

No.: 70475

IN THE SUPREME COURT OF THE STATE OF NEVADA

Ditech Financial, LLC f/k/a Green Tree Servicing, LLC,

Appellant,

vs.

Sanford Buckles, *on behalf of himself and others similarly situated,*

Respondent.

CERTIFIED QUESTION

from the United States District Court, District of Nevada
Case No. 2:15-cv-01581-GMN-CWH

RESPONDENT'S APPENDIX

Abbas Kazerounian (*pro hac vice*)
Michael Kind (SBN 13903)
KAZEROUNI LAW GROUP, APC
7854 W. Sahara Avenue
Las Vegas, NV 89117
Phone: (800) 400-6808 x7
ak@kazlg.com
mkind@kazlg.com

David H. Krieger (SBN 9086)
HAINES & KRIEGER, LLC
8985 S. Eastern Avenue, Suite 350
Henderson, Nevada 89123
Phone: (702) 880-5554
dkrieger@hainesandkrieger.com

Attorneys for Sanford Buckles

RESPONDENT'S APPENDIX

Pursuant to NRAP 30(b)(4), Respondent's Appendix contains only those documents which should have been but were not included in Appellant's appendix and does not include those documents already included in appellant's appendix.

TABLE OF CONTENTS TO RESPONDENT'S APPENDIX

Docket No.	Description	Bates
	Civil Docket for Case No. 2:15-cv-01581-GMN-CWH	001-006
39	Joint Brief	007-019

United States District Court
District of Nevada (Las Vegas)
CIVIL DOCKET FOR CASE #: 2:15-cv-01581-GMN-CWH

Buckles v. Green Tree Servicing LLC et al
Assigned to: Chief Judge Gloria M. Navarro
Referred to: Magistrate Judge Carl W. Hoffman
Demand: \$15,000,000
Case in other court: Supreme Court of the State of Nevada, 70475
Cause: 28:1332 Diversity-(Citizenship)

Date Filed: 08/18/2015
Jury Demand: Both
Nature of Suit: 480 Consumer Credit
Jurisdiction: Diversity

Plaintiff

Sanford Buckles

represented by **David H. Krieger**
Haines & Krieger, LLC
8985 S. Eastern Avenue
Suite 350
Henderson, NV 89123
(702) 880-5554
Fax: (702) 383-5518
Email: dkrieger@hainesandkrieger.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Kind
Kazerouni Law Group, APC
7854 W. Sahara Avenue
Las Vegas, NV 89117
800-400-6808 x7
Fax: 800-520-5523
Email: mkind@kazlg.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Danny Horen
7854 W. Sahara Avenue
Las Vegas, NV 89117
800-400-6808
Email: danny@kazlg.com
TERMINATED: 12/01/2015

V.

Defendant

Green Tree Servicing LLC

represented by **Gregg A Hubley**
Brooks Hubley LLP
1645 Village Center Circle, Ste. 200
Las Vegas, NV 89134
702-851-1191
Fax: 702-851-1198
Email: ghubley@brookshubley.com
LEAD ATTORNEY

Respondent's Appendix 000001

ATTORNEY TO BE NOTICED

Michael R Brooks
 Brooks Hubley, LLP
 1645 Village Center Circle
 Suite 200
 Las Vegas, NV 89134
 702-851-1191
 Fax: 702-851-1198
 Email: efile@brookshubley.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael R Pennington
 Bradley Arant Boult Cummings LLP
 1819 5th Avenue North
 Birmingham, AL 35203
 205-521-8391
 Fax: 205-488-6391
 Email: mpennington@babco.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Elizabeth A Hamrick
 Bradley Arant Boult Cummings LLP
 200 Clinton Avenue West, Suite 900
 Huntsville, AL 35801
 256-517-5107
 Fax: 256-517-5200
 Email: ehamrick@babco.com
ATTORNEY TO BE NOTICED

Defendant

Walter Investment Management Corporation
TERMINATED: 05/13/2016

represented by **Gregg A Hubley**
 (See above for address)
ATTORNEY TO BE NOTICED

Elizabeth A Hamrick
 (See above for address)
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/18/2015	<u>1</u>	COMPLAINT against All Defendants (Filing fee \$400 receipt number 0978-3782167), filed by Sanford Buckles. Certificate of Interested Parties due by 8/28/2015. Proof of service due by 12/16/2015. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summons to Green Tree, # <u>3</u> Summons to Walter Investment) (Horen, Danny) (Entered: 08/18/2015)
08/18/2015		Case assigned to Chief Judge Gloria M. Navarro and Magistrate Judge Carl W. Hoffman. (MMM) (Entered: 08/18/2015)
08/18/2015	2	NOTICE PURSUANT TO LOCAL RULE IB 2-2: In accordance with 28 USC § 636(c) and FRCP 73, the parties in this action are provided with a link to the "AO 85 Notice of

Respondent's Appendix 000002

		<p>Availability, Consent, and Order of Reference - Exercise of Jurisdiction by a U.S. Magistrate Judge" form on the Court's website - www.nvd.uscourts.gov. AO 85 Consent forms should NOT be electronically filed. Upon consent of all parties, counsel are advised to manually file the form with the Clerk's Office. (A copy of form AO 85 has been mailed to parties not receiving electronic service.)</p> <p>NOTICE OF GENERAL ORDER 2013-1 AND OPPORTUNITY FOR EXPEDITED TRIAL SETTING: The parties in this action are provided with a link to General Order 2013-1 and the USDC Short Trial Rules on the Court's website - www.nvd.uscourts.gov. If the parties agree that this action can be ready for trial within 180 days and that a trial of this matter would take three (3) days or less, the parties should consider participation in the USDC Short Trial Program. If the parties wish to be considered for entry into the Court's Short Trial Program, they should execute and electronically file with USDC Short Trial Form 4(a)(1) or Form 4(a)(2).</p> <p>(no image attached) (MMM) (Entered: 08/18/2015)</p>
08/18/2015	3	Summons Issued as to Green Tree Servicing LLC, Walter Investment Management Corporation. (MMM) (Entered: 08/18/2015)
08/19/2015	4	<p>MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Gloria M. Navarro, on 8/19/2015. By Deputy Clerk: Aaron Blazeovich.</p> <p>This case has been assigned to the Honorable Chief Judge Gloria M. Navarro. Chief Judge Navarro's Chambers Practices, which are posted on the U.S. District Court, District of Nevada public website, may also be accessed directly via this hyperlink: www.nvd.uscourts.gov</p> <p>(no image attached) (Copies have been distributed pursuant to the NEF - ASB) (Entered: 08/19/2015)</p>
08/20/2015	5	CERTIFICATE of Interested Parties filed by Sanford Buckles. There are no known interested parties other than those participating in the case . (Horen, Danny) (Entered: 08/20/2015)
09/02/2015	6	WAIVER OF SERVICE Returned Executed by Green Tree Servicing LLC, Walter Investment Management Corporation. Green Tree Servicing LLC waiver sent on 8/31/2015, answer due 10/30/2015. (Hamrick, Elizabeth) (Entered: 09/02/2015)
09/02/2015	7	WAIVER OF SERVICE Returned Executed by Green Tree Servicing LLC, Walter Investment Management Corporation. Walter Investment Management Corporation waiver sent on 8/31/2015, answer due 10/30/2015. (Hamrick, Elizabeth) (Entered: 09/02/2015)
09/29/2015	8	NOTICE of Association of Counsel by Elizabeth A Hamrick on behalf of Defendants Green Tree Servicing LLC, Walter Investment Management Corporation. (Hamrick, Elizabeth) (Entered: 09/29/2015)
10/29/2015	9	MOTION to Dismiss <i>Pursuant to FRCP 12(b)(2)</i> by Defendant Walter Investment Management Corporation. Responses due by 11/15/2015. Certificate of Interested Parties due by 11/8/2015. Discovery Plan/Scheduling Order due by 12/13/2015. (Attachments: # 1 Exhibit A)(Hubley, Gregg) (Entered: 10/29/2015)
10/30/2015	10	MOTION to Dismiss by Defendant Green Tree Servicing LLC. Responses due by 11/16/2015. Certificate of Interested Parties due by 11/9/2015. Discovery Plan/Scheduling Order due by 12/14/2015. (Hubley, Gregg) (Entered: 10/30/2015)
11/05/2015	11	CERTIFICATE of Interested Parties filed by Green Tree Servicing LLC that identifies all parties that have an interest in the outcome of this case. Other Affiliate Green Tree

Respondent's Appendix 000003

		Investment Holdings II LLC, Other Affiliate Green Tree Credit Solutions LLC, Other Affiliate Walter Investment Management Corp., Other Affiliate Green Tree Servicing Corp., Other Affiliate Walter Management Holding Company, LLC for Green Tree Servicing LLC added. . (Hubley, Gregg) (Entered: 11/05/2015)
11/05/2015	12	CERTIFICATE of Interested Parties filed by Walter Investment Management Corporation that identifies all parties that have an interest in the outcome of this case. Other Affiliate Green Tree Investment Holdings II LLC, Other Affiliate Green Tree Credit Solutions LLC, Other Affiliate Green Tree Servicing Corp., Other Affiliate Green Tree Servicing, LLC, Other Affiliate Walter Management Holding Company, LLC for Walter Investment Management Corporation added. . (Hubley, Gregg) (Entered: 11/05/2015)
11/07/2015	13	AMENDED COMPLAINT with Jury Demand against All Defendants, filed by Sanford Buckles. No changes to parties. Proof of service due by 3/6/2016. (Horen, Danny) (Entered: 11/07/2015)
11/25/2015	14	MOTION to Dismiss re: 13 AMENDED COMPLAINT; filed by Defendant Green Tree Servicing LLC. Responses due by 12/12/2015. (Attachments: # 1 Exhibit A)(Hubley, Gregg) (Entered: 11/25/2015)
11/25/2015	15	MOTION to Dismiss <i>First Amended Complaint Pursuant to F.R.C.P. 12(b)(2)</i> by Defendant Walter Investment Management Corporation. Responses due by 12/12/2015. (Attachments: # 1 Exhibit A)(Hubley, Gregg) (Entered: 11/25/2015)
11/25/2015	16	STIPULATION and Order to Stay Discovery by Defendants Green Tree Servicing LLC, Walter Investment Management Corporation. (Hubley, Gregg) (Entered: 11/25/2015)
12/01/2015	17	NOTICE of Change of Attorney on behalf of Plaintiff Sanford Buckles. (Kind, Michael) (Entered: 12/01/2015)
12/02/2015	18	ORDER that 16 Stipulation and Order to Stay Discovery is DENIED without prejudice. Signed by Magistrate Judge Carl W. Hoffman on 12/2/15. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 12/03/2015)
12/08/2015	19	MOTION to Stay <i>[Temporary] of Rule 26(f) and Related Deadlines</i> by Defendants Green Tree Servicing LLC, Walter Investment Management Corporation. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Hubley, Gregg) (Entered: 12/08/2015)
12/12/2015	20	RESPONSE to 14 Motion to Dismiss, filed by Plaintiff Sanford Buckles. Replies due by 12/22/2015. (Kind, Michael) (Entered: 12/12/2015)
12/12/2015	21	WITHDRAWN per 28 ORDER (MMM) RESPONSE to 15 Motion to Dismiss, filed by Plaintiff Sanford Buckles. Replies due by 12/22/2015. (Attachments: # 1 Declaration Michael Kind, # 2 Exhibit A, # 3 Exhibit B)(Kind, Michael) (Entered: 12/12/2015)
12/17/2015	22	VERIFIED PETITION for Permission to Practice Pro Hac Vice by Michael R. Pennington and DESIGNATION of Local Counsel Gregg A. Hubley (Filing fee \$ 250 receipt number 0978-3931431) filed by Defendant Green Tree Servicing LLC . (Hubley, Gregg) (Entered: 12/17/2015)
12/21/2015	23	ORDER Granting 22 Verified Petition for Permission to Practice Pro Hac Vice for Attorney Michael R. Pennington and approving Designation of Local Counsel Gregg A. Hubley for Green Tree Servicing LLC. Signed by Chief Judge Gloria M. Navarro on 12/21/15. Any Attorney not yet registered with the Court's CM/ECF System shall submit a Registration Form on the Court's website www.nvd.uscourts.gov (Copies have been distributed pursuant to the NEF - MMM) (Entered: 12/22/2015)
12/22/2015	24	REPLY to Response to 14 Motion to Dismiss filed by Defendant Green Tree Servicing

Respondent's Appendix 000004

		LLC. (Hubley, Gregg) (Entered: 12/22/2015)
12/22/2015	25	REPLY to Response to 15 Motion to Dismiss filed by Defendant Walter Investment Management Corporation. (Hubley, Gregg) (Entered: 12/22/2015)
12/22/2015	26	STIPULATION re 21 Response to Motion by Plaintiff Sanford Buckles. (Attachments: # 1 Exhibit A)(Kind, Michael) (Entered: 12/22/2015)
12/23/2015	27	RESPONSE to 19 Motion to Stay, filed by Plaintiff Sanford Buckles. Replies due by 1/2/2016. (Kind, Michael) (Entered: 12/23/2015)
12/29/2015	28	ORDER ON STIPULATION Granting 26 STIPULATION to Withdraw and Amend 21 RESPONSE to 15 Motion to Dismiss. Signed by Chief Judge Gloria M. Navarro on 12/29/15. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 12/29/2015)
12/29/2015	29	RESPONSE to 15 Motion to Dismiss, filed by Plaintiff Sanford Buckles. Replies due by 1/8/2016. (Attachments: # 1 Certificate of Service, # 2 Declaration Michael Kind, # 3 Exhibit A)(Kind, Michael) (Entered: 12/29/2015)
12/31/2015	30	REPLY to Response to 19 Motion to Stay filed by Defendants Green Tree Servicing LLC, Walter Investment Management Corporation. (Hubley, Gregg) (Entered: 12/31/2015)
01/05/2016	31	MOTION for Protective Order and Claw Back Order by Defendants Green Tree Servicing LLC, Walter Investment Management Corporation. (Hubley, Gregg) Corrected image 32 attached on 1/5/2016 (DKJ). (Entered: 01/05/2016)
01/05/2016	32	NOTICE of Corrected Image/Document re 31 Motion for Protective Order by Defendants Green Tree Servicing LLC, Walter Investment Management Corporation. (Service of corrected image is attached). (Hubley, Gregg) (Entered: 01/05/2016)
01/25/2016	33	NON-OPPOSITION to 31 Motion for Protective Order ; filed by Plaintiff Sanford Buckles. (Kind, Michael) (Entered: 01/25/2016)
01/26/2016	34	PROTECTIVE AND CLAWBACK ORDER re 31 Motion for Protective Order and Clawback Order. Signed by Magistrate Judge Carl W. Hoffman on 1/26/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 01/27/2016)
05/09/2016	35	PROPOSED Discovery Plan/Scheduling Order filed by Plaintiff Sanford Buckles . (Kind, Michael) (Entered: 05/09/2016)
05/09/2016	36	<p>MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Gloria M. Navarro, on 5/9/2016.</p> <p>After reviewing the briefing regarding Defendant Ditech Financial LLC's Motion to Dismiss, (ECF No. 14), the Court is inclined to certify a question to the Nevada Supreme Court concerning whether Nev. Rev. Stat. § 200.620 prohibits out-of-state parties from recording telephone calls with parties in Nevada without the consent of all parties to the communication.</p> <p>The parties in this action shall have until May 23, 2016, to jointly submit a brief which concisely sets forth a question to be certified to the Nevada Supreme Court addressing the application of Nev. Rev. Stat. § 200.620 to Plaintiff's claims. (Copies have been distributed pursuant to the NEF - EJD) (Entered: 05/09/2016)</p>
05/12/2016	37	<p>MINUTE ORDER IN CHAMBERS of the Honorable Chief Judge Gloria M. Navarro, on 5/12/2016.</p> <p>As Plaintiff has filed an Amended Complaint in this action (ECF No. 13), the pending</p> <p>Respondent's Appendix 000005</p>

		Motions to Dismiss the original Complaint (ECF Nos. 9 , 10) are DENIED AS MOOT. (Copies have been distributed pursuant to the NEF - EJD) (Entered: 05/12/2016)
05/13/2016	38	ORDER that 15 Motion to Dismiss is GRANTED. Plaintiff's claim against Walter Investment is DISMISSED for lack of personal jurisdiction. Signed by Chief Judge Gloria M. Navarro on 5/13/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 05/16/2016)
05/23/2016	39	Joint BRIEF filed by Plaintiff Sanford Buckles. (Kind, Michael) (Entered: 05/23/2016)
05/25/2016	40	ORDER that 14 Defendant Ditech's Motion to Dismiss is DENIED without prejudice. FURTHER ORDERED that the following questions of law are CERTIFIED to the Nevada Supreme Court pursuant to Nevada Rule of Appellate Procedure 5. FURTHER ORDERED that the Clerk of the Court shall forward a copy of this Order to the Clerk of the Nevada Supreme Court under the official seal of the United States District Court for the District of Nevada. See NEV. R. APP. P. 5(d). Signed by Chief Judge Gloria M. Navarro on 5/25/16. (Copies have been distributed pursuant to the NEF - MMM) (Entered: 05/25/2016)
05/26/2016	41	ORDER Granting 19 Motion to Stay. IT IS FURTHER ORDERED that the parties stipulated discovery plan 35 is DENIED without prejudice. Signed by Magistrate Judge Carl W. Hoffman on 5/26/16. (Copies have been distributed pursuant to the NEF - TR) (Entered: 05/27/2016)
06/02/2016	42	NOTICE of Receipt of Documents from Supreme Court of the State of Nevada re 40 Order. (JM) (Entered: 06/06/2016)
06/27/2016	43	Copy of Order Accepting Certified Questions, Directing Briefing and Directing Submission of Filing Fee from Supreme Court of the State of Nevada re 40 Order. (MMM) (Entered: 06/28/2016)
07/08/2016	44	RECEIPT for Documents dated 7/6/16 from Supreme Court of the State of Nevada re 40 Order. (MMM) (Entered: 07/11/2016)
07/14/2016	45	NOTICE of Motion/Stipulation Approved dated 7/12/16 from Supreme Court of the State of Nevada re 40 Order. (MMM) (Entered: 07/18/2016)

PACER Service Center			
Transaction Receipt			
12/16/2016 10:49:07			
PACER Login:	kazerouni:3305498:0	Client Code:	
Description:	Docket Report	Search Criteria:	2:15-cv-01581-GMN-CWH
Billable Pages:	5	Cost:	0.50

KAZEROUNI LAW GROUP, APC
7854 W. Sahara Avenue
Las Vegas, NV 89117

Michael Kind, Esq.
NV Bar No. 13903
KAZEROUNI LAW GROUP, APC
7854 W. Sahara Avenue
Las Vegas, NV 89117
Phone: (800) 400-6808 x7
FAX: (800) 520-5523
mkind@kazlg.com

David H. Krieger, Esq.
NV Bar No. 9086
HAINES & KRIEGER, LLC
8985 S. Eastern Avenue, Suite 350
Henderson, Nevada 89123
Phone: (702) 880-5554
FAX: (702) 385-5518
dkrieger@hainesandkrieger.com

*Attorneys for Plaintiff, SANFORD BUCKLES,
on behalf of himself and others similarly situated*

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

<p>SANFORD BUCKLES, on behalf of himself and others similarly situated,</p> <p>Plaintiff,</p> <p>v.</p> <p>GREEN TREE SERVICING, LLC and WALTER INVESTMENT CORPORATION,</p> <p>Defendants.</p>	<p>Case No.: 2:15-cv-01581-GMN-CWH</p> <p>JOINT BRIEF</p>
--	--

1 Pursuant to this Court's May 9, 2016 Order, Plaintiff Sanford Buckles, on
2 behalf of himself and others similarly situated, and Defendant Green Tree
3 Servicing, LLC's, now known as Ditech Financial, LLC submit their joint brief
4 concerning the question to be certified to the Nevada Supreme Court addressing the
5 application of Nev. Rev. Stat. § 200.620.

6
7 DATED this 23rd day of May 2016.

8
9 Respectfully submitted,

10
11 **KAZEROUNI LAW GROUP, APC**

12 By: /s/ Michael Kind

13 Michael Kind, Esq.

14 7854 W. Sahara Avenue

15 Las Vegas, NV 89117

16 *Attorney for Plaintiff*

17
18 **BRADLEY ARANT BOULT**
19 **CUMMINGS LLP**

20 By: /s/ Michael R Pennington

21 Michael R Pennington, Esq.

22 1819 5th Avenue North

23 Birmingham, AL 35203

24 *Attorney for Green Tree Servicing LLC*
25
26
27
28

KAZEROUNI LAW GROUP, APC
7854 W. Sahara Avenue
Las Vegas, NV 89117

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

SANFORD BUCKLES, on behalf
of himself and others similarly
situated,

Plaintiff,

v.

GREEN TREE SERVICING, LLC
and WALTER INVESTMENT
MANAGEMENT
CORPORATION,

Defendants.

Case No.: 2:15-cv-01581-GMN-(CWH)

**JOINT SUBMISSION/PROPOSED
CERTIFICATION ORDER TO THE
NEVADA SUPREME COURT**

Before the Court is Defendant Ditech Financial LLC's (formerly known as Green Tree Servicing LLC) ("Ditech") motion to dismiss the amended complaint in this putative class action (ECF No. 14). Plaintiff Sanford Buckles ("Plaintiff") filed a response (ECF No. 20), and Ditech filed a reply (ECF No. 24). For the reasons discussed below, the Court has decided that the motion to dismiss raises a statutory "question of law of this state which may be determinative of the cause" as to which it appears to the Court that "there is no controlling precedent" in the decisions of the Nevada Supreme Court. *See* NEV. R. APP. P. 5(a). The Court therefore certifies questions of Nevada statutory law to the Nevada Supreme Court.

I. NATURE OF THE CASE

Plaintiff has filed a putative class action against mortgage servicer Ditech, claiming it violated Nevada Revised Statutes 200.620 by recording telephone conversations involving him and other class members without each class member's consent. ECF No. 13 (amended complaint). Plaintiff has defined the class to

1 include “All persons in Nevada whose inbound and outbound telephone
2 conversations were monitored, recorded, and/or eavesdropped upon without their
3 consent by [Ditech] within three years prior to the filing of the original Complaint
4 in this action.” *Id.* ¶ 39.

5 Ditech moved to dismiss the complaint, arguing (1) that Nevada Revised
6 Statutes 200.620 does not govern telephone calls recorded by persons outside
7 Nevada on equipment located outside of Nevada, and (2) that the United States
8 Constitution precludes extraterritorial application of Nevada Revised Statutes
9 200.620 to telephone recordings made outside of Nevada. This Court has
10 determined that Ditech’s motion turns on a dispositive question of Nevada’s
11 statutory law best decided by the Nevada Supreme Court, since “there is no
12 controlling precedent in the decisions of the Supreme Court of this state.” *See*
13 *NEV. R. APP. P. 5(a)*.

14 **II. STATUTES AT ISSUE**

15 Nevada Revised Statutes 200.620(1) provides, in relevant part:

16 Except as otherwise provided in NRS 179.410 to 179.515, inclusive,
17 209.419 and 704.195, it is unlawful for any person to intercept or
18 attempt to intercept any wire communication unless:

- 19 (a) The interception or attempted interception is made with the
20 prior consent of one of the parties to the communication; and
21 (b) An emergency situation exists and it is impractical to obtain
22 a court order as required by NRS 179.410 to 179.515, inclusive,
23 before the interception, in which event the interception is
24 subject to the requirements of subsection 3. If the application
25 for ratification is denied, any use or disclosure of the
26 information so intercepted is unlawful, and the person who

1 made the interception shall notify the sender and the receiver of
2 the communication that:

3 (1) The communication was intercepted; and

4 (2) Upon application to the court, ratification of the
5 interception was denied.

6 The Nevada Revised Statutes include the following definitions:

7 1. "Person" includes public officials and law enforcement officers of
8 the State and of a county or municipality or other political subdivision
9 of the State.

10 2. "Wire communication" means the transmission of writing, signs,
11 signals, pictures and sounds of all kinds by wire, cable, or other
12 similar connection between the points of origin and reception of such
13 transmission, including all facilities and services incidental to such
14 transmission, which facilities and services include, among other
15 things, the receipt, forwarding and delivering of communications.

16 3. "Radio communication" means the transmission of writing, signs,
17 signals, pictures, and sounds of all kinds by radio or other wireless
18 methods, including all facilities and services incidental to such
19 transmission, which facilities and services include, among other
20 things, the receipt, forwarding and delivering of communications. The
21 term does not include the transmission of writing, signs, signals,
22 pictures and sounds broadcast by amateurs or public or municipal
23 agencies of the State of Nevada, or by others for the use of the general
24 public.

25 Nev. Rev. Stat. 200.610.
26

1 “Intercept” means the aural acquisition of the contents of any wire,
2 electronic or oral communication through the use of any electronic,
3 mechanical or other device or of any sending or receiving equipment.
4 Nev. Rev. Stat. 179.430.

5 The Nevada Revised Statutes contain the following penalties:

6 A person who willfully and knowingly violates NRS 200.620 to
7 200.650 inclusive:

8 (a) Shall be punished for a category D felony as provided in
9 NRS 193.130.

10 (b) Is liable to a person whose wire or oral communication is
11 intercepted without his or her consent for:

12 (1) Actual damages or liquidated damages of \$100 per
13 day of violation but not less than \$1,000, whichever is
14 greater;

15 (2) Punitive damages; and

16 (3) His or her costs reasonably incurred in the action,
17 including a reasonable attorney’s fee,

18 all of which may be recovered by civil action.

19 Nev. Rev. Stat. 200.690(1).

20 **III. STATEMENT OF RELEVANT FACTS**

21 Ditech is a Delaware limited liability company which was headquartered in
22 Minnesota at the time the complaint was filed, and which has since moved its
23 headquarters to Florida. Ditech has customer call centers equipped to record
24 telephone calls. Those call centers are located in Arizona and Minnesota. The
25 company does not have any telephone recording equipment in Nevada. Ditech is a
26 home mortgage servicer that regularly services mortgages of Nevada properties.

1 Plaintiff resides in Nevada in a home whose mortgage is serviced by Ditech.
2 Plaintiff alleges that from 2013 through 2014, Ditech engaged in telephone
3 conversations with Plaintiff regarding the Plaintiff's mortgage and recorded such
4 telephone conversations without Plaintiff's consent.

5
6 **IV. ARGUMENTS OF THE PARTIES**

7 The Nevada Supreme Court has interpreted Nevada Revised Statutes
8 200.620 to "prohibit the taping of telephone conversations with the consent of only
9 one party." *Lane v. Allstate Ins. Co.*, 969 P.2d 938, 940 (Nev. 1998). Ditech has
10 moved to dismiss Plaintiff's complaint, arguing Nevada Revised Statutes 200.620
11 does not apply to telephone calls recorded outside of Nevada. Specifically, Ditech
12 argues that NRS 200.620 applies only to recordings that take place with recording
13 equipment in the State of Nevada.

14 Ditech relies primarily on *McLellan v. State*, 182 P.3d 106 (Nev. 2008). In
15 that case, the Nevada Supreme Court held that a telephone recording made in
16 California was admissible against a Nevada defendant who was party to the call
17 because the recording was not made in Nevada and thus 200.620 did not apply. *Id.*
18 at 109–10. Ditech also relies on authority from the Washington Supreme Court,
19 followed in *McLellan*, holding that the law of the State where the recording is
20 made determines whether interception of the telephone call is lawful. *See State v.*
21 *Fowler*, 139 P.3d 342, 347 (Wash. 2006) (en banc); *Kadoranian v. Bellingham*
22 *Police Dept.*, 829 P.2d 1061, 1065 (Wash. 1992) (en banc).

23 Plaintiff argues that 200.620 applies to telephone calls recorded outside of
24 the State if a person in Nevada is party to the call and does not consent. Plaintiff
25 argues that *McLellan* is distinguishable because it turned on an evidentiary rule
26 (Nevada Revised Statutes 48.077), not 200.620. Plaintiff relies primarily on a
California Supreme Court decision, *Kearney v. Salomon Smith Barney*, 137 P.3d

1 914 (Cal. 2006). *Kearney* held that California’s two-party consent statute applied
2 to recordings made outside California because to hold otherwise would
3 disadvantage California residents. *Id.* at 917, 937.

4 **V. DISCUSSION**

5 If Nevada revised Statutes 200.620 does not apply to recordings made
6 outside of Nevada by DiTech, Ditech’s motion to dismiss is due to be granted. If
7 the statute applies to telephone recordings made outside of Nevada by Ditech,
8 however, this Court must decide Ditech’s constitutional challenge to the statute
9 under the Due Process Clause and the Dormant Commerce Clause of the United
10 States Constitution. The necessity of reaching these serious constitutional
11 questions depends upon resolution of prior, potentially dispositive, questions of
12 Nevada statutory law. This Court believes there is “no controlling precedent” from
13 the Nevada Supreme Court on these precise “questions of law” and therefore has
14 decided to certify the questions to that court. *See* NEV. R. APP. P. 5(a).

15
16 **VI. PARTIES’ PROPOSED CERTIFIED QUESTIONS OF STATE LAW**

17 The Parties have met and conferred on the issue but could not agree as to the
18 language of the question(s) of law to be certified to the Nevada Supreme Court.
19 They therefore respectively propose the following:

20
21 **Plaintiff’s proposed question:** Does Nev. Rev. Stat. 200.620 apply to
22 telephone recordings made by a party outside Nevada, who regularly records
23 telephone conversations with Nevada residents, of telephone conversations with a
24 person in Nevada without that person’s consent?

25 **Defendant’s proposed question:** Does Nev. Rev. Stat. 200.620 apply to
26 telephone recordings made by a party outside Nevada who uses equipment outside
Nevada to record telephone conversations with a person in Nevada without that

1 person's consent? If so, does that decision apply retroactively or prospectively
2 only?

3 **Parties' explanation for competing positions:**

4 First, Plaintiff maintains that the question presented should include the fact
5 that Defendant "regularly records telephone conversations with Nevada residents,"
6 a fact that was considered in *Kearney*. Defendant maintains that the question
7 presented should not include this because the allegation is not relevant. Defendant
8 believes the question should include the fact that the equipment used to record is
9 also located outside Nevada. Plaintiff proposes not to include that concept.

10 Second, Defendant believes that implicit in the question to be certified is
11 whether any decision to apply the statute to recording that takes place on
12 equipment outside Nevada should apply retroactively or prospectively only.
13 Defendant submits that this issue is subsumed within the question to be certified
14 but should be made explicit, is raised by Plaintiff's reliance on *Kearney*¹, and is
15 now appropriate to raise since the Nevada Supreme Court is the court with the
16 power to make application of the statute prospective only. Plaintiff disagrees that
17 this is appropriate since this issue has never been raised in the Parties' briefing
18 and, furthermore, it is outside of the scope of this Court's Order for the Parties to
19 submit this joint brief.

20 Accordingly, the parties have submitted competing proposals on the
21 question(s) to be certified.
22
23
24

25 ¹ The California Supreme Court applied its decision in *Kearney* prospectively,
26 however, due to prior uncertainty in the law. *Id.* at 937–39.

1 **VII. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Defendant Ditech's motion to dismiss
3 (ECF No. 14) is **DENIED without prejudice**, with permission to renew the
4 motion within 30 days of the resolution of the Court's certified question to the
5 Nevada Supreme Court.

6 **IT IS FURTHER ORDERED** that the following questions of law are
7 **CERTIFIED to the Nevada Supreme Court** pursuant to Nevada Rule of
8 Appellate Procedure 5:

9 **Plaintiff's position:** Does Nev. Rev. Stat. 200.620 apply to telephone
10 recordings made by a party outside Nevada, who regularly records telephone
11 conversations with Nevada residents, of telephone conversations with a person in
12 Nevada without that person's consent?

13 **Defendant's position:** Does Nev. Rev. Stat. 200.620 apply to telephone
14 recordings by a party outside Nevada who uses equipment outside Nevada to
15 record telephone conversations with a person in Nevada without that person's
16 consent? If so, does that decision apply retroactively, or prospectively only?
17 *See* NEV. R. APP. P. 5(c)(1). The nature of the controversy and a statement of the
18 facts are discussed above. *See* NEV. R. APP. P. 5(c)(2)–(3). Because Defendant
19 Ditech is the movant, Ditech is designated the Appellant and Plaintiff Buckles is
20 designated the Respondent. *See* NEV. R. APP. P. 5(c)(4). The names and addresses
21 of counsel are as follows:

22 **Counsel for Plaintiff**

23 Michael Kind
24 Kazerouni Law Group, APC
25 7854 W. Sahara Avenue
26 Las Vegas, NV 89117
800-400-6808
mkind@kazlg.com

1 David H. Krieger
2 Haines & Krieger, LLC
3 8985 S. Eastern Avenue
4 Suite 350
5 Henderson, NV 89123
6 (702) 880-5554
7 Fax: (702) 383-5518
8 dkrieger@hainesandkrieger.com

9 **Counsel for Defendant**

10 Michael R. Brooks
11 Nevada Bar No. 7287
12 Gregg A. Hubley
13 Nevada Bar No. 7386
14 BROOKS HUBLEY LLP
15 1645 Village Center Circle, Suite 200
16 Las Vegas, Nevada 89134
17 Telephone: (702) 851-1191
18 Facsimile: (702) 851-1198
19 mbrooks@brookshubley.com
20 ghubley@brookshubley.com

21 Elizabeth Hamrick
22 Nevada Bar No. 9414
23 Bradley Arant Boult Cummings LLP
24 200 Clinton Avenue West, Suite 900
25 Huntsville, AL 35801
26 Telephone: (256) 517-5100
Facsimile: (256) 517-5200
ehamrick@babco.com

See NEV. R. APP. P. 5(c)(5). Further elaboration upon the certified question is included in this Order.

IT IS FURTHER ORDERED that the Clerk of the Court shall forward a copy of this Order to the Clerk of the Nevada Supreme Court under the official seal of the United States District Court for the District of Nevada. *See* NEV. R. APP. P. 5(d).

DATED this ____ day of May, 2016.

Gloria M. Navarro, Chief Judge
United States District Judge

CERTIFICATION OF SERVICE

I HEREBY CERTIFY pursuant to Rule 5 of the Federal Rules of Civil Procedure that on May 23, 2016, the foregoing JOINT BRIEF was served via CM/ECF to all parties appearing in this case.

KAZEROUNI LAW GROUP, APC

By: /s/ Michael Kind
Michael Kind
7854 W. Sahara Avenue
Las Vegas, NV 89117

KAZEROUNI LAW GROUP, APC
NEVADA, CALIFORNIA