3. As to paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 17, 19, 20, 21, and 33 of the Complaint, Defendant lacks sufficient knowledge of information to form a belief as to the truth of the allegations contained in those paragraphs, and on that basis denies each and every allegation contained therein.

4. Answering paragraph 1, 2, 3, 4, and 15 of the Complaint, Defendant admits recording a document the contents of which speak for itself. Defendant denies any allegations of wrong doing. As to any remaining allegations Defendant lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and on that basis denies each and every other allegation contained therein.

5. Defendant admits that Quality Loan Service did not hold a debt collector's license and pursuant to the findings of the FID in case number A-12-657580-J nor was it required to.

6. The complaint lacks a paragraph 22 to respond to.

7. Defendant denies the allegation contained in paragraph 23, as to Paragraphs 23(a)-23(i) Defendant admits the loans referred to it were in default and were referred to have non-judicial foreclosure conducted. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and on that basis denies each and every other allegation contained therein.

6. With respect to the following paragraphs, the documents or statutes alleged speak for themselves and require no answer: 24.

7. Defendant denies the allegations contained in paragraphs 25, 25(a), 26, 26(b), 27, 28, 28(a)-28(e), 29, 30, 31, 32, 34, 35, 36, 37, 28, 39, 40, 41, 42 43, 44, 45, 46, and 47.

8. With respect to paragraph 32, Defendant refers to and incorporates by reference its responses to paragraphs 1 through 31 as though fully set forth herein. With respect to paragraph 41, Defendant refers to and incorporates by reference its responses to paragraphs 1 through 40 as though fully set forth herein.

9. Paragraphs 48 through 54 have been dismissed and require no answer.

10. Defendant denies that Plaintiffs are entitled to any of the relief sought in the Prayer for Relief, paragraphs 1 through 5.

11. Defendant have been forced to retain the services of an attorney and other professionals to defend in this action, and should be awarded its reasonable attorney's fees, costs and other expenses incurred herein.

AFFIRMATIVE DEFENSES

DEFENDANT is informed and believes and based on such information and belief, alleges the following separate and distinct affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

AS A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT alleges that the Complaint fails to state facts sufficient to state a claim against DEFENDANT for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

AS A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege, that Plaintiff's alleged damages, if any, were proximately caused by Plaintiff's own omissions and therefore, Plaintiff's claims are barred.

THIRD AFFIRMATIVE DEFENSE

AS A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges, that each of the causes of action contained in the Complaint are barred by the doctrine of laches and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

AS A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege, that Plaintiff failed to adequately plead and/or allege any actual or proximate cause between the alleged acts or omissions of DEFENDANT and Plaintiff's losses.

FIFTH AFFIRMATIVE DEFENSE

AS A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege, that Plaintiff is estopped from asserting any cause of action against DEFENDANT.

SIXTH AFFIRMATIVE DEFENSE

AS AN SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege, that Plaintiff is barred from recovery by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

AS A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege, that Plaintiff's claims are barred by the applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

AS AN EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege that the damages allegedly suffered by Plaintiff were caused by conduct of third parties who were negligent and failed to exercise ordinary, reasonable, and prudent care and were otherwise actively at fault for the damages allegedly suffered by Plaintiff.

NINTH AFFIRMATIVE DEFENSE

AS A NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes and thereon allege that Plaintiff failed to mitigate his damages.

TENTH AFFIRMATIVE DEFENSE

AS A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege, that because the Complaint is couched in conclusory terms, DEFENDANT presently have insufficient knowledge or information upon which to form a belief as to additional and as yet unstated affirmative defenses.

ELEVENTH AFFIRMATIVE DEFENSE

AS A ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege Plaintiff has approved and ratified the alleged acts of DEFENDANT for which Plaintiff now complains.

TWELFTH AFFIRMATIVE DEFENSE

AS A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege all of the other defenses set forth in NRCP, Rule 8, are incorporated herein, as applicable, for purposes of non-waiver.

THIRTEENTH AFFIRMATIVE DEFENSE

AS A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege Plaintiffs suffered no damage and therefore is not entitled to any relief.

FOURTEENTH AFFIRMATIVE DEFENSE

AS A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege Plaintiff's Complaint was brought against Defendant in bad faith, as Plaintiff knows there is no reasonable basis for bringing this Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

AS A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege the claims in Plaintiff's Complaint are barred by issue preclusion and/or claim preclusion.

SIXTEENTH AFFIRMATIVE DEFENSE

AS A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege the claims in Plaintiff's Complaint are barred by administrative esoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS A SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege the claims in Plaintiff's

Complaint are barred in whole or part, because Plaintiff's alleged injuries were caused by the actions of third person's or entities for which Defendants are not legally responsible.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS A EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege Defendant has been required to employ legal counsel to assist in providing a defense to the above-captioned bad faith and frivolous litigation and are, therefore, entitled to recover, as damages, such reasonable attorney's fees and costs as are thereby incurred.

NINETEENTH AFFIRMATIVE DEFENSE

AS A NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiff's claims are barred, in whole or in part, by the doctrine of res judicata.

TWENTIETH AFFIRMATIVE DEFENSE

AS A TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiff's claims are barred, in whole or in part, to the extent Plaintiff consented to Defendants' conduct which is now the subject of the Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

AS A TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiff's claims are barred because Defendants' conduct was not the cause in fact of any injuries alleged by Plaintiff.

TWENTY-SECOND AFFIRMATIVE DEFENSE

AS A TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes the damages alleged by Plaintiff in the Complaint are not recoverable because such alleged damages are purely speculative and not proximately caused by any action of Defendants alleged in the Complaint.

TWENTY-THIRD AFFIRMATIVE DEFENSE

AS A TWENTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANTS deny that Plaintiff is entitled to recover exemplary or punitive damages in this action. Further, any award of exemplary or punitive damages against Defendants would be barred to the extent that such damages violate the due process and equal protection provisions of the United States Constitution.

TWENTY-FOURTH AFFIRMATIVE DEFENSES

AS A TWENTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes All of Defendants' actions were conducted in good faith and without fraud, oppression or malice towards Plaintiff or his legal rights, thereby precluding any and all claims for special, exemplary, or punitive damages against Defendants.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

AS A TWENTY-FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes All of Plaintiff's alleged damages are barred, in whole or in part, by the doctrines of contributory or comparative negligence.

PRAYER

WHEREFORE, DEFENDANT pray for judgment herein as follows:

1. That Plaintiffs take nothing by way of the Complaint on file herein;
2. That the Complaint be dismissed with prejudice;
3. For costs of suit incurred herein, including attorneys' fees;
4. For such other and further relief as the court deems just and proper.

Dated: March 14 2016,

McCarthy & Holthus, LLP

By: */S/ Kristin A. Schuler-Hintz*
Kristin A. Schuler-Hintz, Esq.
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on March 15, 2016, I electronically transmitted the above ANSWER using the ELECTRONIC FILING SYSTEM for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

An employee of McCarthy & Holthus

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Attorneys for DEFENDANT, MTC FINANCIAL INC. dba TRUSTEE CORPS (erroneously named herein as MTC FINANCIAL, INC. dba TRUSTEE CORPS)

DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BENKO, a Nevada resident; CAMILO MARTINEZ, a California resident; ANA MARTINEZ, a California resident; FRANK SCINTA, a Nevada resident; JACQUELINE SCINTA, a Nevada resident; SUSAN HJORTH, a Nevada resident; RAYMOND SANSOTA, a Ohio resident; FRANCINE SANSOTA, a Ohio resident; SANDRA KUHN, a Nevada resident; JESUS GOMEZ, a Nevada resident; SILVIA GOMEZ, a Nevada resident; DONNA HERRERA, a Nevada resident; ANTOINETTE GILL, a Nevada resident; JESSE HENNIGAN, a Nevada resident; KIM MOORE, a Nevada resident; THOMAS MOORE, a Nevada resident; SUS KALLEN, a Nevada resident; ROBERT MANDARICH, a Nevada resident; JAMES NICO, a Nevada resident and PATRICIA TAGLIAMONTE, a Nevada resident

Plaintiffs,

Case No. A-11-649857-C

Dept. No.: XXIX

MTC FINANCIAL INC. dba TRUSTEE CORPS' ANSWER TO SECOND AMENDED COMPLAINT

vs.

QUALITY LOAN SERVICE CORPORATION, a California Corporation; APPLETON PROPERTIES, LLC, a Nevada Limited Liability Company; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a California Corporation; MERIDIAN FORECLOSURE SERVICE, a California and Nevada Corporation dba MTDS, Inc., dba MERIDIAN TRUST DEED SERVICE; NATIONAL DEFAULT SERVICING CORPORATION, a Arizona Corporation; CALIFORNIA RECONVEYANCE COMPANY, a California Corporation; and DOES 1 through 100, inclusive,

Defendants.

ANSWER TO SECOND AMENDED COMPLAINT

COMES NOW DEFENDANT, MTC Financial Inc. dba Trustee Corps which files this Answer to Plaintiffs' Second Amended Second Amended Complaint as follows:

1. DEFENDANT denies each and every allegation contained in the Second Amended Second Amended Complaint, save and except as expressly addressed otherwise in this Answer.

2. DEFENDANT specifically denies any allegation of illegal conduct or other wrong doing wherever pled in the Second Amended Second Amended Complaint. DEFENDANT specifically denies any allegation of conducting collection activities wherever pled in the Second Amended Complaint. DEFENDANT does not engage in debt collection activity.

3. As to paragraphs 1-4, 6-16, 18-21, and 33 of the Second Amended Complaint, DEFENDANT lacks sufficient knowledge of information to form a belief as to the truth of the allegations contained in those paragraphs, and on that basis denies each and every allegation contained therein.

4. Answering paragraph 5 of the Second Amended Complaint, DEFENDANT admits recording the documents listed, the contents of which speak for itself. DEFENDANT denies any allegations of wrong doing. DEFENDANT admits the Sansotas filed a Chapter 7 case. As to any remaining allegations DEFENDANT lacks sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and on that basis denies each and every other allegation contained therein.

5. Answering paragraph 17, DEFENDANT admits that it did not hold a debt collector's license prior to 2012, and alleges it was not required to.

6. The Second Amended Complaint lacks a paragraph 22 to respond to.

7. DEFENDANT denies the allegations contained in paragraph 23, as to Paragraphs 23(a)-23(i) admits the Sansota loan referred to was in default and was referred to have non-judicial foreclosure conducted. DEFENDANT is without sufficient knowledge or information to form a belief as to the truth of the allegations contained therein and in that basis denies each and every other allegation contained therein. The Sansotas made no payments, and suffered no losses.

8. With respect to the following paragraph, the documents or statutes alleged speak for themselves and require no answer: 24.

9. DEFENDANT denies the allegations contained in paragraphs 25, 25(a), 26, 26(b), 27, 28, 28(a)-28(e), 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47.

10. With respect to paragraph 32, DEFENDANT refers to and incorporates by reference its responses to paragraphs 1 through 31 as though fully set forth herein. With respect to paragraph 41, DEFENDANT refers to and incorporates by reference its responses to paragraphs 1 through 40 as though fully set forth herein.

11. Paragraphs 48 through 54 have been dismissed and require no answer.

12. DEFENDANT denies that Plaintiffs are entitled to any of the relief sought in the Prayer for Relief, paragraphs 1 through 5.

13. DEFENDANT has been forced to retain the services of an attorney and other professionals to defend in this action, and should be awarded its reasonable attorney's fees, costs, and other expenses incurred herein.

AFFIRMATIVE DEFENSES

DEFENDANT is informed and believes and based on such information and belief, alleges the following separate and distinct affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

AS A FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT alleges that the Second Amended Complaint fails to state facts sufficient to state a claim against DEFENDANT for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

AS A SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges, that Plaintiffs' alleged damages, if any, were proximately caused by Plaintiffs' own omissions and therefore, Plaintiffs' claims are barred.

THIRD AFFIRMATIVE DEFENSE

AS A THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges, that each of the causes of action contained in the Second Amended Complaint are barred by the doctrine of laches and unclean hands.

FOURTH AFFIRMATIVE DEFENSE

AS A FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges, that Plaintiffs failed to adequately plead and/or allege any actual or proximate cause between the alleged acts or omissions of DEFENDANT and Plaintiffs' losses.

FIFTH AFFIRMATIVE DEFENSE

AS A FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT in informed and believes, and thereon alleges, that Plaintiffs are estopped from asserting any cause of action again DEFENDANT.

SIXTH AFFIRMATIVE DEFENSE

AS A SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges, that Plaintiffs are barred from recovery by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

AS A SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges, that Plaintiffs' claims are barred by the applicable statutes of limitations.

EIGHTH AFFIRMATIVE DEFENSE

AS A EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges that the damages allegedly suffered by Plaintiffs were caused by conduct of third parties who were negligent and failed to exercise ordinary, reasonable, and prudent care and were otherwise actively at fault for the damages allegedly suffered by Plaintiffs.

NINTH AFFIRMATIVE DEFENSE

AS A NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes and thereon alleges that Plaintiffs failed to mitigate their damages.

TENTH AFFIRMATIVE DEFENSE

AS A TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon allege, that because the Second Amended Complaint is couched in conclusory terms, DEFENDANT presently have insufficient knowledge or information upon which to form a belief as to additional and as yet unstated affirmative defenses.

ELEVENTH AFFIRMATIVE DEFENSE

AS A ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiffs have approved and ratified the alleged acts of DEFENDANT for which Plaintiffs now complains.

TWELFTH AFFIRMATIVE DEFENSE

AS A TWELFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges all of the other defenses set for in NRCP, Rule 8, are incorporated herein, as applicable, for purposes of non-waiver.

THIRTEENTH AFFIRMATIVE DEFENSE

AS A THIRTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiffs suffered no damage and therefore is not entitled to any relief.

FOURTEENTH AFFIRMATIVE DEFENSE

AS A FOURTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiffs' Second Amended Complaint was brought against DEFENDANT in bad faith, as Plaintiffs knows there is no reasonable basis for bringing this Second Amended Complaint.

FIFTEENTH AFFIRMATIVE DEFENSE

AS A FIFTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges the claims in Plaintiffs' Second Amended Complaint are barred by issue preclusion and/or claim preclusion.

SIXTEENTH AFFIRMATIVE DEFENSE

AS A SIXTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges the claims in Plaintiffs' Second Amended Complaint are barred by administrative estoppel.

SEVENTEENTH AFFIRMATIVE DEFENSE

AS A SEVENTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges the claims in Plaintiffs' Second Amended Complaint are barred in whole or part, because Plaintiffs' alleged injuries were caused by the actions of third person's or entities for which DEFENDANTS are not legally responsible.

EIGHTEENTH AFFIRMATIVE DEFENSE

AS A EIGHTEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon DEFENDANT alleges that because of the Bankruptcy Discharge, no debt could be collected.

NINETEENTH AFFIRMATIVE DEFENSE

AS A NINETEENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiffs' claims are barred, in whole or in part, by the doctrine of res judicata.

TWENTIETH AFFIRMATIVE DEFENSE

AS A TWENTIETH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs consented to DEFENDANTS' conduct which is now subject of the Second Amended Complaint.

TWENTY-FIRST AFFIRMATIVE DEFENSE

AS A TWENTY-FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes, and thereon alleges Plaintiffs' claims are barred because DEFENDANT'S conduct was not the cause in fact of any injuries alleged by Plaintiffs.

TWENTY-SECOND AFFIRMATIVE DEFENSE

AS A TWENTY-SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT denies that Plaintiffs are entitled to recover exemplary or punitive damages in this action. Further, any award of exemplary or punitive damages against DEFENDANT would be barred to the extent that such damages violate the due process and equal protection provisions of the United States Constitution.

TWENTY-THIRD AFFIRMATIVE DEFENSE

AS A TWENTY-THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT is informed and believes all of Plaintiffs' alleged damages are barred, in whole or in part, by the doctrines of contributory or comparative negligence.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

AS A TWENTY-FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE, DEFENDANT alleges that there is misjoinder or improper joinder of both Plaintiffs and DEFENDANTS in this case.

PRAYER

WHEREFORE, DEFENDANT prays for judgment herein as follows:

1. That Plaintiffs take nothing by way of the Second Amended Complaint on file herein;

2. That the Second Amended Complaint be dismissed with prejudice;

3. For costs of suit incurred herein, including attorneys' fees;

4. For such other and further relief as the court deems just and proper.

AFFIRMATION

Pursuant to NRS 239B.030

* * * * *

The undersigned does hereby affirm that this document does not contain the Social Security Number of any person.

DATED this 29th day of March, 2016.

SILVESTRI GIDVANI, P.C.
1810 East Sahara Avenue, Suite 1395
Las Vegas, Nevada 89104

By: */s/ Phillip A. Silvestri, Esq.*
Phillip A. Silvestri, Esq.
Neal D. Gidvani, Esq.
DEFENDANT, MTC FINANCIAL INC. dba TRUSTEE CORPS (erroneously named herein as MTC FINANCIAL, INC. dba TRUSTEE CORPS)

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of SILVESTRI GIDVANI, P.C., and that on March 29, 2016, that a true copy of the **MTC FINANCIAL INC. dba TRUSTEE CORPS' ANSWER TO SECOND AMENDED COMPLAINT** was E-Served, e-mailed and/or by placing an original or true copy thereof in a sealed envelope, with sufficient postage affixed thereto, in the United States mail at Las Vegas as follows:

By Electronic service to:

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Via US Mail to:

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Antoinette Gill
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/s/ Phillip A. Silvestri
An employee of SILVESTRI GIDVANI, P.C.

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CLERK OF THE COURT

TRAN

EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

JEFFREY BENKO, et al, Plaintiffs, vs. QUALITY LOAN SERVICE CORPORATION, et al, Defendants.	)	CASE NO. A-11-649857 DEPT. NO. XXIX

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

WEDNESDAY, JULY 20, 2016

TRANSCRIPT RE:
ALL PENDING MOTIONS / DISCOVERY CONFERENCE

APPEARANCES:

For the Plaintiffs:	NICHOLAS A. BOYLAN, ESQ. SHAWN CHRISTOPHER, ESQ.
For Defendant Quality Loan Service Corporation:	KRISTIN A. SCHULER-HINTZ, ESQ.
For Defendant California Reconveyance Co:	LAWRENCE SCARBOROUGH, ESQ. JESSICA R. MAZIARZ, ESQ. KATIE M. WEBER, ESQ.
For Defendant MTC Financial, Inc.:	RICHARD J. REYNOLDS, ESQ.
For Defendant National Default Servicing Corporation:	KEVIN S. SODERSTROM, ESQ.

RECORDED BY: Francesca Haak, Court Recorder

CLARK COUNTY, NEVADA WEDNESDAY, JULY 20, 2016

PROCEEDINGS

(PROCEEDINGS BEGAN AT 9:05 A.M.)

DISCOVERY COMMISSIONER: Benko. I need everyone to state their appearances and who they represent, please. We'll start with plaintiffs' counsel.

MR. BOYLAN: Thank you. Good morning, Your Honor. Nicholas Boylan representing the plaintiffs, and also Shawn Christopher, my co-counsel, representing the plaintiffs in the case.

DISCOVERY COMMISSIONER: Good morning.

MR. CHRISTOPHER: Good morning.

MR. SCARBOROUGH: Good morning, Your Honor. Larry Scarborough, Jessica Maziarz and Katie Weber for CRC.

DISCOVERY COMMISSIONER: Good morning.

MR. REYNOLDS: Good morning, Your Honor. Richard Reynolds for defendant MTC Financial, Inc., dba Trustee Corps.

DISCOVERY COMMISSIONER: Good morning.

MS. SCHULER-HINTZ: Good morning, Your Honor. Kristin Schuler-Hintz on behalf of Quality Loan Service Corporation.

DISCOVERY COMMISSIONER: Good morning.

MR. SODERSTROM: Good morning, Your Honor. Kevin Soderstrom for National Default Servicing Corporation.

THE CLERK: I'm sorry, I didn't hear you.

MR. SODERSTROM: Kevin Soderstrom for National Default Servicing Corporation.

DISCOVERY COMMISSIONER: Good morning. So before we get started, I have a procedural question that I need to ask everyone. I'm going to start with the plaintiffs' counsel. When is the earliest possible date this case must be tried by?

MR. BOYLAN: Must be tried by or could be, Your Honor?

DISCOVERY COMMISSIONER: Must.

MR. BOYLAN: I don't know the answer as I sit here, Your Honor.

DISCOVERY COMMISSIONER: Okay. Defense counsel?

MR. SCARBOROUGH: Your Honor, if the five year rule applies, then we're looking at a trial I believe sometime in late 2017 or early 2018. We've got a schedule that doesn't contemplate that that has been exchanged between the parties and not agreed, but that would be my answer to your question.

DISCOVERY COMMISSIONER: I'm sorry. You said 2017?

MR. SCARBOROUGH: Late 2017 or early 2018.

DISCOVERY COMMISSIONER: And how did you calculate that?

MR. SCARBOROUGH: I calculate that from the dismissal in the federal district court before the appeal.

DISCOVERY COMMISSIONER: I don't think so.

MR. SCARBOROUGH: If it goes back to the original complaint, then the five year rule may well have run as we sit here today. Again, I don't have a full recollection of the original complaint.

DISCOVERY COMMISSIONER: I don't think it's run, but I think it expires -- unless the federal court proceeding tolls it, and I don't think it does because you were litigating in federal court.

MR. CHRISTOPHER: I have, Your Honor --

DISCOVERY COMMISSIONER: And our rule is different. Our Rule 41(e) is different, and I suspected that counsel was not aware of that. You have five years from the date of filing to bring your case to trial, which means by my calculations your file date I believe was on or about October -- I have 22nd but I thought it was earlier, actually.

MR. REYNOLDS: It's October 12th, Your Honor, 2011.

DISCOVERY COMMISSIONER: October 12th. Right. I think I just wrote the wrong date down. 2011. So that's the file date, so the trial date would have to be on or before October 12th of this year.

MR. BOYLAN: Your Honor, if I may comment, now that I understand. I have -- I've not researched it, but my strong impression is that the statute has to be tolled while the case is on appeal, and the case was on appeal in the Ninth Circuit for years. Now, I don't have the exact calculation in front of me, but I believe it was at least a couple years. It was a surprisingly long time before the Ninth Circuit issued and published its opinion in this case. So I would --

DISCOVERY COMMISSIONER: Okay. So here's my thought. And that may be, but I don't think being in federal court tolls the state court filing date. That's my concern. But if you were on appeal, it might arguably toll the time in federal court on the case. I just don't know if on remand it tolled the state court.

MR. BOYLAN: My thought, if I may, Your Honor, is the law is a very practical device and if you're in an appellate court you cannot go to trial. You simply -- it's as if you're imprisoned. So I can't imagine --

DISCOVERY COMMISSIONER: Some people probably believe that.

MR. BOYLAN: Yes. It takes -- it's a long term, a long prison term. So it's

not -- it would be really strange if the law said you're supposed to go to trial when you're in the appellate court.

DISCOVERY COMMISSIONER: Okay. So here's what I would like to have happen today before I proceed. I want the parties to stipulate to a date for the five year rule on the record, to be followed up with a stipulation. I don't know what is -- I don't know if this case is going to be reassigned to a different judge. I suspect it will be. We're still trying to work out the details of that. But I need -- because our rule is a mandatory dismissal, and if one of us is wrong in interpretation that could be a problem. Now, I hear what you're saying about it being tolled during the time it was on appeal in federal court. You may very well be right on that, but I don't have any case law before me and I think everybody has been proceeding without addressing that issue, and my defense attorneys from Nevada know that issue. You knew it.

MS. SCHULER-HINTZ: Your Honor --

DISCOVERY COMMISSIONER: So we need to figure this out on the record.

Yes, ma'am?

MS. SCHULER-HINTZ: Thank you, Your Honor. I was just trying to recollect the dates that it was actually on appeal. My recollection is that it went up on appeal approximately October 1, 2012 and it came back down I believe around August 2015, which would be about a three year tolling period, assuming tolling applies. Now, if you want us to pick a date somewhere before the end of three years as a firm trial date, we can step outside and pick out something that's --

DISCOVERY COMMISSIONER: I want an agreement by every attorney in here representing every party, that you have agreed that the five year rule does not

expire before this date.

MS. SCHULER-HINTZ: And I think we can --

DISCOVERY COMMISSIONER: And then I can deal with your motions and I can get you a trial date. We'll work on getting you a trial date.

MS. SCHULER-HINTZ: I think it's just in order to do that, rather than take up the Court's time, if we just step outside and do it.

DISCOVERY COMMISSIONER: Perfect.

MS. SCHULER-HINTZ: Then you can move on to another case and then we'll come back with an agreement for you.

DISCOVERY COMMISSIONER: That's perfect, because I am prepared to rule on your motions --

MS. SCHULER-HINTZ: Thank you, Your Honor.

DISCOVERY COMMISSIONER: -- but I needed this taken care of first.

(The matter was trailed and recalled at 9:16 a.m.)

DISCOVERY COMMISSIONER: Will counsel come back up? I'm going to recall Benko and I am going to perhaps ask a favor of counsel since there are so many of you and we do have a lot of work to do. I'm thinking if you could maybe give me 45 minutes or an hour I could get through the rest of my calendar and then I can give you all the time that you need. There's a café downstairs. Unless somebody has other obligations that they are going to be late for if I do that, in which case I will certainly accommodate you all.

MR. REYNOLDS: So check in at 10:00?

MR. SCARBOROUGH: I have an early afternoon plane, Your Honor, just after noon.

DISCOVERY COMMISSIONER: Okay.

MR. SCARBOROUGH: I'm willing to race for it to accommodate the Court's schedule, but I'm not sure I have unlimited time starting at 10:00. I probably need to be gone by 11:00.

DISCOVERY COMMISSIONER: Okay. I'm just looking at --

MR. SCARBOROUGH: I'm sorry for that.

DISCOVERY COMMISSIONER: No, I'm just looking at everything else I have and I think I can give you a good solid hour and maybe even more; you know, a good solid hour. But if you could come back at ten o'clock, but before we do that why don't we put a stipulation on the record as to the five year rule.

MR. BOYLAN: Thank you, Your Honor. We have agreed between us that the earliest possible date the five year statute could run is March 1 of 2019. The earliest possible date. Obviously we're reserving our arguments that it could be later, but we have agreed, as you exactly specified, that's the earliest date.

DISCOVERY COMMISSIONER: Okay. Can I have everybody's counsel state their appearance one more time and their agreement with the earliest possible date the five year rule runs would be March 1st, 2019.

MS. SCHULER-HINTZ: So stipulated, Your Honor. Kristin Schuler-Hintz for Quality Loan Service Corporation.

MR. SCARBOROUGH: So stipulated. Larry Scarborough for CRC.

MR. REYNOLDS: So stipulated. Richard Reynolds for MTC Financial.

MR. SODERSTROM: Kevin Soderstrom for National Default Servicing. So stipulated.

DISCOVERY COMMISSIONER: Thank you very much. And if you all --

MR. BOYLAN: And you may wish to note, Your Honor, I apologize for interrupting --

DISCOVERY COMMISSIONER: Yes?

MR. BOYLAN: -- that Meridian is not here today. Their counsel has filed a motion to withdraw. I don't recall the hearing date on that. So we have one party that is not present.

DISCOVERY COMMISSIONER: Okay. That could be a little bit of a problem. I would recommend that you all follow up with a written stipulation. You have a couple of months to get that done because the five year rule, if there's no tolling and we just look at the file date isn't until October, and I would highly encourage counsel to go ahead and do your waiver of the five year rule and -- or, I don't know if it would really necessarily be a waiver, but your agreement that the five year rule is extended to such and such a date, and hopefully get somebody from Meridian to sign off on it.

MS. SCHULER-HINTZ: I believe Meridian is defunct, Your Honor.

DISCOVERY COMMISSIONER: Oh. Well, then maybe it's --

MS. SCHULER-HINTZ: I don't know that they're going to be participating any further.

DISCOVERY COMMISSIONER: Yeah. It may not be an issue then.

MR. REYNOLDS: Your Honor, Richard Reynolds. Your Honor, I can assure you that Meridian is defunct.

DISCOVERY COMMISSIONER: Well, then it may not be a concern for you, but we do have the stipulation --

MR. BOYLAN: As to the others.

DISCOVERY COMMISSIONER: -- on the record.

MR. BOYLAN: As to the others. So, I mean, arguably if Meridian somehow was reincarnated the problem would only be as to it because we've got a stipulation --

DISCOVERY COMMISSIONER: Right.

MR. BOYLAN: -- as to the other defendants.

DISCOVERY COMMISSIONER: Absolutely.

MR. BOYLAN: Very well. Thank you, Your Honor.

MR. SCARBOROUGH: We'll be back at 10:00. Thank you, Your Honor.

DISCOVERY COMMISSIONER: Thank you very much.

(The matter was trailed and recalled at 10:20 a.m.)

DISCOVERY COMMISSIONER: Benko. Come on up.

All right. I'm going to relieve you of having to state your appearances again. So what I'd like to do first, since we've now stipulated to the earliest that the five year rule runs, is I would like to go ahead and have -- prepare your scheduling order and I think that this will make sense for the rest of the motions then that are before me today. I went back and read the hearing that you all had before Judge Scann. We do have another procedural problem and we're working on it. The Court is very sad right now with the passing of the judge and I hope that you all understand that. I had the pleasure of knowing the judge for a very long time. In any event, the order was never signed from the hearing. You all submitted competing orders, but the judge was going to revise the order and provide it or, you know, file it, and that was not done. We are working on it. I do not have an answer for you right now. So I know the parameters that the judge wanted to put in place for the discovery.

Now I'm going to tell you what I do and then I'm going to see if we can somehow work together to have a schedule that makes sense. And as I understand it, the summary judgment motions have been filed and moved to October, I believe.

MR. SCARBOROUGH: Only from one party, Your Honor.

DISCOVERY COMMISSIONER: Okay.

MR. SCARBOROUGH: The rest of us intend to do exactly the same thing, but we haven't done it yet.

DISCOVERY COMMISSIONER: Okay.

MR. REYNOLDS: Your Honor --

DISCOVERY COMMISSIONER: Yes, sir.

MR. REYNOLDS: MTC has -- Mr. Boylan and I have agreed, based on our schedules, to move our summary judgment motion as to Mr. and Mrs. Sansota, one punitive class named member, to October 10th. And that was signed -- that order was signed last week.

DISCOVERY COMMISSIONER: Okay. And I think Judge Ames signed the order, if my recollection serves me right.

So here's what I typically do on class discovery. And I understand there's a dispute whether this may be a class or may not be a class. I understand that. But in order to make that determination we have to do discovery. I think the court's concern, and I completely understand it, is there may have been -- there may be a legal issue here that precludes the plaintiff from proceeding in the case, period, whether there's a class or there's not a class. And I called -- I think the judge referred to this as discovery of the named plaintiffs only. I would like to maybe just recharacterize it as discovery in order to make the legal determination

as to the viability of plaintiffs' claims.

I know it may not be a significant distinction, but I think what you're really asking for, as I understand it, defense counsel, is just time, and the plaintiff is going to need the time to conduct the discovery to determine whether or not this reconveyance company, I guess, was a creditor or acted like a loan collection agency. I did not have access to Judge Williams' decision. I don't warrant it with my Westlaw program, so I did not have an opportunity to read it. But I suspect that, again, the other departments are not bound by that decision. It might be persuasive authority, but each department is going to have to reach its own decision and then maybe everything ends up on appeal. I think the other case was not appealed, for whatever reason.

MS. SCHULER-HINTZ: That's correct, Your Honor, it was not.

DISCOVERY COMMISSIONER: Yeah. But in any event, that's not this case, that's not these lawyers, that's not these plaintiffs. So we have to look at this case separately.

So what I envisioned was this. I envisioned giving you a couple of months to address the issue of the legal determination, and that would work with the summary judgment motions, I believe, or at least would be compatible with it. I don't know if you'll hear all of them at once, so it may necessitate the one summary judgment motion being moved to November. But I would like to say let's focus on that for a couple of months and do whatever discovery needs to be done for the legal determination as to the viability of the plaintiffs' claims.

Then this is Phase 2. I would absolutely require class discovery first. And the problem with the defendants' proposed dates is you go to Phase 2 class

discovery, that's your Phase 2, and you don't really give a date to file the dispositive motions on class certification. And then if the class is certified, what do we do? There's no more discovery. Oops. So that won't work. I think the better approach is to have your Phase 2 be your class discovery and then the dispositive motion date in that phase would be the time to file the motion for class certification.

MR. BOYLAN: I'm sorry, I didn't understand that, Your Honor.

DISCOVERY COMMISSIONER: We have a dispositive motion deadline, which is like your summary judgment motions, but that would be the date that I would say that you should use to file your motion for class certification, if not before. But I'm just talking out loud now conceptually. The case that was right here before me, this is how we did it. We did the class discovery first and then the final -- but I will phase this in three phases because we do have that legal issue. But the third phase would be merit discovery, which would actually be liability and damages for the named plaintiffs as well as the class because there's no purpose in doing damages discovery on the named plaintiffs if we have a class and we have to do all of it at once. It just doesn't make sense to me.

So that's how I would typically phase the discovery. And next time I think maybe you use the word phase instead of bifurcate just because bifurcation has a very -- it's a term of art. Unfortunately it made the law clerk -- it made me panic. So we're phasing discovery. That's what we're doing.

MR. BOYLAN: May I share some initial comments, Your Honor?

DISCOVERY COMMISSIONER: Sure. Absolutely.

MR. BOYLAN: We have a lot to talk about, I think. The papers were lengthy.

DISCOVERY COMMISSIONER: Right.

MR. BOYLAN: Very voluminous. A lot of authority. But from our perspective the legal ruling that was presented by the pleadings was determined by the judge. The 12(b)(5) motion was denied. So the legal determination on the pleadings at least has been made. The only alternative now is a factual showing, so it has to be summary judgment. The legal determination is made. It can be revisited, but she was very clear she wanted a record, meaning facts, meaning summary judgment, as you've said. But I would ask the Court, what is the legal determination that you perceive Judge Scann wanted made based on the factual development, because I --

DISCOVERY COMMISSIONER: Are the defendants a collection agency, required to have a license? And that seems to me what the legal determination is and that seems to me to be a matter of law.

I do have one question, though, for the defendants. Do you really even need discovery on this issue, since you've already filed your summary judgment motions on it? And I don't know exactly conceptually what discovery you would undertake, except perhaps 30(b)(6) depositions of the defendants to ask questions about what type of activities they did, and, you know, did you act like a collection agency?

MR. BOYLAN: As a business in the state of Nevada, and that doesn't mean anecdotally with respect to one or two plaintiffs. Under the statute we are entitled to prove and in fact it appears we must prove that they were conducting a business in Nevada as a collection agent. So anecdotal information about one or two plaintiffs doesn't meet our proof requirement. So, if I can go on?

DISCOVERY COMMISSIONER: I agree with you. That's why I'm trying to --

and maybe I'm not saying this right or not communicating it as effectively as I would like, but that discovery that you just talked about, your proof on that issue, that's the discovery I think we need to do in Phase 1. And I don't think we should touch the individual. I understand what the judge meant by looking at the individual plaintiff's cases because she was thinking of the liability issue.

MR. SCARBOROUGH: That's right.

DISCOVERY COMMISSIONER: I really believe that, that she was thinking is there even a cause of action here, so let's just -- before we deal with the class, let's look at the individual plaintiff's cases.

MR. BOYLAN: Well, but she ruled there was a cause of action, at least on the pleading, so that was the ruling. So --

DISCOVERY COMMISSIONER: Right. But she invited the summary judgment motions. She contemplated discovery on that issue. She contemplated discovery on that issue.

MR. BOYLAN: Right, but here's the thing. It wasn't briefed. She had none of the evidence in front of her. She had none of the declarations that you now have. She was tired; it was the end of a long day. This is not something that should determine the course of this case, a random off-the-cuff discussion at the end of the 12(b)(5) hearing, Your Honor.

DISCOVERY COMMISSIONER: Oh, I agree with you. Believe it or not, plaintiffs' counsel, I actually am persuaded by your perspective of the case. Had I seen you all initially, I might have done something a little bit differently. But having said that, I understand where the court was coming from and I want to be able to make sure that we do this in a fashion that makes sense -- for your clients as well.

Why do you want to spend a lot of money doing research or discovery on class certification when you may not have a viable claim? That does not make sense to me.

MR. BOYLAN: I can answer that. And I've already been handling this case for five years. I went to the Ninth Circuit and back. They published opinion; probably the leading opinion now in the Ninth Circuit on CAFA. I'm not going anywhere. I believe we are a hundred percent right on the law. I also believe that the facts are incredibly strong already, and they won't even give us any discovery. If you saw the letters that we submitted, if you saw the documents we submitted, the declaration of Bijan, the evidence is already overwhelming. In fact, if you look at just MTC's summary judgment motion and the evidence we have already, that motion is dead.

Second, we've got a new plaintiff coming in who submitted a declaration -- Bijan. He's going to be added either by stipulation or motion very quickly. There's no way that summary judgment motion can prevail in light of that testimony. Now, I don't want you to get ahead of that. I'm not asking you to pre-judge that. What I'm saying is we don't want to duplicate discovery.

Let's look at the depositions, for example. The PMK depositions regarding the content and accessibility of their ESI. Now, you deal with this all the time. First, they should have disclosed what their ESI was in the 16.1. They could have reserved their argument that they're not going to produce it or whatever, but they should have at least disclosed what they had in what computers, what's the accessibility, what's the cost. How many files do they have? They didn't even disclose how many electronic files they have. Now, I believe normally that would

have made you upset. They didn't even bother to disclose it. This is called self-selecting --

DISCOVERY COMMISSIONER: Oh, you have no idea.

MR. BOYLAN: This is called self-selecting discovery. They determined the scope of discovery before we even saw you.

Now, let me tell you why that's handicapped you, if I may, Judge, because I've done this many times. If we had those depositions right now, you would have testimony in front of you from a PMK that says, oh, yeah, it's all in the computer, we just punch it in, it generates reports by name. We have a case history. It shows all of our telephone contacts. They deprived you of that information.

DISCOVERY COMMISSIONER: I don't need that information right now. I think it should have been disclosed under 16.1. I don't disagree with you on that because you have to disclose witnesses who may have knowledge. You have to disclose relevant documents. And obviously we could debate these issues right now on what is and what isn't, but lawyers get into trouble when they try to decide what's relevant and what isn't.

But having said all that, and I hear what you're saying, but I think that this is a significant enough case to phase the discovery and do it in a way that makes sense. And the first hurdle that the plaintiffs are going to have to overcome, and maybe it won't be a big hurdle, I don't know, you know, you're very confident. I just don't know the answers and that's not my decision to make. But I do believe that you need to focus in on your discovery on the legal issues. And that may mean, and defense counsel, you know that that may mean you'll have more than one 30(b)(6) deposition, but the 30(b)(6) deposition initially should be

as it relates to the credit collection services or aspects. And I would think you would want to take that and get that information up front.

MR. BOYLAN: Okay, but let's evaluate that. Let's sit in a deposition together right now. We're going to ask those questions and we're going to focus on the database so we can show they were doing this business statewide. They were in this business. They had thousands and thousands of files. With respect to these files, they were making calls from their phone bank, they were sending letters. That's part of our statutory proof. Now, how long is that deposition going to take just to ask the PMK about the data on that? An hour; two hours? Now, if we broaden that, how much longer is that deposition going to take to ask all the questions that might more broadly relate to the class? How much longer is that deposition going to take? Thirty minutes more? The questions are virtually identical, so why do we want to put an artificial limitation and end up doing that deposition twice? Depositions -- I've taken depositions in major cases for days. We're talking about a couple hours. Why would we separate that and then bring in all the lawyers from out of state --

DISCOVERY COMMISSIONER: Why would we increase litigation costs and expenses if the defendants -- and I know you disagree with this, but if they're correct on the law --

MR. BOYLAN: Isn't that true in every case?

DISCOVERY COMMISSIONER: -- that they are not collection agencies?

MR. BOYLAN: Isn't that true in every case where a defendant walks in -- I've had it in --

DISCOVERY COMMISSIONER: Well, this is a narrow legal issue, though.

This is a very concrete issue.

MR. BOYLAN: What is the issue?

DISCOVERY COMMISSIONER: Well, as I understand, the issue is whether or not the plaintiffs have legally valid claims under Nevada law, and specifically as it relates to these foreclosure entities acting as credit collection agencies.

MR. BOYLAN: Again, that was decided on 12(b)(5). Now --

DISCOVERY COMMISSIONER: No. No.

MR. BOYLAN: There's going to be summary judgment.

DISCOVERY COMMISSIONER: Listen. I know I may not look like it, but I probably practiced just about as long as you did before I took the bench. So -- let's hope I don't look like it, right? But here's the deal. That motion was a motion to dismiss on the pleadings. What the judge wanted you to do is do some discovery so she could decide it as a matter of law. That's what she wants done or wanted done. That was her plan. And why would you spend a lot of money doing class certification merit discovery without knowing the initial answer to the question of whether or not you have a legally valid claim under Nevada law?

MR. BOYLAN: Well, it may be that it is just semantics. I need to gather the evidence to defeat those motions. They're asking you to block me from significant components of that motion.

DISCOVERY COMMISSIONER: Well, I read through your motions, so I'm going to deal with those in a minute. But all I'm saying to you is why not phase the discovery? And maybe it is semantics. Maybe we're all talking about the same thing. Now, I don't see any, quote, "experts" being required in this phase. Does anybody see the need for experts?

MR. SCARBOROUGH: Absolutely not.

DISCOVERY COMMISSIONER: Yeah. I saw two deadlines. I saw a close of discovery deadline and a dispositive motion deadline. And then if the claims survive and as a matter of law the court says, yes, those claims are valid, then what I would anticipate is -- what I would anticipate is that we would go to Phase 2, which would be the class discovery. And I would do that next because the merit discovery would have to be the liability and damages for all the plaintiffs in the case.

MR. BOYLAN: In this case, however, if I may, counsel, please. I'm sorry. I understand what you're thinking now, but we need to dig a little deeper because if we're going to do the discovery that I think you're contemplating, it is going to overlap with factual development that relates to the class issues. Now, it's not for that purpose if you so design it, but there's going to be overlap there and we're going to need to --

DISCOVERY COMMISSIONER: There may be overlap in all the phases on certain discovery. That's the risk that you always have when you conduct discovery in phases. But when I think of class discovery, this is what I'm thinking. Who are the members of the class? Let's research that. You know, we've got to send letters out. The court would have to direct the letter to go to the class. I mean, there are a lot -- when I talk about class discovery it may not be the same as what you're contemplating, but that's what I would -- you know, the identification of the class members. And then do we satisfy class certification by numerosity, etcetera?

MR. BOYLAN: Let me give you a razor-sharp example that illustrates why this is problematic. Did you read the declaration of Bijan Laghaei? Now, his declaration -- he's going to be a plaintiff soon -- defeats summary judgment by MTC.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: Let me finish, please.

DISCOVERY COMMISSIONER: All right.

MR. BOYLAN: We had to find him on our own. So these people are witnesses. He has evidence -- You say you want a quick legal determination. These people have evidence which will defeat summary judgment, so I need to know their names and contact information. They are witnesses to defeat summary judgment. So does the Court contemplate that I'm not going to get their names and contact information? They're witnesses to defeat summary judgment.

DISCOVERY COMMISSIONER: I don't know how a witness could defeat summary judgment as a matter of law because that may raise factual issues and the court may say, hey, there are just too many factual issues. What we're talking about is a matter of law. Did these defendants qualify as credit collection agencies? I think you need to look at their conduct first. Now, that may necessarily mean that you get a list of all the people that they did business with and you look at that list. You may get the class list up front, you know, in accordance with the discovery that's being required, but you need to take your 30(b)(6) depositions of their principals. You need to depose their management staff and you need to find out what they actually did and whether or not their conduct and what they did in running their business qualifies under the law.

MR. BOYLAN: Okay, but why would I trust what they say as opposed to the other witnesses who already have a conflict? Rand Johnson, he's the principal of MTC. In support of summary judgment he submitted a declaration that says we never acted as a collection agent, never did forbearance agreements.

MR. REYNOLDS: Your Honor, this is really objectionable.

MR. BOYLAN: Okay. So, Bijan, we found him. We were lucky to find him. He submits a declaration which shows that all of that is false. So we can't just depose their managers and trust what they say.

DISCOVERY COMMISSIONER: Well, I think you need to find out what they did.

MR. BOYLAN: I agree with that, but we need their documents.

DISCOVERY COMMISSIONER: But you need to do that first.

MR. BOYLAN: Well, the other plaintiffs will show what they did. If you read Bijan's declaration --

DISCOVERY COMMISSIONER: Listen, he's not even a plaintiff in this case yet, okay.

MR. BOYLAN: He's a witness.

DISCOVERY COMMISSIONER: Fine.

MR. REYNOLDS: He's not anything.

MR. BOYLAN: But here's the problem. We have to make the legal determination first. That's what needs to be made first and that's what I'm going to require. I'm going to phase the discovery. Now, I'm not quite sure you will be objecting to on my Report and Recommendations because you'll have to do that with the motion work, but on the status check, which is why you're here today in part, the discovery conference. I'm going to phase it in three phases. We'll have to figure out the particulars of what discovery you think you need on those phases, but let's not get ahead of ourselves. I was only going to give you until September 16th to complete that discovery on the legal aspect of the legal validity of your claims.

You may need more time. You tell me.

MR. BOYLAN: Well, yes, much more time. At this point they've cancelled all the depositions. We should have taken two already. Did you see my supplemental declaration?

MR. REYNOLDS: Again, filed in violation of the rules, Your Honor.

DISCOVERY COMMISSIONER: You know what, I have seen a lot today, all right. I can't -- I go through it, I read it, I make notes, all right. That's what I do. Can I tell you specifically what's in it without reviewing it again? No, I can't. And you know what, here's one thing I don't care about your style of oral argument. I ask the questions, not you. If you need to ask me a question to clarify something, I am happy to listen, but I'm not here to be grilled or cross-examined by you today. All right?

MR. BOYLAN: Understood, Your Honor. Not my intention.

DISCOVERY COMMISSIONER: Okay. Well, you need to be careful.

MR. BOYLAN: I didn't know if the declaration made it to you.

DISCOVERY COMMISSIONER: I think it did. I've got three boxes full of materials and I have tabbed things.

MS. SCHULER-HINTZ: Your Honor, can I make a suggestion that might help move this along?

DISCOVERY COMMISSIONER: Yes.

MS. SCHULER-HINTZ: If you could tell us what dates you are thinking, we can take a look at those and then see if we need to move them or stipulate.

DISCOVERY COMMISSIONER: No. I'm going to give you your scheduling order today --

MS. SCHULER-HINTZ: Thank you, Your Honor.

DISCOVERY COMMISSIONER: -- because you need to get busy.

MR. SCARBOROUGH: Then on that, Your Honor, if I could?

DISCOVERY COMMISSIONER: Yes.

MR. SCARBOROUGH: I would suggest we need at least two more weeks from September 16th, round about to October 1st, so that from the defense side we can get the document requests out to see what these plaintiffs have in their possession and then go ahead and take their depositions. And I think given -- wanting to have the documents before the depositions, which is ordinary, we can get that all done on October 1st. I don't want to give this Court the impression that we're trying to extend this timeline. We're trying to do this first phase as quickly as we conceivably can.

DISCOVERY COMMISSIONER: Well, I wasn't contemplating you taking plaintiffs' depositions in the first phase.

MR. SCARBOROUGH: Well, then --

MS. SCHULER-HINTZ: Your Honor, I think we do need them.

MR. SCARBOROUGH: Yes.

MS. SCHULER-HINTZ: The affidavit of Mr. Benko made some claims that we really need to address because it goes to the heart of their allegation that we were engaging in credit collection work.

DISCOVERY COMMISSIONER: Well, you all have just argued yourself out of phasing discovery.

MS. SCHULER-HINTZ: In that case, Your Honor, we'll do it in phases.

MR. REYNOLDS: Well, Your Honor --

DISCOVERY COMMISSIONER: No, I'm serious about this. Listen to yourselves. Now we're getting into factual investigation. That's what you're getting into. Maybe this case doesn't lend itself to that. Maybe I just need to give you one set of deadlines and you do whatever you feel is best. But I was trying to be prudent. I was trying to honor what I believe was prudent on Judge Scann's part to address the legal issues first. But this is not a situation where I felt that we were going to depose the plaintiffs. In fact, I wouldn't see that happening until Phase 3 when we do the merit discovery. What needs to happen is -- and I'm not saying you wouldn't do written discovery on, you know, what do you base -- you know, what are the factual bases for your certification. But you know what? This may not be doable. It may not be doable in the way that you all want to complete discovery.

MS. SCHULER-HINTZ: Your Honor, if we can do the written discovery, then I don't see any problem with the phases.

MR. REYNOLDS: May I speak, Your Honor?

DISCOVERY COMMISSIONER: Yes, of course you may.

MR. REYNOLDS: For MTC. I start at this from a different perspective.

DISCOVERY COMMISSIONER: Okay.

MR. REYNOLDS: The first perspective I start at is what Judge Scann said. Quote, page 40, lines 20 and 21.

DISCOVERY COMMISSIONER: I've read the -- I really have read it.

MR. REYNOLDS: She says: "It's limited to the parties as far as the discovery goes." That's what it says. She specifically says: "Well, right now we don't have a class that's certified, so it's limited to the parties as far as the discovery goes."

DISCOVERY COMMISSIONER: We don't have a class that's certified because we don't have the discovery to certify the class.

MR. REYNOLDS: Let me -- Counsel complains about not producing documents. On the 16.1 as to his clients, the Sansotas, who are out-of-state residents in Ohio, he produced no documents, no communications between my client and his and only referred to those documents that are recorded. That is why we filed the motion for summary judgment because he conceded that if that's all it is, he doesn't have a case against my client as to the named parties. I have a summary judgment motion as to the named parties. I have requests for admissions that are out now as to the named parties that say, did we ever talk to you? The answer is going to be no. I can have a motion for summary judgment and be granted. If he wants to try to find another putative class member, go ahead. I'm happy to talk about Mr. Laghaei because the statute has run against him. He's represented by other counsel and has been for years. He doesn't mention that to you.

DISCOVERY COMMISSIONER: Okay.

MR. REYNOLDS: So that's my point is why am I -- why are we doing this --

DISCOVERY COMMISSIONER: Why are we --

MR. REYNOLDS: -- when we have a pending motion for summary judgment?

DISCOVERY COMMISSIONER: Well, because we have something called Rule 56(f), and I would be very surprised in the environment that we're in in this day and age that you're going to get a summary judgment motion granted without some discovery.

MR. SCARBOROUGH: And that, Your Honor, is why I think we need to be

able to hear from the named class representatives --

DISCOVERY COMMISSIONER: Well, I'm not going to have plaintiffs --

MR. SCARBOROUGH: -- in some --

DISCOVERY COMMISSIONER: I'm sorry, I don't mean to interrupt you, but I am not having the plaintiffs deposed more than once. So that means you're going to deal with their damages at the same time. That means we can't phase discovery.

MR. BOYLAN: Also, Your Honor, you made a good point. I don't think we should --

MR. SCARBOROUGH: Actually, I thought you and I were dialoging, Your Honor.

DISCOVERY COMMISSIONER: We are dialoging, but the problem is why am I going to have the plaintiffs deposed twice on damages and liability? I didn't see that as what we needed.

MR. SCARBOROUGH: And I'm pretty sure I didn't say that we needed to depose them twice at any point in this. What Ms. Schuler-Hintz said would work. I think for purposes of summary judgment what we need is the plaintiffs on record with a verification somehow of saying either I was the recipient of abusive telephone calls, which might qualify for debt collection services if indeed that takes it out of the ambit of Chapter 107, non-judicial foreclosure or not. It doesn't necessarily require their deposition. Or the statement you just made, Your Honor, that there's something called 56(f), what we're going to see is an affidavit from the plaintiffs when we file our motion, saying I was the recipient of 42 telephone calls and let me tell you how those came out.

To go back to Judge Scann, and I know you read the transcript.

DISCOVERY COMMISSIONER: I did.

MR. SCARBOROUGH: It's absolutely clear. What she was saying was to the main argument that every federal court in this state and Judge Williams in the QLS case -- Ms. Schuler-Hintz really wondering why she's here representing the same defendant again -- has ruled --

DISCOVERY COMMISSIONER: Because you're in a different case, different department.

MR. SCARBOROUGH: But has ruled that the debt collection licensing statute does not apply. So what's being argued to my right is an attempt to get a new ruling never before in this state, and that provides some context. Now, let me tell you what Judge Scann said. As you know, she said, okay, really, Mr. Boylan, and on behalf of the plaintiffs, if you think that there's something that takes this case outside the ambit of Chapter 107, then it ought to be in the files, the documentation that went back and forth between the particular mortgage foreclosure trustee and the named plaintiffs, and frankly it ought to be in the plaintiffs' heads about their own dealings with said mortgage foreclosure trustee. Once you assimilate that material, and I'm not pushing back on the deposition at all if we can ask some interrogatories, once we assimilate that material to take out the Rule 56(f) affidavit and make this a live summary judgment ruling, then the Court and we are going to have the ruling that Judge Scann contemplated being made before we move to class certification discovery. That's all I have to say on that topic, Your Honor.

DISCOVERY COMMISSIONER: So what do we do after class certification discovery? Let's say we flip phases. We make Phase 1 and 3, we kind of combine it. And so we call it just discovery of named plaintiffs only, for lack of a better phrase,

but really it is in order to make the legal determination of the viability of plaintiffs' claims. So let's say we conduct that discovery.

MR. SCARBOROUGH: That's Phase 1.

DISCOVERY COMMISSIONER: Okay.

MR. SCARBOROUGH: I would argue, based on what the Court has said, not necessarily the position we took, that you combine Phases 2 and 3 because I'll tell you why under your view, because we do get to take the deposition of the class representatives before the certification motion is decided because there's this issue of whether they are adequate class representatives.

DISCOVERY COMMISSIONER: Okay, but conceptually here's my problem. Let me just say what my problem is and then maybe you can help me fix it. So let's just say we combine 2 and 3 and that will be Phase 1.

MR. SCARBOROUGH: That will be Phase 2, in my view.

DISCOVERY COMMISSIONER: Well, but what will be -- but we can't now because what you're saying -- and I don't disagree with you, I'm not sure I want to limit you to written discovery. You may have to take the plaintiffs' depositions and they are the named plaintiffs right now. But the class discovery is intertwined with that because they are the class rep-- alleged. You know, we don't have class certification yet. But what happens if we combine Phases 2 and 3? Do I give you one scheduling order or do we do a second phase on damages? I mean, here's the problem. Once -- if the class is certified, which I don't -- I'm not sure how this is going to play out, but then we have to have time to do some discovery on the class. That's my concern.

So, really, I do this differently. In the cases before that you've seen,

we do the class discovery first, then we do liability and damages. We do merit discovery. That's how most of the classes are handled. But this is a little bit, I suppose, unique, just because of where you're at right now. But I think maybe the best way to do this is to give you one scheduling order with one group of dates and set the close of discovery far enough out that if the class becomes certified that you'll have time to follow up on any damages discovery. That's the only thing I can think of. And I will have to trust my attorneys to work together because unfortunately what you're telling me is that there is going to be overlap between the individual plaintiffs' cases and the class. But really, I'm frankly at a loss right now.

MS. SCHULER-HINTZ: Your Honor, may I --

MR. BOYLAN: Your Honor, we would agree with that plan.

MS. SCHULER-HINTZ: May I make a recommendation?

MR. BOYLAN: If I can? And just to --

DISCOVERY COMMISSIONER: Let me hear from defense counsel first.

Go ahead, ma'am.

MS. SCHULER-HINTZ: Thank you, Your Honor. I think that the phase is a good plan. I think what I see you struggling with is --

DISCOVERY COMMISSIONER: Is the practicality of it.

MS. SCHULER-HINTZ: The practicality. Exactly, because of the overlap. Now, the issue is the allegation at the motion to dismiss hearing was that we went outside the scope of 107.080 et seq and did things that were not foreclosure collection, and this is where Judge Scann had the issue. So if we do the phased discovery, I think what we can do is do Phases 1, 2 and 3 but do a limited combination of Phase 3 as to the named plaintiffs, as to their damages, their

depositions and all of that as part of Phase 1, because those are questions that would naturally come out in a depo or in discovery.

DISCOVERY COMMISSIONER: Then I'm going to let the plaintiffs do the class discovery. And the reason I'm saying that is there is going to be overlap. I don't know if I can, based on everything you're telling me -- now, what I could do is we could define the class discovery a little bit. You know, but I don't know how to do it, really.

MR. BOYLAN: It's hard.

DISCOVERY COMMISSIONER: And I have been down this road before and I am frankly concerned about this because necessarily you're going to end up doing class discovery. I want you to be able to take the plaintiffs' depositions to be able to determine what they know, to be able to defeat or to bring your motion for summary judgment on these issues, knowing that you have had the ability to fully depose the plaintiffs and you have all the facts so you are not surprised down the road.

MS. SCHULER-HINTZ: But we don't want --

MR. REYNOLDS: I'm not concerned.

MS. SCHULER-HINTZ: We also want limited -- I mean, I understand the struggle.

DISCOVERY COMMISSIONER: But how fair is that?

MS. SCHULER-HINTZ: But I don't think we need --

DISCOVERY COMMISSIONER: How fair is that to the plaintiffs, though, if I say to them you'll be deposed as class representatives; oh, but by the way, we're not doing class discovery. And by the way, in a year you have to come back and

you have to be deposed on your damages.

MS. SCHULER-HINTZ: No, Your Honor. We don't want them to have to come back in a year. Absolutely not. We don't want them to have to come back in a year. I think if there's -- as part of their depo, as part of their discovery their damages claims would come out in that, which is why they wouldn't have to come back. So if we get through the first phase of discovery and we do all of the discovery on the named plaintiffs, the files are open, they can look at everything to do with the named plaintiffs, and if they find something that's outside the ambit of 107.080, that would open the class discovery.

DISCOVERY COMMISSIONER: But what if in order to defeat their summary judgment motion they have to know all the plaintiffs that were -- potential plaintiffs that were affected by this or they find out that maybe these representatives or these people didn't exactly get all the phone calls but somebody else did maybe down the road --

MS. SCHULER-HINTZ: But then they're not really named plaintiffs.

DISCOVERY COMMISSIONER: -- how do I make this fair? How do I make it fair?

MS. SCHULER-HINTZ: But then they're not named plaintiffs, Your Honor, because they didn't get the phone calls. That's just it, is we're foreclosure trustees.

DISCOVERY COMMISSIONER: They're not named plaintiffs because we haven't done class discovery. We're in a circular --

MR. SCARBOROUGH: Your Honor, might I just say we cited two cases, the Ziniak (phonetic) case and the Bird Hotel case right on this point that make it clear that the obligation to find appropriate named class representatives rests with

the plaintiffs. They are not entitled to the records of all the people we dealt with, with whom we did business on the run-up to class certification in this phased kind of discovery. They're just not. We don't have to supply them with those names.

DISCOVERY COMMISSIONER: Are you willing to answer the question, though, whether you made phone calls to any of the fifty states and made phone calls to any of the people that you were servicing these loans? Did you make phone calls as part of your routine practice? And if you did, who did you call?

MS. SCHULER-HINTZ: Absolutely. I'll answer it right now. We did not.

MR. SCARBOROUGH: We're happy to answer those questions because that's fair.

MR. BOYLAN: Your Honor, on that point they cited two cases. Like much of their brief, they cite a lot of trial court orders. That is a minority and we distinguish those because discovery had actually been allowed in part in those cases. We cited ten appellate court cases, the complex case manual. I mean, this is very routine class action management. Of course we're entitled to find the witnesses and potential new class representatives. It's done all the time. If they -- what they're telling you right now is if we get this information their case is over because all these people are going to come forward with all their letters and their phone calls and it's going to be overwhelming.

MS. SCHULER-HINTZ: Objection, Your Honor.

DISCOVERY COMMISSIONER: Well, we don't know that.

MS. SCHULER-HINTZ: It's pure speculation.

DISCOVERY COMMISSIONER: Do we know that? No, we don't know any of this.

MR. BOYLAN: I'll tell you how we do know it.

DISCOVERY COMMISSIONER: This is speculative at this point.

MR. BOYLAN: No, no. Look at the deposition --

DISCOVERY COMMISSIONER: Sir, I'm so sorry about your airline flight. Can you --

MR. SCARBOROUGH: You know, Your Honor, this is way more important than that.

DISCOVERY COMMISSIONER: Are you able to rearrange your schedule? And I really apologize to you. I'm just -- I know you're in from out of state. There have been some delays that are not any of the attorneys' fault.

MR. SCARBOROUGH: No apology from this Court needed. This is extraordinarily important. And when I'm faced -- so I will rearrange my flight out of town. But I do want to say -- and Mr. Boylan has said things like this before about the weight of authority and the amount of years he's been in it. I guess I put my gray hair up against others --

DISCOVERY COMMISSIONER: Well, perhaps together we have more years. I don't know.

MR. SCARBOROUGH: -- in the room. But that is just not correct. And I don't want this Court to use as a basis something where --

DISCOVERY COMMISSIONER: I think this Court is a little more intelligent than that.

MR. SCARBOROUGH: I know this Court is intelligent, but I feel that if I sit here and do not give the counterweight to each of these things, that the incessent push, push, push backs us off from something which sounded absolutely sensible

and comported with what is really routine judicial judgment at this point in time in class action litigation.

DISCOVERY COMMISSIONER: Do your clients make phone calls to people who they service at all? Do they -- How do they communicate?

MR. REYNOLDS: On behalf of MTC, Your Honor, our clients do not call foreclosure borrowers.

DISCOVERY COMMISSIONER: Okay.

MR. REYNOLDS: If somebody calls us, we respond.

DISCOVERY COMMISSIONER: Okay.

MR. REYNOLDS: We do not make phone calls. I can assure you that is the case.

DISCOVERY COMMISSIONER: Is that pretty much how the industry works here?

MR. SCARBOROUGH: That is pretty much how the industry works. And as a result, that's why in our view, and we don't know what was in her head, but judging from the words that she spoke, that's why Judge Scann said before this incredible burden of discovery falls on defendants, which is something that causes defendants to up and settle unmeritorious claims before their time to avoid the expense, that she would ask for some focus on whether these types of telephone calls and other things that counsel is speculating occurred actually occurred. We have something like 17 named plaintiffs because -- and I think the Court sees this -- we don't have one class action here. We have as many class actions -- and they concede this at page 3 of their deposition papers, we have as many class actions as we have defendants because of course each homeowner with a home got involved

with a particular mortgage trustee, and so we've really got five mini class actions here.

DISCOVERY COMMISSIONER: This is why we were unable in the Eighth Judicial District Court to coordinate the quiet title cases, because each case is different. Each homeowner is different. Each set of circumstances are different. So I'm very aware of the problems.

MR. SCARBOROUGH: And you've just stated why this class won't ever be certified. But I agree that there ought to be a chance for discovery if there is a legal viability to any of these 17 individuals' individual claims.

DISCOVERY COMMISSIONER: So I still get back to where I started, which is I think we need to do some discovery on the legal determination --

MR. SCARBOROUGH: Yes.

DISCOVERY COMMISSIONER: -- of whether or not the plaintiffs, the named plaintiffs, if you will, have a viable cause of action. Now, the only caveat, though, I do want to say is this. I don't know if we need a certified class right now. I don't know if we do. But I am confident that the defendants have the technology to run reports to identify individuals that may be class appropriate. My only concern right now is that I get this case moving, and I want to do it in a cost effective way for everybody. It's important to me to do that. We don't have the proportionality rule that federal court does, but we have a rule called 26(g) which basically talks about the same thing.

So how can we do this, and how can I allow the plaintiffs to have the discovery that they really need as well, which may overlap? But I think what I don't want to get into right now is getting the list of the class representatives, making

phone calls to twenty, you know, two hundred people. First of all, I think you're going to have to have a letter sent to these individuals that the Court is going to have to acknowledge and accept and you're going to have to sort out the language of the letter that's going to go to the class. I mean, these are things that we don't want to be doing right now.

MR. BOYLAN: Well, we have to contact them as witnesses now because we need their evidence to defeat summary judgment. We also may need to add them, like Mr. Laghaei, as additional class reps for the reason you said yourself, which is maybe some of them got more letters, more phone calls.

And if I could respond to just a few things.

DISCOVERY COMMISSIONER: Uh-huh.

MR. BOYLAN: I deposed the principal of MTC, Mr. Reynolds' client. They have 200 employees. They have phone banks. They have at least 10 people working the phone bank.

MR. REYNOLDS: Your Honor, this is just completely false.

DISCOVERY COMMISSIONER: Okay. Okay.

MR. BOYLAN: It's in her -- it's in the transcript I gave you.

MR. REYNOLDS: It's completely false.

DISCOVERY COMMISSIONER: Okay, listen, I just want to stay focused for a moment, okay?

MR. BOYLAN: Okay.

DISCOVERY COMMISSIONER: I need you just to stay focused with me. Let's work out a scheduling order that makes sense.

Now, plaintiffs' counsel, when you start doing discovery, okay, when

you start doing discovery and when you start talking to your plaintiffs and if you run -- you get the factual information that you feel says, you know what, we need to start doing class discovery, why don't you come back and see me. But I think we need to start initially with determining what we do have because I don't even know if we know what we have right now.

MR. BOYLAN: Well, that's why we need evidence. And we submitted a lot of evidence. This is a little bit unusual. A motion to grossly limit discovery with no evidence, like they submitted no declarations on burden, expense, duplication.

DISCOVERY COMMISSIONER: This is phasing discovery, and I suspect in most of the manuals, the complex litigation manuals, I know that discovery can be phased. I don't think this is anything unusual. I will tell you in my experience I have put the class certification discovery first and then the merit discovery second.

MR. BOYLAN: Mine, too.

DISCOVERY COMMISSIONER: Now, that's how I've done it. I understand there's this legal issue. And in those other types of cases we know that they have the right to sue on a products liability claim, we're not worried about the legal issue of the liability of that cause of action. My concern here is there's an issue, a fairly serious issue of whether or not there's a viable cause of action under the Nevada law; period. That has to be determined. What do you need discovery-wise to make that happen? And that's where we're at.

MR. BOYLAN: We just --

DISCOVERY COMMISSIONER: Now, I think we need some foundation to go exploring to find other names of other individuals. We need more foundation and I just don't think we have it right now.

MR. BOYLAN: We have -- we've given quite a bit of that in actual sworn evidence and documents to the Court, Your Honor. We've given you a lot of evidence to show that foundation.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: And if I may, your comment about Rule 56(f) is very important. They want to file summary judgments to defeat a case and they want to limit discovery. We would suggest that as you were starting to go in the direction that at this point there should be no limitation. Let's start taking the PMK depositions. You can deal with it on a case-by-case basis when it starts to crystalize in front of you. And since there's already one summary judgment motion filed, we will just as a matter of course have to oppose any limitation. In the case that was argued before us, you looked at the lawyer and said he can ask any questions he wants in the deposition. And that's what --

DISCOVERY COMMISSIONER: I did. I did say that.

MR. BOYLAN: And that's what we need to do here, particularly until we get beyond summary judgment because they are now -- they are actually telling me in the deposition, such as the one I submitted to you, they're telling me what I can ask in the deposition.

DISCOVERY COMMISSIONER: No, not necessarily, but I do think it's fair under the facts and circumstances of this particular case and the complexity of it, we have to make the determination -- the Court has to make the determination initially of whether or not as a matter of law the plaintiff has viable claims; as a matter of law. So how do we do that without expanding discovery? I mean, I would personally not feel like I did my job and was responsible as the Discovery

Commissioner if I allowed class discovery at this point in a case where the claims are not viable. And I think that was -- I know that was Judge Scann's concern.

Now, I do agree in principal with the plaintiffs' position. I do. And I generally allow class discovery. Let's do the class, then we'll do the merit. But I think the concern in this case is the viability of those claims. So here's my proposal. I think I need to give you about 60 to 90 days to -- Listen, if class discovery waits 90 days, it is not going to be the end of the world for you, I guarantee it.

MR. BOYLAN: I'm going to be in Europe quite a bit. Mr. Reynolds and I have been speaking. He has a pretty significant --

DISCOVERY COMMISSIONER: Are you going to Europe, too?

MR. BOYLAN: We're not going together that I know of.

DISCOVERY COMMISSIONER: Not a group trip. Okay.

MR. SCARBOROUGH: That's Mr. Reynolds.

MR. BOYLAN: But Mr. Reynolds also has some vacation plans.

DISCOVERY COMMISSIONER: Sorry, Mr. Reynolds.

MR. SCARBOROUGH: I'm not going to Europe at all. I'll be here, Your Honor. I just want to assure you of that.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: So we have some scheduling --

DISCOVERY COMMISSIONER: Mr. Reynolds, what is your time frame? What do you think is realistic for you? I know you filed your motion for summary judgment and I appreciate that.

MR. REYNOLDS: Well, insofar as my time frame as to these named plaintiffs --

DISCOVERY COMMISSIONER: I want you to do what you feel like you need to do to --

MR. REYNOLDS: I don't need -- I need them to simply respond in three weeks to the written discovery and the case is over from my perspective.

DISCOVERY COMMISSIONER: All right.

MR. SCARBOROUGH: Sixty to ninety days works for the rest of us for sure.

DISCOVERY COMMISSIONER: Okay.

MR. REYNOLDS: What Mr. Boylan and I -- just so the Court knows, Mr. Boylan is out in Europe I think from the 9th to the 23rd, and what we were trying to do was not require his response to our motion for summary judgment to be right after he came back from his vacation. So I'm only gone from the 11th to the 17th of August. I'm taking my daughter back to college, but that's it.

DISCOVERY COMMISSIONER: Well, here's the problem.

MR. REYNOLDS: So that was between Mr. Boylan and I trying to make sure that, you know, he was not getting thrown under the bus during the month of August. That's what we were talking about.

DISCOVERY COMMISSIONER: Okay, and I appreciate that. Here's the Court's problem. Your presiding judge did pass away and we are going to have to figure out how we're going to manage this particular case due to its nature, so it may be reassigned. I wouldn't count on my summary judgment motion being heard in October. I'm not sure. I can't speak to that. But I just -- I don't want there to be a surprise there if that motion needs to be moved a month, okay. I don't want that to be a surprise to you.

What I'm thinking we should do, I should give you August, September

and October to get the initial discovery done as it relates to -- and I'm going to characterize Phase 1 as discovery in order to make legal determination as to the -- to make the legal determination as to the validity of plaintiffs' claims. I know that is a long title. And this is what I contemplate in this Phase 1 discovery. I contemplate that if necessary the defendants can take the plaintiffs' depositions; if necessary. This may not be a true damages -- it may be statutory, so I'm not sure we really have to have a proof of damages. I'm just not sure on that.

MR. SCARBOROUGH: Not from our perspective on Phase 1.

DISCOVERY COMMISSIONER: Yeah. I'm not sure. So maybe we just depose these plaintiffs one -- obviously one time. I'm not going to -- this is, believe it or not, we're going to be very prudent on how we proceed. Now, I will obviously during this first phase require the defendants to respond to written discovery, to have their 30(b)(6) depositions taken. The only limitation that I can really see at this point, and that is with the understanding, defense counsel, that you may very well have to produce a 30(b)(6) deponent again, would be I don't want to get into what I consider true class discovery where we're getting all the names of the potential class members, we're dealing with the numerosity issues, we're dealing with commonality issues.

I promise you, plaintiffs' counsel, that when the time comes you'll have the discovery you need. Now, you can't obviously move to certify the class until you have that discovery and I'm going to give that to you in Phase 2.

MR. BOYLAN: Understood. But part of our opposition to summary judgment will be we were barred in discovery from getting the names of the critical witnesses needed to submit declarations.

DISCOVERY COMMISSIONER: Okay. So let me explain this in case -- and I know you all don't -- some of you don't practice here in Nevada. We have something called 16.1, and I have just recommended extremely severe sanctions for a defendant who failed to disclose potential witnesses because they didn't think they were relevant. I am serious about this and I am not joking. If the defendants have knowledge of individuals who received phone calls, if they know their phone banks did call people and they don't identify those people as witnesses, then you can move for Rule 37 sanctions. That's --

MR. BOYLAN: And collection letters. Did you see the letters we submitted, Your Honor? Those are wonderful. They're unbelievable. They're slam-dunk collection letters.

DISCOVERY COMMISSIONER: Okay. You have to identify under 16.1 witnesses who have knowledge.

MR. BOYLAN: And documents.

DISCOVERY COMMISSIONER: Now, I don't expect the defendants to -- you know, to give you a list of people, but I do expect if the defendants have knowledge of people that would fall into these categories -- it sounds like it's a non-issue because you don't, but if you do you have to identify them.

MR. SCARBOROUGH: We understand the obligation in Nevada --

DISCOVERY COMMISSIONER: Okay.

MR. SCARBOROUGH: -- under 16.1 and we are mindful of what the Court has just said.

DISCOVERY COMMISSIONER: Okay. So if you do have a homeowner out there who you know of called you, okay, so they initiated it, and then you called

them back twenty times on their, quote, unquote "debt," that person needs to be identified. So if I were you, defense counsel, I would go back and see what my phone protocol is, you know, how many people called in, did we call them back, how did we approach that, because that would probably be relevant. And that would be a good topic for your 30(b)(6) deposition.

MR. BOYLAN: Precisely. Thank you, Your Honor. And just -- you know, under the statute it doesn't matter who called who. If they're acting as a collection agent, it doesn't matter who initiated the phone call.

DISCOVERY COMMISSIONER: I understand that. I'm just trying to be descriptive so there's no misunderstanding. But I don't expect the defendants to go back and comb their records right now and identify every single person that they made a phone call to or every person -- I don't expect that. But I think you have to do your 30(b)(6) deposition specifically enough that you get that information. But if there is some knowledge of some individuals that, you know, fall within that category, then, you know, that's why written discovery may be important, too.

MR. BOYLAN: And we've done that. They've refused to respond to any of it. That's the other thing in terms of your time table, Your Honor. Can we have --

MR. SCARBOROUGH: That's just completely untrue.

MR. REYNOLDS: Again false, Your Honor.

MR. BOYLAN: They --

DISCOVERY COMMISSIONER: Well, then that's your fault for not bringing a motion to compel.

MR. BOYLAN: No, we will, but we were waiting for --

DISCOVERY COMMISSIONER: Oh, boy, I can't wait. All right. So, go

ahead. I'm sorry.

MR. BOYLAN: We were waiting for the ruling today --

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: -- because it may have dispensed with the need, frankly.

DISCOVERY COMMISSIONER: Okay. And please don't think I'm not giving you class discovery, because I'm going to. And please don't represent to the court that I denied you class discovery. You can say that I didn't give it to you in Phase 1.

MR. BOYLAN: No, all I'm mentioning is witnesses we need to oppose summary judgment. That's my only comment.

DISCOVERY COMMISSIONER: Right. I understand. I get it.

So here's my plan for Phase 1. And again, this is discovery in order to make a legal determination of the viability of plaintiffs' claims. And to that end, the focus will be on the plaintiffs' individual claims. I would recommend that this phase close November 1st of 2016, with any dispositive motions needing to be filed by November 30th of 2016.

Phase 2 will be class discovery. And if the Court then finds validity to plaintiffs' claims, we move to Phase 2. And then at that point, defense counsel, you'll have to provide your list of all the people who you serviced, probably, within that certain time frame.

MR. REYNOLDS: Can I -- Is the Court saying that it wants a list of every single person that was foreclosed in the state of Nevada? Because there's no other way of finding out any of that information.

DISCOVERY COMMISSIONER: Well, I would hope that you would have record of that -- that you dealt with.

MR. REYNOLDS: Well --

DISCOVERY COMMISSIONER: No?

MR. REYNOLDS: I doubt that anybody would have a record individually of somebody making a phone call because those calls never happened.

DISCOVERY COMMISSIONER: Well, would you have a list of the homeowners that you had any contact with in this process?

MR. REYNOLDS: I am assuming the only list that anybody would have in this room would be a list of those people, if they could find it, of every person that's been foreclosed in the state of Nevada and for a period of time, and the statutes vary as to different parties.

DISCOVERY COMMISSIONER: Right.

MR. REYNOLDS: And this is out of school, but our office will probably be filing a motion to sever ourselves from the rest of this class.

DISCOVERY COMMISSIONER: Okay.

MR. REYNOLDS: I'm not saying it to argue the case, I'm saying that that is something --

DISCOVERY COMMISSIONER: Right.

MR. REYNOLDS: I didn't want to bring it up after the Court's ruling.

DISCOVERY COMMISSIONER: Well, again, this ruling is your scheduling order.

MR. REYNOLDS: Right.

MR. SCARBOROUGH: So we're moving to Phase 2 --

MR. REYNOLDS: Class discovery.

MR. SCARBOROUGH: -- which is class discovery?

DISCOVERY COMMISSIONER: Correct.

MR. SCARBOROUGH: Okay.

DISCOVERY COMMISSIONER: And this would be my recommendation. Usually what I do is I give like 60 days between Phase 1 and 2 after the dispositive motion deadline. So what I would anticipate, that the class discovery would close -- I'm not going to put you on the 1st -- maybe April 7th of 2016. Now, in this case --

MR. BOYLAN: 17?

MR. SCARBOROUGH: 2017?

DISCOVERY COMMISSIONER: 17. I'm sorry. I don't want to re-live this year. April 7th of 2017. Now, what I don't know is if you need experts in this phase. Can you -- do you know if you would need an expert?

MR. SCARBOROUGH: I don't know as I sit here today. I just can't answer the question.

DISCOVERY COMMISSIONER: Plaintiffs' counsel?

MR. BOYLAN: Possibly as to ESI, if we get into disputes about what they're giving us and whatnot and how it's stored, but I'm not sure. I doubt that. Based on our knowledge of the software and the like, the stuff is readily available. Second, you asked a question today about how would the industry work.

DISCOVERY COMMISSIONER: Yeah.

MR. BOYLAN: We're going to have, hopefully, access to a lot of documents and testimony that tells us how these businesses worked, but it is conceivable that we will also need an expert on how this industry works, including in the state of Nevada.

DISCOVERY COMMISSIONER: I think so. Okay, so let me do this. I'm

going to adjust my deadlines a little bit. I'm going to close your class discovery June 1st of 2017, with your last day to amend pleadings, add parties, and your initial expert disclosure date will be March 1st of 2017. Your rebuttal deadline will be March 31st of 2017 and your dispositive motions will be due -- I'll make it July 3rd of 2017.

MR. SCARBOROUGH: And when Your Honor said dispositive motions in this phase --

DISCOVERY COMMISSIONER: Summary judgment.

MR. SCARBOROUGH: You're contemplating summary judgment or motion for class certification?

DISCOVERY COMMISSIONER: You know what, that's an excellent point. It would be the motion for class certification.

MR. SCARBOROUGH: Okay.

DISCOVERY COMMISSIONER: And I will reflect that on my scheduling order. Thank you. So the dispositive motion for the Phase 2 would be the motion for class certification.

Then Phase 3, we'll call it merit discovery, I am assuming at this point -- this actually may be the point, plaintiffs' counsel, where you want your industry standard expert. I don't know if you'll want them in the class certification phase or not. I'm going to give you the deadlines and you can make your decision on when you want to call them or retain them. So then what I would contemplate is -- if I do -- I'm wondering if we can -- if I have your class certification motions filed July 3rd and I give you 60 days before you have to disclose experts, will that be sufficient, do you think?

MR. BOYLAN: Yes, Your Honor.

DISCOVERY COMMISSIONER: So your close of discovery will be December 8th of 2017. Last day to amend pleadings, add parties, initial expert disclosure date will be September 8th of 2017. Your rebuttal deadline will be October 9th of 2017. And your dispositive motion deadline will be January 8th of 2018.

MR. SCARBOROUGH: I'm sorry, did you say 8 or 18?

DISCOVERY COMMISSIONER: 18. January 8th --

MR. SCARBOROUGH: Of '18.

DISCOVERY COMMISSIONER: -- of '18.

MR. SCARBOROUGH: Got it. Thank you.

DISCOVERY COMMISSIONER: And I know I wrote it down. And you believe that the first date, the earliest date to try the case would be -- didn't I write that down?

MR. SCARBOROUGH: I believe we agreed on the five year rule, March 1st, 2019, so there's a year.

DISCOVERY COMMISSIONER: That's fine.

MR. SCARBOROUGH: Yeah, there's a year more.

DISCOVERY COMMISSIONER: Okay. And that will comply or be in accordance with the five year rule.

Now, let me just make sure I have all the other information I need for the scheduling order. I'm kind of afraid to ask the next question. I'm going to say -- I'm going to characterize the case as fraud and unjust enrichment. That's just a label so the Court somewhat knows what the case is about. I would say two to three

weeks for trial. That was my estimate. Is that sufficient? Can you --

MR. SCARBOROUGH: My guess -- obviously it depends how many experts there are going to be, but I would think that might be a tad on the low side. So I'd look at --

DISCOVERY COMMISSIONER: Three to four weeks?

MR. SCARBOROUGH: Something like that.

DISCOVERY COMMISSIONER: Okay, three to four weeks for trial. No settlement conference was requested, although I'm going to send you to a mandatory settlement conference. Do not think that I will not do that once you've had a little opportunity to engage in some discovery.

MR. SCARBOROUGH: Thank you, Your Honor.

DISCOVERY COMMISSIONER: All right. So now I have the motions. And I have my other counsel back.

MR. SCARBOROUGH: I will say I think that goes -- if I can, that that goes a long way toward answering the motions because the first motion was bifurcation. The second motion dealt with database discovery, and really what that means is how much class discovery are we doing in Phase 1, were Your Honor to grant the -- I'm sorry, I won't call it bifurcation anymore, I'll call it phasing.

DISCOVERY COMMISSIONER: Phasing. Let's call it phasing.

MR. SCARBOROUGH: Because Your Honor just ordered phasing, I think we can go back and review our discovery responses as they sit and also deal with whatever plaintiffs ask us and we ask them, applying the template that you just put around your discussion and timeline of phasing in this case.

DISCOVERY COMMISSIONER: It's really important to me, though, that the

plaintiff have the opportunity to take your 30(b)(6) depositions.

MR. SCARBOROUGH: I understood Your Honor to be ruling that.

DISCOVERY COMMISSIONER: I understand that some of that was on class discovery, but what I really think the plaintiff needs to find out is how the business operated, what type of phone calls were made, if any, how the contacts were made, how the letters that you have from your clients were developed. All of those issues need to be discussed. The only part I really don't want to get into or have you all have to disclose, you know, your list of, you know, all the homeowners that you dealt with.

MR. SCARBOROUGH: Your Honor was very clear on that.

DISCOVERY COMMISSIONER: So just briefly, there's four motions. I actually think I can do them fairly quickly.

MR. BOYLAN: May I comment briefly, Your Honor?

DISCOVERY COMMISSIONER: Yes.

MR. BOYLAN: I think your comments about 16.1 disclosure and sanctions are extremely important and I think that under 16.1 and under the applicable law I think particularly where they can do so through computer searches that are easy, I think they do have an obligation to disclose as witnesses those individuals in Nevada who received either collection letters or collection phone calls. And whether they characterize it as --

DISCOVERY COMMISSIONER: Okay. Actually, defense counsel, I think that might be a fair -- if sending a collection letter is one of the indicia for supporting that the company is a collection agency. But I don't see why we don't ask that in an interrogatory.

MR. BOYLAN: I did. They refused to answer it. We're going to bring that motion.

DISCOVERY COMMISSIONER: Okay. Well, that's one that I want answered. How many people did you send -- Did you send out collection letters? Yes or no. If you did, how many did you send out in the state of Nevada? I am hoping you have a database that will allow you to answer that question. If you do not, then you need to explain what you did to try to answer it. If it's really problematic and too burdensome, then you need to bring a motion for a protective order. But that is honestly, I think, one of the areas that I would expect some responses on.

MR. BOYLAN: And the way we test that, Your Honor, as a plaintiff is we take the deposition of the Person Most Knowledgeable about their database. We noticed those weeks and weeks ago and we --

DISCOVERY COMMISSIONER: It's actually a 30(b)(6) deposition.

MR. BOYLAN: Yes.

DISCOVERY COMMISSIONER: They eliminated the notice requirement.

MR. BOYLAN: We did that, exactly as you say.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: And you know why we did it? Because when we arrived here today we wanted to be able to tell you the fruits of that. They refused to produce any of those people. So you don't know --

DISCOVERY COMMISSIONER: So let's get the foundational information first. Whether or not they actually -- now, obviously they did because your clients have these, right, collection letters.

MR. BOYLAN: We've submitted a bunch to the Court with our papers.

DISCOVERY COMMISSIONER: Okay, well -- okay, I'm not commenting on the validity of them, who sent them, what the significance is. I'm just saying that that's the representation that has been made to me.

MR. REYNOLDS: Your Honor, there is some very distinct issues here. Two of the defendants have collection agency licenses for many years. So to that extent all of that discovery is irrelevant. One of those is my client. And so --

DISCOVERY COMMISSIONER: Okay. So then you shouldn't have to answer it.

MR. REYNOLDS: That is correct.

DISCOVERY COMMISSIONER: Just say we have a collection agency license. Here it is.

MR. BOYLAN: No, Your Honor. They got it in 2012. Our discovery --

MR. REYNOLDS: That's right.

MR. BOYLAN: No. They didn't get it until 2012.

MR. REYNOLDS: The discovery is going to last year.

MR. BOYLAN: It goes from --

DISCOVERY COMMISSIONER: I'm confident that the judge is going to limit it based on the statute of limitations, so you will need to calculate or figure out your statute of limitations. And I'm only saying that because that's been my experience in other class action cases like the one that was here, but you probably didn't see them.

All right. So, defendants' joint motion for protective order on 30(b)(6) notices is granted in part and denied in part in that the plaintiff will be able to take a 30(b)(6) deposition focused on, again, the viability of its claims and specifically

on whether or not the defendants qualify as a collection agency under Nevada law. However, class certification discovery is protected.

Number two, the second motion. Defendants' joint motion to bifurcate and limit discovery to named plaintiffs in initial phase of discovery. It's granted within parameters we've discussed, with a caveat that I do expect that 16.1 is complied with, that witnesses who may have knowledge, including from the plaintiffs' perspective are disclosed, who have knowledge about this issue. And I do expect the defense counsel to answer questions regarding, you know, their policies and procedures and practices regarding if they were involved in collection activities or how they contacted people who used their services.

And then the next motion is defendants' motion to bifurcate or limit discovery to named plaintiffs, and this was Raymond and Francine Sansota, I believe, and then there was a joinder and a joint motion to bifurcate. The motion is granted in accordance with the scheduling order that I issued in phases.

And the fourth motion is defendants' motion to compel -- gosh, I think I said it wrong. Financial information for protective order?

MR. BOYLAN: No, Your Honor. It was the other one about the depositions. It was parallel to what you've already ruled on, the PMK depositions.

DISCOVERY COMMISSIONER: Okay. So can I just say granted in accordance with the scheduling order?

MR. BOYLAN: Granted in part and denied in part with the parameters you described as to the other motion. It's exactly the same.

DISCOVERY COMMISSIONER: Okay, I like that. And I like it so much, you get to prepare my Report and Recommendations on these motions.

MR. BOYLAN: Who, Your Honor?

DISCOVERY COMMISSIONER: Do you have local counsel? You do, right?

MR. BOYLAN: Mr. Christopher.

DISCOVERY COMMISSIONER: Mr. Christopher.

MR. BOYLAN: I've been admitted here since '96, so I'm not a complete stranger.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: I had an office here for many years.

DISCOVERY COMMISSIONER: Okay, good, so you can handle this, right? But see the forms on the table, the green --

MR. BOYLAN: Yes.

DISCOVERY COMMISSIONER: Perfect. I want you --

MR. BOYLAN: May I make one final request?

DISCOVERY COMMISSIONER: I want you to prepare that Report and Recommendations. Yes, sir?

MR. BOYLAN: This case has some levels of complexity to it.

DISCOVERY COMMISSIONER: Right.

MR. BOYLAN: Once you cut through it, I think it doesn't seem complex at all. But until you make that first cut, it's kind of tough to get your arms around. I would like to make a request that -- I would like to suggest that the Court take a look at four items before we see you again that I think will at least give you the plaintiffs' perspective on what this is about. I mean, there's a lot of briefing. There was a ton of briefing on the 12(b)(5) motion.

DISCOVERY COMMISSIONER: What would you like me to look at?

MR. BOYLAN: Two decisions by federal appellate courts. Glazer v. Chase Home Financial, that's the Sixth Circuit, 704 F. 3d 453.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: The Fourth Circuit decision in Wilson v. Draper & Goldberg. That's 443 F. 3rd 373.

DISCOVERY COMMISSIONER: Okay.

MR. BOYLAN: And then the recent decision by the Alaska Supreme Court on this debt collection issue, which I have a copy I can share with your bailiff. And also, although we submitted it to you -- defendants have all this, Your Honor -- a copy of Commissioner Burns' decision in the QLS matter. Those four things will give you a huge perspective on how the plaintiff views the case.

DISCOVERY COMMISSIONER: Does anyone have Judge Williams' decision?

MS. SCHULER-HINTZ: I do, Your Honor. I'll supply it.

DISCOVERY COMMISSIONER: Can you submit it to me?

MS. SCHULER-HINTZ: Certainly.

DISCOVERY COMMISSIONER: Make sure you send plaintiffs' counsel a copy, too.

MS. SCHULER-HINTZ: He has it.

MR. SCARBOROUGH: It's been in all the briefing, but we're happy to do that.

DISCOVERY COMMISSIONER: If it's in the briefing, I'll find it. I just couldn't find it.

MR. SCARBOROUGH: On the 12(b)(5) motion it's --

DISCOVERY COMMISSIONER: On the 12(b)(5) motion it is?

MR. SCARBOROUGH: Yeah.

DISCOVERY COMMISSIONER: All right, then I can pull it off the Internet.

MR. SCARBOROUGH: So the Court obviously can decide what it wants to spend its time reading what. I'll just make -- if I can have two sentences of commentary on that?

DISCOVERY COMMISSIONER: Absolutely.

MR. SCARBOROUGH: So the firs thing is Commissioner Burns' decision is worth reading because that's the decision that Judge Williams reversed. And upon reversal, the financial institutions division appealed it no further, meaning to the Nevada Supreme Court.

DISCOVERY COMMISSIONER: I know it didn't go all the way up. Okay.

MR. SCARBOROUGH: And two, my second point is on the two cases that you were given, the out-of-state cases, none of those dealt with the statutory scheme that is before the Court that provides the exclusive basis for the relief that the plaintiffs seek in these cases. So I would never tell you what not to read, but those cases do not involve the Nevada statutory scheme, 107, or the Deceptive Practices Act or the licensure requirement.

DISCOVERY COMMISSIONER: Isn't there an equity remedy of unjust enrichment, too? Although I'm not sure how that plays out here.

MR. SCARBOROUGH: There is --

MR. BOYLAN: There's a bunch of statutory remedies. You were right before. There's injunctive relief. It's a DTPA claim. It's statutory consumer fraud. So there's all those remedies.

A final comment on Judge Williams. QLS capitulated and got its

collection agency license. There was no need to appeal.

MS. SCHULER-HINTZ: Your Honor --

MR. SCARBOROUGH: Well, as the winner, QLS would not be the one appealing, and there's counsel right there.

DISCOVERY COMMISSIONER: Okay.

MS. SCHULER-HINTZ: As QLS's counsel, he wasn't in the case. He doesn't know what went on. He doesn't know the decisions.

DISCOVERY COMMISSIONER: Well, just in case those of you don't know, Judge Williams and I worked together for a number of years, so I'm just going to disclose that.

MS. SCHULER-HINTZ: I just wish he would stop making comments regarding what happened in a case that he wasn't a party to.

DISCOVERY COMMISSIONER: Okay. So now you know, I worked with Judge Williams and Neil Galatz for a number of years. I just want you to know that, okay.

MS. SCHULER-HINTZ: And, Your Honor, I'm sorry. I handed your bailiff that decision that you asked for.

DISCOVERY COMMISSIONER: I got it. Thank you very much.

Okay, so last thing, I've got to set you for a status check. And I'm doing that because -- and I will look at those cases. I will. I'm always interested in reading. I'm kind of a nerd that way. I'll be happy to look at them. But I do want to set you for a status check, so does everyone have their calendars available? Can you -- if I give you a time and a date, if something doesn't work out you can call me and I will move it. But I want to check in with you to see how this Phase 1 discovery is doing. I'd like

to see you back here maybe -- I don't know if Wednesdays or Fridays are better for travel; you tell me.

MR. BOYLAN: Probably Wednesdays, Your Honor.

DISCOVERY COMMISSIONER: Okay. How about October 12th at 10:00 a.m.?

MR. BOYLAN: Yes, Your Honor.

DISCOVERY COMMISSIONER: It will be a status check on Phase 1 discovery. And then at that time, depending on what you find out, we can talk about moving into the next phase, if necessary.

MR. BOYLAN: Years ago -- just a point of order going forward, years ago -- and I haven't worked with Your Honor, but a long time ago I think it was Commissioner Biggar, he would take calls. I mean, sometimes --

DISCOVERY COMMISSIONER: Oh, I take calls.

MR. BOYLAN: -- I run into a lot of problems at depos. I just had one where there were multiple instructions not to answer. I've read your pet peeves in your writings. I know the rules.

DISCOVERY COMMISSIONER: I think I have to update them. Everybody read the Coyote Springs case?

MR. BOYLAN: Is that -- I just read Commissioner Opinion No. 11. That's very helpful to this case.

DISCOVERY COMMISSIONER: Yeah. Those were my --

MR. BOYLAN: That's Oliveras v. Rebel (phonetic).

DISCOVERY COMMISSIONER: Right. My predecessor's opinions. But there have been some updates in the case law. The state court no longer follows

the In re Stratosphere case in federal court. It's Coyote Springs. If you haven't read that case, please read it. I don't have the citation off the top of my head. I believe it came down late last year, 2015. Your local counsel should be able to find it for you. It's a supreme court decision.

MR. BOYLAN: We can find it, Your Honor, for sure, Your Honor.

DISCOVERY COMMISSIONER: All right. Read that case. Make sure you read it. It's important. I take deposition calls all the time. I think some of the lawyers in the room know that. So I'll be happy to take your call. If you need a conference call with me on some issue that arises, call me. I'll take a conference call with you.

MR. BOYLAN: Another thing that you may or may not embrace, Your Honor, that I've seen in cases, a couple of the depositions like these PMK depositions that we're going to take now with your permission, if we did the first couple of depositions here close to you, in physical proximity to you --

DISCOVERY COMMISSIONER: No, I won't do that. Everybody has read the Okada case, though. You need to read that one, too, in terms of the location of depositions. I generally typically do follow the federal court rule on that. But the Okada case changed the landscape a little bit, so just please read that rule as well or that case as well. And that one is relatively recent. I think it's A-k-a-d-a.

MR. BOYLAN: We've seen that.

DISCOVERY COMMISSIONER: Okada. Yeah, read that one. But usually I do it at the convenience of the deponent. But I'm available by phone and if you are two or three hours away and you are taking a deposition, if you let me know in advance I've actually shared my cell phone number so that you can call me during

the deposition if need be, and I'm happy to do that. So those are the things that I will tell counsel that we do -- I do to try to make myself accessible.

I'm hoping also that we will have some instruction for you on the location of this case. Right now it will remain in Department 29, but we'll let you know. You will definitely be advised, okay.

All right. Good luck with everything. I will issue the scheduling order. You'll receive a copy of it. I need my Report and Recommendations -- I'm going to give you 20 days. I know you're going on vacation as well. Try to get the Report and Recommendations to me as soon as possible. I'd like all counsel to approve as to form and content. I know that hasn't gone very well for you all in the past, but I am counting on some effort here. I will fix the Report and Recommendations if need be. They are not an order in the case until they are signed by the district court judge, but if you don't obey them and they are subsequently signed, you're in trouble because the order is retroactive. And I believe that is the Bahena case. You might want to read that. There's Bahena I and Bahena II.

All right. Anything further today? I'll issue the scheduling order. I hope everybody -- I hope we're all on the same page, but have a conference call with me if anything arises or call me during the deposition if you have a problem.

MR. SCARBOROUGH: Thank you, Your Honor.

MR. REYNOLDS: Thank you, Your Honor.

MR. BOYLAN: Thank you, Your Honor.

MR. CHRISTOPHER: Thank you.

THE CLERK: Status check is August 26th at 11:00.

DISCOVERY COMMISSIONER: This is only for plaintiffs' counsel to be here

in case the Report and Recommendations is not done. But plaintiffs' counsel is not going to be here for this. They're going to get their homework done. Okay?

MR. SCARBOROUGH: Thank you, Your Honor.

MR. BOYLAN: Thank you, Your Honor.

MS. SCHULER-HINTZ: Thank you, Your Honor.

DISCOVERY COMMISSIONER: All right, thank you all. Have a good rest of the week.

(PROCEEDINGS CONCLUDED AT 11:44 A.M.)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Liz Garcia

Liz Garcia, Transcriber
LGM Transcription Service

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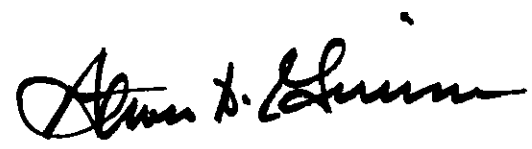

CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

JEFFREY BENKO, Plaintiff, vs. QUALITY LOAN SERVICE CORPORATION, Defendant. AND RELATED PARTIES	)	CASE NO. A-11-649857-C DEPT NO. XXIX **TRANSCRIPT OF PROCEEDINGS**

BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

RE: NOTICE OF PLAINTIFFS' MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANT NDSC (DEPOSITIONS WRITTEN DISCOVERY, NRCP 16.1 DISCLOSURES)

(SEE ADDITIONAL MATTERS ON NEXT PAGE)

WEDNESDAY, SEPTEMBER 21, 2016

APPEARANCES:

FOR THE PLAINTIFFS:	NICHOLAS A. BOYLAN, ESQ. SHAWN CHRISTOPHER, ESQ.
FOR DEFENDANT QLSC:	KRISTIN A. SCHULER-HINTZ, ESQ.
FOR DEFENDANT CRV:	LAWRENCE SCARBOROUGH, ESQ. KATIE M. WEBER, ESQ.
FOR DEFENDANT NDSC:	KEVIN SODERSTROM, ESQ.
FOR DEFENDANT MTC:	ALLAN E. CERAN, ESQ.
ALSO PRESENT:	PAUL LARSON JESSICA MAZZYARS

RECORDED BY: FRANCESCA HAAK, COURT RECORDER
TRANSCRIBED BY: JD Reporting, Inc.

A D D I T I O N A L M A T T E R S

RE: NOTICE OF PLAINTIFFS' MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANT MTC (WRITTEN DISCOVERY)

RE: NOTICE OF PLAINTIFFS' MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANT MTC (DEPOSITIONS)

RE: NOTICE OF PLAINTIFFS' MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANT MTC (NRCP 16.1 DISCLOSURES)

RE: PLAINTIFFS' MOTION TO COMPEL AND SANCTIONS AGAINST DEFENDANT QLS (DEPOSITIONS)

RE: PLAINTIFFS' MOTION TO COMPEL AND SANCTIONS AGAINST DEFENDANT QLS (WRITTEN DISCOVERY)

RE: PLAINTIFFS' NOTICE OF MOTION TO COMPEL AND FOR SANCTIONS AGAINST DEFENDANTS QLS (NRCP 16.1 DISCLOSURES)

RE: DEFENDANTS' JOINT MOTION FOR ENTRY OF CONFIDENTIALITY ORDER AND MOTION FOR ORDER SHORTENING TIME

LAS VEGAS, CLARK COUNTY, NEVADA, SEPTEMBER 21, 2016, 10:02 A.M.

*** * * * ***

THE DISCOVERY COMMISSIONER: I need everyone to state their appearances and who they represent, please.

MS. SCHULER-HINTZ: I guess I'm first. Good morning, Your Honor. Kristin Schuler-Hintz on behalf of Quality Loan Service. With me today in the courtroom is my soon-to-be associated in counsel Paul Larson. He's hiding back there. He's been sick.

Mr. Larson: Right here, Your Honor.

THE DISCOVERY COMMISSIONER: Good morning.

MR. SCARBOROUGH: You have Larry Scarborough, Jessica Mazzyars [phonetic] and Katie Weber for CRC.

THE DISCOVERY COMMISSIONER: Good morning.

MR. CERAN: Good morning, Your Honor, Allan Ceran representing MTC Financial doing business as Trustee Corp.

THE DISCOVERY COMMISSIONER: Good morning.

MR. CERAN: Good morning, Your Honor.

MR. SODERSTROM: Good morning, Your Honor, Kevin Soderstrom for National Default Servicing Corporation.

THE DISCOVERY COMMISSIONER: Good morning.

MR. BOYLAN: Good morning, Your Honor. Nicholas Boylan and Shawn Christopher representing the plaintiffs.

THE DISCOVERY COMMISSIONER: Good morning. Please have a seat.

So the first thing I would like to deal with is the report and recommendation from the last hearing, and I need to advise you all of something.

I did ask the Court for the draft orders from the February 22nd hearing. I know that there is no order yet from that hearing, but I asked to look at the draft proposed orders that were submitted, and to my surprise neither order mentions anything about the discovery parameters. So I was concerned about that issue and what the Court allowed, but apparently you all were not concerned about it because it's not in either of your proposed orders.

All I have is the Judge's transcript. So in any event that gave me some concern. So then I looked again at Judge Scann's hearing transcript. I looked at my hearing transcript from the hearing on July 20th. Now, the purpose of that hearing, it's called a discovery conference, and the purpose of that was to get a scheduling order, and I did try to articulate what I thought the Judge intended.

I am concerned because I want to be able to process this report and recommendations, but evidently there is some dispute with it. The only report and recommendations I believe that I have -- the original that I have although I've got a lot of letter writing back and forth -- what I do have is the one submitted by Mr. Boylan.

And I need to understand from defense counsel -- I

did not receive one from defense counsel. If we did receive it, it probably was sent back for changes because I do not have it. All I have is the plaintiffs' version. So I am concerned as to -- I would like to get this sorted out first because I also think it will help us with the motion, but I would like to know what the problems are with the plaintiffs' report and recommendations that was submitted from the July 20th hearing.

So, Defense Counsel, if you could assist me, I would appreciate it.

MR. SCARBOROUGH: Sure. I have no explanation for why you don't have what we submitted to the Court or thought we submitted to the Court in terms of our view of what occurred on July 20. I hold it in my hand, my copy from my notebook, and I can hand it to Your Honor if you'd like it.

THE DISCOVERY COMMISSIONER: Okay. Do you believe it may have gone back?

MR. SCARBOROUGH: It -- we -- well, we know -- no, is my -- and looking around at everyone, we have no indication on the defense side that it ever came back to us for any changes. We are aware that there was outreach from chambers to Mr. Boylan to make some changes to what he submitted.

THE DISCOVERY COMMISSIONER: Right. Well, what we do, just so you know, is if we get a report and recommendation that's improper we will send it back to the lawyer submitting

it saying please fix this. Please fix that. This is something that we do as the department to assist you.

MR. SCARBOROUGH: Now, one of the things that we understand chambers asked Mr. Boylan to do was to pull out transcript references.

THE DISCOVERY COMMISSIONER: Right.

MR. SCARBOROUGH: So what I'm going to hand you we were not asked to pull out transcript references. Ours has them in it too. We could easily pull them out, but this is what we submitted.

THE DISCOVERY COMMISSIONER: I'm really concerned. I don't know if we received it or if we received it and sent it back.

MR. SCARBOROUGH: You're not the only one who's concerned.

THE DISCOVERY COMMISSIONER: I am happy to find out.

MR. SCARBOROUGH: I'm panic stricken because this is a very important order.

THE DISCOVERY COMMISSIONER: Well, don't be. I haven't signed anything. I haven't -- I was going to have a conference call with you because I was concerned about it, but the --

MR. BOYLAN: Your Honor, I have some information on that.

THE DISCOVERY COMMISSIONER: -- since you were coming

in to see me, I just felt this would be an appropriate time to talk about it.

MR. BOYLAN: The defense --

MR. SCARBOROUGH: So how did I --

And I'm sorry. If I can continue my dialogue free of interruption.

THE DISCOVERY COMMISSIONER: Yes.

MR. SCARBOROUGH: Thank you, Your Honor. I just would look to the Court for guidance as to what you would like us to do with what we thought we submitted quite some time ago.

THE DISCOVERY COMMISSIONER: All right. May I have -- is that a copy?

MR. SCARBOROUGH: It is.

THE DISCOVERY COMMISSIONER: All right. Does plaintiffs' counsel have a copy?

MR. SCARBOROUGH: Sure does.

THE DISCOVERY COMMISSIONER: Do you have it accessible?

MR. BOYLAN: I do, Your Honor, and I know that someone I think -- I think you did have it because there are actually some notes on it. I saw one with some notes on it from the department. So at one point in time I think you did have it. In fact, local counsel, Ms. Katie Weber, submitted both of ours. I think they were both delivered to you at the same time. So I understand there may have been some confusion,

but I know with certainty that you did have it at one point.

THE DISCOVERY COMMISSIONER: Okay.

MR. SCARBOROUGH: The one thing I would say, this is the first time we've heard that there was anything with any notes on it in terms of our discourse here.

THE DISCOVERY COMMISSIONER: All right. It might be a problem on our end. We have made some procedural changes. We have reorganized my department. We are doing our best to stay on top of everything, but it may have fallen through the cracks. So I don't want defense counsel to think that I'm blaming you. I just don't know what happened that I don't have it, but I was concerned enough as to what -- because I did -- what I did receive were the letters back and forth between counsel, or I saw Ms. Weber's letter that said, Please enclosed find the original, but I don't know why I don't have that in this set. So that's what I'm concerned about, but it's fixable because I haven't signed anything yet, which is why we're here today to discuss it.

MR. BOYLAN: We --

THE DISCOVERY COMMISSIONER: So what are the areas of dispute? And please don't tell me everything.

MR. SCARBOROUGH: So I've handed away my notes to --

THE DISCOVERY COMMISSIONER: Let's make a copy, one copy.

MR. SCARBOROUGH: Here, I think Ms. Schuler-Hintz can

help us.

I can say as a general -- as a general matter without trying to restate anything this Court has said, but speaking from memory, when Your Honor ordered the phased discovery, Phase 1, 2 and 3 in response to a series of motions that were before you that day --

THE DISCOVERY COMMISSIONER: Right.

MR. SCARBOROUGH: We are obviously in Phase 1, so focused on Phase 1, and the difference between us is the -- between us meaning plaintiffs and defendants -- is the difference between what in terms of access to communications with the class as a whole -- let's forget the individual plaintiffs -- that's clearly Phase 1. We all know that, but what kinds of communications, if any, belong in Phase 1 that go beyond the individual plaintiffs and do not relate to our client's policies, procedures, method of operation, which absolutely is fair game for purposes of phase one?

And I think that devolves into conversations about lists of all the telephone calls that were ever made to the plaintiff class. We're saying that belongs in class discovery --

THE DISCOVERY COMMISSIONER: Phase 2.

MR. SCARBOROUGH: -- somewhere, not in Phase 1, and in what I hope -- I won't say it. I won't ascribe good faith to us. I'd rather have the Court conclude that, but

notwithstanding where we are with these competing orders, we have proceeded apace. Our client's 30(b)(6) witness has been deposed.

There may be motion practice about it because Mr. Boylan would say that we didn't prepare on certain topics. I would respond by saying those seem like Phase 2 topics. The Court's already made its view clear that if there needs to be two 30(b)(6)'s, one in each phase, that's going to happen, but we've tried to deal with this as best we could, and I think from our perspective -- I'm sorry to sit down --

THE DISCOVERY COMMISSIONER: Oh, no, please do. It's fine.

MR. SCARBOROUGH: -- we're looking at under Roman II, No. 1, we say, Defendants, we're allowed to propound written discovery to the plaintiffs who are not to be deposed more than once for any reason, and then it says, Plaintiffs may propound written discovery, take the 30(b)(6) depositions as they relate to policies and procedures, and then the source of the dispute is plaintiffs are not entitled to seek discovery or question defendants on class-certification issues until Phase 2.

And Mr. Boylan, who obviously can speak for himself, would say that, no, we need to produce lists of phone calls or names of borrowers with whom we dealt beyond the plaintiffs, and that's where we have an analytical issue with respect to what we thought we had discussed on July 20.

THE DISCOVERY COMMISSIONER: If you all will just give me a minute, let me look through your report and recommendations.

MR. SCARBOROUGH: Thank you.

THE DISCOVERY COMMISSIONER: Perhaps it'll help if I get the pages in the right order.

(Pause in the proceedings.)

THE DISCOVERY COMMISSIONER: I am going to ask you if you wouldn't mind if I stepped off the bench for a minute. I want to see if I can figure out what happened to this document.

(Proceedings recessed 10:16 a.m. to 10:18 a.m.)

THE DISCOVERY COMMISSIONER: Okay. So please have a seat, and you all can remain seated.

MR. BOYLAN: Thank you.

THE DISCOVERY COMMISSIONER: I'm okay with that. We have a lot to get through today, and I don't want you to have to stand the entire time.

I do not have the defendants logged in. I do not know what happened. I have read it, or I've looked at it. I am fine with the transcript references being in the report and recommendation. What I will not do is have the report and recommendation attached to -- or the transcript attached to the report and recommendations.

And, Plaintiffs' Counsel, just so you know, I am changing some policies and procedures. This set of documents

would've come in just before we started to change things. So you're going to have to bear with me a little bit.

We are also going electronic. Let me tell you what that means for you all. That means that I only need the original with the signatures. I don't need copies anymore. You will receive them via e-serve, and that will start your notice time for objection.

So instead of us mailing these out or putting them in your box downstairs -- which I like to call the antiquated notice system -- we will be e-serving them, and that will be your notice to start the time running for objection. Under e-serve you have to add three days. It's just like mailing, but be aware of that. So I'm just going to need one report and recommendations with everybody's signature on it.

Now, Plaintiff's Counsel.

MR. BOYLAN: Thank you, Your Honor.

THE DISCOVERY COMMISSIONER: I have read yours as well. I like the defense counsel's better. If you don't want to sign off on it, that's fine. I would like you to reconsider signing off on it because I think it captures what happened at the hearing without discussing ad nauseam some of the particulars.

I want to say this because you indicated a list of items that you thought were discoverable without limitation. I understand why there was some confusion because I read the

transcript, but it was not my intent that the defendants had to disclose every document or every communication they made to every Nevada person. That was not my intent, or identification of the last known names and contact information of every Nevada debtor, not in Phase 1. That was not my intent.

I made an offhanded comment that, you know, it might be that we end up getting the list in Phase 1, but that did not -- I should probably have not made that comment because I was forward thinking, and I think it confused things because I had no intent for any discovery to go beyond the current plaintiffs' discovery with the following exceptions in that I said you should be able to discover what their business policies, practices were, what they were doing generally.

I don't even necessarily have a problem with you sending a request to produce saying, you know, please provide all the forms that you would have used at or near the time of the plaintiff -- making contact with the plaintiff, not a specific form to a specific person, but the generic form that you may have sent out during that time. Give us a sample of it. I don't have a problem with that.

But I think the different topic areas that you identified in the report and recommendations, many of them were not what I intended. So I think the defendants' report and recommendations more effectively captures what I intended, and it has the references to the transcript, which I'm fine with as

long as the transcript itself is not attached.

MR. BOYLAN: Can I speak to that for a moment, please, Your Honor?

THE DISCOVERY COMMISSIONER: Yes, you may.

MR. BOYLAN: I thought that you made some very appropriate comments last time about what we need to prove in Phase 1 and what it takes to determine the validity of plaintiffs' claims, and that takes us I believe right directly to NRS 649.020(1), which defines a collection agency because that's what you said very clearly. We have to determine if they were acting and in the business of being a collection agency in Nevada without a license. All persons engaging directly or indirectly as a primary or secondary object business or pursuit in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another.

At the beginning of the hearing I said we have to prove that they were conducting business within this statute, and we can't do that just based on the information from the named plaintiffs, an anecdotal group of people. You said, I agree with you.

THE DISCOVERY COMMISSIONER: I -- but the Court has already ruled on the issue from the February 22nd hearing, and the Court has said that we are only doing discovery on the named plaintiffs. I extended that to include the legal

validity of the plaintiffs' claims, but I included the plaintiffs' claims. So I fully intended for you to get what I will call the generic letters that were sent out to people in Nevada or to the people who owned the property who may not have resided in Nevada, but I clearly intended you to be able to obtain generic information but not specifics of the various debtors.

And to the extent that I said something that would've led you to believe that that was what I intended, then I am going to correct myself on the record. That is not what I intended. That is Phase 2 of the class discovery after it has been determined that you have and may pursue a legally valid claim in Nevada, and that is what Judge Scann said. I might have said, I might have done this differently, which we talked about, but that is not what happened here.

But imagine my surprise when I looked at your competing orders from the Judge's hearing, and it didn't even discuss the discovery issue.

MR. BOYLAN: I'm not surprised by that. I'm sorry, but I told you at the very first hearing that that was not a ruling. That was not an order. It was a random discussion at the end of a 12(b) hearing. I'm not surprised it's not in the order. I don't believe it was the order of the Court. I don't believe it is the order of the Court, but I understand you're interpreting her intent from the transcript. I respectfully

disagree, but I understand what you're doing, but --

THE DISCOVERY COMMISSIONER: But then you --

MR. BOYLAN: -- there was no motion pending. We hadn't submitted declarations or evidence. So I'm not surprised it's not in the order. I would respectfully -- I know you disagree, but I have to make my record. I would respectfully ask that you not treat that as an order. It is not an order, was not an order, and according to the drafts you've seen will not be an order, and respectfully, I disagree with it.

Now, if I may, I understand I'm indulging -- you know, I'm asking for your patience, but pages 42 and 43 of the transcript, when we were here last time, they stood up and said, We don't have any phone communications with debtors. You said, Hey, buddy, if you don't, okay, fine, but if you do, you better disclose it.

THE DISCOVERY COMMISSIONER: If you know, if you know the --

MR. BOYLAN: Well, of course they know.

THE DISCOVERY COMMISSIONER: -- the witnesses. You can't hide behind -- what I made very clear is you can't -- if you have knowledge, you can't hide behind the order of the Court and not produce it as you are required to under 16.1, which predates my involvement.

MR. BOYLAN: And you said that if -- you've got to go

get that information. You can't just not look for it.

THE DISCOVERY COMMISSIONER: No, I didn't say that. I said I don't expect the defendant to go back into the computer and search for all people unless we have a legal cause of action --

MR. BOYLAN: But the computer --

THE DISCOVERY COMMISSIONER: Listen, I just read my transcript.

MR. BOYLAN: The computer indicates who they spoke to, Your Honor. For example --

THE DISCOVERY COMMISSIONER: But I said that was going to be part of Class 2, the class certification. You have to determine if there's a legally valid claim first --

MR. BOYLAN: And what I'm suggesting to you --

THE DISCOVERY COMMISSIONER: -- and if you disagree with that, and if you disagree with what the Court or my interpretation of what Judge Scann decided to do and how she decided to do it, then you need to file the appropriate motion with the department. An order has not yet been signed. And so why not file your motion to reconsider or for clarification with the District Court Judge?

MR. BOYLAN: Thank, Your Honor.

THE DISCOVERY COMMISSIONER: Because I can't overrule the District Court Judge.

MR. BOYLAN: And I don't think there's an order. So

you're not overruling anyone, but we can --

THE DISCOVERY COMMISSIONER: Well, I disagree with you on that in principle because the Court has spoken.

MR. BOYLAN: Well, where we do have agreement, I thought, is that based on this statute, which I just quoted, we're entitled to prove -- in fact, I think we must prove that they were engaged in this business, and what that business is about is communicating with debtors regarding the defaulted debt in the state of Nevada, communicating orally, communicating in writing.

It's about conducting reinstatement work with respect to the defaulted debt, pay-off work with respect to the defaulted debt, debt validation, notices and responses. All of these things I thought you understood and declared that we were entitled to discovery of all of that.

THE DISCOVERY COMMISSIONER: With regard to these particular plaintiffs, yes. With regard to all debtors, no.

MR. BOYLAN: Well, then we can't prove they were in the business just based on two or three people. How does that -- I'm sorry, Your Honor. It's not -- it doesn't make any sense.

THE DISCOVERY COMMISSIONER: Well, then you'll have to talk to -- well, you'll have to talk to the Judge about it because I think it does make sense. If these individuals -- and there are a number of them. There are a number of

plaintiffs here. If you are sending out a credit letter -- and you've even cited the case law -- if it's one letter that they're -- they're acting like a credit collection agency. So you don't need all the debtor potential members of the class right now.

MR. BOYLAN: I just need the evidence. I prefer overwhelming evidence, and I think I'm entitled to get it, but if --

THE DISCOVERY COMMISSIONER: Why don't --

MR. BOYLAN: I understand you disagree.

THE DISCOVERY COMMISSIONER: Why don't you do what I have requested that you do initially. Get the information regarding these plaintiffs. Get the generic information that I've said that you were entitled to, and then you can bring another motion asking to conduct class discovery based on these findings, but you have to give me something to look at beyond what I have right now.

MR. BOYLAN: Understood. But just for point of clarification, it is absolutely not class discovery. That's where you've been misled. If you read the statute, it's discovery related that they were engaged directly or indirectly as a primary or secondary object business or pursuit in the state of Nevada in the collection of or in soliciting or obtaining in any manner the payment of a claim owed or due or asserted to be owed or due to another. That's what it proves.

Now --

THE DISCOVERY COMMISSIONER: And the plaintiffs are your group that you are focused on initially.

MR. BOYLAN: Okay. We --

THE DISCOVERY COMMISSIONER: And that's my -- I do not want to -- we have so much to get through today. That's my ruling.

MR. BOYLAN: I understand. One final point on it though just for the record. I think this is what persuaded you last time to take a much, I think, more constructive approach, and that is these people are, Your Honor, witnesses too. Remember, they won't give us -- we can't -- they won't give us it. So when those summary judgment motions come, I'm going to say respectfully, the Discovery Commissioner would not allow me to find these witnesses which would have probably maybe, what, 50 declarations --

THE DISCOVERY COMMISSIONER: If you make that representation to the Court, you're going to have a problem, sir.

MR. BOYLAN: No, I'm --

THE DISCOVERY COMMISSIONER: You may not be able to practice in the state of Nevada because that is not what I said.

MR. BOYLAN: I'm sorry. I don't mean it that way. It's not meant to be pejorative.

THE DISCOVERY COMMISSIONER: Well, then you need to be careful how you say things because, frankly, I'm on the front lines all the day, day in and day out. I know you don't always agree with me, and I'm not asking you to, and maybe you're right on this issue, but I have a transcript from a District Court Judge that would suggest otherwise, and her plan in allowing the certain claims to go forward was to determine whether or not the plaintiffs had legally viable claims in Nevada, and that is the first area that needs to be addressed.

Now, I am inviting you to file an appropriate motion with the Court if you feel that that was an inappropriate decision, but you need to do that because I am not going to overrule Judge Scann in her thought process.

MR. BOYLAN: Understood, Your Honor. I just have also just a little different view of what Judge Scann intended.

THE DISCOVERY COMMISSIONER: I understand that. That's fine. Seek clarification. But what I am not going to do is going to require the defendants at this point to turn over all the names, addresses, financial information, et cetera, of all the people that they dealt with on the various foreclosure cases, all of the debtors, not going to do it, not right now, not today, not in Phase 1.

MR. BOYLAN: I think we'll probably need your order in order to qualify to make a reconsideration motion. I'm not sure otherwise we can under the rules. I interpret what you

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY BENKO, A NEVADA RESIDENT; ET Al., Appellants, v. QUALITY LOAN SERVICE CORPORATION, A CALIFORNIA CORPORATION; ET AL., Respondents	Supreme Court No. 73484 District Court Case No. A-11-649857

APPELLANTS' APPENDIX

VOLUME 4

Appeal from Eighth Judicial District Court
Clark County, Nevada

The Honorable William Kephart

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SAC, ¶¶ 21, 23, 34, 35, 38. The Sansotas have thoroughly alleged all necessary elements of the Consumer Fraud perpetrated by MTC. The Motion to Dismiss should, therefore, be denied.

CONCLUSION

The Supplemental Memorandum of Points and Authorities from MTC in support of the Defendants' Joint Motion to Dismiss provides nothing to support the dismissal of the claims alleged by Sansota or the other Plaintiffs. It is absurd to think that Sansota's bankruptcy discharge could provide a blanket of immunity for MTC to collect on nondischarged claims without needing to adhere to Nevada law. Furthermore, Plaintiffs' statutory Consumer Fraud claim is not only fully and adequately pled, it is well documented.

MTC, and the other Defendants, have failed to establish a reason to grant their Motion to Dismiss. Accordingly, Plaintiffs respectfully request that the Court deny Defendants' Joint Motion to Dismiss in its entirety.

Dated: January 18, 2016

Law Office of Nicholas A. Boylan, A.P.C.

By: /s/ Nicholas A. Boylan
Nicholas A. Boylan, Esq.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, hereby certify that on January 18, 2016, I served a true and correct copy of the foregoing **PLAINTIFFS' POINTS AND AUTHORITIES IN OPPOSITION TO MTC'S SUPPLEMENTAL BRIEF, RE MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**, on counsel by e-mail transmission to the persons listed below, pursuant to EDCR 8.05(a):

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DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BENKO, a Nevada resident; CAMILO MARTINEZ, a California resident; ANA MARTINEZ, a California resident; FRANK SCINTA, a Nevada resident; JACQUELINE SCINTA, a Nevada resident; SUSAN HJORTH, a Nevada resident; RAYMOND SANSOTA, a Ohio resident; FRANCINE SANSOTA, a Ohio resident; SANDRA KUHN, a Nevada resident; JESUS GOMEZ, a Nevada resident; SILVIA GOMEZ, a Nevada resident; DONNA HERRERA, a Nevada resident; ANTOINETTE GILL, a Nevada resident; JESSE HENNIGAN, a Nevada resident; KIM MOORE, a Nevada resident; THOMAS MOORE, a Nevada resident; SUSAN KALLEN, a Nevada resident; ROBERT MANDARICH, a Nevada resident, JAMES NICO, a Nevada resident and PATRICIA TAGLIAMONTE, a

CASE NO: A-11-649857-C

Honorable Susan W. Scann
Dept. 29

PLAINTIFFS' OBJECTIONS TO DEFENDANTS' REQUESTS FOR JUDICIAL NOTICE IN SUPPORT OF AND IN DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

CLASS ACTIONS

ARBITRATION EXEMPTION CLAIMED:
Pursuant to NAR 3(A)-

Nevada resident Plaintiffs, v. QUALITY LOAN SERVICE CORPORATION, a California Corporation; APPLETON PROPERTIES, LLC, a Nevada Limited Liability Company; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a California Corporation; MERIDIAN FORECLOSURE SERVICE, a California and Nevada Corporation dba MTDS, Inc., dba MERIDIAN TRUST DEED SERVICE; NATIONAL DEFAULT SERVICING CORPORATION, a Arizona Corporation; CALIFORNIA RECONVEYANCE COMPANY, a California Corporation; and DOES 1 through 100, inclusive, Defendants.	**1. Action Concerning Title to Real Property;** **2. Class Action: and** **3. Action Seeking Equitable and/or Extraordinary Relief** **Jury Trial Demanded** **Hearing Date: February 22, 2016** **Time: 10:00 a.m.**

In their Joint Motion to Dismiss as well as a separate but accompanying Request for Judicial Notice, Defendants have requested that the Court take judicial notice of a variety of exhibits, including deeds of trust and an unpublished decision from *Quality Loan Service Corporation v. State of Nevada*, 2013 WL 6911859 (Nev. Dist. Ct. Jan. 3, 2013). These documents are referred to in Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Complaint ("SAC") as well as Defendant MTC Financial Inc. dba Trustee Corps' Joinder in Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Complaint; Supplemental Memorandum of Points and Authorities in Support Thereof.

Plaintiffs hereby object to the Court taking judicial notice of each and all of these exhibits. Plaintiffs respectfully request that the Court expressly take no judicial notice of the exhibits that Defendants request the Court take notice of and any

matters of fact contained therein. Plaintiffs further request that the Court expressly decline to rely on or consider these exhibits in the Court's consideration of Defendants' Joint Motion to Dismiss.

Exhibits A-1 through A-16

In their Joint Motion to Dismiss, Defendants request that the Court take judicial notice of copies of deeds of trust which Defendants contend secured Plaintiffs' residential properties. *See* Defs' Motion to Dismiss, p. 7 n.2. These deeds of trust comprise Exhibits A-1 through A-5 and consist of approximately 361 pages of paper. Defendants contend that these documents are subject to judicial notice pursuant to NRS 47.130 because, according to Defendants, they form the basis of the SAC and are appropriately subject to judicial notice.

Plaintiffs hereby object on the grounds that the deeds of trust offered as exhibits by Defendants do not form the basis for the allegations found in the SAC. Moreover, Plaintiffs' allegations and claims as alleged in the SAC do *not* rely on these deeds of trust. *See Johnson v. Fed. Home Loan Mortg. Corp.*, 793 F.3d 1005, 1007-08 (9th Cir. 2015) ("Although as a general rule we may not consider any material beyond the pleadings in ruling on a [federal] Rule 12(b)(6) motion, we *may* consider extrinsic evidence not attached to the complaint *if* the document's authenticity is not contested and the plaintiff's complaint *necessarily relies* on it.") (emphasis added). Moreover, these documents are not supported by a declaration by counsel attesting that they are true and correct copies of the documents they purport to be. Accordingly, it is not proper for the Court to consider these documents at this stage and the Court should expressly decline to do so.

Exhibit "1"

Attached to Defendant MTC Financial Inc. dba Trustee Corps' Joinder in Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Complaint; Supplemental Memorandum of Points and Authorities in Support Thereof is Exhibit

"1", which Defendant MTC Financial Inc. ("MTC") asserts is a Trustee's Deed Upon Sale ("TDUS"). As with Exhibits A-1 through A-16, Exhibit "1" does not form the basis for Plaintiffs' allegations and claims as alleged in the SAC. Similarly, Plaintiffs do not necessarily rely on this document for those allegations and claims. *See Johnson v. Fed. Home Loan Mortg. Corp.*, 793 F.3d 1005, 1007-08 (9th Cir. 2015). Accordingly, as with Exhibits A-1 through A-16, the Court should expressly decline to take judicial notice of this exhibit and should not consider it in its decision on Defendants' motion to dismiss.

Exhibit B

Attached as Exhibit B to Defendants' Joint Motion to Dismiss is Exhibit B, which Defendants assert in a footnote is a copy of Judge Williams' written order in *Quality Loan Service Corporation v. State of Nevada*, 2013 WL 6911859 (Nev. Dist. Ct. Jan. 3, 2013). As a preliminary matter, this document is not supported by a declaration of counsel—or even an assertion—that the exhibit is a true and correct copy of what it purports to be. Nor do Defendants request that the Court take judicial notice of this decision. More troubling, judicial notice of this unpublished trial court decision from an unrelated case is not proper under Nevada law. *See Occhiuto v. Occhiuto*, 97 Nev. 143, 625 P.2d 568 (1981) ("It is a general rule that courts should not take judicial notice of their records in another and different case, even though the cases are connected, but this rule is not so inflexible in its application that under no circumstances can judicial notice be invoked to take cognizance of the record in another case."); *see also Geary v. State*, .112 Nev. 1434, 1437 n.1, 930 P.2d 719 (1996) (declining to take judicial notice of portion of transcript from another case); *University of Nevada v. Tarkanian*, 110 Nev. 581, 589 n.3, 879 P.2d 1180 (1994) (declining to take notice of affidavit from different proceeding that bore no relation to case at hand). Although Defendant Quality Loan Service Corporation was a party in the prior decision and is a party in this case, the two proceedings are not connected,

let alone closely related. Thus, unlike in *Occhiuto*, where judicial notice was proper despite the general rule because the "close relationship between this case and the previous divorce proceeding [between the parties] brings it within the exception to the general rule", there is no such close relationship between this case and the prior *Quality Loan* case that would justify this Court taking judicial notice of the prior proceedings. *Id.* at 569. Moreover, if Court were to take judicial notice of Judge Williams' written decision, the Court would likely be required to take further notice of the files and records in that case, including the underlying decision by Commissioner Burns that Judge Williams reviewed, which have not been provided by Defendants. Accordingly, the Court should expressly decline to take judicial notice of the prior *Quality Loan* case, including Judge Williams' written decision in *Quality Loan Service Corporation v. State of Nevada*, 2013 WL 6911859 (Nev. Dist. Ct. Jan. 3, 2013), and should expressly not consider the prior proceeding in this Court's decision on Defendants' Joint Motion to Dismiss.

Conclusion

For the reasons stated above, Plaintiffs therefore respectfully request that the Court expressly take no judicial notice of the exhibits that Defendants request the Court take notice of and any matters of fact contained therein. Plaintiffs further request that the Court expressly decline to rely on or consider these exhibits in the Court's consideration of Defendants' Joint Motion to Dismiss.

Dated: January 18, 2016

Law Office of Nicholas A. Boylan, A.P.C.

By: /s/ Nicholas A. Boylan
Nicholas A. Boylan, Esq.
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I, hereby certify that on January 18, 2016, I served a true and correct copy of the foregoing **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' REQUESTS FOR JUDICIAL NOTICE IN SUPPORT OF AND IN DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**, on counsel by e-mail transmission to the persons listed below, pursuant to EDCR 8.05(a):

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DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BENKO, a Nevada resident; CAMILO MARTINEZ, a Nevada resident; ANA MARTINEZ, a Nevada resident; FRANK SCINTA, a Nevada resident; JACQUELINE SCINTA, a Nevada resident; SUSAN HJORTH, a Nevada resident; RAYMOND SANSOTA, a Ohio resident; FRANCINE SANSOTA, a Ohio resident; SANDRA KUHN, a Nevada resident; JESUS GOMEZ, a Nevada resident; SILVIA GOMEZ, a Nevada resident; DONNA HERRERA, a Nevada resident; ANTOINETTE GILL, a Nevada resident; JESSE HENNIGAN, a Nevada resident; KIM MOORE, a Nevada resident; THOMAS MOORE, a Nevada resident,

Plaintiffs,

vs.

QUALITY LOAN SERVICE CORPORATION, a California Corporation; APPLETON PROPERTIES, LLC, a Nevada Limited Liability Company; MTC FINANCIAL, INC. dba TRUSTEE CORPS, a California Corporation; MERIDIAN FORECLOSURE SERVICE, a California and Nevada Corporation dba MTDS, Inc., dba MERIDIAN TRUST DEED SERVICE; NATIONAL DEFAULT SERVICING CORPORATION; a Arizona Corporation, CALIFORNIA RECONVEYANCE COMPANY, a California Corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: A-11-649857-C
Dept. No.: XXIX
(ELECTRONIC FILING CASE)

DEFENDANTS' JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

Introduction[1]

Plaintiffs claim they should receive money after defaulting on their residential loan obligations secured by deeds of trust because Defendants,[2] foreclosure trustees, were not licensed or did not hold certificates of authority as collection agencies under NRS 649. But foreclosure trustees engaging in the non-judicial foreclosure activities Plaintiffs alleged in the Second Amended Complaint ("SAC") do not constitute collection agencies, and thus are not subject to Nevada licensing requirements for those agencies under NRS 649. Instead, such activities—including recording notices of default and sale—are governed by NRS 107. That statute provides that collection agencies are but one of ten entities that can serve as a foreclosure trustee. Had the Nevada legislature intended to require foreclosure trustees to be collection agencies, then the statute would have stated that collection agencies are the *only* entities able to serve as foreclosure trustees.

Plaintiffs attempt to escape dismissal by suggesting the SAC concerns something other than non-judicial foreclosure activities. Not so. The SAC alleges that Defendants should be treated as collection agencies because they record notices of default and sale and engage in related non-judicial foreclosure activities. Indeed, in describing Defendants' conduct, Paragraph 23 of the SAC relies virtually verbatim on wording from the underlying administrative decision by the Nevada Financial Institutions Division ("FID") ("FID Decision"), the very decision that was reversed and held void *ab initio* in *Quality Loan Service Corp. v. State of Nevada, Department of Business & Industry, Financial Institutions Division*, No. 12A657580, 2013 WL 6911859 (Nev. Dist. Ct. Jan. 3, 2013).

None of the allegations in the SAC affects whether Defendants are required to be licensed as collection agencies to engage in non-judicial foreclosure activities. This result is supported by

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[1] When Plaintiffs filed Plaintiffs' Opposition to Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Complaint (1/18/16) ("Opposition), they improperly combined six separate documents into one filing. This Reply relates to the Opposition only. Defendants will file separate responses to Plaintiffs' other submissions that warrant a response.

[2] As used in the brief, "Defendants" refer to Quality Loan Service Corporation ("QLS"), MTC Financial, Inc. ("MTC"), Meridian Foreclosure Service ("Meridian"), National Default Servicing Corporation ("NDSC"), and California Reconveyance Company ("CRC").

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the deeds of trust each Plaintiff executed, the differing statutory schemes of NRS 107 and NRS 649, the decision in *Quality Loan*, which decided the identical licensing issue presented by Plaintiffs here, and the decisions of Nevada federal district courts that have considered the issue.

Moreover, none of the claims in the SAC can survive dismissal even if Defendants were required to have licenses as collection agencies (which they are not). First, the claim for consumer fraud fails because the SAC does not plead any facts establishing causation or damages. Second, the unjust enrichment claim cannot survive because the SAC is devoid of any allegation Plaintiffs paid any money to Defendants. Moreover, each Plaintiff executed a deed of trust, which governs the rights of the parties and provides for Defendants to engage in non-judicial foreclosure activities upon default. Finally, the facts in the SAC do not support a claim for elder abuse. Engaging in non-judicial foreclosure activities pursuant to a deed of trust does not become elder abuse simply because the defaulting borrower is sixty years of age or older, which is all that is alleged here.

Finally, it is worth noting that Plaintiffs' attempt to emphasize the individualized actions of the trustees throughout the SAC only serves to confirm that individualized inquiries will predominate in this case, which is directly at odds with the predominance requirement for class certification, dooming the class aspects of this action if it were to proceed beyond this motion. *Viole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 937 (9th Cir. 2009) (affirming denial of class certification because "individual issues predominate over common issues").

For these reasons, the Court should grant Defendants' Joint Motion to Dismiss Plaintiffs' Second Amended Complaint (12/18/15) ("Motion") and dismiss the SAC with prejudice.

Argument

I. DEFENDANTS ARE NOT COLLECTION AGENCIES AND ARE NOT REQUIRED TO HAVE COLLECTION AGENCY LICENSES OR CERTIFICATES UNDER NRS 649 BEFORE ENGAGING IN NON-JUDICIAL FORECLOSURE ACTIVITIES.

As an initial matter, Plaintiffs suggest throughout their Opposition that the SAC actually concerns activities that extend beyond the recording of notices of default and sale and that are not related to non-judicial foreclosure activities. Not so. The SAC allegations concern nothing other

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than actions within the scope of non-judicial foreclosure activities under NRS 107, which Plaintiffs recast in a conclusory manner as collection agency activities. [*See* SAC, ¶¶ 1-15] The SAC makes additional allegations in Paragraph 23 that relate to the contents of the publicly recorded notices of default and/or sale as if they are illegal. [*Compare* SAC, Exs. A-EE, *with* SAC, ¶¶ 23, 23(a), 23(b), 23(c), 23(d), 23(f), 23(g), 34 (providing a conclusory summary of allegations in Paragraph 23 of the SAC)] The remainder of Paragraph 23 allegations relate to the recording of notices of default and/or sale. Moreover, the SAC allegations Plaintiffs cite are drawn virtually verbatim from the underlying FID Decision, and the basis of those very allegations led to the reversal in *Quality Loan*. [*Quality Loan* at *2, ¶¶ 9-10, *3, ¶¶ 1-2; *compare* SAC, ¶¶ 23(a)-(i) *with* FID Decision, ¶¶ 8-18, 21; *see also* SAC, ¶ 34 (providing a conclusory summary of allegations in Paragraph 23 of the SAC)] Because the SAC clearly concerns non-judicial foreclosure activities, the Court should disregard Plaintiffs' attempt to re-characterize the allegations as something they are not. [*E.g.*, Opposition at 25]

The next sections concern licensure. The fatal defects relating to each of the substantive claims themselves are catalogued beginning at page 17.

A. The Deeds Of Trust Themselves Indicate That Defendants Are Not Collection Agencies.

The underlying deeds of trust relating to each Plaintiff provide that Defendants would engage in non-judicial foreclosure activities in the event of default on Plaintiffs' loan obligations. [Motion, Exs. A1-A8, ¶¶ 22, 24; A9, ¶¶ 18, 20; A10-A16, ¶¶ 22, 24] It is undisputed that Plaintiffs defaulted on their loan obligations, thereby triggering the recording of notices of default and related non-judicial foreclosure activities. Engaging in non-judicial foreclosure activities pursuant to a deed of trust, by definition, is not the collection of a claim and does not make the Defendant trustees collection agencies subject to licensure under NRS 649.[3]

[3] The Court may take judicial notice of facts generally known or capable of verification from a reliable source whether requested or not. NRS 47.150(1); NRS 47.130(2)(b). The Court should take judicial notice of the deeds of trust, the FID Decision, and *Quality Loan* without converting the motion to dismiss into a motion for summary judgment because those documents are matters of public record and they form the basis of the SAC. *Johnson v. Federal Home Loan*

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B. NRS 107 Is Not Structured In A Way That Transforms Defendants Into Collection Agencies.

NRS Chapter 107 regulates trustees and their non-judicial foreclosure activities. This statutory scheme for non-judicial foreclosure makes it clear that trustees who engage in non-judicial foreclosure activities are not collecting claims, are not collection agencies, and do not need to be licensed or hold certificates as collection agencies. Plaintiffs go to great lengths to make statements about licensed collection agencies under NRS 107.028, but they fail to appreciate that collection agencies are but one of the ten types of entities under NRS 107.028 the legislature has permitted to engage in non-judicial foreclosure activities. NRS 107.028 provides that "[t]he trustee under a deed of trust must be:"

> (a) An attorney licensed to practice law in this State;
> (b) A title insurer or title agent authorized to do business in this State pursuant to chapter 692A or NRS;
> (c) A person licensed pursuant to chapter 669 of NRS;
> **(d) A domestic or foreign entity which holds a current state business license issued by the Secretary of State pursuant to chapter 76 of NRS;**
> (e) A person who does business under the laws of this State, the United States or another state relating to banks, savings banks, savings and loan associations or thrift companies;
> (f) A person who is appointed as a fiduciary pursuant to NRS 662.245;
> (g) A person who acts as a registered agent for a domestic or foreign corporation, limited-liability company, limited partnership or limited-liability partnership;
> (h) A person who acts as a trustee of a trust holding real property for the primary purpose of facilitating any transaction with respect to real estate if he or she is not regularly engaged in the business of acting as a trustee for such trusts;
> (i) A person who engages in the business of a collection agency pursuant to chapter 649 of NRS; or
> (j) A person who engages in the business of an escrow agency, escrow agent or escrow officer pursuant to the provisions of chapter 645A or 692A of NRS.

Mortg. Corp., 793 F.3d 1005, 1007-08 (9th Cir. 2015) (considering deed of trust at motion to dismiss stage even though it was not attached to the complaint because complaint relied upon deed of trust).

In addition, Plaintiffs' own cited authority in their request for judicial notice further demonstrates the Court should take judicial notice of the FID Decision and *Quality Loan* because they bear a close relationship to this case—indeed they concern the precise licensing issue presented by Plaintiffs here and the allegations of the SAC are drawn virtually verbatim from the FID Decision, which was overturned by *Quality Loan*. *See Occhiuto v. Occhiuto*, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981) (affirming trial court's refusal to convert a Rule 12(b) motion into a motion for summary judgment on the basis that it took judicial notice of the parties' prior divorce proceeding because the "close relationship between this case and the previous divorce proceeding brings it within the exception to the general rule and justifies the district court taking judicial notice of the prior proceedings").

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NRS 107.028(1) (emphasis added). Importantly, Plaintiffs nowhere dispute that Defendants are trustees under NRS 107.028.

Although Plaintiffs concede (at 25) that "not all trustees under deeds of trust are licensed collection agencies," they actually argue that all trustees who record notices of default and sale and engage in non-judicial foreclosure activities are collection agencies. Indeed, attempting to distort the meaning of NRS 107.028, Plaintiffs apply (at 25-26) faulty logic to conclude that non-judicial foreclosure activities by a trustee constitute claim collection and thus require the trustee to be licensed as a collection agency. This does not comport with the structure or plain meaning of NRS 107.028 because, had the legislature wanted non-judicial foreclosure activities by a trustee to constitute collection agency activities, it would have specified in NRS 107.028 that only collection agencies may serve as trustees under a deed of trust. NRS 107.028 obviously contains no such requirement, and Plaintiffs do not dispute that principles of statutory construction preclude this interpretation—which would render meaningless the enumeration of the nine other entities that can engage permissibly in non-judicial foreclosure activities as a trustee. *E.g.*, *Hobbs v. State*, 127 Nev. Adv. Rep. 18, 251 P.3d 177, 179 (2011) (refusing to endorse interpretation of statute that rendered word meaningless because courts "avoid statutory interpretation that renders language meaningless or superfluous"); *Davis v. Beling*, 128 Nev. Adv. Rep. 28, 278 P.3d 501, 508-09 (2012) (interpreting statute to give effect to the full provision and intent of the statute).

That NRS 107.028 did not take effect until 2011 does not alter the conclusion that Defendants are not collection agencies. Prior to 2011, NRS 107 did not require trustees like Defendants to have any licenses to engage in non-judicial foreclosure activities, yet still regulated non-judicial foreclosure pursuant to deeds of trust. This demonstrates the legislature's intent that NRS 107—not NRS 649—governs trustees engaging in non-judicial foreclosure activities pursuant to deeds of trust.

Plaintiffs' further red herring argument (at 1, 25-28)—that NRS 107.028 and its legislative history concern whether or not collection agencies must be licensed—misses the point. That legislative history explains that, had the legislature not approved Amendment No. 824 to Assembly Bill No. 273, then a collection agency could not have served as a trustee under a deed

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of trust at all because the prior bill did not specify a collection agency as an entity that could serve as a trustee. [*See* Motion at 13-14 (explaining the legislative history of NRS 107.028(1))] This demonstrates that trustees are not collection agencies, and engaging in non-judicial foreclosure activities is not claim collection.[4]

Moreover, there is not any question that certain fees accompany the foreclosure process as specifically contemplated and authorized by NRS 107. NRS 107.080(2)(c)(3)(V) (requiring the affidavit in the notice of default or sale to provide, among other things, that a written statement was sent regarding "[a] good faith estimate of all fees imposed in connection with the exercise of the power of sale"). This does not transmute non-judicial foreclosure into collection agency activity. Just as the Nevada Supreme Court reminded the FID to avoid attempted regulations with respect to statutes governed by other governmental agencies, the FID does not have authority or jurisdiction over non-judicial foreclosure trustees under NRS 107. *State of Nev. Dep't of Bus. & Indus., Fin. Inst. Div. v. Nevada Ass'n Servs., Inc.*, 128 Nev. Adv. Rep. 34, 294 P.3d 1223, 1227-28 (2012) (holding that FID does not have the authority to interpret or regulate NRS 116). NRS 107 compliance is subject to judicial oversight as *Quality Loan* held.

C. NRS 649 Supports The Conclusion That Defendants Are Not Collection Agencies.

Non-judicial foreclosure trustees are not collection agencies and engaging in non-judicial foreclosure activities pursuant to a deed of trust is not the collection of a claim under NRS 649.020. Given the separate statutory scheme governing non-judicial foreclosure trustees and their non-judicial foreclosure activities contained in NRS 107, had the legislature wanted non-judicial foreclosure trustees like Defendants to hold licenses or certificates as collection agencies to engage in non-judicial foreclosure activities, the legislature would have specifically so provided in NRS 649, as it did for community managers. *See* NRS 649.020(3)(a). The

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[4] Plaintiffs do not and cannot provide any explanation as to how a collection agency can satisfy its duty of impartiality under NRS 107.028(5) if engaging in non-judicial foreclosure activities is collection of a claim. NRS 107.028(5) ("The trustee shall act impartially and in good faith with respect to the deed of trust"). This further demonstrates that engaging in non-judicial foreclosure activities does not transform trustees into collection agencies.

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legislature did not do so, thus supporting the conclusion that non-judicial foreclosure trustees are not subject to NRS 649. *Cramer v. State of Nev., Dep't of Motor Vehicles*, 126 Nev. Adv. Rep. 38, 240 P.3d 8, 12 (2010) ("The maxim 'EXPRESSIO UNIUS EST EXCLUSIO ALTERIUS,' the expression of one thing is the exclusion of another, has been repeatedly confirmed in this State") (citations omitted); *O'Callaghan v. Eighth Judicial Dist. Court of the State of Nev.*, 89 Nev. 33, 35, 505 P.2d 1215, 1216 (1973) ("That which is enumerated excludes that which is not").

Although Plaintiffs point to the legislative history of NRS 649, that history is not to be considered where the meaning of the statute is clear. *State v. State of Nev. Emps. Ass'n, Inc.*, 102 Nev. 287, 289-90, 720 P.2d 697, 699 (1986) (holding the unambiguous plain language of a statute obviates the need to consult the legislative history). Even if the Court were to consider the legislative history, it does not indicate that non-judicial foreclosure trustees acting pursuant to a deed of trust are subject to NRS 649.020.

Plaintiffs also suggest (at 1) that the fact QLS and MTC obtained collection agency licenses is an implied admission of liability here. Not so. QLS and MTC fully dispute that they are required to be licensed as collection agencies for their non-judicial foreclosure activities as trustees. Moreover, QLS prevailed in obtaining reversal of the erroneous FID Decision—which is a binding determination that QLS is not required to have a collection agency license for the very non-judicial foreclosure activities at issue in this lawsuit. None of the non-judicial foreclosure activities of any of the Defendants subjects them to licensure under NRS 649. That statute does not apply here and does not regulate the non-judicial foreclosure activities of non-judicial foreclosure trustees acting pursuant to deeds of trust.

D. The Court Should Reach The Same Result As Its Sister Court In *Quality Loan*, Which Decided The Same Issues Presented In This Case.

Quality Loan explicitly held that foreclosure trustees engaging in non-judicial foreclosure activities are not collecting debts, are not collection agencies, and are not subject to Nevada licensing requirements for collection agencies. *Quality Loan*, at *2, ¶ 4; *3, ¶ 1. Plaintiffs attempt to escape the determination in *Quality Loan* by contending (at 5, 7) that *Quality Loan* did

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not consider the FID Decision, that *Quality Loan* was limited "to the simple fact that QLS did nothing other than record a notice of default (and possibly conduct the sale)," and "[t]he facts at issue here, as pled in the SAC, depict a very different scenario, which itemizes a variety of debt collection activities." None of these contentions is true. The *Quality Loan* decision was based on review of the FID Decision and involved "consider[ation] of the Administrative Record, the briefs of the parties and Amicus Curae [sic], and the arguments of counsel." *Id.* at *1. As explained previously, the very allegations of the SAC identified by Plaintiffs (at 3-4, 10) were drawn essentially verbatim from the FID Decision. [*Compare* SAC ¶¶ 23(a)-(i) *with* FID Decision ¶¶ 8-18, 21; *see also SAC* ¶ 34 (providing a conclusory summary of the allegations in Paragraph 23 of the SAC)] These facts were at issue in *Quality Loan*, and the Court determined they were non-judicial foreclosure activities that did not require licensure under NRS 649. *Quality Loan* refers generally to these non-judicial foreclosure activities as the "exercise of the power of sale." *See Quality Loan*, at *2, ¶ 9 (stating the FID Decision held a "Trustee's exercise of the power of sale" requires licensure as a collection agency). Plaintiffs' attempt to distort the scope of *Quality Loan* to exclude these non-judicial foreclosure activities is unavailing.

Plaintiffs also suggest (at 6) that this Court should follow the FID Decision, despite the fact that *Quality Loan* overturned the decision and pronounced it void. Plaintiffs do not cite, and Defendants are not aware of, any authority that stands for the proposition that an administrative decision that has been expressly reversed—and ruled to be void *ab initio*—has any value, precedential or otherwise. Any deference evaporated once the reviewing court rejected the agency's interpretation.

In overturning the FID Decision, *Quality Loan* reached the correct result and held:

- "[A] Deed of Trust is not a 'claim' or 'debt' as defined by NRS Chapter 649." *Id.* at *3, ¶ 11.

- "The notices required by NRS Chapter 107 in the event of default by the borrower are *not* the solicitation of payment of a debt or claim." *Id.* at *3, ¶ 9(A) (emphasis added).

- "[T]he exercise of the power of sale by a Trustee under NRS Chapter 107, including giving the required notices and conducting sale of the real property held as security, is not collection of debt or claim or the solicitation of payment of a debt or claim under NRS Chapter 649." *Id.* at *2, ¶ 5.

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- "NRS chapter 649 does not apply to the exercise of the power of sale under a Deed of Trust. Rather, only NRS Chapter 107 regulates the exercise of the power of sale pursuant to a Deed of Trust." *Id.* at *3, ¶ 12.

- "NRS Chapter 107 grants *no* regulatory authority or oversight of the power of sale by Trustees to any state executive agency. Rather, all regulatory authority for the exercise of the power of sale under NRS Chapter 107 is exclusively granted to the Judiciary, by actions filed in District Court (pursuant to NRS Chapter 107) challenging validity of the Trustee's exercise of the power of sale." *Id.* at *3, ¶ 13 (emphasis added).

- "The FID has *no* authority to regulate or oversee a Trustees exercise of the power of sale under, or issuance of the notices required by, NRS Chapter 107." *Id.* at *3, ¶ 9(C).

The jurisdiction of the FID has been expressly limited to collection practices undertaken by collection agencies. *Nevada Ass'n Srvs., Inc.*, 294 P.3d at 1227-28 (holding that FID lacks authority to interpret or otherwise regulate as it relates to NRS 116). The FID has no jurisdiction or authority here. As *Quality Loan* held, the Judiciary has exclusive oversight authority of non-judicial foreclosure trustees and their non-judicial foreclosure activities. This Court should reach the same result as in *Quality Loan* and find foreclosure trustees engaging in non-judicial foreclosure activities are not collecting claims, are not collection agencies, and are not required to be licensed or hold certificates as collection agencies under NRS 649. Because all of the claims in the SAC are based on the erroneous premise that Defendants had to be licensed as collection agencies, the Court should dismiss the SAC in it is entirety.[5]

E. Nevada District Courts Consistently Hold That Non-Judicial Foreclosure Trustees Are Not Subject To Nevada Licensing Requirements For Collection Agencies.

As discussed in the Motion (at 15), a number of federal district courts in Nevada have concluded that engaging in non-judicial foreclosure activities is not debt collection and does not require licensure under NRS 649.

Ignoring the applicable federal cases, Plaintiffs attack Defendants' argument (at 21-22), contending these cases are irrelevant because they apply the federal definition of "debt collector"

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[5] Although Plaintiffs assert (at 7) that *Quality Loan* should not have found QLS was not doing business in the State of Nevada, that determination does not impact the dispositive holdings that trustees engaging in non-judicial foreclosure activities are not collecting claims, are not collection agencies, and do not need to be licensed under NRS 649.

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instead of the Nevada version. But both definitions lead to the same result: Defendants are not debt collectors under either statute. Moreover, on this point, federal law versus Nevada law, none of the federal circuit court authorities from beyond the Ninth Circuit cited by Plaintiffs (at 7-9) is or can be controlling. *See, e.g., Reese v. Ellis, Painter, Ratterree & Adams, LLP*, No. 10-14366, 2012 WL 1500108, at *4 (11th Cir. May 1, 2012) (concerning letter from law firm to homeowner that exceeded statutory provisions on foreclosure); *Rowe v. Educational Credit Mgmt. Corp.*, 559 F.3d 1028, 1035 (9th Cir. 2009) (concerning collection of defaulted student loans); *Wilson v. Draper & Goldberg, P.L.L.C.*, 443 F.3d 373, 376-77 (4th Cir. 2006) (concerning various mortgage collection letters sent to plaintiff that allegedly failed to verify the debt, continued after the debt was disputed, and were sent to represented party); *Piper v. Portnoff Law Assocs., Ltd.*, 396 F.3d 227, 230 (3d Cir. 2005) (concerning collection of municipal water obligations); *Romea v. Heiberger & Assoc.*, 163 F.3d 111, 113 (2d Cir. 1998) (concerning collection of rent from tenant); see also *Gburek v. Litton Loan Servicing LP*, 614 F.3d 380, 386-87 (7th Cir. 2010) (holding that "it was a mistake to dismiss the complaint on the sole ground that none of these communications explicitly demanded payment from Gburek" because letters to plaintiff were sent to induce settlement of mortgage loan obligations); *Kaltenbach v. Richards*, 464 F.3d 524, 529 (5th Cir. 2006) (remanding for court to consider whether lawyer conducting foreclosure fit general definition of debt collector).

Although the FDCPA and the Nevada statutes are not identical, Plaintiffs' attempt to distinguish and evade the precedent and importance of the Nevada district court decisions involving alleged FDCPA violations by comparing (at 21-22) the provisions of the Nevada state debt collection law with the FDCPA ultimately is unavailing. Plaintiffs in the district court cases, like the Plaintiffs here, specifically alleged that the defendants' unlicensed debt collection activities against Plaintiffs constituted a violation of Nevada's Deceptive Trade Practices Act, including NRS 598.0923(1). These district court cases analyzed NRS 598.0923(1), which provides that it is a deceptive trade practice for a company to knowingly conduct business without all required state, county, or city licenses. *See, e.g., Padilla v. PNC Mortg.*, No. 3:11-cv-0326-LRH-VPC, 2011 WL 3585484, at *4 (D. Nev. Aug. 15, 2011) (dismissing NDTPA claim and

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holding, two paragraphs after referencing NRS 649.020, that "GMAC did not have to be licensed to take part in the non judicial foreclosure proceedings because it is well established that non judicial foreclosures are not an attempt to collect a debt under the Fair Debt Collection Practice Act and similar state statutes"); *Smith v. Community Lending, Inc.*, 773 F. Supp. 2d 941, 944 (D. Nev. 2011) (dismissing deceptive trade practices claim based on "the allegation that the foreclosing entities did not have a 'collector's license'" because foreclosure does not constitute debt collection); *Maves v. First Horizon Home Loans*, No. 3:10-cv-00396-LRH-VPH, 2010 WL 3724264, at *3 (D. Nev. Sept. 15, 2010) (dismissing deceptive trade practices claim under NRS 598.0923(1) against foreclosure trustee for alleged failure to have a collection agency license because "[a] foreclosure trustee does not have to be licensed to record a notice of default because a foreclosure trustee is not a debt collector"). NRS 649.075 is the *only* statute that requires licensure for operation of a collection agency; there is no corollary licensure provision in the FDCPA. Consequently, these courts necessarily examined the applicability of NRS 649.075 and NRS 649.020 when they determined that the defendants in those cases were not subject to the licensure requirements, and did not apply federal standards. These cases deserve appropriate precedential treatment here.

In addition, although Plaintiffs point (at 9) to NRS 80.015(4), the majority of the federal district court cases cited in the Motion (at 15) did not rely upon NRS 80.015(4) in determining that defendants were not required to possess collection agency licenses under NRS 649. *E.g.*, *Padilla*, 2011 WL 3585485, at *4; *Erickson v. PNC Mortg.*, No. 3:10-cv-0678-LRH-VPC, 2011 WL 1626582, at *3 (D. Nev. Apr. 27, 2011) (dismissing deceptive trade practices claim and holding that "[a] foreclosure trustee does not need to be licensed to record a notice of default because a foreclosure trustee is not a debt collector"); *Smith*, 773 F. Supp. 2d at 944; *Maves*, 2010 WL 3724264, at *3. The one cited case that did concern NRS 80.0154 determined, at least by necessary implication, that NRS 80.0154 did not apply, but it also provided an independent reason for concluding the defendant was not required to have a collection agency license. *See Karl v. Quality Loan Serv. Corp.*, 759 F. Supp. 2d 1240, 1248 (D. Nev. 2010) (rejecting deceptive trade practices claim against QLS for allegedly conducting debt collection activities in Nevada

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without the requisite collection agency license because QLS "was not acting as a debt collector [and] did not need to be licensed as one"), *aff'd*, 553 Fed. Appx. 733 (9th Cir. 2014).

Accordingly, numerous district court decisions confirm that Defendants are not required to hold licenses or certificates as collection agencies under NRS 649 to engage in non-judicial foreclosure activities.

F. The Mini-Miranda Warnings Do Not Affect The Analysis.

In the Motion (at 16-17), Defendants argue that they should not be deemed collection agencies based solely on the inclusion in the recorded foreclosure notices of a disclosure known in the trade as a "mini-Miranda" warning. This argument is made in response to Plaintiffs' theory (SAC ¶¶ 1-15, 23(f); Opposition at 29-30) that the inclusion of this language in the notices of default and sale compels the Court to accept their conclusion that Defendants are operating as debt collectors.

Yet, these federal cases stand for the simple proposition that mere inclusion in a foreclosure trustee's notice of default or sale of a statement identifying the notice as an "attempt to collect a debt" does not transform the foreclosing entity into a debt collector. The Opposition does nothing to refute this basic proposition. Plaintiffs' own cited authorities recognize that mini-Miranda warnings do not affect the analysis. *Gburek*, 614 F.3d at 386 n.3 (recognizing inclusion of mini-Miranda warning "does not automatically trigger the protections of the FDCPA, just as the absence of such language does not have dispositive significance"); *Estes v. Love, Beal & Nixon, P.C.*, Case No. 14-cv-65-JED-TLW, 2015 U.S. Dist. LEXIS 96715 (N.D. Okla. July 24, 2015) ("A defendants' form notices consistent with the mini-Miranda warning is not, standing alone, particularly persuasive as to the 'debt collector' determination").

G. Issue Preclusion Bars Plaintiffs From Relitigating Whether Foreclosure Trustees Must Be Licensed As Collection Agencies.

1. The Court can Decide Issue Preclusion on a Motion to Dismiss.

Contrary to Plaintiffs' assertion (at 11-12), Nevada courts regularly apply issue preclusion and claim preclusion at the pleading stage. *E.g.*, *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. Adv. Rep. 28, 321 P.3d 912, 919 (2014) (affirming dismissal of complaint on motion to dismiss

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because issue preclusion barred relitigation of defendant's liability because plaintiff was in privity with the estate in the prior litigation); *Weddell v. Sharp*, 131 Nev. Adv. Op. 28, 350 P.3d 80, 85-86 (2015) (affirming dismissal of complaint at the pleading stage on grounds of claim preclusion); *Berkson v. LePome*, 126 Nev. Adv. Rep. 46, 245 P.3d 560 (2010) (affirming order granting motion to dismiss complaint based on claim preclusion). As recognized by the Nevada Supreme Court in a case where it affirmed application of issue preclusion at the motion to dismiss stage, "issue preclusion is applied to conserve judicial resources, maintain consistency, and avoid harassment or oppression of the adverse party." *Alcantara*, 321 P.3d at 916. To conserve resources and support judicial economy, the Court should apply issue preclusion here to bar Plaintiffs from relitigating whether trustees engaging in non-judicial foreclosure activities must be licensed as collection agencies.

The cases cited by Plaintiffs (at 11-12) do not stand for the proposition that issue preclusion can only be decided on a motion for summary judgment. That the court in *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470, 215 P.3d 709 (2009), decided issue preclusion at the summary judgment stage creates no brightline rule on when issue and claim preclusion can be asserted and applied. Plaintiffs' reliance (at 12) on *Schwartz v. Schwartz*, 95 Nev. 202, 591 P.2d 1137 (1979), and *Redrock Valley Ranch, LLC v. Washoe County*, 127 Nev. Adv. Rep. 38, 254 P.3d 641 (2011), also is misplaced. *Schwartz* concerned whether claim preclusion could be applied mid-trial, and *Redrock Valley Ranch* concerned whether issue preclusion applied to a commission's denial of a special use permit. *Schwartz*, 95 Nev. at 203-04, 591 P.3d at 1138-39, *Redrock Valley Ranch, LLC*, 254 P.3d at 645-47; *Schwartz*, 95 Nev. at 203-04, 591 P.3d at 1138-39. Neither case concerned whether issue preclusion can apply at the motion to dismiss stage. If Defendants are not successful in obtaining issue preclusion at the pleading stage, they will assert it as an affirmative defense.

2. *Quality Loan* Decided the Same Issue Presented Here and Plaintiffs Were in Privity with the FID.

As set forth in the Motion, for issue preclusion to apply "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must

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have been on the merits and have become final; . . . (3) the party against whom the judgment is asserted must have been a party *or in privity with a party* to the prior litigation; and (4) the issue was actually and necessarily litigated." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008) (affirming dismissal based on claim preclusion) (quotations and citations omitted) (emphasis added). Plaintiffs' Opposition does not dispute that the second and fourth requirements have been met; the Opposition argues (at 12-19) only that the first and third requirements for issue preclusion have not been satisfied.

a. Identical issues.

As to the first requirement, the issue decided in *Quality Loan* is identical to the collection agency licensure issue underlying this lawsuit. Plaintiffs improperly attempt (at 13) to apply a limitation to *Quality Loan* that does not exist. As already explained, the SAC allegations come from the FID Decision overturned by *Quality Loan*, which plainly held that trustees engaging in non-judicial foreclosure activities are not collection agencies and are not required to be licensed under NRS 649. *Quality Loan*, at *2, ¶ 6 (holding "a Trustee exercising the power of sale pursuant to the procedures set forth in NRS chapter 107 is not required to obtain a license as a 'collection agency' from the FID prior to exercising the power of sale under a Deed of Trust"). *Quality Loan* decided the same issue as to which Plaintiffs now seek a different determination. Indeed, the Opposition concedes as much (at 32) by stating that "QLS received a cease and desist order for exactly the same misconduct described herein." *See LaForge v. State of Nev., as the Univ. & Cmty. Coll. Sys. of Nev.*, 116 Nev. 415, 420, 997 P.2d 130, 134 (2000) (holding that "[i]ssue preclusion may apply 'even though the causes of action are substantially different, if the same fact issue is presented'") (citation omitted). Because *Quality Loan* decided the same licensing issue, Plaintiff's citation (at 13) to *Holt v. Regional Trustee Servs. Corp.*, 127 Nev. Adv. Rep. 80, 266 P.3d 602 (2011), is inapposite.

b. Privity.

As to the third requirement, Plaintiffs were in privity with the FID. In accordance with the *Restatement (Second) of Judgments* § 41(1)(d) (1982), a party is in privity with "[a]n official or agency invested by law with authority to represent the person's interests." As set out in the

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Motion (at 17-20), the FID is invested with authority to represent the citizens and residents of Nevada in matters concerning collection agency licensing. Contrary to Plaintiffs' assertion (at 16), the FID's authority need not include the recovery of damages on behalf of Plaintiffs. "[I]ssue preclusion may apply even though the causes of action are substantially different." *Five Star. Capital Corp.*, 124 Nev. at 1053, 194 P.3d at 712 (quotations and citations omitted).

Plaintiffs engage (at 14-16) in extensive quotation and discussion of the commentary to the *Restatement (Second) of Judgments*. Simply put, although a civil lawsuit is a potential avenue for consumers to recover damages in certain circumstances, the FID Decision is preemptive here and precludes Plaintiffs from relitigating the issue of whether non-judicial foreclosure trustees engaging in non-judicial foreclosure activities must be licensed as collection agencies. The Court should find Plaintiffs in privity with the FID. *See, e.g., Rynsburger v. Dairymen's Fertilizer Cooperative, Inc.*, 72 Cal. Rptr. 102, 107 (Ct. App. 1968) (finding citizens of city in privity with the city in unsuccessful action by the city against a fertilizer plant).[6]

3. There Was no Substantial Divergence of Interest Between the FID and Plaintiffs.

Plaintiffs contend (at 17-18) that *Restatement (Second) of Judgments* § 42(1)(d) (1982) precludes a privity determination here. Section 42(1)(d) appears to concern whether there is a substantial divergence of interest between the representative in a class action lawsuit and members of the class. *Id.* ("A person is not bound by a judgment for or against a party who purports to represent him if . . . (d) *With respect to the representative of a class*, there was such a substantial divergence of interest between him and the members of the class, or a group within the class, that he could not fairly represent them with respect to the matters as to which the judgment is subsequently invoked") (emphasis added). Because *Quality Loan* did not concern a class action lawsuit, § 42(1)(d) of the *Restatement* does not apply to the preclusion analysis.[7]

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[6] Plaintiffs' attempt (at 16-17) to distinguish *Rynsburger* is unavailing because the privity analysis is the same whether the action concerns issue preclusion or claim preclusion. As in *Rynsburger*, the Court should similarly find Plaintiffs were in privity with the FID here.

[7] The cases cited by Plaintiffs (at 18) are distinguishable. *S.O.V. v. People ex. rel. M.C.*, 914 P.2d 355 (Colo. 1996), does not discuss § 42(1)(d) of the *Restatement* and is a Colorado case

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Even if the substantial divergence test under § 42(1)(d) of the *Restatement* applied, there was no substantial divergence of interests between the FID and Plaintiffs. Plaintiffs argue (at 17-18) the FID's interests substantially diverged from Plaintiffs' interests because QLS obtained a collection agency license prior to the *Quality Loan* decision. This argument makes no sense because a ruling in *Quality Loan* adverse to the FID Decision would (and did) preclude QLS from having to comply with the collection agency licensing requirements under NRS 649. Plaintiffs also suggest (at 18) that there was a divergence in interest because "the Nevada legislature amended the relevant statutes to satisfy the FID's interests" and "the FID presumably had no reason to continue to defend the prior action by appeal." This argument does not assist Plaintiffs because, as already explained, NRS 107.028 establishes that engaging in non-judicial foreclosure activities does not convert a trustee into a collection agency. Plaintiffs' focus (at 17-18) on damages as a remedy similarly misses the point. Both the FID and Plaintiffs had the same interests—ensuring entities operating as collection agencies are licensed or hold certificates under NRS 649. The FID argued QLS was required to be licensed as a collection agency, resisted reversal, and sought affirmance of the FID Decision. Plaintiffs fully endorse the FID Decision and make the same arguments in this lawsuit. There was no substantial divergence of interest. The FID had more interest than anyone in assuring entities operating as collection agencies are licensed under NRS 649.

4. The FID Did Not Fail to Prosecute or Defend *Quality Loan* with Due Diligence and Reasonable Prudence and QLS was on Notice of Nothing to the Contrary.

Section 42(1)(e) of the *Restatement* does not apply. Section 42(1)(e) provides an exception to privity if "[t]he representative failed to prosecute or defend the action with due diligence and reasonable prudence, and the opposing party was on notice of facts making that

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that reversed a finding that a child was in privity with the state because Colorado statutes specifically required the child to be a *named* party to the underlying paternity action brought by the state. *S.O.V.*, 914 P.2d at 361-62. There is no Nevada statute that required Plaintiffs to be parties in *Quality Loan*. *Democratic Central Committee of D.C. v. Washington Metropolitan Area Transit Commission*, 842 F.2d 402 (D.C. Cir. 1988), *cert. denied sub nom. D.C. Transit Sys. v. Washington Metro Area Transit Comm'n*, 488 U.S. 1043 (1989), does not discuss § 42(1)(d) of the *Restatement* and is distinguishable because Plaintiffs had a meaningful voice here through the FID, which advocated the same argument and positions that Plaintiffs advance in this lawsuit.

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failure apparent." *Restatement (Second) of Judgments* § 42(1)(e). Plaintiffs' only argument stems from the FID's decision not to appeal from the adverse determination in *Quality Loan*. This does not provide a basis for finding the FID did not act with due diligence and reasonable prudence. Indeed, if the entity that Plaintiffs describe (at 5) as the "most knowledgeable about the statutory scheme" acquiesced in the result, there is no basis to argue the FID failed to act with due diligence and reasonable prudence while prosecuting the action.

Plaintiffs' cited authority (at 19), *Arduini v. Hart*, 774 F.3d 622 (9th Cir. 2014), does not assist them. *Arduini* affirmed dismissal of plaintiffs' derivative shareholder case at the pleading stage on the grounds of issue preclusion and found representation was adequate. *Id.* at 636. Nothing in *Arduini* stands for the proposition that a governmental regulator's decision not to appeal an adverse ruling results in a finding of inadequate representation. *See, e.g., Vines v. University of La. at Monroe*, 398 F.3d 700, 712 (5th Cir. 2005) (affirming application of collateral estoppel and finding EEOC adequately represented parties in privity with EEOC even where EEOC "made a calculated decision to voluntarily dismiss its appeal"), *cert. denied*, 546 U.S. 1089 (2006). Moreover, that the FID chose not to appeal *Quality Loan* in no way means QLS was on notice of any lack of due diligence or reasonable prudence by the FID. There was nothing about the FID's representation that was so grossly deficient as to be apparent to QLS. All that exists is an election not to appeal.

Like the court in *Arduini*, this Court can and should decide privity and adequate representation in connection with this motion. *Pyott v. Louisiana Mun. Police Employees' Ret. Sys.*, 74 A.3d 612, 618 (Del. 2013) (reversing denial of motion to dismiss and holding there was no basis upon which to conclude the representative was inadequate).

II. PLAINTIFFS' CONSUMER FRAUD CLAIM FAILS AS A MATTER OF LAW.

Plaintiffs' Opposition confirms that they cannot connect any alleged fraud to any damages, which is a requirement to advance past the pleading stage. *Clark County Sch. Dist. v. Richardson Constr., Inc.*, 123 Nev. 382, 396, 168 P.3d 87, 96 (2007) (causation is an essential element of a tort claim); *see also Bailin v. Select Portfolio Servicing, Inc.*, Case No. 2:14-cv-00678-GMN-PAL, 2015 U.S. Dist. LEXIS 104655, at *8 (D. Nev. Aug. 7, 2015) (dismissing

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consumer fraud claim based on alleged violation of Nevada Deceptive Trade Practices Act because the set of facts alleged did not support a fraud).

Even assuming Defendants were required to obtain collection agency licenses in order to record non-judicial foreclosure notices, which they were not, the SAC fails to plead any facts showing any Plaintiff sustained any damages as a result of any act of consumer fraud by any Defendant. Nor can Plaintiffs make such allegations because Defendants' lack of licensure caused no harm to Plaintiffs and they suffered no actual damages. In accordance with the deeds of trust, Plaintiffs agreed that the trustee Defendants were entitled to initiate non-judicial foreclosure and exercise the power of sale in the event of any Plaintiff's default. [Motion, Exs. A1-A16] Each Plaintiff concedes he or she defaulted on his or her payment obligations under the applicable deed of trust. Plaintiffs did not suffer any damages as a result of Defendants' non-judicial foreclosure activities, including recordation of notices of default, recordation of notices of sale, and/or foreclosure on their homes. Notably, Plaintiffs do not and cannot allege that the licensure status of their foreclosure trustee altered their loan obligations or the consequences resulting from their defaults.

Plaintiffs' Opposition (at 33-34) misstates the holding of *Goldberg v. Central Credit Management, Inc.*, No. 2:11-cv-00305-MMD-GWF, 2012 WL 6042194, at *4 (D. Nev. Dec. 3, 2012) (actually holding that "[p]laintiff fails to state a claim for consumer fraud under Nevada law" because "[p]laintiff has not adequately pled damages" caused by defendant's failure to have a license as a collection agency). The court dismissed the fraud claim in *Goldberg* because the complaint contained only legal conclusions regarding damages. *Id.* Here, too, Plaintiff's claimed damages are conclusory and insufficient. Moreover, the claimed damages are utterly divorced from the alleged fraud because Plaintiffs do not allege how a foreclosure trustee's lack of a collection agency license possibly resulted in any change to any Plaintiff's loan obligations. *See also* NRS 107.080(2)(c)(3)(V) (requiring the affidavit in the notice of default or sale to provide, among other things, that a written statement was sent regarding "[a] good faith estimate of all fees imposed in connection with the exercise of the power of sale"). There is not a single allegation that, for example, a particular plaintiff actually paid a specific amount of money to a foreclosure

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trustee that it would not have otherwise owed had the trustee possessed a Nevada collection agency license.

Because the SAC—the third complaint in this case—still fails to allege any facts showing Plaintiffs sustained any actual damages caused by Defendants' failure to have licenses as collection agencies—causation and damages comprising two of the three key elements of a consumer fraud claim, the Court should dismiss the consumer fraud cause of action with prejudice.

III. PLAINTIFFS' UNJUST ENRICHMENT CLAIM FAILS AS A MATTER OF LAW.

Unjust enrichment is a form of quasi-contractual relief that requires proof of "a benefit conferred on the defendant *by the plaintiff*, appreciation by the defendant of such benefit, and acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof." *Unionamerica Mortg. & Equity Trust v. McDonald*, 97 Nev. 210, 212, 626 P.2d 1272, 1273 (1981) (reversing judgment in favor of unjust enrichment claimant) (quotations and citations omitted) (emphasis added). Noticeably absent from the SAC and Opposition is any allegation or argument that Plaintiffs paid money to Defendants. There can be no claim for unjust enrichment if the Plaintiffs paid no money to Defendants. For this reason alone, the Court should dismiss the claim for unjust enrichment.

Moreover, the deeds of trust—which Plaintiffs do not and cannot dispute they executed—govern the rights of the parties. The notices of default and sale that form the basis of the SAC were recorded pursuant to the power of sale granted in the deeds of trust and by Nevada foreclosure law. Plaintiffs concede that Defendants were acting on behalf of a lender or loan servicer as "trustee or agent of the beneficiary or trustee with regard to the deed of trust, and did so with regard to properties." [SAC, ¶ 23(d)] It is of no import that, as Plaintiffs contend (at 36), Defendants themselves were not parties to the deeds of trust. The key fact—which Plaintiffs cannot dispute—is that each Plaintiff was a party to his or her respective deed of trust, and these trust deeds expressly provide that trustees (whether the original trustee or a substituted trustee) may engage in non-judicial foreclosure activities, including initiating foreclosure by recording the

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requisite notices. [Motion, Exs. A1-A8, ¶¶ 22, 24; A9, ¶¶ 18, 20; A10-A16, ¶¶ 22, 24] Because Plaintiffs are parties to deeds of trust that expressly govern the right of a foreclosing party to record the subject notices of default or sale and engage in non-judicial foreclosure activities, their unjust enrichment claim fails as a matter of law. *Parker v. Greenpoint Mortg. Funding, Inc.*, 3:11-cv-00039-ECR-RAM, 2011 U.S. Dist. LEXIS 78037, at *23 (D. Nev. Jul. 15, 2011) ("Here, Plaintiff entered into a written contract with respect to the mortgage on the Property, namely, the Deed of Trust and the Mortgage Note. These documents guided the interactions, obligations and rights of the parties. As such, Plaintiff cannot make a claim for unjust enrichment with respect to actions that are controlled by a contract to which Plaintiff is a party").

Davis v. Citibank, N.A., Case No. 4:14-cv-1129-CDP, 2015 U.S. Dist. LEXIS 26172 (E.D. Mo. Mar. 4, 2015), cited by Plaintiffs (at 36), is inapplicable because, in that case and unlike here, a person was charged a fee that was not authorized by contract. In *Davis*, a putative class of borrowers alleged that their lender charged a $200 fee when it subordinated a home equity loan after the borrower refinanced the senior loan, in violation of the parties' home equity loan agreement, which did not provide for such a fee. *Id.* at *3-4. The court did not dismiss the unjust enrichment claim because the alleged fee fell outside the parties' express written agreement. *Id.* at *7-8. The court explained: "This could be viewed as analogous to the unjust enrichment claim of an employee who has not been paid for work hours not contemplated by the parties' express agreement." *Id.* at *8. Here, by contrast, Plaintiffs' deeds of trust expressly contemplate, and authorize, the exact foreclosure notices with which Plaintiffs take issue.

Leasepartners Corp. v. Robert L. Brooks Trust, Dated November 12, 1975, 113 Nev. 747, 942 P.2d 182 (1997), cited by Plaintiffs (at 34) and Defendants (at 22), confirms that a court should not apply principles of unjust enrichment where an express contract governs the parties' rights and obligations. The court allowed the claim to proceed based on facts not present here; namely, the absence of any contract. *Id.* at 754, 942 P.2d at 187.

The additional authorities cited by Plaintiffs (at 35) do not advance their position. In *Webb v. Clark County School District*, 125 Nev. 611, 218 P.3d 1239 (2009), the plaintiff contended, as Plaintiffs do here, that he could recover an unlicensed psychologist's treatment fees

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from defendant under a theory of unjust enrichment. *Id.* at 622 n.3, 218 P.3d at 1247 n.3. The Court, however, rejected this argument as "meritless." *Id.* Beyond *Webb*, two of the authorities cited by Plaintiffs concern an unlicensed entity's ability, as a plaintiff, to maintain an unjust enrichment to *recover* payment for services rendered, but these cases are inapposite because Defendants here are not plaintiffs suing for unjust enrichment, and Plaintiffs here did not pay for anything. *Magill v. Lewis*, 74 Nev. 381, 385-89, 333 P.2d 717, 719-21 (1958) (allowing an unlicensed contractor to maintain a cause of action for unjust enrichment against a homeowner who fraudulently induced the contractor to perform work for which the homeowner subsequently refused to pay); *Loomis v. Lange Fin. Corp.*, 109 Nev. 1121, 1129, 865 P.2d 1161, 1165 (1993) (barring a "sophisticated" real estate broker who committed "blatant, substantial, and repeated" violations of Nevada's real estate laws from maintaining an action in equity to recover a commission from the seller of real estate after the broker sold the property). Plaintiffs also cite (at 36) to *Vincent v. Santa Cruz*, 98 Nev. 338, 647 P.2d 379 (1982), but the case does not involve any claim for unjust enrichment. Accordingly, none of these cases supports Plaintiffs' attempt to use unjust enrichment to recover unspecified money that Plaintiffs still—after several rounds of pleading—do not even allege they paid.

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IV. PLAINTIFFS' ELDER ABUSE CLAIM FAILS AS A MATTER OF LAW.

Apart from the licensure issue, the SAC does not allege facts that satisfy the elements of elder abuse prescribed in NRS 41.1395. The SAC does not dispute that Plaintiffs Kuhn, Gill and Kallen's failures to remit the required loan payments triggered CRC and Meridian to record the notices of default, and Kuhn, Gill, and Kallen cannot now transform their own breach of their payment obligations pursuant to their loan agreements into an actionable claim for elder abuse based solely on threadbare recitations of the statutory elements of NRS 41.1395. The act of initiating foreclosure pursuant to a deed of trust and engaging in non-judicial foreclosure activities does not automatically become illegal when the borrower turns sixty years old.

Plaintiffs' Opposition ignores these arguments and repeats the same insufficient allegations stated in the SAC. As discussed in Defendants' Motion (at 24), this set of facts cannot possibly sustain a claim for elder abuse. The sole authority cited by Plaintiffs (at 39) in

support of their claim underscores that there is no way for Plaintiffs to allege an elder abuse cause of action based on this set of facts. In *Jung v. BAC Home Loans Servicing, LP*, 2:10-cv-2236 JCM (GWF), 2011 U.S. Dist. LEXIS 64802 (D. Nev. June 17, 2011), the court held that the complaint adequately pled facts to support an elder abuse claim in a case involving reverse mortgages targeting elderly borrowers. *Id.* at *11-12. In so ruling, the court focused on the complaint's allegation that the defendant "gained the trust and confidence of plaintiffs, who [d]efendant knew were all over 60 years old . . . [and] convert[ed] [p]laintiffs' property and money, though financed, with the intent to permanently deprive [p]laintiffs of ownership, use, benefit, or possession of their property and money, [and] depriv[ed] [p]laintiffs of the information about what their loan would actually cost." *Id.* at *11 (citations omitted). Here, by contrast, the SAC notably fails to allege that any of Defendants had "the trust and confidence of an older person or a vulnerable person." NRS 41.1395(1) (stating that elder abuse occurs where "an older person or a vulnerable person suffers a personal injury or death that is caused by abuse or neglect or suffers a loss of money or property caused by exploitation"); NRS 41.1395(4)(b) (defining "[e]xploitation" as "any act taken by a person who has the trust and confidence of an older person or a vulnerable person").

The SAC does not allege that Gill, Kuhn and Kallen had any personal relationship with any of the Defendants, much less a relationship of confidence that would give rise to an elder abuse claim. Nor does the SAC allege facts, and Plaintiffs fail to cite to any authorities, supporting the misguided notion that the act of recording foreclosure notices or engaging in non-judicial foreclosure activities could possibly constitute "abuse" or "exploitation." Finally, unlike the plaintiffs in *Jung*, Plaintiffs here do not allege that they actually paid any "unlawful" fees to Defendants. *See also* NRS 107.080(2)(c)(3)(V) (requiring the affidavit in the notice of default or sale to provide, among other things, that a written statement was sent regarding "[a] good faith estimate of all fees imposed in connection with the exercise of the power of sale"). After three rounds of pleading, there are still no facts regarding any alleged payments; the SAC and Opposition (at 38) resort to vague conclusions regarding "illegal

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receipt of money" and "unlawful deprivation of money."[8]

V. THE COURT SHOULD DISMISS THE SAC WITH PREJUDICE.

In three attempts, Plaintiffs have failed to plead a viable cause of action. This Court should dismiss the SAC with prejudice because any further amendment would be futile. *Marin v. Wells Fargo Bank, N.A.*, 3:11-cv-00309-ECR-VPC, 2012 WL 424564, at *3 (D. Nev. Feb. 9, 2012) (dismissing claims with prejudice "because the Court finds that amendment will be futile" given that "[f]oreclosure pursuant to a deed of trust does not constitute debt collection").

Relief Requested

For these reasons, Defendants respectfully ask the Court: (1) to grant their request to consider and take judicial notice of the *Quality Loan* decision, the FID Decision, and the deeds of trust that underlie Plaintiffs' claims; (2) to grant their Motion; and (3) to dismiss all claim in the SAC with prejudice.

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[8] The Opposition attempts to invoke improperly (at 38) NRS 598.0977. The SAC does not provide NRS 598.0977 as the basis for any cause of action, and Plaintiffs cannot use the Opposition to amend their complaint a fourth time.

DATED this 5th day of February, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2016, I served a true and correct copy of the foregoing **DEFENDANTS' JOINT REPLY IN SUPPORT OF DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT,** on counsel by e-mail transmission to the persons listed below, pursuant to EDCR 8.05(a):

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EIGHTH JUDICIAL DISTRICT COURT
CIVIL/CRIMINAL DIVISION
CLARK COUNTY, NEVADA

JEFFREY BENKO, et al, Plaintiffs, vs. QUALITY LOAN SERVICE CORPORATION, et al, Defendants.	CASE NO. A-11-649857 DEPT. NO. XXIX

BEFORE THE HONORABLE SUSAN SCANN, DISTRICT COURT JUDGE

MONDAY, FEBRUARY 22, 2016

TRANSCRIPT RE:
DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT

DEFENDANT MTC FINANCIAL, INC. dba TRUSTEE CORPS. JOINDER IN DEFENDANTS' JOINT MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT; SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

APPEARANCES:

For the Plaintiffs:	NICHOLAS A. BOYLAN, ESQ. SHAWN CHRISTOPHER, ESQ.
For Defendant Quality Loan Service Corporation:	KRISTIN A. SCHULER-HINTZ, ESQ.
For Defendant California Reconveyance Co:	LAWRENCE SCARBOROUGH, ESQ. JESSICA R. MAZIARZ, ESQ. KATIE M. WEBER, ESQ.
For Defendant MTC Financial, Inc.:	RICHARD J. REYNOLDS, ESQ.

APPEARANCES (Continued):

For Defendant Meridian Foreclosure Service: SHAUN M. ROSE, ESQ.

For Defendant National Default Servicing Corporation: KEVIN S. SODERSTROM, ESQ.

RECORDED BY: Angie Calvillo, Court Recorder

CLARK COUNTY, NEVADA MONDAY, FEBRUARY 22, 2016

PROCEEDINGS

(PROCEEDINGS BEGAN AT 10:32:40 A.M.)

THE COURT: Jeffrey Benko versus Quality Loan Service Corporation. Case Number A-11-649857. Good morning.

MS. WEBER: Good morning, Your Honor. Katie Weber on behalf --

THE COURT: Appearances. We've got lots of appearances. What was your -- I'm sorry?

MS. WEBER: Katie Weber, local counsel on behalf of California Reconveyance Company.

MR. SCARBOROUGH: And good morning, Your Honor. Larry Scarborough and Jessica Maziarz also on behalf of California Reconveyance.

THE COURT: Okay.

MS. SCHULER-HINTZ: Good morning, Your Honor. Kristin Schuler-Hintz on behalf of Quality Loan Service.

MR. REYNOLDS: Good morning, Your Honor. Richard Reynolds on behalf of MTC Financial.

MR. ROSE: Good morning, Your Honor. Shaun Rose on behalf of Meridian Foreclosure Services.

MR. SODERSTROM: Good morning. Kevin Soderstrom for National Default Servicing Corporation.

THE COURT: Did we get everybody? Okay. And everybody else is just observing, I assume. You're observing?

MS. MAZIARZ: No. Jessica Maziarz. I'm actually on the case as well.

THE COURT: Oh, okay.

MS. MAZIARZ: I practice with Mr. Scarborough.

MR. SCARBOROUGH: Yes.

THE COURT: And plaintiff?

MR. BOYLAN: Good morning, Your Honor. Nicholas Boylan and Shawn Christopher representing the plaintiffs today.

THE COURT: Okay. And this is a motion to dismiss brought by the defendants of the second amended complaint.

MR. SCARBOROUGH: Good morning, Your Honor. Larry Scarborough again.

THE COURT: Good morning. Now, the standard is under no set of facts. It's not, you know, federal court, so.

MR. SCARBOROUGH: And we are mindful of that. And in fact, we've couched our arguments that way. The index of issues, the table of contents that were handed out beforehand are very helpful. And to be targeted about this, our motion presents two different avenues for complete relief; that would be dismissal in this case. The first is what I'll call the collection agency issue or the licensure issue. If plaintiffs have failed to state a claim or an avenue to force us into the collection agency box while we're engaged in non-judicial foreclosure activities, then plaintiffs lose as a matter of logic across the board.

In addition and alternatively under classic standard pleading standards, as the Court just prescribed, if they fail to plead enough elements to make out a claim from a factual basis, not a threadbare conclusionary basis, then with respect to each of consumer fraud, unjust enrichment and elder abuse, then they also lose.

I can do that in either order. I thought what I would do is start with the licensure issue.

THE COURT: The collection -- whether you're collection agencies, whether you're required to be licensed.

MR. SCARBOROUGH: Yes.

THE COURT: Yeah. That makes sense to me.

MR. SCARBOROUGH: Okay. On that issue, as I said, it transcends each of the three claims. I think everyone in this courtroom is aware that NRS Chapter 107 has always for purposes of this case governed non-judicial foreclosure. The underlying deeds of trust -- and I know we'll get to the request for judicial notice. Let me pause there for a second simply to say our position is that the Court should consider all of it from either side. We see nothing that runs afoul of the dismissal standards and converts this into a summary judgment motion in terms of --

THE COURT: I see a lot of representations, no affidavits, but a lot of representations about what the facts may or may not be.

MR. SCARBOROUGH: Well, all I'm talking about in that regard are the documents, the deeds of trust, what we can call Judge Williams' decision in the sister court decision.

THE COURT: As far as the judicial notice part goes.

MR. SCARBOROUGH: Yes.

THE COURT: Yeah.

MR. SCARBOROUGH: Exactly. So anyway, coming back to this, it's undisputed that the underlying trust deeds relating to each of the plaintiffs, relating to each of the putative class members, provide that defendants would engage in

non-judicial foreclosure activities in the event plaintiffs defaulted on their loan obligations. It is undisputed, based on a regard for the complaint, that plaintiffs in fact defaulted on those obligations, which is what triggered the recording of the notices of default and the other related non-judicial foreclosure activities.

As this Court knows better than anyone else, homeowners aggrieved by that process have always come to court, this Court and all of this court's sister courts in this courthouse, to challenge asserted wrongs relating to non-judicial foreclosure, but this entire case is built on things that occurred irrespective of the propriety of those non-judicial foreclosure activities. Before 2011, as the Court knows, there were no limits concerning who might serve as a trustee. Since 2011 there have been ten categories of those who might serve. To create a putative class action out of disparate homeowner non-judicial foreclosure experiences, plaintiffs try to put defendants into the box of collection agencies and say that everything they were doing in the non-judicial foreclosure arena occurred within the collection agency box.

The fatal problem with that contention, Your Honor, looking at this through the prism of dismissal, is there is not a single allegation anywhere in the second amended complaint that says that these defendants could not be operating and were not one of those other nine categories of entities and individuals that could serve as non-judicial foreclosure trustees. Without those allegations as a matter of theory and logic, they can't even attempt to stuff us into the box, to use some vernacular, of collection agency conduct.

Plaintiffs concede that they can't do that and that they're not going to do that. You've seen it at page 13, note 8 of their brief and also at page 25.

They say that they, and I'm quoting, "do not allege that all trustees of deeds of trust are also collection agencies by virtue of their being trustees." Their argument can't even get airborne unless they put us into that category, and they've got no allegations that say we aren't operating as one of the other nine after 2011, and of course there were no limits before that.

That defect points out a very simple, practical fact. The judiciary, courts like this court, have dealt -- have always dealt with homeowner complaints concerning upsets relating to non-judicial foreclosure while -- and this is perhaps the elephant in the room -- the Financial Institutions Division is cabined and is limited in what it can do in terms of regulating under NRS 649. That's not what governs non-judicial foreclosure. That the two don't overlap completely, that there's not an intersection as a matter of law, or put another way a legal underpinning that plaintiffs have given you to stuff us into this collection agency only box is the absolute import of what Judge Williams did in the Quality Loan decision.

And there are a number of aspects that we quote from in our briefing. I'll just put forward one of them in which the sister court found that NRS Chapter 107 grants no regulatory authority or oversight of the power of sale by trustees to any state executive agency; rather, all regulatory authority for that exercise of the power of sale under NRS Chapter 107 is exclusively granted to the judiciary by actions filed in district court pursuant to NRS Chapter 107 challenging the validity of the trustee's exercise of the power of sale. There is not even any such challenge here. I grant you that plaintiffs' claim looked a lot better between the time the Financial Institutions Division entered those findings of fact and conclusions of law, before that was all reversed and held void *ab initio* by Judge Williams, and since the

Financial Institutions Division elected not to appeal that result or launch any further challenges of that type.

And I have to say, Your Honor, that's not the first time since this entire case has built on something that's been reversed in connection with the Financial Institutions Division that the Nevada Supreme Court has told the Financial Institutions Division that its powers and its interpretative abilities are limited. You've seen in our papers the 2012 decision where the Financial Institutions Division sued the Nevada Association Services and the Nevada Supreme Court held that the Financial Institutions Division does not have the authority to interpret or regulate NRS 116 relating to common interest communities. So too the Financial Institutions Division on which earlier now reversed findings form the basis not only of the logic of plaintiffs' claim but are verbatim taken into the second amended complaint before you, the Financial Institutions Division in 2012 was told by the Nevada Supreme Court to stay limited.

Now, that's not all. We have two cases, one that directly overrules the attempt that's being put forward to Your Honor in this complaint and the 2012 decision, but there are -- my term is a near avalanche, there are a number of Nevada federal district court cases looking at the deceptive practices piece of this very consumer fraud claim that's before you that also have held those claims do not state an action that has any vitality at all. Now, the plaintiffs are going to say no, no, wait a minute, those cases were all construing the FDCPA, but those cases talk about this very license argument that's been put to Your Honor. There is no companion or corollary licensure provision under the FDCPA. So when the Nevada district court cases, and there are a number of them and we've cited them all to

Your Honor, say that licensure is no basis for a deceptive practices claim, which is the same thing that's asserted to be consumer fraud in this case, those courts, those federal district courts had in front of them 649.075 and 649.020, which are exactly the statutes that have been put before you.

So because you have no legal underpinning that undoes these defendants' ability to be operating as trustees in the non-judicial foreclosure arena, there simply is no basis upon which to sustain any of these claims. But even if this Court were to conclude otherwise -- and I'm not sure as a matter of law to conclude that we were operating as collection agencies would be appropriate on a motion to dismiss brought by us, given the posture, it wouldn't matter because of the pleading deficiencies under ordinary circumstances, ordinary rules that apply to each of the three claims.

Let me cover the three claims quickly. So let's take consumer fraud. As I said, that's built on deceptive practices. It's those very claims that were considered in what I have termed the near avalanche of federal district court decisions here in Nevada that have rejected similar claims and held that, no, non-judicial foreclosure trustees are not subject to challenge on that basis. But more importantly, I'll put it this way, what difference does it make in terms of injury in fact or harm or damages or causation as to the licensure status of the non-judicial foreclosure trustee when there is no challenge here in this courtroom to the propriety of those underlying non-judicial foreclosures? The answer is none. And if you have no injury in fact, no damages, no causation, you're missing -- depending upon how you view the difference between injury in fact and damages, I view it as two distinct things -- but you're either missing three of the elements of a consumer fraud claim

or you're missing at least two, irrespective of the licensure issue. And they've got nothing that they have put forward that would change that analysis, which is why we're asking for dismissal with prejudice.

Let me cover the last two claims which absolutely ought to be dismissed with prejudice. The first is unjust enrichment. I certainly know I don't need to take this Court all the way back to 1981 and the Union America case, but paraphrasing, it's a benefit conferred by the plaintiff to these defendants that the defendants retain unjustly. There's no allegation anywhere here that we've retained the benefit. Again, plaintiff's pleading undercuts their ability to plead it. And I'm pointing to the second amended complaint, paragraph 23(D), when they acknowledge that these defendants were acting on behalf of a lender or loan servicer as trustee or agent of the beneficiary or trustee with regard to the deed of trust and did so with regard to properties.

This Court knows, and this is why this name game or labeling really should not be countenanced, that in the course of non-judicial foreclosure, and we cited the statute, statements of fees that accrue or occur are absolutely required to be put across to the homeowner who is in default of his or her obligations. But because these defendants did not retain any benefits themselves simply serving as an agent or a trustee for others, there can be no unjust enrichment claim here.

We cite a case that's exactly on point. It's the Grand case at page 22 of our motion papers, which arose out of federal court in Nevada, went to the Ninth Circuit, was affirmed, and there the court cited to Lease Partners, which I know this Court knows is a more recent Nevada Supreme Court case that talks about the elements of unjust enrichment, and here's what was held. Under Nevada law

an action based on a theory of unjust enrichment is not available when there is an express written contract. Here, the rights and obligations of the parties are dictated by express contracts, the first mortgage note and the deed of trust. We cite another district court case there as well.

And finally, elder abuse.

THE COURT: You don't even need to address that.

MR. SCARBOROUGH: I'd be happy not to address that. So there are two ways to look at this case, trying hard to look at it from a pleading requirement's perspective. One is the licensure issue where because their Financial Institutions Division's exuberant attempt to move into the non-judicial foreclosure arena has been foreclosed as a matter of law, that's a reason to dismiss. But even apart from that, the failure to adequately plead facts as opposed to conclusions tracking elements of claims defeats each of the three substantive claims as well.

Unless you have questions, Your Honor, thank you.

THE COURT: No, I don't have any other questions.

Okay, but I have some questions for the plaintiff.

MR. REYNOLDS: Your Honor --

THE COURT: Oh, you've got a joinder.

MR. REYNOLDS: Yes, I do.

THE COURT: Right. Okay.

MR. REYNOLDS: Richard Reynolds for MTC Financial, Your Honor. I'll only address the Court's points on this outline, unless the Court needs judicial notice --

THE COURT: Are you going to -- Do you have anything to add that counsel didn't talk about?

MR. REYNOLDS: Yes, I do.

THE COURT: Okay.

MR. REYNOLDS: What's missing here is -- I don't think it's necessary, but as the Court pointed out the questions that the Court had as to my client, my client -- this is a 54 paragraph complaint, 23 pages. My client is in paragraph 5, other than saying what my client's name is, and that's it. And there are actually different allegations of these people that are now living in Ohio. There's different bankruptcy allegations, whether somebody has the right to sue or doesn't have the right to sue. If that matters -- I don't think it does, but it makes it so this is not a class action. This is --

THE COURT: It hasn't been certified as such at this point.

MR. REYNOLDS: And it isn't possible. It is not even perhaps a correct joinder. It's lumping people that happen to be in the same business. It has nothing to do with anything else.

I'm not going to restate the fact that there's no damages pleaded as they indicate, but if you just look at what's there, remember, this is the second amended complaint. How many chances do you get? That's the question.

The other thing is, what's not really addressed is we don't allow common law remedies in foreclosure cases in Nevada against trustees. There's case law on that. What they're really trying to do is graft something onto a statute that only the Legislature gets to do. It's not within the province of a court to add a remedy that is not clear in a statute where we've got such an all-encompassing statute. People are supposed to know what to do. The deed of trust says what to do. The deed of trust is approved by the State Legislature. The foreclosure process

is approved by the State Legislature. There's no allegations that anybody did anything other than what was approved. And you cannot be held liable for doing something the State tells you to do, specifically.

And that's all the allegations there are, so that is why I believe at least as to our client, if not all of us, it should be dismissed with prejudice. Thank you.

THE COURT: Okay. So is that it from the moving party side? Okay.

MR. BOYLAN: Thank you, Your Honor.

THE COURT: What are you trying to accomplish here, counsel, because I don't see any damages whatsoever. Even if you happen to be right about the breadth of the statute, 649, what damages? There's nothing in the pleading that tells me anything.

MR. BOYLAN: We talked about that in our papers, Your Honor, at some length. And I'd like to direct you to it in writing first and then I will --

THE COURT: It's got to be in the complaint, and the only thing I saw in the complaint was something about collection costs that your clients didn't pay, and if they've been through bankruptcy it doesn't matter.

MR. BOYLAN: No. If we go to -- there's a summary of the allegations with citations to the particular paragraphs in our opposition. If I may just put my hand on it for a moment, it starts I think around page -- well, it's 33 on my copy and then 34. We talk about the fact, Your Honor -- first of all, this is a deceptive trade practices claim. It's a statutory remedy. It's not common law fraud. The rules related to --

THE COURT: Well, you cite common law fraud.

MR. BOYLAN: No, we cite the statute.

THE COURT: I mean, 41.600.

MR. BOYLAN: They do. They do. They talk about common law fraud, we don't. In fact, we say the opposite in our papers. We say this is statutorily defined as fraud when you're doing an act that you have not obtained a license for in Nevada. That's -- it's not deception. There's no -- it's not like common law fraud at all. The statute has said this is a deceptive trade practices, period. It also says you can get all the remedies related to that: damages, injunctive relief, attorney's fees.

Now, let's talk about the specific facts alleged in the pleading, because in all of their briefs and in all of their discussions they don't talk about the specific facts. We've alleged --

THE COURT: Because there aren't very many in this complaint.

MR. BOYLAN: I want to walk you through them then, because they are there.

THE COURT: You recite the existence of the foreclosures. Apparently your clients didn't pay for the property. A number of them went through bankruptcy, so there's no personal liability.

MR. BOYLAN: That's not true, either. We addressed that in our joinder brief at some length with published authority. We don't rely on unpublished trial court decisions that are inconsistent with a long series of appellate pronouncements. That's not what we did. We rely on published decisions that explain this. The Nevada statute is based on a claim, not a debt. The claim itself is not resolved in bankruptcy and there can be *in rem* recovery as well. This is addressed in our brief. Did you see our brief in opposition to MTC's joinder?

THE COURT: I haven't read that.

MR. BOYLAN: Because all the bankruptcy and the related authorities, published authorities that constitute precedent are in there. For example, if you look

at the definition under the Nevada statute of a collection agency, it defines them as acting to collect a claim, not a debt, so the bankruptcy doesn't come into play, first of all.

THE COURT: Sure it does, because there's no claim against your clients. It's an *In rem* action to collect on -- to foreclose.

MR. BOYLAN: No, there is a claim that has not been discharged in many cases. Plus, keep in mind, this is a class action.

THE COURT: Well, it hasn't been certified as such.

MR. BOYLAN: I understand that, but you still have to look at the putative class. You can't dismiss the case based on a particular characteristic of a named plaintiff. This hasn't been briefed. If you want me to brief it, I'll get you a load of cases that say you can't dismiss the case because a named plaintiff has a particular characteristic that is not consistent with the majority of the class. I can get you those authorities. Ninety-eight percent of the class didn't go through bankruptcy. These particular class reps did.

THE COURT: Well, how do you know?

MR. BOYLAN: Statistical logic. Experience. I mean, even if you say it's fifty percent did not go through bankruptcy. How about this, how about we allege it? If you think that's --

THE COURT: I'm not going to allow you to amend this complaint again. Two times is enough.

MR. BOYLAN: Well, let me tell you why that's a problem. We were in federal court. Do you remember what they did? Did you see the antics that they played in federal court? They removed it. We had a right to amend. Then the district court,

who the Ninth Circuit found was way wrong, she was very wrong, as I told her, but the district court said, well, we've got a problem here. So we said, okay, here's a proposed second amended. The district court over there said I'm not going to consider that, either. The Ninth Circuit said, no, you are going to consider it, and in fact, we're going to consider it and we're not even going to give it back to you to reconsider. We're going to order you to send it back to Judge Scann. Order you. You don't get to reconsider nothing.

THE COURT: But now you've filed your second amended complaint.

MR. BOYLAN: Yeah, but we're just beginning. We have no discovery. Are you telling us we can't amend our complaint when we've never had any discovery after four and a half years? I mentioned discovery the last time.

THE COURT: You need to have enough to satisfy Rule 11 before you can file it.

MR. BOYLAN: Well, I mean --

THE COURT: I mean, you've got to have some facts. What you don't have in here is facts.

MR. BOYLAN: Okay. Well, let's go look at that because we need to make the Court aware. Looking at page 3 and 4 of our brief.

THE COURT: Okay.

MR. BOYLAN: Now, are you talking about facts as to collection actions?

THE COURT: The complaint. I'm talking about the second amended complaint because that's what we're focused on in this motion.

MR. BOYLAN: Right. Well, you first asked about damages. We've alleged that they charged thousands of dollars, first file, and they added it to our client's debt.

THE COURT: None of which your client's ever going to pay. I mean, is there --

MR. BOYLAN: Well, that debt has already been added. We don't know without discovery how much of it has been paid or not.

THE COURT: But you haven't paid that. It's for the benefit of the plaintiff -- or the defendants, the lenders. So how is that your damages? How would you ever get that money back, or how would you ever get that money?

MR. BOYLAN: You know, I can answer that. That's an easy question. If you are doing an illegal act and you get money for performing an illegal act, which is then charged to my client, of course you can't keep that. It has to be disgorged to my clients. They charged thousands of dollars to violate the law in Nevada, and that thousands of dollars was added to my client's account. That's a no-brainer. You can't do an illegal act and keep the money, period. You can't keep the money in your pocket when you violate Nevada law. I feel that is very simple.

THE COURT: So your clients, who haven't paid -- haven't satisfied their mortgage notes, get money for not satisfying their mortgage notes?

MR. BOYLAN: Well --

THE COURT: That's kind of what it comes down to.

MR. BOYLAN: Well, that's going way beyond the pleadings. I mean --

THE COURT: Yeah. I mean, most of these arguments go way beyond the pleadings, as far as I can see.

MR. BOYLAN: Well, then you have to deny it, right? I mean, you have to deny it on the law.

THE COURT: I have to decide that under no set of facts could you recover.

MR. BOYLAN: Right. So let's look at the facts. Page 3 of our brief.

THE COURT: I want to see in the complaint.

MR. BOYLAN: Okay. Well, they cite to paragraphs. They cite to paragraphs. One through fifteen of the complaint specifically alleges that they were making demands for payment past due debt on the underlying debt from each of our clients. Those are as to each representative plaintiff. And then you go to paragraph 23(C). There's a specific allegation that they were acting on behalf of the lenders collecting for a third party. They were demanding that these people either remit the payoff amount or the past due amounts or cure the delinquency. Paragraph 23 --

THE COURT: That gives them an opportunity to redeem the property, not to collect a debt.

MR. BOYLAN: Oh, no, you don't know that. We say -- we allege that they --

THE COURT: No, that's true, I don't know that.

MR. BOYLAN: No, we allege that they collected money. We allege that they collected money as an agency and passed it on to the lender.

THE COURT: From your clients?

MR. BOYLAN: Pardon me?

THE COURT: From your clients?

MR. BOYLAN: Yes, ma'am. That's in the complaint. I'm sorry, again, this is all in our brief. Page 3 --

THE COURT: Well, I'm focusing on your complaint.

MR. BOYLAN: Okay. Then look at 23(F).

THE COURT: I mean, you can try to argue the facts as you would.

MR. BOYLAN: Look at 23(F), 23(C), 23(G) in the complaint. 23(C) is what

I just recited. 23(F) indicates they were demanding payment on a past due amount, communicating the payoff and asking that our client send a cashier's check to them, which they process --

THE COURT: How else do you act as a non-judicial foreclosure trustee? So you're trying to say that every activity that they did makes them a debt collector.

MR. BOYLAN: No, that's just false. That's a mischaracterization of our complaint. They make that argument, Your Honor, but that's not true. It's real simple.

THE COURT: Why isn't it true?

MR. BOYLAN: It's real simple. If you want to serve as a trustee you can do that, but you can't engage in a whole variety of packaged services that constitute debt collection under NRS 649.20. So what they did is, Your Honor, they're not just serving as a trustee.

THE COURT: Sure, they are.

MR. BOYLAN: What they did is they packaged it. They packaged it and said, oh, I will do this for you. We'll collect the debt, we'll do this, we'll make the phone calls, we'll send the letters, we'll collect the money, we'll pass the money on to you.

THE COURT: The bankruptcy discharge would prevent them from doing that.

MR. BOYLAN: Pardon me?

THE COURT: The bankruptcy, the injunction under 524 would --

MR. BOYLAN: It did not in this case.

THE COURT: Okay.

MR. BOYLAN: Again, Your Honor, you're going beyond the pleadings. There's no allegation to that effect.

THE COURT: You're way beyond the pleadings in your brief, as far as I can see.

MR. BOYLAN: No, no. Our brief has got multiple citations to the complaint. Like I said, at page 3 it cites each and every sub-paragraph in the complaint. If you look at 23(G), we allege like a collection agency they were demanding payment on the underlying debt and providing wire instructions so that these people could wire money directly to them, collecting on behalf of the lender. If you look at 23(H) in the complaint we say they actually did collect money and they forwarded the money to the lenders on whose behalf they were acting. 23(I) in the complaint, they would forward the net cash proceeds as well. These are all specific facts that, I'll tell you, I'm frankly disappointed because they ignore all these allegations in their papers, but they're there. I just gave you the exact citations to them. They're in the complaint.

THE COURT: It doesn't even say on information and belief, which it should. I mean --

MR. BOYLAN: Well, we've got a lot of the notices. We've seen a lot of the -- I mean, I don't think we have to prove our case before we have discovery. We've got more than a good faith basis to allege all this. We've got their documents where they admit they were debt collectors. Let me say that again.

THE COURT: Well, you're talking about the mini-Miranda and I'm not sure I'm persuaded by that.

MR. BOYLAN: Did you read all the cases, including the ones they cite?

THE COURT: No, I haven't read all of the cases.

MR. BOYLAN: Do you know what they say?

THE COURT: There's too many cases to read --

MR. BOYLAN: Well, do you know what they say?

THE COURT: -- in a short period of time.

MR. BOYLAN: Do you know what all the cases say?

THE COURT: Yes.

MR. BOYLAN: They say, yeah, that's evidence. It's not dispositive, but yeah. It doesn't mean absolutely. It's still a factual issue.

THE COURT: But that's what everybody does because they-- and they're -- I mean, in my experience that's what everybody does is to insure that they don't get sued for some violation of the Fair Debt Collection Act.

MR. BOYLAN: And the cases talk about that. But again, you can't make a fact finding --

THE COURT: You're correct about that.

MR. BOYLAN: -- that they did it because they were just being careful instead of being truthful.

THE COURT: There has to be a record to support any finding.

MR. BOYLAN: Well, I mean, even if they had a witness that came in and said we were just doing this to be careful --

THE COURT: Yeah.

MR. BOYLAN: -- we didn't really think we were debt collectors, even that wouldn't be sufficient to award summary judgment. The writing says what it says and all inferences would be taken in favor of the plaintiff. They say we are a debt

collector. We are acting to collect a debt. Are we licensed in Nevada? No, we're not.

THE COURT: That's really your sole allegation is that they're not licensed and they're doing activities that under your allegations they're collecting a debt, not just a non-judicial foreclosure.

MR. BOYLAN: And that's the key. You've just put your finger on the reason why you have to deny this motion, because if you look at the allegations, they say we put them in a box. No. They put themselves in the box by doing all these debt collection activities. Look at the statute. If you issue any order in this case, please cite the statute. It says --

THE COURT: Which one are you citing?

MR. BOYLAN: 649.020.

THE COURT: Somewhere here I've got a copy of it.

MR. BOYLAN: It defines a collection agency. "All persons engaging, directly or indirectly." Let me say that again. Directly or indirectly, okay. "As a primary or a secondary object." Let me say that again. A primary or secondary object. So even if collecting debt was only a secondary object of the foreclosure process, they fall right into the statute. "In the collection of or in soliciting." Just soliciting is all they had to do. "Or obtaining in any manner the payment of a claim" -- not a debt, a claim -- "owed or due or asserted to be owed or due to another."

Now, if you look at the allegations in our complaint, and I've cited you the exact paragraphs, I've cited you the exact sub-paragraphs, clearly under any scenario I don't think you could rule that this complaint does not say that what they were doing, which is far beyond just recording a notice of default, what they were

doing in this case falls squarely in that definition, directly or indirectly, primary or secondary. There's just no way an order can determine that otherwise on a motion to dismiss, based on the allegations in this complaint.

Now, they say that, well, that doesn't really apply to them. We've addressed that at length in our brief. The Legislature made a couple of very specific exceptions and it did not except out someone who happens to be serving as a trustee under a deed of trust. They just didn't do it. They make all kinds of circular, semantic arguments about that, but it's just not in the statute.

So the problem for them, Your Honor, is they decided they wanted to make a lot of money when Nevada hit hard times by combining a whole package of services for which they could charge much more money, and they built into that package actions which constitute collection agency activity. That's what they did. And then when they realized it, QLS's list, they got caught, they went ahead and got their license. But this case concerns the thousands and thousands of actions they did before they got their license, and of course there's several of the defendants that never got their license. MTC did, as we state in our papers, and they've acknowledged that judicial notice is proper as to what we've asked for. We've given you --

THE COURT: And I'm taking judicial notice of everything. I mean, I understand that the decisions by other departments in this court are not binding. They're simply persuasive.

MR. BOYLAN: Well, if you get into the merit of this, which we've addressed, it's not persuasive in this case. First of all, when I went to law school, you can't cite unpublished trial court orders. I don't know when that changed, but --

THE COURT: Well, now -- you can cite unpublished supreme court orders now, but I don't know if there's anything about the trial courts.

MR. BOYLAN: I've never heard it. I've never heard it. But you see it. I've done a lot of class actions, and defense lawyers, they scour the country for some judge that went along with them, and you always see it, it's an unpublished trial court order. They've done a lot of that here. We analyzed Judge Williams' decision drafted by Lionel Sawyer. We've analyzed it carefully in our papers. And for whatever reason they drafted the order to say only that all they did was record a notice of default or conduct a sale. So although the record was different, I acknowledge the underlying record was different, that's not what the judge put in his order. Very interesting. And so he limited his order.

So, first of all, it wouldn't even be persuasive to this fact scenario because he doesn't recite those facts in his order. He says all they did was record a notice of default. If that's all they did, we wouldn't be here today. So that's the first thing. Then there are other things in Judge Williams' order that are just erroneous on their face, like he relied on the fact that they're not doing business in the state, but the subsection of the statute says that's not a defense to other regulations and statutes. So the order has got defects on its face as well. Plus, we don't know why they didn't appeal. We know that QLS got a license.

THE COURT: Well, now we're going way beyond the pleadings.

MR. BOYLAN: Well, they speculate. In their first page --

THE COURT: Okay. Everybody is speculating throughout their briefs from what I can see.

MR. BOYLAN: In their first page they tell you, well, it must be true that the

FID agreed. We don't know if they cut a deal with the FID; hey, we won't appeal it as long as you maintain your license. We don't know if they cut that deal. Only discovery will tell us that.

A couple other responses to arguments made. The deed of trust cannot license you to do illegal acts. If you have to have a license to be a collection agent in Nevada, a deed of trust can't authorize you to do something that the law doesn't allow. Again, the problem is they did so much more than simply record a notice of default. So when they engaged in the other activities, a deed of trust does not insulate them from the criminal law, from the civil law. It doesn't insulate them from the Deceptive Trade Practices Act. Just like having -- you know, being a trustee under a deed of trust doesn't insulate you from other statutory requirements. For example, do you know, Your Honor, that some of these companies or similar companies also do loan servicing? Again, they package all these things. Well, guess what? If you're doing loan servicing, even if it's related to foreclosure -- let's say someone calls and they want to do a loan mod or they get into that, you still have to have a license from the mortgage division of the FID.

THE COURT: Which is different from the license you're talking about here.

MR. BOYLAN: Well, my point is if you're doing acts beyond simply being the trustee, whether it's mortgage servicing or debt collection, you still have to be licensed. Chapter 107 doesn't give you carte blanche to violate any other law. Let's say this. Let's take an extreme example. What about in connection with foreclosure they send some henchmen out, some local guys to yank the homeowner out and throw him on the street and they say, hey, it's related to foreclosure.

THE COURT: Well, that's the kind of thing that the Debt Collection Act is

meant to prevent. But this is not the same kind of activity, that I can see.

MR. BOYLAN: Well, then all I can do then is re-read the statute because what we've alleged --

THE COURT: Yeah, I looked at the statue. I've got it right here in front of me.

MR. BOYLAN: Yeah. I mean, did they not act on behalf of the third party to demand and solicit payments and collect those payments?

THE COURT: Well, I think there's probably an issue of fact there. I'm not sure that's true, because by the time you get to a non-judicial foreclosure they're not paying, so you've got to provide a payoff.

MR. BOYLAN: If there's an issue of fact, why are we even arguing all this? This is a simple denial.

THE COURT: Well, that's only as to your first claim for relief.

MR. BOYLAN: Okay. And what are the Court's other questions? I can address these.

THE COURT: Well, the elder abuse, you don't cite any facts there, other than the fact that they're over 60. I mean, the natural consequences of losing your home to foreclosure is what you allege --

MR. BOYLAN: Your Honor, I'm sorry.

THE COURT: -- so I see no basis for that.

MR. BOYLAN: Well, here's the problem. I think the Court is not accepting as true what it must accept in this motion, and that is --

THE COURT: But you've got to allege some facts and all you've said is, well, gee, we were upset and one of them might lose their shelter.

MR. BOYLAN: No, no, no, we didn't.

THE COURT: Yeah, that's what you said in your second amended complaint.

MR. BOYLAN: But look at -- we incorporate the prior allegations, Your Honor.

THE COURT: Sure, and they belong with the other allegations. There's nothing that makes this unique, other than the fact that they are over 60, so.

MR. BOYLAN: Okay, under the statute if someone commits a statutory fraud against you and you're an elder, then you have additional remedies as an elder. We have said they committed a statutory wrong. They collected --

THE COURT: Okay, that's your first claim for relief.

MR. BOYLAN: Yes.

THE COURT: There's nothing that makes this elder abuse. There's no allegation in here that brings it within that kind of a statute or that type of claim.

MR. BOYLAN: Well, let me ask you this.

THE COURT: Okay.

MR. BOYLAN: If someone steals -- if someone comes and steals money from you in your house, you've got a claim for conversion, right?

THE COURT: Right.

MR. BOYLAN: And if they come and steal money from you in your house and you're over 70 years old, they're taking advantage of an elder. Let's say you can't walk or you have difficulty, they know it.

THE COURT: Okay. There's no allegations like that in here.

MR. BOYLAN: Okay. I think what we've alleged is that they were the victims of a statutory fraud at a time when they were elders, and under the statute that is sufficient.

THE COURT: I don't agree with you.

MR. BOYLAN: Well, then we would ask the opportunity to amend on that. And I will --

THE COURT: No. I mean, you've been through this enough.

MR. BOYLAN: I don't think we've -- I'm not sure we ever -- we've never had an opportunity to amend that, nor has it ever been challenged.

THE COURT: You've had -- this is your second amended complaint.

MR. BOYLAN: Well, that's because we were in federal court --

THE COURT: Okay.

MR. BOYLAN: -- and we had to deal with the erroneous orders that were reversed by the Ninth Circuit over there, Judge. It doesn't have anything to do with having an opportunity to satisfy you in Nevada. When have we even had an opportunity to amend as to elder abuse, even one?

THE COURT: Every time you filed a complaint.

MR. BOYLAN: It's never been challenged, Judge, and we've never had a judge tell us that they think it's deficient.

THE COURT: I think it's definitely deficient.

MR. BOYLAN: We've never had a judge say that you needed more facts here.

THE COURT: That's just part of pleading. You've got to plead something that says more than simply the same allegations that you put in the original claim. It says they didn't have a license, that debt-related notices, demands or collection -- that's in the first claim for relief -- were subject to debt collection when they were over 60. What's the -- there's no authority for that.

MR. BOYLAN: If you're not licensed it's a statutory fraud against an elder.

THE COURT: Okay. You've already said that in your first claim for relief. There's nothing that makes it the fact that they're over 60. All it says is: Inflicted pain, injury or mental anguish to an older person, as well as deprive an older person of shelter. If you don't pay for your house, what's going to happen? I mean, these are the natural consequences of being in foreclosure.

MR. BOYLAN: Well, again, you're going way beyond the pleadings and trying to turn to look at something that's really not at issue in this case. It doesn't matter. If someone is doing --

THE COURT: Well, if it's not an issue, then you're not going to be bothered by my dismissing it.

MR. BOYLAN: Well, no, what I'm saying is if someone commits an illegal act against you, it doesn't matter that you've had the misfortune that you're going to lose your house. I'm sorry, if someone is trying to do an illegal act against you that's contrary to law, they're not excused simply because you lost your job and you're going to lose your house. I'm sorry, that's not true.

THE COURT: But you don't get more -- additional recovery because you're over 60 unless you've really got elder abuse.

MR. BOYLAN: Do they have to physically beat you? What would that be?

THE COURT: Or take your money without -- you know, take your money without some kind of --

MR. BOYLAN: We've alleged --

THE COURT: But I'm not even persuaded that that's a good claim.

MR. BOYLAN: We've alleged --

THE COURT: I know you've alleged it.

MR. BOYLAN: We've alleged it. That's enough for today.

THE COURT: I disagree. I'm dismissing the elder abuse claim.

MR. BOYLAN: All right. I can't persuade you.

THE COURT: No, you can't.

MR. BOYLAN: What else, Your Honor? I know you have a lot of questions and I don't want to sit down before I get a chance to answer them.

THE COURT: Well, I think what it comes down to at this point -- it's almost a motion for summary judgment except there's no affidavit -- is that I can't really come to the conclusion that under no set of facts could you recover. I mean, I think it needs to be shown what the collection companies did, and I suspect -- well, I'm not going to speculate.

MR. BOYLAN: Well, that's true.

THE COURT: Or they're not collection companies, they're the trustees under the deeds of trust. That's who's here is the companies that do that.

MR. BOYLAN: Did you read the Reese case out of the Eleventh Circuit? This is a published appellate opinion by learned judges. Did you read that case? It says that you can do both -- you can be both. If you cross over and you're doing debt collection at the same time --

THE COURT: Okay. But -- and that's why I'm saying that I can't come to the conclusion that under no set of facts would you be able to prevail. So I'm denying the motion as to 1 and 2, granting it as to number 3, the elder abuse.

MR. BOYLAN: Thank you, Your Honor.

THE COURT: Well, I've already made a ruling.

MR. SCARBOROUGH: I know. Is there any chance I might be able to persuade you to go farther?

THE COURT: No. I mean, well -- and the person who made the motion gets the last word, so.

MR. SCARBOROUGH: I made the motion.

THE COURT: Right.

MR. SCARBOROUGH: Your Honor, this is the first time I've ever heard a motion to dismiss defeated by hypothetical. On the key core issue, if we are operating since 2011 as one of the other nine areas, if we can come in and prove, which we will on summary judgment that (D) applies to us, then we obviate the need for any consideration here.

THE COURT: Okay.

MR. SCARBOROUGH: I didn't want to do that, Your Honor, because I'm trying to be mindful of the allegations. But what you've heard is a defeat of a motion to dismiss by hypothetical and filibuster, divorced from Your Honor's good and crisp focus on the allegations of the complaint. That paragraph 23 is key. It is untethered -- untethered completely from any plaintiff and any fact. And Your Honor knows that under the trustee statute we have to put forward -- we have to as a matter of required law what those additional costs are going to be.

THE COURT: Well, and I understand that, but --

MR. SCARBOROUGH: If he can't allege that we're not -- that we aren't operating under one of those other nine possibilities, and that we only could possibly be a debt collection agency, then he doesn't have the ticket he needs to get into court. He's already made it clear that he's not going to be able to allege that.

And my last point -- I know Your Honor has ruled -- is on unjust enrichment. How can it be, as Your Honor stated it, that these deeds of trust which provide absolute entitlement for what occurred to these home borrowers, as sad and aggrieved as they are, how can that possibly be unjust enrichment under the law of this state spoken by the supreme court, the district court, and affirmed by the Ninth Circuit? Mr. Boylan chastises us for looking inside Nevada, which has its unique statutory scheme, and not having due regard for the Eleventh Circuit. I have great regard for the Eleventh Circuit; not on an issue of Nevada law and Nevada statutory construction. With all due respect, those are the decisions that count. And the unjust enrichment claim as easily as the elder abuse claim ought to be dismissed. If Your Honor is uncomfortable at all with deciding this licensure collection agency activity, I'd urge the Court to dismiss that.

This is their fourth pleading. I can explain why they had two shots at the -- at a second amended complaint. And Your Honor is right. Nobody precluded Mr. Boylan from taking all those things that he enthusiastically hurled at the bench behind which you sit in his first complaint, his first amended complaint, the second amended complaint that Judge Du wouldn't let into federal court. And we can show you a red line of the differences between this second amended complaint. That's four chances. As a matter of law the unjust enrichment claim at least should be dismissed. And that's all I have, Your Honor.

THE COURT: Okay.

MR. SCARBOROUGH: I think Ms. Schuler-Hintz wants to say a word.

THE COURT: Okay. Yeah, you haven't had a chance to weigh in.

MS. SCHULER-HINTZ: And I'm the one who knows the most about it.

Thank you, Your Honor. Good morning. Yes, I am the one person here who's been present throughout this and actually knows what went on with the FID and knows what went on with Quality, and knows what went on with Judge Williams and his order.

MR. BOYLAN: Can I cross-examine her, Your Honor? I'd love that.

THE COURT: No.

MR. BOYLAN: If we're going to get into that, let's get her right there, please.

THE COURT: No, I'm not going to do that. I mean --

MR. BOYLAN: I'd ask that she not give her little personal recitation unless we can examine her.

MR. SCARBOROUGH: You know, Your Honor, really, on behalf of my co-counsel --

THE COURT: She's acting as an advocate.

MR. SCARBOROUGH: -- I'd like to have her address it.

THE COURT: She's acting as an advocate. Go ahead.

MS. SCHULER-HINTZ: I'm just stating why I'm here, Your Honor. I know the history. I know that Quality has an order that says that Quality is not a debt collector. What I'm asking is that this Court honor that order.

THE COURT: Well, I don't really think I have to. I mean, it's not binding.

MS. SCHULER-HINTZ: I know it's not binding, Your Honor --

THE COURT: Right.

MS. SCHULER-HINTZ: -- but the court has already looked at this. The State of Nevada has looked at this. The FID has looked at it. And I can tell you we --

MR. BOYLAN: (Inaudible) you get your license.

MS. SCHULER-HINTZ: Counsel, I did not interrupt you when you were speaking. I expect the same courtesy.

THE COURT: Please address the Court, Ms. Schuler-Hintz.

MS. SCHULER-HINTZ: Thank you.

THE COURT: And no muttering back there. I can't really see him, so I don't know -- he's blocked by --

MR. BOYLAN: I'll put my hand up, Your Honor.

THE COURT: Okay.

MS. SCHULER-HINTZ: I guess they do things differently outside of Nevada.

THE COURT: No muttering. Please proceed, Ms. Schuler-Hintz.

MS. SCHULER-HINTZ: I think that there is a collateral estoppel argument here. The State had the opportunity to pursue it further. They had an opportunity to appeal it. They didn't. A ruling has been made on Quality as to whether it's a debt collector. It's not. These actions -- this case came at the same time as that one. So there's no difference here ascertainable as to why we should be in this case to be determined whether we're a debt collector, when the State of Nevada has already reached a determination that we're not a debt collector.

THE COURT: Well, I think there's an issue there because you've got the director, I can't remember his name, who concluded that they were, and then you asked for a judicial review and Judge Williams said they weren't, so I really feel like more information is needed as a part of the record in order for me to make a ruling on that, because the supreme court likes to see a record.

MS. SCHULER-HINTZ: I do understand, Your Honor. I would also add and remind the Court that when the State of Nevada instituted its foreclosure mediation

program, they had an opportunity to determine what body should govern it. The FID existed in 2009 when the foreclosure mediation program was brought into existence. They didn't give that --

THE COURT: They didn't give that to --

MS. SCHULER-HINTZ: They didn't give that power to the FID, they gave it to the court. So they've always kept matters of real property interest with the court in Nevada, not with government agencies. We saw the same with the NRS 116 decision; the power goes to the court. We saw the same with the Quality decision with Judge Williams; the power goes to the court. We see the same with the foreclosure mediation program; the power to determine a judicial foreclosure goes to the court. So I understand the Court's ruling, but like you said, we have to make a record. Thank you, ma'am.

THE COURT: Right, and I think that's necessary. So that's my ruling.

MR. REYNOLDS: Extremely briefly, Your Honor, if I might?

THE COURT: Oh.

MR. REYNOLDS: May I?

THE COURT: And you made a joinder, so go ahead. So you get to reply.

MR. REYNOLDS: Richard Reynolds for MTC. Your Honor, I did joinders throughout and it is true that they've had multiple opportunities because this is not a real second amended complaint, it's a third amended complaint. And they got extra time to decide. I think we had a status conference back in December and they had extra time to decide what they wanted to file to show, and deliberately put in allegations against a different company so that it could not be removed again because there's only one Nevada corporation --

THE COURT: Okay. So there's no diversity?

MR. REYNOLDS: -- which happens to be defunct --

THE COURT: Uh-huh.

MR. REYNOLDS: -- which is neither here nor there now. But my concern is we have six different parties and really there's six complete different complaints. Maybe there's six class actions, maybe nothing gets certified. But all I have is one paragraph, paragraph 5 of the Sansotas, who are not residents anymore, and all it says is we sent out a notice of default; it's attached. We sent out a notice of trustee sale; it's attached. The Court has taken judicial notice of the trustee's deed upon sale, which shows that it was bought for less than the debt by a third party. The Sansotas paid nothing. They couldn't possibly have an unjust enrichment because they're not -- there was nothing done at their expense. They didn't pay anything.

But my other issue is there are no -- paragraph 23 is -- are simply conclusions that are based on the actual notices that the Court's already got. It's the notice of default and the notice of trustee sale. There's no allegation that my client did anything other than act in accordance with the foreclosure statute. If the Court grants the motion and says, okay, amend and say something, then we've got something, but you can't come in consistent with the local rules of pleading, as well as Rule 11, and just say you're a collection agency and we don't care about this foreclosure statute, but by the way, we're incorporating the very notices we're complaining about. That's not the way pleading works.

And that's why I'm saying maybe they get the right to amend the first claim, but the Court should sustain it because they're not really alleging a fact that takes it outside of the foreclosure statute and that's what they have to do, unless

they're just saying as a matter of law it doesn't matter. And they're not saying that. They're saying it's possible to be a foreclosure company in Nevada and not have to be licensed. Okay, then plead what the heck people did as to your parties.

THE COURT: Well, paragraph 23 does, although it doesn't name you -- let's see. Yeah, it does, MTC Financial.

MR. REYNOLDS: We're even in the second cause of action. We're only one foreclosure trustee with one husband and wife out of these, whatever it is, twenty something people, some are husband and wife. What did we do? We're entitled to know that. You don't get to do a mass joinder and then, you know, fall on your sword and ask for mercy.

THE COURT: Well, that's what --

MR. REYNOLDS: They started it. They need to finish it with their own pleading so that we don't get stuck here forever.

THE COURT: Well, that's what Rule 16.1 is supposed to do.

MR. REYNOLDS: Well, actually that's what you're supposed to plead -- more than notice pleading when you're pleading fraud.

THE COURT: Right.

MR. REYNOLDS: They didn't do it. They just didn't do it. So the Court is saying -- I thought what the Court was saying originally was they didn't do it; I'm going to let you have one more chance. But now it seems like the Court is saying, well, you did it and everybody has to answer and let's start the party. I think they have to plead something and they didn't.

THE COURT: Well, I don't read paragraph 23 that way, so.

MR. REYNOLDS: They don't name --

THE COURT: They did name you.

MR. REYNOLDS; But 23 incorporates the foreclosure notices that the Court takes judicial notice of.

THE COURT: Okay.

MR. REYNOLDS: They didn't say that there were other notices.

THE COURT: Yeah, they do, actually.

MR. REYNOLDS: Actually, they don't --

THE COURT: Yeah.

MR. REYNOLDS: -- because I've spent the entire time reading the complaint.

THE COURT: Yeah, and that's the first thing that I read, so.

MR. REYNOLDS: Take a look at it. Read it again, it's all that.

THE COURT: Well, it says, "Plaintiff borrowers were told by defendants unless they could either remit the payoff on the loan or past due amounts, the amount owed to cure the delinquency on the account, their respective properties would be sold to satisfy the debt."

MR. REYNOLDS: They don't get to lump the defendants in as a matter of state law pleading, as the Court well knows. They lumped the defendants in. They need to say my client did it to the Sansotas. That's what they need to say. They didn't do it. Thank you.

THE COURT: Okay. Well, I'm going to allow -- I'm still going to deny 1 and 2. Three is dismissed.

MR. BOYLAN: We'll prepare the order, Your Honor.

THE COURT: Okay, and run it by counsel.

MR. BOYLAN: Absolutely.

THE COURT: All right. And this of course is without prejudice to a summary judgment if there's some -- just a collection of documents is what it sounds like to me. Are you thinking telephone calls and all kinds of things like that?

MR. BOYLAN: Yes, and we'll have to depose the key people who packaged this and decided to make it --

THE COURT: You're going to have to present affidavits of your clients as to what they got.

MR. BOYLAN: Right. But we're also going to show what they did, how they did it, what they sent, what their objectives were. We're going to show that all their actions fed right into that statute, meaning they were doing collection activities as well as simply serving as the trustee. They were packaging it that way, they were pricing it that way, and they knew what they were doing. They knew because they are collection agencies. They saw an opportunity to make a lot more money by combining all these different functions. And discovery, we believe, will show that.

MR. SCARBOROUGH: Your Honor, this is -- to think forward, one of the reasons I was so focused on the sufficiency of the pleading and what they need to allege, without attacking class actions across the board, where class actions get a bad name it's because -- and you just heard it come out of Mr. Boylan's mouth, now unleashed is an amount of discovery that oftentimes even when defendants are large and so-called well-healed, have to end up in a discovery fight, in a discovery burden where the discovery is one way, and that causes claims that have no basis in law to get settled even when they shouldn't.

And the only reason I say that is certainly not to tell this Court something it doesn't already know, but after we answer here, which is what you've

instructed us to do, it may well be that you see some early motions for summary judgment along the lines that I advertised about being other of the categories of permissible foreclosure. It may be relying on the very documents that you heard Mr. Reynolds say they seem to challenge. And you may see something that looks like a motion to strike the class allegations of the complaint, which is authorized under law, to try to at least pull this apart because we have an agglomeration of disparate entities doing different things.

And I don't say that negatively, but I think in fairness I wanted to advertise to the Court that in an attempt to try to curtail the expenditure that you hear coming, the fusillade of discovery that is clearly coming from my good friend on the other side, we may way to try to shorten this and decrease the expense to try to bring it to a position where you have what you think you need to decide these issues on the record.

THE COURT: Right. Well --

MR. BOYLAN: Based on my experience the way I read that is they're going to try to block every avenue of discovery because there's about eighty million dollars at issue under our estimate and they will have to block us from getting those documents, because those documents are going to show you when we get their documents, and they're going to block everything. Everything is going to be a fight.

THE COURT: Well, right now we don't have a class that's certified, so it's limited to the parties as far as the discovery goes.

MR. BOYLAN: Well, not under the law. I mean, in fact, we can brief that, Judge.

MR. SCARBOROUGH: There we go.

THE COURT: You'd have to because I --

MR. BOYLAN: I've briefed it many, many times.

MR. SCARBOROUGH: There we go.

THE COURT: Well, until you actually try to certify this class, I don't see any reason why --

MR. BOYLAN: Well, we can't certify it without giving you the evidence that shows you it was a policy and a practice that was spread across. I mean, how can we give you the evidence if we can't conduct the discovery to make the class certification motion? I'm sorry, it's just impossible. We have to gather that evidence in order to present it to you.

THE COURT: Well, you've got some named plaintiffs here, so.

MR. BOYLAN: Typically. Yeah, but we want to -- we're asking to certify an entire class. They're going to come in and say there's individual issues.

THE COURT: Well, it seems to me based on your complaint that there are individual issues. I mean, I'm not making a ruling, but that's kind of my take on your complaint.

MR. BOYLAN: Then they have to give us the documents that show it wasn't individual, that this is how they priced it and this is how they serviced it for thousands of people.

THE COURT: Not for thousands of people, for the people who are the named plaintiffs.

MR. BOYLAN: Well, typically -- in fact, invariably in a class action you have to do the discovery necessary to meet the class action requirements, including typicality, predominance and all that. We can't have a situation where they're

arguing that those things don't exist and then bar us from getting the discovery that showed these exist for the class, Judge.

THE COURT: Well, your own complaint doesn't say that they exist for the class. You've got different -- different people.

MR. BOYLAN: No. We have a class definition that says exactly that. We have a class definition. We framed our pleading. I've done this for decades.

THE COURT: Okay, that's fine.

MR. BOYLAN: I mean, it's in the pleading.

MR. SCARBOROUGH: Well, I'll stipulate that Mr. Boylan and I are both old and have being doing it for decades. You just heard what's coming at us. And this is the real disappointment in a sense that, as Your Honor pointed out, what are the damages here? He's talking about practices, procedures, all encompassing this, encompassing that. He's going through millions of documents, not because he wants to read any of the documents, but he wants us to cut a check. And the more he speaks, the more I'm disinclined on this side of the aisle to want to do any of that. But of course we're not spending our own money, either, we're spending our client's money. And my position, taking Your Honor's directive, will be to focus on the individual issues first. And like I say, you may see additional motion practice stemming from this.

THE COURT: It seems to me it all boils down to whether or not they are collection agencies, and you're alleging in your complaint that they conducted activities like making demands and phone calls and things that arguably may be collection activities. But this is under 107. I'm not convinced that the --

MR. BOYLAN: 107 does not allow you to commit crimes if you're doing

a foreclosure. 107 does not allow you to be a mortgage servicer. It doesn't allow you to do other things.

THE COURT: But I don't --

MR. BOYLAN: It doesn't allow you to be a collection agent.

THE COURT: Okay, so you've made some allegations. I need to see some paperwork.

MR. BOYLAN: Well, I'm going to ask them for it and they're not going to give it to me.

THE COURT: And I don't mean by that the packaging and all that. I want to see what they actually did, because if they packaged it that doesn't really matter --

MR. BOYLAN: I'm going to ask.

THE COURT: -- other than how they conducted their business.

MR. BOYLAN: I'm going to ask. There's documents that will show that and they're going to say no. And we're going to come back in here and ask you and I'm going to quote you and say, Judge, you wanted to see this; they won't give me the documents.

THE COURT: I want to see like the files for these particular individuals that you've named. I don't want to -- I'm not sure that I'm going to put much credence --

MR. BOYLAN: Well, then there can't be a class actions.

THE COURT: -- upon the packaging.

MR. BOYLAN: Well, then there can't be a class actions.

THE COURT: Well, maybe not.

MR. BOYLAN: If we can't show what they were doing on a class-wide basis, then how can we even make a motion to certify? It doesn't exist. You've just

eliminated class actions from the civil code. If we can't conduct the discovery to show it, we can't make the motion. It's over.

THE COURT: Well, you need to know some information before you even file, if that's the case.

MR. BOYLAN: Prove our case before we have discovery?

THE COURT: Rule 11.

MR. BOYLAN: We've met Rule 11 easily. We've given you the allegations, the specificity. We've attached documents where they admit they were a debt collector. Let's stop right there.

THE COURT: Yeah, because we've already argued this --

MR. BOYLAN: Yeah.

THE COURT: -- and I've made my ruling, so we're done. Okay.

MR. SCARBOROUGH: Thank you, Your Honor.

MR. REYNOLDS: Thank you, Your Honor.

THE COURT: Thank you.

(PROCEEDINGS CONCLUDED AT 11:36:30 A.M.)

* * * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Liz Garcia

Liz Garcia, Transcriber
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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

JEFFREY BENKO, ET AL, Plaintiffs, vs. QUALITY LOAN SERVICING CORPORATION ET.AL, Defendants.	Case No. A-11-649857-C Dept. No. XXIX **QUALITY LOAN SERVICE CORPORATION'S ANSWER TO COMPLAINT**

COMES NOW Defendant, Quality Loan Service Corporation, by and through its counsel of record, Kristin A. Schuler-Hintz, Esq., of McCarthy & Holthus, LLP, and files this Answer to Plaintiffs' Complaint as follows:

1. Defendant denies each and every allegation contained in the Complaint, save and except as expressly addressed otherwise in this Answer.

2. Defendant specifically denies any allegation of illegal conduct or other wrong doing wherever pled in the complaint. Defendant specifically denies any allegation of conducting collection activities wherever pled in the complaint as pursuant to the findings in *Quality Loan Service Corp. v. State of Nevada, Department of Business & Industry, Financial Institutions Division*, No. 12A657580, 2013 WL6911859 (Nev. Dist. Ct. Jan. 3, 2013) Defendant does not engage in debt collection activity and Defendant is not required to hold a debt collector's license and the FID is estopped from requiring Defendant to hold one.