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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEAN GETZ, individually and on behalf of past and present owners of developed Property,

Plaintiff,

vs.

SERRANO EL DORADO OWNER'S ASSOCIATION, SERRANO ASSOCIATES, LLC, and DOES 1-500, inclusive,

Defendants.

Case No.: PC 20170113

~~[PROPOSED]~~ **JUDGMENT**

Assigned to the Hon. Gary S. Slossberg

Complaint Filed: March 16, 2017
Trial Date: Vacated

The Court hereby enters judgment in this action based upon the following history and orders:

Plaintiff Dean Getz brought this action on March 17, 2017, with the filing of his original complaint. Plaintiff's operative pleading is the Third Amended Complaint, filed on or about April 11, 2018. The Third Amended Complaint asserted three causes of action against defendants Serrano El Dorado Owners' Association (the "**Association**") and Serrano Associates, LLC: (1) declaratory relief; (2) breach of fiduciary duty; and (3) breach of the Association's written declaration of covenants, conditions, and restrictions ("**CC&Rs**"). The Association and Serrano Associates, LLC are collectively referred to as "**Defendants**."

Plaintiff moved for certification of a class action of all causes of action against the Association only. On July 5, 2019, the Court entered its order granting Plaintiff's motion for class certification in part, certifying a class, on all three causes of action as asserted against the Association only, defined as follows:

> [A]ll owners of developed property subject to HOA Master Basic assessments for the period of March 16, 2013 to the present; all owners of developed property subject to HOA cost center 2 and 3 assessments for the period of March 16, 2013 to the present; all owners of developed property subject to HOA cost center 7 assessments for the period of March 16, 2013 to the present; and all owners of developed property subject to HOA cost center 4 and 14 assessments for the period of January 1, 2017 to the present.

Plaintiff and the "**Class**" are referred to herein as "**Plaintiffs**."

On or about July 29, 2020, Plaintiff requested dismissal of his second cause of action with prejudice, only as asserted against Serrano Associates, LLC.

On July 28, 2022, the Court entered its order granting the Association's and Serrano Associates, LLC's respective motions for summary adjudication of Plaintiffs' first cause of action for declaratory relief, construing the assessment provision of the Association's CC&Rs and holding that Plaintiffs were not entitled to the judicial declaration they sought. The Court's July 28, 2022 order is attached hereto as **Exhibit 1** and incorporated by reference.

On March 4, 2024, the Court entered its order granting the Association's motion for summary judgment of Plaintiffs' second and third causes of action against it, and granting Serrano Associates, LLC's motion for summary judgment of Plaintiff's third cause of action against it. The order granting the Defendant's respective motions for summary judgment fully disposes of

Plaintiffs' remaining causes of action against Defendants. The Court's March 4, 2024 order is attached hereto as **Exhibit 2** and incorporated by reference.

THEREFORE, FOR GOOD CAUSE APPEARING, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. Plaintiff and the Class take nothing by way of their Third Amended Complaint against the Serrano El Dorado Owners' Association, and judgment is entered in favor of the Association and against Plaintiff and the Class on all causes of action;
2. Plaintiff take nothing by way of his Third Amended Complaint against Serrano Associates, LLC, and judgment is entered in favor of Serrano Associates, LLC and against Plaintiff Dean Getz on all causes of action;
3. Defendants, being the prevailing parties, are entitled to recover their costs in amounts to be established pursuant to the timely filing of cost memoranda;
4. Defendants, being the prevailing parties, are entitled to recover their reasonable attorneys' fees pursuant to Civil Code sections 1717 and/or 5975(c), or as otherwise provided by contract or law, by way of noticed motion;
5. This Judgment shall be amended as appropriate upon the Court's award of reasonable attorneys' fees and costs; and
6. Pursuant to Rule of Court 3.771(b), within 10 court days of either Defendant giving Notice of Entry of Judgment, Plaintiff shall give notice of Entry of Judgment to the Class in the following manner: (a) by email using the identical email addresses that Plaintiff used when providing notice of the class action; and (b) posting of the Judgment on the Class Notice website. In both instances, Plaintiff shall provide a copy of the Judgment for class members to download and shall include the following language: "This notice pertains to the class action lawsuit *Dean Getz v. Serrano El Dorado Owners' Association, et al.* filed in El Dorado County Superior Court (case no. PC20170113). You are hereby notified that the Court ordered that Plaintiff Dean Getz and the Class take nothing by way of their claims asserted against Serrano El Dorado Owners' Association and Serrano Associates, LLC, and entered

judgment in favor of Serrano El Dorado Owners' Association and Serrano Associates, LLC, and against Plaintiff and the Class on all causes of action. A copy of the Judgment is provided with this notice."

7. Defendant Serrano El Dorado Owners' Association may also disseminate the notice set forth in Paragraph 6 on its members' website and through its regular communications to members, along with a copy of this Judgment.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: 04/09/2024

HON. GARY S. SLOSSBERG
SUPERIOR COURT JUDGE

APPROVED AS TO FORM:

VAN DYKE LITIGATION AND TRIAL ATTORNEYS, P.C.

By: Glen Van Dyke

Glen Van Dyke

Attorneys for Plaintiff Dean Getz, individually and as class representative

Re: *Dean Getz vs. Serrano El Dorado Owner's Association, et al.*
El Dorado County Superior Court Case No. PC 20170113

PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States, employed in the City and County of Sacramento, California. My business address is 400 Capitol Mall, 11th Floor, Sacramento, California, and my email address is aespanapurpur@weintraub.com. I am over the age of 18 years and not a party to the within action.

On the date below, I caused to be served the attached:

[PROPOSED] JUDGMENT

[X] (VIA EMAIL [CRC § 2.251/CCP § 1010.6]) I caused each such document to be sent by electronic mail to the addressees at the email addresses listed below.

Glen A. Van Dyke Megan DeHerrera VAN DYKE LITIGATION AND TRIAL ATTORNEYS, PC 201 Spear Street, Suite 1100 San Francisco, CA 94105 Email: glen@vdlitigation.com megan@vdlitigation.com kelsey@vdlitigation.com carol@vdlitigation.com	Attorneys for Plaintiff Dean Getz individually and as class representative
Daniel V. Kohls HANSEN KOHLS SOMMER & JACOB LLP 1520 Eureka Road, Suite 100 Roseville, California 95661 Email: dkohls@hansenkohls.com sschiele@hansenkohls.com	Attorneys for Plaintiff Dean Getz individually and as class representative
Kimberly A. Shields Arthur J. Harris Jon C. James MURPHY PEARSON BRADLEY & FEENEY 580 California Street, Suite 1100 San Francisco, California 94104 Email: kshields@mpbf.com aharris@mpbf.com jjames@mpbf.com dcorpus@mpbf.com jcuellar@mpbf.com ndavidson@mpbf.com	Attorneys for Defendant Serrano El Dorado Owners' Association

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Sacramento, California, on April 3, 2024.

Adele España-Purpur

Exhibit 1

Dale C. Campbell, State Bar No. 99173
Josiah M. Prendergast, State Bar No. 292840
Anders L. Bostrom, State Bar No. 332929
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Attorneys for Defendant Serrano Associates, LLC

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

DEAN GETZ, individually and on behalf of past and present owners of developed Property, Plaintiffs, vs. SERRANO EL DORADO OWNER'S ASSOCIATION, SERRANO ASSOCIATES, LLC, and DOES 1-500, inclusive, Defendants.	Case No. PC 20170113 [PROPOSED] **ORDER AFTER MOTIONS FOR SUMMARY ADJUDICATION** (BY FAX) Date: July 8, 2022 Time: 1:30 p.m. Dept: 4, The Hon. Michael J. McLaughlin Complaint Filed: March 16, 2017 Trial: August 15, 2022

The motions for summary adjudication of (1) plaintiff Dean Getz ("Plaintiff"), (2) defendant Serrano El Dorado Owner's Association (the "HOA"), and (3) Serrano Associates, LLC ("Serrano") came on for hearing before this Court on July 8, 2022, the Honorable Michael J. McLaughlin presiding. Glen A. Van Dyke and Megan DeHerrera appeared in person on behalf of Plaintiff. Kimberly A. Shields, appeared via Zoom, and Thomas S. Wahl, appeared in person, on behalf of the HOA. Dale C. Campbell and Josiah M. Prendergast appeared in person on behalf of Serrano.

The Court issued its tentative ruling on July 1, 2022, and set the matter for a long cause hearing on July 8, 2022. The Court heard argument from counsel on the parties' motions for

summary adjudication and took the matter under submission to reconsider its tentative ruling. Having considered the arguments, having re-reviewed the applicable provisions of the Covenants, Conditions, and Restrictions for the Serrano El Dorado development ("CC&Rs"), and having reconsidered its tentative ruling, the Court issued a minute order on July 12, 2022 adopting the tentative ruling as the order of the Court. A true and correct copy of the Minute Order adopting the Tentative Ruling is attached hereto and incorporated herein as **Exhibit A**.

Accordingly, the Court, having considered all the papers, pleadings, and files herein, the oral argument of counsel, and all other matters presented to this Court, and good cause appearing therefor as set forth in Exhibit A hereto:

IT IS HEREBY ORDERD that:

1. Plaintiff's Motion for Summary Adjudication as to the First Cause of Action to the Third Amended Complaint is denied;

2. Serrano El Dorado Owner's Association's Motion for Summary Adjudication against the First Cause of Action to the Third Amended Complaint is granted; and

3. Serrano Associates' Motion for Summary Adjudication against the First Cause of Action to the Third Amended Complaint is granted.

IT IS SO ORDERED.

Dated: 7/28/22

/s/ **Michael J. McLaughlin**
The Hon. Michael J. McLaughlin
Judge of the Superior Court

APPROVED AS TO FORM:

VAN DYKE LITIGATION AND TRIAL ATTORNEYS, PC

By: Glen Van Dyke
Glen A. Van Dyke
State Bar No. 183796

Attorneys for Plaintiff Dean Getz

///

MURPHY PEARSON BRADLEY & FEENEY

By: _____

Kimberly A. Shields
State Bar No. 245326

Attorneys for Defendant Serrano El Dorado Owner's Association

weintraub tobin chediak coleman grodin

EXHIBIT A

IN THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF EL DORADO
DEPARTMENT 4

DEAN GETZ
Plaintiff/Petitioner,
v.

SERRANO EL DORADO OWNER'S
Defendant/Respondent.

Case No. **PC20170113**
Event Date: **07/08/2022 4:00 pm**
Department: **Department 4**
Event Type: **Hearing: Other**
Mtn/OSC:
Add'l Info: **Ex Parte Minute Order**
Judge: **Michael J McLaughlin**
Clerk: **Wendy Warden**
Reporter:

Civil Unlimited - Minutes

Appearances:

There are no appearances.

Nature of Proceedings:

The court heard argument from counsel on the parties' motions for summary adjudication on July 8, 2022, and took the matter under submission to reconsider its tentative ruling. Having now considered the aruments of counsel, having re-reviewed the applicable provisions of the CC&Rs, and having reconsidered its tentative ruling, the court adpots the tentative ruling as the order of the court. Defense counsel shall prepare orders for the court consistent with the tentative ruling.

cc: Kimberly A. Shields, Esquire; via email to KShields@mpbf.com
cc: Heather A. Barnes, Esquire; via email to HBarnes@mpbf.com
cc: Glen A. Van Dyke, Esquire; via email to gvandyke@vandykelawgroup.com
cc: Daniel Kohls, Esquire; via email to dkohls@hansenkohls.com
cc: Josiah M. Prendergast, Esquire; via email to jprendergast@weintraub.com
cc: Dale C. Campbell, Esquire; via email to dcampbell@weintraub.com
cc: Megan Deherrera, Esquire; via email to megan@vdlitigation.com

1. GETZ v. SERRANO EL DORADO OWNERS' ASS'N, ET AL., PC20170113

(A) Plaintiff's Motion for Summary Adjudication

(B) Serrano El Dorado Owners' Association's Motion for Summary Adjudication

(C) Serrano Associates' Motion for Summary Adjudication

Plaintiff asserts various causes of action against defendants Serrano El Dorado Owners' Association ("HOA") and Serrano Associates, LLC ("Serrano"), premised upon allegations that the HOA Board overcharged developed property owners and undercharged assessments on undeveloped property in the various HOA Cost Centers. Pending are motions for summary adjudication from all parties as to the First Cause of Action ("1st C/A") for declaratory relief asserted in plaintiffs' Third Amended Complaint ("TAC").

1. STANDARD OF REVIEW

"A party may move for summary adjudication as to one or more causes of action within an action, ... if the party contends that the cause of action has no merit, that there is no affirmative defense to the cause of action, [or] that there is no merit to an affirmative defense as to any cause of action .... A motion for summary adjudication shall be granted only if it completely disposes of a cause of action, an affirmative defense, a claim for damages, or an issue of duty." (Code Civ. Proc., § 437c(f)(1).) "A motion for summary adjudication may be made by itself or as an alternative to a motion for summary judgment and shall proceed in all procedural respects as a motion for summary judgment." (*Id.*, subd. (f)(2).)

The moving party bears the initial burden of making a prima facie showing of the nonexistence of a triable issue of material fact, and only if the moving party carries the initial burden does the burden shift to the opposing party to produce a prima facie showing of the existence of a triable issue of material fact. (*Aguilar v. Atl. Richfield Co.* (2001) 25 Cal.4th 826, 850.)

"The court focuses on issue finding; it does not resolve issues of fact. The court seeks to find contradictions in the evidence, or inferences reasonably deducible from the evidence, which raise a triable issue of material fact." (*Raven H. v. Gamette* (2007) 157 Cal.App.4th 1017, 1024.) The evidence of the moving party is strictly construed and the evidence of the opposing party liberally construed. Doubts as to the propriety of granting the motion must be resolved in favor of the party opposing the motion. (*Stationers Corp. v. Dun & Bradstreet, Inc.* (1965) 62 Cal.2d 412, 417.)

2. PRINCIPLES OF CONTRACT INTERPRETATION

"The same rules that apply to interpretation of contracts apply to the interpretation of CC & R's." (*Chee v. Amanda Goldt Prop. Mgmt.* (2006) 143 Cal.App.4th 1360, 1377.) The fundamental goal of contract interpretation is "to give effect to the mutual intention of the parties as it existed at the time of contracting." (Civ. Code, § 1636.) "California recognizes the objective theory of contracts [citation], under which '[i]t is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation' [citation]. The parties' undisclosed intent or understanding is irrelevant to contract interpretation. [Citations.]" (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 956.)

The "words of a contract are to be understood in their ordinary and popular sense" (*id.*, § 1644), and the parties' intent is ascertained from those words alone if it is "clear and explicit, and does not involve an absurdity." (*Id.*, § 1638.) Courts routinely consult dictionaries to determine the usual and ordinary meaning of a word. (*Coburn v. Sievert* (2005) 133 Cal.App.4th 1483, 1499.)

"Although 'the intention of the parties is to be ascertained from the writing alone, if possible' (*id.*, § 1639), '[a] contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates' (*id.*, § 1647). 'However broad may be the terms of a contract, it extends only to those things ... which it appears that the

parties intended to contract.' (*Id.*, § 1648.)" (*Hess v. Ford Motor Co.* (2002) 27 Cal.4th 516, 524.)

A "contract is ambiguous [if its terms are] reasonably susceptible to more than one interpretation." (*Scheenstra v. Cal. Dairies, Inc.* (2013) 213 Cal.App.4th 370, 389.) Extrinsic evidence "is admissible to interpret a [written agreement] if ' "relevant to prove a meaning to which the language of the instrument is reasonably susceptible." ' " (*Hervey v. Mercury Cas. Co.* (2010) 185 Cal.App.4th 954, 961.) Although extrinsic evidence "may be admissible to determine whether the terms of a contract are ambiguous [citation], it is not admissible if it contradicts a clear and explicit ... provision [citation]." (*Ibid.*)

3. PARTIES' REQUESTS FOR JUDICIAL NOTICE ("RJN")

3.1 RJN Re: Plaintiff's Motion

HOA's RJN in Support of Opposition to Plaintiff's Motion

Granted as to item numbers 1–7. (Evid. Code, § 452(c), (d)(1), (h).)

Serrano's RJN in Support of Opposition to Plaintiff's Motion

Granted as to Exhibits 2–5. (Evid. Code, § 452(d)(1).)

3.2 RJN Re: HOA's Motion

HOA's RJN in Support of Its Motion

Granted as to Exhibits 1–3. (Evid. Code, § 452(d)(1), (h).)

3.3 RJN re: Serrano's Motion

Serrano's RJN in Support of Its Motion

Granted as to Exhibits 1–9 to the Prendergast Declaration. (Evid. Code, § 452(c), (d)(1), (h).)

4. EVIDENTIARY OBJECTIONS

4.1 Objections Re: HOA's Motion and Plaintiff's Opposition

Plaintiffs' Objections to HOA's Evidence

Objection Nos. 1 and 2 are overruled.

HOA's Objections to Plaintiff's Evidence

Objection Nos. 1 and 2 are sustained on the basis of lack of foundation.

Objection Nos. 3, 9, and 10 are sustained on the grounds of relevance, lack of foundation, and the documents are inadmissible as a communication regarding an offer to compromise.

Objection Nos. 4, 5, and 11 are sustained on the grounds of relevance and lack of foundation.

Objection Nos. 6 and 7 are sustained on the basis of relevance.

Objection No. 8 is sustained on the grounds of lack of foundation and the document speaks for itself.

4.2 Objections Re: Serrano's Motion and Plaintiff's Opposition

Serrano's Evidentiary Objections to Declaration of Dean Getz Dated 4/27/22

Objection No. 1 is sustained on the basis of lack of foundation.

Serrano's Evidentiary Objections to Declaration of Dean Getz Dated 12/27/21

Objection No. 1 is sustained on the basis of lack of foundation.

Objection No. 2 is sustained on the grounds of lack of foundation and assumes facts not in evidence.

5. PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION

Plaintiff moves for summary adjudication against the HOA only. In plaintiff's motion, the sole issue he argues concerns the limit on the HOA's authority to increase annual assessments on owners of developed property. Specifically, plaintiff argues that the court "should determine that the HOA was and is bound by the [Consumer Price Index ("CPI")] cap when fixing Common Assessments against Owners of developed Property so long as Undeveloped Property exists within the HOA." (Pl. Mot., Mem. of P&As, 2:1–3.)

As a preliminary matter, the HOA and Serrano raise several procedural arguments in support of their opposition against plaintiff's motion.

Relief Requested in Plaintiff's Motion Versus the TAC

The HOA and Serrano assert that plaintiff's motion fails because he requests relief in his motion that is different from the relief requested in the TAC.

"[T]he pleadings set the boundaries of the issues to be resolved at summary [adjudication]." (*Oakland Raiders v. Nat'l Football League* (2005) 131 Cal.App.4th 621, 648.) In this regard, the TAC's 1st C/A for declaratory relief requests:

> A declaration regarding Plaintiffs' and Defendant owners of undeveloped property's respective assessment obligations pursuant to the CC&Rs, as well as the Defendant Association's duties to enforce those obligations is necessary to prevent Defendants from preventing Plaintiffs, and other members of Serrano, from paying the proper assessments and causing Defendants to pay their fair share of assessment pursuant to the governing documents.
>
> Plaintiffs, and each of them, request a declaration from this Court that the Association must enforce the CC&R assessment obligations of the respective parties and seek to remedy past failures to enforce the CC&R assessment obligations of the respective parties.

(TAC, ¶¶ 42, 43.) Further, in the TAC's "Prayer for Relief," plaintiff requests "[d]eclarations as to the rights and the responsibilities of the Defendants to comply with the CC&Rs as it relates to assessments, enforcing collection policies and voting rights ...." (TAC, 15:9–11.)

The declaration plaintiff requests in the TAC is problematic. Declaratory relief requires a court to have "narrow, precise questions to guide its examination, without which it is unable to 'decree, and not suggest, what the parties may or may not do.' [Citation.]" (*Zetterberg v. State Dep't of Pub. Health* (1974) 43 Cal.App.3d 657, 664.) Plaintiff's request is not narrow and precise. The requested declaration in the TAC is so broad that it could encompass any conceivable issue concerning "assessment obligations" of the CC&R's and the HOA's duty to enforce those obligations. The issue is further complicated due to plaintiff's request in the TAC's "Prayer for Relief" for a declaration as to the rights

and responsibilities of defendants to comply with the CC&R's as it relates to collection policies and voting rights, which issues are not even mentioned in the 1st C/A.

To add another wrinkle, in the "Conclusion" section of his memorandum in support of the instant motion, plaintiff requests an entirely different declaration, albeit a more precise one, than what is requested in the TAC:

> The language of the CC&Rs relating to the calculation of the General Assessment Component of Common Assessments and Common Assessments for Cost Center Components is clear and unambiguous. Defendant Serrano El Dorado Owners' Association may not charge its members more than the amount calculated pursuant to the formula set forth in Paragraph 4 of Exhibit D to the Serrano El Dorado Owners' Association Covenants, Conditions and Restrictions so long as Undeveloped Property exists, and any assessment charged in excess of that amount in the past, if any, constitutes a violation of the Serrano El Dorado Owners' Association Covenants, Conditions and Restrictions.

(Pl. Mot., Mem. of P&As, p. 9.)

Given that the sole issue raised in plaintiff's motion that is supported with cognizable arguments and citation to legal authority concerns the CPI cap, and that the declaration of rights that he now seeks concerns the CPI cap, the court deems as abandoned plaintiff's claims concerning collection policies and voting rights. That said, the TAC does contain allegations about the CPI cap issue. (See TAC, ¶¶ 17, 19, 20, 23, 27.) As such, the court finds that the relief requested in the TAC is worded broadly enough to encompass plaintiff's contentions regarding the CPI cap.

Failure to Move for Summary Adjudication Against Defendant Serrano

Serrano asserts that plaintiff's motion fails because it impermissibly circumvents Serrano, an indispensable party, and therefore does not completely resolve the declaratory relief cause of action.

Serrano's argument is well taken. "A motion for summary adjudication shall be granted only if it completely disposes of a cause of action ...." (Code Civ. Proc., § 437c(f)(1).) The 1st C/A is asserted "Against All Defendants." (TAC, p. 12.) The 1st C/A alleges there "is an actual and present controversy between Plaintiffs and *Defendants, and each of them*, regarding Plaintiffs' and *Defendant owners*" of undeveloped property. (TAC, ¶ 41 [emphasis added].) Further, the 1st C/A seeks a declaration regarding, inter alia, "*Defendant owners* of undeveloped property's respective assessment obligations ...." (TAC, ¶ 42 [emphasis added].)

Serrano is a named defendant and owner of undeveloped property, and plaintiff admits in his TAC that there is a present and actual controversy which involves Serrano. Serrano is therefore a necessary party given that the 1st C/A seeks to adjudicate Serrano's assessment obligations. Because plaintiff moves for summary adjudication only as to the HOA, plaintiff's motion is defective as it would not completely dispose of the 1st C/A for declaratory relief.

Additionally, this defect cannot be cured. Serrano is entitled to 75 days' notice if plaintiff were to move for summary adjudication against defendant. Trial is set for August 15, 2022, which is less than 75 days from now. As such, plaintiff does not have sufficient time to file a motion against Serrano.

Accordingly, plaintiff's motion is denied on the basis that it fails to comply with Code of Civil Procedure § 437c(f)(1). Given this procedural defect, it is not necessary for the court to reach the merits of plaintiff's motion. Additionally, and in the alternative, even if the court were to consider the merits of plaintiff's claims, the court would conclude his claims lack merit, as discussed below.

In summary, plaintiff's motion for summary adjudication against the HOA is denied.

6. The HOA's and Serrano's Motions for Summary Adjudication

The court will address both motions in a combined discussion.

The HOA and Serrano contend that the CC&R's are unambiguous and provide that Common Assessments against owners of undeveloped property were extinguished once Common Assessments against owners of developed property at the initial, CPI-capped level were sufficient to meet the relevant budgetary needs of the HOA. In the alternative, if the court finds that the CC&R's are ambiguous, summary adjudication in favor of defendants is still appropriate because extrinsic evidence makes clear the parties intended that Common Assessments against undeveloped property would be extinguished once Common Assessments against owners of developed property at the initial, CPI-capped level were sufficient to meet the relevant budgetary needs of the HOA.

6.1 Creation of the Development, HOA, Village Associations

The CC&R's were recorded in 1995, thus creating the "Master Association" (i.e., the HOA). (HOA Mot., Master List of Exhibits, Ex. 2, §§ 1.06, 2.04.) The CC&R's vest the HOA with authority to, inter alia, set budgets and fix and collect assessments to pay the expenses of the HOA. (*Id.*, Ex., § 1.06.) Owners of property within the development are entitled to membership in the HOA. (*Id.*, Ex. 2, § 2.40 & Art. 4.)

The CC&R's also sanction the creation of Village Associations: "Nothing in this Master Declaration shall prevent the creation of Village Associations to assess, regulate, maintain or manage the portions of the Property, or to own or control portions thereof for the common use or benefit of the Owners of Lots or Parcels in those portions of the Property subject to Supplemental Declarations or Declarations of Annexation pursuant to which such Village Associations are created." (*Id.*, Ex. 2, § 1.06.) "The word 'Village' refers to portions of the Property which are separated from the remainder of the Property, such as separate gated neighborhoods, separate Cost Centers, or areas with respect to which membership in a Village Association is appurtenant." (*Id.*, Ex. 2, § 2.64.) A "Cost Center" means "one or more Improvements or maintenance areas, the maintenance or use of

which Improvements or maintenance areas is fully or partially restricted to Owners of certain Lots or Parcels as specified in one or more Supplemental Declarations or Declarations of Annexation, and where the expenses of operating, maintaining and replacing such Improvements or areas are borne solely or disproportionately by such specified Owners...." (*Id.*, Ex. 2, § 2.20.)

6.2 Provisions Generally Addressing Assessments

An "Assessment" is "a collective term which refers to Capital Improvement Assessments, Common Assessments, Reconstruction Assessments and Reimbursement Assessments made or assessed by the Master Association against an Owner and his or her Lot or Parcel in accordance with the provisions of Article 6 of this Master Declaration." (*Id.*, Ex. 2, § 2.03.) A "Common Assessment" is defined as "the annual (or supplemental as provided in Section 6.07C) charge against each Owner and his Lot or Parcel, representing a portion of the Common Expenses as provided herein. Common Assessments shall include all late payment penalties, interest charges, attorneys' fees or other costs incurred by the Master Association in its efforts to collect all assessments (other than Reimbursement Assessments) authorized pursuant to this Master Declaration." (*Id.*, Ex. 2, § 2.16.)

Section 6.01 of the CC&R's sets forth the obligation of owners to pay assessments:

> Declarant[1] and any Merchant Builder, for each Lot or Parcel owned by Declarant or such Merchant Builder which is subject to assessment, hereby covenants and agrees, and every other Owner of any Lot or Parcel, by acceptance of a deed or other conveyance therefor, whether or not it shall be so expressed in such deed or such other instrument, is deemed to covenant and agree to pay to the Master Association (i) annual Common Assessments for Common Expenses, (ii) Capital Improvement Assessments,

[1] Declarant was the El Dorado Hills Development Company, the predecessor to defendant Serrano. (HOA Mot., Undisputed Material Facts, ¶ 8.)

(iii) Reimbursement Assessments, and (iv) Reconstruction Assessments; such assessments to be established and collected as hereinafter provided. All assessments other than Reimbursement Assessments, together with interest, costs, and reasonable attorneys' fees for the collection thereof, shall be a charge on the land and shall be a continuing lien upon the Lot or Parcel against which such assessment is made. The personal obligation of assessments shall not pass to the successors in title to any Owner, unless expressly assumed by them.

(*Id.*, Ex. 2, § 6.01.)

6.3 Provisions Specifically Addressing Common Assessments Levied Upon Developed and Undeveloped Property

Section 6.05 addresses Common Assessments and how developed and undeveloped property would be assessed:

Each annual Common Assessment shall constitute an aggregate of separate assessments for each of the Maintenance Funds, reflecting an itemization of die amounts assessed and attributable to prospective deposits into the General Operating and Reserve Funds, the Cost Center Operating and Reserve Funds, and any other Maintenance Fund established by the Master Association .... Sums sufficient to pay Common Expenses shall be assessed as Common Assessments against the Owners of Lots or Parcels. The Common Expenses of the Master Association shall be allocated among the Owners and their respective Lots or Parcels for which Common Assessments have commenced based upon the number of Assessment Units chargeable to each such Lot or Parcel as follows:

A. Assessment Units for Developed Property. Except as provided in Section 6.05D, Assessment Units for developed Property shall be allocated as follows: (i) one Assessment Unit for

each single-family Lot; (ii) three-quarters of one Assessment Unit for each Residential Unit in a halfplex or duplex; (iii) one-half of one Assessment Unit for each Residential Unit in any residential building containing three or more Residential Units and for each residential dwelling unit which is not a Residential Unit, e.g., an apartment dwelling unit which is neither a condominium nor divided into one Lot for each apartment dwelling unit; (iv) one for each 2,000 square feet of gross building area of buildings on any developed commercial or office Parcel, with any fraction being rounded up to the next half Assessment Unit; (v) one for each church Parcel; and (vi) if and when a racquet and/or swimming club is developed, it will be allocated three and one-half Assessment Units per acre. The racquet and swim club referenced in the preceding sentence shall not be Common Area and membership in the Master Association shall not confer any right upon any person to use such facilities. That portion of the Property initially to be assessed pursuant to this Section 6.05A shall be the 160 Lots in the following three maps: Village H El Dorado Hills, Unit 1, Village H El Dorado Hills, Unit 2, and Village I & L El Dorado Hills, Unit 1.

B. Assessment of Undeveloped Property. Undeveloped Property shall be assessed as provided in **Exhibit D** attached hereto and incorporated herein by this reference. As all or any portion of a Parcel which is included within the Property is subdivided into a Residential Subdivision, such Parcel, or subdivided portion thereof, will cease to be assessed as undeveloped and commence to be assessed pursuant to subdivision (i) or (ii) above, on the first day of the first month

following the month in which the first Close of Escrow occurs for the sale of a Lot or Residential Unit in such Residential Subdivision. In the case of the subdivision of only a portion of a Parcel into a Residential Subdivision, the portion not so subdivided shall continue[ ] to be assessed as undeveloped as provided in **Exhibit D**. As a Parcel which is included within the Property is improved with one or more buildings, such Parcel will cease to be assessed as undeveloped and commence to be assessed pursuant to Section 6.05A above, on the first day of the first month following the month in which the first such building is completed. For purposes of determining Class A and Class B voting rights for undeveloped Property, the undeveloped Property shall be deemed to have the number of Assessment Units the undeveloped Property would have pursuant to Section 6.05A if developed to maximum density under the zoning laws in effect as of the date this Declaration is recorded. ... [¶] ...

E. Amount. Common Assessments shall be levied initially against the Owners of Lots and Parcels in the Property in the amounts as set forth in the Master Association budget on file with the DRE, except as provided in Section 6.07A. Thereafter, the Common Assessments shall be adjusted, subject to the provisions of Exhibit D and Section 6.07 below, in accordance with the combined Budget of the Master Association approved by the Board from time to time, always taking into account the amount of contributions to be made pursuant to any Use/Maintenance Agreement or Subsidy Agreement. If the provisions of Exhibit D

conflict with any provision of this Master Declaration, the provisions of Exhibit D shall control.

(*Id.*, Ex. 2, § 6.05(A), (B), (E) [bolding in original].)

6.4 Exhibit D: Common Assessments Levied on Undeveloped Property

Exhibit D is entitled "Common Assessments So Long As Some Property Is Subject To Assessment As Undeveloped Property (Section 6.05)":

1. Background. Common Assessments to be levied against the Phase 1 Property are comprised of three components referred to in DRE budget worksheets as: (i) Master/Basic costs, (ii) Cost Center 1 - Certain Road costs, and (iii) Cost Center 2 - Certain Security/Parks/costs.

A. The component referred to in subdivision (i), above, as it may be revised from time to time as undeveloped portions of the Property are developed and as additional portions of Overall Property are annexed under the CC&Rs, is referred to herein as the "General Assessment Component." All of the Property shall pay assessments to satisfy the General Assessment Component.

B. The component referred to in subdivision (ii), above, as it may be revised from time to time as undeveloped portions of the Property are developed and as additional portions of Overall Property are annexed under the CC&Rs, is referred to herein as the "Cost Center 1 Component." The component referred to in subdivision (iii), above, as it may be revised from time to time as undeveloped portions of the Property are developed and as additional portions of Overall Property are annexed under the CC&Rs, is referred to herein as the "Cost Center 2 Component." As undeveloped portions of the Property are developed, it is anticipated that there will be additional Cost Center Components.

Only portions of the Property lying within a particular Cost Center shall pay assessments to satisfy that Cost Center Component.

2. Fixed Assessment Levels – Real Purchasing Power. The purpose and intent of the assessments provided for in this Exhibit are to allocate to undeveloped portions of the Property sufficient portions of the various Components, so that so long as portions of the Property are assessed as undeveloped Lots or Parcels, Common Assessments for developed Lots and Parcels shall remain constant in real purchasing power. To accomplish that objective, the Declarant is willing to accept levels of Common Assessments on undeveloped portions of the Property which, at least during the early phases of development of the Property, may be disproportionately high, taking into account the fact that undeveloped portions of the Property derive little benefit from most of the costs to be defrayed by Common Assessments.

A. The initial level of the General Assessment Component of Common Assessments for Phase 1 shall be $40 per month per Assessment Unit. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Common Assessments may increase pursuant to paragraph 4, below.

B. As additional Property becomes subject to assessment as developed, the initial level of the General Assessment Component of Common Assessments shall be the level of such General Assessment Component of Common Assessments then applicable to Phase 1. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Common Assessments may increase as provided in paragraph 2A.

C. Subject to credit as provided in paragraph 8, below, the level of the General Assessment Component of Common Assessments for undeveloped Property for any fiscal year shall be an amount sufficient to keep the General Assessment Component of Common Assessments for developed Property from exceeding the levels permitted by paragraphs 2A and 2B for that fiscal year.

D. The initial level of the Cost Center 1 Component of Common Assessments for Phase 1 shall be $24 per month per Assessment Unit, and the initial level of the Cost Center 2 Component of Common Assessments for Phase 1 shall also be $24 per month per Assessment Unit. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of each such Component may increase pursuant to paragraph 4, below.

E. As additional Property becomes subject to assessment as developed within Cost Center 1 and Cost Center 2, the initial level of those Cost Center Components of Common Assessments shall be the level of such Components then applicable to Phase 1. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Components may increase as provided in paragraph 2D.

F. Subject to credit as provided in paragraph 8, below, the level of the Cost Center 1 and Cost Center 2 Components of Common Assessments for undeveloped Property within such Cost Centers for any fiscal year shall be an amount sufficient to keep each such Cost Center Component for developed Property from

exceeding the levels permitted by paragraphs 2D and 2E for that fiscal year.

G. The initial level of Cost Center Components of Common Assessments for additional Cost Centers shall be established pursuant to Section 6.05E of the Master Declaration. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Components may increase pursuant to paragraph 4, below.

H. As additional Property becomes subject to assessment as developed within each additional Cost Center, the initial level of the Cost Center Component of Common Assessments for each additional Cost Center shall be the level of such Component then applicable to developed Property within such Cost Center. Thereafter, for each fiscal year following the year during which such Common Assessments commence, the level of such Component may increase as provided in paragraph 2G.

I. Subject to credit as provided in paragraph 8, below, the level of the Component for a particular additional Cost Center for undeveloped Property within such Cost Center for any fiscal year shall be an amount sufficient to keep the Component for such Cost Center for developed Property from exceeding the levels permitted by paragraphs 2G and 2H for that fiscal year.

3. Adjustment if Actual Assessments Lower than Permissible Levels. If Common Assessments levied against any particular developed Property for a particular Component would otherwise be lower than the maximum rate permitted pursuant to paragraph 2, above, such Common Assessments shall

nevertheless be levied at the maximum permitted rate as provided in this paragraph 3.

A. If the General Assessment Component of Common Assessments levied against any particular developed Property would otherwise be lower than the maximum rate permitted pursuant to paragraph 2, above, such Component shall nevertheless be levied at the maximum permitted rate if, at that time, Cost Center Components of Common Assessments applicable to such developed Property are also being assessed against undeveloped Property within the particular Cost Center(s). The Common Assessments paid pursuant to this paragraph 3A shall be applied to reduce the Common Assessments levied against such undeveloped Property.

B. If the Cost Center Component of Common Assessments levied against any particular developed Property would otherwise be lower than the maximum rate permitted pursuant to paragraph 2, above, such Component shall nevertheless be levied at the maximum permitted rate if, at that time, the General Assessment Component of Common Assessments are being assessed against undeveloped Property or if any other Cost Center Component of Common Assessments applicable to such developed Property are also being assessed against undeveloped Property within the particular Cost Center(s). The Common Assessments paid pursuant to this paragraph 3B shall be applied to reduce the Common Assessments levied against such undeveloped Property.

4. Real Purchasing Power. To determine real purchasing power, the Master Association, when preparing its Budget for the ensuing fiscal year, shall

determine purchasing power with reference to the Consumer Price Index for All Urban Consumers, All Items (San Francisco-Oakland-San Jose Metropolitan Area, base years 1982–1984 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics (the "Index"), by comparing the Comparison Index (defined below) with the Base Index. The Base Index for General Assessment Components and Cost Center 1 and Cost Center 2 Components shall be the latest Index published at least four months prior to the month in which Common Assessments commence under the CC&Rs. The Base Index for the Component for each new Cost Center shall be the latest Index published at least four months prior to the month in which Common Assessments commence which include such Cost Center Component. The Comparison Index shall be the latest Index published at least four months prior to the beginning of the particular fiscal year. If the Comparison Index is different from the Base Index, then the assessment level for the ensuing fiscal year for a developed portion of the Property shall be the initial level for each such portion multiplied by a fraction, the numerator of which is the Comparison Index and the denominator of which is the Base Month Index. In no event shall the General Assessment Component or any Cost Center Component be decreased so long as any undeveloped Property is being assessed with respect thereto.

... [¶] ...

8. Surplus Funds Credit. It is not intended that Common Assessments levied against undeveloped Property result in surplus funds being paid to or accumulated by the Master Association. Accordingly, Common Assessments levied against undeveloped Property for any particular Component shall be reduced each month (except as provided in this paragraph 8) when applicable by the amount, if any, by which Common Assessments for the particular

Component, contributions, subsidies, rent and any other sums collected by the Master Association which are properly applied against the particular Component, exceed the sum necessary to fund (i) the obligations of the Master Association to pay Common Assessment costs for the particular Component identified in the Master Association's then current Budget, regardless of whether the Master Association's Budget anticipated higher costs, plus (ii) the reserves forth in the Master Association's then current Budget.

A portion of the Common Assessments for any particular Component may be used to pay fixed costs identified in line items in the Budget under 100 - Fixed Costs (the "Fixed line Items") and costs identified in line items in the Budget under 400 - Administration (the "Administration Line Items"). Because the Master Association may incur fixed costs identified in the Fixed Line Items on a periodic basis in excess of one month and may incur costs identified in the Administration Line Items in irregular amounts from month to month, any reduction associated with the Fixed Line Items and the Administration Line Items shall be on an other than monthly basis as follows:

A. With respect to the Fixed Line Items for a particular Component, the Common Assessments levied against undeveloped Property for such Component shall be reduced by the amount, if any, by which sums collected by the Master Association and allocated to each such Fixed Line Item exceed the actual costs associated with each such line item only when such costs are actually incurred.

B. With respect to the Administration Line Items for a particular Component, the Common Assessments levied against undeveloped Property for such Component shall be reduced at the end of each of the Master Association's fiscal years by the amount,

> if any, by which sums collected by the Master Association and allocated to each such Administration Line Item during the fiscal year exceed the actual costs associated with each such line item during the fiscal year.
>
> If at the end of a Master Association fiscal year, an Owner of undeveloped Property is entitled to a reduction pursuant to paragraphs 8A and/or 8B, above, in an amount greater than the sum such Owner then owes with respect to the applicable Component, such Owner shall be entitled to a refund at the end of the Master Association's then fiscal year in the amount that such Owner's Common Assessments would have been reduced pursuant to this paragraph 8 on account of Common Assessments paid by the Owner during such fiscal year.

(*Id.*, Ex. 2, § 6.05, Ex. D.)

6.5 The CC&R's Are Not Reasonably Susceptible to More Than One Interpretation

The first issue is whether, viewing the relevant portions of the CC&R's as a whole, the intention of the parties can be ascertained from the CC&R's alone (i.e., the language is clear and explicit), or are the CC&R's reasonably susceptible to more than one interpretation. (Civ. Code, §§ 1638, 1641; *Scheenstra*, *supra*, 213 Cal.App.4th at p. 389.)

To be sure, the language of the CC&R's is dense and mind-numbing. But, when the language is taken as a whole, it is clear in the application of the provisions concerning Common Assessments that the intent of the Declarant was to phase out assessments levied on undeveloped property once the assessments levied on developed property were sufficient to meet the relevant budgetary needs of the HOA, or there no longer existed undeveloped property in any given Cost Center.

" '[I]ndeterminancy in the *application* of language signals its vagueness or ambiguity. An ambiguity arises when language is reasonably susceptible of more than one

application to material facts. There cannot be an ambiguity per se, i.e. an ambiguity unrelated to an application.' [Citation.] [¶] Thus, an ambiguity cannot be created by parsing words outside their context. [Citation.] ' "*[L]anguage in a contract* must be construed in the context of that instrument as a whole, and in the circumstances of that case, and *cannot be found to be ambiguous in the abstract.*" ' [Citation.] 'Multiple or broad meanings do not necessarily create ambiguity.... [¶] The proper question is whether the word is ambiguous in the ... circumstances of *this* case.' [Citation.] Nor does the fact that language *could be* clearer make it ambiguous. [Citations.]" (*Alameda County Flood Control & Water Conservation Dist. v. Dep't of Water Res.* (2013) 213 Cal.App.4th 1163, 1179 [italics in original].)

"To say that language is ambiguous is to say there is more than one semantically permissible candidate for application, though it cannot be determined from the language which is meant. Every substantial claim of ambiguity must tender a candidate reading of the language which is of aid to the claimant. One must ask what meanings are proffered and examine their plausibility in light of the language. A party attacking a meaning succeeds only if the attacker can propose an alternative, plausible, candidate of meaning." (*Estate of Dye* (2001) 92 Cal.App.4th 966, 976.)

Turning to Exhibit D, its stated purpose was to allocate to undeveloped property sufficient portions of the various Components so that Common Assessments for developed lots remained constant in Real Purchasing Power. (HOA Mot., Master List of Exhibits, Ex. 2, Ex. D, ¶ 2.) To accomplish that objective, the Declarant acknowledged and accepted that assessments on undeveloped property, at least during the early stages of development, would be disproportionately high. (*Ibid.*)

The initial levels set for developed property for the General Assessment Component ("GAC"), Cost Center 1, and Cost Center 2 were $40, $24, and $24 per month, respectively. (*Id.*, Ex. D, ¶ 2(A), (D).) For each fiscal year thereafter, these assessments could be increased pursuant to Paragraph 4 ("Real Purchasing Power"). (*Id.*, Ex. D, ¶ 2(B),

(D).) Paragraph 4 addresses Real Purchasing Power, which is determined by reference to a certain index of the CPI.

As additional property began to be assessed as developed property, such property's initial level of assessment for the various Components would be at the level *then applicable* to Phase 1 (i.e., $40, $24, and $24, as applicable to the property, plus whatever increases had been already levied pursuant to Paragraph 4). For each fiscal year thereafter, these assessments could be increased pursuant to Paragraph 4.

In the meantime, subject to a surplus funds credit (see Paragraph 8), undeveloped property would be assessed for the various Components in "an amount sufficient" to prevent the assessments of developed property from exceeding the levels set for developed property, as described in the previous two paragraphs. (*Id.*, Ex. D, ¶ 2(C), (F), (I).)

As lots began to be assessed as developed property, the portion of the GAC and Cost Centers 1 and 2 assessed to undeveloped property would continue to decrease by a certain factor depending upon the parcel. (*Id.*, Ex. D, ¶¶ 5, 6.)

Thus, to summarize in brief, because the CC&R's require the HOA to assess sums sufficient to meet its relevant budgetary needs, at the early stages of development the owners of undeveloped property were required to essentially subsidize the shortfall between the revenue generated from developed property and the HOA's budgetary needs. As that shortfall became smaller, the assessments to undeveloped property would decrease.

It is clear in the application of these provisions that the intent was to eventually phase out Common Assessments levied on undeveloped property.

First, several provisions provide that in no event would Common Assessments be decreased for developed property so long as some property continued to be assessed as undeveloped. For example, Paragraph 4 of Exhibit D explicitly states that the amounts assessed to developed property for the GAC and any given Cost Centers could not be

decreased so long as undeveloped property was being levied upon for those assessments, as well. (*Ibid.*) Even if actual assessments were lower than permissible levels, it was required that the maximum rate permitted be levied against developed property in order to reduce the Common Assessments levied against undeveloped property. (*Id.*, Ex. D, ¶ 3.)

Second, and most importantly, Paragraph 8 of Exhibit D provides that when the Common Assessments levied against undeveloped property resulted in surplus funds being paid to or accumulated by the HOA, the owners of undeveloped property were entitled to a refund, and not also developed property owners. (*Id.*, Ex. D, ¶ 8.) In practice, this means that once the revenue generated from developed property was sufficient to meet the HOA's budgetary needs, the subsidy payments made by owners of undeveloped property were no longer needed because it would have resulted in surplus funds being paid to or accumulated by the HOA, which surplus would have been refunded to the owners of undeveloped property. As such, Exhibit D was no longer needed. Further, because the CPI cap only pertained to the assessment provisions set forth in Exhibit D, the cap, too, was no longer in effect once undeveloped property was no longer subject to assessment pursuant to Exhibit D.

Plaintiff's interpretation of the CC&R's largely consists of parsing sentences outside of their context and imprecisely paraphrasing provisions. Moreover, his interpretation would result in an absurdity since he would require that undeveloped property always be subject to assessment, even if the various Components were financially self-sufficient without funding from undeveloped property, which money then would need to be refunded to the owners of undeveloped property due to there being surplus funds paid to or accumulated by the HOA.

Plaintiff further contends there is no express language in Exhibit D about forever extinguishing assessment obligations against undeveloped property.

The court disagrees. First, the *application* of the language of Exhibit D plainly demonstrates this intent (i.e., the eventual financial self-sufficiency of the various Components due to revenue generated from developed property and surplus funds were refunded to undeveloped property). Second, the phrase "so long as" is conditional language signaling a future end date depending upon a stated condition. In this case, the condition is, "so long as" some property is *subject to assessment* as undeveloped property. The Declarant could have simply written, "so long as" undeveloped property *exists in any given Cost Center*. It did not do so.

As another example—regarding situations where actual assessments are lower than permissible levels—the CC&R's provide that assessments for GAC and Cost Center Components must still be levied against developed property at the maximum permitted "*if, at that time*," undeveloped property is *also being assessed*. Again, the Declarant could have simply written, "if, at that time," undeveloped property *exists within the Property*. It did not do so.

Plaintiff also argues it is unfair not to levy Common Assessments against undeveloped property. This argument is not persuasive. The CC&R's were recorded in 1995, more than 25 years ago. The CC&R's "manifest the intent and expectations of the developer and those who take title to property in a common interest development." (*Pinnacle Museum Tower Ass'n v. Pinnacle Mkt. Dev. (US), LLC* (2012) 55 Cal.4th 223, 250.) By purchasing property within the HOA, each homeowner manifested their consent to the provisions of the CC&R's. Further, the Davis-Stirling Common Interest Development Act, Civ. Code, § 1350, et seq., acknowledges that developers have "latitude to place in declarations any term they deem appropriate, including provisions that afford them special rights and privileges, so long as such terms are not unreasonable." (*Pinnacle*, *supra*, at p. 242; see also Civ. Code, § 4275(e)(2) [stating that courts may not "eliminate any special rights, preferences, or privileges designated in the declaration as belonging to the declarant, without the consent of the declarant"].)

In summary, the HOA's and Serrano's separate motions for summary adjudication against plaintiff's 1st C/A for declaratory relief are granted.

TENTATIVE RULING # 1: PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION IS DENIED. SERRANO EL DORADO OWNERS' ASSOCIATION'S MOTION FOR SUMMARY ADJUDICATION AGAINST THE FIRST CAUSE OF ACTION TO THE THIRD AMENDED COMPLAINT IS GRANTED. SERRANO ASSOCIATES' MOTION FOR SUMMARY ADJUDICATION AGAINST THE FIRST CAUSE OF ACTION TO THE THIRD AMENDED COMPLAINT IS GRANTED. A LONG CAUSE ORAL ARGUMENT HEARING HAS ALREADY BEEN SCHEDULED FOR 1:30 P.M., FRIDAY, JULY 8, 2022, IN DEPARTMENT FOUR. PARTIES MAY APPEAR IN PERSON. IF ANY PARTY WISHES TO APPEAR REMOTELY THEY MUST APPEAR BY ZOOM.

Exhibit 2

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF EL DORADO

EL DORADO CO. SUPERIOR CT.

FILED MAR 04 2024

BY _____ Deputy

DEAN GETZ, individually and on behalf of past and present owners of developed Property,

Plaintiff,

vs.

SERRANO EL DORADO OWNER'S ASSOCIATION, SERRANO ASSOCIATES, LLC, and DOES 1-500, inclusive,

Defendants.

Case No.: PC20170113

RULING ON SUBMITTED MATTER

The above-entitled matter was set for oral argument on December 15, 2023 in Department 9 of the above-entitled court, the Honorable Gary Slossberg, Superior Court Judge, presiding. Plaintiff was represented by Glen Van Dyke and Dan Kholes. Defendant SERRANO EL DORADO OWNER'S ASSOCIATION (hereinafter "HOA") was represented by Arthur Harris. Defendant SERRANO ASSOCIATES, LLC (hereinafter "Serrano Associates") was represented by Dale C. Campbell and Josiah Prendergast.

The matter was before the court pursuant to Plaintiff's September 6, 2023 Motion for Summary Adjudication and both Defendants' Motions for Summary Judgment, each filed on September 28, 2023. As both Defendants raise the same issues in their respective motions and are aligned in their positions, the court collectively refers to them as "Defendants" in this ruling, unless otherwise noted.

On December 15, 2023, the court heard oral argument from the parties after which it took the matter under submission. The court also granted, without objection, all parties' respective requests for judicial notice. At oral argument, the parties agreed that, if the court were to grant Defendants' motions, Plaintiff's motion would be mooted as all causes of action would be resolved. As such, the court addresses Defendants' motions first.

I. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

The HOA manages the common interest development, Serrano El Dorado Master Planned Development (hereafter, "Development"), pursuant to a recorded Master Declaration of Covenants, Conditions, and Restrictions (hereinafter, "CC&Rs"). Among other provisions, the CC&Rs established various cost centers for the budgetary needs of properties within a certain area in the Development and the Master Basic cost center for Development-wide expenses. The CC&Rs also govern the assessments of both developed and undeveloped lots in the Development.

In 2011, Plaintiff purchased a home in the Development and thereby became a member. In 2014, Plaintiff became a member of the HOA Board, after which he became concerned about the lack of assessments of undeveloped lots and demanded that these assessments be reinstated. On March 16, 2017, Plaintiff filed the underlying complaint, since amended multiple times, with the Third Amended Complaint currently being the operative complaint in this action.

A central dispute between the parties was the interpretation of the CC&Rs, resolved by the court by way of summary adjudication on July 8, 2022. At the time, the court adopted its tentative ruling denying Plaintiff's Motion for Summary Adjudication as to the First Cause of Action and granting both Defendants' respective Motions for Summary Adjudication as to the First Cause of Action. However, in granting Defendants declaratory relief, the ruling itself did

not recite the actual language of the court's declaratory relief, instead succinctly stated that it had granted Defendants' motion which requested the following determinations:

1. That the CC&Rs are unambiguous and provide that common assessments against undeveloped lots are extinguished once common assessments against undeveloped lots at the initial, CPI-capped level, are sufficient to meet the relevant budgetary needs of the association, or
2. Alternatively, should this court determine the CC&Rs are ambiguous, that the undisputed facts regarding the parties' conduct following execution of the CC&Rs make clear the parties intended that common assessments against undeveloped lots would be extinguished once common assessments against developed lots at the initial, CPI-capped level were sufficient to meet the relevant budgetary needs of the association.

(See HOA's January 14, 2022 Motion for Summary Adjudication at 2.)

Nonetheless, what is clear upon review of the ruling is that the court adopted the reasoning of Defendants – that is, the clear "intent of the Declarant [of the CC&Rs] was to phase out assessments levied on undeveloped property once the assessments on developed property were sufficient to meet the relevant budgetary needs of the HOA, or there no longer existed undeveloped property in any cost center." (July 8, 2022 Tentative Ruling at 20.)

As to Exhibit D to the CC&Rs, which sets forth the relevant provisions regarding the assessments, the ruling states that "…once the revenue generated from developed property was sufficient to meet the HOA's budgetary needs, the subsidy payments made by owners of undeveloped property were no longer needed because it would have resulted in surplus funds being paid to or accumulated by the HOA, which surplus would have been refunded to the

owners of undeveloped property. **As such, Exhibit D was no longer needed.** Further because the CPI cap only pertained to the assessment provisions set forth in Exhibit D, the cap, too, was no longer in effect once undeveloped property was no longer subject to assessment pursuant to Exhibit D." (*Id.* at 23; emphasis added.)

Thus, the court finds that the July 8, 2022 adoption of the tentative ruling confirms that the common assessments against undeveloped lots are extinguished once common assessments against undeveloped lots at the initial CPI-capped level are sufficient to meet the relevant budgetary needs of the association.

The assessments at issue in this action arise from cost centers for which the HOA determined that the Exhibit D benefits (i.e., subsidies from owners of undeveloped property and a CPI cap on assessments on developed property) no longer apply. Specifically, the HOA made this determination for Cost Center 2 effective assessment year 2002, Cost Cener 3 effective assessment year 2003, Cost Center 7 effective assessment year 2004, and Master Basic effective assessment year 2005. (HOA's Memorandum at 8.)

While Plaintiff does dispute the basis for these determinations – i.e., that the respective Cost Centers' annual operating expenses "were never fully funded at or below the applicable CPI cap without a contribution from undeveloped property" (Plaintiff Dean Getz's Response to Defendant Serrano Associates, LLC's Separate Statement of Undisputed Material Facts Re Motion for Summary Judgment – Response #16, #26, and #34)[1] – Plaintiff does not dispute that the HOA made this determination, albeit, Plaintiff contends, incorrectly.

[1]Plaintiff similarly disputes material fact #41 regarding the determination for Master Basic. While the language in Plaintiff's response differs from the responses for the Cost Centers, the ultimate issue is the same – that is, that the HOA made an incorrect budgetary determination to the detriment of owners of developed property.

On September 6, 2023, Plaintiff filed his Motion for Summary Adjudication, requesting adjudication of the question of whether the HOA had[2] a duty to its members to demand that Serrano Associates pay its fair share of the costs for maintaining improvements to public property. In their September 28, 2023 Motions for Summary Judgment, Defendants argue that Plaintiff's causes of action which remain as to each of the Defendants are time-barred under the relevant statutes of limitations.

II.

LEGAL STANDARD

Motion for Summary Judgment

A motion for summary judgment shall be granted if there is no triable issue as to any material fact and the papers submitted show that the moving party is entitled to judgment as a matter of law. (Cal. Civ. Pro. § 437c.) A defendant moving for summary judgment need only show that one or more elements of the cause of action cannot be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849.) This can be done in one of two ways: either by affirmatively presenting evidence that would require a trier of fact not to find any underlying material fact more likely than not or by simply pointing out "that the plaintiff does not possess and cannot reasonably obtain, evidence that would allow such a trier of fact to find any underlying material fact more likely than not." (*Id.* at 845; *Brantly v. Pisaro* (1996) 42 Cal. App. 4th 1591, 1601.) Because of the drastic nature of a motion for summary judgment, the moving party's evidence is to be strictly construed, while the opposing party's evidence is to be

[2]The parties dispute whether Plaintiff's use of "had" at one place and "has" in another affects the outcome of the motion. As the court is granting Defendants' motions, thereby mooting Plaintiff's motion, the court need not address this issue.

liberally construed. (*A-H Plating, Inc. v. American National Fire Ins. Co.* (1997) 57 Cal. App. 4th 427, 433-434.)

The moving party bears the burden of making a prima facie case for summary judgment. (*White v. Smule, Inc.* (2022) 75 Cal. App. 5th 346.) In other words, the party moving for summary judgment must show that it is entitled to judgment as a matter of law on any theory of liability reasonably embraced within the allegations of the complaint. (*Doe v. Good Samaritan Hospital* (2018) 23 Cal. App. 5th 653, 661.) Given the moving party's burden of proof, even a motion for summary judgment which is left unopposed may still be denied if the moving party fails to meet its burden. (*Harman v. Mono General Hospital* (1982) 131 Cal. App. 3d 607, 613.) Nevertheless, where the defendant makes the required showing, the burden shifts to plaintiff to make a prima facie showing that there exists a triable issue of material fact. (*Zoran Corp. v. Chen* (2010) 185 Cal. App. 4th 799, 805.)

III.

DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT

Continuous Accrual Doctrine

The parties agree that the resolution of Defendants' motions turn primarily on whether Plaintiff's claims are subject to the continuous accrual doctrine. "As a general rule, a cause of action accrues and a statute of limitations begins to run when a controversy is ripe—that is, when all of the elements of a cause of action have occurred and a suit may be maintained. (*Howard Jarvis Taxpayers Assn. v. City of La Habra, supra,* 25 Cal.4th at p. 815, 107 Cal.Rptr.2d 369, 23 P.3d 601.) Where there is a continuing wrong, however, with periodic new injury to the plaintiff, the courts have applied what Justice Werdegar has termed a 'theory of continuous accrual.' (*Id.* at p. 822, 107 Cal.Rptr.2d 369, 23 P.3d 601; see also *Utility Audit Co.,*

Inc. v. City of Los Angeles (2003) 112 Cal.App.4th 950, 960–961, 5 Cal.Rptr.3d 520 ["continuing wrong"]; *Wells Fargo Bank v. Bank of America* (1995) 32 Cal.App.4th 424, 439, fn. 7, 38 Cal.Rptr.2d 521 ["a new breach occurs each month"].)" (*Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co.* (2004) 116 Cal.App.4th 1375, 1388 (*Armstrong*).)

The continuous accrual doctrine generally involves a recurring obligation, such as an installment payment. While allowing the claim to proceed, relief is limited to the alleged breaches that occurred within the statute of limitations period. For instance, in *Armstrong*, the plaintiff sought relief for an incorrect calculation of oil and gas revenues for which Plaintiff was entitled per the parties' written agreement. While the plaintiff had notice of defendant's method of calculations prior to and outside of the statute of limitations period, the court allowed claims for incorrect payments within the statutory period to proceed, deeming each new wrong payment to be a separate, actionable breach. (*Id.* at 1391.)

Similarly, in *Aryeh v. Canon Business Solutions, Inc.* (2013) 55 Cal.4th 1185 (*Aryeh*), the California Supreme Court held that a plaintiff's claims for overcharges from a vendor which were within the statute of limitations period could proceed even though the plaintiff was aware of the issue and unsuccessful resolution thereof prior to the period. As the court writes, "[the theory of continuous accrual] is a response to the inequities that would arise if the expiration of the limitations period following a first breach of duty or instance of misconduct were treated as sufficient to bar suit for any subsequent breach or misconduct; parties engaged in long-standing misfeasance would thereby obtain immunity in perpetuity from suit even for recent and ongoing misfeasance. In addition, where misfeasance is ongoing, a defendant's claim to repose, the principal justification underlying the limitations defense, is vitiated." (*Id.* at 1198.)

Plaintiff contends that like *Armstrong* and *Aryeh* (and like *Gilkyson v. Disney Enterprises, Inc.* (2016) 244 Cal.App.4th 1336 (*Gilkyson*), also cited by Plaintiff) here the HOA has a recurring obligation to set the assessments for developed and undeveloped lots. Plaintiff references the court's July 5, 2019 Ruling on Submitted Matter in which the court, at page 2, states that "...if the facts are proven, then every approval of a fee assessment is arguably a separate breach of the Association's fiduciary duty and an entirely different violation of the CC&R's." At the December 15, 2023 hearing, Plaintiff argued that it is the recurrent, periodic nature of the assessments that make the theory of continuous accrual applicable to this case.

In contrast, Defendants argue that the relevant inquiry is whether Plaintiff can show that homeowners like himself already had established an entitlement to benefits within the statutory period. (Reply Brief in Support of HOA's Motion for Summary Judgment or, Alternatively, Summary Adjudication at 8-9.) Defendants cite to *Dillon v. Board of Pension Com'rs of City of Los Angeles* (1941) 18 Cal.2d 427 (*Dillon*), in which the plaintiff applied for pension benefits and subsequently was denied. The plaintiff then filed an action for recovery of the benefits, but did so more than three years, the relevant statute of limitation, from the initial denial. In affirming the trial court's sustaining of defendant's demurrer without leave to amend, the California Supreme Court distinguished this case from its earlier decision in *Dryden v. Board of Pension Commrs.* (1936) 6 Cal.2d 575, in which the court held that the right to receive periodic pension payments is continuing and that "any time limitation upon the right to sue for each instalment necessarily commences to run from the time when that instalment actually falls due." (*Dillon* at 430.) The Court noted, however, that "[b]efore plaintiff can claim these periodic payments, however, she must establish her right to a pension... An action to determine the

existence of the right thus necessarily precedes and is distinct from an action to recover instalments which have fallen due after the pension has been granted." (*Id.*)

The court finds that Plaintiff's focus on the recurrent nature of the obligation in this case is an oversimplification of the analysis. As illustrated by the Supreme Court in *Dillon*, not every periodic obligation triggers the continuous accrual doctrine; rather, a failure to establish the benefit could preclude its application. Here, Defendants assert that, given the HOA notified its membership that the Exhibit D benefits would no longer apply to Cost Center 2, 7, and 3 and to Master Basic more than four years prior to the commencement of this lawsuit, Plaintiff had to first challenge the HOA's determination within the statute of limitations for each determination to effectively challenge the assessments themselves. While the sufficiency of the HOA's determination is in dispute, Plaintiff concedes that the HOA notified its memberships of these determinations around the time of the determination. (Plaintiff's December 1, 2023 Opposition to Serrano El Dorado Owners' Association Motion for Summary Judgment or, Alternatively Summary Adjudication at 8-9.)

The court finds Defendants' position to be more persuasive and finds that the case authorities cited by Plaintiff are distinguishable from the facts in the present case. In *Armstrong, Aryeh*, and *Gilkyson*, the plaintiff's recourse was based on a violation of contract provisions that remained in full force and effect. Here, as confirmed by the court in its July 8, 2022 ruling, the Exhibit D benefits, including the subsidies from undeveloped lots, would extinguish once common assessments against undeveloped lots at the initial CPI-capped level were sufficient to meet the relevant budgetary needs of the association. Between 2001 and 2005, for the relevant Cost Centers and Master Basic, the HOA determined that the annual expenses were fully funded at or below the applicable CPI cap without a contribution from

undeveloped property. The court finds that these determinations extinguished the Exhibit D benefits for these Cost Centers and Master Basic, subject to a timely legal challenge. As no timely challenge was made, at the time of commencement of Plaintiff's action in 2017 the Exhibit D benefits long had been extinguished, unlike the facts in *Armstrong, Aryeh*, and *Gilkyson*. As such, the continuous accrual doctrine is not applicable to this case.

Plaintiff's citation to *Howard Jarvis Taxpayers Ass'n v. City of La Habra* (2001) 25 Cal.4th 809 (*Howard Jarvis*) is unhelpful to his position. In *Howard Jarvis*, the plaintiff challenged tax assessments imposed without voter approval in violation of Proposition 62, whose constitutionality had recently been upheld by the California Supreme Court. The California Supreme Court held that, "...where the three-year limitations period for actions on a liability created by statute (Code Civ. Proc., § 338, subd. (a)) applies, and no other statute or constitutional rule provides differently, the validity of a tax measure may be challenged within the statutory period after any collection of the tax, regardless of whether more than three years have passed since the tax measure was adopted." (*Id.* at 825.) Distinct from the present case, however, the tax assessment in question in *Howard Jarvis* was illegal per Proposition 62, making every imposition of the tax after its enactment a violation of law. Unfortunately for Plaintiff, no similar facts exist in this case. Rather, while the amount of the assessments at issue here arguably may have been the result of incorrect determinations made several years earlier, the imposition of the assessments themselves (and their amounts) did not violate the law.

The court has considered the other case authorities cited by the parties and finds that none persuade the court that the continuous accrual doctrine is applicable under the facts of this case. As such, the court finds that a single statutory period applies to Plaintiff's causes of action.

Delayed Discovery Rule

Plaintiff further asserts that under the delayed discovery rule Defendants should be equitably estopped from asserting their statute of limitations defense. "[U]nder the delayed discovery rule, a cause of action accrues and the statute of limitations begins to run when the plaintiff has reason to suspect an injury and some wrongful cause, unless the plaintiff pleads and proves that a reasonable investigation at that time would not have revealed a factual basis for that particular cause of action. In that case, the statute of limitations for that cause of action will be tolled until such time as a reasonable investigation would have revealed its factual basis." (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 803.)

Plaintiff argues that the HOA provided its members with false information, specifically that events occurred that made the Exhibit D benefits no longer applicable to certain Cost Centers and to Master Basic. Plaintiff asserts, without evidentiary support, that these false representations prevented Plaintiff or any other person with standing from discovering and investigating the HOA's claims.

As Defendants correctly note, the purported falsity of the representations is immaterial; what is material is whether a homeowner would have been on sufficient notice and whether a reasonable investigation would not have revealed a factual basis for the cause of action.

Plaintiff has failed to provide a sufficient evidentiary showing that he (or anyone else) was prevented from uncovering the purported errors in the HOA's claims through a reasonable investigation. Thus, the court declines to find that there are triable issues of material fact as to whether the delay discovery rule applies.

Adverse Domination of the HOA Board

Finally, Plaintiffs argue that the statute of limitations should be tolled while the HOA Board was controlled by Serrano Associates. "A statute of limitations tolls when a claim arises from a director's or employee's defalcation and the wrongdoers' control makes discovery impossible. (*San Leandro Canning Co., Inc. v. Perillo* (1931) 211 Cal. 482, 487 [295 P.2d 1126]; *Admiralty Fund v. Peerless Ins. Co.* (1983) 143 Cal.App.3d 379, 387 [191 Cal.Rptr. 753].)" (*Smith v. Superior Court* (1990) 217 Cal.App.3d 950, 954 (*Smith*).)

Plaintiff has provided competent evidence from a prior HOA Board Member that a majority of employees of the developer controlled the HOA Board from 1995 to 2014. (See Plaintiff Dean Getz's Table of Exhibits in Support of Plaintiff's Opposition to Serrano El Dorado Owners' Association's Motion for Summary Judgment or Summary Adjudication and Serrano Associates, LLC's Motion for Summary Judgment: Exhibit 14 - Deposition of Jim Parker at 59-61; *Id.* - Exhibit 15.) However, nowhere in the evidence is there competent support for the contention that "the wrongdoers' control [made] discovery impossible." (*Smith* at 954.)

Rather, the HOA Board gave timely notice of their determination that Exhibit D no longer applied to certain Cost Centers and Master Basic. Plaintiff has provided no evidence that the HOA's budget (or other records) were kept from the view of homeowners for them to be able to verify whether the HOA's representations were accurate. While the fact that the developer's employees occupied a majority of the HOA Board certainly may raise suspicions, Plaintiff has presented no competent evidence to raise triable issues of material fact beyond mere speculation.

IV.

DISPOSITION

The court finds as a matter of law that the continuous accrual doctrine does not apply to the facts of this case. Rather, a single statute of limitations period applies which runs from each determination of the HOA as to inapplicability of Exhibit D to the relevant Cost Center or Master Basic. The court finds that there are no triable issues of material fact as to this determination.

Moreover, the court finds that there are no triable issues of material fact as to whether the delayed discovery rule applies or to whether the statute of limitations should be tolled under the adverse domination doctrine. As such, the court finds that all Plaintiff's remaining causes of action against the Defendants are time-barred.

The court grants both Defendants' Motions for Summary Judgment. The court need not address Plaintiff's Motion for Summary Adjudication, deeming it mooted by the resolution of Defendants' motions. The court vacates all pending hearings in the matter.

IT IS SO ORDERED.

Dated: March 4, 2024

GARY SLOSSBERG
Superior Court Judge