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10 STEVEN D. SILVERSTEIN, RON ELTER, and GRE
11 DEVELOPMENT, INC. as agents and Trustee of the
12 Via Corbina Trust #4

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **SOUTHERN DIVISION**

16
17 CHARLES EDWARD LINCOLN, III

18 Plaintiff,

19 vs.
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21 STEVEN D. SILVERSTEIN, RON ELTER,
22 GRE DEVELOPMENT, INC., Individually
23 and as agents for and Trustee of the Via
24 Corbina Trust #4 JOHN MURK, DIANNE
25 D’AGNOLO, The Honorable, SANDRA
26 HUTCHENS, THE SHERIFF OF ORANGE
27 COUNTY, CAL-WESTERN
28 RECONVEYANCE, WELLS FARGO
BANK, N.A., DENNIS STACY,
COLDWELL BANKER, and JOHN &

CASE NO: SACV09-1072 DOC(Ex)

**REPLY TO RESPONSE TO
MOTION TO DISMISS**

DATE: February 22, 2010
TIME: 8:30 a.m.
COURTROOM: 9D

1 JANE DOES 1-20,

2
3 Defendants.

4 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

5 The Movants reply to the Response of the Plaintiffs to Movant's Motion to
6 Dismiss on the grounds set forth in this Reply.

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9 The First Amended Complaint consists of generalities, purported
10 conclusions of law that all of the foreclosure and eviction statutes enacted in the
11 State of California are unconstitutional and unsupported conclusions of how
12 Plaintiffs' interpretation of the facts should be interpreted by this Court.

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16 In the Response, the Plaintiffs admit that they were evicted under the laws of
17 the State of California from premises after foreclosure occurred after unilaterally
18 claiming some type of tenancy. While they claim that the evictions occurred
19 based upon some conspiracy between the Movants and the State Court judges, they
20 focus on their conclusions that the foreclosure and landlord-tenant statutes of the
21 State of California are unconstitutional. Nowhere in the First Amended
22 Complaint do these Movants claim that they "owned" the premises by some
23 contractual purchase agreement between the Plaintiffs and the lenders that they
24 now sue and which foreclosed against the premises due to lack of payment.
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**THE FEDERAL COURT HAS NO JURISDICTION TO REVIEW
A CASE THAT AS A RESULT OF SUBSEQUENT ACTS
OR EVENTS HAS BECOME MOOT**

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6 According to DeFunis v Odegaard (1974) 416 U.S. 312, 94 S.Ct 1704,
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8 1706, the federal courts have no jurisdiction to review a case that as a result of
9 subsequent acts or events has become moot. Both the First Amended Complaint
10 and the “Response” to the Motion to Dismiss claim that the foreclosure and
11 eviction statutes of the State of California are unconstitutional. The foreclosures
12 and evictions in the State of California have been completed according to the
13 Plaintiffs. There is no indication that Plaintiffs appealed these decisions through
14 the Courts of California. Since the cases are concluded, Plaintiffs have no
15 standing to bring this action in the Federal Court since their State Court Actions
16 have been concluded and the issues are now moot. Under the United States
17 Constitution, Article III, Section 2, jurisdiction of the federal courts extends only to
18 cases and controversies. Unless a proceeding comes within this classification, the
19 federal courts will not take cognizance of it and will not declare constitutional
20 rights. See Diamond v Charles (1986) 476 U.S. 54, 106 S. Ct. 1697, 1704.
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THE STATE OF CALIFORNIA APPELLATE COURTS HAVE
NOT DECLARED PLAINTIFFS' CODE SECTIONS
UNCONSTITUTIONAL

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8 In appellate cases, the Courts of the State of California have not ruled that
9 foreclosures, landlord –tenants, or petition to sue attorneys under a conspiracy
10 theory as unconstitutional while ruling on merits of their individual facts. With
11 respect to California Civil Code Section 2924, the Court held that the provisions of
12 this section do not violate the "due process" clause of the Federal Constitution.
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14 See Curti v Pacific Mtg. Guaranty Co. (1936) 87 F2d 42. Under California Code
15 of Civil Procedure Section 1161, Telegraph Ave. Corp. v Raentsch (1928) 205
16 Cal. 93 held that this section is not unconstitutional in that it deprives the lessee of
17
18 equal protection of the law by denying to him the right of set-off, counterclaim or
19 cross-complaint. Under California Civil Code Section 1714.10, the courts held,
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21 that the absence of a provision for formal pretrial discovery prior to the hearing
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23 under California Civil Code Section 1714.10, (judicial determination of
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25 reasonable probability of success required prior to filing action against attorney
26 based on civil conspiracy with client) does not render the statute unconstitutional,
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28 since California Civil Code Section 1714.10., is a special proceeding of a civil

1 nature and as such, is an "action" within the compass of the Civil Discovery Act of
2 1986 Code of Civil Procedure Section 2016 (b)(1) . Hung v Wang (1992) 8 Cal
3 App 4th 908 In addition, California Civil Code Section 1714.10, the judicial
4 determination of reasonable probability of success required prior to filing action
5 against attorney based on civil conspiracy with client), does not violate a plaintiff's
6 right to due process by imposing a standard of proof applied at trial. The
7 reasonable probability standard required by the statute is not higher than the
8 preponderance of the evidence standard applied at trial. See Hung supra.
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15 **THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATION**
16 **ACT DOES NOT APPLY SINCE ALL OF THE MOVANTS ACTS WERE**
17 **ALLOWED BY LAW**
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20 18 USC 1961 specifically sets forth purported criminal acts that are included
21 if a cause of action under this statute is pled. There are no facts in the First
22 Amended Complaint or even the "Response" that support any contention that the
23 Movants committed any acts illegal in the State of California.
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As such, the Motion to Dismiss should be granted without leave to amend.

Respectfully submitted,

LARRY ROTHMAN & ASSOCIATES

Dated: February 16, 2010

s/LARRY ROTHMAN

LARRY ROTHMAN,
Attorney for Defendants:
STEVEN D. SILVERSTEIN, RON ELTER, and GRE DEVELOPMENT, INC. as
agents and Trustee of the Via Corbina Trust #4

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PROOF OF SERVICE

State of California, County of Orange:

I am employed in the county and state aforesaid. I am over the age of 18 and not a party to the within action; my business address is: City Plaza, 1 City Boulevard West, Suite 850, Orange, California 92868

On February 16, 2010, served the foregoing document described as:

REPLY TO RESPONSE TO MOTION TO DISMISS

on the parties listed below in this action by placing a true copy thereof or the originals in a sealed envelope sent first class mail and addressed as follows:

SEE ATTACHED PROOF OF SERVICE LIST

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on February 16, 2010, at Orange, California.

S/LARRY ROTHMAN

LARRY ROTHMAN

PROOF OF SERVICE LIST

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