misdemeanors for each and every violation of the ordinance, from the date of issuance of the permit(s) punishable as provided in Cave Creek Town Code and state law in keeping with Cave Creek's Continuing Violation Doctrine.

g. For damages or restitution in an amount to be proven at trial.

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

i. for such other and further relief as this Court deems just and proper.

SECOND CLAIM FOR RELIEF - DECLARATORY JUDGMENT

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

118. The Town of Cave Creek has no inherent sovereign power and must strictly comply with Arizona's Constitution and state enabling statutes concerning zoning and subdivision of land within its municipal borders.

119. By requiring a dedication (an exaction) of a fourth lot to approve a lot split in violation of A.R.S. § 9-500.15, Cave Creek approved the split of parcel 211-10-003 into an unlawful subdivision in violation of A.R.S. 9-463 *et seq.* and Section 1.1(A)(1) & (2) of the Town's Subdivision Ordinance. In violation of Section 1.1(B)(1), the Zoning Administrator approved the split of parcel 211-10-003 into four lots on September 16, 2003, which Mayor Francia endorsed on behalf of the Town Council on September 18, 2003.

120. Pursuant to Section 6.3(A) of the Town's Subdivision Ordinance, the

lot split of parcel 211-10-003 into four lots: 211-10-003 A, B, C, & D, does not comply with the Town's Subdivision Ordinance rendering "the property unsuitable for building and not entitled to a building permit."

121. Pursuant to Section 1.1(B)(2) of the Subdivision Ordinance, officials and employees of the Town of Cave Creek were negligent and / or intentionally issued permits in violation of provisions of the Subdivision Ordinance.

122. Pursuant to Section 1.4(A) of the Town's Zoning Ordinance, Town Officials, and employees failed to follow the provisions of the Town's Subdivision and Zoning Ordinance and issued permits in conflict with the ordinances. As such, permits issued to lots 211-10-003 A, B, C & D are void.

123. Pursuant to Section 1.7(B) of the Zoning Ordinance, the repairs and improvements constructed on void permits are unlawful.

124. Pursuant to Section 1.7(A) of the Zoning Ordinance, the Town of Cave Creek, its supervisors, officials and employees who oversee or issued permits in violation of the Zoning Ordinance causing improvements to be constructed in violation of the Ordinance are guilty of Class One misdemeanors punishable as provided in Cave Creek Town Code and state law in keeping with Cave Creek's Continuing Violation Doctrine as stated in Section 1.7(A).

WHEREFORE, on his Second Claim for Relief, Plaintiff prays for judgment against Defendants as follows:

a. For a declaratory judgment that the Town's requirement for a dedication of an exaction in violation of A.R.S. § 9-500.15 to approve the split of parcel 211-10-003 into three lots converted the split into an unlawful subdivision of lots 211-10-003 A, B, C, & D in violation of A.R.S. § 9-463 *et seq.*, and Sections 1.1(A)(1),

(2), & (4) and 1.1(B)(1) of the Subdivision Ordinance. As such the split of parcel 211-10-003 into lots 211-10-003 A, B, C, & D is void as against public policy.

b. For a declaratory judgment that the split of parcel 211-10-003 into an unlawful subdivision of four lots rendered the property unsuitable for building and not entitled to building permits, pursuant to Section 6.3(A) of the Subdivision Ordinance.

c. For a declaratory judgment that officials and employees of the Town issued permits in violation of Section 1.1(B)(2) of the Subdivision Ordinance to lots 211-10-003 A, B, C, & D.

d. For a declaratory judgment that pursuant to Section 1.4(A) of the Town's Zoning Ordinance, permits to lots 211-10-003 A, B, C, & D are void.

e. For a declaratory judgment that pursuant to Section 1.7(B) of the Zoning Ordinance, the repairs and improvements constructed on lots 211-10-003 A, B, C & D upon reliance of void permits are unlawful.

f. For a declaratory judgment that pursuant to Section 1.7(A) of the Zoning Ordinance, that each and every person including the Town (as a corporate person), its supervisors, officials and employees who violated a provision of the Ordinance causing unlawful improvements to be constructed are guilty of Class One misdemeanors for each and every violation of the ordinance, from the date of issuance of the permit(s) punishable as provided in Cave Creek Town Code and state law in keeping with Cave Creek's Continuing Violation Doctrine.

g. For damages or restitution in an amount to be proven at trial.

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

i. for such other and further relief as this Court deems just and proper.

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

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

126. The actions taken by Defendants the Town of Cave Creek, Francia, Abujbarah, Cordwell, Anderson and Cave Creek Does XXI-XXX (“Cave Creek Defendants”) were actions taken under color of law.

127. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, and Article 2, Section 17 AZ. Constitution.

128. By recommending a series of lot splits then converting Plaintiff’s lot splits into an unlawful subdivision, Cave Creek Defendants affected a wipe out of Plaintiff’s investment-backed economic expectations; then physically invaded, occupied and converted Plaintiff’s property to the Town of Cave Creek.

129. By issuing permits based upon exactions of easements in violation of its ordinances, Cave Creek took Plaintiff’s property for public purpose without compensating Plaintiff.

130. The actions described hereinabove by the Cave Creek Defendants deprived Fressadi of substantive due process and equal protection as protected by the Constitution of the United States and the State of Arizona in that Fressadi was deprived of property (to include his bundle of rights) and money paid for permits, improvements and easements without due process. Further, Fressadi was deprived of his procedural due process rights, as protected by the Constitutions of the United States and Arizona, in that Fressadi was entitled to payment for property prior to it being taken.

131. As a direct and proximate result of Defendant Cave Creek’s actions, Fressadi has been damaged in an amount to be proven at trial.

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

133. The actions of the Cave Creek Defendants were a gross abuse of governmental authority.

134. The Cave Creek Defendants have singled out Plaintiff for disparate treatment, without justification.

135. The actions of the Cave Creek Defendants herein represent a selective application of the law.

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

137. Cave Creek Defendants selectively enforced state enabling statutes, Town and Building Codes, and Subdivision and Zoning Ordinances with the specific, malicious intent to damage Plaintiff, his property and his business.

WHEREFORE, on his Third Claim for Relief, Plaintiff prays for judgment against the Cave Creek Defendants and its State Actors, for the direct, proximate, and consequential damages to be proven at trial, 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.

- a. For damages and restitution in an amount to be proven at trial;
- b. For costs and interest as allowed by law; and
- c. For such other and further relief as this Court deems just and proper.

FOURTH CLAIM FOR RELIEF –A.R.S. § 13-2314.04

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

139. Upon information and belief, this Count is against Defendants Charlie 2 LLC, Maricopa County, Tyler Thompson, MCSO Does XI-XX, Taser International, Inc., Jay Powell, Esq., BMO Financial Group d/b/a BMO Harris Bank N.A., BMO Does I-X, Town of Cave Creek, Vincent Francia, *et ux*, Usama Abujbarah, *et ux*, Wayne Anderson *et ux*, Ian Cordwell, *et ux*, Cave Creek Does XXI-XXX, Donald R. Sorchych *et ux*, Linda Bentley, Conestoga Merchants, Inc. d/b/a Sonoran News, Jocelyn Kremer and Thomas Van Dyke *et ux*; Michael T. Golec, Keith Vertes, Kay Vertes (a/k/a Vertes Family Trust), REEL, Salvatore and Susan DeVincenzo, and ABC Entities XXXI-L, (the “RICO Defendants”).

140. The Town of Cave Creek is an enterprise, a municipal corporation engaged in and whose activities affect interstate commerce. The RICO Defendants are employed by or have acted in concert with the Cave Creek enterprise.

141. BMO is an enterprise engaged in and whose activities affect interstate commerce. The RICO Defendants are employed by or have acted in concert with the BMO enterprise.

142. Taser International, Inc. is an enterprise engaged in and whose activities affect interstate commerce. The RICO Defendants are employed by or have acted in concert with the Taser enterprise.

143. RICO Defendants conspired, facilitated, and concealed⁷⁷ a series of fraudulent schemes in violation of A.R.S. §§ 13-1003, 13-1004, 13-2310, 13-2311 to engage in a pattern of racketeering activity for the unlawful purpose of

⁷⁷ 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.

controlling and converting Plaintiff's property, the value of which exceeded \$100,000, in violation of A.R.S. § 13-1802. Fressadi sustained reasonably foreseeable injury to his person, business *and* property by a pattern of racketeering activity pursuant to A.R.S. § 13-2314.04.

144. RICO Defendants committed multiple related acts of racketeering activity as defined in A.R.S. § 13-2301(C)(7), (C)(9), (D)(1), (D)(2), (D)(3), (D)(4)(b)(x, xii, xiii, xiv, xv, xvii, xx). Specifically:

(a) Cave Creek recommended a series of lot splits, then converted the lot splits into an unlawful subdivision such that the Town controlled Plaintiff's property per *Valencia* and wiped out Plaintiff investment backed expectations.

(b) By converting a lot split into an unlawful subdivision, Plaintiff could be painted in a false light in the local paper as a "Wildcat Developer," damaging his business, reputation and property but could not sue for defamation as the statement was true—Plaintiff's property *was* an unlawful subdivision, and unlawful to sell pursuant to A.R.S. § 9-463.03, and Section 1.1(A)(2) of the Town of Cave Creek's Subdivision Ordinance.

(c) Cave Creek fraudulently induced Plaintiff to grant easements to extend and repair a costly sewer with the promise of reimbursement knowing that the permits for the costly improvements (the value of which exceeded \$100,000) were void making the improvements ultra vires where the Town could correct a mistake of law per *Valencia*, supra and claim immunity per A.R.S. 12-821 *et seq.*⁷⁸

(d) Cave Creek in concert with Vertes approved the division of parcel 211-10-003 into four lots requiring the lots to connect to Fressadi's sewer that was

⁷⁸ The State Legislature did not intend, nor will the Federal Government allow Arizona to indemnify and hold municipalities harmless for criminal conduct.

constructed to serve Fressadi's unlawful lots 010 A, B & C on void permits.

(e) Vertes fraudulently entered into a Covenant agreement with Fressadi for access and utilities knowing that the split of his property was unlawful and that there was no reciprocity or mutuality of easement causing the Covenant to be illusory and thus converting and controlling Plaintiff's property which exceeded \$100,000 in value.

(f) Cave Creek placed Fressadi under criminal investigation for acts required by the Town of Cave Creek (converting lot splits into unlawful subdivisions by requiring an exaction / dedication of a fourth lot as a condition to approve the lot split) and then feeding the false information to the local newspaper publisher to paint Fressadi in a false light.

(g) selectively enforcing state statutes, zoning ordinance, building codes, and subdivision ordinance.

(h) failing to comply with state subdivision and zoning enabling statutes.

(i) collecting impact fees, permit fees and charging service fees for void permits.

(j) willfully concealing damaging information and submitting false writings to state agencies in violation of A.R.S. § 13-2311, and rule 37(d).

(k) State Actors (i.e. Officers of the Court) facilitated or participated in the criminal conduct in violation of A.R.S. § 13-1004.

(l) submitting false writings to Court to obtain judgments and Orders.

(m) false arrest, detention, excessive use of force under color of law to cause injury in violation of A.R.S. § 13-2314.04.

WHEREFORE, Plaintiff requests that this Court enter judgment against

the RICO Defendant(s) and its State Actors, for the direct, proximate, and consequential damages to be proven at trial, for actual, special, compensatory and punitive damages, attorney's fees and costs, expenses, and interest, and for such other relief as this Court deems just, fair, and appropriate.

**FIFTH CLAIM FOR RELIEF - VIOLATION OF CIVIL RIGHTS
PURSUANT TO TITLE 42 U.S.C. §1983
(False Arrest, Imprisonment; Failure to Implement Appropriate
Policies, Customs and Practices; Negligent supervision; Excessive Force)**

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

146. This Count is against Defendants TYLER THOMPSON *et ux*, MCSO DOES XI-XX, MARICOPA COUNTY, ARIZONA, (the “MCSO Defendants”).

147. In committing the acts complained of herein, the MCSO Defendants acted under color of state law to deprive Plaintiff of constitutionally protected rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States including, but not limited to: a) the right to be secure in his person, property, papers and effects against unreasonable searches and seizures; b) nor be deprived of life, liberty or property, without due process of law; c) nor property be taken for public use without just compensation d) to be free from excessive use of force by persons acting under color of law; e) that no State shall make or enforce any law which shall abridge the privilege or immunities of citizens of the United States; f) the right to just compensation for taking of property, and (g) equal protection.

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

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

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

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

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

153. In violating Plaintiffs' rights as set forth above and other rights that will be proven at trial, Defendants provoked an incident leading to the use of excessive force by Defendants in violation of Plaintiff's rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

154. As a result of the deliberate indifference to Plaintiff's rights by the MCSO Defendants, and its agents, vendors and contractors, Fressadi suffered serious personal injuries and is entitled to relief under 42 U.S.C. § 1983.

155. In committing the acts complained of herein, MCSO Defendants acted under color of state law by falsely arresting and detaining the Plaintiff with no

basis in fact or law to do so. In violating Plaintiffs' right to be free from false arrest, the Defendants violated Plaintiffs' rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

156. As a direct and proximate result of the violation of his constitutional rights by the MCSO Defendants, Plaintiff suffered serious personal injuries and special damages as alleged and is entitled to relief under 42 U.S.C. §1983.

WHEREFORE, on his Fifth Claim for Relief Plaintiff prays for judgment against the MCSO Defendant(s) and its State Actors, for the direct, proximate, and consequential damages to be proven at trial, for actual, special, compensatory and punitive damages, attorney's fees and costs, expenses, and interest, and for such other relief as this Court deems just, fair, and appropriate. This Complaint is timely and a Notice of Claim was timely filed.

SIXTH CLAIM FOR RELIEF - NEGLIGENCE

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

158. The Arizona Supreme Court "has repeatedly adhered to the legal principle that violation of a statute or ordinance requiring a certain thing to be done or not to be done is negligence per se."

159. Cave Creek Defendants owed Plaintiff a duty to comply with state subdivision statutes and ordinances, zoning statutes and ordinances, building and town codes. Cave Creek Defendants breached their duty to Plaintiff by violating state subdivision statutes and ordinances, zoning statutes and ordinances, building and town codes.

160. As a result of Cave Creek Defendants' negligence per se, Plaintiff has

suffered injury, harm and damages to be proven at trial.

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

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

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

164. As a result of Powell's negligence per se, Plaintiff has suffered injury, harm and damages to be proven at trial.

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

SEVENTH CLAIM FOR RELIEF – PRODUCT LIABILITY

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

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

167. Taser's product contains defective conditions because the design of the product is not safe for its intended use on all persons.

168. This design defect made the product unreasonably dangerous.

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

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

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

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

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

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

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

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

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

EIGHTH CLAIM FOR RELIEF – Quiet Title-

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

178. Plaintiff holds title and constructive title to parcels 211-10-003 and 211-10-010. Pursuant to A.R.S. §12-1102, Plaintiff is credibly informed that Defendants BMO, BMO Does I-X, Kremer, Van Dyke, Golec, Vertes, REEL, Charlie 2 LLC, Maricopa County, MCSO Does XI-XX, Salvatore and Susan DeVincenzo, Cave Creek Does XXI-XXX, ABC Entities XXXI-L, and Cave Creek (“QT Defendants”) makes some claim of title adverse to Plaintiff.

WHEREFORE, on his Eighth Claim for Relief, Plaintiff prays for judgment against QT Defendants and its State Actors, as follows:

a. For a Court Order establishing that the Sheriff’s Deed issued to BMO by MCSO is unlawful, unenforceable and void as against public policy pursuant to A.R.S. 9-463.03 and Section 1.1(A)(2) of the Town of Cave Creek’s Subdivision Ordinance;

b. For a Court Order establishing that the assets of Cybernetics Group Ltd. were transferred to Scenic Vistas LLC, upon winding up the Cybernetics Group Ltd., which were transferred to Arek and Derrack Fressadi upon termination of Scenic Vistas LLC; that the sale of parcel 211-10-003 to Keith Vertes was contingent upon Vertes obtaining a lot split from the Town of Cave Creek; that Vertes did not obtain a lot split; that Cave Creek Defendants conspired to facilitate a fraudulent scheme to control and convert the property of another in violation of A.R.S. §§ 13-1003, 13-1004, 13-2310 & 13-1802 and submitted false writings to state agencies to conceal their criminal conduct in violation of A.R.S. § 13-2311;

that Vertes sold or otherwise transferred interests in parcel 211-10-003 in breach of contract and in violation of A.R.S. § 9-463.03; that pursuant to A.R.S. § 9-463.03, the transfer and/or sale of lots 211-10-003 A, B, C & D are unlawful, and unenforceable as void against public policy;

c. For a Court order directing that all documents necessary to vest Arek and Derrack Fressadi with rights as the owner unencumbered by any claim of title by any of the QT Defendants to parcel 211-10-003 be filed and recorded;

d. For a Court order directing that all documents necessary to vest Arek Fressadi with rights as the owner unencumbered by any claim of title by any of the QT Defendants to parcel 211-10-010 be filed and recorded;

e. For an evidentiary hearing to resolve claims by disenfranchised parties as the Court deems fair and equitable;

f. For attorneys' fees and costs incurred herein pursuant to A.R.S. § 12-1103(B); and

g. For such other and further relief as the Court deems just and proper.

NINTH CLAIM FOR RELIEF - FRAUDULENT INDUCEMENT-

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

180. As an inducement and throughout the course of acquisition, design, engineering, construction and development, Cave Creek Defendants and its State Actors misrepresented material information regarding Subdivision Procedures, Town's Ordinances, and Development Agreements procedures.

181. Cave Creek Defendants specifically induced Plaintiff to pursue a series of lot splits as the most effective and expeditious approach to developing

parcels 211-10-003 and 211-10-010 and further induced Plaintiff to pursue a series of lot splits with the verbal promise of reimbursing Plaintiff for repairing and extending the Town's sewer to serve a large area at the base of Black Mountain.

182. Cave Creek Defendants knew these representations were false when they were made, and made these representations with an intent to deceive.

183. Plaintiff reasonably relied upon these representations to his detriment.

184. As a result of Cave Creek Defendants' misrepresentations, Plaintiff was induced to split his land and install infrastructure and spend the next decade + attempting to mitigate damages at a cost exceeding \$1,000,000, a complete wipe out of investment backed expectations pursuant to 42 U.S.C. § 1983, in violation of Article 2, Section 17 of Arizona's Constitution and judicial foreclosure—if it is possible to judicially foreclose a lot in an unlawful subdivision.

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

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

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

WHEREFORE, on his Ninth Claim for Relief, Plaintiff prays for judgment against Cave Creek Defendants and Jay Powell / Powell Law Firm, for consequential damages to be proven at trial, for actual, special, compensatory and

punitive damages, attorney's fees, costs, expenses, and interest, and for such other relief as this Court deems just, fair, and appropriate.

TENTH CLAIM FOR RELIEF
False Light

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

189. Upon information and belief, Cave Creek Defendants in concert with the Sonoran News, the Town's Official newspaper, intentionally publishes articles on persons or problem situations in a false light in order to harm members of the community in disfavor with the junta who controls local politics.

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

191. From 2002 until the present, Linda Bentley has written and Donald R. Sorchych has published numerous disparaging articles on Fressadi in the Sonoran News. In 2002, the Sonoran News published articles that Fressadi was a "Wildcatter" when in fact, the Town had converted Fressadi's lot split into an unlawful subdivision. In 2004, the Sonoran News published an article that Fressadi was under investigation for an illegal subdivision, when in fact, it was the Town's requirement for the dedication of a fourth lot to approve a lot split that created the unlawful subdivision status of the subject property.

192. Most recently, Cave Creek Defendants in concert with REEL, Kremer and BMO filed fraudulent criminal charges against Fressadi that Fressadi

committed “criminal damage by recklessly defacing or damaging property of another, to wit: a retaining wall system owned by Jocelyn Kremer, M&I Marshal Ilsley Bank [BMO] and Real Estate Equity Lending, Inc., in violation of ARS §13-1602(A)(1).

193. In fact, the retaining wall system was a pile of stacked rocks on Fressadi’s property which Fressadi removed. Although the criminal charges were dismissed, the article, “Fressadi Facing Criminal Charges,” as published in the Sonoran News May 11, 2011 remains on the Internet.

194. The publishing of articles in the Sonoran News placing Fressadi in a false light was intended to damage Plaintiff’s reputation, career and standing in the community. The Cave Creek Defendants in concert with Private Parties and the publisher of the Town’s Official Newspaper, has appropriated or exploited Plaintiff’s personality, publicizing Plaintiff’s private affairs with which the public has no legitimate concern.

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

196. Cave Creek Defendants in concert with Bentley, Sorchych, and the Sonoran News published articles injurious to Plaintiff’s reputation to injure Plaintiff in his business and profession.

197. These articles have been publicized and communicated to third persons and the general public via the Internet by the defendants with express, reckless, and wanton disregard of the plaintiff’s right to privacy.

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

199. 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 Tenth Claim for Relief, Plaintiff prays for judgment against Cave Creek Defendants, Bentley, Sorchych and the Sonoran News, 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.

ELEVENTH CLAIM FOR RELIEF
Intentional infliction of emotional distress

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

201. By maliciously prosecuting Plaintiff, by violating Plaintiff's constitutional rights, or by conspiring against Plaintiff, or by interfering with Plaintiff's state civil rights, or by coercion, or by intimidation, and by painting Plaintiff in a false light, Defendants intentionally and deliberately inflicted emotional distress on Plaintiff.

202. Defendants knew or should have known that emotional distress was the likely result of their conduct.

203. The actions of the Defendants were the cause of Plaintiff's distress. The emotional distress sustained by Fressadi and Fressadi's family was severe.

204. Plaintiff's distress caused physical symptomatology.

WHEREFORE, on his Eleventh Claim for Relief, Plaintiff prays for judgment against Defendants for the direct, proximate, and consequential damages to be proven at trial, for actual, special, compensatory and punitive damages, attorney's fees and costs, expenses, and interest, and for such other relief as this Court deems just, fair, and appropriate.

TWELFTH CLAIM FOR RELIEF
Conspiracy

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

206. Defendants Francia, Sorchych and Abujbarah ("FSA") through various schemes, set in motion a series of acts which they knew or reasonably should have known would cause constitutional injury pursuant to 42 U.S.C. § 1983.

207. Pursuant to *Krupski v. Costa Crociere SpA*, 130 S. Ct. 2485 - Supreme Court 2010, the schemes only became clear in the last few months.

208. All the FSA Defendants (a) had an object to be accomplished; (b) had an agreement on the object or course of action; (c) performed one or more unlawful overt acts; and (d) caused Plaintiff damages that were a direct result of those acts.

In furtherance of their object, FSA Defendants had an understanding (i.e. an agreement) and did two or more overt acts against the plaintiffs.

209. FSA Defendants conspired to deprive Plaintiff of his constitutional rights, and participate in a joint activity with the state or its agents.

210. Sometime in 1995, Sorchych moved to Cave Creek and started the Sonoran News to become Cave Creek's Official Newspaper. The poison pen of Sorchych took on politicians, projects, properties, and persons without concern for

the accuracy of his articles. The Community quickly learned to keep their distance and stay on the good side of Sorchych to stay out of the Sonoran News. The Town Manager once remarked to former Vice Mayor Gilbert Lopez that the Town Manager would rather be Don's friend than his enemy. Thus struck up the unholy alliance of Don Sorchych and Usama Abujbarah. Every Friday, Don and Usama meet to consider how best to advance their agenda.

211. Fressadi evoked the ire of Sorchych by correcting Don's false statements at a Town Council meeting in 2001. Sorchych construed Fressadi as a threat to his hegemony over the Town and commenced a vendetta against Fressadi.

212. As alleged hereinabove, FSA conspired to harm Fressadi by wiping out Fressadi's investment backed economic expectations of developing an artistic enclave of adobe homes at the base of Black Mountain by recommending a series of lot splits and then converting lot splits into unlawful subdivisions, promising to enter into a reimbursement agreement to induce Fressadi to advance substantial monies for infrastructure only to renege knowing that the permits for the infrastructure were void; that the Town could correct a mistake of law at any time via *Valencia*, and avoid liability through immunity.

213. As alleged hereinabove, Plaintiff is entitled to compensatory damages because of FSA Defendants' unconstitutional conduct and the underlying conspiracy to violate Fressadi's constitutional rights caused his injuries.

214. Each of the FSA Defendants had the requisite knowledge and agreement and directly committed the predicate acts in furtherance of the object of the conspiracy.

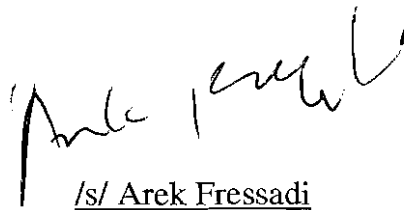
215. The FSA Defendants were aware that the actions they took in furtherance of their conspiracy were unlawful as declared in CV2009-050821.

216. The FSA Defendants understood and willfully participated in a

conspiracy with the intent to injure Plaintiff. Plaintiff's injuries were not merely an accidental by-product of the conspiracy.

WHEREFORE, on his Twelfth Claim for Relief, Plaintiff prays for judgment against Defendants for the direct, proximate, and consequential damages to be proven at trial, for actual, special, compensatory and punitive damages, attorney's fees and costs, expenses, and interest, and for such other relief as this Court deems just, fair, and appropriate.

DATED November 28, 2012.



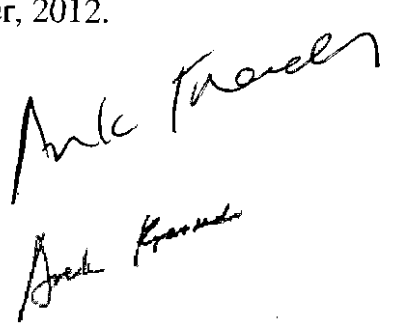
/s/ Arek Fressadi
Arek Fressadi, *pro se*
Plaintiff

VERIFICATION

I, Arek Fressadi, Plaintiff *pro se* in the above-captioned action, have read the foregoing Complaint and declare that the allegations therein are true in substance and in fact, except the allegations stated upon information and belief, and as to such allegations, I believe them to be true.

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

EXECUTED this 28th day of November, 2012.

A handwritten signature in black ink, appearing to read 'Arek Fressadi', written in a cursive style.

Arek Fressadi
/s/ Arek Fressadi