

**ENDORSED FILED  
SAN MATEO COUNTY**

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN MATEO

13 Eric Oberle, Shery Scott, Matthew Fremont, and  
14 Natan BenYonatan on behalf of themselves and  
15 all others similarly situated,

16 Plaintiffs,

17 v.

18 Page Mill Properties, LLC, David A. Taran,  
19 James E. Thompson, Page Mill Management,  
20 LLC, Woodland Park Management, LLC, 1643  
21 Woodland, LLC, 1703 Woodland, LLC, 1807  
22 Woodland Ave, LLC, 1823 Woodland Ave,  
23 LLC, 1835 Woodland Ave, LLC, 1839  
24 Woodland, LLC, 1851 Woodland Ave, LLC,  
25 1859 Woodland Ave, LLC, 2020 Dumbarton,  
26 LLC, 1848 Clarke, LLC, 1986 Euclid, LLC,  
27 2036 Euclid, LLC, 2040 Euclid, LLC, 1995  
28 Manhattan, LLC, 655 Scofield, LLC, 1909  
Cooley, LLC, 504 O'Connor, LLC, DOES 1-  
250, inclusive,

Defendants.

Case No. CIV 478796

CLASS ACTION

**PLAINTIFFS' MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANTS'  
SPECIAL MOTION TO STRIKE -  
FOLLOWING LIMITED COURT-  
ORDERED DISCOVERY**

Date: September 1, 2009  
Time: 9:00 a.m.  
Dept.: 7  
Judge: Hon. Steven Dylina

**[CONDITIONALLY FILED UNDER  
SEAL]**

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1 I. INTRODUCTION

2 The discovery permitted by this Court in its January 26, 2009 Order—a limited production  
3 of documents and deposition of Mr. Taran, testifying on behalf of Page Mill Properties, LLC and  
4 1643 Woodland, LLC—now confirms (1) defendants’ anti-SLAPP motion is groundless, and (2)  
5 plaintiffs have (more than) a reasonable possibility of success on their claims. Discovery has  
6 provided incontrovertible evidence that Mr. Taran and a single, small set of investors conceived  
7 of and assembled—and now own and manage—a business enterprise of more than rental  
8 units in East Palo Alto. This makes Page Mill by far the largest landlord in the City.

9 The record, discussed in the second part of this brief, shows that defendants, when it suits  
10 their purposes, frequently ignore the purported “legal” distinctions among various Page Mill  
11 entities “owning” or managing different properties. Most notably, Page Mill Properties, LLC has  
12 filed *multiple verified* unlawful detainer actions, attesting to *its ownership* of rental properties,  
13 and flatly contradicting Mr. Taran’s testimony that **REDACTED**

14 Evidence also now disproves Mr. Taran’s declaration testimony that Page Mill’s byzantine  
15 ownership structure—assigning only one property per “ownership LLC”—

16 **REDACTED**

The truth is that Page Mill has ignored,

17 on multiple occasions, any purported —precisely when there was not a risk  
18 that multiple parcel ownership would trigger rent control (“RSO”) application.

19 The evidence also confirms that Page Mill’s broad objective is to avoid completely East  
20 Palo Alto’s RSO. Mr. Taran confirmed Page Mill’s contention that

21 And, Mr. Taran has confirmed that he

22 holds in contempt the RSO’s declared objective of discouraging “speculation in rental property,”  
23 opining that **REDACTED**

24 But this Court need not, for purposes of this Motion, even reach the merits. As discussed  
25 immediately below, defendants have failed to carry their “first prong” SLAPP burden to  
26 demonstrate that any of plaintiffs’ claims “arise from” protected activity. The “gravamen” of  
27 plaintiffs’ complaint is not what defendants assert. And, in all events, this action fits squarely  
28 within CCP 425.17(b)’s “public interest” carve-out to the SLAPP statute.

1           **II. ARGUMENT: Plaintiffs’ Claims Do Not Arise From Protected Activity.**

2           Acknowledging their burden to prove that plaintiffs’ claims arise from “protected  
3           activity,” defendants stake their entire Motion on the assertion that “the gravamen of [plaintiffs’]  
4           complaint is that Defendants have refused to register” rental units under the RSO—that “[f]ailure  
5           to register is the critical allegation.” Defs.’ Reply Br. (filed Jan. 30, 2009) at 3, 6; *see also id.* at  
6           1, 2, 4, 5, and 7. However, defendants’ showing on this point fails entirely. *First*, defendants’  
7           current position contradicts defendants’ prior statements to the Court. Specifically, when it better  
8           fit defendants’ interests to take a precisely contrary position regarding the nature of plaintiffs’  
9           complaint—in their successful motion to change venue—defendants did so. Defendants at that  
10          time told the Court that this case was about “property rights” and real property, and not about  
11          registration, and thus venue was proper in San Mateo County under CCP § 392:

12           [T]he critical issue in this case is *whether Defendants’ properties are subject to the rent  
13           control ordinance.*

13   \*   \*   \*

14           [T]he only personal obligation Plaintiffs can identify is *the act of registering the units*  
15           with the East Palo Alto Rent Board. However, *that obligation is illusory because the key*  
16           *relief Plaintiffs seek* is an order prohibiting Defendants from collecting any rent or taking  
17           any other landlord-related acts because the buildings are subject to rent control. Hawk  
18           Decl. Ex. F, at 2, 5 (emphasis added).

17           Accepting defendants’ prior characterization of this action, the Court granted defendants’  
18          venue motion, stating:

19           [T]he main thrust of this case is whether defendants are subject to the rent control  
20           ordinance. Rent control law concerns property rights. Therefore this action must be  
21           transferred to San Mateo County. . . Hawk Decl. ¶ 9, Ex. G (citations omitted).

21           Defendants’ unambiguous *prior statements* mean that their contradictory assertions now  
22          about this action’s gravamen deserve no weight. But, that contradiction and *the Court’s reliance*  
23          on defendants’ prior statements have larger consequences: Defendants are judicially estopped  
24          from taking their current position, as all factors supporting judicial estoppel are present. *See*  
25          *Jogani v. Jogani*, 141 Cal.App.4th 158, 169-70 (2006) (citing *Aguilar v. Lerner*, 32 Cal.4th 974,  
26          986-87 (2004)) (quoting the five factors; “patently wrong to allow a person to abuse the judicial  
27          process by first [taking] one position, and later, if it becomes beneficial, to assert the opposite”).  
28          Because a litigant cannot play “fast and loose” with the courts, *Jackson v. County of Los Angeles*,

1 60 Cal.App.4th 171, 181 (1997), defendants’ essential rationale for this Motion fails. Simply put,  
2 this Motion lacks any good faith basis.

3 Defendants fail to carry their burden for a *second* independent reason: defendants’ own  
4 conduct disproves their assertions that First Amendment conduct is at issue. That is, promptly  
5 after being sued in this action, defendant 1643 Woodland sued the City of East Palo Alto,  
6 affirmatively seeking declaratory relief regarding the *same issues* that defendants assert are raised  
7 by this case. See Hawk Decl. ¶ 4, Ex. C (complaint in *1643 Woodland, LLC v. City of East Palo*  
8 *Alto, et al.*, No. CIV 474732). There, 1643 Woodland sought “a judicial declaration and decree  
9 that [its] Property is exempt from [rent control] registration and certification,”—thus putting in  
10 dispute the very issue that defendants now claim this Court should decline to hear. *Id.* Ex. C, ¶¶  
11 7-8. Pressing that other case forward—taking discovery there while blocking it here with this  
12 SLAPP motion—1643 Woodland went to trial on June 16, 2009. *Id.* ¶ 5, Ex. QQ. During trial,  
13 1643 Woodland’s counsel (Mr. Zacks and Mr. Kraus) were unabashed in arguing that the issues  
14 there were the same as here. *Id.* Ex. QQ at 2-4, 21, 68, 83-85. Judge Mallach awarded judgment  
15 against 1643 Woodland, because she found no controversy with the City, *id.* at 21, 60, 62, 68, and  
16 stating “this lawsuit is really driven by the other lawsuit.” *Id.* at 95.

17 It simply cannot be correct that a declaratory relief claim asserted in one proceeding can  
18 be a SLAPP, when the defendant in that action seeks declaratory relief and initiates discovery  
19 elsewhere, raising (according to defendants themselves) the same issue as the first action. It  
20 would defy logic for a party to affirmatively put at issue, *and subject to possible adverse*  
21 *judgment*, its own protected First Amendment activity. The answer, of course, is that defendants  
22 did nothing of the sort. Neither this lawsuit nor the one brought by defendants arise from  
23 “protected conduct.” Defendants’ cynical but ultimately failed ploy, to moot this lawsuit without  
24 ever giving these plaintiffs a chance to litigate, confirms that this Motion is baseless.

25 *Third*, the Complaint and other submissions in this case, including the Preliminary  
26 Injunction Motion, belie the assertion that this case “arises from” registration of properties or any  
27 arguably protected activity. In reality, this action concerns (i) whether defendants’ properties are  
28 subject to rent control, and (ii) the injury suffered by many East Palo Alto citizens because of

1 defendants' illegal rents. If defendants had imposed lawful rents, this action would never have  
2 been brought. California courts recognize that, even if application of rent control laws may  
3 involve protected activity, claims for violating rent control laws do not *arise from* protected  
4 activity. *Santa Monica Rent Control Bd. v. Pearl St., LLC*, 109 Cal.App.4th 1308, 1318 (2003)  
5 (although "suit may have been triggered by defendants' submission of [] documents" to rent  
6 control board, suit was based on "claim that defendants are charging illegal rents"); *see also*  
7 *Marlin v. Amico Venezia, LLC*, 154 Cal.App.4th 154 (2007). Contrary to defendants' arguments,  
8 neither the *Pearl St.* nor *Marlin* rulings are distinguishable; this Court should follow that clear  
9 precedent.

10 **III. Plaintiffs' Lawsuit, A Public Interest Action Under CCP 425.17(b), Is Exempt From**  
11 **Application Of The SLAPP Statute.**

12 It is not a close question: this lawsuit fits within the CCP 425.17(b) "public interest"  
13 exception to the SLAPP statute. This is true regardless which party bears the burden on the issue.  
14 But, *Brill Media v. TCW Group*, 132 Cal.App.4th 324 (2005), holds the burden is defendants.  
15 Although the burden issue is before the Supreme Court in the *Simpson Strong-Tie* case  
16 (S164174), no case has overruled or even criticized *Brill*, and *Brill* remains controlling law.

17 This action seeks to enforce a *voter-passed rent control ordinance*, which plainly  
18 implicates the public interest. *Cotati Alliance for Better Housing v. City of Cotati*, 148  
19 Cal.App.3d 280, 296 (1983) (a purpose of rent control is to "protect[] the public interest in having  
20 affordable and properly maintained rental housing available to the citizens of the community");  
21 *see also Alfaro v. Cmty. Housing Improvement Sys. & Planning Ass'n*, 171 Cal.App.4th 1356,  
22 1373 (2009). The action is being prosecuted on a purely *pro bono* basis; three of the named  
23 plaintiffs, all individuals of limited means, have remained class representatives despite no longer  
24 living in Page Mill apartments. Hawk Decl. ¶ 2. Defendants' disregard of the RSO and tenants'  
25 interests has brought the ire of the City of East Palo Alto, which passed a resolution condemning  
26 defendants' conduct, *id.* Ex. LL, but the City has been largely unable to match the legal resources  
27 of Page Mill and Mr. Taran. This action affects fundamental public issues in East Palo Alto.

28 This action also plainly satisfies the enumerated requirements of CCP § 425.17(b). First,

1 the Complaint alone shows that named plaintiffs seek no “greater . . . or different relief” than the  
2 class. *Id.* Second, as detailed above, the action implicates “an important right affecting the  
3 public interest.” And, the claims seek to “confer a significant benefit” on a “large class of  
4 persons,” *id.*—the 57 families/tenants who occupy the properties listed in the Complaint, tenants  
5 of *additional*, yet to be identified, 4 unit or less Page Mill properties, Hawk Decl. ¶ 41, the many  
6 additional families that have moved into and out of those units during Page Mill’s ownership, and  
7 all future tenants of those properties—all together greatly increasing the total number affected.  
8 Defendants, again, conceded this point in their prior arguments to the Court regarding venue:  
9 “[t]he determination of [plaintiffs’] claim will affect the rights in these properties of both current  
10 and future owners and current and future tenants.” *Id.* Ex. F at 4.

11 *Third*, “private enforcement is necessary and places a disproportionate financial burden on  
12 plaintiff in relation to plaintiff’s stake.” CCP § 425.17(b). The Court should take judicial notice  
13 of the substantial party and Court resources spent on these issues to date. A single Page Mill  
14 tenant—or even a sizeable group—could not begin to fund litigation over these issues.<sup>1</sup> All three  
15 CCP § 425.17(b) requirements are met: this action is a public interest proceeding.

#### 16 **IV. Precedent Supports a Finding that Plaintiffs’ Claims Have More Than The** 17 **“Minimal Merit” To Overcome Defendants’ SLAPP Motion**

18 Under the second prong of a SLAPP analysis, plaintiffs need only demonstrate “minimal  
19 merit” to prevail. *Soukup v. Law Offices of Herbert Hafif*, 39 Cal.4th 260, 291 (2006). Here, in  
20 order to show that the separate existence of defendant LLCs should be disregarded for purposes  
21 of applying the RSO, plaintiffs need only show that (1) there is “such a unity of interest and  
22 ownership” that the separate personalities of the defendant LLCs do not really exist, and (2) if the

23 <sup>1</sup> Administrative remedies do not offer a viable alternative to resolving the issues in this action.  
24 Though they have the burden, defendants offer *no evidence* that a single tenant has advanced or  
25 practically could advance, in a Rent Board hearing, the arguments made here to pierce Page  
26 Mill’s complex LLC structure. *See* Steinberg Decl., filed herewith; *Action Apt. Ass’n v. Santa*  
27 *Monica Rent Control Bd.*, 94 Cal.App.4th 587, 614-15 (2001) (held no exhaustion requirement in  
28 rent dispute, citing costs/delays of individual rent board petitions, uneconomical nature of  
piecemeal review, likelihood that judicial review still necessary, and greater competence of a  
court versus administrative body in deciding dispositive issue). All the *Action Apt.* factors are  
present in this case. Nor is there an “*exhaustion requirement*” here in any event, because the RSO  
§ 14 provides specifically for judicial relief, as well as administrative procedures. *See Daimler-*  
*Chrysler Motors Company v. Lew Williams, Inc.*, 142 Cal.App.4th 344, 353 (2006); *San Elijo*  
*Ranch Inc. v. County of San Diego*, 65 Cal.App.4th 608, 613 (1998).

1 they are treated separately “an inequitable result will follow.” *Baize v. Eastridge Companies*, 142  
2 Cal.App.4th 293, 302 (2006). This Court’s “responsibility is not [to] weigh the credibility or  
3 comparative probative strength of competing evidence,” but to “accept as true” evidence  
4 favorable to plaintiff. *Soukup*, 39 Cal.4th at 291.

5 Ample legal precedent supports application of *alter ego* principles in this case. There is a  
6 “very numerous and growing class of cases” disregarding the corporate entity where “it is so  
7 organized and controlled, and its affairs are so conducted, as to make it merely an instrumentality,  
8 agency, conduit, or adjunct of another corporation.” *Las Palmas Associates v. Las Palmas Center*  
9 *Associates*, 235 Cal.App.3d 1220, 1249 (1992) (finding “single enterprise” where one entity  
10 guaranteed millions in loans to another and guarantor employees managed business of the other);  
11 *see also Pan Pac. Sash & Door Co. v. Greendale Park, Inc.*, 166 Cal.App.2d 652, 657-59 (1958)  
12 (veil pierced where “[b]oth corporations had the same stockholders, directors and officers,  
13 occupied the same premises, . . . had common employees” and “operated largely on money  
14 borrowed” from common sources). As discussed below, all these factors exist here.

15 Similar to the Mr. Taran’s business model, in *Baize v. Eastridge Companies*, 142  
16 Cal.App.4th 293 (2006), defendant’s business model “often involved creating new legal entities  
17 for each project for which it was awarded a contract.” *Id.* at 296-98, 303 (veil pierced for “family  
18 of entities” sharing the same officers, employees, offices, and attorneys, which had a common  
19 owner). The *Baize* Court found significant that one of the entities “claimed that it was the  
20 developer on projects that [the other] was developing,” further suggesting that related entities  
21 were “one and the same.” *Id.* at 303. Likewise, the court in *Elliott v. Occidental Life Insurance*  
22 *Co.*, 272 Cal.App.2d 373 (1969), upheld a jury finding that purportedly separate entities were “in  
23 fact the same firm.” The Court cited evidence of “common equitable ownership and control over  
24 the two companies by the same individuals,” and the use of the same business locations,  
25 employees, attorney, delivery trucks, and record storage location. *Id.* at 375-77.

26 Fundamental to any *alter ego* analysis is “the rule [] that actual fraud need not be shown  
27 and it is sufficient that a refusal to recognize the unity of the two companies would bring about  
28 *inequitable results* and would permit what would be fraud or *injustice* if accomplished.” *Id.* at

1 377 (citing cases; emphasis added); *see also In re Foxmayer Corp.*, 290 B.R. 229, 236 (Bankr. D.  
2 Del. 2003) (“[F]raud or a sham, strictly speaking, need not be shown to justify the piercing of the  
3 corporate veil under Delaware law.”). It is also important to understand that the doctrine applies  
4 on an issue-by-issue basis: corporate veils are not pierced for all purposes. *Cooperman v. Cal.*  
5 *Unemployment Insurance Appeals Bd.*, 49 Cal.App.3d 1, 8 (1975) (finding that corporation and  
6 its president “were one and the same for purposes of unemployment compensation does not  
7 mean” that the veil will be pierced for “other purposes.”); *see also People v. Clauson*, 231  
8 Cal.App.2d 374, 379 (1965) (*alter ego* applied “situation” specific, as “justice may require.”).

9 **V. Plaintiffs’ Evidence Compels Disregarding The Separate Existence Of Defendant  
LLCs For Purposes Of Applying The RSO.**

10 This record provides compelling support that the *alter ego* test is satisfied here for  
11 purposes of applying the RSO. Defendant “ownership LLCs”: (1) are shells and conduits for a  
12 single venture, owning and managing East Palo Alto rental property, (2) have been dominated  
13 and controlled by common owners, *i.e.*, Mr. Taran and his investors, (3) use the same offices,  
14 employees, and attorneys, (4) depend on other Page Mill-related entities for financial existence,  
15 (5) hold themselves out as responsible for the debts of each other, (6) have commingled funds,  
16 and (7) serve the purpose of circumventing the RSO. *See supra* Part IV; *Associated Vendors, Inc.*  
17 *v. Oakland Meat Co.*, 210 Cal.App.2d 825, 838-40 (1962) (identifying non-exclusive list of  
18 factors courts consider in piercing corporate veil).

19 • Defendant LLCs Have Been Used As Mere Shells, Instrumentalities or Conduits For A  
20 Single Business Venture. As in the *Baize* case, *supra*, when convenient, defendants have treated  
21 all Page Mill-related entities as part of the same concerted business, blurring all purported  
22 distinctions among entities. Despite Mr. Taran’s testimony that

23 **REDACTED**

24 (Hawk Decl. ¶ 10), Page Mill Properties LLC has filed in this  
25 Court verified unlawful detainer complaints affirming the contrary. On *at least five separate*  
26 occasions, Page Mill Properties, LLC has obtained judgments and evicted tenants, based on  
27 sworn statements that *it owned* rental properties or was entitled to receive rent. *Id.* ¶ 10 & Exs.

1 H-L. Defendants have never amended or corrected these sworn pleadings. *Id.* ¶ 10.

2 Additional examples of defendants conflating and ignoring their own purported  
3 management and ownership structure are too numerous to catalog here, but include: (1) a Page  
4 Mill Properties tenant newsletter stating that *it* is the owner of the properties at issue, *e.g.*, bearing  
5 headline “Page Mill Properties Begins Property Improvement Program,” and elsewhere stating  
6 “Page Mill Properties recently purchased the property where you are living.” *id.* Ex. S (Regarding  
7 the headline, Mr. Taran testified in his deposition:

8 here.”), *id.* ¶ 15, Ex. A 96:14-22; (2) a memo outlining

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9  
10 18, Ex. V; (3) Page Mill-related entities and/or their officers’ correspondence to tenants  
11 identifying properties as being owned by Page Mill Properties, *id.* ¶¶ 17,19, Exs. U, W; (4) Mr.  
12 Taran’s references in a sworn declaration to “employees” of Page Mill Properties, LLC, even  
13 though he now asserts that *Id.* ¶ 13, Exs. Q, A 86:7-87:19.

14 • Ownership LLCs Are Dominated and Controlled By Common Owners. Each of the  
15 defendant ownership LLCs , *id.* Ex. A 233:17-23, and is dominated and  
16 controlled by Mr. Taran and his business partners. Hawk Decl. ¶¶ 32-35. All “ownership LLCs”  
17 share the same officers— *Id.* ¶ 35.

18 And, defendant ownership LLCs’ operations

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21  
22 entities and individuals made the decision to

<sup>2</sup> Some combination of these same

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*Id.* ¶¶ 23, 32, Ex. A 199-200, 166-170, 235-251. The same small group makes key business decisions for ownership LLCs, including

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*Id.* These same individuals Hawk Decl. ¶ 32.

• Ownership LLCs Are Financially Dependent On Other Page Mill-Related Entities For Their Existence. When defendant ownership LLCs

*Id.* ¶ 40. In fact,

defendant LLC's financial statements indicate that most (perhaps all) of them

*Id.* Thus, the ownership LLCs are completely dependent

on

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*Id.* ¶ 22 & Ex. X at 103520-21.

• Ownership LLCs Share The Same Offices, Lawyers, Employees and Assets.

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*Id.* ¶¶ 27, 34. Multiple Page Mill-related entities, *including the ownership LLCs,*

*Id.* ¶ 36. Indeed,

*Id.* ¶¶ 27, 36. The same

attorneys represent the defendant LLCs, *id.* ¶ 21, and

¶ 27.

• Ownership LLCs Hold Themselves Out As Liable For Each Other's Liabilities and Commingle Funds.

*Id.* ¶¶ 22-23.

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*Id.* Ex. X 103518.

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Id. ¶ 33,

Ex. A at 145-47.

• Defendants' Intent Is To Circumvent The RSO. The RSO seeks "to protect residential tenants in [East Palo Alto] from unreasonable rent increase[s] by discouraging speculation in rental property and stabilizing rent increases." RSO § 3. When asked to explain his understanding of this purpose of preventing "speculation," Mr. Taran testified:

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Id. ¶ Ex. A

at 340:1-8. Not surprisingly Mr. Taran has consistently sought to avoid the RSO's application to any properties owned by Page Mill entities. According to Mr. Taran, REDACTED

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Id. Ex. A at 221:19-222:13.<sup>3</sup>

In sum, there is compelling evidence that defendants—who plainly comprise a single, centrally controlled enterprise that has become the largest landlord in East Palo Alto—are working *an injustice* by avoiding the RSO, misusing an exemption for landlords owning four units or less. Defendants' Anti- SLAPP Motion should be denied because it fails both prongs of analysis.

Date: August 7, 2009

HOGAN & HARTSON L.L.P.

By:   
ROBERT B. HAWK  
Attorneys for Plaintiffs

<sup>3</sup> Defendants' reliance on "expert" testimony of real estate attorney Joshua Stein, to "refute" these facts, is misplaced. Mr. Stein's testimony, that the ownership structure at issue is "not unusual," or is "typical," is entirely beside the point. Mr. Stein poses *hypothetical* reasons why someone *might* want to use the structure, *see, e.g.*, Stein Decl. (filed 9/25/08) ¶¶ 24-30, but he does not testify regarding the *actual* reasons that defendants' structure was created or is maintained—and does not deny that the structure is used to avoid the RSO. Moreover, Mr. Stein acknowledges the presence of factors that support plaintiffs' claims. *See, e.g.*, Stein Decl. (filed 1/23/09) ¶¶ 10, 35, 39 (acknowledging that each LLC is liable for entire Wachovia financing and that lender can recover from all LLCs upon any LLC's default), 44 (same mailing address and authorized signer), 50 (recognizing that "same people will act for and administer all the entities).