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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re

RICHARD CARROLL SINCLAIR,

Debtor.

Case No. 14-91565-E-7

ANDREW KATAKIS; CALIFORNIA
EQUITY MANAGEMENT GROUP, INC.,
a California corporation; and FOX
HOLLOW OF TURLOCK OWNERS'
ASSOCIATION,

Plaintiffs,

v.

RICHARD CARROLL SINCLAIR,

Defendant.

Adv. Proc. No. 15-9009
Docket Control No. HAR-2

**This Memorandum Decision is not appropriate for publication.
It may be cited for persuasive value on the matters addressed.**

MEMORANDUM OPINION AND DECISION
Motion for Summary Judgment Filed by Andrew Katakis,
California Equity Management Group, and Fox Hollow of Turlock Owners' Association

Andrew Katakis, California Equity Management Group, Inc., and Fox Hollow of Turlock Owners' Association (collectively "Katakis Plaintiffs"), the Plaintiffs in this Adversary Proceeding, have filed a Motion for Summary Judgment. Motion, Dckt. 74. This Adversary Proceeding is just one of many actions, lawsuits, appeals, adversary proceedings, and contested matters between Katakis Plaintiffs and Richard Sinclair, the Defendant (referred to as "Defendant-Sinclair" or

1 “Mr. Sinclair” in this Ruling). The Motion for Summary Judgment seeks a judgment that Defendant-
2 Sinclair’s obligation on the state court judgment Katakis Plaintiffs obtained in the amount of
3 \$1,066,503.52, plus interest, costs, and expenses (“Final State Court Judgment”) in *Mauctrst, LLC*
4 *et al. v. Katakis et al.*, California Superior Court, County of Stanislaus Case No. 332233 (“State
5 Court Action”) is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) [actual fraud] and
6 11 U.S.C. § 523(a)(6) [willful and malicious injury]. The Statement of Decision upon which the
7 Final State Court Judgment is based has been filed in support of the Motion for Summary Judgment
8 as Exhibit 5 (“State Court Decision”). Dckt. 78. Katakis Plaintiffs assert that the findings and
9 determinations in the Final State Court Judgment and the State Court Decision are to be given
10 preclusive effect pursuant to the doctrine of collateral estoppel. The Final State Court Judgment
11 arises out of litigation relating to real property in Turlock, California, which is referred to as the “Fox
12 Hollow Property” in this Ruling.

13 Further, Katakis Plaintiffs assert that the findings and determinations of the State Bar Court
14 in *In the matter of Richard Carroll Sinclair*, Member No. 68238, Case Nos. 13-O-10657-PEM,
15 13-O-11618 (Cons.) (“State Bar Court Action”), are to be given preclusive effect pursuant to the
16 doctrine of collateral estoppel. It is asserted that such findings support the relief requested by
17 Katakis Plaintiffs and that such findings and determinations cannot be relitigated by Defendant-
18 Sinclair in this (or any other) proceeding. The Decision and Order for Involuntary Inactive
19 Enrollment (“State Bar Court Decision”) has been filed in support of the Motion for Summary
20 Judgment as Exhibit 12. Dckt. 79.

21 The court has reviewed the extensive, almost two decades long, battles between Katakis
22 Plaintiffs and Defendant-Sinclair in two recent decisions in Defendant-Sinclair’s bankruptcy case,
23 Bankr. E.D. Cal. No. 14-91565 (“Bankruptcy Case”), in this court. The first is the Memorandum
24 Opinion and Decision granting the motion of the Chapter 7 Trustee in Defendant-Sinclair’s
25 Bankruptcy Case to settle claims and counterclaims of the estate with Katakis Plaintiffs. 14-91565;
26 Dckt. 535. The second is this court’s Memorandum Opinion and Decision sustaining the Chapter 7
27 Trustee’s objection to Defendant-Sinclair’s claim of a personal injury exemption in the “malicious
28 prosecution suit” (term as used by Defendant-Sinclair on Schedules B and C filed under penalty of

perjury) against Katakis Plaintiffs. *Id.*, Dckt. 558. Those decisions contain extensive discussions of the litigation between these Parties and the Defendant-Sinclair’s general litigation strategy.

It is proper for the court to grant summary judgment when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a), Fed. R. Bankr. P. 7056. The alternative relief requested is that the court enter an order determining the material facts which are not genuinely in dispute and treating such facts as established in this case. Fed. R. Civ. P. 56(a), Fed. R. Bankr. P. 7056.

As a general rule, summary judgment motions are focused and nail down the “simple” undisputed facts. Here, the Motion for Summary Judgment has spawned the following pleadings:

A.	Motion for Summary Judgment.....	16 Pages
B.	Motion Points and Authorities.....	40 Pages
C.	Motion Declaration of Greg Durbin (Plaintiffs’ Counsel).....	5 Pages
D.	Motion Declaration Exhibits.....	36 Pages
E.	Motion Exhibits, Set 1.....	163 Pages
F.	Motion Exhibits, Set 2.....	148 Pages
G.	Motion, Statement of Undisputed Facts.....	21Pages
H.	Defendant-Sinclair Substantive Opposition.....	96 Pages
I.	Defendant-Sinclair Procedural Opposition - Insufficient Service.....	4 Pages
J.	Defendant-Sinclair Substantive Opposition Declaration.....	14 Pages
K.	Defendant-Sinclair Procedural Opposition Declaration.....	3 Pages
L.	Reply Memorandum to Opposition.....	18 Pages
M.	Reply Objections to Opposition.....	3 Pages
N.	Reply Declaration.....	4 Pages
O.	Reply Declaration Exhibits.....	46 Pages
P.	Defendant-Sinclair Supplemental Substantive Opposition.....	26 Pages
Q.	Defendant-Sinclair Supplemental Substantive Opposition Declaration.....	57 Pages

One could well imagine a grizzled trial judge, applying the “scale test,”¹ summarily concluding that if this many pounds of “electronic paper” have to be produced for facts and legal issues that must not be genuinely in material dispute, they must all be in “genuine dispute.” Such a conclusion would be incorrect with these parties, as the 700 pages of pleadings are well less than when these parties are fighting about matters that they both believe are “genuinely in material dispute.”

The court grants the Motion for Summary Judgment, with judgment to be entered for Katakis Plaintiffs and against Defendant-Sinclair determining that the obligation arising under the Final State

¹ This is a reference to the belief of many college students that professors and teaching associates just weigh term papers, giving A’s to those with the greatest weight, not quality of content.

1 Court Judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(6) [willful and malicious
2 injury]. The Motion for Summary Judgment is denied without prejudice to adjudication of the
3 claims, objections, and defenses to the claim that the obligation owed on the Final State Court
4 Judgment is nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) [actual fraud], which shall be
5 determined at trial.

6 The court also determines pursuant to Federal Rule of Civil Procedure 56(g) and Federal Rule
7 of Bankruptcy Procedure 7056 that the findings, conclusions, and determinations of the California
8 Superior Court and the California State Bar Court set forth in Addenda A and B, respectively, are
9 determined to not be in material disputed in this Adversary Proceeding and are established for all
10 parties and purposes in this Adversary Proceeding.

11
12 **TABLE OF CONTENTS
FOR MEMORANDUM OPINION AND DECISION**

13 Though the court concludes that there are no genuine disputes as to the material facts with
14 respect to relief pursuant to 11 U.S.C. § 523(a)(6), the complexity of the opposition by Defendant-
15 Sinclair and the extensive findings and determinations in the judgments and decisions of the
16 California Superior Court and State Bar Court considered by this court for the application of
17 collateral estoppel have resulted in a long Memorandum Opinion and Decision.² The court provides
18 the following Table of Contents to the major sections of this decision:

19 **PART I** – Defendant-Sinclair’s Procedural Opposition Asserting Inadequate Service
20 and Katakis Plaintiffs’ Request to Strike Defendant-Sinclair’s
Substantive Opposition as Untimely.....Pg. 5

21 **PART II** – Review of: (1) Katakis Plaintiffs’ Motion for Summary Judgment;
22 (2) Substantive Opposition Presented by Defendant-Sinclair; and (3) Supplemental
Substantive Opposition Presented by Defendant-Sinclair.....Pg. 12

23 **PART III** – Findings and Determinations of State Court and State Bar Court
24 Subject to Collateral Estoppel and Determined Not in Material Dispute Pursuant
to Fed. R. Civ. P. 52(g) and Fed. R. Bankr. P. 7056.....Pg. 41

25
26 ² This court acknowledges that the structure of this Memorandum Opinion and Decision may be
27 very detailed in explaining the numerous opposition grounds and addressing (for some, multiple times)
28 each asserted by Defendant-Debtor. This is intentional and provides the reader with a sense of
Defendant-Sinclair’s repetitive, anything goes, take no prisoners, and throw everything at the court
without regard to there being any legal merit or evidentiary support litigation strategy and conduct.

1 **PART IV** – Decision Denying Motion for Summary Judgment, Without Prejudice,
2 Requesting Relief Pursuant to 11 U.S.C. § 523(a)(2), and Granting Motion for
Summary Judgment for Relief Pursuant to 11 U.S.C. § 523(a)(6).....Pg. 48

3 **PART I**

4 **DEFENDANT-SINCLAIR OPPOSITION BASED** 5 **ON ALLEGED DEFICIENT SERVICE**

6 The Motion for Summary Judgment was filed on January 23, 2017, and set for hearing on
7 February 23, 2017 – 31 days later. No special notice period is provided in the Local Bankruptcy
8 Rules for a motion for summary judgment. L.B.R. 7056-1. No special notice period is provided for
9 a motion for summary judgment under either the Federal Rules of Civil Procedure or Federal Rules
10 of Bankruptcy Procedure. The minimum notice required is 28 days as provided in Local Bankruptcy
11 Rule 9014-1(f)(1), (f)(2)(A). The Certificate of Service filed for the Motion for Summary Judgment
12 states that the Motion for Summary Judgment and supporting pleadings were served by U.S. Mail,
13 deposited with the U.S. Postal Service, on January 26, 2017 – 28 days before the February 23, 2017
14 hearing date.

15 The initial opposition to the Motion for Summary Judgment was filed by Defendant-Sinclair
16 on February 14, 2017, Dckt. 86 (“Substantive Opposition”) and is 96 pages in length.

17 Defendant-Sinclair, by separate pleading, argued that the Motion for Summary Judgment
18 should be denied or the hearing continued based on an assertion that the Motion for Summary
19 Judgment documents were not received by him until February 10, 2017. Dckt. 89 (“Procedural
20 Opposition”). Defendant-Sinclair asserts that this was one day before he had to have his opposition
21 prepared and filed.

22 In addition to asserting a defect in service, Defendant-Sinclair also requests in the Procedural
23 Opposition that the court issue injunctive relief and order the Trustee and Trustee's counsel to join
24 the Defendant-Sinclair in his desired prosecution of the claims against Katakis Plaintiffs, which
25 claims have previously been settled by the Chapter 7 Trustee.

26 Defendant-Sinclair asserts that there is a defect in service because the Motion for Summary
27 Judgment and supporting pleadings were not mailed to his address at 8212 Oak View Drive,
28 Oakdale, California, a residence he states he moved into in September 2016. The Certificate of

1 Service (Dckt. 85) states that the Motion for Summary Judgment and supporting pleadings were
2 mailed to Post Office Box 1628 in Oakdale, California, which Defendant-Sinclair identifies as the
3 Post Office Box used by him for his law practice before he was disbarred by the California Supreme
4 Court. Defendant-Sinclair asserts that Katakis Plaintiffs “knew” he was no longer operating his law
5 office and had moved into the Oak View Drive residence.

6 Defendant-Sinclair filed his Procedural Opposition Declaration providing his testimony
7 relating to this service dispute. Dckt. 88. He directs the court’s attention to what he identifies as the
8 envelope in which the Motion for Summary Judgment and supporting pleadings were mailed.
9 Exhibit “Unnumbered” attached to Procedural Opposition Declaration, Dckt. 88. He opines in the
10 Procedural Opposition Declaration that the documents were not received at his post office box until
11 February 4, 2017, based on what appears to be a forwarding label placed on the envelope by the U.S.
12 Postal Service. However, the label does not state that February 4, 2017, is when the envelope with
13 the documents was received. Rather, it appears that this is the date the forwarding label was
14 prepared and the U.S. Postal Service forwarded the documents to Defendant-Sinclair.

15 Not surprisingly, Katakis Plaintiffs vigorously argue that Defendant-Sinclair’s Procedural
16 Opposition should be overruled, concluding that Defendant-Sinclair’s contentions that he has ceased
17 using the Post Office Box are false and that such contentions are without merit. Objection to
18 (Procedural) Opposition Based on Service, Dckt. 92. Therefore, Katakis Plaintiffs assert the court
19 should ignore the Substantive Opposition and issue a ruling on the Motion for Summary Judgment
20 based just on review of the Katakis Plaintiffs’ pleadings. Greg Durbin, attorney for Katakis
21 Plaintiffs, personally joins the fray providing testimony about the application of the Local
22 Bankruptcy Rules and the record in this Adversary Proceeding and Defendant-Sinclair’s Bankruptcy
23 Case. He directs the court to Defendant-Sinclair using the Post Office Box 1628 address as late as
24 February 14, 2017 (just nine days before the scheduled hearing on the Motion for Summary
25 Judgment) for pleadings filed in and in connection with the Bankruptcy Case.

26 ///

27 ///

28 ///

**Addresses of Record and Addresses Used by Defendant-Sinclair
in this Adversary Proceeding and Chapter 7 Bankruptcy Case**

As this court previously addressed in the Bankruptcy Case, Defendant-Sinclair is an attorney who was formerly licensed to practice law in the State of California. Though disbarred, this court has concluded, and continues to conclude, that Defendant-Sinclair is a highly educated, experienced attorney and business person. *See* 14-91565; Memorandum Opinion and Decision, Dckt. 535.

In this Adversary Proceeding, the court's official address of record for Defendant-Sinclair is:

Richard Carroll Sinclair
PO Box 1628
Oakdale CA 95361

No change of address has been filed by Defendant-Sinclair in this Adversary Proceeding.

The pleadings filed by Defendant-Sinclair in this Adversary Proceeding document the address used by Defendant-Sinclair in this proceeding:

Date Filed	Pleading	Address Stated on Pleadings by Defendant-Sinclair
2017/02/14 Dckt. 89	Procedural Opposition to Summary Judgment Motion, Notice Requirements Not Met	RICHARD C. SINCLAIR 8212 Oak View Drive OAKDALE, CA. 95361
Dckt. 88	Procedural Opposition Declaration of Richard Sinclair	
Dckt. 87	Substantive Opposition Declaration of Richard Sinclair	
Dckt. 86	Substantive Opposition to Summary Judgment Motion	
2016/12/01 Dckt. 66	Supplemental Status Report	RICHARD SINCLAIR PO Box 1628 OAKDALE, CA. 95361
2015/11/25 Dckt. 45	Answer to Complaint	RICHARD C. SINCLAIR PO BOX 1628 OAKDALE, CA. 95361

In this Adversary Proceeding, Defendant-Sinclair has filed a limited number of documents. However, there have been a substantial number of documents filed by Defendant-Sinclair in the Bankruptcy Case. Taken at face value, Defendant-Sinclair's use of the street address rather than his

Post Office Box arises now, only in this Adversary Proceeding when he is trying to prevent the court from considering and ruling on the Motion for Summary Judgment. In his Procedural Opposition and Procedural Opposition Declaration, Defendant-Sinclair offers no explanation why he would not continue to use a post office box as a fixed locus for receiving his important mail, not only from his former law practice and business dealings, but all of the (trial and appellate) state and federal court proceedings that he has been recently prosecuting and defending using the Post Office Box as his mailing address.

Turning to Defendant-Sinclair's Bankruptcy Case, the court's address of record provided by Defendant-Sinclair is:

Richard Carroll Sinclair
PO Box 1628
Oakdale CA 95361

In reviewing the court's files for the Bankruptcy Case, the records reflect Defendant-Sinclair using the following addresses on his pleadings:

Date Filed	Pleading Filed in Bankruptcy Case No. 14-91565	Address Stated on Pleadings by Defendant-Sinclair
2017/02/14 Dckt. 557	Request for Judicial Notice in Support of Motion to Abandon	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2017/02/14 Dckt. 556	Declaration of Richard Sinclair in Support of Motion to Abandon	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2017/02/14 Dckt. 555	Notice of Motion to Abandon	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2017/02/14 Dckt. 554	Motion to Abandon	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2017/01/20 Dckt. 542	Supplemental Opposition to Bifurcation Motion	RICHARD C. SINCLAIR PO Box 1628 Oakdale, Ca. 95361
2017/01/11 Dckt. 539	Request for Judicial Notice	RICHARD C. SINCLAIR PO Box 1628 Oakdale, Ca. 95361

2017/01/11 Dckt. 538	Supplemental Opposition to Bifurcation Motion	RICHARD C. SINCLAIR PO Box 1628 Oakdale, Ca. 95361
2016/12/21 Dckt. 529	Exhibit to Opposition to Motion to Approve Settlement (The Exhibit is a copy of a current pleading that Defendant-Sinclair sought to file in the Stanislaus County Superior Court Action. The address listed for Defendant-Sinclair on the proposed pleading is: RICHARD C. SINCLAIR, P.O. Box 1628, Oakdale, CA 95361)	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/12/21 Dckt. 528	Exhibit to Opposition to Motion to Approve Settlement	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/12/21 Dckt. 527	Exhibit to Opposition to Motion to Approve Settlement	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/12/21 Dckt. 526	Debtor's Claim For Exemptions, Request for Judicial Notice, Declaration of Richard Sinclair	RICHARD C. SINCLAIR PO Box 1628 Oakdale, CA. 95361
2016/12/21 Dckt. 525	Debtor's Claim for Exemptions	RICHARD C. SINCLAIR PO Box 1628 Oakdale, CA. 95361
2016/12/21 Dckt. 524	Debtor's Claim for Exemptions	RICHARD C. SINCLAIR PO Box 1628 Oakdale, CA. 95361
2016/12/01 Dckt. 488	Status Conference Statement	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/12/01 Dckt. 487	Opposition to Motion to Approve Compromise	RICHARD C. SINCLAIR PO Box 1628 Oakdale, CA 95361
2016/12/01 Dckt. 486	Motion to Abandon State Court Action	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/11/28 Dckt. 485	Status Conference Statement	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/11/22 Dckt. 484	Supplemental Status Conference Statement	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361

2016/11/16 Dckt. 471	Request for Judicial Notice	RICHARD C. SINCLAIR PO Box 1628 Oakdale, Ca. 95361
2016/11/16 Dckt. 470	Motion to File Fourth Amended Cross Complaint [in state court action], Declaration of Richard Sinclair, and Points and Authorities	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/11/16 Dckt. 469	Exhibit to Motion to File Fourth Amended Cross Complaint (The exhibit is a copy of the proposed fourth amended cross complaint which lists Defendant-Sinclair's address as: RICHARD C. SINCLAIR, P.O. Box 1628, Oakdale, CA 95361)	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/11/16 Dckt. 468	Status Conference Statement	RICHARD C. SINCLAIR P.O. Box 1628 Oakdale, CA 95361
2016/08/08 Dckt. 452	Reply and Opposition to Objection to Claim of Exemptions	RICHARD C. SINCLAIR PO Box 1628 Oakdale, CA. 95361

During the period of time from August 2016 through his latest filing on February 14, 2017, Defendant-Sinclair uniformly and continuously states on his pleadings that his address for these bankruptcy proceedings is: RICHARD C. SINCLAIR, P.O. Box 1628, Oakdale, CA 95361.

The only aberration from P.O. Box 1628, Oakdale, California, being Defendant-Sinclair's mailing address in the Bankruptcy Case and this Adversary Proceeding is in connection with the current Procedural Opposition to this Motion for Summary Judgment. The presentation of this Procedural Opposition appears to be solely an attempt to improperly deter, deflect, and prevent the court from addressing the Motion for Summary Judgment on its merits.

The court concludes that the contentions made in the Procedural Opposition - Notice Requirements Not Met, Dckt. 89, are without merit and have not been advanced in good faith. The court further concludes that Defendant-Sinclair's testimony under penalty of perjury in the Procedural Opposition Declaration in support of the contention that there is a defect in service, Dckt. 88, is not credible.³ These statements are inconsistent with the objective facts shown by all

³ In making reference to assessing the "credibility" of Defendant-Sinclair's testimony, it is in connection with his Procedural Opposition that the Motion for Summary Judgment should be denied or

1 of the other documents Defendant-Sinclair filed in which he states (and knows that other parties and
2 the court will rely on) that his address for these bankruptcy proceedings is: RICHARD C.
3 SINCLAIR, P.O. Box 1628, Oakdale, CA 95361.

4 As discussed by the court in the two Memorandum Opinions and Decisions referenced above,
5 Defendant-Sinclair has manifested in this court a litigation strategy of saying whatever he believes
6 to be to his advantage, without regard to it being legally or factually supportable. The prominent part
7 of Defendant-Sinclair's (who it must be remembered is a highly educated, experienced attorney,
8 notwithstanding having been disbarred) litigation strategy is to delay, deter, and prevent the court
9 from addressing matters on the merits, working hard to stay in what the court has identified as a
10 "litigation death spiral" with Katakis Plaintiffs.

11 Though denying the meritless assertion of defective service, Defendant-Sinclair has presented
12 his initial Substantive Opposition (96 pages) and Substantive Opposition Declaration (14 pages).
13 In addition, as discussed below, the court has allowed Defendant-Sinclair to file his Supplemental
14 Substantive Opposition (26 pages) and Supplemental Substantive Opposition Declaration (57 pages).
15 Defendant-Sinclair has extensively opposed the present Motion for Summary Judgment, presenting
16 the best opposition he could.

17 The request for a continuance is denied.

18 **Denial of Request by Katakis Plaintiffs to Strike**
19 **Defendant-Sinclair's Substantive Opposition Pleadings as Untimely**

20 The court also denies the request of Katakis Plaintiffs to strike Defendant-Sinclair's
21 Substantive Opposition and rule based just on the pleadings filed by Katakis Plaintiffs. It is obvious
22 that Katakis Plaintiffs have filed extensive pleadings, including a response to the Substantive
23 Opposition, fulling teeing up the issues for the court. No prejudice has been shown by the delay in
24 Defendant-Sinclair in filing his Substantive Opposition. If Katakis Plaintiffs needed more time to
25 respond, they could have requested an extension of time.

26 the hearing continued due to alleged defective service. The court does not assess the "credibility" of the
27 testimony provided by Defendant-Sinclair in connection with the substantive opposition to the Motion
28 for Summary Judgment issues and determining if there are material issues in genuine dispute with respect
to the Final State Court Judgment. Fed. R. Civ. P. 56(a), (g), and Fed. R. Bankr. P. 7056.

1 The filing of pleadings and the failure to comply with the deadlines imposed by Local
2 Bankruptcy Rule 9014-1(f)(1) are addressed in Local Bankruptcy Rule 9014-1(l), which provides:

3 (l) Sanctions. Failure to comply with the requirements of this Local Rule or the
4 provisions of other Local Rules applicable to motion practice shall constitute
5 grounds, without limitation, to deny the motion, strike late-filed pleadings and
6 documents, continue the hearing on the motion, deem the moving party to have
7 waived the time limitations of 11 U.S.C. § 362(e), deny the offending party the
8 ability to appear by telephone, or assess other appropriate sanctions.

9 The Local Rules do not impose a prophylactic “No Pleadings For You!” penalty for an untimely
10 filing. Rather, the judge is left with a wide range of options to ensure that matters are fairly and
11 properly addressed. Here, striking the Substantive Opposition might well likely be what Defendant-
12 Sinclair would prefer, giving him a colorable issue on appeal to continue in the “litigation death
13 spiral.”

14 No prejudice is shown by allowing the belated filing of the Substantive Opposition. There
15 is no surprise to what is asserted in the Substantive Opposition. Katakis Plaintiffs have provided
16 their detailed response to the Substantive Opposition, which applies equally to the Supplemental
17 Substantive Opposition. Determination of the Motion for the Summary Judgment on the merits is
18 warranted and properly before the court.

19 **PART II**

20 **REVIEW OF MOTION FOR SUMMARY JUDGMENT, 21 DEFENDANT-SINCLAIR SUBSTANTIVE OPPOSITION, 22 AND**

23 **DEFENDANT-SINCLAIR SUPPLEMENTAL SUBSTANTIVE OPPOSITION**

24 The consideration of the Motion for Summary Judgment begins with the Motion for
25 Summary Judgment itself and the fundamental requirement for motion practice in federal court – the
26 motion for summary judgment itself must state with particularity the grounds upon which the
27 requested relief is based. Fed. R. Civ. P. 7(b), Fed. R. Bankr. P. 7007.

28 **Motion for Summary Judgment and Supporting Pleadings**

The Motion for Summary Judgment states that Katakis Plaintiffs seek a determination that
the Final State Court Judgment is nondischargeable. The Final State Court Judgment was affirmed
on appeal by the California District Court of Appeal (“DCA”) in *Sinclair v. Katakis et al.*, Cal. DCA

1 5th Cir. No. F058822, 2013 Cal. App. Unpub. LEXIS 509 (2013) (“DCA Opinion”). Exhibit 9,
2 Dckt. 79.

3 It is asserted by Katakis Plaintiffs that the findings and determinations in the State Court
4 Action, which was between Katakis Plaintiffs and Defendant-Sinclair (and other allied, alter-ego
5 parties of Defendant-Sinclair), are subject to the doctrine of collateral estoppel, which results in such
6 findings and determinations being binding on the Parties in this Adversary Proceeding.

7 **Evidence Presented in Support of Motion for Summary Judgment**

8 Katakis Plaintiffs filed the following evidence in support of the Motion for Summary
9 Judgment:

10 A. Declaration of Greg Durbin, attorney for Katakis Plaintiffs. Dckt. 80. This
11 testimony is summarized as follows:

- 12 1. Mr. Durbin and his firm substituted in as counsel for Katakis Plaintiffs in
13 2008 in the State Court Action.
- 14 2. A 36-day trial was conducted in the State Court Action.
- 15 3. Proof of Claim No. 4 filed by Katakis Plaintiffs is for the attorneys’ fees and
16 costs awarded in the State Court Action and appeal of the Final State Court
17 Judgment.

18 B. Declaration of Greg Durbin, attorney for Katakis Plaintiffs as testimony to
19 authenticate the Exhibits A-C filed in support of the Motion for Summary Judgment.
20 Dckt. 81.

21 C. Exhibits A-C, Dckt. 81, consisting of (the subparagraph letter below corresponds to
22 the Exhibit letter):

- 23 (A) Trial Brief of Defendants and Cross-Complainants California Equity
24 Management, Inc. and Andrew Katakis, and Defendant Fox Hollow of
25 Turlock Owners Association filed November 14, 2008.
- 26 (B) Proof of Claim 4 as amended, filed February 12, 2015.
- 27 (C) Proof of Claim 4 as amended, filed June 3, 2016.

28 D. Request for Judicial Notice, Exhibits 1 - 13. Dckt. 77.

E. Exhibits 1-13, Dckts. 78 and 79, consisting of (the subparagraph number below
corresponds to the Exhibit number):

1. Complaint, Stanislaus Superior Court Case No. 332233, filed April 24, 2003.
2. Fifth Amended Complaint, Stanislaus Superior Court Case No. 332233, filed
May 18, 2005.

3. Defendants and Cross-Complainants Answer to Fifth Amended Complaint, Stanislaus Superior Court Case 332233, filed November 14, 2005.
4. Statement of Decision, Stanislaus Superior Court Case No. 332233, filed August 18, 2009.
5. Judgment, Stanislaus Superior Court Case No. 332233, filed August 18, 2009.
6. Order on Defendants' Petition to Amended Judgment to Add Judgment Debtor, Stanislaus Superior Court Case No. 332233, filed April 5, 2010.
7. Order on Motion to Determine Prevailing Party on Contract and Statute and Fix Amount of Attorney's Fees, Stanislaus Superior Court Case No. 332233, filed April 5, 2010.
8. Amended Judgment, Stanislaus Superior Court Case No. 332233, filed June 21, 2010.
9. Remittitur and Opinion, California Court of Appeal Case No. F058822, filed April 29, 2013.
10. Remittitur and Opinion, California Court of Appeal Case No. F060497, filed March 25, 2013.
11. Order and Judgment re: (1) Judgment Creditors' Motion for Attorneys' Fees against Mauctrst, LLC; (2) Judgment Debtor Stanley Flake, individually and as Trustee of Capstone's Trust Motion to Strike Costs; (3) Judgment Creditors, and Andrew Katakis, California Equity Management Group, Inc. and Fox Hollow of Turlock Owners' Association's Motion for Attorneys' Fees on Appeal; and (4) Costs on Appeal, filed in California Superior Court, Stanislaus County Case No. 332233, on December 30, 2013.
12. Decision and Order of Involuntary Inactive Enrollment, In the matter of Richard Carroll Sinclair, Member No. 68238, Case Nos. 13-O-10657-PEM, 13-O-11618 (Cons.) State Bar of California, Hearing Department – San Francisco, filed herein July 28, 2015.
13. State Bar of California attorney search results of Richard Carroll Sinclair, dated July 7, 2016.

Statement of Undisputed Facts Filed By Katakis Plaintiffs

Katakis Plaintiffs have filed their required Statement of Undisputed Facts. Dckt. 76. The Statement provides 109 asserted undisputed facts, the basis for the majority of such facts (106 of the 109) are the findings and determinations of the State Court, affirmed by the DCA, and the State Bar Court. The other three are based on the declaration of counsel for Katakis Plaintiffs. As this court addressed at the hearing on this Motion for Summary Judgment, there is little which is “undisputed” between these Parties – even when they are stated as part of a final judgment that has been affirmed

1 on appeal. This court could well envision that if the court were to rely on the paraphrased recitation
2 of the findings and determinations by Katakis Plaintiffs, rather than quoting and adopting the exact
3 language of the other courts' rulings, it may be asserted by Defendant-Sinclair that Katakis Plaintiffs
4 committed "fraud on this court" in such paraphrasing. Therefore, rather than adopting the Statement
5 of Undisputed Facts, the court will set forth in this ruling the findings and determinations which have
6 been made in other courts for which the doctrine of collateral estoppel applies.

7 **Points and Authorities in Support of Motion for Summary Judgment**

8 Katakis Plaintiffs have filed their separate Points and Authorities as required by the Local
9 Bankruptcy Rules and Revised Guidelines for the Preparation of Documents. Dckt. 75. The legal
10 authorities and arguments will be considered in the discussion below concerning the law and
11 application to the evidence presented to the court.

12 **Substantive Opposition and Opposition Pleadings** 13 **Filed by Defendant-Sinclair**

14 Defendant-Sinclair has filed the Substantive Opposition to the Motion for Summary
15 Judgment asserting his detailed legal and factual bases for such opposition. Dckt. 86. The
16 Substantive Opposition is 96 pages in length and addresses many issues. Defendant-Sinclair filed
17 his 14-page Substantive Opposition Declaration addressing the factual issues raised in the
18 Substantive Opposition. Dckt. 87.

19 Defendant-Sinclair then filed his Supplemental Substantive Opposition (26 pages) and
20 Supplemental Substantive Opposition Declaration (57 pages) on March 13, 2017, which the court
21 considers as part of Defendant-Sinclair's Substantive Opposition to the present Motion for Summary
22 Judgment. Dckts. 96, 98.⁴ The court reviews all of the detailed, extensive arguments, legal

23
24 ⁴ Defendant-Sinclair improperly filed these documents in Defendant-Sinclair's Bankruptcy Case
25 as a motion for reconsideration of summary judgment and a declaration in support of motion for
26 reconsideration. 14-91565; Dckt. 588, 590. Since the court had not yet issued a ruling on the Motion
for Summary Judgment, the court issued an order authorizing the documents to be filed and considered
by the court as supplemental opposition to the Motion for Summary Judgment. *Id.*; Order, Dckt. 596.

27 Copies of the Supplemental Substantive Opposition and Supplemental Substantive Opposition
28 Declaration have been placed on the Docket in this Adversary Proceeding by the Clerk of the Court in
this Adversary Proceeding. Dckts. 96 and 98, respectively, for the convenience of the Parties and any

1 authorities, and evidence presented by Defendant-Sinclair in detail to assure all parties that the
2 contentions, arguments, and testimony under penalty of perjury of Defendant-Sinclair have been
3 considered.

4 **Review of Substantive Opposition to Motion for Summary Judgment**

5 From the 96-page Substantive Opposition filed by Defendant-Sinclair (Dckt. 86), the court
6 distills the following opposition grounds to the Motion for Summary Judgment.

7 Defendant-Sinclair first argues that the over 2,000 pages of exhibits previously filed in the
8 Bankruptcy Case and related bankruptcy proceedings “prove” that counsel for Katakis Plaintiffs
9 fraudulently obtained the Final State Court Judgment.

10 Further, in addition to fraudulently obtaining the Final State Court Judgment, it is asserted
11 that counsel for Katakis Plaintiffs was also representing Defendant-Sinclair.

12 Further, Defendant-Sinclair contends that the Final State Court Judgment is infirm because
13 he contends that counsel for Katakis Plaintiffs “lied” to the judge in the State Court Action
14 concerning an alleged “disability” of Defendant-Sinclair, and then obtained the Final State Court
15 Judgment while Defendant-Sinclair was “disabled.”

16 Defendant-Sinclair then further argues that the 2,000 pages of exhibits filed in the various
17 bankruptcy proceedings also “prove” that Defendant-Sinclair did not commit fraud. Defendant-
18 Sinclair offers this evidence of 2,000 pages of exhibits as a counter to the findings and
19 determinations made in the Final State Court Judgment, affirmed on appeal, State Court Decision,
20 and State Bar Court Decision.

21 The Substantive Opposition continues, with Defendant-Sinclair asserting that fraud has been
22 committed on the State Court thereby rendering the Final State Court Judgment void. He contends
23 that the Final State Court Judgment, which has been affirmed on appeal, cannot therefore be given
24 collateral estoppel effect. This harkens back to earlier proceedings in Defendant-Sinclair’s
25 Bankruptcy Case in which Defendant-Sinclair tried to induce this bankruptcy court to issue orders
26 which would falsely purport to vacate the Final State Court Judgment, the DCA Opinion, and orders

27 _____
28 other court reviewing these proceedings.

1 of the United States District Court. *See* discussion in this court’s Memorandum Opinion and
2 Decision (14-91565; Dckt. 535 p. 2:18–3:17) for a discussion of Defendant-Sinclair’s improper
3 attempt to mislead this court into purporting to vacate orders of other courts.

4 Defendant-Sinclair’s Substantive Opposition then collaterally attacks the Final State Court
5 Judgment, DCA Opinion, and State Bar Court Decision, asserting that Katakis Plaintiffs, their
6 attorney, and the judge in the State Court Action all knew of Defendant-Sinclair’s alleged
7 “disability” and proceeded to have the Final State Court Judgment, which has been affirmed on
8 appeal, entered against Defendant-Sinclair.

9 The Substantive Opposition continues, asserting that there was a purported settlement in the
10 State Court Action and that the Final State Court Judgment is improper because of such purported
11 settlement. Further, such argument collaterally attacks the DCA Opinion affirming the Final State
12 Court Judgment, which rejected the contention that there was such a purported settlement.

13 Defendant-Sinclair further argues that he has many civil law claims against Katakis Plaintiffs,
14 and it is not right that they have a judgment against him. As this court addressed in the
15 Memorandum Opinion and Decision sustaining the Chapter 7 Trustee’s objection to Defendant-
16 Sinclair claiming a personal injury exemption in a “malicious prosecution case,” these various
17 purported claims date back to 2003, more than a decade prior to when Defendant-Sinclair voluntarily
18 filed his Chapter 11 case. 14-91565; Memorandum Opinion and Decision, Dckt. 558. Not only did
19 Defendant-Sinclair have the opportunity to prosecute any such claims (to the extent such claims
20 actually exist) for years prior to voluntarily filing his Chapter 11 Bankruptcy Case, but then for a year
21 while protected in his Chapter 11 case and serving as the Chapter 11 debtor in possession, who had
22 the fiduciary responsible for diligently prosecuting such claims, to the extent they existed.

23 As addressed in the above-referenced Memorandum Opinion and Decision sustaining the
24 objection to exemption (14-91565, Dckt. 558), to the extent that such claims existed, they existed
25 prior to the commencement of the Bankruptcy Case by Defendant-Sinclair and had to be listed on
26 the Schedules, which are made under penalty of perjury, filed by Defendant-Sinclair. No such claims
27 were disclosed by Defendant-Sinclair when he filed his Chapter 11 case or in any schedules (original
28 or amended) filed by Defendant-Sinclair in his Bankruptcy Case. Rather, the existence of such

1 alleged claims was advanced by Defendant-Sinclair in the Bankruptcy Case when the Chapter 7
2 Trustee was moving toward a settlement resolving the almost two decades of disputes and any claims
3 (which, whether disclosed or not, are property of the bankruptcy estate) between Katakis Plaintiffs
4 and Defendant-Sinclair.

5 Beginning at the bottom of page 12 of the Substantive Opposition, Defendant-Sinclair begins
6 “arguing” evidence to support his contention that the Final State Court Judgment and the State Court
7 Decision are in error. These contentions may have been relevant in the State Court Action, in a
8 motion (presumably promptly filed) to vacate the Final State Court Judgment, or possible for the
9 appeal of the Final State Court Judgment (to the extent that this evidence was in the record from the
10 36-day trial), but not for a collateral attack in federal court on the Final State Court Judgment.
11 Defendant-Sinclair is again attempting to have this court ignore or relitigate the Final State Court
12 Judgment and findings of the State Court as the basis of his Substantive Opposition.

13 **Legal Authorities Portion of Substantive Opposition**

14 The Substantive Opposition contains extensive citations to legal authorities and asserts
15 arguments addressing the following points.

16 First, Defendant-Sinclair cites authority for the proposition that fraud committed on a court
17 is grounds for having a judgment set aside. No legal authorities are presented for how such a
18 contention of fraud to set aside the Final State Court Judgment is properly raised in this federal court.
19 While the citations and arguments in this section of the Substantive Opposition are long, they do not
20 present any effective opposition to the present Motion for Summary Judgment.

21 In reality, what these arguments demonstrate is that to the extent that such grounds could
22 exist, Defendant-Sinclair has known of them for years (with some of the events dating back to 2003).
23 However, Defendant-Sinclair failed to act on any such perceived wrongs for the years prior to the
24 appointment of the Chapter 7 Trustee after Defendant-Sinclair’s Bankruptcy Case was converted to
25 one under Chapter 7 in December 2015.

26 Second, Defendant-Sinclair’s argument appears to be cycling back to demand that this
27 bankruptcy court could reach out and void final judgments and final orders of the State Court and
28 the District Court. No authority for such a proposition is provided in the Substantive Opposition.

1 Third, Defendant-Sinclair appears to attempt to weave an argument that Defendant-Sinclair's
2 Constitutional rights were impinged upon because of his inability to prosecute his action because of
3 a "disability." Again, the Substantive Opposition is long on argument but without legal support for
4 how the attempted collateral attack of the Final State Court Judgment in this court is a legally
5 effective opposition to the Motion for Summary Judgment.

6 Fourth, the Substantive Opposition legal argument appears to be recycling and miscasting
7 this court's orders and rulings when it addressed in the Fall of 2015 Defendant-Sinclair's contention
8 that he was then "disabled" in the Bankruptcy Case. Though repeatedly requesting the doctors who
9 Defendant-Sinclair professed stated he was disabled come forward (as opposed to Defendant-Sinclair
10 merely testifying what he said the doctors said to him), no doctors ever provided the court with any
11 testimony or information to the court.

12 This court, to the extent that a disability might have actually existed and Defendant-Sinclair
13 was unable to communicate the need to his doctor for such expert testimony, instructed the Clerk
14 of the Court to send a copy of the detailed order identifying the need for such information to the
15 doctor identified by Defendant-Sinclair. The order expressly requested that the doctor purported to
16 be treating Defendant-Sinclair provide such information, which would appear to be consistent with
17 that doctor's obligations to her patient if Defendant-Sinclair actually suffered from such alleged
18 disability. No doctor stepped forward to present such information in support of the alleged disability
19 asserted by Defendant-Sinclair.

20 The court issued a detailed decision concluding that Defendant-Sinclair was competent and
21 that the purported disability was a sham. 14-91565; Civil Minutes, Dckt. 337. While professing a
22 "disability," Defendant-Sinclair was actively prosecuting the Bankruptcy Case. Defendant-Sinclair
23 appeared to be "disabled" only with respect to the U.S. Trustee attempting to have the case converted
24 and Katakis Plaintiffs conducting discovery. The court findings in the Civil Minutes recount the
25 conduct of Defendant-Sinclair which was inconsistent with the professed disability. *Id.*

26 In the Memorandum Opinion and Decision approving the proposed settlement of claims
27 between Katakis Plaintiffs and the Chapter 7 Trustee, this court addressed not only Defendant-
28 Sinclair's use of an alleged "disability" to delay judicial proceedings, but Defendant-Sinclair's

conscious litigation strategy of asserting claims, rights, and defenses, without regard to whether they had any legal merit or are supported by facts, so long as they fit within his narrative to advance his position. 14-91565; Memorandum pp. 14:27–20:16, Dckt. 535. Based on his conduct in the proceedings in the Bankruptcy Case and the adversary proceedings related thereto, this court has concluded that Defendant-Sinclair’s litigation strategy in this court is to say whatever he thinks can serve his interests, irrespective of the legal merit or truth, to deflect the court from making any decision. This would then allow Defendant-Sinclair to continue in his never ending litigating and relitigating disputes with Katakis Plaintiffs.

Fifth, Defendant-Sinclair, on page 77 of the Substantive Opposition, does address the legal doctrine of Unclean Hands under California law. In citing to *Kendall-Jackson Winery, Ltd. v. Superior Court*, 76 Cal. App. 4th 970 (1999), he directs the court to the following language in that case:

Not every wrongful act constitutes unclean hands. But the misconduct need not be a crime or actionable tort. Any conduct that violates conscience, or good faith, or other equitable standards of conduct is sufficient to invoke the doctrine.

Substantive Opposition, p. 77; Dckt. 86.

The gist of Defendant-Sinclair’s argument is that Katakis Plaintiffs merely stating that there was a finding of “Unclean Hands” is not a magic incantation resulting in a conclusion that the Final State Court Judgment is nondischargeable. The conduct warranting the application of the Unclean Hands defense may not have risen to fraud or willful and malicious injury. Defendant-Sinclair then chooses to go further and argue, therefore, that the express findings of the State Court can never mean that the obligation is nondischargeable, but instead it is the Katakis Plaintiffs that have been shown to be the “bad guys.”

The Substantive Opposition legal authorities then reargue that the Final State Court Judgment should not be respected by this court as a final judgment and does not mean what it says because Defendant-Sinclair says it is “wrong.”

Sixth, Defendant-Sinclair does have a section of the Substantive Opposition specifically stating legal authorities for his opposition to the present Motion for Summary Judgment. However,

1 most of it consists of cutting and pasting in a copy of Federal Rule of Civil Procedure 56, as well as
2 the rule for motions for judgment on the pleadings, the latter not the motion now before the court.

3 Seventh, the Substantive Opposition asserts that the Final State Court Judgment should not
4 be respected because Defendant-Sinclair submitted his own allegations that Katakis Plaintiffs have
5 committed “thirty-nine unclean hands.” In substance, Defendant-Sinclair asserts that based on his
6 contention of “thirty-nine unclean hands of [Katakis Plaintiffs],” the Final State Court Judgment is
7 not a final determination for which collateral estoppel and *res judicata* apply. Other than Defendant-
8 Sinclair making arguments and his using the phrase “unclean hands,” no meritorious legal authority
9 is presented for this conjecture.

10 Eighth, Defendant-Sinclair then argues that under a Federal Rule of Civil Procedure 12(b)
11 motion only the pleadings can be considered. Then, under Rule 12(c) a motion for judgment on the
12 pleadings can be recast as a motion for summary judgment. Therefore, the evidence presented in
13 support of the Motion for Summary Judgment cannot be considered since it is not in the pleadings.
14 The Motion before the court is brought pursuant to Federal Rule of Civil Procedure 56(a) – not
15 Federal Rule of Civil Procedure 12(b) or 12(c). Katakis Plaintiffs are not asserting a defense in this
16 adversary proceeding (a Federal Rule of Civil Procedure 12 presentation of defenses to a complaint),
17 but are prosecuting their Complaint against Defendant-Sinclair. Again, other than Defendant-
18 Sinclair’s argument, no meritorious legal authority is provided for this conjecture.

19 Ninth, Defendant-Sinclair asserts that he has other claims and causes of action which were
20 not included in the State Court Action. Therefore, he concludes that Katakis Plaintiffs are prevented
21 from obtaining a summary judgment based upon the Final State Court Judgment which has been
22 affirmed on appeal. Again, Defendant-Sinclair offers no legal authority for this proposition. Nor
23 does Defendant-Sinclair address how he personally can have any such claim in light of all of those
24 rights coming out of the decades long dispute, which claims are property of the bankruptcy estate.
25 11 U.S.C. § 541.

26 Tenth, Defendant-Sinclair discusses the application of *res judicata* and collateral estoppel,
27 providing the court with authorities on those points.

28 As is clear, while professing to not having been timely served with the Motion for Summary

1 Judgment and not having an adequate opportunity to state an opposition, Defendant-Sinclair has filed
2 an extensive legal and evidentiary, multifaceted, complex opposition. In addition, the court has
3 allowed Defendant-Sinclair to file and has considered the extensive Supplemental Substantive
4 Opposition.

5 **Evidence Filed With Substantive Opposition to Motion for Summary Judgment**

6 Defendant-Sinclair has filed his Substantive Opposition Declaration with the Substantive
7 Opposition to the Motion for Summary Judgment. Dckt. 87. The testimony goes to reargue why the
8 determination of the State Court is in error and why Katakis Plaintiffs are bad people. There is not
9 sufficient, substantive evidence countering and putting in genuine dispute any material facts or issues
10 determined in the Final State Court Judgment which has been affirmed on appeal, and the final State
11 Bar Court Decision which was adopted by the California Supreme Court in disbaring Defendant-
12 Sinclair.

13 **Review of Supplemental Substantive Opposition**

14 On March 13, 2017, before this court finished drafting and had not yet issued a ruling on the
15 Katakis Plaintiffs' Motion for Summary Judgment, Defendant-Sinclair filed a pleading titled
16 "Motion . . . For Reconsideration of Summary Judgment" and related supporting pleadings, which
17 were improperly filed in the Bankruptcy Case itself, not in this Adversary Proceeding. The court
18 now considers the "reconsideration" pleadings, grounds, and additional evidence filed by Defendant-
19 Sinclair as the Supplemental Substantive Opposition to the Motion for Summary Judgment. Order
20 recasting Motion to Reconsider as Supplemental Substantive Opposition, Dckt. 102. Though largely
21 duplicative of the 96-page Substantive Opposition, the court has reviewed in detail the Supplemental
22 Substantive Opposition and puts to rest any contention that this court does not review, consider, and
23 evaluate the merits of the extensive pleadings filed by Defendant-Sinclair or other parties.

24 Though the court considers these supplemental pleadings, the court has not changed its
25 opinion that Defendant-Sinclair's contention that there was defective service (whether intentional
26 or inadvertent) of the Motion for Summary Judgment is without merit. Defendant-Sinclair's
27 arguments and statements under penalty of perjury of having a different address for service of
28 pleadings for this Motion for Summary Judgment than all of the other pleadings he has filed in the

1 Bankruptcy Case and Adversary Proceeding are not credible. Those statements and arguments are
2 made by Defendant-Sinclair as part of his continuing scheme to engage in wrongful conduct.

3 On a second point, most, if not all, of what Defendant-Sinclair presents in the Supplemental
4 Substantive Opposition has been presented to the court in the Substantive Opposition to this Motion
5 for Summary Judgment. In addition, most of these contentions have been previously presented in
6 the Bankruptcy Case and other adversary proceedings related to the Bankruptcy Case.

7 The court addresses the arguments and opposition stated in the Supplemental Substantive
8 Opposition (Dckts. 96 and 98), even if they are already addressed in connection with the 97-page
9 Substantive Opposition previously filed by Defendant-Sinclair in outline form for ease of reading.

10 **1. Defendant-Sinclair seeks to file a motion to vacate the Final State Court**
11 **Judgment based on fraud on the court. Supplemental Substantive Opposition,**
pp. 2, 9, 10, 11, 12.

12 In making this contention, Defendant-Sinclair asserts that he was disabled and unable to
13 defend himself in the State Court Action – notwithstanding Defendant-Sinclair having litigated the
14 36-day trial in the State Court Action. This court has independently found that contentions by
15 Defendant-Sinclair of a “disability” in prior proceedings during the Bankruptcy Case were
16 unsubstantiated, not credible, and false. Rather, the “disability” contention arises when Defendant-
17 Sinclair is on the verge of losing, or has lost, something that he is prosecuting or is being prosecuted
18 against him.

19 The Final State Court Judgment was entered in 2009. Since that time Defendant-Sinclair
20 actively litigated the State Court Action, prosecuted the appeal of the Final State Court Judgment,
21 and then prosecuted the Chapter 11 Bankruptcy Case as the debtor in possession until, when the
22 proceedings were turning against him, Defendant-Sinclair feigned a “disability.”

23 If a *bona fide*, good faith, basis for setting aside the Final State Court Judgment existed,
24 Defendant-Sinclair would have (as the highly educated, experienced attorney he is) prosecuted that
25 in the State Court Action, at least during the six-year period in which he was actively prosecuting
26 the 36-day trial in the State Court Action, the appeal of the Final State Court Judgment, and the
27 Bankruptcy Case as the debtor in possession. He did not and does not offer any reasonable, good
28 faith reason for it not having been done in the years during the state court litigation, the trial, the

1 appeal, and the post-appellate period in which Defendant-Sinclair was actively litigating his
2 Chapter 11 case as the debtor in possession.

3 Asserting this as a basis for opposing the Motion for Summary Judgment is consistent with
4 the conclusions of this court of Defendant-Sinclair engaging in a now two decades long scheme of
5 intentional, wrongful conduct, without any just cause or excuse, to injure others in his attempts to
6 improperly obtain or retain the economic benefits of the Fox Hollow Property.

7
8 **2. Defendant-Sinclair asserts that he was deprived of his Fifth and Fourteenth
Amendment Rights based on his “disabilities.” *Id.*, pp. 2, 9.**

9 Little legal analysis is provided, and there is no evidence, other than Defendant-Sinclair
10 stating his personal conclusion that he was “disabled.” As is clearly shown for the period from 2009
11 through 2015, there was no disability as Defendant-Sinclair actively prosecuted various actions and
12 proceedings in the State Court, the DCA, and this court.

13 While Defendant-Sinclair states that there is no limitation to when he can assert that a fraud
14 was perpetrated on the State Court, he offers no reasonable, honest explanation as to why he did not
15 bring that to the attention of the State Court during the 2009 to 2015 time period. He offers no
16 reasonable, honest explanation as to why only now, after the Chapter 7 Trustee has settled all claims
17 with Katakis Plaintiffs, that Defendant-Sinclair finally wants to pursue such relief.

18 Contrary to Defendant-Sinclair’s contention that he has been deprived of the ability to assert
19 such claims, for six years Defendant-Sinclair chose not to assert any claim of fraud on the State
20 Court. Instead, he now asserts it as part of his intentional, wrongful conduct, without just cause or
21 excuse scheme to abuse not only Katakis Plaintiffs, but both the federal and state judicial processes.

22 **3. In 2016, Defendant-Sinclair submitted to the “court” (presumably he is
23 referencing this bankruptcy court) evidence of fraud having been committed on
the State Court, but the “court” would not hear it. *Id.*, p. 3.**

24 There was a request that Defendant-Sinclair previously slipped into an opposition to a motion
25 filed by Katakis Plaintiffs in the Bankruptcy Case that the court should vacate the Final State Court
26 Judgment for fraud. Defendant-Sinclair could offer the court no authority for his proposition that
27 a federal bankruptcy judge could issue orders vacating the Final State Court Judgment, the DCA
28 Opinion affirming the Final State Court Judgment, or orders entered by the United States District

1 Court.

2 This contention was advanced by Defendant-Sinclair in his “Opposition to Motion to Convert
3 to Chapter 7 and Request to Set Aside Judgment” (“Opposition/Motion to Vacate”) 14-91565,
4 Dckt. 87. Many of the same arguments and grounds set forth in the Supplemental Substantive
5 Opposition as to improper conduct by Katakis Plaintiffs are stated in the Opposition/Motion to
6 Vacate. In the Opposition/Motion to Vacate Defendant-Sinclair filed on February 13, 2015 (while
7 the Defendant-Sinclair was the debtor in possession and in control of all claims and rights of the
8 bankruptcy estate), Defendant-Sinclair states:

- 9 a. Katakis Plaintiffs committed criminal foreclosure fraud in obtaining the Final State
10 Court Judgment;
- 11 b. Defendant-Sinclair has turned “this matter” over to the “US Criminal attorneys at the
12 USDC for the Eastern District of California” and the Anti Trust Division of the
13 Department of Justice;
- 14 c. Katakis Plaintiffs have been criminally stalking Defendant-Sinclair since 1994;
- 15 d. In 2003 Defendant-Sinclair warned Katakis Plaintiffs that the criminal stalking had
16 risen to criminal extortion and to cease such criminal actions.
- 17 e. Notwithstanding Defendant-Sinclair having notified Katakis Plaintiffs to cease the
18 criminal stalking and criminal extortion in 2003, it did not stop.
- 19 f. Defendant-Sinclair asserts that a district court judge in 2010 concluded that
20 Defendant-Sinclair was “disabled” (quotations in original), Katakis Plaintiffs
21 proceeded to obtain the judgment in the State Court Action. (This was the 36-day
22 trial Defendant-Sinclair litigated.)
- 23 g. In litigating the State Court Action in 2010, Katakis Plaintiffs committed a fraud on
24 the State Court.
- 25 h. As debtor in possession, Defendant-Sinclair states he has refiled RICO claims against
26 Katakis Plaintiffs in the action pending before the District Court.
- 27 i. Defendant-Sinclair was prosecuting litigation against the Neumiller Beardslee law
28 firm, which was to go to trial in Fall of 2015, to recover \$25 Million.
- j. There is no statute of limitations for any of Defendant-Sinclair’s claims for fraud on
the court.
- k. Defendant-Sinclair anticipated being able to generate \$30,000.00 to \$50,000.00 a
month in income from his law practice.
- l. Defendant-Sinclair was going to modify his Oakdale home office (for which
Defendant-Sinclair argued that his multi-year lease was unenforceable because he did
not reduce it to writing when he transferred his home office into his trust and made
the trust purportedly irrevocable), and turn it into a senior citizens assisted living

center.

m. The court should not “assist” Katakis Plaintiffs in profiting from his criminal foreclosure fraud and “80 Unclean Hands.”

n. The court should not review any of the transfers made by Defendant-Sinclair to his separated wife because they were made pursuant to a marital settlement agreement for which the family law judge entered an order on the agreement between Defendant-Sinclair and his wife.

o. The bankruptcy judge should set aside the final judgment in the State Court Action, the final decision of the DCA affirming the Final State Court Judgment, and order of the United States District Court judge.

Both orally and in the written decision set forth in the Civil Minutes on the hearing on the motion to convert, the court explained the impropriety in Defendant-Sinclair requesting this bankruptcy court to vacate orders issued by other federal and state court judges.

Furthermore, the request to vacate itself is improper. The Debtor is requesting that this court vacate orders of both a state and federal court judge. The scope of Fed. R. Civ. P. 60 allows this court only to vacate orders that are issued by this court. The Debtor here is seeking to have this court overreach its jurisdictional authority and vacate orders, none of which are specifically pled in Debtors nonsensical opposition, of both a district court and state court. This is plainly improper.

14-91565. Civil Minutes, Dckt. 113 at 4.

Such a contention by Defendant-Sinclair also runs afoul of the Full Faith and Credit Clause of the U.S. Constitution Article IV, § 1 and 28 U.S.C. § 1738. A federal court cannot merely ignore or refuse to enforce an order of the state court merely because one of the parties seeks to assert that “the state court judge was wrong, the other side committed fraud.” As Defendant-Sinclair, a highly educated and experienced attorney knows (and knew when he previously tried to mislead this court into entering improper orders purporting to vacate the Final State Court Judgment, DCA Opinion, and district court orders), there was no merit to the request in 2015 and there is no merit to the argument in the Supplemental Substantive Opposition.

Once again Defendant-Sinclair offers no legal authority for his proposition that he should be able to, and this federal court has the jurisdiction to, vacate orders of other courts.

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1 **4. Katakis Plaintiffs committed criminal foreclosure fraud and other crimes,**
2 **which date back to 2003 and continued thereafter. *Id.* at pp. 2, 3, 4, 5, 6, 13.**

3 Defendant-Sinclair argues that since he contends that Katakis Plaintiffs have committed
4 crimes and torts, this court should preemptively not give Full Faith and Credit to the Final State
5 Court Judgment and the DCA Opinion affirming it on appeal. Defendant-Sinclair seeks to have this
6 court presume all of his contentions are true and correct, turning the court into merely serving as
7 Defendant-Sinclair's instrument to enter whatever order Defendant-Sinclair demands.

8 In reality, dissatisfied with his 36 days in court for the trial in the State Court Action and the
9 appeal to the DCA, Defendant-Sinclair seeks to relitigate the Final State Court Judgment, contending
10 that it is "wrong" because "Katakis Plaintiffs are bad guys," and therefore giving Full Faith and
11 Credit to the Final State Court Judgment is just "wrong."

12 If crimes have been committed, Defendant-Sinclair (as a highly educated and experienced
13 attorney) can notify the proper authorities. His belief that such crimes may have existed since 2003
14 is not a basis for ignoring the Final State Court Judgment.

15 **5. Defendant-Sinclair was not allowed to be a party to the settlement negotiations**
16 **between the Chapter 7 Trustee and Katakis Plaintiffs which was approved by**
17 **the court. *Id.* at pp. 10, 11.**

18 Defendant-Sinclair objects to, after he was removed from being the debtor in possession and
19 lost the ability to control property of the bankruptcy estate, the Chapter 7 Trustee settling with
20 Katakis Plaintiffs without recovering additional value for Defendant-Sinclair. He further asserts that
21 the Trustee failed to obtain a dismissal of the Final State Court Judgment for Defendant-Sinclair.

22 Defendant-Sinclair weaves into this portion of the arguments his contentions of all the
23 wrongs done against him and fraud committed on other courts.

24 Defendant-Sinclair further contends that the court approved the settlement without
25 considering Defendant-Sinclair's opposition or the exhibits (more than 2,000 pages) filed in
26 opposition. Defendant-Sinclair pounds his drumbeat that he was "disabled" and was just unable to
27 assert the fraud on the court claims. However, all the while Defendant-Sinclair was litigating the
28 36-day trial, appeal of the Final State Court Judgment, and the Chapter 11 Bankruptcy Case as the
debtor in possession.

1 Defendant-Sinclair’s contention that the court did not consider his opposition to the Motion
2 to Approve Compromise is not only incorrect, it is a blatantly false statement. The Motion for
3 Approval of Compromise of Controversies with Katakis Plaintiffs was filed on November 17, 2016.
4 14-91565, Dckt. 476. Defendant-Sinclair filed his 13-page opposition to the Trustee’s Motion to
5 Approve Compromise. 14-91565; Dckt. 487. The Opposition to Motion to Approve Compromise
6 lays out Defendant-Sinclair’s contentions that he (actually meaning the bankruptcy estate) now has
7 more than \$40 Million of claims against Katakis Plaintiffs. He argues that he has more than 2,500
8 pages of exhibits that are to be reviewed. However, in substance, the argument is that Defendant-
9 Sinclair now asserts having more than \$40 Million of claims dating back to 2003 – none of which
10 were listed on Schedule B filed by Defendant-Sinclair under penalty of perjury.⁵

11 In this court’s Memorandum Opinion and Decision granting the Motion for Approval of
12 Compromise of Controversies, consideration of these now asserted claims, and the credibility of
13 Defendant-Sinclair, is addressed. 14-91565; Dckt. 535. In addition, to afford Defendant-Sinclair
14 and his allies⁶ the ability to preserve such claims if they had such significant value, the court gave
15 Defendant-Sinclair’s allies the opportunity to exercise a right of first refusal to purchase all of the
16 asserted \$40 Million of claims for the \$40,000.00 offered by Katakis Plaintiffs. *Id.*; Order,
17 Dckt. 499.

18 Defendant-Sinclair and his sister, Kathryn Machado, PhD (“Dr. Machado”) the trustee and
19 managing member of the trust and limited liabilities companies receiving transfers of property from
20 Defendant-Sinclair prior to the commencement of the Bankruptcy Case, appeared at the hearing for
21 the motion to approve the Katakis Plaintiffs settlement obtained by the Trustee. As addressed by this
22 court in the Memorandum Opinion and Decision (*Id.*; Dckt. 535), if these claims were worth

24 ⁵ All that was listed by Defendant-Sinclair for such claims was, “Katakis case for malicious
25 prosecution plus Truax case...approx \$6 million.” 14-91565; Schedule B filed in Defendant-Sinclair’s
Bankruptcy Case, Dckt. 42 at 3.

26 ⁶ The “allies” identified by the court are Deborah Sinclair, Defendant-Debtor’s wife, and
27 Kathryn Machado, PhD, his sister. Defendant-Sinclair has disclosed that his wife (pursuant to a marital
28 settlement agreement) and Dr. Machado (as the trustee of Defendant-Sinclair’s purported irrevocable
trust and the managing member of limited liability companies) both received significant transfers of
assets from Defendant-Sinclair prior to his commencing the Bankruptcy Case.

1 significantly more than the \$40,000.00 settlement amount (Defendant-Sinclair asserting they were
2 worth 1,000-times more), then either the wife or sister, using the significant assets transferred to
3 them by Defendant-Sinclair prior to the filing of the Bankruptcy Case, could have, and likely would
4 have, purchased such claims. Neither took advantage of such rights of first refusal. When pressed
5 on the point at the hearing, Dr. Machado's counsel advised the court that all Dr. Machado wanted
6 was to be done with the Defendant-Sinclair's bankruptcy proceedings and not have to come back to
7 the bankruptcy court.

8 Defendant-Sinclair's revisionist history of the hearing is not merely a mistake, but affirmative
9 misstatements of what occurred. Defendant-Sinclair's complaint that he, after years, if not decades,
10 of not asserting any of the purported claims, was wrongly not allowed to exercise control over or take
11 whatever he wanted from the estate and use (or misuse) it as part of his continuing scheme of
12 intentional, wrongful actions to harm Katakis Plaintiffs and others in his endeavor to retain or obtain
13 further financial benefits from the Fox Hollow Property is without merit.

14 **6. Defendant-Sinclair asserts that the "court" (presumably the bankruptcy court)**
15 **has refused to follow the rules, deprived Defendant-Sinclair of his Fifth and**
16 **Fourteenth Amendment Rights, ignored the criminal conduct of Katakis**
17 **Plaintiffs, promoted Katakis Plaintiffs' counsel's fraud committed on the State**
18 **Court in 2009, and removed all evidence that Katakis Plaintiffs owed**
19 **Defendant-Sinclair \$12.425 Million. Supplemental Substantive Opposition,**
20 **pp. 7, 8.**

21 This portion of the Supplemental Substantive Opposition is merely a recycling of his repeated
22 prior arguments and "evidence" that the Final State Court Judgment cannot be enforced by Katakis
23 Plaintiffs because it is "wrong" and Defendant-Sinclair believes a fraud was committed years ago
24 on the State Court. Though having more than two decades of dealings in his scheme involving the
25 Fox Hollow Property and more than a decade of having the purported claims against Katakis
26 Plaintiffs, Defendant-Sinclair did not take any action to assert such "rights" and "claims." In more
27 recent time, during the period of 2010 through the Summer of 2015, Defendant-Sinclair litigated a
28 36-day trial, the appeal of the Final State Court Judgment, and the Bankruptcy Case as debtor in
possession, but did not see \$40 Million value in such claims to be prosecuted by him.

But when the Chapter 7 Trustee was finally bringing to an end the Katakis Plaintiffs portion
of the Fox Hollow Property scheme by Defendant-Sinclair, the \$40 Million in "claims" materialized.

1 The contentions that the Final State Court Judgment was obtained by fraud were retreaded and run
2 out to the court.

3 A review of the court's files readily shows that all of the oppositions, evidence, arguments,
4 and contentions of Defendant-Sinclair have been considered. The court has even taken extra steps
5 to insure that Defendant-Sinclair has been able to present his positions and evidence to the court.
6 When Defendant-Sinclair asserted that he had a "disability," the court made sure that the doctor who
7 purportedly stated Defendant-Sinclair had a disability, as well as Defendant-Sinclair's sister (Dr.
8 Machado), as trustee of the trust and managing member of the limited liability companies, had notice
9 of these proceedings in the event that Defendant-Sinclair was incapable of communicating the need
10 for assistance. None came forward in support of Defendant-Sinclair and his disability contentions.⁷

11 The Supplemental Substantive Opposition offers no basis for denying the Motion for
12 Summary Judgment. Rather, it demonstrates that the Defendant-Sinclair is continuing in his scheme
13 of intentional and wrongful acts, for which there is no just cause or excuse, done to cause further
14 injury to Katakis Plaintiffs.

15 **Supplemental Substantive Opposition Declaration of Defendant-Sinclair⁸**

16 The Supplemental Substantive Opposition Declaration of Defendant-Sinclair was filed on
17 March 13, 2017. Dkt. 98. Defendant-Sinclair's testimony is the first seven pages of the
18 Supplemental Substantive Opposition Declaration. The next 50 pages consist of a proposed fourth
19 amended cross-complaint that Defendant-Sinclair would file in a state court action that has been
20 settled by the Chapter 7 Trustee, if the Defendant-Sinclair were not in bankruptcy or was still the
21 debtor in possession. The proposed fourth amended cross-complaint seeks to assert claims which
22 Defendant-Sinclair represents date back to 2003. These alleged claims have not been included in
23

24 ⁷ As discussed *infra*, not only was Dr. Machado at Defendant-Debtor's side at proceedings in the
25 Bankruptcy Case while Defendant-Debtor was the debtor in possession (the fiduciary of the bankruptcy
26 estate), Defendant-Debtor was her attorney defending her against potential fraudulent conveyance claims
for (exercising rights to recover for the bankruptcy estate) the transfers she had received pre-petition.

27 ⁸ Though titled "Declaration," the Supplemental Substantive Opposition Declaration contains
28 extensive citations, legal authorities, and legal arguments in addition to personal knowledge testimony
(Fed. R. Evid. 601, 602).

1 prior litigation advanced by Defendant-Sinclair in his litigation with Katakis Plaintiffs and were not
2 listed on his bankruptcy schedules, which schedules are stated under penalty of perjury. With the
3 demanded trebling, it appears that Defendant-Sinclair may now be asserting that these various claims
4 (which are property of the bankruptcy estate) now top \$75 Million – in Defendant-Sinclair’s current
5 opinion.

6 Defendant-Sinclair begins by repeating his prior statements and testimony about the Motion
7 for Summary Judgment being served at the wrong address and Defendant-Sinclair not receiving it
8 in time to file an opposition. Supplemental Substantive Opposition Declaration, p. 1, Dckt. 98. Just
9 as this was not credible before, it is not credible now. Defendant-Sinclair was able to file on
10 March 13, 2107, his massive Substantive Opposition to the Motion for Summary Judgment. Then,
11 when the court authorized the filing of the Supplemental Substantive Opposition, a month later, it
12 duplicates what Defendant-Sinclair presented in the original Substantive Opposition.

13 Defendant-Sinclair then testifies that “the court” (presumably the bankruptcy court) was
14 aware that he intended to file a “Notice of Motion of Fraud on the Court” in the State Court Action.
15 This desire of the Defendant-Sinclair to attack the Final State Court Judgment has been addressed
16 several times by this court. No reasonable, substantive testimony is provided why Defendant-
17 Sinclair, who actively litigated the 36-day trial in the State Court Action, the appeal of the Final State
18 Court Judgment, and the Bankruptcy Case over a five-year period never sought to prosecute this
19 attack on the Final State Court Judgment. Instead, it appears to be the next in a series of acts in his
20 scheme (discussed in the 11 U.S.C. § 523(a)(6) portion of this Ruling) relating to the Fox Hollow
21 Property. Defendant-Sinclair’s testimony under penalty of perjury that he was disabled and that
22 precluded him from taking that action in the post 2009 State Court Trial was and is unbelievable –
23 not that he presents fantastic, compelling testimony, but his testimony is not reasonable and fails to
24 state any evidentiary basis for Defendant-Sinclair failing to act in the past, if such claims actually
25 existed.

26 Further, his testimony discusses a purported disability that ran into February 2010. *Id.*, p. 2.
27 Nothing substantive, reasonable, or credible (in prior proceedings in the Bankruptcy Case) has been
28 provided about any “disability” later in 2010, 2011, 2012, 2013, 2014, or 2015. As determined by

1 this court when Defendant-Sinclair purported to have a “disability” when creditors and the
2 U.S. Trustee were at the door to have the case converted or dismissed, no disability existed. Rather,
3 the feigned “disability” was part of Defendant-Sinclair’s litigation strategy to improperly derail his
4 opponents and impede the judicial process.

5 The Supplemental Substantive Opposition Declaration continues, repeating from the original
6 Substantive Opposition and other pleadings filed in the Bankruptcy Case, Defendant-Sinclair’s
7 alleged “disabilities,” alleged fraud on the State Court, alleged denial of his Fifth and Fourteenth
8 Amendment Rights, and alleged criminal conduct of Katakis Plaintiffs. *Id.*, pp. 3, 4, 5. What
9 Defendant-Sinclair never substantively addresses is why no action was taken in 2010, 2011, 2012,
10 2013, 2014, and 2015 when he could have brought such claims and gone to the State Court to have
11 his contention of fraud on the State Court properly adjudicated.

12 Defendant-Sinclair now contends that this court, the bankruptcy court, deprived him of his
13 Fifth and Fourteenth Amendment rights because he was, or is, incompetent. *Id.*, p. 6. As in the
14 Bankruptcy Case, Defendant-Sinclair does not produce a doctor to provide the court with competent
15 medical testimony. Rather, it is just Defendant-Sinclair re-rearguing in his Supplemental
16 Substantive Opposition Declaration that he was “disabled” and the court has to accept Defendant-
17 Sinclair’s unilateral conclusions on that point. As discussed in this Ruling and the extensive ruling
18 in determining that Defendant-Sinclair was and is competent, the court went to great lengths to get
19 the identified doctor to come forward if Defendant-Sinclair was “disabled.” No doctor came
20 forward. The Defendant-Sinclair’s sister, Dr. Machado, was at his side through most of the
21 Bankruptcy Case proceedings, during which time Defendant-Sinclair was his sister’s attorney,
22 defending the transfers of property to the trust and limited liability companies against fraudulent
23 transfer claims which the Defendant-Sinclair, as the debtor in possession, had the fiduciary duty to
24 prosecute.

25 Additionally, as the court noted in the Bankruptcy Case, if Defendant-Sinclair was actually
26 incapacitated, his sister, who was by his side and is also highly educated (having earned a PhD)
27 would have gone to state court to have a conservator appointed for him or sought a personal
28 representative appointed in federal court. Not only did the sister not do this, she was so confident

1 in his competency that she had Defendant-Sinclair represent her in the Bankruptcy Case up until the
2 time he was initially suspended from the practice of law in July 2015 (which, not coincidentally, is
3 when Defendant-Sinclair professed to have an undocumented “disability”). Then, even after he had
4 been disbarred, Dr. Machado had Defendant-Sinclair by her side “advising” her for several months
5 after his disbarment until the court required her to obtain counsel (since a trust and limited liability
6 companies were the actual parties, not her individually in *pro se*).

7 Defendant-Sinclair continues to “testify” that the court (presumably the bankruptcy court)
8 ignored the bad acts of counsel for Katakis Plaintiffs and “promoted” such counsel’s fraud in the
9 State Court Action. *Id.*, p. 7. Because the court did not find persuasive, or credible, evidence
10 asserted by Defendant-Sinclair, he makes the statement that “in essence, the court struck all evidence
11 that proved” the improper conduct of Katakis Plaintiffs and their attorneys. He further contends that
12 the court “managed to remove all evidence that [Katakis Plaintiffs] owe [Defendant-Sinclair]
13 \$12.425 million and have no damages.” *Id.* No evidence was erased. No evidence was removed.
14 Merely because the court did not believe Defendant-Sinclair that tens of millions of dollars of claims
15 have materialized since the filing of the Bankruptcy Case in late 2014 does not mean the evidence
16 was not presented and considered. The evidence did not support Defendant-Sinclair’s contention
17 that the Chapter 7 Trustee should not administer the bankruptcy estate, that the Chapter 7 Trustee
18 should not settle disputes with Katakis Plaintiffs, and Defendant-Sinclair’s contention that he can
19 do whatever he wants, irrespective of federal bankruptcy law. The manufactured alleged tens of
20 millions of dollars of claims is just part of Defendant-Sinclair’s continuing scheme to intentionally
21 engage in wrongful conduct, without just cause or excuse, which necessarily causes injury to others
22 as he tries to obtain or retain economic value and advantage from the Fox Hollow Property.

23 **Asserted Reporting of Crime Requirement**

24 In the Points and Authorities portion of the Supplemental Substantive Opposition, Defendant-
25 Sinclair makes a unique argument – that the court is obligated to report the crimes which Defendant-
26 Sinclair alleges occurred because Defendant-Sinclair so demands. Supplemental Substantive
27 Opposition, pp. 18, 19, 20, 21.

28 First, Defendant-Sinclair is a highly educated attorney and well capable of reporting the

1 asserted crimes to the proper federal and state authorities. In his pleadings he states that he has
2 already reported them to the county sheriff, attorneys at the U.S. District Court, and the Anti-Trust
3 Division. To the extent that Defendant-Sinclair's contentions have any merit, this court is convinced
4 that the parties to whom Defendant-Sinclair has reported would act properly.

5 In contending that this court has to "report the felony" which Defendant-Sinclair asserts
6 occurred, he first cites the court to 18 U.S.C. § 4, which states:

7 § 4. Misprision of felony

8 Whoever, having knowledge of the actual commission of a felony cognizable by a
9 court of the United States, conceals and does not as soon as possible make known the
10 same to some judge or other person in civil or military authority under the United
States, shall be fined under this title or imprisoned not more than three years, or both.

11 All that has been presented to this court is Defendant-Sinclair's contention that a crime has occurred,
12 which is now being asserted in an effort to derail the Chapter 7 Trustee in administering the
13 bankruptcy estate in the Bankruptcy Case, including the Katakis Plaintiffs' settlement obtained by
14 the Trustee. Defendant-Sinclair admits that he has already reported the alleged crimes to federal and
15 state authorities. Just as Defendant-Sinclair would be outraged if the court were to "re-report" that
16 Defendant-Sinclair committed a crime merely because it was alleged by Katakis Plaintiffs (which
17 they have not), it is improper for Defendant-Sinclair to try and turn the court into his pawn merely
18 because his scheme of wrongful conduct includes allegations of alleged crimes to deter, delay, and
19 prevent the court from addressing the merits of the Motion for Summary Judgment.

20 Defendant-Sinclair can contact the U.S. Attorneys' Office and provide whatever information
21 he believes proper, and be subject to all of the certifications, warranties, and conditions that go with
22 such complaints.

23 Defendant-Sinclair then cites the court to 28 U.S.C. § 1362, contending that it allows a
24 district court judge to issue a writ of *mandamus* to compel an officer of the United States to "perform
25 his duty." *Id.*, p. 20. Based on this, Defendant-Sinclair states:

26 This Court is prohibited from ordering damages where no damages exist to the
27 criminal who caused the problem and his attorneys who are likewise aware but do
28 nothing to perform their duties.

1 *Id.* While making such statement, Defendant-Sinclair fails to provide any authority for this court,
2 subject to the Full Faith and Credit Clause of the U.S. Constitution and 28 U.S.C. § 1738 giving
3 collateral estoppel effect to the Final State Court Judgment.

4 **Asserted Conflict of Interest**

5 Defendant-Sinclair appears to now assert that he owned some of the Fox Hollow Property
6 when Katakis Plaintiffs' counsel was representing the Fox Hollow Home Owner's Association
7 (referred to as "FHOA" or "HOA"). Therefore, he asserts that counsel for FHOA also represented
8 Defendant-Sinclair personally as an owner (or former owner) in connection with the Final State
9 Court Judgment which was affirmed on appeal.

10 The State Court denied, without prejudice, that Katakis Plaintiffs' counsel in the State Court
11 Action (the same counsel in this Adversary Proceeding) had the above disqualifying conflict. On
12 appeal, the DCA affirmed the denial of the motion to disqualify and did not find there to be a
13 disqualifying conflict in issuing the DCA Opinion. DCA Opinion, pp. 26–28. Exhibit 9, Dckt. 79.

14 Defendant-Sinclair attempted to resurrect this contention of a conflict in the second appeal
15 he took to the DCA, contesting the award of attorney's fees. Exhibit 10, *Sinclair v. Katakis et al.*,
16 DCA F060497 ("DCA Attys Fee Opinion"). There, the DCA recounts that the current counsel for
17 the Katakis Plaintiffs did not substitute into the State Court Action until February 2008, ten months
18 before the trial in the State Court Action. DCA Attys Fee Opinion, p. 11. The DCA noted that the
19 issue of a possible conflict was not raised by Defendant-Sinclair and the Other State Court Action
20 Plaintiffs (*infra*) until three years after becoming aware of the alleged conflict. No excuse was
21 offered by Defendant-Sinclair or the Other State Court Action Plaintiffs. The DCA sustained
22 denying Defendant-Sinclair's renewed request to disqualify Katakis Plaintiffs' counsel, drawing two
23 inferences from the delay and conduct of Defendant-Sinclair:

- 24 1. Defendant-Sinclair's delay in raising the disqualification issue is also an
25 indication that they did not view the alleged conflict of interest as serious or
26 substantial; and
- 27 2. **Defendant-Sinclair's delay in raising the disqualification motion is a
28 tactical device to delay the litigation.**

Id., pp. 12-13.

1 It appears, having lost in the State Court and having lost in the DCA, Defendant-Sinclair is
2 seeking to fight a rear guard action to collaterally attack the Final State Court Judgment and the final
3 DCA Opinion on this point to improperly induce this court to not give Full Faith and Credit to the
4 Final State Court Judgment and the DCA Opinion.

5 A number of inconsistencies in this rear guard action arise, beyond there already being a final
6 determination as it relates to the Final State Court Judgment and the findings of the State Court that
7 are being presented to this court for consideration under the doctrine of collateral estoppel. In
8 looking at the State Court Complaint filed and prosecuted by Defendant-Sinclair, he clearly states
9 that Mauctrst, LLC acquired the Fox Hollow Property. State Court Complaint, ¶ 1; Exhibit 1,
10 Dckt. 78. The State Court Complaint further states that subsequent entities Lairtrust, LLC and
11 Capstone, LLC acquired one lot each in Fox Hollow. On its face, the State Court Complaint does
12 not state Defendant-Sinclair has or had any interest in the Fox Hollow Property. *Id.*, ¶ 5. As to
13 Defendant-Sinclair, the State Court Complaint only asserts that Andrew Katakis threatened
14 Defendant-Sinclair to try and prevent the State Court Complaint from being filed by Defendant-
15 Sinclair as the attorney for the Other State Court Action Plaintiffs in the State Court Action. *Id.*, ¶ 7.

16 In the Fifth Amended State Court Complaint filed by Defendant-Sinclair, the ownership of
17 Fox Hollow Property by Mauctrst, LLC is repeated. Fifth Amended State Court Complaint, ¶ 13;
18 Exhibit 2, Dckt. 78. It is further repeated that Lairtrust, LLC and Capstone, LLC each subsequently
19 acquired one lot each of the Fox Hollow Property. *Id.*, ¶ 18.

20 First, as shown in the State Court complaints, Defendant-Sinclair filed complaints in which
21 he did not purport to be an owner of property included in the Fox Hollow Property. Even if
22 Defendant-Sinclair's theory that a homeowners association could never have counsel to litigate with
23 any owners of property included in the association is an accurate statement of the law, Defendant-
24 Sinclair has told the State Court that he, personally, is not such an owner. Defendant-Sinclair's
25 complaint against Katakis Plaintiffs was that he believed he had been personally "threatened" to
26 improperly deter the filing of the State Court complaint, and subsequent State Court amended
27 complaints.

28 Second, Defendant-Sinclair chose to file the State Court Complaint and Fifth Amended State

1 Court Complaint which affirmatively took the fight to FHOA, as well as Andrew Katakis and
2 California Equity Management Group, Inc. Defendant-Sinclair now complains that FHOA has hired
3 attorneys to defend itself against the claims Defendant-Sinclair prosecuted in the State Court
4 Complaint. No legal basis has been provided for such a contention.

5 Third, Defendant-Sinclair offers no evidence that (1) he was a member of the FHOA or
6 (2) that he was a member of the FHOA board when current counsel for Katakis Plaintiffs represented
7 the FHOA. Then, Defendant-Sinclair offers no meritorious legal argument that if he was a board
8 member or an owner of property, the FHOA could not engage its counsel to represent it against
9 Defendant-Sinclair, including claims asserted by Defendant-Sinclair as counsel for others.

10 Fourth, this issue of an alleged conflict was addressed in the State Court Action and by the
11 DCA as discussed in the DCA Opinion. In substance, Defendant-Sinclair argues that
12 notwithstanding the Final State Court Judgment, notwithstanding the DCA Opinion, and
13 notwithstanding the DCA determining that Defendant-Sinclair had no colorable claim on that issue
14 relating to the Final State Court Judgment, Defendant-Sinclair presses that already concluded issue
15 in this court, demanding that this court not give Full Faith and Credit to the Final State Court
16 Judgment.

17 Fifth, Defendant-Sinclair offers no specifics about any representation provided to Defendant-
18 Sinclair as either a member of the FHOA or as a former member of the FHOA.⁹ From the evidence
19 presented, by the time Katakis Plaintiffs and their current counsel enter into the picture, Defendant-
20 Sinclair's involvement with the Fox Hollow Property and FHOA had come to an end.

21 Sixth, this Adversary Proceeding is a "natural offspring" of the State Court Action which was
22 spawned by Defendant-Sinclair (as counsel for the other plaintiffs in the State Court Action and
23 whatever interests he had in the State Court Action) in prosecuting the state court action against
24

25
26 ⁹ As discussed *infra*, Defendant-Sinclair has told varying stories under oath about whether the
27 members of the FHOA that pre-dated the current board had resigned, who they were, and whether they
28 asserted any rights or interests. What the evidence has shown is that Defendant-Sinclair was hired to be
the counsel for FHOA during the period prior to Katakis Plaintiffs acquiring the Fox Hollow Property
and the former board was replaced, after the prior board members gave their notice of resignation
through Defendant-Sinclair.

1 Katakis Plaintiffs, which include FHOA. The “litigation” of this Adversary Proceeding has
2 consisted of the findings of the State Court in the State Court Decision, and the rulings of the DCA
3 in the DCA Opinion and the DCA Attys Fee Opinion (*infra*). This is merely an action to continue
4 in the enforcement of the Final State Court Judgment for which the State Court and the DCA
5 determined that no such conflict existed for Katakis Plaintiffs’ counsel.

6 Seventh, this “conflict” allegation is merely a smoke screen for Defendant-Sinclair to try and
7 relitigate the final determinations in the Final State Court Judgment, State Court Decision, and DCA
8 Opinion. In the conclusion of his Supplemental Substantive Opposition, Defendant-Sinclair
9 demands that “this court [bankruptcy court] has a duty . . . [to] . . . grant Richard Sinclair judgment
10 and deny the MOTION FOR SUMMARY JUDGMENT and also nullify the judgments in 332233
11 and any that might be made in federal case no: 1:03 cv 05439.” Supplemental Substantive
12 Opposition, p. 25, Dckt. 96.

13 In the Substantive Opposition, Defendant-Sinclair’s conclusion further demands “Plaintiff
14 [Katakis Plaintiffs’] Motion for Summary Judgment must be denied. Judgment on the pleadings
15 does not apply. Summary judgment does not apply. There must first be a ‘final judgment,’ without
16 fraud.” Substantive Opposition, p. 96; Dckt. 86.

17 In both of these conclusions, Defendant-Sinclair clearly argues that final judgments are not
18 final – so long as Defendant-Sinclair asserts they are based on fraud. As discussed in this
19 Memorandum Opinion and Decision, though having years to attack such judgments in the courts
20 where the judgments or orders were issued, Defendant-Sinclair has chosen not to do so. Rather, he
21 continues to try and induce this court into violating the Constitution and federal Full Faith and Credit
22 statute by ignoring final judgments. Further, he tries to get this court to “reach out and slap” state
23 court judges and a district court judge who entered orders, judgments, or decisions against
24 Defendant-Sinclair – just because Defendant-Sinclair so demands. The impropriety of such
25 collateral attacks is well known to Defendant-Sinclair, this court having explained in detail several
26 times.

27 On this point the court concludes that it is not that Defendant-Sinclair does not understand
28 what he demands is improper, but that this is just another act by Defendant-Sinclair in doing and

1 alleging whatever he thinks is to his benefit without regard to the facts or law. It is part of his
2 continuing scheme to inflict willful and malicious injury on his opponents. (Discussed *infra*.)

3 Taken at face value, Defendant-Sinclair's argument is that FHOA could never engage any
4 attorney to represent it against Defendant-Sinclair. For this proposition, Defendant-Sinclair
5 provides a long string of citations in his Supplemental Substantive Opposition. Dckt. 96. One
6 authority cited is *Responsible Citizens v. Superior Court*, 16 Cal. App. 4th 1717 (1993). The Court
7 of Appeal held:

8 [a]n attorney representing a partnership does not necessarily have an attorney-client
9 relationship with an individual partner for purposes of applying the conflict of
10 interest rules. Whether such a relationship exists turns on finding an agreement,
express or implied, that the attorney also represents the partner.

11 *Id.*, Dckt. 1721.

12 The DCA found the above statement of California law consistent with the then in effect State
13 Bar Rules of Professional Conduct which limited representation against a former client only when
14 there was confidential information obtained from the former client. For two current clients, an
15 attorney cannot represent one against the other. *Id.*, 1724.

16 The DCA addressed established law that an attorney representing a partnership does not
17 necessarily represent the individual partners. The same is true in representing a corporation, in
18 which the attorney does not necessarily represent the shareholders. *Id.*

19 Another case cited to the court by Defendant-Sinclair is *Johnson v. Superior Court*, 38 Cal.
20 App. 4th 462 (1995) for the proposition that the attorney for FHOA is also the attorney for every
21 person who owns such property included in the homeowners association. Contrary to Defendant-
22 Sinclair's assertion, consistent with the decision in *Responsible Citizen*, the DCA concluded that
23 when an attorney represents an organization, it is the organization that it the client, not the officers
24 or members. *Johnson v. Superior Court*, 38 Cal. App. 4th at 477.¹⁰

25
26 ¹⁰ Though citing 13 cases in this one section of the Supplemental Substantive Opposition,
27 Defendant-Sinclair does not cite the California Supreme Court decision in *Kapelus v. State Bar*, 44 Cal.
28 3d 179, 195 (1987), holding that merely because the attorney (who was the general partner of the
partnership) was representing the general partnership, that did not create an attorney-client relationship
with the limited partners.

1 Nothing substantive has been submitted by Defendant-Sinclair to provide an inkling that
2 there was an attorney-client relationship between Defendant-Sinclair and counsel for Katakis
3 Plaintiffs. To the contrary, the relationship appears to have been, and continues to be, contentious
4 and hostile from day one. Second, there is no evidence of any agreement to, or representation of,
5 Defendant-Sinclair. Here, Defendant-Sinclair offers no evidence that current counsel for Katakis
6 Plaintiffs was undertaking any representation of Defendant-Sinclair.

7 The court concludes that the contention of a conflict, at this late date, after the entry of the
8 Final State Court Judgment, the State Court denying such contention in the State Court Action, and
9 the DCA having determined that such contention did not have merit on the appeal as stated in the
10 DCA Opinion, does not have merit in this Adversary Proceeding. This further demonstrates
11 Defendant-Sinclair's intentional litigation strategy of arguing anything and everything regardless of
12 merit, even to the point of ignoring the U.S. Constitution and federal statutes requiring that this court
13 give Full Faith and Credit to final judgments of state courts.

14 **Exhibit to Supplemental Substantive Opposition**
15 **Declaration, Proposed Fourth Amended Cross-Complaint**

16 The court does not find any more reasonable or meritorious now, than previously, Defendant-
17 Sinclair's contentions with respect to the proposed Fourth Amended Complaint and the numerous
18 claims he now wants to assert against the Katakis Plaintiffs. Clearly Defendant-Sinclair's wife and
19 Dr. Machado (sister who serves as the trustee of Defendant-Sinclair's purported irrevocable trust and
20 managing member of the limited liability companies) who received the pre-petition transfers of
21 property from Defendant-Sinclair, did not find the contentions of Defendant-Sinclair of such great
22 value to be credible. Though given the opportunity to "buy" (using the property transferred to them
23 by Defendant-Sinclair before the filing of the Bankruptcy Case) what Defendant-Sinclair argues is
24 more than a \$40 Million set of claims, neither Defendant-Sinclair's wife nor Dr. Machado thought
25 the claims were worth the \$40,000.00 right of first refusal price.

26 Far from ignoring these asserted claims, the court reviewed them carefully and was satisfied
27 that settlement of the claims was proper before granting the Trustee's motion. The court does not
28 approve a settlement merely because a trustee asks for it, no more than the court denies such a

1 motion because a debtor appears to argue claims worth tens of millions of dollars that are decades
2 old have materialized out of thin air.

3 **Reply By Katakis Plaintiffs**

4 The court has previously addressed Katakis Plaintiffs' objection to the Opposition based on
5 it being untimely filed. That objection has been overruled. The substantive Reply focuses on
6 Defendant-Sinclair's Opposition being an attempt to relitigate the Final State Court Judgment and
7 collaterally attack said judgment. The court does not need to restate and summarize in detail the
8 Reply in this Ruling.

9
10 **PART III**

11 **DOCTRINE OF COLLATERAL ESTOPPEL:**
12 **FINDINGS AND DETERMINATIONS MADE IN**
13 **(1) THE STATE COURT ACTION AND (2) STATE BAR COURT ACTION**
14 **AND**
15 **MATERIAL FACTS DETERMINED NOT IN GENUINE DISPUTE**
16 **(Fed. R. Civ. P. 56(a), (g) and 7056)**

17 **Application of Collateral Estoppel to Findings in State Court Action**

18 In describing the five elements for Collateral estoppel under California law, the Ninth Circuit
19 Court of Appeals has stated,

20 Under California law, collateral estoppel only applies if certain threshold
21 requirements are met:

22 First, the issue sought to be precluded from relitigation must be identical to
23 that decided in a former proceeding. Second, this issue must have been actually
24 litigated in the former proceeding. Third, it must have been necessarily decided in the
25 former proceeding. Fourth, the decision in the former proceeding must be final and
26 on the merits. Finally, the party against whom preclusion is sought must be the same
27 as, or in privity with, the party to the former proceeding. *Harmon v. Kobrin (In re*
28 *Harmon)*, 250 F.3d 1240, 1245 (9th Cir. 2001).

Cal-Micro, Inc. v. Cantrell, 329 F.3d 1119, 1123 (9th Cir. 2003). The party asserting collateral
estoppel bears the burden of establishing these requirements. *In re Harmon*, 250 F.3d 1240, 1245
(9th Cir. 2001). As stated by the court in *Harmon*,

Under the Full Faith and Credit Act, 28 U.S.C. § 1738, the preclusive effect of a state
court judgment in a subsequent bankruptcy proceeding is determined by the
preclusion law of the state in which the judgment was issued. *Gayden v. Nourbakhsh*
(*In re Nourbakhsh*), 67 F.3d 798, 800 (9th Cir. 1995) (citing *Marrese v. Am. Acad.*
of Orthopaedic Surgeons, 470 U.S. 373, 380, 84 L. Ed. 2d 274, 105 S. Ct. 1327
(1985)).

1 *Id.* at 1245. The application of collateral estoppel is greater than merely for the convenience of the
2 federal court, but is required of the federal courts to respect and give effect to a final state court
3 judgment.

4 The party “asserting collateral estoppel carries the burden of proving a record sufficient to
5 reveal the controlling facts and pinpoint the exact issues litigated in the prior action.” *In re Lambert*,
6 233 Fed. Appx. 598, 599 (9th Cir. 2007). If the court has a reasonable doubt as to what was actually
7 decided by the prior judgment, it will refuse to apply preclusive effect. *Id.*

8 The California Supreme Court discussed the doctrine of collateral estoppel in *Murray v.*
9 *Alaska Airlines, Inc.*, 50 Cal. 4th 860, 879 (2010), stating:

10 We find that the public policies underlying the doctrine of collateral estoppel will
11 best be served by applying the doctrine to the particular factual setting of this case.
12 Those policies include conserving judicial resources and promoting judicial economy
13 by minimizing repetitive litigation, preventing inconsistent judgments which
14 undermine the integrity of the judicial system, and avoiding the harassment of parties
through repeated litigation. (*Allen v. McCurry* (1980) 449 U.S. 90, 94; *Montana v.*
United States (1979) 440 U.S. 147, 153–154; *Sims, supra*, 32 Cal.3d at pp. 488–489;
Syufy Enterprises v. City of Oakland (2002) 104 Cal.App.4th 869, 878.)

15 The Supreme Court’s comments ring eerily true for the Motion for Summary Judgment before this
16 court. Repeatedly Defendant-Sinclair attacks the Final State Court Judgment, asserts he wants to
17 relitigate that final judgment, contends that the final judgment should not be effective, and demands
18 that the final judgment should be ignored – in large part because Defendant-Sinclair disagrees with
19 it, even after the Final State Court Judgment has been affirmed on appeal. For Defendant-Sinclair
20 the State Court Action, the 36-day trial, the State Court Decision, the Final State Court Judgment,
21 and the Final State Court Judgment being affirmed on appeal are merely rehearsals for future
22 relitigation of the same issues.

23 **Application of Collateral Estoppel to State Bar Decision** 24 **and Disbarment Order of the Supreme Court**

25 While providing this court with a copy of the State Bar Court Decision, Katakis Plaintiffs
26 have not presented the court with authority whether the State Bar Court Decision is a “previous
27 proceeding” for which the California Superior Court will give collateral estoppel effect. In *Murray*
28 *v. Alaska Airlines*, 50 Cal. 4th at 878-79, the California Supreme Court also addressed the

1 application of collateral estoppel to an administrative proceeding decision which the party again
2 whom the determination was made could elect to assert his rights rather than commencing an action
3 in the state or federal court. The California Supreme Court addressed this issue earlier in
4 *Brosterhous v. State Bar*, 12 Cal. 4th 315, 324 (1995), stating:

5 This court has indicated that a final decision in an administrative adjudication may
6 be given *res judicata* or collateral estoppel effect in a subsequent judicial proceeding
7 if the issues were identical in the administrative proceeding. (*People v. Sims* (1982)
8 32 Cal. 3d 468, 485.) It may do so if the agency was acting in a judicial capacity and
resolved disputed issues of fact which the parties had adequate opportunity to litigate.
(*Id.* at p. 479). CA(1a)(1c).

9 As further discussed by the California District Court of Appeal in *County of Los Angeles v. Southern*
10 *California Edison, Co.*, 112 Cal App. 4th 1108, 1121 (2003) (emphasis added):

11 A final decision by an administrative agency may be given collateral estoppel effect
12 in a subsequent judicial action if the agency acted in a judicial capacity and resolved
13 disputed factual issues that the parties had an adequate opportunity to litigate.
14 (*Brosterhous v. State Bar* (1995) 12 Cal.4th 315, 324.) Collateral estoppel applies,
15 however, only **if the present issue is identical to an issue decided in a prior proceeding.** (*Ibid.*; *Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341–342 [stating
further, “The ‘identical issue’ requirement addresses whether ‘identical factual
allegations’ are at stake in the two proceedings, not whether the ultimate issues or
dispositions are the same. [Citation.]”].)

16 California Business and Professions Code § 6084 provides that the decision of the State Bar
17 Court becomes final and enforceable if no petition to review, reverse, or modify is timely filed with
18 the California Supreme Court.

19 The California Supreme Court, upon consideration of the State Bar Court Decision and the
20 findings of the judge in that previous proceeding, issued its Opinion ordering that Defendant-Sinclair
21 is disbarred from the practice of law in the State of California. *Sinclair on Discipline*, Cal. Supreme
22 Court No. S230942, 2016 Cal. LEXIS 3065 (Feb. 7, 2016).

23 This court will also consider the findings of the State Bar Court for the application of the
24 doctrine of collateral estoppel as it applies to the issues presented to the court. To minimize
25 confusion for the parties (as well on any potential appeal), the court will first consider the State Court
26 Decision and Final State Court Judgment for the application of collateral estoppel and whether the
27 Final State Court Judgment alone provides grounds for the summary judgment requested, or in the
28 alternative the material facts which are not in genuine dispute. The court will then consider and

determine what additional issues or facts are determined based on collateral estoppel being applied to the State Bar Decision.

**Final State Court Judgment and State Court Decision
Findings and Determinations Applicable
to the Issues in This Adversary Proceeding**

Defendant-Sinclair and Katakis Plaintiffs have litigated and previously determined facts in the prior State Court Action that also arise in this Adversary Proceeding. Applying the four factor test, the court concludes for all findings and determinations in the State Court Decision set forth in Addendum A as follows:

First, the facts and determinations presented from the Final State Court Judgment and State Court Decision to be given collateral estoppel effect are those applicable to the determination of nondischargeability pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(6).

Second, the issues were actually litigated as part of a 36-day trial in the State Court Action.

Third, the issues for which collateral estoppel apply were those necessarily and expressly determined by the State Court.

Fourth, the Final State Court Judgment is “final” and has been affirmed on appeal. While Defendant-Sinclair now argues that in 2017 he thinks that the Final State Court Judgment should be attacked, it has not been during the years preceding the commencing of the Bankruptcy Case and has not been vacated.

Fifth, Defendant-Sinclair was a party in the State Court Action, the issues were determined after the 36-day trial in the State Court Action, and the Final State Court Judgment is binding on Defendant-Sinclair.

Therefore, the court adopts and incorporates herein all of the determinations made in the State Court Decision stated in Addendum A attached hereto.

To avoid confusion in light of the roles being reversed in the State Court Action, with Defendant-Sinclair being the plaintiff and Katakis Plaintiffs being the defendant, the court substitutes the defined terms for these parties in this decision for the references to persons in the State Court Decision and judgment in the findings and determinations adopted in Addendum A. When the State Court judge made a finding expressly as to only the Defendant-Sinclair, it has identified him as

1 “Mr. Sinclair.” The court has retained the State Court’s reference to Mr. Sinclair individually in
2 citing to the State Court Decision.

3 The findings and determinations made in the State Court Action given collateral estoppel
4 effect in this Adversary Proceeding and determined not to be in material dispute pursuant to Federal
5 Rule of Civil Procedure 56(g) and Federal Rule of Bankruptcy Procedure 7056 are set forth in
6 Addendum A attached hereto, with the actual language of the specific findings and determinations
7 of the State Court set forth in using double quotation marks (“ . . . ”).

8
9 **State Bar Decision Findings and Determinations
Applicable to the Issues in This Adversary Proceeding**

10 In the State Bar Court Decision, the findings and determinations have been made in that
11 proceeding in which Defendant-Sinclair was a party. The State Bar Court judge stated that with
12 respect to the Fox Hollow Property matter before the State Bar Court, while many of the findings
13 were made by the trial and appellate court in State Court Action, “this [State Bar] court, nonetheless,
14 must assess them independently under the more stringent standard of proof applicable to disciplinary
15 proceedings. (*Maltaman v. State Bar* (1987) 43 Cal.3d 924, 947.)” Further, the State Bar Court’s
16 findings were made under the “clear and convincing” evidence standard, not the lower
17 preponderance of the evidence standard in civil court proceedings.¹¹

18 This court determines that the findings and conclusions in the State Bar Court Decision were
19 actually determined as part of the litigation in which Defendant-Sinclair was a party. Further, all of
20 the determinations made in the State Bar Court Decision set forth in Addendum B hereto: (1) are
21 identical to the grounds asserted in this Motion for Summary Judgment as the basis for the relief
22 requested here; (2) they were actually litigated in the State Bar Court Action; (3) they were
23 necessarily determined in the State Bar Court Action; and (4) such issues determined are being
24 asserted in this Adversary Proceeding against the Defendant-Sinclair, who is the party against whom
25 such determinations were made in the State Bar Court Action.

26 To avoid confusion the court substitutes the defined terms for these parties in this decision
27

28 ¹¹ Exhibit 12, State Bar Court Decision, p. 3; Dckt. 79.

1 for the references to persons in the State Bar Court Decision adopted in Addendum B.

2 The findings and determinations made in the State Bar Court Decision given collateral
3 estoppel effect in this Adversary Proceeding and determined not to be in material dispute pursuant
4 to Federal Rule of Civil Procedure 56(g) and Federal Rule of Bankruptcy Procedure 7056 are set
5 forth in Addendum B hereto, with the actual language of the specific findings and determinations
6 of the State Court set forth in using double quotation marks (“ . . . ”).

7
8 **APPLICABLE LAW TO DETERMINATION OF THE**
9 **MOTION FOR SUMMARY JUDGMENT**
10 **OR IN THE ALTERNATIVE DETERMINATION OF FACTS**
11 **NOT GENUINELY IN MATERIAL DISPUTE**

12 In an adversary proceeding, summary judgment is proper when “[t]he movant shows that
13 there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter
14 of law.” Fed. R. Civ. P. 56(a), *incorporated by* Fed. R. Bankr. P. 7056. The key inquiry in a motion
15 for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P.
16 56(c), *incorporated by* Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
17 248-50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed.
18 2000). “[A dispute] is ‘genuine’ only if there is a sufficient evidentiary basis on which a reasonable
19 fact finder could find for the nonmoving party, and a dispute [over a fact] is ‘material’ only if it
20 could affect the outcome of the suit under the governing law.” *Barboza v. New Form, Inc. (In re*
21 *Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,
22 248 (1986).

23 The party moving for summary judgment bears the burden of showing the absence of a
24 genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the
25 assertion that a fact cannot be genuinely disputed, the moving party must “cit[e] to particular parts
26 of materials in the record, including depositions, documents, electronically stored information,
27 affidavits or declarations, stipulations . . . , admissions, interrogatory answers, or other materials.”
28 Fed. R. Civ. P. 56(c)(1)(A), *incorporated by* Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to
the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial.

1 *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir.
2 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce
3 specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists.
4 *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party
5 "must do more than simply show that there is some metaphysical doubt as to the material facts."
6 *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

7 In ruling on a summary judgment motion, the court must view all of the evidence in the light
8 most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County of Tuolumne v.*
9 *Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court "generally cannot grant
10 summary judgment based on its assessment of the credibility of the evidence presented." *Agosto v.*
11 *INS*, 436 U.S. 748, 756 (1978). "[A]t the summary judgment stage[,] the judge's function is not
12 himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there
13 is a genuine issue for trial." *Anderson*, 477 U.S. at 249.

14 **Evidence Presented in Support of Motion for Summary Judgment**

15 All of the evidence presented in support of the Motion for Summary Judgment, with minor
16 exception, are in the form of the State Court Decision upon which the Final State Court Judgment
17 was issued and affirmed on appeal. Defendant-Sinclair counters not with evidence, but with
18 arguments (whether in the oppositions or placed in his declarations) and his contentions that the
19 State Court Action was not fair, that he was disabled, and that he has other matters he wants to
20 litigate, and that this makes the Final State Court Judgment something other than a final judgment
21 of the California courts. While arguing, or testifying to such contentions, Defendant-Sinclair fails
22 to provide the court with evidence to counterbalance the effect of the Final State Court Judgment and
23 the State Court Decision, which has been affirmed on appeal, and the State Bar Court Decision.

24 ///

25 ///

26 ///

27 ///

1 **PART IV**

2 **DETERMINATION THAT MOTION IS DENIED WITHOUT PREJUDICE FOR 11**
3 **U.S.C. § 523(a)(2)(A) RELIEF**

4 **AND**
5 **GRANTING RELIEF PURSUANT TO 11 U.S.C. § 523(A)(6)**

6 Katakis Plaintiffs seek relief on two separate and independent legal theories, though both are
7 based on the same set of operative, overlapping facts. The amount of damage arising from the
8 alleged fraud and willful and malicious injury is asserted to be obligation of Defendant-Sinclair on
9 the judgment for \$1,066,530.52 in attorneys' fees and costs awarded Katakis Plaintiffs for the State
10 Court Action and appeal thereof. The Complaint seeks a judgment determining that the Final State
11 Court Judgment and obligation owing thereon are nondischargeable, and not the entry of a new
12 monetary federal judgment. If determined nondischargeable, then the Final State Court Judgment
13 may continue to be enforced through the State Court Action, not this court, to the extent determined
14 nondischargeable.

15 **11 U.S.C. § 523(a)(2)(A) Grounds for Nondischargeability of Debt**

16 The first basis for asserting that the obligations owed to Katakis Plaintiffs on the Final State
17 Court Judgment (the award of attorneys' fees at trial and on appeal) are nondischargeable is a
18 contention that the obligation is for "money, property, services, or an extension, renewal, or
19 refinancing of credit" obtained by fraud. The statutory basis for such a contention is found in
20 11 U.S.C. § 523(a)(2)(A), which states as follows:

21 **11 U.S.C. § 523(a)(2)(A)**

22 **§ 523. Exceptions to discharge**

23 (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title
24 does not discharge an individual debtor from any debt--

(2) for money, property, services, or an extension, renewal, or refinancing of credit,
to the extent obtained, by--

(A) false pretenses, a false representation, or actual fraud, other than a
statement respecting the debtor's or an insider's financial condition;

27 The Ninth Circuit Court of Appeals explained the application of 11 U.S.C. § 523(a)(2)(A) in *Turtle*
28 *Rock Meadows Homeowners Ass'n v. Slyman (In re Slyman)*, 234 F.3d 1081, 1085 (9th Cir. 2000),

1 as (emphasis added):

2 Under §523(a)(2)(A) of the Bankruptcy Code, a debt for services obtained by
3 the debtor under "false pretenses, a false representation, or actual fraud" is
4 nondischargeable. 11 U.S.C. §523(a)(2)(A) (2000). **"The purposes of this
5 provision are to prevent a debtor from retaining the benefits of property
6 obtained by fraudulent means and to ensure that the relief intended for honest
7 debtors does not go to dishonest debtors."** 4 Collier on Bankruptcy Par. 523.08[1][a]
8 (15th ed. rev. 2000).

9 The ruling in *Turtle Rock* harkens back to the Supreme Court's unanimous decision authored
10 by Justice Sandra Day O'Connor in *Cohen v. De La Cruz*, 523 U.S. 213, 217-219 (1998) (emphasis
11 added), which states:

12 The Bankruptcy Code has long prohibited debtors from discharging liabilities
13 incurred on account of their fraud, embodying a basic policy animating the Code of
14 affording relief only to an **"honest but unfortunate debtor."** *Grogan v. Garner*,
15 supra, at 287 (internal quotation marks omitted); see id., at 290; *Brown v. Felsen*,
16 442 U.S. 127, 138, 60 L. Ed. 2d 767, 99 S. Ct. 2205 (1979). Section 523(a)(2)(A)
17 continues the tradition, excepting from discharge "any debt . . . for money, property,
18 services, or an extension, renewal, or refinancing of credit, to the extent obtained by
19 . . . false pretenses, a false representation, or actual fraud."

20 The most **straightforward reading of § 523(a)(2)(A)** is that it **prevents discharge**
21 of **"any debt" respecting "money, property, services, or . . . credit"** that the
22 debtor has **fraudulently obtained**, including treble damages assessed on account of
23 the fraud. See *Field v. Mans*, 516 U.S. 59, 61, 64, 133 L. Ed. 2d 351, 116 S. Ct. 437
24 (1995) (describing § 523(a)(2)(A) as barring discharge of debts "resulting from" or
25 "traceable to" fraud). . . .

26 Moreover, the phrase "to the extent obtained by" in § 523(a)(2)(A), . . . makes clear
27 that **the share of money, property, etc., that is obtained by fraud gives rise to a
28 nondischargeable debt** . . . [and] . . . "any debt" arising therefrom is excepted from
discharge. . . .

29 The application of 11 U.S.C. § 523(a)(2)(A) has been the subject of a recent Supreme Court
30 decision in *Husky International Electronics, Inc. v. Ritz*, ___ U.S. ___, 136 S. Ct. 1581 (2016).
31 Katakis Plaintiffs assert that the decision in *Husky* renders Defendant-Sinclair's larger scheme to
32 defraud other persons in connection with the Fox Hollow Property a sufficient "fraud" on the Katakis
33 Plaintiffs to render the obligation on the Final State Court Judgment nondischargeable for fraud.

34 Katakis Plaintiffs contend that based on the conclusion of the Supreme Court in *Husky* that
35 an affirmative misrepresentation need not be made to the creditor, but that Defendant-Sinclair's
36 scheme being sufficiently akin to a fraudulent conveyance scheme (for which liability would exist
37 to such creditor would exist) to drain assets from one entity to avoid those assets being paid to

creditors of that entity renders nondischargeable the obligation to Katakis Plaintiffs for attorneys' fees. While broadening the scope of actual fraud under 11 U.S.C. § 523(a)(2)(A), Katakis Plaintiffs overextend *Husky* and ignore key portions of that decision and the statute.

The facts of *Husky* can be summarized as follows: (1) Husky sold goods during the period 2003 to 2007 on credit to a corporation controlled by Ritz; (2) Beginning in 2006 and continuing in 2007, Ritz began transferring large sums of money from the corporation to another entity in which Ritz had an interest; (3) The corporation was unable to pay creditors; (4) The transfers of assets were fraudulent conveyances made to evade the corporation paying its creditors, and (5) Ritz was personally liable to Husky for the transfers of the corporation's assets as a matter of Texas law. The bankruptcy court, district court, and Fifth Circuit Court of Appeals concluded that while fraudulent conveyances had occurred, there was not the requisite "misrepresentation" made by Ritz to Husky to constitute "actual fraud" under 11 U.S.C. § 523(a)(2)(A).

The Supreme Court disagreed, stating that the definition of the term "actual fraud" was not limited to only the good old fashion "five finger fraud" (with the "first couple fingers" being the knowing, intentional misrepresentation made directly to the creditor, upon which the creditor justifiably relied) but encompassed broader fraudulent conduct. In reality, as discussed below, this is not inconsistent with the long-standing definition of "actual fraud" for purposes of 11 U.S.C. § 523(a)(2)(A) in the Ninth Circuit, with the "first finger" being "misrepresentation, fraudulent omission **or deceptive conduct by the debtor.**" See elements as stated in *Turtle Rock Meadows Homeowners Ass'n v. Slyman* above.

The Supreme Court did not flush away that the creditor must have a claim for "actual fraud" under 11 U.S.C. § 523(a)(2)(A), but recognized that "actual fraud" can be done in a matter in which there is not a specific, express misrepresentation made as part of the "deceptive conduct." The discussion of this principle by the Supreme Court illuminating what constitutes "actual fraud," beyond the express misstatement made directly to the creditor, includes:

But the historical meaning of "actual fraud" provides even stronger evidence that the phrase has long encompassed the kind of conduct alleged to have occurred here: a transfer scheme designed to hinder the collection of debt.

Husky Intl. Elec. Inc. v. Ritz, 136 S. Ct. at 1586. Further,

1 "Actual fraud" has two parts: actual and fraud . . . Thus, anything that counts as
2 "fraud" and is done with wrongful intent is "actual fraud."

3 *Id.* The fraud found in “fraudulent conveyance” law is a recognized actionable actual fraud for
4 which the wrongdoer is held accountable for which there does not need to be a “misrepresentation”
5 which induces conduct of the injured party. While not an “inducement fraud,” the actual fraud in
6 a fraudulent conveyance claim is one of concealment and hindrance, with the fraud being the non-
7 disclosure of the truth, not the disclosure of a non-truth. *Id.*

8 In rejecting the dissent’s assertion that the fraud must be at the inception of the transaction
9 (a misrepresentation to obtain the credit), the majority in *Husky* concludes that no such requirement
10 exists for actual fraud, distinguishing *Field v. Mans*, 516 U.S. 59, 69, 116 S. Ct. 437, 133 L. Ed. 2d
11 351 (1995). *Id.* at 1589-1590.

12 Katakis Plaintiffs are correct, to the extent that they state that the Supreme Court has made
13 it clear that “actual fraud” includes fraudulent conduct intentionally done by a debtor, and one does
14 not have to find a specific misrepresentation by the Defendant-Sinclair. But the Supreme Court also
15 held that merely because Ritz had engaged in the fraudulent transfers and that Ritz was obligated to
16 Husky because of the fraudulent conduct, that did not automatically result in the debt being
17 nondischargeable. The only determination was that “actual fraud” included a fraudulent transfer in
18 which Ritz [the bankruptcy debtor] intentionally engaged in regarding the assets of the corporation
19 that was obligated to Husky. As noted in Footnote 3 to the *Husky* Decision:

20 Ritz' situation may be unusual in this regard because Husky contends that Ritz
21 was both the transferor and the transferee in his fraudulent conveyance scheme,
22 having transferred Chrysalis assets to other companies he controlled. We take no
23 position on that contention here and leave it to the Fifth Circuit to decide on remand
24 **whether the debt to Husky was "obtained by" Ritz' asset-transfer scheme.**

25 *Id.* at 1589 (emphasis added). The “fact” that there was a “fraudulent scheme,” and one does not
26 have to point to a specific “fraudulent misrepresentation,” does not erase the other requirement of
27 11 U.S.C. § 523(a)(2)(A) that the debtor must be for “money, property, services, or an extension,
28 renewal, or refinancing of credit, **to the extent obtained**” by the actual fraud.

Katakis Plaintiffs, for purposes of the present Motion for Summary Judgment, have failed
to show that they have been the victims of fraud or that they have a claim based on fraud, as that

1 term is used in 11 U.S.C. § 523(a)(2)(A). Rather, the mere showing that Defendant-Sinclair may
2 have misrepresented facts to other persons, may have misrepresented facts to the public by recording
3 documents knowing that they were not proper, and made misrepresentation to lenders does not
4 equate to actual fraud having been committed on the Katakis Plaintiffs.

5 Further, Katakis Plaintiffs have not shown that Defendant-Sinclair's obligation to pay them
6 for the attorneys' fees and costs that Katakis Plaintiffs have paid or owe to their own attorneys is
7 "money, property, services, or an extension, renewal, or refinancing of credit" obtained by
8 Defendant-Sinclair from Katakis Plaintiffs.

9 In reality, Katakis Plaintiffs argue that morally Defendant-Sinclair is a bad man, has engaged
10 in fraudulent conduct as to others, and on a general moral basis should not be allowed to discharge
11 the obligation owed to Katakis Plaintiffs by Defendant-Sinclair. That is not the standard for
12 nondischargeable fraud. Katakis Plaintiffs must show actual fraud, as to them, and that the
13 obligation owed to them by Defendant-Sinclair is for money, property, services, or an extension,
14 renewal, or refinancing of credit, to the extent obtained by the actual fraud.

15 By the time Katakis Plaintiffs were purchasing the lots, Defendant-Sinclair's fraud on others
16 was known. As shown in the findings set forth in both the State Court Decision and the State Bar
17 Court Decision, Defendant-Sinclair even attempted to profit from his misconduct and
18 misrepresentations to others by purchasing the lots from the lenders at a substantial discount.

19 While Katakis Plaintiffs have shown that Defendant-Sinclair's conduct has caused them
20 damages, the attorneys' fees and costs awarded, Katakis Plaintiffs have failed, for purposes of this
21 Motion for Summary Judgment, to show that their claim is nondischargeable based on fraud under
22 11 U.S.C. § 523(a)(2)(A). That claim for relief shall proceed to trial.

23 **11 U.S.C. § 523(a)(6)(A) Grounds for Nondischargeability of Debt**

24 As a second and separate basis for determination that the obligations owing for the attorneys'
25 fees and costs awarded as part of the Final State Court Judgment and the appeal thereof are
26 nondischargeable, Katakis Plaintiffs assert that the damages flow from the willful and malicious
27 inflicted on them by Defendant-Sinclair. This ground is stated by Congress in 11 U.S.C. § 523(a)(6).

28 11 U.S.C. § 523(a)(6)

1 (a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not
2 discharge an individual debtor from any debt--

3 (6) for willful and malicious injury by the debtor to another entity or to the property
4 of another entity;

5 In *Ormsby v. First American Title Co. (In re Ormsby)*, 591 F.3d 1199 (9th Cir. 2010), the
6 Ninth Circuit Court of Appeal explains the dual requirement for a determination of an injury to have
7 been the result of “willful and malicious” conduct.

8 The Supreme Court in *Kawaauhau v. Geiger (In re Geiger)*, 523 U.S. 57, 118
9 S. Ct. 974, 140 L. Ed. 2d 90 (1998), made clear that for section 523(a)(6) to apply,
10 the actor must intend the consequences of the act, not simply the act itself. *Id.* at 60.
11 Both willfulness and maliciousness must be proven to block discharge under section
12 523(a)(6).

13 In this Circuit, “§ 523(a)(6)’s willful injury requirement is met only when the
14 debtor has a **subjective motive to inflict injury** or when the **debtor believes that
15 injury is substantially certain to result from his own conduct.**” *Carrillo v. Su (In
16 re Su)*, 290 F.3d 1140, 1142 (9th Cir. 2002). The Debtor is charged with the
17 knowledge of the natural consequences of his actions. *Cablevision Sys. Corp. v.
18 Cohen (In re Cohen)*, 121 B.R. 267, 271 (Bankr. E.D.N.Y. 1990); see *Su*, 290 F.3d
19 at 1146 (“In addition to what a debtor may admit to knowing, the bankruptcy court
20 may consider circumstantial evidence that tends to establish what the debtor must
21 have actually known when taking the injury-producing action.”).

22 “A malicious injury involves (1) a wrongful act, (2) done intentionally,
23 (3) which necessarily causes injury, and (4) is done without just cause or excuse.”
24 *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1209 (9th Cir. 2001) (internal
25 citations omitted). Malice may be inferred based on the nature of the wrongful act.
26 See *Transamerica Commercial Fin. Corp. v. Littleton (In re Littleton)*, 942 F.2d 551,
27 554 (9th Cir. 1991). 7 To infer malice, however, it must first be established that the
28 conversion was willful. See *Thiara*, 285 B.R. at 434.

29 *Ormsby v. First Am. Title Co.*, 591 F.3d at 1206-1207 (emphasis added).

30 **The \$1,066,530.52 Final State Court Judgment is Nondischargeable**
31 **Pursuant to 11 U.S.C. § 523(a)(6) – Final State Court Judgment and State Court Decision**

32 The court begins with the findings and determinations in the State Court Decision in
33 considering whether the conduct of Defendant-Sinclair resulting in the now \$1,066,530.52 Final
34 State Court Judgment rises to willful and malicious conduct. This court concludes that the
35 commencement and prosecution of the action against Katakis Plaintiffs was part of the larger
36 intentional and willful acts as part of Defendant-Sinclair’s plans and schemes for obtaining,
37 maintaining, taking, or obtaining benefit from the Fox Hollow Property.

38 Though stated at the end of the State Court Decision, the State Court determined that

1 Defendant-Sinclair, Mauctrst LLC, Lairtrust LLC, Capstone LLC, Capstone Trust, Stan Flake,
2 Brandon Sinclair, and Gregory Mauchley, the other plaintiffs in the State Court Action (“Other State
3 Court Action Plaintiffs”) with Defendant-Sinclair are indistinguishable from one another for the
4 purposes of the doctrine of unclean hands as Defendant-Sinclair was acting for them. State Court
5 Decision, ¶ 28 at 23:22.5-24.5.¹² Further, Mauctrst was a sham and alter-ego for Defendant-Sinclair
6 and Mr. Mauchley. *Id.*

7 Defendant-Sinclair promoted the development of real property in the City of Turlock,
8 California, which is identified as the “Fox Hollow Property.” In doing so, in April 1994, Defendant-
9 Sinclair misrepresented in writing to the City of Turlock that the FHOA was sufficiently funded.
10 *Id.*, ¶ 1 at 6:13.5 to 16.5. No FHOA had been established, and the statement that a homeowners
11 association existed and was funded was a false statement to the City of Turlock. *Id.*

12 During the period of November 1995 through February 1997, Defendant-Sinclair worked
13 with Stanley Flake to develop the Fox Hollow Property. *Id.*, ¶ 2 at 6:17.5-19. At trial, Mr. Flake
14 testified he was not involved in working to develop the Fox Hollow Property with the Defendant-
15 Sinclair. The State Court Decision determined that Mr. Flake’s testimony was false. *Id.*, and at
16 4:4.5-10.5.

17 In March of 1996, the Defendant-Sinclair, working with the Other State Court Action
18 Plaintiffs, recorded a subdivision map for the Fox Hollow Property. A condition of recording
19 Subdivision Map No. 1 was that the FHOA be formed. In addition to recording the subdivision map,
20 Defendant-Sinclair recorded the covenants, conditions and restrictions (“CC&Rs”) for the Fox
21 Hollow Property, which CC&Rs required the formation of an FHOA. Defendant-Sinclair failed to
22 form the FHOA, notwithstanding the recording of documents for which the FHOA was a condition
23 precedent. *Id.*, ¶ 3 at 6:20-22.

24 In February 1997, four lots of the Fox Hollow Property were transferred from Stanley Flake
25 to Mr. Mauchley. *Id.*, ¶ 4 at 6:22.5-24. Then in 1998, Defendant-Sinclair worked to secure
26 financing for the Fox Hollow Property, using the Fox Hollow Property as collateral. *Id.*, ¶ 5 at 6:25-

27
28 ¹² When the citation is to a numbered paragraph in the State Court Decision, this court includes
the “¶” number in addition to the page and line numbers.

1 26.

2 On or about July 21, 1998, Defendant-Sinclair and the Other State Court Action Plaintiffs
3 recorded a second subdivision map (“Subdivision Map No. 2”) to create 15 new lots on the Fox
4 Hollow Property. Defendant-Sinclair recorded Subdivision Map No. 2 with the knowledge that he
5 had not complied with the requirements as a condition precedent to recording the map. This
6 misconduct included not only that the FHOA which had not been formed, but also the failure to have
7 the required work completed on the Fox Hollow Property that was a condition precedent to the
8 recording of Subdivision Map No. 2. *Id.*, ¶ 6 at 6:27.5-28, 7:1-2.5.

9 Upon recording Subdivision Map No. 2, Defendant-Sinclair arranged 15 loans for which
10 deeds of trust were recorded against the 15 lots created in the new Subdivision No. 2 by the
11 recording of Subdivision Map No. 2. The deeds of trust were signed by Mr. Mauchley which
12 contained representations that the FHOA was in existence. However, Defendant-Sinclair had not
13 formed the FHOA. *Id.*, ¶ 7 at 7:3.5-5.

14 The loans arranged by Defendant-Sinclair in July of 1998 were based on values for the
15 15 lots with completion of subdivision firewall and relocation of underground utilities for
16 15 different ownerships of the lots created by Subdivision Map No. 2. This information provided
17 by Defendant-Sinclair to the lenders was false. *Id.*, ¶ 8 at 7:6-8.

18 By late 1998 and early 1999, defaults began occurring on the loans arranged by Defendant-
19 Sinclair in July 1998. Defendant-Sinclair then further encumbered the Fox Hollow Property with
20 an additional \$300,000.00 of debt. When Mr. Mauchley communicated with Defendant-Sinclair
21 about defaults in payments, Defendant-Sinclair stated that the payments had been made by wire
22 transfers or other payment. This was false, and Defendant-Sinclair later recanted this explanation
23 given to Mr. Mauchley. *Id.*, ¶ 9 at 7:9-11.

24 In the April to June 1999 period, the lenders began recording notices of defaults for the loans
25 obtained by Defendant-Sinclair in July 1988 on the 15 lots created by Subdivision Map No. 2. Then,
26 on July 1, 1999, an entity name “Mauctrst LLC” filed bankruptcy. Mauctrst asserted it was the
27 owner of the 15 lots created by Subdivision Map No. 2 and that the bankruptcy automatic stay
28 prevented the creditors holding the notes and deeds of trust from the July 1998 loans from

1 foreclosing. *Id.*, ¶ 10 at 7:12-14.

2 In July of 1999, it was represented that Mauctrst LLC was owned 50% by Mrs. Mauchley and
3 50% by Mr. Mauchley.¹³ At the State Court Trial Mr. Mauchley testified that such statements were
4 false. In unlawful detainer proceedings both Defendant-Sinclair and Mr. Mauchley stated under
5 penalty of perjury that the two of them owned the Fox Hollow Property. *Id.*, ¶ 11 at 7:15-19.

6 The State Court determined that Defendant-Sinclair testified in deposition, testified at trial,
7 and stated in letters that he sent, that at the time that Defendant-Sinclair was a “member/manager”
8 of Mauctrst LLC and that “member/manager” meant “owner.” Further, Defendant-Sinclair
9 financially benefitted having received \$160,000.00 from the Fox Hollow Property endeavor in the
10 year before July 1, 1999. *Id.*, ¶ 12 at 7:20-22.5.

11 In January 2000, Defendant-Sinclair began to attempt to negotiate significant discounts on
12 the loans by drawing the lenders’ attention -- 18 months after Defendant-Sinclair arranged the loans
13 -- to the fact that their collateral was impaired for reasons solely attributable to Defendant-Sinclair’s
14 misconduct. *Id.*, ¶ 13 at 7:23.5-25.5.

15 In February 2000, lenders filed additional notices of default regarding the Fox Hollow
16 Property. In March 2000, Defendant-Sinclair began suing lenders and seeking restraining orders to
17 delay the foreclosures. In total, Defendant-Sinclair filed seven lawsuits and lost “nearly all of them.”
18 _____

19 ¹³ The Mauctrst, LLC bankruptcy case was filed on July 1, 1999 in this Court. The Petition is
20 signed by Gregory V. Mauchley as the “Member - Manager.” 99-28903, Dckt. 1. The Defendant-
21 Sinclair signed the Petition as the attorney for Debtor. *Id.* Schedule A lists Mauctrst as owning 19 Lots
22 at “152 Twentieth Century Turlock, CA.,” encumbered by 19 individual loans and 2 blanket loans
23 encumbered by second and third deeds of Trust. Dckt. 70 at 3. Six other properties are listed on
24 Schedule A, consisting of 5 properties in Ceres, California and one in Fairfield, California. *Id.* at 4. On
25 the Statement of Financial Affairs, in response to Question 19 to list the name of current partners,
26 officer, directors, and shareholders, the only response is “LLC.” *Id.* at 40.

27 The signature page for the Statement of Financial Affairs is signed “Mauctrst, LLC by Richard
28 Sinclair, Manager.” *Id.* at 42.

29 On December 8, 1999, Amended Schedules were filed Mauctrst, LLC. Dckt. 150. On
30 Schedule A, no new real properties are listed, but it is stated that Greg Mauchley is listed as having a
31 Blanket 4th Deed of Trust to secure \$390,700.00. *Id.* at 4.

32 On the Amended Statement of Financial Affairs, in response to Question 19 the two members are
33 listed as Gregory Mauchley, 50%, and Diana Mauchley, 50%. *Id.* at 41.

1 *Id.*, ¶ 14 at 7:26.5-28.

2 On June 6, 2000, Defendant-Sinclair obtained a preliminary injunction relating to Lots 9 and
3 14 of the Fox Hollow Property. However, Defendant-Sinclair falsely claimed the preliminary
4 injunction also pertained to Lots 3 and 7. The injunction was conditioned on Defendant-Sinclair and
5 the Other State Court Action Plaintiffs making the required monthly payments on the promissory
6 notes as they came due. Defendant-Sinclair and the Other State Court Action Plaintiffs failed to
7 make a single payment, while enjoying the benefit of the injunction until 2003.¹⁴ *Id.*, ¶ 15 at 8:1.5-4.

8 Defendant-Sinclair prepared FHOA minutes indicating that Mr. Mauchley was present at the
9 first two FHOA meetings. Mr. Mauchley testified that he did not attend meetings. The FHOA
10 minutes indicate work was being done on, and Mr. Sinclair billed Fox Hollow for doing work on,
11 the Articles of Incorporation during the time period of August 2000 to December 2000. However,
12 the Articles of Incorporation were signed and completed in July 2000, and simply not filed with the
13 Secretary of State until December 2000. *Id.*, ¶ 16 at 8:5-8.

14 In October 2000, Defendant-Sinclair reported to the escrow that outstanding, unpaid dues
15 were owing, and volunteered to the escrow that "title to the lots cannot be transferred at the present
16 time" in connection with any attempted sale. Defendant-Sinclair provided a declaration under
17 penalty of perjury to the State Court that this letter was sent to the escrow "[o]ut of courtesy to the
18 new owners and to elicit their cooperation." The State Court Decision expressly concludes that this
19 testimony by Defendant-Sinclair was not credible. A month later, Defendant-Sinclair sent out a
20 FHOA dues statement with a note at the bottom that there were potential purchasers interested in
21 purchasing the lots at their "as is where is" price. *Id.*, ¶ 17 at 8:9-12.5.

22 In February 2001, a receiver was appointed over Defendant-Sinclair's objection. The receiver
23 appointment hearing reflects Defendant-Sinclair's misleading conduct. (The State Court Decision
24 makes reference to the record, "1289," but does not state in the findings what the "misleading
25 conduct" was in the receivership proceeding.) *Id.*, ¶ 18 at 13.5-14.5.

26 In May 2001, Defendant-Sinclair entered a settlement agreement with GMAC for the sale
27

28 ¹⁴ The Trial Court Decision does not state as part of the findings how or why the creditors
allowed this default to continue for more than two years.

1 of the Fox Hollow Property. What Defendant-Sinclair failed to disclose to GMAC was that
2 Defendant-Sinclair secretly set up as a double escrow the Fox Hollow Property, and Defendant-
3 Sinclair as the undisclosed actual purchaser. In July 2001, Defendant-Sinclair failed to close the
4 (secret double) escrow to purchase the Fox Hollow Property pursuant to the settlement with GMAC.
5 Defendant-Sinclair informed Mr. Mauchley that they missed the deadline to complete the (secret
6 double escrow) purchases. Defendant-Sinclair had even written correspondence acknowledging that
7 the escrow to sell the Fox Hollow Property "must close" within the time certain. However, when
8 Defendant-Sinclair failed to close the (secret double) escrow to timely buy the property, he claimed
9 that the date for the close of escrow was not a condition of their agreement with GMAC. *Id.*, ¶ 19
10 at 8:15.5-19.

11 In December 2001, Brandon Sinclair (Defendant-Sinclair's son) took out a loan against Lot 1
12 at Fox Hollow and then transferred the property to an LLC that he and Defendant-Sinclair formed.
13 The purpose stated in Brandon Sinclair's testimony was that the LLC was set up to protect Brandon
14 Sinclair from credit damage when they defaulted. *Id.*, ¶ 20 at 8:20-21.5.

15 In May 2002, Defendant-Sinclair and the Other State Court Action Plaintiffs stopped making
16 dues payments to the FHOA. *Id.*, ¶ 21 at 8:22.5. In June 2002, more than 10 months after
17 Defendant-Sinclair and the Other State Court Action Plaintiffs were to close escrow on Lots 11 and
18 18 and after GMAC had canceled the Settlement Agreement with Defendant-Sinclair, California
19 Equity Management Group, Inc. (one of the Plaintiffs in this Adversary Proceeding) entered into a
20 contract with GMAC to purchase those two lots. *Id.*, ¶ 22 at 8:23.5-27.5.

21 During the State Court Action, Defendant-Sinclair deleted information from an exhibit in an
22 attempt to create the false impression that Defendant-Sinclair and the Other State Court Action
23 Plaintiffs had claimed Defendant-Sinclair had a contract to purchase the properties before GMAC
24 and CEMG completed their sale. The State Court Decision expressly determined that Defendant-
25 Sinclair's testimony regarding what he told Mr. Katakis before CEMG closed escrow was false. *Id.*

26 On July 31, 2002, Defendant-Sinclair advised the court in which the receivership action was
27 pending in writing that: (a) after that court appointed a receiver, "the Board resigned"; (b) there was
28 "no board of directors to represent" the FHOA; (c) "no direction has been provided"; and

1 (d) elections should be held. Defendant-Sinclair failed to advise the FHOA for two months after the
2 new Board was elected that Defendant-Sinclair and the prior Board asserted they were still the
3 FHOA Board. Defendant-Sinclair only did so when it was apparent that the new Board was going
4 to begin collecting dues and gather estimates for the repair work at Fox Hollow. *Id.*, ¶ 23 at 9:1-
5 10.5.

6 Defendant-Sinclair explained why he told the State Court that the board had resigned, there
7 was not a board, and he (Defendant-Sinclair as the attorney) was not getting any direction, stating:

8 What I must have ineloquently represented to the Court was Mr. Katakis was buying
9 us out. He had made us an offer of about \$1 million. We were waiting to finalize that.
10 And everybody wanted to get rid of this case because it had no other purpose. And
11 so we weren't going to go to trial. We weren't going to go forward with it. And so I
12 was telling the Court, you know, this is kind of done with.

13 The State Court Decision found that rather than admit that he had lied to the Court,
14 Defendant-Sinclair made up the above story. First, the State Court concluded that the document
15 Defendant-Sinclair stated to the Court at trial suggests nothing remotely like Defendant-Sinclair's
16 testimony. Second, the evidence was unequivocally clear that Mr. Katakis never offered them
17 \$1 million to Defendant-Sinclair and the Other State Court Action Plaintiffs as Defendant-Sinclair
18 asserted at the State Court trial. *Id.*

19 Then, in October 2002, when the new Board and officers were elected for the FHOA, the Fox
20 Hollow Property was already in very poor condition. It had been in the same condition when the
21 State Court was required to appoint a receiver for the homeowner's association. It had been in a
22 deteriorating condition since as early as 1993. Defendant-Sinclair even admitted the deferred
23 maintenance. Yet, Defendant-Sinclair continued to claim that he and the Other State Court Action
24 Plaintiffs had no role in the poor condition of Fox Hollow. *Id.*, ¶ 24 at 9:11.5-14.5.

25 In December 2002, Defendant-Sinclair threatened the new Board with a number of baseless
26 charges, including claims that the prior board of the FHOA had not resigned. *Id.*, ¶ 25 at 9:15.5-16.

27 In March 2003, Defendant-Sinclair and the Other State Court Plaintiffs doctored a summons
28 and prepared an amended complaint, and then served both documents on CEMG and Mr. Katakis
without approval of the court. The doctored summons and amended complaint had not actually been
filed, and Defendant-Sinclair then allowed the "litigation" to proceed for months. *Id.*, ¶ 26 at 9:17-

1 18.5

2 Then in May 2003, Defendant-Sinclair complained about Fox Hollow being in a state of
3 disrepair. Yet, Defendant-Sinclair and the Other State Court Plaintiffs still refused to pay dues. In
4 July 2003, as the FHOA attempted to move forward with a rehabilitation project, Defendant-Sinclair
5 wrote to the FHOA and advised that the FHOA's actions were done to damage Defendant-Sinclair.
6 Defendant-Sinclair's claims that the FHOA and other defendants were harming them by the
7 rehabilitation project were false. *Id.*, ¶ 27 at 9:19.5-22.

8 In November 2003, Defendant-Sinclair and the Other State Court Plaintiffs tendered \$0 to
9 the FHOA when clearly Defendant-Sinclair knew that he and the Other State Court Plaintiffs had
10 not paid dues since May 2002. *Id.*, ¶ 28 at 9:23-23.5.

11 With respect to the Mauctrst, the State Court Decision determined that Defendant-Sinclair
12 made untrue statements to the bankruptcy court as to the ownership of Mauctrst, LLC,
13 misrepresenting that it was owned 50% by Mr. Mauchley and 50% by Mrs. Mauchley. State Court
14 Decision at 18:19-22. The State Court found Defendant-Debtor's denial of ownership Mauctrst,
15 LLC to not be credible. *Id.* at 18:7-12. Contrary evidence presented was that Defendant-Debtor and
16 Mr. Mauchley had filed numerous unlawful detainer actions in which the two of them stated under
17 penalty of perjury (verified complaints) to be the owners of units in the Fox Hollow Property. *Id.*
18 at 18:22-27.

19 The State Court Decision goes further, concluding that Mauctrst LLC was a fiction for
20 Defendant-Debtor to try and avoid obligations under the various deeds of trust secured by the Fox
21 Hollow Property. *Id.* at 18:27-28, 19:1.5-2.5.

22 The State Court Decision determined that the pattern of "unclean hands" conduct and
23 behavior of Defendant-Sinclair and the Other State Court Action Plaintiffs was pervasive as well as
24 endemic to the entire Fox Hollow project over the entire period of time involved in this case,
25 including, but not limited to:

26 (1) the manner of securing the subject promissory notes and deeds of trust;

27 (2) refusing to make payments and misrepresentation of making payments required under the
28 subject promissory notes and deeds of trust;

1 (3) misusing the bankruptcy court to improperly delay and try to defeat the claims of the
2 holders of the subject promissory notes and deeds of trust;

3 (4) misusing a preliminary injunction to delay foreclosures without making monthly
4 payments;

5 (5) failing to timely form and fund an FHOA and failing to properly conduct the affairs of
6 the FHOA;

7 (6) dealings and interacting with the FHOA and [Katakis Plaintiffs], after October 2002,
8 related to the lots in issue;

9 (7) dealings with GMAC and defendants Katakis and CEMG with respect to Lots 11 and 18;
10 and

11 (8) the other conduct further described and set forth in the incorporation by reference
12 paragraphs.

13 *Id.*, p. 24:4.5-21.5.

14 The State Court Decision goes further, finding that “[Defendant-Sinclair and the Other State
15 Court Plaintiffs] plan of non-payment of dues and assessments was systematic, continuous, and long
16 standing.” *Id.* at 14:15.5-16.5.

17 Given the nature and duration of the conduct, the State Court Decision determined that the
18 "unclean hands" of Defendant-Sinclair and the Other State Court Action Plaintiffs was proximately
19 related to Defendant-Debtor's and the Other State Court Action Plaintiffs' claims and the relief they
20 sought. *Id.* The State Court found for Katakis Plaintiffs on their unclean hands defense against
21 Defendant-Sinclair and the Other State Court Action Plaintiffs on all causes of action. The State
22 Court went further, making specific findings and determinations for each of the causes of action
23 asserted by Defendant-Debtor and the Other State Court Plaintiffs. For each of the causes of action,
24 the State Court granted judgment for Katakis Parties on the merits, in addition to the “unclean hands”
25 determination.

26 **Pattern of Conduct and Scheme of Defendant-Sinclair**

27 It is true that the State Court Decision shows a consistent, systematic pattern of conduct, and
28 misconduct, by the Defendant-Sinclair with respect to the Fox Hollow Property. However, this
court's consideration does not stop with merely that there was a judgment and the State Court
Decision used the words “unclean hands.” Fortunately, the State Court Decision makes very clear

1 determinations of the issues concerning Defendant-Sinclair's conduct.

2 As Defendant-Sinclair argues, the application of the doctrine of "Unclean Hands" does not
3 equal a determination of fraud. Beginning with the case cited by Defendant-Sinclair,
4 *Kendall-Jackson Winery, Ltd. v. Superior Court*, 76 Cal. App. 4th 970, 975(1999), "The doctrine of
5 unclean hands does not deny relief to a plaintiff guilty of any past misconduct; only misconduct
6 directly related to the matter in which he seeks relief triggers the defense. (11 Witkin, Summary of
7 Cal. Law (9th ed. 1990) Equity, § 10, p. 686.)."

8 In considering the actual conduct in the findings and determinations in the State Court
9 Decision, this court determines that Defendant-Sinclair engaged in an intentional, willful multi-year
10 pattern of conduct of misrepresentations and actions against others which were without factual or
11 colorable legal foundation. This is consistent with Defendant-Sinclair's conduct in this court, in
12 which this court has concluded that Defendant-Sinclair will say, assert, or argue anything he believes
13 will sound in his favor, without regard to factual support or legal merits, and without regard to the
14 harm done to others.

15 While it is not clear what long-term property development goals Defendant-Sinclair was
16 trying to accomplish with his misrepresentations and willful and malicious conduct, it is clear that
17 he was obtaining short term economic benefits from the Fox Hollow Properties appearing to be
18 subdivided, the loans obtained thereon, and the fees he was paid for "managing" the project. This
19 economic benefit was sustained by the scheme of willful and malicious conduct of Defendant-
20 Sinclair.

21 The significant damage to others manifests when Defendant-Sinclair went out and obtained
22 the loans on the 15 lots for which the invalid Subdivision Map 2 had been filed. In apparent reliance
23 on said invalid Subdivision Map 2, these loans were made and Defendant-Sinclair continued to
24 manage and make money from the Fox Hollow Property.

25 Then, battles erupted when the lenders, not having been paid, tried to foreclose. The State
26 Court Decision cites to specific misrepresentations made by Defendant-Sinclair in the receivership
27 proceedings. It is clear that Defendant-Sinclair used his litigation strategy of saying whatever,
28 irrespective of truth and legal merit, and then asserting threats, to try and continue in his control of

1 the Fox Hollow Property.

2 It was not until 2002 when Katakis Plaintiffs entered the picture, purchasing the two lots of
3 the Fox Hollow Property from GMAC. With that purchase, Katakis Plaintiffs became targets of
4 Defendant-Sinclair's (1) wrongful acts, (2) done intentionally, (3) which necessarily causes injury,
5 and (4) done without just cause or excuse. Defendant-Sinclair then waged a multi-decade campaign
6 of litigation, losing at trial both on the merits and because his conduct in the underlying transactions
7 involving Fox Hollow (to keep it out of the hands of creditors and purchasers at foreclosure sales)
8 was "conduct that violates conscience, or good faith, or other equitable standards of conduct"
9 "relate[d] directly to the cause at issue" with Katakis Plaintiffs in the State Court Action. While the
10 conduct against Katakis Plaintiffs was not unique to Katakis Plaintiffs, they had the litigation
11 fortitude to assert their rights against Defendant-Sinclair.

12 **District Court of Appeals Rulings Affirming State Court Decision and**
13 **Subsequent Award of Attorneys' Fees and Costs**

14 Interestingly, the DCA Opinion affirming the Final State Court Judgment provides some
15 additional information about the award of attorneys' fees and Defendant-Sinclair's conduct. The
16 DCA Opinion includes a detailed history of Defendant-Sinclair's conduct in handling the Fox
17 Hollow Property and his dealings, and misdealings, with others. Issue after issue on appeal for
18 Defendant-Sinclair fails - many for the fundamental failure to provide citation to the record or
19 present grounds to reverse the appeal. Instead, most of what Defendant-Sinclair attempted to do was
20 just relitigate anew the issues which were determined at trial, ignoring his burden on appeal. A
21 common response of the DCA to Defendant-Sinclair's contentions is shown by the following
22 statement:

23 Moreover, plaintiffs [Defendant-Sinclair], in arguing these issues, ignore that they
24 bore the burden of proof at trial and now bear the burden to show error on appeal
under the applicable standard of review.

25 DCA Opinion, p. 40.

26 The conclusion this court draws from the DCA Opinion affirming the Final State Court
27 Judgment is that Defendant-Sinclair filed and prosecuted the appeal without regard to the merits of
28 his contentions. Rather, Defendant-Sinclair intended to do so in a manner designed to cause Katakis

1 Plaintiffs to incur significant legal fees without there being any merit to Defendant-Sinclair's
2 contentions. Defendant-Sinclair sought to intentionally impose those economic damages on Katakis
3 Plaintiffs in an effort to cause so much in damages that Katakis Plaintiffs would give up, not based
4 on the merits of the claims, but the huge financial burden imposed on them by Defendant-Sinclair.

5 The DCA revisited Defendant-Sinclair's conduct in the DCA Attys Fee Opinion. Defendant-
6 Sinclair's appeal of the attorneys' fees awarded by the State Court on remand after the DCA affirmed
7 the State Court Decision.

8 The improper conduct of Defendant-Sinclair is addressed in the DCA Attys Fee Opinion,
9 discussing Defendant-Sinclair's contention that the trial court improperly refused to continue the
10 hearing on attorney's fees. Part of Defendant-Sinclair's contention was that the trial court and
11 parties "violated a federal court order" by conducting the attorneys' fees hearings. First, the DCA
12 panel noted that Defendant-Sinclair did not present any such order to the trial court and raised it for
13 the first time on appeal. Second, Defendant-Sinclair failed to provide a copy of any such federal
14 order in the record on appeal. Finally, "[Defendant-Sinclair's] claim is based on a misrepresentation
15 of the substance and effect of the federal court documents." DCA Attys Fee Opinion at 7. The DCA
16 panel concluded that there was no federal order restraining Katakis Plaintiffs from taking any action.

17 The DCA panel further noted that in his opening appellant's brief, Defendant-Sinclair failed
18 to include citations to the record. *Id.* at 10. When citations were provided in the reply brief by
19 Defendant-Sinclair, they did not necessarily support the contention made in the reply brief. *Id.*

20 In response to Defendant-Sinclair's contention that the award of attorneys' fees should be
21 reversed because of an alleged disqualifying conflict, the DCA panel stated that Defendant-Sinclair
22 waited to assert the issue for more than two years after counsel became involved in the case and
23 more than a year after the trial.

24 The rulings of the DCA in these two appeals demonstrate that Defendant-Sinclair is
25 consistent in his litigation strategy and larger scheme of willful and malicious conduct to retain
26 control of the Fox Hollow Property. Without regard to the legal merits of his contentions, without
27 regard to the truth of the factual contentions asserted, Defendant-Sinclair willfully and intentionally
28 continues in his scheme to financially abuse anyone who would not capitulate to his desires

1 concerning the Fox Hollow Property.

2 Based on the Findings and Determinations in the State Court Decision, which has been
3 affirmed on appeal, this court grants the Motion for Summary Judgment, determining that pursuant
4 to 11 U.S.C. § 523(a)(6) the obligations to Katakis Plaintiffs on the Final State Court Judgment,
5 including the awards of attorneys' fees on appeal, are nondischargeable.

6
7 **Additional Findings of State Bar Court Supporting
Granting of Summary Judgment for 11 U.S.C. § 523(a)(6) Relief**

8 Even though the findings and determinations of the State Court are sufficient for the granting
9 of the Motion for Summary Judgment pursuant to 11 U.S.C. § 523(a)(6), the findings of the State
10 Bar Court give further support for such ruling. The State Bar Court Decision amplifies the
11 determinations of Defendant-Sinclair's sharp dealings, ethical breaches, meritless litigation strategies,
12 and intentional abusive conduct. Defendant-Sinclair's conduct was sufficiently egregious that even
13 under the clear and convincing standard of evidence required in a disbarment proceeding, the State
14 Bar Court ruling was against Defendant-Sinclair.

15 The State Bar Court ties in the Mauctrst bankruptcy case as part of Defendant-Sinclair's
16 scheme, stating that Defendant-Sinclair failed to account in the Mauctrst bankruptcy case for the
17 proceeds of two fire insurance claims, and more than 50 cancelled checks and two bank statements
18 were missing. Additionally, Defendant-Sinclair failed to account to the trustee for \$135,000.00
19 Defendant-Sinclair received from Mauctrst between August 1998 and June 1999. State Bar Court
20 Decision, p. 9; Exhibit 12, Dckt. 79. The State Bar Court judge determined that one of the economic
21 benefits that Defendant-Sinclair obtained from the control of the Fox Hollow Property was that he
22 was paid a monthly salary of \$10,600.00 to manage the Fox Hollow Property. *Id.* at 8.

23 As part of the scheme of willful and malicious conduct, the State Bar Court determined that
24 after the Mauctrst bankruptcy case was closed and the lenders pursued foreclosure, "Defendant-
25 Sinclair on behalf of Mauchley and Mauctrst, filed 15 actions against the lenders to delay
26 foreclosure." *Id.* at 10. The State Bar Court concluded that Defendant-Sinclair did not pursue
27 colorable claims for Mauctrst, but filed the fifteen lenders in actions "to delay foreclosure."

28 In an action against ContiMortgage and Lonestar Mortgagee Services, LLC (Lonestar),

1 Stanislaus Superior Court, Case No. 254996, the State Bar Court found that Defendant-Sinclair
2 misrepresented that the court's preliminary injunction applied to lots not included in the preliminary
3 injunction. *Id.*

4 In addition to being paid to "manage" Fox Hollow, the State Bar Court found that Defendant-
5 Sinclair was then engaged to represent the FHOA, being paid \$50,000.00 to assist in the formation
6 of the association in 2000, four years after Defendant-Sinclair represented that it had been created.
7 *Id.* at 11. Here is further economic benefit Defendant-Sinclair was obtaining from keeping control
8 of the Fox Hollow Property.

9 With respect to Defendant-Sinclair attempting to purchase the property through undisclosed
10 double escrows, the State Bar Court determined that Defendant-Sinclair's testimony that the lender
11 (GMAC) did not care there was an undisclosed double escrow that would result in Defendant-
12 Sinclair (and his indistinguishable alter-egos) still being the "borrower" who owed the money to
13 GMAC was not credible. *Id.* at 13. This lack of disclosure is part of the "anything goes" intentional
14 conduct of Defendant-Sinclair to keep Fox Hollow at all costs (to others). The State Bar Court found
15 credible the lender's witness who stated that "her goal for GMAC was 'to get rid of [Defendant-
16 Sinclair], Mauchley, et cetera, people for all time.'" *Id.*

17 In connection with the litigation, in June 2002 Defendant-Sinclair represented to the court
18 that all of the FHOA board members had resigned when the state court receiver was appointed. *Id.*
19 at 15. Then, just six months later Defendant-Sinclair asserted in writing to Katakis Plaintiffs and
20 the new members of the FHOA that Defendant-Sinclair, Mauchley and Brandon (Defendant-
21 Sinclair's son) had not resigned from the board. *Id.* This further shows the continuing, intentional,
22 willful, misconduct of Defendant-Sinclair as part of his ongoing scheme to cause harm and economic
23 damage to others.

24 The State Bar Court concluded that Defendant-Sinclair had an intentional scheme to defraud
25 that rose to the level of moral turpitude, dishonesty, and corruption in violation of Business and
26 Professions Code § 6106. *Id.* at 24. This conduct included skimming off loan proceeds, filing
27 bankruptcies and lawsuits for purposes of delaying foreclosure sales and to keep control of the Fox
28 Hollow Property, and providing false testimony and misrepresentations to the court to conceal and

1 perpetuate his scheme. *Id.*

2 The State Bar Court, applying a clear and convincing burden of proof standard, concluded
3 that Defendant-Sinclair engaged in a pattern of misconduct and deception, spanning back to 1994.
4 *Id.* at 29. This is consistent with this court's conclusion that Defendant-Sinclair's conduct was not
5 inadvertent, isolated, or a mistake, but an intentional series of intentional acts intended to cause harm
6 to any who did not capitulate to Defendant-Sinclair's desires to keep control of the Fox Hollow
7 Property. As this court has concluded, the State Bar Court Decision includes the determination that:

8 During this time [1994 through the District Court Action] [Defendant-Sinclair] has
9 consistently and repeatedly engaged in deceptive and improper conduct in an effort
10 to procure personal financial gain. The length and extent of [Defendant-Sinclair's]
pattern of misconduct warrant significant weight in aggravation.

11 *Id.* at 30-31.

12 The State Bar Court also determined that Defendant-Sinclair's misconduct as part of his
13 scheme resulted in significant harm to Katakis Plaintiffs, forcing them to unwind Defendant-
14 Sinclair's pattern of misconduct at a cost Katakis over \$1.3 million dollars in attorney's fees, as well
15 the damage to Mr. Katakis' emotional and physical well-being. *Id.* at 31.

16 The misconduct of Defendant-Sinclair was serious enough for the State Bar Court to
17 conclude that he should be disbarred. Upon review of the decision, the California Supreme Court
18 concurred, disbaring Defendant-Sinclair from the practice of law.

19 The findings and determinations of the State Bar Court which are given collateral estoppel
20 effect are additional to, and in themselves provide a separate basis for granting the relief requested
21 pursuant to 11 U.S.C. § 523(a)(6).

22 RELIEF GRANTED

23 Pursuant to this Decision, the court shall issue a separate order:

24 1. Denying without prejudice the Motion for Summary Judgment seeking relief pursuant
25 to 11 U.S.C. § 523(a)(2)(A) for actual fraud. The claims for such relief shall proceed to trial, if
26 Katakis Plaintiffs elect to further pursue that portion of the litigation; and

27 2. Granting the Motion for Summary Judgment requesting relief pursuant to 11 U.S.C.
28 § 523(a)(6) and for entry of a judgment determining that the obligations owing on the Final State

1 Court Judgment, including all costs and attorneys' fees are nondischargeable. The court shall enter
2 judgment that the Final State Court Judgment and the obligations thereunder of Defendant-Sinclair
3 are nondischargeable and not enter a monetary judgment to replace the Final State Court Judgment.

4 The court will defer entry of judgment on the 11 U.S.C. § 523(a)(6) claims until the other
5 claims are litigated or dismissed, and enter one final judgment resolving all claims being asserted
6 in this Adversary Proceeding.

7 Dated: May 2, 2017

8
9 /s/
RONALD H. SARGIS, Chief Judge
10 United States Bankruptcy Court
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ADDENDUM A

**Findings and Determinations of the State Court
Given Collateral Estoppel Effect and
Determined to Not Be in Material Dispute
Fed. R. Civ. P. 56(g) and Fed. R. Bankr. P. 7056**

1. “In April 1994, Mr. Sinclair wrote to the City of Turlock to advise them that there were sufficient funds in the HOA. (D022.) Mr. Sinclair testified that he never told the City that there was an HOA before 1998 (687:5-15) and that there was no HOA before 2000. (689:6-9.) Mr. Sinclair's 1994 letter to the City of Turlock that there was an HOA was false.”

Statement of Decision, ¶ 1 at 6:13.5 to 16.5; Dckt. 78. (The page references are to the page number of the State of Decision itself, Exhibit 4, and not the gross page number for all of the documents in Exhibits 1-7 filed as Dckt. 78.)

2. “From November 1995 through February 1997, Mr. Sinclair and Mr. Flake worked closely together to develop Fox Hollow. (D337 to D382; D390; D391.) Yet, Mr. Flake testified he had no involvement with Mr. Sinclair during this time. Clearly, this was not true.”

Id., ¶ 2 at 6:17.5-19.

3. “In March 1996, [Defendant-Sinclair] subdivided Fox Hollow by recording Map No. 1. (J011.) The City required as a condition that a homeowner's association be formed. (D010.) In September 1996, Plaintiffs recorded the CC&Rs. (D013.) The CC&Rs required formation of an HOA. [Defendant-Sinclair] did not do this.”

Id., ¶ 3 at 6:20-22.

4. “In February 1997, Mr. Flake sold Fox Hollow to Mr. Mauchley by selling four separate lots through four separate deeds. (J014, J017, J019, J021.) Although the CC&Rs required him to convey the common area to the HOA before doing this, he did not do it.”

Id., ¶ 4 at 6:22.5-24.

5. “In 1998, Mr. Sinclair worked to secure financing at Fox Hollow. Mr. Mauchley testified that Mr. Sinclair handled this work and that he, Mr. Mauchley, “didn't talk to any lenders.” Mr. Sinclair testified that Mr. Mauchley was ‘arranging for the most part the financing.’”

Id., ¶ 5 at 6:25-26.

6. “On or about July 21, 1998, [Defendant-Sinclair] caused Subdivision Map No.2 to be recorded creating an additional 15 lots. (J031.) [Defendant-Sinclair] knew that they had failed to complete the conditions imposed by the City for recording such a map. (D010, D012, D013.) [Defendant-Sinclair] also knew that the City had previously rejected their request to complete the required work after the map was recorded. (D016, D018, D021.)”

Id., ¶ 6 at 6:27.5-28, 7:1-2.5.

7. “In July 1998, immediately upon recording Map No.2, [Defendant-Sinclair] caused 15 loans to be placed against the 15 new lots. Mr. Mauchley signed fifteen deeds of trust (J032, J033, J034, J035, J037, J039, J041, J043 to J050) that contained Planned Unit

1 Development riders representing that there was a HOA. Yet, "there was no intention to start
2 it then." (687:5-15.)"

3 *Id.*, ¶ 7 at 7:3.5-5.

4 8. "In July 1998, [Defendant-Sinclair] obtained these 15 new loans based on values that
5 were "subject to final completion of subdivision firewalls and underground relocation of
6 utilities to accommodate individual ownership . . . " (J349; 4:11-14.) This material
7 information was not disclosed to the lenders. [Defendant-Sinclair's] secured these loans was
8 on a false premise."

9 *Id.*, ¶ 8 at 7:6-8.

10 9. "In late 1998 and early 1999, [Defendant-Sinclair] began defaulting on the loans and
11 were further encumbering the property with a \$300,000 loan. (J064.) Mr. Mauchley testified
12 he knew that [Defendant-Sinclair] were late on a more than a couple of payments, but Mr.
13 Sinclair insisted that he had made wire transfers or other sorts of direct payments, but later
14 recanted this testimony."

15 *Id.*, ¶ 9 at 7:9-11.

16 10. "In April, May and June of 1999, lenders began to record notices of default on the
17 July 1998 loans. (J066, J067, J068.) On July 1, 1999, Mautrst LLC filed bankruptcy.
18 [Defendant-Sinclair] claimed that the bankruptcy filing had nothing to do with the pending
19 non-judicial foreclosures and "that wasn't the consideration at all." (724:7-12.)"

20 *Id.*, ¶ 10 at 7:12-14.

21 11. "In July 1999, Mr. Sinclair filed bankruptcy for Mautrst LLC representing that it was
22 owned 50% by Mr. Mauchley and 50% by Mrs. Mauchley. Mr. Mauchley testified at trial
23 these statements were false. Richard Sinclair and Gregory Mauchley then had recently filed
24 unlawful detainer actions verifying under oath that they owned the property. Since July 1999,
25 [Defendant-Sinclair] have asserted that the automatic stay of the Mautrst LLC bankruptcy
26 should prevent Fox Hollow lenders from pursuing collection efforts even though (1) Richard
27 Sinclair and Gregory Mauchley, not Mautrst LLC, owned the property, (2) Mr. Mauchley,
28 not Mautrst LLC, was the obligor on the notes and deeds of trust."

Id., ¶ 11 at 7:15-19.

12 12. "Mr. Sinclair has testified in deposition, at trial and in letters that he sent that he is
13 a member/manager of Mautrst LLC and that member/manager means owner. Mr. Sinclair
14 has divulged that he directly benefitted in the amount of \$160,000 from the Fox Hollow
15 endeavor in the year before the July 1, 1999. Yet, he continues to claim he has no ownership
16 interest in it."

17 *Id.*, ¶ 12 at 7:20-22.5.

18 13. "In January 2000, [Defendant-Sinclair] began to attempt to negotiate significant
19 discounts on their loans by drawing the lenders attention -- 18 months after they obtained the
20 loans -- to the fact that their collateral was impaired for reasons solely attributable to
21 [Defendant-Sinclair's] misconduct. (D057, D058, D065, D067.)"

22 *Id.*, ¶ 13 at 7:23.5-25.5.

23 14. "In February 2000, lenders filed additional notices of default regarding Fox Hollow.

1 (J079 to J084.) In March 2000, [Defendant-Sinclair] began suing lenders and seeking
2 restraining orders to delay those foreclosures. (E.g. J215.) In total, they filed seven lawsuits
and lost nearly all of them.”

3 *Id.*, ¶ 14 at 7:26.5-28.

4 15. “On June 6, 2000, [Defendant-Sinclair] obtained a preliminary injunction which
5 listed Lots 9 and 14 at Fox Hollow, but which they have claimed also pertained to Lots 3 and
6 7. (J232.) The injunction was conditioned on [Defendant-Sinclair] making "the required
monthly payments on the promissory note as it comes due". Plaintiffs failed to make a single
payment and enjoyed the benefit of the injunction until 2003.”

7 *Id.*, ¶ 15 at 8:1.5-4.

8 16. “Although [Defendant-Sinclair] prepared HOA minutes indicating that Mr. Mauchley
9 was present at the first two HOA meetings (P002), Mr. Mauchley testified that he did not
attend meetings. Plaintiffs' minutes indicate work was being done on and Mr. Sinclair billed
10 Fox Hollow for doing work on Articles of Incorporation (P001) during the time period of
August 2000 to December 2000. Yet, the Articles of Incorporation were signed and
11 completed in July 2000, but simply not filed with the Secretary of State until December
2000. (D069.)”

12 *Id.*, ¶ 16 at 8:5-8.

13 17. “In October 2000, [Defendant-Sinclair] provided the outstanding dues to escrow and
14 volunteered to escrow that "title to the lots cannot be transferred at the present time". (D067.)
Mr. Sinclair provided a declaration under penalty of perjury to the Court that this letter was
15 sent "[o]ut of courtesy to the new owners and to elicit their cooperation". (J285, ¶ 17.) This
is not credible. A month later, [Defendant-Sinclair] sent out a HOA dues statement with a
16 note at the bottom that there were potential purchasers interested in purchasing the lots at
their "as is where is" price. (D348.)”

17 *Id.*, ¶ 17 at 8:9-12.5.

18 18. “In February 2001, a receiver was appointed over [Defendant-Sinclair’s] objection.
19 (J285; J291.) The receiver appointment hearing reflects [Defendant-Sinclair’s] misleading
conduct. (J289.)”

20 *Id.*, ¶ 18 at 13.5-14.5.

21 19. “In May 2001, [Defendant-Sinclair] entered a settlement agreement with GMAC that
22 they secretly set up as a double escrow without disclosing to GMAC that the Sinclairs were
the actual purchasers. In July 2001, [Defendant-Sinclair] failed to close with GMAC. Mr.
23 Sinclair informed Mr. Mauchley that they missed the deadline. Mr. Sinclair even wrote
correspondence acknowledging that the escrow "must close" within a time certain. (D093.)
24 However, [Defendant-Sinclair] still claim that the date for the close of escrow was not a
condition of their agreement with GMAC. (J332:4-12.)”

25 *Id.*, ¶ 19 at 8:15.5-19.

26 20. “In December 2001, Brandon Sinclair took out a loan against Lot 1 at Fox Hollow
27 (J140) and then transferred the property to an LLC (J148) that he and his father [Mr. Sinclair]
formed to protect him from credit damage (Testimony of Brandon Sinclair) when they
28 defaulted.”

1 *Id.*, ¶ 20 at 8:20-21.5.

2 21. “In May 2002, [Defendant-Sinclair] stopped making dues payments to the HOA.”

3 *Id.*, ¶ 21 at 8:22.5.

4 22. “In June 2002, over 10 months after the [Defendant-Sinclair] were to close escrow
5 on Lots 11 and 18 and after GMAC had canceled the Settlement Agreement with [Defendant-
6 Sinclair] (D199), CEMG entered into a contract with GMAC to purchase those two lots.
7 During trial, [Defendant-Sinclair] deleted information from an exhibit showing that Mr.
8 Sinclair had not sent a copy of the GMAC settlement agreement until July 17, 2002. (P085
v. D368.) This was done in an attempt to create the impression that [Defendant-Sinclair] had
claimed they had a contract to purchase the properties before GMAC and CEMG completed
their sale. Richard Sinclair's testimony regarding what he told Mr. Katakis before CEMG
closed escrow was false.”

9 *Id.*, ¶ 22 at 8:23.5-27.5.

10 23. “On July 31, 2002, [Defendant-Sinclair] advised the Court in writing that: (a) after
11 the Court appointed a receiver, "the Board resigned"; (b) there was "no board of directors to
12 represent" the HOA; (c) "no direction has been provided"; and (d) elections should be held.
13 (J309.) [Defendant-Sinclair] failed to advise the HOA for two months after the new Board
was elected that they believed they were the Board and only did so when it was apparent that
the new Board was going to begin collecting dues and gather estimates for the repair work
at Fox Hollow. (P052.)

14 Mr. Sinclair explained why he told the Court this: "What I must have ineloquently
15 represented to the Court was Mr. Katakis was buying us out. He had made us an offer of
16 about \$1 million. We were waiting to finalize that. And everybody wanted to get rid of this
17 case because it had no other purpose. And so we weren't going to go to trial. We weren't
18 going to go forward with it. And so I was telling the Court, you know, this is kind of done
with." (595:27-596:6.) Thus, rather than admit that he had lied to the Court, Mr. Sinclair
made up this story. First, the document he stated to the Court suggests nothing remotely like
Mr. Sinclair's testimony. Second, the evidence is unequivocally clear that Mr. Katakis never
offered them \$1 million as Mr. Sinclair claims.”

19 *Id.*, ¶ 23 at 9:1-10.5.

20 24. “In October 2002, when the new Board and officers were elected at Fox Hollow, Fox
21 Hollow was in a very poor condition. (D178.) It had been in the same condition when the
22 Court was required to appoint a receiver for the homeowner's association. (J282; J286 and
pictures attached to both declarations.) It had been in a deteriorating condition since as early
as 1993. (D009.) Mr. Sinclair even admitted the deferred maintenance. (J285, ¶ 9, p. 4.) Yet,
Plaintiffs continue to claim that they had no role in the condition of Fox Hollow.”

23 *Id.*, ¶ 24 at 9:11.5-14.5.

24 25. “In December 2002, [Defendant-Sinclair] threatened the new Board with a number
25 of baseless charges while claiming that the prior Board had in fact not resigned.”

26 *Id.*, ¶ 25 at 9:15.5-16.

27 26. “In March 2003, Plaintiffs doctored a Summons (J228) and prepared an Amended
28 Complaint (J237) and served both documents on CEMG and Mr. Katakis without Court
approval, without them being filed and then allowed the litigation to proceed for months.”

1 *Id.*, ¶ 26 at 9:17-18.5

2 27. “In May 2003, [Defendant-Sinclair] complained about Fox Hollow being in a state
3 of disrepair. (D238.) Yet, [Defendant-Sinclair] still refused to pay dues. In July 2003, as the
4 HOA attempted to move forward with a rehabilitation project, [Defendant-Sinclair] wrote
5 to the HOA and advised that the HOA's actions were done to damage [Defendant-Sinclair].
(D259.) [Defendant-Sinclair's] claims that the HOA and other defendants were harming
them by the rehabilitation project were false.”

6 *Id.*, ¶ 27 at 9:19.5-22.

7 28. “In November 2003, [Defendant-Sinclair] tendered \$0 to the HOA when clearly
[Defendant-Sinclair] knew that they had not paid dues since May 2002. (P019; P021.)”

8 *Id.*, ¶ 28 at 9:23-23.5.

9 The State Court expressly made the 28 above findings as part of its Statement of Decision
10 in rendering judgment for Katakis Plaintiffs in the State Court Action. *Id.*, p. 23:19.5-22.5. These
11 are the 28 “Unclean Hands” findings at issue. The court does not give to them any special
significance to the words “Unclean Hands” as the conclusion of the State Court, but accepts the
individual findings and determinations by the State Court.

12 In addition to the above, the State Court Decision includes the additional findings and
13 determinations:

14 29. “[Defendant-Sinclair, Mauctrst LLC, Lairtrust LLC, Capstone LLC, Capstone Trust,
15 Stan Flake, Brandon Sinclair, and Gregory Mauchley, the plaintiffs in the State Court Action]
are indistinguishable from one another for the purposes of the doctrine as Mr. Sinclair was
acting for them and Mauctrst was a sham and alter ego for Mr. Sinclair and Mr. Mauchley.”

16 *Id.*, at 23:22.5-24.5.

17 30. “One of the plaintiffs, [Defendant-Sinclair], is a veteran, California attorney, residing
18 in Stanislaus County. He is in the private practice of law and also involved in real estate
development and real estate law.”

19 *Id.* at 2:23.5-25.5.

20 31. “In February 1993, [Defendant-Sinclair] applied to the City of Turlock to subdivide
21 Fox Hollow into 19 lots and a common area in order to accomplish a planned unit
22 development (PUD) thus invoking the legal requirements of the Davis-Stirling Common
23 Interest Development Act (Civil Code §§ 1350, *et. seq.*). The application for the
subdivision/conversion was approved by the City of Turlock in the spring of 1993, subject
to various conditions, such as building code compliance for separate utility service for each
individual lot, erection of firewalls and creation of a homeowners association.”

24 *Id.* at 4:4.5-10.5.

25 32. “Given [Defendant-Sinclair's and the Other State Court Plaintiffs'] knowledge of
26 the importance of the payments of dues and assessments and their willing non-compliance
27 in making such payments, notifying Plaintiffs of any rules and procedures in order to satisfy
a claim for code compliance would have been an idle act. Plaintiffs also had far more than
the statutorily contemplated notice associated with a homeowner's association foreclosure
28 and yet at no time tendered any money.”

1 *Id.* at 14:11.5-15.5.

2 32. “[Defendant-Sinclair’s and the Other State Court Plaintiffs’] plan of non-payment of
3 dues and assessments was systematic, continuous and long-standing.”

4 *Id.* at 14: 15.5-16.5.

5 33. “Moreover, [Defendant-Debtor's and the Other State Court Plaintiffs’] claim that
6 [Defendant-Sinclair], Brandon Sinclair and Gregory Mauchley were directors at the time
contradicts [Defendant-Sinclair's] representation to the court that at that time there was no
board, no direction for the BOA and an election should be held. (J309, p. 2.)”

7 *Id.* at 15:13.5-16.5.

8 34. “[Defendant-Debtor's and the Other State Court Plaintiffs’] either made a false
9 statement to the Court in the Receivership action (J309), or at trial, about the Board
resigning.”

10 *Id.* at 15:24.5-25.5.

11 35. “Leading up to the bankruptcy filing in 1999 and thereafter, [Defendant-Sinclair], Mr.
12 Mauchley and Mautrst operated as an indistinguishable enterprise with [Defendant-Sinclair]
having authority to act on behalf of Mr. Mauchley and Mautrst. [Defendant-Sinclair] has
13 testified in deposition and at trial and stated in letters that he sent to tenants at Fox Hollow
that he was a member/manager of Mautrst LLC, and he admitted under oath that
14 member/manager means owner.”

15 *Id.* at 18:7-12.

16 36. “Yet, [Defendant-Sinclair, notwithstanding the above testimony] he denied ownership
of Mautrst LLC at trial. The court did not find Mr. Sinclair's denial of ownership credible.”

17 *Id.* at 18:12-13.

18 37. “[Defendant-Debtor's and the Other State Court Plaintiffs’] claimed that the
19 bankruptcy filing had nothing to do with the pending non-judicial foreclosures and "that
wasn't the consideration at all." (724:7-12.) However, the court did not find such testimony
credible.”

20 *Id.* at 18:15-18.

21 38. “In July 1999, [Defendant-Debtor] filed bankruptcy for Mautrst representing that it
22 was owned 50% by Mr. Mauchley and 50% by Mrs. Mauchley. Mr. Mauchley testified at
trial these statements were false. As such, basic representations were made to the bankruptcy
23 court regarding ownership of Mautrst that were untrue.”

24 *Id.* at 18:19-22.

25 39. “Moreover, at the time Mautrst filed for bankruptcy, Mautrst did not even have a
26 signed operating agreement and Mr. Sinclair had filed numerous unlawful detainer actions
for units at Fox Hollow asserting under oath he ([Defendant-Sinclair]) and Mr. Mauchley as
27 individuals were owners of the Fox Hollow property, not Mautrst. Plaintiffs also asserted
in the bankruptcy court that Mautrst merely had the right to operate the property, and Mr.
28 Mauchley owned the property.”

1 *Id.* at 18:22-27.

2 40. “The Court determines that Mauctrst LLC was a fiction designed to allow the misuse
3 of the bankruptcy court and to attempt to avoid Defendant-Debtor's and the Other State Court
4 Plaintiffs’ obligations under various deeds of trust, including, but not limited, to Lots 3, 7,
5 9 and 14, and other obligations of [Defendant-Debtor's and the Other State Court
6 Plaintiffs’].”

7 *Id.* at 18:27-28, 19:1.5-2.5.

8 The judge in the State Court Action summarized the determination that the Doctrine of
9 Unclean Hands precludes any recovery by Defendant-Sinclair (and the other alter-ego plaintiffs in
10 the State Court Action), concluding:

11 “The pattern of "unclean hands" conduct behavior of [Defendant-Sinclair]
12 was pervasive as well as endemic to the entire Fox Hollow project over the entire
13 period of time involved in this case, including, but not limited to: (1) the manner of
14 securing the subject promissory notes and deeds of trust; (2) refusing to make
15 payments and misrepresentation of making payments required under the subject
16 promissory notes and deeds of trust; (3) misusing the bankruptcy court to improperly
17 delay and try to defeat the claims of the holders of the subject promissory notes and
18 deeds of trust; (4) misusing a preliminary injunction to delay foreclosures without
19 making monthly payments; (5) failing to timely form and fund an HOA and failing
20 to properly conduct the affairs of the HOA; (6) dealings and interacting with the
21 HOA and [Katakis Plaintiffs], after October 2002, related to the lots in issue; (7)
22 dealings with GMAC and defendants Katakis and CEMG with respect to Lots 11 and
23 18; and (8) the other conduct further described and set forth in the incorporation by
24 reference paragraphs. It is fortunate that the unclean hands doctrine is applicable to
25 both legal and equitable settings.

26 Given the nature and duration of the conduct, this court finds that the
27 "unclean hands" of [Defendant-Debtor] is proximately related to
28 [Defendant-Debtor's] claims and the relief they seek, such that the court finds for
[Katakis Plaintiffs] on their unclean hands defense against [Defendant-Debtor] on all
causes of action and for this separate and independent reason finds in favor of
[Katakis Plaintiffs] on each of the causes of action in [Defendant-Debtor] Fifth
Amended Complaint.”

Id., p. 24:4.5-21.5.

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ADDENDUM B

**Findings and Determinations of the State Bar Court
Given Collateral Estoppel Effect and
Determined to Not Be in Material Dispute
Fed. R. Civ. P. 56(g) and Fed. R. Bankr. P. 7056¹⁵**

- A. “In January 1994, respondent, through Sinclair Enterprises, asked to modify the condition requiring all building code revisions to be completed before the final map could be recorded. The City of Turlock denied the request a month later. Respondent wrote the City, stating “[t]here are sufficient funds within the homeowners association” to perform some of the modifications. This was a misrepresentation, as there was no homeowners association.”

State Bar Court Decision, p. 4; Exhibit 12, Dckt. 79.

- B. “Even though the required modifications [to the Fox Hollow Property] were not completed, [Defendant-Sinclair], on February 20, 1998, filed a “Notice of Completion” of the subdivision project.”

Id. at 7.

- C. “Granite Bay Funding, which made loans on lots 3, 7, 9, and 14, did not know the subdivision work had not been completed. Had it been aware of that fact, it would not have made the loans until the work was complete. The civil trial court concluded the July 1998 loans were obtained “on a false premise.” This conclusion was also supported by the evidence contained in the present record.”

Id. at 8.

- D. “In addition, [Defendant-Sinclair] failed to account [in the Mauctrst bankruptcy case] for the proceeds of two fire insurance claims, and over 50 cancelled checks and two bank statements were missing. Finally, [Defendant-Sinclair] he failed to account to the trustee for \$135,000 he had received from Mauctrst between August 1998 and June 1999.”

Id. at 9. Mauctrst was an entity formed by Defendant-Sinclair, which paid Defendant-Sinclair a monthly salary of \$10,600 to manage the Fox Hollow Property. *Id.* at 8.

- E. “After Fox Hollow reverted to Mauctrst in January 2000, [Defendant-Sinclair] attempted to purchase the notes from the foreclosing lenders for his “clients.” At the civil trial, [Defendant-Sinclair] could not remember which clients. [Defendant-Sinclair] offered a reduced price because many of the units securing the notes could not be resold individually since the subdivision work was not complete. For example, in January 2000, just 18 months after Mauchley borrowed \$130,000 against lot 3, respondent offered to pay the lender \$80,000 for the note because the lot was not individually saleable.”

Id. at 9-10.

¹⁵ The court uses a letter paragraph identification methodology for the State Bar Court Decision findings and determination to distinguish them from the State Court Decision.

1 F. "After the property reverted to Mauctrst [after its bankruptcy case was closed], the
2 lenders again pursued foreclosures. [Defendant-Sinclair] on behalf of Mauchley and
Mauctrst, filed 15 actions against the lenders to delay foreclosure."

3 *Id.* at 10.

4 G. "In an action against ContiMortgage and Lonestar Mortgagee Services, LLC
5 (Lonestar), Stanislaus Superior Court, case no. 254996, Mauchley and Mauctrst
6 sought a restraining order and preliminary injunction barring foreclosures on lots 9
and 14. The pleading respondent prepared pertained to lots 9 and 14 only."

7 *Id.*

8 H. "The order [Defendant-Sinclair] prepared [in the above ContiMortgage action] for
9 the judge's signature after the hearing, however, states that defendants were enjoined
10 from conducting a foreclosure sale on lots 9 and 14 "or any Lots in the Fox Hollow
subdivision At the civil trial, [Defendant-Sinclair] and Mauctrst contended the
preliminary injunction also applied to lots 3 and 7.

11 *Id.*

12 I. "Despite the City of Turlock's subdivision approval condition in 1996 that required
13 the formation of a homeowners association and similar language in the CC&R's,
14 respondent testified at the civil trial that the Fox Hollow Owners' Association
(FHOA) had to be formed only upon the sale of the first lot to a second owner.
Therefore, when the first foreclosure by a lender was imminent, respondent held the
first meeting of the FHOA on June 1, 2000, and prepared the minutes."

15 *Id.* at 11.

16 J. "The directors [of FHOA] agreed to waive [Defendant-Sinclair's] conflict of interest
17 as a manager of Mauctrst and employed him as the association's legal counsel at
18 \$225 per hour or approximately \$50,000 for his services that year to assist with the
FHOA formation."

19 *Id.* at 12.

20 K. " In February 2001, Ocwen Federal Bank, F.S.B. (Ocwen Bank), a lender on four of
21 the foreclosed lots, applied to have a receiver appointed for the FHOA because of
22 deterioration of the buildings and common area. The court-appointed investigator
reported that Fox Hollow was in very poor condition. The property was littered with
23 garbage, discarded furniture, disabled vehicles, and abandoned shopping carts. The
landscaping and pool were not maintained, and the pool had a strong sewage odor.
24 In addition, the FHOA had shoddy bookkeeping practices and had grossly misused
its funds. That misuse included paying respondent \$15,266 for attorney fees while
spending only \$9,419 on property-related matters. Over [Defendant-Sinclair's]
25 opposition, a receiver was appointed."

26 *Id.*

27 L. "After GMAC foreclosed on lots 1, 11, 18, and 19, the Mauchley/Mauctrst lawsuit
28 against GMAC for damages remained. In May 2001, GMAC, Mauchley, Mauctrst,
and Flake (for Capstone Trust) entered into a settlement agreement . . . [Defendant-
Sinclair] set up double escrows for the purchase of lots 1 and 19. 8 He testified in

1 the civil trial that Mauchley and Mauctrst owed him substantial attorney fees and
2 wanted those fees to be paid. As payment for those fees, respondent agreed to take
the lots and give one lot to his son, Brandon, because he had worked "on the project."

3 M. "[Defendant-Sinclair] testified in the civil and present trials that GMAC was aware
4 of the double escrows and it did not matter to them. FN.9. GMAC's attorney, who
5 had approved the settlement agreement for GMAC, testified in the civil trial that she
6 never would have agreed to the double escrows had she been aware of them. Her goal
for GMAC was 'to get rid of [Defendant-Sinclair], Mauchley, et cetera, people for
all time.'"

7 *Id.* at 13.

8 FN.9. "[Defendant-Sinclair's] assertion that GMAC did not care about a double
9 escrow is unbelievable. [Defendant-Sinclair's] testimony on this subject lacks
credibility."

10 *Id.*

11 N. "On October 4, 2002, [Defendant-Sinclair] wrote Katakis asking to have the [FHOA]
12 meeting rescheduled because he would be in trial in Fresno. He stated he represented
13 himself; Mauctrst; Brandon; Mauchley; Capstone, LLC; Lairtrust, LLC; and Flake
14 collectively, who owned more than 5 percent of Fox Hollow. [Defendant-Sinclair]
15 did not assert that he, Brandon, and Mauchley were the current board of directors.
And, three months earlier in July 2002, [Defendant-Sinclair] wrote in a statement
filed with the court that the FHOA board members had resigned when the receiver
was appointed, and it was logical to hold elections for a board of directors to carry
out the work of the FHOA."

16 *Id.* at 15.

17 O. "On December 16, 2002, respondent sent a letter to Katakis and the FHOA claiming
18 that the former board--himself, Mauchley and Brandon--had not resigned, and he had
not been given credit for attorney fees that the FHOA owed to him while the receiver
was in place."

19 *Id.* at 16.

20 The State Bar Court Decision makes the following additional specific findings with respect
21 to the claims asserted against Defendant-Sinclair in the State Bar Court Action:

22 P. Count One - § 6106 [Moral Turpitude - Scheme to Defraud]

23 1. "The evidence before this court demonstrates that respondent engaged in a
24 fraudulent real estate scheme involving the Fox Hollow complex, including
25 but not limited to: (1) creating the false appearance of a homeowners
26 association and individually saleable lots; (2) seeking and obtaining loans
27 secured by portions of Fox Hollow based on false pretenses and
misrepresentations; (3) skimming off loan proceeds, dues collected in the
name of the FHOA, rental income, and tenant deposits; (4) filing
bankruptcies and lawsuits to try and delay foreclosures and/or keep the lots;
and (5) providing false testimony and misrepresentations to the civil courts
to conceal and perpetuate the scheme to defraud."

28 State Bar Court Decision, p. 24; Exhibit 12, Dckt. 79.

2. “By engaging in the scheme to defraud, including perpetuation of the scheme through an alter ego, respondent committed acts involving moral turpitude, dishonesty, and corruption, in wilful violation of Business and Professions Code, section 6106.”

Id.

Q. Count Three - § 6106 [Moral Turpitude - Misrepresentation]

1. “In Count Three, the State Bar alleged that respondent committed various acts of misrepresentation constituting moral turpitude. However, this court already relied on these same facts to establish [Defendant-Sinclair’s] culpability in Count One. The appropriate resolution of this matter does not depend on how many rules of professional misconduct or statutes proscribe the same misconduct. (*In the Matter of Torres* (Review Dept. 2000) 4 Cal. State Bar Ct. Rptr. 138, 148.) Count Three is therefore dismissed with prejudice, as duplicative.”

Id. at 24.

R. Pattern of Misconduct (Std. 1.5(c).)

1. “In the Fox Hollow matter, the trial and appellate courts concluded that [Defendant-Debtor’s and the Other State Court Plaintiffs’] conduct constituted a pattern of misconduct and deception. This court agrees, noting that Defendant-Sinclair’s misconduct spanned from 1994 through the underlying civil trial.”

Id. at 29.

2. “During this time [1994 through the District Court Action] [Defendant-Sinclair] has consistently and repeatedly engaged in deceptive and improper conduct in an effort to procure personal financial gain. The length and extent of [Defendant-Sinclair’s] pattern of misconduct warrant significant weight in aggravation.”

Id. at 30-31.

3. “[Defendant-Sinclair’s] actions demonstrate his indifference toward rectification or atonement for the consequences of his misconduct. Despite overwhelming evidence to the contrary, [Defendant-Sinclair] maintains he did nothing wrong and sees himself as the victim. Further, [Defendant-Sinclair] has not taken any steps to rectify the harm he has caused. Consequently, [Defendant-Sinclair’s] indifference toward rectification or atonement for the consequences of his misconduct warrants significant consideration in aggravation.”

Id. at 31.

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4. “[Defendant-Sinclair’s] misconduct resulted in significant harm to Katakis

1 and the administration of justice. Fighting and unwinding [Defendant-
2 Sinclair's] pattern of misconduct has cost Katakis over \$1.3 million dollars
3 in attorney's fees and has taken a toll on his emotional and physical
wellbeing. Further, [Defendant-Sinclair's] misconduct and stalling tactics
have resulted in a waste of judicial resources."

4 *Id.*

- 5 5. "Disbarment often has been imposed in those instances, such as here, where
6 an attorney has engaged in a pattern of serious misconduct because "only the
7 most serious instances of repeated misconduct over a prolonged period of
8 time" are characterized as demonstrating such a pattern. (*Levin v. State Bar*
9 (1989) 47 Cal.3d 1140, 1150, fn. 14; *Garlow v. State Bar*, 44 Cal.3d 689,
10 711-712 [disbarment warranted where attorney's behavior of making false
11 statements to the courts, failing to communicate with clients, failing to
competently perform, failing to return client documents and property, and
inducing others to testify falsely constituted a serious pattern of misconduct
involving recurring types of wrongdoing]; *In the Matter of Hindin* (Review
Dept. 1997) 3 Cal. State Bar Ct. Rptr. 657, 686-687 [disbarment
recommended where attorney's 10-year pattern of neglecting client matters
indicated a continuous course of professional misconduct].)"

12 *Id.* at 33.

- 13 6. "[Defendant-Sinclair's] numerous and repeated instances of deception and
14 fraud relating to the Fox Hollow property demonstrate that he is unable or
15 unwilling to conduct himself in a manner consistent with settled standards of
professional responsibility in this state."

16 *Id.*

- 17 7. "Based on [Defendant-Sinclair's] testimony and demeanor, there is little
18 indication that respondent has gained any insight and understanding regarding
the present misconduct."

19 *Id.*

Instructions to Clerk of Court
Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the document via the BNC or, if checked ☐, via the U.S. mail.

Debtor-Defendant Richard Carroll Sinclair P.O. Box 1628 Oakdale, CA 95361	Attorney for the Debtor-Defendant(s) (if any)
Bankruptcy Trustee (if appointed in the case) Gary Farrar P.O. Box 576097 Modesto, CA 95357	Office of the U.S. Trustee Robert T. Matsui United States Courthouse 501 I Street, Room 7-500 Sacramento, CA 95814
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