Litigation Due Diligence Analysis

Kent v. Smallville HOA

By

March 22, 2023

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# SUMMARY

Blah Blah Blahllazy dog jumped over the moon.

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# PARTIES/SIGNIFICANT FIGURES

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

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

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# STATEMENT OF FACTS / EVIDENTIARY SUPPORT

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

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# NOTABLE PROVISIONS OF THE GOVERNING DOCUMENTS

|  |  |
| --- | --- |
| **Document Name**  **Article / Section No.** | **Text of the Selected Article/Sections No.**  **(if none, put “N/A”; delete rows that you didn’t use; maintain formatting)** |
| CC&Rs  Article IX, Section 6.01 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| Purchase Agreement  Section 8.4 | THIS IS AN EXAMPLE. REPLACE IT WITH ACTUAL DATA. |
| N/A | REMEMBER TO DELETE ANY EXCESS ROWS IN THE TABLE. IF YOU DON’T KNOW HOW TO DO THAT, ASK MBK. |
| \* |  |
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The table may or may not contain all the significant provisions of the document(s) at issue. It is simply a place to include one or more provisions of one or more operative agreement/document that we believe could play a role in some aspect of Client’s case (e.g., binding arbitration, attorneys’ fees, and choice of law provisions). The provisions contained in the table, therefore, should neither be viewed as an exhaustive list of key provisions/evidence, nor be used as a measure of what provisions of the operative documents might strengthen (or weaken) Client’s case.

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# ADDITIONAL INFORMATION/CLARIFICATION NEEDED FROM CLIENT

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

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# ADDITIONAL DOCUMENTS NEEDED FROM CLIENT

None at the moment. This section of the LADD, however, may be amended from time to time if Client locates additional documents, or if a third party produces additional documents.

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# THIRD-PARTY DOCUMENTS/INFORMATION KNOWN TO EXIST

None at the moment. This, however, may change as new information comes to light, in which case the LADD will be amended to reflect such new information.

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# POTENTIAL CAUSES OF ACTION & THE STRENGTHS/WEAKNESSES OF EACH

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

Elements—Breach of CC&Rs

— Restrictive covenants and recorded declarations are written agreements governed by contract principles. (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC* (2012) 55 Cal.4th 223, 240.) Restrictive covenants and recorded declarations are of a contractual nature and are enforceable by statute unless unreasonable. (*Id. at* 237; and see Civ. Code, § 5975.) Because the Declaration of CC&Rs is a recorded declaration of restrictive covenants, it is enforceable provided it is not unreasonable. “[S]ettled principles of condominium law establish that an owners association, like its constituent members, must act in conformity with the terms of a recorded declaration. (See Civ. Code, § 5975, subd. (a); *Lamden v. La Jolla Shores Clubdominium Homeowners Assn.* (1999) 21 Cal.4th 249, 268 [homeowner can sue association to compel enforcement of declaration's provisions];(Citations.)” (*Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US) LLC*, supra, 55 Cal.4th at p. 239.)

— Where enforcement is an issue in a breach of CC&R cause of action, it tends to arise in two ways: (i) HOA not enforcing rules at all; or (ii) HOA applying different rules to different homeowners and/or issuing fines that are not supported by existing CC&Rs (i.e., selective enforcement).

• HOA Not Enforcing Rules.

→ A homeowner can sue his or her HOA to compel enforcement of the CC&Rs. (*Lamden v. La Jolla Shores Clubdominium Homeowners Assn., supra,* 21 Cal.4th at 268; *Pinnacle Museum Tower Assn. v. Pinnacle Market Development* *(US) LLC, supra,* 55 Cal.4th 223, 239.)

• Selective Enforcement.

→ In an improper enforcement situation, there a couple avenues of attack against the HOA. First is to examine the propriety of the rule itself. Use restrictions can be enforced unless they are wholly arbitrary, violate a fundamental public policy, or impose a burden on the use of affected land that far outweighs any benefit. (*Sui v. Price* (2011) 196 Cal.App.4th 933.)

→ The second avenue is to review the enforcement process used by the HOA. This enforcement must be “in good faith, not arbitrary or capricious, and by procedures which are fair and uniformly applied.” (*Liebler v. Point Loma Tennis Club* (1995) 40 Cal.App.4th 1600, 1610; *Nahrstedt v. Lakeside Village Condominium Assn.* (1994) 8 Cal.4th 361.) In other words, the HOA must enforce the CC&Rs in a uniform and fair manner, or else its enforcement will be deemed unlawful. (*Dolan-King v. Rancho Santa Fe Ass’n.* (2000) 81 Cal.App.4th 965, 975, citing former Civ. Code, § 1354; *Villas De Las Palmas Homeowners Ass’n. v. Terifaj* (2004) 33 Cal.4th 73, 84.)

→ When an HOA seeks to enforce the provisions of its CC&Rs to compel an act by one of its member owners, it is incumbent upon it to show that it has followed its own standards and procedures prior to pursuing such a remedy, that those procedures were fair and reasonable and that its substantive decision was made in good faith, and is reasonable, not arbitrary or capricious. [Citations.]” (*Ironwood Owners Assn. IX v. Solomon* (1986) 178 Cal.App.3d 766, 772.) “The criteria for testing the reasonableness of an exercise of such a power by an owners’ association are (1) whether the reason for withholding approval is rationally related to the protection, preservation or proper operation of the property and the purposes of the Association as set forth in its governing instruments and (2) whether the power was exercised in a fair and nondiscriminatory manner. [Citations.]” (*Laguna Royale Owners Assn. v. Darger* (1981) 119 Cal.App.3d 670, 683–684.)

— One of the fundamental duties of an HOA is to maintain the common areas. (Civ. Code, § 4775.) In performing its duties, an association shall perform a reasonably competent and diligent visual inspection of the accessible areas of the major components that the association is obligated to repair, replace, restore or maintain. (Civ. Code, § 5500(a).)

Applicable Statute of Limitations—

— The statute of limitations to enforce a restriction, which includes CC&Rs, is five years. (Code Civ. Proc., § 336(b).) Consequently, an action for a violation of a restriction must be commenced within five years after the party enforcing the restriction discovers, or through the exercise of reasonable diligence, should have discovered, the violation. [*As used here, a “restriction” means a limitation on, or a provision affecting the use of, real property in a deed, Declaration, or other instrument in the form of a covenant, equitable servitude, condition subsequent, negative easement, or other form of restriction.*] (Civ. Code, § 784.)

Remedies—

— While typically injunctive in nature, courts may fashion remedies to enjoin an ongoing breaches. (*Ritter & Ritter Inc. Pension and Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103.) Additionally, compensatory damages are available if plaintiff incurred monetary damages. (*Cutujian v. Benedict Hills Estates Assn.* (1996) 41 Cal.App.4th 1379, 1385; Civ. Code, §§ 3281, 3300.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Application—Application of the Law to Client’s Facts

— REPLACE THIS TEXT by restating applicable facts from above that support the elements of a cause of action for *breach of the CC&Rs*. If one or more provisions of the CC&Rs is/are relevant, you should cite to that/those provision(s) here (no need to quote or provide a snip). **By the same token, however, you need to determine whether the CC&Rs actually require the HOA to enforce the CC&Rs. Some do, and some don’t.**

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

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

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

## Negligence

Elements—Negligence

— To prove a claim for negligence, plaintiff must establish: (i) duty; (ii) breach of duty; (iii) proximate cause; and (iv) damages. (*Peredia v. HR Mobile Services, Inc.* (2018) 25 Cal.App.5th 680, 687.)

— In simple terms, negligence is the commission of an unintentional a wrongful act where one fails to exercise the degree of care in a given situation that an otherwise reasonable person would exercise to prevent another from harm. (*City of Santa Barbara v. Superior Court* (2007) 41 Cal.4th 747, 753–54.)

— An HOA that fails or refuses to abide by its contractual maintenance obligations is liable to the homeowner for damages caused by such negligence. (See, e.g., *White v. Cox* (1971) 17 Cal.App.3d 824, 895.)

— The “enforcement” issue raised in the context of the “Breach of CC&Rs” cause of action above is also applicable in the context of a negligence claim.

— The “failure to maintain” issue discussed in the context of the “Breach of CC&Rs” cause of action above is also applicable in the context of a negligence claim.

Remedies—

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

— Injunctive Relief is available. Courts can fashion equitable relief to remedy negligent conditions. (*Ritter & Ritter Inc. Pension and Profit Plan v. The Churchill Condominium Assn.* (2008) 166 Cal.App.4th 103.)

— Damages for emotional distress are only available in connection with bodily injury. (*Potter v. Firestone Tire & Rubber* (1993) 6 Cal.4th 965.) Such relief, when available, arises out of a claim for *negligent infliction of emotional distress*, which often involve “bystander situations”—e.g., witnessing injury to a family member. (*Burgess v. Superior Court* (1992) 2 Cal.4th 1064.) Emotional distress damages for negligence *without* injury (e.g., fear of illness such as cancer if exposed to toxic substances threatening cancer) available if defendant acted with malice, fraud, or oppression, and the fear is based on knowledge corroborated by reliable medical or scientific evidence. (*Potter v. Firestone Tire & Rubber, supra*, 6 Cal.4th at pp. 999-1000.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

— Two years for personal injuries. (Code Civ. Proc., § 335.1.)

— Three years for claims related to injury to property. (Code Civ. Proc., § 335.1.)

Application—Application of the Law to Client’s Facts

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

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

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

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

## Breach of Fiduciary Duty

Elements—Breach of Fiduciary Duty

— The elements of a claim for breach of fiduciary duty are: (i) the existence of a fiduciary relationship; (ii) its breach; and (iii) damage proximately caused by that breach. (*Tribeca Companies, LLC v. First American Title, Ins.* (2015) 239 Cal.App.4th 1088.)

— Associations owe a fiduciary duty to their members. (*Raven’s Cove Townhomes, Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783; *Cohen v. Kite Hill Community Assn.* (1983) 142 Cal.App.3d 642.)

— Directors of an association are fiduciaries and are thus required to exercise due care and undivided loyalty for the interests of the association. (*Francis T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 513; *Mueller v. Macban* (1976) 62 Cal.App.3d 258, 274.)

— HOAs have an affirmative duty to enforce the restrictions in their governing documents. (*Ekstrom v. Marquesa at Monarch Beach Homeowners Assn.* (2008) 168 Cal.App.4th 1111.)

— Among its acts, directors may not make decisions for the association that benefit their own interests at the expense of the association and the entire membership. (*Raven’s Cove Townhomes, Inc. v. Kruppe Development Co.* (1981) 114 Cal.App.3d 783, 799.) This is typically referred to as “self-dealing.”

— “A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.” (Civ. Code, § 4765(a)(2).) “It is a settled rule of law that homeowners’ associations must exercise their authority to approve or disapprove an individual homeowner’s construction or improvement plans in conformity with the declaration of covenants and restrictions, and in good faith. (*Hannula v. Hacienda Homes* (1949) 34 Cal.2d 442, 447; *Branwell v. Kuhle* (1960) 183 Cal.App.2d 767, 779.) As the court in Hannula stated: ‘Each of the decisions enforcing like restrictions has held that the refusal to approve plans must be a reasonable determination made in good faith.’ (*Hannula v. Hacienda Homes*, supra, 34 Cal.2d 442, 447.) The converse should likewise be true, ... ‘[T]he power to approve plans ... must not be exercised capriciously or arbitrarily.’ (*Bramwell v. Kuhle*, supra, 183 Cal.App.2d 767, 779); [Citations]” (*Cohen v. Kite Hill Community Assn*. (1983) 142 Cal.App.3d 642.)

Remedies—

— If the breach of fiduciary duty results in a breach of CC&Rs, then compensatory (money) damages and injunctive relief may be available.

— If the breach results in damage to property, available compensatory damages are the cost to remedy defects and for loss of use during the period of injury. (*Raven’s Cove Townhomes Inc. v. Knuppe Development Co.* (1981) 114 Cal.App.3d 783, 802.)

— Civil Code § 3333: “For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.”

— Equitable remedies such as constructive trust, rescission, and restitution are available when the defendant has been unjustly enriched by the breach. (*Miester v. Mensinger* (2014) 230 Cal.App.4th 381.)

— Punitive damages may be available if the breach constitutes constructive fraud. (Civ. Code., § 3294; *Hobbs v. Bateman Eichler, Hill Richards Inc.* (1985) 164 Cal.App.3d 174.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

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

Application—Application of the Law to Client’s Facts

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

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

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

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

## Declaratory Relief

Elements—Declaratory Relief

— The essential elements of a declaratory relief cause of action are: (i) an actual controversy between the parties’ contractual or property rights; (ii) involving continuing acts/omissions or future consequences; (iii) that have sufficiently ripened to permit judicial intervention and resolution; and (iv) that have not yet blossomed into an actual cause of action. (*Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners LLC* (2010) 191 Cal.App.4th 357, 366–69.)

— In an action for declaratory relief, an “actual controversy” is one that “admits of definitive and conclusive relief by judgment within the field of judicial administration, as distinguished from an advisory opinion upon a particular or hypothetical state of facts; the judgment must decree, not suggest, what the parties may or may not do.” (*Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110.)

— Code Civ. Proc., § 1060 explicitly permits declaratory relief claims to determine the rights and duties of an HOA/homeowner.

— The “enforcement” issues discussed in the context of the “Breach of CC&Rs” and “Negligence” causes of action above are also applicable to a declaratory relief claim.

Remedies—

— The remedy for a declaratory relief cause of action is a judicial declaration specifying the rights and obligations of the parties. (Code Civ. Proc., § 1060.)

— As to whether attorneys’ fees are available to the prevailing party, see “Attorneys’ Fees and Costs” section below.

Applicable Statute of Limitations—

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

Application—Application of the Law to Client’s Facts

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

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

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## Invasion of Privacy

Elements—Invasion of Privacy

— There are four distinct types of activities that violate a plaintiff’s “right to privacy” and give rise to tort liability: (a) intrusion into private matters; (b) public disclosure of private facts; (c) publicity placing a person in a false light; and (d) misappropriation of a person’s name or likeness. (*Moreno v. Hanford Sentinel, Inc.* (2009) 172 Cal.App.4th 1125, 1129.)

• To prevail on a cause of action for invasion of privacy (i.e., *intrusion into private matters*), a plaintiff needs to prove that: (i) he or she had a legally protected privacy interest; (ii) he or she had a reasonable expectation of privacy in the place, conversation, or matter intruded upon; (iii) the defendant’s intrusion was intentional; (iv) the intrusion would be highly offensive to a reasonable person; (v) causation; and (vi) damages. (*Hernandez v. Hillsides, Inc.* (2009) 47 Cal.4th 272, 286; *County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 926; also see *Nelson v. Tucker Ellis, LLP* (2020) 2020 WL 2123913, 7-8 citing *International Federation of Professional & Technical Engineers, Local 21, AFL-CIO v. Superior Court* (2007) 42 Cal.4th 319, 338.)

• To prove a claim for *public disclosure of private facts*, plaintiff must establish that: (i) defendant widely published; (ii) a private fact; (iii) that would be highly offensive to a reasonable person; (iv) the publication of which did not legitimately concern the public; (v) causation; and (vi) damages. (*Catsouras v. Department of California Highway Patrol* (2010) 181 Cal.App.4th 856, 868.)

→ In the context of HOA disputes, the facts underlying this cause of action often involve this type of invasion of privacy claim (i.e., public disclosure of private facts). Such claims typically arise from one or more board members disclosing private facts about a homeowner to the members at large (e.g., a homeowner’s delinquency in paying dues, or some other private matter), often to retaliate against that homeowner for making “trouble.”

• To prove a claim for *false light publicity*, plaintiff must establish that: (i) defendant publicly communicated; (ii) a false matter about plaintiff; (iii) that would be highly offensive to a reasonable person; (iv) causation; and (v) damages. (*De Havilland v. FX Networks, LLC* (2018) 21 Cal.App.5th 845, 865.)

→ Courts have interpreted the “publicly” requirement to mean that the defendant communicated to a large number of people. (*Catsouras v. Department of California Highway Patrol, supra,* 181 Cal.App.4th at 904.)

→ Although there appears to be a split amongst the courts as to whether *private figures* need to prove actual malice to establish a false light-related invasion of privacy claim (*Fellows v. National Enquirer, Inc.* (1986) 42 Cal.3d 234, 239), that is certainly the case when it comes to a public figure, who must prove that he or she was exposed to hatred, contempt, ridicule, or obloquy. (*Brodeur v. Atlas Entertainment, Inc.* (2016) 248 Cal.App.4th 665, 678.)

→ Where the plaintiff is a public figure, he or she must also prove that the publication was made with *malice* (i.e., knowledge of its falsity or with a reckless disregard for the truth). (*Tilkey v. Allstate Insurance Company* (2020) 47 Cal.App.5th 1072.)

Remedies—

— Plaintiff may recover all damages proximately caused by the intrusion. (Civ. Code, §§ 3281, 3282, 3333.)

— Plaintiff may recover for emotional distress. (*Miller v. National Broadcasting Co.* (1986) 187 Cal.App.3d 1463, 1484-85.)

— Plaintiff may seek punitive damages if the intrusion was oppressive, fraudulent, or malicious. (Civ. Code, § 3294.)

— Injunctive relief is available. (See *Richardson-Tunnell v. School Ins. Program for Employees (SIPE)* (2007) 157 Cal.App.4th 1056, 1066 (disapproved on other grounds by *Quigley v. Garden Valley Fire Protection Dist.* (2019) 7 Cal.5th 798, 815, fn. 8)].)

— Plaintiff need not first make a retraction demand. (*Kapellas v. Kofman* (1969) 1 Cal.3d 20, 35.)

Applicable Statute of Limitations—

— Two years (invading someone’s privacy is a personal, rather than property, matter). (Code Civ. Proc., § 335.1.)

Application—Application of the Law to Client’s Facts

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

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

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# STRATEGIC CONSIDERATIONS

## Statute of Limitations

To the extent that Client wants to allege all of the suggested causes of action discussed above, the claims must be filed on or before (the *earliest* of the applicable statutes of limitations given the desired claims).

## Applicability of Davis-Stirling Act

## Jurisdiction

### Arbitration

### Personal Jurisdiction

### Subject Matter Jurisdiction

Subject matter jurisdiction is a requirement for suits filed in federal court. There are no federal court issues of subject matter jurisdiction in connection with this dispute.

## Standing

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

## Anti-SLAPP Analysis

## Pre-Filing Requirements

## Attorneys’ Fees and Costs

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# FINAL THOUGHTS / ISSUES / CONCERNS / COMMENTS

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

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Reviewed and Approved by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_